



Queensland

# **Transport Infrastructure and Other Legislation Amendment Act 2005**

**Act No. 22 of 2005**





## Queensland

# Transport Infrastructure and Other Legislation Amendment Act 2005

## Contents

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		Page
<b>Part 1</b>	<b>Preliminary</b>	
1	Short title . . . . .	6
2	Commencement . . . . .	6
<b>Part 2</b>	<b>Amendment of Maritime Safety Queensland Act 2002</b>	
3	Act amended in pt 2 . . . . .	6
4	Amendment of s 8 (Functions and powers of MSQ). . . . .	6
<b>Part 3</b>	<b>Amendment of Transport Infrastructure Act 1994</b>	
5	Act amended in pt 3 . . . . .	7
6	Amendment of s 188 (Power to stop rolling stock or vehicle that may be entered or opened) . . . . .	7
7	Amendment of ch 8 hdg (Port infrastructure) . . . . .	7
8	Amendment of s 267 (Definitions for chapter) . . . . .	7
9	Insertion of new s 267A . . . . .	7
	267A Meaning of port facilities. . . . .	8
10	Amendment of s 275 (Functions of port authorities) . . . . .	8
11	Replacement of ss 279–283. . . . .	9
	Part 3A Liability for, and recovery of, charges and expenses	
	279 Port authority may impose a charge. . . . .	9
	280 Liability for a charge in relation to a ship . . . . .	9
	281 Liability for a charge in relation to an aircraft . . . . .	9
	281A Liability for a charge in relation to goods . . . . .	10
	281B Liability for a charge in relation to passengers . . . . .	10
	281C Payment of a charge and interest on an unpaid charge . . . . .	11
	281D Liability for movement of ships, aircraft, vehicles, goods or rolling stock . . . . .	11

281E	Liability for damage to port authority's port facilities . .	12
281F	Security for payment of charges and potential liabilities . . . . .	13
Part 3B	Control of activities at ports	
Division 1	Port notices	
282	Port authority may control activities by port notice . . .	14
282A	Port notice—movement or mooring of, or activities on or by, ships . . . . .	15
282B	Port notice—aircraft parking . . . . .	15
282C	Port notice—movement, handling or storage of goods . . . . .	15
282D	Port notice—movement of persons . . . . .	15
282E	Port notice—parking or stopping of vehicles . . . . .	16
282F	Port notice—movement, stopping or parking of rolling stock . . . . .	16
282G	Display or publication of port notices . . . . .	16
282H	Port notice may refer to documents held by port authority . . . . .	17
282I	Port notices generally . . . . .	18
282J	Offence of not complying with a port notice . . . . .	19
Division 2	Authorised officers	
282K	Appointment and qualifications of authorised officers . . . . .	19
282L	Appointment conditions and limit on powers . . . . .	20
282M	Issue of identity card . . . . .	20
282N	Production or display of identity card . . . . .	20
282O	When authorised officer ceases to hold office . . . . .	21
282P	Return of identity card . . . . .	21
Division 3	Directions	
282Q	Authorised officer may give directions . . . . .	21
282R	If a person does not comply with a direction . . . . .	23
282S	Offence of not complying with a direction . . . . .	24
Division 4	Moving contravening property	
282T	Moving contravening property . . . . .	24
Division 5	Other powers and offences	
283	Power to require name and address . . . . .	26
283A	Inspection of documents . . . . .	27

	283B	Inspection of ships, aircraft, vehicles, rolling stock and goods . . . . .	27
	283C	Obstructing authorised officer . . . . .	28
	283D	False or misleading statement . . . . .	28
	283E	False or misleading document . . . . .	28
	283F	Impersonating an authorised officer . . . . .	29
	283G	Conduct causing public nuisance . . . . .	29
	283H	Interfering with port notices . . . . .	29
12		Replacement of ss 284 and 285 . . . . .	29
	284	Definitions for div 1 . . . . .	29
	285	Land use plans . . . . .	30
	285A	Statement of proposal for preparation of a land use plan or amendment of a plan . . . . .	31
	285B	Draft plan for preparation of a land use plan or amendment of a plan . . . . .	32
	285C	Consultation on statement of proposal or draft plan . . . . .	33
	285D	Directions by Minister for amendment of draft plan . . . . .	33
13		Amendment of s 286 (Approval of land use plans) . . . . .	33
14		Insertion of new ch 8, pts 4A and 4B . . . . .	34
	Part 4A	Port approvals	
	289A	Application of pt 4A . . . . .	35
	289B	Definitions for pt 4A . . . . .	35
	289C	Application for approval . . . . .	35
	289D	Port authority may grant approval, with or without conditions . . . . .	36
	289E	Change of conditions on an approval . . . . .	36
	289F	Decision by port authority in relation to approval . . . . .	36
	289G	Review of and appeals against decisions . . . . .	37
	Part 4B	Disposal of abandoned property	
	289H	Definitions for pt 4B . . . . .	38
	289I	Reasonable steps must be taken to find owner . . . . .	39
	289J	A person may claim property . . . . .	40
	289K	If property not claimed . . . . .	40
	289L	Sale of perishable property . . . . .	40
	289M	Proceeds from the sale of abandoned property . . . . .	40
	289N	Abandoned property of no value . . . . .	41
15		Omission of s 293 (Payment of charges and interest on unpaid charges) . . . . .	41

16	Insertion of new ch 18, pt 5 . . . . .	41
	Part 5            Transitional provisions for the Transport Infrastructure and Other Legislation Amendment Act 2005	
	532            Definitions for pt 5. . . . .	41
	533            Approvals . . . . .	42
	534            Proceedings . . . . .	43
	535            Land use plans . . . . .	43
	536            Detained property. . . . .	43
	537            Notices in the form of official traffic signs . . . . .	44
	538            Things done under re-enacted provision . . . . .	44
17	Amendment of sch 6 (Dictionary) . . . . .	44
<b>Part 4</b>	<b>Amendment of Transport Operations (Marine Safety) Act 1994</b>	
18	Act amended in pt 4 . . . . .	46
19	Amendment of s 3 (Objectives of this Act) . . . . .	46
20	Amendment of s 29 (Achieving an appropriate balance between safety and cost) . . . . .	47
21	Amendment of s 197 (Proceedings for indictable offences) . . . . .	47
22	Amendment of s 218 (Other matters for regulations) . . . . .	47



Queensland

# **Transport Infrastructure and Other Legislation Amendment Act 2005**

## **Act No. 22 of 2005**

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**An Act to amend the *Transport Infrastructure Act 1994*, and for  
other purposes**

**[Assented to 19 May 2005]**

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**The Parliament of Queensland enacts—**

## **Part 1 Preliminary**

### **1 Short title**

This Act may be cited as the *Transport Infrastructure and Other Legislation Amendment Act 2005*.

### **2 Commencement**

Part 3 commences on a day to be fixed by proclamation.

## **Part 2 Amendment of Maritime Safety Queensland Act 2002**

### **3 Act amended in pt 2**

This part amends the *Maritime Safety Queensland Act 2002*.

### **4 Amendment of s 8 (Functions and powers of MSQ)**

Section 8(1)(a)—

*insert—*

‘(ix) to monitor and manage the operation and activities of ships in Queensland waters;’.



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## **Part 3                      Amendment of Transport Infrastructure Act 1994**

### **5            Act amended in pt 3**

This part amends the *Transport Infrastructure Act 1994*.

### **6            Amendment of s 188 (Power to stop rolling stock or vehicle that may be entered or opened)**

Section 188(6)—

*omit.*

### **7            Amendment of ch 8 hdg (Port infrastructure)**

Chapter 8, heading, after ‘**infrastructure**’—

*insert—*

‘**and other matters**’.

### **8            Amendment of s 267 (Definitions for chapter)**

Section 267—

*insert—*

‘**airport**’ means the Cairns International Airport or the Mackay Airport.

**port area**, of a port authority, means the area of its strategic port land and port facilities, and within its port limits.

**port facilities** see section 267A.

**requirement**, of a port notice, includes a direction, instruction, indication, condition or other provision contained in the port notice.’.

### **9            Insertion of new s 267A**

Chapter 8, part 1, after section 267—

*insert—*

### **‘267A Meaning of port facilities**

**‘Port facilities**, of a port authority, means the facilities or land that are—

- (a) owned or controlled by a port authority; and
- (b) used in the operation or strategic management of the port authority’s port.

*Examples of port facilities—*

- wharf and port marine operational areas and shipping channels within port limits
- marine and port structures
- ship building facilities and dry docks
- offshore structures used for shipping purposes
- wharf protection devices
- hydraulic structures
- bulk loading and unloading facilities
- boat harbours and boat ramps
- vehicle and railway ferry terminals, oil and liquid product terminals and other terminals within the port area
- access roads and rail corridors
- car parking facilities
- an airport
- partially completed reclamation areas in areas designated as future strategic port land
- partially completed port facilities’.

### **10 Amendment of s 275 (Functions of port authorities)**

Section 275—

*insert—*

- ‘(3) If a function mentioned in subsection (1)(g) is conferred on a port authority, the port authority must ensure a copy of a document specifying the function is available during business hours for inspection, or for purchase at a reasonable cost, at the office of the port authority in, or nearest to, each port to which it applies.’.

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**11 Replacement of ss 279–283**

Sections 279 to 283—

*omit, insert—*

**‘Part 3A Liability for, and recovery of, charges and expenses****‘279 Port authority may impose a charge**

- ‘(1) A port authority may impose a charge for the use of its port area.
- ‘(2) A charge may, for example, be imposed by reference to—
- (a) a ship or an aircraft using its port; or
  - (b) goods or passengers loaded, unloaded or transhipped to or from a ship or an aircraft using port facilities in its port.
- ‘(3) This section does not limit the powers a port authority has apart from this section.

**‘280 Liability for a charge in relation to a ship**

‘If a charge is payable in relation to a ship, the following persons are jointly and severally liable for the charge—

- (a) the owner of the ship;
- (b) the master of the ship;
- (c) the agent of the ship’s owner;
- (d) another person who has accepted liability for the charge.

**‘281 Liability for a charge in relation to an aircraft**

‘If a charge is payable in relation to an aircraft, the following persons are jointly and severally liable for the charge—

- (a) the owner of the aircraft;
- (b) the licensee of the aircraft;
- (c) the lessee of the aircraft;

- (d) the charterer of the aircraft;
- (e) another person who has accepted liability for the charge.

#### **‘281A Liability for a charge in relation to goods**

‘If a charge is payable in relation to goods, the following persons are jointly and severally liable for the charge—

- (a) the owner of the goods;
- (b) the consignor and consignee of the goods;
- (c) the agent for the sale or custody of the goods;
- (d) the person entitled to possession of the goods;
- (e) for goods transported by ship—
  - (i) the owner of the ship; and
  - (ii) the master of the ship;
- (f) for goods transported by aircraft—
  - (i) the owner of the aircraft; and
  - (ii) the licensee of the aircraft; and
  - (iii) the lessee of the aircraft; and
  - (iv) the charterer of the aircraft;
- (g) another person who has accepted liability for the charge.

#### **‘281B Liability for a charge in relation to passengers**

‘If a charge is payable in relation to passengers on a ship or an aircraft, the following persons are jointly and severally liable for the charge—

- (a) for passengers on a ship—
  - (i) the owner of the ship; and
  - (ii) the master of the ship; and
  - (iii) the agent of the ship’s owner; and
  - (iv) another person who has accepted liability for the charge;

- (b) for passengers on an aircraft—
  - (i) the owner of the aircraft; and
  - (ii) the licensee of the aircraft; and
  - (iii) the lessee of the aircraft; and
  - (iv) the charterer of the aircraft; and
  - (v) another person who has accepted liability for the charge.

### **‘281C Payment of a charge and interest on an unpaid charge**

- ‘(1) A charge imposed by a port authority is payable within a reasonable time decided by the authority.
- ‘(2) If the charge is not paid on or before the day the charge is due, interest is payable on the unpaid amount of the charge at a reasonable rate decided by the authority.
- ‘(3) The port authority may recover a charge, or part of a charge, and any interest payable in relation to the charge, as a debt payable to the port authority.
- ‘(4) A regulation may provide for exemptions from the payment of charges, including any interest on a charge.
- ‘(5) Subsection (4) does not affect or limit the power of a port authority to exempt or partially exempt a person from a charge, including any interest on the charge, imposed by a port authority.

### **‘281D Liability for movement of ships, aircraft, vehicles, goods or rolling stock**

- ‘(1) This section applies if a port authority incurs an expense because an authorised officer of the port authority moves, or takes a step to move, a ship, an aircraft, a vehicle, goods or rolling stock under part 3B.<sup>1</sup>

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<sup>1</sup> Part 3B (Control of activities at ports)

- ‘(2) The amount of the expense, to the extent that the amount is reasonable, is a debt owing to the port authority by—
- (a) for a ship, aircraft or goods—the persons who are liable for a charge payable in relation to the ship, aircraft or goods; or
  - (b) for a vehicle or rolling stock—the owner and driver of the vehicle or rolling stock.
- ‘(3) The liability of persons mentioned in subsection (2)(a) and (b) is joint and several.

### **‘281E Liability for damage to port authority’s port facilities**

- ‘(1) If damage is caused to a port authority’s port facilities, the following persons are jointly and severally liable for the damage—
- (a) if the damage is caused by a ship—
    - (i) the owner of the ship; and
    - (ii) the master of the ship; and
    - (iii) the agent of the ship’s owner;
  - (b) if the damage is caused by an aircraft—
    - (i) the owner of the aircraft; and
    - (ii) the licensee of the aircraft; and
    - (iii) the lessee of the aircraft; and
    - (iv) the charterer of the aircraft.
- ‘(2) If damage is caused to a port authority’s port facilities by floating or submerged material, the owner of the material is liable for the damage if the damage happened because of the intentional, reckless or negligent act of the owner.
- ‘(3) The port authority may recover the reasonable cost of rectifying the damage as a debt payable to the port authority.

**‘281F Security for payment of charges and potential liabilities**

- ‘(1) A port authority may, by written notice, require a person to give the port authority a security deposit as security for a liability or debt incurred, or that may be incurred, under this part in relation to—
  - (a) the payment of a charge; or
  - (b) damage caused, or that may be caused, to port facilities.
- ‘(2) The security deposit must be in or for an amount decided by the port authority that is a reasonable amount having regard to the liability or potential liability of the person under this part.
- ‘(3) The security deposit may be—
  - (a) cash; or
  - (b) a guarantee from a financial institution; or
  - (c) in another form accepted by the port authority.
- ‘(4) The port authority may appropriate or partly appropriate a security deposit to meet the liability or indebtedness of the person if the liability or debt is unpaid after becoming due.
- ‘(5) If a security deposit is appropriated or partly appropriated, the port authority may, by written notice, require the person to give the port authority a further security deposit.
- ‘(6) Also, if the port authority considers that the person’s liability or indebtedness, or potential liability or indebtedness, under this part should be more adequately guaranteed, the port authority may, by written notice, require the person to give the port authority a security deposit in a greater amount, or in a different form, or both.

## **‘Part 3B                    Control of activities at ports**

### **‘Division 1                Port notices**

#### **‘282    Port authority may control activities by port notice**

‘(1) A port authority may display or publish a notice (a *port notice*) to control activities or conduct in its port area if the port authority reasonably considers the activities or conduct may—

- (a) affect the port’s operation; or
- (b) cause damage to the port authority’s strategic port land; or
- (c) cause damage to the environment.

‘(2) Without limiting subsection (1), the purposes for which a port authority may display or publish a port notice include—

- (a) maintaining or improving the safe, secure or efficient operation of its port; or

*Example for paragraph (a)—*

A port authority may issue a port notice to ensure that the loading or unloading operations at the port facilities are carried out efficiently.

- (b) maintaining fair or reasonable access to port facilities for users of its port; or

*Example for paragraph (b)—*

A port authority may issue a port notice to ensure that a user of its port facilities does not unreasonably restrict the access of other users of its port facilities.

- (c) moving or mooring ships, or parking aircraft, within its port area; or
- (d) managing controlled activities; or
- (e) preventing damage to strategic port land; or
- (f) preventing damage to the environment.

‘(3) This section does not limit the powers a port authority has under this division.



**‘282A Port notice—movement or mooring of, or activities on or by, ships**

‘A port authority may control by port notice—

- (a) the movement or mooring of ships at its port facilities; or
- (b) the movement or mooring of ships if the movement or mooring may affect the port’s operation; or
- (c) activities on or by ships moored at its port facilities or in its port if the activities may affect the port’s operation.

**‘282B Port notice—aircraft parking**

- ‘(1) This section applies to the Cairns Port Authority and the Mackay Port Authority.
- ‘(2) Each port authority may control by port notice the parking of aircraft at its airport including, for example, by indicating where parking of aircraft is restricted or prohibited.

**‘282C Port notice—movement, handling or storage of goods**

‘A port authority may control by port notice the movement, handling or storage of goods loaded, waiting to be loaded, unloaded or transhipped to or from—

- (a) ships at its port facilities; or
- (b) if the port authority is the Cairns Port Authority or the Mackay Port Authority—aircraft at its port facilities.

**‘282D Port notice—movement of persons**

‘A port authority may control by port notice the movement of persons at its port facilities including, for example, where the movement of members of the public, or another identified group, is restricted or prohibited.

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**‘282E Port notice—parking or stopping of vehicles**

- ‘(1) A port authority may control by port notice the parking or stopping of vehicles at or on its port facilities or strategic port land including, for example, by indicating a place where parking or stopping of a vehicle is restricted or prohibited.
- ‘(2) However, a port authority’s power to control a matter mentioned in subsection (1) by port notice is subject to the control of the matter by an official traffic sign installed under the *Transport Operations (Road Use Management) Act 1995*, chapter 5, part 2, by the chief executive within the meaning of that part.

**‘282F Port notice—movement, stopping or parking of rolling stock**

‘A port authority may control by port notice the movement, stopping or parking of rolling stock at its port facilities including, for example, by indicating where parking of rolling stock is restricted or prohibited.

**‘282G Display or publication of port notices**

- ‘(1) To have effect, a port notice must—
  - (a) be displayed on or near the thing to which it relates; or
  - (b) be published on the port authority’s web site on the internet.
- ‘(2) Before a port notice mentioned in subsection (1)(b) has effect, the port authority issuing the port notice must publish it on at least 2 occasions in a newspaper circulated in the area to which the port notice relates.
- ‘(3) A copy of a port notice must be available during normal business hours for inspection, or for purchase at a reasonable cost, at the office of the port authority that is in, or nearest to, the area to which the notice relates.

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**‘282H Port notice may refer to documents held by port authority**

- ‘(1) A port notice may require a person to comply, in whole or in part, with a requirement of a stated document held by the port authority.
- ‘(2) However, the requirement must be able to be made by a port notice under this division.
- ‘(3) If the document is a standard, the port notice must state that a copy of the standard is available during normal business hours for inspection, or for purchase at a reasonable cost, at a stated office of the port authority that is in, or nearest to, the area to which the notice relates.
- ‘(4) If the document is not a standard, the port notice must—
  - (a) include a copy of the document; or
  - (b) do both of the following—
    - (i) include a summary of the requirement;
    - (ii) state that a copy of the document is available during normal business hours, free of charge, at a stated office of the port authority that is in, or nearest to, the area to which the notice relates.
- ‘(5) In this section—

*standard* means—

  - (a) the Code of Safe Practice for Solid Bulk Cargoes issued by the International Maritime Organisation, as it applies to materials mentioned in appendix B of the Code; or
  - (b) the International Maritime Dangerous Goods Code published by the International Maritime Organisation; or
  - (c) the International Safety Guide for Oil Tankers and Terminals issued by the International Chamber of Shipping, the Oil Companies International Marine Forum and the International Association of Ports and Harbours; or

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- (d) the Ship to Ship Transfer Guide (Liquefied Gases) issued by the International Chamber of Shipping and the Oil Companies International Marine Forum; or
  - (e) the Ship to Ship Transfer Guide (Petroleum) issued by the International Chamber of Shipping and the Oil Companies International Marine Forum; or
  - (f) the Tanker Safety Guide (Chemicals) issued by the International Chamber of Shipping; or
  - (g) the Tanker Safety Guide (Liquefied Gas) issued by the International Chamber of Shipping; or
  - (h) a code, guide, rule, specification, standard or other document (a *relevant document*) adopted, made or published by—
    - (i) the International Association of Ports and Harbours; or
    - (ii) the International Chamber of Shipping; or
    - (iii) the International Maritime Organisation; or
    - (iv) the Oil Companies International Marine Forum; or
    - (v) the Civil Aviation Safety Authority; or
    - (vi) the International Civil Aviation Organisation; or
  - (i) a Standards Australia standard adopting, making or publishing a relevant document adopted, made or published by an entity mentioned in paragraph (h)(i) to (vi); or
  - (j) a relevant document prescribed under a regulation for this definition.

## **‘282I Port notices generally**

- ‘(1) A port notice—
  - (a) must indicate the area to which the port notice applies; and
  - (b) if contravention of a requirement of the port notice is an offence against this Act—must state that fact and the maximum penalty for the offence.

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- ‘(2) Evidence that a sign was displayed on or near the thing to which it relates is evidence that the notice was displayed by the port authority.
  - ‘(3) A port notice displayed on or near the thing to which it relates must be clearly visible to passers-by.

### **‘282J Offence of not complying with a port notice**

‘A person must comply with each requirement of a port notice, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—

- (a) for a contravention of a requirement of a port notice about a controlled activity—100 penalty units; or
- (b) for a contravention of a requirement of a port notice about the movement or mooring of, or activities on or by, a ship—100 penalty units; or
- (c) for a contravention of a requirement of a port notice about the parking of an aircraft—50 penalty units; or
- (d) for a contravention of a requirement of a port notice about the movement, handling or storage of goods—50 penalty units; or
- (e) for a contravention of a requirement of a port notice about any other matter—25 penalty units.

## **‘Division 2                      Authorised officers**

### **‘282K Appointment and qualifications of authorised officers**

- ‘(1) A port authority may appoint a person as an authorised officer for the port authority.
- ‘(2) However, the port authority may appoint a person as an authorised officer for the port authority only if the port authority is satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

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**‘282L Appointment conditions and limit on powers**

- ‘(1) An authorised officer holds office on any conditions stated in—
- (a) the authorised officer’s instrument of appointment; or
  - (b) a signed notice given to the authorised officer; or
  - (c) a regulation.
- ‘(2) The instrument of appointment, a signed notice given to the authorised officer or a regulation may limit the authorised officer’s powers under this Act.
- ‘(3) In this section—
- signed notice* means a notice signed by the port authority or a member of the port authority who is authorised by it to sign notices.

**‘282M Issue of identity card**

- ‘(1) The port authority must issue an identity card to each authorised officer.
- ‘(2) The identity card must—
- (a) contain a recent photo of the authorised officer; and
  - (b) contain a copy of the authorised officer’s signature; and
  - (c) identify the person as an authorised officer for the port authority under this Act; and
  - (d) state an expiry date for the card.

**‘282N Production or display of identity card**

- ‘(1) In exercising a power under this Act in relation to a person, an authorised officer must—
- (a) produce the authorised officer’s identity card for the person’s inspection before exercising the power; or
  - (b) have the identity card displayed so it is clearly visible to the person when exercising the power.

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

### **‘282O When authorised officer ceases to hold office**

- ‘(1) An authorised officer ceases to hold office if—
- (a) the term of office stated in a condition of office ends; or
  - (b) under another condition of office, the authorised officer ceases to hold office.
- ‘(2) Subsection (1) does not limit the ways an authorised officer may stop holding office.
- ‘(3) In this section—
- condition of office*** means a condition on which the authorised officer holds office.

### **‘282P Return of identity card**

‘A person who ceases to be an authorised officer of a port authority must return the person’s identity card to the port authority within 21 days after ceasing to be an authorised officer unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

## **‘Division 3                      Directions**

### **‘282Q Authorised officer may give directions**

- ‘(1) An authorised officer of a port authority may give a verbal direction to a person in the port authority’s port area if giving the direction is reasonably necessary to—
- (a) ensure the safety or security of the port area, its users or the port authority’s employees; or
  - (b) prevent the person’s activities or conduct from affecting the port’s operation.

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*Examples of directions that may be given for subsection (1)—*

- a direction to control the movement or mooring of, or activities on or by, a ship
- a direction to control the parking of an aircraft or the movement, stopping or parking of a vehicle or rolling stock
- a direction to control the movement, handling or storage of goods that are loaded, waiting to be loaded, unloaded or being transhipped
- a direction to control the movement of persons
- a direction to a person, who is the holder of an approval to perform a controlled activity under part 4A, to stop performing the controlled activity for a period

‘(2) Subsection (3) applies if an authorised officer—

- (a) finds a person committing an offence, or reasonably suspects that a person has just committed an offence, against section 283G;<sup>2</sup> or
- (b) reasonably believes that a person’s presence at the port facilities may pose a threat to the safety or security of the port facilities, its users or the port authority’s employees; or
- (c) reasonably believes that a person is in an area of the port facilities without lawful justification or excuse.

‘(3) An authorised officer may give a verbal direction to the person to—

- (a) immediately leave the port facilities, or an area of the port facilities; or
- (b) immediately leave the port facilities, or an area of the port facilities, and not return for at least 24 hours.

‘(4) An authorised officer must identify himself or herself as an authorised officer if the authorised officer gives a verbal direction by radio, megaphone or another form of distance communication.

‘(5) An authorised officer must not give a verbal direction about the movement of rolling stock if a train controller is satisfied

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2 Section 283G (Conduct causing public nuisance)



that the movement of the rolling stock would cause an immediate threat to—

- (a) the safety of the railway; or
- (b) the public using it or who may use it.

**‘282R If a person does not comply with a direction**

- ‘(1) If the person does not comply with a verbal direction given by an authorised officer under section 282Q, the authorised officer may give the person a written notice stating—
  - (a) the authorised officer’s name; and
  - (b) the direction; and
  - (c) a brief statement about the authorised officer’s reason for giving the direction; and
  - (d) a further reasonable time within which the person must comply with the direction; and
  - (e) when the direction was given.
- ‘(2) If it is not possible or reasonable for the authorised officer to give the person a written notice at the time the person does not comply with a verbal direction given by an authorised officer under section 282Q, the authorised officer—
  - (a) may give the person a further verbal direction stating the information mentioned in subsection (1)(a) to (d); and
  - (b) must give the person the written notice the person would have received at the time the person did not comply with the verbal direction as soon as practicable after giving the further verbal direction.
- ‘(3) At the time the authorised officer gives the person a written notice under subsection (1), or a further verbal direction under subsection (2)(a), the authorised officer must warn the person that the person may commit an offence unless the person complies with the direction within the stated time.

**‘282S Offence of not complying with a direction**

‘Unless a person has a reasonable excuse, a person must comply with a direction given to the person by an authorised officer under section 282R, within the reasonable time stated in a written notice under section 282R(1) or as part of a further verbal direction under 282R(2)(a).

Maximum penalty—

- (a) if the contravention results in a significant delay to port operations—200 penalty units; or
- (b) otherwise—
  - (i) for a contravention of a direction to leave the port facilities or an area of the port facilities, or leave the port facilities or an area of the port facilities and not return for 24 hours—100 penalty units; or
  - (ii) for a contravention of a direction about the movement or mooring of, or activities on or by, a ship—100 penalty units; or
  - (iii) for a contravention of a direction about the parking of an aircraft—50 penalty units; or
  - (iv) for a contravention of a direction about the movement, handling or storage of goods—50 penalty units; or
  - (v) for a contravention of another direction—25 penalty units.

**‘Division 4 Moving contravening property****‘282T Moving contravening property**

‘(1) This section applies if—

- (a) an authorised officer of a port authority reasonably believes that a ship, an aircraft, a vehicle, goods or rolling stock in a port or at a port facility is contravening property; and

- (b) the authorised officer reasonably believes that it is necessary to move the contravening property having regard to—
    - (i) the efficient operation of the port; or
    - (ii) the safety or security of the port, its users or the port authority’s employees; and
  - (c) the authorised officer—
    - (i) can not immediately find the person in charge of the contravening property; or
    - (ii) reasonably believes the person in charge of the contravening property can not, or will not, move the contravening property immediately.
- ‘(2) The authorised officer may—
- (a) take steps necessary and reasonable to have the contravening property moved; and
  - (b) if the contravening property is property in the form of goods that are perishable, or of little or no value, treat the goods as abandoned property under part 4B.<sup>3</sup>
- ‘(3) However, for contravening property that is rolling stock, the authorised officer must not move the rolling stock if a train controller is satisfied that the movement of the rolling stock would cause an immediate threat to—
- (a) the safety of the railway; or
  - (b) the public using it or who may use it.
- ‘(4) In this section—
- contravening property*** means a ship, an aircraft, a vehicle, goods or rolling stock, that is moored, parked or left in a port or at a port facility in contravention of—
- (a) a requirement of a port notice; or
  - (b) a direction of an authorised officer under division 3.
- person in charge***, of contravening property, means—

3 Part 4B (Disposal of abandoned property)

- (a) for contravening property that is a ship—the ship’s master or another person in charge of the ship; or
- (b) for contravening property that is an aircraft—the aircraft’s pilot or another person in charge of the aircraft; or
- (c) for contravening property that is a vehicle or rolling stock—the driver of the vehicle or rolling stock or another person in charge of the vehicle or rolling stock; or
- (d) for contravening property that is property in the form of goods—the owner of the goods or another person in charge of the goods.

## **‘Division 5                    Other powers and offences**

### **‘283    Power to require name and address**

- ‘(1) An authorised officer of a port authority may require a person, who is in the port authority’s port area, to state the person’s name and address if the authorised officer—
  - (a) finds the person committing an offence against this Act; or
  - (b) reasonably suspects the person has just committed an offence against this Act.
- ‘(2) When making the requirement, the authorised officer must warn the person that it is an offence to fail to state the person’s name and address unless the person has a reasonable excuse.
- ‘(3) The authorised officer may require the person to give evidence of the correctness of the person’s stated name and address if the authorised officer reasonably suspects the stated name or address is false.
- ‘(4) A person must comply with the authorised officer’s requirement under subsection (1) or (3), unless the person has a reasonable excuse for not complying with it.

Maximum penalty—10 penalty units.

- ‘(5) The person does not commit an offence against this section if—
- (a) the authorised officer required the person to state the person’s name and address in the circumstances mentioned in subsection (1)(a) or (b); and
  - (b) the person is not proved to have committed the offence.

### **‘283A Inspection of documents**

- ‘(1) An authorised officer of a port authority may require a person, who is or may be liable to pay a charge to the port authority, to produce for the authorised officer’s inspection, documents that are—
- (a) under the person’s control; and
  - (b) relevant to deciding—
    - (i) whether the person is liable to pay the charge; or
    - (ii) the amount of the charge.
- ‘(2) The person must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty for subsection (2)—50 penalty units.

### **‘283B Inspection of ships, aircraft, vehicles, rolling stock and goods**

- ‘(1) This section applies only to the extent necessary to allow an authorised officer of a port authority to decide—
- (a) whether a charge is payable in relation to a ship, an aircraft or goods; and
  - (b) the amount of the charge.
- ‘(2) A person in charge of a conveyance in the port authority’s port area must allow the authorised officer to enter and inspect the conveyance, or inspect goods on or in the conveyance, if asked by the authorised officer.

Maximum penalty—50 penalty units.

- ‘(3) In this section—

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*conveyance* means a ship, an aircraft, a vehicle or rolling stock.

**‘283C Obstructing authorised officer**

- ‘(1) A person in a port authority’s port area must not obstruct an authorised officer in the exercise of a power under this part, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- ‘(2) In this section—

*obstruct* includes hinder, resist, insult, attempt to obstruct and threaten to obstruct.

**‘283D False or misleading statement**

- ‘(1) A person must not state anything to an authorised officer that the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

- ‘(2) It is enough for a complaint for an offence against subsection (1) to state the statement made was ‘false or misleading’ to the person’s knowledge, without specifying which.

**‘283E False or misleading document**

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

Maximum penalty—50 penalty units.

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

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

- ‘(3) It is enough for a complaint for an offence against subsection (1) to state the document was ‘false or misleading’ to the person’s knowledge, without specifying which.

**‘283F Impersonating an authorised officer**

‘A person must not pretend to be an authorised officer.

Maximum penalty—50 penalty units.

**‘283G Conduct causing public nuisance**

‘A person at a port authority’s port facilities must not be disorderly or create a disturbance.

Maximum penalty—50 penalty units.

**‘283H Interfering with port notices**

- ‘(1) This section applies to a port notice, other than a port notice published on a port authority’s web site on the internet.

- ‘(2) A person must not unlawfully interfere with the port notice.

Maximum penalty—25 penalty units.

- ‘(3) In this section—

*interfere*, with a port notice, includes removing or damaging the port notice.’.

**12 Replacement of ss 284 and 285**

Sections 284 and 285—

*omit, insert—*

**‘284 Definitions for div 1**

‘In this division—

*core matters*, in relation to a land use plan (including its preparation), means each of the following matters—

- (a) land use and development;
- (b) port facilities;

(c) valuable features.

**land use and development**, for an area, includes each of the following—

- (a) the location of, and the relationships between, the land uses in the area;
- (b) the current effects of land use in the area;
- (c) the likely effects of any proposed development of the land;
- (d) the accessibility to the area.

**valuable features** see the *Integrated Planning Act 1997*, section 2.1.3A(4).<sup>4</sup>

## **‘285 Land use plans**

- ‘(1) This section applies to the following port authority land—
- (a) in relation to the Cairns Port Authority—port authority land that is used or that may be used by the Cairns Port Authority for its airport;
  - (b) in relation to the Mackay Port Authority—port authority land that is used or that may be used by the Mackay Port Authority for its airport;
  - (c) in relation to any port authority—port authority land that is on or near the interface between the land and the waters within the limits of the port, as defined under section 274, and that is used or may be used—
    - (i) for domestic or international trade; or
    - (ii) by industries requiring close proximity to a port; or
    - (iii) for the integration of sea transport with other transport modes; or
    - (iv) as port buffer lands; or
    - (v) as a boating facility; or

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<sup>4</sup> *Integrated Planning Act 1997*, section 2.1.3A (Core matters for planning schemes)



- (vi) for residential and tourist accommodation as mentioned in section 275(1)(f),<sup>5</sup> or
  - (vii) for other purposes of a port authority prescribed under a regulation.
- ‘(2) At least every 8 years, a port authority must prepare a land use plan in relation to the port authority’s land for approval under section 286.<sup>6</sup>
- ‘(3) The Minister may also direct a port authority to prepare a land use plan, or an amendment of a land use plan, for approval under section 286.
- ‘(4) A port authority’s land use plan must—
- (a) specify details of—
    - (i) the port authority’s strategic port land; and
    - (ii) land the port authority proposes to become strategic port land; and
    - (iii) the current and proposed uses of the land; and
  - (b) coordinate and integrate the core matters relevant to the land use plan; and
  - (c) identify desired environmental outcomes for the land; and
  - (d) include measures that will help achieve the desired environmental outcomes.’.

‘(5) In this section—

***port authority land*** means land a port authority holds title to or holds directly from the State.

**‘285A Statement of proposal for preparation of a land use plan or amendment of a plan**

- ‘(1) A port authority must prepare a statement (*statement of proposal*) about—

5 Section 275 (Functions of port authorities)

6 Section 286 (Approval of land use plans)

- 
- (a) the preparation of a land use plan; or
  - (b) an amendment of a land use plan, unless the amendment—
    - (i) is to remove land from the land use plan; or
    - (ii) relates to land that is already strategic port land and its usage is not to change.
- ‘(2) The statement of proposal must—
- (a) identify matters the port authority anticipates the land use plan will address; and
  - (b) state how the port authority intends to address each relevant aspect of a core matter in the land use plan.
- ‘(3) A port authority must supply the statement of proposal to the local government for the local government area within which the port area is situated, and any other local government for a local government area adjoining the port area.

**‘285B Draft plan for preparation of a land use plan or amendment of a plan**

‘After complying with section 285A, and section 285C to the extent the section relates to a statement of proposal, a port authority must—

- (a) take appropriate account of issues raised as a result of consultation under section 285C in relation to the statement of proposal; and
- (b) prepare a draft (*draft plan*) of—
  - (i) if the statement of proposal is for the preparation of a land use plan—the land use plan; or
  - (ii) if the statement of proposal is for an amendment of a land use plan—the amendment of the land use plan; and
- (c) supply the draft plan to the local government for the local government area within which the port area is situated, and any other local government for a local government area adjoining the port area.

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**‘285C Consultation on statement of proposal or draft plan**

- ‘(1) This section applies if a port authority prepares a statement of proposal under section 285A or a draft plan under section 285B.
- ‘(2) The port authority must publish, at least once in a newspaper circulating generally in the area to which the statement of proposal or the draft plan relates, a notice stating the following—
  - (a) the name of the port authority;
  - (b) that the port authority has prepared a statement of proposal or a draft plan and that it is available for inspection and purchase;
  - (c) a contact telephone number for information about the statement of proposal or draft plan;
  - (d) that any person may make written submissions about the statement of proposal or draft plan to the port authority;
  - (e) the period (the *consultation period*) during which submissions may be made;
  - (f) the requirements for properly making a submission.
- ‘(3) The consultation period must be for at least 40 business days after the notice is first published under subsection (2).

**‘285D Directions by Minister for amendment of draft plan**

- ‘(1) The Minister may return a draft plan prepared by the port authority under section 285B for amendment in the way directed by the Minister.
- ‘(2) A copy of the direction must be published in the gazette within 21 days after it is given.’

**13 Amendment of s 286 (Approval of land use plans)**

- (1) Section 286(1) and (2)—  
*omit, insert—*

- ‘(1) The Minister may approve a draft plan prepared under section 285B if the Minister is satisfied that—
- (a) the land included in the draft plan is used or may be used for a matter or purpose mentioned in section 285(1);<sup>7</sup> and
  - (b) the port authority has taken appropriate account of issues raised in written submissions made to it under section 285C;<sup>8</sup> and
  - (c) no local government has a substantial objection to the draft plan; and
  - (d) State interests will not be adversely affected by the draft plan.
- ‘(2) If the Minister is satisfied about subsection (1)(a), (b) and (d) but is satisfied that a local government has a substantial objection to the draft plan, the draft plan may only be approved by the Governor in Council.’.
- (2) Section 286—  
*insert—*
- ‘(6) Each port authority must ensure the port authority’s current approved land use plan is published on the port authority’s web site on the internet.’.

#### **14 Insertion of new ch 8, pts 4A and 4B**

After section 289—

*insert—*

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<sup>7</sup> Section 285 (Land use plans)

<sup>8</sup> Section 285C (Consultation on statement of proposal or draft plan)

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## **‘Part 4A                      Port approvals**

### **‘289A Application of pt 4A**

‘This part applies if a port authority decides to regulate a controlled activity by issuing a port notice, under section 282,<sup>9</sup> under which the approval of the port authority is required to perform the controlled activity.

### **‘289B Definitions for pt 4A**

‘In this part—

**approval** see section 289C(1).

**controlled activity** means any of the following activities—

- (a) operating a tug service;
- (b) in relation to a ship—
  - (i) burning; or
  - (ii) welding; or
  - (iii) riveting; or
  - (iv) spray painting; or
  - (v) sand blasting; or
  - (vi) another similar activity prescribed under a regulation;
- (c) operating a refuelling facility.

### **‘289C Application for approval**

‘(1) A person may apply to a port authority for approval to perform a controlled activity in a port authority’s port area (an **approval**).

‘(2) The application must—

- (a) be in writing; and

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9 Section 282 (Port authority may control activities by port notice)

- (b) identify the area where the controlled activity will be performed under the approval; and
- (c) state any other thing relevant to the proper consideration of the application as required under a regulation.

**‘289D Port authority may grant approval, with or without conditions**

- ‘(1) The port authority may decide to—
  - (a) grant an application for an approval, with or without conditions; or
  - (b) refuse the application.
- ‘(2) A holder of an approval to operate a tug service may or may not be given an exclusive right to operate the tug service in a port area.
- ‘(3) A holder of an approval must not breach a condition of the approval.

Maximum penalty for subsection (3)—50 penalty units.

**‘289E Change of conditions on an approval**

- ‘(1) A port authority may change an approval, if the port authority considers it reasonably necessary to do so having regard to—
  - (a) the efficient operation of the port; or
  - (b) the safety or security of the port, its users or the port authority’s employees.

- ‘(2) In this section—

*change*, an approval, means revoke, suspend, or impose or change a condition on, the approval.

**‘289F Decision by port authority in relation to approval**

- ‘(1) This section applies if the port authority decides to do any of the following—
  - (a) refuse an application for an approval;

- 
- (b) impose a condition on an approval as part of a grant of an application for an approval;
  - (c) change, within the meaning of section 289E, an approval.
- ‘(2) The port authority must give the applicant or approval holder a written notice stating the following—
- (a) the decision;
  - (b) the reasons for the decision;
  - (c) that the applicant or approval holder may ask for the decision to be reviewed and appeal against the reviewed decision;
  - (d) that, under the *Transport Planning and Coordination Act 1994*, part 5, as applied under section 289G, the applicant or approval holder may ask for the decision or the reviewed decision to be stayed.

### ‘289G Review of and appeals against decisions

- ‘(1) A person whose interests are affected by a decision to which section 289F applies (the *original decision*) may ask the port authority to review the decision.
- ‘(2) The *Transport Planning and Coordination Act 1994*, part 5, division 2—
- (a) applies to the review as if—
    - (i) references in the division to the chief executive were references to the port authority that made the decision; and
    - (ii) references in the division to an appeal court or the appeal court were references to a Magistrates Court; and
  - (b) provides—
    - (i) for the procedure for applying for the review and the way it is to be carried out; and
    - (ii) that the original decision may be stayed by the person by applying to a Magistrates Court.

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- ‘(3) Also, after the port authority confirms or amends the original decision or substitutes another decision, the person may appeal against the confirmed, amended or substituted decision (the *reviewed decision*) to a Magistrates Court.
- ‘(4) The *Transport Planning and Coordination Act 1994*, part 5, division 3—
- (a) applies to the appeal as if—
    - (i) references in the division to the chief executive were references to the port authority that made the decision; and
    - (ii) references in the division to an appeal court or the appeal court were references to a Magistrates Court; and
  - (b) provides—
    - (i) for the procedure for the appeal and the way it is to be disposed of; and
    - (ii) that the reviewed decision may be stayed by the person by applying to a Magistrates Court.

## ‘Part 4B                      Disposal of abandoned property

### ‘289H Definitions for pt 4B

‘In this part—

*abandoned property* means property that the port authority reasonably believes has been abandoned at the port authority’s port facilities including, for example—

- (a) a ship, an aircraft or a vehicle; or
- (b) a thing attached to, or contained in, a ship, an aircraft or a vehicle.

*insufficient value property* means abandoned property that is—



- (a) of no value; or
- (b) if sold by a port authority, would not be likely to return sufficient proceeds of sale to cover the total of the following amounts—
  - (i) the expenses reasonably incurred by the authority in selling the property;
  - (ii) the expenses reasonably incurred by the authority in dealing with the property under this part;
  - (iii) the charges, interest and other expenses owing to the authority in relation to the property.

**‘289I Reasonable steps must be taken to find owner**

- ‘(1) This section applies to abandoned property found at the port authority’s port facility, unless—
  - (a) it is insufficient value property; or
  - (b) it is perishable and it is impracticable for the port authority to keep it having regard to its nature and condition.
- ‘(2) The port authority—
  - (a) must take reasonable steps to locate the owner of the property; and
  - (b) may have the property moved to a place it considers appropriate.
- ‘(3) If the port authority has located the owner of the property within 28 days after the property was found, the port authority must give the owner a written notice—
  - (a) describing the property; and
  - (b) stating the property has been found; and
  - (c) explaining how it may be recovered; and
  - (d) stating the property may be sold or disposed of if it is not recovered.
- ‘(4) If the port authority has not located the owner of the property within 28 days after finding the property, the port authority

must publish a notice in a newspaper circulating generally in the State that includes the matters mentioned in subsection (3)(a) to (d).

**‘289J A person may claim property**

‘The port authority must return abandoned property to a person if the person, within 28 days after the notice is given or published under section 289I—

- (a) satisfies the port authority that the person is the owner of the property; and
- (b) pays the expenses reasonably incurred by the port authority in dealing with the property under this part.

**‘289K If property not claimed**

‘If a person does not claim the abandoned property within 28 days after a port authority has given or published a notice under section 289I about it, the port authority may sell the property.

**‘289L Sale of perishable property**

‘The port authority may sell abandoned property if it is perishable and it is impracticable for the port authority to keep it having regard to its nature and condition.

**‘289M Proceeds from the sale of abandoned property**

- ‘(1) If abandoned property is sold by a port authority, the proceeds of the sale must be applied in the following order—
  - (a) in payment of the expenses reasonably incurred by the port authority in selling the property;
  - (b) in payment of the expenses reasonably incurred by the authority in dealing with the property under this part;
  - (c) in payment of charges, interest and other expenses owing to the authority in relation to the property;
  - (d) in payment of any balance to the owner.

- ‘(2) If the proceeds of the sale are less than the total of the expenses mentioned in subsection (1)(a), (b) and (c), the difference is a debt owing to the port authority by the owner.
- ‘(3) Compensation may not be recovered against the port authority in relation to a payment under this section.

**‘289N Abandoned property of no value**

‘A port authority may dispose of abandoned property that is insufficient value property in the way the port authority considers appropriate.’.

**15 Omission of s 293 (Payment of charges and interest on unpaid charges)**

Section 293—

*omit.*

**16 Insertion of new ch 18, pt 5**

Chapter 18—

*insert—*

**‘Part 5 Transitional provisions for the  
Transport Infrastructure and  
Other Legislation Amendment  
Act 2005**

**‘532 Definitions for pt 5**

‘In this part—

*commencement* means the commencement of this section.

*repealed regulation* means—

- (a) the *Transport Infrastructure (Ports) Regulation 1994*; or
- (b) the *Transport Infrastructure (Airport Management) Regulation 1994*.

### ‘533 Approvals

- ‘(1) Subsection (2) applies to a written approval—
- (a) given by a port authority under the *Transport Infrastructure (Ports) Regulation 1994* before commencement, other than a written approval given under section 43, 44 or 45 of the regulation;<sup>10</sup> and
  - (b) in force immediately before commencement.
- ‘(2) The written approval is taken to be an approval granted by the port authority under chapter 8, part 4A<sup>11</sup> after commencement.
- ‘(3) Subsection (4) applies to a written approval (***controlled activity approval***)—
- (a) given by a port authority under the *Transport Infrastructure (Ports) Regulation 1994*, section 43, 44 or 45, before commencement; and
  - (b) in force immediately before commencement.
- ‘(4) The controlled activity approval—
- (a) is taken to be an approval granted by the port authority under chapter 8, part 4A; and
  - (b) expires whenever the first of the following happens—
    - (i) the end of 6 months after commencement;
    - (ii) the port authority gives a new approval to the person in substitution for the controlled activity approval under this Act.
- ‘(5) For subsection 4(b)(ii), the port authority may give an approval without receiving an application for the approval under section 289C.<sup>12</sup>

10 *Transport Infrastructure (Ports) Regulation 1994*, section 43 (Approval for burning, welding etc. in certain ports), 44 (Approval of operation of a tug service in a port) or 45 (Approval of operation of fuelling facility in certain ports)

11 Chapter 8 (Port infrastructure and other matters), part 4A (Port approvals)

12 Section 289C (Application for approval)

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**‘534 Proceedings**

‘A proceeding by or against a port authority under a repealed regulation, that has not ended before the commencement, may be continued and finished as if the repealed regulation had not been repealed.

**‘535 Land use plans**

‘(1) This section applies if, before commencement—

(a) consultation had started or had been completed in relation to a proposed land use plan or amendment of a land use plan under section 285 as in force immediately before commencement;<sup>13</sup> and

(b) the Minister had not approved the proposed land use plan or amendment of the land use plan under section 286 as in force immediately before commencement.<sup>14</sup>

‘(2) Chapter 8, part 4, division 1, as in force immediately before commencement, continues to apply to the proposed land use plan or amendment of a land use plan despite the enactment of the *Transport Infrastructure and Other Legislation Amendment Act 2005*.

**‘536 Detained property**

‘(1) This section applies to property, detained by a port authority under part 4, division 2 of a repealed regulation, which has not been completely dealt with by the port authority under that division before commencement.

‘(2) The port authority may continue to deal with the property as if the repealed regulation had not been repealed.

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13 See sections 285 (Consultation on land use plans) as in force immediately before commencement.

14 See section 286 (Approval of land use plans) as in force immediately before commencement.

### **‘537 Notices in the form of official traffic signs**

- ‘(1) This section applies to a notice (however described), in the form of an official traffic sign, erected or displayed under a repealed regulation on a road by a port authority before commencement if the notice was in force under the repealed regulation immediately before commencement.
- ‘(2) At commencement, the notice is taken to be an official traffic sign installed under the *Transport Operations (Road Use Management) Act 1995*, chapter 5, part 2, by the chief executive within the meaning of that part.
- ‘(3) This section expires 1 year after it commences.

### **‘538 Things done under re-enacted provision**

- ‘(1) This section applies subject to this part.
- ‘(2) A thing continues to have effect as if the thing had been done under this Act if the thing—
- (a) expressly or impliedly was authorised to be done under a provision of a repealed regulation; and
  - (b) was in force immediately before the repeal; and
  - (c) can be done under a re-enacted provision.

*Examples of things that continue to have effect—*

- port notices issued by a port authority
- appointments of authorised officers
- directions given to a person by an authorised officer

- ‘(3) In this section—

*re-enacted provision* means a provision of a repealed regulation that has been re-enacted, including with changes, as a provision in chapter 8 by the *Transport Infrastructure and Other Legislation Amendment Act 2005*.’.

## **17 Amendment of sch 6 (Dictionary)**

- (1) Schedule 6, definitions *approval*, *authorised officer* and *commencement*—

*omit.*

(2) Schedule 6—

*insert—*

**‘abandoned property**, for chapter 8, part 4B, see section 289H.

**airport**, for chapter 8, see section 267.

**approval—**

- (a) for chapter 8, part 4A—see section 289B; or
- (b) for chapter 12—see section 415; or
- (c) for chapter 14—means an approval by the chief executive.

**authorised officer—**

- (a) for chapter 8—means a person appointed under section 282K; or
- (b) for a person who is appointed under a regulation as an officer in relation to a matter as stated in the regulation—means a person appointed under the regulation as an officer for the matter.

**charterer**, of an aircraft, for chapter 8, part 3A, does not include a person who hires, as part of the same transaction, the aircraft and the services of a pilot for the aircraft.

**commencement—**

- (a) for chapter 18, part 3, see section 521; or
- (b) for chapter 18, part 5, see section 532.

**controlled activity**, for chapter 8, see section 289B.

**draft plan** see section 285B.

**insufficient value property**, for chapter 8, part 4B, see section 289H.

**port area**, of a port authority, for chapter 8, see section 267.

**port facilities**, for chapter 8, see section 267.

**port notice**, for chapter 8, see section 282(1).

*requirement*, of a port notice, for chapter 8, see section 267.

*repealed regulation*, for chapter 18, part 5, see section 532.

*statement of proposal* see section 285A.

*train controller*, for rolling stock, means an individual who is in control of train control signalling and communication for the section of track on which the rolling stock is moving or stationary.’.

- (3) Schedule 6, definition *port authority*, paragraph (c)—  
*omit, insert—*  
‘(c) the Central Queensland Ports Authority; or’.

## Part 4**Amendment of Transport Operations (Marine Safety) Act 1994**

### 18 Act amended in pt 4

This part amends the *Transport Operations (Marine Safety) Act 1994*.

### 19 Amendment of s 3 (Objectives of this Act)

- (1) Section 3(1), after ‘overall’—

*insert—*

‘primary’.

- (2) Section 3—

*insert—*

- ‘(4A) A further objective of this Act is to manage the operation and activities of ships.’.



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**20 Amendment of s 29 (Achieving an appropriate balance between safety and cost)**

Section 29(1), after ‘is’—

*insert—*

‘primarily’.

**21 Amendment of s 197 (Proceedings for indictable offences)**

Section 197(2)(b), first occurring—

*renumber* as section 197(2)(a).

**22 Amendment of s 218 (Other matters for regulations)**

Section 218—

*insert—*

‘(2) Also, a regulation may make provision about the operation and activities of ships not otherwise provided for under sections 208 to 217.

*Examples for subsection (2)—*

- provision about amenity
- provision about zones and controlling the operation of ships in the zones’.