

Model Local Law No.6 (Bathing Reserves) 2010

Version 1.2

GUIDANCE NOTES

Disclaimer

These guidance notes have been compiled for your information only and should not be treated as an exhaustive statement on the subject. Nor should they be considered as rendering to you legal or professional service. The Department of Infrastructure, Local Government and Planning (DILGP) recommends that independent legal advice be sought on any matter of interpretation of the model local laws or template subordinate local laws. The information is provided on the basis that you are responsible for making your own assessment of the topics discussed.

DILGP expressly disclaims all liability (including but not limited to liability for negligence) for errors or omissions of any kind whatsoever or for any loss (including direct and indirect losses), damages or other consequences which may arise from your reliance on the material contained in the guidance notes.

Purpose

These guidance notes aim to assist local governments interpret and implement the set of seven model local laws gazetted on 25 June 2010. They provide explanatory commentary on each model local law and its relevant subordinate local law template.

The guidance notes set out the scope and purpose of each part of the model local law and associated provisions within the relevant template subordinate local law and explain how the model is intended to be applied. The notes also identify:

- how linkages between the different model local laws form an integrated regulatory regime
- how the model laws link with other relevant legislation including the *Local Government Act 2009* (LGA).

A set of guidance notes is available for each model local law and should be read in conjunction with the relevant model local law and template subordinate local law.

Context

Model local laws 2010

The model local laws were developed following consultation with stakeholders undertaken in 2007–08. The model local laws cover a range of matters considered appropriate for local government to regulate such as:

- undertaking prescribed activities in a local government area
- bathing reserves
- parking
- community and environmental matters
- animal management and the regulation of other activities on local government controlled areas, facilities and roads.

This means there is only one set of provisions for obtaining a local government's approval on a matter, rather than duplicating these provisions within each model local law. It ensures the model local laws are streamlined but flexible, enabling local governments to make local laws on new issues in the future without having to repeat relevant approval and enforcement provisions. It also means that a local government needs to adopt the Administration Model to enable any other model local law adopted to have effect.

There are a number of overarching principles upon which all model local laws are based. These include a requirement that a model local law should not duplicate state legislation and it should be necessary and enforceable. A full list of the principles upon which all model local laws are based are set out in the guidance notes for the Administration Model.

Template subordinate local laws 2010

A template subordinate local law is available for each model local law as an additional support tool for local governments adopting the model local laws. These templates are available on the department's website at www.dilgp.qld.gov.au.

Subordinate local laws are essential to the successful implementation of the model local laws. In recognition of the diversity of local governments throughout the state, and to avoid limiting the application of the model local laws, subordinate local laws provide the means for local governments to specify the details of regulatory requirements that meet their particular needs.

It is intended local governments use the templates as a guide when developing subordinate local laws appropriate for their areas for each model local law adopted. The templates provide a subordinate local law structure that is consistent with the heads of power provided in the model local law. While the templates include examples and suggestions for subordinate local law content in italicised text, this text is not intended to provide an exhaustive list of matters for inclusion.

Commentary on model local law provisions and template subordinate

Model Local Law No.6 (Bathing Reserves) 2010 (the Bathing Reserves Model) and the Subordinate Local Law No.6 (Bathing Reserves) 2010 (the Bathing Reserves Subordinate) updates and replaces the model local law matters that were previously covered by Model Local Law No.7 (Bathing Reserves) 2000. It has been drafted to complement existing state legislation dealing with maritime safety.

The Bathing Reserves Model should be read in conjunction with the Administration Model, which provides the procedural framework for all of the other model local laws. The Administration Model sets out common approval processes for undertaking specific prescribed activities. The Bathing Reserves Model allows local governments to regulate the reservation of parts of a bathing reserve for competitions and special occasions through an approval system as these are prescribed activities for the purposes of the Administration Model.

Section 5(b) of the Administration Model states that a prescribed activity includes an activity that is prescribed by a Local Government Act which includes another local law as a prescribed activity. Section 7 of the Administration Model provides that an approval required for a prescribed activity must be obtained under Part 2 of that model local law. Linking the approval process for undertaking such activities in bathing reserves to the Administration Model avoids unnecessary duplication in the Bathing Reserve Model of separate approval provisions.

While the Bathing Reserves Model is to be read in conjunction with the Administration Model, it should be noted that the authorised persons provisions of the Administration Model do not apply to authorised persons appointed under the Bathing Reserves Model. Section 4(2) of the Bathing Reserves Model limits the scope of the powers of authorised persons appointed under this model to only those powers provided under this model. This is because of the unique circumstances attaching to the regulation of bathing reserves. Surf life savers are appointed as authorised persons, but they are not required to have the full range of powers provided under the Administration Model and the *Local Government Act 2009*. Conversely, authorised persons appointed by the local government for other purposes may use either the powers provided to them under their instrument of appointment or under the Administration Model when they are dealing with matters in a bathing reserve.

See Appendix 2 for a summary of the offences and corresponding penalties in the Bathing Reserves Model and Bathing Reserves Subordinate.

Part 1—Preliminary

The Bathing Reserves Model provides local governments with the regulatory framework to control conduct and the use of equipment and provide for the safety of bathing reserves. A bathing reserve is defined under section 26(1) of the Local Government (Operations) Regulation 2010 to mean a place under the control of the local government as granted by the Governor in Council by a Gazette notice. The Bathing Reserves Model can therefore only be applied by local governments that have coastal bathing reserves

gazetted under their control and cannot be used for regulating other areas used for bathing such as dams, creeks and other recreational waterways. However, Model Local Law No.4 (Local Government Controlled Areas, Facilities and Roads) 2010 (the LGCAFR Model) allows local governments to prohibit or restrict activities on local government controlled areas and may therefore provide an option for regulating bathing in local government controlled areas such as dams.

S2. Purpose and how it is to be achieved

The Bathing Reserves Model enables local governments to ensure the public safety and convenience of bathing reserves by providing for the:

- designation, supervision and management of safe, supervised bathing areas
- regulation of conduct and the use of aquatic equipment within bathing reserves
- assignment of responsibility to lifesaving clubs for managing, patrolling and supervising bathing reserves
- appointment and powers of authorised persons to manage and enforce the regulation of conduct within bathing reserves.

This provision, by default, also sets the broad context and scope of subordinate local laws that may be developed by local governments to supplement the Bathing Reserves Model. The content of subordinate local laws needs to be consistent with the purpose of the Bathing Reserves Model as outlined in this provision.

S3. Definitions—the dictionary

The Schedule to each model includes a dictionary to ensure that all relevant words used in the model are defined and are consistent with state legislation. Definitions are included in the dictionary for the model local laws based on the following approach:

- where a term is used in only one section of the model local law it is defined in that section and not repeated in the dictionary
- where a term is defined in the Administration Model and also used with the same meaning in another model, the definition is not repeated in the dictionaries of the other models. Instead the term will be signposted in the other models dictionaries to refer the reader to the definition in the Administration Model
- generally where a term is defined in the *Local Government Act 2009* (LGA) it is not replicated in the model local law dictionaries. The first instance of the term's use in the model is footnoted to alert readers to refer to the LGA for its definition
- where a term is defined in another Act and the models rely on the meaning given to the term in that Act, specific reference is made to this effect in the model.

S4. Relationship with other laws

The Bathing Reserves Model operates in conjunction with the LGA and the *Transport Operations (Marine Safety) Act 1994* (TOMSA) and Transport Operations (Marine Safety) Regulation 2004 (TOMSR).

A potential overlap between the Bathing Reserves Model and TOMSR may arise in two ways:

- TOMSR applies to all Queensland waters, while the Bathing Reserves Model applies to a subset of Queensland waters, designated as a bathing reserve
- TOMSR applies to ships and powered personal watercraft (such as a jet ski), while the Bathing Reserves Model regulates 'aquatic equipment'. This is defined to include a boat, vessel, a surf ski, jet-ski, surfboard, sailboard, bodyboard or another device (whether motorised or not) for use on or in water.

While there is limited scope for potential inconsistency between TOMSR and the Bathing Reserves Model, section 27 of the LGA (inconsistency with state and Commonwealth laws) confirms that TOMSR will prevail over the local law provisions to the extent of any inconsistency.

See also Appendix 3 for a list of current legislation in addition to the LGA and Local Government Regulations that is relevant to the matters covered by this model local law. Local governments should carefully consider this legislation, and any new legislation, when developing subordinate local laws to ensure the content is consistent with requirements of state legislation.

Part 2—Bathing reserves

S5. Signs indicating existence of bathing reserve

Local governments are required under this provision to erect and maintain signs to indicate the boundaries of a bathing reserve it intends to regulate. This ensures that members of the public and others using the area are aware of the existence of the bathing reserve and may consider any impact this may have on their rights to enjoy the area.

S6. Bathing areas

This provision empowers an authorised person to establish a safe bathing area within a bathing reserve, marked out by two patrol flags. The outer seaward boundary of a bathing area has been limited to 200 metres from the flags rather than using the outer boundary of the bathing reserve, which is often one kilometre seaward of the low water mark. Given that unassisted swimmers rarely swim out more than 50–100 metres from the shore, defining the outer boundary of the bathing area as 200 metres from the flags was considered to achieve an appropriate balance between the interests of vessels and the safety of swimmers.

The 200 metre bathing area boundary will reduce the limitation on the use of certain aquatic equipment in bathing reserves. For example, section 11 of the Bathing Reserves Model prohibits the use of aquatic equipment within a bathing area. This means that a person on a surf ski paddling parallel to the shore beyond the surf break must only be 200 metres from the shore wherever there is a flagged area, instead of one kilometre as

would have been the case if the outer boundary of the bathing area was defined by the outer boundary of the bathing reserve.

It should also be noted that the outer boundary of the bathing area is referenced as 200 metres from the flags rather than measuring from the shoreline. This makes it easier to define and allows the bathing area to be more easily visualised as a box. In addition, section 6(5) also allows for a bathing area to be declared with a boundary less than 200 metres out from the foreshore. This may be required in cases where there is a narrow passage.

S7. Flags to inform bathers about prevailing conditions

If an authorised person marks out a bathing area and considers the prevailing conditions to be potentially hazardous, the authorised person must exhibit a yellow flag in a prominent position on or adjacent to the foreshore warning bathers of the conditions. This ensures that bathers are clearly informed about potentially hazardous conditions that are not considered dangerous enough to close the bathing reserve.

S8. Closure of bathing reserve

An authorised person may close a bathing reserve by placing a red flag in a prominent position on the foreshore and removing any patrol flags. This provision also creates an offence for bathing in a bathing reserve that has been closed, which gives authorised persons the ability to appropriately enforce the closure of a bathing reserve.

S9. Reservation for lifesaving training

This provision clarifies that an authorised person may set aside part of a bathing reserve for lifesaving training and may impose access restrictions to that area. Any access restrictions must be clearly indicated by signs, however the area cannot be set aside on an exclusive basis without an approval under section 10 (see below).

S10. Reservation for lifesaving training

Section 10 provides for the reservation of a bathing reserve or a part of a bathing reserve for:

- lifesaving training on an exclusive basis
- the conduct of a surfing competition, a surf lifesaving competition or other aquatic activity.

Section 10 declares these activities to be a prescribed activity under section 5(b) of the Administration Model. An approval is therefore required to undertake any such activity.

The process for applying for, deciding, conditioning, amending or suspending an approval is contained in Part 2 of the Administration Model, which provides the framework model for all the model local laws. That model sets out the approval process for all prescribed activities within all the model local laws, including in this instance for an approval to set aside part of a bathing reserve for particular activities.

Schedule 27 of the Administration Subordinate provides a template that local governments may use to prescribe specific details for an approval to set aside part of a bathing reserve for a particular activity. The templates for all prescribed activities follow a standard format but can be modified by local governments as appropriate and sub

sections removed or added if necessary. For example, it is unnecessary to retain the section on third party certification if this is not relevant for this type of approval.

Schedule 27 provides examples of the types of documents and materials that a local government may require to accompany applications for an approval of this kind, along with examples of criteria that may be relevant for determining applications. In addition, examples of conditions that may be imposed on approvals to set aside part of a bathing reserve for a particular activity are included for consideration by local governments.

Local governments should only use the sections of the Administration Subordinate that are relevant for the particular prescribed activity. It is a matter for local governments to determine how detailed or streamlined an approval process for a particular prescribed activity needs to be.

The Administration Model is intended to be sufficiently flexible to allow local governments to tailor, by subordinate local law, the necessary level of complexity for an approval for a prescribed activity. For example, section 6(3) of the Administration Model provides for a local government to declare in a subordinate local law that certain events or activities within a prescribed activity do not require an approval.

In addition, this provision ensures that where an approval permits restrictions on access to any part of the bathing reserve, the area set aside for the activity must be clearly indicated by signs erected in prominent positions in the bathing reserve. This is required to ensure that members of the public are made aware of the restrictions, particularly given that a penalty is imposed for contravening any such restrictions on access to the bathing reserve.

Part 3—Use of aquatic equipment in bathing reserves

S11. Prohibition of use of aquatic equipment in bathing areas

This provision prohibits the use of aquatic equipment within a bathing area and sets a maximum penalty of 20 penalty units for contravention of this prohibition. While the intention is to strictly prohibit all aquatic equipment from a bathing area to ensure the safety and enjoyment of swimmers, a number of exceptions to this prohibition are listed. These include where the equipment is:

- authorised under another law (including another local law)
- authorised by an authorised person
- a rubber float or board that will not give rise to injuries
- lifesaving equipment being used by lifesavers for surveillance or rescue.

It should also be noted that in defining the seaward boundary of the bathing area as 200 metres out from the flags, the local law no longer prohibits the use of aquatic equipment between the 200 metre mark (i.e. the outer boundary of the bathing area) and the outer boundary of the bathing reserve (approximately one kilometre). In practical terms, this means that a person on a surf ski, paddleboard, jets ski, kite-surfer or sailboard moving parallel to the shore beyond the surf break must only be 200 metres from the shore wherever there is a flagged area, instead of one kilometre from shore as would have been the case if the outer boundary of the bathing area was defined by the outer boundary of the bathing reserve.

Section 127A of the TOMSR also operates to restrict the speed of personal watercraft within 60 metres of a bathing reserve, so this speed limit would apply also to the intermediate zone between the outer boundary of the bathing area and the outer boundary of the bathing reserve. Jet skis, are therefore speed restricted within a bathing reserve (and within 60 metres seaward of the bathing reserve boundary) and prohibited within a bathing area as a result of the combined operation of both TOMSR and the Bathing Reserves Model.

S12. Restrictions on use of aquatic equipment in bathing reserves

Local governments have the flexibility to prohibit or restrict the use of aquatic equipment in a bathing reserve or a part of a bathing reserve by subordinate local law. Where such restrictions or prohibitions are applied, appropriate signage is required to be erected to ensure members of the public are made aware of the restriction or prohibition. This is particularly important given the maximum penalty for the contravention of any such restriction or prohibition is 20 penalty units. Of course it is an exemption to this provision where the use of such equipment is specifically authorised by under another law.

Schedules 1 and 2 of the Bathing Reserves Subordinate makes provisions for local governments to list the prohibitions or type of restrictions on the use of aquatic equipment.

Schedule 1 can be used to detail the:

- specific aquatic equipment or a class of aquatic equipment that is prohibited
- area to which the prohibition applies—for example, the prohibition may apply to the entire bathing reserve or just part of the bathing reserve.

Similarly, Schedule 2 can include the:

- details of the area to which the restriction on aquatic equipment applies (either in the entire bathing reserve or a specific part of it)
- specific item of aquatic equipment to which the restriction applies
- extent of the restriction (this may be a restriction on the use of the equipment during certain times or it may impose particular safety requirements or conditions on its use).

Given the broad range of aquatic equipment in existence and potential restrictions able to be imposed, local governments should give careful consideration to defining in Schedules 1 and 2 of the Bathing Reserves Subordinate the special features or level of risk that warrants the imposition of these restrictions or prohibitions.

The state also has complementary powers under section 221 of TOMSR to prohibit the operation of a ship where it may endanger marine safety. For example, Maritime Safety Queensland (MSQ) may publish a gazette notice prohibiting the operation of a ship within 60 metres either side of the boundaries of a flagged swimming area that endangers marine safety. The TOMSR provisions also provide for local governments to propose to MSQ for the creation of a marine zone, which may be seen as an alternative means for local governments to restrict the use of aquatic equipment or other activities within a bathing reserve.

While there is scope for potential inconsistency between these provisions, section 12(3) of the Bathing Reserves Model explicitly states that any prohibition or restriction under section 12 is subject to being ‘authorised under another law’. This confirms that the Bathing Reserves Model cannot permit the use of aquatic equipment within a bathing reserve if that is contrary to a restriction gazetted under section 221 of TOMSR. This approach is also consistent with section 27 of the *Local Government Act 2009* (LGA) (inconsistency with state laws) which confirms that TOMSR would prevail over the local law provisions to the extent of any inconsistency.

S13. Reservation of areas for use of aquatic equipment

Under this provision, an authorised person may temporarily set aside a part of a bathing reserve for the use of aquatic equipment of a particular type. The part of the bathing reserve set aside must be clearly defined by flags or signs or another way that clearly identifies the area that is being set aside and the purposes for which it may be used. The provision also creates an offence for using aquatic equipment contrary to any such reservation, with a maximum penalty of 20 penalty units.

These provisions dovetail with those in section 12 to enable authorised persons to accommodate the interests of all bathing reserve users in a manner that protects the safety and amenity of all users. This is achieved by regulating the use of aquatic equipment within bathing reserves on both a temporary (under section 13) or permanent basis (under section 12).

Part 4—Behaviour in bathing reserves

S14. Dangerous objects

This provision creates an offence for bringing a dangerous object or item of aquatic equipment into a bathing reserve or using a dangerous object or item of aquatic equipment within a bathing reserve, which has a maximum penalty of 20 penalty units. It gives authorised persons the power to regulate the items brought into and used in a bathing reserve and thereby ensure the safety of all bathing reserve users.

This provision is required in addition to section 12 to cover dangerous items and objects that may not be specifically prohibited within the bathing reserve. The terms ‘dangerous object’ and “dangerous item of aquatic equipment” are both defined in the dictionary as being of such a nature that, in the absence of care or precaution in its use or management, the life, safety or health of any person may be endangered. This definition is based on section 289 (Duty of persons in charge of dangerous things) of the Queensland Criminal Code for ease of enforcement by authorised persons and to ensure consistency with other state legislation. It gives broad scope for a wide range of potentially dangerous objects or items of aquatic equipment to be managed under this provision.

It should be noted that surf lifesaving equipment being used by lifesavers is specifically exempted from the application of this provision.

S15. Prohibited equipment

It is an offence to have prohibited equipment in a bathing reserve. Prohibited equipment is defined to include a spear gun, a fishing spear or another object classified as prohibited equipment under a subordinate local law. A maximum penalty of 20 penalty units is set for breaching this provision.

Section 6 of the Bathing Reserves Subordinate provides an example of how local governments may specify any other equipment that is prohibited within a bathing reserve. This may include items that are not necessarily dangerous, but obstruct the right of others to enjoy a bathing reserve. An example given in the Bathing Reserves Subordinate is a tent or beach shelter covering more than four square metres.

In addition, section 7 of the Bathing Reserves Subordinate allows local governments to outline the circumstances where prohibited equipment may be exempted from these provisions. That is, a local government may exempt the use of tents covering more than four square metres where it is being used for an event or competition approved by the local government. This gives local governments the flexibility to deal with the range of circumstances that may arise in relation to regulating equipment in bathing reserves and balance the interests of everyone using the bathing reserve.

S16. Dangerous conduct

This is a broad ranging provision that is intended to give authorised persons the power to manage any conduct that creates a risk to the safety of others in any way. The provision refers to the use of aquatic equipment or 'anything else' and sets a maximum penalty of 20 penalty units for the offence. Local governments will need to take care in the application and enforcement of this provision to ensure authorised persons do not inadvertently take on the role of quasi-police.

S17. Emergency evacuation alarm

This provision provides for authorised persons to raise an emergency evacuation alarm to signal bathers to leave the water in the event of a dangerous situation. The alarm may be given by the prolonged ringing of a bell or alarm and/or the raising of a red flag or other manner recognised by Surf Life Saving Queensland, such as raising a red and white quartered flag. Once the alarm has sounded, bathers must leave the water as soon as practicable and not return until the all-clear is given. The all-clear may be signalled by a short ringing of the bell or siren and replacement of the red flag with a yellow flag.

This provision also creates an offence for remaining in the water after an emergency evacuation alarm has sounded, with a maximum penalty of 20 penalty units. This provision seeks to ensure that authorised persons or life savers are not put at further risk to remove people from the water in an emergency or dangerous situation.

S18. False alarms

This provision creates an offence for giving an emergency evacuation alarm or giving the all clear after an emergency evacuation alarm without the authority of an authorised person. The penalty is set at a maximum of 50 penalty units, which reflects the seriousness of the offence given the potential consequences to the safety of bathers.

Part 5—Lifesaving clubs and powers of authorised persons

It should be noted that the powers of authorised persons under the Bathing Reserves Model are more limited in scope to those of authorised persons appointed under the Administration Model. This is because of the unique circumstances of regulating bathing reserves, where surf life savers are appointed as authorised persons, but are not required to have the full range of powers provided under the Administration Model and the *Local Government Act 2009*. The notes below outline the powers of authorised persons appointed under this model (ss22–25) and the process for applying additional limitations on these powers (s27).

S19. Recognised lifesaving clubs

Local governments may assign the responsibility for patrolling a particular part of a bathing reserve to a lifesaving club, with their agreement. This mirrors the current process by which most local governments devolve patrolling responsibilities to surf lifesaving clubs. The dictionary defines a ‘recognised life saving club’ as one to which the local government has assigned the responsibility for patrolling a bathing reserve or part of a bathing reserve under this provision.

S20. Enclosure for lifesaving patrols

A recognised lifesaving club may, with the written approval of the relevant local government, enclose a part of a bathing reserve for the exclusive use of members of lifesaving patrols.

This ensures that surf lifesavers may establish areas within a bathing reserve for the storage of equipment and the exclusive use by surf lifesavers in order to provide operational effectiveness of surf lifesaving patrols.

S21. Distinctive clothing

Surf lifesaving patrol members are required to wear a distinctive uniform approved by Surf Life Saving Queensland while performing duties in a bathing reserve. This provision ensures that surf lifesavers are dressed similarly across different bathing reserves and are easily recognisable by members of the public.

S22. Power to remove or reduce danger

This provision gives authorised persons the power to take action to reduce or remove any potential dangers within a bathing reserve caused by the presence of certain objects or items of aquatic equipment. For example, lifesavers that are authorised persons may direct a person to either remove a potentially dangerous object from the bathing reserve or direct them to take action such as securing an item that may be blown away or otherwise cause harm to others. It provides a broad power to lifesavers to issue directions to manage potentially dangerous objects and creates an offence for failing to comply with such directions.

This power is complementary to sections 14–15 of the Bathing Reserves Model, which establish the offences of having dangerous objects or items of prohibited equipment in a bathing area. Section 22 operates in addition to these provisions, to give authorised persons the power to take action to reduce danger and manage situations where these offences have occurred or to prevent potentially dangerous situations from arising.

The terms ‘dangerous object’ and ‘dangerous item of aquatic equipment’ are both defined in the dictionary as being of such a nature that, in the absence of care or precaution in its use or management, the life, safety or health of any person may be endangered. This definition gives broad scope for a wide range of potentially dangerous objects or items of aquatic equipment to be managed under this provision.

S23. Power to stop dangerous and antisocial conduct

Authorised persons may direct a person to stop any behaviour that endangers the safety of themselves or others or causes a nuisance to others within a bathing reserve. This provision creates an offence for failing to comply with any such directions, with a maximum penalty of 20 penalty units. The elements of the offence are defined in broad terms in an attempt to cover the range of behaviours requiring regulation to ensure the continued safe enjoyment of bathing reserves. For example, this provision could be used to stop people from jumping off rocks into dangerous surf or surfing in dangerous conditions where they are potentially risking their lives or the lives of lifesavers having to rescue them.

This power is complementary to section 16 of the Bathing Reserves Model, which establishes the offence of using aquatic equipment or anything else in a bathing area in a way that creates risk to the safety of others. Section 23 operates in addition to this provision, giving authorised persons the power to take action to manage situations where these offences have occurred and to prevent other potentially dangerous or anti-social conduct from occurring.

It is recommended that authorised persons be provided with training in relation to these provisions to ensure they are enforced in an appropriate manner and do not inadvertently disadvantage or target particular social groups, such as the socially or intellectually impaired.

S24. Power to require bathers to leave water

This provision gives authorised persons the power to give bathers a direction to leave the water where a bathing reserve or part thereof has been closed, if the emergency evacuation alarm has been sounded, or if there is any other risk to the bathers’ safety. It is an offence not to comply with such a direction, with a maximum penalty of 20 penalty units.

It should also be noted that the offence of disobeying an instruction given by an authorised person to leave a closed bathing reserve is in addition to the offence of swimming in a closed bathing reserve (section 8) or remaining in a bathing area after the emergency evacuation alarm has sounded (section 17). This means that a person may be fined for swimming in a closed bathing reserve or remaining in a bathing area after the evacuation alarm has sounded. If they then refuse to leave the water on the direction of an authorised person, the person commits the additional offence of failing to comply with a direction to leave the water, which would result in a second fine.

S25. Seizure and detention of dangerous objects and prohibited equipment

This provision gives authorised persons the power to seize and detain dangerous objects and items of prohibited equipment. Section 25(3) outlines the process and procedures that must be followed by an authorised person in the event of seizing and detaining an object, including the need to give a receipt to the person from whom the item was seized. The authorised person must deliver the seized item to the local government or the lifesaving club if it is not reclaimed on the day it is seized and all reasonable steps must be taken to ensure its safe custody.

Under this provision, items may be seized for a period from one hour to six months, depending on the nature of the object or item and the gravity of the offence. For minor offences, it is customary for the authorised person to detain an object until the end of the day—for example a surfboard or other dangerous item of aquatic equipment. The seizure provisions therefore provide authorised persons with broad scope to appropriately deal with matters of varying degrees of seriousness.

At the conclusion of the period of detention, any items in the custody of the lifesaving club must be delivered into the custody of the local government. This is required to ensure that the item is appropriately dealt with as an impounded item under section 37 of the Administration Model. Impounded items are not a matter that surf lifesaving clubs should be responsible for administering.

Part 6—Authorised persons

S26. Who are authorised persons

The Bathing Reserves Model has separate authorised persons provisions to that of the Administration Model and the *Local Government Act 2009* (LGA), in order to better provide for the unique circumstances associated with the regulation of bathing reserves. For example, given that bathing reserves are predominantly regulated by surf lifesaving clubs, it is considered appropriate to distinguish the role and powers of authorised persons in relation to these matters, rather than simply conferring all of the broad-ranging powers granted to authorised persons generally under the Administration Model and the LGA.

This provision identifies two distinct ways in which local governments may appoint authorised persons, including under:

- the local law itself (section 26)
- a subordinate local law.

These two approaches for the appointment of authorised persons provide flexibility for local governments to directly appoint local government employees and other persons that are eligible to be authorised persons under the model, but also to allow for the appointment by subordinate local law of a category of authorised persons, such as surf lifesavers.

Authorised persons that may be appointed under section 26 of the Bathing Reserves Model include employees of the local government and other persons that are eligible to be authorised persons under Chapter 6, Part 6 of the LGA. This provision also requires

that the instrument of appointment must state the specific purposes for which the authorised person is appointed and before making an appointment. The local government must also be satisfied that the person has the necessary expertise or experience or alternatively, has completed any training required by the local government for the appointment.

In addition, section 8 of the Bathing Reserves Subordinate provides for local governments to identify other categories of authorised persons appointed only for the purposes of regulating the Bathing Reserves Model. For example, a person holding the rank that has been assigned responsibility for patrolling a bathing reserve or part of a bathing reserve under section 19 of the Bathing Reserves Model might be a category of authorised persons appointed under the Bathing Reserves Subordinate. This provides flexibility for local governments to identify other categories of authorised persons by subordinate local law as the need arises, as well as providing scope to limit the powers of these persons (see section 27 below).

S27. Limitation on authorised person's powers

This provision allows the local government to limit the powers of authorised persons and categories of authorised persons as required in particular circumstances. Limitations may be placed on the powers of an authorised person in two ways:

- where the authorised person is appointed under the local law, then any required limitations may be outlined in the instrument of appointment
- where the authorised person is appointed by subordinate local law, then any required limitations may be included in the subordinate local law.

Such limitations might include a limit to:

- the powers that may be exercised (i.e. only the powers under sections x, y and z of the local law)
- the powers that may be exercised by a particular category of authorised person (i.e. an authorised person who is a captain of a lifesaving patrol may only exercise the powers under sections x and y of the local law)
- where the powers may be exercised (i.e. only in that part of the bathing reserve assigned to the lifesaving club under section 19 of the local law)
- the times that those powers may be exercised (i.e. only when they are participating in a lifesaving patrol etc).

Local governments will need to carefully consider the type and duration of powers that authorised persons appointed under the Bathing Reserves Model require and detail these clearly in the instrument of appointment or the subordinate local law.

Section 9 of the Bathing Reserves Subordinate provides an example for local governments of how limitations may be applied to a particular class of authorised persons.

S28. Authorised person's appointment conditions

Authorised persons are deemed to hold office on the conditions stated in their instrument of appointment or in a subordinate local law for this provision. Again, this corresponds with the method of appointment of the authorised person:

- if appointed under the local law, then any conditions would be recorded in the instrument of appointment
- if appointed by subordinate local law, any conditions of appointment would be outlined in the subordinate local law.

Section 10 of the Bathing Reserves Subordinate provides an example of how local governments may set out the specific conditions of office for authorised persons appointed under section 8 of the subordinate local law. Local governments may use this provision to set general conditions of appointment for surf lifesavers. For example, a condition may be used to clarify that where there is a conflict between an authorised person appointed under section 8 such as a volunteer surf lifesaver and an authorised person appointed under s 26(1)(b) such as an authorised person appointed by the local government regarding how these powers should be exercised, then the powers shall be exercised as directed by the authorised person appointed under section 26(1)(b) of the Bathing Reserves Model.

Such a condition would eliminate any potential overlap or conflict between the powers of surf lifesavers appointed under section 8 of the Bathing Reserves Subordinate and those of an authorised person appointed under section 26(1)(b) of the Bathing Reserves Model should such a situation arise.

In addition, section 28(2) outlines when an authorised person ceases to hold office and when and how an authorised person may resign from the office of authorised person.

S29. Authorised person's identity card

All authorised persons appointed under this local law must hold an identity card issued by the local government or the lifesaving club. Identification cards are required to:

- include a recent photograph
- be signed
- identify the person as an authorised person for the local government or the lifesaving club
- include an expiry date.

This provision is very important given the wide-ranging powers exercised by authorised persons. The provision also requires anyone who ceases to be an authorised person to return the identity card to the local government or the lifesaving club within 21 days of the cessation.

S30. Production of identity card

This provision mirrors the requirement in section 126 of the LGA for authorised persons to first produce and display their identity card before they exercise a power in relation to another person. Where it is not reasonably practical to do so, the authorised person must produce the identity card at the first reasonable opportunity to do so.

S31. Offence

This provision mirrors the offence in section 150 of the LGA, which creates an offence for impersonating an authorised person. The penalty for this provision is 50 penalty units, which is consistent with that under the LGA and reflects the seriousness of the offence.

S32. Protection from liability

Authorised persons appointed under the Bathing Reserves Model are afforded protection from civil liability for acts or omissions made honestly and without negligence during the course of performing their duties under this local law. The resulting liability from any such acts or omissions attaches instead to the local government that appointed the authorised person. It should be noted that the provision protects in similar terms anyone who is acting under the direction of an authorised person in the performance of their duties. This means anyone directed to assist is also protected from civil liability in circumstances where they are acting honestly and without negligence. This provision is particularly important given the nature of surf lifesaving, which is often performed by volunteers often undertaking sometimes dangerous duties associated with surf rescues.

Part 7—Miscellaneous

S33. Compliance with Australian standards

All flags and signs used for the purposes of this local law are required to comply with any relevant Australian standards. This provision seeks to ensure that the size and colour of flags and signs are standardised across all bathing reserves. This will aid in public recognition of the conditions and circumstances being notified by the signs or flags, thereby increasing public safety and enjoyment of bathing reserves.

It should be noted, however, that non-compliance with any relevant flag or signage standards will not invalidate anything done under the local law.

S34. Obstruction of authorised persons and lifesavers

It is an offence under this provision to obstruct an authorised person or lifesaver in performing their functions and duties under this local law. The maximum penalty for this offence is 50 penalty units, which is consistent with the comparable offence under section 149 of the *Local Government Act 2009* (LGA) for obstructing a person authorised to take action under a local government Act.

An additional offence of using insulting or abusive language to an authorised person or a member of a lifesaving patrol is also included, with a lesser maximum penalty of 20 penalty units. These provisions are similar to section 21 of the Administration Model, which provides recourse for authorised persons and lifesavers charged with enforcing this local law if they are obstructed in the course of their duties. Given that none of the provisions relating to authorised persons in the Administration Model apply to authorised persons appointed under the Bathing Reserves Model, these provisions are included in the Bathing Reserves Model.

S35. Interference with flags and lifesaving equipment

This provision makes it an offence to interfere with a sign or flag or any other piece of lifesaving equipment in the bathing reserve. The maximum penalty of 50 penalty units is indicative of the potential seriousness and danger associated with these offences.

S36. Subordinate local laws

Local governments are empowered to make subordinate local laws under sections 12(1), 15(2), 26(1)(a), 27 and 28(1) of the Bathing Reserves Model in relation to the following matters:

- restrictions on the use of aquatic equipment in bathing reserves
- prohibited equipment in bathing reserves
- appointment of authorised persons
- limitation of authorised persons powers
- conditions of office for authorised persons.

However a local government may choose not to regulate one or more of these matters. This can be achieved by not making a subordinate local law on the matter.

Commentary on the content of the Bathing Reserves Subordinate is outlined in these guidance notes under each of the relevant authorising provisions of the Bathing Reserves Model. Local governments should refer to relevant state legislation when making a subordinate local law under the Bathing Reserves Model to ensure consistency and operational efficiency.

Appendix 1—Model local laws gazetted in 2010

Title	Date of gazettal notice
Model Local Law No.1 (Administration) 2010	25 June 2010
Model Local Law No.2 (Animal Management) 2010	25 June 2010
Model Local Law No.3 (Community and Environmental Management) 2010	25 June 2010
Model Local Law No.4 (Local Government Controlled Areas, Facilities and Roads) 2010	25 June 2010
Model Local Law No.5 (Parking) 2010	25 June 2010
Model Local Law No.6 (Bathing Reserves) 2010	25 June 2010
Model Local Law No.7 (Indigenous Community Land Management) 2010	25 June 2010

Appendix 2—Summary of offence provisions and maximum applicable penalty

Provision number	Summary of offence provision	Maximum penalty (in penalty units)
8(3)	Bathing in a bathing reserve that is closed to bathing	20
10(3)	Contravening a restriction on access to a part of a bathing reserve set apart for lifesaving training, a competition or another aquatic activity.	20
11(1)	Using aquatic equipment in a bathing area	20
12(3)	Using aquatic equipment in a bathing reserve in contravention of a prohibition or restriction.	20
13(3)	Using aquatic equipment outside of the area set apart for using that particular type of equipment or using a different type of aquatic equipment in that area.	20
14(1)	Bringing or using an item of aquatic equipment or other object that is dangerous within a bathing reserve.	20
15(1)	Having prohibited equipment in a bathing reserve.	20
16(1)	Dangerous conduct such as using aquatic equipment or anything else in a bathing reserve that creates risk to the safety of others.	20
17(1)	Failing to leave the water after an emergency evacuation alarm is sounded or re-entering the water before the all-clear is given.	20
18	Falsely sounding an emergency alarm or falsely giving the all-clear.	50
22(2)	Failing to comply with a direction to stop dangerous and anti-social conduct.	20
23(2)	Failing to comply with a direction to stop behaviour that may endanger safety or create a nuisance	20
24(2)	Failing to comply with a direction to leave the water.	20
29(4)	Failing to return an authorised person's identity card within 21 days of ceasing to be an authorised person.	10
31	Pretending to be an authorised person.	50
34(1)	Obstructing an authorised person or a member of a lifesaving patrol in the conduct of their duties.	50
34(2)	Using insulting or abusive language to an authorised person or a member of a lifesaving patrol.	20
35	Interfering with signs, flags or lifesaving equipment in a bathing reserve.	50

Appendix 3—State legislation relevant to the Bathing Reserves Model

Title of state legislation	Part of model local law affected
<i>Transport Operations (Marine Safety) Act 1994 (TOMSA) and Transport Operations (Marine Safety) Regulation 2004 (TOMSR).</i>	Part 2—Bathing reserves Part 3—Use of aquatic equipment in bathing reserves Part 4—Behaviour in bathing reserves
<i>Transport Operations (Marine Safety-Parasailing) Standard 2007</i>	Part 2—Bathing reserves Part 3—Use of aquatic equipment in bathing reserves Part 4—Behaviour in bathing reserves

Note: This list of state legislation is current as at June 2010. As legislation changes, local governments should check current legislation for comprehensiveness and certainty.