TRANSPORT AND OTHER LEGISLATION AMENDMENT BILL 2004

EXPLANATORY NOTES

General Outline

OBJECTIVES OF THE LEGISLATION

The objective of the Transport and Other Legislation Amendment Bill 2004 is to amend Acts administered by the Department of Transport and the Department of Main Roads, as well as the *Land Act 1994* and the *Land Title Act 1994* that are administered by the Department of Natural Resources, Mines and Energy.

REASONS FOR THE BILL

The *Land Act 1994* is to be amended to allow the registration of a Building Management Statement over a perpetual lease, and to delegate certain management functions for rail corridor land to QT.

The *Land Title Act 1994* is to be amended to ensure that Building Management Statements for both leasehold and freehold lots will be included in the appropriate land title registers.

The *Transport Infrastructure Act 1994* is to be amended so that if a sublease for a railway line passes from QR to another railway manager, any obligations for interruptions to neighbouring land transfer to the new manager.

The *Transport Operations (Marine Safety) Act 1994* is to be amended to provide a head of power to introduce a new national marine safety regime.

The *Transport Operations (Passenger Transport) Act 1994* is to be amended to:

- clarify that standards do not apply to fixed-track public passenger services;
- clarify that standards do apply to all road-based public passenger services;

- clarify that it is always an offence to make false statements;
- define 'ferry' to include vehicular barges that carry walk-on passengers for fares;
- remove duplicated powers of authorised persons;
- provide a legislative framework for integrated ticketing; and
- provide consistent powers and penalties for all segments of an integrated journey.

The *Transport Operations (Road Use Management) Act 1995* is to be amended to:

- allow local governments to regulate shared paths;
- allow local governments to regulate parking with traffic signs and specify parking fees through resolution or local law;
- allow local governments to control infringement notices for minor traffic offences;
- allow more flexibility when cancelling approvals;
- correct the penalty reference for failing to stop a heavy vehicle; and
- allow persons to be delegated or authorised to receive documents as 'officials'.

The *Transport Planning and Coordination Act 1994* is to be amended to apply the 'noting of title' requirement in the *Acquisition of Land Act 1967* when QT compulsorily acquires leasehold land.

ESTIMATED COSTS FOR GOVERNMENT IMPLEMENTATION

An amendment at clause 55 to facilitate the introduction of integrated ticketing in south east Queensland involves the termination of several public passenger transport service contracts. There is a potential cost for government if compensation is deemed to be payable to operators whose contracts may be terminated.

RESULTS OF CONSULTATION

The proposed amendments have generally been supported.

CONSISTENCY WITH FUNDAMENTAL LEGISLATIVE PRINCIPLES

An amendment at clause 55 to facilitate the introduction of integrated ticketing in south east Queensland involves the termination of several public passenger transport service contracts. This clause will affect the operator's rights and this could be considered to breach fundamental legislative principles. This potential breach is considered to be justified by the widespread benefits to the public of transforming the public transport network into one system that allows passengers to travel easily by bus, train and ferry. Further, affected operators may seek compensation following the termination of a relevant service contract.

NOTES ON CLAUSES

PART 1—PRELIMINARY

Clause 1 states that the short title of the Act is to be the *Transport and Other Legislation Amendment Act 2004*.

Clause 2 states that certain sections of this Act are to commence by proclamation. The balance of the Act will commence on Assent.

PART 2—AMENDMENT OF *TRANSPORT INFRASTRUCTURE ACT 1994*

Clause 3 states that this part and the schedule amend the *Transport Infrastructure Act 1994*.

Clause 4 inserts a new section 239A to apply when the chief executive resumes an interest in land that is less than freehold that is intended to be leased to a railway manager as rail corridor land.

The amendment allows the chief executive to acquire a lease or other interest free of its existing interests or obligations, and use the land immediately for the purpose for which it was resumed. On behalf of the State, the chief executive may deal with the State land utilising all the owner's powers

The chief executive must arrange for the land to become unallocated State land in terms of section 240 and subsequently lease it to the railway manager. This action may be delayed until the land is surveyed following the construction of the railway.

Section 12(2A) of the *Acquisition of Land Act 1967* does not apply in order that this clause can operate.

Clause 5 inserts a new section 260A to apply when Queensland Rail surrenders its sublease for a rail corridor and the land is subleased to a new railway manager.

The provision transfers to the new railway manager Queensland Rail's statutory obligations (under section 260) to maintain fencing, access and drainage where a rail corridor interacts with neighbouring land. However, Queensland rail is responsible for any outstanding obligation which exists when the sublease is surrendered.

Clause 6 corrects an error arising from recent renumbering of the *Transport Infrastructure Act 1994*.

Clause 7 inserts a new section 530 so that the correction in clause 6 will apply from the commencement of the *Transport Infrastructure Act 1994, section 521.*

PART 3—AMENDMENT OF *TRANSPORT OPERATIONS (MARINE SAFETY) ACT 1994*

Clause 8 states this part and the schedule amend the *Transport Operations (Marine Safety) Act 1994*

Clause 9 replaces section 212 with a new section authorising the making of regulations which may give effect to agreements or documents about ships approved by an Australian entity. Initially this will allow the new National Standard for Commercial Vessels to supersede the Uniform Shipping Laws.

PART 4—AMENDMENT OF *TRANSPORT OPERATIONS (PASSENGER TRANSPORT) ACT 1994*

Clause 10 states that Part 4 and the schedule amend the *Transport Operations (Passenger Transport) Act 1994*.

Clause 11 inserts a new section 4A to allow local governments to impose additional requirements to protect transport property in their local government area. It is intended that the passenger related offences in this Act will provide a minimum standard of compliance, and that the local authority may require, through a local law, a higher standard of compliance for transport property or infrastructure owned or operated by the local authority.

Clause 12 amends section 12 to clarify that section 12(2)(a) excludes railway operators from operator accreditation requirements when providing public passenger services using a fixed track vehicle. However, a railway operator may still require operator accreditation for the provision of other types of public passenger service. For example if a railway operator was to provide a scheduled passenger service using a bus then that bus operator would require operator accreditation.

Clause 13 amends section 24 to clarify that section 24(2)(a) excludes railway operators from driver authorisation requirements when providing public passenger service using a fixed track vehicle. However, driver authorisation requirements may apply to other types of public passenger service provided by a railway operator. For example if a railway operator was to provide a scheduled passenger service using a bus then the driver of that bus would require driver authorisation.

Clause 14 amends section 43 (Obligation to hold service contracts) to allow the maximum penalty of 160 penalty units to apply to a declared TransLink area within the south east Queensland (SEQ) area where no exclusivity will be granted under the service contracts.

Formerly, if a person provided a public passenger service without a service contract in a declared area or route a penalty of 30 penalty units applied if the contract for the area was non-exclusive, and 160 penalty units if it granted exclusivity.

In a TransLink area within the SEQ area a person must hold either a TransLink service contract or a written agreement with the chief executive (for example, an operator from an undeclared area travelling into a declared TransLink area to provide services) or a written agreement with the holder

of a TransLink service contract that is approved by the chief executive (for example, a sub-contract arrangement).

The definition of a 'TransLink area' is created at clause 57 to ensure that subsections (1) (a) and (2) (b) do not apply to service contract areas or routes in the SEQ area that do not form part of integrated ticketing. As a result of this amendment, a person providing services illegally in a Translink area or route will be liable for a penalty of 160 penalty units.

Clause 15 amends section 46 (Review of holder's performance) to remove obligations to conduct a market based needs assessment for TransLink service contract holders. Under a TransLink service contract holders will not keep the fare box revenue and will not be able to vary fares. There will be no capacity for TransLink service contract holders to make service changes to increase patronage targets. With this limited ability to affect market outcomes such market based needs assessments should not be imposed on the operator as part of midterm or other reviews.

Clause 16 amends section 51 (Conditions of funding) to exclude TransLink service contracts from rights to concession fare reimbursement. Under the TransLink scheme a service contract holder will not forego revenue as a result of providing concessions, so the state will not need to pay reimbursement. The state will retain all fare box revenue and pay contract holders for the services provided under a TransLink service contract.

Clause 17 inserts a new section 54A to exclude TransLink service contracts from the application of Chapter 6, Part 2, Division 2, which will continue to apply to the remainder of Queensland and non-TransLink service contracts within the SEQ area.

Clause 18 inserts a new division, *Division 2AA – TransLink Service Contracts* which outlines the contractual scheme for TransLink service contracts within the SEQ area.

Section 62AAA (Purpose of division 2AA) outlines the purpose of the new division.

Section 62AAB states that in Division 2AA a "prescribed day" means a day stated in a notice, being not less than 28 days after the date of that notice.

Section 62AAC describes a TransLink service contract. Under a TransLink service contract the State will set fares and retain the fare box revenue. The contract holder will be paid by the state for the services provided and will not be granted exclusive rights to an area or route.

Section 62AAD will provide TransLink service contract holders with an entitlement to make a first offer for subsequent contracts of the same type, and for additional services for the same area or route. This amendment reflects the new scheme under which TransLink service contracts will not grant the holder an exclusive right to operate in a service contract area or route.

The section also replaces the chief executive's ability to invite offers 'from the public or someone else' in section 62(2) with the ability in subsection (3) to invite offers from any or all holders of TransLink service contracts or the public. This clarifies the chief executive's discretion to invite offers from one or a number of TransLink operators rather than to invite public offers.

Section 62AAE states the chief executive is not obliged to accept any offer for a service contract and must only accept an offer for a service contract if the chief executive considers it acceptable. Subsection (2) sets out the mandatory factors to be considered by the chief executive in deciding if an offer for a TransLink service contract is acceptable.

Section 62AAF states that the chief executive must give a holder written notice if it is decided that performance of their obligations under a service contract is unsatisfactory.

Section 62AAG states the process to be followed if the chief executive has declared a new service contract area or route under section 42, and the new service contract area or route is proposed to be within the TransLink area. Written notice must be given to all affected operators, who have 28 days to respond. The chief executive must consider any representations received before making a decision to proceed with the proposal to make the new service contract area or route a TransLink area.

If after considering the representations a decision is made to proceed with the proposed declaration, the chief executive has a discretion to provide an affected operator (for example, any or all of the affected operators) or any or all TransLink service contract holders with the opportunity to offer to provide the services in the area or route in the manner prescribed.

Alternatively the chief executive may invite offers for a TransLink service contract from the public by public notice. The various options available to the chief executive under subsection (3) are interchangeable. For example, if the chief executive initially invites offers under subsection (3)(a) but does not receive any acceptable offers, the chief executive may invite offers either under subsection (3)(b) or (c).

An 'affected operator' is defined to include the holder of a TransLink service contract providing services in an adjacent or proposed amended service contract area or route (for example a holder who provides scheduled passenger services in a service contract area or route that is proposed to be amended by incorporating part of an adjacent undeclared area) or any other operator providing a scheduled passenger service (for example, a school service) within the proposed new service contract area.

If an offer is made under subsection (3)(a) or (b) within the prescribed time and the chief executive considers the offer substantially meets the requirements of an offer that would be acceptable under section 62AAE, the chief executive may defer inviting offers under subsection (3)(b) or(c).

Section 62AAH provides for compensation to be sought where a decision is made under section 62AAG and an affected operator, other than the holder of a TransLink service contract, does not make an offer or is not awarded the new contract. The amount of compensation payable is to be decided by agreement between the parties and if there is no agreement by arbitration.

Section 62AAI inserts a new section that outlines the process to be followed if a TransLink service contract is cancelled or terminated by the chief executive or surrendered by a TransLink service contract holder. The chief executive may invite offers from any or all TransLink service contract holder/s or the public. The chief executive may invite offers from any or all TransLink service contract holder/s first, and then invite offers from the public if no TransLink offer is acceptable or vice versa.

Clause 19 amends section 101 to clarify the application of standards made under the Act. Standards do not apply to a railway manager or railway operator in relation to a public passenger service provided using a fixed track vehicle. However standards may apply to a railway manager or railway operator in relation to the provision of public passenger services other than those using a fixed track vehicle. For example, if a railway operator provides a public passenger service using a bus then standards made under the Act would apply to the railway operator.

Clause 20 omits Chapter 11, Part 2 from the Act as these powers are no longer required due to the amalgamation of powers for authorised persons and authorised persons for railways and light rail.

Clause 21 renumbers Chapter 11, part 1 as Chapter 11 part 2 due to the insertion of a new part.

Clause 22 inserts a new Chapter 11, Part 1 – Interpretation, and a new section 110 (Definition for ch 11). Section 110 includes a definition of

'relevant legislation' used in defining the powers of authorised persons in this Act.

Clause 23 amends section 111 to ensure that anyone who may be an authorised person under that section may be authorised to enforce the 'relevant legislation'. The amendment also expands on who the chief executive may declare as authorised persons to include an employee of, or a contractor for, a railway operator or railway manager, a contractor's employee, or a person prescribed under a regulation.

Clause 24 renumbers the subsections in section 112 (Identity cards), making section 112(4) now read as 112(1A).

Clause 25 inserts the term 'relevant legislation' into section 114 to give authorised persons the powers to enforce that legislation.

Clause 26 incorporates the civil liability provisions in section 119 into section 115 so that one set of provisions will apply to all authorised persons.

Clause 27 amends section 126 to remove unnecessary duplication of powers for the enforcement of matters relating to the transport of dangerous goods by rail. Sections 126(4) and 126(5) are deleted. These sections are replicated in sections 125F(1) and 125 F(2) which provide for the return of seized things after six months, at the end of proceedings commenced within that six months, or earlier if an authorised person considers their retention is no longer necessary.

Section 126(6) is deleted because it is duplicated by Section 126D(1)(c).

Clause 28 amends section 126D(1)(c) to allow for the retention of seized goods where they are likely to be used to commit offences against any provision of this Act or Chapter 14 of the *Transport Infrastructure Act 1994*.

Clause 29 inserts a new section, section 126P (Definition for Part 4). This section provides a definition for 'relevant offence', meaning an offence against the relevant legislation defined at clause 22.

Clause 30 amalgamates sections 127 and 137 so that one set of provisions will apply to all authorised persons. This amendment gives authorised persons the power to ask for a person's age, which formerly applied only to authorised persons for rail.

Clause 31 amalgamates sections 128 and 138 so that one set of provisions will apply to all authorised persons, because Part 6 and therefore section 138, is being omitted.

Clause 32 removes the reference to authorised person for a railway at section 130 so that one set of provisions will apply to all authorised persons.

Clause 33 removes the reference to authorised person for a railway at section 131 so that one set of provisions will apply to all authorised persons.

Clause 34 removes the references to authorised persons for rail at section 135 so that one set of provisions will apply to all authorised persons. The term 'official' is also omitted, and is replaced with authorised persons.

Clause 35 removes references to authorised persons for rail at section 136 so that one set of provisions will apply to all authorised persons.

Clause 36 amends and relocates section 139 (Power to require production of tickets) so that it is read in chapter 11, part 4 as section 143ADA. The amendment amalgamates subsections (1) and (2), and broadens the section to make the new subsection applicable to all public passenger vehicles, rather than only rail. The amendment also allows authorised persons to require tickets from persons that are attempting to travel, as applicable. Subsection (5) has been reworded to clarify that it is applicable only to rail.

Clause 37 amends and relocates section 140 (Power to require person to leave train etc.) so that it is read in chapter 11A as section 143AHA. The amendments remove the reference to an authorised person for a railway, and renumbers the sections identified in subsection (1)(a) as sections 141,142 and 143 are being omitted. The new equivalent sections are 143AC and 143AF.

Subsections 140(2) and 140(3) are omitted as sections 143AI and 143AK will apply to all public passenger vehicles and subsection (4) is renumbered to be read as subsection (2).

Clause 38 omits all of chapter 11, part 6 as the sections contained in this part (137-140) are addressed elsewhere in the amended chapters 11 and 11A.

Clause 39 omits the Chapter 11, Part 7 heading.

Clause 40 omits sections 141 – 143 as these sections are addressed in the amended and newly amalgamated sections. Section 141 is addressed in section 143AF. A 'public passenger vehicle' includes a fixed track vehicle. A definition for 'fixed track vehicle' is being inserted (refer clause 57), which states that a fixed track vehicle includes a train or a light rail vehicle.

Sections 142 and 143 are addressed by the amended sections 143 AB and 143AC.

Clause 41 relocates section 143A (Evidence of concession entitlement) to Chapter 11A as section 143ADB. Subsection (2) is amended to enable both the driver of a public passenger vehicle and an authorised person to require a person who is travelling or about to travel – rather than someone who has already bought a concession ticket (as section 143A currently reads) – to produce the person's entitlement to the concession. The amendment also removes the specific reference to an authorised person for a railway.

Clause 42 omits section 143AB (Application of ch 11A).

Clause 43 renumbers section 143AC (Definitions for ch 11A) as section 143AA and inserts definitions for 'tag off' and 'tag on' which are required to provide clarity in discussing payment of a fare for a smartcard. This clause also omits the definition for 'over-travel', as the definition is moved to schedule 3 and expands on the definition of 'driver' to address the applicability to trains and ferries.

Clause 44 inserts a new section 143AB to clarify when a person 'evades payment of a fare', to include attempting to 'evade payment of a fare'. The meaning includes travelling on an 'invalid ticket' (a ticket includes a smartcard). There is a definition for 'invalid ticket' and 'over-travel', which should be noted in relation to this section.

Clause 45 omits section 143AD (Fare evasion and obtaining hire of vehicle by fraud etc.) and separates the two subsections of this section by inserting two new sections 143AC (Fare Evasion) and 143AD (Obtaining hire or use of vehicle by fraud or misrepresentation).

Clause 46 amends section 143AE (Vehicle and equipment not to be interfered with), to expand the section to include service equipment and scheduled passenger services. Service equipment has been included to assist with the protection of transport infrastructure and facilities. The inclusion of scheduled passenger services is intended to assist in the efficient and timely provision of services.

Clause 47 amends section 143AF (Creating disturbance or nuisance on vehicle) to include a railway.

Clause 48 amends section 143AG (Direction to leave, or not to enter, vehicle), specifically subsection 1(a), to provide consistency in the wording used in the chapter. Subsection (c) is also amended to ensure that the

subsection is applicable to all aspects of the newly amended section 143AE (refer to clause 46).

Clause 49 amends section 143AH (Direction to leave vehicle) by relocating subsections (1) and (2) to section 143AG, which is a section that better reflects the contents of the subsections. The remaining subsection relates to giving a direction when the vehicle is full. The section heading is amended to reflect the contents of the section.

Clause 50 amends section 143AK (Offence to contravene direction) to broaden the applicability of the section to the whole part, rather than only sections 143AG and 143AH, as it is considered that the offence provisions included in the part are to ensure the safe transportation of passengers. Therefore to contravene a direction places passengers' safety at risk. The maximum penalty has been amended, with the rail equivalent of 40 penalty units adopted.

Clause 51 amends section 149 to clarify that it is an offence to dishonestly obtain or dishonestly apply for an accreditation, authorisation, contract or licence issued under the Act.

Clause 52 amends section 152 by omitting the need to prove the appointment of authorised persons .

Clause 53 amends section 154 to exclude sections 143AC and 143AD, as attempting to commit an offence is specifically identified as being an offence in these provisions.

Clause 54 amends section 154B (Definitions for part 2) to remove the definitions for 'fare' and 'service equipment', as these definitions have been adopted throughout chapters 11 and 11A and are more appropriately located in schedule 3.

Clause 55 inserts a new part in chapter 13, *Part 1A – Transitional Provisions for Transport and Other Legislation Amendment Act 2004.* Section 157 is inserted to clarify authorised person's powers in relation to the authorisation that was previously given to an 'authorised person for rail' and an 'authorised person for light rail'.

Section 158 is inserted to clarify than any invitations to offer that were made under section 62 for a TransLink service contract, to service contract holders mentioned in schedule 2A, column 1, replaces and extinguishes any right that the service conract holder may have had to offer for a new service contract. This section also identifies the process to be followed if the holder of the service contract refuses the invitation, fails to respond to

the invitation within the time allowed or fails to make an offer that is acceptable.

Section 159 is inserted to clarify matters that the chief executive took into account or should take into account when considering an offer made under section 158.

Section 160 is inserted to state that service contracts mentioned in schedule 2A, column 1, are terminated at 6.00 p.m. on 25 June 2004 if the contract holder has not already entered into a Translink service contract.

Section 161 is inserted to clarify the grounds on which compensation may be payable as a result of termination of a holder's service contract under section 160.

Clause 56 inserts a new schedule 2A to assist in identifying existing service contract holders for the purpose of the transitional provisions. The schedule also identifies the service contract areas or routes in south east Queensland that are service contract areas or routes in the TransLink area.

Clause 57 amends schedule 3 (Dictionary) to omit some terms from the dictionary that are either no longer applicable or have been moved within the Act, while also inserting other terms into the schedule required to interpret the Act.

PART 5—AMENDMENT OF *TRANSPORT OPERATIONS (ROAD USE MANAGEMENT) ACT 1995*

Clause 58 states that this part and the schedule amend the *Transport Operations (Road Use Management) Act 1995.*

Clause 59 amends section 19 to allow greater flexibility in cancelling approvals. Currently there is only the option to suspend *or* cancel by a notice. The same notice cannot do both. However a cancellation can be changed to a suspension. The difficulty is that if the terms of suspension are still not met there currently is not the power to cancel under that notice and a new cancellation notice must be issued. Suspension and cancellation notices both allow a minimum 28 day 'show cause' period before they can take effect. It is proposed that one notice will provide for the cancellation of an approval but if amended to suspension and if the conditions of a

suspension are not met, allow a cancellation to take effect immediately. This will streamline the process and remove delays.

Section 19(2) (c) (ii) is amended to provide new conditions on suspension. Subsection (A) allows a permit to be suspended while a condition is met to the chief executive's satisfaction within a reasonable time. Subsection (B) allows the chief executive to cancel the approval if the grounds for suspension are not remedied within that time. This protects the public, gives minimal disadvantage to the approval holder and gives greater flexibility where the grounds are serious enough to cancel the approval.

Clause 60 inserts a new section 19A. Section 19(4)(b) in clause 59 specifies how the failure to address a condition of suspension leads to a cancellation of an approval under section 19A, which in turn sets out how the cancellation is to be carried out. Section 19A accords with principles of natural justice by requiring notice to be given, including reasons for a decision and advising of the opportunity for review and appeal.

Clause 61 amends section 32 to correct an error. A reference is made to section s32 (4) rather than section 32 (3).

Clause 62 inserts a new section 53A to clarify that it is always an offence to supply false or misleading information required under this Act. Currently the legislation is unclear. It refers to information being given to an ‘official’, and it is not clear that all persons authorised to receive such information meet that definition.

Section 53A (2) provides that it is sufficient proof that a statement or document was given to an official if it was given to a person authorised to receive it. Under section 53A (3) it does not matter whether the person was an official so long as they are authorised to receive information by a delegation, as an agent or by any other form of authorisation.

Clause 63 amends section 66(1) by inserting the term ‘shared path’ into the class of areas which a local government may regulate with respect to the driving, stopping or wheeling of vehicles or animals.

The term ‘shared path’ was incorporated into the Queensland Road Rules from the Australian Road Rules. The Australian Road Rules have by the agreement of all states been incorporated wherever possible in each jurisdiction to give consistent rules across the country.

'Footpaths' and 'shared paths' both provide for non-motor vehicle travel. Local governments are able to regulate the use of bicycles and wheeled recreational devices on footpaths they administer and will now be able to do so for shared paths also.

Section 66(8) specifically adopts the definition of 'shared path' in the *Transport Operations (Road Use Management-Road Rules) Regulation 1999.*

Clause 64 amends section 101(1) to simplify the process of parking regulation by local governments. Section 101 currently states that if a local government wishes to change parking conditions it has to go through the lengthy process of changing a local law. It is proposed to give local governments the power to regulate general parking matters by installing official traffic signs, and to regulate parking fees by passing resolutions.

Section 101(1) is amended to remove the requirement that a local law must be passed to introduce or change the regulation of parking.

Clause 65 amends Section 102(1) so that the act of installing traffic signs is the means by which certain parking matters are regulated.

Clause 66 amends section 103. References to the setting of fees in sections 103(3), 103(4) and (5) are omitted. A new section 103(6) allows these fees for paid parking, permits and commercial vehicle identification labels to be set either by local law or by local government resolution. Section 103(6) must not be inconsistent with section 147 of the *Transport Operations (Passenger Transport) Act 1994,* in that the fees cannot be set so high as to be considered a 'parking tax' or 'road tax' without the authorisation of the Minister.

Clause 67 amends section 105 with respect to local government parking regulation, by omitting the requirement that a local law specify the fixed hours when only paid parking is allowed in designated parking spaces in the traffic area or place where the space is located.

Clause 68 amends section 108(4), which defines a 'minor traffic offence', by adding the offence of disobeying an official traffic sign about regulated parking. This will allow local governments to issue infringement notices for disobeying an official parking sign that may be installed according to the amended sections 101, 102, 103 and 105. A local government may set the amount of an infringement notice penalty under a local law.

Clause 69 inserts in schedule 3, a reference to section 19A. This confirms that an appeal of the review of a decision under section 19A is made to a Magistrates Court. The appeal method is consistent with other methods of appeal under section 65.

PART 6—AMENDMENT OF *TRANSPORT PLANNING AND COORDINATION ACT 1994*

Clause 70 states that this part amends the *Transport Planning and Coordination Act 1994.*

Clause 71 amends section 25 (General powers regarding property) by renumbering subsections and inserting new subsections (10) and (11). The provision requires the chief executive to lodge a copy of a 'notice of intention to resume' in the appropriate land registry when there is an intention to resume leasehold State land or some other interest in State land that is less than freehold. If the resumption notice is amended or the resumption discontinued, the chief executive must immediately lodge this notice in the same land register.

PART 7—AMENDMENT OF *LAND ACT 1994*

Clause 72 introduces the amendments in Part 7 – Amendment of *Land Act 1994.*

Clause 73 renumbers existing Division 3A (Explanatory format plans) as Division 3B in *Chapter 6 (Registration and Dealings)*, Part 1 (Land Registry and Registers).

Clause 74 renumbers existing section 290A (Explanatory format plans) as section 290D

Clause 75 inserts new division 3A in *Chapter 6 (Registration and Dealings)*, Part 1 (Land Registry and Registers) about plans of survey. The provisions are based upon similar provisions in the *Land Title Act 1994* and are intended to achieve greater uniformity in the land registry under the *Land Title Act* 1994 and the *Land Act* 1994.

New section 290A provides for two formats of plans,- standard and volumetric. The format to be used depends upon how the land is to be identified. Requirements for completing plans will be set out in the chief executive's directions for plan preparation. The directions will effectively mirror those of the Registrar of Titles under the *Land Title Act 1994* to ensure consistency within the land registry.

New section 290B introduces the concept of a standard format plan. A standard format plan creates lots that are of two dimensions at ground level and are unlimited in height and depth. The lots are defined by survey dimensions and marks placed on the ground.

New section 290C introduces the concept of a volumetric format plan. A volumetric format plan creates lots that are fully enclosed by bounding planes. Bounding planes are the limiting feature of a volumetric lot. They are any surface that can be mathematically generated and sufficiently defined and shown on a plan such that there is no possibility of ambiguity as to the boundary and location of the lot. Volumetric parcels may be above, below or partly above and partly below ground surface and are defined by surveyed dimensions and levels.

Clause 76 inserts new division 3C in *Chapter 6 (Registration and Dealings)*, Part 1 (Land Registry and Registers) about plans of subdivision. The provisions are based upon similar provisions in the *Land Title Act 1994* and are intended to achieve greater uniformity in the land registry under the *Land Title Act* 1994 and the *Land Act* 1994.

New section 290E gives a generic definition for a plan of subdivision and the self-explanatory purposes for which the plan may be used.

New section 290F. The section allows for a plan of subdivision to be used to define lots on non-freehold land. This will allow a consistent requirement for survey plans that currently exists under the *Land Title Act 1994* to also apply to survey plans of non-freehold land under the *Land Act 1994*.

In addition where, for example, a building management statement is to be registered over transport land (as defined in the Act) as well as freehold land, one plan of survey can be used. The single plan will allow the simplification of the plan process showing the lots affected by the building management statement. Where this occurs the plan of survey is registered under the *Land Title Act* 1994 and the *Land Act 1994*. On registration of the plan, a lot or lots defined in the plan is created.

However, the plan operates no further than that. For the non-freehold lots, it remains for the Governor in Council or the Minister administering the *Land Act 1994 to* exercise their appropriate power under that Act to create or affect tenures under the *Land Act 1994*. However, with a plan of subdivision of transport land, upon registration on the plan, the description of the land is amended.

In the case of the freehold lots, the *Land Title Act 1994* provisions that operate after the creation of lots apply.

New section 290G allows a standard format plan to only apply to standard format lots. A plan of this type can only subdivide a standard format lot to create more standard format lots. Subdivide in this instance takes its meaning from section 290E.

New section 290H allows a volumetric format plan to divide both standard format lots and a volumetric lot. The effect of this is that a standard format lot could be subdivided to create another standard format lot and a volumetric lot. The volumetric lot could then be further subdivided by another volumetric plan of subdivision to create more volumetric lots. Subdivide in this instance takes its meaning from section 290E.

New section 290I operates to ensure that where a volumetric plan of subdivision creates volumetric lots from a standard format lot and there is a balance or remainder lot from the original standard format lot having a property description of a standard format lot, the remainder lot is a standard format lot.

New section 290J details the requirements for a plan of subdivision that is lodged for registration.

Freehold and non- freehold lots that are to be subdivided can be included in the one plan of subdivision. This does not mean, however, that the registered plan can, for example, amalgamate a subdivided non-freehold lot with a freehold lot. Because of the differing legislative requirements of the *Land Act 1994* and the *Land Title Act 1994* each lot will have to be dealt with under the appropriate provisions of the Act that administers that tenure.

Similarly if there are both freehold and non-freehold lots in the plan and the *Land Title Act 1994* requires local government consent to the subdivision of the lots, the consent requirement can only apply to the freehold lots under the *Integrated Planning Act 1997* because of the exemption for non-freehold land under Schedule 8 of that Act.

Consequently where a plan is to be registered under both the *Land Title Act 1994* and the *Land Act 1994*, any differing requirements of the Acts will apply to lots according to their tenure.

New section 290K requires the chief executive upon registration of a plan of subdivision, to record in the appropriate register, the details of each lot created by the registration. Public use land is not required to be shown as it will be dealt with legislatively under the *Land Act 1994.*

New section 290L deals with the priority of documents when a plan of subdivision is lodged, withdrawn and re-lodged.

The section ensures similar provisions operate in the registers under the *Land Title Act* 1994 and the *Land Act 1994.*

New section 290M provides for the situation where a lot from which a road or watercourse has been excluded, is subdivided.

New section 290N allows pre-examination of plans and related documents. In cases where complex transactions are proposed, registration issues can be dealt with prior to lodgement, to facilitate a smooth registration process. The provision does not however operate to prevent the chief executive from requisitioning for the correction of errors in the documents during the registration process.

Clause 77 inserts new part "Part 1A – Building Management Statements", divisions and sections in Chapter 6 (Registration and Dealings). A building management statement is intended to allow individual volumetric lots on transport land within a building and also where applicable adjoining freehold lots to have the use and occupation and management of the building regulated by a registered agreement. The agreement is binding on all owners and occupiers of the building as well as their successors in title. The provisions substantially reflect similar provisions in the *Land Title Act 1994*

New section 294A restricts the application of the part to transport land that consists of busway land, light rail land, non-corridor land and rail corridor land under a perpetual lease. The limitation is deliberately made to prevent the Part's application to other leased land under the *Land Act 1994.*

New section 294B introduces the concept that a building management statement can be registered, and states the pertinent characteristics of a building management statement. As with a building management statement on freehold land, the lots to which it applies must be wholly or partly contained in a building. A building management statement cannot be registered solely over bare land. Subsection (4) is important because despite a building management statement being registered the role and decisions of the Governor in Council or the chief executive in section 360 are not fettered.

New section 294C sets out the requirements for a building management statement to be registered.

New section 294D details the mandatory and discretionary provisions for a building management statement. For example the statement, in

dealing with the mandatory item of right of access, must provide in comprehensive terms how, when and where that access is to and from the lots. This mechanism removes the need to register easement plans and easement documents to describe all aspects of the right of access. It must be recognised that a community management statement needs to comprehensively deal with the issues included in the provisions.

New section 294E allows the recording of the building management statement in either or both the land register under the *Land Act 1994* and the *Land Title Act 1994* depending on the whether the lots benefited or burdened are non-freehold or freehold. While the chief executive may examine a building management statement for its validity, the chief executive is not obliged to do so. Consequently the enforceability or correctness of the statement's provisions is not something that the chief executive will necessarily police.

New section 294F sets out the requirements for the amendment of a building management statement. However, the amending instrument cannot alter the lots to which the building management statement applies.

New section 294G allows a building management statement to be registered even if a single person holds the leases to all the lots to which the building management statement applies. The provision is intended to provide for the situation where, for example, if the one person acquires all the lots to which the statement applies with the intention of retaining the building management statement but resubdividing lots further, the building management statement does not have to be extinguished.

New section 294H provides for when one person holds the leases to all the lots to which the building management statement applies. The building management statement is not automatically extinguished but only if the lessee requests the chief executive to extinguish it.

New section 294I sets out the requirements for a building management statement to be extinguished.

Where a building management statement applies to both freehold and non-freehold lots, and there is an extinguishment of the building management statement, the freehold lots would still be subject to the relevant provisions of the *Land Title Act 1994.*

For example, if under a building management statement that was over both non-freehold and freehold land, a community titles scheme under the *Body Corporate and Community Management Act 1997* comprised a freehold lot, the statutory requirements under *Land Title Act* 1994 relating

to the community titles scheme agreeing to the extinguishment would have to be complied with irrespective of any requirements for non–freehold lots.

New section 294J requires a building management statement that applies to both freehold and non-freehold land, to be registered in the appropriate registers under the *Land Act 1994* and *Land Titles Act 1994*. Further dealings, for example leases, and mortgages of those leases relating to lots subject to the building management statement must be likewise registered in those registries. Clause 82 inserts similar provision in the *Land Titles Act 1994*.

The section also provides for the Minister to allow the continuation of a building management statement even though a lease under the *Land Act 1994* of a lot subject to the building management statement is surrendered. The section recognises that in certain circumstances it may be necessary to allow the building management statement to continue to operate despite changed circumstances relating to the freehold or non-freehold lots under the building management statement. These circumstances might, for example, include the need to preserve the access, maintenance or physical support requirements of the building management statement.

Where there has been a surrender, the section also allows for the continuation of the building management statement from the unallocated State land to any new tenure subsequently granted over the land. The binding effect of the building management statement will then continue.

Clause 78 amends section 352 to add compliance with new section 290J to the existing requirements to be met before the chief executive may register a plan of subdivision. The section will clearly provide for the Minister administering the *Land Act 1994* to delegate the Minister's powers in the particular circumstances of this section.

Clause 79 amends section 392 (Delegation by Minister) by inserting a new subsection 2A. The provision allows the Minister to delegate to the chief executive and officers of Queensland Transport, the Minister's powers under this Act in relation to rail corridor land and non-rail corridor land.

Clause 80 inserts new definitions in schedule 6 (Dictionary).

PART 8—AMENDMENT TO *LAND TITLE ACT 1994*

Clause 81 states that this part and the schedule amend the *Land Title Act 1994*.

Clause 82 inserts a new section 54J requiring a building management statement applying to both freehold and non-freehold land, to be registered in the appropriate registers under the *Land Act 1994* and *Land Titles Act 1994*. Further dealings, for example leases and mortgages of the lots subject to the building management statement, must be also be registered in non-freehold and freehold land registers. Clause 77 inserts similar provisions in the *Land Act 1994*.

The section also provides for the Minister to allow the continuation of a building management statement even though a lot under the *Land Title Act 1994* subject to the building management statement is surrendered. The intention is to recognise that in certain circumstances it may be necessary to allow the building management statement to continue to operate despite changed circumstances relating to the freehold or non-freehold lots under the building management statement. These circumstances might, for example include the need to preserve the access, maintenance or physical support requirements of the building management statement.