Transport and Other Legislation Amendment Bill (No. 2) 2010

Explanatory Notes

General Outline

The Bill amends 25 Acts and 12 Regulations:

- *Adult Proof of Age Card Act 2008;*
- *Anti-Discrimination Act 1991;*
- *Coastal Protection and Management Act 1995;*
- *Coastal Protection and Management Regulation 2003;*
- *Criminal Code;*
- *Electrical Safety Act 2002;*
- *Electrical Safety Regulation 2002;*
- *Electricity Act 1994;*
- *Environmental Protection Regulation 2008;*
- *Explosives Regulation 2003;*
- *Judicial Review Act 1991;*
- *Land Act 1994;*
- *Maritime Safety Queensland Act 2002;*
- *Mineral Resources Act 1989;*
- *Nature Conservation (Wildlife Management) Regulation 2006;*
- *Right to Information Act 2009;*
- *South Bank Corporation Act 1989;*
- *Sustainable Planning Act 2009*
- *Transport Infrastructure Act 1994;*
- *Transport Legislation Amendment Act 2007;*

- *Transport Infrastructure (Ports) Regulation 2005;*
- *Transport Infrastructure (Rail) Regulation 2006;*
- *Transport (New Queensland Driver Licensing) Amendment Act 2008;*
- *Transport Operations (Marine Pollution) Act 1995;*
- *Transport Operations (Marine Pollution) Regulation 2008;*
- *Transport Operations (Marine Safety) Act 1994;*
- *Transport Operations (Marine Safety) Regulation 2004;*
- *Transport Operations (Passenger Transport) Act 1994;*
- *Transport Operations (Passenger Transport) Regulation 2005;*
- *Transport Operations (Road Use Management) Act 1995;*
- *Transport Operations (TransLink Transit Authority) Act 2008;*
- *Transport Planning and Coordination Act 1994;*
- *Transport Planning and Coordination Regulation 2005;*
- *Transport Security (Counter-Terrorism) Act 2008;*
- *Transport (South Bank Corporation Area Land) Act 1999;*
- *Urban Land Development Authority Act 2007; and*
- *Workplace Health and Safety Regulation 2008*.

The emergency contact information provisions in the *Adult Proof of Age Card Act 2008* and the *Transport (New Queensland Driver Licensing) Amendment Act 2008* will be relocated to the *Transport Planning and Coordination Act 1994*.

The *Maritime Safety Queensland Act 2002* will:

- incorporate functions of chapter 15 of the *Transport Infrastructure Act 1994* and the *Transport Infrastructure (Public Marine Facilities) Regulation 2000* into the *Maritime Safety Queensland Act 2002*, to extend Maritime Safety Queensland's powers to manage public marine facilities and waterways;
- preserve the leave and service entitlements for existing public service officers who are subsequently appointed on contracts;
- provide a right of reversion to the public service for these officers; and

- remove a reference to the Marine Board.

The *Transport Infrastructure Act 1994* will be amended to:

- simplify vehicular property access (which typically relates to driveway access to state controlled roads) applications;
- clarify the appeal and enforcement provisions that apply to approvals for property access (driveways) to state controlled roads issued under the *Transport Infrastructure Act 1994* and the *Sustainable Planning Act 2009*;
- clarify the Department of Transport and Main Roads' jurisdiction with regard to mitigating the environmental impacts on development where these impacts are generated by state controlled roads. This will be consistent with rail, port and public passenger transport infrastructure;
- change the definition of railway transport infrastructure to explicitly include railway station vehicle parking and passenger set-down facilities;
- enable the chief executive to register a notice against a property title to provide notification that certain activities on the land may impact on transport infrastructure;
- enable the chief executive to require activity on land to stop, alter or not start, where the activity may adversely impact on the safety or operational integrity of transport infrastructure or the public transport network;
- ensure the Department of Transport and Main Roads has statutory authority to manage public utility plant on all state land where busway and light rail transport infrastructure is located or will be located;
- expand the categories of land that the Minister for Main Roads may declare to be state toll road corridor land;
- appropriately provide for interests that are affected by the declaration; and
- ensure the transition from existing leases to new leases is seamless for both state toll road corridor land and local government tollway corridor land.

The *Transport Infrastructure Act 1994* will be amended to provide a clearly defined framework to engage an Operator Franchise Public Private Partnership for Stage 1 of the Gold Coast Rapid Transit (GCRT) project.

The *Transport Planning and Coordination Act 1994* will be amended to:

- include emergency contact information provisions being moved from the *Adult Proof of Age Card Act 2008* and the *Transport (New Queensland Driver Licensing) Amendment Act 2008*;
- clarify the definition of transport associated development;
- ensure the legitimacy of prescribed transit node declarations;
- clarify that any change in the value of land resulting from a prescribed transit node declaration is not included in the compensation payable as a result of the compulsory acquisition of land; and
- provide that when land, which is resumed for the development of transport infrastructure, is offered back to the former owner, the constructing authority may require an interest in the land.

The *Transport Operations (Marine Safety) Act 1994* will:

- allow a shipping inspector to issue a direction for a ship to be taken to a safe place for non-compliance with safety equipment obligation;
- remove requirements for marine safety standards to be reviewed within seven years of making and allow minor amendments to standards to be made without required procedures; and
- remove references to the Marine Board.

The *Transport Operations (Marine Pollution) Act 1995* will be amended as a result of the *Pacific Adventurer* incident to provide for the greater protection of Queensland's marine and coastal environment. The Bill will provide for:

- greater penalties for the discharging of oil, oil residues, noxious liquid and jettisoning of harmful substances (such as containerised cargo) into Queensland coastal waters;
- authorised officers to act when a pollution risk is identified to ensure a pollutant is not discharged into coastal waters and also that appropriate action is taken to rectify the issue before a ship is allowed to operate again;
- the amendment of provisions dealing with self-incrimination for corporations to improve access to corporate information for investigations into marine pollution incidents in order to improve compliance; and

- a Letter of Undertaking to be a legally binding form of security.

The *Transport Operations (Marine Pollution) Act 1995* will also be amended to ensure all fixed toilets onboard 'declared ships' operating in 'nil discharge waters' are connected to a holding device fitted to the ship.

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

- require the Department of Transport and Main Roads to report funding details of service contracts relating to areas outside the TransLink area;
- provide a definition of tourist service;
- remove the requirement for the standard to be reviewed within seven years of making and allow minor amendments to a standard to be made without required procedures; and
- make the record keeping requirements for limousine bookings the same as the current requirements for special purpose limousine bookings by amending the *Transport Legislation Amendment Act 2007*.

The *Transport Operations (TransLink Transit Authority) Act 2008* will be amended to:

- ensure that the *Financial Accountability Act 2009* imposes appropriate annual reporting requirements on TransLink including a modified timeline for submitting TransLink's annual report, and reporting funding details of service contracts relating to the TransLink area, in the TransLink annual report.

The *Transport Operations (Road Use Management) 1995* will be amended to adopt enforcement measures and court order provisions from national scheme legislation for heavy vehicles approved by the Australian Transport Council.

The Office of the Queensland Parliamentary Counsel has included some minor administrative amendments in the Schedule to this Bill. These amendments are to the *Transport Operations (Road Use Management) Act 1995*, the *Transport (New Queensland Driver Licensing) Amendment Act 2008, the Transport Operations (Passenger Transport) Act 1994* and the *Transport Security (Counter-Terrorism) Act 2008*.

Short Title

The short title of the Bill is the Transport and Other Legislation Amendment Bill (No. 2) 2010.

Policy Objectives of the Legislation

Port and Rail Amendments

The policy objectives of this Bill are:

- to facilitate the restructure and divestment of the businesses of QR Limited and Port of Brisbane Corporation Limited (POBC);
- to implement transitional arrangements to ensure a smooth transition during the restructure and divestment of the businesses of QR Limited and POBC; and
- to make consequential amendments to the *Transport Infrastructure Act 1994* and other legislation which arise from the proposed restructure and divestment of the businesses of QR Limited and POBC and ensure that the appropriate entity is subject to the applicable legislative framework.

Gold Coast Rapid Transit

The amendments to the *Transport Infrastructure Act* will:

- enable the State to engage an Operator Franchise Public Private Partnership (PPP) to design, construct, operate and manage Stage 1 of the GCRT project;
- provide land tenure and access arrangements that establish certainty and clarity for the State and an Operator Franchise PPP; and
- provide an interface management regime that supports the efficient and effective operation of light rail and nearby infrastructure.

The amendments to the *Transport Infrastructure Act 1994* will:

- simplify vehicular property access applications by eliminating the overlap of approvals as both road works and road access works under section 33 (Prohibition on road works etc on state-controlled roads) and section 50 (Ancillary work and encroachments);
- clarify the enforcement and appeal provisions for vehicular property access on state-controlled roads where an application is subject to the *Transport Infrastructure Act 1994* as well as the development

approval process under the *Sustainable Planning Act 2009*, to provide that the *Transport Infrastructure Act 1994* will only apply to approvals that are made and assessed under that Act, and not to approvals made and assessed under the *Sustainable Planning Act 2009*;

- clarify the Department of Transport Main Road's jurisdiction with regard to mitigating the environmental impacts on development where these impacts are generated by state controlled roads. This will be consistent with rail, port and public passenger transport infrastructure;
- change the Schedule 6 definition of rail transport infrastructure to explicitly include railway station vehicle parking, passenger set down facilities and pedestrian paving in order to provide consistency with the definitions of busway transport infrastructure and light rail transport infrastructure;
- ensure that the Department of Transport and Main Roads has the statutory authority to manage public utility plant on land where busway and light rail transport infrastructure is located or will be located;
- enable the chief executive to require activities to stop that will adversely impact on the safety and operational integrity of transport infrastructure or network in order to protect transport infrastructure which may be threatened by works or activities conducted on nearby land; and
- enable the chief executive to register a notice against the title of a property in order to notify land owners and potential purchasers of their proximity to and obligations towards nearby transport infrastructure, ensuring that the infrastructure is given a zone of protection from certain construction works or activities.

The amendments to the *Transport Planning and Coordination Act 1994* will:

- clarify the definition of Transport Associated Development in order to eliminate conflict in the Act between the interpretation of the definition of transport associated development and the objectives of the Act;
- provide that the legitimacy of a prescribed transit node declaration is not impacted by minor design refinements;
    - provide that when land which has been compulsorily acquired under the *Acquisition of Land Act 1967* for the development of

transport infrastructure that the department may require an interest in the land in order to protect the infrastructure before the land is offered back to the former owner pursuant to that Act (section 41 (Disposal of Land)), the department may require an interest in the land in order to protect the infrastructure; and

- clarify that compensation payable to a landowner as a result of the compulsory acquisition of land does not consider any changes in the value of the land resulting from the declaration of a prescribed transit node.

Adult Proof of Age Card and New Queensland Driver Licensing

The emergency contact information provisions (which are yet to be commenced) in the *Adult Proof of Age Card Act 2008* and the *Transport (New Queensland Driver Licensing) Amendment Act 2008* will be relocated to the *Transport Planning and Coordination Act 1994*.

Maritime

Maritime Safety Queensland Act 2002

Rights and entitlements of public service officers

The amendment will ensure that all public service officers who are subsequently appointed under section 12 of the *Maritime Safety Queensland Act 2002* will maintain continuity of service and accrued leave entitlements. This will be the case regardless of whether the public service officers were previously employed on section 122 contracts under the *Public Service Act 2008.*

Only those public service officers employed on tenure who are subsequently appointed under section 12 of the *Maritime Safety Queensland Act 2002* will have right of reversion. The right of reversion does not to apply to marine pilots who are employed under section 12 of the *Maritime Safety Queensland Act 2002*.

Transfer of Functions

Section 8 of the *Maritime Safety Queensland Act 2002* outlines particular functions and powers of Maritime Safety Queensland. Responsibilities under chapter 15 of the *Transport Infrastructure Act 1994* and the *Transport Infrastructure (Public Marine Facilities) Regulation 2000* were previously managed by the Department of Transport and Main Roads through its Passenger Transport division. Departmental restructuring has

resulted in functions and responsibilities under the *Transport Infrastructure Act 1994* and the *Transport Infrastructure (Public Marine Facilities) Regulation 2000* being transferred to Maritime Safety Queensland.

Section 8 of the *Maritime Safety Queensland Act 2002* does not empower Maritime Safety Queensland to exercise the specific powers under the *Transport Infrastructure Act 1994*. The Bill expressly incorporates the functions set out in chapter 15 of the *Transport Infrastructure Act 1994* following the transfer of responsibilities from the Passenger Transport division to Maritime Safety Queensland.

This will enable Maritime Safety Queensland to undertake responsibilities under chapter 15 of the *Transport Infrastructure Act 1994*.

Remove references to the Marine Board

Remove reference to the Marine Board (refer to heading under the *Transport Operations (Marine Safety) Act 1994*.

Transport Operations (Marine Safety) Act 1994

Remove references to the Marine Board

The Marine Board was established by amendments to the *Transport Operations (Marine Safety) Act 1994.*

In 2008, the Government commissioned an independent review of all Queensland government boards, committees and statutory authorities headed by Ms Simone Webbe and Professor Patrick Weller. The report "*Brokering Balance: A Public Interest Map for Queensland Government Bodies – An Independent Review of Queensland Government Boards, Committees and Statutory Authorities*" (the report) was publicly released on 31 March 2009.

The report recommended that the Marine Board be abolished. In the government response to the report, the recommendation was supported and in December 2008 the Marine Board was abolished and has not met since. The tenure of the most recent members of the Marine Board expired in December 2008 and was not renewed. All matters relating to the Marine Board were completed in December 2008. No transitional provisions are required.

The Bill removes all references to the Marine Board.

Shipping Inspectors

The amendment will ensure that vessels that are not appropriately equipped with safety equipment can be directed to a place of safety, and will ensure that the vessel and its occupants are not able to remain in an unsafe situation after a marine infringement notice has been issued for failure to be equipped with the necessary safety equipment.

The amendment will enhance maritime safety by reducing the exposure of people and property to risk of incident or accident at sea. Maritime Safety Queensland liaises regularly with maritime safety officers about breach and enforcement trends and issues, and will ensure the power is exercised consistently and only when justified.

Transport Operations (Marine Pollution) Act 1995

Pacific Adventurer incident

On Wednesday 11 March 2009, the general cargo ship *Pacific Adventurer* lost 31 containers overboard, each containing 19.5 tonnes of ammonium nitrate, east of Cape Moreton. The lost containers ruptured the ship's fuel tanks, causing approximately 270 tonnes of heavy fuel oil to spill from the ship.

The oil subsequently washed ashore on the southern Queensland coastline. Approximately 56 kilometres of beaches were impacted by oil, from the southern sections of Moreton Island to the northern beaches of the Sunshine Coast.

On 12 March 2009, the declaration of a disaster situation for the oil spill was made under the provisions of the *Disaster Management Act 2003*, by the Honourable the Minister for Emergency Services in conjunction with the Honourable the Premier of Queensland. This declaration provided logistics support and resources that were over-and-above normal State and Commonwealth oil spill response capabilities.

The clean-up involved approximately 2,500 people from over 22 agencies including Federal, State and local Government agencies as well as state emergency service volunteers and private contractors.

This spill was one of the largest ship-sourced pollution incidents in Australia. Given the magnitude and complexity of this oil spill, particular attention is being paid to reviewing the effectiveness of the clean-up response and Australia's and Queensland's capacity to respond to similar incidents in the future. A number of processes and reports are feeding into this comprehensive review.

Penalties

The *Transport Operations (Marine Pollution) Act 1995* establishes a regime where the onus is on the ship owner or master to prevent pollution. Even accidental discharges attract criminal sanctions, except in circumstances where the discharge occurred because of damage to the ship. It is fundamental to the operation of this regime that the penalties associated with the discharge offences are sufficiently severe to prevent discharges of pollution.

The *Transport Operations (Marine Pollution) Act 1995* prohibits the discharging of oil, oil residues, noxious liquid, jettisoning of harmful substances and disposing of garbage and sewage.

The current maximum penalty for the discharging of oil, noxious liquid, jettisoning of harmful substances or disposing of garbage is $350,000 for an individual and $1,750,000 for a body corporate.

The *Transport Operations (Marine Pollution) Act 1995* will be amended to ensure that Queensland's marine and coastal protection regime has the highest rate of penalty.

For the discharging of oil, oil residues, noxious liquid or the jettisoning of harmful substances (such as containerised cargo) into Queensland coastal waters, the *Transport Operations (Marine Pollution) Act 1995* will be amended to increase penalties to a maximum of $500,000 for an individual and for a body corporate to $10,000,000.

Corporation Privilege

The Bill amends the *Transport Operations (Marine Pollution) Act 1995* to require corporations to produce information relevant to a marine pollution incident. Specifically, the Act will be amended to provide that it is not a reasonable excuse for a corporation to fail to give information, even if giving the information might tend to incriminate the corporation.

In the interests of protecting the rights and liberties of individuals involved, the Bill also provides that information obtained through this power will only be used in an action against a corporation and not an individual. That is to say, any information provided by a corporation upon request in relation to a marine pollution incident, cannot be used as evidence to prosecute an individual, thereby preserving the rights and liberties of individuals with respect to self-incrimination.

Compelling a corporation to provide information relevant to a marine pollution incident will also improve Maritime Safety Queensland's ability

to investigate the causes of incidents under the *Transport Operations (Marine Pollution) Act 1995* with the goal of improving compliance.

Authorised officers

This amendment extends the powers of authorised officers to be able to direct ships, with defects (or other instances of non-compliance with relevant legislative requirements) that would, or would be likely to, pollute coastal waters, not to operate, until the cause of the problem is rectified and the ship is assessed as no longer presenting a pollution risk.

Currently, an authorised officer has the power to detain a ship (in an emergency situation only) if the officer believes a discharge offence has *already* occurred. The current amendment will allow the officer to prevent the operation of a ship *before* a pollution incident occurs. The amendment will enhance Maritime Safety Queensland's ability to protect the marine and coastal environment by minimising deliberate and negligent discharges of ship-sourced pollutants into Queensland coastal waters.

Letter of Undertaking

Currently, the chief executive must release a ship detained under the *Transport Operations (Marine Pollution) Act 1995* if a security is given for payment of liability and expenses. The securities currently listed in the Act are a bank guarantee, a bond or an insurance policy.

A Letter of Undertaking is regarded in the insurance industry as being a legally binding guarantee for the release of a detained ship. This arrangement is consistent with recognised international practice, and was given judicial approval by the High Court of Australia in *Freshpac Machinery Pty Limited v The Ship 'Joana Bonita'*.

The Bill will align the forms of security allowed for under the *Transport Operations (Marine Pollution) Act 1995* with industry and international practice and clarify that a Letter of Undertaking is an acceptable form of security.

Fixed Toilets

The amendment will require the owner or master of a declared ship operating in prescribed nil discharge waters for treated or untreated sewage, to have all fixed toilets onboard correctly plumbed into a sewage holding device (as mandatorily fitted) onboard the vessel. The amendment will require that such connections are unable to be by-passed.

Passenger Transport

The changes to the *Transport Operations (Passenger Transport) Act 1994* will:

- allow industry to keep records in a more flexible manner;
- ensure the Act is up to date and continues to reflect policy intent; and
- ensure that annual reporting is accurate and transparent.

The changes to the *Transport Operations (TransLink Transit Authority) Act 2008* will ensure annual reporting is accurate, thorough, transparent and timely.

Road Safety

The enforcement measures and court based orders which are currently in Queensland legislation allow an offender to be punished for behaviour which breaches heavy vehicle operating requirements. To supplement these measures and orders and to allow enforcement officers to work proactively with heavy vehicle operators it is now proposed to adopt further provisions from national model legislation.

The adoption of these provisions will provide a means of addressing dangerous behaviours through, for example, the imposition of conditions on heavy vehicle operators which must be complied with to avoid the commission of an offence. These provisions will complement the provisions which currently allow for the imposition of penalties for non-compliant behaviour.

Declaration of State toll road corridor land and local government tollway corridor land

The amendments to the State toll road corridor provisions of the *Transport Infrastructure Act 1994*:

- extend the categories of land that are eligible to be declared by the Minister to be State toll road corridor land;
- streamline administrative processes for the creation of the relevant leases of land declared by the Minister to be State toll road corridor land; and
- appropriately deal with interests that may be affected by any such declaration made by the Minister.

For consistency, similar amendments are being made to the local government tollway corridor provisions in the *Transport Infrastructure Act 1994*.

Counter Terrorism

The amendment to the *Transport Security (Counter-Terrorism) Act 2008* ensures users are directed to the correct reference in the 'Australian Emergency Manuals Series' to test their risk management plan. The incorrect reference occurred due to the omission of a number in the text.

Reasons for the Bill

Port and Rail Amendments

The restructure of QR Limited will entail the establishment of two new entities, namely QR National Limited (QR National) and Queensland Rail Limited (Queensland Rail). QR National will be the listed holding company of the current QR Limited group, which will operate QR Limited's above rail coal and freight business and below rail coal network. Queensland Rail will be created by converting the QR Limited subsidiary that currently operates the above rail passenger business (QR Passenger Pty Ltd) into a government owned corporation (GOC) and transferring it out of the QR National group so that it remains in government ownership. This entity will operate QR Limited's above and below rail passenger and below rail regional freight businesses. The Bill makes amendments to ensure that these new entities are appropriately regulated under the existing legislative framework (including the *Transport Infrastructure Act 1994*) applicable to the rail industry.

The Port of Brisbane will be leased for 99 years by a government owned entity (port lessor) to a private sector entity (port lessee). Currently, port authorities manage and operate their respective ports subject to a tailored legislative framework under the *Transport Infrastructure Act 1994* and other legislation. This Bill amends the existing legislative framework in relation to port charges, control powers, planning, land dealings, rates, land tax, trade waste and water and sewerage services and puts in place a tailored framework for the Port of Brisbane under management and operation of a private sector entity. The Bill ensures that there is a balanced legislative and regulatory framework applicable to the port industry.

Gold Coast Rapid Transit

Queensland is in the middle of a sustained period of population growth. This growth is most pronounced in South East Queensland where, over the 25 years to 2004, the residential population has increased from around 1.5 million to more than 2.5 million. The South East Queensland Regional Plan 2009-31 predicts growth will continue and anticipates a regional population of 4.4 million by 2031. This growth is placing increasing demands on South East Queensland's road and public passenger transport networks.

The delivery of efficient and effective public passenger transport is fundamental to the development of an integrated transport system with the capacity to support South East Queensland's growing transport task.

Amendments in this Bill will ensure that there is a clearly defined framework to engage the Operator Franchise Public Private Partnership for Stage 1 of the GCRT project, enabling the Queensland Government to deliver a light rail public transport system that represents a key element of its plan to address growth on the Gold Coast.

Other amendments to the *Transport Infrastructure Act 1994* and the *Transport Planning and Coordination Act 1994* are necessary to ensure the safety and operational integrity of Queensland's transport infrastructure and the public transport network.

Adult Proof of Age Card and New Queensland Driver Licensing

The emergency contact information provisions in the *Adult Proof of Age Card Act 2008* and the *Transport (New Queensland Driver Licensing) Amendment Act 2008* will be relocated to the *Transport Planning and Coordination Act 1994*.

Because the *Transport Planning and Coordination Act 1994* is an umbrella Act for transport legislation, the provision providing for the storing of emergency contact information will now only appear once in the statute book, whereas it would have appeared in three separate Acts. The amendment is administrative in nature and will provide for more efficient and streamlined legislation.

Maritime

Maritime Safety Queensland Act 2002

Rights and entitlements of public service officers

The amendment will address the following ongoing problems:

- Loss of maritime knowledge, skill and experience within Maritime Safety Queensland;
- Difficulties in attracting suitably qualified people to marine specialist roles in Maritime Safety Queensland; and
- Barriers to marine specialist career opportunities within the public service.

Transfer of Functions

The recent departmental restructure transferred the functions and responsibilities for the management of public marine facilities and waterways to Maritime Safety Queensland from Passenger Transport Division.

The proposed amendments are administrative in nature and empower Maritime Safety Queensland to exercise specific powers relating to the management of public marine facilities and waterways as set out in the *Transport Infrastructure Act 1994* and the *Transport Infrastructure (Public Marine Facilities) Regulation 2000.*

Remove references to the Marine Board

Remove reference to the Marine Board (refer to heading under the *Transport Operations (Marine Safety) Act 1994*)

Transport Operations (Marine Safety) Act 1994

Remove references to the Marine Board

The amendments contained in this Bill will remove these references as the Marine Board no longer exists.

Shipping Inspectors

The amendment serves to address the current situation where a marine infringement notice may be issued to a vessel master for the offence of failing to carry the prescribed safety equipment but the shipping inspector has no legislative authority to remove the vessel from harm's way. An example is a vessel that is intercepted in offshore waters, does not carry an

Emergency Position Indicating Radio Beacon (EPIRB), receives a fine for the offence but is unable to be lawfully directed back to the safety of sheltered waters where an EPIRB is not required.

The amendment will broaden the existing powers of shipping inspectors at sections 171, 172 and 172A that provide for the issuing of directions for vessel inspections and breaches of registration and licence requirements to include a direction that deals specifically with contraventions of safety equipment requirements.

Transport Operations (Marine Pollution) Act 1995

Pacific Adventurer incident

As a result of the *Pacific Adventurer* incident the *Transport Operations (Marine Pollution Act) 1995* is to be amended to provide for the greater protection of Queensland's marine and coastal environment.

The Bill provides for:

- greater penalties for the discharging of oil, oil residues, noxious liquid and jettisoning of harmful substances (such as containerised cargo) into Queensland coastal waters;
- authorised officers to act when a pollution risk is identified to ensure that a pollutant is not discharged into coastal waters and also that appropriate action is taken to rectify the issue before a ship is allowed to operate again;
- the amendment of provisions dealing with self incrimination for corporations to improve access to corporate information for investigations into the causes of incidents under the *Transport Operations (Marine Pollution Act) 1995* so as to improve compliance;
- clarification that under Queensland legislation, in accordance with international law and custom, a Letter of Undertaking is a legally binding form of security.

Fixed Toilets

Currently section 49 of the *Transport Operations (Marine Pollution) Act 1995* requires that 'declared ships' (operating in prescribed nil discharge waters for the discharge of treated or untreated sewage from a declared ship) must be fitted with an onboard sewage holding device. There is no provision stating that a fixed toilet (or toilets) fitted onboard such a 'declared ship' must be correctly plumbed into the sewage holding device (or devices).

This amendment will clarify that all such fixed toilets onboard 'declared ships' must be connected to an onboard sewage holding device, and that such connections are unable to be by-passed, thereby preventing a pollution risk to Queensland coastal waters.

Passenger Transport

The amendments will address a number of specific matters including:

- a change to annual reporting of the funding details of service contracts to boost transparency;
- the *Transport Operations (Passenger Transport) Regulation 2005* definition for a tourist service needs to be reintroduced into the *Transport Operations (Passenger Transport) Act 1994* to provide a meaning to the tourist service term in the definition of a special purpose limousine service licence;
- remove the requirement for the standard to be reviewed within seven years of making and allow minor amendments to a standard to be made without required procedures; and
- make the record keeping requirements for limousine bookings the same as the current requirements for special purpose limousine bookings by amending the *Transport Legislation Amendment Act 2007* (Act No. 43 of 2007).

TransLink

The amendments will ensure TransLink can submit its annual report in accordance with accepted standards. The requirement to include funding details relating to service contracts in the annual report will boost transparency.

Road Safety

The *National Transport Commission (Road Transport Legislation—Compliance and Enforcement Bill) Regulations 2006* is national model legislation which was developed by the National Transport Commission and approved by the Australian Transport Council. The model legislation was designed to achieve national uniformity and improve compliance with, and enforcement of, heavy vehicle operating requirements. A heavy vehicle is a vehicle with a gross vehicle mass exceeding 4.5 tonnes.

Queensland adopted the majority of the investigatory and enforcement provisions from the national legislation in April 2008. It is now proposed to

adopt two additional measures and two additional court sanctions from the national model legislation.

Declaration of State toll road corridor land and local government tollway corridor land

The amendments to the *Transport Infrastructure Act 1994* will broaden the categories of land that can be declared by the Minister to be state toll road corridor land.

The amendments will also allow the associated registered and unregistered interests in the land to be dealt with by the Minister at the same time.

For consistency, similar amendments are being made to the local government tollway corridor provisions in the *Transport Infrastructure Act 1994*.

Counter Terrorism

An incorrect reference due to a typeset error has occurred within the *Transport Security (Counter-Terrorism) Act 2008* that relates to a particular reference to the 'Australian Emergency Manuals Series' The incorrect reference has occurred due to the omission of a number in the text. Consequently, the proposed amendment replaces the words 'manual 2 – Managing exercises' with 'manual 42 – Managing exercises' in Part 2, section 25(6)(b) of the *Transport Security (Counter-Terrorism) Act 2008*.

Administrative Costs

Ports and Rail Amendments

The cost of administering the Bill is not considered material beyond the current regulation of these operations within public ownership. A cost recovery charge for planning services could operate to ensure administration of the port planning regime does not require supplementation.

Gold Coast Rapid Transit

The administrative costs to support the Gold Coast Rapid Transit project are included within the existing project funding allocations.

The other amendments to the *Transport Infrastructure Act 1994* and *Transport Planning and Coordination Act 1994* that will support the safety and operational integrity of transport and transport infrastructure will be funded from within existing budget allocations.

Fixed Toilets

Vessel owners will be required to pay for any necessary plumbing changes however the costs associated with plumbing configurations are considered negligible.

The amendments for the Adult Proof of Age Card, New Queensland Driver Licensing, maritime, passenger transport, heavy vehicle reforms and transport security legislation will be funded from within existing budget allocations.

Achieving the Objectives

Port and Rail amendments

The Bill achieves its policy objectives by:

- replacing specific references to QR Limited in the *Transport Infrastructure Act 1994* and other legislation with generic terms to ensure that the QR National group and Queensland Rail are subject to the applicable legislative framework;
- inserting new provisions in the *Transport Infrastructure Act 1994*–
    - enshrining the Government's commitment that QR National maintain a substantial operational (including head office) presence in Queensland; and
    - imposing a total 15% cap on the shares a person or entity and their associates can hold in QR National;
- inserting a new savings provision in the *Transport Infrastructure Act 1994* permitting rail infrastructure that was constructed between 1995 and the present on land that is not owned or leased by QR Limited (or on land that is adjacent to such land) to remain on that land, where the rail infrastructure augments, duplicates or replaces pre-1995 infrastructure;
- introducing a tailored standing exemption (subject to conditions) for railway managers (other than a rail GOC and its subsidiaries) in relation to the removal of dead protected animals from railways under the *Nature Conservation (Wildlife Management) Regulation 2006;*
- amending chapter 8 of the *Transport Infrastructure Act 1994* to confer powers on the port operator of the Port of Brisbane to impose charges in relation to port services and port facilities of the Port of Brisbane;

- amending chapter 8 of the *Transport Infrastructure Act 1994* to confer appropriate control powers on the port lessor to regulate activities in the area of the Port of Brisbane for safety and security purposes and to allow the port lessor to delegate these powers to the port operator;
- amending chapter 8 of the *Transport Infrastructure Act 1994* to insert a tailored planning regime in relation to the remaining core port land of the Port of Brisbane, generally based on the existing land use planning regime, but with adaptations for greater consistency with the *Sustainable Planning Act 2009*;
- inserting new provisions in the *Transport Infrastructure Act 1994* to enable the relevant local governments to take over the planning administration of certain balance port land under their respective planning schemes;
- inserting new provisions in the *Transport Infrastructure Act 1994* for land dealings under the *Land Act 1994* and *Land Title Act 1994* in respect of land related to the Port of Brisbane and declared projects under the *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009;*
- inserting new provisions in the *Transport Infrastructure Act 1994* dealing with the grant of trade waste approvals from the service provider (currently Brisbane City Council) to the port operator's tenants at the Port of Brisbane;
- inserting new provisions in the *Transport Infrastructure Act 1994* dealing with the registration of service providers for water and sewerage services at the Port of Brisbane;
- inserting new provisions in the *Transport Infrastructure Act 1994* dealing with land tax and rates to maintain the status quo;
- inserting new provisions in the *Transport Infrastructure Act 1994* dealing with the exclusion of the application of a limited number of local laws to Brisbane core port land, where those local laws would otherwise conflict with either the *Transport Infrastructure Act 1994* or with other State controls;
- amending the *Land Act 1994* to allow subletting of leases under that Act beyond an initial sublease or sub-sublease;
- amending the *Judicial Review Act 1991* to exclude this Act in relation to decisions of the State or a relevant entity (the port lessor, a port lessee or a port manager) made in carrying out its functions under

chapter 8, part 3A (Liability for, and recovery of, charges and expenses);

- making consequential amendments to other Acts and Regulations to ensure that appropriate obligations and exemptions continue to apply to the port operator in relation to the Port of Brisbane; and
- inserting transitional amendments in the *Transport Infrastructure Act 1994* and other legislation in relation to QR Limited and POBC (including in relation to the application of the common carrier exemption that the QR Limited group currently enjoys, and port area, port charging, control powers and planning matters for former strategic port land).

Gold Coast Rapid Transit

The amendments to the *Transport Infrastructure Act 1994* will provide a clearly defined framework to support the delivery of the Gold Coast Rapid Transit project as a Public Private Partnership.

Transport Infrastructure Act 1994

Vehicular property access

The amendments to the *Transport Infrastructure Act 1994* (sections 33, 50, 52, 67 and 70) will remove the overlap between the approval of vehicular property access as both road access works and road works under the Act, by clarifying the scope of each approval. The amendments will simplify the application process and ensure that road access works are approved only as road works under the Act.

The amendments will also clarify the appeal and enforcement provisions for vehicular property access on state-controlled roads where an application is subject to both the *Transport Infrastructure Act 1994* and the development approval process under the *Sustainable Planning Act 2009,* ensuring that the *Transport Infrastructure Act 1994* will apply only to approvals that are made and assessed under the *Transport Infrastructure Act 1994*, and not to approvals that are made and assessed under the *Sustainable Planning Act 2009*.

Environmental Impacts on Development from State-controlled Roads

The insertion of new section 49A will clarify the Department of Transport and Main Roads' existing power in relation to environmental impacts on development from state-controlled roads, clarifying that the department can place conditions on a development in order to mitigate such impacts. This

will provide consistency between the department's jurisdiction over state-controlled roads and the heads of power for public passenger transport, rail and ports.

Definition of rail transport infrastructure

The amendment to the Schedule 6 definition of rail transport infrastructure in the Act to explicitly include railway station vehicle parking, passenger set down facilities and pedestrian paving will bring this infrastructure into line with the definitions of busway transport infrastructure and light rail transport infrastructure and ensure that the infrastructure is considered exempt development under the *Sustainable Planning Act 2009*.

Public utility plant on busway and light rail transport infrastructure

The proposed amendments to chapter 9, part 4, division 4 and chapter 10, part 4, division 3 (Public utility plant) will amend the definitions of busway land and light rail land, to ensure the safety and operational integrity of transport infrastructure by clarifying the chief executive's statutory authority to manage public utility plant on all state land where busway or light rail transport is, or is planned to be located.

Works or activities affecting transport infrastructure

The amendments to chapter 16 (General Provisions) insert provisions that will protect transport infrastructure by enabling the chief executive to require activities that will adversely impact on the safety and operational integrity of transport infrastructure to stop, alter or not start.

Notice on title

The amendments to chapter 16 (General Provisions) insert provisions that will ensure that the safety and operational integrity of transport infrastructure and network is protected from certain nearby construction works or activities, by providing the chief executive with the power to register a notice against the title of a property to notify land owners (and potential purchasers) of their existing obligations not to impact on transport infrastructure.

Transport Planning and Coordination Act 1994

Transport associated development

The amendments to sections 3 (Definitions) and 8A (Object of pt 2A) of the Act will resolve the conflict in the Act between the interpretation of the definition of transport associated development and the objectives of the Act.

Prescribed Transit nodes

The amendments to section 28AA (Declaration of area used or to be used for particular purposes to be prescribed transit node) will provide that the legitimacy of a prescribed transit node declaration is not impacted by minor design changes.

Protecting State Interests in Land

The amendments to section 28 (No compensation for works after notice of intention to resume or agreement to acquire) will enable the chief executive to protect transport infrastructure by disposing of land subject to an interest, when it has been resumed for the development of transport infrastructure and is then offered back to the former owner.

Valuation of Land at and around Prescribed Transit Nodes

The amendments to section 28 (No compensation for works after notice of intention to resume or agreement to acquire) will provide certainty for project teams and land owners by clarifying that that any change in the value of land resulting from a prescribed transit node declaration is not included in the compensation payable as a result of the compulsory acquisition of land. This will avoid potential project delay should a land owner attempt to claim a change in the value of the land which occurs as a consequence of the prescribed transit node declaration.

Adult Proof of Age Card and New Queensland Driver Licensing

As the *Transport Planning and Coordination Act 1994* is an umbrella Act for transport legislation, the provision providing for the storing of emergency contact information will only appear once in the statute book.

Maritime

Maritime Safety Queensland Act 2002

Rights and entitlements of public service officers

As a result of a recent review that compared remuneration arrangements nationally for the positions of Regional Harbour Master and Assistant Harbour Master, any new and current employee that will undertake these roles will be offered a contract under section 12 of the *Maritime Safety Queensland Act 2002* rather than under section 122 of the *Public Service Act 2008.*

This will provide more flexible employment arrangements and redress remuneration anomalies identified during the comparison with industry.

In the future other employees performing maritime specific roles may be offered employment under section 12 of the *Maritime Safety Queensland Act 2002* to address attraction and retention issues.

Remove references to the Marine Board

The Marine Board no longer exists and the amendment will remove the reference to the Marine Board (refer to heading under the *Transport Operations (Marine Safety) Act 1994*).

Transfer of Functions

The amendment will extend Maritime Safety Queensland's functions and powers to manage public marine facilities and waterways under the *Transport Infrastructure Act 1994* and the *Transport Infrastructure (Public Marine Facilities) Regulation 2000.*

Transport Operations (Marine Safety) Act 1994

Remove references to the Marine Board

The Marine Board no longer exists.

Shipping Inspectors

The amendment will broaden the existing powers of shipping inspectors at sections 171, 172 and 172A that provide for the issuing of directions for vessel inspections and breaches of registration and licence requirements to include a direction that deals specifically with contraventions of safety equipment requirements.

The amendment will enhance marine safety by reducing the exposure of people and property to risk of incident or accident at sea.

***Pacific Adventurer* incident**

Penalties

The *Transport Operations (Marine Pollution) Act 1995* establishes a regime where the onus is on the ship owner or master to prevent pollution. Even accidental discharges attract criminal sanctions, except in circumstances where the discharge occurred because of damage to the ship. It is fundamental to the operation of this regime that the penalties associated with the discharge offences are sufficiently severe to prevent discharges of pollution.

The *Transport Operations (Marine Pollution) Act 1995* prohibits the discharging of oil, oil residues, noxious liquid, jettisoning of harmful substances and disposing of garbage and sewage.

The current maximum penalty for the discharging of oil, noxious liquid, jettisoning of harmful substances or disposing of garbage is $350,000 for an individual and $1,750,000 for a body corporate.

The *Transport Operations (Marine Pollution) Act 1995* is to be amended to ensure that Queensland's marine and coastal protection regime has the highest rate of penalty.

For the discharging of oil, oil residues, noxious liquid or the jettisoning of harmful substances (such as containerised cargo) into Queensland coastal waters, the *Transport Operations (Marine Pollution) Act 1995* is to be amended to increase penalties to a maximum of $500,000 for an individual and for a body corporate to $10,000,000.

Corporation Privilege

The Bill amends the *Transport Operations (Marine Pollution) Act 1995* to require corporations to produce information relevant to a marine pollution incident. Specifically, the Act will be amended to provide that it is not a reasonable excuse for a corporation to fail to give information, even if giving the information might tend to incriminate the corporation.

Compelling a corporation to provide information relevant to a marine pollution incident will improve Maritime Safety Queensland's ability to investigate the causes of incidents under the *Transport Operations (Marine Pollution) Act 1995* with the goal of improving compliance.

Authorised officers

This amendment extends the powers of 'authorised officers' to be able to direct ships, with defects (or other instances of non-compliance with relevant legislative requirements) that would, or would be likely to, pollute coastal waters, not to operate, until the cause of the problem is rectified and the ship is assessed as no longer presenting a pollution risk.

Currently, an authorised officer has the power to detain a ship (in an emergency situation only), if the officer believes a discharge offence has already occurred. The current amendment will allow the officer to prevent the operation of a ship before a pollution incident occurs. The amendment will enhance Maritime Safety Queensland's ability to protect the marine and coastal environment by minimising deliberate and negligent discharges of ship-sourced pollutants into Queensland coastal waters.

Letter of Undertaking

Currently, the chief executive must release a ship detained under the *Transport Operations (Marine Pollution) Act 1995* if a security is given for payment of liability and expenses. The securities currently listed in the Act are a bank guarantee, a bond or an insurance policy.

A Letter of Undertaking is regarded in the insurance industry as being a legally binding guarantee for the release of a detained ship. This arrangement is consistent with recognised international practice, and was given judicial approval by the High Court of Australia in *Freshpac Machinery Pty Limited v The Ship 'Joana Bonita'*.

The Bill will align the forms of security allowed for under the *Transport Operations (Marine Pollution) Act 1995* with industry and international practice and clarify that a Letter of Undertaking is an acceptable form of security.

Fixed Toilets

The further amendment to the *Transport Operations (Marine Pollution) Act 1995* will ensure that the mandatory sewage holding devices installed on declared ships (operating in prescribed nil discharge waters for treated or untreated sewage) must be correctly connected to all fixed toilets onboard such ships. This amendment will also provide that such connections are unable to be by-passed.

Passenger Transport

The changes will ensure the *Transport Operations (Passenger Transport) Act 1994* is up to date and reflects policy intent by allowing industry to keep records in a more flexible manner, improving annual reporting, removing redundant review provisions about standards and reinserting the definition of tourist service.

TransLink

The changes will ensure TransLink submits a timely and accurate annual report that includes relevant information relating to service contracts.

Road Safety

The *Transport Operations (Road Use Management) Act 1995* will be amended to incorporate two additional measures and two court order provisions which are designed to assist in reducing non-compliance with heavy vehicle operating requirements.

The two new measures are the ability of authorised officers to issue improvement notices and formal warnings. The availability of these measures will provide additional flexibility for enforcement. It will enable consideration to be given on a case-by-case basis as to the most appropriate means of dealing with behaviour which presents a safety risk to road users. It will also facilitate an environment which encourages working with operators to assist them to comply with the legislation. Comprehensive training will be provided to enforcement officers to allow them to assess when it would be appropriate to use either one of these new measures rather than the usual means of issuing a penalty infringement notice or commencing court proceedings.

Currently under the *Transport Operations (Road Use Management) Act 1995* the court can impose fines or a commercial benefits penalty order when a person is found guilty of committing a heavy vehicle offence. It is now intended to adopt two new court-based sanctions. These are supervisory intervention orders and compensation orders.

Declaration of State toll road corridor land and local government tollway corridor land

Amendments to the *Transport Infrastructure Act 1994* will*:*

- extend the categories of land that may be declared by the Minister to be State toll road corridor land;
- provide that the lease of land to the State comes into effect at the time of the declaration made by the Minister;
- allow the Minister to continue specified interests in relation to the State toll road corridor land;
- provide that land that is declared by the Minister is free of any interest or obligation other than the interests which have been expressly continued in the declaration; and
- provide that a person with an interest in the declared land that has not been continued has the same rights to claim compensation as provided for under the *Acquisition of Land Act 1967.*

For consistency, similar amendments are being made to the local government tollway corridor provisions in the *Transport Infrastructure Act 1994.*

Counter Terrorism

The amendment to the *Transport Security (Counter-Terrorism) Act 2008* corrects a particular reference to the 'Australian Emergency Manuals Series'

Fundamental Legislative Principles

The changes to the *Maritime Safety Queensland Act 2002*, the *Transport Operations (Marine Safety) Act 1994*, the *Transport Operations (Passenger Transport) Act 1994* and the *Transport Security (Counter-Terrorism) Act 2008* do not breach any Fundamental Legislative Principles.

Amendments to the *Adult Proof of Age Card Act 2008* and the *Transport (New Queensland Driver Licensing) Amendment Act 2008* are administrative in nature and merely relocate provisions relating to emergency contact information to the *Transport Planning and Coordination Act 1994*. This will provide for more efficient and streamlined legislation. The amendments do not breach any Fundamental Legislative Principles.

Port and Rail amendments

The Bill raises issues relevant to fundamental legislative principles:

Whether legislation has sufficient regard to the rights and liberties of individuals (Legislative Standards Act, section 4(2)(a)) – QR Limited, new section 244A of the Transport Infrastructure Act 1994.

QR Limited has rail transport infrastructure on land that it does not own or lease. This infrastructure (which was constructed before 1995) may remain on the land by virtue of section 244 of the *Transport Infrastructure Act 1994*. Further, section 244 allows QR Limited to alter that infrastructure, manage the railway using that infrastructure and operate (or authorise a railway operator to operate) rolling stock using that infrastructure. The section also confirms that land owners do not have an interest in the rail infrastructure merely because it is fixed to their land. Since the commencement of that section, QR Limited has augmented, duplicated and replaced rail transport infrastructure of this kind. New section 244A effectively preserves the benefit of section 244 in relation to the rail infrastructure comprised in such augmentations, duplications and replacements where this has occurred since the commencement of section 244.

Much of this rail infrastructure was constructed pursuant to informal arrangements. As a result there are, for example, gaps in the tenure for rail corridor land over watercourses and roads. This new section will permit the existing rail infrastructure to remain on the land (despite the lack of tenure) and permit the owner of the rail infrastructure to enter upon the land for the purposes of managing the railway, without the need for a grant of a licence or other land tenure. In particular, the owner of the rail infrastructure will not require a licence from local governments in relation to such rail infrastructure on local government roads.

This new section is considered necessary to preserve the status quo with the existing rail infrastructure. The new section 244A provides Queensland Rail and QR National with a statutory right in relation to existing rail infrastructure as currently exists in the name of QR Limited. However, Queensland Rail and QR National will need to enter the appropriate access arrangements or secure tenure through the normal commercial processes for any new rail infrastructure.

Whether legislation has sufficient regard to the rights and liberties of individuals by abrogating common law rights (Legislative Standards Act, section 4(2)(a)) – QR Limited, section 248 of the Transport Infrastructure Act 1994.

Currently, section 248 declares QR Limited and its wholly owned subsidiaries not to be common carriers. The Bill amends this section so that this exemption applies to Queensland Rail, which will be the owner of the above and below rail passenger business and the regional freight network. This amendment will maintain the status quo for Queensland Rail.

Once the QR National commercial freight business ceases to be government owned, it will not have the benefit of this exemption.

However, as a transitional matter, the Bill preserves the benefit of the common carrier exemption in respect of contracts which the QR Limited group has entered into upon the basis of the common carrier exemption. This transitional arrangement is justified, as it preserves existing contractual rights which were agreed upon in reliance on that exemption. Without this statutory preservation, the discontinuation of this exemption in relation to existing contracts would alter third parties' contractual rights.

Whether legislation has sufficient regard to the rights and liberties of individuals (Legislative Standards Act, section 4(2)(a)) – Port of Brisbane, New Planning Framework.

The Bill provides that a person is not entitled to compensation under the *Sustainable Planning Act 2009*, or any other law in relation to a change to a Brisbane port land use plan affecting the person's interest in any Brisbane core port land. There is no common law right to compensation if a land use plan (LUP) is amended. However, this clause is intended to put this issue beyond doubt. This clause is identical to the approach taken under the *Airport Assets (Restructuring and Disposal) Act 2008.*

Whether legislation has sufficient regard to rights and liberties of individuals by delegation of administrative power only in appropriate cases and to appropriate persons (Legislative Standards Act 1992, section 4(3)(c)) – Port of Brisbane, Delegation of Statutory Control Powers to Port Lessee.

Under chapter 8 of the *Transport Infrastructure Act 1994*, POBC, as a port authority, may control activities by issue of a port notice within its port area and appoint authorised officers to give directions to persons in the port area, move contravening property and inspect documents, vessels, vehicles and goods. These powers are important for maintaining safety, security and efficient operation of the Port of Brisbane and (in the case of inspection) for enforcing port charges. Post divestment, the Port of Brisbane will be managed by a private sector entity, port lessee/operator. In recognition of the fact that the port lessee/operator will be a private sector entity, the control powers are proposed to be ultimately vested in the port lessor (a government entity) and delegated to the port lessee/operator. However, the State will continue to be able to ensure that the powers that are made available under the Bill are exercised within appropriate guidelines. It is noted that this model was also adopted in the *Airport Assets (Restructuring and Disposal) Act 2008*.

As to protection from suit, the authorised officers appointed by the port lessor or by the lessee/operator as delegate of the port lessor will be placed in the same position as current authorised officers of POBC. That is, section 6 of the *Transport Infrastructure (Ports) Regulation 2005* exempts authorised officers and employees from civil liability for acts and omissions done honestly and without negligence for purposes related to the management and operation of the port. It is considered important that individual authorised officers appointed by the port lessor/lessee/operator, acting honestly and without negligence should be able to carry out their duties without concern for their private liability. Authorised officers will be fulfilling the important function of ensuring the safety and security of the port area, its users and invitees, and ensuring that the conduct of

persons does not adversely affect the operation of the port. Further, the immunity granted to the authorised officers does not prevent a person affected by an act or omission of the authorised officers recovering against the port lessor/lessee/operator.

Whether legislation has sufficient regard to rights and liberties of individuals by delegation of administrative power only in appropriate cases and to appropriate persons (Legislative Standards Act 1992, section 4(3)(c)) – Port of Brisbane, Delegation to Local Governments (Planning).

The State has retained responsibility for oversight of the planning provisions. However, the Bill provides that the planning chief executive may delegate to a local government certain 'administrative functions' in relation to the administration and enforcement of development approvals under the *Sustainable Planning Act 2009*. In this instance, it is appropriate for legislation to permit administrative power to be delegated by the planning chief executive to a local government. While the usual delegation provision within Government would typically provide for delegation to specified 'appropriately qualified persons', in this instance, the delegation is provided to a local government itself. Local governments are experienced in planning administration such as issuing planning and development certificates. Accordingly, the local government, rather than a specifically delegated person, will be required to undertake this role. If a delegation of an administrative function is made under this clause, the delegation will be disclosed by means of a notice to the port lessee/operator and also a notice on the departmental website. This delegation power does not extend to deciding development applications.

Whether legislation has sufficient regard to the institution of Parliament (Legislative Standards Act, section 4(4)) - Port of Brisbane, Exemption from Port Charges.

The Port of Brisbane is a multi-purpose, multi-operator port facility. POBC relies on statutory powers conferred on it to impose and enforce its port charges. In particular, POBC also relies on a statutory power to recover port charges associated with the cost of maintaining the shipping channel that provides access to the Port of Brisbane, as POBC is not the owner of the channel and does not have any tenure over or general right to restrict access to the channel area.

For the same reasons that a statutory power to impose charges is conferred on POBC and other port authorities, a power will be conferred on the port

operator to impose port charges in relation to port services and facilities (including the channel) in relation to the Port of Brisbane.

As the capacity to charge is conferred by legislation, it is recognised that there may be circumstances when a person should be exempt from port charges. Currently, under section 281C of the *Transport Infrastructure Act 1994*, a regulation may provide for exemptions from the payment of port charges. Section 281C also allows a port authority to exempt a person from port charges. For the Port of Brisbane, the Bill will allow a regulation or a 'port agreement' made between the port operator and the State to exempt a person from port charges. As this matter is one that would ordinarily be dealt with administratively, it is appropriate content for a regulation or agreement. This proposal is consistent with the charging powers currently conferred on port authorities. It is also noted that the ability to exempt a person from port charges under a port agreement is limited to the Port of Brisbane.

Whether legislation has sufficient regard to the rights and liberties of individuals (Legislative Standards Act, section 4(2)(a)) – Port of Brisbane, Production of Information.

Under the *Transport Infrastructure Act 1994*, port authorities (including POBC) may obtain information from port users associated with Port of Brisbane. Given the nature of the port business and the various users of the ports services and facilities (for example, ship owners and masters, cargo owners and forwarders and their agents), it is necessary to continue this arrangement to allow that the port lessor and its delegate (the port operator) to obtain information from its port users to ensure the security, safety and efficient operations of the port. In addition, the port lessor will require information from port users to satisfy the requirements of State and Commonwealth agencies (e.g. information relating to maritime security).

The Bill permits the port lessor and its delegate to require a person to produce information relevant to the management, security, safety and efficient operations of the port. Such information includes, but is not limited to, information relating to the description of vessels, vehicles, goods and commodities entering or located in the port area and data about the movement of vessels, vehicles or passengers, movement and storage of goods and commodities and efficiency of operations.

Whether legislation has sufficient regard to the rights and liberties of individuals by abrogating established statute law rights and liberties (Legislative Standards Act, section 4(2)(a)) – Judicial Review Act 1991.

The *Judicial Review Act 1991* exempts commercial activities and community service obligations of QR Limited and POBC, as GOCs, from judicial review. To maintain the status quo, the commercial activities and community service obligations of Queensland Rail (as a rail GOC) will continue to be exempt from judicial review.

In relation to Port of Brisbane, the State, the port lessor, port lessee and port operator will be exempt from the *Judicial Review Act 1991* in respect of decisions in relation to liability for, and recovery of, charges and expenses. Decisions relating to liability for, and recovery of, charges and expenses are commercial matters and not appropriate for judicial review.

Whether legislation has sufficient regard to the institution of Parliament (Legislative Standards Act, section 4(4)) – Gazette Notices and Regulations.

Certain provisions of the Bill will be modified by gazette notice or regulation.

(a) Declaration of Certain Entities

QR National, a port lessor and a port lessee will be declared by gazette notice. Once these entities have been identified by gazette notice, the relevant provisions of the Bill will be capable of applying in respect of them. Given that QR National, the port lessor and port lessee will not be established prior to the introduction of the Bill, these entities will be identified by gazette notice.

(b) QR Limited, Relevant Interests in Shares

The Bill permits the Treasurer, by gazette notice, to provide that particular relevant interests in shares will be disregarded for the purposes of the 15% shareholding cap. This provides a mechanism to modify the application of the shareholding cap. The Government has announced that it will retain a shareholding in QR National of 25-40%. The precise amount of the State's shareholding in QR National is yet to be determined and may not be known until the float date. The use of a gazette notice to exempt the State's shareholding from the shareholding cap is necessary because the State will initially have a 100% shareholding in QR National pre-float and a 25-40% shareholding post-float, these being shareholdings that would otherwise breach that cap.

(c) Port of Brisbane, Definition of 'Port Area' and 'Port Facilities'

Currently, section 267 of the *Transport Infrastructure Act 1994* defines a 'port area' by reference to a port authority, as the area of its strategic port

land and port facilities, and within its (prescribed) port limits. Section 274 provides that a regulation may define port limits.

Under the Bill, for the Port of Brisbane, a regulation may declare:

- an area to be or not to be part of the port area;
- the port limits; and
- facilities to be or not to be port facilities for the Port of Brisbane.

This regulation may contain information such as mapping coordinates and detailed asset descriptions, which are not appropriate to be included in an Act.

For the same reason, a regulation may also amend the port area of the Port of Brisbane as part of the restructure of POBC before divestment.

(d) Port of Brisbane, Planning

As part of the restructure of POBC, a gazette notice will –

- declare certain land to be Brisbane core port land;
- declare the first LUP for Brisbane core port land; and
- declare that certain balance port land will cease to be strategic port land under the *Transport Infrastructure Act 1994* and (where applicable) become subject to the relevant local government planning scheme administration.

Given the extensive list of lots to be declared as Brisbane core port land or as balance port land, it is appropriate that this type of detail is not listed in an Act. A gazette notice is the appropriate mechanism for the above purposes as the planning scheme amendments and first Brisbane port LUP will include a series of maps and detailed text, which would be too detailed for legislation itself.

Also, gazettal is the more usual approach in relation to planning schemes, for example under section 118(1)(e) of the *Sustainable Planning Act 2009*. Furthermore, the gazette notices will reflect a negotiated outcome agreed upon by the relevant State departments and local governments. Both the planning scheme amendments and the first Brisbane port LUP are proposed to be derived from existing precinct planning under the current Port of Brisbane LUP 2007 which was the subject of normal public consultation under the *Transport Infrastructure Act 1994.*

A gazette notice provides the necessary flexibility to ensure that the above matters can be coordinated with the restructure and divestment of POBC and avoid any gaps in the legislative scheme.

(e) Port of Brisbane, Local Laws Exemption

Currently, local laws apply to strategic port land of the Port of Brisbane. The Bill excludes certain local laws that are inconsistent with the functions and operations of the Port of Brisbane (such as in relation to traffic controls). The Bill also introduces a process for the exclusion of future local laws that are inconsistent with the functions and operation of the Port of Brisbane. Under the proposed provisions, a regulation may provide that a stated local law does not apply to the port. In this instance, the regulation does not amend the application of primary legislation or subordinate legislation.

Gold Coast Rapid Transit

Easements for Light Rail Overhead Wiring

To meet Queensland's growing passenger transport task, which is a result of Queensland's sustained population growth, new transport infrastructure, such as the Gold Coast Rapid Transit project, will be required to be delivered as brownfield development within existing urban areas.

The proposed insertion of section 377R (Limited compensation for easements etc. or damage relating to overhead wiring for light rail) that will enable the attachment of overhead wiring to private land may be considered not to have a sufficient regard to the rights and liberties of individuals (the *Legislative Standards Act 1992*, section 4(3)(g)) or provide for fair compensation for the compulsory acquisition of property (*Legislative Standards Act 1992*, section 4(3)(i)).

Pursuant to proposed section 377R, the department is required to pay compensation under the *Acquisition of Land Act 1967* for any compulsory acquisition of an easement for overhead wiring for a light rail. The compensation arrangements within section 377R also provide that the department must pay compensation for any damage caused by the attachment of overhead wiring for a light rail.

It is intended that the chief executive will only require the attachment of overhead wiring for a light rail where no other practical alternative exists, having regard to: the cost, design, functionality and safety matters in accordance with the objectives of the *Transport Infrastructure Act 1994*.

Interface Arrangements

The proposed insertion of a new Part 4A (Franchised light rail), Division 4A, subdivision 3 (Interface management) into the *Transport Infrastructure Act 1994* establishes interface management arrangements for light rail. These amendments may be considered not to have a sufficient regard to the rights and liberties of individuals (the *Legislative Standards Act*, section 4(3)(g)).

The State has a responsibility under transport legislation for safety of persons and the maintenance of structural and operational integrity of all transport infrastructure and public transport networks. Within the urban footprint, transport infrastructure is becoming increasingly complex. In the case of the GCRT project there will be interactions with other transport modes (for example, roads, buses and active transport) and active interfaces with other land uses (for example, a major commercial or retail development).

The new Part 4A, Division 4A, subdivision 3 does not impact on existing safety, maintenance or liability obligations of the parties, but instead, establishes a framework within which these obligations can be effectively managed and coordinated. The amendments are designed to ensure these interactions are undertaken in a manner that ensures the safety, structural and operational integrity of transport infrastructure.

Additionally, it is important to note that before an interface management area may be declared, the chief executive is required to undertake consultation with all parties (and provides the opportunity for submissions) that the chief executive reasonably believes may be impacted by the declaration of an interface management area.

The significant penalty provisions, which are consistent with the *Transport Rail Safety Act 2010*, reinforce the serious safety implications associated with complex transport interfaces with other land uses. The proposed amendments establish an appropriate dispute resolution process, and it is intended that the enforcement of penalties will be used as a last resort.

The proposed interface management regime is based on existing legislation, including provisions within the *Rail Safety Act 2010*.

Applications for road access to state controlled roads

The proposed new section 33(5) appears to restrict the circumstances in which an approval may be given for road access works and could be considered a breach of the fundamental principle that legislation have

sufficient regard to an individual's 'rights and liberties'. However, the *Transport Infrastructure Act 1994* does not clearly delineate the scope of road access works approvals (provided under section 50 of the *Transport Infrastructure Act 1994*) and road works approvals (provided under section 33 of the *Transport Infrastructure Act 1994*). As a consequence there is overlap and complexity in the application and approval process, which has resulted in the inconsistent application of these provisions across the State.

This amendment will make it easier for applicants (usually property owners) to apply for vehicle property access to state controlled roads and provides permanent vehicular property access that runs with the land. In contrast an application approved under section 50 does not run with the land and each new property owner has to reapply for the road access to the state controlled road.

Appeals and offence provisions about road access locations and road access works

The amendment to section 49 and the insertion of a new section 49A may be considered not to have a sufficient regard to the rights and liberties of individuals (the *Legislative Standards Act 1992*, section 4(3)(g)). These amendments clarify the appeal and enforcement provisions for vehicular property access on state-controlled roads where an application is subject to the *Transport Infrastructure Act 1994* as well as the development approval process under the *Sustainable Planning Act 2009*, to provide that the *Transport Infrastructure Act 1994* will only apply to approvals that are made and assessed under the Act, and not to approvals made and assessed under the *Sustainable Planning Act 2009*.

Currently, applications to allow a driveway direct access to a state controlled road are made under the *Transport Infrastructure Act 1994* (section 49) and must comply with relevant notification and appeal processes under that Act. However some applications made under section 49 may also be part of a development approval process under the *Sustainable Planning Act 2009*. In these instances the appeal and enforcement provisions of the *Transport Infrastructure Act 1994* and the *Sustainable Planning Act 2009* apply. The two different appeal processes have caused confusion for property owners and developers.

The amendments to section 49 and the insertion of a new section 49A will make it clear that the notification and appeal processes under the *Transport Infrastructure Act 1994* will only apply to decisions about access that are made and assessed under the Infrastructure Act and not to approvals made

and assessed under the *Sustainable Planning Act 2009*. Approvals made and assessed under the *Sustainable Planning Act 2009* will continue to be subject to the appeal processes of that Act.

Power to require works to stop

New section 476B (Power to require works to stop) in Chapter 16 (General Provision) of the Infrastructure Act may be considered not to have a sufficient regard to the rights and liberties of individuals (the *Legislative Standards Act 1992*, section 4(3)(g)).

It is considered that any breach of fundamental legislative principles is justified and adequate protection is provided to an individual's rights and liberties.

The amendment enables the department to protect busway, light rail and road infrastructure by enabling the chief executive to approve, stop or alter activities on land that may interfere with the safety or operational integrity transport infrastructure.

New section 476B (Power to require to works to stop)

Imposes an obligation on a person not to carry out works on land if the works threaten, or are likely to threaten, the safety or operational integrity of transport infrastructure (excluding heavy rail). A breach of this obligation can incur a maximum of 100 penalty units ($10,000).

Enables the chief executive to give a written direction to stop alter or not to start the works if the chief executive reasonably believes the works threaten or are likely to threaten, the safety or operational integrity of transport infrastructure. A failure to comply with the direction without reasonable excuse can incur a maximum penalty of 100 penalty units ($10,000).

The chief executive can require an owner of the land to alter, demolish or take away the works and failure to comply with the requirement unless the person has a reasonable excuse can incur a maximum penalty of 100 penalty units ($10,000).

The chief executive may alter demolish or take way the works and the recover the costs of doing so as a debt payable.

Due to the increasing need to build transport infrastructure within the existing urban landscape there are increased risks that transport infrastructure can be threatened or damaged by works or activities conducted on nearby land. These activities may not be limited to physical construction or associated works, but could include activities that interfere

with the operation of technology, for example the Go-Card ticketing system. It is critical that the chief executive is able to manage these risks to protect the states high investment in infrastructure but also importantly to ensure the safety and operational integrity of all transport infrastructures and the network. Examples of works that are relevant are excavation, construction, demolition, alteration or disturbance of existing improvements, excessive loading, vibration and interferences with technology based systems

New section 476 provides for compensation for the owner or occupier of the land for any loss or damage or taking or using materials.

Notice on title

The insertion of a new section 476D (Registration of notice about nature of works) into Chapter 16 (General Provisions) of the Infrastructure Act may be considered not to have a sufficient regard to the rights and liberties of individuals (the *Legislative Standards Act 1992*, section 4(3)(g). New section 476D will enable the chief executive to register a notice that will notify prospective purchasers of the land's proximity to, and obligations regarding, transport infrastructure.

In many instances transport infrastructure will be built and operated within the urban footprint. A lot of this infrastructure (for example, tunnels, support for tunnels, and support for other vital infrastructure) may be near (including below ground) a land owner's property.

Road, busway and light rail transport infrastructure (and in particular subterranean infrastructure) requires a zone of protection to ensure the structural and operational integrity of the infrastructure. Within this zone, certain construction works or other activities may jeopardize the structural integrity or the efficient and safe operation of the transport infrastructure or its component parts.

The Department of Transport and Main Roads has some protection as a referral agency under the *Sustainable Planning Act 2009* by being able to condition certain development proposals on land within a certain distance of transport infrastructure. The provisions can fall short of the protection levels required. These instances include:

- works that are not assessable or assessable development or exempt development;
- development that occurs without the necessary application to the assessment manager;

- development in areas where a town planning scheme does not adequately address the need for the department's involvement as a concurrence or referral agency; and
- where the construction methods used in approved or exempt developments have the potential to cause harm or damage to infrastructure or its users.

The registration of a notice will reinforce and provide notice of existing obligations already imposed on landowners by section 179 of the *Property Law Act 1974*. Section 179 provides that "attached to any land is an obligation not to do anything on or below the land that will withdraw support from any other land, building structure or erection that has been placed on or below the land".

Additionally the proposed new section 476D (Power to require works to stop) will also impose an obligation on a person not to carry out works or activities without the chief executive's approval near transport infrastructure that are likely to threaten safety or operational integrity of the transport infrastructure.

Although a current landowner may be aware of infrastructure located near or abutting the property, potential land purchasers may not be aware of this infrastructure. By registering a notice on the land title, land owners, prospective purchasers and developers are provided notice of obligations regarding, transport infrastructure.

New section 476D provides that a notice can be registered on a land title if the chief executive reasonable believes that works of a particular nature that if conducted on the land are likely to threaten the safety or operational integrity of transport infrastructure. The notice must identify the nature of works that the chief executive reasonably believes is likely to threaten the safety or operational integrity of transport infrastructure; and state that the owner of the land must obtain the chief executive's written approval of the chief executive under section 476B before conducting works of that nature on the land.

The land owner has a right of appeal to QCAT against the decision of the chief executive to register a notice on title.

Matters affecting compensation payable

The proposed replacement of section 28 of the *Transport Planning and Coordination Act 1994* with a new section 28 (Matters affecting compensation payable) may raise a concern that the proposed legislation adversely affects the rights and liberties of persons or provide for fair compensation for the compulsory acquisition of property (*Legislative Standards Act 1992*, section 4(3)(i)).

When the department compulsorily acquires land for a transport purpose it must, in accordance with the provisions of the *Acquisition of Land Act 1967*, pay as part of the compensation to the owner the market value of the interest of the land. However it is well established in law that in calculating the market value of land any increase or decrease in the market value arising from the carrying out, or the proposal to carry out, the purpose for which the interest was acquired must be disregarded. This principle is reflected in section 20(2A) of the *Acquisition of Land Act 1967*.

The amendment reflects this principle by clarifying in the *Transport Planning and Coordination Act 1994* that compensation payable to a landowner as a result of the compulsory acquisition of land does not consider any changes in the value of the land resulting from the declaration of a prescribed transit node.

Maritime

Transport Operations (Marine Pollution) Act 1995

Pacific Adventurer incident

Penalties

The justification for higher penalties is that Queensland's marine environment is of significant economic, environmental and cultural importance and the effects of ship sourced pollution can be severe. The majority of incidents that are prosecuted are a result of negligence or deliberate actions on the part of a polluter. As with all pollution offences, any penalty imposed by a court is not necessarily the maximum but takes into account the severity and circumstances of the discharge.

It is considered appropriate to establish high penalties to discourage ships from attempting to avoid compliance with the *Transport Operations (Marine Pollution) Act 1995*. This is consistent with the international principle of the "polluter pays", the community's expectation for zero tolerance of marine pollution and the high penalties for marine pollution offences imposed by all other Australian jurisdictions.

The fundamental legislative principle that requires observance of the rights and liberties of individuals may be affected by the proposed increase in penalty, particularly when coupled with the reverse onus of proof that is associated with the strict liability nature of the discharge offences in the *Transport Operations (Marine Pollution) Act 1995*.

In answer to this, it should be observed that none of the discharge offences carry a term of imprisonment and so the liberty of individuals is never under threat. Further, the public policy behind the *Transport Operations (Marine Pollution) Act 1995*, to prevent discharges of pollutants from ships, is extremely important. As was seen in the *Pacific Adventurer* incident, community tolerance for large-scale discharges of pollutants from ships is extremely low and the penalty for even accidental pollution should be correspondingly severe and be at least as great as is available in other Australian jurisdictions.

Corporation Privilege

The proposed amendment to require corporations to provide information in relation to a marine pollution incident may breach section 4(3)(f) of the *Legislative Standards Act 1992*, which requires Queensland legislation to provide appropriate protection against self-incrimination and section 4(3)(h) of the *Legislative Standards Act 1992*, which requires that Queensland legislation does not confer immunity from proceeding or prosecution without adequate justification.

The proposed amendment will require corporations to provide information which may result in self-incrimination and prosecution (against the corporation). The intent of the proposed amendment is that any information obtained through this proposed power would only result in action against a corporation and not an individual.

The Department of Transport and Main Roads considers it reasonable to proceed with the amendment to ensure corporations are meeting their obligations in protecting the marine environment and to appropriately enforce the law against corporations. This is consistent with the High Court of Australia's decision in *Environmental Protection Agency v Caltex Refining Co Pty Ltd (1993) 178 CLR 477* which provides that the privilege, with regards to self-incrimination, is a human right or personal privilege that is not available to corporations.

The proposed amendment does not allow the corporate information obtained through this new power to be used as evidence towards the prosecution of an individual who provides information related to a

discharge offence. This provides a level of immunity to an individual from prosecution. Similar to existing whistleblower legislation in Queensland, it is justified to provide limited immunity to an individual, as it is a proven tool and incentive to encourage persons, who are best placed to observe breaches or contributing factors to an incident, to come forward without fear of further self-incrimination as an individual.

Similar to existing provisions which provide that a Pollution Report cannot be used as evidence in a prosecution for a discharge offence, the proposed immunity is limited to the evidence obtained through the proposed new power to obtain corporate information. It is important to note that an individual may still be subject to a prosecution as a result of other evidence collected through the normal course of investigations into the same marine pollution incident.

Authorised Officers Powers

The amendment extends the powers of an authorised officer to direct ships, with defects or other instances of non-compliance with relevant legislative requirements that would, or would be likely to, pollute coastal waters, not to operate until the cause of the problem is rectified and the ship is assessed as no longer presenting a pollution risk.

The broadened powers of the authorised officers will be exercised in a manner consistent with the existing powers of the authorised officer under section 95, and of shipping inspectors under sections 171, 172 and 172A of the *Transport Operations (Marine Pollution) Act 1995* which will allow authorised officers, if satisfied on reasonable grounds that a discharge of pollutant has happened, or is likely to happen, to direct ships not to operate until the cause of the problem is rectified and the ship is assessed as no longer presenting a pollution risk.

Although the amendment potentially infringes fundamental legislative principles of the rights of liberties of individuals under section 4(2)(a) of the *Legislative Standards Act 1992*, the Department of Transport and Main Roads considers the amendment will protect Queensland's marine and coastal environment by minimising deliberate and negligent discharges of ship-sourced pollutants into coastal waters through the ability to act in a pre-emptive versus reactionary manner.

Transport Operations (Marine Safety) Act 1994

Shipping Inspectors power of direction

The amendment extends the powers of a shipping inspector to direct the master of a vessel with non compliant safety equipment to return to port or to the safety of waters for which the vessel's equipment is compliant.

The newly defined powers of the shipping inspector will be exercised in a manner consistent with the existing powers of the shipping inspector under sections 171, 172 and 172A of the *Transport Operations (Marine Safety) Act 1994* which provide for the issuing of directions for a ship to be inspected or surveyed, or for a ship not to be operated for safety reasons. The inclusion of new subsections in section 172A enables shipping inspectors to give directions in relation to vessels that are specifically contravening safety equipment requirements to be directed to move to a safe place to ensure the safety of those on board.

To ensure the consistency of the application of this power, Maritime Safety Queensland will undertake the following actions as per standard procedures:

- the issue of Maritime Safety Queensland enforcement directives to all shipping inspectors in relation to this regulatory change;
- inclusion of the issue as an agenda item at quarterly meeting in all regions; and
- continued liaison with the regions (including Queensland Boating and Fisheries Patrol and Water Police) via the Senior Compliance Officer.

Although the amendment potentially infringes fundamental legislative principles of the rights of liberties of individuals in section 4(2)(a) of the *Legislative Standards Act 1992*, the Department of Transport and Main Roads considers the amendment promotes the protection and preservation of life at sea and as such takes precedence over the rights and liberties of individuals.

Road Safety

Transport Operations (Road Use Management) Act 1995

The amendments which adopt enforcement measures and court order provisions from the national model legislation dealing with heavy vehicles potentially raise fundamental legislative principle considerations.

Institution of Parliament

While these amendments are based on national model legislation, careful thought has been given to the impact of that legislation. The Bill has been drafted in a manner that incorporates Queensland drafting practices and minor modifications have also been made so that the provisions are consistent with existing Queensland legislation. In addition, the Bill provides a lower penalty for the breach of an improvement notice than the model legislation.

These reforms will be subject to consideration and scrutiny by the Queensland Parliament.

Rights and liberties of individuals

The amendments adequately take into account the rights and liberties of individuals.

The amendment in clause 257 introduces the ability of authorised officers to issue improvement notices. The ground on which this administrative power may be exercised by an authorised officer is clearly defined – namely, that the officer must reasonably believe that a person has contravened, is contravening or is likely to contravene a provision under the Act relating to the operation of a heavy vehicle. Further, a decision to issue an improvement notice or to amend an improvement notice is a reviewable decision**.** This means that a person whose interest is affected by the decision to issue or amend an improvement notice may firstly request that the decision be reviewed internally by the Department of Transport and Main Roads, and if necessary, that the reviewed decision be considered by the Queensland Civil and Administrative Tribunal.

These new provisions mirror existing legislation that allows improvement notices to be issued in relation to the non-compliance or suspected non-compliance with requirements relating to the carriage of dangerous goods (see section 161B of the *Transport Operations (Road Use Management) Act 1995*).

New section 39R provides that a person who acts in contravention of a requirement of an improvement notice commits an offence. The section also provides a defence to a person charged under this section. The defendant bears the onus of proof of establishing the defence on the balance of probabilities. However, this is appropriate as the information necessary to prove this defence is particularly within the defendant's knowledge, rather than the prosecution's knowledge and would be

extremely difficult for the prosecution to prove. For example, it is much easier for the defendant to demonstrate how he or she remedied the alleged contravention of a heavy vehicle operating requirement since the defendant is the party who took the remedial action.

The amendment in clause 257 to allow an authorised officer to issue formal warnings is a beneficial provision. It allows warnings to be provided to assist a person to comply with heavy vehicle operating requirements and to avoid being prosecuted for breaches of those requirements.

Clauses 262 and 265 contain new court based orders – namely supervisory intervention orders and compensation orders. These provisions take into account rights and liberties of individuals by vesting the courts with discretionary power to make these orders. It is appropriate that the judiciary is the body to issue these orders.

A supervisory intervention order will, in many instances, impose some additional obligations on those against whom they are made. However, the main purpose of the order is to assist offenders to comply in future with heavy vehicle legislative requirements. The intended result of the order is therefore to avoid further prosecution against a particular party and also to improve the safety of all road users. These orders will only be made against operators who have a history of committing serious heavy vehicle offences where fines ordered against them have not had the desired deterrent effect.

It is a fundamental legislative principle that the level of a penalty should be proportionate to the seriousness of the offence. The Bill incorporates two new offences. The penalty for contravening an improvement notice is $8,000 (80 penalty units) and the penalty for contravening a requirement of a supervisory intervention order is $10,000 (100 penalty units). The penalties are proportionate to the offences and are consistent with penalties set for similar offences in the Act.

The penalty for a contravention of a supervisory intervention order is identical to the penalty in the national model legislation. However, the penalty for the contravention of an improvement notice is less than the penalty recommended in the national legislation. The national legislation penalty for the breach of an improvement notice is identical to the penalty for the contravention of a supervisory intervention order. The Bill adopts a lower penalty for a contravention of an improvement notice as this offence is not as serious as the contravention of a supervisory intervention order which is made by a court.

Transport Infrastructure Act 1994

Declaration of State toll road corridor land and local government tollway corridor land

The amendments relating to the declaration of land as State toll road corridor land or as local government tollway corridor land raise the fundamental legislative principle set out in section 4(3)(i) of the *Legislative Standards Act 1992*. This section requires that legislation which provides for the compulsory acquisition of property must be done only with fair compensation.

The amendments to section 84A of the *Transport Infrastructure Act 1994* expand the category of land that may be declared by the Minister to be State toll road corridor land. The effect of a declaration made under this section is provided for in new subsection (3B) of section 84C. It provides that the land is free from any interest or obligation not stated by the Minister to be continued. Similarly, the effect of a declaration of land under section 105H as local government tollway corridor land is that the land is free from any interest or obligation not stated by the Minister to be continued (see new section 105J(3A)). However, the amendments adequately take into account the rights and liberties of individuals in the ways set out below.

Firstly, the declaration under section 84A may only apply to non-freehold land on or within which road transport infrastructure or rail transport infrastructure is situated. Secondly, section 84A expressly allows the Minister to declare stated interests to continue in relation to the State toll road corridor land (see new subsection (6) of section 84A). Similarly section 105H(9) allows the Minister to declare stated interests to continue in relation to the local government tollway corridor land. Finally, a person whose interest in the land has not been continued in the Minister's declaration will be entitled to claim compensation under the *Acquisition of Land Act 1967* (see new section 84D in relation to State toll road corridor land and new section 105JA in relation to local government tollway corridor land). The principles incorporated into the *Acquisition of Land Act 1967* contain a just way of determining eligibility for, and assessment of, compensation and it is appropriate that these principles apply in relation to the determination of compensation that is required to be paid in relation to declarations of land as State toll road corridor land or local government tollway corridor land.

The amendments also provide that no compensation is to be payable in relation to an interest under a services contract for the land. An example of a services contract is a contract for mowing or cleaning. This is to maintain consistency with the compensation principles that are provided for in the *Acquisition of Land Act 1967*. Specifically, section 12(5C) of that Act excludes a right to compensation in relation to an interest under a services contract for the land.

Proposed subsections 84A(6) and 105H(9) also raise fundamental legislative principle considerations on the basis that they confer a discretionary power on the Minister to decide which interests are to continue. However, it is appropriate that the Minister be granted the power to consider the relevant interests on a case-by-case basis. This will allow the Minister to decide which interests are appropriate to be continued, such as those that are consistent with the ongoing operation of the land as State toll road corridor land or local government tollway corridor land. Examples of interests that are likely to be continued are easements and access rights which do not affect the safety or operational integrity of the land as State toll road corridor land or as local government tollway corridor land, respectively. As mentioned above, those persons with an interest that is not continued in the Minister's declaration will be entitled to claim compensation under the *Acquisition of Land Act 1967*.

Consultation

Government

Consultation has been undertaken with the Department of the Premier and Cabinet, Queensland Treasury, the Department of Infrastructure and Planning, the Department of Employment, Economic Development and Innovation, the Department of Justice and the Attorney-General, the Department of Environment and Resource Management including the Office of Climate Change and the Queensland Police Service. The Brisbane City Council was also consulted in relation to the amendments proposed to the local government tollway corridor provisions in the *Transport Infrastructure Act 1994*. The Gold Coast City Council was also consulted in relation to amendments to the *Transport Infrastructure Act 1994* to support the Gold Coast Rapid Transit project. The Gold Coast Rapid Transit project was subject to extensive public consultation during the preparation of the project's Concept Design and Impact Management Plan.

Industry

With regard to the limousine amendment, industry stakeholders have been consulted on the proposed amendment to allow paper records to be kept of limousine bookings and are supportive of the change. A commitment has been made to amend the provisions prior to their scheduled commencement in October 2010.

TransLink has been consulted on the proposed amendment to report on service contracts entered into within the TransLink area, and the extended timeframe of three months to submit annual reports.

Port and Rail amendments

Targeted consultation has been undertaken with the key departments and local governments (namely, the Department of Transport and Main Roads, Maritime Safety Queensland, the Department of Infrastructure and Planning, the Department of Environment Resource Management, Brisbane City Council, Moreton Bay Regional Council, QR Limited and POBC). Other departments and agencies have also been consulted in relation to specific consequential amendments to other legislation.

Notes on Clauses

Chapter 1 Preliminary

Short Title

Clause 1 sets out the short title of the Act as the Transport and Other Legislation Amendment Act (No. 2) 2010.

Commencement

Clause 2 provides that:

(1) Subject to paragraphs (2), (3) and (4) below, the provisions of the Act commence on assent.

(2) The following provisions commence on a day to be fixed by proclamation—

(a) chapter 4, part 1;

(b) chapter 4, part 5;

(c) section 230;

(d) chapter 4, part 9;

(e) section 277.

(3) Section 180(2) commences on the later of the following—

(a) the day the *Transport (Rail Safety) Act 2010*, section 350 commences;

(b) the date of assent.

(4) The following provisions in chapter 2 commence on the occurrence of a specified event (eg. the cessation of QR Limited as a GOC)—

(a) Section 24;

(b) Part 8, other than section 33;

(c) Section 69;

(d) Section 74, other than to the extent it inserts new chapter 13, part 2;

(e) Section 77;

(f) Section 84;

(g) Section 125, to the extent it inserts new section 566;

(h) Part 19;

(i) Part 25;

(j) Part 26.

Chapter 2 Amendments relating to rail and Port of Brisbane

Part 1 Anti-Discrimination Act 1991

Clause 3 provides that this part amends the *Anti-Discrimination Act 1991*.

Clause 4 amends section 106A(1). This section currently provides that the *Anti-Discrimination Act 1991* has no effect on the imposition of a compulsory retirement age on the chief executive officer or an employee of QR Limited. This amendment removes this exemption.

Part 2 Amendment of Coastal Protection and Management Act 1995

Clause 5 provides that this part amends the *Coastal Protection and Management Act 1995*.

Clause 6 amends the definition of 'artificial waterway' to provide that a navigation channel, harbour swing basin, berth pocket, berth approach or departure path used for accessing port infrastructure constructed in the area of a port operator's port is not an artificial waterway.

Clauses 7 - 13 amend the relevant sections of chapter 2, part 2 to require the Minister to deal with the port operator in the preparation and review of coastal management plans.

Clause 14 amends section 57 to require the chief executive to send details of a proposal to declare, change or abolish a coastal management district to a port operator, in the same way as for a port authority.

Clause 15 amends section 75(3)(e) to include the views of a port operator as an example of a relevant matter the chief executive may consider when deciding applications for an allocation of quarry material, in the same way as for a port authority.

Clause 16 amends the example of a 'person' under section 89 to include a port operator, in the same way as for a port authority.

Clause 17 inserts a definition of 'port operator' into the schedule.

Part 3 Amendment of Coastal Protection and Management Regulation 2003

Clause 18 provides that this part amends the *Coastal Protection and Management Regulation 2003*.

Clause 19 amends section 9. This amendment provides that no royalty is payable by a port operator for quarry material removed for the purposes mentioned in that section.

Clause 20 amends section 15(1)(a) to provide that tidal works by a port operator is not a prescribed tidal work, with the consequence is that tidal works by the port operator remain regulated at State level, rather than local government level, consistent with the State's interest in the port.

Clause 21 inserts a definition of 'Brisbane core port land' into schedule 5.

Part 4 Amendment of Criminal Code

Clause 22 provides that this part amends the Criminal Code.

Clause 23 inserts a definition of a 'rail GOC' and amends the definition of 'persons employed in the public service' in section 1 so that it includes rail GOC employees.

Clause 24 inserts a new chapter 87.

New section 724 provides that the chief executive officer of QR Limited and persons employed by QR Limited or its related bodies corporate are taken to be employees in the public service during the interim period for the purposes of the application to them of the Criminal Code.

Part 5 Amendment of Electrical Safety Act 2002

Clause 25 provides that this part amends the *Electrical Safety Act 2002*.

Clause 26 inserts a definition of 'railway manager' in schedule 2. It also amends the definition of 'electricity entity' by extending it to railway managers exempted under section 20Q of the *Electricity Act 1994* (QR Network Pty Ltd, the QR Limited subsidiary that currently manages the QR rail track, is such an entity). This amendment maintains the status quo in relation to the QR National group and Queensland Rail group.

Part 6 Amendment of Electrical Safety Regulation 2002

Clause 27 provides that this part amends the *Electrical Safety Regulation 2002*.

Clause 28 amends section 165(1) to insert a new transitional provision to accommodate the amended definition of 'electricity entity' under the *Electrical Safety Act 2002*. It also deletes section 165(2) which is an expired transitional provision.

Part 7 Amendment of Electricity Act 1994

Clause 29 provides that this part amends the *Electricity Act 1994.*

Clause 30 amends section 20Q. This amendment replaces references to QR Limited and QR Network Pty Ltd with more generic terms to cover rail GOCs, railway managers and their related bodies corporate. This amendment also inserts a provision to exempt the supply and sale of electricity between a rail GOC and a relevant railway manager. This is necessary because, while Queensland Rail and the QR National group will

be structurally separated, the integrated nature of the rail network means that they will be selling and supplying to each other electricity that is used by them for the purposes of operating their respective parts of the network.

Part 8 Amendment of Environmental Protection Regulation 2008

Clause 31 provides that this part amends the *Environmental Protection Regulation 2008*.

Clause 32 inserts a new chapter 10 after chapter 9.

New section 160 provides the definitions for chapter 10.

New section 161 provides that a member of the QR National group is taken to be an instrumentality or agency of the State for the purposes of section 106 during the interim period. This section maintains the status quo until QR National is floated.

New section 162 provides that the chief executive of the Department of Environment and Resources Management may continue to investigate and exercise enforcement powers against a member of the QR National group in respect of investigations and enforcement actions on foot prior to the float of QR National where they relate to environmental nuisances, noise standard contraventions and water contamination as if that group member continues to be an instrumentality or agency of the State. Under this section, the chief executive may also continue to assess and determine an application for approval of an environmentally relevant activity made by a member of the QR National group if the application was properly made on or before the float of QR National.

Clause 33 amends the definition of 'port' in schedule 2, section 50 to refer to the port area.

Clause 34 inserts new definitions relating to chapter 10 in schedule 12.

Part 9 Amendment of Explosive Regulation 2003

Clause 35 provides that this part amends the *Explosives Regulation 2003*.

Clauses 36 – 40 amend the relevant sections of part 5, division 4 to ensure that these provisions apply to a port operator.

Clause 41 inserts a definition of 'port operator' into schedule 7.

Part 10 Amendment of Judicial Review 1991

Clause 42 provides that this part amends the *Judicial Review Act 1991*.

Clause 43 inserts new section 18C. New section 18C provides that the *Judicial Review Act 1991* does not apply to a decision of the State or a relevant entity (the port lessor, a port lessee or a port manager) made in carrying out its functions or powers under part 3A (Liability for, and recovery of, charges and expenses), chapter 8 of the *Transport Infrastructure Act 1994*.

Clause 44 amends schedule 6 to replace the reference to QR Limited with a reference to a rail GOC.

Part 11 Amendment of Land Act 1994

Clause 45 provides that this part amends the *Land Act 1994*.

Clause 46 ensures that a port lessor, port lessee and port manager cannot deal with freehold land that has become inundated unless the relevant entity is the owner of that land.

Clause 47 allows the Governor in Council to approve that land owned, vested in, leased or managed by a port lessor and surrendered to the State by a port lessor be reallocated or dedicated to the port lessor without

competition. The section also provides that where land is reallocated as a lease under this section, the Governor in Council may also set the rent (which may be nil) for the lease of that land. Where the rent is prescribed by the Governor in Council under this provision, section 182, 183, 183A, 183AA, 184 and chapter 5, part 1, division 2 do not apply to that lease.

Clause 48 inserts the definitions of 'port lessee', 'port lessor' and 'port manager' and also amends the definition of sublease to include a sub-sublease for trust land and any derivative under a lease of land other than trust land.

Part 12 Amendment of Mineral Resources Act 1989

Clause 49 provides that this part amends the *Mineral Resources Act 1989*.

Clause 50 inserts a definition of 'rail GOC' and amends the definition of 'reserve' in the schedule to include land vested in a rail GOC or a subsidiary of a rail GOC.

Part 13 Amendment of Nature Conservation (Wildlife Management) Regulation 2006

Clause 51 provides that this part amends the *Nature Conservation (Wildlife Management) Regulation 2006*.

Clause 52 amends section 40. This amendment replaces specific references to QR Limited with references to a 'rail GOC' to permit employees and officers of a rail GOC to take, move and deal with dead protected animals on a railway without a wildlife authority or permit. This amendment also modifies the definition of 'public land' to include a railway managed by a rail GOC.

Clause 53 inserts new section 40A after section 40. New section 40A permits a railway manager to take and move dead protected animals from a

railway managed by the railway manager without a wildlife authority or wildlife permit. This exemption is subject to conditions imposed by the chief executive of the Department of Environment and Resources Management.

Clause 54 inserts a definition of 'rail GOC'.

Part 14 Amendment of Right to Information Act 2009

Clause 55 provides that this part amends the *Right to Information Act 2009*.

Clause 56 inserts new chapter 8 after chapter 7.

New section 207 provides the definitions for chapter 8.

New sections 208 and 209 operate to ensure that the *Right to Information Act 2009* continues to apply to members of the QR National group, subject to the existing exemptions, until those companies cease to be government owned.

Clause 57 has the effect that a rail GOC will be exempt from the *Right to Information Act 2009* in respect of its freight or insurance operations, except so far as they relate to community service obligations. This section will apply to Queensland Rail, as a rail GOC and the owner of the passenger business and regional freight network. This amendment is consistent with the exemption currently provided to QR Limited.

Clause 58 deletes the definition of 'QR freight operations' and inserts new definitions for the purposes of chapter 8.

Part 15 Amendment of South Bank Corporation Act 1989

Clause 59 provides that this part amends the *South Bank Corporation Act 1989*.

Clause 60 inserts a definition of 'rail GOC' into section 3.

Clause 61 replaces the reference to QR Limited in section 17(4) with a reference to a rail GOC or a subsidiary of a rail GOC.

Clause 62 amends section 38 by replacing references to QR Limited with references to a rail GOC or a subsidiary of a rail GOC.

The effect of these clauses is to capture Queensland Rail as the new owner of the passenger business, which operates in the Corporation's area.

Part 16 Amendment of Sustainable Planning Act 2009

Clause 63 states that this part amends the *Sustainable Planning Act 2009*.

Clause 64 provides for section 347(2)(a)(ii) to extend to ports and airports in the same way as for railways, notwithstanding that they are no longer State-controlled under section 347(2)(a)(i).

Clause 65 gives the Planning and Environment Court jurisdiction for the construction of the Brisbane port LUP, in the same way as for planning schemes.

Part 17 Amendment of Transport Infrastructure Act 1994 relating to rail

Clause 66 provides that this part amends the *Transport Infrastructure Act 1994*.

Clause 67 omits section 2(2)(d)(vi) which provides that an objective of the *Transport Infrastructure Act 1994* is to provide a framework under which QR Limited may operate. This provision is redundant as QR Limited (once floated) will not operate within this framework because it will not be a GOC.

Clause 68 amends section 20 by replacing references to QR Limited with a rail GOC. This reflects the application of this provision to GOC entities only.

Clause 69 inserts new section 244A. New section 244A provides QR National and Queensland Rail with a statutory right to keep their existing rail infrastructure on land that they do not own or lease and permits them to enter upon that land for the purposes of managing their respective railway networks. This statutory right only applies to rail infrastructure that (prior to the commencement date) augments, duplicates or replaces pre-1995 rail infrastructure that has the benefit of a similar right under existing section 244.

Clause 70 deletes section 246, which requires the chief executive to perform functions and exercise powers of a local government pursuant to the *Building Act 1975* and *Sustainable Planning Act 2009* for works carried out on railway land that relates to rail transport infrastructure. As railway land on which rail transport infrastructure is located is typically designated for 'community infrastructure' under the *Sustainable Planning Act 2009,* and given the exemptions that apply under that Act in relation to rail track infrastructure, as well as QR Limited's existing practices for complying with these Acts, section 246 is redundant.

Clause 71 amends section 248. The amendment to section 248 declares a rail GOC and a wholly owned subsidiary of a rail GOC not to be common carriers. This amendment maintains the status quo for Queensland Rail.

Clause 72 replaces references to QR Limited in section 260 with references to the relevant railway manager and defines the term 'relevant railway manager'. This not only maintains the status quo for the QR National group, but also ensures that other railway managers (whether privately or publicly owned) are accorded the same treatment.

Clause 73 deletes section 260A, as the above clause has the effect of amalgamating sections 260 and 260A.

Clause 74 replaces chapter 13. The functions of Queensland Rail, as a rail GOC, will be dealt with in its constitution and not prescribed by statute.

New section 438 contains the definitions for new chapter 13.

New section 438A permits the Treasurer to state by gazette notice the entity that is (or is to be) the ultimate holding company of QR Limited. This will be QR National Limited. Such a declaration can only be made within six months of the commencement of the section.

New section 438B defines when a person has a 'relevant interest' in shares, and the manner in which the 'voting power' of a person is to be determined. In each case these concepts are framed by reference to the *Corporations Act 2001 (Cth)*. The section also provides that the Treasurer may, by gazette notice, effectively exempt certain relevant interests from the shareholding restriction. The purpose of this provision is to allow the State to retain a 25-40% shareholding in QR National.

New section 438C provides that a person has a prohibited shareholding interest if the person has a voting power of more than 15% in QR National, and prohibits a person from having a prohibited shareholding interest. However, QR National and a subsidiary of QR National are not subject to this shareholding restriction. To assist in the enforcement of the shareholding restriction, the section obliges QR National to take all reasonable steps to ensure that no person obtains or maintains a prohibited shareholding interest.

New section 438D allows the Minister, or a director or secretary of QR National, to require, by notice, a person to provide information for the purposes of determining whether or not a person has a prohibited shareholding interest. The person may also be required to verify, by statutory declaration, the accuracy of that information. These powers are designed to assist in the enforcement of the shareholding restriction.

New section 438E allows the Minister or QR National to seek remedial orders from the Supreme Court to procure compliance with new section 438C. The Supreme Court may make such orders against a person who has or is reasonably suspected to have a prohibited shareholding interest. This section provides the State and QR National with an avenue for recourse for breach of new section 438C.

New section 438F requires that QR National:

- holds at least half of its board meetings in each year in Queensland;
- ensures that the central management and control of QR National is ordinarily exercised in Queensland, including through maintaining offices of the managing director, chief executive officer, chief financial officer and company secretary in Queensland;
- ensures that its corporate services are provided through offices in Queensland to the extent that the services primarily relate to its operations in Queensland;

- ensures that its annual general meeting is held in Queensland at least every 2 years; and
- maintains a substantial operational presence in Queensland.

The manner of enforcement of a breach or proposed breach of this business location obligation is by application to the Supreme Court, by the Minister responsible for the provision or the Attorney-General, for an injunction restraining the breach and/or an order requiring rectification. In addition, the State may also seek punitive damages in relation to any wilful breach of the provision.

Clause 75 amends the definition of 'transport GOC' in section 486 to include a rail GOC, a GOC port authority and another GOC on which functions are conferred under the *Transport Infrastructure Act 1994.*

Clause 76 repeals section 550. Section 550 provides for the application of section 260A in relation to the transfer of sublease 701720343. Given the amendment of section 260 and deletion of section 260A, section 550 is no longer necessary.

Clause 77 inserts new chapter 19. Chapter 19 contains certain transitional provisions that relate to QR National and its related bodies corporate (including QR Limited).

New section 559 sets out the definitions for chapter 19.

New section 560 provides that the *Judicial Review Act 1991* does not apply to a decision of a member of the QR National group where that decision is made during the period from the commencement of chapter 19 until QR National ceases to be government owned. This preserves the position of QR Limited, as a GOC, in relation to the relevant parts of QR Limited's business.

New section 561 provides that no member of the QR National group is a common carrier in relation to contracts entered into by them before the commencement of this section, unless the contract states otherwise.

Clause 78 inserts relevant definitions in schedule 6 including a definition of 'rail GOC'. A 'rail GOC' is defined to mean a GOC the principal business of which is to manage a railway and/or operate rolling stock on a railway. Queensland Rail will be a rail GOC. QR Limited will also be a rail GOC for so long as it is a GOC.

Part 18 Amendment of Transport Infrastructure Act 1994 relating to Port of Brisbane

Clause 79 provides that this part amends the *Transport Infrastructure Act 1994*.

Clause 80 amends section 267 which provides the definitions for chapter 8.

Clause 81 inserts new section 267AA. New section 267AA defines 'port area' of a port authority and a port entity (other than a port authority). A regulation may include or exclude an area from the port area of a port entity. The new provision also allows the modification of the port limits of the Port of Brisbane by regulation.

Clause 82 amends section 267A which defines port facilities. The amended definition of port facilities will include port facilities of a port entity other than a port authority (such as a port lessor and port lessee).

Clause 83 restricts the power under section 274 to define or amend port limits by regulation to a port of a port authority. Section 274 is contained in a part 2, chapter 8 of the *Transport Infrastructure Act 1994* which provides for the establishment, declaration and abolition of port authorities. For this reason, it is appropriate that the power under section 274 be restricted to a port of a port authority.

Clause 84 removes references to the POBC in section 275. As POBC will cease to be a port authority under the *Transport Infrastructure Act 1994*, its functions should not be prescribed by the *Transport Infrastructure Act 1994.*

Clause 85 requires the port lessor to exercise its powers subject to the powers of the general manager and harbour master under the *Transport Operations (Marine Safety) Act 1994.*

Clause 86 inserts new sections 279A and 279B. New section 279A provides that the port lessor, a port lessee or a port manager (relevant entity) of the Port of Brisbane may impose charges in relation to port services and port facilities. Port charges must be published on the relevant entity's website and on signage within the port area. The provision also provides that charges are subject to any relevant port agreement with the State or any agreement with port users. However, a port charge cannot be imposed on a port user exempted by a port agreement or regulation.

New section 279B permits the State to enter into an agreement (port agreement) with a relevant entity about port charges in relation to port services and port facilities. A port agreement may provide for exemptions from port charges but this does not limit the relevant entity's power to otherwise exempt a person from port charges. A port agreement may also impose obligations or conditions in relation to the provision of port services or the exercise of powers by the relevant entity. A port agreement and each amendment to a port agreement must be tabled in the Legislative Assembly after it is entered into.

Clauses 87 - 90 amend sections 281C - 281F to apply to a port lessor, port lessee or port manager in relation to enforcement of port charges.

Clause 91 permits a port lessor to control the activities or conduct within its port area by displaying or publishing a port notice if the port operator reasonably considers the activities or conduct may affect port operations, cause damage to port land or cause damage to the environment.

Clause 92 inserts new section 282AA. Under new section 282AA, the port lessor may display or publish port notices requiring the production of information relevant to the provision of port services, the calculation of port charges, the provision, use or preservation of port facilities, the operation, safety or security or efficiency of the port and information requested by a Commonwealth or State entity.

Clauses 93 – 100, 105 and 106 amend sections 282A - 282I, 282Q and 282T to apply to a port lessor. These provisions regulate the port lessor's power to control activities and conduct within its port area by port notice, moving contravening property and/or giving verbal directions to a person.

Clauses 101 amends section 282K to permit a port lessor to appoint a person as an authorised officer for chapter 8 of the *Transport Infrastructure Act 1994*. The port lessor must be satisfied that the person is qualified for the appointment.

Clauses 102 – 104 amend sections 282L, 282M and 282P. These amendments deal with the imposition of conditions to limit an authorised officer's powers under the *Transport Infrastructure Act 1994* and the issue and surrender of authorised officers' identity cards.

Clauses 107 - 112 amends the relevant sections of division 5, part 3B, chapter 8 (section 283-283H). These amendments provide that an authorised officer of a port lessor has the requisite powers to enforce port notices including the power to inspect a conveyance, to require the

production of documents and to require the name and address of a person found committing an offence or reasonably suspected of having committed an offence. The amendments provide for offences including the obstruction of an authorised officer in the exercise of powers under part 3B, public nuisance and interference with a port notice.

Clause 113 inserts new chapter 8, part 3C.

New section 283I sets out the definitions for this part.

New section 283J provides that the Treasurer may, by gazette notice, declare some land to be 'Brisbane core port land' and other land to be 'balance port land'. This will be a division of the Port of Brisbane Corporation's landholdings, primarily for planning administration purposes.

New section 283K defines 'Brisbane core port land'. Initially, a gazette notice will declare 'Brisbane core port land'. Afterwards, additional Brisbane core port land may be included in new or amended Brisbane port LUPs.

New section 283L defines 'balance port land' as the land which the Treasurer has declared to be balance port land by gazette notice.

New section 283M provides that the *Sustainable Planning Act 2009* applies, except to the extent of any inconsistency with this part. In particular, this part significantly increases the referral agency jurisdictions applicable to Brisbane core port land compared with strategic port land, but makes a series of adaptations tailored to the particular circumstances and tenure arrangements of the Port of Brisbane. Accordingly, this part codifies the applicable referral agency jurisdictions for Brisbane core port land.

New section 283N provides that Brisbane core port land is not subject to a local planning instrument, preserving the existing position otherwise applicable to strategic port land.

New section 283O confirms that when land becomes 'balance port land' it ceases to be strategic port land.

New section 283P authorises the Treasurer, by gazette notice, to amend Brisbane City Plan and the Redcliffe Planning Scheme (administered by Moreton Bay Regional Council) to deal with the balance port land. The context is that Scarborough boat harbour is located within the local government area of Moreton Bay Regional Council, while other balance port land is in Brisbane. Subsections 2-4 expressly enable amendments to

Brisbane City Plan to extend to lots located beyond the local government boundaries of the City of Brisbane, which are within the Brisbane River. The planning scheme will have effect for those lots and Brisbane City Council will be the assessment manager.

New section 283Q authorises the Treasurer to gazette and notify the initial LUP for the Brisbane core port land, known as the 'first Brisbane port LUP'. This LUP will be based on existing detailed precinct planning included in the LUP approved in 2007 by the Transport Minister under the *Transport Infrastructure Act 1994* which was the subject of public consultation at that time. However, the 'first Brisbane port LUP' will need to have appropriate modifications to satisfy the content requirements of this part. Upon gazettal, the Brisbane core port land ceases to be strategic port land.

New section 283R declares that the first Brisbane port LUP has effect for the Brisbane core port land.

New section 283S sets out the minimum content requirements for Brisbane port LUPs and also some examples of additional contents which may be included.

New section 283T provides for a Brisbane port LUP to set out various levels of assessment for different types of development within each precinct of the Brisbane core port land. In addition to the normal types of assessment available under planning schemes, there are two tailored items for Brisbane core port land: 'port prohibited development' and 'inconsistent or consistent development'. There is a scheduled list of 'port prohibited development' which is prohibited throughout the Brisbane core port land and in addition the Brisbane port LUP may identify further 'port prohibited development' for individual precincts, for example, buffer or nature conservation precincts. LUPs for strategic port land may identify consistent and inconsistent development and this approach is continued for the Brisbane port LUP with the modification that the Brisbane port LUP may additionally identify the reasons for an inconsistency and if the identified inconsistency is 'transport reasons' (a defined term) then the concurrence of the Transport Minister is required. Material change of use for a list of 'core port infrastructure' cannot trigger a higher level of assessment than exempt or self assessable development under the Brisbane port LUP, provided that it is located within the appropriate precincts and is consistent with the requirements for the precinct. Material change of use for a list of 'port related development' cannot trigger a higher level of assessment than code assessment, provided that it is located within the

appropriate precincts and is consistent with the requirements for the precinct. This does not prevent these types of development from potentially requiring other approvals, for example, environmentally relevant activities, tidal work or building work.

New section 283U requires review of the Brisbane port LUP at least every 10 years, including assessment of the achievement of the strategic outcomes identified in the plan. This is consistent with the requirement for planning schemes under the *Sustainable Planning Act 2009*.

New section 283V sets out the three options available to a port operator upon a review of a Brisbane port LUP.

New section 283W sets out the minimum requirements for a report to the transport Minister and planning Minister if the port operator decides upon a review that no action is required

New section 283X requires the port operator to prepare a 'priority infrastructure interface plan' to include in the Brisbane port LUP, after Brisbane City Council has introduced a priority infrastructure plan under the *Sustainable Planning Act 2009.* The interface plan is required to describe how development that is consistent with the Brisbane port LUP is intended to coordinate with the local government's plan in relation to the particular types of local government infrastructure which are relevant to Brisbane core port land.

New section 283Y provides for a statement of proposal process similar to the process applicable to amendments or replacements of LUPs for strategic port land, except that this will not be required either to remove land from a LUP, or for a defined list of 'minor amendments (LUP)'.

New section 283Z provides one of the available options to include additional land in a Brisbane port LUP, which is to apply for amendment through the normal process, if the port lessee or port lessor already holds a registered interest and where the planning and transport Ministers are both satisfied that the land is or may be used for core port infrastructure, port related development or buffer purposes.

New section 283ZA provides for preparation of a draft plan for the amendment or replacement of a LUP, similar to the process for LUPs for strategic port land.

New section 293ZB provides for a consultation process similar to the process for LUPs for strategic port land, except that the requirements for a 'properly made submission' are defined, similar to the corresponding

requirements in relation to planning schemes under the *Sustainable Planning Act 2009*.

New section 283ZC requires the planning and transport Ministers to consider whether or not State interests would be adversely affected and to consider all properly made submissions.

New section 283ZD provides for the planning and transport Ministers to require amendments to a draft plan, consistently with the process for LUPs for strategic port land.

New section 283ZE provides criteria for the planning and transport Ministers' joint consideration of the draft amendment or replacement LUP, reflecting both the consultation process and content requirements. If the Ministers are satisfied that Brisbane City Council has raised a substantial objection which has not been addressed, the Ministers must refer the draft plan and the substantial objection to the Governor in Council for consideration.

New section 283ZF requires the port operator to ensure that a current version of the Brisbane port LUP is published on its website.

New section 283ZG enables the planning and transport Ministers to recover their reasonable administrative costs of assessing a draft plan from the port operator.

New section 283ZH provides for the local government to be notified of any amended or replacement plan.

New section 283ZI enables the local government's planning scheme to be updated accordingly, similar to the recording of mining tenements on planning schemes under the *Mineral Resources Act 1989.*

New section 283ZJ enables the planning and transport Ministers jointly to give notice to the port operator in the event of either a required minor amendment or a non-compliance with a requirement under this part to make or amend a LUP and requires the port operator to comply with a direction.

New section 283ZK requires the port operator to notify the Brisbane City Council and the planning chief executive when new land is added to the Brisbane core port land, enabling planning scheme notations to be kept updated. Subsection 4 provides one of the available options for including new land in the Brisbane port LUP, which is that, even if the port lessee or port lessor has not yet acquired a registered interest in the new land at the time that a new or amended Brisbane port LUP is subject to the normal

public consultation and assessment process, it can be foreshadowed in the LUP, included in the precinct plan mapping and a table of assessment can be planned including proposed development rights for that land. If this detailed level of planning has already been through the consultation and assessment process prior to a registered interest being acquired, then upon the registered interest being acquired, it immediately becomes Brisbane core port land and the LUP has effect. Otherwise, under subsection 5, the planning scheme continues to have effect until the LUP is amended under section 283Z. The planning chief executive immediately becomes responsible for administering development applications for that land under subsection 6. The purpose of this section is to avoid any planning hiatus when new land is added to Brisbane core port land.

New section 283ZL similarly requires the port operator to notify the Brisbane City Council and the planning chief executive when land ceases to be Brisbane core port land, enabling planning scheme notations to be kept updated. If there is an underlying zoning already in place for the land, then the planning scheme automatically has effect under the *Sustainable Planning Act 2009*. However, if the land is unzoned, then the relevant precinct of the Brisbane port LUP continues to apply to the land until the planning scheme can be amended to include the land, despite any requirement of the standard planning scheme provisions to the contrary. Again, the purpose of this section is to avoid any planning hiatus if land is unzoned at the time it ceases to be Brisbane core port land, which may otherwise temporarily remove or reduce development rights.

New section 283ZM addresses reconfiguring a lot for Brisbane core port land. The position for strategic port land is that reconfiguring a lot is exempt development. On Brisbane core port land, the tenure structure is such that the only type of reconfiguring a lot that needs to be considered would be long-term sublease of land (or any derivation of a sublease). To preserve the same flexibility for relocating subtenants of wharves and other core port infrastructure as for other ports in Queensland, the exemption will continue for Brisbane core port land, where the stated permitted purpose in the sublease is any type of core port infrastructure, other transport infrastructure or a combination of both. However, this section removes the exemption in relation to leases for other permitted purposes, such as offices or cafes, so as to ensure that these types of premises satisfy LUP reconfiguration code standards such as adequate access. Taking into account that the only type of reconfiguration available for these other purposes on Brisbane core port land is by way of sublease (or a derivation

of a sublease), the purpose of this provision is to ensure that the assessment process is quick and straightforward.

New section 283ZN prohibits applications from being made for port prohibited development.

New section 283ZO codifies the requirements for code assessment of development applications for port related development which are consistent with the Brisbane port LUP and with all applicable codes. If an application does not comply with all applicable codes, then the normal rules for code assessment apply under the *Sustainable Planning Act 2009*.

New section 283ZP sets out the particular circumstances in which the planning chief executive is the assessment manager for development applications on (or partly within) Brisbane core port land. Note that, if these circumstances do not apply, then the normal rules apply under the *Sustainable Planning Act 2009* for other assessment managers, for example, private certifiers for building work applications.

New section 283ZQ introduces a new formal role for the Brisbane City Council as advice agency upon any development application under the Brisbane port LUP, in relation to any material impacts of the proposed development on planning scheme land.

New section 283ZR continues the role of the transport Minister as concurrence agency for development applications inconsistent with the Brisbane port LUP, except that, in contrast with strategic port land, this will only be for development which is identified in the LUP as inconsistent for defined transport reasons. This is because, upon the adaptation of the LUP to satisfy the content requirements under this part, many more applications will potentially become technically inconsistent with new code requirements which are unrelated to transport jurisdiction.

New section 283ZS sets out one adaptation to the list of referral agency jurisdictions applicable to building work applications under schedule 7, table 1 *Sustainable Planning Regulation 2009*. This adaptation is to address the particular circumstances of the railway land on Brisbane core port land. All other normal referral agency jurisdictions for building work under the *Sustainable Planning Regulation 2009* remain applicable.

New section 283ZT provides the transport chief executive with the normal list of referral agency jurisdictions for material change of use and operational work applications, which would otherwise be applicable on planning scheme land. By way of background, for strategic port land,

some of these items do not apply at all, while others only apply to inconsistent applications. On Brisbane core port land, the same items apply whether or not the application is consistent with the Brisbane port LUP. Only minor adaptations have been made from the *Sustainable Planning Regulation 2009* to address the particular circumstances of Brisbane core port land, in particular, a definition to encapsulate the different types of railway tenure which may be applicable to Brisbane core port land.

New section 283ZU provides for the various normal concurrence agency jurisdictions relating to the *Environmental Protection Act 1994* to be made applicable to Brisbane core port land, for material change of use applications. For strategic port land, these only apply to inconsistent applications. On Brisbane core port land, the same items apply whether or not the application is consistent with the Brisbane port LUP. If a proposed development does not require a material change of use application under the Brisbane port LUP, the administering authority under the *Environmental Protection Act 1994* remains the assessment manager, if the development is otherwise assessable for these purposes under the *Sustainable Planning Regulation 2009.*

New section 283ZV provides if the local government registers any local heritage places within the Brisbane core port land, this is of no effect while the land remains Brisbane core port land. However, State heritage would not be affected.

New section 283ZW provides for the various normal concurrence agency jurisdictions relating to the *Coastal Protection and Management Act 1995* to be made applicable to Brisbane core port land, if the application also includes either material change of use or operational work under the Brisbane port LUP. If a proposed development does not require a material change of use or operational work application under the Brisbane port LUP, then the chief executive administering the *Coastal Protection and Management Act 1995* is assessment manager if the development is otherwise assessable for these purposes under the *Sustainable Planning Regulation 2009.*

New section 283ZX provides for the remaining types of concurrence agency jurisdictions adopted from the *Sustainable Planning Regulation 2009*. For strategic port land, some of these items do not apply at all, while most others only apply to inconsistent application. On Brisbane core port land, the same items apply whether or not the application is consistent with the Brisbane port LUP.

New section 283ZY adapts the current respective jurisdictions of a port authority and the chief executive administering the *Transport Operations (Marine Safety) Act 1994*, for applications by any persons within the Brisbane port limits below high water mark. Unlike the position for port authorities elsewhere, it is not considered appropriate for a port operator to be a concurrence agency, so the port operator will be an advice agency only, with jurisdiction to protect the safety and operational integrity of the port (for example, security). The chief executive administering the *Transport Operations (Marine Safety) Act 1994* will have concurrence agency jurisdiction for the same area, but may not always have the benefit of the detailed operational information known to the port operator, so for safety and operational integrity purposes, it remains relevant for the port operator to provide advice.

New section 283ZZ imposes additional restrictions on the types of conditions that can be imposed upon development approvals for the Brisbane core port land. It is intended to prevent contributions from being calculated on the basis of notional yield rates for the Brisbane core port land or any part of it as Brisbane core port land normally includes areas such as buffer precincts and other minimally developed areas. A contributions schedule, calculated as required by this section, is required to be included in the Brisbane port LUP and will be used by the assessment manager for working out conditions. This section does not affect any conditions which may be imposed by concurrence agencies.

New section 283ZZA exempts the Brisbane core port land from local government powers to acquire land for planning purposes. It also confirms that a person is not entitled to claim compensation as a result of a change to a LUP. There was not previously any provision stating that a person was entitled to claim compensation in this event during the period that the land was strategic port land.

New section 283ZZB enables planning and development certificates to be obtained for any premises located within the Brisbane core port land, similar to the position for land under planning schemes, but with necessary and appropriate modifications.

New section 283ZZC prevents local government designation of Brisbane core port land for community infrastructure, but does not restrict Ministerial designation.

New section 283ZZD exempts the Brisbane core port land from master plans by the local government, consistent with the administration of the Brisbane core port land by the planning chief executive.

New section 283ZZE provides a procedure for the planning chief executive to update the local government's records with copies of development approvals and infrastructure agreements relating to the Brisbane core port land. This will ensure that the local government is properly kept informed.

New section 283ZZF provides for the planning chief executive to delegate relevant administrative functions to the local government. These functions are defined to relate to ongoing administration and enforcement of existing development approvals and the functions delegable to local government do not include assessment of development applications.

New section 283ZZG protects existing development approvals for the Brisbane core port land from any changes to LUPs.

New section 283ZZH protects existing development approvals for the Brisbane core port land in the event that the relevant part of the land ceases to be Brisbane core port land and a planning scheme becomes applicable to the land. It provides the same protection for balance port land.

New section 283ZZI enables planning administration for existing development approvals to be transferred if land ceases to be Brisbane core port land.

New section 283ZZJ sets out administrative and procedural arrangements if a development application is underway when land becomes Brisbane core port land.

New section 283ZZK provides transitional administrative and procedural arrangements if a development application is underway when land either becomes balance port land or ceases to be Brisbane core port land.

New section 283ZZL provides definitions for division 6.

New section 283ZZM authorises the grant of Brisbane port land below and above high-water mark, including reclaimed land, to the port lessor without competition for nil purchase price, despite certain provisions of the Land Act 1994. The section also allows perpetual and other leases granted under this section to the port lessor to be included with another tenure held by the port lessor.

New section 283ZZN exempts from Ministerial approval under the *Land Act 1994* specified dealings in leases and subleases of Port of Brisbane land

held under the *Land Act 1994*. The section also permits a port entity to grant a licence to enter and use land under a lease or sublease it holds under the *Land Act 1994* subject to any conditions of the lease or sublease. A grant of a licence under this section is also exempt from Ministerial approval under the *Land Act 1994*.

New section 283ZZO provides that the area of a sublease of a port lease may be increased or decreased.

New section 283ZZP allows the Minister to delegate a function or power under division 6 to the chief executive or officers or employees of the department that administers the *Land Act 1994*.

New section 283ZZQ applies the *Land Act 1994* to a lease granted under division 6 of the *Transport Infrastructure Act 1994* as if it were granted under the *Land Act 1994*. This section also authorises the chief executive of the department administering the *Land Act 1994* to record dealings under division 6.

Clause 114 amends the heading of part 4, chapter 8.

Clauses 115 - 121 amend part 4B, chapter 8 to apply to a port operator. These sections deal with abandoned property found at port facilities.

Clause 122 inserts new parts 4C to 4E in chapter 8 after part 4B.

New section 289O provides that for the purposes of the *Land Tax Act 1915*, the port lessee of Brisbane core port land, or a lessee or sublessee of strategic port land that is a subsidiary of POBC is the owner of the land and not POBC or the port lessor as the case may be. Where land tax has accrued to POBC but is unpaid at the time that a lease or sublease is granted by POBC to its subsidiary, the POBC subsidiary is liable for the unpaid land tax. Where there is unpaid land tax in respect of Brisbane core port land when a lease or sublease of that land is terminated or expires, the entity that was the port lessee is liable for the unpaid land tax.

New section 289P provides that for the purposes of the *Local Government Act 1993* and the *Local Government Act 2009* about levying or payment of rates, a lessee or sublessee of strategic port land is the owner of the land and not POBC. The section also provides that the occupier of Brisbane core port land under a lease or sublease from POBC or a port entity (other than a port authority) is the owner of the land not POBC nor each port entity that is not an occupier of the land. An entity must notify the commissioner of the *Taxation Administration Act 2001* if that entity becomes a lessee or sublessee of strategic port land or a port lessee. Where rates in respect of

strategic port land have accrued to POBC but are unpaid at the time that a lease or sublease of that land is granted by POBC to its subsidiary, the subsidiary is liable for the unpaid rates not POBC. Where rates in relation to Brisbane core port land are unpaid at the time when a lease or sublease of that land from the port lessor to the port lessee is terminated or expires, the entity that was the port lessee is liable for the unpaid rates not the port lessor. The provision also provides that certain land is exempt from rates (consistent with the exemptions applied to POBC as a port authority under the rates equivalence regime).

New section 289Q provides that a port lessor, port lessee or port manager is not liable for royalties or similar charges for the removal of extractive material if the removal is for the specified purposes.

New section 289R sets out the definitions for part 4D.

New section 289S states that words which are defined in the *Water Supply (Safety and Reliability) Act 2008* and used in part 4D, have the same meaning as in the *Water Supply (Safety and Reliability) Act 2008*.

New section 289T deems a port operator (other than a port lessor) to be a water service provider and a sewerage service provider for the purposes of the *Water Supply (Safety and Reliability) Act 2008*, and provides that if there is a port operator, the port lessor is taken not to be supplying water or sewerage services.

New section 289U requires an entity which has become the port operator to provide to the regulator any information requested by the regulator for the purposes of registration. The regulator must register the port operator as a service provider. The section also makes it clear that an entity is a water service provider or sewerage service provider from the day it becomes a port operator regardless of registration under this section.

New section 289V declares that, for the purposes of the *Water Supply (Safety and Reliability) Act 2008*, chapter 2, part 3, division 4 and part 6, and sections 193, 330 and 331, the relevant distributor-retailer is taken to be a sewerage service provider in respect of sewerage infrastructure located on port land and the sewerage infrastructure on port land is part of local government. The port lessor or port operator (as the case may be) must give the relevant distributor-retailer information about the sewerage infrastructure reasonably requested by the distributor-retailer relating to the grant or administration of trade waste approvals. This legislative provision will facilitate the relevant entity issuing trade waste approvals directly to the tenants at the Port of Brisbane.

New section 289W provides that part 4D does not affect the ownership of any infrastructure for supplying water or sewerage services.

New section 289X deems instruments purportedly issued as trade waste approvals for the purposes of chapter 2, part 6 of the *Water Supply (Safety and Reliability) Act 2008* by Brisbane City Council to an occupant of Brisbane port land before the commencement of this provision to be trade waste approvals issued on the commencement of this section for the purposes of the *Water Supply (Safety and Reliability) Act 2008*.

New section 289Y confers power on the Treasurer to declare an entity to be the port lessor or port lessee of the Port of Brisbane.

New section 289Z confers power on the port lessor to delegate a function under chapter 8, other than part 3A (Liability for, and recovery of, charges and expenses), to a port lessee or port manager. It is a condition of a lease of Brisbane core port land that any lawful directions made by the port lessor in respect of the performance of any delegated functions must be complied with. In addition, a regulation or the conditions of a delegation may require the port lessee or port manager to establish a system of monitoring, and receiving and dealing with complaints about the performance of delegated functions.

New section 289ZA confers power on the port lessor to appoint a person as port manager. In addition, a port lessee may appoint a person as port manager with the written approval of the port lessor.

New section 289ZB deals with civil liability for an act or omission of an employee of the port lessor or an authorised officer appointed by a delegate of a port lessor. In particular, the port lessor is not civilly liable for acts or omissions of an authorised officer only by reason of their appointment as an authorised officer appointed by its delegate under the *Transport Infrastructure Act 1994*. Rather, civil liability attaches to the entity which exercised the power to appoint the authorised officer. For example, if the port lessor's delegate appointed the authorised officer, the delegate is liable for the authorised officer's actions or omissions.

New section 289ZC excludes a limited range of local laws for Brisbane core port land and authorises the making of a regulation in the future providing for the exclusion of further local laws. The local laws excluded are those which are considered inconsistent with port functions and controls, such as in relation to foreshore management and traffic control at the port, or which are otherwise inconsistent with this Act.

New section 289ZD provides that local laws made after the commencement of the Act do not apply to Brisbane core port land for 3 months. In this time, the port operator may apply to the Department responsible for the administration of local laws for an exemption by regulation from all or part of the new local law.

New section 289ZE provides that if there is no port lessee for the Port of Brisbane, a thing required or permitted under chapter 8 may be done by the port lessor.

Clause 123 amends section 292 to apply to a port entity. Under this section, it is an offence to intentionally or recklessly cause damage to a port entity's works or infrastructure. It is also an offence to evade payment of a port operator's charges.

Clause 124 inserts new sections 477C - 477E. New section 477C permits a relevant entity to grant a concurrent sublease in respect of a lease held under the *Land Act 1994* of port land or land relating to a declared project (as defined by the *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009*). The Urban Land Development Authority may also grant a concurrent sublease in respect of a trade lease of former port land it holds that has been subleased to a person. A grant of a concurrent sublease under this provision is not subject Ministerial approval under the *Land Act 1994*. The chief executive of the department that administers the *Land Act 1994* may record a dealing effected under this section in the leasehold land register.

New section 477D permits the Minister or the Treasurer to set the rent (including rent of zero dollars) for a lease, licence or permit or class of leases, licences or permits relating to a declared project (as defined under the *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009*) or land used or required for the operation of the Port of Brisbane, Abbot Point Coal Terminal or a railway leased from the State or a State body. The section also provides that sections 182, 183, 183A, 183AA and 184, and chapter 5, part 1, divisions 2 of the *Land Act 1994* do not apply to a lease, licence or permit or a class of leases, licences or permits for which rent is set under this section.

New section 477E permits a relevant entity to grant a licence to enter and use land under a lease it holds under the *Land Act 1994* in relating to a declared project (as defined under the *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009*). A grant of a licence under this provision is not subject to Ministerial approval under the *Land Act 1994*.

Clause 125 inserts new chapter 20 after chapter 19 dealing with transitional arrangements.

New section 562 sets out the definitions for chapter 20.

New section 563 provides for the alteration of the port area of the Port of Brisbane by regulation. This is a transitional provision and a regulation under this section can only be made for the interim period.

New section 564 provides that during the interim period, references in chapter 8 to the port area include the area of a trade lease.

New section 565 provides that during the interim period, references in chapter 8 other than sections 267AA and 267A to a port entity in relation to the Port of Brisbane are taken to be a reference to the port authority for the Port of Brisbane.

New section 566 provides that during the interim period, a subsidiary of POBC is taken to be a relevant entity for chapter 8, part 3A and section 267, definition 'charge'.

New section 567 provides that during the interim period, references in chapter 8 part 3A and in the definition of 'charge' in section 267 to a port authority includes a reference to a subsidiary of POBC. In addition, references to the port, port area and port facilities of POBC include references the port, port area, port facilities and an authorised officer of a subsidiary of POBC.

New section 568 provides that during the transition period after the completion day, port notices of POBC are taken to be port notices of the port lessor or its delegate.

New section 569 provides that during the interim period a reference in chapter 8, part 4D to a port operator other than the port lessor includes a reference to a subsidiary of POBC that is the lessee of infrastructure owned by POBC for supplying water or sewerage services. In addition, references in chapter 8, part 4D to the port lessor includes a reference to POBC.

New section 570 provides that during the interim period, POBC and a subsidiary of POBC are not liable to pay royalties or similar charges for the removal of extractive material in the specified circumstances.

New section 571 provides that an existing appointment of an authorised officer for POBC continues for 3 months from the completion day as if it were an appointment for the port lessor or its delegate.

New section 572 authorises POBC to delegate its functions under chapter 8 to a subsidiary of POBC during the interim period.

New section 573 provides that anything done by POBC under chapter 8, part 4B in respect of abandoned property in possession of POBC or on land within the port area immediately prior to completion day is taken to have been done by the port operator.

New section 574 provides that from completion day section 289M continues to apply to the port lessee or port manager, if there is one, in respect of proceeds from the sale of abandoned property in possession of POBC or on land within the port area immediately prior to completion day.

New section 575 provides that the amendment of a regulation by the *Transport and Other Legislation Amendment Act (No. 2) 2010,* chapter 2 does not affect the power of the Governor in Council to further amend the regulation or to repeal it.

Clause 126 inserts new schedule 5B after schedule 5A. New schedule 5B lists uses which are 'core port infrastructure', 'port related development' or 'port prohibited development'.

Clause 127 amends the definitions in schedule 6.

Part 19 Amendment of Transport Infrastructure (Ports) Regulation 2005

Clause 128 provides that this part amends the *Transport Infrastructure (Ports) Regulation 2005*.

Clause 129 deletes the entry in schedule 2 for Port of Brisbane.

Part 20 Amendment of Transport Infrastructure (Rail) Regulation 2006

Clause 130 provides that this part amends the *Transport Infrastructure (Rail) Regulation 2006*.

Clause 131 deletes references to QR Limited in section 38 and inserts references to a rail GOC. This amendment provides that the activities of a rail GOC other than its activities performed as part of its community services obligations are taken to be activities conducted on a commercial basis. This is relevant to the application (or otherwise) of the *Judicial Review Act 1991* to decisions of a rail GOC.

Part 21 Amendment of Transport Operations (Marine Pollution) Act 1995

Clause 132 provides that this part amends the *Transport Operations (Marine Pollution) Act 1995.*

Clause 133 provides that the chief executive must take reasonable steps to consult with a port operator in developing marine pollution prevention and response programs if the chief executive thinks the port operator would be affected by the programs.

Clause 134 ensures that the general manager may work with or direct a port operator to provide reception facilities. Where a notice is given to a port operator to provide, maintain or make available reception facilities, a port operator must comply with the notice. This obligation to comply continues until the direction in the notice is complied with. The failure to comply with a notice under this section is an offence.

Clause 135 permits the State to enter into an agreement with a port operator about the port operator responding to a discharge of pollutants into coastal waters.

Clauses 136 - 138 amends the relevant provisions of part 13 (sections 111, 113 and 115) to provide for the recovery of a port operator's discharge expenses.

Clauses 139 - 141 amends the relevant provisions of part 14 (sections 118, 122 and 127) which deal with legal proceedings relating to the recovery of discharge expenses incurred by a port operator.

Clause 142 inserts a definition of 'port operator' into the schedule.

Part 22 Amendment of Transport Operations (Marine Pollution) Regulation 2008

Clause 143 provides that this part amends the *Transport Operations (Marine Pollution) Regulation 2008.*

Clause 144 provides that an officer or employee of the port operator of the Port of Brisbane is a prescribed person for the purposes of section 72(1)(c) of the *Transport Operations (Marine Pollution) Act 1995.* This amendment allows the general manager of that Act to appoint an officer or employee of the port operator as an authorised officer for the purposes of that Act.

Part 23 Amendment of Transport Operations (Marine Safety) Act 1994

Clause 145 provides that this part amends *Transport Operations (Marine Safety) Act 1994*.

Clause 146 provides that the chief executive must take reasonable steps to consult with a port operator in developing marine safety implementation programs if the chief executive thinks the port operator would be affected by the programs.

Clause 147 inserts a definition of 'port operator' into the schedule.

Part 24 Amendment of Transport Operations (Marine Safety) Regulation 2004

Clause 148 provides that this part amends the *Transport Operations (Marine Safety) Regulation 2004*.

Clause 149 amends section 140 to delete references to Bundaberg pilotage area and to include a reference to a subsidiary of POBC and a port operator in the definition of 'DGTrac system'.

Clause 150 provides the general manager may approve the establishment of the buoy mooring in a port only if the general manager is satisfied the port operator for the port has consented to the establishment.

Part 25 Amendment of Transport Operations (Passenger Transport) Act 1994

Clause 151 provides that this part amends the *Transport Operations (Passenger Transport) Act 1994*.

Clause 152 ensures that the powers of authorised officers of a rail GOC appointed by the chief executive are not restricted to a railway managed or operated by the rail GOC. This is currently the case for authorised officers of the QR passenger business. As that business will be operated by a rail GOC (Queensland Rail), this simply maintains the status quo.

Part 26 Amendment of Transport Operations (Passenger Transport) Regulation 2005

Clause 153 provides that this part amends the *Transport Operations (Passenger Transport) Regulation 2005*.

Clause 154 provides that employees of a rail GOC are prescribed as persons the chief executive may appoint under section 111(2) of the *Transport Operations (Passenger Transport) Act 1994* for the Brisbane Airport Rail Link. This is currently the case for employees of the QR passenger business. As that business will be operated by a rail GOC (Queensland Rail), this simply maintains the status quo.

Part 27 Amendment of Transport Planning and Coordination Act 1994

Clause 155 provides that this part amends the *Transport Planning and Coordination Act 1994.*

Clause 156 amends the definition of a 'transport GOC' to include a 'rail GOC', a 'GOC port authority' and 'any other GOC or candidate GOC'. This is consistent with the status quo as such entities are GOCs.

Part 28 Amendment of Transport (South Bank Corporation Area) Act 1999

Clause 157 provides that this part amends the *Transport (South Bank Corporation Area Land) Act 1999*.

Clause 158 provides that no fee or charge, including any duty under the *Duties Act 2001*, is payable by (among others) a rail GOC or its related bodies corporate in relation to dealings with land to give effect to part 3 of

the Act. This amendment reflects the fact that a rail GOC (Queensland Rail) will become the holder of land in the Corporation area.

Part 29 Amendment of Urban Land Development Authority Act 2007

Clause 159 provides that this part amends the *Urban Land Development Authority Act 2007*.

Clause 160 relates to a limited area of land within the Northshore Hamilton urban development area which will cease to be strategic port land and will cease to be subject to the existing Port of Brisbane LUP, upon the gazettal of balance port land. Existing lawful uses and development permits issued by the port authority are already preserved for this land under the *Urban Land Development Authority Act 2007*. However, some of these uses are prohibited under the development scheme administered by the Authority. This clause provides these existing users with a limited range of additional flexibility to seek to apply to the Authority to restart uses which have temporarily ceased (if the application is made within 6 months) or to change conditions or layout, for substantially the same development, only for the remaining period that the current applicable leases remain in place.

Part 30 Amendment of Workplace Health and Safety Regulation 2008

Clause 161 provides that this part amends the *Workplace Health and Safety Regulation 2008*.

Clause 162 deletes the definition of 'relevant authority' as this term is no longer used in this regulation.

Chapter 3 Particular amendments relating to busways or light rail

Part 1 Amendment of Land Act 1994

Clause 163 provides that this part amends the *Land Act 1994*.

Clause 164 amends section 390B (Particular dealing with rail land) by inserting the new definitions for *busway land* and *light rail land*. This amendment ensures consistency with the amendments to the *Transport Infrastructure Act 1994* in clause 179 (which amends section 477A of the *Transport Infrastructure Act 1994*).

Part 2 Amendment of Transport Infrastructure Act 1994

Clause 165 provides that this part amends the *Transport Infrastructure Act 1994*.

Clause 166 amends section 2 (Objectives of this Act). Subsection (1) amends section 2(2)(i) by inserting new objectives for busway and light rail. The new objects are consistent with those for heavy rail. Subsection (2) inserts new section 2(2)(j)(iv), to clarify that, for light rail, the objectives of the Act include the construction, management and operation of light rail transport infrastructure under a light rail franchise agreement.

Clause 167 inserts new section 303AB (Licence in relation to busway land or busway transport infrastructure), which mirrors proposed section 355A (Licence in relation to light rail land or infrastructure).

Clause 168 amends section 352 (Definition for pt 3) by extending the definition of *road* to include State-controlled roads.

Clause 169 amends section 353 (Declaration of land as light rail land). Subsection (1) amends existing subsection 353(2)(b) to clarify that land

declared as light rail land may be land on which transport infrastructure, other than light rail transport infrastructure, is located or operated. Subsection (2) omits existing subsection 353(4)(a) and (b) and inserts a new subsection 353(4)(a) and (b), which expands land that may be declared to be *light rail land*.

Clause 170 amends section 354 (Effect on land of light rail declaration). Subsection (1) omits subsection 354(4) to remove the limitation on light rail land being declared to be a State-controlled road under section 24 of the Act. Subsection (2) renumbers existing subsection 354(3A) as subsection 354(4). Subsection (3), amends subsection 354(5) by providing that the Minister administering the *Land Act 1994* has the responsibility for leasing light rail land that is unallocated state land to the State.

The amendments to sections 352, 353 and 354 allow the co-location of light rail on both locally controlled roads and State-controlled roads.

Clause 171 amends section 355 (Sublease of lease of light rail land) to insert new subsections 355(10) and 355(11), which provide flexibility to impose conditions on any sublease of a perpetual lease for light rail land.

Clause 172 inserts new section 355A (Licence in relation to light rail land or infrastructure). New section 355A allows the chief executive, for the State, to grant licences over light rail land and light rail transport infrastructure, whether or not located on light rail land, to third parties for various purposes. New section 355A(3) provides that the chief executive must give a written notice of the licence to the registrar of titles after it has been granted, and that the registrar of titles must record the licence against the land in the appropriate register. The ability to record these licences gives security to the holder of the licence while enabling the State to manage state land and preserve its interests through the ability to condition the licence.

New section 355A(4) provides that a licence can be mortgaged, sublicensed or transferred with the consent of the chief executive.

New section 355A(5) provides that despite chapter 4, part 4 of the *Land Act 1994*, the chief executive of the department in which that Act is administered cannot issue a permit to occupy light rail land to which a licence relates or land on which light rail transport infrastructure to which a licence (under subsection 355A(1)) relates is situated. In order to reach a position where section 355A applies, the chief executive would have normally entered into an agreement to use or deal with the land.

New section 355A(6) and 355A(7) state that where there is inconsistency between a local government's control of a road under the *Local Government Act 1993*, section 901 or the *Local Government Act 2009*, section 60 (other than for a matter mentioned in section 357 or 358) and a provision of a licence under subsection 355A(1), the provision of the licence applies to the extent of the inconsistency.

Clause 173 amends existing subsection 360A(1) (Powers of chief executive for light rail transport infrastructure works contracts etc.). Subsection (1) omits existing subsections 360A(1)(b) and 360A(1)(c) and inserts new subsections 360A(1)(b) to 360A(1)(e). New sections 360A(1)(b) and 360A(1)(e) expand the matters for which the chief executive can carry out or enter into a contract for light rail transport infrastructure works. New subsections 360A(1)(c) and 360A(1)(d), mirror existing subsections 360A(1)(b) and 360A(1)(c). Subsection (2) omits existing subsections 360A(10)(c) and 360A(10)(d) and inserts new subsections 360A(10)(c) to 360A(10)(f). New subsections 360A(10)(c) and 360A(10)(f) expand the matters for which the chief executive may arrange to share costs. New subsections 360A(10)(d) and 360A(10)(e) mirror existing subsections 360A(10)(c) and 360A(10)(d).

Clause 174 inserts a new section 361A (Definition for div 2) to define, for chapter 10, part 4, division 2, the term *interfere with*.

Clause 175 amends section 362 (Interfering with light rail transport infrastructure) to extend subsection 362 to include light rail transport infrastructure works.

Clause 176 amends section 363 (Rectifying unauthorised interference or works) to extend remedial powers to circumstances where light rail transport infrastructure works have been interfered with.

Clause 177 amends section 377 (Trespass on light rail land or light rail transport infrastructure). Subsection (1) replaces the heading and existing subsections 377(1) and 377(2). The amendments extend the application of section 377 to *light rail land* and *light rail transport infrastructure works site*. Subsection (2) replaces subsections 377(4) and 377(5) to expressly include *light rail land* and *light rail transport infrastructure works site.*

This amendment is a protective mechanism for both the safety and operational integrity of light rail and to ensure public safety.

Clause 178 inserts a new chapter 10, part 4A, division 4A (Franchised light rail).

New section 377A (Objectives of division) establishes the objectives of division 4A.

New subdivision 2 (Franchised light rail) establishes the framework for light rail franchise agreements.

New section 377B (Power to enter into light rail franchise agreements) provides that the Minister may, on behalf of the state, enter into a light rail franchise agreement with a person about investing in various aspects of the delivery and operation of a light rail project. These include works for, or associated with, establishing a light rail, designing, constructing, maintaining and managing light rail transport infrastructure, and operating a public passenger service using light rail transport infrastructure.

New section 377C (Operating public passenger service under agreement) provides that if a light rail franchise agreement relates to operating a public passenger service using light rail transport infrastructure:

- chapter 6 of the *Transport Operations (Passenger Transport) Act 1994* does not apply to the agreement; and
- part 8 of the *Transport Operations (Passenger Transport) Regulation 2005* does not apply to the operator of the service or the operator of the light rail.

The provisions of section 377C are necessary to allow a project deed for a public private partnership, to govern the contractual arrangements for the delivery of public passenger services. For example, a project deed may dictate the term of a service contract.

New section 377D (Tabling of light rail franchise agreements) provides that the Minister is required to table each franchise agreement and each amendment to a franchise agreement in the Legislative Assembly. Section 377D exempts the tabling of information within a franchise agreement that is considered 'commercial-in-confidence'.

New section 377E (Report on operation of division) requires that each annual report of the department must include a report on division 4A (Franchised light rail) of the Act during the financial year to which the report relates.

New section 377F (Recovery of money) provides that where a franchise agreement enables the Minister to recover an amount from a franchisee, the amount may be recovered as a debt payable to the State.

New section 377G (Rateability of land) provides that a regulation may provide that light rail franchise agreement land is not rateable under the *Local Government Act 1993*.

New section 377H (Guarantees and undertakings) establishes the sections of the *Statutory Bodies Financial Arrangements Act 1982* that apply, with the necessary changes and any changes prescribed by regulation, to a franchisee, for the purposes of giving guarantees or undertakings to a franchisee.

New subdivision 3 (Interface management) establishes the framework for managing the interface between light rail, light rail land, light rail infrastructure and surrounding areas.

New section 377I (Purpose of sdiv 3) establishes that the purpose of subdivision 3 is to provide a regime for dealing with light rail interface issues in light rail interface management areas. This is necessary to support the construction and operation of light rail transport that is integrated with roads and other land uses (for example, retail, residential and commercial precincts).

New section 377J (Definitions for sdiv 3) establishes, for subdivision 3, definitions of *light rail interface, light rail interface agreement, light rail interface issue*, *light rail interface management area* and *light rail land*.

New section 377K (Meaning and scope of *light rail interface agreement)* establishes that a light rail interface agreement may provide for a matter by applying, adopting or incorporating a matter contained in another document (with or without modification). This recognises that parties to a light rail interface agreement may be bound by other requirements, such as Building Management Statements, easements and precinct emergency plans.

New section 377L (Declaration of light rail interface management area) provides that the chief executive may declare, by gazette notice, land or part of land to be a light rail interface management area. Subsection 377L(2) requires the chief executive to consult before a declaration can be made. Subsections 377L(3) and 377(4) establish the arrangements for identifying land declared as a light rail interface management area in a gazette notice.

New section 377M (Particular persons may enter into light rail interface agreement) identifies the categories of persons who may enter into a light rail interface agreement.

New section 377N (Failure to enter into light rail interface agreement) establishes the process the chief executive must follow in the event of a failure to enter into an interface agreement. The process includes the issue of a preliminary notice and direction and suggested terms for inclusion in the light rail interface agreement. The maximum penalty for subsection 377(5) of 60 penalty units is consistent with section 77 (Chief executive may give notice about failure to enter into interface agreement) of the *Rail Safety Act 2010*.

New section 377O (Directions about arrangement that is to apply) is an enforcement provision for a failure to comply with a preliminary notice or direction under section 377N. The maximum penalty for non-compliance with a direction is 200 penalty units. This is consistent with section 78 (Chief executive may give direction about arrangement that is to apply) of the *Rail Safety Act 2010*.

New section 377P (Guidelines about light rail interfaces etc.) provides that the chief executive may make interface guidelines and requires any such guidelines to be published on the internet and made available for public inspection. The guidelines are intended to provide information on interface risks and measures that might be implemented to deal with these risks. A guideline may also provide general information regarding the form and layout of an interface management agreement.

New subdivision 4 (Miscellaneous) provides the legal framework for light rail in relation to all other miscellaneous issues.

New section 377Q (Severance of light rail transport infrastructure) provides that the chief executive may decide to sever light rail transport infrastructure from the light rail land on which it is situated and be dealt with as personal property, without affecting the land itself, or the use of the land or the infrastructure.

New section 377R (Limited compensation for easements etc. or damage relating to overhead wiring for a light rail) establishes a compensation framework for an easement or other interest in land, taken by the chief executive under part 4 of the *Transport Planning and Coordination Act 1994*, for overhead wiring for a light rail and damage caused by the attachment of the overhead wiring. Section 377R is limited to overhead light rail transport infrastructure, with no restriction on the general powers of the chief executive under section 25 of the *Transport Planning and Coordination Act 1994*.

Clause 179 amends section 477A (Power to deal with particular land) by omitting 'rail land' from subsection 477A(1) and replacing the phrase with 'prescribed land', defined as busway land, light rail land or rail land.

Clause 180 amends schedule 1 (Subject matter for regulations) to ensure the Minister has the requisite power to make regulations, for light rail, for example, regarding: asset and interface management, and franchise agreements.

Clause 181 amends schedule 6 (Dictionary). Subsection (1) omits the definition of *franchisee*. Subsection (2) inserts definitions for *franchisee*, *interfere with*, *light rail*, *light rail franchise agreement*, *light rail interface, light rail interface agreement, light rail interface issue, light rail interface management area, overhead wiring* and *public passenger service*.

Subsection (3) extends the definition of *light rail* to include a route wholly or partly dedicated to priority movement of light rail vehicles for public transport purpose, where the dedicated route has also been designed and constructed for other purposes. For example, where a route has been constructed for the movement of light rail vehicles and shared with other vehicles.

Subsection (4) amends the definition of *light rail land* to include the new definition of *light rail land* included in new section 377J.

Subsection (5) amends the definition of *light rail transport infrastructure* to include the defined term, *overhead wiring*, inserted under subsection (2).

Chapter 4 Other amendments

Part 1 Amendment of Adult Proof of Age Card Act 2008

Clause 182 provides that the Act amended in this part is the *Adult Proof of Age Card Act 2008*.

Clause 183 provides for an administrative amendment to section 10 to ensure consistency of language used in the section.

Clause 184 omits section 35 from the *Adult Proof of Age Card Act 2008*. The section will instead be placed in the *Transport Planning and Coordination Act 1994* (see clause 277 of this Bill). Section 35 of the *Adult Proof of Age Card Act 2008* provides for the storing of emergency contact information on an Adult Proof of Age Card. Because the *Transport Planning and Coordination Act 1994* is an umbrella Act for transport legislation, the provision providing for the storing of emergency contact information will now only appear once in the statute book, whereas previously it was required to appear in three separate Acts. This is an administrative amendment that provides for a more efficient and streamlined drafting practice.

Clause 185 provides for minor consequential amendments to section 36(2). Because it is not mandatory for a holder of an Adult Proof of Age Card to store emergency contact information on the card, subclause (1) simply recognises that emergency contact information may not exist. Subclause (2) inserts a note referring the reader to section 36H of the *Transport Planning and Coordination Act 1994*, which deals with the storing of emergency contact information.

Clause 186 relocates the definition of *emergency contact information* from the Schedule (Dictionary) of the *Adult Proof of Age Card Act 2008* to a sectional definition under section 36(3) of the same Act.

Part 2 Amendment of Maritime Safety Queensland Act 2002

Clause 187 states that this part amends the *Maritime Safety Queensland Act 2002*.

Clause 188 amends section 8 (Functions and powers of MSQ). The clause omits wording to remove references to the Marine Board from section 8(1)(a)(i). It also renumbers section 8(1)(c) and (d) to section 8(1)(d) and (e) following the insertion of new subsection 8(1)(c). New subsection 8(1)(c) extends the powers of Maritime Safety Queensland to include the management of public marine facilities and the use of waterways.

Clause 189 (Insertion of new ss 12A and 12B) inserts into part 2, division 3 new section 12A (Preservation of rights of particular public service

officers) and section 12B (Tenure as public service officer on ending of particular employment contracts).

The clause sets out that new section 12A applies to persons employed under section 12 of the *Maritime Safety Queensland Act 2002* other than as a marine pilot and a person who was a public service officer immediately before being employed under section 12. New subsection 12A(2) states that these persons keep all rights and entitlements accrued or accruing as a public service officer as if the service as an employee under section 12 were a continuation of service as a public service officer for example long service, recreation and sick leave and rights as a member of a superannuation scheme.

New section 12B (Tenure as public service officer on ending of particular employment contracts) applies to persons employed under a section 12 contract, other than marine pilots, when the contract is terminated other than by disciplinary action or when it expires and is not renewed or replaced by another contract of employment under section 12. This section also applies if the person on contract was a public service officer on tenure immediately before taking up employment on a section 12 contract or if the person on a section 12 contract becomes a public service officer on tenure. These persons are to be employed at the end of the contract at the same classification level and remuneration they would have been employed at and entitled to if the person had continued in employment as a public service officer on tenure.

Part 3 Amendment of Transport Infrastructure Act 1994

Clause 190 provides that this part amends the *Transport Infrastructure Act 1994*.

Clause 191 amends section 2(2)(b) (Objectives of this Act) by inserting a new objective that provides that environmental emissions generated by State-controlled roads are addressed by development.

Clause 192 amends section 33 (Prohibition on road works etc. on State-controlled roads) by inserting a new subsection 33(5) to provide that an approval for road works may only be given if there is a permitted road access location in force under section 62(1) (Management of access

between individual properties and State-controlled roads) in relation to the road access works.

Clause 193 inserts a new section 49A (Impacts of particular development and State-controlled roads) to clarify the existing power of the chief executive as a referral agency under the *Sustainable Planning Act 2009* to condition development applications. This will ensure the efficient and safe management of State-controlled roads, and that development addresses impacts on the development from environmental emissions generated by a State-controlled road.

New subsection 49A(3) establishes that in performing the chief executive's functions as a referral agency, the chief executive must consider the extent to which the proposed development satisfies the purpose mentioned in subsection (2). New subsection 49A(4) clarifies that subsection (3) is in addition to, and does not limit, the *Sustainable Planning Act 2009,* section 282 and chapter 6, part 5, division 2.

Clauses 194 and 195 have the effect of ensuring that applications for vehicular property access can only be made under amended section 33 of the Act.

Clause 196 amends section 67 (Notice of decision under s 62(1)) by inserting a new subsection 67(1A) to provide that subsection (1) does not apply if the decision was made in conjunction with a development approval under the *Sustainable Planning Act 2009.* The effect of this amendment is to ensure that decisions made as part of a development approval under the *Sustainable Planning Act 2009* cannot be appealed under this Act.

Clause 197 amends section 70 (Offences about road access locations and road access works, relating to decisions under s 62(1)) by omitting section 70(1) and inserting a new subsection (1) to provide that these offence provisions do not apply where the decision was made in conjunction with a development application under the *Sustainable Planning Act 2009.*

Clause 198 amends section 84A (Declaration of land as State toll road corridor land).

Currently, section 84A allows the Minister to declare certain land tenures to be State toll road corridor land. Section 84C provides that land declared by the Minister under section 84A immediately becomes unallocated state land. Subsection 84C(4) then provides that a perpetual lease must issue to the State and subsection 84C(6) allows the State to lease this land to another person. These provisions facilitate the lease of land by the State to

a private proponent for the purpose of constructing, operating or maintaining a toll road.

The amendments contained in this clause and clause 200 extend the categories of land that may be the subject of a land declaration and streamline the administrative processes relating to the creation of the relevant leases for the State toll road corridor land.

Specifically the amendments provide for the following: -

- the extension of the categories of land that the Minister may declare as State toll road corridor land to land which is non-freehold land on or within which road transport infrastructure or rail transport infrastructure is situated (see amendments to section 84A(1));
- the requirement for the Minister to include in the declaration the terms that are to apply to the lease of the land to the State under section 84C, and that have been agreed to by the Minister administering the *Land Act 1994*; and
- the ability for the Minister to declare that a stated interest in land declared to be State toll road corridor land continues in relation to the State toll road corridor land (see new section 84A(6)). The declaration will state whether the interest continues in relation to the lease of the land to the State under new section 84C(4) or the lease that the State has agreed to enter into with another person under section 84C(6).

Clause 199 amends section 84B (State toll road corridor land on rail corridor land).

Currently, section 84B is stated to apply if, under section 84A, the Minister intends to declare a road, or part of a road, that crosses rail corridor land and continues on the other side of the rail corridor land to be State toll road corridor land. This section provides that the declaration under section 84A must also declare that the place where rail corridor and State toll road corridor cross is a common area. The section sets out the rights associated with a common area.

The amendments contained in this clause clarify that section 84B only applies to level crossings – that is, where a road and railway meet at substantially the same level. The amendment clarifies that the section is not intended to apply where the intersection involves a road crossing over or under a railway.

Clause 200 amends section 84C (Effect on land of State toll road corridor land declaration).

The amendments contained in this clause insert additional subsections that deal with the effect of a declaration of land as State toll road corridor land under section 84A.

New subsection 3A provides that the declaration does not affect the ownership of public utility plant. Public utility plant is defined in schedule 6 of the Act to mean plant permitted under another Act or a Commonwealth Act to be on a road. Plant is defined to include items such as a pipeline or a water channel. This provision mirrors section 105M of the Act, which ensures that the declaration of local government tollway corridor land does not affect the ownership of public utility plant on the land which is the subject of the Minister's declaration.

New subsection 3B provides that land declared under section 84A that becomes unallocated State land under subsection (1), (2) or (3) is free of any interest or obligation other than interests in the land, if any, continued under section 84A (6).

The amendments also replace existing subsections (4) and (5). Currently, under subsection (4), the Minister administering the *Land Act 1994* must lease the State toll road corridor land declared under section 84A to the State. However, the amendments in this clause and clause 198 streamline the administrative process involved in the creation of the lease to the State. Specifically, new section 84C(4) provides that the Minister administering the *Land Act 1994* is taken to have leased the State toll road corridor land to the State when the declaration is made. New section 84C(5) provides further information about the lease to the State. The subsection retains the matters in the existing subsection (5). However, it also provides that the lease is subject to the terms stated in the declaration of the State toll road corridor land under section 84A (see subsection (5)(d)).

The amendments also specify that the lease to the State and any sublease are subject to any interest in the land that is continued in relation to the respective leases under the declaration in section 84A (see new section 84C(5)(c)) for the lease to the State and new section 84C(8)(b) in relation to the sublease to another person).

A new subsection 10 is also included which provides that if a registered interest is continued in the declaration under section 84A, the registrar of titles must record the interest in the leasehold land register against the lease in relation to which it is continued.

Clause 201 inserts new section 84D (Compensation).

This section provides that a person who has an interest in land declared to be State toll road corridor land under section 84A who has not had their right continued, has a right to claim compensation (see subsections (1) and (2)). The section also provides that the person's right to claim compensation is under the *Acquisition of Land Act 1967* (see subsections (3) and (4)). Consistent with section 12 (5C) of that Act, section 84D(2)(b) provides that a person does not have a right to compensation for an interest under a services contract for the land. A definition of what is a services contract is provided by clause 214 which amends Schedule 6 (Dictionary).

Clauses 202 to 204 make similar amendments to the local government tollway corridor provisions as clauses 198, 200, and 201 make in relation to the State toll road corridor provisions.

Clause 202 amends section 105H (Declaration of land as local government tollway corridor land).

This clause and clause 203 streamline the administrative processes relating to the creation of the relevant leases of the local government tollway corridor land.

Specifically the amendments provide for:

- the requirement for the Minister to include in the declaration the terms that are to apply to the lease of the land to the State under section 105J, and which have been agreed to by the Minister administering the *Land Act 1994*; and
- the ability of the Minister to declare that a stated interest in land declared to be local government tollway corridor land continues in relation to the land (see new subsection (9)). The declaration will state whether the interest continues in relation to the lease of the land to the State under new section 105J(4) or the lease of the land to a local government under section 105J(6).

Clause 203 amends section 105J (Effect on land of local government tollway corridor land declaration).

The amendments contained in this clause insert new subsection 3A which deals with the effect of a declaration of land as local government tollway road corridor land under section 105H. New subsection 3A provides that declared land that becomes unallocated State land under subsections (1), (2) or (3) is free of any interest or obligation other than interests in the land, if any, continued under section 105H(9).

The amendments also replace existing subsections (4) and (5). Currently, under subsection (4), the Minister administering the *Land Act 1994* must lease the local government tollway corridor land declared under section 105H to the State. However, the amendments in this clause and clause 202 streamline the administrative process involved in the creation of the lease to the State. Specifically, new section 105J(4) provides that the Minister administering the *Land Act 1994* is taken to have leased the local government tollway corridor land to the State when the declaration is made. The new section 105J(5) provides further information about the lease to the State. The subsection retains the matters in the existing subsection (5). However, it also provides that the lease is subject to the terms stated in the declaration of the local government tollway corridor land under section 105H (see subsection (5)(d)).

The amendments also specify that the lease to the State and any sublease are subject to any interest in the land that is continued in relation to the respective leases under the declaration in section 105H (see new section 105J(5)(c) for the lease to the State and new section 105J(8)(b) in relation to the sublease).

A new subsection 13 is also included which provides that if a registered interest is continued in the declaration under section 105H, the registrar of titles must record the interest in the leasehold land register against the lease in relation to which it is continued.

Clause 204 inserts new section 105JA (Compensation).

New section 105JA provides that a person who has an interest in land declared to be local government tollway corridor land under section 105H who has not had their interest continued, has a right to claim compensation (see subsections (1) and (2)). The section also provides that the person's right to claim compensation is under the *Acquisition of Land Act 1967* (see subsections (3) and (4)). Consistent with section 12(5C) of that Act, section 105JA(2)(b) provides that a person does not have a right to compensation for an interest under a services contract for the land. A definition of what is a services contract is provided by clause 214 which amends Schedule 6 (Dictionary).

Clause 205 amends section 316 (Definition for div 4) by omitting the definition of *busway land* and inserting a new definition for *busway land*, to include land held by the chief executive on behalf of the State, and on which busway transport infrastructure is or, is proposed to be, situated.

This amendment will enable the chief executive to manage public utility plant on land where infrastructure is or, is proposed to be, situated. This amendment will facilitate the efficient maintenance and coordination of public utility plant during the delivery of infrastructure projects, particularly as many projects are delivered within an existing urban footprint.

Clause 206 amends section 317 (Retention of ownership of public utility plant) to ensure the ownership of public utility plant vests in the relevant provider notwithstanding the declaration of busway land.

Clause 207 amends section 364 (Definitions for div 3) by omitting the definitions of *busway land* and *light rail land* and inserting a definition of *light rail land*, to include land held by the chief executive on behalf of the State, and on which light rail transport infrastructure is or is proposed to be located.

Clause 208 amends section 365 (Retention of ownership of public utility plant) to ensure the ownership of public utility plant vests in the relevant provider notwithstanding the declaration of light rail land.

Clauses 209 and 210 amend sections 368 (Public utility provider to consult with chief executive before replacing public utility plant) and section 371 (Information by public utility provider to chief executive) by omitting 'chief executive' from the heading and inserting 'light rail authority'.

Clause 211 inserts new section 476B (Power to require works to stop) to enable the chief executive to give a written direction to stop, alter, or not to start works if the chief executive reasonably believes the works threaten or are likely to threaten, the safety or operational integrity of transport infrastructure or networks. New section 476B allows the chief executive to permit, stop, remediate and inspect works, and includes penalty provisions for non-compliance with a requirement of the chief executive. The penalty provisions are based on the existing heavy rail provisions in section 168 of the Act. This amendment does not apply to rail transport infrastructure, which relies on existing provision 168 of the Act.

New section 476C (Compensation) establishes the compensation arrangements for section 476B.

New section 476D (Registration of notice about nature of works) allows the chief executive to register a notice on a title. This notice is about the nature of works that the chief executive reasonably believes are likely to threaten the safety or operational integrity of transport infrastructure.

Clause 212 inserts transitional provisions for:

- existing applications for approval for road access works;
- particular applications for approval for road access works; and
- the effect of change in definition of *rail transport infrastructure* on development applications.

Clause 213 amends schedule 3 (Reviews and appeals) by inserting review and appeal provisions to the Queensland Civil and Administrative Tribunal (QCAT) for new sections 476B(2), (4) and (6) and 476D.

Clause 214 amends schedule 6 (Dictionary) to insert a new definition, *services contract*, and extend the definition of *rail transport infrastructure* to clarify that vehicle parking and set down facilities for passengers and pedestrian facilities, are included. Clause 214 also makes a number of minor and consequential amendments to the definitions.

Part 4 Amendment of Transport Legislation Amendment Act 2007

Clause 215 establishes that this part amends the *Transport Legislation Amendment Act 2007* (which ultimately is an amendment of the *Transport Operations (Passenger Transport) Act 1994*).

Clause 216 amends section 29 by omitting sections 87B to 87D, which prescribe electronic record keeping only.

Part 5 Amendment of Transport (New Queensland Driver Licensing) Amendment Act 2008

Clause 217 provides that this part amends the *Transport (New Queensland Driver Licensing) Amendment Act 2008*.

Clause 218 provides for minor consequential amendments to section 5 of the *Transport (New Queensland Driver Licensing) Amendment Act 2008*.

Section 5 of the *Transport (New Queensland Driver Licensing) Amendment Act 2008* inserted, in part, a new section 195I into the *Police Powers and Responsibilities Act 2000*. The existing section 195I provides for limited circumstances by which a police officer may access and use emergency contact information stored on a prescribed document (such as a Queensland Driver Licence). Because it is not mandatory for a holder of prescribed document to store emergency contact information on the prescribed document, the current amendment simply recognises that emergency contact information may not exist.

Clause 219 amends section 15 of the *Transport (New Queensland Driver Licensing) Amendment Act 2008*, which in part, inserted new sections 63E and 63F into the *Transport Operations (Marine Safety) Act 1994*. The existing section 63E provides for the storing of emergency contact information on a Smartcard Marine Licence Indicator. Subclause (1) omits section 63E from the *Transport Operations (Marine Safety) Act 1994*. The section will instead be placed in the *Transport Planning and Coordination Act 1994* (see clause 277 of this Bill).

Because the *Transport Planning and Coordination Act 1994* is an umbrella Act for a number of transport Acts, the provision providing for the storing of emergency contact information will now only appear once in the statute book, whereas previously it was required to appear in three separate Acts. This is an administrative amendment that provides for a more efficient and streamlined drafting practice.

Subclause (2) provides for a minor consequential amendment to section 63F(2). Because it is not mandatory for a holder of a Smartcard Marine Licence Indicator to store emergency contact information on the indicator, the amendment simply recognises that emergency contact information may not exist.

Subclause (3) inserts a note referring the reader to section 36H of the *Transport Planning and Coordination Act 1994* which deals with the storing of emergency contact information.

Clause 220 amends section 17 to relocate the definition of *emergency contact information* from the Schedule (Dictionary), of the *Transport Operations (Marine Safety) Act 1994,* to a sectional definition under section 63F(3) of the same Act.

Clause 221 amends section 28 of the *Transport (New Queensland Driver Licensing) Amendment Act 2008*, which in part, inserted new sections 91E and 91F into the *Transport Operations (Road Use Management) Act 1995.*

The existing section 91E provides for the storing of emergency contact information on a Smartcard Driver Licence. Subclause (1) omits section 91E from the *Transport Operations (Road Use Management) Act 1995.* The section will instead be placed in the *Transport Planning and Coordination Act 1994* (see clause 277 of this Bill).

Because the *Transport Planning and Coordination Act 1994* is an umbrella Act for a number of transport Acts, the provision providing for the storing of emergency contact information will now only appear once in the statute book, whereas previously it was required to appear in three separate Acts. This is an administrative amendment that provides for a more efficient and streamlined drafting practice.

Subclause (2) provides for a minor consequential amendment to section 91F(2). Because it is not mandatory for a holder of a Queensland Driver Licence to store emergency contact information on the licence, the amendment simply recognises that emergency contact information may not exist.

Subclause (3) inserts a note referring the reader to section 36H of the *Transport Planning and Coordination Act 1994* which deals with the storing of emergency contact information.

Clause 222 amends section 31 to relocate the definition of *emergency contact information* from Schedule 4 (Dictionary), of the *Transport Operations (Road Use Management) Act 1995,* to a sectional definition under section 91F(3) of the same Act.

Part 6 Amendment of Transport Operations (Marine Pollution) Act 1995

Clause 223 states that this part amends the *Transport Operations (Marine Pollution) Act 1995*.

Clause 224 amends section 26 (Discharge of oil into coastal waters prohibited) to provide that the maximum penalty for an individual is 5,000 penalty units and 100,000 penalty units for a corporation.

Clause 225 amends section 27 (Oil residues) to provide that the maximum penalty for an individual is 5,000 penalty units and 100,000 penalty units for a corporation.

Clause 226 amends section 35 (Discharge of noxious liquid substances into coastal waters prohibited) to provide that the maximum penalty for an individual is 5,000 penalty units and 100,000 penalty units for a corporation.

Clause 227 amends section 42 (Jettisoning of harmful substances into coastal waters prohibited) to provide that the maximum penalty for an individual is 5,000 penalty units and 100,000 penalty units for a corporation.

Clause 228 amends section 48A (Ship with fixed toilet operating in prescribed nil discharge waters to be able to hold or treat sewage) by omitting the definition of *fixed toilet* at section 48A(4) .

Clause 229 amends section 49 (Declared ship operating in prescribed nil discharge waters to be fitted with sewage holding device) by replacing wording in section 49(1) after 'unless' with new subsections (a) and (b) which provides for the requirement that a declared ship fitted with a sewage holding device must have each fixed toilet on the declared ship connected to the sewage holding device.

Clause 230 inserts new section 86A. New section 86A(1) states that this section applies if an authorised officer is satisfied on reasonable grounds that a ship has discharged or is likely to discharge pollutant into coastal waters. New section 86A(2)(a) states that an authorised officer may give a written direction to the master or owner of a ship to take reasonable actions within reasonable times and not to operate a ship except in a way approved by the authorised officer until the authorised officer is satisfied on reasonable grounds that the ship is not likely to discharge pollutant into coastal waters.

New subsection 86A(2)(b) states that the authorised officer may attach a notice to the ship requiring the ship not to operate other than in a way approved by the authorised officer and until the authorised officer is satisfied on reasonable grounds that the ship is not likely to discharge pollutant into coastal waters.

New section 86A(3) allows an authorised officer to make an oral requirement under subsection 2(a) and confirm the requirement by written notice as soon as practicable.

New section 86A(4) imposes a penalty of 200 penalty units on an owner or master of a ship for non compliance with a notice given under subsection (2)(a) of this section without a reasonable excuse.

New section 86A(5) imposes a penalty of 200 penalty units on a person for non compliance with a notice given under subsection (2)(b) of this section without a reasonable excuse.

New section 86A(6) states that a person does not contravene this Act by merely complying with a requirement in the notice issued by an authorised officer in relation to a discharge or likely discharge of pollutant from the ship.

New section 86A(7) states that if the authorised officer knows the identity of the master or owner of the ship, the authorised officer must give the owner or master of the ship a copy of the requirement as soon as practicable and may direct the owner or master of the ship by written notice to take a reasonable action to be taken within a reasonable time in relation to the ship.

New section 86A(8) imposes a penalty of 200 penalty units on the owner or master of a ship for non-compliance with a notice under subsection 86A(7)(b).

New section 86A(9) allows an authorised officer to allow a ship to operate before the end of the stated reasonable time if the action on a direction has been taken and if the authorised officer is satisfied on reasonable grounds that the ship is not likely to discharge pollutant into coastal waters.

Clause 231 amends section 104 (Failure to answer questions). Section 104(1)(a) is replaced with a new subsection which states that the section applies if an authorised officer requires a person to give information, including, for example, by answering a question under section 88(2).

The clause also amends section 104(3) to state that if the person is an individual it is a reasonable excuse for the person not to comply with the requirement.

In addition, the clause inserts new section 104(3A) stating that if the person is a corporation, it is not a reasonable excuse for the person not to comply with the requirement if complying with the requirement might tend to incriminate the person.

New subsection (3B) states that if information is given under section 88(2) by a person who is a corporation the information is not admissible in evidence against a representative of the person in a civil or criminal

proceeding, other than a proceeding against the representative for an offence against this section or in relation to the falsity of the information.

Finally, the clause renumbers sections 104(3A) to (4) as sections 104(4) to (6).

Clause 232 amends section 113 (Detained ship must be released on giving security) by inserting new section 113(4)(d) to add 'a letter of undertaking' to the list of securities which may be provided to the chief executive for the release of a detained ship.

Clause 233 inserts new part 17 division 6 Transitional provision for *Transport and Other Legislation Amendment Act (No. 2) 2010*. New section 160 (Application of s 49) states that section 49 as in force before commencement of new section 49(1) continues to apply to a declared ship until the end of 30 June 2011.

Clause 234 amends the schedule (Dictionary) to insert a new definition for *fixed toilet* and inserts a new reference to section 160 for *declared ship*.

Part 7 Amendment of Transport Operations (Marine Safety) Act 1994

Clause 235 states that this part amends the *Transport Operations (Marine Safety) Act 1994*.

Clause 236 amends section 3 (objectives of this Act). Clause 237(1) omits section 3(5) to remove a reference to the Marine Board. Clause 236(2) renumbers section 3(4A) as section 3(5).

Clause 237 amends section 31 (What is a standard) by omitting the wording relating to seeking the advice of the Marine Board and the related footnote.

Clause 238 amends section 45 (Standards). Clause 238(1) renumbers section 45(3) as section 45(4).

Clause 238(2) omits section 45(2) and inserts new section 45(2) stating that a standard or an amendment of a standard is subordinate legislation. New section 45(3) is also inserted stating that part 5 of the *Statutory Instruments*

Act 1992 does not apply to a standard or an amendment of a standard. The Note is also inserted providing that this division provides for a process instead of a regulatory impact statement.

Clause 239 amends section 47 (Notice of proposal to prepare draft standard) by omitting section 47(5) to remove the reference to the Marine Board.

Clause 240 amends section 48 (Preparation of draft standard) by removing references to the Marine Board.

Clause 241 amends section 49 (Notice of draft standard) by omitting subsection (4) to remove the reference to the Marine Board.

Clause 242 amends section 50 (Making of standard) by omitting the wording in section 50(1)(a) which refers to the Marine Board. This clause also omits wording in section 50(1)(b) which relates to the Marine Board.

Clause 242(3) omits wording in section 50(2) and inserts wording to state that no further notice is required if the general manager changes the draft standard after considering the submissions.

Clause 243 replaces section 54 (Review of standards) with new sections 54(1) and 54(2) (Amendment of standards). New section 54(1) states that this division applies to the amendment of a standard in the same way as it applies to the making of a standard with any necessary changes. Section 54(2) states that sections 47 to 50 do not apply to the amendment of a standard if the general manager considers the proposed amendment is not likely to impose appreciable costs on the community or a part of the community or only provides for, or to the extent it only provides for any matter mentioned in the *Statutory Instruments Act 1994* sections 46(1)(a), (b), (c), (e), (f), (g), (h) or (i).

New section 54A (Application of *Acts Interpretation Act 1954*) states that the application of section 24AA of the *Acts Interpretation Act 1954* does not apply to the amendment or repeal of a standard under this division.

Clause 244 omits Part 10 (Marine Board).

Clause 245 amends section 172A (Other directions). This clause inserts a new section 172A(1)(c) extending the application of this section to a person operating a ship which is not equipped with the safety equipment required by a regulation for the waters in which the ship is being operated.

Clause 245(2) inserts new section 172A(3A) which states that if subsection (1)(c) applies, the inspector may by written notice, require the master of the

ship to take the ship to waters for which the ship has the required safety equipment (operating waters) within the reasonable time stated in the notice and to not operate the ship for any purpose other than taking it to the operating waters.

Clause 245(3) also inserts the new reference to subsection (3A) to sections 172A(4), (7) and (8) which sets out additional directions that can be given by a shipping inspector where there has been non-compliance with safety equipment obligations.

Clause 245(4) inserts new section 172A(6A) stating that if a master takes a ship to its operating waters as required under subsection (3A), the master does not contravene section 44 while operating the ship to take it to the waters.

Clause 245(5) inserts new subsection (9) referencing the definition of *safety equipment* at section 44(3) of the *Transport Operations (Marine Safety) Act 1994.*

Clause 246 amends section 203D (Decisions that can not be appealed against etc.) by omitting the reference to the Marine Board.

Part 8 Amendment of Transport Operations (Passenger Transport) Act 1994

Clause 247 provides that this part amends the *Transport Operations (Passenger Transport) Act 1994.*

Clause 248 amends section 52 (Approval of basis for funding or other financial assistance by State). Subsection 52(3)(a) is amended so that each annual report of the department contains details of funding or other financial assistance. These details relate to each holder of a service contract, other than a service contract for the TransLink area, who received State funding or other financial assistance during the year to which the report relates.

Clause 249 amends section 87E (Record of prior booking-limousine service provided under special purpose limousine service licence). Section 87E heading is amended to refer to 'Record of prior booking'. Subsection

87E(1) is omitted. Reference to '(2)(b)' within subsection 87E(4)(a), is omitted and replaced with '(1)(b)'. Subsections 87E(2) to (4) are renumbered as subsections 87E(1) to (3).

Clause 250 amends section 87F (Operator to keep record of prior booking made for s 87E). Section 87F heading is amended to refer to 'Operator to keep record of prior booking'. Reference to 'made for s 87E' within subsection 87F(a)(i) is omitted.

Clause 251 amends section 87G (Driver to produce record of prior booking made for s 87E). Section 87G heading is amended to refer to 'Driver to produce record of prior booking made'. Reference to 'for section 87E' within subsection 87G(1)(a) is omitted.

Clause 252 amends sections 87E to 87G and renumbers as sections 87B to 87D.

Clause 253 amends section 92 (Making of standards). Subsection 92(3) is renumbered as subsection 92(4). Subsection 92(2) is amended to include that an amendment to a standard is subordinate legislation. New subsection 92(3) is inserted to outline that the *Statutory Instruments Act 1992*, part 5 does not apply to a standard or an amendment of a standard.

Clause 254 omits the current section 99 and replaces it with section 99 (Review of standards). Subsection 99(1) outlines that the chapter applies to the amendment of a standard in the same way as it applies to the making of a standard with any necessary changes, the procedures applying to the preparation and approval of standards under this division apply to the amendment and repeal of standards with any necessary changes and any changes prescribed by regulation. Subsection 99(2) establishes that the procedures applying to the preparation and approval of standards under sections 93 to 96 of this division do not apply to the amendment of a standard in various circumstances. These circumstances include if the amendment is not likely to impose appreciable costs on the community or a part of the community. These circumstances also include if the amendment to the standard provides for matters mentioned in sections 46(1)(a), (b), (c), (e), (f), (g), (h) or (i) of the *Statutory Instruments Act 1992*. Section 99A clarifies that section 24AA of the *Acts Interpretation Act 1954* does not apply to the amendment or repeal of a standard under this section.

Clause 255 amends schedule 3 (Dictionary) to insert the term *tourist service*, which means a pre-booked public passenger service operated in accordance with a publically available itinerary to a common scenic or tourist attraction. *Tourist service* may also include an itinerary for a major

sporting or cultural event, if the service is not wholly within a service contract area or route.

Part 9 Amendment of Transport Operations (Road Use Management) Act 1995

Clause 256 provides that this part amends the *Transport Operations (Road Use Management) Act 1995*.

Clause 257 inserts new chapter 3, part 3, div 2, subdivision 7. This new subdivision is entitled "Other powers in relation to heavy vehicles – improvement notices and formal warnings" and contains new sections 39P to 39W.

Section 39P ensures that only those authorised officers who have been expressly appointed are able to exercise the powers to issue improvement notices and formal warnings. Due to the discretion required to issue these notices and warnings only senior officers will be appointed to exercise these powers.

Section 39Q contains a new power for an authorised officer to give a person who the officer reasonably believes has contravened, is contravening or is likely to contravene a provision under the Act relating to the operation of a heavy vehicle, an improvement notice. The purpose of this provision is to facilitate authorised officers working with heavy vehicle drivers and operators to assist them to comply with heavy vehicle operating requirements.

The notice must require the person to remedy the contravention or likely contravention within the period stated in the notice.

The substantive matters that the improvement notice must set out are:

- that the authorised officer reasonably believes that a person has contravened, is contravening or is likely to contravene a provision under the Act relating to the operation of a heavy vehicle;
- the reason for the belief; and
- the relevant provisions of the Act.

The notice may also set out the way the alleged contravention or likely contravention is to be remedied.

Section 39R provides that it is an offence to contravene an improvement notice. The maximum penalty is 80 penalty units (currently $8,000).

Section 39S sets out the procedure for amending an improvement notice. Subsection (3) requires that any amendment must be done by the giving of written notice to the person who is subject to the improvement notice. Subsection (5) provides that the written notice must state the reasons for the amendment. It must also inform the person that the decision to amend the improvement notice is a reviewable decision. This means the person can ask the chief executive to reconsider the decision and, if they are not satisfied with the reconsidered decision, apply to Queensland Civil and Administrative Tribunal for further review.

Section 39T provides for the cancellation of improvement notices and requires that written notice of cancellation must be given to the person.

Section 39U allows an authorised officer to state, by way of a clearance certificate, that any or all requirements of an improvement notice have been complied with. Once the person receives that certificate, the requirement under the improvement notice stops having effect.

Section 39V provides for the giving of formal warnings by authorised officers. Under subsection (1), these warnings can be given only if the officer believes that the person took reasonable steps to prevent a contravention of the Act and was unaware of the contravention. They can also only be given where the contravention is one that is appropriate to be dealt with by the giving of a formal warning. Under subsection (2) the warning must be in writing. Subsection (3) states circumstances in which a formal warning must not be given – namely in relation to suspected serious mass, dimension, loading and fatigue offences.

Section 39W allows for the withdrawal of a formal warning within 21 days after the warning is given. Under subsection (2) written notice of the withdrawal must be given to the person. Once the formal warning has been withdraw, subsection (3) provides that proceedings may be taken against the person for the contravention.

Clause 258 replaces the heading to chapter 6, part 3.

Clause 259 inserts a new chapter 6, part 3, division 1 which contains a range of defined terms that are used in new part 3.

Clause 260 inserts a new heading to chapter 6, part 3, division 2.

Clause 261 amends section 164 to provide that section 164(2) does not apply in relation to a heavy vehicle offence. The effect of this amendment is that a court order under section 164 will not be made where a heavy vehicle offence has been committed. Road compensation orders in relation to heavy vehicle offences will be made under new chapter 6, part 3, division 3 as inserted by clause 262.

Clause 262 inserts new chapter 6, part 3, division 3 which deals with road compensation orders.

New section 164AA inserts a definition for new division 3. This definition clarifies that road compensation orders in relation to heavy vehicle offences may be made in relation to damage caused to either a state-controlled road or a local government controlled road.

New section 164AB will allow the court to make a road compensation order where a heavy vehicle offence has been committed and there has been damage to any road infrastructure as a consequence of the commission of the offence.

Section 164AC sets out the matters that the court may take into account when assessing the amount of compensation payable under a road compensation order.

Section 164AD requires that the defendant be provided with copies of any certificates mentioned in section 164AC. These certificates deal with matters such as the estimated costs of remedying the damage to a road, and the extent of the defendant's contribution to the damage. Subsection (3) requires a defendant who wishes to challenge a statement in a certificate to give written notice of that challenge.

Section 164AE states various limits on the maximum amount of compensation that a court can order.

Section 164AF provides that the court has the same power to order costs in relation to proceedings for a road compensation order as it has under the Uniform Civil Procedure Rules.

Section 164AG states that the road compensation order, and any award of costs, is enforceable as if it was a judgement of the court in a civil proceeding.

Section 164AH deals with the relationship between road compensation orders and other orders or awards that can be made by courts and tribunals. This section ensures that a defendant is not required to pay compensation more than once in relation to the same damage.

Clause 263 inserts new chapter 6, part 3, division 4, heading.

Clause 264 amends section 164A to insert reference to refer to a "heavy vehicle offence". This term is defined in new section 163F.

Clause 265 inserts a new chapter 6, part 3, division 5 which deals with supervisory intervention orders. New section 164B allows a court to make such an order, on application by the prosecutor, where a person has been convicted of a heavy vehicle offence. Subsection (2) states the circumstances in which the court may make a supervisory intervention order. In particular, a court may only make such an order if the court considers it appropriate in light of the number of heavy vehicle offences that have been committed by the person. It is expected that such orders would only be made against those who are systematic or persistent offenders against heavy vehicle operating requirements. Prior to making an order, the court must also be satisfied that the order is capable of improving the person's ability or willingness to comply with heavy vehicle operating requirements.

Section 164C states the requirements that may be contained in a supervisory intervention order.

Section 164D provides for the amending or revoking of a supervisory intervention order.

Section 164E contains an offence for a person who contravenes a supervisory intervention order with a maximum penalty of 100 penalty units (currently $10,000).

Clause 266 inserts a new heading to chapter 6, part 4.

Clause 267 states those decisions relating to improvement notices that are reviewable decisions under the Act.

Clause 268 amends the dictionary to insert reference to a number of new defined terms relevant to the amendments outlined above.

Part 10 Amendment of Transport Operations (TransLink Transit Authority) Act 2008

Clause 269 provides that this part amends the *Transport Operations (TransLink Transit Authority) Act 2008*.

Clause 270 omits the current section 45 and replaces it with section 45 (Annual report). Subsection 45(1) will require TransLink to include various matters in each annual report. These matters include:

(a) relevant Ministerial directions related to the reporting year;

(b) a statement of how TransLink performed its functions during the year compared with the expected performance under the network plan;

(c) details for funding or other financial assistance for each holder of a service contract for the TransLink area who received State funding or other financial assistance;

(d) reasons for the funding or other financial assistance mentioned in paragraph (c); and

(e) any other matter prescribed under a regulation.

Subsection 45(2) defines 'state funding or other financial assistance' as funding or other financial assistance provided by the State under section 52 of the *Transport Operations (Passenger Transport) Act 1994*.

Part 11 Amendment of Transport Planning and Coordination Act 1994

Clause 271 provides that this part amends the *Transport Planning and Coordination Act 1994*.

Clause 272 amends section 3 (Definitions) to clarify the definition of *transport associated development* by omitting 'and the integration of a prescribed transit node into the community within which it is to operate in a way that contributes to the economic and social wellbeing of the

community' and the section 3 editor's notes on transport associated development. This amendment resolves an inconsistency with the objectives of section 8A of the Act.

Clause 273 corrects section 8A (Object of pt 2A) by replacing 'so' in section 8A(2)(h) with 'as'.

Clause 274 inserts new section 27A (Power of chief executive to dispose of land subject to easement) to enable the chief executive to dispose of land subject to an easement. This section applies if the chief executive reasonably believes an easement over all or part of the land is necessary to ensure the structural and operational integrity of transport infrastructure. In this case, the chief executive may take an easement over the resumed land prior to offering the land back to the former owner under section 41 of the *Acquisition of Land Act 1967*. The value of the easement must be taken into account in the determination of the price at which the land will be offered.

Clause 275 replaces section 28 (No compensation for works after notice of intention to resume or agreement to acquire) with a new section 28 (Matters affecting compensation payable). New subsection 28(b) ensures regard must not be had to any change in the value of the land as a result of the declaration of a prescribed transit node.

Clause 276 amends section 28AA (Declaration of area used or to be used for particular purposes to be prescribed transit node) to ensure that minor changes that affect the footprint do not invalidate the declaration of a prescribed transit node.

Clause 277 inserts a new section 36H (Storing emergency contact information electronically on a relevant prescribed document) into the *Transport Planning and Coordination Act 1994*. The new section 36H is simply a relocation of the provisions removed from the *Adult Proof of Age Card Act 2008* and *Transport (New Queensland Driver Licensing) Amendment Act 2008* by Chapter 4, Parts 1 and 5 in this Bill.

Because the *Transport Planning and Coordination Act 1994* is an umbrella Act for transport legislation, the provision providing for the storing of emergency contact information will now only appear once in the statute book, whereas previously it was required to appear in three separate Acts. This is an administrative amendment that provides for a more efficient and streamlined drafting practice.

Clause 278 inserts a new part 7 (Transitional provision) for this Act providing amendment of the *Transport Planning and Coordination Regulation 2005* by this Act does not affect the power of the Governor in Council to further amend the regulation or to repeal it.

Part 12 Amendment of Transport Planning and Coordination Regulation 2005

Clause 279 provides that the Regulation amended in this part is the *Transport Planning and Coordination Regulation 2005.*

Clause 280 amends section 4 (Prescribed transit nodes—Act, s28AA). This is a consequential amendment to clause 276 of this Act.

Part 13 Minor and consequential amendments

Clause 281 provides the schedule amends the Acts it mentions. These are the *Transport Infrastructure Act 1994,* the *Transport Operations (Road Use Management) Act 1995, the Transport Operations (Passenger Transport) Act 1994,* the *Transport (New Queensland Driver Licensing) Amendment Act 2008* and the *Transport Security (Counter-Terrorism) Act 2008.*

Schedule Acts amended

Transport Infrastructure Act 1994

1 – 12 make consequential amendments to update the relevant sections in relation to the *Sustainable Planning Act 2009.*

Transport Operations (Passenger Transport) Act 1994

1. Reinstates section 97(2).

Transport Operations (Road Use Management) Act 1995

2. Schedule 4, definition work, paragraph (d)(vii) 'subparagraph' is omitted and replaced by 'any of subparagraphs'.

Transport (New Queensland Driver Licensing) Amendment Act 2008

1. Sections 26(1) to (3) are renumbered as sections 26(2) to (4).

2. A minor consequential amendment is made to section 26 of the *Transport (New Queensland Driver Licensing) Amendment Act 2008*. The original section 26 amended section 77 of the *Transport Operations (Road Use Management) Act 1995*. The schedule provides for the heading to section 77 to be amended to more appropriately reflect the changes made to that section by the *Transport (New Queensland Driver Licensing) Amendment Act 2008*.

Transport Security (Counter-Terrorism) Act 2008

1. Part 2, section 25(6)(b) of the *Transport Security (Counter-Terrorism) Act 2008* is amended by replacing the words 'manual 2 – Managing exercises' with 'manual 42 – Managing exercises'. It ensures users of the *Transport Security (Counter-Terrorism) Act 2008* are directed to use the correct publication in testing their risk management plan.