

Queensland



**TRANSPORT AND OTHER  
LEGISLATION AMENDMENT  
ACT 2004**

**Act No. 9 of 2004**



# Queensland



## TRANSPORT AND OTHER LEGISLATION AMENDMENT ACT 2004

### TABLE OF PROVISIONS

Section		Page
<b>PART 1—PRELIMINARY</b>		
1	Short title . . . . .	10
2	Commencement . . . . .	10
<b>PART 2—AMENDMENT OF TRANSPORT INFRASTRUCTURE ACT 1994</b>		
3	Act amended in pt 2 and sch . . . . .	10
4	Insertion of new s 239A . . . . .	11
	239A Effect of resumption of particular interests in land . . . . .	11
5	Insertion of new s 260A . . . . .	11
	260A Transfer of obligations for existing railway to new railway manager . . . . .	12
6	Amendment of s 521 (Definitions for pt 3) . . . . .	12
7	Insertion of new s 530 . . . . .	12
	530 Declaration about s 521, definition “previous” . . . . .	12
<b>PART 3—AMENDMENT OF TRANSPORT OPERATIONS (MARINE SAFETY) ACT 1994</b>		
8	Act amended in pt 3 and sch . . . . .	13
8A	Amendment of s 206A (General manager’s power to fix speed limits for ships) . . . . .	13
9	Replacement of s 212 (Regulations may give effect to Uniform Shipping Laws Code) . . . . .	13
	212 Regulations may give effect to agreements or documents about ships approved by Australian entity . . . . .	13
<b>PART 4—AMENDMENT OF TRANSPORT OPERATIONS (PASSENGER TRANSPORT) ACT 1994</b>		
10	Act amended in pt 4 and sch . . . . .	14

11	Insertion of new s 4A .....	14
	4A Act does not prevent local law from imposing additional requirements .....	14
12	Amendment of s 12 (What is operator accreditation) .....	14
12A	Replacement of s 23 (Purpose of driver authorisation) .....	14
	23 Purpose of driver authorisation .....	14
13	Amendment of s 24 (What is driver authorisation) .....	15
13A	Amendment of s 27 (Driver must hold appropriate authorisation) .....	15
13B	Insertion of new ss 28A–28C .....	15
	28A Ineligibility for driver authorisation—category A driver disqualifying offences .....	16
	28B Driver authorisation—category B driver disqualifying offences . . .	16
	28C Driver authorisation—category C driver disqualifying offences . . .	17
13C	Amendment of s 29 (Granting, renewing or refusing driver authorisation) .	17
13D	Amendment of s 31 (Applicant to notify charge for disqualifying offence etc.) .....	18
13E	Amendment of s 32 (Amendment, suspension and cancellation of driver authorisations) .....	18
13F	Amendment of s 33 (Authorised driver must notify charge for disqualifying offence etc.) .....	19
13G	Insertion of new s 33A .....	19
	33A Protection of children and vulnerable members of the community . .	19
13H	Amendment of s 34 (Authorised driver must notify suspension or cancellation of licence etc.) .....	20
13I	Amendment of s 35 (Obligation to notify accredited operator of suspension or cancellation of licence etc.) .....	20
14	Amendment of s 43 (Obligation to hold service contracts) .....	20
15	Amendment of s 46 (Review of holder’s performance) .....	21
16	Amendment of s 51 (Conditions of funding) .....	21
17	Insertion of new s 54A .....	21
	54A Application of div 2 .....	21
18	Insertion of new ch 6, pt 2, div 2AA .....	21
	<i>Division 2AA—Translink service contracts</i>	
	62AAA Purpose of div 2AA .....	22
	62AAB Definition for div 2AA .....	22

---

62AAC	What is a Translink service contract . . . . .	22
62AAD	Offer of new Translink service contract. . . . .	22
62AAE	Matters to be considered generally when considering offers for Translink service contracts . . . . .	23
62AAF	Unsatisfactory performance of Translink service contract holder . .	24
62AAG	New service contract area or route in the Translink area. . . . .	24
62AAH	Compensation . . . . .	26
62AAI	What happens when Translink service contract is surrendered, cancelled or terminated . . . . .	26
19	Replacement of s 101 (Standards do not apply to railway managers or operators) . . . . .	27
101	Application of standards to railway managers or railway operators . . . . .	27
20	Omission of ch 11, pt 2 . . . . .	27
21	Renumbering of ch 11, pt 1 . . . . .	27
22	Insertion of new ch 11, pt 1 . . . . .	28
	<b>PART 1—INTERPRETATION</b>	
110	Definition for ch 11 . . . . .	28
23	Amendment of s 111 (Appointment of authorised persons etc.). . . . .	28
24	Amendment of s 112 (Identity cards) . . . . .	29
25	Amendment of s 114 (Powers of authorised persons). . . . .	29
26	Amendment of s 115 (Protection from liability). . . . .	29
27	Amendment of s 126 (Procedure after thing seized). . . . .	30
28	Amendment of s 126D (Forfeiture of seized things). . . . .	30
29	Insertion of new s 126P . . . . .	30
126P	Definition for pt 4 . . . . .	30
30	Replacement of s 127 (Power to require name and address). . . . .	30
127	Power to require name, address and age . . . . .	30
31	Amendment of s 128 (Power to require information from certain persons) .	31
32	Amendment of s 130 (False or misleading information) . . . . .	32
33	Amendment of s 131 (False, misleading or incomplete documents) . . . . .	32
34	Amendment of s 135 (Obstructing authorised person or authorised person for a railway) . . . . .	32
35	Amendment of s 136 (Impersonating authorised person or authorised person for a railway) . . . . .	32

36	Amendment and relocation of s 139 (Power to require production of tickets) . . . . .	33
37	Amendment and relocation of s 140 (Power to require person to leave train etc.) . . . . .	33
38	Omission of ch 11, pt 6 . . . . .	34
39	Omission of ch 11, pt 7, hdg . . . . .	34
40	Omission of ss 141–143 . . . . .	34
41	Amendment and relocation of s 143A (Evidence of concession entitlement) . . . . .	34
42	Omission of s 143AB (Application of ch 11A). . . . .	35
43	Amendment of s 143AC (Definitions for ch 11A) . . . . .	35
44	Insertion of new s 143AB . . . . .	36
	143AB When does a person evade payment of a fare. . . . .	36
45	Replacement of s 143AD (Fare evasion and obtaining hire of vehicle by fraud etc.) . . . . .	37
	143AC Fare evasion. . . . .	37
	143AD Obtaining hire or use of vehicle by fraud or misrepresentation . . . . .	37
46	Amendment of s 143AE (Vehicle and equipment not to be interfered with) . . . . .	37
47	Replacement of s 143AF (Creating disturbance or nuisance on vehicle) . . . . .	38
	143AF Creating disturbance or nuisance on railway or vehicle . . . . .	38
48	Amendment of s 143AG (Direction to leave, or not to enter, vehicle) . . . . .	38
49	Amendment of s 143AH (Direction to leave vehicle). . . . .	38
50	Replacement of s 143AK (Offence to contravene direction) . . . . .	39
	143AK Offence to contravene direction . . . . .	39
51	Amendment of s 149 (Offences of dishonesty). . . . .	39
52	Amendment of s 152 (No need to prove appointments) . . . . .	39
53	Amendment of s 154 (Attempt to commit offence) . . . . .	39
54	Amendment of s 154B (Definitions for pt 2) . . . . .	40
55	Insertion of new ch 13, pt 1A . . . . .	40
	<b>PART 1A—TRANSITIONAL PROVISIONS FOR TRANSPORT AND OTHER LEGISLATION AMENDMENT ACT 2004</b>	
	<i>Division 1—Authorised persons</i>	
	157 Authorised persons . . . . .	40
	<i>Division 2—Translink service contracts</i>	

158	Offers for Translink service contracts . . . . .	41
159	Matters to be considered when considering offer . . . . .	41
160	Termination of particular service contracts in SEQ area . . . . .	42
161	Compensation . . . . .	42
	<i>Division 3—Driver disqualifying offences</i>	
162	Driver disqualifying offences. . . . .	43
163	Transitional regulation-making power. . . . .	43
55A	Insertion of new sch 1A. . . . .	44
	SCHEDULE 1A	
	DRIVER DISQUALIFICATION OFFENCES	
55B	Amendment of sch 2 (Reviewable decisions) . . . . .	48
56	Insertion of new sch 2A. . . . .	48
	SCHEDULE 2A	
	PARTICULAR SERVICE CONTRACTS IN SEQ AREA	
57	Amendment of sch 3 (Dictionary). . . . .	50
	<b>PART 5—AMENDMENT OF TRANSPORT OPERATIONS (ROAD USE MANAGEMENT) ACT 1995</b>	
58	Act amended in pt 5 and sch . . . . .	53
59	Amendment of s 19 (Procedure for amending, suspending or cancelling approvals) . . . . .	54
60	Insertion of new s 19A . . . . .	54
	19A Cancelling suspended approval for failing to take remedial action . .	54
61	Amendment of s 32 (Power to stop heavy vehicles) . . . . .	55
62	Insertion of new s 53A . . . . .	55
	53A Proof of giving false and misleading statements and documents . . .	55
63	Amendment of s 66 (Local laws etc.) . . . . .	56
64	Amendment of s 101 (Who may regulate parking). . . . .	56
65	Amendment of s 102 (Parking regulation involves installing official traffic signs) . . . . .	56
66	Amendment of s 103 (Examples of how parking may be regulated) . . . . .	56
67	Amendment of s 105 (Paid parking) . . . . .	57
68	Amendment of s 108 (Local laws about minor traffic offences). . . . .	57
69	Amendment of sch 3 (Reviewable decisions) . . . . .	58

**PART 6—AMENDMENT OF TRANSPORT PLANNING AND  
COORDINATION ACT 1994**

70	Act amended in pt 6 . . . . .	58
71	Amendment of s 25 (General powers regarding property) . . . . .	58
71A	Insertion of new s 36DA . . . . .	58
	36DA Commissioner for Children and Young People . . . . .	59

**PART 7—AMENDMENT OF LAND ACT 1994**

72	Act amended in pt 7 . . . . .	59
73	Renumbering of ch 6, pt 1, div 3A . . . . .	59
74	Renumbering of s 290A (Explanatory format plan) . . . . .	59
75	Insertion of new ch 6, pt 1, div 3A . . . . .	59
	<i>Division 3A—Format of plans of survey</i>	
	290A Available formats for plans . . . . .	60
	290B Standard format plan . . . . .	60
	290C Volumetric format plan . . . . .	60
76	Insertion of new ch 6, pt 1, div 3C . . . . .	60
	<i>Division 3C—Plans of subdivision</i>	
	290E Meaning of “plan of subdivision” . . . . .	60
	290F Plan of subdivision may be registered . . . . .	61
	290G Standard format plan of subdivision . . . . .	61
	290H Volumetric format plan of subdivision . . . . .	61
	290I Division of lot on standard format plan of subdivision . . . . .	61
	290J Requirements for registration of plan of subdivision . . . . .	61
	290K Particulars to be recorded on registration of plan . . . . .	62
	290L Lodged plan that is withdrawn and re-lodged . . . . .	63
	290M Division excluding road or watercourse . . . . .	63
	290N Pre-examination of plans . . . . .	63
77	Insertion of new ch 6, pt 1A . . . . .	63

**PART 1A—BUILDING MANAGEMENT STATEMENTS**

*Division 1—Application*

	294A Application . . . . .	64
--	----------------------------	----

*Division 2—Building management statements*

	294B Building management statement may be registered . . . . .	64
--	--	----

294C	Circumstances under which building management statement may be registered . . . . .	64
294D	Content of building management statement . . . . .	65
294E	Registration of building management statement . . . . .	66
294F	Amending a building management statement . . . . .	66
294G	Building management statement if lots owned by 1 lessee . . . . .	66
294H	One person becoming lessee of all lots . . . . .	66
294I	Extinguishing a building management statement . . . . .	67
294J	Building management statement affecting freehold and non-freehold land . . . . .	67
78	Amendment of s 352 (Plan of survey must be registered if needed). . . . .	68
79	Amendment of s 392 (Delegation by Minister). . . . .	68
80	Amendment of sch 6 (Dictionary). . . . .	68
<b>PART 8—AMENDMENT OF LAND TITLE ACT 1994</b>		
81	Act amended in pt 8 and sch . . . . .	69
82	Insertion of new s 54J . . . . .	70
54J	Building management statement affecting freehold and non-freehold land . . . . .	70
<b>SCHEDULE . . . . .</b>		
<b>MINOR AND CONSEQUENTIAL AMENDMENTS</b>		
	LAND ACT 1994 . . . . .	71
	TRANSPORT INFRASTRUCTURE ACT 1994 . . . . .	71
	TRANSPORT OPERATIONS (MARINE SAFETY) ACT 1994 . . . . .	72
	TRANSPORT OPERATIONS (PASSENGER TRANSPORT) ACT 1994. . . . .	72
	TRANSPORT OPERATIONS (ROAD USE MANAGEMENT) ACT 1995 . . . . .	74



Queensland



**Transport and Other Legislation Amendment  
Act 2004**

**Act No. 9 of 2004**

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

*[Assented to 20 May 2004]*

**The Parliament of Queensland enacts—**

## **PART 1—PRELIMINARY**

### **1 Short title**

This Act may be cited as the *Transport and Other Legislation Amendment Act 2004*.

### **2 Commencement**

The following provisions of the Act commence on proclamation—

- sections 20 to 50
- sections 52 to 54
- section 55 (to the extent it inserts sections 157, 160 and 161)
- section 57(1)
- section 57(2) (other than to the extent it inserts definitions “SEQ area”, “Translink area” and “Translink service contract”)
- schedule, amendment of the *Land Act 1994*
- schedule, amendments of the *Transport Infrastructure Act 1994*
- schedule, amendments of the *Transport Operations (Passenger Transport) Act 1994*, item 9.

## **PART 2—AMENDMENT OF TRANSPORT INFRASTRUCTURE ACT 1994**

### **3 Act amended in pt 2 and sch**

This part and the schedule amend the *Transport Infrastructure Act 1994*.

#### **4 Insertion of new s 239A**

Chapter 7, part 7—

*insert—*

##### **‘239A Effect of resumption of particular interests in land**

‘(1) This section applies if, under the resumption laws, the chief executive, for the State, acquires an interest in land that is less than a freehold interest (the “**acquired land**”) for use by a railway manager as part of a rail transport corridor.

‘(2) The acquired land is free of any interest or obligation arising under the interest that was acquired.

‘(3) The chief executive, for the State, may exercise all the powers of an owner in relation to the acquired land.

‘(4) The chief executive must, as soon as practicable, arrange for the acquired land to become unallocated State land for the purposes of section 240.

‘(5) However, the chief executive may delay the acquired land becoming unallocated State land until any proposed rail transport infrastructure is built or substantially built and the boundaries of the land are more accurately defined.

‘(6) The *Acquisition of Land Act 1967*, section 12(2A),<sup>1</sup> does not apply to the acquired land.

‘(7) In this section—

**“resumption laws”** means —

- (a) the *Transport Planning and Coordination Act 1994*, section 25;<sup>2</sup> and
- (b) the *Acquisition of Land Act 1967*’.

#### **5 Insertion of new s 260A**

After section 260—

*insert—*

---

1 *Acquisition of Land Act 1967*, section 12 (Effect of gazette resumption notice)

2 *Transport Planning and Coordination Act 1994*, section 25 (General powers regarding property)

**‘260A Transfer of obligations for existing railway to new railway manager**

‘(1) This section applies if—

- (a) Queensland Rail has obligations under section 260 in relation to a railway that it leases; and
- (b) Queensland Rail surrenders the lease of the railway; and
- (c) the railway is leased to another railway manager; and
- (d) the other railway manager operates the railway as a railway.

‘(2) After the railway is leased to the other railway manager, the other railway manager must satisfy Queensland Rail’s obligations under section 260.

‘(3) However, Queensland Rail continues to be responsible for any obligations that arose before the lease of the railway was surrendered.’.

**6 Amendment of s 521 (Definitions for pt 3)**

Section 521, definition “previous”, ‘with that number as in force’—

*omit, insert—*

‘as that provision existed’.

**7 Insertion of new s 530**

Chapter 18, part 3—

*insert—*

**‘530 Declaration about s 521, definition “previous”**

‘It is declared that, for the period starting on 1 December 2003 to immediately before the commencement of this section, the definition “previous” in section 521 is taken to have included ‘as that provision existed’ instead of ‘with that number as in force’.’.

## **PART 3—AMENDMENT OF TRANSPORT OPERATIONS (MARINE SAFETY) ACT 1994**

### **8 Act amended in pt 3 and sch**

This part and the schedule amend the *Transport Operations (Marine Safety) Act 1994*.

### **8A Amendment of s 206A (General manager’s power to fix speed limits for ships)**

(1) Section 206A(2), before ‘subordinate legislation’—

*insert—*

‘not’.

(2) Section 206A—

*insert—*

‘(8) It is declared that a gazette notice under this section is taken never to have been subordinate legislation.’.

### **9 Replacement of s 212 (Regulations may give effect to Uniform Shipping Laws Code)**

Section 212—

*omit, insert—*

#### **‘212 Regulations may give effect to agreements or documents about ships approved by Australian entity**

‘A regulation may give effect (with or without changes and whether in whole or part) to an agreement or document about ships approved by an Australian entity whose functions include matters relating to marine safety.

*Example—*

Uniform Shipping Laws Code adopted by the Australian Transport Council.<sup>3</sup>’.

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3 The Australian Transport Council comprises Commonwealth, State, Territory and New Zealand Ministers responsible for transport, roads and marine and ports issues.

## **PART 4—AMENDMENT OF TRANSPORT OPERATIONS (PASSENGER TRANSPORT) ACT 1994**

### **10 Act amended in pt 4 and sch**

This part and the schedule amend the *Transport Operations (Passenger Transport) Act 1994*.

### **11 Insertion of new s 4A**

Chapter 1, after section 4—

*insert—*

#### **‘4A Act does not prevent local law from imposing additional requirements**

‘This Act does not prevent a local government from making a local law imposing requirements that are additional to requirements under this Act for the protection of property or infrastructure relating to public passenger transport in its local government area.’.

### **12 Amendment of s 12 (What is operator accreditation)**

Section 12(2)(a), after ‘a service’—

*insert—*

‘using a fixed track vehicle’.

### **12A Replacement of s 23 (Purpose of driver authorisation)**

Section 23—

*omit, insert—*

#### **‘23 Purpose of driver authorisation**

‘(1) The purpose of driver authorisation is to maximise public confidence in public passenger services in relation to the drivers of public passenger vehicles.

‘(2) Without limiting subsection (1), the purpose includes ensuring that drivers of public passenger vehicles—

- (a) are suitable persons to drive public passenger vehicles having regard to the need to provide for the personal safety of passengers and their property, and the public; and
- (b) conduct themselves responsibly with passengers and the public; and
- (c) are responsible in the act of driving and are capable of safely operating the relevant type of vehicle; and
- (d) are aware of their customer service responsibilities; and
- (e) are held accountable for complying with appropriate standards.

‘(3) Without limiting subsection (1) or (2), the purpose also includes ensuring that drivers do not damage the reputation of public passenger transport.

‘(4) In deciding whether to grant driver authorisation to a person, or to renew or amend, impose a condition on, or suspend or cancel a person’s driver authorisation, the chief executive must take into consideration—

- (a) the purpose of driver authorisation mentioned in subsections (1) to (3); and
- (b) the paramount principle mentioned in section 33A that children and other vulnerable members of the community must be protected.’.

### **13 Amendment of s 24 (What is driver authorisation)**

Section 24(2)(a), after ‘a service’—

*insert—*

‘using a fixed track vehicle’.

### **13A Amendment of s 27 (Driver must hold appropriate authorisation)**

Section 27, penalty, ‘30’—

*omit, insert—*

‘100’.

### **13B Insertion of new ss 28A–28C**

After section 28—

*insert—*

**‘28A Ineligibility for driver authorisation—category A driver disqualifying offences**

‘A person is ineligible to apply for or hold driver authorisation if the person has been convicted of a category A driver disqualifying offence.

**‘28B Driver authorisation—category B driver disqualifying offences**

‘(1) This section applies if the chief executive is aware that a person who is an applicant for driver authorisation or who holds driver authorisation has been convicted of a category B driver disqualifying offence.

‘(2) The chief executive must give the person written notice of the chief executive’s intention to refuse to grant or renew, or to cancel, the driver authorisation (the “**exclusion action**”) unless the person demonstrates to the chief executive’s satisfaction that an exceptional case exists.

*Example of an exceptional case—*

A person with no other criminal history was convicted of unlawful carnal knowledge 30 years ago and placed on a good behaviour bond after being involved in a consensual sexual relationship with a 15 year old when the person was 17.

‘(3) The chief executive must give the person a written notice about the exclusion action—

- (a) identifying the category B driver disqualifying offence of which the person has been convicted; and
- (b) stating the requirements of subsection (4); and
- (c) giving the person an opportunity to make written representations about the category B driver disqualifying offence and the exclusion action within 28 days.

‘(4) The chief executive must consider any written representations and must take the exclusion action unless the chief executive, subject to the paramount principle mentioned in section 33A, is satisfied that an exceptional case exists.

‘(5) For subsection (4)—

- (a) the Commissioner for Children and Young People may advise the chief executive on whether the commissioner considers an exceptional case exists; and

- (b) without limiting the chief executive's power to take the exclusion action, the chief executive must take the advice into account.

‘(6) Nothing in this section limits action the chief executive may take under any other provision of this Act.

### **‘28C Driver authorisation—category C driver disqualifying offences**

‘(1) This section applies if the chief executive is aware that a person who is an applicant for driver authorisation or who holds driver authorisation has been convicted of a category C driver disqualifying offence.

‘(2) Without limiting the grounds on which the chief executive may deal with the application or the driver authorisation, the chief executive may do any of the following (the “**proposed action**”)—

- (a) refuse to grant driver authorisation to the person;
- (b) refuse to renew the person's driver authorisation;
- (c) suspend or cancel the person's driver authorisation.

‘(3) The chief executive must give the person written notice of the proposed action.

‘(4) Nothing in this section limits action the chief executive may take under any other provision of this Act.’.

### **13C Amendment of s 29 (Granting, renewing or refusing driver authorisation)**

Section 29(2)—

*omit, insert—*

‘(2) Without limiting subsection (1), a regulation may authorise the chief executive—

- (a) to impose a condition when granting driver authorisation to a person or renewing a person's driver authorisation; or
- (b) to refuse to grant driver authorisation to a person or to renew the person's driver authorisation if the person—
  - (i) has been convicted of a category C driver disqualifying offence; or

- (ii) has been charged with a driver disqualifying offence and the charge has not been finally disposed of.’.

**13D Amendment of s 31 (Applicant to notify charge for disqualifying offence etc.)**

(1) Section 31, heading, before ‘disqualifying’—

*insert—*

‘**driver**’.

(2) Section 31(1), before ‘disqualifying’—

*insert—*

‘driver’.

(3) Section 31(1)—

*insert—*

‘Maximum penalty—100 penalty units.’.

(4) Section 31(2), penalty, ‘10’—

*omit, insert—*

‘100’.

**13E Amendment of s 32 (Amendment, suspension and cancellation of driver authorisations)**

(1) Section 32—

*insert—*

‘(1A) Without limiting subsection (1), a regulation may authorise the chief executive to amend a person’s driver authorisation by imposing a condition on the authorisation.’.

(2) Section 32(2), ‘disqualifying offence.’—

*omit, insert—*

‘category B or category C driver disqualifying offence.’.

(3) Section 32(3), before ‘disqualifying’—

*insert—*

‘driver’.

**13F Amendment of s 33 (Authorised driver must notify charge for disqualifying offence etc.)**

(1) Section 33, heading, before ‘disqualifying’—

*insert—*

**‘driver’.**

(2) Section 33(1), before ‘disqualifying’—

*insert—*

‘driver’.

(3) Section 33(1)—

*insert—*

‘Maximum penalty—100 penalty units.’.

(4) Section 33(2), penalty, ‘10’—

*omit, insert—*

‘100’.

**13G Insertion of new s 33A**

After section 33—

*insert—*

**‘33A Protection of children and vulnerable members of the community**

‘(1) This section applies to the following when making decisions about driver authorisation—

- (a) the chief executive;
- (b) persons constituting a review panel under the *Transport Planning and Coordination Act 1994*;
- (c) a court hearing an appeal against a decision about driver authorisation.

‘(2) If, because an applicant for, or a holder of, driver authorisation has been charged with or convicted of a driver disqualifying offence or for any other reason, the safety of children or other vulnerable members of the community becomes relevant, the paramount principle is that children and other vulnerable members of the community must be protected.’.

**13H Amendment of s 34 (Authorised driver must notify suspension or cancellation of licence etc.)**

Section 34, penalty, '10'—

*omit, insert—*

'100'.

**13I Amendment of s 35 (Obligation to notify accredited operator of suspension or cancellation of licence etc.)**

Section 35, penalty, '10'—

*omit, insert—*

'100'.

**14 Amendment of s 43 (Obligation to hold service contracts)**

(1) Section 43(1)(a) and (b)—

*omit, insert—*

(a) if the service contract area or route is in the Translink area—

- (i) a Translink service contract; or
- (ii) a written agreement with the chief executive that is not a service contract; or
- (iii) with the chief executive's approval, a written agreement with the holder of a Translink service contract; or

(b) in any other case—

- (i) a service contract; or
- (ii) a written agreement with the holder of a service contract.'

(2) Section 43(1), penalty, paragraph (b)—

*omit, insert—*

- (b) if the service contract area or route is in the Translink area—160 penalty units; or
- (c) in any other case—30 penalty units.'

**15 Amendment of s 46 (Review of holder's performance)**

(1) After section 46(1A)—

*insert—*

‘**(1B)** Subsections (4) to (7) do not apply to a Translink service contract.’.

(2) Section 46—

*insert—*

‘**(7A)** On a review of a Translink service contract, the chief executive must take into account whether the holder is meeting the requirements of the holder's service contract.’.

**16 Amendment of s 51 (Conditions of funding)**

(1) Section 51(2) and (3)—

*renumber* as section 51(3) and (4).

(2) Section 51—

*insert—*

‘**(2)** Subsection (1) does not apply to a Translink service contract.’.

**17 Insertion of new s 54A**

Chapter 6, part 2, division 2, before section 55—

*insert—*

**‘54A Application of div 2**

‘This division applies to all service contracts for scheduled passenger services, other than Translink service contracts.’.

**18 Insertion of new ch 6, pt 2, div 2AA**

After section 62A—

*insert—*

***‘Division 2AA—Translink service contracts***

**‘62AAA Purpose of div 2AA**

‘The purpose of this division is to provide for arrangements between the chief executive and operators to facilitate an integrated ticketing system in the SEQ area.

**‘62AAB Definition for div 2AA**

‘In this division—

**“prescribed day”**, in relation to a notice under this division, means the day stated in the notice, being not less than 28 days after the date of the notice.

**‘62AAC What is a Translink service contract**

‘(1) A **“Translink service contract”** is a service contract for scheduled passenger services in the Translink area under which—

- (a) the holder charges the fare set by the chief executive; and
- (b) the State retains the revenue; and
- (c) the State pays the holder for the services provided under the contract.

‘(2) A Translink service contract does not give the holder the exclusive right to operate a scheduled passenger service in the Translink area.

‘(3) For subsection (1), it does not matter whether the service contract was entered into before or after the commencement of this section.

**‘62AAD Offer of new Translink service contract**

‘(1) This section applies if the chief executive—

- (a) decides the performance of a holder of a Translink service contract (the **“existing contract”**) has been satisfactory; and
- (b) proposes, at the end of the term of the existing contract, to invite offers for a new Translink service contract—

- (i) for the same kind of scheduled passenger service provided under the existing contract; or
- (ii) for those services and additional services for the same area or route defined in the existing contract.

‘(2) The chief executive must, by written notice, invite the holder to offer for the new Translink service contract.

‘(3) The chief executive may invite offers from any or all other holders of Translink service contracts or from the public only if the holder—

- (a) refuses the invitation; or
- (b) fails to respond to the invitation by the prescribed day; or
- (c) fails to make an offer that is acceptable or, despite section 62AAE, is substantially acceptable.

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

- (a) that is an emergency service contract; or
- (b) that is a service contract in relation to which an option to renew may be exercised; or
- (c) that states this section does not apply to it.

### **‘62AAE Matters to be considered generally when considering offers for Translink service contracts**

‘(1) The chief executive—

- (a) is not obliged to accept any offer for a Translink service contract; and
- (b) may only accept an offer for a Translink service contract if the chief executive considers the offer to be acceptable for the contract.

‘(2) In deciding if an offer for a Translink service contract is acceptable, the chief executive must have regard to at least the following—

- (a) the ability of each offerer to meet the minimum service levels and other standards of performance specified in the invitation to offer;
- (b) the cost of providing the scheduled passenger service;
- (c) the need for sustainability and continuity of services;

(d) any matters prescribed under a regulation.

‘(3) In deciding between 2 or more acceptable offers, the chief executive must select the offer the chief executive considers to be the best having regard to the matters mentioned in subsection (2)(a) to (d).

### **‘62AAF Unsatisfactory performance of Translink service contract holder**

‘If the chief executive decides, for section 62AAD, that a service contract holder’s performance under a Translink service contract has not been satisfactory, the chief executive must give the holder written notice of the decision and the reasons for it.

### **‘62AAG New service contract area or route in the Translink area**

‘(1) This section applies if the chief executive—

- (a) has declared a service contract area or route under section 42 (“**new service area**”);<sup>4</sup> and
- (b) the new service area is proposed to be in the Translink area (“**the proposal**”).

‘(2) The chief executive must—

- (a) give written notice of the proposal to all affected operators; and
- (b) allow the affected operators a reasonable opportunity to make written representations to the chief executive about the proposal by the prescribed day.

‘(3) If, after considering all written representations made by the prescribed day, the chief executive intends continuing with the proposal, the chief executive may do any of the following—

- (a) give an affected operator, by written notice, the opportunity to offer, by the prescribed day, to provide a scheduled passenger service for the new service area (the “**new service**”);
- (b) invite any or all holders of Translink service contracts, by written notice, to offer by the prescribed day, to provide the new service;

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4 Section 42 (Declaration that service contracts are required)

- (c) invite the public, by public notice, to offer to provide the new service.

‘(4) If the chief executive acts under subsection (3)(a) and either—

- (a) an affected operator makes no offer, or if there is more than 1 affected operator, no affected operator makes an offer, by the prescribed day; or
- (b) if 1 or more offers are made, the chief executive decides no offer made is acceptable under section 62AAE;

the chief executive may invite offers from any or all holders of Translink service contracts or from the public under subsection (3)(b) or (c) to provide the new service.

‘(5) If the chief executive acts under subsection (3)(b) and no holder of a Translink service contract—

- (a) makes an offer by the prescribed day; or
- (b) makes an offer that the chief executive decides is acceptable under section 62AAE;

the chief executive may invite offers from the public under subsection (3)(c) to provide the new service.

‘(6) However, if—

- (a) an offer is made under subsection (3)(a) or (b) by the prescribed day; and
- (b) the chief executive considers the offer substantially meets the requirements of an offer that would be acceptable under section 62AAE;

the chief executive may defer inviting offers under subsection (3)(b) or (c) to allow an opportunity for a contract to be concluded with the offerer.

‘(7) In this section—

**“affected operator”** means—

- (a) the holder of a Translink service contract providing a scheduled passenger service in the new service area, or in a service area or route adjacent to the new service area; or
- (b) any other operator providing a scheduled passenger service in the new service area.

**‘62AAH Compensation**

‘(1) This section applies if, following a proposal mentioned in section 62AAG—

- (a) the new service area is prescribed under a regulation to be in the Translink area; and
- (b) an affected operator mentioned in section 62AAG, other than the holder of a Translink service contract—
  - (i) did not offer to provide the new service; or
  - (ii) is not awarded a Translink service contract to provide the new service.

‘(2) The affected operator may claim compensation from the State.

‘(3) The amount of compensation payable to the affected operator is to be decided by agreement between the chief executive and the operator or, if there is no agreement, by an arbitrator appointed by the chief executive and the operator.

‘(4) Without limiting the matters an arbitrator may or may not take into account, a regulation may provide for matters to be considered, or not considered, in deciding the amount of compensation.

‘(5) The *Commercial Arbitration Act 1990* applies to the arbitration.

**‘62AAI What happens when Translink service contract is surrendered, cancelled or terminated**

‘(1) This section applies if a Translink service contract is surrendered, cancelled or terminated, whether by the chief executive or by the operator.

‘(2) The chief executive may do either of the following—

- (a) invite any or all holders of Translink service contracts, by written notice, to offer by the prescribed day for the Translink service contract;
- (b) invite the public, by public notice, to offer for the Translink service contract.

‘(3) If the chief executive acts under subsection (2)(a) and either—

- (a) no holder of a Translink service contract makes an offer by the prescribed day; or

- (b) if 1 or more offers are made, the chief executive decides no offer made is acceptable under section 62AAE;

the chief executive may invite offers from the public under subsection (2)(b) for the Translink service contract.

‘(4) However, if—

- (a) an offer is made under subsection (2)(a) by the prescribed day; and
- (b) the chief executive considers the offer substantially meets the requirements of an offer that would be acceptable under section 62AAE;

the chief executive may defer inviting offers from the public under subsection (2)(b) to allow an opportunity for a contract to be concluded with the offerer.’.

## **19 Replacement of s 101 (Standards do not apply to railway managers or operators)**

Section 101—

*omit, insert—*

### **‘101 Application of standards to railway managers or railway operators**

‘Standards do not apply to a railway manager or railway operator in relation to a public passenger service provided using a fixed track vehicle.’.

## **20 Omission of ch 11, pt 2**

Chapter 11, part 2—

*omit.*

## **21 Renumbering of ch 11, pt 1**

Chapter 11, part 1—

*renumber* as chapter 11, part 2.

**22 Insertion of new ch 11, pt 1**

Chapter 11—

*insert—*

**‘PART 1—INTERPRETATION****‘110 Definition for ch 11**

‘In this chapter—

**“relevant transport legislation”** means—

- (a) this Act; or
- (b) the *Transport Infrastructure Act 1994*, chapter 7 or 14;<sup>5</sup> or
- (c) a regulation in relation to a railway made under the *Transport Infrastructure Act 1994*.’.

**23 Amendment of s 111 (Appointment of authorised persons etc.)**

(1) Section 111(1) and (1A), after ‘authorised person’—

*insert—*

‘for relevant transport legislation’.

(2) Section 111(1A)(b)—

*omit, insert—*

- ‘(b) an employee of, or a contractor for, a railway manager or railway operator;
- (c) an employee of a contractor mentioned in paragraph (b);
- (d) another person prescribed under a regulation.’.

(3) Section 111—

*insert—*

‘(5) An authorised person who is a person mentioned in subsection (2)(b) or (c) may exercise a power under this Act only in relation to a railway managed or operated by the railway manager or

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<sup>5</sup> *Transport Infrastructure Act 1994*, chapter 7 (Rail transport infrastructure and other matters) or 14 (Transporting dangerous goods by rail)

railway operator of whom the person is an employee, a contractor or an employee of a contractor.

‘(6) Subsection (5) does not apply to an authorised person who is—

- (a) an employee of, or a contractor for, Queensland Rail; or
- (b) an employee of a contractor for Queensland Rail.’.

(4) Section 111(1A) to (3)—

*renumber* as section 111(2) to (4).

## **24 Amendment of s 112 (Identity cards)**

(1) Section 112(4)—

*relocate and renumber* as section 112(1A).

(2) Section 112(1A) to (3)—

*renumber* as section 112 (2) to (4).

## **25 Amendment of s 114 (Powers of authorised persons)**

Section 114(1)—

*omit, insert—*

‘(1) An authorised person has the powers given under relevant transport legislation.’.

## **26 Amendment of s 115 (Protection from liability)**

(1) Section 115(2), from ‘this Act’—

*omit, insert—*

‘relevant transport legislation’.

(2) Section 115(3)—

*omit, insert—*

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

- (a) if the authorised person is employed by a railway manager or railway operator and is exercising a power in relation to a railway—the manager or operator of the railway; or

(b) in any other case—the State.

‘(4) For subsection (3)(a), a person is employed by a railway manager or railway operator if the person is—

(a) an employee of, or a contractor for, the railway manager or operator; or

(b) an employee of a contractor mentioned in paragraph (a).’.

## **27 Amendment of s 126 (Procedure after thing seized)**

Section 126(4) to (6)—

*omit.*

## **28 Amendment of s 126D (Forfeiture of seized things)**

Section 126D(1)(c), after ‘against’—

*insert—*

‘this Act or’.

## **29 Insertion of new s 126P**

Chapter 11, part 4, before section 127—

*insert—*

### **‘126P Definition for pt 4**

‘In this part—

“**relevant offence**” means an offence against relevant transport legislation.’.

## **30 Replacement of s 127 (Power to require name and address)**

Section 127—

*omit, insert—*

### **‘127 Power to require name, address and age**

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

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

‘(2) The authorised person may also require the person to state the person’s age if the authorised person reasonably suspects that the person’s age is required for the enforcement of relevant transport legislation.

‘(3) When making the requirement, the authorised person must warn the person that it is an offence to fail to state the person’s name and address and, if relevant, age unless the person has a reasonable excuse.

‘(4) The authorised person may require the person to give evidence of the correctness of the person’s stated name, address or age if the authorised person reasonably suspects that the stated name, address or age is false.

‘(5) A person must comply with the authorised person’s requirement under subsection (1), (2) or (4), unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

‘(6) A person does not commit an offence against this section if—

- (a) the person was required to state the person’s name, address or age by an authorised person who suspected the person had committed a relevant offence; and
- (b) the person is not proved to have committed the offence.’.

### **31 Amendment of s 128 (Power to require information from certain persons)**

(1) Section 128(1), ‘suspects on reasonable grounds’—

*omit, insert—*

‘reasonably suspects’.

(2) Section 128(1)(a), ‘an offence against this Act’—

*omit, insert—*

‘a relevant offence’.

(3) Section 128(1)(b)—

*omit, insert—*

‘(b) the offence relates to the construction, operation, maintenance or repair of a public passenger vehicle or a railway; and’.

**32 Amendment of s 130 (False or misleading information)**

Section 130(1)(a) and (b), ‘, authorised person for a railway’—  
*omit.*

**33 Amendment of s 131 (False, misleading or incomplete documents)**

Section 131(1) and (2), ‘, authorised person for a railway’—  
*omit.*

**34 Amendment of s 135 (Obstructing authorised person or authorised person for a railway)**

(1) Section 135, heading—  
*omit, insert—*

**‘135 Obstructing authorised person’.**

(2) Section 135(1), from ‘or an’ to ‘(an “official”)’—  
*omit.*

(3) Section 135(2), ‘official’—  
*omit, insert—*

‘authorised person’.

**35 Amendment of s 136 (Impersonating authorised person or authorised person for a railway)**

(1) Section 136, heading—  
*omit, insert—*

**‘136 Impersonating authorised person’.**

(2) Section 136, ‘or an authorised person for a railway’—  
*omit.*

**36 Amendment and relocation of s 139 (Power to require production of tickets)**

(1) Section 139(1) to (3)—

*omit, insert—*

‘(1) The driver or an authorised person may require anyone who is travelling or attempting to travel on a public passenger vehicle to produce to the driver or authorised person the person’s ticket for the journey.

‘(2) If the driver or an authorised person reasonably suspects that a person has just travelled on a public passenger vehicle, the driver or authorised person may require the person to produce to the driver or authorised person the person’s ticket for the journey.

‘(3) If the driver or the authorised person reasonably suspects that the ticket produced to the driver or authorised person is an invalid ticket, the driver or authorised person may require the person to give it to the driver or authorised person.’.

(2) Section 139(5), after ‘subsection (4)’—

*insert—*

‘in relation to travel by rail’.

(3) Section 139—

*insert—*

‘(6) In this section—

“**invalid ticket**” means an invalid ticket as defined under section 143AB(2).’.

(4) Section 139—

*relocate and renumber* as section 143ADA.

**37 Amendment and relocation of s 140 (Power to require person to leave train etc.)**

(1) Section 140(1), ‘for a railway’—

*omit.*

(2) Section 140(1)(a), ‘141, 142 or 143’—

*omit, insert—*

‘143AC or 143AF<sup>6</sup>’.

(3) Section 140(2) and (3)—

*omit.*

(4) Section 140(4)—

*renumber* as section 140(2).

(5) Section 140—

*relocate and renumber* as section 143AHA.

### **38 Omission of ch 11, pt 6**

Chapter 11, part 6, as amended—

*omit.*

### **39 Omission of ch 11, pt 7, hdg**

Chapter 11, part 7, heading—

*omit.*

### **40 Omission of ss 141–143**

Sections 141 to 143—

*omit.*

### **41 Amendment and relocation of s 143A (Evidence of concession entitlement)**

(1) Section 143A(2)—

*omit, insert—*

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6 Section 143AC (Fare evasion) or 143AF (Creating disturbance or nuisance on railway or vehicle)

‘(2) The driver or an authorised person may require anyone who is travelling or about to travel on a concession ticket to produce evidence of the person’s entitlement to the concession.’

(2) Section 143A—

*relocate and renumber* as section 143ADB.

#### **42 Omission of s 143AB (Application of ch 11A)**

Section 143AB—

*omit.*

#### **43 Amendment of s 143AC (Definitions for ch 11A)**

(1) Section 143AC, definitions “driver” and “over-travel”—

*omit.*

(2) Section 143AC—

*insert—*

‘**“driver”** includes—

- (a) a conductor or train guard on or near a public passenger vehicle who is operating in relation to the vehicle; and
- (b) for a ferry, the master of the ferry or a deckhand operating in relation to the ferry.

**“master”** see the *Transport Operations (Marine Safety) Act 1994*, section 7.

**“tag off”** means present a smartcard to a smartcard reader on completing a journey, or part of a journey, resulting in a response from the smartcard reader that the transaction is successful.

**“tag on”** means present a smartcard to a smartcard reader on starting a journey, or part of a journey, resulting in a response from the smartcard reader that the transaction is successful.’

(3) Section 143AC—

*renumber* as section 143AA.

**44 Insertion of new s 143AB**

After section 143AA—

*insert—*

**‘143AB When does a person evade payment of a fare**

**‘(1)** A person **“evades payment of a fare”** in relation to a public passenger vehicle if the person—

- (a) when attempting to travel, for an intended journey—
  - (i) does not, without a reasonable excuse, pay the fare lawfully required; or
  - (ii) if using a smartcard, does not tag on; or
  - (iii) attempts to travel on an invalid ticket; or
- (b) in relation to all or part of a journey travelled—
  - (i) does not, without a reasonable excuse, pay the fare lawfully required or, if using a smartcard, does not tag on; or
  - (ii) travels on a concession fare without being entitled to the concession; or
  - (iii) travels on an invalid ticket; or
  - (iv) travels by railway in a railway carriage of a higher class than that paid for and shown on the person’s ticket for the journey.

**‘(2)** In this section—

**“invalid ticket”** means a ticket for a journey for which a ticket is required that—

- (a) is used, or attempted to be used—
  - (i) to over-travel the fare that was paid for the journey, without reasonable excuse; or
  - (ii) for a journey that is not the journey for which the ticket was issued; or
  - (iii) if the ticket is non-transferrable, by a person who is not the first user of the ticket; or
- (b) has been altered or defaced; or
- (c) is counterfeit.

“**over-travel**”, in relation to a fare, means remain on a public passenger vehicle after the place, distance or time covered by the fare paid for the journey has been reached and includes, for a smartcard, tag off before the completion of the journey or part of the journey.’.

**45 Replacement of s 143AD (Fare evasion and obtaining hire of vehicle by fraud etc.)**

Section 143AD—

*omit, insert—*

**‘143AC Fare evasion**

‘A person must not evade payment of the fare lawfully required for the person’s use or hire of a public passenger vehicle.

Maximum penalty—40 penalty units or 6 months imprisonment.

**‘143AD Obtaining hire or use of vehicle by fraud or misrepresentation**

‘A person must not obtain, or attempt to obtain, the use or hire of a public passenger vehicle by fraud or misrepresentation.

Maximum penalty—40 penalty units or 6 months imprisonment.’.

**46 Amendment of s 143AE (Vehicle and equipment not to be interfered with)**

(1) Section 143AE, heading—

*omit, insert—*

**‘143AE Interfering with service, vehicle or equipment’.**

(2) Section 143AE(1)—

*omit, insert—*

‘(1) A person must not wilfully and unlawfully interfere with a public passenger service, public passenger vehicle or service equipment.

Maximum penalty—40 penalty units or 6 months imprisonment.’.

**47 Replacement of s 143AF (Creating disturbance or nuisance on vehicle)**

Section 143AF—

*omit, insert—*

**‘143AF Creating disturbance or nuisance on railway or vehicle**

‘A person must not create a disturbance or nuisance while on a railway or public passenger vehicle, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units or 6 months imprisonment.’.

**48 Amendment of s 143AG (Direction to leave, or not to enter, vehicle)**

(1) Section 143AG(1)—

*omit, insert—*

‘(1) Subsection (2) applies if the driver or an authorised person reasonably believes that a person who is on, or about to enter, a public passenger vehicle—

- (a) is creating, or is likely to create, a disturbance or nuisance on the vehicle; or
- (b) is causing, or is likely to cause a danger to anyone; or
- (c) is contravening, or has just contravened, section 143AC or 143AE.’.

(2) Section 143AG—

*insert—*

‘(5) In this section—

“**over-travel**” means “over-travel as defined under section 143AB(2).’.

**49 Amendment of s 143AH (Direction to leave vehicle)**

(1) Section 143AH, heading—

*omit, insert—*

**‘143AH Direction to leave or not to enter vehicle that is full’.**

(2) Section 143AH(3), after ‘leave’—

*insert—*

‘, or not to enter,’.

(3) Section 143AH(1) and (2)—

*relocate and renumber* as section 143AG(3) and (4).

## **50 Replacement of s 143AK (Offence to contravene direction)**

Section 143AK—

*omit, insert—*

### **‘143AK Offence to contravene direction**

‘A person must not contravene a direction given to the person under this chapter, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.’.

## **51 Amendment of s 149 (Offences of dishonesty)**

Section 149(1), after ‘must not’—

*insert—*

‘apply for or’.

## **52 Amendment of s 152 (No need to prove appointments)**

Section 152, ‘for a railway’—

*omit.*

## **53 Amendment of s 154 (Attempt to commit offence)**

Section 154—

*insert—*

‘(3) However, this section does not apply to an offence under section 143AC or 143AD.’<sup>7</sup>.

#### **54 Amendment of s 154B (Definitions for pt 2)**

Section 154B, definitions “fare” and “service equipment”—  
*relocate* to schedule 3.

#### **55 Insertion of new ch 13, pt 1A**

After section 156—

*insert—*

### **‘PART 1A—TRANSITIONAL PROVISIONS FOR TRANSPORT AND OTHER LEGISLATION AMENDMENT ACT 2004**

#### *‘Division 1—Authorised persons*

#### **‘157 Authorised persons**

‘(1) A person who, immediately before the commencement of this section, was an authorised person for a railway under section 116(1) or (2)<sup>8</sup> or an authorised person for a light rail under section 116(2A) is taken to be an authorised person under section 111.’<sup>9</sup>

‘(2) Subsection (1) does not affect any limitation on the powers of the authorised person existing immediately before the commencement of this section.

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7 Section 143AC (Fare evasion) or 143AD (Obtaining hire or use of vehicle by fraud or misrepresentation)

8 Section 116 (Appointment of authorised persons for railways or light rail)

9 Section 111 (Appointment of authorised persons etc.)

***‘Division 2—Translink service contracts*****‘158 Offers for Translink service contracts**

‘(1) This section applies if, before the commencement of this section, the chief executive has, under section 62,<sup>10</sup> invited a service contract holder mentioned in schedule 2A, column 1 to offer for a Translink service contract.

‘(2) The invitation to offer replaces any right (“**existing right**”) the holder may have to offer for a new service contract, and the holder’s existing right is extinguished.

‘(3) If the holder—

- (a) refuses the invitation mentioned in subsection (1); or
- (b) fails to respond to the invitation within the time allowed by the chief executive under the invitation; or
- (c) fails to make an offer that is acceptable;

the chief executive may, after the commencement of this section, invite offers for the Translink service contract from any or all other holders of service contracts mentioned in schedule 2A, column 1 or from the public.

‘(4) For subsection (3), it does not matter whether the refusal mentioned in subsection (3)(a) or the failure to respond mentioned in subsection (3)(b) happened before or after the commencement of this section.

**‘159 Matters to be considered when considering offer**

‘(1) This section applies to any consideration by the chief executive, whether before or after the commencement of this section, of an offer for a Translink service contract made in response to an invitation mentioned in section 158(1).

‘(2) The chief executive—

- (a) was not, or is not, obliged to accept any offer for the contract; and

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10 Section 62 (Offer of new service contract)

- (b) could only have accepted, or may only accept, an offer for the contract if the chief executive considered, or considers, the offer to be acceptable for the contract.

‘(3) In deciding whether the offer was or is acceptable, it is enough that the chief executive had or has regard to at least the following—

- (a) the ability of each offerer to meet the minimum service levels and other standards of performance specified in the invitation to offer;
- (b) the cost of providing the scheduled passenger service;
- (c) the need for sustainability and continuity of services.

### **‘160 Termination of particular service contracts in SEQ area**

‘(1) This section applies if a service contract holder mentioned in schedule 2A, column 1—

- (a) is the holder of a service contract for a service contract area or route listed opposite the holder’s name in schedule 2A, column 2 that is in force immediately before 6.00 p.m. on 25 June 2004; and
- (b) does not enter into a Translink service contract before 6.00 p.m. on 25 June 2004.

‘(2) The holder’s service contract for the area or route mentioned in column 2 is terminated at 6.00 p.m. on 25 June 2004.

### **‘161 Compensation**

‘(1) A holder may claim compensation from the State if—

- (a) the holder’s service contract is terminated because of section 160; and
- (b) the holder does not enter into a Translink service contract.

‘(2) The amount of compensation is to be decided by agreement between the chief executive and the holder or, if there is no agreement, by an arbitrator appointed by the chief executive and the holder.

‘(3) Without limiting the matters an arbitrator may or may not take into account, a regulation may provide for matters to be considered, or not considered, in deciding the amount of compensation.

‘(4) The *Commercial Arbitration Act 1990* applies to the arbitration.

### *‘Division 3—Driver disqualifying offences*

#### **‘162 Driver disqualifying offences**

‘(1) For the purposes of a reference in this Act to a category A driver disqualifying offence, category B driver disqualifying offence or category C driver disqualifying offence, it is declared that—

- (a) the reference includes a reference to the offence whether the offence was or is committed before or after the commencement of this section; and
- (b) a reference to a conviction of the offence includes a conviction of the offence whether the conviction happened before or after the commencement of this section.

‘(2) If the person has been convicted of a category A disqualifying offence before the commencement of this section—

- (a) if the person holds driver authorisation on the commencement—the driver authorisation is immediately cancelled on the commencement; and
- (b) if the person has applied for the grant or renewal of driver authorisation before the commencement that has not been finalised—the application is terminated on the commencement; and
- (c) if the person immediately before the commencement has an entitlement to have driver authorisation granted or renewed under a decision of a court on appeal from the decision of the chief executive—the entitlement is extinguished on the commencement.

#### **‘163 Transitional regulation-making power**

‘(1) A regulation made after the commencement of this section may provide that a regulation in existence immediately before the commencement is amended from the commencement in order to take account of the creation of driver disqualifying offences for driver authorisations on the commencement.

‘(2) Subsection (1) applies even if the regulation is not a beneficial provision within the meaning of the *Statutory Instruments Act 1992*, section 34.<sup>11</sup>’.

## **55A Insertion of new sch 1A**

After schedule 1—

*insert—*

### **‘SCHEDULE 1A**

#### **‘DRIVER DISQUALIFICATION OFFENCES**

dictionary, definition “driver disqualifying offence”

#### **‘PART 1—CATEGORY A DRIVER DISQUALIFYING OFFENCES**

##### *‘Division 1—Existing provisions of the Criminal Code*

1. Section 208 (Unlawful sodomy) unless, when the offence was committed, the offender was aged between 14 and 20 (both inclusive) and the person in relation to whom the offence was committed was not an intellectually impaired person and was aged between 14 and 17 (both inclusive)
2. Section 210 (Indecent treatment of children under 16) unless, when the offence was committed, the offender and the person against whom the offence was committed were both aged between 14 and 20 (both inclusive)
3. Section 213 (Owner etc. permitting abuse of children on premises), if the proscribed act mentioned in section 213(1) is a category A driver disqualifying offence mentioned in item 1, 2 or 4

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11 *Statutory Instruments Act 1992*, section 34 (Beneficial retrospective commencement)

4. Section 215 (Carnal knowledge with or of children under 16) unless, when the offence was committed, the offender and the person against whom the offence was committed were both aged between 14 and 20 (both inclusive)
5. Section 216 (Abuse of intellectually impaired persons)
6. Section 217 (Procuring young person etc. for carnal knowledge)
7. Section 218A (Using internet etc. to procure children under 16)
8. Section 219 (Taking child for immoral purposes), if the proscribed act mentioned in section 219(1) is a category A driver disqualifying offence mentioned in item 1, 2 or 4
9. Section 222 (Incest), if the person in relation to whom the offence was committed was a child when the offence was committed
10. Section 228 (Obscene publications and exhibitions), if section 228(2) or (3) applies
11. Section 229B (Maintaining a sexual relationship with a child), if any of the offences of a sexual nature required to be proved for the purposes of the section is a category A driver disqualifying offence
12. Section 229G (Procuring prostitution), if section 229G(2) applies
13. Section 349 (Rape)

***‘Division 2—Provisions of the Criminal Code repealed by the Criminal Law Amendment Act 1997***

1. Section 208 (Unlawful anal intercourse), if section 208(2)(b) applies
2. Section 222 (Incest by man), if the person in relation to whom the offence was committed was a child under 16 years when the offence was committed

## **‘PART 2—CATEGORY B DRIVER DISQUALIFYING OFFENCES**

### **Criminal Code**

1. Section 229G (Procuring prostitution)
2. Section 229L (Permitting young person etc. to be at place used for prostitution)
3. Section 328A (Dangerous operation of a vehicle)

### ***Drugs Misuse Act 1986***

1. Section 7(1) (Receiving or possessing property obtained from trafficking or supplying), if paragraph (a) of the maximum penalty for the provision applies
2. Section 8 (Producing dangerous drugs), if paragraph (a), (b) or (c) of the maximum penalty for the provision applies
3. Section 8A(1) (Publishing or possessing instructions for producing dangerous drugs), if paragraph (a) or (b) of the maximum penalty for the provision applies
4. Section 9 (Possessing dangerous drugs), if paragraph (a), (b) or (d) of the maximum penalty for the provision applies
5. Section 10(1) (Possessing things), if paragraph (a) of the maximum penalty for the provision applies
6. Section 11(1)(a) (Permitting use of place), if paragraph (a) of the maximum penalty for the provision applies

### ***Weapons Act 1990***

Section 65 (Unlawful trafficking in weapons)<sup>12</sup>

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12 See the definition “category B driver disqualifying offence” in schedule 3 for the full list of category B driver disqualifying offences.

## **‘PART 3—CATEGORY C DRIVER DISQUALIFYING OFFENCES**

### *‘Division 1—Existing provisions of the Criminal Code*

1. Chapter 9 (Unlawful assemblies—breaches of the peace)
2. Chapter 16 (Offences relating to the administration of justice)
3. Chapter 20 (Miscellaneous offences against public authority)
4. Chapter 22 (Offences against morality)
5. Chapter 26 (Assaults and violence to the person generally—justification and excuse)
6. Chapter 27 (Duties relating to the preservation of human life)
7. Chapter 28 (Homicide—Suicide—Concealment of birth)
8. Chapter 29 (Offences endangering life or health)
9. Chapter 30 (Assaults)
10. Chapter 33 (Offences against liberty)
11. Chapter 36 (Stealing)
12. Chapter 37 (Offences analogous to stealing)
13. Chapter 38 (Stealing with violence—extortion by threats)
14. Chapter 39 (Burglary—Housebreaking—And like offences)
15. Chapter 40 (Other fraudulent practices)
16. Chapter 41 (Receiving property stolen or fraudulently obtained and like offences)
17. Chapter 42 (Frauds by trustees and officers of companies and corporations—false accounting)
18. Chapter 42A (Secret commissions)
19. Chapter 46 (Offences)
20. Chapter 49 (Punishment of forgery and like offences)
21. Chapter 52 (Personation)
22. Chapter 56 (Conspiracy)

***‘Division 2—Provisions of the Criminal Code repealed by the Criminal Law Amendment Act 1997***

1. Section 343A (Assaults occasioning bodily harm)
2. Section 344 (Aggravated assaults)’.

**55B Amendment of sch 2 (Reviewable decisions)**

(1) Schedule 2—

*insert—*

- |             |  |               |
|-------------|--|---------------|
| <b>‘28B</b> | Category B driver disqualifying offence—refusal to grant or renew driver authorisation or cancellation of driver authorisation               | Magistrates   |
| <b>28C</b>  | Category C driver disqualifying offence—refusal to grant or renew driver authorisation or suspension or cancellation of driver authorisation | Magistrates’. |

(2) Schedule 2, entry for section 29, after ‘authorisation’—

*insert—*

‘or the imposition of a condition on driver authorisation’.

(3) Schedule 2, entry for section 32, after ‘authorisation’—

*insert—*

‘or the imposition of a condition on driver authorisation’.

**56 Insertion of new sch 2A**

After schedule 2—

*insert—*

**‘SCHEDULE 2A****‘PARTICULAR SERVICE CONTRACTS IN SEQ AREA**

sections 158 and 160 and schedule 3,  
definition “Translink area”, paragraph (a)

<b>Service contract holder</b>	<b>Service contract area or route</b>
Bribie Island Coaches Pty Ltd	Bribie Island and Bribie Island–Caboolture service contract area/route
Brisbane City Council	Brisbane service contract area/route
	Arana Hills, Albany Creek and Dayboro–Petrie service contract area/route
Bus Queensland Pty Ltd	Park Ridge and Beaudesert–Brisbane service contract area/route
Caboolture Bus Lines Pty Ltd	Caboolture service contract area/route
Clark’s Logan City Bus Service (Qld) Pty Ltd	Logan service area
GK & JM Thompson Pty Ltd	Strathpine and Murrumba Downs service contract area/route
Hornibrook Bus Lines Pty Ltd	Redcliffe, Kallangur, Petrie and Redcliffe–Brisbane service contract area/route
Mt Gravatt Bus Service Pty Ltd	Burbank/McKenzie service contract area/route
National Bus Company (Qld) Pty Ltd	Cleveland/Redland Bay service contract area/route
S & S Webster Investments Pty Ltd	Deception Bay/Narangba service area/route

**Service contract holder**

Surfside Buslines Pty Ltd

Transit Australia Pty Ltd

Westside Bus Co. Pty Ltd

**Service contract area or route**

Gold Coast service area

Sunshine Coast service area

Ipswich/Goodna service contract area

Camira/Springfield and Wacol  
Railway Station to Inala Plaza via  
Carole Park, Ellengrove, Forest  
Lake and Doolandalla service  
contract area/route’.

**57 Amendment of sch 3 (Dictionary)**

(1) Schedule 3, definitions “authorised person”, “driver”, “fare”, “invalid ticket”, “railway” and “service equipment”—

*omit.*

(2) Schedule 3—

*insert—*

‘ **“authorised person”** means a person who is, or is appointed as, an authorised person under section 111.

**“category A driver disqualifying offence”** means—

- (a) an offence against a provision of the Criminal Code mentioned in schedule 1A, part 1; or
- (b) an offence of counselling or procuring the commission of, or attempting or conspiring to commit, an offence mentioned in paragraph (a), and to which paragraph (a) does not otherwise apply; or
- (c) an offence against a law of another jurisdiction, including a jurisdiction outside Australia, that substantially corresponds to an offence mentioned in paragraph (a) or (b).

**“category B driver disqualifying offence”** means any of the following that is not a category A driver disqualifying offence—

- (a) an offence that is a serious offence within the meaning of the *Commission for Children and Young People Act 2000*, schedule 4 (Dictionary), definition “serious offence”, paragraph (a) or (b);

- (b) an offence against a provision of an Act mentioned in schedule 1A, part 2;
- (c) an offence of counselling or procuring the commission of, or attempting or conspiring to commit, an offence mentioned in paragraph (a) or (b), and to which paragraph (a) or (b) does not otherwise apply;
- (d) an offence against a law of another jurisdiction, including a jurisdiction outside Australia, that substantially corresponds to an offence mentioned in paragraph (a), (b) or (c).

**“category C driver disqualifying offence”** means any of the following that is not a category A driver disqualifying offence or a category B driver disqualifying offence—

- (a) an offence against a provision of the Criminal Code mentioned in schedule 1A, part 3;
- (b) an offence against the *Drugs Misuse Act 1986* punishable by imprisonment for 1 year or more, even though a fine may be imposed in addition or as an alternative;
- (c) an offence against the *Weapons Act 1990* punishable by imprisonment for 1 year or more, even though a fine may be imposed in addition or as an alternative;
- (d) an offence against this Act;
- (e) an offence against the *Transport Operations (Passenger Transport) Regulation 1994*, for which the maximum penalty is at least 20 penalty units;
- (f) an offence of counselling or procuring the commission of, or attempting or conspiring to commit, an offence mentioned in paragraph (a), (b), (c), (d) or (e), and to which paragraph (a), (b), (c), (d) or (e) does not otherwise apply;
- (g) an offence against a law of another jurisdiction, including a jurisdiction outside Australia, that substantially corresponds to an offence mentioned in paragraph (a), (b), (c), (d), (e) or (f).

**“driver”**—

- (a) generally—means the driver of a public passenger vehicle; and
- (b) for chapter 11A—see section 143AA.

**“driver disqualifying offence”**, in relation to driver authorisation, means—

- (a) a category A driver disqualifying offence; or
- (b) a category B driver disqualifying offence; or
- (c) a category C driver disqualifying offence.

**“evade payment of a fare”** see section 143AB.

**“fixed track vehicle”** includes a train and a light rail vehicle.

**“light rail”** see the *Transport Infrastructure Act 1994*, schedule 6.

**“light rail vehicle”** see the *Transport Infrastructure Act 1994*, schedule 6.

**“master”**, for chapter 11A, see section 143AA.

**“prescribed day”** for chapter 6, part 2, division 2AA, see section 62AAB.

**“railway”** includes—

- (a) for chapters 11 and 11A—a carpark or bus station under a railway manager’s control; and
- (b) in relation to the transportation of dangerous goods by rail—a cableway.

**“reasonably suspects”** means suspects on reasonable grounds.

**“relevant offence”**, for chapter 11, part 4, see section 126P.

**“relevant transport legislation”**, for chapter 11, see section 110.

**“SEQ area”** means the local government area of the following local governments—

- (a) the cities of Brisbane, Caloundra, Gold Coast, Ipswich, Logan, Redcliffe and Toowoomba;
- (b) the shires of Beaudesert, Boonah, Caboolture, Esk, Gatton, Kilcoy, Laidley, Maroochy, Noosa, Pine Rivers and Redland.

**“smartcard”** means a card or something similar approved by the chief executive on which electronic records of transit and other applications are stored.

**“tag off”**, for chapter 11A, see section 143AA.

**“tag on”**, for chapter 11A, see section 143AA.

**“ticket”** includes a smartcard.

**“Translink area”** means—

- (a) the service contract areas or routes mentioned in schedule 2A, column 2; and
- (b) any other service contract areas or routes in the SEQ area that are prescribed under a regulation for this definition.

**“Translink service contract”** see section 62AAC.’.

(3) Schedule 3, definition “disqualifying offence”, before ‘means’—  
*insert—*

‘, in relation to operator accreditation, a taxi service licence or a limousine service licence.’.

(4) Schedule 3, definition “disqualifying offence”, paragraph (e)—  
*omit, insert—*

- ‘(e) an offence against a law of another jurisdiction, including a jurisdiction outside Australia, that substantially corresponds to an offence mentioned in paragraph (a), (b), (c) or (d).’.

(5) Schedule 3, definition “ferry”, after ‘boat’—  
*insert—*

‘, barge’.

(6) Schedule 3, definition “information notice”, ‘of the chief executive’—

*omit.*

## **PART 5—AMENDMENT OF TRANSPORT OPERATIONS (ROAD USE MANAGEMENT) ACT 1995**

### **58 Act amended in pt 5 and sch**

This part and the schedule amend the *Transport Operations (Road Use Management) Act 1995*.

**59 Amendment of s 19 (Procedure for amending, suspending or cancelling approvals)**

(1) Section 19(2)(c)—

*omit, insert—*

‘(c) if the proposed action was to cancel the approval—

(i) amend the approval; or

(ii) suspend the approval for a period, including on the condition that—

(A) if the grounds for taking action under this section are capable of being remedied by the holder, the holder remedy the grounds to the chief executive’s reasonable satisfaction within a reasonable time before the suspension period ends; and

(B) if the holder fails to remedy the grounds in accordance with subparagraph (A), the chief executive may cancel the approval under section 19A; or

(iii) cancel the approval.’.

(2) Section 19(4)(b)—

*renumber* as section 19(4)(c).

(3) Section 19(4)—

*insert—*

‘(b) if the approval is suspended on the condition mentioned in subsection (2)(c)(ii), the approval may be cancelled under section 19A if the holder fails to comply with the condition; and’.

**60 Insertion of new s 19A**

Chapter 3, part 1A—

*insert—*

**‘19A Cancelling suspended approval for failing to take remedial action**

‘(1) This section applies if the chief executive—

(a) suspends an approval on the condition mentioned in section 19(2)(c)(ii); and

- (b) reasonably believes the holder has failed to comply with the condition.

‘(2) The chief executive may by written notice given to the holder cancel the approval.

‘(3) The notice must state—

- (a) the reasons for the chief executive’s belief; and
- (b) that the holder may—
  - (i) under section 65—ask for the decision to be reviewed and appeal against the reviewed decision; and
  - (ii) under the *Transport Planning and Coordination Act 1994*, part 5—ask for the decision or the reviewed decision to be stayed.

‘(4) The cancellation takes effect on the later of the following—

- (a) the day the notice is given to the holder;
- (b) the day stated in the notice.’.

## **61 Amendment of s 32 (Power to stop heavy vehicles)**

Section 32(4), penalty, ‘subsection (3)’—

*omit, insert—*

‘subsection (4)’.

## **62 Insertion of new s 53A**

After section 53—

*insert—*

### **‘53A Proof of giving false and misleading statements and documents**

‘(1) This section applies to a proceeding for an offence against section 52 or 53.

‘(2) It is sufficient proof the statement was made, or the document was given, to the official to prove it was made or given to a person authorised to receive it.

‘(3) It does not matter whether the person was an official or whether the authorisation was a delegation, agency or any other form of authorisation by which someone acts through another.’

### **63 Amendment of s 66 (Local laws etc.)**

(1) Section 66(3)(a)(i), after ‘footpath,’—

*insert—*

‘shared path,’.

(2) Section 66—

*insert—*

‘(8) In this section—

“**shared path**” see the *Transport Operations (Road Use Management—Road Rules) Regulation 1999*, section 242(2).<sup>13</sup>’.

### **64 Amendment of s 101 (Who may regulate parking)**

Section 101(1), ‘, under a local law,’—

*omit.*

### **65 Amendment of s 102 (Parking regulation involves installing official traffic signs)**

Section 102(1), ‘install’—

*omit, insert—*

‘regulate parking by installing’.

### **66 Amendment of s 103 (Examples of how parking may be regulated)**

(1) Section 103(3), ‘Under a local law,’—

*omit, insert—*

‘Official traffic signs installed by’.

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13 *Transport Operations (Road Use Management—Road Rules) Regulation 1999*, section 242 (Travelling in or on a wheeled recreational device or toy on a footpath or shared path)

(2) Section 103(3)(d)—

*omit.*

(3) Section 103(3)(e) and (f)—

*renumber* as subsection 3(d) and (e).

(4) Section 103(4)(c)—

*omit.*

(5) Section 103(5)(c)—

*omit.*

(6) Section 103—

*insert—*

‘(6) A local government may, by local law or resolution, specify the following—

(a) parking fees for a place or a traffic area;

(b) the fee for—

(i) a permit mentioned in subsection (4)(a)(i) or (ii); or

(ii) a commercial vehicle identification label mentioned in subsection (5)(a).’.

## **67 Amendment of s 105 (Paid parking)**

Section 105(1) ‘has—’ to ‘installed’—

*omit, insert—*

‘has installed’.

## **68 Amendment of s 108 (Local laws about minor traffic offences)**

Section 108(4), definition “minor traffic offence”—

*insert—*

‘(c) an offence against section 74 that is a contravention of an indication given by an official traffic sign installed by a local government under this part.’.

**69 Amendment of sch 3 (Reviewable decisions)**

Schedule 3—

*insert—*

‘19A Cancelling suspended approvals Magistrates’.

**PART 6—AMENDMENT OF TRANSPORT PLANNING  
AND COORDINATION ACT 1994****70 Act amended in pt 6**This part amends the *Transport Planning and Coordination Act 1994*.**71 Amendment of s 25 (General powers regarding property)**

(1) Section 25(10) and (11)—

*renumber* as section 25(12) and (13).

(2) Section 25—

*insert—*‘(10) If the chief executive issues a notice of intention to resume a lease of State land, or some other interest in State land that is less than freehold, the chief executive must file a copy of the notice in the appropriate land register kept under the *Land Act 1994*.

‘(11) If the chief executive amends or discontinues a resumption mentioned in subsection (10), the chief executive must immediately file a notice of the amendment or discontinuance in the register.’.

**71A Insertion of new s 36DA**

Part 5, after section 36D—

*insert—*

**‘36DA Commissioner for Children and Young People**

‘(1) This section applies if an appeal concerns a reviewed decision about driver authorisation if a driver disqualifying offence involving a child was relevant to the original decision.

‘(2) The Commissioner for Children and Young People may appear as a party.

‘(3) In this section—

“**driver authorisation**” means driver authorisation under the *Transport Operations (Passenger Transport) Act 1994*.

“**driver disqualifying offence**” means a driver disqualifying offence under the *Transport Operations (Passenger Transport) Act 1994*.’.

**PART 7—AMENDMENT OF LAND ACT 1994****72 Act amended in pt 7**

This part amends the *Land Act 1994*.

**73 Renumbering of ch 6, pt 1, div 3A**

Chapter 6, part 1, division 3A—

*renumber* as chapter 6, part 1, division 3B.

**74 Renumbering of s 290A (Explanatory format plan)**

Section 290A—

*renumber* as section 290D.

**75 Insertion of new ch 6, pt 1, div 3A**

Chapter 6, part 1, after section 290AA—

*insert*—

***‘Division 3A—Format of plans of survey*****‘290A Available formats for plans**

‘(1) A plan of survey may be in a standard or volumetric format.

‘(2) The format to be used in the plan depends on how the plan is to define the land to which it relates.

**‘290B Standard format plan**

‘A “**standard format**” plan of survey defines land using a horizontal plane and references to marks on the ground.

*Example of marks—*

Posts in the ground.

**‘290C Volumetric format plan**

‘A “**volumetric format**” plan of survey defines land using 3 dimensionally located points to identify the position, shape and dimensions of each bounding surface.’.

**76 Insertion of new ch 6, pt 1, div 3C**

Chapter 6, part 1, after section 290D, as renumbered—

*insert—*

***‘Division 3C—Plans of subdivision*****‘290E Meaning of “plan of subdivision”**

‘A “**plan of subdivision**” is a plan of survey providing for 1 or more of the following—

- (a) the division of 1 or more lots;
- (b) the amalgamation of 2 or more lots to create a smaller number of lots;
- (c) the dedication of land to public use;
- (d) the redefinition of a lot on a resurvey.

**‘290F Plan of subdivision may be registered**

‘(1) A plan of subdivision may be registered in the appropriate register in the land registry.

‘(2) A lot defined in the plan is created as a lot when the plan is registered.

‘(3) The registration of a plan of subdivision does not limit anything the Governor in Council or Minister may do under this Act.

‘(4) On the registration of a plan of subdivision of transport land, the description of the land is amended as provided by the plan of subdivision.

‘(5) Subsection (4) is not limited by section 360.<sup>14</sup>

**‘290G Standard format plan of subdivision**

‘A standard format plan of subdivision may only divide a standard format lot.

**‘290H Volumetric format plan of subdivision**

‘A volumetric format plan of subdivision may divide a lot on a standard or volumetric format plan of subdivision.

**‘290I Division of lot on standard format plan of subdivision**

‘(1) This section applies if a volumetric format plan of subdivision divides a standard format lot, creating 2 or more lots.

‘(2) If, after the division, a created lot continues to be defined using a horizontal plane and references to marks on the ground, the created lot is a standard lot.

**‘290J Requirements for registration of plan of subdivision**

‘(1) A plan of subdivision must—

- (a) show all proposed lots marked with separate and distinct numbers; and

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14 Section 360 (Governor in Council may change leases)

- (b) show all proposed easements marked with separate and distinct letters; and
- (c) distinctly show all roads, parks, reserves and other proposed lots that are to be public use land; and
- (d) comply with directions of the chief executive about the required format for a plan of subdivision; and
- (e) comply with the *Surveyors Act 1977*; and
- (f) be certified as accurate by a licensed surveyor; and
- (g) include a statement agreeing to the plan by—
  - (i) the lessee; or
  - (ii) if the mortgagee of the lessee is in possession—the mortgagee in possession; and
- (h) be consented to by the Minister; and
- (i) be consented to by all registered mortgagees of each lot the subject of the plan and all other registered sublessees whose interests are affected by the plan.

‘(2) If the plan of subdivision defines the boundaries of a lease, or part of a lease, or another interest in land less than freehold, that is acquired by resumption under the authority of an Act—

- (a) subsection (1)(g), (h) and (i) does not apply; and
- (b) the plan must be consented to by the acquiring entity.

### **‘290K Particulars to be recorded on registration of plan**

‘In registering a plan of subdivision, the chief executive must record in the appropriate register particulars of each proposed lot that is not public use land.

**‘290L Lodged plan that is withdrawn and re-lodged**

‘If a plan of subdivision is withdrawn and re-lodged under section 308, it must be treated for the purposes of section 283 and section 298 to have been lodged when it was first lodged.<sup>15</sup>

**‘290M Division excluding road or watercourse**

‘(1) A lot may be divided by a plan of subdivision, even though there is a road or watercourse within the boundaries of the lot that is not part of the lot.

‘(2) However, the road or watercourse is not included in any lot created by the plan of subdivision, even though it may be within the boundaries of the lot.

**‘290N Pre-examination of plans**

‘(1) Nothing in this Act prevents the chief executive from examining a plan of survey and related instruments deposited before the plan is lodged for registration.

‘(2) Section 305 applies to a plan and related instruments deposited under subsection (1).<sup>16</sup>’.

**77 Insertion of new ch 6, pt 1A**

Chapter 6, after section 294—

*insert—*

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15 Section 308 (Withdrawing lodged document before registration), section 283 (Documents form part of a register) and section 298 (Priority of registered documents)

16 Section 305 (Requisitions)

## **‘PART 1A—BUILDING MANAGEMENT STATEMENTS**

### *‘Division 1—Application*

#### **‘294A Application**

‘This part applies only to transport land.

### *‘Division 2—Building management statements*

#### **‘294B Building management statement may be registered**

‘(1) A building management statement may be registered.

‘(2) A “**building management statement**” is a document that—

- (a) identifies lots to which it applies; and
- (b) contains provisions benefiting and burdening the lots to which it applies; and
- (c) otherwise complies with the requirements of this division for a building management statement.

‘(3) The lots to which a building management statement applies must be lots wholly or partly contained in, or wholly or partly containing, a building.

‘(4) However, the registration of a building management statement does not limit anything the Governor in Council may do, or the chief executive must do, under section 360.<sup>17</sup>.

#### **‘294C Circumstances under which building management statement may be registered**

‘(1) A building management statement may be registered if—

- (a) the statement is signed by the lessees of all lots to which the statement applies; and

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17 Section 360 (Governor in Council may change leases)

- (b) the statement complies with the directions of the chief executive about the required format for a building management statement.

‘(2) The lots to which a building management statement applies must comprise—

- (a) 2 or more volumetric format lots; or
- (b) 1 or more volumetric format lots, and 1 or more standard format lots.

#### **‘294D Content of building management statement**

‘(1) A building management statement must contain provisions about the following—

- (a) the supply of services to lots;
- (b) rights of access to lots;
- (c) rights of support and shelter;
- (d) insurance arrangements.

‘(2) A building management statement may contain provisions about the following—

- (a) the establishment and operation of a management group;
- (b) the imposition and recovery of levies, how levy amounts are to be kept and how levy amounts are to be spent;
- (c) property maintenance;
- (d) architectural and landscaping standards;
- (e) dispute resolution;
- (f) rules for common services and facilities;
- (g) administrative arrangements;
- (h) arrangements for accomplishing the extinguishment of the statement.

‘(3) To remove doubt, it is declared that a right of access, support or shelter, or other right in the nature of an easement, under a building management statement may operate according to its terms, and may be effective, despite the absence of a formal registered easement establishing the right.

‘(4) A dispute resolution provision under a building management statement may operate to require the referral of a dispute arising under the statement other than to a court.

‘(5) However, the provision is ineffective to the extent that it purports to operate to stop final determination of the dispute in a court of competent jurisdiction.

#### **‘294E Registration of building management statement**

‘(1) When registering a building management statement, the chief executive must record a reference to the statement in the particulars for the lease in the appropriate register.

‘(2) However, the chief executive, though not obliged to examine, may examine a building management statement for its validity, including, in particular, its consistency with any plan of subdivision, or its compliance with the requirements for a building management statement.

#### **‘294F Amending a building management statement**

‘(1) A building management statement may be amended by registering an instrument of amendment of the building management statement.

‘(2) The instrument of amendment must be signed by the lessees of all lots to which the building management statement applies.

‘(3) The instrument of amendment must not change the lots to which it applies.

#### **‘294G Building management statement if lots owned by 1 lessee**

‘A building management statement may be registered even if all the lots to which it applies have the same lessee.

#### **‘294H One person becoming lessee of all lots**

‘If the same person becomes the lessee of all lots to which a building management statement applies, the building management statement is extinguished only if the lessee asks the chief executive to extinguish it.

**‘294I Extinguishing a building management statement**

‘(1) A building management statement may be extinguished by registering a document of extinguishment of the building management statement.

‘(2) The instrument of extinguishment must be signed by the lessees of all lots to which the building management statement applies.

‘(3) However, a building management statement may be extinguished only if all registered mortgagees of lots to which the building management statement applies consent to the extinguishment.

**‘294J Building management statement affecting freehold and non-freehold land**

‘(1) If a building management statement benefits or burdens both freehold and non-freehold land, the building management statement must be registered in the appropriate registers.

‘(2) Further dealings affecting the building management statement must also be registered in the appropriate registers.

‘(3) If a lot subject to a building management statement, including a lot under the *Land Title Act 1994*, is surrendered to the State to be dealt with under this Act, the building management statement continues over the resulting unallocated State land only if the Minister approves the continuation.

‘(4) In considering whether to approve the continuation of the building management statement, the Minister may consider if it is reasonably necessary to benefit the lots, including the unallocated State land, the subject of the building management statement.

‘(5) If a building management statement continues over unallocated State land, the continuation must be recorded in the appropriate register.

‘(6) If unallocated State land, over which there is a building management statement, is dealt with under this Act—

- (a) the Minister may approve the building management statement continue; and
- (b) if approved—the continuation of the building management statement must be recorded in the appropriate register.’

**78 Amendment of s 352 (Plan of survey must be registered if needed)**

Section 352(3)—

*insert—*

‘(e) the plan complies with section 290J.<sup>18</sup>’.

**79 Amendment of s 392 (Delegation by Minister)**

(1) Section 392—

*insert—*

‘(2A) The Minister may delegate the Minister’s powers under this Act about rail land that is leased under this Act to the chief executive, or to an officer or employee, of the department within which the *Transport Infrastructure Act 1994*, chapter 7<sup>19</sup> is administered.’.

(2) Section 392—

*insert—*

‘(5) In subsection (2A)—

“**rail land**” means rail corridor land and non-rail corridor land as defined under the *Transport Infrastructure Act 1994*.’.

**80 Amendment of sch 6 (Dictionary)**

(1) Schedule 6—

*insert—*

‘ “**building**” means a fixed structure that is wholly or partly enclosed by walls and is roofed, and includes a part of a building.

“**building management statement**” see section 294B(2).

“**document**” includes—

- (a) a deed of grant or lease; and
- (b) a will, grant of representation, or exemplification of a will, that may be used to deal with a lot; and

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18 Section 290J (Requirements for registration of plan of subdivision)

19 *Transport Infrastructure Act 1994*, chapter 7 (Rail transport infrastructure and other matters)

- (c) a deed that relates to or may be used to deal with a lot; and
- (d) a power of attorney that may be used to deal with a lot; and
- (e) a request, application or other document that deals with a lot and may be registered under this Act; and
- (f) a map or plan of survey that may be lodged; and
- (g) another document that may be deposited.

**“lot”** means a separate, distinct parcel of land created on the registration of a plan of subdivision.

**“plan of subdivision”** see section 290E.

**“standard format”** see section 290B.

**“standard format lot”** means a lot on a standard format plan of survey.

**“transport land”**, for chapter 6, means any of the following land that is held under a perpetual lease—

- (a) land declared to be busway land under the *Transport Infrastructure Act 1994*, chapter 9;
- (b) land declared to be light rail land under the *Transport Infrastructure Act 1994*, chapter 10;
- (c) non-rail corridor land as defined under the *Transport Infrastructure Act 1994*;
- (d) rail corridor land as defined under the *Transport Infrastructure Act 1994*.

**“volumetric format”** see section 290C.’.

(2) Schedule 6, definition **“explanatory format plan”**, ‘section 290A’—  
*omit, insert—*  
 ‘section 290D’.

## **PART 8—AMENDMENT OF LAND TITLE ACT 1994**

### **81 Act amended in pt 8 and sch**

This part and the schedule amend the *Land Title Act 1994*.

**82 Insertion of new s 54J**

Part 4, division 4—

*insert—*

**‘54J Building management statement affecting freehold and non-freehold land**

‘(1) If a building management statement benefits or burdens both freehold and non-freehold land, the building management statement must be registered in the appropriate registers.

‘(2) Further dealings affecting the building management statement must also be registered in the appropriate registers.

‘(3) If a lot subject to a building management statement, including a lot over which a lease is issued under the *Land Act 1994*, is surrendered to the State to be dealt with under the *Land Act 1994*, the building management statement continues over the resulting unallocated State land only if the Minister approves the continuation.

‘(4) In considering whether to approve the continuation of the building management statement, the Minister may consider if it is reasonably necessary to benefit the lots, including the unallocated State land, the subject of the building management statement.

‘(5) In this section—

“**Minister**” means the Minister administering the *Land Act 1994*.’.

## SCHEDULE

### MINOR AND CONSEQUENTIAL AMENDMENTS

sections 3, 8, 10, 58 and 81

#### LAND ACT 1994

- 1 Section 290J(e), ‘Surveyors Act 1977’—**  
*omit, insert—*  
*‘Survey and Mapping Infrastructure Act 2003’.*

#### TRANSPORT INFRASTRUCTURE ACT 1994

- 1 Section 400(2)(c), ‘for the light rail’—**  
*omit.*
- 2 Section 481(b) and (c)—**  
*omit.*
- 3 Schedule 1, item 17, ‘for a railway’—**  
*omit.*
- 4 Schedule 6, definition, “authorised person”, ‘, other than for a railway or light rail,’—**  
*omit.*
- 5 Schedule 6, definitions “authorised person for a light rail” and “authorised person for a railway”—**  
*omit.*

## SCHEDULE (continued)

**TRANSPORT OPERATIONS (MARINE SAFETY)  
ACT 1994****1 Section 4—***insert—*‘**“approved form”** see section 206B.’.**TRANSPORT OPERATIONS (PASSENGER  
TRANSPORT) ACT 1994****1 Section 47A(4), ‘section 62.’—***omit, insert—*‘sections 62 and 62AAD.<sup>20</sup>’.**2 Chapter 6, part 2, division 2, heading, ‘service’—***insert—*‘*passenger services*’.**3 Section 56(3)(a)(ii)(A), ‘sections’—***omit, insert—*

‘section’.

**4 Section 56(3)(a)(ii)(C), ‘has’—***omit.*

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20 Sections 62 (Offer of new service contract) and 62AAD (Offer of new Translink service contract)

## SCHEDULE (continued)

**5 Section 59(2), after ‘regard to’—***insert—*

‘at least the following’.

**6 Section 59(2)(a), (b), (c) and (d), ‘; and’—***omit, insert—*

‘;’.

**7 Section 61(4), ‘A’—***omit, insert—*

‘Without limiting the matters an arbitrator may or may not take into account, a’.

**8 Chapter 11, part 3A, heading, after ‘FOR’—***insert—*

‘DANGEROUS GOODS ON’.

**9 Chapter 11A, heading—***omit, insert—***‘CHAPTER 11A—FARE EVASION AND OTHER  
OFFENCES’.****10 Section 143AI, ‘part’—***omit, insert—*

‘chapter’.

## SCHEDULE (continued)

**TRANSPORT OPERATIONS (ROAD USE  
MANAGEMENT) ACT 1995****1 Section 151, heading—***omit, insert—***‘151 Application of ch 5A’.****2 Section 151(1), ‘This part’—***omit, insert—***‘This chapter’.****3 Section 151(2), ‘this part’—***omit, insert—***‘this chapter’.**