



# WEST BEACH RECREATION RESERVE ACT, 1987

No. 79 of 1987

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# ELIZABETHAE II REGINAE

A.D. 1987

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No. 79 of 1987

**An Act to provide for the administration and development of the West Beach Recreation Reserve; to repeal the West Beach Recreation Reserve Act, 1954; and for other purposes.**

*[Assented to 19 November 1987]*

The Parliament of South Australia enacts as follows:

## PART I PRELIMINARY

- Short title.** 1. This Act may be cited as the "West Beach Recreation Reserve Act, 1987".
- Commencement.** 2. (1) This Act will come into operation on a day to be fixed by proclamation.  
(2) The Governor may, in a proclamation fixing a day for this Act to come into operation, suspend the operation of specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.
- Repeal.** 3. The West Beach Recreation Reserve Act, 1954, is repealed.
- Interpretation.** 4. In this Act unless the contrary intention appears—  
"the Glenelg council" means the Corporation of the City of Glenelg;  
"the Henley and Grange council" means the City of Henley and Grange;  
"the repealed Act" means the West Beach Recreation Reserve Act, 1954, repealed by this Act;  
"the Reserve" means—  
(a) the West Beach Recreation Reserve vested in the Trust pursuant to the repealed Act, being the whole of the land comprised in Certificate of Title Volume 4196 Folio 330;

and

(b) any other land owned or leased by the Trust, or land of which the Trust has the care, control and management:

“the Trust” means the West Beach Trust established under the repealed Act and continued under this Act:

“the West Torrens council” means the Corporation of the City of West Torrens.

## PART II

### THE WEST BEACH TRUST

#### DIVISION I—CONSTITUTION OF THE TRUST

5. (1) The *West Beach Trust* continues in existence.

The West Beach Trust.

(2) The Trust is a body corporate.

(3) The Trust has full juristic capacity to exercise any powers that are by their nature capable of being exercised by a body corporate.

(4) An apparently genuine document that appears to bear the common seal of the Trust and to be signed by any two or more of its members or by any one of its members and the chief executive officer of the Trust will be taken, in any legal proceedings, in the absence of proof to the contrary, to be duly executed by the Trust.

6. The Trust is subject to the control and direction of the Minister.

Trust subject to control of Minister.

7. (1) The Trust consists of seven members, appointed by the Minister, of whom—

Membership of the Trust.

(a) three will be persons who have experience in those fields that the Minister believes will best assist the Trust in the performance of its functions;

(b) one will be appointed after consultation with the Glenelg council;

(c) one will be appointed after consultation with the Henley and Grange council;

(d) one will be appointed after consultation with the West Torrens council;

and

(e) one will be appointed as follows:

(i) the first appointment (and any subsequent appointments to fill a casual vacancy in the office of the first appointee) will be made after consultation with the West Torrens council;

(ii) the next appointment (and any subsequent appointments to fill a casual vacancy in the office of that next appointee) will be made after consultation with the Glenelg council;

(iii) the next appointment (and any subsequent appointments to fill a casual vacancy in the office of that next

appointee) will be made after consultation with the Henley and Grange council;

and

(iv) subsequent appointments will be made in accordance with and in the order of the preceding subparagraphs.

(2) Of the members of the Trust appointed under subsection (1) (a), one will be appointed by the Minister to be its presiding officer and another to be its deputy presiding officer.

(3) A person to be appointed as a member of the Trust after consultation with a council is not eligible for appointment unless he or she is a member or employee of that council.

Conditions of membership.

8. (1) Subject to subsection (2), a member of the Trust will be appointed for such term of office, not exceeding five years, as the Minister determines and specifies in the instrument of appointment.

(2) A member of the Trust appointed pursuant to section 7 (1) (e) will be appointed for a term of office not exceeding three years.

(3) A member of the Trust (other than a member appointed pursuant to section 7 (1) (e)) will, on the expiration of a term of office, be eligible for reappointment.

(4) The Minister may remove a member of the Trust from office for—

(a) mental or physical incapacity to carry out official duties satisfactorily;

(b) neglect of duty;

or

(c) dishonourable conduct.

(5) Subject to subsection (6), the office of a member of the Trust becomes vacant if—

(a) the member dies;

(b) the member's term of office expires;

(c) the member resigns by written notice addressed to the Minister;

(d) the member ceases to reside in South Australia;

(e) the member is absent without permission of the Trust from three consecutive meetings of the Trust and is declared by resolution of the Trust to have forfeited his or her office;

or

(f) the member is removed by the Minister under subsection (4).

(6) A member of the Trust whose term of office expires may continue to act as a member until a fresh appointment is made to replace him or her.

Allowances and expenses.

9. A member of the Trust is entitled to receive such allowances and expenses as the Governor may from time to time determine.

Disclosure of interest.

10. (1) A member of the Trust who is directly or indirectly interested in a contract or proposed contract made by, or in the contemplation of, the Trust—

(a) must, as soon as he or she becomes aware of the contract, or the proposal to make the contract, disclose the nature of his or her interest to the Trust;

and

(b) must not take part in any deliberations or decisions of the Trust with respect to that contract.

Penalty: \$1 000.

(2) Subsection (1) does not apply in respect of an interest that exists only by virtue of the fact that a member is—

(a) an employee of the Trust;

or

(b) a member of the Glenelg council, the Henley and Grange council or the West Torrens council.

(3) A disclosure made under this section must be recorded in the minutes of the Trust.

(4) Where a member makes a disclosure of interest in respect of a contract or proposed contract in accordance with this section, or the member's interest in a contract or proposed contract is not such as need be disclosed under this section—

(a) the contract is not liable to be avoided by the Trust on any ground arising from the fiduciary relationship between the member and the Trust;

and

(b) the member is not liable to account to the Trust for profits derived from the contract.

Procedure at meetings of the Trust.

11. (1) The presiding officer or, in his or her absence, the deputy presiding officer will preside at a meeting of the Trust and, in the absence of both, a member chosen by the members present at the meeting will preside at that meeting.

(2) Four members of the Trust constitute a quorum of the Trust and no business will be transacted at a meeting of the Trust unless a quorum is present.

(3) A decision carried by a majority of the votes of the members present at a meeting of the Trust will be a decision of the Trust.

(4) Each member present at a meeting is entitled to one vote on any matter arising for decision at that meeting.

(5) The Trust must cause accurate minutes to be kept of its proceedings at meetings.

(6) Subject to this Act, the business of the Trust will be conducted in such manner as the Trust may determine.

Validity of acts of the Trust and immunity of its members.

12. (1) An act or proceeding of the Trust is not invalid by reason of a vacancy in its membership, or a defect in an appointment.

(2) No liability attaches to a member of the Trust for any act or omission by the Trust, in good faith and in the exercise of powers or functions, or in the discharge of duties, under this Act.

(3) A liability that would, but for subsection (2), lie against a member of the Trust lies instead against the Crown.

General functions  
and powers of the  
Trust.

DIVISION II—FUNCTIONS AND POWERS OF THE TRUST

13. (1) The functions of the Trust are as follows—

- (a) to administer and develop the Reserve—
  - (i) as a sporting, cultural and recreational complex;
  - and
  - (ii) as a tourist attraction and resort;
- (b) to promote and encourage the use and enjoyment of the Reserve by the public;
- and
- (c) to perform any other function assigned to the Trust by this Act or the Minister.

(2) For the purpose, or in the course, of performing its functions, the Trust may—

- (a) establish subcommittees (which may, but need not, consist of, or include, members of the Trust) to advise the Trust on any aspect of its functions;
- (b) delegate any of its powers under this Act to a subcommittee, member of the Trust or other person;
- (c) acquire, deal with or dispose of real or personal property or any interest or right in relation to real or personal property;
- (d) provide facilities for accommodation, refreshment, sport or entertainment and any other amenities on the Reserve;
- (e) grant (on such conditions as the Trust thinks fit) leases, licences or other rights of occupation or use in relation to any part of the Reserve or any building or facility on the Reserve;
- (f) carry out work and undertakings for the improvement or maintenance of the Reserve;
- (g) construct on the Reserve any buildings or structures that it considers appropriate;
- (h) fix charges for admission to the Reserve or any part of it;
- (i) fix charges for any services or amenities provided by the Trust;
- (j) enter into any contract or arrangement relevant to the functions of the Trust;
- (k) do any other thing that is necessary for, or incidental to, the performance of its functions.

(3) A delegation under subsection (2) (b) is revocable at will and does not derogate from the power of the Trust to act itself in any matter.

(4) Notwithstanding any other provision of this Act, the Trust may not—

- (a) sell or otherwise dispose of any of the land comprised in Certificate of Title Volume 4196 Folio 330;
- (b) sell or otherwise dispose of any of its other real property, without the prior approval of the Minister.

or

- (c) lease any of its real property for a term exceeding ten years, without the prior approval of the Minister.

14. Subject to the Coast Protection Act, 1972, that part of the foreshore that lies between the low water mark and the part of the western boundary of the Reserve that borders the sea will continue to be under the care, control and management of the Trust.

Control of  
foreshore west of  
Reserve.

#### DIVISION III—STAFF OF THE TRUST

15. (1) There will be—

Officers and  
employees.

(a) a chief executive officer of the Trust;

and

(b) such other officers and employees of the Trust as are necessary for the administration of this Act.

(2) Officers and employees of the Trust will be appointed by the Trust on such terms and conditions as the Trust may determine.

(3) Officers and employees of the Trust are not employed in the Public Service of the State.

#### DIVISION IV—FINANCIAL PROVISIONS

16. (1) All money received by the Trust will be paid into a bank account established by the Trust.

Dealings with  
money of the  
Trust.

(2) A bank account established by the Trust will be operated by a cheque signed and countersigned by such persons as the Trust may appoint for the purpose.

(3) All money received by the Trust will be applied by it towards the cost of carrying out its functions under this Act.

(4) Any money of the Trust that is not immediately required for the purposes of the Trust may be invested in a manner approved by the Treasurer.

17. (1) The Trust will cause proper accounts to be kept of its financial affairs.

Accounts and  
audit.

(2) The Auditor-General may at any time, and must at least once in every year, audit the accounts of the Trust.

(3) For the purpose of an audit under subsection (2), the Auditor-General may exercise, in relation to the accounts of the Trust and the officers and employees of the Trust, the powers that are vested in the Auditor-General by the Public Finance and Audit Act, 1987.

18. (1) The Trust may submit for the Minister's approval a scheme for subsidizing (by grant, loan or guarantee) work related to the Reserve, or the provision or maintenance of a service or facility on the Reserve.

Power to advance  
money, to act as  
guarantor, etc.

(2) The Trust may, with the approval of the Minister, amend a scheme previously submitted and approved under this section.

(3) An approved scheme and any amendment to it must be published in the *Gazette*.

PART III  
MISCELLANEOUS

Report.

**19.** (1) The Trust must, on or before the thirtieth day of September in each year, deliver to the Minister a report on the administration of this Act during the financial year that ended on the preceding thirtieth day of June.

(2) The report must incorporate the audited statement of accounts for the Trust in relation to the relevant financial year.

(3) The Minister must cause a copy of a report submitted under subsection (1) to be laid before each House of Parliament within 12 sitting days of receipt of the report if Parliament is then in session, or if Parliament is not then in session, within 12 days of the commencement of the next session of Parliament.

Stamp duty not payable on instruments of conveyance to the Trust.

**20.** No stamp duty is payable on any instrument by virtue of which real or personal property is vested in the Trust.

Exemption from certain taxes.

**21.** The Trust and all property of the Trust is exempt from—

- (a) any tax payable under the Land Tax Act, 1936;
- (b) any rates or taxes payable under the Local Government Act, 1934;
- (c) pay-roll tax payable under the Pay-roll Tax Act, 1971;
- (d) any rates payable under the Waterworks Act, 1932, or the Sewerage Act, 1929;

and

- (e) any other prescribed rate, tax, charge, levy or impost.

Damage, etc., to property of the Trust.

**22.** A person who, without the authority of the Trust—

- (a) damages or destroys any property of the Trust;
- or
- (b) removes any property of the Trust from the possession or control of the Trust, is guilty of an offence.

Penalty: \$2 000 or imprisonment for three months.

Summary procedure.

**23.** The offences constituted by this Act are summary offences.

Power to resume land in reserve.

**24.** (1) The Governor may, by proclamation, resume any of the land within the Reserve that is owned by the Trust, if satisfied that the land is required for a public purpose.

(2) On such a proclamation being made under subsection (1), the land to which it relates will cease to be part of the Reserve and will vest in the Crown.

(3) Subject to subsection (4) no compensation is payable to the Trust in respect of land so resumed.

(4) If any improvements have been made to the land resumed and are in existence at the time of the resumption, the Governor will direct the Treasurer to pay the Trust an appropriate compensation having regard to the value of those improvements.



Regulations.

25. (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of subsection (1), those regulations may—

- (a) provide for the admission, exclusion or expulsion of members of the public to or from the Reserve, or any part of it;
  - (b) regulate, restrict or prohibit the driving or parking of motor vehicles on the Reserve;
  - (c) regulate, restrict or prohibit the entry of animals onto the Reserve;
  - (d) prohibit disorderly or offensive behaviour on the Reserve;
- and
- (e) prescribe penalties, not exceeding \$1 000, for breach of, or non-compliance with, the regulations.

(3) In any proceedings for an offence against a regulation an allegation in a complaint that a person named in the complaint was the owner or driver of a specified vehicle on a specified day will be taken to be proved in the absence of proof to the contrary.

(4) The owner and driver of a motor vehicle are not both liable to be convicted of an offence arising out of the same circumstances and consequently conviction of the owner exonerates the driver and conversely conviction of the driver exonerates the owner.

(5) Before proceedings are commenced against the owner of a motor vehicle for an offence against a regulation, a notice must be sent to the owner by the Trust—

- (a) setting out the particulars of the alleged offence;
- and
- (b) inviting the owner, if he or she was not the driver at the time of the alleged offence, to provide the Trust, within 21 days of the date of the notice, with a statutory declaration setting out the name and address of the driver.

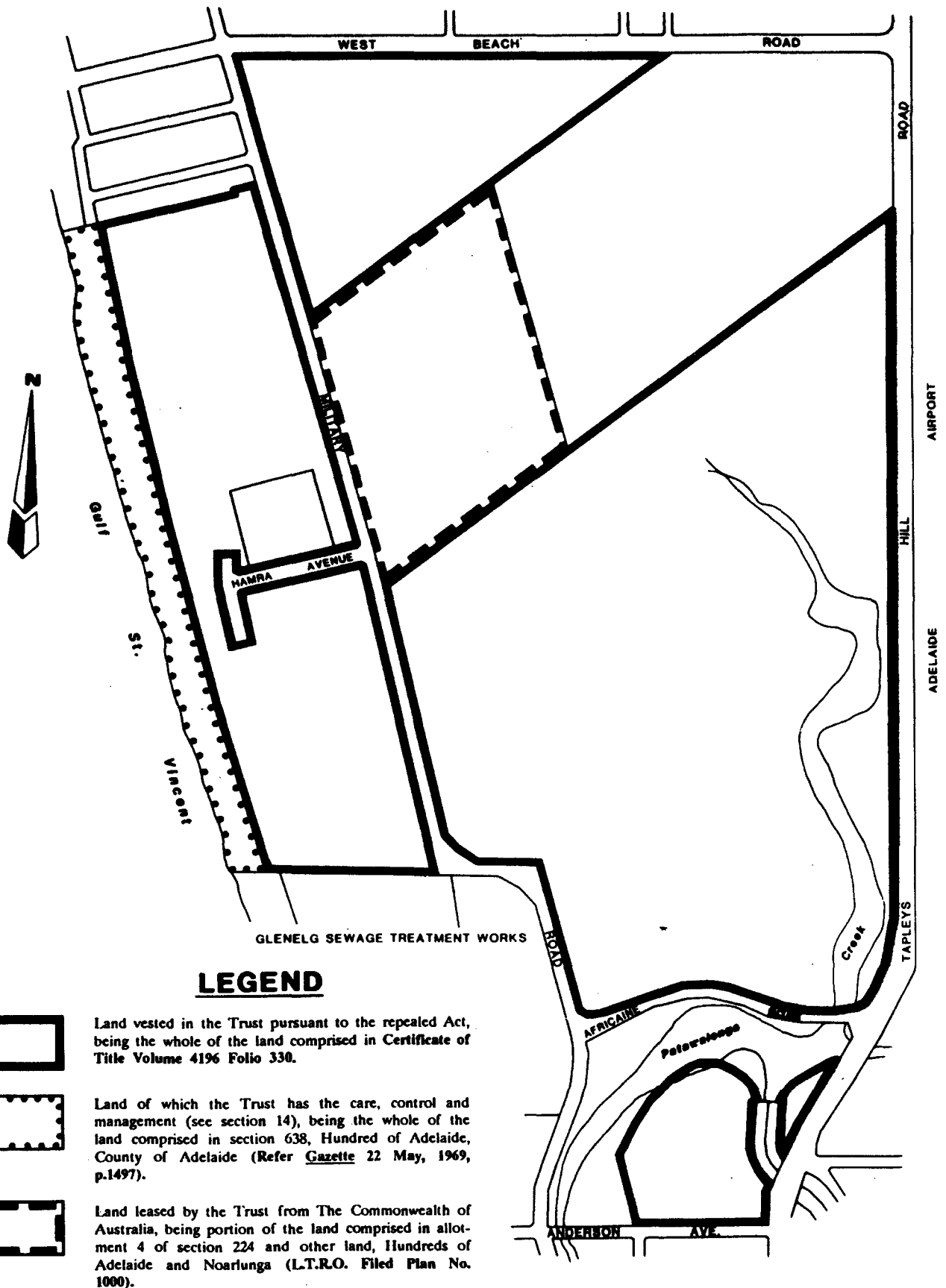
(6) In proceedings against the owner of a motor vehicle for an offence against a regulation, it is a defence to prove—

- (a) that, in consequence of some unlawful act, the motor vehicle was not in the possession or control of the owner at the time of the alleged offence;
- or
- (b) that the owner provided the Trust with a statutory declaration setting out the name and address of the driver in accordance with an invitation under subsection (5) (b).

(7) Where it is alleged that a person has committed an offence against a regulation, the Trust may cause to be served personally or by post on that person a notice to the effect that he or she may expiate the offence by payment to the Trust of the amount specified in the notice, being an amount fixed by regulation, within a time fixed by the notice and, if the offence is so expiated, no proceedings will be commenced in a court with respect to the alleged offence.

SCHEDULE 1

# WEST BEACH RECREATION RESERVE



## SCHEDULE 2

*Transitional Provisions*

1. The members of the Trust in office immediately prior to the commencement of this Act, will, on the commencement of this Act, vacate their respective offices.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor