



Queensland

Transport and Other Legislation Amendment Act 2009

Act No. 47 of 2009



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Transport and Other Legislation Amendment Act 2009

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An Act to amend the Maritime Safety Queensland Act 2002, the Transport Infrastructure Act 1994, the Transport Operations (Marine Safety) Act 1994, the Transport Operations (Passenger Transport) Act 1994 and the regulation under that Act, the Transport Operations (Road Use Management) Act 1995, the Transport Planning and Coordination Act 1994 and the Transport Security (Counter-Terrorism) Act 2008 for particular purposes, and to make consequential and minor amendments of legislation as stated in the schedule

[Assented to 19 November 2009]

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Transport and Other Legislation Amendment Act 2009*.

2 Commencement

Part 7 commences on 1 January 2010.

Part 2 Amendment of Maritime Safety Queensland Act 2002

3 Act amended

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

4 Amendment of s 11 (Functions and powers of general manager)

Section 11(2)(c)—
omit.

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

5 Act amended in pt 3 and schedule

This part and the schedule amend the *Transport Infrastructure Act 1994*.

6 Amendment of s 2 (Objectives of this Act)

Section 2(2)(i)(vii), from ‘network’—
omit, insert—
‘network; and’.

7 Replacement of s 9 (Obligations about government supported transport infrastructure)

Section 9—
omit, insert—

‘9 Obligations about government supported transport infrastructure

‘The chief executive must ensure that—

- (a) the construction, maintenance and operation of all government supported transport infrastructure for which the chief executive is responsible is carried out in a way that, within the objective of this chapter—
 - (i) takes into account best practice and national benchmarks; and
 - (ii) promotes the safe transport of persons and goods; and
 - (iii) reduces adverse environmental impacts; and
 - (iv) encourages efficient and competitive behaviour in the construction and maintenance of transport infrastructure; and

[s 8]

- (b) the construction, maintenance and operation of all government supported transport infrastructure for which the chief executive is responsible is carried out in accordance with standards—
 - (i) published by the chief executive; and
 - (ii) designed, within overall transport objectives, to achieve efficiency, affordable quality and cost effectiveness; and
- (c) contracts that are let for the construction, maintenance or operation of transport infrastructure are designed in a way that encourages efficient performance by the contractor.

‘9A Beneficial assets

- ‘(1) For section 9(a)(iii), it is recognised that, although the operation or use of transport infrastructure may have significantly adverse environmental impacts, the operation and use are necessary for the community’s environmental, social and economic wellbeing.
- ‘(2) However, it is intended that, within the objective of this chapter, any significantly adverse environmental impacts resulting from the operation or use of transport infrastructure be progressively reduced to the extent that it is practicable to do so.’.

8 Amendment of s 258 (Impact of particular development on railways)

- (1) Section 258, heading, ‘on’—
omit, insert—
‘and’.
- (2) Section 258(2) and (3)—
omit, insert—
- ‘(2) Also, this section has as its purpose ensuring—

-
- (a) the safety and operational integrity of railways and future railways; and
 - (b) that development addresses impacts on the development from environmental emissions generated by railways or future railways.

Examples of environmental emissions—

air particles, fumes, light, noise

- ‘(3) For performing the chief executive’s functions as assessment manager or referral agency, the chief executive must consider the extent to which the proposed development satisfies the purpose mentioned in subsection (2).’.

9 Amendment of s 275 (Functions of port authorities)

- (1) Section 275(1)(f)(i), after ‘land’—
insert—
‘at Cairns’.
- (2) Section 275(1)(f)(i) and (iii), ‘Cairns Port Authority’—
omit, insert—
‘Far North Queensland Ports Corporation Limited’.
- (3) Section 275(1)(f)(ii) and (iii), ‘Port of Brisbane Corporation’—
omit, insert—
‘Port of Brisbane Corporation Limited’.
- (4) Section 275—
insert—
- ‘(4) In this section—
Far North Queensland Ports Corporation Limited means Far North Queensland Ports Corporation Limited ACN 131 836 014.

Port of Brisbane Corporation Limited means Port of Brisbane Corporation Limited ACN 124 048 522.’.

[s 10]

10 Amendment of s 277 (Powers of port authorities subject to Marine Safety Act)

Section 277, from ‘powers of a harbour master’—

omit, insert—

‘powers of—

- (a) the general manager under part 14A of the Marine Safety Act; or
- (b) a harbour master under the Marine Safety Act about marine safety and navigation.

‘(2) In this section—

Marine Safety Act means the *Transport Operations (Marine Safety) Act 1994*.’.

11 Insertion of new ss 287A and 287B

Chapter 8, part 4, division 2—

insert—

‘287A Impact of particular development and port operations

‘(1) This section applies if the Minister or chief executive is an assessment manager or a referral agency under the *Integrated Planning Act 1997* for a development application under that Act.

‘(2) This section has as its purpose ensuring—

- (a) the safety and operational integrity of ports; and
- (b) that development addresses impacts on the development from environmental emissions generated from a port.

Examples of environmental emissions—

air particles, fumes, light, noise

‘(3) For performing the Minister’s or the chief executive’s functions as assessment manager or referral agency, the Minister or the chief executive must consider the extent to which the proposed development satisfies the purpose mentioned in subsection (2).

-
- ‘(4) Subsection (3) is in addition to, and does not limit, the *Integrated Planning Act 1997*, section 3.3.15 and chapter 3, part 5, division 2.
 - ‘(5) This section does not apply to development in a State development area under the *State Development and Public Works Organisation Act 1971*.

‘287B Guidelines for s 287A

- ‘(1) For the purpose of section 287A, the chief executive may make guidelines to which a person must have regard when carrying out development under the *Integrated Planning Act 1997*.
- ‘(2) The chief executive must give a copy of the guidelines to each local government affected by the guidelines.’.

12 Insertion of new ch 15, pt 2, div 1, hdg

Chapter 15, part 2, before section 470—

insert—

‘Division 1 Preliminary’.

13 Insertion of new ch 15, pt 2, div 2, hdg

After section 471—

insert—

‘Division 2 Waterway transport management plans’.

14 Insertion of new ch 15, pt 2, divs 3 and 4

Chapter 15, part 2, after section 475—

insert—

[s 14]

‘Division 3 Authorised persons for waterway transport management plans

‘475A Authorised persons

- ‘(1) The following persons are authorised persons for a waterway transport management plan—
- (a) a police officer;
- Note—*
- See the *Police Powers and Responsibilities Act 2000*, section 14 for provisions about the declaration of police officers as public officials.
- (b) under an arrangement between the chief executive and the chief executive of the department in which the *Fisheries Act 1994* is administered—an inspector under that Act.
- ‘(2) The chief executive may appoint an officer of the department, or any other person, as an authorised person.
- ‘(3) However, the chief executive may appoint a person under subsection (2) only if the chief executive is reasonably satisfied the person is qualified for appointment because the person has the necessary expertise or experience.
- ‘(4) Sections 475B(1)(a) and (b), 475C and 475D do not apply to an authorised person who is a police officer.

‘475B Appointment conditions and limit on powers

- ‘(1) An authorised person holds office on any conditions stated in—
- (a) the person’s instrument of appointment; or
 - (b) a signed notice by the chief executive given to the person; or
 - (c) a regulation.

- ‘(2) The instrument of appointment, a signed notice given to the person or a regulation may limit the person’s powers under this Act.

‘475C Issue of identity card to each authorised person

- ‘(1) The chief executive must issue an identity card to each authorised person.
- ‘(2) The identity card must—
- (a) contain a recent photo of the person; and
 - (b) contain a copy of the person’s signature; and
 - (c) identify the person as an authorised person under this Act for a waterway transport management plan; and
 - (d) state an expiry date for the card.
- ‘(3) This section does not prevent the issuing of a single identity card to a person for a waterway transport management plan and other purposes.

‘475D Production or display of identity card

- ‘(1) In exercising a power under this division in relation to a person, an authorised person must—
- (a) produce the authorised person’s identity card for the person’s inspection before exercising the power; or
 - (b) have the identity card displayed so that 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 person must produce the identity card for the person’s inspection at the first reasonable opportunity.
- ‘(3) For subsection (1), an authorised person does not exercise a power in relation to a person only because the authorised person has entered a place as mentioned in section 475I(2).

[s 14]

‘475E When authorised person ceases to hold office

- ‘(1) An authorised person ceases to hold office if any of the following happens—
- (a) the term of office stated in a condition of office ends;
 - (b) the person ceases to hold office under another condition of office;
 - (c) the person’s resignation under section 475F takes effect.
- ‘(2) Subsection (1) does not limit the ways an authorised person may cease to hold office.
- ‘(3) In this section—
- condition of office* means a condition on which the person holds office.

‘475F Resignation

‘An authorised person may resign by signed notice given to the chief executive.

‘475G Return of identity card

‘A person who ceases to be an authorised person must return the person’s identity card to the chief executive within 21 days after ceasing to be an authorised person, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

‘Division 4 Powers of authorised persons

‘Subdivision 1 Interpretation

‘475H Definitions for div 4

‘In this division—

occupier, of a place that is a watercraft, means the owner or operator of the watercraft.

place includes the following—

- (a) land;
- (b) a building or other structure, or part of a building or other structure, of any type;
- (c) a group of buildings or other structures, or part of a group of buildings or other structures, of any type;
- (d) a watercraft.

‘Subdivision 2 Entry of places by authorised persons

‘475I Power to enter places

- ‘(1) An authorised person may enter a place if—
 - (a) its occupier consents to the entry; or
 - (b) the entry is authorised by a warrant.
- ‘(2) For the purpose of asking the occupier of a place for consent to enter, an authorised person may, without the occupier’s consent or a warrant—
 - (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
 - (b) enter part of the place the authorised person reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.

‘475J Procedure for entry with consent

- ‘(1) This section applies if an authorised person intends to ask an occupier of a place to consent to the authorised person or another authorised person entering the place under section 475I(1)(a).

[s 14]

- ‘(2) Before asking for the consent, the authorised person must tell the occupier—
 - (a) the purpose of the entry; and
 - (b) that the occupier is not required to consent.
- ‘(3) If the consent is given, the authorised person may ask the occupier to sign an acknowledgement of the consent.
- ‘(4) The acknowledgement must state—
 - (a) the occupier has been told—
 - (i) the purpose of the entry; and
 - (ii) that the occupier is not required to consent; and
 - (b) the purpose of the entry; and
 - (c) the occupier gives the authorised person consent to enter the place and exercise powers under this division; and
 - (d) the time and date the consent was given.
- ‘(5) If the occupier signs the acknowledgement, the authorised person must immediately give a copy to the occupier.
- ‘(6) If—
 - (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
 - (b) an acknowledgement complying with subsection (4) for the entry is not produced in evidence;the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

‘475K Application for warrant

- ‘(1) An authorised person may apply to a magistrate for a warrant relating to a place.
- ‘(2) The application must be sworn and state the grounds on which the warrant is sought.
- ‘(3) The magistrate may refuse to consider the application until the authorised person gives the magistrate all of the information

the magistrate requires about the application in the way the magistrate requires.

Example—

The magistrate may require additional information supporting the application to be given by statutory declaration.

‘475L Issue of warrant

- ‘(1) A magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—
- (a) there is a particular thing or activity (the *evidence*) that may provide evidence of an offence against a waterway transport management plan; and
 - (b) the evidence is at the place or, within the next 7 days, may be at the place.
- ‘(2) The warrant must state—
- (a) that a stated authorised person may, with necessary and reasonable help and force—
 - (i) enter the place and any other place necessary for entry; and
 - (ii) exercise the authorised person’s powers under this division; and
 - (b) the offence for which the warrant is sought; and
 - (c) the evidence that may be seized under the warrant; and
 - (d) the hours of the day or night when the place may be entered; and
 - (e) the date, within 14 days after the warrant’s issue, the warrant ends.

‘475M Warrants—procedure before entry

- ‘(1) This section applies if an authorised person named in a warrant issued under this subdivision in relation to a place is intending to enter the place under the warrant.

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- ‘(2) Before entering the place the authorised person must do, or make a reasonable attempt to do, the following—
- (a) identify himself or herself to a person who appears to be an occupier of the place by producing a copy of the authorised person’s identity card;
 - (b) give the person a copy of the warrant;
 - (c) tell the person the authorised person is permitted by the warrant to enter the place;
 - (d) give the person an opportunity to allow the authorised person immediate entry to the place without using force.
- ‘(3) However, the authorised person need not comply with subsection (2) if the authorised person reasonably believes that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.
- ‘(4) Subsection (2)(a) does not apply to an authorised person who is a police officer.

Note—

See the *Police Powers and Responsibilities Act 2000*, section 637 for provisions about police officers supplying details.

‘Subdivision 3 Powers after entry

‘475N General powers after entering places

- ‘(1) This subdivision applies to an authorised person who enters a place under subdivision 2.
- ‘(2) However if, under section 475I(2), the authorised person enters a place to ask the occupier’s consent to enter a place, this subdivision applies to the authorised person only if the consent is given or the entry is otherwise authorised.
- ‘(3) The authorised person may do any of the following—
- (a) search any part of the place;

-
- (b) inspect, measure, test, film, photograph, videotape or otherwise record an image of any part of the place or anything at the place;
 - (c) take a thing, or a sample of or from a thing, at the place for analysis, measurement or testing;
 - (d) take an extract from, or copy, a document at the place;
 - (e) take into or onto the place any equipment, materials or persons the authorised person reasonably requires for exercising a power under this division.
- ‘(4) If the authorised person takes a sample or thing for analysis under subsection (3)(c), the authorised person must—
- (a) give a receipt for the sample or thing to the person in charge of the thing or place from which it was taken; and
 - (b) for a sample or thing with an intrinsic value—at the end of 6 months after the sample or thing was taken, return it to the person who appears to be the owner of it or the person in charge of the thing or place from which it was taken.

Note—

Section 475V provides for forfeiture of the sample or thing to the State in particular circumstances.

- ‘(5) However, if for any reason it is not practicable to comply with subsection (4)(a), the authorised person must leave the receipt at the place in a conspicuous position and in a reasonably secure way.

‘475O Power to require reasonable help or information

- ‘(1) An authorised person may require the occupier of, or someone else at, a place entered under subdivision 2 to give the authorised person reasonable help to exercise any of the powers mentioned in section 475N(3)(a) to (e).
- ‘(2) A person must comply with a requirement under subsection (1), unless the person has a reasonable excuse.

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Maximum penalty—20 penalty units.

- ‘(3) A requirement under subsection (1) does not include a requirement to produce a document or give information.

‘Subdivision 4 Removal of watercraft

‘475P Notice of intention to remove watercraft

- ‘(1) An authorised person who reasonably believes a watercraft is anchored or moored in contravention of a waterway transport management plan may give the watercraft’s owner or operator a notice of intention to remove the watercraft.
- ‘(2) The notice must state the contravention and that the watercraft may be removed by an authorised person if the watercraft is not moved, within 14 days after the notice is given, to a place that is not in contravention of a waterway transport management plan.
- ‘(3) Without limiting the ways the notice may be given, it may be given by securely attaching it to the watercraft in a prominent position.

‘475Q Removing illegally anchored or moored watercraft

- ‘(1) This section applies if—
- (a) a notice of intention to remove a watercraft has been given under section 475P; and
 - (b) after the 14 days mentioned in the notice, the watercraft is still anchored or moored in contravention of a waterway transport management plan; and
 - (c) an authorised person—
 - (i) can not immediately find the watercraft’s owner or operator; or
 - (ii) reasonably believes neither the watercraft’s owner nor operator is able or willing to move the watercraft immediately.

-
- ‘(2) The authorised person may take steps that are necessary and reasonable to have the watercraft and anything in, on or attached to it removed to a place that is not in contravention of a waterway transport management plan.

‘475R Removal of hazardous watercraft

- ‘(1) This section applies if an authorised person reasonably believes a watercraft is—
- (a) anchored or moored in contravention of a waterway transport management plan; and
 - (b) a hazard to water traffic.

Example for paragraph (b)—

A watercraft is a hazard to water traffic if it is on or beside the course of a power boat race conducted under a consent under the *Transport Operations (Marine Safety) Act 1994*, section 217(2).

- ‘(2) The authorised person may take steps that are necessary and reasonable to have the watercraft and anything in, on or attached to it removed to a place that is not in contravention of a waterway transport management plan.

‘475S Giving notice of removal of watercraft

- ‘(1) If a watercraft is removed under section 475Q or 475R, the chief executive must give the watercraft’s owner written notice of the place where the watercraft has been taken.
- ‘(2) However, if the chief executive can not find the owner after making reasonable inquiries having regard to the watercraft’s value, the chief executive may give the notice by publishing it in a newspaper circulating in the locality from which the watercraft was removed.
- ‘(3) In this section—
- watercraft*** includes anything in, on or attached to the watercraft.

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‘475T Dealing with removed watercraft

- ‘(1) This section applies if—
- (a) the chief executive gives notice under section 475S about the removal of a watercraft; and
 - (b) the watercraft’s owner does not take possession of the watercraft and pay the amount of all expenses of removal of the watercraft within 1 month after the notice is given.
- ‘(2) Having regard to the value and condition of the watercraft, the chief executive may sell it by public auction or otherwise dispose of it.
- ‘(3) In this section—
- expenses of removal*, of a watercraft, includes expenses of—
- (a) removing and detaining the watercraft; and
 - (b) giving notice under section 475S; and
 - (c) advertising for sale or other disposal of the watercraft; and
 - (d) selling or otherwise disposing of the watercraft.
- watercraft* includes anything in, on or attached to the watercraft.

‘475U Proceeds from the sale of removed watercraft

- ‘(1) If watercraft is sold under section 475T(2), the proceeds of the sale must be applied—
- (a) first, in payment of the expenses of removal of the watercraft reasonably incurred by the chief executive in selling the watercraft; and
 - (b) second, in payment of any balance to the watercraft’s owner.
- ‘(2) If the proceeds of the sale are less than the total of the expenses mentioned in subsection (1)(a), the difference is a debt owing by the owner to the State.

-
- ‘(3) Compensation may not be recovered against the State in relation to a payment under this section.
- ‘(4) In this section—
- expenses of removal*, of a watercraft, include expenses of—
- (a) removing and detaining the watercraft; and
 - (b) giving notice under section 475S; and
 - (c) advertising for sale or other disposal of the watercraft; and
 - (d) selling or otherwise disposing of the watercraft.
- watercraft* includes anything in, on or attached to the watercraft.

‘475V Forfeiture by authorised person

- ‘(1) A sample or thing taken for analysis under section 475N(3)(c) is forfeited to the State if the authorised person who took, or arranged the taking of, the sample or thing—
- (a) after making reasonable efforts, can not return it to its owner; or
 - (b) after making reasonable inquiries, can not find its owner.
- ‘(2) For subsection (1), the authorised person is not required—
- (a) to make efforts if it would be unreasonable to make efforts to return the sample or thing to its owner; or
 - (b) to make inquiries if it would be unreasonable to make inquiries to find the owner.
- Example for paragraph (b)—*
- The owner of the sample or thing has migrated to another country.
- ‘(3) Regard must be had to the condition, nature and value of the sample or thing in deciding—
- (a) whether it is reasonable to make efforts or inquiries; and

[s 14]

(b) if efforts or inquiries are made—what efforts or inquiries, including the period over which they are made, are reasonable.

‘(4) In this section—

owner, of a sample or thing taken for analysis, means the person in charge of the sample or thing or place from which it was taken.

‘475W Dealing with forfeited sample or thing

- ‘(1) On forfeiture of a sample or thing to the State, it becomes the State’s property and may be dealt with by the chief executive in a way the chief executive reasonably believes is appropriate.
- ‘(2) Without limiting subsection (1), the chief executive may destroy or dispose of the sample or thing.

‘Subdivision 5 General enforcement matters

‘475X Direction to stop contravening plan

- ‘(1) If an authorised person considers a person is not complying with a provision of a waterway transport management plan, the authorised person may give the person a direction to immediately stop contravening the plan in a stated way.
- ‘(2) When giving the direction, the authorised person must tell the person that it is an offence to fail to comply with the direction, unless the person has a reasonable excuse.
- ‘(3) The person must comply with the direction.
- Maximum penalty for subsection (3)—40 penalty units.

‘475Y Power to require name and address

- ‘(1) This section applies if—

-
- (a) an authorised person finds a person committing an offence against a waterway transport management plan;
or
 - (b) an authorised person finds a person in circumstances that lead, or has information about a person that leads, the authorised person to reasonably suspect the person has just committed an offence against a waterway transport management plan.
- ‘(2) The authorised person may require the person to state the person’s name and residential address.
- ‘(3) When making the requirement, the authorised person must warn the person it is an offence to fail to state the person’s name or residential address unless the person has a reasonable excuse.
- ‘(4) The authorised person may also require the person to give evidence of the correctness of the stated name or residential address if the authorised person reasonably suspects the stated name or address is false.
- ‘(5) A person of whom a requirement is made under subsection (2) or (4) must comply with the requirement unless the person has a reasonable excuse.
- Maximum penalty—20 penalty units.
- ‘(6) A person does not commit an offence against subsection (5) if—
- (a) the requirement was given because the authorised person reasonably suspected the person had committed an offence; and
 - (b) the person is not proved to have committed the offence.

‘475Z False or misleading statements

- ‘(1) A person must not state anything to an authorised person, in relation to the authorised person’s exercise of a power under this division, that the person knows is false or misleading in a material particular.

[s 14]

Maximum penalty—20 penalty units.

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

‘475ZA False or misleading documents

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

Maximum penalty—20 penalty units.

- ‘(2) Subsection (1) does not apply to a person if the person, when giving the document—
- (a) tells the authorised person, to the best of the person’s ability, how the document is false or misleading; and
 - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information to the authorised person.
- ‘(3) In a proceeding for an offence against subsection (1), it is enough to state the document was ‘false or misleading’ to the person’s knowledge, without specifying which.

‘475ZB Obstruction of authorised person

- ‘(1) A person must not obstruct an authorised person, in relation to the authorised person’s exercise of a power under this division, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

- ‘(2) If a person has obstructed an authorised person and the authorised person decides to proceed with the exercise of the power, the authorised person must warn the person that—
- (a) it is an offence to obstruct the authorised person unless the person has a reasonable excuse; and

(b) the authorised person reasonably believes the person's conduct is an obstruction.

'(3) In this section—

obstruct includes assault, hinder, resist and attempt or threaten to obstruct.

'475ZC Impersonating an authorised person

'A person must not pretend to be an authorised person.

Maximum penalty—40 penalty units.

'475ZD Notice of damage

'(1) This section applies if—

(a) an authorised person damages something when exercising, or purporting to exercise, a power under this division; or

(b) another person acting under the direction or authority of an authorised person when exercising or purporting to exercise a power under this division damages something.

'(2) The authorised person must give a signed notice to the person who appears to be the owner or person in possession of the thing.

'(3) If for any reason it is not practicable to comply with subsection (2), the authorised person must leave the notice in a conspicuous position and in a reasonably secure way at the place where the damage happened.

'(4) The notice must state the particulars of the damage.

'(5) If the authorised person reasonably believes the damage was caused by a latent defect in the thing or other circumstances beyond the control of the authorised person or person acting under the direction or authority of the authorised person, the authorised person may state the belief in the notice.

[s 15]

- ‘(6) However, an authorised person need not comply with this section if the authorised person reasonably believes the damage is trivial.

‘475ZE Protection from liability

- ‘(1) An authorised person is not civilly liable for an act or omission done honestly and without negligence under this division.
- ‘(2) If subsection (1) prevents civil liability attaching to an authorised person, the liability attaches instead to the State.’.

15 Insertion of new ch 18, pt 13

Chapter 18—

insert—

‘Part 13 Transitional provisions for Transport and Other Legislation Amendment Act 2009

‘Division 1 Prescribed development applications

‘553 Application of s 258 to prescribed development applications

- ‘(1) This section applies to a prescribed development application made—
- (a) before, and not finally dealt with at, the commencement;
 - or
 - (b) within 6 months after the commencement.
- ‘(2) The following provisions do not apply in relation to the development application—

- (a) section 258(2)(b);
- (b) section 258(3), to the extent it refers to the purpose mentioned in section 258(2)(b).

‘(3) In this section—

commencement means the commencement of this section.

prescribed development application means a development application made under the *Integrated Planning Act 1997* for which the chief executive is an assessment manager or a referral agency under that Act.

‘554 **Application of s 287A to prescribed development applications**

‘(1) Section 287A does not apply in relation to a prescribed development application made—

- (a) before, and not finally dealt with at, the commencement;
or
- (b) within 6 months after the commencement.

‘(2) In this section—

commencement means the commencement of this section.

prescribed development application means a development application made under the *Integrated Planning Act 1997* for which the Minister or the chief executive is an assessment manager or a referral agency under that Act.

‘Division 2 **Waterway transport management plans**

‘555 **Amendment of waterway transport management plan by the amending Act does not affect powers of Minister and Governor in Council**

‘(1) The amendment of a waterway transport management plan by the amending Act does not affect—

[s 16]

- (a) the power of the Minister to further amend the plan or to repeal it; or
 - (a) the power of the Governor in Council to approve a matter mentioned in paragraph (a).
- ‘(2) In this section—
- amending Act* means the *Transport and Other Legislation Amendment Act 2009*.
- a waterway transport management plan* means—
- (a) the *Transport Infrastructure (Gold Coast Waterways) Management Plan 2000*; or
 - (b) the *Transport Infrastructure (Sunshine Coast Waterways) Management Plan 2000*; or
 - (c) the *Transport Infrastructure (Yeppoon Waterways) Management Plan 2000*’.

Part 4

Amendment of Transport Operations (Marine Safety) Act 1994

16 Act amended

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

17 Amendment of s 88 (Direction to master about operation of ship in relation to pilotage area)

Section 88(1)(d), after ‘in’—

insert—

‘, or adjacent to,’.

18 Insertion of new pt 14A

After section 191—

insert—

‘Part 14A General manager’s powers of direction

‘191A Direction to master about operation of ship in relation to pilotage area

‘(1) The general manager may give a direction under this section only if the general manager is satisfied that exceptional circumstances exist to justify the general manager’s intervention in the public interest.

Examples of exceptional circumstances—

- circumstances on board a ship that pose a serious risk to public health including, for example, a contagious disease
- circumstances where a natural disaster has affected a community and facilitating the off-loading of equipment or materials from a ship would assist the community

‘(2) The general manager may direct the master of a ship to navigate or otherwise operate the ship in relation to a pilotage area in a stated way, including, for example, in any of the following ways—

- (a) not to cause the ship to enter the pilotage area;
- (b) to cause the ship to enter the pilotage area in a stated way;
- (c) to navigate the ship in the pilotage area in a stated way;
- (d) to anchor, berth or moor the ship at a stated place in, or adjacent to, the pilotage area;
- (e) to move the ship from an anchorage, berth or mooring in the pilotage area;
- (f) to cause the ship to leave the pilotage area or to leave the pilotage area in a stated way.

[s 18]

- ‘(3) The direction may be given orally, in writing or in another way.
- ‘(4) Without limiting subsection (3)—
- (a) subject to the direction of the general manager, an oral direction may be communicated on the general manager’s behalf by a harbour master, an agent of a harbour master or a shipping inspector—
 - (i) personally to a person; or
 - (ii) by phone, radio or or another form of electronic communication; or
 - (iii) by megaphone or another form of distance communication; or
 - (b) a written direction may be given by way of a written notice published or otherwise reasonably made available or known to any person to whom it applies, including, for example, by publication in a newspaper or by a fax or email; or
 - (c) a direction may be given in another way appropriate for the maritime environment by being published or otherwise reasonably made available or known to the master, including, for example, by use of flags or lights.
- ‘(5) The direction may be given to another person in control of the ship if it is not practicable to give the particular direction to the ship’s master.
- ‘(6) A direction given under subsection (5) to a person in control of a ship, other than the ship’s master, is taken to have been given to the ship’s master.
- ‘(7) In a proceeding, if an issue arises about whether a direction was given to a person, the party alleging the direction was given must prove that the person had, or reasonably ought to have had, knowledge of the direction.

- ‘(8) A person must not contravene a direction given under this section, unless the person has a reasonable excuse for the contravention.

Maximum penalty—500 penalty units.

‘191B Direction to person in charge of a place

- ‘(1) This section applies if—
- (a) the general manager gives a direction to the master of a ship under section 191A(2); and
 - (b) the direction requires the master of the ship to anchor, berth or moor the ship at a stated place in, or adjacent to, a pilotage area.

- ‘(2) The general manager may direct the person in charge of the stated place in, or adjacent to, the pilotage area—

- (a) to allow a ship to be berthed at the place or moved from the place; or
- (b) to allow access through the place to and from the ship.

- ‘(3) A person must comply with a direction under subsection (2), unless the person has a reasonable excuse for not complying with it.

Maximum penalty—500 penalty units.’.

19 Amendment of schedule (Dictionary)

Schedule, definition *notice offence*—

insert—

- section 191A(8)
- section 191B(3)’.

Part 5 **Amendment of Transport Operations (Passenger Transport) Act 1994**

20 Act amended in pt 5 and schedule

This part and the schedule amend the *Transport Operations (Passenger Transport) Act 1994*.

21 Amendment of s 10 (Obligations about public passenger transport)

Section 10(1)(a)(i)—

omit, insert—

‘(i) takes into account best practice and national benchmarks; and’.

21A Amendment of s 28B (Driver authorisation—category B driver disqualifying offences)

(1) Section 28B(3)(b), ‘(4)’—

omit, insert—

‘(7)’.

(2) Section 28B(4) and (5)—

omit, insert—

‘(4) The chief executive must ask the Commissioner for Children and Young People and Child Guardian (the *children’s commissioner*) whether the commissioner considers an exceptional case exists.

‘(5) The children’s commissioner may give the chief executive the advice requested under subsection (4).

‘(6) Without limiting the chief executive’s power to take the exclusion action, the chief executive—

-
- (a) must take the advice of the children’s commissioner into account; and
 - (b) can not be satisfied that an exceptional case exists if the children’s commissioner advises the chief executive that the children’s commissioner considers an exceptional case does not exist.
- ‘(7) The chief executive must consider any written representations made by the person and must take the exclusion action unless the chief executive, subject to subsection (6) and the paramount principle mentioned in section 33A, is satisfied that an exceptional case exists.’.
- (3) Section 28B(6)—
renumber as section 28B(8).

22 Amendment of s 79 (Suspension and cancellation of taxi service licences)

Section 79(2)—

insert—

- ‘(c) the person does not pay the fees or taxi industry security levy payable in relation to the licence.’.

23 Amendment of s 94 (Preparation of draft standard)

Section 94(b)—

omit, insert—

- ‘(b) takes into account best practice and national benchmarks.’.

24 Insertion of new ch 13, pt 8

Chapter 13—

insert—

[s 25]

**‘Part 8 Transitional provision for
Transport and Other
Legislation Amendment Act
2009**

**‘183 Amendment of regulation by Transport and Other
Legislation Amendment Act 2009 does not affect
powers of Governor in Council**

*‘The amendment of the *Transport Operations (Passenger Transport) Regulation 2005* by the *Transport and Other Legislation Amendment Act 2009* does not affect the power of the Governor in Council to further amend the regulation or to repeal it.’*

25 Amendment of sch 1A (Driver disqualification offences)

- (1) Schedule 1A, part 1, division 1, item 1, ‘14’, first mention—
omit, insert—
‘17’.
- (2) Schedule 1A, part 1, division 1, item 2, from ‘offender’—
omit, insert—
‘offender was aged between 17 and 20 (both inclusive) and the person against whom the offence was committed was aged between 14 and 20 (both inclusive)’.
- (3) Schedule 1A, part 1, division 1, item 4, from ‘offender’—
omit, insert—
‘offender was aged between 17 and 20 (both inclusive) and the person against whom the offence was committed was aged between 14 and 20 (both inclusive)’.

26 Amendment of sch 3 (Dictionary)

- (1) Schedule 3, definition *category A driver disqualifying offence*, after ‘means’—
insert—

‘any of the following offences committed by a person when the person was at least 17 years’.

- (2) Schedule 3, definition *category A driver disqualifying offence*, paragraph (a)—

omit, insert—

‘(a) an offence against a provision of the Criminal Code mentioned in schedule 1A, part 1, subject to any qualification relating to the provision mentioned in the part;’.

- (3) Schedule 3, definition *category A driver disqualifying offence*, paragraph (b), ‘or’, at the end—

omit.

- (4) Schedule 3, definition *category B driver disqualifying offence*—

omit, insert—

‘***category B driver disqualifying offence*** means—

- (a) any of the following that is not a category A driver disqualifying offence—
- (i) an offence listed in the *Commission for Children and Young People and Child Guardian Act 2000*, schedule 2 or 2A, subject to any qualification relating to the offence mentioned in the schedule;
 - (ii) an offence against a provision of an Act mentioned in schedule 1A, part 2, subject to any qualification relating to the provision mentioned in the part;
 - (iii) an offence of counselling or procuring the commission of, or attempting or conspiring to commit, an offence mentioned in subparagraph (i) or (ii), and to which paragraph (i) or (ii) does not otherwise apply;
 - (iv) an offence against a law of another jurisdiction, including a jurisdiction outside Australia, that substantially corresponds to an offence mentioned in subparagraph (i), (ii) or (iii); or

[s 27]

- (b) an offence mentioned in the definition *category A driver disqualifying offence*, paragraph (a), (b) or (c), committed by a person when the person was under 17 years.’.

Part 6 Amendment of Transport Operations (Passenger Transport) Regulation 2005

27 Regulation amended

This part amends the *Transport Operations (Passenger Transport) Regulation 2005*.

28 Amendment of s 55 (Amendment, suspension and cancellation of taxi service licences—Act, ss 75(1) and 79)

Section 55(2)(c), ‘fees payable for the licence remain’—
omit, insert—

‘fees, or a taxi industry security levy, payable for the licence
remains’.

29 Amendment of sch 11 (Dictionary)

Schedule 11—

insert—

‘*accommodation house* means a place providing lodging or
food and lodging to the public.’.

Part 7 **Amendment of Transport Operations (Road Use Management) Act 1995**

30 **Act amended**

This part amends the *Transport Operations (Road Use Management) Act 1995*.

31 **Amendment of s 31 (Power to stop private vehicles)**

(1) Section 31(1)—

insert—

‘(c) if the officer reasonably believes the driver has just committed, or is committing, an offence against the Queensland Road Rules, section 154(1) or 156(1).

Note—

For the expiry of paragraph (c) and subsection (2AA), see section 170A.’.

(2) Section 31(2A), ‘subsection (1) or (2)’—

omit, insert—

‘subsection (1)(a) or (b) or (2)’.

(3) After section 31(2A)—

insert—

‘(2AA) In addition, an authorised officer who is not a police officer may only make a requirement under subsection (1)(c) on a business day during the period between 6a.m. and 7p.m.’.

32 **Amendment of s 48 (Power to require name and address)**

Section 48(1)(b)—

insert—

[s 33]

‘Example of an offence against a transport Act—

an offence against the Queensland Road Rules, section 154(1) or 156(1)’.
’

33 Amendment of s 49 (Power to require documents to be produced)

(1) Section 49(1), ‘subsection (2A)’—

omit, insert—

‘subsections (2A) and (2B)’.

(2) Section 49(2A), ‘Only’—

omit, insert—

‘Unless subsection (2B) applies, only’.

(3) Section 49—

insert—

‘(2B) An authorised officer who is not a police officer may require the driver of a private vehicle to produce his or her driver licence under subsection (1) if the officer reasonably believes the driver has just committed, or is committing, an offence against the Queensland Road Rules, section 154(1) or 156(1).

‘(2C) If a driver mentioned in subsection (2B) holds an open licence but is unable to comply with the requirement immediately, the driver may comply with the requirement by producing the licence to the chief executive, at a place nominated by the authorised officer, within 2 business days after the requirement is made.

‘(2D) The place nominated under subsection (2C) must be an office of the department that is reasonable in the circumstances.

Note—

For the expiry of subsections (2B) to (2D), see section 170A.’.

34 Insertion of new s 170A

After section 170—

insert—

‘170A Expiry and amendment of certain provisions

- ‘(1) This section, section 31(1)(c) and the note, and sections 31(2AA) and 49(2B) to (2D) expire on 31 March 2011.
- ‘(2) However, before 31 March 2011, a regulation may extend the expiry to a stated day of not later than 31 March 2012.
- ‘(3) Immediately before the expiry, this Act is amended as follows—
 - (a) section 31(2A), ‘subsection (1)(a) or (b) or (2)’—
omit, insert—
‘subsection (1) or (2)’;
 - (b) section 49(1), ‘subsections (2A) and (2B)’—
omit, insert—
‘subsection (2A)’;
 - (c) section 49(2A), ‘Unless subsection (2B) applies, only’—
omit, insert—
‘Only’.’.

**Part 8 Amendment of Transport
 Planning and Coordination Act
 1994**

35 Act amended

This part amends the *Transport Planning and Coordination Act 1994*.

[s 36]

36 Amendment of s 3 (Definitions)

- (1) Section 3—

insert—

‘public passenger service see the Transport Operations (Passenger Transport) Act 1994, schedule 3.

public passenger transport means the carriage of passengers by a public passenger service using a public passenger vehicle.

public passenger vehicle see the Transport Operations (Passenger Transport) Act 1994, schedule 3.’.

- (2) Section 3, definition *public passenger transport infrastructure*, paragraphs (a) to (i)—

omit, insert—

- ‘(a) a transit terminal for public passenger services;*

Examples—

an airport terminal, a coach terminal, a cruise ship terminal

- (b) a ferry terminal, jetty, pontoon or landing for ferry services;*
(c) a bus stop, bus shelter, bus station or bus lay-by;
(d) a busway station;
(e) a light rail station;
(f) a taxi rank, limousine rank or limousine standing area;
(g) a railway station;
(h) vehicle parking and set-down facilities;
(i) pedestrian and bicycle paths and bicycle facilities;
(j) a road on which a public passenger service operates.’.

37 Amendment of s 8A (Object of pt 2A)

- (1) Section 8A(2)(b) to (g)—

renumber as section 8A(2)(c) to (h).

(2) Section 8A(2)(a)—

omit, insert—

‘(a) ensuring, as far as practicable, development does not have a significant adverse impact on any of the following—

- (i) existing or future public passenger transport;
- (ii) existing or future public passenger transport infrastructure; and

(b) ensuring development addresses any impacts on the development from environmental emissions generated by any of the following—

- (i) existing or future public passenger transport;
- (ii) existing or future public passenger transport infrastructure; and

Examples of environmental emissions—

air particles, fumes, light, noise’.

Part 9 Amendment of Transport Security (Counter-Terrorism) Act 2008

38 Act amended

This part amends the *Transport Security (Counter-Terrorism) Act 2008*.

39 Amendment of schedule (Dictionary)

Schedule—

insert—

‘*law enforcement agency* includes the following—

[s 40]

- (a) the Australian Federal Police;
- (b) a police force or service of another State;
- (c) a department of government, agency, authority, commission, instrumentality, office, or other entity of any State or the Commonwealth established for a law enforcement or counter-terrorism purpose;
- (d) a part of an entity mentioned in paragraph (c);
- (e) an officer, employee or member of an entity mentioned in any of paragraphs (a) to (d).’.

Part 10 Other amendments

40 Legislation amended in schedule

- (1) The schedule amends the legislation it mentions.
- (2) However, subsection (1) does not apply in relation to particular legislation if another provision of this Act states that the schedule amends the particular legislation.

Schedule	Legislation amended
-----------------	----------------------------

sections 4, 21 and 40

State Penalties Enforcement Act 1999

1 Part 10—

insert—

‘Division 5 Transitional provision for Transport and Other Legislation Amendment Act 2009

‘181 Amendment of regulation by Transport and Other Legislation Amendment Act 2009 does not affect powers of Governor in Council

*‘The amendment of the *State Penalties Enforcement Regulation 2000* by the *Transport and Other Legislation Amendment Act 2009* does not affect the power of the Governor in Council to further amend the regulation or to repeal it.’.*

State Penalties Enforcement Regulation 2000

1 Schedule 3, entry for *Transport Infrastructure Act 1994*, entry for section 282J, ‘Cairns Port Authority’—

omit, insert—

‘Far North Queensland Ports Corporation Limited’.

Schedule

2 Schedule 3, entry for the *Transport Infrastructure (Gold Coast Waterways) Management Plan 2000*, authorised person for service of infringement notices entry—

omit, insert—

‘**Authorised person for service of infringement notices**—an authorised person for a waterway transport management plan under the *Transport Infrastructure Act 1994*, section 475A’.

3 Schedule 3, entry for the *Transport Infrastructure (Sunshine Coast Waterways) Management Plan 2000*, authorised person for service of infringement notices entry—

omit, insert—

‘**Authorised person for service of infringement notices**—an authorised person for a waterway transport management plan under the *Transport Infrastructure Act 1994*, section 475A’.

4 Schedule 3, entry for the *Transport Infrastructure (Yeppoon Waterways) Management Plan 2000*, authorised person for service of infringement notices entry—

omit, insert—

‘**Authorised person for service of infringement notices**—an authorised person for a waterway transport management plan under the *Transport Infrastructure Act 1994*, section 475A’.

Transport Infrastructure Act 1994

1 Section 49(3)(a), ‘or’—

omit.

- 2 Section 64, ‘subsection 62(1)’—**
omit, insert—
‘section 62(1)’.
- 3 Sections 85B(2) and 93A(2), ‘section 45’—**
omit, insert—
‘section 71’.
- 4 Section 105B, definition *final notice*, ‘section 105GF(3)’—**
omit, insert—
‘section 105GE(4)’.
- 5 Section 105GA(5), ‘Act’—**
omit, insert—
‘section’.
- 6 Section 105ZC(4)(c), ‘section 105ZB(4)’—**
omit, insert—
‘section 105ZB(1)’.
- 7 Section 182(1)(a), at the end, ‘or’—**
omit, insert—
‘and’.
- 8 Section 262, ‘(Conditions must be reviewed)’—**
omit, insert—
‘(Reviewing imposed conditions of lease)’.

- 9 Section 336(2), definition *emergency service*, paragraph (b), ‘Authority’—**
omit, insert—
‘Service’.
- 10 Section 336(2), definition *emergency service*, paragraph (d), ‘Services’—**
omit, insert—
‘Service’.
- 11 Section 374(1)(b), ‘owing’—**
omit, insert—
‘owning’.
- 12 Section 403(5)(b), ‘division’—**
omit, insert—
‘chapter’.
- 13 Section 463(1)(a), ‘chapter 7’—**
omit, insert—
‘chapter 8’.
- 14 Section 481(d) and (e)—**
renumber as section 481(b) and (c).
- 15 Section 486, heading, after ‘Act’—**
insert—
‘1991’.

-
- 16 Section 492, heading, after ‘Act’—**
insert—
‘1976’.
- 17 Schedule 2, item 8—**
omit.
- 18 Schedule 2, items 9 and 10—**
renumber as items 8 and 9.
- 19 Schedule 6, definitions, *access, dangerous goods (first occurring), declaration, establishment, interference, land and place—***
omit.
- 20 Schedule 6—**
insert—
‘*court*, for chapter 7, part 6, see section 213B.
data logger recording, for chapter 7, part 6, see section 213B.
data logger recording information, for chapter 7, part 6, see section 213B.
declaration—
(a) for chapter 6, part 5, division 2, subdivision 2, see section 53; or
(b) for chapter 6, part 8, for a local government tollway, see section 105B.
extractive material, for chapter 8, see section 267.
land—
(a) for chapter 6, part 5, division 2, subdivision 2, for land adjacent to a State-controlled road, see section 53; or
(b) for chapter 6, and for chapters 9 to 12, includes—

- (i) an interest in land; and
- (ii) land within the beds and banks of a watercourse or inundated land; and
- (iii) land beneath the internal waters of Queensland; or
- (c) for chapter 7 includes—
 - (i) a reserve within the meaning of the *Land Act 1994* or a road; and
 - (ii) land within the beds or banks of a watercourse or inundated land; or
- (d) for chapter 7, part 7 and for chapters 9 to 12, includes the airspace above, and the land below, the surface; or
- (e) for chapter 8, see section 267.

occupier, of a place that is a watercraft, see section 475H.

permitted road access location, for chapter 6, part 5, division 2, subdivision 2, see section 53.

place—

- (a) for chapter 7, part 5, see section 170; or
- (b) for chapter 15, part 2, division 4, see section 475H.

road access location, for chapter 6, part 5, division 2, subdivision 2, see section 53.

waterway transport management plan see section 472(1).’.

21 Schedule 6, definition *ancillary works and encroachments*, ‘, for, means’—

omit, insert—

‘means’.

22 Schedule 6, definition *authorised person*, paragraphs (a) and (b)—

omit, insert—

- ‘(a) for chapter 15, part 2—a person who is an authorised person for a waterway transport management plan under section 475A; or
- (b) for a person who is appointed under a regulation as an authorised person relating to a matter as stated in the regulation—a person appointed under the regulation as an authorised person for the matter; or
- (c) otherwise—a person who is an authorised person under the *Transport Operations (Passenger Transport) Act 1994*, section 111.’.

23 Schedule 6, definition *local government tollway corridor land*, after ‘part 8’—

insert—

‘and section 249’.

24 Schedule 6, definition *Queensland Competition Authority*, ‘section 5’—

omit, insert—

‘section 7’.

25 Schedule 6, definition *road access works*, ‘, for, means’—

omit, insert—

‘means’.

26 Schedule 6, definition *wild river area*, ‘2’—

omit.

Transport Infrastructure (Gold Coast Waterways) Management Plan 2000

- 1** **Parts 10 and 11—**
omit.

- 2** **Schedule 1, part 1, heading, after ‘floodways’—**
insert—
‘,’.

- 3** **Schedule 4, heading, ‘section 14’—**
omit, insert—
‘section 13’.

- 4** **Schedule 6, definitions *film* and *photograph*—**
omit.

Transport Infrastructure (Sunshine Coast Waterways) Management Plan 2000

- 1** **Parts 11 and 12—**
omit.

- 2** **Schedule 5, definitions *film* and *photograph*—**
omit.

Transport Infrastructure (Yeppoon Waterways) Management Plan 2000

- 1 Part 5, first occurring and part 5, second occurring—**
omit.

Transport Operations (Passenger Transport) Act 1994

- 1 Section 6(4), from ‘SEQTA’ to ‘1994’—**
omit, insert—
‘TransLink area under the *Transport Operations (TransLink Transit Authority) Act 2008*’.
- 2 Section 155, heading, ‘Regulations’—**
omit, insert—
‘**Regulation-making power**’.
- 3 Chapter 13, part 5 as inserted by Act No. 32 of 2008,
section 101—**
renumber as part 6.
- 4 Section 180 as inserted by Act No. 32 of 2008, section
101—**
renumber as section 181.
- 5 Schedule 3, definition *accommodation house*—**
omit.

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