Queensland

Transport Infrastructure Act 1994

Current as at [Not applicable]

Indicative reprint note

This is an unofficial version of a reprint of this Act that incorporates all proposed amendments to the Act included in the Transport Legislation (Road Safety and Other Matters) Amendment Bill 2019. This indicative reprint has been prepared for information only—it is not an authorised reprint of the Act.

Amendments to this Act are also included in the Economic Development and Other Legislation Amendment Bill 2018 and the Personalised Transport Ombudsman Bill 2019. These proposed amendments are not included in this indicative reprint.

The point-in-time date for this indicative reprint is the introduction date for the Transport Legislation (Road Safety and Other Matters) Amendment Bill 2019—13 February 2019.

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Transport Infrastructure Act 1994

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Transport Infrastructure Act 1994

An Act about transport infrastructure and related matters

Chapter 1 Preliminary

1 Short title

This Act may be cited as the *Transport Infrastructure Act 1994*.

2 Objectives of this Act

(1) The overall objective of this Act is, consistent with the objectives of the *Transport Planning and Coordination Act 1994*, to provide a regime that allows for and encourages effective integrated planning and efficient management of a system of transport infrastructure.

(2) In particular, the objectives of this Act are—

(a) to allow the Government to have a strategic overview of the provision and operation of all transport infrastructure; and

(b) for roads—to establish a regime under which—

(i) a system of roads of national and State significance can be effectively planned and efficiently managed; and

(ii) influence can be exercised over the total road network in a way that contributes to overall transport efficiency; and

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(iii) account is taken of the need to provide adequate levels of safety, and community access to the road network; and

(iv) impacts on development from environmental emissions generated by State-controlled roads are addressed by the development; and

(c) for miscellaneous transport infrastructure—to establish a regime for the effective planning and efficient management of the infrastructure; and

(d) for rail—to establish a regime that—

(i) contributes to overall transport effectiveness and efficiency; and

(ii) provides for the safety of railways and persons at, on or near railways; and

(iii) contributes to lower transport costs by allowing the maximum flexibility in rail transport operations consistent with achieving safety objectives; and

(iv) allows railway managers and operators to make decisions on a commercial basis; and

(e) for ports—to establish a regime under which a ports system is provided and can be managed within an overall strategic framework; and

(f) for air—to promote basic access to air services, and regional development, by making provision about air transport infrastructure; and

(g) for public marine transport—to establish a regime under which—

(i) public marine facilities are effectively and efficiently managed; and

(ii) the use of waterways for transport purposes is effectively and efficiently managed; and

(h) for busways—to establish a regime that provides for—

(i) flexibility in the choice between private and public construction and management; and

(ii) land tenure arrangements allowing private management to be established on a sound financial basis; and

(iii) safely constructed, managed and operated infrastructure; and

(i) for busways and light rail—to establish a regime for each that—

(i) contributes to overall transport effectiveness and efficiency; and

(ii) is responsive to community needs; and

(iii) offers an appealing alternative to private transport in a way that takes into account overall environmental, economic and social influences of transport; and

(iv) addresses the challenges of future growth; and

(v) provides busway and light rail transport infrastructure and passenger services at a reasonable cost to the community and government; and

(vi) results in minimal interference with access to and from the road network; and

(vii) encourages the facilitation and use of public transport; and

(viii) gives priority to public transport over private vehicles; and

(ix) contributes to lower transport costs by allowing the maximum flexibility in busway and light rail transport operations consistent with achieving safety objectives; and

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(x) allows managers and operators of busways and light rail to make decisions on a commercial basis; and

(j) for light rail—to establish a regime that provides for—

(i) flexibility in the choice between private and public construction and management; and

(ii) land tenure arrangements allowing private management to be established on a sound financial basis; and

(iii) the safety of light rail, light rail land, light rail transport infrastructure and persons at, on or near light rail, light rail land or light rail transport infrastructure; and

(iv) the construction, management and operation of light rail transport infrastructure under a light rail franchise agreement.

3 Definitions—the dictionary

(1) A dictionary in schedule 6 defines particular words used in this Act.

(2) Definitions found elsewhere in the Act are signposted in the dictionary.

3A Notes in text

A note in the text of this Act is part of the Act.

4 State/Commonwealth agreements or arrangements

The powers and discretions conferred by this Act may be exercised in accordance with an agreement or arrangement between the State and the Commonwealth about the funding of transport infrastructure.

Chapter 2 Transport infrastructure strategies

5 Development of transport infrastructure strategies

(1) The chief executive must, from time to time, develop for the Minister's approval transport infrastructure strategies that are designed to give effect to the coordination plan in relation to transport infrastructure in accordance with the objectives of this Act.

(2) In developing transport infrastructure strategies, the chief executive must take reasonable steps to engage in public consultation.

(3) The Minister may, at any time, direct the chief executive to prepare new transport infrastructure strategies for the Minister's approval or to amend transport infrastructure strategies in the way the Minister directs.

(4) The Minister may approve transport infrastructure strategies that are submitted for approval or require the chief executive to amend the strategies in the way the Minister directs.

6 Contents of transport infrastructure strategies

(1) Transport infrastructure strategies must include—

(a) a statement of the specific objectives sought to be achieved; and

(b) proposals for the provision of transport infrastructure; and

(c) investment criteria for deciding priorities for government supported transport infrastructure between and within the different transport modes and options for financing the priorities; and

(d) criteria for deciding which roads should be controlled by the chief executive as State-controlled roads; and

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(e) appropriate performance indicators for deciding whether, and to what extent, the objectives of the strategies have been achieved.

(2) Transport infrastructure strategies must aim to provide an adequate framework for coordinating and integrating the provision of transport infrastructure as between the different transport modes.

(3) Transport infrastructure strategies must take account of agreements or arrangements between the State and the Commonwealth about the funding of transport infrastructure.

(4) If there is an integrated regional transport plan under the *Transport Planning and Coordination Act 1994* for an area, the transport infrastructure strategies for the area must not be inconsistent with, and must give effect to, the plan.

7 Tabling of transport infrastructure strategies

The Minister must cause transport infrastructure strategies, and each amendment of transport infrastructure strategies, approved by the Minister to be tabled in the Legislative Assembly.

Chapter 3 Obligations about transport infrastructure

8 Objective of chapter

In giving effect to the objective of this Act, this chapter is intended to ensure value for money for resources applied to the construction, maintenance and operation of transport infrastructure.

9 Obligations about government supported transport infrastructure

The chief executive must ensure that—

(a) the construction, maintenance and operation of all government supported transport infrastructure for which the chief executive is responsible is carried out in a way that, within the objective of this chapter—

(i) takes into account best practice and national benchmarks; and

(ii) promotes the safe transport of persons and goods; and

(iii) reduces adverse environmental impacts; and

(iv) encourages efficient and competitive behaviour in the construction and maintenance of transport infrastructure; and

(b) the construction, maintenance and operation of all government supported transport infrastructure for which the chief executive is responsible is carried out in accordance with standards—

(i) published by the chief executive; and

(ii) designed, within overall transport objectives, to achieve efficiency, affordable quality and cost effectiveness; and

(c) contracts that are let for the construction, maintenance or operation of transport infrastructure are designed in a way that encourages efficient performance by the contractor.

9A Beneficial assets

(1) For section 9(a)(iii), it is recognised that, although the operation or use of transport infrastructure may have significantly adverse environmental impacts, the operation

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and use are necessary for the community's environmental, social and economic wellbeing.

(2) However, it is intended that, within the objective of this chapter, any significantly adverse environmental impacts resulting from the operation or use of transport infrastructure be progressively reduced to the extent that it is practicable to do so.

10 Report on giving effect to s 9

Each annual report of the department must include a report on the way in which effect has been given to section 9 during the year to which the report relates.

Chapter 4 Implementation of transport infrastructure strategies

Part 1 Roads implementation programs

11 Development of roads implementation programs

(1) The chief executive must, each year, develop for the Minister's approval roads implementation programs for the year and for 1 or more later years.

(2) Roads implementation programs must include—

(a) a program of projects, and policies and financial provisions, for implementing the transport infrastructure strategies in relation to road transport infrastructure, including roads that are not State-controlled roads; and

(b) performance targets for road transport infrastructure.

(3) Roads implementation programs may include proposals to spend amounts on transport infrastructure other than road transport infrastructure if the spending would contribute to intermodal effectiveness and efficiency.

(4) In developing roads implementation programs, the chief executive must take reasonable steps to consult with local governments that, in the opinion of the chief executive, would be affected by the programs.

(5) Roads implementation programs are to be made publicly available in the way decided by the Minister.

(6) The Minister may at any time direct the chief executive to amend roads implementation programs.

(7) The Minister may approve roads implementation programs that are submitted for approval or require the chief executive to amend the programs in the way the Minister directs.

12 Consistency with transport infrastructure strategies

(1) Subject to directions of the Minister, roads implementation programs must be consistent with transport infrastructure strategies.

(2) If the Minister gives a direction under this section that results in roads implementation programs being inconsistent with transport infrastructure strategies, the Minister must cause a copy of the direction to be tabled in the Legislative Assembly within 5 sitting days after it is given.

13 Report on operation of roads implementation programs

Each annual report of the department must include a report on the operation of the roads implementation programs during the year to which the annual report relates.

Not authorised—indicative only

Not authorised—indicative only

Part 2 Rail implementation programs

14 Development of programs

(1) The chief executive must, each year, develop for the Minister's approval rail implementation programs for the year and for 1 or more later years for rail transport infrastructure that is government supported transport infrastructure.

(2) Rail implementation programs must include—

(a) a program of projects, and policies and budgets, for implementing the transport infrastructure strategies for rail transport infrastructure that is government supported transport infrastructure; and

(b) performance targets for the rail transport infrastructure.

(3) In developing rail implementation programs, the chief executive must take reasonable steps to—

(a) consult with local governments and railway managers and operators that the chief executive considers would be affected by the programs; and

(b) minimise conflict between the programs and expenditure programs of local governments and railway managers and operators.

(4) Rail implementation programs are to be made publicly available in the way decided by the Minister.

(5) The Minister may, at any time, direct the chief executive to amend a rail implementation program.

(6) The Minister may—

(a) approve a rail implementation program submitted for approval; or

(b) require the chief executive to amend a rail implementation program submitted for approval.

15 Consistency with transport infrastructure strategies

(1) Subject to the Minister's directions, a rail implementation program must be consistent with transport infrastructure strategies.

(2) If a direction of the Minister results in a rail implementation program being inconsistent with a transport infrastructure strategy, the Minister must table a copy of the direction in the Legislative Assembly within 5 sitting days after it is given.

16 Report on implementation of programs

Each annual report of the department must include a report on the implementation of the rail implementation program for the year of the report.

Part 3 Implementation programs for miscellaneous transport infrastructure

17 Development of implementation programs for miscellaneous transport infrastructure

(1) The chief executive must, each year, develop for the Minister's approval implementation programs for miscellaneous transport infrastructure for the year and for 1 or more later years.

(2) Implementation programs for miscellaneous transport infrastructure must include—

(a) a program of projects, and policies and budgets, for implementing the transport infrastructure strategies about the miscellaneous transport infrastructure covered by the programs; and

(b) performance targets for that miscellaneous transport infrastructure.

Not authorised—indicative only

Not authorised—indicative only

(3) Implementation programs for miscellaneous transport infrastructure may include proposals to spend amounts on transport infrastructure other than miscellaneous transport infrastructure if the spending would contribute to intermodal effectiveness and efficiency.

(4) In developing implementation programs for miscellaneous transport infrastructure, the chief executive must take reasonable steps to consult with local governments that, in the opinion of the chief executive, would be affected by the programs.

(5) Implementation programs for miscellaneous transport infrastructure are to be made publicly available in the way decided by the Minister.

(6) The Minister may at any time direct the chief executive to amend implementation programs for miscellaneous transport infrastructure.

(7) The Minister may approve implementation programs for miscellaneous transport infrastructure that are submitted for approval or require the chief executive to amend the programs in the way the Minister directs.

18 Consistency with transport infrastructure strategies

(1) Subject to directions of the Minister, implementation programs for miscellaneous transport infrastructure must be consistent with transport infrastructure strategies.

(2) If the Minister gives a direction under this section that results in implementation programs for miscellaneous transport infrastructure being inconsistent with transport infrastructure strategies, the Minister must cause a copy of the direction to be tabled in the Legislative Assembly within 5 sitting days after it is given.

19 Report on operation of implementation programs for miscellaneous transport infrastructure

Each annual report of the department must include a report on the operation of the implementation programs for miscellaneous transport infrastructure during the year to which the annual report relates.

Part 4 Transport government entities

20 Matters transport government entities must take into account

(1) In preparing a corporate plan or a statement of corporate intent under the *Government Owned Corporations Act 1993* or a strategic plan or operational plan under the *Queensland Rail Transit Authority Act 2013*, each rail government entity and each GOC port authority must take into account the transport infrastructure strategies.

(2) A rail government entity or a GOC port authority may spend amounts on transport infrastructure other than rail transport infrastructure or port infrastructure if the spending would contribute to effectiveness and efficiency.

Chapter 5 Air transport infrastructure

21 Air transport infrastructure funding programs

(1) The chief executive may develop, for the Minister's approval, an air transport infrastructure funding program.

(2) The purpose of a program is to facilitate basic access to air transport services and regional development.

Not authorised—indicative only

Not authorised—indicative only

(3) An air transport infrastructure funding program must include a program of government funding to facilitate the upgrading or building of runways, landing strips or ancillary works.

(4) The chief executive may, with the Minister's approval, amend an air transport infrastructure funding program.

(5) The chief executive may develop guidelines, consistent with the objectives of this Act and government policy, for assessing funding applications under a program.

(6) The chief executive must make any current program or guidelines publicly available.

22 Report on implementation of program

Each annual report of the department must include a report on the implementation of the air transport infrastructure funding program for the year of the report.

Chapter 6 Road transport infrastructure

Part 1 Preliminary

23 Scope of chapter

(1) To give effect to the objectives of this Act in relation to road transport infrastructure, the chief executive has, subject to the Minister and as required by this chapter—

(a) the function of influencing the total road network; and

(b) control over roads of State significance in the total road network, including roads of national significance that are managed in accordance with agreements or

arrangements between the State and the Commonwealth about the funding of road transport infrastructure.

(2) This chapter establishes a framework under which the construction, maintenance or operation of a State-controlled road can be done by the chief executive, or by a local government or someone else under agreements or arrangements with the chief executive.

Part 2 State-controlled roads

Division 1 Declaration of State-controlled roads

24 Declaration of State-controlled roads

(1) The Minister may, by gazette notice, declare a road or route, or part of a road or route, to be a State-controlled road.

Note—

See sections 84CB and 105JAB for the revocation of a declaration made under this subsection by the making of a declaration under section 84A(1) or 105H(3).

(2) A declaration must be consistent with criteria about the declaration of State-controlled roads in the transport infrastructure strategies.

(3) A declaration must enable the location of the road to be identified.

(4) The location may be identified by specifying—

(a) the starting and ending points of the road; and

(b) the alignment of the road; and

(c) the width of the road by reference to the constructed centre line of the road pavement or surface.

Not authorised—indicative only

Not authorised—indicative only

(5) Unless otherwise specified in a declaration, the width of a State-controlled road through a State reserve, State forest, timber reserve, vacant State land or pastoral holding is 30m each side of the centre line of the trafficked route.

25 Consultation before declaration

Before making or revoking a declaration under section 24, the Minister must be satisfied each local government that would, in the Minister's opinion, be affected by the proposed declaration or revocation has been—

(a) made aware of the proposed declaration or revocation; and

(b) given a reasonable opportunity to make submissions to the Minister on the proposed declaration or revocation.

26 State-controlled roads on rail corridor land

(1) This section applies if, under section 24, the Minister intends to declare a road or route, or part of a road or route, that crosses rail corridor land and continues on the other side of the rail corridor land to be a State-controlled road.

(2) Before making the declaration, the Minister must be satisfied—

(a) the department has consulted with the railway manager, if any, for the rail corridor land; and

(b) the railway manager has been given a reasonable opportunity to make submissions to the Minister on the declaration.

(3) If the Minister decides to declare the road or route, or part of the road or route, to be a State-controlled road, the Minister must, when making the declaration, declare in the gazette notice the part of the rail corridor land where it is crossed by the road or route to be a common area (***common area***) for the rail corridor land and the State-controlled road.

(4) When the common area is declared—

(a) the chief executive may construct, maintain and operate the State-controlled road on the common area in a way not inconsistent with its use as rail corridor land; and

(b) a railway manager for the rail corridor land may construct, maintain and operate a railway on the common area in a way not inconsistent with its use as State-controlled road; and

(c) the railway manager and its agents or employees, and the Authority and its agents or employees, do not have any liability for the State-controlled road or its use or operation on the common area.

Examples for paragraph (a)—

- a level crossing
- a bridge or other structure over a railway
- a bridge or other structure that allows the road to pass under the railway

(5) Unless the chief executive and a railway manager for the rail corridor land otherwise agree—

(a) subject to section 251, the chief executive is responsible for maintaining the State-controlled road on the common area; and

(b) if the State-controlled road on the common area stops being used, the chief executive is responsible for the cost of removing road transport infrastructure from the common area and restoring the railway.

(6) The State is taken not to be in breach of any of its obligations in a sublease of the rail corridor land between the State and the railway manager by—

(a) the Minister's declarations; or

(b) anything done by the chief executive under chapter 6 for the common area.

(7) After the common area is declared—

Not authorised—indicative only

Not authorised—indicative only

(a) the chief executive must promptly give a copy of the gazette notice of the declarations to the registrar of titles; and

(b) the registrar of titles must record the declarations on the relevant lease of the rail corridor land to the State and any affected sublease in the leasehold land register.

Division 2 Motorways

27 Declaration of motorways

(1) The Minister may, by gazette notice, declare that the whole or a part of a State-controlled road is a motorway.

(2) A declaration must enable the location of the motorway to be identified.

(3) Before making or revoking a declaration, the Minister must be satisfied each local government that would, in the Minister's opinion, be affected by the proposed declaration or revocation has been—

(a) made aware of the proposed declaration or revocation; and

(b) given a reasonable opportunity to make submissions to the Minister on the proposed declaration or revocation.

Division 3 Chief executive to have powers of a local government

28 Chief executive to have power of a local government for State-controlled roads

The chief executive may exercise, for a State-controlled road in the area of a local government, all of the powers that the local government may exercise for a local government road in the area.

Part 3 Construction, maintenance and operation

29 Powers of chief executive for road works contracts etc.

(1) The chief executive may, in accordance with the relevant roads implementation program, carry out, or enter into contracts for the State with other persons (including local governments, State government bodies and agencies of the Government of some other State or of a Territory) for the carrying out of—

(a) road works on a State-controlled road or on land that is intended to become a State-controlled road; or

(b) other works that contribute to the effectiveness and efficiency of the road network; or

(c) the operation of a State-controlled road.

(2) The chief executive may, for the State, carry out road works on a local government road in accordance with an agreement between the chief executive and the local government.

(3) The chief executive may, for the State, enter into contracts with other persons for road works to be carried out outside the State by the chief executive, a local government, a State government body or a contractor to the chief executive in accordance with an agreement between the State and the other State or Territory concerned.

(4) A contract with a local government under this section about the maintenance and operation of a State-controlled road may include arrangements about which powers of the local government are to be exercised by the chief executive and which of the powers are to be exercised by the local government for the State-controlled road.

(5) A local government may enter into a contract mentioned in subsection (1) even though the contract relates to works or operation outside the local government's area.

Not authorised—indicative only

Not authorised—indicative only

(6) The chief executive may, for the State, carry out, or enter into contracts with other persons to carry out, accommodation works that are necessary or convenient to be done as a result of road works, other than work done under subsection (7).

(7) The chief executive may, for the State, carry out, or enter into contracts for, works on or adjacent to a State-controlled road at the request of the owner of adjacent land on the basis that the owner provides consideration, whether monetary or otherwise, as agreed between the chief executive and the owner.

(8) This section does not prevent the chief executive carrying out, or entering into contracts for the carrying out, of road works of a minor or emergency nature.

30 Obligations in carrying out of works or operation of roads by the chief executive

In carrying out works, or the operation of roads, mentioned in section 29, the chief executive must ensure that the carrying out is done on a value for money basis.

31 Contracts to encourage efficiency

(1) In entering into contracts of the kind mentioned in section 29, the chief executive must ensure that open competition is encouraged.

(2) Subsection (1) does not apply to a contract with a person if the person is the sole invitee and enters into a price performance contract with the chief executive.

32 Cost sharing arrangements

The chief executive may arrange with another person (including a local government and a State government body) for the sharing by the chief executive with the other person of the cost of—

(a) acquisition of land for transport infrastructure; or

(b) road works on a State-controlled road; or

(c) other works that contribute to the effectiveness and efficiency of the road network; or

(d) the operation of a State-controlled road;

including all necessary preliminary costs associated with the acquisition, works or operation.

33 Prohibition on road works etc. on State-controlled roads

(1) A person must not, without lawful excuse or the written approval of the chief executive—

(a) carry out road works on a State-controlled road; or

(b) interfere with a State-controlled road or its operation.

Maximum penalty—200 penalty units.

(2) A person may apply to the chief executive for an approval mentioned in subsection (1).

Note—

See part 10 for general provisions about the application.

(~~2~~3) An approval may be subject to conditions decided by the chief executive.

(~~3~~4) A person must not contravene a condition that applies to the person under subsection (~~2).~~3).

Maximum penalty—200 penalty units.

(~~4~~5) Subsection (1) does not apply to a person who carries out maintenance of ancillary works and encroachments or landscaping that does not interfere with a State-controlled road or its operation.

(~~5~~6) An approval under subsection (1) for road works that are road access works may only be given if there is a permitted road access location under a decision in force under section 62(1) in relation to the road access works.

Not authorised—indicative only

Not authorised—indicative only

34 Offender to pay cost of remedying unauthorised works

(1) If a person carries out works contrary to section 33(1), the chief executive may—

(a) dismantle or alter the works; or

(b) remedy damage caused by the works.

(2) If the chief executive causes the works to be dismantled or altered or the damage to be remedied under subsection (1), the person is liable to pay to the chief executive the costs incurred by the chief executive.

35 Temporary occupation and use of land

(1) To carry out road works or accommodation works, the chief executive, or someone authorised in writing by the chief executive, (***temporary occupier***) may temporarily occupy and use land, including roads, and do anything on the land that is necessary or convenient to be done.

(2) Subsection (1) does not authorise the temporary occupier to extract quarry material from a watercourse in a wild river area.

(3) However, without limiting subsection (1), the subsection does authorise the chief executive to extract and use quarry material reserved to the State and administered under the *Forestry Act 1959* from land.

36 Notice of entry or permission to enter

(1) The person who is proposing to occupy and use land under section 35 (***proposed temporary occupier***) must—

(a) give at least 7 days written notice to the owner or occupier of the land and the following persons—

(i) if the land is land from which quarry material mentioned in section 35(3) is to be extracted—to the chief executive of the department in which the *Forestry Act 1959* is administered;

(ii) if the land is administered under the *Land Act 1994*—to the chief executive of the department in which that Act is administered; or

(b) obtain the written approval of the owner or occupier to the occupation or use.

(2) The notice must state—

(a) the road works and any accommodation works to be carried out; and

(b) the use proposed to be made of the land; and

(c) details of the things proposed to be done on the land; and

(d) an approximate period when the occupation or use is expected to continue; and

(e) if accommodation works are proposed to be carried out on the land—the owner or occupier may, within 7 days after the notice is given, make submissions to the proposed temporary occupier about the accommodation works proposed to be carried out on the land.

(3) A notice may be given under subsection (1) in relation to land even if it is proposed to resume the land for road works.

(4) If accommodation works are proposed to be carried out on the land, the proposed temporary occupier must consider any submissions that are made within the 7 days after the notice is given, before carrying out the accommodation works.

(5) After the end of 7 days after service of a notice under subsection (1), or with the agreement of the owner or occupier, the land may be entered and the road works specified in the notice carried out.

(6) If urgent remedial attention is required, subsection (1) does not apply but the person who is proposing to occupy or use the land must, if it is practicable, notify the owner or occupier of the land orally.

Not authorised—indicative only

Not authorised—indicative only

37 Compensation for physical damage from entry etc.

(1) An owner of land that is entered, occupied or used under section 35 may give a written notice to the chief executive claiming compensation for physical damage caused by the entry, occupation or use or for the taking or consumption of materials.

(2) Compensation is not payable unless a claim is received by the chief executive within 1 year after occupation or use has ended.

(3) However, the chief executive may allow a claim to be made at a later time.

(4) Compensation awarded under this section must not be more than the compensation that would have been awarded if the land had been acquired.

38 Fencing State-controlled roads

(1) The chief executive does not have to contribute to the fencing of the whole or a part of the boundary between land and—

(a) an existing State-controlled road; or

(b) a road or land that is intended to become a State-controlled road; or

(c) a widening or deviation of a State-controlled road involving the acquisition of land.

(2) However, subsection (1)(b) does not apply to an existing road if the land is substantially fenced and the presence of the road will make the fencing ineffective.

(3) Subsection (1)(c) does not apply if the previous boundary of the road was substantially fenced.

39 Watercourses and road works

(1) To carry out road works, the chief executive may—

(a) divert a watercourse; or

(b) construct a watercourse, whether temporary or permanent.

(2) In taking action under subsection (1), the chief executive must consider the effect that the action will have on the physical integrity and flow characteristics of the watercourse.

(3) The chief executive may enter and occupy private land under section 35 and carry out works that the chief executive considers necessary or desirable to enable a watercourse to operate effectively and efficiently.

(4) Subsection (1) does not authorise the chief executive, in a wild river area, to—

(a) divert or construct a watercourse; or

(b) extract quarry material from a watercourse.

Part 4 Relationship with local governments

40 Funds for works on, or operation of, local government roads etc.

(1) The chief executive may enter into an agreement with a local government under which the chief executive supplies funds to the local government for road works on a local government road, for other works that contribute to the effectiveness and efficiency of the road network or for the operation of a local government road.

(2) The agreement—

(a) must provide for the works or operation to be carried out in accordance with an agreement between the chief executive and the local government that is designed to ensure value for money in the application of the funds; and

(b) may be subject to other conditions.

Not authorised—indicative only

Not authorised—indicative only

41 Improvement of State-controlled road as an economic alternative to improvement of the local road network

If a local government concludes that improvements to a State-controlled road in its area would be beneficial to the local road network, the local government may make financial arrangements with the chief executive for the improvements to be made.

42 Impact of certain local government decisions on State-controlled roads

(1) A local government must obtain the chief executive's written approval if—

(a) it intends to carry out road works on a local government road or make changes to the management of a local government road; and

(b) the works or changes would—

(i) require the carrying out of road works on a State-controlled road; or

(ii) otherwise have a significant adverse impact on a State-controlled road; or

(iii) have a significant impact on the planning of a State-controlled road or a future State-controlled road.

(2) Subsection (1) does not apply if the chief executive or planning chief executive considered the works or changes as part of considering—

(a) an application for a development approval; or

(b) a change application.

(3) The chief executive may make guidelines to which local governments must have regard in deciding whether an approval of the chief executive under subsection (1) is required.

(4) An approval by the chief executive under subsection (1) may be subject to conditions, including a condition that consideration, whether monetary or otherwise, be given in compensation for the impact that the road works or changes will have.

(5) Subsection (1) does not apply if the conditions applied and enforced by the local government for the road works or changes comply with permission criteria fixed by the chief executive.

(6) The permission criteria may include conditions, including a condition that consideration, whether monetary or otherwise, be given in compensation for the impact that the road works or changes will have.

(7) A local government must comply with conditions that apply to it under this section.

(8) If a local government contravenes subsection (1) or a condition that applies to it under this section, the local government is liable to compensate the chief executive for the cost of road works to State-controlled roads that are reasonably required because of the contravention.

(9) An approval by the chief executive under subsection (1) must be given—

(a) within 21 days after receiving the application for approval; or

(b) within a longer period notified to the local government by the chief executive within the 21 day period.

(10) If—

(a) a local government applies for an approval under subsection (1); and

(b) the chief executive does not respond to the application within 21 days after receiving the application;

the chief executive is taken to have given approval at the end of the 21 days.

Not authorised—indicative only

Not authorised—indicative only

(11) In this section—

future State-controlled road means a road or land that the chief executive has notified the local government in writing is intended to become a State-controlled road.

(12) The chief executive must cause a copy of each notice under subsection (11) to be published in the gazette.

43 Distraction of traffic on motorways

(1) A local government must obtain the chief executive's written approval if it intends to approve the erection, alteration or operation of an advertising sign or other advertising device that would be—

(a) visible from a motorway; and

(b) beyond the boundaries of the motorway; and

(c) reasonably likely to create a traffic hazard for the motorway.

(2) The chief executive may make guidelines to which local governments must have regard in deciding whether an approval of the chief executive under subsection (1) is required for particular motorways.

(3) An approval by the chief executive under subsection (1) may be subject to conditions.

(4) Subsection (1) does not apply if the conditions applied by the local government to the erection, alteration or operation of the sign or device comply with permission criteria fixed by the chief executive.

(5) The permission criteria may include conditions.

(6) A local government must comply with conditions that apply to it under this section.

(7) An approval by the chief executive under subsection (1) must be given—

(a) within 21 days after receiving the application for approval; or

(b) within a longer period notified to the local government by the chief executive within the 21 day period.

(8) If—

(a) a local government applies for an approval under subsection (1); and

(b) the chief executive does not respond to the application within 21 days after receiving the application;

the chief executive is taken to have given approval at the end of the 21 days.

(9) In this section—

motorway includes a road or land that the chief executive has notified the local government in writing is intended to become a motorway.

(10) The chief executive must cause a copy of each notice under subsection (9) to be published in the gazette.

44 Effect of decisions of Planning and Environment Court

(1) If—

(a) an approval under section 42(1) is subject to conditions; and

(b) a local government imposes conditions on the road works or changes to which the approval relates; and

(c) the Planning and Environment Court amends the conditions mentioned in paragraph (b);

then, to the extent to which the amendment relates to the conditions of the approval under section 42(1), the conditions of the approval are taken to be amended accordingly.

(2) If—

Not authorised—indicative only

Not authorised—indicative only

(a) there are permission criteria relevant to road works or changes mentioned in section 42; and

(b) a local government imposes conditions on the road works or changes; and

(c) the Planning and Environment Court amends the conditions mentioned in paragraph (b);

then, to the extent to which the amendment relates to the permission criteria, the permission criteria are taken to be amended accordingly in their application to the road works or changes.

(3) If—

(a) an approval under section 43(1) is subject to conditions; and

(b) a local government imposes conditions on the relevant erection, alteration or operation of the sign or other device; and

(c) the Planning and Environment Court amends the conditions mentioned in paragraph (b);

then, to the extent to which the amendment relates to the conditions of the approval under section 43(1), the conditions of the approval are taken to be amended accordingly.

(4) If—

(a) there are permission criteria relevant to the erection, alteration or operation of a sign or other device mentioned in section 43; and

(b) a local government imposes conditions on the erection, alteration or operation; and

(c) the Planning and Environment Court amends the conditions mentioned in paragraph (b);

then, to the extent to which the amendment relates to the permission criteria, the permission criteria are taken to be amended accordingly in their application to the erection, alteration or operation.

(5) The Planning and Environment Court is not to amend conditions as mentioned in this section without giving the chief executive a chance to be heard.

45 Management of particular functions on State-controlled roads by local governments

(1) A local government may exercise, for a State-controlled road in its area, all the powers that it may exercise for a local government road in its area subject to the *Local Government Act 2009*, the *City of Brisbane Act 2010* and the *Transport Operations (Road Use Management) Act 1995*, section 66.

(2) However, if there is a contract of the kind mentioned in section 29(4) between the chief executive and a local government, the exercise of the powers must be done as required by the contract.

(3) If there is no contract of the kind mentioned in section 29(4) between the chief executive and a local government, the chief executive may direct the local government not to exercise any or some of its powers for a State-controlled road specified in the direction.

(4) A direction under subsection (3) may be subject to conditions.

(5) A local government must comply with directions or conditions under this section.

(6) The exercise of a power by a local government under this section is not a contravention of this Act.

Not authorised—indicative only

Not authorised—indicative only

Part 5 Management of State-controlled roads

Division 1 Prevention of damage and ensuring safety

46 Temporary restrictions on use of State-controlled roads

(1) If the chief executive considers that it is necessary to prevent damage to road transport infrastructure or to ensure the safety of road users and other persons, the chief executive may, by erecting or displaying a notice (a ***restricted road use notice***), declare that—

(a) a State-controlled road is temporarily closed to all traffic or traffic of a particular class; or

(b) a State-controlled road may only be used—

(i) at specified times; or

(ii) by particular classes of vehicles; or

(iii) in accordance with conditions (including restrictions on the weight of loads of vehicles) fixed by the chief executive.

(2) A restricted road use notice must—

(a) be erected or displayed on the road to which the notice applies; and

(b) be easily visible to persons using the road; and

(c) state how the use of the road is restricted; and

(d) state the maximum penalty for failing to comply with the notice.

(3) The chief executive must take reasonable steps to advertise a declaration under subsection (1) in a way the chief executive considers appropriate.

Examples of ways declaration may be advertised—

on the department's website, in a newspaper circulating generally in the relevant area, on television, on the radio

(4) A person must not drive past a restricted road use notice erected or displayed under subsection (1) in contravention of the notice, unless the person—

(a) has a reasonable excuse; or

(b) is acting in accordance with a written approval given by the chief executive or police commissioner; or

Note—

A written approval includes, for example, an approval given by text message, email or fax.

(c) is carrying out road works or inspecting a road for the chief executive, and the contravention is necessary for the person to carry out the road works or inspect the road.

Maximum penalty—200 penalty units.

(5) A person must not unlawfully tamper with a restricted road use notice erected or displayed under subsection (1).

Maximum penalty—200 penalty units.

(6) Neither the State nor the chief executive is liable for damage or injury caused directly because of a contravention of subsection (4).

(7) Also, civil liability does not attach to the chief executive or police commissioner for giving an approval mentioned in subsection (4)(b) if the approval was given in good faith without reckless disregard for the possible occurrence of the personal injury or loss or damage to property from which liability would arise if this subsection did not apply.

(8) If subsection (7) prevents civil liability attaching to the chief executive or police commissioner liability attaches instead to the State.

(9) In this section—

Not authorised—indicative only

Not authorised—indicative only

police commissioner means the commissioner of the police service appointed under the *Police Service Administration Act 1990*.

tamper, with a restricted road use notice erected or displayed under subsection (1), includes—

(a) damage, deface or destroy the notice; and

(b) move or remove the notice; and

(c) hinder the visibility of the notice.

47 Removal of materials etc.

(1) A person must not, without lawful excuse, damage, remove or interfere with naturally occurring materials, stockpiles of materials, watercourses, road works or ancillary works and encroachments on a State-controlled road.

Maximum penalty—200 penalty units.

(2) A person must not deposit rubbish or abandon goods or materials on a State-controlled road other than at places approved by, and under conditions fixed by, the chief executive.

Maximum penalty—200 penalty units.

48 Recovery of cost of damage

(1) If—

(a) a person intentionally, recklessly or negligently causes damage to road works or ancillary works and encroachments on a State-controlled road, whether or not an offence is committed; and

(b) the chief executive repairs the damage or replaces or reconstructs as necessary the road works or ancillary works and encroachments;

the person is liable to pay to the chief executive the cost of repair, replacement or reconstruction.

(2) If—

(a) the damage is caused by the operation of a vehicle; and

(b) the driver of the vehicle is unknown or can not be located;

the person in whose name the vehicle is registered is liable for the costs of repair, replacement or reconstruction for which the driver would be liable.

(3) Subsection (2) does not apply if the vehicle was being used without the agreement or knowledge of the person in whose name the vehicle is registered.

(4) If—

(a) a court finds a person guilty of an offence against this Act; and

(b) in committing the offence, the person caused damage to road works or ancillary works and encroachments;

the court may, in addition to imposing a penalty, order the person to pay an amount towards the cost of repairing the damage.

49 Assessment of impacts on State-controlled roads from certain activities

(1) This section applies if—

(a) the chief executive considers the carrying on of an activity prescribed under a regulation is having, or will have, a significant adverse impact on a State-controlled road; and

(b) the activity is not for—

(i) a significant project under the *State Development and Public Works Organisation Act 1971*; or

(ii) development categorised under a planning scheme as assessable development for the Planning Act; or

Not authorised—indicative only

Not authorised—indicative only

(iii) development in a priority development area under the *Economic Development Act 2012*.

(2) The chief executive may require the entity carrying out the activity to provide information, within a reasonable time, that will enable the chief executive to assess the impact.

(3) After assessing the impact, the chief executive may decide to do 1 or more of the following—

(a) give the entity a direction about the use of the road to lessen the impact;

(b) require the entity—

(i) to carry out works to lessen the impact; or

(ii) to pay an amount as compensation for the impact.

(4) The chief executive may require the works to be carried out or the amount to be paid before the impact commences or intensifies.

(5) The amount required to be paid under subsection (3)(b)(ii) is a debt payable to the chief executive and may be recovered in a court of competent jurisdiction.

(6) The regulation mentioned in subsection (1)(a)—

(a) must contain a process under which the chief executive's decision may be reviewed; and

(b) may contain a process for enforcing the decision.

49A Impact of particular development and State-controlled roads

(1) This section applies if the chief executive is—

(a) a referral agency for a development application; or

(b) the responsible entity or a referral agency for a change application.

(2) Also, this section has as its purpose ensuring—

(a) the efficient and safe management of State-controlled roads; and

(b) that development addresses impacts on the development from environmental emissions generated by State-controlled roads.

Examples of environmental emissions—

air particles, fumes, light, noise

(3) For performing the chief executive's functions as responsible entity or referral agency, the chief executive must consider the extent to which the proposed development satisfies the purpose mentioned in subsection (2).

(4) Subsection (3) is in addition to, and does not limit, the Planning Act, sections 55, 81 and 82.

Division 2 Ancillary works and encroachments and roadside facilities

Subdivision 1 General rules for ancillary works and encroachments

50 Ancillary works and encroachments

(1) The chief executive may construct, maintain, operate or conduct ancillary works and encroachments on a State-controlled road.

(2) A person, other than the chief executive, must not construct, maintain, operate or conduct ancillary works and encroachments on a State-controlled road unless the construction, maintenance, operation or conduct—

(a) is approved in writing by the chief executive; or

(b) conforms to requirements stated in a notice made by the chief executive under subsection (4); or

Not authorised—indicative only

Not authorised—indicative only

(c) is done as required by a written arrangement entered into with the chief executive; or

(d) is approved under this Act, other than this section; or

(e) is permitted under the *Land Act 1994*, the *Transport Operations (Road Use Management) Act 1995*, the *Economic Development Act 2012* or an Act about local government.

Example for paragraph (e)—

ancillary works and encroachments permitted under a local law made under the *Transport Operations (Road Use Management) Act 1995*, section 66

Maximum penalty—200 penalty units.

(3) A person may apply to the chief executive for an approval mentioned in subsection (2)(a).

Note—

See part 10 for general provisions about the application.

(4) For the purpose of subsection (2)(b), the chief executive may, by notice, permit the construction, maintenance, operation or conduct of ancillary works and encroachments that meet requirements stated in the notice.

(5) The chief executive must publish a notice made under subsection (4) on the department's website.

(6) An approval or requirements under this section may be subject to conditions (including conditions about the payment of fees and other charges) fixed by the chief executive.

(7) In this section—

arrangement includes an agreement, contract, deed, lease and permit.

~~**50 Ancillary works and encroachments**~~

~~(1) The chief executive may construct, maintain, operate or conduct ancillary works and encroachments on a State-controlled road.~~

~~(2) The chief executive may, by gazette notice, decide that specified ancillary works and encroachments must not be constructed, maintained, operated or conducted on State-controlled roads, or on State-controlled roads in a specified district, without the written approval of the chief executive.~~

~~(3) A person must not construct, maintain, operate or conduct ancillary works and encroachments on a State-controlled road contrary to a notice under subsection (2).~~

~~Maximum penalty—200 penalty units.~~

~~(4) Subsection (3) does not apply to the construction, maintenance, operation or conduct of ancillary works and encroachments on a State-controlled road if the construction, maintenance, operation or conduct—~~

~~(a) conforms to requirements specified by the chief executive by gazette notice; or~~

~~(b) is done as required by a contract entered into with the chief executive.~~

~~(5) An approval or requirements under this section may be subject to conditions (including conditions about the payment of fees and other charges) fixed by the chief executive.~~

~~(6) A thing is not done contrary to this section if it is permitted under the Land Act 1994, the Transport Operations (Road Use Management) Act 1995, the Economic Development Act 2012 or an Act about local government.~~

51 Presumptions about advertising notices

(1) This section applies to a prosecution for an offence against section 50(~~3) in relation to an advertising notice.~~2) in relation to an advertising notice.

(2) Each person whose product or service is advertised on the notice is taken to maintain the notice, unless the person proves the advertisement was placed without the person's knowledge or permission.

Not authorised—indicative only

Not authorised—indicative only

52 Alteration etc. of ancillary works and encroachments

(1) If ancillary works and encroachments are constructed, maintained, operated or conducted contrary to section 50, the chief executive may—

(a) cause them to be altered, relocated, made safe or removed; or

(b) for activities—direct that their conduct be altered or that they stop being conducted.

(2) A person who constructed, maintained or operated ancillary works and encroachments contrary to section 50 is liable to pay to the chief executive the cost of altering or relocating them, making them safe or removing them.

(3) If ancillary works and encroachments are removed under subsection (1), the chief executive may cause them to be sold or destroyed.

(3A) If the chief executive sells ancillary works and encroachments, the proceeds of the sale must be applied in the following order—

(a) in payment of the expenses reasonably incurred by the chief executive in removing and selling the ancillary works and encroachments;

(b) if there is an amount owing to an entity under a security interest registered for the ancillary works and encroachments under the *Personal Property Securities Act 2009* (Cwlth)—in payment of the amount owing under the security interest;

(c) the balance to the owner of the ancillary works and encroachments or, if the owner can not be found, to the consolidated fund.

(3B) A secured party can not enforce any security interest in the proceeds of sale against an entity to whom an amount is payable under subsection (3A)(a) or (b).

(4) If the chief executive is of the opinion that ancillary works and encroachments, or the use of ancillary works and

encroachments, that were constructed, maintained, operated or conducted on a State-controlled road under an approval, requirements or contract under section 50—

(a) by themselves or with other factors—

(i) are creating or may in the future create a traffic hazard; or

(ii) are reducing or may in the future reduce safety; or

(iii) are having or may in the future have an adverse effect on traffic operations; or

(b) require emergency action; or

(c) have become or may in the future become an obstacle to the carrying out of road works on the road or to the construction, augmentation, alteration or maintenance of public utility plant on the road;

the chief executive may cause them to be, or direct that they be, altered, relocated, made safe or removed or, for activities, direct that their conduct be altered or that they stop being conducted.

(5) A person must comply with a direction under this section.

Maximum penalty—200 penalty units.

(6) If ancillary works and encroachments are altered, relocated, made safe or removed because of a direction under subsection (4), the chief executive may enter into an agreement with the owner of the ancillary works and encroachments for making a contribution towards the cost of the alteration, relocation, making safe or removal.

(7) In this section—

secured party has the meaning given by the *Personal Property Securities Act 2009* (Cwlth), section 10.

Not authorised—indicative only

Not authorised—indicative only

Subdivision 2 Special arrangements about access

53 Definitions

In this subdivision—

declaration has the meaning given by section 54(1).

land, adjacent to a State-controlled road, includes land that is not adjacent to the road but is benefited by an easement, registered under the *Land Title Act 1994*—

(a) that is over land that is adjacent to the road; and

(b) that starts at the boundary between the land mentioned in paragraph (a) and the road.

owner includes a lessee under the*Land Act 1994*.

permitted road access location means a permitted road access location under a decision in force under section 62(1).

road access location means a location on a property boundary between land and a road for the entry or exit of traffic.

State-controlled road includes a road or land that the chief executive has notified the relevant local government in writing is intended to become a State-controlled road.

54 Limited access roads

(1) The chief executive, by gazette notice complying with sections 56 and 57, may declare part or all of a State-controlled road to be a limited access road (a ***declaration***).

(2) For each limited access road proposed to be declared, the chief executive must make a policy about the application of section 62 to access between the limited access road and adjacent land.

(3) For a State-controlled road that is a limited access road under section 516(1), the chief executive may—

(a) develop a policy about the application of section 62 to access between the road and adjacent land; and

(b) publish a gazette notice complying with section 57 about the policy.

(4) If a gazette notice mentioned in subsection (1) or (3) is published for a limited access road, the chief executive—

(a) must ensure there is always a policy for the road while it is a limited access road; and

(b) by gazette notice complying with section 57, may replace the policy as it exists at any time for the road; and

(c) without a gazette notice, may amend the policy under section 58; and

(d) must apply the policy as made, amended or replaced.

55 Local government to be consulted on proposed declaration or policy

The chief executive must, before giving effect to a proposal to publish a gazette notice to make, amend or revoke a declaration or to make, amend or replace a policy for a limited access road—

(a) notify each local government, that the chief executive considers is affected by the proposal, of the proposal; and

(b) give each notified local government a reasonable opportunity to make a submission to the chief executive on the proposal.

56 Information in s 54 gazette notice about a declaration

(1) A gazette notice under section 54(1) must state the reasons for the declaration.

Not authorised—indicative only

Not authorised—indicative only

(2) The gazette notice must also state that any person whose interests are affected by the declaration may—

(a) under section 485—ask for the decision to make the declaration (the ***original decision***) to be reviewed by the chief executive; and

(b) under the *Transport Planning and Coordination Act 1994*, part 5, division 2—apply for the original decision to be stayed; and

(c) under the *Transport Planning and Coordination Act 1994*, part 5, division 3—

(i) appeal against the chief executive's decision on the review (the ***reviewed decision***) to the court stated in schedule 3 for the decision; and

(ii) apply for the reviewed decision to be stayed.

57 Information in s 54 gazette notice about new or replacement policy

(1) A gazette notice under section 54(1), (3)(b) or (4)(b) for a limited access road must state the following—

(a) that there is a policy, that will be applied, about the application of section 62 to access between the road and adjacent land;

(b) if the policy is replacing another policy, that a policy identified in the notice is being replaced;

(c) the text of section 61;

(d) either—

(i) the text of the policy; or

(ii) a notice that the policy is available for inspection, free of charge, during business hours at stated places;

(e) that the policy may be amended at any time without a gazette notice if—

(i) the amendment merely changes or repeals specific provision for 1 or more particular properties; and

(ii) the owner or occupier of each property has been given written notice of the amendment;

(f) that any person whose interests are affected by a policy, or, if the policy is a replacement policy, any change of the policy being replaced, may—

(i) under section 485—ask for the decision about the policy to be applied (the ***original decision***) to be reviewed by the chief executive; and

(ii) under the *Transport Planning and Coordination Act 1994*, part 5, division 2—apply for the original decision to be stayed; and

(iii) under the *Transport Planning and Coordination Act 1994*, part 5, division 3—

(A) appeal against the chief executive's decision on the review (the ***reviewed decision***) to the court stated in schedule 3 for the decision; and

(B) apply for the reviewed decision to be stayed.

(2) If the policy for the limited access road is replacing another policy, the rights mentioned in subsection (1)(f) of a person mentioned in subsection (1)(f) are limited to any change the policy makes to the replaced policy.

58 Amendment of policy for a limited access road in limited circumstances

(1) The chief executive may amend a policy for a limited access, as opposed to replacing the policy, if—

(a) the amendment is a mere change or repeal of a specific provision for 1 or more particular properties; and

(b) the chief executive has given the owner or occupier of each property written notice of the amendment.

Not authorised—indicative only

Not authorised—indicative only

(2) The written notice mentioned in subsection (1)(b) must—

(a) state the notice is given under this section; and

(b) state the reasons for the decision; and

(c) be accompanied by an information notice for the decision.

59 Gazette notices must show location of limited access road

A gazette notice under section 54 must contain enough information to allow the location of the limited access road to be identified, for example, by including the following information—

(a) the points at which the limited access road starts or ends;

(b) its alignment;

(c) the boundaries of the State-controlled road to which limitation of access is to be applied.

60 Advertisement of gazette notice

The publishing of a gazette notice under section 54 must be advertised in a newspaper circulating in the area of the limited access road, or if there is no newspaper circulating in the area, in a newspaper circulating throughout the State.

61 Offence for limited access roads

A person must not construct or change a physical means of entry or exit for traffic between land and a limited access road without first obtaining a decision under section 62(1) that authorises the construction or change.

Maximum penalty—200 penalty units.

62 Management of access between individual properties and State-controlled roads

(1) The chief executive may, for 1 or more State-controlled roads and particular adjacent land, on application by a person with an interest in the land or the chief executive's own initiative, make a written decision stating any of the following—

(a) the location or locations at which access between the land and the road is permitted (a ***permitted road access location***);

(b) restrictions on the use of a permitted road access location;

(c) conditions on the use of a permitted road access location;

(d) where particular road access works, or a stated type of road access works, must be situated;

(e) conditions or restrictions on the use of road access works;

(f) that access at a location or locations is no longer permitted;

(g) that road access works for construction at a place must be of a stated type, standard or extent or be constructed in a stated way;

(h) that either the type, construction or extent of existing road access works must be changed in a way stated by the chief executive or the use of the works must be discontinued;

(i) that all access between the road and the land is prohibited or no longer prohibited;

(j) that stated existing road access works must be removed by the owner within a stated reasonable time;

(k) without limiting paragraphs (f) to (j), that anything mentioned in paragraphs (a) to (e) is changed or must be changed as stated in the decision.

Not authorised—indicative only

Not authorised—indicative only

Note—

See part 10 for general provisions about the application.

(2) A condition or restriction under subsection (1) may, for example, be any of the following—

(a) a prohibition on the use of the permitted road access location or road access works by pedestrians;

(b) a prohibition on turns by vehicles going in or out of the land;

(c) a restriction on the type and number of vehicles the owner, occupier or person who applied for the decision may allow to use the permitted road access location;

(d) a requirement that the owner, occupier or person who applied for the decision take reasonable, or stated reasonable, steps to ensure the permitted road access location is used by others in accordance with the conditions;

(e) a restriction on when the permitted road access location may be used.

(3) All or part of a decision may be limited to a stated period by reference to time or circumstance.

(4) A decision must be consistent with any policy under section 54 that is applicable to the decision.

62A Particular applications taken to be application for decision under s 62(1)

(1) This section applies if—

(a) a development application or a change application (each a ***planning application***) is made under the Planning Act; and

(b) the planning chief executive is—

(i) if the planning application is a development application—the assessment manager or a referral agency for the application; or

(ii) if the planning application is a change application—the responsible entity for the application; and

(c) the proposed development involves constructing or changing a vehicular access between the land the subject of the application (the ***subject land***) and a State-controlled road; and

(d) either—

(i) the chief executive has not made a decision under section 62(1) in relation to the subject land; or

(ii) the chief executive has made a decision under section 62(1) in relation to the subject land, but the chief executive did not take the proposed development into account in making the decision.

(2) The planning application is taken to also be an application for a decision under section 62(1).

(3) If the planning application lapses, or is changed or withdrawn, under the Planning Act, the application for a decision under section 62(1) also lapses, or is taken to have been changed or withdrawn.

(4) To remove any doubt, it is declared that this section applies even if the applicant for the planning application does not have an interest in the subject land.

(5) In this section—

proposed development means—

(a) for a development application—the development the subject of the application; or

(b) for a change application—the development the subject of the development approval to which the change application relates, as the development is proposed to be changed under the change application.

Not authorised—indicative only

Not authorised—indicative only

63 Request for information

(1) The chief executive may, by written notice, ask an applicant for a decision under section 62(1) for further information needed to decide the application.

(2) The applicant must give the requested information to the chief executive by—

(a) the day stated in the notice; or

(b) a later day agreed between the applicant and the chief executive.

(3) If the chief executive asks, under this section, for further information about an application, the chief executive may refuse to decide the application until the applicant gives the required information.

(4) However, subsection (3) does not apply to a planning application that, under section 62A(2), is taken to also be an application for a decision under section 62(1).

64 Decision under s 62(1) may impose construction or financial obligation

(1) A decision under section 62(1) made on an application may include either or both of the following conditions—

(a) that the applicant construct, pay for, or contribute to the cost of, stated road access works to be constructed to a stated standard;

(b) that the applicant maintain, pay for, or contribute to the cost of, maintaining stated road access works to a stated standard.

(2) However, this section does not apply if the application is made in compliance with a direction given under section 69.

65 Limitation on new decisions under s 62(1)

If there is a permitted road access location for land, the chief executive may make a new decision under section 62(1) for the land on the chief executive's own initiative only if the chief executive considers the permitted road access location, road access works associated with it, or the use of either of them—

(a) by themselves, or with other factors—

(i) are creating or may in the future create a traffic hazard; or

(ii) are reducing or may in the future reduce safety; or

(iii) are having or may in the future have an adverse effect on traffic operations; or

(b) require emergency action; or

(c) has become or may in the future become an obstacle to—

(i) the carrying out of road works on a State-controlled road; or

(ii) the construction, augmentation, alteration or maintenance of ancillary works and encroachments, or public utility plant, on a State-controlled road.

66 Road access works within State-controlled road

(1) To remove doubt, it is declared that—

(a) a decision under section 62(1) does not give rise to any rights whether beneficial or otherwise in any property that is on, or part of, a State-controlled road; and

(b) section 62 does not limit the chief executive's powers to change, remove, construct or deal with road access works to the extent they are on, or part of, a State-controlled road.

Not authorised—indicative only

Not authorised—indicative only

(2) Also, it is declared that the chief executive is not obliged to consider making or obliged to make a decision for a person under section 62(1) in relation to road access works to the extent they are on, or part of, a State-controlled road if none of the following circumstances relevant to the decision exist—

(a) action by the chief executive in substance changing the effect of a previous decision, binding on the person, in force under section 62(1) about anything mentioned in section 62(1)(a) to (c);

(b) action by the chief executive affecting a written agreement under this Act between the chief executive and the person bound by a decision under 62(1).

(3) Subsection (2) does not limit the discretion of the chief executive under section 62(1).

67 Notice of decision under s 62(1)

(1) If the chief executive makes a decision under section 62(1), the chief executive must give written notice of the decision to—

(a) if the decision is on a planning application that, under section 62A(2), is taken to also be an application for a decision under section 62(1)—the planning chief executive; or

(b) otherwise, each of the following persons—

(i) the owner of the land to which the decision relates;

(ii) the occupier of the land to which the decision relates;

(iii) any person who may have applied for the decision.

(2) The notice must state the following—

(a) the notice is given under this section;

(b) the reasons for the decision;

(c) if the notice is given to the planning chief executive—that the applicant for the planning application is bound by the decision because of section 70;

(d) if the notice is given to a person mentioned in subsection (1)(b)—that the person is bound by the decision because of section 70;

(e) the text of section 70;

(f) that there is no guarantee of the continuation of road access arrangements, as this depends on future traffic safety and efficiency circumstances.

(3) Subsection (4) applies if the decision is not a decision sought by—

(a) for a decision on a planning application mentioned in subsection (1)(a)—the applicant; or

(b) for any other decision—the person to whom the notice is given.

(4) The notice must be accompanied by an information notice for the decision.

(5) Subsections (6) to (8) apply if the decision is on a planning application mentioned in subsection (1)(a).

(6) The notice—

(a) must be given to the planning chief executive at least 1 business day before the end of the response period for the planning application; and

(b) must then be given by the planning chief executive to the applicant when the planning chief executive gives the applicant—

(i) a referral agency's response under the Planning Act for the planning application; or

(ii) a decision notice, under the Planning Act, section 63 or 83, for the planning application; and

Not authorised—indicative only

Not authorised—indicative only

(c) is taken to have been given to the applicant by the chief executive on the day the notice is given to the applicant by the planning chief executive.

(7) If a development approval, or changed development approval, is given for the planning application, the decision under section 62(1)—

(a) starts to have effect when the approval has effect; and

(b) stops having effect if the approval lapses or is cancelled; and

(c) replaces any earlier decision made under section 62(1) in relation to the land.

(8) If the planning application is refused, the decision under section 62(1) does not take effect.

(9) In this section—

decision-making period means—

(a) for a development application—the period allowed under the development assessment rules under the Planning Act for the assessment manager to decide the application, including any extension of that period under the rules; or

(b) for a change application—the period allowed under the development assessment rules under the Planning Act for the responsible entity to decide the application, including any extension of that period under the rules.

minor change application means a change application for a minor change to a development approval, as defined in the Planning Act.

referral agency's response period, for a development application, means the period stated in the development assessment rules under the Planning Act for complying with section 56(4) of that Act for the application, including any extension of that period under the rules.

response period, for a planning application, means—

(a) if the planning application is a development application for which the planning chief executive is a referral agency—the referral agency's response period for the application; or

(b) if the planning application is a development application for which the planning chief executive is the assessment manager or a change application other than a minor change application—the decision-making period for the application; or

(c) if the planning application is a minor change application—the period allowed under the Planning Act, section 81(5) or (6) for deciding the application, including any extension of that period under section 81(7) of that Act.

67A Request for copy of decision made under s 62(1)

(1) A person who has an interest in land may, in writing, ask the chief executive to give the person a copy of a decision in force under section 62(1) for the land.

(2) If a person asks the chief executive, under subsection (1), for a copy of a decision, the chief executive must give the person the copy.

68 Other persons may, by notice, also become bound by a decision under s 62(1)

(1) If a particular person is not already bound by a decision under section 62(1), the chief executive may—

(a) give the person a copy of the decision and of section 70; and

(b) notify the person, in writing, that the person is bound, under this section, by the decision.

(2) A person notified under subsection (1) is bound by the decision.

Not authorised—indicative only

Not authorised—indicative only

69 Direction to owner or occupier to apply for permitted road access location

(1) This section applies to land adjacent to a State-controlled road, if there is no decision in force under section 62(1) for the land.

(2) The chief executive may give a person who is the owner or occupier of the land a written direction that the person must do either or both of the following—

(a) within 28 days of the direction, apply under section 62(1) to have the chief executive make a decision about access between the land and the State-controlled road;

(b) not use, or permit anyone else to use, any road access location on any boundary between the land and the State-controlled road until the person has applied to the chief executive for a decision under section 62(1).

(3) The direction must state the penalty for not complying with the direction.

(4) A person given a direction under subsection (2) must comply with the direction.

Maximum penalty for subsection (4)—200 penalty units.

70 Offences about road access locations and road access works, relating to decisions under s 62(1)

(1) This section applies to a person who has been given notice under section 67 or 68 of a decision under section 62(1) about access between a State-controlled road and adjacent land.

(2) A person to whom this section applies must not—

(a) obtain access between the land and the State-controlled road other than at a location at which access is permitted under the decision; or

(b) obtain access using road access works to which the decision applies, if the works do not comply with the

decision and the noncompliance was within the person's control; or

(c) obtain any other access between the land and the road contrary to the decision; or

(d) use a road access location or road access works contrary to the decision; or

(e) contravene a condition stated in the decision; or

(f) permit another person to do a thing mentioned in paragraphs (a) to (e); or

(g) fail to remove road access works in accordance with the decision.

Maximum penalty—200 penalty units.

(3) However, subsection (2)(g) does not apply to a person who is bound by the decision because of section 68.

71 Chief executive may take steps to prevent or deal with contravention

(1) The chief executive may take reasonable and necessary steps to prevent, or protect the public from the consequences of, a person's contravention of section 70.

(2) If the chief executive takes steps under subsection (1), because a person contravenes or attempts to contravene section 70, the chief executive may recover from the person as a debt the reasonable costs of taking the steps.

72 Chief executive may supply or contribute to new access arrangements

(1) This section applies if a decision under section 62(1) has an effect mentioned in section 73(1) or (2), and section 74 does not prevent the payment of compensation or remove the chief executive's liability to pay compensation.

Not authorised—indicative only

Not authorised—indicative only

(2) The chief executive may enter into an agreement with the owner, or the owner and the occupier, of the land for—

(a) the supply by the chief executive of, or a contribution towards the supply by the chief executive of, alternative road access works between the State-controlled road and the adjacent land or between the adjacent land and another road; or

(b) the carrying out, or a contribution towards the carrying out, of other works in relation to the land.

73 Compensation

(1) This section applies if a decision under section 62(1) has the effect that all access between a State-controlled road and particular adjacent land is prohibited and—

(a) there is—

(i) no practical alternative road access location for the land, that is, the land becomes effectively landlocked; and

(ii) no previous decision in force under section 62(1) under which the land was effectively landlocked; or

(b) there is a permitted road access location between the land and the road, and paragraph (a) does not apply.

(2) This section also applies if a decision under section 62(1) has the effect of changing in substance the effect of a previous decision in force under section 62(1) about anything mentioned in section 62(1)(a) to (c) other than in a way that has the effect mentioned in subsection (1).

(3) However, this section only applies if the owner or occupier claiming compensation is adversely affected by the decision and—

(a) an agreement can not be reached with the chief executive under section 72; or

(b) the chief executive decides it is not practicable to take action under section 72.

(4) The owner or occupier may recover as a debt from the chief executive compensation for the diminution in value because of the prohibition or change.

(5) To remove doubt, it is declared that—

(a) in deciding compensation, access to and from the land that could be made available at other locations must be taken into account; and

(b) compensation is not payable to the extent that the diminution in value is attributable to a prohibition or change that affects—

(i) the supply of access to and from a traffic stream; or

(ii) road works mentioned in paragraph (b) of the definition *road access works*.

74 Cases where compensation not payable

(1) Compensation is payable under section 73 to a person only if a claim is given to the chief executive within 1 year after—

(a) the day when the relevant decision took effect; or

(b) the day when the person was first notified by the chief executive of the decision;

whichever is the later.

(2) However, the chief executive may allow a claim to be made at a later time.

(3) The chief executive is not liable to pay compensation for action under this subdivision in relation to land if action is taken to acquire the land.

(4) Also, the chief executive is not liable to pay compensation for the effect of a decision under section 62(1) made on an application by a person with an interest in the land in any of the following circumstances—

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Not authorised—indicative only

(a) if—

(i) there is a proposed, ongoing or completed development of the land that involves a material change of use of premises or reconfiguring a lot; and

(ii) the development was taken into account in making the decision, and the decision has the effect mentioned in section 73(1)(a);

(b) if—

(i) there is a proposed, ongoing or completed development of the land that—

(A) involves a material change of use of premises or reconfiguring a lot; or

(B) has had or is likely to have a significant impact on traffic safety or efficiency on the State-controlled road to which the decision relates; and

(ii) the development was taken into account in making the decision, and the decision has the effect mentioned in section 73(1)(b);

(c) if the decision has the effect mentioned in section 73(2).

(5) Subsection (4) applies whether or not the application results from action taken under section 69.

(5A) The chief executive is not liable to pay compensation for the effect of a decision under section 62(1) made in relation to a planning application—

(a) if—

(i) the planning application relates to a material change of use or reconfiguring a lot; and

(ii) the decision has the effect mentioned in section 73(1)(a) or (b); or

(b) if—

(i) the planning application relates to development that has had, or is likely to have, a significant impact on traffic safety or efficiency on the State-controlled road to which the decision relates; and

(ii) the decision has the effect mentioned in section 73(1)(b); or

(c) if the decision has the effect mentioned in section 73(2).

(6) In this section—

premises see the Planning Act, schedule 2.

75 Conditions in particular development approvals

For sections 72 to 74, if—

(a) a development approval given under the repealed *Sustainable Planning Act 2009* or the repealed *Integrated Planning Act 1997* includes conditions about access between land and a State-controlled road; and

(b) the conditions were included because of a referral agency's response given by the chief executive; and

(c) the development approval has not lapsed under the Planning Act;

a decision, that includes the conditions, is taken to be in force under section 62(1) for the proposed development of the land.

Subdivision 3 Roadside facilities

76 Roadside facilities

(1) The chief executive may supply, or enter into an agreement with another person for the supply of, roadside service centres, roadside rest facilities and other roadside businesses adjacent to or near State-controlled roads.

Not authorised—indicative only

Not authorised—indicative only

(2) The agreement may include—

(a) arrangements for supplying access to the facility from the road; and

(b) provision for payment of amounts to the chief executive, whether by lump sum or annual rental, in consideration for supplying the access or for supplying access to the traffic stream.

Division 3 Public utility plant on State-controlled roads

77 Application of div 3

This division does not apply to—

(a) public utility plant constructed under the *Electricity Act 1994*; or

(b) gas infrastructure, or the carrying out of gas infrastructure work, under the *Gas Supply Act 2003*; or

(c) water infrastructure, or the carrying out of water infrastructure work, under the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*.

78 Location

For the purposes of this division, the location of public utility plant on a State-controlled road includes the line, level and boundary of the plant on the road.

79 Chief executive's requirements for public utility plant

(1) The chief executive may, by written notice to the owner of public utility plant on a State-controlled road, make requirements about matters prescribed under a regulation in relation to the plant.

(2) The requirements may include the imposition of conditions, including conditions about the payment of a fee or other charge fixed by the chief executive.

80 Specification of chief executive's requirements about public utility plant

(1) The construction, augmentation, alteration or maintenance of public utility plant on a State-controlled road must be undertaken in accordance with the chief executive's requirements and at the expense of the owner of the plant.

(2) Road works on a State-controlled road made necessary by the construction, augmentation, alteration or maintenance of public utility plant on a State-controlled road must be undertaken in accordance with the chief executive's requirements and at the expense of the owner of the plant.

(3) Requirements mentioned in subsection (1) or (2) are to be notified in writing to the owner of the plant within a reasonable period.

81 Information by owner of public utility plant to chief executive

(1) A person who wants to take action mentioned in section 80 must give a written notice to the chief executive of the person's intention to carry out work on a State-controlled road within a reasonable time before taking the action.

(2) If public utility plant is constructed, augmented, altered or maintained on a State-controlled road, the owner of the plant must prepare records that adequately define the location of the plant on the road at the time of the construction, augmentation, alteration or maintenance of the plant.

(3) The owner of public utility plant on a State-controlled road must, if asked by the chief executive, supply information to the chief executive to define adequately the location of the plant in a specified area.

Not authorised—indicative only

Not authorised—indicative only

Maximum penalty for subsection (3)—40 penalty units.

82 Liability for damage or expenses

(1) Unless the chief executive otherwise agrees, the chief executive is not liable for damage caused by the chief executive to public utility plant on a State-controlled road if—

(a) the chief executive had, before the damage was caused, asked for information under section 81(3) from the owner of the plant and—

(i) the owner had not, within a reasonable time, complied with the request; and

(ii) the damage was caused because of the failure to comply with the request; or

(b) information supplied to the chief executive under section 81(3) does not define in adequate detail the location of the plant and the damage was caused because of the failure to define in adequate detail the location of the plant; or

(c) the damage was caused because of the plant having been constructed, augmented, altered or maintained other than under the chief executive's requirements under this division.

(2) If the chief executive incurs additional expense in carrying out road works on a State-controlled road because—

(a) the owner of public utility plant had not supplied within a reasonable time information asked for by the chief executive under section 81(3); or

(b) information supplied to the chief executive did not define in adequate detail the location of public utility plant; or

(c) public utility plant had not been constructed, augmented, altered or maintained under the chief executive's requirements;

the owner of the plant is liable to pay to the chief executive the additional expense.

(3) If the construction of road works by or for the chief executive requires the removal or replacement of public utility plant on a State-controlled road, the chief executive can not be compelled to approve the replacement or reconstruction of the plant in its previous location and form.

(4) If the chief executive approves the replacement or reconstruction of plant, the replacement or reconstruction must be done under the chief executive's requirements.

83 Chief executive and owner of public utility plant may share costs

The chief executive may arrange with the owner of public utility plant (whether existing or proposed) for the sharing by the chief executive and the owner of the cost of all or any of the following—

(a) acquisition of land associated with the plant;

(b) construction, augmentation, alteration or maintenance of the plant;

(c) construction of road works affected by the plant;

including all necessary preliminary costs associated with the acquisition, construction, augmentation, alteration or maintenance.

Not authorised—indicative only

Not authorised—indicative only

Part 6 State toll road corridor land and franchised roads

Division 1 Preliminary

84 Objectives of part

The objectives of this part are—

(a) to assist and encourage private investment in the construction, maintenance and operation of road transport infrastructure; and

(b) by the involvement of private investment, to enable road transport infrastructure projects to be undertaken at an earlier time than would otherwise be possible; and

(c) to provide an appropriate management structure for the construction, maintenance and operation of road transport infrastructure on a commercial basis.

Division 2 State toll road corridor land

84A Declaration of land as State toll road corridor land

(1) The Minister may, by gazette notice, declare the following land to be State toll road corridor land—

(a) non-freehold land (including a road or reserve, or part of a road or reserve, under the *Land Act 1994*) on or within which road transport infrastructure or rail transport infrastructure is situated;

(b) land, not mentioned in paragraph (a), that is held by the State.

(2) The land must be—

(a) identified specifically in the gazette notice; or

(b) identified generally in the gazette notice, and identified specifically in documents described in the gazette notice and available to be read at an office of the department mentioned in the gazette notice.

(3) The declaration of land as State toll road corridor land may be subject to conditions, included in the declaration under subsection (1), the Minister considers necessary or desirable in the circumstances.

(4) The Minister must, in a declaration under subsection (1), declare the terms for section 84C(5)(d) that are to apply to the lease of the land to the State under section 84C(4)(a).

(5) The terms mentioned in subsection (4) must—

(a) have been agreed to by the Minister administering the *Land Act 1994*; and

(b) be consistent with section 84C(5)(a) to (c).

(6) The Minister may, in a declaration under subsection (1), declare that a stated interest in land declared to be State toll road corridor land continues in relation to—

(a) the lease of the land to the State under section 84C(4)(a); or

(b) a lease of the land by the State to another person under section 84C(6).

(6A) If land has been declared under subsection (1) (the ***original State toll road corridor land***), the area of the original State toll road corridor land may be increased by a subsequent declaration of land under subsection (1) (the ***additional State toll road corridor land***).

(6B) If a declaration of land under subsection (1) (the ***additional State toll road corridor land declaration***) increases the area of the original State toll road corridor land—

(a) subsections (4) and (5) do not apply to the additional State toll road corridor land declaration; and

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(b) for section 84C(5)(d), the terms that apply to the lease of the land to the State are the terms for the lease of the original State toll road corridor land applying immediately before the additional State toll road corridor land declaration is made; and

(c) the additional State toll road corridor land declaration must state—

(i) the lease reference number for the lease under section 84C(4) of the original State toll corridor land; and

(ii) if the additional State toll road corridor land is to be added to a lease under section 84C(6) or (6A) of the original State toll road corridor land—the dealing number for the lease.

Note—

For the effect of a declaration of additional State toll road corridor land on leases, see sections 84C and 84CA.

(7) In this section—

non-freehold land means non-freehold land under the *Land Act 1994*.

84B State toll road corridor land on rail corridor land

(1) This section applies if—

(a) the Minister intends to declare land to be State toll road corridor land under section 84A; and

(b) a level crossing is situated partly on the land and partly on rail corridor land.

(2) Before making the declaration, the Minister must be satisfied—

(a) the department has consulted with the railway manager, if any, for the rail corridor land; and

(b) the railway manager has been given a reasonable opportunity to make submissions to the Minister about the proposed declaration.

(3) If the Minister decides to declare the land to be State toll road corridor land, the declaration must also declare the part of the rail corridor land on which the level crossing is partly situated to be a common area (the ***common area***) for the rail corridor land and the State toll road corridor land.

(4) When the common area is declared—

(a) the relevant person may construct, maintain and operate a toll road, and transport infrastructure relating to a toll road, on the common area in a way not inconsistent with its use as rail corridor land; and

Examples for paragraph (a)—

- filling in a pothole on a toll road
- erecting a sign about safety matters on a toll road

(b) the railway manager, if any, for the rail corridor land may construct, maintain and operate a railway on the common area in a way not inconsistent with its use as a toll road; and

(c) the railway manager and its agents or employees do not have any liability for the toll road or its use or operation on the common area.

(5) Unless the relevant person and the railway manager, if any, for the rail corridor land otherwise agree—

(a) subject to section 251, the relevant person is responsible for maintaining a toll road, and transport infrastructure relating to a toll road, on the common area; and

(b) if the toll road on the common area stops being used, the relevant person is responsible for the cost of removing road transport infrastructure from the common area and restoring the railway.

(6) The State is taken not to be in breach of any of its obligations in a sublease of the rail corridor land, whether entered into

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Not authorised—indicative only

before or after the commencement of this section, between the State and the railway manager by—

(a) the Minister's declaration; or

(b) anything done by the chief executive under this chapter for the common area.

(7) If a declaration under section 84A includes a common area—

(a) the chief executive must, as soon as practicable, give a copy of the gazette notice of the declaration to the registrar of titles; and

(b) the registrar of titles must record the declaration on the relevant lease of the rail corridor land to the State and any affected sublease in the leasehold land register; and

(c) any existing common area on the part of the rail corridor land where the level crossing is situated is, on the publication of the declaration, extinguished.

(8) In this section—

level crossing means a level crossing and its associated infrastructure.

relevant person, for State toll road corridor land, means—

(a) the chief executive; or

(b) if the State toll road corridor land has been leased under section 84C(6)—the person to whom the land has been leased.

84C Effect on land of State toll road corridor land declaration

(1) If a road or reserve, or part of a road or reserve, under the *Land Act 1994* is declared under section 84A to be State toll road corridor land, the road or reserve, or the part—

(a) stops being a road or reserve under that Act; and

(b) becomes unallocated State land.

(2) If a lot, or part of a lot, under the *Land Title Act 1994* is declared under section 84A to be State toll road corridor land, the lot or part becomes unallocated State land.

(3) If land, other than land mentioned in subsection (1) or (2) or unallocated State land, is declared under section 84A to be State toll road corridor land, the land becomes unallocated State land.

(3A) If, immediately before the declaration of land as State toll road corridor land, public utility plant was located on the land, the declaration does not affect the ownership of the public utility plant.

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

(4) The Minister administering the *Land Act 1994*—

(a) is taken to have leased the State toll road corridor land to the State under the *Land Act 1994*, section 17(2) when the declaration is made; and

(b) must lodge a document evidencing the lease in the leasehold land register.

(5) The lease is—

(a) in perpetuity; and

(b) if demanded, for a rent of $1 a year; and

(c) subject to the interests in the State toll road corridor land, if any, continued in relation to the lease under section 84A(6)(a); and

(d) on the terms stated in the declaration of the State toll road corridor land under section 84A(4).

(6) The State may lease State toll road corridor land to another person.

(6A) A person to whom the State has leased State toll road corridor land, or a person who holds a lease under the lease from the

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Not authorised—indicative only

State, may lease the State toll road corridor land to another person.

(7) Each lease under subsection (6) or (6A) may include an option to renew the lease.

(8) The terms of the lease under subsection (6), including an option to renew the lease, and a renewed lease are—

(a) to be decided by the Minister; and

(b) subject to the interests in the State toll road corridor land, if any, continued in relation to the lease under section 84A(6)(b).

(9) The *Land Act 1994*, sections 157, 183, 204, 211 and 336(2)(a) and (c) do not apply to a lease or sublease of State toll road corridor land.

(10) If an interest that is a registered interest is continued under section 84A(6), the registrar of titles must record the interest in the leasehold land register against the lease in relation to which it is continued.

(10A) If the Minister makes an additional State toll road corridor land declaration, this section is subject to section 84CA.

(11) In this section—

registered interest means—

(a) an interest recorded in a register kept under the *Land Act 1994*, section 276; or

(b) a registered interest under the *Land Title Act 1994*.

84CA Effect of additional State toll road corridor land declaration on leases

(1) This section applies if the Minister makes an additional State toll road corridor land declaration.

(2) For applying section 84C to the additional State toll road corridor land, the following apply—

(a) despite section 84C(4)—

(i) the Minister administering the *Land Act 1994* is taken to have amended the lease of the original State toll road corridor land (the ***amended perpetual lease***) under the *Land Act 1994*, section 360A, to include the additional State toll road corridor land; and

(ii) the chief executive must lodge with the registrar of titles the documents that the registrar considers necessary to evidence the amended perpetual lease in the leasehold land register;

(b) a reference in section 84C(5) to the lease is taken to be a reference to the amended perpetual lease;

(c) a reference in section 84C(5)(c) to the State toll road corridor land includes a reference to the additional State toll road corridor land;

(d) despite section 84C(5)(d), the terms that apply to the amended perpetual lease are the terms mentioned in section 84A(6B)(b);

(e) without limiting section 84C(6) or (6A), the additional State toll road corridor land may be added to a lease under the subsection of the original State toll road corridor land.

(3) If the additional State toll road corridor land is to be added to a sublease—

(a) the sublease is taken to be amended (the ***amended sublease***) to include the additional State toll road corridor land; and

(b) a reference in section 84C(8)(b) to the State toll road corridor land includes a reference to the additional State toll road corridor land.

(4) If the additional State toll road corridor land is to be added to a sub-sublease, the sub-sublease is taken to be amended (the ***amended sub-sublease***) to include the additional State toll road corridor land.

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Not authorised—indicative only

(5) Also, if subsection (3) or (4) applies, the following apply—

(a) the *Land Act 1994*, section 336(3) and (4) do not apply to an amendment of the sublease or sub-sublease to include the additional State toll road corridor land;

(b) the chief executive must lodge with the registrar of titles the documents the registrar considers necessary to evidence the amended sublease or amended sub-sublease in the leasehold land register;

(c) the amended sublease or amended sub-sublease operates as if it had been originally issued or executed as amended.

(6) For subsections (2)(a)(ii) and (5)(b), no fee is payable for lodging the documents.

(7) In this section—

sublease means a lease of original State toll road corridor land under section 84C(6).

sub-sublease means a lease of original State toll road corridor land under section 84C(6A).

84CB Effect of State toll road corridor land declaration on State-controlled road declaration

(1) This section applies if—

(a) the Minister has declared a road or route, or part of a road or route, to be a State-controlled road under section 24(1) (***State-controlled road declaration***); and

(b) land where the State-controlled road, or part of the State-controlled road, is situated is later declared under section 84A(1) to be State toll road corridor land.

(2) The State-controlled road declaration is revoked to the extent the declaration is for the State-controlled road, or part of the State-controlled road, situated on the State toll road corridor land.

(3) Section 25 does not apply to the revocation.

84D Compensation

(1) Subsection (3) applies to a person who has an interest in land declared to be State toll road corridor land under section 84A.

(2) However, subsection (3) does not apply if the interest—

(a) is continued under section 84A(6); or

(b) is an interest under a services contract for the land.

(3) The person has a right to claim compensation under the *Acquisition of Land Act 1967*, section 12(5A) and (5B) and part 4 as if the interest were land taken by the State under that Act.

(4) For applying the *Acquisition of Land Act 1967* under subsection (3)—

(a) the State is the constructing authority; and

(b) for section 24(2A) of that Act, a claimant refers a claim for compensation to the Land Court by filing in the office of the registrar of the court copies of the claim given by the claimant to the State and the gazette notice for the declaration; and

(c) the reference in section 24(5) of that Act to the date of the gazette containing the gazette resumption notice taking the land is taken to be a reference to the date of the gazette containing the gazette notice for the declaration.

(5) Other than as stated in this section, a person has no right to compensation for the declaration of land as State toll road corridor land under section 84A.

Division 3 Franchised roads

85 Power to enter into road franchise agreements

(1) The Minister may, for the State, enter into an agreement (a ***road franchise agreement***) with a person under which, or as

Not authorised—indicative only

Not authorised—indicative only

part of which, the person is to invest in the construction, maintenance or operation of road transport infrastructure.

(2) The agreement must be consistent with—

(a) the coordination plan; and

(b) the objectives of this Act; and

(c) the current transport infrastructure strategies; and

(d) the obligations about government supported transport infrastructure set out in section 9.

(3) The agreement may include, for example—

(a) provisions about the ownership of the road transport infrastructure; or

(b) provisions about tolls for the use of the road transport infrastructure; or

(c) provisions about administration charges in relation to tolls for the use of the road transport infrastructure.

85A Franchised road on rail corridor land

(1) If, under section 85, the Minister intends to enter into a road franchise agreement involving the construction, maintenance or operation of a road, or part of a road, that crosses rail corridor land and continues on the other side of the rail corridor land, the Minister must be satisfied—

(a) the department has consulted with the railway manager, if any, for the rail corridor land; and

(b) the railway manager has been given a reasonable opportunity to make submissions to the Minister about the proposed declaration.

(2) If the Minister enters into the road franchise agreement, the Minister must, by gazette notice, declare the part of the rail corridor land where it is crossed by the road to be a common area (***common area***) for the rail corridor land and the franchised road.

(3) The declaration of the common area must be made as soon as practicable after the Minister enters into the road franchise agreement.

(4) After the common area is declared—

(a) the franchisee may construct, maintain or operate a franchised road on the common area in a way not inconsistent with its use as rail corridor land; and

Examples for paragraph (a)—

- a bridge or other structure over a railway
- a bridge or other structure that allows the franchised road to pass under the railway

(b) the railway manager, if any, for the rail corridor land may construct, maintain and operate a railway on the common area in a way not inconsistent with its use as a franchised road; and

(c) the railway manager and its agents or employees, and the Authority and its agents or employees, do not have any liability for the franchised road or its use or operation on the common area.

(5) Unless the franchisee and the railway manager, if any, for the rail corridor land otherwise agree—

(a) subject to section 251, the franchisee is responsible for maintaining a franchised road on the common area; and

(b) if the franchised road on the common area stops being used, the franchisee is responsible for the cost of removing road transport infrastructure from the common area and restoring the railway.

(6) The State is taken not to be in breach of any of its obligations in a sublease of the rail corridor land, whether entered into before or after the commencement of this section, between the State and the railway manager by—

(a) the road franchise agreement; or

(b) anything done by the franchisee under this chapter for the common area.

Not authorised—indicative only

Not authorised—indicative only

(7) After the common area is declared—

(a) the chief executive must, as soon as practicable, give a copy of the gazette notice of the declaration to the registrar of titles; and

(b) the registrar of titles must record the declaration on the relevant lease of the rail corridor land to the State and any affected sublease in the leasehold land register; and

(c) any existing common area on the part of the rail corridor land where it is crossed by the franchised road is, on the publication of the declaration, extinguished.

85B Application of Queensland Heritage Act 1992 for development for a franchised road

(1) This section applies to development for a franchised road if the development is proposed to be carried out in relation to a Queensland heritage place under the*Queensland Heritage Act 1992*.

(2) The development is taken to be development proposed to be carried out by the State to which section 71 of that Act applies.

(3) In this section—

development see the Planning Act, schedule 2.

86 Tabling of road franchise agreements

The Minister must table each road franchise agreement, and each amendment of a road franchise agreement, in the Legislative Assembly as soon as practicable after it is entered into.

87 Report on operation of part

Each annual report of the department must include a report on the operation of this part during the financial year to which the report relates.

88 Recovery of money

If a road franchise agreement provides that the Minister may recover an amount from a franchisee, the amount may be recovered as a debt payable by the franchisee to the State.

89 Rateability of land

(1) In this section—

road franchise agreement land means land on which is situated road transport infrastructure to which a road franchise agreement applies.

(2) A regulation may provide that road franchise agreement land is not rateable under the *Local Government Act 2009* or the *City of Brisbane Act 2010*.

90 Application of other provisions of this chapter

(1) The provisions of parts 1 to 5, and regulations made for the parts, apply to a franchised road as if it were a State-controlled road.

(2) A regulation may—

(a) prescribe changes to the way the provisions apply to a particular franchised road; or

(b) declare that some of the provisions do not apply to a particular franchised road.

Not authorised—indicative only

Not authorised—indicative only

91 Guarantees and undertakings

For the purpose of giving guarantees or undertakings to a franchisee, the following sections of the *Statutory Bodies Financial Arrangements Act 1982* apply, with all necessary changes and any changes prescribed by regulation, to the franchisee as if the franchisee were a statutory body within the meaning of the Act—

- section 14 (Conditions precedent to financial arrangements and other matters)
- section 16 (Guarantees for the State)
- section 18 (Requirement for security)
- section 19 (Guarantee may include waiver of immunity and other provisions)
- section 20 (Guarantee not affected by transfer of liability)
- part 3, division 3 (Consequences if payment required under guarantee).

Part 7 Toll roads

Division 1 Preliminary

92 Definitions for pt 7

In this part—

designated vehicle means a vehicle, other than an exempt vehicle, of a type liable for a toll under a gazette notice under section 93.

E toll system means an electronic system operated by a toll road operator for the recording, or the recording and meeting, of liability for a toll for use of the toll road.

image processing fee see section 93(6)(a).

prescribed time, for a notice given to a person under division 3, means 30 days, or the greater number of days stated in the notice, after the notice is given.

toll road means a road, or part of a road, in relation to which a toll has become payable for use of the road or part of the road, under a declaration under section 93.

toll road operator means—

(a) if the relevant toll road is the subject of a road franchise agreement—the person stated in the agreement as the person who is to operate the toll road; or

(b) otherwise—the chief executive.

user administration charge, for a toll, means the user administration charge set, under a gazette notice under section 93, for persons making payment of the toll other than in cash or by use of a touch tag or the E toll system.

Division 2 Toll roads and toll payment requirements

93 Tolls

(1) The Minister may, by gazette notice, declare a toll may be payable for use of any of the following—

(a) a State-controlled road or part of a State-controlled road;

(b) a franchised road or part of a franchised road;

(c) a road to be constructed under a road franchise agreement;

(d) State toll road corridor land or part of State toll road corridor land.

(2) A declaration under subsection (1) must include notice of the matters mentioned in schedule 5 for the toll road.

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(3) A toll may be set in a way that applies differently—

(a) to different classes of vehicles; or

(b) by reference to stated exceptions or factors.

(4) Subsection (3) does not limit schedule 5 or the *Statutory Instruments Act 1992*.

(5) An administration charge under the gazette notice must not be more than the reasonable cost, under this division, of—

(a) issuing a notice about an unpaid toll; and

(b) collecting the unpaid toll, an image processing fee for the toll and the administration charge.

(6) A user administration charge under the gazette notice, for a toll—

(a) may include a fee (an ***image processing fee***) that is not more than the reasonable cost of capturing, processing and using an image to identify a vehicle at a toll plaza for the toll; and

(b) so far as it does not comprise an image processing fee, must not be more than the reasonable cost, under this division, of administering and collecting payment of the toll.

(7) A reference in the gazette notice to a video matching fee is taken to be a reference to an image processing fee.

93AA Application of s 93 to QML network

(1) The Minister may make a declaration under section 93 for a toll road that is part of the QML network only if the Minister is satisfied each matter for the toll road included in the declaration—

(a) is consistent with the original declaration; or

(b) otherwise, is necessary and appropriate to facilitate the carrying out of the Logan Motorway Enhancement Project.

(2) The chief executive must make a copy of map QML 1 available for inspection by the public, free of charge—

(a) on the department's website; and

(b) during office hours on business days, at the department's head office.

(3) In this section—

Gateway Motorway Facility—

(a) means the major arterial road, known as the Gateway Motorway and including the Sir Leo Hielscher Bridges, that connects—

(i) the start of the Gateway Extension Motorway at the Pacific Motorway interchange at Eight Mile Plains, shown on map QML 1 as 153.103 E and –27.580 N; and

(ii) the Nudgee Road interchange, shown on map QML 1 as 153.095 E and –27.388 N; but

(b) does not include the major arterial road, shown on map QML 1 as the Old Gateway Motorway, that—

(i) connects with the road mentioned in paragraph (a) at the Nudgee Road interchange and Eagle Farm; and

(ii) passes through the following GPS coordinates—

(A) 153.089 E and –27.394N;

(B) 153.088E and –27.435N.

Logan Motorway Enhancement Project means the market-led proposal of that name prepared by the QML network operator in 2016 for the development of particular road transport infrastructure on, or to service, the QML network.

Logan Motorway Facility means—

(a) the major arterial road, known as the Logan Motorway, that connects—

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(i) the Ipswich Motorway at the Ipswich Motorway interchange at Gailes, shown on map QML 1 as 152.923 E and –27.607 N; and

(ii) the Pacific Motorway at the Pacific Motorway interchange at Loganholme, shown on map QML 1 as 153.181 E and –27.684 N; and

(b) the major arterial road, known as the Gateway Extension Motorway, that connects—

(i) the Pacific Motorway interchange at Eight Mile Plains, shown on map QML 1 as 153.103 E and –27.580 N; and

(ii) the Logan Motorway interchange at Drewvale, shown on map QML 1 as 153.061 E and –27.647 N.

original declaration means the declaration made under section 93 in relation to the QML network that was in effect immediately before 31 December 2011.

QML network means—

(a) the Gateway Motorway Facility; and

(b) the Logan Motorway Facility.

QML network operator means the toll road operator for the toll roads comprising the QML network.

93A Application of Queensland Heritage Act 1992 for development for a toll road

(1) This section applies to development for a toll road if the development is proposed to be carried out in relation to a Queensland heritage place under the*Queensland Heritage Act 1992*.

(2) The development is taken to be development proposed to be carried out by the State to which section 71 of that Act applies.

(3) In this section—

development see the Planning Act, schedule 2.

94 Liability for toll and user administration charge and satisfying the liability

(1) The driver of a designated vehicle entering, or on, a toll road is liable, at each toll plaza through which the vehicle passes, for—

(a) the toll payable at the toll plaza for the use of the toll road by the vehicle; and

(b) if the driver satisfies the driver's liability under paragraph (a) other than in cash or by use of a touch tag or the E toll system—the user administration charge for the toll.

(2) The amount of any unpaid toll or user administration charge may be recovered by the toll road operator as a debt from the driver, subject to any applicable agreement made by the toll road operator.

(3) However, the driver is not liable to pay the amount of the user administration charge for the toll if the toll is unpaid because—

(a) the driver's transponder or other electronic device is faulty through no fault of the driver and the driver is unaware it is faulty; or

(b) the E toll system is faulty or otherwise inoperable.

(3A) The driver may satisfy the driver's liability for the toll payable at a toll plaza by—

(a) if a part of the toll plaza is designated by appropriate signs as available for making a toll payment in cash—making a payment in cash of the toll payable; or

(b) if a part of the toll plaza is designated by appropriate signs as available for making a toll payment by using a touch tag—using a touch tag as required by the toll road operator; or

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Not authorised—indicative only

(c) if there is an E toll only pay point at the toll plaza, or another part of the toll plaza designated by appropriate signs as available for using the E toll system—using the E toll system as required under section 95(1); or

(d) if a gazette notice under section 93 provides another way of making the payment—making the payment in that way.

(4) If the designated vehicle is at an E toll only pay point at the toll plaza, the driver may satisfy the driver's liability for the toll only by using the E toll system in accordance with the requirements of section 95(1).

95 Using the E toll system

(1) The following requirements apply for using the E toll system to satisfy a driver's liability under section 94 for the toll payable at a toll plaza—

(a) a properly operating transponder or other electronic device is in, or fitted to, the designated vehicle;

(b) the transponder or other device—

(i) was issued for a vehicle of the same type as the designated vehicle; and

(ii) is linked to a valid account for the E toll system operating for the toll road; and

(iii) properly activates the E toll system.

(2) To remove doubt, it is declared that using the E toll system to satisfy the liability of a designated vehicle's driver for the toll payable at a toll plaza does not affect another contractual obligation owed by the driver or another person to a toll road operator under an applicable agreement made by the toll road operator.

Example for subsection (2)—

The arrangements for a person's account with a toll road operator may provide that the person will be billed at the end of each month for all

the times the transponder issued to the person has been used at toll plazas in the month.

Division 3 Failure to pay toll

96 Application of div 3

This division applies if—

(a) a designated vehicle passes through a toll plaza; and

(b) the driver does not, under section 94(3A), satisfy the driver's liability for the toll payable at the toll plaza.

97 Definition for div 3

In this division—

deferred toll amount means the total of the following amounts—

(a) the amount of the toll for which the driver's liability was not satisfied under section 94(3A);

(b) the amount of the image processing fee for the toll.

98 Liability for image processing fee and administration charge in addition to unpaid toll

(1) If this division applies to a driver, the driver immediately becomes liable to pay the toll road operator, in addition to the unpaid toll, the amount of—

(a) the image processing fee for the toll; and

(b) an administration charge.

(2) However, the driver is not liable under subsection (1) to pay the amount of the image processing fee or administration charge if the toll is unpaid because—

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(a) the driver's transponder or other electronic device is faulty through no fault of the driver and the driver is unaware it is faulty; or

(b) the E toll system is faulty or otherwise inoperable.

99 Notice to vehicle's registered operator

(1) The toll road operator may give the registered operator of the vehicle a written notice in the approved form under this section if the toll road operator has not received the deferred toll amount.

(2) The notice must specify each of the 1 or more deferred toll amounts for which it is given.

(3) The notice must require the registered operator to do either of the following, within the prescribed time, for each deferred toll amount listed in the notice—

(a) pay the deferred toll amount to the toll road operator;

(b) give the toll road operator the registered operator's statutory declaration in the approved form containing information that—

(i) if the registered operator is an individual—establishes, to the extent it is reasonably practicable for the registered operator to do so, that the registered operator was not the driver when liability for the toll included in the deferred toll amount was incurred; and

(ii) gives the toll road operator all the help the registered operator can reasonably give for establishing the name and address of the person who was the driver when liability for the toll included in the deferred toll amount was incurred.

(4) The notice may also require the registered operator to pay an administration charge stated in the notice if there are any deferred toll amounts listed in the notice for which the

registered operator does not give a statutory declaration under subsection (3)(b).

(5) The notice must not require the registered operator to pay more than 1 administration charge, even if the notice is given for 2 or more deferred toll amounts.

(6) If the notice is given in contravention of subsection (5), it is of no effect.

(7) The registered operator must comply with the notice unless the registered operator has a reasonable excuse.

Maximum penalty—15 penalty units.

(8) Payment of an administration charge required by the notice also satisfies the liability for the administration charge that arose under section 98(1)(b) in relation to each toll included in a deferred toll amount listed in the notice.

(9) For giving the notice, the registered operator's address for service may be taken to be a residential, postal or business address recorded for the registered operator under the registration Act applying to the designated vehicle's registration.

99AA Single notice under ss 99 and 105ZH

(1) A single notice may be given to the registered operator that is a notice under section 99 and a notice under section 105ZH.

(2) If a single notice is given, only 1 administration charge may be charged under the notice.

(3) Payment of an administration charge mentioned in subsection (2) is taken to be payment of the administration charge under both section 99(4) and section 105ZH(4).

99A Corporation may be taken to be driver of vehicle

(1) This section applies if the registered operator of the vehicle—

(a) is a corporation; and

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Not authorised—indicative only

(b) fails to give the toll road operator all the help, under section 99(3)(b)(ii), the registered operator can reasonably give to enable the toll road operator to establish the name and address of the driver of the vehicle.

(2) The registered operator of the vehicle is taken to be the driver of the vehicle for sections 94 and 98.

100 Notice to information holder

(1) The toll road operator may give a notice under this section only if the toll road operator—

(a) has not received the deferred toll amount; and

(b) considers, on reasonable grounds, that a person (the ***information holder***) other than the vehicle's registered operator has information that could help the toll road operator establish the name and address of the driver.

(2) The toll road operator may give the information holder a written notice in the approved form requiring the information holder, within the prescribed time for the notice, to give the toll road operator a statutory declaration complying with subsection (3).

(3) The statutory declaration must—

(a) be made by the information holder; and

(b) be in the approved form; and

(c) contain information giving the toll road operator all the help the information holder can reasonably give for establishing the driver's name and address.

(4) The information holder must comply with the notice given under subsection (2) unless the information holder has a reasonable excuse.

Maximum penalty for subsection (4)—15 penalty units.

101 Notice to person identified as driver

(1) The toll road operator may give a notice in the approved form to a person under this section if the toll road operator—

(a) has not received the deferred toll amount; and

(b) considers, on reasonable grounds, it has correctly identified the person as the driver.

(2) The notice must specify each of the 1 or more deferred toll amounts for which it is given.

(3) The notice must require the person to do either of the following, within the prescribed time, for each deferred toll amount listed in the notice—

(a) pay the deferred toll amount to the toll road operator;

(b) give the toll road operator the person's statutory declaration in the approved form containing information that—

(i) establishes, to the extent it is reasonably practicable for the person to do so, that the person was not the driver when liability for the toll included in the deferred toll amount was incurred; and

(ii) gives the toll road operator all the help the person can reasonably give for establishing the name and address of the person who was the driver when liability for the toll included in the deferred toll amount was incurred.

(4) The notice may also require the person to pay an administration charge stated in the notice if there are any deferred toll amounts listed in the notice for which the person does not give a statutory declaration under subsection (3)(b).

(5) The notice must not require the person to pay more than 1 administration charge, even if the notice is given for 2 or more deferred toll amounts.

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(6) If the notice is given in contravention of subsection (5), it is of no effect.

(7) The person must comply with the notice unless the person has a reasonable excuse.

Maximum penalty—15 penalty units.

(8) Payment of an administration charge required by the notice also satisfies the liability for the administration charge that arose under section 98(1)(b) in relation to each toll included in a deferred toll amount listed in the notice.

101A Single notice under ss 101 and 105ZK

(1) A single notice may be given to a person that is a notice under section 101 and a notice under section 105ZK.

(2) If a single notice is given, only 1 administration charge for the notice may be charged.

(3) Payment of an administration charge mentioned in subsection (2) is taken to be payment of the administration charge under both section 101(4) and section 105ZK(4).

102 Statutory declarations for div 3

(1) A statutory declaration given by a person under this division may, if appropriate, be supported by statutory declarations in the approved form from other persons.

(2) If a person required to give a statutory declaration under this division is a body corporate, the statutory declaration must be given by a person authorised to act for the body corporate.

103 Limit on offences

If this division applies more than once because of a failure to pay a toll at each of 2 or more toll plazas on the 1 toll road in a single journey, a person liable for an offence under this

division arising out of the journey may not be punished for more than 1 offence.

Division 4 Miscellaneous

104 Confidentiality

(1) A person must not, intentionally or recklessly, disclose, allow access to, record or use personal information.

Maximum penalty—200 penalty units.

(2) However, a person may disclose, allow access to, record or use personal information—

(a) in the discharge of a function related to the administration of this part; or

(b) if authorised, expressly or impliedly—

(i) under another provision of this Act, or under another Act; or

(ii) by the individual whose identity is apparent, or can reasonably be ascertained, from the personal information; or

(c) for a proceeding in a court or tribunal, if the personal information is admissible as evidence in the proceeding; or

(d) if the purpose for which the action is taken is directly related to the purpose for which the personal information was obtained; or

(e) if the person believes on reasonable grounds that the action is necessary to prevent or lessen a serious and imminent threat to the life or health of an individual.

(3) In this section—

administration of this part includes the operation of a toll road under this part.

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personal information means information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, that—

(a) has been gained or otherwise brought into existence—

(i) through involvement in the administration of this part; or

(ii) because of an opportunity provided by involvement in the administration of this part; and

(b) is about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

105 Evidence and procedure

(1) For this part—

(a) it is not necessary to prove the appointment of an official; and

(b) a signature purporting to be the signature of an official is evidence of the signature it purports to be; and

(c) a certificate stating any of the following matters is evidence of the matter—

(i) a stated place was or was not a toll road or part of a toll road;

(ii) a stated place was or was not a toll plaza or part of a toll plaza;

(iii) a stated person was or was not recorded as the registered operator of a stated vehicle;

(iv) a stated vehicle was or was not a designated vehicle of a stated type;

(v) a stated person was or was not a toll road operator;

(vi) a notice under section 99 was given to the registered operator of a stated vehicle;

(vii) a notice under section 100 was given to the information holder;

(viii) a notice under section 101 was given to the person identified as the driver;

(~~v~~ix) the toll payable for a vehicle's use of a toll road has not been paid;

(~~vi~~x) an administration charge payable under a notice given under section 99 or 101 has not been paid;

(~~vii~~xi) a user administration charge for a toll has not been paid;

(~~viii~~xii) a statutory declaration required for division 3 was or was not received;

(~~ix~~xiii) a recording is a recording of a type mentioned in subsection (3).

(2) A certificate—

(a) may relate to a stated time or period of time; and

(b) if it is issued for a particular period, has the effect mentioned in subsection (1)(c) for the entire period.

(3) A recording by a photographic, mechanical, electronic or other device for the purpose of administering this part, including for the operation of a toll road under this part, is evidence—

(a) that the recording was made; and

(b) of the accuracy of the recording; and

(c) of the matters stated in the recording.

(4) For this section—

certificate means a certificate purporting to be signed by an official.

official means—

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Not authorised—indicative only

(a) the chief executive, or a suitably qualified officer or employee of the department acting under the authority of the chief executive; or

(b) the chief executive officer, however named, of a toll road operator, or a suitably qualified employee of either the toll road operator or another person acting under the authority of the chief executive officer.

Part 8 Local government tollways

Division 1 Preliminary

105A Objectives of pt 8

The objectives of this part are—

(a) to provide a framework for the management and operation of local government tollway corridor land; and

(b) to ensure transport infrastructure on local government tollway corridor land is—

(i) developed as an integrated and affordable transport system consistent with public transport infrastructure and the existing road network; and

(ii) integrated with the objectives of land use planning; and

(iii) provided in a coordinated and efficient way with an acceptable level of community access; and

(iv) responsive to community needs and the challenges of further growth; and

(v) financially viable.

105B Definitions for pt 8

In this part—

approved tollway project means a tollway project approved under section 105C(2) to be an approved tollway project.

compliance notice see section 105GC(2).

declaration, for a local government tollway, means a declaration under section 105GA as in force from time to time.

designated vehicle means a vehicle, other than an exempt vehicle, of a type in relation to which a toll is payable under a notice under section 105ZB(1).

E toll system means an electronic system operated by a local government tollway operator for the recording, or the recording and meeting, of liability for a toll for use of the local government tollway.

final notice see section 105GE(4).

image processing fee see section 105ZB(6)(a).

local government franchised road means land to which a local government tollway franchise agreement applies, and includes facilities identified in the local government tollway franchise agreement that are on or for the tollway and relate to the operation or servicing of the tollway or facilities for tollway users.

local government franchisee means a person with whom a local government has entered into a local government tollway franchise agreement.

local government tollway see section 105GA(5).

local government tollway corridor land—

(a) for division 4—see section 105L; or

(b) otherwise—means land declared under section 105H to be local government tollway corridor land.

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Not authorised—indicative only

local government tollway franchise agreement see section 105Y.

local government tollway infrastructure means transport infrastructure relating to local government tollways.

local government tollway infrastructure works means works done for—

(a) constructing local government tollway infrastructure or things associated with local government tollway infrastructure; or

(b) maintaining local government tollway infrastructure or things associated with local government tollway infrastructure; or

(c) facilitating the operation of local government tollway infrastructure or things associated with local government tollway infrastructure.

local government tollway operator, for a local government tollway, means—

(a) if the local government tollway is the subject of a local government tollway franchise agreement—the person stated in the agreement as the person who is to operate the local government tollway; or

(b) otherwise—the relevant local government.

matter, in relation to a contravention, means any matter arising because of the contravention.

prescribed time, for a notice given to a person under division 6, subdivision 3, means 30 days, or the greater number of days stated in the notice, after the notice is given.

relevant notice see section 105GH(1).

revocation notice see section 105GD(2)(b).

schedule 5 step-in notice see section 105GF(2).

schedule 5A step-in notice see section 105GG(2).

suspension notice see section 105GD(2)(a).

tollway project means a project for the development and construction of a tollway, including local government tollway infrastructure.

user administration charge, for a toll, means the user administration charge set, under a notice under section 105ZB(1), for persons making payment of the toll other than in cash or by use of the E toll system.

Division 2 Approval of tollway project

105C Approval of tollway project

(1) A local government may, by written notice given to the Minister, ask the Minister for approval for a tollway project.

(2) The Minister may, by written notice given to the local government, approve the tollway project to be an approved tollway project.

(3) Without limiting the matters to which the Minister may have regard in deciding whether to approve a tollway project, the Minister may have regard to the following matters—

(a) whether the tollway project is viable or likely to be viable, including, for example, whether the tollway under the tollway project will be economically, financially and technically viable;

(b) whether the funding of the tollway project is viable or likely to be viable, including, for example, whether funding of the tollway project provides the local government with the best value for money outcome;

(c) whether the tollway project—

(i) meets an identified community need; and

(ii) fits with transport plans prepared by the State; and

(iii) is considered to be a priority by the State;

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Not authorised—indicative only

(d) whether the tollway project has an impact on other transport infrastructure policies, priorities and services;

(e) whether there is an alternative road for which a toll is not charged and that offers an acceptable level of service;

(f) the proposed methodology or strategy for charging tolls for use of the tollway.

(4) The approval of a tollway project may be subject to conditions, included in the notice under subsection (2), about matters the Minister considers necessary or desirable in the circumstances, including, for example, a matter mentioned in subsection (3).

(5) This section is in addition to and not in substitution for—

(a) the *State Development and Public Works Organisation Act 1971*; or

(b) the *Statutory Bodies Financial Arrangements Act 1982*.

105E Minister may amend approval

(1) This section applies if the Minister is reasonably satisfied there is a material change of a type mentioned in section 105ZOA to an approved tollway project.

(2) The Minister may, at any time during the currency of the approval for the approved tollway project, amend the approval by written notice given to the local government.

(3) The Minister may amend the approval by—

(a) imposing a condition on the approval; or

(b) amending a condition on the approval; or

(c) removing a condition on the approval.

(4) For subsection (2), the Minister may amend the approval—

(a) because of a notice given under section 105ZOA of a material change; or

(b) on the Minister's own initiative.

(5) An amendment of an approval takes effect on the day the notice of the amendment is given to the local government or the later day stated in the notice.

105F When approval has effect

An approval under section 105C(2)—

(a) starts on the day the Minister gives the local government written notice under that subsection about the approval; and

(b) ends on the earlier of the following days—

(i) the day the Minister declares, under section 105GA, the land the subject of the approved tollway project to be a local government tollway;

(ii) the day the Minister revokes the approval.

Note—

For the way in which the power to revoke an approval is exercisable, see the *Acts Interpretation Act 1954*, section 24AA.

Division 2A Local government tollway

Subdivision 1 Declaration

105G Request for declaration

(1) A local government that has an approved tollway project may, by written notice given to the Minister, ask the Minister to declare a local government tollway for the approved tollway project.

(2) The request must be accompanied by a plan of the proposed local government tollway.

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Not authorised—indicative only

(3) After receiving the application and the plan, the Minister may, by written notice given to the local government, ask the local government to give the Minister, within the reasonable time stated in the notice—

(a) further information or documents about the approved tollway project or proposed local government tollway; or

(b) a revised plan or another plan for the local government tollway.

(4) If the local government does not comply with a request made under subsection (3), the Minister may make the decision about the declaration without the further information or document or revised or other plan.

105GA Declaration

(1) If the Minister receives a request under section 105G, the Minister may, by gazette notice, declare that any of the following is a local government tollway—

(a) a local government franchised road or part of a local government franchised road;

(b) local government tollway corridor land or part of local government tollway corridor land;

(c) land, or part of land, other than the land mentioned in paragraph (a) or (b), that is—

(i) mentioned in section 105H(1)(a), (b), (c), (d) or (e); and

(ii) the subject of an approved tollway project.

(2) Without limiting the matters to which the Minister may have regard in deciding whether to declare a local government tollway for an approved tollway project, the Minister may have regard to the following matters—

(a) whether there have been any material changes to the approved tollway project;

(b) whether the local government has complied with conditions to which, under division 2, the approved tollway project is subject;

(c) whether the local government has complied with all other requirements relevant to the approved tollway project under an Act.

(3) The Minister may, by the gazette notice mentioned in subsection (1), impose the conditions that the Minister considers necessary in the circumstances on the declaration of a local government tollway.

(4) A condition must be about a matter mentioned in schedule 5 or 5A.

(5) In this section, a ***local government tollway*** means a local government tollway declared under this section and, if the context permits, includes the maintenance or operation of the local government tollway.

105GB Amendment etc. of declaration or conditions at request of local government

(1) A local government for which the declaration of a local government tollway has been made may, by written notice given to the Minister, ask the Minister—

(a) to amend the description of the local government tollway because the boundaries of the land described in the declaration are not stated with adequate certainty; or

(b) to amend the declaration by including additional land in, or omitting land from, the declaration; or

(c) to impose, amend or remove a condition on the declaration about a matter mentioned in schedule 5 or 5A.

(2) A request under subsection (1)(a) or (b) must be accompanied by a plan of the local government tollway, identifying the land for which the amendment is sought.

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Not authorised—indicative only

(3) The Minister may, by gazette notice, amend the declaration as the Minister considers necessary or desirable in the circumstances.

(4) If the local government makes a request under subsection (1)(c), the Minister may, by gazette notice—

(a) if the request relates to a condition mentioned in schedule 5—impose, amend or remove a condition on the declaration about a matter mentioned in schedule 5 as the Minister considers necessary or desirable; or

(b) if the request relates to a condition mentioned in schedule 5A—impose, amend or remove a condition on the declaration about a matter mentioned in schedule 5A as the Minister considers necessary or desirable.

(5) An amendment of a declaration or the imposition, amendment or removal of a condition under this section—

(a) if the amendment relates to a request under subsection (1)(a)—is taken to have had effect from the day on which the declaration of the local government tollway took effect; or

(b) otherwise—takes effect from the day the gazette notice is published.

Subdivision 2 Compliance with conditions of declaration

105GC Compliance notice

(1) This section applies if the Minister reasonably believes a condition imposed on a declaration of a local government tollway is being, or has been, contravened by—

(a) the local government; or

(b) if the local government has entered into a local government tollway franchise agreement for the tollway—the local government franchisee.

(2) The Minister may give the local government a notice (a ***compliance notice***) requiring the local government—

(a) if the local government is contravening, or has contravened, the condition—

(i) to stop contravening the condition; or

(ii) to stop contravening the condition and rectify the matter; or

(iii) to rectify the matter; or

(b) if the local government franchisee is contravening, or has contravened, the condition—

(i) to ensure the local government franchisee stops contravening the condition; or

(ii) to ensure the local government franchisee stops contravening the condition and the local government to rectify, or ensure the local government franchisee rectifies, the matter; or

(iii) to rectify, or ensure the local government franchisee rectifies, the matter.

(3) The compliance notice must state the following—

(a) that the Minister believes the local government or local government franchisee is contravening, or has contravened, a condition imposed on the declaration of the local government tollway;

(b) the condition the Minister believes is being, or has been, contravened;

(c) briefly, how it is believed the condition is being, or has been, contravened;

(d) if the notice requires the local government to rectify, or ensure the local government franchisee rectifies, a matter—

(i) the matter the Minister believes is reasonably capable of being rectified; and

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(ii) the steps the local government must take to rectify, or ensure the local government franchisee rectifies, the matter; and

(iii) the stated reasonable period, not less than 7 days after the day the compliance notice is given, in which the local government must take the steps or ensure the local government franchisee has taken the steps;

(e) that if the contravention continues or the matter is not rectified as required, the Minister may take action described in the notice under section 105GD, 105GF or 105GG.

(4) If the local government has entered into a local government tollway franchise agreement for the local government tollway, the Minister must also give a copy of the compliance notice to the local government franchisee.

(5) The local government must, as required by the compliance notice and unless the local government has a reasonable excuse—

(a) stop contravening the condition or rectify the matter; or

(b) ensure the local government franchisee stops contravening the condition or rectifies the matter.

105GD Failure to comply with compliance notice if no local government tollway franchise agreement

(1) This section applies if—

(a) the Minister has given a local government a compliance notice; and

(b) the local government fails to stop contravening the condition, or fails to rectify the matter, as required by the compliance notice; and

(c) the local government—

(i) has not entered into a local government tollway franchise agreement for the local government tollway; or

(ii) has entered into a local government tollway franchise agreement for the local government tollway but the agreement has ended.

(2) The Minister may—

(a) by written notice (a ***suspension notice***) given to the local government, declare that a toll stops being payable for the use of the local government tollway for a period stated in the notice; or

(b) give the local government a notice (a ***revocation notice***) that states the following—

(i) that the Minister believes the local government has failed to stop contravening the condition, or failed to rectify the matter, as required by the compliance notice;

(ii) briefly, how it is believed the local government has failed to stop contravening the condition, or failed to rectify the matter, as required by the compliance notice, including any of the matters mentioned in section 105GC(3) that are still relevant for the revocation notice;

(iii) the steps the local government must take to stop contravening the condition or rectify the matter;

(iv) the stated reasonable period, not less than 7 days after the day the revocation notice is given, in which the contravention must stop or the matter must be rectified;

(v) that if, within the stated reasonable period, the contravention does not stop or the matter is not rectified, the Minister intends to revoke the declaration of the local government tollway.

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(3) The local government must comply with the revocation notice, unless the local government has a reasonable excuse.

105GE Effect of revocation notice or suspension notice

(1) Subsection (2) applies if—

(a) the Minister gives a local government a revocation notice; and

(b) the local government fails to stop contravening the condition or fails to rectify the matter, as required by the revocation notice.

(2) The Minister may, by gazette notice, revoke the declaration of the local government tollway.

(3) A gazette notice under subsection (2) takes effect from the day the gazette notice is published or the later day stated in the gazette notice.

(4) As soon as practicable after revoking a declaration under subsection (2), the Minister must give the local government a notice (a ***final notice***) about the revocation of the declaration.

(5) If the Minister gives the local government a suspension notice—

(a) the suspension notice has effect for the period stated in the suspension notice; and

(b) a person is not liable, under section 105ZC, to pay a toll for the use of the local government tollway for the period.

105GF Failure to comply with compliance notice for schedule 5 condition

(1) This section applies if—

(a) a local government has entered into a local government tollway franchise agreement for the local government tollway; and

(b) the Minister has given the local government a compliance notice; and

(c) the local government or local government franchisee fails to stop contravening the condition, or fails to rectify the matter, as required by the compliance notice; and

(d) the condition is a condition mentioned in schedule 5.

(2) The Minister may give the local government a notice (a ***schedule 5 step-in notice***) that states the following—

(a) that the Minister believes the local government or local government franchisee has failed to stop contravening the condition, or failed to rectify the matter, as required by the compliance notice;

(b) briefly, how it is believed the local government or local government franchisee has failed to stop contravening the condition, or failed to rectify the matter, as required by the compliance notice, including any of the matters mentioned in section 105GC(3) that are still relevant for the schedule 5 step-in notice;

(c) the steps the local government must take—

(i) to stop contravening the condition or to rectify the matter; or

(ii) to ensure the local government franchisee stops contravening the condition or rectifies the matter;

(d) the stated reasonable period, not less than 7 days after the day the schedule 5 step-in notice is given, in which the contravention must stop or the matter must be rectified;

(e) that if, within the stated reasonable period, the contravention does not stop or the matter is not rectified, the chief executive may exercise powers under subsection (4).

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(3) The local government must, as required by the schedule 5 step-in notice and unless the local government has a reasonable excuse—

(a) stop contravening the condition or rectify the matter; or

(b) ensure the local government franchisee stops contravening the condition or rectifies the matter.

(4) If the local government fails to comply with the schedule 5 step-in notice, the chief executive may exercise the powers of the local government under the local government tollway franchise agreement for the purpose of, and only for the purpose of, enforcing the local government's rights under the agreement in relation to the contravention of the condition.

(5) The chief executive may exercise rights under subsection (4)—

(a) as if the chief executive were—

(i) a party to the local government tollway franchise agreement in place of the local government; and

(ii) subject to the requirements imposed on the exercise of the rights by any agreement the local government has made with a financier in relation to the local government tollway; and

(iii) entitled to all the indemnities, benefits and protections in favour of the local government under the local government tollway franchise agreement or any ancillary agreement between the local government and the local government franchisee or the local government franchisee's financiers; and

(b) without relieving the local government from any of its obligations and responsibilities under the local government tollway franchise agreement.

(6) If the chief executive incurs costs, losses or expenses because of the exercise of powers under subsection (4), the amount of the costs, losses or expenses—

(a) is a debt payable to the State by the local government; and

(b) may be recovered as a debt by action against the local government.

(7) The Minister must also give a copy of the schedule 5 step-in notice to the local government franchisee.

105GG Failure to comply with compliance notice for schedule 5A condition

(1) This section applies if—

(a) a local government has entered into a local government tollway franchise agreement for the local government tollway; and

(b) the Minister has given the local government a compliance notice; and

(c) the local government fails to stop contravening the condition, or fails to rectify the matter, as required by the compliance notice; and

(d) the condition is a condition mentioned in schedule 5A.

Note—

The notice would not mention the local government franchisee because the conditions in schedule 5A apply only to the local government.

(2) The Minister may give the local government a notice (a ***schedule 5A step-in notice***) that states the following—

(a) that the Minister believes the local government has failed to stop contravening the condition, or failed to rectify the matter, as required by the compliance notice;

(b) briefly, how it is believed the local government has failed to stop contravening the condition, or failed to rectify the matter, as required by the compliance notice, including any of the matters mentioned in section 105GC(3) that are still relevant for the schedule 5A step-in notice;

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(c) the steps the local government must take to stop contravening the condition or to rectify the matter;

(d) the stated reasonable period, not less than 7 days after the day the schedule 5A step-in notice is given, in which the contravention must stop or the matter must be rectified;

(e) that if, within the stated reasonable period, the contravention does not stop or the matter is not rectified, the chief executive may take steps to stop the contravention or rectify the matter.

(3) The local government must, as required by the schedule 5A step-in notice, stop contravening the condition or rectify the matter, unless the local government has a reasonable excuse.

(4) If the local government fails to comply with the schedule 5A step-in notice, the chief executive may take the steps the chief executive considers necessary to stop the contravention or rectify the matter.

(5) If the chief executive incurs costs, losses or expenses because of taking steps under subsection (4), the amount of the costs, losses or expenses—

(a) is a debt payable to the State by the local government; and

(b) may be recovered as a debt by action against the local government.

Subdivision 3 Appeal

105GH Decision by Minister in relation to notice

(1) This section applies if the Minister decides to give a local government any of the following notices (a ***relevant notice***)—

(a) a compliance notice;

(b) a suspension notice;

(c) a revocation notice;

(d) a final notice;

(e) a schedule 5 step-in notice;

(f) a schedule 5A step-in notice.

(2) The relevant notice must state—

(a) that the local government may appeal against the decision; and

(b) that, under the *Transport Planning and Coordination Act 1994*, part 5, division 3, as applied under section 105GI, the local government may ask for the decision to be stayed.

105GI Appeal against decision

(1) This section applies if a local government is given a relevant notice.

(2) The local government may appeal to the Supreme Court against the Minister's decision to give the relevant notice.

(3) The *Transport Planning and Coordination Act 1994*, part 5, division 3—

(a) applies to the appeal as if—

(i) references in the division to the chief executive were references to the Minister; and

(ii) references in the division to a reviewed decision were references to the decision; and

(iii) references in the division to an appeal court or the appeal court were references to the Supreme Court; and

(b) provides—

(i) for the procedure for the appeal and the way it is to be disposed of; and

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(ii) that the decision may be stayed by the local government by applying to the Supreme Court.

Division 3 Local government tollway corridor land

105H Declaration of land as local government tollway corridor land

(1) A local government that has an approved tollway project or local government tollway may ask the Minister to declare any of the following land to be local government tollway corridor land—

(a) land acquired by the local government for the approved tollway project or local government tollway, including under the *Transport Planning and Coordination Act 1994*, section 28D;

(b) land that is a road under the *Land Act 1994*;

(c) land, not mentioned in paragraph (a) or (b), held by the local government;

(d) land, not mentioned in paragraph (b) or (e), held by the State;

(e) non-freehold land (including a reserve or part of a reserve) under the *Land Act 1994*, other than land mentioned in paragraph (b), on or within which road transport infrastructure or rail transport infrastructure is situated.

(1A) A request under subsection (1) must be accompanied by—

(a) a survey plan of the local government tollway corridor land for the approved tollway project or local government tollway that—

(i) shows the local government tollway corridor land as it will exist if the declaration is made; and

(ii) identifies the land for which the declaration is sought; and

(b) if the request relates to a local government tollway—a request under section 105GB(1)(a) or (b) to amend the declaration of the local government tollway in accordance with the proposed declaration of the local government tollway corridor land.

(3) The Minister may, by gazette notice, declare land mentioned in subsection (1) to be local government tollway corridor land.

(4) In deciding whether to make the declaration under subsection (3), the Minister must have regard to—

(a) whether the local government has complied with any conditions to which, under this Act, the approved tollway project or the declaration of a local government tollway is subject; and

(b) another matter the Minister considers relevant to the declaration under subsection (3).

(5) The land must be—

(a) identified specifically in the gazette notice; or

(b) identified generally in the gazette notice, and identified specifically in documents described in the gazette notice and available to be read at the local government's public office.

(6) The declaration of land as local government tollway corridor land may be subject to conditions, included in the declaration under subsection (3), the Minister considers necessary or desirable in the circumstances.

(7) The Minister must, in a declaration under subsection (3), declare the terms for section 105J(5)(d) that are to apply to the lease of the land to the State under section 105J(4)(a).

(8) The terms mentioned in subsection (7) must—

(a) have been agreed to by the Minister administering the *Land Act 1994*; and

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(b) be consistent with section 105J(5)(a) to (c).

(9) The Minister may, in a declaration under subsection (3), declare that a stated interest in land declared to be local government tollway corridor land continues in relation to—

(a) the lease of the land to the State under section 105J(4)(a); or

(b) the lease of the land to a local government under section 105J(6).

(10) If land has been declared under subsection (3) (the ***original local government tollway corridor land***), the area of the original local government tollway corridor land may be increased by a subsequent declaration of land under subsection (3) (the ***additional local government tollway corridor land***).

(11) If a declaration of land under subsection (3) (the ***additional local government tollway corridor land declaration***) increases the area of the original local government tollway corridor land—

(a) subsections (7) and (8) do not apply to the additional local government tollway corridor land declaration; and

(b) for section 105J(5)(d), the terms that apply to the lease of the land to the State are the terms for the lease of the original local government tollway corridor land applying immediately before the additional local government tollway corridor land declaration is made; and

(c) the additional local government tollway corridor land declaration must state—

(i) the lease reference number for the lease under section 105J(4) of the original local government tollway corridor land; and

(ii) the dealing number for the lease of the original local government tollway corridor land under section 105J(6); and

(iii) if the additional local government tollway corridor land is to be added to a lease under section 105J(9) or (10) of the original local government tollway corridor land—the dealing number for the lease.

Note—

For the effect of a declaration of additional local government tollway corridor land on leases see sections 105J and 105JAA.

105I Local government tollway corridor land on rail corridor land

(1) This section applies if, under section 105H, the Minister intends to declare a road, or part of a road, that crosses rail corridor land and continues on the other side of the rail corridor land to be local government tollway corridor land.

(2) Before making the declaration, the Minister must be satisfied—

(a) the department has consulted with the railway manager, if any, for the rail corridor land; and

(b) the railway manager has been given a reasonable opportunity to make submissions to the Minister about the proposed declaration.

(3) If the Minister decides to declare the road, or part of the road, to be local government tollway corridor land, the declaration under section 105H(3) must also declare the part of the rail corridor land where it is crossed by the road to be a common area (***common area***) for the rail corridor land and the local government tollway corridor land.

(4) The declaration of a common area may be subject to conditions, included in the declaration under section 105H(3), the Minister considers necessary or desirable.

(5) When the common area is declared—

(a) the local government for whom the declaration of the local government tollway corridor land is made may construct, maintain and operate a local government

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tollway on the common area in a way not inconsistent with its use as rail corridor land; and

Examples for paragraph (a)—

- a bridge or other structure over a railway
- a bridge or other structure that allows the tollway to pass under the railway

(b) the railway manager, if any, for the rail corridor land may construct, maintain and operate a railway on the common area in a way not inconsistent with its use as a local government tollway; and

(c) the railway manager and its agents or employees do not have any liability for the local government tollway or its use or operation on the common area.

(6) Unless the local government and the railway manager, if any, for the rail corridor land otherwise agree—

(a) subject to section 251, the local government is responsible for maintaining a local government tollway on the common area; and

(b) if the local government tollway on the common area stops being used, the local government is responsible for the cost of removing local government tollway infrastructure from the common area and restoring the railway.

(7) The State is taken not to be in breach of any of its obligations in a sublease of the rail corridor land, whether entered into before or after the commencement of this section, between the State and the railway manager by—

(a) the Minister's declaration; or

(b) anything done by the local government for the common area.

(8) If a declaration under section 105H(3) includes a common area—

(a) the chief executive must, as soon as practicable, give a copy of the gazette notice of the declaration to the registrar of titles; and

(b) the registrar of titles must record the declaration on the relevant lease of the rail corridor land to the State and any affected sublease in the leasehold land register; and

(c) any existing common area on the part of the rail corridor land where it is crossed by the road is, on the publication of the declaration, extinguished.

105J Effect on land of local government tollway corridor land declaration

(1) If a road, or part of a road, under the *Land Act 1994* is declared under section 105H to be local government tollway corridor land, the road or part—

(a) stops being a road under that Act; and

(b) becomes unallocated State land.

(2) If a lot, or part of a lot, under the *Land Title Act 1994* is declared under section 105H to be local government tollway corridor land, the lot or part becomes unallocated State land.

(3) If land, other than land mentioned in subsection (1) or (2) or unallocated State land, is declared under section 105H to be local government tollway corridor land, the land becomes unallocated State land.

(3A) Subject to section 105M, land that becomes unallocated State land under subsection (1), (2) or (3) is free of any interest or obligation other than the interests in the land, if any, continued under section 105H(9).

(4) The Minister administering the *Land Act 1994*—

(a) is taken to have leased the local government tollway corridor land to the State under the *Land Act 1994*, section 17(2) when the declaration is made; and

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(b) must lodge a document evidencing the lease in the leasehold land register.

(5) The lease is—

(a) in perpetuity; and

(b) if demanded, for a rent of $1 a year; and

(c) subject to the interests in the local government tollway corridor land, if any, continued in relation to the lease under section 105H(9)(a); and

(d) on the terms stated in the declaration of the local government tollway corridor land under section 105H(7).

(6) The State must lease local government tollway corridor land to the local government that asked, under section 105H, for the land to be declared to be local government tollway corridor land.

(7) The lease under subsection (6) may include an option to renew the lease.

(8) The terms of the lease under subsection (6), including an option to renew the lease, and a renewed lease are—

(a) to be decided by the Minister; and

(b) subject to the interests in the land, if any, continued in relation to the lease under section 105H(9)(b).

(9) The local government may lease the local government tollway corridor land to another person for use as a tollway.

(10) A person to whom the local government has leased the local government tollway corridor land, or a person who holds a lease under the lease from the local government, may lease the local government tollway corridor land to another person.

(11) Each lease under subsection (9) or (10) may include an option to renew the lease.

(12) The terms of each lease under subsection (9) or (10), including an option to renew the lease, and a renewed lease

are to be decided by the lessor and lessee but must be consistent with any conditions imposed on the approved tollway project under an Act.

(13) If an interest that is a registered interest is continued under section 105H(9), the registrar of titles must record the interest in the leasehold land register against the lease in relation to which it is continued.

(13A) If the Minister makes an additional local government tollway corridor land declaration, this section is subject to section 105JAA.

(14) In this section—

registered interest means—

(a) an interest recorded in a register kept under the *Land Act 1994*, section 276; or

(b) a registered interest under the *Land Title Act 1994*.

105JAAEffect of additional local government tollway corridor land declaration on leases

(1) This section applies if the Minister makes an additional local government tollway corridor land declaration.

(2) For applying section 105J to the additional local government tollway corridor land, the following apply—

(a) despite section 105J(4)—

(i) the Minister administering the *Land Act 1994* is taken to have amended the lease of the original local government tollway corridor land (the ***amended perpetual lease***) under the *Land Act 1994*, section 360A, to include the additional local government tollway corridor land; and

(ii) the chief executive must lodge with the registrar of titles the documents that the registrar considers necessary to evidence the amended perpetual lease in the leasehold land register;

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(b) a reference in section 105J(5) to the lease is taken to be a reference to the amended perpetual lease;

(c) a reference in section 105J(5)(c) to the local government tollway corridor land includes a reference to the additional local government tollway corridor land;

(d) despite section 105J(5)(d), the terms that apply to the amended perpetual lease are the terms mentioned in section 105H(11)(b);

(e) despite section 105J(6), the sublease is taken to be amended (the ***amended sublease***) to include the additional local government tollway corridor land;

(f) despite section 105J(8)(a), the terms of the amended sublease are the same as the terms of the sublease immediately before the additional local government tollway corridor land declaration is made;

(g) a reference in section 105J(8)(b) to the land includes a reference to the additional local government tollway corridor land;

(h) without limiting section 105J(9) and (10), the additional local government tollway corridor land may be added to a lease under the subsection of the original local government tollway corridor land;

(i) the *Land Act 1994*, section 336(3) and (4) do not apply to an amendment of the sublease to include the additional local government tollway corridor land;

(j) the chief executive must lodge in the leasehold land register the documents the registrar of titles considers necessary to give effect to the amended sublease;

(k) the amended sublease operates as if it had been originally issued or executed as amended.

(3) If the additional local government tollway corridor land is to be added to a sub-sublease—

(a) the sub-sublease is taken to be amended (the ***amended sub-sublease***) to include the additional local government tollway corridor land; and

(b) the *Land Act 1994*, section 336(3) and (4) do not apply to an amendment of the sub-sublease to include the additional local government tollway corridor land; and

(c) the chief executive must lodge with the registrar of titles the documents the registrar considers necessary to evidence the amended sub-sublease in the leasehold land register; and

(d) the amended sub-sublease operates as if it had been originally issued or executed as amended.

(4) For subsections (2)(a)(ii) and (j) and (3)(c), no fee is payable for lodging the documents.

(5) In this section—

sublease means the lease of the original local government tollway corridor land under section 105J(6).

sub-sublease means a lease of original local government tollway corridor land under section 105J(9) or (10).

105JABEffect of local government tollway corridor land declaration on State-controlled road declaration

(1) This section applies if—

(a) the Minister has declared a road or route, or part of a road or route, to be a State-controlled road under section 24(1) (***State-controlled road declaration***); and

(b) land where the State-controlled road, or part of the State-controlled road, is situated is later declared under section 105H(3) to be local government tollway corridor land.

(2) The State-controlled road declaration is revoked to the extent the declaration is for the State-controlled road, or part of the

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State-controlled road, situated on the local government tollway corridor land.

(3) Section 25 does not apply to the revocation.

105JA Compensation

(1) Subsection (3) applies to a person who has an interest in land declared to be local government tollway corridor land under section 105H.

(2) However, subsection (3) does not apply if the interest—

(a) is continued under section 105H(9); or

(b) is an interest under a services contract for the land.

(3) The person has a right to claim compensation under the *Acquisition of Land Act 1967*, section 12(5A) and (5B) and part 4 as if the interest were land taken by the State under that Act.

(4) For applying the *Acquisition of Land Act 1967* under subsection (3)—

(a) the State is the constructing authority; and

(b) for section 24(2A) of that Act, a claimant refers a claim for compensation to the Land Court by filing in the office of the registrar of the court copies of the claim given by the claimant to the State and the gazette notice for the declaration; and

(c) the reference in section 24(5) of that Act to the date of the gazette containing the gazette resumption notice taking the land is taken to be a reference to the date of the gazette containing the gazette notice for the declaration.

(5) Other than as stated in this section, a person has no right to compensation for the declaration of land as local government tollway corridor land under section 105H.

105K Relationship with other Acts

The following provisions do not apply to any lease or sublease, under section 105J, of local government tollway corridor land—

(a) the *Land Act 1994*, sections 157, 183, 204, 211 and 336(2)(a) and (c);

(b) the *Local Government (Finance, Plans and Reporting) Regulation 2010*, section 176;

(c) the *City of Brisbane (Finance, Plans and Reporting) Regulation 2010*, section 171.

Division 4 Public utility plant

Subdivision 1 Preliminary

105L Definition for div 4

In this division—

local government tollway corridor land means local government tollway corridor land that, immediately before it was declared under this chapter to be local government tollway corridor land, was a road or part of a road.

Subdivision 2 Ownership of public utility plant

105M Retention of ownership of public utility plant

(1) This section applies if, immediately before the declaration of land as local government tollway corridor land, public utility plant was located on the land.

(2) The declaration does not affect the ownership of the public utility plant.

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Subdivision 3 Powers of public utility provider on local government tollway corridor land

105N Public utility plant on local government tollway corridor land

(1) A public utility provider may do the following things on local government tollway corridor land—

(a) build, replace or take away, or alter, other than for maintenance or repair, its public utility plant;

(b) maintain or repair, or alter, for maintenance or repair, its public utility plant;

(c) take reasonable steps to stop obstruction or potential obstruction to, or interference or potential interference with, its public utility plant.

(2) However, the public utility provider may do things mentioned in subsection (1) only with the written agreement of the local government for whom the declaration of the local government tollway corridor land was made.

(3) The local government must not unreasonably withhold agreement.

(4) However, the local government may impose conditions on the agreement—

(a) to ensure the safety of persons doing things mentioned in subsection (1); or

(b) to require persons doing things mentioned in subsection (1) to undergo training.

(5) Despite subsection (2), a public utility provider may, if acting in the interests of public safety, carry out urgent maintenance of its public utility plant on local government tollway corridor land without the written agreement of the local government.

(6) However, the public utility provider may carry out urgent maintenance under subsection (5) only if the public utility provider—

(a) makes all reasonable attempts to obtain the oral agreement of the chief executive officer of the local government to the carrying out of the maintenance; and

(b) whether or not the chief executive officer's oral agreement is obtained, acts as quickly as possible to advise the local government of the details of the maintenance being carried out.

(7) Building or altering public utility plant under subsection (1)(a) does not affect the ownership of the public utility plant.

Subdivision 4 Obligations of public utility provider

105O Local government must give public utility provider information

(1) This section applies if a public utility provider asks, in writing, the local government for information about lines and levels for planned local government tollway infrastructure on local government tollway corridor land.

(2) The local government must give the public utility provider the information about the lines and levels necessary to enable the public utility provider to minimise possible adverse effects of the establishment of the infrastructure on the public utility provider's works.

105P Public utility provider to consult with local government before replacing public utility plant

(1) This section applies if a public utility provider proposes to replace the whole or a substantial proportion of its public utility plant on local government tollway corridor land.

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(2) The public utility provider must, before seeking written agreement under section 105N, consult with the local government.

(3) The object of the consultation is to identify mutually beneficial arrangements for the replacement of the public utility plant, having regard to existing development plans for the local government tollway corridor land.

105Q Public utility provider to comply with local government's or chief executive officer's agreement

(1) This section applies if, in relation to local government tollway corridor land, a public utility provider does something mentioned in section 105N(1) (the ***relevant action***)—

(a) without the written agreement of the local government, or the oral agreement of the local government's chief executive officer, required under section 105N; or

(b) in a way inconsistent with an agreement with the local government or chief executive officer.

(2) The local government may, by written notice given to the public utility provider, require the public utility provider, at the public utility provider's cost, and within the time stated in the notice, to take action to remedy the relevant action.

(3) The time stated in the notice must be a time that is reasonable in the circumstances.

(4) If the public utility provider does not comply with the notice, the local government may arrange for action the local government considers necessary to remedy the relevant action.

(5) The local government's reasonable expenses in arranging for the action to be carried out is a debt payable by the public utility provider to the local government.

105R Local government may require public utility provider to change position of public utility plant

(1) A local government may require a public utility provider to change the position of the public utility provider's public utility plant on local government tollway corridor land if the local government considers that the public utility plant will interfere with the exercise of the local government's powers for the local government tollway corridor land.

(2) The local government is responsible only for the cost of changing the position of the public utility plant.

105S Information by public utility provider to local government

(1) If, in relation to public utility plant on local government tollway corridor land, a public utility provider does something mentioned in section 105N(1), the public utility provider must prepare records adequately defining the location of the public utility plant.

(2) A public utility provider owning public utility plant located on local government tollway corridor land must, if asked by the local government, give the local government information adequately defining the location of the public utility plant.

Maximum penalty for subsection (2)—40 penalty units.

Subdivision 5 Liability for matters relating to public utility plant

105T Liability for damage caused by failure to comply with request for information

(1) This section applies if—

(a) a local government causes damage to public utility plant located on local government tollway corridor land; and

(b) before the damage was caused, the local government had asked for information as mentioned in section

Not authorised—indicative only

Not authorised—indicative only

105S(2) from the public utility provider owning the public utility plant; and

(c) the public utility provider had not, within a reasonable time, complied with the request; and

(d) the damage was caused because of the failure to comply with the request.

(2) Unless the local government otherwise agrees, the local government is not liable for the damage.

105U Liability for damage caused by failure to give enough detail about location of public utility plant

(1) This section applies if—

(a) a local government causes damage to public utility plant located on local government tollway corridor land; and

(b) information given to the local government under section 105S(2) did not define in enough detail the location of the public utility plant; and

(c) the damage was caused because of the failure to define in enough detail the location of the public utility plant.

(2) Unless the local government otherwise agrees, the local government is not liable for the damage.

105V Liability for damage caused because of failure to comply with local government's requirements

(1) This section applies if—

(a) a local government causes damage to public utility plant located on local government tollway corridor land; and

(b) the damage is caused because the public utility provider owning the public utility plant did something mentioned in section 105N(1) in relation to the public utility plant other than under the local government's requirements under this division.

(2) Unless the local government otherwise agrees, the local government is not liable for the damage.

105W Liability of public utility provider to pay additional expenses incurred by local government

(1) This section applies if a local government incurs additional expense in carrying out local government tollway infrastructure works on local government tollway corridor land because a public utility provider—

(a) did not give within a reasonable time information asked for by the local government as mentioned in section 105S(2); or

(b) in giving information as mentioned in section 105S(2) to the local government, did not define in enough detail the location of public utility plant; or

(c) did something mentioned in section 105N(1) in relation to public utility plant other than under the local government's requirements under this division.

(2) Unless the local government otherwise agrees, the public utility provider is liable to pay the local government the additional expense.

Subdivision 6 Replacement or reconstruction of public utility plant

105X Replacement or reconstruction of public utility plant

(1) This section applies if the carrying out of local government tollway infrastructure works on local government tollway corridor land by or for the local government requires taking away or replacing public utility plant.

(2) The local government can not be compelled to replace or reconstruct the public utility plant in its previous location and form.

Not authorised—indicative only

Not authorised—indicative only

(3) If the public utility plant is replaced or reconstructed—

(a) it must be done under the local government's requirements; and

(b) it must be done at the local government's expense.

(4) However, the cost to the local government of replacement or reconstruction of the public utility plant may be reduced by agreement between the local government and the public utility provider owning the public utility plant after taking into account—

(a) the remaining life of the public utility plant; and

(b) the salvage or scrap value of the public utility plant; and

(c) additional expense incurred because of inaccurate information given by the public utility provider about the location of the public utility plant; and

(d) additional expense incurred because the public utility plant was not constructed in accordance with the local government's requirements.

Division 5 Franchising local government tollway corridor land

105Y Power to enter into tollway franchise agreements

(1) A local government may, with the Treasurer's approval under the *Statutory Bodies Financial Arrangements Act 1982*, section 60A, enter into an agreement (a ***local government tollway franchise agreement***) with a person under which, or as part of which, the person is to invest in the construction, maintenance or operation of—

(a) a tollway under an approved tollway project; or

(b) a local government tollway.

(2) The agreement must be consistent with—

(a) for a tollway under an approved tollway project—conditions to which, under division 2, the approved tollway project is subject; and

(b) for a local government tollway—conditions to which, under division 2A, the declaration of the local government tollway is subject.

(3) Also, to the extent practicable, the agreement must be consistent with—

(a) the coordination plan; and

(b) the objectives of this Act; and

(c) any relevant regional plan under the Planning Act; and

(d) the objectives of the State's current transport infrastructure strategies.

(4) The agreement may include, for example, the following—

(a) provisions about the ownership of the local government tollway infrastructure;

(b) provisions about tolls for the use of the local government tollway;

(c) provisions about administration charges in relation to tolls for the use of the local government tollway.

105Z Tabling of local government tollway franchise agreements

(1) The mayor of a local government that enters into a local government tollway franchise agreement or an amendment of a local government tollway franchise agreement must, as soon as practicable after the agreement or amendment is entered into, table the agreement or amendment at a meeting of the local government.

(2) The local government must—

(a) keep the local government tollway franchise agreement or the amendment of a local government tollway

Not authorised—indicative only

Not authorised—indicative only

franchise agreement open for inspection, free of charge, by members of the public at its public office; and

(b) make copies available for purchase at a price not more than the cost to the local government of producing the copy and, if a copy is supplied to a purchaser by post, the cost of the postage.

105ZA Annual report on operation of part

(1) If a local government has entered into a local government tollway franchise agreement, each annual report of the local government under the *Local Government Act 2009* or the*City of Brisbane Act 2010* must include a report on the operation of this part during the financial year to which the report relates.

(2) Without limiting subsection (1), the report must include—

(a) if the local government has an approved tollway project—a statement of how it is complying with conditions to which the approval is subject; and

(b) if the local government has a local government tollway—a statement of how it is complying with any conditions imposed on the declaration.

Division 6 Tolling matters

Subdivision 1 Notice of tolling matters

105ZB Local government to give notice of tolling matters

(1) A local government must give notice of the matters mentioned in schedule 5 for a local government tollway before a toll becomes payable for the use of the local government tollway.

(2) Notice under subsection (1) must be given by a notice published in a newspaper circulating generally in the local government's area and in adjoining local government areas.

(3) A toll may be set in a way that applies differently—

(a) to different classes of vehicles; or

(b) by reference to stated exceptions or factors.

(4) Subsection (3) does not limit schedule 5 or the *Statutory Instruments Act 1992*.

(5) An administration charge under the notice under subsection (1) must not be more than the reasonable cost, under this division, of—

(a) issuing a notice about an unpaid toll; and

(b) collecting the unpaid toll, an image processing fee for the toll and the administration charge.

(6) A user administration charge under the notice under subsection (1) for a toll—

(a) may include a fee (an ***image processing fee***) that is not more than the reasonable cost of capturing, processing and using an image to identify a vehicle at a toll plaza for the toll; and

(b) so far as it does not comprise an image processing fee, must not be more than the reasonable cost, under this division, of administering and collecting payment of the toll.

(7) A reference in the notice under subsection (1) to a video matching fee is taken to be a reference to an image processing fee.

Subdivision 2 Liability for tolls

105ZC Liability for toll and user administration charge and satisfying the liability

(1) The driver of a designated vehicle entering, or on, a local government tollway is liable, at each toll plaza through which the vehicle passes, for—

Not authorised—indicative only

Not authorised—indicative only

(a) the toll payable at the toll plaza for the use of the local government tollway by the vehicle; and

(b) if the driver satisfies the driver's liability under paragraph (a) other than in cash or by use of the E toll system—the user administration charge for the toll.

(2) The amount of any unpaid toll or user administration charge may be recovered by the local government tollway operator as a debt from the driver, subject to any applicable agreement made by the local government tollway operator.

(3) However, the driver is not liable to pay the amount of the user administration charge for the toll if the toll is unpaid because—

(a) the driver's transponder or other electronic device is faulty through no fault of the driver and the driver is unaware it is faulty; or

(b) the E toll system is faulty or otherwise inoperable.

(4) The driver may satisfy the driver's liability for the toll payable at a toll plaza by—

(a) if a part of the toll plaza is designated by appropriate signs as available for making a toll payment in cash—making a payment in cash of the toll payable; or

(b) if there is an E toll only pay point at the toll plaza, or another part of the toll plaza designated by appropriate signs as available for using an E toll system—using the E toll system as required under section 105ZD(1); or

(c) if a notice under section 105ZB(1) provides another way of making the payment—making the payment in that way.

(5) If the designated vehicle is at an E toll only pay point at the toll plaza, the driver may satisfy the driver's liability for the toll only by—

(a) using the E toll system as required under section 105ZD(1); or

(b) another way provided in a notice under section 105ZB(1).

105ZD Using the E toll system

(1) The following requirements apply for using the E toll system to satisfy the driver's liability for the toll payable at the toll plaza—

(a) the designated vehicle must have a properly operating transponder or other electronic device;

(b) the transponder or other device—

(i) must have been issued for a vehicle of the same type as the designated vehicle; and

(ii) must be linked to a valid account for the E toll system operating for the local government tollway; and

(iii) must properly activate the E toll system.

(2) Using the E toll system to satisfy the liability of a designated vehicle's driver for the toll payable at a toll plaza does not affect another contractual obligation owed by the driver or another person to a local government tollway operator under an applicable agreement made by the local government tollway operator.

Example for subsection (2)—

The arrangements for a person's account with a local government tollway operator may provide that the person will be billed at the end of each month for all the times the transponder issued to the person has been used at toll plazas on the local government tollway in the month.

Subdivision 3 Failure to pay toll

105ZE Application of sdiv 3

This subdivision applies if—

Not authorised—indicative only

Not authorised—indicative only

(a) a designated vehicle passes through a toll plaza on a local government tollway; and

(b) the driver does not, under section 105ZC(4), satisfy the driver's liability for the toll payable at the toll plaza.

105ZF Definition for sdiv 3

In this subdivision—

deferred toll amount means the total of the following amounts for any local government tollway—

(a) the amount of the toll for which the driver's liability was not satisfied under section 105ZC(4);

(b) the amount of the image processing fee for the toll.

105ZG Liability for image processing fee and administration charge in addition to unpaid toll

(1) If this subdivision applies to a driver, the driver immediately becomes liable to pay the local government tollway operator, in addition to the unpaid toll, the amount of—

(a) the image processing fee for the toll; and

(b) an administration charge.

(2) However, the driver is not liable under subsection (1) to pay the amount of the image processing fee or administration charge if the toll is unpaid because—

(a) the driver's transponder or other electronic device is faulty through no fault of the driver and the driver is unaware it is faulty; or

(b) the E toll system is faulty or otherwise inoperable.

105ZH Notice to vehicle's registered operator

(1) The local government tollway operator may give the registered operator of the vehicle a written notice in the

approved form under this section if the local government tollway operator has not received the deferred toll amount.

(2) The notice must specify each of the 1 or more deferred toll amounts for which it is given.

(3) The notice must require the registered operator to do either of the following, within the prescribed time, for each deferred toll amount listed in the notice—

(a) pay the deferred toll amount to the local government tollway operator;

(b) give the local government tollway operator the registered operator's statutory declaration in the approved form containing information that—

(i) if the registered operator is an individual—establishes, to the extent it is reasonably practicable for the registered operator to do so, that the registered operator was not the driver when liability for the toll included in the deferred toll amount was incurred; and

(ii) gives the local government tollway operator all the help the registered operator can reasonably give for establishing the name and address of the person who was the driver when liability for the toll included in the deferred toll amount was incurred.

(4) The notice may also require the registered operator to pay an administration charge stated in the notice if there are any deferred toll amounts listed in the notice for which the registered operator does not give a statutory declaration under subsection (3)(b).

(5) The notice must not require the registered operator to pay more than 1 administration charge, even if the notice is given for 2 or more deferred toll amounts.

(6) If the notice is given in contravention of subsection (5), it is of no effect.

Not authorised—indicative only

Not authorised—indicative only

(7) The registered operator must comply with the notice unless the registered operator has a reasonable excuse.

Maximum penalty—15 penalty units.

(8) Payment of an administration charge required by the notice also satisfies the liability for the administration charge that arose under section 105ZG(1)(b) in relation to each toll included in a deferred toll amount listed in the notice.

(9) For giving the notice, the registered operator's address for service may be taken to be a residential, postal or business address recorded for the registered operator under the registration Act applying to the designated vehicle's registration.

(10) Section 99AA provides for giving a single notice under section 99 and this section.

105ZI Corporation may be taken to be driver of vehicle

(1) This section applies if the registered operator of the vehicle—

(a) is a corporation; and

(b) fails to give the local government tollway operator all the help, under section 105ZH(3)(b)(ii), the registered operator can reasonably give to enable the local government tollway operator to establish the name and address of the driver of the vehicle.

(2) The registered operator of the vehicle is taken to be the driver of the vehicle for sections 105ZC and 105ZG.

105ZJ Notice to information holder

(1) The local government tollway operator may give a notice under this section only if the local government tollway operator—

(a) has not received the deferred toll amount; and

(b) considers, on reasonable grounds, that a person (the ***information holder***) other than the vehicle's registered operator has information that could help the local government tollway operator establish the name and address of the driver.

(2) The local government tollway operator may give the information holder a written notice requiring the information holder, within the prescribed time for the notice, to give the local government tollway operator a statutory declaration complying with subsection (3).

(3) The statutory declaration must—

(a) be made by the information holder; and

(b) contain information giving the local government tollway operator all the help the information holder can reasonably give for establishing the driver's name and address.

(4) The information holder must comply with the notice given under subsection (2) unless the information holder has a reasonable excuse.

Maximum penalty for subsection (4)—15 penalty units.

105ZK Notice to person identified as driver

(1) The local government tollway operator may give a notice in the approved form to a person under this section if the local government tollway operator—

(a) has not received the deferred toll amount; and

(b) considers, on reasonable grounds, it has correctly identified the person as the driver.

(2) The notice must specify each of the 1 or more deferred toll amounts for which it is given.

(3) The notice must require the person to do either of the following, within the prescribed time, for each deferred toll amount listed in the notice—

Not authorised—indicative only

Not authorised—indicative only

(a) pay the deferred toll amount to the local government tollway operator;

(b) give the local government tollway operator the person's statutory declaration in the approved form containing information that—

(i) establishes, to the extent it is reasonably practicable for the person to do so, that the person was not the driver when liability for the toll included in the deferred toll amount was incurred; and

(ii) gives the local government tollway operator all the help the person can reasonably give for establishing the name and address of the person who was the driver when liability for the toll included in the deferred toll amount was incurred.

(4) The notice may also require the person to pay an administration charge stated in the notice if there are any deferred toll amounts listed in the notice for which the person does not give a statutory declaration under subsection (3)(b).

(5) The notice must not require the person to pay more than 1 administration charge, even if the notice is given for 2 or more deferred toll amounts.

(6) If the notice is given in contravention of subsection (5), it is of no effect.

(7) The person must comply with the notice unless the person has a reasonable excuse.

Maximum penalty—15 penalty units.

(8) Payment of an administration charge required by the notice also satisfies the liability for the administration charge that arose under section 105ZG(1)(b) in relation to each toll included in a deferred toll amount listed in the notice.

(9) Section 101A provides for giving a single notice under section 101 and this section.

Subdivision 4 Statutory declarations and limitation on offences

105ZL Statutory declarations for sdiv 3

(1) A statutory declaration given by a person under subdivision 3 may, if appropriate, be supported by statutory declarations from other persons.

(2) If a person required to give a statutory declaration under subdivision 3 is a corporation, the statutory declaration must be given by a person authorised to act for the corporation.

105ZM Limit on offences

If this division applies more than once because of a failure to pay a toll at each of 2 or more toll plazas on the 1 local government tollway in a single journey, a person liable for an offence under this division arising out of the journey may not be punished for more than 1 offence.

Subdivision 5 Confidentiality of personal information

105ZN Confidentiality

(1) A person must not, intentionally or recklessly, disclose, allow access to, record or use personal information.

Maximum penalty—200 penalty units.

(2) However, a person may disclose, allow access to, record or use personal information—

(a) in the discharge of a function related to the administration of this division; or

(b) if authorised, expressly or impliedly—

Not authorised—indicative only

Not authorised—indicative only

(i) under another provision of this Act, or under another Act; or

(ii) by the individual whose identity is apparent, or can reasonably be ascertained, from the personal information; or

(c) for a proceeding in a court or tribunal, if the personal information is admissible as evidence in the proceeding; or

(d) if the purpose for which the action is taken is directly related to the purpose for which the personal information was obtained; or

(e) if the person believes on reasonable grounds that the action is necessary to prevent or lessen a serious and imminent threat to the life or health of an individual.

(3) In this section—

administration of this division includes the operation of a local government tollway under this division.

personal information means information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, that—

(a) has been gained or otherwise brought into existence—

(i) through involvement in the administration of this division; or

(ii) because of an opportunity provided by involvement in the administration of this division; and

(b) is about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

Subdivision 6 Evidentiary matters

105ZO Evidence and procedure

(1) For this division—

(a) it is not necessary to prove the appointment of an official of a local government or a local government tollway operator; and

(b) a signature purporting to be the signature of an official of a local government or a local government tollway operator is evidence of the signature it purports to be; and

(c) a certificate stating any of the following matters is evidence of the matter—

(i) a stated place was or was not a local government tollway or part of a local government tollway;

(ii) a stated place was or was not a toll plaza or part of a toll plaza for a local government tollway;

(iii) a stated person was or was not recorded as the registered operator of a stated vehicle;

(iv) a stated vehicle was or was not a designated vehicle of a stated type;

(v) a stated person was or was not a local government tollway operator;

(vi) a notice under section 105ZH was given to the registered operator of a stated vehicle;

(vii) a notice under section 105ZJ was given to the information holder;

(viii) a notice under section 105ZK was given to the person identified as the driver;

(~~v~~ix) the toll payable for a designated vehicle's use of a local government tollway has not been paid;

Not authorised—indicative only

Not authorised—indicative only

(~~vi~~x) an administration charge payable under a notice given under section 105ZH or 105ZK has not been paid;

(~~vii~~xi) a user administration charge for a toll has not been paid;

(~~viii~~xii) a statutory declaration required for subdivision 3 was or was not received;

(~~ix~~xiii) a recording is a recording of a type mentioned in subsection (3).

(2) A certificate—

(a) may relate to a stated time or period of time; and

(b) if it is issued for a particular period, has the effect mentioned in subsection (1)(c) for the entire period.

(3) A recording by a photographic, mechanical, electronic or other device for the purpose of administering this division, including for the operation of a local government tollway under this division, is evidence of—

(a) the making of the recording; and

(b) the accuracy of the recording; and

(c) the matters stated in the recording.

(4) In this section—

certificate means a certificate purporting to be signed by an official.

official, of a local government or a local government tollway operator, means—

(a) the chief executive officer of the local government, or an officer or employee of the local government acting under the authority of the chief executive officer; or

(b) the chief executive officer, however named, of a local government tollway operator, or an employee of either the local government tollway operator or another person acting under the authority of the chief executive officer.

Division 7 Miscellaneous

105ZOALocal government to keep Minister informed

(1) A local government that has an approved tollway project or local government tollway must, by written notice given to the Minister, inform the Minister about any material change relating to the approved tollway project or local government tollway as soon as practicable after the local government becomes aware of the material change.

(2) Without limiting subsection (1), a material change to an approved tollway project or local government tollway includes a change that may—

(a) adversely affect the local government's financial position in a material way; or

(b) adversely affect the State's financial position in a material way; or

(c) adversely impact on the operation or management of a State-controlled road, a franchised road or public transport in a material way; or

(d) affect the proposed methodology or strategy for charging tolls for use of the local government tollway; or

(e) change the performance specifications for the approved tollway project or local government tollway, including, for example, the project alignment or design or the land required for the approved tollway project or local government tollway.

105ZOBState not liable for loss relating to local government tollway etc.

(1) The State is not liable for any loss suffered by a local government or another person arising out of any matter relating to an approved tollway project or local government tollway.

Not authorised—indicative only

Not authorised—indicative only

(2) Without limiting subsection (1), the State is not liable for any loss suffered by a local government or another person arising out of the following—

(a) the approval of a tollway project, including any conditions to which the approval is subject, or any amendment or revocation of the approval;

(b) the declaration of a local government tollway;

(c) the construction, maintenance or operation of a local government tollway;

(d) the declaration of land to be local government tollway corridor land;

(e) any condition imposed on a declaration or any amendment of a condition;

(f) a decision by the Minister to issue a compliance notice, suspension notice, revocation notice, final notice, schedule 5 step-in notice or schedule 5A step-in notice;

(g) anything done under a schedule 5 step-in notice or schedule 5A step-in notice.

Part 9 Public thoroughfare easements

105ZP Public thoroughfare easements

(1) This section applies if a public thoroughfare easement is created over relevant land.

(2) The State has control of the easement land, subject to the provisions of the instrument creating the easement.

(3) Control of the easement land includes capacity to take all necessary steps for—

(a) construction, maintenance and improvement of the easement land; and

(b) regulation of the use of the easement land.

(4) Despite subsections (2) and (3)—

(a) the State has responsibility for the maintenance of the easement land; and

(b) for deciding the respective rights and liabilities that attach to a relevant entity for anything that happens arising out of the use of the easement land, the easement land must be taken to be a State-controlled road.

(5) The owner of the relevant land, as the grantor of the easement, or as a successor in title of the grantor of the easement—

(a) is not required, and can not be required, to maintain, or to contribute to the maintenance of, any part of the easement land; and

(b) is not, and can not be made, civilly liable for an act done, or omission made, honestly and without negligence, in relation to the easement land.

(6) In this section—

easement land means any part of the relevant land that is affected by the public thoroughfare easement.

owner, of the relevant land, means—

(a) if the relevant land is land granted in trust under the *Land Act 1994*—the trustee of the land; or

(b) if the relevant land is non-freehold land under the *Land Act 1994*—the lessee or licensee of the land; or

(c) if the relevant land is a lot under the *Land Title Act 1994*—the registered owner of the lot.

relevant entity means any of following—

(a) the owner of the relevant land;

(b) the State;

(c) any member of the public.

relevant land means—

Not authorised—indicative only

Not authorised—indicative only

(a) land granted in trust, or non-freehold land, under the *Land Act 1994*; or

(b) a lot under the *Land Title Act 1994*.

Part 10 General provision for particular applications

105ZQ Applications for particular decisions

(1) This section applies to—

(a) an application for an approval mentioned in section 33(1) or 50(2)(a); or

(b) an application for a decision under section 62(1).

(2) The application must be made in the approved form and in the way stated on the approved form.

Example of how application could be made—

by post or fax or electronically using an online system provided for the purpose and accessible on, or through, the department's website

(3) Subsection (2) does not apply to an application that, under section 62A(2), is taken to also be an application for a decision under section 62(1).

Chapter 7 Rail transport infrastructure and other matters

Part 1 Preliminary

106 Ways of achieving objectives

The objectives of this Act for rail are intended to be achieved by—

(a) providing for the development and implementation of rail transport infrastructure strategies; and

(b) providing a framework to—

(i) allow railway managers to manage rail transport infrastructure in an effective and efficient way; and

(ii) allow railway operators to operate rolling stock in an effective and efficient way; and

(iii) allow rail transport infrastructure to be constructed and maintained in an effective and efficient way; and

(iv) otherwise allow rail transport infrastructure to be managed and operated in an effective and efficient way; and

(c) providing for the safety of railways and persons at, on or near railways by imposing requirements directed at ensuring the safety.

107 Scope of chapter

(1) This chapter applies to rail transport infrastructure and other rail infrastructure.

(2) This chapter does not apply to—

(a) a cable car; or

Not authorised—indicative only

Not authorised—indicative only

(b) a monorail; or

(c) an amusement railway; or

(d) a railway that—

(i) is part of, and used solely for, a mining operation; and

(ii) is not connected to a railway used to transport passengers or freight; or

(e) a cane railway; or

(f) light rail or light rail transport infrastructure; or

(g) another railway prescribed under a regulation.

(3) In this section—

amusement railway means—

(a) a railway that—

(i) is operated solely within an amusement or theme park; and

(ii) is an amusement device required to be registered under a regulation under the *Work Health and Safety Act 2011*; and

(iii) does not operate on or across a road; or

(b) a railway that operates on a track with a gauge of less than 600mm on a place other than a road.

Part 2 Investigating potential rail corridor

108 Purpose of pt 2

The purpose of this part is—

(a) to facilitate the development of rail transport infrastructure by giving a person who is genuinely

considering constructing a railway or the chief executive authorisation to enter land to enable the land's potential and suitability as a rail corridor to be investigated; and

(b) to safeguard the interests of owners and occupiers of land affected by the entry.

109 Definitions for pt 2

In this part—

associated person, of an investigator, means any of the following—

(a) if the investigator is a corporation—the corporation's chief executive, secretary or directors;

(b) the investigator's employees or partners who are individuals;

(c) a person who is an agent of, or contractor for, the investigator, and engaged in writing for the purposes of the investigator's authority;

(d) employees of an agent or contractor mentioned in paragraph (c);

(e) if a person mentioned in paragraph (c) is a corporation—the corporation's chief executive, secretary, directors or employees.

authority means—

(a) if the chief executive is the relevant person—the authority to enter land under section 109A; or

(b) if an investigator is the relevant person—a rail feasibility investigator's authority.

investigator means a person who holds an authority.

relevant person means the chief executive or an investigator.

Not authorised—indicative only

Not authorised—indicative only

109A Chief executive may enter land to investigate potential rail corridor

(1) The chief executive, or someone authorised in writing by the chief executive, may—

(a) enter and re-enter any land for the purpose of investigating the land's potential and suitability as a rail corridor; and

(b) to the extent reasonably necessary or convenient for that purpose—

(i) do anything on the land; or

(ii) bring anything onto the land; or

(iii) temporarily leave machinery, equipment or other items on the land.

Examples of things the chief executive may do on the land—

- conduct surveys and take soil samples
- clear vegetation, or otherwise disturb the land, to the extent reasonably necessary
- construct temporary access tracks using the land or using materials brought onto the land

(2) Before land is entered for the first time under subsection (1), the chief executive must give a written notice to the owner or occupier of the land.

(3) The notice must state—

(a) the chief executive, or someone authorised in writing by the chief executive, intends to investigate the land; and

(b) a general outline of the things intended to be done on the land, including, for example, the construction of any temporary access track; and

(c) the approximate period during which the land is to be entered under subsection (1); and

(d) the entry is not an indication of a commitment or approval by the State, the chief executive or any other person in relation to any proposal, and in particular,

does not commit the State to acquiring any land as a rail corridor.

(4) The chief executive may enter the land only if—

(a) the owner or occupier of the land gives written consent to the entry; or

(b) at least 7 days have passed since the notice was given.

(5) In this section—

land does not include a part of a place where a person resides.

110 How to apply for a rail feasibility investigator's authority

(1) A person may apply to the chief executive for a rail feasibility investigator's authority for an area of land.

(2) The application must be in writing and state the following information—

(a) the area of land;

(b) the purpose for which the authority is sought;

(c) details of the nature of the activities proposed to be conducted in the area;

(d) the period for which the authority is sought.

(3) The reasonable costs and expenses incurred by the chief executive in acting under sections 111 and 112 relation to the application are a debt payable by the applicant to the State.

111 Additional information for application

(1) The chief executive may—

(a) make inquiries to decide the application; and

(b) require the applicant to give the chief executive additional information to decide the application.

(2) The chief executive may reject the application if the applicant fails, without reasonable excuse, to give the additional

Not authorised—indicative only

Not authorised—indicative only

information within a stated reasonable time of not less than 28 days.

112 Granting authority

(1) The chief executive may grant or refuse to grant an authority.

(2) The chief executive must grant the authority if the chief executive is satisfied the person is genuinely considering constructing a railway and is acting reasonably and in good faith.

(3) If the chief executive refuses to grant an authority, the chief executive must give the applicant written reasons for the refusal.

(4) In deciding the area for an authority, the chief executive must be satisfied the area is no more extensive than is reasonably necessary.

113 Rail feasibility investigator's authority

(1) An authority must be in writing stating the following—

(a) the area to which it applies;

(b) the purpose for which it is granted;

(c) when it expires;

(d) any conditions that may be imposed on the authority.

Example of conditions—

lodging a bond with the chief executive or taking out insurance

(2) An authority authorises the investigator and associated persons—

(a) to enter and re-enter any land within the area to which it applies for the purpose of investigating the land's potential and suitability as a rail corridor; and

(b) to the extent reasonably necessary or convenient for that purpose—

(i) to do anything on the land; or

(ii) to bring anything onto the land; or

(iii) to temporarily leave machinery, equipment or other items on the land.

Examples of things authorised by the authority—

- to conduct surveys and take soil samples
- to clear vegetation, or otherwise disturb the land, to the extent reasonably necessary
- to construct temporary access tracks using the land or using materials brought onto the land

(3) The grant of an authority is not an indication of a commitment or approval by the State, the chief executive or any other person in relation to any proposal, and in particular, does not commit the State to acquiring any land as a rail corridor.

(4) An investigator or associated person must comply with each condition of the investigator's authority, unless the investigator or associated person has a reasonable excuse.

Maximum penalty for subsection (4)—200 penalty units.

114 What investigator must do before land is entered for the first time

(1) Before land is entered for the first time under an investigator's authority, the investigator must give a written notice to the land's owner or occupier.

(2) The notice must state—

(a) the chief executive has granted to the investigator a rail feasibility investigator's authority for an area that is part of or includes the land; and

(b) the things the investigator and associated persons of the investigator are authorised to do under the authority; and

(c) a general outline of the things intended to be done on the land, including the construction of any temporary access track; and

Not authorised—indicative only

Not authorised—indicative only

(d) the approximate period during which the land is to be entered under the authority; and

(e) the grant of the authority is not an indication of a commitment or approval by the State, the chief executive or any other person in relation to any proposal, and in particular, does not commit the State to acquiring any land as a rail corridor.

(3) The investigator or associated person may enter onto land only if—

(a) the owner or occupier of the land gives written consent to the entry; or

(b) at least 7 days have passed since the notice was given.

115 Relevant person to issue associated person with identification

(1) Before a relevant person allows an associated person to act under the relevant person's authority, the relevant person must issue the associated person with identification.

Maximum penalty—10 penalty units.

(2) The identification must—

(a) state the names of the relevant person and the person to whom the identification is issued; and

(b) indicate that, for the purposes of this Act, the person is associated with the holder of a rail feasibility investigator's authority; and

(c) state the capacity in which the associated person is an associated person; and

(d) be signed by or for the relevant person; and

(e) be signed by the associated person; and

(f) state an expiry date.

(3) A person who stops being an associated person of a relevant person must return the person's identification issued under

subsection (1) to the relevant person as soon as practicable, but within 21 days, after the person stops being an associated person, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

(4) Subsections (5) and (6) apply if a person who claims to be or appears to be the owner or occupier of land within the area for an authority asks an individual who has entered, is entering or is about to enter land under an authority—

(a) for identification; or

(b) about the person's authority to enter the land.

(5) If the request is made of an investigator, the investigator must immediately state the investigator's name and show the person a copy of the investigator's authority.

Maximum penalty—10 penalty units.

(6) If the request is made of an associated person of a relevant person, the associated person must immediately state his or her name and show the other person the identification issued to the associated person under subsection (1).

Maximum penalty for subsection (6)—10 penalty units.

(7) If the request under subsection (4) is made of the chief executive, the chief executive must immediately state the chief executive's name and state the chief executive is authorised to investigate the land under section 109A.

(8) If the chief executive (the ***official***), or someone authorised in writing by the chief executive (also the ***official***), investigates land under section 109A and the owner or occupier of the land is not present, before leaving the land, the official must leave a notice in a conspicuous position and in a reasonably secure way stating the following—

(a) the official's name and business address or telephone number;

(b) the action taken by the official under section 109A;

(c) when the action was taken.

Not authorised—indicative only

Not authorised—indicative only

(9) In this section—

associated person, if the chief executive intends to investigate land under section 109A, includes a person authorised by the chief executive under section 109A.

116 Pretending to be an investigator etc.

A person must not pretend—

(a) to be an investigator; or

(b) to be an associated person of an investigator; or

(c) to be the chief executive investigating land under section 109A; or

(d) to be a person authorised by the chief executive under section 109A.

Maximum penalty—80 penalty units.

117 Relevant person to take care in acting under authority

A relevant person—

(a) must take as much care as is practicable to minimise damage to the land or inconvenience to the land's owner or occupier; and

(b) may do anything necessary or desirable to minimise the damage or inconvenience; and

(c) is liable to compensate the land's owner or occupier for any loss or damage suffered by the owner or occupier arising out of the entry onto the land, any use made of the land, anything brought onto the land or anything done or left on the land in connection with the relevant person's authority.

118 Compensation payable by relevant person

(1) An owner or occupier of land may, by written notice given to the relevant person—

(a) claim compensation from the relevant person for loss or damage arising out of an entry onto the land, any use made of the land, anything brought onto the land or anything done or left on the land in connection with the relevant person's authority; or

(b) require the relevant person to carry out works to rectify the damage within a reasonable time after the relevant person has finished investigating the land under the authority; or

(c) require the relevant person to carry out works under paragraph (b) and then claim compensation for any loss or damage not rectified.

(2) A claim may be made—

(a) whether or not the act or omission giving rise to the claim was authorised under the authority; and

(b) whether or not the relevant person prohibited, or took steps to prevent, the loss or damage; and

(c) even though the loss or damage was caused or contributed to by an associated person.

(3) The notice must be given—

(a) within 1 year after the loss or damage happened; or

(b) at a later time allowed by a court.

(4) The amount of compensation is—

(a) the amount agreed between the parties; or

(b) if the parties can not agree within a reasonable time—the amount decided by a court with jurisdiction for the amount of compensation claimed.

(5) In this section—

Not authorised—indicative only

Not authorised—indicative only

associated person, if the chief executive intends to investigate land under section 109A, includes a person authorised by the chief executive under section 109A.

Part 4 Rail transport infrastructure powers

Division 1 Railway works

162 Application of div 1

This division applies only to railway works.

163 Entering land for railway works etc.

For railway works, the chief executive or an accredited person may enter someone else's land and carry out the works.

164 Entry to land by notice or with approval

(1) Before entering someone else's land to carry out railway works, the chief executive or an accredited person must—

(a) give at least 7 days written notice to the land's owner or occupier; or

(b) get the written agreement of the land's owner or occupier to the entry.

(2) The notice must—

(a) state the use intended to be made of the land; and

(b) include a general outline of the intended works; and

(c) state an approximate period when the works are expected to be carried out on the land.

(3) The chief executive or accredited person need not comply with subsection (1) for—

(a) urgent remedial action on a railway; or

(b) maintenance on a road.

(4) If urgent remedial action is required, the chief executive or accredited person must give the land's owner or occupier as much oral notice as is practicable.

165 Care to be taken in carrying out works etc.

In entering land and carrying out railway works on the land, the chief executive or an accredited person—

(a) must take as much care as is practicable to minimise damage to the land or inconvenience to the land's owner or occupier; and

(b) may do anything necessary or desirable to minimise the damage or inconvenience; and

(c) must get the agreement of the owner or occupier to take or use the materials of the land's owner or occupier, unless urgent remedial action on a railway is required.

166 Compensation for carrying out works etc.

(1) An owner or occupier of land entered under this part by the chief executive or an accredited person may, by written notice given to the chief executive or accredited person—

(a) claim compensation for loss or damage caused by the entry or railway works carried out on the land; or

(b) claim compensation for the taking or use of materials; or

(c) require the person to carry out works in restitution for the damage; or

(d) require the person to carry out works in restitution for the damage and then claim compensation for any loss or damage not restituted.

Not authorised—indicative only

Not authorised—indicative only

(2) The notice must be given—

(a) within 1 year after the railway works are completed; or

(b) at a later time allowed by the chief executive or accredited person.

(3) The amount of compensation is—

(a) the amount agreed between the parties; or

(b) if the parties can not agree within a reasonable time—the amount decided by a court with jurisdiction for the recovery of the amount of compensation claimed.

(4) However, the amount of compensation for damage to the land and its fixtures, and for taking or use of materials, can not be more than the amount that would have been awarded if the land had been acquired.

167 Watercourses

(1) To carry out railway works, an accredited person may, with the chief executive's written approval—

(a) divert a watercourse; or

(b) construct a watercourse, whether temporary or permanent.

(2) In deciding whether to approve the diversion of a watercourse, the chief executive must consider the effect the works would have on the watercourse's physical integrity and flow characteristics.

(3) Subsection (2) does not limit the matters the chief executive may consider.

(4) Subsection (1) does not authorise the chief executive, in a wild river area, to grant an approval under this section to—

(a) divert or construct a watercourse; or

(b) extract quarry material from a watercourse.

Division 2 Other powers

168 Power to require works to stop

(1) A person must not, without the chief executive's written approval, carry out works near a railway if the works threaten, or are likely to threaten, the railway's safety or operational integrity.

Maximum penalty—100 penalty units.

(2) If—

(a) a person is carrying out, or proposes to carry out, works near a railway; and

(b) the chief executive reasonably believes they threaten, or are likely to threaten, the railway's safety or operational integrity;

the chief executive may give the person a written direction to stop, alter or not to start the works.

(3) The person must comply with the direction, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(4) If works are carried out contrary to subsection (1) or a direction under subsection (2), the chief executive may, by written notice, require the owner of the land where the works are situated to alter, demolish or take away the works within a stated reasonable time.

(5) The person must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(6) If the person does not comply with the requirement, the chief executive may—

(a) alter, demolish or take away the works; or

Not authorised—indicative only

Not authorised—indicative only

(b) alter, demolish or take away the works and recover the cost of doing so from the land's owner as a debt payable by the owner.

(7) For this section, a person authorised by the chief executive may enter land and inspect works—

(a) after giving 3 days written notice to the land's owner or occupier; or

(b) with the written agreement of the land's owner or occupier; or

(c) without notice or approval, if the chief executive reasonably believes there is an immediate and significant threat to the railway's safety or operational integrity.

(8) This section binds all persons, including the State, the Commonwealth and the other States.

169 Closing railway crossings

(1) A railway manager may temporarily close or regulate a railway crossing if satisfied it is necessary because of an immediate threat to—

(a) the safety of the railway; or

(b) the public using it or who may use it.

(2) If the manager decides to close or regulate a crossing—

(a) the manager must, as soon as practicable after its closure or regulation, notify the authority responsible for the crossing of its closure or regulation, unless the authority has agreed that notification is unnecessary; and

(b) the manager may construct a substitute crossing.

Part 7 Land for railway purposes

239AH Definitions for pt 7

In this part—

registered interest means an interest registered in the leasehold land register, other than a mortgage.

unregistered right, in relation to land held under a lease or sublease, means a right to use the land that has not been registered or can not be registered in the leasehold land register.

239AI Effect of resumption of particular interests in land

(1) This section applies if, under the resumption laws, the chief executive, for the State, acquires an interest in land that is less than a freehold interest (the ***acquired land***) for use by a railway manager as part of a rail transport corridor.

(2) The acquired land is free of any interest or obligation arising under the interest that was acquired.

(3) The chief executive, for the State, may exercise all the powers of an owner in relation to the acquired land.

(4) The chief executive must, as soon as practicable, arrange for the acquired land to become unallocated State land for the purposes of section 240.

(5) However, the chief executive may delay the acquired land becoming unallocated State land until any proposed rail transport infrastructure is built or substantially built and the boundaries of the land are more accurately defined.

(6) The *Acquisition of Land Act 1967*, section 12(2A), does not apply to the acquired land.

(7) In this section—

resumption laws means—

Not authorised—indicative only

Not authorised—indicative only

(a) the *Transport Planning and Coordination Act 1994*, section 25; and

(b) the *Acquisition of Land Act 1967*.

240 Sublease of land to railway managers

(1) This section applies if—

(a) the State acquires land (the ***acquired land***) for use by a railway manager as part of a rail transport corridor; or

(b) the chief executive decides that non-rail corridor land (also ***acquired land***) should be used by a railway manager as part of a rail transport corridor.

(2) If the acquired land mentioned in subsection (1)(a) becomes unallocated State land, the Minister administering the *Land Act 1994* must lease it to the State under section 17(2) of that Act.

(3) The lease is in perpetuity and, if demanded, for a rent of $1 per year.

(4) The State must sublease acquired land mentioned in subsection (1)(a) or (b) to the manager—

(a) if the manager agrees to meet the full costs of the acquisition—

(i) for a term of not more than 100 years; and

(ii) for a rent, if demanded, of $1 per year; and

(iii) on other terms decided by the chief executive; or

(b) otherwise—on terms agreed between the parties.

(5) A sublease by the State under subsection (4)(a) may include an option to renew the sublease.

(6) The terms of the option and the renewed sublease are to be decided by the chief executive.

(6A) Subsections (2) to (6) are subject to section 240AA.

(7) The *Land Act 1994*, section 336(2)(a) does not apply to a document of amendment of a sublease to a railway manager under subsection (4) or a sublease to a railway manager granted under the exercise of an option mentioned in subsection (5).

(7A) If acquired land is freehold land, the chief executive must require the registrar of titles to include the freehold land in the perpetual lease by a written notice made under this section, instead of under the *Land Act 1994*, section 360A(3).

(7B) The registrar of titles must amend the description in the following documents to include the freehold land—

(a) the perpetual lease;

(b) the sublease mentioned in subsection (4).

(7C) When the registrar of titles registers the amendment to the perpetual lease—

(a) the freehold land—

(i) is surrendered absolutely; and

(ii) becomes part of the rail transport corridor under the perpetual lease and the sublease; and

(b) all interests in that part of the rail transport corridor, other than public utility easements, are extinguished.

(8) If the manager attaches any rail transport infrastructure or any other works or structures to the acquired land, they remain the manager's property until the manager disposes of them.

(9) In this section—

acquires includes acquires by—

(a) gift; and

(b) surrender of a sublease previously granted to a railway manager; and

(c) exchange; and

(d) purchase.

Not authorised—indicative only

Not authorised—indicative only

full costs, of an acquisition, includes (if the acquired land consists of a lease to the State) all rent or other money payable by the State under the lease granted to the State during the term of—

(a) the sublease of the acquired land from the State to the manager under subsection (4); and

(b) any renewal of the sublease to the manager.

perpetual lease means the lease mentioned in subsection (2).

240AA Interests in commercial corridor land continue after acquisition

(1) This section applies if—

(a) the acquired land mentioned in section 240(1)(a) is commercial corridor land; and

(b) the land—

(i) becomes unallocated State land; and

(ii) is subleased to a railway manager under section 240(4).

(2) All interests in the acquired land, other than the interest of the owner, at the time the acquired land becomes unallocated State land continue in the sublease on the same terms as an interest in the acquired land, with the railway manager as sublessee substituted for the owner of the acquired land as a party to the interest.

(3) Subsection (2) applies despite the *Land Act 1994*, section 331(2).

(4) The registrar of titles must record each registered interest continued under subsection (2) on the sublease in the leasehold land register.

(5) In this section—

owner, of acquired land, means the owner of the acquired land before it becomes unallocated State land.

registered interest means an interest registered under the *Land Title Act 1994*.

240A Registered interests in rail corridor land

(1) This section applies if—

(a) a railway manager's sublease for a section of rail corridor land—

(i) expires; or

(ii) is surrendered or terminated; and

(b) there is a registered interest in the railway manager's sublease for that section of rail corridor land.

(2) After the expiry, surrender or termination, the registered interest in the sublease continues on the same terms as a registered interest in the lease for the section of the non-rail corridor land, with the State as lessee substituted for the railway manager as a party to the registered interest.

Note—

By definition, rail corridor land becomes non-rail corridor land on expiry, surrender or termination of the sublease.

(3) Subsection (2) applies despite the *Land Act 1994*, section 372.

240B Unregistered rights in rail corridor land

(1) This section applies if—

(a) a railway manager's sublease for a section of rail corridor land—

(i) is to expire or be surrendered; or

(ii) is terminated; and

(b) there is an unregistered right in the railway manager's sublease for that section of rail corridor land.

(2) If the sublease is to expire or be surrendered, the railway manager must give the chief executive details of all

Not authorised—indicative only

Not authorised—indicative only

unregistered rights in the sublease at least 3 months before the expiry or surrender of the sublease.

(2A) Subsection (2) does not apply to a sublease that is to expire if the railway manager and the chief executive, acting on behalf of the State, agree to renew the sublease before or immediately after the expiry.

(2B) If the sublease is terminated, the railway manager must give the chief executive details of all unregistered rights in the sublease within 3 months after the termination of the sublease.

(3) After the expiry, surrender or termination, an unregistered right in the railway manager's sublease for that section of rail corridor land continues on the same terms as an unregistered right in the lease for the section of the non-rail corridor land, with the State as lessee substituted for the railway manager as a party to the unregistered right.

(4) The chief executive may at any time revoke an unregistered right that is continued under subsection (3) if the chief executive considers—

(a) the use of the right would affect the safety or operational integrity of the land as a railway or would adversely affect another transport purpose; or

(b) the holder of the right has not complied with any conditions imposed on the right by the railway manager or the chief executive; or

(c) the right is being used in a way that is contrary to the provisions of—

(i) the perpetual lease of the land to the State; or

(ii) the *Land Act 1994*.

(5) A person whose interest is affected by the chief executive's decision under subsection (4)(a) is entitled to be paid compensation by the State for the loss for the unexpired portion of the unregistered right, but only if—

(a) the person had paid the railway manager for the unregistered right; or

(b) the person is the owner of land adjacent to the section of rail corridor land the subject of the sublease that has expired or been surrendered or terminated and, as part of the acquisition agreement or settlement of that section of the rail corridor land from the person or a previous owner of the land, the unregistered right mentioned in subsection (3) was granted.

(6) The person is entitled to be paid, because of the revocation of the right, the reasonable compensation that is agreed between the person and the chief executive, or failing agreement, that is decided by a court.

(7) Compensation may be claimed and ordered to be paid in a proceeding brought in a court with jurisdiction for the recovery of a debt equal to the amount of compensation claimed.

(8) Subsection (5) does not prevent an ex gratia payment from being made to a person under the *Financial Accountability Act 2009*.

240C Lease of non-rail corridor land to railway manager

(1) This section applies if the chief executive subleases a section of non-rail corridor land to a railway manager.

(2) When the registrar of titles registers the sublease in the leasehold land register—

(a) the sublease is taken to be the next vested right to, or be next in priority to, the perpetual lease of the section of the land to the State; and

(b) the railway manager as sublessee is substituted for the State as a party to any lesser registered interest.

(3) Also, when the registrar of titles registers the sublease in the leasehold land register—

(a) the State's rights and obligations in an unregistered right in the section of the land are taken to be vested in the railway manager as sublessee; and

Not authorised—indicative only

Not authorised—indicative only

(b) the railway manager is substituted for the State as a party to the unregistered right.

(4) Subsection (2) applies despite the *Property Law Act 1974*, section 115 and the *Land Act 1994*, section 298.

240D Lease of non-rail corridor land to local government or government entity

(1) This section applies if the chief executive subleases a section of non-rail corridor land to a local government or government entity that is not a railway manager.

(2) When the registrar of titles registers the sublease in the leasehold land register—

(a) the sublease is taken to be the next vested right to, or be next in priority to, the perpetual lease of the section of the land to the State; and

(b) the local government or government entity as sublessee is substituted for the State as a party to any lesser registered interest.

(3) However, subsection (2) does not apply to a registered interest that was registered before the sublease is registered if, when the sublease is registered, a provision in the sublease states that subsection (2) does not apply to the registered interest.

(4) Also, when the registrar of titles registers the sublease in the leasehold land register—

(a) the State's rights and obligations in an unregistered right in the section of the land are taken to be vested in the local government or government entity as sublessee; and

(b) the local government or government entity is substituted for the State as a party to the unregistered right.

(5) Subsections (2) and (3) apply despite the *Property Law Act 1974*, section 115 and the *Land Act 1994*, section 298.

240E Access arrangements across proposed railway

(1) This section applies if—

(a) the chief executive enters into an agreement with a person about land (***relevant land***)—

(i) that the State proposes to acquire as mentioned in section 240(1)(a); or

(ii) that is non-rail corridor land mentioned in section 240(1)(b); and

(b) the relevant land is, or is proposed to be, future railway land; and

(c) the person is the railway manager for a proposed railway to be constructed on the relevant land; and

(d) the owner of land adjacent to the relevant land (the ***land-owner***)—

(i) owns the relevant land; or

(ii) has a right of access over the relevant land; and

(e) the land-owner requires access across the proposed railway.

(2) The land-owner may ask the railway manager for a right of access across the proposed railway.

(3) The railway manager must—

(a) negotiate with the land-owner about a right of access across the proposed railway; and

(b) have regard to the relevant matters for the proposed railway; and

(c) either—

(i) provide a right of access across the proposed railway; or

(ii) refuse to provide a right of access across the proposed railway.

(4) Subsection (5) applies if—

Not authorised—indicative only

Not authorised—indicative only

(a) the railway manager and the land-owner do not agree on a right of access across the proposed railway, including about any conditions to which the right of access is subject; or

(b) the railway manager refuses to provide a right of access across the proposed railway.

(5) The railway manager or the land-owner may ask the chief executive to decide whether a right of access across the proposed railway should be granted.

(6) In deciding whether or not to grant a right of access across the proposed railway, the chief executive—

(a) must have regard to the relevant matters for the proposed railway; and

(b) must consult with the railway manager about what, if any, conditions should be imposed on the right of access; and

(c) may ask the railway manager or the land-owner for any other information the chief executive needs to make a decision.

(7) The railway manager or the land-owner must give the chief executive the information the chief executive asks for.

(8) The chief executive must decide—

(a) to grant a right of access across the proposed railway; or

(b) not to grant a right of access across the proposed railway; or

(c) not to grant a right of access across the proposed railway and refer the matter of a right of access back to the railway manager for further negotiation with the land-owner.

(9) If the chief executive decides to grant a right of access under subsection (8)(a), or not to grant a right of access under subsection (8)(b), the chief executive must notify, in writing, the railway manager and the land-owner about the decision.

(10) The railway manager must meet the full cost of any works required for the purpose of a right of access granted by the chief executive across the proposed railway.

(11) A right of access across a proposed railway given or granted under this section may be given or granted with or without conditions.

(12) Without limiting the conditions the chief executive may impose on a right of access across a proposed railway, the chief executive may impose a condition that the right of access may be used only for a stated approved use.

(13) In this section—

railway manager includes a proposed railway manager.

relevant matters, for a proposed railway, means—

(a) the safety and operational integrity of the proposed railway; and

(b) the need to limit the number of level crossings across the proposed railway; and

(c) the cost of providing a right of access across the proposed railway.

240F Cancellation of right of access

(1) This section applies if relevant land under section 240E becomes rail corridor land.

(2) Subject to subsection (3), a right of access granted by the chief executive under section 240E(8)(a) remains in force—

(a) while the relevant land is rail corridor land; or

(b) if the relevant land becomes non-rail corridor land—while the relevant land is non-rail corridor land.

(3) A right of access granted by the chief executive under section 240E(8)(a) may be cancelled—

(a) by written agreement between the relevant entity for the relevant land and the holder of the right of access; or

Not authorised—indicative only

Not authorised—indicative only

(b) by the chief executive if—

(i) the holder of the right of access does not comply with any conditions imposed by the chief executive under section 240E(8)(a) on the right of access; or

(ii) the chief executive considers that the use of the right of access would affect the safety or operational integrity of the railway on the relevant land or would adversely affect another transport purpose.

(4) If the chief executive cancels a right of access under subsection (3)(b)(ii), the owner of land affected by the decision is entitled to be paid reasonable compensation for the loss of the use of the right of access—

(a) as agreed between the owner and the relevant entity for the relevant land; or

(b) failing agreement under paragraph (a), as decided by the Land Court.

(5) For subsection (4), if the right of access was granted subject to a condition that it be used only for a stated approved use, the owner is entitled to be paid compensation only for the loss of the approved use of the right of access.

(6) Compensation may be claimed and ordered to be paid in a proceeding brought in the Land Court.

(7) In this section—

relevant entity means—

(a) for relevant land that is rail corridor land—both the chief executive and the railway manager for the land; or

(b) for relevant land that becomes non-rail corridor land—the chief executive.

241 Railway tunnel easements

(1) This section applies to an easement described in schedule 4, despite the terms of the easement.

(2) The State may grant a licence in relation to the easement to a railway manager.

(3) If the State grants a licence as mentioned in subsection (2), the railway manager may grant a sublicence to a railway operator.

(4) No compensation is payable to the grantor of the easement because of any vesting, transfer, licence or sublicence under this section.

242 What is *future railway land*

(1) Land becomes ***future railway land*** when the chief executive, by written notice to the relevant local government and in the gazette, indicates that the land is intended to be used for a railway.

(2) Future railway land ceases to be future railway land when it is subleased to a railway manager under section 240(4).

(3) If the chief executive decides that future railway land is no longer to be used for a railway, the chief executive must give written notice of that fact to the relevant local government and in the gazette.

243 Status of railway land

(1) The railway manager for corridor land is, for any rail transport infrastructure on the land or proposed to be constructed on the land, subject to the same controls and exemptions under State and local laws that an agency of the State would be if it had the manager's interest in the land.

(2) In this section—

corridor land means—

(a) commercial corridor land that is not leased by the railway manager on a commercial basis; or

(b) existing rail corridor land, or new rail corridor land, that is not subleased by the railway manager on a commercial basis; or

Not authorised—indicative only

Not authorised—indicative only

(c) future railway land.

railway manager, for corridor land, means the person who is an accredited rail infrastructure manager in relation to railway operations for the railway or proposed railway on or proposed to be on the corridor land.

244 Existing rail transport infrastructure on land

(1) This section applies if at the commencement—

(a) rail transport infrastructure was on land that is not owned or leased by Queensland Rail; and

(b) the previous rail corporation had managed a railway using the rail transport infrastructure.

(2) After the commencement—

(a) the rail transport infrastructure may stay on the land; and

(b) the railway manager may—

(i) alter the rail transport infrastructure; and

(ii) manage the railway using the rail transport infrastructure, whether or not altered; and

(iii) operate, or authorise a railway operator to operate, rolling stock on the railway.

(3) A person has no interest in, or right to, the rail transport infrastructure (whether or not altered) on land only because the person has an interest in the land.

244A Duplicated and replacement rail infrastructure on land

(1) This section applies if at the commencement of this section—

(a) rail transport infrastructure has been constructed or installed on land mentioned in section 244(1)(a) or on land adjacent to that land; and

(b) the rail transport infrastructure augments, duplicates or replaces rail transport infrastructure to which section 244 applied.

(2) After the commencement of this section—

(a) the rail transport infrastructure may stay on the land; and

(b) the railway manager may—

(i) alter the rail transport infrastructure; and

(ii) manage the railway using the rail transport infrastructure, whether or not altered; and

(iii) operate, or authorise a railway operator to operate, rolling stock on the railway.

(3) A person has no interest in, or right to, the rail transport infrastructure (whether or not altered) on land only because the person has an interest in the land.

245 Existing buildings on land

(1) If, immediately before the commencement, a building of the previous rail corporation was lawfully on land—

(a) it may stay on the land; and

(b) its construction is not subject to any approval that did not affect it immediately before the commencement.

(2) If, immediately before the commencement, the previous rail corporation's activities were lawfully being carried out on the land, they may still be carried out on the land despite any change to the zoning of the land.

(3) In this section—

building includes a structure or works.

Not authorised—indicative only

Not authorised—indicative only

247 Chief executive taken to be owner of rail corridor land and non-rail corridor land for particular circumstances under Planning Act

(1) This section applies if—

(a) the planning Minister or a local government proposes to make, amend, extend the duration of or repeal a designation of premises under the Planning Act, chapter 2, part 5 and the premises is, or includes, rail corridor land or non-rail corridor land; or

(b) an application made under the Planning Act—

(i) relates to rail corridor land or non-rail corridor land; and

(ii) must, under that Act, be accompanied by evidence of the consent of the owner of the premises to which the application relates, to the making of the application; or

(c) an application made under the Planning Act relates to rail corridor land or non-rail corridor land, or premises that adjoin that land, and the applicant must, under that Act, give notice of the application to—

(i) the owner of the premises to which the application relates; or

(ii) the owner of premises adjoining the premises to which the application relates.

(2) For the purposes of the Planning Act, the chief executive is taken to be the owner of the land that is rail corridor land or non-rail corridor land.

Part 8 General

248 Rail government entity not common carrier

A rail government entity is not a common carrier.

Note—

See also section 561 in relation to QR Limited and subsidiaries of QR Limited.

249 Railways on particular roads

(1) This section applies if—

(a) a railway manager—

(i) holds a sublease of rail corridor land; or

(ii) has access to future railway land; and

(b) the route of the rail corridor land or future railway land—

(i) is interrupted by a relevant road; and

(ii) continues on the other side of the relevant road.

(2) The Minister may, by gazette notice, declare the part of the relevant road where it interrupts the route to be a common area (***common area***) for the relevant road and the route of the rail corridor land or future railway land.

(3) If the Minister declares a common area—

(a) the railway manager for the rail corridor land or future railway land may construct, maintain and operate a railway on the common area in a way not inconsistent with its use as a relevant road; and

(b) the relevant person for the relevant road may construct, maintain and operate the relevant road on the common area in a way not inconsistent with its use as a railway; and

(c) the relevant person for the relevant road and the relevant person's agents or employees do not have any liability for the railway or its use or operation on the common area.

Examples for paragraph (a)—

- a level crossing

Not authorised—indicative only

Not authorised—indicative only

- a bridge or other structure over the road
- a bridge or other structure that allows the railway to pass under the road

(4) After a common area is declared—

(a) the chief executive must give a copy of the gazette notice to the registrar of titles—

(i) promptly after the gazette notice is published, if the land is rail corridor land; or

(ii) promptly after the land is subleased to the railway manager under section 240(4), if the land is future railway land; and

(b) the registrar of titles must record the declaration on the relevant lease of the rail corridor land to the State and the sublease in the leasehold land register.

(5) If a railway on a common area stops being used, the railway manager for the railway is responsible for the cost of removing rail transport infrastructure from the common area and restoring the road, unless the relevant person and the railway manager otherwise agree.

(6) In this section—

chief executive for chapter 6 means the chief executive of the department that deals with the administration of chapter 6.

relevant person means—

(a) for a State-controlled road—the chief executive for chapter 6; or

(b) for a franchised road—the franchisee; or

(c) for State toll road corridor land—

(i) the chief executive for chapter 6; or

(ii) if the State toll road corridor land has been leased—the person to whom the land has been leased; or

(d) for local government tollway corridor land—

(i) the local government; or

(ii) if the local government tollway corridor land has been leased—the person to whom the land has been leased; or

(e) for a local government road—the local government.

relevant road means—

(a) a State-controlled road; or

(b) a franchised road; or

(c) State toll road corridor land; or

(d) local government tollway corridor land; or

(e) a local government road.

250 Altering road levels

(1) In constructing or managing a railway, the railway manager for the railway may alter the level of a road or require the authority responsible for the road to alter its level.

(2) Unless the railway manager and the authority responsible for the road agree, the railway manager must pay all reasonable expenses incurred by the authority in altering the road level.

(3) A person whose land is directly affected by the alteration is entitled to be paid compensation by the railway manager.

(4) The amount of compensation is—

(a) the amount agreed between the parties; or

(b) if the parties can not agree within a reasonable time—the amount decided by a court with jurisdiction for the recovery of the amount of compensation claimed.

(5) However, the amount of compensation can not be more than the amount that would have been awarded if the land had been acquired.

Not authorised—indicative only

Not authorised—indicative only

251 Maintaining roads crossing railways

(1) A railway manager for a railway must maintain—

(a) the part of the railway on a road; and

(b) the surface of a road, in a character in keeping with the road—

(i) between the rails; and

(ii) outside the outermost rails to a distance of 0.6m.

(2) If a railway is built by way of a bridge or other structure over or under a road, the authority that maintained the road before the railway was built must continue to maintain the road under or over the bridge or structure.

252 No presumption of dedication of roads

If the public uses railway land as a road or otherwise for access purposes, the land is not taken to have been dedicated for use as a road even though the use is authorised or allowed by the railway manager.

253 Extending roads through or over rail corridor land or non-rail corridor land

(1) The chief executive may allow a local government to construct, maintain and operate a road on rail corridor land or non-rail corridor land by way of—

(a) a bridge or other structure over relevant infrastructure on the land; or

(b) a bridge or other structure that allows the road to pass under relevant infrastructure on the land; or

(c) a crossing at the same level as relevant infrastructure on the land.

Example for paragraph (c)—

a level crossing

(1A) Without limiting subsection (1), a permission may be granted under the subsection in relation to relevant infrastructure that is proposed to be on the land—

(a) under a transport infrastructure strategy; or

(b) for non-rail corridor land that is subleased, under the relevant sublease.

(2) The permission may be subject to conditions.

(2A) Without limiting subsection (2), a condition of a permission for rail corridor land may provide for the future expansion of the railway on the land.

Example—

A condition may provide that the length of a bridge over a railway be long enough to allow for an additional track to be laid in the future.

(3) Before deciding a request for the permission, the chief executive must consult with the relevant person for the land.

(3A) After the permission is granted—

(a) the chief executive must immediately give a copy of the permission to the registrar of titles; and

(b) the registrar of titles must record the permission on the relevant lease of the rail corridor land or non-rail corridor land to the State and any affected sublease in the leasehold land register.

(4) The relevant person may continue to use the land, and the airspace above the land, other than any land and airspace excluded by a condition of the permission.

(5) The chief executive and the relevant person and their agents or employees, do not have any duty or liability for the road or its use or operation.

(6) Once the road is used, it is taken to be—

(a) a road under the relevant local government's control; and

(b) a road under any Act about the use of vehicles on a road.

Not authorised—indicative only

Not authorised—indicative only

(7) Unless the chief executive and the local government otherwise agree—

(a) the local government is responsible for maintaining the road and the bridge, structure or crossing; and

(b) if the road stops being used—the local government is responsible for the cost of taking the bridge, structure or crossing away and restoring the relevant infrastructure on the land.

(8) The State is taken not to be in breach of any of its obligations in a sublease of rail corridor land or non-rail corridor land between the State and a relevant person for the land by—

(a) giving the permission; or

(b) anything done by the local government under the permission.

(9) In this section—

relevant infrastructure means—

(a) for rail corridor land—a railway or part of a railway on the land; or

(b) for non-rail corridor land—any infrastructure on the land.

relevant person means—

(a) for rail corridor land—the railway manager for the land; or

(b) for non-rail corridor land—any entity to whom the land is subleased.

254 Level crossings

(1) Pedestrians and drivers of vehicles must give way to—

(a) a railway operator's rolling stock on railway tracks at a level crossing; and

(b) a railway manager's rail vehicle on railway tracks at a level crossing.

(2) If an accident happens at a level crossing because a person does not comply with subsection (1)—

(a) the railway manager or operator is not liable for any injury or damage caused in the accident; and

(b) the person must pay the railway manager or operator the cost of any damage caused to property of the manager or operator.

(3) However, subsection (2) does not apply if the manager or operator, or its agents or employees, were negligent in relation to the accident.

255 Interfering with railway

(1) A person in or on a railway corridor must not interfere with a railway under the control of a railway manager unless—

(a) the person has the railway manager's written approval; or

(b) the interference is permitted or authorised under a right of access under section 240E, section 253 or the Rail Safety Law; or

(c) the interference is otherwise approved, authorised or permitted under this Act or another Act.

Maximum penalty—160 penalty units.

(2) An approval may be subject to a reasonable condition.

(3) The person must comply with the condition.

Maximum penalty—40 penalty units.

(4) Subsection (1) does not apply to a person who carries out urgent maintenance of a railway.

(5) This section binds all persons, including the State, the Commonwealth and the other States.

Not authorised—indicative only

Not authorised—indicative only

(6) In this section—

interfere with, a railway, means—

(a) carry out works in or on a railway corridor; or

(b) otherwise interfere with the railway or its operation.

railway corridor means—

(a) land subleased to a railway manager under section 240; or

(b) commercial corridor land; or

(c) future railway land under the control of a railway manager; or

(d) land described in schedule 4; or

Note—

See section 241 (Railway tunnel easements).

(e) a railway crossing.

256 Rectifying unauthorised interference

(1) If a person contravenes section 255(1) by interfering with a railway, the railway manager for the railway may, by written notice, require the person to rectify the interference within a stated reasonable time.

(2) The person must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(3) If the person does not comply with the requirement, the railway manager may rectify the interference.

(4) The person must pay the manager the manager's costs of—

(a) rectifying the interference; or

(b) altering the construction, maintenance or operation of the railway because of the interference.

(5) In this section—

rectify the interference means—

(a) alter, dismantle or take away any works; or

(b) fix any damage caused by the interference.

257 Trespassing on railway

A person must not intentionally or recklessly trespass on a railway.

Maximum penalty—40 penalty units.

258 Impact of particular development and railways

(1) This section applies if the chief executive is—

(a) the assessment manager or a referral agency for a development application; or

(b) the responsible entity or a referral agency for a change application.

(2) Also, this section has as its purpose ensuring—

(a) the safety and operational integrity of railways and future railways; and

(b) that development addresses impacts on the development from environmental emissions generated by railways or future railways.

Examples of environmental emissions—

air particles, fumes, light, noise

(3) For performing the chief executive's functions as assessment manager, responsible entity or referral agency, the chief executive must consider the extent to which the proposed development satisfies the purpose mentioned in subsection (2).

(4) Subsection (3) is in addition to, and does not limit, the Planning Act, sections 55, 81 and 82.

Not authorised—indicative only

Not authorised—indicative only

258A Impact of change of management of local government road on railways

(1) A local government must apply to the chief executive to obtain the chief executive's written approval to make a change to the management of a local government road that, if made—

(a) would require works to be carried out on a railway; or

(b) would have a significant adverse impact on the safety and operational integrity of a railway or a future railway.

(2) The chief executive—

(a) must consider the application within—

(i) 30 days after receiving it; or

(ii) the longer time notified to the local government by the chief executive, in writing, before the end of the 30 days; and

(b) may—

(i) approve the proposed change, with or without conditions; or

(ii) refuse to approve the proposed change.

(3) The chief executive must give the local government written notice of the chief executive's decision on the application.

(4) If the chief executive does not do any of the following within the 30 days, the chief executive is taken to have approved the proposed change—

(a) approve the proposed change;

(b) refuse to approve the proposed change;

(c) give the local government a notice under subsection (2).

(5) This section does not apply if the chief executive or planning chief executive considered the proposed change to the management of the local government road as part of considering—

(a) an application for a development approval; or

(b) a change application.

258B Guidelines for ss 258–258A

(1) For the purposes of sections 258 and 258A, the chief executive may make guidelines to which a person must have regard when—

(a) planning for, or carrying out, development under the Planning Act; or

(b) making changes to the management of a local government road.

(2) The chief executive must give a copy of the guidelines to each local government affected by the guidelines.

259 Fencing new railways

(1) A railway manager need not contribute to the fencing of any part of the boundary of land that is—

(a) a future railway; or

(b) acquired for a widening or deviation of a railway.

(2) Subsection (1) does not apply if—

(a) the land acquired was substantially fenced; and

(b) the railway's presence may make the fencing ineffective.

260 Works for existing railways

(1) This section applies—

(a) while a railway existing at the commencement (the ***existing railway***) continues to be operated as a railway; and

(b) to the owners and occupiers of land next to the existing railway (the ***neighbouring land***).

Not authorised—indicative only

Not authorised—indicative only

(2) The relevant railway manager must, within a reasonable time, construct and maintain—

(a) works that are necessary to make good any interruptions caused by the existing railway to the use of the neighbouring land; and

(b) works that are necessary to—

(i) separate the existing railway from the neighbouring land; and

(ii) protect the stock straying from the neighbouring land onto the railway; and

(c) sufficient works to ensure the neighbouring land's drainage is as good, or nearly as good, as it was before the existing railway was constructed.

(3) The relevant railway manager may satisfy its obligation under subsection (2)(b) by constructing and maintaining a fence of substantially similar quality to any fence around the neighbouring land when the railway was constructed.

(4) This section does not require the relevant railway manager to—

(a) construct or maintain works in a way that would prevent or obstruct the use of the existing railway; or

(b) construct or maintain works for owners or occupiers who agreed to receive, and have been paid, compensation in place of the works; or

(c) construct or maintain works for a change of use of the neighbouring land by its owner or occupier.

(5) The Land Court must decide any dispute about the adequacy of works or maintenance under this section.

(6) If the owner or occupier of neighbouring land considers that works carried out under this section are insufficient for the convenient use of the land, the owner or occupier may, with the relevant railway manager's agreement, carry out further works at the owner's or occupier's expense.

(7) The relevant railway manager may, by written notice given to the owner or occupier, require the further works to be carried out—

(a) under the supervision of a person nominated by the relevant railway manager; and

(b) according to plans and specifications approved by the relevant railway manager.

(8) The relevant railway manager must attempt to keep the cost of the further works to a reasonable level.

(9) Until the relevant railway manager carries out the works mentioned in subsection (2), the owner or occupier of the neighbouring land, and their employees and agents, may cross the existing railway next to the land with vehicles and livestock.

(10) The crossing must be made directly, and in a way that is safe and does not damage or obstruct the railway.

(11) However, subsection (9) does not apply to an owner or occupier who agreed to receive, and has been paid, compensation in place of the works.

(12) A person must shut and lock a gate set up under this section at either side of an existing railway as soon as the person, and any vehicles or livestock in the person's care, have passed through the gate.

Maximum penalty for subsection (12)—10 penalty units.

(13) In this section—

change of use, of the neighbouring land, means a change of the use (the ***new use***) of the land, if the new use would result in works that would have been required to be carried out under this section in relation to the previous use of the land being insufficient for the convenient new use of the land.

relevant railway manager means the railway manager for the existing railway.

Not authorised—indicative only

Not authorised—indicative only

262 Application of Land Act 1994

(1) The following sections of the *Land Act 1994* do not apply to a lease of existing rail corridor land, new rail corridor land or non-rail corridor land, or a lease granted under the lease, or a concurrent sublease—

- section 157 (Expiry of lease)
- section 183 (Rent payable generally)
- section 204 (Survey condition)
- section 211 (Reviewing imposed conditions of lease)
- section 336(2)(a) and (c).

(2) In this section—

concurrent sublease means concurrent sublease granted under section 477C(1) of all or part of land relating to a declared project mentioned in the *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009*, section 5(1)(c) or (d).

265 Delayed passenger services

(1) A railway manager must endeavour to bring a passenger service that is delayed back to its scheduled running time.

(2) In complying with subsection (1), a railway manager must not distinguish between different types of regularly scheduled passenger services.

(3) Subsection (2) does not limit the matters that the railway manager may consider as relevant when complying with subsection (1).

Examples of relevant matter—

1 a train transporting livestock

2 train service entitlements for services other than passenger services

266 Priority for regularly scheduled passenger services in allocating train paths

(1) The chief executive may establish a process that regularly allows the chief executive to identify passenger service requirements.

(2) For the process established under subsection (1), the chief executive may, by written notice to a railway manager, require the railway manager to give to the chief executive information about—

(a) the total number of train paths that is possible for a specific section of railway track having regard to the railway manager's maintenance requirements; and

(b) the existing train paths that are the subject of agreements with railway operators for access to that specific section of railway track; and

(c) the usage of the existing train paths on that specific section of railway track; and

(d) any other matter, if the information is reasonably required by the chief executive for identifying passenger service requirements.

(3) After identifying passenger service requirements, the chief executive may give written notice to each accredited person about the passenger service requirements relevant to the railway manager's railway.

(4) Subject to subsection (5E), a railway manager given a notice under subsection (3) must, whenever a train path is available for the railway manager to allocate, provide for priority to be given to the passenger service requirements as stated in the notice.

(5) In complying with subsection (4), a railway manager must not distinguish between different types of regularly scheduled passenger services.

(5A) If a railway manager becomes aware that a train path used for regularly scheduled passenger services on a specific section of

Not authorised—indicative only

Not authorised—indicative only

railway track is, or will become, available for allocation, the railway manager must, during the period or at the time mentioned in subsection (5B), give written notice of the availability to the chief executive.

(5B) A notice under subsection (5A) must be given—

(a) if the train path will become available because of the impending expiry of an agreement for access to the specific section of railway track by an existing regularly scheduled passenger service—at least 6 months before the agreement expires; or

(b) otherwise—as soon as practicable after the railway manager becomes aware of the availability.

(5C) On receiving a notice under subsection (5A), the chief executive may, within the period mentioned in subsection (5D), give a written notice to the railway manager requiring that the train path be allocated to a stated passenger service with effect from—

(a) if the train path is not available when the notice is given by the chief executive—the day the train path becomes available; or

(b) otherwise—as soon as practicable after the notice is given by the chief executive.

(5D) A notice given by the chief executive under subsection (5C) must be given—

(a) if the notice is given in response to a notice given by the railway manager under subsection (5B)(a)—within 3 months after receiving the notice given by the railway manager; or

(b) if the notice is given in response to a notice given by the railway manager under subsection (5B)(b)—within a reasonable time after receiving the notice given by the railway manager.

(5E) A railway manager given a notice under subsection (5C) must allocate the train path to the passenger service stated in the

notice with effect from the day or time mentioned in the subsection.

(6) In charging for access to regularly scheduled passenger services (an ***access charge***), a railway manager must not—

(a) differentiate between similar regularly scheduled passenger services operating or proposed to operate over the same route at different times of the day; or

(b) set an access charge for a train path that is greater than the access charge set for similar train paths.

(6A) This section does not apply in relation to a preserved train path under section 266A.

(7) In this section—

available, in relation to the allocation of a train path, includes—

(a) a new train path available for allocation because of rearrangements of train operations or new or upgraded infrastructure; and

(b) reallocating an existing train path.

infrastructure includes rail transport infrastructure and other rail infrastructure.

passenger service requirements means requirements for train paths for the following—

(a) regularly scheduled passenger services on railway track in the State;

(b) rolling stock that is to be used for a regularly scheduled passenger service and is being relocated for the purpose of providing the service.

266A Allocation of preserved train paths

(1) This section applies to a train path (a ***preserved train path***) that is, on the commencement of this section, allocated for the provision of—

Not authorised—indicative only

Not authorised—indicative only

(a) a regularly scheduled passenger service; or

(b) a service involving the transportation of a type of freight other than coal.

(2) If a preserved train path becomes available for a railway manager to allocate, the railway manager must not allocate the train path to a person for the provision of a different type of service unless—

(a) the railway manager gives written notice to the chief executive, at least 2 months before the day the proposed allocation takes effect, stating details of the proposed allocation; and

(b) the chief executive gives written notice to the railway manager stating the chief executive consents to the proposed allocation.

(3) Despite subsection (1), this section ceases to apply to a preserved train path if—

(a) the chief executive gives written notice to the railway manager stating the train path is no longer subject to the requirements under this section; or

(b) the preserved train path is allocated by the railway manager under subsection (2).

(4) The chief executive may give the railway manager a written notice requiring the railway manager to give the chief executive information reasonably required to determine the railway manager's compliance with subsection (2).

(5) The railway manager must comply with the requirement within the reasonable period stated in the notice.

(6) This section does not prevent the railway manager allowing a preserved train path to be used for a different type of service when it is not being used for the service for which it is allocated.

266B Civil penalty for breach of train path obligation

(1) A railway manager is liable to pay the State a civil penalty if the railway manager breaches, without a reasonable excuse, any of the following obligations (the ***train path obligations***)—

(a) section 265(1);

(b) section 266(4), (5A) or (5E);

(c) section 266A(2).

(2) A civil penalty may be imposed on a railway manager either by—

(a) a penalty notice given to the railway manager by the chief executive; or

(b) an order made by the Supreme Court under section 266G.

(3) If the penalty is imposed under a penalty notice, the amount of the penalty is—

(a) for breach of section 265(1), 266(4) or 266(5A)—$5,000; or

(b) for breach of section 266(5E) or 266A(2)—$25,000.

Note—

For the amount of the penalty that may be imposed by the Supreme Court, see section 266G.

266C Giving of notice proposing imposition of penalty

(1) This section applies if the chief executive—

(a) suspects a railway manager has breached a train path obligation; and

(b) proposes to impose a penalty on the railway manager under a penalty notice.

Not authorised—indicative only

Not authorised—indicative only

(2) The chief executive may give the railway manager a written notice (a ***proposed penalty notice***) proposing to impose a penalty on the railway manager on the grounds of the breach.

(3) The proposed penalty notice must state each of the following—

(a) the chief executive proposes to impose a penalty on the railway manager;

(b) the grounds for imposing the proposed penalty;

(c) an outline of the facts and circumstances forming the basis for the grounds for imposing the proposed penalty;

(d) the railway manager may make a written submission to the chief executive, no later than 28 days after the railway manager is given the notice, as to why the penalty should not be imposed;

(e) the way in which the submission may be made.

266D Submission against proposed imposition of penalty

(1) The railway manager may make a submission against the imposition of the penalty in the way stated in the proposed penalty notice.

(2) The submission must—

(a) be made to the chief executive no later than 28 days after the railway manager is given the proposed penalty notice; and

(b) state fully the grounds for the submission and the facts relied upon.

(3) The chief executive may, by written notice given to the railway manager, state a longer period allowed for making the submission.

266E Giving of penalty notice

(1) This section applies if—

(a) the period under section 266D for making a submission against the imposition of the penalty has expired; and

(b) the chief executive has considered any submission made under section 266D; and

(c) the chief executive is satisfied the railway manager has breached the train path obligation mentioned in the proposed penalty notice without a reasonable excuse.

(2) The chief executive may decide to impose a penalty on the railway manager on the grounds of the breach.

(3) If the chief executive makes a decision under subsection (2), the chief executive must give the railway manager a penalty notice.

(4) A ***penalty notice*** is a written notice that states each of the following—

(a) the chief executive has decided to impose a penalty on the railway manager;

(b) the reasons for the decision;

(c) the amount of the penalty provided for under section 266B(3), and the day by which it must be paid;

(d) that the railway manager may appeal to the Supreme Court against the decision within 28 days after the railway manager is given the penalty notice;

(e) how to appeal.

(5) The day for payment stated under subsection (4)(c) must not be less than 28 days after the day the penalty notice is given to the railway manager.

(6) The State may recover the penalty from the railway manager as a debt.

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266F Appeal against imposition of penalty by penalty notice

(1) A railway manager who is given a penalty notice may appeal to the Supreme Court against the chief executive's decision to impose the penalty.

(2) The *Transport Planning and Coordination Act 1994*, part 5, division 3 applies to an appeal mentioned in subsection (1) as if—

(a) references in the division to a reviewed decision were references to the chief executive's decision; and

(b) references in the division to an appeal court or the appeal court were references to the Supreme Court.

266G Proceeding for civil penalty order

(1) This section applies if, on the application of the chief executive, the Supreme Court is satisfied a railway manager has breached a train path obligation without a reasonable excuse.

(2) However, the chief executive may not make an application under this section if a penalty notice has been given to the railway manager for the breach and has not been revoked.

(3) To remove any doubt, it is declared that the chief executive may make an application under this section without first giving the railway manager a proposed penalty notice.

(4) The Supreme Court may order the railway manager to pay the State as a civil penalty an amount of no more than—

(a) for breach of section 265(1), 266(4) or 266(5A)—$50,000; or

(b) for breach of section 266(5E) or 266A(2)—$250,000.

(5) In fixing the penalty, the court must consider—

(a) the nature and extent of the breach, including, for a breach of section 266(5E) or 266A(2)—

(i) the benefit that the railway manager has obtained, or is likely to obtain, from the allocation of the train path; and

(ii) the extent of the adverse economic impact of the allocation of the train path on providers, and customers of providers, of the service mentioned in section 266(5E) or 266A(1); and

(iii) the extent of the social impact of the allocation of the train path; and

(b) the circumstances in which the breach took place, including—

(i) whether the breach was deliberate; and

(ii) whether the railway manager took steps to attempt to prevent the breach occurring or to mitigate the effect of the breach; and

(c) whether the railway manager has previously engaged in any similar conduct.

(6) If the Supreme Court orders payment of an amount under this section, the State may enforce the order as a judgment of the court for a debt of that amount.

266H Conduct by directors, servants or agents of railway manager for provisions about civil penalty

(1) This section applies for deciding whether a railway manager has failed to comply with a train path obligation without a reasonable excuse.

(2) If it is necessary to be satisfied of a railway manager's state of mind, it is enough to be satisfied that a director, servant or agent (a ***representative***) of the railway manager, acting within the scope of the representative's actual or apparent authority, had the state of mind.

(3) Conduct engaged in for a railway manager by the following persons is taken to have been engaged in by the railway manager—

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(a) a representative of the railway manager, acting within the scope of the representative's actual or apparent authority;

(b) another person at the direction, or with the consent or agreement, of a representative of the railway manager, if the giving of the direction, consent or agreement was within the scope of the representative's actual or apparent authority.

(4) Conduct engaged in for a railway manager by the following persons is taken to have been engaged in by the railway manager—

(a) a servant or agent of the railway manager, acting within the scope of the servant's or agent's actual or apparent authority;

(b) another person at the direction, or with the consent or agreement, of a servant or agent of the railway manager, if the giving of the direction, consent or agreement was within the scope of the servant's or agent's actual or apparent authority.

(5) In this section—

consent or agreement includes an implied consent or agreement.

state of mind, of a person, may include—

(a) knowledge, intention, opinion, belief or purpose of the person; and

(b) the person's reasons for the person's intention, opinion, belief or purpose.

Chapter 8 Port infrastructure and other matters

Part 1 Preliminary

267 Definitions for chapter

In this chapter—

charge means an amount charged by a port authority or relevant entity.

completion day, in relation to the Port of Brisbane, means the beginning of the day of the first declaration of a port lessee for the port under section 289Y.

corporate plan means a corporate plan required by the *Government Owned Corporations Act 1993*.

extractive material means sand, gravel, boulders, clay, silt, mud or other material in or on land under tidal water, but does not include a mineral within the meaning of the *Mineral Resources Act 1989*.

land means any land, whether above or below the ordinary high water mark at spring tides.

Land Act means the *Land Act 1994*.

lease includes a sublease.

port agreement see section 279B.

port area see section 267AA.

port entity—

(a) in relation to a port, other than the Port of Brisbane, means the port authority; or

(b) in relation to the Port of Brisbane, means each of the following—

(i) the port lessor;

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(ii) a port lessee;

(iii) a port manager.

port facilities see section 267A.

port lessee means an entity declared to be a port lessee under section 289Y.

port lessor means an entity declared to be the port lessor under section 289Y.

port manager means an entity appointed as a port manager under section 289ZA.

port operator means—

(a) a port lessee or port manager to whom functions have been delegated under section 289Z; or

(b) otherwise—the port lessor.

port services includes the following services relating to the management of a port area or port facilities—

(a) monitoring and management of the movement of vessels, vehicles, goods and people in the port area;

(b) services in relation to port facilities;

(c) services in relation to dredging;

(d) services in relation to reclaiming land;

(e) management, monitoring or administration of the use of, and access to, port facilities;

(f) security services and security monitoring services in the port area;

(g) services relating to the safety of persons or things in the port area;

(h) services relating to the preservation of the environment;

(i) issuing, and monitoring the use of, security identification;

(j) traffic control services;

(k) emergency services;

(l) processing applications, reporting information and attending to other administrative matters for the management of the port.

port user includes the following—

(a) the owner, master or agent of the owner of a vessel or vehicle using port facilities or port services;

(b) the owner, consignor or consignee or person entitled to possession of goods located in or passing through the port area;

(c) the agent of a person mentioned in paragraph (b);

(d) a lessee or licensee of any part of the port area (other than a port operator or the port lessor) and their invitees.

relevant entity see section 279A(1).

requirement, of a port notice, includes a direction, instruction, indication, condition or other provision contained in the port notice.

ship has the same meaning as in the *Transport Operations (Marine Safety) Act 1994*.

statement of corporate intent means a statement of corporate intent required by the *Government Owned Corporations Act 1993*.

strategic port land means land that is strategic port land under section 286.

sublease includes the following—

(a) any derivative under lease;

(b) a concurrent lease;

(c) a concurrent lease of any derivative under lease.

trade lease means a lease of land under the Land Act that was transferred, whether before or after the commencement of section 477C, from the Port of Brisbane Corporation to the

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former Urban Land Development Authority under the *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009*.

vessel includes a boat, ship, seaplane, hovercraft or amphibious craft.

267AA Meaning of *port area*

(1) ***Port area***—

(a) of a port authority for a port, means the area of its strategic port land and port facilities, and within its port limits; or

(b) of a port entity other than a port authority, means each of the following—

(i) the area of Brisbane core port land;

(ii) the area of its port facilities;

(iii) the area within its port limits;

(iv) another area prescribed by regulation.

(2) However, a port area mentioned in subsection (1)(b) does not include an area prescribed by regulation not to be part of the port area for that port.

(3) A regulation may define or amend the limits of the Port of Brisbane.

267A Meaning of *port facilities*

(1) ***Port facilities***—

(a) of a port authority, means the facilities or land that are—

(i) owned or controlled by—

(A) the port authority; or

(B) if the port authority is a GOC port authority—a wholly owned subsidiary of the port authority; and

(ii) used in the operation or strategic management of the port authority's port; or

(b) of a port entity other than a port authority, means the facilities or land that are—

(i) owned or controlled by a port entity other than a port authority, or leased or licensed to or occupied by, or constructed, managed, provided or maintained by a port entity other than a port authority; and

(ii) used or intended to be used in connection with the management, operation, development, maintenance of, or access to, the port entity's port.

(2) For subsection (1)(b), a lease or licence of land or facilities granted, or other provision for the use of or access to land or facilities made, by a port entity other than a port authority for the benefit of a person is to be disregarded.

(3) Port facilities for a port entity other than a port authority also include land or facilities prescribed by regulation to be port facilities.

(4) Port facilities for a port entity other than a port authority do not include land or facilities prescribed by regulation not to be port facilities.

Examples of port facilities—

- wharf and port marine operational areas and shipping channels within port limits
- marine and port structures
- berths and berth pockets
- ship building facilities and dry docks
- offshore structures used for shipping purposes
- wharf protection devices
- hydraulic structures

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- bulk loading and unloading facilities
- boat harbours and boat ramps
- vehicle and railway ferry terminals, oil and liquid product terminals and other terminals within the port area
- access roads and rail corridors
- roads, access corridors and flyovers
- conveyors
- pipelines
- weighbridges
- monitoring facilities
- security facilities
- communication facilities
- material handling or disposal areas
- vehicle parking facilities
- an airport
- public, community and visitor facilities
- partially completed reclamation areas in areas designated as future strategic port land
- partially completed port facilities

Part 2 Establishment, declaration and abolition of port authorities

268 Establishment of new port authority

(1) A regulation may establish a new port authority as a body corporate that has a seal and may sue and be sued in its corporate name.

(2) A regulation may also—

(a) specify the name of the port authority; or

(b) specify the name of the port it is to manage; or

(c) transfer assets and liabilities to the authority.

269 Port authority is excluded matter for Corporations Act

A port authority established under section 268 is declared to be an excluded matter for the Corporations Act, section 5F in relation to the following provisions of the Corporations Act—

(a) parts 2D.1 and 2D.6;

(b) chapters 2K and 2L;

(c) parts 5.7, 5.7B, 5.9 and 5B.2.

270 Abolition of port authority

(1) A regulation may abolish a port authority established under section 268 and transfer its functions to another port authority, the State or a local government (the ***transferee***).

(2) A regulation may also transfer to the transferee, or to a port authority, the State or a local government, assets and liabilities of the abolished port authority.

(3) A legal proceeding by or against the abolished port authority about the port, or transferred assets and liabilities, that is unfinished when the relevant regulation commences may be continued and finished by or against—

(a) the transferee; or

(b) if the assets or liabilities concerned are transferred to a person mentioned in subsection (2) who is not the transferee—the person.

271 Transfer of management of a port

(1) A regulation may transfer the management of a port from a port authority, the State or a local government (the ***transferor***) to a port authority, the State or a local government (the ***transferee***).

(2) A regulation may also transfer to the transferee, or to a port authority, the State or a local government, assets and liabilities of the transferor.

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(3) A legal proceeding by or against the transferor about the port, or transferred assets or liabilities, that is unfinished when the relevant regulation commences may be continued and finished by or against—

(a) the transferee; or

(b) if the assets or liabilities concerned are transferred to a person mentioned in subsection (2) who is not the transferee—the person.

(4) Subsections (2) and (3) do not apply if—

(a) the transferor and transferee are both GOC Act entities; and

(b) the assets and liabilities of the transferor are transferred, under the *Government Owned Corporations Act 1993*, to the transferee.

272 Regulation may make transitional arrangements

(1) If a port authority is established or abolished, or the management of a port is transferred, under this part, a regulation may make transitional arrangements about the establishment, abolition or transfer.

(2) The transitional arrangements may include—

(a) arrangements for the transfer of staff, and their superannuation and other entitlements; or

(b) other transitional arrangements necessary or convenient for the establishment, abolition or transfer.

(3) This section does not apply if the transfer of the management of a port is from a port authority that is a GOC Act entity to another port authority that is also a GOC Act entity.

273 Management of port by State or local government

If the State or a local government is given the management of a port under this chapter, the Minister or the local government

has, for the port, all the functions and powers, and all the obligations, of a port authority under this chapter.

274 Regulation may define port limits etc.

A regulation may—

(a) define or amend the limits of a port, other than the Port of Brisbane; or

(b) give a name to a port or change the name of a port; or

(c) for a new port—transfer the management of the port to an existing port authority, the State or a local government; or

(d) change the name of a port authority established under section 268.

274A Regulation may declare GOC Act entity to be port authority

For a GOC Act entity, a regulation may do 1 or more of the following—

(a) declare the entity to be a port authority;

(b) prescribe the port the entity is to manage;

(c) revoke the declaration of the entity as a port authority.

Part 3 Functions and powers of port authorities

275 Functions of port authorities

(1) The functions of a port authority are—

(a) to establish, manage, and operate effective and efficient port facilities and services in its port; and

(b) to make land available for—

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(i) the establishment, management and operation of effective and efficient port facilities and services in its port by other persons; or

(ii) other purposes consistent with the operation of its port; and

(c) to provide or arrange for the provision of ancillary services or works necessary or convenient for the effective and efficient operation of its port; and

(d) to keep appropriate levels of safety and security in the provision and operation of the facilities and services; and

(e) to provide other services incidental to the performance of its other functions or likely to enhance the usage of the port; and

(f) without limiting any other paragraph of this subsection, in relation to strategic port land of the following port authorities—

(i) the Far North Queensland Ports Corporation Limited—to provide or arrange for the development and use of its strategic port land at Cairns for residential and tourist accommodation;

(iii) the Far North Queensland Ports Corporation Limited—to plan or carry out works in relation to the development and use of strategic port land under subparagraph (i); and

(g) to perform any other functions conferred on it under this or another Act or under the regulations.

(2) A port authority's functions as provided under subsection (1) may be removed, restricted or limited by regulation.

(3) If a function mentioned in subsection (1)(g) is conferred on a port authority, the port authority must ensure a copy of a document specifying the function is available during business hours for inspection, or for purchase at a reasonable cost, at

the office of the port authority in, or nearest to, each port to which it applies.

(4) In this section—

Far North Queensland Ports Corporation Limited means Far North Queensland Ports Corporation Limited ACN 131 836 014.

276 Port services function

(1) A port authority has, in addition to its functions under section 275, the function of providing port services and ancillary services—

(a) whether in or outside its port; and

(b) whether in or outside Australia; and

(c) whether for another port authority or for someone else.

(2) A GOC port authority is taken to have had the function mentioned in subsection (1) from when it became a GOC.

(3) However, subsection (2) does not apply to the function of providing port services to the extent the port services are pilotage services and arranging for the provision of pilotage services.

(4) In this section—

ancillary services means services ancillary to the provision of port services, including services appropriate for complementing or enhancing the provision of port services.

compulsory pilotage area see TOMSA.

pilotage services see the *Maritime Safety Queensland Act 2002*.

port services means any of the following—

(a) services relating to the establishment, operation or administration of ports;

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(b) pilotage services, or arranging for the provision of pilotage services, in the compulsory pilotage area for which the port authority is the responsible pilotage entity;

(c) dredging services;

(d) services relating to the reclamation of land;

(e) consultancy services about any of the services mentioned in paragraphs (a) to (d).

responsible pilotage entity, for a compulsory pilotage area, see TOMSA, section 71A.

277 Powers of port authorities or port lessor subject to Marine Safety Act

(1) The powers of a port authority or port lessor under this chapter, including powers conferred by a regulation, must be exercised subject to the powers of—

(a) the general manager under part 14A of the Marine Safety Act; or

(b) a harbour master under the Marine Safety Act about marine safety and navigation.

(2) In this section—

Marine Safety Act means the *Transport Operations (Marine Safety) Act 1994*.

278 Powers of port authorities

(1) In addition to the powers a port authority has because of this chapter, each port authority has all powers necessary or convenient for performing its functions.

(2) Without limiting subsection (1), a port authority's powers include power—

(a) to dredge and otherwise maintain or improve navigational channels in its port; and

(b) to reduce or remove a shoal, bank or accumulation in its port that, in the port authority's opinion, impedes navigation in its port.

(3) A port authority is not liable to pay royalties or similar charges for extractive material removed—

(a) to maintain or improve navigational channels in its port, or improve navigation in its port, if the material is disposed of—

(i) in an area associated with port activities and approved by the Minister; and

(ii) under relevant statutory environmental controls; or

(b) to reclaim land that is, or is proposed to be, strategic port land.

278A Functions and powers of port authority that is a GOC not limited

This chapter does not limit the functions or powers a port authority that is a GOC may have.

Part 3A Liability for, and recovery of, charges and expenses

279 Port authority may impose a charge

(1) A port authority may impose a charge for the use of its port area.

(2) A charge may, for example, be imposed by reference to—

(a) a ship using its port; or

(b) goods or passengers loaded, unloaded or transhipped to or from a ship using port facilities in its port.

(3) This section does not limit the powers a port authority has apart from this section.

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279A Relevant entity may impose charges

(1) The port lessor, a port lessee or a port manager (a ***relevant entity***) may impose charges in relation to port services and port facilities, including in relation to—

(a) the acquisition, establishment, construction, improvement, operation and maintenance of port facilities; and

(b) works relating to port facilities including dredging and disposal of dredged material and reclamation of land.

(2) Subsection (1) is subject to—

(a) any conditions or limitations on charges in any port agreement to which the relevant entity is a party; and

(b) any agreement between the relevant entity and a port user.

(3) The relevant entity must maintain a website and must publish its standard charges and conditions on the website.

(4) A charge may not be imposed on a person who is exempt from payment of the charge under—

(a) subject to section 279B(4), a port agreement to which the relevant entity is a party; or

(b) a regulation made under section 281C.

(5) This section does not limit the powers or rights that the relevant entity has apart from this section, except to the extent stated in this section.

279B Port agreement

(1) The Minister may, for the State, enter into an agreement (a ***port agreement***) with a relevant entity about charges imposed by the relevant entity under section 279A.

(2) Without limiting subsection (1), a port agreement may—

(a) provide for exemptions, or partial exemptions, from payment of charges, including interest on charges, imposed by the relevant entity; or

(b) impose obligations or conditions in relation to the provision of port services or port facilities or the exercise of powers by the relevant entity under section 279A.

Example—

A port agreement may oblige a relevant entity to undertake stated capital or maintenance works as a condition of imposing charges.

(3) Subsection (2)(a) does not limit the power of a relevant entity to otherwise exempt or partially exempt a person from a charge, including any interest on a charge, imposed by the relevant entity.

(4) If there is an inconsistency between the port agreement and a regulation made under section 281C, the regulation prevails to the extent of the inconsistency.

(5) The Minister must table each port agreement, and each amendment of a port agreement, in the Legislative Assembly as soon as practicable after it is entered into.

(6) In this section—

Minister means the Minister who administers this section or the Treasurer.

280 Liability for a charge in relation to a ship

If a charge is payable in relation to a ship, the following persons are jointly and severally liable for the charge—

(a) the owner of the ship;

(b) the master of the ship;

(c) the agent of the ship's owner;

(d) another person who has accepted liability for the charge.

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281A Liability for a charge in relation to goods

If a charge is payable in relation to goods, the following persons are jointly and severally liable for the charge—

(a) the owner of the goods;

(b) the consignor and consignee of the goods;

(c) the agent for the sale or custody of the goods;

(d) the person entitled to possession of the goods;

(e) for goods transported by ship—

(i) the owner of the ship; and

(ii) the master of the ship;

(f) another person who has accepted liability for the charge.

281B Liability for a charge in relation to passengers

If a charge is payable in relation to passengers on a ship, the following persons are jointly and severally liable for the charge—

(a) the owner of the ship;

(b) the master of the ship;

(c) the agent of the ship's owner;

(d) another person who has accepted liability for the charge.

281C Payment of a charge and interest on an unpaid charge

(1) A charge imposed by a port authority or relevant entity is payable within a reasonable time decided by the port authority or relevant entity.

(2) If the charge is not paid on or before the day the charge is due, interest is payable on the unpaid amount of the charge at a reasonable rate decided by the port authority or relevant entity.

(3) The port authority or relevant entity may recover a charge, or part of a charge, and any interest payable in relation to the charge, as a debt payable to the port authority or relevant entity.

(4) A regulation may provide for exemptions from the payment of charges, including any interest on a charge.

(5) Subsection (4) does not affect or limit the power of a port authority or relevant entity to exempt or partially exempt a person from a charge, including any interest on the charge, imposed by a port authority or relevant entity.

281D Liability for movement of ships, vehicles, goods or rolling stock

(1) This section applies if a port authority or port operator incurs an expense because an authorised officer of the port authority or port lessor moves, or takes a step to move, a ship, a vehicle, goods or rolling stock under part 3B.

(2) The amount of the expense, to the extent that the amount is reasonable, is a debt owing to the port authority or port operator by—

(a) for a ship or goods—the persons who are liable for a charge payable in relation to the ship or goods; or

(b) for a vehicle or rolling stock—the owner and driver of the vehicle or rolling stock.

(3) The liability of persons mentioned in subsection (2)(a) and (b) is joint and several.

281E Liability for damage to port facilities

(1) If damage is caused by a ship to port facilities, the following persons are jointly and severally liable for the damage—

(a) the owner of the ship;

(b) the master of the ship;

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(c) the agent of the ship's owner.

(2) If damage is caused to port facilities by floating or submerged material, the owner of the material is liable for the damage if the damage happened because of the intentional, reckless or negligent act of the owner.

(3) A port entity may recover its reasonable cost of rectifying the damage as a debt payable to the entity.

281F Security for payment of charges and potential liabilities

(1) A port entity may, by written notice, require a person to give the port entity a security deposit as security for a liability or debt incurred, or that may be incurred, to it under this part in relation to—

(a) the payment of a charge; or

(b) damage caused, or that may be caused, to port facilities.

(2) The security deposit must be in or for an amount decided by the port entity that is a reasonable amount having regard to the liability or potential liability of the person under this part.

(3) The security deposit may be—

(a) cash; or

(b) a guarantee from a financial institution; or

(c) in another form accepted by the port entity.

(4) The port entity may appropriate or partly appropriate a security deposit to meet the liability or indebtedness of the person if the liability or debt is unpaid after becoming due.

(5) If a security deposit is appropriated or partly appropriated, the port entity may, by written notice, require the person to give the port entity a further security deposit.

(6) Also, if the port entity considers that the person's liability or indebtedness, or potential liability or indebtedness, to it under this part should be more adequately guaranteed, the port entity may, by written notice, require the person to give the port

entity a security deposit in a greater amount, or in a different form, or both.

Part 3B Control of activities at ports

Division 1 Port notices

282 Port authority or port lessor may control activities by port notice

(1) A port authority or port lessor may display or publish a notice (a ***port notice***) to control activities or conduct in its port area if the port authority or port lessor reasonably considers the activities or conduct may—

(a) affect the port's operation; or

(b) cause damage to the port authority's strategic port land or Brisbane core port land; or

(c) cause damage to the environment.

(2) Without limiting subsection (1), the purposes for which a port authority or port lessor may display or publish a port notice include—

(a) maintaining or improving the safe, secure or efficient operation of its port; or

Example for paragraph (a)—

A port authority or port lessor may issue a port notice to ensure that the loading or unloading operations at the port facilities are carried out efficiently.

(b) maintaining fair or reasonable access to port facilities for users of its port; or

Example for paragraph (b)—

A port authority or port lessor may issue a port notice to ensure that a user of its port facilities does not unreasonably restrict the access of other users of its port facilities.

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(c) moving or mooring ships within its port area; or

(d) managing controlled activities; or

(e) preventing damage to strategic port land or Brisbane core port land; or

(f) preventing damage to the environment.

(3) This section does not limit the powers a port authority or port lessor has under this division.

282AA Port lessor may give port notice requiring information

(1) The port lessor may display or publish a port notice requiring a person or class of persons to produce to the port lessor or port lessor's delegate, information relevant to the following—

(a) the provision or use of port services;

(b) the calculation of charges;

(c) the provision, use or preservation of port facilities;

(d) the management, operation, safety, security or efficiency of the port;

(e) information requested by a Commonwealth or State entity.

(2) For subsection (1), the information requested may include the following—

(a) a description of vessels, vehicles, goods and commodities entering or located in the port area;

(b) data about the movement of vessels, vehicles or passengers and the movement and storage of goods and commodities;

(c) information about the efficiency of operations and other logistical matters.

282A Port notice—movement or mooring of, or activities on or by, ships

A port authority or port lessor may control by port notice—

(a) the movement or mooring of ships at its port facilities; or

(b) the movement or mooring of ships if the movement or mooring may affect the port's operation; or

(c) activities on or by ships moored at its port facilities or in its port if the activities may affect the port's operation.

282C Port notice—movement, handling or storage of goods

A port authority or port lessor may control by port notice the movement, handling or storage of goods loaded, waiting to be loaded, unloaded or transhipped to or from ships at its port facilities.

282D Port notice—movement of persons

A port authority or port lessor may control by port notice the movement of persons at its port facilities including, for example, where the movement of members of the public, or another identified group, is restricted or prohibited.

282E Port notice—parking or stopping of vehicles

(1) A port authority or port lessor may control by port notice the parking or stopping of vehicles at or on its port facilities, strategic port land or Brisbane core port land including, for example, by indicating a place where parking or stopping of a vehicle is restricted or prohibited.

(2) However, a port authority's or port lessor's power to control a matter mentioned in subsection (1) by port notice is subject to the control of the matter by an official traffic sign installed under the *Transport Operations (Road Use Management) Act*

Not authorised—indicative only

Not authorised—indicative only

1995, chapter 5, part 2, by the chief executive within the meaning of that part.

282F Port notice—movement, stopping or parking of rolling stock

A port authority or port lessor may control by port notice the movement, stopping or parking of rolling stock at its port facilities including, for example, by indicating where parking of rolling stock is restricted or prohibited.

282G Display or publication of port notices

(1) To have effect, a port notice must—

(a) be displayed on or near the thing to which it relates; or

(b) be published on the port authority's, port lessor's or port lessor's delegate's web site on the internet.

(2) Before a port notice mentioned in subsection (1)(b) has effect, the port authority or port lessor issuing the port notice must publish it on at least 2 occasions in a newspaper circulated in the area to which the port notice relates.

(3) A copy of a port notice must be available during normal business hours for inspection, or for purchase at a reasonable cost, at the office of the port authority, port lessor or port lessor's delegate that is in, or nearest to, the area to which the notice relates.

282H Port notice may refer to documents held by port authority, port lessor or port lessor's delegate

(1) A port notice may require a person to comply, in whole or in part, with a requirement of a stated document held by the port authority, port lessor or port lessor's delegate.

(2) However, the requirement must be able to be made by a port notice under this division.

(3) If the document is a standard, the port notice must state that a copy of the standard is available during normal business hours for inspection, or for purchase at a reasonable cost, at a stated office of the port authority, port lessor or port lessor's delegate that is in, or nearest to, the area to which the notice relates.

(4) If the document is not a standard, the port notice must—

(a) include a copy of the document; or

(b) do both of the following—

(i) include a summary of the requirement;

(ii) state that a copy of the document is available during normal business hours, free of charge, at a stated office of the port authority, port lessor or port lessor's delegate that is in, or nearest to, the area to which the notice relates.

(5) In this section—

standard means—

(a) the Code of Safe Practice for Solid Bulk Cargoes issued by the International Maritime Organisation, as it applies to materials mentioned in group B of the Code; or

(b) the International Maritime Dangerous Goods Code published by the International Maritime Organisation; or

(c) the International Safety Guide for Oil Tankers and Terminals issued by the International Chamber of Shipping, the Oil Companies International Marine Forum and the International Association of Ports and Harbours; or

(d) the Ship to Ship Transfer Guide (Liquefied Gases) issued by the International Chamber of Shipping and the Oil Companies International Marine Forum; or

(e) the Ship to Ship Transfer Guide (Petroleum) issued by the International Chamber of Shipping and the Oil Companies International Marine Forum; or

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Not authorised—indicative only

(f) the Tanker Safety Guide (Chemicals) issued by the International Chamber of Shipping; or

(g) the Tanker Safety Guide (Liquefied Gas) issued by the International Chamber of Shipping; or

(h) a code, guide, rule, specification, standard or other document (a ***relevant document***) adopted, made or published by—

(i) the International Association of Ports and Harbours; or

(ii) the International Chamber of Shipping; or

(iii) the International Maritime Organisation; or

(iv) the Oil Companies International Marine Forum; or

(i) a Standards Australia standard adopting, making or publishing a relevant document adopted, made or published by an entity mentioned in paragraph (h)(i) to (iv); or

(j) a relevant document prescribed under a regulation for this definition.

282I Port notices generally

(1) A port notice—

(a) must indicate the area to which the port notice applies; and

(b) if contravention of a requirement of the port notice is an offence against this Act—must state that fact and the maximum penalty for the offence.

(2) Evidence that a sign was displayed on or near the thing to which it relates is evidence that the notice was displayed by the port authority or port lessor.

(3) A port notice displayed on or near the thing to which it relates must be clearly visible to passers-by.

282J Offence of not complying with a port notice

A person must comply with each requirement of a port notice, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—

(a) for a contravention of a requirement of a port notice about a controlled activity—100 penalty units; or

(b) for a contravention of a requirement of a port notice about the movement or mooring of, or activities on or by, a ship—100 penalty units; or

(c) for a contravention of a requirement of a port notice about the movement, handling or storage of goods—50 penalty units; or

(d) for a contravention of a requirement of a port notice about any other matter—25 penalty units.

Division 2 Authorised officers

282K Appointment and qualifications of authorised officers

(1) A port authority or port lessor may appoint a person as an authorised officer for the port authority or port lessor.

(2) However, the port authority or port lessor may appoint a person as an authorised officer for the port authority or port lessor only if the port authority or port lessor is satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

282L Appointment conditions and limit on powers

(1) An authorised officer holds office on any conditions stated in—

(a) the authorised officer's instrument of appointment; or

Not authorised—indicative only

Not authorised—indicative only

(b) a signed notice given to the authorised officer; or

(c) a regulation.

(2) The instrument of appointment, a signed notice given to the authorised officer or a regulation may limit the authorised officer's powers under this Act.

(3) In this section—

signed notice means a notice signed by—

(a) the port lessor or port lessor's delegate; or

(b) an officer of the port authority, port lessor or port lessor's delegate who is authorised by the entity to sign notices.

282M Issue of identity card

(1) The port authority or port lessor must issue an identity card to each authorised officer.

(2) The identity card must—

(a) contain a recent photo of the authorised officer; and

(b) contain a copy of the authorised officer's signature; and

(c) identify the person as an authorised officer for the port authority or port lessor under this Act; and

(d) state an expiry date for the card.

282N Production or display of identity card

(1) In exercising a power under this Act in relation to a person, an authorised officer must—

(a) produce the authorised officer's identity card for the person's inspection before exercising the power; or

(b) have the identity card displayed so it is clearly visible to the person when exercising the power.

(2) However, if it is not practicable to comply with subsection (1), the authorised officer must produce the identity card for the person's inspection at the first reasonable opportunity.

282O When authorised officer ceases to hold office

(1) An authorised officer ceases to hold office if—

(a) the term of office stated in a condition of office ends; or

(b) under another condition of office, the authorised officer ceases to hold office.

(2) Subsection (1) does not limit the ways an authorised officer may stop holding office.

(3) In this section—

condition of office means a condition on which the authorised officer holds office.

282P Return of identity card

A person who ceases to be an authorised officer of a port authority or port lessor must return the person's identity card to the port authority, port lessor or port lessor's delegate within 21 days after ceasing to be an authorised officer unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

Division 3 Directions

282Q Authorised officer may give directions

(1) An authorised officer of a port authority or port lessor may give a verbal direction to a person in the port authority's or port lessor's port area if giving the direction is reasonably necessary to—

Not authorised—indicative only

Not authorised—indicative only

(a) ensure the safety or security of the port area, its users or a port entity's employees; or

(b) prevent the person's activities or conduct from affecting the port's operation.

Examples of directions that may be given for subsection (1)—

- a direction to control the movement or mooring of, or activities on or by, a ship
- a direction to control the movement, stopping or parking of a vehicle or rolling stock
- a direction to control the movement, handling or storage of goods that are loaded, waiting to be loaded, unloaded or being transhipped
- a direction to control the movement of persons
- a direction to a person, who is the holder of an approval to perform a controlled activity under part 4A, to stop performing the controlled activity for a period

(2) Subsection (3) applies if an authorised officer—

(a) finds a person committing an offence, or reasonably suspects that a person has just committed an offence, against section 283G; or

(b) reasonably believes that a person's presence at the port facilities may pose a threat to the safety or security of the port facilities, its users or a port entity's employees; or

(c) reasonably believes that a person is in an area of the port facilities without lawful justification or excuse.

(3) An authorised officer may give a verbal direction to the person to—

(a) immediately leave the port facilities, or an area of the port facilities; or

(b) immediately leave the port facilities, or an area of the port facilities, and not return for at least 24 hours.

(4) An authorised officer must identify himself or herself as an authorised officer if the authorised officer gives a verbal

direction by radio, megaphone or another form of distance communication.

(5) An authorised officer must not give a verbal direction about the movement of rolling stock if a train controller is satisfied that the movement of the rolling stock would cause an immediate threat to—

(a) the safety of the railway; or

(b) the public using it or who may use it.

282R If a person does not comply with a direction

(1) If the person does not comply with a verbal direction given by an authorised officer under section 282Q, the authorised officer may give the person a written notice stating—

(a) the authorised officer's name; and

(b) the direction; and

(c) a brief statement about the authorised officer's reason for giving the direction; and

(d) a further reasonable time within which the person must comply with the direction; and

(e) when the direction was given.

(2) If it is not possible or reasonable for the authorised officer to give the person a written notice at the time the person does not comply with a verbal direction given by an authorised officer under section 282Q, the authorised officer—

(a) may give the person a further verbal direction stating the information mentioned in subsection (1)(a) to (d); and

(b) must give the person the written notice the person would have received at the time the person did not comply with the verbal direction as soon as practicable after giving the further verbal direction.

(3) At the time the authorised officer gives the person a written notice under subsection (1), or a further verbal direction under

Not authorised—indicative only

Not authorised—indicative only

subsection (2)(a), the authorised officer must warn the person that the person may commit an offence unless the person complies with the direction within the stated time.

282S Offence of not complying with a direction

Unless a person has a reasonable excuse, a person must comply with a direction given to the person by an authorised officer under section 282R, within the reasonable time stated in a written notice under section 282R(1) or as part of a further verbal direction under 282R(2)(a).

Maximum penalty—

(a) if the contravention results in a significant delay to port operations—200 penalty units; or

(b) otherwise—

(i) for a contravention of a direction to leave the port facilities or an area of the port facilities, or leave the port facilities or an area of the port facilities and not return for 24 hours—100 penalty units; or

(ii) for a contravention of a direction about the movement or mooring of, or activities on or by, a ship—100 penalty units; or

(iii) for a contravention of a direction about the movement, handling or storage of goods—50 penalty units; or

(iv) for a contravention of another direction—25 penalty units.

Division 4 Moving contravening property

282T Moving contravening property

(1) This section applies if—

(a) an authorised officer of a port authority or port lessor reasonably believes that a ship, a vehicle, goods or rolling stock in a port or at a port facility is contravening property; and

(b) the authorised officer reasonably believes that it is necessary to move the contravening property having regard to—

(i) the efficient operation of the port; or

(ii) the safety or security of the port, its users or a port entity's employees; and

(c) the authorised officer—

(i) can not immediately find the person in charge of the contravening property; or

(ii) reasonably believes the person in charge of the contravening property can not, or will not, move the contravening property immediately.

(2) The authorised officer may—

(a) take steps necessary and reasonable to have the contravening property moved; and

(b) if the contravening property is property in the form of goods that are perishable, or of little or no value, treat the goods as abandoned property under part 4B.

(3) However, for contravening property that is rolling stock, the authorised officer must not move the rolling stock if a train controller is satisfied that the movement of the rolling stock would cause an immediate threat to—

(a) the safety of the railway; or

(b) the public using it or who may use it.

(4) In this section—

contravening property means a ship, a vehicle, goods or rolling stock, that is moored, parked or left in a port or at a port facility in contravention of—

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Not authorised—indicative only

(a) a requirement of a port notice; or

(b) a direction of an authorised officer under division 3.

person in charge, of contravening property, means—

(a) for contravening property that is a ship—the ship's master or another person in charge of the ship; or

(b) for contravening property that is a vehicle or rolling stock—the driver of the vehicle or rolling stock or another person in charge of the vehicle or rolling stock; or

(c) for contravening property that is property in the form of goods—the owner of the goods or another person in charge of the goods.

Division 5 Other powers and offences

283 Power to require name and address

(1) An authorised officer of a port authority or port lessor may require a person, who is in the port authority's or port lessor's port area, to state the person's name and address if the authorised officer—

(a) finds the person committing an offence against this Act; or

(b) reasonably suspects the person has just committed an offence against this Act.

(2) When making the requirement, the authorised officer must warn the person that it is an offence to fail to state the person's name and address unless the person has a reasonable excuse.

(3) The authorised officer may require the person to give evidence of the correctness of the person's stated name and address if the authorised officer reasonably suspects the stated name or address is false.

(4) A person must comply with the authorised officer's requirement under subsection (1) or (3), unless the person has a reasonable excuse for not complying with it.

Maximum penalty—10 penalty units.

(5) The person does not commit an offence against this section if—

(a) the authorised officer required the person to state the person's name and address in the circumstances mentioned in subsection (1)(a) or (b); and

(b) the person is not proved to have committed the offence.

283A Inspection of documents

(1) An authorised officer of a port authority or port lessor may require a person, who is or may be liable to pay a charge to the port authority or a relevant entity, to produce for the authorised officer's inspection, documents that are—

(a) under the person's control; and

(b) relevant to deciding—

(i) whether the person is liable to pay the charge; or

(ii) the amount of the charge.

(2) The person must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty for subsection (2)—50 penalty units.

283B Inspection of ships, vehicles, rolling stock and goods

(1) This section applies only to the extent necessary to allow an authorised officer of a port authority or port lessor to decide—

(a) whether a charge is payable in relation to a ship or goods; and

(b) the amount of the charge.

Not authorised—indicative only

Not authorised—indicative only

(2) A person in charge of a conveyance in the port authority's or port lessor's port area must allow the authorised officer to enter and inspect the conveyance, or inspect goods on or in the conveyance, if asked by the authorised officer.

Maximum penalty—50 penalty units.

(3) In this section—

conveyance means a ship, a vehicle or rolling stock.

283C Obstructing authorised officer

(1) A person in a port authority's or port lessor's port area must not obstruct an authorised officer in the exercise of a power under this part, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

(2) In this section—

obstruct includes hinder, resist, insult, attempt to obstruct and threaten to obstruct.

283D False or misleading statement

(1) A person must not state anything to an authorised officer that the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

(2) It is enough for a complaint for an offence against subsection (1) to state the statement made was 'false or misleading' to the person's knowledge, without specifying which.

283E False or misleading document

(1) A person must not give an authorised officer a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

(2) Subsection (1) does not apply to a person if the person when giving the document—

(a) tells the authorised officer, to the best of the person's ability, how it is false or misleading; and

(b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

(3) It is enough for a complaint for an offence against subsection (1) to state the document was 'false or misleading' to the person's knowledge, without specifying which.

283F Impersonating an authorised officer

A person must not pretend to be an authorised officer.

Maximum penalty—50 penalty units.

283G Conduct causing public nuisance

A person at a port authority's or port lessor's port facilities must not be disorderly or create a disturbance.

Maximum penalty—50 penalty units.

283H Interfering with port notices

(1) This section applies to a port notice, other than a port notice published on a port authority's, port lessor's or port lessor's delegate's web site on the internet.

(2) A person must not unlawfully interfere with the port notice.

Maximum penalty—25 penalty units.

(3) In this section—

interfere, with a port notice, includes removing or damaging the port notice.

Not authorised—indicative only

Not authorised—indicative only

Part 3C Land management—Port of Brisbane

Division 1 Preliminary

283I Definitions for pt 3C

In this part—

balance port land see section 283L.

Brisbane core port land see section 283K.

Brisbane port LUP means the plan, approved under this part, that regulates development on Brisbane core port land.

code assessment see the Planning Act, section 45(3).

consultation period see section 283ZB(2)(f).

contributions schedule see section 283S(1)(g).

core matters, for the Brisbane port LUP (including its preparation), means each of the following matters—

(a) land use and development;

(b) core port infrastructure;

(c) valuable features.

core port infrastructure means core port infrastructure stated in schedule 5B, part 2.

designation means a designation of premises under the Planning Act.

draft plan see section 283ZA.

first Brisbane port LUP means the first Brisbane port LUP as published under section 283Q(1).

former land use plan means the land use plan under this Act for the Port of Brisbane in effect immediately before the completion day.

high-water mark means the ordinary high-water mark at spring tides.

impact assessment see the Planning Act, section 45(5).

land use and development, for an area, includes each of the following—

(a) the location of, and the relationships between, the land uses in the area;

(b) the current effects of land use in the area;

(c) the likely effects of any proposed development of Brisbane core port land;

(d) the accessibility to, and within, Brisbane core port land.

LGIP, of a local government, means the local government's LGIP under the Planning Act.

minor amendment (LUP), for the Brisbane port LUP, means—

(a) an amendment correcting or changing any of the following—

(i) an explanatory matter about the plan, this Act or the Planning Act;

(ii) the format or presentation of the plan;

(iii) a spelling, typographical, grammatical or mapping error in the plan;

(iv) a factual matter incorrectly stated in the plan;

(v) a redundant or outdated term;

(vi) inconsistent numbering of provisions in the plan;

(vii) cross-references to provisions in the plan;

(viii) a matter in the Brisbane port LUP to make it consistent with the Planning Act or a State planning instrument under that Act; or

(b) an amendment to include a statement in the plan that a State planning instrument, or a part of a State planning

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Not authorised—indicative only

instrument, is appropriately reflected in the plan, if the planning Minister has advised the port operator that the planning Minister is satisfied the Brisbane port LUP reflects the instrument; or

(c) an amendment the planning Minister and transport Minister agree is made to reflect—

(i) a development approval; or

(ii) a designation; or

(iii) transport infrastructure or planned transport infrastructure.

plan commencement day see section 283R.

planned transport infrastructure means future transport infrastructure that is—

(a) planned under the Brisbane port LUP; or

(b) authorised under a development approval or mentioned in a designation; or

(c) planned under a State planning instrument; or

(d) any of the following identified in a guideline made under the *Transport Planning and Coordination Act 1994*, section 8E—

(i) a future busway station;

(ii) a future railway passenger station for the network known as Citytrain;

(iii) a future passenger transport interchange facility;

(iv) a future route for public transport; or

(e) future railway land; or

(f) a road or land that the chief executive has notified a local government in writing is intended to become a State-controlled road.

planning Minister means the Minister administering the Planning Act.

port prohibited development means—

(a) port prohibited development stated in schedule 5B, part 3; or

(b) development that is stated in the Brisbane port LUP to be port prohibited development for the plan or a precinct.

port related development means port related development stated in schedule 5B, part 4.

precinct means an area marked on a map in the Brisbane port LUP and for which a table of assessment is identified in the plan.

premises see the Planning Act, schedule 2.

priority infrastructure interface plan, for the Brisbane port LUP, means a document prepared by or for the port operator describing how development that is consistent with the Brisbane port LUP is intended to coordinate with the LGIP of the Brisbane City Council for the types of local government infrastructure relevant to Brisbane core port land.

properly made submission means a submission that—

(a) is in writing and, unless the submission is made electronically, is signed by each person who made the submission; and

(b) is given to all of the following—

  (i) the port operator;

  (ii) the planning Minister;

  (iii) the transport Minister; and

(c) is received during the consultation period; and

(d) states the name and residential or business address of each person who made the submission; and

(e) states the grounds of the submission and the facts and circumstances relied on in support of the grounds.

Not authorised—indicative only

Not authorised—indicative only

registered interest means an interest registered in—

(a) the freehold land register; or

(b) the leasehold land register under the Land Act.

service provider means an entity that is a service provider under the *Water Supply (Safety and Reliability) Act 2008.*

State interest see the Planning Act, schedule 2.

statement of proposal see section 283Y(1).

State planning instrument means a State planning instrument under the Planning Act.

strategic plan, for the Brisbane port LUP, see section 283S(2).

table of assessment, for a precinct, means a statement in the Brisbane port LUP for the precinct as to whether particular development in the precinct is any of the following—

(a) accepted development or assessable development for the Planning Act under the Brisbane port LUP;

(b) port prohibited development;

(c) development that is consistent or inconsistent with the Brisbane port LUP.

transport Minister means the Minister administering this Act.

transport reasons means all of the following—

(a) the objectives of this Act;

(b) the elements of the strategic plan for the Brisbane port LUP relating to—

(i) planning for core port infrastructure, port related development and other transport infrastructure; and

(ii) maintaining buffer land for the infrastructure or development;

(c) the safety and operational integrity of core port infrastructure and planned core port infrastructure identified under the Brisbane port LUP;

(d) the safety and operational integrity of transport infrastructure and planned transport infrastructure not mentioned in paragraph (c);

(e) a matter within the powers of the chief executive, or the chief executive of the department in which any of the following Acts is administered, as a referral agency under the Planning Act—

(i) the *Transport Planning and Coordination Act 1994*;

(ii) the *Transport Operations (Marine Safety) Act 1994*.

283J Treasurer may declare land to be Brisbane core port land or balance port land

The Treasurer may by gazette notice—

(a) declare land to be Brisbane core port land for the first Brisbane port LUP; and

(b) on or before the day Brisbane core port land is declared under paragraph (a), declare land to be balance port land.

283K What is *Brisbane core port land*

Brisbane core port land means—

(a) for the first Brisbane port LUP—land the Treasurer declares to be Brisbane core port land under section 283J; or

(b) after the day the first Brisbane port LUP has effect—

(i) land identified in the Brisbane port LUP as Brisbane core port land; or

(ii) land that is subject to a table of assessment for a precinct, if the port lessee or port lessor has a registered interest in the land.

Not authorised—indicative only

Not authorised—indicative only

283L What is *balance port land*

Balance port land means land the Treasurer declares to be balance port land under section 283J.

283M Application of Planning Act

(1) Subject to this part, the Planning Act applies for development on Brisbane core port land and balance port land.

(2) If there is an inconsistency between this part and the Planning Act, this part prevails to the extent of the inconsistency.

(3) If development is stated to be development of a particular type for the Planning Act under the Brisbane port LUP, the development is taken to be development of that type under that Act.

283N Brisbane core port land not subject to local planning instrument

Brisbane core port land is not subject to a local planning instrument under the Planning Act.

Division 2 Particular provisions about balance port land and planning schemes

283O Balance port land is not strategic port land

If strategic port land is declared to be balance port land under section 283L, it stops being strategic port land.

283P Amendment of planning schemes

(1) The Treasurer may, by gazette notice on or before the day land is declared to be Brisbane core port land under section 283J, amend the planning schemes of the following local governments for the purpose of dealing with balance port land under the planning schemes—

(a) Brisbane City Council;

(b) Moreton Bay Regional Council.

(2) The gazette notice may provide for an amendment of a planning scheme to deal with balance port land that—

(a) is not a part of the area of a local government; and

(b) adjoins the area of a local government.

(3) The local government is the assessment manager for a development application for development on the balance port land dealt with by the gazette notice.

(4) A planning scheme as amended under this section—

(a) applies to the balance port land dealt with under the planning scheme; and

(b) may be amended under the Planning Act.

Division 3 Plan for land use on Brisbane core port land

Subdivision 1 First Brisbane port LUP

283Q Notice of first plan

(1) The Treasurer must, on or as soon as practicable after the completion day, publish notice in the gazette of the plan for land use (the ***first Brisbane port LUP***) for Brisbane core port land.

(2) Section 283S, other than section 283S(1)(h), applies to the first Brisbane port LUP.

(3) The Treasurer may act under subsection (1) only if satisfied—

(a) the first Brisbane port LUP satisfactorily deals with the core matters relevant to the plan; and

(b) State interests will not be adversely affected by the plan.

Not authorised—indicative only

Not authorised—indicative only

(4) The Treasurer must give a copy of the gazette notice and the first Brisbane port LUP to—

(a) the port operator; and

(b) Brisbane City Council.

(5) On and from the day the notice mentioned in subsection (1) is published in the gazette—

(a) the former land use plan is of no force or effect for Brisbane core port land; and

(b) strategic port land that has been declared to be Brisbane core port land stops being strategic port land.

283R Status of first plan

The first Brisbane port LUP—

(a) has effect as the Brisbane port LUP for Brisbane core port land on and from the day notice of the plan is published in the gazette (the ***plan commencement day***); and

(b) is taken to be the Brisbane port LUP approved under this division until it is replaced or amended under the division.

Subdivision 2 Content and review of Brisbane port LUP

283S Content of plan—mandatory requirements

(1) The Brisbane port LUP must, for Brisbane core port land—

(a) include a part outlining, by way of concept plans and words, for a period of at least 20 years after the plan commencement day—

(i) planning for core port infrastructure and proposed port related development for the land; and

(ii) anticipated infrastructure requirements relating to development mentioned in subparagraph (i); and

(b) include a part identifying the strategic outcomes for the land and stating measures that facilitate achieving the strategic outcomes; and

(c) state details of the land and the current and intended uses of the land; and

(d) coordinate and integrate the core matters relevant to the plan; and

(e) integrate matters relevant to the land under the regional plan and State planning policies under the Planning Act; and

(f) outline existing land uses for land (***adjacent land***) adjoining or neighbouring Brisbane core port land and how the adjacent land is dealt with by the planning scheme for the adjacent land; and

(g) include a schedule of charges (a ***contributions schedule***) under which a contribution may be required by a condition imposed on a development approval under section 283ZZ; and

(h) include a priority infrastructure interface plan for the land.

Note—

Subsection (1)(h) does not apply to the first Brisbane port LUP. See section 283Q(2).

(2) The parts of the Brisbane port LUP mentioned in subsection (1)(a) and (b) are called the ***strategic plan***.

(3) The other parts of the Brisbane port LUP must be consistent with the strategic plan.

(4) For subsection (1)(b), measures facilitating achievement of the strategic outcomes include the identification of—

(a) accepted development for the Planning Act under the Brisbane port LUP; or

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(b) assessable development for the Planning Act under the Brisbane port LUP requiring code or impact assessment; or

(c) port prohibited development.

(5) Without limiting subsection (1), the Brisbane port LUP may—

(a) state that particular development is inconsistent with the plan, or a part of the plan relating to a particular precinct, for transport reasons; or

(b) state that any part of Brisbane core port land is intended to be maintained as buffer land; or

(c) include details of any land proposed to become part of Brisbane core port land; or

(d) state the assessment benchmarks for the Planning Act that assessable development under the Brisbane port LUP must be assessed against.

283T Content of plan—matters about development

(1) The Brisbane port LUP may state that development on Brisbane core port land, or in a precinct, is port prohibited development.

(2) Also, the Brisbane port LUP may state—

(a) that development is consistent or inconsistent with the plan or a part of the plan relating to a particular precinct; and

(b) the reasons that development is inconsistent with the plan or the part.

(3) The Brisbane port LUP may state that development that is a material change of use of premises for core port infrastructure and is consistent with the plan for a precinct is, within that precinct, accepted development for the Planning Act under the plan.

(4) The Brisbane port LUP may state that development that is a material change of use of premises for port related development and is consistent with the plan for a precinct is, within that precinct, accepted development or assessable development requiring code assessment for the Planning Act under the plan.

(5) However, the Brisbane port LUP must not state that—

(a) port prohibited development stated in schedule 5B is accepted development or assessable development for the Planning Act; or

(b) development is assessable development for the Planning Act if a regulation made under section 43(5)(b) of that Act prohibits local categorising instruments, as defined in that Act, from doing so; or

(c) any of the following development is assessable development or port prohibited development for the Planning Act under the plan—

(i) development that is a material change of use of premises for core port infrastructure and is consistent with the plan;

(ii) development categorised as accepted development under a regulation made under the Planning Act; or

(d) development that is a material change of use of premises for port related development, and is consistent with the plan, is assessable development requiring impact assessment or port prohibited development under the plan.

283U Requirement to review plan

(1) The port operator must complete a review of the Brisbane port LUP at least every 10 years after the plan commencement day.

(2) The review must include an assessment of the achievement of the strategic outcomes identified in the plan.

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283V Action port operator must take after review

After reviewing the Brisbane port LUP, the port operator must—

(a) propose to prepare a new Brisbane port LUP; or

(b) propose to amend the Brisbane port LUP; or

(c) if the port operator is satisfied the Brisbane port LUP is suitable to continue without amendment—decide to take no further action.

283W Report about review if decision is to take no action

If the port operator decides to take no further action under section 283V(c), the port operator must—

(a) prepare a report stating the reasons the port operator decided to take no further action; and

(b) give a copy of the report to the planning Minister and the transport Minister.

283X When plan must include priority infrastructure interface plan

The port operator must ensure the Brisbane port LUP includes a priority infrastructure interface plan for Brisbane core port land by the earlier of the following—

(a) the day that is 3 years after the day the Brisbane City Council's first priority infrastructure plan under the repealed *Sustainable Planning Act 2009* is included in its planning scheme;

(b) the day the port operator first prepares a new Brisbane port LUP under this division after the Brisbane City Council's first priority infrastructure plan under the repealed *Sustainable Planning Act 2009* is included in its planning scheme.

Note—

On and from 1 July 2014, a local government's priority infrastructure plan under the repealed *Sustainable Planning Act 2009* became the local government's LGIP under that Act. See section 982 of that repealed Act.

Subdivision 3 Preparation and amendment of Brisbane port LUP by port operator

283Y Statement of proposal for preparation or amendment of Brisbane port LUP

(1) The port operator must prepare a statement (***statement of proposal***) about—

(a) the preparation of a new Brisbane port LUP; or

(b) an amendment of the Brisbane port LUP.

(2) However, subsection (1)(b) does not apply to an amendment of the Brisbane port LUP if the amendment—

(a) is to remove land from the Brisbane port LUP; or

(b) is a minor amendment (LUP).

(3) The statement of proposal must—

(a) identify matters the port operator anticipates the Brisbane port LUP will address; and

(b) state how the port operator intends to address each relevant aspect of the core matters in the plan.

(4) The port operator must give a copy of the statement of proposal to—

(a) the Brisbane City Council; and

(b) the planning Minister; and

(c) the transport Minister.

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Not authorised—indicative only

283Z Brisbane port LUP may be amended to identify additional land

(1) The Brisbane port LUP may be amended to identify additional land as Brisbane core port land if the planning Minister and transport Minister are satisfied the additional land—

(a) is land in which the port lessee or port lessor has a registered interest; and

(b) is or may be used—

(i) for core port infrastructure; or

(ii) for port related development; or

(iii) as buffer land.

Note—

Land identified in the Brisbane port LUP is Brisbane core port land. See section 283K.

(2) Subsection (1) does not limit how the Brisbane port LUP may be amended.

283ZA Draft plan for preparation or amendment of Brisbane port LUP

After complying with section 283Y, and section 283ZB to the extent the section relates to a statement of proposal, the port operator must—

(a) take appropriate account of issues raised as a result of consultation under section 283ZB in relation to the statement of proposal; and

(b) prepare a draft (***draft plan***) of—

(i) if the statement of proposal is for the preparation of a new Brisbane port LUP—the plan; or

(ii) if the statement of proposal is for an amendment of the Brisbane port LUP—the amendment of the plan; and

(c) give a copy of the draft plan to—

(i) the Brisbane City Council; and

(ii) the planning Minister; and

(iii) the transport Minister.

283ZB Consultation on statement of proposal or draft plan

(1) This section applies if the port operator prepares a statement of proposal under section 283Y or a draft plan under section 283ZA.

(2) The port operator must publish, at least once in a newspaper circulating generally in the area to which the statement of proposal or the draft plan relates, a notice stating the following—

(a) the name of the port operator;

(b) that the statement of proposal or draft plan relates to Brisbane core port land;

(c) that the port operator has prepared a statement of proposal, or a draft plan, and that it is available for inspection and purchase at the office of the port operator in Brisbane;

(d) a contact telephone number for information about the statement of proposal or draft plan;

(e) that any person may make a properly made submission about the statement of proposal or draft plan;

(f) the period (the ***consultation period***) during which a submission mentioned in paragraph (e) may be made;

(g) the requirements for a properly made submission.

(3) The consultation period must be—

(a) for a statement of proposal—at least 20 business days after the notice is first published under subsection (2); or

(b) for a draft plan—at least 40 business days after the notice is first published under subsection (2).

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Not authorised—indicative only

283ZC Consideration of draft plan and submissions

(1) On receiving a copy of a draft plan, the planning Minister and the transport Minister must consider whether or not any State interests would be adversely affected by the draft plan.

(2) Also, before approving a draft plan or recommending approval of a draft plan to the Governor in Council under this subdivision, the planning Minister and the transport Minister must consider all properly made submissions.

283ZD Directions for amendment of draft plan

(1) The planning Minister and the transport Minister may return a draft plan prepared by the port operator for amendment in the way directed by the planning Minister and the transport Minister.

(2) A copy of the direction must be published in the gazette within 21 days after it is given.

283ZE Approval of plans

(1) The planning Minister and the transport Minister may jointly approve a draft plan if satisfied that—

(a) the draft plan, or Brisbane port LUP as amended by the draft plan, satisfactorily deals with the core matters relevant to the plan and the mandatory requirements of the plan under section 283S; and

(b) the port operator has taken appropriate account of issues raised in properly made submissions; and

(c) the Brisbane City Council does not have a substantial objection to the draft plan; and

(d) State interests will not be adversely affected by the draft plan.

(2) If the planning Minister and the transport Minister are satisfied about subsection (1)(a), (b) and (d) but are satisfied that the Brisbane City Council has a substantial objection to

the draft plan, the draft plan may only be approved by the Governor in Council.

(3) Approval of the Brisbane port LUP, or an amendment of the plan, must be notified in the gazette within 21 days after it is given.

(4) The approval or amendment takes effect when it is notified in the gazette.

(5) As soon as practicable after the approval or amendment is notified in the gazette, the planning chief executive must give the port operator notice of the gazettal.

283ZF Port operator to publish approved plan

The port operator must ensure the Brisbane port LUP as approved under this division is published on its website.

283ZG Recovery of Ministers' costs

The reasonable costs and expenses incurred by the planning Minister and the transport Minister in acting under this subdivision in relation to a draft plan are a debt payable by the port operator to the State.

Subdivision 4 Miscellaneous

283ZH Notification about Brisbane port LUP

If the Brisbane port LUP is approved or amended under subdivision 3, the planning chief executive must give written notice of the details of the plan or amendment to the Brisbane City Council.

283ZI Recording matters about Brisbane port LUP

(1) The Brisbane City Council must ensure there is a record—

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(a) on each relevant map in its planning scheme identifying the land to which the Brisbane port LUP applies; and

(b) in the planning scheme stating that interested persons may obtain details of the Brisbane port LUP from the port operator.

(2) A record made under subsection (1) is not an amendment of the planning scheme.

283ZJ Ministerial direction to port operator

(1) This section applies if the planning Minister and the transport Minister are satisfied—

(a) a minor amendment (LUP) is required for the Brisbane port LUP; or

(b) the port operator has not complied with a requirement under subdivision 2 or 3 to make or amend the Brisbane port LUP.

(2) The planning Minister and the transport Minister jointly may, by written notice, direct the port operator—

(a) to make the minor amendment (LUP) within a stated reasonable period; or

(b) comply with the requirement under subdivision 2 or 3 within a stated reasonable period.

(3) The notice must state the reasons for deciding to give the direction.

(4) Before giving a direction to the port operator under subsection (2), the Ministers must consult with the port operator.

(5) The port operator must comply with the direction.

Division 4 Effect of land becoming or ceasing to be Brisbane core port land

283ZK Effect of land becoming Brisbane core port land

(1) This section applies if land becomes Brisbane core port land (***new port land***) at any time after the day the first Brisbane port LUP has effect.

(2) The port operator must give written notice of the particulars of the new port land, including the date the land became Brisbane core port land, to—

(a) the Brisbane City Council; and

(b) the planning chief executive.

(3) An entity given a notice under subsection (2) must ensure there is a record, on each relevant map in the council's planning scheme held by the entity, indicating that the land is Brisbane core port land.

(4) If the new port land is land that is subject to a table of assessment for a precinct, the Brisbane port LUP applies to the land on and from the day it becomes Brisbane core port land.

(5) If subsection (4) does not apply to the new port land, the new port land continues to be subject to the planning scheme for the land until the Brisbane port LUP is amended to identify the land as Brisbane core port land.

(6) On and from the day land becomes Brisbane core port land—

(a) the Brisbane City Council ceases to be the assessment manager in relation to the land; and

(b) the planning chief executive is the assessment manager in relation to the land.

Not authorised—indicative only

Not authorised—indicative only

283ZL Effect of land ceasing to be Brisbane core port land

(1) This section applies if land (***former port land***) stops being Brisbane core port land.

(2) The port operator must give written notice of the particulars of the former port land, including the date it stopped being Brisbane core port land, to—

(a) the Brisbane City Council; and

(b) the planning chief executive.

(3) An entity given a notice under subsection (2) must ensure there is a record, on each relevant map in the council's planning scheme held by the entity, indicating that the land is not Brisbane core port land.

(4) Subsections (5) to (7) apply if the former port land is, when it stops being Brisbane core port land, unzoned land.

(5) While the former port land is unzoned land—

(a) the Brisbane port LUP continues to apply to the land and the land is taken to be a part of the Brisbane City Council's planning scheme; and

(b) the Brisbane City Council is the assessment manager for a development application for development on the land that is assessable development for the Planning Act under the Brisbane port LUP even if the land is not part of, but adjoins, the council's local government area.

(6) When the former port land stops being unzoned land, the Brisbane port LUP does not apply to the land.

(7) To the extent subsection (5) is inconsistent with any regulated requirements prescribed by regulation under the Planning Act, section 16(2), subsection (5) prevails.

(8) Subsection (6) applies to former port land even if the Brisbane port LUP has not been amended to show the former port land is not included in the plan.

(9) In this section—

unzoned land means land that is not zoned for a purpose or use under a planning scheme.

Division 5 Particular matters about development on Brisbane core port land

Subdivision 1 Preliminary

283ZM Reconfiguring a lot

(1) Subsection (2) applies to development that is reconfiguring a lot by a lease only if the reconfiguring is for 1 of the following stated permitted purposes under the lease—

(a) core port infrastructure;

(b) transport infrastructure;

(c) core port infrastructure and transport infrastructure.

(2) Despite the Planning Act, the development is accepted development under that Act.

(3) Subsections (4) to (6) apply to development that is reconfiguring a lot, other than for a stated purpose mentioned in subsection (1).

(4) The development is assessable development requiring code assessment under the Planning Act and there are no referral agencies for the development.

(5) If a development application is only for the reconfiguring of a lot on Brisbane core port land, the application must be decided within 20 business days after the application is made.

(6) A condition can not be imposed on a development approval for reconfiguring a lot on Brisbane core port land if the condition requires a monetary payment to anyone.

Not authorised—indicative only

Not authorised—indicative only

283ZN Port prohibited development

(1) A development application or change application can not be made in relation to development on Brisbane core port land that is port prohibited development.

(2) If a development application or change application relates to port prohibited development—

(a) the application is taken not to have been made; and

(b) the development assessment process under the Planning Act does not apply to the application.

283ZO Code assessment under Brisbane port LUP

(1) This section applies to any part of a development application or change application requiring code assessment under the Brisbane port LUP for port related development.

(2) The part must be approved under the Planning Act if the port related development—

(a) is consistent with the Brisbane port LUP; and

(b) complies with the assessment benchmarks under the Planning Act for the development.

(3) Subsection (2) is subject to any requirements for the part required by a referral agency.

Subdivision 2 Provisions about local heritage places and infrastructure contributions

283ZV Development on heritage places

(1) Development on a local heritage place that is on Brisbane core port land is not assessable development under the Planning Act even if the development is categorised as assessable development by a regulation made under that Act.

(2) Subsection (1) applies to development on the local heritage place whether or not it became a local heritage place before or after the completion day.

(3) This part does not limit or otherwise affect assessment, or a function or power of a referral agency, under the Planning Act for development on a Queensland heritage place.

(4) In this section—

local heritage place means a local heritage place under the *Queensland Heritage Act 1992*.

Queensland heritage place means a Queensland heritage place under the *Queensland Heritage Act 1992*.

283ZZ Restriction on conditions of development approvals

(1) The assessment manager for a development application for development on Brisbane core port land may, under the Planning Act, impose a condition on the development approval for the application requiring a contribution only in relation to the following infrastructure provided by the Brisbane City Council or a service provider—

(a) drainage;

(b) public transport;

(c) roads;

(d) sewerage and water supply headworks.

(2) In this section—

contribution, for a condition of a development approval, means an amount payable under the condition to the Brisbane City Council or a service provider—

(a) for infrastructure provided by the Brisbane City Council or service provider; and

(b) worked out under the contributions schedule on the basis of the relevance of the infrastructure to the actual proposed development to which the approval relates.

Not authorised—indicative only

Not authorised—indicative only

Note—

This section does not effect the conditions that may be imposed by a referral agency.

Subdivision 3 Application of particular provisions of Planning Act

283ZZAParticular provisions of Planning Act do not apply in relation to Brisbane core port land

(1) The Planning Act, section 263 does not apply in relation to Brisbane core port land.

(2) A person is not entitled to claim compensation under the Planning Act, chapter 2, part 4, division 2, or any other law in relation to a change to the Brisbane port LUP affecting the person's interest in any Brisbane core port land.

283ZZBModified application of Planning Act, s 265

(1) A person may apply to the planning chief executive for a planning and development certificate, under the Planning Act, section 265, for premises on Brisbane core port land.

(2) The application must be accompanied by the fee prescribed by regulation.

(3) For subsection (1)—

(a) the Planning Act, section 265(3) applies as if a reference in the subsection to a local government were a reference to the planning chief executive; and

(b) a regulation made under the Planning Act, section 265(4) applies—

(i) as if a reference in the regulation to a local government were a reference to the planning chief executive; and

(ii) as if a reference in the regulation to any planning scheme were a reference to the Brisbane port LUP; and

(iii) as if a reference in the regulation to any LGIP were a reference to any contributions schedule under the Brisbane port LUP; and

(iv) as if the regulation provides that a planning and development certificate also be accompanied by—

(A) any statement of proposal for Brisbane core port land notified under section 283ZB(2), if a draft plan in relation to the statement of proposal has not yet been approved under section 283ZE; or

(B) any draft plan for Brisbane core port land notified under section 283ZB(2) but not yet approved under section 283ZE; and

(v) with other necessary changes.

(4) This section does not limit the Planning Act, section 265.

283ZZCRestriction on designation of premises for development of infrastructure

(1) Despite the Planning Act, chapter 2, part 5, only the planning Minister may, under that part, make a designation of premises that is, or includes, Brisbane core port land.

(2) Development carried out on premises that are the subject of a designation is accepted development under the Planning Act to the extent the development—

(a) is carried out under the designation; and

(b) would, other than for this subsection, be assessable development for that Act under the Brisbane port LUP.

(3) Subsection (2) does not limit the Planning Act, section 44(6)(b).

Not authorised—indicative only

Not authorised—indicative only

Subdivision 4 Notice of development approval

283ZZE Requirement to give notice of development approval and infrastructure agreement

(1) If the planning chief executive gives a development approval for development on Brisbane core port land, the planning chief executive must, within 5 business days after giving the approval, give a copy of the approval to each of the following—

(a) the Brisbane City Council;

(b) the port operator;

(c) the chief executive;

(d) each referral agency for the development application to which the approval relates.

(2) If an applicant for a development approval for development on Brisbane core port land enters into an infrastructure agreement under the Planning Act in relation to the development, the applicant must give a copy of the agreement to—

(a) the Brisbane City Council; and

(b) if the planning chief executive is not a party to the agreement—the planning chief executive; and

(c) if the chief executive is not a party to the agreement—the chief executive.

Subdivision 5 Delegation

283ZZF Delegation of particular functions of planning chief executive

(1) The planning chief executive may delegate the planning chief executive's relevant administrative functions to the Brisbane City Council.

(2) If the planning chief executive delegates any relevant administrative functions to the Brisbane City Council, the planning chief executive must—

(a) give written notice of the delegation to the port operator; and

(b) publish the notice on the website of the department in which the Planning Act is administered.

(3) In this section—

relevant administrative functions means the planning chief executive's functions under the Planning Act for matters relating to the administration and enforcement, under that Act, of a development approval for development on Brisbane core port land.

Subdivision 6 Development approvals affected by change

283ZZGBrisbane port LUP does not affect existing development approval

(1) This section applies if—

(a) a development approval is in effect for premises on Brisbane core port land; and

(b) after the approval is given, the Brisbane port LUP is replaced or amended.

(2) To the extent the development approval has not lapsed, the replacement or amended Brisbane port LUP does not stop or additionally regulate the development to which the approval relates, or otherwise affect the approval.

Not authorised—indicative only

Not authorised—indicative only

283ZZHPlanning scheme can not affect existing development approval

(1) This section applies if a development approval is in effect for premises on—

(a) Brisbane core port land, and the land the subject of the approval stops being Brisbane core port land; or

(b) land that becomes balance port land.

(2) The carrying out of development or the use of premises under the approval can not be stopped or additionally regulated under any planning scheme that applies to the land—

(a) when, or after, it stops being Brisbane core port land; or

(b) when, or after, it becomes balance port land.

283ZZI Changing status of land—effect on development approvals

(1) Subsection (2) applies if—

(a) a development approval is in effect for premises on Brisbane core port land; and

(b) the land the subject of the approval stops being Brisbane core port land; and

(c) the approval was given by the Port of Brisbane Corporation or the planning chief executive.

(2) For the purposes of any matter relating to the administration or enforcement of the development approval under the Planning Act, the approval is taken to have been given by the Brisbane City Council.

(3) Subsection (4) applies if—

(a) a development approval is in effect for premises on land that is not Brisbane core port land; and

(b) the land the subject of the approval becomes Brisbane core port land.

(4) For the purposes of any matter relating to the administration or enforcement of the development approval under the Planning Act, the approval is taken to have been given by the planning chief executive.

(5) Subsection (6) applies if—

(a) a development approval is in effect for premises on balance port land; and

(b) the approval was given by the Port of Brisbane Corporation.

(6) For the purposes of any matter relating to the administration or enforcement of the development approval under the Planning Act, the approval is taken to have been given by—

(a) MEDQ under the *Economic Development Act 2012* if the balance port land is in the Northshore Hamilton urban development area under that Act; or

(b) otherwise—the local government for the area that adjoins the balance port land or in which the balance port land is situated.

Subdivision 7 Dealing with particular applications affected by change

283ZZJ Particular applications—Brisbane core port land

(1) This section applies to a development application, or change application, relating to—

(a) development on strategic port land that becomes Brisbane core port land if—

(i) the application was made but not decided under the Planning Act before the day the land becomes Brisbane core port land; and

(ii) the Port of Brisbane Corporation is—

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Not authorised—indicative only

(A) if the application is a development application—the assessment manager for the application; or

(B) if the application is a change application—the responsible entity for the application; or

(b) development assessed against a planning scheme if the land the subject of the application becomes Brisbane core port land before the application is finally decided.

(2) On the relevant day for the application—

(a) the planning chief executive is taken to be, for the Planning Act—

(i) if the application is a development application—the assessment manager for the application; or

(ii) if the application is a change application—the responsible entity for the application; and

(b) the development assessment process stops for the application.

(3) As soon as practicable after the relevant day for an application to which subsection (1)(a) applies, the port operator must give the application to the planning chief executive.

(4) As soon as practicable after the relevant day for an application to which subsection (1)(b) applies, the assessment manager or responsible entity for the application must give the application to the planning chief executive.

(5) The planning chief executive may, in writing, ask the port operator, assessment manager or responsible entity for any information or material about the application the planning chief executive reasonably requires to process and decide the application.

(6) The port operator, assessment manager or responsible entity must comply with a request under subsection (5) within 10 business days after receiving the request.

(7) On receiving the application, and any further information or material requested under subsection (5), the planning chief executive must consider the application and the further information or material.

(8) The development assessment process for the application starts again 20 business days after the later of the following—

(a) the day the development assessment process stopped under subsection (2)(b);

(b) the day the planning chief executive is given the application under subsection (4).

(9) Subject to this part, the Planning Act applies for processing and deciding the application.

(10) Despite subsection (9), the planning chief executive must assess the application against the matters that would have applied for the assessment before the relevant day for the application.

(11) In this section—

change application does not include a change application for a minor change to a development approval, as defined in the Planning Act.

relevant day, for an application for land, means the day the land becomes Brisbane core port land.

283ZZKParticular applications—balance port land or former Brisbane core port land

(1) This section applies to a development application, or change application, relating to—

(a) development on land that becomes balance port land if—

(i) the application was made but not decided under the Planning Act before the relevant day for the land; and

(ii) the Port of Brisbane Corporation is—

Not authorised—indicative only

Not authorised—indicative only

(A) if the application is a development application—the assessment manager for the application; or

(B) if the application is a change application—the responsible entity for the application; or

(b) development on land that stops being Brisbane core port land if the development is assessable development for the Planning Act under the Brisbane port LUP.

(2) On the relevant day for the land—

(a) if the land is in the Northshore Hamilton urban development area under the *Economic Development Act 2012*—MEDQ under that Act is taken to be, for the Planning Act—

(i) if the application is a development application—the assessment manager for the application; or

(ii) if the application is a change application—the responsible entity for the application; and

(b) if the land is not in the area mentioned in paragraph (a)—the local government for the area that adjoins the land, or in which the land is situated, is taken to be, for the Planning Act—

(i) if the application is a development application—the assessment manager for the application; or

(ii) if the application is a change application—the responsible entity for the application; and

(c) the development assessment process stops for the application.

(3) As soon as practicable after the relevant day for the land, the former decision-maker for the application must give the application to the new decision-maker for the application.

(4) The new decision-maker may, in writing, ask the former decision-maker for any information or material about the

application the new decision-maker reasonably requires to process and decide the application.

(5) The former decision-maker must comply with a request under subsection (4) within 10 business days after receiving the request.

(6) On receiving the application, and any further information or material requested under subsection (4), the new decision-maker must consider the application and the further information or material.

(7) The development assessment process for the application starts again 20 business days after the later of the following—

(a) the day the development assessment process stopped under subsection (2)(c);

(b) the day the new decision-maker is given the application under subsection (3).

(8) Subject to this part, the Planning Act applies for processing and deciding the application.

(9) Despite subsection (8), the new decision-maker must assess the application against the matters (including the former land use plan) that would have applied for the assessment before the relevant day for the land.

(10) In this section—

change application does not include a change application for a minor change to a development approval, as defined in the Planning Act.

former decision-maker means—

(a) for a development application or change application to which subsection (1)(a) applies—the Port of Brisbane Corporation; or

(b) for a development application or change application to which subsection (1)(b) applies—the planning chief executive.

new decision-maker means—

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Not authorised—indicative only

(a) for a development application—the entity that, under subsection (2)(a)(i) or (b)(i), is taken to be the assessment manager for the application; or

(b) for a change application—the entity that, under subsection (2)(a)(ii) or (b)(ii), is taken to be the responsible entity for the application.

relevant day means—

(a) for land that becomes balance port land—the day the land was declared to be balance port land under section 283J; or

(b) otherwise—the day the land stops being Brisbane core port land.

Division 6 Dealings with Brisbane port land

283ZZLDefinitions for div 6

In this division—

Minister means the Minister administering the Land Act.

port land means land that is, or is needed as, Brisbane core port land.

port lease means a lease held under the Land Act by—

(a) the Port of Brisbane Corporation; or

(b) a subsidiary of the Port of Brisbane Corporation; or

(c) the port lessor.

283ZZMGrant of port land

(1) If land (including reclaimed land) above high-water mark is port land—

(a) the Governor in Council may issue to the port lessor, without competition, a deed of grant over all or part of the land; or

(b) the Minister may issue to the port lessor, without competition, a lease over all or part of the land for either a term of years or in perpetuity.

(2) If land below high-water mark is port land the Minister may issue to the port lessor, without competition, a lease over all or part of the land for either a term of years or in perpetuity.

(3) If tenure over port land is to be issued to the port lessor, the Governor in Council or the Minister may include that land with freehold land or a lease held by the port lessor.

(4) If a deed of grant is issued for reclaimed land under this division, or if reclaimed land is included in freehold land under this division, the purchase price for the land is nil.

(5) If reclaimed land is already held under a lease, the lease must be surrendered before a new lease or deed of grant is issued under this section.

(6) The following provisions of the Land Act do not apply if this section applies—

(a) section 16;

(b) chapter 4, part 1, division 1;

(c) section 127;

(d) section 155(1).

283ZZNLeases and licences under Land Act

(1) This section applies to any of the following dealings affecting land—

(a) a transfer under the Land Act, section 322 of a sublease;

(b) a sublease under the Land Act, section 332;

(c) an amendment under the Land Act, section 336 of a sublease;

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Not authorised—indicative only

(d) the creation under the Land Act, section 362 of an easement that burdens or benefits a sublease;

(e) the registration under the Land Act, section 363 of an easement that burdens or benefits a sublease;

(f) an amendment under the Land Act, section 370 of a registered easement that burdens or benefits a sublease.

(2) If land affected by the dealing is held under a port lease or a sublease of a port lease, despite a provision of the Land Act mentioned in subsection (1) the Minister's approval is not required for the dealing or the registration of a document for the dealing.

(3) If a port entity holds a lease under the Land Act of port land, or a sublease of a trade lease of land, the port entity may grant a licence to enter and use the land.

(4) Subsection (3) is subject to any condition of the lease that prohibits or restricts the grant of a licence.

(5) To remove any doubt, it is declared that the Minister's approval under the Land Act is not required for the grant of a licence under this section.

Note—

See also sections 477C–477E in relation to declared projects under the *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009*.

283ZZOAmendment of area of subleases of port land

(1) An amendment to a sublease of a port lease may increase or decrease the subleased area.

(2) To remove any doubt, it is declared that an amendment under this section increasing the area of a sublease does not constitute the surrender of a lease or sublease, or create a new lease or sublease.

(3) To remove any doubt, it is declared that an amendment under this section decreasing the area of a sublease does not constitute the surrender of a lease or sublease of the remaining area of the sublease, or create a new lease or sublease.

283ZZPDelegation by Minister

The Minister may delegate a function or power under this division to the chief executive or an officer or employee of the department that administers the Land Act.

283ZZQApplication of Land Act and registration

(1) Subject to this division, the Land Act applies to a lease granted under this division as if it were granted under the Land Act.

(2) The chief executive of the department that administers the Land Act may record a dealing effected for a lease under this division in the leasehold land register.

Part 4 Land management—ports other than Port of Brisbane

Division 1 Strategic port land

284 Definitions for div 1

In this division—

core matters, in relation to a land use plan (including its preparation), means each of the following matters—

(a) land use and development;

(b) port facilities;

(c) valuable features.

land use and development, for an area, includes each of the following—

(a) the location of, and the relationships between, the land uses in the area;

(b) the current effects of land use in the area;

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Not authorised—indicative only

(c) the likely effects of any proposed development of the land;

(d) the accessibility to the area.

285 Land use plans

(1) This section applies to port authority land that is on or near the interface between the land and the waters within the limits of the port, as defined under section 274, and that is used or may be used—

(a) for domestic or international trade; or

(b) by industries requiring close proximity to a port; or

(c) for the integration of sea transport with other transport modes; or

(d) as port buffer lands; or

(e) as a boating facility; or

(f) for a purpose mentioned in section 275(1)(f); or

(g) for other purposes of a port authority prescribed under a regulation.

(2) At least every 8 years, a port authority must prepare a land use plan in relation to the port authority's land for approval under section 286.

(3) The Minister may also direct a port authority to prepare a land use plan, or an amendment of a land use plan, for approval under section 286.

(4) A port authority's land use plan must—

(a) specify details of—

(i) the port authority's strategic port land; and

(ii) land the port authority proposes to become strategic port land; and

(iii) the current and proposed uses of the land; and

(b) coordinate and integrate the core matters relevant to the land use plan; and

(c) identify desired environmental outcomes for the land; and

(d) include measures that will help achieve the desired environmental outcomes.

(5) In this section—

port authority land, of a port authority, means land the port authority or, if the port authority is a GOC port authority, a wholly owned subsidiary of the port authority—

(a) holds title to; or

(b) holds directly from the State.

285A Statement of proposal for preparation of a land use plan or amendment of a plan

(1) A port authority must prepare a statement (***statement of proposal***) about—

(a) the preparation of a land use plan; or

(b) an amendment of a land use plan, unless the amendment—

(i) is to remove land from the land use plan; or

(ii) relates to land that is already strategic port land and its usage is not to change.

(2) The statement of proposal must—

(a) identify matters the port authority anticipates the land use plan will address; and

(b) state how the port authority intends to address each relevant aspect of a core matter in the land use plan.

(3) A port authority must supply the statement of proposal to the local government for the local government area within which

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Not authorised—indicative only

the port area is situated, and any other local government for a local government area adjoining the port area.

285B Draft plan for preparation of a land use plan or amendment of a plan

After complying with section 285A, and section 285C to the extent the section relates to a statement of proposal, a port authority must—

(a) take appropriate account of issues raised as a result of consultation under section 285C in relation to the statement of proposal; and

(b) prepare a draft (***draft plan***) of—

(i) if the statement of proposal is for the preparation of a land use plan—the land use plan; or

(ii) if the statement of proposal is for an amendment of a land use plan—the amendment of the land use plan; and

(c) supply the draft plan to the local government for the local government area within which the port area is situated, and any other local government for a local government area adjoining the port area.

285C Consultation on statement of proposal or draft plan

(1) This section applies if a port authority prepares a statement of proposal under section 285A or a draft plan under section 285B.

(2) The port authority must publish, at least once in a newspaper circulating generally in the area to which the statement of proposal or the draft plan relates, a notice stating the following—

(a) the name of the port authority;

(b) that the port authority has prepared a statement of proposal or a draft plan and that it is available for inspection and purchase;

(c) a contact telephone number for information about the statement of proposal or draft plan;

(d) that any person may make written submissions about the statement of proposal or draft plan to the port authority;

(e) the period (the ***consultation period***) during which submissions may be made;

(f) the requirements for properly making a submission.

(3) The consultation period must be for at least 40 business days after the notice is first published under subsection (2).

285D Directions by Minister for amendment of draft plan

(1) The Minister may return a draft plan prepared by the port authority under section 285B for amendment in the way directed by the Minister.

(2) A copy of the direction must be published in the gazette within 21 days after it is given.

286 Approval of land use plans

(1) The Minister may approve a draft plan prepared under section 285B if the Minister is satisfied that—

(a) the land included in the draft plan is used or may be used for a matter or purpose mentioned in section 285(1); and

(b) the port authority has taken appropriate account of issues raised in written submissions made to it under section 285C; and

(c) no local government has a substantial objection to the draft plan; and

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(d) State interests will not be adversely affected by the draft plan; and

(e) if the land included in the draft plan is within, or includes, a priority port's master planned area—the draft plan is consistent with the port overlay for the master planned area.

(2) If the Minister is satisfied about subsection (1)(a), (b), (d) and (e) but is satisfied that a local government has a substantial objection to the draft plan, the draft plan may only be approved by the Governor in Council.

(3) Approval of a land use plan, or an amendment of a land use plan, must be notified in the gazette within 21 days after it is given.

(4) The approval takes effect when it is notified in the gazette.

(5) Land included in a port authority's current approved land use plan is its ***strategic port land***.

(6) Each port authority must ensure the port authority's current approved land use plan is published on the port authority's website on the internet.

(7) In this section—

master planned area, for a priority port, see the *Sustainable Ports Development Act 2015*, section 6.

port overlay, for a priority port's master planned area, means the port overlay made for the area under the *Sustainable Ports Development Act 2015*, part 2, division 3.

priority port see the *Sustainable Ports Development Act 2015*, section 5.

287 Strategic port land not subject to local planning instrument

(1) Strategic port land is not subject to a local planning instrument under the Planning Act.

(2) Subsection (1) has effect despite the Planning Act, chapter 2, part 3.

Division 2 General

287A Impact of particular development and port operations

(1) This section applies if the Minister is—

(a) a referral agency for a development application; or

(b) the responsible entity or a referral agency for a change application.

(2) This section has as its purpose ensuring—

(a) the safety and operational integrity of ports; and

(b) that development addresses impacts on the development from environmental emissions generated from a port.

Examples of environmental emissions—

air particles, fumes, light, noise

(3) For performing the Minister's functions as the responsible entity or a referral agency, the Minister must consider the extent to which the proposed development satisfies the purpose mentioned in subsection (2).

(4) Subsection (3) is in addition to, and does not limit, the Planning Act, sections 55, 81 and 82.

(5) This section does not apply to development in a State development area under the *State Development and Public Works Organisation Act 1971*.

287B Guidelines for s 287A

(1) For the purpose of section 287A, the chief executive may make guidelines to which a person must have regard when carrying out development under the Planning Act.

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(2) The chief executive must give a copy of the guidelines to each local government affected by the guidelines.

288 Restrictions on dealing in property

(1) A port authority must not, without the Minister's written approval—

(a) dispose of freehold land; or

(b) enter into a lease, licence or another form of tenure of its strategic port land, or its port facilities, for longer than 25 years (including any renewal option).

(2) Also, a wholly owned subsidiary of a GOC port authority must not, without the Minister's approval—

(a) dispose of freehold land; or

(b) enter into a lease, licence or another form of tenure of its facilities or land that are a port authority's port facilities, for longer than 25 years (including any renewal option).

(3) An approval may be subject to conditions.

(4) A purported dealing in land or port facilities contrary to this section has no effect.

289 Port marine operational area

In an Act, a reference to the marine operational area of a port is a reference to an area of land that is—

(a) within the limits of the port; and

(b) below the ordinary high-water mark at spring tides; and

(c) at least 1 of the following—

(i) in, or within 200m of, marked shipping channels and recognised entry and exit shipping corridors;

(ii) in, or within 100m of, swing basins, commercial shipping wharves, moorings, anchorages and spoil grounds;

(iii) declared under a regulation to be a marine operational area for the port.

Part 4A Port approvals

289A Application of pt 4A

This part applies if a port authority decides to regulate a controlled activity by issuing a port notice, under section 282, under which the approval of the port authority is required to perform the controlled activity.

289B Definitions for pt 4A

In this part—

approval see section 289C(1).

controlled activity means any of the following activities—

(a) operating a tug service;

(b) in relation to a ship—

(i) burning; or

(ii) welding; or

(iii) riveting; or

(iv) spray-painting; or

(v) sand blasting; or

(vi) another similar activity prescribed under a regulation;

(c) operating a refuelling facility.

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Not authorised—indicative only

289C Application for approval

(1) A person may apply to a port authority for approval to perform a controlled activity in a port authority's port area (an ***approval***).

(2) The application must—

(a) be in writing; and

(b) identify the area where the controlled activity will be performed under the approval; and

(c) state any other thing relevant to the proper consideration of the application as required under a regulation.

289D Port authority may grant approval, with or without conditions

(1) The port authority may decide to—

(a) grant an application for an approval, with or without conditions; or

(b) refuse the application.

(2) A holder of an approval to operate a tug service may or may not be given an exclusive right to operate the tug service in a port area.

(3) A holder of an approval must not breach a condition of the approval.

Maximum penalty for subsection (3)—50 penalty units.

289E Change of conditions on an approval

(1) A port authority may change an approval, if the port authority considers it reasonably necessary to do so having regard to—

(a) the efficient operation of the port; or

(b) the safety or security of the port, its users or the port authority's employees.

(2) In this section—

change, an approval, means revoke, suspend, or impose or change a condition on, the approval.

289F Decision by port authority in relation to approval

(1) This section applies if the port authority decides to do any of the following—

(a) refuse an application for an approval;

(b) impose a condition on an approval as part of a grant of an application for an approval;

(c) change, within the meaning of section 289E, an approval.

(2) The port authority must give the applicant or approval holder a written notice stating the following—

(a) the decision;

(b) the reasons for the decision.

(3) The written notice must also state that the applicant or approval holder may—

(a) under section 289G—ask for the decision (the ***original decision***) to be reviewed by the port authority; and

(b) under the *Transport Planning and Coordination Act 1994*, part 5, division 2—apply for the original decision to be stayed; and

(c) under section 289GA—ask for the port authority's decision on the review (the ***reviewed decision***) to be reviewed by QCAT; and

(d) under the QCAT Act—apply for the reviewed decision to be stayed.

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Not authorised—indicative only

289G Internal review of decisions

(1) A person whose interests are affected by a decision mentioned in section 289F(1) (the ***original decision***) may ask the port authority to review the decision.

(2) The *Transport Planning and Coordination Act 1994*, part 5, division 2—

(a) applies to the review as if a reference in the division to the chief executive were a reference to the port authority that made the decision; and

(b) provides—

(i) for the procedure for applying for the review and the way it is to be carried out; and

(ii) that the person may apply to QCAT to have the original decision stayed.

289GA External review of decisions

(1) If a reviewed decision is not the decision sought by the applicant for the review, the port authority that made the reviewed decision must give the applicant a QCAT information notice for the reviewed decision.

(2) The applicant may apply, as provided under the QCAT Act, to QCAT for a review of the reviewed decision.

Note—

The QCAT Act, section 22(3) provides that QCAT may stay the operation of the reviewed decision, either on application by a person or on its own initiative.

(3) In this section—

reviewed decision means the port authority's decision on a review under section 289G.

Part 4B Disposal of abandoned property

289H Definitions for pt 4B

In this part—

abandoned property means property that the port authority or port operator reasonably believes has been abandoned at the port authority's or port operator's port facilities including, for example—

(a) a ship or a vehicle; or

(b) a thing attached to, or contained in, a ship or a vehicle.

insufficient value property means abandoned property that is—

(a) of no value; or

(b) if sold by a port authority or port operator, would not be likely to return sufficient proceeds of sale to cover the total of the following amounts—

(i) the expenses reasonably incurred by the port authority or port operator in selling the property;

(ii) the expenses reasonably incurred by the port authority or port operator in dealing with the property under this part;

(iii) the charges, interest and other expenses owing to the port authority or port operator in relation to the property.

289I Reasonable steps must be taken to find owner

(1) This section applies to abandoned property found at the port authority's or port operator's port facility, unless—

(a) it is insufficient value property; or

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Not authorised—indicative only

(b) it is perishable and it is impracticable for the port authority or port operator to keep it having regard to its nature and condition.

(2) The port authority or port operator—

(a) must take reasonable steps to locate the owner of the property; and

(b) may have the property moved to a place it considers appropriate.

(3) If the port authority or port operator has located the owner of the property within 28 days after the property was found, the port authority or port operator must give the owner a written notice—

(a) describing the property; and

(b) stating the property has been found; and

(c) explaining how it may be recovered; and

(d) stating the property may be sold or disposed of if it is not recovered.

(4) If the port authority or port operator has not located the owner of the property within 28 days after finding the property, the port authority or port operator must publish a notice in a newspaper circulating generally in the State that includes the matters mentioned in subsection (3)(a) to (d).

289J A person may claim property

The port authority or port operator must return abandoned property to a person if the person, within 28 days after the notice is given or published under section 289I—

(a) satisfies the port authority or port operator that the person is the owner of the property; and

(b) pays the expenses reasonably incurred by the port authority or port operator in dealing with the property under this part.

289K If property not claimed

If a person does not claim the abandoned property within 28 days after a port authority or port operator has given or published a notice under section 289I about it, the port authority or port operator may sell the property.

289L Sale of perishable property

The port authority or port operator may sell abandoned property if it is perishable and it is impracticable for the port authority or port operator to keep it having regard to its nature and condition.

289M Proceeds from the sale of abandoned property

(1) If abandoned property is sold by a port authority or port operator, the proceeds of the sale must be applied in the following order—

(a) in payment of the expenses reasonably incurred by the port authority or port operator in selling the property;

(b) in payment of the expenses reasonably incurred by the port authority or port operator in dealing with the property under this part;

(c) in payment of charges, interest and other expenses owing to the port authority or port operator in relation to the property;

(d) if there is an amount owing to an entity under a security interest registered for the abandoned property under the *Personal Property Securities Act 2009* (Cwlth)—in payment of the amount owing under the security interest;

(e) the balance to the owner of the abandoned property or, if the owner can not be found, to the consolidated fund.

(2) If the proceeds of the sale are less than the total of the expenses mentioned in subsection (1)(a), (b) and (c), the

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Not authorised—indicative only

difference is a debt owing to the port authority or port operator by the owner.

(3) Compensation may not be recovered against the port authority or port operator in relation to a payment under this section.

289N Abandoned property of no value

A port authority or port operator may dispose of abandoned property that is insufficient value property in the way the port authority or port operator considers appropriate.

Part 4C Port of Brisbane—land tax and rates

289O Owner of land for land tax purposes

(1) This section applies for the purposes of the *Land Tax Act 1915* and the *Land Tax Act 2010*.

(2) Unless subsection (3) applies, if a lessee or sublessee of strategic port land is a subsidiary of the Port of Brisbane Corporation—

(a) the subsidiary is taken to be the owner of the land; and

(b) the Port of Brisbane Corporation is taken not to be the owner of the land.

(3) If there is a port lessee of Brisbane core port land—

(a) the port lessee is taken to be the owner of the land; and

(b) the Port of Brisbane Corporation and the port lessor are taken not to be the owner of the land.

(4) A liability of the Port of Brisbane Corporation for land tax on strategic port land that has accrued but not been paid when a lease or sublease of the land is granted by the Port of Brisbane Corporation to a subsidiary of it is a liability of the subsidiary and not a liability of the Port of Brisbane Corporation.

(5) A liability for land tax on Brisbane core port land that has accrued but not been paid when a lease or sublease of the land from the port lessor to a port lessee is terminated or expires is a liability of the entity that was the port lessee immediately before the termination or expiration and not a liability of the port lessor.

(6) In this section—

land tax includes unpaid tax interest and penalty tax within the meaning of the *Taxation Administration Act 2001*.

289P Owner of land for rating purposes

(1) This section applies for the purposes of the *Local Government Act 1993* and the *Local Government Act 2009* about levying or payment of rates.

(2) If a lessee or sublessee of strategic port land is a subsidiary of the Port of Brisbane Corporation—

(a) the lessee or sublessee is taken to be the owner of the land; and

(b) the Port of Brisbane Corporation is taken not to be the owner of the land.

(3) If Brisbane core port land is occupied under a lease or sublease from the Port of Brisbane Corporation or a port entity other than a port authority—

(a) the occupier is taken to be the owner of the land; and

(b) the Port of Brisbane Corporation and each port entity that is not an occupier of the land are taken not to be the owner of the land.

(4) An entity must notify the commissioner in writing if the entity becomes a lessee or sublessee mentioned in subsection (2), or becomes a port lessee mentioned in subsection (3), within 28 days after becoming the lessee, sublessee or port lessee.

(5) A liability of the Port of Brisbane Corporation for rates in respect of strategic port land that has accrued but not been

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Not authorised—indicative only

paid when a lease or sublease of the land is granted by the Port of Brisbane Corporation to a subsidiary of it is a liability of the subsidiary and not a liability of the Port of Brisbane Corporation.

(6) A liability for rates in respect of Brisbane core port land that has accrued but not been paid when a lease or sublease of the land from the port lessor to a port lessee is terminated or expires is a liability of the entity that would have been liable under subsection (5) if the lease or sublease had not terminated or expired.

(7) The following land is exempted from rates—

(a) strategic port land that is occupied by a member of POBC Group;

(b) Brisbane core port land that is used for a road (other than a road maintained by a local government), vacant land, buffer zone or grass verge, or that is below the high-water mark;

(c) existing rail corridor land or new rail corridor land.

(8) In this section—

commissioner has the meaning given under the *Taxation Administration Act 2001*.

289Q When port lessor, port lessee or port manager is not liable to pay royalties or similar charges

The port lessor, a port lessee or a port manager is not liable to pay royalties or similar charges for extractive material removed—

(a) to maintain or improve navigational channels in its port, or improve navigation in its port, if the material is disposed of under relevant statutory environmental controls; or

(b) to reclaim land that is, or is proposed to be, Brisbane core port land.

Part 4D Port of Brisbane—matters relating to Water Supply (Safety and Reliability) Act 2008

289R Definition for pt 4D

In this part—

Water Supply Act means the *Water Supply (Safety and Reliability) Act 2008*.

289S Words have the same meaning as in the Water Supply Act

A word used in this part and defined in the Water Supply Act has the same meaning as in the Water Supply Act.

289T Port operator is service provider

(1) This section applies in relation to infrastructure for supplying water services or sewerage services owned by the port lessor in relation to the Port of Brisbane.

(2) For the purposes of the Water Supply Act—

(a) a port operator, other than the port lessor, is taken to be—

(i) a water service provider for infrastructure for supplying water services; and

(ii) a sewerage service provider for infrastructure for supplying sewerage services; and

(b) if there is a port operator other than the port lessor—the port lessor is taken not to supply water services or sewerage services.

289U Entry into service provider register

(1) If section 289T applies—

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Not authorised—indicative only

(a) as soon as practicable after an entity other than the port lessor becomes a port operator, the entity must give the regulator any information requested by the regulator for the purpose of registration as a service provider; and

(b) the regulator must—

(i) register the entity in the service provider register as a service provider for the relevant services; and

(ii) give the entity notice of the registration; and

(c) the Water Supply Act, sections 21 and 22 do not apply to the registration.

(2) The entity is a water service provider or sewerage service provider from the day it becomes a port operator, regardless of when it is registered.

289V Sewerage infrastructure for Port of Brisbane

(1) For the purposes of the Water Supply Act, chapter 2, part 3, division 4 and part 6, and sections 193, 330 and 331—

(a) the relevant distributor-retailer is taken to be a sewerage service provider in respect of sewerage infrastructure owned by the port lessor in relation to the Port of Brisbane; and

(b) sewerage infrastructure mentioned in paragraph (a) is taken to be part of the relevant distributor-retailer's infrastructure.

(2) The port lessor or, if there is a port operator other than the port lessor, the port operator must give the relevant distributor-retailer information about the sewerage infrastructure mentioned in subsection (1)(a) reasonably requested by the relevant distributor-retailer in relation to the grant or administration of trade waste approvals.

(3) In this section—

relevant distributor-retailer means the Brisbane City Council or another entity that owns the infrastructure connected to the sewerage infrastructure mentioned in subsection (1)(a).

289W No effect on ownership

This part does not affect the ownership of any infrastructure for supplying water or sewerage services.

289X Port land trade waste approvals

(1) This section applies to instruments issued before the commencement of this section—

(a) purportedly as trade waste approvals for the purposes of the Water Supply Act, chapter 2, part 6; and

(b) by the Brisbane City Council to an occupant of land at the Port of Brisbane.

(2) The instruments are taken to be trade waste approvals issued on the commencement of this section for the purposes of the Water Supply Act.

Part 4E Port of Brisbane—other matters

289Y Declaration of port lessor and port lessees

(1) The Treasurer may, by gazette notice—

(a) declare an entity to be the port lessor for the Port of Brisbane; or

(b) if an entity holds any Brisbane core port land under a lease, sublease or licence from the port lessor—declare the entity to be a port lessee for the Port of Brisbane.

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Not authorised—indicative only

(2) For subsection (1)(b), it does not matter whether the entity enters into the lease, sublease or licence with the port lessor or is an assignee of that instrument.

289Z Delegation by port lessor to port lessee or port manager

(1) The port lessor may delegate a function under this chapter, other than under part 3A, to a port lessee or port manager.

Note—

See the *Acts Interpretation Act 1954*, section 27A.

(2) It is a condition of a lease of Brisbane core port land that the port lessee must comply with, or ensure a port manager complies with, the lawful directions of the port lessor in relation to the performance of delegated functions.

(3) A regulation or the conditions of a delegation may require the port lessee or port manager to establish a system for monitoring, and receiving and dealing with complaints about, the performance of delegated functions.

(4) In this section—

delegated function means a function of the port lessor delegated to a port lessee or port manager.

function includes power.

289ZA Appointment of port manager

(1) The port lessor may appoint an entity as a port manager for the Port of Brisbane.

(2) A port lessee may, with the written approval of the port lessor, appoint an entity as a port manager for the Port of Brisbane.

289ZB Liability for acts of authorised officers and others, and related matters

(1) If a person is appointed as an authorised officer by a delegate of the port lessor—

(a) the person is not an officer, employee or agent of the port lessor only because of that appointment; and

(b) the port lessor is not civilly liable for an act done, or omission made, by the person as an authorised officer.

(2) If subsection (1) prevents a civil liability attaching to the port lessor, the liability attaches instead to the delegate.

(3) An authorised officer is not civilly liable for an act done, or omission made, by the officer for a port operator honestly and without negligence.

(4) If subsection (3) prevents a civil liability attaching to an authorised officer, the liability attaches instead to the delegate that appointed the officer.

(5) An employee of the port lessor or person acting for the port lessor, is not civilly liable for an act done, or omission made, by the employee or person for the port lessor honestly and without negligence.

(6) If subsection (5) prevents a civil liability attaching to an employee or person, the liability attaches instead to the port lessor.

289ZC Application of particular local laws to Brisbane core port land

(1) The following local laws of the Brisbane City Council do not apply to Brisbane core port land—

(a) local laws 6 (Streets, bridges, culverts etc.), 11 (Sundry matters relating to structures), 13 (Foreshore and retaining walls) and 14 (Parking and control of traffic);

(b) Heavy and Long Vehicle Parking Local Law 1999.

(2) Also, a regulation may provide that a stated local law does not apply, or does not apply to a stated extent, or applies with stated changes, to Brisbane core port land.

Not authorised—indicative only

Not authorised—indicative only

(3) The regulation may fix, as the time of effect, the day fixed for another matter under a gazette notice made under another provision of this Act.

Example—

The regulation may fix, as the time of effect, the day on which notice is published of the first land use plan for Brisbane core port land.

(4) In this section—

time of effect means the day on which a stated local law stops applying, or stops applying to a stated extent, or starts applying with stated changes, to Brisbane core port land.

289ZD Delayed application of new local laws to Brisbane core port land

(1) This section applies to a local law made after the completion day.

(2) Subject to subsection (3), the local law does not apply to Brisbane core port land until the later of the following days—

(a) the day that is 3 months after the day the local law is made;

(b) the day the local law commences.

(3) Subsection (2) stops applying to the local law on the commencement of a regulation under section 289ZC about the application or non-application of the local law to the Brisbane core port land.

289ZE Port lessor may substitute for port lessee

(1) This section applies if, at any time after the commencement of this section—

(a) an entity ceases to be a port lessee; and

(b) another entity has not become a port lessee.

(2) If this chapter requires or permits something to be done by a port lessee, the thing may be done by the port lessor.

Part 5 General

290 Protection from liability

(1) In this section—

official means a director of the board of a port authority, an employee of a port authority or a person acting for a port authority.

(2) A regulation may provide that an official is not civilly liable for an act or omission done honestly and without negligence for a port authority.

(3) If subsection (2) prevents a civil liability attaching to an official, the liability attaches instead to the port authority.

291 Carrying on port activities outside port limits

The Governor in Council may decide that port activities of a substantial nature may be carried on at a place that is not a port managed by a port authority, the State or a local government.

292 Offences

(1) A person must not intentionally or recklessly—

(a) damage a port entity's works or infrastructure; or

(b) interfere with or disrupt a port's operations; or

(c) dump refuse or goods at a port or into the waters of a port.

Maximum penalty—200 penalty units.

(2) A person must not intentionally or recklessly evade the payment of a port authority's or relevant entity's charges.

Maximum penalty—200 penalty units.

Not authorised—indicative only

Not authorised—indicative only

(3) A person must not carry on port activities of a substantial nature at a place unless the place is in a port or a place where a decision under section 291 applies.

Maximum penalty—200 penalty units.

294 Transitional provisions applying in relation to port authorities that are candidate GOCs

(1) This section applies in relation to a port authority that is a candidate GOC.

(2) A regulation may prescribe matters about the administration and operation of the port authority, including, for example, matters about—

(a) the port authority's board, chief executive officer and senior management; and

(b) the port authority's powers; and

(c) the port authority's employees; and

(d) the port authority's superannuation schemes; and

(e) dealings with the port authority.

(3) Without limiting subsection (2), a regulation under the subsection may make provision to the same or similar effect as the following provisions of the *Government Owned Corporations Act 1993*—

- chapter 3 (Government Owned Corporations (GOCs)), part 10 (General reserve powers of shareholding Ministers)
- sections 124 and 125
- sections 146 to 153
- schedule 1 (Interim boards of directors)
- schedule 2 (Executives of candidate GOC associates and associate subsidiaries).

(4) Subsections (2) and (3) are in addition to, and do not limit, section 290.

(5) A regulation under this section may create offences and prescribe penalties for the offences of not more than 100 penalty units.

(6) A regulation may prescribe transitional provisions about the port authority and an entity to which its assets and liabilities are to be transferred by a regulation under the *Government Owned Corporations Act 1993*.

(7) The port authority is a statutory body for the purposes of the *Statutory Bodies Financial Arrangements Act 1982*.

(8) This section ceases to apply to the port authority when its assets and liabilities are transferred to an entity by regulation under the *Government Owned Corporations Act 1993* or 18 months after it first applied to the authority.

295 Notices at entrances

(1) If—

(a) a port authority erects or displays a notice at each entrance commonly used by persons to gain access to its port; and

(b) the notice contains information about the port; and

(c) in a case where use of its port or facilities gives rise to a liability for charges—the notice states this and indicates generally the nature of the charges; and

(d) in a case where a contravention of a requirement of the notice is an offence—the notice states this and indicates generally the penalties that apply; and

(e) a person gains access to the port by using another entrance;

the person is taken to be aware of the information.

(2) If—

Not authorised—indicative only

Not authorised—indicative only

(a) a port authority erects or displays a notice at each entrance commonly used by persons to gain access to its strategic port land; and

(b) the notice contains information about the strategic port land; and

(c) in a case where use of its strategic port land or facilities gives rise to a liability for charges—the notice states this and indicates generally the nature of the charges; and

(d) in a case where a contravention of a requirement of the notice is an offence—the notice states this and indicates generally the penalties that apply; and

(e) a person gains access to the strategic port land by using another entrance;

the person is taken to be aware of the information.

Chapter 9 Busways and busway transport infrastructure

Part 1 Preliminary

296 Ways of achieving busway objectives

The objectives of this Act for busways are intended to be achieved by—

(a) developing and putting into effect busway transport infrastructure strategies; and

(b) establishing a legal framework to allow the construction, maintenance, management and operation of busway transport infrastructure in an effective and efficient way.

Part 2 Chief executive's functions and powers

297 Functions

The chief executive has the following functions in relation to busways, including proposed busways, and busway transport infrastructure, including proposed busway transport infrastructure—

(a) investigating, planning, establishing, constructing, maintaining, managing or operating, or arranging for someone else to investigate, plan, establish, construct, maintain, manage or operate;

(b) providing or arranging for associated services or works necessary or convenient for effective and efficient establishment, construction, maintenance, management and operation;

(c) efficiently integrating with any transport infrastructure, including light rail transport infrastructure;

(d) providing for appropriate levels of safety in construction, management and operation;

(e) investigating, planning or carrying out accommodation works that are necessary or convenient to be done as a result of busway transport infrastructure or busway transport infrastructure works;

(f) doing other things that directly or indirectly—

(i) are likely to enhance the provision of busway transport infrastructure and passenger services on busways; or

(ii) are incidental or complementary to the performance of another function.

Not authorised—indicative only

Not authorised—indicative only

298 Authority to enter or temporarily occupy or use land

(1) For the performance of a function under this chapter, the chief executive, or someone authorised in writing by the chief executive, may—

(a) do 1 or more of the following in relation to land—

(i) enter the land, whether or not for temporarily occupying or using the land;

(ii) temporarily occupy the land;

(iii) temporarily use the land; and

(b) do anything on the land necessary or convenient for the function, including, for example, for busway transport infrastructure works.

(2) However, the chief executive must not authorise a person to enter land under this section if the entry is a type of entry able to be authorised under an investigator's authority under chapter 11.

299 When land may be entered, occupied or used

(1) This section applies if a person proposes to enter, occupy or use land under this part.

(2) The person may enter, occupy or use the land without the permission of, or notice to, the owner or occupier of the land to perform urgent remedial work to facilitate or maintain the operation of busway transport infrastructure.

(3) However, the person must, if practicable, notify the occupier orally or in writing before entering the land.

(4) If the entry, occupation or use is other than for the performance of urgent remedial work, the person may enter, occupy or use the land if the person—

(a) obtains the written permission of—

(i) each person who is an owner of the land; and

(ii) each person who is an occupier of the land; or

(b) gives at least 7 days written notice to the occupier before the entry, occupation or use.

(5) The notice under subsection (4)(b) must state—

(a) all works proposed to be performed; and

(b) all uses proposed to be made of the land; and

(c) details of anything else proposed to be done on the land; and

(d) the approximate period when occupation or use is expected to continue; and

(e) an owner or occupier of the land may claim compensation from the chief executive for loss or damage caused by the entry, occupation or use; and

(f) if accommodation works are proposed to be carried out on the land—the owner or occupier may, within 7 days after the notice is given, make submissions to the person about the accommodation works proposed to be carried out on the land.

(6) A notice may be given under this section even though it is proposed to resume the land for busway transport infrastructure.

(7) If accommodation works are proposed to be carried out on the land, the person must consider any submissions that are made within 7 days after the notice is given, before carrying out the accommodation works.

(8) Power to enter, occupy or use land under this part does not authorise entry, occupation or use of a structure on the land used solely for residential purposes without the permission of the occupier of the land.

300 Compensation

(1) This section applies if land is entered, occupied or used under this part.

Not authorised—indicative only

Not authorised—indicative only

(2) An owner or occupier of the land may claim compensation from the chief executive for loss or damage caused by the entry, occupation or use, including by the taking or consumption of materials.

(3) However, compensation is payable only if written notice of the claim or proposed claim is given to the chief executive—

(a) after the loss or damage happens, but within 1 year after the entry, occupation or use ends; or

(b) at a later time allowed by the chief executive.

(4) In the absence of agreement between the owner or occupier and the chief executive about the payment of compensation, payment of compensation may be claimed and ordered in a proceeding brought in the Land Court.

(5) The Land Court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

(6) Compensation paid under this section for loss or damage caused to land must not be more than the compensation that would have been awarded if the land had been acquired.

Part 3 Establishment of busways

301 Definition for pt 3

In this part—

road means—

(a) a road under the *Land Act 1994*; and

(b) a State-controlled road.

302 Declaration of land as busway land

(1) The Minister may, by gazette notice, declare land to be busway land.

(2) Land declared to be busway land—

(a) must be—

(i) identified specifically in the gazette notice; or

(ii) identified generally in the gazette notice, and identified specifically in documents described in the gazette notice and available for perusal at an office of the department mentioned in the gazette notice; and

(b) must consist only of land for a busway and busway transport infrastructure.

(3) The identification of land declared to be busway land may, but need not, be by reference to strata occupied by the land.

(4) Land may be declared to be busway land only if it is—

(a) land acquired by the State or the chief executive for busway purposes or for a purpose, or combination of purposes, that includes busway purposes; or

(b) a road; or

(c) land acquired by the State or the chief executive, other than land mentioned in paragraph (a) or (b), on which busway transport infrastructure is located.

(5) In this section—

busway purposes includes busway transport infrastructure.

303 Effect on land of busway declaration

(1) If a road or a part of a road is declared under this part to be busway land, the road or part—

(a) stops being a road; and

(b) becomes unallocated State land.

(2) If a lot or a part of a lot under the *Land Title Act 1994* is declared under this part to be busway land, the lot or part becomes unallocated State land.

Not authorised—indicative only

Not authorised—indicative only

(2A) If land, other than land mentioned in subsection (1) or (2) or unallocated State land, is declared under this part to be busway land, the land becomes unallocated State land.

(3) Busway land can not be declared under section 24 to be a State-controlled road.

(4) The Governor in Council must lease busway land that is unallocated State land to the State under the *Land Act 1994*, section 17.

(5) The lease is in perpetuity and, if demanded, for a rent of $1 a year.

(6) The *Land Act 1994*, sections 157, 183, 204, 211 and 336(2)(a) and (c) do not apply to a lease or sublease of busway land.

303AA Sublease of lease of busway land

(1) The State may sublease its lease of busway land to another person for a busway established or proposed to be established on the busway land on terms negotiated and agreed between the parties.

(2) For the *Land Act 1994*, section 332(1)(b), the other person is eligible to hold a sublease of the lease.

(3) The first sublease under subsection (1) (the ***original sublease***) may include an option to renew the sublease, and any subsequent sublease may in turn include an option to renew.

(4) The terms of any option and any subsequent sublease are to be those negotiated and agreed between the parties.

(5) The *Land Act 1994*, section 336(2)(a) does not apply to a document of amendment of the original sublease or any subsequent sublease.

(6) If a sublessee attaches busway transport infrastructure to the land the subject of the original sublease or a subsequent sublease, the infrastructure immediately becomes the property of the chief executive unless the parties to the sublease agree it is to become the property of the chief executive at a later time.

(7) Despite any agreement under subsection (6), the infrastructure, if it has not already become the property of the chief executive, becomes the property of the chief executive—

(a) if there is no subsequent sublease—at the end of the original sublease; or

(b) if there is only 1 subsequent sublease—at the end of the subsequent sublease; or

(c) if there are 2 or more subsequent subleases—at the end of the last of the subsequent subleases.

(8) Neither the original sublease nor any subsequent sublease stops being a sublease only because persons are expressly or impliedly permitted by the chief executive under this chapter to be on the subleased land.

(9) This section does not stop the granting of a lease or sublease to another person for a busway, other than under this section, of land that is not busway land but on which there is, or is proposed to be, busway transport infrastructure.

(10) In this section—

busway land means busway land that is leased to the State under the *Land Act 1994*, section 17.

303AB Licence in relation to busway land or busway transport infrastructure

(1) The chief executive may, for the State, grant to a person a licence in relation to busway land or busway transport infrastructure for any of the following purposes—

(a) construction, maintenance or operation of any thing on the land;

(b) the use of the land or infrastructure for any purpose, including, for example, a commercial or retail purpose;

Examples—

- the erection, alteration or operation of an advertising sign or other advertising device

Not authorised—indicative only

Not authorised—indicative only

- a retail outlet

(c) maintenance, management or operation of the land or infrastructure.

(2) A licence under subsection (1) is subject to any conditions that the chief executive considers appropriate and that are stated in the licence.

(3) If the chief executive gives the registrar of titles written notice of a licence granted under subsection (1), the registrar must record the licence against the land in the appropriate register.

(3A) If a licence recorded under subsection (3) is cancelled or surrendered, the registrar of titles must record the cancellation or surrender against the land in the appropriate register.

(3AA) No fee is payable for recording a licence under subsection (3).

(4) A licence under subsection (1) may be mortgaged, sublicensed or transferred with the consent of the chief executive.

(5) Despite the *Land Act 1994*, chapter 4, part 4, the chief executive of the department in which that Act is administered can not issue a permit to occupy—

(a) busway land to which a licence under subsection (1) relates; or

(b) land on which busway transport infrastructure to which a licence under subsection (1) relates is, or is proposed to be, situated.

(6) Subsection (7) applies if there is any inconsistency between—

(a) a local government's control of a road under the *Local Government Act 2009*, section 60, other than for a matter mentioned in section 305 or 307 of this Act; and

(b) a provision of a licence under subsection (1).

(7) To the extent of the inconsistency the provision of the licence prevails.

(8) To remove any doubt, it is declared that the *Land Act 1994* does not apply to the grant of a licence under this section.

(9) In this section—

busway land includes private agreement land or State land—

(a) on which busway transport infrastructure is, or is proposed to be, situated; or

(b) required for the construction of busway transport infrastructure works.

private agreement land means land—

(a) held by a person other than the State; and

(b) that is the subject of an agreement—

(i) in relation to busway transport infrastructure between the person and the State; and

(ii) providing for the granting of a licence under this section.

303AC Compensation for licence granted under s 303AB

(1) This section applies if the chief executive grants a licence for a purpose under section 303AB (a ***relevant activity***) in relation to busway land under that section or busway transport infrastructure.

(2) An owner or occupier of the land or infrastructure may claim compensation from the chief executive for loss or damage caused by a relevant activity, including by the taking or consumption of materials.

(3) However, compensation is payable only if written notice of the claim or proposed claim is given to the chief executive—

(a) after the loss or damage happens, but within 1 year after the relevant activity ends; or

(b) at a later time allowed by the chief executive.

(4) In the absence of agreement between the owner or occupier and the chief executive about the payment of compensation, payment of compensation may be claimed and ordered in a proceeding brought in the Land Court.

Not authorised—indicative only

Not authorised—indicative only

(5) The Land Court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

(6) Compensation paid under this section for loss or damage caused to land must not be more than the compensation that would have been awarded if the land had been acquired under the *Acquisition of Land Act 1967*.

304 Development of busway and busway transport infrastructure

(1) This section applies to the establishment of a busway, including any investigating, planning, maintaining, managing, operating, and arranging for the busway or for busway transport infrastructure for the busway.

(2) Nothing in this chapter is intended to affect the operation of the Planning Act to the extent that the establishment of the busway is development under that Act.

Part 4 Management of busway land and busway transport infrastructure

Division 1 Transport infrastructure interaction

305 Altering road levels by a local government

(1) The chief executive may require a local government having control of a road to alter the level of the road for—

(a) busway transport infrastructure works; or

(b) the management or operation of a busway.

(2) However, the chief executive—

(a) must consult with the local government about the nature and extent of the alteration of the level of the road before the alteration is started; and

(b) subject to an agreement between the chief executive and the local government arising out of the consultation, pay all reasonable costs incurred by the local government in altering the road level.

(3) The local government must comply with the chief executive's requirement.

306 Watercourses and busway transport infrastructure works

(1) To carry out busway transport infrastructure works, the chief executive may—

(a) divert a watercourse; or

(b) construct a watercourse, whether temporary or permanent.

(2) In taking action under subsection (1)(a), the chief executive must consider the effect that the action will have on the physical integrity and flow characteristics of the watercourse.

(3) Subsection (1) does not authorise the chief executive, in a wild river area, to—

(a) divert or construct a watercourse; or

(b) extract quarry material from a watercourse.

307 Permitted construction by local government of roads over or under busway land

(1) Despite section 303(1), the chief executive may permit a local government to construct, maintain and operate a road located on busway land, consisting of—

(a) a bridge or other structure allowing traffic to pass over the level at which buses use the busway land; or

Not authorised—indicative only

Not authorised—indicative only

(b) a structure allowing traffic to pass under the level at which buses use the busway land.

(2) The permission may be given on reasonable conditions.

(3) In deciding whether to give the permission, the chief executive must consider the limiting effect the use of the road is likely to have on the use of the busway land for busway passenger services.

(4) While the bridge or other structure is being used for the road—

(a) neither the chief executive nor any person the chief executive has permitted to operate a bus using the busway land has any duty or liability for the road or its use or operation; and

(b) the road is taken to be a road of which the local government has control under the *Local Government Act 2009*, section 60; and

(c) the road is taken to be a road under any Act about the use of vehicles on a road.

(5) Unless the chief executive and the local government otherwise agree—

(a) the local government is responsible for maintaining the road and the bridge or other structure; and

(b) if the bridge or other structure stops being used for the road, the local government is responsible for the cost of taking the bridge or other structure away and of restoring the busway land.

308 Powers of chief executive for busway transport infrastructure works contracts etc.

(1) The chief executive may, for the State, carry out or enter into contracts with other persons for the carrying out of—

(a) busway transport infrastructure works on a busway or on land that is intended to become a busway; or

(b) other works that contribute to the effectiveness and efficiency of the busway network; or

(c) the operation of a busway.

(2) The chief executive, for the State, may enter into contracts with other persons for busway transport infrastructure works to be carried out outside the State under an agreement between the State and the other State concerned.

(3) A contract with a local government under this section may include arrangements about which powers of the local government are to be exercised by the chief executive, and which are to be exercised by the local government, for the busway.

(4) A local government may enter into a contract mentioned in subsection (1) even though the contract relates to works or operation outside the local government's area.

(5) The chief executive, for the State, may carry out or enter into contracts for works on or adjacent to a busway at the request of the owner of adjacent land on the basis that the owner provides consideration, whether monetary or otherwise, as agreed between the chief executive and the owner.

(6) This section does not prevent the chief executive carrying out, or entering into contracts for the carrying out, of busway transport infrastructure works of a minor or emergency nature.

(7) In carrying out works or the operation of a busway, the chief executive must ensure that the carrying out is done on a value for money basis.

(8) In entering into contracts under this section, the chief executive must ensure that open competition is encouraged.

(9) Subsection (8) does not apply to a contract with a person if the person is the sole invitee and enters into a price performance contract with the chief executive.

(10) The chief executive may arrange with another person for the sharing by the chief executive with the other person of the cost of—

Not authorised—indicative only

Not authorised—indicative only

(a) acquisition of land for busway transport infrastructure; or

(b) busway transport infrastructure works on a busway; or

(c) other works that contribute to the effectiveness and efficiency of the busway network; or

(d) the operation of a busway;

including all necessary preliminary costs associated with the acquisition, works or operation.

309 Distraction of traffic on busway

(1) A local government must obtain the chief executive's written approval if it intends to approve the erection, alteration or operation of an advertising sign or other advertising device that would be—

(a) visible from a busway; and

(b) reasonably likely to create a traffic hazard for the busway.

(2) For subsection (1), the chief executive may make guidelines to which local governments must have regard in deciding whether the chief executive's approval is required for a particular busway.

(3) An approval may be subject to conditions.

(4) Subsection (1) does not apply if the conditions applied by the local government to the erection, alteration or operation of the sign or device comply with permission criteria fixed by the chief executive.

(5) The permission criteria may include conditions.

(6) A local government must comply with conditions that apply to it under this section.

(7) An approval must be given—

(a) within 21 days after receiving the application for approval; or

(b) within a longer period notified to the local government by the chief executive within the 21 day period.

(8) If the chief executive does not respond to a local government's application within 21 days after receiving it, the chief executive is taken to have given approval at the end of the 21 days.

(9) The chief executive must publish a copy of each notice mentioned in subsection (10) in the gazette.

(10) In this section—

busway includes land that the chief executive has notified the local government in writing is intended to become a busway.

310 No presumption of dedication of road

(1) This section applies if the public uses busway land as a road, or for access purposes other than as a road.

(2) The busway land does not at law, either because the use is authorised or permitted by the chief executive or for another reason, become dedicated to public use as a road.

Division 2 Interfering with busway transport infrastructure

311 Interfering with busway transport infrastructure

(1) A person must not interfere with or carry out works on busway transport infrastructure unless—

(a) the person has the written approval of the chief executive; or

(b) the interference or works are for the construction, maintenance or operation of a road permitted under this part to be constructed, maintained and operated across, over or under the busway transport infrastructure; or

Not authorised—indicative only

Not authorised—indicative only

(c) the interference or works are otherwise authorised under this Act or another Act.

Maximum penalty—160 penalty units.

(2) An approval under subsection (1)(a) may be given on reasonable conditions.

(3) The person given the approval must comply with the conditions of the approval.

Maximum penalty—40 penalty units.

(4) Subsection (1) does not apply to the carrying out of urgent maintenance of a busway or busway transport infrastructure.

312 Rectifying unauthorised interference or works

(1) This section applies if a person (the ***identified person***) interferes with or carries out works on busway transport infrastructure in contravention of section 311(1).

(2) The chief executive may, by written notice given to the identified person, require the person to rectify the interference, or the effect of the carrying out of the works, within a stated reasonable time.

(3) The identified person must comply with the notice unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(4) If the identified person does not comply with the notice, the chief executive may rectify the interference or the effect of the carrying out of the works.

(5) The identified person must pay the amount of the chief executive's reasonable costs of—

(a) rectifying the interference or the effect of the carrying out of the works; or

(b) changing the way the busway transport infrastructure is built, maintained or operated because of the interference or the effect of the carrying out of the works.

(6) The chief executive may recover the amount as a debt.

(7) In this section—

rectify the interference includes the following—

(a) alter, dismantle or take away works;

(b) fix damage caused by the interference.

Division 4 Public utility plant

316 Definition for div 4

(1) In this division—

busway land includes land that is State land, or private agreement land, on which busway transport infrastructure is, or is proposed to be, situated.

Note—

Information about projects and initiatives involving busway land is available on the department's website ~~at www.tmr.qld.gov.au~~.

(2) In this section—

private agreement land means land—

(a) held by a person other than the State; and

(b) that is subject to an agreement for public utility plant on the land, between the person and the State.

317 Retention of ownership of public utility plant

(1) This section applies if, immediately before the declaration of land as busway land under section 302, public utility plant is located on the land.

(2) The declaration does not affect the ownership of the public utility plant.

Not authorised—indicative only

Not authorised—indicative only

318 Public utility plant on busway land

(1) A public utility provider may do the following things on busway land—

(a) build, replace or take away, or alter, other than for maintenance or repair, its public utility plant;

(b) maintain or repair, or alter, for maintenance or repair, its public utility plant;

(c) take reasonable steps to stop obstruction or potential obstruction to, or interference or potential interference with, its public utility plant.

(2) However, the provider may do things mentioned in subsection (1) only if the chief executive agrees in writing.

(3) The chief executive must not unreasonably withhold agreement.

(4) Despite subsection (2), a public utility provider may, if acting in the interests of public safety, carry out urgent maintenance of its public utility plant on busway land without the written agreement of the chief executive, but only if the provider—

(a) makes all reasonable attempts to obtain the chief executive's oral agreement to the carrying out of the maintenance; and

(b) whether or not the chief executive's oral agreement is obtained, acts as quickly as possible to advise the chief executive of the details of the maintenance being carried out.

(5) Building or altering public utility plant under subsection (1)(a) does not affect the ownership of the plant.

319 Chief executive must give provider information

If asked in writing by a public utility provider, the chief executive must give the provider information about lines and levels for planned busway transport infrastructure on busway land necessary to enable the provider to minimise possible

adverse effects of the establishment of the infrastructure on the provider's works.

320 Public utility provider to consult with chief executive before replacing public utility plant

(1) If a public utility provider proposes to replace the whole or a substantial proportion of its public utility plant on busway land, the provider must, before seeking written agreement under section 318, consult with the chief executive.

(2) The object of the consultation is to identify mutually beneficial arrangements for the replacement of the public utility plant, having regard to existing development plans for the busway land.

321 Public utility provider to comply with chief executive's agreement

(1) This section applies if, in relation to busway land, a public utility provider does something mentioned in section 318(1) (the ***relevant action***)—

(a) without the written or oral agreement of the chief executive required under section 318; or

(b) in a way inconsistent with an agreement with the chief executive; or

(c) in a way inconsistent with a regulation about how things mentioned in section 318(1) are to be done.

(2) The chief executive may, by written notice given to the public utility provider, require the provider, at the provider's cost, and within the time stated in the notice, to take action to remedy the relevant action.

(3) The time stated in the notice must be a time that is reasonable in the circumstances.

Not authorised—indicative only

Not authorised—indicative only

(4) If the provider does not comply with the notice, the chief executive may arrange for action the chief executive considers necessary to remedy the relevant action.

(5) The chief executive's reasonable expenses in arranging for the action to be carried out is a debt payable by the provider to the chief executive.

322 Chief executive may require public utility provider to alter position of public utility plant

(1) The chief executive may require a public utility provider to alter the position of the provider's public utility plant on busway land if the chief executive considers that the plant will interfere with the exercise of the chief executive's powers for the busway land.

(2) The chief executive is responsible only for the cost of altering the position of the public utility plant.

323 Information by public utility provider to chief executive

(1) If, in relation to public utility plant on busway land, a public utility provider does something mentioned in section 318(1), the provider must prepare records adequately defining the location of the plant.

(2) A public utility provider owning public utility plant located on busway land must, if asked by the chief executive, give the chief executive information adequately defining the location of the plant.

Maximum penalty for subsection (2)—40 penalty units.

324 Liability for damage caused by failure to comply with request for information

(1) This section applies if—

(a) the chief executive causes damage to public utility plant located on busway land; and

(b) before the damage was caused, the chief executive had asked for information under section 323(2) from the public utility provider owning the public utility plant; and

(c) the provider had not, within a reasonable time, complied with the request; and

(d) the damage was caused because of the failure to comply with the request.

(2) Unless the chief executive otherwise agrees, the chief executive is not liable for the damage.

325 Liability for damage caused by failure to give enough detail about location of public utility plant

(1) This section applies if—

(a) the chief executive causes damage to public utility plant located on busway land; and

(b) information supplied to the chief executive under section 323(2) did not define in enough detail the location of the plant; and

(c) the damage was caused because of the failure to define in enough detail the location of the plant.

(2) Unless the chief executive otherwise agrees, the chief executive is not liable for the damage.

326 Liability for damage caused because of failure to comply with chief executive's requirements

(1) This section applies if—

(a) the chief executive causes damage to public utility plant located on busway land; and

(b) the damage is caused because the public utility provider owning the plant did something mentioned in section

Not authorised—indicative only

Not authorised—indicative only

318(1) in relation to the plant other than under the chief executive's requirements under this division.

(2) Unless the chief executive otherwise agrees, the chief executive is not liable for the damage.

327 Liability of public utility provider to pay additional expenses incurred by chief executive

(1) This section applies if the chief executive incurs additional expense in carrying out busway transport infrastructure works on busway land because a public utility provider—

(a) did not supply within a reasonable time information asked for by the chief executive under section 323(2); or

(b) in supplying information to the chief executive, did not define in enough detail the location of public utility plant; or

(c) did something mentioned in section 318(1) in relation to public utility plant other than under the chief executive's requirements under this division.

(2) The public utility provider is liable to pay the chief executive the additional expense.

328 Replacement or reconstruction of public utility plant

(1) If the carrying out of busway transport infrastructure works on busway land by or for the chief executive requires taking away or replacing public utility plant, the chief executive can not be compelled to replace or reconstruct the plant in its previous location and form.

(2) If the plant is replaced or reconstructed—

(a) it must be done under the chief executive's requirements; and

(b) it must be at the chief executive's expense, but the cost to the chief executive of replacement or reconstruction may be reduced by agreement between the chief

executive and the public utility provider owning the plant after taking into account—

(i) the remaining life of the plant; and

(ii) the salvage or scrap value of the plant; and

(iii) additional expense incurred because of inaccurate information supplied by the provider about the location of the plant; and

(iv) additional expense incurred because the plant was not constructed in accordance with the chief executive's requirements.

Division 5 Use of busway or busway transport infrastructure

329 Trespass on busway or busway transport infrastructure

(1) A person must not, without reasonable excuse, be on a busway or busway transport infrastructure unless the person has permission of the chief executive to be on the busway or infrastructure.

Maximum penalty—40 penalty units.

(2) For subsection (1), permission may be given, for example—

(a) expressly, by—

(i) signs, structures, textured pavement or painted lines designating points for vehicles or pedestrians to cross the busway or busway transport infrastructure; or

(ii) signs designating the hours during which the busway or busway transport infrastructure may be used by pedestrians to access a public passenger service; or

Not authorised—indicative only

Not authorised—indicative only

(iii) signs designating a part of the busway or busway transport infrastructure as being open to pedestrians to access a public passenger service; or

(b) impliedly, by the absence of demarcation between ordinary road and the busway or busway transport infrastructure.

(3) A regulation may include rules about the use of a busway or busway transport infrastructure by a bus or by persons having the permission of the chief executive to be on the busway or infrastructure.

Division 6 Compensation entitlements

330 Definitions for div 6

In this division—

access, for land, means—

(a) access to the land from the road network, whether or not through other land; or

(b) access from the land to the road network, whether or not through other land.

busway land means busway land that, when declared under this chapter to be busway land, was a road or part of a road.

establishment, of busway transport infrastructure on busway land, includes the following—

(a) initial construction of the busway transport infrastructure on the busway land;

(b) construction for changing or adding to busway transport infrastructure previously constructed on the busway land;

(c) putting in place the arrangements under which persons are permitted or not permitted to be on the busway land.

interference, with access, includes loss or reduction of access.

331 No entitlement to compensation for particular matters

(1) A person having an interest in land (the ***relevant land***) has no entitlement at law, except to the extent this division provides, to compensation for a matter listed in subsection (2), to the extent the matter is caused by—

(a) the establishment of a busway; or

(b) the establishment or proposed establishment of busway transport infrastructure on busway land; or

(c) the operation of a busway on busway land.

(2) The matters are—

(a) the adverse effect on the amenity or likely amenity of the neighbourhood of the relevant land; and

(b) interference with an activity of a business, commercial, industrial or residential nature carried out on the relevant land; and

(c) loss or damage arising directly or indirectly from interference with access for the relevant land; and

(d) the reduction or loss of a right of access for the relevant land and loss or damage caused by the reduction or loss of the right of access.

332 Compensation for reduced market value of interest in land

(1) A person who has an interest in land (the ***relevant land***) is entitled to compensation if the establishment of busway transport infrastructure on busway land (the ***infrastructure***), when completed, is a cause of interference (the ***interference***) with access for the relevant land.

(2) Subsection (1) applies only if—

(a) either of the following applies—

(i) the busway land joins directly with the relevant land or with land (***access land***) giving access for

Not authorised—indicative only

Not authorised—indicative only

the relevant land because of an easement or other right or interest;

(ii) the busway land does not join directly with the relevant land or with access land, but it is possible to travel from the relevant land or access land to the busway land by travelling only over road; and

(b) the practical effect of the interference is substantially greater in nature and extent than the practical effect of interference with access for the relevant land that might reasonably be expected to be experienced from time to time in changes to the operation of the road network; and

(c) the practical effect of the interference is that there is a direct and substantial interference with practicable access for the relevant land compared with the practicable access existing for the relevant land before the establishment of the infrastructure.

(3) The amount of the compensation is the amount by which the market value of the interest may fairly be said to have been reduced because of the interference now affecting the relevant land.

(4) However, the compensation must not be more than the compensation that would have been awarded if the interest had been acquired.

333 Compensation of person in actual occupation for interference with enjoyment of land

(1) A person is entitled to compensation if—

(a) the person is in actual occupation of land (the ***relevant land***) when the establishment of busway transport infrastructure on busway land (the ***infrastructure***) is happening or when it is completed; and

(b) the establishment of the infrastructure is a cause of interference with access (the ***access interference***) for the relevant land; and

(c) the access interference is a cause of interference (the ***enjoyment interference***) with the person's enjoyment of the relevant land.

(2) Subsection (1) applies only if—

(a) either of the following applies—

(i) the busway land joins directly with the relevant land or with land (***access land***) giving access for the relevant land because of an easement or other right or interest;

(ii) the busway land does not join directly with the relevant land or with access land, but it is possible to travel from the relevant land or access land to the busway land by travelling only over road; and

(b) the practical effect of the access interference is substantially greater in nature and extent than the practical effects of interference with access for the relevant land that might reasonably be expected to be experienced from time to time in changes to the operation of the road network; and

(c) the practical effect of the access interference is that there is a direct and substantial interference with practicable access for the relevant land compared with the practicable access existing for the relevant land before the establishment of the infrastructure.

(3) The amount of compensation is an amount fairly representing, in the particular circumstances—

(a) if the person is in occupation of the relevant land at any time during the establishment of the infrastructure—the reasonable cost to the person of the enjoyment interference during the establishment; and

Not authorised—indicative only

Not authorised—indicative only

(b) if the person is in occupation of the relevant land when the establishment of the infrastructure is completed—the reasonable cost to the person of the enjoyment interference, starting from when the establishment of the infrastructure is completed.

(4) In calculating the compensation, no regard is to be had to the reduction in the market value of an interest the person may have in the relevant land.

334 Chief executive may supply or contribute to new access arrangements

(1) The chief executive may, having regard to the establishment, or proposed establishment, of busway transport infrastructure on busway land, enter into an agreement with a person who is the owner or occupier of land (the ***relevant land***) for—

(a) the supply by the chief executive, or a contribution by the chief executive towards the supply, of works for alternative access for the relevant land; or

(b) the carrying out, or a contribution towards the carrying out, of other works in relation to the relevant land for the purpose of access for the land.

(2) A person's entitlement to compensation under this division is reduced to the extent provided for in an agreement under subsection (1).

335 Obtaining compensation

(1) A person claiming to be entitled to compensation under this division may apply in writing to the chief executive for the compensation.

(2) The application must be made—

(a) within 12 months after the establishment of busway transport infrastructure on busway land giving rise to the claim for compensation; or

(b) within a longer time agreed by the chief executive.

(3) If, within 60 days after the person applies under subsection (1), or a longer time agreed between the person and the chief executive, no agreement has been reached between the person and the chief executive on the application—

(a) the person may apply to the Land Court for the compensation; or

(b) the chief executive may apply to the Land Court to have the compensation decided by the court.

(4) The Land Court has jurisdiction to deal with an application made to it under subsection (3), including jurisdiction to require the chief executive to pay the person compensation decided by the court.

(5) Nothing in subsection (2)(a) stops a person from applying for compensation before the establishment of the busway transport infrastructure is completed if the claim relates to the person's occupation of land during the establishment of the infrastructure.

Part 4A Accreditation as busway manager

335AA Reference to busway in pt 4A

In this part, other than in this section, section 335AB and section 335AP, a reference to a busway is a reference to a busway that is—

(a) established on busway land; or

(b) proposed to be established on busway land; or

(c) proposed to be established on land proposed to become busway land.

Not authorised—indicative only

Not authorised—indicative only

335AB Only accredited person can manage busway

A person must not manage a busway on busway land unless the person is accredited as the busway manager for the busway.

Maximum penalty—160 penalty units.

335AC Application for accreditation

A person may apply to the chief executive for accreditation as the busway manager for a busway.

335AD Additional information for application

(1) The chief executive may, by written notice, require an applicant to give the chief executive the stated written information the chief executive reasonably requires to consider the application.

(2) The chief executive may reject the application if the applicant does not comply with the requirement within a stated reasonable time, not less than 28 days, without reasonable excuse.

335AE Giving accreditation

(1) The chief executive must promptly consider an application for accreditation and give, or refuse to give, the accreditation.

(2) The chief executive must accredit an applicant as the busway manager for a busway if satisfied—

(a) the applicant has the competency and capacity to manage the busway safely; and

(b) the applicant has an appropriate safety management system; and

(c) the applicant has the financial capacity or public risk insurance arrangements to meet reasonable potential accident liabilities for the busway; and

(d) the applicant has rights of access to all land the applicant needs for the establishment and operation of the busway; and

(e) the applicant has rights to the use of all busway transport infrastructure and other infrastructure the applicant needs for the establishment and operation of the busway.

(3) In considering a safety management system, the chief executive must consider—

(a) what the applicant proposes for the busway; and

(b) the appropriateness of the safety management system for what the applicant proposes; and

(c) the safety levels achievable, consistent with the nature of what the applicant proposes, at a reasonable cost; and

(d) the need for efficient and competitive busway transport services; and

(e) consistency with generally accepted risk management principles; and

(f) the levels of safety proposed compared with the levels of safety of competing transport modes.

(4) Subsection (3) does not limit what the chief executive may consider in considering a safety management system.

(5) If the chief executive decides to give the accreditation, the chief executive must promptly give the applicant a written notice stating—

(a) the decision; and

(b) the details of the accreditation, including its scope; and

(c) if the accreditation is given on conditions—

(i) the details of the conditions; and

(ii) the reason for the conditions.

Not authorised—indicative only

Not authorised—indicative only

(6) If the chief executive decides not give the accreditation, the chief executive must promptly give the applicant a written notice stating—

(a) the decision; and

(b) the reason for the decision.

(7) A written notice given under subsection (5) or (6) must be accompanied by an information notice for the decision the subject of the notice.

335AF Annual levy

(1) A regulation may impose levies on busway managers for busways relating to their accreditation on a basis prescribed under the regulation.

(2) The chief executive must give each busway manager for a busway written notice of the amount of a levy applying to the manager.

(3) The chief executive may recover the amount of a levy as a debt owed to the chief executive.

335AG Accreditation conditions

(1) An accreditation of a person as the busway manager for a busway may be subject to conditions.

(2) However, the conditions must be about—

(a) constructing or maintaining the busway; or

(b) managing the busway safely, considering the need for efficient and competitive services; or

(c) the person's financial capacity or public risk insurance arrangements to meet reasonable potential accident liabilities for the busway; or

(d) paying accreditation fees; or

(e) something else prescribed under a regulation.

(3) A person must comply with each condition of the person's accreditation as the busway manager for a busway.

Maximum penalty for subsection (3)—40 penalty units.

335AH Requiring accreditation conditions to be complied with

(1) This section applies if the chief executive reasonably believes a person has not complied with a condition of the person's accreditation as the busway manager for a busway.

(2) The chief executive may, by written notice, require the person to remedy the breach within a reasonable period stated in the notice.

(3) If the person has not complied with the condition of the person's accreditation as the busway manager for a busway, the person must comply with the notice.

Maximum penalty for subsection (3)—60 penalty units.

335AI Accreditation period

A person's accreditation as the busway manager for a busway remains in force until it is suspended, cancelled or surrendered.

335AJ Amending accreditation conditions on application

(1) A person accredited as the busway manager for a busway may apply to the chief executive for an amendment of the conditions of the person's accreditation.

(2) The chief executive must consider the application and decide whether to make the amendment.

(3) The chief executive may amend a condition only if satisfied the condition is—

(a) no longer appropriate; or

Not authorised—indicative only

Not authorised—indicative only

(b) no longer consistent with generally accepted risk management principles.

(4) If the chief executive decides to amend a condition, the chief executive must promptly give the applicant a written notice stating the decision and the amendment.

(5) If the chief executive decides not to amend a condition, the chief executive must promptly give the applicant a written notice stating—

(a) the decision; and

(b) the reason for the decision.

(6) A written notice given under subsection (5) must be accompanied by an information notice for the decision the subject of the notice.

(7) If the chief executive does not decide the application within 70 days after it is made, the chief executive is taken to have made the amendment sought by the applicant at the end of the 70 days.

335AK Amending accreditation conditions without application

(1) This section applies if the chief executive considers the conditions of a person's accreditation as the busway manager for a busway should be amended but the person has not applied for the proposed amendment.

(2) Before amending the conditions, the chief executive must give the person a written notice—

(a) stating the proposed amendment; and

(b) stating the reason for the proposed amendment; and

(c) inviting the person to show, within a stated time of at least 28 days, why the proposed amendment should not be made.

(3) If, after considering all written representations made within the stated time, the chief executive still considers the

conditions should be amended, the chief executive may amend the conditions—

(a) in the way proposed; or

(b) in another way, having regard to the representations.

(4) The chief executive must inform the person of the decision by written notice.

(5) If the chief executive decides to amend the conditions, the notice must also state—

(a) the amendment; and

(b) the reason for the decision.

(6) A written notice given under subsection (4) must be accompanied by an information notice for the decision the subject of the notice.

(7) Subsections (2) to (5) do not apply if the chief executive proposes to amend the conditions of a person's accreditation as the busway manager for a busway for a formal or clerical reason not adversely affecting the person's interests.

(8) The chief executive may amend a condition in a way mentioned in subsection (7) by written notice given to the person.

335AL Suspending or cancelling accreditation

(1) This section applies if the chief executive—

(a) reasonably suspects a person accredited as the busway manager for a busway has not complied with a condition of the person's accreditation; and

(b) considers the person's accreditation should be suspended or cancelled (the ***proposed action***).

(2) Before taking the proposed action, the chief executive must give the person a written notice—

(a) stating the proposed action; and

Not authorised—indicative only

Not authorised—indicative only

(b) stating the reason for the proposed action; and

(c) if the proposed action is suspension of the accreditation, stating the proposed suspension period; and

(d) if the proposed action is a limited suspension of the accreditation, stating the details of the proposed limitation; and

Note—

See section 335AN (Limited suspension of accreditation).

(e) inviting the person to show, within a stated time of at least 28 days, why the proposed action should not be taken.

(3) If, after considering all written representations made within the stated time, the chief executive still considers the proposed action should be taken, the chief executive may—

(a) if the proposed action is to suspend the accreditation—suspend the accreditation—

(i) for no longer than the proposed suspension period; and

(ii) if the proposed action was a limited suspension, by no more than the proposed limitation; or

(b) if the proposed action was to cancel the accreditation—cancel the accreditation or suspend it for a period.

(4) The chief executive must inform the person of the decision by written notice.

(5) If the chief executive decides to suspend or cancel the accreditation, the notice must also state the reason for the decision.

(6) The chief executive may immediately cancel the accreditation by written notice given to the person if—

(a) rather than cancel the accreditation, the chief executive has suspended it on condition the person do certain things to rectify the failure to comply with a condition of the person's accreditation; but

(b) the person has not rectified the failure within the suspension period.

(7) The notice must state the reason for the decision.

(8) A written notice given under subsection (4) or (6) must be accompanied by an information notice for the decision the subject of the notice.

335AM Immediate suspension of accreditation

(1) This section applies if the chief executive—

(a) reasonably believes a person accredited as the busway manager for a busway has not complied with a condition of the person's accreditation; and

(b) considers members of the public may be seriously harmed if urgent action to suspend the person's accreditation is not taken.

(2) The chief executive may immediately suspend the accreditation by written notice given to the person.

(3) The notice must state the reason for the decision and must be accompanied by an information notice for the decision.

(4) The chief executive must at the same time give the person a notice under section 335AL(2).

(5) The accreditation is suspended under this section until the earlier of the following—

(a) the chief executive gives the person notice of the chief executive's decision under section 335AL;

(b) the end of 60 days after the notice under subsection (2) was given to the person.

335AN Limited suspension of accreditation

Under section 335AL or 335AM, the chief executive may limit a suspension of a person's accreditation as the busway

Not authorised—indicative only

Not authorised—indicative only

manager for a busway to, for example, a particular busway for which the person is accredited as a busway manager.

335AO Surrender of accreditation

A person accredited as the busway manager for a busway may, at any time, surrender the person's accreditation by written notice given to the chief executive.

335AP Accreditation for proposed busway

(1) This section applies if—

(a) a person holds an accreditation under this part as the busway manager for a busway—

(i) proposed to be established on busway land; or

(ii) proposed to be established on land proposed to become busway land; and

(b) the busway is established on busway land substantially in the way proposed.

(2) The accreditation automatically becomes an accreditation under this part that the person holds as the busway manager for the busway as established.

Part 5 Busway authorisation

335A Definitions for pt 5

In this part—

authorised busway user, for a busway, means—

(a) a busway service provider authorised by the chief executive to use the busway; or

(b) another person authorised by the chief executive for the busway.

busway service provider means—

(a) a person using a bus to provide a public passenger service other than—

(i) a booked hire service within the meaning of the *Transport Operations (Passenger Transport) Act 1994*; or

(ii) a taxi service within the meaning of the *Transport Operations (Passenger Transport) Act 1994*; or

(iii) a person who provides a scheduled passenger service under a service contract referred to in section 336(1)(a)(ii); or

(b) a person carrying out busway transport infrastructure works on a busway or busway transport infrastructure.

336 Who may drive on a busway

(1) A person must not drive on a busway unless the person is—

(a) driving in the course of the person's duty as an employee of—

(i) a busway service provider authorised by the chief executive to use the busway; or

(ii) the holder of a service contract that requires the holder to provide a public passenger service for the area in which the busway is located; or

(iii) an emergency service; or

(b) authorised by the chief executive to drive on the busway.

Maximum penalty—160 penalty units.

(2) In this section—

emergency service means—

(a) the Queensland Ambulance Service; or

(b) the Queensland Fire and Rescue Service; or

Not authorised—indicative only

Not authorised—indicative only

(c) the Queensland Police Service; or

(d) the State Emergency Service; or

(e) another entity approved by the chief executive.

337 Applying for authorisation as authorised busway user

(1) A person may apply to the chief executive for authorisation as an authorised busway user for a busway.

(2) The chief executive may, by written notice, require an applicant to give the chief executive stated written information that the chief executive reasonably requires to consider the application.

(3) The chief executive may reject the application if the applicant fails to comply with the requirement within a stated reasonable time, of not less than 28 days, without reasonable excuse.

338 Considering application for authorisation

(1) The chief executive must promptly consider an application for authorisation as an authorised busway user and decide to grant, or refuse to grant, the authorisation.

(2) If the chief executive decides to grant the authorisation, the chief executive must promptly give the applicant a written notice stating—

(a) the decision; and

(b) the details of the authorisation, including its scope; and

(c) if the authorisation is subject to a condition—

(i) the details of the condition; and

(ii) the reason for the condition.

(3) If the chief executive decides not to grant the authorisation, the chief executive must promptly give the applicant a written notice stating—

(a) the decision; and

(b) the reason for the decision.

(4) A notice under subsection (2) or (3) must be accompanied by an information notice.

339 Authorisation conditions

(1) An authorisation may be subject to conditions.

(2) A condition may relate only to—

(a) safely using a busway; or

(b) something else prescribed under a regulation.

(3) An authorised busway user must comply with each condition of the authorised busway user's authorisation.

Maximum penalty for subsection (3)—40 penalty units.

340 Requiring authorisation conditions to be complied with

(1) This section applies if the chief executive reasonably believes an authorised busway user has not complied with a condition of the authorised busway user's authorisation.

(2) The chief executive may, by written notice, require the authorised busway user to remedy the breach within a reasonable period stated in the notice.

(3) If the authorised busway user has not complied with the condition, the authorised busway user must comply with the notice.

Maximum penalty for subsection (3)—40 penalty units.

341 Authorisation period

An authorised busway user's authorisation remains in force until suspended, cancelled or surrendered.

Not authorised—indicative only

Not authorised—indicative only

342 Amending authorisation conditions on application

(1) An authorised busway user may apply to the chief executive for an amendment of the conditions of the authorised busway user's authorisation.

(2) The chief executive must consider the application and decide to grant, or refuse to grant, the amendment.

(3) The chief executive may amend a condition only if satisfied the condition is—

(a) no longer appropriate; or

(b) no longer consistent with generally accepted risk management principles.

(4) If the chief executive decides to amend a condition, the chief executive must promptly give the applicant a written notice stating the decision and the amendment.

(5) If the chief executive decides not to amend a condition, the chief executive must promptly give the applicant a written notice stating—

(a) the decision; and

(b) the reason for the decision.

(6) A notice under subsection (5) must be accompanied by an information notice.

(7) If the chief executive does not decide the application within 70 days after it is made, the chief executive is taken to have made the amendment sought by the applicant at the end of the 70 days.

343 Amending authorisation conditions without application

(1) This section applies if the chief executive considers the conditions of an authorised busway user's authorisation should be amended although the authorised busway user has not applied for the amendment.

(2) Before amending the conditions, the chief executive must give the authorised busway user a written notice stating—

(a) the proposed amendment; and

(b) the reason for the amendment; and

(c) an invitation to the authorised busway user to show in writing, within a stated time of at least 28 days, why the amendment should not be made.

(3) If, after considering all written representations made within the stated time, the chief executive still considers the conditions should be amended, the chief executive may amend the conditions—

(a) in the way proposed; or

(b) in another way, having regard to the representations.

(4) The chief executive must inform the authorised busway user of the decision by written notice.

(5) If the chief executive decides to amend the conditions, the notice must also state—

(a) the amendment; and

(b) the reason for the decision.

(6) A notice under subsection (5) must be accompanied by an information notice.

(7) Subsections (2) to (5) do not apply if the chief executive proposes to amend the conditions of an authorised busway user's authorisation for a formal or clerical reason that does not adversely affect the authorised busway user's interests.

(8) The chief executive may amend a condition in a way mentioned in subsection (7) by written notice to the authorised busway user.

344 Suspending or cancelling authorisation

(1) This section applies if the chief executive—

Not authorised—indicative only

Not authorised—indicative only

(a) reasonably suspects an authorised busway user has contravened a condition of the authorised busway user's authorisation; and

(b) considers the authorisation should be suspended or cancelled (the ***proposed action***).

(2) Before taking the proposed action, the chief executive must give the authorised busway user a written notice stating—

(a) the proposed action; and

(b) the reason for the proposed action; and

(c) if the proposed action is to suspend the authorisation—the proposed suspension period; and

(d) if the proposed action is to suspend the authorisation only in relation to a particular service operated by the authorised busway user—the service; and

(e) an invitation to the authorised busway user to show in writing, within a stated time of at least 28 days, why the proposed action should not be taken.

(3) If after considering all written representations made within the stated time, the chief executive still considers the proposed action should be taken, the chief executive may—

(a) if the proposed action was to suspend the authorisation—suspend the authorisation—

(i) for no longer than the proposed suspension period; and

(ii) if the proposed suspension was limited to a particular service—only in relation to the service; or

(b) if the proposed action was to cancel the authorisation—cancel the authorisation or suspend it for a period.

(4) The chief executive must inform the authorised busway user of the decision by written notice.

(5) If the chief executive decides to suspend or cancel the authorisation, the notice must also state the reason for the decision.

(6) If—

(a) rather than cancel the authorisation, the chief executive suspends it on condition that the authorised busway user do certain things to rectify the failure to comply with a condition of the authorised busway user's authorisation; and

(b) the authorised busway user does not rectify the failure within the suspension period;

the chief executive may immediately cancel the authorisation by written notice to the authorised busway user.

(7) A notice under subsection (4) or (6) must be accompanied by an information notice.

345 Immediate suspension of authorisation

(1) This section applies if the chief executive—

(a) reasonably believes an authorised busway user has contravened a condition of the authorised busway user's authorisation; and

(b) considers members of the public may be seriously harmed if urgent action to suspend the authorisation is not taken.

(2) The chief executive may immediately suspend the authorisation by written notice to the authorised busway user.

(3) The notice must state the reason for the decision and must be accompanied by an information notice.

(4) The chief executive must at the same time give the authorised busway user a notice under section 344(2).

(5) The authorisation is suspended under this section until the earlier of the following—

Not authorised—indicative only

Not authorised—indicative only

(a) the chief executive gives the authorised busway user notice of the chief executive's decision under section 344;

(b) the end of 60 days after the notice under subsection (2) was given to the authorised busway user.

346 Surrender of authorisation

An authorised busway user may, at any time, surrender the authorised busway user's authorisation by written notice to the chief executive.

Chapter 10 Light rail and light rail transport infrastructure

Part 1 Preliminary

347 Ways of achieving light rail objectives

The objectives of this Act for light rail are intended to be achieved by—

(a) developing and putting into effect light rail transport infrastructure strategies; and

(b) establishing a legal framework to allow the construction, maintenance, management and operation of light rail transport infrastructure in an effective and efficient way; and

(c) providing for the safety of the following by imposing requirements directed at ensuring the safety—

(i) light rail, light rail land and light rail transport infrastructure;

(ii) persons at, on or near light rail, light rail land or light rail transport infrastructure.

Part 2 Chief executive's functions and powers

348 Functions

The chief executive has the following functions in relation to light rail, including a proposed light rail, and light rail transport infrastructure, including proposed light rail transport infrastructure—

(a) investigating, planning, establishing, constructing, maintaining, managing or operating, or arranging for someone else to investigate, plan, establish, construct, maintain, manage or operate;

(b) providing or arranging for associated services or works necessary or convenient for effective and efficient establishment, construction, maintenance, management and operation;

(c) efficiently integrating with any transport infrastructure, including busway transport infrastructure;

(d) investigating, planning or carrying out accommodation works that are necessary or convenient to be done as a result of light rail transport infrastructure or light rail transport infrastructure works;

(e) doing other things that directly or indirectly—

(i) are likely to enhance the provision of light rail transport infrastructure and passenger services on light rail; or

(ii) are incidental or complementary to the performance of another function.

Not authorised—indicative only

Not authorised—indicative only

349 Authority to enter or temporarily occupy or use land

(1) For the performance of a function under this chapter, the chief executive, or someone authorised in writing by the chief executive, may—

(a) do 1 or more of the following in relation to land—

(i) enter the land, whether or not for temporarily occupying or using the land;

(ii) temporarily occupy the land;

(iii) temporarily use the land; and

(b) do anything on the land necessary or convenient for the function, including, for example, for light rail transport infrastructure works.

(2) However, the chief executive must not authorise a person to enter land under this section if the entry is a type of entry able to be authorised under an investigator's authority under chapter 11.

350 When land may be entered, occupied or used

(1) This section applies if a person proposes to enter, occupy or use land under this part.

(2) The person may enter, occupy or use the land without the permission of, or notice to, the owner or occupier of the land to perform urgent remedial work to facilitate or maintain the operation of light rail transport infrastructure.

(3) However, the person must, if practicable, notify the occupier orally or in writing before entering the land.

(4) If the entry, occupation or use is other than for the performance of urgent remedial work, the person may enter, occupy or use the land if the person—

(a) obtains the written permission of—

(i) each person who is an owner of the land; and

(ii) each person who is an occupier of the land; or

(b) gives at least 7 days written notice to the occupier before the entry, occupation or use.

(5) The notice under subsection (4)(b) must state—

(a) all works proposed to be performed; and

(b) all uses proposed to be made of the land; and

(c) details of anything else proposed to be done on the land; and

(d) the approximate period when occupation or use is expected to continue; and

(e) that an owner or occupier of the land may claim compensation from the chief executive for loss or damage caused by the entry, occupation or use; and

(f) if accommodation works are proposed to be carried out on the land—the owner or occupier may, within 7 days after the notice is given, make submissions to the person about the accommodation works proposed to be carried out on the land.

(6) A notice may be given under this section even though it is proposed to resume the land for light rail transport infrastructure.

(7) If accommodation works are proposed to be carried out on the land, the person must consider any submissions that are made within 7 days after the notice is given, before carrying out the accommodation works.

(8) Power to enter, occupy or use land under this part does not authorise entry, occupation or use of a structure on the land used solely for residential purposes without the permission of the occupier of the land.

351 Compensation

(1) This section applies if land is entered, occupied or used under this part.

Not authorised—indicative only

Not authorised—indicative only

(2) An owner or occupier of the land may claim compensation from the chief executive for loss or damage caused by the entry, occupation or use, including by the taking or consumption of materials.

(3) However, compensation is payable only if written notice of the claim or proposed claim is given to the chief executive—

(a) after the loss or damage happens, but within 1 year after the entry, occupation or use ends; or

(b) at a later time allowed by the chief executive.

(4) In the absence of agreement between the owner or occupier and the chief executive about the payment of compensation, payment of compensation may be claimed and ordered in a proceeding brought in the Land Court.

(5) The Land Court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

(6) Compensation paid under this section for loss or damage caused to land must not be more than the compensation that would have been awarded if the land had been acquired.

Part 3 Establishment of light rail

352 Definition for pt 3

In this part—

road—

(a) means a road under the *Land Act 1994*; and

(b) includes a State-controlled road or local government road.

353 Declaration of land as light rail land

(1) The Minister may, by gazette notice, declare land to be light rail land.

(2) Land declared to be light rail land—

(a) must be—

(i) identified specifically in the gazette notice; or

(ii) identified generally in the gazette notice, and identified specifically in documents described in the gazette notice and available for perusal at an office of the department mentioned in the gazette notice; and

(b) must consist only of land for a light rail and light rail transport infrastructure, which may be land on which transport infrastructure other than light rail transport infrastructure is situated or operated.

(3) The identification of land declared to be light rail land may, but need not, be by reference to strata occupied by the land.

(4) Land may be declared to be light rail land only if it is—

(a) unallocated State land and other land held by the State; or

(b) land granted in trust under the *Land Act 1994*, chapter 3, part 1, division 3; or

(c) busway land, but only if it is the subject of a lease to the State under the *Land Act 1994*, section 17; or

(d) a road.

(5) In this section—

light rail purposes includes light rail transport infrastructure.

354 Effect on land of light rail declaration

(1) If a road or a part of a road is declared under this part to be light rail land, the road or part—

Not authorised—indicative only

Not authorised—indicative only

(a) stops being a road; and

(b) becomes unallocated State land.

(2) If a lot or a part of a lot under the *Land Title Act 1994* is declared under this part to be light rail land, the lot or part becomes unallocated State land.

(3) If busway land is declared under this part to be light rail land—

(a) any lease of the land under the *Land Act 1994*, section 17 provided for under chapter 9 ends; and

(b) the land stops being busway land and becomes unallocated State land.

(4) If land, other than land mentioned in subsection (1), (2) or (3) or unallocated State land, is declared under this part to be light rail land, the land becomes unallocated State land.

(5) The Minister administering the *Land Act 1994*—

(a) is taken to have leased the light rail land to the State under the *Land Act 1994*, section 17(2) when the declaration is made; and

(b) must lodge a document evidencing the lease in the leasehold land register.

(6) The lease is in perpetuity and, if demanded, for a rent of $1 a year.

(7) The *Land Act 1994*, sections 157, 183, 204, 211 and 336(2)(a) and (c) do not apply to a lease or sublease of light rail land.

355 Sublease of lease of light rail land

(1) The State may sublease its lease of light rail land to a light rail manager for a light rail established or proposed to be established on the light rail land on terms negotiated and agreed between the parties.

(2) For the *Land Act 1994*, section 332(1)(b), the light rail manager is eligible to hold a sublease of the lease.

(3) The first sublease under subsection (1) (the ***original sublease***) may include an option to renew the sublease, and any subsequent sublease may in turn include an option to renew.

(4) The terms of any option and any subsequent sublease are to be those negotiated and agreed between the parties.

(5) The *Land Act 1994*, section 336(2)(a) does not apply to a document of amendment of the original sublease or any subsequent sublease.

(6) If the light rail manager attaches light rail transport infrastructure to the land the subject of the original sublease or a subsequent sublease, the infrastructure immediately becomes the property of the chief executive unless the parties to the sublease agree it is to become the property of the chief executive at a later time.

(7) Despite any agreement under subsection (6), the infrastructure, if it has not already become the property of the chief executive, becomes the property of the chief executive—

(a) if there is no subsequent sublease—at the end of the original sublease; or

(b) if there is only 1 subsequent sublease—at the end of the subsequent sublease; or

(c) if there are 2 or more subsequent subleases—at the end of the last of the subsequent subleases.

(8) Neither the original sublease nor any subsequent sublease stops being a sublease only because—

(a) under part 4, land the subject of the sublease is taken to be a State-controlled road or a road under the control of a local government; or

(b) persons are expressly or impliedly permitted by the chief executive under this chapter to be on the subleased land.

(9) This section does not stop the granting of a lease or sublease to a light rail manager for a light rail, other than under this

Not authorised—indicative only

Not authorised—indicative only

section, of land that is not light rail land but on which there is, or is proposed to be, light rail transport infrastructure.

(10) Despite subsection (1) or (4), the Minister may impose any condition on a sublease, option or subsequent sublease granted under this section that the Minister considers necessary to—

(a) achieve the objectives of this Act mentioned in section 2; or

(b) ensure public safety.

(11) A condition imposed by the Minister under subsection (10) takes effect on the day stated in a notice given, for the purposes of this subsection, by the Minister to the other party to the sublease, option or subsequent sublease.

(12) In this section—

light rail land means light rail land that is leased to the State under the *Land Act 1994*, section 17.

355A Licence in relation to light rail land or infrastructure

(1) The chief executive may, for the State, grant to a person a licence in relation to light rail land or light rail transport infrastructure for any of the following purposes—

(a) construction, maintenance or operation of any thing on the land;

(b) the use of the land or infrastructure for any purpose, including, for example, a commercial or retail purpose;

Examples—

- the erection, alteration or operation of an advertising sign or other advertising device
- a retail outlet

(c) maintenance, management or operation of the land or infrastructure.

(2) A licence under subsection (1) is subject to any conditions that the chief executive considers appropriate and that are stated in the licence.

(3) If the chief executive gives the registrar of titles written notice of a licence granted under subsection (1), the registrar must record the licence against the land in the appropriate register.

(3A) If a licence recorded under subsection (3) is cancelled or surrendered, the registrar of titles must record the cancellation or surrender against the land in the appropriate register.

(3AA) No fee is payable for recording a licence under subsection (3).

(4) A licence under subsection (1) may be mortgaged, sublicensed or transferred with the consent of the chief executive.

(5) Despite the *Land Act 1994*, chapter 4, part 4, the chief executive of the department in which that Act is administered can not issue a permit under that provision to occupy—

(a) light rail land to which a licence under subsection (1) relates; or

(b) land on which light rail transport infrastructure to which a licence under subsection (1) relates is, or is proposed to be, situated.

(6) Subsection (7) applies if there is any inconsistency between—

(a) a local government's control of a road under the *Local Government Act 2009*, section 60, other than for a matter mentioned in section 357 or 358 of this Act; and

(b) a provision of a licence under subsection (1).

(7) To the extent of the inconsistency the provision of the licence prevails.

(8) To remove any doubt, it is declared that the *Land Act 1994* does not apply to the grant of a licence under this section.

(9) In this section—

light rail land includes private agreement land or State land—

Not authorised—indicative only

Not authorised—indicative only

(a) on which light rail transport infrastructure is, or is proposed to be, situated; or

(b) required for the construction of light rail transport infrastructure works.

private agreement land means land—

(a) held by a person other than the State; and

(b) that is the subject of an agreement—

(i) in relation to light rail transport infrastructure between the person and the State; and

(ii) providing for the grant of a licence under this section.

355B Compensation for licence granted under s 355A

(1) This section applies if the chief executive grants a licence for a purpose under section 355A (a ***relevant activity***) in relation to light rail land under that section or light rail transport infrastructure.

(2) An owner or occupier of the land or infrastructure may claim compensation from the chief executive for loss or damage caused by a relevant activity, including by the taking or consumption of materials.

(3) However, compensation is payable only if written notice of the claim or proposed claim is given to the chief executive—

(a) after the loss or damage happens, but within 1 year after the relevant activity ends; or

(b) at a later time allowed by the chief executive.

(4) In the absence of agreement between the owner or occupier and the chief executive about the payment of compensation, payment of compensation may be claimed and ordered in a proceeding brought in the Land Court.

(5) The Land Court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

(6) Compensation paid under this section for loss or damage caused to land must not be more than the compensation that would have been awarded if the land had been acquired under the *Acquisition of Land Act 1967*.

356 Development of light rail and light rail transport infrastructure

(1) This section applies to the establishment of a light rail, including all investigating, planning, maintaining, managing, operating, and arranging for the light rail or for light rail transport infrastructure for the light rail.

(2) Nothing in this chapter is intended to affect the operation of the Planning Act to the extent that the establishment of the light rail is development under that Act.

Part 4 Management of light rail land and light rail transport infrastructure

Division 1 Transport infrastructure interaction

357 Altering road levels by a local government

(1) The chief executive may require a local government having control of a road to alter the level of the road for—

(a) light rail transport infrastructure works; or

(b) the management or operation of a light rail.

(2) However, the chief executive—

Not authorised—indicative only

Not authorised—indicative only

(a) must consult with the local government about the nature and extent of the alteration of the level of the road before the alteration is started; and

(b) subject to an agreement between the chief executive and the local government arising out of the consultation, pay all reasonable costs incurred by the local government in altering the road level.

(3) The local government must comply with the chief executive's requirements.

358 Permitted construction by local government of roads over or under light rail land

(1) Despite section 354(1), the chief executive may permit a local government to construct, maintain and operate a road located on light rail land, consisting of—

(a) a bridge or other structure allowing traffic to pass over the level at which light rail vehicles use the light rail land; or

(b) a structure allowing traffic to pass under the level at which light rail vehicles use the light rail land.

(2) However, if there is a light rail manager for a light rail established on the light rail land, the chief executive must consult with the light rail manager before deciding whether to give the permission.

(3) The permission may be given on reasonable conditions.

(4) In deciding whether to give the permission, the chief executive must consider the limiting effect the use of the road is likely to have on the use of the light rail land for light rail passenger services.

(5) While the bridge or other structure is being used for the road—

(a) none of the following has any duty or liability for the road or its use or operation—

(i) the chief executive;

(ii) if there is a light rail manager for a light rail established on the light rail land, the manager;

(iii) if there is a light rail operator for a light rail established on the light rail land, the operator; and

(b) the road is taken to be a road of which the local government has control under the *Local Government Act 2009*, section 60; and

(c) the road is taken to be a road under any Act about the use of vehicles on a road.

(6) Unless the chief executive and the local government otherwise agree—

(a) the local government is responsible for maintaining the road and the bridge or other structure; and

(b) if the bridge or other structure stops being used for the road, the local government is responsible for the cost of taking the bridge or other structure away and of restoring the light rail land.

359 Designation of light rail land for use as road under local government control

(1) Despite section 354(1), the chief executive may, by gazette notice, designate light rail land described in the notice as light rail land that is to be used as a road under a local government's control.

(2) The chief executive must also—

(a) give a copy of the notice to the local government; and

(b) publish a copy of the notice in a newspaper circulating generally in the area of the light rail land.

(3) If there is a light rail manager for a light rail established on the light rail land, the chief executive must consult with the light rail manager before designating the light rail land under the notice.

Not authorised—indicative only

Not authorised—indicative only

(4) The land described in the notice must be land generally suitable for both of the following—

(a) use as a road;

(b) the operation of a light rail.

(5) The notice may include directions with which the local government must comply, including directions about the local government's exercise of powers under the *Local Government Act 2009* for roads it controls.

(6) However, the chief executive must consult with the local government before including any directions in the notice.

(7) While the notice is in force, the land described in the notice is taken to be—

(a) a road of which the local government has control under the *Local Government Act 2009*, section 60; and

(b) a road under any Act about the use of vehicles on a road.

(8) However, in acting under the *Local Government Act 2009*, section 60, the local government must comply with all directions included in the notice, including the notice as amended from time to time.

360 Designation of light rail land for use as State-controlled road

(1) Despite section 354(1), the Minister may, by gazette notice, designate light rail land described in the notice as light rail land to be used as a State-controlled road.

(2) The Minister must also publish a copy of the notice in a newspaper circulating generally in the area of the light rail land.

(3) If there is a light rail manager for a light rail established on the light rail land, the Minister must be satisfied the department has consulted with the manager before designating the light rail land under the notice.

(4) The land described in the notice must be land generally suitable for both of the following—

(a) use as a State-controlled road;

(b) the operation of a light rail.

(5) The notice may include operational arrangements applying to the use of the light rail land as a State-controlled road.

(6) While the notice is in force, the land described in the notice is, except to the extent provided for in the notice, taken to be—

(a) a State-controlled road for the provisions of this Act, other than chapter 6, part 2, division 1 and part 5, division 3, and of any other Act, applying to State-controlled roads; and

(b) a road under any Act about the use of vehicles on a road.

360A Powers of chief executive for light rail transport infrastructure works contracts etc.

(1) The chief executive may, for the State, carry out or enter into contracts with other persons for the carrying out of—

(a) light rail transport infrastructure works on a light rail or on land that is intended to become a light rail; or

(b) works on land affected by a light rail or a proposed light rail, including, for example, road works on a road; or

(c) other works that contribute to the effectiveness and efficiency of the light rail network; or

(d) the operation of a light rail; or

(e) the operation of a public passenger service using light rail transport infrastructure.

(2) The chief executive, for the State, may enter into contracts with other persons for light rail transport infrastructure works to be carried out outside the State under an agreement between the State and the other State concerned.

Not authorised—indicative only

Not authorised—indicative only

(3) A contract with a local government under this section may include arrangements about which powers of the local government are to be exercised by the chief executive, and which are to be exercised by the local government, for the light rail.

(4) A local government may enter into a contract mentioned in subsection (1) even though the contract relates to works or operation outside the local government's area.

(5) The chief executive, for the State, may carry out or enter into contracts for works on or adjacent to a light rail at the request of the owner of adjacent land on the basis that the owner provides consideration, whether monetary or otherwise, as agreed between the chief executive and the owner.

(6) This section does not prevent the chief executive carrying out, or entering into contracts for the carrying out, of light rail transport infrastructure works of a minor or emergency nature.

(7) In carrying out works or the operation of a light rail, the chief executive must ensure that the carrying out is done on a value for money basis.

(8) In entering into contracts under this section, the chief executive must ensure that open competition is encouraged.

(9) Subsection (8) does not apply to a contract with a person if the person is the sole invitee and enters into a price performance contract with the chief executive.

(10) The chief executive may arrange with another person for the sharing by the chief executive with the other person of the cost of—

(a) acquisition of land for light rail transport infrastructure; or

(b) light rail transport infrastructure works on a light rail or land that is intended to become a light rail; or

(c) works on land affected by a light rail or a proposed light rail, including, for example, road works on a road; or

(d) other works that contribute to the effectiveness and efficiency of the light rail network; or

(e) the operation of a light rail; or

(f) the operation of a public passenger service using light rail transport infrastructure;

including all necessary preliminary costs associated with the acquisition, works or operation.

361 No presumption of dedication of road

(1) This section applies if the public uses light rail land as a road, or for access purposes other than as a road.

(2) The light rail land does not at law, either because the use is authorised or permitted by the chief executive or for another reason, become dedicated to public use as a road.

Division 2 Interfering with light rail transport infrastructure

361A Definition for div 2

In this division—

interfere with, light rail transport infrastructure, includes carrying out works on the infrastructure.

362 Interfering with light rail transport infrastructure or works

(1) A person must not interfere with light rail transport infrastructure or light rail transport infrastructure works, unless—

(a) the person has the written approval of—

(i) for light rail transport infrastructure for light rail for which there is a light rail manager—the manager; or

Not authorised—indicative only

Not authorised—indicative only

(ii) for light rail transport infrastructure works constructed or maintained for, or that facilitate operation of, light rail transport infrastructure for light rail for which there is a light rail manager—the manager; or

(iii) otherwise—the chief executive; or

(b) the interference is for the construction, maintenance or operation of a road permitted under this part to be constructed, maintained and operated across, over or under the light rail transport infrastructure; or

(c) the interference is otherwise authorised under this Act or another Act.

Maximum penalty—160 penalty units.

(2) Subsection (1) applies even if the interference is for the carrying out of functions that apart from subsection (1) are lawful on light rail land that, under division 1, is taken to be—

(a) a road of which a local government has control under the *Local Government Act 2009*, section 60; or

(b) a State-controlled road for provisions of any Act applying to State-controlled roads.

(3) An approval under subsection (1)(a) may be given on reasonable conditions.

(4) However, a light rail manager for a light rail may give the approval only if the chief executive—

(a) has been consulted about the giving of the approval; and

(b) has approved all conditions to which the approval is subject.

(5) The person given the approval must comply with the conditions of the approval.

Maximum penalty—40 penalty units.

(6) Subsection (1) does not apply to the carrying out of urgent maintenance of a light rail or light rail transport infrastructure.

363 Rectifying unauthorised interference

(1) This section applies if a person (the ***identified person***) interferes with light rail transport infrastructure or light rail transport infrastructure works in contravention of section 362(1).

(2) If there is a light rail manager for a light rail established for the light rail transport infrastructure or for light rail transport infrastructure to which the light rail transport infrastructure works relate, the manager may give a written notice to the identified person requiring the person to rectify the interference within a stated reasonable time.

(3) The light rail manager may give the identified person the notice only if the chief executive—

(a) has been consulted about the giving of the notice; and

(b) has approved the terms of the notice.

(4) If subsection (2) does not apply, the chief executive may give a written notice to the identified person requiring the person to rectify the interference within a stated reasonable time.

(5) The identified person must comply with a notice given under subsection (2) or (4), unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(6) If the identified person does not comply with the notice, the person who gave the notice (the ***notifier***) may rectify the interference.

(7) The identified person must pay the amount of the notifier's reasonable costs of—

(a) rectifying the interference; or

(b) changing the way the light rail transport infrastructure is built, maintained or operated, or the way the light the light rail transport infrastructure works are done, because of the interference.

(8) The notifier may recover the amount as a debt.

Not authorised—indicative only

Not authorised—indicative only

(9) In this section—

rectify the interference includes the following—

(a) alter, dismantle or take away works;

(b) fix damage caused by the interference;

(c) for interference involving the carrying out of works on light rail transport infrastructure—rectify the effect of the carrying out of the works.

Division 3 Public utility plant

364 Definitions for div 3

(1) In this division—

light rail authority, for light rail land, means—

(a) if there is a light rail manager for a light rail established, or proposed to be established, on the light rail land—each of the following—

(i) the chief executive;

(ii) the light rail manager; or

(b) otherwise—the chief executive.

light rail land includes land that is State land, or private agreement land, on which light rail transport infrastructure is, or is proposed to be, situated.

Note—

Information about projects and initiatives involving light rail land is available on the department's website ~~at www.tmr.qld.gov.au~~.

(2) In this section—

private agreement land means land—

(a) held by a person other than the State; and

(b) that is subject to an agreement, in relation to public utility plant, between the person and the State.

365 Retention of ownership of public utility plant

(1) This section applies if, immediately before the declaration of land as light rail land under section 353, public utility plant is located on the land.

(2) The declaration does not affect the ownership of the public utility plant.

366 Public utility plant on light rail land

(1) A public utility provider may do the following things on light rail land—

(a) build, replace or take away, or alter, other than for maintenance or repair, its public utility plant;

(b) maintain or repair, or alter, for maintenance or repair, its public utility plant;

(c) take reasonable steps to stop obstruction or potential obstruction to, or interference or potential interference with, its public utility plant.

(2) However, the provider may do things mentioned in subsection (1) only if each light rail authority for the light rail land agrees in writing.

(3) A light rail authority must not unreasonably withhold agreement.

(4) Despite subsection (2), a public utility provider may, if acting in the interests of public safety, carry out urgent maintenance of its public utility plant on light rail land without the written agreement of each light rail authority for the light rail land, but only if the provider—

(a) makes all reasonable attempts to obtain each authority's oral agreement to the carrying out of the maintenance; and

(b) whether or not each authority's oral agreement is obtained, acts as quickly as possible to advise each

Not authorised—indicative only

Not authorised—indicative only

authority of the details of the maintenance being carried out.

(5) Building or altering public utility plant does not affect the ownership of the plant.

367 Chief executive must give provider information

If asked in writing by a public utility provider, the chief executive must give the provider information about lines and levels for planned light rail transport infrastructure on light rail land necessary to enable the provider to minimise possible adverse effects of the establishment of the infrastructure on the provider's works.

368 Public utility provider to consult with light rail authority before replacing public utility plant

(1) If a public utility provider proposes to replace the whole or a substantial proportion of its public utility plant on light rail land, the provider must, before seeking written agreement under section 366, consult with each entity that is a light rail authority for the light rail land.

(2) The object of the consultation is to identify mutually beneficial arrangements for the replacement of the public utility plant, having regard to existing development plans for the light rail land.

369 Public utility provider to comply with light rail authority's agreement

(1) This section applies if, in relation to light rail land, a public utility provider does something mentioned in section 366(1) (the ***relevant action***)—

(a) without the written or oral agreement of a light rail authority required under section 366; or

(b) in a way inconsistent with an agreement with a light rail authority for the light rail land; or

(c) in a way inconsistent with a regulation about how things mentioned in section 366(1) are to be done.

(2) If this section applies because of subsection (1)(a) or (b), the light rail authority may, by written notice given to the public utility provider, require the provider, at the provider's cost, and within the time stated in the notice, to take action to remedy the relevant action.

(3) If this section applies because of subsection (1)(c), the chief executive may, by written notice given to the public utility provider, require the provider, at the provider's cost, and within the time stated in the notice, to take action to remedy the relevant action.

(4) The time stated in a notice under subsection (2) or (3) must be a time that is reasonable in the circumstances.

(5) If the provider does not comply with the notice, the light rail authority giving the notice to the provider may arrange for action the authority considers necessary to remedy the relevant action.

(6) The light rail authority's reasonable expenses in arranging for the action to be carried out is a debt payable by the provider to the light rail authority.

370 Chief executive may require public utility provider to alter position of public utility plant

(1) The chief executive may require a public utility provider to alter the position of the provider's public utility plant on light rail land if the chief executive considers that the plant will interfere with the exercise of the chief executive's powers for the light rail land.

(2) The chief executive is responsible only for the cost of altering the position of the public utility plant.

Not authorised—indicative only

Not authorised—indicative only

371 Information by public utility provider to light rail authority

(1) If, in relation to public utility plant on light rail land, a public utility provider does something mentioned in section 366(1), the provider must prepare records adequately defining the location of the plant.

(2) A public utility provider owning public utility plant located on light rail land must, if asked by a light rail authority for the light rail land, give the light rail authority information adequately defining the location of the plant.

Maximum penalty for subsection (2)—40 penalty units.

372 Liability for damage caused by failure to comply with request for information

(1) This section applies if—

(a) a light rail authority for light rail land causes damage to public utility plant located on the light rail land; and

(b) before the damage was caused, the light rail authority had asked for information under section 371(2) from the public utility provider owning the public utility plant; and

(c) the provider had not, within a reasonable time, complied with the request; and

(d) the damage was caused because of the failure to comply with the request.

(2) Unless the light rail authority otherwise agrees, the authority is not liable for the damage.

373 Liability for damage caused by failure to give enough detail about location of public utility plant

(1) This section applies if—

(a) a light rail authority for light rail land cause damage to public utility plant located on the light rail land; and

(b) information supplied to the light rail authority under section 371(2) did not define in enough detail the location of the plant; and

(c) the damage was caused because of the failure to define in enough detail the location of the plant.

(2) Unless the light rail authority otherwise agrees, the authority is not liable for the damage.

374 Liability for damage caused because of failure to comply with light rail authority's requirements

(1) This section applies if—

(a) a light rail authority for light rail land causes damage to public utility plant located on the light rail land; and

(b) the damage was caused because the public utility provider owning the plant did something mentioned in section 366(1) in relation to the plant other than under the light rail authority's requirements under this division.

(2) Unless the light rail authority otherwise agrees, the authority is not liable for the damage.

375 Liability of public utility provider to pay additional expenses incurred by light rail authority

(1) This section applies if a light rail authority for light rail land incurs additional expense in carrying out light rail transport infrastructure works on the light rail land because a public utility provider—

(a) did not supply within a reasonable time information asked for by the authority under section 371(2); or

(b) in supplying information to the authority, did not define in enough detail the location of public utility plant; or

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Not authorised—indicative only

(c) did something mentioned in section 366(1) in relation to public utility plant other than under the authority's requirements under this division.

(2) The public utility provider is liable to pay the light rail authority the additional expense.

376 Replacement or reconstruction of public utility plant

(1) If the carrying out of light rail transport infrastructure works by or for a light rail authority for light rail land requires taking away or replacing public utility plant, the light rail authority can not be compelled to replace or reconstruct the plant in its previous location and form.

(2) If the plant is replaced or reconstructed—

(a) it must be done under the light rail authority's requirements; and

(b) it must be at the authority's expense, but the cost to the authority of replacement or reconstruction may be reduced by agreement between the authority and the public utility provider owning the plant after taking into account—

(i) the remaining life of the plant; and

(ii) the salvage or scrap value of the plant; and

(iii) additional expense incurred because of inaccurate information supplied by the provider about the location of the plant; and

(iv) additional expense incurred because the plant was not constructed in accordance with the authority's requirements.

Division 4 Use of light rail or light rail transport infrastructure

377 Trespass on light rail, light rail land, light rail transport infrastructure or light rail transport infrastructure works site

(1) A person must not, without reasonable excuse, be on a light rail, light rail land, light rail transport infrastructure or light rail transport infrastructure works site unless the person has the relevant person's permission to be on the light rail, light rail land, light rail transport infrastructure or light rail transport infrastructure works site.

Maximum penalty—40 penalty units.

(2) For subsection (1), permission may be given, for example—

(a) expressly, by—

(i) signs, structures, textured pavement or painted lines designating points for vehicles or pedestrians to cross the light rail, light rail land, light rail transport infrastructure or light rail transport infrastructure works site; or

(ii) signs designating the hours during which the light rail, light rail land, light rail transport infrastructure or light rail transport infrastructure works site may be used by pedestrians to access a public passenger service; or

(iii) signs, markings or signals designating a part of the light rail, light rail land, light rail transport infrastructure or light rail transport infrastructure works site as being open to traffic or to a member of the public to access a public passenger service; or

(b) impliedly, by the absence of demarcation between ordinary road and the light rail, light rail land, light rail

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Not authorised—indicative only

transport infrastructure or light rail transport infrastructure works site.

(3) Subsection (1) does not apply to a person who is on light rail land if, under division 1, the light rail land is taken to be—

(a) a road of which a local government has control under the *Local Government Act 2009*, section 60; or

(b) a State-controlled road.

(4) A regulation may include rules about the use of a light rail, light rail land, light rail transport infrastructure or light rail transport infrastructure works site by—

(a) light rail vehicles; or

(b) persons having the permission of the chief executive to be on the light rail, light rail land, light rail transport infrastructure or light rail transport infrastructure works site.

(5) In this section—

light rail land includes land—

(a) held by the chief executive on behalf of the State; and

(b) on which light rail transport infrastructure is situated.

light rail transport infrastructure works site means land on which light rail transport infrastructure works are situated.

relevant person means—

(a) for a light rail, light rail land on which there is a light rail, or light rail transport infrastructure used for a light rail, for which there is a light rail manager—the manager; or

(b) for a light rail, light rail land or light rail transport infrastructure to which paragraph (a) does not apply—the chief executive; or

(c) for a light rail transport infrastructure works site for light rail transport infrastructure works relating to a light

rail for which there is a light rail manager—the manager; or

(d) for a light rail transport infrastructure works site to which paragraph (c) does not apply—the chief executive.

Division 4A Franchised light rail

Subdivision 1 Preliminary

377A Objectives of division

The objectives of this division are—

(a) to assist and encourage private investment in the construction, maintenance and operation of light rail transport infrastructure; and

(b) by the involvement of private investment, to enable light rail transport infrastructure projects to be undertaken, or public passenger services using light rail transport infrastructure to be provided, at an earlier time than would otherwise be possible; and

(c) to provide an appropriate management structure for the construction, maintenance and operation of light rail transport infrastructure, or the operation of a public passenger service using light rail transport infrastructure, on a commercial basis.

Subdivision 2 Franchised light rail

377B Power to enter into light rail franchise agreements

(1) The Minister may, for the State, enter into an agreement (a ***light rail franchise agreement***) with a person under which, or

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as part of which, the person is to invest in 1 or more of the following—

(a) works for, or associated with, establishing a light rail;

(b) designing light rail transport infrastructure;

(c) constructing light rail transport infrastructure;

(d) maintaining light rail transport infrastructure;

(e) managing light rail transport infrastructure;

(f) operating light rail transport infrastructure;

(g) operating a public passenger service using light rail transport infrastructure.

(2) The agreement must be consistent with—

(a) the coordination plan; and

(b) the objectives of this Act; and

(c) the current transport infrastructure strategies; and

(d) the obligations about government supported transport infrastructure set out in section 9.

(3) The agreement may include, for example, provisions about any or all of the following—

(a) the ownership of the light rail transport infrastructure;

(b) the transfer of rights under the light rail franchise agreement;

(c) the granting of security in relation to the light rail transport infrastructure;

(d) charges for the use of the light rail transport infrastructure;

(e) administration charges in relation to the charges mentioned in paragraph (d);

(f) the safety and standard of the light rail transport infrastructure;

(g) for an agreement relating to operating a public passenger service using light rail transport infrastructure—

(i) the level of the service that is to be provided; and

(ii) performance measures relating to the operation of the service;

(h) any other matter that the Minister considers necessary or desirable in the circumstances.

377C Operating public passenger service under agreement

(1) This section applies if a light rail franchise agreement relates to operating a public passenger service using light rail transport infrastructure.

(2) The *Transport Operations (Passenger Transport) Act 1994*, chapter 6 does not apply to the light rail franchise agreement or the operation of the public passenger service.

(3) The *Transport Operations (Passenger Transport) Regulation 2005*, part 8 does not apply in relation to the operation of the public passenger service or the operation of a light rail vehicle for the service.

377D Tabling of light rail franchise agreements

(1) The Minister must table each light rail franchise agreement and each amendment of a light rail franchise agreement in the Legislative Assembly as soon as practicable after it is entered into.

(2) However, subsection (1) does not require the Minister to table a part of a light rail franchise agreement or amendment of a light rail franchise agreement if—

(a) the person with whom the State has entered the agreement gives the Minister a written notice claiming the part of the agreement or amendment should be

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treated as confidential on the grounds of commercial confidentiality; and

(b) the Minister reasonably considers the part of the agreement or amendment would be—

(i) exempt information under the *Right to Information Act 2009*; or

(ii) information disclosure of which could reasonably be expected to cause a public interest harm as mentioned in the *Right to Information Act 2009*, schedule 4, part 4, item 7.

377E Report on operation of division

Each annual report of the department must include a report on the operation of this division during the financial year to which the report relates.

377F Recovery of money

If a light rail franchise agreement provides that the Minister may recover an amount from a franchisee, the amount may be recovered as a debt payable by the franchisee to the State.

377G Rateability of land

(1) A regulation may provide that light rail franchise agreement land is not rateable land under the *Local Government Act 2009*.

(2) In this section—

light rail franchise agreement land means land on which is situated a light rail or light rail transport infrastructure to which a light rail franchise agreement applies.

377H Guarantees and undertakings

For giving guarantees or undertakings to a franchisee, the *Statutory Bodies Financial Arrangements Act 1982*sections 14, 16, 18, 19 and 20 and part 3, division 3 apply, with all necessary changes and any changes prescribed under a regulation, to the franchisee as if the franchisee were a statutory body within the meaning of that Act.

Note—

Statutory Bodies Financial Arrangements Act 1982, sections 14 (Conditions precedent to financial arrangements and other matters), 16 (Guarantees for the State), 18 (Requirement for security), 19 (Guarantee may include waiver of immunity and other provisions) and 20 (Guarantee not affected by transfer of liability) and part 3, division 3 (Consequences if payment required under guarantee)

Subdivision 4 Miscellaneous

377Q Severance of light rail transport infrastructure

(1) The chief executive may decide to sever light rail transport infrastructure from light rail land on which it is situated.

(2) If the chief executive makes a decision under subsection (1), the severed infrastructure is taken to be, and must be dealt with as, personal property separate from the land.

(3) A decision under subsection (1) takes effect on the day stated in a notice given, for the purposes of this subsection, by the chief executive to—

(a) the owner of the light rail transport infrastructure; and

(b) each other person the chief executive knows, or ought reasonably to know, has an interest in the light rail transport infrastructure.

(4) The severance of light rail transport infrastructure from land under this section—

(a) does not affect the right of the infrastructure to be situated on the land; and

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(b) does not affect a person's rights or obligations under a light rail franchise agreement relating to the infrastructure, other than to the extent stated in the agreement; and

(c) does not affect any right to drain water or sewage from the infrastructure across and through the land or to use any means of drainage of water or sewage from the facility across and through the land.

(5) In this section—

light rail land includes land—

(a) held by the chief executive on behalf of the State; and

(b) on which light rail transport infrastructure is situated.

light rail transport infrastructure includes any part of light rail transport infrastructure.

377R Limited compensation for easements etc. or damage relating to overhead wiring for a light rail

(1) This section applies in relation to the following—

(a) a light rail overhead wiring easement;

(b) light rail overhead wiring damage.

(2) Despite anything to the contrary in the *Acquisition of Land Act 1967* or a provision of this chapter, compensation is not payable for—

(a) the taking of a light rail overhead wiring easement that is an easement or other interest in land relating to a road; or

(b) light rail overhead wiring damage that occurs on or in relation to a road.

(3) Also, despite anything to the contrary in the *Acquisition of Land Act 1967* or a provision of this chapter, compensation is payable for the following only in accordance with subsections (4) to (8)—

(a) the taking of a light rail overhead wiring easement that is not an easement or other interest in land relating to a road (***compensable taking of overhead wiring easement***);

(b) light rail overhead wiring damage that occurs other than on or in relation to a road (***compensable overhead wiring damage***).

(4) A relevant person may apply in writing to the chief executive for compensation for—

(a) compensable taking of overhead wiring easement; or

(b) compensable overhead wiring damage.

(5) An application under subsection (4) must be made—

(a) within 1 year after—

(i) for compensable taking of overhead wiring easement—the day of the taking; or

(ii) for compensable overhead wiring damage—the day the damage occurs; or

(b) within a longer period allowed by the chief executive.

(6) If, within 60 days after a relevant person applies for compensation under subsection (5), or a longer period agreed between the person and the chief executive, no agreement has been reached between the person and the chief executive about the application—

(a) the person may apply to the Land Court for the compensation; or

(b) the chief executive may apply to the Land Court to have the compensation decided by the court.

(7) The Land Court has jurisdiction to deal with an application made to it under subsection (6), including jurisdiction to require the chief executive to pay the person compensation decided by the court.

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(8) Compensation paid under this section for compensable overhead wiring damage caused to land must not be more than the compensation that would have been awarded if the land had been taken by the chief executive under the *Transport Planning and Coordination Act 1994*, part 4.

(9) In this section—

light rail overhead wiring damage means physical damage caused by the construction of, or affixation of attachments for, overhead wiring for a light rail.

light rail overhead wiring easement means an easement or other interest in land taken by the chief executive under the *Transport Planning and Coordination Act 1994*, part 4, for the construction, maintenance or operation of overhead wiring for a light rail.

relevant person means—

(a) for compensable taking of overhead wiring easement—the person who holds an interest in the land affected by the easement or other interest in the land; or

(b) for compensable overhead wiring damage—a person affected by the damage.

road means road within the meaning of section 352.

Division 5 Compensation entitlements

378 Definitions for div 5

In this division—

access, for land, means—

(a) access to the land from the road network, whether or not through other land; or

(b) access from the land to the road network, whether or not through other land.

busway land means busway land that, when declared under chapter 9 to be busway land, was a road or part of a road.

establishment, of light rail transport infrastructure on light rail land, includes the following—

(a) initial construction of the light rail transport infrastructure on the light rail land;

(b) construction for changing or adding to light rail transport infrastructure previously constructed on the light rail land;

(c) putting in place the arrangements under which persons are permitted or not permitted to be on the light rail land.

interference, with access, includes loss or reduction of access.

light rail land means light rail land that, when declared under this chapter to be light rail land, was—

(a) a road or part of a road; or

(b) busway land.

379 No entitlement to compensation for particular matters

(1) A person having an interest in land (the ***relevant land***) has no entitlement at law, except to the extent this division provides, to compensation for a matter listed in subsection (2), to the extent the matter is caused by—

(a) the establishment of a light rail; or

(b) the establishment or proposed establishment of light rail transport infrastructure on light rail land; or

(c) the operation of a light rail on light rail land.

(2) The matters are—

(a) the adverse effect on the amenity or likely amenity of the neighbourhood of the relevant land; and

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(b) interference with an activity of a business, commercial, industrial or residential nature carried out on the relevant land; and

(c) loss or damage arising directly or indirectly from interference with access for the relevant land; and

(d) the reduction or loss of a right of access for the relevant land and loss or damage caused by the reduction or loss of the right of access.

380 Compensation for reduced market value of interest in land

(1) A person who has an interest in land (the ***relevant land***) is entitled to compensation if the establishment of light rail transport infrastructure on light rail land (the ***infrastructure***), when completed, is a cause of interference (the ***interference***) with access for the relevant land.

(2) Subsection (1) applies only if—

(a) either of the following applies—

(i) the light rail land joins directly with the relevant land or with land (***access land***) giving access for the relevant land because of an easement or other right or interest;

(ii) the light rail land does not join directly with the relevant land or with access land, but it is possible to travel from the relevant land or access land to the light rail land by travelling only over road; and

(b) the practical effect of the interference is substantially greater in nature and extent than the practical effect of interference with access for the relevant land that might reasonably be expected to be experienced from time to time in changes to the operation of the road network; and

(c) the practical effect of the access interference is that there is a direct and substantial interference with practicable

access for the relevant land compared with the practicable access existing for the relevant land before the establishment of the infrastructure.

(3) The amount of the compensation is the amount by which the market value of the interest may fairly be said to have been reduced because of the interference now affecting the relevant land.

(4) However, the compensation must not be more than the compensation that would have been awarded if the interest had been acquired.

381 Compensation of person in actual occupation for interference with enjoyment of land

(1) A person is entitled to compensation if—

(a) the person is in actual occupation of land (the ***relevant land***) when the establishment of light rail transport infrastructure on light rail land (the ***infrastructure***) is happening or when it is completed; and

(b) the establishment of the infrastructure is a cause of interference with access (the ***access interference***) for the relevant land; and

(c) the access interference is a cause of interference (the ***enjoyment interference***) with the person's enjoyment of the relevant land.

(2) Subsection (1) applies only if—

(a) either of the following applies—

(i) the light rail land joins directly with the relevant land or with land (***access land***) giving access for the relevant land because of an easement or other right or interest;

(ii) the light rail land does not join directly with the relevant land or with access land, but it is possible to travel from the relevant land or access land to the light rail land by travelling only over road; and

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(b) the practical effect of the access interference is substantially greater in nature and extent than the practical effects of interference with access for the relevant land that might reasonably be expected to be experienced from time to time in changes to the operation of the road network; and

(c) the practical effect of the access interference is that there is a direct and substantial interference with practicable access for the relevant land compared with the practicable access existing for the relevant land before the infrastructure.

(3) The amount of compensation is an amount fairly representing, in the particular circumstances—

(a) if the person is in occupation of the relevant land at any time during the establishment of the infrastructure—the reasonable cost to the person of the enjoyment interference during the establishment; and

(b) if the person is in occupation of the relevant land when the establishment of the infrastructure is completed—the reasonable cost to the person of the enjoyment interference, starting from when the establishment of the infrastructure is completed.

(4) In calculating the compensation, no regard is to be had to the reduction in the market value of an interest the person may have in the relevant land.

382 Chief executive may supply or contribute to new access arrangements

(1) The chief executive may, having regard to the establishment, or proposed establishment, of light rail transport infrastructure on light rail land, enter into an agreement with a person who is the owner or occupier of land (the ***relevant land***) for—

(a) the supply by the chief executive, or a contribution by the chief executive towards the supply, of works for alternative access for the relevant land; or

(b) the carrying out, or a contribution towards the carrying out, of other works in relation to the relevant land for the purpose of access for the land.

(2) A person's entitlement to compensation under this division is reduced to the extent provided for in an agreement under subsection (1).

383 Obtaining compensation

(1) A person claiming to be entitled to compensation under this division may apply in writing to the chief executive for the compensation.

(2) The application must be made—

(a) within 12 months after the establishment of light rail transport infrastructure on light rail land giving rise to the claim for compensation; or

(b) within a longer time agreed by the chief executive.

(3) If, within 60 days after the person applies under subsection (1), or a longer time agreed between the person and the chief executive, no agreement has been reached between the person and the chief executive on the application—

(a) the person may apply to the Land Court for the compensation; or

(b) the chief executive may apply to the Land Court to have the compensation decided by the court.

(4) The Land Court has jurisdiction to deal with an application made to it under subsection (3), including jurisdiction to require the chief executive to pay the person compensation decided by the court.

(5) Nothing in subsection (2)(a) stops a person from applying for compensation before the establishment of the light rail transport infrastructure is completed if the claim relates to the person's occupation of land during the establishment of the infrastructure.

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Not authorised—indicative only

Chapter 11 Investigating potential busway or light rail

401 Purpose of ch 11

The purpose of this chapter is—

(a) to allow persons authorised by the chief executive to enter land to investigate the land's potential and suitability for the development of busway or light rail transport infrastructure (the ***development***) before powers under chapter 9 or 10 are exercised; and

(b) to safeguard the interests of the owners and occupiers of land affected by the entry.

402 Definitions for ch 11

In this chapter—

affected person for land, means each person who is an owner or occupier of the land.

associated person, of an investigator, means any of the following—

(a) if the investigator is a corporation, the corporation's chief executive, secretary or directors;

(b) the investigator's employees or partners who are individuals;

(c) a person who is an agent of, or contractor for, the investigator, and engaged in writing for the investigator's authority;

(d) employees of an agent or contractor mentioned in paragraph (c);

(e) if a person mentioned in paragraph (c) is a corporation, the corporation's chief executive, secretary, directors or employees.

compensation notice see section 411.

development see section 401.

investigator means a person who holds an investigator's authority.

investigator's authority means an investigator's authority given under this chapter.

rectification notice see section 411.

403 How to apply for investigator's authority

(1) This section applies if the person proposing the development can not successfully negotiate entry to the land with all affected persons for the land.

(2) The person may apply to the chief executive for an investigator's authority for the land.

(3) The applicant must give the chief executive the following in support of the application—

(a) details of the proposed development, including the land on which the development is proposed to be located;

(b) the likely demand for the services associated with the proposed development;

(c) advice as to how the proposed development would satisfy an identified need;

(d) details of the applicant's financial and technical capacity to establish the proposed development;

(e) details of the steps the applicant has taken, or tried to take, to satisfy its obligations under subsection (1);

(f) all other information the chief executive considers is necessary to assess the application.

(4) The application must be in writing and state the following information—

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(a) the land intended to be entered under the investigator's authority;

(b) the purpose for which the authority is sought;

(c) details of the nature of the activities proposed to be conducted on the land;

(d) the period for which the authority is sought.

(5) The chief executive must advise the affected persons for the land—

(a) that an application for an investigator's authority has been made for the land; and

(b) the powers a person given an authority may exercise under this chapter.

404 Additional information about application

(1) Before deciding the application, the chief executive—

(a) must consult with the affected persons for the land about the proposed entry to the land; and

(b) may require the applicant to give additional information about the proposed entry.

(2) The chief executive may reject the application if the applicant fails, without reasonable excuse, to give the additional information within a stated reasonable time of not less than 28 days.

405 Giving investigator's authority

(1) The chief executive may—

(a) give an investigator's authority, with or without conditions; or

(b) refuse to give the authority.

(2) If the chief executive refuses to give the investigator's authority, the chief executive must give the applicant written reasons for the refusal.

(3) Without limiting subsection (1)(a), a condition may require lodging a bond or security deposit with the chief executive.

(4) The investigator's authority must be only for the part of the land the chief executive is satisfied is reasonably necessary for conducting the investigations.

406 Investigator's authority

(1) The investigator's authority must be in writing stating the following—

(a) the land to which it applies;

(b) the purpose for which it is given;

(c) when it ends;

(d) all conditions imposed on the authority.

(2) The investigator's authority authorises the investigator and associated persons of the investigator—

(a) to enter and re-enter land the subject of the authority for investigating the land's potential and suitability for the development; and

(b) to the extent reasonably necessary or convenient for the purpose—

(i) to do anything on the land; or

(ii) to bring anything onto the land; or

(iii) to temporarily leave machinery, equipment or other items on the land.

Examples of actions authorised by the investigator's authority—

1 to conduct surveys, investigate and take samples

2 to clear vegetation, or otherwise disturb the land, to the extent reasonably necessary

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3 to construct temporary access tracks using the land or using materials brought onto the land

(3) It is declared that—

(a) the giving of the investigator's authority is not an indication of a commitment or approval by the State, the chief executive or anyone else to any proposal, and in particular, does not commit the State to acquiring land for the development; and

(b) a person is not an employee or agent of the State only because the person is an investigator.

(4) The investigator's authority does not authorise entering or doing anything to a structure on the land used solely for residential purposes without the permission of the occupier of the land.

(5) The investigator and each associated person of the investigator, must comply with each condition of the authority, unless the investigator or associated person has a reasonable excuse.

Maximum penalty for subsection (5)—200 penalty units.

407 What investigator must do before land is entered for the first time

(1) Before land is entered for the first time under the investigator's authority, the investigator must give a written notice to the affected persons for the land together with a copy of the authority.

(2) The notice must state the following—

(a) the investigator has been given the investigator's authority;

(b) the things the investigator and associated persons of the investigator are authorised to do under the authority;

(c) a general outline of the things intended to be done on the land, including the construction of any temporary access track;

(d) the approximate period during which the land is to be entered under the authority;

(e) the rights of the affected persons under this chapter for the rectification of, and to compensation for, loss or damage suffered because of the investigation;

(f) the giving of the authority is not an indication of a commitment or approval by the State, the chief executive or anyone else in relation to any proposal, and in particular, does not commit the State to acquiring land for the development.

(3) The investigator or an associated person of the investigator may enter the land only if—

(a) the affected persons give written consent to the entry; or

(b) at least 7 days have passed since the notice was given.

408 Investigator to issue associated person with identification

(1) Before the investigator allows an associated person of the investigator to act under the investigator's authority, the investigator must give the associated person an identification document in the approved form.

Maximum penalty—10 penalty units.

(2) The identification document must—

(a) state the names of the investigator and the person to whom the identification document is given; and

(b) indicate that, for this Act, the person is associated with the holder of the investigator's authority; and

(c) state the capacity in which the associated person is an associated person; and

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Not authorised—indicative only

(d) be signed by or for the investigator; and

(e) be signed by or for the associated person; and

(f) state when it ends.

(3) A person who stops being an associated person of an investigator must return the person's identification document to the investigator as soon as practicable, but within 21 days, after the person stops being an associated person, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

(4) Subsections (5) and (6) apply if a person who claims to be, or appears to be, an affected person for the land asks an individual who has entered, is entering or is about to enter land under the investigator's authority—

(a) for identification; or

(b) about the person's authority to enter the land.

(5) If the request is made of an investigator, the investigator must immediately state the investigator's name and show the person a copy of the investigator's authority.

Maximum penalty—10 penalty units.

(6) If the request is made of an associated person of the investigator, the associated person must immediately state his or her name and show the other person the associated person's identification document.

Maximum penalty for subsection (6)—10 penalty units.

409 Pretending to be an investigator or associated person

A person must not pretend to be an investigator or an associated person of an investigator.

Maximum penalty—80 penalty units.

Not authorised—indicative only

410 Investigator to take care in acting under investigator's authority

The investigator and all associated persons of the investigator—

(a) must take as much care as is practicable to minimise damage to the land or inconvenience to the affected persons for the land; and

(b) may do anything necessary or desirable to minimise the damage or inconvenience.

411 Rectification of damage by investigator

(1) An affected person for the land may, by written notice (***rectification notice***) given to the investigator, require the investigator, within a reasonable time after the investigator has finished investigating the land under the investigator's authority, to rectify loss or damage suffered by the affected person arising out of—

(a) the investigator entering the land; or

(b) use made of the land by the investigator; or

(c) anything brought onto the land by the investigator; or

(d) anything done or left on the land while the investigator was on the land under, or purportedly under, the investigator's authority.

(2) If the loss or damage mentioned in subsection (1) is not rectified or can not be rectified, the affected person may, by written notice (***compensation notice***) given to the investigator, claim compensation for the loss or damage not rectified.

(3) A rectification or compensation notice must be given—

(a) within 1 year after the loss or damage was suffered; or

(b) at a later time allowed by the Land Court.

(4) The claim for compensation may be made—

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(a) whether or not the act or omission giving rise to the claim was authorised under the investigator's authority; and

(b) whether or not the investigator took steps to prevent the loss or damage; and

(c) even though the loss or damage was caused, or contributed to, by an associated person of the investigator.

(5) In subsection (1)—

investigator includes an associated person of the investigator.

412 Compensation payable by investigator

(1) The investigator must compensate each affected person for the land for the loss or damage the affected person has suffered and that has not been rectified.

(2) The amount of compensation is—

(a) the amount agreed between the parties; or

(b) if the parties can not agree on the amount within a reasonable time, the amount decided by the Land Court.

413 Release of bond or security deposit

(1) This section applies if, under a condition of the investigator's authority, a bond or security deposit is required to be lodged with the chief executive.

(2) If an affected person for the land does not give a rectification or compensation notice within the prescribed time, the chief executive may keep the bond or security deposit until 1 year after the investigator's authority expires.

(3) If an affected person for the land gives a rectification or compensation notice within the prescribed time, the chief executive may keep the bond or security deposit until the chief executive is satisfied the damage or loss has been repaired or

rectified or any compensation agreed or awarded for the damage or loss has been paid to the affected person.

(4) In this section—

prescribed time, for giving a rectification or compensation notice arising out of the entry of land by the investigator, means 1 year after the investigator was last on the land under, or purportedly under, the investigator's authority.

414 Use of bond or security deposit to repair or rectify

(1) This section applies if—

(a) under a condition of the investigator's authority, a bond or security deposit is required to be lodged with the chief executive; and

(b) an affected person for the land gives a rectification or compensation notice within the prescribed time; and

(c) the chief executive is satisfied the damage or loss has not been repaired or rectified or compensation agreed or awarded for the damage or loss has not been paid to the affected person.

(2) The chief executive—

(a) may use the bond or security deposit to repair or rectify the damage or loss or pay the compensation; and

(b) must pay the balance, if any, to the investigator.

(3) In this section—

prescribed time, for giving a rectification or compensation notice arising out of the entry of land by the investigator, means 1 year after the investigator was last on the land under, or purportedly under, the investigator's authority.

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Chapter 12 Miscellaneous transport infrastructure

Part 1 Preliminary

415 Definitions for ch 12

In this chapter—

approval means an approval granted under section 420.

approval conditions see section 423(1).

dispute notice see section 425(1).

intersecting area means an area (other than an area of land that is required land) or a thing that—

(a) intersects required land; and

(b) is owned, administered, controlled, or managed by a GOC or a local government.

Examples—

- an area of water
- land covered by water
- miscellaneous transport infrastructure works
- a port
- rail corridor land
- a road

licensee means the holder of an operational licence.

operational licence means a licence in force granted—

(a) under section 418; or

(b) under another Act, for infrastructure that is miscellaneous transport infrastructure.

required land means land that has been acquired for miscellaneous transport purposes or an incidental purpose.

responsible entity, for an intersecting area, means an entity responsible for administering, controlling, or managing the area under any Act.

416 Meaning of *miscellaneous transport infrastructure*

(1) ***Miscellaneous transport infrastructure*** means—

(a) infrastructure relating to the transportation, movement, transmission or flow of anything, including, for example, goods, material, substances, matter, particles with or without charge, light, energy, information and anything generated or produced; or

Examples of infrastructure relating to the transportation, movement, transmission or flow of anything—

- pipelines, whether underground or above ground, for transporting chemical, gas or petroleum products, or mineral slurry
- conveyor belts

(b) anything declared under a regulation to be miscellaneous transport infrastructure, whether or not it is infrastructure under paragraph (a).

(2) However, road transport infrastructure, rail transport infrastructure, air transport infrastructure, public marine transport infrastructure and port infrastructure are not miscellaneous transport infrastructure.

(3) Also, busway transport infrastructure and light rail transport infrastructure are not miscellaneous transport infrastructure.

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Part 2 Operational licences and approvals for licensees

Division 1 Definitions

417 Definition for pt 2

In this part, other than division 2—

Minister means the Minister administering the *State Development and Public Works Organisation Act 1971*.

Division 2 Granting operational licences

418 Minister may grant operational licence

The Minister may grant to a person a licence to construct, maintain, use or operate stated miscellaneous transport infrastructure on stated conditions.

Division 3 Approvals for licensees for intersecting areas

419 Purpose and scope of div 3

(1) The purpose of this division is to provide a mechanism for a licensee to obtain an approval from a responsible entity for an intersecting area.

(2) However, this division does not apply to an approval if the approval is required under another Act.

(3) This division applies only for ensuring miscellaneous transport infrastructure can be constructed, maintained, used or operated across, over or under the area.

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420 Approvals

(1) A licensee may apply for an approval by a responsible entity to construct, maintain, use or operate miscellaneous transport infrastructure stated in the licensee's operational licence across, over or under an intersecting area.

(2) The application must—

(a) be written; and

(b) identify the area and the miscellaneous transport infrastructure; and

(c) state any other thing prescribed under a regulation.

(3) The entity may grant or refuse the approval.

(4) If the approval is granted, the licensee may, subject to any approval conditions, construct, maintain, use or operate the miscellaneous transport infrastructure identified in the application across, over or under the area.

421 Refusal to grant approval

If an application has been made to a responsible entity and the entity refuses the application, it must give the applicant written notice within 14 days after refusing the application stating—

(a) the decision; and

(b) the reasons for the decision; and

(c) that the applicant may apply in writing to the Minister for the approval.

422 Licensee may apply to Minister if approval not granted

(1) This section applies if—

(a) an application has been made to a responsible entity for an approval; and

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(b) the entity refuses the application or does not grant the application within 20 business days after it is made.

(2) The applicant may apply in writing to the Minister for the approval.

(3) The Minister may grant or refuse the approval.

(4) The Minister must give the applicant and the entity notice of the granting or refusal.

(5) If the Minister grants the approval, it is taken to have been granted by the entity.

(6) If the Minister decides to grant or refuse the approval, the Minister must prepare a statement of the reasons for the decision for this section.

(7) The statement of reasons must be tabled in the Legislative Assembly within 14 sitting days after the day of the decision.

(8) In preparing the statement of reasons, the Minister must not include anything that is exempt information.

(9) A failure to comply with subsections (6) to (8) is of no effect.

(10) The *Judicial Review Act 1991*, parts 3 and 4, do not apply to any decision the Minister makes or fails to make for this section.

(11) In this section—

exempt information means information that is exempt information under the *Right to Information Act 2009*.

Division 4 Conditions for approvals

423 Approval conditions

(1) If a responsible entity or the Minister grants an approval, the entity may impose reasonable conditions for the approval (***approval conditions***).

(2) However, a condition may only be imposed within 20 business days of—

(a) if the approval was granted by the entity—the making of the application to the entity; or

(b) if the approval was granted by the Minister—the giving of notice of the approval by the Minister to the entity.

(3) An approval condition may, for example, provide for the following—

(a) reinstating land disturbed by construction;

(b) installing signs, markings or warning devices about or for the miscellaneous transport infrastructure for which the approval was granted on the intersecting area;

(c) surveying or siting the infrastructure on the area;

(d) adding to, altering or replacing the infrastructure, at the applicant's cost—

(i) to ensure the safe operation or use of other infrastructure or works on the area; or

(ii) to preserve, promote or protect the environmental condition of the area;

(e) how the approval may be amended, suspended or cancelled.

424 Notice of approval conditions

If a responsible entity imposes approval conditions, it must give the applicant for the approval written notice within 14 days after imposing the conditions stating—

(a) the conditions; and

(b) that the applicant may appeal against the conditions to an arbitrator; and

(c) that an appeal may be started by giving the entity a written notice of dispute within 20 business days after receiving the notice of the conditions.

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Division 5 Arbitration of approval conditions

425 Notice of dispute

(1) If a responsible entity imposes approval conditions, the applicant for the approval may, by written notice to the entity (a ***dispute notice***), dispute the reasonableness of the conditions.

(2) However, if notice of the conditions has been given to the applicant under section 424, a dispute notice may only be given within 20 business days after the giving of the notice of the conditions.

426 Appointment of arbitrator

(1) Within 10 business days after the giving of a dispute notice, the responsible entity and the applicant for approval must join in appointing an independent arbitrator to resolve the dispute.

(2) If the entity and the applicant do not appoint an arbitrator within the 10 business days, the following persons may, on the application of the applicant or entity, appoint the arbitrator—

(a) if the entity is a local government—the Minister and the Minister administering the Planning Act, acting jointly;

(b) if the entity is not a local government—the Minister.

(3) However, each Minister may nominate another person to exercise the power under subsection (2).

427 Arbitrator's functions

The arbitrator must—

(a) resolve the dispute by deciding what are reasonable conditions for the approval; and

(b) give the entity and the applicant notice of, and reasons for, the decision.

428 Arbitrator's powers

(1) In resolving the dispute, the arbitrator may—

(a) confirm the approval conditions imposed by the responsible entity; or

(b) amend the conditions; or

(c) set aside the conditions and substitute other conditions.

(2) The arbitrator may exercise the powers of an arbitrator under the *Commercial Arbitration Act 2013*.

429 Hearing procedures

(1) An arbitration must be by way of rehearing, unaffected by the responsible entity's decision on the approval conditions.

(2) Unless this division or a regulation made under schedule 1 otherwise provides, the practice and procedure for an arbitration follow the practice and procedure for an arbitration under the *Commercial Arbitration Act 2013*.

430 Effect of arbitrator's decisions

(1) An arbitrator's decision under this division is final.

(2) The entity and the applicant may not apply for review of, or appeal against, the decision.

(3) The approval conditions decided by the arbitrator are, other than for section 424 and this division, taken to be the approval conditions imposed by the responsible entity.

Division 6 Miscellaneous

431 Miscellaneous transport infrastructure remains property of licensee

(1) This section applies if—

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(a) a licensee constructs, maintains, uses or operates miscellaneous transport infrastructure across, over or under an intersecting area; and

(b) the licensee has obtained an approval from each responsible entity for the area.

(2) Subject to a condition of the licensee's operational licence or an agreement between the licensee and the State, the infrastructure remains the licensee's property despite—

(a) the attaching of the infrastructure to the area; or

(b) an approval condition.

(3) However, an approval condition may provide for—

(a) if the State agrees—the disposal of the infrastructure to the State on reasonable terms if the licensee no longer holds an operational licence for the infrastructure; or

(b) if the State and licensee agree—someone else to own or acquire the infrastructure.

432 Compensation to responsible entity from licensee

(1) This section applies if—

(a) a licensee constructs, maintains, uses or operates miscellaneous transport infrastructure across, over or under an intersecting area; and

(b) a responsible entity for the area incurs a cost, damage, liability or loss because of the existence, construction, maintenance, use or operation of the infrastructure.

(2) The licensee must pay the entity the amount of the cost, damage, loss or liability.

(3) The entity may claim the amount in a proceeding in a court with jurisdiction for the amount claimed.

Part 3 Authorities to occupy and use land

433 Temporary use and occupation of land

To carry out miscellaneous transport infrastructure works, the chief executive, or anyone authorised in writing by the chief executive, may temporarily occupy and use land, including roads, and do anything on the land that is necessary or convenient.

434 Notice of entry or permission to enter

(1) If a person proposes to occupy or use land under this chapter, the person must—

(a) give at least 3 days written notice to the owner or occupier of the land; or

(b) obtain the written permission of the owner or occupier to the occupation or use.

(2) The notice must state—

(a) the miscellaneous transport infrastructure works to be carried out; and

(b) the use proposed to be made of the land; and

(c) details of the things proposed to be done on the land; and

(d) an approximate period when the occupation or use is expected to continue.

(3) A notice may be given under subsection (1) in relation to land even though it is proposed to resume the land for miscellaneous transport infrastructure.

(4) After the end of 3 days after service of a notice under subsection (1), or with the permission of the owner or occupier, the land may be entered and the miscellaneous

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transport infrastructure works specified in the notice carried out.

(5) If a person proposes to occupy or use land to carry out urgent remedial work to miscellaneous transport infrastructure or miscellaneous transport infrastructure works, subsection (1) does not apply but the person must, if practicable, notify the owner or occupier of the land orally before entering the land.

435 Compensation for physical damage from entry etc.

(1) An owner of land that is entered, occupied or used under this chapter may give a written notice to the chief executive claiming compensation for physical damage caused by the entry, occupation or use or for the taking or consumption of materials.

(2) Compensation is not payable unless a claim is received by the chief executive within 1 year after occupation or use has ended.

(3) However, the chief executive may allow a claim to be made at a later time.

(4) Compensation awarded under this section must not be more than the compensation that would have been awarded if the land had been acquired.

Part 4 Powers of chief executive over required land

436 Chief executive may grant interests in land

(1) The chief executive may, for the State, grant or dispose of an interest in required land used, or proposed to be used, for miscellaneous transport infrastructure to—

(a) a licensee; or

(b) someone else authorised under another Act to construct, maintain, use or operate miscellaneous transport infrastructure.

Example of an interest in land under subsection (1)—

a licence or right to use or occupy required land

(2) The chief executive may grant the interest on conditions, including, for example, a condition that the interest ends if the person ceases to be a person entitled to be granted the interest.

(3) This section has effect despite the *Acquisition of Land Act 1967*.

Part 5 Miscellaneous

437 Effect of chapter on other Acts

This chapter has effect despite a provision of another Act about—

(a) constructing miscellaneous transport infrastructure; or

(b) acquiring interests in land, or doing anything else, to enable the construction of miscellaneous transport infrastructure.

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Chapter 13 Shareholding requirements and business location obligations for QR National

Part 1 Interpretation

438 Definitions for ch 13

In this chapter—

network company means a QR National company that is a railway manager for a railway situated in Queensland.

prohibited shareholding interest see section 438C.

QR National means the entity declared by the Treasurer under section 438A.

QR National company means QR National or a related body corporate of QR National.

relevant interest see section 438B(1).

relevant person means the Minister, a director of QR National or a secretary of QR National.

Part 2 Declaration of QR National

438A Treasurer to declare QR National by gazette notice

The Treasurer must, by gazette notice made within 6 months after the commencement of this section, state the entity that is, or is to be, the ultimate holding company of QR Limited ACN 124 649 967.

Part 3 Regulation of shareholding interests

438B Matters relating to relevant interests in shares

(1) For this part, a person has a ***relevant interest*** in a share only if the person would be taken to have a relevant interest in the share because of the Corporations Act, sections 608 and 609.

(2) For this part, the voting power a person, including QR National, has in QR National is the person's voting power determined in accordance with the Corporations Act, section 610 as if a reference in that section to a relevant interest were a reference to a relevant interest mentioned in subsection (1).

(3) The Treasurer may, by gazette notice, provide that relevant interests, or particular classes of relevant interests, in shares, or in particular classes of shares, must be disregarded—

(a) in the circumstances and subject to any conditions stated in the gazette notice; and

(b) for the purposes stated in the gazette notice.

438C Prohibited shareholding interest

(1) A person has a ***prohibited shareholding interest*** if the person has a voting power of more than 15% in QR National.

(2) A person must not have a prohibited shareholding interest.

(3) For this part, QR National and subsidiaries of QR National are taken not to have a prohibited shareholding interest.

(4) QR National must take all reasonable steps to ensure that no person obtains or maintains a prohibited shareholding interest.

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438D Power to require information relating to entitlement to shares in QR National

(1) A relevant person may, by notice in writing served on a person who has, or is suspected by the relevant person of having, a relevant interest in shares in QR National, require the person to give information stated in the notice for the purpose of determining whether that person or any other person has, or is taking action to acquire, a prohibited shareholding interest.

(2) A notice under subsection (1) may require the person on whom the notice is served or, if that person is a corporation, a director of the corporation, to verify by statutory declaration any information given in compliance with the notice.

438E Remedial orders

(1) Subsection (2) applies if a person has, or is reasonably suspected by a relevant person of having, a prohibited shareholding interest.

(2) The Supreme Court may, on an application made by the Minister or QR National, make the orders the court considers appropriate to stop the person benefiting from that interest and to procure compliance with this part, including the following orders—

(a) an order directing the disposal of shares;

(b) an order restraining the exercise of any rights attached to shares;

(c) an order prohibiting or deferring the payment of any sums due to a person in relation to shares held by the person;

(d) an order that any exercise of rights attached to shares has no effect.

(3) Without limiting the orders the Supreme Court may make under subsection (2), the court may—

(a) for the purpose of procuring compliance with any other order made under this section, make an order directing any person to do or refrain from doing a stated act; and

(b) make an order containing the ancillary or consequential provisions the court thinks fit.

(4) The Supreme Court may, before making an order under this section, direct that either or both of the following happen—

(a) notice of the application be given to the persons the court thinks fit;

(b) notice of the application be published in the manner the court thinks fit.

(5) The Supreme Court may, by order, rescind, vary, discharge or suspend the operation of an order made by it under this section.

Part 4 Business location obligations

438F Business location obligations

(1) QR National must—

(a) ensure at least half of the board meetings of QR National in each year are held in Queensland; and

(b) ensure the central management and control of QR National is ordinarily exercised in Queensland, including through maintaining in Queensland the principal operational offices of the following company personnel, however described—

(i) managing director;

(ii) chief executive officer;

(iii) chief financial officer;

(iv) company secretary; and

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(c) ensure corporate services are provided through offices in Queensland to the extent the corporate services primarily relate to the operations of QR National and its subsidiaries undertaken in Queensland; and

(d) ensure QR National's annual general meeting is held in Queensland at least every 2 years; and

(e) maintain a substantial operational presence in Queensland.

(2) For subsection (1)(e), QR National maintains a substantial operational presence in Queensland if QR National and its subsidiaries have the following operations undertaken principally in Queensland—

(a) the operation and maintenance of rail track infrastructure located in Queensland;

(b) the operation and maintenance of rolling stock primarily used in Queensland;

(c) the provision of services directly associated with the operations mentioned in paragraphs (a) and (b).

Part 5 Governance

438G Requirements about appointment of directors

(1) The majority of the directors of a network company must consist of eligible persons.

(2) In this section—

eligible person means a person who—

(a) is not an employee of a QR National company; and

(b) has not been an employee of a QR National company at any time during the ineligibility period; and

(c) is not engaged by a QR National company to provide advisory or consultancy services to a QR National

company, if the engagement could reasonably be regarded as material to that person; and

(d) has not been engaged by a QR National company to provide advisory or consultancy services to a QR National company at any time during the ineligibility period, if the engagement could reasonably be regarded as material to that person; and

(e) is not an employee of a company or partnership, an officer of a company, or a partner in a partnership, that is engaged by a QR National company to provide advisory or consultancy services to a QR National company, if—

(i) the person is directly involved in providing those services; and

(ii) the engagement could reasonably be regarded as material to the company or partnership; and

(f) was not an employee of a company or partnership, an officer of a company, or a partner in a partnership, that was engaged by a QR National company to provide advisory or consultancy services to a QR National company at any time during the ineligibility period, if—

(i) the person was directly involved in providing those services; and

(ii) the engagement could reasonably be regarded as material to the company or partnership; and

(g) is not an employee of a company or partnership, an officer of a company other than a QR National company, or a partner in a partnership, that has a contract with a QR National company, if the contract could reasonably be regarded as material to the company or partnership; and

(h) does not have a substantial holding in a QR National company; and

(i) is not an officer of a company that—

(i) is not a QR National company; and

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(ii) has a substantial holding in a QR National company.

employee, of a company, does not include a person who is engaged solely as a director of the company.

ineligibility period, in relation to an eligible person, means the period of 3 years prior to the appointment of the person as a director of the network company.

substantial holding has the meaning given in the Corporations Act.

438H Related party access agreements

(1) A network company must not enter into an access agreement with another QR National company unless the agreement has been approved by the board of directors of the network company.

(2) The board of directors of a network company must not approve an access agreement mentioned in subsection (1) unless the board is reasonably satisfied the agreement is on arms-length terms.

(3) In this section—

access agreement see the *Queensland Competition Authority Act 1997*, schedule 2.

Chapter 14 Transporting dangerous goods by rail

Part 1 Introductory

439 Purposes of ch 14

The purposes of this chapter are—

(a) to reduce risk arising from transporting dangerous goods by rail; and

(b) to help create a substantially uniform national rail transport law about dangerous goods; and

(c) to promote consistency between the regulation of the transport of dangerous goods by rail and by other modes of transport.

440 Application of chapter

This chapter—

(a) applies only to the transportation of dangerous goods by rail, other than prescribed exempt transport; and

(b) applies in addition to, and does not limit, any other provision of this Act or any other Act.

~~440 Application of chapter~~

~~(1) This chapter—~~

~~(a) applies only to the transportation of dangerous goods by rail; and~~

~~(b) applies in addition to, and does not limit, any other provision of this Act or any other Act.~~

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(2) However, this chapter does not apply to any of the following—

(a) the transport of the following except if transported with other dangerous goods—

(i) radioactive substances under the Radiation Safety Act 1999;

(ii) explosives under the Explosives Act 1999;

(b) the transport of a load of dangerous goods if—

(i) the dangerous goods are not, and do not include, infectious substances of UN division 6.2; and

(ii) the total quantity of each type of dangerous goods in the load is less than the quantity prescribed by regulation for that type;

(c) the transport by a person of a load of dangerous goods by rail if—

(i) the load does not contain dangerous goods—

(A) in a receptacle with a capacity that is more than a capacity prescribed under a regulation; or

(B) in a receptacle if the quantity of dangerous goods in the receptacle is more than the quantity prescribed under a regulation for the receptacle; and

(ii) the goods are not, and do not include, dangerous goods prescribed under a regulation as designated dangerous goods; and

(iii) the aggregate quantity of the dangerous goods in the load, as worked out under a regulation, is less than 25% of a load of dangerous goods that, under a regulation, is required to be placarded; and

(iv) the goods are not being transported by the person in the course of a business of transporting goods by rail.

(3) Also, even if particular goods are prescribed under a regulation as dangerous goods, this chapter does not apply to the transport of the particular dangerous goods in a rail vehicle if —

(a) the dangerous goods are in packaging that is —

(i) designed for, and forming part of, the fuel or electrical system of the rail vehicle propulsion engine or auxiliary engine; or

(ii) part of, and necessary for, the operation of an appliance, plant or refrigeration system forming part of or attached to the rail vehicle; or

(b) the dangerous goods are in equipment carried in, fitted to or installed in the rail vehicle and designed for the safety or protection of an occupant of the rail vehicle, the rail vehicle or its load, including, for example, a fire extinguisher or self-contained breathing apparatus.

(4) A requirement of this Act imposed because of this chapter does not apply to the transport by rail of dangerous goods to the extent the goods are transported by, or under the direction of, an authorised person or relevant emergency service officer to prevent a dangerous situation.

(5) In this section —

UN division 6.2 means UN division 6.2 (infectious substances) under the UN classification system for dangerous goods.

441 Ch 14 binds all persons

(1) This chapter binds all persons, including every Queensland government entity, and, so far as the legislative power of the Parliament permits, every government entity of the Commonwealth or of another State.

(2) In this section—

government entity includes—

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Not authorised—indicative only

(a) the State, the Commonwealth or another State; and

(b) an instrumentality, agent, authority, company, GOC or entity of the State, the Commonwealth or another State.

441A Definition for chapter

In this chapter—

prescribed exempt transport means the transport of dangerous goods by rail that is prescribed by regulation as exempt from the application of this chapter.

Part 2 Regulations

442 Regulations about dangerous goods

(1) A regulation may make provision about dangerous goods and the transport of dangerous goods by rail, including, for example, the following—

(a) identifying and classifying goods as dangerous goods, and the identification and classification of dangerous goods;

(b) the making of decisions by the chief executive for the purposes of a regulation in relation to the following—

(i) the identification and classification of goods as dangerous goods;

(ii) the identification and classification of dangerous goods;

(iii) the specification of what is, and what is not, compatible with dangerous goods for transport purposes;

(iv) prohibiting or regulating the transport of dangerous goods;

(v) regulating the containment of dangerous goods that are being, or that are to be, transported;

(d) the analysis and testing of dangerous goods;

(e) the marking and labelling of packages containing dangerous goods for transport and the placarding of rail vehicles and packaging on or in which dangerous goods are transported;

(g) containers, rail vehicles, packaging equipment and other items to be used for transporting dangerous goods;

(h) the manufacture of rail vehicles, containers, packaging, equipment and other items for use in transporting dangerous goods;

(i) the loading of dangerous goods for, and the unloading of dangerous goods after, their transportation;

(j) deciding routes along which, the areas in which and the times during which, dangerous goods may or may not be transported;

(k) procedures for transporting dangerous goods, including—

(i) the quantities and circumstances in which dangerous goods may be transported; and

(ii) safety procedures and equipment;

(l) the approval of—

(i) rail vehicles, packaging, equipment and other items used in relation to transporting dangerous goods; and

(ii) facilities for, and methods of, testing or using rail vehicles, packaging, equipment and other items used in relation to transporting dangerous goods; and

(iii) processes carried out in relation to transporting dangerous goods;

Not authorised—indicative only

Not authorised—indicative only

(n) other approvals;

(o) documents to be prepared or kept by persons involved in transporting dangerous goods and the approval of alternative documentation;

(p) obligations arising, and procedures to be followed, in a dangerous situation;

(q) the training and qualifications required of persons involved in, and the approval of training courses and qualifications relating to involvement in, transporting dangerous goods;

(r) the recognition of accredited providers of training, package testing, design verification and other similar activities~~.~~;

(s) exempting from the application of this chapter the transport by rail—

(i) of stated types of dangerous goods; and

(ii) of dangerous goods in stated circumstances or ways.

(1A) Without limiting subsection (1), a regulation may make provision about—

(a) the recognition of laws of other jurisdictions relating to transporting dangerous goods by rail, things done under those laws and giving effect to those things; and

(b) the recognition of an entity (the ***competent authorities panel***) whose membership includes the chief executive and dangerous goods authorities, and other matters in relation to the competent authorities panel.

(1B) For subsection (1A)(b), a regulation may provide that the chief executive must refer to the competent authorities panel—

(a) an application made to the chief executive for a decision, approval or exemption under this Act if the chief executive considers the decision, approval or

exemption should have effect in all participating dangerous goods jurisdictions or some of those jurisdictions including this jurisdiction; or

(b) a decision, approval or exemption under this Act that has effect in all participating dangerous goods jurisdictions or some of those jurisdictions including this jurisdiction if—

(i) the chief executive considers the decision, approval or exemption should be cancelled or amended; or

(ii) a dangerous goods authority recommended to the chief executive that the decision, approval or exemption should be cancelled or amended; or

(c) a recommendation by the chief executive to a dangerous goods authority that a decision, approval or exemption given by the authority under a corresponding law, that has effect in all participating dangerous goods jurisdictions or some of those jurisdictions including this jurisdiction, if the chief executive considers a ground exists under the corresponding law for the authority to cancel or amend the decision, approval or exemption.

(1C) If a regulation provides that a matter must be referred to the competent authorities panel, the regulation may provide that the chief executive must have regard to the panel's decision.

(1D) A regulation may make provision in relation to an action taken or decision made by the competent authorities panel or a dangerous goods authority in relation to a matter considered by the competent authorities panel, including that the action or decision has effect in this jurisdiction as if it were an action or decision of the chief executive.

(2) Without limiting subsection (1), a regulation may provide—

(a) for the granting or renewing of, or refusing to grant or renew, an approval or exemption; or

(b) grounds for amending, suspending or cancelling an approval or exemption.

Not authorised—indicative only

Not authorised—indicative only

(3) The *Statutory Instruments Act 1992* is not limited by this section.

(4) In this section—

amend includes vary.

corresponding law means—

(a) a law of another State corresponding, or substantially corresponding, to this chapter; or

(b) a law of the other State that is declared under a regulation to be a corresponding law, whether or not the law corresponds, or substantially corresponds, to this chapter.

Part 3 Approvals and exemptions

Division 1 Exemptions

443 Exemptions

(1) A person, or a representative of a class of person, may apply to the chief executive for an exemption from complying with a provision of a regulation about transporting dangerous goods by rail.

(2) The chief executive may, on an application under subsection (1) or on the chief executive's own initiative, exempt a person or a class of person from complying with the provision if satisfied—

(a) it is not reasonably practicable for the person or class of person to comply with the provision; and

(b) granting the exemption—

(i) would not be likely to create a risk of a dangerous situation, greater than would be the case if the person or class of person did comply; and

(ii) would not cause unnecessary administrative or enforcement difficulties, particularly about maintaining national substantially uniform rail transport laws about dangerous goods.

(3) If an exemption is given on conditions, the exemption operates only if the conditions are complied with.

(4) A person operating under an exemption must comply with any conditions on which the exemption was granted.

Maximum penalty—100 penalty units or 6 months imprisonment.

(5) If an application is made for an exemption and the chief executive grants the exemption, the chief executive must send to each applicant a notice stating—

(a) the provisions of a dangerous goods regulation in relation to which the exemption applies; and

(b) the dangerous goods to which the exemption applies; and

(c) the time for which the exemption applies, including the date that the exemption takes effect; and

(d) the conditions to which the exemption is subject; and

(e) the geographical area for which the exemption applies; and

(f) for a class exemption—each of the following to be stated in the exemption—

(i) the class of person exempted;

(ii) the class representative for the exemption.

(6) If an application is made for an exemption and the chief executive does not grant the exemption, the chief executive must give a notice stating the following to each applicant—

(a) that the chief executive is not granting the exemption;

(b) the reasons for the decision;

Not authorised—indicative only

Not authorised—indicative only

(c) that the person may—

(i) under section 485, ask for the decision to be reviewed and appeal against the reviewed decision; and

(ii) under the *Transport Planning and Coordination Act 1994*, part 5, ask for the decision or the reviewed decision to be stayed.

Note—

A notice is not required when an exemption is granted on conditions.

(7) The *Statutory Instruments Act 1992*, sections 24 to 26 apply to the exemption as if it were a statutory instrument.

(8) A regulation may make provision in relation to applying for, and the giving of, exemptions under this Act.

(9) In this section—

applicant means—

(a) a person who has applied under subsection (1) for himself or herself, whether or not the application is made jointly with other persons; or

(b) a person who is a representative of a class of persons and who has applied under subsection (1) for the class of persons; or

(c) a person who is a member of a class of persons and whose name and address is given in an application made by a person as mentioned in paragraph (b).

Division 2 Amending, suspending or cancelling approval or exemption

444 Grounds for amending, suspending or cancelling approval or exemption

(1) It is a ground for amending, suspending or cancelling an approval or exemption if the approval or exemption was—

(a) granted because of a document or representation that is false or misleading; or

(b) obtained or made in another improper way.

(2) It is a ground for amending, suspending or cancelling an approval or exemption if the person, or 1 or more of the persons, to whom the approval or exemption applies—

(a) has contravened a condition of the approval or exemption; or

(b) has been convicted of a dangerous goods offence or of an offence against a law of another State or the Commonwealth about transporting dangerous goods by rail.

(3) It is also a ground for amending, suspending or cancelling an exemption if—

(a) public safety has been endangered, or is likely to be endangered because of the exemption; or

(b) the chief executive considers that if he or she were dealing with an application for the exemption again (a ***notional application***), the chief executive would not be satisfied, as mentioned in section 443(2), in relation to the granting of the notional application; or

(c) the chief executive considers it necessary in the public interest.

(4) It is also a ground for amending, suspending or cancelling an approval if—

(a) public safety has been endangered, or is likely to be endangered because of the exemption; or

(b) the chief executive considers it necessary in the public interest.

Not authorised—indicative only

Not authorised—indicative only

445 What chief executive must do before taking proposed action, other than for class exemption

(1) This section applies if the chief executive proposes to amend, suspend or cancel an approval or exemption, other than a class exemption (the ***proposed action***).

(2) Before taking the proposed action, the chief executive must give the holder of the approval or exemption written notice stating—

(a) the proposed action; and

(b) the grounds for the proposed action; and

(c) an outline of the facts and circumstances forming the basis for the grounds; and

(d) if the proposed action is to amend the approval or exemption, including a condition of the approval or exemption—the proposed amendment; and

(e) if the proposed action is to suspend the approval or exemption—the proposed suspension period; and

(f) an invitation to the holder of the approval or exemption to show in writing, within a stated time of at least 28 days, why the proposed action should not be taken.

446 What chief executive must do before taking proposed action for class exemption

(1) This section applies if the chief executive proposes to amend, suspend or cancel a class exemption (the ***proposed action***).

(2) Before taking the proposed action, the chief executive must give written notice to the class representative for the exemption and in the gazette stating—

(a) the proposed action; and

(b) the grounds for the proposed action; and

(c) an outline of the facts and circumstances forming the basis for the grounds; and

(d) if the proposed action is to amend the exemption, including a condition of the exemption—the proposed amendment; and

(e) if the proposed action is to suspend the exemption—the proposed suspension period; and

(f) an invitation to any member of the class for the exemption to show in writing, within a stated time of at least 28 days, why the proposed action should not be taken.

447 Decision on proposed action

(1) If, after considering any written representations made within the time allowed under section 445 or 446, the chief executive still considers the proposed action should be taken, the chief executive may—

(a) if the proposed action was to amend the approval or exemption—amend the approval or exemption; or

(b) if the proposed action was to suspend the approval or exemption—suspend the approval or exemption for no longer than the period stated in the notice under section 445 or 446; or

(c) if the proposed action was to cancel the approval or exemption—amend or cancel the approval or exemption, or suspend the approval or exemption for a period.

(2) The chief executive must give written notice of the chief executive's decision to—

(a) for an approval or exemption, other than a class exemption—the holder; or

(b) for a class exemption—the class representative for the exemption.

Not authorised—indicative only

Not authorised—indicative only

(3) If the chief executive decides to amend, suspend or cancel the approval or exemption, the notice must state the reasons for the decision and be accompanied by an information notice.

(4) The decision takes effect on the day notice is given under subsection (2) or a later day stated in the notice.

448 Sections 445–447 do not apply to beneficial or clerical amendment

(1) Sections 445 to 447 do not apply—

(a) if the chief executive proposes to amend an approval or exemption only—

(i) for a formal or clerical reason; or

(ii) in another way that does not adversely affect the interests of any person; or

(b) if the chief executive proposes to amend an approval or exemption in another way or cancel it and the holder has asked the chief executive to take the proposed action.

(2) The chief executive may amend an approval or exemption in a way mentioned in subsection (1) by written notice to—

(a) for an approval or exemption, other than a class exemption—the holder; or

(b) for a class exemption—the class representative for the exemption.

449 Immediate suspension in the public interest

(1) Despite sections 445 and 446, this section applies if the chief executive considers it is necessary in the interest of public safety to immediately suspend an approval or exemption.

(2) The chief executive may, by written notice to the holder of the approval or exemption, other than a class exemption, immediately suspend the approval or exemption until the earlier of the following—

(a) a notice is given to the holder under section 447(2); or

(b) the end of 56 days after the day the notice under this section is given to the holder.

(3) The chief executive may, by written notice to the class representative for a class exemption, immediately suspend the exemption until the earlier of the following—

(a) a notice is given for the exemption under section 447(2); or

(b) the end of 56 days after the day the notice under this section is given to the class representative.

(4) If the chief executive suspends a class exemption, the chief executive must give notice of the suspension in the gazette.

(5) A notice under subsection (2) or (3) must state the reasons for the decision and be accompanied by an information notice.

Part 4 Offences

451 Duties when transporting dangerous goods

(1) A person involved in transporting dangerous goods by rail must ensure, as far as is practicable, that the goods are transported safely.

(2) A person involved in transporting dangerous goods by rail must not contravene this chapter or a dangerous goods regulation in circumstances in which the person knew, or ought reasonably to have known, that the contravention would be likely to endanger the safety of another person or of property or the environment.

Maximum penalty—

(a) if the contravention results in death or grievous bodily harm to a person—1,000 penalty units or 2 years imprisonment; or

(b) otherwise—500 penalty units or 1 year's imprisonment.

Not authorised—indicative only

Not authorised—indicative only

(3) This section applies in addition to, and does not limit, any other provision of this chapter or a dangerous goods regulation.

452 Exclusion orders prohibiting involvement in the transport of dangerous goods by rail

(1) This section applies if a person is convicted of a dangerous goods offence.

(2) The court before which the person is convicted may, after having regard to the following matters, make an order (an ***exclusion order***) that the person be prohibited for a stated period from involvement in the transport of dangerous goods by rail—

(a) the person's record in the transport of dangerous goods;

(b) the person's criminal history to the extent the court considers it relevant to the making of the exclusion order;

(c) the circumstances surrounding the commission of the offence;

(d) any other matters the court considers appropriate.

(3) However, the court must not make an exclusion order that prohibits the person from driving a rail vehicle other than a rail vehicle transporting dangerous goods.

(4) A person must not contravene an exclusion order.

Maximum penalty—500 penalty units or 2 years imprisonment.

(5) Subsections (2) and (4) do not limit any other penalty the court may impose for the offence.

(6) If a court has made an exclusion order, the court may revoke or amend the exclusion order on the application of—

(a) the chief executive; or

(b) the person for whom the order was made but only if the court is satisfied there has been a change of circumstances warranting revocation or amendment and the chief executive was given reasonable notice of the application.

(7) For subsection (6), the chief executive is entitled to appear and be heard and to give and produce evidence at the hearing of the application for or against the granting of the revocation or amendment.

(8) In this section—

criminal history, of a person, means each of the following despite the *Criminal Law (Rehabilitation of Offenders) Act 1986*, sections 6, 8 and 9—

(a) every conviction of the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this provision;

(b) every charge made against the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this provision.

involvement, in the transport of dangerous goods by rail, includes the following—

(a) importing, or arranging for the importation of, dangerous goods;

(b) marking or labelling packages and unit loads containing dangerous goods for transport by rail, and placarding vehicles in which dangerous goods are transported by road;

(c) consigning dangerous goods for transport by rail;

(d) loading dangerous goods onto a vehicle or into a container that is to be put on a vehicle for transport by rail or unloading dangerous goods that have been transported by rail;

Not authorised—indicative only

Not authorised—indicative only

(e) undertaking or being responsible for, other than as an employee or subcontractor, the transport of dangerous goods by rail;

(f) driving a vehicle carrying dangerous goods by rail;

(g) being a consignee of dangerous goods transported by rail;

(h) being involved as a director, secretary or manager of a corporation or other person who takes part in the management of a corporation that takes part in something mentioned in paragraphs (a) to (g).

Part 5 Recovery of costs and forfeiture

453 Forfeiture if conviction relates to dangerous goods

(1) This section applies if a person is convicted of a dangerous goods offence.

(2) The court before which the person is convicted may order the dangerous goods or their packaging, or other things used to commit the offence, be forfeited to the State.

(3) Subsection (1) does not limit the court's power to make any other order on the conviction including an order under section 455.

454 Dealing with forfeited things etc.

(1) On the forfeiture of a thing to the State, the thing becomes the State's property and may be dealt with by the chief executive as the chief executive considers appropriate.

(2) Without limiting subsection (1), the chief executive may destroy or dispose of the thing.

(3) The chief executive must not deal with the thing until any review of, or appeal against, the decision to forfeit the thing is decided.

455 Recovery of costs from convicted person

(1) A court convicting a person of a dangerous goods offence may order the person to pay to the State any of the following—

(a) costs that have been reasonably incurred in investigating and prosecuting the offence including, for example, collecting, packaging, testing, transporting, storing or destroying the dangerous goods or other evidence;

(b) costs that, after the conviction, will be reasonably incurred in collecting, packaging, testing, transporting, storing, destroying, selling or otherwise disposing of the dangerous goods or other evidence, whether or not there is an order under section 453 for forfeiture of the dangerous goods or other things.

(2) An amount ordered to be paid under subsection (1) is a debt owing to the State.

(3) A court may make an order under subsection (1) in addition to any other order the court may make.

(4) A document purporting to be signed by any of the following stating details of the costs that have been or will be reasonably incurred for a matter mentioned in subsection (1) is evidence of the costs—

(a) for the department—the chief executive;

(b) for another government entity—the person who is the chief executive or otherwise responsible for the entity.

456 Recovery of costs of government action

(1) This section applies if any of the following events happen in relation to the transportation of dangerous goods by rail—

(a) a dangerous situation;

Not authorised—indicative only

Not authorised—indicative only

(b) an incident wholly or partly constituted by or arising from—

(i) the escape of dangerous goods; or

(ii) an explosion or fire involving dangerous goods;

(c) an incident involving the risk of the escape of dangerous goods or an explosion or fire involving dangerous goods.

(2) If a government entity incurs costs because of the event, the entity may recover the costs reasonably incurred in dealing with the event as a debt owing to the entity.

(3) The costs are recoverable as a joint and several liability from the following persons—

(a) the person who owned the dangerous goods when the event happened;

(b) the person who had possession or control of the dangerous goods when the event happened;

(c) the person who caused the event;

(d) the person responsible (other than as an employee, agent or subcontractor of someone else) for the transportation of the dangerous goods by rail.

(4) However, costs are not recoverable from a person—

(a) who does not incur civil liability because of section 458; or

(b) who establishes that—

(i) the event was primarily caused by someone else; or

(ii) the person could not, exercising reasonable care, have prevented the event; or

(iii) the event was not attributable to the person or to an employee, agent or subcontractor of the person.

(5) This section does not limit the powers a government entity has apart from this chapter.

Part 6 Miscellaneous

457 Facilitation of proof

(1) In a prosecution for a dangerous goods offence, if an authorised person gives evidence that he or she believes, or believed at a particular time relevant to the exercise of a power, any of the matters mentioned in subsection (2), the court must accept the matter as proved if—

(a) it considers the belief is, or was, reasonable; and

(b) there is no evidence to the contrary.

(2) The matters are as follows—

(a) that dangerous goods described in transport documentation as being carried in a rail vehicle are or were carried in the rail vehicle;

(b) that particular goods are or were dangerous goods or dangerous goods of a particular type;

(c) if a marking or placard on, or attached to, a substance or container indicates or indicated that the substance is or was or the container contains or contained particular dangerous goods—that the substance is or was or the container contains or contained those dangerous goods;

(d) if a marking on, or attached to, a package indicates or indicated that the package contains or contained particular dangerous goods—that the package contains or contained those dangerous goods;

(e) if a marking or placard on, or attached to, a vehicle or equipment indicates or indicated that the vehicle or equipment is or was being used to transport dangerous goods—that the vehicle or equipment is or was being used to transport those dangerous goods;

(f) if a marking or placard on, or attached to, a substance or packaging indicates or indicated, in relation to the substance, the packaging or the contents of the

Not authorised—indicative only

Not authorised—indicative only

packaging, a particular capacity, tare weight, origin, character, specification, ownership or date of manufacture—that the substance, the packaging or the contents of the packaging has or had that capacity, tare weight, origin, character, specification, ownership or date of manufacture;

(g) if markings on, or attached to, a package indicate or indicated, in relation to the contents of the package, a particular capacity, tare weight, origin, character, specification, ownership or date of manufacture—that the contents of the package have or had that capacity, tare weight, origin, character, specification, ownership or date of manufacture;

(h) if a marking or placard on, or attached to, a vehicle or packaging indicates or indicated, in relation to the load of the vehicle or the contents of the packaging, a particular quantity of dangerous goods—that the vehicle or packaging contains or contained that quantity of dangerous goods;

(i) that a person is or is not, or was or was not at a particular time, accredited in relation to the transport by rail of dangerous goods.

457A Document signed by chief executive is evidence of matters stated in it if no evidence to the contrary

(1) In a prosecution for a contravention of this Act, a court may admit each of the following documents as evidence if the document purports to be signed by the chief executive—

(a) a document relating to whether a person is exempt from a requirement under section 443;

(b) a document relating to a vehicle, equipment or another item required under a dangerous goods regulation to be approved by the chief executive;

(c) a document relating to an accreditation under a dangerous goods regulation about the transport of dangerous goods.

(2) If there is no evidence to the contrary, the court must accept the document as proof of the facts stated in it.

458 Helping in accidents or emergencies

(1) This section applies if a person, other than an official—

(a) helps, or attempts to help, in a situation in which an accident or emergency involving dangerous goods happens or is likely to happen; and

(b) the help, or attempt to help, is given—

(i) honestly and without negligence; and

(ii) without any fee, charge or other reward.

(2) The person does not incur civil liability for helping or attempting to help.

(3) If subsection (2) prevents civil liability attaching to a person, the liability attaches instead to the State.

(4) This section does not apply to a person whose act or omission wholly or partly caused the accident, emergency or likely accident or emergency.

(5) In this section—

official means a person who is, or is acting under the control of, an authorised person under the *Transport Operations (Passenger Transport) Act 1994*.

Not authorised—indicative only

Not authorised—indicative only

Part 7 Goods too dangerous to be transported

458A Application of Act to goods too dangerous to be transported

(1) Unless otherwise provided, provisions of this Act relating to dangerous goods also apply in relation to goods too dangerous to be transported.

(2) This Act does not authorise the transport by rail of goods too dangerous to be transported.

(3) For subsection (1)—

(a) a reference in a provision of this Act to dangerous goods includes a reference to goods too dangerous to be transported; and

(b) a reference in a provision of this Act to a dangerous goods regulation includes a reference to a regulation that makes provision for goods too dangerous to be transported.

(4) Subsections (1) and (3) do not apply to the following provisions—

(a) section 440;

(b) part 2;

(c) section 443.

(5) Also, subsections (1) and (3) do not apply to subordinate legislation made under this Act unless a particular instrument of subordinate legislation expressly provides.

(6) A requirement of this Act imposed because of this part does not apply to the transport by rail of goods too dangerous to be transported to the extent the goods are transported by, or under the direction of, an authorised person or relevant emergency service officer to prevent a dangerous situation.

458B Consignment of goods too dangerous to be transported prohibited

A person must not consign for transport by rail goods too dangerous to be transported.

Maximum penalty—

(a) if the contravention results in death or grievous bodily harm to a person—1,000 penalty units or 2 years imprisonment; or

(b) otherwise—500 penalty units or 1 year's imprisonment.

458C Regulations

(1) A regulation may make provision about goods too dangerous to be transported by rail, including, for example, the following—

(a) identifying, classifying and regulating goods that are too dangerous to be transported, including prohibiting the transport of the goods;

(b) the making of decisions by the chief executive for the purposes of a regulation in relation to the following—

(i) the identification and classification of goods as goods too dangerous to be transported;

(ii) the identification and classification of goods too dangerous to be transported.

(2) Without limiting subsection (1), a regulation may make provision about—

(a) the recognition of laws of other jurisdictions relating to goods too dangerous to be transported by rail, things done under those laws and giving effect to those things; and

(b) the recognition of an entity (the ***competent authorities panel***) whose membership includes the chief executive and dangerous goods authorities, and other matters in relation to the competent authorities panel.

Not authorised—indicative only

Not authorised—indicative only

(3) For subsection (2)(b), a regulation may provide that the chief executive must refer to the competent authorities panel—

(a) an application made to the chief executive for a decision under this Act if the chief executive considers the decision should have effect in all participating dangerous goods jurisdictions or some of those jurisdictions including this jurisdiction; or

(b) a decision under this Act that has effect in all participating dangerous goods jurisdictions or some of those jurisdictions including this jurisdiction if—

(i) the chief executive considers the decision should be cancelled or amended; or

(ii) a dangerous goods authority recommended to the chief executive that the decision should be cancelled or amended; or

(c) a recommendation by the chief executive to a dangerous goods authority that a decision given by the authority under a corresponding law, that has effect in all participating dangerous goods jurisdictions or some of those jurisdictions including this jurisdiction, if the chief executive considers a ground exists under the corresponding law for the authority to cancel or amend the decision.

(4) If a regulation provides that a matter must be referred to the competent authorities panel, the regulation may provide that the chief executive must have regard to the panel's decision.

(5) A regulation may make provision in relation to an action taken or decision made by the competent authorities panel or a dangerous goods authority in relation to a matter considered by the competent authorities panel, including that the action or decision has effect in this jurisdiction as if it were an action or decision of the chief executive.

(6) The *Statutory Instruments Act 1992* is not limited by this section.

(7) In this section—

amend includes vary.

corresponding law means—

(a) a law of another State corresponding, or substantially corresponding, to this chapter; or

(b) a law of the other State that is declared under a regulation to be a corresponding law, whether or not the law corresponds, or substantially corresponds, to this chapter.

Chapter 15 Public marine transport infrastructure

Part 1 Public marine facilities

459 Appointment of manager of public marine facility

(1) The Governor in Council may, by regulation, appoint a person (the ***manager***) to manage a public marine facility.

Examples of persons who may be appointed—

a local government, a port authority, the chief executive or the person who is for the time being the manager of a resort

(2) The appointment may only be made if the person consents to the appointment.

(3) The appointment may be on conditions stated under the regulation, including the payment of a fee to the chief executive for moorings in the facility.

(4) Under a regulation, a condition may be changed if the manager consents to the change.

Not authorised—indicative only

Not authorised—indicative only

(5) However, the consent of the manager is not required to change the fee payable under a regulation to the chief executive for moorings in the facility.

(6) Subsection (3) does not limit the power to impose, under a regulation, fees for moorings in a public marine facility, whether or not a manager has been appointed to manage the facility.

460 Manager's responsibility for maintenance and injuries etc.

(1) The manager is responsible for maintaining the public marine facility in good condition to a standard appropriate to its use.

(2) The facility is taken, for the purposes of all adverse civil proceedings in relation to death, injury, damage or loss, to be solely owned, occupied and under the management, control and responsibility of the manager.

(3) However, subsection (2) does not apply to the extent any death, injury, damage or loss is attributable to a structural defect in the facility unless—

(a) the defect is attributable to the manager's failure to—

(i) properly construct, extend or alter the facility in accordance with a sanction under a provision continuing to have effect under repealed section 236; or

Note—

Section 236 (Continuation of certain provisions of Harbours Act requiring approval for certain matters) was repealed on 20 October 2003.

(ii) properly maintain the facility; or

(b) the defect or its continuation is attributable to a contravention by the manager of the conditions of the manager's appointment.

461 Management by chief executive

(1) This section applies to a public marine facility, other than a facility in, or on land adjacent to, Gold Coast waters, if, apart from this section, there is no current manager of the facility.

(2) The chief executive is taken to be the manager of the public marine facility until the chief executive or someone else is appointed as the manager under section 459.

(3) If the chief executive is the manager of a public marine facility, the chief executive—

(a) has any powers, conferred under a regulation, to limit or prohibit the use of the facility; and

(b) may exercise any other of the chief executive's powers, and do anything the chief executive considers necessary or convenient, for the facility's effective and efficient management.

(4) This section does not limit a power the chief executive has apart from this section.

461A Management by Gold Coast Waterways Authority

(1) This section applies to a public marine facility in, or on land adjacent to, Gold Coast waters if, apart from this section, there is no current manager of the facility.

(2) The Gold Coast Waterways Authority is taken to be the manager of the public marine facility until a person is appointed as the manager of the facility under section 459.

(3) If the Gold Coast Waterways Authority is the manager of a public marine facility, the authority—

(a) has any powers, conferred under a regulation, to limit or prohibit the use of the facility; and

(b) may exercise any other of the authority's powers, and do anything the authority considers necessary or convenient, for the facility's effective and efficient management.

Not authorised—indicative only

Not authorised—indicative only

(4) This section does not limit a power the Gold Coast Waterways Authority has apart from this section.

462 Management by local government

If a local government is the manager of a public marine facility, the local government—

(a) has, for the facility, all the functions, powers and obligations of a local government under the *Local Government Act 2009*; and

(b) may make local laws and do anything it considers necessary or convenient for the facility's effective and efficient management.

463 Management by port authority

(1) If a port authority is the manager of a public marine facility, the port authority—

(a) has, for the facility, all the functions, powers and obligations of a port authority under chapter 8; and

(b) may exercise its powers, and do anything it considers necessary or convenient for the facility's effective and efficient management.

(2) This section does not limit the functions, powers or obligations of a port authority that is a GOC.

464 Management by another person

If the manager of a public marine facility is not the chief executive, the Gold Coast Waterways Authority, a local government or a port authority, the manager's management powers include any power, conferred under a regulation, to limit or prohibit the use of the facility.

465 Exercise of manager's powers to be consistent with conditions

Anything done by a manager under sections 461 to 464 must be consistent with any conditions imposed on the manager's appointment.

466 Fees

(1) The manager of a public marine facility may impose fees payable to the manager for the use of the facility, whether as a condition of an approval to use the facility or otherwise.

(2) The fee may, for example, be imposed by reference to—

(a) ships using the facility; or

(b) goods or passengers loaded, unloaded or transhipped to or from ships using the facility; or

(c) vehicular access to the facility.

(3) However, a fee may not be imposed for the genuine, transient private recreational use of a boat ramp, jetty, landing or pontoon.

Example of transient use—

loading fishing gear onto a ship that only takes 15 minutes

(4) Also, if the manager is—

(a) the chief executive or Gold Coast Waterways Authority—the amount of the fee must be prescribed under a regulation; and

(b) a local government—the amount of the fee must be prescribed under a local law; and

(c) a port authority—the amount of the fee must be fixed by a resolution of the board of the port authority.

(5) A manager, other than the chief executive or Gold Coast Waterways Authority, who imposes a fee under this section may recover the fee as a debt owing to the manager.

Not authorised—indicative only

Not authorised—indicative only

Note—

For the recovery of fees payable to the chief executive see section 476.

(6) This section does not limit the powers a manager has apart from this section.

467 When manager may resign

A manager may resign with the consent of the Governor in Council.

468 Removal of improvements added by manager

(1) If a manager resigns under section 467 or the manager's appointment is revoked, the manager may, within the next 3 months, remove any improvements to the facility added by the manager that do not form an integral part of the facility.

(2) Any of those improvements not removed within the 3 months then become the State's property.

(3) This section does not apply to improvements that were funded by the State or intended to become State-owned under an agreement between the State and the manager or under the conditions of the manager's appointment.

469 Regulation prevails over action taken by a manager under this part

(1) If there is any inconsistency between a regulation and action taken under this part by a manager, the regulation prevails to the extent of the inconsistency.

Example—

A regulation about the management of public marine facilities prevails over a local law made for the purposes of this part to the extent they are inconsistent.

(2) Subsection (1) applies whether the action was taken before or after the regulation.

Part 2 Authorised persons for waterway management regulation

Division 1 Preliminary

470 Purpose of pt 2

(1) This part recognises that particular waterways require a system of regulation to balance demands on the use, by water traffic, of the waterways and associated infrastructure.

(2) The object of this part is to promote the overall effective and efficient use of waterways for transport by ensuring there are suitably qualified persons to implement, monitor and enforce compliance with a waterway management regulation.

(3) To achieve this object, this part includes provision for the appointment of authorised persons for a waterway management regulation, and gives authorised persons particular powers.

471 Meaning of *waterway management regulation*

A ***waterway management regulation*** is a regulation made under this Act that relates to a matter mentioned in schedule 1, part 2.

Division 2 Appointment of authorised persons

472 Functions of authorised persons

An authorised person has the following functions—

(a) to investigate, monitor and enforce compliance with a waterway management regulation;

Not authorised—indicative only

Not authorised—indicative only

(b) to investigate or monitor whether an occasion has arisen for the exercise of powers under a waterway management regulation or this part;

(c) to facilitate the exercise of powers under a waterway management regulation or this part.

475A Authorised persons

(1) The following persons are authorised persons—

(a) a police officer;

Note—

See the *Police Powers and Responsibilities Act 2000*, section 14 for provisions about the declaration of police officers as public officials.

(b) under an arrangement between the chief executive or the Gold Coast Waterways Authority and the chief executive of the department in which the *Fisheries Act 1994* is administered—an inspector under that Act.

(2) The chief executive may appoint an officer of the department, or any other person, as an authorised person.

(3) The Gold Coast Waterways Authority may appoint an employee of the authority as an authorised person.

(4) However, the chief executive may appoint a person under subsection (2), and the Gold Coast Waterways Authority may appoint a person under subsection (3), only if the chief executive or the authority is reasonably satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

(5) Sections 475B(1)(a) and (b), 475C and 475D do not apply to an authorised person who is a police officer.

475B Appointment conditions and limit on powers

(1) An authorised person holds office on any conditions stated in—

(a) the person's instrument of appointment; or

(b) a signed notice by the chief executive or Gold Coast Waterways Authority given to the person; or

(c) a regulation.

(2) The powers of an authorised person are limited as follows—

(a) if the authorised person is appointed by the chief executive under section 475A(2)—the person's powers do not apply in relation to Gold Coast waters;

(b) if the authorised person is appointed by the Gold Coast Waterways Authority under section 475A(3)—the person's powers apply only in relation to Gold Coast waters.

(3) Also, an authorised person's powers under this Act may be limited by the person's instrument of appointment, a signed notice given to the person or a regulation.

475C Issue of identity card to each authorised person

(1) The chief executive or Gold Coast Waterways Authority must issue an identity card to each authorised person.

(2) The identity card must—

(a) contain a recent photo of the person; and

(b) contain a copy of the person's signature; and

(c) identify the person as an authorised person under this Act for a waterway management regulation; and

(d) state an expiry date for the card.

(3) This section does not prevent the issuing of a single identity card to a person for a waterway management regulation and other purposes.

Not authorised—indicative only

Not authorised—indicative only

475D Production or display of identity card

(1) In exercising a power under this part in relation to a person, an authorised person must—

(a) produce the authorised person's identity card for the person's inspection before exercising the power; or

(b) have the identity card displayed so that it is clearly visible to the person when exercising the power.

(2) However, if it is not practicable to comply with subsection (1), the authorised person must produce the identity card for the person's inspection at the first reasonable opportunity.

(3) For subsection (1), an authorised person does not exercise a power in relation to a person only because the authorised person has entered a place as mentioned in section 475I(2).

475E When authorised person ceases to hold office

(1) An authorised person ceases to hold office if any of the following happens—

(a) the term of office stated in a condition of office ends;

(b) the person ceases to hold office under another condition of office;

(c) the person's resignation under section 475F takes effect.

(2) Subsection (1) does not limit the ways an authorised person may cease to hold office.

(3) In this section—

condition of office means a condition on which the person holds office.

475F Resignation

An authorised person may resign by signed notice given to the chief executive or Gold Coast Waterways Authority.

475G Return of identity card

A person who ceases to be an authorised person must return the person's identity card to the chief executive or Gold Coast Waterways Authority within 21 days after ceasing to be an authorised person, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

Division 3 Powers of authorised persons

Subdivision 1 Interpretation

475H Definitions for div 4

In this division—

occupier, of a place that is a watercraft, means the owner or operator of the watercraft.

place includes the following—

(a) land;

(b) a building or other structure, or part of a building or other structure, of any type;

(c) a group of buildings or other structures, or part of a group of buildings or other structures, of any type;

(d) a watercraft.

Subdivision 2 Entry of places by authorised persons

475I Power to enter places

(1) An authorised person may enter a place if—

(a) its occupier consents to the entry; or

Not authorised—indicative only

Not authorised—indicative only

(b) the entry is authorised by a warrant.

(2) For the purpose of asking the occupier of a place for consent to enter, an authorised person may, without the occupier's consent or a warrant—

(a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or

(b) enter part of the place the authorised person reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.

475J Procedure for entry with consent

(1) This section applies if an authorised person intends to ask an occupier of a place to consent to the authorised person or another authorised person entering the place under section 475I(1)(a).

(2) Before asking for the consent, the authorised person must tell the occupier—

(a) the purpose of the entry; and

(b) that the occupier is not required to consent.

(3) If the consent is given, the authorised person may ask the occupier to sign an acknowledgement of the consent.

(4) The acknowledgement must state—

(a) the occupier has been told—

(i) the purpose of the entry; and

(ii) that the occupier is not required to consent; and

(b) the purpose of the entry; and

(c) the occupier gives the authorised person consent to enter the place and exercise powers under this division; and

(d) the time and date the consent was given.

(5) If the occupier signs the acknowledgement, the authorised person must immediately give a copy to the occupier.

(6) If—

(a) an issue arises in a proceeding about whether the occupier consented to the entry; and

(b) an acknowledgement complying with subsection (4) for the entry is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

475K Application for warrant

(1) An authorised person may apply to a magistrate for a warrant relating to a place.

(2) The application must be sworn and state the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the authorised person gives the magistrate all of the information the magistrate requires about the application in the way the magistrate requires.

Example—

The magistrate may require additional information supporting the application to be given by statutory declaration.

475L Issue of warrant

(1) A magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—

(a) there is a particular thing or activity (the ***evidence***) that may provide evidence of an offence against a waterway management regulation; and

(b) the evidence is at the place or, within the next 7 days, may be at the place.

(2) The warrant must state—

(a) that a stated authorised person may, with necessary and reasonable help and force—

Not authorised—indicative only

Not authorised—indicative only

(i) enter the place and any other place necessary for entry; and

(ii) exercise the authorised person's powers under this division; and

(b) the offence for which the warrant is sought; and

(c) the evidence that may be seized under the warrant; and

(d) the hours of the day or night when the place may be entered; and

(e) the date, within 14 days after the warrant's issue, the warrant ends.

475M Warrants—procedure before entry

(1) This section applies if an authorised person named in a warrant issued under this subdivision in relation to a place is intending to enter the place under the warrant.

(2) Before entering the place the authorised person must do, or make a reasonable attempt to do, the following—

(a) identify himself or herself to a person who appears to be an occupier of the place by producing a copy of the authorised person's identity card;

(b) give the person a copy of the warrant;

(c) tell the person the authorised person is permitted by the warrant to enter the place;

(d) give the person an opportunity to allow the authorised person immediate entry to the place without using force.

(3) However, the authorised person need not comply with subsection (2) if the authorised person reasonably believes that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

(4) Subsection (2)(a) does not apply to an authorised person who is a police officer.

Note—

See the *Police Powers and Responsibilities Act 2000*, section 637 for provisions about police officers supplying details.

Subdivision 3 Powers after entry

475N General powers after entering places

(1) This subdivision applies to an authorised person who enters a place under subdivision 2.

(2) However if, under section 475I(2), the authorised person enters a place to ask the occupier's consent to enter a place, this subdivision applies to the authorised person only if the consent is given or the entry is otherwise authorised.

(3) The authorised person may do any of the following—

(a) search any part of the place;

(b) inspect, measure, test, film, photograph, videotape or otherwise record an image of any part of the place or anything at the place;

(c) take a thing, or a sample of or from a thing, at the place for analysis, measurement or testing;

(d) take an extract from, or copy, a document at the place;

(e) take into or onto the place any equipment, materials or persons the authorised person reasonably requires for exercising a power under this division.

(4) If the authorised person takes a sample or thing for analysis under subsection (3)(c), the authorised person must—

(a) give a receipt for the sample or thing to the person in charge of the thing or place from which it was taken; and

(b) for a sample or thing with an intrinsic value—at the end of 6 months after the sample or thing was taken, return it to the person who appears to be the owner of it or the

Not authorised—indicative only

Not authorised—indicative only

person in charge of the thing or place from which it was taken.

Note—

Section 475V provides for forfeiture of the sample or thing to the State in particular circumstances.

(5) However, if for any reason it is not practicable to comply with subsection (4)(a), the authorised person must leave the receipt at the place in a conspicuous position and in a reasonably secure way.

475O Power to require reasonable help or information

(1) An authorised person may require the occupier of, or someone else at, a place entered under subdivision 2 to give the authorised person reasonable help to exercise any of the powers mentioned in section 475N(3)(a) to (e).

(2) A person must comply with a requirement under subsection (1), unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

(3) A requirement under subsection (1) does not include a requirement to produce a document or give information.

Subdivision 4 Removal of watercraft

475P Notice of intention to remove watercraft

(1) An authorised person who reasonably believes a watercraft is anchored or moored in contravention of a waterway management regulation may give the watercraft's owner or operator a notice of intention to remove the watercraft.

(2) The notice must state the contravention and that the watercraft may be removed by an authorised person if the watercraft is not moved, within 14 days after the notice is given, to a place that is not in contravention of a waterway management regulation.

(3) Without limiting the ways the notice may be given, it may be given by securely attaching it to the watercraft in a prominent position.

475Q Removing illegally anchored or moored watercraft

(1) This section applies if—

(a) a notice of intention to remove a watercraft has been given under section 475P; and

(b) after the 14 days mentioned in the notice, the watercraft is still anchored or moored in contravention of a waterway management regulation; and

(c) an authorised person—

(i) can not immediately find the watercraft's owner or operator; or

(ii) reasonably believes neither the watercraft's owner nor operator is able or willing to move the watercraft immediately.

(2) The authorised person may take steps that are necessary and reasonable to have the watercraft and anything in, on or attached to it removed to a place that is not in contravention of a waterway management regulation.

475R Removal of hazardous watercraft

(1) This section applies if an authorised person reasonably believes a watercraft is—

(a) anchored or moored in contravention of a waterway management regulation; and

(b) a hazard to water traffic.

Example for paragraph (b)—

A watercraft is a hazard to water traffic if it is on or beside the course of a power boat race conducted under a consent under the *Transport Operations (Marine Safety) Act 1994*, section 217(2).

Not authorised—indicative only

Not authorised—indicative only

(2) The authorised person may take steps that are necessary and reasonable to have the watercraft and anything in, on or attached to it removed to a place that is not in contravention of a waterway management regulation.

475S Giving notice of removal of watercraft

(1) If a watercraft is removed under section 475Q or 475R, the watercraft's owner must be given written notice of the place where the watercraft has been taken by—

(a) if the watercraft was removed from Gold Coast waters—the Gold Coast Waterways Authority; or

(b) otherwise—the chief executive.

(2) However, if the chief executive or Gold Coast Waterways Authority can not find the owner after making reasonable inquiries having regard to the watercraft's value, the chief executive may give the notice by publishing it in a newspaper circulating in the locality from which the watercraft was removed.

(3) In this section—

watercraft includes anything in, on or attached to the watercraft.

475T Dealing with removed watercraft

(1) This section applies if—

(a) the chief executive or Gold Coast Waterways Authority gives notice under section 475S about the removal of a watercraft; and

(b) the watercraft's owner does not take possession of the watercraft and pay the amount of all expenses of removal of the watercraft within 1 month after the notice is given.

(2) Having regard to the value and condition of the watercraft, the chief executive or Gold Coast Waterways Authority may sell it by public auction or otherwise dispose of it.

(3) In this section—

expenses of removal, of a watercraft, includes expenses of—

(a) removing and detaining the watercraft; and

(b) giving notice under section 475S; and

(c) advertising for sale or other disposal of the watercraft; and

(d) selling or otherwise disposing of the watercraft.

watercraft includes anything in, on or attached to the watercraft.

475U Proceeds from the sale of removed watercraft

(1) If watercraft is sold under section 475T(2), the proceeds of the sale must be applied—

(a) first, in payment of the expenses of removal of the watercraft reasonably incurred by the chief executive or Gold Coast Waterways Authority in selling the watercraft; and

(b) second, in payment of any balance to the watercraft's owner.

(2) If the proceeds of the sale are less than the total of the expenses mentioned in subsection (1)(a), the difference is a debt owing by the owner to the State.

(3) Compensation may not be recovered against the State in relation to a payment under this section.

(4) In this section—

expenses of removal, of a watercraft, include expenses of—

(a) removing and detaining the watercraft; and

(b) giving notice under section 475S; and

Not authorised—indicative only

Not authorised—indicative only

(c) advertising for sale or other disposal of the watercraft; and

(d) selling or otherwise disposing of the watercraft.

watercraft includes anything in, on or attached to the watercraft.

475V Forfeiture by authorised person

(1) A sample or thing taken for analysis under section 475N(3)(c) is forfeited to the State if the authorised person who took, or arranged the taking of, the sample or thing—

(a) after making reasonable efforts, can not return it to its owner; or

(b) after making reasonable inquiries, can not find its owner.

(2) For subsection (1), the authorised person is not required—

(a) to make efforts if it would be unreasonable to make efforts to return the sample or thing to its owner; or

(b) to make inquiries if it would be unreasonable to make inquiries to find the owner.

Example for paragraph (b)—

The owner of the sample or thing has migrated to another country.

(3) Regard must be had to the condition, nature and value of the sample or thing in deciding—

(a) whether it is reasonable to make efforts or inquiries; and

(b) if efforts or inquiries are made—what efforts or inquiries, including the period over which they are made, are reasonable.

(4) In this section—

owner, of a sample or thing taken for analysis, means the person in charge of the sample or thing or place from which it was taken.

475W Dealing with forfeited sample or thing

(1) On forfeiture of a sample or thing to the State, it becomes the State's property and may be dealt with by the chief executive or the Gold Coast Waterways Authority in a way the chief executive or the Gold Coast Waterways Authority reasonably believes is appropriate.

(2) Without limiting subsection (1), the chief executive or the Gold Coast Waterways Authority may destroy or dispose of the sample or thing.

Subdivision 5 General enforcement matters

475X Direction to stop contravening regulation

(1) If an authorised person considers a person is not complying with a provision of a waterway management regulation the authorised person may give the person a direction to immediately stop contravening the regulation in a stated way.

(2) When giving the direction, the authorised person must tell the person that it is an offence to fail to comply with the direction, unless the person has a reasonable excuse.

(3) The person must comply with the direction.

Maximum penalty for subsection (3)—40 penalty units.

475Y Power to require name and address

(1) This section applies if—

(a) an authorised person finds a person committing an offence against a waterway management regulation; or

(b) an authorised person finds a person in circumstances that lead, or has information about a person that leads, the authorised person to reasonably suspect the person has just committed an offence against a waterway management regulation.

Not authorised—indicative only

Not authorised—indicative only

(2) The authorised person may require the person to state the person's name and residential address.

(3) When making the requirement, the authorised person must warn the person it is an offence to fail to state the person's name or residential address unless the person has a reasonable excuse.

(4) The authorised person may also require the person to give evidence of the correctness of the stated name or residential address if the authorised person reasonably suspects the stated name or address is false.

(5) A person of whom a requirement is made under subsection (2) or (4) must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

(6) A person does not commit an offence against subsection (5) if—

(a) the requirement was given because the authorised person reasonably suspected the person had committed an offence; and

(b) the person is not proved to have committed the offence.

475Z False or misleading statements

(1) A person must not state anything to an authorised person, in relation to the authorised person's exercise of a power under this division, that the person knows is false or misleading in a material particular.

Maximum penalty—20 penalty units.

(2) In a proceeding for an offence against subsection (1), it is enough to state that the statement made was 'false or misleading' to the person's knowledge, without specifying which.

475ZA False or misleading documents

(1) A person must not give an authorised person a document containing information that the person knows is false or misleading in a material particular.

Maximum penalty—20 penalty units.

(2) Subsection (1) does not apply to a person if the person, when giving the document—

(a) tells the authorised person, to the best of the person's ability, how the document is false or misleading; and

(b) if the person has, or can reasonably obtain, the correct information—gives the correct information to the authorised person.

(3) In a proceeding for an offence against subsection (1), it is enough to state the document was 'false or misleading' to the person's knowledge, without specifying which.

475ZB Obstruction of authorised person

(1) A person must not obstruct an authorised person, in relation to the authorised person's exercise of a power under this division, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

(2) If a person has obstructed an authorised person and the authorised person decides to proceed with the exercise of the power, the authorised person must warn the person that—

(a) it is an offence to obstruct the authorised person unless the person has a reasonable excuse; and

(b) the authorised person reasonably believes the person's conduct is an obstruction.

(3) In this section—

obstruct includes assault, hinder, resist and attempt or threaten to obstruct.

Not authorised—indicative only

Not authorised—indicative only

475ZC Impersonating an authorised person

A person must not pretend to be an authorised person.

Maximum penalty—40 penalty units.

475ZD Notice of damage

(1) This section applies if—

(a) an authorised person damages something when exercising, or purporting to exercise, a power under this division; or

(b) another person acting under the direction or authority of an authorised person when exercising or purporting to exercise a power under this division damages something.

(2) The authorised person must give a signed notice to the person who appears to be the owner or person in possession of the thing.

(3) If for any reason it is not practicable to comply with subsection (2), the authorised person must leave the notice in a conspicuous position and in a reasonably secure way at the place where the damage happened.

(4) The notice must state the particulars of the damage.

(5) If the authorised person reasonably believes the damage was caused by a latent defect in the thing or other circumstances beyond the control of the authorised person or person acting under the direction or authority of the authorised person, the authorised person may state the belief in the notice.

(6) However, an authorised person need not comply with this section if the authorised person reasonably believes the damage is trivial.

475ZE Protection from liability

(1) An authorised person is not civilly liable for an act or omission done honestly and without negligence under this division.

(2) If subsection (1) prevents civil liability attaching to an authorised person, the liability attaches instead to the State.

Chapter 15A Transport interface management

475ZF Purpose of ch 15A

The purpose of this chapter is to provide for a regime for dealing with transport interface issues in transport interface management areas.

475ZG Definitions for ch 15A

In this chapter—

public marine transport infrastructure works means works done for—

(a) constructing public marine facilities or things associated with public marine facilities; or

(b) maintaining public marine facilities or things associated with public marine facilities; or

(c) facilitating the operation of public marine facilities.

transport associated development see *Transport Planning and Coordination Act 1994*, section 3.

transport infrastructure works means any of the following—

(a) busway transport infrastructure works;

Not authorised—indicative only

Not authorised—indicative only

(b) light rail transport infrastructure works;

(c) public marine transport infrastructure works;

(d) transport associated development;

(e) railway works;

(f) road works.

transport interface means an interface between—

(a) a transport interface object; and

(b) either or both of the following—

(i) a thing (including a building, another structure, road or watercourse) that is in the immediate vicinity of, or otherwise affects or is affected by, the transport interface object;

(ii) a place (including a building, another structure, road or watercourse) at, on or in which an activity that affects or is affected by the transport interface object is carried out.

transport interface agreement see section 475ZH.

transport interface issue means an issue that arises because of a transport interface.

Examples of issues that may be transport interface issues—

- access to a thing located partly on land owned or occupied by someone else
- access to a thing that can only be accessed for a particular purpose (for example, maintenance) by entering land owned or occupied by someone else
- shared responsibility for safety and maintenance of shared facilities
- disruption of, or delays in, carrying out activities at a place caused by the presence of a thing, or carrying out of activities, at an adjacent or nearby place

transport interface management area means land or part of land declared as a transport interface management area under section 475ZI.

transport interface object means any of the following—

(a) transport infrastructure;

(b) transport infrastructure works;

(c) railway crossing;

(d) State land on which transport infrastructure is located.

watercourse means land that is the property of the State under the *Land Act 1994*, section 9 or 13A(1) or (2).

475ZH Meaning and scope of *transport interface agreement*

(1) A ***transport interface agreement***is an agreement that provides for the following—

(a) identifying transport interface issues for the transport interface covered by the agreement;

(b) measures for managing the identified transport interface issues, and implementing the measures;

(c) the evaluation, testing and, if necessary, revision of the measures mentioned in paragraph (b);

(d) the roles and responsibilities of each party to the agreement in relation to the measures mentioned in paragraph (b);

(e) the procedures by which each party will monitor compliance with the obligations under the agreement;

(f) a process for keeping the agreement under review and how any review will be conducted and implemented;

(g) enforcing rights or obligations under the agreement, including, for example, a dispute resolution process.

(2) A transport interface agreement—

(a) may provide for a matter by applying, adopting or incorporating a matter contained in another document (with or without modification); and

(b) may consist of 2 or more documents.

Not authorised—indicative only

Not authorised—indicative only

(3) A transport interface agreement must be consistent with—

(a) the objectives of this Act mentioned in section 2; and

(b) the objectives of other transport laws.

475ZI Declaration of transport interface management area

(1) The chief executive may, by gazette notice, declare land or part of land to be a transport interface management area if—

(a) there is a transport interface on the land or part; and

(b) the chief executive reasonably believes—

(i) the transport interface creates or is likely to create transport interface issues; and

(ii) transport interface arrangements should be in place to deal with the transport interface issues or potential transport interface issues.

(2) Before making the declaration, the chief executive must—

(a) give the persons the chief executive considers may be affected by the declaration written notice of the chief executive's proposal to make the declaration; and

Example of a person who may be affected by the declaration—

a person who owns, manages, controls or is otherwise responsible for a thing or place in relation to which the transport interface issues or potential transport interface issues exist

(b) give the persons a reasonable opportunity to make submissions to the chief executive in relation to the proposed declaration; and

(c) have regard to any submissions made by the persons.

(3) Land declared to be a transport interface management area must be—

(a) identified specifically in the gazette notice; or

(b) identified generally in the gazette notice, and identified specifically in documents described in the gazette notice

and available for perusal at an office of the department mentioned in the gazette notice.

(4) The identification of land declared to be a transport interface management area may, but need not, be by reference to strata occupied by the land.

(5) If the chief executive gives the registrar of titles a copy of the gazette notice for the declaration of land or part of land as a transport interface management area, the registrar of titles must note the details of the declaration in the appropriate register.

(6) No fee is payable by the chief executive for the noting of the details in the appropriate register.

(7) In this section—

transport interface arrangements means—

(a) transport interface agreements; or

(b) arrangements under section 475ZL.

475ZJ Particular persons may enter into transport interface agreement

(1) This section applies if—

(a) there is a transport interface; and

(b) a person (***first person***) owns, manages, controls or is otherwise responsible for a transport interface object the subject of the transport interface; and

Examples of a person for paragraph (b)—

the chief executive, light rail franchisee, light rail manager

(c) another person (***second person***) owns, manages, controls or is otherwise responsible for a relevant thing or place in relation to the transport interface; and

Examples of persons for paragraph (c)—

owner or occupier, a local government, chief executive, public utility plant provider

Not authorised—indicative only

Not authorised—indicative only

(d) the transport interface is in a transport interface management area.

(2) The first person and second person may enter into a transport interface agreement for the transport interface.

(3) In this section—

relevant thing or place, in relation to a transport interface, means a thing or place mentioned in section 475ZG, definition *transport interface*, paragraph (b)(i) or (ii).

475ZK Failure to enter into transport interface agreement

(1) This section applies if the chief executive is satisfied—

(a) that, under section 475ZJ, a person is seeking to enter into a transport interface agreement with another person and the agreement has not been entered into because the other person—

(i) is unreasonably refusing or failing to enter into a transport interface agreement with the person; or

(ii) is unreasonably delaying the negotiation of a transport interface agreement with the person; or

(b) that—

(i) section 475ZJ applies in relation to persons for a transport interface in a transport interface management area; and

(ii) the persons have not made a reasonable attempt to enter into a transport interface agreement for the interface; and

(iii) it has been at least 60 days after the declaration of the transport interface management area.

(2) The chief executive may give the persons mentioned in subsection (1)(a) or (b) a written notice (a ***preliminary notice***) that—

(a) states the chief executive's powers under this chapter, including that the chief executive may give a direction under section 475ZL at any time after a stated date that is at least 28 days after the preliminary notice is given; and

(b) includes copies of this section and section 475ZL; and

(c) identifies the transport interface issues that the chief executive reasonably considers should be dealt with by a transport interface agreement between the persons.

(3) The preliminary notice may contain suggested terms for inclusion in a transport interface agreement to deal with the transport interface issues mentioned in subsection (2)(c).

(4) The chief executive may, by written notice, ask a person to whom a preliminary notice was given for information the chief executive reasonably requires for giving a direction under section 475ZL.

(5) A person to whom a written notice is given under subsection (4) must comply with the notice, unless the person has a reasonable excuse.

Maximum penalty for subsection (5)—60 penalty units.

475ZL Direction about arrangement that is to apply

(1) This section applies if—

(a) the chief executive gives persons a preliminary notice under section 475ZK; and

(b) the persons have not entered into a transport interface agreement to deal with the transport interface issues identified in the preliminary notice by the date stated in the preliminary notice.

(2) The chief executive may—

(a) decide the arrangements that are to apply in relation to the transport interface issues identified in the preliminary notice; and

Not authorised—indicative only

Not authorised—indicative only

(b) direct the persons to implement the arrangements by a stated date.

(3) A direction under subsection (2)(b) may be given at any time after a day that is at least 28 days after the preliminary notice is given.

(4) A direction given under subsection (2)(b) must be written and state the following—

(a) the arrangements decided by the chief executive that are to apply in relation to the transport interface issues identified in the preliminary notice;

(b) the date by which the arrangements must be implemented.

(5) A person to whom a direction is given under subsection (2)(b) must comply with the direction, unless the person has a reasonable excuse.

Maximum penalty for subsection (5)—200 penalty units.

475ZM Guidelines about transport interfaces etc.

(1) The chief executive may make guidelines about the following—

(a) how persons may identify transport interface issues that may affect them;

(b) measures that may be implemented to deal with particular transport interface issues;

(c) standard terms that may be included in transport interface agreements.

(2) The chief executive must—

(a) publish the guidelines, and the provisions of any document applied, adopted or incorporated by the guidelines, on the department's website; and

(b) make copies of the guidelines, and the provisions of any document applied, adopted or incorporated by the guidelines, available for inspection—

(i) without charge; and

(ii) during normal business hours; and

(iii) at the places the chief executive considers appropriate.

Chapter 16 General provisions

476 Amounts payable are debts owing to the State

An amount payable by a person to the chief executive or the Gold Coast Waterways Authority under this Act, the repealed *Sustainable Planning Act 2009* or the Planning Act is a debt owing to the State.

476A Chief executive may give information to corresponding authority

(1) In relation to the transport of dangerous goods by rail, whether within or outside Queensland, the chief executive may give to a corresponding authority—

(a) information about action taken by the chief executive under this Act; or

(b) information obtained under this Act.

(2) Subsection (1) does not apply if the chief executive or the corresponding authority would otherwise be required to maintain confidentiality about the information under an Act.

(3) In this section—

corresponding authority means—

Not authorised—indicative only

Not authorised—indicative only

(a) a government entity of the Commonwealth or another State responsible for administering a corresponding law to a transport Act; or

(b) a person prescribed under a regulation as a corresponding authority for this Act.

476B Power to require works to stop

(1) A person must not, without the chief executive's written approval, carry out works on land if the works threaten, or are likely to threaten, the safety or operational integrity of transport infrastructure.

Maximum penalty—100 penalty units.

(2) If—

(a) a person is carrying out, or proposes to carry out, works on land; and

(b) the chief executive reasonably believes the works threaten, or are likely to threaten, the safety or operational integrity of transport infrastructure;

the chief executive may give the person a written direction to stop, alter or not to start the works.

(3) The person must comply with the direction, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(4) If works are carried out contrary to subsection (1) or a direction under subsection (2), the chief executive may, by written notice, require the owner of the land where the works are situated to alter, demolish or take away the works within a stated reasonable time.

(5) The person must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(6) If the person does not comply with the requirement, the chief executive may—

(a) alter, demolish or take away the works; or

(b) alter, demolish or take away the works and recover the cost of doing so from the land's owner as a debt payable by the owner.

(7) For this section, a person authorised by the chief executive may enter land and inspect works—

(a) after giving 3 days written notice to the land's owner or occupier; or

(b) with the written agreement of the land's owner or occupier; or

(c) without notice or approval, if the chief executive reasonably believes there is an immediate and significant threat to the safety or operational integrity of the transport infrastructure.

(8) This section binds all persons, including the State, the Commonwealth and the other States.

(9) In this section—

transport infrastructure does not include rail transport infrastructure.

476C Compensation

(1) This section applies if a person enters land under section 476B(7).

(2) An owner or occupier of the land may, by written notice given to the chief executive—

(a) claim compensation for loss or damage caused by the entry on the land; or

(b) claim compensation for the taking or use of materials; or

(c) require the chief executive to carry out works in restitution for the damage; or

Not authorised—indicative only

Not authorised—indicative only

(d) require the chief executive to carry out works in restitution for the damage and then claim compensation for any loss or damage not restituted.

(3) The notice must be given—

(a) within 1 year after the entry ends; or

(b) at a later time allowed by the chief executive.

(4) The amount of compensation is—

(a) the amount agreed between the parties; or

(b) if the parties can not agree within a reasonable time—the amount decided by a court with jurisdiction for the recovery of the amount of compensation claimed.

(5) However, the amount of compensation for damage to the land and its fixtures, and for taking or use of materials, can not be more than the amount that would have been awarded if the land had been acquired.

476D Registration of notice about nature of works

(1) This section applies if the chief executive reasonably believes works of a particular nature that may be conducted on land are likely to threaten the safety or operational integrity of transport infrastructure.

(2) The chief executive may give the registrar of titles a signed notice—

(a) identifying the land; and

(b) identifying the nature of works that may be conducted on the land the chief executive reasonably believes is likely to threaten the safety or operational integrity of transport infrastructure; and

(c) stating that the owner of the land must obtain the chief executive's written approval under section 168 or 476B before conducting works of that nature on the land.

(3) The registrar of titles must ensure a notice appears in the relevant register kept under the *Land Act 1994* or the *Land Title Act 1994* so that a search of the register will show that an owner of the land must obtain the chief executive's written approval under section 168 or 476B before conducting works of the nature identified in the notice on the land.

(4) No fee is payable for registration of the notice.

477 Power to require information from local governments

(1) The chief executive may, by written notice given to a local government, require that the local government give to the chief executive, or to a specified person, information on a particular issue relevant to the discharge of functions or the exercise of powers under this Act or the Planning Act.

(2) The notice must specify a reasonable time within which the notice is to be complied with and may specify the way in which it is to be complied with.

(3) The local government must comply with the notice.

(4) However, the local government may appeal to the Minister against the notice and, if the local government appeals, the local government only has to comply with the notice if, and to the extent that, the Minister directs.

477A Power to deal with particular land

(1) The chief executive may apply under the *Land Act 1994* for the issue of a deed of grant for a part of prescribed land if the chief executive considers the issue of the deed of grant is necessary—

(a) to facilitate development for commercial purposes; or

(b) to provide infrastructure of a type prescribed by regulation under the Planning Act, section 35(1).

(2) In this section—

prescribed land means—

Not authorised—indicative only

Not authorised—indicative only

(a) busway land; or

(b) light rail land; or

(c) rail land.

rail land means non-rail corridor land or rail corridor land that is held under a perpetual lease under the *Land Act 1994*.

477AA Chief executive taken to be owner of particular transport land for particular circumstances under Planning Act

(1) This section applies if—

(a) the planning Minister or a local government proposes to make, amend, extend the duration of or repeal a designation of premises under the Planning Act, chapter 2, part 5 and the premises are, or include, transport land; or

(b) an application made under the Planning Act—

(i) relates to transport land; and

(ii) must, under that Act, be accompanied by evidence of the consent, of the owner of the premises to which the application relates, to the making of the application; or

(c) an application made under the Planning Act relates to transport land, or premises that adjoin transport land, and the applicant for the application must, under that Act, give notice of the application to—

(i) the owner of the premises to which the application relates; or

(ii) the owner of premises adjoining the premises to which the application relates.

(2) For the purposes of the Planning Act, the chief executive is taken to be the owner of the transport land.

(3) In this section—

transport land means State land held for a transport purpose by the department in which the *Transport Planning and Coordination Act 1994* is administered.

Note—

See section 247 for transport land that is rail corridor land or non-rail corridor land.

477B Recording of information for land in transport noise corridor

(1) The chief executive may give the registrar of titles a written notice about land within a transport noise corridor.

(2) The notice must include particulars of the land.

(3) If the chief executive acts under subsection (1), the registrar of titles must—

(a) keep a record to show the land to which the notice relates is land within a transport noise corridor; and

(b) keep the record in a way that a search of the register kept by the registrar under any Act relating to title to land will show the land is within a transport noise corridor.

(4) Subsection (5) applies if land for which a notice is given under subsection (1) is no longer within a transport noise corridor.

(5) As soon as practicable after becoming aware the land is no longer within the transport noise corridor, the chief executive must give the registrar of titles written notice of the fact.

(6) On receiving the notice, the registrar of titles must remove the record mentioned in subsection (3) from the registrar's records.

(7) No fee is payable to the registrar for keeping or removing a record under this section.

(8) In this section—

transport noise corridor means a transport noise corridor designated under the *Building Act 1975*, section 246Z.

Not authorised—indicative only

Not authorised—indicative only

477C Concurrent subleases for declared projects

(1) If a relevant entity holds a lease under the *Land Act 1994* of port land or land relating to a declared project that has been subleased to a person, the entity may grant a concurrent sublease of all or part of the land to another person for all or part of the term of the lease.

Note—

See section 262 for the application of particular provisions of the *Land Act 1994* to a concurrent sublease granted under this section of all or part of land relating to a declared project mentioned in the *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009*, section 5(1)(c) or (d).

(2) If MEDQ holds a trade lease of land that has been subleased to a person, MEDQ may grant a concurrent sublease of all or part of the land to another person for all or part of the term of the lease.

Note—

MEDQ is the legal successor of the former Urban Land Development Authority—see the *Economic Development Act 2012*, section 180.

(3) To remove any doubt, it is declared that the Minister's approval under the *Land Act 1994* is not required for a grant of a concurrent sublease under this section.

(4) The chief executive of the department that administers the *Land Act 1994* may record a dealing effected under this section in the leasehold land register.

(5) In this section—

declared entity has the meaning given by the *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009.*

declared project has the meaning given by the *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009.*

lease see section 267.

port entity see section 267.

port land see section 283ZZL.

relevant entity means the following—

(a) the State;

(b) a declared entity, other than MEDQ;

(c) a port entity;

(d) a rail government entity;

(e) a railway manager;

(f) a related body corporate of a railway manager.

sublease see section 267.

477D Rent under Land Act 1994 leases for declared projects

(1) This section applies to a lease, licence or permit (a ***relevant lease, licence or permit***)—

(a) held under the *Land Act 1994* by the State or a State body; and

(b) that relates to—

(i) a declared project; or

(ii) land used or required in connection with—

(A) the operation of the Port of Brisbane; or

(B) the operation of the Abbot Point Coal Terminal; or

(C) the operation of a railway that is leased from the State or a State body; or

(D) activities related to any of the matters described in sub-subparagraphs (A) to (C).

(2) The Minister, or the Treasurer in relation to a declared project, may set the rent for a relevant lease, licence, or permit, or a class of relevant leases, licences or permits.

(3) Without limiting this section, rent set under this section may be set at zero dollars in total or for a rental period.

(4) The *Land Act 1994*, sections 182, 183, 183A, 183AA, 184 and chapter 5, part 1, division 2 do not apply to a relevant lease,

Not authorised—indicative only

Not authorised—indicative only

licence or permit, or a class of relevant leases, licences or permits, for which rent is set under this section.

(5) In this section—

declared project see section 477C.

lease see section 267.

Minister means the Minister administering the *Land Act 1994*.

State body means any of the following within the meaning of the *Government Owned Corporations Act 1993*—

(a) a GOC;

(b) a government entity;

(c) a subsidiary of a GOC or government entity.

477E Licences under Land Act for declared projects

(1) If a relevant entity holds a lease of land under the *Land Act 1994* in relation to a declared project, the entity may grant a licence to enter and use the land.

(2) To remove any doubt, it is declared that the Minister's approval under the *Land Act 1994* is not required for the grant of a licence under this section.

(3) In this section—

declared entity see section 477C.

lease see section 267.

declared project see section 477C.

relevant entity means the following—

(a) the State;

(b) a declared entity;

(c) a rail government entity;

(d) a railway manager;

(e) a related body corporate of a railway manager.

477F Watercourse crossings

(1) Subject to this or another Act—

(a) the chief executive, or a person authorised in writing by the chief executive, may—

(i) survey and resurvey a watercourse crossing; and

(ii) construct, augment, improve, maintain, operate and replace a watercourse crossing; and

(b) the chief executive may name and number a watercourse crossing.

(2) If the chief executive gives a copy of the prescribed details for an authorisation under subsection (1)(a)(ii) for a watercourse crossing to the registrar of titles, the registrar of titles must note the prescribed details against the relevant land in the appropriate register.

(3) In this section—

prescribed details, for an authorisation under subsection (1)(a)(ii) for a watercourse crossing, means the following—

(a) the name and other identifying details of the watercourse crossing;

(b) the name of the person to whom the authorisation is given;

(c) the term of the authorisation.

relevant land means the land adjoining the watercourse crossing.

watercourse means land that is the property of the State under the *Land Act 1994*, section 9 or 13A(1) or (2).

Note—

Land Act 1994, sections 9 (Land adjacent to tidal boundary or right line tidal boundary owned by State) and 13A (Land adjacent to non-tidal boundary (watercourse) or non-tidal boundary (lake) owned by State)

Not authorised—indicative only

Not authorised—indicative only

***watercourse crossing*—**

(a) means transport infrastructure that is, or is proposed to be, situated over, under, on or in a watercourse; but

(b) does not include river crossings under the *City of Brisbane Act 2010*, section 77.

477G Chief executive may approve a compliance management plan

(1) This section applies if, under a transport Act, the chief executive grants or enters into, or proposes to grant or enter into, an arrangement to establish, construct, maintain, manage or operate transport infrastructure with a relevant entity.

(2) The chief executive may ask or give consent to the relevant entity to submit a compliance management plan (a ***CMP***) addressing 1 or more compliance matters for the arrangement.

(3) If subsection (2) applies, the relevant entity may submit to the chief executive a CMP for the compliance matter.

(4) A CMP may apply, adopt or incorporate any document.

(5) The chief executive may approve a CMP for a compliance matter only if the chief executive—

(a) has consulted the relevant agency; and

(b) is satisfied the compliance matter is adequately addressed in the CMP.

(6) The chief executive may approve a CMP subject to any conditions (***CMP conditions***) the chief executive considers necessary or desirable.

(7) If the chief executive approves a CMP subject to CMP conditions, the conditions form part of the approved CMP.

(8) If the chief executive approves a CMP, the chief executive must give written notice to the relevant entity stating—

(a) that the CMP is approved; and

(b) any conditions the chief executive imposed under subsection (6); and

(c) the date the approved CMP takes effect and the date it expires; and

(d) the compliance matters addressed in the CMP (the ***approved compliance matters***).

(9) The chief executive must publish the notice and any other information about the approved CMP the chief executive considers appropriate on the department's website.

~~*Note—*~~

~~The department's website is located at www.tmr.qld.gov.au.~~

(10) If the relevant entity complies with the approved CMP, the relevant entity is taken to have met the requirements for the approved compliance matters under the relevant laws.

(11) In this section—

address, a compliance matter, means demonstrate how the purpose of the relevant law will be satisfied in relation to the compliance matter.

approval, under a relevant law for a compliance matter, includes an authorisation or permit.

arrangement includes an agreement, authority, approval, contract, lease, licence and permit.

compliance matter, for an arrangement, means a matter—

(a) regulated by an Act; and

(b) relating to the establishment, construction, maintenance, management or operation of the transport infrastructure under the arrangement.

Examples—

- the closure of a road to facilitate construction activities for which an order may be obtained under the *Transport Operations (Road Use Management) Act 1995* or a local law

Not authorised—indicative only

Not authorised—indicative only

- construction activities emitting dust, light, noise or odour to which standards apply under the *Environment Protection Act 1994* or a local law.

government entity includes any of the following—

(a) the State, the Commonwealth or another State; or

(b) an instrumentality, agent, authority, company, GOC or entity of the State, the Commonwealth or another State; or

(c) a local government.

relevant entity means—

(a) a government entity; or

(b) a person.

relevant law, for a compliance matter, means a law—

(a) under which approval is required for the compliance matter; or

(b) under which a standard applies for the compliance matter; or

(c) that provides for a relevant agency for the compliance matter to enforce compliance with the relevant law; or

(d) that otherwise regulates the compliance matter.

transport Act means—

(a) this Act; or

(b) another Act, or a provision of another Act, administered by the Minister.

477H Chief executive may make a compliance management plan

(1) This section applies if the chief executive proposes to establish, construct, maintain, manage or operate transport infrastructure under a transport Act (the ***works***).

(2) The chief executive may make a compliance management plan (***CMP***) addressing 1 or more compliance matters for the works.

(3) A CMP may apply, adopt or incorporate any document.

(4) The chief executive may make a CMP only if the chief executive—

(a) has consulted the relevant agency; and

(b) is satisfied the compliance matter is adequately addressed in the CMP.

(5) The chief executive must publish the CMP and any other information about the CMP the chief executive considers appropriate on the department's website.

~~*Note—*~~

~~The department's website is located at www.tmr.qld.gov.au.~~

(6) If the chief executive makes a CMP subject to CMP conditions, the conditions form part of the approved CMP.

(7) If the chief executive complies with the CMP made under this section, the chief executive is taken to have met the requirements for the compliance matters under the relevant laws.

(8) In this section—

address, a compliance matter, means demonstrate how the purpose of the relevant law will be satisfied in relation to the compliance matter.

approval, under a relevant law for a compliance matter includes an authorisation or permit.

compliance matter, for the works, means a matter—

(a) regulated by an Act; and

(b) relating to the works.

Examples—

- the closure of a road to facilitate construction activities for which an order may be obtained under the *Transport*

Not authorised—indicative only

Not authorised—indicative only

Operations (Road Use Management) Act 1995 or a local law

- construction activities emitting dust, light, noise or odour to which standards apply under the *Environment Protection Act 1994* or a local law.

relevant agency, for a compliance matter, means an entity administering a relevant law for the compliance matter.

relevant law, for a compliance matter, means a law—

(a) under which approval is required for the compliance matter; or

(b) under which a standard applies for the compliance matter; or

(c) that provides for a relevant agency for the compliance matter to enforce compliance with the relevant law; or

(d) that otherwise regulates the compliance matter.

transport Act means—

(a) this Act; or

(b) another Act, or a provision of another Act, administered by the Minister.

478 Conduct of company directors, employees or agents

(1) In this section—

engaging in conduct includes failing to engage in conduct.

representative means—

(a) in relation to a corporation—an executive officer, employee or agent of the corporation; or

(b) in relation to an individual—an employee or agent of the individual.

state of mind of a person includes—

(a) the person's knowledge, intention, opinion, belief or purpose; and

(b) the person's reasons for the intention, opinion, belief or purpose.

(2) If, in a proceeding for an offence against this Act, it is necessary to establish the state of mind of a corporation about particular conduct, it is sufficient to show—

(a) the conduct was engaged in by a representative of the corporation within the scope of the representative's actual or apparent authority; and

(b) the representative had the state of mind.

(3) Conduct engaged in on behalf of a corporation by a representative of the corporation within the scope of the representative's actual or apparent authority is taken, in a proceeding for an offence against this Act, to have been engaged in also by the corporation unless the corporation establishes it took reasonable precautions and exercised proper diligence to avoid the conduct.

(4) If, in a proceeding for an offence against this Act, it is necessary to establish the state of mind of an individual about particular conduct, it is sufficient to show—

(a) the conduct was engaged in by a representative of the individual within the scope of the representative's actual or apparent authority; and

(b) the representative had the state of mind.

(5) Conduct engaged in on behalf of an individual by a representative of the individual within the scope of the representative's actual or apparent authority is taken, in a proceeding for an offence against this Act, to have been engaged in also by the individual unless the individual establishes the individual took reasonable precautions and exercised proper diligence to avoid the conduct.

479 Approval of forms

The chief executive may approve forms for use under this Act.

Not authorised—indicative only

Not authorised—indicative only

480 Disposal of fees, penalties etc.

(1) Fees or other amounts received or recovered under this Act in relation to the operations of a GOC, or a local government under chapter 15, are to be paid to the GOC or local government.

(2) A penalty received or recovered in relation to the operations of a GOC for an infringement notice offence under the *State Penalties Enforcement Act 1999* concerning a vehicle parking or stopping offence under this Act is to be paid to the GOC.

(3) Penalties received or recovered in relation to a local government's tolling enforcement by an entity other than the local government are to be paid to the local government.

(4) Penalties received or recovered by a local government in relation to the local government's tolling enforcement may be retained by the local government.

(5) To remove doubt, it is declared that a penalty received or recovered in relation to the operations of a local government for an offence under a local law authorised by chapter 15 is to be paid to the local government.

(6) The following amounts are controlled receipts for the purpose of the *Financial Accountability Act 2009*—

(a) a fee paid to the chief executive under a regulation mentioned in section 459(3) or 466(4)(a);

(b) a levy paid to the chief executive under a regulation mentioned in schedule 1, part 1, item 21.

(7) A declared amount received or recovered by the chief executive is to be retained by the chief executive and not paid into the consolidated fund.

(8) Fees or other amounts under section 466 received or recovered by a manager of a public marine facility are to be retained by the manager and not paid into the consolidated fund.

(9) All other fees, penalties and other amounts received or recovered under this Act are to be paid to the consolidated fund.

(10) In this section—

declared amount means any of the following—

(a) a fee or charge under section 79(2);

(b) a fee under section 459(3);

(c) a levy under schedule 1, part 1, item 21.

local government tollway see section 105GA(5).

relevant tolling offence means an offence against section 105ZH(7), 105ZJ(4) or 105ZK(7).

tolling enforcement, in relation to a local government, means enforcement of a relevant tolling offence committed in relation to a local government tollway in the local government's area and started by—

(a) an infringement notice served under the *State Penalties Enforcement Act 1999*; or

(b) complaint and summons served under the *Justices Act 1886*.

481 No need to prove appointments

In a proceeding for an offence against this Act, there is no need to prove the appointment of a person who is any of the following—

(a) an authorised person;

(b) an authorised person, or officer, appointed under a regulation as an authorised person, or officer, relating to a matter as stated in the regulation.

Not authorised—indicative only

Not authorised—indicative only

482 Prosecutions for offences committed while travelling on a railway

(1) This section applies to an offence against this Act committed by a person while the person was travelling on a railway.

(2) A complaint for the offence may be heard at a place appointed for holding Magistrates Courts within any of the districts through which the person travelled on the railway.

(3) This section has effect despite, but does not limit, the *Justices Act 1886*, section 139.

483 Proceedings for offences

(1) An offence against this Act is a summary offence.

(2) A proceeding for an offence must start—

(a) within 1 year after the commission of the offence; or

(b) within 6 months after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

(3) A statement in a complaint for an offence against this Act that the matter of the complaint came to the knowledge of the complainant on a stated day is evidence of when the matter came to the complainant's knowledge.

484 Attempts to commit offences

(1) A person must not attempt to commit an offence against this Act.

Maximum penalty—half the maximum penalty for committing the offence.

(2) The Criminal Code, section 4 (Attempts to commit offences) applies to subsection (1).

485 Internal review of decisions

(1) A person whose interests are affected by a decision described in schedule 3 (the ***original decision***) may ask the chief executive to review the decision.

(2) The person is entitled to receive a statement of reasons for the original decision whether or not the provision under which the decision is made requires that the person be given a statement of reasons for the decision.

(3) The *Transport Planning and Coordination Act 1994*, part 5, division 2—

(a) applies to the review; and

(b) provides—

(i) for the procedure for applying for the review and the way it is to be carried out; and

(ii) that the person may apply to QCAT to have the original decision stayed.

485A External review of decisions

(1) This section applies in relation to an original decision if QCAT is stated in schedule 3 for the decision.

(2) If the reviewed decision is not the decision sought by the applicant for the review, the chief executive must give the applicant a QCAT information notice for the reviewed decision.

(3) The applicant may apply, as provided under the QCAT Act, to QCAT for a review of the reviewed decision.

Note—

The QCAT Act, section 22(3) provides that QCAT may stay the operation of the reviewed decision, either on application by a person or on its own initiative.

(4) In this section—

original decision means a decision described in schedule 3.

Not authorised—indicative only

Not authorised—indicative only

reviewed decision means the chief executive's decision on a review under section 485.

485B Appeals against decisions

(1) This section applies in relation to an original decision if a court (the ***appeal court***) is stated in schedule 3 for the decision.

(2) If the reviewed decision is not the decision sought by the applicant for the review, the applicant may appeal against the reviewed decision to the appeal court.

(3) The *Transport Planning and Coordination Act 1994*, part 5, division 3—

(a) applies to the appeal; and

(b) provides—

(i) for the procedure for the appeal and the way it is to be disposed of; and

(ii) that the person may apply to the appeal court to have the original decision stayed.

(4) Subsection (5) applies if—

(a) a person appeals to the Planning and Environment Court against a decision under section 62(1) on a planning application that is taken, under section 62A(2), to also be an application for a decision under section 62(1); and

(b) a person appeals to the Planning and Environment Court against a decision under the Planning Act on the planning application.

(5) The court may order—

(a) the appeals to be heard together or 1 immediately after the other; or

(b) 1 appeal to be stayed until the other is decided.

(6) Subsection (5) applies even if all or any of the parties to the appeals are not the same.

(7) In this section—

original decision means a decision described in schedule 3.

reviewed decision means the chief executive's decision on a review under section 485.

486 Application of Judicial Review Act 1991 to transport government entity

(1) The *Judicial Review Act 1991* does not apply to a decision of a transport government entity made in carrying out its excluded activities.

(2) A regulation may declare the activities of a transport government entity that are taken to be, or are taken not to be, activities conducted on a commercial basis.

(3) In this section—

commercial activities means activities conducted on a commercial basis.

excluded activities means—

(a) commercial activities; or

(b) for the Authority—community service obligations under the *Queensland Rail Transit Authority Act 2013*, section 57 (the ***Authority's community service obligations***); or

(c) for a subsidiary of the Authority—any of the Authority's community service obligations performed by the subsidiary; or

(d) for a GOC—community service obligations under the *Government Owned Corporations Act 1993*, section 112 that are prescribed under a regulation.

transport government entity means a rail government entity, a GOC port authority or another GOC on which functions are conferred under this Act.

Not authorised—indicative only

Not authorised—indicative only

487 Altering watercourse to adversely affect transport route

(1) A person must not, without lawful excuse, alter a watercourse in a way that adversely affects a transport route.

Maximum penalty—40 penalty units.

(2) If the chief executive considers that water from a watercourse has collected or is likely to collect, and obstruct or be likely to obstruct, traffic on a transport route, the chief executive may—

(a) under section 35, 164 or 298, enter the land on which the watercourse is situated; and

(b) take the action that the chief executive considers necessary or desirable to reduce or prevent the collection of water.

(3) Before exercising the powers under subsection (2), the chief executive may, by written notice, require the owner of the land on which the watercourse is situated to take the action that the chief executive considers necessary or desirable to reduce or prevent the collection of water.

(4) The owner must comply with the notice, unless the owner has a reasonable excuse.

Maximum penalty—200 penalty units.

(5) If the owner fails to comply with the notice, the chief executive may exercise the powers mentioned in subsection (2).

(6) The owner is liable to pay the chief executive the costs incurred because of the exercise of powers.

(7) This section applies—

(a) even if the water collected as a result of action that was authorised under an Act; or

(b) whether the water collects permanently, temporarily or intermittently.

(8) In this section—

alter includes damage and interfere with.

chief executive, in relation to a railway, includes an accredited rail infrastructure manager for railway operations relating to the railway if the manager's accreditation states that the person may act under this section.

transport route means a busway, railway or road.

488 Altering materials etc.

(1) A person must not, without lawful excuse, alter any naturally occurring materials, stockpile of material or works on a busway or railway.

Maximum penalty—200 penalty units.

(2) A person must not deposit rubbish or abandon goods or materials on a busway or railway other than at places approved by, and under conditions fixed by, the relevant person.

Maximum penalty—200 penalty units.

(3) In this section—

alter includes damage, interfere with and remove.

relevant person means—

(a) for a busway—the chief executive; or

(b) for a railway—

(i) the chief executive; or

(ii) an accredited rail infrastructure manager for railway operations relating to the railway.

works means—

(a) for a busway—busway transport infrastructure works; or

(b) for a railway—railway works.

Not authorised—indicative only

Not authorised—indicative only

489 Recovery of cost of damage

(1) This section applies if a person intentionally, recklessly or negligently damages works on a busway or railway.

(2) The person is liable to pay the relevant person the cost of repairing the damage.

(3) However, if the damage is caused by the driver of a vehicle whose identity is unknown, or who can not be located, the registered operator of the vehicle is liable for the costs of repairing the damage, unless the vehicle was being used without the registered operator's knowledge or permission.

(4) Subsections (2) and (3) apply, whether or not the damage constitutes, or is done in connection with, an offence against this Act.

(5) However, if—

(a) a court finds a person guilty of an offence against this Act; and

(b) in committing the offence, the person damaged works;

the court may, as well as imposing a penalty, order the person to pay an amount towards the cost of repairing the damage.

(6) In this section—

registered operator means the person in whose name the vehicle is registered.

relevant person means—

(a) for damage to works on a busway—the chief executive; or

(b) for damage to works on a railway—

(i) if the works are or were carried out by or on behalf of an accredited rail infrastructure manager for railway operations relating to the railway—the rail infrastructure manager; or

(ii) otherwise—the chief executive.

repairing includes replacing and reconstructing.

works means—

(a) for a busway—busway transport infrastructure works; or

(b) for a railway—railway works.

490 Regulations

(1) The Governor in Council may make regulations for the purposes of this Act.

(2) A regulation may create offences and prescribe penalties for the offences of not more than 40 penalty units.

(3) In particular, regulations may be made for the matters specified in schedule 1.

(4) A regulation may confer functions or powers on a local government or a State government body.

Chapter 17 Savings and transitional provisions, amendments and repeals

Part 1 Savings and transitional provisions about ports

492 Continuation of pt 5, div 2 of Port of Brisbane Authority Act 1976

(1) The *Port of Brisbane Authority Act 1976*, part 5, division 2 as well as any definitions in the Act relevant to the division, continue to apply to leases for which compensation could be claimed under the division.

Not authorised—indicative only

Not authorised—indicative only

(2) This section has effect despite the repeal of the *Port of Brisbane Authority Act 1976*.

(3) This section expires on a date to be fixed by regulation.

493 Expiries under this part

If a provision of this part allows a regulation to prescribe an earlier day than the day stated in the provision for the expiry of a section, a regulation may be made prescribing an earlier day than the stated day for part of the section.

Part 2 General savings and transitional provisions

Division 1 Transition of references about roads

494 Application of division

This division applies to references in Acts in existence at its commencement.

495 Transport Infrastructure (Roads) Act 1991 references

A reference to the *Transport Infrastructure (Roads) Act 1991* is, in relation to transport infrastructure or another matter dealt with under this Act, taken to be a reference to this Act.

496 Main Roads Act 1920 references

A reference to the *Main Roads Act 1920* may, in relation to transport infrastructure or another matter dealt with under this Act, be taken to be a reference to this Act.

497 Commissioner of Main Roads references

A reference to the Commissioner of Main Roads (either as a natural person or corporation sole) is taken to be a reference to the chief executive.

498 Declared road references

(1) A reference to a declared road under the *Main Roads Act 1920* is taken to be a reference to a State-controlled road under this Act.

(2) A reference to a declared road under the *Transport Infrastructure (Roads) Act 1991* is taken to be a reference to a State-controlled road under this Act.

499 Motorway references

A reference to a motorway under the *Transport Infrastructure (Roads) Act 1991* is taken to be a reference to a motorway under this Act.

500 Main Roads Fund references

A reference to the Main Roads Fund is taken to be a reference to the funds of the department.

Division 2 Transition of references about railways

501 Application of division

This division applies to references in Acts (other than this Act) in existence at its commencement.

Not authorised—indicative only

Not authorised—indicative only

502 Railways Act 1914 references

A reference to the *Railways Act 1914* is taken to be a reference to this Act.

503 Transport Infrastructure (Railways) Act 1991 references

A reference to the *Transport Infrastructure (Railways) Act 1991* is taken to be a reference to this Act.

504 Commissioner for railways references

A reference to the commissioner for railways is taken to be a reference to—

(a) for the commissioner as a corporation sole—Queensland Rail; or

(b) for the commissioner as an individual—the chief executive of Queensland Rail.

505 Railways Department references

A reference to the Railways Department is taken to be a reference to Queensland Rail.

506 Queensland Railways references

A reference to Queensland Railways is taken to be a reference to Queensland Rail.

Division 3 Transition of references about ports

507 Application of division

This division applies to references in Acts in existence at its commencement.

508 Harbours Act 1955 and Port of Brisbane Authority Act 1976 references

A reference to the *Harbours Act 1955* or *Port of Brisbane Authority Act 1976* is taken to be a reference to this Act.

509 Harbour board references

(1) A reference to a harbour board is taken to be a reference to a port authority under this Act.

(2) A reference to the Port of Brisbane Authority is taken to be a reference to the Port of Brisbane Corporation.

510 Harbour references

A reference to a harbour is taken to be a reference to a port under this Act.

511 Harbours Corporation and Harbours Trust references

(1) A reference to the Harbours Corporation or Harbours Trust is taken to be a reference to—

(a) for a port to which subsection (2) applies—the Ports Corporation of Queensland; or

(b) in any other case—the State.

(2) This subsection applies to the following ports—

- Abbot Point
- Burketown
- Cape Flattery
- Cooktown
- Hay Point
- Innisfail
- Karumba

Not authorised—indicative only

Not authorised—indicative only

- Lucinda
- Margaret Bay
- Maryborough
- Port Kennedy
- Quintell Beach
- St Lawrence
- Weipa.

512 Gold Coast Waterways Authority references

A reference to the Gold Coast Waterways Authority is taken to be a reference to the State.

Chapter 18 Further transitional provisions and declaration

Part 1 Transitional provisions for the Integrated Planning Act 1997

513 Continuing application of previous provisions to particular applications

(1) This section applies if—

(a) a local government would have had to apply under section 42 for the approval of a subdivision, rezoning or development of land (the ***work***) under the section as in force immediately before its amendment by the *Integrated Planning and Other Legislation Amendment Act 1999*; and

(b) a development approval for the same work is not required under the repealed *Integrated Planning Act 1997*, the repealed *Sustainable Planning Act 2009* or the *Planning Act 2016*.

(2) Sections 42 and 44 and schedule 3, as in force immediately before their amendment by the *Integrated Planning and Other Legislation Amendment Act 1999*, apply to the work.

514 Applications for approval of subdivisions, rezoning or development

If an approval was applied for under section 42(1)(a)(i), as in force immediately before its amendment by the *Integrated Planning and Other Legislation Amendment Act 1999*, processing of the application and all matters incidental to the processing, including any review or appeal made in relation to a decision about the application, must proceed as if that Act had not been enacted.

Part 2 Transitional provisions for the Transport Legislation Amendment Act 2000

515 Definitions for pt 2

In this part—

amendment Act means the *Transport Legislation Amendment Act 2000*.

repealed section 51 means section 51 repealed by section 17 of the amendment Act.

repealed section 52 means section 52 repealed by section 17 of the amendment Act.

Not authorised—indicative only

Not authorised—indicative only

516 Transitional—access-limited roads

(1) A State-controlled road or part of a State-controlled road that immediately before the commencement of this section was an access-limited road is taken to be a limited access road declared under section 54.

(2) For subsection (1), an access-limited road includes a State-controlled road, or part of a State-controlled road, to which access was limited immediately before the commencement of repealed section 51 to the extent not inconsistent with a declaration made under repealed section 51.

(3) A policy made under repealed section 51 in force immediately before the commencement of this section is taken, with necessary changes, to be a policy gazetted under section 54(3).

517 Transitional—previous decisions about access

(1) A decision under repealed section 52 in force immediately before the commencement of this section (a ***previous decision***) is taken, from the commencement, with necessary changes, to be a decision under section 62(1).

(2) A decision prohibiting or limiting access to a State-controlled road in force immediately before the commencement of repealed section 52, to the extent not inconsistent with a decision under the repealed section 52 in force immediately before the commencement of this section, (a ***previous decision***) is taken from the commencement, with necessary changes, to be a decision under section 62(1).

(3) Without limiting subsection (1) or (2)—

(a) a location at which access was permitted under the previous decision is taken to be a permitted road access location; and

(b) means of access, under the previous decision, that are physical works are taken to be road access works.

518 Transitional—ancillary works and encroachments

(1) A reference in a gazette notice to an approval or contract under section 50, published, given or made before the commencement of this section, is taken to be a reference to road access works.

(2) Anything that, immediately before the commencement of this section was a means of access constructed, maintained or operated under an approval, requirements or a contract under section 50, is taken from the commencement, for sections 72 to 74, to be road access works relating to a permitted road access location under a decision under section 62(1).

519 Transitional—wharf or other harbour work

(1) This section applies if management and control of a wharf or other harbour work was vested in a person under the repealed *Harbours Act 1955*, section 140 immediately before the commencement of this section.

(2) From the commencement, the person is taken to be appointed under section 459 as the manager of the public marine facility constituted by the harbour work (***the facility***).

(3) A provision of a by-law under the *Local Government Act 1936*, or local law, about the facility that was in force immediately before the commencement continues in force from the commencement until the manager makes a local law under section 462 that replaces, or is inconsistent with, the provision.

(4) A resolution of the board of a port authority about the facility that was in force immediately before the commencement continues in force from the commencement until the port authority takes action under section 463 that replaces, or is inconsistent with, the resolution.

(5) Despite subsections (3) and (4), an amount that immediately before the commencement was fixed under section 140(4A) of the repealed *Harbours Act 1955* in relation to the facility

Not authorised—indicative only

Not authorised—indicative only

continues to be fixed from the commencement until a fee is imposed, under section 466 for the facility for any matter.

(6) A right, permit or licence granted under any of the following by-laws, that was in force immediately before the commencement, is taken from the commencement to be an approval granted by the chief executive as manager of the facility—

- *Bowen Harbour Board By-law 1977*, by-laws 1, 2, 9 and 10
- *Mooloolaba Boat Harbour By-law 1976*
- *Rosslyn Bay Boat Harbour By-law 1980*
- *Snapper Creek and Urangan Boat Harbours By-law 1976*.

Part 3 Transitional provisions for the Transport Infrastructure and Another Act Amendment Act 2003

520 Application of part

This part applies in addition to the *Acts Interpretation Act 1954*, part 6.

521 Definitions for pt 3

In this part—

accreditation means—

(a) for a railway—accreditation granted under section 126 as a railway manager or railway operator; or

(b) for light rail—accreditation given under section 388 as a light rail manager or light rail operator.

accredited person means—

(a) for chapter 7—a railway manager or operator for whom an accreditation is in force under the chapter; or

(b) for chapter 10—a light rail manager or operator for a light rail for whom an accreditation is in force under the chapter.

commencement means commencement of this section.

continuing accredited person means a person who was an accredited person for chapter 7 immediately before the commencement.

previous, in relation to a numbered provision, means the provision of this Act as that provision existed immediately before the commencement.

522 Inclusion of s 120

The inclusion of section 120 does not affect or limit the interpretation of this Act in relation to a matter arising before the commencement.

523 Approved safety management system for person who is accredited at commencement

(1) This section applies to the safety management system that the chief executive considered appropriate at the time of considering the application for accreditation of a continuing accredited person, as that system was in force immediately before the commencement.

(2) The safety management system is the approved safety management system for a railway managed, or for the operation of rolling stock on a railway, by the continuing accredited person.

(3) For section 135, the anniversary day for a continuing accredited person is the day the person was accredited under the Act as in force at any time before the commencement.

Not authorised—indicative only

Not authorised—indicative only

524 Certificate of accreditation given before commencement

(1) If a document about a continuing accredited person's accreditation was issued to the person under this Act before the commencement and it purported to be a certificate of accreditation, the document is the person's certificate of accreditation.

(2) If a document purporting to be a certificate of accreditation was not issued to a continuing accredited person before the commencement, the chief executive must issue a certificate of accreditation to the accredited person before the end of 6 months after the commencement.

(3) In this section—

certificate of accreditation has the meaning given by section 126(7) as in force immediately before the commencement of the *Transport (Rail Safety) Act 2010*, section 334.

525 Annual levy before commencement

(1) This section applies to a notice under previous section 127(3) given to an accredited person before the commencement.

(2) After the commencement, the notice is a notice under section 127(3) and is not invalid only because it does not comply with that subsection.

526 Accreditation conditions

(1) This section applies to an accreditation under previous section 128 as the accreditation exists immediately before the commencement.

(2) The accreditation continues to be subject to the conditions to which the accreditation was subject immediately before the commencement.

(3) Subsection (2) is subject to an express provision of this Act or a regulation condition.

Example of the application of subsection (2)—

If an accreditation before the commencement contained conditions about the accredited person's financial capacity or public risk insurance arrangements, those conditions may not apply to the extent they are inconsistent with section 137.

Note—

Chapter 7, part 3 was repealed by the *Transport (Rail Safety) Act 2010* and regulation conditions are no longer applicable.

(4) In this section—

approved safety management system has the meaning given by section 122 as in force immediately before the commencement of the *Transport (Rail Safety) Act 2010*, section 334.

527 How to deal with application for amending accreditation conditions made before commencement

(1) This section applies to an application made under previous section 132 for which the chief executive has not granted, or refused to grant, the amendment before the commencement.

(2) The application is to be dealt with by the chief executive as—

(a) to the extent the application relates to the accredited person's safety management system—an application under section 133; and

(b) to the extent the application relates to matters other than the accredited person's safety management system—an application under section 132.

528 Actions to amend accreditation conditions without application or to suspend or cancel accreditation

(1) This section applies to an accreditation if—

(a) the chief executive had given the accredited person a notice under previous section 139 or 140 before the commencement; and

Not authorised—indicative only

Not authorised—indicative only

(b) the proceeding started by the giving of the notice has not been completed before the commencement.

(2) The proceeding that the notice starts is to be continued and completed under chapter 7, part 3, division 7 as if the notice were a show cause notice under that division.

(3) If the notice under previous section 140(2) was given at the same time as a notice under previous section 145, the suspension under previous section 145 continues until the proceeding following the giving of the notice is completed under section 159 or 160.

529 Appeals

(1) This section applies to a person if, before the commencement, the person may—

(a) ask the chief executive to review a decision under section 485(1); or

(b) appeal against a reviewed decision under section 485(4).

(2) The person's rights as mentioned in subsection (1) continue after the commencement subject to any limitations applicable before the commencement.

(3) Subsection (2) applies whether or not the person has done either of the things mentioned in subsection (1) before the commencement.

(4) For an application for a review or an appeal by a person to whom this section applies, when either the chief executive or an appeal court is exercising powers under the *Transport Planning and Coordination Act 1994*, part 5, the chief executive or appeal court must exercise those powers as if the right to make the application or appeal arose after the commencement.

530 Declaration about s 521, definition *previous*

It is declared that, for the period starting on 1 December 2003 to immediately before the commencement of this section, the definition *previous* in section 521 is taken to have included 'as that provision existed' instead of 'with that number as in force'.

Part 4 Transitional provision for the Transport Infrastructure Amendment Act 2004

531 Statements about derailment

(1) This section applies to a statement about the derailment made by a relevant employee to a rail safety officer before the commencement of this section.

(2) The statement (the ***primary evidence***) and any information, or document or other thing obtained as a direct or indirect result of the statement (the ***derived evidence***) is not admissible in evidence against the employee in any civil or criminal proceeding.

(3) Subsection (2) does not prevent the primary evidence or derived evidence being admitted in evidence in criminal proceedings about the falsity or misleading nature of the primary evidence.

(4) Also, subsection (2) has no effect on the use or admissibility of a report in a coronial procedure.

(5) It is declared that the statement, information, or document or other thing mentioned in subsection (2) is taken to be restricted information for the purposes of chapter 7, part 6.

(6) In this section—

civil or criminal proceeding has the meaning given by section 213B as in force immediately before the commencement of the *Transport (Rail Safety) Act 2010*, section 336.

Not authorised—indicative only

Not authorised—indicative only

coronial procedure has the meaning given by section 213B as in force immediately before the commencement of the *Transport (Rail Safety) Act 2010*, section 336.

derailment means the derailment of the tilt train operated by Queensland Rail derailled on or about 16 November 2004 at Berajondo.

individual has the meaning given by section 213B as in force immediately before the commencement of the *Transport (Rail Safety) Act 2010*, section 336.

rail safety officer means a person who is appointed as a rail safety officer under section 171.

relevant employee means an individual involved in the derailment who at the time of the derailment was an employee of a railway operator for the rolling stock involved in the derailment.

Part 5 Transitional provisions for the Transport Infrastructure and Other Legislation Amendment Act 2005

532 Definitions for pt 5

In this part—

commencement means the commencement of this section.

repealed regulation means—

(a) the *Transport Infrastructure (Ports) Regulation 1994*; or

(b) the *Transport Infrastructure (Airport Management) Regulation 1994*.

533 Approvals

(1) Subsection (2) applies to a written approval—

(a) given by a port authority under the *Transport Infrastructure (Ports) Regulation 1994* before commencement, other than a written approval given under section 43, 44 or 45 of the regulation; and

(b) in force immediately before commencement.

(2) The written approval is taken to be an approval granted by the port authority under chapter 8, part 4A after commencement.

(3) Subsection (4) applies to a written approval (***controlled activity approval***)—

(a) given by a port authority under the *Transport Infrastructure (Ports) Regulation 1994*, section 43, 44 or 45, before commencement; and

(b) in force immediately before commencement.

(4) The controlled activity approval—

(a) is taken to be an approval granted by the port authority under chapter 8, part 4A; and

(b) expires whenever the first of the following happens—

(i) the end of 6 months after commencement;

(ii) the port authority gives a new approval to the person in substitution for the controlled activity approval under this Act.

(5) For subsection 4(b)(ii), the port authority may give an approval without receiving an application for the approval under section 289C.

534 Proceedings

A proceeding by or against a port authority under a repealed regulation, that has not ended before the commencement, may be continued and finished as if the repealed regulation had not been repealed.

Not authorised—indicative only

Not authorised—indicative only

535 Land use plans

(1) This section applies if, before commencement—

(a) consultation had started or had been completed in relation to a proposed land use plan or amendment of a land use plan under section 285 as in force immediately before commencement; and

Note—

See section 285 (Land use plans) as in force immediately before commencement.

(b) the Minister had not approved the proposed land use plan or amendment of the land use plan under section 286 as in force immediately before commencement.

Note—

See section 286 (Approval of land use plans) as in force immediately before commencement.

(2) Chapter 8, part 4, division 1, as in force immediately before commencement, continues to apply to the proposed land use plan or amendment of a land use plan despite the enactment of the *Transport Infrastructure and Other Legislation Amendment Act 2005*.

536 Detained property

(1) This section applies to property, detained by a port authority under part 4, division 2 of a repealed regulation, which has not been completely dealt with by the port authority under that division before commencement.

(2) The port authority may continue to deal with the property as if the repealed regulation had not been repealed.

538 Things done under re-enacted provision

(1) This section applies subject to this part.

(2) A thing continues to have effect as if the thing had been done under this Act if the thing—

(a) expressly or impliedly was authorised to be done under a provision of a repealed regulation; and

(b) was in force immediately before the repeal; and

(c) can be done under a re-enacted provision.

Examples of things that continue to have effect—

- port notices issued by a port authority
- appointments of authorised officers
- directions given to a person by an authorised officer

(3) In this section—

re-enacted provision means a provision of a repealed regulation that has been re-enacted, including with changes, as a provision in chapter 8 by the *Transport Infrastructure and Other Legislation Amendment Act 2005*.

Part 6 Transitional provisions for the Transport Legislation Amendment Act 2005

Division 1 Transitional provision for port authorities

539 Port authorities

(1) This section applies to a port authority mentioned in schedule 6, definition *port authority*, paragraph (a), (b) or (c), as in force immediately before the commencement of this section.

(2) On the commencement—

(a) the port authority continues in existence as if it had been declared to be a port authority under a regulation under section 274A; and

Not authorised—indicative only

Not authorised—indicative only

(b) the port or ports that the port authority is prescribed to manage is the port or are the ports the port authority managed immediately before the commencement.

Division 2 Transitional provisions for busways

540 Busway authorisation

(1) If, immediately before the commencement, a person was an authorised busway service provider, the person is, on the commencement, taken to be an authorised busway user.

(2) A reference in an Act or a document to an authorised busway service provider may, if the context permits, be taken to be a reference to an authorised busway user.

541 Busway safety officers

(1) If, immediately before the commencement, a person was a busway safety officer under section 22 of the regulation the person is, on the commencement, taken to be a busway safety officer appointed under section 346B.

(2) If, immediately before the commencement, the person held office on conditions stated in an instrument of appointment or signed notice, on the commencement the stated conditions continue to apply to the appointment as if they were stated in an instrument of appointment or a signed notice under section 346C.

(3) If the person had been issued with an identity card under section 24 of the regulation, on the commencement the identity card is taken to have been issued under section 346D.

(4) In this section—

commencement means the commencement of this section.

regulation means the *Transport Infrastructure (Busway) Regulation 2002*, as in force immediately before the commencement.

542 Offences

Proceedings for an offence against the *Transport Infrastructure (Busway) Regulation 2002*, section 7, 9 or 29, may be continued, or started, as if the section had not been repealed.

Part 7 Transitional provisions for Transport and Other Legislation Amendment Act 2005

543 Transitional provision for toll roads

(1) This section applies if, immediately before the commencement, a State-controlled road or part of a State-controlled road, or a franchised road or part of a franchised road, was a toll road under the previous provisions.

(2) On the commencement—

(a) the road continues to be a toll road as if it had been declared to be a toll road by gazette notice under section 93; and

(b) tolls payable for the use of toll roads under the previous provisions continue to be payable for the use of toll roads as if they had been provided for by gazette notice under section 93; and

(c) the types of vehicles liable for tolls for use of the toll road under the previous provisions continue to be liable for tolls for use of the toll road as if they had been provided for by gazette notice under section 93; and

(d) the toll set as payable under the previous provisions for each type of vehicle at each toll plaza on the toll road continues to be payable as if it had been provided for by gazette notice under section 93; and

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Not authorised—indicative only

(e) the administration charge for a toll set under the previous provisions for chapter 6, part 7 of the Act continues as the administration charge for the toll as if it had been provided for by gazette notice under section 93.

(3) The Minister may, by gazette notice, provide for a matter mentioned in schedule 5 for a toll road mentioned in subsection (1) as if the toll road were being declared under section 93.

(4) Without limiting subsection (3), a gazette notice under that subsection may provide for, or amend, a matter mentioned in subsection (2).

(5) In this section—

commencement means the commencement of this section.

previous provisions means the *Transport Infrastructure (State-controlled Roads) Regulation 1994*, part 4.

544 Transitional provision for north-south bypass tunnel project

(1) On the commencement, the north-south bypass tunnel project is taken to be an approved tollway project as if the Minister had, by written notice given to Brisbane City Council, given approval under section 105C(2).

(2) Without limiting subsection (1)—

(a) the approval of the tollway project is taken, for section 105F, to have started on the day on which the memorandum of understanding was entered into; and

(b) a condition to which the north-south bypass tunnel project is subject, immediately before the commencement, including, for example, under the memorandum of understanding, is taken to be a condition to which the approval is subject under section 105C(4); and

(c) the approval of the north-south bypass tunnel project may be amended under section 105E.

(3) In this section—

commencement means the commencement of this section.

memorandum of understanding means the document titled 'Memorandum of Understanding—North-South Bypass Tunnel Project' entered into between the State of Queensland and Brisbane City Council and dated 28 February 2005.

north-south bypass tunnel project means the project described in the document titled 'North-South Bypass Tunnel Draft Environmental Impact Statement' prepared under the *State Development and Public Works Organisation Act 1971* by Sinclair Knight Merz Pty Ltd and Connell Wagner Pty Ltd and dated February 2005.

Editor's note—

A copy of the document may be obtained at the Brisbane City Council's public office or through the Council's website.

Part 9 Transitional provision for Transport Legislation Amendment Act 2008, part 3, division 2

546 Transitional provision for toll roads

(1) This section applies to a road that immediately before the commencement of this section continued, under section 543, to be a toll road as if it had been declared to be a toll road by gazette notice under section 93.

(2) Despite the amendment of section 93—

(a) the road continues to be a toll road as if, by gazette notice under section 93, the Minister had declared a toll may be payable for use of the road; and

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(b) section 543 continues to apply to the road, including section 543(3), on the basis that a reference to the toll road being declared under section 93 were a reference to the road being the subject of a declaration under section 93.

(3) In this section—

amendment of section 93 means the amendment of section 93 by the *Transport Legislation Amendment Act 2008*, part 3, division 2.

Part 10 Transitional provision and declaration for Transport and Other Legislation Amendment Act 2008, part 3, division 12

547 Declaration about particular subleases

(1) This section applies to—

(a) amendment to sublease 701720343 executed on 29 August 2008 by the State of Queensland and QR Limited and lodged with the registrar of titles under dealing number 711947329; and

(b) transfers of the following subleases from QR Limited to QR Network Pty Ltd executed on 29 August 2008—

- 701720343
- 709548151
- 709650878.

(2) For the *Land Act 1994*, section 302, the amendment and transfers are taken to have been registered on 1 September 2008.

548 Declaration about sch 4 easements

(1) This section applies to the transfers of schedule 4 easements from QR Limited to the State of Queensland executed on 29 August 2008.

(2) For the *Land Title Act 1994*, section 62, the transfers are taken to have been registered on 1 September 2008.

(3) In this section—

schedule 4 easement means an easement mentioned in schedule 4.

549 Exercise of power under s 241

(1) This section applies to an easement to which section 241 applies.

(2) An exercise of power under previous section 241 continues to have effect under this Act, including an exercise of power by QR Limited.

Note—

Previous section 241 mentioned Queensland Rail but on 1 July 2007 Queensland Rail became QR Limited.

(3) Without limiting subsection (2), in relation to the grant of a licence to a railway manager or the grant of a sublicence to a railway operator under previous section 241, the grant is taken to have been made under section 241 and may be dealt with under that section.

(4) In this section—

previous section 241 means section 241 as in force immediately before the commencement of this section.

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Part 12 Transitional provision for Sustainable Planning Act 2009

552 Application of s 247

Section 247(2) as in force immediately before the commencement of this section continues to apply in relation to—

(a) a matter mentioned in section 247(1)(a) and being done under the repealed *Integrated Planning Act 1997* before or after the commencement; and

(b) a requirement mentioned in section 247(1)(b) or (c) arising under the repealed *Integrated Planning Act 1997* before or after the commencement.

Part 13 Transitional provisions for Transport and Other Legislation Amendment Act 2009

553 Application of s 258 to prescribed development applications

(1) This section applies to a prescribed development application made—

(a) before, and not finally dealt with at, the commencement; or

(b) within 6 months after the commencement.

(2) The following provisions do not apply in relation to the development application—

(a) section 258(2)(b);

(b) section 258(3), to the extent it refers to the purpose mentioned in section 258(2)(b).

(3) In this section—

commencement means the commencement of this section.

prescribed development application means a development application made under the repealed *Integrated Planning Act 1997* or the *Sustainable Planning Act 2009* for which the chief executive is an assessment manager or a referral agency under that Act.

554 Application of s 287A to prescribed development applications

(1) Section 287A does not apply in relation to a prescribed development application made—

(a) before, and not finally dealt with at, the commencement; or

(b) within 6 months after the commencement.

(2) In this section—

commencement means the commencement of this section.

prescribed development application means a development application made under the repealed *Integrated Planning Act 1997* or the *Sustainable Planning Act 2009* for which the Minister or the chief executive is an assessment manager or a referral agency under that Act.

Part 14 Transitional provisions for Transport and Other Legislation Amendment Act (No. 2) 2010

556 Existing applications for approval for road access works

(1) This section applies if an application for approval for road access works is made under section 33 or 50 (the ***relevant***

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Not authorised—indicative only

section) before the commencement of this section but is not decided before the commencement.

(2) The chief executive must decide, or continue to decide, the application under the relevant section as if this Act had not been amended by the *Transport and Other Legislation Amendment Act (No. 2) 2010*.

557 Particular applications for approval for road access works

(1) This section applies to an application for the chief executive's approval for the construction, maintenance, operation or conduct of road access works on a State-controlled road that is made—

(a) after the commencement of this section; and

(b) purportedly under section 50.

(2) The application is taken to have been made, and must be dealt with, under section 33.

558 Effect of change in definition *rail transport infrastructure* on development applications

(1) This section applies to a prescribed development application made—

(a) before, and not finally dealt with at, the commencement; or

(b) within 6 months after the commencement.

(2) The Act, as in force immediately before the commencement, applies to the development application as if schedule 6, definition *rail transport infrastructure* had not been amended.

(3) In this section—

commencement means the commencement of this section.

prescribed development application means a development application for which the chief executive is an assessment manager or a referral agency.

Chapter 19 Transitional provisions for members of QR Group

559 Definitions for ch 19

In this chapter—

commencement means the commencement of this chapter.

member of QR Group means QR Limited or a related body corporate of QR Limited.

560 Application of Judicial Review Act 1991 to member of QR Group during interim period

(1) The *Judicial Review Act 1991* does not apply to a decision of a member of QR Group made during the interim period in carrying out any activity.

(2) In this section—

change of ownership means the beginning of the day notified by the Treasurer for this chapter.

interim period means the period from the commencement to the change of ownership.

561 Member of QR Group as common carrier

(1) Subsection (2) applies to a contract for the carriage of persons or things entered into by a member of QR Group before the commencement.

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(2) A member of QR Group is taken not to be a common carrier under the contract unless the contract states that the member of QR Group is a common carrier.

(3) This section applies despite section 248.

Chapter 20 Transitional provisions for Port of Brisbane

562 Definitions for ch 20

In this chapter—

commencement means the commencement of this section.

completion day, in relation to the Port of Brisbane, means the beginning of the day of the first declaration of a port lessee for the port under section 289Y.

interim period means the period from the commencement to the completion day.

port area see section 267AA.

transition period, for a port notice immediately before the completion day, means the period from the completion day until the port notice is amended or replaced so that it refers to the port lessor or its delegate.

563 Alteration of port area of Port of Brisbane during interim period

(1) A regulation may alter the port area of the Port of Brisbane during the interim period.

(2) This section does not limit the power to make a regulation under section 267AA(3).

564 References to port area of Port of Brisbane during interim period

During the interim period, a reference in chapter 8 to the port area of the Port of Brisbane includes the area of a trade lease.

565 References to port entity during interim period

During the interim period, a reference in chapter 8, other than sections 267AA and 267A, to a port entity in relation to the Port of Brisbane is taken to be a reference to the port authority for the Port of Brisbane.

566 References to relevant entity for charging during interim period

During the interim period, for chapter 8, part 3A and section 267, definition *charge*, a subsidiary of the Port of Brisbane Corporation is taken to be a relevant entity.

567 References to port authority for charging during interim period

(1) During the interim period, a reference in chapter 8, part 3A and in section 267, definition *charge* to a port authority is taken to include a reference to a subsidiary of the Port of Brisbane Corporation.

(2) If a reference to a port authority is taken to include a reference to a subsidiary of the Port of Brisbane Corporation under subsection (1), the following apply—

(a) a reference to the port of the Port of Brisbane Corporation is taken to include a reference to the port of the subsidiary of the Port of Brisbane Corporation;

(b) a reference to the port area of the Port of Brisbane Corporation is taken to include a reference to the port area of the subsidiary of the Port of Brisbane Corporation;

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Not authorised—indicative only

(c) a reference to the port facilities of the Port of Brisbane Corporation is taken to include a reference to the port facilities of the subsidiary of the Port of Brisbane Corporation.

568 Port notices of Port of Brisbane Corporation taken to be port notices of port lessor or delegate during transition period

During the transition period—

(a) a port notice displayed or published by the Port of Brisbane Corporation immediately before the completion day is taken to be a port notice displayed or published by the port lessor or its delegate; and

(b) a reference in a port notice to the Port of Brisbane Corporation is taken to be a reference to the port lessor or its delegate.

569 Application of ch 8, pt 4D during interim period

(1) This section applies during the interim period.

(2) For chapter 8, part 4D—

(a) a reference in the part to a port operator, other than the port lessor, includes a reference to a subsidiary of the Port of Brisbane Corporation that is the lessee of infrastructure—

(i) for supplying water services or sewerage services; and

(ii) that is owned by the Port of Brisbane Corporation; and

(b) a reference in the part to the port lessor includes a reference to the Port of Brisbane Corporation.

570 When member of POBC Group not liable to pay royalties or similar charges

(1) This section applies during the interim period.

(2) A member of POBC Group is not liable to pay royalties or similar charges for extractive material removed—

(a) to maintain or improve navigational channels in its port, or improve navigation in its port, if the material is disposed of under relevant statutory environmental controls; or

(b) to reclaim land that is, or is proposed to be, strategic port land or Brisbane core port land.

571 Authorised officers

(1) This section applies to an appointment as an authorised officer for the Port of Brisbane Corporation in force, immediately before the completion day, under chapter 8, part 3B, division 2.

(2) The appointment continues in force on the same conditions, for a period of 3 months starting on the completion day, as if it were an appointment as an authorised officer for the port lessor.

(3) Subsection (2) applies subject to any earlier ending of the appointment, or change of conditions of the appointment, under this Act.

572 Delegation

(1) The Port of Brisbane Corporation, during the interim period, may delegate its functions under chapter 8 to a subsidiary of the Port of Brisbane Corporation.

(2) In this section—

functions includes powers.

Not authorised—indicative only

Not authorised—indicative only

573 Abandoned property

(1) This section applies to any property that—

(a) immediately before the completion day, is abandoned under chapter 8, part 4B and in the possession of the Port of Brisbane Corporation; and

(b) is abandoned on land that, on the completion day, is in the port area of the Port of Brisbane.

(2) Anything done by the Port of Brisbane Corporation under chapter 8, part 4B in relation to the property is taken to have been done by the port operator.

574 Proceeds from the sale of abandoned property

(1) This section applies if—

(a) property is abandoned on land that, on the completion day, is in the port area; and

(b) immediately before the completion day, the Port of Brisbane Corporation is holding an amount that is, under section 289M, proceeds of sale of the property.

(2) From the completion day, section 289M continues to apply to the port operator in relation to the amount.

Chapter 21 Further transitional provisions

Part 1 Transitional provision for Motor Accident Insurance and Other Legislation Amendment Act 2010

576 Information to be provided about preserved train paths

(1) A railway manager must, within the period mentioned in subsection (2), give the chief executive a written notice identifying, in a way acceptable to the chief executive, the preserved train paths relating to the railway manager's railway.

(2) For subsection (1), the period is—

(a) 3 months after the commencement of this section; or

(b) a longer period agreed to by the railway manager and the chief executive.

(3) In this section—

preserved train path see section 266A.

Part 3 Validation and transitional provisions for Transport and Other Legislation Amendment Act 2011

578 Declaration and validation for watercourse crossings

It is declared that the chief executive has, and always had, the powers conferred on the chief executive under section 477F.

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Not authorised—indicative only

579 Interfering with railway

Section 255 as in force on the commencement of this section applies to an approval sought but not finally decided before the commencement.

580 Interface management

(1) A declaration of a light rail interface management area under repealed section 377L that is in effect immediately before the commencement is taken to be a transport interface management area declared under section 475ZI.

(2) A written notice given under repealed section 377L(2)(a) before the commencement is taken to be a written notice given under 475ZI(2)(a).

(3) A submission made under repealed section 377L(2)(b) before the commencement is taken to be a submission made under 475ZI(2)(b).

(4) A light rail interface agreement within the meaning of repealed section 377K that is in force immediately before the commencement is taken to be a transport interface agreement under chapter 15A.

(5) A preliminary notice given under repealed section 377N(3) before the commencement is taken to be a preliminary notice given under 475ZK(2).

(6) A written notice given under repealed section 377N(5) before the commencement is taken to be a written notice given under 475ZK(4).

(7) A direction given under repealed section 377O(2)(b) before the commencement is taken to be a direction given under 475ZL(2)(b).

(8) A guideline made under repealed section 377P(1) before the commencement is taken to be a guideline made under 475ZM(1).

(9) In this section—

commencement means commencement of this section.

repealed, in relation to a provision of this Act, means the provision as it was in force from time to time before the commencement.

581 Internal review of approvals for interfering with railway

(1) This section applies to a railway manager's refusal, on or after the commencement of this section, to approve an interference with a railway under section 255(1)(a).

(2) For section 485, the refusal is an original decision even if the approval was first sought before the commencement of this section.

Part 4 Transitional provisions for Transport and Other Legislation Amendment Act 2014

582 Recovery of chief executive's costs for rail feasibility investigator's authority

Section 110(3) applies to an application for a rail feasibility investigator's authority that is not decided before the commencement of this section.

Not authorised—indicative only

Not authorised—indicative only

Part 5 Transitional provisions for Planning (Consequential) and Other Legislation Amendment Act 2016

583 Definitions for part

In this part—

amending Act means the *Planning (Consequential) and Other Legislation Amendment Act 2016*.

former, in relation to a provision, means the provision as in force immediately before the provision was amended or repealed under the amending Act.

584 Existing particular development applications

(1) Subsection (2) applies to an existing development application mentioned in former section 49A.

(2) Former section 49A continues to apply in relation to the application as if the amending Act had not been enacted.

(3) Subsection (4) applies to an existing development application mentioned in former section 258(1).

(4) Former section 258(1) continues to apply in relation to the application as if the amending Act had not been enacted.

(5) Subsection (6) applies to an existing development application mentioned in former chapter 8, part 3C.

(6) Former chapter 8, part 3C continues to apply in relation to the application as if the amending Act had not been enacted.

(7) Subsection (8) applies to an existing development application mentioned in former section 287A(1).

(8) Former section 287A continues to apply in relation to the application as if the amending Act had not been enacted.

(9) In this section—

existing development application means an application made under the repealed *Sustainable Planning Act 2009*, to which the Planning Act, section 288 applies.

585 References to Brisbane port railway land

(1) This section applies to a reference in a document made before the commencement to Brisbane port railway land if the document defines, or in effect defines, the term 'Brisbane port railway land' as having the meaning given in this Act.

(2) The reference may, if the context permits, be taken as a reference to Brisbane port railway land as defined in former section 283I.

Part 6 Transitional provisions for Transport Legislation (Road Safety and Other Matters) Amendment Act 2019

586 Definitions for part

In this part—

amending Act means the *Transport Legislation (Road Safety and Other Matters) Amendment Act 2019*.

former, for a provision, means as in force before the amendment of the provision under the amending Act.

587 Existing applications under former ss 33 and 62

(1) This section applies to—

(a) a request for the chief executive's approval under former section 33 made, but not decided, before the commencement; or

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Not authorised—indicative only

(b) an application under former section 62(1) made, but not decided, before the commencement.

(2) Section 105ZQ does not apply to the request or application.

588 Existing requests for approval for ancillary works and encroachments

(1) This section applies if a request for the chief executive's approval under former section 50 was made but not decided before the commencement.

(2) This Act as in force immediately before the commencement continues to apply in relation to the request as if the amending Act had not been enacted.

589 Existing approvals for ancillary works and encroachments

(1) This section applies to an approval given under former section 50 if, immediately before the commencement, the approval was in force.

(2) The approval continues in force as if it had been given under section 50.

(3) The approval continues to be subject to the conditions to which the approval was subject immediately before the commencement.

Schedule 1 Subject matter for regulations

section 490

Part 1 Subject matter for regulations generally

1 the conditions of use of motorways or limited access roads, including limitations on access or use, and removal of stationary vehicles

2 regulation of traffic (including for safety purposes) during construction of road works, busway transport infrastructure works or light rail transport infrastructure works

3 regulation of animals on State-controlled roads, busways, busway transport infrastructure, light rails or light rail transport infrastructure

4 camping on State-controlled roads or areas under the chief executive's control

5 regulation of ancillary works and encroachments

6 exemptions from regulations

7 allowing the chief executive to give a fee concession or a full or part refund of a fee or levy

8 fees, charges, allowances, royalties, costs or expenses to be paid

9 the operation by the chief executive of electronic and other devices for monitoring, recording or controlling the passage of vehicles or the flow of traffic on—

(a) State-controlled roads; or

(b) roads that are proposed to be State-controlled roads; or

(c) franchised roads; or

(d) other roads with the agreement of the relevant local government; or

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(e) busways; or

(f) light rails

10 regulation of the safety of railways and persons at, on or near railways by imposing requirements directed at ensuring safety

12 regulation of—

(a) busway, light rail or miscellaneous transport infrastructure; or

(b) busway, light rail or miscellaneous transport infrastructure works; or

(c) busways or light rails; or

(d) busway land or light rail land

13 the rights and obligations of persons on—

(a) a railway; or

(b) a busway or busway transport infrastructure; or

(c) a light rail or light rail transport infrastructure; or

(d) busway land or light rail land

14 the removal and disposal of vehicles or property that are abandoned on—

(a) a railway; or

(b) a busway, busway land, or busway transport infrastructure; or

(c) a light rail, light rail land, or light rail transport infrastructure

15 the removal of vehicles parked or property left—

(a) on a busway, busway land, or busway transport infrastructure, against the directions of—

(i) the busway manager for the busway, the person in control of the busway land, or the busway manager for which the busway transport infrastructure is used; or

(ii) the chief executive; or

(b) on a railway against the directions of—

(i) an accredited person for the railway; or

(ii) the chief executive; or

(c) on a light rail, light rail land, or light rail transport infrastructure, against the directions of—

(i) an accredited person for the light rail, the person in control of the light rail land, or an accredited person for the light rail for which the light rail transport infrastructure is used; or

(ii) the chief executive

16 the recovery of the costs of doing the things mentioned in items 14 and 15

17 alcohol breath tests, drug tests and medical examinations that may be required by an authorised person

18 the granting of approvals to licensees under chapter 12

19 conditions of approvals to licensees under chapter 12

20 the management of public marine facilities by the chief executive, including matters about abandoned property, property moored, left, moved or parked contrary to a notice or direction, the appointment and powers of authorised officers and fees for producing or preparing documents

21 a levy on a person who has a tenure over boat harbour land managed by the chief executive as a contribution towards the dredging and maintenance of public marine transport infrastructure

22 how a levy is to be calculated, the date by which it must be paid, and for the payment of a levy by instalments

24 protection of, and consequences of damage to, State-owned or State-controlled land or transport infrastructure, including a State-controlled road, a future State-controlled road, busway, busway land, light rail, light rail land, and ancillary works and encroachments on them

25 the exemption of vehicles from the payment of tolls on roads

26 matters relating to light rail interface issues

Not authorised—indicative only

Not authorised—indicative only

Part 2 Subject matter for waterway management regulation

1 regulating the mooring and anchoring of watercraft

2 regulating the types of water traffic that may use certain waters or certain marine infrastructure

3 regulating when, and for how long, watercraft may remain at a place or locality

4 regulating living on board watercraft

5 regulating recreational activities involving the use of waterways or watercraft, for example, private or commercial skiing, use of personal watercraft, diving, parasailing and sailing

6 nuisances caused by the use of watercraft or persons on board watercraft or by cargo or things associated with the use of watercraft or waterways infrastructure

7 the issue of directions by authorised persons

8 protection of public marine transport infrastructure and recovery of expenses incurred as a result of a contravention of a requirement of a regulation from a person contravening it

Schedule 3 Reviews and appeals

sections 485, 485A and 485B

Section of the Act	Description of decision	Court or tribunal
33	refusal to approve carrying out of proposed road works	QCAT
33	refusal to approve action interfering with State-controlled road or its operation	QCAT
33	imposition of conditions on approval	QCAT
34	decision of chief executive about amount of costs incurred	QCAT
37	decision of chief executive about amount of compensation	QCAT
37	decision not to extend time	QCAT
38	decision of chief executive not to contribute to fencing	QCAT
42(1)	refusal to approve road works or changes	Planning and Environment
42(4) and (6)	imposition of conditions	Planning and Environment
42(8)	decision of chief executive about amount of compensation	QCAT
43(1)	refusal to approve erection of, alteration or operation of sign or device	Planning and Environment
43(3) and (5)	imposition or inclusion of conditions	Planning and Environment

Not authorised—indicative only

Not authorised—indicative only

Section of the Act	Description of decision	Court or tribunal
48	decision of chief executive about cost of repair, replacement or reconstruction of damaged work	QCAT
50	refusal of chief executive to approve construction, maintenance, operation or conduct of ancillary work or encroachment	QCAT
52(1)	decision to cause ancillary works and encroachments to be altered, relocated, made safe or removed, or to direct that the conduct of ancillary works and encroachments be altered or stop	QCAT
52(2)	decision of chief executive about cost of alteration, making safe or removing ancillary work and encroachments	QCAT
52(4)	decision to alter, relocate, make safe or remove ancillary works and encroachments or that activities are to be altered or to stop	QCAT
54(1)	decision to declare a limited access road	Planning and Environment
54	policy for limited access road made, replaced or amended	Planning and Environment
62	decision about access between State-controlled road and particular adjacent land	Planning and Environment
73	decision of chief executive about amount of compensation	QCAT
74(2)	decision not to extend time for claim	QCAT
78	requirement by chief executive about public utility plant on State-controlled road	QCAT

Section of the Act	Description of decision	Court or tribunal
82	decision of chief executive about amount of additional expense	QCAT
166(2)	refusal to allow later time to give notice for compensation	QCAT
167	refusal to approve diversion or construction of watercourse	QCAT
168(2)	direction requiring works to stop, be altered or not started	QCAT
168(4)	requirement to alter, demolish or take away works	QCAT
168(6)	decision to alter, demolish or take away works	QCAT
168(6)	decision about cost of altering, demolishing or taking away works	QCAT
240B(4)	decision of chief executive to revoke continued unregistered right in non-rail corridor land	Planning and Environment
240E(8)	decision of chief executive to grant or not grant a right of access across a proposed railway, or impose conditions on a right of access across a proposed railway	Land
240F(3)(b)(i) and (ii)	decision of chief executive to cancel a right of access across a railway or proposed railway, other than by agreement with the relevant railway manager and holder of the right of access	Land
255(1)(a)	refusal to approve interference with railway	QCAT
255(2)	imposition of a condition	QCAT

Not authorised—indicative only

Not authorised—indicative only

Section of the Act	Description of decision	Court or tribunal
300(3)(b)	refusal to allow later time to give notice for compensation	QCAT
309(1)	refusal to approve erection of, alteration or operation of sign or device	Planning and Environment
309(3) and (5)	imposition or inclusion of conditions	Planning and Environment
322	requirement by chief executive about public utility plant on busway land	QCAT
327	decision of chief executive about amount of additional expense	QCAT
335AE	giving accreditation on conditions	QCAT
335AE	refusal to give accreditation	QCAT
335AJ(2)	refusal to amend accreditation conditions	QCAT
335AK(3)	amendment of accreditation conditions	QCAT
335AK(8)	amendment of accreditation conditions	QCAT
335AL(3)	suspension or cancellation of accreditation	QCAT
335AL(6)	immediate cancellation of accreditation	QCAT
335AM(2)	immediate suspension of accreditation	QCAT
338(2)	decision of chief executive to impose conditions on an authorisation	QCAT
338(3)	decision of chief executive not to grant an authorisation	QCAT
342(5)	decision of chief executive not to amend authorisation conditions	QCAT
343(3)	decision of chief executive to amend authorisation conditions	QCAT
344(3)	suspension or cancellation of authorisation	QCAT

Section of the Act	Description of decision	Court or tribunal
344(6)	immediate cancellation of authorisation	QCAT
345(2)	immediate suspension of authorisation	QCAT
351(3)(b)	refusal to allow later time to give notice for compensation	QCAT
370	requirement by chief executive about public utility plant on light rail land	QCAT
375	decision of chief executive about amount of additional expense	QCAT
443	refusing to give exemption	QCAT
447	amendment, suspension or cancellation of approval or exemption	QCAT
449	immediate suspension of approval or exemption	QCAT
476B(2)	direction requiring works to stop, be altered or not started	QCAT
476B(4)	requirement to alter, demolish or take away works	QCAT
476B(6)	decision to alter, demolish or take away works	QCAT
476B(6)	decision about recovering cost of altering, demolishing or taking away works	QCAT
476D	decision to register notice about nature of works	QCAT
489	decision of chief executive about cost of repair, replacement or reconstruction of damaged works	QCAT

Not authorised—indicative only

Not authorised—indicative only

Schedule 4 Railway tunnel easements

section 241

Servient land	Easement
Lot 325 CP SL 1633	Easements A and B RP 852852
Lot 408 CP SL 7151	Lots C and D CP 852851
Lot 515 CP SL 6565	Easement G RP 852850
Lot 461 CP SL 3741	Lot H CP 852849
Lot 13 CP B32219	Easement K RP 136379
Lot 1 RP 115152	Easement H RP 115158
Lot 5 SP 115364	Easement A SP 118572
Lot 5 SP 115364	Easement B SP 118573
Lot 5 SP 115364	Easement E SP 118574
Lot 5 SP 115364	Easement F SP 118575
Lot 5 SP 115364	Easement G SP 118576
Lot 5 SP 115364	Easement H SP 118577
Lot 5 SP 115364	Easement K SP 134045
Lot 5 SP 115364	Easement L SP 123675
Lot 2 RP 124155	Easement A RP 852844
Lot 2 RP 124155	Easement B RP 893936
Lot 2 RP 118622	Easement in gross no. 602205520
Lot 2 RP 118622	Easement B RP 852845
Lot 1 RP 152576	Easement in gross no. 602205520

Servient land	Easement
Lot 1 RP 152576	Easement C RP 852845
Lot 2 RP 152576	Easement D RP 852845
Lot 2 RP 85223 and Lot 1 RP 105765	Easement B RP 852848
Lot 21 RP 178644	Easement in gross no. 602106739
Lot 21 RP 178644	Easements A, B and C RP 183623
Lot 1 RP 188351	Easement in gross no. 602505742
Lot 1 RP 117227	Easement A RP 880802
Lot 2 RP 117227	Easement A RP 852848
Lot 1 RP 155774	Easement E RP 852846
Lot 1 RP 197728	Easement F RP 852847
Lot 2 RP 10133	Easement in gross no. 601608083
Lot 2 RP 10133	Easement H RP 852847
Lot 3 RP 10133	Easement in gross no. 601401832
Lot 3 RP 10133	Easement K RP 852847
Lot 13 RP 10122	Easement D RP 852846
Lot 2 RP 60443	Easement C RP 852846
Lot 2 RP 197728	Easement G RP 852847
Lot 13 RP 10124	Easement in gross no. 601539792
Lot 13 RP 10124 and Lot 2 RP 10129	Easement J RP 852847
Lot 12 RP 10124	Easement in gross no. 601544351

Not authorised—indicative only

Not authorised—indicative only

Servient land	Easement
Lot 1 RP 196222	Easement in gross no. 602129535
Lot 1 RP 196222	Easement in gross no. 602129536
Lot 9 RP 814964	Easement A RP 852846
Lot 0 BUP 4313 (CMS 10872)	Easement in gross no. 601201902
Lot 0 BUP 4313 (CMS 10872)	Easement B RP 852846
Lots 22 and 23 RP 10122	Easement in gross no. 602279385
Lot 2 RP 888141	Easement in gross no. 601837139
Lot 5 RP 127273	Easement A RP 852853
Lot 0 BUP 9977 (CMS 5362)	Easement B RP 852853
Lot 15 SP 126957	Easements C and D RP 852853
Lot 16 SP 120013	Easements C and E RP 852853
Lot 2 RP 9449	Easement F RP 852854
Lot 1 RP 9449	Easement G RP 852854
Lot 10 SP 120689	Lot B RP 852855
Lot 10 SP 120689	Easement H RP 852853
Lot 10 SP 120689	Lot J RP 852854
Lot 10 SP 120689	Easements M and N RP 885880
Lot 10 SP 120689	Easement in gross no. 601481648
Lot 10 SP 120689	Easement in gross no. 601922003

Servient land	Easement
Lot 10 SP 120689	Easement in gross no. 601922004
Lot 10 SP 120689	Easement in gross no. 601993708
Lot 10 SP 120689	Easement in gross no. 602418143
Lot 8 RP 151540	Easement A RP 852855
Lot 1 RP 202674	Easement in gross no. 601481648
Lot 1 RP 202674	Easement E RP 852855
Lot 0 BUP 105422 (CMS 15376)	Easements C and D RP 852855
Lot 3 RP 9399	Easement A RP 880804
Lot 103 RP 48101	Easement F RP 852855
Lots 67 to 69 RP 46061	Easement in gross no. 602009566
Lots 67 to 69 RP 46061	Easement in gross no. 602009567
Lot 60 RP 46062	Easement A RP 852856
Lot 59 RP 46062	Easement in gross no. 601842947
Lot 59 RP 46062	Easement B RP 852856
Lot 58 RP 46062	Easement C RP 852856
Lots 55 to 57 RP 46062	Easements A, B, and C RP 880805
Lot 54 RP 47036	Easement D RP 852856
Lots 51 and 52 RP 47036	Easement E RP 852856
Lot 1 RP 126496	Easements A and B RP 126496

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Not authorised—indicative only

Servient land	Easement
Lot 2 RP 11632	Easement in gross no. 602230916
Lot 4 RP 11657	Easement in gross no. 602063425
Lot 5 RP 11657	Easement A RP 46641
Lot 6 RP 11657	Easement in gross no. 602443214
Lot 6 RP 11657	Easement in gross no. 602443215
Lot 7 RP 11657	Easement in gross no. 601262452
Lot 7 RP 11657	Easement in gross no. 702217998
Lot 12 RP 11657	Easement in gross no. 602820194
Lots 21 to 26 RP 11653	Easement in gross no. 602464557
Lots 21, 22, 24 and 26 RP 11653	Easement in gross no. 602464558
Lots 27 and 28 RP 11653	Easement in gross no. 602784029
Lot 28 RP 11653	Easement in gross no. 602563205
Lot 29 RP 11668	Easement in gross no. 602784029
Lot 29 RP 11668	Easement in gross no. 602784030

Schedule 5 Tolling matters for toll road or local government tollway

sections 93, 105GA and 105GB

1 the types of vehicles liable for tolls for use of a toll road or local government tollway

2 the maximum toll payable for use of a toll road or local government tollway for each type of vehicle liable to pay a toll

3 the methodology to be used to decide indexed, periodic increases in the maximum toll payable for use of a toll road or local government tollway

4 the day the toll becomes payable by each type of vehicle liable to pay a toll for use of a toll road or local government tollway

5 the administration charge payable for issuing a notice for, and collecting, an unpaid deferred toll amount for use of a toll road or local government tollway

6 the ways of making payment of the toll liability for use of a toll road or local government tollway, other than payment in cash or by use of the E toll system

7 the user administration charge payable for persons making payment of the toll other than in cash or by use of the E toll system

8 a description of the arrangements that will be used to allow users of a toll road or local government tollway to satisfy the liability to pay tolls on the toll road or local government tollway and tolls on other toll roads or tollways in the State or another State

9 the day the toll stops being payable, or a method to work out the day that the toll stops being payable, by each type of vehicle liable to pay a toll for use of a toll road or local government tollway

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Schedule 5A Other matters for conditions for local government tollways

sections 105GA and 105GB

1 traffic management by the local government

2 management by the local government of the impact of the local government tollway on the road network

3 reports from local government about the local government tollway

Schedule 5B Core port infrastructure, port related development and port prohibited development

section 283I, definitions *core port infrastructure*, *port prohibited development* and *port related development*

Part 1 Definitions for schedule 5B

In this schedule—

food and drink outlet means premises used for preparing and selling food or drink to the public, on a regular basis, for consumption on or off the premises.

freight warehouse or depot means premises used to receive, store, or distribute goods, if at least 75% of the goods are, in each year, transported by ship through the Port of Brisbane.

hospital means premises—

(a) used for medical or surgical care or treatment of patients; and

(b) at which accommodation is provided for inpatients to stay overnight.

medical centre means premises—

(a) used for medical or surgical care or treatment of patients; and

(b) at which accommodation is not provided for patients to stay overnight.

nature based recreation facility means premises used for minor recreational facilities that cause minimal impact on the environment.

Examples—

boardwalks, picnic facilities and premises used to educate visitors about an area's ecology

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***office*—**

1 *Office* means premises used for an administrative, professional or management service, other than the manufacture or sale of goods.

Example—

a financial institution's office

2 However, *office* does not include ancillary offices for core port infrastructure.

***port terminal facility*—**

1 *Port terminal facility* means premises used for handling shipping freight or dealing with a ship's passengers.

2 *Port terminal facility* includes facilities within a building that are used to provide goods and services, including, for example, services to a ship's passengers.

Example of facilities for paragraph 2—

- arts and craft stores, bookstores, gift or souvenir stores, newsagencies, pharmacies and toy stores
- tourism or accommodation booking offices

residential development means premises in which people reside or stay, whether permanently or temporarily.

Examples—

dwelling house, hostel, hotel, motel, multiple dwelling, relocatable home park, residential care facility, retirement facility and caretaker's accommodation

seafarers' centre means premises where chaplaincy services and rest and recreational facilities are provided primarily for seafarers.

***service station*—**

1 *Service station* means premises used primarily for the sale of fuel for vehicles.

2 *Service station* includes part of any premises mentioned in paragraph 1 used to maintain, service, repair, clean or hire vehicles, or as a shop (minor) or food and drink outlet.

shop (minor) means premises that—

(a) are used for the display or retail of goods or personal services; and

(b) have a gross floor area of not more than 2,500m^2.

Examples—

beauty salon, dry cleaning shop, laundromat and supermarket

shopping facility (major) means a building or group of buildings that—

(a) are used primarily as shops or retail showrooms; and

(b) are an integrated development; and

(c) have a gross floor area of more than 2,500m^2.

Examples—

department store, discount department store, discount factory outlet, retail warehouse, shopping centre and a showroom or wholesale facility

sport and recreation (major) means premises that—

(a) are used for sporting or recreational activities; and

(b) have an area of more than 2,500m^2.

Examples—

race track, sporting field and motor sport track

tourist attraction (major) means premises that—

(a) are used primarily for public entertainment or recreation; and

(b) have an area of more than 2,500m^2.

Examples—

theme park and zoo

transport and equipment depot means premises used to garage, store or maintain vehicles and equipment, including, for example, trucks and earthmoving equipment.

visitor centre means premises used primarily to provide information to visitors about the Port of Brisbane or training relating to the port, including premises containing an office, cafe or meeting rooms.

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warehouse (general) means a building used for the storage or distribution of goods, other than a freight warehouse or depot or transport and equipment depot.

wind farm means premises that—

(a) are used for generating electricity by wind force; and

(b) have an area of more than 2,500m^2.

Part 2 Core port infrastructure

The following are core port infrastructure for Brisbane core port land—

(a) berths;

(b) bulk loading and unloading facilities;

(c) communications or telecommunications facilities;

(d) conveyors and pipelines;

(e) customs, immigration and quarantine facilities, including facilities for underbond storage and housing of animals;

(f) defence facilities;

(g) emergency service facilities, including, for example, a base for water police;

(h) facilities for handling dredged material;

(i) freight warehouse or depot;

(j) monitoring facilities, including, for example a facility to monitor weather or tides;

(k) port terminal facilities;

(l) roads, driveways, flyovers and other accesses;

(m) security facilities;

(n) ship building facilities and dry docks;

(o) signage, other than advertising billboards;

(p) storage yards;

(q) transport and equipment depot;

(r) transport infrastructure;

(s) utilities for water supply, sewerage, drainage, waste storage and collection, electricity supply and transmission;

(t) vehicle parking facilities;

(u) weighbridges;

(v) wharves and associated structures, including hydraulic structures, structures used for shipping purposes and wharf protection devices;

(w) ancillary offices for infrastructure mentioned in paragraphs (a) to (v).

Part 3 Port prohibited development

Development for a following purpose is port prohibited development for Brisbane core port land—

(a) hospital;

(b) sport and recreation (major);

(c) residential development;

(d) shopping facility (major);

(e) tourist attraction (major);

(f) wind farm.

Part 4 Port related development

Development for a following purpose is port related development for Brisbane core port land—

(a) food and drink outlet;

(b) medical centre;

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(c) nature based recreation facility;

(d) office;

(e) park;

(f) seafarers' centre;

(g) service station;

(h) shop (minor);

(i) visitor centre;

(j) warehouse (general).

Schedule 6 Dictionary

section 3

abandoned property, for chapter 8, part 4B, see section 289H.

accommodation works means temporary or permanent works carried out on, over or under land affected by busway transport infrastructure, busway transport infrastructure works, light rail transport infrastructure, light rail transport infrastructure works or road works to—

(a) minimise the impact those works or that infrastructure had on the land; or

(b) restore the land to its former condition, purpose or use; or

(c) provide safety for the persons who use the land.

accreditation, for chapter 18, part 3, see section 521.

accredited person—

(a) if paragraph (b) does not apply—means a rail transport operator under the Rail Safety Law who is an accredited person under that Law; or

(b) for chapter 18, part 3—see section 521.

accredited rail infrastructure manager means a rail infrastructure manager under the Rail Safety Law who is an accredited person under that Law.

acquire, for chapter 9, part 3, includes acquire by gift, exchange or purchase.

active transport infrastructure see the *Transport Planning and Coordination Act 1994*, section 8A(3).

additional local government tollway corridor land, for chapter 6, part 8, division 3, see section 105H(10).

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additional local government tollway corridor land declaration, for chapter 6, part 8, division 3, see section 105H(11).

additional State toll road corridor land, for chapter 6, part 6, division 2, see section 84A(6A).

additional State toll road corridor land declaration, for chapter 6, part 6, division 2, see section 84A(6B).

administration charge means an administration charge set in relation to non-payment of a deferred toll amount.

affected person, for chapter 11, see section 402.

air transport infrastructure includes transport infrastructure relating to aircraft or to the operation of aircraft.

alter includes add to.

ancillary works and encroachments, for a road, means—

(a) a structure or other thing, other than public utility plant, on, over or under the road; or

Examples of structures or other things—

an advertising device, an A-frame board, a bridge, a pipeline, a remotely piloted aircraft, a rest area, a tunnel, an underpass

(b) an activity conducted on, over or under the road, other than travelling or grazing an animal under a permit issued under the *Stock Route Management Act 2002*.

Examples of an activity—

a community event, roadside vending

~~***ancillary works and encroachments*** means—~~

~~(a) the following things—~~

~~(i) cane railways;~~

~~(ii) monorails;~~

~~(iii) bridges, overhead conveyors or other overhead structures;~~

~~(iv) tunnels;~~

~~(v) rest area facilities;~~

(vi) monuments or statues;

(vii) advertising signs or other advertising devices;

(viii) traffic and service signs;

(ix) bores, wells, pumps, windmills, water pipes, channels, culverts, viaducts, water tanks or dams;

(x) pipes;

(xi) tanks;

(xii) cables;

(xiii) paths or bikeways;

(xiv) grids or other stock facilities;

(xv) buildings, shelters, awnings or mail boxes;

(xvi) poles, lighting, gates or fences;

(xvii) pumps and bowsers; or

(b) any of the following activities —

(i) drilling;

(ii) clearing;

(iii) trimming;

(iv) slashing;

(v) landscaping;

(vi) planting;

(vii) burning off;

(viii) removing trees;

(ix) road safety related activities;

(x) sporting activities;

(xi) camping;

(xii) conducting a business (for example, a market);

(xiii) moving stock, other than under a stock route travel permit under the *Stock Route Management Act 2002*;

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~~(xiv) holding meetings; or~~

~~(c) other encroachments declared under a regulation to be ancillary works and encroachments;~~

~~but does not include public utility plant.~~

appropriate register see the *Land Act 1994*, schedule 6.

approval—

(a) for chapter 8, part 4A—see section 289B; or

(b) for chapter 12—see section 415; or

(c) for chapter 14—means an approval by the chief executive.

approval conditions, for chapter 12, see section 415.

approved form means a form approved by the chief executive under section 479.

approved tollway project, for chapter 6, part 8, see section 105B.

assessment manager means the assessment manager for a development application under the Planning Act.

associated person for—

(a) chapter 7, part 2—see section 109; or

(b) chapter 11—see section 402.

authorised busway user, for chapter 9, part 5, see section 335A.

authorised officer—

(a) for chapter 8—means a person appointed under section 282K; or

(b) for a person who is appointed under a regulation as an officer in relation to a matter as stated in the regulation—means a person appointed under the regulation as an officer for the matter.

authorised person means—

(a) for chapter 15, part 2—a person who is an authorised person for a waterway transport management plan under section 475A; or

(b) for a person who is appointed under a regulation as an authorised person relating to a matter as stated in the regulation—a person appointed under the regulation as an authorised person for the matter; or

(c) otherwise—a person who is an authorised person under the *Transport Operations (Passenger Transport) Act 1994*, section 111.

authority, for chapter 7, part 2, see section 109.

Authority means the Authority established under the *Queensland Rail Transit Authority Act 2013*, section 6.

balance port land see section 283I.

Brisbane core port land see section 283I.

Brisbane port LUP see section 283I.

busway means—

(a) a route especially designed and constructed for, and dedicated to, the priority movement of buses for passenger transport purposes; and

(b) places for the taking on and letting off of bus passengers using the route.

busway land—

1 *Busway land* means land declared to be busway land under chapter 9.

2 Additionally, the following apply—

(a) for chapter 9, part 4, division 4, see section 316;

(b) for chapter 9, part 4, division 6, see section 330;

(c) for chapter 10, part 4, division 5, see section 378.

busway manager, for a busway, means a person who holds an accreditation under chapter 9, part 4A as the busway manager for the busway.

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busway service provider, for chapter 9, part 5, see section 335A.

busway transport infrastructure means each of the following—

(a) the pavement on which buses run for a busway;

(b) the stations for operating a busway;

(c) other facilities necessary for managing or operating a busway, including for example—

(i) infrastructure put in place for the busway, including the following—

- support earthworks
- cuttings
- drainage works
- excavations
- land fill; and

(ii) the following things, if associated with the busway's operation—

- access or service lanes
- bridges, including bridges over water
- busway operation control facilities
- communication systems
- depots
- machinery and other equipment
- monitoring and security systems
- noise barriers
- notice boards, notice markers and signs
- office buildings
- passenger interchange facilities between the busway and other modes of transport
- platforms

- positioning systems
- power and communication cables
- signalling facilities and equipment
- survey stations, pegs and marks
- ticketing equipment and systems
- timetabling systems
- tunnels
- under-busway structures
- workshops;

(d) vehicle parking and set down facilities for intending passengers for a busway;

(e) pedestrian facilities, including paving of footpaths, for a busway;

(f) other facilities, or commercial or retail outlets or works, for the convenience of passengers and others who may use a busway, including, for example, automatic teller machines, lockers or showers for cyclists and others, newsagents and wheelchair hire or exchange centres;

(g) landscaping or associated works for a busway.

busway transport infrastructure works means works done for—

(a) constructing busway transport infrastructure or things associated with busway transport infrastructure; or

(b) the maintenance of busway transport infrastructure or of things associated with busway transport infrastructure; or

(c) facilitating the operation of busway transport infrastructure or things associated with busway transport infrastructure; or

(d) establishing, constructing or maintaining transport infrastructure, other than busway transport infrastructure, if the works are—

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(i) directly related to an activity mentioned in paragraph (a), (b) or (c); and

(ii) necessary for the safety, efficiency and operational integrity of transport infrastructure; or

(e) other works declared under a regulation to be busway transport infrastructure works.

candidate GOC has the same meaning as in the *Government Owned Corporations Act 1993*.

cane railway means a tramway or railway—

(a) operated, entirely or partly, on an access right under the *Sugar Industry Act 1999*, chapter 2, part 4; and

(b) used, or proposed to be used, to transport sugar cane, sugar or sugar cane by-products; and

(c) that does not transport passengers or other freight for reward.

carry out road or railway works means do anything on land that is reasonably necessary or desirable for the works, including, for example, temporarily occupy or use the land.

change application means a change application under the Planning Act.

charge see section 267.

class exemption means an exemption granted to a class of person under section 443(2).

class representative, for a class exemption, means the representative of a class of person who applied for the exemption.

code assessment, for chapter 8, part 3C, see section 283I.

commencement—

(a) for chapter 18, part 3, see section 521; or

(b) for chapter 18, part 5, see section 532; or

(c) for chapter 19, see section 559; or

(d) for chapter 20, see section 562.

commercial corridor land means old QR land—

(a) on or within which rail transport infrastructure is situated; and

(b) notified by the chief executive in the gazette.

compensation notice, for chapter 11, see section 402.

completion day—

(a) for chapter 8, see section 267; or

(b) for chapter 20, see section 562.

compliance notice, for chapter 6, part 8, see section 105B.

consign and ***consignor***—

1 A person ***consigns***, and is the ***consignor*** in relation to, goods transported, or to be transported, by rail or goods that are dangerous goods if the person is any of the following—

(a) the person who has consented to being, and is, named or otherwise identified as the consignor of the goods in the transport documentation for the consignment;

(b) if there is no person as described in paragraph (a)—

(i) for goods transported or to be transported by rail—the person who engages an operator of the railway, either directly or through another person, to transport the goods by rail; or

(ii) for goods that are dangerous goods—the person who engages a prime contractor, either directly or through another person, to transport the goods; or

(iii) if there is no person as described in subparagraph (i) or (ii)—the person who has possession of, or control over, the goods immediately before the goods are transported by rail; or

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(iv) if there is no person as described in subparagraph (i), (ii) or (iii)—the person who loads a vehicle with the goods, for transport by rail, at a place—

(A) where goods in bulk are stored, temporarily held or otherwise held waiting collection; and

(B) that is unattended, other than by the driver or trainee driver of the rail vehicle or someone else necessary for the normal operation of the rail vehicle, during loading;

(c) if there is no person as described in paragraph (a) or (b) and the goods are imported into Australia through a place in Queensland—the importer of the goods.

2 Also, a person consigns goods for transport by rail if the person arranges for the conveyance of the goods on a rail vehicle owned or controlled by the person.

consignee, in relation to dangerous goods transported or to be transported by rail—

(a) means the person who—

(i) has consented to being, and is, named or otherwise identified as the intended consignee of the goods in the transport documentation for the consignment; or

(ii) actually receives the goods after they are transported; but

(b) does not include a person who merely unloads or unpacks the goods.

construction of busway, light rail, or road transport infrastructure includes each of the following for the infrastructure, to the extent it involves the development of the infrastructure—

(a) initial construction;

(b) improvement of its standard;

(c) realignment;

(d) widening;

(e) extension to accommodate the extension of a busway, light rail or road.

consultation period, for chapter 8, part 3C, see section 283I.

continuing accredited person, for chapter 18, part 3, see section 521.

contributions schedule, for chapter 8, part 3C, see section 283I.

controlled activity, for chapter 8, see section 289B.

convicting a person includes a court finding the person guilty, or the person pleading guilty, whether or not a conviction is recorded.

coordination plan means the transport coordination plan developed under the *Transport Planning and Coordination Act 1994*.

core matters, for chapter 8, part 3C, see section 283I.

core port infrastructure see section 283I.

corporate plan, for chapter 8, see section 267.

dangerous goods means—

(a) goods prescribed under a regulation to be dangerous goods; or

(b) for implied references to goods too dangerous to be transported—see chapter 14, part 7, section 458A.

dangerous goods authority means an entity in a participating dangerous goods jurisdiction that has functions under a corresponding law to chapter 14 that correspond to the chief executive's functions under that chapter.

dangerous goods offence means an offence against chapter 14, the *Transport Operations (Passenger Transport) Act 1994*, chapter 11, or a dangerous goods regulation, involving or relating to the transport of dangerous goods by rail.

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dangerous goods regulation means a regulation made under chapter 14—

(a) applying to the transport of dangerous goods by rail; or

(b) for implied references to goods too dangerous to be transported—see chapter 14, part 7, section 458A.

dangerous situation means a situation involving the transportation of dangerous goods by rail that is causing, or is likely to cause, imminent risk of—

(a) death of, or significant injury to, a person; or

(b) significant harm to the environment; or

(c) significant damage to property.

dealing number, for a lease under section 84C(6) or (6A) or 105J(6), (9) or (10), means a number assigned to the lease by the registrar of titles.

declaration—

(a) for chapter 6, part 5, division 2, subdivision 2, see section 53; or

(b) for chapter 6, part 8, for a local government tollway, see section 105B.

deferred toll amount—

(a) for chapter 6, part 7, division 3—see section 97; or

(b) for chapter 6, part 8, division 6, subdivision 3—see section 105ZF.

department's website means a website, or part of a website—

(a) administered by the department; and

(b) with a URL that contains qld.gov.au.

designated vehicle—

(a) for chapter 6, part 7—see section 92; or

(b) for chapter 6, part 8—see section 105B.

designation, for chapter 8, part 3C, see section 283I.

development—

(a) for chapter 6, part 5, division 2, subdivision 2 and chapter 8, part 3C, see the Planning Act, schedule 2; or

(b) for chapter 11, see section 401.

development application means an application for a development approval.

development approval means a development approval under the Planning Act.

development assessment process see the Planning Act, schedule 2.

dispute notice, for chapter 12, see section 415.

draft plan—

(a) for chapter 8, part 3C, see section 283I; or

(b) for chapter 8, part 4, see section 285B.

employee, of a railway manager, railway operator or the Authority, means—

(a) an employee of, or a contractor for, the manager, operator or Authority; or

(b) an employee of a contractor mentioned in paragraph (a); or

(c) an individual who performs work for the manager, operator or Authority without payment, while the individual is performing that work.

Example for paragraph (c)—

An individual does work as a volunteer for an organisation of which the individual is a member. The organisation is a railway manager. The volunteer is an employee of the railway manager while the volunteer is performing work for the manager.

establishment, for—

(a) chapter 9, part 4, division 6—see section 330; or

(b) chapter 10, part 4, division 5—see section 378.

E toll only pay point means a part of a toll plaza designated by appropriate signs for the exclusive use of vehicles using the E toll system.

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E toll system—

(a) for chapter 6, part 7—see section 92; or

(b) for chapter 6, part 8—see section 105B.

exemption, for chapter 14, means an exemption under section 443.

exempt vehicle means a vehicle exempted from the payment of tolls on roads under—

(a) an Act; or

(b) an Act or law of the Commonwealth; or

(c) an Act of another State that is prescribed under a regulation for this paragraph.

existing rail corridor land means old QR land—

(a) on or within which rail transport infrastructure is situated; and

(b) that is not commercial corridor land.

extractive material, for chapter 8, see section 267.

final notice, for chapter 6, part 8, see section 105B.

first Brisbane port LUP, for chapter 8, part 3C, see section 283I.

food and drink outlet, for schedule 5B, see schedule 5B, part 1.

former land use plan, for chapter 8, part 3C, see section 283I.

former Urban Land Development Authority means the authority established under the repealed *Urban Land Development Authority Act 2007*, section 93.

Note—

MEDQ is the legal successor of the former Urban Land Development Authority—see the *Economic Development Act 2012*, section 180.

franchised road means a road to which a road franchise agreement applies, and includes facilities identified in the road franchise agreement that are on or adjacent to the road and relate to the operation or servicing of the road or facilities for road users.

franchisee means—

(a) for a road franchise agreement—a person with whom the Minister has entered into the agreement; or

(b) for a light rail franchise agreement—a person with whom the Minister has entered into the agreement.

freight warehouse or depot, for schedule 5B, see schedule 5B, part 1.

future railway land has the meaning given by section 242.

GOC includes a candidate GOC.

GOC Act entity means—

(a) a GOC; or

(b) an entity established under the *Government Owned Corporations Act 1993*.

GOC port authority means a port authority that is a GOC.

Gold Coast waters see the *Gold Coast Waterways Authority Act 2012*, section 7(1).

Gold Coast Waterways Authority means the Gold Coast Waterways Authority established under the *Gold Coast Waterways Authority Act 2012*.

goods too dangerous to be transported means goods prescribed under a dangerous goods regulation as goods too dangerous to be transported.

government supported transport infrastructure means transport infrastructure that—

(a) is funded, wholly or partly, by appropriations from the consolidated fund; or

(b) is funded, wholly or partly, by borrowings made by the Government (other than commercial borrowings made by the Queensland Treasury Corporation acting as an agent); or

(c) is funded, wholly or partly, by borrowings guaranteed by the Government other than borrowings for commercial investments; or

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(d) is provided by a person on the basis of conditions agreed to by the Government that are intended to support the commercial viability of the infrastructure.

high-water mark, for chapter 8, part 3C, see section 283I.

hospital, for schedule 5B, see schedule 5B, part 1.

image processing fee—

(a) for chapter 6, part 7—see section 93(6)(a); or

(b) for chapter 6, part 8—see section 105ZB(6)(a).

impact assessment, for chapter 8, part 3C, see section 283I.

in a rail vehicle includes on the vehicle.

incident means an incident that has caused or could have caused—

(a) property damage; or

(b) injury to an individual, including death.

information holder—

(a) for chapter 6, part 7, division 3, see section 100(1)(b); or

(b) for chapter 6, part 8, division 6, subdivision 3, see section 105ZJ(1)(b).

information notice, for a decision the subject of a written notice given to a person, means a written notice stating that the person may—

(a) under section 485—ask for the decision to be reviewed by the chief executive; and

(b) under the *Transport Planning and Coordination Act 1994*, part 5, division 2—apply for the decision to be stayed; and

(c) either—

(i) if section 485A applies in relation to the reviewed decision—

(A) under that section—ask for the reviewed decision to be reviewed by QCAT; and

(B) under the QCAT Act—apply for the reviewed decision to be stayed; or

(ii) if section 485B applies in relation to the reviewed decision, under the *Transport Planning and Coordination Act 1994*, part 5, division 3—

(A) appeal against the reviewed decision to the court stated in schedule 3 for the decision; and

(B) apply for the reviewed decision to be stayed.

insufficient value property, for chapter 8, part 4B, see section 289H.

interfere with, light rail transport infrastructure, for chapter 10, part 4, division 2, see section 361A.

interim period, for chapter 20, see section 562.

intersecting area, for chapter 12, see section 415.

investigator means—

(a) other than for chapter 11—a person who holds an authority; or

(b) for chapter 11—a person who holds an investigator's authority under that chapter.

investigator's authority, for chapter 11, see section 402.

land—

(a) for chapter 6, part 5, division 2, subdivision 2, for land adjacent to a State-controlled road, see section 53; or

(b) for chapter 6, and for chapters 9 to 12, includes—

(i) an interest in land; and

(ii) land within the beds and banks of a watercourse or inundated land; and

(iii) land beneath the internal waters of Queensland; or

(c) for chapter 7 includes—

(i) a reserve within the meaning of the *Land Act 1994* or a road; and

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(ii) land within the beds or banks of a watercourse or inundated land; or

(d) for chapter 7, part 7 and for chapters 9 to 12, includes the airspace above, and the land below, the surface; or

(e) for chapter 8, see section 267.

Land Act, for chapter 8, see section 267.

land use and development, for chapter 8, part 3C, see section 283I.

lease, for chapters 8 and 20, see section 267.

leasehold land register means the leasehold land register kept under the *Land Act 1994*, section 276(a).

lease reference number, for a lease mentioned in section 84C(4) or 105J(4), means the number for the lease recorded by the registrar of titles in the leasehold land register.

LGIP, of a local government, for chapter 8, part 3C, see section 283I.

licensee, for chapter 12, see section 415.

light rail means—

(a) a route wholly or partly dedicated to the priority movement of light rail vehicles for passenger transport purposes, whether or not the route was designed and constructed for those purposes as well as other purposes; and

(b) places for the taking on and letting off of light rail vehicle passengers using the route.

light rail authority, for chapter 10, part 4, division 3, see section 364.

light rail franchise agreement see section 377B.

light rail land—

1 *Light rail land* means land declared to be light rail land under chapter 10.

2 Additionally, the following apply—

(a) for chapter 10, part 4, division 3, see section 364;

(c) for chapter 10, part 4, division 5, see section 378.

light rail manager, for a light rail, means a person who is an accredited rail infrastructure manager in relation to railway operations, under the Rail Safety Law, for the light rail.

light rail operator, for a light rail, means a person who is accredited, as a rail transport operator in relation to railway operations for light rail, under the Rail Safety Law.

light rail transport infrastructure means each of the following—

(a) the rails on which light rail vehicles run for a light rail and pavement incorporating the rails;

(b) the stations for operating a light rail;

(c) other facilities necessary for managing or operating a light rail, including, for example—

(i) works built for the light rail, including the following—

- cuttings
- drainage works
- excavations
- land fill
- track support earthworks; and

(ii) light rail vehicles that operate on a light rail; and

(iii) the following things if they are associated with the light rail's operation—

- access or service lanes
- bridges, including bridges over water
- communication systems
- light rail operation control facilities
- machinery and other equipment
- maintenance depots

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- marshalling yards
- monitoring and security systems
- noise barriers
- notice boards, notice markers and signs
- office buildings
- overhead wiring
- over-track structures
- passenger interchange facilities between light rail and other modes of transport
- platforms
- positioning systems
- power and communication cables
- power supply substations and equipment
- signalling facilities and equipment
- survey stations, pegs and marks
- ticketing equipment and systems
- timetabling systems
- tunnels
- under-track structures
- workshops;

(d) vehicle parking and set down facilities for intending passengers for a light rail;

(e) pedestrian facilities, including paving of footpaths, for a light rail;

(f) other facilities, or commercial or retail outlets or works, for the convenience of passengers and others who may use a light rail, including, for example, automatic teller machines, lockers or showers for cyclists and others, newsagents and wheelchair hire or exchange centres;

(g) landscaping or associated works for a light rail.

light rail transport infrastructure works means works done for—

(a) constructing light rail transport infrastructure or things associated with light rail transport infrastructure; or

(b) the maintenance of light rail transport infrastructure or of things associated with light rail transport infrastructure; or

(c) facilitating the operation of light rail transport infrastructure or things associated with light rail transport infrastructure; or

(d) establishing, constructing or maintaining transport infrastructure, other than light rail transport infrastructure, if the works are—

(i) directly related to an activity mentioned in paragraph (a), (b) or (c); and

(ii) necessary for the safety, efficiency and operational integrity of transport infrastructure; or

(e) other works declared under a regulation to be light rail transport infrastructure works.

light rail vehicle means a type of transport that—

(a) is intended wholly or mainly for the carriage of passengers or for track maintenance; and

(b) travels on flanged wheels on parallel rails; and

(c) is designed to operate in line of sight on road-like areas.

loading, in relation to loading a rail vehicle with dangerous goods, includes the following—

(a) loading 1 or more packages of the goods in or on the rail vehicle;

(b) placing or securing 1 or more packages of the goods on the rail vehicle;

(c) supervising an activity mentioned in paragraph (a) or (b);

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(d) managing or controlling an activity mentioned in paragraph (a), (b) or (c);

but does not include loading goods into packaging already on the rail vehicle or placing or securing packages in or on further packaging already on the vehicle.

local government franchised road, for chapter 6, part 8, see section 105B.

local government franchisee, for chapter 6, part 8, see section 105B.

local government road means a road that is under the control of a local government.

local government tollway, for chapter 6, part 8, see section 105B.

local government tollway corridor land see section 105B.

local government tollway franchise agreement, for chapter 6, part 8, see section 105B.

local government tollway infrastructure, for chapter 6, part 8, see section 105B.

local government tollway infrastructure works, for chapter 6, part 8, see section 105B.

local government tollway operator, for chapter 6, part 8, see section 105B.

maintain includes repair.

maintenance, for chapters 6, 7 and 12, includes—

(a) rehabilitation; and

(b) replacement; and

(c) repair; and

(d) recurrent servicing; and

(e) preventive and remedial action; and

(f) removal; and

(g) alteration; and

(h) maintaining systems and services for transport infrastructure.

material change of use see the Planning Act, schedule 2.

matter, for chapter 6, part 8, see section 105B.

medical centre, for schedule 5B, see schedule 5B, part 1.

MEDQ means MEDQ under the *Economic Development Act 2012*.

member of POBC Group means the Port of Brisbane Corporation or a subsidiary of the Port of Brisbane Corporation.

member of QR Group, for chapter 19, see section 559.

Minister, for chapter 8, part 3C, division 6, see section 283ZZL.

minor amendment (LUP), for chapter 8, part 3C, see section 283I.

miscellaneous transport infrastructure see section 416.

miscellaneous transport infrastructure works means—

(a) works done for—

(i) constructing miscellaneous transport infrastructure or things associated with miscellaneous transport infrastructure; or

(ii) the maintenance of miscellaneous transport infrastructure or of things associated with miscellaneous transport infrastructure; or

(iii) facilitating the operation of miscellaneous transport infrastructure or things associated with miscellaneous transport infrastructure; or

(b) works declared under a regulation to be miscellaneous transport infrastructure works.

motorway means a State-controlled road that is declared to be a motorway under section 27.

nature based recreation facility, for schedule 5B, see schedule 5B, part 1.

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network company, for chapter 13, see section 438.

new rail corridor land means land that is subleased to a railway manager under section 240.

non-rail corridor land means land leased to the State in perpetuity that was—

(a) old QR land declared to be non-rail corridor land; or

(b) rail corridor land for which the sublease previously granted to a railway manager has—

(i) expired; or

(ii) been surrendered or terminated.

notice means a notice, sign or pictograph of any type of material and whether fixed or moveable.

occupier, of a place that is a watercraft, for chapter 15, part 2, division 3, see section 475H.

occupier, of land, for chapters 6, 7, 9, 10, 11 and 12, means—

(a) the person in actual occupation of the land; or

(b) if there is no person in actual occupation—the person entitled to possession of the land;

and, for a watercourse or reserve, includes the person responsible for the care and management of the watercourse or reserve.

office, for schedule 5B, see schedule 5B, part 1.

old QR land means land (other than an easement in land) that, immediately before the commencement of the *Transport Infrastructure Amendment (Rail) Act 1995*, section 4—

(a) was held by the previous rail corporation in fee simple; or

(b) could be granted in fee simple to the previous rail corporation under the *Transport Infrastructure (Railways) Act 1991*, section 49(2).

on a railway, road or other land includes over or under the land.

operational licence, for chapter 12, see section 415.

operational work see the Planning Act, schedule 2.

original local government tollway corridor land, for chapter 6, part 8, division 3, see section 105H(10).

original State toll road corridor land, for chapter 6, part 6, division 2, see section 84A(6A).

other rail infrastructure means—

(a) freight centres or depots; or

(b) maintenance depots; or

(c) office buildings or housing; or

(d) rolling stock or other vehicles that operate on a railway; or

(e) workshops; or

(f) any railway track, works or other thing that is part of anything mentioned in paragraphs (a) to (e).

overhead wiring means an overhead electrical power supply system and associated support structures and safety signs.

Example of overhead electrical power supply system—

a catenary

owner, of land, includes—

(a) the lessee or licensee from the State of the land; or

(b) the person who has lawful control of the land, on trust or otherwise; or

(c) the person who is entitled to receive the rents and profits of the land.

pack, in relation to dangerous goods, includes the following—

(a) put goods in packaging, even if that packaging is already on a rail vehicle;

Example for paragraph (a)—

A person who uses a hose to fill the tank of a tank rail vehicle with petrol packs the petrol for transport.

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(b) enclose or otherwise contain more than 1 package, even if that packaging is already on a rail vehicle;

(c) supervise an activity mentioned in paragraph (a) or (b);

(d) manage or control an activity mentioned in paragraph (a), (b) or (c).

package, in relation to dangerous goods, means the complete product of the packing of the goods for transport, and consists of the goods and their packaging.

packaging, in relation to dangerous goods—

(a) means anything that contains, holds, protects or encloses the goods, whether directly or indirectly, to enable them to be received or held for transport, or to be transported; and

(b) includes anything prescribed under a dangerous goods regulation to be packaging.

Notes—

1 It may be that a container constitutes the whole of the packaging of goods, as in the case of a drum in which goods, including, for example, dangerous goods, are directly placed.

2 The term is not used in the same way as it is used in United Nations publications relating to the transport of dangerous goods.

park, for schedule 5B, see schedule 5B, part 1.

participating dangerous goods jurisdiction means a State that has a corresponding law to chapter 14 unless a regulation provides that the State is not a participating dangerous goods jurisdiction.

penalty notice see section 266E(4).

permitted road access location, for chapter 6, part 5, division 2, subdivision 2, see section 53.

personal watercraft means a power driven ship that is designed to be operated by a person standing, crouching or kneeling on it or sitting astride it.

placard means a label or emergency information panel that is required under a dangerous goods regulation to be used in transporting dangerous goods by rail.

place, for chapter 15, part 2, division 3, see section 475H.

plan commencement day, for chapter 8, part 3C, see section 283I.

planned transport infrastructure, for chapter 8, part 3C, see section 283I.

Planning Act means the *Planning Act 2016*.

planning application see section 62A(1).

planning chief executive means the chief executive of the department in which the Planning Act is administered.

planning Minister, for chapter 8, part 3C, see section 283I.

planning scheme means a planning scheme under the Planning Act.

plant includes any of the following—

(a) a conduit or cable;

(b) an electrical installation under the *Electricity Act 1994*;

(c) an overhead conveyor;

(d) a pipeline;

(e) a pole;

(f) a railway, monorail or tramway;

(g) a telecommunications plant;

(h) a viaduct or aqueduct;

(i) a water channel.

port—

(a) of a port authority, means a port for which the authority is responsible; or

(b) of the port lessor, means the port for which the port lessor is declared to be the port lessor; or

(c) of a port lessee, means the port for which the port lessee is declared to be a port lessee; or

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(c) of a port manager, means a port for which the port lessor that appointed, or approved the appointment of, the port manager, is declared to be the port lessor.

port agreement, for chapter 8, see section 267.

port area, for chapters 8 and 20, see section 267AA.

port authority—

(a) means a port authority established under section 268 or a body declared to be a port authority under a regulation under section 274A; but

(b) does not include a port authority that has been abolished under section 270 or for which the declaration has been revoked under a regulation under section 274A.

port entity, for chapters 8 and 20, see section 267.

port facilities, for chapter 8, see section 267.

port infrastructure includes transport infrastructure relating to ports.

port land, for chapter 8, part 3C, division 6, see section 283ZZL.

port lease, for chapter 8, part 3C, division 6, see section 283ZZL.

port lessee see section 267.

port lessor see section 267.

port manager see section 267.

port notice, for chapter 8, see section 282(1).

Port of Brisbane Corporation means Port of Brisbane Corporation Limited ACN 124 048 522.

port operator, for chapters 8 and 20, see section 267.

port prohibited development see section 283I.

port related development see section 283I.

port services, for chapter 8, see section 267.

port terminal facility, for schedule 5B, see schedule 5B, part 1.

port user, for chapter 8, see section 267.

precinct, for chapter 8, part 3C, see section 283I.

premises, for chapter 8, part 3C and schedule 5B, see section 283I.

prescribed exempt transport, for chapter 14, see section 441A.

prescribed time—

(a) for chapter 6, part 7—see section 92; or

(b) for chapter 6, part 8—see section 105B.

prevent, in relation to the transport of dangerous goods, includes avert, eliminate, minimise, remove and stop.

previous, for chapter 18, part 3, see section 521.

previous rail corporation means Queensland Railways.

priority infrastructure interface plan, for chapter 8, part 3C, see section 283I.

prohibited shareholding interest, for chapter 13, see section 438.

properly made submission, for chapter 8, part 3C, see section 283I.

proposed penalty notice see section 266C(2).

public marine facility means public marine transport infrastructure, including—

(a) land or waters associated with the infrastructure that are affected by its use; and

(b) land or waters specified for the infrastructure under a regulation made with the objective of clarifying what are the land or waters associated with the infrastructure that are affected by its use.

Example—

- an area of land and waters, specified under a regulation, that constitutes a boat harbour

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Not authorised—indicative only

- breakwaters, jetties, landings, mooring piles, pontoons, carparks and land or waters affected by the use of the infrastructure

public marine transport infrastructure means State-owned or State-controlled transport infrastructure relating to Queensland waters, other than port or miscellaneous transport infrastructure.

public marine transport infrastructure works, for chapter 15A, see section 475ZG.

public passenger service see the *Transport Operations (Passenger Transport) Act 1994*, schedule 3.

public thoroughfare easement means a public thoroughfare easement under either of the following provisions, if the easement is in favour of the State—

(a) the *Land Act 1994*, chapter 6, part 4, division 8;

(b) the *Land Title Act 1994*, part 6, division 4.

public utility plant means plant permitted under another Act or a Commonwealth Act to be on a road.

public utility provider means an entity that owns public utility plant.

QCAT information notice means a notice complying with the QCAT Act, section 157(2).

QR Limited means QR Limited ACN 124649967.

QR National, for chapter 13, see section 438.

QR National company, for chapter 13, see section 438.

QR Network Pty Ltd means QR Network Pty Ltd ACN 132181116.

quarry material see the *Water Act 2000*, schedule 4.

rail, for chapter 14, includes cableway.

rail corridor land means existing rail corridor land or new rail corridor land.

rail government entity—

1 A rail government entity is a government entity under the *Public Service Act 2008*, section 24(1)(c) whose

principal business is doing either or both of the following directly, or indirectly through its subsidiaries—

(a) managing a railway;

(b) operating rolling stock on a railway.

2 If a rail government entity has 1 or more subsidiaries, a reference in an Act to a rail government entity includes a reference to each of its subsidiaries.

Rail Safety Law means the Rail Safety National Law (Queensland).

rail transport infrastructure means facilities necessary for operating a railway, including—

(a) railway track and works built for the railway, including, for example—

- cuttings
- drainage works
- excavations
- land fill
- track support earthworks; and

(b) any of the following things that are associated with the railway's operation—

- bridges
- communication systems
- machinery and other equipment
- marshalling yards
- notice boards, notice markers and signs
- overhead electrical power supply systems
- over-track structures
- platforms
- power and communication cables
- service roads

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- signalling facilities and equipment
- stations
- survey stations, pegs and marks
- train operation control facilities
- tunnels
- under-track structures; and

(c) vehicle parking and set down facilities for intending passengers for a railway that are controlled or owned by a railway manager or the chief executive; and

(d) pedestrian facilities, including footpath paving, for the railway that are controlled or owned by a railway manager or the chief executive;

but does not include other rail infrastructure.

rail vehicle, for chapter 14, includes rolling stock and a cableway car.

railway means a guided system, or proposed guided system, designed for the movement of rolling stock that is capable of transporting passengers or freight, or both, on a railway track and—

(a) includes—

(i) rail transport infrastructure; and

(ii) a railway being or proposed to be built on future railway land; but

(b) does not include—

(i) rolling stock; and

(ii) a railway mentioned in section 107(2).

railway crossing means a level crossing, bridge or another structure used to cross over or under a railway.

railway manager means—

(a) for a railway—the person who is an accredited rail infrastructure manager in relation to railway operations relating to the railway; or

(b) for rail corridor land—the person who is an accredited rail infrastructure manager in relation to railway operations relating to the railway or proposed railway on or proposed to be on the rail corridor land.

railway operator—

(a) means a person who operates rolling stock on a railway; but

(b) does not include the Authority.

railway works means—

(a) works for constructing, maintaining, altering or operating a railway or rolling stock; or

(b) works for establishing, constructing or maintaining transport infrastructure, other than rail transport infrastructure, that are—

(i) directly related to paragraph (a); and

(ii) necessary for the safety, efficiency and operational integrity of transport infrastructure; or

(c) other works declared under a regulation to be railway works.

reasonably means on grounds that are reasonable in all the circumstances.

reconfiguring a lot see the Planning Act, schedule 2.

rectification notice, for chapter 11, see section 411.

referral agency see the Planning Act, section 54(2).

referral agency's response see the Planning Act, section 56(4).

registered operator, of a vehicle that has passed through a toll plaza, means a person who, when the vehicle passed through the toll plaza, was the person in whose name the vehicle was registered under a registration Act.

registrar of titles means a public official or authority responsible for registering title to land and dealings affecting land.

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registration Act means—

(a) the *Transport Operations (Road Use Management) Act 1995* or another Act, prescribed under a regulation, dealing with the registration of vehicles; or

(b) a law of the Commonwealth or another State dealing generally with the registration of vehicles.

related body corporate has the meaning given in the Corporations Act.

relevant emergency service officer means an officer of any of the following—

(a) the Queensland Ambulance Service;

(b) the Queensland Fire and Rescue Service;

(c) the Queensland Police Service;

(d) the State Emergency Service;

(e) a service of another State, corresponding to a service mentioned in paragraphs (a) to (d), if there is a dangerous goods authority for the State;

(f) a unit of the Australian Defence Force corresponding to a service mentioned in paragraphs (a) to (d).

relevant entity, for chapters 8 and 20, see section 267.

relevant interest, for chapter 13, see section 438.

relevant notice, for chapter 6, part 8, see section 105B.

relevant person—

(a) for chapter 7, part 2, see section 109; or

(b) for chapter 13, see section 438.

repealed regulation, for chapter 18, part 5, see section 532.

required land, for chapter 12, see section 415.

requirement, of a port notice, for chapter 8, see section 267.

residential development, for schedule 5B, see schedule 5B, part 1.

responsible entity, for a change application, see the Planning Act, section 78(3).

responsible entity, for chapter 12, see section 415.

revocation notice, for chapter 6, part 8, see section 105B.

road—

(a) for chapter 9, part 3, has the meaning given in section 301; and

(b) for chapter 10, part 3, has the meaning given in section 352; and

(c) does not include an area or thing that is busway land, busway transport infrastructure, light rail land or light rail transport infrastructure; and

(ca) does not include a public thoroughfare easement; and

(d) subject to paragraphs (a) to (c), means—

(i) an area of land dedicated to public use as a road; or

(ii) an area that is open to or used by the public and is developed for, or has as 1 of its main uses, the driving or riding of motor vehicles; or

(iii) a bridge, culvert, ferry, ford, tunnel or viaduct; or

(iv) a pedestrian or bicycle path; or

(v) a part of an area, bridge, culvert, ferry, ford, tunnel, viaduct or path mentioned in subparagraphs (i) to (iv).

road access location, for chapter 6, part 5, division 2, subdivision 2, see section 53.

road access works means—

(a) a physical means of entry or exit for traffic between land and a road; or

Example—

a driveway

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(b) road works providing entry or exit for traffic between works mentioned in paragraph (a) and the part of the road formed or prepared for use by general traffic.

Example—

an acceleration or deceleration lane, or a laneway, lane or track, connecting a driveway of a property adjacent to a road to a lane on the road designed to carry through traffic

road franchise agreement, for chapter 6, see section 85.

road transport infrastructure includes transport infrastructure relating to roads.

road works, for chapters 6 and 15A, means—

(a) works done for—

(i) establishing or constructing roads or things associated with roads; or

(ii) maintaining roads or things associated with roads (other than public utility plant); or

(iii) facilitating the operation or safety of road transport infrastructure; or

(iv) establishing, constructing or maintaining transport infrastructure, other than road transport infrastructure, if the works are—

(A) directly related to an activity mentioned in subparagraph (i), (ii) and (iii); and

(B) necessary for the safety, efficiency, operation or structural integrity of transport infrastructure; or

(b) road access works; or

(c) works declared under a regulation to be road works.

rolling stock means a vehicle, including, for example, a train, that operates on a railway and is used, or is proposed to be used, for either of the following purposes—

(a) transporting passengers or freight on a railway track; or

(b) maintenance work, or other work associated with, a railway.

schedule 5 step-in notice, for chapter 6, part 8, see section 105B.

schedule 5A step-in notice, for chapter 6, part 8, see section 105B.

seafarers' centre, for schedule 5B, see schedule 5B, part 1.

service provider, for chapter 8, part 3C, see section 283I.

services contract, for land, means a contract merely for the provision of services on, to, or in relation to, the land, but does not include a contract for the provision of services under which a person has a right to reside on any part of the land.

Example of a services contract—

a contract for the provision of a mowing service

service station, for schedule 5B, see schedule 5B, part 1.

ship, for chapter 8, see section 267.

shop (minor), for schedule 5B, see schedule 5B, part 1.

shopping facility (major), for schedule 5B, see schedule 5B, part 1.

signed notice means a written notice signed by the person giving the notice.

sport and recreation (major), for schedule 5B, see schedule 5B, part 1.

State-controlled road means a road or land, or part of a road or land, declared under section 24 to be a State-controlled road, and, for chapter 6, part 5, division 2, subdivision 2, see section 53.

State government body, for chapter 6, means—

(a) a department or a division, branch or other part of a department; or

(b) a State instrumentality, agency, authority or entity or a division, branch or other part of a State instrumentality, agency, authority or entity; or

(c) a GOC;

but does not include a local government.

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State interest, for chapter 8, part 3C, see section 283I.

State land means any of the following—

(a) unallocated State land;

(b) a road, including a State-controlled road and local government road;

(c) trust land under the *Land Act 1994*;

(d) lease land under the *Land Act 1994*;

(e) a watercourse crossing;

(f) land otherwise held by or vested in the State.

statement of corporate intent, for chapter 8, see section 267.

statement of proposal—

(a) for chapter 8, part 3C, see section 283I; or

(b) for chapter 8, part 4, see section 285A.

State planning instrument, for chapter 8, part 3C, see section 283I.

State toll road corridor land means land declared to be State toll road corridor land under section 84A.

strategic plan, for chapter 8, part 3C, see section 283I.

strategic port land, for chapter 8, see section 267.

sublease, for chapters 8 and 20, see section 267.

subsidiary, of a body corporate, has the meaning given in the Corporations Act.

subsidiary, of a rail government entity, means a body corporate that would be a subsidiary of the rail government entity under the Corporations Act, part 1.2, division 6 if the entity were a body corporate.

suspension notice, for chapter 6, part 8, see section 105B.

table of assessment, for chapter 8, part 3C, see section 283I.

tenure, over boat harbour land, means a lease, licence, permit or other authority conferring a right of possession or occupation for the land.

toll plaza means a part of a toll road or local government tollway where facilities are constructed for either or both of the following—

(a) the collection of tolls from the drivers of vehicles using the toll road or local government tollway;

(b) the operation of an E toll system for vehicles using the toll road or local government tollway.

toll road, for chapter 6, part 7, see section 92.

toll road operator, for chapter 6, part 7, see section 92.

tollway project, for chapter 6, part 8, see section 105B.

tourist attraction (major), for schedule 5B, see schedule 5B, part 1.

trade lease see section 267.

traffic includes the passing back and forth of persons, vehicles and animals.

train means a conveyance or group of connected conveyances that travels on a rail or rails of a railway or sugar tramway.

train controller, for rolling stock, means an individual who is in control of train control signalling and communication for the section of track on which the rolling stock is moving or stationary.

train path obligations see section 266B(1).

transition period, for chapter 20, see section 562.

transport, in relation to dangerous goods, includes each of the following—

(a) the packing, loading and unloading of the goods, and the transfer of the goods to or from a vehicle, for their transport by rail;

(b) the marking or labelling of packages containing dangerous goods for their transport by rail;

(c) the placarding of packaging and vehicles in which dangerous goods are transported, or are to be transported, by rail;

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(d) other matters incidental to their transport, or in preparation for their transport, by rail.

transport and equipment depot, for schedule 5B, see schedule 5B, part 1.

transport associated development, for chapter 15A, see section 475ZG.

transport documentation means each of the following—

(a) for a rail vehicle—

(i) each contractual document directly or indirectly associated with—

(A) a transaction for the actual or proposed transport by rail of goods or any previous transport of the goods by any transport method; or

(B) goods, to the extent the document is relevant to the transaction for their actual or proposed transport by rail; or

(ii) each document—

(A) contemplated in a contractual document mentioned in subparagraph (i); or

(B) required by law, or customarily given, in connection with a contractual document or transaction mentioned in subparagraph (i);

Examples—

- a bill of lading
- a consignment note
- a container weight declaration
- a contract of carriage
- a delivery order
- an export receival advice
- an invoice
- a load manifest
- a sea carriage document
- a vendor declaration

- train wire
- sequential consist
- loading form

(b) for the transport of dangerous goods—documentation required to be kept under a dangerous goods regulation.

transport infrastructure includes—

(a) air, busway, light rail, miscellaneous, public marine, rail or road transport infrastructure; and

(b) transport infrastructure relating to ports; and

(c) other rail infrastructure; and

(d) active transport infrastructure.

transport infrastructure works, for chapter 15A, see section 475ZG.

transport interface, for chapter 15A, see section 475ZG.

transport interface agreement, for chapter 15A, see section 475ZG.

transport interface issue, for chapter 15A, see section 475ZG.

transport interface management area, for chapter 15A, see section 475ZG.

transport interface object, for chapter 15A, see section 475ZG.

transport Minister, for chapter 8, part 3C, see section 283I.

transport purpose includes any purpose for which the Minister is responsible.

transport reasons, for chapter 8, part 3C, see section 283I.

Treasurer means the Minister who administers the *Financial Accountability Act 2009*.

unregistered right, for chapter 7, part 7, see section 239AH.

user administration charge—

(a) for chapter 6, part 7—see section 92; or

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(b) for chapter 6, part 8—see section 105B.

valid account, for an E toll system operating for a toll road or local government tollway, means an account that—

(a) has been established by a person for using the E toll system; and

(b) is, under the arrangements under which the account was established, available to be operated for using the toll road or local government tollway.

valuable features includes each of the following, whether terrestrial or aquatic—

(a) resources or areas of ecological significance, including, for example, habitats, wildlife corridors, buffer zones, places supporting biological diversity or resilience, and features contributing to the quality of air, water (including catchments or recharge areas) and soil;

(b) areas contributing significantly to amenity, including, for example, areas of high scenic value, physical features that form significant visual backdrops or that frame or define places or localities, and attractive built environments;

(c) areas or places of cultural heritage significance, including, for example, areas or places of indigenous cultural significance, or aesthetic, architectural, historical, scientific, social or technological significance, to the present generation or past or future generations;

(d) resources or areas of economic value, including, for example, extractive deposits, fishery resources, forestry resources, water resources, sources of renewable and non-renewable energy and good quality agricultural land.

vehicle, see the *Transport Operations (Road Use Management) Act 1995*.

vessel, for chapter 8, see section 267.

visitor centre, for schedule 5B, see schedule 5B, part 1.

warehouse (general), for schedule 5B, see schedule 5B, part 1.

watercourse—

(a) for chapter 15A, see section 475ZG; or

(b) otherwise—includes a lake, spring, stream or swale.

watercourse crossing see section 477F.

watercraft includes any thing that is water traffic or a device, for example, a sailboard, used for the movement of persons who are on or in water.

Water Supply Act, for chapter 8, part 4D, see section 289R.

water traffic includes a hovercraft and a vehicle, person, aircraft or other craft on or in water.

waterway management regulation see section 471.

wild river area see the *Wild Rivers Act 2005*, schedule.

wilfully means deliberately or recklessly.

wind farm, for schedule 5B, see schedule 5B, part 1.

works includes activities.

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