TRANSPORT LEGISLATION AMENDMENT BILL 2002

EXPLANATORY NOTES

GENERAL OUTLINE

OBJECTIVES OF THE LEGISLATION

The objective of the Transport Legislation Amendment Bill 2002 is to provide for amendments to a range of statutes administered by the Department of Transport and Department of Main Roads.

REASONS FOR THE BILL

The extension of transitional provisions in the *Transport Infrastructure Act 1994* (TIA) for the identification of rail corridor land is required before the existing provisions expire on 30 June 2002. Queensland Transport and Queensland Rail will have completed the task of identifying what land is to be retained in the rail corridor by the present expiry date. However, the process for including the categorised land in the Rail Headlease and Sublease will go beyond this date. The provisions allowing for the issue of title deeds for residual QR land also needs extension to complete the categorization and titling processes.

Provisions relating to compulsory holding tanks on all ships over 10 metres in overall length were due to come into effect on 31 December 2001. This date was extended to 1 July 2002 by the *Transport Legislation Amendment Act 2001*. This Bill proposes amendments to the *Transport Operations (Marine Pollution) Act 1995* (TOMPA) to create a more practical outcome-oriented legislative regime to replace these provisions, and to provide greater protection to Queensland waterways and waterway users from ship sourced sewage. TOMPA is also to be amended to make pollution insurance compulsory.

The *Transport Operations (Marine Safety) Act 1994* (TOMSA) is to be amended to extend the state's power to investigate maritime incidents, and to enable the costs of damage to navigational aids to be recovered.

A number of amendments to the *Transport Operations (Passenger Transport) Act 1994* (TOPTA) are urgently sought to comply with National Competition Policy requirements. These amendments will provide for greater flexibility in the length of public passenger service contracts, and allow for the inclusion of penalty provisions in those contracts.

Other amendments to TOPTA are sought to allow the chief executive to include principles of fare setting in service contracts, to enter into emergency service contracts if services are disrupted, and to remove the distinction between commercial and government-funded service contracts.

Amendments are also sought to a number of Acts administered by the portfolio in response to the introduction of the *Corporations Act 2001 (Cwlth).* The previous scheme of corporate law in Australia was based on a referral of state powers to the Commonwealth. A decision of the High Court held that this may be invalid, and that a Commonwealth Act was needed to enforce powers in Commonwealth courts.

Crown Law has reviewed the portfolio's legislation for consistency with the Commonwealth's new corporations law scheme, identifying entities that are subject to the Corporations Act, and determining the extent to which these entities are to be excluded its operation.

To give effect to the recommendations of the Crown Law review it is proposed to amend the following Acts:

Aurukun Associates Agreement Act 1975

Queensland Nickel Agreement Act 1970

Transport Infrastructure Act 1994

Transport Planning and Coordination Act 1994

It is stressed that these amendments are essentially technical in nature, and are not designed to alter the intended operation of these Acts.

ESTIMATED COSTS FOR GOVERNMENT IMPLEMENTATION

No costs are estimated for governmental implementation of these amendments.

RESULTS OF CONSULTATION

The proposed amendments have been supported.

CONSISTENCY WITH FUNDAMENTAL LEGISLATIVE PRINCIPLES

The proposed amendment clause 36, amending ss.47, 48 and 50 of the *Transport Operations (Marine Pollution) Act 1995*, breaches the fundamental principle of reversing the onus of proof in criminal proceedings, in that it applies despite the Criminal Code, ss.23 and 24. The affect of this is that defences which may ordinarily be available are excluded. Section 23 of the Criminal Code deals with a person's criminal responsibility for an act or omission that happens independently of the person's will or for an event which is accidental. The Criminal Code, s.24 deals with a person's criminal responsibility for an act or omission done under an honest and reasonable, but mistaken, belief in the state of things. The exclusion of these sections creates a regime of strict liability, whereby intent or mistake cannot be relied upon as a defence and the Crown would not need to establish intent as an element of the offence.

This amendment merely continues the exclusion of the operation of ss.23 and 24 of the Criminal Code, which was also the position before this amendment was drafted. The same scheme can be seen in the other offence provisions in the *Transport Operations (Marine Pollution) Act 1995*.

The Act is a part of a national scheme of legislation implementing the International Convention for the Prevention of Pollution from Ships (MARPOL). The convention similarly (at Regulation 9 of Annex I for oil) prohibits absolutely discharges of pollutants unless it is a permitted operational discharge or one resulting from damage to a ship or its equipment. The *Transport Operations (Marine Pollution) Act 1995* also provides for similar defences.

The abhorrence of ship sourced marine pollution is reflected in the convention and the large number of countries which have implemented MARPOL into their domestic legislation.

Queensland in many ways, with its proximity to the Great Barrier Reef and Torres Strait, has a particular interest in preventing ship sourced marine pollution and there is a deterrent effect if prosecutions are successful. The legislature has previously deemed that it is appropriate to exclude the operation of ss.23 and 24 of the Criminal Code in the offence provisions of the Act and it is consistent with the remainder of the Act that this scheme is continued.

NOTES ON CLAUSES

PART 1—PRELIMINARY

Clause 1 states that the short title of the Act is to be the *Transport Legislation Amendment Act 2002*.

Clause 2 states how and when this Act commences.

PART 2—AMENDMENT OF THE AURUKUN ASSOCIATES AGREEMENT ACT 1975

Clause 3 states that this part amends the *Aurukun Associates Agreement Act 1975*.

Clause 4 inserts a new section 7 that states that any reference to the Companies Act is to be read as a reference to the Corporations Act.

PART 3— AMENDMENT OF THE CENTRAL QUEENSLAND COAL ASSOCIATES AGREEMENT ACT 1968

Clause 5 states that this part amends the *Central Queensland Coal Associates Agreement Act 1968*.

Clause 6 to 19 contained in part 3 have the following effect:

The *Central Queensland Coal Associates Agreement Act 1968* is amended to authorise the making of an agreement between the parties (the State of Queensland and the Associates) amending the agreement made and subsequently amended pursuant to that Act, namely, to agree that BHP Queensland Coal Limited ARBN 010 506 073 may transfer its 8.50% interest in the operations carried on pursuant to the Agreement to BHP Queensland Coal Investments Pty Ltd ACN 098 876 825.

The amendment to the *Central Queensland Coal Associates Agreement Act 1968* stems from a written request by BHP Billiton Ltd. BHP Billiton Ltd is the ultimate parent of the proposed transferor BHP Queensland Coal Limited ARBN 010 506 073 and the proposed transferee BHP Queensland Coal Investments Pty Ltd ACN 098 876 825. In its request, BHP Billiton explains that the transferor, incorporated in the USA, is presently exposed to both the Australian and US tax jurisdictions. The proposed transferee is an Australian registered subsidiary of the transferor. The change does not affect the State's interest in the Agreement and the State's position is to acceed to BHP Billiton Ltd's request.

The amendment to the *Central Queensland Coal Associates Agreement Act 1968* will authorise the State making an agreement amending the agreement made and subsequently amended pursuant to the *Central Queensland Coal Associates Agreement Act 1968*.

PART 4—AMENDMENT OF THE QUEENSLAND NICKEL AGREEMENT ACT 1970

Clause 20 states that this part amends the *Queensland Nickel Agreement Act 1970*.

Clause 21 inserts a new section 8 that states that any reference to the Companies Act is to be read as a reference to the Corporations Act.

PART 5—AMENDMENT OF THE TRANSPORT INFRASTRUCTURE ACT 1994

Clause 22 states that this part amends the *Transport Infrastructure Act 1994*.

Clause 23 omits section 138 (Carrying Dangerous Goods). This provision was previously set to be omitted by section 30 of the *Transport Legislation Amendment Act 2001*(TLAA), but was not proclaimed into effect.

Clause 24 of this Bill inserts a new section 138A. This provision was previously set to be inserted as new section 138 by section 30 of the TLAA. This could not be proclaimed into effect as the omission of the existing section 138 has been delayed. Clause **30** of this Bill removes that uncommenced provision from the TLAA.

The new section 138A provides for situations where rail corridor land is interrupted by a state-controlled road. The minister may identify the area of land comprised by the intersection of the road corridor and rail corridor and declare it to be a common area. The declaration is recorded in any the lease which gives tenure of the adjacent rail corridor land to a railway manager. This will be a publicly available record and will make the arrangement clear for any subsequent dealings with the land.

A railway manager and the state's road authority may both use the common area, which may include level crossings and overpasses (with footings in the common area). A road authority is not liable for the railway's presence or operation because of its tenure over the land. Where a railway on a common area ceases being used the chief executive may require that the road be cleared of rail infrastructure.

Clause 25 inserts a new section 155A that gives any new Port Authorities established by Regulation the status of an exempt public authority and to remove them from the operation of the *Corporations Act 2001*.

Clause 26 amends section 215 (Boundary identification etc.) to extend the expiry date of that section by 12 months to 30 June 2003. An expired regulation-making power to extend this section is omitted.

Clause 27 amends section 218 (Expiry of division etc.) to extend the expiry date of that section by 12 months to 30 June 2003.

Clause 28 amends section 221 (Continuation of Transport Infrasructure (Railways) Act 1991, ss 49 and 51) to extend the expiry date of that section by 12 months to 30 June 2003. An expired regulation-making power to extend this section is omitted.

PART 6—AMENDMENT OF THE TRANSPORT LEGISLATION AMENDMENT ACT 2001

Clause 29 states that this part amends the *Transport Legislation Amendment Act 2001*.

Clause 30 omits the uncommenced section 30 (Replacement of s 138 (Carrying dangerous goods)). This provision is replaced in this Bill by clause **24**, with the renumbering of the inserted section from 138 to 138A, to allow for its proclamation into effect.

PART 7—AMENDMENT OF THE TRANSPORT OPERATIONS (MARINE POLLUTION) ACT 1995

Clause 31 states that this part amends the *Transport Operations (Marine Pollution) Act 1995*.

Clause 32 omits section 2 of the Act which is a commencement section, and is now no longer required.

Clause 33 inserts a new bullet point to allow for the recognition of Annex IV (Prevention of pollution by sewage) provisions of the *International Convention for the Prevention of Pollution from Ships* (MARPOL).

Clause 34 inserts a new section 7A to create a definition for measurement of the length overall of a ship for the entire TOMPA. Previously the definition was only required for Part 7 of the Act, but now it is relevant to the whole Act.

Clause 35 omits section 50 from the Act. Section 50 is no longer required due to the new provisions with respect to prevention of pollution by sewage.

Clause 36 replaces part 7 (Prevention of Pollution by Sewage) to provide for a scheme of marine sewage discharge. New sections 45 to 51C are inserted as discussed below.

New section 45 includes definitions relevant for this Part of the *Transport Operations (Marine Pollution) Act 1995*.

This section defines "culpable person". This definition was amended as part of amendments to the *Transport Operations (Marine Pollution) Act 1995* in 2001. Prior to the 2001 amendments the Act simply identified the ship owner or master responsible for a sewage discharge offence. This definition continues to hold the ship's owner and master criminally responsible, however it also replicates the existing scheme in the *Transport Operations (Marine Pollution) Act 1995* by including any other member of the ship's crew whose act or omission caused or contributed to the discharge criminally responsible for it.

The effect of the extension of the class or person who may be prosecuted for discharge offences will allow for the person actually responsible for causing a deliberate or negligent discharge to be accountable for it.

This section also defines the terms "declared ship", "discharge offence", "sewage holding device", and "sewage quality characteristics".

The term "declared ship" specifically applies to section 49 and the details for a "declared ship" will be discussed as part of that section.

A "discharge offence" simply identifies that it is an offence to discharge sewage under sections 47, 48 or 50 of the legislation. These sections will be discussed further in these notes.

The definition for a "sewage holding device" identifies that a holding device can include any container or receptacle capable of holding sewage prior to disposal. It also identifies that a holding device can also be a "treatment system" as long as the system is fitted with, or connected to, a container or receptacle to hold the sewage prior to disposal. This section specifically applies to a "declared ship" in section 49 of the legislation.

The definition for "sewage quality characteristics" identifies the standard to which a treatment system must be capable of achieving. The specific "sewage quality characteristics" will be detailed in the *Transport Operations (Marine Pollution) Regulation 1995*.

New section 46 allows for the recognition of the words and expressions used in Annex IV (Prevention of pollution by sewage) of the *International Convention for the Prevention and Pollution from Ships* (MARPOL). This will allow consistency in the use of terms with the Australian Maritime Safety Authority, Great Barrier Reef Marine Park Authority and New South Wales. However, this section also stipulates that if the definitions used in the *Transport Operations (Marine Pollution) Act 1995* and MARPOL are inconsistent then Act definitions will apply. This specifically allows for the use of specific terms for sewage management in Queensland coastal waters.

New section 47 is an offence provision prohibiting the discharge of untreated sewage into the nil discharge waters for untreated sewage. "Untreated sewage" is defined in the Schedule (Dictionary) of the legislation as sewage other than treated sewage. The nil discharge waters for untreated sewage will be detailed in the *Transport Operations (Marine Pollution) Regulation 1995*. The nil discharge waters are intended to circumvent potential environmental problems, health risks, and undesirable amenity impacts, in or adjacent to areas of high usage, habitation, food producers and environmentally sensitive areas. Particular areas intended to be included as nil discharge waters include marinas, boat harbours, canals, rivers, creeks, plus areas surrounding reefs, persons in the water, and aquaculture fisheries resource. Opportunity will exist for further consultation and the inclusion of additional sensitive areas when seeking amendments to the *Transport Operations (Marine Pollution) Regulation 1995*.

New section 48 is an offence provision prohibiting the discharge of treated sewage into the nil discharge waters for treated sewage. This clause is similar to section 47, however it applies to the discharge of treated sewage instead of untreated sewage. "Treated sewage" is defined in the Schedule (Dictionary) of the legislation as sewage that has been treated in a treatment system and meets the standards prescribed for a treatment system. The nil discharge waters for treated sewage will also be detailed in the *Transport Operations (Marine Pollution) Regulation 1995*.

New section 49 is an offence provision prohibiting a "declared ship" from operating in the nil discharge waters for a declared ship unless the declared ship is fitted with a sewage holding device. This section allows the setting of specific sewage management conditions for those ships with a high sewage generating capacity, are frequently on the water, and potentially frequent areas sensitive to a sewage discharge. The types or class of ships to be included as a declared ship will be detailed in the *Transport Operations (Marine Pollution) Regulation 1995*. This section also requires that unless the holding capacity of the "sewage holding device" on a declared ship is adequate to cover the person capacity of the ship and the duration of the ship's journey, then ship will not be recognised as being fitted with a sewage holding device. This requires the owner or master of a declared ship to ensure that the sewage-holding device is capable of containing all sewage generated on the ship during its journey. The nil discharge waters for a declared ship will be detailed in the *Transport Operations (Marine Pollution) Regulation 1995*.

New section 50 is an offence provision prohibiting the discharge of sewage into the nil discharge waters for a declared ship. Through the

stipulation of a sewage holding device in section 49 and detailing that it is an offence to discharge in the nil discharge waters for a declared ship, the owner or master of a declared ship must adopt appropriate onboard management measures to ensure there is no sewage discharge from their ship.

New section 51 provides that a ship declared under the *Transport Operations (Marine Pollution) Regulation 1995* must have onboard a "shipboard sewage management plan". It is an offence if there is no plan onboard the ship. Similar provisions exist in the *Transport Operations (Marine Pollution) Act 1995* whereby some ships must have a "shipboard oil pollution emergency plan" and a "shipboard waste management plan". This section allows for a ship owner or master whose ship has a high sewage generating capacity and/or frequently visits areas sensitive to a sewage discharge to detail how sewage will be managed onboard their ship. The minimum requirements for the plan will be prescribed in the *Transport Operations (Marine Pollution) Regulation 1995.*

New section 51A provides a defence to a prosecution for sewage discharge, if the discharge was necessary for the safety of a ship or saving life at sea, and if the discharge was caused due to damage, other than intentional damage, to the ship or its equipment and that all reasonable precautions were taken after the damage happened or the discharge was discovered to prevent or minimise the discharge. This section also defines intentional damage and includes a ship's master, owner or member of the crew being capable of causing intentional damage.

New section 51B is an offence provision that requires (if a treatment system is being used for the purposes of discharge outside the nil discharge waters for treated sewage but within the nil discharge waters for untreated sewage) a treatment system to be maintained in proper working order. It places the onus on the ship owner or master to maintain their treatment system in proper working order whilst in these nil discharge waters. This section identifies that an indicator on a treatment system that indicates the system is malfunctioning is evidence that the system is not in proper working order. Malfunctioning is defined in this section.

New section 51C provides that the sewage provisions contained within this Bill do not limit another law imposing more stringent requirements concerning sewage discharge into coastal waters. For example, the *Transport Infrastructure (Sunshine Coast Waterways) Management Plan 2000,* which commenced on the 1 January 2001, requires that all ships used for living aboard on the Noosa River and Pumicestone Passage to be fitted with a waste holding system. In this plan wastewater contained onboard

must be disposed at an onshore reception facility and a record kept of the wastewater disposal. Other laws will be considered on a case-by-case basis.

Clause 37 amends section 67 to expand the existing definition of a "reportable incident" in the *Transport Operations (Marine Pollution) Act 1995* to include the discharge of sewage into the nil discharge waters for untreated sewage (s47), treated sewage (s48), and for declared ships (s50). If a discharge of sewage was to occur in the specified nil discharge waters the ship's master must notify an authorised officer in the way detailed in the existing provisions of the *Transport Operations (Marine Pollution) Act 1995* and the *Transport Operations (Marine Pollution) Regulation 1995.*

Clause 38 inserts a new s 67A to require the owner of a ship over 35 metres in length to have an insurance policy in place sufficient to pay for the clean up costs of a pollutant discharged into Queensland's coastal waters, and to pay for the costs of salvage or removal of the ship from coastal waters if the ship is abandoned or wrecked. This amendment is complementary to amendments to the *Protection of the Sea (Civil Liability) Act 1981* (Cth). The purpose is to ensure that clean up and salvage costs incurred by the State are recoverable.

Clause 39 replaces section 133(2)(e) with a new subsection to allow for the making of regulations for the standard of treatment systems, rather than holding tanks as currently stated. This allows for the detailing of specific requirements in the *Transport Operations (Marine Pollution) Regulation 1995* for a treatment system.

Clause 40 amends the Dictionary in the Schedule to the *Transport Operations (Marine Pollution) Act 1995* to allow the removal of non-relevant definitions plus the addition of relevant definitions.

Definitions of "culpable person", "declared ship", "sewage holding device", and "sewage quality characteristics" are referred to section 45 of the Act. The following terms are defined in this schedule: "toilet", "treated sewage", "treatment system", and "untreated sewage".

"Toilet" identifies that a toilet can also include a urinal.

"Treated sewage" is defined as sewage that has been treated in a treatment system and meets the "sewage quality characteristics" prescribed under the *Transport Operations (Marine Pollution) Regulation 1995* for treated sewage.

The definition of "treatment system" provides that the system must be capable of reducing the levels of sewage quality characteristics in the

sewage to a prescribed under the *Transport Operations (Marine Pollution) Regulation 1995* for treated sewage. In addition the setting of specific operational or maintenance standards for what a treatment system must be capable of achieving can also be stipulated in the *Transport Operations (Marine Pollution) Regulation 1995*.

"Untreated sewage" is defined as all sewage other than treated sewage. For sewage to be recognised as treated sewage is must have met all of the requirements for treated sewage and has passed through a treatment system. If sewage is only partially treated or only meets some of the requirements of a treatment system it will be classified as untreated sewage.

The definition of "sewage" in the Schedule (Dictionary) has been amended to identify that sewage has the meaning given by the *International Convention for the Prevention and Pollution from Ships* (MARPOL) and includes human faecal wastes. This allows greater emphasis on the prevention and minimisation of human faeces being discharged in the prescribed nil discharge waters for untreated sewage (s47), treated sewage (s48), and for declared ships (s49).

PART 8—AMENDMENT OF THE TRANSPORT OPERATIONS (MARINE SAFETY) ACT 1994

Clause 41 states that this part amends the *Transport Operations (Marine Safety) Act 1994*.

Clause 42 deletes section 14 to allow for the reporting and investigation of marine incidents occurring in Queensland's coastal waters. The section being deleted previously excluded the operation of this Act where a marine incident was required to be reported under a Commonwealth Act.

The Commonwealth requires incidents involving certain ships to be reported, but it does not have jurisdiction for ships on intrastate voyages or pleasure craft or most fishing vessels. Many marine incidents involve ships over which the commonwealth has jurisdiction and those over which the State has jurisdiction. The drafting of section 14 was too wide because it meant that the State could not investigate any incident involving a ship over which the Commonwealth had jurisdiction, even if a vessel over which the State had jurisdiction was also involved.

The current section 12 of the Act has a similar effect but does not exclude the operation of the whole Act but only those parts that are inconsistent with Commonwealth legislation. This is the general position at law notwithstanding section 12. Section 14 is considered too wide in its application and is unnecessary.

Clause 43 inserts a new section 107A to provide that the master and owner of a ship that damages an aid to navigation are jointly and severally liable for the repair or reinstatement of the aid to navigation, and that the expense incurred is recoverable as a debt owing to the State. The Act allowed the prosecution of a person who damaged an aid to navigation but did not provide for the repair or reinstatement to be paid by any particular person. This was left to common law principles. The amendment directs the recovery of these costs to the persons who are most likely to have insurance cover or capacity to pay, and who are most likely to be able to supervise operations to prevent damage to aids to navigation.

PART 9—AMENDMENT OF THE TRANSPORT OPERATIONS (PASSENGER TRANSPORT) ACT 1994

Clause 44 states that this part amends the *Transport Operations (Passenger Transport) Act 1994*.

Clause 45 omits section 38A to remove the provisions for temporary service contracts that are no longer required because of the introduction of emergency service contracts (refer clause 35) and also because of the amendment enabling the terms of service contract to vary up to a maximum of seven years (refer clause 48).

Clause 46 amends section 38B (chief executive may enter into service contracts) to remove requirements for entering into temporary service contracts because such contracts will no longer be issued. Refer to clauses 45 and 53.

Clause 47 amends section 41 (Other matters to be included in service contracts) to enable a service contract to establish principles for fare collection. This might include, but is not limited to specifying ticketing software to be used by the contract holder. In addition, this amendment identifies that a service contract might require the holder of a contract to

charge fares determined by the chief executive (and which may vary from time to time).

Clause 48 amends section 44 (Terms of service contracts) to allow that the term of a service contract may be specified for any length up to seven years.

Clause 49 amends section 45 (Conditions of service contracts) to enable service contracts to include penalties for breaching performance standards under the contract. This amendment is to provide for penalties of up to four penalty units. The chief executive's powers to amend, suspend or cancel a service contract under this Act, or to seek redress under common law, will not be affected.

Clause 50 amends section 46 (Review of a contract holder's performance) to replace the reference to a temporary service contract with a reference to an emergency service contract in line with changes proposed by clauses 45 and 53.

Clause 51 amends section 47 (Breach of service contracts) to allow the chief executive to move immediately to amend, suspend or cancel a service contract where the breach of that contract amounts to a full or partial withdrawal of services. It is also proposed to enable the chief executive to act if there is a reasonable belief that such a breach of a service contract is imminent. This is required to help ensure that the department can act promptly to maintain essential services.

This clause also sets forth the conditions in which a person may seek compensation from a court following the chief executive's exercise of these powers. A regulation may be made to prescribe additional matters that may, or must be taken into account by a court in deciding whether it is just to order compensation.

The amendment, suspension or cancellation of service contracts under this Act is an excluded matter for the *Corporations Act 2001 (Cwlth)*, section 5F, which limits the ability to deal with property during administration.

Clause 52 inserts a new section 47A to state that a service contract, other than an emergency service contract, may include a clause giving an option for renewal. The renewed contract may not itself be renewed under this section. However, this section does not restrict the holder of a service contract that has been renewed from any entitlement granted to an existing operator to make the first offer for a new contract.

This section operates despite section 44(1) which states that the maximum term of a service contract is not more than 7 years. This means that, for example, a a service contract which has a term of 7 years and which contains an option for renewal under section 47A can be renewed for up to period of up to another maximum 7 years.

An option for renewal is void should the chief executive issue to a contract holder a notice that the holder's performance under the contract has been unsatisfactory.

Clause 53 inserts a new division 4 for emergency service contracts. Emergency service contracts can be used to establish a public passenger service, to ensure the continuity of a public passenger service, and to allow the provision of a public passenger service during an interim period while the process for issue of a service contract is being followed. In particular, an emergency service contract will enable the chief executive to quickly ensure the ongoing provision of a public passenger service in the event that an existing contract holder is no longer able or willing to provide the service.

Offers for an emergency service contract can be invited in any way that the chief executive considers appropriate. However the chief executive is not required to invite any offer if the chief executive considers that the emergency service contract is necessary to ensure the ongoing provision of a public passenger service that is already being be provided or which may have been previously provided but had ceased.

The term of an emergency service is determined by the chief executive and be up to a maximum of 2 years. However if the chief executive did not invite offers for the emergency service contract then the contract term can be no longer than 6 months.

Clause 54 omits section 50 (Commercial and government funded service contracts). Commercial service contracts and government funded service contracts were given definitions under this section. Each is a type of service contract. However, there is no need in the legislation to distinguish between these types of service contracts.

Clause 55 amends section 54 (Special condition for commercial service contract for restricted school service). References in the legislation to commercial service contracts are being removed. It is not necessary to distinguish commercial service contracts as a particular type of service contract. This section will now refer to "service contracts" rather than "commercial service contract".

Clause 56 amends section 62 (Offer of new service contract). Prior to this amendment, this section did not apply to "the holder of a service contract that states this section does not apply to it or to a prescribed school service contract". This amendment provides that in addition to the above, that section 62 will not apply to the holder of an emergency service contract (refer clause 53) or to a service contract in relation to which an option to renew may be exercised (refer clause 52). To clarify, under section 47A a service contract can give the contract holder the right to renew the contract for 1 further term only. Section 62 will not apply to a contract that has this renewal option open. A contract that is renewed by option under section 47A cannot be renewed again by option. However in this latter circumstance, section 62 will apply.

Clauses 57-58 amend sections 62AC (Entitlement of a satisfactorily performing existing operator under a service contract) and 62AD (First opportunity to offer may be given to existing operator of school services under a service contract or transitional provision). These amendments state these sections, which each provide an entitlement to existing operators to have the first offer for a prescribed school service contract, do not apply to the holder of an emergency service contract. Refer clause 53.

Clause 59 omits Chapter 6, part 2, Division 3 (Entering into temporary service contract to ensure continuity of service). Provisions for temporary service contracts are being removed. Temporary service contracts will no longer be required because of the introduction of emergency service contracts (refer clause 53) and also because of the amendment enabling the terms of service contract to vary up to a maximum of seven years (refer clause 48).

Clause 60 replaces chapter 13, part I. Prior to this amendment, this part provided for transitional provisions that expired on 7 November 2000. The new part makes transitional provisions for temporary service contracts that were entered into prior to making of the amendments in this Bill.

Clause 61 amends schedule 2 (Reviewable decisions) to identify decisions made under sections 47(1) or (3), and section 47A(3).

Clause 62 amends schedule 3 (Dictionary). Definitions for "commercial service contract", "government funded service contract" and "temporary service contract" are omitted. Refer clauses 27 and 36. Also a definition for "reasonably believes" is given.

PART 10—AMENDMENT OF THE TRANSPORT PLANNING AND COORDINATION ACT 1994

Clause 63 states that this part amends the *Transport Planning and Coordination Act 1994*.

Clause 64 inserts a new section 10A to exclude the South East Queensland Transit Authority (SEQTA) from the operation of the Corporations law.

Clause 65 inserts a new section 16A to exclude the SEQTA board from the operation of the Corporations law.

PART 11—REPEALS

Clause 66 details repealed legislation.