



Queensland

# **Maritime and Other Legislation Amendment Act 2006**

**Act No. 21 of 2006**





Queensland

# Maritime and Other Legislation Amendment Act 2006

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Queensland

## **Maritime and Other Legislation Amendment Act 2006**

### **Act No. 21 of 2006**

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**An Act to amend the *Maritime Safety Queensland Act 2002*, the *Transport Operations (Marine Pollution) Act 1995* and the *Transport Operations (Marine Safety) Act 1994*, and for other purposes**

**[Assented to 17 May 2006]**

**The Parliament of Queensland enacts—****Part 1 Preliminary****1 Short title**

This Act may be cited as the *Maritime and Other Legislation Amendment Act 2006*.

**2 Commencement**

The following provisions commence on a date to be fixed by proclamation—

- section 13
- section 44, to the extent it inserts section 144 in the *Transport Operations (Marine Pollution) Act 1995*
- section 91
- section 92, to the extent it inserts section 204 in the *Transport Operations (Marine Safety) Act 1994*
- section 95
- section 105, to the extent it inserts section 242 in the *Transport Operations (Marine Safety) Act 1994*
- part 5, division 3.

**Part 2 Amendment of Maritime Safety Queensland Act 2002****3 Act amended in pt 2**

This part amends the *Maritime Safety Queensland Act 2002*.



**4 Amendment of s 4 (Purpose of Act)**

Section 4, ‘and ship-sourced pollution’—

*omit, insert—*

‘, ship-sourced pollution and related matters’.

**5 Amendment of s 8 (Functions and powers of MSQ)**

(1) Section 8(1)(a)(iv)—

*omit, insert—*

‘(iv) to approve an entity to conduct training programs for the operation of ships or to conduct examinations for issuing licences under that Act; and’.

(2) Section 8(1)(a)—

*insert—*

‘(x) to monitor and manage unseaworthy ships or abandoned, stranded, sunk or wrecked ships;’.

**6 Amendment of s 11 (Functions and powers of general manager)**

Section 11(5)—

*omit.*

**7 Insertion of new s 11A**

Part 2, division 2—

*insert—*

**‘11A Delegation of functions of general manager**

‘(1) The general manager may delegate to an appropriate person (the *delegate*) a function of the general manager under this or another Act.

‘(2) The delegation may permit the delegate to subdelegate the delegated function to an appropriate person.

‘(3) This section applies despite a provision to the contrary in an Act.



**11 Amendment of s 62 (Defences to discharge offence)**

(1) Section 62(b)—

*omit, insert—*

‘(b) the discharge happened because of a fault in transfer apparatus not operated at the master’s direction and—

(i) if the person charged with committing the offence is the ship’s owner or master—

(A) before the transfer operation, the owner or master did not know, or could not reasonably have known, about the existence of the fault and the master took all reasonable steps to find out whether the transfer apparatus was in good working order; and

(B) after the discharge happened or was discovered, the master took all reasonable precautions to prevent or minimise the discharge; or

(ii) if the person charged with committing the offence is another member of the ship’s crew whose act caused the discharge—the person did not know, or could not reasonably have known, about the existence of the fault;’.

(2) Section 62—

*insert—*

‘(2) For subsection (1)(b)(i)(A), the master must prove that the master took all reasonable steps to find out from all members of the ship’s crew any information concerning any fault in the transfer apparatus known to them.

‘(3) In this section—

*fault*, in transfer apparatus, does not include any existing defect in the transfer apparatus resulting from an event, lack of maintenance or anything else that happened while the transfer apparatus was under the direction of the master of the ship.’.

**12 Amendment of s 63 (Restrictions on transfer operations at night)**

(1) Section 63, heading, after ‘operations’—

*insert—*

**‘for particular ships’.**

(2) Section 63(2) to (4)—

*renumber* as section 63(3) to (5).

(3) Section 63(1)—

*omit, insert—*

‘(1) This section applies if a ship is more than 15m in length overall.

‘(2) A transfer operation for the ship must not be conducted between sunset and sunrise (a ***night transfer operation***), unless an authorised officer—

(a) has been given notice of the operation; and

(b) has given written approval for it.’.

**13 Amendment of s 67A (Ship’s owner to have insurance)**

(1) Section 67A(1)—

*omit, insert—*

‘(1) This section applies if a ship is more than 15m in length overall.’.

(2) Section 67A—

*insert—*

‘(3) The Minister may recommend the making of a regulation under subsection (4) only if—

(a) the Minister has had regard to the risk of the ship discharging pollutants into, or being abandoned or wrecked in, coastal waters; and

(b) the Minister is reasonably satisfied that, for the particular type of ship, an insurance policy mentioned in subsection (2) could not reasonably be obtained or kept in force.

‘(4) A regulation may exempt a ship from the application of this section.

‘(5) A regulation under subsection (4) may provide that, for the exemption to apply, an owner of the ship must comply with conditions stated in the regulation.

*Example of conditions that a regulation may provide—*

A regulation may provide that an owner develop and implement a risk management plan including matters mentioned in the regulation or that an owner must not operate the ship with more than a stated type or quantity of pollutant on board the ship.’.

**14 Replacement of s 69 (Authorised officers subject to directions from general manager)**

Section 69—

*omit, insert—*

**‘69 Authorised officer subject to directions of general manager**

‘An authorised officer is subject to the directions of the general manager in exercising the powers of an authorised officer.’.

**15 Amendment of s 70 (Powers of authorised officers)**

Section 70(2) and (3)—

*omit.*

**16 Amendment of s 71 (Limitation on powers of authorised officer)**

Section 71(1)(c)—

*omit, insert—*

‘(c) by notice of the general manager given to the authorised officer.’.

**17 Amendment of s 72 (Appointment of authorised officers)**

Section 72(2) and (3)—

*omit, insert—*

- (2) A person may be appointed as an authorised officer only if the general manager considers, on reasonable grounds, that the person has the necessary expertise or experience to be an authorised officer.’

**18 Amendment of s 73 (Authorised officer’s appointment conditions)**

Section 73(2)(b), ‘administering executive’—

*omit, insert—*

‘general manager’.

**19 Amendment of s 74 (Authorised officer’s identity card)**

- (1) Section 74(1) and (5), ‘administering executive’—

*omit, insert—*

‘general manager’.

- (2) Section 74(3) and (4)—

*omit.*

- (3) Section 74(5) and (6)—

*renumber* as section 74(3) and (4).

**20 Amendment of s 76 (Protection from liability)**

Section 76(2), from ‘instead to’—

*omit, insert—*

‘instead to the State.’.

**21 Amendment of s 82 (Power to seize evidence from places)**

Section 82(5), ‘administering executive’—

*omit, insert—*

‘general manager’.

**22 Amendment of s 83 (Power to seize after boarding ship)**

Section 83(3), ‘administering executive’—

*omit, insert—*

‘general manager’.

**23 Amendment of s 92 (Purpose of division)**

Section 92, from ‘a port authority’ to ‘State (generally)’—

*omit, insert—*

‘the State’.

**24 Amendment of s 93 (State has prime responsibility for directing emergency response)**

(1) Section 93(1), ‘(the *discharge*)’—

*omit, insert—*

‘(a *relevant discharge*)’.

(2) Section 93(2) and (5), ‘the discharge’—

*omit, insert—*

‘a relevant discharge’.

(3) Section 93(3) and (4)—

*omit, insert—*

‘(3) The State may enter into an agreement with a port authority about the port authority responding to a relevant discharge within the port limits of the port.

‘(4) To the extent stated in either of the following agreements between the State and a port authority, the port authority has responsibility within the port limits of the port for directing and coordinating the State’s response if there is a relevant discharge within the port limits—

(a) an agreement under subsection (3);

(b) an agreement of the type mentioned in subsection (3) entered into before the commencement of this subsection.’.

**25 Amendment of s 94 (Emergency declaration may overrule local law)**

Section 94(1), ‘the State or port authority’s response’—  
*omit, insert—*  
‘the State’s response’.

**26 Replacement of ss 105 and 106**

Sections 105 and 106—  
*omit, insert—*

**‘105 False or misleading statements**

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

Maximum penalty—350 penalty units.

**‘106 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—350 penalty units.

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

- (a) informs 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.’.

**27 Amendment of s 110 (Compensation)**

(1) Section 110(1), after ‘compensation’—  
*insert—*

‘from the State’.



- (2) Section 110(2)—  
*omit.*
- (3) Section 110(3), ‘compensation may’—  
*omit, insert—*  
‘compensation from the State may’.
- (4) Section 110(5), ‘The regulations’—  
*omit, insert—*  
‘A regulation’.
- (5) Section 110(3) to (5)—  
*renumber* as section 110(2) to (4).

## **28 Amendment of s 111 (Definitions for part)**

- (1) Section 111, definition *discharge expenses*, paragraph (a), subparagraphs (ia) to (v)—  
*renumber* as section 111, definition *discharge expenses*, paragraph (a), subparagraphs (iii) to (vi).
- (2) Section 111, definition *discharge expenses*, paragraph (b), ‘or port authority’—  
*omit.*

## **29 Insertion of new s 112**

After section 111—

*insert—*

### **‘112 General manager to set amounts for costs and expenses relating to definition *discharge expenses***

- ‘(1) The general manager may, by gazette notice, set an amount for the services of a person, or the use or provision of ships or equipment, for a section 111 activity.
- ‘(2) Despite subsection (1), if the State contracts for the services of a person, or contracts or hires the use or provision of ships or equipment, for a section 111 activity, the actual cost for the contract or hiring is the amount to be used for the definition *discharge expenses*.

- ‘(3) A claim by the State for discharge expenses based on the amounts as gazetted or incurred for a matter as mentioned in this section is, in the absence of contrary evidence, taken to be the State’s reasonable costs and expenses in relation to the matter for the purposes of the definition *discharge expenses*.
- ‘(4) The State’s discharge expenses may include other matters not mentioned in a gazette notice under subsection (1).
- ‘(5) In this section—  
*section 111 activity* means an activity mentioned in the definition *discharge expenses*, paragraph (a).’.

### **30 Amendment of s 115 (Recovery of discharge expenses)**

- (1) Section 115(3), (4), (5)(c), (6), (8) and (9), ‘administering authority’—  
*omit, insert—*  
‘general manager’.
- (2) Section 115(9)(a), ‘administering authority’s’—  
*omit, insert—*  
‘general manager’s’.

### **31 Amendment of s 116 (Appeals)**

- (1) Section 116(2)(a), ‘administering authority’—  
*omit, insert—*  
‘general manager’.
- (2) Section 116(2)(a), ‘a District Court’—  
*omit, insert—*  
‘the District Court’.

### **32 Insertion of new pt 13A**

After section 117—  
*insert—*

## **‘Part 13A                    Securing compliance with Act**

### **‘Division 1                    Purpose**

#### **‘117A Purpose of pt 13A**

- ‘(1) The purpose of this part is to provide for alternative ways of ensuring compliance with this Act.
- ‘(2) Division 2 provides for enforcement orders and interim enforcement orders if a person has failed to comply with any of the following—
  - (a) a direction, requirement or order given to the person by the general manager or an authorised officer;
  - (b) a division 3 undertaking given by the person to the general manager.
- ‘(3) Division 3 provides for undertakings.

### **‘Division 2                    Enforcement orders and interim enforcement orders**

#### **‘117B Proceeding for enforcement order or interim enforcement order**

- ‘A prescribed applicant may bring a proceeding in the District Court for any of the following—
- (a) an enforcement order;
  - (b) an order cancelling or amending an enforcement order or interim enforcement order.

#### **‘117C Making enforcement order**

- ‘(1) The District Court may make an enforcement order if the court is satisfied about any of the following—
  - (a) a notice offence has been committed or, unless an enforcement order is made, will be committed;

- (b) an intervention direction has been contravened or, unless an enforcement order is made, will be contravened;
  - (c) a division 3 undertaking has been contravened or, unless an enforcement order is made, will be contravened.
- ‘(2) Subsection (1) applies whether or not there has been a prosecution for the notice offence.

#### **‘117D Making interim enforcement order**

- ‘(1) If a prescribed applicant has brought a proceeding for an enforcement order but the District Court has not decided the proceeding, the court may make an interim enforcement order if it is satisfied it would be appropriate to make the interim enforcement order.
- ‘(2) The District Court may make the interim enforcement order on application by the prescribed applicant or on its own initiative.
- ‘(3) An interim enforcement order may be made subject to conditions.

#### **‘117E Effect of order**

- ‘(1) An enforcement order or an interim enforcement order may direct a person (the *respondent*) to do 1 or more of the following—
- (a) to stop an activity that constitutes, or will constitute, a notice offence or a contravention of an intervention direction or division 3 undertaking;
  - (b) not to start an activity that will constitute a notice offence or a contravention of an intervention direction or division 3 undertaking;
  - (c) to do anything required to stop committing a notice offence, or a contravention of an intervention direction or division 3 undertaking, including, for example, requiring the repair, demolition or removal of a ship or a part of a ship.

- ‘(2) If an enforcement order or an interim enforcement order is made as mentioned in subsection (1), the District Court may do either or both of the following—
- (a) direct the respondent to give a security bond to the State for a stated period for a matter mentioned in the enforcement order or interim enforcement order;
  - (b) make another order the court considers appropriate.
- ‘(3) An enforcement order or interim enforcement order—
- (a) may be in terms the District Court considers appropriate to secure compliance with this Act; and
  - (b) must state the time by which the order is to be complied with.
- ‘(4) A person who contravenes an enforcement order or interim enforcement order commits an offence against this Act.  
Maximum penalty—1000 penalty units or 1 year’s imprisonment.
- ‘(5) The District Court may order the forfeiture to the State of all or part of the security bond given by the respondent under subsection (2)(a) if—
- (a) a prescribed applicant applies to the court for an order for the forfeiture of all or part of the security bond; and
  - (b) the court is satisfied that the respondent contravened the enforcement order or interim enforcement order during the period for which the security bond was given, whether or not the respondent has been prosecuted for an offence against subsection (4).

#### **‘117F Powers of District Court about enforcement order or interim enforcement order**

- ‘(1) The District Court’s power to make an enforcement order or interim enforcement order to stop, or not to start, an activity may be exercised whether or not—
- (a) it appears to the court that the person against whom the order is made intends to engage, or to continue to engage, in the activity; or

- (b) the person has previously engaged in an activity of the kind; or
  - (c) there is danger of substantial damage to the Queensland marine and coastal environment if the person engages, or continues to engage, in the activity.
- ‘(2) The District Court’s power to make an enforcement order or interim enforcement order to do anything may be exercised whether or not—
- (a) it appears to the court that the person against whom the order is made intends to fail, or to continue to fail, to do the thing; or
  - (b) the person has previously failed to do a thing of the kind; or
  - (c) there is danger of substantial damage to the Queensland marine and coastal environment if the person fails, or continues to fail, to do the thing.
- ‘(3) The District Court may cancel or amend an enforcement order or interim enforcement order.
- ‘(4) The District Court’s power under this section is in addition to its other powers.

**‘117G No undertaking as to damages or costs may be required**

‘To remove any doubt, it is declared that no undertaking as to damages or costs may be required of a prescribed applicant or the State in relation to an enforcement order or interim enforcement order.

**‘Division 3                      Undertakings**

**‘117H General manager may seek division 3 undertaking**

- ‘(1) This section applies if the general manager believes, on reasonable grounds, that a person has contravened, will contravene or will be involved in a contravention of, this Act.

- ‘(2) The general manager may, by written notice given to the person—
- (a) state the act or omission the general manager believes is, or will constitute, the contravention or involvement with the contravention; and
  - (b) ask the person to give the general manager a written undertaking under this division (a ***division 3 undertaking***) that the person will not commit, continue to commit or repeat the act or omission.

### **‘117I Undertaking about other matter**

‘Without limiting section 117H, the general manager may accept a division 3 undertaking given by a person for this division about anything for which the chief executive, general manager or marine pollution controller has a function or power under this Act.

### **‘117J Variation and withdrawal of division 3 undertaking**

- ‘(1) This section applies if the general manager has accepted a division 3 undertaking given by a person.
- ‘(2) The person may vary or withdraw the division 3 undertaking only if the general manager agrees to the variation or withdrawal.
- ‘(3) The general manager may—
- (a) vary the division 3 undertaking only if the person agrees to the variation; or
  - (b) withdraw the division 3 undertaking only if the general manager reasonably believes either of the following—
    - (i) before the division 3 undertaking was accepted, the person contravened this Act in a way unknown to the general manager and, had the general manager known about the contravention, he or she would not have accepted the division 3 undertaking;
    - (ii) the division 3 undertaking is no longer necessary.

- ‘(4) If a division 3 undertaking is varied or withdrawn under this section, the general manager must give written notice of the variation or withdrawal to the person.
- ‘(5) The variation or withdrawal takes effect when written notice of the variation or withdrawal is given to the person.

### **‘117K Enforcement of division 3 undertaking**

- ‘(1) This section applies if the general manager believes, on reasonable grounds, a person—
  - (a) has contravened a term of a division 3 undertaking; or
  - (b) will contravene a term of a division 3 undertaking, unless an enforcement order is made.
- ‘(2) The general manager may apply to the District Court for an enforcement order under division 2.

### **‘117L Register of division 3 undertakings**

- ‘(1) The general manager must, in any way the general manager considers appropriate, keep a register of each division 3 undertaking given to the general manager by a person under this division.
- ‘(2) Also, the general manager must ensure the register is available for public inspection, without charge, at a place prescribed under a regulation during normal working hours.’.

## **33 Amendment of s 118 (Evidentiary provisions)**

- (1) Section 118(2), (3) and (5), ‘administering executive’—  
*omit, insert—*  
‘general manager’.
- (2) Section 118(4), ‘administering authority or administering executive’—  
*omit, insert—*  
‘general manager’.



- (3) Section 118(9), from ‘administering authority applies’ to ‘by it’—

*omit, insert—*

‘general manager applies to recover the costs and expenses incurred by the State or a port authority’.

- (4) Section 118(9)(a), from ‘administering authority’ to ‘incurred’—

*omit, insert—*

‘general manager stating that stated costs and expenses were incurred by the State or a port authority’.

### **34 Amendment of s 122 (How discharge expenses may be recovered)**

- (1) Section 122(5)—

*renumber* as section 122(6).

- (2) Section 122—

*insert—*

- ‘(5) This section does not limit the general manager’s power to recover discharge expenses by making a demand against a security as mentioned in section 115(3).<sup>1</sup>’.

### **35 Replacement of s 127 (Court may make orders about compensation and other matters)**

Section 127—

*omit, insert—*

### **‘126A Allegations of false or misleading statements or documents**

‘It is enough for a complaint for an offence against section 105, 106, 128G or 128H to state that a statement made, or document given, was ‘false or misleading’ to the person’s knowledge, without specifying whether it was false or whether it was misleading.

---

1 Section 115 (Recovery of discharge expenses)

**‘127 Court may make orders about rehabilitation, etc.**

- ‘(1) If a person is convicted of an offence against this Act, the court dealing with the matter may make an order under this section in addition to—
- (a) any other penalty the court may impose under this Act, the *Penalties and Sentences Act 1992* or another Act; or
  - (b) any other order the court may make under this Act, the *Penalties and Sentences Act 1992* or another Act.

*Note—*

See section 147(1) if an offence was committed entirely before the commencement of section 147.

- ‘(2) The court may order the defendant to do 1 or more of the following—
- (a) to take stated action to rehabilitate or restore Queensland’s marine and coastal environment damaged because of the act or omission constituting the offence;
  - (b) on application only by the prosecution, to do 1 or more of the following—
    - (i) to conduct a stated advertising or education campaign to promote compliance with the Act;
    - (ii) to make a stated private apology or publish a stated public apology to persons affected by the contravention;
    - (iii) to operate a stated ship in a particular way, including putting a stated procedure or system in place for or on the ship to ensure compliance with the Act;
    - (iv) to repair, modify or replace a stated ship or part of a ship, or repair, modify, install or replace stated machinery or equipment on a stated ship to ensure compliance with the Act;
    - (v) to start or stop a stated activity in relation to a stated ship;
    - (vi) not to own or operate any ship unless the general manager has given written consent for the ownership or operation;

(c) to comply with another order the court considers appropriate.

‘(3) Also, if—

(a) a person is convicted of an offence against this Act or the *Transport Operations (Marine Safety) Act 1994*; and

(b) the act or omission constituting the offence caused the State or a port authority to incur discharge expenses in relation to a discharge or likely discharge of pollutant from a ship into coastal waters;

the court may order the defendant to pay to the State or the port authority the amount that could be recovered under section 122(1).

‘(4) An order under this section is subject to any limitation of liability that may apply under a law of the State or the Commonwealth.

*Example—*

*Protection of the Sea (Civil Liability) Act 1981 (Cwlth)*

‘(5) A person who contravenes an order under this section commits an offence against this Act.

Maximum penalty—3500 penalty units or 2 years imprisonment.’

## **36 Insertion of new pt 14A**

After section 128—

*insert—*

## **‘Part 14A Protection for whistleblowers**

### **‘128A Definitions for pt 14A**

‘In this part—

*disclosing person* see section 128C(1).

*official* means—

(a) the chief executive; or

(b) the general manager; or

- (c) the marine pollution controller; or
- (d) an authorised officer.

*reprisal* see section 128E(3).

### **‘128B Application of pt 14A**

- ‘(1) This part applies to a person other than a person who makes a disclosure as a public officer under the *Whistleblowers Protection Act 1994*.
- ‘(2) If a disclosure is made under the *Whistleblowers Protection Act 1994*, this part does not limit the application of that Act and that Act does limit the application of this part.

### **‘128C General limitation**

- ‘(1) A person (the *disclosing person*) is not civilly or criminally liable for disclosing information to an official about a person’s conduct, whether committed before or after the commencement of this section, that the disclosing person honestly believes, on reasonable grounds, contravenes this Act.
- ‘(2) Without limiting subsection (1)—
  - (a) in a proceeding for defamation, the disclosing person has a defence of absolute privilege for publishing the disclosed information; and
  - (b) if the disclosing person would otherwise be required to maintain confidentiality about the disclosed information under an Act, agreement, oath, rule of law or practice, the disclosing person does not—
    - (i) contravene the Act, oath, rule of law or practice by making the disclosure; or
    - (ii) breach the agreement by making the disclosure.
- ‘(3) In this section—

*agreement* includes a contract or deed.

**‘128D Liability for conduct unaffected**

- ‘(1) The liability of the disclosing person for his or her own conduct is not affected only because the disclosing person discloses the conduct to an official.
- ‘(2) However, a court may have regard to the disclosure if the disclosing person is prosecuted for an offence involving the conduct and either of the following applies—
  - (a) the disclosing person is the master of a ship and his or her conduct was in compliance with an express instruction of the owner of the ship or someone authorised by the owner to give the instruction;
  - (b) the disclosing person is another member of a ship’s crew and his or her conduct was in compliance with an express instruction of the master of the ship or someone authorised by the master to give the instruction.
- ‘(3) Subsection (2) does not limit the *Penalties and Sentences Act 1992*.

**‘128E Reprisal and grounds for reprisal**

- ‘(1) A person must not cause, or attempt or conspire to cause, detriment to another person because, or in the belief that, anybody has made, or may make, a disclosure as mentioned in section 128C(1).
- ‘(2) An attempt to cause detriment includes an attempt to induce a person to cause detriment.
- ‘(3) A contravention of subsection (1) is a reprisal or the taking of a reprisal.
- ‘(4) A ground mentioned in subsection (1) as the ground for a reprisal is the unlawful ground for the reprisal.
- ‘(5) For the contravention to happen, it is sufficient if the unlawful ground is a substantial ground for the act or omission that is the reprisal, even if there is another ground for the act or omission.

**‘128F Damages entitlement or other remedy for reprisal**

- ‘(1) A reprisal is a tort and a person who takes a reprisal is liable in damages to anyone who suffers detriment as a result.
- ‘(2) Any appropriate remedy that may be granted by a court for a tort may be granted by a court for the taking of a reprisal.
- ‘(3) If the claim for damages goes to trial in the Supreme Court or the District Court, it must be decided by a judge sitting without a jury.
- ‘(4) This section does not limit any other remedy that may be available at law to the person against whom the reprisal is taken.

**‘128G False or misleading statements**

‘A person must not, for section 128C(1), state anything to an official that the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units.

**‘128H False or misleading documents**

- ‘(1) A person must not, for section 128C(1), give an official 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) informs the official, 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.’.

**37 Omission of pt 15, div 1 (Devolutions)**

Part 15, division 1—

*omit.*

- 38 Omission of pt 15, div 2, hdg (Delegations)**  
Part 15, division 2, heading—  
*omit.*
- 39 Amendment of s 130 (Delegation by chief executive)**  
(1) Section 130, ‘powers’—  
*omit, insert—*  
‘functions’.  
(2) Section 130—  
*insert—*  
‘(2) In this section—  
*functions* include powers.’.
- 40 Omission of ss 131 and 132**  
Sections 131 and 132—  
*omit.*
- 41 Amendment of s 133 (Regulation-making power)**  
(1) Section 133(2)(i), ‘an administering authority’—  
*omit, insert—*  
‘the general manager’.  
(2) Section 133(2)(m)—  
*omit.*
- 42 Replacement of pt 17, hdg (Transitional provisions for Maritime Safety Queensland Act 2002)**  
Part 17, heading—  
*omit, insert—*

**‘Part 17                    Transitional provisions****‘Division 1                    Provisions for Maritime Safety  
Queensland Act 2002’.****43            Amendment of s 136 (Definitions for pt 20)**

(1) Section 136, heading—

*omit, insert—*

**‘136    Definitions for div 1’.**

(2) Section 136, definition *commencement*—

*omit, insert—*

*‘commencement means 6 August 2002.’.*

**44            Insertion of new pt 17, div 2**

After section 142—

*insert—*

**‘Division 2                    Provisions for Maritime and Other  
Legislation Amendment Act 2006****‘143    Application of s 62**

‘(1) Section 62, as in force immediately after the commencement of this section, does not apply in relation to an offence against section 61<sup>2</sup> committed entirely before the commencement.

‘(2) However section 62, as in force immediately before the commencement, applies in relation to an offence against section 61 committed entirely before the commencement.

**‘144    Application of s 67A for 1 year after commencement**

‘(1) This section applies to a ship that is more than 15m, but not more than 35m, in length overall.

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2    Section 61 (Discharge of pollutant into coastal waters prohibited)



- ‘(2) The ship’s owner does not commit an offence against section 67A(2) if, during the period of 1 year after the commencement of this section, the ship’s owner does not comply with that subsection.
- ‘(3) This section expires 1 year after its commencement.

**‘145 Authorised officers appointed by chief executive officer of port authority**

- ‘(1) On the commencement of this section, a port authorised officer stops being an authorised officer for the purposes of this Act, including for the application of section 74.<sup>3</sup>
- ‘(2) A person who, immediately before the commencement, was a port authorised officer must, within 21 days after the commencement, return to the general manager the identity card given to the person under section 74, as in force at any time before the commencement, unless the person has a reasonable excuse.  
Maximum penalty—40 penalty units.
- ‘(3) Without limiting the court’s power to find an excuse is a reasonable excuse, it is a reasonable excuse if—
  - (a) for the purposes of section 74 and other purposes, the identity card is a single identity card; and
  - (b) within 21 days after the commencement—
    - (i) the person sought a new card in relation to the other purposes and gave written notice to the general manager about the other purposes; but
    - (ii) a new card in relation to the other purposes had not been issued.
- ‘(4) The employment relationship between the person and the port authority in relation to which the person was previously appointed as an authorised officer is not affected only because of this section.

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3 Section 74 (Authorised officer’s identity card)

**‘146 Protection from liability for port authorised officers and others and continuing liability for port authorities**

‘Section 76, as in force immediately before the commencement of this section, continues to apply in relation to an act or omission of a port authorised officer or a person acting under the direction of a port authorised officer.

**‘147 Making orders under s 127 and pt 13A, div 2**

- ‘(1) Despite section 127 as in force after the commencement of this section, section 127 as in force immediately before the commencement continues to apply to an offence committed entirely before the commencement.
- ‘(2) An enforcement order or interim enforcement order may not be made under part 13A, division 2 in relation to an offence committed entirely before the commencement.

**‘148 Delegation under s 132 as in force before commencement**

- ‘(1) This section applies to a delegation under section 132 by the general manager of a power under this Act as the delegation is in force immediately before the commencement of this section.
- ‘(2) The delegation continues in force as a delegation under the *Maritime Safety Queensland Act 2002*, section 11A until it is amended or repealed under that Act.

*Note—*

The *Maritime Safety Queensland Act 2002*, section 11A provides for the general manager to delegate his or her functions under that Act or another Act to appropriate persons, namely an employee of MSQ, an authorised officer or a shipping inspector under the *Transport Operations (Marine Safety) Act 1994*.

**‘149 Previous exercise of powers by port authority officer not affected**

- ‘(1) Section 145(1) does not affect the exercise of a power by a port authorised officer made under this Act before the

commencement of this section as an authorised officer, including, for example, under part 12, divisions 3, 4 and 5.

- ‘(2) However, if this Act provides that after exercising a power, an authorised officer must do a thing (*discharge a duty*), the port authorised officer must discharge the duty and give written notice to the general manager about discharging the duty.

*Example for subsection (2)—*

Under section 84, an authorised officer may have exercised a power and detained a ship before the commencement of this section. However, the authorised officer may not have given an approved notice under section 85 about the detention before the commencement. A person who was a port authorised officer must comply with section 85 and give a notice to the ship’s master.

- ‘(3) Also, if this Act provides that after exercising a power (the *first power*), an authorised officer may exercise another power (*other power*)—
- (a) the port authorised officer may not exercise the other power but must give written notice to the general manager about the other power not having been exercised; and
  - (b) the general manager may exercise the other power even though the provision about the other power provides that the other power may only be exercised by the authorised officer who exercised the first power.

#### ‘150 **Emergency response powers under pt 12, div 6**

- ‘(1) If, immediately before the commencement of this section, a port authority had prime responsibility for a discharge as mentioned in section 93(3) as in force immediately before the commencement—
- (a) the port authority continues to have the prime responsibility; but
  - (b) the State may assume prime responsibility in the way stated in section 93(4) as in force immediately before the commencement as if that subsection had not been omitted by the *Maritime and Other Legislation Amendment Act 2006*.

- ‘(2) A declaration under section 94(1), as in force immediately before the commencement, is not affected only because the declaration could not be made under section 94(1) after the commencement.

**‘151 Continuing liability of port authority for compensation**

- ‘(1) This section applies to a person who may, before the commencement of this section, claim compensation from a port authority under section 110 as in force before the commencement of this section.
- ‘(2) Section 110, as in force immediately before the commencement, continues to apply in relation to the person and the person may make a claim under that section as if that section had not been amended.
- ‘(3) If, under this section, the port authority pays compensation to a person, the definition *discharge expenses* in section 111 is taken to include an amount reasonably paid as compensation by the port authority.

**‘152 If port authority has started to recover discharge expenses before commencement**

- ‘(1) If, before the commencement of this section, a port authority started to recover discharge expenses under section 115 and the matter was not completed on the commencement, the port authority may continue to recover the discharge expenses under section 115 as if—
- (a) the section had not been amended; and
  - (b) the definition *administering authority* had not been omitted by the *Maritime and Other Legislation Amendment Act 2006*.
- ‘(2) An appeal may be made by or against a port authority under section 116 as if that section had not been amended by the *Maritime and Other Legislation Amendment Act 2006* if—
- (a) immediately before the commencement, an appeal may be made under section 116 by a person whose interests were affected by a decision under section 115; or

- (b) a person's interests were affected by a decision under section 115 as in force immediately before the commencement because of subsection (1).

### **'153 Application of s 118 to particular matters**

'Section 118, as in force immediately before the commencement of this section, applies in relation to a matter for a proceeding under this Act if—

- (a) a provision is amended by the *Maritime and Other Legislation Amendment Act 2006*; and
- (b) the provision, as in force immediately before the amendment, continues to apply in relation to the matter.'

### **45 Amendment of schedule (Dictionary)**

- (1) Schedule, definitions *administering authority*, *administering executive*, *chief executive officer* and *devolved matter*—  
*omit.*

- (2) Schedule—

*insert—*

'*convicted*, of an offence, means being found guilty of the offence, on a plea of guilty or otherwise, whether or not a conviction is recorded.

*disclosing person* see section 128C(1).

*division 3 undertaking* see section 117H(2)(b).

*enforcement order* means an order of the District Court under part 13A, division 2—

- (a) to remedy or restrain the commission of a notice offence or a contravention of an intervention direction; or
- (b) to ensure compliance with a division 3 undertaking.

*interim enforcement order* means an order under section 117D.

*intervention direction* means a direction issued under section 98(2)(b) of the kind authorised under section 99.

***marine pollution controller*** see section 93A.

***notice offence*** means an offence against any of the following provisions constituted by a person contravening an approval, direction, notice, requirement or order given to the person under this Act—

- section 63(5)
- section 66(5)
- section 84(3)
- section 84(5)
- section 89(2)
- section 95(6)
- section 96(3)
- section 103(2).

***official***, for part 14A, see section 128A.

***port authorised officer***, for part 17, division 2, means a person who was, immediately before the commencement of section 145, an authorised officer appointed by the chief executive officer of a port authority.

***prescribed applicant***, for part 13A, means any of the following—

- (a) the chief executive;
- (b) the general manager;
- (c) the marine pollution controller.

***reprisal***, for part 14A, see section 128E(3).

***territorial sea*** means the territorial sea of Australia.’.

- (3) Schedule, definition *port limits*, ‘, chapter 5A’—  
*omit.*



*insert—*

‘(7) A reference to a ship includes the ship’s equipment.’.

## **50 Insertion of new s 10A**

Part 1, division 3—

*insert—*

### **‘10A Meaning of *commercial ship*, *fishing ship* and *recreational ship*, and related provision**

‘(1) A *commercial ship* is—

- (a) a ship other than a fishing ship or recreational ship; or
- (b) a tender to a ship other than a fishing ship or recreational ship.

‘(2) A *fishing ship* is—

- (a) a ship authorised, under an authority under the *Fisheries Act 1994*, for fishing purposes; or
- (b) a ship authorised, under a development permit under the *Integrated Planning Act 1997*, for aquaculture purposes; or
- (c) a ship that is a boat for which a licence has been granted under the *Fisheries Management Act 1991* (Cwlth) or the *Torres Strait Fisheries Act 1984* (Cwlth); or
- (d) a tender to a ship mentioned in paragraph (a), (b) or (c).

‘(3) A *recreational ship* is—

- (a) a ship used only for private recreation; or
- (b) a tender to a ship used only for private recreation.

‘(4) For subsection (3), a regulation may provide for deciding if a ship is used only for private recreation.’.

## **51 Amendment of s 11 (General application of Act to ships)**

(1) Section 11(1)(a), after ‘be’—

*insert—*

‘, including while they are outside Queensland waters’.



- (2) Section 11(1)(c), after ‘voyages’—  
*insert—*  
‘, including while they are outside Queensland waters’.

**52 Amendment of s 19 (Development of marine safety strategies)**

Section 19—

*insert—*

- ‘(5) In this section—  
*coordination plan* means the Transport Coordination Plan developed under the *Transport Planning and Coordination Act 1994*.’.

**53 Amendment of s 34 (What mechanisms ensure safety)**

Section 34(b), ‘and builders’—

*omit, insert—*

‘, ship builders’.

**54 Amendment of s 40 (General safety obligation of ship designers and builders and marine surveyors about condition of ships)**

- (1) Section 40, heading, ‘and builders’—  
*omit, insert—*  
‘, **ship builders**’.
- (2) Section 40(1), ‘or builder’—  
*omit, insert—*  
‘, ship builder’.
- (3) Section 40(2), ‘the person’—  
*omit, insert—*  
‘the accredited ship designer, ship builder or marine surveyor’.

**55 Amendment of s 42 (Relationship between regulatory provisions and general safety obligations about the condition of ships)**

(1) Section 42(1), definition *general safety provision*—  
*omit, insert—*

‘*general safety provision* means section 40 or 41.’.

(2) Section 42(2)(a), after ‘contravened a’—  
*insert—*

‘general’.

**56 Amendment of s 47 (Notice of proposal to prepare draft standard)**

Section 47(5), from ‘of the draft standard’—

*omit, insert—*

‘of the proposal to prepare a draft standard and ask for its advice on the proposal.’.

**57 Amendment of s 56 (Regulation may require registration of ship)**

Section 56, after ‘the ship’—

*insert—*

‘as a commercial ship, fishing ship or recreational ship’.

**58 Amendment of s 57 (Contravention of registration obligations)**

(1) Section 57(2)—

*renumber* as section 57(5).

(2) Section 57—

*insert—*

‘(2) If a ship is registered as a recreational ship, the ship’s owner or master must not operate the ship except as a recreational ship or as otherwise provided for under a regulation.’

- ‘(3) If a ship is registered as a commercial ship, the ship’s owner or master must not operate the ship except as a commercial ship or as otherwise provided for under a regulation.
- ‘(4) If a ship is registered as a fishing ship, the ship’s owner or master must not operate the ship except as a fishing ship or as otherwise provided for under a regulation.’.

### **59 Amendment of s 60 (Regulation may require licences)**

Section 60—

*insert—*

- ‘(2) In this section—  
*licence* includes a certificate of competency, service or recognition and a permit.’.

### **60 Amendment of s 62 (Grant, amendment and renewal of licences)**

Section 62(3)—

*omit, insert—*

- ‘(3) Also, a regulation may provide for either the chief executive or the general manager—
  - (a) to conduct examinations, or to approve an entity to conduct examinations, to establish whether a person meets a requirement under a regulation; or
  - (b) to approve an entity to conduct training programs about the operation of ships.’.

### **61 Amendment of s 63 (Cancellation, suspension and amendment of licences)**

Section 63—

*insert—*

*Note—*

Section 202C(1) provides that, when an order is made under section 202A for a person, a licence, and any subsisting licence, held by the person for whom the order is made is cancelled. Also, section 202I

provides for a regulation-making power for cancelling or suspending a restricted licence.’.

**62 Amendment of s 64 (Object of division)**

Section 64, ‘and builders’—

*omit, insert—*

‘, ship builders’.

**63 Amendment of s 65 (Regulation may provide for accreditation)**

Section 65, ‘or builder’—

*omit, insert—*

‘, ship builder’.

**64 Amendment of s 79 (Delegation by harbour master)**

(1) Section 79(1), ‘powers’—

*omit, insert—*

‘functions’.

(2) Section 79—

*insert—*

‘(3) In this section—

*functions* include powers.’.

**65 Amendment of s 80 (Identity cards)**

Section 80(2), after ‘delegates’—

*insert—*

‘functions or’.

**66 Amendment of s 86 (General limitation on harbour master’s power to give directions under subdivision)**

(1) Section 86(1)—

*omit, insert—*

- ‘(1) A harbour master may give a direction under this subdivision only if the harbour master reasonably considers it necessary to give the direction to ensure safety.’.
- (2) Section 86(3) and (4)—  
*omit.*

## 67 Insertion of new s 86A

After section 86—

*insert—*

### ‘86A Direction may be general or particular

- ‘(1) A direction under this subdivision may be given as a general direction or particular direction.
- ‘(2) A **general direction** is a direction that—
  - (a) applies to all ship owners, ship masters, ships, other persons or matters; or
  - (b) is limited in its application to stated classes of ship owners, ship masters, ships, other persons or matters; or
  - (c) otherwise applies generally or generally with stated exceptions or factors.
- ‘(3) A general direction may—
  - (a) make different provision for different ship owners, ship masters, ships, other persons or matters, or different classes of ship owners, ship masters, ships, other persons or matters; or
  - (b) apply differently to stated exceptions or factors.
- ‘(4) A **particular direction** is a direction that applies to—
  - (a) a particular ship owner or ship master, including an owner or master mentioned in the direction only as the owner or master of a stated particular ship; or
  - (b) a particular ship; or
  - (c) another particular person or matter.

- ‘(5) A general direction or particular direction may be given orally, in writing or in another way.
- ‘(6) Without limiting subsection (5)—
- (a) an oral direction may be given by the harbour master, an agent of the harbour master or a shipping inspector—
    - (i) personally to a person; or
    - (ii) by phone, radio or or another form of electronic communication; or
    - (iii) by megaphone or another form of distance communication; or
  - (b) a written direction may be given by way of a written notice published or otherwise reasonably made available or known to any person to whom it applies, including, for example, by publication in a newspaper or by a fax or email; or
  - (c) a direction may be given in another way appropriate for the maritime environment by being published or otherwise reasonably made available or known to any person to whom it applies, including, for example, by use of flags or lights.
- ‘(7) For a particular direction applying to a ship’s master, the direction may be given to another person in control of the ship if it is not practicable to give the particular direction to the ship’s master.
- ‘(8) A particular direction given under subsection (7) to a person in control of a ship, other than the ship’s master, is taken to have been given to the ship’s master.
- ‘(9) In a proceeding, if an issue arises about whether a direction was given to a person, the party alleging the direction was given must prove that the person had, or reasonably ought to have had, knowledge of the direction.’.

**68 Amendment of s 87 (Power of Minister to require directions)**

- (1) Section 87, ‘particular’—  
*omit.*

- (2) Section 87(2), from ‘86(1)’ to ‘does not’—  
*omit, insert—*  
 ‘86 does not’.

## **69 Insertion of new s 87B**

After section 87A—

*insert—*

### **‘87B Direction to master about operation of ship in relation to a marine incident area**

- ‘(1) A harbour master may direct the master of a ship to operate the ship in a stated way.
- ‘(2) Without limiting subsection (1), the harbour master may direct the master of a ship in or adjacent to a marine incident area to operate the ship in a stated way, including, for example, in any of the following ways—
- (a) not to cause the ship to enter the marine incident area;
  - (b) to cause the ship to enter the marine incident area in a stated way;
  - (c) to navigate the ship in the marine incident area in a stated way;
  - (d) to anchor, berth or moor the ship at a stated place in the marine incident area;
  - (e) to move the ship from an anchorage, berth or mooring in the marine incident area;
  - (f) to cause the ship to leave the marine incident area or to leave the marine incident area in a stated way.
- ‘(3) A person must not contravene a direction under this section, unless the person has a reasonable excuse.
- Maximum penalty for subsection (3)—200 penalty units.’.

## **70 Amendment of s 88 (Direction to master about operation of ship)**

- (1) Section 88, heading—

*omit, insert—*

**‘88 Direction to master about operation of ship in relation to pilotage area’.**

(2) Section 88(1), after ‘operate the ship’—

*insert—*

‘in relation to a pilotage area’.

(3) Section 88(1)(a) to (f), ‘a pilotage area’—

*omit, insert—*

‘the pilotage area’.

**71 Amendment of s 89 (Direction to person in charge of a place)**

Section 89(1), after ‘adjacent to, a’—

*insert—*

‘marine incident area or’.

**72 Amendment of s 90 (Direction to person carrying out works)**

Section 90(1), after ‘in or near a’—

*insert—*

‘marine incident area or’.

**73 Amendment of s 91 (Direction to person about obstruction)**

Section 91(1) and (2)—

*omit, insert—*

‘(1) A harbour master may direct a person responsible for something that is obstructing, or may obstruct, navigation to remove it.

‘(2) The direction may specify how, when and to where the thing must be moved.’.



**74 Amendment of s 92 (Direction to person to put out certain lights etc.)**

(1) Section 92(1)—

*omit, insert—*

‘(1) This section applies if a harbour master reasonably believes a light, sign, signal, electrical or radio installation or equipment or anything else (a *source of interference*)—

(a) may be or has been mistaken for, may interfere or is interfering with, or may otherwise affect or is otherwise affecting the proper operation of, an aid to navigation; or

(b) may otherwise affect the safe operation of ships.’.

(2) Section 92(2)(b), ‘believes, on reasonable grounds,’—

*omit, insert—*

‘reasonably believes’.

**75 Replacement of s 93 (Harbour master may carry out direction)**

Section 93—

*omit, insert—*

**‘93 Harbour master may carry out direction**

‘(1) This section applies if—

(a) a person has contravened a direction under subdivision 1 that the person must comply with; or

(b) a harbour master reasonably believes there is no-one to whom a proposed direction under subdivision 1 may be given and, because of urgent circumstances, the harbour master must act under this section.

‘(2) The harbour master may, to the extent necessary to ensure safety as mentioned in section 86(1), carry out the direction or proposed direction.

‘(3) Without limiting subsection (2), the harbour master may—

(a) board a ship and operate it, including, for example, by moving or navigating it; or

- (b) enter or remain in a place in, or adjacent to, a marine incident area or pilotage area in order to board a ship and anchor, berth, moor or move it; or
  - (c) light or mark construction works; or
  - (d) remove a thing that is obstructing, or may obstruct, navigation; or
  - (e) put out, remove or screen, or take other action in relation to, a source of interference.
- ‘(4) If the harbour master attaches the ship (the *first ship*) to another ship or a buoy, wharf or pile, this Act does not prevent the owner or master of the other ship, or the owner of the buoy, wharf or pile, from recovering damages for injury or loss suffered, because of the attachment, from the owner or master of the first ship.’

**76 Amendment of s 94 (Recovery by State of expenses of carrying out direction)**

- (1) Section 94(1), ‘(Harbour master may carry out direction)’—  
*omit.*
- (2) Section 94(3)—  
*omit, insert—*
- ‘(3) The following persons are liable for the expense—
  - (a) if a direction was given to a person under section 87B, 89, 90, 91 or 92 and the person did not comply with the direction—the person;
  - (b) if a direction under section 87B, 89, 90, 91 or 92 could have been given to a person but was not given for the reasons mentioned in section 93(1)(b)—the person;
  - (c) if a direction under section 88 was given to the master of a ship and the master did not comply with the direction—the master and the owner of the ship;

*Note for paragraph (c)—*

Under section 86A(8) a direction given to the person in control of a ship is taken to have been given to the ship’s master.

(d) if a direction under section 88 could have been given to the master of a ship but was not given for the reasons mentioned in section 93(1)(b)—the master and the owner of the ship.’.

(3) Section 94—

*insert—*

‘(5) In this section—

*direction* means—

(a) a direction given under subdivision 1 that, under the subdivision, a person must comply with; or

(b) a direction that could have been given under subdivision 1 and, if it had been given under the subdivision, a person would have been required to comply with.’.

## **77 Amendment of s 125 (Marine incidents must be reported)**

Section 125—

*insert—*

‘(4) It is a reasonable excuse if the owner under subsection (1), or the master under subsection (2), did not have access to a way of reporting the marine incident within the time stated in the relevant subsection.

‘(5) Subsection (4) does not limit the circumstances that may constitute a reasonable excuse under subsections (1) and (2).’.

## **78 Amendment of s 127 (Regular reports of marine incidents to Minister)**

Section 127(3), ‘4’—

*omit, insert—*

‘6’.

## **79 Amendment of s 139 (Protection of members, legal representatives and witnesses)**

(1) Section 139, heading, ‘and witnesses’—

*omit, insert—*

**‘, witnesses and others’.**

(2) Section 139—

*insert—*

‘(4) A person whose services are made available to a board of inquiry as mentioned in section 134(a) is not civilly liable for an act or omission done honestly and without negligence in providing services to the board for the conduct of the inquiry.

‘(5) If subsection (4) prevents a civil liability attaching to a person, the liability attaches instead to the State.’.

## **80 Amendment of s 142 (Board’s powers on inquiry)**

(1) Section 142(1)(c), second mention—

*omit, insert—*

‘(e) permit or refuse to permit a person, whether the person is an Australian legal practitioner or not, to represent someone else at the inquiry.’.

(2) Section 142—

*insert—*

‘(3) Subsection (1)(e) does not authorise a person who is not an Australian legal practitioner to engage in legal practice contrary to the *Legal Profession Act 2004*.’.

## **81 Replacement of ss 148 and 149**

Sections 148 and 149—

*omit, insert—*

### **‘148 False or misleading statements**

‘A person must not state anything to the board of inquiry that the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units.

**‘149 False or misleading documents**

‘(1) A person must not give the board of inquiry 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) informs the board, 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.’.

**82 Replacement of s 171 (Shipping inspector may direct that ship stays at, or goes to, safe anchorage)**

Section 171—

*omit, insert—*

**‘171 Direction if shipping inspector reasonably believes ship is not safe or can not be operated safely**

‘(1) This section applies if a shipping inspector reasonably believes that life may be endangered because—

- (a) a ship that is being, or is intended to be, operated is not safe; or
- (b) a ship can not be operated safely.

‘(2) To allow the ship to be further inspected and, if necessary, surveyed, the shipping inspector may give a written direction to the owner or master of the ship—

- (a) if it is reasonable to require the ship to be inspected at an anchorage, berth, mooring or place on land—to take the ship to the anchorage, berth, mooring or place on land, as stated in the direction; or
- (b) in any other case—to keep the ship at the ship’s current anchorage, berth, mooring or place on land, as stated in the direction, for a period of time stated in the direction.

‘(3) The directed person for the ship must comply with the direction.

Maximum penalty—200 penalty units.

- ‘(4) For subsection (3), if a person is required to hold a licence of a particular class to operate the ship and the directed person does not hold the licence, the directed person must comply with the direction by causing a person who holds the licence to take the ship to the anchorage, berth or mooring as stated in the direction.
- ‘(5) In this section—  
*directed person*, for a ship, means either of the following to whom a direction is given under subsection (2)—  
 (a) the ship’s owner;  
 (b) the ship’s master.’.

**83 Amendment of s 172 (Shipping inspector may direct ship is surveyed and order repairs)**

- (1) Section 172(1)—  
*omit, insert—*
- ‘(1) This section applies to a ship mentioned in section 171(1)(a) or (b), whether or not a direction under section 171(2)(a) has been given to the owner or master of the ship.’.
- (2) Section 172(2), ‘direct that it’—  
*omit, insert—*  
 ‘give a direction to the owner or master that the ship’.
- (3) Section 172(3), after ‘order the’—  
*insert—*  
 ‘owner or’.
- (4) Section 172(4)—  
*omit, insert—*
- ‘(4) An owner or a master to whom a direction under this section is given must comply with the direction.  
 Maximum penalty—500 penalty units or 1 year’s imprisonment.’.
- (5) Section 172(5), ‘the master’—

*omit, insert—*

‘the owner or master’.

#### **84 Insertion of new s 172AA**

After section 172—

*insert—*

##### **‘172AA Shipping inspector may declare that ship is unseaworthy and must not be operated**

- ‘(1) This section applies if a shipping inspector reasonably believes a ship is unseaworthy.
- ‘(2) By written notice attached to the ship, the shipping inspector may declare the ship is unseaworthy and must not be operated, other than in a way approved by the shipping inspector.
- ‘(3) A person must not contravene a declaration under subsection (2).  
Maximum penalty—200 penalty units.
- ‘(4) If the identity of the owner or master of the ship is known to the shipping inspector, the shipping inspector must give the owner or master a copy of the declaration.
- ‘(5) Also, the shipping inspector may, by written direction to the owner or master of the ship, require the owner or master to remove the ship from Queensland waters within a period stated in the direction and in a way approved by the shipping inspector.
- ‘(6) A person given a direction under subsection (5) must comply with the direction, unless the person has a reasonable excuse.  
Maximum penalty—200 penalty units.
- ‘(7) If the identity of the owner or master of the ship is not known to the shipping inspector, the ship is taken to be abandoned property for the purposes of section 175A.’.

#### **85 Amendment of s 175A (Removing abandoned property)**

- (1) Section 175A(1)—

*omit, insert—*

- ‘(1) This section applies if a shipping inspector reasonably believes that a ship, part of a ship or other property is abandoned property.’.
- (2) Section 175A(2), (3), (4) and (6), before ‘property’—  
*insert—*  
‘abandoned’.
- (3) Section 175A(5)—  
*omit, insert—*
- ‘(4A) If the shipping inspector is reasonably satisfied about either of the following, the shipping inspector may immediately seize and remove the abandoned property without complying with subsection (3)—
- (a) the abandoned property is a hazard to ships or navigation or may cause damage to the environment;
  - (b) before a seizure notice may be published in a newspaper or a time required to be stated in a seizure notice, the abandoned property may become a hazard to ships or navigation or cause damage to the environment.
- ‘(4B) If the shipping inspector seizes and removes the abandoned property under subsection (4A), the shipping inspector must publish the following information in a notice in a newspaper circulating in the locality from where the abandoned property was seized—
- (a) a description of the abandoned property;
  - (b) where and when the abandoned property was found;
  - (c) a statement that the abandoned property was immediately seized and removed;
  - (d) information about the place to where the abandoned property has been removed;
  - (e) a statement to the effect of subsection (5).
- ‘(5) Having regard to the abandoned property’s value and condition, the shipping inspector may sell it by public auction or destroy it if—



- (a) no one claims the abandoned property within the time stated in a seizure notice and the shipping inspector seizes and removes the abandoned property; or
  - (b) no one claims the abandoned property within 28 days after a notice under subsection (4B) is published.’
- (5) Section 175A(7)—  
*omit, insert—*
- ‘(7) However, if the proceeds of the sale of the abandoned property are insufficient to cover the amounts mentioned in subsection (6)(a) and (b), the amount by which the proceeds are insufficient is a debt payable to the State—
- (a) if the abandoned property is a ship or part of a ship and the owner or master of the ship is known—jointly and severally by the owner and master of the ship; or
  - (b) if the abandoned property is not a ship or part of a ship and the owner is known—by the owner of the abandoned property; or
  - (c) if the owner of the abandoned property is not known but a person was registered under an Act as its owner at the time of the abandonment, loss or stranding—the registered person.
- ‘(8) In this section—  
***abandoned property*** means a ship, part of a ship, or other property, that is abandoned, lost or stranded in Queensland waters or on land adjacent to Queensland waters.  
*Examples of land adjacent to Queensland waters—*  
mudflats, banks of rivers, bays  
***property*** does not include land or an interest in land.’

**86 Replacement of ss 176 and 177**

Sections 176 and 177—

*omit, insert—*

**‘176 False or misleading statements**

‘A person must not state anything to a shipping inspector that the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units.

**‘177 False or misleading documents**

‘(1) A person must not give a shipping inspector 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) informs the shipping inspector, 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.’

**87 Insertion of new pt 13A**

After section 183—

*insert—*

**‘Part 13A Securing compliance with Act****‘Division 1 Purpose****‘183A Purpose of pt 13A**

- ‘(1) The purpose of this part is to provide for alternative ways of ensuring compliance with this Act.
- ‘(2) Division 2 provides for enforcement orders and interim enforcement orders if a person has failed to comply with any of the following—

- (a) a direction or requirement given to the person by the general manager, a harbour master or a shipping inspector;
  - (b) a division 3 undertaking given by the person to the general manager.
- ‘(3) Division 3 provides for undertakings.

## **‘Division 2                    Enforcement orders and interim enforcement orders**

### **‘183B Proceeding for enforcement order or interim enforcement order**

‘A prescribed applicant may bring a proceeding in the District Court for any of the following—

- (a) an enforcement order;
- (b) an order cancelling or amending an enforcement order or interim enforcement order.

### **‘183C Making enforcement order**

- ‘(1) The District Court may make an enforcement order if the court is satisfied about any of the following—
- (a) a notice offence has been committed or, unless an enforcement order is made, will be committed;
  - (b) a division 3 undertaking has been contravened or, unless an enforcement order is made, will be contravened.
- ‘(2) Subsection (1) applies whether or not there has been a prosecution for the notice offence.

### **‘183D Making interim enforcement order**

- ‘(1) If a prescribed applicant has brought a proceeding for an enforcement order but the District Court has not decided the proceeding, the court may make an interim enforcement order if it is satisfied it would be appropriate to make the interim enforcement order.

- ‘(2) The District Court may make the interim enforcement order on application by the prescribed applicant or on its own initiative.
- ‘(3) An interim enforcement order may be made subject to conditions.

### ‘183E Effect of order

- ‘(1) An enforcement order or an interim enforcement order may direct a person (the *respondent*) to do 1 or more of the following—
  - (a) to stop an activity that constitutes, or will constitute, a notice offence or a contravention of a division 3 undertaking;
  - (b) not to start an activity that will constitute a notice offence or a contravention of a division 3 undertaking;
  - (c) to do anything required to stop committing a notice offence, or a contravention of a division 3 undertaking, including, for example, requiring the repair, demolition or removal of a ship or a part of a ship.
- ‘(2) If an enforcement order or an interim enforcement order is made as mentioned in subsection (1), the District Court may do either or both of the following—
  - (a) direct the respondent to give a security bond to the State for a stated period for a matter mentioned in the enforcement order or interim enforcement order;
  - (b) make another order the court considers appropriate.
- ‘(3) An enforcement order or interim enforcement order—
  - (a) may be in terms the District Court considers appropriate to secure compliance with this Act; and
  - (b) must state the time by which the order is to be complied with.
- ‘(4) A person who contravenes an enforcement order or interim enforcement order commits an offence against this Act.

Maximum penalty—500 penalty units or 1 year’s imprisonment.

- ‘(5) The District Court may order the forfeiture to the State of all or part of the security bond given by the respondent under subsection (2)(a) if—
- (a) a prescribed applicant applies to the court for an order for the forfeiture of all or part of the security bond; and
  - (b) the court is satisfied that the respondent contravened the enforcement order or interim enforcement order during the period for which the security bond was given, whether or not the respondent has been prosecuted for an offence against subsection (4).

**‘183F Powers of District Court about enforcement order or interim enforcement order**

- ‘(1) The District Court’s power to make an enforcement order or interim enforcement order to stop, or not to start, an activity may be exercised whether or not—
- (a) it appears to the court that the person against whom the order is made intends to engage, or to continue to engage, in the activity; or
  - (b) the person has previously engaged in an activity of the kind; or
  - (c) it appears to the court a marine incident may happen if the person engages, or continues to engage, in the activity.
- ‘(2) The District Court’s power to make an enforcement order or interim enforcement order to do anything may be exercised whether or not—
- (a) it appears to the court that the person against whom the order is made intends to fail, or to continue to fail, to do the thing; or
  - (b) the person has previously failed to do a thing of the kind; or
  - (c) it appears to the court a marine incident may happen if the person fails, or continues to fail, to do the thing.
- ‘(3) The District Court may cancel or amend an enforcement order or interim enforcement order.

- ‘(4) The District Court’s power under this section is in addition to its other powers.

**‘183G No undertaking as to damages or costs may be required**

‘To remove any doubt, it is declared that no undertaking as to damages or costs may be required of a prescribed applicant or the State in relation to an enforcement order or interim enforcement order.

**‘Division 3 Undertakings**

**‘183H General manager may seek division 3 undertaking**

- ‘(1) This section applies if the general manager reasonably believes a person has contravened, will contravene or will be involved in a contravention of, this Act.
- ‘(2) The general manager may, by written notice given to the person—
- (a) state the act or omission the general manager believes is, or will constitute, the contravention or involvement with the contravention; and
  - (b) ask the person to give the general manager a written undertaking under this division (a *division 3 undertaking*) that the person will not commit, continue to commit or repeat the act or omission.

**‘183I Undertaking about other matter**

‘Without limiting section 183H, the general manager may accept a division 3 undertaking given by a person for this division about anything for which the chief executive, the general manager or a harbour master has a function or power under this Act.

**‘183J Variation and withdrawal of division 3 undertaking**

- ‘(1) This section applies if the general manager has accepted a division 3 undertaking given by a person.
- ‘(2) The person may vary or withdraw the division 3 undertaking only if the general manager agrees to the variation or withdrawal.
- ‘(3) The general manager may—
  - (a) vary the division 3 undertaking only if the person agrees to the variation; or
  - (b) withdraw the division 3 undertaking only if the general manager reasonably believes either of the following—
    - (i) before the division 3 undertaking was accepted, the person contravened this Act in a way unknown to the general manager and, had the general manager known about the contravention, he or she would not have accepted the division 3 undertaking;
    - (ii) the division 3 undertaking is no longer necessary.
- ‘(4) If a division 3 undertaking is varied or withdrawn under this section, the general manager must give written notice of the variation or withdrawal to the person.
- ‘(5) The variation or withdrawal takes effect when written notice of the variation or withdrawal is given to the person.

**‘183K Enforcement of division 3 undertaking**

- ‘(1) This section applies if the general manager reasonably believes a person—
  - (a) has contravened a term of a division 3 undertaking; or
  - (b) will contravene a term of a division 3 undertaking, unless an enforcement order is made.
- ‘(2) The general manager may apply to the District Court for an enforcement order under division 2.

**‘183L Register of division 3 undertakings**

- ‘(1) The general manager must, in any way the general manager reasonably considers appropriate, keep a register of each division 3 undertaking given to the general manager by a person under this division.
- ‘(2) Also, the general manager must ensure the register is available for public inspection, without charge, at a place prescribed under a regulation during normal working hours.’.

**88 Insertion of new pt 15, div 1, hdg**

Part 15, before section 192—

*insert—*

**‘Division 1                    General’.****89 Insertion of new s 200A**

After section 200—

*insert—*

**‘200A Allegations of false or misleading statements or documents**

‘It is enough for a complaint for an offence against section 148, 149, 176, 177, 202T, 202U or 205 to state the statement made, or document given, was ‘false or misleading’ to the person’s knowledge, without specifying whether it was false or whether it was misleading.’.

**90 Amendment of s 201 (Evidentiary provisions)**

Section 201(4)(e), ‘order or’—

*omit.*

**91 Insertion of new pt 15, divs 2–4**

Part 15, after section 202—

*insert—*





- (b) if the person is currently disqualified from holding a licence for a stated time—
    - (i) from the time of the conviction, the person is disqualified absolutely; or
    - (ii) from a time stated by the court, the person is disqualified for a stated time from holding or obtaining a licence; or
  - (c) otherwise—from the time of the conviction, the person is disqualified absolutely, or for a time stated by the court, from holding or obtaining a licence.
- ‘(3) A court that makes an order under subsection (2) is a ***disqualifying court***.
- ‘(4) In making an order under subsection (2), the disqualifying court must have regard to—
- (a) the nature of the offence; and
  - (b) the circumstances in which the offence was committed; and
  - (c) the real or potential danger to other persons operating or aboard ships and the public generally; and
  - (d) whether during the period of 5 years before the conviction, including any period before the commencement of this section, the person had been convicted of an offence mentioned in subsection (1)(a).
- ‘(5) An order under subsection (2) is in addition to any other penalty the disqualifying court may impose, or other order the disqualifying court may make, under an Act.
- ‘(6) It does not matter that the person for whom an order under subsection (2) is made—
- (a) was not present when the disqualifying court made its order; or
  - (b) was not called on to show cause why the order should not be made.

**‘202B Dealing with order under s 202A**

- ‘(1) A relevant clerk of the disqualifying court must send a copy of an order under section 202A to the chief executive of the department in which this Act is administered.
- ‘(2) The chief executive must send a copy of the order to the person for whom the order was made.

**‘202C Licence cancelled when order made under s 202A**

- ‘(1) If, at the time the disqualifying court makes an order under section 202A, the person for whom the order is made holds a licence, the licence, and any subsisting licence, is cancelled from the day the order is made.
- ‘(2) The chief executive of the department must give written notice to the person stating that the person is required to give the chief executive the person’s licence, and any subsisting licence, within 7 days after the day the notice is given to the person.
- ‘(3) A person given a notice under subsection (2) must comply with the notice, unless the person has a reasonable excuse.  
Maximum penalty—20 penalty units.
- ‘(4) Despite the cancellation of a licence under subsection (1), if the disqualification by the order under section 202A is suspended pending a decision on an appeal, as mentioned in section 204(5), the licence, and any subsisting licence, is revived during the suspension of the disqualification.

**‘Division 3                      Restricted licences****‘202D Restricted licence for disqualified person**

- ‘(1) This section applies if a person—
  - (a) is convicted before a court, by summary proceeding under the *Justices Act 1886*, of an offence against—
    - (i) section 41, 43, 44, 57, 61, 186, 202J or 211; or

- (ii) the *Transport Operations (Road Use Management) Act 1995*, section 79, other than section 79(1) or (2D); or
  - (iii) the *Transport Operations (Road Use Management) Act 1995*, 80(5A); and
- (b) by order of the court (a ***disqualification order***) is disqualified under section 202A from holding or obtaining a licence.
- ‘(2) The court may, if it has received an application in the approved form from the person, make an order that the person be issued with a restricted licence.
- ‘(3) The application may only be made—
  - (a) at the summary proceeding; and
  - (b) before the court makes the disqualification order.
- ‘(4) For the application—
  - (a) the court may hear evidence relating to all matters relevant to the application; and
  - (b) the applicant and other persons may be called as witnesses; and
  - (c) if the court requires it, the applicant must submit himself or herself as a witness.
- ‘(5) The order may only be made—
  - (a) at the summary proceeding; and
  - (b) in conjunction with the disqualification order.
- ‘(6) If the court grants the application, the court must make an order directing a restricted licence be granted to the applicant during the period of the applicant’s disqualification subject to restrictions, as stated in the order, that—
  - (a) restrict the use, under the restricted licence, of a ship by the applicant to stated circumstances directly connected with the applicant’s means of earning his or her livelihood; and
  - (b) may include, but are not limited to, 1 or more of the following—

- (i) the class of ship that may be operated;
  - (ii) the purpose for which a ship may be operated;
  - (iii) the times at which, or period during which, a ship may be operated;
  - (iv) the waters in which a ship may be operated.
- ‘(7) To remove any doubt, it is declared that if the court makes an order under subsection (2), the applicant—
- (a) is disqualified from holding or obtaining a licence other than the restricted licence; and
  - (b) may not operate a ship, for the operation of which a licence is required, during the period of the disqualification unless the applicant applies for and obtains the restricted licence the court orders may be granted.
- ‘(8) An order under subsection (2) may relate only to a restricted licence that is of the same type and class as the licence held by the applicant immediately before the disqualification in relation to which the application is made.

### **‘202E Other limitations on ordering a restricted licence**

- ‘(1) An application for an order under section 202D for the grant of a restricted licence must not be granted unless the applicant satisfies the court that—
- (a) the applicant is a fit and proper person to hold a restricted licence, having regard to the safety of other operators of ships and the public generally; and
  - (b) a refusal would cause extreme hardship to the applicant, or the applicant’s family, by depriving the applicant of his or her means of earning his or her livelihood; and
  - (c) the disqualification for which the application is made resulted from the applicant’s conviction for an offence committed when the applicant held a licence; and
  - (d) the applicant was the holder of a licence immediately before the disqualification in relation to which the application is made; and

- (e) none of the circumstances mentioned in subsection (2) apply to the applicant.
- ‘(2) For subsection (1)(e), the application must not be granted in any of the following circumstances—
- (a) if, within 5 years before making the application for the order under section 202D including any period before the commencement of this section, either of the following happened—
    - (i) the applicant was disqualified from holding or obtaining a licence;
    - (ii) a licence held by the applicant was suspended or cancelled;
  - (b) if the applicant was previously convicted—
    - (i) in Queensland of an offence mentioned in section 202A(1)(a); or
    - (ii) elsewhere of any offence that, if committed in Queensland, would be an offence mentioned in section 202A(1)(a);

within a period of 5 years before the conviction that results in the disqualification for which the application is made, including any period before the commencement of this section;
  - (c) if the disqualification for which the application is made resulted from a conviction of the applicant for any of the following—
    - (i) an offence committed when the applicant was engaged in an activity directly connected with the applicant’s means of earning his or her livelihood;
    - (ii) an offence committed by the applicant operating a ship when not holding a licence the applicant was required to hold;
    - (iii) an offence committed at a time when the applicant was the holder of a restricted licence;
  - (d) if—
    - (i) the disqualification for which the application is made resulted from the applicant’s conviction for

an offence against the *Transport Operations (Road Use Management) Act 1995*, section 79(2); and

- (ii) the applicant is a person to whom section 79(2D) of that Act would have applied apart from the fact that the person was over the general alcohol limit under that Act.
- ‘(3) For subsection (1)(b), if the applicant is not self-employed, the applicant must produce to the court an affidavit made by the applicant’s employer confirming the applicant would be deprived of the applicant’s means of earning his or her livelihood if the application is refused.
- ‘(4) In subsection (2)(a), the reference to a disqualification, suspension or cancellation does not include—
- (a) a disqualification, suspension or cancellation that was set aside on appeal; or
  - (b) a disqualification, suspension or cancellation because of the applicant’s mental or physical disability.

#### **‘202F Consideration of order for restricted licence when making order disqualifying a person**

‘A court, in considering an order it proposes to make under section 202A(2) disqualifying a person from holding or obtaining a licence absolutely or for a period, must have regard to any other order it proposes to make under section 202D.

#### **‘202G Application for, and grant of, restricted licence**

- ‘(1) This section applies if—
- (a) an order is made under section 202D; and
  - (b) the person for whom the order is made makes an application under a regulation for a restricted licence of the type stated in the order.
- ‘(2) The person who, under a regulation, has the power of granting a licence of the type for which the application is made (*licensing entity*) must grant to the person a restricted licence of the type stated in the order subject to—

- (a) the restrictions imposed by the disqualifying court's order made under section 202D; and
- (b) other terms, provisions, conditions, limitations or restrictions, consistent with the order, as may be stated on the licence under this Act.

### **'202H Duration of restricted licence**

- '(1) In the first instance, a restricted licence must be granted for—
  - (a) if the licence that was cancelled under section 202C(1) included a date for the expiry of the licence—the period remaining until the expiry date; or
  - (b) otherwise—1 year.
- '(2) If a restricted licence is renewed during the period of the cancellation, the restricted licence must be renewed subject to the restrictions stated in the order last made whether under section 202D or 202K.
- '(3) A restricted licence remains in force until it expires or is cancelled, suspended or surrendered under this Act.

### **'202I Regulation-making power in relation to restricted licence**

- '(1) A regulation may be made about restricted licences.
- '(2) Without limiting subsection (1), a regulation about restricted licences may make provision about authorising the chief executive or the general manager to cancel or suspend a restricted licence even though the restricted licence is ordered to be granted under an order of a disqualifying court.

### **'202J Offence of operating ship other than under a restricted licence**

- 'A person who is the holder of a restricted licence must not operate a ship unless—
- (a) the person operates the ship under the restricted licence;  
or



- (b) a licence is not required by anyone to operate the ship.  
Maximum penalty—20 penalty units.

### **‘202K Variation of restrictions**

- ‘(1) This section applies if, after a disqualifying court makes an order under section 202D or this section, the circumstances connected with the disqualified person’s means of earning his or her livelihood have changed.
- ‘(2) The disqualified person (the *applicant*) may apply, in the approved form, to a Magistrates Court exercising jurisdiction at the place where the applicant resides for an order to vary restrictions currently applying to the applicant’s restricted licence by an order of a court.
- ‘(3) For the application, the following must give evidence relating to all matters relevant to the application and must be liable to cross-examination—
- (a) the applicant, if required by the court to submit himself or herself as a witness; and
- (b) any other person, if called as a witness.
- ‘(4) At least 28 days before the date of the hearing for the application, the applicant must give written notice about the application, including the time and place at which the application is to be heard, to the chief executive in a way prescribed under a regulation.
- ‘(5) The chief executive is entitled to appear and be heard and to give and produce evidence at the hearing of the application, including for or against the grant of the application.
- ‘(6) Also, the chief executive is entitled to be represented at the hearing.

*Note—*

The chief executive may be represented by an Australian legal practitioner or government legal officer.

- ‘(7) A court to which an application is made under subsection (2) may, if it considers that the justice of the case requires that it do so and having regard to the restrictions mentioned in section 202D(4), make an order varying the restrictions to

which the restricted licence is subject under section 202D or this section.

- ‘(8) If the chief executive is given—
- (a) a copy of an order made under this section (a *variation order*) certified to be a true copy by a relevant clerk of the court that made the order; and
  - (b) the restricted licence to which the variation order relates;

the licensing entity who dealt with the previous application for the restricted licence under section 202G must vary the restrictions to which the restricted licence is subject so the restrictions accord with those imposed by the court by the variation order.

- ‘(9) Until the licensing entity mentioned in subsection (8) varies the restrictions to which the restricted licence is subject, those restrictions continue to apply to the restricted licence despite any variation order.

## ‘Division 4                    Removal of disqualification

### ‘202L Application for removal of disqualification under div 2

- ‘(1) This section applies if a person was disqualified by an order under section 202A(2) from holding or obtaining a licence absolutely or for a period of more than 2 years, whether or not at the time of the order the person held a licence.
- ‘(2) The person may, at any time after the expiration of 2 years from the start of the disqualification period, apply for the disqualification to be removed.
- ‘(3) The application must be made to—
- (a) if the disqualification was ordered by the Supreme Court—the Supreme Court; or
  - (b) if the disqualification was ordered by the District Court—the District Court; or
  - (c) if the disqualification was not ordered by the Supreme or District Court—

- (i) if the person lives in Queensland—the Magistrates Court exercising jurisdiction at the place where the person lives; or
  - (ii) if the person lives outside Queensland—the Magistrates Court, Central division of the Brisbane Magistrates Courts District.
- ‘(4) At least 28 days before the date of the hearing of the application, the applicant must give written notice about the application, including the time and place at which the application is to be heard, to the chief executive in a way prescribed under a regulation.
- ‘(5) The chief executive is entitled to appear and be heard and to give and produce evidence at the hearing of the application, including for or against the grant of the application.
- ‘(6) Also, the chief executive is entitled to be represented at the hearing.

*Note for subsection (6)—*

The chief executive may be represented by an Australian legal practitioner or government legal officer.

## **‘202M Court hearing an application**

- ‘(1) This section applies to a hearing by the Supreme Court, the District Court or a Magistrates Court of an application under section 202L(2) for the removal of a disqualified person’s disqualification.
- ‘(2) As it considers appropriate, the court may—
- (a) by order, remove the disqualification on and from a date stated in the order; or
  - (b) refuse the application.
- ‘(3) For subsection (2), the court must have regard to the following—
- (a) the character of the disqualified person;
  - (b) the disqualified person’s conduct after the order under section 202A(2) was made;

- (c) the nature of the offence for which the disqualified person was convicted by the disqualifying court;
  - (d) other circumstances relating to the disqualification or application.
- ‘(4) If the application is refused, a further application under section 202L(2) must not be considered if made within 1 year after the date of the refusal.
- ‘(5) If an order for the removal of a disqualification is made under subsection (2)(a), the court may order the applicant to pay all or part of the costs of the application.
- ‘(6) A relevant clerk of the court that deals with the application must give the chief executive information about the outcome of the application.’.

## 92 Replacement of pt 16 (Appeals)

Part 16—

*omit, insert—*

### ‘Part 15A Protection for whistleblowers

#### ‘202N Definitions for pt 15A

‘In this part—

*disclosing person* see section 202P(1).

*official* means—

- (a) the chief executive; or
- (b) the general manager; or
- (c) a harbour master; or
- (d) a shipping inspector.

*reprisal* see section 202R(3).

**‘202O Application of pt 15A**

- ‘(1) This part applies to a person other than a person who makes a disclosure as a public officer under the *Whistleblowers Protection Act 1994*.
- ‘(2) If a disclosure is made under the *Whistleblowers Protection Act 1994*, this part does not limit the application of that Act and that Act does limit the application of this part.

**‘202P General limitation**

- ‘(1) A person (the *disclosing person*) is not civilly or criminally liable for disclosing information to an official about a person’s conduct, whether committed before or after the commencement of this section, that the disclosing person honestly believes, on reasonable grounds, contravenes this Act.
- ‘(2) Without limiting subsection (1)—
  - (a) in a proceeding for defamation, the disclosing person has a defence of absolute privilege for publishing the disclosed information; and
  - (b) if the disclosing person would otherwise be required to maintain confidentiality about the disclosed information under an Act, agreement, oath, rule of law or practice, the disclosing person does not—
    - (i) contravene the Act, oath, rule of law or practice by making the disclosure; or
    - (ii) breach the agreement by making the disclosure.
- ‘(3) In this section—  
*agreement* includes a contract or deed.

**‘202Q Liability for conduct unaffected**

- ‘(1) The liability of the disclosing person for his or her own conduct is not affected only because the disclosing person discloses the conduct to an official.

- ‘(2) However, a court may have regard to the disclosure if the disclosing person is prosecuted for an offence involving the conduct and either of the following applies—
- (a) the disclosing person is the master of a ship and his or her conduct was in compliance with an express instruction of the owner of the ship or someone authorised by the owner to give the instruction;
  - (b) the disclosing person is another member of a ship’s crew and his or her conduct was in compliance with an express instruction of the master of the ship or someone authorised by the master to give the instruction.
- ‘(3) Subsection (2) does not limit the *Penalties and Sentences Act 1992*.

#### **‘202R Reprisal and grounds for reprisal**

- ‘(1) A person must not cause, or attempt or conspire to cause, detriment to another person because, or in the belief that, anybody has made, or may make, a disclosure as mentioned in section 202P(1).
- ‘(2) An attempt to cause detriment includes an attempt to induce a person to cause detriment.
- ‘(3) A contravention of subsection (1) is a reprisal or the taking of a reprisal.
- ‘(4) A ground mentioned in subsection (1) as the ground for a reprisal is the unlawful ground for the reprisal.
- ‘(5) For the contravention to happen, it is sufficient if the unlawful ground is a substantial ground for the act or omission that is the reprisal, even if there is another ground for the act or omission.

#### **‘202S Damages entitlement or other remedy for reprisal**

- ‘(1) A reprisal is a tort and a person who takes a reprisal is liable in damages to anyone who suffers detriment as a result.
- ‘(2) Any appropriate remedy that may be granted by a court for a tort may be granted by a court for the taking of a reprisal.

- ‘(3) If the claim for damages goes to trial in the Supreme Court or the District Court, it must be decided by a judge sitting without a jury.
- ‘(4) This section does not limit any other remedy that may be available at law to the person against whom the reprisal is taken.

### **‘202T False or misleading statements**

‘A person must not, for section 202P(1), state anything to an official that the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units.

### **‘202U False or misleading documents**

- ‘(1) A person must not, for section 202P(1), give an official 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) informs the official, 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.

## **‘Part 16                      Review of and appeals against particular decisions**

### **‘203 Definitions for pt 16**

‘In this part—

*appropriate appeal court* means a court to which a reviewed decision may be appealed under section 203E.

***delegate***, of the chief executive or general manager, means a person who makes a decision as the delegate of the chief executive or general manager.

***original decision*** means a decision made under this Act by the chief executive, the general manager, a delegate of the chief executive or general manager, a harbour master or a shipping inspector, other than—

- (a) a decision mentioned in section 203B; or
- (b) a decision made, or taken to be made, by the chief executive or general manager that confirms or amends a decision, or substitutes another decision, that has been the subject of an application for review.

***reviewed decision*** see section 203C(1).

### **‘203A Main purposes of pt 16**

‘The main purposes of this part are to provide for—

- (a) reviews of particular decisions made under this Act and appeals from the decisions made on review, whether the decisions are made by the chief executive, the general manager, a delegate of the chief executive or general manager, a harbour master or a shipping inspector; and
- (b) the application of the *Transport Planning and Coordination Act 1994*, part 5, divisions 2 and 3;<sup>6</sup> and
- (c) appeals from decisions under section 202A, including, for example, decisions disqualifying persons from holding or obtaining licences.

### **‘203B Review of original decision**

‘(1) A person whose interests are affected by an original decision may ask the following to review it—

- (a) if the original decision was made by the chief executive or a delegate of the chief executive—the chief executive;

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<sup>6</sup> *Transport Planning and Coordination Act 1994*, part 5 (Review of and appeals against decisions), divisions 2 (Review of original decisions) and 3 (Appeals against reviewed decisions)



- (b) otherwise—the general manager.
- ‘(2) The *Transport Planning and Coordination Act 1994*, part 5, division 2—
  - (a) applies to the review; and
  - (b) provides—
    - (i) for the procedure for applying for the review and the way it is to be carried out; and
    - (ii) that the original decision may be stayed by the person applying to—
      - (A) the District Court if the original decision is about a matter mentioned in section 203E; or
      - (B) the Magistrates Court for any other decision.
- ‘(3) For the application of the *Transport Planning and Coordination Act 1994*, part 5, division 2, if the original decision was made by the general manager or a delegate of the general manager, a reference to the chief executive in that division, including, for example, sections 33 and 34 of that Act, is taken to be a reference to the general manager.

### ‘203C Appeal against reviewed decision

- ‘(1) This section applies if the chief executive or general manager—
  - (a) confirms or amends an original decision or substitutes another decision (the *reviewed decision*); or
  - (b) is taken to have made a decision confirming an original decision (also the *reviewed decision*).
- ‘(2) The person may appeal against the reviewed decision to the appropriate appeal court.
- ‘(3) The *Transport Planning and Coordination Act 1994*, part 5, division 3—
  - (a) applies to the appeal; and
  - (b) provides—
    - (i) for the procedure for the appeal and the way it is to be disposed of; and

- (ii) that the reviewed decision may be stayed by the person applying to the appropriate appeal court.
- ‘(4) For the application of the *Transport Planning and Coordination Act 1994*, part 5, division 3, if the reviewed decision was made, or is taken to have been made, by the general manager, a reference in that division to the chief executive is taken to be a reference to the general manager.

### **‘203D Decisions that can not be appealed against etc.**

‘The following decisions can not be appealed against or be the subject of a review—

- (a) a decision of the Governor in Council;
- (b) a decision of the Minister about the Marine Board or a board of inquiry;
- (c) a decision of the chief executive or general manager about a standard.

### **‘203E Appropriate appeal court**

- ‘(1) A person whose interests are affected by a reviewed decision under this Act about any of the following matters may appeal against the decision to the District Court—
- (a) the registration of a ship;
  - (b) a certificate of compliance or survey for a ship;
  - (c) the licensing of a person to be the master, a crew member or a pilot of a ship;
  - (d) the accreditation of a person as a ship designer, ship builder or marine surveyor;
  - (e) the approval of the design of a ship or part of a ship;
  - (f) a decision declared under a regulation to be a decision against which an appeal may be made to the District Court.
- ‘(2) A person whose interests are affected by another reviewed decision under this Act may appeal against the decision to a Magistrates Court.

**‘204 Appeals in relation to disqualification under s 202A**

- ‘(1) This section applies to a person who, because of a conviction for an offence mentioned in section 202A(1), is disqualified from holding or obtaining a licence by an order under section 202A.
- ‘(2) The disqualified person may appeal against the order in the same way the person may appeal against the conviction.
- ‘(3) The court deciding the appeal may, having regard to the circumstances of the case and as it considers appropriate—
  - (a) by order, remove the disqualification on and from a date stated in the order; or
  - (b) dismiss the appeal.
- ‘(4) A relevant clerk of the court deciding the appeal must give information about the outcome of the appeal to the chief executive.
- ‘(5) If the disqualified person starts an appeal against the conviction, the disqualification is suspended pending the decision on the appeal.
- ‘(6) However, subject to any decision of a court on the appeal, the part of the period of disqualification that had not expired when the suspension began to operate takes effect from the date of decision of the appeal.’.

**93 Amendment of s 205 (False or misleading documents)**

- (1) Section 205(1) and (2)(a), ‘, misleading or incomplete’—  
*omit insert—*  
‘or misleading’.
- (2) Section 205(3)—  
*omit, insert—*
- ‘(3) This section does not apply to a document given under section 202U to an official within the meaning of section 202N.’.

**94 Amendment of s 205A (Inquiries about person's suitability to conduct examinations or conduct training programs)**

- (1) Section 205A(1), after 'The chief executive'—  
*insert—*  
'or the general manager'.
- (2) Section 205A(2)—  
*omit, insert—*
- '(1A) Without limiting subsection (1), the chief executive or the general manager may ask the commissioner of the police service for a written report about a person's criminal history.
- '(2) The commissioner of the police service must give a written report about a person's criminal history—
- (a) to the chief executive if the chief executive asked the commissioner for the person's criminal history; or
  - (b) to the general manager if the general manager asked the commissioner for the person's criminal history.'

**95 Insertion of new s 205B**

After section 205A—

*insert—*

**'205B Electronic search to verify person is holder of licence**

- '(1) A person may, on payment of the fee prescribed under a regulation, electronically search information held by the department about licences to verify that a person is the holder of a licence under this Act.
- '(2) However, the person may search information only—
- (a) to verify the person's own licence; or
  - (b) with the consent of the person to whom the search relates.'

**96 Amendment of s 206 (Signals of distress)**

Section 206(4), from ‘an offence against’ to ‘convicts the person’—

*omit insert—*

‘a person is convicted of an offence against this section, the court’.

**97 Replacement of s 215 (Pilotage fees and conservancy dues)**

Section 215—

*omit, insert—*

**‘215 Pilotage fees, conservancy dues and related matters**

‘(1) A regulation may provide for the following—

(a) establishing fees on a user pays basis—

(i) for pilotage services in pilotage areas and compulsory pilotage areas; and

(ii) for other services for other matters incidental or related to pilotage services, including, for example, establishing other fees for delay or cancellation of pilotage services;

(b) establishing conservancy dues in relation to ships;

(c) procedures for the payment of pilotage fees, other fees and conservancy dues;

(d) procedures for recovering pilotage fees, other fees or conservancy dues payable under this Act.

‘(2) Without limiting the *Statutory Instruments Act 1992*, sections 24 or 25, for establishing a pilotage fee, other fee or conservancy due under subsection (1), a regulation may establish the pilotage fee, other fee or conservancy due by reference to a ship’s length.

‘(3) A conservancy due may be a tax.

‘(4) In this section—

*other fee* means a fee for other services for other matters incidental or related to pilotage services, established under a regulation as mentioned in subsection (1)(a)(ii).

*pilotage fee* means a fee for pilotage services, established under a regulation as mentioned in subsection (1)(a)(i).’.

## 98 Amendment of 217 (Regulations about aquatic events and activities)

- (1) Section 217, ‘about the safety of ships or persons’—  
*omit.*
- (2) Section 217—  
*insert—*
- ‘(2) If a regulation requires a person (an *applicant*) to obtain the consent of a stated person under the regulation before holding an event or activity mentioned in subsection (1), neither the State or the stated person—
  - (a) is responsible for supervising the holding of the event or activity; or
  - (b) is liable in relation to the holding or conduct of the event or activity.
- ‘(3) Subsection (2) does not prevent the State being held liable in relation to the grant of the consent to the applicant to hold the event or activity by a person whose consent was required under a regulation.’.

## 99 Amendment of s 218 (Other matters for regulations)

- (1) Section 218(1)(e)—  
*omit, insert—*
- ‘(e) where buoy moorings may be established, approvals for establishing buoy moorings at locations and other matters relating to identifying and using buoy moorings.’.
- (2) Section 218—  
*insert—*

- ‘(3) If under a regulation, whether made before or after the commencement of this subsection, the general manager or the chief executive approved the establishment of a buoy mooring or where a buoy mooring may be established, the general manager, the chief executive and the State are not, and never have been, responsible—
- (a) for approving the structural integrity of the buoy mooring; or
  - (b) for other matters in relation to the buoy mooring’s establishment or maintenance.
- ‘(4) The general manager, the chief executive and the State are not, and never have been, liable in relation to a buoy mooring’s establishment or maintenance other than in relation to the approval of the location of the buoy mooring.
- ‘(5) However if a court decided a matter before the commencement of this subsection, and the decision included a finding that the general manager, the chief executive or the State was liable in relation to an approval in relation to a buoy mooring, the decision is not affected by subsections (3) and (4).’.

## **100 Insertion of new s 219**

Part 18—

*insert—*

### **‘219 General manager’s power to fix other matters by gazette notice**

‘Without limiting the *Statutory Instruments Act 1992*, section 26,<sup>7</sup> a regulation may authorise the general manager to provide, by gazette notice, for an aspect of a matter prescribed in the regulation.

*Examples of aspects of matters—*

- changing times prescribed in a regulation for reporting matters relevant to ships with dangerous cargo or for matters about notice requirements for amending or cancelling pilotage

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<sup>7</sup> *Statutory Instruments Act 1992*, section 26 (Statutory instrument may authorise determination etc. by specified person etc.)

- defining areas of Queensland waters as category areas for buoy moorings
- stating waters where the presence of anchored ships involves danger to aircraft or other ships or the anchoring, berthing, mooring or operating of a ship, or type of ship, endangers marine safety’.

**101 Insertion of new pt 19, div 1, hdg**

Part 19, before section 220—

*insert—*

**‘Division 1 Provisions for Act No. 14 of 1994’.****102 Omission of s 224 (Existing approvals, consents, licences, permits etc.)**

Section 224—

*omit.*

**103 Replacement of pt 20, hdg (Transitional provisions for Maritime Safety Queensland Act 2002)**

Part 20, heading—

*omit, insert—*

**‘Division 2 Provisions for Maritime Safety Queensland Act 2002’.****104 Amendment of s 225 (Definitions for pt 20)**

- (1) Section 225, heading, ‘pt 20’—

*omit, insert—*

**‘div 2’.**

- (2) Section 225, ‘part’—

*omit, insert—*

**‘division’.**



**105 Insertion of new pt 19, div 3 and schedule**

After section 235—

*insert—*

**‘Division 3                      Provisions for Maritime and Other  
Legislation Amendment Act 2006**

**‘236 References in other legislation to words defined  
in s 4**

- ‘(1) This section applies to a reference in another Act or statutory instrument, that is in force at the commencement of this section, to a word or expression as defined in this Act (however the reference is worded) that includes a reference to section 4.

*Example—*

The *Transport Infrastructure (Public Marine Facilities) Regulation 2000*, schedule 4 includes a definition of ship as follows—

*ship* see *Transport Operations (Marine Safety) Act 1994*, section 4.

- ‘(2) If the context permits, the reference is taken to be a reference to that word or expression as defined in the schedule.
- ‘(3) In this section—  
*section 4* means section 4 of this Act as the section was in force immediately before the commencement of this section.

**‘237 Provisions relating to the power of harbour masters  
before the commencement to give directions**

- ‘(1) If a direction was given under part 7, division 2 before the commencement of this section and continued to have effect immediately before the commencement—
- (a) the direction continues to have effect; and
  - (b) this Act, as in force immediately before the commencement, continues to apply to the direction and the obligations of any person arising out of the direction.

*Examples for paragraph (b)—*

- 1 If, before the commencement of this section, the master of a ship is taken to have been given a direction that, under

section 86(3), was given to a crew member, after the commencement the master continues to have an obligation to comply with the direction.

- 2 If, before the commencement of this section, a person is given a direction under section 89, after the commencement the person continues to have an obligation to comply with the direction even though it was not in writing.

- ‘(2) If a harbour master had started to carry out a direction or proposed direction as mentioned in section 93 as in force immediately before the commencement, the harbour master may continue to carry out the direction or proposed direction.
- ‘(3) Section 94, as in force immediately before the commencement, continues to apply to an expense incurred before the commencement and also applies to an expense incurred by a harbour master who, under subsection (2), continues to carry out a direction or proposed direction.
- ‘(4) Subsections (2) and (3) do not limit subsection (1).

### **‘238 Reasonable excuse for not reporting marine incident**

‘Section 125(4) and (5) apply in relation to a marine incident even if it happened before the commencement of this section.

### **‘239 Direction or notice given by shipping inspector before the commencement**

- ‘(1) This section applies to any of the following given by a shipping inspector before the commencement of this section that continues to have effect immediately before the commencement—
- (a) a direction under section 171 or 172, as in force before the commencement;
  - (b) a notice under section 172A, as in force before the commencement.
- ‘(2) This Act, as in force immediately before the commencement, continues to apply to—
- (a) the direction or notice; and
  - (b) the obligations of any person arising out of the direction or notice.

**‘240 Property seized under s 175A before the commencement**

‘If property is seized by a shipping inspector under section 175A before the commencement of this section, that section as in force immediately before the commencement continues to apply in relation to the property and its seizure.

**‘241 Enforcement order or interim enforcement order only if offence committed after the commencement**

‘An enforcement order or interim enforcement order may not be made under part 13A, division 2 in relation to an offence committed entirely before the commencement of this section.

**‘242 Disqualification under s 202A only if offence committed after the commencement**

‘Section 202A does not apply to a person if the person committed an offence mentioned in section 202A(1)(a) before the commencement of this section.

**‘243 Decisions made before the commencement**

‘(1) If a person whose interests were affected by a pre-commencement decision started an appeal under previous part 16 against the decision—

(a) previous part 16 continues to apply to the appeal; and

(b) previous part 16 applies in relation to any decision made on appeal about the pre-commencement decision.

‘(2) If a person whose interests were affected by a pre-commencement decision had not started an appeal under previous part 16 against the decision before the commencement of this section, the person may not start an appeal under previous part 16 but may take action in relation to the pre-commencement decision under new part 16.

‘(3) In this section—

*new part 16* means part 16 as in force immediately after the commencement of this section.

*pre-commencement decision* means a decision made under this Act before the commencement of this section that may be appealed under previous part 16.

*previous part 16* means part 16 as in force immediately before the commencement of this section.

**‘244 Existing licences to drive speedboats and other recreational ship master’s licences**

- ‘(1) This section applies to a person—
- (a) who, immediately before the commencement of this section, was taken to be the holder of a licence under this Act<sup>8</sup> that was a licence to drive a speedboat; or
  - (b) who, on or after 3 June 1994, became the holder of a recreational ship master’s licence.
- ‘(2) If, before the commencement, a licence mentioned in subsection (1) had not been cancelled or surrendered under this Act, the person who holds the licence is taken to be the holder of a licence under this Act to operate a recreational ship as its master as if the licence were granted under this Act.
- ‘(3) If, before the commencement, a licence mentioned in subsection (1) had been suspended under this Act for a period, the person who holds the licence is taken to be the holder of a licence under this Act to operate a recreational ship as its master as if the licence were granted under this Act but suspended until the period expires.
- ‘(4) To remove any doubt, it is declared that a recreational ship master’s licence granted on or after 3 June 1994 and before the commencement, has not expired even if the licence included an expiry date on the licence.

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8 Repealed section 224 previously dealt with this issue.

## ‘Schedule Dictionary

### section 4

**accredited**, in relation to a ship designer, ship builder or marine surveyor, means a ship designer, ship builder or marine surveyor accredited under a regulation.

**aid to navigation** see section 104.

**appropriate appeal court**, for part 16, see section 203.

**approval** means any of the following—

- (a) registration of a ship;
- (b) licensing of a person as a master, crew member or pilot;
- (c) accreditation of an entity to license a person as a master, crew member or pilot;
- (d) approval of an entity to conduct training programs relating to the operation of ships;
- (e) permission for a person to operate a ship as its master or pilot;
- (f) accreditation of a ship designer, ship builder or marine surveyor.

**approved form** see section 206B.

**Australian legal practitioner** see the *Legal Profession Act 2004*, schedule 5.

**building**, in relation to a ship, includes altering the ship, or replacing a part of the ship, if the alteration or replacement is declared, under a regulation, to be an alteration or replacement that may affect marine safety.

**buoy mooring** means something, other than the ship’s own equipment, used, or intended to be used, for mooring a ship, that consists of each of the following—

- (a) a device attached to or sitting on the seabed or the bed of other Queensland waters;

- (b) a system involving cables, chains or ropes that is attached to the device mentioned in paragraph (a);
- (c) a buoy or other float on the surface of the water, that is attached to the system mentioned in paragraph (b) and marks the location of the device and system.

**causes** includes—

- (a) for a marine incident—substantially contributing to the marine incident; and
- (b) for the death of, or grievous bodily harm to, a person—substantially contributing to the death of, or grievous bodily harm to, the person.

**certificate of compliance** see section 5.

**certificate of survey**, for a ship, means a certificate of survey issued for the ship under a regulation.

**commercial ship** see section 10A(1).

**Commonwealth Navigation Act** means the *Navigation Act 1912* (Cwlth).

**compulsory pilotage area** means a pilotage area, or part of a pilotage area, declared under a regulation to be a compulsory pilotage area.

**connected with Queensland**, for a ship, see section 6.

**convicted**, of an offence, means being found guilty of the offence, on a plea of guilty or otherwise, whether or not a conviction is recorded.

**delegate**, of the chief executive or general manager, for part 16, see section 203.

**disclosing person**, for part 15A, see section 202P(1).

**disqualified person** means a person for whom there is an order of a court under section 202A(2) disqualifying the person from holding or obtaining a licence, either absolutely or for a period ordered by the court.

**disqualifying court** see section 202A(3).

**division 3 undertaking**, for part 13A, means an undertaking under part 13A, division 3.

***enforcement order*** means an order of the District Court under part 13A, division 2—

- (a) to remedy or restrain the commission of a notice offence; or
- (b) to ensure compliance with a division 3 undertaking.

***fishing ship*** see section 10A(2).

***general direction*** see section 86A(2).

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

***government legal officer*** see the *Legal Profession Act 2004*, schedule 5.

***grievous bodily harm*** has the meaning given by the Criminal Code.

***harbour master*** means a person who is appointed under this Act as a harbour master.

***interim enforcement order*** means an order under section 183D.

***interstate voyage*** means an inter-State voyage as defined under the Commonwealth Navigation Act.

***licence*** means—

- (a) a licence provided for under section 60(1); or
- (b) a restricted licence.

***licensing entity*** see section 202G(2).

***lost***, in relation to a ship or part of a ship, includes sunk and wrecked.

***marine incident*** see section 123.

***marine incident area***, for a provision in part 7, division 2 under which a harbour master is authorised to give a direction in relation to a marine incident area, means an area where the harbour master reasonably believes a marine incident has happened or is likely to happen.

***master*** see section 7.

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

**notice offence** means an offence against any of the following provisions involving a person contravening a direction or requirement under this Act—

- section 87B(3)
- section 88(2)
- section 89(2)
- section 90(3)
- section 91(3)
- section 92(4)
- section 171(3)
- section 172(4)
- section 172AA(3)
- section 172AA(6)
- section 172A(4)
- section 175(2).

**obstruct** includes hinder, resist and attempt to obstruct.

**official**, for part 15A, see section 202N.

**operates**, a ship, see section 8.

**original decision**, for part 16, see section 203.

**overseas voyage** means an overseas voyage as defined under the Commonwealth Navigation Act.

**owner**, of a ship, see section 9.

**particular direction** see section 86A(4).

**person in control** includes—

- (a) for a ship—the ship’s master or the person who appears to be the ship’s master; and
- (b) for a vehicle—the vehicle’s driver or the person who appears to be the vehicle’s driver.



***pilot*** means a person licensed under a regulation as a pilot and who, when on board a ship, has the conduct of it even though the person does not belong to the ship.

***pilotage area*** means an area of Queensland waters that is declared under this Act to be a pilotage area.

***place*** includes land and premises, but does not include a ship or vehicle.

***port***, of a port authority, has the same meaning as in the *Transport Infrastructure Act 1994*.

***port authority*** means a port authority under the *Transport Infrastructure Act 1994*.

***premises*** includes—

- (a) a building or other structure or part of a building or other structure; and
- (b) land where a building or other structure is situated.

***prescribed applicant***, for part 13A, means any of the following—

- (a) the chief executive;
- (b) the general manager;
- (c) a harbour master.

***Queensland intrastate voyage*** means a voyage beginning or ending in Queensland waters, other than an interstate voyage or overseas voyage.

***reasonably believes*** means believes on grounds that are reasonable in all the circumstances.

***reasonably considers*** means considers on grounds that are reasonable in all the circumstances.

***reasonably satisfied*** means satisfied on grounds that are reasonable in all the circumstances.

***recreational ship*** see section 10A(3).

***relevant clerk***, of a court, means—

- (a) if the court is a Magistrates Court—the clerk of the court; or

- (b) if the court is the District Court—a registrar, within the meaning of the *District Court of Queensland Act 1967*, of the court; or
- (c) if the court is the Supreme Court—a registrar of the court.

**reprisal**, for part 15A, see section 202R(3).

**restricted licence** means a licence under part 15, division 3.

**reviewed decision**, for part 16, see section 203C(1).

**set up**, an aid to navigation, includes—

- (a) build, erect or place the aid; and
- (b) add to, alter or remove the aid; and
- (c) change its character or the way it exhibits its lights; and
- (d) maintain the aid.

**ship** see section 10.

**shipping inspector** means a person who is appointed under this Act as a shipping inspector, and includes a harbour master.

**source of interference** see section 92(1).

**standard** means a standard made under section 45 and includes an interim standard.

**tender** means an auxiliary ship, other than a lifeboat, that—

- (a) is not longer than 6m; and
- (b) is employed to attend another ship; and
- (c) is smaller than the other ship; and
- (d) is operated only in the proximity of the other ship.

**vehicle** includes an aircraft but does not include a ship.’

## **Part 5                      Amendment of other legislation**

### **Division 1                      Amendment of Transport Infrastructure Act 1994**

#### **106      Act amended in div 1**

This division amends the *Transport Infrastructure Act 1994*.

#### **107      Amendment of s 84B (State toll road corridor land on rail corridor land)**

(1) Section 84B(4)(a) and (5), ‘chief executive’—

*omit, insert—*

‘relevant person’.

(2) Section 84B—

*insert—*

‘(8) In this section—

*relevant person*, for State toll road corridor land, means—

(a) the chief executive; or

(b) if the State toll road corridor land has been leased—the person to whom the land has been leased.’.

#### **108      Amendment of s 85 (Power to enter into road franchise agreements)**

Section 85(3)—

*insert—*

‘(c) provisions about administration charges in relation to tolls for the use of the road transport infrastructure.’.

#### **109      Insertion of new s 85A**

After section 85—

*insert—*

**‘85A Franchised road on rail corridor land**

- ‘(1) If, under section 85, the Minister intends to enter into a road franchise agreement involving the construction, maintenance or operation of a road, or part of a road, that crosses rail corridor land and continues on the other side of the rail corridor land, the Minister must—
- (a) consult with the railway manager, if any, for the rail corridor land; and
  - (b) give the railway manager a reasonable opportunity to make submissions to the Minister about the intended declaration.
- ‘(2) If the Minister enters into the road franchise agreement, the Minister must, by gazette notice, declare the part of the rail corridor land where it is crossed by the road to be a common area (*common area*) for the rail corridor land and the franchised road.
- ‘(3) The declaration of the common area must be made as soon as practicable after the Minister enters into the road franchise agreement.
- ‘(4) After the common area is declared—
- (a) the franchisee may construct, maintain or operate a franchised road on the common area in a way not inconsistent with its use as rail corridor land; and  
*Examples for paragraph (a)—*
    - a bridge or other structure over a railway
    - a bridge or other structure that allows the franchised road to pass under the railway
  - (b) the railway manager, if any, for the rail corridor land may construct, maintain and operate a railway on the common area in a way not inconsistent with its use as a franchised road; and
  - (c) the railway manager and its agents or employees do not have any liability for the franchised road or its use or operation on the common area.
- ‘(5) Unless the franchisee and the railway manager, if any, for the rail corridor land otherwise agree—

- (a) subject to section 251,<sup>9</sup> the franchisee is responsible for maintaining a franchised road on the common area; and
  - (b) if the franchised road on the common area stops being used, the franchisee is responsible for the cost of removing road transport infrastructure from the common area and restoring the railway.
- ‘(6) The State is taken not to be in breach of any of its obligations in a sublease of the rail corridor land, whether entered into before or after the commencement of this section, between the State and the railway manager by—
- (a) the road franchise agreement; or
  - (b) anything done by the franchisee under this chapter for the common area.
- ‘(7) After the common area is declared—
- (a) the chief executive must, as soon as practicable, give a copy of the gazette notice of the declaration to the registrar of titles; and
  - (b) the registrar of titles must record the declaration on the relevant lease of the rail corridor land to the State and any affected sublease in the leasehold land register; and
  - (c) any existing common area on the part of the rail corridor land where it is crossed by the franchised road is, on the publication of the declaration, extinguished.’.

**110 Amendment of s 90 (Application of other provisions of this chapter)**

Section 90(1), ‘the other parts of this chapter, and of regulations made for this chapter’—

*omit, insert—*

‘parts 1 to 5, and regulations made for the parts’.

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<sup>9</sup> Section 251 (Maintaining roads crossing railways)

**111 Amendment of s 92 (Definitions for pt 7)**

Section 92, definition *user administration charge*, after ‘by use of’—

*insert*—

‘a touch tag or’.

**112 Amendment of s 94 (Liability for toll and user administration charge and satisfying the liability)**

Section 94(1)(b), after ‘by use of’—

*insert*—

‘a touch tag or’.

**113 Amendment of s 96 (Application of div 3)**

Section 96(b), ‘section 94(3)’—

*omit, insert*—

‘section 94(3A)’.

**114 Amendment of s 97 (Definition for div 3)**

(1) Section 97, definition *deferred toll amount*, paragraph (a), ‘section 94(3)’—

*omit, insert*—

‘section 94(3A)’.

(2) Section 97, definition *deferred toll amount*, paragraph (c)—

*omit*.

**115 Amendment of s 98 (Liability for administration charge in addition to unpaid toll and user administration charge)**

(1) Section 98, heading, ‘and user administration charge’—

*omit*.

- (2) Section 98(1), ‘and the user administration charge for the toll’—  
*omit.*

### 116 Amendment of s 105B (Definitions for pt 8)

- (1) Section 105B, definition *local government tollway*—  
*omit.*

- (2) Section 105B—  
*insert—*

‘*compliance notice* see section 105GC(2).

*declaration*, for a local government tollway, means a declaration under section 105GA as in force from time to time.

*final notice* see section 105GF(3).

*local government franchisee* means a person with whom a local government has entered into a local government tollway franchise agreement.

*local government tollway* see section 105GA(5).

*matter*, in relation to a contravention, means any matter arising because of the contravention.

*relevant notice* see section 105GH(1).

*revocation notice* see section 105GD(2)(b).

*schedule 5 step-in notice* see section 105GF(2).

*schedule 5A step-in notice* see section 105GG(2).

*suspension notice* see section 105GD(2)(a).’.

- (3) Section 105B, definitions *designated vehicle* and *user administration charge*, ‘section 105ZB(4)’—  
*omit, insert—*  
‘section 105ZB(1)’.

**117 Omission of s 105D (Local government to keep Minister informed)**

Section 105D—

*omit.***118 Amendment of s 105E (Minister may amend approval)**

(1) Section 105E(1), after ‘material change’—

*insert—*

‘of a type mentioned in section 105ZOA’.

(2) Section 105E(4)(a), ‘section 105D’—

*omit, insert—*

‘section 105ZOA’.

**119 Amendment of s 105F (When approval has effect)**

Section 105F(b)(i), ‘section 105ZB’—

*omit, insert—*

‘section 105GA’.

**120 Replacement of s 105G (State not liable for loss relating to approved tollway project)**

Section 105G—

*omit, insert—***‘Division 2A Local government tollway****‘Subdivision 1 Declaration****‘105G Request for declaration**

‘(1) A local government that has an approved tollway project may, by written notice given to the Minister, ask the Minister to declare a local government tollway for the approved tollway project.



- ‘(2) The request must be accompanied by a plan of the proposed local government tollway.
- ‘(3) After receiving the application and the plan, the Minister may, by written notice given to the local government, ask the local government to give the Minister, within the reasonable time stated in the notice—
  - (a) further information or documents about the approved tollway project or proposed local government tollway; or
  - (b) a revised plan or another plan for the local government tollway.
- ‘(4) If the local government does not comply with a request made under subsection (3), the Minister may make the decision about the declaration without the further information or document or revised or other plan.

#### **‘105GA Declaration**

- ‘(1) If the Minister receives a request under section 105G, the Minister may, by gazette notice, declare that any of the following is a local government tollway—
  - (a) a local government franchised road or part of a local government franchised road;
  - (b) local government tollway corridor land or part of local government tollway corridor land.
- ‘(2) Without limiting the matters to which the Minister may have regard in deciding whether to declare a local government tollway for an approved tollway project, the Minister may have regard to the following matters—
  - (a) whether there have been any material changes to the approved tollway project;
  - (b) whether the local government has complied with conditions to which, under division 2, the approved tollway project is subject;
  - (c) whether the local government has complied with all other requirements relevant to the approved tollway project under an Act.

- ‘(3) The Minister may, by the gazette notice mentioned in subsection (1), impose the conditions that the Minister considers necessary in the circumstances on the declaration of a local government tollway.
- ‘(4) A condition must be about a matter mentioned in schedule 5 or 5A.
- ‘(5) In this Act, a *local government tollway* means a local government tollway declared under this section and, if the context permits, includes the maintenance or operation of the local government tollway.

#### **‘105GB Amendment etc. of declaration or conditions at request of local government**

- ‘(1) A local government for which the declaration of a local government tollway has been made may, by written notice given to the Minister, ask the Minister—
  - (a) to amend the description of the local government tollway because the boundaries of the land described in the declaration are not stated with adequate certainty; or
  - (b) to amend the declaration by including additional land in, or omitting land from, the declaration; or
  - (c) to impose, amend or remove a condition on the declaration about a matter mentioned in schedule 5 or 5A.
- ‘(2) A request under subsection (1)(a) or (b) must be accompanied by a plan of the local government tollway, identifying the land for which the amendment is sought.
- ‘(3) The Minister may, by gazette notice, amend the declaration as the Minister considers necessary or desirable in the circumstances.
- ‘(4) If the local government makes a request under subsection (1)(c), the Minister may, by gazette notice—
  - (a) if the request relates to a condition mentioned in schedule 5—impose, amend or remove a condition on the declaration about a matter mentioned in schedule 5 as the Minister considers necessary or desirable; or

- (b) if the request relates to a condition mentioned in schedule 5A—impose, amend or remove a condition on the declaration about a matter mentioned in schedule 5A as the Minister considers necessary or desirable.
- ‘(5) An amendment of a declaration or the imposition, amendment or removal of a condition under this section—
- (a) if the amendment relates to a request under subsection (1)(a)—is taken to have had effect from the day on which the declaration of the local government tollway took effect; or
  - (b) otherwise—takes effect from the day the gazette notice is published.

## ‘Subdivision 2 Compliance with conditions of declaration

### ‘105GC Compliance notice

- ‘(1) This section applies if the Minister reasonably believes a condition imposed on a declaration of a local government tollway is being, or has been, contravened by—
- (a) the local government; or
  - (b) if the local government has entered into a local government tollway franchise agreement for the tollway—the local government franchisee.
- ‘(2) The Minister may give the local government a notice (a ***compliance notice***) requiring the local government—
- (a) if the local government is contravening, or has contravened, the condition—
    - (i) to stop contravening the condition; or
    - (ii) to stop contravening the condition and rectify the matter; or
    - (iii) to rectify the matter; or
  - (b) if the local government franchisee is contravening, or has contravened, the condition—

- (i) to ensure the local government franchisee stops contravening the condition; or
  - (ii) to ensure the local government franchisee stops contravening the condition and the local government to rectify, or ensure the local government franchisee rectifies, the matter; or
  - (iii) to rectify, or ensure the local government franchisee rectifies, the matter.
- ‘(3) The compliance notice must state the following—
- (a) that the Minister believes the local government or local government franchisee is contravening, or has contravened, a condition imposed on the declaration of the local government tollway;
  - (b) the condition the Minister believes is being, or has been, contravened;
  - (c) briefly, how it is believed the condition is being, or has been, contravened;
  - (d) if the notice requires the local government to rectify, or ensure the local government franchisee rectifies, a matter—
    - (i) the matter the Minister believes is reasonably capable of being rectified; and
    - (ii) the steps the local government must take to rectify, or ensure the local government franchisee rectifies, the matter; and
    - (iii) the stated reasonable period, not less than 7 days after the day the compliance notice is given, in which the local government must take the steps or ensure the local government franchisee has taken the steps;
  - (e) that if the contravention continues or the matter is not rectified as required, the Minister may take action described in the notice under section 105GD, 105GF or 105GG.
- ‘(4) If the local government has entered into a local government tollway franchise agreement for the local government tollway,

the Minister must also give a copy of the compliance notice to the local government franchisee.

- ‘(5) The local government must, as required by the compliance notice and unless the local government has a reasonable excuse—
- (a) stop contravening the condition or rectify the matter; or
  - (b) ensure the local government franchisee stops contravening the condition or rectifies the matter.

**‘105GD Failure to comply with compliance notice if no local government tollway franchise agreement**

- ‘(1) This section applies if—
- (a) the Minister has given a local government a compliance notice; and
  - (b) the local government fails to stop contravening the condition, or fails to rectify the matter, as required by the compliance notice; and
  - (c) the local government—
    - (i) has not entered into a local government tollway franchise agreement for the local government tollway; or
    - (ii) has entered into a local government tollway franchise agreement for the local government tollway but the agreement has ended.
- ‘(2) The Minister may—
- (a) by written notice (a *suspension notice*) given to the local government, declare that a toll stops being payable for the use of the local government tollway for a period stated in the notice; or
  - (b) give the local government a notice (a *revocation notice*) that states the following—
    - (i) that the Minister believes the local government has failed to stop contravening the condition, or failed to rectify the matter, as required by the compliance notice;

- (ii) briefly, how it is believed the local government has failed to stop contravening the condition, or failed to rectify the matter, as required by the compliance notice, including any of the matters mentioned in section 105GC(3) that are still relevant for the revocation notice;
  - (iii) the steps the local government must take to stop contravening the condition or rectify the matter;
  - (iv) the stated reasonable period, not less than 7 days after the day the revocation notice is given, in which the contravention must stop or the matter must be rectified;
  - (v) that if, within the stated reasonable period, the contravention does not stop or the matter is not rectified, the Minister intends to revoke the declaration of the local government tollway.
- ‘(3) The local government must comply with the revocation notice, unless the local government has a reasonable excuse.

### **‘105GEEffect of revocation notice or suspension notice**

- ‘(1) Subsection (2) applies if—
- (a) the Minister gives a local government a revocation notice; and
  - (b) the local government fails to stop contravening the condition or fails to rectify the matter, as required by the revocation notice.
- ‘(2) The Minister may, by gazette notice, revoke the declaration of the local government tollway.
- ‘(3) A gazette notice under subsection (2) takes effect from the day the gazette notice is published or the later day stated in the gazette notice.
- ‘(4) As soon as practicable after revoking a declaration under subsection (2), the Minister must give the local government a notice (a *final notice*) about the revocation of the declaration.
- ‘(5) If the Minister gives the local government a suspension notice—

- (a) the suspension notice has effect for the period stated in the suspension notice; and
- (b) a person is not liable, under section 105ZC, to pay a toll for the use of the local government tollway for the period.

**‘105G Failure to comply with compliance notice for schedule 5 condition**

- ‘(1) This section applies if—
- (a) a local government has entered into a local government tollway franchise agreement for the local government tollway; and
  - (b) the Minister has given the local government a compliance notice; and
  - (c) the local government or local government franchisee fails to stop contravening the condition, or fails to rectify the matter, as required by the compliance notice; and
  - (d) the condition is a condition mentioned in schedule 5.
- ‘(2) The Minister may give the local government a notice (a *schedule 5 step-in notice*) that states the following—
- (a) that the Minister believes the local government or local government franchisee has failed to stop contravening the condition, or failed to rectify the matter, as required by the compliance notice;
  - (b) briefly, how it is believed the local government or local government franchisee has failed to stop contravening the condition, or failed to rectify the matter, as required by the compliance notice, including any of the matters mentioned in section 105GC(3) that are still relevant for the schedule 5 step-in notice;
  - (c) the steps the local government must take—
    - (i) to stop contravening the condition or to rectify the matter; or
    - (ii) to ensure the local government franchisee stops contravening the condition or rectifies the matter;

- (d) the stated reasonable period, not less than 7 days after the day the schedule 5 step-in notice is given, in which the contravention must stop or the matter must be rectified;
  - (e) that if, within the stated reasonable period, the contravention does not stop or the matter is not rectified, the chief executive may exercise powers under subsection (4).
- ‘(3) The local government must, as required by the schedule 5 step-in notice and unless the local government has a reasonable excuse—
- (a) stop contravening the condition or rectify the matter; or
  - (b) ensure the local government franchisee stops contravening the condition or rectifies the matter.
- ‘(4) If the local government fails to comply with the schedule 5 step-in notice, the chief executive may exercise the powers of the local government under the local government tollway franchise agreement for the purpose of, and only for the purpose of, enforcing the local government’s rights under the agreement in relation to the contravention of the condition.
- ‘(5) The chief executive may exercise rights under subsection (4)—
- (a) as if the chief executive were—
    - (i) a party to the local government tollway franchise agreement in place of the local government; and
    - (ii) subject to the requirements imposed on the exercise of the rights by any agreement the local government has made with a financier in relation to the local government tollway; and
    - (iii) entitled to all the indemnities, benefits and protections in favour of the local government under the local government tollway franchise agreement or any ancillary agreement between the local government and the local government franchisee or the local government franchisee’s financiers; and



- (b) without relieving the local government from any of its obligations and responsibilities under the local government tollway franchise agreement.
- ‘(6) If the chief executive incurs costs, losses or expenses because of the exercise of powers under subsection (4), the amount of the costs, losses or expenses—
- (a) is a debt payable to the State by the local government; and
  - (b) may be recovered as a debt by action against the local government.
- ‘(7) The Minister must also give a copy of the schedule 5 step-in notice to the local government franchisee.

**‘105GG Failure to comply with compliance notice for schedule 5A condition**

- ‘(1) This section applies if—
- (a) a local government has entered into a local government tollway franchise agreement for the local government tollway; and
  - (b) the Minister has given the local government a compliance notice; and
  - (c) the local government fails to stop contravening the condition, or fails to rectify the matter, as required by the compliance notice; and
  - (d) the condition is a condition mentioned in schedule 5A.

*Note—*

The notice would not mention the local government franchisee because the conditions in schedule 5A apply only to the local government.

- ‘(2) The Minister may give the local government a notice (a *schedule 5A step-in notice*) that states the following—
- (a) that the Minister believes the local government has failed to stop contravening the condition, or failed to rectify the matter, as required by the compliance notice;
  - (b) briefly, how it is believed the local government has failed to stop contravening the condition, or failed to

- rectify the matter, as required by the compliance notice, including any of the matters mentioned in section 105GC(3) that are still relevant for the schedule 5A step-in notice;
- (c) the steps the local government must take to stop contravening the condition or to rectify the matter;
  - (d) the stated reasonable period, not less than 7 days after the day the schedule 5A step-in notice is given, in which the contravention must stop or the matter must be rectified;
  - (e) that if, within the stated reasonable period, the contravention does not stop or the matter is not rectified, the chief executive may take steps to stop the contravention or rectify the matter.
- ‘(3) The local government must, as required by the schedule 5A step-in notice, stop contravening the condition or rectify the matter, unless the local government has a reasonable excuse.
- ‘(4) If the local government fails to comply with the schedule 5A step-in notice, the chief executive may take the steps the chief executive considers necessary to stop the contravention or rectify the matter.
- ‘(5) If the chief executive incurs costs, losses or expenses because of taking steps under subsection (4), the amount of the costs, losses or expenses—
- (a) is a debt payable to the State by the local government; and
  - (b) may be recovered as a debt by action against the local government.

### ‘Subdivision 3      Appeal

#### ‘105GH Decision by Minister in relation to notice

- ‘(1) This section applies if the Minister decides to give a local government any of the following notices (a *relevant notice*)—
- (a) a compliance notice;

- (b) a suspension notice;
  - (c) a revocation notice;
  - (d) a final notice;
  - (e) a schedule 5 step-in notice;
  - (f) a schedule 5A step-in notice.
- ‘(2) The relevant notice must state—
- (a) that the local government may appeal against the decision; and
  - (b) that, under the *Transport Planning and Coordination Act 1994*, part 5, division 3, as applied under section 105GI, the local government may ask for the decision to be stayed.

### **‘105GI Appeal against decision**

- ‘(1) This section applies if a local government is given a relevant notice.
- ‘(2) The local government may appeal to the Supreme Court against the Minister’s decision to give the relevant notice.
- ‘(3) The *Transport Planning and Coordination Act 1994*, part 5, division 3—
- (a) applies to the appeal as if—
    - (i) references in the division to the chief executive were references to the Minister; and
    - (ii) references in the division to a reviewed decision were references to the decision; and
    - (iii) references in the division to an appeal court or the appeal court were references to the Supreme Court; and
  - (b) provides—
    - (i) for the procedure for the appeal and the way it is to be disposed of; and
    - (ii) that the decision may be stayed by the local government by applying to the Supreme Court.’.

**121 Amendment of s 105H (Declaration of land as local government tollway corridor land)**

(1) Section 105H(1), after ‘project’—

*insert—*

‘or local government tollway’.

(2) Section 105H—

*insert—*

‘(1A) A request under subsection (1) must be accompanied by—

(a) a survey plan of the local government tollway corridor land for the approved tollway project or local government tollway that—

(i) shows the local government tollway corridor land as it will exist if the declaration is made; and

(ii) identifies the land for which the declaration is sought; and

(b) if the request relates to a local government tollway—a request under section 105GB(1)(a) or (b) to amend the declaration of the local government tollway in accordance with the proposed declaration of the local government tollway corridor land.’.

(3) Section 105H(4)(a) and (b)—

*omit, insert—*

‘(a) all conditions to which, under this Act, the approved tollway project or the declaration of a local government tollway is subject; and

(b) all other requirements relevant to the approved tollway project or the declaration of a local government tollway under an Act.’.

**122 Amendment of s 105Y (Power to enter into tollway franchise agreements)**

(1) Section 105Y(2)(b), ‘section 105ZB,’—

*omit, insert—*

‘division 2A, the declaration of’.

- (2) Section 105Y(2)(c)—  
*omit.*

**123 Replacement of s 105ZA (Annual report on operation of part)**

Section 105ZA—  
*omit, insert—*

**‘105ZA Annual report on operation of part**

- ‘(1) If a local government has entered into a local government tollway franchise agreement, each annual report of the local government under the *Local Government Act 1993* or the *City of Brisbane Act 1924* must include a report on the operation of this part during the financial year to which the report relates.
- ‘(2) Without limiting subsection (1), the report must include—
- (a) if the local government has an approved tollway project—a statement of how it is complying with conditions to which the approval is subject; and
  - (b) if the local government has a local government tollway—a statement of how it is complying with any conditions imposed on the declaration.’.

**124 Replacement of ch 6, pt 8, div 6, hdg (Local government tollways)**

Chapter 6, part 8, division 6, heading—  
*omit, insert—*

**‘Division 6 Tolling matters’.**

**125 Replacement of ch 6, pt 8, div 6, sdiv 1 (Declaration of local government tollways)**

Chapter 6, part 8, division 6, subdivision 1—  
*omit, insert—*

## **‘Subdivision 1 Notice of tolling matters**

### **‘105ZB Local government to give notice of tolling matters**

- ‘(1) A local government must give notice of the matters mentioned in schedule 5 for a local government tollway before a toll becomes payable for the use of the local government tollway.
- ‘(2) Notice under subsection (1) must be given by a notice published in a newspaper circulating generally in the local government’s area and in adjoining local government areas.
- ‘(3) A toll may be set in a way that applies differently—
  - (a) to different classes of vehicles; or
  - (b) by reference to stated exceptions or factors.
- ‘(4) Subsection (3) does not limit schedule 5 or the *Statutory Instruments Act 1992*.
- ‘(5) An administration charge, under a notice under subsection (1), for a toll must not be more than the reasonable cost, under this division, of issuing a notice for, and collecting, the unpaid toll and administration charge for the toll.
- ‘(6) A user administration charge, under a notice under subsection (1), for a toll must not be more than the reasonable cost, under this division, of administering and collecting payment of the toll.’.

### **126 Amendment of s 105ZF (Definition for sdiv 3)**

Section 105ZF, definition *deferred toll amount*, paragraph (c)—  
*omit.*

### **127 Amendment of s 105ZG (Liability for administration charge in addition to unpaid toll and user administration charge)**

- (1) Section 105ZG, heading, ‘and user administration charge’—  
*omit.*

- (2) Section 105ZG(1), ‘and the user administration charge for the toll’—

*omit.*

## **128 Insertion of new ch 6, pt 8, div 7**

After section 105ZO—

*insert—*

### **‘Division 7                      Miscellaneous**

#### **‘105ZOA Local government to keep Minister informed**

- ‘(1) A local government that has an approved tollway project or local government tollway must, by written notice given to the Minister, inform the Minister about any material change relating to the approved tollway project or local government tollway as soon as practicable after the local government becomes aware of the material change.
- ‘(2) Without limiting subsection (1), a material change to an approved tollway project or local government tollway includes a change that may—
- (a) adversely affect the local government’s financial position in a material way; or
  - (b) adversely affect the State’s financial position in a material way; or
  - (c) adversely impact on the operation or management of a State-controlled road, a franchised road or public transport in a material way; or
  - (d) affect the proposed methodology or strategy for charging tolls for use of the local government tollway; or
  - (e) change the performance specifications for the approved tollway project or local government tollway, including, for example, the project alignment or design or the land required for the approved tollway project or local government tollway.

**‘105ZOB State not liable for loss relating to local government tollway etc.**

- ‘(1) The State is not liable for any loss suffered by a local government or another person arising out of any matter relating to an approved tollway project or local government tollway.
- ‘(2) Without limiting subsection (1), the State is not liable for any loss suffered by a local government or another person arising out of the following—
- (a) the approval of a tollway project, including any conditions to which the approval is subject, or any amendment or revocation of the approval;
  - (b) the declaration of a local government tollway;
  - (c) the construction, maintenance or operation of a local government tollway;
  - (d) the declaration of land to be local government tollway corridor land;
  - (e) any condition imposed on a declaration or any amendment of a condition;
  - (f) a decision by the Minister to issue a compliance notice, suspension notice, revocation notice, final notice, schedule 5 step-in notice or schedule 5A step-in notice;
  - (g) anything done under a schedule 5 step-in notice or schedule 5A step-in notice.’.

**129 Amendment of s 249 (Railways on particular roads)**

- (1) Section 249(6), definitions *relevant person* and *relevant road*—  
*omit.*
- (2) Section 249(6)—  
*insert—*  
*‘relevant person* means—
- (a) for a State-controlled road—the chief executive for chapter 6; or



- (b) for a franchised road—the franchisee; or
- (c) for State toll road corridor land—
  - (i) the chief executive for chapter 6; or
  - (ii) if the State toll road corridor land has been leased—the person to whom the land has been leased; or
- (d) for local government tollway corridor land—
  - (i) the local government; or
  - (ii) if the local government tollway corridor land has been leased—the person to whom the land has been leased.

*relevant road* means—

- (a) a State-controlled road; or
- (b) a franchised road; or
- (c) State toll road corridor land; or
- (d) local government tollway corridor land.’.

### **130 Amendment of s 275 (Functions of port authorities)**

Section 275(1)(f)—

*omit insert*—

- ‘(f) without limiting any other paragraph of this subsection, in relation to strategic port land of the following port authorities—
  - (i) the Cairns Port Authority—to provide or arrange for the development and use of its strategic port land for residential and tourist accommodation;
  - (ii) the Port of Brisbane Corporation—to provide or arrange for the development and use of its strategic port land—
    - (A) at Eagle Farm and Hamilton, for residential accommodation, community infrastructure and ancillary services; and

(B) at Fisherman Islands, for local commercial activities;

(iii) the Cairns Port Authority and Port of Brisbane Corporation—to plan or carry out works in relation to the development and use of strategic port land under subparagraphs (i) and (ii); and’.

**131 Amendment of s 285 (Land use plans)**

Section 285(1)(c)(vi)—

*omit, insert—*

‘(vi) for a purpose mentioned in section 275(1)(f); or’.

**132 Amendment of sch 5 (Matters for notice for toll road or local government tollway)**

Schedule 5, heading and authorising section—

*omit, insert—*

**‘Schedule 5 Tolling matters for toll road or local government tollway**

sections 93, 105GA and 105GB’.

**133 Insertion of new sch 5A**

After schedule 5—

*insert—*

**‘Schedule 5A Other matters for conditions for local government tollways**

sections 105GA and 105GB

- 1 traffic management by the local government
- 2 management by the local government of the impact of the local government tollway on the road network

- 3 reports from local government about the local government tollway’.

### 134 Amendment of sch 6 (Dictionary)

Schedule 6—

*insert—*

*‘compliance notice*, for chapter 6, part 8, see section 105B.

*declaration*, for chapter 6, part 8, see section 105B.

*final notice*, for chapter 6, part 8, see section 105B.

*local government franchisee*, for chapter 6, part 8, see section 105B.

*matter*, for chapter 6, part 8, see section 105B.

*relevant notice*, for chapter 6, part 8, see section 105B.

*revocation notice*, for chapter 6, part 8, see section 105B.

*schedule 5 step-in notice*, for chapter 6, part 8, see section 105B.

*schedule 5A step-in notice*, for chapter 6, part 8, see section 105B.

*suspension notice*, for chapter 6, part 8, see section 105B.’.

## Division 2                      **Amendment of Transport Operations (Passenger Transport) Act 1994**

### 135 Act amended in div 2

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

### 136 Insertion of new s 83A

After section 83—

*insert—*

**‘83A Requirement for limousine service licence for stretched passenger car**

‘A person must not provide a public passenger service, other than a community transport service or a courtesy transport service, in a stretched passenger car unless the person holds a limousine service licence.

Maximum penalty—160 penalty units.’.

**137 Insertion of new s 145**

After section 144—

*insert—*

**‘145 Chief executive may declare particular motor vehicles**

‘(1) The chief executive may, by gazette notice, declare a vehicle to be—

- (a) a forward-control passenger vehicle; or
- (b) a luxury motor vehicle.

‘(2) A declaration under subsection (1)—

- (a) starts on the day the gazette notice is published; and
- (b) ends on the day that is 6 months later.’.

**138 Insertion of new ch 13, pt 4**

After section 178—

*insert—*

**‘Part 4** **Provision for Maritime and Other Legislation Amendment Act 2006**

**‘179 Amendment of regulation by Maritime and Other Legislation Amendment Act 2006 does not affect powers of Governor in Council**

‘The amendment of the *Transport Operations (Passenger Transport) Regulation 2005* by the *Maritime and Other*

*Legislation Amendment Act 2006* does not affect the power of the Governor in Council to further amend the regulation or to repeal it.’.

### 139 Amendment of sch 3 (Dictionary)

(1) Schedule 3, definition *luxury motor vehicle*—  
*omit.*

(2) Schedule 3—  
*insert—*

***‘forward-control passenger vehicle—***

(a) means a passenger vehicle, other than an off-road passenger vehicle, having up to 9 seating positions, including the driver’s position, and in which the centre of the steering wheel is in the forward quarter of the vehicle’s total length; and

(b) includes—

(i) a vehicle prescribed under a regulation to be a forward-control passenger vehicle; or

(ii) a vehicle declared by the chief executive under section 145 to be a forward-control passenger vehicle.

*Note—*

The reference to the number of seating positions allows for a consistent definition for the Act and subordinate legislation.

***luxury motor vehicle*** means—

(a) a vehicle declared under a regulation to be a luxury motor vehicle; or

(b) a vehicle declared by the chief executive under section 145 to be a luxury motor vehicle.

***motor vehicle*** has the meaning given by the *Transport Operations (Road Use Management) Act 1995*.

***off-road passenger vehicle*** means a passenger vehicle that has up to 9 seating positions, including the driver’s position,

designed with special features for off-road operation as defined by the Australian Design Rules.

*Note—*

The reference to the number of seating positions allows for a consistent definition for the Act and subordinate legislation.

***passenger car*** means a passenger vehicle, other than an off-road passenger vehicle or a forward-control passenger vehicle, having up to 9 seating positions, including the driver's position.

***passenger vehicle*** means a motor vehicle constructed primarily for the carriage of persons and having at least 4 wheels.

***stretched***, in relation to a passenger vehicle, means the passenger vehicle has been modified by adding an extra section to the body to increase the overall length of the passenger vehicle.

***stretched passenger car*** means a passenger vehicle that—

- (a) has been modified by being stretched; and
  - (b) has more than 9 seating positions, including the driver's position; and
  - (c) was a passenger car before it was modified?.
- (3) Schedule 3, definition *disqualifying offence*, before paragraph (a)—

*insert—*

‘(aa) an offence against this Act, whether the act relating to the offence was or is committed before or after the commencement of this paragraph; or’.

- (4) Schedule 3, definition *disqualifying offence*, paragraph (e), ‘or (d)’—

*omit, insert—*

‘, (d) or (e)’.

- (5) Schedule 3, definition *disqualifying offence*, paragraphs (aa) to (e)—

*renumber* as paragraphs (a) to (f).

### **Division 3                      Amendment of Transport Operations (Road Use Management) Act 1995**

#### **140    Act amended in div 3**

This division amends the *Transport Operations (Road Use Management) Act 1995*.

#### **141    Amendment of s 78 (Driving of motor vehicle without a driver licence prohibited)**

Section 78(3)—

*insert—*

‘(i) if the person committed the offence while, under section 79B—

(i) the person’s Queensland driver licence was suspended; or

(ii) the person’s authority to drive on a Queensland road under a non-Queensland driver licence was suspended; or

(iii) the person was disqualified from holding or obtaining a Queensland driver licence;

for a period, of at least 2 years but not more than 5 years, decided by the court.’.

#### **142    Insertion of new s 79AA**

After section 79—

*insert—*

##### **‘79AA Provisions applying to supervisor of a learner**

‘(1) This section applies to a person who is the supervisor of a learner while the learner is driving a motor vehicle under the direction of the supervisor.

‘(2) The supervisor is in charge of the motor vehicle for the purposes of—

- (a) the relevant provisions; and
- (b) other provisions of this Act applying in relation to any charge, proceedings, conviction or sentence for an offence against a relevant provision.

*Example for subsection (2)(a)—*

- 1 If a learner is driving a car under the direction of a supervisor, the supervisor is in charge of the car and must not be over the general alcohol limit.
  - 2 If a learner is driving a truck or bus under the direction of a supervisor, the supervisor of the learner is in charge of the truck or bus and must not be over the no alcohol limit.
- ‘(3) Subsection (2) has no effect on the application of the relevant provisions, or any other provisions of this Act, to the learner.
- ‘(4) In this section—

***learner*** means—

- (a) the holder of a licence that, under a regulation, authorises the holder to learn to drive a motor vehicle; or
- (b) the holder of a licence granted outside Queensland that corresponds to a licence mentioned in paragraph (a).

***relevant provisions*** means sections 79 and 80.

***supervisor***, of a learner—

- (a) means a person who—
  - (i) under a regulation, is a person with whom a learner is authorised to drive under direction; or
  - (ii) purports to be a person mentioned in subparagraph (i); but
- (b) does not include a person accredited as a driver trainer under a regulation while the person is acting in the person’s professional capacity as a driver trainer.’

## **143 Insertion of new ss 79B–79D**

After section 79A—

*insert—*



**‘79B Immediate suspension or disqualification**

- ‘(1) This section applies if a person is—
- (a) charged under section 79(1) with driving a motor vehicle whilst under the influence of liquor and, when the person is charged, the person is given an analysis certificate in relation to the offence indicating the person was over the high alcohol limit; or
  - (b) charged under section 80(11) with failing to provide a specimen of the person’s breath for analysis or a specimen of the person’s blood for a laboratory test; or
  - (c) charged under section 79(2), (2A), (2B) or (2J) with an offence committed after having been charged, after the commencement of this paragraph, with another offence under section 79(2), (2A), (2B) or (2J) and the earlier charge has not been dealt with by a court, or withdrawn or otherwise discontinued; or
  - (d) charged under the Criminal Code, section 328A(1) or (4) with the dangerous operation of a motor vehicle, when accompanied by a circumstance of aggravation that—
    - (i) at the time of committing the offence the person was adversely affected by an intoxicating substance that is alcohol; and
    - (ii) the person was, at the time, over the high alcohol limit.
- ‘(2) If the person holds a Queensland driver licence, the person’s Queensland driver licence is suspended.
- ‘(3) If the person’s authority to drive on a Queensland road is under a non-Queensland driver licence, the person’s authority under the licence to drive on a Queensland road is suspended.
- ‘(4) If the person does not hold a driver licence, the person is disqualified from obtaining or holding a Queensland driver licence.
- ‘(5) The suspension or disqualification under subsection (2), (3) or (4)—
- (a) starts when the person is charged; and

- (b) ends when the charge is dealt with by a court or is withdrawn or otherwise discontinued.
- ‘(6) If a person’s driver licence is suspended under this section and, at the time the driver licence is suspended, section 80(22AA) also applies to the person, the suspension of the driver licence under section 80(22AA) is superseded by the suspension under this section.
- ‘(7) In this section—  
*analysis certificate* means—
  - (a) a certificate mentioned in section 80(15) stating the concentration of alcohol indicated by an analysis of a person’s breath to be present in the blood or breath of the person; or
  - (b) a certificate mentioned in section 80(16B) stating the concentration of alcohol in a person’s blood indicated by a laboratory test of a specimen of the person’s blood.

### ‘79C When person is charged for s 79B

- ‘(1) This section applies if a proceeding for an offence as mentioned in section 79B(1) is started against a person by notice to appear, arrest or on complaint and summons.
- ‘(2) If the proceeding is started by notice to appear, the person is, for section 79B, taken to be charged with the offence when the notice to appear is issued and served on the person.
- ‘(3) If the proceeding is started by arrest, the person is, for section 79B, taken to have been charged with the offence when the person is arrested.
- ‘(4) If the proceeding is started by complaint and summons, the person is, for section 79B, taken to have been charged with the offence when the complaint and summons is issued and served on the person.
- ‘(5) In this section—  
*notice to appear* has the meaning given by the *Police Powers and Responsibilities Act 2000*.

**‘79D Notice to be given of suspension or disqualification**

- ‘(1) This section applies if, under section 79B—
- (a) a person’s Queensland driver licence, or authority to drive on a Queensland road under a non-Queensland driver licence, is suspended; or
  - (b) a person is disqualified from obtaining or holding a Queensland driver licence.
- ‘(2) As soon as practicable after the person is charged with the offence to which the suspension or disqualification relates—
- (a) a police officer must give the person a notice about the suspension or disqualification, in the approved form, for the person’s information; and
  - (b) the commissioner must give the chief executive notice about the details of the suspension or disqualification.
- ‘(3) Failure by a police officer or the commissioner to give notice under subsection (2)(a) or (b) about the suspension or disqualification does not invalidate the suspension or disqualification, or affect anything done in relation to the suspension or disqualification unless, in relation to a notice under subsection (2)(a), the police officer has no reasonable excuse for failing to give the notice.’

**143A Amendment of s 80 (Provisions with respect to breath tests and laboratory tests)**

- (1) Section 80(22A), ‘subsection (22)’—  
*omit, insert—*  
‘subsection (22AA)’.
- (2) Section 80(22C) and (22D), ‘pursuant to subsection (22)’—  
*omit, insert—*  
‘under subsection (22AA)’.

**144 Amendment of s 86 (Disqualification of drivers of motor vehicles for certain offences)**

Section 86—

*insert—*

- ‘(7) In deciding a period of disqualification for a person whose licence is suspended, or who is disqualified from obtaining or holding a licence, under section 79B, the court may take into account the period of suspension or disqualification that has already been served under that section.’.

**144A Insertion of new ss 90A–90D**

After section 90—

*insert—***‘90A Definitions for ss 90B–90D**

In sections 90B to 90D—

***dangerous driving offence*** means an offence against the Criminal Code, section 328A(1) or (4) if the offence is accompanied by a circumstance of aggravation that, at the time of committing the offence, the person charged with the offence was adversely affected by an intoxicating substance that is alcohol.

***designated offence*** means—

- (a) an offence against—
- (i) section 79(1) or (2), to the extent it involves a motor vehicle; or
  - (ii) section 79(2A), (2B) or (2J); or
  - (iii) section 80(11); or
- (b) a dangerous driving offence.

***disqualified*** means disqualified from holding or obtaining a Queensland driver licence.

*Note—*

See section 127(4) which provides for the effect of a suspension under this Act of any licence.

***drink driving offence*** means—

- (a) an offence against—
  - (i) section 78(1); or
  - (ii) section 79(1) or (2), to the extent it involves a motor vehicle; or
  - (iii) section 79(2A), (2B) or (2J); or
  - (iv) section 80(11); or
  - (v) section 87(10); or
  - (vi) a provision of a regulation under section 150AB for failing to comply with an order under that regulation; or
- (b) a dangerous driving offence.

***relevant disqualifying provision*** means—

- (a) section 78(3)(i); or
- (b) section 81; or
- (c) section 86; or
- (d) section 87(10A)(b); or
- (e) a provision of a regulation under section 150AB providing for the disqualification of a person for failing to comply with an order made under the regulation; or
- (f) the *Penalties and Sentences Act 1992*, section 187.

***section 89 disqualification*** means a disqualification ordered by a court under section 89 as a result of being charged with, but not convicted of, a dangerous driving offence.

***section 90 disqualification*** means a disqualification ordered by a court under section 90 as a result of being charged with, but not convicted of, a dangerous driving offence or an offence against section 79.

## **‘90B Cumulative periods of disqualification for offences committed at different times**

- ‘(1) This section applies if—
  - (a) a person is disqualified (the ***initiating disqualification***)—

- (i) under a relevant disqualifying provision for a drink driving offence; or
  - (ii) under a section 89 disqualification; or
  - (iii) under a section 90 disqualification; and
- (b) before the period of disqualification for the initiating disqualification ends, the person is disqualified again on 1 or more occasions (a *later disqualification*) as mentioned in paragraph (a).
- ‘(2) However, this section does not apply if section 90C applies.
- ‘(3) Each period of disqualification whether for an initiating disqualification or later disqualification takes effect cumulatively with each other period of disqualification.

*Examples—*

- 1 D is charged with a drink driving offence. Before the court hears that charge D is charged again with a drink driving offence. The court convicts D of both offences and disqualifies D for a period of 2 months for 1 offence and a period of 4 months for the other offence. The total period of disqualification is 6 months.
- 2 D commits a drink driving offence on 25 December 2008 and commits another drink driving offence on 1 January 2009. A court convicts D of the 1 January offence on 2 January 2009 and disqualifies D for a period of 2 months. On 1 February, the court convicts D of the 25 December offence and disqualifies D for a period of 4 months. The total period of disqualification is 6 months.

**‘90C Cumulative periods of disqualification for acts done and offences committed at same time**

- ‘(1) This section applies if—
- (a) a person does an act that results in the person being charged with a designated offence and, when the person does the act, the person commits an offence against section 78(1); and
  - (b) as a result of being charged with the designated offence, the person is disqualified (the *drink driving disqualification*)—
    - (i) under section 81 or 86 or the *Penalties and Sentences Act 1992*, section 187; or

- (ii) under a section 89 disqualification; or
    - (iii) under a section 90 disqualification; and
  - (c) as a result of committing the offence against section 78(1), the person is disqualified (the ***unlicensed driving disqualification***) under section 78(3)(a) to (h) or the *Penalties and Sentences Act 1992*, section 187.
- ‘(2) Subsection (3) applies if, when the person does the act that results in the person being charged with the designated offence, the person does not hold a driver licence authorising the person to drive the motor vehicle on the road but is not disqualified—
- (a) under a relevant disqualifying provision for a drink driving offence; or
  - (b) under a section 89 disqualification; or
  - (c) under a section 90 disqualification.
- ‘(3) The periods of disqualification for the drink driving disqualification and the unlicensed driving disqualification take effect cumulatively with each other.
- ‘(4) Subsection (5) applies if, when the person does the act that results in the person being charged with the designated offence, the person does not hold a licence because the person is disqualified (the ***existing disqualification***)—
- (a) under a relevant disqualifying provision for a drink driving offence; or
  - (b) under a section 89 disqualification; or
  - (c) under a section 90 disqualification.
- ‘(5) Each period of disqualification, whether for a drink driving disqualification, an unlicensed driving disqualification or an existing disqualification, takes effect cumulatively with each other period of disqualification.

#### ‘90D Other matters about cumulative periods of disqualification

- ‘(1) For sections 90B and 90C, the following is immaterial to the cumulative effect of disqualifications—

- (a) whether the periods of disqualification are imposed or ordered at the same hearing;
  - (b) whether an offence or charge that resulted in a period of disqualification (or the conviction or sentence for the offence or charge) happened before or after another offence or charge (or the conviction or sentence for the other offence or charge) that resulted in a period of disqualification;
  - (c) the order in which the periods of disqualification are imposed or ordered.
- ‘(2) Also, for sections 90B and 90C, periods of disqualification mentioned in the sections take effect cumulatively with other periods of disqualification mentioned in the sections in the order in which they are imposed or ordered.’

## **145 Insertion of new s 150AB**

Chapter 5, part 10—

*insert—*

### **‘150AB Regulation about particular suspensions**

- ‘(1) A regulation must provide that a court may make orders authorising persons whose Queensland driver licences have been suspended under section 79B(2), because the persons have been charged as mentioned in section 79B(1)(a), (b) or (d), to continue to drive motor vehicles under the licences in stated circumstances.
- ‘(2) Without limiting subsection (1), the regulation may provide for—
  - (a) the circumstances in which applications for the orders may or may not be made; and
  - (b) how and when applications for the orders are to be made; and
  - (c) the criteria to be used in deciding applications for the orders; and
  - (d) the type of conditions that may be included in the orders; and
  - (e) the periods for which the orders are effective; and



- (f) variation of the orders; and
- (g) the consequences for failing to comply with the orders, including, for example, the creation of offences and the disqualification of persons from holding or obtaining driver licences.

‘(3) This section does not limit section 150(1)(c).’.

#### **146 Insertion of new ch 7, pt 8**

After section 203—

*insert—*

### **‘Part 8 Transitional provisions for Maritime and Other Legislation Amendment Act 2006**

#### **‘204 Transitional provision for ss 79B–79D**

- ‘(1) This section applies if, after the commencement of this section—
- (a) a person is charged with an offence as mentioned in section 79B(1); and
  - (b) the act constituting the offence happened before the commencement.
- ‘(2) To remove any doubt, it is declared that sections 79B to 79D do not apply to the person in relation to the charge.

#### **‘205 Transitional provision for ss 90A–90D**

‘Sections 90A to 90D apply only in relation to an act happening after the commencement of this section that results in a person being charged with an offence.

*Examples—*

- 1 Before the commencement of this section, D is disqualified for an offence under section 79(1). After the commencement and while still disqualified, D drives a motor vehicle while under the influence of liquor, is charged with an offence against section 79(1) and is

convicted and again disqualified. Section 90B(3) does not apply to D in relation to the disqualifications.

- 2 D commits an offence against section 79(2A) before the commencement of this section. After the commencement, a court convicts D of the offence and disqualifies him from holding or obtaining a driver licence for 4 months. While disqualified D commits a further offence against section 79(2A) and is again disqualified. Section 90B(3) does not apply to D in relation to the disqualifications.
- 3 Before the commencement of this section, D does an act that results in D being disqualified. After the commencement and while still disqualified, D does an act that results in D committing offences against sections 78(1) and 79(1). A period of disqualification is imposed for each offence. The periods of disqualification are cumulative with each other but take effect concurrently with the period of disqualification that took effect before the commencement of this section.’.

## **Division 4                      Amendment of Transport Planning and Coordination Act 1994**

### **147      Act amended in div 4**

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

### **148      Amendment of s 28D (Powers regarding property)**

- (1) Section 28D(1), from ‘for an approved’—  
*omit, insert—*  
‘for—
  - (a) an approved tollway project under the *Transport Infrastructure Act 1994*; or
  - (b) a local government tollway under the *Transport Infrastructure Act 1994*.’.
- (2) Section 28D(2)(a) and (b), after ‘approved tollway project’—  
*insert—*  
‘or local government tollway’.
- (3) Section 28D(3), after ‘approval tollway project’—

*insert—*

‘or local government tollway.’

## **149 Insertion of new s 28DA**

Part 4B—

*insert—*

### **‘28DA Approved tollway project becomes local government tollway**

- ‘(1) This section applies if—
- (a) a local government has started acquiring land for an approved tollway project as mentioned in section 28D; and
  - (b) before the acquisition is complete, a local government tollway is declared for the approved tollway project.
- ‘(2) The acquisition is not affected by the declaration of the local government tollway and the local government may continue the acquisition as if the declaration had not been made.’.

## **Division 5 Other minor amendments of legislation**

### **150 Other minor amendments**

- (1) Schedule 1 amends the legislation it mentions.
- (2) Schedule 2 amends the waterway transport management plans it mentions.

## **Schedule 1      Other minor amendments of legislation**

section 150(1)

### **Off-shore Facilities Act 1986**

- 1      Section 6, ‘Marine Safety’—**  
*omit, insert—*  
*‘Transport Operations (Marine Safety)’.*

### **Transport Infrastructure Act 1994**

- 1      Section 105ZC(5)(b), ‘section 105ZB(4)’—**  
*omit, insert—*  
*‘section 105ZB(1)’.*
- 2      After section 544—**  
*insert—*

## **‘Part 8                      Transitional provision for Maritime and Other Legislation Amendment Act 2006**

### **‘545      Making and approval of waterway transport management plan**

‘The amendment of a waterway transport management plan mentioned in the *Maritime and Other Legislation Amendment Act 2006*, schedule 2 does not affect the power of—

- (a) the Minister to further amend or to repeal the plan; or

## Schedule 1 (continued)

- (b) the Governor in Council to approve the making of an amendment or repeal of the plan.’.

**Transport Operations (Passenger Transport)  
Regulation 2005**

- 1 Section 105, heading, after ‘*luxury motor vehicle*’—**  
*insert—*  
**‘, paragraph (a)’.**
- 2 Part 11—**  
*insert—*  
**‘135A Forward-control passenger vehicle—Act, sch 3, def forward-control passenger vehicle**  
‘A forward-control passenger vehicle includes a Chrysler Voyager, Honda Odyssey, Kia Carnival, Mazda MPV, Mitsubishi Nimbus, Mitsubishi Starwagon and Toyota Tarago.’.
- 3 Section 156—**  
*omit.*
- 4 Schedule 11, definitions *forward-control passenger vehicle, motor vehicle, off-road passenger vehicle, passenger car and passenger vehicle—***  
*omit.*

## Schedule 1 (continued)

**Transport Planning and Coordination Act 1994**

- 1 Section 29(2)—**  
*omit.*
  
- 2 Section 37, before ‘power’—**  
*insert—*  
‘function or’.

## **Schedule 2      Amendment of waterway transport management plans under the Transport Infrastructure Act 1994**

section 150(2)

### **Transport Infrastructure (Gold Coast Waterways) Management Plan 2000**

#### **1      Section 12(1)—**

*omit, insert—*

- ‘(1) This section applies to an area for which a consent for an aquatic event under the *Transport Operations (Marine Safety) Regulation 2004*, section 218 has been issued if the consent operates for no more than 48 hours.’.

#### **2      Section 35(1)(b), example, from ‘an authority’—**

*omit, insert—*

‘a consent under the *Transport Operations (Marine Safety) Regulation 2004*, section 218.’.

#### **3      Schedule 6, definition *authorised buoy mooring*—**

*omit, insert—*

‘*authorised buoy mooring* means a buoy mooring established under an approval under the *Transport Operations (Marine Safety) Regulation 2004*, section 209.’.

## Schedule 2 (continued)

**Transport Infrastructure (Sunshine Coast Waterways)  
Management Plan 2000****1 Section 14(1), from ‘an authority’ to ‘states’—**

*omit, insert—*

‘a consent to hold an aquatic event under the *Transport Operations (Marine Safety) Regulation 2004*, section 218 states’.

**2 Section 17, from ‘under the’ to ‘that’—**

*omit, insert—*

‘under the *Transport Operations (Marine Safety) Regulation 2004*, section 221(4) that’.

**3 Section 39(1)(b), example, from ‘an authority’—**

*omit, insert—*

‘a consent under the *Transport Operations (Marine Safety) Regulation 2004*, section 218.’.

**4 Schedule 4, section 5(1), from ‘under the’ to ‘that’—**

*omit, insert—*

‘under the *Transport Operations (Marine Safety) Regulation 2004*, section 221(4) that’.

**5 Schedule 5, definition *authorised buoy mooring*—**

*omit, insert—*

‘*authorised buoy mooring* means a buoy mooring established under an approval under the *Transport Operations (Marine Safety) Regulation 2004*, section 209.’.



## Schedule 2 (continued)

**Transport Infrastructure (Yeppoon Waterways)  
Management Plan 2000****1 Section 18(1)(b), example, from ‘an authority’—***omit, insert—*

‘a consent under the *Transport Operations (Marine Safety) Regulation 2004*, section 218.’.