



Queensland

Motor Accident Insurance and Other Legislation Amendment Act 2010

Act No. 32 of 2010



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Queensland

Motor Accident Insurance and Other Legislation Amendment Act 2010

Act No. 32 of 2010

An Act to amend the Motor Accident Insurance Act 1994, the Queensland Competition Authority Act 1997, the Queensland Competition Authority Regulation 2007 and the Transport Infrastructure Act 1994 for particular purposes

[Assented to 8 September 2010]

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Motor Accident Insurance and Other Legislation Amendment Act 2010*.

2 Commencement

- (1) Part 2, other than sections 5 to 7, commences on 1 October 2010.
- (2) Sections 76, 77 and 79(1) commence on the later of the following days—
 - (a) the day a gazette notice is made under the *Transport Infrastructure Act 1994*, section 438A as inserted by the *Transport and Other Legislation Amendment Act (No. 2) 2010*, section 74;
 - (b) the day this Act receives the royal assent.

Part 2 Amendment of Motor Accident Insurance Act 1994

3 Act amended

This part amends the *Motor Accident Insurance Act 1994*.

4 Amendment of s 3 (Objects)

- (1) Section 3(a), after ‘motor vehicle insurance’—

insert—

‘(CTP insurance)’.

- (2) Section 3(aa), ‘insurance under the statutory insurance scheme’—

omit, insert—

‘CTP insurance’

- (3) Section 3(aa), ‘insurance’—

omit, insert—

‘CTP insurance’.

- (4) Section 3—

insert—

‘(ab) to promote competition in the setting of premiums for CTP insurance; and’.

- (5) Section 3(b), from ‘providing’—

omit, insert—

‘providing CTP insurance under CTP insurance policies; and’.

- (6) Section 3(aa) to (f)—

renumber as section 3(b) to (h).

5 Amendment of s 4 (Definitions)

- (1) Section 4—

insert—

‘CTP insurance see section 3(a)’.

- (2) Section 4, definitions *mobile machinery, motor vehicle* and *registration*—

‘1999’—

omit, insert—

‘2010’.

[s 6]

- (3) Section 4, definition *registration*, ‘62’—
omit, insert—
‘107’.

6 Amendment of s 20A (Temporary gratuitous insurance)

Section 20A(1), ‘1999, section 63’—
omit, insert—
‘2010, section 108’.

7 Amendment of s 23 (Statutory policy of insurance)

- (1) Section 23(8)(a), ‘a certificate of roadworthiness’—
omit, insert—
‘an inspection certificate’.

- (2) Section 23—
insert—

‘(10) In this section—

inspection certificate means an inspection certificate under the *Transport Operations (Road Use Management—Vehicle Standards and Safety) Regulation 2010*.’.

8 Amendment of s 66 (Withdrawal or suspension of licence)

Section 66—
insert—

- ‘(1A) A request by an insurer under subsection (1)(a) must be given in writing to the commission at least 3 months before the day the licence is to be withdrawn or suspended.’.

9 Amendment of s 67 (Effect of withdrawal or suspension on existing liabilities etc.)

- (1) Section 67(5)—
renumber as section 67(8).
- (2) Section 67(3), ‘by transport administration’—
omit, insert—
‘under subsection (5) or (6)’.
- (3) Section 67(4)—
omit, insert—
- ‘(4) The commission—
 - (a) must consult with the remaining licensed insurers about their capacity to underwrite the CTP insurance policies; and
 - (b) may consult with any insurer the commission considers appropriate for the purpose of the insurer becoming a licensed insurer; and
 - (c) must have regard to the results of any consultation with APRA relevant to the matter.
- ‘(5) Subject to subsection (6), transport administration must randomly allocate the CTP insurance policies to the remaining licensed insurers in proportion to their shares of the market for CTP insurance.
- ‘(6) Subsection (5) does not apply, and transport administration must allocate the CTP insurance policies as decided by the commission, if—
 - (a) the commission decides that the remaining licensed insurers do not have the capacity the commission considers appropriate to underwrite the CTP insurance policies that would be randomly allocated to them under subsection (5); or
 - (b) an insurer mentioned in subsection (4)(b) becomes a licensed insurer.
- ‘(7) Subsections (3), (5) and (6) are subject to section 67A.’

[s 10]

(4) Section 67—

insert—

‘(9) In this section—

APRA means the Australian Prudential Regulation Authority established under the *Australian Prudential Regulation Authority Act 1998* (Cwlth).’.

10 Insertion of new s 67A

After section 67—

insert—

‘67A When State may underwrite CTP insurance policies

‘(1) This section applies if—

- (a) an insurer’s licence is withdrawn or suspended; and
- (b) the commission considers CTP insurance policies of the insurer can not be appropriately allocated to another insurer under section 67(5) or (6), including for example, if the commission considers—
 - (i) there is no insurer with appropriate capacity to underwrite the policies; or
 - (ii) the circumstances are urgent.

‘(2) The commission may request the Minister to authorise the State to underwrite the CTP insurance policies

‘(3) The commission must provide the Minister with the information and the recommendations on matters decided by the Minister.

‘(4) The Minister may authorise the State to underwrite the policies starting from a day stated by the Minister, including from a day before the Minister authorises the underwriting.

‘(5) The State becomes the insurer underwriting the policies from the day stated by the Minister.

-
- ‘(6) If the State becomes an insurer under subsection (5), a regulation may make provision for the State to, under section 21—
- (a) become an insurer of a motor vehicle, even if, in a particular case, the State is not the insurer of the motor vehicle under subsection (4); or
 - (b) stop being the insurer of a motor vehicle.
- ‘(7) For subsections (5) and (6), this Act, other than the following provisions, applies to the State—
- (a) sections 62 to 64;
 - (b) section 66;
 - (c) section 67(1) and (2);
 - (d) sections 68 and 69;
 - (e) sections 71 to 87.
- ‘(8) For subsection (7), a reference, in an applied provision, to an insurer, licensed insurer or CTP insurer includes a reference to the State.
- ‘(9) A regulation may modify an applied provision for the purpose of its application to the State, including, for example—
- (a) to modify the way an insurer’s premiums are fixed under sections 13 and 13A if the State is the insurer; or
 - (b) to exempt the State from compliance with section 22.
- ‘(10) A regulation may provide for anything necessary or convenient relating to the transfer to the State of CTP insurance business from the old insurer, including for example the following—
- (a) the transfer of some or all of the rights and liabilities of the old insurer relating to CTP insurance policies transferred to the State;
 - (b) continuing or further obligations of the old insurer relating to the transferred CTP insurance policies;

[s 11]

- (c) the payment of amounts into or out of any fund controlled by the State that relates to insurance provided for or by the State.

‘(11) In this section—

applied provision means a provision of this Act applied to the State under subsection (7).

old insurer means the insurer whose licence is withdrawn or under suspension.’.

11 Insertion of new s 72A

After section 72—

insert—

‘72A Declarations from licensed insurer

- ‘(1) The commission may by notice in writing require the chief executive officer or another appropriate officer of a licensed insurer, or both, to give the commission within a reasonable period a declaration for the period to which the notice relates—
 - (a) that the licensed insurer has complied with section 96(1); and
 - (b) that the licensed insurer has not established or treated the cost of any inducement to which section 96(2)(c) or (3)(b) applies as a cost, expense or charge under or against the insurer’s CTP insurance policies or CTP business generally; and
 - (c) that the licensed insurer has complied with section 97(5).
- ‘(2) The commission may require the declaration to be given on an annual basis or in relation to a particular period, as stated by the commission in the notice.
- ‘(3) A person of whom the declaration is required must be a resident of Australia.
- ‘(4) A person of whom the declaration is required—

- (a) must give the declaration as required, unless the person has a reasonable excuse; and
- (b) must not make a false declaration.

Maximum penalty—300 penalty units.

‘(5) In this section—

appropriate officer of the licensed insurer means an officer of the licensed insurer who the commission considers is appropriate to provide the declaration.’.

12 Insertion of new s 96

After section 95—

insert—

‘96 Inducement for CTP insurance business prohibited

‘(1) A licensed insurer or other person acting for a licensed insurer must not give, or offer to give, to an entity, including an entity acting for the insurer, an inducement for directing CTP insurance business to the licensed insurer.

Maximum penalty—300 penalty units

‘(2) A licensed insurer or other person does not contravene subsection (1) if—

(a) the inducement is given or offered to be given to an entity only on the basis that the entity will direct an associate of the entity—

(i) to enter into or renew a CTP insurance policy with the licensed insurer; and

(ii) to ask the licensed insurer, on each occasion the associate pays a premium to the licensed insurer, to make a particular donation to—

(A) a particular registered charity; or

(B) a particular road safety research entity; or

(C) an entity prescribed under a regulation; and

[s 12]

Note—

‘direct’ has a meaning that corresponds to the defined term *directing CTP insurance business*.

- (b) the inducement is the donations made by the licensed insurer on every occasion the associate makes the request mentioned in paragraph (a)(ii); and
 - (c) the licensed insurer does not intend to, and does not, establish or treat the cost of the inducement as a cost, expense or charge under or against the insurer’s CTP insurance policies or CTP business generally.
- ‘(3) Also, a licensed insurer or other person does not contravene subsection (1) in relation to a CTP insurance policy if—
- (a) the entity to whom the inducement is given, or offered to be given, is the person who is to enter or renew the CTP insurance policy (the *policy holder* or *proposed policy holder*); and
 - (b) the licensed insurer does not intend to, and does not, establish or treat the cost of the inducement as a cost, expense or charge under or against the insurer’s CTP insurance policies or CTP business generally.
- ‘(4) However, subsection (3) does not apply if—
- (a) the policy holder or proposed policy holder conducts the business of selling motor vehicles; and
 - (b) the CTP insurance policy is for a motor vehicle that will be sold in the ordinary course of the business, even if the vehicle is not for sale when the inducement is given or offered; and
 - (c) the entering or renewal of the CTP insurance policy by the policy holder or proposed policy holder would effectively direct CTP insurance business to the licensed insurer when the vehicle is sold.
- ‘(5) Subsections (2), (3) and (4) provide for exemptions under the *Justices Act 1886*, section 76.
- ‘(6) A court that convicts a licensed insurer of an offence against subsection (1) may, by order, withdraw the licence.

‘(7) In this section—

associate includes member, employee or supporter.

directed CTP insurance business means the CTP insurance business directed to, or obtained for, a licensed insurer because of an inducement.

directing CTP insurance business, to a licensed insurer, includes—

- (a) obtaining CTP business for a licensed insurer; and
- (b) giving any form of advice, encouragement or suggestion intended to direct CTP business to a licensed insurer.

inducement means any reward, consideration or benefit, including, for example, the following—

- (a) a commission;

Examples—

- commissions based on any premium for CTP insurance policies resulting from directed CTP insurance business
- commissions paid on insurance products not involving CTP insurance business but based on directed CTP insurance business

- (b) an administration payment;

Example—

- a fee payable to a motor dealer based on the cost to the motor dealer for work done in directing the directed CTP insurance business to the licensed CTP insurer

- (c) general financial support.

Examples (where the directed CTP insurance business is being directed to a CTP insurer by a motor dealer)—

- discounts or subsidies applying to premiums for insurance relating to the motor dealer’s business or business connected to the motor dealer’s business
- contributions made to the motor dealer’s general operating expenses, including floor plan charges, entertainment, sponsorship, memberships, sales incentive awards and associated functions

registered charity means—

- (a) a charity registered under the *Collections Act 1966*; or

[s 13]

- (b) a charity registered under a law of another State—
 - (i) that is prescribed under a regulation for this section; or
 - (ii) if a law is not prescribed under subparagraph (i)—with objects similar to the *Collections Act 1966* and that provides for the registration of charities.

road safety research entity means an entity that is, or is conducting, a research program, affiliated with a university, relating to—

- (a) the causes of motor vehicle accidents and their prevention; or
- (b) rehabilitation of persons injured in motor vehicle accidents.’.

13 Amendment of s 97 (CTP premiums not to be discounted etc.)

- (1) Section 97(5)—

renumber as section 97(6).

- (2) Section 97—

insert—

- ‘(5) A licensed insurer or other person acting for a licensed insurer must not give, or offer to give, to a person an inducement to enter into or renew an insurance policy, including a CTP insurance policy, with the insurer if the insurer intends to establish or treat the cost of the inducement as a cost, expense or charge under or against the insurer’s CTP insurance policies or the insurer’s CTP business generally.

Examples of an inducement—

- 1 A licensed insurer offers a discount to policy holders who hold several policies of insurance with the insurer. The offer is available if one of the policies is a CTP insurance policy. The discount is applied to a policy that is not a CTP insurance policy, but the cost of the discount is held partly against the account for the CTP insurance policy.

- 2 A licensed insurer offers to give a person a gift if the person selects the licensed insurer as the insurer under a CTP insurance policy for the person's motor vehicle. The insurer intends to treat the cost of the gift as a cost of the insurer's CTP business.

Maximum penalty—300 penalty units.’.

14 Insertion of new pt 7, div 6

Part 7—

insert—

‘Division 6 Transitional provisions for the Motor Accident Insurance and Other Legislation Amendment Act 2010

‘113 Termination of s 96 inducement

- ‘(1) This section applies to an arrangement entered into before 1 October 2010 between a licensed insurer, or a person acting for a licensed insurer, and another entity (the *entity*) if under the arrangement—
- (a) a prohibited inducement is to be given to the entity on or after 1 October 2010 for directing CTP insurance business to the licensed insurer before, on or after 1 October 2010; or
 - (b) a prohibited inducement has been given to the entity before 1 October 2010 for directing CTP insurance business to the licensed insurer on or after 1 October 2010.
- ‘(2) The arrangement is terminated, and is void and unenforceable, to the extent it makes provision for—
- (a) the prohibited inducement; and
 - (b) directing CTP insurance business to the licensed insurer in return for the prohibited inducement.
- ‘(3) No compensation is payable to any person for the termination of the arrangement.

[s 14]

‘(4) The following are taken not to be in breach of the terminated arrangement—

(a) the licensed insurer, or person acting for the licensed insurer, for failing to give the prohibited inducement mentioned in subsection (2)(a) to the entity in accordance with the provisions of the terminated arrangement;

(b) the entity, for failing to direct the CTP insurance business to the licensed insurer in return for the prohibited inducement mentioned in subsection (1)(a) or (b) in accordance with the provisions of the terminated arrangement.

‘(5) If, before 1 October 2010, the entity has received an amount that on the commencement of this section becomes a prohibited inducement under a terminated arrangement, the entity within a reasonable period must repay the amount to the licensed insurer, or the person acting for a licensed insurer, who gave the amount to the entity.

‘(6) If the entity fails to repay an amount under subsection (5), the licensed insurer, or other person entitled to be repaid the amount, may recover it as a debt.

‘(7) In this section—

arrangement includes contract and agreement.

prohibited inducement means an inducement of a type mentioned in section 96(1) the giving or offering of which would be prohibited under section 96(1) if the arrangement were entered into on or after 1 October 2010.

terminated arrangement means the arrangement to which subsection (2) applies to the extent it is terminated by the subsection.

‘114 Termination of s 97(5) inducement

‘(1) This section applies if—

[s 17]

‘5 Dictionary’.

(2) Section 5, ‘the schedule’—

omit, insert—

‘schedule 2’.

17 Amendment of s 10 (Authority’s functions)

(1) Section 10(f), ‘Ministerial declarations’—

omit, insert—

‘declarations of services under part 5’.

(2) Section 10—

insert—

‘(ha) to monitor compliance with approved access undertakings; and’.

18 Amendment of s 69E (Object of pt 5)

Section 69E, after ‘investment in,’—

insert—

‘significant’.

19 Amendment of s 70 (Meaning of *facility*)

(1) Section 70(2)—

omit.

(2) Section 70(3)—

renumber as section 70(2).

20 Amendment of s 72 (Meaning of *service*)

Section 72(2)(d)—

omit.

21 Replacement of pt 5, div 2 hdg (Ministerial declarations)

Part 5, division 2, heading—

omit, insert—

‘Division 2 Declarations of services’.

22 Amendment of pt 5, div 2, sdiv 1 hdg (Criteria for declaration recommendations and Ministerial declarations)

Part 5, division 2, subdivision 1, heading, ‘Ministerial’—

omit, insert—

‘making of’.

23 Amendment of s 76 (Access criteria)

(1) Section 76(1)(a) and (b), ‘candidate’—

omit.

(2) Section 76(2)(a), after ‘promote’—

insert—

‘a material increase in’.

(3) Section 76(2)—

insert—

‘(ba) that the facility for the service is significant, having regard to its size or its importance to the Queensland economy;’.

(4) Section 76(2)(ba) to (d)—

renumber as section 76(2)(c) to (e).

(5) Section 76(3), ‘(2)(d)’—

omit, insert—

‘(2)(e)’.

(6) Section 76(3)—

[s 24]

insert—

- ‘(i) if the facility for the service extends outside Queensland—whether access to the service provided outside Queensland by means of the facility is regulated by another jurisdiction and the desirability of consistency in regulating access to the service.’.

24 Amendment of s 77 (Requests about declarations)

Section 77(1) and (2), ‘candidate’—

omit.

25 Amendment of s 79 (Making recommendation)

(1) Section 79(3)—

omit, insert—

- ‘(3) The authority must publish the recommendation and the reasons for the recommendation in the way the authority considers appropriate.’.

(2) Section 79(4), ‘candidate’—

omit.

26 Insertion of new s 79A

After section 79—

insert—

‘79A Period for making recommendation

- ‘(1) The authority must use its best endeavours to make a recommendation under section 79 within 6 months from the day the authority receives the request.

- ‘(2) However, the 6 month period mentioned in subsection (1) does not include any of the following—

- (a) if the authority conducts an investigation for making the recommendation and gives a notice under section 185 to

a person requiring the person to give information or produce a document for the investigation, a day in the period—

- (i) starting on the day the notice is given to the person; and
 - (ii) ending on the day the person complies with the notice;
- (b) if the authority publishes a document about the recommendation and invites persons to make submissions on the document to the authority within a stated period—a day in the period for making submissions stated by the authority.
- ‘(3) The authority must publish a notice on its website, while the authority is considering the making of the recommendation, stating—
- (a) the day the 6 month period mentioned in subsection (1) started or will start; and
 - (b) the day the period will end; and
 - (c) for a day not included in the period under subsection (2)—the reason the day is not included in the period.

Editor’s note—

The authority’s website can be found at <www.qca.org.au>.

- ‘(4) If the authority fails to make the recommendation within the 6 month period mentioned in subsection (1), it must, as soon as practicable after the period ends, give written notice of the reasons for the authority’s failure to—
- (a) the applicant for the request about the declaration of the service; and
 - (b) if the request was not made by the Ministers—the Ministers.’.

[s 27]

27 Amendment of s 80 (Factors affecting making of recommendation)

(1) Section 80, ‘candidate’—

omit.

(2) Section 80(3)—

omit, insert—

‘(3) Despite subsection (1), the authority may recommend that a service not be declared by the Ministers if the authority considers the request was not made in good faith or is frivolous.’.

(3) Section 80(4), ‘(3)(b)’—

omit, insert—

‘(3)’.

28 Amendment of pt 5, div 2, sdiv 3 hdg (Investigations about candidate services)

Part 5, division 2, subdivision 3, heading, ‘candidate’—

omit.

29 Amendment of s 81 (Power of authority to conduct investigation)

Section 81, ‘candidate’—

omit.

30 Amendment of s 84 (Making declaration)

Section 84—

insert—

‘(5) If the Ministers decide not to declare the service and the declaration recommendation was made under subdivision 4A, the decision does not affect the existing declaration for the service.’.

31 Amendment of s 85 (Notice of decision)

(1) Section 85(1), after ‘must’—

insert—

‘, within 90 days after the relevant day,’.

(2) Section 85(2) and (3)—

omit, insert—

‘(2) Also, as soon as practicable after making the decision, the Ministers must—

(a) give the designated material for the decision to the following—

(i) if a request about the declaration of the service was made by someone other than the Ministers—the applicant;

(ii) the owner of the service, unless the owner made a request about the declaration of the service;

(iii) if the owner and operator of the service are different entities—the operator, unless the operator made a request about the declaration of the service; and

(b) give to the authority a written notice stating the decision and the reasons for the decision.’.

32 Amendment of s 86 (Factors affecting making of declaration)

(1) Section 86, ‘candidate’—

omit.

(2) Section 86(3)—

omit.

(3) Section 86(4)—

renumber as section 86(3).

[s 33]

33 Amendment of s 87 (Duration of declaration)

Section 87, 'Ministerial'—

omit.

34 Insertion of new pt 5, div 2, sdiv 4A

Part 5, division 2—

insert—

'Subdivision 4A Review of declaration

'87A Declaration recommendation to be made before expiry of declaration

- '(1) At least 6 months, but not more than 12 months, before the expiry date of a declaration of a service, the authority must recommend to the Ministers that, with effect from the expiry date—
- (a) the service be declared; or
 - (b) part of the service, that is itself a service, be declared; or
 - (c) the service not be declared.
- '(2) Before making the recommendation, the authority may consult with any person it considers appropriate.
- '(3) The authority must publish the recommendation and the reasons for the recommendation in the way the authority considers appropriate.
- '(4) If the authority recommends that the service, or part of the service, be declared with effect from the expiry date, the authority must also recommend the period for which that declaration should operate.

Note—

On receiving the recommendation the Ministers must, under subdivision 4, either declare all or part of the service, or decide not to declare the service.

‘87B Notice of review

‘The authority must, when it starts considering the making of a recommendation under section 87A, tell the owner of the service that the authority is considering the matter.

‘87C Factors affecting making of recommendation

- ‘(1) The authority must make a recommendation under section 87A(1)(a) if the authority is satisfied about all of the access criteria for the service.
- ‘(2) The authority must make a recommendation under section 87A(1)(c) if the authority is not satisfied about all of the access criteria for the service.
- ‘(3) Despite subsections (1) and (2), the authority may make a recommendation under section 87A(1)(b) if the authority is satisfied about all of the access criteria for the part of the service.

‘87D Power of authority to conduct investigation

‘For making a recommendation under section 87A, the authority may conduct an investigation about the service.

‘87E Notice of investigation

- ‘(1) Before starting an investigation under this subdivision, the authority must give reasonable notice of the investigation to—
 - (a) the owner of the service; and
 - (b) any other person the authority considers appropriate.
- ‘(2) The notice must—
 - (a) state the authority’s intention to conduct the investigation; and
 - (b) state the name of the owner of the service; and
 - (c) state the subject matter of the investigation; and

[s 35]

- (d) invite the person to whom the notice is given to make written submissions to the authority on the subject matter within a reasonable time stated in the notice; and
- (e) state the authority's address.

'87F Procedures for investigation

'Part 6 applies to an investigation under this subdivision.'

35 Amendment of s 88 (Recommendation to revoke)

- (1) Section 88(1) and (3), 'Ministerial declaration'—
omit, insert—
'declaration of a service or part of a service'.
- (2) Section 88(2), 'Ministerial declaration'—
omit, insert—
'declaration of the service or part of the service'.
- (3) Section 88(3), after 'relevant service'—
insert—
'or the part of the relevant service'.

36 Amendment of s 92 (Revocation)

- (1) Section 92(1), from 'must'—
omit, insert—
'must—
 - (a) revoke the declaration of the service or the part of the service; or
 - (b) decide not to revoke the declaration of any part of the service.'
- (2) Section 92(2), 'Ministerial declaration'—
omit, insert—

‘declaration of a service or part of a service’.

- (3) Section 92(2)(b), after ‘relevant service’—
insert—

‘or the part of the relevant service’.

37 Amendment of s 93 (Notice of decision)

Section 93(1)(a)—

omit, insert—

‘(a) notice of a decision—

- (i) to revoke the declaration of a service or part of a service; or
- (ii) not to revoke the declaration of any part of a service; and’.

38 Amendment of s 94 (When revocation takes effect)

Section 94, ‘Ministerial declaration’—

omit, insert—

‘declaration of a service or part of a service’.

39 Amendment of s 95 (Effect of expiry or revocation of declaration)

Section 95, ‘expiry or revocation of a Ministerial declaration’—

omit, insert—

‘expiry of a declaration, or the revocation of a declaration of a service or part of a service,’.

40 Amendment of s 96 (Register of declarations)

Section 96, ‘Ministerial’—

omit.

[s 41]

41 Omission of pt 5, div 3 (Regulation based declarations)

Part 5, division 3—

omit.

42 Amendment of s 100 (Obligations of parties to negotiations)

Section 100—

insert—

- ‘(2) In negotiating access agreements, or amendments to access agreements, relating to the service, the access provider must not unfairly differentiate between access seekers in a way that has a material adverse effect on the ability of 1 or more of the access seekers to compete with other access seekers.

Note—

Provision for enforcing compliance with subsection (2) is made in division 8 (Enforcement for pt 5), particularly section 153 (Orders to enforce prohibitions on hindering access and unfair differentiation).

- ‘(3) Subsection (2) does not prevent the access provider treating access seekers differently to the extent the different treatment is—
- (a) reasonably justified because of the different circumstances, relating to access to the declared service, applicable to the access provider or any of the access seekers; or
 - (b) expressly required or permitted by—
 - (i) an access code or approved access undertaking for the declared service; or
 - (ii) an access determination to which the access provider is a party.
- ‘(4) However, subsection (3) does not authorise an access provider to—
- (a) engage in conduct for the purpose of preventing or hindering a user’s access to the declared service; or

Note—

See sections 104 and 125 in relation to conduct preventing or hindering a user's access to the declared service.

- (b) propose a price for access to the declared service that is inconsistent with the pricing principles mentioned in section 168A.’.

43 Amendment of s 118 (Examples of access determinations)

Section 118(1)(b), ‘accept, and pay for,’—

omit, insert—

‘pay for’.

44 Amendment of s 119 (Restrictions affecting making of access determination)

- (1) Section 119(4)—

omit, insert—

- ‘(4) Despite subsection (2)(c), the authority may make an access determination requiring an access provider to extend, or permit the extension of, a facility if—

- (a) the requirement is consistent with a requirement imposed under an approved access undertaking for the service that was approved by the authority under section 136(4) or 142(2), and the requirements under subsection (4B) are met; or

- (b) the requirements under subsection (5) are met.

- ‘(4A) An access determination mentioned in subsection (4)(a) may require the access provider to pay all or some of the costs of extending the facility if the requirement is consistent with a requirement imposed under the approved access undertaking.

- ‘(4B) For subsection (4)(a), the requirements are that the authority is satisfied—

[s 45]

- (a) the extension will be technically and economically feasible and consistent with the safe and reliable operation of the facility; and
- (b) the legitimate business interests of the following entities are protected—
 - (i) the owner of the facility;
 - (ii) if the owner and operator of the facility are different entities—the operator.’
- (2) Section 119(5), from ‘However’ to ‘only if’—
omit, insert—
‘For subsection (4)(b), the requirements are’.
- (3) Section 119(6), ‘(4)’—
omit, insert—
‘(4)(a) or (4)(b)’.

45 Amendment of s 127 (Register of access determinations)

Section 127(2)—

insert—

- ‘(f) if the access determination has been amended under subdivision 4—
 - (i) details of the amendment; and
 - (ii) the date the authority decided to amend the access determination; and
 - (iii) the date the amendment is to take, or took, effect; and
 - (iv) if the authority amended the access determination under section 127D—the authority’s reasons for amending the access determination;
- (g) if the access determination has been revoked under subdivision 4—

-
- (i) the date the authority decided to revoke the access determination; and
 - (ii) the date the revocation is to take, or took, effect; and
 - (iii) if the authority revoked the access determination under section 127D—the authority’s reasons for revoking the access determination.’.

46 Insertion of new pt 5, div 5, sdiv 4

Part 5, division 5—

insert—

‘Subdivision 4 Amendment and revocation of access determinations

‘127A Application for amendment or revocation of access determination

- ‘(1) A party to an access determination may apply to the authority for the amendment or revocation of the access determination, if the party reasonably believes—
 - (a) there has been a material change of circumstances since the access determination was made; and
 - (b) the material change of circumstances justifies the amendment or revocation of the access determination.
- ‘(2) An application under subsection (1) must be in writing and state the following—
 - (a) the name and address of the party making the application;
 - (b) the name and address of the other parties to the access determination;
 - (c) details of the material change of circumstances the party reasonably believes has happened and the reasons why the party believes it justifies the amendment or revocation of the access determination.

[s 46]

‘127B Notice by authority of application for amendment or revocation

‘On receiving an application under section 127A, the authority must give a copy of the application to the other parties to the access determination.

‘127C Amendment or revocation with agreement of parties

- ‘(1) The authority may amend or revoke the access determination if—
- (a) an application for the amendment or revocation has been made under section 127A; and
 - (b) all other parties to the access determination agree with the amendment or revocation; and
 - (c) the authority is reasonably satisfied—
 - (i) there has been a material change of circumstances since the access determination was made; and
 - (ii) the material change of circumstances justifies the amendment or revocation; and
 - (d) either—
 - (i) for an amendment—the requirements under section 119 are satisfied and the authority has had regard to the matters mentioned in section 120; or
 - (ii) for a revocation—the authority has had regard to the matters mentioned in section 120.
- ‘(2) For subsection (1)(d), the relevant sections apply as if a reference to the making of an access determination were a reference to the making of an amendment to, or the revocation of, the access determination.
- ‘(3) The authority must give written notice of the making of the amendment or revocation to all parties to the access determination.
- ‘(4) The notice must state the day the amendment or revocation takes effect.

‘127D Arbitration of dispute about amendment or revocation of access determination

- ‘(1) This section applies if—
- (a) a party to an access determination has made an application under section 127A; and
 - (b) another party (the *disputing party*) to the access determination does not agree with the amendment or revocation of the access determination applied for.
- ‘(2) The disputing party may give written notice to the authority that an access dispute exists.
- ‘(3) On receiving a notice under subsection (2), the authority must give written notice of the access dispute to all other parties to the access determination.
- ‘(4) Subject to subsection (6), the authority must make a written determination (a *subdivision 4 determination*) in an arbitration on the amendment or revocation of the access determination.
- ‘(5) Without limiting subsection (7), the authority may make a subdivision 4 determination that amends or revokes the access determination only if the authority is reasonably satisfied—
- (a) there has been a material change of circumstances since the access determination was made; and
 - (b) the material change of circumstances justifies the amendment or revocation.
- ‘(6) At any time before the authority makes a subdivision 4 determination—
- (a) the party who made the application under section 127A may withdraw it; or
 - (b) the disputing party may give the authority written notice stating that the disputing party withdraws the notice given under subsection (2) and agrees with the amendment or revocation applied for.
- ‘(7) Sections 117(5) to (7), 117A to 123 apply to the arbitration of the access dispute by the authority as if—

[s 47]

- (a) a subdivision 4 determination were an access determination; and
 - (b) a notice given under subsection (2) were an access dispute notice.
- ‘(8) For subsection (7), section 122 applies as if the following were substituted for paragraph (c)—
- ‘(c) no material change of circumstances has happened since the access determination was made.’.

47 Amendment of s 128 (Making codes)

Section 128—

insert—

- ‘(4) The Ministers may make a code only if the Ministers consider it appropriate to do so having regard to—
- (a) the matters mentioned in section 138(2)(a) to (g); and
 - (b) any other matters the Ministers consider relevant.’.

48 Amendment of s 134 (Consideration and approval of draft access undertaking by authority)

- (1) Section 134(2), from ‘, within’—

omit, insert—

‘to—

- (a) amend the draft access undertaking in the way the authority considers appropriate; and
- (b) give the authority a copy of the amended draft access undertaking within—
 - (i) 60 days of receiving the notice; or
 - (ii) if the period is extended under subsection (2A)—the extended period.’.

- (2) Section 134—

insert—

-
- ‘(2A) The authority may, during the period mentioned in subsection (2)(b)(i), extend the period within which the amended draft access undertaking must be given to the authority by giving the owner or operator a written notice stating the day the extended period ends.
- ‘(2B) The day stated in a notice under subsection (2A) must be no later than 90 days after the owner or operator received the secondary undertaking notice.’

49 Insertion of new s 136A

After section 136—

insert—

‘136A Compulsory amendment of draft access undertaking for declared service given voluntarily

- ‘(1) This section applies if—
- (a) a following person (the *relevant person*) gives a draft access undertaking for a declared service to the authority under section 136—
 - (i) the owner or operator of the declared service;
 - (ii) a person who expects to be the owner or operator of the declared service; and
 - (b) the authority refuses to approve the draft access undertaking mentioned in paragraph (a); and
 - (c) the authority has previously refused to approve a draft access undertaking given to it under section 136 by the relevant person.
- ‘(2) The notice given to the relevant person under section 136(5) may include a request for the relevant person to—
- (a) amend the draft access undertaking mentioned in subsection (1)(a) in the way the authority considers appropriate; and
 - (b) give the authority a copy of the amended draft access undertaking within—

[s 50]

- (i) 60 days of receiving the notice; or
 - (ii) if the period is extended under subsection (3)—the extended period.
- ‘(3) The authority may, during the period mentioned in subsection (2)(b)(i), extend the period within which the amended draft access undertaking must be given to the authority by giving the relevant person a written notice stating the day the extended period ends.
- ‘(4) The day stated in a notice under subsection (3) must be no later than 90 days after the relevant person received the notice given under section 136(5).
- ‘(5) If the relevant person complies with a request under subsection (2), the authority may approve the draft access undertaking.
- ‘(6) If the relevant person does not comply with a request under subsection (2), the authority may prepare, and approve, a draft access undertaking for the service in relation to the relevant person.’.

50 Amendment of s 137 (Contents of access undertakings)

Section 137—

insert—

- ‘(1A) An access undertaking for a service owned or operated by a related access provider must include provisions for—
- (a) identifying, preventing and remedying conduct of the related access provider that unfairly differentiates in a material way between—
 - (i) in negotiating access agreements, or amendments to access agreements, relating to the service—access seekers; or
 - (ii) in providing access to the service—users; and
 - (b) preventing the related access provider recovering, through the price of access to the service, costs that are

not reasonably attributable to the provision of the service.’.

(2) Section 137—

insert—

‘(3) In this section—

material way, in relation to unfair differentiation between access seekers or users, means a way that has a material adverse effect on the ability of 1 or more of the access seekers or users to compete with other access seekers or users.’.

51 Amendment of s 138 (Factors affecting approval of draft access undertaking)

(1) Section 138(1)—

omit, insert—

‘(1) This section applies to a draft access undertaking given to, or prepared by, the authority under this subdivision.’.

(2) Section 138(2)(f)—

omit, insert—

‘(f) the effect of excluding existing assets for pricing purposes;

(fa) the pricing principles mentioned in section 168A;’.

(3) Section 138(2)(fa) and (g)—

renumber as section 138(2)(g) and (h).

52 Insertion of new s 138A

Part 5, division 7, subdivision 1—

insert—

‘138A Terms of particular approved access undertakings

‘(1) An approved access undertaking for a service may require or permit the owner or operator of the service to do the following, in the circumstances stated in the undertaking—

[s 53]

- (a) treat access seekers differently in negotiating access agreements, or amendments to access agreements, relating to the service; or
 - (b) treat users differently in providing access to the service.
- ‘(2) However, subsection (1) does not authorise an approved access undertaking to require or permit the owner or operator to do anything inconsistent with the pricing principles mentioned in section 168A.’.

53 Amendment of s 140 (Consideration and approval of draft amending access undertaking by authority)

- (1) Section 140(2), from ‘, within’—

omit, insert—

‘to—

- (a) amend the draft access undertaking in the way the authority considers appropriate; and
- (b) give the authority a copy of the amended draft access undertaking within—
 - (i) 30 days of receiving the notice; or
 - (ii) if the period is extended under subsection (2A)—the extended period.’.

- (2) Section 140—

insert—

- ‘(2A) The authority may, during the period mentioned in subsection (2)(b)(i), extend the period within which the amended draft access undertaking must be given to the authority by giving the responsible person a written notice stating the day the extended period ends.
- ‘(2B) The day stated in a notice under subsection (2A) must be no later than 60 days after the responsible person received the secondary amendment notice.’.

54 Replacement of s 144 (Application of subdivision)

Section 144—

omit, insert—

‘144 Application of sdiv 3

‘This subdivision applies to a draft access undertaking given to, or prepared by, the authority under subdivision 1 or 2.’.

55 Insertion of new s 150AA

Part 5, division 7, subdivision 4, after section 150A—

insert—

‘150AA Requirement to give information about compliance with approved access undertaking

- ‘(1) The authority may take action under this section to find out whether a responsible person is complying with section 150A in relation to an approved access undertaking.
- ‘(2) The authority may, by written notice given to the responsible person, require the responsible person to give the authority, within the time (not less than 14 days) stated in the notice, stated information about the responsible person’s compliance with the approved access undertaking.
- ‘(3) The responsible person must comply with the requirement within the time stated in the notice, unless the responsible person has a reasonable excuse.
Maximum penalty—500 penalty units or 6 months imprisonment.
- ‘(4) A responsible person who is an individual is not required to comply with a requirement to give information if the responsible person claims on the ground of self incrimination a privilege the responsible person would be entitled to claim against giving the information were the responsible person a witness in a prosecution for an offence in the Supreme Court.
- ‘(5) The authority or responsible person may apply to the Supreme Court for a determination of the validity of a claim of privilege.’.

[s 56]

56 Amendment of s 153 (Orders to enforce prohibition on hindering access)

(1) Section 153, heading, from ‘prohibition’—

omit, insert—

‘prohibitions on hindering access and unfair differentiation’.

(2) Section 153(1), ‘104 or 125’—

omit, insert—

‘100(2), 104, 125 or 168C’.

57 Amendment of s 168A (Pricing principles)

(1) Section 168A, ‘declared’—

omit.

(2) Section 168A(c)—

omit, insert—

‘(c) not allow a related access provider to set terms and conditions that discriminate in favour of the downstream operations of the access provider or a related body corporate of the access provider, except to the extent the cost of providing access to other operators is higher; and’.

58 Insertion of new ss 168B and 168C

After section 168A—

insert—

‘168B Information to be considered by authority in making decisions

‘(1) This section applies to the making of any of the following decisions by the authority—

(a) a decision to make a recommendation to the Ministers under section 79, 87A or 88;

- (b) an access determination;
 - (c) a decision to approve, or refuse to approve, a draft access undertaking under section 134, 136, 140 or 142;
 - (d) a decision about whether to make a ruling under division 7A.
- ‘(2) Subsection (3) applies if a person makes a submission, or gives information, (*late information*) to the authority after the period for making the submission or giving the information stated by the authority.
- ‘(3) The authority may make the decision without taking late information into account if doing so is reasonable in all of the circumstances.
- ‘(4) For subsection (3), in deciding whether it is reasonable in all of the circumstances, the following factors must be taken into account—
- (a) whether the late information was available, or ought reasonably to have been available, to the person during the period mentioned in subsection (2);
 - (b) the length, complexity and relevance of the late information;
 - (c) how much time has elapsed since the period mentioned in subsection (2) ended;
 - (d) how advanced the authority’s decision making process is when the late information is received.
- ‘(5) Subsection (6) applies if—
- (a) the authority has required a person to give information, or produce a document, to it for the purpose of making the decision; and
 - (b) the person fails to comply with the requirement.
- ‘(6) The authority may make the decision on the basis of the information available to it at the time.

[s 59]

‘168C Prohibition on particular treatment of users by access providers

‘(1) In providing access to a declared service, an access provider must not unfairly differentiate between users of the service in a way that has a material adverse effect on the ability of 1 or more of the users to compete with other users.

Note—

Provision for enforcing compliance with subsection (1) is made in division 8 (Enforcement for pt 5), particularly section 153 (Orders to enforce prohibitions on hindering access and unfair differentiation).

‘(2) An access provider does not contravene subsection (1) to the extent the different treatment is expressly required or permitted by—

- (a) an access code or approved access undertaking for the service; or
- (b) an access agreement to which the provider is a party; or
- (c) an access determination to which the provider is a party.

‘(3) However, subsection (2) does not authorise an access provider to do anything—

- (a) under an access agreement or access determination to which the provider is a party if the provider is prevented from doing the thing under section 104 or 125; or
- (b) that is inconsistent with the pricing principles mentioned in section 168A.

‘(4) This section applies despite section 102.’.

59 Amendment of s 171 (Application of part)

(1) Section 171—

insert—

‘(ea) an investigation for part 5, division 2, subdivision 4A;’.

(2) Section 171(ea) to (l)—

renumber as section 171(f) to (m).

60 Amendment of s 181 (Notice to witness)

Section 181, ‘chairperson’—

omit, insert—

‘authority’.

61 Amendment of s 185 (Giving information and documents to authority)

Section 185(1), ‘chairperson’—

omit, insert—

‘authority’.

62 Insertion of new pt 12

After section 247—

insert—

‘Part 12 Transitional and savings provisions for Motor Accident Insurance and Other Legislation Amendment Act 2010

‘248 Definition for pt 12

‘In this part—

expiry day means the day that is 10 years from the day this section commences.

‘249 Exclusion of service from pt 5

‘(1) Despite section 72, part 5 does not apply to the service mentioned in subsection (2).

[s 62]

- ‘(2) The service is the use of rail transport infrastructure for providing transportation by rail between Queensland and another State if—
 - (a) the infrastructure is standard gauge track; and
 - (b) the transportation is effected by using standard gauge rolling stock.
- ‘(3) Subsection (1) stops applying at the end of the expiry day.

‘250 Saving of declarations of particular services

- ‘(1) Each of the following services is taken to be a service declared by the Ministers under part 5, division 2—
 - (a) the use of a coal system for providing transportation by rail;
 - (b) the use of rail transport infrastructure for providing transportation by rail if the infrastructure is used for operating a railway for which Queensland Rail Limited, or a successor, assign or subsidiary of Queensland Rail Limited, is the railway manager;
 - (c) the handling of coal at Dalrymple Bay Coal Terminal by the terminal operator.

Note—

The services mentioned in subsection (1) were, immediately before the commencement of this part, declared under a regulation made under repealed section 97.

- ‘(2) Subsection (1) stops having effect in relation to a service, or part of a service—
 - (a) at the end of the expiry day; or
 - (b) if the declaration of the service or part of the service is revoked under part 5, division 2, subdivision 5—when the revocation takes effect.

Notes—

- 1 See section 95 in relation to the effect of the declaration ending.

-
- 2 Subsection (1) ceasing to have effect in relation to a service does not prevent the Ministers declaring the service under part 5, division 2 with effect after the expiry day.
- ‘(3) For this section, *coal system* means rail transport infrastructure that is—
- (a) part of any of the following—
 - (i) the Blackwater system, being the railway connecting Gregory, Rolleston and Minerva to Gladstone, including the part of the North Coast Line between Parana and Rocklands, as shown on the diagram in schedule 1;
 - (ii) the Goonyella system, being the railway connecting Gregory, North Goonyella and Blair Athol mine to the Port of Hay Point, as shown on the diagram in schedule 1;
 - (iii) the Moura system, being the railway connecting Moura mine to Gladstone, as shown on the diagram in schedule 1;
 - (iv) the Newlands system, being the railway connecting Newlands to the Port of Abbott Point, including the part of the North Coast Line between Durroburra and Kaili, as shown on the diagram in schedule 1; or
 - (b) directly or indirectly connected to a system mentioned in paragraph (a) and owned or leased by the owner or lessee, or a related body corporate of the owner or lessee, of the system.
- ‘(4) Also, a *coal system* includes an extension of the coal system that—
- (a) is built on or after 30 July 2010; and
 - (b) does not directly connect the coal system to a coal basin to which the coal system was not directly connected on 30 July 2010; and
 - (c) is owned or leased by—
 - (i) the owner or lessee of the coal system; or

[s 62]

- (ii) a related body corporate of the owner or lessee of the coal system.

Note—

The declaration of the service mentioned in subsection (1)(a) under the *Queensland Competition Authority Regulation 2007*, repealed section 2B, commenced on 30 July 2010.

(5) In this section—

Dalrymple Bay Coal Terminal means the port infrastructure located at the port of Hay Point owned by Ports Corporation of Queensland or the State, or a successor or assign of Ports Corporation of Queensland or the State, and known as Dalrymple Bay Coal Terminal and includes the following which form part of the terminal—

- (a) loading and unloading equipment;
- (b) stacking, reclaiming, conveying and other handling equipment;
- (c) wharfs and piers;
- (d) deepwater berths;
- (e) ship loaders.

handling of coal includes unloading, storing, reclaiming and loading.

North Coast Line means the railway running the length of the coast of Queensland from Brisbane to Cairns.

Queensland Rail Limited means Queensland Rail Limited ACN 132 181 090.

railway manager see the *Transport Infrastructure Act 1994*, schedule 6.

terminal operator means—

- (a) the owner or lessee of Dalrymple Bay Coal Terminal; or
- (b) a person operating Dalrymple Bay Coal Terminal for the owner or lessee.’.

63 Insertion of new sch 1

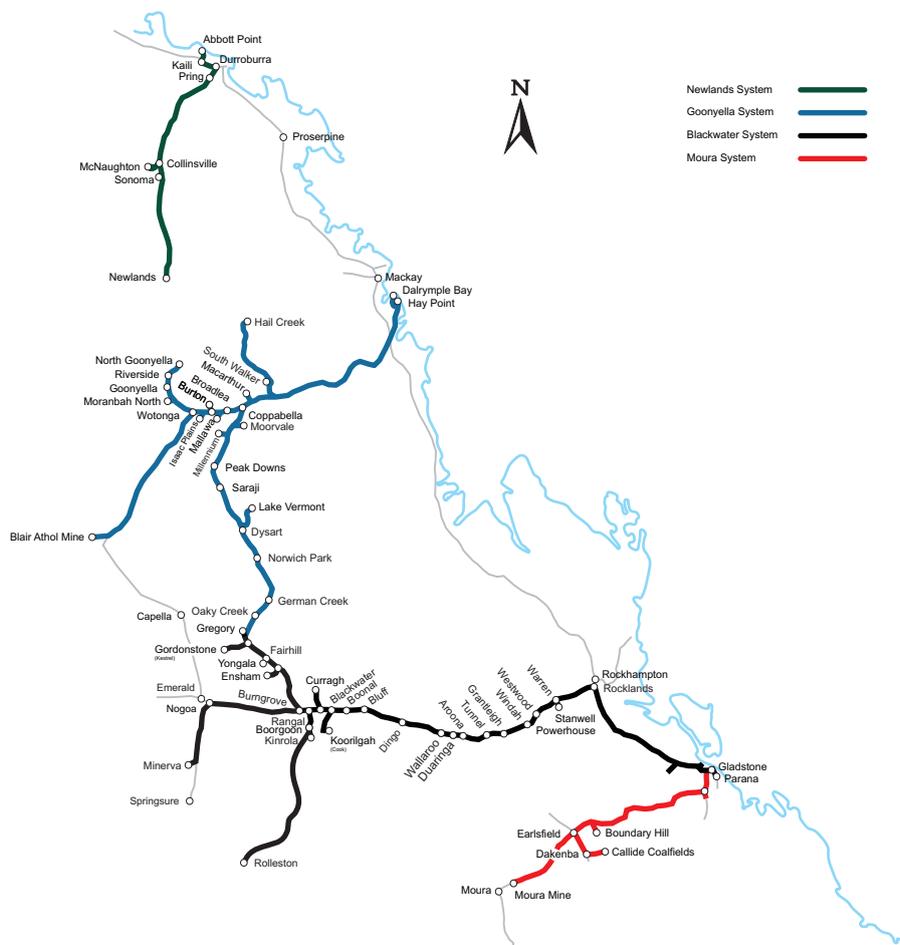
After part 12—

insert—

[s 63]

'Schedule 1 Central Queensland coal network rail infrastructure

section 250



64 Amendment and renumbering of schedule (Dictionary)

- (1) Schedule, definitions *candidate service*, *Ministerial declaration*, *private facility*, *public facility* and *regulation based declaration*—

omit.

- (2) Schedule—

insert—

‘expiry day, for part 12, see section 248.

extension, of a facility, includes an enhancement, expansion, augmentation, duplication or replacement of all or part of the facility.

related access provider, in relation to a service, means an access provider that—

- (a) owns or operates the service; and
- (b) provides, or proposes to provide, access to the service to itself or a related body corporate of the access provider.’.

- (3) Schedule, definition *declaration*, paragraph (a)—

omit, insert—

‘(a) for part 5—a declaration of a service made by the Ministers under part 5, division 2; or’.

- (4) Schedule, definition *declaration recommendation*, paragraph (a), after ‘79’—

insert—

‘or 87A’.

- (5) Schedule, definition *investigation notice*—

insert—

‘(da) for an investigation under part 5, division 2, subdivision 4A—a notice of investigation given under section 87E; or’.

- (6) Schedule, definition *investigation notice*, paragraphs (da) to (k)—

69 Replacement of pt 2, div 2 (Savings and transitional provisions)

Part 2, division 2—

omit, insert—

‘Division 2 Transitional provisions

‘5 Transitional provision for Motor Accident Insurance and Other Legislation Amendment Act 2010

‘The amendment of this regulation by the *Motor Accident Insurance and Other Legislation Amendment Act 2010* does not affect the power of the Governor in Council to further amend this regulation or to repeal it.’.

Part 5 Amendment of Transport Infrastructure Act 1994

70 Act amended

This part amends the *Transport Infrastructure Act 1994*.

71 Insertion of new s 93AA

After section 93—

insert—

‘93AA Application of s 93 to QML network

- ‘(1) In relation to the QML network, on and from 31 December 2011—
- (a) a declaration may not be made under section 93; and
 - (b) the declaration that is in effect under section 93 immediately before 31 December 2011 continues to have effect.

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- ‘(2) The chief executive must make a copy of map QML 1 available for inspection by the public, free of charge—
- (a) on the department’s website; and
 - (b) during office hours on business days, at the department’s head office.

Editor’s note—

The department’s head office is at 85 George Street, Brisbane.

- ‘(3) In this section—

Gateway Motorway Facility—

- (a) means the major arterial road, known as the Gateway Motorway and including the Sir Leo Hielscher Bridges, that connects—
 - (i) the start of the Gateway Extension Motorway at the Pacific Motorway interchange at Eight Mile Plains, shown on map QML 1 as 153.103 E and -27.580 N; and
 - (ii) the Nudgee Road interchange, shown on map QML 1 as 153.095 E and -27.388 N; but
- (b) does not include the major arterial road, shown on map QML 1 as the Old Gateway Motorway, that—
 - (i) connects with the road mentioned in paragraph (a) at the Nudgee Road interchange and Eagle Farm; and
 - (ii) passes through the following GPS coordinates—
 - (A) 153.089 E and -27.394N;
 - (B) 153.088E and -27.435N.

Logan Motorway Facility means—

- (a) the major arterial road, known as the Logan Motorway, that connects—
 - (i) the Ipswich Motorway at the Ipswich Motorway interchange at Gailes, shown on map QML 1 as 152.923 E and -27.607 N; and

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- (ii) the Pacific Motorway at the Pacific Motorway interchange at Loganholme, shown on map QML 1 as 153.181 E and -27.684 N; and
 - (b) the major arterial road, known as the Gateway Extension Motorway, that connects—
 - (i) the Pacific Motorway interchange at Eight Mile Plains, shown on map QML 1 as 153.103 E and -27.580 N; and
 - (ii) the Logan Motorway interchange at Drewvale, shown on map QML 1 as 153.061 E and -27.647 N.

QML network means—

- (a) the Gateway Motorway Facility; and
- (b) the Logan Motorway Facility.’.

72 Amendment of s 139 (Chief executive may decide matters on request)

Section 139(8), definition *access undertaking*, ‘the schedule’—

omit, insert—

‘schedule 2’.

73 Amendment of s 140 (Notice of dispute under agreement for access)

Section 140(4), definition *access agreement*, ‘the schedule’—

omit, insert—

‘schedule 2’.

74 Amendment of s 266 (Priority for regularly scheduled passenger services in allocating train paths)

- (1) Section 266(2)—

insert—

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- ‘(d) any other matter, if the information is reasonably required by the chief executive for identifying passenger service requirements.’.
- (2) Section 266(4), ‘A’—
omit, insert—
‘Subject to subsection (5E), a’.
- (3) Section 266—
insert—
- ‘(5A) If a railway manager becomes aware that a train path used for regularly scheduled passenger services on a specific section of railway track is, or will become, available for allocation, the railway manager must, during the period or at the time mentioned in subsection (5B), give written notice of the availability to the chief executive.
- ‘(5B) A notice under subsection (5A) must be given—
- (a) if the train path will become available because of the impending expiry of an agreement for access to the specific section of railway track by an existing regularly scheduled passenger service—at least 6 months before the agreement expires; or
- (b) otherwise—as soon as practicable after the railway manager becomes aware of the availability.
- ‘(5C) On receiving a notice under subsection (5A), the chief executive may, within the period mentioned in subsection (5D), give a written notice to the railway manager requiring that the train path be allocated to a stated passenger service with effect from—
- (a) if the train path is not available when the notice is given by the chief executive—the day the train path becomes available; or
- (b) otherwise—as soon as practicable after the notice is given by the chief executive.
- ‘(5D) A notice given by the chief executive under subsection (5C) must be given—

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- (a) if the notice is given in response to a notice given by the railway manager under subsection (5B)(a)—within 3 months after receiving the notice given by the railway manager; or
 - (b) if the notice is given in response to a notice given by the railway manager under subsection (5B)(b)—within a reasonable time after receiving the notice given by the railway manager.
- ‘(5E) A railway manager given a notice under subsection (5C) must allocate the train path to the passenger service stated in the notice with effect from the day or time mentioned in the subsection.
- ‘(6A) This section does not apply in relation to a preserved train path under section 266A.’.
- (4) Section 266(6)(b), ‘on the same route’—
omit.

75 Insertion of new ss 266A–266H

Chapter 7, part 8—

insert—

‘266A Allocation of preserved train paths

- ‘(1) This section applies to a train path (a *preserved train path*) that is, on the commencement of this section, allocated for the provision of—
- (a) a regularly scheduled passenger service; or
 - (b) a service involving the transportation of a type of freight other than coal.
- ‘(2) If a preserved train path becomes available for a railway manager to allocate, the railway manager must not allocate the train path to a person for the provision of a different type of service unless—
- (a) the railway manager gives written notice to the chief executive, at least 2 months before the day the proposed

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allocation takes effect, stating details of the proposed allocation; and

- (b) the chief executive gives written notice to the railway manager stating the chief executive consents to the proposed allocation.
- ‘(3) Despite subsection (1), this section ceases to apply to a preserved train path if—
- (a) the chief executive gives written notice to the railway manager stating the train path is no longer subject to the requirements under this section; or
 - (b) the preserved train path is allocated by the railway manager under subsection (2).
- ‘(4) The chief executive may give the railway manager a written notice requiring the railway manager to give the chief executive information reasonably required to determine the railway manager’s compliance with subsection (2).
- ‘(5) The railway manager must comply with the requirement within the reasonable period stated in the notice.
- ‘(6) This section does not prevent the railway manager allowing a preserved train path to be used for a different type of service when it is not being used for the service for which it is allocated.

‘266B Civil penalty for breach of train path obligation

- ‘(1) A railway manager is liable to pay the State a civil penalty if the railway manager breaches, without a reasonable excuse, any of the following obligations (the *train path obligations*)—
- (a) section 265(1);
 - (b) section 266(4), (5A) or (5E);
 - (c) section 266A(2).
- ‘(2) A civil penalty may be imposed on a railway manager either by—

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- (a) a penalty notice given to the railway manager by the chief executive; or
 - (b) an order made by the Supreme Court under section 266G.
- ‘(3) If the penalty is imposed under a penalty notice, the amount of the penalty is—
- (a) for breach of section 265(1), 266(4) or 266(5A)—\$5000; or
 - (b) for breach of section 266(5E) or 266A(2)—\$25000.

Note—

For the amount of the penalty that may be imposed by the Supreme Court, see section 266G.

‘266C Giving of notice proposing imposition of penalty

- ‘(1) This section applies if the chief executive—
 - (a) suspects a railway manager has breached a train path obligation; and
 - (b) proposes to impose a penalty on the railway manager under a penalty notice.
- ‘(2) The chief executive may give the railway manager a written notice (a *proposed penalty notice*) proposing to impose a penalty on the railway manager on the grounds of the breach.
- ‘(3) The proposed penalty notice must state each of the following—
 - (a) the chief executive proposes to impose a penalty on the railway manager;
 - (b) the grounds for imposing the proposed penalty;
 - (c) an outline of the facts and circumstances forming the basis for the grounds for imposing the proposed penalty;
 - (d) the railway manager may make a written submission to the chief executive, no later than 28 days after the

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railway manager is given the notice, as to why the penalty should not be imposed;

- (e) the way in which the submission may be made.

‘266D Submission against proposed imposition of penalty

- ‘(1) The railway manager may make a submission against the imposition of the penalty in the way stated in the proposed penalty notice.
- ‘(2) The submission must—
- (a) be made to the chief executive no later than 28 days after the railway manager is given the proposed penalty notice; and
 - (b) state fully the grounds for the submission and the facts relied upon.
- ‘(3) The chief executive may, by written notice given to the railway manager, state a longer period allowed for making the submission.

‘266E Giving of penalty notice

- ‘(1) This section applies if—
- (a) the period under section 266D for making a submission against the imposition of the penalty has expired; and
 - (b) the chief executive has considered any submission made under section 266D; and
 - (c) the chief executive is satisfied the railway manager has breached the train path obligation mentioned in the proposed penalty notice without a reasonable excuse.
- ‘(2) The chief executive may decide to impose a penalty on the railway manager on the grounds of the breach.
- ‘(3) If the chief executive makes a decision under subsection (2), the chief executive must give the railway manager a penalty notice.

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- ‘(4) A *penalty notice* is a written notice that states each of the following—
- (a) the chief executive has decided to impose a penalty on the railway manager;
 - (b) the reasons for the decision;
 - (c) the amount of the penalty provided for under section 266B(3), and the day by which it must be paid;
 - (d) that the railway manager may appeal to the Supreme Court against the decision within 28 days after the railway manager is given the penalty notice;
 - (e) how to appeal.
- ‘(5) The day for payment stated under subsection (4)(c) must not be less than 28 days after the day the penalty notice is given to the railway manager.
- ‘(6) The State may recover the penalty from the railway manager as a debt.

‘266F Appeal against imposition of penalty by penalty notice

- ‘(1) A railway manager who is given a penalty notice may appeal to the Supreme Court against the chief executive’s decision to impose the penalty.
- ‘(2) The *Transport Planning and Coordination Act 1994*, part 5, division 3 applies to an appeal mentioned in subsection (1) as if—
- (a) references in the division to a reviewed decision were references to the chief executive’s decision; and
 - (b) references in the division to an appeal court or the appeal court were references to the Supreme Court.

‘266G Proceeding for civil penalty order

- ‘(1) This section applies if, on the application of the chief executive, the Supreme Court is satisfied a railway manager

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has breached a train path obligation without a reasonable excuse.

- ‘(2) However, the chief executive may not make an application under this section if a penalty notice has been given to the railway manager for the breach and has not been revoked.
- ‘(3) To remove any doubt, it is declared that the chief executive may make an application under this section without first giving the railway manager a proposed penalty notice.
- ‘(4) The Supreme Court may order the railway manager to pay the State as a civil penalty an amount of no more than—
 - (a) for breach of section 265(1), 266(4) or 266(5A)—\$50000; or
 - (b) for breach of section 266(5E) or 266A(2)—\$250000.
- ‘(5) In fixing the penalty, the court must consider—
 - (a) the nature and extent of the breach, including, for a breach of section 266(5E) or 266A(2)—
 - (i) the benefit that the railway manager has obtained, or is likely to obtain, from the allocation of the train path; and
 - (ii) the extent of the adverse economic impact of the allocation of the train path on providers, and customers of providers, of the service mentioned in section 266(5E) or 266A(1); and
 - (iii) the extent of the social impact of the allocation of the train path; and
 - (b) the circumstances in which the breach took place, including—
 - (i) whether the breach was deliberate; and
 - (ii) whether the railway manager took steps to attempt to prevent the breach occurring or to mitigate the effect of the breach; and
 - (c) whether the railway manager has previously engaged in any similar conduct.

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- ‘(6) If the Supreme Court orders payment of an amount under this section, the State may enforce the order as a judgment of the court for a debt of that amount.

‘266H Conduct by directors, servants or agents of railway manager for provisions about civil penalty

- ‘(1) This section applies for deciding whether a railway manager has failed to comply with a train path obligation without a reasonable excuse.
- ‘(2) If it is necessary to be satisfied of a railway manager’s state of mind, it is enough to be satisfied that a director, servant or agent (a *representative*) of the railway manager, acting within the scope of the representative’s actual or apparent authority, had the state of mind.
- ‘(3) Conduct engaged in for a railway manager by the following persons is taken to have been engaged in by the railway manager—
- (a) a representative of the railway manager, acting within the scope of the representative’s actual or apparent authority;
 - (b) another person at the direction, or with the consent or agreement, of a representative of the railway manager, if the giving of the direction, consent or agreement was within the scope of the representative’s actual or apparent authority.
- ‘(4) Conduct engaged in for a railway manager by the following persons is taken to have been engaged in by the railway manager—
- (a) a servant or agent of the railway manager, acting within the scope of the servant’s or agent’s actual or apparent authority;
 - (b) another person at the direction, or with the consent or agreement, of a servant or agent of the railway manager, if the giving of the direction, consent or agreement was

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within the scope of the servant's or agent's actual or apparent authority.

(5) In this section—

consent or agreement includes an implied consent or agreement.

state of mind, of a person, may include—

- (a) knowledge, intention, opinion, belief or purpose of the person; and
- (b) the person's reasons for the person's intention, opinion, belief or purpose.'

76 Amendment of s 438 (Definitions for ch 13)

Section 438—

insert—

'network company means a QR National company that is a railway manager for a railway situated in Queensland.

QR National company means QR National or a related body corporate of QR National.'

77 Insertion of new ch 13, pt 5

Chapter 13—

insert—

'Part 5 Governance

'438G Requirements about appointment of directors

(1) The majority of the directors of a network company must consist of eligible persons.

(2) In this section—

eligible person means a person who—

- (a) is not an employee of a QR National company; and

- (b) has not been an employee of a QR National company at any time during the ineligibility period; and
- (c) is not engaged by a QR National company to provide advisory or consultancy services to a QR National company, if the engagement could reasonably be regarded as material to that person; and
- (d) has not been engaged by a QR National company to provide advisory or consultancy services to a QR National company at any time during the ineligibility period, if the engagement could reasonably be regarded as material to that person; and
- (e) is not an employee of a company or partnership, an officer of a company, or a partner in a partnership, that is engaged by a QR National company to provide advisory or consultancy services to a QR National company, if—
 - (i) the person is directly involved in providing those services; and
 - (ii) the engagement could reasonably be regarded as material to the company or partnership; and
- (f) was not an employee of a company or partnership, an officer of a company, or a partner in a partnership, that was engaged by a QR National company to provide advisory or consultancy services to a QR National company at any time during the ineligibility period, if—
 - (i) the person was directly involved in providing those services; and
 - (ii) the engagement could reasonably be regarded as material to the company or partnership; and
- (g) is not an employee of a company or partnership, an officer of a company other than a QR National company, or a partner in a partnership, that has a contract with a QR National company, if the contract could reasonably be regarded as material to the company or partnership; and

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- (h) does not have a substantial holding in a QR National company; and
- (i) is not an officer of a company that—
 - (i) is not a QR National company; and
 - (ii) has a substantial holding in a QR National company.

employee, of a company, does not include a person who is engaged solely as a director of the company.

ineligibility period, in relation to an eligible person, means the period of 3 years prior to the appointment of the person as a director of the network company.

substantial holding has the meaning given in the Corporations Act.

‘438H Related party access agreements

- ‘(1) A network company must not enter into an access agreement with another QR National company unless the agreement has been approved by the board of directors of the network company.
- ‘(2) The board of directors of a network company must not approve an access agreement mentioned in subsection (1) unless the board is reasonably satisfied the agreement is on arms-length terms.
- ‘(3) In this section—
access agreement see the *Queensland Competition Authority Act 1997*, schedule 2.’.

78 Insertion of new ch 21

After section 575—

insert—

‘Chapter 21 Further transitional provisions

‘Part 1 Transitional provision for Motor Accident Insurance and Other Legislation Amendment Act 2010

‘576 Information to be provided about preserved train paths

- ‘(1) A railway manager must, within the period mentioned in subsection (2), give the chief executive a written notice identifying, in a way acceptable to the chief executive, the preserved train paths relating to the railway manager’s railway.
- ‘(2) For subsection (1), the period is—
- (a) 3 months after the commencement of this section; or
 - (b) a longer period agreed to by the railway manager and the chief executive.
- ‘(3) In this section—
preserved train path see section 266A.’.

79 Amendment of sch 6 (Dictionary)

- (1) Schedule 6—
insert—
‘network company, for chapter 13, see section 438.
QR National company, for chapter 13, see section 438.’.
- (2) Schedule 6—
insert—

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'penalty notice see section 266E(4).

proposed penalty notice see section 266C(2).

train path obligations see section 266B(1).'

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