

Queensland



TRANSPORT LEGISLATION AMENDMENT ACT 2002

Act No. 15 of 2002

Queensland



**TRANSPORT LEGISLATION
AMENDMENT ACT 2002**

TABLE OF PROVISIONS

Section		Page
PART 1—PRELIMINARY		
1	Short title	8
2	Commencement	8
PART 2—AMENDMENT OF AURUKUN ASSOCIATES AGREEMENT ACT 1975		
3	Act amended in pt 2	8
4	Insertion of new s 7	8
7	Changed references for Corporations Act	8
PART 3—AMENDMENT OF CENTRAL QUEENSLAND COAL ASSOCIATES AGREEMENT ACT 1968		
5	Act amended in pt 3	9
6	Replacement of title	9
7	Insertion of new s 1A	9
	1A Definition	9
8	Amendment of s 2 (Execution of agreement authorised)	9
9	Replacement of s 3 (Executed agreement to have force of law)	10
	3 Agreement has force of law	10
10	Amendment and relocation of s 4 (Variation of agreement)	10
11	Insertion of new s 4	10
	4 Variation of agreement	10
12	Replacement of ss 4A and 5	10
	5 Application of GST to rents after 30 June 2005	10
13	Amendment of s 6 (Making of agreement authorised)	11
14	Insertion of new ss 8 and 9	11

8	Making of 2002 agreement authorised	11
9	Regulation-making power	12
15	Amendment of sch 1 (The agreement)	12
	SCHEDULE 1	
	THE ORIGINAL AGREEMENT	
16	Amendment of sch 2, as inserted by 2001 Act No. 46 (Agreement).	12
	PROPOSED 2001 AGREEMENT	
17	Amendment of sch 2, as inserted by 1997 Act No. 72 (Central Queensland Coal Associates Amendment Agreement 1997)	12
	SCHEDULE 2	
	FIRST PROPOSED 1997 AGREEMENT	
18	Amendment of sch 3, as inserted by 1997 Act No. 72 (Central Queensland Coal Associates Amendment Agreement 1997)	13
	SCHEDULE 3	
	SECOND PROPOSED 1997 AGREEMENT	
19	Insertion of new sch 5	13
	SCHEDULE 5	
	PROPOSED 2002 AGREEMENT	
	PART 4—AMENDMENT OF QUEENSLAND NICKEL AGREEMENT ACT 1970	
20	Act amended in pt 4.	17
21	Insertion of new s 8	17
	8 Changed references for Corporations Act	17
	PART 5—AMENDMENT OF TRANSPORT INFRASTRUCTURE ACT 1994	
22	Act amended in pt 5.	17
23	Omission of s 138 (Carrying dangerous goods)	17
24	Insertion of new s 138A	17
25	Insertion of new s 155A	19
	155A Port authority is excluded matter for Corporations Act.	19
26	Amendment of s 215 (Boundary identification etc.)	19
27	Amendment of s 218 (Expiry of division etc.)	20
28	Amendment of s 221 (Continuation of Transport Infrastructure (Railways) Act 1991, ss 49 and 51).	20

**PART 6—AMENDMENT OF TRANSPORT LEGISLATION
AMENDMENT ACT 2001**

29	Act amended in pt 6	20
30	Omission of s 30 (Replacement of s 138 (Carrying dangerous goods))	20

**PART 7—AMENDMENT OF TRANSPORT OPERATIONS
(MARINE POLLUTION) ACT 1995**

31	Act amended in pt 7	21
32	Omission of s 2 (Commencement)	21
33	Amendment of s 3 (Overall purpose)	21
34	Insertion of new s 7A	21
	7A Meaning of “length overall”	21
35	Omission of s 50 (Ships to have holding tanks)	21
36	Replacement of pt 7	22

PART 7—PREVENTION OF POLLUTION BY SEWAGE

Division 1—Interpretation

45	Definitions for pt 7	22
46	Words and expressions used in Annex IV to MARPOL and this part	22

Division 2—Discharge of sewage

47	Discharge of untreated sewage into nil discharge waters for untreated sewage prohibited	23
48	Discharge of treated sewage into nil discharge waters for treated sewage prohibited	23
49	Declared ship operating in prescribed nil discharge waters to be fitted with sewage holding device	24
50	Discharge of sewage from declared ship into nil discharge waters for sewage prohibited	24
51	Shipboard sewage management plan	25

Division 3—Defence

51A	Defence to discharge offence	25
-----	--	----

Division 4—General

51B	Treatment system to be in proper working order	26
51C	Other laws may also apply	26
37	Amendment of s 67 (Duty to report certain incidents)	27
38	Insertion of new pt 11A	27

PART 11A—INSURANCE

67A	Ship's owner to have insurance	27
39	Amendment of s 133 (Regulations).	28
40	Amendment of schedule (Dictionary).	28
PART 8—AMENDMENT OF TRANSPORT OPERATIONS (MARINE SAFETY) ACT 1994		
41	Act amended in pt 8.	29
42	Omission of s 14 (Marine incidents required to be reported under Commonwealth Navigation Act).	29
43	Insertion of new s 107A	30
	107A Damage to an aid to navigation	30
PART 9—AMENDMENT OF TRANSPORT OPERATIONS (PASSENGER TRANSPORT) ACT 1994		
44	Act amended in pt 9.	30
45	Omission of s 38A (What are temporary service contracts)	30
46	Amendment of s 38B (Chief executive may enter into service contracts) . .	30
47	Amendment of s 41 (Other matters to be included in service contracts) . . .	31
48	Amendment of s 44 (Term of service contracts).	31
49	Amendment of s 45 (Conditions of service contracts)	31
50	Amendment of s 46 (Review of holder's performance)	32
51	Amendment of s 47 (Breach of service contracts)	32
52	Insertion of new s 47A	33
	47A Renewal of service contracts	33
53	Insertion of new ch 6, pt 1, div 4.	34
	<i>Division 4—Emergency service contracts</i>	
	48A Chief executive may enter into emergency service contract	34
	48B Entering into an emergency service contract	34
	48C Term of emergency service contract	34
54	Omission of s 50 (Commercial and government funded service contracts) .	35
55	Amendment of s 54 (Special condition for commercial service contracts for restricted school services)	35
56	Amendment of s 62 (Offer of new service contract).	35
57	Amendment of s 62AC (Entitlement of satisfactorily performing existing operator under a service contract)	35

58	Amendment of s 62AD (First opportunity to offer may be given to existing operator of school services under a service contract or transitional provision)	36
59	Omission of ch 6, pt 2, div 3 (Entering into temporary service contracts to ensure continuity of existing service)	36
60	Replacement of ch 13, pt 1	36
	PART 1—TRANSITIONAL PROVISION FOR TRANSPORT LEGISLATION AMENDMENT ACT 2002	
	156 Continuation of temporary service contracts	36
61	Amendment of sch 2 (Reviewable decisions)	36
62	Amendment of sch 3 (Dictionary)	37
	PART 10—AMENDMENT OF TRANSPORT PLANNING AND COORDINATION ACT 1984	
63	Act amended in pt 10.	37
64	Insertion of new s 10A	37
	10A SEQTA is excluded matter for Corporations Act.	38
65	Insertion of new s 16A	38
	16A SEQTA board is excluded matter for Corporations Act	38
	PART 11—REPEALS	
66	Repeal of legislation	38

Queensland



Transport Legislation Amendment Act 2002

Act No. 15 of 2002

**An Act to amend legislation administered by the Minister for
Transport and the Minister for Main Roads, and for other purposes**

[Assented to 17 May 2002]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the *Transport Legislation Amendment Act 2002*.

2 Commencement

(1) Part 3, sections 31, 32 and 35, and part 11 commence on assent.

(2) The remaining provisions of this Act commence on a day to be fixed by proclamation.

PART 2—AMENDMENT OF AURUKUN ASSOCIATES AGREEMENT ACT 1975

3 Act amended in pt 2

This Act amends the *Aurukun Associates Agreement Act 1975*.

4 Insertion of new s 7

After section 6—

insert—

‘7 Changed references for Corporations Act

‘(1) A reference in the definition “related company” in clause 2(1) of part I of the agreement to a related company or related corporation as either of those terms is defined by the Companies Act is a reference to a related body corporate under the Corporations Act.

‘(2) A reference in clause 7(2) of part VIII of the agreement to section 6 of the Companies Act is to be read as a reference to the Corporations Act, section 9.

‘(3) Any other reference in the agreement to the Companies Act is to be read as a reference to the Corporations Act.’.

PART 3—AMENDMENT OF CENTRAL QUEENSLAND COAL ASSOCIATES AGREEMENT ACT 1968

5 Act amended in pt 3

This part amends the *Central Queensland Coal Associates Agreement Act 1968*.

6 Replacement of title

Title—

omit, insert—

‘An Act about an agreement between the State and various companies for the mining of coal in central Queensland, and for related purposes’.

7 Insertion of new s 1A

After section 1—

insert—

‘1A Definition

‘In this Act—

“the agreement” means the agreement made on 28 January 1969 as authorised by section 2, as varied under this or another Act.’.

8 Amendment of s 2 (Execution of agreement authorised)

Section 2, from ‘a copy’—

omit, insert—

‘the form of which is set out in schedule 1.’.

9 Replacement of s 3 (Executed agreement to have force of law)

Section 3—

omit, insert—

‘3 Agreement has force of law

‘The agreement has the force of law as if it were enacted.’.

10 Amendment and relocation of s 4 (Variation of agreement)

(1) Section 4, heading—

omit, insert—

‘Making of 2001 agreement authorised’.

(2) Section 4(1), ‘schedule 2’—

omit, insert—

‘schedule 4’.

(3) Section 4—

renumber and relocate as section 7.

11 Insertion of new s 4

After section 3—

insert—

‘4 Variation of agreement

‘(1) The agreement may be varied only by further agreement between the parties under the authority of an Act.

‘(2) A variation of the agreement purported to be made other than under subsection (1) is of no effect.’.

12 Replacement of ss 4A and 5

Sections 4A and 5—

omit, insert—

‘5 Application of GST to rents after 30 June 2005

‘(1) This section applies to rent payable after 30 June 2005 under—

- (a) this Act; or
- (b) the agreement; or
- (c) a lease granted under, or mentioned in, the agreement.

‘(2) If the rent is for a supply for which GST is payable, the rent payable is the total of—

- (a) the rent that would have been payable if the rent were not for a supply for which GST is payable; and
- (b) 10% of the rent that would have been payable if the rent were not for a supply for which GST is payable.

‘(3) Subsection (2) applies despite the following—

- (a) sections 3 and 4;
- (b) the agreement;
- (c) the *Mineral Resources Act 1989*.’

13 Amendment of s 6 (Making of agreement authorised)

Section 6, heading—

omit, insert—

‘**Making of 1997 agreements authorised**’.

14 Insertion of new ss 8 and 9

After section 7 (as renumbered)—

insert—

‘8 Making of 2002 agreement authorised

‘(1) The Premier is authorised, for the State, to make an agreement (the “**2002 agreement**”) with the other parties named in the 2002 agreement.

‘(2) The 2002 agreement must be substantially in the form set out in schedule 5.

‘(3) The Premier must notify the date of making of the 2002 agreement by gazette notice.

‘9 Regulation-making power

‘The Governor in Council may make regulations under this Act.’.

15 Amendment of sch 1 (The agreement)

Schedule 1, heading—

omit, insert—

‘SCHEDULE 1**‘THE ORIGINAL AGREEMENT**

section 2’.

16 Amendment of sch 2, as inserted by 2001 Act No. 46 (Agreement)

(1) Schedule 2, heading, ‘Agreement’—

omit, insert—

‘PROPOSED 2001 AGREEMENT

section 7’.

(2) Schedule 2—

renumber and relocate as schedule 4.

17 Amendment of sch 2, as inserted by 1997 Act No. 72 (Central Queensland Coal Associates Amendment Agreement 1997)

Schedule 2, heading—

omit, insert—

‘SCHEDULE 2**‘FIRST PROPOSED 1997 AGREEMENT**

section 6’.

18 Amendment of sch 3, as inserted by 1997 Act No. 72 (Central Queensland Coal Associates Amendment Agreement 1997)

Schedule 2, heading—

*omit, insert—***‘SCHEDULE 3****‘SECOND PROPOSED 1997 AGREEMENT**

section 6’.

19 Insertion of new sch 5

After schedule 4 (as renumbered)—

*insert—***‘SCHEDULE 5****‘PROPOSED 2002 AGREEMENT**

section 8

AN AGREEMENT made the day of 2002

BETWEEN THE STATE OF QUEENSLAND

- and **BHP COAL PTY LTD ACN 010 595 721** (formerly BHP Australia Coal Pty Ltd) (formerly Utah Development Company), a company duly incorporated according to law and having its registered office at Level 13, Riverside Centre, 123 Eagle Street, Brisbane, Queensland (“**BHPC**”)
- and **MITSUBISHI DEVELOPMENT PTY LTD ACN 009 779 873**, a company duly incorporated according to law and having its registered office at Level 32, AMP Place, 10 Eagle Street, Brisbane, Queensland (“**Mitsubishi**”)
- and **UMAL CONSOLIDATED PTY LTD ACN 000 767 386** (formerly Utah Mining Australia Limited), a company duly incorporated according to law and having its registered office at Level 13, Riverside Centre, 123 Eagle Street, Brisbane, Queensland (“**UCL**”)
- and **QCT INVESTMENT PTY LTD ACN 010 487 831**, a company duly incorporated according to law and having its registered office at Level 13, 123 Eagle Street, Brisbane, Queensland (“**QCT Investment**”)
- and **QCT MINING PTY LTD ACN 010 487 840**, a company duly incorporated according to law and having its registered office at Level 13, 123 Eagle Street, Brisbane, Queensland (“**QCT Mining**”)
- and **QCT MANAGEMENT LIMITED ACN 010 472 036**, a company duly incorporated according to law and having its registered office at Level 13, Riverside Centre, 123 Eagle Street, Brisbane (“**QCT Management**”)
- and **BHP QUEENSLAND COAL LIMITED ARBN 010 506 073**, a company duly incorporated according to law and having its registered office at Level 13, Riverside Centre, 123 Eagle Street, Brisbane, Queensland (“**BHPQ**”)

and **BHP QUEENSLAND COAL INVESTMENTS PTY LTD ACN 098 876 825**, a company duly incorporated according to law and having its registered office at Level 13, Riverside Centre, 123 Eagle Street, Brisbane (“**BHPQ Investments**”)

RECITAL

BHPQ wishes to transfer its 8.50% interest in the benefits and obligations under the agreement (including its 8.50% interest in its rights to, or as the holder of, any lease, licence, easement, grant or other title granted to it under the agreement) to its wholly-owned subsidiary, BHPQ Investments.

IT IS AGREED—

‘1 Definitions

In this agreement—

“**Act**” means the *Central Queensland Coal Associates Agreement Act 1968*.

“**the agreement**” means the agreement as defined in section 1A of the Act.

‘2 Amendment of the agreement

The parties agree that the agreement is amended as follows—

(1) In part I, clause 2, definition “**Companies**”—

omit, insert—

‘“**Companies**” means—

- (a) BHP Coal Pty Ltd; and
- (b) Mitsubishi Development Pty Ltd; and
- (c) Umal Consolidated Pty Ltd; and
- (d) BHP Queensland Coal Investments Pty Ltd; and
- (e) QCT Investment Pty Ltd; and
- (f) QCT Mining Pty Ltd; and
- (g) QCT Management Limited.’

(2) In part IX, clauses 11 and 12, ‘BHP Queensland Coal Limited’—

omit, insert—

‘BHP Queensland Coal Investments Pty Ltd’.

‘3 When agreement takes effect

This agreement takes effect on—

- (a) if all the parties have signed it before 1 July 2002—1 July 2002;
or
- (b) if paragraph (a) does not apply—the date the Premier signs it.

‘4 Effect of agreement

The parties agree that on and from the date this agreement takes effect—

- (a) BHPQ is released and discharged from all the duties, obligations and liabilities it has under the agreement to the extent of its 8.50% interest assigned to BHPQ Investments but not otherwise; and
- (b) BHPQ Investments agrees to be bound by the agreement as if it had been party to it; and
- (c) the companies hold the interests in the operations carried on under the agreement as follows—

BHPC	40.75%
Mitsubishi	15.53%
UCL	0.75%
BHPQ Investments	8.50%
QCT Investment	12.00%
QCT Mining	15.78%
QCT Management	6.69%.

SIGNED by the parties as follows’.

PART 4—AMENDMENT OF QUEENSLAND NICKEL AGREEMENT ACT 1970

20 Act amended in pt 4

This part amends the *Queensland Nickel Agreement Act 1970*.

21 Insertion of new s 8

After section 7—

insert—

‘8 Changed references for Corporations Act

‘(1) A reference in the agreement to a related company of the Companies or any of them within the meaning of *The Companies Act 1961 to 1964* is a reference to a related body corporate, under the Corporations Act, of the Companies or any of them.

‘(2) Any other reference in the agreement to the Companies Act is to be read as a reference to the Corporations Act.’.

PART 5—AMENDMENT OF TRANSPORT INFRASTRUCTURE ACT 1994

22 Act amended in pt 5

This part amends the *Transport Infrastructure Act 1994*.

23 Omission of s 138 (Carrying dangerous goods)

Section 138—

omit.

24 Insertion of new s 138A

After section 137—

insert—

‘138A Railways on State-controlled roads

‘(1) This section applies if—

- (a) a railway manager—
 - (i) holds a sublease of rail corridor land; or
 - (ii) has access to future railway land; and
- (b) the route of the rail corridor land or future railway land—
 - (i) is interrupted by a State-controlled road; and
 - (ii) continues on the other side of the State-controlled road.

‘(2) The Minister may, by gazette notice, declare the part of the State-controlled road where it interrupts the route to be a common area (“**common area**”) for the State-controlled road and the route of the rail corridor land or future railway land.

‘(3) If the Minister declares a common area—

- (a) the railway manager for the rail corridor land or future railway land may construct, maintain and operate a railway on the common area in a way not inconsistent with its use as a State-controlled road; and
- (b) the chief executive for chapter 5 may construct, maintain and operate the State-controlled road on the common area in a way not inconsistent with its use as a railway; and
- (c) the chief executive for chapter 5 and the chief executive’s agents or employees do not have any liability for the railway or its use or operation on the common area.

Examples for paragraph (a)—

- a level crossing
- a bridge or other structure over the road
- a bridge or other structure that allows the railway to pass under the road.

‘(4) After a common area is declared—

- (a) the chief executive must give a copy of the gazette notice to the registrar of titles—
 - (i) promptly after the gazette notice is published, if the land is rail corridor land; or

- (ii) promptly after the land is leased to the railway manager under section 131(4), if the land is future railway land; and
- (b) the registrar of titles must record the declaration on the relevant lease of the rail corridor land to the State and the sublease in the leasehold land register.

‘(5) If a railway on a common area stops being used, the railway manager for the railway is responsible for the cost of removing rail transport infrastructure from the common area and restoring the road, unless the chief executive and the railway manager otherwise agree.

‘(6) In this section—

“**chief executive for chapter 5**” means the chief executive of the department that deals with the administration of chapter 5.’.

25 Insertion of new s 155A

After section 155—

insert—

‘155A Port authority is excluded matter for Corporations Act

‘A port authority established under section 155 is declared to be an excluded matter for the Corporations Act, section 5F in relation to the following provisions of the Corporations Act—

- (a) parts 2D.1 and 2D.6;
- (b) chapters 2K and 2L;
- (c) parts 5.7, 5.7B, 5.9 and 5B.2.¹’.

26 Amendment of s 215 (Boundary identification etc.)

(1) Section 215(1), ‘within 5 years after the commencement’—

omit, insert—

‘by the end of 30 June 2003’.

1 Corporations Act, part 2D.1 (Duties and powers), part 2D.6 (Disqualification from managing corporations), chapter 2K (Charges), chapter 2L (Debentures), part 5.7 (Winding up bodies other than companies), part 5.7B (Recovering property or compensation for the benefit of creditors of insolvent company), part 5.9 (Miscellaneous) and part 5B.2 (Registrable bodies)

(2) Section 215(7)—
omit.

27 Amendment of s 218 (Expiry of division etc.)

Section 218(2), ‘7 years after it commences’—
omit, insert—
‘on 30 June 2003’.

28 Amendment of s 221 (Continuation of Transport Infrastructure (Railways) Act 1991, ss 49 and 51)

(1) Section 221(4)—
omit, insert—
‘(4) This section expires on 30 June 2003.’.
(2) Section 221(5)—
omit.

**PART 6—AMENDMENT OF TRANSPORT
LEGISLATION AMENDMENT ACT 2001**

29 Act amended in pt 6

This part amends the *Transport Legislation Amendment Act 2001*.

30 Omission of s 30 (Replacement of s 138 (Carrying dangerous goods))

Section 30—
omit.

PART 7—AMENDMENT OF TRANSPORT OPERATIONS (MARINE POLLUTION) ACT 1995

31 Act amended in pt 7

This part amends the *Transport Operations (Marine Pollution) Act 1995*.

32 Omission of s 2 (Commencement)

omit.

33 Amendment of s 3 (Overall purpose)

Section 3(2), after the third bullet point—

insert—

- Annex IV (which deals with pollution by sewage)’.

34 Insertion of new s 7A

Part 1, division 3—

insert—

‘7A Meaning of “length overall”

‘(1) The “**length overall**” of a ship is the distance in the fore and aft line from the foremost part of the hull of the ship to the aftermost part of the hull of the ship taken at the upper weather tight deck or, for an open ship, at the height of the gunwale.

‘(2) However, the length overall of the ship does not include the length of appendages to the hull.

Example—

A bowsprit or boarding platform is not taken into account when measuring the length overall of a ship.’.

35 Omission of s 50 (Ships to have holding tanks)

Section 50—

omit.

36 Replacement of pt 7

Part 7—

omit, insert—

‘PART 7—PREVENTION OF POLLUTION BY SEWAGE***‘Division 1—Interpretation*****‘45 Definitions for pt 7**

‘In this part—

“culpable person”, for a discharge of treated sewage or untreated sewage from a ship, means—

- (a) the ship’s owner; or
- (b) the ship’s master; or
- (c) another member of the ship’s crew whose act caused or contributed to the discharge, unless the member was acting under the direct supervision of the master or of someone authorised by the master for the purpose.

“declared ship” see section 49.

“discharge offence” means an offence against section 47, 48 or 50.

“sewage holding device” means—

- (a) a container or receptacle that is designed or constructed to receive sewage and hold it inside the container or receptacle for disposal; or

Example for paragraph (a)—

A portable toilet or holding tank.

- (b) a treatment system that is fitted with, or connected to, a container or receptacle mentioned in paragraph (a).

‘46 Words and expressions used in Annex IV to MARPOL and this part

‘(1) Words and expressions used in Annex IV to MARPOL and this part have the same meanings in this part they have in the annex.

‘(2) Subsection (1) applies whether or not a particular word or expression is defined in Annex IV.

‘(3) Except as far as the context or subject matter otherwise indicates or requires, if a word or expression is defined in Annex IV to MARPOL and this part—

- (a) this part’s definition does not limit or exclude, but may extend, the meaning of the word or expression given under Annex IV; and
- (b) the definitions are to be read in the context of each other and the other provisions of this Act, but, if the definitions so read are inconsistent, the Annex IV definition is displaced.

‘Division 2—Discharge of sewage

‘47 Discharge of untreated sewage into nil discharge waters for untreated sewage prohibited

‘(1) If untreated sewage is discharged from a ship into nil discharge waters for untreated sewage, each culpable person for the discharge commits an offence.

Maximum penalty—850 penalty units.

‘(2) The nil discharge waters for untreated sewage are the coastal waters prescribed under a regulation for this section.

‘(3) This section applies despite the Criminal Code, sections 23 and 24.²

‘48 Discharge of treated sewage into nil discharge waters for treated sewage prohibited

‘(1) If treated sewage is discharged from a ship into nil discharge waters for treated sewage, each culpable person for the discharge commits an offence.

Maximum penalty—850 penalty units.

² See the footnote to section 26(2) for information about sections 23 and 24 of the Code.

‘(2) The nil discharge waters for treated sewage are the coastal waters prescribed under a regulation for this section.

‘(3) This section applies despite the Criminal Code, sections 23 and 24.

‘49 Declared ship operating in prescribed nil discharge waters to be fitted with sewage holding device

‘(1) The owner or master of a declared ship must not operate the declared ship in nil discharge waters for treated sewage or untreated sewage from a declared ship, unless the declared ship is fitted with a sewage holding device.

Maximum penalty—850 penalty units.

‘(2) A declared ship is taken not to be fitted with a sewage holding device unless a sewage holding device fitted to the ship is appropriate having regard to—

- (a) the person capacity of the ship prescribed under the *Transport Operations (Marine Safety) Act 1994*; and
- (b) the duration of the ship’s journey in the nil discharge waters.

‘(3) The nil discharge waters for treated sewage or untreated sewage from a declared ship are the coastal waters prescribed under a regulation for this section.

‘(4) In this section—

“**declared ship**” means a ship declared under a regulation to be a ship to which this section applies.

“**operate**”, a declared ship, includes anchor, berth or moor the declared ship.

‘50 Discharge of sewage from declared ship into nil discharge waters for sewage prohibited

‘(1) If treated sewage or untreated sewage is discharged from a declared ship into the nil discharge waters for treated sewage or untreated sewage from a declared ship under section 49, each culpable person for the discharge commits an offence.

Maximum penalty—850 penalty units.

‘(2) This section applies despite the Criminal Code, sections 23 and 24.

‘51 Shipboard sewage management plan

‘(1) This section applies to a ship declared under a regulation for this section.

‘(2) If a ship does not have on board a shipboard sewage management plan, the ship’s owner and master each commit an offence.

Maximum penalty—850 penalty units.

‘(3) If a ship has on board a shipboard sewage management plan but is not fitted with any equipment that may be required to implement the plan, the ship’s owner and master each commit an offence.

Maximum penalty—850 penalty units.

‘(4) A regulation may prescribe minimum requirements for a shipboard sewage management plan.

‘Division 3—Defence**‘51A Defence to discharge offence**

‘(1) Each of the following is a defence to a prosecution for a discharge offence—

- (a) the discharge was necessary for the purpose of securing the safety of a ship or saving life at sea;
- (b) the discharge resulted from damage, other than intentional damage, to the ship or its equipment and all reasonable precautions were taken after the damage happened or the discharge was discovered to prevent or minimise the discharge.

‘(2) For subsection (1)(b), damage to a ship or its equipment is intentional damage only if the damage arose in circumstances in which the ship’s owner, master or another member of the ship’s crew—

- (a) acted with intent to cause damage; or
- (b) acted recklessly and with knowledge that damage would probably result.

‘Division 4—General**‘51B Treatment system to be in proper working order**

‘(1) This section applies if—

- (a) a ship is operating in coastal waters that are outside the nil discharge waters for treated sewage under section 48 but within the nil discharge waters for untreated sewage under section 47; and
- (b) the ship is fitted with a treatment system.

‘(2) The owner or master of the ship or a member of the ship’s crew responsible for the operation of the treatment system must ensure that the treatment system is not operated, or available to be operated, to discharge the sewage into the coastal waters unless the system is in proper working order.

Maximum penalty—350 penalty units.

‘(3) In a proceeding for an offence against subsection (2), the fact that at a particular time an indicator on a treatment system was indicating that the system was malfunctioning is evidence that the system was not in proper working order at the time.

‘(4) In this section—

“malfunctioning” includes the following—

- (a) faulty;
- (b) in need of attention;
- (c) not in proper working order;
- (d) out of order.

‘51C Other laws may also apply

‘This part does not limit another law imposing more stringent requirements about the discharge of sewage into coastal waters.

Example of another law—

Transport Infrastructure (Sunshine Coast Waterways) Management Plan 2000’.

37 Amendment of s 67 (Duty to report certain incidents)

Section 67(1), definition “reportable incident”—

omit, insert—

‘**“reportable incident”** means—

- (a) a discharge or probable discharge of—
 - (i) oil or a noxious liquid substance that happens in coastal waters; or
 - (ii) untreated sewage in the nil discharge waters for untreated sewage under section 47; or
 - (iii) treated sewage in the nil discharge waters for treated sewage under section 48; or
 - (iv) for a declared ship, treated sewage or untreated sewage in the nil discharge waters for treated sewage or untreated sewage under section 49; or
- (b) the jettisoning of a harmful substance carried in packaged form from a ship that happens in coastal waters;

but does not include a discharge or jettisoning exempted by regulation.’.

38 Insertion of new pt 11A

After section 67—

insert—

‘PART 11A—INSURANCE**‘67A Ship’s owner to have insurance**

‘(1) This section applies if a ship is more than 35 m in length overall.

‘(2) The ship’s owner must have an insurance policy that, to the limits applying under a regulation, is sufficient to pay for—

- (a) the clean up costs of the discharge of a pollutant from the ship into coastal waters; and

- (b) the costs of salvage or removal of the ship from coastal waters if the ship is abandoned or wrecked.

Maximum penalty—850 penalty units.’.

39 Amendment of s 133 (Regulations)

(1) Section 133, heading—

omit, insert—

‘Regulation-making power’.

(2) Section 133(2)(e)—

omit, insert—

‘(e) the standard of treatment systems;’.

40 Amendment of schedule (Dictionary)

(1) Schedule, definitions **“commencement”**, **“existing ship”**, **“high sensitivity zone”**, **“holding tank”**, **“large ship”**, **“length overall”**, **“low sensitivity zone”**, **“medium ship”**, **“moderate sensitivity zone”**, **“new ship”**, **“small ship”** and **“toilet”**—

omit.

(2) Schedule—

insert—

‘**“culpable person”**, for part 7, see section 45.

“declared ship”, for part 7, see section 45.

“length overall”, of a ship, see section 7A.

“sewage holding device”, for part 7, see section 45.

“sewage quality characteristics” means any of the following—

- (a) faecal coliforms;
- (b) suspended solids;
- (c) biochemical oxygen demand;
- (d) dissolved oxygen;
- (e) total nitrogen;

- (f) total phosphorus;
- (g) total residual chlorine;
- (h) viruses;
- (i) another thing prescribed under a regulation.

“toilet” includes urinal.

“treated sewage” means sewage that has been treated in a treatment system so that the levels of sewage quality characteristics in the sewage are reduced to not more than the levels prescribed under a regulation.

“treatment system” means a system, installed on a ship, for treating sewage that—

- (a) is able to reduce the levels of sewage quality characteristics in sewage to not more than the levels for treated sewage; and
- (b) conforms with the standard prescribed under a regulation.

“untreated sewage” means sewage, other than treated sewage.’.

(3) Schedule, definition **“sewage”**, after ‘human’—

insert—

‘faecal’.

PART 8—AMENDMENT OF TRANSPORT OPERATIONS (MARINE SAFETY) ACT 1994

41 Act amended in pt 8

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

42 Omission of s 14 (Marine incidents required to be reported under Commonwealth Navigation Act)

Section 14—

omit.

43 Insertion of new s 107A

Part 9—

insert—

‘107A Damage to an aid to navigation

‘(1) This section applies if a ship damages or destroys an aid to navigation.

‘(2) The master and the owner of the ship are jointly and severally liable for the expense of repairing or reinstating the aid to navigation.

‘(3) The amount of the expense may be recovered as a debt by the State by action in a court of competent jurisdiction from the master and the owner of the ship.’.

**PART 9—AMENDMENT OF TRANSPORT
OPERATIONS (PASSENGER TRANSPORT) ACT 1994****44 Act amended in pt 9**

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

45 Omission of s 38A (What are temporary service contracts)

Section 38A—

omit.

46 Amendment of s 38B (Chief executive may enter into service contracts)

Section 38B(2)—

omit.

47 Amendment of s 41 (Other matters to be included in service contracts)

(1) Section 41(1)—

insert—

‘(ca) establish principles for fare collection; and’.

(2) Section 41(1)—

insert—

‘(ea) require the holder to charge fares decided by the chief executive; and’.

48 Amendment of s 44 (Term of service contracts)

(1) Section 44(1), ‘5’—

omit, insert—

‘not more than 7’.

(2) Section 44(2)—

omit.

(3) Section 44(3), ‘section 47’—

omit, insert—

‘sections 47 and 47A’.

(4) Section 44(3), as amended—

renumber as section 44(2).

49 Amendment of s 45 (Conditions of service contracts)

Section 45—

insert—

‘(2) A service contract may provide for payment, by the holder, of an amount to the chief executive for a breach of a key performance indicator.

‘(3) The payment can not be more than the equivalent of 4 penalty units.

‘(4) The payment is payable on demand by the chief executive and may be recovered as a debt payable to the chief executive.

‘(5) This section does not limit section 47 or the chief executive’s right to damages for a breach of service contract, including damages arising out of a breach of a key performance indicator.

‘(6) In this section—

“**key performance indicator**”, for a service contract, means a term of the service contract identified in the contract as a key performance indicator.’.

50 Amendment of s 46 (Review of holder’s performance)

Section 46(2), ‘other than’ to ‘a temporary service contract’—

omit, insert—

‘other than an emergency service contract’.

51 Amendment of s 47 (Breach of service contracts)

(1) Section 47, heading—

omit, insert—

‘47 Amendment, suspension or cancellation of service contracts for breach of service contracts’.

(2) Section 47(1), ‘if the holder contravenes a condition of the contract.’—

omit, insert—

‘if—

- (a) the holder contravenes a condition of the contract; or
- (b) the chief executive reasonably believes a contravention of the contract by the holder is imminent.’.

(3) Section 47—

insert—

‘(3) The chief executive may, by notice given to a holder, immediately amend, suspend or cancel the holder’s service contract if the chief executive reasonably believes that the holder is unable to provide any or all of the services required under the contract.

‘(4) A holder may claim compensation from the State if the holder incurs a cost, damage or loss because of the amendment, suspension or cancellation of the holder’s service contract under subsection (3).

‘(5) Compensation or costs that may be recovered under subsection (4) may be claimed and ordered in a proceeding brought in a court having jurisdiction for the recovery of a debt in the amount claimed.

‘(6) A court may order the payment of compensation only if it is satisfied—

- (a) there were no reasonable grounds for believing that the holder was unable to provide any or all of the services required under the contract; and
- (b) it is just to make the order in the circumstances of the particular case.

‘(7) A regulation may prescribe matters that may, or must, be taken into account by the court when considering whether it is just to order compensation.

‘(8) Subsection (4) has effect to the exclusion of any other remedy.

‘(9) The amendment, suspension or cancellation of a service contract under this section is declared to be an excluded matter for the Corporations Act, section 5F in relation to the Corporations Act, section 440C.³.

52 Insertion of new s 47A

After section 47—

insert—

‘47A Renewal of service contracts

‘(1) Despite section 44(1), a service contract, other than an emergency service contract, may contain a provision giving the holder of the contract the option of renewing the contract for 1 further term only.

‘(2) However, the option for renewal may not be exercised if the chief executive has given the holder a notice under subsection (3).

3 Corporations Act, section 440C (Owner or lessor cannot recover property used by company)

‘(3) The chief executive may, for this section, decide that the holder’s performance under the contract has been unsatisfactory and give the holder written notice of the decision and the reasons for it.

‘(4) This section does not limit section 62.’.

53 Insertion of new ch 6, pt 1, div 4

After section 48—

insert—

‘Division 4—Emergency service contracts

‘48A Chief executive may enter into emergency service contract

‘The chief executive may enter into a service contract if the chief executive is satisfied the contract is necessary as a matter of urgency—

- (a) to establish a public passenger service; or
- (b) to ensure the continuity of a public passenger service; or
- (c) to provide a public passenger service in an interim period while another service contract for the service is being offered or negotiated.

‘48B Entering into an emergency service contract

‘(1) The chief executive may—

- (a) invite offers from the public or operators, in whatever way the chief executive considers appropriate, for an emergency service contract; and
- (b) decide the period within which offers must be made.

‘(2) Despite subsection (1), the chief executive may enter into an emergency service contract without inviting offers for the contract if satisfied the contract is necessary to ensure the continuity of a public passenger service.

‘48C Term of emergency service contract

‘(1) An emergency service contract is, despite section 44(1), for the term of not more than 2 years decided by the chief executive.

‘(2) However, if the chief executive has entered into an emergency service contract without inviting offers for the contract, the contract can not be for a term of more than 6 months.’.

54 Omission of s 50 (Commercial and government funded service contracts)

Section 50—

omit.

55 Amendment of s 54 (Special condition for commercial service contracts for restricted school services)

Section 54, ‘commercial’—

omit.

56 Amendment of s 62 (Offer of new service contract)

Section 62(3)—

omit, insert—

‘(3) This section does not apply in relation to an existing contract—

(a) that is—

(i) an emergency service contract; or

(ii) a prescribed school service contract; or

(iii) a service contract in relation to which an option to renew may be exercised; or

(b) that states that this section does not apply to it.’.

57 Amendment of s 62AC (Entitlement of satisfactorily performing existing operator under a service contract)

Section 62AC(5)—

omit, insert—

‘(5) This section does not apply in relation to a contract—

- (a) that is an emergency service contract; or
- (b) that states that this section does not apply to it.’.

58 Amendment of s 62AD (First opportunity to offer may be given to existing operator of school services under a service contract or transitional provision)

(1) Section 62AD(4)—
renumber as section 62AD(5).

(2) Section 62AD—
insert—

‘(4) This section does not apply in relation to an emergency service contract.’.

59 Omission of ch 6, pt 2, div 3 (Entering into temporary service contracts to ensure continuity of existing service)

Chapter 6, part 2, division 3—
omit.

60 Replacement of ch 13, pt 1

Chapter 13, part 1—
omit, insert—

**‘PART 1—TRANSITIONAL PROVISION FOR
TRANSPORT LEGISLATION AMENDMENT ACT 2002**

‘156 Continuation of temporary service contracts

‘A temporary service contract entered into under this Act as in force immediately before the commencement of this section continues for its term as a service contract under this Act unless it is sooner cancelled or terminated under this Act.’.

61 Amendment of sch 2 (Reviewable decisions)

Schedule 2, entry for section 47(1)—

omit, insert—

‘47(1) or (3)	Amendment, suspension or cancellation of a service contract	District or Magistrates
47A(3)	Contract holder’s performance has been unsatisfactory	Magistrates’.

62 Amendment of sch 3 (Dictionary)

(1) Schedule 3, definitions “**commercial service contract**”, “**government funded service contract**” and “**temporary service contract**”—

omit.

(2) Schedule 3—

insert—

‘ **“emergency service contract”** means a contract entered into under section 48A.

“reasonably believes” means believes on reasonable grounds.’.

PART 10—AMENDMENT OF TRANSPORT PLANNING AND COORDINATION ACT 1984

63 Act amended in pt 10

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

64 Insertion of new s 10A

After section 10—

insert—

‘10A SEQTA is excluded matter for Corporations Act

‘SEQTA is declared to be an excluded matter for the Corporations Act, section 5F in relation to the Corporations Act, parts 5.7 and 5.7B.⁴’.

65 Insertion of new s 16A

After section 16—

insert—

‘16A SEQTA board is excluded matter for Corporations Act

‘The SEQTA board is declared to be an excluded matter for the Corporations Act, section 5F in relation to the Corporations Act, parts 5.7 and 5.7B.’.

PART 11—REPEALS**66 Repeal of legislation**

The following legislation is repealed—

- Central Queensland Coal Associates (Variation of Agreement) Order 1992⁵
- Central Queensland Coal Associates Agreement Regulation 1995 SL No. 245
- Central Queensland Coal Associates Agreement Regulation 1997 SL No. 117.

4 Corporations Act, parts 5.7 (Winding up bodies other than companies) and 5.7B (Recovering property or compensation for the benefit of creditors of insolvent company)

5 pubd gaz 15 May 1992 pp 427–35

