



# River Improvement Trust Act 1940

Current as at 22 November 2016

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## Queensland

# River Improvement Trust Act 1940

## Contents

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		Page
<b>Part 1</b>	<b>Preliminary</b>	
1	Short title .....	5
2	Definitions .....	5
2A	Object .....	5
<b>Part 2</b>	<b>Establishment of river improvement areas and trusts</b>	
3	River improvement areas .....	6
4	Trusts for river improvement areas .....	7
<b>Part 3</b>	<b>Membership and operation of trusts</b>	
<b>Division 1</b>	<b>Membership</b>	
5	Membership of trust .....	7
5A	Appointment of members to vacancies .....	9
5B	Application of particular provisions of Local Government Act ...	10
<b>Division 2</b>	<b>Eligibility for membership</b>	
5C	Eligibility for appointment as member .....	10
5D	Investigations about eligibility for appointment .....	11
5E	Criminal history is confidential document .....	12
<b>Division 3</b>	<b>Executive members</b>	
5F	Chairperson .....	12
5G	Deputy chairperson .....	13
5H	Term of office .....	13
<b>Division 4</b>	<b>Vacancies of office</b>	
5I	Casual vacancy .....	14
5J	Resignation .....	15
5K	Removal from office as member .....	15
5L	Removal from office as chairperson or deputy chairperson ....	16
5M	Removal of all trust members .....	17
<b>Division 5</b>	<b>Procedures</b>	

Contents

---

5N	Times and places of meetings . . . . .	17
5O	Quorum . . . . .	17
5P	Presiding at meetings . . . . .	17
5Q	Conduct of meetings . . . . .	18
5R	Other procedures . . . . .	18
5RA	Trust committees . . . . .	18
<b>Division 6</b>	<b>Other matters</b>	
5S	Validity of trust's acts, proceedings or decisions . . . . .	19
<b>Part 4</b>	<b>Officers and employees of trusts</b>	
6	Secretary, officers, and employees . . . . .	19
<b>Part 5</b>	<b>Legal capacity and powers of trusts</b>	
<b>Division 1</b>	<b>Status of trusts</b>	
7	Trusts are bodies corporate etc. . . . .	20
8	Trusts are statutory bodies . . . . .	21
<b>Division 2</b>	<b>Powers for land and works</b>	
9	Compulsory acquisition of land . . . . .	21
10	Works which trust may undertake or maintain . . . . .	21
<b>Division 3</b>	<b>Improvement notices</b>	
11	Definitions . . . . .	24
11A	Improvement notice . . . . .	24
11B	Recording of improvement notice . . . . .	25
11C	Requirement to comply with improvement notice . . . . .	26
11D	Compensation for crop damage . . . . .	26
11E	Work by trust to ensure compliance with improvement notice . . . . .	26
11F	Action for debt does not stop proceeding for offence . . . . .	27
11G	Injunction . . . . .	27
<b>Division 4</b>	<b>General</b>	
11H	Other dealings in land are available to trust . . . . .	28
<b>Part 6</b>	<b>Financial matters</b>	
<b>Division 1</b>	<b>Trusts' responsibilities</b>	
12	Funds of the trusts . . . . .	29
12A	Trust may make certain arrangements about its accounts . . . . .	29
13	Budget . . . . .	30
13A	Unanticipated expenditure . . . . .	31
<b>Division 2</b>	<b>Funding</b>	
14	Liability of local government to contribute to trust . . . . .	31

---

14B	Other contributions in aid of works .....	32
<b>Part 8</b>	<b>General</b>	
19	Entry and inspection of land .....	33
20	Proceedings for offences .....	34
20B	Fees and allowances for chairperson and members .....	34
21	Delegations .....	34
22	Regulation-making power .....	34
23	Approval of forms .....	35
<b>Part 9</b>	<b>Transitional provision for Water Legislation Amendment Act 2016</b>	
24	Continuance of areas and trusts .....	35
<b>Schedule 1</b>	<b>Dictionary .....</b>	<b>37</b>



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# River Improvement Trust Act 1940

**An Act to provide for the management of river catchments, for their protection and improvement, by suitably qualified and representative entities**

## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *River Improvement Trust Act 1940*.

### 2 Definitions

The dictionary in schedule 1 defines particular words used in this Act.

### 2A Object

- (1) The object of this Act is to provide for the responsible management of river catchment areas through—
  - (a) planning for and implementing measures that improve the protection, health and resilience of rivers and their catchments; and
  - (b) repairing, and preventing damage to, rivers and their catchments; and
  - (c) restoring natural resilience to flooding and cyclones in rivers and their catchments; and
  - (d) protection of water security; and

- (e) improving water quality and river system function in rivers and their catchments.
- (2) The object is to be achieved mainly by—
  - (a) establishing river improvement areas; and
  - (b) establishing for the areas trusts that have the powers and functions to achieve the matters mentioned in subsection (1)(a) to (e).

## **Part 2**                                      **Establishment of river improvement areas and trusts**

### **3**                      **River improvement areas**

- (1) A regulation may establish a river improvement area, and may change or abolish the area.
- (2) A river improvement area must be made up of—
  - (a) all or part of a local government area; or
  - (b) all or part of each of 2 or more local government areas.
- (3) A local government, or 2 or more local governments acting jointly, may apply to the Minister for the establishment, change or abolition of a river improvement area.
- (4) The Minister must consider an application under subsection (3) and make a recommendation on the application to the Governor in Council.
- (5) The Minister may recommend to the Governor in Council the making of a regulation under subsection (1) whether or not an application has been made under subsection (3), and whether or not the regulation recommended is consistent with an application under subsection (3).
- (6) A regulation establishing a river improvement area must assign a name to the area.
- (7) A regulation changing a river improvement area may change the name of a river improvement area.



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#### **4 Trusts for river improvement areas**

- (1) A regulation establishing a river improvement area must establish and name a trust for the area.
- (2) A regulation changing a river improvement area may change the trust for a river improvement area, including by changing its name.
- (3) A regulation abolishing a river improvement area must abolish the trust for the area.
- (4) The name of a trust as provided for in a regulation establishing or changing the trust must be a name the Minister is satisfied is suitable, having regard to the intended scope of operations of the trust and the persons who are appointed to make up the trust.
- (5) It is not necessary for the word ‘trust’ to form part of a trust’s name.
- (6) A regulation changing or abolishing a river improvement area may provide for any matter necessary or convenient to give effect to the change or abolition.
- (7) Without limiting subsection (6), the regulation may transfer assets and liabilities of a trust to another trust.

## **Part 3 Membership and operation of trusts**

### **Division 1 Membership**

#### **5 Membership of trust**

- (1) Unless a trust’s membership is provided for under a regulation under subsection (1A), the trust’s membership is made up of—

- (a) 2 councillors of each constituent local government for the trust's river improvement area, appointed by the local government; and
  - (b) up to 3 persons appointed by the Minister.
- (1A) A trust's membership may be made up of the members, up to the number as stated in a regulation, who are appointed by the Governor in Council and who—
- (a) must include 1 or more councillors, as stated in the regulation, of each constituent local government for the trust, nominated by the constituent local government; and
  - (b) may include—
    - (i) persons nominated by other entities stated in the regulation as being entities entitled to nominate members for the trust; and
    - (ii) persons nominated by the Minister.
- (1B) The regulation under subsection (1A)—
- (a) may provide that the members of the trust are to be known as directors or another term stated in the regulation; and
  - (b) if there are 2 or more constituent local governments for the trust—is not required to state the same number of councillors for nomination by each local government.
- (2) Despite subsection (1), if the Minister considers it appropriate, each constituent local government for a trust whose membership is provided for in subsection (1) may appoint 1 councillor as a member of the trust, in addition to the councillors appointed under subsection (1)(a).
- (3) Each person appointed by a local government under subsection (1)(a) or (2) holds office for the term, of no more than 4 years, decided by the local government.
- (4) Each person appointed by the Minister under subsection (1)(b) holds office for the term, of no more than 4 years, decided by the Minister.

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- (4A) Each person appointed by the Governor in Council under subsection (1A) holds office for the term, of no more than 4 years, decided by the Governor in Council.
  - (5) Despite subsections (3), (4) and (4A) and section 5A(6), if a person completes the person's term of office as a member of a trust, the person continues to hold office as a member until the person's successor is appointed.
  - (6) This section is subject to divisions 2 and 4.
  - (7) In this section—  
*constituent local government*, for a trust, means a local government whose local government area or part of the area is included in the river improvement area for which the trust is constituted.

## **5A Appointment of members to vacancies**

- (1) If the office of a member of a trust appointed by a local government under section 5(1)(a) or (2) becomes vacant, the local government must appoint another of its councillors to the office within 30 days after the vacancy.
- (2) If a local government does not appoint a councillor to a vacant office under subsection (1), the Minister may give the local government a written notice requiring it to appoint a councillor to the office within a reasonable period of at least 7 days.
- (3) If the local government does not comply with the notice, the Minister may appoint a person, whether or not a councillor of the local government, to the vacant office.
- (4) If the office of a member of a trust appointed by the Minister under section 5(1)(b) becomes vacant, the Minister may appoint another person to the office.
- (5) However, if there are no other members of the trust appointed under section 5(1)(b), the Minister must appoint another person to the vacant office.

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- (5A) If the office of a member of a trust appointed under section 5(1A) becomes vacant, the Governor in Council may appoint a person to the vacant office.
- (5B) If the member was nominated by a local government under section 5(1A)(a) or by another entity under section 5(1A)(b)(i), the Minister must have regard to the views of the local government or other entity in recommending the appointment to the Governor in Council.
- (6) A person appointed under this section is appointed for the balance of the term of office of the person's predecessor.
- (7) This section is subject to divisions 2 and 4.

## **5B Application of particular provisions of Local Government Act**

The *Local Government Act 2009*, chapter 6, part 2, division 5 applies to a member of the trust as if—

- (a) a reference to a councillor were a reference to a member of the trust; and
- (b) a reference to a local government, or the chief executive officer of a local government, were a reference to the trust; and
- (c) a reference to a local government's area were a reference to the trust's river improvement area; and
- (d) all other necessary changes were made.

## **Division 2 Eligibility for membership**

### **5C Eligibility for appointment as member**

- (1) A person is not eligible to be appointed as a member of a trust if the person—
  - (a) is incapable of performing the member's functions because of physical or mental incapacity; or

- (b) is an insolvent under administration under the Corporations Act, section 9; or
  - (c) has been convicted of an indictable offence and the rehabilitation period for the offence has not expired or has been revived under the *Criminal Law (Rehabilitation of Offenders) Act 1986*; or
  - (d) is the secretary or another officer or an employee of the trust; or
  - (e) is directly interested in an agreement with, or on behalf of, the trust.
- (2) Also, a person is not eligible to be appointed as a member of a trust by a local government under section 5(1)(a) or (2) or 5A(1) or (2) if the person's term of office as councillor of the local government has ended or the office has otherwise become vacant.
- (3) Further, a person is not eligible to be appointed as a member of a trust by the Governor in Council under section 5(1A)(a) if the person's term of office as a councillor of the constituent local government that nominated the person has ended or the office has otherwise become vacant.

## **5D Investigations about eligibility for appointment**

- (1) The chief executive may make investigations about a person to decide whether the person is eligible to be appointed as a member of the trust.
- (2) Without limiting subsection (1), the chief executive may—
- (a) by written notice, ask the person for written consent for the chief executive to obtain a written report about the person's criminal history; and
  - (b) if the person gives the consent, ask the commissioner of the police service for a written report about the person's criminal history.
- (3) The commissioner must give the requested report to the chief executive.

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- (4) However, the report is required to contain only criminal history in the commissioner's possession or to which the commissioner has access.

## **5E Criminal history is confidential document**

- (1) A public service employee in the employ of the department or an agent engaged to perform services for the department must not, directly or indirectly, disclose to anyone else a report, or information contained in a report, given under section 5D.

Maximum penalty—100 penalty units.

- (2) However, the officer, employee or agent does not contravene subsection (1) if—
  - (a) disclosure of the report or information to someone else is authorised by the chief executive to the extent necessary to perform a function under or in relation to this Act; or
  - (b) the disclosure is otherwise required or permitted by law.
- (3) The chief executive must destroy the report as soon as practicable after considering the person's eligibility.

## **Division 3 Executive members**

### **5F Chairperson**

- (1) A trust must elect one of its members appointed under section 5(1)(b) as its chairperson—
  - (a) at its first meeting; and
  - (b) within 30 days after a vacancy in the office of chairperson.
- (2) However, if only 1 member of the trust has been appointed under section 5(1)(b), the Minister must appoint that member as the chairperson.

- (3) If the trust does not elect a chairperson under subsection (1), the Minister may appoint a member appointed under section 5(1)(b) as the chairperson.
- (4) The Governor in Council appoints the chairperson of the trust for a river improvement area as mentioned in section 5(1A).

## **5G Deputy chairperson**

- (1) A trust must elect one of its members, other than the chairperson, as its deputy chairperson—
  - (a) at its first meeting; and
  - (b) within 30 days after a vacancy in the office of deputy chairperson.
- (2) If the trust does not elect a deputy chairperson under subsection (1), the Minister may appoint a person, other than the chairperson, as deputy chairperson of the trust.
- (3) The deputy chairperson is to act as chairperson—
  - (a) during a vacancy in the office of chairperson; or
  - (b) during a period when the chairperson is absent from duty or, for another reason, can not perform the functions of the office.

## **5H Term of office**

- (1) A person holds office as the chairperson or deputy chairperson for the person's term of office as a member of the trust.
- (2) Despite subsection (1) and section 5(3) and (4), if a person completes the person's term of office as the chairperson or deputy chairperson, the person continues to hold the office until the person's successor is appointed.
- (3) A person appointed to fill a vacancy in the office of a member who was chairperson or deputy chairperson does not become the chairperson or deputy chairperson only because of the person's appointment.

- (4) Subsection (3) does not apply to a person appointed under section 5F(2) or (3) or 5G(2).

## **Division 4                      Vacancies of office**

### **5I            Casual vacancy**

- (1) The office of a member of a trust becomes vacant if any of the following happens—
- (a) the member dies during the member's term of office;
  - (b) the member resigns from office;
  - (c) for a member appointed by a local government—the local government removes the member from office;
  - (d) for a member appointed by the Minister—the Minister removes the member from office;
  - (e) for a member appointed by the Governor in Council—the Governor in Council removes the member from office.
- (2) The office of a member of a trust who is a councillor of a local government also becomes vacant if the person's term of office as councillor ends or the office as councillor otherwise becomes vacant.
- (3) The office of a person who is the chairperson or deputy chairperson of a trust also becomes vacant if—
- (a) the person resigns from the office; or
  - (b) the person is removed from the office under section 5L; or
  - (c) the office of the person as a member of the trust becomes vacant under subsection (1) or (2).



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## **5J Resignation**

- (1) A member of a trust may resign from office as a member by signed notice of resignation given to the chairperson of the trust.
- (2) The chairperson of a trust may resign from office as chairperson by signed notice of resignation given to the other members of the trust.
- (3) The deputy chairperson of a trust may resign from office as the deputy chairperson by signed notice of resignation given to the chairperson of the trust.
- (4) A person resigning from the office of chairperson or deputy chairperson of a trust may continue to be a member of the trust.

## **5K Removal from office as member**

- (1) This section applies to a local government, the Minister or the Governor in Council for removing from office as a member of a trust a person the local government, Minister or Governor in Council has appointed.
- (2) The local government, Minister or Governor in Council may remove the person from the office on any of the following grounds—
  - (a) the person is ineligible to be appointed as a member under section 5C;
  - (b) the person is absent from 3 consecutive meetings of the trust without the trust's leave and without reasonable excuse;
  - (c) the person declines to act as a member;
  - (d) the person is convicted of an offence against this Act.
- (3) The Minister may remove a person from office as a member of a trust if—
  - (a) the person was appointed by the Minister under section 5(1)(b); and

- (b) the Minister believes on reasonable grounds that the person is not acting in the best interests of the trust.
- (4) The Governor in Council may remove a person from office as a member of a trust if—
  - (a) the person was appointed by the Governor in Council under section 5(1A)(b)(ii); and
  - (b) the Minister, in recommending the person's removal to the Governor in Council, believes on reasonable grounds that the person is not acting in the best interests of the trust.

## **5L Removal from office as chairperson or deputy chairperson**

- (1) This section applies to—
  - (a) a trust, for removing from office a person who has been elected to the office of chairperson or deputy chairperson of the trust; or
  - (b) the Minister or Governor in Council, for removing from office a person the Minister or Governor in Council has appointed to the office of chairperson or deputy chairperson of a trust under section 5F(2), (3) or (4) or 5G(2).
- (2) The trust, Minister or Governor in Council may remove the person from the office if—
  - (a) a ground to remove the person from office as a member of the trust exists under section 5K(2); or
  - (b) the person declines to act as the chairperson or deputy chairperson of the trust; or
  - (c) the person is prohibited under the Corporations Act from being a director of a body corporate for a reason other than a person's age.

## **5M Removal of all trust members**

- (1) The Minister or Governor in Council may remove all the members of a trust from office if—
  - (a) the trust does not meet at least twice in a financial year;  
or
  - (b) the trust does not comply with its obligations under the *Financial Accountability Act 2009* for the preparation and submission of annual financial statements and annual reports under that Act.
- (2) For applying subsection (1)—
  - (a) the Minister may remove the members of a trust even if any of them was appointed by a local government; and
  - (b) only the Governor in Council may remove the members of a trust appointed by the Governor in Council.

## **Division 5 Procedures**

### **5N Times and places of meetings**

- (1) Meetings of a trust are to be held at the times and places decided by the trust.
- (2) However, a trust must meet at least twice in a financial year.

### **5O Quorum**

A quorum at a meeting of a trust is 2 of its members.

### **5P Presiding at meetings**

- (1) The chairperson is to preside at all meetings of a trust at which the chairperson is present.
- (2) If the chairperson is absent from a meeting or the office of chairperson is vacant, the deputy chairperson is to preside.

- (3) If the deputy chairperson cannot preside at a meeting under subsection (2), a member chosen by the members present is to preside.

## **5Q Conduct of meetings**

- (1) A question at a meeting of the trust is decided by a majority of the votes of the members present.
- (2) Each member present at the meeting has a vote on each question to be decided and, if the votes are equal, the member presiding also has a casting vote.
- (3) If a member present at a meeting fails to vote, the member is taken to have voted in the negative.

## **5R Other procedures**

Subject to this division, a trust must conduct its business, including its meetings—

- (a) in the way prescribed under a regulation; or
- (b) in so far as the way is not prescribed, as it considers appropriate.

## **5RA Trust committees**

- (1) A trust may establish committees to advise the trust about matters identified by the trust.
- (2) A committee may be made up of persons appointed by the trust from—
  - (a) members of the trust; and
  - (b) other persons considered by the trust to have experience in or knowledge about matters to be referred to the committee.
- (3) The trust may pay a member of a committee, other than a person who is also a member of the trust, fees and allowances that are—

- (a) decided by the trust; and
- (b) not more than the fees and allowances payable to a member of the trust.

## **Division 6                    Other matters**

### **5S            Validity of trust's acts, proceedings or decisions**

- (1) An act, proceeding or decision of a trust is not invalidated only because of—
  - (a) a defect in the qualification, appointment or membership of a member of the trust; or
  - (b) a vacancy in the membership of the trust at the time of the act, proceeding or decision.
- (2) However, subsection (1) applies only if there was a quorum at the meeting of the trust at which the act was done, proceeding was taken or, decision was made.

## **Part 4                            Officers and employees of trusts**

### **6                    Secretary, officers, and employees**

- (1) The trust shall appoint a secretary and may appoint such other officers as it deems necessary.
- (1A) The trust may with the consent of any relevant local government for the trust appoint the chief executive officer of such local government to be its secretary, and such chief executive officer may hold both offices.
- (2) The secretary shall, subject to the trust, have power to execute documents on behalf of the trust and to affix the official seal thereto and shall also have such other powers and perform such other duties as may from time to time be prescribed or, in so far as not prescribed, appointed or directed by the trust.

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- (3) The trust may retain or obtain the advice or services of such technical advisers and experts as it shall from time to time consider necessary.
- (4) The trust may employ such employees as it shall deem necessary.
- (5) In this section—  
*relevant local government*, for a trust, means a local government that may appoint a member of the trust or may nominate a person to be a member of the trust.

## **Part 5                      Legal capacity and powers of trusts**

### **Division 1                Status of trusts**

#### **7            Trusts are bodies corporate etc.**

- (1) A trust—
  - (a) is a body corporate; and
  - (b) may sue and be sued in its corporate name.
- (2) A trust has all the powers of an individual and may, for example—
  - (a) enter into contracts; and
  - (b) acquire, hold, deal with and dispose of property.
- (3) Subsection (2) does not limit a trust's powers under this or another Act.
- (4) A trust does not represent the State.

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## 8 Trusts are statutory bodies

- (1) Under the *Financial Accountability Act 2009* and *Statutory Bodies Financial Arrangements Act 1982*, a trust is a statutory body.
- (2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way in which a trust's powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

## Division 2 Powers for land and works

### 9 Compulsory acquisition of land

- (1) A trust may take land within its river improvement area for the purpose (the *relevant purpose*) of doing anything it is permitted or required to do under this Act, including undertaking or maintaining works as mentioned in section 10(1).
- (2) Without limiting subsection (1)—
  - (a) a trust is a constructing authority under the *Land Act 1994* (the *Land Act*) and the *Acquisition of Land Act 1967* (the *ALA*); and
  - (b) the relevant purpose is taken to be a purpose that, for the taking of land by a trust, is set out in the ALA, schedule 1; and
  - (c) the taking of land must be carried out under the Land Act or the ALA and not this Act.

### 10 Works which trust may undertake or maintain

- (1) A trust—
  - (a) may undertake or maintain any works for the purpose of achieving the object of this Act, other than works the chief executive directs the trust not to undertake or maintain; and

- (b) must undertake or maintain any works the chief executive directs the trust to undertake or maintain for the purpose of achieving the object of this Act; and
  - (c) must comply with any direction the chief executive gives the trust about the undertaking or maintenance of works under paragraph (a) or (b).
- (2) Subsection (1) does not operate to exempt a trust from complying with any law providing for how the undertaking or maintenance must be performed.
- (2A) Also, for undertaking or maintaining works, including for designing and for any subsequent monitoring, a trust must obtain advice from suitably qualified persons to ensure intended outcomes for the works are achieved, including, for example, the effective mitigation of loss or damage intended to be achieved by the works.
- (2B) A trust must, for each financial year, give the chief executive a report about its undertaking and maintenance of works in the financial year.
- (3) The power of the trust to undertake works includes, but without limiting the ordinary meaning of that term, power to construct, establish, carry out, manage, or control the works concerned.
- (4) Without limiting section 7(2), the trust may enter into contracts for or with respect to the undertaking or maintenance of any works.
- (5) A trust may enter into an agreement (a ***trust agreement***) with any person having an interest in land about any matter necessary to allow the trust to effectively undertake or maintain works directly or indirectly associated with the land.
- (6) Subject to the trust agreement, the obligations under the agreement on an owner of the land, or on another person who holds a registered interest in the land, attach to the land and bind the successors in title of the owner or other person.
- (6A) The trust may give the registrar of titles notice of the trust agreement and the registrar must record the notice in a way



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that a search of the register kept by the registrar under any Act relating to the relevant land will show—

- (a) the existence of the agreement; and
- (b) the terms of the agreement.

(6B) If the trust agreement is cancelled, as soon as practicable after the cancellation—

- (a) the trust must give the registrar notice of the cancellation; and
- (b) the registrar must remove the particulars of the agreement from the registrar's records.

(7) The chief executive or any person authorised in writing by the chief executive in that behalf or any member of a trust or any of its officers or employees authorised in writing on that behalf by the trust may enter upon any land—

- (a) where an emergency exists, forthwith;
- (b) in any other case, upon 7 days notice in writing being given to the owner or occupier of that land;

for the purpose of—

- (c) examining whether any of the provisions of this Act or any requisition, notice or order issued pursuant to this Act is being complied with or is being contravened;
- (d) making any plan or survey or taking levels;
- (e) making any inspection or examination;
- (f) otherwise in or for carrying out any of the powers, duties or authorities conferred or imposed upon the trust by or pursuant to this or any other Act.

(8) The power to enter land under subsection (7) includes power, to the extent reasonably necessary to achieve the purpose of entry—

- (a) to take on to the land any persons, vehicles, materials and equipment; and
- (b) to stay on the land.

## Division 3                      Improvement notices

### 11            Definitions

In this division—

*improvement notice* see section 11A(1).

*occupier*, of land, means, if there is no person in actual occupation of the land, a person, whether or not an owner of the land, who is entitled to immediate possession of the land.

*owner*, of land, means—

- (a) for land held from the State for an estate less than freehold—a person who holds the land directly from the State; or
- (b) otherwise—a person who is entitled to the rents and profits of the land.

*prohibit*, a person from doing a relevant act, includes control or regulate the person's doing of the relevant act.

*relevant act* means an act causing or contributing to, or likely to cause or contribute to, relevant damage.

*relevant damage* means damage to the bank of a river caused, or likely to be caused, by flood or cyclone.

*relevant land*, for an improvement notice, means any land the subject of a prohibition or requirement provided for in the notice.

### 11A    Improvement notice

- (1) A trust may, by a notice (an *improvement notice*) given to a person, do either or both of the following—
  - (a) prohibit the person from doing a relevant act as stated in the notice;
  - (b) require the person to take action, as stated in the notice, to remedy or prevent relevant damage.
- (2) An improvement notice must—

- (a) state the time within which compliance with any prohibition or requirement included in the notice must be complied with; and
  - (b) state when the notice ceases to be in force; and
  - (c) identify any relevant land for the notice.
- (3) An improvement notice may be given to a person only if it is reasonable in the circumstances to give the person the notice.
  - (4) An improvement notice has effect within the trust's river improvement area.
  - (5) If an improvement notice is given to a person in the person's capacity as the occupier of relevant land for the notice, the improvement notice applies not only to the person to whom it is given but also to each other person who is an occupier of the relevant land from time to time while the notice is in force as if it had also been given to the other person.
  - (6) An improvement notice may include information about action the trust may take for noncompliance with the notice.

## **11B Recording of improvement notice**

- (1) A trust may ask the registrar of titles to record an improvement notice for which there is relevant land.
- (2) The registrar must record the notice in a way that a search of the register kept by the registrar under any Act relating to relevant land for the notice will show the existence of the notice.
- (3) As soon as practicable after the improvement notice ceases to be in force for any reason—
  - (a) the trust must advise the registrar that the improvement notice has ceased to be in force; and
  - (b) the registrar must remove the particulars of the improvement notice from the registrar's records.

### **11C Requirement to comply with improvement notice**

- (1) A person to whom an improvement notice applies must take all reasonable steps to comply with the notice while the notice is in force unless the person has a reasonable excuse.

Maximum penalty—

- (a) for a first offence—20 penalty units; or
  - (b) for a second or later offence—100 penalty units.
- (2) Without limiting subsection (1), for a person who is the occupier of relevant land for the improvement notice, it is a reasonable excuse that the person was not aware, and could not reasonably be expected to have become aware, of the existence of the notice.

### **11D Compensation for crop damage**

- (1) This section applies if an occupier of relevant land for an improvement notice—
  - (a) takes action to comply with the notice; and
  - (b) in taking the action, can not reasonably avoid causing damage to a cultivated crop growing on the land.
- (2) The trust must pay the occupier an amount of compensation—
  - (a) agreed between the trust and the occupier; or
  - (b) if there is no agreement—decided by the Land Court as being fair compensation for the damage.

### **11E Work by trust to ensure compliance with improvement notice**

- (1) This section applies if a person to whom an improvement notice applies does not fully comply with the notice.
- (2) The trust may, through its employees and agents, and with any necessary equipment—
  - (a) perform all works necessary to ensure that the person's obligations under the notice are complied with; and

- (b) to the extent necessary under paragraph (a), enter and stay on any land.
- (3) All expenses reasonably incurred by the trust in performing the works may be recovered by the trust as a debt owing by the person to the trust.
- (4) If the same improvement notice applies to 2 or more persons, the persons are jointly and severally liable to pay the debt owing.

### **11F Action for debt does not stop proceeding for offence**

- (1) A person may be proceeded against for an offence against section 11C(1) in relation to an improvement notice even if the person is also liable for a debt under section 11E(3) arising out of a failure to comply with the same improvement notice.
- (2) However, in a proceeding against a person for an offence against section 11C(1), the court may, instead of, or in addition to, imposing a penalty, order that—
  - (a) the person must pay an amount the court is satisfied would otherwise be recoverable as a debt under section 11E(3); and
  - (b) payment of the amount is in satisfaction of the debt.

### **11G Injunction**

- (1) This section applies if a person to whom an improvement notice applies (the *relevant person*) has not complied with the notice.
- (2) On application by the trust that gave the improvement notice, the court may grant an injunction, on terms the court considers appropriate for achieving the purposes of the notice—
  - (a) to restrain the relevant person from engaging in stated conduct; or

- (b) to require the relevant person to do any stated act or thing.
- (3) If the court considers it desirable to do so, the court may—
  - (a) grant an interim injunction pending its decision on an application under subsection (2); or
  - (b) discharge or vary an injunction or interim injunction granted under this section.
- (4) In this section—  
*court* means the Supreme Court.

## **Division 4                    General**

### **11H    Other dealings in land are available to trust**

- (1) Nothing in this part is intended to stop a trust from seeking to achieve the object of this Act in relation to land through dealings relating to land, including, for example, the registration of an easement.
- (2) For the purposes of allowing a public utility easement under the *Land Title Act 1994* or the *Land Act 1994* to be registered in favour of a trust, a trust is taken to be a person authorised to provide a public utility service, as mentioned in—
  - (a) the *Land Title Act 1994*, section 81A, definition *public utility provider*, paragraph (d); or
  - (b) the *Land Act 1994*, schedule 6, definition *public utility provider*, paragraph (d).

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## **Part 6                      Financial matters**

### **Division 1                      Trusts' responsibilities**

#### **12                      Funds of the trusts**

- (1) A trust must establish the following funds at a financial institution—
  - (a) a general fund, to be called the [name of trust] fund;
  - (b) a loan fund for each loan borrowed;
  - (c) a reserve fund comprising any reserve accounts established under subsection (4).
- (2) The general fund must be made up of all revenues of the trust and must be applied to expenditure properly incurred by the trust, other than expenditure for works for which the trust is authorised to spend loan moneys.
- (3) A loan fund must be made up of the amounts received under a loan and must be applied to expenditure for which the loan was obtained or as otherwise authorised under this Act.
- (4) A trust may establish reserve accounts for the transfer from its general fund of amounts as provided for under its annual budget.
- (5) An amount held in a reserve account must be used only for the purposes stated for that account.

#### **12A                      Trust may make certain arrangements about its accounts**

- (1) A trust may, by resolution, enter into a written arrangement with a local government to use the accounts, and the accounting systems, of the local government if—
  - (a) at least 1 of the local government's councillors is a member of the trust; and
  - (b) the trust is satisfied it will achieve operational efficiencies under the arrangement.

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- (2) If a trust enters into an arrangement, the funds established under section 12 must be included with the local government's accounts and accounting systems and, at least once a month, are to be reconciled to ensure the funds consist of the moneys mentioned in the section.
- (3) This section applies despite a contrary provision under the *Financial Accountability Act 2009* or *Statutory Bodies Financial Arrangements Act 1982*.

### **13 Budget**

- (1) A trust must propose and adopt a budget for each financial year.
- (2) In proposing the budget the trust must estimate for the financial year concerned—
  - (a) the amount of revenue; and
  - (b) the expenditure from revenue, including, specifically, expenditure for the undertaking or maintenance of works; and
  - (c) the expenditure from loan funds for the undertaking or maintenance of works; and
  - (d) the amount payable for interest on, or redemption of, loans; and
  - (e) the amounts to be transferred from the general fund to any reserve account established under section 12(4).
- (3) Also, in proposing the budget—
  - (a) all expenditure not approved by the Treasurer to be met from loans must be allocated to revenue; and
  - (b) the estimate of revenue must be sufficient in amount to balance with the expenditure allocated under paragraph (a).
- (4) A trust must give a copy of its adopted annual budget to the chief executive on or before the day prescribed by regulation.



- (5) A trust must follow its budget in its expenditure from revenue and loan funds and, as far as possible, balance the expenditure with the budget.

### **13A Unanticipated expenditure**

- (1) A trust must, before making a payment from its general fund or a loan fund in a financial year, approve the payment by a resolution of the trust if the payment—
- (a) was not provided for in its budget for the financial year; or
  - (b) exceeds the amount stated for the payment in the estimates for items of expenditure in the budget for the financial year.
- (2) Also, loan funds that are already allocated must not be diverted for any expenditure not relating to the allocation without the approval of the Treasurer.
- (3) Section 13(5) does not stop the trust from expending revenue or loan funds on the undertaking, maintenance or repair of any works made necessary by a flood or cyclone.

## **Division 2 Funding**

### **14 Liability of local government to contribute to trust**

- (1) Every local government the area or any part of the area of which is included in a river improvement area shall be liable to contribute to the trust constituted for such river improvement area in each year the sum hereinafter prescribed.
- (1A) If the river improvement area is comprised of the area or part of the area of any one local government the sum to be so contributed shall be the amount of revenue estimated by the trust in the budget adopted by it for such year.
- (1B) If the river improvement area comprises areas or parts of areas of more than 1 local government the sum to be so contributed by each such local government is the amount negotiated and

agreed each financial year by the trust and each of the local governments.

- (1C) If there is a failure under subsection (1B), within a time the Minister considers reasonable, to negotiate and agree an amount to be contributed by a local government, the amount the local government must contribute is the amount decided by the Minister.
- (2) For the purpose of obtaining payment from a local government of the amount payable by it hereunder to the trust in any year, the trust shall have full power and authority to issue a precept signed by the chairperson or any 2 members to such local government stating therein the sum to be contributed by such local government and requiring such local government within a time limited by the precept to pay the sum mentioned to the credit of the general fund of the trust.
- (2A) For the purpose of recovering the amount of any such precept the trust shall have and may exercise all or any of the powers, functions, and rights of a local government under the *Local Government Act 2009*, and a local government upon which such precept is issued shall be subject to all such duties, responsibilities, and obligations and have all such powers and authorities in respect of the payment of the sum mentioned and the raising of such amount as if such precept were a precept duly issued to such local government by a joint local government, and all the relative provisions of the *Local Government Act 2009* shall, mutatis mutandis, apply and extend accordingly.

#### **14B Other contributions in aid of works**

- (1) A trust may make with any corporation, instrumentality or authority created by or under any Act an arrangement whereby such corporation, instrumentality or authority undertakes to contribute in aid of the undertaking and maintenance, or undertaking or maintenance, of any works by the trust under this Act which are or will be to the benefit of such corporation, instrumentality or authority.

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- (2) A trust may make with the owner or, where the owner is not the occupier, with the owner and occupier, of land within the trust's river improvement area an arrangement under which the owner or occupier undertakes to contribute to the undertaking or maintenance of any works by the trust which are or will be to the benefit of the owner or occupier.
  - (3) A trust may do all things necessary or convenient to be done in connection with, or incidental to, the making of an arrangement under subsection (1) or (2), including, for example—
    - (a) entering into and complying with contracts, agreements or arrangements the trust considers to be necessary or desirable to enable it to properly perform its functions under this section; and
    - (b) obtaining, taking and holding securities for the payment of any amount by any person under this section, including interest charges and expenses chargeable to the owner or occupier.
  - (4) An arrangement made by a trust under subsection (2) is binding on the trust and all other parties to the agreement, their successors, executors, administrators, and permitted assigns.
  - (5) Any amount payable to the trust under this section and not paid is recoverable by the trust as a debt.

## **Part 8                      General**

### **19      Entry and inspection of land**

The chief executive or any person authorised by the chief executive in that behalf, or any member of the trust, or any of its officers or employees authorised in that behalf by the trust, may enter any land within the river improvement area for the purpose of inspecting same.

## **20 Proceedings for offences**

- (1) A proceeding for an offence against this Act must be taken in a summary way under the *Justices Act 1886* within the later of the following—
  - (a) 6 months after the offence is committed;
  - (b) 4 months after the commission of the offence comes to the complainant's knowledge, but not later than 1 year after the offence is committed.
- (2) On convicting a person for an offence in relation to damaging or destroying or attempting to damage or destroy any works, a court may, instead of or in addition to imposing a penalty, order the person to pay to the trust responsible for the works the whole of the expenses reasonably incurred by the trust as a result of the commission of the offence.
- (3) A person can not be required under subsection (2) to pay an amount as reimbursement for damage or destruction unless the damage or destruction was caused by the person directly.

## **20B Fees and allowances for chairperson and members**

The chairperson and other members of a trust are entitled to be paid the fees and allowances approved by the Minister.

## **21 Delegations**

The chief executive may delegate the chief executive's powers under this Act to an appropriately qualified person.

## **22 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may be made for or about—
  - (a) the fees or allowances of the secretary of the trust;

- (b) the periodical inspection by a person authorised in that behalf by the Minister of the affairs of the trust, the powers, duties, and obligations of such person, and the obligations, duties, and responsibilities of the members, secretary, officers, and employees of the trust in relation to such person;
- (c) where no provision or no sufficient provision is made by this Act in relation thereto, regulating and controlling the conduct by the trust of its business and proceedings or the exercise by it of its powers, authorities, duties, and functions under this Act;
- (d) penalties not exceeding in any case 20 penalty units for breaches of the regulations.

### **23 Approval of forms**

The chief executive may approve forms for use under this Act.

## **Part 9 Transitional provision for Water Legislation Amendment Act 2016**

### **24 Continuance of areas and trusts**

- (1) To remove any doubt, it is declared that each relevant area, and the trust for each relevant area, continued in existence under this Act on and after 19 December 2014.
- (2) For the appointment by the Minister, before the commencement, of a person to the membership of the trust for a relevant area, section 5(1)(b) is taken never to have required the number of persons to be appointed to be as stated in a regulation.
- (3) If a provision of this Act applies to a member of a trust as having been appointed under section 5(1)(a) or under section 5(1)(b), the reference to either provision is taken to be a

reference to the provision as in force when the person was appointed to the trust.

(4) In this section—

***relevant area*** means a river improvement area, including the Burdekin Shire Rivers Improvement Area, in existence under this Act as a river improvement area immediately before 19 December 2014.

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# Schedule 1      Dictionary

## section 2

***approved form*** see section 23.

***banks***, in relation to any river, includes all elevations or slopes confining or tending to confine waters flowing in, into, or out of that river during the period of any flood or cyclone to the bed thereof.

***catchment***, of a river, includes any land draining into the river.

***councillor***, of a local government, see the *Local Government Act 2009*, schedule 4 or the *City of Brisbane Act 2010*, schedule 1.

***criminal history***, of a person, has the meaning given by the *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 3, but does not include convictions for which the rehabilitation period has expired, and has not been revived, under that Act.

***improvement notice*** see section 11A(1).

***land*** includes any land the fee simple of which is subject to any trust or which is held from the Crown upon any tenure or subject to any trust under any Act relating to the alienation of Crown lands, and also includes any estate or interest in land (legal or equitable) and any easement, right, power, or privilege over, in, or in connection with land.

***occupier***, of land, for part 5, division 3, see section 11.

***owner***, of land, for part 5, division 3, see section 11.

***prohibit***, for part 5, division 3, see section 11.

***registrar of titles*** means the registrar under the *Land Title Act 1994* or the chief executive under the *Land Act 1994*.

***relevant act***, for part 5, division 3, see section 11.

***relevant damage***, for part 5, division 3, see section 11.

**relevant land**, for part 5, division 3, see section 11.

**river** includes any stream of water, whether perennial or intermittent, flowing in a natural channel, or in a natural channel artificially improved, or in an artificial channel which has changed the course of the stream of water and any affluent, confluent, branch, or other stream into or from which the river flows and, in the case of a river running to the sea or into any coastal bay or inlet or into a coastal lake, includes the estuary of such river and any arm or branch of same and any part of the river subject to the ebb and flow of the tide at ordinary spring tides.

**river improvement area** means a river improvement area constituted under this Act.

**security** includes a mortgage (legal or equitable), encumbrance, charge, lien, bond, debenture, debenture stock, floating charge, bill of sale, lien on wool, mortgage on livestock, lien on crops, guarantee or other written instrument duly issued or granted by way of security to a trust.

**Treasurer** see the *Financial Accountability Act 2009*, schedule 3.

**trust** means a trust established under this Act.

**works** includes—

- (a) the whole or any part of any works, project, undertaking, or other matter or thing whatsoever undertaken or maintained under this Act for the purposes of repairing as far as may be damage occasioned to the banks of any river within a river improvement area, or land within the river's catchment area that may have a direct impact on the river, prior to or after the passing of this Act by flood or cyclone or of preventing as far as may be the future occurrence of such damage; and
- (b) any trees, grass, or other plants planted or maintained for any of the aforesaid purposes; and
- (c) the removal of dead or growing timber, or other vegetation or aquatic plants, or of silt, shingle, soil, sand, gravel, stone, rock or other matter or thing whatsoever, from the bed, banks or foreshore of any



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tidal waters or coastal lake or lagoon, or from the water or the bed or banks of a river or from any adjoining, adjacent or nearby lands, the placing or depositing of any such timber, or other vegetation or aquatic plants, or of silt, shingle, soil, sand, gravel, stone, rock or other matter or thing whatsoever, on any adjoining, adjacent or nearby land, including, in the case of removal from adjoining, adjacent or nearby lands hereinbefore referred to, on such lands, and the removal of or otherwise disposing of by burning (where appropriate, having regard to the nature of the matter or thing in question), or by any other means whatsoever, any such timber, or other vegetation or aquatic plants, or of silt, shingle, soil, sand, gravel, stone, rock or other matter or thing whatsoever placed or deposited as aforesaid; and

- (d) changing or preventing the changing of the course of a river; defining and constructing the course of a river through a swamp or otherwise draining land; and
- (e) preventing erosion of the bed or banks of a river, or of adjoining or adjacent land or of land in the river's catchment, by water of or from the river or its catchment; and
- (f) preventing the siltation of the course of a river where such work is confined to the bed or banks of a river and adjoining, adjacent or nearby lands; and
- (g) preventing or mitigating the inundation of land by flood waters from a river whether the land abuts upon or is adjacent or nearby to the banks of the river; and
- (h) activities directed at restoring a river's natural function or improving water quality in a river, if the activities are undertaken in the bed or banks of the river or on adjoining, adjacent or nearby land or on any land within the river's catchment; and
- (i) preventing the inflow of sea water or saline water into the course of a river; and
- (j) preventing the erosion of lands by tidal waters or by the waters of any coastal lake or lagoon; and

- (k) the construction and maintenance of levees.