Transport and Other Legislation Amendment Bill 2011

Explanatory Notes

Short title

The short title of the Bill is the Transport and Other Legislation Amendment Bill 2011.

Policy objectives and the reasons for them

State toll roads and local government tollways

Several amendments are proposed to support the efficient delivery of state toll roads and local government tollways by improving the declaration and land tenure processes for these projects. These amendments will reduce the administrative burden on the state and toll road operators and prevent unnecessarily delaying the commencement of operation of toll roads.

Works for existing railways

The amendment to the *Transport Infrastructure Act 1994* removes any ambiguity in the interpretation of fencing and drainage obligations placed upon a railway manager when an adjacent land owner submits a development application for land adjacent to a railway.

The legislation only applies to a railway that existed on 1 July 1995. The railway manager is responsible for fencing and drainage works in relation to adjoining land when the railway is first constructed with ongoing maintenance obligations.

Application of the Land Act 1994

The amendment to the *Transport Infrastructure Act 1994* clarifies that a concurrent sublease involving the rail network is exempted from certain sections of the *Land Act 1994*.

With the divestment of the State Assets announced by the Premier in 2009, QR Limited was structured to create QR Limited (trading as QR National) and Queensland Rail Limited. Separate railway manager's subleases for the

respective parts of the rail corridor have been created including two concurrent subleases where the operations overlap on the North Coast Line. As a railway manager's sublease and a concurrent sublease provide similar responsibilities and liabilities, the *Land Act 1994* should apply in the same manner.

Chief Executive taken to be owner of rail corridor and non-rail corridor land

The amendment to the *Transport Infrastructure Act 1994* recognises the chief executive as the owner of rail corridor and non-rail corridor land where a development application may be required to be supported by evidence identified within the *Transport Planning and Coordination Act 1994*.

Rail corridor land and non-rail corridor land, leased to the State, represented by the Department of Transport and Main Roads under the *Land Act 1994*, is considered a State Resource under Schedule 14 of the *Sustainable Planning Regulation 2009*.

Development applications relating to State resources may require evidence of a resource allocation or entitlement. Therefore the chief executive is recognised as the owner of rail corridor and non-rail corridor land in instances where evidence of an allocation or entitlement to the State resource is required under the *Sustainable Planning Act 2009*. This is not currently reflected in the legislation.

Railways on particular roads

The amendment to the *Transport Infrastructure Act 1994* extends common area provisions to apply where a railway crosses a local government road.

The legislation presently allows the Minister to declare a common area when a railway is constructed on certain roads with the Titles Office recording the common area in the leasehold land register. While the legislation presently allows a railway to be on a local government road, there is no provision to declare a common area over a local government road. Extending the common area provisions to local government roads would result in similar recordings when a railway is constructed on any road.

Procurement

The amendment to the *Transport Infrastructure Act 1994* brings the terminology used in the Act into line with Queensland's State Procurement Policy. There are several sections of the *Transport Infrastructure Act 1994*

that do not align with the State Procurement Policy or the objectives for chapter 3 as they refer to 'price competitive' instead of 'value for money'.

Investigating a potential rail corridor

The amendment to the *Transport Infrastructure Act 1994* clarifies that the chief executive has the power to enter and investigate rail corridors under chapter 7 (Rail transport infrastructure and other matters) of the Act. It has become unclear what powers the chief executive has to enter and investigate rail corridors as a result of the divestment of QR Limited.

Interfering with railway

The amendment to the *Transport Infrastructure Act 1994* clarifies that a railway manager's power to protect a railway from interference under section 255 (Interfering with railway) relates to activities within a railway corridor. The amendments will also insert review and appeal mechanisms. The amendments are necessary as the definition of *interfere with* in the *Transport Infrastructure Act 1994* is broad and potentially misleading, and the development industry has raised concerns about the scope of section 255 and the lack of review and appeal provisions.

Transport Interface management – Busways

The amendment to the *Transport Infrastructure Act 1994* extends the interface management regime that is in place for light rail in chapter 10 of the Act to apply to busways. The interface management regime will ensure that constructors, managers and operators of infrastructure can effectively fulfil their existing maintenance, operation, safety, environmental and incident management obligations where their ability to fulfil these obligations is affected by land or infrastructure owned, managed or controlled by another party.

Watercourse crossings

The amendments to the *Transport Infrastructure Act 1994* enable the Department of Transport and Main Roads to construct, operate and protect transport infrastructure over, under, on or in a watercourse (tidal and non-tidal boundary watercourses). As a result, the Department of Transport and Main Roads will be able to:

- provide a franchisee with a continuous tenure or right to use infrastructure from one side of a watercourse crossing to the other;
- construct, augment, improve, maintain, operate, replace, name and number transport infrastructure over a watercourse; and

- protect and manage the watercourse crossing as transport infrastructure.

Gold Coast Rapid Transit

Growth on the Gold Coast, one of Australia's fastest growing cities, is placing increasing demands on South East Queensland's road and public passenger transport networks. The delivery of efficient and effective public passenger transport such as light rail is fundamental to the development of an integrated transport system with the capacity to support South East Queensland's growing transport task.

The objectives of this Bill are to implement a second tranche of amendments to support the delivery and establishment of the Gold Coast Rapid Transit light rail project.

The second tranche of amendments will build on the framework implemented in the first tranche – further facilitating the Gold Coast Rapid Transit as a Public Private Partnership and supporting private investment in the delivery of the project. It is proposed to amend the *Transport Infrastructure Act 1994*, *Transport Planning and Coordination Act 1994*, *Transport Operations (Passenger Transport) Act 1995*, *Electrical Safety Act 2002* and *Electricity Act 1994* to:

- provide greater certainty about the establishment of and planning for the light rail corridor for delivery by the Public Private Partnership;
- streamline administrative processes involved with the establishment of the light rail and transport corridors, title corrections and disposal of land for all transport infrastructure projects;
- assist with the Operator Franchise processes and give clarity for the bidders and therefore, a more competitive price for the State;
- facilitate and provide greater flexibility for infrastructure delivery and construction;
- clarify and resolve anomalies in existing legislation for light rail and busway; and
- clarify the original intent of legislation introduced by the *Transport and Other Legislation Amendment Act (No. 2) 2010* that all state land is available for the establishment of light rail and that compensation is available only for physical damage caused by the attachment of overhead wiring to a building.

Sale of surplus land

The amendment to the *Transport Planning and Coordination Act 1994* streamlines the sale of compulsorily resumed land or parts of resumed land that are no longer required for the original resumption purpose. Currently, to dispose of resumed land within seven years of resumption, section 41 of the *Acquisition of Land Act 1967* requires the Department of Transport and Main Roads to obtain a valuation from the valuer-general, before offering it back to the former owner.

However, these parcels are often unattractive to the former owner due to their size, shape, access, aspect or position beside a major piece of infrastructure and the acceptance rate by former owners is extremely low. In most instances the former owners have used the resumption compensation funds to purchase a new property and have re-established their lives elsewhere.

The current process places a considerable administrative burden on both the Department of Transport and Main Roads and the Department of Environment and Resource Management in terms of resources and time. Under the proposed amendments, the chief executive can, before obtaining a valuation, ask the former owner if they are *interested* in repurchasing the property. If the former owner expresses an *interest,* then the chief executive will procure a valuation from a registered valuer. Once the valuation is obtained the owner can then make a decision as to whether they wish to proceed with the purchase. Section 27A also enables the chief executive to register an easement over the land which was originally resumed before offering back, thus avoiding the necessity of a second resumption of the easement.

This proposed amendment will save considerable time and resources for both the Department of Transport and Main Roads and the Department of Environment and Resource Management and is timelier for the former owner.

This amendment recognises that the land offered back may be the subject of an easement to the Department of Transport and Main Roads to protect the structural and operational integrity of infrastructure with an allowance for the decrease in value.

Transport Noise Corridors

The amendment to the *Building Act 1975* brings the provisions in chapter 8B (Transport noise corridors) into line with the original policy intent. The

legislation currently does not include franchised roads within the definition of *State-controlled road* or *road, under the control of a local government*, which has created uncertainty regarding franchised roads and whether they are covered by the transport noise provisions. The amendments will also clarify the noise level conditions that apply to railway land and state-controlled roads.

Light rail operators

The amendment to the *Transport Operations (Passenger Transport) Act 1994* excludes light rail operators from the operator accreditation, driver authorisation and standards requirements of the legislation as they are more appropriately regulated under the *Transport (Rail Safety) Act 2010.* This will bring the treatment of light rail into line with that of heavy rail.

Driver disqualifying offences

The amendment to the *Transport Operations (Passenger Transport) Act 1994* better aligns its driver disqualifying offence provisions with the disqualifying offence and serious offence provisions in the *Commission for Children and Young People and Child Guardian Act 2000* to reduce the administrative overlaps between the Department of Transport and Main Roads and the Commission.

Mandatory Written Bailment Agreements for Taxi Operators and Drivers

The amendment to the *Transport Operations (Passenger Transport) Act 1994* requires all bailment arrangements between taxi drivers and operators be contained in a signed agreement which will ensure drivers and operators have written proof of their agreements.

Civil (court based) banning orders

The amendment to the *Transport Operations (Passenger Transport) Act 1994* seeks to provide an additional process of civil banning (exclusion) orders to compliment and strengthen the current criminal sentencing exclusion order regime which is based on persons who have been convicted of one or more offences. A civil exclusion order, similar to an existing criminal exclusion order process in the *Transport Operations (Passenger Transport) Act 1994*, is primarily a deterrence based measure which aims to safeguard the following: the safety and security of persons using the public transport network; the preservation of the amenity and condition of the public transport network; and the protection of revenue from the public transport network.

Alcohol ignition interlock exemption

Amendments to the *Transport Operations (Road Use Management) Act 1995* will consolidate the regulation-making power for alcohol ignition interlock exemptions that are based on geographical location.

Drink driving reforms

Drink driving related fatalities represented 22.9% of all road fatalities in Queensland in the seven years prior to 30 June 2009. Following a review of the current approach to drink driving, a number of initiatives are being introduced to help reduce drink driving and the number of people killed and injured on Queensland roads because of it.

Licence suspension imposed by Magistrates Court

The Bill clarifies the interaction between the *Bail Act 1980* and provisions of the *Transport Operations (Road Use Management Act) 1995* that require a Magistrates Court to suspend the driver licence of a person who fails to attend court on a drink or drug driving charge. The Bill also provides discretion for the court to not impose a licence suspension, or to remove a previously imposed suspension, where it is in the interests of justice to do so. These amendments will ensure that these licence suspensions are only imposed in appropriate circumstances.

Release of information

Transport legislation contains restrictions on the release of information held by the department relating to individuals. While it is appropriate to limit the release of this information, it is desirable that certain information relating to an individual can be released to that person in a timely and cost-efficient manner such as over the telephone or over the counter at a customer service centre. For example, providing information to a person about the number of demerit points they have recorded on their traffic history has the potential to influence the manner in which that person drives.

Bus and transit lane enforcement

The *Transport and Other Legislation Amendment Act 2009* (No. 47 of 2009) amended the *Transport Operations (Road Use Management) Act 1995* to give powers to authorised officers other than police officers to enforce bus lanes and transit lanes. A transit lane is a lane designed for use by higher occupancy vehicles that displays a 'T2' or 'T3' sign.

The powers were given on a trial basis. The outcomes of the trial demonstrated that the enforcement reduced travel times and increased compliance with bus and transit lane restrictions. The Bill will amend the *Transport Operations (Road Use Management) Act 1995* to give authorised officers these powers on a permanent basis.

Protection for whistleblowers

The amendment to the *Transport (Rail Safety) Act 2010* inserts whistleblower protection for the reporting of potential breaches of rail safety law and/or other rail safety issues to the Rail Safety Regulator. The Rail Safety Regulator has advised that the lack of whistleblower protections is likely to deter some persons from reporting issues if they may be subject to recriminations or reprisal.

Exemption of accredited railways

The amendment to the *Transport (Rail Safety) Act 2010* defines the types of low risk railways that may apply to the chief executive for exemption from the need to comply with all or some of the accreditation requirements. Accreditation of some small railway operations is not consistent with the objects and intent of the *Transport (Rail Safety) Act 2010*, for example, some railway operations do not convey passengers or freight and have a level of risk that accreditation would not provide any reasonable improvement in the safe operation of the railway.

Achievement of policy objectives

State toll roads and local government tollways

Amendments to the *Transport Infrastructure Act 1994* will:

- provide that the Minister must consider whether the local government has satisfied certain conditions and other relevant matters when deciding whether to make a local government tollway corridor land declaration and will align the provisions that apply for the various categories of land that may be the subject of the declaration;
- allow the Minister to make a local government tollway declaration before making a local government tollway corridor land declaration when requested by a local government;
- extend the categories of land that may be declared by the Minister to be local government tollway corridor land and remove a restriction on declaring a State-controlled road as local government tollway corridor land; and

- enable the Minister to make a declaration of additional land to be added to existing leases of State toll road corridor land or local government tollway corridor land.

Works for existing railways

The amendment to section 260 of the *Transport Infrastructure Act 1994* removes any doubt that the railway manager's obligations are at the standard that applied at the time a railway was established. The owner of adjoining land is responsible for upgrading fencing and drainage to satisfy any increase in standards required for a new use of the adjoining land (particularly where the new use requires a development application) and for associated maintenance.

For example, at the time of establishment of the railway, the railway manager's obligations for fencing would likely be a three strand barbed wire fence. Upon the establishment of a new use (brought about by a development application), the fencing obligations are to a higher standard and are the responsibility of the adjoining owner.

Application of the Land Act 1994

The amendment to section 262 of the *Transport Infrastructure Act 1994* clarifies that exemptions to the *Land Act 1994* listed apply to a concurrent sub-lease in the same manner as a railway manager's sublease.

Chief executive taken to be owner of rail corridor and non-rail corridor land

The amendment to the *Transport Infrastructure Act 1994* reflects that the chief executive is also considered the owner of rail corridor and non-rail corridor land in circumstances where evidence of a resource allocation or resource entitlement may be required in place of the chief executive's owner's consent to a development application.

Railways on particular roads

The amendment to the *Transport Infrastructure Act 1994* allows a common area to be declared and recorded over a local government road to provide uniformity when a railway is constructed over any road.

Procurement

The amendments to the *Transport Infrastructure Act 1994* will bring the terminology in section 8 of the *Transport Infrastructure Act 1994* (which outlines the objective of seeking 'value for money') into line with the Queensland's State Procurement Policy. This is achieved by replacing the phrase 'price competitive' with 'value for money' in several sections.

Investigating a potential rail corridor

The amendments to the *Transport Infrastructure Act 1994* (sections 106, 108, 109, 117 and 118) and the insertion of new section 109A will clarify that the chief executive has the power to enter and investigate rail corridors under chapter 7 (Rail transport infrastructure and other matters), which was unclear following the divestment of QR Limited.

Interfering with railway

The amendments to section 255 of the *Transport Infrastructure Act 1994* (Interfering with railway) will clarify that the power under section 255 to protect railway from interference relates to activities in or on a railway corridor only. The amendment will also insert review and appeal mechanisms in schedule 3, for decisions made under section 255.

Transport Interface management – Busways

The insertion of new chapter 15A into the *Transport Infrastructure Act 1994* will extend the interface management regime that is in place for light rail in chapter 10 of the *Transport Infrastructure Act 1994* to apply to busway. The interface management regime will ensure that constructors, managers and operators of infrastructure can effectively fulfil their existing maintenance, operation, safety, environmental and incident management obligations where their ability to fulfil these obligations is affected by the use of, or activities on, land or infrastructure owned, managed or controlled by another party.

Watercourse crossings

The insertion of new section 477F (Watercourse crossings) in the *Transport Infrastructure Act 1994* will clarify that the Department of Transport and Main Roads has the power to establish transport infrastructure over State-owned watercourses. This will give the State the ability to provide a continuous tenure or right to use infrastructure from one side of a river crossing to the other. This will facilitate the establishment of a transport corridor than can continue over watercourses, which is particularly important for the purpose of private sector investment.

Watercourse crossings are included in the new definition of State land in schedule 6 for the purposes of the grant of a licence under section 355A for a transport corridor.

Gold Coast Rapid Transit Light Rail Project

This second tranche of amendments for the Gold Coast Rapid Transit project will amend the *Transport Infrastructure Act 1994*, *Transport Planning and Coordination Act 1994*, *Transport Operations (Passenger Transport) Act 1995*, *Electrical Safety Act 2002* and the *Electricity Act 1994* to:

- provide for compliance management plans that will establish a regime that will avoid the need to obtain potentially duplicate approvals that would otherwise be necessary for construction works along the corridor;
- exempt the light rail franchisee from licensing and technical requirements of the Electricity Act and Electrical Safety Act, in the same manner that exists for heavy rail. These amendments are required for the construction and operation of light rail, particularly if the light rail is to be established in a road environment;
- exempt a light rail franchisee from the Passenger Transport Act licensing and accreditation requirements, as these are provided for in the *Transport (Rail Safety) Act 2010*. A light rail franchisee will also be exempted from the Passenger Transport Standards, as these issues will be dealt with in the light rail franchise agreement and performance specifications;
- clarify the original intent of legislation introduced by the *Transport and Other Legislation Amendment Act (No. 2) 2010* that for the purposes of section 355A (Licence in relation to light rail land and infrastructure), light rail land can be all land held by the state including state land where there may be third party interests. Consequently, the amendment provides a compensation framework for persons with rights of occupancy on affected state land; and
- clarify the original intent of legislation introduced by the *Transport and Other Legislation Amendment Act (No. 2) 2010* that compensation is available only for physical damage caused by the attachment of overhead wiring to structures.

Transport Noise Corridors

The amendments to the chapter 8B provisions of the *Building Act 1975* for transport noise corridors will bring chapter 8B into line with the original drafting intent of the provisions. The amendment to section 246W clarifies that franchised roads are included in the transport noise provisions, which was previously unclear. The section 246Z(2)(b) amendment separates the noise requirements for state-controlled roads and railway, clarifying the noise levels required for each.

Light rail operators

Exclusion of these operators from the operator accreditation, driver authorisation and standards requirements will reduce their administrative burden as they will be subject to only one set of regulatory requirements in Queensland, that is, the *Transport (Rail Safety) Act 2010*.

Driver disqualifying offences

The better alignment of the passenger transport legislation driver disqualifying offences with disqualifying offence and serious offence provisions in the *Commission for Children and Young People and Child Guardian Act 2000* will improve the efficiency of assessing whether individuals are able to hold driver authorisation by reducing the administrative overlaps between the Department of Transport and Main Roads and the Commission.

Mandatory written bailment agreements for taxi operators and drivers

Requiring bailment agreements between taxi drivers and operators to be contained in a signed agreement will ensure the rights of the drivers and operators are able to be legally enforced. This will ensure a fairer and more transparent system to enable drivers to work in the taxi and limousine industries.

Civil (court based) banning orders

The amendment to the *Transport Operations (Passenger Transport) Act 1994* will enable the court to make a civil exclusion order which can restrict or prohibit a person's use of the public transport network for a period of up to 12 months. To make a civil exclusion order, the court must be satisfied that the person has committed an act of violence. That is, committed an act of violence against another person or property on the public transport network, of such a nature that the act of violence would cause a person in the vicinity to reasonably fear bodily harm to any person or to damage property.

As a stand alone 'alternative trigger', a court may also make an exclusion order should a person be issued with 10 or more penalty infringement notices for a 'relevant offence' as defined in the *Transport Operations (Passenger Transport) Act 1994* within a 12 month timeframe.

Under the *Transport Operations (Passenger Transport) Act 1994*, a transport indictable offence is an indictable offence, including an indictable offence dealt with summarily, committed on or in public transport infrastructure. A relevant offence includes fare evasion, interfering with a service, vehicle or equipment, creating a disturbance or nuisance on railway or vehicle, interfering with a railway, trespassing on a railway, trespassing on busway land, trespassing on light rail land.

Alcohol ignition interlock exemption

The regulation-making power in the *Transport Operations (Road Use Management) Act 1995* which deals with alcohol ignition interlock exemptions based on geographical location will be amended. The amendment will ensure that an exemption may be granted if:

1. the nearest interlock installer is reasonably inaccessible from the person's principal place of residence; or

2. the person's principal place of residence is outside both a prescribed radius from the nearest interlock installer and an area where a mobile installation service is provided by a prescribed interlock installer.

Drink driving reforms

Amendments to the *Transport Operations (Road Use Management) Act 1995* will:

1. introduce a new *middle alcohol limit* offence for drink driving offenders with a blood/breath alcohol concentration of 0.10 or above but less than 0.15;

2. provide that people charged with this new offence will have their driver licences immediately suspended or, if they are unlicensed, will be immediately disqualified from obtaining a licence;

3. increase the maximum time allowed to obtain a breath and/or blood specimen for drink driving offences from two to three hours; and

4. allow the arresting/detaining police officer to also conduct the breath analysis for drink driving offences.

Licence suspension imposed by Magistrates Court

The *Transport Operations (Road Use Management) Act 1995* currently provides that if a person charged with a drink or drug driving offence fails to appear in court on that charge, the court must suspend the person's driver licence. An amendment clarifies that a suspension need not be imposed if the person's appearance is excused by the *Bail Act 1980*, which allows a person to be represented by their lawyer.

A further amendment provides magistrates with discretion to not impose such a suspension where it is in the interests of justice. This supplements the existing discretion which can be exercised where a person was physically incapable of attending court for medical or other reasons.

A final amendment allows the court to revoke a prior suspension order where it is in the interests of justice to do so.

Release of information

The amendments authorise the chief executive to release certain information to a person verbally without requiring the person to make a written application. The information will only be released, however, once the chief executive is satisfied the person is the person to whom the information relates.

Where a person requires information to be provided in a written form (for example, a printed traffic history), the amendments require that the existing application process must be followed.

Bus and transit lane enforcement

The *Transport Operations (Road Use Management) Act 1995* will be amended to remove the expiry clause which applies to the powers of authorised officers to enforce restrictions on the use of bus and transit lanes.

Protection for whistleblowers

The amendments achieve the policy objectives by providing protection to whistleblowers to encourage them to report openly and honestly, rail safety issues to the Rail Safety Regulator.

Exemption of accredited railways

The amendments achieve the policy objectives by providing the chief executive with the power to consider exemption from all or some of the rail

safety accreditation requirements for a low risk railway based on the level of risk of the railway operation.

Alternative ways of achieving policy objectives

Light rail operators

The only alternative for achieving the proposed policy objectives of reducing the administrative burden of light rail operators would be to exempt them from the accreditation requirements under the *Transport (Rail Safety) Act 2010*, rather than the passenger transport legislation. However, this would be inappropriate as the Rail Safety Act is part of a national approach to regulate all railway operations (e.g. heavy rail and light rail).

Driver disqualifying offences

A number of other approaches to reduce the administrative overlaps between the Department of Transport and Main Roads and the commission were considered. These were:

1. requiring all public transport driver applicants (approximately 18 000 in 2010) to obtain a blue card as well as driver authorisation. This approach was not considered feasible as it would require drivers to hold and pay for two forms of authorisation (blue card and driver authorisation) as the Department of Transport and Main Roads still needs to screen applicants for non-child related criminal offences and driver related offences. Further, the Commission for Children and Young People and Child Guardian (the Commission) would have to process a further 18 000 blue card applications annually; or
2. the Commission would need to advise the Department of Transport and Main Roads if a person had been convicted of a serious or disqualifying offence under the *Commission for Children and Young People and Child Guardian Act 2000*. This approach was not progressed as it would require major changes to the policy principles underpinning the Commission's act about the privacy of the information collected on individuals to determine whether the person was suitable to work with children.

Taxi bailment agreements

The only other feasible option was the current voluntary industry led approach which has led to situations of exploitation of drivers. The legislated approach in the Bill is supported by the industry as it will ensure

a fairer and more transparent system to enable drivers to work in the taxi and limousine industries.

There are no alternative ways to achieving the policy objectives for the remaining amendments.

Estimated cost for government implementation

Mandatory written bailment agreements for taxi operators and drivers

There will be some increase in Department costs in auditing taxi operator compliance to the taxi bailment requirements. However, it is expected that these costs will be met within current departmental resources. There may be increased demand on the Queensland Civil and Administrative Tribunal's minor civil dispute jurisdiction that such costs are unable to be estimated at this time.

The costs for implementing the remaining amendments will be minimal and will be met from existing budget allocations.

Consistency with fundamental legislative principles

Local government tollways

An amendment to the *Transport Infrastructure Act 1994* expands the categories of land that may be declared by the Minister to be local government tollway corridor land. The amendment potentially raises the fundamental legislative principle that legislation that provides for the compulsory acquisition of property must only do so with fair compensation. The amendment takes into account the rights and liberties of individuals in the following ways:

1. the additional categories of land will be limited to non-freehold land, on or within, which road transport infrastructure or rail transport infrastructure is situated;

2. the declaration may continue stated interests in relation to the local government tollway corridor land; and

3. a person whose interest in the land has not been continued in the Minister's declaration will be entitled to claim compensation under existing provisions of the *Acquisition of Land Act 1967*.

Interfering with railway

Clause 47, which amends section 255 (Interfering with railway) of the *Transport Infrastructure Act 1994*, may be considered not to have a sufficient regard to the rights and liberties of individuals (*Legislative Standards Act 1992*, section 4(3)(g)).

This provision provides that a person must not, whilst in or on a railway corridor, interfere with a railway or its operations without the railway manager's approval. The purpose of this section is to support the railway manager's responsibility to ensure the safety of all users of the railway and the operational safety and integrity of the railway itself.

Prior to these amendments, there has been some confusion as to whether a railway manager could exercise this power outside of a railway corridor. This may have been a breach of a fundamental legislative principle. This amendment will ensure that the railway manager can only exercise this power within a railway corridor. Within a railway corridor, it is a reasonable expectation that the railway manager can control activities that may jeopardise the safety of rail passengers and the operational safety and integrity of the railway.

Limited compensation for easement etc. or damage relating to overhead wiring for a light rail

Clause 62, which amends section 377R (Limited compensation for easement etc. or damage relating to overhead wiring for a light rail) of the *Transport Infrastructure Act 1994*, may be considered not to have a sufficient regard to the rights and liberties of individuals (*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)), by limiting the definition of *light rail overhead wiring damage* to physical damage to a structure caused by the construction and affixation of overhead attachments for a light rail, and hence limiting the compensation that is available.

Section 377R was originally inserted by the *Transport and Other Legislation Amendment Act (No. 2) 2010* to establish 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 attachments for a light rail and damage caused by the attachment of the overhead wiring.

The amendment to section 377R simply clarifies the original intent of the provision as stated in the explanatory notes for the *Transport and Other Legislation Amendment Act (No. 2) 2010* stating that compensation is available only for physical damage caused by the attachment of overhead wiring for a light rail. The onus is on the department to ensure that all physical damage to structures is remedied. However, should the property owner remain unsatisfied, a process for claiming compensation has been provided in section 377R.

This amendment does not impact on or remove the right of a property owner to receive compensation for the acquisition of an easement.

Interface arrangements

Clause 63, which inserts new chapter 15A (Transport interface management) into the *Transport Infrastructure Act 1994* extends the interface management arrangements previously in place for light rail to also cover busway. These amendments may be considered not to have a sufficient regard to the rights and liberties of individuals (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, delivery and management of transport infrastructure is becoming increasingly complex.

New chapter 15A 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.

The process and 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.

Investigating a potential rail corridor

Clauses 36 - 43 amend the *Transport Infrastructure Act 1994* (sections 106, 108,109, 115, 116, 117 and 118) and insert new section 109A to clarify that the chief executive has the power to enter and investigate rail corridors under chapter 7 (Rail transport infrastructure and other matters).

These amendments may be considered not to have a sufficient regard to the rights and liberties of individuals (Legislative Standards Act, section 4(3)(g)).

As a result of the divestment of QR Limited, it is necessary to clarify the chief executive's power to enter and investigate rail corridors.

The amendments are consistent with the existing powers of an investigating authority to investigate a railway corridor and will provide consistency with other chapters of the *Transport Infrastructure Act 1994* by bringing the rail transport infrastructure provisions into line with the provisions already in place for road, busway and light rail.

While the amendments will enable the chief executive to enter land for the purpose of investigating the land's potential suitability as a rail corridor, the amendments are justified as the chief executive must give written notice before land is entered. Furthermore, section 118 makes clear that under chapter 7, part 2 (Investigating a potential rail corridor) an owner or occupier of land can claim compensation for loss or damage arising out of entry onto the land.

Watercourse Crossings

Clause 65 inserts new section 477F of the *Transport Infrastructure Act 1994* (Watercourse crossings), which may be considered not to have a sufficient regard to the rights and liberties of individuals (*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)). The provision will allow the chief executive to construct, augment, replace, maintain and operate transport infrastructure over, under, on or in a state owned or held watercourse.

The insertion of new section 477F is considered to be justified as it will not change the underlying tenure of the land in the appropriate land registry, impact on Native title rights, impact on common law or statutory rights to use a navigable waterway as a public highway, or exclude the provisions of

the *Sustainable Planning Act 2009* or any other Act. New section 477F will not affect the rights for privately owned watercourses under the *Acquisition of Land Act 1967*. The *Acquisition of Land Act 1967* provisions regarding fair compensation will still apply if a watercourse crossing were to cross a private waterway. The provisions do not detract from any legislative or common law obligation to ensure river crossings are constructed and operated in such a way that they do not impede the flow of water.

Clause 66 inserts section 578 (Declaration and validation for watercourse crossings), transitional provision to ensure that all previously constructed watercourse crossings have legislative authority. Whilst potentially not having sufficient regard to the rights and liberties of individuals (*Legislative Standards Act 1992*, section 4(3)(g)), this provision merely clarifies the pre-existing powers of the chief executive and the legitimacy of existing infrastructure and does not impact on the rights of any person.

Licence under sections 303AB (Licence in relation to busway land or busway transport infrastructure) and 355A (Licence in relation to light rail land or light rail transport infrastructure)

Clauses 50 and 56 amend sections 303AB and 355A in relation to granting of licences over land, which now include privately owned land and State land over which third party interests may exist. These provisions may not be considered to have a sufficient regard to the rights and liberties of individuals (*Legislative Standards Act 1992*, section 4(3)(g)) or provide for fair compensation for the compulsory acquisition of interests in land (*Legislative Standards Act 1992*, section 4(3)(i)). However, these provisions ensure that in the case of privately owned land, the chief executive must enter into an agreement with the owner in relation to busway or light rail transport infrastructure and for the granting of the licence. In this respect, there can be no compulsory acquisition. Further, compensation provisions are inserted into sections 303AC and 355B, for licences granted under sections 303AB and 355A.

Alignment of driver disqualifying offences

The Bill amends the *Transport Operations (Passenger Transport) Act 1994* to make a person who has been convicted of a *Commission for Children and Young People and Child Guardian Act 2000* schedule 4 disqualifying offences that included a term of imprisonment or who is subject to offender reporting obligations, and offender prohibition order, a disqualification order or a sexual offender order under section 169(1)(b) (of the

Commission for Children and Young People and Child Guardian Act 2000) ineligible to hold driver authorisation.

For a person with such convictions to hold driver authorisation currently, the Children's Commission and the chief executive would have to deem that the person had an exceptional case. Although it is extremely unlikely that this has occurred, there is a remote possibility that there may be some individuals who will be required to surrender their driver authorisation because of this amendment.

In considering a person's suitability to hold driver authorisation, the Passenger Transport Act requires the chief executive to take account of the paramount principle that children and other vulnerable members of the community must be protected. Accordingly, it is considered that this paramount principle overrides the fundamental legislative principal of the rights of an individual who has been convicted of such an offence with a term of imprisonment or has an order.

Civil (court based) banning orders

The proposed scheme for civil banning orders could be considered to be inconsistent with the fundamental legislative principle of having sufficient regard to rights and liberties of individuals (Section 4(3) of the *Legislative Standards Act 1992*) as it proposes to remove the right of a person (the respondent) to use certain public transport if the person has been issued with a banning order from a court. As it is proposed that a civil banning order may be issued to a respondent who has not been convicted of an offence, it could be claimed that such a banning order breaches fundamental civil liberties in a democratic society.

However, this must be balanced against the public policy objective of regulation compatible with minimising the adverse effects on the safety and welfare of public transport users, as well as minimising the harm to the good order or management of the public transport network. The fundamental legislative principle inconsistency is also partially mitigated as the civil and criminal court-based schemes contain the inherent safeguards associated with a judicial process, for example, consistency with natural justice principles, a right of hearing and an appropriate avenue of appeal. As well, the banning order can be varied depending on changing circumstances; for example, so that the offender is not unfairly restricted in employment or training opportunities.

The proposed scheme also requires the Police Commissioner to give the information about any criminal history that the respondent may have to the

chief executive. This could be considered a breach of the fundamental legislative principle regarding privacy. While this is acknowledged, information about a respondent's criminal history is essential for the operation of the scheme as it will enable the chief executive to determine whether or not to proceed with a civil banning order application. Also, the courts would need such information to determine whether or not to issue a civil banning order.

Drink driving reforms

The amendments create a new *middle alcohol limit* offence that applies when a driver has a blood/breath alcohol concentration of 0.10 or above but less than 0.15. Under current legislation these drivers would be charged with a *general alcohol limit* offence and subject to the penalties and sanctions that apply to this offence.

A person convicted of the new *middle alcohol limit* offence will be subject to a maximum penalty and a period of licence disqualification that is higher than those that apply to the *general alcohol limit* offence. The introduction of this new level of offence and the penalties associated with it are justified by the seriousness of the offence. At a blood/breath alcohol concentration of 0.10, drink drivers have a crash risk that is almost five times the crash risk of a person with no alcohol in their blood or breath. In the seven years to 2007/08, drivers recording a blood/breath alcohol concentration of 0.10 or higher accounted for approximately 80% of drink driving-related fatal crashes in Queensland.

It is appropriate that these drink drivers are subject to penalties and sanctions that reflect the seriousness of the road safety risk posed to themselves and other road users.

A person who is disqualified from holding a driver licence as a result of a conviction for the new *middle alcohol limit* offence will be entitled to apply to the court, under existing provisions, for a restricted licence. The existing eligibility criteria and restrictions will apply in relation to the granting of any restricted licence.

The amendments will also extend the existing immediate licence suspension provisions to include those people charged with the new *middle alcohol limit* offence.

Any interference with an individual’s ability to continue driving is considered justified because crash risk research and Queensland crash data demonstrate the seriousness of the road safety risk posed by drivers above

the *middle alcohol limit*. Immediate licence suspension protects the public by restraining drink drivers who pose a high road safety risk and has the potential to prevent the person committing further drink driving offences while the suspension is in effect.

Those people whose licence is immediately suspended due to being charged with a *middle alcohol limit* offence will be entitled to apply to the court, under existing provisions, for an order allowing them to drive prior to their court appearance. The existing eligibility criteria and restrictions will apply in relation to any such order.

Protection for whistleblowers

Clause 124 (section 267A-267C) provides protection for a whistleblower from incurring liability for disclosing information, potentially breaches the principle that legislation should not confer immunity from proceeding or prosecution without adequate justification (*Legislative Standards Act 1992*, section 4(3) (h)), by providing protection for the whistleblower.

The amendment is justified because it is a proven means of providing an incentive (as used in the aviation industry and in other Australian jurisdictions in the rail industry) to encourage persons within the industry to come forward without fear of recriminations or reprisal. Even a minor breach of safe practice has the potential to cause substantial harm, injury or loss of life. The purpose of the *Transport (Rail Safety) Act 2010* is to regulate the rail industry to ensure safety. Persons disclosing information are not provided with immunity for their own illegal acts. Immunity is only in relation to the disclosure. There is significant public interest in ensuring rail safety for the community, this amendment provides adequate justification for the limited immunity for the whistleblower.

Exemption of accredited railways

Clause 121 and 122, amend the *Transport (Rail Safety) Act 2010* exempting rail transport operators from the Act, potentially breaches the principle that legislation should have sufficient regard to the institution of Parliament (*Legislative Standards Act 1992*, section 4(2)(b)), by allowing an administrative decision to exempt a rail transport operator from the requirement to be accredited for all or stated railway operations relating to a low risk railway.

This amendment is considered to be in the public interest as it ensures that those low risk, often not for profit and/or Tourist and Heritage operators,

are not unnecessarily subjected to the onerous requirements under the Act that do not reflect their railway's operating risk.

Consultation

Local government tollways

The Brisbane City Council was consulted on all amendments relating to local government tollways.

Light rail operators

As these amendments are to provide for a reduction in overlap of legislation requirements, no consultation was undertaken with community stakeholders or organisations.

Driver disqualifying offences

The amendments have been developed in consultation with the Commission for Children and Young People and Child Guardian. No other consultation was undertaken with community stakeholders or organisations as the amendments are intended to reduce the overlap in legislation requirements between the *Transport Operations (Passenger Transport) Act 1994* and the *Commission for Children and Young People and Child Guardian Act 2000*.

Mandatory written bailment agreements for taxi operator drivers

Consultation with industry stakeholders occurred through a number of forums including the Taxi Industry Advisory Committee and the Taxi Industry Health and Safety Committee. These committees include representatives from major industry groups such as the Taxi Council of Queensland, the Transport Workers Union and Queensland Taxi Drivers Inc. Through these forums independent drivers were also consulted. Apart from a representative from the Cab Drivers Association of Queensland, who argued that the amendments did not go far enough and supported the implementation of all of the Ombudsman's recommendations, there was otherwise strong support from all other Committee representatives for these amendments.

Drink driving reforms

The government commenced a public consultation process in March 2010 examining possible interventions aimed at reducing drink driving. The consultation process involved three elements. Firstly, a public discussion paper was released outlining a wide range of potential drink driving

countermeasures on the Queensland Government's *Get Involved* website together with an online survey that elicited over 1 000 responses. Secondly, two community forums were held on 4 and 5 May 2010, in Townsville and Brisbane respectively. Thirdly, focus groups and one-on-one interviews were undertaken with a range of drink driving offenders throughout Queensland.

The drink driving amendments contained in the Bill received community support in the online survey as follows:

- extend immediate licence suspension for drink driving offenders with a blood/breath alcohol concentration greater than or equal to 0.10 – 72.72% support from respondents;
- extend the maximum time allowed to obtain a breath/blood specimen for drink driving offences from two to three hours – 47.1% support from respondents; and
- allow the arresting/detaining police officer to also conduct the breath analysis for drink driving offences – 57.7% support from respondents.

Consistency with legislation of other jurisdictions

Taxi bailment agreements

Taxi services operate under bailment agreements in all states and territories. In New South Wales, the bailment relationship is recognised under the Industrial Relations Act (NSW) 1996. The act creates enforceable conditions for taxi drivers and operators in the Sydney Metropolitan District. Victoria and South Australia have non-regulated approaches to bailment agreements. However, taxi bailment agreements are highly regulated in Western Australia under a set pay in format.

Overhead wiring for light rail

Section 377R covers much the same issue as section 104R of the *Transport Administration Act 1988 (NSW)*. However, that Act limits compensation to a greater extent than section 377R.

Drink driving reforms

All States and Territories, except Western Australia, have immediate licence suspension for drink driving offences. Queensland, Tasmania and the Northern Territory immediately suspend the licence of drivers recording a blood/breath alcohol concentration of 0.15 or higher. New South Wales and South Australia immediately suspend the licence of

drivers who record a blood/breath alcohol concentration of 0.08 or higher, as does the Northern Territory for a second or subsequent offence. Victoria suspends learner and provisional licence holders who record a concentration of 0.07 or higher, and open licence holders at 0.10 or higher. The Australian Capital Territory immediately suspends the licence of drivers recording a blood/breath alcohol concentration of 0.10 or higher.

Protection for whistleblowers

Queensland has similar provisions for public interest disclosures in the *Transport Operations (Marine Safety) Act 1994*, *Transport Operations (Marine Pollution) Act 1995, Biodiscovery Act 2004*, *Guardianship and Administration Act 2000* and the *Commission for Children and Young People and Child Guardian Act 2000*.

Similar provisions for public interest disclosures also exist in the Commonwealth's *Australian Transport Safety Investigation Act 2003* and New South Wales' *Rail Safety Act 2008.* Victoria's *Transport (Compliance and Miscellaneous) Act 1983* also contains confidential reporting scheme whistleblower protection.

Exemption of accredited railways

Other Australian jurisdictions have similar exemption provisions in their Rail Safety legislative packages either contained in subordinate legislation (New South Wales, Victoria, South Australia, Northern Territory) or by the Minister authorising a notice exempting those operators (Western Australia and Tasmania).

Notes on provisions

Part 1 Preliminary

Clause 1 states that, when enacted, the Act will be cited as the Transport and Other Legislation Amendment Act 2011.

Clause 2 provides that:

- Sections 77, 89, 90 and 91 commence on 1 August 2011;
- Section 80, to the extent it inserts chapter 4A, 82 to 88 and 91, to the extent it inserts section 191, commences on 1 September 2011;
- The following provisions commence on a day to be fixed by proclamation:
  (a) part 4;
  (b) section 72;
  (c) sections 100(1) to (10), 101 to 110, 113 and 114;
  (d) part 11.

Part 2 Amendment of Adult Proof of Age Card Act 2008

Clause 3 states that this part amends the *Adult Proof of Age Card Act 2008*.

Clause 4 amends section 30 (Restricted release of information in APA register) to provide that the section deals only with the release of information in writing.

Clause 5 inserts a new section 30A (Restricted oral release of information). Section 30A(1) authorises the chief executive to orally release certain information to a person. The information that may be released is information kept in the APA register maintained under the Act about the person's adult proof of age card.

Subsection (2) provides that the chief executive may only release the information if satisfied that the person is the person to whom the information relates.

Part 3 Amendment of Building Act 1975

Clause 6 states that this part amends the *Building Act 1975*.

Clause 7 amends section 246W (Definitions for ch 8B) to clarify that franchised roads can be declared as transport noise corridors under chapter 8B. Franchised roads will be included in chapter 8B by omitting the definition of *road*, and inserting a new definition of *road* that includes 'a local government franchised road within the meaning of the Transport Infrastructure Act', and by omitting the definition of *State-controlled road*, and inserting a new definition of *State-controlled road* that includes 'a franchised road within the meaning of the Transport Infrastructure Act'.

Clause 8 amends section 246Z (Designation of transport noise corridor – transport chief executive) to clarify the noise levels that apply when designating either railway land or a State-controlled road as a transport noise corridor. Subsection (2)(b) will be separated into (i) and (ii), clarifying that the noise level has to be at least 70db(A) for railway land and at least 58db(A) for State-controlled roads, in order to be designated as a transport noise corridor.

Part 4 Amendment of Criminal Code

Clause 9 states that this part amends the Criminal Code.

Clause 10 amends section 328A (Dangerous operation of a vehicle) by inserting a reference to the new *middle alcohol limit* offence in section 79(1F) of the *Transport Operations (Road Use Management) Act 1995* in the definition of *prescribed offence*. This will ensure that prior convictions for the *middle alcohol limit* offence are considered in the same manner as other drink driving convictions, for the purpose of sentencing an offender under section 328A.

Part 5 Amendment of Electrical Safety Act 2002

Clause 11 states that this part amends the *Electrical Safety Act 2002*.

Clause 12 amends section 7 (Application of Act to railways), inserting references to light rail.

Clause 13 inserts new definitions for *light rail* and *light rail manager* into Schedule 2.

Clause 13 also omits and inserts a new paragraph (c) in the definition of *electricity entity*, to include a reference to a 'light rail manager for a light rail, that is exempted by the Electricity Act, section 20Q or 20QA'. This is necessary because:

- section 66 of the *Electrical Safety Act 2002* refers to entities declared to be a prescribed electricity entity under the Regulation;
- section 165 of the *Electrical Safety Regulation 2002* states that prescribed electricity entities include those named in the schedule and those persons who are an electricity entity under paragraph (c) of the definition in the Act; and
- light rail manager and light rail operators are not presently named in the schedule as electrical entities.

By including light rail manager in paragraph (c) of the definition of an electricity entity in the *Electrical Safety Act 2002*, a light rail manager will be a prescribed electricity entity under the Regulation. The result is that the light rail manager must have and give effect to a safety management system.

Part 6 Amendment of Electricity Act 2002

Clause 14 states that this part amends the *Electricity Act 1994*.

Clause 15 inserts new section 20QA (Exemptions for light rail franchisees and light rail managers) to provide:

- that a light rail franchisee or a light rail manager are exempted from sections 88A (Prohibition on operating supply network unless authorised) in relation to the supply and sale of electricity used either in connection with the building or use of electrical installations and other works required under a light rail franchise agreement or for powering rolling stock and railway signals required under a light rail franchise agreement; and
- a definition for *light rail franchisee*, to mean a franchisee under a light rail franchise agreement.

The amendment will allow electricity supply arrangements for a light rail project to be implemented without the light rail franchisee or light rail manager requiring licences under the *Electricity Act 1994* and brings light rail into line with heavy rail.

Clause 16 amends section 102 (Works on roads), as an electricity provider may have to comply with section 102(1) of the *Electricity Act 2002* over land occupied by light rail to effect works. For example, the relocation of electrical public utility plant necessary for construction of light rail in a road environment. Chapter 10, division 3 and section 362 of the Transport Infrastructure Act 1994 may also apply to electricity provider works over land occupied by light rail. Amended section 102 requires the road authority to consult with the light rail operator to provide a consistent approach where light rail is being constructed or is already constructed.

Clause 17 contains amendments to section 106 (Public entity may require electricity entity to alter position of works) to exclude light rail from the meaning of publicly controlled place. Currently, the definition potentially includes light rail. Therefore the light rail could be under the control of public entities, but not the light rail franchisee. This is not a suitable arrangement for infrastructure being delivered under a light rail franchise agreement where the infrastructure ownership and management rights may be vested in the franchisee. The effect of the amendment is to exclude light rail land from the definition of publicly controlled place, which means that the *Transport Infrastructure Act 1994* will apply the protective mechanisms and public utility plant provisions.

Clause 18 amends section 109 (Works impairing railway signalling or communication lines) by inserting new subsection (4) to clarify the term railway operator. Subsection (4) states that railway operator includes a light rail manager and light rail operator for a light rail. New subsection (4) will prohibit an electricity entity from building or carrying out works in a way that impairs use of the light rail signalling and communication lines. This provision will apply to light rail in the same way as it does to heavy rail. Because this section refers to existing equipment, it will only have effect after the infrastructure has been completed.

Clause 19 amends section 110 (Building by railway operator of signalling or communication line likely to be affected by electricity entity's works etc.) by inserting new subsection (3) to clarify the term railway operator. Subsection (3) states that railway operator includes a light rail manager and light rail operator for a light rail. New subsection (3) will impose requirements on the light rail manager and light rail operator where new

signalling or communication lines are to be built, in the same way as currently exists for heavy rail.

Clause 20 amends schedule 5 (Dictionary) to refer to the *Transport Infrastructure Act 1994* definitions of light rail, light rail manager and light rail operator, for the sake of consistency.

Part 7 Amendment of Environmental Protection Act 1994

Clause 21 states that this part amends the *Environmental Protection Act 1994*.

Clause 22 amends schedule 1 (Exclusions relating to environmental nuisance or environmental harm) and is a consequential amendment to new section 477G of the *Transport Infrastructure Act 1994*, inserted by clause 65 of this Bill.

Part 8 Amendment of Tow Truck Act 1973

Clause 23 states that this part amends the *Tow Truck Act 1973*.

Clause 24 amends section 19H (Restricted release of information) to provide that the section deals only with the release of information in writing.

Clause 25 inserts a new section 19I (Restricted oral release of particular information). Section 19I(1) authorises the chief executive to orally release certain information to a person. The information that may be released is information kept under the Act about the person's tow truck driver's certificate or assistant's certificate.

Subsection (2) provides that the chief executive may only release the information if satisfied that the person is the person to whom the information relates.

Part 9 Amendment of Transport Infrastructure Act 1994

Clause 26 states that this part amends the *Transport Infrastructure Act 1994*.

Clause 27 amends section 30 (Obligations in carrying out of works or operation of roads by the chief executive) by replacing the phrase 'price competitive' with 'value for money'. This will bring the Act into line with the Queensland's State Procurement Policy, which lists 'seeking value for money' as one of its objectives.

Clause 28 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 subsections 84C(6) and (6A) allow the State to sublease this land to another person and for further sub subleases to be entered into. 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 in this clause, and the amendments in clauses 29 and 30, apply where additional land is declared to be State toll road corridor land (the additional land) and this land is needed to increase the area of land previously declared to be State toll road corridor land (the original land). In this situation, the perpetual lease of the original land (the existing perpetual lease) will be amended to include the additional land (the amended perpetual lease). The additional land may also be included in any existing subleases or sub-subleases of the original land under section 84C(6) or (6A) (the existing leases). This will avoid the need for separate leases to be entered into for the additional land and simplify the administrative processes for amending the leases.

Clause 28 inserts new sections 84A(6A) and (6B). Section 84A(6A) provides that the area of the original land may be increased by a subsequent declaration under section 84A(1) of additional land. Section 84A(6B) provides for the following:

- the Minister is not required to state the terms of the perpetual lease when declaring the additional land to be State toll road corridor land;
- the terms of the amended perpetual lease are the terms that applied to the existing perpetual lease immediately before the additional land was declared to be State toll road corridor land;
- the declaration of the additional land as State toll road corridor land must state the lease reference number for the existing perpetual lease and, if the additional land is to be included in an existing lease, the declaration must also state the dealing number for the relevant lease.

Clause 29 amends section 84C (Effect on land of State toll road corridor land declaration) to make that section subject to section 84CA where the Minister declares additional land to be State toll road corridor land.

Clause 30 inserts a new section 84CA (Effect of declaration of additional State toll road corridor land on leases) which sets out the effect on leases if the Minister declares additional land to be State toll road corridor land.

Despite section 84C(4), section 84CA(2)(a) provides that the existing perpetual lease is taken to have been amended to include the additional land under the *Land Act 1994*. Section 84C(5) applies to the amended perpetual lease. However, for section 84C(5)(c), sections 84CA(2)(b) and (c) provide that the amended perpetual lease is subject to any interests in the original land or the additional land which were continued in relation to the lease under section 84A(6)(a). Further, for section 84C(5)(d), sections 84CA(2)(b) and (d) confirm that the amended perpetual lease is on the terms mentioned in section 84A(6B)(b).

Section 84CA(2)(e) provides that the additional land may be included in an existing lease under section 84C(6) or (6A). If this is to happen, sections 84CA(3)(a) and (4) provide that the existing lease is taken to be amended to include the additional land. For section 84C(8)(b), an amended lease under section 84C(6) is subject to any interests continued under section 84A(6)(b) in the additional land or the original land for the leases. Section 84CA(5)(c) provides that the amended leases operate as if they had been originally issued or executed as amended.

Section 84CA(2)(e) also clarifies that the ability to lease the additional land under sections 84C(6) or (6A) is not limited by this amendment. This allows for separate leases of the additional land to be entered into under those sections if required. This may be necessary if the additional land is to be leased to a person other than the person who holds a lease under section 84C(6) or (6A) for the original land.

Section 84CA(5)(a) provides that if an existing lease is to be amended, the registration of the amended sublease does not require the endorsement of the Minister administering the *Land Act 1994* under section 336(3) and (4) of that Act.

The chief executive must lodge documents necessary to give effect to the amended leases in the leasehold land register (section 84CA(2)(a)(ii) and (5)(b)). No fee is payable for lodging these documents (section 84CA(6)).

Clause 31 amends section 105GA (Declaration). Section 105GA currently provides that if a local government which has an approved tollway project requests the Minister to declare a local government tollway, the Minister may declare a local government franchised road or local government tollway corridor land to be a local government tollway. Therefore, unless the tollway is subject to a franchise agreement, a local government tollway corridor land declaration must be made before the local government tollway declaration. The administrative requirements for a local government tollway corridor land declaration are complex and have the potential to delay the commencement of operations on local government tollways.

This amendment provides that land or part of land which is the subject of an approved tollway project and which is land mentioned in sections 105H(1)(a) to (e) may also be declared to be a local government tollway.

Clause 32 amends section 105H (Declaration of land as local government tollway corridor land).

Clause 32(1) removes the current restriction on declaring a State-controlled road to be a local government tollway corridor land.

Clause 32(3) extends the categories of land that may be the subject of a local government tollway corridor land declaration to include non-freehold land under the *Land Act 1994* on or within which road or rail transport infrastructure is situated. The amendment in clause 32(2) is consequential to this amendment.

The amendment in clause 32(4) removes an obligation for the Minister to declare land acquired by the local government to be local government tollway corridor land, if requested to do so by the local government. There is no obligation to make the declaration in relation to other categories of land which may be the subject of the declaration. This amendment, and the amendment in clause 32(5), aligns the requirements for local government acquired land with other categories of land which may be the subject of the

declaration. Clause 32(7) makes amendments that are consequential to the amendment in clause 32(4).

Currently section 105H(4) provides that the Minister may only make a declaration of local government tollway corridor land if the local government has complied with all conditions and legislative requirements that apply to the approved tollway project or the local government tollway. Clause 32(6) amends section 105H(4) to remove this requirement and to provide instead that the Minister must have regard to whether the local government has complied with the conditions applying to the approved tollway project or the local government tollway and other relevant matters in deciding whether to make the declaration. This will allow the Minister to make the land declaration if it is appropriate in the circumstances including where all conditions have not been complied with.

The amendment in clause 32(8) amends section 105H by inserting new sections 105H(10) and (11).

Currently, section 105H allows the Minister to declare certain land tenures to be local government tollway corridor land. Section 105J provides that land declared by the Minister under section 105H immediately becomes unallocated State land. Section 105J(4) then provides that a perpetual lease must issue to the State. The state must lease the land to the relevant local government (section 105J(6)). Sections 105H(9) and (10) allow the local government to sublease this land to another person and for further sub-subleases to be entered into. These provisions facilitate the lease of land by the State to the local government or a private proponent for the purpose of constructing, operating or maintaining a tollway.

The amendments in clause 32(8) and the amendments in clauses 34 and 35 apply where additional land is declared to be local government tollway corridor land (additional land) and this land is needed to increase the area of land previously declared to be local government tollway corridor land (the original land). In this situation, the perpetual lease of the original land (the existing perpetual lease) and the lease of the land to the local government (the existing local government lease) will be amended to include the additional land (the amended perpetual lease and the amended local government lease). The additional land may also be included in any existing subleases or sub-subleases of the original land under section 105J(9) or (10) (the existing leases). This will avoid the need for separate leases to be entered into for the additional land and simplify the administrative processes for amending the leases.

Clause 32(8) inserts new sections 105H(10) and (11). Section 105H(10) provides that the area of the original land may be increased by a subsequent declaration under section 105H(3) of additional land. Section 105H(11) provides for the following:

- the Minister is not required to state the terms of the perpetual lease when declaring the additional land to be local government tollway corridor land;
- the terms of the amended perpetual lease are the terms that applied to the existing perpetual lease immediately before the additional land was declared to be State toll road corridor land;
- the declaration of the additional land as local government tollway corridor land must state the lease reference number for the existing perpetual lease and the dealing number for the existing local government lease;
- if the additional land is to be included in an existing lease, the declaration must also state the dealing number for the relevant lease.

Clause 33 amends section 105I (Local government tollway corridor land on rail corridor land). The amendments in this clause are consequential on the amendment in clause 32(4).

Clause 34 amends section 105J (Effect on land of local government tollway corridor land declaration) to make that section subject to section 105JAA where the Minister declares additional land to be local government tollway corridor land.

Clause 35 inserts a new section 105JAA (Effect of declaration of additional local government tollway corridor land on leases) which sets out the effect on leases if the Minister declares additional land to be local government tollway corridor land.

Despite section 105J(4), section 105JAA(2)(a) provides that the existing perpetual lease is taken to have been amended to include the additional land for section 360A of the Land Act 1994. Section 105J(5) applies to the amended perpetual lease. However, for section 105J(5)(c), sections 105JAA(2)(b) and (c) provide that the amended perpetual lease is subject to any interests in the original land or the additional land which were continued in relation to the lease under section 105H(9)(a). Further, for section 105J(5)(d), sections 105JAA(2)(b) and (d) confirm that the amended perpetual lease is on the terms mentioned in section 105H(11)(b).

For section 105J(6), section 105JAA(2)(e) provides that the existing local government lease is taken to be amended to include the additional land. Despite section 105J(8)(a), the terms of the amended local government lease are the same as the terms of the existing local government lease immediately before the additional land was declared to be local government tollway corridor land (section 105JAA(2)(f)). For section 105J(8)(b) the amended local government lease is subject to any interests continued in relation to the original land and the additional land (section 105JAA(2)(g)).

Section 105JAA(2)(h) provides that the additional land may be included in an existing lease under section 105J(9) or (10). If this is to happen, section 105JAA(3)(a) provides that the existing lease is taken to be amended to include the additional land. Section 105JAA(2)(h) also confirms that the ability to lease the additional land under sections 105J(9) and (10) is not limited by the amendment. This allows for separate leases of the additional land to be entered into under those sections if required. This may be necessary if the additional land is to be leased to a person other than the person who holds a lease under section 105J(9) or (10) of the original land.

Sections 105JAA(2)(k) and 105JAA(3)(d) provide that the amended local government lease and the amended leases operate as if they had been originally issued or executed as amended. Sections 105JAA(2)(i) and 105JAA(3)(b) provide that the registration of the amended leases does not require the endorsement of the Minister administering the *Land Act 1994* under section 336(3) and (4) of that Act. The chief executive must lodge documents necessary to give effect to all amended leases in the leasehold register (sections 105JAA(2)(a)(ii), 105JAA(2)(j) and 105JAA(3)(c)). No fee is payable for lodging these documents (section 105JAA(4)).

Clause 36 amends section 106 (Ways of achieving objectives) by amending the objectives of the Act to include:

- new subsection 106(b)(iii), 'allow rail transport infrastructure to be constructed and maintained in an effective and efficient way'; and
- new subsection 106(b)(iv), 'otherwise allow rail transport infrastructure to be constructed and maintained in an effective and efficient way'.

The effect of these amendments will be to align the objectives of the Act for rail with the provisions already in place for road, busway and light rail.

Clause 37 amends section 108 (Purpose of pt 2) by omitting 'railway authorisation' and inserting 'railway or the chief executive authorisation' in its place.

Clause 38 amends section 109 (Definitions for pt 2) by inserting definitions of *authority* and *relevant person*. These definitions have the effect of including the chief executive in the provisions under part 2.

Clause 39 inserts new section 109A (Chief executive may enter land to investigate potential rail corridor) to clarify that the chief executive has the power to enter and investigate potential rail corridors. New section 109A provides the chief executive with clearer powers in relation to rail transport infrastructure, bringing rail into line with the provisions already in place for road, busway and light rail. New section 109(5) clarifies that for the purposes of section 109A, *land* does not include a structure or part of a structure used as a residence.

Clause 40 amends section 115 (Investigator to issue associated person with identification), omitting the references to 'investigator' and inserting references to 'relevant person' in their place. This will have the effect of clarifying that the chief executive, and not just an investigator, has powers under section 115.

Clause 41 amends section 116 (Pretending to be an investigator etc.), inserting new (c) and (d) to clarify that a person must not pretend to be the chief executive or a person authorised by the chief executive.

Clause 42 amends section 117 (Investigator to take care in acting under authority) by omitting the use of the word 'investigator' throughout and inserting 'relevant person' in its place. Following the divestment of QR Limited, this change was necessary in order to clarify that it is not just QR investigators, but also the chief executive, who has powers under section 117.

Clause 43 amends section 118 (Compensation payable by investigator) by omitting the use of the word 'investigator' throughout and inserting 'relevant person' in its place. Following the divestment of QR Limited, this change was necessary in order to clarify that it is not just QR investigators, but also the chief executive, who has powers under section 118.

Clause 45 inserts new subsection (1A) into section 247 (Chief Executive taken to be owner of rail corridor land and non-rail corridor land for particular circumstances under the Planning Act). The new subsection confirms that the chief executive is taken to be owner in instances where

evidence of a resource entitlement or resource allocation may be required for a development application under the *Sustainable Planning Regulation 2009*.

Clause 46 amends section 249 (Railways on particular roads) by expanding the definition of a relevant person to include the local government for a local government road as well as defining a local government road as a relevant road.

Clause 47 amends section 255 (Interfering with railway) to clarify a railway manager's power to protect a railway from interference. Clause 47 inserts 'in or on a railway corridor must not interfere with a railway under the control of a railway manager unless' into subsection (1), clarifying that the railway manager's powers can only be used in relation to interference with a railway that is under the control of a railway manager and occurs in or on the railway corridor itself. In order to correct a minor drafting error, 'railway's manager' is to be omitted from subsection (1)(a), with 'railway manager's' inserted in its place. Clause 47 amends subsection (1), inserting new (c) 'the interference is otherwise approved, authorised or permitted under this Act or another Act'. This will clarify that interference can be authorised not just under the provisions previously mentioned in subsection (1)(b), but under the *Transport Infrastructure Act 1994* or any other Act. New subsection (6) inserts the definition of *interfere with* from schedule 6, further clarifying that interference is only in relation to activities that occur in or on a railway corridor. New subsection (6) also inserts a definition of *railway corridor*, in order to clarify that section 255 relates to land subleased to the railway manager under section 240, commercial corridor land, future railway land under the control of a railway manager, rail tunnel easement or a railway crossing.

Clause 48 amends section 260 (Works for existing railways) by inserting a provision that confirms that a railway manager is not required to upgrade drainage and fencing for a railway that existed on 1 July 1995 when an owner or occupier of land adjoining a rail corridor changes the use of the land.

Clause 49 amends section 262 (Application of the Land Act 1994) by inserting words confirming that a concurrent lease is captured within the provision. A definition of a concurrent sublease for the section is also inserted.

Clause 50 amends section 303AB (Licence in relation to busway land or busway transport infrastructure), clarifying the type of land that can be

classed as *busway land* for the purposes of this section. The amendments also insert a definition of *private agreement land* for the busway chapter, enabling the chief executive to enter into an agreement about busway transport infrastructure with a person other than the State. This amendment will achieve consistency with the light rail chapter and is required due to the amendments to section 355A.

Clause 51 inserts new section 303AC (Compensation for licence granted under s 303AB), providing a compensation regime for owners or occupiers of land over which a busway licence is granted to compensate them for loss or damage caused by the grant of licence.

This loss or damage is intended to cover actual loss or costs or proven damage resulting from the grant of licence and is not intended to extend to indirect damages, future economic or consequential loss. New section 303AC(6) limits compensation to that which would be appropriate under resumption and is subject to any agreement with the chief executive. This may include any agreement under section 300, the agreement contemplated in the definition of *private agreement land*, a rental agreement or otherwise under the provisions of an Act.

Clause 52 amends section 308 (Powers of chief executive for busway transport infrastructure works contracts etc.) by replacing the phrase 'price competitive' with 'value for money'. This will bring the Act into line with Queensland's State Procurement Policy, which lists 'seeking value for money' as one of its objectives.

Clause 53 amends section 316 (Definitions for div 4) by amending the definition of *busway land* for chapter 9, part 4, division 4 (public utility plant), originally inserted by *Transport and Other Legislation Amendment Act (No. 2) 2010.* The amendments will clarify the type of land that is classified as busway land for the purposes of the public utility plant provisions. Section 316 allows the more effective management of public utility plant during construction and operation of busway, so that it is not reliant on the declaration of busway land under section 302. The amendments will allow the management of public utility plant on state land or private agreement land on which busway transport infrastructure is, or is proposed to be situated. The definition of *State land* inserted into schedule 6 by clause 65 also facilitates the intent of section 316.

Clause 54 amends section 352 (Definitions for pt 3) by inserting 'or a local government road' into paragraph (b) of the definition of *road* for chapter 10, part 3 (Establishment of light rail). This will have the effect of

including local government roads, as well as State-controlled roads, under the definition of *road* for part 3. This facilitates the establishment of the Gold Coast Rapid Transit light rail project where the light rail will travel over both State-controlled roads and roads controlled by the local authority.

Clause 55 amends section 354 (Effect on land of light rail declaration), providing for a simplified process for adding parcels of light rail land to a perpetual lease as they are declared under section 353.

Clause 56 will amend section 355A (Licence in relation to light rail land or infrastructure) in order to provide a more convenient and flexible tenure arrangement than provided for under the Land Act. The amendments will minimise administrative burdens for the State in the administration of transport land. Subsection (3A) provides a process to record the cancellation or surrender of the licence in the Titles Registry. Subsection (8) puts beyond doubt that the *Land Act 1994* does not apply to licences granted under section 355A. Subsection (9) clarifies the original intent of section 355A, that all state land could be available for the establishment of transport infrastructure. This enables the establishment of a continuous corridor for delivery for the light rail franchisee which does not depend on the underlying land tenure. In a linear transport project, there is a high probability that the underlying tenure could be land over which no tenure exists (for example, unallocated state land, road or watercourse). Section 355A licences make it possible for the State to deliver a consistent corridor for a public private partnership, such as the Gold Coast Light Rapid light rail franchise. Subsection (9) also inserts a definition of *private agreement land* for the section, as land on which infrastructure may be established, to recognise that the state enters into agreements with private land owners (for example, when transfers to the state are pending or there are retitling delays). The private land owner must agree to the establishment of the infrastructure on the land, as well as the granting of the licence by the chief executive under section 355A to a third party).

Clause 57 inserts a new definition of *State land* into schedule 6 (Dictionary) that supports sections 303AB, 316, 355A and 364. The definition clarifies the types of tenures that comprise State land, and includes those lands over which third parties may have some rights of occupancy or permissions. The definition is exhaustive because of the complexity of tenure of State land and the overlay of third party rights, for example, declarations for toll roads. However, state land does not include land held by the state on behalf of private third parties

Clause 57 inserts new section 355B which provides a compensation regime for owners or occupiers of land over which a light rail licence is granted to compensate them for loss or damage caused by the grant of licence.

This loss or damage is intended to cover actual loss or costs or proven damage resulting from the grant of licence and is not intended to extend to indirect damages, future economic or consequential loss. New section 355B(6) limits compensation to that which would be appropriate under resumption and is subject to any agreement with the chief executive. This may include any agreement under section 300, the agreement contemplated in the definition of *private agreement land*, a rental agreement or otherwise under the provisions of an Act.

Clause 58 omits section 358(7).

*Clause 5*9 amends section 360A (Powers of chief executive for light rail transport infrastructure works contracts etc.) by replacing the phrase 'price competitive' with 'value for money'. This will bring the Act into line with Queensland's State Procurement Policy, which lists 'seeking value for money' as one of its objectives.

Clause 60 amends section 364 (Definitions for div 3) by inserting a new definition of *light rail land*, originally inserted by *Transport and Other Legislation Amendment Act (No. 2) 2010.* The amendments will clarify the type of land that is classified as light rail land for the purposes of the public utility plant provisions. Section 364 allows the more effective management of public utility plant during construction and operation of light rail so that it is not reliant on the declaration of light rail land under section 353. The amendments will allow the management of public utility plant on state land or private agreement land on which light rail transport infrastructure is, or is proposed to be situated. The definition of *State land* inserted into schedule 6 by clause 65 also facilitates the intent of section 364.

Clause 61 omits chapter 10, part 4, division 4A, subdivision 3 (Interface management). The interface management regime is being moved from the light rail chapter to new general chapter 15A.

Clause 62 amends section 377R (Limited compensation for easements etc. or damage relating to overhead wiring for a light rail) by omitting the definition of *light rail overhead wiring damage* and inserting a new definition of *light rail overhead wiring damage* to clarify that it means physical damage to a structure caused by the construction of or affixation of overhead attachments for a light rail. Compensation arising from the affixation of overhead attachments is limited to physical damage to the

structure. This puts the responsibility onto the chief executive to ensure physical damage is remedied.

Clause 63 inserts new chapter 15A (Transport interface management) in order to extend the interface management provisions that are currently in place for light rail to busway.

New section 475ZF (Purpose of ch 15A) establishes that the purpose of Chapter 15A is to provide a regime for dealing with transport interface issues in interface management areas.

New section 475ZG (Definitions for ch 15A) establishes, for chapter 15A, definitions of *transport interface, transport interface agreement, transport interface issue*, *transport interface management area and transport interface object*.

New section 475ZH (Meaning and scope of transport interface agreement) establishes that a transport 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 transport interface agreement may be bound by other requirements, such as Building Management Statements, easements and precinct emergency plans.

New section 475ZI (Declaration of transport interface management area) provides that the chief executive may declare, by gazette notice, land or part of land to be a transport interface management area. Subsection 475ZI(2) requires the chief executive to consult before a declaration can be made. Subsections 475ZI(3) and (4) establish the arrangements for identifying land declared as a transport interface management area in a gazette notice. Subsection 475ZI(5) sets out the definition of *transport interface arrangements*.

New section 475ZJ (Particular persons may enter into transport interface agreement) identifies the categories of persons who may enter into a transport interface agreement.

New section 475ZK (Failure to enter into transport 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 transport interface agreement. The maximum penalty for subsection 475ZK(6) of 60 penalty units is consistent with section 377N (Failure to enter into light rail interface agreement) of the *Transport Infrastructure Act*

1994 and section 77 (Chief executive may give notice about failure to enter into interface agreement) of the *Transport (Rail Safety) Act 2010*.

New section 475ZL (Direction about arrangement that is to apply) is an enforcement provision for a failure to comply with a preliminary notice or direction under section 475ZK. The maximum penalty for non-compliance with a direction is 200 penalty units. This is consistent with section 377O (Direction about arrangement that is to apply) of the *Transport Infrastructure Act* 1994 for light rail, and section 78 (Chief executive may give direction about arrangement that is to apply) of the *Transport* (*Rail Safety) Act 2010*.

New section 475ZM (Guidelines about transport 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.

Clause 64 inserts a note in section 477C and refers to particular provisions of the *Land Act 1994* and concurrent subleases. The note identifies that a concurrent sublease is granted for declared projects under the *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009*. This clause is consequential to clause 49.

*Clause 6*5 inserts new section 477F (Watercourse crossings) to clarify the power of the chief executive to provide a continuous corridor over a watercourse.

New subsection 477F(1) states that the chief executive may survey and resurvey, construct, augment, improve, maintain, operate, replace, name and number watercourse crossings, subject to the *Transport Infrastructure Act 1994* or another Act.

Sections 29(4) and 45 of the *Transport Infrastructure Act 1994* are relevant to allow the local government to maintain and operate watercourse crossings and for the exercise of local laws.

Subsection 477F(2) sets out the definitions for section 477F, clarifying that *transport infrastructure* not only includes the definition of *transport infrastructure* under Schedule 6, but also active transport infrastructure (within the meaning of the *Transport Planning and Coordination Act 1994,* section 8A(3). Subsection (2) further clarifies that *watercourse* means land

that is the property of the State under the *Land Act 1994*, sections 9, 13(1) or (2), capturing both tidal and non-tidal land. Subsection (2) also states that the meaning of *watercourse crossing* is transport infrastructure that is or is proposed to be over, under, on or in a watercourse. A watercourse crossing does not, however, include a river crossing under the *City of Brisbane Act 2010*, section 77. New section 477F does not conflict with section 77 of the *City of Brisbane Act 2010,* as section 477F relates to infrastructure delivered by the department, and the City of Brisbane Act relates to river crossings delivered by the Brisbane City Council as local roads.

This provision does not detract from the provisions of section 39 of the *Transport Infrastructure Act 1994* (Watercourses and road works).

Watercourse crossings have also been included in the definition of *State land* in schedule 6 (Dictionary), which will provide the ability to extend and continue the transport corridor and any licences over watercourses.

Clause 66 contains new section 578 (Declaration and validation for watercourse crossings), a transitional provision which clarifies that the chief executive has, and always had, the powers conferred on the chief executive under section 477F, and the legislative authority to construct watercourse crossings.

Clause 65 also inserts section 477G (Chief executive may approve compliance management plan). Major linear infrastructure projects are required to obtain or comply with requirements of various standards, approvals, permits and authorities under transport or other legislation or local laws administered by a number of agencies and these may vary over the length of the infrastructure corridor.

These are time consuming to obtain and sometimes duplicate the same issues.

New section 477G will rationalise and streamline these processes by providing for a compliance management plan that establishes a regime for compliance with the various laws that regulate construction and infrastructure project activities. For example, projects necessarily involve activities which are required to be conducted outside of normal working hours for access, traffic or safety reasons. Such activities are the subject of default noise standards under the *Environment Protection Act 1994.* This Act provides for default standards, but there is no mechanism for approval for activities which fall outside these standards. As a result, constructors would breach that Act.

The department, constructors and franchisees require certainty about approvals for a more cost and time efficient project delivery. New section 477G facilitates a more streamlined approach to compliance matters which will result in improvements in the cost, timeliness and quality of projects being delivered to or by the State. Compliance management plans will allow the department to assess construction tenders for compliance matters.

Subsection 477G(1) states that 477G applies if a licence is, or is proposed to be, granted to a person (the relevant person) by the chief executive under the *Transport Infrastructure Act* 1994, to facilitate establishment and construction of transport infrastructure (for example, licences issued under section 355A of the *Transport Infrastructure Act* 1994).

Subsections (2) and (3) provide that the chief executive may request that the relevant person submit a plan (the *compliance management plan)*, or consent to a plan that the relevant person has submitted. This allows flexibility in negotiation during the bid and evaluation phase of major projects.

Subsection (4) provides that a compliance management plan may comprise one or more plans and address more than one compliance matter. For example, in the normal course or preparing for construction, a person may prepare a construction management plan. Sometimes, the preparation of a plan is required as part of the tender process. This plan may include the ways that the relevant person will be complying with environmental nuisance and requirements for traffic management and road closures simultaneously. Rather than making separate applications to different agencies for the same activity, this matter can be included in the compliance management plan.

Subsection (5) provides for approval of a compliance management plan if the chief executive is satisfied that the plan addresses the compliance matter or matters and after consultation with the agency that administers the compliance matter.

Subsection (6) provides that the chief executive gives notice of the approval of the plan with commencement and expiry dates and the approved compliance matter or matters. Subsections (6)(c) obviates the necessity for the relevant person to apply for the approvals that would normally be required for the approved compliance matters.

Subsection (7) deems compliance with the relevant law if the relevant person complies with the aspects of the approved compliance plan that satisfy the requirements of the relevant law for the approved compliance

matter. For example, if the approved compliance matter is road closure for construction purposes, and if all aspects of traffic management and safety as outlined in the plan are complied with, the relevant person is deemed to have complied with the relevant law.

Conversely, if a relevant person does not comply with an approved compliance matter, the relevant law applies. This allows the relevant administering authority to enforce the relevant law. Likewise, if a compliance matter is not stated as an approved compliance matter, then the relevant person must obtain approval or otherwise address the compliance matter.

Subsection (8) provides definitions for the terms introduced and used under section 477G.

The expression "for a licence" is not to be read as implying that the requirements to satisfy compliance matters are conditions of the licence, but rather, the activities for which the licence may be granted.

Clause 66 inserts transitional provisions for new section 477F (Watercourse crossings), section 255 (Interfering with railway), chapter 15A (Interface management) and section 485 (Internal review of approvals for interfering with railway).

As mentioned above, clause 66 will insert new section 578 (Declaration and validation for watercourse crossings) to clarify that the chief executive has, and always had, the powers conferred on the chief executive under section 477F.

New section 579 (Interfering with railway) will clarify that the amended section 255 will apply to any approvals sought, but not finally decided before the new section 255 commenced. This will capture any outstanding approvals under the newly amended section 255, rather than under the previous section 255.

New section 580 (Interface management) inserts transitional provisions for the transport interface management regime in new chapter 15A. New section 580 will clarify that a declaration of a light rail interface management area under repealed section 377L that is in effect immediately before the commencement of the new chapter 15A is taken to be a transport interface management area under new chapter 15A. Similarly, new section 580 states that notices etc. given under the previous light rail interface regime in chapter 10 are taken to have been given under the new general regime in chapter 15A.

New section 581 will clarify that the internal review provisions in sections 485 apply to a railway manager's refusal of an approval under section 255(1)(a) that was granted on or after the commencement of the bill. Such an approval is taken to be an original decision, even if approval was first sought before section 581 commenced. The review provisions under part 5 of the *Transport Planning and Coordination Act 1994* will also apply to review of section 255 decisions.

Clause 67 amends schedule 3 (Reviews and appeals) by inserting review and appeal provisions to the Queensland Civil and Administrative Tribunal (QCAT) review power for section 255(1)(a) and (2).

Clause 68 amends schedule 6 (Dictionary) by omitting the definitions of *interfere with* a railway, *light rail interface*, *light rail interface agreement*, *light rail interface issue* and *light rail interface management area* and insert definitions for *additional State toll road corridor land, additional State toll road corridor land declaration, additional local government tollway corridor land, additional local government tollway corridor land declaration, appropriate register, dealing number, lease reference number, light rail operator, original local government tollway corridor land, original State toll road corridor land*, *relevant person, railway crossing*, *state land*, *transport interface*, *transport agreement*, *transport interface issue*, *transport interface management area* and *transport interface object* and *watercourse crossing*. Subsection (3) omits 'section 377J' from item 2(b) in the definition of *light rail land*, inserting 'section 475ZG' in its place, to reflect the omission of the light rail interface regime in chapter 10 and the insertion of a transport interface regime in chapter 15A. Subsections (5) and (6) are amended to remove reference in the definition of rollingstock of a light rail vehicle and light rail respectively.

Part 10 Amendment of Transport Operations (Marine Safety) Act 1994

Clause 69 states that this part amends the *Transport Operations (Marine Safety) Act 1994*.

Clause 70 amends section 63I (Restricted release of information) to provide that the section deals only with the release of information in writing. Clause 69(2) omits section 63I(7).

Clause 71 inserts a new section 63J (Restricted oral release of particular information). Section 63J(1) authorises the chief executive to orally release certain information to a person. The information that may be released is information kept under the Act about the person's marine licence or marine history.

Subsection (2) provides that the chief executive may only release the information if satisfied that the person is the person to whom the information relates.

Clause 72 amends section 202E (Other limitations on ordering a restricted licence) to ensure that an application for a restricted licence under section 202D must not be granted if the person was convicted of a *middle alcohol limit* offence and the person was a person to whom the *no alcohol limit* applied.

Clause 73 amends schedule 6 (Dictionary) by inserting the definition of *marine history* which had previously been located in section 63I.

Part 11 Amendment of Transport Operations (Passenger Transport) Act 1994

Clause 74 states that this part amends the *Transport Operations (Passenger Transport) Act 1994*.

Clause 75 amends section 12 (What is operator accreditation) to exclude light rail operators from the requirement to hold operator accreditation on a similar basis to that currently in place for rail operators. The requirement for light rail operators to hold operator accreditation is unnecessary as these operators are required to comply with the *Transport (Rail Safety) Act 2010*, which accredits rail operations, including light rail operators.

Clause 76 amends section 24 (What is driver authorisation) to exclude drivers of a service using a fixed track vehicle provided by a light rail operator from the requirements to hold driver authorisation on a similar

basis to that currently in place for drivers of fixed track vehicles provided by railway operators. The requirement for light rail drivers to hold driver authorisation is unnecessary as these drivers are required to comply with the *Transport (Rail Safety) Act 2010* which accredits rail operations, including light rail operations.

Clause 77 amends section 28B (Driver authorisation–category B driver disqualifying offences) and inserts new subsections. Subsection (1) inserts new subsections (3A), (4A), (4B) and 5(A).

New subsection (3A) will mean that the chief executive will only be required to seek the Commissioner's advice on driver disqualifying offences that are also offences under the *Commission for Children and Young People and Child Guardian Act 2000*, that is, those offences that the Commissioner considers for granting a blue card. The exceptional cases of all other category B offences, such as dangerous operation of the vehicle and unlawful trafficking in weapons) will be considered only by the chief executive.

Current subsection (4) requires the chief executive to ask the Commissioner to Children and Young People and Child Guardian (the Commissioner) whether an exceptional case exists.

New subsection (4A) allows the chief executive to give the Commissioner the information, including a person's written representations about their category B driver disqualifying offence and any other information the chief executive reasonably considers necessary for the Commissioner to consider whether an exceptional case exists.

New subsection (4B) provides that the chief executive is taken to have made a request to the Commissioner under subsection (4) as to whether the Commissioner considers an exceptional case exists if the online validation service on the Commissioner's website confirms that a person's blue card is current.

New subsection (5A) provides that if the online validation service on the Commissioner's website confirms that a person's blue card is current the Commissioner is taken to have advised the chief executive that an exceptional case exists.

Subsection (2) inserts new wording into subsection (6) to provide that without limiting the chief executive's power to take exclusion action, if the chief executive requests the advice of the Commissioner, the chief executive must take the advice of the Commissioner into account and can

not be satisfied that an exceptional case exists if the Commissioner advises the chief executive that the Commissioner considers an exceptional case does not exist. Subsection (3) inserts new subsection (9), which defines the children's commission.

Clause 78 amends section 35H (Restricted release of information) to provide that the section deals only with the release of information in writing.

Clause 79 inserts new section 35I (Restricted oral release of particular information) which allows the chief executive to release of relevant information about the person in an oral form (subsection (1)). The information that may be released is information kept under the Act about the person's driver authorisation. Subsection (2) requires the chief executive to be satisfied that the person is the person to whom the information relates before the chief executive can release the information.

Clause 80 inserts new chapter 4A (Taxi service bailment agreements).

New section 35J (Purpose of ch 4A) states that the purpose of the new chapter 4A is to provide minimum requirements for taxi service bailment agreements.

New section 35K (Application of ch 4A) states that chapter 4A does not apply to a taxi operator who employs a taxi driver.

New section 35L (What is a taxi service bailment agreement) defines what a taxi service bailment agreement is for the purposes of chapter 4A. Subsection (1) defines a taxi service bailment agreement as an agreement between an accredited operator (of a taxi service licence) and an authorised driver (of a taxi service). The subsection requires the agreement to be: in writing, signed by both parties and to include information that is prescribed under regulation for the agreement. Subsection (2) outlines that a taxi service bailment agreement need not be limited to the bailment by the accredited operator of a particular taxi providing a taxi service. This subsection allows an operator and driver to have a taxi bailment agreement that applies to a number of different taxis operated by the operator.

New section 35M (Accredited operator must ensure taxi service bailment agreement entered into) makes it an offence (maximum penalty – 40 penalty units) for an operator of the taxi service if the operator does not have a taxi bailment agreement in place with the taxi driver.

New section 35N (Accredited operator may only enter into taxi service bailment agreement with set pay in arrangement in particular

circumstances) makes it an offence (maximum penalty – 40 penalty units) for an operator of the taxi service to enter into a taxi service bailment agreement with set pay in arrangements with a driver unless the driver has held driver authorisation for at least 12 months consecutively or cumulatively within five years before the agreement is entered into. New subsection (2) defines *set pay arrangement* and *set pay in amount*.

New section 35O (Accredited operator must give authorised driver copy of taxi service bailment agreement) makes it an offence (maximum penalty – 20 penalty units) for an operator if the operator does not give the taxi driver a copy of the taxi bailment agreement that the operator has entered into with the taxi driver.

New section 35P (Accredited operator must keep a copy of taxi service bailment agreement) makes it an offence (maximum penalty – 20 penalty units) for the operator if the operator does not keep a copy of the written bailment agreement that has been entered into with the taxi driver for the duration of the agreement and five years from the date it ends unless the operator has a reasonable excuse.

New section 35Q (Authorised driver must not drive taxi unless taxi service bailment agreement entered into) makes it an offence (maximum penalty – 10 penalty units) for a driver to drive a taxi for an operator if the driver does not have a taxi bailment agreement with the operator.

New section 35R (Authorised person may request particular information) allows an authorised person to ask an operator to give the authorised person a copy of the bailment agreement that the operator has entered into with the operator's taxi driver or statutory declarations that the operator has engaged the driver as an employee.

Subsection (2) provides that when making a request for a copy of a taxi service bailment agreement under subsection (1), the authorised officer must warn the accredited operator it is an offence to fail to comply with the request, unless the accredited operator has a reasonable excuse. Subsection (3) makes it an offence (maximum penalty – 20 penalty units) for the operator if the operator does not give the authorised person a copy of the bailment agreement unless the operator has a reasonable excuse. Subsection (4) provides examples of a reasonable excuse. Subsection (5) inserts definitions for *authorised person* and *statutory declaration*.

Clause 81 inserts new section 101A (Application of standards to light rail operators). New section 101A states that the standards do not apply to a light rail operator in relation to a public passenger service provided using a

fixed track vehicle. The application of the standards to light rail operators is unnecessary as these operators are required to comply with the *Transport (Rail Safety) Act 2010*, which accredits rail operations, including light rail operations.

Clause 82 amends section 129Y (Definitions for pt 4B). Subsection (1) removes 'definitions and replaces it with 'definition'. Subsection (2) removes the definitions for *exclusion order*, *proper officer*, *public transport network* and *relevant offence.*

Clause 83 amends section 129ZA (Court may make exclusion order) by replacing the criteria about which the court must be satisfied to make an exclusion order when a court is convicting a person on a transport indictable offence or a relevant offence. The amendment requires the court to be satisfied that unless the order is made, the person would pose an unacceptable risk to: the good order or management of the public transport network; or the safety and welfare of persons using the public transport network.

Clause 84 amends section 129ZB (Matters court must consider in deciding whether to make exclusion order) by inserting a further criteria the court must have regard to when making an exclusion order or the terms of an exclusion order. The further criteria inserted is whether the person is subject to a civil banning order.

This clause also amends the wording of subsection (b) by changing a further criteria of the court considering whether the making of the order would cause substantial hardship to the person or the persons family with relevant examples. The amendment to subsection (b) changes the wording 'would cause substantial' to 'is likely to cause undue' which changes the way the court gives regard to personal circumstances of a respondent to allow more flexibility in making an order or the terms of an order.

Clause 85 amends section 129ZC (Exclusion order to be explained if person before the court) by inserting a new subsection (1A). Subsection (1A) requires the person serving an exclusion order on a person who the court has made the order on and who did not appear before the court when the order was made to explain to the person: the purpose, terms and effect of the exclusion order; and, consequences of contravening the exclusion order; and that the exclusion order may be varied or revoked on application of the person or an authorised person.

Clause 86 amends section 129ZD (Amendment or revocation of exclusion order generally) to not allow a person to whom an exclusion order applies

to apply for an amendment or revocation of the order within three months of making the order (rather than the current six months).

Clause 87 amends section 129ZG (Offence to contravene exclusion order). Subsection (1) amends subsection (2)(c) which, without limiting what may constitute a reasonable excuse for contravention of an exclusion order, gives an example of a reasonable excuse. The amendment inserts reasonably into clause (c)(iii) - the contravention of the exclusion order relates reasonably to the changed circumstances in relation to which the exclusion variation order is sought.

Clause 88 inserts new part 4C (Powers of court to make civil banning orders for protecting the public or property) in chapter 11.

New section 129ZH (Definitions for pt 4C) provides the following definitions for *act of violence*, *authorised person*, *civil banning order*, *interim civil banning order* and *respondent*. The new definitions increase clarity and effectiveness of the sections which make reference to these definitions.

New section 129ZI (Purpose of pt 4C) provides for the making of civil banning orders to help ensure the safety and security of persons using the public transport network; preserve the amenity and condition of the public transport network; and protect revenue from the public transport network.

New section 129ZJ (What is a civil banning order) states what a civil banning order is. Subsection (1) states that a civil banning order is an order made in relation to an adult person that prohibits the person, until the stated date, from: using the public transport network for a period of not more than 12 months; or restricts, for a period of not more than 12 months, a person's use of the public transport network in certain ways. These ways are: the particular general route services or public transport infrastructure the person may use; the days or times or periods of the day when the person may use the public transport network; or the purpose for which the person may use the public transport network.

Subsection (2) requires that the stated date in the civil banning order (that is, the date until which the civil banning order applies) must be a date no later than 12 months after an interim civil banning order or the civil banning order is made. Subsection (3) allows the civil banning order to take effect when the order is made, if the respondent or the respondent's representative is present at the hearing; or, otherwise when the order is served on the respondent.

New section 129ZK (Who may apply for a civil banning order) allows an authorised person to apply to a Magistrates Court for civil banning order to be made in relation to a respondent.

New section 129ZL (Application for a civil banning order) states the requirements of a civil banning order application. Subsection (1) requires the civil banning order application to state the:

- name of the respondent;
- details of the order sought;
- information necessary to satisfy the court of the matters mentioned in section 129ZO(1) or (2);
- details of any previous application for a civil banning order and the outcome of the application;
- affidavits in response to the application may be filed under section 129ZM; and
- application may, under section 129ZN(2), be decided in the respondent's absence.

Subsection (2) requires that the application must be accompanied by any affidavit the authorised person intends to rely on in the hearing of the application. Subsection (3) requires that the application, with any accompanying affidavit, must be filed in the court and served on the respondent within 10 business days after being filed.

New section 129ZM (Response by respondent) allows the respondent to file affidavits for the hearing of the respondent's application. This section also requires the respondent to file the affidavits within 28 business days after the application is filed.

New section 129ZN (Hearing of application) sets out the requirements for hearing an application for a civil banning order. New subsection (1) allows the court to hear and decide an application; or adjourn the application, whether or not it makes it an interim banning order; or dismiss the application.

Subsection (2) allows the court, if a respondent fails to appear before the court that is to hear and decide the application for a civil banning order and the court is satisfied that a copy of the application has been served on the respondent, to: proceed to hear and decide the application in the absence of the respondent; or adjourn the application, whether or not it makes an interim civil banning order; or dismiss the application.

New section 129ZO (Making a civil banning order) provides for making a civil banning order. Subsection (1) allows the court to make a civil banning order if satisfied of the following:

- the respondent has, within the 12 months before the date of the application for civil banning order, committed a relevant act of violence or been served with 10 or more infringement notices for a relevant offence, or relevant offences (and the infringement notices have been dealt with under the *State Penalties Enforcement Act 1999,* part 3; and
- unless the order is made, the respondent would pose an unacceptable risk to: good order or management of the public transport network; or the safety and welfare of persons on the public transport network.

Subsection (2) provides a non-exhaustive list of matters that the court must have regard to in considering whether to make a civil banning order. The matters listed are self-explanatory. Subsection (3) does not limit the matters to which the court may have regard in considering whether or not to make, or the terms of, an exclusion order.

Subsection (4) allows the court to impose a condition it considers necessary on a civil banning order. Subsection (5) allows the court to make a civil banning order whether or not the respondent has been charged with, convicted of, acquitted of, or sentenced for, an offence arising out of the act of violence mentioned in subsection (1)(a)(i). Subsection (6) states that for the definition *dealt with* under subsection (7), a reference in the *State Penalties Enforcement Act 1999*, part 3 to an alleged offender is taken to be a reference to the respondent. Subsection (7) defines the term *dealt with* and *relevant act of violence*.

New section 129ZP (Interim civil banning order) provides for making an interim civil banning order. Subsection (1) states that the section applies if an authorised person has made an application for a civil banning order under section 173U. Subsection (2) allows the authorised person to apply to the court for an interim civil banning order to be in force until the court finally decides the application for the civil banning order or the application otherwise ends. Subsection (3) sets out the information that must be contained in an application for an interim civil banning order.

Subsection (4) states that the application for an interim banning order and accompanying affidavit must be filed and thereafter served on the respondent within five business days after the application is filed. Subsection (5) states that the respondent may file affidavits to be relied on by the respondent for the hearing of the application. Subsection (6)

requires the respondent to file the affidavits within 15 business days after the day the application is filed.

Subsection (7) states that the court may make an interim civil banning order if satisfied: the application for the interim civil banning order has been served on the respondent and there are reasonable grounds for believing there is a sufficient basis to make a civil banning order. Subsection (8) allows the court to make an interim civil banning order whether or not the respondent appears before the court or makes submissions. Subsection (9) states that an interim civil banning order may prohibit the respondent from doing, or attempting to do, anything that person may be prohibited from doing by a civil banning order. Subsection (10) states that an interim civil banning order takes effect from when it is made if the respondent or legal or other representative of the respondent is present at the hearing of the application; or otherwise, when the respondent is served with the order.

New section 129ZQ (Varying or revoking civil banning order for changes in circumstances) provides for varying or revoking a civil banning order because of change of circumstances. Subsection (1) states that an authorised person or a respondent may apply to a Magistrates Court to vary or revoke a civil banning order. Subsection (2) prevents the respondent from applying to vary or revoke a civil banning order until at least three months after the order is made unless leave of the court is granted.

Subsection (3) requires that the application must be in the approved form and be accompanied by an affidavit by the respondent outlining why the variation mentioned in the application is necessary; and the information or details of the information, the respondent intends to rely on for the application. Subsection (4) requires the applicant to give a copy of the application for varying or revoking a civil banning order to the authorised person (if the applicant is a respondent) or to the respondent (if the applicant is the authorised person) within 14 business days after the application is filed. Subsection (5) provides that the authorised person and respondent are each entitled to be heard at the hearing of the application. Subsection (6) states that if the respondent makes the application, subsection (3) does not prevent the respondent from producing further evidence at the hearing of the application.

Subsection (7) allows the court to vary or revoke a civil banning order only if the Court has regard to:

- the matters mentioned in section 129ZO as far as they are relevant to the application and whether the respondent has, without reasonable excuse under section 129ZZ, contravened the civil banning order; and
- is satisfied there has been a material change in circumstances of the respondent that justifies the variation or revocation; and
- considers the justice of the case requires the variation or revocation.

New section 129ZR (Court may make civil banning order by consent) provides for the Magistrates Court to make a civil banning order in a form agreed to by an authorised person and the respondent. Such an order may include only matters that may be dealt with under this part.

New section 129ZS (Orders must be explained) requires that a civil banning order or an interim banning order must be explained to the respondent in terms of the purpose and effect of the order; the consequences of contravening the order; and (for a civil banning order) that the order may be amended or revoked on the application of an authorised person or the respondent.

New section 129ZT (Civil banning order to be given to interested persons) requires that the proper officer of the Magistrates Court that makes a civil banning order or an order varying or revoking a civil banning order must, as soon as possible, provide a copy of the order in writing in the approved form to the respondent, the commission of the police service, the chief executive and the chief executive officer of the TransLink Transit Authority.

Subsection (2) requires that the written order must include the name of the respondent; the period for which the order applies; the prohibitions or restrictions that the order imposes. Subsection (3) provides that failure to comply with this section does not affect the validity of the order.

New section 129ZU (No costs to be awarded) provides that the Magistrates Court must not award costs on proceedings under this division unless the court dismisses the application as frivolous or vexatious or another abuse of process.

New section 129ZV (No filing fee is payable) provides that no fees are payable for making an application or filing another document under this part.

New section 129ZW (Standard of proof) provides that a question of fact in proceedings under this part, other than proceedings for an offence, is to be decided on the balance of probabilities.

New section 129ZX (General application of rules of court) provides that the Uniform Civil Procedure Rules 1999 apply to all applications made to the court under this Part to the extent that those rules are consistent with this part.

New section 129ZY (Interaction with criminal proceedings) sets out the interaction of the civil banning order regime with criminal proceedings. It allows for an application for a civil banning order or an interim banning order to be made, and a court to dispose of the application, even if the respondent has been charged with an offence arising out of the act of violence on which the application is based. A reference to the making (or refusal to make) the order or a revocation or variation; or the existence of current proceedings in which a civil banning order is sought against the respondent; or the fact that evidence of a particular nature or content was given in the proceedings in which the order, revocation or variation was made or refused or the current proceedings; is inadmissible in the trial of the person for an offence arising out of the act of violence on which the application for the order, revocation, or variation, or relevant to the current proceedings, is based.

This applies if the respondent against whom a civil banning order has been made; or a court refused to make a civil banning order; or proceedings are current in which a civil banning order or an order varying or revoking a civil banning order is sought, is charged with an offence arising out of an act of violence on which the application is based. It also applies if the respondent is charged with such an offence and the court has done either of the following relating to a civil banning order naming the person as the respondent: revoked, or refused to revoke, a civil banning order; varied, or refused to vary, the civil banning order, including the conditions imposed by the order.

To remove any doubt, the section expressly declares that, subject to this section, an application, proceeding or order under this Part in relation to the conduct of the respondent does not affect any proceeding for an offence against the respondent arising out of the same conduct. Further, the respondent may be punished for the offence arising out of the act of violence on which the application is based despite any order made against the respondent under this part.

New section 129ZZ (Contravention of civil banning order or interim civil banning order) makes it an offence to contravene, without reasonable excuse, a civil banning order or an interim civil banning order, which is

punishable by a maximum penalty of 40 penalty units or six months imprisonment.

Subsection (2) provides a self explanatory non-exhaustive list of what the court may consider is a reasonable excuse for a person to contravene a civil banning order for a interim civil banning order.

Subsection (3) provides that if the magistrate court convicts a person of an offence against subsection (1), the court may, in addition to or instead of sentencing the person under subsection (1), vary the civil banning order. Subsection (4) defines *civil banning order.*

New section 129ZZA (Appeals) provides that an authorised person or the respondent in relation to whom a decision of the Magistrates Court under this Part has been made may appeal against the decision to the District Court.

New section 129ZZB (Time for appeal) makes it clear that an appeal must be started within one month after the decision is made but that period may be extended on application to the District Court.

New section 129ZZC (Starting appeal) provides that a person starts an appeal by filing a notice of appeal with the registrar. The notice must be signed by the person or the person's lawyer and state, briefly and precisely, the grounds of the appeal. If the notice is not filed in the appeal period, the person must also file with the registrar a notice of application for extension of time for filing the notice.

New section 129ZZD (Registrar to give respondent copies of particular documents) requires the registrar to give the respondent to an appeal copies of the notice to appeal and notice of application for extension of time for filing a notice of appeal.

New section 129ZZE (Stay of operation of decision) makes it plain that an appeal does not stay the operation of the decision.

New section 129ZZF (District Court's powers on appeal) sets out the powers of the District Court on appeal. An appeal is by way of rehearing. The decision of the District Court upon an appeal is final and conclusive.

New section 129ZZG (No costs on appeal) provides that District Court must not award costs on an appeal under this division unless the court dismisses the application as frivolous or vexatious or another abuse of process.

New section 129ZZH (Service of documents) provides for the service of documents under this Part upon the respondent. It requires personal service but allows for substituted service if it appears to the court that it is not reasonably practicable to serve the document personally. If the document requires the appearance of the respondent in court, the person serving the document must explain the contents of the document to the respondent in language likely to be understood by the respondent.

New section 129ZZI (Police commissioner must provide information relevant to applications) enables the chief executive to ask the police commissioner to give the chief executive the information required to make (or consider making) an application for a civil banning order in relation to a person, for example the information may include: the criminal history of the person, police statements in relation to any act of violence committed by the person and statements of witnesses or victims of any act of violence committed by the person. The obligation of the commissioner to comply with such a request applies only to information in the possession of the commissioner or to which the commissioner has access.

Clause 89 amends section 148 (Inquiries about person's suitability to hold accreditation or authorisation). Subsection (1) amends section 148(2) to allow the chief executive to ask the police commissioner whether the person has been subject to an order for an offence mentioned in schedule 1A, part 1.

Subsection (2) inserts a new subsection (6) that requires the police commissioner to give the chief executive the following information under subsection (2) about a person who is or has been subject to a relevant order for an offence mentioned in schedule 1A, part 1:

- that the person is or has been subject to a relevant order from offence mentioned in schedule 1A, part 1;
- the duration and details of the disqualification order if the person is or has been subject to a relevant order that is a disqualification order under the CCYPCG Act;
- a brief description of the conduct that gave rise to the order and the duration and details of the order (including whether it is or was a temporary offender prohibition order or final offender prohibition order) if the person is or has been subject to an offender prohibition order.

Clause 90 inserts new section 148BA (Obtaining information from chief executive (corrective services)). New subsection (1) allows the chief

executive, by written notice, to ask the chief executive (corrective services) whether a person applying for driver authorisation or a person who holds driver authorisation is, or has been, subject to or becomes subject to the obligations of a relevant order mentioned in section 28A(b). That is, subject to the obligations or an order mentioned in section 170(b) of the *Commission for Children and Young People and Child Guardian Act 2000*.

New subsection (2) requires the chief executive (corrective services) to give the chief executive the information mentioned in subsection (1). New subsection (3) states that the information given by the chief executive (corrective services) must be in writing and state the person's name and that the person is, or has been, subject to the order mentioned in section 28B(b). New subsection (4) allows the chief executive (corrective services) and the chief executive to enter into a written arrangement by which the written notices are given under subsection (1). New subsection (5) allows the arrangements for written notices to be given electronically. New subsection (6) requires that if written notices under subsection (1) are given electronically then the arrangements must provide for limitations on who may access the information in the notices and on the purposes for which that information may be used. New subsection (7) authorises the disclosure of the information by the chief executive (corrective services) under this Act despite any other act or law imposing an obligation to maintain confidentiality about the information. New subsection (8) defines the chief executive (corrective services) as the chief executive of the Department in which the *Corrective Services Act 2006* is administered.

Clause 91 inserts a new part 11 (Transitional provisions for Transport and Other Legislation Amendment Act 2011) into chapter 13.

New section 189 (Application for amended provisions about driver disqualifying offences in relation to driver authorisations) allows for a postponement provision to apply in relation to an application for driver authorisation made but not decided before the commencement of this section. Also, the postponement provision applies to a person who holds driver authorisation granted or renewed before the commencement.

Subsection (3) defines *commencement* as the commencement of this section, *postponement provisions* as the provisions as in force on and from the commencement of section 28B, or schedule 3 definition, *category A driver disqualifying offence* or *category B driver disqualifying offence* or *category C driver disqualifying offence*.

New section 190 (Application of ch 11, pt 4B immediately before the commencement) states that chapter 11, part 4B applies in relation to a relevant application in relation to a person made but not decided before the commencement of this section. A relevant application under this section means an application under Chapter 11, part 4B for the following: an application order in relation to the person; an order varying or revoking an exclusion order in relation to a person.

New section 191 (Application of ch11, pt 4C) provides that chapter 11, part 4C does not apply to an act of violence committed by a person before the commencement of this section. Subsection (2) provides that chapter 11, part 4C does not apply in relation to an infringement notice served on a person before the commencement of this section.

Clause 92 amendment of schedule 1 (Disqualifying offences – provisions of the Criminal Code)). Subsection (1) omits from schedule 1, part 1, item 19 chapter 42 (Frauds by trustees and officers of companies and corporations–false accounting) of the Criminal Code. Chapter 42 was repealed by the *Criminal Code and Other Acts Amendment Act 2008* as its offences are covered by other stealing and fraud offences of the Code and subsequently schedule 1 of the Act. Subsection (2) inserts a new Part 3 (Provisions repealed by Criminal Code and Other Acts Amendment Act 2008) into schedule 1. The new Part lists item 1, chapter 42 (Frauds by trustees and officers of companies and corporations–false accounting).

Clause 93 amends schedule 1A (Driver disqualifying offences) by omitting '*definition driver disqualifying offence*' in the authorisation provision and replacing it with *category A driver disqualifying offence, category B driver disqualifying offence* and *category C driver disqualifying offence.*

Subsection (2) inserts in schedule 1A, part 1 a number of offences under the *Classification of Computer Games and Images Act 1995*, *Classification of Films Act 1991* and the *Classification of Publications Act 1991*.

Subsection (3) omits a number of Criminal Code offences in schedule 1A. These sections are reinserted in subsection (4). Subsection (4) inserts a number of Criminal Code offences. Subsection (5) inserts a number of offences under the Criminal Code (Cwth) and *Customs Act 1901* (Cwth). Inclusion of the *Commission for Children and Young People and Child Guardian Act 2000* disqualifying offences in schedule 1A will mean that individuals convicted of any such offences that include a term of imprisonment will be ineligible to hold driver authorisation. Such

individuals would not be eligible to hold a 'blue card' under the *Commission for Children and Young People and Child Guardian Act 2000*.

Subsection (6) omits the entry for the *Drugs Misuse Act 1986* from schedule 1A, Part 2. Subsection (7) omits item 17 from schedule 1A, part 3, division 1. Subsection (8) inserts chapter 42 (Frauds by trustees and officers of companies and corporations – false accounting) as division 3 into schedule 1A, part 3 (Provisions of the Criminal Code repealed by the Criminal Law Amendment Act 2008).

Clause 94 amends schedule 3 (Dictionary). Subsection (1) omits the definitions for *authorised person* and *relevant offence* for chapter 11, part 4 and chapter 11, part 4B. Subsection (2) inserts new definitions for *act of violence*, *authorised person*, *CCYPCG Act*, *civil banning order*, *civil banning variation order*, *copy*, *employment arrangement*, *interim civil banning order*, *light rail manager*, *light rail operator*, *proper officer*, *public transport network*, *relevant offence*, *relevant order* and *respondent*.

Subsection (3) amends Schedule 3 definition of *category A driver disqualifying offence* to include newly inserted offences in Schedule 1A for which an imprisonment order was or is imposed, or for which the person is subject to the obligations or an order mentioned in the *Commission for Children and Young People and Child Guardian Act 2000*, section 170(b), when a person was at least 17 years including new subsection (a) an offence against a provision of an Act.

Subsection (4) amends Schedule 3 definition of *category B driver disqualifying offence* to replace the *Commission for Children and Young People and Child Guardian Act 2000* with CCYPCG.

Subsection (5) amends Schedule 3 definition *category B driver disqualifying offence,* by replacing paragraph (b) with an offence mentioned in the definition *category A driver disqualifying offence*, paragraph (a), (b) or (c) if the offence was committed by a person when the person was under 17 years; and an imprisonment order was or is not imposed; and the person is not subject to any obligations or orders mentioned in the *Commission for Children and Young People and Child Guardian Act 2000*, section 170(b) for which the person is not subject to a relevant order.

Subsection (6) inserts the definition for *public transport infrastructure*.

Part 12 Amendment of Transport Operations (Road Use Management) Act 1995

Clause 95 states that this part amends the *Transport Operations (Road Use Management) Act 1995*.

Clause 96 amends section 31 (Power to stop private vehicles) by omitting the note in section 31(1).

Clause 97 amends section 49 (Power to require documents to be produced) by omitting the note in section 49(2D).

Clause 98 amends section 77 (Restricted release of person's prescribed authority and traffic history information) to provide that the section deals only with the release of information in writing.

Clause 99 inserts a new section 77AA (Restricted oral release of particular information). Section 77AA(1) authorises the chief executive to orally release certain information to a person. The information that may be released is information kept under the Act about the person's prescribed authority or traffic history. The terms *prescribed authority* and *traffic history* are defined in the Schedule 4 Dictionary to the Act. Section 77AA(2) provides that the chief executive may only release the information if satisfied that the person is the person to whom the information relates.

Clause 100 amends section 79 (Vehicle offences involving liquor or other drugs) to introduce a new *middle alcohol limit* offence and to amend provisions requiring a Magistrates Court to suspend a person's licence in certain situations.

Clause 100(2) inserts a new subsection 79(1F) which provides that it is an offence to drive, attempt to put into motion or be in charge of a motor vehicle, tram, train or vessel while the person is over the *middle alcohol limit* (a blood/breath alcohol concentration of 0.10 or above) but not over the *high alcohol limit* (a blood/breath alcohol concentration of 0.15 or above). The maximum penalty for this offence is 20 penalty units or up to six months imprisonment. A person may not be charged or convicted under this offence unless the offence was committed after the amendments commence (see section 20C of the *Acts Interpretation Act 1954*).

Clause 100(3) amends section 79(2) to provide that the offence in that section applies when a person is over the *general alcohol limit* (a

blood/breath alcohol concentration of 0.05 or above) but not over the new *middle alcohol limit*. Previously, the offence in this section applied when a person was over the *general alcohol limit* but not over the *high alcohol limit*.

Clauses 100(1), (4), (5), (6), (7), (8), (9) and (10) insert into relevant subsections of section 79 consequential references to the new offence in section 79(1F). The amendments will include reference to the new offence in provisions dealing with:

- liability for offences under section 79 where the person has been convicted of an earlier offence (sections 79(1D), (1E), (2F), (2G), (2H), (2I));
- convictions arising from the hearing of a complaint of an offence against section 79(1) (sections 79(4) and (4A));
- defendants manifesting an intention to refrain from driving a motor vehicle (section 79(6)); and
- the suspension of a driver licence where a defendant fails to appear in court (section 79(9)).

In relation to liability for repeat drink driving offences, the Act currently treats all drink driving offences, other than the offence under section 79(1), in the same manner. The amendments retain that pattern for repeat offences involving a *middle alcohol limit* offence. In particular, clause 100 inserts reference to the new *middle alcohol limit* offence under section 79(1F) wherever there is reference to drink driving offences other than under section 79(1).

Clause 100(11) provides that the suspension of a Queensland driver licence imposed under section 79(9) will end if the court orders that the suspension be revoked in the interests of justice. If the court does not make such an order, the suspension will end when the charge is heard and decided or otherwise disposed of.

Clause 100(12) amends section 79(9A) to clarify the interaction between section 79(9) and section 20(3AA) of the *Bail Act 1980*. Specifically, the amendment clarifies that a driver licence suspension under section 79(9) should not be imposed if the person is represented by their lawyer in accordance with the provisions of the *Bail Act 1980*.

Clause 100(13) amends section 79(10) by providing that the court need not impose a licence suspension under subsection (9) if it is satisfied the order should not be made in the interests of justice. This discretion is in addition

to the existing discretion to not impose a suspension order where the person was physically incapable of appearing before the court due to a medical or other circumstance.

Clause 100(14) inserts a new section 79(10AA). This section confirms that a Magistrates Court has and may exercise a discretion to revoke an order previously made under section 79(9) if it is in the interests of justice.

Clause 101 amends section 79A (When a person is over the limit) to define the *middle alcohol limit* for the Act. A person is over the *middle alcohol limit* if the concentration of alcohol in the person's blood is, or is more than, 100mg of alcohol in 100mL of blood or the concentration of alcohol in the person's breath is, or is more than 0.100g of alcohol in 210L of breath.

Clause 102 amends section 79B (Immediate suspension or disqualification) to provide that the section applies if a person is charged with the *middle alcohol limit* offence in section 79(1F) in relation to a motor vehicle.

This will ensure that a person charged with the *middle alcohol limit* offence will have their Queensland driver licence or authority to drive under a non-Queensland driver licence immediately suspended. If the person does not hold a driver licence, the person will be disqualified from obtaining or holding a Queensland driver licence.

Clause 103 amends section 79E (Court may allow particular person whose licence is suspended under section 79B to drive) by providing that the section applies to a person whose Queensland driver licence is suspended under section 79B because the person was charged with the *middle alcohol limit* offence in section 79(1F). This will enable the person to apply to the court for authority to continue driving on Queensland roads in stated circumstances if the person obtains a replacement licence under section 79F. The person must also be eligible and apply under a regulation as provided for in section 79E(1)(b).

Clause 104 amends section 79G (When person is disqualified while section 79E order applies) by inserting a reference to new section 79B(1)(ab). This will ensure that the operation of section 79G is extended to a person who obtains a section 79E order after being charged with the new *middle alcohol limit* offence.

Clause 105 amends section 80 (Breath and saliva tests, and analysis and laboratory tests). Clauses 105(2) and 105(6) amend the time period specified in sections 80(2) and 80(4) during which a police officer can

require a specimen of breath for a breath test. That requirement must now be made within three hours of the event which authorises the officer to make the requirement.

Clause 105(7) similarly amends the time period during which a police officer may require a person who is at a hospital for treatment to provide a specimen of breath for a breath test, or a specimen of blood for a laboratory test, from two hours to three hours.

Clauses 105(1), (3), (4), (5), (11), (12), (13) and (20) make amendments that are consequential on the amendments in clauses 105(2) and 105(6) discussed above. The amendments to sections 80(15G) and 80(16F) that are contained in clause 105(2) are also consequential amendments.

Clauses 105(8), (9) and (10) amend section 80(8J) to remove the requirement that the police officer operating a breath analysing instrument must not be the police officer who arrested or detained the person.

Clauses 105(14), (15), (16), (17), (18) and (19) make consequential amendments to the amendments in clauses 105(8), (9) and (10).

Clause 106 amends section 81 (Notices to offenders for certain first offences) to make a consequential amendment to the amendments in clause 100 which introduce the *middle alcohol limit* offence. The *general alcohol limit* offence in section 79(2) has been amended to only apply to a person who is not over the *middle alcohol limit*. As a result, the provisions of section 81(1)(b) are no longer required as the only people who can be charged with the offences set out in section 81(1)(a) are those who are under the *middle alcohol limit*.

Clause 107(3) amends section 86 (Disqualification of drivers of motor vehicles for certain offences) to provide that a person convicted of a *middle alcohol limit* offence under section 79(1F) with no relevant convictions in the previous five years must be disqualified from holding or obtaining a Queensland driver licence for a period of not less than three months and not more than 12 months.

Clause 107 also inserts reference to the new section 79(1F) into relevant subsections of section 86 that deal with the disqualification of drivers for drink driving and related offences.

In relation to disqualifications imposed for repeat drink driving offences, the Act currently treats all drink driving offences, other than the offence under section 79(1), in the same manner. The amendments retain that pattern for repeat offences involving a *middle alcohol limit* offence. In

particular, clause 107 inserts a reference to the new *middle alcohol limit* offence under section 79(1F) wherever there is reference to drink driving offences other than the offence under section 79(1).

Clause 108 amends section 87 (Issue of restricted licence to disqualified person). A person convicted of an offence against section 79(1F) may be granted a court order directing that the person be issued with a restricted licence if the person meets all requirements under section 87.

Clause 108(2) provides that if a person disqualified as a result of a conviction for an offence against section 79(1F) applies for a restricted licence, the immediate suspension of their licence under section 79B is not included in the reference to a *suspension* in section 87(5)(b). The immediate suspension will not, therefore, preclude them from obtaining a restricted licence.

Similarly, clause 108(3) provides that if the person held an open or provisional licence immediately prior to the disqualification, the person is considered to be holder of an open or provisional for the purpose of section 87(5)(f).

Clause 108(1) provides, however, that an application for a restricted licence from a person convicted under section 79(1F) must not be granted if the person is a person to whom the *no alcohol limit* applied.

Clause 109 amends section 90A (Definitions for ss 90B-90D) to provide that for sections 90B to 90D, a *designated offence* and a *drink driving offence* includes an offence against section 79(1F). Sections 90A to 90D provide that periods of multiple driver disqualifications are to take effect cumulatively and not concurrently for designated offences and drink driving offences.

Clause 110 amends section 91I (Definitions for pt 3B) to make a consequential amendment to the definition of *drink driving offence*. The amendment replaces a reference in that definition to section 79(2) with a reference to both section 79(2) and (1F) as a result of the introduction of the new *middle alcohol limit* offence.

Clause 111 amends section 91Q (Deciding application for interlock exemption) to include that the chief executive may grant an interlock exemption if:

- the nearest interlock installer is reasonably inaccessible from the person's principal place of residence; or

- the person's principal place of residence is outside both a prescribed radius from the nearest interlock installer and any area where a mobile interlock installation service is provided by a prescribed interlock installer.

Clause 112 omits section 170A (Expiry and amendment of certain provisions). Section 170A was designed to expire provisions of the Act relating to the enforcement of bus and transit lanes by authorised officers. Those powers are to be retained permanently and, as a result, section 170A is no longer required.

Clause 113 inserts a transitional provision to confirm that, despite the amendment of the *Transport Operations (Road Use Management—Driver Licensing) Regulation 2010* in Part 13 of the Bill, the Governor in Council's power to further amend or repeal that regulation is not affected.

Clause 114 amends schedule 4 (Dictionary) to insert a cross-reference to the definition of *middle alcohol limit* in section 79A.

Part 13 Amendment of Transport Operations (Road Use Management - Driver Licensing) Regulation 2010

Clause 115 states that this part amends the *Transport Operations (Road Use Management—Driver Licensing) Regulation 2010*.

Clause 116 amends the definition of *suspended licence* that appears in section 90 (Definitions for pt 13) to include a reference to new section 79B(1)(ab) of the *Transport Operations (Road Use Management) Act 1995* (inserted by clause 102 above). Under section 79B(1)(ab) a person who is charged with the *middle alcohol limit* offence will have their licence immediately suspended. This amendment is necessary to ensure the person is entitled to bring an application for a section 79E order allowing them to continue to drive in circumstances stated in the order.

Part 14 Amendment of Transport Planning and Coordination Act 1994

Clause 117 states that this part amends the *Transport Planning and Coordination Act 1994*.

Clause 118 amends section 27 (Power of chief executive to lease, sell or otherwise dispose of land) by inserting 'for a transport purpose' in the heading after 'land'.

Clause 119 will omit the current section 27A (Power of chief executive to dispose of land subject to easement) by inserting a new section 27A (Power of chief executive to dispose of land) in its place.

The department resumes properties as a constructing authority under the *Acquisition of Land Act 1967.* In some cases, the properties or parts of properties are required for less than seven years from the date of the acquisition. For example, a property may be required for construction of a tunnel and the property provides construction access. Upon completion of construction, the land is no longer required for the purpose for which it was acquired. Section 41(1) of the *Acquisition of Lands Act 1967* requires the chief executive to offer the land back to the former owner.

Currently, under the *Acquisition of Land Act 1967*, the department has to engage the valuer-general to obtain a valuation and then offer the property for sale to the former owner. In most cases, the former owner declines the buy-back offer, having used the compensation payment to establish their lives elsewhere. In many cases, the residual land is of such a size, shape or location that is no longer desirable for the former owner. The current process is time and resource consuming and in the vast majority of cases, does not result in a buy-back by the former owner.

New section 27A in the *Transport Planning and Coordination Act 1994* will replace the offer-back process under the *Acquisition of Land Act 1967*. New section 27A will improve and simplify the offering back process by asking the former owner if they are interested in a buy-back before any valuation is obtained. Only if the former owner expresses interest in the buy-back does the chief executive formulate the price.

The chief executive will determine the price based on valuations from a registered valuer, the current government land policies, and the existence of any easement over the land.

This is a far more efficient process for the Department of Transport and Main Roads, the Department of Environment and Resource Management and the former owner. The department is then able to deal with the land, for example, by aggregating smaller parcels and disposing of the land.

The effect is to enable the more efficient disposal of resumed land that is no longer required within seven years of resumption.

In some cases, an easement is reasonably required to protect the structural and operational integrity of infrastructure. For example, for emergency access or subterranean support of a tunnel. The support required by the easement may include some limitation on excavation of or loading on the land to prevent loss of support from asymmetric loading to the tunnel.

Where such an easement is required, the chief executive must register the easement over the land before offering the land to the former owner. This process for registration of easements is generally provided under the *Land Titles Act 1994*.

Where land is being offered back that is subject to an easement, the chief executive must notify the former owner that the land is subject to an easement and the terms of the easement. Ultimately, if the former owner wishes to buy back the land, the chief executive must take the easement into consideration in determining the price.

Clause 119 provides for new 27A(1) and (5), which sets the parameters for the application of the section, namely, when the chief executive intends to offer back resumed land within seven years of resumption.

New section 27A(2) provides that section 27A applies despite the *Acquisition of Land Act 1967*. Therefore, in respect of the subject matter of section 27A, section 27A prevails.

New section 27A(3) and (4) require the chief executive to lodge an easement over land prior to it being offered back where the chief executive reasonably believes it is necessary to ensure the structural and operational integrity of infrastructure.

New section 27A(6), and (9) to (12) provide the process for offering land back and includes the process to be used where the land being offered back is subject to an easement registered under this section.

New section 27A(7) and (8) allow for the disposal of land if the former owner e has not given notice within 28 days that they are interested in buying the land.

New section 27A(13) replicates section 41(3) of the *Acquisition of Land Act 1967* and is equivalent to the principle of bona fide purchaser without notice.

New section 27A(14) imports the definition of former owner from the *Acquisition of Land Act 1967* and defines *registered valuer.*

Part 15 Amendment of Transport (Rail Safety) Act 2010

Clause 120 states that this part amends the *Transport (Rail Safety) Act 2010.*

Clause 121 amends section 42 (Exemption may be granted) by replacing 'private isolated railway' with the term 'low risk railway', reflecting the intent of the legislation.

Clause 122 amends section 43 (Application for exemption) by replacing 'private isolated railway' with the term 'low risk railway', reflecting the intent of the legislation.

Clause 123 amends section 44 (What applicant must demonstrate and conditions that may be imposed) by removing the requirement for the chief executive to take into consideration whether the railway is to operate during daylight hours only. This is not regarded to be a primary indicator when assessing a "low risk railway".

Clause 124 inserts new Chapter 12A (Protection for whistleblowers). Section 267A (Application of part 12A) provides for non-public officers to report under this part and public officers to report under the *Public Interest Disclosure Act 2010*. This outlines the way in which whistleblower protection will apply to persons reporting breaches of the Act or other rail safety issues to the Rail Safety Regulator.

Section 267B (General limitation) states the whistleblower is not civilly or criminally liable for disclosing information to an official about a person's conduct, whether committed before or after the commencement of this

section, that the disclosing person honestly believes on reasonable grounds contravenes this Act. It also provides for absolute privilege as a defence and states the disclosing person does not contravene the Act, oath, rule of law or practice by making the disclosure, or breach the agreement by making the disclosure. An agreement includes a contract or deed.

Section 267C (Liability for conduct unaffected) states the liability of the whistleblower for his or her own conduct is not affected only because the whistleblower discloses the conduct to an official. However, a court may have regard to the disclosure if the whistleblower is prosecuted for an offence involving the conduct and the whistleblower's conduct was in compliance with an express instruction of the rail transport operator or someone authorised by the rail transport operator to give the instruction.

Clause 125 amends schedule 3 (Dictionary) by inserting a definition for *disclosing person, low risk railway* and *rail or road public crossing* and removes the definition of *private isolated railway.*