

# **TRANSPORT INFRASTRUCTURE BILL 1993**

## **EXPLANATORY NOTE**

### **GENERAL OUTLINE**

#### **Rationalisation of Transport Legislation**

The Minister for Transport is responsible for the administration of 55 Acts.

As part of the process of integrating the State's transport functions, it is planned to rationalise this legislation to approximately 20 Acts.

The key to this plan is to establish peak legislation for the portfolio, namely the *Transport Planning and Coordination Bill 1993*. The primary supporting legislation will be this *Transport Infrastructure Bill 1993* and four other proposed bills covering transport services. Refer to Appendix A for a graphical representation of the legislative structure for the transport portfolio.

#### **Staged Development of the Transport Infrastructure Bill 1993**

The *Transport Infrastructure Bill 1993*, as now presented, contains core provisions relating to all forms of transport infrastructure, and detailed provisions relating to roads infrastructure, including provisions relating to State-controlled roads which are roads of national or State significance and are equivalent to declared roads under the current legislation. The legislation will replace the roads provisions in the *Transport Infrastructure (Roads) Act 1991* and the *Transport Infrastructure (Roads) Regulation 1991*.

The motor vehicle registration and weight of loads provisions in the *Transport Infrastructure (Roads) Act 1991* and the *Transport Infrastructure (Roads) Regulation 1991* will migrate to other portfolio legislation in due course.

Also, in the near future, the *Transport Infrastructure Bill 1993* will be expanded to cover specific obligations and powers concerning rail, ports, miscellaneous infrastructure and franchised motorways.

### **Objectives of Legislation**

The objectives of the *Transport Planning and Coordination Bill 1993* essentially are to coordinate transport in a way that provides economic and social benefits. These are broad objectives which are supplemented by more detailed objectives within the primary supporting legislation, that is, this *Transport Infrastructure Bill 1993* and the four other proposed bills covering transport services. This "family" of legislation will contain a hierarchy of objectives which become progressively more specific. In particular, this supporting legislation contains mode-specific legislative objectives and further objectives are to be contained within the mode-specific strategies which give effect to the higher level objectives.

This Bill's overall objective is to provide a framework for the effective integrated planning and management of a system of transport infrastructure. This framework is required to be consistent with the broad economic and social objectives of the *Transport Planning and Coordination Bill 1993*.

The *Transport Infrastructure Bill 1993* also has an objective of allowing a strategic overview by Government of the provision and operation of all transport infrastructure and provides specific objectives for each transport mode. In relation to roads, the Bill is intended to establish a regime under which the roads of national and State significance can be effectively planned and efficiently managed, and influence exerted over the total road network, including local government roads, in a way which contributes to overall transport efficiency. For this latter purpose, the Bill contains a number of provisions under which the chief executive can enter into arrangements with local governments in relation to both State-controlled roads and local government roads. The regime established by the Bill is also intended to enable account to be taken of adequate levels of safety, and of community access to the road network. In addition, relatively broad objectives are included for the transport GOCs which might need to be expanded upon when those elements are incorporated into the Bill at a later stage. As well as the effectiveness objectives of the *Transport Infrastructure Bill 1993*, *chapter 3* contains efficiency objectives to ensure that value-for-money is

obtained in the provision or operation of government supported transport infrastructure.

### **Portfolio Strategic Planning**

The *Transport Planning and Coordination Bill 1993* incorporates a legislative obligation to develop a Transport Coordination Plan for the strategic management of transport across the State, including the integration of plans of the Department of Transport with those of transport Government Owned Corporations (GOCs), namely, Queensland Railways and the various Port Authorities. Refer to Appendix B for a graphical representation of the strategic planning structure for the portfolio.

The Transport Coordination Plan will provide a framework for the strategic planning and coordination of the most important transport infrastructure and services in Queensland, especially those controlled by the Department of Transport and the transport-related GOCs.

In the *Transport Infrastructure Bill 1993*, the Minister will be committed to operating strategically and will be accountable for that by the requirement to develop transport infrastructure strategies for the transport portfolio that are designed to give effect to the Transport Coordination Plan under the *Transport Planning and Coordination Bill 1993*. These strategies will include goal statements and will incorporate the criteria for determining the financial and management accountability of the Minister for achieving the road system objectives i.e. performance indicators for road system performance. Also, the strategies will incorporate the criteria for determining what roads are to be State-controlled roads and the criteria for advising Treasury and Cabinet on where funds should be invested.

Each year, the chief executive will be required to develop, for the Minister's approval, roads implementation programs for that year and for one or more later years.

These roads implementation programs will include:

- a program of projects, and policies and financial provisions, for implementing the transport infrastructure strategies in relation to road transport infrastructure, including roads that are not State-controlled roads; and
- performance targets for road transport infrastructure.

## **Reasons for this Initial Roads Component of Transport Infrastructure Bill**

Existing corresponding legislation is the *Transport Infrastructure (Roads) Act 1991*. The legislation was proclaimed on 14 July 1991 and replaced the *Main Roads Act 1920*. That review primarily restructured the legislation and incorporated some initiatives which were generally uncontroversial and/or facilitated easier administration of the legislation.

Since then, the Department of Transport has embarked on a major reform of the construction and maintenance of roads and the management of the road network. The change comes from a shift in focus from a supply-driven environment to a more strategic approach to delivery of the roads program. The shift in focus is so significant as to necessitate a total rewrite of the existing legislation.

The roads program should now be seen as having two primary facets:

- the road system should be viewed as an economic asset, to be managed for the purpose of achieving economic, trade and regional development;
- construction, maintenance and operation of roads should be viewed as an economic activity, to be carried out in the most cost-efficient manner.

The change in focus will ensure that the State gets the best value-for-money for the dollars spent on the State's road system. One way in which this will be achieved is through the aggregation of projects into more cost-effective sizes.

The legislation will enable performance in the delivery of the roads program to be measured against defined objectives and will provide a basis for effective Parliamentary and public accountability.

## **Cross-references with Previous Legislation**

Attached are Appendices C and D which provide cross-references between the *Transport Infrastructure (Roads) Act 1991* and this Bill.

**Additional Graphical Explanation**

Attached as Appendices E - J are graphical representations of some key aspects of the legislation.

**Estimated Cost for Government Implementation**

The implementation process for this Bill will be administrative in nature and so the cost will not be significant. Costs will be able to be met within existing budgetary allocations.

**Consultation**

To the extent that it is possible to reconcile the sometimes conflicting views, the various comments have been incorporated into the revised draft of this Bill. There are no unresolved substantive issues.

**NOTES ON PROVISIONS****CHAPTER 1—PRELIMINARY**

*Clause 1* sets out the short title of the Bill.

*Clause 2* provides that all of the provisions of the Bill will commence on a day to be fixed by proclamation.

*Clause 3* describes the Bill's overall objective to provide a framework for the effective integrated planning and management of a system of transport infrastructure. This framework is to be consistent with the broad economic and social objectives of the *Transport Planning and Coordination Bill 1993*.

The clause also contains the objective of a strategic overview by Government of the provision and operation of all transport infrastructure and specific objectives for each transport mode.

In relation to roads, the Bill seeks to provide a basis by which control can be exercised directly over the most significant roads, and influence exerted over the total road network, by the Department. In addition, the clause contains relatively broad objectives for the transport GOCs which might

need to be expanded upon when those elements are incorporated into the Bill at a later stage.

*Clause 4* defines definitions of terms used in the Bill.

*Clause 5* provides that the chief executive's powers and discretions are subject to any conditions which may be attached to Commonwealth funding.

## **CHAPTER 2—TRANSPORT INFRASTRUCTURE STRATEGIES**

*Clause 6* imposes a legislative obligation on the chief executive to periodically develop transport infrastructure strategies for approval by the Minister. These strategies are designed to give effect to the Transport Coordination Plan which is required to be prepared by the *Transport Planning and Coordination Bill 1993*.

In developing the transport infrastructure strategies, the chief executive must engage in the appropriate level of public consultation.

The Minister may approve transport infrastructure strategies submitted by the chief executive, or direct that they be amended or be replaced by new strategies.

*Clause 7* describes the mandatory, minimum contents of transport infrastructure strategies, including more detailed objectives to supplement those mentioned in *clause 3*. Additional mandatory requirements may be added to this clause when the transport-related GOC components and other components are added to this Bill.

The strategies must include "investment criteria for determining priorities for government supported transport infrastructure between the different transport modes and within those modes and options for financing the priorities". This information will form the basis of advice to Treasury and Cabinet concerning allocation of funds between the transport modes (including between the Department of Transport and the rail and ports GOCs) for transport infrastructure. Further, the options for financing the priorities will address the borrowing requirements of the Department and the GOCs within the constraints of borrowing limits.

The strategies also must incorporate "criteria for determining which roads should be controlled by the chief executive as State-controlled roads". "State-controlled road" is the term intended to replace "declared road", which was used in previous roads legislation. There have been no criteria in the past for the declaration of declared roads. The criteria will provide an objective basis for the determination of those roads which should be controlled directly by the State government. However, flexibility will be retained by the Minister's being able to amend the strategies (including the criteria) and tabling the amendments in the House. Thus, Ministerial responsibility is retained, with transparency and accountability.

The strategies must also take into account any agreements or arrangements between Queensland and the Commonwealth concerning the funding of transport infrastructure.

*Clause 8* imposes an obligation that all transport infrastructure strategies, and any variation thereof, must be tabled in the House by the Minister. This will ensure transparency in the way that government operates and provide a political accountability for that.

### **CHAPTER 3—OBLIGATIONS ABOUT TRANSPORT INFRASTRUCTURE**

*Clause 9* describes a further objective of the legislation to ensure efficiency in the provision, maintenance and operation (by government and the construction industry) of transport infrastructure.

*Clause 10* requires the setting of standards for the construction, maintenance and operation of transport infrastructure which is budget-funded. It also requires those activities to be carried out in accordance with accepted benchmarks and best practice. The safe transport of persons and goods is to be promoted, and efficient and competitive behaviour in construction and maintenance of infrastructure is to be encouraged. Contracts are to be designed to encourage efficient performance by the contractor.

The obligations under this clause are imposed on the relevant transport authority. This will be the chief executive of the Department of Transport in

the case of roads and miscellaneous transport infrastructure, and Queensland Railways and the several port authorities in the case of rail and ports respectively.

In the case of Queensland Railways and the port authorities, the obligations under this clause will not apply to infrastructure funded out of their own revenues, without any form of government support.

*Clause 11* requires the Department of Transport and the transport GOCs to report annually, in their respective annual reports, on their achievements in regard to the value-for-money obligations of *clause 10*.

## **CHAPTER 4—IMPLEMENTATION OF TRANSPORT INFRASTRUCTURE STRATEGIES**

### **PART 1—ROADS IMPLEMENTATION PROGRAMS**

*Clause 12* imposes a requirement on the chief executive to develop, for the Minister's approval, an annual roads implementation program which describes the activities for that year, and forward plans, that will give effect to the transport infrastructure strategies. The roads implementation program must include a program of projects, policies and financial arrangements and performance targets for the program.

A roads implementation program may include proposals to spend money on other than State-controlled roads and also on other forms of transport infrastructure, where this will contribute to overall transport effectiveness and efficiency. For example, the roads implementation program could include proposals to spend money on some local government roads and bridges or on a road/rail interchange.

In developing the roads implementation program, the chief executive must consult the local governments that would be affected by the program and make the annual program publicly available.

The Minister may approve a roads implementation program, or require it to be varied at any time.

*Clause 13* provides that, subject to the Minister's directing otherwise, the annual roads implementation program must be consistent with the transport infrastructure strategies. If the Minister directs an implementation program to be inconsistent with the transport infrastructure strategies, the Minister must table the direction in the House, thus providing flexibility whilst ensuring transparency and accountability.

*Clause 14* provides for annual reporting on performance of the roads implementation programs.

## **PART 2—IMPLEMENTATION PROGRAMS FOR MISCELLANEOUS TRANSPORT INFRASTRUCTURE**

*Clause 15* imposes a requirement on the chief executive to develop, for the Minister's approval, an annual miscellaneous transport infrastructure implementation program which describes the activities for that year, and forward plans, that will give effect to the transport infrastructure strategies. The miscellaneous transport infrastructure implementation program must include a program of projects, policies and financial arrangements and performance targets for the program.

Miscellaneous transport infrastructure includes boat harbours, marinas, airports and various forms of people-movers such as monorails.

In developing the miscellaneous transport infrastructure implementation program, the chief executive must consult the local governments that would be affected by the program and make the annual program publicly available.

The Minister may approve a miscellaneous transport infrastructure implementation program, or require it to be varied at any time.

*Clause 16* provides that, subject to the Minister's directing otherwise, the annual miscellaneous transport infrastructure implementation program must be consistent with the transport infrastructure strategies. If the Minister directs an implementation program to be inconsistent with the transport infrastructure strategies, the Minister must table the direction in the House, thus providing flexibility whilst ensuring transparency and accountability.

*Clause 17* provides for annual reporting on performance of the miscellaneous transport infrastructure implementation programs.

## **PART 3—TRANSPORT GOCS**

*Clause 18* provides that Queensland Railways and each port authority are required to take into account the current transport infrastructure strategies. It is intended that the transport GOCs will be heavily involved in the development of such portfolio strategies.

The clause also authorises the GOCs to spend moneys on other than rail transport infrastructure and port infrastructure, where this will contribute to transport effectiveness and efficiency.

## **CHAPTER 5—ROAD TRANSPORT INFRASTRUCTURE**

### **PART 1—PRELIMINARY**

*Clause 19* defines the scope of this chapter dealing specifically with roads. In summary, it states that, subject to the direction of the Minister, the chief executive of the Department of Transport is to directly control a set of roads of State significance and indirectly influence the entire road network. The chapter provides a framework for the construction, maintenance and operation of State-controlled roads, whether by the chief executive, or by local government or others under agreements or arrangements with the chief executive. The intention is to enable flexible arrangements to be worked out, according to circumstances, to achieve the most effective construction and management regime for these roads.

*Clause 20* defines definitions of terms used in this chapter.

## **PART 2—STATE-CONTROLLED ROADS**

### *Division 1—Declaration of State-controlled roads*

*Clause 21* provides that the Minister may declare roads, or parts thereof, to be State-controlled roads (previously known as declared roads).

This clause requires that a road may be declared to be a State-controlled road only if the road meets the criteria for State-controlled roads set out in the current transport infrastructure strategies. The Minister will have the flexibility to amend the criteria to permit the declaration of any particular State-controlled road, but will be required by this legislation to table such amendment to the transport infrastructure strategies in the Legislative Assembly, as per *clause 8*. Again, this facilitates transparency and accountability.

The legislation is not prescriptive as to how the location of a State-controlled road is to be identified. However, it does indicate acceptable mechanisms, especially in those situations where the road alignment shifts from time to time (usually because of wash-outs).

*Clause 22* provides for the Minister to notify local governments of proposals, which might affect them, to declare a State-controlled road (or to revoke such a declaration) and allows for subsequent submissions by the local governments to the Minister.

### *Division 2—Motorways*

*Clause 23* provides for declaration (and revocation) by the Minister of a motorway, notification to local governments of proposals which could affect them and for subsequent submissions by those local governments to the Minister. A motorway must also be a State-controlled road and motorway-specific policies may apply concerning access between the road and adjoining properties; access between it and other roads; prohibition of classes of traffic and removal of vehicles causing obstruction to traffic flow.

As for the declaration of State-controlled roads, the legislation is not prescriptive as to how the location of a motorway is to be identified.

***Division 3—Chief executive to have powers of a local government***

*Clause 24* gives the chief executive, in addition to the powers specifically conferred by this legislation, the powers in respect of State-controlled roads in a local government area the same powers as the local government has over its local government roads. This means that the powers of the chief executive may vary from one local government area to another.

It should be noted also that *clause 41* provides that each local government has the powers over State-controlled roads in its area that it has over its own local government roads in its area. Thus the chief executive and the local government have concurrent powers over State-controlled roads in that area and *clause 41* enables the chief executive, by contract with a local government or by direction to the local government, to determine how it may exercise local government powers over a State-controlled road.

These dual mechanisms will maximise flexibility in terms of how individual State-controlled roads can be managed in any area.

**PART 3—CONSTRUCTION, MAINTENANCE AND OPERATION**

*Clause 25* provides power for the chief executive of the Department of Transport to operate as both a constructor / maintainer / operator and as a road-system owner for projects which have been approved by the Minister in the roads implementation program and for works of a minor or emergency nature.

The chief executive, for the State of Queensland, may enter into contracts with other persons (including local governments, State government bodies and agencies of the Government of some other State or of a Territory) for construction or maintenance works or management of operational functions on current or future State-controlled roads. A significant point is that local governments no longer act as agents of the Department, but rather, operate as contractors to the Department.

The chief executive may construct, maintain or operate local government roads, under agreement with the local government in that area.

The chief executive may, under an agreement, perform road works outside Queensland. This usually would arise at border situations where it is sensible for the chief executive to utilise his resources near that border to undertake road works in the adjoining State or Territory.

A contract may be made with a local government for the maintenance and operation of a State-controlled road, which may include arrangements as to which organisation will exercise what powers. Refer also to the notes on *clause 24* concerning the derivation of those powers. In addition, the chief executive will have the ability to delegate his powers under the generic delegation provisions of *clause 25* of the *Transport Planning and Coordination Bill 1993*.

The chief executive may delegate his powers in relation to a State-controlled road to a local government, State government body or other person who has been awarded a contract to carry out road works on, or to operate, a State-controlled road. The delegated power may include power acquired through *clause 24*, that being that the chief executive has the powers over his State-controlled roads in a local government area that the local government has over its own roads in that area. Thus, the chief executive can empower a local government doing contract work outside its own area with powers equivalent to the local government in that area in which the work is being done.

A local government may enter into a contract with the chief executive for road works outside its own area.

This clause also empowers the chief executive to perform work for adjoining landowners and charge for that service. This is intended to cover situations where it would be efficient to utilise road construction machinery operating on that road.

*Clause 26* requires that the chief executive operates on a price-competitive basis when acting as a constructor / maintainer / operator. That is, the same discipline of efficient operation is to be applied internally as is to be applied to external providers of goods and services.

*Clause 27* provides that open competition be encouraged for contracts under *clause 25*, except where the contract is to be with a sole invitee. Where a person (usually a local government) is the sole invitee for a

contract, a price performance contract is required. Such a contract is an agreed fixed price for agreed deliverables.

*Clause 28* provides for the sharing of costs for certain works and operations.

*Clause 29* cites that it is an offence to carry out any road works on a State-controlled road, or to interfere with such a road, or the operation of such a road, unless it has been specifically approved in writing from the Department. Any written approval may be subject to conditions. Alternatively, the person doing such things on a State-controlled road must have a lawful excuse, such as construction of a bus shelter as an approved encroachment.

The clause also exempts work on public utility plant and maintenance of ancillary works and encroachments and landscaping from the prohibition in *subclause 1*.

As per *Schedule 2*, merits appeals lie against decisions concerning refusal to approve proposed road works, refusal to approve action interfering with a State-controlled road and the imposition of conditions on an approval.

*Clause 30* prescribes that an offender under *clause 29* be liable to the chief executive for the cost of remedying unauthorised works or damage caused by those works.

As per *Schedule 2*, a merits appeal lies against a decision of the chief executive about the amount of costs incurred.

*Clause 31* provides that, for the purposes of carrying out road works, the chief executive may temporarily occupy and use land that is not controlled by him or her.

Through the delegation power under *clause 25* of the *Transport Planning and Coordination Bill 1993*, this power may be delegated to contractors (including a local government or State government body) and their employees.

*Clause 32* specifies the notice requirements for entry under *clause 31*.

*Clause 33* provides for compensation for damage caused by entry under *clause 31*.

As per *Schedule 2*, merits appeals lie against a decision of the chief executive about the amount of compensation and a decision not to extend the time for claiming compensation.

*Clause 34* limits the obligations of the chief executive regarding fencing of State-controlled road boundaries.

As per *Schedule 2*, a merits appeal lies against a decision of the chief executive not to contribute to fencing.

*Clause 35* enables the chief executive to divert or construct watercourses and includes the ability to enter and carry out works on private land. In so doing, the chief executive is required to take account of the consequential effects of such action on the flow characteristics of the watercourse.

## **PART 4—RELATIONSHIP WITH LOCAL GOVERNMENTS**

*Clause 36* enables the chief executive to enter into an agreement with a local government to provide funds to it for works on that local government's roads (or for other local government works) where this will contribute to overall transport effectiveness and efficiency. This provision will allow the chief executive to expend funds on, say, a local government bridge where that is a more cost-efficient option than works on a State-controlled road. Such projects would be incorporated into the annual implementation program approved by the Minister.

In spending funds in this way, the legislation imposes an obligation on the chief executive to ensure that such an agreement will require value-for-money.

*Clause 37* provides that a local government may make financial arrangements with the chief executive for improvements to a State-controlled road where that is sensible for the local road network. In this way, a local government may contribute to the upgrading of a State-controlled road for the use of local traffic as an economic alternative to providing or upgrading local roads.

*Clause 38* provides that local governments must gain the written approval of the chief executive before approving development proposals where the development proposal would require the carrying out of road works on a State-controlled road or otherwise would have a significant adverse impact on any State-controlled road, or on the planning of an existing or future State-controlled road. The clause also requires the local government to seek the approval of the chief executive where it intends to carry out road works on a local government road or make changes to the operation of such a road that will similarly impact on a State-controlled road. The chief executive will issue guidelines as to when local governments should refer such matters to the Department. Future State-controlled roads are recognised as such by notice given to the local government in writing and in the Government Gazette.

The conditions of approval may include a requirement for compensation, whether monetary or otherwise, for the impact of the development.

Also, the chief executive will determine permission criteria which will allow local governments to automatically apply the conditions which attach to the criteria, without referral to the chief executive. It is expected that, over time, the criteria will be refined such that the significant majority of applications will not require referral to the Department.

The local government is obligated to meet the Department's conditions if development approval is given by the local government. The local government has the express power to impose the Department's conditions but may elect to not pass on some conditions to the developer and to meet those costs itself. The obligation is between the Department and the local government. However, the conditions imposed by the Department are subject to appeal to the Planning and Environment Court by the local government (or any person that may be affected by the decisions). The developer (or any person that may be affected by the decisions) may appeal to that same Court under the *Local Government (Planning and Environment) Act 1990* against the conditions imposed by the local government. Where such appeal involves the Department's conditions, the Department could elect to be a co-defendant in the appeal by the developer against the local government. The Department has a vested interest in the outcome as *clause 40* makes the amended conditions resulting from such appeals binding on the Department. That same clause also requires that the Department is made aware of such appeals.

A failure by a local government to obtain the Department's concurrence or to apply all of the required conditions prior to approving a development application does not invalidate the approval. However, the local government remains liable to compensate the Department for the consequences of that failure.

The chief executive must make his or her decision on approval within 21 days of receiving advice of an application for approval, or within a longer period, which must be advised to the local government within 21 days. If the chief executive does not respond within the 21 days, then he or she is deemed to have given approval.

As per *Schedule 2*, merits appeals lie against a refusal of the chief executive to approve a development application and a decision of the chief executive concerning the imposition of conditions.

Appeals may be made under this Bill by the local government (or any affected parties) against the determination by the chief executive of conditions which are to attach to permission criteria. However, appeals against the application by the local government of those conditions lie under the *Local Government (Planning and Environment) Act 1990*.

*Clause 39* applies a similar scheme for advertising signs which are likely to distract drivers on a motorway. It requires that a local government must refer applications to the chief executive for approval which involve any advertising medium facing a motorway, or proposed motorway, that are outside of the motorway and are likely to create a traffic hazard. Again, the chief executive may issue guidelines as to when such applications need to be referred.

Also, the chief executive will determine permission criteria which will allow local governments to automatically apply the conditions which attach to the criteria, without referral to the chief executive. Again, it is expected that, over time, the criteria will be refined such that the significant majority of applications will not require referral to the Department.

The local government is obligated to meet the Department's conditions if development approval is given by the local government. The local government has the express power to impose the Department's conditions but may elect to not pass on some conditions to the developer and to meet those costs themselves. The obligation is between the Department and the local government. However, the conditions imposed by the Department are

subject to appeal to the Planning and Environment Court by the local government (or any person that may be affected by the decisions). The applicant (or any person that may be affected by the decisions) may appeal to that same Court under the *Local Government (Planning and Environment) Act 1990* against the conditions imposed by the local government. Where such appeal involves the Department's conditions, the Department could elect to be a co-defendant in the appeal by the applicant against the local government. The Department has a vested interest in the outcome as *clause 40* makes the amended conditions resulting from such appeals binding on the Department. That same clause also requires that the Department is made aware of such appeals.

The chief executive must make his or her decision on approval within 21 days of receiving advice of an application for approval, or within a longer period, which must be advised to the local government within 21 days. If the chief executive does not respond within the 21 days, then he or she is deemed to have given approval.

These provisions apply equally to proposed motorways, which are recognised as such by notice given to the local government in writing and in the Government Gazette.

As per *Schedule 2*, merits appeals lie against a refusal of the chief executive to approve erection of an advertising medium and a decision of the chief executive concerning the imposition or inclusion of conditions.

Appeals against the determination by the chief executive of conditions which are to attach to permission criteria may be made under the Bill by the local government (or any affected parties). However, appeals against the application by the local government of these conditions lie under the *Local Government (Planning and Environment) Act 1990*.

*Clause 40* makes the amended conditions resulting from appeals to the Planning and Environment Court for both development applications and advertising applications (referred to in *clauses 38 and 39* respectively), binding on the Department. Also, the Department must be made aware of such appeals and be given the opportunity to be heard.

*Clause 41* provides that each local government has the powers over State-controlled roads in its area that it has over its own local government roads in its area.

It should be noted also that *clause 24* gives the chief executive, in addition to the powers specifically conferred by this legislation, the powers in respect of State-controlled roads in a local government area the same powers as the local government has over local government roads. This means that the powers of the chief executive may vary from one local government area to another.

Thus the chief executive and the local government have concurrent powers over State-controlled roads in that area and *clause 41* further provides that the chief executive is to determine which organisation is to exercise what powers and under what conditions. If there is no contract between a local government and the chief executive, the chief executive may direct the local government not to exercise some or all of its powers derived from this legislation.

These dual mechanisms will maximise flexibility in terms of how individual State-controlled roads can be managed in any area.

## **PART 5—MANAGEMENT OF STATE-CONTROLLED ROADS**

### *Division 1—Prevention of damage and ensuring safety*

*Clause 42* provides for the temporary closure of State-controlled roads or restrictions on their use immediately after occurrences such as flooding.

The chief executive is not to be liable for damage or injury which results from contravention of such a decision.

*Clause 43* provides for offences for damage to, or removal of, certain materials from State-controlled roads. It also makes it an offence to damage road works and ancillary works and encroachments, to interfere with a watercourse so as to affect a State-controlled road and to deposit rubbish on a State-controlled road.

*Clause 44* provides for recovery of costs of damages, whether or not they are associated with various offences under this legislation.

Owner-onus applies when damage is caused by a vehicle and the driver is unknown or cannot be located.

As per *Schedule 2*, a merits appeal lies against a decision of the chief executive about the cost of repair or replacement or reconstruction of damaged work.

## ***Division 2 - Ancillary works and encroachments and roadside facilities***

### ***Subdivision 1—General rules for ancillary works and encroachments***

*Clause 45* empowers the chief executive to be a constructor / maintainer / operator of some ancillary works and encroachments (AWEs) on State-controlled roads and also to control the conditions of residence of all AWEs within the boundaries of State-controlled roads.

The definition of AWEs covers a comprehensive range of physical objects (such as bores, pumps, advertising signs) that are located within the boundaries of State-controlled roads and which are not an integral part of the road transport infrastructure. As well, AWEs include activities such as burning off, tree planting and movement of stock (but excluding stock movement under the *Rural Lands Protection Act 1985*). The term is proposed to be used in the new Local Government Act which will represent a further step towards consistency in legislation dealing with roads.

AWEs do not give any title in the land and so buildings treated as AWEs would be only temporary or minor buildings. Any requirement to provide an interest in the land (as could be the case for the provision of service centres adjacent to motorways) could be done through lands legislation by Lands Department's extricating the subject land from the boundaries of the State-controlled road and handling the leasing of that extricated part.

The approval of the chief executive is required before persons may construct, maintain, operate or conduct ancillary works and encroachments on a State-controlled road. Any such approval may be subject to conditions and may require the payment of fees and other charges. This is intended to be the case with limited advertising within the boundaries of selected State-controlled roads.

Whilst the definition of AWEs is comprehensive, the degree of control that is required on the numerous types varies throughout the State.

Accordingly, a list of those AWEs to be controlled in each District of the Department is to be published in the Government Gazette - this triggers the offence provisions in *subclause 3*.

The legislation also provides for the chief executive to determine his requirements for each of the types of AWEs in the various circumstances throughout the State and for him or her to not require a permit to be issued where construction, maintenance, operation or conduct of the AWE is in conformance with those requirements or is done in accordance with a contract with the chief executive.

No offence is committed if a permit is not obtained and the construction, maintenance, operation or conduct meet the criteria or are performed under contract. The conformance requirements will be refined over time and this facility should significantly reduce the administrative burden on the Department, industry and the general public in the safe and efficient operation of AWEs within the boundaries of State-controlled roads.

Because of the overlap of some provisions concerning things within the boundaries of roads with other legislation, those things permitted under other legislation will not be offences under this legislation.

As per *Schedule 2*, a merits appeal lies against a refusal by the chief executive to approve the construction, maintenance, operation or conduct of ancillary works and encroachments.

*Clause 46* provides that if AWEs are constructed, maintained, operated or conducted in a way that is contrary to the permit conditions or conformance requirements, the chief executive may take corrective action. The person who constructed, maintained, operated or conducted the AWE is liable to pay any consequential cost to the chief executive.

The chief executive may sell, or destroy any removed illegal or non-conforming AWEs. This provision particularly would be utilised for the removal and destruction of illegal advertising signs attached to guide posts and trees within the boundaries of State-controlled roads.

If a previously approved or conforming AWE has become a traffic hazard or will interfere with road works, the chief executive may direct alternative arrangements be made for the AWE and may enter into an agreement with the owner of the AWE as to making a contribution towards the cost of those alternative arrangements. This provision does not apply to

a means of access [which is the physical connection between a property and a road] and for which special provisions follow.

As per *Schedule 2*, merits appeals lie against decisions of the chief executive about the cost of alteration, making safe or removal of ancillary works and encroachments and to alter, relocate, make safe or remove ancillary works and encroachments or that activities are to be altered or to stop.

### ***Subdivision 2—Special arrangements for means of access***

*Clause 47* contains definitions which relate only to this Subdivision.

*Clause 48* provides for the chief executive to declare, by Gazette notice, a State-controlled road to be an access-limited road and for a special policy concerning access to apply. A road-specific access policy will be required to be issued with each declaration of an access-limited road. This is the only distinguishing feature about access-limited roads.

*Subclause 2* provides for the notification to local governments of proposals for the declaration of access-limited roads which could affect them and allows for subsequent submissions by the local government to the chief executive.

The declaration must be described in sufficient detail to allow the particular access-limited road to be identified.

Details of such declarations are required to be advertised in a local newspaper.

The provisions of *clause 49* apply in the construction or alteration of means of access on access-limited roads.

*Clause 49* provides for management of access between State-controlled roads (including access-limited roads) and adjacent land.

The chief executive has the power to determine, or vary, the basis of traffic movement between a State-controlled road and adjacent land. This could include the types of vehicles which may use the means of access and their frequency of use (e.g. 40 truck trips per day for a quarry) or even the prohibition of traffic at a particular point or along an entire frontage.

The chief executive may make his determinations in response to an application for construction of a means of access or on his own initiative where an existing, approved means of access, or the use of it, is presenting a traffic hazard or is obstructing road works or work involving public utility plant.

As per *Schedule 2*, a merits appeal lies against a decision by the chief executive in relation to access between a State-controlled road and particular adjacent land.

*Clause 50* provides for an offence for obtaining access to a State-controlled road without approval or for breaching a condition of *clause 49*.

*Clause 51* provides for action to be taken to prevent access where an offence is being committed under *clause 50*. Any costs of taking that action may be recovered by the chief executive from the person obtaining illegal access.

As per *Schedule 2*, a merits appeal lies against a decision by the chief executive concerning the amount of cost of taking that action.

*Clause 52* provides that, where an existing, approved means of access between a State-controlled road and adjacent land is prohibited by the chief executive, he or she may arrange for the provision of an alternative means of access and, by negotiation, contribute to its cost. The necessary works may include alteration to on-site buildings and parking facilities to restore the same functionality to the land. Such alternative access may be to an adjoining local government road which would require the approval of the local government.

*Clause 53* provides for compensation to be paid where an existing, approved means of access between a State-controlled road and adjacent land is prohibited and no alternative means of access is provided, either because both parties could not agree on an alternative or the chief executive determined that provision of such alternative is prohibitively expensive. Compensation would apply where the prohibition of the only means of access results in a land-locked situation or where the loss of one or more multiple accesses to the site damages its functionality e.g. a service station where one access is lost.

Compensation is based on the diminished value of the property.

As per *Schedule 2*, a merits appeal lies against a decision by the chief executive concerning the amount of compensation.

*Clause 54* defines the time-barring provisions that apply to compensation under *clause 53*. Despite this provision, the chief executive may allow a claim to be made at a later time.

There will be no compensation for the prohibition of the use of an existing means of access where such has never been approved. Also, no separate compensation is payable where the land is acquired by agreement or resumption. As per *Schedule 2*, a merits appeal lies against a decision not to extend the time for claiming compensation.

### ***Subdivision 3—Roadside facilities***

*Clause 55* provides the power for the chief executive to either provide, or to enter into an agreement for others to provide, roadside service centres, roadside rest facilities and other roadside commercial businesses adjacent to or near State-controlled roads. In consideration of giving an undertaking of exclusive access to the traffic stream, the chief executive may charge a fee. The undertaking may incorporate the approval of a means of access between the facility and the State-controlled road.

### ***Division 3—Public utility plant on State-controlled roads***

*Clause 56* provides the power for the chief executive to determine the location and requirements for public utility plant to reside within State-controlled road boundaries.

“Public utilities” and “public utility plant” replace the terms “owners of statutory utilities” and “statutory utilities” respectively, used in previous legislation.

As per *Schedule 2*, a merits appeal lies against the requirements of the chief executive about public utility plant within the boundaries of a State-controlled road.

*Clause 57* requires public utility plant on a State-controlled road to comply with the chief executive’s requirements. In determining his requirements, the chief executive would take account of other legislation

covering those public utilities. For example, the chief executive would have regard to safety requirements which exist in other legislation for the placement of underground gas lines.

*Clause 58* requires public utilities to advise the chief executive of their intention to carry out work on a State-controlled road. The public utility must advise the chief executive, on request, of the location of public utility plant on a State-controlled road. To that end, there is an obligation on public utilities to maintain accurate records of plant location.

*Clause 59* describes the circumstances under which the chief executive is not liable for damage caused to public utility plant. It also outlines when the public utility is liable to pay for additional expenses incurred by the chief executive in carrying out road works on a State-controlled road. In addition, if the chief executive requires public utility plant to be removed or relocated, it is to be done in accordance with the chief executive's requirements and the costs to the chief executive may be reduced after consideration of specific matters.

As per *Schedule 2*, a merits appeal lies against a decision of the chief executive about the amount of additional expense.

*Clause 60* provides for the sharing of costs between the chief executive and a public utility for acquisition of land, construction etc of public utility plant or construction of road works affected by the public utility plant.

*Clause 61* excludes the public utility plant constructed under the *Electricity Act 1976* from the provisions of this Division.

## **CHAPTER 6—GENERAL PROVISIONS**

*Clause 62* provides for the recovery through the courts of amounts payable to the chief executive.

*Clause 63* enables the chief executive, by written notice, to request from local governments information which relates to the chief executive's functions or powers under this Bill or the regulations. Local governments will be able to appeal to the Minister against requirements that they consider to be unreasonable.

*Clause 64* establishes rules for deciding the state of mind of a corporation or employer for the purpose of prosecution, that is, the circumstances when a corporation or other person is bound, and not bound, by the conduct of its directors, employees and agents for prosecution purposes.

*Clause 65* provides for the payment of fees, penalties and other money to the Consolidated Fund. Further, fees or other money collected on behalf of GOCs are to be paid to those GOCs.

*Clause 66* provides for appeals, on the merits, against decisions under this Bill and which are particularised in *Schedule 2*. A merits-based appeal is one against the merits of a decision, whereas judicial review provides for a review that the approved process has been followed in reaching a decision.

A merits-based appeal mechanism is provided for the transport portfolio in the *Transport Planning and Coordination Bill 1993*, pending consideration of a State government-wide merits appeals process as recommended by EARC.

This Bill invokes the generic appeal mechanism in the *Transport Planning and Coordination Bill 1993*. That mechanism is supplemented in this Bill by *clauses 67* and *68*, which relate to the appeal period for decisions under this legislation and to the Planning and Environment Court.

A person who is entitled to appeal or seek a review of a decision, may request a statement of reasons, if not already provided.

Any person whose interests are affected by a decision specified in *Schedule 2* may lodge an appeal against that decision to the court nominated in that Schedule.

No appeal may be lodged until the applicant has sought an internal review of the decision, if such decision is made by a delegate of the chief executive who is an officer or employee of the Department. Thus, no internal review is required where the delegate is a local government, or other person.

*Clause 67* provides an appeal period of 28 days after a decision or a statement of reasons for the decision has been received. The relevant court may extend the appeal period.

*Clause 68* extends the power under the *Local Government (Planning and Environment) Act 1990* to make rules of court for the Planning and Environment Court in handling appeals to it under this legislation.

In the absence of rules concerning appeals under this Bill to the Planning and Environment Court, the court may determine such rules.

*Clause 69* enables the Governor in Council to make regulations for the purposes of this Bill and in accordance with the specific subject matter for regulations set out in *Schedule 1*.

A penalty may be prescribed by a regulation of not more than 40 penalty units. The current value of a penalty unit is \$60, thus the maximum penalty would be \$2,400.

## **CHAPTER 7—SAVINGS AND TRANSITIONAL PROVISIONS AND AMENDMENTS OF OTHER ACTS**

### **PART 1—SAVINGS AND TRANSITIONAL PROVISIONS**

*Clause 70* provides definitions relevant to this Chapter.

*Clause 71* provides for the translation of all declared roads under earlier legislation to State-controlled roads, despite the criteria for establishment of State-controlled roads under *clause 21(2)*.

*Clause 72* provides for the continuance of approvals of means of access under previous legislation.

It also provides for the translation of declarations of "roads which are subject to limitation of access" under previous legislation to "access-limited roads" under this legislation.

*Clause 73* provides for the continuance of declarations of motorways under previous legislation.

*Clause 74* provides for the continuance of requests for information from local governments under previous legislation which had not been fulfilled at the time of commencement of this legislation.

*Clause 75* provides for the continuance of particular cost sharing arrangements made with local governments, and others, under previous legislation.

*Clause 76* provides for the continuance of permits issued under previous legislation for the taking of naturally occurring materials.

*Clause 77* provides for the continuance of approvals and determinations under previous legislation for the placement of rubbish, goods or materials.

It also provides for the continuance of determinations under previous legislation for temporary restrictions on the use of State-controlled roads.

*Clause 78* provides for the continuance of agreements under previous legislation between the Corporation [The Director-General, Department of Transport] and local governments as if they were contracts between the chief executive and those local governments for construction, maintenance and operations under *clause 25(1)*.

*Clause 79* provides for the continuance of approvals under previous legislation by the Corporation [The Director-General, Department of Transport] for road works etc as if they were approvals by the chief executive under *clause 29(1)*.

*Clause 80* provides for the continuance of approvals under previous legislation by the Corporation [The Director-General, Department of Transport] for roads joining State-controlled roads as if they were approvals by the chief executive under *clause 38(1)*.

*Clause 81* provides for the continuance of permission under previous legislation by the Corporation [The Director-General, Department of Transport] for temporary occupation and use of land as if they were permission delegated by the chief executive under *clause 25* of the *Transport Planning and Coordination Bill 1993*.

It also provides for the continuance of notices under previous legislation by the Corporation [The Director-General, Department of Transport] for temporary occupation and use of land as if they were notices issued by the chief executive under *clause 32(1)*.

This clause further provides for the continuance of temporary entry, occupation and use of land under previous legislation by the Corporation [The Director-General, Department of Transport] as if they were temporary

entry, occupation and use of land by the chief executive under this legislation.

*Clause 82* provides for the continuance of requirements under previous legislation by the Corporation [The Director-General, Department of Transport] for ancillary works and encroachments as if they were determinations by the chief executive under *clause 45*.

It also provides for the continuance of approvals under previous legislation by the Corporation [The Director-General, Department of Transport] for ancillary works and encroachments as if they were approvals by the chief executive under *clause 45(2)*.

*Clause 83* provides, where the chief executive has a corresponding power by or under the *Transport Planning and Coordination Bill 1993*, for the completion of the exercise of powers under repealed legislative provisions by the Corporation [The Director-General, Department of Transport], a port authority or the Harbours Corporation of Queensland concerning acquisition of land, as if the chief executive had commenced to exercise that power.

*Clause 84* provides, where the chief executive has a corresponding power by or under this Bill, for the continuation of contracts under previous legislation between the Corporation [The Director-General, Department of Transport] and another person, as if the contract had been between the chief executive and the other person.

*Clause 85* provides for the continuance of legal proceedings under previous legislation by or against the Corporation [The Director-General, Department of Transport] as if they were proceedings begun by or brought against the chief executive.

*Clause 86* provides for the conveyance of property vested under previous legislation in the Corporation [The Director-General, Department of Transport] to the State, but may be dealt with by the chief executive, for the State.

*Clause 87* provides for the completion by the chief executive of property acquisitions initiated under previous legislation by the Corporation [The Director-General, Department of Transport].

*Clause 88* provides for the continuance of delegations made under previous legislation by the Minister, the chief executive or the Corporation [The Director-General, Department of Transport] as if they were

delegations made under *clause 25* of the *Transport Planning and Coordination Bill 1993*.

*Clause 89* exempts the chief executive from the requirement to develop the first implementation programs until the inaugural transport infrastructure strategies have been approved.

## **PART 2—AMENDMENTS OF OTHER ACTS**

*Clause 90* amends the legislation detailed in *Schedule 3*.

### **SCHEDULE 1**

*Schedule 1* lists the subject matter for regulations.

### **SCHEDULE 2**

*Schedule 2* lists the decisions which are subject to a merits appeal and the court in which each matter is to be heard.

### **SCHEDULE 3**

*Schedule 3* contains amendments to other legislation.

