

Queensland



CANALS ACT 1958

**Reprinted as in force on 7 November 1997
(includes amendments up to Act No. 40 of 1997)**

Reprint No. 1A *

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See 2001 Act No. 93 s 25(b)**

* Minor differences in style between this reprint and another reprint with the same number are due to the conversion to another software program. The content has not changed.

Information about this reprint

This Act is reprinted as at 7 November 1997. 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.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 have been made to use aspects of format and printing style consistent with current drafting practice (s 35).

This page is specific to this reprint. See previous reprint 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**
- **editorial changes made in earlier reprints.**

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[as amended by all amendments that commenced on or before 7 November 1997]

An Act to make provision for the regulation and control of the construction, maintenance and use of canals

1 Short title

This Act may be cited as the *Canals Act 1958*.

2 Interpretation

(1) In this Act—

“**access channel**” means any artificial channel constructed in tidal water in association with the construction of a canal and connected or intended to be connected to such canal, and any training wall or other works associated with such artificial channel, and includes any addition to or alteration to any such artificial channel, training wall or other works.

“**beach protection authority**” means the Beach Protection Authority constituted by the *Beach Protection Act 1968*.

“**canal**” means any artificial channel or lake for use or intended for use for navigational, ornamental and recreational purposes, or any of those purposes, and connected or intended to be connected with any tidal water so that the water of such artificial channel or lake becomes or, on such connection, will become tidal water, and includes any access channel, any addition to or alteration of any canal, and any system of canals provided in any subdivision of land.

“**coast**” has the same meaning as in the *Beach Protection Act 1968*.

“**coastal management**” has the same meaning as in the *Beach Protection Act 1968*.

“**construct**”, in relation to a canal, includes commence to construct, continue to construct, carry out or carry on construction, and do or take or permit or allow to be done or taken any thing or step for or in

connection with the construction or commencement, carrying out, carrying on or continuance of the construction.

“tidal water” means tidal water under and within the meaning of the *Harbours Act 1955*.

“vessel” means a vessel under and within the meaning of the *Harbours Act 1955*.

(2) In relation to Brisbane City Council, references in this Act to the *Local Government Act 1993*, shall be read as referring to that Act and the *City of Brisbane Act 1924*.

(3) For the purposes of this Act—

“tidal water” includes all those tidal waters contained in Dunlop’s Drain as described in the schedule within the limits set out in such description.

3 Liability relating to constructing canals unlawfully

(1) A person shall not—

- (a) construct any canal the construction whereof has not been finally approved by the Governor in Council under this Act; or
- (b) construct any canal contrary in any respect to the plans and specifications and other information and particulars in respect of which the Governor in Council finally approved of the construction of that canal; or
- (c) construct a canal contrary to a term or condition of the final approval to construct the canal; or
- (d) construct any canal whose tidal water will not upon completion be connected to the sea other than across inundated land within the meaning of the *Harbours Act 1955*, section 97A in respect of which the registered proprietor or where that land is leased, the lessee, may restrict, regulate or prohibit the use or movement of vessels on, over, through or beneath the waters thereof.

Maximum penalty—2 000 penalty units and daily penalty not exceeding 40 penalty units for each day during which the offence continues.

(2) The Minister may by signed notice direct any person convicted of an offence under subsection (1) to restore, within such time as the Minister specifies in the notice, the land in relation to which the offence was

committed to, as nearly as practicable, its condition immediately prior to the commencement of the commission of the offence.

(3) A person to whom a notice under subsection (2) is given shall comply in every respect with the direction therein contained.

Maximum penalty—\$2 000 for each and every day during which the person in question fails in any respect to comply with the direction contained in the notice.

4 Approvals required before commencement of construction of canal

A person who proposes to construct a canal shall, before commencing that construction, apply for and obtain the provisional approval and, subject to obtaining that provisional approval, the final approval prescribed by this Act.

5 Provisional approval of construction of canal

(1) Application in writing for provisional approval to construct a canal shall be made to the chief executive and shall—

- (a) be in the prescribed form; and
- (b) contain or be accompanied by, according as may be prescribed, the prescribed information and particulars; and
- (c) be accompanied by the prescribed fee.

(2) Upon receipt of the application the chief executive—

- (a) shall refer a copy thereof to the chief executive under the *Transport Operations (Marine Safety) Act 1994* and request that chief executive's views as to the effects (if any) the construction of the canal, in whole or part, is likely to have in regard to navigation in the locality concerned; and
- (b) shall refer a copy thereof to the beach protection authority and request the authority's views as to the effects (if any) the construction of the canal, in whole or part, is likely to have in regard to coastal management; and
- (c) may cause to be made such other inquiries as the chief executive thinks fit for the purpose of determining a recommendation to the Minister upon the application.

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(3) The Minister shall make in respect of the application a recommendation to the Governor in Council.

(3A) The Minister's recommendation may be—

- (a) that the application be refused; or
- (b) that the application be granted in whole or in part.

(3B) The Minister may recommend the approval in whole or in part of the application subject to modifications as set out in the Minister's recommendation and, in any event, may recommend the approval in whole or in part of the application, and either with or without modifications, upon and subject to all such terms and conditions as the Minister deems fit.

(4) The Governor in Council may at the Governor in Council's absolute discretion—

- (a) refuse the application; or
- (b) grant the application in whole or in part and in either such case, with or without modifications, and upon and subject to the condition set out in subsection (5) and to all other such terms and conditions (if any) as the Governor in Council deems fit including, but without limit to the generality of the Governor in Council's power to impose terms and conditions, terms and conditions with respect to the use or disposal of spoil derived from the canal including terms and conditions regulating and controlling, and to the extent the Governor in Council deems fit, prohibiting, such spoil from being used for the purpose of raising the level of any land.

(5) It shall be a condition upon which any application is granted that revetment adequate to the satisfaction of the Governor in Council shall be provided for so much of the bed, or banks, or bed and banks of the proposed canal as the Governor in Council shall specify.

(6) Where an application relates in part to the construction of an access channel in connection with the construction of a canal, it shall be a condition upon which the application is granted, if the Governor in Council specifies training walls and other works to be provided in respect of the access channel, that training walls and other works as so specified shall be provided to the satisfaction of the Governor in Council.

6 Notice of provisional approval

(1) The chief executive shall give to the applicant notice in writing of the decision of the Governor in Council upon his or her application.

(2) If the Governor in Council grants an application for provisional approval of a proposal to construct a canal, the notice given to the applicant pursuant to subsection (1) shall specify—

- (a) whether or not the application has been granted in whole or in part and, if in part, the extent to which it has been granted; and
- (b) the modifications (if any) subject to which the approval has been granted; and
- (c) the terms and conditions (if any) subject to which the approval has been granted; and
- (d) the period of time within which the applicant shall comply with the requirements of section 7.

(3) The Governor in Council may, at the Governor in Council's absolute discretion fix, and to the extent the Governor in Council deems fit, from time to time extend or further extend the period of time referred to in subsection (2)(d), and any reference in this Act to that period of time shall be deemed to refer to the same as fixed or, as the case may be, extended for the time being, by the Governor in Council.

(3A) The chief executive shall give to the applicant concerned notice in writing of any such extension.

(4) The Governor in Council may approve the transfer to another person of provisional approval of a proposal to construct a canal granted by the Governor in Council to an applicant.

(5) Application in writing for such approval shall—

- (a) be made by the proposed transferor and the proposed transferee; and
- (b) be in the prescribed form; and
- (c) be accompanied by the prescribed fee.

(6) Where the Governor in Council approves the transfer, the transferee shall—

- (a) be deemed to have applied for and obtained the provisional approval; and

- (b) be deemed to have taken and done all such prescribed steps and things (if any) that have up to the time of such approval been taken and done or deemed to have been taken and done by the transferor for the purpose of obtaining the final approval of the Governor in Council to the construction of the canal; and
- (c) subject to any further transfer, be the applicant for the final approval.

(7) The chief executive shall give to the applicants notice in writing of the decision of the Governor in Council upon their application.

7 Final approval

(1) Every applicant who has obtained provisional approval of a proposal to construct any canal shall, within the time specified in the notice given to the applicant under section 6, take and do all such steps and things as are prescribed for obtaining the final approval of the Governor in Council to the construction of that canal, including by furnishing to the chief executive all such plans, specifications and other information and particulars as may be prescribed or, in so far as not prescribed, required by the chief executive as the chief executive thinks fit in the circumstances of the particular case, including plans and specifications of, and other information and particulars relating to the revetment proposed to be provided to comply with the condition specified in section 5(5).

(1A) All such plans, specifications, and other information and particulars shall be authenticated in the manner required by the chief executive.

(2) If an applicant granted provisional approval of a proposal to construct a canal fails to comply in every respect with the requirements of subsections (1) and (1A) within the period of time specified in the notice given to the applicant under section 6, that provisional approval shall thereupon and thereby lapse and become and be void and of none effect.

(3) If an applicant granted provisional approval of a proposal to construct a canal—

- (a) complies in every respect with the requirements of subsections (1) and (1A); and
- (b) submits plans and specifications and other information and particulars pertaining to the construction of the canal satisfactory to the Governor in Council;

the Governor in Council may give final approval to the construction of the canal in accordance with the plans and specifications and other information and particulars so satisfactory to the Governor in Council and subject to such terms and conditions (if any) as the Governor in Council considers appropriate.

(3A) The chief executive must, as soon as practicable after final approval is given to the construction of a canal, give written notice of the details of the approval to—

- (a) the applicant; and
- (b) the registrar of titles.

(4) The Governor in Council may approve the transfer to another person of final approval given by the Governor in Council to an applicant in respect of the construction of a canal.

(5) Application in writing for such approval shall—

- (a) be made by the proposed transferor and the proposed transferee; and
- (b) be in the prescribed form; and
- (c) be accompanied by the prescribed fee.

(6) Where the Governor in Council approves the transfer, the transferee shall be deemed to have applied for and obtained the provisional approval and to have obtained the final approval.

8 When dealings with land in subdivision which provides for a canal prohibited

(1) When the chief executive is satisfied that a canal has been constructed in compliance in every respect with—

- (a) the plans and specifications and other information and particulars in respect of which the Governor in Council finally approved of the construction of that canal;
- (b) the terms and conditions (if any) of the final approval;

the chief executive shall certify accordingly to the Minister, who shall notify in the gazette the receipt by the Minister of such certificate and the contents thereof.

(2) A person shall not, either as principal or as agent, sell, agree to sell, offer to sell, offer to agree to sell, give or agree to give any option to

purchase, or grant or agree to grant any lease or licence in respect of, any land in a subdivision of land which provides for a canal before the applicant receives notice of the final approval under section 7(3A) in relation to the canal specified in subsection (1).

Maximum penalty—100 penalty units.

(3) Every transaction relative to land which contravenes this section shall be absolutely void and of no legal effect whatsoever save that any moneys paid in respect of the transaction shall be recoverable by the payer from the payee.

8A Continued application of Land Sales Act, parts 2, 3 and 4

(1) Notwithstanding the provisions of the *Land Sales Act 1984* for the purposes of the application of the *Land Sales Act 1984*, parts 2 and 4 in respect of proposed allotments (within the meaning of that Act) comprised of land within a subdivision of land which provides for a canal, that land shall, notwithstanding the registration of the plan of subdivision and any issue of a separate instrument of title, continue to be relevant land until the publication of the notification in the gazette referred to in section 8(1) in respect of that canal.

(2) For the purposes of subsection (3)—

“**plan**” shall have the same meaning as in the *Land Sales Act 1984*.

(3) Notwithstanding the provisions of the *Land Sales Act 1984* for the purpose of the application of the *Land Sales Act 1984*, parts 3 and 4 in respect of a proposed lot (within the meaning of that Act) which is a proposed lot within a subdivision of land which provides for a canal, that proposed lot shall, notwithstanding the registration of the plan and any issue of a separate instrument of title, continue to be a proposed lot until the publication of the notification in the gazette referred to in section 8(1) in respect of that canal.

9 Subdivision of land which provides for canal

(1) The following provisions apply with respect to a subdivision of land which provides for any canal—

- (a) the plan of that subdivision shall define by metes and bounds separately from any and every other subdivision included in the plan, the land whereon the canal is to be constructed, and shall describe the land so defined appropriately to the descriptions of

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all other subdivisions included in the plan, and shall clearly indicate that the land so defined is required for the canal;

- (b) the Governor in Council may refuse to give consideration to the application for provisional approval to construct the canal unless and until the applicant satisfies the Governor in Council that the local government will approve the plan of that subdivision;
- (c) additionally to all considerations specified in the *Local Government Act 1936*, section 34 the local government shall take into consideration the disposal of sewage and shall not approve the subdivision unless and until it is satisfied that sewage from the subdivided lands will not be discharged into the canal and will be capable of being disposed of in a manner which will ensure against any pollution of the canal or any water therein;
- (d) the Governor in Council shall refuse to give final approval to the construction of the canal unless and until the local government has approved the plan of that subdivision;
- (e) the approval by the local government of the plan of that subdivision shall not have any force or effect in law unless and until the Governor in Council shall give, as prescribed, final approval to the construction of the canal and accordingly, if such final approval is refused, the approval by the local government shall be, and be deemed to have always been, void and of none effect in law;
- (f) the registrar of titles or other person charged with registering instruments of title to any land shall not register any instrument dealing with any land in a subdivision whereto this section applies (other than a transfer surrendering to the Crown) unless and until a plan of that subdivision bearing both the approval of the local government and the final approval of the Governor in Council hereinbefore referred to in this section and a transfer surrendering to the Crown all land defined in that plan as the land whereon the canal is to be constructed are registered in the registrar of titles' office and the notification referred to in section 8(1) in respect of that canal is published in the gazette.

(2) However, the said registrar or other person shall not register a transfer surrendering to the Crown any land defined in any plan of subdivision which provides for a canal as being the land whereon the canal is to be constructed unless and until a plan of that subdivision bearing both the approval of the local government and the final approval of the Governor

in Council hereinbefore referred to in this section is registered in the registrar's office.

10 Consequences of connection of canal with tidal water

(1) On and from the time when a canal is connected with any tidal water—

- (a) if that tidal water is within the limits of a harbour—that canal shall become and be included in and form part of that harbour; and
- (b) if that tidal water is not within the limits of a harbour—that canal shall become and be included in and form part of that tidal water;

and all of the provisions of the *Transport Infrastructure Act 1994* and the *Transport Operations (Marine Safety) Act 1994* shall apply and extend to such canal subject, however, to all such modifications and adaptations thereof as are necessary to give operation and effect to this Act.

(1A) However, where an act or omission constitutes an offence both under this Act and under any other Act mentioned in subsection (1), the offender may be prosecuted and punished under either this Act or the other Act in question but so that the offender is not twice punished for the same offence.

(2) Any right of navigation belonging to or enjoyed by the public over tidal water shall, subject to this Act and the other Acts mentioned in subsection (1), extend to the tidal water in any canal.

10A Consequences of connection of access channel with canal

(1) On and from the time when an access channel is connected with any canal—

- (a) if the tidal water within the access channel is within the limits of a harbour—that access channel shall remain as part of that harbour;
- (b) if that tidal water is not within the limits of a harbour—that access channel shall remain as part of that tidal water;

and all of the provisions of the *Transport Infrastructure Act 1994* and the *Transport Operations (Marine Safety) Act 1994* shall apply to the access channel subject, however, to all such modifications and adaptations thereof as are necessary to give operation and effect to this Act.

(2) Any right of navigation belonging to or enjoyed by the public over tidal water applies, subject to this Act and the other Acts mentioned in subsection (1), in respect of the tidal water in an access channel.

11 Maintenance of canals

(1) A local government shall preserve, maintain and keep clean any canal within its area, whether constructed—

- (a) before or after the commencement of the *Canals Act Amendment Act 1979*;
- (b) under the authority or sanction of this Act or any other Act.

(2) It is hereby declared that—

- (a) such preserving, maintaining and keeping clean as aforesaid is a function of local government;
- (b) for the purposes of this section and for the purposes of the *Local Government Act 1993*, the expression “**canal within its area**” occurring in subsection (1) includes any access channel constructed in association with the construction of a canal although such access channel is not within the area of the local government in question;
- (c) “**canal**” occurring in subsection (1) includes any access channel, whether constructed before or after the commencement of the *Canals Act Amendment Act 1979*, approval or sanction for the construction of which has been granted according to law prior to the commencement of that Act.

(3) Where a local government pursuant to the provisions of the *Local Government Act 1993* makes and levies a special rate or a separate rate for the function of local government referred to in subsection (2), the whole or part of the moneys received in respect of the special rate or separate rate may, at the discretion of the local government and notwithstanding the provisions of the said Act, be transferred from the special fund or separate fund established by the local government under the said Act in respect of the special rate or separate rate levied to a canal maintenance reserve fund referred to in subsection (4) for the purpose of equalising expenditure necessarily incurred in the exercise and performance of the function of local government as aforesaid.

(4) The local government shall establish a canal maintenance reserve fund where, pursuant to subsection (3), moneys are transferred from the

special fund or separate fund for the purpose of equalising expenditure necessarily incurred in the exercise and performance of the function of local government as aforesaid.

(5) A canal maintenance reserve fund shall consist of the moneys transferred from the special fund or separate fund pursuant to subsection (3), and shall be applied to expenditure necessarily incurred in the exercise and performance of the function of local government as aforesaid.

(6) The provisions of the *Local Government Act 1993* in respect of reserve funds kept by a local government under that Act shall apply and extend to a canal maintenance reserve fund kept by a local government pursuant to this Act.

12 Protection in respect of construction of access channel

A person, being an applicant under this Act to construct a canal the application in respect of which relates in part to the construction of an access channel in connection with the construction of the canal, who receives from the Governor in Council final approval to the construction pursuant to section 7(3) or (4) and who, in relation to such construction, acts in accordance with such approval is not liable to action or indictment or process of law for nuisance, encroachment or obstruction or other like cause on account of the commencement, construction or placement of the access channel as aforesaid.

13 Existing canals

(1) In and for the purposes of this section and of section 14—

“**existing canal**” means any and every one of those canals provided or proposed to be provided in respect of subdivisions of lands called respectively—

- (a) Florida Gardens; and
- (b) Miami Keys; and
- (c) Rio Vista; and
- (d) Moana;

within the area of the shire of Albert in respect whereof permissions for the purposes of the *Harbours Act 1955*, section 59, were applied for and granted prior to the passing of this Act.

(1A) However, a canal provided for in any plan of subdivision of any of the lands mentioned in subsection (1) not registered by the registrar of titles prior to the passing of this Act shall not be, or be deemed to be, an existing canal for the purposes of this section or of section 14 unless and until the Minister makes on that plan the endorsement prescribed by subsection (3).

(2) When any plan of subdivision of any of the lands mentioned in subsection (1) which provides for any canal shall have been approved by the council of the shire of Albert and registered by the registrar of titles prior to the passing of this Act, then that canal shall be presumed to be an existing canal unless and until the contrary is proved.

(3) When any plan of subdivision of any of the lands mentioned in subsection (1) not registered by the registrar of titles prior to the passing of this Act provides for any canal which purports to be an existing canal, then the registrar of titles shall not register that plan unless and until the Minister endorses thereon a certificate that such canal is an existing canal.

(3A) The onus shall lie on the applicant for the endorsement referred to in this section to satisfy the Minister that the purported existing canal is in all respects the canal in respect whereof the permission mentioned in subsection (1) was given and the Minister shall not make the endorsement unless and until the Minister is so satisfied.

(3B) The Minister shall not make an endorsement pursuant to this section upon any plan of subdivision which does not comply in all respects with the requirements of section 9(1)(a).

(4) All lands defined in a plan of subdivision as being required for the construction of any existing canal shall by virtue of the registration by the registrar of titles of that plan be deemed to be transferred and surrendered to the Crown—

- (a) in the case of such a plan so registered prior to the date of the passing of this Act—on and from the date of the passing of this Act; and
- (b) in the case of such a plan so registered on or after the date of the passing of this Act—on and from the date when the plan is so registered.

(4A) However, in the case of a plan mentioned in subsection (4)(a) which does not comply in all respects with the requirements of section 9(1)(a), the registrar of titles shall not register any dealing relating to any subdivision comprised in the plan (other than a transfer surrendering to the Crown) unless and until the registrar is satisfied that a transfer

surrendering to the Crown all land in that plan whereon any canal is or is to be constructed is registered in the registrar's office.

(5) Sections 3 to 9 do not apply to existing canals but, save those sections, all of the provisions of this Act apply to existing canals.

13A Palm Gardens Estate and Anglers' Paradise Estate

(1) Subject to this section, any canal provided in respect of the subdivisions of land within the area of the city of Gold Coast called respectively Palm Gardens Estate and Anglers' Paradise Estate shall be an 'existing canal' for the purposes of the provisions of section 13, as applied with modifications by this section, and section 14.

(2) For the purposes of applying the provisions of section 13 as prescribed by this section, that section shall be read and construed as if—

- (a) the words 'passing of "*The Canals Act Amendment Act of 1959*"' were substituted for the words 'passing of this Act', wherever those words occur; and
- (b) the words 'city of Gold Coast' were substituted for the words 'shire of Albert' wherever those words occur; and
- (c) the words 'in respect whereof permissions for the purposes of section 59 of "*The Harbours Acts, 1955 to 1956*"', were applied for and granted prior to the passing of this Act' were omitted from subsection (1).

14 Indemnity

No action for damages or other right or remedy whatsoever shall lie against the Crown, the Minister, the chief executive, the beach protection authority, the chief executive under the *Transport Operations (Marine Safety) Act 1994* or a local government, or any officer, employee or agent of any of them, in respect of any disturbance of the right of support of any land included in a subdivision which provides for any canal finally approved under this Act or existing canal or other damage whatsoever to any such land or any improvement on any such land, caused by or resulting from the provision, construction or existence of the canal, or the state and condition of the canal, or the doing of or omission to do anything by a local government under section 11 or the manner in which any such thing is done.

15 Offences

(1) Any person who contravenes or fails to comply with any provision of this Act shall be guilty of an offence against this Act.

(2) Every person who aids, causes or procures, or is in any way knowingly concerned in the commission of an offence against this Act shall be deemed to have committed that offence and may be proceeded against and shall be punishable accordingly.

Summary proceedings

(3) All offences against this Act may be prosecuted in a summary way under the *Justices Act 1886*, upon the complaint of any person thereunto authorised by the Minister.

Time for commencement of prosecution

(4) A prosecution for an offence against this Act may be instituted at any time within 12 months after the commission of the offence or within 6 months after the commission of the offence comes to the knowledge of the complainant, whichever is the later period.

General penalty etc.

(5) Any person guilty of an offence against this Act shall, if no specific penalty is provided for that offence, be liable to a penalty not exceeding 20 penalty units.

(6) In this Act, a penalty for an offence expressed as a number of penalty units means a penalty of an amount equal to the product obtained by multiplying the number of penalty units referred to by the value of a penalty unit as prescribed by the *Penalty Units Act 1985* at the time the offence, in respect of which the reference to penalty units is made, occurred.

16 Liability for offences by bodies corporate

(1) Where a body corporate offends against this Act each and every one of the following persons shall be deemed to have committed the offence, and shall be liable to be proceeded against and punished accordingly, namely—

- (a) the managing director, manager or other governing officer, by whatever name called, and every member of the governing body, by whatever name called thereof;

- (b) every person who in Queensland manages or acts or takes part in the management, administration, or government of the business in Queensland of the body corporate.

(2) This section applies so as not to limit or affect howsoever the liability of a body corporate to be proceeded against and punished for an offence against this Act committed by it.

17 Regulations

(1) The Governor in Council may from time to time make regulations providing for all or any purposes, either general or to meet particular cases, that in the Governor in Council's opinion are convenient for the administration of this Act or that in the Governor in Council's opinion are necessary or expedient for carrying out the objects and purposes of this Act.

(1A) Without limiting the generality of subsection (1), regulations may be made for or in respect of all or any of the following purposes, matters and things—

- (a) prescribing forms under this Act and the purposes respectively for which such forms shall be used;
- (b) prescribing the matters in respect of which fees shall be payable and the amounts of such fees, prescribing the persons who shall be liable for the payment of such fees, providing for the time and manner of payment of such fees, and for the recovery of any amount thereof not duly paid;
- (c) prescribing the information and particulars required to be contained in or to accompany an application for provisional approval to construct a canal;
- (d) prescribing the things and steps required to be done and taken to obtain the final approval of the Governor in Council to the construction of a canal including the plans, specifications and other information and particulars to be furnished to the chief executive;
- (e) regulating and controlling the right of navigation belonging to or enjoyed by the public over the tidal water in any canal including the use of the tidal water in any canal or part of a canal by any vessels, and the mooring, anchoring or placing of any vessels in any canal or part of a canal;

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- (f) safeguarding and in particular securing against trespass, injury, pollution, obstruction, disturbance, misuse, or use for or in connection with any purpose not authorised under this Act any land whereon any canal is constructed, the bed and banks of and water in such canal, and any revetment or other thing connected with that canal or the construction or use thereof;
- (g) providing for and regulating and controlling the discharge of storm water into any canal;
- (h) prohibiting in relation to land whereon any canal is constructed, that canal and the waters therein all such acts and things as in the opinion of the Governor in Council are detrimental to the safety, convenience or health of the public;
- (i) prescribing the amount of any penalty for any offence against any regulation, provided that any such penalty shall not exceed 20 penalty units or, where the offence is a continuing one, 2 penalty units for each and every day during which the offence is continued;
- (j) prescribing all matters or things which by this Act are required or permitted to be prescribed.

(2) The power to make any regulation under this Act shall include power to make that regulation so that it may be of general or specially limited application according to time, place, purposes, persons or vessels, or persons or vessels included in any class thereof, or circumstances or otherwise as is prescribed and so that any regulation of specially limited application may or may not differ from any other regulation of specially limited application with respect to the same persons, vessels, matters or things.

(3) The power to make any regulation under this Act shall include power thereby to prohibit or restrict either generally or to meet particular cases.

(4) This section shall apply so as not to limit or affect howsoever the application and extension with respect of any canal of any regulation under any of the Acts mentioned in section 10 save that every such regulation shall so apply and extend with and subject to all such adaptations and modifications thereof as are necessary to give operation and effect to this Act, including any and every regulation hereunder.

SCHEDULE**CANALS ACT 1958**

section 2(3)

DESCRIPTION—DUNLOP'S DRAIN

parish of Gilston, county of Ward

All those tidal waters contained in Dunlop's Drain within the following limits—

Commencing at a point on the high water mark of an unnamed creek, a tributary of Little Tallebudgera Creek, parish of Gilston, county of Ward, which said point bears 51 degrees 50 minutes (Magnetic) and is distant 593.45 metres from the north-western corner of resubdivision 31 of subdivision 11 of portion 66, parish of Gilston aforesaid, and bounded thence by a line bearing 165 degrees for a distance of 11.28 metres to high water mark on the right bank of the unnamed creek aforesaid, and bounded thence upstream by the right bank of tidal drain bearing generally southerly to a point on high water mark which said point bears 90 degrees and is distant approximately 402.34 metres from the south-western corner of resubdivision 54 of subdivision 11 of the aforesaid portion 66, as shown on plan catalogued Southport 3121-7 in the head office of the Department of Harbours and Marine, and thence bounded by a line bearing 89 degrees 53 minutes 50 seconds for about 3 metres and thence bounded generally in a southerly direction by the lines shown on plan catalogued number 312-28 in the head office of the Department of Harbours and Marine, as far as the south-eastern corner of the area on the aforesaid plan and thence bounded by a line bearing 270 degrees for a distance of 57.868 metres to the south-western corner of the aforesaid area, and thence from this corner bounded generally in a northerly direction by lines shown on plan catalogued 3120-28 in the head office of Department of Harbours and Marine, as far as the north-eastern corner of Lot 174 on R.P. 187683 in the Titles Office, Brisbane, thence by a line bearing 89 degrees 52 minutes 50 seconds for about 63 metres to a point on high water mark on the left bank of the aforesaid tidal drain, and bounded thence downstream along the line of high water mark, bearing generally northerly to the point of

SCHEDULE (continued)

commencement, including all tidal tributaries thereof, as shown on plan catalogued Southport 3121-7 in the head office of the Department of Harbours and Marine.

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 7 November 1997. Future amendments of the Canals Act 1958 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. 68 of 1992	22 December 1995

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
Corrected minor errors	1
Renumbered provisions	1

6 List of legislation

Canals Act 1958 7 Eliz 2 No. 17

date of assent 7 May 1958
commenced on date of assent
as amended by—

Canals Act Amendment Act 1959 8 Eliz 2 No. 76

date of assent 23 December 1959
commenced on date of assent

Canals Acts Amendment Act 1960 9 Eliz 2 No. 30

date of assent 12 December 1960
commenced on date of assent

Canals Act Amendment Act 1979 No. 16

date of assent 15 May 1979
commenced on date of assent

Beach Protection Act and Another Act Amendment Act 1984 No. 65 pt 3

date of assent 12 September 1984
ss 1–2 commenced on date of assent (see s 2(1))
remaining provisions commenced 22 December 1984 (proc pubd gaz 22 December 1984 p 2298)

Canals Act Amendment Act 1987 No. 20

date of assent 23 April 1987
 commenced on date of assent

Harbours Act and Other Acts Amendment Act 1987 No. 63 pt 6

date of assent 16 November 1987
 commenced on date of assent

Statute Law (Miscellaneous Provisions) Act 1989 No. 103 s 3 sch

date of assent 25 October 1989
 commenced on date of assent (see s 2(1))

Public Service (Administrative Arrangements) Act 1990 No. 73 s 3 sch 5

date of assent 10 October 1990
 ss 1–2 commenced on date of assent (see s 2(1))
 remaining provisions commenced 24 November 1990 (proc pubd gaz 24 November 1990 p 1450)

Statute Law (Miscellaneous Provisions) Act (No. 2) 1992 No. 68 ss 1–3 sch 1

date of assent 7 December 1992
 commenced on date of assent

Land Sales and Land Title Amendment Act 1997 No. 40 ss 1–2 sch

date of assent 25 August
 commenced on date of assent

7 List of annotations

Interpretation

- s 2** amd 1960 9 Eliz 2 No. 30 s 2
 def “**access channel**” ins 1979 No. 16 s 2(a)
 def “**area**” om R1 (see RA s 39)
 def “**beach protection authority**” ins 1984 No. 65 s 52(a)
 def “**canal**” amd 1979 No. 16 s 2(b)
 def “**coast**” ins 1984 No. 65 s 52(b)
 def “**coastal management**” ins 1984 No. 65 s 52(b)
 def “**Director-General**” ins 1984 No. 65 s 52(c)
 sub 1990 No. 73 s 3 sch 5
 om R1 (see RA s 39)
 def “**Harbour Board**” om 1979 No. 16 s 2(c)
 def “**Harbours Trust**” om 1979 No. 16 s 2(c)
 def “**local authority**” om R1 (see RA s 39)
 def “**Marine Board**” om R1 (see RA s 39)
 def “**Minister**” sub 1990 No. 73 s 3 sch 5
 om R1 (see RA s 39)
 def “**person**” om R1 (see RA s 39)
 def “**vessel**” amd 1984 No. 65 s 52(d)
 def “**Year**” om 1984 No. 65 s 52(e)

Liability relating to constructing canals unlawfully

- s 3** amd 1979 No. 16 s 3; 1987 No. 63 s 118; 1992 No. 68 s 3 sch 1

Provisional approval of construction of canal

s 5 amd 1979 No. 16 s 4; 1984 No. 65 s 53; 1990 No. 73 s 3 sch 5

Notice of provisional approval

s 6 amd 1979 No. 16 s 5; 1984 No. 65 s 54; 1990 No. 73 s 3 sch 5

Final approval

s 7 amd 1979 No. 16 s 6; 1984 No. 65 s 55; 1990 No. 73 s 3 sch 5; 1992 No. 68 s 3 sch 1

When dealings with land in subdivision which provides for a canal prohibited

s 8 amd 1979 No. 16 s 7; 1984 No. 65 s 56; 1987 No. 20 s 2; 1987 No. 63 s 119; 1989 No. 103 s 3 sch; 1990 No. 73 s 3 sch 5; 1992 No. 68 s 3 sch 1

Continued application of Land Sales Act, parts 2, 3 and 4

s 8A ins 1987 No. 20 s 3
 amd 1997 No. 40 s 2 sch

Subdivision of land which provides for canal

s 9 amd 1987 No. 20 s 4

Consequences of connection of canal with tidal water

s 10 amd 1979 No. 16 s 8; 1987 No. 63 s 120

Consequences of connection of access channel with canal

s 10A ins 1979 No. 16 s 9

Maintenance of canals

s 11 sub 1979 No. 16 s 10

Protection in respect of construction of access channel

s 12 sub 1979 No. 16 s 11

Existing canals

s 13 amd 1984 No. 65 s 57

Palm Gardens Estate and Anglers' Paradise Estate

s 13A ins 1959 8 Eliz 2 No. 76 s 2

Indemnity

s 14 amd 1979 No. 16 s 12; 1984 No. 65 s 58; 1990 No. 73 s 3 sch 5

Offences

s 15 amd 1979 No. 16 s 13; 1987 No. 63 s 121

Regulations

s 17 amd 1979 No. 16 s 14; 1984 No. 65 s 59; 1987 No. 63 s 122; 1990 No. 73 s 3 sch 5

Publication of orders in council and laying before Legislative Assembly

s 18 sub 1984 No. 65 s 60
 om 1992 No. 68 s 3 sch 1

When artificial channel or lake to be a canal

s 19 om 1987 No. 20 s 5

Implementation of town planning scheme which provides for canals

s 20 ins 1959 8 Eliz 2 No. 76 s 3
om 1979 No. 16 s 15

SCHEDULE—CANALS ACT 1958

ins 1960 9 Eliz 2 No. 30 s 3
sub 1987 No. 63 s 123