

Queensland



TEMPORARY COASTAL DWELLINGS PROTECTION BILL 1999

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DICTIONARY

1999

A BILL

FOR

**An Act to provide for the grant of permits to occupy land on which
temporary coastal dwellings are situated**

The Parliament of Queensland enacts—

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PART 1—PRELIMINARY

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Short title

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1. This Act may be cited as the *Temporary Coastal Dwellings Protection Act 1999*.

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Dictionary

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2. The dictionary in the schedule defines particular words used in this Act.

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PART 2—PERMITS TO OCCUPY DWELLING SITES

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Division 1—Applications for, and grant of, permits

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Application

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3.(1) A person may apply to the Minister for a permit under this Act only if—

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(a) immediately before the commencement of the Act, the person owned a temporary coastal dwelling; and

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(b) the dwelling has been on the land on which it is situated (the “**dwelling site**”) for at least 10 years.

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(2) The application must—

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(a) be in the approved form; and

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(b) be given to the Minister within 6 months after the commencement; and

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- (c) be supported by enough information to enable the Minister to decide the application; and 1
2
- (d) be accompanied by— 3
 - (i) the appropriate application fee; and 4
 - (ii) if the dwelling site is on land subject to a lease, licence or permit under the *Land Act 1994* and the applicant is not the holder of the lease, licence or permit—the holder’s written consent to the grant of the application. 5
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- (3) The Minister may also require— 9
 - (a) an applicant to give the Minister additional information about the application; or 10
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 - (b) any information in the applicant’s application, or any additional information required under paragraph (a), to be verified by statutory declaration. 12
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Notice of proposal to grant application 15

4.(1) Before granting the application, the Minister must give public notice of the proposal to grant the application. 16
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(2) The notice must— 18

- (a) be published in a newspaper circulating generally in the area of the dwelling site; and 19
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- (b) state that a person whose interests are affected by the grant of the application (an “**objector**”) may object to the grant of the application; and 21
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- (c) state a day by which objections may be given to the Minister. 24

Objector may inspect application and other information 25

5.(1) An objector may inspect the application and any additional information about the application given to the Minister. 26
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(2) The Minister must ensure the application and additional information are available at all reasonable times for inspection by the objector. 28
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Deciding application

6. In deciding whether to grant or refuse the application, or what should be the conditions of a permit, the Minister must consider the following—

- (a) the application;
- (b) additional information given in relation to the application;
- (c) any objections to the grant of the application;
- (d) whether the relevant temporary coastal dwelling is safe for use as a dwelling having regard to the nature and condition of the dwelling, the area in which it is located and the area's usual weather conditions;
- (e) whether the public interest is likely to be adversely affected if the application were granted.

Grant of application

7. If the Minister decides to grant the application, the Minister must, within 14 days after making the decision, give the applicant—

- (a) a permit in the approved form; and
- (b) if the Minister imposes conditions on the permit, written notice stating the following—
 - (i) the reasons for the decision;
 - (ii) that the applicant may appeal against the decision to a Magistrates Court within 28 days after receiving the notice;
 - (iii) how to start an appeal.

Refusal of application

8. If the Minister decides to refuse to grant the application, the Minister must, within 14 days after making the decision, give the applicant written notice stating the following—

- (a) the decision;
- (b) the reasons for the decision;
- (c) that the applicant may appeal against the decision to a Magistrates

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- 2
- Court within 28 days after receiving the notice;
- (d) how to start an appeal.

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Division 2—Conditions of permit

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Conditions

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9.(1) A permit may be granted for up to 20 years.

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(2) The Minister may impose conditions on the permit the Minister decides are appropriate to the dwelling site and the purpose of the permit.

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(3) Without limiting subsection (2), the Minister may impose conditions—

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(a) about improvements on the dwelling site; and

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(b) about the care and protection of the site or land adjoining it; and

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(c) about cancellation of the permit.

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(4) A permit may not be renewed, sublet or mortgaged.

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Obligation to perform conditions

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10.(1) A permittee must comply with all of the conditions of the permit.

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(2) If no action is taken on a breach of a condition of a permit, it is not a waiver, authorisation or excuse for the breach.

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Division 3—Cancellation, surrender or transfer of permit, and change of permit conditions

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Conditions for cancellation

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11. The Minister may cancel a permit only if the Minister believes a ground exists for the cancellation and the procedure under sections 13 to 15 is followed.

Grounds for cancellation

12. Each of the following is a ground for cancelling a permit—
- (a) the permit was issued in error or because of a document or representation that is false, misleading or omits a material particular;
 - (b) the permittee has breached a condition of the permit.

Notice of cancellation

13. If the Minister proposes to cancel a permit, the Minister must give the permittee a written notice stating the following—

- (a) that the Minister proposes to cancel the permit;
- (b) the grounds for the proposed cancellation;
- (c) the facts and circumstances forming the basis for the grounds;
- (d) that the permittee may, within 28 days after the permittee receives the notice, give the Minister written representations to show why the permit should not be cancelled.

Minister to consider representations

14. The Minister must consider the written representations given to the Minister under section 13(d).

Cancellation

15.(1) If, after considering the representations, the Minister still believes a ground exists to cancel the permit, the Minister may cancel the permit.

(2) If the Minister decides to cancel the permit, the Minister must give the permittee a notice (a “**cancellation notice**”) stating the following—

- (a) the decision;
- (b) the reasons for the decision;
- (c) that the permittee may appeal against the decision to a Magistrates Court within 28 days after receiving the notice;

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(d) how to start an appeal.	1
(3) Cancellation is effective from—	2
(a) the day the permittee receives the cancellation notice; or	3
(b) if a later day is stated in the notice—the later day.	4
(4) No compensation is payable for the cancellation of a permit.	5
Surrender of permit	6
16. A permittee may, at any time, surrender the permit.	7
Transfer of permit	8
17.(1) This section applies if a permittee transfers the permit to another person (the “ transferee ”).	9 10
(2) The transferee must give the permit to the Minister for the details of the transfer to be recorded on the permit.	11 12
Change of permit conditions	13
18.(1) The Minister may change the conditions of a permit with the agreement of the permittee.	14 15
(2) If a permittee agrees to a change of condition, the permittee must return the permit to the Minister for the change in condition to be recorded on the permit.	16 17 18
(3) The change of condition has effect from the day the change is recorded.	19 20
What happens when permit ends	21
19.(1) If a permit is cancelled, expires or is surrendered—	22
(a) any improvements on the dwelling site the subject of the permit become the property of the State and no compensation is payable; and	23 24 25
(b) the site becomes unallocated State land.	26

(2) However, the Minister must allow the permittee to remove the improvements within a reasonable time—

- (a) if a permit is cancelled—after the day the permit is cancelled; or
- (b) if a permit expires or is surrendered—after expiry or surrender.

PART 3—APPEALS

Who may appeal

20. The following persons (an “**appellant**”) may appeal to a Magistrates Court under this part against the following decisions of the Minister—

- (a) for a decision under section 7 to grant an application—a person who objected to the proposal to grant the application;
- (b) for a decision under section 8 to refuse to grant an application—the applicant;
- (c) for a decision under section 9(2) to impose conditions on the grant of an application—
 - (i) the applicant; or
 - (ii) a person who objected to the proposal to grant the application;
- (d) for a decision under section 15(1) to cancel a permit—the permittee.

Starting appeal

21.(1) An appeal is started by—

- (a) filing a written notice of appeal with the clerk of the court of the Magistrates Court nearest the place where the appellant resides or carries on business or employment; and
- (b) giving a copy of the notice to the chief executive.

(2) The notice must be filed within 28 days after the appellant receives

notice of the decision appealed against.

(3) The court may at any time extend the period for filing the notice of appeal.

(4) The notice of appeal must state the grounds of the appeal.

Stay of operation of decisions

22.(1) A Magistrates Court may stay a decision appealed against to secure the effectiveness of the appeal.

(2) A stay—

(a) may be given on conditions the court considers appropriate; and

(b) has effect for the period fixed by the court; and

(c) may be revoked or amended by the court.

(3) The period of a stay given by the court must not extend past the time when the court decides the appeal.

(4) The appeal affects the decision or carrying out of the decision only if the decision is stayed.

Hearing procedures

23.(1) The procedure for an appeal to a Magistrates Court under this part is to be in accordance with—

(a) the rules of court for Magistrates Courts; or

(b) in the absence of relevant rules—directions of a Magistrates Court.

(2) The appeal is by way of rehearing, unaffected by the Minister's decision.

(3) In deciding the appeal, a Magistrates Court—

(a) is not bound by the rules of evidence; and

(b) must observe natural justice.

Powers of court on appeal

24.(1) In deciding an appeal, the court may—

- (a) confirm the decision appealed against; or
- (b) vary the decision; or
- (c) set aside the decision and substitute another decision; or
- (d) set aside the decision and return the matter to the Minister with directions that the court considers appropriate.

(2) In varying the decision or substituting another decision, the court has the same powers as the Minister.

(3) If the court substitutes another decision, the substituted decision is, other than for this part, taken to be the decision of the Minister.

(4) The court may make an order for costs it considers appropriate.

Appeal to District Court on questions of law only

25.(1) An appellant may appeal against a decision of a Magistrates Court to the District Court, but only on a question of law.

(2) On hearing the appeal, the court may make an order for costs it considers appropriate.

PART 4—MISCELLANEOUS**Approval of forms**

26. The chief executive may approve forms for use under this Act.

Regulation-making power

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

(2) Without limiting subsection (1), a regulation may be made about fees.

SCHEDULE	1
DICTIONARY	2
section 2	3
“appellant” see section 20.	4
“approved form” means a form approved under section 26.	5
“cancellation notice” see section 15(2).	6
“dwelling site” see section 3(1)(b).	7
“holder” , of a lease, licence or permit under the <i>Land Act 1994</i> , means the person to whom the lease, licence or permit is issued.	8 9
“improvements” , on a dwelling site, means any building, fence, roadway, path or other structure on the site.	10 11
“objector” see section 4(2)(b).	12
“permit” means a permit to occupy a dwelling site given under section 7.	13
“permittee” means the person to whom a permit is granted or transferred.	14
“public interest” includes the cultural, environmental, heritage, land protection, planning, recreational, and social interests of the public.	15 16
“temporary coastal dwelling” means a building or other structure, or part of a building or other structure, that—	17 18
(a) is erected on—	19
(i) unallocated State land; or	20
(ii) land the subject of a lease, licence or permit under the <i>Land Act 1994</i> ; and	21 22

SCHEDULE (continued)

- | | |
|---|---|
| (b) is being used as a dwelling, whether or not occupied at all times; | 1 |
| and | 2 |
| (c) is within 20 km of the mainland shore. | 3 |
| “unallocated State land” see <i>Land Act 1994</i> , schedule 6. ¹ | 4 |

¹ Under the *Land Act 1994*, schedule 6, **unallocated State land** is defined as follows—

‘ **“unallocated State land”** means all land that is not—

- (a) freehold land, or land contracted to be granted in fee simple by the State;
or
- (b) a road or reserve, including a national park, conservation park, State forest or timber reserve; or
- (c) subject to a lease, licence or permit issued by the State.’.