

TRANSPORT INFRASTRUCTURE AND ANOTHER ACT AMENDMENT BILL 2003

EXPLANATORY NOTES

GENERAL OUTLINE

OBJECTIVES OF THE LEGISLATION

The objectives of the *Transport Infrastructure and Another Act Amendment Bill 2003* are—

- to amend the *Transport Infrastructure Act 1994* for various reasons; and
- to make minor amendments to the *Transport Operations (Passenger Transport) Act 1994*.

REASONS FOR THE BILL

The reasons for amending the *Transport Infrastructure Act 1994* include clarifying the role of the chief executive in the regulation of rail safety as a result of the recommendations of the Inquiry into the Glenbrook New South Wales rail disaster in 1999 and OR's Access Undertaking for services declared under the *Queensland Competition Authority Act 1997*.

The amendments provide statutory authority for the chief executive to carry out the chief executive's present audit and inspection functions and confer additional powers on the chief executive for railway managers and railway operators. The amendments include—

- requiring that all safety management systems are reviewed on an annual basis and amendments, generally speaking, are approved by the chief executive;
- making decisions about terms of access agreements relating to safety if parties cannot agree;
- giving safety directions to do or not to do a particular act;
- detailing procedures for disciplinary action.

The Act is also to be amended to provide for priority for passenger services over other rail services.

ESTIMATED COSTS FOR GOVERNMENT IMPLEMENTATION

No new costs are anticipated for government from the amendments. However, the amendments do increase the regulatory role to be carried out by Queensland Transport.

RESULTS OF CONSULTATION

The Bill is the result of consultation with relevant Government Agencies and other accredited persons and other persons in the railway industry and acceptable compromises made. For example, the interrelationship of the *Workplace Health and Safety Act 1995* with a rail safety direction was raised during consultation by QR and has been dealt with under proposed section 91D to the satisfaction of all relevant Government Agencies including QR. Another example is Queensland Transport's needs to secure existing and future passenger service train path requirements within the rail network—see proposed sections 152C and 152D.

CONSISTENCY WITH FUNDAMENTAL LEGISLATIVE PRINCIPLES

The principles relating to legislation that underlie a parliamentary democracy based on the rule of law are the fundamental legislative principles. Examples of those principles are set out in the *Legislative Standards Act 1992*, section 4(3) to (5).

Some aspects of the Bill impact on the fundamental legislative principles relating to the rights and liberties of individuals. These aspects and their impact are as follows:

1. Proposed section 80A (Part does not create civil cause of action)

The *Transport Infrastructure Act 1994* is proposed to be amended to provide that a breach of part 4 of the Act relating to accreditation, safety management systems, safety directions and audits does not create a breach of statutory duty. This is a complex area of the law. Sometimes courts have found that if a person breaches an Act that the breach is the basis of an action for compensation without proof of negligence or breach of contract. Traditionally, the courts find the statutory duties in health and safety

legislation. But the courts have expressed a concern that the issue is left for the courts to decide Parliament's intention rather than the matter being dealt with expressly in the legislation.

Section 80A states that no breach of statutory duty is created. Accordingly an injured third party would need to prove a breach of negligence or contract and subsequent damages before compensation is paid. The provision is not a breach of the *Legislative Standards Act 1992*, s.4(3)(h), as it does not provide an immunity but expressly states that a new tort is not created.

2. Increase in penalty units

The *Transport Infrastructure Act 1994* is amended to increase the maximum penalty units, including from 160 penalty units to 500 penalty units for managing or operating a railway without accreditation and increasing the maximum penalty from 40 penalty units to 200 penalty units for not complying with conditions of accreditation. Other amendments capture significant safety concepts that were previously covered by accreditation conditions. Breaching these conditions currently attract a maximum penalty of only 40 penalty units. The Bill proposes that they be separate provisions with revised maximum penalties, for example, failure to have the financial capacity or public liability insurance to meet accident liabilities has been increased to 400 penalty units.

The following clauses or proposed sections of the Bill increase penalty units significantly as stated—

- 500 penalty units—clause 9 increases penalties for section 81(1) and (2)
- 400 penalty units—see proposed section 88E(1) and (2)
- 200 penalty units—see proposed sections 88B(1), 88F(2), 90D(3), 100S(3), 101R(1), 101S(1), 101X(1) and 102(3)
- 150 penalty units—proposed section 91A(3) and 91B(2)
- 100 penalty units—proposed section 88C(2), 100R(3), 100S(4), 100T(3), 101T(1) and 101U.

While this may be interpreted as infringing the *Legislative Standards Act 1992*, s.4(2)(a), a penalty needs to be a sufficient sanction for a breach and the existing penalties are not. Penalty amounts under similar interstate legislation and similar safety regimes in Queensland, including, for example, the maritime area were used as a benchmark. Therefore, proposed sanctions are considered justifiable especially when breaches of the Act

may result in loss of life, considerable injury, significant property losses and damage to railway infrastructure. Penalties for rail safety offences under the Act have not been amended since introduction in 1994.

3. Proposed sections 101P and 101Q

The *Transport Infrastructure Act 1994* is proposed to be amended to provide for a rail safety officer to be able to request an accredited person to make available for inspection a document required to be kept by the accredited person under the relevant approved safety management system or prepared under that system. A person must comply with the requirement unless the person has a reasonable excuse. The amendment expressly provides that it is not a reasonable excuse for a person to not comply with the requirement if it might tend to incriminate the person. This is a departure from the *Legislation Standards Act 1992*, s.4(3)(f), regarding appropriate protection against self incrimination.

However, the requirement needs to be viewed in the overall scheme of the Act setting up a co-regulation system. As such, accredited persons develop their own safety management systems and are required to implement and continually improve them. Without access to documents forming part of the system, rail safety officers would not be able to audit the system and find hidden faults and problems. It is considered that this departure is justified because of the need to uncover breaches of the Act and thereby prevent loss of life, considerable injury, significant property losses and damage to railway infrastructure.

4. Proposed sections 152A and 152B

The *Transport Infrastructure Act 1994* is proposed to be amended to limit the civil liability of the chief executive and a rail safety officer acting under certain rail safety provisions of the Act as well as a person who helps in an accident or emergency situation. This may be seen as a departure from the *Legislation Standards Act 1992*, s.4(3)(h), regarding the principle of not conferring immunity from proceeding or prosecution without adequate justification.

However, the immunity in the case of the chief executive or a rail safety officer is limited to where they have acted honestly and without negligence. There is also a separate compensation system when a rail safety officer damages things when exercising or purporting to exercise a power. This limited form of immunity is considered justifiable on the basis that any liability not attaching to the chief executive or authorised officer attaches

instead to the state. The ability to sue for actions done honestly and without negligence may inhibit QT officers in the performance of their duties.

In the case of people helping in accidents or emergencies, the immunity protects good samaritans whose help is given honestly and without negligence or a fee or charge. This limited form of immunity is considered justifiable on the basis of the public policy of encouraging and protecting good samaritans and because any liability not attaching to a good samaritans attaches instead to the State.

NOTES ON CLAUSES

PART 1—PRELIMINARY

Clause 1 provides for the short title of the Act to be the *Transport Infrastructure and Another Act Amendment Act 2003*.

Clause 2 states the Act is to commence by proclamation.

PART 2—AMENDMENT OF THE TRANSPORT INFRASTRUCTURE ACT 1994

Clause 3 indicates the amendments in part 2 amend the *Transport Infrastructure Act 1994*.

Clause 4 inserts a new subparagraph (2)(d)(ii) that states that one of the objectives of the Act is to provide for adequate levels of rail safety. It also renumbers the subparagraphs.

Clause 5 amends the title of the chapter to reflect that the chapter is not limited to “rail transport infrastructure”, which is a defined term in the Act.

Clause 6 amends section 74, to increase the focus on rail safety through the accreditation provisions in the chapter.

Clause 7 amends section 75 which states the scope of chapter 6, by clarifying that the chapter also applies to “other rail infrastructure” which is a defined term in the Act that includes rail freight centres or depots, rail maintenance depots, rail workshops and rollingstock.

The existing exclusion of a mining railway from the scope of the chapter is also amended. The new exclusion applies if the mining railway is not connected to another railway used to transport passengers or freight. The concept of the other railway being for “reward” has been removed to ensure that all railways operate safely even ones where a fee is not charged as part of ensuring the whole network operates safely.

Clause 8 inserts a division heading in the part as the part is now to consist of divisions and sets out the purpose of the part in proposed section 80 as including providing for an accreditation system for railway managers and railway operators.

Proposed section 80A is to clarify that no new civil liability is created by the inclusion of the part. The provision is discussed earlier under the heading of fundamental legislative principles.

Proposed section 80B inserts new definitions for the part for the terms accepted representations, approved safety management system (but see proposed section 80C), audit program, certificate of accreditation, disciplinary action, dispute matter, employee, imposed condition, interim minor amendment, proposed action, railway, regulation condition, representation period, safety direction, show cause notice, show cause period and suspend.

Proposed section 80C defines what is meant by “approved safety management system” for railway managers and railway operators, so that each time a new system or amendment is approved it becomes the approved safety management system for the railway manager or railway operator.

Clause 8 also inserts a new division heading for division 2, namely Accreditation of railway managers and railway operators.

Clause 9 amends the maximum penalties for offences in section 81 to reflect the seriousness of the offences and to bring them into the same range for maximum penalties for similar types of offences in other jurisdictions.

Clause 10 amends section 82 to require an applicant to use an approved form when applying for accreditation to ensure that the appropriate information is provided as early as possible in the application process.

Clause 11 amends section 84 at subsection (7) to require the chief executive to issue a certificate of accreditation to each successful applicant for accreditation. To date, a form of certificate has been provided on request and it has been decided to formalise the document.

Clause 12 amends section 84A of the Act to incorporate provisions currently in the *Transport Infrastructure (Rail) Regulation 1996* which provide that an accredited person must pay the annual accreditation levy by a date notified by the chief executive. There is no change in how the existing levy is applied or the quantum. The levy covers some of the costs of administering the accreditation system.

Clause 13 amends section 85 to clarify that conditions to which an accreditation is subject are those conditions that are imposed by the chief executive as appropriate conditions and regulation conditions. Matters are detailed in the section as matters about which the chief executive may impose conditions as part of the accreditation.

The approved safety management system with which the accredited person must comply is included as a matter that may be included as a condition of all accreditations. The maximum penalty for not complying with an imposed condition is increased to reflect the seriousness of the offence and to bring it into the same range for maximum penalties for similar types of offences in other jurisdictions.

Clause 14 omits existing section 86 and inserts a new provision that allows a regulation to prescribe conditions of accreditation that accredited persons must comply with. This provides a mechanism for new safety initiatives to be made relevant to all accredited persons through a new condition of accreditation where required. The provision also states that imposed conditions that are inconsistent with regulation conditions are subject to the regulation conditions.

Clause 14 also includes a proposed section 86A for the surrender of an accreditation, previously dealt with in section 93. It also makes it an offence if the certificate of accreditation is not returned to the chief executive within 14 days of the surrender of accreditation.

Clause 15 amends the heading of section 88 and amends the reference to conditions so that they are “imposed conditions”. Section 88 is amended to provide for an application to amend an approved safety management system to be made under section 88A instead of section 88 as it was considered that changes to approved safety management systems should be specifically dealt with.

Clause 16 omits sections 89 to 93.

Clause 17 rennumbers section 93A as section 93H.

Clause 18 inserts a new section 88A and new divisions 3 to 8 in chapter 6, part 4.

Proposed section 88A sets out the process for an accredited person to apply to the chief executive for approval of a proposed amendment of an approved safety management system for a railway or operation of rollingstock. As stated earlier, it was considered that changes to approved safety management systems should be specifically dealt with. The section sets out the principles the chief executive must consider when assessing whether to approve or refuse a proposed amendment of an approved safety management system, and how the chief executive notifies the accredited person about the decision.

Division 3—Obligations of accredited persons

Proposed section 88B requires an accredited person to comply with their approved safety management system for a railway. It is an offence for non-compliance unless the person has a reasonable excuse. However, it is a reasonable excuse if the person was complying with the system as amended by an interim minor amendment (a defined term in proposed section 80B) or the person was complying with a safety direction.

Proposed section 88C, as part of the co-regulation system, requires an accredited person to review the appropriateness of their approved safety management system for a railway on an annual basis including taking into account any safety directions given since the last approval.

The accredited person must give the chief executive a certificate each year advising that they have reviewed the appropriateness of their approved safety management system and advising of any differences between the approved safety management system for the current year and the proposed safety management system for the next year. It is an offence if the person does not supply the certificate with the required information at least 28 days before the anniversary of the accreditation, unless there is a reasonable excuse.

Proposed section 88D requires the accredited person to apply to the chief executive for approval of the proposed safety management system for the next year as mentioned in section 88C if there are differences. The

section sets out the actions the chief executive must do or consider when assessing whether to approve or refuse the proposed safety management system, including how the chief executive's decision has to be advised to the accredited person.

Proposed section 88E requires the accredited person to have, at all times, the financial capacity or public risk insurance arrangements to meet reasonable potential accident liabilities for the railway as applicable. Currently, the Act provides for this to be included as an accreditation condition. However, it is considered that this is an important aspect of the accreditation and needs to be set out in the Act. It is an offence not to have the financial capacity or public risk insurance and the penalty units have increased for this offence.

The chief executive is able to require the accredited person to satisfy the chief executive at any time that section 88E is being complied with and the chief executive is able to immediately suspend an accreditation, under section 93D, if an accredited person does not have the required financial capacity or public risk insurance.

Proposed section 88F requires a railway manager and railway operator to give notice to the chief executive within 14 days of an agreement required under the railway operator's accreditation to have access to a railway manager's railway is cancelled or suspended. It is an offence not to give the notice.

***Division 4 —Disputes about or under agreements for access to rail
transport infrastructure relating to rail safety'***

Proposed section 89 applies if parties to a proposed agreement about access to rail infrastructure are unable to agree about a safety matter.

The Queensland Competition Authority may ask the chief executive to make a decision about a safety matter, if the matter has arisen because of an access undertaking under the *Queensland Competition Authority Act 1997* or if there is no access undertaking and access is being sought under the that Act generally.

Parties to access negotiations outside the *Queensland Competition Authority Act 1997* may also ask the chief executive for a decision about a safety matter. Where the Queensland Competition Authority asks for a decision about a safety matter from the chief executive, the Queensland

Competition Authority must not deal with the safety matter inconsistently with the chief executive's decision. In other cases the decision is only binding on the parties if the parties agreed to be bound by the decision.

If the chief executive makes a decision, the chief executive when exercising another power under the Act, must take the decision into account if it is relevant. The chief executive may produce guidelines on how a decision may be made in disputes under access agreements and must make the guidelines publicly available.

Proposed section 90 provides that if an accredited person gives another party to an agreement for access to rail transport infrastructure a notice concerning a rail safety dispute, the accredited person may also notify the chief executive the details of the dispute.

An agreement for access may be an agreement under section 151 or an access agreement under the *Queensland Competition Authority Act 1997*. If the dispute is resolved, each accredited person who is a party to the access agreement must notify the chief executive in writing within 14 days, the details of the resolution. It is an offence to fail to notify the chief executive.

Proposed section 90A applies if the chief executive has been advised of a dispute under section 90 and a party to the dispute asks the chief executive to give a safety direction or the chief executive considers it may be appropriate the chief executive gives a safety direction.

The chief executive must obtain information about the disputed matter. In doing so the chief executive may consult with each accredited person who is party to the agreement and other persons including the Queensland Competition Authority. The chief executive may ask an accredited person or another person who may be able to assist in the matter, to attend a meeting. It is an offence for an accredited person given a notice about a meeting to not attend the meeting.

Proposed section 90B provides for when the chief executive considers sufficient information has been gathered in relation to the disputed matter and the chief executive can make a safety decision, the chief executive must give each party to the agreement and the Queensland Competition Authority a proposed safety direction. The grounds for the decision must be given including the facts and circumstances forming the basis for the grounds.

Each person given a proposed safety direction must be given at least 14 days to show why the proposed safety direction should not be given to the accredited person.

Proposed section 90C provides that each person given a proposed safety direction may make written submissions about the proposed safety direction.

Proposed section 90D provides that the chief executive, after considering all written representations received under section 90C, may issue the safety direction to one or more of the accredited persons previously given a proposed safety direction under section 90B.

The safety direction must set out the reason for the direction and by when the direction has to be complied with. The person must be advised, by an information notice, how to seek a review of the decision and how to appeal against a reviewed decision.

Unless the person has a reasonable excuse, it is an offence for a person given a safety direction, not to comply with the direction.

Division 5—Safety directions by rail safety officers

Proposed section 91 provides that this division applies if a rail safety officer believes it is necessary to issue a written safety direction to an accredited person, or a person who appears to be an employee of the accredited person. The basis on which a safety direction may be given is to maintain an adequate level of safety in the management of a railway or the operation of rollingstock on a railway or to prevent a situation that is unsafe.

Proposed section 91A provides that a rail safety officer may give a safety direction to do nor not to do an act stated in the direction. The proposed section also states that the safety direction must state the time for compliance which must be reasonable. It is an offence not to comply with the direction.

Proposed section 91B allows a direction to be given orally by the rail safety officer if it is not possible or reasonable to give a written direction. However, within 5 days of the rail safety officer orally giving the direction, the rail safety officer must also give the person a written direction dealing with the oral direction. It is an offence not to comply with the direction.

Proposed section 91C requires the written direction given under sections 91A or 91B to state the reason for the direction. An information notice must accompany the direction, advising how to seek a review of the

decision to issue the direction and how to appeal against a reviewed decision.

If it is not possible or reasonable to give reasons in the written direction or to attach an information notice, the rail safety officer should do so as soon as it is reasonably practicable.

Proposed section 91D establishes the relationship between a safety direction and a person's obligations under the *Workplace Health and Safety Act 1995* by providing it is a defence for a person given a safety direction if the person does not comply with the safety direction as part of the person complying with the *Workplace Health and Safety Act 1995*.

Division 6—Audit regime

Proposed section 92 requires the chief executive to prepare an annual program of audits to inspect the activities of railway managers and railway operators, to ensure that audits are undertaken on a systematic and objective basis.

Proposed section 92A provides for the chief executive to be able to inspect an accredited person under an audit program or if the chief executive believes that an aspect of safety needs to be considered or the accredited person is not complying with this Act.

Proposed section 92B allows the chief executive when inspecting an accredited person, to require the accredited person to supply information or documents relevant to the inspection. The notice must specify by when the requirement has to be complied with and warn that unless the accredited person has a reasonable excuse, non-compliance with the notice is an offence.

Proposed section 92C creates an offence if the person does not comply with the requirements of a notice under proposed section 92B. It is a reasonable excuse to not comply with the requirements of the notice if complying might tend to incriminate the person or the information or document is not relevant.

Division 7—Disciplinary action against accredited persons

Proposed section 93 provides that an audit program, an inspection, a report of a serious incident or an investigation of an incident may uncover grounds for the chief executive to take disciplinary action about an accredited person's accreditation. However, the chief executive may consider other matters as a ground to take action.

Proposed section 93A sets out the grounds to take disciplinary action on an accredited person's accreditation. The grounds include that the accredited person contravened a provision of chapter 6, part 4, 5A or 6 or chapter 8AA. The grounds apply whether or not—

- a penalty is provided for the provision that the accredited person contravened
- a proceeding for a railway offence or another action under this Act is started against the person
- the person is convicted of a railway offence
- another action is taken in relation to the person under this Act
- the accredited person failed to comply with a condition of the accreditation.

Proposed section 93B provides that there is to be a notice given to the person to begin the show cause process for varying, suspending or cancelling accreditation including the information to be contained in the show cause notice. The show cause notice is required to contain important information to let the accredited person know what is happening and why.

Proposed section 93C requires the chief executive to consider written representations from the person given the show cause notice under section 93B if received by the date in the notice.

Proposed section 93D provides a process where the chief executive may immediately suspend an accreditation to ensure public safety or prevent damage to the railway or where the accredited person does not have the financial capacity or public risk insurance.

A notice stating the reasons for the decision, a show cause notice and an information notice advising how to seek a review of the decision must be provided. The suspension continues until the show cause notice is dealt with.

Proposed section 93E provides the process to complete the disciplinary action if there are no valid representations received subsequent to the issue of the show cause notice or the chief executive after considering all valid representations still believes there are grounds to take disciplinary action.

If disciplinary action is to be taken, the chief executive must immediately give a written notice to the accredited person advising the decision together with the reasons for the decision. The person must be advised, by an information notice, how to appeal against a decision.

Proposed section 93F sets out the process if, after considering all accepted representations, the chief executive decides there are no grounds for disciplinary action under 93E. The chief executive must give the accredited person a signed notice stating the chief executive does not intend to take action under section 93E and the matter is completed.

Division 8—Information about safety issues

Proposed section 93G provides for the chief executive to be able to publish safety bulletins about rail safety issues. However, if it is possible, from the information contained in a proposed safety bulletin, to identify an accredited person, the chief executive must consult with the accredited person. If a proposed safety bulletin contains information in which a person has a proprietary interest, the chief executive must consult with that person.

Clause 19 omits section 101. This section with amendments is re-inserted by clause 21 as section 101X.

Clause 20 inserts new part 5A (Rail Safety Officers) to provide a regime for qualified officers to enforce the provisions of the Act, as it is proposed to amend it.

Division 1—Definitions

Proposed section 100A inserts the definitions for the section, namely enter, place, public place and railway workplace.

Division 2—Rail safety officers including provisions about appointment

Proposed section 100B establishes that a police officer is a rail safety officer and specifies the chief executive may appoint other persons as rail safety officers. However, before appointing a person, the chief executive must be satisfied the person has the necessary expertise or experience. Sections 100C, 100D and 100E do not apply to a police officer.

Proposed section 100C specifies the different ways that conditions can apply to the appointment of a rail safety officer and how the rail safety officer's powers may be limited.

Proposed section 100D requires the chief executive to issue an identity card to each rail safety officer and details what the identity card is to contain.

Proposed section 100E details the circumstances when a rail safety officer must show the identity card to ensure that persons with whom the officer deals knows he or she is a rail safety officer.

Proposed section 100F identifies ways in which a rail safety officer ceases to hold office.

Proposed section 100G specifies how a rail safety officer resigns office.

Proposed section 100H requires a person to return the identity cards if they cease to be a rail safety officer. Unless there is a reasonable excuse, it is an offence if the card is not returned within 21 days of ceasing office.

Division 3—Entry to places by rail safety officers

Proposed section 100I provides that a rail safety officer may enter a place if the occupier consents to the entry, the place is a public place that is open to the public, the entry is authorised by a warrant or the place is a railway workplace in circumstances specified in the proposed section.

However, a rail safety officer may not enter someone's home even if it is part of a railway workplace, such as a caretaker's caravan.

A rail safety officer may enter a railway workplace which is not open if entry is urgently required to investigate the circumstances of a serious incident which is a defined term under the current Act.

Proposed section 100J sets out the requirements of a rail safety officer in seeking the consent of the occupier of a place when seeking entry to that place. The section also provides that the rail safety officer may ask for an acknowledgement of the occupier's consent and specifies what the acknowledgment must contain.

Proposed section 100K sets out the requirement of a rail safety officer who plans to enter a railway workplace without owner's consent or a warrant. The rail safety officer must tell the occupier the purpose of the entry and that the occupier is not required to consent.

Proposed section 100L provides that a rail safety officer may apply to a Magistrate for a warrant to enter a place. The section also sets out the requirements of the application for the warrant.

Proposed section 100M specifies when a magistrate can issue a warrant together with the formal requirements of the warrant.

Proposed section 100N allows warrant applications to be made other than in person in special or urgent circumstances. This section outlines procedures to be followed by the rail safety officer and the Magistrate in issuing warrants in special or urgent circumstances.

Proposed section 100O specifies the obligations of a rail safety officer intending to enter a place under a warrant if a person is there.

Division 4—General powers of rail safety officers

Proposed section 100P provides the general powers and obligations of a rail safety officer when entry is under division 3.

Proposed section 100Q provides the general powers and obligations of a rail safety officer when entering rollingstock or a vehicle as an adjunct to requirements under section 100P.

Proposed section 100R requires the occupier of a place or a person at the place to give reasonable help to a rail safety officer or give information to help the rail safety officer exercising a power under this Chapter. Non-compliance with a request for help or information is an offence unless the person has a reasonable excuse. For an individual, it is a reasonable excuse not to supply the information requested, if complying with the request might tend to incriminate the person.

Proposed section 100S provides for a rail safety officer to stop rollingstock or a vehicle that is to be entered if the rollingstock or vehicle is moving or about to be moved. The rollingstock or vehicle may be requested to be moved to another place. The train controller must be consulted for safety reasons and there must be minimal disruption to other train operations. It is an offence for the person in control of the rollingstock or vehicle, to not comply with the rail safety officer's request.

Proposed section 100T requires a person in control of the rollingstock or vehicle, if requested, to give reasonable help to the rail safety officer to enter or open the rollingstock or vehicle. The section also requires a person in control of the rollingstock or vehicle, if requested, to bring the rollingstock or vehicle to a stated place and remain in control of the rollingstock or vehicle for a reasonable time, to allow the rail safety officer to exercise a power under this part. Unless the person has a reasonable excuse, non-compliance with the request is an offence.

Division 5—Seizure

Proposed section 101 sets out the circumstances where evidence may be seized about offences against the Act where entry is without consent or warrant. Evidence may only be seized if it would prevent it being hidden, lost or used to commit another railway offence.

Proposed section 101A sets out where evidence may be seized where entry is with consent or warrant. If the rail safety officer reasonably believes a thing in the place is evidence of an offence, the rail safety officer may seize the thing. However, the seizure has to be consistent with the purpose of the entry. The rail safety officer may seize other things at the place if the things may be evidence of an offence or seizure is necessary to prevent the thing being destroyed or used to commit an offence.

Proposed section 101B outlines the ways a rail safety officer may seize a thing. This includes leaving the thing at the place but taking reasonable action to restrict access to it.

Proposed section 101C makes it an offence, where a rail safety officer has restricted access to a seized thing or makes seized equipment inoperable, for a person to tamper with the thing or equipment.

Proposed section 101D provides for a rail safety officer to request the person in control of the thing to bring the thing to be seized to a reasonable

stated place by a reasonable stated time. If requested by the rail safety officer, the person is to remain in control of the thing at the stated place for a reasonable time. Unless the person has a reasonable excuse, non-compliance with the request is an offence.

The rail safety officer must provide a receipt for a seized thing to the person from whom it was seized.

Proposed section 101E allows a rail safety officer, who has requested the person in control of a seized thing to bring it to a stated place under section 101D, to request the person to take the thing back to where it was seized. Unless the person has a reasonable excuse, non-compliance with the request is an offence.

Proposed section 101F requires a rail safety officer to give a receipt for a seized thing unless it is impracticable or unreasonable due to the nature, condition or value of the thing.

Proposed section 101G requires the rail safety officer to return to its owner a seized thing six months after it was seized if the thing has not been forfeited. However, if a proceeding for an offence involving the thing, commences within this six month period, it does not have to be returned until the proceeding is finished or the right of appeal from the proceeding has lapsed or has been exhausted.

Proposed section 101H requires a rail safety officer to allow the owner of a seized thing, that has not been forfeited or returned, to inspect it or if it is a document to copy it.

Division 6—Forfeiture

Proposed section 101I sets out procedures where a thing has been seized or a sample or thing taken for analysis under section 100P(3)(d) and the owner cannot be found or where the chief executive cannot return the thing to the owner, after making reasonable efforts.

Proposed section 101J allows a court when convicting a person for an offence against this Act, to order forfeiture to the State of a seized thing owned by the person.

Proposed section 101K provides for the chief executive to deal with a forfeited thing or sample in a way the chief executive reasonably believes is appropriate.

Division 7—Other powers

Proposed section 101L provides for a rail safety officer in certain circumstances to ask a person to state their name or address and if the rail safety officer suspects that a false name or address has been given, ask for proof.

Proposed section 101M makes failure to state name or address an offence unless the person has a reasonable excuse. However, it is not an offence if the rail safety officer when asking the person their name or address had suspected the person had committed an offence and it is proved the person had not committed an offence.

Proposed section 101N allows a rail safety officer to request a person to give information if the rail safety officer reasonably believes the Act has been contravened and the person has knowledge of the contravention.

Proposed section 101O makes non-compliance with the request for information under section 101N an offence unless the person has a reasonable excuse. For an individual, it is a reasonable excuse not to supply the information requested, if complying with the request might tend to incriminate the person.

Proposed section 101P provides powers for a rail safety officer to require an accredited person to produce for inspection a document issued or required to be kept under the safety management system. The section also provides that the document may be taken in order to have it copied. The document must be returned.

Proposed section 101Q makes non-compliance to supply a document for inspection under section 101P, an offence unless the person has a reasonable excuse. For an individual, it is not a reasonable excuse not to supply the document requested, if complying with the request might tend to incriminate the person.

Division 8—Offences relating to rail safety officers

Proposed section 101R makes it an offence to make a false or misleading statement to a rail safety officer.

Proposed section 101S makes it an offence to give a false or misleading document to a rail safety officer, unless the person tells the rail safety

officer where the document is false or misleading to the best of the person's ability and if known, gives the correct information.

Proposed section 101T makes it an offence to obstruct a rail safety officer, unless a person has a reasonable excuse.

Proposed section 101U makes it an offence to pretend to be a rail safety officer.

Division 9—Notice of damage and compensation

Proposed section 101V requires a rail safety officer who in the exercise of a power under this Chapter damages anything to promptly give written notice of the particulars of the damage to the person the thing appears to belong to or if impractical leave a written notice in a conspicuous place. If the rail safety officer believes that the damage occurred due to a latent defect in the thing, the rail safety officer may state this in the notice.

Proposed section 101W provides for a person to claim compensation from the State if the person incurs loss or expense because of the exercise or purported exercise of a power under this part, sections 100A to 101V, other than because of forfeiture under section 101I or 101J.

Clause 21 inserts a new section 101X requiring serious incidents to be reported by accredited persons. The chief executive may make guidelines setting out what incidents the reporting requirements apply to, the information required, the time in which to report and the form of the report. The Minister must notify the making of a guideline in the gazette for it to be in effect. The guidelines are subordinate legislation.

Clause 22 amends section 102 to give the chief executive the power to request a report from an accredited person about an incident on or involving a railway even if the incident was not considered serious. This is in addition to the present powers concerning serious incidents.

The maximum penalty for failure to supply a report on a serious incident or other incident when requested by the chief executive is increased to reflect the seriousness of the offence and to bring it into the same range for maximum penalties for similar types of offences in other jurisdictions.

Clause 23 amends section 103 to change the enforcement officer from an “authorised person for a railway” to a “rail safety officer” and gives the chief executive the power to have a rail safety officer investigate any

incident on or involving a railway, in addition to the present power concerning serious incidents. The change to rail safety officer recognises the different training and experience rail safety officers have compared with other authorised persons for railways.

Clause 24 amends section 104 including the heading to change it from “authorised person for a railway” to a “rail safety officer”. The reason for the change is that set out in clause 23.

Clause 25 amends section 109 to change “an authorised person for a railway” to a “rail safety officer”.

Clause 26 and clause 27 amends references to “authorised person for railway” to “rail safety officer” in sections 113 and 114.

Clause 28 and 29 insert the new term “railway provision” into sections 144 and 151 to better define the other provisions of the Act that are relevant to these sections.

Clause 30 inserts new sections 152A, 152B, 152C, 152D.

Proposed section 152A removes the civil liability attaching to rail safety officers for acts or omissions done honestly and without negligence under the chapter. The civil liability attaches to the accredited person if the civil liability arose in the rail safety officer's role of investigating railway incidents under part 6 due to the activities of his employer who is the accredited person. Otherwise the civil liability attaches to the State.

Proposed section 152B provides that if a person other than a rail safety officer helps in a railway incident or emergency and the help is given honestly and without negligence and no fee is charged or reward given, any civil liability attaches to the State.

Proposed section 152C provides for a railway manager to endeavour to bring a delayed passenger service back to its scheduled running time. In effect, the railway manager is required to give priority to passenger trains operating on the track controlled by the railway manager, with due consideration of other relevant matters, including for example the operation of livestock trains and the train service entitlements of services other than passenger services.

Proposed section 152D provides for the chief executive to identify the need for train paths for regularly scheduled passenger services in Queensland, including the train paths required to relocate the rollingstock that provides those services.

In determining the need for passenger train paths, the chief executive may request, by written notice, the railway manager to provide certain information relating to the capacity and utilisation of the railway.

After identifying the need for passenger train paths, the chief executive may give to each accredited person, written notice about the requirements for passenger train paths and for the train paths to relocate the rollingstock that provides those services.

In allocating an available train path, the railway manager must provide for priority to be given to passenger services, including the train paths required to relocate the rollingstock that provides those services, as stated in the written notice.

In addition, a railway manager must not apply a premium access charge to passenger trains operating or proposed to operate at certain times of the day and must not set a premium access charge for passenger train paths.

Clause 31 amends the reference in section 180 ZZZN from an “authorised person for a railway” to a “rail safety officer”. This allows the light rail provisions of the Act to remain consistent with the amendment to the heavy rail provisions in Chapter 6.

Clause 32 amends section 192 to include all types of enforcement officers who have powers under the Act.

Clause 33 amends section 193 to distinguish between “railway offences” and “offences committed while travelling on a railway”.

Clause 34 replaces section 200A with a revised provision that will also result in a renumbering of the Act when it is next reprinted. However, the revised provision will also allow uncommenced provisions to be taken into account and specified consequential amendments to be done to other provisions of Acts listed in schedule 2B.

Clause 35 omits Chapter 10, part 1, the part heading for part 2 and the division heading for part 2, division 2. By way of explanation for omitting these headings, chapter 10, part 2, division 1, and section 221 (which comprises the whole of division 2), expire on 30 June 2003 (see sections 218(2) and 221(4)). This will leave the part 2 heading and the division 2 heading.

Clause 36 inserts new part 3 into chapter 11 with the part heading ‘Transitional provisions for the Transport Infrastructure and Another Act Amendment Act 2003’, which part 3 includes proposed sections 268 to 277.

Proposed section 268 provides for this part to apply in addition to the *Acts Interpretation Act 1954*, part 6.

Proposed section 269 inserts definitions for the purposes of part 3, namely commencement, continuing accredited person and previous as that word is used in conjunction with a provision reference.

Proposed section 270 provides that revised section 80A does not affect the interpretation of the Act before the commencement of the section (section 80A provides that part 4 of the Act (Accreditation) does not create a civil case or action). This section prevents the inclusion of section 80A in the Act being used as part of a legal argument for something that took place before this amendment Act.

Proposed section 271 ensures that the safety management system that was approved for the railway manager or operator, and as amended by the chief executive since their accreditation, applies to the accredited person after the commencement. The anniversary date for the persons approved safety management system under section 88C is the date the person was accredited.

Proposed section 272 preserves and validates existing certificates of accreditation where issued before the commencement of the section and requires a certificate of accreditation to be issued where one was not issued. No fee is required for the issue of the certificate.

Proposed section 273 provides that a notice to an accredited person in relation to the amount of the levy to be imposed as provided for under previous section 84A(3) is valid even if it does not comply with the revised section 84A(3).

Proposed section 274 continues conditions of accreditation that existed before commencement subject to conditions imposed by way of the Act as amended. In particular, the requirement to have the financial capacity or public risk insurance to meet reasonable accident liabilities in new section 88E was previously a matter that was covered under conditions of accreditation.

Proposed section 275 provides for applications made to the chief executive to amend an accreditation before the commencement of this section to be dealt with in two ways. If the application relates to amending the accredited persons safety management system it is to be dealt with under section 88A, otherwise it is to be dealt with under section 88.

Proposed section 276 provides for the continuation of proceedings started before the commencement of this section to amend an accreditation

without application by the accredited person or, suspend or cancel an accreditation. The proceedings are to continue under the revised chapter 6, part 4, division 7. The continuation of proceedings where immediate suspension of accreditation under previous section 91 (including giving a notice under previous section 90(2)) was started before the commencement of this section are to be completed under sections 93E or 93F.

Proposed section 277 provides for the continuation of appeal and review rights under section 196 of the Act.

Clause 37 amends schedule 1 (Subject matters for regulation) to include the regulation of safety issues relating to managing a railway or operating rollingstock on a railway and conditions to which an accreditation of an accredited person is subject.

Schedule 1 is also amended to include a direction from an accredited person for the railway about parking. The reference to an “authorised person for a railway” in item 16 is changed to include a “rail safety officer” and adds a new matter for which a regulation may be made.

Clause 38 amends schedule 2 (Reviews and Appeals) to insert a new provision to ensure the specified decisions under the amended rail safety provisions are able to be reviewed and appealed.

Clause 39 inserts a new schedule 2B for the purposes of the renumbering of cross-references in other Acts when this Act is renumbered under proposed section 200A.

Clause 40 amends schedule 3 (Dictionary) to alter existing and insert new terms accepted representations, accreditation, approved form, approved safety management system, audit program, authorised officer, authorised person, authorised person for a light rail, authorised person for a railway, certificate of accreditation, commencement, continuing accredited person, disciplinary action, dispute matter, employee, enter, imposed condition, incident, interim minor amendment, place, previous, proposed action, public place, Queensland Competition Authority, rail safety officer; railway offence, railway provision, railway workplace, regulation condition, representation period, rolling stock, safety direction, show cause notice, show cause period, signed notice and suspend.

PART 3—AMENDMENT OF THE TRANSPORT OPERATIONS (PASSENGER TRANSPORT) ACT 1994

Clause 41 provides that this part amends the *Transport Operations (Passenger Transport) Act 1994*.

Clause 42 amends section 115 to extend the protection from liability for authorised persons under the Act to a protection under the *Transport Infrastructure Act 1994*.

Clause 43 amends section 116 to omit the provision to appoint an authorised person for a railway to investigate a matter under the *Transport Infrastructure Act 1994*, section 103(2). These matters will now be investigated by a rail safety officer under the *Transport Infrastructure Act 1994*.

The clause also expands who can be appointed an authorised person for a railway to include a contractor of a railway manager or operator and an employee of the contractor.

Clause 44 amends section 117 to alter cross-references to section 116 which will have been amended under clause 43.