

Queensland



**ENVIRONMENTAL
LEGISLATION AMENDMENT
ACT 2002**

Act No. 72 of 2002

Queensland



ENVIRONMENTAL LEGISLATION AMENDMENT ACT 2002

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Queensland



**Environmental Legislation Amendment
Act 2002**

Act No. 72 of 2002

An Act to amend Acts administered by the Minister for Environment

[Assented to 13 December 2002]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

1 Short title

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

2 Commencement

Sections 12, 16 and 17 and part 4 commence on a day to be fixed by proclamation.

PART 2—AMENDMENT OF BRISBANE FOREST PARK ACT 1977

3 Act amended in pt 2

This part amends the *Brisbane Forest Park Act 1977*.

4 Amendment of s 4 (Interpretation)

(1) Section 4, heading—

omit, insert—

‘4 Definitions’.

(2) Section 4, ‘In this Act—’—

omit, insert—

‘The dictionary in the schedule defines particular words used in this Act.’.

(3) Section 4, definitions—

relocate to the schedule as inserted by this Act.

5 Omission of ss 46 and 47

Sections 46 and 47—

omit.

6 Replacement of s 49 (Protection of administration authority etc.)

Section 49—

omit, insert—

‘49 Protection from liability

‘(1) This section applies to each of the following persons (a “**relevant person**”)—

- (a) the Minister;
- (b) the chief executive;
- (c) the administration authority or secretary of the administration authority;
- (d) an authorised officer;
- (e) a person acting under the direction or authority of an authorised officer.

‘(2) A relevant person is not civilly liable to someone for an act done, or omission made, honestly and without negligence under this Act.

‘(3) If subsection (2) prevents civil liability attaching to a relevant person, the liability attaches instead to the State.

‘(4) In this section—

“**civil liability**” includes liability for the payment of costs ordered to be paid in a proceeding for an offence against this Act.’.

7 Renumbering of pt 6 (General provisions)

Part 6—

renumber as part 7.

8 Renumbering of ss 42–49

Sections 42 to 49—

renumber as sections 86 to 91.

9 Insertion of new pt 6

After part 5—

insert—

‘PART 6—AUTHORISED OFFICERS***‘Division 1—Appointment*****‘42 Appointment and qualifications**

‘(1) The administration authority may appoint the following persons as an authorised officer—

- (a) a public service employee; or
- (b) a person, or a member of a class of persons, prescribed under a regulation.

‘(2) However, the administration authority may appoint a person as an authorised officer only if the administration authority is satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

‘43 Appointment conditions and limit on powers

‘(1) An authorised officer holds office on any conditions stated in—

- (a) the authorised officer’s instrument of appointment; or
- (b) a signed notice given to the authorised officer; or
- (c) a regulation.

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

‘(3) In this section—

“**signed notice**” means a notice signed by the administration authority.

‘44 Issue of identity card to each authorised officer

‘(1) The administration authority must issue an identity card to each authorised officer.

‘(2) The identity card must—

- (a) contain a recent photo of the authorised officer; and
- (b) contain a copy of the authorised officer’s signature; and
- (c) identify the person as an authorised officer under this Act; and
- (d) state an expiry date for the card.

‘(3) This section does not prevent the issuing of a single identity card to a person for this Act and other purposes.

‘45 Production or display of identity card

‘(1) In exercising a power under this Act in relation to a person, an authorised officer must—

- (a) produce the authorised officer’s identity card for the person’s inspection before exercising the power; or
- (b) have the identity card displayed so that it is clearly visible to the person when exercising the power.

‘(2) However, if it is not practicable to comply with subsection (1), the authorised officer must produce the identity card for the person’s inspection at the first reasonable opportunity.

‘(3) For subsection (1), an authorised officer does not exercise a power in relation to a person only because the authorised officer has entered a place as mentioned in section 53(1)(b) or (2).

‘46 When authorised officer ceases to hold office

‘(1) An authorised officer ceases to hold office if any of the following happens—

- (a) the term of office stated in a condition of office ends;

(b) under another condition of office, the authorised officer ceases to hold office;

(c) the authorised officer's resignation under section 47 takes effect.

'(2) Subsection (1) does not limit the ways an authorised officer may cease to hold office.

'(3) In this section—

“condition of office” means a condition on which the authorised officer holds office.

'47 Resignation

'(1) An authorised officer may resign by signed notice given to the administration authority.

'(2) However, if holding office as an authorised officer is a condition of the authorised officer holding another office, the authorised officer may not resign as an authorised officer without resigning from the other office.

'48 Return of identity card

'A person who ceases to be an authorised officer must return the person's identity card to the administration authority within 21 days after ceasing to be an authorised officer, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

'Division 2—Powers of authorised officers

'Subdivision 1—Entry to vehicles

'49 Application of sdiv 1

'(1) This subdivision applies to a vehicle at or about the park or a public place or road in or adjoining the park.

'(2) However, this subdivision does not apply to a vehicle, or a part of a vehicle, designed to be, and being, used as a residence.

‘50 Power of entry for vehicles

‘An authorised officer may enter a vehicle if the authorised officer reasonably suspects—

- (a) the vehicle is being, or has been, used in relation to the commission of an offence against this Act; or
- (b) the vehicle, or a thing in the vehicle, may provide evidence of the commission of an offence against this Act.

‘51 Procedure before entry to a vehicle

‘(1) This section applies if an authorised officer intends to enter a vehicle under section 50.

‘(2) If a person is present at the vehicle, the authorised officer must, before entering the vehicle, do or make a reasonable attempt to do the following things—

- (a) comply with section 45(1);¹
- (b) tell the person the purpose of the entry;
- (c) ask for the consent of the person to the entry;
- (d) tell the person the authorised officer is permitted under this Act to enter the vehicle without consent;
- (e) if the person is not the owner of the vehicle—advise the owner of the vehicle of the authorised officer’s intention to enter the vehicle.

‘(3) If a person is not present at the vehicle, the authorised officer must, before entering the vehicle—

- (a) take reasonable steps to find the owner of the vehicle; and
- (b) comply with subsection (2)(a) to (d) for the owner.

‘(4) Subsections (2)(e) and (3) do not require the authorised officer to take a step the authorised officer reasonably believes may frustrate or otherwise hinder an investigation under this Act or the purpose of the intended entry.

‘(5) In this section—

1 Section 45 (Production or display of identity card)

“owner”, of a vehicle, includes a person who appears to be in control of the vehicle.

‘Subdivision 2—Entry to other places

‘52 Application of sdiv 2

‘This subdivision applies to a place, other than a vehicle to which subdivision 1 applies.

‘53 Power of entry for particular places

‘(1) An authorised officer may enter a place if—

- (a) its occupier consents to the entry; or
- (b) it is a public place and the entry is made when it is open to the public; or
- (c) the entry is authorised by a warrant.

‘(2) For the purpose of asking the occupier of a place for consent to enter, an authorised officer may, without the occupier’s consent or a warrant—

- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
- (b) enter part of the place the authorised officer reasonably believes members of the public ordinarily are allowed to enter when they wish to contact the occupier.

‘54 Procedure for entry with consent

‘(1) This section applies if an authorised officer intends to ask an occupier of a place to consent to the authorised officer or another authorised officer entering the place under section 53(1)(a).

‘(2) Before asking for the consent, the authorised officer must tell the occupier—

- (a) the purpose of the entry; and
- (b) that the occupier is not required to consent.

‘(3) If the consent is given, the authorised officer may ask the occupier to sign an acknowledgment of the consent.

‘(4) The acknowledgment must state—

- (a) the occupier has been told—
 - (i) the purpose of the entry; and
 - (ii) that the occupier is not required to consent; and
- (b) the purpose of the entry; and
- (c) the occupier gives the authorised officer consent to enter the place and exercise powers under this part; and
- (d) the time and date the consent was given.

‘(5) If the occupier signs the acknowledgment, the authorised officer must immediately give a copy to the occupier.

‘(6) If—

- (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
- (b) an acknowledgment complying with subsection (4) for the entry is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

‘55 Application for warrant

‘(1) An authorised officer may apply to a magistrate for a warrant for a place.

‘(2) The application must be sworn and state the grounds on which the warrant is sought.

‘(3) The magistrate may refuse to consider the application until the authorised officer gives the magistrate all of the information the magistrate requires about the application in the way the magistrate requires.

Example for subsection (3)—

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

‘56 Issue of warrant

‘(1) A magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—

- (a) there is a particular thing or activity (the “**evidence**”) that may provide evidence of an offence against this Act; or
- (b) the evidence is at the place, or, within the next 7 days, may be at the place.

‘(2) The warrant must state—

- (a) that a stated authorised officer may, with necessary and reasonable help and force—
 - (i) enter the place and any other place necessary for entry; and
 - (ii) exercise the authorised officer’s powers under this division; and
- (b) the offence for which the warrant is sought; and
- (c) the evidence that may be seized under the warrant; and
- (d) the hours of the day or night when the place may be entered; and
- (e) the date, within 14 days after the warrant’s issue, the warrant ends.

‘57 Special warrants

‘(1) An authorised officer may apply for a warrant (a “**special warrant**”) by electronic communication, fax, phone, radio or another form of communication if the authorised officer considers it necessary because of—

- (a) urgent circumstances; or
- (b) other special circumstances, including, for example, the authorised officer’s remote location.

‘(2) Before applying for the special warrant, the authorised officer must prepare an application stating the grounds on which the warrant is sought.

‘(3) The authorised officer may apply for the warrant before the application is sworn.

‘(4) After issuing the special warrant, the magistrate must immediately electronically communicate or fax a copy (a “**facsimile warrant**”) to the authorised officer if it is reasonably practicable to do so.

‘(5) If it is not reasonably practicable to electronically communicate or fax a copy to the authorised officer—

- (a) the magistrate must tell the officer—
 - (i) what the terms of the special warrant are; and
 - (ii) the date and time the special warrant is issued; and
- (b) the authorised officer must complete a form of warrant (a “**warrant form**”) and write on it—
 - (i) the magistrate’s name; and
 - (ii) the date and time the magistrate issued the special warrant; and
 - (iii) the terms of the special warrant.

‘(6) The facsimile warrant, or the warrant form properly completed by the authorised officer, authorises the entry and the exercise of the other powers stated in the special warrant issued.

‘(7) The authorised officer must, at the first reasonable opportunity, send the magistrate—

- (a) the sworn application; and
- (b) if the authorised officer completed a warrant form—the completed warrant form.

‘(8) On receiving the documents, the magistrate must attach them to the special warrant.

‘(9) If—

- (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a special warrant; and
- (b) the warrant is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a special warrant authorised the exercise of the power.

‘58 Warrants—procedure before entry

‘(1) This section applies if—

- (a) an authorised officer named in a warrant issued under section 56 or 57 for a place is intending to enter the place under the warrant; and
- (b) a person is present at the place.

‘(2) Before entering the place, the authorised officer must do or make a reasonable attempt to do the following things—

- (a) comply with section 45(1);²
- (b) give the person a copy of—
 - (i) the warrant; or
 - (ii) if the entry is authorised by a facsimile warrant or warrant form mentioned in section 57(6)—the facsimile warrant or warrant form;
- (c) tell the person the authorised officer is permitted by the warrant to enter the place;
- (d) give the person an opportunity to allow the officer immediate entry to the place without using force.

‘(3) However, the authorised officer need not comply with subsection (2) if the authorised officer reasonably believes immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

‘Subdivision 3—Powers for entry to places**‘59 Application of sdiv 3**

‘This subdivision applies if an authorised officer may enter a vehicle or other place under section 50 or 53.

2 Section 45 (Production or display of identity card)

‘60 Power to stop vehicle that may be entered

‘(1) If a vehicle is moving or about to move, the authorised officer may signal the person in control of the vehicle to stop, or not to move, the vehicle.

‘(2) The person must not disobey the signal unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

‘(3) It is a reasonable excuse for the person to disobey the signal if—

- (a) to immediately obey the signal would endanger the person or someone else; and
- (b) the person obeys the signal as soon as is practicable to obey it.

‘61 Other powers relating to vehicles that may be entered

‘(1) The authorised officer may require the person in control of a vehicle—

- (a) to give the authorised officer reasonable help to enter the vehicle; or
- (b) to bring the vehicle to a stated place and remain in control of the vehicle for a reasonable period to allow the authorised officer to exercise a power under this division.

‘(2) When making a requirement under subsection (1), the authorised officer must warn the person it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.

‘(3) A person must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—50 penalty units.

‘62 Powers of authorised officer after entering places

‘(1) This section applies to an authorised officer who has entered a place under section 50 or 53.

‘(2) However, if an authorised officer, under section 53(2)³ enters a place to ask the occupier’s consent to enter premises, this section applies to the authorised officer only if the consent is given or the entry is otherwise authorised.

‘(3) For investigating compliance with this Act, an authorised officer may do any of the following—

- (a) search any part of the place;
- (b) inspect, film, photograph, videotape or otherwise record an image of a document or other thing at the place;
- (c) take an extract from, or copy, a document at the place;
- (d) take into the place the equipment, materials or persons the authorised officer reasonably requires for exercising a power under this division;
- (e) require the occupier of the place, or a person at the place, to give the authorised officer—
 - (i) reasonable help to exercise a power under this division; or
 - (ii) information to help the authorised officer ascertain whether this Act is being complied with.

‘(4) When making a requirement under subsection (3)(e), the authorised officer must warn the person it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.

‘(5) A person required to give reasonable help under subsection (3)(e)(i), or give information under subsection (3)(e)(ii), must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

‘(6) It is a reasonable excuse for the person not to comply with the requirement if complying with the requirement might tend to incriminate the person.

3 Section 53 (Power of entry for particular places)

‘Subdivision 4—Seizure**‘63 Power to seize evidence—entry to place without consent or warrant**

‘An authorised officer who enters a place under section 50 or 53(1)(b) may seize a thing at the place only if the authorised officer reasonably believes—

- (a) the thing is evidence of an offence against this Act; and
- (b) the seizure is necessary to prevent the thing being—
 - (i) destroyed, hidden or lost; or
 - (ii) used to commit, continue or repeat, an offence against this Act.

‘64 Power to seize evidence—entry to place with consent or warrant

‘(1) This section applies if an authorised officer enters a place—

- (a) under section 53(1)(a) with the necessary consent of a person; or
- (b) under section 53(1)(c) with a warrant.

‘(2) If the authorised officer enters a place with the necessary consent, the authorised officer may seize a thing at the place if—

- (a) the authorised officer reasonably believes the thing is evidence of an offence against this Act; and
- (b) seizure of the thing is consistent with the purpose of entry as told to the person when asking for the person’s consent.

‘(3) If the authorised officer enters the place with a warrant, the authorised officer may seize a thing that is the evidence for which the warrant was issued.

‘(4) The authorised officer may seize anything else at the place if the authorised officer reasonably believes—

- (a) the thing is evidence of an offence against this Act; and
- (b) the seizure is necessary to prevent the thing being—
 - (i) destroyed, hidden or lost; or
 - (ii) used to commit, continue or repeat an offence against this Act.

‘65 Power to seize abandoned things

‘(1) An authorised officer may seize a thing in a public place in the park if the authorised officer reasonably believes the thing has been abandoned by its owner.

‘(2) In this section—

“owner” includes the person in charge of the thing immediately before it was abandoned.

‘66 Securing seized things

‘Having seized a thing, an authorised officer may—

- (a) move the thing from the place where it was seized (the “**place of seizure**”); or
- (b) leave the thing at the place of seizure but take reasonable action to restrict access to it; or

Examples of restricting access to a thing—

1. Marking, sealing, tagging or otherwise identifying the thing to show access to it is restricted.
2. Sealing the entrance to a room where the thing is situated and marking the entrance to show access to the thing is restricted.

- (c) for equipment—make it inoperable.

Example of making equipment inoperable—

Dismantling equipment or removing a component of equipment without which the equipment is not capable of being used.

‘67 Offence to tamper with seized thing

‘(1) If an authorised officer restricts access to a seized thing, a person must not tamper, or attempt to tamper, with the thing, or something restricting access to the thing, without an authorised officer’s approval.

Maximum penalty—100 penalty units.

‘(2) If an authorised officer makes seized equipment inoperable, a person must not tamper, or attempt to tamper, with the equipment, without an authorised officer’s approval.

Maximum penalty—100 penalty units.

‘68 Powers to support seizure

‘(1) To enable a thing to be seized, an authorised officer may require the person in control of it—

- (a) to take it to a stated reasonable place by a stated reasonable time; and
- (b) if necessary, to remain in control of it at the stated place for a stated reasonable period.

‘(2) The requirement—

- (a) must be made by notice given to the person; or
- (b) if for any reason it is not practicable to give a notice to the person—may be made orally and confirmed by notice given to the person as soon as is practicable.

‘(3) A further requirement may be made under this section about the thing if it is necessary and reasonable to make the further requirement.

‘(4) A person of whom a requirement is made under subsection (1) or (3) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

‘(5) The notices mentioned in subsection (2) must be in the approved form.

‘69 Receipt for seized thing

‘(1) This section applies to a thing seized under section 63 or 64.

‘(2) After an authorised officer seizes the thing, the authorised officer must give a receipt for it to the person from whom the thing was seized.

‘(3) However, if for any reason it is not practicable to comply with subsection (2), the authorised officer must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.

‘(4) The receipt must describe generally each thing seized and its condition.

‘(5) This section does not apply to a thing if it would be impracticable or unreasonable to expect the authorised officer to account for the thing given its condition, nature and value.

‘70 Return of seized thing

‘(1) This section applies to a thing seized under section 63 or 64 if—

- (a) the thing has some intrinsic value; and
- (b) the thing has not been forfeited under subdivision 5.

‘(2) The authorised officer must return the thing to its owner—

- (a) at the end of 6 months after the seizure; or
- (b) if a proceeding for an offence involving the thing is started within the 6 months—at the end of the proceeding and any appeal from the proceeding.

‘(3) Despite subsection (2), the authorised officer must promptly return a thing seized as evidence if the authorised officer stops being satisfied—

- (a) its continued retention as evidence is necessary; and
- (b) its continued retention is necessary to prevent the thing being used to continue, or repeat, an offence.

‘71 Access to seized thing

‘(1) Until a seized thing is forfeited or returned, an authorised officer must allow its owner to inspect it and, if it is a document, to copy it.

‘(2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

‘Subdivision 5—Forfeiture**‘72 Forfeiture by authorised officer**

‘(1) A thing seized under subdivision 4, is forfeited to the State if the authorised officer who seized the thing—

- (a) after making reasonable efforts, can not return it to its owner; or
- (b) after making reasonable inquiries, can not find its owner.

‘(2) For subsection (1), the authorised officer is not required to—

- (a) make efforts if it would be unreasonable to make efforts to return the thing to its owner; or

- (b) make inquiries if it would be unreasonable to make inquiries to find the owner.

Example for paragraph (b)—

The owner of the thing has migrated to another country.

‘(3) Regard must be had to the thing’s condition, nature and value in deciding—

- (a) whether it is reasonable to make efforts or inquiries; and
(b) if efforts or inquiries are made—what efforts or inquiries, including the period over which they are made, are reasonable.

‘73 Forfeiture on conviction

‘(1) On conviction of a person for an offence against this Act, the court may order the forfeiture to the State of anything owned by the person and seized under subdivision 4.

‘(2) The court may make any order to enforce the forfeiture it considers appropriate.

‘(3) This section does not limit the court’s powers under the *Penalties and Sentences Act 1992* or another law.

‘74 Dealing with forfeited thing

‘(1) On forfeiture of a thing to the State, the thing becomes the State’s property and may be dealt with by the administration authority in a way the administration authority considers appropriate.

‘(2) Without limiting subsection (1), the administration authority may destroy or dispose of the thing.

‘(3) If the thing is sold, the proceeds of the sale, less any expenses relating to the sale, must be paid into the Brisbane Forest Park Fund.

‘Subdivision 6—Other powers

‘75 Power to require name and address

‘(1) An authorised officer may require a person to state the person’s name and residential or business address if the authorised officer—

- (a) finds the person committing an offence against this Act; or
- (b) finds the person in circumstances that lead, or has information that leads, the authorised officer to reasonably suspect the person has just committed an offence against this Act.

‘(2) When making the requirement, the authorised officer must warn the person it is an offence to fail to state the person’s name or address unless the person has a reasonable excuse.

‘(3) The authorised officer may also require the person to give evidence of the correctness of the stated name or required address if the authorised officer suspects the stated name or address is false.

‘76 Failure to give name or address

‘(1) A person of whom a requirement is made under section 75(1) or (3) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

‘(2) A person does not commit an offence against subsection (1) if—

- (a) the requirement was given because the authorised officer suspected the person had committed an offence against this Act; and
- (b) the person is not proved to have committed the offence.

‘77 Power to require information about contravention

(1) This section applies if an authorised officer reasonably believes—

- (a) this Act has been contravened; and
- (b) a person may be able to give information about the contravention.

‘(2) The authorised officer may require the person to give information to the person’s knowledge about the contravention in a stated reasonable time and in a stated reasonable way.

‘(3) When making a requirement under subsection (2), the authorised officer must warn the person it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.

‘78 Failure to give information about contravention

‘(1) A person of whom a requirement is made under section 77 must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

‘(2) It is a reasonable excuse for the person if complying with the requirement might tend to incriminate the person.

‘79 Power to require production of documents

‘(1) An authorised officer may require a person to make available for inspection by an authorised officer, or produce to the authorised officer for inspection, at a stated reasonable time and place—

- (a) a document given to the person under this Act; or
- (b) a document required to be kept by the person under this Act.

‘(2) The authorised officer may keep the document to copy it.

‘(3) The authorised officer must return the document to the person after copying it.

‘80 Failure to produce document

‘A person required to make available, or produce, for inspection a document under section 79 must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

‘Division 3—Offences relating to authorised officers**‘81 False or misleading statements**

‘(1) A person must not state anything to an authorised officer that the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units.

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

‘82 False or misleading documents

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

Maximum penalty—200 penalty units.

‘(2) Subsection (1) does not apply to a person if the person when giving the document—

- (a) tells the authorised officer to the best of the person’s ability, how it is false or misleading; and
- (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

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

‘83 Obstruction of authorised officer

‘(1) A person must not obstruct an authorised officer in the exercise of a power under division 2, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

‘(2) If a person has obstructed an authorised officer and the authorised officer decides to proceed with the exercise of the power, the authorised officer must warn the person that—

- (a) it is an offence to obstruct the authorised officer unless the person has a reasonable excuse; and
- (b) the authorised officer believes the person’s conduct is an obstruction.

‘(3) In this section—

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

‘Division 4—Notice of damage and compensation

‘84 Notice of damage

‘(1) This section applies if—

- (a) an authorised officer damages something when exercising, or purporting to exercise, a power under division 2; or
- (b) a person acting under the direction or authority of an authorised officer damages something.

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

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

‘(4) The notice must state—

- (a) the particulars of the damage; and
- (b) that the person who suffered the damage may claim compensation under section 85.

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

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

‘85 Compensation

‘(1) This section applies if a person incurs loss or damage because of the exercise, or purported exercise, of a power under division 2, other than because of a forfeiture under section 72 or 73.⁴

‘(2) The person is entitled to be paid the reasonable compensation because of the loss or damage that is agreed between the administration authority and the person, or failing agreement, decided by a court.

⁴ Section 72 (Forfeiture by authorised officer) or 73 (Forfeiture on conviction)

‘(3) Compensation may be claimed and ordered to be paid in a proceeding—

- (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
- (b) for an offence against this Act brought against the person claiming compensation.

‘(4) A court may order compensation to be paid only if satisfied it is just to make the order in the circumstances of the particular case.’.

10 Insertion of new sch

After section 91—

insert—

‘SCHEDULE

‘DICTIONARY

section 4

‘**“at”**, a place, includes in and on the place.

‘**“authorised officer”** means a person appointed as an authorised officer under section 42.

‘**“facsimile warrant”** see section 57(4).

‘**“occupier”**, of a place, includes the owner or person apparently in charge of the place.

‘**“owner”**, for a thing seized under this Act, includes a person who would be entitled to possession of the thing had it not been seized.

‘**“place”** includes the following—

- (a) land;
- (b) premises;
- (c) a vehicle.

‘**“place of seizure”** see section 66(a).

“premises” means—

- (a) a building or structure, or part of a building or structure, of any type; or
- (b) a group of buildings or structures, or part of a group of buildings or structures, of any type; or
- (c) a tent.

“public place” means a place, or part of a place—

- (a) that the public is entitled to use, is open to members of the public or is used by the public, whether or not on payment of money; or
- (b) the occupier of which allows, whether or not on payment of money, members of the public to enter.

“reasonably believes” means to believe on grounds that are reasonable in the circumstances.

“reasonably suspects” means to suspect on grounds that are reasonable in the circumstances.

“vehicle” means anything used for carrying any animal, person or thing by land or water.

“warrant form” see section 57(5)(b).’.

PART 3—AMENDMENT OF FORESTRY ACT 1959

11 Act amended in pt 3

This part amends the *Forestry Act 1959*.

12 Amendment of s 5 (Definitions)

Section 5, definition “forest infringement”—
omit.

13 Replacement of s 32 (Land for tourist purposes)

Section 32—

omit, insert—

‘32 Land for tourist purposes or use as road

‘(1) A regulation may revoke, in whole or in part, the setting apart and declaration of land as a State forest or timber reserve.

‘(2) In recommending the Governor in Council make the regulation, the Minister must—

- (a) be satisfied, having regard to the purposes of this Act and the public interest, it is desirable to make land in the State forest or timber reserve available for—
 - (i) providing accommodation or recreational facilities for encouraging or promoting the tourist industry; or
 - (ii) opening as a road, or applying the land for use as a road, for public use; and
- (b) have regard to access and other matters relating to the proper management of the remaining land in the State forest or timber reserve.

‘(3) Land excluded from a State forest or timber reserve under subsection (1)—

- (a) is unallocated State land; and
- (b) must be dealt with in a way consistent with the purpose for which the land was excluded.’.

14 Amendment of s 35A (Permit to camp in State forest taken to have been granted by chief executive)

Section 35A(2)—

insert—

- ‘(f) if the person completed the credit card payment section of the camping form and the person’s financial institution does not authorise the payment.’.

15 Replacement of s 73A (Display of camping forms)

Section 73A—

omit, insert—

‘73A Display of camping form if permit to camp granted

‘(1) This section applies to a camping form for a permit to camp that, under section 35A(1), is taken to have been granted under section 35.

‘(2) The person stated in the form must—

- (a) attach the part of the form designated for this section to—
 - (i) if the person is using a tent, caravan or other structure for camping—the tent, caravan or other structure; or
 - (ii) otherwise—any camping equipment or vehicle the person is using for camping; and
- (b) take reasonable steps to ensure that while a person continues to camp under the permit, the part of the camping form remains attached to the tent, caravan, structure, equipment or vehicle.

Maximum penalty—4 penalty units.

‘(3) A person must not interfere with the part of the camping form mentioned in subsection (2) if a person is camping under the permit to which the form relates.

Maximum penalty—20 penalty units.

‘(4) In this section—

“**interfere with**”, a part of a camping form, includes to remove the part of the camping form.

‘73B Offence to display camping form if no permit to camp

‘A person must not attach a part of a camping form to a tent, caravan, structure, camping equipment or vehicle, in a self-registration camping area unless the person holds a permit to camp for the area.

Maximum penalty—20 penalty units.’.

16 Omission of s 87A (Interference with infringement notices or camping forms)

Section 87A—

omit.

17 Omission of ss 88A–88F

Sections 88A to 88F—

omit.

18 Amendment of sch 2 (Subject matters for regulations)

Schedule 2, section 27—

omit, insert—

‘27 Penalties

‘Prescribing a penalty of not more than 20 penalty units for a contravention of a regulation.’.

PART 4—AMENDMENT OF MEAKER TRUST (RAINE ISLAND RESEARCH) ACT 1981**19 Act amended in pt 4 and schedule**

(1) This part amends the *Meaker Trust (Raine Island Research) Act 1981*.

(2) The schedule also includes amendments of the *Meaker Trust (Raine Island Research) Act 1981*.

20 Replacement of s 4 (Meaning of terms)

Section 4—

omit, insert—

‘2 Definitions

‘In this Act—

“**corporation**” means the Raine Island Corporation constituted under section 5.

“**Great Barrier Reef Province**” means the part of the Queensland continental shelf between latitude 24°10' south and latitude 09°08' south.⁵

“**Maclennan Cay**” means the coral cay at latitude 11°19' south, longitude 143°48' east.

“**member**” means a member of the corporation.

“**Moulter Cay**” means the coral cay at latitude 11°24'30" south, longitude 144°01'11" east.

“**Raine Island**” means the coral cay at latitude 11°35'34" south, longitude 144°02'12" east.

“**Torres Strait Islands**” means the islands north of latitude 11° south that are part of the State.

“**Torres Strait Regional Authority**” means the Torres Strait Regional Authority established under the *Aboriginal and Torres Strait Islander Commission Act 1989* (Cwlth).

3 References to latitudes and longitudes

‘Latitudes and longitudes mentioned in this Act are worked out using the ‘Australian Geodetic Datum 1966’, commonly called ‘AGD66’, notified in the Commonwealth Government Gazette No. 84 on 6 October 1966, at page 4984.’.

21 Replacement of ss 6–8

Sections 6 to 8—

omit, insert—

6 Membership of corporation

‘(1) The corporation must consist of at least 8, but not more than 9, members.

‘(2) The members must include the following persons—

5 The part is identified as the ‘Great Barrier Reef Province’ in W.G.H. Maxwell, ‘The Great Barrier Reef—Past, Present and Future’, *Queensland Naturalist*, volume 20, December 1972. Latitude 24°10' south is near Lady Elliot Island and latitude 09°08' south is near Bramble Cay.

- (a) the chief executive;
- (b) the chief executive of the department in which the *Community Services (Torres Strait) Act 1984* is administered;
- (c) a Torres Strait Islander who—
 - (i) has, under Island custom, a connection with, or with the surrounding seas of, Maclellan Cay, Moulter Cay or Raine Island; or
 - (ii) is the chairperson of the Torres Strait Regional Authority;
- (d) a person of the Aboriginal race of Australia who—
 - (i) has, under Aboriginal tradition, a connection with, or with the surrounding seas of, Maclellan Cay, Moulter Cay or Raine Island; or
 - (ii) is the chairperson of the Wuthathi Land Trust;⁶
- (e) a person who is representative of the Australian community and has—
 - (i) a demonstrated interest in conservation; and
 - (ii) knowledge of, or experience in, financial management or fund raising;
- (f) 2 of the following persons—
 - (i) a lineal descendant of the deceased Doctor Wilmer Edward George Butler, son-in-law of Mrs Ella Hibberd who was a trustee of the Benjamin Meaker Charities Trust;
 - (ii) if there are no lineal descendants of Doctor Wilmer Edward George Butler—a relative (a “**nominated relative**”) of Doctor Wilmer Edward George Butler previously nominated by a lineal descendant, or a relative of Doctor Wilmer Edward George Butler nominated by a nominated relative.

‘(3) Also, the members must include 1 or 2 persons who hold pre-eminent scientific qualifications or pre-eminent qualifications in the conservation field.

⁶ The Wuthathi Land Trust is a land trust incorporated under the *Aboriginal Land Regulation 1991*, part 3. The incorporation of the land trust was notified in the gazette on 17 November 1995 at page 1090.

‘(4) The Governor in Council must appoint the members mentioned in subsection (2)(c) to (f) and subsection (3).

‘(5) A member must be appointed for a term of not more than 3 years.

‘(6) The chief executive is the chairperson of the corporation.

‘(7) The Governor in Council must appoint a person mentioned in subsection (3) as the deputy chairperson of the corporation.

‘(8) A person mentioned in subsection (2)(a) or (b) may appoint an officer of the person’s department to act as the person’s deputy as a member.

‘(9) A person appointed as a deputy under subsection (8)—

(a) may act as the member for which the person is deputy in the member’s absence, but must not act as chairperson; and

(b) has all the powers and functions of the member for which the person is deputy.’.

22 Replacement of ss 15–19

Sections 15 to 19—

omit, insert—

‘15 Conduct of business

‘Subject to this division, the corporation must conduct its business, including its meetings, in the way it considers appropriate.

‘16 Quorum

‘A quorum for a meeting of the corporation is 4 members, including at least 1 of the members mentioned in section 6(2)(f).

‘17 Attendance by proxy

‘(1) A member may attend a meeting by proxy.

‘(2) A member is not entitled to preside at a meeting merely because the member is the proxy holder for another member, who if present, would be entitled to preside.

‘18 Time and place of meetings

‘(1) Meetings of the corporation must be held at the times and places the corporation decides.

‘(2) The secretary of the corporation must give written notice of each meeting, including an adjourned meeting, to each member at least 7 days before the day of the meeting unless it is impracticable to give the notice.

‘(3) The notice must state—

- (a) the day and time of the meeting; and
- (b) the place where the meeting is to be held; and
- (c) the business to be conducted at the meeting.

‘19 Presiding at meetings

‘(1) The chairperson of the corporation must preside at all meetings of the corporation at which the chairperson is present.

‘(2) If the chairperson is absent from a meeting of the corporation and the deputy chairperson is present, the deputy chairperson must preside.

‘(3) If both the chairperson and deputy chairperson are absent from the meeting, a member elected by the other members present at the meeting must preside.

‘20 Conduct of meetings

‘(1) A question at a meeting of the corporation is decided by a majority of the votes of the members present.

‘(2) Each member has a vote on each question to be decided, and if the votes are equal, the member presiding also has a casting vote.

‘(3) The corporation may hold its meetings, or allow members to take part in its meetings, by using any technology that reasonably allows members to hear and take part in discussions as they happen.

Example of technology—

Teleconferencing.

‘(4) A member who takes part in a meeting under subsection (3) is taken to be present at the meeting.

‘(5) A resolution is validly made by the corporation, even if it is not passed at a meeting, if—

- (a) notice of the resolution is given under procedures approved by the corporation; and
- (b) a majority of its members give written agreement to the resolution.

‘20A Minutes and records

‘(1) The corporation must keep—

- (a) minutes of its meetings; and
- (b) a record of resolutions made under section 20(5).

‘(2) Each entry in the minutes for a meeting of the corporation must be signed by the member presiding at the next meeting after the meeting for which the minutes were taken.

‘20B Disclosure of interest

‘(1) If a member becomes aware that the member has a conflict of interest about an issue being considered, or about to be considered, by the corporation, the member must disclose the nature of the conflicting interest to a meeting of the corporation.

‘(2) Unless the corporation otherwise directs, the member must not—

- (a) be present when the corporation considers the issue; or
- (b) take part in a decision of the corporation about the issue.

‘(3) The member must not be present when the corporation is considering whether to give a direction under subsection (2).

‘(4) If there is another member who must, under subsection (1) also disclose an interest in the issue, the other member must not—

- (a) be present when the corporation is considering whether to give a direction under subsection (2); or
- (b) take part in making the decision about giving the direction.

‘(5) If—

- (a) because of this section, a member is not present at a meeting of the corporation for considering or deciding an issue, or for

considering or deciding whether to give a direction under subsection (2); and

(b) there would be a quorum if the member were present;

the remaining members present are a quorum of the corporation for considering or deciding the issue, or for considering or deciding whether to give the direction, at the meeting.

‘(6) A member has a conflict of interest about an issue if the member has an interest, financial or otherwise, that could conflict with the proper performance of the member’s duties.

‘(7) A disclosure under subsection (1) must be recorded in the corporation’s minutes.

‘(8) A contravention of this section does not invalidate any decision of the corporation or the performance of a function or exercise of a power by the corporation.’.

23 Insertion of new s 38

Part 4—

insert—

‘38 Numbering and renumbering of Act

‘In the next reprint of this Act produced under the *Reprints Act 1992*, the provisions of this Act must be numbered and renumbered as permitted by the *Reprints Act 1992*, section 43.⁷’.

24 Insertion of new pt 5

After part 4—

insert—

⁷ *Reprints Act 1992*, section 43 (Numbering and renumbering of provisions)

**‘PART 5—TRANSITIONAL PROVISIONS FOR
ENVIRONMENTAL LEGISLATION AMENDMENT
ACT 2002**

‘39 Definition for pt 5

‘In this part—

“**commencing day**” means the day the *Environmental Legislation Amendment Act 2002*, part 4, commences.

‘40 Members of corporation

‘(1) On the commencing day—

- (a) the chief executive of the department responsible for fisheries management ceases to hold office as a member; and
- (b) every other person who was a member immediately before the commencing day continues to hold office as a member.

‘(2) The members mentioned in subsection (1)(b) continue to hold office until the day the member’s appointment, in force immediately before the commencing day, ends.

‘41 Term of appointment of new members

‘The term of appointment of a person appointed, on the commencing day, to be a member ends on the day the appointment of members continued under section 40(1)(b) ends.’.

**PART 5—AMENDMENT OF NATURE CONSERVATION
ACT 1992**

25 Act amended in pt 5

This part amends the *Nature Conservation Act 1992*.

26 Amendment of s 22 (Management principles of nature refuges)

Section 22(a) and (b), before ‘natural’—

insert—

‘cultural and’.

27 Amendment of s 70C (Dedication of forest reserves)

Section 70C, from ‘part of’—

omit, insert—

‘part of—

- (a) a Land Act reserve; or
- (b) a State forest or timber reserve; or
- (c) unallocated State land.’.

28 Amendment of s 133 (Chief executive to keep register)

(1) Section 133(1), paragraphs (a) and (c) to (e)—

omit.

(2) Section 133(1), paragraphs (b) to (l)—

renumber as paragraphs (a) to (h).

29 Amendment of s 139 (Annual report)

Section 139(1), ‘3 months’—

omit, insert—

‘4 months’.

PART 6—AMENDMENT OF TRANSPORT INFRASTRUCTURE ACT 1994

30 Act amended in pt 6

This part amends the *Transport Infrastructure Act 1994*.

31 Amendment of s 233 (Continuation of certain by-laws and provisions of Harbours Act)

Section 233(9), ‘31 December 2002’—

omit, insert—

‘31 December 2003’.

32 Amendment of s 236 (Continuation of certain provisions of Harbours Act requiring approval for certain matters)

Section 236(8), ‘31 December 2002’—

omit, insert—

‘31 December 2003’.

PART 7—MINOR AND CONSEQUENTIAL AMENDMENTS

33 Acts amended—schedule

The schedule amends the Acts it mentions.

SCHEDULE

MINOR AND CONSEQUENTIAL AMENDMENTS

sections 19(2) and 33

BEACH PROTECTION ACT 1968

1 Section 60, heading—

omit, insert—

‘60 Regulation-making power’.

MEAKER TRUST (RAINE ISLAND RESEARCH) ACT 1981

1 Sections 9(1) and (2) and 10(1), ‘ex officio’—

omit, insert—

‘mentioned in section 6(2)(a) or (b)’.

2 Sections 9 to 11 and 22, ‘member of the corporation’—

omit, insert—

‘member’.

3 Section 13(e), from ‘the regions’ to ‘Ocean’—

omit, insert—

‘the Great Barrier Reef Province’.

SCHEDULE (continued)

4 Section 23(2), ‘if its functions’—*omit, insert—*

‘of its functions’.

5 Section 37, heading—*omit, insert—***‘37 Regulation-making power’.****NEWSTEAD HOUSE TRUST ACT 1939****1 Section 14, heading—***omit, insert—***‘14 Regulation-making power’.****2 Section 14(2)(a) to (c) and (f) to (k), headings—***omit.*