

TRANSPORT INFRASTRUCTURE AMENDMENT (RAIL) BILL 1995

EXPLANATORY NOTE

The Transport Infrastructure Amendment (Rail) Bill 1995 has been drafted consistent with current legislative drafting practice and has been written in plain English. As a consequence, particular clauses, sections and sub-sections require little or no specific further explanation. Therefore certain clauses, sections and sub-sections have been repeated or summarised in general terms only.

GENERAL OUTLINE

Objectives of the Legislation

The objective of the legislation is to provide a regime for the construction, maintenance and operation of rail transport infrastructure in a way that:—

- contributes to overall transport efficiency and effectiveness;
- contributes to lower transport costs by allowing maximum flexibility in rail transport operations consistent with safety objectives;
- provides a high level of accountability;
- allows railway managers and operators to make decisions on a commercial basis; and
- provides a framework under which Queensland Rail can operate as a corporation, as required in accordance with the *Government Owned Corporations Act 1993*.

These objectives are to be achieved by:—

- providing for the development and implementation of rail transport infrastructure strategies;
- providing for railway managers to construct and maintain rail transport infrastructure in an effective and efficient way;
- providing for railway operators to operate rolling stock in an effective and efficient way; and
- introducing a safety accreditation system to maintain appropriate levels of safety in the rail transport industry.

Reasons for Legislation

The legislation will replace the *Transport Infrastructure (Railways) Act 1991*, the *Transport Infrastructure (Railways) Amendment Act 1993* and the *Railways Land Acquisition Act 1977* with:—

- A framework to place railway industry regulatory functions, as far as is practicable, in the hands of the State, as an essential prerequisite to the corporatisation of Queensland Rail.
- A basis on which third parties will be provided with the right to negotiate access to the railway system, consistent with the access principles in the Competition Principles Agreement between the Commonwealth and the States and the objectives of this Act.
- The introduction of a safety accreditation system, with the chief executive, Queensland Transport responsible for the accreditation of railway managers and operators.
- Generic rail legislation specifying the rights, obligations and powers of any accredited railway manager or operator participating in the State's railway industry.
- Legislation to cover matters which are of relevance only to Queensland Rail, either for historical reasons or to create and maintain Queensland Rail as a statutory Government Owned Corporation.
- Provisions relating to the future ownership and use of land currently held by Queensland Rail.

The legislation will assist in the rationalisation of all transport related legislation and, together with the *Government Owned Corporations Act 1993*, will accommodate the proposed corporatisation of Queensland Rail from 1 July 1995. It will apply to railways operated for the transport of public freight or passengers, for reward.

Rationalisation of Transport Legislation

The *Transport Infrastructure Act 1994* has been designed to facilitate a coordinated approach to the development of all transport infrastructure in Queensland. Together with four other Acts covering different aspects of transport operations, the *Transport Infrastructure Act 1994* sits under the umbrella of the *Transport Planning and Coordination Act 1994* which provides an integrated legislative structure for the transport portfolio.

Portfolio Strategic Planning

The *Transport Planning and Coordination Act 1994* incorporates a legislative obligation to develop a Transport Coordination Plan for the strategic development and management of transport across the State.

The Transport Coordination Plan, tabled in the Legislative Assembly in 1994, provides the framework for the strategic planning and coordination of transport infrastructure and transport operations in Queensland.

In the Transport Infrastructure Amendment (Rail) Bill 1995, there is a commitment to operating strategically, with the development of rail transport infrastructure strategies for the transport portfolio that are designed to give effect to the Transport Coordination Plan under the *Transport Planning and Coordination Act 1994*. These strategies will include goal statements and will incorporate criteria for determining the financial and management accountability of the Minister for achieving rail infrastructure objectives.

Estimated Cost for Government Implementation

The direct cost implications from the Bill relate principally to the review and rationalisation of Queensland Rail's existing land holdings and to the implementation of a rail safety accreditation system, independent of Queensland Rail.

Costs will be incurred by Queensland Rail, Queensland Transport and the Department of Lands during the transitional land rationalisation process, designed to clearly identify the transport corridor land to be held by the State. This work is expected to cost around \$11 million over the five (5) year land review period, however, where survey is required to implement the corridor tenure arrangements, then higher costs will be incurred. It is anticipated that a substantial portion of these costs can be offset through the sale of surplus land identified during the process.

It is estimated that the independent rail safety accreditation system will cost approximately \$400,000 per annum. It is intended that this cost will be offset by accreditation fees payable by applicants seeking accreditation as railway managers or operators. Further, it is assessed that the performance-based nature of accreditation is likely to result in substantially less costs for applicants than rigid regulatory systems.

Queensland Rail will also incur additional local government rates as a consequence of proposed changes from the *Transport Infrastructure (Railways) Act 1991*. The cost to Queensland Rail of the additional rates will progressively increase over the five (5) land rationalisation period to approximately \$5 million per annum. From the State's perspective, this effectively represents a re-direction of funds to local governments that would otherwise flow to the Consolidated Fund.

Consultation

All Government departments as well as other key Government agencies, industry groups, unions and client groups have been consulted in the drafting of the Bill.

To the maximum extent possible, the various comments of bodies consulted have been incorporated into the Bill. There are no unresolved substantive issues and further consultation is to occur in the preparation of subordinate legislation relating to third party access.

NOTES ON PROVISIONS**PART 1—PRELIMINARY**

Clause 1 sets out the short title of the Bill.

Clause 2 establishes the commencement days for the various provisions of the Bill.

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

Clause 3 indicates that this Part amends the *Transport Infrastructure Act 1994*.

Clause 4 amends the existing objectives of the rail component of the *Transport Infrastructure Act 1994*.

Clauses 5 and 6 amend references to “Queensland Railways” to refer to Queensland Rail”.

Clause 7 inserts **PART 1A—RAIL IMPLEMENTATION PROGRAMS** (new sections 14A to 14C) in Chapter 4, of the *Transport Infrastructure Act 1994*.

- New section 14A imposes a requirement on the chief executive to develop, for the Minister’s approval, an annual rail implementation program for government supported transport infrastructure which describes the activities for that year, and forward plans, that will give effect to the relevant parts of the transport infrastructure strategies. The rail implementation program must include a program of projects, policies and budgets and performance targets for the program.

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- In developing the rail implementation program, the chief executive must take reasonable steps to consult with any local governments, railway managers and operators likely to be affected by the program and minimise any conflict with their expenditure programs.
- The Minister will make rail implementation programs publicly available and may approve or amend a program.
- New section 14B provides that, subject to the Minister directing otherwise, the annual rail implementation program must be consistent with transport infrastructure strategies. If the Minister directs an implementation program to be inconsistent with a transport infrastructure strategy, the Minister must table the direction in the Legislative Assembly within 5 sitting days, thus providing flexibility whilst ensuring transparency and accountability.
- New section 14C requires that the annual report of Queensland Transport must report on the implementation of the rail implementation programs.

Clause 8 amends a reference to “Queensland Railways” to refer to “Queensland Rail”.

Clause 9 amends section 20 of the Act in relation to definitions. Definitions omitted from this section are redefined in Clause 21 of the Bill which amends Schedule 3 (Dictionary).

Clause 10 omits Section 68 which relates to the power of the chief executive to lease or dispose of land to franchisees for a franchised road. This power is being incorporated in Section 12 of the *Transport Planning and Coordination Act 1994*, which is being amended through Clause 23 of this Bill.

Clause 11 inserts CHAPTER 5A—RAIL TRANSPORT INFRASTRUCTURE (new sections 71A—71ZZZA) after Chapter 5 of the *Transport Infrastructure Act 1994*. This is the main body of the rail component of the infrastructure legislation.

PART 1—PRELIMINARY

- New section 71A defines the methods by which the rail objectives of the Act are to be achieved.
- New section 71B defines the scope of this chapter to be covering rail transport infrastructure and rolling stock used for the purpose of transporting freight or carrying passengers for reward. The new section also lists types of railways to which the chapter does not apply and allows for regulations to exclude other types of railways.

PART 2—FUNCTIONS OF QUEENSLAND RAIL

- New section 71C defines the functions of Queensland Rail, focusing on effective and efficient rail transport services and infrastructure.

PART 3—ACCESS TO RAIL TRANSPORT INFRASTRUCTURE

The rail access regime seeks to reflect the thrust of national competition policy by facilitating agreement between railway managers and persons seeking access to services requiring rail transport infrastructure, consistent with the overall objectives of the *Transport Infrastructure Act 1994*.

- New section 71D indicates that the objectives of the part are to give effect to the principles in the *Competition Principles Agreement* between the Commonwealth and the State about third party access to services provided by means of significant infrastructure facilities and, in particular, to make provision to ensure access agreements comply with the objectives of the *Transport Infrastructure Act 1994* and the competition principles. Generally subsequent new sections in Part 3 reflect the requirements, given in the *Competition Principles Agreement*, of an effective State access regime.

To aid readers the relevant part of the *Competition Principles Agreement* is attached to the Act; however, the attachment is not part of the Act.

- New section 71E states that the access provisions of Part 3 apply to all services provided by significant rail transport infrastructure facilities, except to coal carried by Queensland Rail, until five (5) years after the commencement of Part IIIA of the *Trade Practices Act 1974*.

It is the intention of the Commonwealth that Part IIIA of the *Trade Practices Act 1974* will be inserted by the *Competition Policy Reform Bill 1995*. The exemption relating to coal carrying services mirrors clause 73 of the Commonwealth's Bill.

- New section 71F indicates that Regulations may be made about matters relating to the competition principles for access.

The new section includes examples of the matters which may be subject to Regulation.

In relation to Regulations about the arbitration of disputes which arise from negotiations for access, a linkage to the *Commercial Arbitration Act 1990* has been established for general provisions about arbitration, the judicial review of arbitrator's awards and appeals on questions of law.

The range of matters about which a Regulation may be made must not operate to limit the application of the competition principles; however, it is equally important that the Regulations are consistent with the objectives of the *Transport Infrastructure Act 1994*.

- New section 71G subjects Part 3 to a 'sunset' provision of no longer than two years after commencement of the part. This will enable a review of the State's rail access regime and allow the State to initiate action with the Commonwealth to ensure that the Queensland rail access regime conforms with the access principles in the *Competition Principles Agreement*, with the consequent consolidation of that regime into principal legislation.

PART 4—ACCREDITATION

The safety accreditation framework established in this Part is designed to ensure that railway managers and operators have the competency and capacity to safely perform their respective functions in Queensland. The accreditation framework is a performance-based system in which the

person seeking accreditation agrees to manage or operate, or both, in accordance with conditions tailored to that persons specific requirements only.

- New section 71H states that a person must not build or manage a railway or operate rolling stock on a railway unless the person is accredited under this part to be respectively a railway manager or a railway operator.

This section does not apply to a person who owns and manages a railway for a purpose incidental to their main business, who has an agreement to connect to an accredited railway manager's railway and has made arrangements for maintenance acceptable to the accredited railway manager. This new section is intended to exclude private rail sidings from the accreditation regime, on the basis that the accredited railway manager, of the railway to which the siding is connected, addresses issues associated with the safe interaction of traffic on the private siding with traffic on the accredited railway, within the approved safety management system for the accredited railway.

- New section 71I states that a person may apply for accreditation as either the manager or an operator for a railway or may apply for both functions. While a railway may have several operators under this Bill, only one manager can be accredited for a railway.
- New section 71J enables the chief executive to require the provision of additional information from the applicant.
- New section 71K provides for accreditation to be granted to an applicant subject to the satisfaction of certain criteria. Before granting accreditation, the chief executive must be satisfied that:
 - the applicant has the competency and capacity to manage the railway or to operate rolling stock safely (in the case of a person accredited in another State there will be mutual recognition of safety accreditation);
 - the applicant has an appropriate safety management system;
 - the applicant has appropriate insurance or financial capacity to meet reasonable potential accident liabilities; and
 - the applicant has reached an agreement providing for the

management of a railway (new or existing) or has an agreement with a railway owner to operate rolling stock on a railway.

- New section 71L provides that accreditation may be subject to conditions relating to.
 - safe management of a railway or operation of rolling stock;
 - for an operator, continued existence of an agreement with a railway manager which includes arrangements relating to the interaction between the safety management systems of the railway manager and the railway operator.
 - financial capacity or insurance arrangements sufficient to meet reasonable potential accident liabilities;
 - the payment of accreditation fees; and,
 - other safety related matters prescribed under a regulation. (For example, a regulation may prescribe safety monitoring and reporting arrangements or arrangements for periodic review of safety management systems.)
- New section 71M provides the chief executive with the option to require a person to comply with a condition of that person's accreditation which the chief executive believes has been breached, rather than taking immediate action to suspend or cancel the accreditation.
- New section 71N provides that an accreditation remains in force until it is suspended, cancelled or surrendered.
- New section 71O provides that the conditions of accreditation may be varied (or not varied) on application from an accredited person.
- New section 71P provides that the conditions of accreditation may be varied by the chief executive without application.
- New section 71Q details the procedures to be followed in suspending or cancelling accreditation.
- New section 71R details the procedures to be followed for an immediate suspension of an accreditation.
- In sections 71P, 71Q and 71R provision is made for the appeal of

the chief executive's decision.

- New section 71S allows for a suspension of an accreditation to be limited to a particular railway or a particular service.
- New section 71T allows an accredited person to surrender their accreditation by written notice to the chief executive.

PART 5—RAIL TRANSPORT INFRASTRUCTURE POWERS

This part specifies certain powers held by the chief executive and railway managers and operators to facilitate the effective management and operation of the railway.

- New section 71U provides for the temporary occupation and use of land by the chief executive or an accredited person to carry out works in relation to a railway.
- New section 71V provides that seven (7) days notice must be given to the owner or occupier of land or the written approval of the owner or occupier be obtained, prior to the entry, occupation or use of land under new section 71U. For urgent works, the period of notice need not apply.
- New section 71W seeks to ensure that, in respect to new section 71U, the chief executive or accredited person takes care to minimise inconvenience and damage to the land and if necessary that works be carried out where practicable to ensure inconvenience and damage is minimised. Agreement from the land owner or occupier is required before taking or using any materials from the land.
- New section 71X provides for compensation to be paid or remedial work to be undertaken, for the impacts caused by entry under new section 71U.
- New section 71Y enables an accredited person, with the approval of the chief executive, to divert or construct watercourses. In so doing, the chief executive is required to take account of, inter alia, the consequential effects of such action on the physical integrity and flow characteristics of the watercourse.

- New section 71Z provides that a person must not carry out works near a railway which threaten the safety or operational integrity of the railway without lawful excuse or the written approval of the chief executive. The chief executive may give directions stopping or altering the works or could require demolition or removal of the works within a specified time.

For the purposes of this new section a representative of the chief executive may enter land and inspect works or activities subject to written notice being given to, or with the approval of, the owners or occupiers of the land. If a threat exists to the safety or operational integrity of the railway the chief executive may enter the land without notice or approval.

- New section 71ZA provides that a railway manager may temporarily close or regulate a level crossing or other crossing structure if there is a threat to safety.

PART 6—RAILWAY INCIDENTS

This part contains provisions relating to the reporting and investigation of railway incidents, including investigations by boards of inquiry.

- New section 71ZB states that an accredited person must notify the chief executive of any serious incident on or involving the railway, upon becoming aware of the incident.

The chief executive may provide guidelines to indicate the type of incidents to be notified and other matters relating to the form, content and timing of submission of incident reports.

- New section 71ZC allows the chief executive to require an accredited person to provide a written report or specified details about a serious incident within a reasonable period of time.
- New section 71ZD allows the chief executive to require an authorised person to investigate a serious incident and to report the results of the investigation.
- New section 71ZE describes the powers of an authorised person to investigate incidents. An authorised person may require:
 - a person to give reasonable help in the investigation;

- a person who the authorised person reasonably suspects was at or near the scene of the incident to answer questions or produce documents or other things relevant to the incident; or,
- under specific circumstances, for certain persons to take an alcohol breath test, a drug test or a medical examination.

In relation to the alcohol or drug testing and examination provision, action can only be taken if the person was directly involved in the incident, the result of the test or examination is likely to be relevant in deciding the cause of the incident. The test or examination is to take place within two (2) hours of the incident.

Refusal, without reasonable excuse, to undertake the test or examination under such circumstances could lead to a presumption that the person was under the influence of alcohol or a drug at the time of the incident. The purpose for which the refusal is to be used is to be prescribed by regulation.

- New section 71ZF states that a person must not provide false or misleading information to an authorised person or knowingly fail to provide information, without which the person's statement would be misleading.
- New section 71ZG states that a person must not give the chief executive or an authorised person a document which is known to be false, misleading or incomplete.
- New section 71ZH provides that a person must not obstruct an authorised person without reasonable excuse and establishes a requirement for and nature of a warning from the authorised person.
- New section 71ZI provides that a person must not impersonate an authorised person.
- New section 71ZJ provides for compensation for a person if that person has incurred a loss or expense as a result of the exercise of a power by an authorised person under this part, if a court considers it just to pay compensation in the circumstances of the case.

- New sections 71ZK to 71ZZE relate to boards of inquiry.
- New section 71ZK allows the Minister to establish a board of inquiry into a railway incident which the Minister considers serious.
- New section 71ZL outlines the role of a board of inquiry.
- New section 71ZM provides for conditions of appointment of the members of a board of inquiry, including the payment of fees and allowances.
- New section 71ZN requires the chief executive to provide staff to service a board of inquiry and to address financial matters associated with the inquiry.
- New section 71ZO provides for an authorised person to exercise powers for the purpose of the board of inquiry's investigation.
- New section 71ZP addresses procedural issues associated with the conduct of an inquiry by a board.
- New section 71ZQ provides for at least 14 days written notice to be given of the time and place of an inquiry to persons who may appear before the board.
- New section 71ZR requires an inquiry to be held in public other than in special circumstances when the board may direct that the inquiry or part thereof is held in private.
- New section 71ZS provides for board members, legal representatives and witnesses to have the same protection and immunity as if the hearing was in the Supreme Court.
- New section 71ZT requires the board to keep a record of its proceedings.
- New section 71ZU to provide for procedural fairness and representation and requires the board to provide the opportunity for any person to make a defence against any claims made against them.

- New section 71ZV provides for the powers of a board in conducting an inquiry and for a member of the board to administer an oath or affirmation from a witness appearing before the board. Also, provision are made in relation to the information and evidence presented to the board, including the manner of representation of persons at the inquiry.
- New section 71ZW allows the board to require witnesses to attend to give evidence and, if not prescribed by regulation, to decide the reasonable fees to be paid to a witness.
- New section 71ZX allows the board to inspect a document or thing produced to the board or take possession of same during the inquiry.
- New section 71ZY allows the board of inquiry to start or continue, despite other legal proceedings, unless a competent court orders otherwise.
- New section 71ZZ provides for offences by witnesses.
- New section 71ZZA provides that a witness is not excused from answering a question or producing a document on the basis that it could be self-incriminating. Despite this, the answer may not be admissible in a criminal proceeding against the person.
- New section 71ZZB provides that a person must not make false, misleading or incomplete statements to a board of inquiry.
- New section 71ZZC provides that a person must not provide false, misleading or incomplete documents to a board of inquiry.
- New section 71ZZD addresses issues associated with contempt of a board of inquiry.
- New section 71ZZE provides that a board of inquiry is not affected by a change in its membership.

PART 7—LAND FOR RAILWAY PURPOSES

This part contains provisions about the construction and use of land by a railway manager, in the management of the railway.

- New section 71ZZF provides that, where the State has acquired land for use by a railway manager as part of a rail transport corridor, the land must be leased to the railway manager. Where the rail manager meets the full cost of acquisition, the lease conditions are specified; in other cases, lease conditions are to be negotiated between the parties.
- New section 71ZZG provides that the same controls and exemptions under State and local government laws to apply to corridor land as would apply to an agency of the State.
- New section 71ZZH provides for the continued application of the *Queensland Heritage Act 1992* to Queensland Rail as if it were a State agency.
- New section 71ZZI preserves the existence and operation of existing railways where the land is not owned or leased by Queensland Rail.
- New section 71ZZJ provides certainty over the continued legal status of buildings and structures on land and the continued conduct of activities on land, despite the corporatisation of Queensland Rail and any zoning changes.
- New section 71ZZK makes a provision relating to railway works on corridor land; which indicates that the chief executive, rather than a local government, is to exercise any power or function under the Building Code of Australia.

PART 8—GENERAL

This part contains some general provisions relating to the management of railways and operation of rolling stock.

- New section 71ZZL preserves the existing position that Queensland Rail is not a common carrier.
- New section 71ZZM provides for the carriage of dangerous goods by rail.

- New section 71ZZN provides for the alteration of the level of a road by a railway manager where required in the construction or management of a railway. Provision is made for compensation where a person's land is affected.
- New section 71ZZO specifies responsibility for maintenance where the railway and a road intersect.
- New section 71ZZP provides for land not to be presumed as being dedicated for a road, despite its use for public access.
- New section 71ZZQ provides for railway managers to permit local governments to extend roads through or over railway land. Conditions may be applied and the railway manager is entitled to continue to use the land.
- New section 71ZZR states that pedestrians and drivers of vehicles are required to give way to rolling stock and other rail vehicles at level crossings and also makes provisions relating to liabilities resulting from accidents at level crossings.
- New section 71ZZS states that a person must not interfere with a railway without the approval of the railway manager, except to carry out urgent maintenance of the railway.
- New section 71ZZT states that a person who acts contrary to new section 71ZZS may be required to rectify the interference within a reasonable time.
- New section 71ZZU states that a person must not trespass on a railway.
- New section 71ZZV provides a power of arrest to a police officer in relation to certain offences concerning railways.
- New section 71ZZW provides that the chief executive may make guidelines to assist local governments in approving works or developments which would consequently require works on a railway or otherwise have a significant adverse impact on a railway or on the planning of a railway or future railway.
- New section 71ZZX details a railway manager's obligations in relation to contributing towards the fencing of new railways.
- New section 71ZZY defines Queensland Rail's obligation in respect of fencing, drainage and other necessary works along

existing railways while these railways continue to operate. Also, a provision is included for the closing of gates, including a penalty for persons not shutting and locking the gate.

- New section 71ZZZ complements Part 4—Accreditation in providing that non accredited railways may be connected to an accredited railway with the written consent of the manager of the accredited railway. An example of a non accredited railway is a private siding, where the accredited railway manager, of the railway to which the siding is connected, addresses issues associated with the safe interaction between the traffic on the private siding and traffic on the accredited railway.

Where a railway manager maintains a non accredited railway then this new section specifies the railway manager’s liabilities for and provides for the exercise of powers under this Act.

Also included in this section is a provision requiring the Minister’s approval for the construction of a non accredited railway near a watercourse.

- New section 71ZZZA details provisions of the *Land Act 1994* which do not apply to leases over certain corridor lands.

Clause 12 makes a minor drafting change to a heading.

Clause 13 omits Sections 99 and 100 of the *Transport Infrastructure Act 1994*, dealing with the rateability of strategic port land. The Schedule—Amendment of Other Acts to this Bill provides for this exemption and a similar provision for corridor land to be included in the *Local Government Act 1993* and the *City of Brisbane Act 1924*.

Clause 14 inserts after section 105 new sections 105A and 105B

- New section 105A—provides that in a proceeding for an offence it is not necessary to prove the appointment of a person who is an authorised person for a railway.
- New section 105B—provides for an offence to be heard in any district through which a person has travelled.

Clause 15 inserts new section 110A in chapter 7, which provides for the circumstances under which the *Freedom of Information Act 1992* and *Judicial Review Act 1991* do not apply to a transport GOC.

Clause 16 inserts, in Chapter 8, a new Part 1A—SAVINGS AND TRANSITIONAL PROVISIONS ABOUT RAILWAYS:

The first division in this part details how ‘old QR land’ is to be categorised and dealt with, upon commencement of this Act; ‘old QR land’ being that land which immediately before commencement was held by Queensland Rail, or which could be granted, in fee simple.

Generally the categories indicate that the ‘old QR land’ will become either part of a transport corridor or not. The corridor land may be designated as ‘commercial corridor land’, ‘existing rail corridor land’ or ‘non-rail corridor land’.

It is intended that Queensland Rail will, during the five (5) year period, confirm its title to old QR land that is not corridor land. Title over such old QR land will generally be freehold except if the surrounding land tenure is leasehold then title may be leasehold.

The intention of this division and subsequent transitional provisions about land, is to retain a degree of public control over strategic rail corridors in a similar manner to control over strategic road corridors.

To assist readers a diagrammatic representation of the land categorisation process is given at Appendix 1.

- New section 126A provides that, on the commencement existing rail corridor land becomes unallocated State land, is leased to the State and sub-leased to Queensland Rail for 100 years (with an option to extend) at a nominal rental.
- New section 126B provides that within five (5) years of the commencement of this Part, Queensland Rail and the chief executive must:—
 - identify the boundaries of existing rail corridor land; and
 - identify the portions of old QR land which is not existing rail corridor land or commercial corridor land but which is of strategic importance as a transport corridor and define its boundaries. The boundaries of this land are to be notified in the Gazette, at which point the land will become unallocated State land. It is then to be immediately leased by the Governor in Council to the State.

- New section 126C provides for the continuation of the effect of existing leases or rights over land and prevents disturbance when the land becomes unallocated State land under this division.
- New section 126D provides for an exemption of lodgement and registration fees associated with the land categorisation process.
- New section 126E provides a “sunset” clause, for division 1, of seven (7) years after commencement.

Division 2 of the savings and transitional Part contains a range of other provisions.

- New section 126F provides for the interim accreditation of Queensland Rail and other existing railway managers and operators for a period of two (2) years. This new section expires a maximum of two and one half years after commencement.
- New section 126G provides for the continuation of advertising sites on railway land for a five (5) year period from commencement of the Bill. Any new advertising sites during the five (5) year period and all advertising sites after the five (5) year period, are to be subject to normal approval processes.
- New section 126H continues agreements for certain roads extending through or over railway land.
- New section 126I preserves Queensland Rail’s right to obtain title over its existing land for a maximum period of seven (7) years.
- New section 126J provides that the resumption of land by Queensland Rail not completed at the commencement of this Act may continue to proceed. This new section expires no later than five (5) years after commencement.
- New section 126K acts to remove any doubt that Queensland Rail continues to represent the State in respect of any contracts entered into by the previous rail corporatisation, immediately prior to the commencement.
- New section 126L provides for the preservation of duties and obligations previously undertaken by Queensland Railways, representing the State. This is necessary to avoid breaching the conditions on certain equipment lease contracts.

- New sections 126M and 126N allow for existing regulations to remain in force or for transitional regulations to be made, respectively. The times of expiry of the sections and the subject regulations are specified.
- New section 126O requires renumbering of the *Transport Infrastructure Act 1994* at its next reprint.

Clause 17 provides for a new “Division 1A—Transition of references about railways” to be inserted in Chapter 8, part 3. This includes new sections 151A to 151F which update references to previous railway legislation and organisations.

Clause 18 omits the existing Chapter 8, part 3, division 3 (transition of references about railways now superseded under clause 17).

Clause 19 provides, for railways, further subject matters, under Schedule 1, for which regulations may be made. These matters include the removal and sale or disposal of abandoned or illegally placed vehicles, goods or other property; the recovery of costs and tests or examinations relating to alcohol.

Clause 20 provides for the inclusion of certain decisions, made by the chief executive, to be included in Schedule 2 as decisions about which a person may request a review and may subsequently appeal.

Clause 21 amends and updates Schedule 3—the dictionary.

PART 3—REPEALS AND AMENDMENTS OF OTHER ACTS

Clause 22 lists the repealed legislation.

Clause 23 provides a schedule amending other legislation as set out below:

CITY OF BRISBANE ACT 1924

- *Section 47(1)* is amended to exclude strategic port land and existing or new rail corridor land from rates. Strategic port land was previously exempt from rates under Section 100 of the *Transport Infrastructure Act 1994*. Railway land has not previously been rateable and the intention of this amendment and a similar amendment to the *Local Government Act 1993* is to provide the same status to all strategic transport land.

FREEDOM OF INFORMATION ACT 1992

- Schedule 2 of the Act is amended to provide that Queensland Rail or a port authority is excluded from application of the Act in respect of certain documents.

JUDICIAL REVIEW ACT 1991

- Schedule 6 of the Act is amended to provide that Queensland Rail or a port authority is excluded from application of the Act in respect of certain decisions.

LAND ACT 1962

- *Section 40(1)* is amended to allow a single member sitting alone to constitute the Land Court.

LAND ACT 1994

- Section 98(1) is amended to make it clear that, in closing a road, the Minister need not undertake the level of advertising and notice described in section 100, on those occasions where it is considered unnecessary.
- Section 183(5) is amended to allow the Minister to set a rent when a lease is to the State or a GOC.
- Section 257 is amended to provide that a permit to clear trees is not required when the trees interfere with the routine maintenance and safe operation of the railway.

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- Section 340(2) is amended to ensure it is consistent with the similar provision in the *Land Title Act 1994*.
- Section 393 is amended to recognise that the Registrar of Titles operationally manages all registry functions.
- Section 40 was incorrectly omitted from the sections of the *Land Act 1962* that were to continue when the *Land Act 1994* commenced (see also the above amendment to the *Land Act 1962*).
- Schedule 5 is amended to correct a mistake, the word “borrowing” should read “registered”.
- Schedule 6 is amended because the definition of a pre-Wolfe freeholding lease incorrectly referred to an “existing” mining titles freeholding lease. As these leases will continue to be issued until all applications to freehold that were lodged before 1 January 1995 are processed, the word “existing” was incorrect.

LOCAL GOVERNMENT ACT 1993

- Section 515 is amended to provide that local laws about railways do not include the railways to which the *Transport Infrastructure Act 1994*, chapter 5A (rail transport infrastructure) applies.
- Section 553(1)(e) is renumbered as 553(1)(f).
- Section 553(1) is amended to exempt certain land, used for transport purposes, from rates. (A similar amendment was made above, to the *City of Brisbane Act 1924*).

TRANSPORT OPERATIONS (PASSENGER TRANSPORT) ACT 1994

Section 14(2)(a) is amended to ensure that a railway operator is excluded from the application of operator accreditation under the Act. Queensland Rail is currently excluded from application under the Act.

Section 26(2)(a) is amended to ensure that a railway operator is excluded from the application of driver accreditation under the Act. Queensland Rail is currently excluded from application under the Act.

New section 101A amends the Act to ensure that standards made under the Act do not apply to railway managers or railway operators.

In Chapter 11 a new PART 1A—AUTHORISED PERSONS FOR RAILWAYS (new sections 115A -115E) is inserted.

- New section 115B defines authorised persons for a railway and provides for the appointment of authorised persons (other than police officers) by the chief executive. The section also specifies the requirements for appointment of an authorised person.
- New section 115C provides a requirement for the railway manager or operator to issue each authorised person (other than a police officer) an identity card containing a recent photograph and signature of the authorised person. It requires a person to return the identity card to the chief executive as soon as practicable after ceasing to be an authorised person, unless the person has a reasonable excuse for not doing so.
- New section 115D specifies the requirements for the display of identity cards by authorised persons.
- New section 115E provides protection from liability for an authorised person for an act or omission done honestly and without negligence. This new section further provides that if the new section prevents a civil liability attaching to an authorised person, the liability attaches to the railway manager or operator for its employees and in other cases to the State.

In Chapter 11 the following new parts are also inserted:

new PART 5—POWERS OF AUTHORISED PERSONS FOR RAILWAYS (new sections 132A—132D); and

new PART 6—RAILWAY OFFENCES (new sections 132E—132G).

- New section 132A provides for an authorised person to require the name and address of a person and also provides a power of arrest to a police officer in certain circumstances.
- New section 132B provides for an authorised person to require information from certain persons.
- New section 132C provides for an authorised person the production of a ticket by a person travelling by rail.

- New section 132D provides that an authorised person may direct a person to leave a railway, train or other passenger vehicle and also provides a power of arrest to a police officer in certain circumstances.
- New section 132E provides that a person must not create a disturbance or nuisance on a railway.
- New section 132F provides that a person must not travel by railway without paying the correct fare and having a valid ticket, unless that person has reasonable excuse.
- New section 132G provides that a person must not travel by railway on an invalid ticket.

New sections 140A and 140B are inserted after section 140 of the *Transport Operations (Passenger Transport) Act 1994*.

- New section 140A provides that in a proceeding for an offence it is not necessary to prove the appointment of a person who is an authorised person or authorised person.
- New section 140B provides for an offence to be heard in any district through which a person has travelled.

In Chapter 13 a new PART 6—NUMBERING AND RENUMBERING OF ACT (new section 175) is inserted to provide for the renumbering of the Act.

In Schedule 5, the dictionary of the *Transport Operations (Passenger Transport) Act 1994* is amended to delete the previous definition of ‘authorised person’ and to include certain defined terms relative to railways.

TRANSPORT OPERATIONS (ROAD USE MANAGEMENT) ACT 1995

A new section 94 is inserted to provide for the validity of the Act’s assent.

TRANSPORT PLANNING AND COORDINATION ACT 1994

Section 8A is renumbered as Section 8B.

Section 10 is amended to provide that the chief executive may have regard to any relevant matter in the acquisition of land and to ensure that the chief executive's powers to acquire land includes the power to acquire land, or an easement, beneath the surface.

Section 10 is further amended to insert 'or resume' after 'obtain' in subsection (6) and to insert a new subsection (8) about the description used to identify acquired land. The section is renumbered to accommodate the additional provisions.

Section 12 is deleted and replaced with new Section 12 to provide the chief executive with powers, for the State, to lease, sell or otherwise dispose of 'transport land', not only to a transport GOC but also to a railway manager or franchisee. (The meanings of 'transport land' and 'transport GOC' are given in the new section.)

For transparency and completeness, 'franchisee' has been inserted to provide that the chief executive can acquire land for the purpose of a road franchise agreement. This power is already provided for under the *Transport Infrastructure Act 1994*.

ATTACHMENT FOR TRANSPORT INFRASTRUCTURE ACT 1994

NOT FORMING PART OF ANY ACT

To aid readers of Part 3—Access to Rail Transport Infrastructure, an extract of the Competition Principles Agreement between the Commonwealth and the States is attached.

APPENDIX

