

SOUTH AUSTRALIA

WEST BEACH RECREATION RESERVE ACT 1987

This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 1 July 1999.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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WEST BEACH RECREATION RESERVE ACT 1987

being

West Beach Recreation Reserve Act 1987 No. 79 of 1987
[Assented to 19 November 1987]¹

as amended by

Statutes Amendment and Repeal (Common Expiation Scheme) Act 1996 No. 34 of 1996 [Assented to 2 May 1996]²

Financial Sector Reform (South Australia) Act 1999 No. 33 of 1999 [Assented to 17 June 1999]³

¹ Came into operation 31 March 1988: *Gaz.* 31 March 1988, p. 764.

² Came into operation 3 February 1997: *Gaz.* 19 December 1996, p. 1923.

³ **Schedule (item 61) came into operation 1 July 1999: being the date specified under section 3(16) of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999* of the Commonwealth as the transfer date for the purposes of that Act.**

NOTE:

- Asterisks indicate repeal or deletion of text.
- Entries appearing in bold type indicate the amendments incorporated since the last reprint.
- For the legislative history of the Act see Appendix.

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.

The Parliament of South Australia enacts as follows:

**PART 1
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 The *West Beach Recreation Reserve Act 1954* is repealed.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"**the repealed Act**" means the *West Beach Recreation Reserve Act 1954*, repealed by this Act;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.

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**PART 2
THE WEST BEACH TRUST**

DIVISION 1—CONSTITUTION OF THE TRUST

The West Beach Trust

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

(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.

Trust subject to control of Minister

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

Membership of the Trust

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

(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; and

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

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

(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; and

(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; and

(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; or

(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; or

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

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

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

(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—

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- (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.

DIVISION 2—FUNCTIONS AND POWERS OF THE TRUST

General 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; and

- (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; or
 - (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.

Control of foreshore west of Reserve

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.

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DIVISION 3—STAFF OF THE TRUST

Officers and employees

15. (1) There will be—

- (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 4—FINANCIAL PROVISIONS

Dealings with money of the Trust

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

(2) An ADI 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.

Accounts and audit

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

(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*.

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

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

(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 3
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*; and
- (b) any rates or taxes payable under the *Local Government Act 1934*; and
- (c) pay-roll tax payable under the *Pay-roll Tax Act 1971*; and
- (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.

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(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; and
- (b) regulate, restrict or prohibit the driving or parking of motor vehicles on the Reserve; and
- (c) regulate, restrict or prohibit the entry of animals onto the Reserve; and
- (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; and
- (f) fix expiation fees, not exceeding \$75, for alleged offences against 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) An expiation notice or expiation reminder notice given under the *Expiation of Offences Act 1996* to the owner of a vehicle for an alleged offence against a regulation arising out of the use of the vehicle must be accompanied by a notice inviting the owner, if he or she was not the driver at the time of the alleged offence, to provide the Trust, within the period specified in the notice, with a statutory declaration—

- (a) setting out the name and address of the driver; or
- (b) if he or she had transferred ownership of the vehicle to another prior to the time of the alleged offence and has complied with the *Motor Vehicles Act 1959* in respect of the transfer—setting out details of the transfer (including the name and address of the transferee).

(6) Before proceedings are commenced against the owner of a vehicle for an offence against a regulation arising out of the use of the vehicle, the complainant must send the owner a notice—

- (a) setting out particulars of the alleged offence; and
- (b) inviting the owner, if he or she was not the driver at the time of the offence, to provide the complainant, within 21 days of the date of the notice, with a statutory declaration setting out the matters referred to in subsection (1).

(7) Subsection (6) does not apply to—

- (a) proceedings commenced where an owner has elected under the *Expiation of Offences Act 1996* to be prosecuted for the offence; or
- (b) proceedings commenced against an owner of a vehicle who has been named in a statutory declaration under this section as the driver of the vehicle.

(8) Subject to subsection (9), in proceedings against the owner of a vehicle for an offence against a regulation, it is a defence to prove—

- (a) that, in consequence of some unlawful act, the 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 complainant with a statutory declaration in accordance with an invitation under this section.

(9) The defence in subsection (8)(b) does not apply if it is proved that the owner made the declaration knowing it to be false in a material particular.

(10) If—

- (a) an expiation notice is given to a person named as the alleged driver in a statutory declaration under this section; or
- (b) proceedings are commenced against a person named as the alleged driver in such a statutory declaration,

the notice or summons, as the case may be, must be accompanied by a notice setting out particulars of the statutory declaration that named the person as the alleged driver.

(11) In proceedings against a person named in a statutory declaration under this section for the offence to which the declaration relates, it will be presumed, in the absence of proof to the contrary, that the person was the driver of the vehicle at the time at which the alleged offence was committed.

(12) In proceedings against the owner or driver of a vehicle for an offence against this Act, an allegation in the complaint that a notice was given under this section on a specified day will be accepted as proof, in the absence of proof to the contrary, of the facts alleged.

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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.

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APPENDIX

LEGISLATIVE HISTORY

Transitional Provisions

(Transitional provision from Statutes Amendment and Repeal (Common Expiation Scheme) Act 1996, s. 5)

5. An Act repealed or amended by this Act will continue to apply (as in force immediately prior to the repeal or amendment coming into operation) to an expiation notice issued under the repealed or amended Act.

Legislative History

(entries in bold type indicate amendments incorporated since the last reprint)

Section 16(1):	amended by 33, 1999, Sched. (item 61(a))
Section 16(2):	amended by 33, 1999, Sched. (item 61(b))
Section 25(2):	amended by 34, 1996, s. 4 (Sched. cl. 43)
Section 25(5) - (7):	substituted by 34, 1996, s. 4 (Sched. cl. 43)
Section 25(8) - (12):	inserted by 34, 1996, s. 4 (Sched. cl. 43)