

Airport Assets (Restructuring and Disposal) Bill 2008

Explanatory Notes

General Outline

Policy Objectives

The purpose of the Bill is to facilitate the restructure and divestment of the State's interest in Cairns and Mackay Airports held by Cairns Ports Ltd (Cairns Ports) and Mackay Ports Ltd (Mackay Ports), together with Port of Brisbane Corporation Ltd's shareholding in Brisbane Airport, held by Gateway Investments Corporation Ltd (Gateway) (a subsidiary of the Port of Brisbane Corporation Ltd) by the end of December 2008, and associated purposes; and to amend the *Energy Assets (Restructuring and Disposal) Act 2006* (EARDA) to revive certain powers in relation to the continuing project to sell the Government Owned Corporation wind farm at Emu Downs (and development opportunities) (SWAG Project).

Reasons for the Bill

Legislation is required to facilitate the restructure and disposal of the Cairns and Mackay Airports, the disposal of the Government's shareholding in Brisbane Airport, and to provide for a planning regime and other particular matters about the continuing operation of the airports at Cairns and Mackay; and to amend the EARDA to continue in effect certain powers to complete the SWAG Project.

Achievement of the Objectives

The Bill achieves its main policy objectives by:

- (a) facilitating the creation of stand alone airport businesses operated by new subsidiaries of Cairns Ports Ltd and Mackay Ports Ltd (collectively the ports corporations);

- (b) facilitating a competitive disposal process being conducted for the divestment of the State's interest in Cairns and Mackay Airports, together with its shareholding in Brisbane Airport;
- (c) modifying the current planning regime for the airport land, so as to transfer assessment powers from the ports and Queensland Transport to the Department of Infrastructure and Planning and ensure that the integrated development assessment system (IDAS) applies more effectively to the assessment of applications;
- (d) conferral on the Treasurer of the power to give directions and to make transfer notices to transfer the assets of ports corporations (including the exercise of powers under various legislation) to restructure and divest the airport businesses of the ports corporations;
- (e) conferral on the Treasurer of a power to deem the form of an instrument and which parties (including third parties) are bound by that instrument as part of the divestment process;
- (f) ensuring that appropriate controls are available to the airport operators over the airport land, including the provision for certain exemptions to be granted from local laws, where application of such laws would not be appropriate for the operation of the airport;
- (g) clarification of the position in respect of land tax and rates with respect to the airport lessees; and
- (h) amending the *Energy Assets (Restructuring and Disposal) Act 2006* to revive the Treasurer's powers to give project directions and make transfer notices to complete the SWAG Project.

Alternatives to the Bill

The policy objectives can only be implemented through primary legislation.

Estimated Cost for Government Implementation

The cost of administering the Bill in respect of the divestment of the airport businesses and the shareholding in Brisbane airport will be defrayed by the proceeds of the disposal of these assets. The ongoing costs of the administration of the planning regime and other administrative provisions in respect of the airport land at Mackay and Cairns, will be primarily be defrayed from the receipt of fees from the airport lessee (and sub-tenants)

for planning applications and certificates under the *Integrated Planning Act 1997*.

Consistency with Fundamental Legislative Principles

On 15 April 2008, the Government announced the divestment of its interest in Cairns International Airport and Mackay Airport, together with its shareholding in Brisbane Airport. The Government intends to apply the funds realised from the divestment of the Cairns International Airport and Mackay Airport towards new health infrastructure in North Queensland.

The Government Airport Transaction Team (ATT) has commenced:

- (i) the process of identifying and examining the airport assets and liabilities of the Mackay Ports and Cairns Ports for the purpose of restructuring the businesses into airport entities; and
- (ii) the disposal processes for the State's shareholding in Brisbane Airport.

The Bill is essential to enable the Queensland Government to restructure and dispose of the airport businesses. It is a preference of the Government that the disposal be affected on the basis of a 99 year lease of the land involved. Thus the restructuring of Cairns Ports and Mackay Ports airport businesses for disposal will require the establishment for each of the Ports Corporations of an airport lessor company and an airport lessee company which will be the disposal vehicles. This will involve a complex commercial and legislative process due to amongst other things:

- (a) improvements in the planning regime for the airport land;
- (b) the provision of appropriate powers to the airport lessee to control the behaviour of people and the movement of vehicles on airport land to ensure the operation of the airport and safety and security of users; and
- (c) the provision of safeguards to ensure that airport lessees handle their powers in a responsible manner.

The timeframe for the disposal of the appropriately structured airport entities is set for the end of 2008. The restructuring provisions under the Bill, particularly in relation to the Minister's powers, will cease to operate on 30 June 2009. The Bill is essential to facilitate the restructure of the

airport entities within this strict timeframe and to ensure that the best commercial outcome is achieved for the State. Any delay in the restructure or disposal processes will reduce the receipts to Government for the commercial value of the businesses.

The Bill is designed to deal with a complex range of novel issues that arise out of the restructure of the airport entities within the current legislative framework that regulates these entities

The Bill raises the following issues relevant to fundamental legislative principles:

- (a) Rights and liberties of individuals, facilitation of evidence by certificate - *Legislative Standards Act section 4(3) and 4(3)(a)*. The Bill may not be consistent with the principles of natural justice in that clause 29 provides that the Treasurer may issue a certificate as conclusive evidence in relation to matters done under Chapter 2. For example, the Treasurer may issue a certificate identifying that certain information was authorised to be disclosed by a Ports Corporation or its subsidiaries to a prospective purchaser for the purpose of this project. Such a certificate would prevent a person bringing any contrary evidence to challenge the validity of the certificate. Given the State's proposed timeframe and the need for certainty for this project, any legal proceedings would "derail" the disposal process.
- (b) Rights and liberties of individuals, decisions not reviewable - *Legislative Standards Act section 4(3) and 4(3)(a)*. Clause 20 provides that a decision under this Act is final and conclusive; cannot be challenged, appealed against, reviewed, quashed, set aside or called into question in any other way, under the *Judicial Review Act 1991* or otherwise (whether by Supreme Court, another court, a tribunal or another entity); and is not subject to any writ or order of the Supreme Court, another court, a tribunal or another entity on any ground. Given the State's proposed timeframe and the need for certainty and speed in which things need to be done for this project, any legal proceedings would "derail" the divestment process. The exclusion of review in relation to things done under this Bill is on the basis that this is a significant commercial project and the purchasers of the airport assets require certainty in the current economic conditions. Also, the State would suffer a significant financial detriment if it was delayed in restructuring the State owned airport assets and their subsequent disposal. It is necessary to limit the ability of third parties to unreasonably delay the implementation of this project.

- (c) Rights and liberties of individuals, no entitlement to compensation - *Legislative Standards Act section 4(3) and 4(3)(a)*. Clause 52 provides a person is not entitled to compensation under the Planning Act, chapter 5, part 4, or any other law in relation to a change to a LUP affecting the person's interest in any airport land. There is no common law right to compensation if a land use plan is amended. However, it is arguable that there may possibly be a right to compensation which arises from the operation of the *Acts Interpretation Act 1954* to existing rights. The Bill balances this possible impact upon the rights and liberties of an individual by providing for the person's existing uses and rights under current development approvals to continue despite any change to the LUP. Such a provision is appropriate having regard to the fact that there is a clear process for the review of LUPs in the Bill, generally every 8 years, involving public consultation.
- (d) Rights and liberties of individuals, liability for acts of authorised officers and related persons. - *Legislative Standards Act section 4(3) & conferring immunity from liability - Legislative Standards Act section 4(3)(h)*. Clause 96 provides that the airport lessee is civilly liable for the actions of an authorised officer, rather than the airport lessor and confers immunity on an authorised officer acting honestly and without negligence. This provision sheets liability to the airport operator rather than to the State owned airport lessor of the airport land. This is consistent with the high standard of responsible conduct required by the Government of private sector airport operators of the Cairns International Airport and the Mackay Airport. Further the rights of persons who allege loss or damage arising from the conduct of authorised officers are preserved, since such claims may be brought against the airport lessee.
- (e) Rights and liberties of individuals, disclosure of confidential information and the deeming of a third party's consent – *Legislative Standards Act section 4(3) & conferring immunity from liability - Legislative Standards Act section 4(3)(h)*. There are three circumstances in which third parties' commercial rights may be affected by the Bill in respect of the restructuring and disposal provisions:
- the disclosure of confidential information without third parties' consent;

- the transfer of businesses, assets and liabilities between the Ports Corporation and its subsidiary without third parties' consent by gazetted transfer notice issued by the Treasurer; and
 - the deeming of third party consent eg to a change of control provision in a commercial agreement upon disposal of the airport entities to a purchaser.(i.e. parties to the Deed of Covenant in respect of the Brisbane airport shareholding;
- (i) For the purposes of this project, the Ports Corporations have been required by direction under section 124 of the *Government Owned Corporations Act 1993* (“the Shareholding Ministerial direction”) to co-operate with the State and its advisors in identifying and examining the assets and liabilities of. Cairns Ports, Mackay Ports and Gateway. The Ports Corporations and their subsidiaries are concerned that they and their employees may be sued by a third party for a breach of contract or confidence in relation to the disclosure of confidential information to the State and its advisors. This is particularly the case for Gateway which can not be given a Shareholding Ministerial direction and thus acts voluntarily to disclose confidential information to the Port of Brisbane Corporation Ltd and the State’s advisors which may be to the detriment of the directors of Gateway.
 - (ii) The ATT has established a “vendor data room” which contains information in the possession and control of the Ports Corporations and their subsidiaries. Pursuant to clause 23, the State is entering into a confidentiality agreement with prospective purchasers for the purpose of giving access to information in the possession or control of a Ports Corporation or its subsidiaries.
 - (iii) Clauses 24 and 25 authorise a Ports Corporation or its subsidiary to disclose information to persons involved in the project, prospective purchasers and other Ports Corporation or its subsidiaries for the purpose of the project. Clause 25 overrides any condition contained in an agreement between a third party and a Ports Corporation or its subsidiaries that certain information (including the terms of the relevant agreement) cannot be disclosed to any person without that third party’s consent.
 - (iv) To achieve the State’s proposed timeframe, it is not possible to obtain the necessary consents from the relevant third parties to disclose the requisite information to the prospective purchasers. At the same time, this information needs to be provided to prospective purchasers for the

purpose of them being able to make an informed decision. If this information is not provided, the State is at risk of being guilty of providing false and misleading information. The purpose of clauses 24 and 25 is to facilitate the due diligence and disposal processes. This clause will also overcome the need for the relevant Ministers to continue to issue directions to the Ports Corporations and their subsidiaries relating to disclosure of information to the ATT for the purposes of the project

- (v) Similar provisions to clause 12 (Transfer Notice), clause 23 (Confidentiality Agreement with Prospective Purchasers), clause 24 (Disclosure and Use of Information for the Project), clause 25 (Effect on Legal Relationships) and clause 29 (Evidentiary Aids) were contained in the *Energy Assets (Restructuring and Disposal) Act 2006*.
- (v) The transfer notice power in this Bill will also empower the Treasurer to deem the form of an instrument and which parties (including third parties) are bound by that instrument. This is intended to deal with the divestment of part of Port of Brisbane Corporation's interest in the Brisbane Airport. The BACH Shareholders Agreement requires that all other shareholders consent to the divestment of the Port of Brisbane Corporation's subsidiary Gateway's interest in the Brisbane Airport by agreeing and signing a deed of covenant. In a previous divestment of part of Gateway's interest in the Brisbane Airport, the process of signing a deed of covenant was protracted due to the conduct of other shareholders seeking a collateral commercial advantage. Further the State has experienced difficulties in completing the sale of Emu Downs Wind Farm in Western Australia due to the refusal of a joint venture party to consent to the sale. The powers would, if used, affect third party rights but this is considered appropriate in this circumstance if this large capital value divestment were to be unreasonably held up or prevented by other shareholders seeking to hold the State to ransom to gain a collateral commercial advantage.
- (vi) The Bill's objective is to facilitate and ensure the completion of the disposal process by December 2008. If the Bill does not override some third parties' rights, it would not be possible for the restructure of the businesses to occur in a manner which maximises the return to the State, and enable this project to be completed within the State's proposed timeframe. This is a significant commercial project and the

purchasers of the airport assets require certainty. Also, the State would suffer significant financial detriment, if the State was delayed in restructuring the airport business of the State-owned Ports Corporations and the subsequent disposal of those businesses.

Consultation

Community and Business Policy consultation on this issue is not considered appropriate. However, consultation will occur with the local governments at Mackay and Cairns when the Bill has been introduced to Parliament.

The Department of Infrastructure and Planning and the Department of Transport have been closely consulted on the Bill, having regard to the impact upon their responsibilities. Comments received from both Departments in response to Ministerial briefing notes have been reflected in the legislation, particularly in respect of Chapter 4, Planning.

Given that clause 16 of the Bill provides that the acts of the Minister under this Act is an excluded matter for the *Corporations Act*, it will be necessary to consult with the Ministerial Council as soon as possible, seeking their comments about the proposed section.

Notes on Provisions

Chapter 1 Preliminary

Part 1 Introduction

Clause 1 specifies the name of the Act.

Clause 2 provides for the commencement of the Bill. Sections 130 and Chapter 7 Part 7 commence on a proclamation. The balance of the Bill commences on Royal Assent.

Clause 3 states the main purposes of the Act.

Part 2 Interpretation

Clause 4 refers to the dictionary in schedule 3 where particular words used in the Act are defined.

Clause 5 defines the term “project”. This definition assists to circumscribe the limits of the powers granted in the Bill to affect the purpose.

Clause 6 defines the term “airport entities”. This definition assists to define the extent of the powers granted under Chapter 2 in respect of the restructure of the airport entities.

Clause 7 defines the term “airport land”. This definition assists to limit the application of the powers under of the Minister under the Bill.

Clause 8 defines the term “Cairns airport land”. The operation of the definition is delayed until completion day, which is defined in schedule 3 for Cairns International Airport, or Mackay Airport (as the case may be) as the day on which an entity is declared under section 100(1)(c) of the Act to be an airport lessee for that airport.

Clause 9 defines the term “Mackay airport land”. The operation of the definition is delayed until completion day.

Clause 10 defines the term “functions”.

Chapter 2 Restructure and disposal of airport entities and related matters

Part 1 Particular Ministerial powers and activities relating to the project

Clause 11 provides that the Minister may take any necessary or incidental action for the purposes of facilitating the disposal of an airport entity or of a business, asset or liability of an airport entity, and to ensure the continued operation of airport entities. The operation of this clause is limited to the purpose of the project and only in relation to airport entities.

Clause 12 provides that the Minister may, by gazette notice, do a number of things for the purposes of the project, including:

- (a) transferring an asset and related records from an airport entity to another airport entity;
- (b) making certain transactions under the *Land Act 1994* in relation to airport land;
- (c) licensing the airport entities under such acts as the *Environmental Protection Act 1994*, *Nature Conservation (Administration) Regulation 2006*, the *Water Supply (Safety and Reliability) Act 2008* and the *Dangerous Goods Safety Management Regulation 2001*; and
- (d) deeming the form of an instrument and which parties (including third parties) are bound by that instrument.

The Minister’s power under clause 12 is limited to the purpose of the project and to airport entities.

Clause 13 provides limitations on the Minister's power to second employees of an airport entity under clause 10. For example, the secondment of an employee under a transfer notice must not reduce the employee's status or unreasonably change the employee's duties, without the employee's consent.

Clause 14 provides that the Minister may give a direction to an airport entity or its board requiring it to do something necessary and convenient to assist in the disposal of an airport entity or the business, assets or liabilities of an airport entity. A board is required to comply with a direction given pursuant to this section. This clause is similar to provisions relating to project directions under the *Energy Assets (Restructuring and Disposal) Act 2006*

Part 2 Application of other laws and instruments

Clause 15 provides for the validity of acts done under the Chapter 2 of the Act despite contrary provisions under any other Act or instrument.

Clause 16 is a displacement provision for the purposes of section 5F of the *Corporations Act 2001(Cth)*.

Clause 17 provides that no duty under the *Duties Act 2001* is payable in relation to anything done under a transfer notice issued by the Minister under the Act.

Clause 18 excludes the operation of section 121 of the *Property Law Act 1974* (Provisions as to covenants not to assign etc. without licence or consent) over the lease of airport land granted by an airport lessor. Thus the airport lessor is not subject to a statutory obligation to act reasonably in considering a request by the airport lessee to assign the lease of the airport land.

Clause 19 provides that where a transfer notice or project direction results in the disposal of a public record, the public record is taken to be disposed of under legal authority, justification or excuse for the purposes of section 13 of the *Public Records Act 2002*.

Clause 20 provides that a decision made under the Act is final and conclusive and is not subject to challenge or review under the *Judicial Review Act 1991*, or otherwise.

Part 3 Miscellaneous

Clause 21 provides that the Minister may not perform a function under Parts 3, 4 or 5 of the Act on or after 1 July 2009.

Clause 22 provides that the registrar of titles may without formal application register the transfer of an asset or liability under a transfer notice issued by the Minister under the Act. However, the registrar of titles must register the transfer if a written application is made by a transferee entity. This clause also requires the registration of a transaction related to a

transfer under a transfer notice even if the transferee entity has not been registered as a proprietor of the asset or liability provided that the transaction is effected by an instrument otherwise in registrable form. In addition, this clause provides that the registrar of titles is not obliged to enquire as to whether an asset or liability has been transferred under a transfer notice provided that the asset or liability is registered in the name of a transferor entity before registering a dealing.

Clause 23 provides that a prospective purchaser may enter into a confidentiality agreement with the State for the purpose of obtaining access to information in the possession or control of an airport entity.

Clause 24 (1) provides that a person may disclose information in the possession or control of an airport entity for the purpose of the project. Clause 24(1) limits disclosure to those persons who are involved with the project or have entered into a confidentiality agreement mentioned in clause 23, and to airport entities (including any employee or agent). Clause

24(2) compels an airport entity or its board to comply with a request by the Minister for the disclosure of information for the purpose of the project. A person, who in acting honestly discloses or uses information under clause 24 or pursuant to a confidentiality agreement mentioned in clause 23, is not liable in relation to any civil, criminal or other administrative action under the Act in relation to that use or disclosure.

Clause 25 provides that existing legal relationships continue despite anything done under the Act and protects the State and other prescribed entities from liability for things done under the Act. Clauses 25(2) and (3) provide that where notice or consent is required to do something under the Act that notice or consent is taken to be given unconditionally.

Clauses 23, 24 and 25 are read together to facilitate the restructure and disposal of the selected airport entity assets. For example, if a commercial agreement contains a confidentiality clause permitting the disclosure of confidential information to another person if required by law, clause 24(2) will be regarded as a sufficient lawful authority to do so. If a commercial agreement includes a condition that certain information (including terms of the relevant agreement) cannot be disclosed to any person without that third party's consent, clause 25 will operate to override that condition by deeming that consent has been given unconditionally. Clause 23 will ensure that a prospective purchaser who is the recipient of such information is subject to confidentiality obligations that may be attached to the information.

Clause 26 provides that a thing is taken to be done under this Act in compliance with a transfer notice or a project direction even if steps are required to be taken under another Act. For example if the Minister grants a sub-lease of land under the *Land Act 1994* by way of a transfer notice, the grant is deemed to be done under this Act and due to the operation of clause 23(2) of the Act, any consent required under the *Land Act 1994*, section 322 is taken to have been given unconditionally.

Clause 27 preserves all rights, benefits, entitlements or remuneration of employees seconded from an airport entity to another airport entity as part of any action taken to facilitate the disposal of the assets and liabilities of an airport entity to the extent permitted by the *Workplace Relations Act 1996 (Cth)*.

Clause 28 preserves all rights, benefits, entitlements or remuneration of employees transferred from an airport entity to another airport entity as part of any action taken to facilitate the disposal of the assets and liabilities of an airport entity to the extent permitted by the *Workplace Relations Act 1996 (Cth)*.

Clause 29 provides that the Minister's certificate is conclusive evidence that a stated thing was, or is being done for the purpose of facilitating the disposal of the assets and liabilities of an airport entity, or that person is, or

was at a stated time involved in the process of facilitating the disposal of the assets and liabilities of an airport entity, or that a company was

established for the purpose of facilitating the disposal of the assets and liabilities of an airport entity.

Chapter 3 Provisions about land use plans and development on airport land

Part 1 Land use plans for airport land

Division 1 Preliminary

Clause 30 provides definitions relevant to the contents of land use plans and their assessment.

Division 2 Airport lessee's first land use plan

Clause 31 enables the Minister to gazette and notify the first land use plan for each of the airports after completion day. These initial land use plans will be based on plans which had previously been prepared by the port authorities, when the airport land was strategic port land, with appropriate modifications for the purpose of the planning regime under this Chapter. Similar to Section 319A *Mineral Resources Act 1989* in relation to mining tenements, there is a new provision enabling a notation to be placed immediately on local government planning schemes identifying the airport land, for the information of the public.

Clause 32 provides for the first land use plan to take effect upon gazettal.

Division 3 Initial requirement to make new plan or amend first land use plan

Clause 33 requires an application for amendment or replacement of the first land use plan within 2 years. This will enable the airport lessee to propose changes to the plan and also for additional contents to be included at that stage, in particular as a minimum, a schedule of charges and a priority infrastructure plan. In the meantime, charges will be assessed on a case-by-case basis.

Division 4 Land use plans - generally

Clause 34 requires review of land use plans at least every 8 years, consistently with the requirement for land use plans for strategic port land under the *Transport Infrastructure Act 1994*.

Clause 35 sets out the minimum content requirements for land use plans and also some examples of additional contents which may be included.

Clause 36 provides for a statement of proposal process similar to the process applicable to amendments or replacements of land use plans for strategic port land under the *Transport Infrastructure Act 1994*, except that this will not be required either to remove land from a land use plan or for defined minor amendments, consistently with the minor amendment definition applicable to planning instruments under the *Integrated Planning Act 1997*.

Clause 37 provides for preparation of a draft plan for the amendment or replacement of a land use plan, similar to the process for land use plans for strategic port land under the *Transport Infrastructure Act 1994*.

Clause 38 provides for a consultation process similar to the process for land use plans for strategic port land under the *Transport Infrastructure Act 1994*, except that the consultation period for a statement of proposals is proposed to be reduced, given that there is a second consultation period available for the draft plan itself.

Clause 39 requires the planning Minister to consider whether or not State interests would be adversely affected, consistent with the requirement for assessment of planning instruments under the *Integrated Planning Act*

1997. It also introduces a new requirement for the planning Minister to respond to any submission by a local government.

Clause 40 provides for the planning Minister to require amendments to a draft plan, consistently with the process for land use plans for strategic port land under the *Transport Infrastructure Act 1994*.

Clause 41 provides criteria for the planning Minister's consideration of the draft amendment or replacement land use plan, reflecting both the consultation process and content requirements. If the planning Minister is satisfied that the local government has raised a substantial objection which has not been addressed by an amendment under Clause 40, the planning Minister must refer the draft plan and the substantial objection to the Governor in Council for consideration.

Clause 42 requires the airport lessee to publish the current plan on its website.

Division 5 Local government charges for infrastructure

Clause 43 relates to the preparation process and the contents of the charges schedule, which is required to be included in a land use plan after the first 2 years. A consultation process is applicable to preparing the charges schedule, whether this is done by way of an amendment or replacement land use plan. In particular, sub-section (3) is intended to prevent charges from being calculated on the basis of notional yield rates for the airport land or any part of it. Given that airport land normally includes areas such as buffer precincts and other minimally developed areas, the methodology that has been used to calculate local government charges in some local government areas in Queensland, on the basis of higher notional yield rates for development than the actual development assessed, would be inappropriate for airport land.

Division 6 Other matters

Clause 44 provides for the local government to be notified of any amended or replacement plan and enables the local government's planning scheme to

be updated accordingly, similar to the notification of mining tenements to local governments under Section 319A *Mineral Resources Act 1989*.

Clause 45 provides for a land use plan to cease to apply immediately upon any parcel of land ceasing to be part of the airport land.

Clause 46 enables the planning Minister to give notice to the airport lessee in the event of non-compliance with a requirement under this part to make or amend a land use plan, or in other limited circumstances where an issue has arisen which requires attention before the next land use plan is due for review. The airport lessee must comply with a direction.

Part 2 Relationship with Planning Act and particular matters about development on airport land

Division 1 Preliminary

Clause 47 provides for the *Integrated Planning Act 1997* to apply to development on airport land, to avoid any doubt. If there is any inconsistency between this part and the *Integrated Planning Act 1997*, this part prevails.

Division 2 Particular provisions about development on airport land

Clause 48 continues to exempt the airport land from planning schemes, consistently with the previous exemption applicable under the *Transport Infrastructure Act 1994*.

Clause 49 enables land use plans to state that consistent development is exempt, self-assessable or assessable development under the land use plan, consistently with provisions relating to planning schemes under the *Integrated Planning Act 1997*. However, land use plans cannot override the list of exempt development under Schedule 9 *Integrated Planning Act 1997* or the list of self assessable development under Schedule 8 Part 2

Integrated Planning Act 1997, in the same way as planning schemes cannot override these provisions. Land use plans also cannot make defined 'core airport infrastructure' that is consistent with the land use plan assessable development.

Clause 50 introduces a new role for the relevant local government as advice agency upon any development application which is required to be assessed by the planning chief executive. Thus with respect to any such development application, the local government will be notified and consulted through the advice agency process under the *Integrated Planning Act 1997*.

Clause 51 imposes additional restrictions on the types of conditions that can be imposed upon development approvals for the airport land, in addition to the restrictions under the *Integrated Planning Act 1997*. Monetary contributions were not required to be paid to local governments for development on airport land until this Bill, so it is appropriate to impose restrictions to ensure relevance of the charges to the airports. Reconfiguration was exempt development for the airport land until this Bill and would generally only relate to applications for reconfiguration of land by sub-lease, which would not be an appropriate event for imposing monetary contributions.

Clause 52 exempts the airport land from local government powers to acquire land for planning purposes. This arises as a consequence of the fact that airport land is exempt from local government planning scheme controls under the Act. This clause also confirms that a person is not entitled to claim compensation as a result of a change to a land use plan. There was not previously any provision stating that a person was entitled to claim compensation in this event during the period that the land was strategic port land, but this provision is intended to avoid any doubt.

Clause 53 enables planning and development certificates to be obtained for any premises located within the airport land, similar to the position for land under planning schemes, but with necessary and appropriate modifications.

Clause 54 provides that if the local government registers any local heritage places within the airport land, this is of no effect while the land remains airport land.

Clause 55 enables Ministerial designation of community infrastructure within the airport land. This will enable designation of any future infrastructure corridors that may potentially need to cross planning scheme

land and airport land, such as electricity or water pipeline corridors. It does not enable local government designation.

Clause 56 exempts the airport land from master plans by the local government, consistently with the fact that responsibility for the administration of the planning regime in respect of the airport land rests with the planning chief executive rather than local government.

Division 3 Notice of development approval

Clause 57 provides a procedure for the planning chief executive to update the local government's records with copies of development approvals and infrastructure agreements relating to the airport land. This will both ensure that the local government is properly kept informed and also provide a basis for the planning chief executive to delegate any ongoing administrative and enforcement powers to the local government, for example to provide planning and development certificates.

Division 4 Protection of existing uses and rights

Clause 58 protects existing development approvals for the airport land from any changes to land use plans.

Clause 59 protects existing development approvals for the airport land in the event that the relevant part of the land ceases to be airport land and a planning scheme becomes applicable to the land.

Division 5 Other matters

Clause 60 provides for the planning chief executive to delegate relevant administrative functions to the local government. These functions are defined to relate to ongoing administration and enforcement of existing development approvals and the functions delegable to local governments do not include assessment of development applications.

Clause 61 enables the local government to amend its planning scheme promptly to reflect consequential changes required because of this chapter,

without the need for the amendments to undertake the normal full process for planning scheme amendments.

Chapter 4 Control of activities at airports

Part 1 Airport Notices

Clause 62 enables an airport lessor to display or publish a notice regarding particular activities on airport land. The activities relate primarily to the movement of people, vehicles and goods. It should be noted that this and the following clauses in Chapter 4 will have no effect until completion day is reached and the declaration of the entity that is the “airport lessor” under clause 100 takes place.

Clause 63 provides for the manner in which airport notices must be displayed or published and requires that copies of the notices must be made available for inspection or purchase.

Clause 64 permits airport notices to require compliance with a stated document held by the airport operator. Certain requirements in regard to providing a summary of the document, and making it available at the office of the airport operator apply. This provision allows for requirements under international, State and Commonwealth laws regarding operations at airports to be implemented.

Clause 65 specifies certain requirements for the contents and display of airport notices.

Clause 66 is an evidentiary aid in establishing that a person was aware of information in a notice. If the requirements of the section are adhered to, the person is taken to be aware of the information in the notice.

Clause 67 provides that it is an offence not to comply with an airport notice unless the person has a reasonable excuse.

Part 2 Authorised Officers

Clause 68 provides that authorised officers may be appointed by an airport lessor, if the airport lessor is satisfied the person is qualified for appointment. A regulation may be made about the appointment of authorised officers.

Clause 69 provides that the authorised officer holds office subject to conditions as may be imposed in the instrument of appointment, a signed notice or a regulation.

Clause 70 provides for the issue of an identity card to each authorised officer by an airport lessor, and the required contents for such a card.

Clause 71 requires that an authorised officer must produce an identity card or have it clearly visible before exercising a power under the Act.

Clause 72 provides for certain circumstances in which the authorised officer ceases to hold office.

Clause 73 requires that a person who ceases to be an authorised officer must return the person's identity card to the airport lessor, within a specified time unless the person has a reasonable excuse. A breach of this provision is an offence.

Part 3 Directions

Clause 74 empowers an authorised officer to give verbal directions. The power is constrained by the need for the direction to be reasonably necessary to ensure the safety or security of the airport land, its users or the airport operator's employees or invitees; or to prevent the person's activities or conduct from affecting the airport's operation. An authorised officer is specifically authorised to give a verbal direction to leave the airport or an area of the airport in circumstances where a person is committing an offence, or is reasonably suspected of having just committed an offence, or the person's presence at the airport may pose a threat to safety or security or the person is in an area without lawful justification or excuse.

Clause 75 provides for a process that may be followed by an authorised officer, if a person does not comply with a verbal direction of an authorised

officer. In these circumstances, the authorised officer can give a written notice, (with or without a further verbal direction), and with such notice or further verbal direction, must warn the person that an offence may be committed if the direction is not complied with within a stated time.

Clause 76 requires that a person comply with a direction given by an authorised officer. In circumstances where a person does not comply within a reasonable time, and does not have a reasonable excuse, an offence may be committed. The most severe penalty of 200 penalty units is reserved for where the contravention results in a significant delay to airport operations. Other offences with lesser penalties are also specified.

Part 4 Moving contravening property

Clause 77 empowers an authorised officer to move and deal with contravening property, which includes aircraft, vehicles and goods parked or left at the airport in contravention of an airport notice or a direction of an authorised officer. In certain circumstances the property can be dealt with under other provisions in the Act as abandoned property.

Part 5 Other powers and offences

Clause 78 provides that an authorised officer has power to require a person to state the person's name and address, in cases where the person is found committing an offence, or the authorised officer reasonably suspects the person as having committed an offence.

Clause 79 permits an authorised officer to require a person who is or may be liable to pay a charge to the airport operator, to produce for inspection certain documents. Failure to comply with the requirement without reasonable excuse, is an offence.

Clause 80 allows an authorised officer to enter and inspect a conveyance (being an aircraft or a vehicle), or inspect goods on or in the conveyance. This section only applies where an authorised officer needs to decide whether a charge is payable and the amount of the charge.

Clause 81 provides that it is an offence for a person to obstruct an authorised officer in the exercise of a power under this part of the Act.

Clause 82 provides that it is an offence for a person to state anything to an authorised officer that the person knows is false or misleading in a material particular. There is an evidentiary aid in this clause in that a complaint for an offence need only specify that a statement is “false or misleading”, without specifying which of these terms applies in the particular case.

Clause 83 provides that it is an offence for a person to give an authorised officer a document containing information the person knows is false or misleading in a material particular. The clause does not apply where a person provides clarifying information to the authorised officer as stated in the clause. There is an evidentiary aid in this clause in that a complaint for an offence need only specify that a statement is “false or misleading”, without specifying which of these terms applies in the particular case.

Clause 84 provides for the offence of pretending to be an authorised officer.

Clause 85 provides for the offence of being disorderly or creating a disturbance at an airport facility.

Clause 86 provides for the offence of unlawfully interfering with an airport notice.

Part 6 Disposal of abandoned property

Clause 87 specifies the definitions of the key terms “abandoned property” and “insufficient value property” for this part.

Clause 88 provides for the process for dealing with particular abandoned property found at the airport facility. The airport operator must take reasonable steps to locate the owner of the property, but is empowered to move the property. The owner’s rights in respect of the property are protected, in that the airport operator must give a located owner written notice about the property. If however, the airport operator has not located the owner within 28 days of finding the property, the airport operator must publish a notice in a newspaper. Property that is of insufficient value or is perishable and impracticable to be kept is not within the scope of the section.

Clause 89 provides for the return of abandoned property in circumstances where a person satisfies the airport operator that the person is the owner of the property and pays the expenses reasonably incurred, within 28 days after the notice under the previous clause is given.

Clause 90 authorises the airport operator to sell abandoned property which is not claimed.

Clause 91 authorises the airport operator to sell perishable abandoned property which is not able to be kept.

Clause 92 imposes accounting requirements upon the airport operator in respect of the proceeds from the sale of abandoned property. Any surplus of the proceeds over the costs of the airport operator must be paid to the Public Trustee.

Clause 93 authorises the airport operator to dispose of abandoned property of no value in the way the airport operator considers appropriate.

Part 7 General

Clause 94 authorises the airport lessor which will be a State owned company to delegate its functions (including powers) under the Act to the airport lessee or to the airport manager, such as the power to issue airport notices or to appoint authorised officers. The clause also establishes a regime for the airport lessor to monitor and regulate the exercise of the delegated functions by the airport lessee or the airport manager.

Clause 95 authorises the airport lessor (and the airport lessee with the written approval of the airport lessor) to appoint an airport manager.

Clause 96 provides that the airport lessee is civilly liable for the actions of an authorised officer, rather than the airport lessor or the authorised officer acting honestly and without negligence.

Chapter 5 Local government matters and land tax

Clause 97 provides for a regulation to state whether and to what extent a local law applies to airport land.

Clause 98 provides for a local law made after completion day not to apply for a period of 3 months after it is made. The local law's application to airport land may be affected by a regulation under clause 97.

Clause 99 provides that for the purposes of the *Local Government Act 1993* and the *Land Tax Act 1915* that the airport lessee is the owner of the airport land and not the airport lessor. It should be noted that this clause will have no effect until completion day.

Chapter 6 General provisions

Part 1 Miscellaneous

Clause 100 provides that the Minister may by a gazette notice declare an entity to be the lessor of the Cairns International Airport or the Mackay Airport, and also declare an entity to be the airport lessee for the Cairns International Airport or the Mackay Airport.

Clause 101 provides that where the lease of the airport land terminates that the airport lessor may do those things that Chapters 3 requires the airport lessee to do.

Clause 102 provides that the Minister may delegate the Minister's functions under the Act, except for the power to issue a transfer notice under clause 12, to declare entities as airport lessors or airport lessees under clause 100, and to gazette the first land use plan for each of the airports after completion day under clause 31.

Clause 103 facilitates the provision of evidence about the state of mind of a corporation or an individual for proceedings for an offence against the Act.

Clause 104 provides that an offence under the Act is a summary offence. The clause also makes provision for limitations on commencing proceedings and contains an evidentiary aid as to statements made in the complaint as to the complainant's knowledge.

Clause 105 applies provisions of the *Criminal Code* concerning attempts to offences under the Act.

Clause 106 provides that penalties are payable to the consolidated fund.

Clause 107 provides for the Governor make regulations under the Act.

Part 2 Transitional

Clause 108 provides a definition for Part 2.

Clause 109 permits port notices to continue in effect as airport notices from completion day for that airport.

Clause 110 permits the appointment of authorised officers for a port authority for Cairns International Airport or Mackay Airport under the *Transport Infrastructure Act 1994* to continue for a period of three months after completion day for that airport.

Clause 111 deems property abandoned at Cairns International Airport or Mackay Airport prior to completion day to be property abandoned under Chapter 4 Part 6 and requires the relevant port authority to deliver up the property to the airport operator.

Clause 112 provides that the proceeds of sale of property abandoned at Cairns International Airport or Mackay Airport prior to the completion day for the relevant airport to be held by the relevant Ports Corporations pursuant to section 289M of the *Transport Infrastructure Act 1994*.

Clause 113 provides that the power of the Governor in Council to amend or repeal the *Integrated Planning Regulation 1998* or the *State Penalties Enforcement Regulation 2000* is not affected by the amendment of those regulations in this Act.

Clause 114 provides that the Planning Chief Executive will be the development assessment manager for development applications made to, but not decided by, the Ports Authorities before the completion date. It also makes provisions for the assessment process.

Chapter 7 Amendment of other legislation

Part 1 Amendment of Energy Assets (Restructuring and Disposal) Act 2006

Clause 115 states that Chapter 7 Part 1 of the *Airport Assets (Restructuring and Disposal) Act 2008* amends the *Energy Assets (Restructuring and Disposal) Act 2006*.

Clause 116 amends section 52 (Time within which the Minister may act) of the *Airport Assets (Restructuring and Disposal) Act 2008* by providing that the Minister may perform a function under Part 3 for the 2007 project from the commencement of the *Airport Assets (Restructuring and Disposal) Act 2008* until 30 June 2009. The Minister may issue a project direction under the *Energy Assets (Restructuring and Disposal) Act 2006* in relation to the 2007 project.

Part 2 Amendment of Integrated Planning Act 1997

Clause 117 provides that Chapter 7 Part 2 of the *Airport Assets (Restructuring and Disposal) Act 2008* amends the *Integrated Planning Act 1997*.

Clause 118 expands the jurisdiction of the Planning and Environment Court upon declaration proceedings to include construction of a land use plan for airport land, consistent with the Court's jurisdiction to construe planning instruments.

Clause 119 makes consequential changes to Schedule 8 *Integrated Planning Act 1997* as a result of the land ceasing to be strategic port land and becoming airport land.

Clause 120 provides for the planning chief executive to be the assessment manager for development completely or partly on airport land. This is on the basis that if the application is only partly on airport land, the agency which would have been assessment manager for the balance of the land becomes the concurrence agency for that part of the land.

Clause 121 inserts consequential amendments to the Dictionary in the *Integrated Planning Act 1997*, in particular new definitions of 'airport land', 'core airport infrastructure' and references to 'core airport infrastructure' within existing relevant definitions.

Part 3 **Amendment of Integrated Planning Regulation 1998**

Clause 122 provides that Chapter 7 Part 3 of the *Airport Assets (Restructuring and Disposal) Act 2008* amends the *Integrated Planning Regulation 1998*.

Clause 123 provides that assessable development on airport land must be assessed against the land use plan, whether it is consistent or inconsistent with the land use plan. This is on the basis that the *Integrated Planning Act 1997* provides a procedure for inconsistent development to be approved notwithstanding the inconsistency if sufficient grounds are demonstrated.

Clause 124 continues the existing jurisdiction of the Transport Minister as concurrence agency for any development applications inconsistent with a land use plan.

Part 4 **Amendment of Land Tax Act 1915**

Clause 125 states that Chapter 7 Part 4 of the *Airport Assets (Restructuring and Disposal) Act 2008* amends the *Land Tax Act 1915*.

Clause 126 amends section 13(1)(k) (Land exempted from land tax) of the *Land Tax Act 1915* preserves the port authorities' exemption in favour of its

wholly owned subsidiaries and after completion date provides an exemption from land tax for “airport land” within the meaning given by the *Airport Assets (Restructuring and Disposal) Act 2008*.

Part 5 Amendment of Local Government Act 1993

Clause 127 states that Chapter 7 Part 5 of the *Airport Assets (Restructuring and Disposal) Act 2008* amends the *Local Government Act 1993*.

Clause 128 amends section 957 (What land is rateable) of the *Local Government Act 1993* by including a new category of land that is not rateable land, namely airport land that is used for a runway, taxiway, apron, road, vacant land, buffer zone or grass verge. The clause also extends the application of subsection 957(1)(e)(i) to land held by a wholly owned subsidiary of a port authority

Part 6 Amendment of State Penalties Enforcement Regulation 2000

Clause 129 states that Chapter 7 Part 6 amends the *State Penalties Enforcement Regulation 2000*.

Clause 130 omits the entry for section 282J, paragraph (c) in schedule 3 of the *Transport Infrastructure Act 1994*.

Clause 131 inserts a schedule of offences and penalties into the *State Penalties Enforcement Regulation 2000*.

Part 7 Amendment of Transport Infrastructure 1994

Division 1 Preliminary

Clause 132 states that that Chapter 7 Part 7 of the *Airport Assets (Restructuring and Disposal) Act 2008* amends the *Transport Infrastructure Act 1994*.

Division 2 Amendment commencing on assent

Clause 133 inserts a new Chapter 8, Part 1A into the *Transport Infrastructure Act 1994*.

- (a) New section 267AB provides for a port authority to delegate its functions and powers to a wholly owned subsidiary. This only applies to Cairns International Airport and Mackay Airport.
- (b) New section 267AC provides that from the completion day for either Cairns International Airport or Mackay Airport that any reference in the *Transport Infrastructure Act 1994* to:
 - (i) “an airport” does not include either Cairns International Airport or Mackay Airport airport; and
 - (ii) “strategic port land” does not include airport land of either Cairns International Airport or Mackay Airport.

It ought to be noted that the completion day may be different days for Cairns International Airport and Mackay Airport.

- (c) New section 267AD provides that this part of the Act expires on the commencement date for section 134 of the Act.

Division 3 Amendment commencing on proclamation

Clause 134 amends section 267 (Definitions for Chapter) of the *Transport Infrastructure Act 1994* by omitting the definition of “airport”.

Clause 135 amends section 267A (Meaning of port facilities) of the *Transport Infrastructure Act 1994* by omitting “an airport” as an example of “port facilities”.

Clause 136 amends section 276(3) (Port services functions) of the *Transport Infrastructure Act 1994* by omitting the definition of a “port”.

Clause 137 amends section 279(2)(a) and (b) (Port authority may impose a charge) of the *Transport Infrastructure Act 1994* by omitting “or an aircraft”.

Clause 138 omits section 281 (Liability for a charge in relation to an aircraft) of the *Transport Infrastructure Act 1994*.

Clause 139 omits section 281A(f) (Liability for a charge in relation to an aircraft) of the *Transport Infrastructure Act 1994* and renumbers section 281A(g) as section 281A(f).

Clause 140 omits section 281B (Liability for a charge in relation to passengers) of the *Transport Infrastructure Act 1994* and inserts new section 281B (Liability for a charge in relation to passengers) which deletes references to “aircraft”.

Clause 141 amends section 281D (Liability for movement of ships, aircraft, vehicles, goods or rolling stock) of the *Transport Infrastructure Act 1994* by deleting references to “aircraft” in section 281D heading, and sections 281D(1) and (2).

Clause 142 omits section 281E (Liability for damage to port authority’s port facilities) of the *Transport Infrastructure Act 1994* and inserts new section 281E (Liability for damage to port authority’s port facilities) of the *Transport Infrastructure Act 1994* which deletes references to “aircraft”.

Clause 143 amends section 282(2)(c) (Port Authority may control activities by port notice) of the *Transport Infrastructure Act 1994* by deleting “, or parking aircraft”.

Clause 144 omits section 282B (Port notice –aircraft parking) of the *Transport Infrastructure Act 1994*.

Clause 145 amends section 282C (port notice –movement, handling and storage of goods).

Clause 146 amends section 282H(5) (Port notice may refer to documents held by port authority) of the *Transport Infrastructure Act 1994* by deleting paragraph (h)(v) and (vi) from the defined word “standard”.

Clause 147 omits section 282J penalty paragraph (c) (Offence of not complying with a port notice) of the *Transport Infrastructure Act 1994* and renumbers section 282J penalty, paragraphs (d) and (e) as paragraphs (c) and (d).

Clause 148 omits from the examples to section 282Q(1) (Authorised officer may give directions) of the *Transport Infrastructure Act 1994* “the parking of an aircraft or”.

Clause 149 omits the penalty at section 282S(b)(iii) (Offence of not complying with a direction) of the *Transport Infrastructure Act 1994* and renumbers section 282S(b)(iv) and (v) as (b)(iii) and (iv).

Clause 150 omits the following from section 282T (Moving contravening property) of the *Transport Infrastructure Act 1994*:

- (a) “an aircraft” from section 28T(1)(a);
- (b) definition of contravening property, “an aircraft” from section 282T(4);
- (c) paragraph (b) of the definition of “person in charge” from section 282T(4); and

renumbers the definition of “person in charge”, paragraphs (c) and (d) as (b) and (c).

Clause 151 omits references to an aircraft from section 283B (Inspection of ships, aircraft, vehicles, rolling stock and goods) of the *Transport Infrastructure Act 1994*.

Clause 152 amends the words in section 285(c)(i) (Land use plans) of the *Transport Infrastructure Act 1994*.

Clause 153 omits the definition of abandoned property in section 289H (Definitions for pt 4 B) of the *Transport Infrastructure Act 1994*.

Clause 154 omits section 291 (2) (Carrying on port activities outside port limits) of the *Transport Infrastructure Act 1994*.

Clause 155 omits section 292(4) (Offences) of the *Transport Infrastructure Act 1994*.

Clause 156 omits the definitions of “airport” and “charterer” and omits “, and includes an airport for which the authority is responsible” from the definition of “port” from Schedule 6 (Dictionary) of the *Transport Infrastructure Act 1994*

Schedule 1

Part 1 contains real property descriptions for the Cairns Airport Land.

Part 2 contains real property descriptions for the Mackay Airport Land.

Schedule 2

Schedule 2 contains a definition of core airport infrastructure.

Schedule 3

Schedule 3 contains a dictionary which defines particular words used in the Act.