

Transport Legislation Amendment Bill 2008

Explanatory Notes

General Outline

The Bill amends the following eight pieces of transport legislation:

- *Maritime Safety Queensland Act 2002*;
- *Transport Infrastructure Act 1994*;
- *Transport Legislation and Another Act Amendment Act 2007*;
- *Transport Operations (Marine Pollution) Act 1995*;
- *Transport Operations (Marine Safety) Act 1994*;
- *Transport Operations (Passenger Transport) Act 1994*;
- *Transport Operations (Road Use Management) Act 1995*; and
- *Transport Planning and Coordination Act 1994*.

Amendments to the *Transport Infrastructure Act 1994* will enable the Minister to facilitate the development of the Airport Link project by declaring, prior to the construction of a franchised road, that a toll may be payable on completion of the road; to allow the chief executive to grant permission to a local government for a road to be on non-rail corridor land; and to ensure that passenger convenience services, including commercial and retail facilities, can clearly be considered busway or light rail infrastructure.

Amendments to the *Transport Operations (Marine Pollution) Act 1995* insert a head of power to require vessels that have a fixed toilet onboard to have the toilet configured in such a way to meet the discharge requirements for the area in which the vessel is operating; insert a head of power to enable the appointment of an analyst to test possible pollutants; and enable third parties to recover loss or damage suffered from the discharge of a pollutant.

Amendments to the *Transport Operations (Marine Safety) Act 1994* clarify the definition of ‘registered owner’; provide capacity for courts to impose a range of civil penalties; and provide for an offence to knowingly make a false or misleading statement in or on a document.

Amendments to the *Transport Operations (Passenger Transport) Act 1994* provide for summary offences of wilful exposure and aggravated wilful exposure in Schedule 1A, category C driver disqualifying offences.

Amendments to the *Transport Operations (Road Use Management) Act 1995* adopt the *National Transport Commission (Model Legislation – Heavy Vehicle Driver Fatigue) Regulation 2006* (model law) in relation to the Heavy Vehicle Driver Fatigue Reform Package (fatigue package). The National Transport Commission undertook a comprehensive review of the regulatory approaches to managing heavy vehicle driver fatigue which culminated in the fatigue package, which included the model law. The amendments to the *Transport Operations (Road Use Management) Act 1995* provide for the adoption of the model law.

Amendments to the *Transport Planning and Coordination Act 1994* allow the State to acquire land for future use in transport associated development, and allow for surplus land to be sold or leased to third parties. There are strict limitations to ensure that the proposed amendments do not extend beyond Queensland Transport's resumption powers of providing the power for bona fide transport infrastructure development.

There are a number of miscellaneous amendments to the *Transport Legislation and Another Act Amendment Act 2007*, the *Maritime Safety Queensland Act 2002*, the *Transport Operations (Marine Pollution) Act 1995*, the *Transport Operations (Marine Safety) Act 1994* and the *Transport Operations (Road Use Management) Act 1995*. The *National Rail Corporation (Agreement) Act 1991* is to be repealed.

The preliminary sections of the explanatory notes deal with each of the matters in the Bill under the following headings:

- *Maritime legislation* – these are amendments to the *Maritime Safety Queensland Act 2002*, the *Transport Operations (Marine Pollution) Act 1995* and the *Transport Operations (Marine Safety) Act 1994*;
- *Transport legislation* – these are amendments to the *Transport Legislation and Another Act Amendment Act 2007*;
- *Passenger transport legislation* – these are amendments to the *Transport Operations (Passenger Transport) Act 1994*;

- *Transport infrastructure legislation* – these are amendments to the *Transport Infrastructure Act 1994*;
- *Transport operations and road use management legislation* – these are amendments to the *Transport Operations (Road Use Management) Act 1995*; and
- *Transport planning and coordination legislation* – these are amendments to the *Transport Planning and Coordination Act 1994*.

Short Title

The short title of the Bill is the Transport Legislation Amendment Bill 2008.

Policy Objectives of the Legislation

Maritime legislation

The amendments to the *Maritime Safety Queensland Act 2002* update references to ‘Maritime Safety Agency of Queensland’ and ‘MSQ’ to read ‘Maritime Safety Queensland’.

The amendments to the *Transport Operations (Marine Pollution) Act 1995*:

- insert a head of power to require vessels, other than declared ships, that have a fixed toilet onboard to have the toilet configured in such a way to meet the discharge requirements for the area in which the vessel is operating;
- insert a head of power to enable the appointment of an analyst to test possible pollutants;
- enable third parties to recover loss or damage suffered from the discharge of a pollutant; and
- remove section 135 which requires the Act be reviewed 10 years after its commencement and a report tabled in Parliament. A report about the review was tabled by the Minister on 28 November 2006.

The amendments to the *Transport Operations (Marine Safety) Act 1994*:

- provide for an offence to knowingly make a false or misleading statement in or on a document;

- clarify that the definition of ‘registered owner’ in section 87A includes ships registered in another State, or Territory of Australia, Commonwealth of Australia or another country;
- allow courts to impose civil penalties, for example, requiring modification of a ship to ensure compliance to reduce the risk of future incidents; and
- correct a typographical error in section 202K(7).

Transport legislation

The amendments to the *Transport Legislation and Another Act Amendment Act 2007* remove certain superfluous provisions.

Passenger transport legislation

New Category C Driver Disqualifying Offences

The amendments to the *Transport Operations (Passenger Transport) Act 1994* provide for the offences of wilful exposure and aggravated wilful exposure as category C driver disqualifying offences.

Transport infrastructure legislation

Tolling amendments

The Bill amends the *Transport Infrastructure Act 1994* to allow the Minister to make a declaration, prior to construction of a franchised road, that a toll may be payable for use of a type of road or land set out in section 93(1).

Amendments for rail purposes

Determining access by adjoining property owners across a proposed railway

The Bill amends the *Transport Infrastructure Act 1994* to improve the process for deciding the access given to adjoining property owners across a proposed railway.

Extending local roads through or over non-rail corridor land

The Bill amends the *Transport Infrastructure Act 1994* to allow the chief executive to grant permission to a local government for a road to be on non-rail corridor land.

National Rail Corporation

The Bill repeals the *National Rail Corporation (Agreement) Act 1991*.

Amendments for busway and light rail purposes

Amendments are made to the definitions of busway transport infrastructure and light rail transport infrastructure to remove any ambiguity that retail or commercial services that are typically found in station concourses, such as, transfer facilities (parking and cycle centres), passenger comfort facilities, refreshment outlets and other services are transport infrastructure.

Transport operations road use management legislation

National heavy vehicle driver fatigue reforms

The amendments to the *Transport Operations (Road Use Management) Act 1995* adopt provisions from the *National Transport Commission (Model Legislation – Heavy Vehicle Driver Fatigue) Regulation 2006* (model law). The objective of the reforms is to regulate heavy vehicle driver fatigue in a nationally consistent manner.

Transport planning and coordination legislation

The amendments to the *Transport Planning and Coordination Act 1994* include the option to resume land for future use in transport associated development, provided the land is initially acquired for transport or incidental purposes. This amendment minimises the possibility of legal challenges regarding the primary purpose of the original land resumption and provides flexibility in the development of transport infrastructure and related development. The amendment also allows surplus land, initially acquired for transport and incidental purposes to be sold or leased to third parties for ‘transport associated development’.

Reasons for the Bill

Maritime legislation

Maritime Safety Queensland Act 2002

The amendments to the *Maritime Safety Queensland Act 2002* are necessary to clarify that the title of the agency is ‘Maritime Safety Queensland’, rather than the ‘Maritime Safety Agency of Queensland’.

Transport Operations (Marine Pollution) Act 1995

The amendments to the *Transport Operations (Marine Pollution) Act 1995* are necessary to maintain a high level of protection for Queensland's marine environment by:

- inserting a head of power to require vessels, other than declared ships, that have a fixed toilet onboard to have the toilet configured in such a way to meet the discharge requirements for the area in which the vessel is operating; and
- inserting a head of power to enable the appointment of an analyst to test possible pollutants.

There is also an amendment which provides that third parties who suffer loss or damage suffered from the discharge of a pollutant may recover costs.

In addition there are minor administrative amendments to remove obsolete provisions and provide for transitional arrangements.

Transport Operations (Marine Safety) Act 1994

The amendments to the *Transport Operations (Marine Safety) Act 1994* are necessary to enhance marine safety and better manage abandoned ships in Queensland coastal waters. This is to be achieved by:

- providing an offence to knowingly make a false or misleading statement in or on a document;
- clarifying that the definition of ‘registered owner’ in section 87A includes ships registered in another State, or Territory of Australia, Commonwealth of Australia or another country; and
- providing courts with the power to impose civil penalties, for example, requiring modification of a ship to ensure compliance to reduce the risk of future incidents.

In addition there are minor administrative amendments to the *Transport Operations (Marine Safety) Act 1994* which correct cross references and provide for transitional provisions.

Transport Legislation

Transport Legislation and Another Act Amendment Act 2007

This amendment deletes part 2 and sections 57(62) and 57(63). Part 2 was used to correct a cross reference error that existed in section 91 of the *Maritime and Other Legislation Amendment Act 2006*. However timing meant that section 91 of the *Maritime and Other Legislation Amendment Act 2006* commenced before the *Transport Legislation and Another Act Amendment Act 2007*. This created the cross reference error in section 202K (7) of the *Transport Operations (Marine Safety) Act 1994*. Advice

from the Office of the Queensland Parliamentary Counsel is that part 2 of the *Transport Legislation and Another Act Amendment Act 2007* must be repealed, and the amendment made to the *Transport Operations (Marine Safety) Act 1994* itself.

The *Transport Legislation and Another Act Amendment Act 2007* introduced provisions dealing with drug testing of drivers into the *Transport Operations (Road Use Management) Act 1995*. Those provisions were, to a large extent, mirrored on existing provisions within the Act relating to the breath/blood testing of drivers for alcohol. Sections 57(62) and 57(63) of the *Transport Legislation and Another Act Amendment Act 2007* sought to mirror, for drug testing, an existing provision dealing with the issue of a certificate by a health care professional. The circumstances in which that certificate can be issued are not, however, relevant to drug testing of drivers. The Bill will delete those provisions from the *Transport Legislation and Another Act Amendment Act 2007*.

Part 2 and sections 57(62) and 57(63) of the *Transport Legislation and Another Act Amendment Act 2007*, which have not been proclaimed into force, have been postponed to ensure they were not automatically commenced under section 15DA(2) of the *Acts Interpretation Act 1954*.

Passenger transport legislation

New Category C Driver Disqualifying Offences

Depending on the circumstances, a person convicted of wilful exposure on a number of occasions or aggravated wilful exposure could be considered to not be suitable to hold driver authorisation.

Currently Queensland Transport uses the public interest provisions in the *Transport Operations (Passenger Transport) Act 1994* to take action against driver authorisation holders whose *Summary Offences Act 2005* offence is considered to be particularly serious; for example, an aggravated wilful exposure offence that attracts one year imprisonment or a person who has a history of wilful exposure offences.

However, inclusion of wilful exposure and aggravated wilful exposure as a *Transport Operations (Passenger Transport) Act 1994* category C driver disqualifying offence would strengthen Queensland Transport's ability to prevent such offenders from holding driver authorisation. It would also provide magistrates considering appeals about Queensland Transport

decisions with a stronger indication of the offences serious nature for public transport purposes.

Transport infrastructure legislation

Tolling amendments

The current provisions relating to the declaration of State toll roads under the *Transport Infrastructure Act 1994* allow for the declaration of a toll road to be made after construction of the road is completed.

The amendments to the *Transport Infrastructure Act 1994* will change the nature and the timing of the declaration. Accordingly, the amendments will allow a declaration to be made which will provide that a toll may be payable for use of the road. The toll, however, may not be collected until after the road has been constructed. The amendments will allow the declaration to be made at an early stage in the development of the State toll road project, before all land has been acquired for the project and before the construction of the road. This will provide the private financiers of the private public partnership with certainty that a future revenue stream has been identified which may service any debt incurred in obtaining finance for the project.

Amendments for rail purposes

Determining access by adjoining property owners across a proposed railway

The Bill will insert new provisions into the *Transport Infrastructure Act 1994* to set out the procedures for negotiating access by adjoining property owners across a proposed railway.

There have been problems in determining access by adjoining property owners across new major coal haulage railways in the past. Some adjoining property owners, with land on both sides of the proposed railway, have requested numerous crossings across the proposed railway. While the railway manager for safety reasons prefers limited or no level crossings, with crossings to be by underpass where practicable.

Extending local roads through or over non-rail corridor land

The Bill amends the *Transport Infrastructure Act 1994* to extend section 253 to allow the Director-General of Queensland Transport to permit a local government to construct, maintain and operate a road on non-rail corridor land.

Section 253 allows the Director-General of Queensland Transport to permit a local government to construct, maintain and operate a road on rail corridor land. Non-rail corridor land is land leased by the State (represented by Queensland Transport) where the railway has ceased to operate.

Non-rail corridor land is increasingly being leased to local government for walking and bicycling tracks and to government entities for public utilities, for example a recycled water pipeline.

With development occurring adjacent to some non-rail corridor land, requests are being received for roads to cross the non-rail corridor land. The provision of the road is presently being achieved by surrendering a portion of the non-rail corridor land and transferring the land to the local government to open as road.

However, this results in the Director-General of Queensland Transport losing control of the portion of land and for a gap to appear in the corridor. If the non-rail corridor was to reopen as a railway or to be used for another transport purpose, Queensland Transport would have to negotiate with the local government as to how the railway or other transport use would cross the road.

National Rail Corporation

The *National Rail Corporation (Agreement) Act 1991* approved and gave effect to an agreement made on 30 July 1991 between the State of Queensland, the Commonwealth and certain other States relating to the National Rail Corporation Limited.

The agreement proposed the formation of the National Rail Corporation Limited with the principal objective being the carriage of interstate rail freight on a national network. The Queensland Government at the time decided not to become a shareholder in the National Rail Corporation Limited.

The corporation has subsequently been sold to Pacific National. As no further action can be taken under the Act, the Bill repeals the Act.

Transport operations road use management legislation

The *Transport Operations (Road Use Management) Act 1995* contains numerous provisions assigning powers and functions to the chief executive. In practice, many of these powers are exercised and functions performed by delegates of the chief executive. This delegation of powers and functions is provided for in section 37 of the *Transport Planning and Coordination Act 1994* and section 57 of the *Public Service Act 1996* and is regulated by section 27A of the *Acts Interpretation Act 1954*.

Section 124(1)(l) of the *Transport Operations (Road Use Management) Act 1995* refers to “the chief executive or the chief executive's delegate”. Because of the general ability for the chief executive to delegate the exercise of a power, the words “or the chief executive's delegate” are not necessary and have been deleted. This will clarify the ability of the chief executive to delegate powers in the *Transport Operations (Road Use Management) Act 1995* - including the power in section 124(1)(l) – and will remove any uncertainty those additional words might create.

National heavy vehicle driver fatigue reforms

Fatigue has long been identified as a significant safety concern in the road transport industry - impacting on heavy vehicle drivers and other road users. Fatigue is one of the main causes of crashes involving heavy vehicle drivers. The precise contribution of fatigue in heavy vehicle crashes is difficult to isolate. Estimates range from about 12% to over 60%. Most fatigue experts consider the true figure to be 20% to 30%.

Currently, the legislation in Queensland which regulates heavy vehicle driver fatigue sets prescriptive hours of driving and rest, whereas more recent research indicates a wider program of reforms is necessary to adequately manage fatigue in the heavy vehicle road transport industry. The current legislation also fails to cater for diversity in the heavy vehicle industry and restricts industry innovation in managing fatigue. The lack of scientific basis in current working hours regulation, poor levels of industry compliance, and ongoing concern about fatigue for drivers of heavy vehicles have all been further triggers for change.

The national model law on which the amendments are based is underpinned by advice from fatigue experts. It places emphasis on restorative rest, fitness for duty, body clock factors and the influence of the many parties in the supply chain on driver fatigue. Based on improved knowledge about the onset of fatigue and its effects on driver behaviour, the

model law also takes into account non-driving activities (such as loading/unloading) when calculating a driver's allowable work time.

Transport planning and coordination legislation

Transport Infrastructure Act 1994

Without amendment to the Act, it is not clear that retail or commercial services that are typically found in station concourses such as transfer facilities (parking and cycle centres), passenger comfort facilities, refreshment outlets and other services (eg. ATMs) are transport infrastructure. The amendments to the Act are intended to remove this ambiguity.

Transport Planning and Coordination Act 1994

Existing legislation does not address the integration of land uses such as commercial and business activity or housing density, which the *South East Queensland Regional Plan* (regional plan) identifies as essential to support efficiency of public transport developments. Some specific limitations include:

- Current legislation focuses on specific infrastructure (i.e. roads, busways, rail and ports), but has limited application to the wider development needs which support the infrastructure and which the regional plan acknowledges are fundamental to the successful integration of public transport infrastructure.
- The Act allows for the acquisition of land for the development of public transport infrastructure or incidental activities. However, the Act does not address issues of acquisition, disposal or continued government use of land for transport associated activities, such as destination services or community infrastructure.
- Current legislation does not provide for the disposal of land to underpin Government initiatives, in particular the development of 'transport associated development' (defined), where it is desirable to include a balanced mix of commercial, residential and retail development, in close proximity to key public transport infrastructure, such as rail, busway or light rail stations.
- The powers and procedures under the *State Development and Public Works Organisation Act 1971* are comprehensive but their timing and processes are targeted towards major urban developments of state significance rather than the commercial/residential developments surrounding key public transport infrastructure.

Administrative Costs

Maritime legislation

The administrative costs associated with the introduction of the amendments to the *Maritime Safety Queensland Act 2002*, the *Transport Operations (Marine Pollution) Act 1995* and the *Transport Operations (Marine Safety) Act 1994* will be absorbed within existing budget allocations.

Transport legislation

Nil.

Passenger transport legislation

New Category C Driver Disqualifying Offences

There will be no direct costs associated with the inclusion of the new category C driver disqualifying offences. Costs could be incurred if a driver authorisation applicant or holder requests a review of or appeals the decision made by Queensland Transport. However, this cost would be seen as necessary to protect users of passenger transport services.

Transport infrastructure legislation

Tolling amendments

Any costs connected with introduction of the tolling amendments in this Bill will be minor and absorbed within existing budget allocations.

Amendments for rail purposes

Any costs connected with introduction of the rail amendments in this Bill will be minor and absorbed within existing budget allocations.

Transport operations road use management legislation

National heavy vehicle driver fatigue reforms

Implementation costs for the Queensland Government to adopt the national heavy vehicle driver fatigue reforms relate to marketing and communications costs to inform industry of the proposed changes and training and development costs for Queensland Transport staff. All costs will be absorbed within existing budget allocations.

Transport planning and coordination legislation

Nil.

Achieving the Objectives

Maritime legislation

The Maritime Safety Queensland Act 2002

The Bill will simply clarify that the title of the agency is ‘Maritime Safety Queensland’, rather than the ‘Maritime Safety Agency of Queensland’. Maritime Safety Queensland has been the name operationally used since the agency commenced in 2002.

The Transport Operations (Marine Pollution) Act 1995

The Bill will ensure that Queensland waters are protected from ship sourced pollutants to the greatest extent practicable.

The Transport Operations (Marine Safety) Act 1994

The Bill will ensure that Maritime Safety Queensland continues to be able to effectively manage issues related to ships that are lost, abandoned or stranded and to maintain strong messages about the importance of marine safety through the courts.

Transport legislation

The Transport Legislation and Another Act Amendment Act 2007

The Bill deletes Part 2 and sections 57(62) and 57(63) from the *Transport Legislation and Another Act Amendment Act 2007* as these provisions are superfluous.

Passenger transport legislation

New Category C Driver Disqualifying Offences

On assent of this Bill, the screening of driver authorisation applicants for the new category C driver disqualifying offences will commence. This will have an immediate impact on the suitability of persons driving public passenger vehicles.

Transport infrastructure legislation

Tolling amendments

The Bill amends chapter 6, part 8 of the *Transport Infrastructure Act 1994*, in particular sections 92 and 93 of the Act. The proposed amendments will provide the proponents of a public private partnership, at the outset of their involvement, with greater certainty that funds outlaid in planning and

constructing a State toll road may be recovered through the collection of tolls once the infrastructure has been completed.

The Bill also amends chapter 18 of the *Transport Infrastructure Act 1994* by inserting a new transitional provision, section 546, under a new part 9 of chapter 18 of the Act. This amendment will ensure that existing State toll roads continue to be toll roads as if the Minister, by gazette notice under section 93, has declared a toll may be payable for use of the road. It also ensures that, in particular, section 543(3) continues to enable the Minister, by gazette notice, to provide for a matter in Schedule 5 to apply to the road, as if the road had been the subject of a declaration under section 93.

Amendments for rail purposes

Determining access by adjoining property owners across a proposed railway

The Bill amends chapter 7, part 7 of the *Transport Infrastructure Act 1994* to insert new sections 240E and 240F with a minor amendment to section 255. It sets out a process to negotiate access by adjoining property owners across a proposed railway that is fair and reasonable to all parties. A property owner and the railway manager will be required to consider the safety and operation integrity of the proposed railway, the need to limit the number of level crossings and the cost of providing a right of access across the proposed railway.

If the property owner and railway manager cannot negotiate suitable right of access across the proposed railway, either party may refer the matter to the Director-General of Queensland Transport for determination. However, it will be preferable for the railway manager to negotiate an acceptable outcome, rather than the Director-General of Queensland Transport having to make a determination.

Extending local roads through or over non-rail corridor land

The Bill amends chapter 7, part 7 of the *Transport Infrastructure Act 1994* to extend section 253 to allow the Director-General of Queensland Transport to permit a local government to construct, maintain and operate a road on non-rail corridor land.

There is no railway manager for non-rail corridor land. However, there could be another sublessee, for example a local authority. Provisions concerning the railway manager have been amended so that they apply to a railway manager of rail corridor land or a sublessee of non-rail corridor land (if any).

Likewise, there would be no railway on non-rail corridor land but there could be other infrastructure. Provisions concerning railway have been amended so that they apply to relevant infrastructure which is defined to include a railway on rail corridor land and any infrastructure on non-rail corridor land.

National Rail Corporation

The Bill repeals the *National Rail Corporation (Agreement) Act 1991*.

Transport operations road use management legislation

The Bill deletes superfluous words from section 124(1) (l) of the *Transport Operations (Road Use Management) Act 1995*. This will clarify the ability of the chief executive to delegate powers in the *Transport Operations (Road Use Management) Act 1995* - including the power in section 124(1) (l) – and will remove any uncertainty those additional words might create.

National heavy vehicle driver fatigue reforms

In line with the national model law, the new provisions contained in this Bill relate to heavy vehicles with a gross vehicle mass or gross combination mass of more than 12 tonnes and to buses with more than 12 seats.

The Bill supplements existing powers of authorised officers by providing for specialised and tailored powers to deal with on-road breaches of heavy vehicle fatigue requirements. This includes the power to require a person in control of a heavy vehicle, found to be in breach of key fatigue management obligations, to take rest breaks or work for a shorter period in their next work period. The Bill also includes a power to require a person in control of a heavy vehicle to stop work if the authorised officer reasonably believes the person is impaired by fatigue or if their work diary cannot be produced or relied upon. These supplementary powers are essential for the effective enforcement of the fatigue management reforms, by providing immediate on-road remedies where key fatigue management breaches are detected.

The Bill also provides for a scheme of extended liability for specified persons in the chain of responsibility who are in a position to directly influence a heavy vehicle driver's compliance with fatigue management laws. In relation, for example, to an offence involving a contravention of a driver's maximum work requirement or minimum rest requirement, an "influencing person" will include: the employer, scheduler (of the transport and drivers), consignor, consignee, and loading managers. Consistent with defences available for mass, dimension and loading offences, an

influencing person for a fatigue offence will have access to a “reasonable steps” defence. This defence will apply if the influencing person can establish that they did not know and could not reasonably be expected to have known of the breach of the relevant fatigue management requirement, and the person either took all reasonable steps or there were no steps that the person could have taken to prevent the breach, and finally that the person exercised reasonable diligence to prevent a contravention by the driver.

Finally, the Bill provides a consolidated regulation making power for the management of fatigue of drivers of heavy vehicles.

Transport planning and coordination legislation

Transport Infrastructure Act 1994

By amending schedule 6 of the Act it will be made clear that commercial and retail activities which are commonly associated with public transport stations, including newsagents, chemists, dry cleaners, repair services, automatic teller machines or cycle or walking facilities can be considered a part of station infrastructure.

Transport Planning and Coordination Act 1994

The amendments will give some flexibility to the development of transport infrastructure and related developments, by redefining the Queensland Transport (QT) chief executive's land acquisition powers.

- The concepts of a ‘transport associated development’ and a ‘prescribed transit node’ are defined.
- A ‘prescribed transit node’ can be a busway, light rail or railway station or any other transport facility. The location of a ‘prescribed transit node’ must be identified by regulation.
- Section 25(1) will be amended to allow land acquisition, handling and disposal for ‘transport associated development’, and section 25(2) will be amended to allow resumption for ‘transport associated development’.
- Limitations apply to the operation of this provision to ensure that it does not extend the resumption powers beyond those that are currently used for transport infrastructure development. Under a new subsection 25(2A) it will be mandatory that before any resumed land can be used for ‘transport associated development’, it must first have been required for a transport or incidental purpose.

- An amendment to section 27 allows resumed land to be sold or leased to third parties for ‘transport associated development’. This amendment will enable land acquired for transport or incidental purposes under section 25 to be more effectively managed by allowing surplus land to be amalgamated and sold or leased to a third party for ‘transport associated development’.

Fundamental Legislative Principles

Maritime legislation

None of the amendments to maritime legislation breach any of the fundamental legislative principles.

Transport legislation

None of the amendments to the *Transport Legislation and Another Act Amendment Act 2007* breach any of the fundamental legislative principles.

Passenger transport legislation

Category C driver disqualifying offences

The proposed amendment to include the offences of wilful exposure in Schedule 1A, category C driver disqualifying offences may be considered to breach a fundamental legislative principle. It may adversely affect the rights of, or impose obligations on, future driver authorisation holders who may not be able to drive public passenger vehicles. The public benefit of a high level of safety and security for passenger transport users far outweighs any possible breach of this fundamental legislative principle.

Transport infrastructure legislation

Tolling amendments

The amendments have sufficient regard to the rights and liberties of individuals and fundamental legislative principles.

Amendments for rail purposes

Determining access by adjoining property owners across a proposed railway

Section 240F of the *Transport Infrastructure Act 1994* (clause 16) provides for the cancellation of right of access across rail corridor land or non-rail corridor land. It is proposed to restrict when compensation is payable. This could be considered a breach of fundamental legislative principles. No

compensation is payable if the right of access is cancelled due to non-compliance with any conditions imposed by the Director-General of Queensland Transport on the right of access. Where the right of access is cancelled due to the affect of the use of the right on safety or operational integrity of the railway or another transport purpose, compensation will be restricted to the loss of the approved use of the right of access. For example, the right of access may have been granted for approved use of farm vehicles, say approximately two vehicles per day crossing the level crossing. However, if the farm is subdivided, the use of the crossing could increase to over 100 vehicles per day. This would change the risk at the crossing and may be why the right of access is being cancelled. As right of access was only granted for farm use, this will form the basis of deciding compensation. Alternatively, the developer could have proposed to contribute to the upgrade of the crossing, so that it did not become a safety issue. If the crossing was upgraded, the approved use would be amended to reflect the change.

Transport operations road use management legislation

National heavy vehicle driver fatigue reforms

Particular provisions in the Bill relating to the heavy vehicle driver fatigue reforms may infringe fundamental legislative principles. However, the need to ensure the safe operation of heavy vehicles is considered to outweigh any potential infringement of an individual's rights. Furthermore, for the reasons of national consistency and to permit authorised officers to exercise reciprocal powers in different jurisdictions, it is imperative that the model law provisions be adopted as closely as possible.

Does not adversely affect rights and liberties (s.4(3)(g) of the Legislative Standards Act 1992).

The Bill includes amendments that permit authorised officers to require those in charge of a heavy vehicle to take a rest break immediately or to work for a shorter period in their next work period (new s.39K and 39L, clause 49). Further, the Bill contains the power for an authorised officer to require a person in control of regulated heavy vehicle to stop work if impaired by fatigue (new s.39M, clause 49) or if their work diary cannot be produced or relied upon (new s.39N, clause 49). These powers are essential for the on-road enforcement of the legislation, by providing for immediate remedial action where breaches of core fatigue management requirements are detected. The exercise of these powers will occur in situations where a

driver may be fatigued and, therefore, present a danger to themselves and other road users. The Bill specifically describes the nature / level of the enforcement response that can be exercised based upon the seriousness of the breach detected.

Appropriateness of penalties for offences (s.4(2)(a) of the Legislative Standards Act 1992)

Authorised officers will have the power to direct a person in control of a heavy vehicle to stop work and not work again for 24 hours if a work diary cannot be produced or relied upon (new s.39N, clause 49). This new power will supplement the existing offence provision in section 49 of the Act which relates to a failure to produce a document required to be kept under the Act. The new power is not, however, an additional punishment for the driver but is, instead, aimed at dealing with the immediate road safety concern that arises where a work diary (i.e. logbook) cannot be produced and there may be no other way of confirming how long a heavy vehicle driver has been continuously on the road. When a heavy vehicle driver is unable to produce their work diary, this is a serious matter because the sole means by which an authorised officer can confirm compliance with the legislation is not available. A protection is provided in the legislation for the heavy vehicle driver who is able to provide a reasonable excuse for not being able to produce the work diary.

Appropriate delegation of legislative power (s.4(3)(c) and s.4(4)(a) of the Legislative Standards Act 1992)

The Bill provides for a number of terms to be defined by reference to what is specified under a regulation. These terms are “suitable rest place” and the classification of breaches of fatigue requirements as “minor risk”, “substantial risk”, “severe risk” and “critical risk” (amendment to schedule 4, clause 65).

The definitions for the classification of breaches of fatigue requirements are determined by the degree of time by which a heavy vehicle driver has exceeded their maximum work time or is deficient in their minimum rest time, over various periods of time (for example a minor risk breach occurs in a number of circumstances including if a driver has worked for > 5 ¼ hours in any period of 5 ½ hours, or if the driver has worked for >7 ½ hours in any 8 hour period). Accordingly this level of detail is most appropriately placed in a regulation. The operation of these provisions is restricted to vehicles defined as “Fatigue Regulated Heavy Vehicles”, which are

generally heavy vehicles with a gross vehicle mass of more than 12 tonnes (new s. 39J, clause 49).

New section 150C as inserted by clause 62 allows for a regulation to provide for an evidentiary provision in relation to proceedings for an offence against a fatigue management regulation that may be committed by a person failing to take all reasonable steps. The reason for the placement of the evidentiary provision in the regulation is so that it is next to the offence provision to which it relates. This will aid in the accessibility and interpretation of the legislation.

Reverse the onus of proof (s.4(3)(d) of the Legislative Standards Act 1992)

Legislation should not reverse the onus of proof in criminal proceedings without adequate justification. Some amendments may breach that principle. The first is the amendment expressly identifying additional persons (i.e. employer, scheduler (of the transport and drivers), consignor, consignee, and loading manager) in the definition of “influencing person” (s.57AB, clauses 52). If a driver of a heavy vehicle is proved to have committed an offence, then under s.57B, an influencing person is taken to have committed the offence. However the influencing person has the benefit of the defences in s.57B. These are the reasonable steps defence and the defence of not being in a position to influence the conduct of the driver.

The amendment expands an existing legislative concept in the *Transport Operations (Road Use Management) Act 1995*. This concept is crucial to ensure all those in the chain of responsibility can be held accountable for their acts or omissions. Each of the additional classes of persons expressly identified have been included in the model law as having an integral role in influencing the potential breach of a specified fatigue management requirement by the driver. Therefore the express expansion of the definition of “influencing person” for specified fatigue offences is considered to be justified.

The potential breach of the fundamental legislative principle is also considered to be justified as these amendments are important measures to ensure people in the chain of responsibility take responsibility for their actions in so far as they contribute to breaches of specified fatigue offences. This is important in addressing some root causes of driver fatigue, for example unrealistic scheduling and unfair pressure from currently unaccountable consignors.

Furthermore, a “reasonable steps” defence is available to these persons within the chain of responsibility. Finally, the information necessary to prove this defence is peculiarly within the defendant’s knowledge rather than the prosecutor’s knowledge.

Transport planning and coordination legislation

Transport Planning and Coordination Act 1994

The rights and liberties of individuals / principles of natural justice

To the extent that the proposed amendments allow Queensland Transport to dispose of resumed land to third persons for ‘transport associated development’ purposes, this amendment introduces a change in procedures under the *Acquisition of Land Act 1967*. These changes are consistent with the existing Coordinator-General's powers under the *State Development and Public Works Organisation Act 1971* to transfer the land for other public purposes.

There is no change to the rights of individuals regarding objection, review or compensation. Under the proposed amendments, the land will be required for a stated specific purpose which includes transport associated development.

In particular, the Bill does not provide for the compulsory acquisition of land without fair compensation (the quantum of compensation payable to a dispossessed landowner will not change). Further, there is no retrospective abrogation of rights. The resumption process still provides for natural justice, through the adoption of the compulsory acquisition (and objection) process under the *Acquisition of Land Act 1967*.

Compulsory acquisition of property only with fair compensation

The *Transport Planning and Coordination Act 1994* adopts the relevant procedures required under the *Acquisition of Land Act 1967*. The legislation does not intend to make the rights, liberties or obligations dependent on administrative power - other than the power already exercised under the *Acquisition of Land Act 1967*. No changes are proposed to the availability of judicial review (regarding the validity of resumption notices and procedures) or the availability of compensation or appeal rights in the Land Court.

The amendments do not propose delegation of administrative power

Proposed amendments increase the power of the Queensland Transport chief executive within defined parameters. The proposed amendments do

not involve offences, so fundamental legislative principles associated with reversal of the onus of proof, entering premises, self incrimination, and immunity from proceeding or prosecution are not relevant.

Transport Infrastructure Act 1994

There are no fundamental legislative principles affected by this amendment

Consultation

Maritime legislation

Consultation on the maritime amendments has been undertaken with the Department of the Premier and Cabinet, Queensland Treasury, Queensland Police Service, the Department of Justice and Attorney-General, the Department of Primary Industries and Fisheries, the Department of Employment and Industrial Relations and the Environmental Protection Agency. None of the agencies have any issues with the amendments.

Transport legislation

Consultation on the *Transport Legislation and Another Act Amendment Act 2007* amendments has been undertaken with the Department of the Premier and Cabinet, Queensland Treasury and the Department of Justice and Attorney-General. None of these agencies have any issues with the amendments.

Passenger transport legislation

New Category C Driver Disqualifying Offences

Consultation was undertaken with the Department of Premier and Cabinet, Department of Justice and Attorney-General, Commission for Children and Young People and Child Guardian, Queensland Police Service and Queensland Treasury. All stakeholders agree with the amendment.

Transport infrastructure legislation

Tolling amendments

Consultation has been undertaken with the Department of the Premier and Cabinet, Queensland Treasury, the Department of Justice and Attorney-General, City North Infrastructure Pty Ltd, Queensland Transport and the Department of Infrastructure and Planning. None of these agencies have any issues with the amendments.

Amendments for rail purposes

Consultation has been undertaken with QR Limited and no issues were identified.

National Rail Corporation

Consultation has been undertaken with Queensland Treasury with no issues identified.

Transport operations road use management legislation

National heavy vehicle driver fatigue reforms

Both Queensland Transport and the National Transport Commission have undertaken extensive public consultation in relation to the fatigue reforms. The Royal Automobile Club of Queensland Limited, as the major advocacy body for motorists, was briefed on 19 July 2007. The Livestock Transporters Association of Queensland, as the key industry representative for livestock transporters, has been briefed on a number of occasions including presentations at their annual conference in Brisbane, at information sessions in Townsville, Charters Towers and Hughenden as well as through regular briefings at the Road Freight Industry Council. Agforce Queensland, as a representative of the livestock industry, was briefed at a joint meeting with the Livestock Transporters Association of Queensland on 23 May 2007. Further briefings have also taken place in Brisbane and Queensland Transport representatives conducted an information session on the reform package and spoke at a regional Agforce meeting in Roma in September 2007. Queensland Transport is also regularly undertaking direct consultation with other leading industry bodies, including the Queensland Trucking Association, NatRoads and the Transport Workers Union.

All relevant Queensland Government agencies were consulted and support the provisions in the Bill. Key agencies consulted on the entire Bill include the Department of the Premier and Cabinet and Queensland Treasury. Other relevant agencies consulted on appropriate parts of the Bill include the Department of Justice and Attorney-General, the Queensland Police Service, the Department of Communities, and the Department of Employment and Industrial Relations.

Transport planning and coordination legislation

Consultation has principally been within the government as these provisions largely impact upon those responsible for acquiring land for the purposes of transport infrastructure.

Agencies consulted include the Department of the Premier and Cabinet, the Department of Justice and Attorney-General, Queensland Treasury, the Department of Natural Resources and Water, the Department of Infrastructure and Planning, the Office of Urban Management, and the Department of Local Government, Sport and Recreation.

Notes on Clauses

Part 1 Preliminary

Short Title

Clause 1 sets out the short title of the Act as the *Transport Legislation Amendment Act 2008*.

Commencement

Clause 2 provides that Part 8, division 3 commences on a day to be fixed by proclamation.

Part 2 Amendment of Maritime Safety Queensland Act 2002

Clause 3 states that the Act amended in this part is the *Maritime Safety Queensland Act 2002*.

Clause 4 provides that the long title of the Act will be amended to read 'Maritime Safety Queensland' instead of 'Maritime Safety Agency of Queensland'. This amendment simply clarifies the correct title of the agency and has no impact on stakeholders.

Clause 5 amends section 4 (Purpose of Act) by omitting 'the Maritime Safety Agency of Queensland' and replacing it with 'Maritime Safety

Queensland’. This amendment simply clarifies the correct title of the agency and has no impact on stakeholders.

Clause 6 amends the heading for part 2 (Maritime Safety Agency of Queensland) by omitting ‘Agency of’. This amendment simply clarifies the correct title of the agency and has no impact on stakeholders.

Clause 7 amends section 7(1) (Establishment of MSQ) by omitting ‘The Maritime Safety Agency of Queensland’ and inserting ‘Maritime Safety Queensland’. This amendment simply clarifies the correct title of the agency and has no impact on stakeholders.

Clause 8 amends section 10(1) (Appointment of general manager) by inserting ‘the *general manager*’. This amendment defines the term ‘general manager’ and a definition is also inserted in the Dictionary (schedule 2).

Clause 9 inserts part 5, division 1, heading. This establishes the new division 1 ‘Transitional provisions for pilotage service contracts’.

Clause 10 inserts new part 5, division 2 to provide transitional provisions for the *Transport Legislation Amendment Act 2008*. This ensures that in any document any reference to the ‘Maritime Safety Agency of Queensland’ may, if the context allows, be read as a reference to ‘Maritime Safety Queensland’. This amendment simply clarifies the correct title of the agency and has no impact on stakeholders.

Clause 11 amends schedule 2 (Dictionary) to include a definition of *general manager* as included by clause 8 and to amend the definition of “Maritime Safety Queensland” to clarify the correct title of the agency.

Part 3 Amendment of Transport Infrastructure Act 1994

Division 1 Act amended

Clause 12 states that the Act amended in this part is the *Transport Infrastructure Act 1994*.

Division 2 Amendments for tolling purposes

Clause 13 amends the definition of “toll road” in section 92 (Definitions for pt 7). The new definition of “toll road” provides that a toll road means a road, or part of a road, that a toll has become payable for the use of, under a declaration made under section 93.

Clause 14 amends section 93(1) (Tolls) by providing that a declaration may be made that a toll may be payable for use of the various categories of road or land specified in section 93(1).

Currently, the section only allows that a toll road may be declared after the road has been constructed. The amendment will allow such a declaration to be made at an earlier stage ensuring that tolls may be collected on completion of the construction of a road.

Section 93(1) has also been amended to provide that a toll may be payable for an additional category of road, that is, a road to be constructed under a franchise agreement.

Clause 15 inserts a new part 9 into chapter 18 to provide a transitional provision for the *Transport Legislation Amendment Act 2008*. Part 9 contains a new section 546 (Transitional provision for toll roads).

The *Transport and Other Legislation Amendment Act 2005* inserted section 543 into the *Transport Infrastructure Act 1994* on 27 January 2006 to ensure that State toll roads that existed prior to the amendments made by the *Transport and Other Legislation Amendment Act 2005* continued to be toll roads.

The current amendments to section 93 change the nature of the declaration from a declaration of a toll road to a declaration that a toll may be payable for the use of a type of road or land as set out in section 93(1). As a consequence, the insertion of section 546 is necessary to avoid any adverse impact on existing toll roads to which section 543 applies.

Section 546 ensures that existing State toll roads to which section 543 applies, continue to be toll roads as if the Minister, by gazette notice under section 93, has declared a toll may be payable for use of these roads. It also ensures that, in particular, section 543(3) continues to enable the Minister, by gazette notice, to provide for a matter in Schedule 5 to apply to these roads, as if these roads had been the subject of a declaration under section 93.

Division 3 Amendments for rail purposes

Clause 16 inserts new sections 240E and 240F after section 240D. Section 240E (Access arrangements across proposed railway) sets out a process to negotiate access for adjoining property owners across a proposed railway that is fair and reasonable to all parties. A property owner and the railway manager will be required to consider the safety and operational integrity of the proposed railway, the need to limit the number of level crossings and the cost of providing a right of access across the proposed railway.

If the property owner and railway manager cannot negotiate suitable right of access across the proposed railway, either party may refer the matter to the Director-General of Queensland Transport for determination. The Director-General must consider relevant matters when deciding whether or not to grant the right of access, with or without conditions.

If the Director-General decides to grant the right of access, the railway manager is required to meet the full costs of any works needed for the purpose of a right of access across the proposed railway.

Section 240F (Cancellation of right of access) applies if the land for the proposed railway in section 240E becomes rail corridor land. A right of access granted by the Director-General of Queensland Transport under section 240E remains in force while the land is rail corridor land or if the land becomes and continues to be non-rail corridor land.

However, the Director-General of Queensland Transport may cancel the grant of right of access if specified circumstances occur, such as, the right would affect the safety or operational integrity of the railway on the land or would adversely affect another transport purpose, in which reasonable compensation is payable.

New section 240E may apply when the Director-General of Queensland Transport enters into an agreement with a person to acquire land under section 240(1)(a) or (b) and the land acquired (relevant land) is to be used for a railway. The land has or is to be gazetted 'future railway land'. The person is appointed or is proposed to be appointed railway manager for the railway proposed to be constructed on the relevant land.

Subsection 240E(2) allows the previous owner of relevant land that is adjacent to the proposed railway and needs access across the proposed railway to ask the railway manager for access across the proposed railway.

Under subsection 240E(3) the railway manager having regard to relevant matters (defined in subsection 240E(13)) must negotiate with the land owner and decide if the right of access across the proposed railway will be given or refused. Subsection 240E(11) provides for a right of access to be granted with or without conditions.

Where the owner of the land and the railway manager cannot reach agreement on the right of access, or alternatively the railway manager has refused the right of access, under subsection 240E(5) the owner of the land or the railway manager may ask the Director-General of Queensland Transport to decide if the right of access across the proposed railway should be granted.

Subsection 240E(6) requires the Director-General to have regard to relevant matters when deciding whether or not to grant the right of access. To assist with the decision, the Director-General of Queensland Transport must consult with the railway manager about conditions, if any, to be imposed in a grant of access and may ask the owner of the land or the railway manager for information. Subsection 240E(7) requires the owner of the land or the railway manager to provide this information.

Under subsection 240E(8), the Director-General of Queensland Transport must decide to grant or not to grant the right of access over the proposed railway. However, if the Director-General of Queensland Transport believes that insufficient negotiations were conducted, the Director-General may alternatively decide to refer the matter back to the railway manager to further negotiate with the owner of the land.

Where the Director-General of Queensland Transport has decided under paragraphs 240E(8)(a) or (b), to grant or not to grant a right of access, the Director-General under subsection 240E(9) must notify the decision to the owner of the land and the railway manager.

Subsection 240E(10) requires the railway manager to meet the full costs of any works needed for the purpose of a right of access across the proposed railway where the Director-General has made the decision under subsection 240E(8). However, this provision does not apply where the railway manager and the owner of the land have negotiated a right of access over the proposed railway. In this negotiated situation, the railway manager and the owner of the land may make other arrangements regarding the cost of any works to provide the access. For example, they may negotiate a more elaborate crossing with the owner of the land agreeing to meet certain costs.

Subsection 240E(12) allows the Director-General of Queensland Transport to impose a condition that the right of access may be used only for a stated approved use granted under subsection 240E(8).

Under schedule 3 of the Act, the Director-General decisions under subsections 240E(8) are reviewable and appealable.

Section 240F (Cancellation of right of access) applies if the land for the proposed railway in section 240E becomes rail corridor land, that is, it is subleased to a railway manager under section 240. Under subsection 240F (2), the right of access granted by the Director-General of Queensland Transport under paragraph 240E(8)(a) remains in force while the land is rail corridor land.

The right of access also remains in force if the land becomes and continues to be non-rail corridor land. Non-rail corridor land is land where the railway manager has surrendered the sublease to the land and Queensland Transport continues to hold the land under the rail perpetual lease.

Subsection 240F(3) sets out how a right of access granted by the Director-General of Queensland Transport under paragraph 240E(8)(a) may be cancelled. It may be by written agreement between the Director-General, the railway manager (if any) and the holder of the right of access. (The adjacent land may have been sold and the right of access would have transferred to the new owner/holder. If the land for the railway has become non-rail corridor land, there would be no railway manager.)

Furthermore, the Director-General may cancel the right of access if the holder of the right of access does not comply with conditions imposed under subsection 240E(8). Likewise if the Director-General believes that the use of the right would affect the safety or operational integrity of the railway on the land, or would adversely affect another transport purpose, the right of access may be cancelled.

Under subsection 240F(4) if the right of access is cancelled because the use of the right would affect the safety or operational integrity of the railway on the land or would adversely affect another transport purpose, reasonable compensation is payable. However, if the right of access was subject to a stated approved use under subsections 240E(8) and (12), compensation is only payable for the loss of the approved use. For example, if the right of access crossing was approved for limited farm use and the farm has been subdivided and numerous households want to use the crossing, compensation will only be based on the limited farm use.

Under Schedule 3 of the Act, the Director-General decisions under subparagraphs 240F(3)(b)(i) and (ii) are reviewable and appealable.

Clause 17 amends section 253 (Extending roads through or over rail corridor land). Under section 253, the Director-General of Queensland Transport may give permission, subject to conditions, for a local government to build a road on rail corridor land. The amendment extends the provision to allow the Director-General of Queensland Transport to give permission, subject to conditions, for a local government to build a road on non-rail corridor land. Non-rail corridor land is land where the railway has ceased to be operational with Queensland Transport continuing to hold the land under the perpetual lease for a future transport use.

As there would be no railway on non-rail corridor land, relevant infrastructure, defined in proposed subsection 253(9), replaces railway in the existing provision.

With non-rail corridor land, there is no railway manager but the land may be subleased to another entity, for example a local government for a walking and cycling path. Relevant person is defined in proposed subsection 253(9) and replaces railway manager in the existing provision.

Clause 18 amends section 255 (Interfering with railway) to exclude a right of access granted under section 240E as being interference with a railway.

Clause 19 amends schedule 3 (Reviews and appeals) by making reviewable and appealable certain decisions inserted by clause 16.

Division 4 Amendments for busway and light rail purposes

Clause 20 amends section 302 (Declaration of land as busway land) to ensure that passenger convenience facilities which are likely to be built at busway stations can clearly be considered station infrastructure. Clause 20(1) deletes the word ‘necessary’ from the clause which allows busway land to be declared, removing ambiguity as to which facilities may be considered as necessary. Clause 20(2) includes specific reference to a combination of purposes that include busway purposes. This removes any ambiguity or doubt that busway land may include all relevant purposes. Clause 20(3) inserts a definition for ‘busway purposes’ to make it clear that busway purposes includes busway transport infrastructure.

Clause 21 amends section 353 (Declaration of land as light rail land) to ensure that passenger convenience facilities which are likely to be built at light rail stations can clearly be considered station infrastructure. Clause 21(1) deletes the word “necessary” from the clause which allows light rail land to be declared, removing ambiguity as to which facilities may be considered as necessary. Clause 21(2) includes specific reference to a combination of purposes that include light rail purposes. This removes any ambiguity or doubt that light rail land may include all relevant purposes. Clause 21(3) inserts a definition for ‘light rail purposes’ to make it clear that light rail purposes includes light rail transport infrastructure.

Clause 22 amends the definitions of busway transport infrastructure and light rail transport infrastructure in schedule 6 (Dictionary). Clause 22(1) amends the definition of busway transport infrastructure and Clause 22(2) amends the definition of light rail transport infrastructure. This clause ensures that passenger convenience facilities which are likely to be built at busway or light rail stations can clearly be considered station infrastructure.

The amended definitions will allow commercial and retail activities which commonly are associated with transport stations, including newsagents, chemists, dry cleaners, and repair services, to be considered a part of station infrastructure. Additionally, services such as automatic teller machines, cycle facilities, locker rooms and showers, when at a station, will also be considered as transport infrastructure. As both commuter needs and technology change over time, specific restrictions on the types of services are avoided.

Part 4 Amendment of Transport Legislation and Another Act Amendment Act 2007

Clause 23 states that this part amends the *Transport Legislation and Another Act Amendment Act 2007*.

Clause 24 repeals part 2 (Amendment of Maritime and Other Legislation Amendment Act 2006) of the *Transport Legislation and Another Act Amendment Act 2007* (Act No.6 of 2007). That Act was not progressed in time to correct a cross reference error in section 91 (Licence

disqualifications, cancellations and suspensions) under the *Maritime and Other Legislation Amendment Act 2006*. Section 91 inserted a new pt 15, divs 2—4 into the *Transport Operations (Marine Safety) Act 1994*. The cross reference error occurred in section 202K(7) where a reference to section 202D(4) should have been a reference to section 202D(6).

Because section 91 commenced before the *Transport Legislation and Another Act Amendment Act 2007* received assent, the error came into force under the *Transport Operations (Marine Safety) Act 1994*. Advice from the Office of the Queensland Parliamentary Counsel required part 2 of the *Transport Legislation and Another Act Amendment Act 2007* to be repealed and section 202K(7) of the *Transport Operations (Marine Safety) Act 1994* corrected. Part 6 of this Bill includes the amendment to the *Transport Operations (Marine Safety) Act 1994*.

Clause 25 omits sections 57(62) and 57(63) from the *Transport Legislation and Another Act Amendment Act 2007*. The *Transport Legislation and Another Act Amendment Act 2007* introduced provisions dealing with drug testing of drivers into the *Transport Operations (Road Use Management) Act 1995*. Those provisions were, to a large extent, mirrored on existing provisions within the Act relating to the breath/blood testing of drivers for alcohol. Sections 57(62) and 57(63) of the *Transport Legislation and Another Act Amendment Act 2007* sought to mirror, for drug testing, an existing provision dealing with the issue of a certificate by a health care professional. The circumstances in which that certificate can be issued are not, however, relevant to drug testing of drivers. The Bill will delete those provisions from the *Transport Legislation and Another Act Amendment Act 2007*.

Part 5 Amendment of Transport Operations (Marine Pollution) Act 1995

Clause 26 states that this part amends the *Transport Operations (Marine Pollution) Act 1995*.

Clause 27 inserts a new section 48A (Ship with fixed toilet operating in prescribed nil discharge waters to be able to hold or treat sewage) which

requires that all ships fitted with a toilet taken into prescribed nil discharge waters must be able to hold or treat sewage onboard.

This will apply to non 'declared ships' which are predominantly recreational and commercial ships with fixed toilets onboard operating in nil discharge waters. Maritime Safety Queensland is aware that many vessel operators put a portable toilet on board to give the impression that they are complying with the existing legislative provisions, but continue to use the fixed onboard toilet. They continue to unlawfully discharge sewage into nil discharge and prohibited discharge waters.

As a result many vessel operators are not complying with the intent of the legislation. This situation particularly applies to ships in marinas and smooth waters used for living aboard. Enforcement of the provisions is not possible unless persons are actually caught in the act of discharging and this is impractical.

The proposed maximum penalty of \$63,750.00 (850 penalty units) is consistent with other offence provisions in the *Transport Operations (Marine Pollution) Act 1995*.

Clause 28 amends section 118 (Evidentiary provisions) to include reference to an analyst. This is a consequential amendment to the new part 15A.

Clause 29 inserts a new part 15A (Appointment of analysts) into the *Transport Operations (Marine Pollution) Act 1995*. This sets out how the general manager may appoint suitable persons as analysts for the purposes of the *Transport Operations (Marine Pollution) Act 1995*. Persons may only be appointed as analysts for the *Transport Operations (Marine Pollution) Act 1995* if they are considered to have the necessary expertise or experience. The conditions of appointment include the term of appointment and allow Maritime Safety Queensland to properly maintain a register of suitable persons. The new part also provides for what happens when an analyst stops holding office and establishes how an analyst may resign from the appointment.

Clause 30 inserts a new section 132F (Recovery of damages) into the *Transport Operations (Marine Pollution) Act 1995*. This enables a person who suffers loss or damage to property because of a discharge of a pollutant prohibited under the *Transport Operations (Marine Pollution) Act 1995* to recover costs via court and reflects other jurisdictions in Australia.

Clause 31 omits section 135 (Review of Act). Section 135 of the *Transport Operations (Marine Pollution) Act 1995* requires that the Act be reviewed 10 years after its commencement and, within one year, a report of the review be tabled in the Legislative Assembly by the Minister. Maritime Safety Queensland has reviewed the *Transport Operations (Marine Pollution) Act 1995* in accordance with section 135. A report on the review was tabled in Parliament by the Minister on 28 November 2006. As the requirement is complete, the provision is obsolete and this amendment removes it.

Clause 32 inserts a new part 17, division 3 (Provisions for *Transport Legislation Amendment Act 2008*, part 5) to provide a number of transitional provisions for the application of the change to the *Maritime Safety Queensland Act 2002*, the changes regarding appointment of analysts, actions done and documents made by analysts, and recovery of damages under the *Transport Operations (Marine Pollution) Act 1995*.

Clause 33 amends the schedule (Dictionary) to omit the current definitions of ‘analyst’ and ‘authorised officer’ and inserts updated definitions for these terms. The definition of ‘Maritime Safety Queensland’ is also amended to reflect the change from ‘Maritime Safety Agency of Queensland’ to ‘Maritime Safety Queensland’.

Part 6 Amendment of Transport Operations (Marine Safety) Act 1994

Clause 34 provides that the Act amended in part 6 is the *Transport Operations (Marine Safety) Act 1994*.

Clause 35 amends section 87A (Owner of ship lost, abandoned or stranded) of the *Transport Operations (Marine Safety) Act 1994*. Section 87A of the *Transport Operations (Marine Safety) Act 1994* provides that a direction may be given to the registered owner of a ship that is lost, stranded or abandoned about the ship. This provision currently does not make it clear that ‘registered owner’ also means the registered owner of a ship under the law of another State or Territory of Australia, Commonwealth of Australia or overseas in any country. Clause 35 of the Bill clarifies the intent of this provision by amending section 87A of the

Transport Operations (Marine Safety) Act 1994 to insert a definition of registered owner to mean the person who registered the ship under the *Transport Operations (Marine Safety) Act 1994*, the law of another State or Territory of Australia, the Commonwealth of Australia or overseas in any country. The existing provision in section 87A that enables a person to prove they are not the registered owner of a ship will continue to apply.

Clause 36 inserts a new section 199B (Courts may make orders about apologies and other matters). The *Transport Operations (Marine Safety) Act 1994* allows for monetary penalties and imprisonment to be imposed against persons successfully prosecuted for a breach of safety legislation. However, there are no provisions that allow the courts to impose civil penalties.

The amendment provides that a court, at its own discretion or upon application by the prosecution, may apply a range of civil penalties in addition to pecuniary penalties or imprisonment. For example, in cases where a breach of the *Transport Operations (Marine Safety) Act 1994* is proven, a court will be able to order the defendant to undertake a range of actions, including conducting an advertising or education campaign to promote compliance with the Act, publishing an apology, putting in place a system or modifying a ship to ensure compliance with the Act and reduce the risk of future incidents.

These amendments are consistent with section 127 of the *Transport Operations (Marine Pollution) Act 1995* (Court may make orders about rehabilitation, etc).

Clause 37 amends section 202K (Variation of restrictions) by omitting a reference to section 202D(4) and inserting section 202D(6). This corrects a minor typographical error in section 202K(7) of the *Transport Operations (Marine Safety) Act 1994*.

In April 2007, the *Maritime and Other Legislation Act 2006* included section 91 which introduced new part 15, divs 2 – 4 to *Transport Operations (Marine Safety) Act 1994*. This established a regime for licence disqualifications, cancellations and suspensions and included new section 202K(7). A typographical error in section 202K(7) incorrectly referenced section 202D(4) instead of section 202D(6).

Clause 38 amends section 205 (False or misleading documents) of the *Transport Operations (Marine Safety) Act 1994*.

Currently section 205(1) of the *Transport Operations (Marine Safety) Act 1994* provides that it is an offence for a person to knowingly give a false or misleading statement to Queensland Transport in or on an approved form.

It is not always the case that the person who makes the statement (that is, completes the form) will be the same person who actually gives the document to Queensland Transport. For example, a Statement of Positive Flotation is required when applying for registration of commercial ships less than 6 metres in length. The person who gives this form to Queensland Transport along with the registration form (the owner of the ship) may not be the same person who completed the form. The person who completed the form will be someone with expertise regarding a vessel's flotation such as an accredited surveyor.

The amendment provides an offence to knowingly make a false and misleading statement in or on an approved form to the department. The offence is set at 200 penalty units (currently \$15,000).

Clause 39 inserts a new part 19, division 4 (Provision for *Transport Legislation Amendment Act 2008*, part 6) to provide for minor transitional provisions. The provision relates to the changes regarding civil penalties.

Clause 40 amends the schedule (Dictionary) to reflect the change from 'Maritime Safety Agency of Queensland' to 'Maritime Safety Queensland'.

Part 7 **Amendment of Transport Operations (Passenger Transport) Act 1994**

Clause 41 provides that the Act amended in part 7 is the *Transport Operations (Passenger Transport) Act 1994*.

Clause 42 inserts a new chapter 13, part 5 in the *Transport Operations (Passenger Transport) Act 1994* which provides that the new category C driver disqualifying offences being introduced under clause 43 of this Bill will apply from the date the Bill is assented to.

Clause 43 amends the definition of a category C driver disqualifying offence to include “an offence against the *Summary Offences Act 2005*, section 9” (i.e. wilful exposure and aggravated wilful exposure).

Part 8 **Amendment of Transport Operations (Road Use Management) Act 1995**

Division 1 **Act amended**

Clause 44 provides that part 8 amends the *Transport Operations (Road Use Management) Act 1995*.

Division 2 **Amendment to commence on assent**

Clause 45 amends section 124(1)(l) (Facilitation of proof) of the *Transport Operations (Road Use Management) Act 1995*. The Act contains numerous provisions assigning powers and functions to the chief executive. In practice, many of these powers are exercised and functions performed by delegates of the chief executive. This delegation of powers and functions is provided for in section 37 of the *Transport Planning and Co-ordination Act 1994* and section 57 of the *Public Service Act 1996*. Section 124(1)(l) of the *Transport Operations (Road Use Management) Act 1995* refers to “*the chief executive or the chief executive's delegate*”. Because of the general ability for the chief executive to delegate the exercise of a power, the words “*or the chief executive's delegate*” are not necessary and will be deleted. This will remove any uncertainty those words might create and will clarify that the chief executive has the authority to delegate all powers and functions contained in the *Transport Operations (Road Use Management) Act 1995*. Section 27A of the *Acts Interpretation Act 1954* will apply to that delegation and will, for example, allow a certificate under section 124(1)(l) to be signed by a delegate of the chief executive.

Division 3 Amendments to commence by proclamation

Clause 46 amends section 18 (Grounds for amending, suspending or cancelling approvals) to insert new grounds on which the chief executive can amend, suspend or cancel an accreditation or exemption granted under a fatigue management regulation. The first of these new grounds relates to the suitability of the person to whom the accreditation or exemption has been granted. The second ground relates to a change in circumstances since the accreditation or exemption was granted.

Clause 47 amends section 35 (Power to enter vehicles etc. other than for vehicle inspection) to make it clear that the power of an authorised officer to copy a document in a vehicle includes the power to download information contained on a disk, tape or other device in the vehicle. This has been included as an example of the power contained in section 35(2) (e).

Clause 48 amends section 35B (Further powers to access stored information or to decide if anything found in a heavy vehicle may be seized) to clarify that the section enables not only the accessing but also the downloading of information contained on anything found in or at the vehicle.

Clause 49 inserts a new chapter 3, part 3, division 2, subdivision 6 into the Act (Further powers in relation to fatigue regulated heavy vehicles).

The new subdivision contains new sections 39I- 39O.

New section 39I is an application section. The section states that the subdivision applies to a fatigue regulated heavy vehicle regardless of whether the vehicle is, has been, or becomes the subject of a direction or requirement given or made by an authorised officer under another provision of the part.

New section 39J (Meaning of fatigue regulated heavy vehicle) inserts a definition of fatigue related heavy vehicle. This is defined as a motor vehicle with a Gross Vehicle Mass of more than 12t, a combination with a Gross Vehicle Mass of more than 12t or a bus. However, there are also a number of specified vehicles that are expressly excluded from the definition. It is only a fatigue related heavy vehicle as defined by this section that is subject to the heavy vehicle reforms introduced by this Bill.

New section 39K (Requiring person to rest for contravention of maximum work requirement) contains powers for an authorised officer to direct a person in control of a fatigue regulated heavy vehicle to take certain specified actions if the officer reasonably believes the person has worked for a period in excess of the maximum period allowed under a “maximum work requirement”. (The term “maximum work requirement” is a newly defined term inserted into schedule 4 by clause 65. It is a requirement of a fatigue management regulation relating to the maximum period a driver may drive a fatigue regulated heavy vehicle, or otherwise work, without taking a rest).

The nature of the powers contained in section 39K varies according to the risk category of the breach detected. If the excess period worked has resulted in the person committing a critical risk or severe risk breach, the authorised officer must require the person:

- To immediately take a stated period of rest in accordance with a minimum rest requirement applying to the person; and
- To work for a stated shorter period in the person's next work period to compensate for the excess period worked.

If the breach amounts to a substantial or minor risk breach, the authorised officer has the option to require the person to take the action set out above. The terms critical, severe, substantial and minor risk breach in relation to a maximum work requirement are newly defined terms which reflect the severity of the breach and have been incorporated into schedule 4 of the Act by clause 65.

New section 39L (Requiring person to rest for contravention of minimum rest requirement) contains powers for an authorised officer to direct a person in control of a fatigue regulated heavy vehicle to take certain specified actions if the officer reasonably believes the person has taken a rest period that is shorter than the minimum rest period required under a “minimum rest requirement”. (The term “minimum rest requirement” is a newly defined term inserted into schedule 4 by clause 65. It is a requirement of a fatigue management regulation relating to the minimum period a driver of a fatigue regulated heavy vehicle must rest to break up the period of time the driver drives the vehicle or otherwise works).

The nature of these powers varies according to the risk category of the breach detected. If an authorised officer reasonably believes the contravention is a critical risk or severe risk breach, the authorised officer must require the person:

- To immediately take a stated period of rest to compensate for the shortfall between the rest period taken by the person and the minimum rest period required under the minimum rest requirement; and
- If the person has failed to take one or more night rest breaks required under a minimum rest requirement – to take one or more night rest breaks to compensate for the shortfall between the number of night rest breaks taken by the person and the number of night rest breaks required under the minimum rest requirement.

The term "night rest break" has the meaning given by the fatigue management regulation prescribing the minimum rest requirement (see subsection (4)).

If the breach in question amounts to a substantial or minor risk breach, the authorised officer has the option to require the person to take the action set out above. The terms critical, severe, substantial and minor risk breach are new defined terms which reflect the severity of the breach and have been incorporated into schedule 4 of the Act by clause 65.

New section 39M (Requiring person to stop working if impaired by fatigue) provides a power to an authorised officer if the officer reasonably believes the person in control of a fatigue regulated heavy vehicle is impaired by fatigue. The definition of "impaired by fatigue" is a newly defined term inserted into schedule 4 by clause 65. It is defined as being when a driver is fatigued to the extent that he or she is incapable of driving a vehicle safely. Under subsection (2)(a), the officer may require the person to immediately stop work and not work again for a stated period. Subsection (3) provides that the stated period must be a reasonable period having regard to a number of factors set out in that subsection.

Subsection (2)(b) deals with the instance that the officer has observed the person driving in a way the officer considers on reasonable grounds to be dangerous. In addition to giving a notice under subsection (2)(a), the officer may require the person to stop being in the control of the vehicle immediately under subsection (2)(b). Subsection (4) then allows the officer to authorise a person who is qualified and fit to drive the vehicle to move it to a suitable rest place for fatigue regulated heavy vehicles.

Subsection (5) provides that a regulation may prescribe the matters to which the authorised officer, or a court, must or may have regard when deciding whether or not a person was impaired by fatigue for this section.

New section 39N (Requiring person to stop working if work diary not produced or unreliable) provides the power for an authorised officer to require a person in control of a fatigue regulated heavy vehicle to immediately stop work and to not work again for a stated period of up to 24 hours, if the person does not produce a work diary when asked by the authorised officer under section 49 of the Act. This power also applies if the person produces a document that the officer reasonably believes is not a work diary, or the officer reasonably believes the diary that is produced can not be relied upon as an accurate record of the time the person recently spent working or resting. Examples of when the officer may reasonably believe that a diary can not be relied on as an accurate record are included in the section.

New section 39O (Compliance with requirement under this subdivision) is a penalty provision that provides that a person given a notice under this new subdivision (that is, a notice given under sections 39K – N) must comply with the notice unless the person has a reasonable excuse. The maximum penalty is \$9,000 (120 penalty units). Subsection (2) provides the ability to allow up to 1 hour delay for complying with a notice in relation to all powers other than in relation to a person the authorised officer reasonably believes is impaired by fatigue (that is a notice given under section 39M). Subsection (2) also qualifies when the 1 hour delay may be allowed in relation to complying with a notice given under sections 39K, 39L or 39N.

Clause 50 amends section 49 (Power to require documents to be produced) to include reference to a work diary, in addition to the existing reference to logbook.

Clause 51 amends section 53B (False or misleading transport documentation for goods) to insert the words “loading manager”. This is a consequential amendment due to the amendment of the definition of the word “loader” and the addition of the defined term “loading manager”.

Clause 52 inserts new section 57AB which contains definitions for chapter 3, part 5, division 1, subdivision 2. This subdivision deals with extended liability offences. The definitions of “extended liability offence” and “influencing person” which are contained in the current section 57B in relation to mass, dimension and loading offences have been transferred into this new section. These definitions have also been extended to cater for definitions necessary for an offence committed by a person in control of a fatigue regulated heavy vehicle in relation to a maximum work requirement

or minimum rest requirement, a work and rest hours option requirement, and a work diary requirement.

For example for an offence relating to a contravention of a maximum work requirement or minimum rest requirement (both defined in schedule 4 as inserted by clause 65), an “influencing person” includes the following (as defined in schedule 4 where relevant):

- The employer of the driver of the heavy vehicle;
- A person who schedules the transport of any goods or passengers by the vehicle;
- A person who schedules the work and rest times of the driver of the vehicle;
- The consignor of any goods in the vehicle;
- The consignee of any goods in the vehicle; and
- The loading manager of any goods in the vehicle.

Each of these influencing persons is a key party that has been identified as having responsibilities in relation to ensuring that persons in control of heavy vehicles do not commit driver fatigue offences. This amendment means that if the person in control of a heavy vehicle (for example, the driver) breaches a maximum work requirement or minimum rest requirement, then each of these parties is taken to have committed the offence. This is the consequence of the new definitions as they will apply to section 57B which contains Queensland's chain of responsibility provision. Note however that the influencing person has access to defences under section 57B. One of these is the “reasonable steps defence” (see further notes in relation to clause 55 below).

New section 57AB provides a more limited definition of “influencing person” in relation to an offence relating to a contravention of a work and rest hours option requirement (defined in schedule 4 as inserted by clause 65), and for an offence relating to a contravention of a work diary requirement (defined in schedule 4 as inserted by clause 65).

Clause 53 amends section 57B (Further liability provisions for extended liability offences) by transferring the definitions of “associate”, “holding company”, “security interest” and “subsidiary” into the new section 57AB.

Clause 54 amends section 57C (Liability for inducing breaches of mass, dimension or loading requirements – consignees) by deleting from section 57C the definition of *consignee* since this definition has now been

relocated to schedule 4 due to its application to sections in addition to section 57C.

Clause 55 amends section 57D (Reasonable steps defence) to apply the existing explanation of the reasonable steps defence to fatigue management offences (in addition to its existing application to mass, dimension and loading offences). Existing subsection (2) which provides what the court may have regard to in relation to someone charged with a mass, dimension or loading offence has been relocated to new section 57DA as inserted by clause 56.

Clause 56 inserts new sections 57DA-57DD.

New section 57DA contains matters that a court may consider for deciding whether a person took all reasonable steps in relation to heavy vehicle mass, dimension or loading offences. These matters were previously contained in section 57D.

New section 57DB contains matters that a court may consider for deciding whether a person charged with a fatigue management offence took reasonable steps.

New section 57DC specifies when a person charged with a fatigue management offence is to be regarded as having taken all reasonable steps to prevent the act or omission that led to the contravention to which the offence relates. The matters listed in the section include that the person:

- identified and assessed on a regular basis, risks that may lead to the contravention of a fatigue management requirement; and
- took measures to eliminate those risks or, if it is not reasonably possible to eliminate the risk, to minimise the risk.

New section 57DD provides that a regulation may provide for the ways, or examples of ways, persons can identify and assess the aspects of activities of the persons, or relevant drivers, that may lead to a contravention of a fatigue management requirement by a relevant driver and the measures, or examples of measures, persons may take to eliminate or minimise risks of aspects of activities of the persons, or relevant drivers, leading to a contravention of a fatigue management requirement by a relevant driver.

Clause 57 amends section 57E (Inclusion of reasonable diligence) which contains a drafting improvement by including the words 'or is not liable' to make the intent of the section clearer.

Clause 58 amends section 60 (Evidentiary aids) to include reference to a work diary in addition to the existing reference to logbook.

Clause 59 amends section 150 (Regulating driver management) by replacing the existing subsection (1)(g) with a head of power provision which specifies that a regulation may prescribe rules providing for the management of fatigue of drivers of heavy vehicles.

Clause 60 renumbers the existing section 150AB (Driver licensing regulation prevails over rules of court) as section 150AC.

Clause 61 inserts new section 150AB (Regulating management of fatigue of drivers of heavy vehicles) which provides a head of power detailing the matters for which a regulation may provide under this part concerning the management of fatigue of drivers of heavy vehicles.

Clause 62 inserts new section 150C (Proceedings for particular offences involving requirements about fatigue regulated heavy vehicles) which provides a new evidentiary provision in relation to proceedings for an offence against a fatigue management regulation that may be committed by a person failing to take all reasonable steps to ensure that another person does not drive a fatigue regulated heavy vehicle while impaired by fatigue.

Clause 63 inserts a new chapter 6, part 1, heading - Provisions for mass, dimension or loading requirement.

Clause 64 inserts a new chapter 6, part 2 and part 3 heading – Provision for offences about heavy vehicle driver fatigue. This clause also inserts a new section 163D (Deciding whether person knew or ought reasonably to have known something) which is an evidentiary provision for offences about heavy vehicle driver fatigue. This section is in relation to a proceeding in which it is relevant to prove that someone ought reasonably to have known something. The provision provides that a court must consider a number of factors when deciding whether the person ought reasonably to have known the thing.

Clause 64 also inserts a new heading “Part 3 - Other provisions”.

Clause 65 amends schedule 4 (Dictionary) to insert a number of new definitions to support other amendments contained in this Bill.

Part 9 **Amendment of Transport Planning and Coordination Act 1994**

Clause 66 provides that this part amends the *Transport Planning and Coordination Act 1994*.

Clause 67 amends section 3 (Definitions). This clause defines; a complementary purpose, a transport associated development and a prescribed transit node.

A complimentary purpose has been defined to include transport associated development. This would enable land to be disposed for a transport associated development under section 27(1) of the Act.

A prescribed transit node is defined as a location declared under a regulation to be a prescribed transit node. Regulation making powers are addressed in clause 70.

The definition of a transport associated development refers to developments which are focussed on the integration of land use with transport infrastructure and services considered to support public transport use. The definition draws on the objectives of Part 2A of the Act which aim to encourage increased integration between land use and transport by ensuring that, as far as practicable, development does not have a significant adverse impact on existing and future public passenger transport and public passenger transport offers an attractive alternative to private transport in a way that reduces the overall economic, environmental and social costs of transport. Part 2A aims to promote urban development that maximises the use of public passenger transport and increases opportunities for people to access public passenger transport, including access by cycling and walking; and ensures, as far as practicable, the provision of public passenger transport infrastructure to support public passenger transport.

The definition of transport associated development provides that the development support the integration of a prescribed transit node into the community within which it is located. Transit nodes will be prescribed by regulation and can include bus, light rail or rail stations and other transport facilities. Such developments would provide easy access to and from the prescribed transit node and could be expected to be within walking distance of the prescribed transit node.

In determining what may constitute integration into a prescribed transit node, the principles established in statutory planning documents such as the *South East Queensland Regional Plan* or other statutory planning documents would provide the guiding framework. Examples of relevant principles in the *South East Queensland Regional Plan* include the support of a more compact pattern of urban development and the promotion of self-contained travel in sub-regions by integrating transport and land use planning.

Well integrated commercial centres, recreational centres and medium and high density residential developments are amongst the developments considered likely to promote the prescribed transit node as an origin and destination for public transport users.

Clause 68 amends section 25 (General Powers regarding property). This amendment is intended to allow for integrated development surrounding key public transport stations which support public passenger transport use.

Subclause 68(1) amends section 25(1) of the Act to enable the chief executive to acquire, hold, dispose of or otherwise deal with properties for the purpose of a transport associated development only if the land was first required for the purposes of transport or, for an incidental purpose, or for a combination of these purposes. This limitation is referred to in the notation expressed at the end of the provision regarding the introduction of a new section 25(2A).

Subclause 68(2) amends section 25(2) which is also amended in a similar fashion as section 25(1), with reference to the chief executive's resumption powers. The chief executive's powers under this provision are also limited by the introduction of a new section 25(2A).

Subclause 68(3), provides a new subsection 25(2A) which limits the resumption powers as amended under subclause 68(1). It provides that any resumption for the purposes of a transport associated development under section 25(1) or (2) as amended, must first have been required, at the time of acquisition, for either the purposes of transport or for an incidental purpose or a combination of those purposes. Section 25(2A) ensures that the proposed amendments do not broaden the chief executive's existing resumption powers beyond those powers that currently exist.

Subclause 68(5) amends section 25(8) which ensures that transport associated development under the amended subsection 25(1) can be considered a purpose for which land can be taken under the *Acquisition of Land Act 1967*.

Clause 69 amends section 27 (Power of chief executive to lease, sell or otherwise dispose of land). Subclause 69(1) amends section 27(1), by inserting a new subsection 27(1)(ba) to provide for the disposal of land for the purposes of transport associated development. Under this provision, land acquired under section 25 can be sold or leased to another person for the purposes of transport associated development.

Subclauses 69(2) & (4) contain amendments to correct referencing.

Subclause 69(3) inserts a notation into section 27(2) which clarifies that the *Acquisition of Land Act 1967* does not apply to section 27(1).

Clause 70 inserts a new section 28AA (Declaration of prescribed transit node) for the declaration of a ‘prescribed transit node’ by regulation. Any existing or proposed busway, light rail or rail station or another transport facility may be declared a prescribed transit node. In making such a declaration the Minister, when making the regulation, may have regard to key planning documents which may be relevant to the need for or location of a transit node. Examples of current regional plans are provided but it is anticipated that any major planning document which outlined the intended shape of future growth and development would be used to inform the decision.

Part 10 Repeal and other minor amendments

Clause 71 repeals the National Rail Corporation (Agreement) Act 1991.

Clause 72 contains a schedule of minor amendments to the following Acts:

Tow Truck Act 1973

Transport Infrastructure Act 1994

Transport Operations (Marine Pollution) Act 1995

Transport Operations (Passenger Transport) Act 1994

Transport Operations (Road Use Management) Act 1995

Transport Planning and Coordination Act 1994

© State of Queensland 2008