

Queensland



# COASTAL PROTECTION AND MANAGEMENT ACT 1995

**Reprinted as in force on 20 October 2003  
(includes commenced amendments up to 2001 Act No. 93)**

**Reprint No. 2 revised edition**

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This Act is reprinted as at 20 October 2003. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

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

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have been made to—

- use aspects of format and printing style consistent with current drafting practice (s 35)
- omit provisions that are no longer required (s 37)
- number and renumber provisions and references (s 43).

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

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in the reprint, including table of renumbered provisions**
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Revised edition indicates further material has affected existing material. For example—

- a correction
- a retrospective provision
- other relevant information.

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MANAGEMENT ACT 1995**

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# **COASTAL PROTECTION AND MANAGEMENT ACT 1995**

[as amended by all amendments that commenced on or before 20 October 2003]

**An Act about the protection and management of the coast, and for related purposes**

## **CHAPTER 1—PRELIMINARY**

### **PART 1—INTRODUCTION**

#### **1 Short title**

This Act may be cited as the *Coastal Protection and Management Act 1995*.

#### **2 Commencement**

This Act commences on a day to be fixed by proclamation.

### **PART 2—OBJECTS AND ACHIEVEMENT OF COASTAL MANAGEMENT**

#### **3 Main objects of Act**

The main objects of this Act are to—

- (a) provide for the protection, conservation, rehabilitation and management of the coast, including its resources and biological diversity; and

- (b) have regard to the goal, core objectives and guiding principles of the National Strategy for Ecologically Sustainable Development in the use of the coastal zone; and
- (c) provide, in conjunction with other legislation, a coordinated and integrated management and administrative framework for the ecologically sustainable development of the coastal zone; and
- (d) encourage the enhancement of knowledge of coastal resources and the effect of human activities on the coastal zone.

#### **4 How coastal management is to be achieved**

Coastal management is to be achieved by coordinated and integrated planning and decision making, involving, among other things, the following—

##### **(a) Coastal management plans**

- Preparing coastal management plans that—
  - state principles and policies for coastal management
  - identify key coastal sites and coastal resources in the coastal zone and planning for their long term protection or management
  - are developed in consultation with the public
  - have regard to Aboriginal tradition and Island custom of Aboriginal and Torres Strait Islander people particularly concerned with land affected by the plans.

##### **(b) Coastal management districts**

- Declaring coastal management districts in the coastal zone as areas requiring special development controls and management practices.

##### **(c) Use of other legislation**

- Using other relevant legislation wherever practicable to achieve the object of this Act.

## 5 Advancing Act's objects

If, under this Act, a function or power is conferred on an entity, the entity must perform the function or exercise the power in a way that advances the Act's objects.

# PART 3—INTERPRETATION

## *Division 1—Dictionary*

## 6 Definitions

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

## *Division 2—Other definitions*

## 7 Meaning of “access channel”

(1) “**Access channel**” means an artificial channel constructed in tidal water and connected, or intended to be connected, to a canal.

(2) Without limiting subsection (1), “**access channel**” includes—

- (a) training walls or other works associated with the channel; and
- (b) additions or alterations to the channel, training walls or other works.

## 8 Meaning of “artificial waterway”

(1) “**Artificial waterway**” means an artificial channel, lake or other body of water.

(2) Without limiting subsection (1), “**artificial waterway**” includes—

- (a) an access channel; and
- (b) an artificial channel that—
  - (i) is formed because land has been reclaimed from tidal water; and

- (ii) is intended to allow boating access to allotments on subdivided land; and
  - (c) other artificial channels subject to the ebb and flow of the tide; and
  - (d) any additions or alterations to an artificial waterway.
- (3) However, “**artificial waterway**” does not include the following—
- (a) a swimming pool;
  - (b) an ornamental pond of no more than 5 000 m<sup>2</sup> in area;
  - (c) a pond—
    - (i) for aquaculture; or
    - (ii) for treating effluent;
  - (d) a freshwater storage reservoir for domestic water supply;
  - (e) a water storage facility—
    - (i) situated on a natural watercourse; and
    - (ii) used for irrigation or other agricultural purposes;
  - (f) a part of a river, creek or stream in which water flows in a natural channel, whether artificially improved or not;
  - (g) a drain for carrying stormwater or other material;
  - (h) any of the following used for accessing port infrastructure if constructed in the area of a port for which a port authority is responsible—
    - (i) a navigation channel;
    - (ii) a harbour swing basin;
    - (iii) a berth pocket;
    - (iv) a berth approach or departure path.

## 9 Meaning of “canal”

- (1) “**Canal**” means an artificial waterway—
- (a) connected, or intended to be connected, to tidal water; and
  - (b) from which boating access to the tidal water is not hindered by a lock, weir or similar structure.

(2) **“Canal”** includes a canal surrendered to the State under the Canals Act, section 13(4).<sup>1</sup>

(3) However, **“canal”** does not include a marina, boat harbour or commercial boat mooring facility.

## **10 Meaning of “coast”**

The **“coast”** means all areas within or neighbouring the foreshore.

## **11 Meaning of “coastal management”**

**“Coastal management”** includes the protection, conservation, rehabilitation, management and ecologically sustainable development of the coastal zone.

## **12 Meaning of “coastal resources”**

**“Coastal resources”** means the natural and cultural resources of the coastal zone.

## **13 Meaning of “coastal waters”**

**“Coastal waters”** means Queensland waters to the limit of the highest astronomical tide.

## **14 Meaning of “coastal wetlands”**

**“Coastal wetlands”** include tidal wetlands, estuaries, salt marshes, melaleuca swamps (and any other coastal swamps), mangrove areas, marshes, lakes or minor coastal streams regardless of whether they are of a saline, freshwater or brackish nature.

## **15 Meaning of “coastal zone”**

The **“coastal zone”** means—

- (a) coastal waters; or

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<sup>1</sup> Canals Act, section 13 (Existing canals)

- (b) all areas to the landward side of coastal waters in which there are physical features, ecological or natural processes or human activities that affect, or potentially affect, the coast or coastal resources.

### **16 Meaning of “ecologically sustainable development”**

“**Ecologically sustainable development**” has the meaning given by the National Strategy for Ecologically Sustainable Development.

### **17 Meaning of “State coastal land”**

(1) “**State coastal land**” means land in a coastal management district other than land that is—

- (a) freehold land, or land contracted to be granted in fee simple by the State; or
- (b) a State forest or timber reserve under the *Forestry Act 1959*; or
- (c) in a watercourse or lake as defined under the *Water Act 2000*; or
- (d) subject to a lease or licence issued by the State.

(2) In this section—

“**licence**” includes a permit or other authority issued under any Act relating to mining, but does not include a permit issued under the *Land Act 1994*, section 177(1).<sup>2</sup>

## *Division 3—General*

### **18 Aboriginal people and Torres Strait Islanders particularly concerned with land**

Aboriginal people and Torres Strait Islanders are particularly concerned with land if—

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<sup>2</sup> *Land Act 1994*, section 177 (Chief executive may issue permit)

- (a) they are members of a group that has a particular connection with land under Aboriginal tradition or Island custom; or
- (b) they live on or use the land or neighbouring land.

## **PART 4—APPLICATION OF ACT**

### **19 Act binds all persons**

This Act binds all persons, including the State, and, so far as the legislative power of the Parliament permits, the Commonwealth and the other States.

## **CHAPTER 2—COASTAL MANAGEMENT**

### **PART 1—ADVISORY BODIES**

#### *Division 1—Coastal Protection Advisory Council*

### **20 Establishment of advisory council**

The Coastal Protection Advisory Council is established.

### **21 Functions of advisory council**

(1) The functions of the advisory council are to advise the Minister about coastal management including the following issues—

- (a) areas of the coastal zone needing special coastal management;
- (b) coastal plans and their relationship with other plans, prepared by a State agency or local government, for the coastal zone;
- (c) appropriate preventive and remedial measures for coastal management;

- (d) assistance local governments and other management agencies need in the application of coastal management techniques;
  - (e) developing public and community programs for coastal management;
  - (f) research and other studies relating to the coastal zone and disseminating information about coastal management;
  - (g) submissions received on coastal management plans.
- (2) The measures mentioned in subsection (1)(c) may relate to—
- (a) preventing a thing having an unacceptable effect on the coastal zone; and
  - (b) mitigating damage to property from erosion or tidal inundation.
- (3) In performing its functions, the advisory council must, as far as practicable—
- (a) monitor the integration of coastal zone management; and
  - (b) have regard to Aboriginal tradition and Island custom of Aboriginal and Torres Strait Islander people particularly concerned with land in the coastal zone; and
  - (c) liaise and consult with Aboriginal people and Torres Strait Islanders particularly concerned with land in the coastal zone; and
  - (d) have regard to the existing tenure of, interests in, and rights to land in the coastal zone.

## **22 Membership of advisory council**

(1) The advisory council consists of the chief executive and 11 other members appointed by the Minister.

(2) The appointed members must include representatives from the community recognised for their experience in, and knowledge of, coastal zone management.

## **23 Chairperson**

The chief executive is the chairperson of the advisory council.

***Division 2—Regional consultative groups*****24 Establishment of regional consultative group**

The Minister must appoint a regional consultative group to assist during the preparation of a regional plan.

**25 Functions of regional consultative group**

(1) The functions of the regional consultative group are to—

- (a) advise the Minister about the preparation of the regional plan; and
- (b) make recommendations on issues, management strategies and areas requiring special coastal management to achieve ecological sustainable development of the coastal zone covered by the plan.

(2) The regional consultative group must seek community involvement during the preparation of the plan.

**26 Membership of regional consultative group**

The members of the regional consultative group must include representatives of local government, tourism, conservation, industry, and Aboriginal and Torres Strait Islander interests.

**27 Chairperson**

The Minister must nominate a chairperson for the regional consultative group.

***Division 3—General*****28 Member's fees and allowances**

Each member of the advisory council or a regional consultative group is entitled to be paid the fees and allowances decided by the Governor in Council.

**29 Chief executive to record information and provide administrative assistance**

(1) The chief executive must—

- (a) take appropriate measures to record information about the wave climate and storm tide levels relating to erosion and tidal inundation of the coast; and
- (b) give the information to the advisory council for use in performing its functions.

(2) The chief executive may provide the advisory council or a regional consultative group with the administrative assistance necessary for it to perform its functions.

**PART 2—COASTAL MANAGEMENT PLANS***Division 1—State coastal management plan***30 State plan must be prepared**

The Minister must prepare a State coastal management plan for the coastal zone.

**31 Content of State plan**

- (1) The State plan must describe how the coastal zone is to be managed.
- (2) In preparing the State plan, the Minister must consider public access to the foreshore.
- (3) The State plan may include—
  - (a) a statement of the principles and policies by which the coastal zone and its designated areas are to be managed; and
  - (b) a map or series of maps showing coastal resource information.

**32 Public notice inviting submissions on draft State plan**

(1) The Minister must give public notice when a draft State plan has been prepared.

(2) The notice must—

(a) be published in—

- (i) a newspaper circulating generally throughout Queensland; and
- (ii) any other newspapers the Minister considers appropriate; and

(b) state where copies of the draft plan may be inspected and, on payment of a fee, purchased; and

(c) invite written submissions from the public; and

(d) state a day (not earlier than 40 business days from the publication of the notice) by which submissions may be made and the place where the submissions may be made.

(3) The Minister must send a copy of the notice—

(a) and draft plan to each local government and port authority within the area covered by the draft plan; and

(b) to any other group or person the Minister considers appropriate.

(4) A local government or port authority receiving a copy of the draft plan must make the copy available for inspection by the public.

**33 Submissions to be considered when preparing final State plan**

(1) When the final State plan is being prepared, the Minister must consider—

(a) all submissions properly made on the plan; and

(b) the advisory council's advice about the submissions.

(2) If, when making a submission, a person asks the Minister for a response on the submission, the Minister must advise the person in writing whether the submission was accepted or rejected and, if it was rejected, the reasons for the rejection.

**34 Approval of final State plan**

The final State plan does not have effect until it is approved by the Governor in Council.

*Division 2—Regional coastal management plans***35 Regional plans must be prepared**

The Minister must prepare regional coastal management plans for parts of the coastal zone as soon as practicable.

**36 Content of regional plans**

(1) A regional plan must describe how the region covered by the plan is to be managed and identify the coastal management districts in the region.

(2) A regional plan may—

- (a) describe the principles, policies and requirements by which the coastal zone in the region will be managed, including, for example, the relationship between public and private infrastructure; and
- (b) describe a scheme of coastal management works, including maintenance of the works by a local government, port authority or statutory authority; and
- (c) identify key coastal sites requiring special coastal management; and
- (d) include a map or series of maps showing coastal resource information.

(3) For subsection (2)(c), identification must be based on, but not limited to, coastal resources.

**37 Public notice of proposal to prepare draft regional plan**

(1) The Minister must give public notice when the Minister proposes to prepare a draft regional plan.

(2) The notice must—

- (a) be published in—

- (i) a newspaper circulating generally throughout the region; and
  - (ii) any other newspapers the Minister considers appropriate; and
  - (b) invite written submissions from the public; and
  - (c) state a day (not earlier than 40 business days from the publication of the notice) by which submissions may be made and the place where the submissions may be made.
- (3) The Minister must send a copy of the notice to—
- (a) each local government and port authority within the area covered by the draft regional plan; and
  - (b) any other group or person the Minister considers appropriate.

### **38 Preparation of draft regional plan**

When a proposed draft regional plan is being prepared, the Minister must consider—

- (a) all submissions properly made about the preparation of the plan; and
- (b) the advisory council's advice about the submissions; and
- (c) the regional consultative group's advice about the submissions.

### **39 Public notice inviting submissions on draft regional plan**

(1) The Minister must give public notice when a draft regional plan has been prepared.

- (2) The notice must—
- (a) be published in—
    - (i) a newspaper circulating generally throughout the region; and
    - (ii) any other newspapers the Minister considers appropriate; and
  - (b) state where copies of the draft plan may be inspected and, on payment of a fee, purchased; and
  - (c) invite written submissions from the public; and

- (d) state a day (not earlier than 40 business days from the publication of the notice) by which submissions may be made and the place where the submissions may be made.

(3) The Minister must send a copy of the notice—

- (a) and draft plan to each local government and port authority within the area covered by the draft plan; and
- (b) to any other group or person the Minister considers appropriate.

(4) A local government or port authority receiving a copy of the draft plan must make the copy available for inspection by the public.

#### **40 Submissions to be considered when preparing final regional plan**

(1) When a final regional plan is being prepared, the Minister must consider—

- (a) all submissions properly made on the plan; and
- (b) the advisory council's advice about the submissions; and
- (c) the regional consultative group's advice about the submissions.

(2) If, when making a submission, a person asks the Minister for a response on the submission, the Minister must advise the person in writing—

- (a) whether the submission was accepted or rejected and, if it was rejected, the reasons for the rejection; and
- (b) if the person is an owner of land in a coastal management district identified in the final regional plan—the reason why the land is to be included in the district; and
- (c) if a coastal building line is to be fixed for the district that affects the owner's land—the reason for fixing the line.

#### **41 Approval of final regional plan**

A final regional plan does not have effect until it is approved by the Governor in Council.

***Division 3—Review of coastal plans*****42 Minister must review coastal plans**

The Minister must review each coastal plan within 7 years of its commencement.

**43 Public notice of proposal to review coastal plan**

(1) The Minister must give public notice when the Minister proposes to review a coastal plan.

(2) The notice must—

(a) be published in—

- (i) if a State plan is being reviewed—a newspaper circulating generally throughout the State; or
- (ii) if a regional plan is being reviewed—a newspaper circulating generally throughout the region; and
- (iii) any other newspapers the Minister considers appropriate; and

(b) invite written submissions from the public; and

(c) state a day (not earlier than 40 business days from the publication of the notice) by which submissions may be made and the place where the submissions may be made.

(3) The Minister must send a copy of the notice to—

(a) each local government and port authority within the area covered by the draft plan; and

(b) any other group or person the Minister considers appropriate.

**44 Minister prepares draft coastal plan**

If after considering the advice of the advisory council about all submissions properly made on the review, the Minister considers a new coastal plan should be prepared, the Minister—

(a) may prepare a new draft coastal plan; and

(b) if a new regional plan is to be prepared—must appoint a new regional consultative group.

**45 Public notice inviting submissions on new draft coastal plan**

(1) The Minister must give public notice when a new draft coastal plan has been prepared.

(2) The notice must—

(a) be published in—

- (i) if a State plan is being reviewed—a newspaper circulating generally throughout the State; or
- (ii) if a regional plan is being reviewed—a newspaper circulating generally throughout the region; and
- (iii) any other newspapers the Minister considers appropriate; and

(b) state where copies of the draft plan may be inspected and, on payment of a fee, purchased; and

(c) invite written submissions from the public; and

(d) state a day (not earlier than 40 business days from the publication of the notice) by which submissions may be made and the place where the submissions may be made.

(3) The Minister must send a copy of the notice—

(a) and draft plan to each local government and port authority within the area covered by the draft plan; and

(b) to any other group or person the Minister considers appropriate.

(4) A local government or port authority receiving a copy of the draft plan must make the copy available for inspection by the public.

**46 Submissions to be considered when preparing final coastal plan**

(1) When a final State plan is being prepared, the Minister must consider—

(a) all submissions properly made on the plan; and

(b) the advisory council's advice about the submissions.

(2) When a final regional plan is being prepared, the Minister must consider—

(a) all submissions properly made on the plan; and

- (b) the advisory council's advice about the submissions; and
- (c) the regional consultative group's advice about the submissions.

(3) If, when making a submission, a person asks the Minister for a response on the submission, the Minister must advise the person in writing—

- (a) whether the submission was accepted or rejected and, if it was rejected, the reasons for the rejection; and
- (b) if the person is an owner of land in a coastal management district identified in the final regional plan—the reason why the land is to be included in the district; and
- (c) if a coastal building line is to be fixed for the district that affects the owner's land—the reason for fixing the line.

#### **47 Approval of final coastal plan**

A final coastal plan does not have effect until it is approved by the Governor in Council.

### *Division 4—Miscellaneous*

#### **48 Implementation of coastal plans**

(1) The chief executive must implement coastal plans.

(2) However, the chief executive may arrange with a local government, port authority or statutory authority to carry out or maintain works necessary to implement a coastal plan.

#### **49 Effect of coastal plans**

Coastal plans are statutory instruments under the *Statutory Instruments Act 1992*.

#### **50 Relationship of coastal plans with Integrated Planning Act 1997**

(1) The assessment manager, or a referral agency, for a development application under the *Integrated Planning Act 1997* must assess the

application as if a relevant coastal plan were a State planning policy under that Act.

(2) Also, the following provisions of the *Integrated Planning Act 1997* apply as if a coastal plan were a State planning policy—

- (a) section 2.1.4;
- (b) schedule 1, section 18;
- (c) schedule 6, section 2.<sup>3</sup>

## **51 Amendment of coastal plans**

(1) A coastal plan may be amended by a later coastal plan only if the procedures applying to the preparation and approval of the plan under this part are followed for the later plan.

(2) However, if the later plan is a regional plan, sections 37 and 38<sup>4</sup> do not apply to the preparation and approval of the plan.

(3) Also, subsection (1) does not apply to the amendment of a coastal plan to do any of the following—

- (a) correct an error in the plan;
- (b) make a change, other than a change of substance, in the plan;
- (c) if the plan provides that an amendment of a stated type may be made to the plan by amendment under this subsection—make an amendment of that type.

## **52 Public inspection and purchase of coastal plans**

(1) The chief executive must keep each coastal plan or draft coastal plan available for inspection by the public during office hours on business days at the head office and each regional office of the department.

(2) The chief executive may keep each coastal plan or draft coastal plan available for inspection by the public during office hours on business days at other places the chief executive considers appropriate.

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3 The *Integrated Planning Act 1997*, section 2.1.4, schedule 1, section 18 and schedule 6, section 2, make provision about State interests in relation to planning schemes and designation of land for community infrastructure.

4 Sections 37 (Public notice of proposal to prepare draft regional plan) and 38 (Preparation of draft regional plan)

(3) On payment of a fee, a person may buy a copy of a coastal plan or draft coastal plan.

(4) The fee for a copy of a coastal plan or draft coastal plan must not be more than the reasonable cost of publishing the copy.

### **53 Transitional planning schemes may be amended**

(1) This section applies if a transitional planning scheme is amended under the *Integrated Planning Act 1997*, section 2.3.2,<sup>5</sup> because it is not consistent with a regional plan.

(2) If the amendment changes how land may be used under the transitional planning scheme, the owner of the land is taken to be an owner mentioned in section 150(1) and the remaining provisions of chapter 5, part 1, apply.

## **PART 3—COASTAL MANAGEMENT DISTRICTS AND EROSION PRONE AREAS**

### *Division 1—Declaration, amendment, amalgamation and abolition of coastal management districts*

### **54 Declaration of coastal management districts**

(1) An area may be declared as a coastal management district under—

- (a) if the area is covered by a regional plan—a regulation giving effect to the plan; or
- (b) if the area is not covered by a regional plan and the Minister considers the area requires protection or management—a regulation.

(2) In addition, the Minister may, by written notice, declare an area to be a coastal management district, or part of an existing coastal management

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<sup>5</sup> *Integrated Planning Act 1997*, section 2.3.2 (Power of Minister to direct local government to take action about local planning instrument)

district, only if the Minister considers the area requires immediate protection or management.

(3) The notice is subordinate legislation and, unless it is earlier repealed, expires 6 months after it commences.

(4) A regulatory impact statement under the *Statutory Instruments Act 1992* need not be prepared for the notice.

(5) A coastal management district may be assigned a name or number, or both.

(6) The chief executive must give public notice of the declaration of a coastal management district.

(7) The notice must be published in a newspaper circulating generally throughout the control district.

## **55 Where coastal management districts may be declared**

(1) A coastal management district may be declared—

- (a) over coastal waters; or
- (b) over a foreshore and over land up to 400 m inland from the high water mark along the foreshore; or
- (c) at a river mouth or estuarine delta—over land up to 1000 m from the high water mark at the river mouth or estuarine delta; or
- (d) along tidal rivers, saltwater lakes and other bodies of internal tidal water—over land up to 100 m from the high water mark along the river, lake or body of water; or
- (e) over an island in coastal waters.

(2) Despite subsection (1), a coastal management district may also include all or part of a coastal wetland, dune system or key coastal site and up to 100 m from the wetland, system or site.

## **56 Things to be considered when declaring coastal management districts**

The following things must be considered before an area is declared as a coastal management district—

- (a) the area's vulnerability to erosion by the sea or to wind induced effects;

- (b) whether the area should be kept in an undeveloped state to maintain or enhance the coast or coastal resources;
- (c) public access to a foreshore in the area;
- (d) foreseeable human impacts and natural hazards in the area;
- (e) the existing tenure of, interests in, and rights to, land in the area;
- (f) Aboriginal tradition and Island custom of Aboriginal and Torres Strait Islander people particularly concerned with land in the area;
- (g) planning and development management of the area.

### **57 Notice declaring, changing or abolishing coastal management district**

(1) Before a regulation, under section 54(1)(b), is made declaring, changing the boundaries of or abolishing a coastal management district, the chief executive must give public notice of the proposed declaration, change or abolition (the “**proposal**”).

(2) The notice must—

- (a) be published in a newspaper circulating generally throughout the coastal management district; and
- (b) state where copies of the plan showing the proposal may be inspected and, on payment of a reasonable fee, purchased; and
- (c) invite written submissions from the public; and
- (d) state a day (not earlier than 40 business days from the publication of the notice) by which submissions may be made and the place where the submissions may be made.

(3) The chief executive must send details of the proposal to each local government and port authority within the area covered by the district.

(4) The Minister must consider all submissions properly made about the proposal.

(5) If, when making a submission, a person asks the Minister for a response on the submission, the Minister must advise the person in writing—

- (a) whether the submission was accepted or rejected and, if it was rejected, the reasons for the rejection; and

- (b) if the person is an owner of land in the coastal management district—the reason why the land was included in the district; and
- (c) if a coastal building line is fixed for the land—the reason for fixing the line.

## **58 Amendment, amalgamation and abolition of coastal management districts**

(1) This section applies to a coastal management district declared under a regulation made under section 54(1)(b).

(2) A regulation may—

- (a) change the boundaries of the district; or
- (b) amalgamate the district with 1 or more other districts; or
- (c) abolish the district.

### *Division 2—Coastal protection and tidal works notices*

## **59 Coastal protection notices**

(1) This section applies only to activity in a coastal management district.

(2) The chief executive may give a notice (a “**coastal protection notice**”) to a person directing the person, within the reasonable time stated in the notice—

- (a) to take the reasonable action stated in the notice to protect land; or
- (b) to stop, or not start, an activity stated in the notice, if the chief executive is satisfied the activity is likely to—
  - (i) have a significant effect on coastal management; or
  - (ii) cause wind erosion.

(3) If the name of the person who started or is about to start the activity is not known, the notice may be given—

- (a) in a newspaper circulating generally throughout the district; or
- (b) if the notice is about activity over land—by displaying it in a prominent position on the land.

(4) Without limiting subsection (2), the notice may require the person—

- (a) to build or maintain works; or
- (b) to plant, cultivate or preserve, or not damage, vegetation native to the coastal management district; or
- (c) not to alter the geographical features of land; or
- (d) to do anything else necessary to protect land from wind erosion; or
- (e) to restore land; or
- (f) to remove stock from land.

(5) The notice must state that the person may appeal against the decision to give the notice within the period stated in the notice.<sup>6</sup>

(6) The person must comply with the notice.

Maximum penalty for subsection (6)—3 000 penalty units.

## **60 Tidal works notices**

(1) If, in the chief executive's opinion, works in, on, or over the foreshore or land under tidal water need repair, are abandoned or should be removed, the chief executive may give the person responsible for the works or for the maintenance of them a notice (a "**tidal works notice**").

(2) If the name of the person is not known, the notice may be given—

- (a) in a newspaper circulating generally throughout the coastal management district; or
- (b) by displaying it in a prominent position on the land.

(3) The notice may direct the person within the reasonable time stated in the notice to take stated reasonable action to—

- (a) repair the works to the chief executive's reasonable satisfaction; or
- (b) remove the works and restore the site, as nearly as practicable, to its former condition.

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<sup>6</sup> Appeals are dealt with in chapter 5.

(4) The notice must state that the person may appeal against the decision to give the notice within the period stated in the notice.<sup>7</sup>

(5) The person must comply with the notice.

Maximum penalty for subsection (5)—3 000 penalty units.

## **61 Chief executive may take required action**

(1) If a person fails to comply with a coastal protection or tidal works notice requiring particular action to be taken (the “**required action**”), the chief executive may take the required action.

(2) For subsection (1), the chief executive, or a person authorised by the chief executive, may, without any further authority apart from this subsection—

- (a) enter and re-enter land at all reasonable times; and
- (b) remain on the land for the time that is necessary and reasonable; and
- (c) take onto, and keep on, the land the vehicles, materials, equipment and other things that are necessary and reasonable.

(3) The chief executive may recover, as a debt, from the person to whom the notice is directed, the costs and expenses reasonably incurred in taking the required action.

## **62 Forfeiture of property**

(1) This section applies if a coastal protection or tidal works notice is given to a person in relation to property that belongs to the person and is on unallocated State land.

(2) If the person does not comply with the notice, or appeals against the giving of the notice, then—

- (a) if an appeal is not made against the giving of the notice within the period stated in the notice—the property is forfeited to the State at the end of the stated period; or
- (b) if an appeal is made but is dismissed—the property is forfeited to the State when the final decision on the appeal is made.

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<sup>7</sup> Appeals are dealt with in chapter 5.

**63 Record of coastal protection or tidal works notice in land registry**

(1) This section applies if a coastal protection or tidal works notice is given in relation to land other than unallocated State land.

(2) As soon as practicable after giving the notice, the chief executive must give written notice to the registrar of titles of the giving of the notice.

(3) The registrar must keep records that show the notice has been given.

(4) The registrar must keep the records in a way that a search of the register kept by the registrar under any Act relating to title to the land will show the notice has been given.

(5) As soon as practicable after the notice has been complied with, the chief executive must give written notice to the registrar of compliance with the notice.

(6) As soon as practicable after receiving the notice of compliance, the registrar must remove the particulars of the notice from the registrar's records.

**64 Owner of land and builder jointly liable**

(1) If a coastal protection or tidal works notice is served on both the owner of land and the person responsible for works on the land or for the maintenance of them, they are jointly and severally bound by the requirements of the notice.

(2) In this section—

“**owner of land**” includes the occupier of the land.

**65 Notice binding on purchaser**

(1) This section applies if land or works subject to an undischarged coastal protection or tidal works notice are sold.

(2) The seller must give the buyer written advice of the undischarged notice not less than 14 days before settlement of the sale.

(3) However, if settlement of the sale is made less than 14 days after the agreement to sell is made, the seller must give the buyer written advice of the undischarged notice on the day the agreement is made.

Maximum penalty for subsections (2) and (3)—150 penalty units.

(4) If the seller complies with subsection (2) or (3), the buyer is bound by the undischarged notice as if it had been given to the buyer.

(5) If the seller does not comply with subsection (2) or (3), the agreement is of no effect unless the buyer—

- (a) by written advice given to the seller before settlement, states the intention to settle despite the non-compliance; or
- (b) by written advice given to the seller within 30 days after settlement, affirms the sale despite the non-compliance.

### *Division 3—General provisions about coastal management districts*

#### **66 Coastal building line**

(1) For assessment of a development application for building work under the *Integrated Planning Act 1997*, a regulation, or notice that declares a coastal management district, may fix a coastal building line for a coastal management district.

(2) However, a notice may fix a coastal building line only for the coastal management district declared under the notice.

#### **67 Placing signs on unallocated State land**

(1) The chief executive may place a sign on unallocated State land, within or on the boundary of a coastal management district, indicating—

- (a) particulars of the district; or
- (b) anything prohibited or authorised in the district.

(2) A person must not, without lawful authority, destroy, pull down, erase, remove, deface or otherwise damage or interfere with the sign.

Maximum penalty—100 penalty units.

#### **68 Temporary occupation of land**

(1) The chief executive may, to implement a coastal plan, temporarily occupy and use land in a coastal management district for the purpose of building, maintaining or repairing works, and may—

- (a) take from it stone, gravel, sand, earth, and other material; and

- (b) deposit materials on it; and
- (c) form and use temporary works on it, including, for example, roads; and
- (d) build structures of a temporary nature on it.

(2) Before occupying land under this section, the chief executive must give the occupier and the owner of the land not less than 7 days written notice of the intention to occupy.

(3) However, subsection (2) does not apply in urgent circumstances.

(4) The notice must state the use proposed to be made of the land and the approximate period during which the use is expected to continue.

(5) The owner of the land or any other person having an interest in the land may, at any time during the occupation or within 3 months after the occupation, give written notice to the chief executive claiming compensation.

(6) If the land is not resumed, the owner of the land and all persons having an interest in it may recover compensation for the occupation and use.

(7) The total compensation payable under this section in relation to land may not be more than the compensation that would have been payable had the land been resumed.

(8) Compensation is not payable under this section for anything done under this section, if the right or authority to do the thing is given under another Act, or a State grant, or other instrument, even though conditions imposed under the Act, grant, or instrument for doing the thing have not been performed.

(9) The amount of the compensation payable is the amount agreed between the claimant and chief executive or, failing agreement, decided by the Planning and Environment Court.

#### *Division 4—Offence about damaging vegetation on State coastal land*

### **69 Damaging vegetation**

- (1) A person must not damage vegetation on State coastal land without—
- (a) the written approval of the entity responsible for the management and control of the land; or

(b) other lawful authority, justification or excuse.

Maximum penalty—400 penalty units.

(2) In this section—

“**damage**”, to vegetation, does not include minor damage to vegetation that happens in the course of the ordinary use of the land on which the vegetation is situated.

## **PART 4—EROSION PRONE AREAS**

### **70 Declaration of erosion prone areas**

(1) The chief executive may declare an area within the coastal zone to be an erosion prone area if satisfied the area may be subject to erosion or tidal inundation.

(2) If the chief executive declares an area under subsection (1), the chief executive must—

- (a) ensure the erosion prone area is shown on a document describing the area; and
- (b) keep the document available for inspection by members of the public at the department’s head office; and
- (c) give a copy of the document to each local government in whose area the erosion prone area or a part of the erosion prone area is situated.

*Examples of a document describing the area—*

A map or plan.

### **71 Amending erosion prone areas**

(1) The chief executive may amend the area of an erosion prone area.

(2) If the chief executive amends the area, the chief executive must—

- (a) record the amendment on the document mentioned in section 70(2)(b) on which the erosion prone area is shown; and

- (b) give a copy of the amended document to each local government in whose area the erosion prone area or a part of the erosion prone area is situated.

## **72 Local governments to keep copies of documents**

The local government must keep available for inspection by members of the public any document given to it under section 70(2)(c) or 71(2)(b) at its head office.

# **PART 5—QUARRY MATERIALS**

## *Division 1—Allocation of quarry materials*

### *Subdivision 1—Obtaining allocations*

## **73 Applications for allocation of quarry material**

(1) A person may apply to the chief executive for an allocation of quarry material below high water mark.

(2) The application must be—

- (a) in the approved form; and
- (b) accompanied by the fee prescribed under a regulation.

## **74 Additional information for applications**

(1) The chief executive may, by written notice, ask the applicant to give the chief executive further information or documents about the application by the reasonable date stated in the notice.

(2) Without limiting subsection (1), the chief executive may ask the applicant to give the chief executive information or documents about the potential impact the removal of the quarry material may have on coastal management.

(3) If the applicant does not give the chief executive the further information or documents by the stated day, the application lapses.

## **75 Criteria for deciding applications**

(1) In deciding whether to grant the allocation or refuse the application, or what should be the conditions of the allocation, the chief executive must consider—

- (a) the State plan and regional plans; and
- (b) the impact the removal of the quarry material, including the proposed method of extraction, or the placement of spoil may have on coastal management including the following—
  - (i) the supply of sediments to estuaries and the sea;
  - (ii) the physical integrity of the land, including stability of beds and banks of watercourses;
  - (iii) the quarry material available on the land and any existing allocations for the land;
  - (iv) the ecologically sustainable development of the land and watercourses on the land; and
- (c) if the chief executive is satisfied the removal of the quarry material or the placement of spoil may impact on waters mentioned in the *Environmental Protection (Water) Policy 1997*, schedule 1, column 1—the impact the removal or placement may have on the environmental values and water quality objectives stated in a document mentioned in column 2 of that schedule for the waters; and
- (d) the impact the removal of the quarry material or placement of spoil may have on the management of—
  - (i) fish habitats under the *Fisheries Act 1994*; or
  - (ii) marine parks under the *Marine Parks Act 1982*; or
  - (iii) protected areas under the *Nature Conservation Act 1992*.

(2) Also, in deciding an application that involves placement of quarry material in a coastal management district, the chief executive must consider—

- (a) the nature of the material including contaminants in the material; and

(b) the characteristics of the material's receiving environment.

(3) Subsections (1) and (2) do not stop the chief executive from considering other matters relevant to the application, including, for example—

- (a) fair and equitable access to State resources; and
- (b) economic and social implications of a decision to grant or refuse the application; and
- (c) the views of a local government about the removal of the quarry material or placement of spoil; and
- (d) if the removal or placement happens on land under tidal water—the views of a harbour master about the effect the removal or placement may have on marine safety in the tidal water; and
- (e) if the removal or placement happens on land under tidal water within the limits of a port—the views of the port authority for the land about the removal or placement.

## 76 Deciding applications

(1) If the chief executive is satisfied the application should be approved, the chief executive must grant the application.

(2) If the chief executive is not satisfied the application should be approved, the chief executive must refuse the application.

(3) Within 30 business days after deciding the application, the chief executive must give the applicant—

- (a) notice of the decision; and
- (b) if the chief executive grants the application—a notice (an “**allocation notice**”) in the approved form.

(4) The allocation notice—

- (a) has effect from the day stated in the notice; and
- (b) remains in force, unless sooner cancelled or suspended, for the period of not more than 6 years decided by the chief executive.

**77 Selling allocation of quarry material by auction or tender**

(1) The chief executive may sell by auction or tender an allocation of quarry material below high water mark.

(2) In selling the allocation, the chief executive must consider the impact the removal of the quarry material or placement of spoil may have on coastal management, including the matters mentioned in section 75.

(3) If the chief executive sells an allocation, the chief executive must give the buyer an allocation notice under section 76(3).

(4) Sections 78 to 80 apply to the allocation.

***Subdivision 2—Content and conditions of allocation notices*****78 Content of allocation notices**

Without limiting what may be included in an allocation notice, the notice must state—

- (a) the quantity of quarry material that may be removed under the allocation; and
- (b) the area to which the allocation relates; and
- (c) the rate of royalty payable for removal of the quarry material.

**79 Conditions of allocation notice**

The chief executive may impose conditions on the allocation notice the chief executive considers appropriate for coastal management, including, for example, conditions about—

- (a) the maximum rate at which the quarry material may be removed; and
- (b) monitoring the impact of the removal of the quarry material or placement of spoil on coastal management; and
- (c) the nature and extent of surveys to be carried out in relation to the removal of the quarry material or placement of spoil.

**80 Allocation holder to give information**

(1) This section applies to an allocation holder from the day the holder first removes quarry material under the allocation.

(2) The holder must, within 20 business days after the end of each month, give to the chief executive a written notice stating the quantity of quarry material removed by the holder under the allocation in the month.

Maximum penalty—50 penalty units.

***Subdivision 3—Removal of quarry materials may require other approval*****81 Removal of quarry material is subject to other approvals**

(1) An allocation notice authorises the allocation holder, during the period the allocation is in force, to access quarry material.

(2) However, the allocation holder is not authorised to remove any quarry material under the allocation notice until the holder has obtained—

- (a) if the holder must have a development permit for the removal—a development permit; and
- (b) if the holder must have an environmental authority for the removal—an environmental authority.

(3) The application for the development permit or environmental authority must be supported by evidence of the allocation.

***Subdivision 4—Transferring or renewing allocations*****82 Transferring allocations**

(1) The allocation notice holder may apply to the chief executive to transfer all or part of the allocation to another person.

(2) The application must be—

- (a) in the approved form; and
- (b) supported by sufficient information to enable the chief executive to decide the application, including, for example, the consent of the transferee to the transfer; and
- (c) accompanied by the fee prescribed under a regulation.

(3) Within 30 business days after receiving the application, the chief executive must—

- (a) approve the transfer as applied for, with or without conditions; or
- (b) approve the transfer, as varied by the chief executive, with or without conditions; or
- (c) refuse the transfer.

(4) In making a decision under subsection (3), the chief executive must consider the impact the transfer may have on coastal management, including the matters mentioned in section 75.

(5) Within 30 business days after deciding the application, the chief executive must—

- (a) give the applicant and the other person written notice of the decision; and
- (b) if the transfer is approved—give the transferee a new allocation in accordance with the approval; and
- (c) if the application was not to transfer all of an allocation—give the applicant an amended allocation notice for the part not transferred.

(6) The transfer has effect from the day the notice is given.

### **83 Renewing allocations**

(1) The allocation notice holder may apply to the chief executive to renew the allocation notice.

(2) The application must be—

- (a) in the approved form; and
- (b) accompanied by the fee prescribed under a regulation.

(3) Within 30 business days after receiving the application, the chief executive must—

- (a) approve the renewal, as applied for, with or without conditions; or
- (b) approve the renewal, as varied by the chief executive, with or without conditions; or
- (c) refuse the application.

(4) In making a decision under subsection (3), the chief executive must consider the impact the renewal may have on coastal management, including the matters mentioned in section 75.

(5) Within 30 business days after deciding the application, the chief executive must give the applicant—

- (a) a written notice stating the decision and the reasons for it; and
- (b) if the renewal is approved—a new allocation notice in accordance with the approval.

(6) This division applies, with all necessary changes, to the application as if it were an application for an allocation.

### *Subdivision 5—Amending, suspending or cancelling allocation notices*

#### **84 Amendment—grounds**

(1) The chief executive may amend an allocation notice, including, for example, by adding a further condition to the notice—

- (a) with the written agreement of the holder of the notice; or
- (b) if the chief executive is satisfied, or reasonably believes, the amendment is necessary or desirable for coastal management.

(2) Without limiting subsection (1), if an allocation notice holder removes quarry material at a rate less than 50% of the maximum rate stated in the notice, the chief executive may amend—

- (a) the total quantity of material permitted to be removed under the notice; or
- (b) the maximum rate.

(3) However, an amendment under subsection (1) must not increase the period for which the notice has effect.

#### **85 Suspension or cancellation—grounds**

The chief executive may suspend or cancel an allocation notice if the chief executive is satisfied, or reasonably believes—

- (a) the allocation notice was granted in error or because of a materially false or fraudulent document, statement or representation; or

- (b) the allocation notice holder—
  - (i) has committed, or is committing, an offence against this Act or another Act relating to protection of the environment; or
  - (ii) has not complied with a condition of the allocation notice; or
  - (iii) has not, within 1 year after the day the notice was issued, applied for—
    - (A) if the holder must have a development permit for the removal—a development permit; and
    - (B) if the holder must have an environmental authority for the removal—an environmental authority; or
- (c) the suspension or cancellation is necessary or desirable for coastal management.

### **86 Amendment, suspension or cancellation—procedure**

(1) Before amending, suspending or cancelling an allocation notice, the chief executive must give the allocation notice holder a written notice inviting the holder to show why the allocation notice should not be amended, suspended or cancelled (the “**proposed action**”).

(2) The notice must state each of the following—

- (a) the proposed action;
- (b) the grounds for the proposed action;
- (c) the facts and circumstances forming the basis for the grounds;
- (d) if the proposed action is to amend the allocation notice—the proposed amendment;
- (e) if the proposed action is suspension of the allocation notice—the proposed suspension period;
- (f) that representations may be made about the notice;
- (g) how the representations may be made;
- (h) where the representations may be made or sent;
- (i) a period within which the representations must be made.

(3) The stated period must end at least 10 business days after the notice is given.

(4) If, after considering all representations made within the stated period, the chief executive still considers the proposed action should be taken, the chief executive may—

- (a) if the proposed action is to amend the allocation notice—amend the allocation notice; and
- (b) if the proposed action is to suspend the allocation notice—suspend the allocation notice for no longer than the proposed suspension period; and
- (c) if the proposed action is to cancel the allocation notice—cancel the allocation notice or suspend it for a period.

(5) This section does not apply if the allocation is amended under section 84(1)(a).

### **87 Notice and effect of amendment, suspension or cancellation of allocations**

(1) If the chief executive amends, suspends or cancels an allocation notice, written notice and particulars of the amendment, suspension or cancellation must be given to the allocation holder.

(2) The notice must state the decision and the reasons for it.

(3) An amendment takes effect from the day the notice is given.

(4) If the chief executive suspends the allocation notice, it is ineffective during the period of suspension.

(5) The suspension—

- (a) may be for the period the chief executive decides; and
- (b) has effect from—
  - (i) the day the notice is given; or
  - (ii) if a later day is stated in the notice—the stated day.

(6) If the chief executive cancels the allocation notice, it ceases to have effect from—

- (a) the day the notice is given; or
- (b) if a later day is stated in the notice—the stated day.

(7) The amendment, suspension or cancellation does not give the holder a right to compensation for any loss or damage arising from the amendment, suspension or cancellation.

### *Subdivision 6—Surrender of allocation*

## **88 Surrender**

The holder of an allocation notice may surrender the holder's allocation by giving the chief executive—

- (a) written notice of the surrender; and
- (b) the allocation notice.

### *Division 2—Dredge management plans*

#### *Subdivision 1—Preliminary*

## **89 What is a dredge management plan**

A dredge management plan is a plan—

- (a) prepared by a person proposing to remove quarry material below high water mark or place spoil derived from the removal (the “**proposed activity**”); and
- (b) used to manage the removal or the placement.

*Example of person for paragraph (a)—*

A government entity or a port authority.

## **90 Preparation of plans**

(1) In preparing a dredge management plan, a person must consider—

- (a) the matters mentioned in section 75; and
- (b) the impact the proposed activity may have on coastal management, including the matters mentioned in section 104(2).

(2) The dredge management plan must include the following—

- (a) a description of the area to which the plan relates;
- (b) a description of the method to be used to remove or interfere with the quarry material;
- (c) details of the locations where spoil is to be placed or disposed of;
- (d) details of measures the person intends to take to minimise the proposed activity's adverse impacts on coastal management.

### *Subdivision 2—Obtaining approval of dredge management plans*

## **91 Applications for approval of plans**

(1) A person may apply to the chief executive for approval of a dredge management plan.

(2) The application must be accompanied by—

- (a) a copy of the plan; and
- (b) the fee prescribed under a regulation.

## **92 Requesting additional information and documents**

(1) The chief executive may, by written notice, ask the applicant to give the chief executive further reasonable information or documents about the plan by the reasonable date stated in the notice.

(2) The chief executive may refuse to approve the plan if the applicant does not give the chief executive the further information or documents by the stated day.

(3) If the chief executive agrees, the applicant may amend the plan before the chief executive has finished considering it.

## **93 Approving or refusing to approve plans**

(1) The chief executive may approve the plan if satisfied the removal of quarry material and the placement or disposal of spoil under the plan—

- (a) are consistent with the State plan and regional plans; and
- (b) do not adversely affect coastal management or navigational safety; and

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- (c) do not adversely affect management of—
  - (i) fish habitats under the *Fisheries Act 1994*; or
  - (ii) marine parks under the *Marine Parks Act 1982*; or
  - (iii) protected areas under the *Nature Conservation Act 1992*;  
and
- (d) do not adversely affect waters mentioned in the *Environmental Protection (Water) Policy 1997*, schedule 1, column 1, having regard to the environmental values and water quality objectives stated in a document mentioned in column 2 of that schedule for the waters; and
- (e) if the removal or placement happens on land below high water mark within the limits of a port—do not adversely affect the operation of the port.

(2) Before approving the plan, the chief executive may require the person to include in the plan details about the following—

- (a) the area to which the plan relates;
- (b) the quantity of quarry material that may be removed under the plan;
- (c) the maximum rate at which the quarry material may be removed;
- (d) monitoring the impact of the removal of the quarry material or placement of spoil on coastal management;
- (e) the nature and extent of surveys to be carried out in relation to the removal of the quarry material or placement of spoil;
- (f) giving the chief executive information about the quantity of quarry material removed by the holder of the plan;
- (g) the rate of royalty payable for removal of the quarry material;
- (h) the placement or disposal of spoil derived from the removal;
- (i) the release of contaminants, dust or particulate matter into the environment, or the emission of noise, because of the removal, placement or disposal of the quarry material;
- (j) monitoring, maintaining or rehabilitating the site at which the removal, placement or disposal happens;
- (k) any other matter the chief executive decides having regard to coastal management.

(3) Within 10 business days after deciding the application, the chief executive must give the applicant written notice of—

- (a) the decision; and
- (b) if the chief executive decides to refuse the application—the reasons for the refusal.

(4) An approved plan has effect, unless sooner cancelled or suspended, for the period, of not more than 6 years, decided by the chief executive.

#### **94 Relationship with IPA**

(1) This section applies to a person who has an approved dredge management plan dealing with operational work mentioned in the *Integrated Planning Act 1997*, schedule 8, part 1, item 3D.

(2) Despite the *Integrated Planning Act 1997*, section 3.1.4, the person is not required to have a development approval for the work if—

- (a) the chief executive would be the assessment manager for the work under that Act; and
- (b) there would be no referral agencies for the work under that Act.

(3) Also, despite the *Integrated Planning Act 1997*, section 3.3.3, the person is not required to refer a development application for the work to the chief executive if the chief executive is a referral agency for the work.<sup>8</sup>

(4) Subsections (2) and (3) apply only to the extent the operational works have been approved under the plan.

#### **95 Transferring approved plan**

(1) The holder of an approved plan may apply to the chief executive to transfer the plan to another person.

(2) The application must be—

- (a) supported by sufficient information to enable the chief executive to decide the application, including, for example, the consent of the transferee to the transfer; and
- (b) accompanied by the fee prescribed under a regulation.

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<sup>8</sup> *Integrated Planning Act 1997*, sections 3.1.4 (When is a development permit necessary) and 3.3.3 (Applicant gives material to referral agency)

(3) Within 30 business days after receiving the application, the chief executive must—

- (a) approve the transfer as applied for, with or without conditions; or
- (b) approve the transfer, as varied by the chief executive, with or without conditions; or
- (c) refuse the transfer.

(4) Within 10 business days after deciding the application, the chief executive must give the applicant and the other person written notice of—

- (a) the decision; and
- (b) if the chief executive decides to refuse the transfer—the reasons for the refusal.

(5) The transfer has effect from the day the notice is given.

## **96 Renewing approvals**

(1) The holder of an approved plan may apply to the chief executive for renewal of the approval.

(2) The application must be accompanied by—

- (a) a copy of the plan; and
- (b) the fee prescribed under a regulation.

(3) Within 30 business days after receiving the application, the chief executive must—

- (a) approve the renewal, with or without a requirement that the holder include details in the plan of a matter mentioned in section 93(2); or
- (b) refuse the application.

(4) However, the chief executive may refuse the application or impose a requirement under subsection (3)(a) only if the chief executive is satisfied—

- (a) the holder has not complied with the plan or this Act; or
- (b) the holder proposes to change the way in which, or the place where, the activities under the plan are carried out; or
- (c) the plan is inconsistent with a coastal plan that has been amended or approved since the dredge management plan was approved; or

- (d) the risk of a detrimental impact on coastal management from an activity carried out under the plan has significantly increased since the plan was approved; or
- (e) a matter that was not considered in the preparation of the plan—
  - (i) is having, or may have, a detrimental impact on coastal management; and
  - (ii) needs to be addressed in the plan.

(5) Within 10 business days after deciding the application, the chief executive must give the applicant written notice of—

- (a) the decision; and
- (b) if the chief executive decides to refuse the application—the reasons for the refusal.

### *Subdivision 3—Amending plans and suspending or cancelling approvals*

#### **97 Amendment—grounds**

(1) The chief executive may amend an approved plan—

- (a) with the written agreement of the plan holder; or
- (b) if the chief executive is satisfied, or reasonably believes, the amendment is necessary or desirable for coastal management.

(2) However, an amendment must not increase the period for which the plan has effect.

#### **98 Suspension or cancellation—grounds**

The chief executive may suspend or cancel approval of a plan if the chief executive is satisfied, or reasonably believes—

- (a) the approval was granted in error or because of a materially false or fraudulent document, statement or representation; or
- (b) the plan holder—
  - (i) has committed, or is committing, an offence against this Act or another Act relating to protection of the environment; or
  - (ii) has not complied with the plan; or

- (c) the suspension or cancellation is necessary or desirable for coastal management.

### **99 Amendment, suspension or cancellation—procedure**

(1) Before amending an approved plan, or suspending or cancelling approval of a plan, the chief executive must give the plan holder a written notice inviting the holder to show why the plan should not be amended, or the approval should not be suspended or cancelled (the “**proposed action**”).

(2) The notice must state each of the following—

- (a) the proposed action;
- (b) the grounds for the proposed action;
- (c) the facts and circumstances forming the basis for the grounds;
- (d) if the proposed action is to amend the plan—the proposed amendment;
- (e) if the proposed action is suspension of the approval—the proposed suspension period;
- (f) that representations may be made about the notice;
- (g) how the representations may be made;
- (h) where the representations may be made or sent;
- (i) a period within which the representations must be made.

(3) The stated period must end at least 10 business days after the notice is given.

(4) If, after considering all representations made within the stated period, the chief executive still considers the proposed action should be taken, the chief executive may—

- (a) if the proposed action is to amend the plan—amend the plan; and
- (b) if the proposed action is to suspend the approval—suspend the approval for no longer than the proposed suspension period; and
- (c) if the proposed action is to cancel the approval—cancel the approval or suspend it for a period.

(5) This section does not apply if the plan is amended under section 97(1)(a).

**100 Notice and effect of amendment, suspension or cancellation**

(1) If the chief executive amends a plan, or suspends or cancels an approval, written notice and particulars of the amendment, suspension or cancellation must be given to the plan holder.

(2) The notice must state the decision and the reasons for it.

(3) An amendment takes effect from the day the notice is given.

(4) If the chief executive suspends approval of a plan, the approval is ineffective during the period of suspension.

(5) The suspension—

(a) may be for the period the chief executive decides; and

(b) has effect from—

(i) the day the notice is given; or

(ii) if a later day is stated in the notice—the stated day.

(6) If the chief executive cancels approval of a plan, the approval ceases to have effect from—

(a) the day the notice is given; or

(b) if a later day is stated in the notice—the stated day.

(7) The amendment, suspension or cancellation does not give the plan holder a right to compensation for any loss or damage arising from the amendment, suspension or cancellation.

***Division 3—Offences*****101 Removing quarry material**

(1) A person must not, without reasonable excuse, remove quarry material below high water mark unless the person is the holder of an allocation notice or an approved dredge management plan for the material.

Maximum penalty—1 665 penalty units.

(2) A person must not, without a reasonable excuse—

(a) contravene a condition of an allocation notice; or

- (b) remove quarry material under an approved dredge management plan other than in accordance with the plan.

Maximum penalty—1 665 penalty units.

(3) On a conviction for an offence under subsection (1), the court in addition to imposing a penalty may order the offender pay to the chief executive royalty at the rate prescribed under a regulation for section 102(1) for the quarry material removed in contravention of subsection (1).

(4) Subsection (1) does not apply to a person who removes quarry material—

- (a) because of an emergency endangering the life or health of a person or involving a serious threat to the environment; or
- (b) while fossicking under a licence under the *Fossicking Act 1994* if the person does not remove more than 1 m<sup>3</sup> of quarry material in a year.

(5) In this section—

“**remove**” includes collect.

#### *Division 4—General*

### **102 Royalty or price for quarry material**

(1) For quarry material removed under an allocation notice or a dredge management plan, royalty at the rate prescribed under a regulation or the price set for the sale is payable to the State as prescribed under the regulation or the sale.

(2) The royalty, or the price payable and not paid, is a debt due to the State.

(3) Despite subsection (1), a port authority is not liable to pay a royalty for quarry material removed—

- (a) to maintain or improve navigational channels or navigation in its port if the material is disposed of—
  - (i) in an area associated with port activities and approved by the Minister of the department through which the *Transport Infrastructure Act 1994* is administered; and

- (ii) under relevant statutory environmental controls; or
- (b) to reclaim land that is, or is proposed to be, strategic port land under the *Transport Infrastructure Act 1994*.

## **PART 6—DEVELOPMENT APPROVALS FOR ASSESSABLE DEVELOPMENT**

### *Division 1—Preliminary*

#### **103 Application of pt 6**

This part applies if the chief executive is the assessment manager or a concurrence agency for a development application.

### *Division 2—Assessment and conditions of assessable development in the coastal zone*

#### **104 Assessing applications**

- (1) In assessing the application the chief executive must—
  - (a) if the chief executive is the assessment manager—consider the potential impact of the development on coastal management; or
  - (b) if the chief executive is a concurrence agency—consider the potential impact of the development on coastal management excluding amenity or aesthetic significance or value.
- (2) Without limiting subsection (1), if the chief executive is the assessment manager, the chief executive must consider the following—
  - (a) natural coastal, riverine and estuarine processes, including, for example, erosion and accretion, wave and tidal currents, littoral drift, tidal prism and tidal inundation;
  - (b) natural topography and drainage of coastal land, including, for example, the integrity of dune systems and natural surface runoff;

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- (c) coastal wetlands and other coastal ecological systems, including, for example, the wildlife, biological diversity and water quality of the wetlands or systems;
- (d) places or objects that have cultural heritage, landscape, historical, anthropological, archaeological or aesthetic significance or value, including, for example, significance or value under Aboriginal tradition or Torres Strait Islander custom;
- (e) public access to the foreshore.

(3) Without limiting subsection (1), if the chief executive is a concurrence agency, the chief executive must consider the matters mentioned in subsection (2) other than amenity or places or objects that have aesthetic significance or value.

(4) Also, if the application is for reconfiguration of a lot in connection with the construction of an artificial waterway, the chief executive must consider the following—

- (a) the proposed use and maintenance of the artificial waterway after it is constructed;
- (b) how the top water level in the waterway and the water supply, if any, to the waterway will be maintained;
- (c) how water, if any, is supplied to the waterway;
- (d) the capacity of the outlet structure, if any, from the waterway;
- (e) how pollution and siltation of the waterway will be minimised;
- (f) how the waterway's water quality will be monitored and maintained.

(5) Subsections (1) to (4) do not limit section 3.3.15 or chapter 3, part 5, division 2, of the *Integrated Planning Act 1997*.

### **105 Declaration for Integrated Planning Act 1997, ss 3.3.15, 3.5.4 and 3.5.5**

To remove any doubt, it is declared that for the *Integrated Planning Act 1997*, sections 3.3.15(1)(a), 3.5.4(3) and 3.5.5(2)(e) and (3)(e), the laws

and policies mentioned in the sections include the State plan and regional plans.<sup>9</sup>

### **106 Development approvals—general conditions**

(1) The chief executive may impose on the development approval the conditions the chief executive considers appropriate for coastal management.

(2) Without limiting subsection (1), the chief executive may impose conditions about—

- (a) the rate of progress of the development; and
- (b) if the approval is for development in connection with the construction of an artificial waterway—
  - (i) the specifications for construction of training walls and other works, including, for example, sand bypassing systems, associated with the waterway; or
  - (ii) the use or disposal of spoil derived from the construction of the waterway, including, for example, restrictions about using the spoil to raise the level of any land; or
  - (iii) the profile of the waterway bed, and revetment on the bed or banks of the waterway; or
  - (iv) the size of riparian buffer zones along the waterway; or
  - (v) the management or disposal of acid sulphate soils; and
- (c) if the approval is for development that is reconfiguration of a lot on which a canal has been constructed—
  - (i) the matters mentioned in paragraph (b); or
  - (ii) the maintenance and management of the waterway.

### **107 Development approvals—condition about financial assurance**

(1) Without limiting section 106, the chief executive may impose a condition on the development approval that the holder of the approval must

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<sup>9</sup> *Integrated Planning Act 1997*, sections 3.3.15 (Referral agency assesses application), 3.5.4 (Code assessment) and 3.5.5 (Impact assessment)

give the chief executive financial assurance for the State in the form, and for the reasonable amount, decided by the chief executive.

(2) The financial assurance must continue in force until all the conditions of the development approval are complied with to the satisfaction of the chief executive.

### **108 Development approvals—conditions for development partly in a coastal management district**

(1) This section applies to a development application for development partly within a coastal management district, other than an application to reconfigure a lot in connection with the construction of a canal.

(2) The chief executive may impose conditions on the development approval for the development only in relation to the part of the development in the district.

#### *Division 3—Land surrender conditions*

##### *Subdivision 1—Preliminary*

### **109 Application of div 3**

This division applies to a development application for reconfiguration of a lot situated completely or partly within a coastal management district.

#### *Subdivision 2—Land surrender*

### **110 Governor in Council may approve inclusion of land surrender condition**

(1) Subject to section 114, the chief executive may include a condition (a “**land surrender condition**”) that a part of the lot (the “**land**”) in the coastal management district must be surrendered to the State for coastal management.

(2) However, the land may be required to be surrendered under subsection (1) only if—

- (a) the chief executive is satisfied the land should be surrendered for coastal management; and
- (b) the land is—
  - (i) in an erosion prone area; or
  - (ii) within 40 m of the foreshore; and
- (c) the Governor in Council approves the inclusion of the land surrender condition.

### **111 Notice of condition about land surrender**

(1) Before including a land surrender condition under section 110(1), the chief executive must give a written notice to—

- (a) the applicant; and
- (b) if the chief executive is not the assessment manager for the application—the assessment manager.

(2) The notice must—

- (a) state the chief executive is considering including a land surrender condition; and
- (b) include details of the land to be surrendered.

(3) The IDAS process under the *Integrated Planning Act 1997* stops on the day the notice is received by the applicant and starts again on the day the chief executive gives the applicant a notice under section 113(1).

### **112 Criteria for decision**

In deciding whether to include a land surrender condition, and the land to be surrendered, the chief executive must consider how surrender of the land would avoid or minimise detrimental impacts on coastal management.

### **113 Notice of decision about land surrender**

(1) After making a decision about whether or not to include a land surrender condition, the chief executive must give a written notice to—

- (a) the applicant; and
- (b) if the chief executive is not the assessment manager for the application—the assessment manager.

(2) The notice must—

- (a) state the decision and the date it was made; and
- (b) if the decision is to include a land surrender condition—
  - (i) state the day the Governor in Council approved the inclusion of the land surrender condition; and
  - (ii) include details of the land to be surrendered.

### **114 When land surrender condition may not be included**

The chief executive must not include a land surrender condition on the development approval for the application if—

- (a) the lot relating to the application was part of another lot that has been the subject of—
  - (i) a development application; or
  - (ii) an application to rezone land under the *Local Government (Planning and Environment) Act 1990*; and
- (b) a part of the other lot was surrendered to the State under a land surrender condition or the Beach Protection Act, section 41C(6) or 45(7).<sup>10</sup>

### **115 Other matters about land surrender condition**

(1) No compensation is payable because of a land surrender condition.

(2) Despite the *Integrated Planning Act 1997*, section 4.1.27(1)(b), the applicant for the development approval may not appeal to the court against a land surrender condition.

(3) To remove any doubt, it is declared that a land surrender condition complies with the *Integrated Planning Act 1997*, section 3.5.30.<sup>11</sup>

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10 Beach Protection Act, sections 41C (Mandatory condition for rezoning approvals) or 45 (Opening of road or subdivision of land in coastal management control district)

11 *Integrated Planning Act 1997*, sections 4.1.27 (Appeals by applicants) and 3.5.30 (Conditions must be relevant or reasonable)

***Division 4—Matters about artificial waterways******Subdivision 1—Canals*****116 Canals—surrender to the State**

(1) This section applies to a development application to reconfigure a lot in connection with the construction of a canal.

(2) The area of the canal relating to the development must be surrendered to the State as a public waterway.

***Subdivision 2—Development applications involving artificial waterways*****117 Applications to include operational works**

A development application for the reconfiguration of a lot in connection with the construction of an artificial waterway must relate also to operational work associated with the construction of the artificial waterway.

**118 When assessment manager must refuse application**

The assessment manager for a development application for the reconfiguration of a lot in connection with the construction of a canal must refuse the application if—

- (a) the canal is to intersect, or be connected to, inundated land or leased land; and
- (b) the registered proprietor of the inundated land or lessee of the leased land may restrict or prohibit the use or movement of vessels in water on the land.

***Subdivision 3—Plans of subdivision*****119 Requirements for plans of subdivision**

(1) If a plan of subdivision shows an artificial waterway on the plan, the plan must—

- (a) show the area of the artificial waterway as a separate lot; and
- (b) include a metes and bounds description of the land on which the waterway is to be constructed; and
- (c) clearly indicate—
  - (i) if the waterway is a canal—that the land is to be a canal; and
  - (ii) if the waterway is not a canal—that the land is an artificial waterway; and
  - (iii) any access channel associated with the waterway.

(2) Also, the local government for the local government area in which the waterway is constructed must certify on the plan that—

- (a) the waterway, and any access channel associated with the waterway, is constructed in accordance with the development approval for the waterway; and
- (b) if the waterway is not a canal—the local government is satisfied arrangements have been made, or will be made, for the maintenance and management of the waterway.

(3) Subsections (1) and (2) apply in addition to the requirements for registration of a plan of subdivision under the *Land Title Act 1994*, section 50.<sup>12</sup>

## **120 Registration of instruments—construction of artificial waterways**

(1) The registrar of titles must not register an instrument dealing with land the subject of a reconfiguration of a lot in connection with the construction of an artificial waterway unless—

- (a) the plan of subdivision for the reconfiguration of the lot is registered under the *Land Title Act 1994*; and
- (b) if the artificial waterway is a canal—
  - (i) the plan of subdivision is certified by a local government under section 119(2)(a); and
  - (ii) the area of the canal has been surrendered to the State as a public waterway.

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<sup>12</sup> *Land Title Act 1994*, section 50 (Requirements for registration of plan of subdivision)

(2) Subsection (1) does not apply to an instrument surrendering the area of a canal to the State if the plan of subdivision for the reconfiguration of a lot in connection with the construction of the canal is—

- (a) registered under the *Land Title Act 1994*; and
- (b) certified by a local government under section 119(2)(a).

## PART 7—MISCELLANEOUS

### 121 Maintenance of canals

(1) A local government must maintain and keep clean each—

- (a) canal in its area; and
- (b) access channel for a canal mentioned in paragraph (a), whether or not the access channel is in its area.

(2) Subsection (1) does not apply to—

- (a) a canal, other than an access channel for the canal, constructed under the *Integrated Resort Development Act 1987*; or
- (b) a canal constructed under the *Sanctuary Cove Resort Act 1985*.

(3) In this section—

“**canal**” means—

- (a) an artificial waterway surrendered to the State under this Act or the Canals Act; or
- (b) a canal surrendered under a lease under the *Land Act 1994*.

### 122 Canal waters are part of coastal management district

(1) The waters of a canal constructed completely or partly within a coastal management district are taken to be part of the coastal management district when the canal is connected to tidal water.

(2) Subsection (1) applies to waters of the canal to the extent of the tidal limit.

**123 Development permits—right to use and occupy**

(1) This section applies to a development permit for operational work that is tidal works on land under tidal water unless—

- (a) a lease is granted under the *Land Act 1994* for the land; or
- (b) a permit to occupy is issued under that Act for the land; or
- (c) the land is freehold land, including inundated land; or
- (d) the land is a reserve under the *Land Act 1994*.

(2) The development permit is taken to include a right to use and occupy the land on which the tidal works are situated.

**124 Obligation to keep certain tidal works in safe condition**

(1) This section applies to an owner of freehold land, and a lessee of land leased from the State, if the land is—

- (a) above high water mark; and
- (b) connected to, or receives the benefit of, a structure for which a development permit for operational work that is tidal works on land under tidal water has been given.

(2) The owner or lessee must ensure the structure is maintained in a safe condition.

*Examples of a structure—*

- a jetty
- a pontoon
- a boat ramp.

(3) In this section—

“**lessee**”, of land leased from the State, means a person registered in the land registry under the *Land Act 1994* as the holder of a lease from the State for the land.

“**owner**”, of freehold land, means a person recorded in the freehold land register under the *Land Title Act 1994* as a proprietor of the land.

## **CHAPTER 3—INVESTIGATION AND ENFORCEMENT**

### **PART 1—ADMINISTRATION GENERALLY**

#### **125 Appointment of authorised persons**

The chief executive may appoint any of the following persons as authorised persons—

- (a) officers of the public service;
- (b) employees of the department;
- (c) other persons of a class prescribed under a regulation.

#### **126 Investigative functions of authorised persons**

An authorised person has the function of conducting investigations and inspections to monitor and enforce compliance with—

- (a) this Act; and
- (b) the *Integrated Planning Act 1997*, so far as it relates to assessable development completely or partly within a coastal management district.

#### **127 Qualifications for appointment**

A person may be appointed as an authorised person only if—

- (a) in the chief executive's opinion, the person has the necessary expertise or experience to be an authorised person; or
- (b) the person has satisfactorily finished training approved by the chief executive.

#### **128 Conditions and terms of appointment**

(1) An authorised person holds office on the conditions stated in the instrument of appointment.

(2) An authorised person appointed under section 125(c)—

- (a) is appointed for the term stated in the instrument of appointment; and
  - (b) may resign by signed notice given to the chief executive.
- (3) An authorised person ceases to hold office—
- (a) if the authorised person was appointed under section 125(a) or (b)—if the authorised person ceases to be an officer of the public service or employee of the department; or
  - (b) if the authorised person was appointed under section 125(c)—if the authorised person ceases to be a member of the class of persons.

### **129 Powers of authorised persons**

- (1) An authorised person has the powers given under this or another Act.
- (2) Subsection (1) has effect subject to any limitations—
- (a) stated in the authorised person's instrument of appointment; or
  - (b) prescribed under a regulation; or
  - (c) stated in a notice given to the authorised person by the chief executive.
- (3) Notice under subsection (2)(c) may be given orally, but must be confirmed in writing as soon as practicable.

### **130 Issue of identity cards**

- (1) The chief executive must issue an identity card to each authorised person.
- (2) The identity card must—
- (a) contain a recent photograph of the authorised person; and
  - (b) be signed by the authorised person; and
  - (c) identify the person as an authorised person; and
  - (d) include an expiry date.
- (3) Nothing in this section prevents the issue of a single identity card to a person for this Act and other Acts.

**131 Production or display of identity card**

(1) An authorised person may exercise a power in relation to someone else (the “**other person**”) only if the authorised person—

- (a) first produces his or her identity card for the other person’s inspection; or
- (b) has his or her identity card displayed so it is clearly visible to the other person.

(2) However, if, for any reason, it is not practicable to comply with subsection (1), the authorised person must produce the identity card for the other person’s inspection at the first reasonable opportunity.

**132 Failure to return identity card**

A person who ceases to be an authorised person must return the person’s identity card to the chief executive as soon as possible (but within 21 days) after ceasing to be an authorised person, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

**133 Protection from liability**

(1) An official does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.

(2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to the State.

(3) In this section—

“**official**” means—

- (a) an authorised person; or
- (b) a person acting under the direction of an authorised person.

## **PART 2—INSPECTION AND OTHER POWERS**

### *Division 1—Power of entry*

#### **134 Power to enter land**

- (1) An authorised person may enter land at any reasonable time to—
- (a) inspect or survey the land or works on the land; or
  - (b) dig and bore into the land to find out the nature of the soil; or
  - (c) do everything necessary for paragraphs (a) and (b), including, for example—
    - (i) measuring, photographing or filming anything on the land; or
    - (ii) taking samples of or from anything on the land.
- (2) The power to enter land includes power to—
- (a) re-enter the land; and
  - (b) remain on the land for the time that is reasonable and necessary for the purpose of the entry; and
  - (c) take assistants, vehicles, materials, equipment or things that are reasonable and necessary for the purpose of the entry.
- (3) Before entering land, the authorised person must—
- (a) obtain the agreement of the occupier or, if there is no occupier, the owner of the land; or
  - (b) give at least 7 days notice to the person mentioned in paragraph (a) of—
    - (i) the authorised person’s intention to enter the land; and
    - (ii) the reason for entering the land; and
    - (iii) the day and time when the authorised person proposes to enter the land.
- (4) However, subsection (3) does not apply if, because of urgent circumstances, entry is required to take action to protect the coastal zone.

(5) In exercising a power under this section, the authorised person must take all reasonable steps to ensure the person causes as little inconvenience, and does as little damage, as is practicable.

(6) This section does not authorise the entry of a structure, or part of a structure, used for residential purposes.

(7) In this section—

“**occupier**”, of land, includes a person who reasonably appears to be the occupier, or in charge, of the land.

### **135 Authorised person to give notice of damage**

(1) This section applies if an authorised person, or a person assisting an authorised person, damages anything in the exercise of a power under this division.

(2) The authorised person must promptly give written notice of the particulars of the damage to the person who appears to be the owner of the thing.

(3) However, if for any reason it is not practicable to comply with subsection (2), the authorised person must leave the notice, in a reasonably secure way and in a conspicuous position, at the place where the damage happened.

(4) If the authorised person believes the damage was caused by a latent defect in the thing or other circumstances beyond the authorised person’s control, the authorised person may state this in the notice.

(5) This section does not apply to damage the authorised person reasonably believes is trivial.

(6) In this section—

“**owner**”, of a thing, includes the person in possession or control of the thing.

### **136 Compensation**

(1) A person may claim compensation if the person incurs loss or expense because of the exercise or purported exercise of a power under this division.

(2) Compensation may be claimed and ordered in a proceeding for—

- (a) compensation brought in a court of competent jurisdiction; or
- (b) an offence against this Act brought against the person making the claim for compensation.

(3) The court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

(4) A regulation may prescribe matters that may, or must, be taken into account by the court when considering whether it is just to make the order.

### *Division 2—General investigative powers*

#### **137 Power to require name and address**

(1) This section applies if an authorised person—

- (a) finds a person committing an offence against this Act; or
- (b) finds a person in circumstances that lead the authorised person to reasonably suspect the person has just committed an offence against this Act; or
- (c) has information that leads the authorised person to reasonably suspect a person has just committed an offence against this Act.

(2) The authorised person may require the person to state the person's name and residential address.

(3) When making the requirement, the authorised person must warn the person it is an offence to fail to state the person's name or residential address, unless the person has a reasonable excuse.

(4) The authorised person may require the person to give evidence of the correctness of the stated name or address if the authorised person reasonably suspects the stated name or address is false.

(5) A requirement under subsection (2) or (4) is called a “**formal details requirement**”.

#### **138 Failure to give name or address**

(1) A person of whom a formal details requirement is made must comply with the requirement, unless the person has a reasonable excuse for not complying.

Maximum penalty—50 penalty units.

- (2) A person does not commit an offence against subsection (1) if—
- (a) the person was required to state the person's name and address by an authorised person who suspected the person had committed an offence against this Act; and
  - (b) the person is not proved to have committed the offence.

### *Division 3—General*

#### **139 False or misleading statements**

- (1) A person must not—
- (a) state anything to an authorised person the person knows is false or misleading in a material particular; or
  - (b) omit from a statement made to an authorised person anything without which the statement is, to the person's knowledge, misleading in a material particular.

Maximum penalty—50 penalty units.

(2) It is enough for a complaint against a person for an offence against subsection (1) to state that the statement made was false or misleading to the person's knowledge.

#### **140 False, misleading or incomplete documents**

(1) A person must not give an authorised person a document containing information the person knows is false, misleading or incomplete in a material particular.

Maximum penalty—50 penalty units.

(2) Subsection (1) does not apply to a person if the person, when giving the document—

- (a) tells the authorised person, to the best of the person's ability, how it is false, misleading or incomplete; and
- (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

(3) It is enough for a complaint against a person for an offence against subsection (1) to state that the document was false, misleading or incomplete to the person's knowledge.

**141 Obstructing authorised persons**

A person must not obstruct an authorised person in the exercise of a power, unless the person has a reasonable excuse for the obstruction.

Maximum penalty—100 penalty units.

**142 Impersonating authorised persons**

A person must not pretend to be an authorised person.

Maximum penalty—50 penalty units.

**CHAPTER 4—LEGAL PROCEEDINGS****PART 1—EVIDENCE****143 Evidentiary provisions**

(1) This section applies to a proceeding under or in relation to this Act.

(2) It is not necessary to prove the appointment of an authorised person or the authority of an authorised person to do anything under this Act.

(3) A signature purporting to be that of the chief executive or an authorised person is evidence of the signature it purports to be.

(4) A certificate purporting to be signed by the chief executive stating any of the following matters is evidence of the matter—

- (a) a specified document is a copy of a notice given under this Act;
- (b) on a day mentioned in the certificate, a specified person was given a notice under this Act.

(5) A statement in a complaint starting the proceeding of any of the following matters is evidence of the matter—

- (a) that the matter of the complaint came to the knowledge of the complainant on a specified day;
- (b) that the place where the offence was committed was in a specified coastal management district.

## **PART 2—PROCEEDINGS FOR OFFENCES**

### **144 Indictable and summary offences**

(1) An offence against section 59(6), 60(5), 148(12) or 149(6) is an indictable offence.

(2) Any other offence against this Act is a summary offence.

### **145 Proceedings for indictable offences**

(1) A proceeding for an indictable offence against this Act may be taken, at the election of the prosecution—

- (a) by way of summary proceedings under the *Justices Act 1886*; or
- (b) on indictment.

(2) A magistrate must not hear an indictable offence summarily if—

- (a) the defendant asks at the start of the hearing that the charge be prosecuted on indictment; or
- (b) the magistrate considers that the charge should be prosecuted on indictment.

(3) If subsection (2) applies—

- (a) the magistrate must proceed by way of an examination of witnesses for an indictable offence; and
- (b) a plea of the person charged at the start of the proceeding must be disregarded; and
- (c) evidence brought in the proceeding before the magistrate decided to act under subsection (2) is taken to be evidence in the proceeding for the committal of the person for trial or sentence; and
- (d) before committing the person for trial or sentence, the magistrate must make a statement to the person as required by the *Justices Act 1886*, section 104(2)(b).

(4) The maximum penalty that may be summarily imposed for an indictable offence is 165 penalty units.

**146 Limitation on who may summarily hear indictable offence proceedings**

- (1) A proceeding must be before a magistrate if it is a proceeding—
- (a) for the summary conviction of a person on a charge for an indictable offence; or
  - (b) for an examination of witnesses for a charge for an indictable offence.

(2) However, if a proceeding for an indictable offence is brought before a justice who is not a magistrate, jurisdiction is limited to taking or making a procedural action or order within the meaning of the *Justices of the Peace and Commissioners for Declarations Act 1991*.

**147 Limitation on time for starting summary proceedings**

A proceeding for an offence against this Act by way of summary proceeding under the *Justices Act 1886* must start—

- (a) within 1 year after the commission of the offence; or
- (b) within 1 year after the offence comes to the complainant's knowledge, but within 5 years after the commission of the offence.

**PART 3—RESTRAINT ORDERS****148 Restraint of contraventions of Act etc.**

(1) A proceeding may be brought in the Planning and Environment Court for an order to remedy or restrain an offence against this Act, or a threatened offence against this Act, by—

- (a) the Minister; or
- (b) the chief executive; or
- (c) someone whose interests are affected by the subject matter of the proceeding; or

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- (d) someone else with the leave of the court (even though the person does not have a proprietary, material, financial or special interest in the subject matter of the proceeding).

(2) In deciding whether or not to grant leave to a person under subsection (1)(d), the court—

(a) must be satisfied—

- (i) harm has been or is likely to be caused to the coastal zone; and
- (ii) the proceeding would not be an abuse of the process of the court; and
- (iii) there is a real or significant likelihood that the requirements for the making of an order under this section would be satisfied; and
- (iv) it is in the public interest that the proceeding should be brought; and
- (v) the person has given written notice to the Minister asking the Minister to bring a proceeding under this section and the Minister has failed to act within a time that is a reasonable time in the circumstances; and
- (vi) the person is able to adequately represent the public interest in the conduct of the proceeding; and

(b) may have regard to other matters the court considers relevant to the person's standing to bring and maintain the proceeding.

(3) However, the court must not refuse to grant leave merely because the person's interest in the subject matter of the proceeding is no different from someone else's interest in the subject matter.

(4) The court may grant leave subject to conditions, including, for example—

- (a) a condition requiring the person to give security for the payment of costs of the proceeding that may be awarded against the person; or
- (b) a condition requiring the person to give an undertaking about damages.

(5) If the court is satisfied—

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- (a) an offence against this Act has been committed (whether or not it has been prosecuted); or
- (b) an offence against this Act will be committed unless restrained;

the court may make the orders it considers appropriate to remedy or restrain the offence.

**(6)** An order—

- (a) may direct the defendant—
  - (i) to stop an activity that is or will be a contravention of this Act; or
  - (ii) to do anything required to comply with, or to cease a contravention of, this Act; and
- (b) may be in the terms the court considers appropriate to secure compliance with this Act; and
- (c) must specify the time by which the order is to be complied with.

**(7)** The court's power to make an order to stop an activity may be exercised whether or not—

- (a) it appears to the court the person against whom the order is made intends to engage, or to continue to engage, in the activity; or
- (b) the person has previously engaged in an activity of that kind; or
- (c) there is danger of substantial damage to the coastal zone if the person engages, or continues to engage, in the activity.

**(8)** The court's power to make an order to do anything may be exercised whether or not—

- (a) it appears to the court the person against whom the order is made intends to fail, or to continue to fail, to do the thing; or
- (b) the person has previously failed to do a thing of that kind; or
- (c) there is danger of substantial damage to the coastal zone if the person fails, or continues to fail, to do the thing.

**(9)** Without limiting the powers of the court, the court may make an order—

- (a) restraining the use of plant or equipment or a place; or
- (b) requiring the demolition or removal of plant or equipment, a structure or another thing; or

(c) requiring the rehabilitation or restoration of the coastal zone.

(10) The court must order a plaintiff to pay costs if the court is satisfied the proceeding was brought for obstruction or delay.

(11) The court's power under this section is in addition to its other powers.

(12) A person who contravenes an order commits an offence against this Act.

Maximum penalty for subsection (12)—3 000 penalty units.

### **149 Power of court to make order pending final decision in proceeding**

(1) This section applies if a proceeding has been brought by a person in the Planning and Environment Court under section 148 and the court has not finally determined the proceeding.

(2) On the person's application, the court may make an order of a kind mentioned in section 148 pending determination of the proceeding if it is satisfied it would be proper to make the order.

(3) The court's power to make an order to stop an activity may be exercised whether or not—

- (a) it appears to the court the person against whom the order is made intends to engage, or to continue to engage, in the activity; or
- (b) the person has previously engaged in an activity of that kind; or
- (c) there is an imminent danger of substantial damage to the coastal zone if the person engages, or continues to engage, in the activity.

(4) The court's power to make an order to do anything may be exercised whether or not—

- (a) it appears to the court the person against whom the order is made intends to fail, or to continue to fail, to do the thing; or
- (b) the person has previously failed to do a thing of that kind; or
- (c) there is an imminent danger of substantial damage to the coastal zone if the person fails, or continues to fail, to do the thing.

(5) The court's power under this section is in addition to its other powers.

(6) A person who contravenes an order commits an offence against this Act.

Maximum penalty for subsection (6)—3 000 penalty units.

## CHAPTER 5—ADMINISTRATION

### PART 1—COMPENSATION

#### 150 When compensation is payable

(1) The owner of an interest in land (the “owner”) is entitled to be paid compensation only if the existing use that may be made of the land is changed by a prohibition imposed by a coastal plan or the declaration of a coastal management district.

(2) However, for land other than rural land, the owner is entitled to compensation only if—

- (a) the owner was the owner at the time of the change; and
- (b) the owner makes an application for the land; and
- (c) the application is made within 2 years of the change; and
- (d) the application clearly indicates that a compensation claim may be made if the application is refused; and
- (e) the application is refused only because this Act applies to the application.

(3) However, for rural land, the owner is entitled to compensation only if—

- (a) the owner was the owner at the time of the change; and
- (b) the land was regularly used as rural land during the 2 previous years; and
- (c) the owner makes a written application to the chief executive for compensation.

(4) In this section—

“application for the land” means—

- (a) an application to build a structure, the proposed use of which was as of right under the planning scheme as it applied immediately before the change; or
- (b) an application for the subdivision of land that is consistent with the provisions of the planning scheme that regulated the subdivision of land immediately before the change.

**“existing use”** includes a lawful as of right use that may have been made of the land immediately before the change.

**“primary producer”** means a person whose major source of income is from primary production.

**“rural land”** means land used only by a primary producer for grazing stock or cultivating crops.

### **151 Matters for which compensation is not payable**

(1) To remove any doubt, the owner is not entitled to be paid compensation—

- (a) for development, or an activity, unlawfully carried out; or
- (b) if the change merely requires the development, or an activity, to be carried out on a different part of the land to that preferred by the owner.

(2) If compensation is payable under another Act, the claim for compensation must be made under the other Act.

### **152 How to claim compensation**

(1) A claim for compensation must be lodged with the chief executive within 6 months after—

- (a) if section 150(2) applies—the refusal of the application; or
- (b) if section 150(3) applies—the change of use.

(2) The chief executive or the Planning and Environment Court may, in special circumstances, allow a longer period under subsection (1).

(3) A claim for compensation is to be taken to have been made on the day when it is received by the chief executive.

**153 Deciding compensation payable**

(1) The chief executive must decide the reasonable compensation payable under the claim within 60 days after the day the claim is received.

(2) In deciding the claim, the chief executive may decide—

- (a) the reasonable compensation payable; or
- (b) to reject the claim; or
- (c) to acquire the interest.

(3) The chief executive must, within 10 days after deciding the claim, notify the claimant of the decision and advise the claimant that the claimant may appeal to the Planning and Environment Court against a decision under section 153(2)(a) or (b).

(4) If the chief executive fails to decide the claim within 60 days of receiving the claim, the owner may appeal to the court as if the chief executive had decided to reject the claim.

**154 What is reasonable compensation**

(1) Reasonable compensation is (subject to subsections (2), (3) and (4)) an amount equal to the difference between the market value of the interest immediately after the change and what would have been the market value of the interest if the change had not been made.

(2) Any benefit the owner obtains from the change is to be taken into account in calculating the reasonable compensation.

(3) If the owner owns land adjacent to the land for which the payment of compensation is sought, the payment of compensation must also take into account any benefit accruing to the adjacent land because of the change.

(4) If the land for which compensation is claimed has, since the change, become or ceased to be separate from other land, the amount of compensation is not to be increased because it has become or ceased to be separate from other land.

**155 Payment of compensation**

The compensation must be paid within 30 days after the last day an appeal could be made or, if an appeal is made, within 30 days after the day the appeal is decided.

**156 Time for starting appeal**

If the owner appeals under section 153, the appeal must be made within 30 days of the making of the decision.

**157 Decision by court**

(1) In making its decision, the Planning and Environment Court must have regard to any difference in the value of the land because of the change.

(2) Subsection (1) does not limit the things to which the court may have regard in making its decision.

**158 Payment of compensation to be recorded**

(1) As soon as practicable after the compensation is paid, the chief executive must give the registrar of titles written notice that the land is affected by chapter 5, part 1.<sup>13</sup>

(2) The notice must be in a form approved by the registrar.

(3) The registrar must keep the information stated in the notice as information under the *Land Title Act 1994*, section 34.

**PART 2—APPEALS****159 Who may appeal**

A person who is dissatisfied with the chief executive's decision to give the person a coastal protection or tidal works notice may appeal against the decision to the Planning and Environment Court.

**160 How to start appeal**

(1) An appeal is started by—

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13 Chapter 5 (Administration), part 1 (Compensation).

- (a) filing written notice of the appeal with the registrar of the court; and
  - (b) complying with the rules of court applicable to the appeal.
- (2) The notice of appeal must—
- (a) be filed within—
    - (i) if the coastal protection or tidal works notice is given under section 59(3) and 60(2)—60 days after the notice is given; or
    - (ii) if subparagraph (i) does not apply—30 days after the person receives the coastal protection or tidal works notice; and
  - (b) state fully the grounds of the appeal and the facts relied on.

### **161 Appellant to give notice of appeal**

Within 7 days after filing a notice of appeal, the appellant must serve notice of the appeal on the chief executive.

### **162 Stay of operation of decision**

(1) The court may grant a stay of the decision appealed against to secure the effectiveness of the appeal.

(2) A stay may be granted on conditions the court considers appropriate and has effect for the period stated by the court.

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

(4) An appeal against a decision does not affect the operation or carrying out of the decision unless the decision is stayed.

### **163 Hearing procedures**

(1) The procedure for an appeal is to be in accordance with the rules of court applicable to the appeal or, if the rules make no provision or insufficient provision, in accordance with directions of the judge.

(2) An appeal is by way of rehearing, unaffected by the chief executive's decision.

**164 Powers of court on appeal**

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

- (a) confirm the decision appealed against; or
- (b) vary the decision appealed against; or
- (c) set aside the decision appealed against and make a decision in substitution for the decision set aside.

(2) If on appeal the court acts under subsection (1)(b) or (c), the decision is taken, for this Act (other than this part), to be that of the chief executive.

**PART 3—MISCELLANEOUS****165 Delegation by chief executive**

The chief executive may delegate the chief executive's powers under this Act to an officer of the public service, a local government, port authority or statutory authority.

**166 State of the coastal zone report**

(1) The chief executive must prepare and publish a report on the state of the coastal zone at least every 4 years.

(2) The report must—

- (a) include an assessment of the condition of major coastal resources; and
- (b) identify significant trends in coastal values; and
- (c) review significant programs, activities and achievements of persons and public authorities in relation to the protection, restoration and enhancement of the coastal zone; and
- (d) evaluate the efficiency and effectiveness of coastal management strategies implemented to achieve the object of this Act.

(3) The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving it.

**167 Regulation-making power**

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

(2) A regulation may make provision for coastal management, including, for example, provisions about any of the following matters—

- (a) access to unallocated State land in a coastal management district;
- (b) the use or development of land in a coastal management district;
- (c) activities in a coastal management district;
- (d) the presence and use of vehicles and vessels in a coastal management district;
- (e) the impounding, removal and disposal of vehicles, vessels, aircraft or property found abandoned in a coastal management district;
- (f) requirements for erecting or altering a building or other structure on land in an erosion prone area;
- (g) the matters for which fees, costs and charges are payable under this Act, the amounts of the fees, costs and charges, the persons who are liable to pay the fees, costs and charges, when the fees, costs and charges are payable, and the recovery of any amount of the fees, costs and charges not paid;
- (h) giving effect to, and enforcing compliance with, coastal plans, including, for example, giving a notice about a contravention of a coastal plan and the effect of failure to comply with it;
- (i) exemption from compliance with provisions of a coastal plan.

(3) Without limiting subsection (2)(f), a regulation may prescribe fees payable to the chief executive in relation to the chief executive's functions under the *Integrated Planning Act 1997* as assessment manager or a concurrence agency.

(4) A regulation may prescribe when the chief executive may waive a royalty, or waive or refund a fee, payable under this Act.

(5) A regulation may prescribe offences for contraventions of a regulation, and fix a maximum penalty of a fine of not more than 165 penalty units for the contravention.

## **CHAPTER 6—TRANSITIONAL PROVISIONS**

### **PART 1—TRANSITIONAL PROVISION FOR ORIGINAL ACT (No. 41 OF 1995)**

#### **168 Transition of control districts**

For this Act—

- (a) each coastal management control district and erosion prone area under the *Beach Protection Act 1968* is taken to be a control district under this Act; and
- (b) each setback requirement as specified in the plans listed in the table in the *Coastal Management Control Districts (Requirements for Buildings or Other Structures) Regulation 1984*, is taken to be a coastal building line under this Act.

*Note—*

Under the *Coastal Protection and Management and Other Legislation Amendment Act 2001*, control districts were renamed as coastal management districts.

### **PART 2—TRANSITIONAL PROVISIONS FOR COASTAL PROTECTION AND MANAGEMENT AND OTHER LEGISLATION AMENDMENT ACT 2001**

#### *Division 1—Coastal management districts*

#### **169 Control districts taken to be coastal management districts**

From the commencement of this section, each area that was a control district under this Act immediately before the commencement of the section is taken to be a coastal management district.

**170 Declaration about coastal management districts in areas covered by regional plans**

(1) This section applies if—

- (a) a coastal management district is declared under section 54(1)(a) for an area covered by a regional plan; and
- (b) the area includes a coastal management district or part of a coastal management district (a “**former district**”) because of section 169.

(2) The former district that is within the area covered by the plan ceases to be a coastal management district under section 169.

*Division 2—Authorities, permits and approvals under Harbours Act,  
Beach Protection Act and Canals Act*

**171 Continuing effect of authorities under Harbours Act**

(1) This section applies to a following authority in force immediately before the commencement of the section—

- (a) a sanction to carry out works given under the Harbours Act, section 86;
- (b) an authorisation to reclaim land given under the Harbours Act, section 91.

(2) From the commencement, the authority, and any conditions of the authority, have effect as if the authority were a development approval in the form of a development permit for operational work under the *Integrated Planning Act 1997*, schedule 8, part 1, item 3D.

(3) Subsection (2) applies only to the extent the carrying out of the operational work could have been sanctioned or authorised under the Harbours Act, section 86 or 91.

**172 Continuing effect of right to use and occupy**

(1) This section applies to a sanction to carry out works given under the Harbours Act, section 86, if, under that section, a right to use and occupy land relating to the sanction is in force immediately before the commencement of this section.

(2) From the commencement, the right to use and occupy the land continues to have effect.

(3) However, the right to use and occupy the land ceases to have effect if, under the *Land Act 1994*—

- (a) a lease is granted for the land; or
- (b) a permit to occupy is issued for the land; or
- (c) the land is dedicated as a reserve.

### **173 Continuing effect of permits under Beach Protection Act, section 44**

(1) This section applies to a permit given under the Beach Protection Act, section 44(3),<sup>14</sup> and in force immediately before the commencement of the section.

(2) From the commencement, the permit, and any conditions of the permit, have effect as if the permit were a development approval in the form of a development permit for a material change of use of premises.

(3) Subsection (2) applies despite the repeal of the Beach Protection Act and only to the extent the carrying out of the material change of use of premises could have been authorised under the Beach Protection Act, section 44.

### **174 Continuing effect of a consent under Beach Protection Act, section 45**

(1) This section applies to a consent given under the Beach Protection Act, section 45(6), to an application relating to an approval to open a road or subdivide land in a coastal management district.

(2) From the commencement of this section, the consent and any conditions of the consent, have effect as if the consent were a development approval in the form of a development permit to reconfigure a lot.

(3) Subsection (2)—

- (a) applies despite the repeal of the Beach Protection Act; and

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14 Beach Protection Act, section 44 (Control of building operations)

- (b) applies only to the extent the reconfiguring of a lot could have been authorised under the Beach Protection Act, section 45(6); and
- (c) has effect only for the period the approval would have had effect if the Beach Protection Act had not been repealed.

### **175 Continuing effect of permits under Beach Protection Act, section 47**

(1) This section applies to a permit given under the Beach Protection Act, section 47(1A),<sup>15</sup> and in force immediately before the commencement of this section.

(2) From the commencement, the permit, and any conditions of the permit, have effect as if the permit were a development approval in the form of a development permit for operational work.

(3) Subsection (2)—

- (a) applies despite the repeal of the Beach Protection Act; and
- (b) applies only to the extent the work could have been authorised under the Beach Protection Act, section 47(1A); and
- (c) has effect only for the period the permit would have had effect if the Beach Protection Act had not been repealed.

### **176 Continuing effect of approvals under Canals Act**

(1) This section applies to the following approvals in force immediately before the commencement of the section—

- (a) a provisional approval granted under the Canals Act, section 5(4)(b);
- (b) a final approval granted under the Canals Act, section 7(3).

(2) Despite the repeal of the Canals Act, from the commencement—

- (a) the provisional approval, and any conditions of the approval, have effect as if the approval were a preliminary approval to reconfigure a lot; and

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<sup>15</sup> Beach Protection Act, section 47 (Certain acts prohibited without permit)

- (b) the final approval, and any conditions of the approval, have effect as if the approval were a development approval in the form of a development permit for—
- (i) reconfiguration of a lot to construct an artificial waterway; and
  - (ii) operational works to construct the waterway.

(3) Subsection (2) has effect only for the period the approval would have had effect if the Canals Act had not been repealed.

### **177 Relationship to Integrated Planning Act 1997, ch 3, pt 5, div 5**

(1) This section applies to each of the following (a “**deemed approval**”)—

- (a) a sanction to carry out works given under the Harbours Act, section 86;
- (b) an authorisation to reclaim land given under the Harbours Act, section 91;
- (c) a permit under the Beach Protection Act, section 44;
- (d) a consent given under the Beach Protection Act, section 45(6), to an application relating to an approval to open a road or subdivide land in a coastal management district;
- (e) a permit under the Beach Protection Act, section 47(1A);
- (f) a provisional approval to construct a canal under the Canals Act, section 5;
- (g) a final approval to construct a canal under the Canals Act, section 7.

(2) The *Integrated Planning Act 1997*, chapter 3, part 5, division 5 applies to a deemed approval.

(3) However, if the deemed approval is for operational work that is tidal works associated with construction of a structure, the currency period for the deemed approval is—

- (a) the 4 years starting the day this section commences; or
- (b) if the deemed approval states or implies a time for the approval to lapse—the period from the day the approval had effect until the stated or implied time.

(4) If development under a deemed approval mentioned in subsection (3) is not substantially completed at the end of the currency period for the approval, the deemed approval lapses.

### *Division 3—Dredging permits*

#### **178 Continuing effect of dredging permits**

(1) This section applies to a dredging permit granted under the *Marine Land Dredging By-law 1987*, section 7.

(2) Despite the repeal of the *Marine Land Dredging By-law 1987*, the permit, and any conditions of the permit continue to have effect for the term of the permit.

### *Division 4—Applications in progress*

#### **179 Effect of commencement on certain applications**

(1) This section applies to an application for any of the following not finally decided before the commencement of this section—

- (a) a sanction to carry out works given under the Harbours Act, section 86;
- (b) an authorisation to reclaim land given under the Harbours Act, section 91;
- (c) a permit under the Beach Protection Act, section 44;
- (d) a consent under the Beach Protection Act, section 45(6), relating to an approval to open a road or subdivide land in a coastal management district;
- (e) a permit under the Beach Protection Act, section 47(1A);
- (f) a provisional approval to construct a canal under the Canals Act, section 5;
- (g) a final approval to construct a canal under the Canals Act, section 7;
- (h) a dredging permit under the *Marine Land Dredging By-law 1987*, section 6.

(2) From the commencement—

- (a) processing of the application and all matters incidental to the processing must proceed as if the Act or by-law under which the application was made had not been repealed; and
- (b) any sanction, authorisation, permit, consent or approval issued is taken to be a preliminary approval or development permit, as the case may be.

### **180 When certain applications lapse**

(1) This section applies to an application for any of the following made before the commencement of the section—

- (a) a sanction to carry out works given under the Harbours Act, section 86;
- (b) an authorisation to reclaim land given under the Harbours Act, section 91;
- (c) a provisional approval to construct a canal under the Canals Act, section 5.

(2) If the chief executive has, by written notice given before the commencement of this section, asked the applicant to give the chief executive a stated document or information relevant to the application, the applicant must give the stated document or information to the chief executive within 1 year after the commencement.

(3) If the applicant does not give the chief executive the stated document or information within the period mentioned in subsection (2), the application lapses.

### **181 Applications to reconfigure a lot in a coastal management district**

(1) This section applies if—

- (a) immediately before the commencement of the section, a person who holds an authority from a local government to reconfigure a lot in a coastal management district has not applied for the Governor in Council's consent under the Beach Protection Act, section 45(4); and
- (b) after the commencement, the person intends to reconfigure the lot.

(2) The person must apply for a development approval for the reconfiguration under the *Integrated Planning Act 1997*.

(3) The chief executive is the assessment manager for the application.

### ***Division 5—Dissolution of Beach Protection Authority***

#### **182 Dissolution of Beach Protection Authority**

On the commencement of this section—

- (a) the Beach Protection Authority (the “**authority**”) is dissolved; and
- (b) each member of the authority goes out of office; and
- (c) the assets and liabilities of the authority—
  - (i) are transferred to the State and become assets and liabilities of the State; and
  - (ii) are to be administered by the Minister; and
- (d) the State is substituted as a party for the authority in all pending and existing proceedings to which the authority is a party.

#### **183 References to Beach Protection Authority**

(1) This section applies to a reference in an Act or document, immediately before the commencement of the section, to the Beach Protection Authority.

(2) From the commencement, the reference may, if the context permits, be taken to be a reference to the chief executive.

### ***Division 6—Erosion prone areas***

#### **184 Transition of areas specified in erosion prone area plans**

(1) This section applies to an area that, immediately before the commencement of the section, is specified in an erosion prone area plan under the Beach Protection Act as an area that may be subject to erosion or encroachment by tidal water.

(2) From the commencement, the area is taken to be an erosion prone area under this Act.

(3) This section applies despite the repeal of the Beach Protection Act.

### *Division 7—Coastal management plans under Beach Protection Act*

#### **185 Transition of coastal management plans**

(1) This section applies to a coastal management plan approved under the Beach Protection Act, section 38 and in force immediately before the commencement of this section.

(2) From the commencement, the plan continues in force as if the Beach Protection Act had not been repealed until a regional coastal management plan, replacing the coastal management plan, takes effect.

## **PART 3—TRANSITIONAL PROVISIONS FOR BEACH PROTECTION LEGISLATION AMENDMENT ACT 2003**

#### **186 Protection of erosion prone area**

(1) After the registration of plan of subdivision SP 143333, the area of land comprising lot 100 on the plan may not be further subdivided under the *Land Title Act 1994* until the erosion prone area is surrendered to the State as a reserve for ‘Beach Protection and Coastal Management’ purposes.

(2) In this section—

“**erosion prone area**” means the strip of land along Saltwater Creek—

- (a) designated as riparian buffer and landscape zone on plan Nos MK-16-18-RCP-01 to 06;<sup>16</sup> and

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16 A copy of the plans may be inspected at the offices of the Gold Coast City Council and the Environmental Protection Agency during normal business hours.

*Coastal Protection and Management Act 1995*

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- (b) mentioned in the consent of the Governor in Council given on 19 September 2002 under the repealed *Beach Protection Act 1968*, section 45 in relation to those plans.

**SCHEDULE****DICTIONARY**

section 6

“**access channel**” see section 7.

“**advisory council**” means the Coastal Protection Advisory Council.

“**allocation notice**” see section 76(3)(b).

“**alter**” includes add to, remove from, maintain, or change in any way, and includes starting or continuing to alter.

“**artificial waterway**” see section 8.

“**assessable development**” see *Integrated Planning Act 1997*, schedule 10.

“**assessment manager**” see *Integrated Planning Act 1997*, section 3.1.7.<sup>17</sup>

“**authorised person**” means a person appointed as an authorised person under this Act.

“**Beach Protection Act**” means the *Beach Protection Act 1968*.

“**Beach Protection Authority**” means the Beach Protection Authority constituted under the Beach Protection Act, section 5.

“**biological diversity**” see *Nature Conservation Act 1992*, section 10.

“**build**” includes—

- (a) move from one position to another position, whether on the same or another allotment; and
- (b) re-build (with or without alteration) whether on the same or another allotment.

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

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<sup>17</sup> Under section 3.1.7 (Assessment manager) of the *Integrated Planning Act*, the “**assessment manager**”, for an application for a development approval is generally the local government for the area in which the development is to be carried out. However, in some circumstances, it may be another entity prescribed under a regulation under that Act or decided by the Minister administering that Act.

## SCHEDULE (continued)

“**canal**” see section 9.

“**Canals Act**” means the *Canals Act 1958*.

“**coast**” see section 10.

“**coastal building line**” means a line declared as a coastal building line under this Act.

“**coastal management**” see section 11.

“**coastal management district**” means a part of the coastal zone declared under this Act as a coastal management district.

“**coastal plan**” means the State plan or a regional plan.

“**coastal protection notice**” see section 59.

“**coastal resources**” see section 12.

“**coastal waters**” see section 13.

“**coastal wetlands**” see section 14.

“**coastal zone**” see section 15.

“**concurrence agency**”, for a development application, see the *Integrated Planning Act 1997*, schedule 10.<sup>18</sup>

“**cultural resources**”, of the coastal zone, means the places or objects that have anthropological, archaeological, historical, scientific, spiritual, visual or sociological significance or value, including such significance or value under Aboriginal tradition or Island custom.

“**damage**”, to vegetation, means remove, fell, cut down, ringbark, dig up, pull out, poison or burn the vegetation or interfere with the natural growth of the vegetation, and includes damage to the vegetation caused by draining land or altering the water table for land.

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18 Under the Integrated Planning Act, the concurrence agency for a development application is the entity prescribed under a regulation under that Act as a concurrence agency for the application or, if the functions of the entity in relation to the application have been devolved or delegated to another entity, the other entity.

## SCHEDULE (continued)

“**deemed approval**” see section 177(1).

“**development**” see *Integrated Planning Act 1997*, section 1.3.2.<sup>19</sup>

“**development application**” means an application for a development approval.

“**development approval**” see *Integrated Planning Act 1997*, schedule 10.<sup>20</sup>

“**development permit**” see *Integrated Planning Act 1997*, schedule 10.

“**ecologically sustainable development**” see section 16.

“**environmental authority**” see *Environmental Protection Act 1994*, schedule 3.

“**erosion prone area**” means an area declared to be an erosion prone area under section 70(1).

“**fee**” includes tax.

“**foreshore**” means the land lying between high water mark and low water mark as is ordinarily covered and uncovered by the flow and ebb of the tide at spring tides.

“**former district**” see section 170(1)(b).

“**government entity**” means a government department or an agency, authority, commission, corporation, instrumentality, office or other entity, established under an Act for a public or official purpose, and includes part of a government entity.

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<sup>19</sup> *Integrated Planning Act 1997*, section 1.3.2 (Meaning of “development”)—

**1.3.2. “Development”** is any of the following—

- (a) carrying out building work;
- (b) carrying out plumbing or drainage work;
- (c) carrying out operational work;
- (d) reconfiguring a lot;
- (e) making a material change of use of premises.

Chapter 1, part 3, division 3 of the *Integrated Planning Act* contains supporting definitions and explanations for the term “development”.

<sup>20</sup> Under the *Integrated Planning Act 1997*, a development approval is required for certain development. A development approval may be in the form of a preliminary approval, a development permit or a combination of both of them.

## SCHEDULE (continued)

**“harbour master”** means a person who is appointed under the *Transport Operations (Marine Safety) Act 1994* as a harbour master.

**“Harbours Act”** means the repealed *Harbours Act 1955* as continued to have effect under the *Transport Infrastructure Act 1994*, sections 233 and 236.

**“high water mark”** means the ordinary high water mark at spring tides.

**“interest”**, for land, includes—

- (a) a mining claim, mineral development licence or mining lease granted under the *Mineral Resources Act 1989*; or
- (b) a petroleum lease granted under the *Petroleum Act 1923*.

**“inundated land”** means freehold land that, through the excavation of the land or other land, has become inundated by water subject to tidal influence, but does not include a canal, or part of a canal.

**“key coastal site”** means an area identified under a regional plan as a key coastal site.

**“land”** includes land that is, or is at any time, covered by Queensland waters.

**“land surrender condition”** see section 110(1).

**“land under tidal water”** includes foreshore.

**“leased land”** means land held under a lease under the *Land Act 1994*.

**“local government area”** means the part of the State—

- (a) established as a local government area under the *Local Government Act 1993*; or
- (b) declared to be a council area under the *Community Services (Aborigines) Act 1984* or the *Community Services (Torres Strait) Act 1984*.

**“low water mark”** means the ordinary low water mark at spring tides.

**“National Strategy for Ecologically Sustainable Development”** means the National Strategy for Ecologically Sustainable Development endorsed by the Council of Australian Governments on 7 December 1992.

## SCHEDULE (continued)

**“natural resources”**, of the coastal zone, means the natural and physical features and processes of the zone, including wildlife, soil, water, minerals and air.

**“obstruct”** includes—

- (a) hinder or resist; and
- (b) attempt to obstruct.

**“owner”**, for chapter 5, part 1, see section 150(1).

**“owner”**, of land, means the person for the time being entitled to receive the rent of the land or would be entitled to receive the rent from it if it were let to a tenant at a rent, and includes the holder of a lease, licence or permission from the State, or a person deriving title under it.

**“place”** includes land, a structure, vehicle or other place (even if the place is in a natural or undeveloped state) whether the place is on or under the water or on the bed of any waters.

**“plan of subdivision”** see *Land Title Act 1994*, section 49.

**“planning scheme”** see *Integrated Planning Act 1997*, section 2.1.1.

**“port”** see *Transport Infrastructure Act 1994*, schedule 3.

**“port authority”** see *Transport Infrastructure Act 1994*, schedule 3.

**“preliminary approval”** see the *Integrated Planning Act 1997*, schedule 10.

**“quarry material”**—

1. “Quarry material” means material on State coastal land, other than a mineral within the meaning of any Act relating to mining.
2. For item 1, material includes, for example, stone, gravel, sand, rock, clay, mud, silt and soil, unless it is removed from a culvert, stormwater drain or other drainage infrastructure as waste material.

**“reasonably believes”** means believes on grounds that are reasonable in the circumstances.

**“regional plan”** means a regional coastal management plan approved under chapter 2, part 2, division 2 or 3.

**“sea”** includes bays, arms and inlets of the sea.

## SCHEDULE (continued)

**“seaward”** means toward tidal water.

**“State coastal land”** see section 17.

**“State plan”** means the State coastal management plan approved under chapter 2, part 2, division 1 or 3.

**“stock”** means any grazing animal, and includes commercially farmed birds.

**“structure”** includes a building, deck, fence, gazebo, path, pillar, post, road, swimming pool, tennis court and wall.

**“tidal water”** means the sea and any part of a harbour or water course ordinarily within the ebb and flow of the tide at spring tides.

**“tidal works”**—

1. “Tidal works” means work in, on or above land under tidal water, or land that will or may be under tidal water because of development on or near the land.
2. “Tidal works” includes the construction of a basin, boat ramp, breakwater, bridge, dam, dock, dockyard, embankment, groyne, jetty, pipeline, pontoon, power line, seawall, slip, small craft facility, training wall or wharf and works in tidal water necessarily associated with the construction.
3. “Tidal works” does not include—
  - (a) erecting a sign or other structure, including, for example, a navigational aid or sign for maritime navigation, under a direction made under another Act; or
  - (b) building a drain that—
    - (i) is less than 1 m deep; and
    - (ii) has a cross sectional area less than 2.5 m<sup>2</sup>; or
  - (c) assessable development under schedule 8, part 1, table 4, item 5(b); or
  - (d) removing quarry material that has accumulated within the boundaries of, or in an area adjoining, a previously approved tidal work to allow the work to be used for the function for which it was approved; or

## SCHEDULE (continued)

- (e) removing quarry material from land under tidal water, if the removal is for no other purpose than the sale of the material.

**“tidal works notice”** see section 60.

**“transitional planning scheme”** see *Integrated Planning Act 1997*, section 6.1.3.

**“unallocated State land”** see *Land Act 1994*, schedule 6.

**“vegetation”** includes trees.

**“wildlife”** see *Nature Conservation Act 1992*, section 7.

## 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 20 October 2003. Future amendments of the Coastal Protection and Management Act 1995 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)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered

## **4 Table of reprints**

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

## **5 List of legislation**

### **Coastal Protection and Management Act 1995 No. 41**

date of assent 9 November 1995

ss 1–2 commenced on date of assent

remaining provisions commenced 1 February 1996 (1996 SL No. 8)

amending legislation—

### **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 March 1998 (1998 SL No. 55)

### **Local Government and Other Legislation Amendment (No. 2) 1999 No. 59 ss 1, 2(7) pt 4**

date of assent 29 November 1999

commenced on date of assent

### **Coastal Protection and Management and Other Legislation Amendment Act 2001 No. 93 pts 1–2, s 24 sch (this Act is amended, see amending legislation below)**

date of assent 10 December 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 20 October 2003 (2003 SL No. 202)

(proposed commencement 11 December 2003 (automatic commencement under AIA s 15DA(2) (2002 SL No. 359 s 2)))

amending legislation—

#### **Integrated Planning and Other Legislation Amendment Act 2003 No. 64 ss 1, 2(3)(b), 116–118, 120 (amends 2001 No. 93 above)**

date of assent 16 October 2003

ss 1–2 commenced on date of assent

remaining provisions commenced on date of assent (see s 2(3)(b))

#### **Beach Protection Legislation Amendment Act 2003 No. 65 pts 1, 3 (amends 2001 No. 93 above)**

date of assent 17 October 2003

commenced on date of assent

### **Transport Infrastructure Act 1994 No. 8 s 200A(3) sch 2B (this Act is amended, see amending legislation below)**

amending legislation—

**Transport Infrastructure and Another Act Amendment Act 2003 No. 54**  
**ss 1–2, 34, 39 (amends 1994 No. 8 above)**

date of assent 18 September 2003

ss 1–2 commenced on date of assent

remaining provisions not yet proclaimed into force (see s 2)**Integrated Planning and Other Legislation Amendment Act 2003 No. 64 ss 1, 2(4),**  
**pt 4**

date of assent 16 October 2003

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remaining provisions not yet proclaimed into force (see s 2(4))**6 List of annotations****This reprint has been renumbered—see table of renumbered provisions in endnote 7.****CHAPTER 1—PRELIMINARY****PART 2—OBJECTS AND ACHIEVEMENT OF COASTAL MANAGEMENT****pt hdg** sub 2001 No. 93 s 24 sch**Main objects of Act****prov hdg** sub 2001 No. 93 s 24 sch**s 3** amd 2001 No. 93 s 24 sch**How coastal management is to be achieved****s 4** amd 2001 No. 93 s 24 sch**Advancing Act's objects****s 5** ins 2001 No. 93 s 4**PART 3—INTERPRETATION****Division 1—Dictionary****div 1 (s 6)** sub 2001 No. 93 s 5**Division 2—Other definitions****div hdg** sub 2001 No. 93 s 6**Meaning of “access channel”****s 7** ins 2001 No. 93 s 7**Meaning of “artificial waterway”****s 8** ins 2001 No. 93 s 7**Meaning of “canal”****s 9** ins 2001 No. 93 s 7**Meaning of “coast”****prov hdg** sub 2001 No. 93 s 24 sch**s 10** amd 2001 No. 93 s 24 sch**Meaning of “coastal management”****s 11 prov hdg** sub 2001 No. 93 s 24 sch

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- def “**artificial waterway**” ins 2001 No. 93 s 24 sch
- def “**assessable development**” ins 2001 No. 93 s 24 sch
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