

# Land Amendment Regulation (No. 2) 2014

Explanatory notes for SL 2014 No. 307

made under the

*Land Act 1994*

## General Outline

### Short title

*Land Amendment Regulation (No.2) 2014*

### Authorising law

Sections 431Q(1) and 431T(3) of the *Land Act 1994*

### Policy objectives and the reasons for them

The *Land Act 1994* allows for the making of a Regulation that can declare an area of seashore to be a declared beach area and to apply suitable conditions of use that will apply to the declared beach area.

Ex-tropical cyclone Oswald caused severe beach erosion in 2013 which resulted in the eastern boundary of three privately owned freehold parcels of land being located in the ocean. The beach area seaward of these properties previously allowed for public access to this beach area and also direct beach access to the Broadwater Regional Park.

Normally beach areas are separated from private owned lands by esplanades or community purpose reserve or the privately owned land is sufficiently above high water mark to not affect the use of the public of the adjoining beach area. However in some instances especially after severe erosion is caused by natural disasters the sea can move within the boundaries of private freehold or leasehold land. In such cases these affected landholders at present can lawfully prevent the public access across the beach area. Alternately if they do not prevent public access they can expose themselves to a significant public liability risk.

## **Achievement of policy objectives**

The policy objectives of the *Land Act 1994* will be achieved by declaring these affected areas within the private boundary as public beach area. This will allow for the State to assume the public liability risk over the beach area and will provide suitable conditions of use to apply to this public access. Declaring these areas as beach area will again allow the public the right to use the beach area for recreational purposes or for access purposes.

## **Consistency with policy objectives of authorising law**

The *Land Amendment Regulation (No. 2) 2014* is consistent with the objectives of the *Land Act 1994* as declaring these areas as beach area will again allow the public the right to use the beach area for recreational purposes or for access purposes.

## **Inconsistency with policy objectives of other legislation**

The *Land Amendment Regulation (No. 2) 2014* is not inconsistent with the policy objectives of other legislation.

## **Benefits and costs of implementation**

There are no additional costs in relation to this action as both the *Land Act 1994* and the *Land Amendment Regulation (No.2) 2014* are administered by the Department of Natural Resources and Mines.

The amendments to the *Land Act 1994* allows the Minister for Natural Resources and Mines to declare by Regulation on a case by case basis, a conditional right of public access to an area of beach, where through erosion, that area of beach falls under private ownership. By declaring these affected areas within the private boundary as public beach area, the State will assume the public liability risk over the beach area and will prescribe conditions that apply to this public access. Declaring these areas as beach area will again allow the public the right to use the beach area for recreational purposes or for access purposes.

## **Consistency with fundamental legislative principles**

The amendments being made to the *Land Act 1994* are also consistent with the fundamental legislative principles. The declared beach access power is in addition to existing compulsory acquisition powers available under the *Acquisition of Land Act 1967* and in this case is deemed to be the most appropriate course of action. By using the *Acquisition of Land Act 1967* powers the affected land would have been resumed from the freehold properties and removed from their land title. By using this Regulatory power the affected lands still remain in private ownership and if over time the seaward boundary of these properties again rise above the high water mark the beach declaration will be repealed. The declaration of part of a title as a declared beach area

does not affect the location at law of any external boundary of the title, whether a right line boundary or a tidal boundary.

## **Consultation**

As required under the making land available for public use as beach provisions of the *Land Act 1994*, consultation was undertaken with the owners of the lots. Consultation was also undertaken with the Gladstone Regional Council, the Rules Beach Access Group, the Department of National Parks, Recreation, Sport and Racing and the Department of Environment and Heritage Protection.

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