

Queensland



BEACH PROTECTION ACT 1968

**Reprinted as in force on 28 February 2002
(includes amendments up to Act No. 71 of 2001)**

Warning—see last endnote for uncommenced amendments

Reprint No. 1F

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Information about this reprint

This Act is reprinted as at 28 February 2002. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **provisions that have not commenced and are not incorporated in the reprint**
- **editorial changes made in earlier reprints.**

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BEACH PROTECTION ACT 1968

[as amended by all amendments that commenced on or before 28 February 2002]

An Act to provide for the regulation of and the provision of advice in respect of certain activities affecting the coast, to minimise damage to property from erosion or encroachment by tidal water and for those purposes to establish an authority and to confer and impose upon it certain functions and powers

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the *Beach Protection Act 1968*.

3 Meaning of terms

(1) In this Act—

“**authority**” means the Beach Protection Authority as constituted under this Act.

“**coast**” means all land, including the bed and banks of any river, stream, watercourse, lake or other body of water—

- (a) that is situated above the highest astronomical tide mark and within 400 m, measured by the shortest distance, of that mark;
- (b) that is situated below the highest astronomical tide mark.

This definition applies with respect to every island forming part of the State of Queensland.

“**coastal management**” means the works, activities, maintenance and other matters considered by the authority to be necessary or expedient to protect the amenity of the coast and, subject thereto, to minimise damage to property from erosion or encroachment by tidal water.

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“coastal management control district” means a part of the coast that is declared or deemed to be declared under this Act to be a coastal management control district.

“coastal management plan” means a plan prepared by the authority under this Act that states in general terms the future preferred coastal management for land situated in a coastal management control district and includes a scheme that, pursuant to section 2A(2),¹ is deemed to be a coastal management plan approved under this Act.

“court” means the Planning and Environment Court.

“engineer” means the engineer in the department who for the time being is designated by the director-general to be engineer to the authority.

“fund” see section 29(1).

“erosion prone area plan” means a plan prepared by the authority under this Act specifying areas of the coast that, in the opinion of the authority, may be subject to erosion or encroachment by tidal water.

“owner”, of land, means the person (other than the State) who, for the time being, is entitled to receive the rent of the land, and includes the holder of a licence or permission from the State, or a person deriving title to the land.

“restricted access area” means the whole or part of an area to which an erosion prone area plan relates which is declared under section 48 to be a restricted access area.

“river improvement trust” means a trust constituted by or under the *River Improvement Trust Act 1940*.

“secretary” means the officer of the department who for the time being is designated by the director-general to be secretary of the authority.

“unoccupied Crown land” means all land except land which is for the time being—

- (a) lawfully granted or contracted to be granted in fee simple by the Crown;
- (b) subject to any lease or licence lawfully granted by the Crown.

In this definition “land” includes land below mean high-water mark at spring tides of any tidal water and “licence” includes an authority to prospect, permit or dredging claim under any Act relating to mining.

¹ Section 2A (Savings, etc.) was omitted by 1995 No. 58 s 4 sch 1.

(2) In relation to any locality the Governor in Council by regulation may amend the definition “coast” by, in paragraph (a), substituting for the distance 400 m a greater distance.

(2A) On the making of the regulation, all land in the locality stated in the regulation which is situated above and within such greater distance (measured as prescribed by the said paragraph (a)), of mean high-water mark at spring tides shall be included in and be part of the coast under and for the purposes of this Act.

(3) A reference in this Act to an area to which an erosion prone area plan relates is a reference to an area indicated on the plan that may, in the opinion of the authority, be subject to erosion or encroachment by tidal water.

4 Interpretation

To the extent of any inconsistency between any provision of this Act and any provision of the *Petroleum (Submerged Lands) Act 1967*, the provision of the latter Act shall prevail.

PART 2—THE AUTHORITY

5 The authority

(1) There is hereby constituted a Beach Protection Authority.

(2) The authority shall consist of a chairperson and 8 other members each of whom shall, subject to subsection (3), be appointed by the Governor in Council by notification published in the gazette.

(3) The chairperson and other members of the authority shall be respectively—

- (a) in the case of the chairperson, the chief executive or other officer of the department nominated by the Minister to carry out the functions and duties of the chairperson;
- (b) a person nominated by the Minister administering the *Land Act 1994*;

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- (c) a person nominated by the Minister for the time being administering the *State Development and Public Works Organization Act 1971*;
- (d) a person nominated by the Minister administering the *Mineral Resources Act 1989*;
- (e) a person nominated by the Minister administering the *Local Government Act 1993*;
- (f) 4 representatives of local governments the areas whereof include any part of the coast each of whom shall be a member of such a local government nominated to the Minister by the Executive of the Local Government Association of Queensland (Incorporated).

(4) Where 4 suitably qualified persons are not nominated to the Minister for appointment as the representatives referred to in subsection (3)(f) the Minister may—

- (a) where there has been a failure to nominate any representatives—nominate 4 suitably qualified persons for appointment as those representatives;
- (b) where less than 4 representatives have been nominated—nominate such number of suitably qualified persons for appointment as those representatives as will bring the number of representatives to 4;

and such nominees shall be deemed to have been nominated under subsection (3)(f).

(5) Subject to this Act the chairperson and other members of the authority shall be appointed to hold office for such period not exceeding 3 years as is determined by the Governor in Council and stated in the notification of their appointments published in the gazette, but any person appointed a member of the authority shall, if qualified, be eligible for reappointment (but subject, where prescribed, to nomination as prescribed).

6 Body corporate

(1) The authority shall be a body corporate under the name and style of the 'Beach Protection Authority', and by that name shall have perpetual succession and an official seal and be capable in law of—

- (a) suing and being sued;

- (b) compounding or proving in any court of competent jurisdiction all debts or sums of money due to it;
- (c) taking, acquiring by grant, purchasing or taking on lease property (whether situated in Queensland or elsewhere);
- (d) surrendering to the Crown or selling, leasing, assigning, transferring, or otherwise dealing with property (whether situated in Queensland or elsewhere);
- (e) doing and suffering all such other acts and things as bodies corporate may by law do and suffer.

(2) All courts, judges, justices and persons acting judicially shall take judicial notice of the seal of the authority affixed to any document, notice or other writing and, until the contrary is proved, shall presume that it was duly affixed.

(3) For the purposes of this Act the authority shall be a constructing authority under the *Acquisition of Land Act 1967*.

8 Disqualifications from office

(1) A person who—

- (a) is not of the full age of 18 years; or
- (b) is an undischarged bankrupt or takes advantage of the laws in force for the time being relating to bankruptcy; or
- (c) has been convicted in Queensland of an indictable offence or has been convicted elsewhere than in Queensland in respect of an act or omission which if done or made by the person in Queensland would have constituted an indictable offence; or
- (e) is concerned or participates in the profits of a contract with the authority;

shall not be qualified to be or to continue as a member of the authority;

(2) However, a person shall not be disqualified from being or continuing as a member of the authority solely because the person is concerned or participates in a transaction with the authority in respect of—

- (a) a sale, purchase or lease of land, or an agreement for such a sale, purchase or lease;
- (b) a contract for the publication of advertisements in a public newspaper or journal;

- (c) a sale of goods to or the performance of work for the authority bona fide in the ordinary course of business, not exceeding the sum or value of \$1 000 in the aggregate in any year.

9 Vacation of office

(1) A member of the authority shall be deemed to have vacated office as such member if the member—

- (a) dies; or
- (b) by reason of a provision of section 8 he or she is not qualified to be or to continue as a member of the authority; or
- (c) is absent, without leave granted by the authority from 3 consecutive meetings of the authority of which due notice has been given to the member; or
- (d) resigns such office by written notice delivered to the secretary; or
- (e) in the case of a member of a local government specified in section 5(3)(f), ceases to be a member of the local government whereof he or she was a member when nominated; or
- (f) is removed from office by the Governor in Council (who is hereby thereunto authorised).

(2) In section 8 and this section—

“**member**” includes a deputy for a member.

10 Casual vacancies

(1) If from any cause, other than expiration of the term of office, a vacancy occurs in the office of a member of the authority the Governor in Council (subject to nomination as prescribed in the case of any such office where nomination of a representative for appointment thereto is prescribed) may appoint a person to fill the vacancy.

(2) If, in the case of any such office where nomination of a representative for appointment thereto is prescribed, a nomination of a person to fill the casual vacancy is not furnished to the Minister within 14 days, or such longer time as the Minister may allow, after the occurrence of the vacancy, the Minister may nominate a person for appointment to the authority and the Governor in Council may appoint such person to fill the vacancy.

(3) The person appointed to fill such a vacancy shall, subject to this Act, hold office for the remainder of the predecessor's term of office.

11 Defects in appointments etc.

(1) No act or proceeding of the authority shall be invalid or illegal in consequence only of the number of the members of the authority not being complete at the time of such act or proceeding.

(2) All acts and proceedings of the authority shall, notwithstanding any defect in the appointment of any member of the authority, or that any member of the authority was at the time in question disqualified or disentitled to act as such be as valid as if such member had been duly appointed and qualified to act as such, and as if the authority had been properly and fully constituted at the time in question.

(3) Where by or under any Act it is provided that the holder of any office shall devote the whole of the holder's time to the duties of such office or shall be prohibited from engaging in employment other than such office such provision shall be construed so as not to disqualify such holder from holding that office and also the office of a member of the authority or from receiving and retaining any allowance or expenses payable to the holder as such member.

12 Payments to members

(1) Members of the authority may be paid such allowances or expenses, or both, as the Minister may decide.

(2) Any such payments shall be payable from the fund and may differ in amounts between different members.

13 Proceedings of the authority

(1) The authority shall meet at such times and places as are fixed by the chairperson.

(1A) The secretary shall give to each member not less than 14 days prior notice of the time and place of any meeting.

(2) Where, in the opinion of the chairperson, it is necessary for the authority to meet by reason of any emergency, such notice as the chairperson directs shall be sufficient prior notice to a member of the time and place of the meeting.

(3) The chairperson of the authority shall preside at all meetings thereof at which the chairperson is present.

(3A) In the absence of the chairman a member elected by and from the members present shall preside at the meeting in question.

(4) The person presiding at a meeting of the authority shall have a vote and, in the event of an equality of votes, a second or casting vote.

(5) At any meeting of the authority, not less than one-half of the members in office for the time being shall constitute a quorum.

(5A) If a quorum is not present within half an hour after the time appointed for a meeting, the members present or the majority of them, or any one member if only 1 is present, may adjourn the meeting to any time not later than 14 days from the date of such adjournment.

(5B) However, nothing in this Act shall be construed so as to prevent the adjournment of any meeting to a later hour of the same day on which it was appointed to be held.

(6) Subject to subsections (4) to (5B) all questions at a meeting of the authority shall be decided by a majority of votes of the members present at the meeting.

(6A) If any member fails to vote, the member's vote shall be counted in the negative.

(7) Notwithstanding—

- (a) the preceding provisions of this section; or
- (b) that all or any of the members may not be present at the same venue;

a meeting of the authority may be held for the purposes of this Act, if all the members entitled to be present so agree, by means of a telephone or some other mode of communication previously approved for the purposes of this subsection by the authority, or partly by one such mode and partly by another.

14 Deputies for members

(1) A member of the authority may by notice in writing given to the secretary appoint a person to be the member's deputy and the Minister may approve the appointment.

(2) In the absence of a member of the authority from a meeting thereof, a deputy for that member appointed and approved as prescribed by subsection (1) is entitled to attend that meeting and when so attending shall be deemed to be a member.

(2A) However, a deputy, whether for the chairperson or another member, shall not preside at any meeting.

(3) Appointment or approval as prescribed by subsection (1) of a deputy may be in respect of a particular meeting or a particular period of time or may be made generally.

(4) The appointment or approval may be revoked at any time.

15 Delegation

The authority may delegate its powers to an officer or employee of the department.

16 Assignment of officer etc. to authority

(1) The chief executive shall designate—

- (a) an engineer in the department to be engineer to the authority;
- (b) officers of the department to be respectively secretary of the authority, and accountant of the authority;

and may assign such other officers and employees of the department to perform such duties as are required for the exercise and performance of the powers, functions and duties of the authority under this Act or otherwise to secure the objects and purposes of this Act.

(2) A person who is required to perform duties on behalf of the authority pursuant to subsection (1) may perform those duties in conjunction with any other duties the person is required to perform by reason of the person's membership of the public service.

17 Declaration that authority is statutory body

(1) The authority is a statutory body for the *Statutory Bodies Financial Arrangements Act 1982*.

(2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way in which the authority's powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

29 Beach Protection Authority Fund

(1) The Beach Protection Authority Fund (the “**fund**”) is continued in existence subject to the *Financial Administration and Audit Act 1977*, part 8, division 2.²

(2) Accounts for the fund must be kept as part of the departmental accounts of the department.

(3) Amounts received for the fund must be deposited in a departmental financial-institution account of the department but may be deposited in an account used for depositing other amounts of the department.

(4) Amounts received for the fund include—

- (a) amounts paid to the authority by way of loan for the purposes of this Act; and
- (b) amounts paid to the department as part of the department's departmental vote under the *Financial Administration and Audit Act 1977* and made available by the department to the authority for the fund; and
- (c) other amounts paid to the authority for the purposes of this Act.

(5) An amount is payable from the fund only for a liability necessarily incurred by the authority in the performance of the functions under this Act.

(6) In this section—

“**departmental accounts**”, of a department, means the accounts of the department under the *Financial Administration and Audit Act 1977*, section 12.

“**departmental financial-institution account**”, of a department, means an account of the department kept under the *Financial Administration and Audit Act 1977*, section 18.

² *Financial Administration and Audit Act 1977*, part 8 (Transitional provisions), division 2 (Transitional provisions for *Financial Administration Legislation Amendment Act 1999*)

“other amounts”, of a department, means amounts received by the department other than amounts received for the fund.

PART 3—FUNCTIONS ETC. OF THE AUTHORITY

34 Functions of the authority

(1) The functions of the authority shall be—

- (a) the giving of advice and the making of reports with respect to coastal management to the Minister, State government departments, port authorities, local governments, river improvement trusts and other persons;
- (b) the carrying out of investigations, conducting of experiments and giving of demonstrations with respect to coastal management;
- (c) the planning of preventive and remedial measures with a view to preventing any matter or thing having an adverse effect upon the amenity of the coast and, subject thereto, with a view to minimising damage to property from erosion or encroachment by tidal water;
- (d) the recording and evaluating of the results of the investigations, experiments, demonstrations and plans referred to in paragraphs (b) and (c);
- (e) the disseminating of information on coastal management to members of the public;
- (f) the exercising and performing of the powers, authorities, functions and duties conferred upon it by this or any other Act.

(2) In respect of any investigation the authority shall have all the powers, authority, protection and jurisdiction of a commission under the *Commissions of Inquiry Act 1950*, save such powers, authority, and jurisdiction as are confined to a chairperson of a commission when that chairperson is a judge of the Supreme Court.

(3) Any advice or report referred to in subsection (1)(a) other than advice given or a report made to the Minister may be given or made subject to such terms and conditions as to the authority seem fit including a condition requiring the payment of a fee to the authority.

36 Coastal management control districts

(1) A regulation may—

- (a) declare any part of the coast to be a coastal management control district;
- (b) assign a name or number, or both, to any such district;
- (c) abolish any such district;
- (d) amalgamate 2 or more such districts into one such district;
- (e) amend the boundaries of any such district so as to exclude therefrom any part thereof or to include therein any part of the coast which is not included in such a district;
- (f) exclude from any such district any part thereof and declare that part to be a coastal management control district or include it in another such district.

(2) Where a recommendation or part of a recommendation of the authority is that the whole or part of the limits of a harbour defined pursuant to the *Harbours Act 1955* be included within a coastal management control district it shall not be competent to the Governor in Council to give effect to that recommendation or, as the case may be, part pursuant to subsection (1) unless the recommendation or part has been approved by the Minister or, if at the material time the *Harbours Act 1955* is being administered by a person other than the Minister, by that person.

(3) The boundaries of any coastal management control district or of any part of such district may be sufficiently described by reference to a plan or map kept in the office of the chief executive (of the department in which the *Surveyors Act 1977* is administered).

(3A) A copy of such plan or map shall be kept in the office of the local government into the area whereof the coastal management control district extends or, if it extends into the areas of 2 or more local governments, then in the office of each such local government.

(3B) Such plan or map and every such copy thereof shall be open to public inspection at all times during which the office of the said chief executive or of the local government is open for the transaction of public business.

(3C) The authority shall furnish a copy of such plan or map showing the current boundaries of a coastal management control district delineated thereon—

- (a) where that district includes freehold land, to the registrar of titles to be kept in the land registry;
- (b) where that district includes land other than freehold land, to the chief executive of the department in which the *Land Act 1994* is administered to be kept in the land registry.

(4) The boundaries of a coastal management control district as declared for the time being by the Governor in Council shall not be affected by any change in the mean high-water mark or the mean low-water mark of any tidal water, or in both such marks.

37 Coastal management plan

(1) The authority may cause to be prepared in respect of a coastal management control district or part thereof a coastal management plan or several such plans (as the authority thinks fit).

(2) When the coastal management plan is prepared the authority shall—

- (a) furnish a copy of the plan to each local government, port authority and river improvement trust that will be affected by the implementation of the plan;
- (b) by advertisement published at least once in at least 1 newspaper circulating in the locality in which the coastal management control district in question is situated, give notice that a copy of the plan is open for public inspection for the period of 1 month specified in the advertisement at the office or offices respectively of the local government or local governments named in the advertisement.

(3) A local government which, pursuant to subsection (2)(a), is furnished with a copy of the coastal management plan, shall keep such copy open for public inspection at its office at all times when its office is open for the transaction of public business during the period of 1 month specified in the advertisement.

(4) During the inspection period of 1 month or within 1 week after its termination any person (including a local government, port authority or river improvement trust that will be affected by the implementation of the plan) who considers that he or she will be aggrieved by a requirement of the plan may object to the plan.

(5) Where the Minister is satisfied that a person has reasonable grounds for objecting to a coastal management plan the Minister may, by notice in

writing given to the person, extend, in relation to that person, the period of 1 week referred to in subsection (4) to a period not exceeding 2 months and where the Minister does so this section, in so far as it relates to that person, shall be construed as if the reference in subsections (4) and (10) to a period of 1 week were a reference to the extended period mentioned in the notice.

(6) The objection shall be in writing, shall be addressed to the secretary and shall set out the grounds of objection and the facts and circumstances relied on by the objector in support of those grounds.

(7) A ground of objection may be that the implementation of the plan will impose an undue financial burden on the objector.

(8) An objection may be made by a group of persons.

(9) An objection may be posted to or lodged with any local government at the office whereof a copy of the plan is required to be kept open for public inspection, and such local government shall forthwith forward to the secretary every objection received by it.

(10) The authority shall forthwith consider every objection made pursuant to this section and received by the secretary not later than 1 week after the termination of the inspection period.

(11) For the purposes of subsection (10) an objection received by a local government pursuant to subsection (9) shall be deemed to have been received by the secretary.

38 Approval of plan

(1) The authority shall furnish to the Minister for submission to the Governor in Council, and the Minister shall submit to the Governor in Council—

- (a) the coastal management plan;
- (b) every objection duly made to the plan;
- (c) the representations by the authority in respect of such objections;
- (d) such other information and particulars with respect to the plan and objections thereto as the Minister requires.

(2) The Governor in Council may—

- (a) approve the coastal management plan as submitted;

- (b) approve the coastal management plan subject to such alterations or modifications as the Governor in Council determines;
- (c) reject the coastal management plan.

39 Implementation of coastal management plan

(1) When a coastal management plan is approved by the Governor in Council, the authority may arrange with each local government, port authority or river improvement trust that will be affected by the implementation of the plan for the carrying out, taking and doing by the local government, port authority or, as the case may be, river improvement trust of the works, steps and things necessary to implement the plan.

(2) Arrangements made under subsection (1) may include a program listing, in relation to successive stages, the works, steps and things to be carried out, taken and done by the local government, port authority or river improvement trust in question for the purpose of implementing the coastal management plan.

(3) A local government, port authority or river improvement trust may carry out works, take steps and do things—

- (a) pursuant to an arrangement in that behalf made with it by the authority under subsection (1);
- (b) that are in accordance with and that are carried out, taken or done for the purpose of implementing a coastal management plan.

(4) A local government, port authority or river improvement trust shall maintain any works carried out by it pursuant to an arrangement entered into under subsection (1) or in accordance with and for the purpose of implementing a coastal management plan.

(5) The carrying out of works, taking of steps and doing of things by a local government under subsection (3) and the carrying out of maintenance by a local government under subsection (4) are hereby declared functions of local government.

(6) A local government, port authority, river improvement trust or other person shall not do anything that to its knowledge—

- (a) is contrary in any respect to the works, steps or things provided for in a coastal management plan; or

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- (b) is likely to make the implementation of that plan more difficult than would otherwise be the case; or
- (c) is likely to increase the cost of implementing the plan.

Maximum penalty—20 penalty units.

(7) The Minister may, by notice in writing given to a local government, port authority, river improvement trust or other person that or who has done anything—

- (a) contrary in any respect to the works, steps or things provided for in a coastal management plan; or
- (b) likely to make the implementation of that plan more difficult than would otherwise be the case; or
- (c) likely to increase the cost of implementing the plan;

direct that person to cease the doing of that thing and, where the Minister is satisfied that the person has contravened subsection (6), direct that person—

- (d) to restore as nearly as practicable the site whereon that thing was done to the condition in which it was immediately prior to the time at which the thing was commenced to be done; or
- (e) where the Minister and that person have so agreed in writing—to carry out, take or do such works, steps or things as have been so agreed;

within such time as is specified in the notice.

(8) A person who fails to comply with a notice given to the person under subsection (7) commits an offence against this Act which shall be taken to be a continuing offence and is liable to a penalty of 10 penalty units for each day during which the failure has continued.

(9) A person may be prosecuted from time to time for the person's failure to comply with a notice given to the person under subsection (7) in respect of any period or periods during which the failure has continued.

(10) Where a person fails to comply with a notice given to the person under subsection (7), within the time specified in the notice, the Minister may cause all such steps to be taken and all such things to be done to carry out all or any requirements of the notice.

(11) All expenses incurred by the Minister (including administrative expenses) under subsection (10) shall be a debt due to the Minister by the

person to whom the notice was given and may be sued for and recovered in a court of competent jurisdiction.

40 Authority may carry out works

For the purpose of implementing a coastal management plan the authority may—

- (a) with the concurrence of any local government, port authority or river improvement trust carry out on behalf of that local government, port authority or river improvement trust any works, the cost of which shall be charged to that local government, port authority or river improvement trust;
- (b) with the concurrence of any local government, port authority or river improvement trust supervise on behalf of that local government, port authority or river improvement trust the carrying out of any works, the cost of which supervision may, where agreement has been reached in that regard, be charged to that local government, port authority or river improvement trust;
- (c) carry out any works with moneys received for the fund for that purpose.

41 Amendment of plan

(1) A coastal management plan may be amended from time to time as prescribed by this section.

(2) The provisions of sections 37 and 38 shall, with and subject to all necessary adaptations, apply with respect to any amendment of the coastal management plan.

(3) When a coastal management plan is amended as prescribed by this section, the plan as so amended shall become and be the plan in question.

41A Erosion prone area plan

(1) The authority may cause to be prepared in respect of any part of the coast an erosion prone area plan or several erosion prone area plans (as the authority thinks fit).

(2) When an erosion prone area plan is prepared the authority shall furnish a copy of the plan to the local government the area whereof

includes the part of the coast in question, or if that part is included in the areas of 2 or more local governments, then to each such local government.

(3) A local authority which, pursuant to subsection (2), is furnished with a copy of an erosion prone area plan shall keep such copy open for public inspection at its office at all times when its office is open for the transaction of public business.

(4) The authority may from time to time amend an erosion prone area plan and where it does so the plan as so amended shall become and be the plan in question.

41B Local government to obtain authority's views

Before a local government applies under the *Local Government (Planning and Environment) Act 1990*, for the Governor in Council's approval of—

- (a) a proposed town planning scheme; or
- (b) an amendment to an existing town planning scheme;

it shall, where any land to be affected by the proposed scheme or amendment is in a coastal management control district or in an area to which an erosion prone area plan relates, obtain the authority's views with respect to the proposed scheme or, as the case may be, amendment in so far as it relates to that land.

41C Mandatory condition for rezoning approvals

(1) This section applies if—

- (a) a person applies under the *Local Government (Planning and Environment) Act 1990* for approval to amend an existing planning scheme by the rezoning of land (the “**relevant land**”); and
- (b) all or part of the relevant land is in a coastal management control district or is included in an area to which an erosion prone area plan relates.

(2) In this section—

“**surrender**”, of land, means surrender of the land free of charge to the State for beach protection and coastal management.

(3) Within 2 days after lodging the application with the local government, the person must give a copy of the application to the Beach Protection Authority.

(4) Subsection (3) is a relevant procedure that must be included in the applicant's statutory declaration mentioned in the *Local Government (Planning and Environment) Act 1990* sections 4.3(10) and 4.6(10).

(5) If the Beach Protection Authority is satisfied the relevant land should be protected by the surrender of part of the land, it must—

- (a) advise the applicant and the local government that a condition of the approval should be that a specified part of the relevant land be surrendered; and
- (b) give the local government written advice about the condition within 30 days of receiving the copy of the application from the applicant.

(6) If the Governor in Council is satisfied the relevant land should be protected by the surrender of land, the Governor in Council may require, as a condition of the approval, that land be surrendered.

(7) To remove any doubt, the surrender requirement only applies to the part of the land in an area to which an erosion prone area plan relates.

(8) No appeal lies against the surrender requirement and no compensation is payable for the surrender.

(9) If land has been previously surrendered under this section, this section does not apply if the remaining land is subject to a further application mentioned in subsection (1).

42 Application of provisions of Harbours Act

Nothing in this Act shall exclude the operation of the provisions of the *Harbours Act 1955*, sections 86 and 91 (as continued in effect under the *Transport Infrastructure Act 1994*, section 236) in relation to the carrying out or maintenance of any works connected with the implementation of a coastal management plan.

43 Protection from wind erosion

(1) Every owner of land situated in an area to which an erosion prone area plan relates shall, at the owner's own cost, at all times protect such land from wind erosion.

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(2) A local government into the area whereof an area to which an erosion prone area plan relates extends may, and shall if so directed by the authority, serve upon an owner of land in such area a notice in writing requiring the owner to take the action specified in the direction, and if so specified within the time or times specified in the notice, for the purpose of performing obligations under subsection (1).

(2A) A local government thereunto directed by the authority under subsection (2) shall serve upon the owner of land in question a notice in writing containing the requirements directed by the authority.

(2B) The action required by a notice under subsection (2) may be any or all of the following—

- (a) the construction and maintenance of any works;
- (b) the planting and cultivation of any vegetation;
- (c) the preservation and cultivation of any subsisting vegetation;
- (d) the refraining from altering the natural configuration of the land;
- (e) the taking or doing of any other step or thing necessary or expedient in the opinion of the local government or the authority to protect the land from wind erosion.

(2C) A notice under subsection (2) may require that any action specified therein be not taken without the prior permission of the local government or the authority.

(3) If an owner of land fails to comply in any respect with the requirements of a notice under subsection (2)—

- (a) the local government as a function of local government shall as soon as may be itself comply with those requirements;
- (b) the owner shall be liable to pay to the local government all costs incurred by it in complying with those requirements and any amount thereof unpaid to the local government upon demand may be recovered by it by action as for a debt in any court of competent jurisdiction;
- (c) the owner shall be guilty of an offence against this Act and liable to a penalty of not more than 10 penalty units and additionally, in the case of any such offence which is continued, 2 penalty units for each and every day on which it is continued.

(3A) Subsections (3)(a) and (b) apply—

- (a) irrespective of whether or not proceedings for an offence under subsection (3)(c) in respect of the failure concerned have been instituted or concluded;
- (b) so as not to exempt an owner from liability to be punished under subsection (3)(c).

(4) Where a notice under subsection (2) is subsisting in respect of any land at the time when the land is sold or agreed to be sold, the purchaser shall be bound by the notice as from the date of the sale or agreement to sell as if it had been served upon the purchaser, and shall be liable accordingly.

(5) On or before the date of the sale or agreement to sell, the vendor shall give to the purchaser a statement in writing that the land is subject to a notice under subsection (2) of this section and shall accompany such statement with the notice or a copy thereof.

(6) A person who fails to comply with subsection (5) is guilty of an offence against this Act and liable to a penalty of not more than 10 penalty units.

44 Control of building operations

(1) Where—

- (a) under a town planning scheme; or
- (b) under a by-law whereby provision is made in respect of regulating and controlling the erection or alteration of buildings or other structures on land in an area or part of an area to be included in a town planning scheme pending the coming into force of the scheme;

any building or other structure may be erected or altered for any purpose on land only with the approval, consent or permission of the local government and the land concerned is in a coastal management control district then notwithstanding that that approval, consent or permission (whether conditionally or not) has been obtained a person shall not erect or alter or cause or allow to be erected or altered on that land the building or other structure without the authority of a permit under this section or contrary in any respect to the terms and conditions of a permit under this section.

(1A) Notwithstanding subsection (1), where—

- (a) the approval, consent or permission of a local government under a town planning scheme or a by-law referred to in subsection (1)

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has been obtained in respect of the erection or alteration of a building or other structure on land in a coastal management control district; and

- (b) a permit has been granted under this section in respect of that erection or alteration;

then if the local authority has modified that approval, consent or permission under the *Local Government (Planning and Environment) Act 1990*, a person is not required to obtain a further permit under this section by reason only of that modification and subsection (1B) does not apply to the approval, consent or permission of the local government as so modified.

(1B) The approval, consent or permission of a local government under a town planning scheme or a by-law referred to in subsection (1) in respect of the erection or alteration of any building or other structure on land in a coastal management control district shall not have any force or effect in law unless and until the Governor in Council shall grant a permit under this section for the carrying out of that erection or alteration and if such permit is refused the approval, consent or permission by the local government shall be and be deemed to have always been void and of no effect in law.

(1C) For the purposes of this section a decision by the Planning and Environment Court allowing an appeal against a refusal by a local government—

- (a) to give its approval, consent or permission under a town planning scheme or a by-law referred to in subsection (1) in respect of the erection or alteration of any building or other structure on land in a coastal management control district; or
- (b) to modify any such approval, consent or permission;

shall be deemed to be a decision by the local government in respect of the matter to which the appeal relates.

(2) Application for a permit under this section shall be made to the local government in the area whereof the land is situated or, where the local government is the applicant to the authority (it being hereby declared that this section applies to local governments) in the manner prescribed and shall contain or be accompanied by the prescribed information and particulars.

(2A) The local government shall forward the application together with the information and particulars appertaining to it to the authority.

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(3) The Governor in Council may at the Governor in Council's discretion grant or refuse to grant a permit under this section or may grant it subject to such terms and conditions as the Governor in Council deems fit.

(4) The Governor in Council may grant a permit under this section for a limited period as specified in the permit and in that event the permit shall cease to be in force at the expiration of the period specified therein unless the Governor in Council (who is hereby thereunto authorised) sooner extends the period thereof.

(5) Where a structure is erected or altered contrary in any respect to the provisions of this section then, notwithstanding that proceedings for an offence against this section have not been instituted or concluded in respect of the contravention, the authority may serve a notice on the owner of the land in question, or on the person responsible for erecting or altering the structure, or on both of them, requiring that the structure in question be removed or, in the case of alteration, be restored to its former state and that all such other steps and things be done and taken as in the opinion of the authority are necessary to restore the land in question, including vegetation thereon, to the state it was in immediately prior to the commencement of the erection or alteration or to place the land in such a state as may be agreed upon between the authority and the owner or, as the case may be, person responsible.

(5A) A notice under subsection (5) may specify a time within which a person served therewith shall comply with the requirements of the notice.

(5B) Where the notice is served on both the owner of the land in question and the person responsible for erecting or altering the structure, they shall be jointly and severally bound by the requirements of the notice.

(5C) Upon failure of the person or persons bound by a notice under this section to comply in every respect with the requirements thereof, the authority may itself comply with those requirements irrespective of whether or not proceedings for an offence under this section in respect of such failure have been instituted or concluded.

(5D) Subsection (5C) applies so as not to exempt a person bound by the notice from liability to be punished for any offence under this section.

(5E) The authority may sell by public tender or by public auction any materials derived from the removal of any structure or, in the case of alteration, from the restoration of any structure and, if it makes any such sale, shall apply the proceeds thereof towards the costs of the sale and of

the removal or restoration, as the case may be, and shall pay any surplus to the owner of the land.

(5F) In the event that the authority makes no such sale or that the proceeds of such a sale are insufficient to defray such costs, the authority may recover such costs or the undefrayed balance thereof from any person bound by the notice by action as for a debt in any court of competent jurisdiction.

(6) A person who contravenes or fails to comply with any provision of subsection (1) or (5) shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding 50 penalty units and additionally to a penalty not exceeding 5 penalty units for each and every day on which the person continues the offence after the person is convicted therefor.

(7) In this section—

“**alter**” includes alter, add to, remove, take away from, or modify in any respect and also includes commencing or continuing the alteration, adding to, removal, taking away from or modification.

“**building**” means a fixed structure that is either wholly or partly enclosed by walls and is roofed and includes any part of a building.

“**by-law**”, in relation to the Brisbane City Council, includes an ordinance.

“**erect**” includes erect, construct, make or place and also includes commencing or continuing the erection, construction, making or placing.

“**structure**” includes any building, wall, fence, pillar, post, roadway or path or other structure or erection.

“**town planning scheme**” means a town planning scheme approved under the *Local Government (Planning and Environment) Act 1990*.

(8) A permit under this section shall not authorise, justify or excuse any act or omission which is an offence against any law other than this Act.

44A Regulations—buildings or other structures

(1) Regulations may be made under section 60 prescribing requirements that must be complied with by persons who erect or alter any building or other structure on land in a coastal management control district.

(2) Regulations made for the purpose of subsection (1) are incorporated with and shall be read as one with the *Standard Building Regulation 1993*

and shall be administered by the local authority having jurisdiction in the area in which the building or other structure is or is to be situated.

(3) In this section—

“alter”, “building”, “erect” and “structure” have the same meaning as in section 44.

45 Opening of road or subdivision of land in coastal management control district

(1) Notwithstanding that a local government has approved (whether conditionally or not) an application to open a road or to subdivide land in a coastal management control district a person shall not open the road or subdivide the land without the consent of the Governor in Council under this section or contrary in any respect to the terms and conditions pursuant to which that consent is given.

(2) The approval by a local government of an application to open a road or to subdivide land in a coastal management control district shall not have any force or effect in law unless and until the Governor in Council shall give the Governor in Council’s consent under this section to the opening of the road or the subdivision of the land and if such consent is refused the approval by the local government shall be and be deemed to have always been void and of no effect in law.

(3) For the purposes of this section a decision by the Planning and Environment Court allowing an appeal against a refusal by a local government to approve an application to open a road or to subdivide land in a coastal management control district shall be deemed to be a decision by the local government in respect of the matter to which the appeal relates.

(4) An application for consent under this section shall be made to the local government in the area whereof the land is situated or, where the local government is the applicant, to the authority (it being hereby declared that this section applies to local governments) in the manner prescribed and shall contain or be accompanied by the prescribed information and particulars.

(5) The local government shall forward the application together with the information and particulars appertaining to it to the authority.

(6) The Governor in Council may give or refuse to give consent to an application made under this section or may give it subject to such terms and conditions as the Governor in Council deems fit.

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(7) The conditions stipulated by the Governor in Council may include a condition requiring the surrender of all or any land to which an approval referred to in subsection (1) relates to the Crown where such land is situated in an area to which an erosion prone area plan relates.

(8) Where a local government has approved an application (whether conditionally or not) to open a road or to subdivide land in a coastal management control district the registrar of titles or other person charged with registering instruments of title to any land shall not record any instrument dealing with any land to which that approval relates (other than a transfer surrendering land to the Crown) unless and until—

- (a) a plan of the road or, as the case may be, of the subdivision bearing a certificate under the hand of the secretary stating that the necessary consent has been given by the Governor in Council under this section and, where that consent was given subject to any terms or conditions, that the terms and conditions have been complied with; and
- (b) where the consent of the Governor in Council was given subject to a condition referred to in subsection (7), a transfer surrendering to the Crown all the land to which that condition relates;

are registered in his or her office.

(9) For the purpose of satisfying himself or herself that the terms and conditions, to which any consent given by the Governor in Council under this section is subject, have been complied with, the secretary may have regard to a report by—

- (a) the engineer;
- (b) the chief executive officer of the local government concerned or an engineer employed by that local government.

(10) In this section—

“**coastal management control district**” includes land in an area to which an erosion prone area plan relates.

46 Compensation for injurious affection

(1) Subject to this Act, a person whose estate or interest in land is injuriously affected by—

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- (a) the refusal of the Governor in Council to grant a permit under section 44; or
- (b) the refusal of the Governor in Council to consent to the opening of a road or to a subdivision of land under section 45;

shall, subject to and in accordance with this section be entitled to obtain compensation from the authority in respect of such injurious affection.

(1A) For the purposes of this section neither the grant pursuant to section 44 of a permit subject to terms and conditions nor the giving of consent pursuant to section 45 subject to terms and conditions shall be construed as a refusal by the Governor in Council to grant a permit or to consent.

(2) Every claim for compensation under this section shall be made to the authority in the prescribed form.

(2A) The claimant shall fully complete and sign such form and lodge it with the authority.

(2B) The authority shall not be obliged to consider the claim until all information reasonably required by the form to be supplied has been supplied by the claimant.

(2C) A claim shall be deemed to have been made on the date on which it was received by the authority.

(2D) The time within which a claim under this section may be made shall be 6 months after the date of the refusal in question.

(2E) On application the court may, if it deems just in the circumstances, extend such time upon such conditions, including as respects costs, as it deems fit, and may do so whether or not such time has expired.

(2F) If within 40 days after the receipt by the authority of a duly completed claim for compensation under this section the authority has not made a decision on the claim, or having made a decision thereon, has not communicated its decision to the claimant, or if the authority having made a decision thereon and communicated the same to the claimant within the time aforesaid the claimant is not satisfied with such decision, the claimant may apply to the court, which shall have jurisdiction to hear and determine the claim.

(3) A claimant for compensation under this section shall satisfy the court—

- (a) in the case of a refusal to grant a permit under section 44 that, if the permit had been granted, the erection or, as the case may be,

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alteration of the structure in question in accordance with the information and particulars contained in or accompanying the application for the permit would have been lawful in every respect and that every relevant approval, consent or permission of the local government or any other authority whomsoever required in the case would, if the authority had granted the permit, have been granted;

- (b) in the case of refusal to consent to the opening of a road or to a subdivision, that, except for such refusal, the local government or any other authority concerned would have approved the application to open the road or to subdivide the land in question.

(3A) Unless the claimant satisfies the court as prescribed by subsection (3), the court shall not award the claimant any compensation.

(4) Where a person has obtained compensation from the authority under this section on account of his or her estate or interest in any land being injuriously affected no person shall thereafter be entitled to obtain compensation from the authority under this section on account of his or her estate or interest in that land or in any part of it being injuriously affected.

(5) As soon as practicable after the compensation is paid, the secretary must give to the registrar of titles notice of the payment and must identify the land for which the payment was made.

(6) The notice must be in the form approved by the registrar of titles.

(7) The registrar of titles, upon receiving sufficient notice of a notification furnished under subsection (5) shall record in the register the fact of payment of compensation under this section in respect of the land concerned.

(8) Where, subsequently to the recording in the register or entry of a memorial on an instrument of title pursuant to subsection (7), another instrument of title to the whole or part of the land concerned is issued a like memorial shall be endorsed upon all copies of the instrument of title so issued.

(9) Stamp duty and fees shall not be payable in connection with any document made for the purpose of having a recording made or a memorial entered as referred to in subsection (8).

47 Certain acts prohibited without permit

(1) On any unoccupied Crown land in an area to which an erosion prone area plan relates a person shall not without the permission in writing of the local government for the area in which that land is situated or contrary in any respect to the terms and conditions of such a permit—

- (a) depasture or cause or allow to be depastured or have in the person's possession or under the person's control any stock;
- (b) damage any vegetation;
- (c) interfere with any works carried out pursuant to an arrangement entered into under section 39.

(1A) On any unoccupied Crown land in a coastal management control district or in an area to which an erosion prone area plan relates a person shall not without the permission in writing of the authority or contrary in any respect to the terms and conditions of such a permit—

- (a) interfere with any sand, stone, gravel, rock, clay or other earth;
- (b) drain or cause or allow to be drained or to flow any water or other fluid across or through such land.

(1B) A person who contravenes any provision of subsection (1) or (1A) commits an offence against this Act and shall be liable to a penalty not exceeding 50 penalty units and additionally, in the case of any such offence that is continued, 5 penalty units for each and every day on which it is continued.

(2) A local government may serve upon any owner or, if the owner is not the occupier, the occupier of land in an area to which an erosion prone area plan relates a notice in writing prohibiting the person from—

- (a) depasturing or causing or allowing to be depastured or having in the person's possession or under the person's control on the person's land any stock;
- (b) damaging any vegetation on the person's land;
- (c) interfering with any sand, stone, gravel, rock, clay or other earth on the person's land.

(2AAA) For the purposes of subsection (2)—

“prohibiting” includes controlling and regulating.

(2AA) A person who contravenes a notice under this section shall be guilty of an offence against this Act and shall be liable to a penalty not

exceeding 50 penalty units and additionally, in the case of any such offence which is continued, 5 penalty units for each and every day on which it is continued.

(2A) Where a person commits an offence against subsection (1), (1A), (2) or (2AA) and as a consequence of that offence having been committed damage is caused to the land in respect of which the offence was committed the local government for the area in which the land is situated in the case of an offence against subsection (1), (2) or (2AA) or the authority in the case of an offence against subsection (1A) may cause the land to be restored as nearly as practicable to the condition in which it was immediately prior to the commission of the offence or may cause the land to be placed in some other condition and may recover the expenses incurred by it in doing so from that person by action as for a debt in any court of competent jurisdiction.

(3) In this section—

“damage”, in relation to vegetation, includes remove, fell, cut down, ringbark, dig up, pull out, poison, damage by fire, whether intentionally or unintentionally, or interfere in any way with the natural growth of.

“interfere with”, in relation to works or sand, stone, gravel, rock, clay or other earth, includes destroy, remove, take, dig up, use, or interfere with in any way.

“stock” includes camels, cattle, horses, asses, sheep, goats or swine and the young thereof.

“vegetation” includes trees, plants and any other vegetable growth.

48 Restricted access area

(1) In respect of any unoccupied Crown land in any area to which an erosion prone area plan relates the local government for the area in which the land is situated, by notification published in the gazette, may declare such land to be a restricted access area.

(1A) The boundaries of such restricted access area may be described in the notification in any manner which in the opinion of the local government sufficiently identifies them.

(2) By the notification declaring any unoccupied Crown land to be a restricted access area or by a further notification published in the gazette the local government may regulate and control the use of the land

comprised in the area, which power to regulate and control includes power—

- (a) to prohibit any person whomsoever from entering or being in the area;
- (b) to prohibit any person whomsoever from entering or being in the area except for a purpose specified by the local government;
- (c) to prohibit any person whomsoever from entering or leaving the area except at a point specified by the local government;
- (d) where access is prohibited except for the purpose of traversing the area, to prohibit any person whomsoever from traversing the area except by a route and by the means specified by the local government or to use any route so specified except for the purpose of traversing the area.

(4) Any person who enters, is in or traverses any restricted access area contrary in any respect to any prohibition imposed by a local government pursuant to subsection (2) of this section shall be guilty of an offence against this Act and liable to a penalty of not more than 10 penalty units.

(5) Where a person commits an offence against this section and as a consequence of that offence having been committed damage is caused to land in a restricted access area the local government for the area in which the land is situated may cause the land to be restored as nearly as practicable to the condition in which it was immediately prior to the commission of the offence or may cause the land to be placed in some other condition and may recover the expenses incurred by it in doing so from that person by action as for a debt in any court of competent jurisdiction.

PART 4—GENERAL PROVISIONS

49 Powers of entry etc.

(1) For the purposes of this Act any member, officer, employee, contractor or agent of the authority or of a local government, port authority or river improvement trust or any person authorised by the authority or by a local government, port authority or river improvement trust in that behalf may—

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- (a) enter upon any land, for the purpose of making any inspection, valuation, survey or taking levels;
 - (b) affix or set up thereon trigonometrical stations, survey pegs, marks, or poles, and from time to time alter, remove, inspect, reinstate and repair the same;
 - (c) dig and bore into the land so as to ascertain the nature of the soil, and set out the lines of any works thereon;
 - (d) do all things necessary for the purposes aforesaid.
- (2) The power to enter upon any land includes power to—
- (a) re-enter from time to time;
 - (b) remain upon that land for such time as is necessary to achieve the purpose of the entry;
 - (c) take such assistants, vehicles, materials, equipment or things as are necessary to achieve the purpose of the entry.

(3) Save to the extent it is otherwise prescribed by subsection (3A), not less than 7 days notice in writing shall be given to the occupier or, if there is no occupier, the owner of the land of the intention to enter thereon, and the authority under which the person entering claims to enter or has entered shall, if required by such owner or occupier, be produced and shown.

(3A) Where entry upon land is proposed for the purpose only of making an inspection or a valuation thereof notice as prescribed by subsection (3) need not be given.

- (4) Every person who—
- (a) without due authority, destroys, mutilates, defaces, takes away, or alters the position of any trigonometrical station, survey peg, mark, or pole fixed or set up by any person under the authority of this section; or
 - (b) wilfully obstructs or attempts to obstruct any person acting under the authority of this section;

shall be guilty of an offence against this Act and liable to a penalty not exceeding 20 penalty units.

(5) The authority or, as the case may be, local government, port authority or river improvement trust shall be liable for compensation for the actual damage (if any) done to the land by reason of the exercise of any power conferred by this section.

(6) Subsection (5) applies subject to section 50(4).

(7) Compensation pursuant to subsection (5) may be claimed and agreed upon or determined as prescribed by section 50(3) and (5).

50 Temporary occupation of land

(1) The authority or a local government, port authority or river improvement trust may temporarily occupy and use any land for the purpose of constructing, maintaining or repairing any works including any works referred to in section 39, and may—

- (a) take therefrom stone, gravel, sand, earth, and other material;
- (b) deposit thereon any material;
- (c) form and use temporary roads thereon;
- (d) manufacture bricks or other materials thereon;
- (e) erect workshops, sheds, and other buildings of a temporary nature thereon.

(2) The authority or, as the case may be, a local government, port authority or river improvement trust or the person having the charge of the works shall, before occupying or using any land as herein provided, and except in the case of accident requiring immediate repair, give to the occupier or, if there is no occupier, the owner thereof not less than 7 days notice in writing, and shall state in such notice the use proposed to be made of the land and an approximate period during which such use is expected to continue.

(3) The owner of the land or any other person having an estate or interest in the land may, at any time during such occupation or within 3 months thereafter give notice in writing to the authority or, as the case may be, the local government, port authority or river improvement trust that the person claims compensation; and subject to giving such notice if the land is not taken the owner and all persons having any interest in the land may recover under this Act compensation for all damage done, but not exceeding the compensation which would have been payable had the land been taken.

(4) No compensation shall be payable for any act or thing done under this section, the right or authority to exercise which is reserved by any Act, or by any regulation, Crown grant, or other instrument, except to the extent therein mentioned, notwithstanding that the terms and conditions imposed by such Act, regulation, grant, or instrument have not been performed.

(5) The authority or, as the case may be, the local government, port authority or river improvement trust and the claimant may agree upon the amount of compensation to be paid under this section or they may agree that such amount be determined by the court, in which case such amount shall, upon the reference of either of them, be determined by the court as if the land had been taken and the claim were limited to the compensation recoverable under this section.

51 Contracts by the authority

Contracts entered into by the authority may be made as follows—

- (a) a contract which if made between natural persons would be required by law to be in writing under seal may be made by the authority in writing under the common seal of the authority;
- (b) a contract which if made between natural persons would be required by law to be in writing signed by the parties to be charged therewith may be made by the authority in writing signed by the chairperson or by 2 members of the authority acting by the direction of the authority;
- (c) a contract which if made between natural persons would be valid in law although not reduced into writing may be made without writing by the chairperson or by 2 members of the authority acting by the direction of the authority;

and any contract so made shall be effectual in law and shall bind the authority and all other parties thereto and may be varied or discharged in the manner in which it is authorised to be made.

52 Erection of signs

(1) The authority may install upon any unoccupied Crown land within or on the boundary of a coastal management control district or an area to which an erosion prone area plan relates and a local government may install upon any unoccupied Crown land situated in its area which land is within or on the boundary of a restricted access area any sign or signs indicating such district or area and any matter or thing prohibited or authorised in relation to the place or places specified on the sign or, as the case may be, signs.

(2) Any person who without lawful authority demolishes, destroys, pulls down, erases, removes, defaces or otherwise damages or interferes with a

sign installed pursuant to subsection (1) shall be guilty of an offence against this Act.

53 Obstruction of authorised persons

Any person who obstructs, resists or hinders any person, authorised by or under this Act to perform any work, or to do any act or thing, in the exercise of his or her authority commits an offence against this Act and is liable to a penalty not exceeding 10 penalty units.

54 Offences generally

(1) Any person who contravenes or fails to comply with any provision of this Act commits an offence against this Act, and, except where a specific penalty is otherwise provided for that offence, is liable to a penalty not exceeding 30 penalty units.

(2) Without derogating from any other provision of this Act, any person who after being convicted of an offence against this Act continues in the contravention or failure to comply for which the person has been so convicted commits an offence which shall be deemed to be a continuing offence and, except where a specific penalty is prescribed shall be liable to a penalty not exceeding 2 penalty units for each day during which such offence continues.

(3) All offences against this Act may be prosecuted by way of summary proceedings under the *Justices Act 1886*.

(4) Proceeding for—

- (a) any offence against this Act may be taken upon the complaint of any person authorised in writing (either generally or in the particular case) by the chairperson of the authority or by the secretary;
- (b) an offence against section 43(3)(c) or (5), 47(1), (2) or (2AA), 48, 49(4), 52(2) or 53 may be taken upon the complaint of any person authorised in writing (either generally or in the particular case) by the chairperson of a local government.

55 Evidentiary aids

In any proceeding under or for the purposes of this Act—

Beach Protection Act 1968

- (a) it shall not be necessary to prove—
- (i) the boundaries of any coastal management control district or any area to which an erosion prone area plan relates or any restricted access area or that any place is within such a district or area, but this shall not prejudice the right of any defendant to prove the limits of any such district or area;
 - (ii) the signature of the chairperson of the authority or of the secretary or the seal of any local government;
 - (iii) the authority of any complainant to make the complaint in question;
 - (iv) the appointment of any officer;
 - (v) the authority of any officer to do any act or give any order;
- (b) an allegation or averment in any complaint that—
- (i) any person is or is not or was or was not at any time or date mentioned in the complaint the holder of a permit or approval under this Act;
 - (ii) that any place is within a coastal management control district, an area to which an erosion prone area plan relates or a restricted access area;
 - (iii) that any sign was a sign installed pursuant to this Act;
- shall be prima facie evidence of the fact thereby alleged or averred and, in the absence of evidence to the contrary, shall be conclusive evidence of that fact;
- (c) a document purporting to be a duplicate original or copy of any approval, permit, order, notice or notification under this Act shall upon its production in evidence, be evidence thereof and of the matters contained therein, and in the absence of evidence to the contrary shall be conclusive evidence thereof and of such matters.

56 Proof of proceedings of authority

(1) An entry in a book kept by the secretary for the purpose of recording the proceedings of the authority which purports to be an entry relating to a proceeding of the authority and to be signed by the chairperson of the authority and a certified copy or extract from such an entry which purports to be so certified by the chairperson of the authority and the secretary shall

be prima facie evidence of the proceeding referred to in such entry and the validity of such proceeding.

(2) In the case of an appointment of an acting chairperson of the authority such an entry and a certified copy or extract of such an entry shall, as regards a person acting bona fide and doing business with the authority, be conclusive evidence of such appointment, its validity, and the authority of the appointee to act as such.

57 Proof of documents

A document shall be taken to have been issued by or at the direction of the authority until the contrary is proved—

- (a) if the document purports to be issued or written by or at the direction of the authority and purports to be signed by the chairperson or a person acting as the chairperson of the authority, or by the secretary; or
- (b) if the document purports to be issued or written by or at the direction of the authority and purports to be signed by the secretary or by an officer of the authority authorised in that behalf.

59 Limitation of liability

Liability at law shall not attach to the Crown or any person on account of any act or thing done or omitted to be done pursuant to this Act or done or omitted to be done bona fide for the purposes of this Act and done or omitted to be done without negligence.

60 Regulation making power

(1) The Governor in Council may make regulations under this Act.

(2) A regulation may create offences and prescribe penalties of not more than 50 penalty units.

ENDNOTES

1 Index to endnotes

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 28 February 2002. Future amendments of the Beach Protection Act 1968 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	prev	= previous
amd	= amended	(prev)	= previously
amdt	= amendment	proc	= proclamation
ch	= chapter	prov	= provision
def	= definition	pt	= part
div	= division	pubd	= published
exp	= expires/expired	R[X]	= Reprint No.[X]
gaz	= gazette	RA	= Reprints Act 1992
hdg	= heading	reloc	= relocated
ins	= inserted	renum	= renumbered
lap	= lapsed	rep	= repealed
notfd	= notified	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 1992
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered

4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 58 of 1995	2 February 1996
1A	to Act No. 54 of 1996	18 November 1997
1B	to Act No. 13 of 1998	15 July 1998
1C	to Act No. 19 of 1999	17 May 1999
1D	to Act No. 29 of 1999	1 July 1999
1E	to Act No. 16 of 2000	31 August 2001

5 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Changed citations and remade laws	1
Changed names and titles	1
Obsolete and redundant provisions	1
Renumbered provisions	1

6 List of legislation

Beach Protection Act 1968 No. 17

date of assent 19 April 1968

commenced 1 July 1968 (proc pubd gaz 29 June 1968 p 1044)

amending legislation—

Beach Protection Act Amendment Act 1970 No. 41

date of assent 21 December 1970

commenced on date of assent

Metric Conversion Act 1972 No. 31 pt 2 sch 1

date of assent 21 December 1972

commenced 1 July 1973 (proc pubd gaz 16 June 1973 p 1460)

Age of Majority Act 1974 No. 57 s 8 sch

date of assent 27 September 1974

commenced 1 March 1975 (proc pubd gaz 16 November 1974 p 1083)

Beach Protection Act and Another Act Amendment Act 1984 No. 65 pt 2

date of assent 12 September 1984

commenced 22 December 1984 (proc pubd gaz 22 December 1984 p 2298)

Real Property Acts and Other Acts Amendment Act 1986 No. 26 s 4 sch

date of assent 8 April 1986
commenced on date of assent (see s 2(1))

Harbours Act and Other Acts Amendment Act 1989 No. 44 pt 5

date of assent 5 May 1989
commenced on date of assent

Public Service (Administrative Arrangements) Act 1990 (No. 2) No. 80 s 3 sch 2

date of assent 14 November 1990
commenced on 7 December 1989 (see s 2(4)(b))

Marine Safety Act 1994 No. 14 ss 1–2, 234 sch 2

date of assent 27 April 1994
ss 1–2 commenced on date of assent
remaining provisions commenced 3 June 1994 (1994 SL No. 177)

Statute Law (Miscellaneous Provisions) Act 1994 No. 15 ss 1–2, 3 sch 2

date of assent 10 May 1994
commenced on date of assent (see s 2)

Coastal Protection and Management Act 1995 No. 41 ss 1–2, s 105 sch 1

date of assent 9 November 1995
ss 1–2 commenced on date of assent
remaining provisions commenced 1 February 1996 (1996 SL No. 8)

Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1

date of assent 28 November 1995
commenced on date of assent

Statutory Bodies Financial Arrangements Amendment Act 1996 No. 54 ss 1–2, 9 sch

date of assent 20 November 1996
ss 1–2 commenced on date of assent
remaining provisions commenced 1 June 1997 (1997 SL No. 128)

Building and Integrated Planning Amendment Act 1998 No. 13 ss 1, 2(3), 191 sch

date of assent 23 March 1998
ss 1–2 commenced on date of assent
remaining provisions commenced 30 April 1998 (1998 SL No. 55)

Statute Law (Miscellaneous Provisions) Act 1999 No. 19 ss 1–3 sch

date of assent 30 April 1999
commenced on date of assent

Financial Administration Legislation Amendment Act 1999 No. 29 ss 1–2, 50 sch

date of assent 16 June 1999
ss 1–2, 50 commenced on date of assent
remaining provisions commenced 1 July 1999 (1999 SL No. 122 and see 1999
SL No. 119, 1999 SL No. 70 s 2(3))

Mental Health Act 2000 No. 16 ss 1–2, 590 sch 1 pt 2

date of assent 8 June 2000
ss 1–2, 590 commenced on date of assent (see s 2(1))

remaining provisions commenced 28 February 2002 (2002 SL No. 27) (provisions were to commence 8 June 2002 (automatic commencement under AIA s 15DA(2) (2001 SL No. 46 s 2)))

Duties Act 2001 No. 71 ss 1–2(1), 551 sch 1

date of assent 13 November 2001

ss 1–2 commenced on date of assent

remaining provisions commence 1 March 2002 (2002 SL No. 10)

7 List of annotations

Long title sub 1984 No. 65 s 5

Short title

s 1 amd R1 (See RA s 39)

Parts of Act

s 2 amd 1984 No. 65 s 6
om R1 (see RA s 36)

Savings, etc.

s 2A ins 1984 No. 65 s 7
om 1995 No. 58 s 4 sch 1

Meaning of terms

s 3 amd 1972 No. 31 s 6 sch 1; 1984 No. 65 s 8(b); 1995 No. 58 s 4 sch 1
def “**Area**” ins 1984 No. 65 s 8(a)(i)
om 1995 No. 58 s 4 sch 1
def “**Beach erosion control district**” om 1984 No. 65 s 8(a)(ii)
def “**Board**” om 1984 No. 65 s 8(a)(ii)
def “**coast**” amd 1972 No. 31 s 6 sch 1
sub 1984 No. 65 s 8(a)(iii)
amd 1995 No. 41 s 105 sch 1
def “**coastal management**” ins 1984 No. 65 s 8(a)(iv)
def “**coastal management control district**” ins 1984 No. 65 s 8(a)(iv)
def “**coastal management plan**” ins 1984 No. 65 s 8(a)(iv)
def “**Co-ordinator-General**” om 1984 No. 65 s 8(a)(v)
def “**court**” sub 1998 No. 13 s 191 sch
def “**department**” ins 1990 No. 80 s 3 sch 2
om R1 (see RA s 39)
def “**Director**” ins 1970 No. 41 s 2(a)
om 1990 No. 80 s 3 sch 2
def “**Director-General**” ins 1990 No. 80 s 3 sch 2
om 1995 No. 58 s 4 sch 1
def “**engineer**” sub 1970 No. 41 s 2(b)
sub 1990 No. 80 s 3 sch 2
def “**erosion prone area plan**” ins 1984 No. 65 s 8(a)(vi)
def “**fund**” ins 1999 No. 29 s 50 sch
def “**Harbour Board**” ins 1984 No. 65 s 8(a)(vi)
om 1995 No. 58 s 4 sch 1

- def “**Local Authority**” ins 1984 No. 65 s 8(a)(vi)
om 1995 No. 58 s 4 sch 1
- def “**Marine Board**” ins 1984 No. 65 s 8(a)(vi)
om 1994 No. 14 s 234 sch 2
- def “**Minister**” sub 1970 No. 41 s 2(c)
sub 1989 No. 44 s 35
om 1995 No. 58 s 4 sch 1
- def “**owner**” sub 1995 No. 58 s 4 sch 1
- def “**restricted access area**” sub 1984 No. 65 s 8(a)(vii)
- def “**River Improvement Trust**” ins 1984 No. 65 s 8(a)(viii)
- def “**secretary**” sub 1970 No. 41 s 2(d)
amd 1984 No. 65 s 8(a)(ix)
sub 1990 No. 80 s 3 sch 2
- def “**unoccupied Crown land**” amd 1984 No. 65 s 8(a)(x)

PART 2—THE AUTHORITY**pt hdg** amd 1984 No. 65 s 9**The authority****s 5** amd 1970 No. 41 s 3; 1984 No. 65 s 10; 1989 No. 44 s 36; 1990 No. 80 s 3
sch 2; 1995 No. 58 s 4 sch 1**Advisory board****s 7** amd 1970 No. 41 s 4
om 1984 No. 65 s 11**Disqualifications from office****s 8** amd 1974 No. 57 s 8 sch; 1984 No. 65 s 12; 2000 No. 16 s 590 sch 1 pt 2**Vacation of office****s 9** amd 1984 No. 65 s 13**Casual vacancies****s 10** amd 1984 No. 65 s 14**Defects in appointments etc.****s 11** amd 1984 No. 65 s 15**Payments to members****s 12** amd 1984 No. 65 s 16**Proceedings of the authority****prov hdg** amd 1984 No. 64 s 17(a)**s 13** amd 1984 No. 65 s 17(b)–(g)**Deputies for members****s 14** amd 1984 No. 65 s 18**Delegation****s 15** sub 1984 No. 65 s 19; 1995 No. 41 s 105 sch 1**Assignment of officer etc. to authority****s 16** sub 1970 No. 41 s 5

amd 1984 No. 65 s 20; 1990 No. 80 s 3 sch 2

Declaration that authority is statutory body

s 17 sub 1995 No. 58 s 4 sch 1; 1996 No. 54 s 9 sch

Resolution before borrowing

s 18 om 1995 No. 58 s 4 sch 1

Application of loan moneys

s 19 om 1995 No. 58 s 4 sch 1

Repayment of Treasury loans

s 20 om 1995 No. 58 s 4 sch 1

Debentures

s 21 om 1995 No. 58 s 4 sch 1

Loan to be authorized investment

s 22 om 1995 No. 58 s 4 sch 1

Brokerage

s 23 om 1995 No. 58 s 4 sch 1

Remedies of debenture holders

s 24 om 1995 No. 58 s 4 sch 1

Remuneration of receiver

s 25 om 1995 No. 58 s 4 sch 1

Moneys recoverable as debt

s 26 om 1995 No. 58 s 4 sch 1

Regulations relating to loans

s 27 om 1995 No. 58 s 4 sch 1

Illegal borrowing

s 28 om 1995 No. 58 s 4 sch 1

Beach Protection Authority Fund

s 29 sub 1999 No. 29 s 50 sch

Budget

s 30 amd 1984 No. 65 s 21
om 1995 No. 58 s 4 sch 1

Form of budget until a form is prescribed

s 31 om 1995 No. 58 s 4 sch 1

Variation in dates

s 32 om 1995 No. 58 s 4 sch 1

Audit and statements of account

s 33 sub 1984 No. 65 s 22
om 1994 No. 15 s 3 sch 2

PART 3—FUNCTIONS ETC. OF THE AUTHORITY

pt hdg amd 1984 No. 65 s 23

Functions of the authority

s 34 amd 1984 No. 65 s 24; 1994 No. 14 s 234 sch 2

Functions of the Board

s 35 om 1984 No. 65 s 25

Coastal management control districts

prov hdg amd 1984 No. 65 s 26(a)

s 36 amd 1970 No. 41 s 6; 1984 No. 65 s 26(b)–(e); 1995 No. 58 s 4 sch 1

Coastal management plan

prov hdg sub 1999 No. 19 s 3 sch

s 37 amd 1970 No. 41 s 7

sub 1984 No. 65 s 27

Approval of plan

s 38 amd 1984 No. 65 s 28

Implementation of coastal management plan

s 39 sub 1984 No. 65 s 29

amd 1995 No. 58 s 4 sch 1

Authority may carry out works

s 40 sub 1984 No. 65 s 30

amd 1999 No. 29 s 50 sch

Amendment of plan

prov hdg amd 1984 No. 65 s 31(a)

s 41 amd 1984 No. 65 s 31(b)–(e)

Erosion prone area plan

s 41A ins 1984 No. 65 s 32

Local government to obtain authority's views

s 41B ins 1984 No. 65 s 32

amd 1995 No. 58 s 4 sch 1

Mandatory condition for rezoning approvals

s 41C ins 1995 No. 41 s 105 sch 1

Application of provisions of Harbours Act

s 42 sub 1984 No. 65 s 33

amd 1995 No. 58 s 4 sch 1

Protection from wind erosion

s 43 amd 1984 No. 65 s 34; 1995 No. 58 s 4 sch 1

Control of building operations

s 44 amd 1984 No. 65 s 35; 1995 No. 58 s 4 sch 1

Regulations—buildings or other structures

s 44A ins 1984 No. 65 s 36

amd 1998 No. 13 s 191 sch

Opening of road or subdivision of land in coastal management control district

s 45 amd 1970 No. 41 s 8

sub 1984 No. 65 s 37

amd 1995 No. 41 s 105 sch 1

Compensation for injurious affection

s 46 amd 1970 No. 41 s 9; 1984 No. 65 s 38; 1986 No. 26 s 4 sch; 1995 No. 58 s 4 sch 1; 2001 No. 71 s 551 sch 1

Certain acts prohibited without permit

prov hdg sub 1984 No. 65 s 39(a)
s 47 amd 1984 No. 65 s 39(b)–(e); 1995 No. 58 s 4 sch 1

Restricted access area

s 48 amd 1984 No. 65 s 40; 1995 No. 58 s 4 sch 1

Powers of entry etc.

s 49 amd 1970 No. 41 s 10; 1984 No. 65 s 41; 1995 No. 58 s 4 sch 1

Temporary occupation of land

s 50 amd 1984 No. 65 s 42

Erection of signs

prov hdg amd 1984 No. 65 s 43(a)
s 52 amd 1984 No. 65 s 43(b)

Obstruction of authorised persons

s 53 amd 1984 No. 65 s 44; 1995 No. 58 s 4 sch 1

Offences generally

s 54 amd 1984 No. 65 s 45; 1995 No. 58 s 4 sch 1

Evidentiary aids

s 55 amd 1984 No. 65 s 46

Service of document

s 58 om 1995 No. 58 s 4 sch 1

Limitation of liability

s 59 sub 1984 No. 65 s 47

Regulation making power

s 60 amd 1984 No. 65 s 48
sub 1995 No. 58 s 4 sch 1

Publication of orders in council and laying before Legislative Assembly

s 61 sub 1984 No. 65 s 49
om 1995 No. 58 s 4 sch 1

Annual report

s 62 sub 1984 No. 65 s 50
om 1994 No. 15 s 3 sch 2

8 Provisions that have not commenced and are not incorporated into reprint

The following provision is not incorporated in this reprint because it had not commenced before the reprint date (see Reprints Act 1992, s 5(c)).

Duties Act 2001 No. 71 s 551 sch 1 reads as follows—

1 Section 46(9), ‘Stamp duty and fees shall not be’—

omit, insert—

‘No fees are’.