

# **Transport and Other Legislation Amendment Bill 2005**

## **General Outline**

The Bill makes a number of amendments to transport and other legislation. The following acts are amended:

- *Acquisition of Land Act 1967*
- *Land Act 1994*
- *Property Law Act 1974*
- *Transport Infrastructure Act 1994*
- *Transport Planning and Coordination 1994*

## **Short Title**

The short title of the Bill is the *Transport and Other Legislation Amendment Bill 2005*.

## **Policy Objectives of the Legislation**

The objective of the *Transport and Other Legislation Amendment Bill 2005* is to amend Acts administered by Queensland Transport, as well as the *Acquisition of Land Act 1967*, the *Property Law Act 1974* and *Land Act 1994*.

The Bill sets out a framework to enable the planning, ownership, construction and operation of toll roads or tollways by local government, the state, a private operator or a combination of these entities.

The policy objectives of the bill are to set out a legislative framework which empowers local government to:

- acquire land for an approved tollway project;
- lease declared local government tollway land to a private proponent for an approved tollway project;

- enter into franchise agreements for the construction, maintenance and operation of a local government tollway; and
- levy tolls for a local government tollway.

Similar amendments are proposed for consistency to allow the State government to lease State toll road corridor land and enter into similar arrangements with a private operator for the construction, operation and maintenance of a toll road.

Other amendments are proposed to ensure there is adequate protection for below surface structures and streamlined approval processes apply when dealing with transport land.

### **Reasons for the Bill**

The existing legislative framework does not provide for the ownership, construction and operation of tolled roads by a local government. A number of toll road projects have been considered by local government, some with the intention to involve the private sector in the delivery of these projects. The amendments provide the capacity for State government and local government to involve the private sector in these projects. However, it is critical that this power is subject to State transport priorities and strategies. In this way, planning for toll roads is subject to Ministerial approval and State infrastructure priorities. It is intended that Ministerial project approval is a critical element of these new powers. Transparency in the approval and conditioning process is essential to balance accountability and commercial flexibility.

### **Administrative Costs**

The Bill imposes negligible costs to the State.

### **Achieving the Objectives**

To achieve the objectives amendments are proposed to the *Transport Infrastructure Act 1994* and the *Transport Planning and Coordination Act 1994* which specifically establish the following process:

- Local government acquires or holds the land (including funding the process) for an approved tollway project under the *Transport Planning and Coordination Act 1994*, (as amended);
- The Minister must declare such land as local government tollway corridor land subject to compliance with conditions for an

approved tollway project. The Minister may also declare other State land required for the project as local government tollway corridor land;

- Upon declaration of local government tollway corridor land, the land becomes Unallocated State Land (USL) leased to the State by way of a perpetual lease;
- The perpetual lease to the State must be sub-leased to local government to allow local government to retain ongoing control and tenure (local government tollway corridor land may become a local government tollway to ensure full operational capability); and
- The sublease to the local government may be sub-sub-leased to a private proponent operator giving private sector certainty.

Similar amendments are proposed to the *Transport Infrastructure Act 1994* to allow the State government to lease land for a State toll road corridor for sub-lease to a private operator. This includes establishing a legislative framework which will also allow State and local government to jointly lease State toll road corridor land.

Other amendments are proposed for the:

- *Acquisition of Land Act 1967* to ensure Brisbane City Council is treated the same as other constructing authorities, including local government, in terms of resumption timeframes.
- *Land Act 1994* to streamline existing approval requirements for the Minister of Natural Resources and Mines when dealing with transport land; and
- *Property Law Act 1974* to ensure below surface structures are protected.

## **Fundamental Legislative Principles**

There are no breaches of the fundamental legislative principles. Under the *Legislative Standards Act 1992*, the legislation must have regard to the principle of natural justice. The bill does not set out appeal rights for the conditioning and approval of tollway projects. It is therefore intended that the principles of judicial review apply as set out in the *Judicial Review Act 1991*.

## **Consultation**

Key government stakeholders have been extensively consulted throughout the development of the bill. This has included the establishment of a legislative working group which involves representation by the Brisbane City Council. Key government stakeholders include Queensland Treasury, the Department of Premier and Cabinet, the Coordinator General, the Department of Natural Resources and Mines, and the Department of Justice and Attorney-General.

## **Notes on Clauses**

### **Part 1 - Preliminary**

#### **Short Title**

Clause 1 sets out the short title of the Act as the *Transport and Other Legislation Amendment Act 2005*.

#### **Commencement**

Clause 2 provides that the Act will commence on a date to be fixed by proclamation.

### **Part 2 - Amendment of *Acquisition of Land Act 1967***

Clause 3 provides that this part amends the *Acquisition of Land Act 1967*.

Clause 4 amends definitions in section 2 of the Act.

Clauses 5-6 make minor consequential amendments following the removal of section 10 of the act (see clause 7 below).

Clause 7 amends the act by removing section 10 of the *Acquisition of Land Act 1967*. This amendment ensures that the same resumption timeframes to all local governments. Previously, the Brisbane City Council was

required to complete their resumptions within twelve months of issuing their Notice of Intention to Resume. All other constructing authorities, including local governments, are only required to progress the matter to the Minister for Natural Resources and Mines within the twelve month period. This amendment allows the Brisbane City Council and all local governments to operate within equal timeframes.

Clauses 8 to 12 are consequential amendments that flow on from the omission of section 10. (See above.)

Clause 13 is a transitional provision which provides for acquisitions that had already been initiated prior to commencement of this Act. The timeframe for resumptions applies from the date of the Notice of Intention to Resume.

## **Part 3 - Amendment of *Land Act 1994***

Clause 14 provides that Part 3 amends the *Land Act 1994*.

Clause 15 amends section 290J to provide that the Minister for Natural Resources and Mines is not required to consent to a registration of a plan of subdivision for transport land.

Clause 16 amends the *Land Act 1994* by inserting a new division 13, section 390A of the *Land Act 1994*. This section provides that approval from the Minister of Natural Resources and Mines is not required for various dealings with transport land. This includes dealings with easements, subleases and covenants for transport land.

Clause 17 amends Schedule 6 of the act by including within the definition of "transport land" 'State toll road corridor land' and 'local government tollway corridor land' - categories established by this Act.

## **Part 4 - Amendment of *Property Law Act 1974***

Clause 18 provides that this part amends the *Property Law Act 1974*.

Clause 19 amends section 179 of the Act to make it clear that a statutory protection extends to underground and below-surface structures like tunnels not only structures that are above ground.

## **Part 5 - Amendment of *Transport Infrastructure Act 1994***

Clause 20 provides that this part amends the *Transport Infrastructure Act 1994*.

Clause 21 inserts a new section about the effect of a note in the text of the Act.

Clause 22 inserts a new Chapter heading by referencing a new division for State toll road corridor land and franchised roads.

Clause 23 inserts a new Division 2 for State toll road corridor land that sets out the process and effect of the declaration of State toll road corridor land. This Division sets out the legislative framework where state lands are to be incorporated in a toll project. Such a project may also involve land resumed by a local government but held by the State and may include private sector involvement.

In section 84A, land held by the State would include land identified in a business case for a State toll road corridor and held by the State for the purposes of a State toll road, subject to the agreement of the relevant State agencies.

This means that the State may lease land for a toll road to accommodate a range of commercial arrangements. For example, the lease may be to a joint venture operator comprising of:

- State government and local government interests;
- State government, local government and private operator;
- Local government and private operator.

This model provides the State with the capacity to involve the private sector in the delivery and management of transport infrastructure delivery.

Given the potential for the involvement of other parties the section provides that the Minister declaring the land may impose conditions. The

declaration of State toll road corridor land is subject to conditions established by the Minister.

Under section 84C (below), it is intended that these conditions may be reflected in the terms of the lease, as required.

The new section 84B, provides for the operation and management of common areas where toll road corridor land intersects with rail corridor land. A railway manager and the toll road operator may both use the common area, which may include overpasses (with footings in the common area). The State is also not liable for the railway's presence or operation because of its tenure over the land. Where a toll road on a common area ceases being used the chief executive may require that the area be cleared of road infrastructure.

The new section 84C provides the process of establishing the tenure arrangements for State toll road corridor land. The effect of the declaration is that the land becomes unallocated state land. This in turn enables the land to be dealt with under the *Land Act 1994*. The clause then provides that the Governor in Council must lease the land to the State in perpetuity. The land is able to be subleased by the state and in turn by any subsequent sublessees.

This means that for a road, the road stops being a road as defined under the *Land Act 1994*, for the purposes of this division. This section changes the tenure and it becomes unallocated state land. This means that despite a change in the tenure, the provisions regarding road operation and management under the transport legislation still apply. For example, the road rules will still apply under the *Transport Operations (Road Use Management) Act 1994*.

This clause also inserts a new division 3 for Franchised Roads which applies for sections 85 to 91 of the Act.

Clause 24 is intended to allow the Minister to table a summary of the road franchise agreement in the Legislative Assembly (instead of the whole document). This is to ensure transparency while protecting information which is commercial-in-confidence.

Clause 25 omits certain definitions and replaces them in Schedule 6, Dictionary.

Clause 26 omits the previous section 93 of the *Transport Infrastructure Act 1994* and provides a new section 93.

Subsection (1) provides that the Minister may declare certain roads (that is, a State-controlled road or part of a State-controlled road, the whole or part

of a franchised road, or the whole or part of State toll road corridor land ) to be toll roads.

Subsection (2) provides that a gazette notice must include the matters set out in schedule 5.

Subsection (3) allows different toll amounts to be set for different types of vehicles or by reference to stated exceptions or factors such as the time of day the tolled infrastructure is being used by a motorist.

Subsection (4) relates to the setting of an administration charge payable for collection of an unpaid toll referred to under subsection (2). The charge must be no more than the costs incurred for the recovery and collection of the toll.

Subsection (5) allows a user administration charge to be levied in addition to the gazetted toll amount to be paid by a user not using E toll or cash.

Clause 27 amends section 94 by clarifying that a driver is liable to pay the toll and a user administration charge.

The amended subsection (3A) replaces the existing s 94(3) and provides four ways in which drivers may satisfy their liability for payment of a toll:

- in cash where this payment type is available at a toll plaza;
- by touch tag;
- using the E toll system in accordance with section 95(1); and
- paying in another way as allowed by gazette.

Clause 28 amends the definition of 'deferred toll amount'.

Clause 29 replaces section 98 to ensure that is liable for a driver to pay the toll road operator the administration charge as well as the unpaid toll and user administration charge. If the driver's transponder or the E toll system is faulty, the driver is not liable to pay the administration charge.

Clause 30 amends section 99(2)(b)(i) for consistency with the new section 99A.

Clause 31 inserts a new section 99A which provides that if a corporation is the registered operator of a vehicle, and does not help the toll road operator in the manner prescribed by subsection 1(b), the corporation becomes liable under section 94 and section 98.

Clause 32 inserts a new chapter 6, part 8 for local government tollways. These amendments will set out a framework to apply to all local governments for tolled transport infrastructure projects.

Section 105A sets out the objectives of the part. These objectives are intended to apply as guidelines for the construction, maintenance and operation of local government tollways. Section 105B inserts new definitions for the division.

Section 105C sets out a process for the approval of local government tollway projects. This process provides the Minister administering the Act with a power to approve and impose conditions on tollway projects. This is to ensure that all such projects take into account state and regional issues and to further ensure that such projects will integrate with the transport system.

If the project is an approved tollway project, the following consequences will then derive from the approval:

- Firstly, under amendments proposed to the *Transport Planning and Coordination Act 1994*, (see clause 39) the local government will be empowered to acquire land for the project subject to compliance with any conditions imposed by the Minister or any other conditions which are applicable under other legislation;
- Secondly, the Minister must declare land acquired for the project by local government as 'tollway corridor land' but only if the project is approved and local government complies with conditions, as above. Other land required for the project (such as land held by the state) may also be declared 'tollway corridor land';
- Thirdly, the terms of a franchise agreement must be consistent with the approval and conditions imposed for the project; and
- Finally, before a toll is payable, the Minister may declare a tollway, which will allow the local government to levy a toll and operate a toll road. This declaration is at the discretion of the Minister.

To ensure appropriate corporate governance arrangements, it is intended that the Minister may publicly disclose the conditions either by tabling in Parliament or through public notification. This is intended to ensure appropriate transparency and accountability measures apply.

Section 105C(5) ensures that project approval given by the Minister under this Act does not mean that other approvals required under other legislation like the *State Development and Public Works Organisation Act 1971* and the *Statutory Bodies Financial Arrangements Act 1982* are superseded. Other legislative approvals are still required regardless of whether project approval is granted under these provisions.

Section 105D imposes an obligation on the local government to keep the Minister informed of material changes to the project as soon as practicable. This recognizes that the approval at this stage is of a preliminary nature. As the business case, full feasibility and environmental impact studies proceed and as other factors arise, the scope of elements of the project may potentially change. Section 105 D requires the local government to keep the Minister informed on any material changes as soon as practicable.

Section 105 E provides that if there is a material change in the scope of the approved project, the Minister may review approval of the project and amend conditions. The local government will be required to comply with the amended conditions and the State is not liable for the payment of compensation arising out of a change or revocation in project approval or conditions.

These sections have flow on effects for the acquisition of land under the amended section 28D of the *Transport Planning and Coordination Act 1994*. Project approval triggers the powers of the local government to acquire land for the purposes of an approved tollway project. However, if there is a material change in the project and the Minister has revoked approval for the project, the local government does not have an automatic right to acquire land.

Section 105 F reflects the preliminary nature of the approval under 105C(2) and provides that while the Minister is able to vary the conditions of approval under 105E, this capacity to vary these conditions will end when the land is declared as local government tollway. This is to provide project proponents with sufficient levels of certainty.

Section 105G provides that the State is not liable for any changes or revocation of an approval.

Section 105H provides that land acquired under the *Transport Planning and Coordination Act 1994* for an approved tollway project is able to be declared as 'local government tollway corridor land'. Where the land has been acquired by the local government under section 28D of that Act and the Minister is satisfied the conditions have been met, the Minister is obliged to make the declaration. Where other land is involved the Minister (where satisfied the conditions have been met) may make the declaration. This declaration sets in train the tenure arrangements for such land (see 105 J)

In section 105H, land held by the State may be declared local government tollway land. For the purposes of this section, this would include land identified in an approved tollway project for a tollway corridor and held by

the State for the purposes of a local government tollway, subject to the agreement of the relevant State agencies.

Section 105I provides for the operation and management of common areas where local government tollway corridor land intersects with rail corridor land. A railway manager and the local government or tollway operator may both use the common area, which may include overpasses (with footings in the common area). The State is also not liable for the railway's presence or operation because of its tenure over the land. Where a tollway on a common area ceases being used the chief executive may require that the tollway be cleared of local government tollway infrastructure.

Section 105J establishes the framework for the leasing model. Where a declaration has been made under 105H the land which is the subject of the declaration becomes Unallocated State Land (USL) and is leased by the Governor in Council to the State by way of a perpetual lease. Section 105J then provides this land is then subleased to the local government. This lease is able to be subleased, sub-subleased etc.

This tenure regime is framed to allow local government to retain ongoing control and tenure (local government tollway corridor land may become a tollway to ensure full operational capability); and the discretion to sub-sub-lease to a private proponent operator.

Section 105K lists those provisions of a number of Acts that do not apply to lease under section 105J. These provisions generally apply in relation to the disposal of land. This section therefore exempts the application of these specific provisions in respect of a lease under section 105J.

The new Division 4 sets out provisions in respect of public utility plants. It details the relationship between the chief executive and the owners of public utility plant on local tollway corridor land. Section 105L defines 'local government tollway corridor land' for this division.

Section 105M confirms that the ownership of public utility plant located on land, does not change, despite a declaration of that land as local government tollway corridor land.

Section 105N enables a public utility provider (the provider) to do certain things including, building, maintaining, replacing or taking away, or altering the public utility plant on local government tollway land (see for example, section 105N(1)).

This section further clarifies that the provider may only do the things mentioned in section 105N with the local government's written agreement and the local government must not unreasonably withhold agreement.

Section 105N(5) provides an exception to section 105N(2) in that the provider, in the interests of public safety may carry out urgent maintenance of its public utility plant on local government tollway land without the local government's written agreement. However, the provider must make reasonable attempts to obtain the local government's oral agreement to the maintenance. The provider must, regardless of the success or otherwise of achieving the local government's oral agreement as quickly as possible advise the chief executive of the maintenance being carried out.

Under section 105O, the local government must give a public utility provider information about possible alignments and levels of planned local government tollway infrastructure to minimize any adverse affects of the tollway on the provider's works.

Section 105P sets out a consultation process before replacing public utility plants.

Section 105Q provides for the rectification of the effect of unauthorized works mentioned in section 105N, by notice given by the local government to the provider, where a provider does something without the agreement of the local government or inconsistent with that agreement.

Sections 105R and 105S outline specific requirements in relation to the location of a public utility plant.

Section 105T sets out matters relating to liability for damage or expenses in relation to damage caused by the local government to public utility plant located on local government tollway land. Sections 105U-V describe the circumstances under which the local government is not liable for damage caused to public utility plant. Section 105W states the liability of the provider to pay additional expenses incurred by the local government under specified circumstances. Section 105X outlines the process which applies for the replacement and reconstruction of public utility plant.

## **Division 5 establishes the mechanisms to franchise local government tollway corridor land.**

Section 105Y provides local government with a power to enter into franchise agreements subject to approval by the Treasurer under section 60A of the *Statutory Bodies Financial Arrangements Act 1982*. These agreements must be consistent with any conditions imposed by the Minister administering the *Transport Infrastructure Act 1994* or any other conditions imposed under other legislation for the project. It is intended

that the agreement be consistent, as far as it is possible, with Queensland's transport planning priorities and strategies including the Integrated Regional Transport Plan for South East Queensland.

Section 105Z requires the mayor of a local government that enters into a franchise agreement to table a summary of the agreement. However, the information for inclusion in a summary must be approved by the Auditor General. This is to ensure transparency while protecting commercially sensitive information. For example, it is envisaged that the types of matters that may not be disclosed in a summary franchise agreement include:

- the proponent's costs structure or profit margin;
- matters relating to intellectual property; and
- any other matters where disclosure would put the proponent at a commercial disadvantage with its competitors.

The details that may be contained in a summary include:

- The full identity of the Preferred Proponent and its sponsors, including details of cross ownership of relevant companies;
- Service delivery requirements and performance specifications;
- The term of the partnership. This information would include details of future transfers of assets of significant value back to Government at the end of the term at no or nominal cost;
- The assets that are to be transferred to the Preferred Proponent;
- Maintenance provisions;
- The price to be paid by the public, and the basis for variations to this price;
- Provisions for renegotiation;
- The risk sharing in the construction and operational phases;
- Significant guarantees or undertakings. This would include loans entered into or agreed to be entered into; and
- Other key substantive elements of the Project Agreements.

Section 105ZA also requires each annual report of the local government to include a report on the operation of this part.

The new Division 6 applies for 'Local Government Tollways'.

Section 105ZB applies to tolling. Subsection (1) provides that the Minister may by gazette declare part or the whole of a local government franchised

road and part or the whole of local government tollway corridor land to be a local government tollway.

Subsection (2) allows the Minister, before making a declaration under subsection (1), to consider matters including whether there have been any material changes to the approved tollway project, whether conditions imposed by the Minister under division 2 have been complied with and whether the local government has complied with all other requirements relevant to the approved tollway project under the Transport Infrastructure Act or other Acts.

Subsection (3) provides that the Minister may make the declaration subject to conditions about a matter mentioned in schedule 5 that the Minister considers necessary in the circumstances.

Subsection (4) provides that after the Minister makes a declaration under subsection (1) and before a toll is payable, the local government must give notice of the matters set out in schedule 5.

Subsection (5) provides that the local government must advertise its notice of the matters mentioned in schedule 5 in a newspaper circulating generally in the local government's area.

Subsection (6) allows different toll amounts to be set for different types of vehicles or by reference to stated exceptions or factors such as the time of day the tolled infrastructure is being used by a motorist.

Subsection (8) provides that an administration charge for an unpaid toll under a notice under subsection (4) must not be more than the reasonable cost of issuing a notice and collecting the unpaid toll and administration charge for the toll.

Subsection (9) provides that a user administration charge imposed for payment of a toll, other than by E toll, must not be more than the reasonable cost of administering and collecting payment of the toll.

### ***Section 105ZC Liability for toll and satisfying the liability***

Subsection (1) creates a liability for the driver of a designated vehicle to pay a prescribed toll and user administration charge when entering, or on, a local government tollway. It states that the toll is payable at each toll plaza through which the vehicle passes and that the payment is for the use of the local government tollway.

Subsection (2) allows the local government tollway operator to recover unpaid toll or user administration charge as a debt subject to any applicable agreement made by the local government tollway operator.

However, subsection (3) provides that the driver is not liable to pay the user administration charge if the transponder or E-toll system is faulty.

Subsection (4) provides three ways in which drivers may satisfy their liability for payment of a toll:

- in cash where this payment type is available at a toll plaza
- by E toll using the system in accordance with section 105ZD(1)
- making payment in another way allowed under a section 105ZB(4) notice

Subsection (4) applies when the driver is at a lane designated only for use of the E toll system. In this situation, the driver may only use the E toll system or a method of payment allowed under a section 105ZB(4) notice.

### ***Section 105ZD Using the E toll system***

Subsection (1)(a) provides that the driver of a designated vehicle may satisfy the liability to pay the toll by having a properly operating transponder or other electronic device in or fitted to the vehicle. The use of the words “or other electronic device” allows for advances in technology and the possibility that a device other than a transponder is developed.)

Subsection (1)(b)(i) provides that where satisfying the toll liability under section 105ZC, the transponder or other device must have been issued for a vehicle of the same type as the designated vehicle. This ensures that the vehicle is in the same class or range of vehicles included in the description for a particular toll price. Subsection (1)(b)(ii) provides that the transponder or device must also be linked to a valid account for the E toll system for the local government tollway being used.

Subsection (1)(b)(iii) provides that the transponder or other device must properly activate the E toll system.

Subsection (2) clarifies that the satisfying of the obligation to pay a toll under subsection (1) does not affect another contractual obligation owed by a driver to a toll operator. It explains that, even though a driver may satisfy the obligation under the Act by having a correctly operating transponder, a further or subsequent obligation to a local government tollway operator such as payment of monthly accounts issued by the operator to the person for use of the transponder at toll plazas in the month, must still be satisfied.

***Section 105ZE Application of subdivision 3***

Section 105ZE provides for when subdivision 3 applies. It states that the division applies if the driver of a designated vehicle passes through a toll plaza on a local government tollway and does not satisfy the driver's liability for the toll under section 105ZC(3).

***Section 105ZF Definition for subdivision 3***

This section defines the term “deferred toll amount” for the purpose of subdivision 3.

***Section 105ZG Liability for administration charge and user administration charges in addition to unpaid toll***

This section provides for the circumstances in which a driver using a local government tollway is liable to pay, in addition to any unpaid toll and user administration charge, the amount of the administration charge. The user administration charge enables the toll operator to recover from a driver the additional costs the operator incurs as a result of a driver using a method of payment that is more expensive for the operator to administer than if the driver used a transponder or cash.

***Section 105ZH Notice to vehicle's registered operator***

Subsection (1) provides that a local government tollway operator may only give a notice under subsection (2) if it has not received the deferred toll amount.

Subsection (2) provides that, where the driver has become liable for a deferred toll amount under section 105S, the local government tollway operator may give the registered operator of a vehicle a written notice requiring the registered operator, within the time prescribed on the notice, to either pay the deferred toll amount to the local government tollway operator or give the local government tollway operator a statutory declaration made by the registered operator containing information set out in subsections 105ZH(2) (b)(i) and 105ZH(2)(b)(ii).

Subsection (3) provides that non-compliance without a reasonable excuse with subsection (2) is an offence.

Subsection (4) provides that for the purpose of giving a notice under subsection (2) the registered operator's address for service may be taken to

be the address recorded under the Registration Act applying to the designated vehicle's registration..

***Section 105ZI Corporation may be taken to be driver of vehicle***

If a corporation is the registered operator of a vehicle, and does not help the local government tollway operator in a the manner prescribed by subsection 1(b), the corporation becomes liable under section 105ZG.

***Section 105ZJ Notice to information holder***

This section allows the local government tollway operator to obtain information about a driver who failed to pay a toll from a person other than the registered operator of the vehicle used by the driver.

Subsection (1) provides the conditions under which a local government tollway operator may provide a notice to an information holder.

Subsection (2) provides that a written notice may be given to the information holder requiring a statutory declaration containing information as described in subsection (3).

Subsection (3) provides that the declaration by the information holder must be in the approved form and give the toll operator all reasonable help necessary to establish the name and address of the driver.

Subsection (4) makes it an offence for the information holder without reasonable excuse to fail to comply with the notice given under subsection (2).

***Section 105ZK Notice to person identified as driver***

This section allows the local government tollway operator to provide a notice to a person, including a person identified as a result of a statutory declaration given by the registered operator under section 105T, or by the information holder under section 105ZJ.

Subsection (1) provides that the section will apply only if the local government tollway operator has not received the deferred toll amount and considers on reasonable grounds that the driver (the identified person) has been correctly identified.

Subsection (2) provides that the local government tollway operator may give written notice to the identified person requiring:-

- payment of the deferred toll amount; or
- a statutory declaration that establishes that the identified person was not the driver and that gives the toll operator all reasonable help necessary to establish the name and address of the driver.

Subsection (3) provides that, if the identified person without reasonable excuse does not comply with the notice, the identified person commits an offence.

### ***Section 105ZL Statutory declarations for subdivision 2***

Subsection (1) provides that a statutory declaration given under subdivision 2 may be supported by statutory declarations from other persons.

Subsection (2) provides that when a statutory declaration is required from a corporation, the statutory declaration must be given by a person authorised to act on behalf of the corporation.

### ***Section 105ZM Limit on offences***

This section limits to one the number of offences related to non-payments of tolls that a person may be charged with resulting from a single journey on one toll road.

### ***Section 105ZN Confidentiality***

This section is included for the protection of personal information obtained in the course of toll collection and is consistent with one of the legislative principles adopted by the Standing Committee on Transport. The provision is primarily aimed at employees of a local government tollway operator but applies to any person who may have access to such information.

Subsection (1) provides that a person must not, intentionally or recklessly, disclose, allow access to, record or use personal information.

Subsection (2) provides for the circumstances when a person may disclose, allow access to, record or use personal information for the purposes of subsection (1). These are:

- in the discharge of a function related to the administration of Division 3.

- if authorised by legislation or by person whose identity can be ascertained from the personal information.
- if the information is being used in a court or tribunal and the information is admissible as evidence in the proceeding
- if the information is being used for a purpose directly related to the purpose for which the information was obtained
- if the person using the information reasonably believes that the use is necessary to prevent or lessen a serious or imminent threat to the life or health of an individual.

Subsection (3) defines for the purposes of 105Z the terms “administration of this division” and “personal information”.

The new Subdivision 3 sets out miscellaneous provisions relating to tolling.

### ***Section 105ZO Evidence and procedure***

This section relates to proving an offence under Division 3.

Subsection (1) provides for the effect of the specified evidentiary matters.

Subsection (2) provides that a certificate may relate to a stated time or period of time and has the effect mentioned in subsection (1)(c) for the entire particular period for which it was issued.

Subsection (3) provides that a recording by photographic, mechanical, electronic or other devices produced for administering Division 3 is evidence that the recording was made, of the accuracy of the recording and of the matters stated in the recording. These recordings would include the image and toll data stored on an electronic image file. This means, for example, that a hardcopy of an image file presented in a court or tribunal, purporting to represent that a particular vehicle passed through a particular toll plaza lane at a particular time and that payment or the liability to pay was not fulfilled, will be taken to be evidence of those facts.

Subsection (4) defines “certificate” and “official”.

Clause 33 corrects a minor drafting in section 243 by adding a definition of railway manager. The railway manager of corridor land is the railway manager for the railway that is located or is proposed to be located, on corridor land.

Clause 34 reframes the existing s249 to cover state toll road corridor land and local government tollway corridor land as well as state controlled

roads. This provision deals with the respective rights and obligations of the parties involved in the common area where the respective corridors overlap.

Clause 35 amends existing s303 to reflect the application of certain provisions of the Land Act for busway land. This means that the relationship with the Land Act will be the same for busway and local government tollway corridor land.

Clause 36 parallels Clause 35 for light rail corridor land.

Clause 37 inserts a new transitional provision for toll roads. It ensures that a declared toll road under the repealed regulation continues to be a declared toll road.

Clause 37 also inserts a new transitional provision for the proposed North South Bypass Tunnel project. This project is likely to be the first project to utilize the tollway provisions. The proposed North South Bypass Tunnel is a Brisbane City Council (BCC) project and is the subject of a Memorandum of Understanding between the State and BCC dated 28 February 2005.

There have also been a number of letters exchanged between the State and BCC establishing in part the state's requirements. This correspondence includes but is not limited to:

- Letter from the Premier and Minister for Trade, Hon Peter Beattie MP dated 28 February 2005;
- Letter from the Premier and Minister for Trade, Hon Peter Beattie MP, dated 19 September 2003.

This transitional provision validates conditions imposed on the BCC, including those established by correspondence from the State.

The effect of the provision will be that the project will not need additional approval under section 105C(2). This will effectively avoid duplicating the assessment that has already undertaken by the State. Conditions imposed by the State will be binding. This will enable BCC to proceed with the acquisition of land required for the project.

The provision clarifies that if there are material changes to the project, the State may review its support for the project and impose other conditions, for compliance by the BCC.

BCC will still require the declaration of the project as a local government tollway by the Minister. This will be necessary before a toll road can operate and is an opportunity for the Minister to assess compliance with State conditions and whether the project parameters have changed.

Clause 38 amends Schedule 1 of the Act and allows a regulation to specify what vehicles are exempt from the payment of a toll.

Clause 39 inserts a new Schedule 5. Schedule 5 sets out the matters which must be included in a gazette notice to be given by the Minister pursuant to section 93(2) or notice to be given by a local government for a local government tollway pursuant to section 105ZB(4).

Clause 40 omits and amends certain definitions. Paragraph (a) of the proposed definition of railway manager is the existing definition. New paragraph (b) reflects that the railway manager for rail corridor land is the railway manager for the railway that is located, or is proposed to be located, on rail corridor land.

## **Part 6 – Amendment of *Transport Planning and Coordination Act 1994***

Clause 41 provides that this part amends the *Transport Planning and Coordination Act 1994*

Clause 42 inserts a new Part 4B that establishes that a local government has the power to acquire land for an approved tollway project. This clarifies that the land so acquired is able to be dealt with by local government and sub-leased to another person or entity. For example a local government could sublease the land to a tollway company to construct and operate the tollway.

The provision confirms that the local government will be a constructing authority for the purposes of the *Acquisition of Land Act 1967* and that Act will be utilised for the process of acquisition.

This is consistent with other transport land models (for example, railways and busway), and is also preferable given the NSBT involves land beneath the high water mark (under the Brisbane River).