



Waterways

Compliance and Enforcement

OPERATIONAL POLICY



Document control sheet

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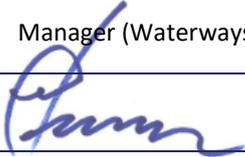
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Operational Policy—Compliance and Enforcement

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1.0 Policy intent

1.1 Introduction

The Gold Coast Waterways Authority (**GCWA**) has been established to deliver best possible management of **Gold Coast waterways** at reasonable cost to the community and government, while keeping government regulation to a minimum.

In the spirit of keeping regulation to a minimum, GCWA's *Operational Policy—Compliance and Enforcement* (the **Policy**) describes mechanisms that encourage **compliance**, while also describing a principles-based approach to **enforcement** where required.

GCWA is responsible for administering and ensuring compliance with all or parts of the following legislation, as it relates to Gold Coast waterways and **trust land** within GCWA's jurisdiction:

- *Gold Coast Waterways Authority Act 2012*
- *Gold Coast Waterways Authority Regulation 2012*
- *Land Act 1994* (as trustee of Doug Jennings Park and other land reserves)
- *Land Regulation 2020*
- *Model by-law about protection and use of trust land* (pursuant the *Land Act 1994*, section 56)
- *Planning Act 2016*
- *Transport Infrastructure Act 1994*
- *Transport Infrastructure (Waterways Management) Regulation 2012*
- *Transport Operations (Marine Pollution) Act 1995*
- *Transport Operations (Marine Pollution) Regulation 2008*
- *Transport Operations (Marine Safety) Act 1994*
- *Transport Operations (Marine Safety) Regulation 2016*.

GCWA's jurisdiction may overlap with other State Government departments or agencies and the local government, including Department of Environment and Science, Department of Natural Resources, Mines and Energy, Department of Transport and Main Roads, Maritime Safety Queensland and the Council of the City of Gold Coast.

GCWA will always seek cooperation with other departments, agencies and the local government where issues of overlapping jurisdiction arise in order to achieve **best possible waterways compliance outcomes**.

The meanings of the words and terms **italicised** can be found in section 10, **Definitions**.

1.2 Policy statement

The Policy provides clarity as to what individuals or corporate entities may expect from GCWA if subject to compliance-related activities or an enforcement response.

GCWA will remain cognisant of community needs, expectations and concerns, which shall be relevant considerations for proper assessment of the **public interest**.

Generally, GCWA will consider an enforcement response as the last resort for achieving compliance, and this kind of response will only apply after there has been a breakdown of negotiated outcomes between GCWA and the person subject of the action, or where urgent corrective or remedial action is necessary.

Where jurisdiction remains unclear, and to address issues that might impact directly upon Gold Coast waterways, their users and values, GCWA will work collaboratively with other agencies, including:

- Council of the City of Gold Coast (the City)
- Department of Agriculture and Fisheries (DAF)
- Department of Environment and Science (DES)
- Department of Natural Resources, Mines and Energy (NRME)
- Department of State Development, Tourism and Innovation (DSDTI)
- Department of Transport and Main Roads (TMR)
- Maritime Safety Queensland (MSQ)
- Queensland Boating and Fisheries Patrol (QBFP)
- Queensland Parks and Wildlife Service (QPWS)
- Queensland Police Service (QPS)
- State Assessment and Referral Agency (SARA).

The Policy ensures that GCWA's compliance and enforcement practices are lawful, safe, fair, practical and consistent, and that GCWA discharges its **statutory obligations** during the investigation and enforcement of **unlawful activities**.

The Policy documents the strategic and overarching policy for compliance activities and enforcement **functions** across the spectrum of GCWA regulatory responsibilities. Where circumstances warrant unique or discrete treatment, GCWA may produce specific compliance guidelines, which shall become schedules to the Policy.

The Policy also acknowledges the contribution of the Queensland Ombudsman's office for the provision of guidance to regulatory good decision-making and administrative practices in its publication *Tips and Traps for Regulators (Second Edition)*, issued in October 2009.¹

1.3 Purpose

GCWA may be described as a **law enforcement agency** because of its establishment as a statutory authority with responsibilities for the performance of functions or activities directed at the prevention, detection, investigation and prosecution of offences and other breaches of laws for which penalties or sanctions may be imposed.²

For its purpose, this Policy:

- advocates that people are aware of and should generally act in **voluntarily compliance** with the law

¹ For further information, refer to the website of the Queensland Ombudsman at <https://www.ombudsman.qld.gov.au/improve-public-administration/reports-and-case-studies/investigative-reports/tips-and-traps-for-regulators-second-edition-2009>.

² *Information Privacy Act 2009*, schedule 5

- provides clear guidance about enforcement options available to GCWA where there has been a failure on behalf of an individual or corporate entity to comply with accepted community standards and/or legislative requirements
- openly documents how GCWA will, as a requirement of meeting its statutory obligations, seek to achieve compliance and exercise its enforcement functions
- articulates the level of interaction and involvement between compliance officers, **Board members**, and individuals and corporate entities where compliance activities or enforcement functions are necessary
- provides information on how GCWA expects Gold Coast residents and visitors to comply with the intent of the acts, regulations, other laws and the planning scheme applicable within the Gold Coast local government area
- instils community confidence in the way that GCWA delivers compliance activities and enforcement functions, as well as the impartiality of GCWA's regulatory decision-making process.

GCWA will use a range of proactive and reactive tools in its approach to compliance and enforcement, namely:

Proactive—

- legislation
- policies, procedures, standards and guidelines
- communication, education and incentives
- field operations
- authorities (for example, approvals, authorities or permits granted under an act, regulation or model by-law).

Reactive—

- investigation
- enforcement.

The Policy shall be supported by a broader compliance and enforcement structure that includes:

- compliance guidelines for specific areas of compliance responsibility
- factsheets and other material, to enable waterways users and the community to better understand their **personal responsibilities** for compliance (for example, an anchoring and mooring brochure)
- procedures or standards
- procedures for **reviewable decisions**
- management systems for **reports** and **complaints**
- access to documents through right to information
- cooperation with other law enforcement agencies
- collaboration with the Queensland Ombudsman's office.

1.4 Scope

GCWA has an obligation to exercise its statutory responsibilities where unlawful activities are detected and identified. The Policy provides clarity as to what individuals and corporate entities may expect from GCWA in terms of compliance activities or if subject to an enforcement response.

The Policy also provides a level of confidence that GCWA's compliance and enforcement practices:

- communicate how GCWA values those who voluntarily comply with the law
- demonstrate **proportionality** in regulatory decision-making
- display transparency in the process of investigation and enforcement
- remain open to public scrutiny.

1.5 Objectives

The objectives of the Policy are to establish clear guidelines for how GCWA will:

- perform its compliance activities and exercise its enforcement functions under the various acts, regulations or model by-law applicable to Gold Coast waterways and trust land
- empower **compliance officers** to seek compliance in line with applicable legislative standards
- support an agency, individual or corporate entity to achieve compliance with a lawful requirement
- expect waterways users, waterfront residents and corporate entities to comply with the intent of the acts, regulations or model by-law
- support, resource, disseminate information and provide the tools to assist compliance officers in deciding whether enforcement action is warranted
- assess whether an enforcement response is proportionate to the level of **risk** involved
- manage unlawful activities
- maintain a consistent approach to compliance and enforcement.

2.0 Principles

2.1 Effective compliance and enforcement

GCWA advocates firm but fair regulation to provide positive waterways community outcomes. The underlying principles in achieving this objective are:

- applying proportionality in the application of the law and in securing compliance
- maintaining a consistent approach
- displaying transparency in what individuals and corporate entities may expect from GCWA if they default
- that any enforcement response considers risk.

GCWA understands that incidents requiring regulatory intervention may differ.

In assessing the most appropriate regulatory response, compliance officers will have consideration to the following:

- risk (potential to cause physical, financial, environmental or other harm, along with the consequences of this happening)
- cost (value of time and resources to obtain a positive and beneficial outcome)
- evidence (facts or observations presented in support of an assertion)
- behaviour (the way in which a person responds to a situation with consideration to circumstance and exerting a positive demeanour)
- circumstances (facts that surround a situation, event or incident that should be kept in mind for regulatory decision-making)
- public interest (the outcome considers benefits offered to the entire community, or a group within the community, or individuals).

Example of public interest

Unattended anchored watercraft may become a hazard to other water traffic, a threat to the marine environment and a source of significant community concern. GCWA is obliged to investigate and take regulatory action where appropriate against the owners or operators of anchored watercraft, to ensure prompt removal of these watercraft from Gold Coast regulated waters at minimal cost to the community.

The public interest factors relating to anchored watercraft may include:

- *it's a serious issue that causes disruption to water traffic and negatively affects access to popular destinations within Gold Coast waterways*
- *the issue is prevalent and ongoing, and there's a strong need for deterrence of individuals, as well as generally across the community*
- *the issue generates significant public concern and a regular source of public reports and political interest*
- *failing to act would have a negative impact on public order and morale and would undermine public confidence in GCWA.*

*However, there is often more to the application of public interest factors because the circumstances of the owner of the watercraft also require consideration. To illustrate the point, if the owner of the anchored watercraft is seemingly fit and healthy with a substantial financial income, has been the subject of regular public reports, and when approached by GCWA displays an attitude that is uncooperative and hostile, then **enforcement action by GCWA is likely**.*

*Alternatively, if the owner of the anchored watercraft relies on a government pension as a sole means of income, has recently been hospitalised for an ongoing serious medical condition, is otherwise respectful and law-abiding, and when approached by GCWA displays a cooperative attitude and is willing to negotiate a positive compliance outcome, then **enforcement action by GCWA is less likely**.*

Consistency and transparency will be integral to GCWA's aim of regulating fairly. These values should assist those who might be subject of regulation to understand what shall be expected of them and why GCWA intends to initiate an enforcement response.

In addition, GCWA will follow principles of procedural fairness in any investigation to ensure fair and reasonable enforcement decision-making.

In accordance with principles for separation of powers and procedural fairness, protection of individual rights and process integrity, Board members will not involve themselves in GCWA compliance activities, regulatory

decision-making, or the negotiation and resolution of enforcement-related outcomes with aggrieved parties. This role will be undertaken by compliance officers under the guidance of, or in collaboration with, the Manager (Waterways), or if necessary, the Chief Executive Officer.

2.2 Voluntary compliance

GCWA acknowledges there will be high levels of cooperation and voluntary compliance with legislation across the Gold Coast community.

Consequently, GCWA will only direct its limited resources to investigative functions where unlawful activities have been identified.

GCWA will maintain records of all reports about unlawful activities, which shall be made available through appropriate lawful processes (for example, right to information).

To achieve its compliance objectives, GCWA will use a range of flexible and targeted measures, including:

- communication and education activities
- timely provision of information and advice
- persuasion
- cooperative assistance
- inspection and monitoring
- auditing
- **systematic risk management**
- performance feedback
- information sessions and community workshops
- access to information via website and social media.

GCWA will ensure availability of information that encourages voluntary compliance and assists the public in their waterways-related enquiries.

This information will be disseminated by both general publication and targeted communication in response to the identification of a particular risk.

GCWA will also advocate voluntary compliance by working with stakeholders to tailor audit, monitoring and inspection regimes (for example, spot checks, follow-up inspections or written advice).

GCWA will regularly review its compliance activities and enforcement functions, and incorporate lessons learnt into the Policy, procedures, standards, guidelines, broader compliance tools and, where appropriate, any jurisdictional-related legislative review process.

2.3 Enforcement

GCWA has broad statutory powers to assist in the following:

- compliance with conditions of relevant approvals, authorities or permits

- monitoring and movements of watercraft
- movements of vehicles
- regulation of unlawful activities
- management of development activities
- protection and use of public assets and land reserves.

All enforcement functions will be carried out in accordance with legislation, and with due regard to achieving an appropriate balance between regulating waterways and land reserve use and promoting the use and enjoyment of waterways and land reserves for tourism, recreation and marine industries.

GCWA’s regulatory effort will be primarily directed towards those who, through their unlawful activities, have the greatest negative impact upon other waterways and land reserve users, as well as GCWA’s ability to achieve its statutory purposes.

In the first instance, GCWA will take action to change the behaviour and address the impact from the unlawful activity through voluntary compliance. However, where this approach does not deliver the desired result, GCWA will escalate through an appropriate enforcement response.

Allegations of unlawful activity will be acknowledged in accordance with performance standards and, where necessary, compliance officers will produce reports to the Manager (Waterways) that set out the facts and circumstances of a matter and describe what enforcement action GCWA has taken or intends to take.

The Manager (Waterways) will produce quarterly reports to the Chief Executive Officer that include details of GCWA’s enforcement functions.

Reports by compliance officers and the Manager (Waterways) will be captured in GCWA’s records management system.

2.4 Prioritisation of resources

GCWA has multi-faceted responsibilities and priorities. Accordingly, GCWA will prioritise its compliance activities and enforcement effort to ensure the most efficient use of its limited resources.

This means the allocation of resources for compliance activities or enforcement functions will be prioritised according to the severity of a **contravention**, and the breadth of the impact of that contravention on waterways or land reserve users, as broadly outlined in Figure 1 below and by Figure 2 on the next page.

Critical	Severe impact on a wide cross-section of users
Severe	Minor impact on a wide cross-section of users
Moderate	Severe impact on limited number of users
Minor	Minor impact on a limited number of users

Figure 1: Severity model

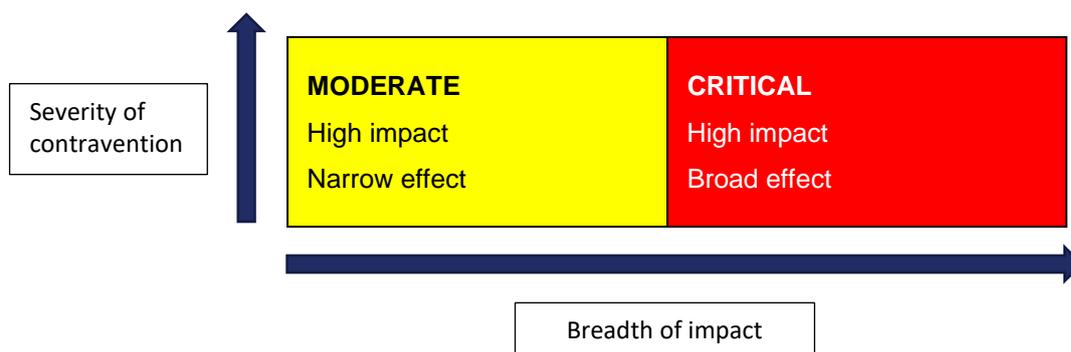


Figure 2: Severity of a contravention and breadth of its impact can be used to indicate potential importance and prioritisation for enforcement response.

3.0 Enforcement toolbox

3.1 Overview

GCWA will primarily focus its enforcement effort on those persons directly responsible for the act that causes the risk; or who are best placed for appropriate response and management, or resolution through a positive outcome.

The following sections outline the range of possible enforcement responses arising from an investigation into an unlawful activity.

3.2 No further action

Generally, GCWA will take no further action in circumstances where an investigation identifies:

- GCWA’s legislative responsibilities are not enlivened or applicable in the circumstances
- there is insufficient evidence to prove the alleged contravention
- another law enforcement agency has initiated regulatory action such that issues of duplicity arise
- meaningful exercise of enforcement functions cannot be undertaken due to passage of time
- an exemption, exception or defence available under relevant legislation that is clearly applicable in those circumstances
- expiry of a statutory period of limitation
- **public interest factors** dictating that no further action is the most appropriate response.

3.3 Informal action

GCWA will take informal action where corrective or remedial action is necessary and the unlawful activity has a relatively inconsequential impact.

The prerequisites for taking informal action may include:

- trivial or minor nature of the unlawful activity

- low level community concern
- the subject has received no previous warnings concerning the unlawful activity.

Informal action may include the following:

- caution (verbal advice by a compliance officer)
- **caution letter** (where a compliance officer confirms advice in writing)
- written request for corrective or remedial action.

Where GCWA requests corrective or remedial action (i.e. where there is a pressing need to ensure waterways safety, or to protect community health, safety or amenity, or to protect the marine environment from **environmental harm**), the compliance officer will clearly explain to the subject of that response why the action is necessary, and provide to that person an opportunity to discuss requirements for achieving compliance with relevant legislation, before proceeding to a formal enforcement response.

3.4 Formal action

GCWA will initiate formal enforcement action where urgency is required, and enforcement tools exist to expedite an immediate and effective response.

GCWA will consider formal enforcement action where the criteria for taking informal action are not available.

Formal enforcement action may include:

- **warning letter**
- infringement notice
- removal notice
- waterways notice
- administrative action
- request for voluntary undertaking
- **civil proceeding.**

The compliance officer leading the investigation will provide the person subject of the formal enforcement action with a written explanation about any rights of review against the enforcement action, where applicable.

3.5 Prosecution

Prosecution is an important and sometimes necessary part of an enforcement response. GCWA recognises that prosecution is a serious consequence that will only be pursued as a last resort and after full consideration of its implications and the outcomes being sought.

Decisions concerning prosecution trigger a process that elevate the status of the investigation and requires consultation between the Manager (Waterways) and GCWA's legal advisor. Prior to commencing prosecution, GCWA may also need to consult with an external third party (for example, TMR, NRME or an independent legal representative).

When deciding whether to prosecute, GCWA will apply a two-tiered test:

1. Sufficiency of evidence
2. Public interest.

3.5.1 Sufficiency of evidence

GCWA will not commence prosecution unless there is sufficient, admissible and reliable evidence to prove beyond doubt the commission of an offence, and there is a reasonable prospect of success in court. This means, based on the evidence collected, it is more likely than not that a court would convict the alleged offender.

If an allegation does not pass the sufficiency of evidence test (through consultation between the compliance officer, the Manager (Waterways) and GCWA's legal advisor), then no further prosecution action will be taken, regardless of how important or serious the allegation might be.

However, this does not mean that GCWA should not explore alternatives to prosecution, and that consideration will not be given to another type of formal enforcement response.

For example, where a person is suspected of being the person in charge of contravening property (such as a watercraft in contravention of requirements of a waterways notice), but there is no admissible evidence available that might prove that legal relationship, then GCWA will not commence prosecution against the suspected person in charge for contravention of the notice.³

However, GCWA may still commence action to move the contravening property and thereby ensure the effective and efficient management and use of Gold Coast waterways, or the safety and security of the users of Gold Coast waterways.

3.5.2 Public interest

Where there is sufficient evidence, GCWA may not commence prosecution unless this course of action serves the public interest.

Public interest factors that can affect the decision to prosecute usually depend upon the seriousness of the alleged unlawful activity, or the circumstances of an alleged offender and whether, through the conviction of a defendant, others may be deterred from similar unlawful activities.

Public interest factors require assessment of the seriousness of the alleged offence; any mitigating circumstances; the age, background, culture, health, or special infirmity of an alleged offender; or the availability of other alternate courses of action.

As a preventative strategy to alleviate or minimise the risk of unlawful activities or other inappropriate behaviour, GCWA will consider the wider public interest where enforcement action may lead to prosecution.

3.5.3 Circumstances for prosecution

Where an alleged offence passes both the sufficiency of evidence and public interest tests, GCWA may prosecute in any of the following circumstances:

- the alleged offence involves a failure to comply, in full or part, with a **statutory notice**
- there is a history of similar offences in relation to non-compliance with a statutory notice
- the alleged offence has the potential for unacceptable risk to users of Gold Coast waterways
- there has been disregard for, or persistent contraventions of, regulatory requirements
- the alleged offence involves knowingly supplying false or misleading documents
- there has been obstruction to a compliance officer in the exercise of a function under relevant legislation.

³ For further information, refer to the *Director's Guidelines* published by the Office of the Director of Public Prosecutions and available online at https://www.justice.qld.gov.au/_data/assets/pdf_file/0015/16701/directors-guidelines.pdf.

3.6 Alternatives to prosecution

In cases where prosecution may be appropriate, but a decision is made not to prosecute, GCWA will then consider an alternative response to achieve compliance (for example, caution letter, warning letter, waterways notice, voluntary undertaking, infringement notice, or a combination of these).

GCWA will maintain records of all enforcement responses in relation to a person and, where necessary, GCWA may refer to these records in subsequent dealings with that person.

GCWA may also refer matters to other law enforcement agencies in facilitating an alternative response to ensure compliance (for example, City of Gold Coast, Maritime Safety Queensland, Queensland Boating and Fisheries Patrol, Queensland Parks and Wildlife Service and Queensland Police Service).

3.7 Integrity and impartiality

The Policy shall be read and understood in conjunction with the *Code of Conduct for the Queensland Public Service* as it applies to Board members, the Chief Executive Officer and GCWA employees; together with principles for managing conflicts of interest, as set out in guidelines and other information released from time to time by the Integrity Commissioner, the Public Service Commission, and the Crime and Corruption Commission.⁴

3.8 Working with other law enforcement agencies

GCWA will liaise with other law enforcement agencies to minimise duplication, avoid inconsistencies, and to ensure that commencement of any legal proceedings (whether by prosecution or a civil proceeding) shall be for the most appropriate offence.

3.9 Injunctions

In its simplest form, an injunction is a temporary court order directing a person to do or not to do a specific thing, generally to maintain the status quo until such time the larger legal issue can be heard before the court.

GCWA may seek an injunction in relation to a person only in circumstances where:

- relevant law allows for such an order
- there are sufficient grounds for an order
- there is an immediate threat to Gold Coast waterways, land reserves for which GCWA is trustee, or an unacceptable risk to the Gold Coast community
- the act or omission by the person is causing extreme distress.

An application for an injunction will only be successful if:

- there is a serious question to be determined
- there is a matter of urgency
- damages will not adequately repair the harm
- the balance of convenience favours granting the injunction.

⁴ For further information, refer to the *Code of Conduct for the Queensland Public Service* at <https://www.qld.gov.au/gov/code-conduct-queensland-public-service>.

When deciding whether to proceed with an application for an injunction, GCWA will always consider the possibility that GCWA may face a claim for damages in the event that an eventual proceeding in court may not be successful.

When considering an application for an injunction, GCWA will always obtain legal advice on prospects of success or otherwise.

GCWA understands that it is better to fail in an application for an injunction than failing to take any action in the face of a known, unacceptable risk.

4.0 Enforcement decisions

In most cases, the compliance officer will make the decision about the most appropriate course of action to achieve compliance, including an enforcement response.

The compliance officer will inform this decision through reference to some or all of the following:

- relevant legislation
- any relevant operational policies, procedures, standards or guidelines
- GCWA priorities
- advice and guidance from the Manager (Waterways)
- legal advice
- professional judgment.

The role of the compliance officer will be to guide, educate, mitigate and take appropriate enforcement action, to achieve compliance with relevant legislation, uphold accepted community standards, and to reflect the values and culture of GCWA.

For more serious matters (where the nature of the unlawful activity points towards an enforcement response such as removal of property or prosecution), the decision-making process for the most appropriate course of action will be one of collaboration with approval by the Manager (Waterways) and, where necessary, the Chief Executive Officer.

5.0 Review of this Policy

Implementation, monitoring and review of the Policy will be the responsibility of the Manager (Waterways) who will make any necessary suggestions or recommendations for improvement to the Chief Executive Officer.

All GCWA employees with responsibilities for monitoring and dealing with watercraft, initiating and making enquiries into reports or complaints, or investigating alleged or suspected contraventions of legislation shall also be responsible for implementation of this Policy.

Any variance from the Policy shall be reported immediately to the Manager (Waterways) who will address the concern and initiate corrective or remedial action, if warranted.

The Policy shall be **reviewed annually** or more frequently if there are significant changes to legislation or other circumstances that impact upon its effectiveness and validity.

6.0 Reviewable decisions and complaints

Where an individual or corporate entity is dissatisfied with a decision made by the Chief Executive Officer or a GCWA employee, or raises concern about GCWA's compliance activities or enforcement functions, or questions the conduct or management of a GCWA investigation, that person may seek to have the decision or concern dealt with in a way appropriate to the nature of the particular matter.

6.1 Review of decisions

Generally, decisions for compliance or enforcement-related matters made by the Chief Executive Officer or GCWA employees are **reviewable decisions** under relevant legislation (for example, a decision to move contravening property pursuant section 28 of the *Gold Coast Waterways Authority Act 2012* would be subject to review under section 34 of that Act).

Where applicable, the relevant legislation provides a **review procedure** that sets out how a person may apply for a review of a compliance or enforcement-related decision.

GCWA will respond to an application for the review of a compliance or enforcement-related decision in accordance with relevant legislation (for example, for a decision under the *Gold Coast Waterways Authority Act 2012*, the review procedure as provided by the *Transport Planning and Coordination Act 1994*).

6.2 Complaints management

GCWA is committed to delivery of quality services responsive to waterways users and the community.

GCWA has developed a *Complaints Management Policy* for dealing with complaints from individuals or corporate entities about GCWA's activities, decisions or services, and which describes procedures of a formal **complaints process**.

The *Complaints Management Policy* (and the Complaint Lodgement Form) can be found on GCWA's website here <https://gcwa.qld.gov.au/about/lets-connect/>.

Any person may take up a complaint with GCWA or the Chief Executive Officer.

6.3 Queensland Ombudsman

A core function of the Queensland Ombudsman's office is to investigate complaints about actions and decisions by State Government departments or agencies.

The Ombudsman's office encourages those with complaints to first seek resolution with the relevant department or agency. The Ombudsman's office also suggests that persons keep records of all discussions with the department or agency, along with copies of all correspondence.

For complaints about GCWA or one of its employees, a person should first approach GCWA and genuinely attempt resolution of the issue or problem through the complaints process.

Where an individual or corporate entity remains dissatisfied with GCWA's response to a complaint, or there is undue delay in addressing the complaint, the person may make a complaint to the Queensland Ombudsman, following an online process that can be found here <https://www.ombudsman.qld.gov.au/how-to-complain>.

7.0 Human rights and information

7.1 Human rights

The *Human Rights Act 2019* (the HR Act) sets out 23 human rights covering civil and political rights; along with economic, social and cultural rights.

The HR Act binds all persons, including the State of Queensland; and applies to **public entities**.

By definition under the HR Act, GCWA as a statutory authority, the Board members, the Chief Executive Officer, and all GCWA employees are public entities.

This means that GCWA, the Chief Executive Officer and all GCWA employees have obligations under the HR Act to properly consider human rights and to make decisions in ways that are compatible with human rights.

In its interactions with all persons, GCWA will:

- build a culture that respects and promotes human rights
- protect and promote human rights
- encourage dialogue about the nature, meaning and scope of human rights.

GCWA will embed an understanding of human rights into its compliance and enforcement-related activities, to ensure that human rights of individuals, especially those most vulnerable, remain at the forefront of GCWA's regulatory decision-making.

More information about the HR Act and the 23 human rights can be found on the Queensland Government's website here <https://www.qld.gov.au/law/your-rights/human-rights>.

7.2 Queensland Human Rights Commission

The core functions of the Queensland Human Rights Commission include dealing with human rights complaints and reviewing the policies, programs, procedures, practices and services of public entities for compatibility with human rights.

For a human rights complaint about GCWA or one of its employees, a person should first approach GCWA and genuinely attempt resolution of the complaint, following the complaints process.

However, where the person remains dissatisfied with GCWA's response to the complaint, that person may make a complaint to the Queensland Human Rights Commission following the online process that can be found here <https://www.qhrc.qld.gov.au/complaints>.

7.3 Information privacy

The *Information Privacy Act 2009* (the IP Act) requires that GCWA, as an agency, complies with the 11 Information Privacy Principles (IPPs) to protect **personal information** that is collected, stored and handled by the State Government departments and agencies.⁵

During its compliance and enforcement-related activities, GCWA may collect personal information for the purpose of administering and ensuring compliance with several pieces of legislation, in accordance with the IP Act.

GCWA will not use or disclose personal information for a purpose other than the purpose for which the personal information was collected, except as provided by the IP Act.

⁵ *Information Privacy Act 2009*, schedule 3

However, as a law enforcement agency, GCWA is exempt from certain provisions of the IP Act to enable the performance of activities or functions directed to the prevention, detection, investigation or prosecution of offences and other breaches of laws for which penalties or sanctions may be imposed, or for the execution or implementation of an order or decision made by a court.

If a person believes there has been a breach by GCWA of the IP Act relating to personal information, that person may make a complaint to GCWA by completing and submitting a Complaint Lodgement Form that can be found on GCWA's website here <https://gcwa.qld.gov.au/about/lets-connect/>.

7.4 Right to information

The *Right to Information Act 2009* (the RTI Act) provides a mechanism for persons to have access to documents in the possession or under the control of State Government departments and agencies. The RTI Act enhances accountability for those departments and agencies, and promotes discussion about public affairs.

The RTI Act includes certain grounds for refusing access to documents held by GCWA; for example, where a document is reasonably open to public access under another act.

An application by a person for access to document(s) under the RTI Act must:

- be made in writing
- provide sufficient information concerning the document(s) sought to enable GCWA's RTI officer to identify the document(s)
- be accompanied by the prescribed application fee, unless the document(s) for which the access is sought contains the personal affairs of the applicant.

Further information about right to information may be found on GCWA's website here <https://gcwa.qld.gov.au/right-to-information/>.

8.0 Appointments and delegations

GCWA may appoint or delegate certain GCWA employees for the performance of various levels of investigative or enforcement functions under relevant legislation (for example, the Chief Executive Officer may appoint authorised persons under the *Transport Infrastructure Act 1994*).

Other State Government departments or agencies may also appoint certain GCWA employees for various investigative or enforcement functions under relevant legislation (for example, Maritime Safety Queensland may appoint shipping inspectors under the *Transport Operations (Marine Safety) Act 1994*).

GCWA shall maintain records of all employees with statutory appointments or delegations, in accordance with good record management practices.

9.0 Relevant legislation and other published material

9.1 Legislation

- *Gold Coast Waterways Authority Act 2012*
- *Gold Coast Waterways Authority Regulation 2012*
- *Human Rights Act 2019*

- *Information Privacy Act 2009*
- *Land Act 1994*
- *Land Regulation 2020*
- *Model by-law about protection and use of trust land (pursuant the Land Act 1994, section 56)*
- *Planning Act 2016*
- *Right to Information Act 2009*
- *Transport Infrastructure Act 1994*
- *Transport Infrastructure (Waterways Management) Regulation 2012*
- *Transport Operations (Marine Safety) Act 1994*
- *Transport Operations (Marine Safety) Regulation 2016*
- *Transport Operations (Marine Pollution) Act 1995*
- *Transport Operations (Marine Pollution) Regulation 2008*

7.2 Other published material

- *Code of Conduct for the Queensland Public Service*
- *Complaints Management Policy*
- *Tips and Traps for Regulators (Second Edition) (2009)*
- *Welcome Aboard: A guide for members of Queensland Government Boards, Committees and Statutory Authorities*

10.0 Definitions

best possible waterways compliance outcomes include one or more of the following solutions:

- a) all parties agree and commit to a positive outcome
- b) waterways access and networks are enhanced
- c) waterways community, health and safety are not compromised
- d) waterways infrastructure, social and environmental amenity are enhanced
- e) harm or nuisance arising from waterways activity is reduced or abated.

Board members means the duly appointed members of the GCWA Board under the *Gold Coast Waterways Authority Act 2012*.

caution letter means a letter from GCWA to a person involved in an incident or event that describes the facts and circumstances of the incident or event, identifies a particular unlawful activity, recommends corrective or remedial action, and informs the person that no further action will be taken at that time.

Chief Executive Officer mean the duly appointed Chief Executive Officer under the *Gold Coast Waterways Authority Act 2012*.

civil proceeding is a legal proceeding not related to a criminal matter (for example, a trespass proceeding under the *Land Act 1994*).

complaint means a formal complaint by a person about an activity, decision or service by GCWA, the Chief Executive Officer or an employee of GCWA.

complaints process means the formal process for dealing with complaints about GCWA's activities, decisions or services, in accordance with requirements outlined in *Directive 13/06—Complaints Management Systems*, issued by the Public Service Commissioner, Queensland, in November 2006.

compliance refers to an agency, corporate entity or individual complying with, or taking steps to comply with, relevant requirements of an act, regulation or model by-law.

compliance officer means a person who is appointed under an act, regulation or model by-law to exercise appropriate functions or powers under that act, regulation or model by-law; or in the absence of a statutory appointment, a person undertaking compliance-related duties at the direction of the Chief Executive Officer or the Manager (Waterways).

contravention means unlawful activity.

enforcement means a range of measures and actions that might be taken by GCWA or a GCWA employee to ensure that an individual or corporate entity complies with their statutory obligations.

environmental harm means an adverse effect, or potential adverse effect (whether temporary or permanent and of whatever magnitude, duration or frequency) on an environmental value, including environmental nuisance.

function includes the exercise of powers under an act, regulation or model by-law.

GCWA means Gold Coast Waterways Authority established under the *Gold Coast Waterways Authority Act 2012*.

Gold Coast waterways means those waters as defined by the *Gold Coast Waterways Authority Act 2012*, section 7(2).

law enforcement agency means that term as defined by the *Information Privacy Act 2009*, schedule 5.

personal information mean that term as defined by the *Information Privacy Act 2009*, section 12.

personal responsibility means that the primary responsibility for compliance rests with individuals and corporate entities.

Policy means this *Operational Policy—Compliance and Enforcement*.

proportionality means relating an enforcement response to the risks and costs. GCWA will always consider costs, ensuring that any enforcement response remains proportionate to the risk. As far as the law allows, GCWA will take into consideration the circumstances of the concern, behaviours and risk when deciding the most appropriate enforcement response.

prosecution means the commencement and conduct of legal proceedings against an individual or corporate entity for alleged unlawful activity.

public entity means that term as defined in the *Human Rights Act 2019*, section 9.

public interest means the interests of the whole community, or a group within the community, or individuals.

public interest factors include consideration of matters that may impact upon the public's perception of circumstances, including:

- a) level of seriousness or triviality of the alleged offence, or whether it is of a 'technical' nature only
- b) existence of any mitigating or aggravating circumstances
- c) youth, age, physical or mental health or special infirmity of the alleged offender or a necessary witness
- d) alleged offender's antecedents and background, including culture and ability to understand the English language
- e) passing of time or staleness of the alleged offence
- f) degree of culpability of the alleged offender in connection with the offence
- g) whether or not enforcement would be perceived as counterproductive to the interests of justice
- h) availability and efficacy of any alternatives to enforcement
- i) prevalence of the alleged offence and need for deterrence, either personal or general
- j) whether or not the alleged offence is of minimal public concern
- k) any entitlement or liability of a victim or other person to criminal compensation, restitution, reparation or forfeiture if enforcement action is taken
- l) attitude of the victim of the alleged offence to enforcement
- m) likely duration and expense of enforcement action
- n) whether or not the alleged offender is willing to co-operate in the investigation or enforcement of others, or the extent to which the alleged offender has done so
- o) likely outcome in the event of enforcement being successful, considering the enforcement options available
- p) whether or not the alleged offender has already been pursued for a series of other offences and what likelihood there is of any additional penalty, having regard to the totality principle
- q) necessity to maintain public confidence in GCWA
- r) effect on public order and morale.

report means a written report by a person to GCWA about an alleged or suspected contravention or offence against an act, regulation or model by-law for which GCWA has regulatory responsibility.

review procedure means the procedure for review of GCWA decisions, including enforcement decisions, where relevant legislation allows.

reviewable decision means a decision that is capable of being the subject of judicial review.

risk means a potential impact that may cause physical, financial, environmental or other harm resulting in loss of life, loss of value to goods or property, or loss of amenity.

statutory notice means a waterways notice issued under the *Gold Coast Waterways Authority Act 2012*.

statutory obligation means an obligation that does not arise from a contractual relationship but is established under a law.

systematic risk management means to identify and manage risks (i.e. identifying and assessing planned risk responses, and then monitoring and controlling those risks during the response).

trust land means land for which Gold Coast Waterways Authority has been appointed trustee under the *Land Act 1994*.

unlawful activity means any activity that has been or is being carried out:

- a) without an approval, authority, permit or other written authorisation from GCWA, where such approval, authority, permit or other written authorisation is required by an act, regulation or model by-law
- b) contrary to the terms or conditions of an approval, authority, permit or other written authorisation from GCWA, where such approval, authority, permit or other written authorisation is required by an act, regulation or model by-law
- c) contrary to an act, regulation or model by-law to regulate the activity that can be carried out in Gold Coast waterways or on trust land
- d) contrary to a legislative provision regulating that activity.

voluntary compliance generally means that an individual or corporate entity will carry out and manage their activity within requirements of an act, regulation or model by-law, or conditions of an approval, authority or permit granted under an act, regulation or model by-law.

warning letter means a letter from GCWA to an alleged offender that describes an alleged unlawful activity, outlines consequences for the alleged unlawful activity, recommends corrective or remedial action, and informs the person that no further action will be taken at that time. A warning letter is stronger than a caution letter.