

# Gold Coast Waterways Authority Bill 2012

## Explanatory Notes

### Short title

The short title of the bill is the *Gold Coast Waterways Authority Bill 2012*.

### Policy objectives and reasons for the Bill

The principal objectives of the bill are to:

- promote partnerships between government and the Gold Coast community to improve access and infrastructure for Gold Coast waterways;
- provide for localised decision making and control of Gold Coast waterways to ensure government programs are aligned with community needs and expectations;
- ensure the Gold Coast community is represented in determining the priorities for the delivery of navigational access and boating infrastructure projects and the development of waterways management policies and legislation; and
- promote the sustainable use and development of Gold Coast waterways for a range of maritime industries, tourism and recreational activities.

### *Repeal of two Acts*

The Bill repeals two Acts that are no longer required.

### *Power-assisted bicycles*

The Bill will also allow regulations to specify types of power-assisted bicycles which are approved or prohibited in Queensland.

### How the policy objectives are to be achieved

The Gold Coast waterways are economically, socially and environmentally important to the Gold Coast Community and to the State. There is no

existing mechanism to engage the varying community, industry and tourism interests around a single approach to managing the long term future of Gold Coast waterways and support decision making.

Since the Gold Coast Seaway was constructed in 1986, the stability of the main entrance to the Gold Coast has seen an increase in aquatic activity, including:

- luxury yacht construction in the Coomera precinct;
- world-class Sanctuary Cove Boat Show;
- marine-based tourism, such as personal water craft hire, fishing charters and jet boat ‘thrill’ rides;
- access to the southern areas of the pristine Moreton Bay Marine Park; and
- a dramatic increase in recreational boat ownership and use in the Gold Coast region.

Growth in waterways use is expected to continue. Growth pressures need to be balanced with a range of amenity and environmental considerations to ensure that Gold Coast’s waterways continue to support a range of important economic and social activities on the Gold Coast. To achieve this, the 10 year management strategy for Gold Coast waterways and the GCWA’s implementation programs should be underpinned by localised advice and input.

The Government has committed to involving the local community in decision making to ensure Gold Coast waterways are managed for the benefit of locals, boaties, fishers and tourist in a sustainable and environmentally sensitive manner.

At the moment, there is no single community sector, organisation or peak body that represents the range of community, industry or tourism interests associated with Gold Coast’s waterways. The waterways are vital infrastructure, akin to roads and bridges that are used by and underpin all sectors of the Gold Coast maritime community, including recreational and commercial vessel users. The Gold Coast City Council’s (GCCC) jurisdiction does not extend to the management of waterways.

The re-established GCWA is best placed to improve access to, provision of marine infrastructure and management of Gold Coast waterways and activities, when properly advised by a board of local community, tourism

and industry representatives, which will also be established by this legislation.

It is clear that the most effective proposal is to establish a statutory entity reporting to the Minister for Transport and Main Roads with its operations and functions separate from the Department of Transport and Main Roads (TMR). The re-established GCWA will have a chief executive officer reporting to a decision making board to ensure localised input and control in managing Gold Coast waterways.

The GCWA Board can make decisions on its own initiative and can also be directed by the Minister for Transport and Main Roads. It will be guided in its work by both the proposed GCWA Act and the GCWA Board's terms of reference.

It is proposed that the GCWA Board will have seven members made up of:

- a chairperson (appointed member);
- the mayor of the GCCC (or delegate); and
- five other persons (also appointed members).

Appointed members should be people with knowledge and expertise in the marine, coastal or waterways areas for planning, development, infrastructure, engineering and environmental sciences. Members of the local community, industry organisations and interest groups would also be desirable.

Usually, statutory entities include the relevant departmental chief executive on the board to ensure maximum value for money outcomes. However, the proposed composition of the GCWA Board does not include the chief executive of TMR in accordance with Government's advice that the GCWA should make decisions and function autonomously from TMR.

#### *Power-assisted bicycles*

The Bill amends the definition of 'bicycle' and inserts a new definition of 'power-assisted bicycle' in the *Transport Operations (Road Use Management) Act 1995* to allow regulations to prescribe types of power-assisted bicycles which are approved or prohibited in Queensland.

This will ensure that Queensland's legislation can be changed in a timely manner in line with emerging technologies for power-assisted bicycles. After the Bill is passed, it is proposed that a regulation will be made to allow bicycles meeting European Standard EN 15194 to be used in Queensland. These bicycles are referred to as 'pedalecs' in the Australian

Design Rules and are also commonly referred to as ‘pedelecs’. The regulation will also continue to prohibit bicycles with internal combustion engines and allow those with electric motors with a maximum power output of 200 watts.

### **Alternative ways of achieving policy objectives**

Options were canvassed to re-establish a GCWA as a Government Owned Corporation, port authority, statutory entity or an advisory board.

There is no significant business activity or potential for substantial revenue associated with waterways management and delivering navigational access and boating infrastructure. Therefore re-establishing a GCWA as a Government Owned Corporation is not practicable. Similarly, a port authority is generally associated with the management of port facilities and services to support the effective and efficient movement of large trading ships and their freight. None of these functions presently apply to Gold Coast waterways.

An advisory board could be established in legislation however it would not be able to function autonomously from TMR. It is unlikely that this option would be effective in achieving the GCWA’s objectives given the complex planning, environmental and maritime legislation associated with being a waterways manager. The re-established GCWA requires its own legislative foundation to deliver its responsibilities and therefore an advisory board is not recommended.

#### *Power-assisted bicycles*

The *Transport Operations (Road Use Management) Act 1995* contains limitations on the types of power-assisted bicycles that can be used in Queensland through the definition of ‘bicycle’. In order to provide for emerging types of power-assisted bicycles to be allowed or prohibited, there was no alternative way of achieving the policy objective.

### **Estimated cost for implementation of the Bill:**

The table below summarises all additional costs to re-establish a GCWA.

<b>Cost Element</b>	<b>Year 1 2012-13</b>	<b>Year 2 2013-14</b>	<b>Year 3 2014-15</b>	<b>Year 4 2015-16</b>	<b>Total (4 Years)</b>
Establishment costs	220,000	0	0	0	<b>220,000</b>
Additional GCWA operating costs	656,527	661,259	666,094	671,036	<b>2,654,916</b>
Additional sand bypass costs	171,000	171,000	171,000	171,000	<b>684,000</b>
<b>Total</b>	<b>1,047,527</b>	<b>832,259</b>	<b>837,094</b>	<b>842,036</b>	<b>3,558,916</b>

### *Power-assisted bicycles*

There is minimal cost to government arising from the amendments about power-assisted bicycles and those costs will be met from existing budget allocations.

## **Consistency with Fundamental Legislative Principles**

### *Power-assisted bicycles*

The new definition of ‘power-assisted bicycle’ in the *Transport Operations (Road Use Management) Act 1995* may raise an issue of fundamental legislative principles as it allows regulations to specify types of power-assisted bicycles that are allowed or prohibited in Queensland.

It is considered this approach is justified because the amendment retains the essential elements of a power-assisted bicycle in the Act definition but allows a regulation to prescribe further inclusive or exclusive characteristics for a power-assisted bicycle. In addition, the scope of the regulation-making power is limited to enable regulations to deal with emerging technologies for power-assisted bicycles. The amendment will allow newer, safer and more-efficient power-assisted bicycles, such as Pedalecs, to be approved for use on Queensland roads in a timely manner once they become available to the market.

## Notes on Provisions

### Part 1 Preliminary

**Clause 1** states that the short title of the Act is the *Gold Coast Waterways Authority Act 2012*.

**Clause 2** provides that the Act commences on 1 December 2012, except for the amendments to the *Transport Operations (Road Use Management) Act 1995* in part 13, division 6 (and a related technical amendment in part 13, division 1), which commence on proclamation. Consequential regulation amendments are needed for the provisions commencing on proclamation and it is proposed that the Act and regulation amendments will commence at the same time.

**Clause 3** provides the purposes of the Act and how they are to be achieved. **Clause 8** of the Act establishes the Gold Coast Waterways Authority (GCWA). The GCWA will be responsible for waterways within the area defined in **Clause 7** which reflects the area of responsibility of the former GCWA which was abolished in 1995.

All other access (dredging) and boating infrastructure needs for waterways outside the GCWA's area of responsibility continue to be a state responsibility, through TMR.

TMR continues its regulatory responsibilities for marine safety and marine pollution, as these responsibilities are to remain a state-wide function.

**Clause 4** details various Acts that all apply to aspects of marine operations, ranging from infrastructure operation, safety and pollution. This clause states this Act does not limit the application of the Acts named. If this clause was not in the Bill, it is possible that an inference could be drawn that this Bill did in fact limit the application of the named Acts.

**Clause 5** provides that this Bill binds all persons including the State and where permissible, the Commonwealth. Further, the State is not liable to be prosecuted for an offence. Maritime law is a complex mixture of Commonwealth and State laws and it is important that Queensland's maritime legislation recognises this fact. The Commonwealth and the States each have the ability to make laws with respect to maritime matters, if there is an inconsistency between those laws, the Commonwealth's laws

prevail. In this case, there is no inconsistency between this Act and Commonwealth legislation and no Constitutional law issues are believed to occur.

## **Part 2 Interpretation**

**Clause 6** provides that the dictionary in schedule 2 defines particular words used in the Act.

**Clause 7** defines Gold Coast waters and Gold Coast waterways. Gold Coast waters are the Gold Coast City local government area and those areas described in **Schedule 1** to the Act. The Gold Coast waterways are all of the waterways in the Gold Coast waters.

## **Part 3 Gold Coast Waterways Authority**

### **Division 1 Establishment and status**

**Clause 8** establishes the GCWA as a distinct entity. This clause is located within Part 3 of the Bill and is to be considered in the context of the Part rather than in isolation.

**Clause 9** provides that the GCWA:

- represents the State;
- is a body corporate with perpetual succession;
- has a seal; and
- may sue and be sued in its own corporate name.

### **Division 2 Functions and powers**

**Clause 10** details the GCWA's main function and how it is to be achieved.

The GCWA is responsible for developing a Gold Coast waterways strategy and pursuant to the *Transport Infrastructure Act 1994* managing public marine facilities and the use of waterways.

The *Transport Infrastructure Act 1994* defines public marine facilities as follows:

- *public marine facility* means public marine transport infrastructure, including:
  - land or waters associated with the infrastructure that are affected by its use; and
  - land or waters specified for the infrastructure under a regulation made with the objective of clarifying what are the land or waters associated with the infrastructure that are affected by its use.
- examples include:
  - an area of land and waters, specified under a regulation, that constitutes a boat harbour; and
  - breakwaters, jetties, landings, mooring piles, pontoons, carparks and land or waters affected by the use of the infrastructure.

The *Transport Infrastructure (Public Marine Facilities) Regulation 2011* will not apply within the GCWA's boundaries.

The GCWA will also have these functions for the *Transport Operations (Marine Safety) Act 1994*:

- set up and maintain aids to navigation as part of its responsibilities to maintain the whole Gold Coast waterway network;
- monitor and manage the operation and activities of ships; and
- monitor and manage abandoned, stranded, sunk or wrecked ships.

The GCWA will also have these functions for the *Transport Operations (Marine Pollution) Act 1995*:

- deal with discharge of ship-sourced pollutants into coastal waters;
- provision of reception facilities; and
- recovery of discharge expenses.

Finally the GCWA has any other function conferred on it under this Act or another law.

**Clause 11** details the GCWA's general powers. These powers are required so as to enable it to carry out the functions detailed in **Clause 11**. These powers are fully detailed in the clause and are subject to **Clause 13**. This clause confirms the GCWA has the powers conferred on it under another provision of this Act or under another Act.

**Clause 12** grants the GCWA the powers detailed in this clause. Importantly, pursuant to this clause, the GCWA is exempted from having to pay any royalties or similar charges for extractive material removed to maintain or improve navigational channels, or improve navigation, in the Gold Coast waterways, if the material is disposed of in an area approved by the Minister and under relevant statutory environmental controls.

The effect of this clause is to contrast with section 102 of the *Coastal Protection and Management Act 1995* which provides for quarry material removed under an allocation notice, royalties are to be paid at the rate prescribed under a regulation or the price set for the sale is payable to the State as prescribed under the regulation or the sale.

**Clause 13** states that the exercise of any of the GCWA's powers is subject to Ministerial directions. This clause should be read with **Clauses 16, 19** and **36** with respect to the Minister's relationship with the GCWA.

**Clause 14** authorises the GCWA to delegate its functions under this Act to a member, chief executive or other appropriately qualified person. As the term 'appropriately qualified person' is not defined in the Act, it is necessary to look at **Clause 10**. **Clause 10** details the GCWA's main function and how it is to be achieved.

The delegation of powers is a common administrative tool, for example section 37 of the *Transport Planning and Coordination Act 1994* authorises the Minister or the chief executive to delegate to a person a function or power of the delegator under this or another Act. Unlike the *Transport Planning and Coordination Act 1994*, this clause does not authorise the GCWA to sub-delegate its functions.

## **Part 4**                      **Waterways management strategy**

### **Division 1**                **Development and approval of strategy**

**Clause 15** defines a waterways management strategy. The GCWA will be responsible for developing a 10 year waterways management strategy for Gold Coast waterways.

The strategy will need to consider community, environmental and economic values before outlining the needs and priorities for the sustainable use, management and development of Gold Coast waterways. The strategy will provide marine businesses and tourism with more certainty about the direction of waterways management and development in future years.

**Clause 16** states that the GCWA will be required to develop for Ministerial approval a waterways management strategy. In developing the strategy, the GCWA must have regard to **Clause 3** of this Bill, consult with and consider the views of the GCCC and a range of community, environmental and social needs and interests.

The Minister has the ability to direct the GCWA (see **Clause 13**) to prepare a new strategy or to amend an existing strategy. Once submitted for approval, the Minister may approve the strategy or require it to be amended in the way the Minister directs.

**Clause 17** details what must be contained in a waterways management strategy. The re-established GCWA will also be responsible for deciding on the best use of the \$30 million committed to dredging and boating infrastructure projects for Gold Coast waterways; to improve access and restore it as a hub of recreational and tourist activity.

However, the re-established GCWA will not be responsible for development assessments which was a role undertaken by the former Authority.

This role will remain with the GCCC and the Coordinator-General in accordance with the current State Government planning framework.

However, the Authority will have a concurrence agency role for planning and development matters to implement the 10 year management strategy and advise on the future use and development of Gold Coast waterways.

This will ensure that the GCWA has influence in these matters but the existing planning and environmental responsibilities across state and local government are not displaced.

TMR continues its regulatory responsibilities for marine safety and marine pollution, as these responsibilities are to remain a state-wide function.

**Clause 18** states that the Minister must table a copy of a waterways management strategy in the Legislative Assembly within 5 sitting days after approving the strategy.

## **Division 2            Waterways management program**

**Clause 19** states the GCWA must before the start of each financial year develop for the Minister's approval a Gold Coast waterways management program for the year and for three following years. As this program underpins the strategy, it will need to be approved by the Minister for Transport and Main Roads and be reported on as part of the GCWA's annual report, along with other operational and financial reporting, during the financial year to which it relates.

**Clause 20** states that a waterways management program must be consistent with a waterways management strategy. This consistency is to be expected when it is considered that the program, strategy and strategic plan are linked and interdependent of each other.

It is also consistent with **Clauses 18** and **19** that if the Minister gives a direction under this section that results in a waterways management program being inconsistent with a waterways management strategy, the Minister must table a copy of the direction in the Legislative Assembly within 5 sitting days after it is given.

## **Part 5**                      **Powers relating to waterways management**

### **Division 1**                **Preliminary**

**Clause 21** details the limitations on the GCWA's powers. The GCWA's powers are limited geographically by being restricted to Gold Coast waters and Gold Coast waterways.

Administratively, the GCWA's powers are subject to those of the general manager of Maritime Safety Queensland under the *Transport Operations (Marine Safety) Act 1994* and the *Transport Operations (Marine Pollution) Act 1995*.

Part 14A of the *Transport Operations (Marine Safety) Act 1994* contains sections 191A and 191B. Section 191A authorises the general manager to direct the master of a ship to navigate or otherwise operate the ship in relation to a pilotage area in a specified way.

Section 191B (Direction to person in charge of a place) authorises the general manager to direct a person in charge of a place to allow a ship to be berthed or moved and to allow access through the place to and from the ship. This section applies if the general manager has issued a direction to the master of a ship under new section 191A(2).

The *Transport Operations (Marine Pollution) Act 1995*, amongst other things, authorises the general manager of Maritime Safety Queensland to direct authorised officers in the performance of their duties when dealing with marine pollution.

The powers are also subject to those of a harbour master concerning marine safety and navigation under the *Transport Operations (Marine Safety) Act 1994*.

### **Division 2**                **Waterways notices**

**Clause 22** authorises the GCWA to control activities or conduct by notice. The notice can be issued for the purposes of:

- maintaining or improving the safe, secure or efficient operation of Gold Coast waterways;
- maintaining fair and reasonable access to public marine facilities for users of Gold coast waterways; and
- moving or mooring ships, controlling activities on or by ships in Gold Coast waters.

The use of notices as a means of controlling activities and conduct is not a new concept. The *Transport Infrastructure Act 1994* was amended by inserting section 282 in 2005. Section 282 provides for a port authority or port lessor to control activities by port notice. Although not identically worded, section 282 is in similar terms to clause 24.

**Clause 23** is in similar terms to section 282I of the *Transport Infrastructure Act 1994* and states a waterways notice must indicate the area to which the notice applies and state that contravention of a requirement of the notice is an offence against this Act and the maximum penalty for the offence. **Clause 25** details the relevant penalties for offences against the ‘waterway notice’ provisions of this Act.

**Clause 24** states the display or publication requirements for waterways notices. The clause is expressed in mandatory terms so that the valid display or publication of a waterways notice requires the procedure detailed in this clause to be followed. The clause is in similar terms to section 282G of the *Transport Infrastructure Act 1994*.

**Clause 25** states it an offence to not comply with the requirements of a waterways notice unless the person has a reasonable excuse for not complying with it. The penalty for not complying with the requirements of a waterways notice ranges from 25-100 penalty units.

The clause is in similar terms to section 282J of the *Transport Infrastructure Act 1994*.

**Clause 26** states it is an offence to unlawfully interfere with a waterways notice. The penalty for interfering with a waterways notice is 25 penalty units.

## **Division 3                      Dealing with contravening and abandoned property**

**Clause 27** contains the definitions for division 3 comprising **Clauses 27 to 32**.

**Clause 28** is in similar terms to section 282T of the *Transport Infrastructure Act 1994* and states when the GCWA may move contravening property. Legislation granting the GCWA the authority to remove contravening property is similar to the powers granted to Port Authorities by the *Transport Infrastructure Act 1994*. The 2005 amendments discussed with respect to **Clauses 22 to 24** also gave Port authorities the authority to remove abandoned property.

The provision allows the Authority, if it reasonably believes that there is contravening property, to take steps that are necessary and reasonable to have the contravening property moved.

However, before taking action, the GCWA must believe the contravening property may affect efficient management, the safety or security of the users of the waterways, or the GCWA's employees and the GCWA cannot immediately locate the person in charge of the contravening property or the GCWA reasonably believes the person in charge cannot or will not move the contravening property immediately.

**Clause 29** is in similar terms to section 289I of the *Transport Infrastructure Act 1994*, and states that the GCWA must take reasonable steps to locate the owner of abandoned property and move it to an appropriate place. These obligations do not apply to property of an insufficient value or is perishable.

The clause also states that if the property owner is not located within twenty-eight days, the GCWA must publish a notice in a Gold Coast newspaper contained the details listed in this clause.

**Clause 30** details the actions to be taken by the GCWA if the owner of the property is located within twenty-eight days.

**Clause 31** states the GCWA has the authority to sell abandoned property. The clause details the procedures to be followed in undertaking the sale and how the proceeds of such sale are to be applied. Compensation may not be recovered against the GCWA in relation to a payment under this section.

**Clause 32** states that if abandoned property is of an insufficient value, the GCWA may dispose of that property as it sees fit.

## **Division 4            Review of decisions**

**Clause 33** contains the definitions for Division 4 comprising **Clauses 33 to 35**.

**Clause 34** explains how the internal review of a decision made by the GCWA is to be reviewed. The internal review process uses a process common to legislation administered by TMR. This process is also utilised in the *Transport Infrastructure Act 1994*, *Transport Operations (Marine Safety) Act 1994*, *Transport Operations (Marine Pollution) Act 1995*, *Transport Operations (Passenger Transport) Act 1994*, and *Transport Operations (Road use Management) Act 1995*.

The *Transport Planning and Coordination Act 1994* applies to the review and provides for the procedures to be applied.

**Clause 35** states that the Queensland Civil and Administrative Tribunal has the jurisdiction to undertake external review of a decision made by an internal reviewer (as detailed in **Clause 34**).

## **Part 6                    Ministerial directions, reporting and information**

**Clause 36** gives the Minister the statutory power to issue a written direction to the GCWA about the performance of its functions. This power extends to prohibiting the GCWA from acquiring particular assets or assets of a particular type. The GCWA must comply with this direction.

**Clause 37** gives the Minister the statutory power to require the GCWA to provide either the Minister or a stated person in TMR or another government entity, information or documents as detailed in the written direction. As the department is not represented on the GCWA Board but retains responsibilities that could impact on both the department and the GCWA, this power is required.

**Clause 38** states the GCWA is also required to provide quarterly performance reporting to the Minister which addresses access and boating infrastructure improvements, waterways management issues and revenue and expenditure reporting. The GCWA will also need to prepare annual financial statements which will be audited by the Auditor-General (or delegate), as required under the *Financial Accountability Act 2009*.

**Clause 39** details what information is required to be provided by the GCWA in its annual report.

## **Part 7                      Financial provisions**

**Clause 40** establishes that the *Financial Accountability Act 2009* and the *Statutory Bodies Financial Arrangements Act 1982* apply to the GCWA.

**Clause 41** states that funds received by the GCWA pursuant to this or any other Act are to be paid into the consolidated fund. The GCWA will collect revenue from a small number of charges and fees. Anticipated revenue includes:

- existing regulatory fees under the *Transport Infrastructure Act 1994* and *Transport Operations (Marine Safety) Regulation 1994*;
- amounts received, to the extent they relate to the Gold Coast waterways from the proceeds of sale of a watercraft under section 475U(1)(a) of the *Transport Infrastructure Act 1994* in payment of the expenses of removal reasonably incurred by the chief executive in selling the watercraft; and
- non-regulatory fees associated with buoy mooring kits, hire out rates for vessels, crew charge-out rates and temporary storage of abandoned or adrift property.

Section 475U was inserted into the *Transport Infrastructure Act 1994* in 2009. The section outlines the requirements for applying proceeds from the sale of removed watercraft, having been sold in accordance with section 475T(2).

The proceeds are required to be applied first to the expenses of removal of the watercraft that were reasonably incurred by the chief executive in selling the watercraft, and second, any balance must be paid to the watercraft's owner. Subsection 475U(2) provides that if the proceeds of

sale are less than the total expenses of removal, the difference is a debt owing by the owner to the State. Subsection 475U(3) provides that compensation is not recoverable against the State in relation to a payment under this section.

**Clause 42** details by what date a marina owner must pay an annual levy as a contribution towards providing and maintaining marine transport infrastructure.

The imposition of a levy is not new. Section 473 and Schedule 2 of the *Transport Infrastructure Act 1994* also provide for a levy on marina owners, as a contribution towards dredging and maintenance of public marine transport infrastructure.

## **Part 8                      Gold Coast Waterways Authority Board**

### **Division 1                      Establishment and membership**

**Clause 43** states the GCWA Board controls the Authority.

The GCWA Board is a decision making board which:

- reports to the Minister for Transport and Main Roads about Gold Coast waterways;
- oversees the day to day operation of the GCWA;
- decides on navigational access and boating infrastructure projects as well as waterways management policies and legislation as part of its responsibility to prepare Gold Coast Waterways Implementation Programs; and
- engages with the Gold Coast community and assists the GCWA in indentifying local needs to improve access, boating infrastructure and the management of Gold Coast waterways.

The Board can make decisions on its own initiative or can be directed by the Minister for Transport and Main Roads. It is guided in its work by both this Act and its terms of reference.

A Board Charter will be developed that will outline governance procedures as well the role and responsibilities of the GCWA Board and individual members. This includes:

- clarifying the respective role of the board, members and responsible Minister;
- identifying key deliverables;
- developing processes to deal with conflicts of interest;
- establishing recordkeeping processes; and
- risk management systems.

**Clause 44** details the Board's membership. The seven person Board includes a chairperson, an additional five appointed members who must meet the criteria detailed in Clause 45 and the GCCC Mayor.

**Clause 45** also details the qualifications required by a person to be appointed a Board member. In reflecting the rationale behind the GCWA it is important the Board is connected to the Gold Coast community. Board membership is also based on the following important principles:

- the Government has committed to involving the local community in decision making to ensure Gold Coast waterways are managed for the benefit of locals, boaties, fishers and tourist in a sustainable and environmentally sensitive manner;
- there is no single community sector, organisation or peak body that represents the range of community, industry or tourism interests associated with Gold Coast's waterways;
- the waterways are vital infrastructure, akin to roads and bridges, that are used by and underpin all sectors of the Gold Coast maritime community, including recreational and commercial vessel users; and
- the GCCC's jurisdiction does not extend to the management of waterways.

The re-established GCWA is best placed to improve access to, provision of marine infrastructure and management of Gold Coast waterways and activities, when properly advised by an advisory board of local community, tourism and industry representatives.

Appointed members should be people with knowledge and expertise in the marine, coastal or waterways areas for planning, development, infrastructure, engineering and environmental sciences. Members of the

local community, industry organisations and interest groups would also be desirable.

**Clause 46** provides for a Board members term of office. The term can run from a single term of three years to the maximum allowed two terms totalling six years.

**Clause 47** states that a Board member is to receive remuneration and allowances decided by the Governor in Council.

**Clause 48** states the office of an appointed member become vacant if the member resigns by signed notice given to the Minister or is removed from office pursuant to **Clause 50**.

**Clause 49** provides for the suspension of appointed members by the Minister provided the conditions detailed in this clause are met.

**Clause 50** states that the Governor in Council may remove an appointed member from office for any reason or none.

**Clause 51** states that the GCCC Mayor may delegate the duties the Mayor's function as a member to those offices stated in the section. The delegation may be made to another councillor of the GCCC or an appropriately qualified employee of the GCCC.

## **Division 2            Meetings and other business**

**Clause 52** states how business and meetings are to be conducted.

**Clause 53** states where and when board meetings are to be held.

**Clause 54** specifies that a quorum for a board meeting is more than half of the number of members.

**Clause 55** provides that the chairperson is to preside at all board meetings at which the chairperson is present, and if not able to be present, the presiding member is chosen by the members present.

**Clause 56** provides that the board may hold meetings, or allow members to take part in its meetings, by using any technology allowing reasonably contemporaneous and continuous communication between persons taking part in the meeting.

A person who takes part in a board meeting is taken to be present at the meeting, and a decision at a board meeting must be a majority decision of

the members present. If there is an equality of votes cast on a particular matter the chairperson makes the casting vote.

**Clause 57** provides that a decision of the board that is made other than at a board meeting, may be made only with the written agreement of a majority of the members.

**Clause 58** provides that the board must keep minutes of its meetings, and a record of any decision made under clause 57 (Decisions outside meetings).

### **Division 3            Miscellaneous provisions**

**Clause 59** provides protection for members from civil liability for an act done, or omission made, honestly and without negligence under this Act or a direction or a requirement under this Act. Instead, the civil liability attaches to the State.

## **Part 9                Staff**

### **Division 1            Chief executive officer**

**Clause 60** ‘Chief executive officer’ provides for the appointment of the chief executive officer of the Authority by the Governor in Council, and requires the remuneration, allowances, and other terms and conditions decided by the Governor in Council to be included in the instrument of appointment. The term of appointment cannot be more than five years. Only persons that are not disqualified persons can be appointed as the chief executive officer. **Clause 62** also provides for the functions and powers of the chief executive.

**Clause 61** ‘Acting chief executive officer’ provides for the appointment of an ‘acting’ chief executive officer by the Minister in certain circumstances including where no chief executive officer has been appointed; or the office is vacant; or the appointed chief executive officer is absent, or unwell.

The appointment ends if the Governor in Council appoints a chief executive officer and the term of that appointment starts, or the Minister gives notice that the chief executive officer has resumed duties.

**Clause 62** states the functions and powers of the chief executive officer including the requirement to report to the board about the Authority's operations. As was noted in **Clause 60** the chief executive officer is not a public servant and must report to the board about the Authority's operations.

**Clause 63** allows the chief executive officer to delegate the chief executive's functions to an appropriately qualified person.

## **Division 2            Employees**

**Clause 64** states that that the Authority's staff are employed under the *Public Service Act 2008* or **Clause 65** of this Bill. The intent of these provisions is to adequately protect those who work for the employing office from the scope of the *Workplace Relations Act 1996*.

**Clause 65** states the chief executive officer may employ those employees considered necessary to perform the Authority's functions. The *Public Service Act 2008* does not apply to the employment of employees under this section.

**Clause 66** preserves the rights of public service officers employed pursuant to **Clause 65**.

**Clause 67** provides for a former public service officer employed pursuant to **Clause 65** to resume their status as a public servant on their **Clause 65** contracts being terminated for reasons other than by disciplinary action.

## **Part 10                Miscellaneous provisions**

**Clause 68** applies if a person is being considered for appointment as an appointed member or the chief executive officer, and provides that the Minister may request a written statement from the person about whether they are a disqualified person, and if they (or a close relative) have any direct or indirect pecuniary interests that would conflict with their

performance if appointed. These provisions set a maximum penalty for giving a false or misleading statement to the Minister of 100 penalty units.

**Clause 69** applies to a person who is an appointed member or the chief executive officer, and provides that the person must (as soon as practicable) notify the Minister if the person becomes a disqualified person. This provision sets a maximum penalty for non compliance of 100 penalty units.

**Clause 70** applies if a member or the chief executive officer has a close relative that has a direct or indirect pecuniary interest that conflicts (or may conflict) with the performance of their functions, and provides that they must (as soon as practicable) disclose the information to the board or the Minister and sets a maximum penalty for non compliance of 100 penalty units. Further, if the matter is being or about to be considered by the board, the member must not partake in the consideration of the matter. The penalty for non compliance is also 100 penalty units.

**Clause 71** provides for a review of the GCWA's operation at the expiration of a three year period. The clause also provides for those aspects of the GCWA's operation that must be reviewed.

**Clause 72** enables the Governor in Council to make regulations under this Act.

## **Part 11                      Repeals**

**Clause 73** states two Acts are repealed. TMR has identified two Acts that are redundant and can be repealed. This supports the government's commitment to red tape reduction, and the removal of unnecessary legislation from Queensland's statute books.

The *Australian Shipping Commission Authorization Act 1977* authorised the Commonwealth Government to create the Australian Shipping Commission. The Australian Shipping Commission was abolished in 1989 and the Australian National Line that replaced it was sold in 1999. The Act serves no purpose and is obsolete.

The *Brisbane River Tidal Lands Improvement Act 1927* refers to a weir on the Enoggera Creek (Formally Breakfast Creek) that no longer exists. Modern planning laws have superseded the need for this Act and the Act has no application or use for current or future land development.

## Part 12 Transitional provisions

**Clause 74** defines the term ‘commencement’ for Part 12 comprising **Clauses 74 to 81**.

**Clause 75** states **Clause 16** does not apply until 1 December 2013. This clause removes any doubt that may have existed over when the GCWA needed to have a waterways management strategy in place. The clause also states the Minister may not direct the GCWA to prepare a new waterways management strategy until after 30 November 2013.

**Clause 76** states **Clause 19** does not apply to the GCWA for the financial year 1 July 2012 to 30 June 2013. This clause removes any doubt that may have existed over the GCWA needing to have a waterways management program in place for the current financial year.

**Clause 77** states that the ‘Marina owner levy’ outlined in **Clause 42** does not apply to a marina owner for the 2012 calendar year if they have already paid the levy to the chief executive as required under section 23 of the *Transport Infrastructure (Gold Coast Waterways) Management Plan 2000*. This requirement will ensure that marina owners will not be charged what is essentially the same levy twice.

**Clause 78** transfers particular assets and liabilities from TMR to the GCWA. These include aids to navigation, certain vessels and the sand bypass system as they relate to the GCWA’s area of responsibility.

**Clause 79** requires that appropriate records are kept in regard to the transfer of assets and liabilities (under **Clause 78**) from TMR to the GCWA.

**Clause 80** allows for the novation of particular contracts from TMR to the GCWA.

## **Part 13                      Amendment of Acts**

### **Division 1                      Amendment of this Act**

**Clause 81** states this division amends this Act (the *Gold Coast Waterways Authority Act 2012*).

**Clause 82** amends the long title of the *Gold Coast Waterways Authority Act 2012*.

### **Division 2                      Public Service Act 2008**

**Clause 83** states this division amends the *Public Service Act 2008*.

**Clause 84** is a consequential amendment to the *Public Service Act 2008*. The clause inserts the GCWA and its chief executive into the list of public service offices and their heads.

The GCWA will be established primarily from a re-organisation of existing TMR staff. Relevant positions in Maritime Safety Queensland's Gold Coast office will be transferred together with their substantive occupants to the GCWA through a Machinery of Government change.

Any further additional staff from TMR, and if necessary the broader State Government, will be redeployed to make up the balance of remaining GCWA structure.

### **Division 3                      Transport Infrastructure Act 1994**

**Clause 85** states this division amends the *Transport Infrastructure Act 1994*.

**Clause 86** amends section 461 of the *Transport Infrastructure Act 1994*. The clause states that if there is no current manager of a public marine facility (other than a facility in, or on land adjacent to, Gold Coast waters), the chief executive of TMR assumes the role until such time as the chief executive or another person is appointed as manager (under section 459).

Section 459 of the *Transport Infrastructure Act 1994* allows the Governor-in-Council to appoint a manager of a public marine facility by regulation with the consent of the person to be appointed.

**Clause 87** is a consequential amendment of the *Transport Infrastructure Act 1994* and inserts a new section 461A into that Act. The clause confirms that the GCWA is to be taken as a manager of a public marine facility situated in, or on land adjacent to, Gold Coast waters if there is no current manager of the facility.

**Clause 88** amends section 464 of the *Transport Infrastructure Act 1994*. If the facility is not being managed by the chief executive, a local government, a port authority, or the GCWA, the manager's management powers include any power, conferred under a regulation, to limit or prohibit the use of the facility.

**Clause 89** amends section 466(4)(a) and (5) of the *Transport Infrastructure Act 1994* to clarify that fees are payable to the manager for the use of the facility, whether as a condition of an approval to use the facility or otherwise. The fee may, for example, be imposed by reference to:

- ships using the facility; or
- goods or passengers loaded, unloaded or transhipped to or from ships using the facility; or
- vehicular access to the facility.

However, a fee may not be imposed for the genuine, transient private recreational use of a boat ramp, jetty, landing or pontoon. If the manager is the chief executive or the GCWA, the amount of the fee must be prescribed under a regulation.

**Clause 90** replaces the heading for chapter 15, part 2 and inserts a new heading, 'Part 2 Authorised persons for waterway management regulation'.

**Clause 91** replaces divisions 1 and 2 of chapter 15, part 2. It also inserts new sections 470-471 which are concerned with waterways regulation which balances demands on the use by water traffic of the waterways and associated infrastructure.

**Clause 92** replaces the heading to chapter 15, part 2, division 3 and inserts a new heading, 'Division 3 Appointment of authorised persons'.

**Clause 93** renumbers chapter 15, part 2, divisions 3 and 4 as chapter 15, part 2, divisions 2 and 3.

**Clause 94** inserts a new section 472 and details the functions of authorised persons for waterway management regulation.

In 2009 the *Transport and Other Legislation Amendment Act 2009* amended the *Transport Infrastructure Act 1994* by inserting a new division 3 (Authorised persons for waterway transport management plans). The new division contained a number of new sections. Division 3 provides for certain persons to be authorised persons for the purposes of waterway transport management plans. Division 3 is amended by this Bill to ensure authorised officers appointed by the GCWA are properly empowered to carry out their functions.

**Clause 95** amends section 475A of the *Transport Infrastructure Act 1994* by inserting the power into this Act for the GCWA to appoint its own authorised officers for a waterway management regulation.

Section 475A (Authorised persons) (1)(a) and (b) lists who is an authorised person under the Act as being: a police officer (in keeping with section 14 of the *Police Powers and Responsibilities Act 2000*) and an inspector under the *Fisheries Act 1994*, when there is an arrangement between the chief executive of TMR or the GCWA and the chief executive of the department that administers that Act.

Subsection 475A(2) provides that the chief executive may appoint an officer of the department or any other person as an authorised person, however subsection 475A(3) requires that for this to take place, the chief executive of TMR or the GCWA must be reasonably satisfied that the person has the necessary expertise or experience and is therefore considered qualified.

The amendments also amend all references in division 3 from a ‘transport management plan’ to a ‘management regulation’.

**Clause 96** amends section 475B (Appointment conditions and limit on powers) and establishes that an authorised person holds office subject to appointment conditions stated in their instrument of appointment, signed notice by the chief executive of TMR or the GCWA given to the person, or regulation, and that this may limit their powers under the Act.

Section 475B is also amended by confirming that if appointed by the chief executive of TMR under section 475A(2), an authorised person’s powers do not apply to Gold Coast waters and conversely if a person is appointed an authorised person by the GCWA under section 475A(3), their powers are only exercisable in relation to Gold Coast waterways.

**Clause 97** amends section 475C (Issue of identity card to each authorised person) and provides that each authorised person must be issued an identity card by the chief executive of TMR, or the GCWA, and that the identity card must contain a recent photo of the person, a copy of their signature, identify them as an authorised person under the Act, and state the expiry date of the card. Subsection 475C(3) provides that the requirements of section 475C do not prevent a single identity card being issued to a person for this Act and other purposes.

**Clause 98** is a consequential amendment of section 475D (Production or display of identity card) to change reference from ‘division’ to ‘part’ in 475D(1) to correspond with the renumbering mentioned at **Clause 93**.

**Clause 99** amends section 475F (Resignation) and establishes that an authorised person may resign by signed notice given to the chief executive of TMR or the GCWA.

**Clause 100** amends section 475G (Return of identity card) and establishes that a person who has ceased to be an authorised person must return their identity card to the chief executive of TMR or the GCWA within 21 days of ceasing to be an authorised person, unless they have a reasonable excuse. The maximum penalty for non-compliance is 40 penalty units.

**Clause 101** amends section 475L (Issue of warrant) and requires that a magistrate may only issue a warrant if they are satisfied that there are reasonable grounds to suspect that there is a particular thing or activity that may provide evidence of an offence against a management regulation, and the evidence is or may be at the place within the next 7 days.

**Clause 102** amends section 475P (Notice of intention to remove watercraft) and provides that if an authorised person reasonably believes a watercraft is anchored or moored in contravention of a management regulation, they may give the watercraft’s owner or operator a notice of intention to remove the watercraft. Subsection 475P(2) provides that the notice must state the contravention and that the watercraft may be removed by an authorised person if the watercraft is not moved within 14 days after notice is given, to a place that is not in contravention of a management regulation.

**Clause 103** amends section 475Q (Removing illegally anchored or moored watercraft) and allows an authorised person to take the steps that are necessary and reasonable to have a watercraft (and anything in, on or attached to it) removed to a place that is not in contravention of a

management regulation. Under subsection 475Q(1), the authorised person may only take these steps if:

- a notice of intention to remove a watercraft has been given (in keeping with section 475P);
- after 14 days of the notice being given the watercraft is still anchored or moored in contravention of a management regulation; and
- the authorised person cannot immediately find the watercraft's owner or operator or reasonably believes neither the owner or operator is able or willing to move the watercraft immediately.

**Clause 104** amends section 475R (Removal of hazardous watercraft) and establishes that if an authorised person reasonably believes a watercraft is anchored or moored in contravention of a management regulation and a hazard to water traffic (for example, a watercraft is a hazard to water traffic if it is on or beside the course of a power boat race conducted under a consent under the *Transport Operations (Maritime Safety) Act 1994*, section 217(2)), the authorised person is able to take steps that are necessary and reasonable to have the watercraft and anything in, on or attached to it removed to a place that is not in contravention of a management regulation.

**Clause 105** amends section 475S (Giving notice of removal of watercraft) and requires the chief executive of TMR or the GCWA to give written notice to a watercraft's owner of the place where it has been taken if the watercraft is removed in keeping with sections 475Q or 475R. Subsection 475S(2) provides that where the chief executive is unable to find the owner, the chief executive may instead give notice by publishing it in a newspaper circulating in the locality from which the watercraft was removed. Subsection 475S(3) defines 'watercraft' to include anything in, on or attached to the watercraft, for the purposes of this section.

**Clause 106** amends section 475T (Dealing with removed watercraft) and provides that the chief executive may sell, by public auction, or otherwise dispose of a watercraft, having regard to its value and condition. Subsection 475T(1) provides that the chief executive of TMR or the GCWA may only exercise this power if:

- notice has been given, under section 475S, regarding the removal of the watercraft; and

- the watercraft's owner does not take possession of the watercraft and pay the amount of all expenses of removal of the watercraft within 1 month after the notice is given.

Subsection 475T(3) defines 'expenses of removal' as expenses relating to removing and detaining the watercraft, giving notice under section 475S, advertising for sale or other disposal of the watercraft, and selling or otherwise disposing of the watercraft. Subsection 475T(3) also defines 'watercraft' to include anything in, on or attached to the watercraft.

**Clause 107** amends new section 475U (Proceeds from the sale of removed watercraft) and outlines the requirements for applying proceeds from the sale of removed watercraft, having been sold in accordance with section 475T(2). The proceeds are required to be applied first to the expenses of removal of the watercraft that were reasonably incurred by the chief executive of TMR or the GCWA in selling the watercraft, and second, any balance must be paid to the watercraft's owner. Subsection 475U(2) provides that if the proceeds of sale are less than the total expenses of removal, the difference is a debt owing by the owner to the State. Subsection 475U(3) provides that compensation is not recoverable against the State in relation to a payment under this section.

**Clause 108** amends section 475W (Dealing with forfeited sample or thing) and establishes that the chief executive of TMR or the GCWA may deal with forfeited property in a way that the chief executive or the GCWA reasonably believes is appropriate, as a forfeited sample or thing becomes the property of the State. Subsection 475W(2) states that the chief executive or the GCWA may destroy or dispose of the sample or thing, but this subsection is not intended to limit the operation of subsection (1).

**Clause 109** amends section 475X (Direction to stop contravening regulation) and establishes that an authorised person has the power to give a person a direction to immediately stop contravening the management regulation, if the authorised person considers that the person is not complying with a provision of a regulation. It is a requirement of this section that the authorised person must tell the person that it is an offence to fail to comply with such a direction, unless the person has a reasonable excuse. The maximum penalty for non-compliance is 40 penalty units.

**Clause 110** amends section 475Y by amending the reference to a 'transport management plan' replacing 'management regulation'.

**Clause 111** amends section 476 by stating a debt payable by a person to the chief executive or the GCWA under this Act or the Planning Act is a debt owing to the State.

**Clause 112** amends reference to ‘schedule 1, item 21’ in section 480 by inserting a reference to part 1 in 480(6)(b) and (10)(c), so the sub-sections now read, ‘schedule 1, part 1, item 21’.

**Clause 113** amends schedule one (Subject matter for regulations) by dividing it into two parts, part one dealing with subject matter for regulations generally and part two dealing with subject matter waterway management regulation. This amendment is consequential upon all references in division 3 to a ‘transport management plan’ being replaced by a reference to ‘management regulation’.

**Clause 114** omits Schedule two (Subject matter for waterway transport management plans).

**Clause 115** amends the dictionary in schedule six by omitting the term, ‘waterway transport management plan’ and inserting definitions for ‘Gold Coast waters’, Gold Coast Waterways Authority’ and ‘waterway management regulation’. There are also consequential amendments to the numbering contained within the definitions of ‘occupier’ and ‘place’ to correspond with the renumbering mentioned at **Clause 93**.

## **Division 4                      Transport Operations (Marine Pollution) Act 1995**

**Clause 116** states that this division amends the *Transport Operations (Marine Pollution) Act 1995*.

**Clause 117** amends section 66 of the *Transport Operations (Marine Pollution) Act 1995* by ensuring the GCWA may provide for or direct someone to provide and maintain adequate facilities for the reception and disposal of oil, noxious liquid substances, sewage or garbage.

**Clause 118** amends section 72 of the *Transport Operations (Marine Pollution) Act 1995* by including officers or employees of the GCWA as eligible for appointment as authorised officers.

**Clause 119** amends section 111 of the *Transport Operations (Marine Pollution) Act 1995* by inserting a note after the definition ‘discharge

expenses' advising that the *Gold Coast Waterways Authority Act 2012*, section 9(2), provides that the GCWA represents the State.

**Clause 120** amends the dictionary of the *Transport Operations (Marine Pollution) Act 1995* by inserting definitions for 'Gold Coast waters' and 'Gold Coast Waterways Authority' and a consequential amendment to the definition of 'notice offence' to correspond with renumbering carried out as part of the amendments of **Clause 118**.

## **Division 5            Transport Operations (Marine Safety) Act 1994**

**Clause 121** states that this division amends the *Transport Operations (Marine Safety) Act 1994*.

**Clause 122** amends section 18A and provides that the general manager of Maritime Safety Queensland may exempt a person or ship from a provision of a regulation or a speed limit fixed under section 206A (a *regulatory provision*). **Clause 121** inserts new section 206AA into this Act following section 206A.

**Clause 123** inserts new section 77A which provides that before a harbour master exercises a power that may affect the functions of the GCWA, the harbour master must consult with the GCWA to the extent that it is reasonably practicable.

**Clause 124** inserts new section 105A which authorises the GCWA to set up an aid to navigation in the Gold coast waterways in the areas specified in the section.

**Clause 125** amends section 157 by authorising the Maritime Safety Queensland general manager to appoint employees of the GCWA as shipping inspectors.

**Clause 126** amends section 203B by applying the review provisions common to legislation administered by TMR. This process is also utilised in the *Transport Infrastructure Act 1994*, *Transport Operations (Marine Pollution) Act 1995*, *Transport Operations (Passenger Transport) Act 1994*, and *Transport Operations (Road use Management) Act 1995*.

**Clause 127** amends the definition of chief executive in section 203C. If the reviewed decision is made by the general manager of Maritime Safety

Queensland, the reference is to the general manager, if the decision is made by the GCWA, the term ‘chief executive’ is taken to refer to the GCWA.

**Clause 128** amends section 206A to ensure Maritime Safety Queensland general manager does not publish on information Maritime Safety Queensland’s website regarding speed limits for ships using Gold Coast waterways.

**Clause 129** inserts new section 206AA into the *Transport Operations (Marine Safety) Act 1994*. The new section immediately follows section 206A. This section provides the GCWA with the authority to gazette speed limits and affix notices detailing the authorised speed allowed on Gold Coast waterways. A person is liable to a maximum penalty of 200 penalty units for breaching the speed limits authorised by this section.

**Clause 130** amends section 218(3), (4) and (5) by inserting the GCWA into these provisions which concern the making of regulations about the establishment and maintenance of buoy moorings.

**Clause 131** inserts a new part 19, division 5 into the *Transport Operations (Marine Safety) Act 1994*. The new provision states that if pursuant to section 206A, a speed limit was fixed for ships using the Gold Coast waterways; the speed limit is taken to have been fixed by the GCWA under section 206AA.

**Clause 132** amends the dictionary by inserting definitions for ‘Gold Coast waters’ and ‘Gold Coast Waterways Authority’.

## **Division 6                      Transport Operations (Road Use Management) Act 1995**

**Clause 133** provides that this division amends the *Transport Operations (Road Use Management) Act 1995*.

**Clause 134** replaces the definitions of ‘bicycle’ and ‘motor vehicle’ and inserts a new definition of ‘power-assisted bicycle’.

The definition of ‘bicycle’ remains fundamentally the same, but all matters relating to bicycles with auxiliary motors are moved to the new definition of ‘power-assisted bicycle’.

The definition of ‘motor vehicle’ is amended to clarify that a power-assisted bicycle is not a motor vehicle. This ensures that certain

requirements that apply to motor vehicles (for example, the requirement for the driver of a motor vehicle to hold a driver licence under s.78) do not apply to power-assisted bicycles.

The new definition of ‘power-assisted bicycle’ requires the vehicle to be one which is described in paragraph (a) of the definition of ‘bicycle’ and have one or more auxiliary motors. The definition allows regulations to prescribe types of power-assisted bicycles which are approved or prohibited in Queensland. After the Bill is passed, it is proposed that a regulation will be made to allow bicycles meeting European Standard EN 15194 to be used in Queensland. These bicycles are referred to as ‘pedalecs’ in the Australian Design Rules and are also commonly referred to as ‘pedelecs’. The regulation will also continue to prohibit bicycles with internal combustion engines and allow those with electric motors with a maximum power output of 200 watts.

**Schedule 1** defines Gold Coast waters.

**Schedule 2** is the dictionary to the Act.