



Gold Coast Waterways Authority Act 2012

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Queensland

Gold Coast Waterways Authority Act 2012

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Gold Coast Waterways Authority Act 2012

An Act to provide for the establishment of the Gold Coast Waterways Authority

Part 1 Preliminary

1 Short title

This Act may be cited as the *Gold Coast Waterways Authority Act 2012*.

2 Commencement

- (1) This Act, other than part 13, divisions 1 and 6, commences on 1 December 2012.
- (2) Part 13, divisions 1 and 6 commence on a day to be fixed by proclamation.

3 Purposes of Act and their achievement

- (1) The main purpose of this Act is to deliver the best possible management of the Gold Coast waterways at reasonable cost to the community and government, while keeping government regulation to a minimum.
- (2) Other purposes of this Act are to do the following—
 - (a) plan for and facilitate the development of the Gold Coast waterways over the long term in a way that is sustainable and considers the impact of development on the environment;
 - (b) improve and maintain navigational access to the Gold Coast waterways;

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- (c) develop and improve public marine facilities relating to the Gold Coast waterways;
 - (d) promote and manage the sustainable use of the Gold Coast waterways for marine industries, tourism and recreation;
 - (e) facilitate the implementation of the Spit master plan through the development and delivery of a program of community infrastructure and public realm works.
- (3) To achieve the purposes, this Act establishes the Gold Coast Waterways Authority to—
- (a) strategically plan for, facilitate and manage the development and use of the Gold Coast waterways; and
 - (b) develop and deliver a program of community infrastructure and public realm works for the Spit master plan area.

4 Relationship with other Acts

- (1) This Act does not affect the operation of the following Acts—
- (a) the *Fisheries Act 1994*;
 - (b) the *Marine Parks Act 2004*;
 - (c) the *Maritime Safety Queensland Act 2002*;
 - (d) the *Transport Infrastructure Act 1994*;
 - (e) the *Transport Operations (Marine Pollution) Act 1995*;
 - (f) the *Transport Operations (Marine Safety) Act 1994*.
- (2) This Act does not affect the functions or obligations of a local government under the following laws—
- (a) the *Coastal Protection and Management Act 1995*;
 - (b) the *Local Government Act 2009* or a local law made under that Act;
 - (c) the *Planning Act 2016*.

5 Act binds all persons

- (1) This Act binds all persons including the State and, to the extent the legislative power of the Parliament permits, the Commonwealth and the other States.
- (2) Nothing in this Act makes the State liable to be prosecuted for an offence.

Part 2 Interpretation

6 Definitions

The dictionary in schedule 2 defines particular words used in this Act.

7 Meaning of *Gold Coast waters* and *Gold Coast waterways*

- (1) The *Gold Coast waters* are all of the waters within the following areas—
 - (a) the Gold Coast City local government area;
 - (b) the area near the mouth of Currumbin Creek described in schedule 1, section 1;
 - (c) the area near the Gold Coast Seaway described in schedule 1, section 2;
 - (d) the area near the mouth of Tallebudgera Creek described in schedule 1, section 3.
- (2) The *Gold Coast waterways* are all of the waterways in Gold Coast waters.

Part 3 Gold Coast Waterways Authority

Division 1 Establishment and status

8 Establishment

The Gold Coast Waterways Authority is established.

9 Legal status

- (1) The authority—
 - (a) is a body corporate, consisting of the board members provided for under part 8, division 1; and
 - (b) has perpetual succession; and
 - (c) has a seal; and
 - (d) may sue or be sued in its corporate name.
- (2) The authority represents the State.
- (3) Without limiting subsection (2), the authority has all the privileges and immunities of the State.

Division 2 Functions and powers

10 Main function and its achievement

- (1) The authority's main function is to give effect to the purposes of this Act.
- (2) For giving effect to the purposes of this Act mentioned in section 3(1) and (2)(a) to (d), the authority's main function is performed primarily by the authority doing the following in relation to the Gold Coast waterways—
 - (a) developing, under part 4—

-
- (i) a waterways management strategy; and
- (ii) a waterways management program;
- (b) ensuring the effective and efficient management of the following, including by exercising the powers under part 5—
- (i) water traffic and public marine facilities;
- (ii) the use of the Gold Coast waterways;
- (c) performing functions conferred on the authority under the following Acts—
- (i) the *Transport Infrastructure Act 1994*;
- Examples of functions conferred on the authority under the Transport Infrastructure Act 1994—*
- managing public marine facilities
 - managing, under a waterways management regulation made under that Act, the use of waterways
- (ii) the *Transport Operations (Marine Pollution) Act 1995*;
- Examples of functions conferred on the authority under the Transport Operations (Marine Pollution) Act 1995—*
- through employees of the authority appointed as authorised officers, dealing with the discharge of ship-sourced pollutants into coastal waters
 - providing, arranging for the provision of, or directing the provision of reception facilities
 - recovering discharge expenses incurred in relation to a discharge or likely discharge of pollutant from a ship into coastal waters
- (iii) the *Transport Operations (Marine Safety) Act 1994*;
- Examples of functions conferred on the authority under the Transport Operations (Marine Safety) Act 1994—*
- setting up, entering into agreements to set up and maintaining aids to navigation
 - fixing speed limits for ships
 - approving the establishment of buoy moorings

- giving consent for the holding of aquatic events
- (d) performing any other function conferred on the authority under this Act or another law.
- (3) For giving effect to the purpose of this Act mentioned in section 3(2)(e), the authority's main function is performed primarily by the authority—
 - (a) developing, under part 4A, a Spit works program; and
 - (b) ensuring the effective and efficient delivery of the Spit works program.

11 General powers

- (1) The authority has the powers—
 - (a) necessary or convenient to perform its functions; or
 - (b) incidental to the performance of its functions; or
 - (c) to help achieve the purposes of this Act.
- (2) Without limiting subsection (1), the authority may do all or any of the following—
 - (a) acquire, hold, dispose of, and deal with property;
 - (b) appoint agents and attorneys;
 - (c) engage consultants;
 - (d) enter into contracts, joint ventures and commercial arrangements;
 - (e) do anything necessary or convenient to be done in the performance of its functions under an Act.
- (3) In performing its functions, the authority may act alone or in conjunction with public sector units, local governments and other entities.
- (4) The authority also has the powers conferred on it under another provision of this Act or under another Act.

12 Powers relating to navigational access

- (1) For the purposes of improving or maintaining navigational access to the Gold Coast waterways, the authority may—
 - (a) dredge and otherwise improve and maintain navigational channels for the Gold Coast waterways; and
 - (b) reduce or remove a shoal, bank or accumulation in Gold Coast waters that impedes navigation.
- (2) The authority is not liable to pay royalties or similar charges for extractive material removed in exercising a power under subsection (1) if the material is disposed of—
 - (a) in an area approved by the Minister; and
 - (b) under environmental controls relating to extractive material under an Act.

13 Powers subject to Ministerial direction

The exercise of any of the authority's powers is subject to Ministerial directions.

14 Delegations by Gold Coast Waterways Authority

- (1) The authority may delegate its functions under an Act to—
 - (a) a member; or
 - (b) the chief executive officer; or
 - (c) any other appropriately qualified person.
- (2) However, the authority can not delegate its functions under part 4 or 4A.
- (3) A delegation of a function may permit the subdelegation of the function to an appropriately qualified person.
- (4) If the function is performed under another Act, the power to delegate or subdelegate is subject to the other Act.

Part 4 **Waterways management strategy**

Division 1 **Development and approval of strategy**

15 **Meaning of *waterways management strategy***

- (1) A *waterways management strategy* is a 10-year management strategy about the long-term sustainable use, management and development of the Gold Coast waterways.
- (2) The purposes of a waterways management strategy are to—
 - (a) establish a clear direction for the sustainable use, management and development of the Gold Coast waterways for a 10-year period; and
 - (b) identify the needs and priorities for the sustainable use, management and development of the Gold Coast waterways into the future, having regard to the benefits for and impacts on the community, environment and economy of the Gold Coast City local government area.

16 **Development of waterways management strategy**

- (1) The authority must, from time to time, develop for the Minister's approval a waterways management strategy.
- (2) In developing a waterways management strategy, the authority must—
 - (a) have regard to the purposes of this Act; and
 - (b) consult with, and consider the views of, the Gold Coast City Council; and
 - (c) within the Gold Coast City local government area, take reasonable steps to engage in public consultation.
- (3) The Minister may, at any time, direct the authority to prepare a new waterways management strategy for the Minister's

approval or to amend an existing strategy in the way the Minister directs.

- (4) In relation to a waterways management strategy submitted for approval, the Minister may—
- (a) approve the strategy; or
 - (b) direct the authority to amend the strategy in the way the Minister directs.

17 Content of waterways management strategy

- (1) A waterways management strategy must include the following—
- (a) a statement of the specific objectives sought to be achieved in relation to the Gold Coast waterways;
 - (b) any proposals for the provision of navigational access to, and public marine facilities for, the Gold Coast waterways;
 - (c) any proposals for the use of the Gold Coast waterways for activities;
 - (d) investment criteria for deciding priorities for improving and maintaining navigational access, developing and improving public marine facilities and other waterways management initiatives and options for financing the priorities;
 - (e) appropriate performance indicators for deciding whether, and to what extent, the objectives of the strategy have been achieved.
- (2) A waterways management strategy must have regard to agreements or arrangements between the State and the Gold Coast City Council about navigational access to, marine infrastructure for, and management of, the Gold Coast waterways.

18 Tabling of waterways management strategy

- (1) The Minister must table a copy of a waterways management strategy in the Legislative Assembly within 5 sitting days after approving the strategy.
- (2) In this section—
waterways management strategy includes an amendment of a waterways management strategy.

Division 2 Waterways management program

19 Development of waterways management program

- (1) Before the start of each financial year, the authority must develop for the Minister's approval a Gold Coast waterways management program for the year and the following 3 years (a *waterways management program*).
- (2) A waterways management program must include each of the following for the period to which the program relates—
 - (a) the policies and financial measures for implementing the waterways management strategy;
 - (b) the performance targets to be achieved;
 - (c) details of projects to improve and maintain navigational access to Gold Coast waters and to develop and improve public marine facilities;
 - (d) details of measures to be taken to implement and monitor compliance with a waterways management regulation made under the *Transport Infrastructure Act 1994* to the extent the regulation applies to Gold Coast waters.
- (3) In developing a waterways management program, the authority must take reasonable steps to consult with the Gold Coast City Council, the community of the Gold Coast City local government area and sectors of the maritime industry

that, in the authority's opinion, would be affected by the program.

- (4) A waterways management program must be—
 - (a) published on the authority's website; and
 - (b) available for inspection at the authority's office during normal business hours.
- (5) The Minister may at any time direct the authority to amend a waterways management program.
- (6) In relation to a waterways management program submitted for approval, the Minister may—
 - (a) approve the program; or
 - (b) direct the authority to amend the program in a the way the Minister directs.

20 Consistency with waterways management strategy

- (1) Subject to directions of the Minister, a waterways management program must be consistent with a waterways management strategy.
- (2) If the Minister gives a direction under this part that results in a waterways management program being inconsistent with a waterways management strategy, the Minister must table a copy of the direction in the Legislative Assembly within 5 sitting days after it is given.

Part 4A Spit works programs

20A Development of Spit works programs

- (1) Before the start of each financial year, the authority must develop, for the Spit Development Minister's approval, a program for the financial year and the following 3 financial years about community infrastructure and public realm works

to be delivered in the Spit master plan area during the period (a *Spit works program*).

- (2) A Spit works program must include each of the following for the period to which the program relates—
 - (a) details of the community infrastructure and public realm works to be delivered;
 - (b) a separate program for each item of community infrastructure and public realm works to be delivered;
 - (c) the performance targets to be achieved;
 - (d) an estimate of the cost of delivering the community infrastructure and public realm works.
- (3) In developing a Spit works program, the authority must take reasonable steps to consult with—
 - (a) the Gold Coast City Council; and
 - (b) the community of the Gold Coast City local government area; and
 - (c) another entity the Spit Development Minister considers may be affected by, or have an interest in, the Spit works program.
- (4) If a Spit works program is given to the Spit Development Minister for approval, the Spit Development Minister may—
 - (a) approve the Spit works program; or
 - (b) direct the authority to amend the Spit works program.
- (5) However, the Spit Development Minister must not approve a Spit works program unless satisfied the program is consistent with the Spit master plan.
- (6) If the Spit Development Minister approves a Spit works program, the authority must—
 - (a) publish a copy of the Spit works program on the authority's website; and

- (b) keep a copy of the Spit works program available for inspection at the authority's office during normal business hours.
- (7) A Spit works program approved under this section is the *approved Spit works program* for the first financial year to which the program relates.

20B Direction to amend approved Spit works program

- (1) The Spit Development Minister may, at any time, direct the authority to amend the approved Spit works program.
- (2) However, the direction must not require the authority to amend the approved Spit works program in a way that is inconsistent with the Spit master plan.
- (3) The authority must comply with a direction given under subsection (1).

Part 5 Powers relating to waterways management

Division 1 Preliminary

21 General limitation on Gold Coast Waterways Authority's powers under part

The powers of the authority under this part—

- (a) may only be exercised in relation to Gold Coast waters; and
- (b) must be exercised subject to the powers of each of the following—
 - (i) the general manager under part 14A of the *Transport Operations (Marine Safety) Act 1994*;

- (ii) a harbour master under the *Transport Operations (Marine Safety) Act 1994*;
- (iii) the general manager, including the general manager operating as the marine pollution controller, under part 12 of the *Transport Operations (Marine Pollution) Act 1995*.

Division 2 Waterways notices

22 Gold Coast Waterways Authority may control activities or conduct by notice

The authority may display or publish a notice (a *waterways notice*) in the way required under section 24 to control activities or conduct in Gold Coast waters for the following purposes—

- (a) maintaining or improving the effective and efficient management of the Gold Coast waterways;
- (b) maintaining fair and reasonable access to public marine facilities for users of the Gold Coast waterways;
- (c) moving or mooring watercraft, or controlling activities on or by watercraft, in Gold Coast waters.

23 Waterways notices generally

A waterways notice must—

- (a) indicate the thing or area to which the notice applies; and
- (b) state that contravention of a requirement of the notice is an offence against this Act and the maximum penalty for the offence.

24 Display or publication of waterways notices

- (1) To have effect, a waterways notice must—

-
- (a) be displayed, in a way that is clearly visible to passers-by, on or near the thing or area to which it relates; or
 - (b) be published on the authority's website.
- (2) Before a waterways notice mentioned in subsection (1)(b) has effect, the authority must publish the waterways notice in a newspaper circulated in the Gold Coast City local government area.
 - (3) A copy of a waterways notice must be available during normal business hours for inspection at the authority's office.
 - (4) Evidence that a sign displaying a waterways notice was on or near the thing or area to which it relates is evidence that the notice was displayed by the authority.

25 Person must comply with waterways notice

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

Maximum penalty—

- (a) for a contravention of a requirement of a waterways notice about the movement or mooring of, or activities on or by, a watercraft—100 penalty units; or
- (b) otherwise—25 penalty units.

26 Interfering with waterways notices

- (1) This section applies to a waterways notice, other than a waterways notice published on the authority's website.
- (2) A person must not unlawfully interfere with the waterways notice.

Maximum penalty—25 penalty units.

- (3) In this section—

interfere, with a waterways notice, includes remove or damage the waterways notice.

Division 3 Dealing with contravening and abandoned property

Note—

The powers of the authority under this division do not affect a function or obligation of a local government to deal with abandoned property under another law. See section 4(2).

27 Definitions for div 3

In this division—

abandoned property means a watercraft, part of a watercraft, or other property, that the authority reasonably believes is abandoned, lost or stranded in Gold Coast waters or on land adjacent to Gold Coast waters.

Examples of land adjacent to Gold Coast waters—

mudflats, banks of rivers, foreshores

contravening property means a watercraft, part of a watercraft, or other property, that is moored or left in Gold Coast waters or on land adjacent to Gold Coast waters in contravention of a requirement of a waterways notice.

insufficient value, in relation to property, means the property—

- (a) is of no value; or
- (b) if sold by the authority, would not be likely to return sufficient proceeds of sale to cover the total of the following amounts—
 - (i) the expenses reasonably incurred by the authority in selling the property;
 - (ii) the expenses reasonably incurred by the authority in dealing with the property under this division;

- (iii) the charges, interest and other expenses owing to the authority in relation to the property.

property does not include land or an interest in land.

28 Moving contravening property

- (1) This section applies to contravening property found by the authority if—
 - (a) the authority reasonably believes it is necessary to move the contravening property having regard to—
 - (i) the effective and efficient management and use of the Gold Coast waterways; or
 - (ii) the safety or security of the users of the Gold Coast waterways or the authority's employees; and
 - (b) the authority—
 - (i) can not immediately find the person in charge of the contravening property; or
 - (ii) reasonably believes the person in charge of the contravening property can not, or will not, move the contravening property immediately.
- (2) The authority may—
 - (a) take steps necessary and reasonable to have the contravening property moved; and
 - (b) if the contravening property consists of goods that are perishable or is of insufficient value—treat the goods as abandoned property.
- (3) In this section—

person in charge, of contravening property, means—

 - (a) for a watercraft—the person having command or charge of the watercraft; or
 - (b) otherwise—the owner of the property or another person in charge of the property.

29 Reasonable steps must be taken to find owner of abandoned property

- (1) This section applies to abandoned property found by the authority, unless the property—
 - (a) is of insufficient value; or
 - (b) is perishable and it is impracticable for the authority to keep it having regard to its nature and condition.
- (2) The authority—
 - (a) must take reasonable steps to locate the owner of the property; and
 - (b) may have the property moved to a place it considers appropriate.
- (3) If the authority has located the owner of the property within 28 days after the property was found, the authority must give the owner a written notice—
 - (a) describing the property; and
 - (b) stating the property has been found; and
 - (c) explaining how the property may be recovered; and
 - (d) stating the property may be sold or disposed of if it is not recovered.
- (4) If the authority has not located the owner of the property within 28 days after finding the property, the authority must publish a notice in a newspaper circulating generally in the Gold Coast City local government area that includes the matters mentioned in subsection (3)(a) to (d).

30 A person may claim property

The authority must return abandoned property to a person if the person, within 28 days after the notice is given or published under section 29—

- (a) satisfies the authority that the person is the owner of the property; and

- (b) pays the expenses reasonably incurred by the authority in dealing with the property under this division.

31 Sale of abandoned property

- (1) The authority may sell abandoned property if—
 - (a) a person does not claim the abandoned property within 28 days after the authority has given or published a notice about the property under section 29; or
 - (b) the property is perishable and it is impracticable for the authority to keep it having regard to its nature and condition.
- (2) If abandoned property is sold by the authority, the proceeds of the sale must be applied in the following order—
 - (a) in payment of the expenses reasonably incurred by the authority in selling the property;
 - (b) in payment of the expenses reasonably incurred by the authority in dealing with the property under this division;
 - (c) in payment of charges, interest and other expenses owing to the authority in relation to the property;
 - (d) if there is an amount owing to an entity under a security interest registered for the abandoned property under the *Personal Property Securities Act 2009* (Cwlth)—in payment of the amount owing under the security interest;
 - (e) the balance to the owner of the abandoned property or, if the owner can not be found, to the consolidated fund.
- (3) If the proceeds of the sale are less than the total of the expenses mentioned in subsection (2)(a), (b) and (c), the difference is a debt owing to the State by the owner.
- (4) Compensation may not be recovered against the authority in relation to a payment under this section.

32 Abandoned property of insufficient value

The authority may dispose of abandoned property that is of insufficient value in the way the authority considers appropriate.

32A Recovery of expenses incurred in dealing with property

- (1) If the authority reasonably incurs expenses in dealing with property under this division, the amount of the expenses may be recovered by the authority as a debt payable to the State by the owner of the property.
- (2) However, this section does not apply if the authority sells the property under section 31.

Division 4 Review of decisions

33 Definitions for div 4

In this division—

original decision means a decision made under this part by the authority or a delegate of the authority, other than a reviewed decision.

reviewed decision means the authority's decision made, or taken to have been made, on a review under section 34.

34 Internal review

- (1) A person whose interests are affected by an original decision may ask the authority to review the decision.
- (2) The *Transport Planning and Coordination Act 1994*, part 5, division 2—
 - (a) applies to the review; and
 - (b) provides—

-
- (i) for the procedure for applying for the review and the way it is to be carried out; and
 - (ii) that the person may apply to QCAT to have the original decision stayed.
- (3) For applying the *Transport Planning and Coordination Act 1994*, part 5, division 2, a reference to the chief executive in that division, including, for example, in sections 33 and 34 of that Act, is taken to be a reference to the authority.

35 External review

- (1) If a reviewed decision is not the decision sought by the applicant for the review, the authority must give the applicant a QCAT information notice for the reviewed decision.
- (2) The applicant may apply, as provided under the QCAT Act, to QCAT for a review of the reviewed decision.

Note—

The QCAT Act, section 22(3) provides that QCAT may stay the operation of the reviewed decision, either on application by a person or on its own initiative.

- (3) In this section—

QCAT information notice means a notice complying with the QCAT Act, section 157(2).

Part 6 Ministerial directions, reporting and information

36 Ministerial directions or guidelines to Gold Coast Waterways Authority

- (1) The Minister may give the authority—
 - (a) a written direction about the performance of its functions (a ***Ministerial direction***); or

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- (b) written guidelines to help the authority perform its functions.
- (2) A Ministerial direction may prohibit the authority from acquiring a particular asset or an asset of a particular type.
- (3) The authority must comply with a Ministerial direction.
- (4) In this section—
Minister means—
 - (a) for a Ministerial direction or guidelines about the performance of the authority’s functions in relation to the Gold Coast waterways—the Minister responsible for administering this Act; or
 - (b) for a Ministerial direction or guidelines about the performance of the authority’s functions in relation to the development or delivery of a Spit works program—the Spit Development Minister.

37 Ministerial access to information

- (1) The Minister may, by written notice, require the authority to prepare, approve and give the Minister or a stated person in a stated government entity stated information or stated documents, or copies of documents, in the authority’s possession.
- (2) The authority must comply with the requirement.
- (3) In this section—
government entity see the *Public Service Act 2008*, section 24.
Minister means—
 - (a) for information or a document relating to the Gold Coast waterways—the Minister responsible for administering this Act; or
 - (b) for information or a document relating to the development or delivery of a Spit works program—the Spit Development Minister.

38 Quarterly performance reports

- (1) The authority must prepare, approve and give the Minister a written report about the performance of its functions at quarterly intervals or other more frequent intervals as directed by the Minister.
- (2) Without limiting subsection (1), the report must include information about the following matters—
 - (a) projects relating to—
 - (i) improving and maintaining navigational access to Gold Coast waters; and
 - (ii) developing and improving public marine facilities; and
 - (iii) the delivery of the approved Spit works program;
 - (b) the progress of each project mentioned in paragraph (a);
 - (c) waterways management activities in relation to the Gold Coast waterways;
 - (d) revenue and expenditure.

39 Annual report

- (1) This section applies to each annual report the authority is required to prepare and give to the Minister under the *Financial Accountability Act 2009*, section 63.
- (2) The annual report must include the following—
 - (a) a copy of any Ministerial directions given during the year to which the report relates (the *year*);
 - (b) a statement about how the authority performed its functions during the year compared with the expected performance for the year under the authority's waterways management program and approved Spit works program;
 - (c) details about projects relating to improving and maintaining navigational access to Gold Coast waters

- and developing and improving public marine facilities undertaken during the year;
- (d) details about projects relating to the delivery of the approved Spit works program undertaken during the year;
 - (e) any other matter prescribed under a regulation.
- (3) This section does not limit the application of the *Financial Accountability Act 2009*.

Part 7 Financial provisions

40 Application of financial Acts

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

41 Amounts received must be paid into the consolidated fund

The authority must pay amounts received under this or another Act into the consolidated fund, including the following—

- (a) amounts received from the proceeds of sale of abandoned property under section 31;
- (b) amounts received for annual levies from an owner of a marina under section 42;

- (c) amounts received, to the extent they relate to the Gold Coast waterways—
 - (i) from the proceeds of sale of a watercraft under the *Transport Infrastructure Act 1994*, section 475U; and
 - (ii) for fees in relation to buoy moorings and aquatic events under the *Transport Operations (Marine Safety) Act 1994*.

42 Marina owner levy

- (1) The owner of a marina must pay an annual levy to the authority as a contribution towards providing and maintaining public marine facilities.
- (2) The levy must be paid within 30 days after the authority gives written notice of the levy to the owner of the marina.
- (3) The amount of the levy is the amount prescribed under a regulation.
- (4) In this section—

marina means a jetty, mooring, pontoon or berth, or combination of them, that can be used to moor at least 3 watercraft.

owner, of a marina, includes a person who—

- (a) exercises or purports to exercise the powers of the owner; and
- (b) operates the marina or causes or allows the marina to be operated by someone else.

Part 8 Gold Coast Waterways Authority Board

Division 1 Establishment and membership

43 Gold Coast Waterways Authority Board controls the Authority

The Gold Coast Waterways Authority Board controls the Authority.

44 Membership

The board consists of the following persons (each a *member*)—

- (a) a chairperson (an *appointed member*); and
- (b) the mayor of the Gold Coast City Council; and
- (c) at least 5, but no more than 8, other persons (each also an *appointed member*).

45 Appointed members

- (1) Appointed members are to be appointed by the Governor in Council, by gazette notice, on the recommendation of the Minister.
- (2) A person may be appointed as an appointed member only if the person is not a disqualified person and the person—
 - (a) has knowledge of and experience in 1 or more of the following relevant to the Gold Coast waterways—
 - (i) the representation of the interests of stakeholders in the Gold Coast waterways, including industry, recreational users, tourism operators and interested groups;
 - (ii) marine, coastal or waterways planning;

- (iii) environmental management;
 - (iv) marine, coastal, waterways or infrastructure engineering;
 - (v) commercial and marketing development;
 - (vi) maritime business; or
- (b) has knowledge of and experience in 1 or more of the following relevant to the development and delivery of a Spit works program—
- (i) major projects, including, for example, construction, design or delivery of major projects;
 - (ii) project management;
 - (iii) planning and development;
 - (iv) the design and aesthetics of public open spaces, parks, natural environments and built form; or
- (c) has other knowledge and experience the Minister considers appropriate.

46 Duration of appointment

- (1) An appointed member holds office for the term, of not more than 3 years, stated in the member's instrument of appointment.
- (2) If an appointed member is reappointed, the total of the member's terms of office may not be longer than 6 years.

47 Terms and conditions of appointment

- (1) An appointed member is to be paid the remuneration and allowances decided by the Governor in Council in the person's instrument of appointment.
- (2) An appointed member holds office on the terms and conditions, not provided for by this Act, that are decided by the Governor in Council.

48 Vacation of office of appointed member

The office of an appointed member becomes vacant if the member—

- (a) completes a term of office; or
- (b) resigns office by signed notice given to the Minister; or
- (c) is removed from office as a member under section 50.

49 Suspension from office of appointed members

- (1) This section applies if—
 - (a) a matter has arisen in relation to an appointed member of the board; and
 - (b) the matter—
 - (i) is one which is, or may be, a reason for removing a member from office under section 50; or
 - (ii) is alleged misconduct by the member; and
 - (c) the Minister considers that it is necessary in the public interest for the member to be suspended from office pending further consideration of the matter.
- (2) The Minister may suspend the appointed member from office, by written notice given to the appointed member, for a period not exceeding 60 days.
- (3) If the Minister considers it is necessary in the circumstances, the Minister may extend the suspension from time to time, by written notice given to the appointed member, by periods not exceeding 60 days.
- (4) The Minister must advise the appointed member, by written notice given to the appointed member, if the Minister ends the member's suspension.
- (5) In this section—

misconduct, for an appointed member of the board, means—

 - (a) inappropriate or improper conduct in performing the member's duties; or

- (b) inappropriate or improper conduct in a private capacity that reflects seriously or adversely on the board.

50 Removal from office of appointed members

The Governor in Council may at any time remove an appointed member from office for any reason or none.

51 Delegation by particular member

The mayor of the Gold Coast City Council may delegate the mayor's functions as a member of the board to—

- (a) another councillor of the Gold Coast City Council; or
- (b) an appropriately qualified employee of the Gold Coast City Council.

Division 2 Meetings and other business

52 Conduct of business

- (1) A regulation may provide for how the board may conduct its business, including its meetings.
- (2) Subject to subsection (1) and this division, the board may conduct its business, including its meetings, in the way it considers appropriate.

53 Times and places of meetings

- (1) Meetings of the board are to be held at the times and places the chairperson decides.
- (2) However, the chairperson must call a meeting if asked, in writing, to do so by at least 2 members.
- (3) Also, the chairperson must call a meeting at least once in each quarter.

54 Quorum

A quorum for a board meeting is more than half of the number of members.

55 Presiding at meetings

- (1) The chairperson is to preside at all board meetings at which the chairperson is present.
- (2) If the chairperson is not present, the following member is to preside—
 - (a) the member chosen by the chairperson;
 - (b) otherwise—the member chosen by the members present.

56 Conduct of meetings

- (1) The board may hold meetings, or allow members to take part in its meetings, by using any technology allowing reasonably contemporaneous and continuous communication between persons taking part in the meeting.
- (2) A person who takes part in a board meeting under subsection (1) is taken to be present at the meeting.
- (3) A decision at a board meeting must be a majority decision of the members present.
- (4) However, if the votes cast on a matter are equal the chairperson has a casting vote.

57 Decisions outside meetings

A decision of the board, other than a decision at a meeting of the board, may be made only with the written agreement of a majority of members.

58 Minutes and record of decisions

- (1) The board must keep—

- (a) minutes of its meetings; and
 - (b) a record of any decisions under section 57.
- (2) The minutes of a meeting or record of a decision must record that a member abstained from casting a vote on a matter.

Division 3 Miscellaneous provisions

59 Protection of members from civil liability

- (1) A member is not civilly liable to someone for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to the member, the liability attaches instead to the State.

Part 9 Staff

Division 1 Chief executive officer

60 Chief executive officer

- (1) The Governor in Council must appoint a chief executive officer of the authority.
- (2) A disqualified person can not be appointed as the chief executive officer.
- (3) The term of the chief executive officer's appointment can not be more than 5 years.
- (4) Subject to subsection (3), the chief executive officer's remuneration and allowances and other terms and conditions of office are as decided by the Governor in Council in the person's instrument of appointment.

- (5) The chief executive officer is to be appointed under this Act, and not under the *Public Service Act 2008*.

61 Acting chief executive officer

- (1) This section applies if—
- (a) no chief executive officer has been appointed; or
 - (b) the office of chief executive officer is vacant; or
 - (c) the appointed chief executive officer (the *usual CEO*) is absent or is unable to discharge the functions of the office because of illness or any other reason.
- (2) The Minister may, by signed notice, appoint a person to act in the office.
- (3) For the circumstances mentioned in subsection (1)(a) or (b), the appointment ends when, if the Governor in Council appoints someone else as the chief executive officer, the term of that appointment starts.
- (4) For the circumstances mentioned in subsection (1)(c), the appointment ends if the Minister gives the appointee notice that the usual CEO has resumed his or her duties as the chief executive officer.
- (5) The *Acts Interpretation Act 1954*, section 24B(7D) to (15) applies to the appointee as if the appointee had been appointed under that section.
- (6) This section does not limit or otherwise affect the *Acts Interpretation Act 1954*, section 24B.

62 Functions and powers of the chief executive officer

- (1) The chief executive officer must manage, and report to the board about, the authority's operations.
- (2) The chief executive officer has the power to do anything necessary or convenient to be done for the performance of the chief executive officer's functions.

63 Delegations by chief executive officer

- (1) The chief executive officer may delegate the chief executive officer's functions under an Act to any appropriately qualified person.
- (2) A delegation of a function may permit the subdelegation of the function.
- (3) If the function is performed under another Act, the power to delegate or subdelegate is subject to the other Act.

Division 2 Employees

64 Employees

The authority's employees are to be employed under either of the following, as stated in the employee's instrument of appointment—

- (a) the *Public Service Act 2008*; or
- (b) section 65.

65 Chief executive officer may employ employees

- (1) The chief executive officer may employ employees the chief executive officer considers necessary to perform the authority's functions.
- (2) Subject to any relevant industrial instrument, the chief executive officer may decide the employment conditions of employees employed under this section.
- (3) The *Public Service Act 2008* does not apply to the employment of employees employed under this section.
- (4) Before employing a person under this section, the chief executive officer must consult with the commission chief executive under the *Public Service Act 2008*.
- (5) Despite subsection (3), an employee employed under this section is taken to be a public service employee of the

authority for the purposes of a work performance arrangement under the *Public Service Act 2008*, section 183.

(6) In this section—

employment conditions includes conditions about the length of the employment and ending the employment.

66 Preservation of rights of particular public service officers

(1) This section applies if—

- (a) a person is employed under section 65; and
- (b) the person was a public service officer immediately before being employed under section 65.

(2) The person keeps all rights and entitlements accrued or accruing to the person as a public service officer as if service as an employee under section 65 were a continuation of service as a public service officer.

Examples of rights and entitlements—

long service, recreation and sick leave

67 Tenure as public service officer on ending of particular employment contracts

(1) This section applies if—

- (a) a person is employed on contract under section 65; and
- (b) the contract—
 - (i) is terminated other than by disciplinary action; or
 - (ii) expires and is not renewed or replaced by another contract of employment under section 65; and
- (c) immediately before the person was first employed under the contract, the person was employed as a public service officer.

(2) The person becomes a public service officer employed on the same terms and conditions that applied to the person before being employed on a contract under section 65.

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- (3) Without limiting subsection (2), the person is to be employed—
- (a) at the classification level at which the person would have been employed if the person had continued in employment as a public service officer; and
 - (b) on the remuneration to which the person would have been entitled if the person had continued in employment as a public service officer.

Part 10 Miscellaneous provisions

68 Request for information from prospective appointees

- (1) This section applies if a person is being considered for appointment as an appointed member or the chief executive officer.
- (2) The Minister may ask the person to give the Minister a written statement stating—
 - (a) whether or not the person is a disqualified person; and
 - (b) whether or not the person, or any close relative of the person, has an interest that, if the appointment is made, conflicts or may conflict with the proper performance of the person's functions under the appointment.
- (3) The person must not give the Minister a statement under subsection (2) that the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

- (4) A complaint against a person for an offence against subsection (3) is sufficient if it states that the statement or the information was false or misleading to the person's knowledge, without specifying whether it was false or whether it was misleading.

69 Disclosure of disqualification by appointees

If an appointed member or the chief executive officer is or becomes a disqualified person, that person must, as soon as practicable, give the Minister notice of that fact.

Maximum penalty—100 penalty units.

70 Disclosure of conflicts of interest by appointees

(1) This section applies if—

- (a) a member, or a close relative of a member, has an interest that conflicts or may conflict with the proper performance of the member's functions; or
- (b) the chief executive officer, or a close relative of the chief executive officer, has an interest that conflicts or may conflict with the proper performance of the chief executive officer's functions.

(2) The member or chief executive officer must, as soon as practicable, disclose the interest to—

- (a) if the matter is being considered or about to be considered by the board—the board; or
- (b) otherwise—the Minister.

Maximum penalty—100 penalty units.

(3) If a member has disclosed an interest relating to a matter being considered or about to be considered by the board, the member must not participate in the board's consideration of the matter.

Maximum penalty—100 penalty units.

71 Review of Gold Coast Waterways Authority's operations

(1) As soon as practicable after the end of each 3 years of the authority's operation, the Minister must review the operation of the authority (each a *three-yearly review*).

- (2) The first three-yearly review must be undertaken as soon as practicable after the day that is 3 years after the commencement of this section.
- (3) Each three-yearly review must include a review of—
 - (a) the way, and the extent to which, the authority has performed its functions; and
 - (b) whether the functions of the authority remain appropriate for giving effect to the purposes of this Act.

72 Regulation-making power

The Governor in Council may make regulations under this Act.

Part 11 Repeals

73 Repeals

The following Acts are repealed—

- Australian Shipping Commission Authorization Act 1977, No. 57
- Brisbane River Tidal Lands Improvement Act 1927, 18 Geo 5 No. 20.

Part 12 Transitional provisions

74 Definition for pt 12

In this part—

commencement means the commencement of this section.

75 Waterways management strategy

- (1) The authority is not required to develop a waterways management strategy under section 16(1) until 1 December 2013.
- (2) The Minister may not direct the authority under section 16(3) to prepare a new waterways management strategy until after 30 November 2013.

76 Waterways management program

- (1) Section 19 does not apply for the financial year that starts on 1 July 2012 and ends on 30 June 2013.
- (2) To the extent that a waterways management plan relates to a period occurring before 1 December 2013, the program need not include the matters required under section 19(2)(a) or (c).

77 Marina owner levy

- (1) Section 42 does not apply to the owner of a marina in relation to an annual levy for the 2012 calendar year if, before the commencement, the owner paid the levy to the chief executive under the *Transport Infrastructure (Gold Coast Waterways) Management Plan 2000*, section 23.
- (2) Subsection (3) applies if—
 - (a) before the commencement, the chief executive gave the owner of a marina a written notice of an annual levy under the *Transport Infrastructure (Gold Coast Waterways) Management Plan 2000*, section 23(2); and
 - (b) on the commencement, the levy has not been paid to the chief executive.
- (3) On the commencement—
 - (a) the notice is taken to have been given to the marina owner by the authority under section 42(2); and
 - (b) the annual levy the subject of the notice is taken to be an annual levy payable to the authority under section 42.

(4) An annual levy mentioned in subsection (3)(b) stops being payable to the authority if the levy is paid to the chief executive.

(5) In this section—

chief executive means the chief executive of the department in which the *Transport Infrastructure Act 1994* is administered.

marina see section 42(4).

owner see section 42(4).

78 Transfer of particular State assets and liabilities to Gold Coast Waterways Authority

(1) The Minister may prepare a register of the assets and liabilities of the State that are to be transferred to the authority for the purposes of this Act.

(2) The register has no effect unless it is approved under a regulation.

(3) When the register takes effect—

(a) the State is divested of the assets and liabilities and they become assets and liabilities of the authority; and

(b) proceedings by or against the State, or that could have been started by or against the State before the register takes effect, relating to the assets or liabilities may be continued or started by or against the authority.

(4) This section does not limit or otherwise affect sections 78(2)(b) or 80(2)(b).

79 Registration of transferred assets

(1) The registrar of titles or another person responsible for keeping a register for dealings about relevant assets must, on written application by the authority, and on payment of any fee, record a transfer of an asset that, under section 78(3)(a), becomes an asset of the authority.

(2) In this section—

registrar of titles means a public official or authority responsible for registering title to land and dealings affecting land.

80 Novation of particular State contracts to Gold Coast Waterways Authority

- (1) This section applies to a contract prescribed under a regulation—
 - (a) in force immediately before the commencement; and
 - (b) to which the State is a party; and
 - (c) that relates to the performance of a function by or for the State that will, from the commencement, be a function of the authority; and
 - (d) that is not a contract of employment.
- (2) On the commencement, the following apply despite any provision of the contract—
 - (a) the authority is taken to be a party to the contract instead of the State;
 - (b) the authority assumes the State's liabilities and rights under the contract;
 - (c) a reference in the contract to the State is taken to be a reference to the authority;
 - (d) changes to the contract that are necessary for, or incidental to, the matters in paragraphs (a) to (c) are taken to have been made.
- (3) Subsection (2), or any thing done under it, does not—
 - (a) discharge or otherwise affect the contract or the performance of the contract by another party to it; or
 - (b) fulfil a condition allowing a person to terminate the contract or be released, wholly or partly, from the contract or a liability under it.

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- (4) If the advice or consent of, or giving notice to, a person would be necessary to give effect to any matter under subsection (2)—
- (a) the advice is taken to have been obtained; and
 - (b) the consent or notice is taken to have been given.
- (5) To remove any doubt, it is declared that—
- (a) a State is a party to a contract entered into by an entity that is a manifestation of, or that represents, the State (a ***State entity***), either for the State or in the entity's own right; and
 - Examples of manifestations of the State—*
 - the department responsible for the administration of the *Transport Infrastructure Act 1994*, the *Transport Operations (Marine Safety) Act 1994* and the *Transport Operations (Marine Pollution) Act 1995*
 - Maritime Safety Queensland established under the *Maritime Safety Queensland Act 2002*
 - (b) a reference in a contract to the performance of a function by or for the State includes a reference to performance of that function by or for a State entity; and
 - (c) a liability that, under a contract, is expressed to be a liability of a State entity is a liability of the State under that contract; and
 - (d) a right that, under a contract, is expressed to be a right of a State entity is a right of the State under that contract; and
 - (e) a reference in a contract to a named State entity is a reference to the State.
- (6) For subsection (1)(c), a contract relating to the performance of a function by or for the State includes a contract under which a guarantee, indemnity or other form of surety is given for the performance of the function by or for the State.
- (7) In this section—

[s 80]

contract includes a deed or other instrument under which a guarantee, indemnity or other form of surety is given in favour of the State, whether or not for consideration.

Schedule 1 Gold Coast waters

section 7

1 Area near the mouth of Currumbin Creek

For section 7(1)(b), the area near the mouth of Currumbin Creek is the area within the following boundary—

- (a) starting at the point on the boundary of the Gold Coast City local government area that is latitude 28°07.598' south, longitude 153°28.791' east (the *starting point*);
- (b) to latitude 28°07.393' south, longitude 153°28.972' east;
- (c) to the point on the boundary of the Gold Coast City local government area that is latitude 28°07.476' south, longitude 153°29.219' east;
- (d) along the boundary of the Gold Coast City local government area to the starting point.

2 Area near the Gold Coast Seaway

For section 7(1)(c), the area near the Gold Coast Seaway is the area within the following boundary—

- (a) starting at the point where the boundary of the Gold Coast City local government area intersects the high water mark on the south side of the northern breakwater of the Gold Coast Seaway (the *starting point*);
- (b) along the high water mark to the easterly tip of the northern wall of the Gold Coast Seaway;
- (c) to latitude 27°55.90' south, longitude 153°27.06' east;
- (d) to latitude 27°56.10' south, longitude 153°27.06' east;
- (e) to the eastern tip of the southern wall of the Gold Coast Seaway;
- (f) along the high water mark of the northern side of the southern breakwater to the point where the high water

mark intersects the boundary of the Gold Coast City local government area;

- (g) along the boundary of the Gold Coast City local government area to the starting point.

3 Area near the mouth of Tallebudgera Creek

For section 7(1)(d), the area near the mouth of Tallebudgera Creek is the area within the following boundary—

- (a) starting at the point on the boundary of the Gold Coast City local government area that is latitude $28^{\circ}05.425'$ south, longitude $153^{\circ}27.580'$ east (the *starting point*);
- (b) to latitude $28^{\circ}05.584'$ south, longitude $153^{\circ}27.879'$ east;
- (c) to the point on the boundary of the Gold Coast City local government area that is latitude $28^{\circ}05.898'$ south, longitude $153^{\circ}27.713'$ east;
- (d) along the boundary of the Gold Coast City local government area to the starting point.

Schedule 2 Dictionary

section 6

abandoned property, for part 5, division 3, see section 27.

appointed member, of the board, see section 44(a) and (c).

appropriately qualified, in relation to a function, includes having the qualifications, experience or standing to perform the function.

approved Spit works program see section 20A(7).

authority means the Gold Coast Waterways Authority.

board means the Gold Coast Waterways Authority Board.

chief executive officer means the authority's chief executive officer appointed under section 60(1).

commencement, for part 12, see section 74.

contravening property, for part 5, division 3, see section 27.

disqualified person means any of the following—

- (a) a party to a contract (a *relevant contract*) with the authority relating to the Gold Coast waterways or the Spit master plan area;
- (b) a person who, under the Corporations Act, is a related entity of a body corporate that is a party to a relevant contract;
- (c) an employee of a party to a relevant contract, unless the party is the Gold Coast City Council;
- (d) a member of the Legislative Assembly or of a parliament of the Commonwealth or another State;
- (e) a councillor of a local government;
- (f) a person who has been convicted of an indictable offence;

- (g) a person who is or has been an insolvent under administration under the Corporations Act, section 9;
- (h) a person who is disqualified from managing corporations under the Corporations Act, part 2D.6.

functions includes powers.

Gold Coast City local government area means the local government area of the Gold Coast City Council.

Gold Coast waters see section 7(1).

Gold Coast waterways see section 7(2).

insufficient value, for part 5, division 3, see section 27.

member, of the board, see section 44.

Ministerial direction see section 36(1)(a).

original decision, for part 5, division 4, see section 33.

property, for part 5, division 3, see section 27.

public marine facility see the *Transport Infrastructure Act 1994*, schedule 6.

reviewed decision, for part 5, division 4, see section 33.

Spit Development Minister means the Minister responsible for administering the *Implementation of The Spit Master Plan Act 2020*.

Spit master plan see the *Implementation of The Spit Master Plan Act 2020*, section 6.

Spit master plan area means the master plan area under the *Implementation of The Spit Master Plan Act 2020*.

Spit works program see section 20A(1).

watercraft see the *Transport Infrastructure Act 1994*, schedule 6.

Examples of watercraft—

a ship, a boat, a jet ski

water traffic see the *Transport Infrastructure Act 1994*, schedule 6.

waterways management program see section 19(1).

waterways management strategy see section 15(1).

waterways notice see section 22.