

Queensland



# **MARITIME SAFETY QUEENSLAND ACT 2002**

**Act No. 29 of 2002**



Queensland



**MARITIME SAFETY QUEENSLAND  
ACT 2002**

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Queensland



## **Maritime Safety Queensland Act 2002**

**Act No. 29 of 2002**

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**An Act to provide for the establishment of the Maritime Safety Agency  
of Queensland, and for other purposes**

*[Assented to 6 August 2002]*

**The Parliament of Queensland enacts—**

## **PART 1—PRELIMINARY**

### **1 Short title**

This Act may be cited as the *Maritime Safety Queensland Act 2002*.

### **2 Commencement**

This Act commences on a day to be fixed by proclamation.

### **3 Dictionary**

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

### **4 Purpose of Act**

The purpose of this Act is to create an entity, the Maritime Safety Agency of Queensland, to provide professional, specialist advice to, and undertake particular functions of, the chief executive in relation to marine safety and ship-sourced pollution.

### **5 Application of Act**

This Act does not limit the application of the following Acts—

- (a) *Transport Infrastructure Act 1994*;
- (b) *Transport Operations (Marine Pollution) Act 1995*;
- (c) *Transport Operations (Marine Safety) Act 1994*;
- (d) *Transport Planning and Coordination Act 1994*.

### **6 Act binds all persons**

This Act binds all persons, including the State, and, so far as the legislative power of the Parliament permits, the Commonwealth and the other States.

## PART 2—MARITIME SAFETY AGENCY OF QUEENSLAND

### *Division 1—Establishment, functions and powers of MSQ*

#### **7 Establishment of MSQ**

(1) The Maritime Safety Agency of Queensland (“MSQ”) is established.

(2) MSQ consists of—

- (a) the general manager; and
- (b) employees employed under section 12;<sup>1</sup> and
- (c) other employees employed under the *Public Service Act 1996*.

#### **8 Functions and powers of MSQ**

(1) MSQ has the following functions—

(a) for the *Transport Operations (Marine Safety) Act 1994*—

- (i) to develop strategies for marine safety, including on advice received from the Marine Board established under that Act; and

*Example—*

Education campaign for the safe use of recreational ships.

- (ii) to make standards for designing, building and operating commercial ships for approval by the Governor in Council, and to monitor and audit the implementation of the standards; and
- (iii) to accredit ship designers, ship builders or marine surveyors; and
- (iv) to accredit an entity to conduct training programs in the operation of ships; and
- (v) to licence masters, other than recreational masters, crew members and pilots; and

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<sup>1</sup> Section 12 (Employees)

- (vi) to set up and maintain aids to navigation; and
- (vii) to handle the investigation process into marine incidents; and
- (viii) to monitor and manage the movement of ships in Queensland waters;
- (b) for the *Transport Operations (Marine Pollution) Act 1995*—
  - (i) to develop strategies to prevent the deliberate, negligent or accidental discharge of ship-sourced pollutants into coastal waters; and
  - (ii) to deal with the discharge of ship-sourced pollutants into coastal waters;
- (c) to provide, or arrange for the provision of, maritime services including pilotage services;
- (d) any other function conferred on MSQ under this or another Act.

(2) MSQ has power to do anything necessary or convenient to be done for the performance of MSQ's functions.

## 9 Chief executive's responsibility

(1) The chief executive is responsible for the way MSQ performs its functions.

(2) Without limiting subsection (1), the chief executive is responsible for—

- (a) deciding the objectives, strategies and policies to be followed by MSQ; and
- (b) ensuring MSQ performs its functions in an appropriate, effective and efficient way.

*Example—*

The chief executive could establish performance measures for MSQ.

(3) This section does not affect the chief executive's responsibilities for the department under another Act.

## *Division 2—The general manager*

### **10 Appointment of general manager**

(1) The Governor in Council appoints the general manager for MSQ.

(2) The general manager is to be employed under the *Public Service Act 1996*.

### **11 Functions and powers of general manager**

(1) The general manager must, in accordance with the objectives, strategies and policies decided by the chief executive, manage MSQ's operations.

(2) Without limiting subsection (1), the general manager must—

- (a) advise the chief executive in relation to employment conditions of employees employed under section 12; and
- (b) direct employees employed under section 12 in the performance of the employees' duties; and
- (c) prepare a strategic plan incorporating performance targets approved by the chief executive.

(3) The general manager has power to do anything necessary or convenient to be done for the performance of the general manager's functions.

(4) In exercising a power, the general manager is accountable to the chief executive under the *Public Service Act 1996*.

(5) The general manager may delegate a power of the general manager under this or another Act to—

- (a) an employee of MSQ; or
- (b) an authorised officer under the *Transport Operations (Marine Pollution) Act 1995*; or
- (c) a shipping inspector under the *Transport Operations (Marine Safety) Act 1994*.

### *Division 3—Employees*

## **12 Employees**

(1) The chief executive may employ—

- (a) marine pilots; and
- (b) the other employees the chief executive considers necessary to perform MSQ's functions.

(2) However, the chief executive must not employ an individual as a marine pilot unless satisfied the individual has the necessary expertise or experience, prescribed under a regulation, to be a marine pilot.

(3) Subject to any relevant industrial instrument, the chief executive may decide the employment conditions of employees employed under this section.

(4) The *Public Service Act 1996* does not apply to the employment of employees employed under this section.

(5) In this section—

“**employment conditions**” includes conditions about the length of the employment and ending the employment.

## **PART 3—FINANCIAL PROVISIONS**

### **13 Fund**

(1) The Maritime Safety Queensland Fund is established.

(2) Accounts for the fund must be kept as part of the departmental accounts of the department.

(3) Amounts received for the fund must be deposited in a departmental financial-institution account of the department but may be deposited in an account used for depositing other amounts of the department.

(4) Amounts received for the fund include the following received by the department—

- (a) amounts received for pilotage fees and conservancy dues under the *Transport Operations (Marine Safety) Act 1994*;

- (b) amounts received by the department from other sources for the fund or amounts that must be paid into the fund;
- (c) amounts received for the disposal of an asset that the chief executive considers was purchased substantially with amounts paid from the fund;
- (d) interest from investment of the fund.

(5) An amount is payable from the fund for the purposes of this Act.

(6) The *Financial Administration and Audit Act 1977* applies to the fund.

(7) In this section—

**“departmental accounts”** of the department means the accounts of the department under the *Financial Administration and Audit Act 1977*, section 12.

**“departmental financial-institution account”** of the department means an account of the department kept under the *Financial Administration and Audit Act 1977*, section 18.

**“other amounts”** of the department means amounts received by the department other than amounts received for the fund.

## PART 4—MISCELLANEOUS PROVISIONS

### 14 Regulation-making power

The Governor in Council may make regulations under this Act.

## PART 5—TRANSITIONAL PROVISIONS

### 15 Pilotage service contracts

(1) This section applies to a contract in force immediately before the commencement of this section if the contract was—

- (a) a contract for services entered into by the department or a port authority for the supply of a pilotage service; or

- (b) a written or oral employment contract entered into by a port authority with an employee engaged to perform a pilotage service.

(2) On the commencement—

- (a) for a contract for services—

- (i) MSQ takes the place of the department or port authority as a party to the contract; and
- (ii) the contract may be enforced by or against MSQ; and

- (b) for an employment contract—

- (i) the person becomes an employee of MSQ on the same conditions on which the person was employed by the port authority; and
- (ii) the person keeps all rights and entitlements accrued or accruing to the person as an employee of the port authority.

*Example of rights and entitlements—*

Long service, recreation and sick leave and rights as a member of a superannuation scheme.

(3) Without limiting subsection (2)(b), if an industrial instrument applies to the person immediately before the commencement, the instrument continues to apply to the person after the commencement.

(4) Subsection (3) has effect subject to the *Industrial Relations Act 1999*.

(5) Compensation is not recoverable from the chief executive, the State or anyone else in relation to the transfer from a port authority to MSQ of the rights and obligations under a contract to which this section applies.

(6) This section does not apply to a contract, prescribed under a regulation, that provides for the transfer of a pilot onto or off a ship.

(7) In this section—

“**contract**”, for a contract that only partly relates to a pilotage service, means that part of the contract that relates to a pilotage service.

## **PART 6—CONSEQUENTIAL AMENDMENTS**

### **16 Acts amended in sch 1**

Schedule 1 amends the Acts it mentions.

## SCHEDULE 1

### CONSEQUENTIAL AMENDMENTS

section 16

#### TRANSPORT INFRASTRUCTURE ACT 1994

- 1 Section 161A(3), definition “port services”, paragraphs (d) and (e)—**

*omit, insert—*

‘(d) consultancy services about any of the services mentioned in paragraphs (a) to (c).’.

#### TRANSPORT OPERATIONS (MARINE POLLUTION) ACT 1995

- 1 Section 7(2)(a), ‘chief executive’—**

*omit, insert—*

‘general manager’.

- 2 Section 66(1), (2) and (4)(b), ‘chief executive’—**

*omit, insert—*

‘general manager’.

- 3 Section 69, heading, ‘chief executive’—**

*omit, insert—*

‘general manager’.

## SCHEDULE 1 (continued)

- 4 Section 69(a), ‘chief executive’—**  
*omit, insert—*  
‘general manager’.
- 5 Section 70(2), ‘chief executive’—**  
*omit, insert—*  
‘general manager’.
- 6 Section 71(1)(c)(i), ‘chief executive’—**  
*omit, insert—*  
‘general manager’.
- 7 Section 72(1), ‘chief executive’—**  
*omit, insert—*  
‘general manager’.
- 8 Section 72(1)—**  
*insert—*  
‘(ba)employees of MSQ;’.
- 9 Section 74(3), ‘chief executive’—**  
*omit, insert—*  
‘general manager’.
- 10 Section 93(4), ‘chief executive’, first mention—**  
*omit, insert—*  
‘general manager’.

## SCHEDULE 1 (continued)

- 11 Section 98(1), (2), (3) and (5), ‘chief executive’—**  
*omit, insert—*  
‘general manager’.
- 12 Section 98(3), ‘chief executive’s’—**  
*omit, insert—*  
‘general manager’s’.
- 13 Section 99(2), ‘chief executive’—**  
*omit, insert—*  
‘general manager’.
- 14 Section 100(1), ‘chief executive’—**  
*omit, insert—*  
‘general manager’.
- 15 Section 100(2), ‘chief executive’s’—**  
*omit, insert—*  
‘general manager’s’.
- 16 Section 111, definition “discharge expenses”, paragraph (a)(v), ‘chief executive’—**  
*omit, insert—*  
‘general manager’.
- 17 Section 115(10), ‘chief executive’—**  
*omit, insert—*  
‘general manager’.

## SCHEDULE 1 (continued)

**18 Section 118(2)(a) and (b) and (3), before ‘administering executive’—***insert—*

‘chief executive,’.

**19 Section 118(5), before ‘administering executive’—***insert—*

‘chief executive or’.

**20 Section 130, before ‘authorised officer’—***insert—*

‘employee of MSQ,’.

**21 After section 131—***insert—***‘132 Delegation by general manager**

‘The general manager may delegate the general manager’s powers under this Act to—

- (a) an employee of MSQ; or
- (b) an authorised officer.’.

**22 After section 135—***insert—*

**‘PART 17—TRANSITIONAL PROVISIONS FOR  
MARITIME SAFETY QUEENSLAND ACT 2002**

**‘136 Definitions for pt 20**

‘In this part—

“**commencement**” means the commencement of this part.

## SCHEDULE 1 (continued)

**“former function of the chief executive”** means a function that, immediately before the commencement, was a function of the chief executive but that on the commencement became a function of the general manager.

**‘137 Transition of chief executive’s functions to general manager**

**‘(1)** If—

- (a) a process relating to a former function of the chief executive was started before this section was commenced; and
- (b) the process was not completed before the commencement;

the chief executive must complete the process.

*Example of a process—*

The process of suspending or cancelling an approval.

**‘(2)** However, subsection (1) does not limit the chief executive’s power to delegate a function under the *Transport Planning and Coordination Act 1994*.

**‘138 Agreements**

**‘(1)** This section applies to an agreement made by the chief executive when performing a former function of the chief executive that is in force immediately before the commencement.

**‘(2)** The agreement continues to have effect after the commencement as if it had been made by the general manager.

**‘139 Notices**

**‘(1)** This section applies to a notice made, given or signed by the chief executive when performing a former function of the chief executive that is in force immediately before the commencement.

**‘(2)** The notice continues to have effect after the commencement as if it had been made, given or signed by the general manager.

## SCHEDULE 1 (continued)

**‘140 Appointments**

‘(1) This section applies to an appointment made by the chief executive when performing a former function of the chief executive that is current immediately before the commencement.

‘(2) The appointment continues to have effect after the commencement as if it had been made by the general manager.

**‘141 Other things done by chief executive**

‘(1) This section applies to anything done, made, given or signed by the chief executive when performing a former function of the chief executive that is in force immediately before the commencement and is not otherwise provided for under this part.

‘(2) The thing continues to have effect after the commencement as if it had been done, made, given or signed by the general manager.

**‘142 Particular references to chief executive**

‘A reference in an Act or document to the chief executive may, if the context permits, be taken to be a reference to the general manager.’.

**23 Schedule, definition “administering authority”, paragraph (b), ‘the chief executive’—**

*omit, insert—*

‘MSQ’.

**24 Schedule, definition “administering executive”, paragraph (b), ‘chief executive’—**

*omit, insert—*

‘general manager’.

## SCHEDULE 1 (continued)

**25 Schedule, definition “analyst”, paragraph (a), ‘chief executive’—**

*omit, insert—*

‘general manager’.

**26 Schedule—**

*insert—*

‘**“general manager”** means the general manager under the *Maritime Safety Queensland Act 2002*.

“**MSQ**” means the Maritime Safety Agency of Queensland established under the *Maritime Safety Queensland Act 2002*.’.

**TRANSPORT OPERATIONS (MARINE SAFETY)  
ACT 1994****1 Section 4—**

*insert—*

‘**“general manager”** means the general manager under the *Maritime Safety Queensland Act 2002*.

“**MSQ**” means the Maritime Safety Agency of Queensland established under the *Maritime Safety Queensland Act 2002*.’.

**2 Section 18A(1), (2), (3), (5) and (6)(d), ‘chief executive’—**

*omit, insert—*

‘general manager’.

**3 Section 31(4) and (5), ‘chief executive’—**

*omit, insert—*

‘general manager’.

## SCHEDULE 1 (continued)

- 4 Section 34(i), after ‘chief executive’—**  
*insert—*  
‘or general manager’.
- 5 Section 36(1) and (2), ‘chief executive’—**  
*omit, insert—*  
‘general manager’.
- 6 Section 42(3)(a)(ii), ‘chief executive’—**  
*omit, insert—*  
‘general manager’.
- 7 Section 45(1), ‘chief executive’—**  
*omit, insert—*  
‘general manager’.
- 8 Section 47(1), (4)(b) and (5), ‘chief executive’—**  
*omit, insert—*  
‘general manager’.
- 9 Section 48(1) and (2), ‘chief executive’—**  
*omit, insert—*  
‘general manager’.
- 10 Section 49(1), (3)(c) and (4), ‘chief executive’—**  
*omit, insert—*  
‘general manager’.

## SCHEDULE 1 (continued)

- 11 Section 50(1) and (2), ‘chief executive’—**  
*omit, insert—*  
‘general manager’.
- 12 Section 51(1), ‘chief executive’—**  
*omit, insert—*  
‘general manager’.
- 13 Section 54(1), ‘chief executive’—**  
*omit, insert—*  
‘general manager’.
- 14 Section 59, after ‘chief executive’—**  
*insert—*  
‘or general manager’.
- 15 Section 62(2)(a) and (b) and (3), after ‘chief executive’—**  
*insert—*  
‘or general manager’.
- 16 Section 63, after ‘chief executive’—**  
*insert—*  
‘or general manager’.
- 17 Section 67(1)(a)(ii) and (2)(a)(ii), ‘chief executive’—**  
*omit, insert—*  
‘general manager’.

## SCHEDULE 1 (continued)

**18 Section 70, ‘chief executive’—***omit, insert—*

‘general manager’.

**19 Section 70A, heading, ‘Chief executive’—***omit, insert—*

‘General manager’.

**20 Section 70A(1) and (2), ‘chief executive’—***omit, insert—*

‘general manager’.

**21 Section 70B(1), ‘chief executive’—***omit, insert—*

‘general manager’.

**22 Section 74(1), ‘the department’—***omit, insert—*

‘MSQ’.

**23 Section 76—***insert—*

‘(2) In exercising a power, a harbour master is subject to the direction of the general manager.’.

**24 Section 78, ‘the department’—***omit, insert—*

‘MSQ’.

## SCHEDULE 1 (continued)

**25 Section 79(1)—***insert—*

‘(ca)an employee of MSQ; or’.

**26 Section 101(5), definition “general employer”, ‘the department or a port authority’—***omit, insert—*

‘MSQ’.

**27 Section 102A(1)(a), (1)(b)(i), (2)(a) and (2)(b)(i), ‘the department or a port authority’—***omit, insert—*

‘MSQ’.

**28 Section 105, heading, ‘Chief executive’—***omit, insert—*

‘General manager’.

**29 Section 105(1), (2) and (3), ‘chief executive’—***omit, insert—*

‘general manager’.

**30 Section 109(2), ‘chief executive’—***omit, insert—*

‘general manager’.

**31 Section 109(3), ‘or chief executive’—***omit, insert—*

‘, chief executive or general manager’.

## SCHEDULE 1 (continued)

**32 Section 120, ‘chief executive’—***omit, insert—*

‘general manager’.

**33 Section 126(1) to (4), ‘chief executive’—***omit, insert—*

‘general manager’.

**34 Section 126(3)(a), after ‘may’—***insert—*

‘recommend to the chief executive that the chief executive’.

**35 Section 134(a), after ‘employees of the department’—***insert—*

‘or of MSQ’.

**36 Section 153(d), ‘chief executive’—***omit, insert—*

‘general manager’.

**37 Section 154, ‘chief executive’—***omit, insert—*

‘general manager’.

**38 Section 156(c), ‘chief executive’—***omit, insert—*

‘general manager’.

## SCHEDULE 1 (continued)

- 39 Section 157(1) and (2), ‘chief executive’—**  
*omit, insert—*  
‘general manager’.
- 40 Section 157(1)—**  
*insert—*  
‘(ba)employees of MSQ;’.
- 41 Section 157(2)(a), ‘chief executive’s’—**  
*omit, insert—*  
‘general manager’s’.
- 42 Section 158(2)(b), ‘chief executive’—**  
*omit, insert—*  
‘general manager’.
- 43 Section 159(1), (2)(b) and (3), ‘chief executive’—**  
*omit, insert—*  
‘general manager’.
- 44 Section 201(2)(a) and (b), (3), (4) and (5), after ‘chief executive’—**  
*insert—*  
‘, the general manager’.
- 45 Section 203(3)(c), after ‘chief executive’—**  
*insert—*  
‘or general manager’.

## SCHEDULE 1 (continued)

**46 Section 203(5), after ‘department’—**

*insert—*

‘or MSQ’.

**47 Section 203—**

*insert—*

‘(5A) An appeal lies under subsections (1) and (2) against a decision made by a delegate of the general manager who is an officer or employee of MSQ only if the applicant has sought a review by the general manager of the decision.’.

**48 Section 205(1), ‘or an officer or employee of the department’—**

*omit, insert—*

‘, the general manager or an officer or employee of the department or of MSQ’.

**49 Section 205(2)(a) and (b), after ‘chief executive’—**

*insert—*

‘, general manager’.

**50 Section 206A, heading, ‘Chief executive’s’—**

*omit, insert—*

‘General manager’s’.

**51 Section 206A(1) and (4), ‘chief executive’—**

*omit, insert—*

‘general manager’.

## SCHEDULE 1 (continued)

**52 Section 216(3)(a) and (b) and (5)(a), ‘chief executive’—**

*omit, insert—*

‘general manager’.

**53 After section 224—**

*insert—*

**‘PART 20—TRANSITIONAL PROVISIONS FOR  
MARITIME SAFETY QUEENSLAND ACT 2002**

**‘225 Definitions for pt 20**

‘In this part—

**“commencement”** means the commencement of this part.

**“former function of the chief executive”** means a function that, immediately before the commencement, was a function of the chief executive but that on the commencement became a function of the general manager.

**‘226 Transition of chief executive’s functions to general manager**

**‘(1) If—**

- (a) a process relating to a former function of the chief executive was started before the commencement; and
- (b) the process was not completed before the commencement;

the chief executive must complete the process.

*Example of a process—*

The process of suspending or cancelling an approval.

**‘(2) However, subsection (1) does not limit the chief executive’s power to delegate a function under the *Transport Planning and Coordination Act 1994*.**

**SCHEDULE 1 (continued)****‘227 Exemptions**

‘(1) This section applies to an exemption given by the chief executive when performing a former function of the chief executive that is in force immediately before the commencement.

‘(2) The exemption continues to have effect after the commencement as if it had been given by the general manager.

**‘228 Standards**

‘(1) This section applies to a standard given by the chief executive when performing a former function of the chief executive that is in force immediately before the commencement.

‘(2) The standard continues to have effect after the commencement as if it had been given by the general manager.

**‘229 Approvals**

‘(1) This section applies to an approval given by the chief executive when performing a former function of the chief executive that is in force immediately before the commencement.

‘(2) The approval continues to have effect after the commencement as if it had been given by the general manager.

**‘230 Appointments**

‘(1) This section applies to an appointment made by the chief executive when performing a former function of the chief executive that is current immediately before the commencement.

‘(2) The appointment continues to have effect after the commencement as if it had been made by the general manager.

**‘231 Agreements**

‘(1) This section applies to an agreement made by the chief executive when performing a former function of the chief executive that is in force immediately before the commencement.

**SCHEDULE 1 (continued)**

‘(2) The agreement continues to have effect after the commencement as if it had been made by the general manager.

**‘232 Fixing of speed limits for ships**

‘(1) This section applies to a speed limit fixed for a ship by the chief executive when performing a former function of the chief executive that is in force immediately before the commencement.

‘(2) The speed limit continues to have effect after the commencement as if it had been fixed by the general manager.

**‘233 Notices**

‘(1) This section applies to a notice made, given or signed by the chief executive when performing a former function of the chief executive that is in force immediately before the commencement.

‘(2) The notice continues to have effect after the commencement as if it had been made, given or signed by the general manager.

**‘234 Other things done by chief executive**

‘(1) This section applies to anything done, made, given or signed by the chief executive when performing a former function of the chief executive that is in force immediately before the commencement and is not otherwise provided for under this part.

‘(2) The thing continues to have effect after the commencement as if it had been done, made, given or signed by the general manager.

**‘235 Particular references to chief executive**

‘A reference in an Act or document to the chief executive may, if the context permits, be taken to be a reference to the general manager.’.

## SCHEDULE 2

### DICTIONARY

section 3

**“industrial instrument”** has the meaning given by the *Industrial Relations Act 1999*.

**“maritime service”** means a service provided to the maritime industry, whether or not on payment of a fee.

**“MSQ”** means the Maritime Safety Agency of Queensland.

**“pilotage service”** means a maritime service, with an individual or other person, that provides for—

- (a) the piloted movement of ships; or
- (b) the transfer of a pilot onto or off a ship.