

ACT

To declare the Governor-General to be the owner of the sea-shore and to be entitled to exercise control over the sea-shore and of the sea and the bed of the sea within the three miles limit; and to provide for the grant of rights in respect of the sea-shore and of the bed of the sea within the three miles limit, and for the alienation of portions of the sea-shore and for matters incidental thereto.

BE IT ENACTED by the King's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:—

Interpretation.

1. In this Act, unless inconsistent with the context—
 - “sea-shore” means the land situated between low-water mark and high-water mark;
 - “high-water mark” means the highest line reached by the sea during ordinary storms occurring during the most stormy period of the year, excluding exceptional or abnormal floods;
 - “low-water mark” means the lowest line to which the sea recedes during periods of ordinary spring tides;
 - “three miles limit” means the distance of three nautical miles out to sea from low-water mark;
 - “Minister” means the Minister of Lands or any other Minister of State acting in his stead, save that in relation to the seashore or the sea or the bed of the sea within the three miles limit falling within the limits of any port or harbour within the jurisdiction of the Railways and Harbours Administration of the Union under any law relating to ports and harbours, “Minister” means the Minister of Railways and Harbours or any other Minister of State acting in his stead; and
 - “local authority” means any municipal, borough or town or village council, town board, local board, village management board, divisional council, local administration and health board or health committee constituted in accordance with any law.

Governor-General is owner of sea-shore.

2. (1) Subject to the provisions of this Act, the Governor-General shall be the owner of the sea-shore, except of those portions thereof of which the ownership has been transferred to or declared to be vested in any person by or pursuant to any law or which are included in the pieces of land described in items 2, 3, 4 and 5 of the Schedule to this Act.

(2) The sea-shore of which the Governor-General is declared by this section to be the owner shall not be capable of being alienated or let except as provided by this Act or by any other law and shall not be capable of being acquired by prescription.

Governor-General exercises control over sea-shore and sea and bed of sea within the three miles limit.

3. Subject to the provisions of this Act, the Governor-General shall be entitled to exercise full control over the sea-shore of which he is declared by section *two* to be the owner and of the sea and the bed of the sea within the three miles limit.

Letting of sea-shore for short periods.

4. (1) The Minister may let for periods not exceeding one year, and subject to such conditions as he may deem expedient, any portion of the sea-shore of which the Governor-General is by section *two* declared to be the owner, for any of the following purposes:—

- (a) The erection of bathing boxes or tents
- (b) the erection of beach shelters;
- (c) the erection of tea-rooms and refreshment places;
- (d) the training of horses, the holding of races (including motor car and motor cycle races) and the provision of places for recreation, amusement or display;
- (e) the construction of temporary jetties and landing-stages;

- (f) the erection of temporary fish-curing sheds or any other temporary structures required in connection with the fishing industry ;
- (g) the erection of any other temporary structures ;
- (h) for the provision of landing sites for aircraft and the establishment of aerodromes.

(2) The Minister may permit, on such conditions as he may deem expedient, the removal of sand, shingle, rock, stone, shells or seaweed from the sea-shore of which the Governor-General is by section *two* declared to be the owner.

(3) If any portion of the sea-shore in respect of which it is proposed to enter into any lease in terms of sub-section (1) or to grant any permit in terms of sub-section (2), is situate within or adjoins the area of jurisdiction of a local authority, the consent in writing of that local authority shall be obtained before any such lease is entered into or any such permit is granted.

(4) The Minister may, if thereto authorized by resolution of both Houses of Parliament, by notice in the *Gazette* delegate to any local authority, subject to such conditions as may be set forth in such resolution, in respect of any portion of the sea-shore situate within or adjoining the area of jurisdiction of such local authority, any of the powers vested in him by this section, and if similarly thereto authorized by like notice withdraw any delegation so made.

Disposal, under authority of Parliament, of rights over sea-shore and bed of the sea within the three miles limit.

5. The Governor-General may, if authorized thereto by resolution of both Houses of Parliament, and on such conditions as may be set forth in such resolution—

- (a) let any portion of the sea-shore of which he is by section *two* declared to be the owner for any of the following purposes :—
 - (i) the construction or improvement of permanent wharves, piers, jetties and landing stages ;
 - (ii) the construction of breakwaters, sea walls, promenades, embankments, esplanades, buildings or other structures ;
 - (iii) the construction of bathing pools and enclosures ;
 - (iv) the erection of whaling stations or fish-canning or other factories ;
 - (v) the legalisation of any encroachment ;
 - (vi) the carrying out of any work of public utility ;
 - (vii) the laying of drainage or sewerage systems ;
 - (viii) the laying of water pipes or cables ;
 - (ix) the erection of boathouses ;
 - (x) any of the purposes mentioned in section *four* ;
- (b) transfer by deed of grant to any local authority any portion of the sea-shore of which he is by section *two* declared to be the owner for any of the purposes described in sub-paragraphs (i), (ii) and (iii) of paragraph (a) ;
- (c) permit the construction or laying on the bed of the sea within the three miles limit of—
 - (i) cables, wharves, piers, breakwaters, sea walls, embankments, jetties, landing-stages or other structures,
 - (ii) drainpipes or sewers, or
 - (iii) any work of public utility ;
- (d) permit the removal for industrial purposes of shells from the bed of the sea within the three miles limit ;
- (e) reclaim land from the sea or permit the reclamation of land from the sea, and alienate or let any land so reclaimed :

Provided that not less than one month before submitting to Parliament any proposal to grant any rights in respect of the sea-shore in terms of this section, the Minister shall at the expense of the person in whose favour such right is proposed to be granted cause a notice setting forth particulars of such proposal to be published in the *Gazette* and in a newspaper circulating in the district in which such portion of the sea-shore is situate :

Provided further that if any portion of the sea-shore proposed to be dealt with in terms of this section is situate within or adjoins the area of jurisdiction of a local authority the Minister shall before any such proposal is submitted to Parliament consult the local authority concerned.

Use by Government of sea-shore and bed of the sea within the three miles limit.

6. The Governor-General may, if authorized thereto by a resolution of both Houses of Parliament and on such conditions as may be set forth in such resolution, authorize the use of the

sea-shore of which he is by section *two* declared to be the owner or the bed of the sea within the three miles limit for the purpose of any Government undertaking or work.

Exercise of powers for purposes of public health.

7. (1) Notwithstanding anything contained in the Public Health Act, 1919 (Act No. 36 of 1919), the Governor-General may by proclamation in the *Gazette* declare that any local authority, as defined in the aforesaid Act, may exercise, in respect of the sea-shore situate within its area of jurisdiction or adjoining such area, any of the powers which are conferred by or under that Act on a local authority.

(2) The power conferred by section *five* of the Public Health Act, 1919, Amendment Act, 1927 (Act No. 36 of 1927) on the Minister of Public Health or the Administrator of a Province or a magistrate or a local authority, as defined in the Public Health Act, 1919 (Act No. 36 of 1919), as amended by the said Act, to delegate to certain persons or to a local authority a function or duty vested in or devolving upon him or it under the said Acts, may be exercised as regards any function or duty which may vest in or devolve upon him or it under the said Acts as regards any portion of the sea-shore or the sea or the bed of the sea within the three miles limit.

Application of mining laws.

8. For the purposes of any law which is or at any time has been in force in any part of the Union relating to the exploitation of metals, minerals, precious stones, coal or oil, the sea-shore of which the Governor-General is by section *two* declared to be the owner and the bed of the sea within the three miles limit shall be deemed to be Crown land; and, in the application of any such law, this section shall be deemed to have been in operation as from the commencement of such law.

Determination of actual position of high-water mark.

9. (1) The Minister may, in his discretion—

(a) upon the application of an owner of land of which one or more of the boundaries extend to high-water mark, or extend to a stated distance from high-water mark, to have the position of high-water mark relatively to that land or any portion of that land determined and defined by beacons; or

(b) upon the application of a local authority, within or adjoining whose area of jurisdiction any portion of the sea-shore is situate, to have the position of high-water mark relatively to that area or to any portion of that area determined and defined by beacons; or

(c) upon his own motion, if he considers that it is in the public interest that the position of high-water mark relatively to any land be determined and defined by beacons,

by notice in the *Gazette* appoint a commission to make the required determination: Provided that if any mortgage bond over or any real right in the land referred to in paragraph (a) is registered in the deeds registry, the application shall be accompanied by proof that written notice has been given by the owner of his intention to apply for such determination to any person in whose favour any mortgage over a real right in the land is so registered.

(2) The Minister may before appointing a commission upon any application made under paragraph (a) or (b) of sub-section (1) require the applicant to deposit with him security for the payment of any amount which in terms of sub-section (14) he may be ordered to pay.

(3) The commission shall consist of—

(a) the magistrate of the district in which that land or area is situate, who shall be the chairman;

(b) the Surveyor-General (or one of his professional assistants) of the province in which that land or area is situate; and

(c) one other person, who shall be a land-surveyor in independent practice recognized as such for the purposes of the Land Survey Act, 1927 (Act No. 9 of 1927), and who has practised as such for a period of at least ten years and who shall be nominated by the Minister after consultation with the owner of the land relatively to which the position of high-water mark is to be determined, and where the position of high-water mark is to be determined relatively to the area of jurisdiction of a local authority or relatively to land situate within the area of jurisdiction of a local authority, after consultation with that local authority.

(4) The notice referred to in sub-section (1) shall state the names of the members of the commission and shall describe the land or area relatively to which it is required to determine the position of high-water mark.

(5) The commission shall keep a record of its proceedings and of the evidence taken by it, and such record shall, after the commission has issued an order in terms of this section, be filed in the office of the Surveyor-General and shall thereafter be available for inspection by any person.

(6) The decision of the majority of the members of the commission shall be deemed to be the decision of the commission.

(7) The commission shall for the purposes of the enquiry be entitled to enter upon the land or area relatively to which the position of high-water mark is to be determined and have the powers and jurisdiction conferred upon the Board of Trade and Industries by section *two* of the Board of Trade and Industries Act, 1923 (Act No. 28 of 1923), and that section shall, *mutatis mutandis*, apply to the commission and to all witnesses subpoenaed by the commission: Provided that any subpoena mentioned in sub-section (2) of section *two* of that Act shall be signed by the chairman of the commission.

(8) The commission shall after enquiry determine the position at the date on which the determination is made of high-water mark relatively to the land or area described in the notice referred to in sub-section (1), shall make an order setting forth that position, and shall state its reasons for its findings.

(9) The commission may, with the consent of the Governor-General and of every owner of land situate outside the area of jurisdiction of a local authority, relatively to which land the position of high-water mark is to be determined, and, where the position of high-water mark is to be determined relatively to the area of jurisdiction of a local authority or relatively to land situate within the area of jurisdiction of a local authority with the consent of the Governor-General and of that local authority, determine that a give-and-take line which follows closely the actual high-water mark and which is set forth in an order made by the commission shall be high-water mark relatively to that land or that area.

(10) Subject to the provisions of sub-section (11), high-water mark as determined by the commission in terms of sub-section (8) or (9) and set forth in the order made by the commission shall, for the purposes of this Act, and for the purposes of determining the boundaries of the land or area described in the notice referred to in sub-section (1), be deemed at all times thereafter to be high-water mark, and those boundaries shall be deemed to have been lawfully amended accordingly: Provided that if after any determination has been made any such boundary is, by reason of encroachment by the sea, regularly submerged at low-water during periods of ordinary spring tides, the Minister may, after affording a reasonable opportunity to the owner concerned to protect his land from such encroachment exercise the powers conferred on him under paragraph (c) of sub-section (1).

(11) An order made by the commission shall be final and not subject to appeal or review by any court of law, except on any question of law in which case an appeal or review may be noted or applied for within the period of three months after the date on which the order was made to any division of the Supreme Court of South Africa within whose area of jurisdiction is situate the sea-shore bounded by the high-water mark the position of which is set forth in that order. Such appeal or review shall be prosecuted within such period as may be prescribed by rule of the said division or fixed by order of that division.

(12) The Surveyor-General shall cause the necessary beacons to be erected either on the sea-shore or on the landward side of the high-water mark in accordance with the order of the commission and shall cause the position of those beacons to be determined by actual survey and cause a plan to be prepared showing the position of the beacons so erected in relation to the property affected and the beacons so erected shall, for the purposes of the Land Survey Act, 1927 (Act No. 9 of 1927), be deemed to have been lawfully established as if they had been established in terms of section *thirty-one* of that Act.

(13) The Surveyor-General shall cause such amendments or endorsements to be made on the relative diagrams as may be necessary to record the determination made by the commission and any alteration in the boundaries of any land consequent upon that determination, and shall notify the Registrar of Deeds concerned of those amendments; and the Registrar of Deeds shall thereupon amend the relative title-deeds and registers in the deeds registry in his charge.

(14) The commission may, if it thinks it just to do so, order that the whole or a portion of the costs of survey and of erection of beacons referred to in sub-section (12) and the fees and

expenses paid to witnesses in terms of sub-section (16) shall be borne by the person upon whose application the commission was appointed or by the owner of any land the boundaries of which are affected by the determination by the commission of high-water mark; and the Minister may deduct the amount so ordered to be paid by any person from the amount of security deposited by him in terms of sub-section (2) or may recover the same or the balance remaining after any such deduction from any such person by action in a competent court.

(15) Any person (not being a member of the public service) who is appointed as a member of the commission shall be paid, out of moneys appropriated by Parliament for the purpose, fees and expenses of travelling and subsistence prescribed under section *ten*.

(16) Any witness who is summoned to give evidence at any enquiry by the commission shall, subject to any order by the commission, be paid, out of moneys appropriated by Parliament for the purpose, fees and expenses of travelling and subsistence at such rates as may from time to time be prescribed in terms of the Magistrates' Courts Act, 1917 (Act No. 32 of 1917), or any amendment thereof for witnesses attending a magistrate's court: Provided that the commission may in its discretion disallow the expenses of any witness whom it has summoned at the request of any person.

Regulations.

10. (1) The Governor-General may make regulations, not inconsistent with this Act—

- (a) concerning the use of the sea-shore;
- (b) concerning bathing in the sea;
- (c) concerning the removal from the sea-shore or the bed of the sea within the three miles limit of sand, shingle, rock, stone, shells or seaweed;
- (d) for the prevention or the regulation of the depositing or the discharging upon the sea-shore or in the sea within the three miles limit of offal, rubbish or anything liable to be a nuisance or danger to health;
- (e) concerning the control, generally, of the sea-shore and of the sea and the bed of the sea within the three miles limit;
- (f) prescribing fees for the doing of any act upon or in or in relation to the sea-shore or the bed of the sea or the sea within the three miles limit;
- (g) prescribing the fees and expenses referred to in sub-section (15) of section *nine*.

(2) Any regulation may provide a penalty, not exceeding a fine of twenty-five pounds, for any contravention thereof or failure to comply therewith.

(3) Any regulation may be expressed to apply to the whole or to any defined portion of the sea-shore (whether it has been alienated or not) or the bed of the sea or the sea within the three miles limit; and whenever any regulation applies to any portion of the sea-shore situate within or adjoining the area of any local authority, or to any portion of the bed of the sea or the sea within the three miles limit adjoining such portion of the sea-shore, the Governor-General may by that regulation (or by any other regulation made under this section) confer powers and impose duties in relation to the administration of such regulation upon such local authority or upon any of its officers: Provided that not less than one month before any regulation is submitted to Parliament in terms of sub-section (6) the Minister shall cause to be published in the *Gazette* a copy of the proposed regulation: Provided further that before any regulation is made concerning any portion of the sea-shore situate within or adjoining the area of jurisdiction of any local authority, the Minister shall consult the local authority concerned and submit to it a copy of the proposed regulations.

(4) Any regulation may provide that all fees or fines recovered thereunder or under any other regulations made under this section, in respect of acts done upon or in relation to any portion of the sea-shore situate within or adjoining the area of any local authority, or upon or in or in relation to any portion of the bed of the sea or the sea within the three miles limit adjoining such portion of the sea-shore, shall accrue to that local authority.

(5) Nothing contained in this section or in any regulation made under this section shall affect any by-law lawfully made by a local authority under any law.

(6) No regulation made under this section shall take effect unless it has been approved by resolution of both Houses of Parliament.

Validation of previous grants.

11. The pieces of land described in the Schedule to this Act shall, in so far as they include portions of the sea-shore, be deemed to have been lawfully granted.

Authority to deal with certain piece of land.

12. The Governor-General may deal with the piece of land which is described in item 1 of the Schedule to this Act, and which, in terms of section *one* of the Defence Endowment Property and Account Act, 1922 (Act No. 33 of 1922), was transferred to the Government of the Union, in accordance with the provisions of section *three* of that Act, notwithstanding the fact that a portion thereof consists of sea-shore.

Savings.

13. Nothing contained in this Act shall affect—

- (a) the provisions of the Simon's Bay Dockyard Port Regulation Statutes, 1898-1912, or any rights or powers conferred upon the Admiralty by agreement or by or under any law relating to ports and harbours in respect of any portion of the sea-shore or the sea or the bed of the sea within the three miles limit or any rights of the Admiralty under any agreement entered into in terms of section *six* of the Defence Endowment Property and Account Act, 1922 (Act No. 33 of 1922);
- (b) any rights or powers conferred upon the Railways and Harbours Administration of the Union by or under any law relating to ports and harbours in respect of any portion of the sea-shore or the sea or the bed of the sea within the three miles limit, and in the event of any conflict between the provisions of this Act and any such law, the rights and powers of the said Administration shall be determined by the provisions of such law, and not by the provisions of this Act;
- (c) any rights of any member of the public to use the sea-shore or the sea or the bed of the sea within the three miles limit, except in so far as such rights are inconsistent with the rights conferred by any title validated by this Act, or by any title, lease, permit, authority, delegation or regulation lawfully issued, entered into, granted or made by virtue of this Act or by virtue of any such title, lease, permit, authority, delegation or regulation.
- (d) the power of a provincial council to make ordinances conferred upon it by or under section *eighty-five* of the South Africa Act, 1909, or any other law, or the validity or operation of any ordinance lawfully made by any provincial council before or after the commencement of this Act; or
- (e) any rights or powers conferred upon any person by any licence granted by the Postmaster-General in terms of section *eighty* of the Post Office Administration and Shipping Combinations Discouragement Act, 1911 (Act No. 10 of 1911).

Short title.

14. This Act shall be known as the Sea-shore Act, 1935.

Schedule.

Item.	Instrument of grant.	Date.	Description of land.	Approximate Area.	Grantee.
1	Grant No. 23 (Cape Freehold Grants, Vol. 19).	September 17, 1888.	Piece of land situate at Three Anchor Bay.	3 morgen 343 square roods.	Secretary of State for War.
2	Grant No. 26 (Cape Freehold Grants, Vol. 28).	April 22, 1915.	Pieces of land situate at Camps Bay named Camps Bay Foreshore South and Camps Bay Foreshore North.	52 morgen 180 square roods.	The Council of the City of Cape Town.
3	Grant No. 9 (Cape Freehold Grants, Vol. 30).	September 8, 1919.	Piece of land situate at Sea Point, named Lot Low Water No. 1.	21 morgen 300 square roods.	The Council of the City of Cape Town.
4	Grant No. 16 (Cape Freehold Grants, Vol. 30).	February 10, 1920.	Piece of land situate at Sea Point named Lot Low Water No. 2.	6 morgen.	The Council of the City of Cape Town.
5	Grant No. 146 of 1931.	July 10, 1931.	Piece of land situate at Simons-town, named Section Admiralty House East.	4 morgen 78 square roods.	The Commissioners of the Admiralty.