

TRANSPORT INFRASTRUCTURE (RAILWAYS) ACT 1991

No. 28 of 1991

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Queensland



ANNO QUADRAGESIMO

ELIZABETHAE SECUNDAE REGINAE

No. 28 of 1991

**An Act to consolidate and amend the law relating to railways,
to provide for the incorporation of Queensland
Railways and for related purposes**

[ASSENTED TO 5TH JUNE, 1991]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART 1—PRELIMINARY

1.1 Short title. This Act may be cited as the *Transport Infrastructure (Railways) Act 1991*.

1.2 Commencement. (1) Section 1.1 and this section commence on the day this Act is assented to for and on behalf of Her Majesty.

(2) Except as provided by subsection (1), this Act is to commence on a day appointed by Proclamation.

(3) The day appointed under subsection (2) is, in this Act, referred to as the commencement of this Act.

1.3 Interpretation. (1) In this Act, unless the contrary intention appears—

“Board” means the Queensland Railways Board constituted by section 3.1;

“Chairperson” means the presiding officer of the Board appointed under section 3.7;

“Chief Executive” means the Chief Executive appointed under section 4.1;

“court of competent jurisdiction” means the Supreme Court, a District Court, the Land Court or a Magistrates Court that has jurisdiction in actions for the recovery of an amount or compensation claimed;

“deputy Chairperson” means the deputy presiding officer of the Board appointed under section 3.7;

“director” means a member of the Board appointed under section 3.6;

“employee of Queensland Railways” means any person employed in the service of Queensland Railways;

“freight” includes animals and things of every kind conveyed by Queensland Railways;

“level crossing” means any place where a railway line crosses a road on the level or where the public is permitted to cross a railway line on the level;

“local authority” means a local authority or joint board constituted under the *Local Government Act 1936-1990* for an Area or the Brisbane City Council constituted under the *City of Brisbane Act 1924-1990*;

“Minister” includes a Minister of the Crown for the time being acting for or on behalf of the Minister;

“previous Corporation” means the Commissioner for Railways the corporation sole constituted by section 8 (1) of the *Railways Act 1914-1989*;

“Queensland Railways” means the corporation continued in existence by section 2.1;

“railway” means any part or portion, extension or branch of any railway constructed or worked under this Act or vested in Queensland Railways: The term, where necessary, includes all lands, buildings, structures, works, matters and conveniences connected therewith or appurtenant thereto, whether of an electrical nature or otherwise;

“railway line” means any set of rails: The term includes the area within 1.25 metres of a line drawn midway between those rails;

“road” means any road, street, highway or thoroughfare and any bridge or culvert on a road;

“statutory declaration” means a declaration made under the *Oaths Act 1867-1989* or a corresponding law in force in any other State or Territory of the Commonwealth or other country where the declaration is made;

“ticket” means any ticket, pass, symbol or other evidence of a right or liberty to travel as a passenger on any railway of whatever material the ticket consists;

“vehicle” means a vehicle within the meaning of section 9 of the *Traffic Act 1949-1990*;

“watercourse” includes any river, stream, ditch, drain or other channel or passage through which water flows.

(2) In this Act, unless the contrary intention appears, where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

PART 2—QUEENSLAND RAILWAYS

2.1 Queensland Railways. (1) The previous Corporation is hereby continued in existence under the name and style “Queensland Railways”.

(2) Queensland Railways—

(a) is a body corporate;

(b) has a common seal;

and

(c) may sue and be sued in its corporate name.

(3) All courts and persons acting judicially are to take judicial notice of the imprint of the common seal of Queensland Railways appearing on a document and, until the contrary is proved, are to presume that the seal was duly affixed.

2.2 Functions of Queensland Railways. (1) The functions of Queensland Railways are—

(a) to establish, maintain and operate or otherwise arrange for safe and efficient freight and passenger transport services whether by railway or otherwise;

- (b) to provide or otherwise arrange for ancillary services or works which in the opinion of the Board are necessary for Queensland Railways to efficiently carry out its functions.

(2) Queensland Railways may exercise its functions in and outside Queensland.

(3) In carrying out its functions Queensland Railways is to apply sound commercial principles.

2.3 General powers of Queensland Railways. (1) Queensland Railways has power to do all things necessary or convenient to be done, for or in connection with, or incidental to, the performance of its functions and, in particular, has power—

- (a) to enter into contracts;
- (b) to compound or prove in any court of competent jurisdiction all debts due to it;
- (c) to acquire, hold, let, lease and dispose of (by exchange, sale or otherwise) real and personal property or any interest therein, whether situated in or outside Queensland;
- (d) to appoint agents and attorneys, and act as agent for other persons;
- (e) to engage consultants;
- (f) to offer and pay rewards;
- (g) to provide consultancy and project management services;
- (h) to construct railways or other transportation systems;
- (i) to erect buildings and structures, carry out works and manufacture plant, machinery, equipment and goods;
- (j) to increase, reduce or cease any service or operation it provides in the exercise of its powers including the addition of or removal of infrastructure and facilities;
- (k) to undertake and carry on any business undertaking, transaction or operation commonly undertaken or carried on by providers of transportation and transact and do all or any acts, matters or things incidental or ancillary to the business of transportation;
- (l) to act in any manner in which or exercise any power or authority that a company, within the meaning of the Corporations Law of the Commonwealth (or any Act, amendment or substitution for that Act), may lawfully act or exercise;
- (m) to take such steps and do such acts and things as are necessary or desirable for the purpose of achieving the objects and purposes of this Act or incidental or ancillary to that purpose.

(2) The powers conferred on Queensland Railways by this section are in addition to and not in derogation of any other power so conferred by this or any other Act.

(3) Queensland Railways may exercise its powers in and outside Queensland.

(4) The power under subsection (1) (k), to cease any service or operation Queensland Railways provides—

- (a) is not to be exercised without the approval of the Board;
and
- (b) is to be exercised within limitations set by the Minister from time to time.

2.4 Specific powers of Queensland Railways. (1) Queensland Railways has power, for or in connection with the performance of its functions—

- (a) to form and participate in the formation, management, supervision or control of the business or operations of any body corporate or association or body (incorporated or unincorporated) or other undertaking;
- (b) to subscribe for and purchase shares in, and debentures and other securities of, companies;
- (c) to undertake and carry on or enter into a partnership, trust, joint venture or other arrangement for sharing profits with any person, association or body (incorporated or unincorporated) carrying on any other business that is capable of being conveniently carried on in connection with its other activities or calculated directly or indirectly to enhance the value of or render profitable any of Queensland Railways' property or activities;
- (d) to become and be a member of any governmental or semi-governmental authority or other body or association, where such membership is calculated directly or indirectly to enhance the value of or render profitable any of Queensland Railways' property or activities;
- (e) to grant licences in respect of advertising on land or property vested in Queensland Railways;
- (f) to authorise any person to operate passenger and freight services on its railways.

(2) For the purposes of exercising its power under subsection (1) (d), Queensland Railways may authorise the holder of any office it so specifies to be a member of the authority, body or association or a member of its directorate or other governing body.

(3) Where a licence is granted under subsection (1) (e) the approval of any other body or local authority required to be granted in respect of that advertising is to be taken to have been given.

(4) A person authorised under subsection (1) (f) has the protection and immunity that Queensland Railways has under sections 6.19, 7.7 and 7.8.

2.5 Branches and agencies. (1) Queensland Railways may establish and maintain branches or agencies at any place in or outside Queensland

and may discontinue a branch or agency maintained at any place by it.

(2) Queensland Railways may employ as its agents persons who are in or outside Queensland.

2.6 Mode of making contracts. (1) Contracts on behalf of Queensland Railways may be made, varied or discharged as follows:—

- (a) a contract that, if made by or between private persons would by law be required to be in writing under seal may be made, varied or discharged, in the name and on behalf of Queensland Railways, in writing under the common seal of Queensland Railways;
- (b) a contract that, if made by or between private persons would by law be required to be in writing signed by the parties to be charged by it may be made, varied or discharged, in the name and on behalf of Queensland Railways, in writing signed by a person acting under the express or implied authority of Queensland Railways;
- (c) a contract that, if made by or between private persons would be valid although made by parol only and not reduced into writing, may be made, varied and discharged by parol, in the name and on behalf of Queensland Railways, by a person acting under the express or implied authority of Queensland Railways.

(2) Subsection (1) is not to be construed to invalidate a contract made and executed on behalf of Queensland Railways by a duly appointed attorney if that contract would be valid if executed by the attorney on the attorney's own behalf.

2.7 Relationship to Crown. In the discharge of its functions and duties or the exercise of its powers for the purposes of this Act, Queensland Railways—

- (a) represents the Crown in right of Queensland;
- (b) has all the immunities, rights and privileges of the Crown in right of Queensland, except where this Act provides to the contrary;
and
- (c) is an agency of the Government of Queensland.

2.8 Custody and affixing of seal. (1) The common seal of Queensland Railways is to be kept in the custody of the Chairperson or such other person as may be authorised by resolution of the Board.

(2) The common seal is to be affixed to documents only in pursuance of a resolution of the Board and by the person having the custody of the seal in accordance with subsection (1).

(3) Queensland Railways may have for use outside Queensland, seals, each of which is to be a facsimile of the common seal.

(4) For the purposes of its use outside Queensland, each facsimile of the common seal is to be taken to be the common seal and is to be secured and affixed as if it were the common seal.

2.9 Authentication of documents. A document purporting to be made by or on behalf of Queensland Railways, other than a document that requires the common seal of Queensland Railways to be affixed, is duly made if it bears the signature of the Chairperson or a person authorised by resolution of the Board for that purpose.

PART 3—THE BOARD

3.1 Queensland Railways Board. (1) There is established by this Act a Queensland Railways Board.

(2) The policies of Queensland Railways are to be determined by the Board.

3.2 Role of the Board. (1) The Board is responsible for the exercise and discharge by Queensland Railways of the powers conferred and the functions and duties imposed on it by this Act.

(2) Without limiting subsection (1), the Board—

- (a) is to make general determinations as to the policy of Queensland Railways and its operations;
- (b) may determine policy in relation to the administration, management and control of Queensland Railways;
- (c) may give such directions to and exercise such control over the Chief Executive as it considers appropriate;
- (d) has and may exercise such other powers and discharge such other functions and duties as are prescribed by this Act or any other Act or enactment.

3.3 Board to inform Minister. The Board is—

- (a) to consult with the Minister on matters of policy of or affecting Queensland Railways and is to keep the Minister informed of policy determinations made by the Board;
- (b) to keep the Minister informed of the general conduct of its activities and of any significant development or proposed development in its activities;
- (c) to supply the Minister or any person nominated by the Minister with such information relating to its activities as the Minister or that person may require.

3.4 Ministerial directions. (1) Where the Minister is satisfied that it is desirable in the public interest to do so, the Minister may give written directions to the Board with respect to the performance of its functions or duties or the exercise of its powers.

(2) The Board is to comply with any direction given under subsection (1).

(3) Where the Minister gives a direction to the Board under subsection (1), the Chief Executive is to cause a statement setting out particulars of the direction to be incorporated in the relevant annual report of Queensland Railways.

3.5 Board to act on sound commercial principles. Subject to this Act, the Board—

- (a) is to perform its functions and duties and exercise its powers in accordance with sound commercial principles;
and
- (b) is to earn a rate of return and attain standards of productivity and service as determined by the Minister from time to time.

3.6 Membership of Board. (1) The Board is to consist of 7 directors to be appointed by the Governor in Council on the recommendation of the Minister by notification published in the Gazette.

(2) A person recommended under subsection (1) is to have such commercial, managerial or other qualifications as the Minister considers will enable the Board to carry out its functions.

3.7 Appointment of Chairperson and deputy Chairperson. (1) The Governor in Council, on the recommendation of the Minister, is to appoint, by notification published in the Gazette, one of the directors as Chairperson and another director as deputy Chairperson.

(2) The deputy Chairperson—

- (a) during such time as the Chairperson is prevented by absence, illness or otherwise from performing the duties of that office, is to act in the office of Chairperson;
and
- (b) during such time as a vacancy exists in that office and while the deputy Chairperson so acts, is to have and may exercise the powers and is to perform the functions and duties conferred or imposed upon the Chairperson under this Act.

3.8 Tenure of office. (1) A director is to hold office for such term, not exceeding 3 years, as the Governor in Council determines.

(2) A director, if that director is otherwise qualified, is eligible for re-appointment as a director.

(3) The Governor in Council on the recommendation of the Minister may at any time remove a director from office by notification published in the Gazette.

3.9 Disqualification from directorship. (1) A person who—

- (a) is an undischarged bankrupt or takes advantage of the laws in force for the time being relating to bankruptcy;

(b) has been or is convicted in Queensland of an indictable offence or has been or is convicted elsewhere in respect of an act or omission that if done or made by that person in Queensland would have constituted an indictable offence;

or

(c) is or becomes a patient within the meaning of the *Mental Health Services Act 1974-1990*;

is not to be capable of being or continuing to be a director.

(2) A person who is a director, officer or employee of any corporation, association or body (whether incorporated or unincorporated) the business of which is wholly or mainly that of transporting freight or passengers and competitive with Queensland Railways is not qualified for appointment as a director and a director who becomes so disqualified for appointment thereupon ceases to hold office as a director.

3.10 Vacation of office. The office of a director becomes vacant if that director—

(a) dies;

(b) becomes incapable of continuing as a director;

(c) is absent without prior leave of absence granted by the Board from 3 consecutive meetings of the Board of which due notice has been given to that director;

(d) furnishes his or her written resignation to the Minister;

(e) ceases to be qualified as a director;

(f) is removed from office under section 3.8 (3).

3.11 Casual vacancies. (1) When a casual vacancy occurs in the office of a director the Governor in Council is to appoint in accordance with this Act another person qualified to be a director.

(2) A person appointed to fill a casual vacancy as a director—

(a) is to be appointed and hold office for the balance of the term of office of that person's predecessor or until that person sooner vacates that office;

and

(b) if otherwise qualified—is eligible for re-appointment as a director.

3.12 Remuneration to directors. (1) A director is to be paid such fees and allowances in respect of the performance of that director's duties as the Governor in Council may determine from time to time.

(2) Fees and allowances are not to be paid to a director who is an officer of the public sector or the public service of Queensland for attendance at any meeting of the Board wholly held during ordinary office working hours of that officer.

(3) Each director is to be paid such expenses as are necessarily incurred by that director in the discharge of that director's duties and as the Board approves.

3.13 Confidentiality and honesty. (1) Before entering upon the duties or exercising or discharging any power, function or duty of a director under this Act, each director is to make a declaration of confidentiality in the form determined by the Minister.

(2) Each director is at all times to act honestly in the exercise of his or her powers and in the discharge of his or her duties under this Act.

Penalty:

(a) if the contravention was committed with intent to deceive or defraud Queensland Railways or creditors of Queensland Railways or creditors of any other person or for any other fraudulent purpose—330 penalty units or imprisonment for 5 years, or both;

or

(b) otherwise—85 penalty units.

(3) A director or former director is not to make improper use of information acquired by virtue of his or her position as a director—

(a) to gain, directly or indirectly, an advantage for himself or herself or for any other person;

or

(b) to cause detriment to Queensland Railways.

Penalty: 330 penalty units or imprisonment for 5 years, or both.

3.14 Declaration of pecuniary interests. (1) Before the Minister makes a recommendation under section 3.6 (1), the Minister is to require each person the Minister intends to recommend to furnish to the Minister a statutory declaration as to the extent and nature of all pecuniary interests had by that person that stand to benefit directly by the operations or decisions of Queensland Railways.

(2) Each time there is a change in the interests of a director declared under subsection (1), that director is to forthwith furnish to the Minister a further statutory declaration as to the extent and nature of those interests then had by that director.

(3) For the purposes of this section, if a person or the spouse or a member of that person's family ordinarily resident with that person—

(a) owns shares (whether beneficially or otherwise) in a body corporate that stands to benefit directly by the operation or decisions of Queensland Railways;

(b) is a member of a firm that stands to benefit directly by the operation or decisions of Queensland Railways;

or

(c) is a director or employee of a body corporate or is an employee of a firm that, in either case, stands to benefit directly by the operation or decisions of Queensland Railways; that person is to be taken to have a pecuniary interest that stands to benefit directly by the operation or decisions of Queensland Railways.

3.15 Procedure generally. Subject to the following provisions of this Part, the Board is to conduct its business in the manner it considers appropriate.

3.16 Meetings. (1) Subject to subsection (2), the Chairperson is to convene meetings of the Board which, in the Chairperson's opinion, are necessary for the efficient conduct of its affairs.

(2) If requested to do so in writing by 2 or more other directors, the Chairperson is to convene a meeting of the Board.

(3) Subject to subsection (4), notice of every meeting is to be in writing and is to be given to each director at least 7 days prior to the date appointed for that meeting.

(4) Where in the opinion of the Chairperson or of 2 or more other directors circumstances constitute an emergency, the Chairperson or those other directors may, upon written notice to all the directors, call a meeting of the Board and that meeting may be validly held even though 7 days notice is not given.

(5) The Board is to meet at least once in each quarter of each year.

3.17 Quorum. (1) Business is not to be conducted at a meeting of the Board unless a quorum is present.

(2) A quorum of the Board is a majority of the total number of directors for the time being.

3.18 Presiding officer. (1) The Chairperson is to preside at all meetings of the Board at which the Chairperson is present and, in the absence of the Chairperson, the deputy Chairperson, if present, is to preside.

(2) If both the Chairperson and the deputy Chairperson are absent from a meeting, a director elected by the directors present at that meeting (if they constitute a quorum) is to preside.

(3) A director elected to preside at a meeting has and may exercise the powers and is to discharge the functions and perform the duties of the Chairperson.

3.19 Conduct of affairs. (1) The Board is to discharge its functions, exercise its powers and perform its duties by the majority vote of its directors present at a meeting and voting on the business in question.

(2) Where a director, being present at a meeting, abstains from voting that director is to be taken to have voted in the negative.

(3) The person who is duly presiding at a meeting has a deliberative vote and, in the event of an equality of votes, a casting vote.

(4) If all the directors sign a document containing a statement that they are in favour of a resolution in terms set out in the document, that resolution is to be taken to have been passed at a meeting of the directors held on the day on which the document was signed and at the time at which the document was last signed by a director or, if the directors signed the document on different days, on the day on which, and at the time at which, the document was last signed by a director.

(5) For the purposes of subsection (4), 2 or more separate documents containing statements in identical terms each of which is signed by one or more directors are together to be taken to constitute one document containing a statement in those terms signed by those directors on the respective days on which they signed the separate documents.

3.20 Minutes. (1) The Chairperson is to cause to be kept a record of all decisions of the Board whether made at a duly constituted meeting or by reference in writing and that record is to be presented to the next meeting of the Board for confirmation as to its correctness and is to be signed by the person who is presiding at that subsequent meeting and that record then forms part of the minutes of that meeting.

(2) Every entry in the minute book purporting to be signed in accordance with subsection (1) and every writing purporting to be a copy of or extract from such an entry and to be certified by the Chairperson, upon its production in any proceeding, is evidence, and in the absence of evidence to the contrary, conclusive evidence, of the matters contained in it.

3.21 Validity of proceedings. Any act, proceeding or decision of the Board is not invalid because of any defect in the qualification, directorship or appointment of any director or a vacancy in the directorship of the Board at the time of that act, proceeding or decision.

3.22 Authentication of documents. A document or writing made or issued by the Board for the purposes of this Act is sufficiently authenticated if it is made or, as the case may be, signed by the Chairperson or a person authorised by resolution of the Board for that purpose.

3.23 Disclosure of interests. (1) A director who has a direct or indirect pecuniary interest (within the meaning of section 3.14 (3)) in a matter being considered, or about to be considered, by the Board, is, as soon as practicable after the relevant facts come to the director's knowledge, to disclose the nature of the interest at a meeting of the Board.

Penalty: 50 penalty units.

(2) A disclosure under subsection (1) is to be recorded in the minutes of the meeting and that director—

(a) is not to be present during any deliberation of the Board in relation to the matter;

- (b) is not to take part in any decision of the Board in relation to the matter;
- and
- (c) is to be disregarded for the purposes of constituting a quorum in respect of the consideration of the matter.

(3) Subsection (1) does not apply in relation to a matter relating to the supply of goods or services for the director if the goods or services are, or are to be, available to members of the public on the same terms and conditions.

(4) Notwithstanding that a director contravenes a provision of this section, that contravention does not invalidate any decision of the Board or the discharge of a function, exercise of a power or the performance of a duty by it.

PART 4—STAFF

4.1 Appointment of Chief Executive. (1) The Board is to appoint a person to be the Chief Executive of Queensland Railways.

(2) The Chief Executive is to be paid such salary and allowances and employed on such terms and conditions as the Board determines from time to time.

(3) The Board may at any time remove the Chief Executive from office.

(4) On and from the commencement of this Act and until a person appointed under subsection (1) commences duty, the person who, immediately prior to the commencement of this Act, was the Commissioner for Railways appointed under section 6 of the *Railways Act 1914-1989* is to be the Chief Executive.

4.2 Chief Executive to manage Queensland Railways. (1) Subject to this Act, to the control and direction of the Board and to any policy determined by the Board, the Chief Executive is to administer, conduct the business of and manage and control Queensland Railways.

(2) The Chief Executive is to comply with all written directions issued by the Board regarding the operation of Queensland Railways and inform the Board of any significant happenings.

(3) Any act, matter or thing done in the name of, or on behalf of Queensland Railways by the Chief Executive is to be taken to have been done by Queensland Railways.

4.3 Disqualification from appointment. A person who—

- (a) is an undischarged bankrupt or takes advantage of the laws in force for the time being relating to bankruptcy;
- (b) has been or is convicted in Queensland of an indictable offence or has been or is convicted elsewhere in respect of

an act or omission that if done or made by that person in Queensland would have constituted an indictable offence;

- (c) is or becomes a patient within the meaning of the *Mental Health Services Act 1974-1990*;
- (d) is or becomes a member of the Executive Council or of the Legislative Assembly;
- (e) is or becomes a director, officer or employee of any corporation, association or body (whether incorporated or unincorporated) the business of which is wholly or mainly that of transporting freight or passengers and competitive with Queensland Railways;

is not capable of being or continuing to be the Chief Executive.

4.4 Vacation of office. The office of the Chief Executive becomes vacant if the Chief Executive—

- (a) dies;
- (b) becomes incapable of continuing as the Chief Executive;
- (c) furnishes his or her written resignation to the Board;
- (d) under section 4.3, ceases to be capable of continuing to be the Chief Executive;
- (e) is removed from office under section 4.1 (3);
- (f) engages in any employment outside the duties of the Chief Executive under this Act;
- (g) is absent from duty for a period of 14 days without lawful excuse.

4.5 Staff of Queensland Railways. (1) Queensland Railways may appoint and employ on salary or wages or engage and employ under contracts such persons as are necessary for the effectual administration of this Act.

(2) Subject to any applicable decision within the meaning of the *Industrial Relations Act 1990*, persons employed by Queensland Railways are to be paid salaries, wages and allowances at such rates and are to be employed under such conditions of employment (including conditions as to leave entitlements) as Queensland Railways determines.

(3) The *Public Service Management and Employment Act 1988-1990* does not apply to any employee of Queensland Railways.

(4) Queensland Railways is to establish an appeal process for the purposes of hearing promotions and disciplinary appeals within Queensland Railways.

4.6 Employment of staff of previous Corporation. (1) In this section—
“employee of the previous Corporation” means a person who immediately prior to the commencement of this Act held paid employment with the previous Corporation.

(2) On the commencement of this Act, every employee of the previous Corporation becomes an employee of Queensland Railways on such terms and conditions, subject to any applicable award or industrial agreement, as the Board may determine, but no less favourable than the terms and conditions upon which that person was employed by the previous Corporation immediately before that commencement.

(3) A person who becomes an employee of Queensland Railways under subsection (2)—

- (a) retains all rights accrued or accruing as an employee of the previous Corporation;
- and
- (b) is entitled to receive annual, sick and long service leave and any similar entitlement accrued or accruing to that person as an employee of the previous Corporation;

and that person's service as an employee of the previous Corporation is to be taken to be service as an employee of Queensland Railways for the purposes of any law under which those rights accrued or were accruing or by which that entitlement is conferred.

(4) A person who becomes an employee of Queensland Railways under subsection (2) is not entitled to claim, both under this Act and any other Act, benefits in respect of the same period of service.

4.7 Superannuation entitlements. A person who, under section 4.6, becomes an employee of Queensland Railways—

- (a) retains all entitlements accrued or accruing to that person as a contributor to or member of the superannuation scheme to which that person contributed and was a member of immediately prior to the commencement of this Act;
- (b) is to continue to contribute to that scheme;
- and
- (c) is entitled to payments and other benefits from it in respect of that person.

PART 5—CORPORATE PLAN

5.1 Corporate plan. (1) An annual corporate plan is to be prepared incorporating performance targets developed in consultation with the Minister.

(2) The Board, at least 3 months before the beginning of each financial year is to deliver to the Minister the draft corporate plan for that financial year.

(3) The Minister is to comment on the draft corporate plan within 2 months of receiving it.

(4) The Board is to respond to the Minister's comments and deliver the completed corporate plan to the Minister before the beginning of the financial year concerned.

- (5) Each corporate plan is to specify—
- (a) the separate activities of the Queensland Railways;
 - (b) the objectives of each separate activity for the financial year concerned and for the following 4 financial years (or such other number of financial years as the Minister directs);
 - (c) the strategies, policies and budgets for achieving those objectives;
- and
- (d) targets and criteria for assessing the performance of Queensland Railways.

(6) The Board, as far as practicable, is to ensure that Queensland Railways exercises its functions in accordance with the relevant corporate plan.

5.2 Queensland Railways a statutory body. Notwithstanding section 2.7, Queensland Railways is to be taken to be a statutory body within the meaning of the *Statutory Bodies Financial Arrangements Act 1982-1990*.

PART 6—CONSTRUCTION, LAND AND ROADS

6.1 Power to enter land. Queensland Railways, by its authorised agents, may, for the purpose of ascertaining the suitability of any land for the purposes of Queensland Railways—

- (a) enter on, and inspect, the land or any adjacent land;
- and
- (b) on land so entered, do any act or thing that is necessary or convenient and reasonable for that purpose, including, without limiting the generality of the foregoing—
 - (i) making surveys and taking levels (including any associated clearing and the placing of survey marks);
 - (ii) making geotechnical investigations (including drilling for sampling, digging pits and taking samples);
 - (iii) making environmental surveys (including any associated sampling).

6.2 Powers relating to construction and maintenance of railways.

(1) Queensland Railways, by its authorised agents, may, for purposes connected with the construction, maintenance, alteration, repair or use of a railway—

- (a) enter on, and occupy, so long as is necessary, any land;
- and
- (b) on, over or under land so entered or occupied, do any act or thing that is necessary or convenient and reasonable for

those purposes, including, without limiting the generality of the foregoing—

- (i) surveying, marking and setting out the lines of any work;
- (ii) diverting or altering, temporarily or permanently, the course of any watercourse;
- (iii) raising or lowering, temporarily or permanently, the level of any watercourse or other body of water;
- (iv) placing any plant, machinery, equipment or goods;
- (v) taking or depositing sand, clay, stone, earth, gravel, timber, wood or other materials or things;
- (vi) felling or lopping trees and clearing or removing other vegetation or undergrowth;
- (vii) making cuttings, embankments, excavations or tunnels;
- (viii) manufacturing or working materials, goods or things;
- (ix) erecting temporary workshops, sheds or other buildings;
- (x) constructing roads, bridges or tunnels;
- (xi) temporarily closing, diverting or narrowing any road;
- (xii) breaking the surface of any road for the purpose of laying down railway tracks, drains, pipes, cables, wires and other things;
- (xiii) altering the position of any main, pipe, cable or wire;
- (xiv) taking water from any watercourse or other body of water; and
- (xv) demolishing, destroying or removing any plant, machinery, equipment, goods, workshop, shed or building placed or erected on the land in pursuance of this subsection.

(2) No stone or slate quarry, brickfield, or other like place, which at the commencement of this Act is commonly worked or used for getting materials for the purpose of selling or disposing of them, is to be taken or used by Queensland Railways either wholly or in part for any of those purposes.

(3) Queensland Railways, if required to do so by the owner or occupier of the land occupied, is to separate the land by a sufficient fence from any adjoining land, with such gates as are necessary for the convenient occupation of the adjoining land; and in the case of any difference as to the necessity for such fences and gates, then with those fences and gates as are reasonably necessary for the security of the adjoining land.

(4) In the exercise of its powers under subsection (1), Queensland Railways is not to—

- (a) divert or alter the course of any watercourse or raise or lower the level of any watercourse or other body of water;
- (b) close, divert or narrow, or break the surface of, a road;
- (c) alter the position of any water, sewerage or gas main or pipe;

or

- (d) alter the position of any electricity or telecommunications cable or wire;

unless it has given reasonable notice, in writing, of its intention to do so to the authority having the care and management of water, the road, main, pipe, cable or wire.

6.3 Notification of intended use of power. (1) Before exercising its powers under section 6.1 or 6.2 in relation to any land, Queensland Railways is to give reasonable notice, in writing, of its intention to do so to—

- (a) the owner of the land;
- and
- (b) if the land is occupied by a person other than the owner of the land—the occupier of the land.

(2) A notice given under subsection (1) is to specify the purpose for which Queensland Railways intends to exercise its powers.

6.4 Queensland Railways to take steps to do as little damage as practicable. (1) Queensland Railways is to take all reasonable steps to ensure that, in the exercise of the powers under sections 6.1 and 6.2, as little detriment, inconvenience and damage, as is practicable, is caused or done.

(2) Subject to subsection (5), where the owner or occupier of land suffers loss or damage by reason of the exercise, in relation to that land, of any of the powers under section 6.1 or 6.2, Queensland Railways is liable to pay to that person—

- (a) from time to time during such period as Queensland Railways is in occupancy or possession of any of that person's land—rent;

or

- (b) compensation;

(or both) as is agreed upon between them or, in the absence of agreement, such rent or compensation as is determined by the Land Court.

(3) Compensation under subsection (2) is to include compensation in respect of—

- (a) damage of a temporary character as well as of a permanent character;

and

- (b) the taking of sand, clay, stone, earth, gravel, timber, wood, water and other materials or things.

(4) In this section—

“owner”, in relation to land, means a person who—

- (a) owns any legal or equitable estate in the land;
- (b) has any legal or equitable interest in the land;

or

- (c) has any right, power or privilege over, or in connection with, the land.
- (5) No compensation is payable for any act or thing done under this section, if—
- (a) authority to do that act or thing is given by any Act, Crown grant or other instrument (except to the extent therein mentioned);
and
 - (b) the terms and conditions imposed by that Act, Crown grant or other instrument have been performed.

6.5 Accommodation works. (1) This section applies to works for the accommodation of the owners and occupiers of lands adjoining a railway.

(2) Subject to subsection (3), Queensland Railways is to construct and at all times thereafter maintain such works—

- (a) as are necessary for making good any interruptions caused by the railway to the use of the lands through which the railway is constructed;
- (b) as are necessary for separating the land taken for the use of the railway from the adjoining lands not taken, and protecting those lands from trespass or the stock of the owners or occupiers of those lands from straying from those lands because of the railway;
- (c) as will be sufficient at all times to convey the water as clearly from the lands lying near or affected by the railway as before the construction of the railway, or as nearly so as is possible.

(3) Queensland Railways' obligations under subsection (2) (b) are to be taken to be discharged at all times during which a fence equal in state and kind to any fence bounding the land adjoining the land taken for the use of the railway when that land was taken, exists or is erected.

(4) Queensland Railways is not required to construct accommodation works in a manner that would prevent or obstruct the working or using of the railway, nor to construct any accommodation works where the owners and occupiers of the lands have agreed to receive and have been paid compensation instead of having accommodation works constructed.

(5) If any difference arises in respect of any kind or number of such accommodation works or the dimensions or sufficiency of them, or in respect of their maintenance, the difference is to be determined by the Land Court, which is also to appoint the time within which those works are to be commenced and completed.

(6) Subject to subsection (8), any owner or occupier of land affected by the railway, who considers the accommodation works constructed by Queensland Railways insufficient for the convenient use of that land, may at any time at the owner's or occupier's own expense, construct

further works for that purpose as the owner or occupier considers necessary and as are agreed to by Queensland Railways.

(7) If Queensland Railways so desires, those further accommodation works are to be constructed under the superintendence of the engineer of the railway and according to plans and specifications approved by Queensland Railways.

(8) Queensland Railways is not to require—

(a) that plans should be adopted which would involve a greater expense than that incurred in the construction of similar works by Queensland Railways;

or

(b) that the plans selected should be executed in a more expensive manner than that adopted in similar cases by Queensland Railways.

(9) Subject to subsection (10), until Queensland Railways has made the accommodation works referred to in subsection (2) (a) and no longer, the owners and occupiers of those intersected lands and any other persons whose right-of-way is affected by that intersection, and their respective servants, may at all times freely pass and repass with vehicles and livestock directly (but not otherwise) across the part of the railway made in or through their respective lands solely for the purpose of occupying those lands or for the exercise of their right-of-way, and so as not to obstruct passage along the railway or to damage it.

(10) If a person referred to in subsection (9) has, in their arrangements with Queensland Railways, received or agreed to receive compensation instead of the accommodation works referred to in subsection (2) (a), that person is not entitled to cross the railway.

(11) A person is not, without reasonable excuse, to fail or refuse to shut and lock any gate, set up at either side of the railway for the accommodation of the owners or occupiers of the adjoining lands, as soon as that person and the vehicles and livestock (if any) under that person's care have passed through it.

Penalty: 2 penalty units.

6.6 Land may be taken for the purposes of Act. (1) Land required for any of the purposes of this Act, or for any purpose incidental thereto, may from time to time be taken by Queensland Railways.

(2) For the purposes specified in subsection (1), Queensland Railways is a constructing authority within the meaning of the *Acquisition of Land Act 1967-1990*.

(3) Any land taken by Queensland Railways may be described in the Proclamation taking the land or in an annexure to the Proclamation in any manner sufficient to identify the land.

6.7 Queensland Railways may acquire certain small parcels. (1) If—

- (a) land is divided by the land taken so as to leave on any side of the land taken a piece of land of lesser value than the expense of the construction of accommodation works under section 6.5;
- and
- (b) the owner of that land has no other land adjoining that piece of land and requires Queensland Railways to construct those works;

Queensland Railways may take that piece of land.

(2) Any dispute as to the value of that piece of land or as to what would be the expense of constructing those works is to be determined by the Land Court under the *Acquisition of Land Act 1967-1990*; and when the value of the land required or taken is determined, the Court is, if required by either party, to determine the value of the severed piece of land and also what would be the expense of constructing those works.

6.8 Land vests in Queensland Railways. (1) All land—

- (a) acquired for or on behalf of Queensland Railways;
- (b) taken under the authority of any Act authorising the taking of land for railway purposes;
- and
- (c) comprised in a road or part of a road closed under section 6.16;

vests in Queensland Railways for an estate in fee-simple.

(2) Subject to the *Land Act 1962-1990*, the Governor in Council may—

- (a) grant in fee-simple to Queensland Railways any Crown land which for the time being is reserved for railway purposes under that or any other Act;
- and
- (b) issue to Queensland Railways a deed of grant for any land vested absolutely—
 - (i) under the *Railways Act 1914-1989*—in the Commissioner for Railways;
 - or
 - (ii) under this Act—in Queensland Railways;
 for an estate in fee-simple under subsection (1) or granted in fee-simple to Queensland Railways under paragraph (a).

(3) Land reserved for railway purposes and granted to Queensland Railways under subsection (2) (a) upon and by virtue of that grant is absolutely freed from that reservation.

6.9 Taking Crown land. (1) Queensland Railways, as a constructing authority under the *Acquisition of Land Act 1967-1990*, may take, for any purpose of this Act—

- (a) land;
- or
- (b) an easement over land;

which is held from the Crown for a lesser estate or interest than fee-simple.

(2) Land taken under subsection (1) (a) vests in Queensland Railways for an estate in fee-simple, but an easement taken under subsection (1) (b) does not.

(3) The Governor in Council may, subject to the *Land Act 1962-1990*, grant in fee-simple to Queensland Railways any land taken under subsection (1) (a) subject to such reservations and conditions as are authorised or prescribed by that Act.

(4) The *Acquisition of Land Act 1967-1990* is to be read, with and subject to all such modifications and adaptations of that Act as are necessary to give operation and effect to subsection (1); and any reference in that Act to the Registrar of Titles is to be read as the person or authority charged with registering instruments evidencing the title to the estate or interest in the land held from the Crown.

6.10 Title under repealed Act. Where land is or was vested in Queensland Railways or the Commissioner for Railways under—

- (a) this Act;
- (b) any Act repealed by this Act;
- or
- (c) any Act repealed by the *Railways Act of 1914*;

Queensland Railways is entitled, upon proof that that land has been set out, ascertained, and finally appropriated for the purposes of a railway or other works in connection therewith, to obtain from the Registrar of Titles a certificate of title in respect of that land without any legal conveyance.

6.11 Queensland Railways property not subject to rates. Subject to sections 21 (6), 21 (7), 21 (8), 24 (1) (iii) and 27 (8) of the *Local Government Act 1936-1990*, no rates, taxes or assessments are to be made, charged or levied upon any property vested in Queensland Railways.

6.12 Compensation where land injuriously affected other than by resumption. (1) Any person entitled to claim compensation under the *Acquisition of Land Act 1967-1990*, in respect of the taking of any land by Queensland Railways, may claim from Queensland Railways compensation for injurious affection to the land caused by Queensland Railways exercising any of the powers (other than the power to acquire the land) conferred by this Act.

(2) The claimant and Queensland Railways may agree upon the amount of the compensation to be paid under this section or the amount may, upon the reference of either of them, be determined by the Land Court under the *Acquisition of Land Act 1967-1990*, as if the land had been taken by Queensland Railways and the claim for compensation in respect of such taking were limited to compensation for the injurious affection in question.

6.13 No presumption of dedication of land. Use by the public of any lands of Queensland Railways as a thoroughfare or otherwise for access purposes, whether or not such use is authorised or permitted, is not, as against Queensland Railways, to be presumed to be or construed as dedication by Queensland Railways of those lands or any part of those lands for use as a road.

6.14 Railway may be on road or reserve. (1) Notwithstanding any Act to the contrary, Queensland Railways may, on, over or under any public reserve or road, construct and maintain—

- (a) a railway;
- (b) open level crossings (with or without cattle grids);
and
- (c) all necessary structures for use in connection with a railway.

(2) Queensland Railways is not to exercise its powers under subsection (1) unless it has given reasonable notice, in writing, of its intention to do so to the authority having care and management of the public reserve or road, as the case may be.

(3) No person is entitled to compensation for or on account of any public reserve or road being used for the purposes of subsection (1) or for any damage or inconvenience arising from the use thereof.

(4) Queensland Railways has the right of ingress and egress in and over all public reserves and roads occupied under subsection (1).

6.15 Width of road over which railway passes. Whenever a railway is constructed over and above any road (whether an existing road or a road substituted for it under section 6.17), the width of the part of the road under the railway bridge or other structure is to be not less than 5 metres between the piers or walls of that bridge or structure; and that part of the road, exclusive of those piers or walls or other railway works, is to be under the control of the relevant authority and maintained by it.

6.16 Closure of roads. (1) Whenever Queensland Railways considers it necessary that any road or part of a road should be closed, Queensland Railways is to deposit in the office of the relevant local authority a map and description of the road or part of it proposed to be closed, and is to notify in the *Gazette*—

- (a) that the map and description are there open for inspection;
and

(b) that any person interested may make an objection to that closure by forwarding to Queensland Railways, within 30 days after that publication, a notice of objection.

(2) Queensland Railways is to cause each objection made to be duly considered and it may cause an inquiry to be held into the matter of any objection.

(3) Before any closure is authorised, Queensland Railways is to report to the Minister on the proposed closure and any objections to the closure, and the objectors are to be heard by the Minister if they so desire.

(4) Where the Minister, after hearing the objectors, recommends that the road or part of it be closed, the Governor in Council may, by Order in Council, close the road or part of it and the land comprised in the road that is closed vests in Queensland Railways for an estate in fee-simple.

6.17 Substituted roads. (1) This section applies where a railway is constructed upon or otherwise interferes with a road.

(2) If it is found necessary to cross, cut through, raise, lower, or use any part of a road, so as to render it extraordinarily inconvenient for public traffic, Queensland Railways is, before the commencement of those operations, to cause a sufficient substituted road to be made.

(3) Any person who suffers special damage because of the failure of Queensland Railways to cause a substituted road to be made before it interferes with an existing road may recover the amount of the damage from Queensland Railways with costs by action in any court of competent jurisdiction.

(4) If the existing road can be restored compatibly with the use of the railway, it is, with reasonable expedition, to be restored to a substantial condition.

(5) If the existing road cannot be restored compatibly with the use of the railway, Queensland Railways is, with reasonable expedition, to cause a sufficient substituted road to be put into a permanently substantial condition, equally convenient as the former road or as near thereto as circumstances permit.

(6) The Minister is to determine any question of the sufficiency of a substituted road.

(7) Notwithstanding anything contained in section 35 (4) of the *Local Government Act 1936-1990*, where a road of less width than 20 metres is interfered with, the substituted road need not be of greater width but is not (except in the case of a railway crossing over and above that road by means of a bridge or other structure, referred to in section 6.15) to be of a lesser width than the road interfered with.

(8) Where a road is parallel and contiguous to any part of a line of railway the road may—

(a) be lessened to not less than 10 metres in width;

or

(b) may be made of a width of not less than 10 metres.

(9) Where a railway crosses a road other than on the level, Queensland Railways is to make convenient ascents and descents and other convenient approaches, with handrails or other fences and such gates as are necessary.

(10) Where it is expedient to alter the levels of any road for the purpose of the construction of a railway, Queensland Railways is to pay all reasonable expenses incurred in connection with that alteration, unless otherwise agreed upon.

(11) The owner of any land prejudicially affected by such alteration of the level of any road within any city or town, the level of which has been fixed under the *Local Government Act 1936-1990*, is entitled to compensation from Queensland Railways, to be agreed on or, failing agreement, to be determined by a court of competent jurisdiction, for all damages sustained by that owner by reason of that alteration.

(12) Notwithstanding section 35 (17) of the *Local Government Act 1936-1990*, Queensland Railways is to maintain a railway on a road in good order and repair and, if that road is within a city or town, the surface of the roadway between the rails and for the space of only 0.6 metre outside each rail.

(13) The character of maintenance undertaken under subsection (12) is to be in keeping with the road on which the railway has been constructed.

(14) Queensland Railways is to immediately repair any damage occasioned to any sewer, drain, gas or water main, or works for supply of electricity during the construction or maintenance of any railway on a road.

(15) Where it is necessary for Queensland Railways, in complying with this section, to acquire land in respect of the construction of a substituted road, Queensland Railways may dedicate for road purposes any or all of the land acquired.

6.18 Agreement for extension of certain roads through or over lands of Queensland Railways. (1) Queensland Railways may, with the approval of the Governor in Council and subject to such terms, provisions and conditions as the Governor in Council considers appropriate, grant to a local authority, permission to construct, use, maintain, continue, repair, renew and operate a roadway as an extension of any other roadway by means of a bridge, viaduct or other structure and associated works (in this section called the "works") over and across any lands of Queensland Railways.

(2) The local authority permitted under subsection (1) may, under, subject to and in compliance in every respect with the terms, provisions and conditions of the grant of permission, construct and thereafter at all times during the continuance in force of the grant of permission use, maintain, continue, repair, renew and operate the works over and across the lands of Queensland Railways.

(3) Upon the completion of the construction of the works by the local authority in accordance with the terms, provisions and conditions of the permission granted under subsection (1) they are to be used for the passing and repassing of vehicles and pedestrians and for no other purposes.

(4) If at any time the local authority stops using the works or any part of them for the purposes specified in subsection (3) then, as against Queensland Railways, dedication by Queensland Railways of any of the lands, over and across which the works are or were constructed, for use as a road is not to be presumed because of continued use, for whatever period, of the works by the public for the purposes specified in that subsection or any of those purposes.

(5) The grant of permission under subsection (1) does not derogate from the right of Queensland Railways to use the lands and the airspace above those lands (including the airspace above the works) other than—

- (a) those parts of the lands upon which rest any piers or abutments of the viaduct structure or overbridge or any roadway of the works;
- (b) the airspace occupied by any of the works;
and
- (c) the airspace over and above the works to a height of 5.5 metres above the nearest surface of the roadway thereof;

for any purpose for which Queensland Railways might have used those lands and airspace if such permission had not been granted.

(6) Queensland Railways and any officer or employee of Queensland Railways is not subject to any duty, obligation, liability or responsibility whatsoever in respect of the works or the use and operation of the works for the purpose specified in subsection (3) or any of those purposes; and any duty, obligation, liability or responsibility which but for this subsection would have been a duty, obligation, liability or responsibility of Queensland Railways or any officer or employee of Queensland Railways is a duty, obligation, liability or responsibility of the local authority.

(7) From such time as, with the consent of the local authority, use of the works, for the purposes specified in subsection (3), commences and for so long as such use continues the works are to be taken to be—

- (a) a road under the control of the local authority;
- (b) a road for the purposes of the *Traffic Act 1949-1990* and any other Act relating to the use of vehicles on a road.

(8) Nothing in subsection (7) is to prejudice or affect, or in any way derogate from, the terms, provisions and conditions subject to which any permission is granted under subsection (1).

6.19 Level Crossings. (1) The drivers of all vehicles and all pedestrians are to give way to all rolling stock using railway lines at level crossings.

(2) Subject to subsection (3), where an accident or collision occurs at a level crossing as a result of a failure by a person (in this section called “the driver”) to comply with subsection (1)—

- (a) Queensland Railways is not liable for any damages in respect of any injury or damage caused, as a result of that accident or collision, to the driver or any other person travelling with the driver;
and
- (b) the driver is liable to pay to Queensland Railways the cost of any damage caused to Queensland Railways’ property as a result of that accident or collision.

(3) Subsection (2) does not apply where—

- (a) injury is caused by rolling stock colliding with a vehicle at a level crossing where an electronic warning device has been erected to warn vehicles of the approach from time to time of rolling stock on that level crossing, and it is proven that the warning device malfunctioned and failed to warn of the approach of the rolling stock involved in the collision;
or
- (b) in respect of the collision, Queensland Railways or its employees are proven to be negligent.

(4) All warning signs and traffic control devices required to be erected pursuant to the Manual of Uniform Traffic Control Devices (issued under the Traffic Regulations 1962) in respect of level crossings and any ancillary electrical wiring are to be erected and maintained at the expense of the authority responsible for the maintenance of the road.

6.20 Private railways and sidings. (1) A private railway or siding may be constructed, maintained and worked in connection with a railway.

(2) A private railway or siding is not to be connected to a railway without the written consent of Queensland Railways.

(3) Queensland Railways may, with a person desiring to connect a private railway or siding with a railway, enter into an agreement with respect to its construction, maintenance and working.

(4) Subject to any agreement made under this section, Queensland Railways may close or remove the connection of a private railway siding with the railway, at any time after giving 3 months notice to the owner of the siding.

(5) Upon closing or removing the connection of a private railway or siding with a railway, Queensland Railways may require the owner of that private railway or siding to lift, take up, dismantle, and remove so much of that private railway or siding as is situated upon Queensland Railways’ land, and if the owner fails to do so within the time allowed by Queensland Railways, Queensland Railways may, at the risk of the

owner, lift, take up, dismantle, and remove it and stack and store all rails and other materials derived from so doing and may recover from the owner all expenses incurred in so doing.

(6) A person desiring to connect a private railway or siding with a railway under arrangements made or proposed to be made under this section may, with prior permission, granted with the consent of the Governor in Council, of the relevant local authority within which any road is situated (or, in the case of a road under the *Main Roads Act 1920-1990*, the Commissioner of Main Roads) construct, maintain and work that private line or siding along, over, across (on the level) or under that road.

(7) Section 35 (24AA) of the *Local Government Act 1936-1990* applies for the purposes of subsection (6) with and subject to the following modifications:—

- (a) the provision limiting permission to a period not exceeding 9 years does not apply and the permission may be granted without limit of time except that, where the Governor in Council fixes a period the permission and, until the Governor in Council otherwise decides, any renewal of it is for the period so fixed;
- (b) before determining an appeal the Minister administering that Act is to consult with the Minister administering this Act and is to have regard to any report made by Queensland Railways;
- (c) the permission is not to authorise the permittee to do or to omit to do any act or thing contrary in any respect to the arrangements made by the permittee with Queensland Railways.

(8) Section 35 (24AA) of the *Local Government Act 1936-1990*, with and subject to the modifications referred to in subsection (7), is also to apply so as to enable an appeal as prescribed by that section to be made, heard and determined under that section against the refusal or neglect of the Commissioner of Main Roads to grant any permission referred to in subsection (6).

(9) A private railway or siding to which this section applies may be constructed, maintained and worked along, or over or under any river, stream or other water or watercourse with the prior consent of the Governor in Council.

(10) Where Queensland Railways runs trains, locomotives and rolling stock over a private railway or siding connected with a railway, that private railway or siding is to be taken to be a railway, and Queensland Railways may exercise its powers and authorities under, and has the protection and immunities of, this Act accordingly.

(11) Unless Queensland Railways expressly accepts liability under arrangements made under this section, Queensland Railways is not to be liable in respect of any matter arising out of the presence on any land, or along, or over, or across, or under any road, or along, or over,

or under any river, stream, or other water or watercourse of any private railway or siding connected with a railway or arising out of anything done or omitted to be done by Queensland Railways in respect of the construction or maintenance of that private railway or siding.

(12) This section applies to private railways and sidings connected to a railway indirectly by means of another private railway or siding as well as to private railways or sidings directly connected.

6.21 Construction of works on Queensland Railways' land. (1) Notwithstanding any other Act, no person is to construct any works on, over or under land vested in Queensland Railways without the written approval of Queensland Railways.

(2) Notwithstanding any other Act, unless Queensland Railways otherwise agrees, Queensland Railways is not liable for any damage caused by it to any such works constructed on its land where—

- (a) construction of the works was not approved by Queensland Railways;
- and
- (b) damage is incurred as a consequence of the works having been constructed, maintained or operated otherwise than in accordance with Queensland Railways' approval.

(3) Where Queensland Railways incurs additional expense in carrying out construction of its works by reason that works referred to in subsection (1) had been constructed without the approval of Queensland Railways or were not constructed, maintained or operated in accordance with Queensland Railways' approval, Queensland Railways may recover from the person responsible for the management of those works the additional expense which becomes a debt due and owing by that person to Queensland Railways.

(4) This section binds the Crown not only in right of the State but also, so far as the legislative power of Parliament extends, the Crown in all its other capacities.

PART 7—ADMINISTRATION AND OFFENCES

7.1 Delegation. (1) The Board may, by instrument in writing, delegate to the Chief Executive or any other officer or employee of Queensland Railways all or any of the powers and duties of Queensland Railways under this Act, other than this power of delegation.

(2) The Chief Executive may, by instrument in writing, delegate to any other officer or employee of Queensland Railways all or any of the powers and duties of the Chief Executive under this Act, other than this power of delegation.

(3) A delegation made under this section may be made either generally or as otherwise provided in the instrument of delegation.

(4) A power or duty delegated under this section is, when exercised or performed by the delegate, to be taken to have been exercised or

performed by Queensland Railways or the Chief Executive, as the case may be.

(5) A person purporting to exercise a power or to perform a duty in accordance with a delegation under this section is, in the absence of proof to the contrary, presumed to be acting in accordance with the instrument of delegation.

(6) The delegation of a power or duty does not prevent the exercise of the power or the performance of the duty by Queensland Railways or the Chief Executive, as the case may be.

7.2 Indemnity. Queensland Railways is to indemnify every director, employee and agent of Queensland Railways against all actions, proceedings and claims in relation to—

(a) acts done, or omitted to be done, by the person without negligence under this Act;

or

(b) acts done, or omitted to be done, by the person in good faith and without negligence for the purposes of this Act.

7.3 Reports of accidents to be supplied to Minister and Board. (1) Where—

(a) an accident—

(i) resulting in loss of human life or serious injury to any person;

or

(ii) involving a train carrying passengers;

or

(b) any other serious incident;

occurs on a railway operated by Queensland Railways, the Chief Executive is to forthwith furnish to the Minister and the Board a written report of the circumstances of the accident or incident, as the case may be.

(2) A report given under subsection (1) is to be in the form the Minister directs by instrument in writing.

7.4 Inquiries into accidents. (1) Where an accident referred to in section 7.3 (1) occurs on a railway operated by Queensland Railways, the Minister may by instrument in writing, establish a Board of Inquiry to inquire into, and report on, the circumstances of the accident or incident.

(2) In the discharge of its functions, a Board of Inquiry is to inquire into the circumstances and possible causes of the accident or incident and is to make its findings in writing to the Minister.

(3) For the purpose of any such inquiry a Board of Inquiry is to be taken to be a Commission of Inquiry within the meaning of the *Commissions of Inquiry Act 1950-1989* and the provisions of that Act

(other than sections 4, 4A, 10 (3), 13, 14 (1A), 19 (2), 19A, 19B, 19C and 26), subject to subsection (4), are to apply accordingly.

(4) Where a provision of the *Commissions of Inquiry Act 1950-1989* is inconsistent with a provision of this Act, the provision of this Act, to the extent of the inconsistency, is to prevail.

(5) For the purposes of applying the provisions of the *Commissions of Inquiry Act 1950-1989*, each member of the Board of Inquiry, is to be taken to be a Commissioner and the chairperson is to be taken to be the chairman within the meaning of that Act.

(6) There shall be payable to a witness who appears before the Board of Inquiry an allowance for expenses being—

(a) the allowances payable under section 24 of the *Commissions of Inquiry Act 1950-1989*;

or

(b) such other allowances as the chairperson of the Board of Inquiry in special circumstances considers reasonable;

whichever is the greater and that allowance is to be paid by Queensland Railways.

(7) A Board of Inquiry is to be constituted in the manner specified in the instrument by which it is established.

(8) A Board of Inquiry is to consist of 4 members appointed by the Minister of whom—

(a) one is to be an Industrial Magistrate who is to be the chairperson;

(b) one is to be a person representing employers and principal contractors or employers or principal contractors, as the Minister considers appropriate, in the industry;

(c) one is to be a person representing employees in the industry; and

(d) one is to be a person who is, in the opinion of the Minister, a safety expert in the industry.

(9) Queensland Railways and the staff of Queensland Railways may authorise persons to represent them at a Board of Inquiry and any person so authorised by them in that behalf may adduce evidence, cross-examine any witness and address the Board of Inquiry.

7.5 Service of notices. (1) Any summons or notice or any writ or other document in any legal proceeding requiring to be served on Queensland Railways may be served by being given personally to the Chief Executive or being left at or transmitted through the post by registered letter or certified mail directed to the principal office of Queensland Railways in Brisbane.

(2) Any notice, claim, or other document required to be served on any person under this Act may be—

- (a) sent to the last known place of abode or business of that person by messenger or by post;
or
- (b) where the person is absent from the State—served on that person's agent in like manner.

(3) Where in respect of a document to be served under Part 6 the person is not known or has no known agent in the State, the document may be served by the publication of a true abstract of it in the Gazette, and in some newspaper circulating generally in the locality where the land affected is situated, and by serving the document on the Registrar of the Supreme Court.

(4) Where a document is sent by post it must be sent so as to arrive in due course of post on or before the last day on which that document is required to be served.

7.6 Cessation of maintenance of closed railway. (1) Where under section 2.3 (1) (j) Queensland Railways ceases to operate services on a railway, it is not required to maintain that railway and may—

- (a) dispose of the railway or any part of it or lift, take up, dismantle and remove it;
and
- (b) surrender to the Crown or dispose of all or any of the land used in relation to the operation of that railway.

(2) Where Queensland Railways exercises a right under subsection (1), it may make arrangements with the owners and occupiers of lands intersected by that railway releasing Queensland Railways from its obligations, with respect to the maintenance of any bridge or other accommodation works to which section 6.5 applies, made in relation to those lands under this Act.

(3) As part of those arrangements Queensland Railways may dispose of, to the owner of any of the intersected or adjoining lands in question, any of the land appurtenant to the railway or the Governor in Council may grant in fee-simple or demise to any such owner any land so appurtenant which has been surrendered by Queensland Railways to the Crown.

(4) A demise under subsection (3) may be upon such tenure under the *Land Act 1962-1990* as the Governor in Council considers appropriate in the circumstances.

(5) Where the Governor in Council is satisfied that an owner or occupier of land has refused or failed to make arrangements with Queensland Railways upon just terms, the Governor in Council may release Queensland Railways from the obligations in question upon such terms as the Governor in Council considers appropriate.

(6) Where Queensland Railways under subsection (1) ceases to maintain a railway, it is no longer subject to nor can incur any obligation or liability in respect of any bridge or other works whereby any road is carried across, over or under that railway.

(7) Where subsection (6) applies, the local authority for the relevant Area (or, in the case of a road under the *Main Roads Act 1920-1990*, the Commissioner of Main Roads), in respect of that bridge or works is subject to the duties and responsibilities imposed on local authorities by law in respect of bridges and like works comprised in roads, unless Queensland Railways has disposed of the railway to a person upon terms imposing upon that person obligations and liabilities with respect to the maintenance of that bridge or other works.

7.7 Limit of damages in respect of animals. In any action brought to recover damages or compensation in respect of loss of or injury to any animal whether during carriage by railway or otherwise, incurred on or after the commencement of this Act, judgment is not to be given or entered for an amount more than the prescribed amount, unless in the case of an animal to be carried by railway the owner of it or the consignor acting on the owner's behalf has, previous to consigning it declared its value to be greater than the amount prescribed, and has paid to Queensland Railways, in addition to the freight, an insurance charge in respect of the declared value of the animal in excess of the amount of Queensland Railways' liability under this section.

7.8 Limit of damages in respect of passengers' luggage. In any action brought to recover damages or compensation in respect of loss of or damage to any passenger's luggage, judgment is not to be given or entered for an amount more than the prescribed amount unless the owner of the luggage has—

(a) before entering on the journey;

or

(b) if the owner is not travelling by the same train—before the departure of the train conveying the luggage;

paid to Queensland Railways an insurance charge in addition to declaring the value of the luggage to be in excess of the amount of Queensland Railways' liability under this section.

7.9 Removal of vehicles from railway land. (1) If any vehicle is parked or left standing on land or property vested in Queensland Railways or under the control or management of Queensland Railways (in this section called "railway land") in such a position as to interfere with traffic or obstruct other vehicles or in any way to interfere or be likely to interfere with any activity relating to or in connection with the working of the railways and the driver of the vehicle—

(a) cannot be readily located;

or

(b) fails to remove the vehicle forthwith when required to do so by the Chief Executive;

the vehicle may be removed by the Chief Executive to such place, whether within or outside railway land, as the Chief Executive determines.

(2) The Chief Executive is to give to the owner of the vehicle, as soon as practicable after removal, notice of the removal and the place to where it was removed unless it is claimed by the owner or a person possessing authority to act for or on behalf of the owner in the meantime.

(3) The notice referred to in subsection (2) is, wherever practicable, to be in writing and served upon the owner personally, but if it is not served within 14 days after the removal it may be given by public advertisement in a newspaper circulating in the locality from where the vehicle was removed.

(4) If within one month after—

(a) the vehicle is claimed by the owner or a person possessing authority to act for or on behalf of the owner in a case where a notice is not given under subsection (2) because the vehicle is claimed;

or

(b) the service or advertisement of the notice under subsection (3);

as the case may be, the owner does not pay all expenses in connection with the removal of the vehicle and in an applicable case, the keeping of it at the place to where it was removed, and of serving or advertising the notice in a case of such service or advertisement, and take possession of the vehicle, the vehicle may be sold by public auction (after notice of such sale has been given by advertisement in a newspaper circulating in the locality from where the vehicle was removed) or, where no offer or no reasonable offer is received at such auction, may be otherwise disposed of by direction of the Chief Executive in such manner and on such terms as the Chief Executive determines.

(5) The proceeds of a sale or disposal referred to in subsection (4) are to be applied—

(a) firstly, in payment of the expenses of the sale or disposal;

(b) secondly, in payment of the expenses in connection with the removal of the vehicle and the keeping of it at the place to where it was removed, and of serving or advertising the notice in an applicable case;

and

(c) thirdly, in payment of the balance to the owner or, if after reasonable inquiry the owner cannot be found, into the Consolidated Revenue Fund of the State.

(6) The authority to deal with a vehicle in any manner specified in this section extends also to the dealing with any goods, equipment or other property contained in, on or attached to the vehicle at the material time, and this section extends and applies to those goods, equipment or other property accordingly.

(7) Where the Chief Executive, having regard to the expenses associated with the holding of a public auction and the likely proceeds resulting from the auctioning of the goods, equipment or other property, considers that the holding of a public auction is not warranted, the Chief Executive may dispense with the holding of a public auction and may dispose of the goods, equipment or other property (unless they are perishables) not earlier than they would have been sold by public auction, in such manner and on such terms as the Chief Executive determines.

(8) A vehicle that has been removed under subsection (1) is not to be delivered to the owner of it or to a person possessing authority to act for or on behalf of the owner unless—

- (a) the owner or person acting for or on behalf of the owner has applied in writing signed by that person to the Chief Executive for the release of the vehicle;
- (b) the applicant has furnished proof to the satisfaction of the Chief Executive of the applicant's ownership or, in the case of the applicant being a person acting for or on behalf of the owner, has furnished proof to the satisfaction of the Chief Executive of that person's authority to so act;
- (c) the applicant has paid all expenses incurred by the Chief Executive in connection with the removal and keeping of the vehicle and the service or advertisement of any notice served or advertised by the Chief Executive in relation to the removal or intended sale or disposal of the vehicle;
and
- (d) the applicant has signed a receipt for the delivery of the vehicle to the applicant.

(9) A person is not to take or obtain possession of or remove or attempt to remove any vehicle under subsection (1) except in accordance with subsection (8).

Penalty: 20 penalty units.

7.10 Disposal of abandoned vehicles and other abandoned property.

(1) Where there is on any land or property vested in Queensland Railways or under the control or management of Queensland Railways any vehicle or any other property in respect of which there are reasonable grounds for suspecting that it has been abandoned by the person who last used it (in this section called "abandoned property"), the Chief Executive may remove and detain the abandoned property, or cause it to be removed and detained, at a place of safe keeping, and may deal with the abandoned property or cause it to be dealt with in the manner provided by this section.

(2) As soon as practicable after removal of the abandoned property, the Chief Executive is to cause to be given to the owner of it, if the owner can be ascertained, written notice of the removal and of the place at which the abandoned property is then detained.

(3) The notice is, if practicable, to be served upon the owner personally, but if it is not so served within 14 days after the removal it may be given by public advertisement in a newspaper circulating in the locality in which the abandoned property was found.

(4) If within one month after the date of service or advertisement of the notice the owner of the abandoned property or a person acting on the owner's behalf or a person claiming a right to the possession of the abandoned property has not obtained possession of it in accordance with this section, the Chief Executive may—

- (a) by notice published in a newspaper circulating in the locality in which the abandoned property was found, advertise that the Chief Executive will offer the abandoned property for sale by public auction at the place and time stated in the advertisement;
- (b) at the time on the day stated in the advertisement (which day is not to be earlier than 14 days after the date when the advertisement was first published) and at the place stated in the advertisement, offer the abandoned property for sale by public auction unless the owner of it or a person acting on the owner's behalf or a person claiming a right to possession of it has sooner obtained possession of the abandoned property in accordance with this section;
- (c) if no offer or no reasonable offer is received at the auction, dispose of it in such manner and on such terms as the Chief Executive determines.

(5) The holding of a public auction may be dispensed with where the Chief Executive, having regard to the expenses associated with the holding of a public auction and the likely proceeds resulting from the auctioning of the abandoned property, considers that the holding of a public auction is not warranted; and in that case the Chief Executive may dispose of the abandoned property, but not earlier than it would have been sold by public auction, in such manner and on such terms as the Chief Executive determines.

(6) The proceeds of the sale or disposal of the abandoned property are to be applied as follows:—

- (a) firstly, in payment of the expenses of the sale or disposal;
- (b) secondly, in payment of the cost of removal and detention of the abandoned property and the service or advertisement of any notice served or advertised under this section;
- (c) thirdly, in payment of the balance of the proceeds to the owner of the abandoned property or if after reasonable inquiry the owner cannot be ascertained, into the Consolidated Revenue Fund of the State.

(7) Where the abandoned property is perishable, the Chief Executive may deal with and dispose of it in such manner as the Chief Executive considers appropriate and the proceeds, if any, of their disposal are to be applied in accordance with subsection (6).

(8) Abandoned property that the Chief Executive has removed and detained under this section is not to be delivered to its owner or to another person acting on the owner's behalf or to a person claiming a right to its possession unless—

- (a) the owner or person acting on the owner's behalf or person claiming a right to its possession has applied in writing signed by that person to the Chief Executive for the release of the abandoned property;
- (b) the applicant has furnished proof to the satisfaction of the Chief Executive of the applicant's ownership or right to possession of the abandoned property and, in the case of the applicant being a person acting on behalf of the owner, has furnished proof to the satisfaction of the Chief Executive of the applicant's authority to so act;
- (c) the applicant has paid all expenses incurred by the Chief Executive in connection with the removal and detention of the abandoned property and the service or advertisement of any notice served or advertised by the Chief Executive in relation to the removal and detention or intended sale or disposal of the abandoned property;
and
- (d) the applicant has signed a receipt for the delivery of the abandoned property to the applicant.

(9) A person is not to take delivery or obtain possession of or remove or attempt to remove from the detention of the Chief Executive abandoned property removed and detained under this section except in accordance with subsection (8).

Penalty: 20 penalty units.

(10) In this section—

“abandoned property” includes any part of the abandoned property.

7.11 Inspectors. (1) The Chief Executive may, by writing, appoint employees of Queensland Railways to be inspectors.

(2) A person ceases to be an inspector if the person is no longer an employee of Queensland Railways.

(3) The Chief Executive may cause an identity card to be issued to an inspector.

(4) The identity card is to—

- (a) contain a recent photograph of the inspector;
- and

- (b) be in a form approved, in writing, by the Chief Executive.

(5) A person who ceases to be an inspector is, as soon as practicable, to return his or her identity card to the Chief Executive.

(6) Before exercising any powers under this Act in relation to a person, an inspector, who is not readily identifiable as an inspector, is to produce to the person the inspector's identity card.

7.12 Obstruction and damage. (1) A person is not to—

- (a) wilfully obstruct any person acting under the authority of this Act;
- (b) without due authority, destroy, mutilate, deface, take away, or alter the position of any survey station, survey peg, mark, pole, stake, noticeboard, notice, or distance marker fixed or set up by any person under the authority of this Act;
- (c) wilfully trespass upon any railway;
- (d) throw any thing whatever on any part of a railway;
- (e) create a disturbance or commit a nuisance whilst upon or in any railway or railway carriage;
- (f) travel by railway without first paying his or her fare for the distance for which the person is travelling;
- (g) refuse, when requested to do so by an inspector, to produce his or her ticket for the journey the person is then undertaking.

Penalty:

- (a) in the case of an offence defined in paragraph (b) or (c)—
40 penalty units;
or
- (b) in the case of an offence defined in paragraph (a), (d), (e), (f) or (g)—20 penalty units.

(2) A police officer who finds a person committing an offence defined in subsection (1) (a), (b), (c), (d) or (e) may arrest that person, without warrant.

(3) An inspector or police officer who—

- (a) finds a person committing an offence defined in subsection (1) (e), (f) or (g);
and
- (b) believes on reasonable grounds that the person may continue to commit the offence or repeat the offence;

may require the person to leave the railway or the railway carriage and if the person fails or refuses to do so may use such force as is reasonable and necessary to remove that person from the railway or the railway carriage.

7.13 Police officer may require name and address. (1) Any police officer who—

- (a) finds any person committing;
or
- (b) believes on reasonable grounds that any person has committed or is about to commit;

on any land vested in or under the control of Queensland Railways, any offence against this Act, may require that person to state their name or address (or both) and, if the police officer believes on reasonable grounds that the name or address (or both) stated is false, may require evidence of the correctness of the name or address (or both).

(2) An inspector who—

(a) finds a person committing;

or

(b) believes on reasonable grounds that a person has committed or is about to commit;

on or in any railway or railway carriage, an offence defined in section 7.12 (1) (e), (f) or (g) may require that person to state their name or address (or both) and, if the inspector believes on reasonable grounds that the name or address (or both) stated is false, may require evidence of the correctness of the name or address (or both).

(3) When required under this section to state their name or address (or both) a person is not to—

(a) refuse or fail to do so;

or

(b) state a false name or false address (or both).

Penalty: 20 penalty units.

(4) When required under this section to produce evidence of the correctness of any particulars a person is not to—

(a) refuse or fail to produce that evidence;

or

(b) produce false evidence with respect to those particulars.

Penalty: 20 penalty units.

(5) If a person refuses or fails to state their name or address (or both) or to produce evidence of the correctness of any particulars when required to do so under this section, the police officer or inspector, as the case may be, is to caution that person, and, if that person still refuses or fails or gives a name or address (or both) that in the opinion of the police officer or inspector, as the case may be, is false, the police officer or inspector, as the case may be, may arrest that person without warrant.

7.14. Offences. (1) A prosecution for an offence against this Act is to be by way of summary proceedings under the *Justices Act 1886-1990* on complaint of—

(a) a person authorised by the Chief Executive for that purpose, either generally or in a particular case;

or

(b) a police officer.

(2) The authority of a person referred to in subsection (1) (a) to make a complaint is to be presumed until the contrary is proved.

PART 8—GENERAL

8.1 Queensland Railways not a common carrier. Queensland Railways is not a common carrier.

8.2 Conveyance of dangerous goods. (1) A person is not to have in his or her possession or in his or her luggage while travelling by railway any dangerous goods or other goods which, in the opinion of an employee of Queensland Railways, are of a dangerous nature.

(2) A person is not to send by railway any dangerous goods unless—

(a) the package containing the goods is distinctly marked with the nature of the goods;

or

(b) the employee of Queensland Railways with whom the goods are left at the time of sending is given written notice setting out the nature of the goods.

Penalty: 40 penalty units.

(3) Where an employee of Queensland Railways believes on reasonable grounds that a package or luggage may contain dangerous goods or goods of a dangerous nature, the employee may—

(a) refuse to take the package or luggage;

(b) require the package or luggage to be opened for inspection.

(4) For the purposes of this section—

“dangerous goods” means substances classifiable in accordance with the classification system specified in section 2 (Classification of Dangerous Goods) of the Code, any of the substances listed in section 9 (Index of Dangerous Goods) of the Code and any of the substances listed in section 10 (Index of Dangerous Goods of Class 1 (Explosives)) of the Code and includes any substances declared by Order in Council to be dangerous goods for the purposes of this Act: The term does not include any substance declared by Order in Council not to be dangerous goods for the purposes of this Act;

“the Code” means the Australian Code for the Transport of Dangerous Goods by Road and Rail last published before the passing of this Act in the Commonwealth of Australia Gazette No. P15 issued 7 April 1987 and includes—

(a) that Code as amended from time to time by amendments published in the Commonwealth of Australia Gazette;

and

(b) that Code as last so published in an amended form.

8.3 Mining under railways. (1) A person who owns, leases or occupies mines or minerals lying under or near a railway or land used for railway purposes is not to—

- (a) make any tunnel or excavation which, in the opinion of the Chief Executive, may render the railway or land unsafe to use for railway purposes;
- (b) carry on any mining operations whatever under any land used for railway purposes unless the consent in writing of Queensland Railways has been obtained.

(2) Any lease, license or other authority granted under any other Act or law to carry on any mining operations in contravention of this section is void to the extent it contravenes this section.

(3) Any inspector appointed under the *Mines Regulation Act 1964-1989* and any competent person authorised by Queensland Railways may at all reasonable times by day and night—

- (a) enter, inspect, examine and make a survey of any mine and every part of it;
- (b) make such examination and inquiry as is necessary to ascertain whether subsections (1) and (2) are complied with.

(4) A person is not, in exercising a right under subsection (3), to impede or unnecessarily obstruct the working of the mine.

(5) A person is not to wilfully obstruct an inspector or other person in the execution of his or her duty under this section, and every owner, agent or manager of a mine is not to refuse or neglect to furnish to an inspector or other person the means necessary for making an entry, inspection, examination, inquiry, or survey under this section in relation to the mine.

Penalty: 2 penalty units.

(6) Where the Chief Executive is of the opinion that any mine has been or is being or is likely to be worked so as to damage a railway or interfere with its stability, the Chief Executive may order the owner, lessee or occupier of the mine to construct such works and to adopt such means as are in the opinion of the Chief Executive necessary for making the railway safe and preventing damage to it, and if the order or any part of it is not complied with forthwith, Queensland Railways may comply with it, and recover the expense of doing so from the owner, lessee or occupier by action in any court of competent jurisdiction.

8.4 Regulations. (1) The Governor in Council may make regulations, not inconsistent with this Act, for or with respect to—

- (a) regulating the movement of trains, engines, rolling stock, machines and vehicles;
- (b) permitting or prohibiting smoking in or upon railways and carriages;

- (c) regulating the conduct of all persons whilst upon or in any railway or railway carriage and where necessary the removal from a railway or railway carriage of any person found creating a disturbance or committing a nuisance or an offence against this Act upon or in any railway or railway carriage;
 - (d) regulating the duties and conduct of porters, cabdrivers, and carriers (not in the employment of Queensland Railways) employed at or plying for hire to or from any railway;
 - (e) regulating generally the travelling or traffic upon or using or working of railways;
 - (f) regulating the admission of the public to any railway and fixing a charge therefor, or dispensing with the same on certain days or for certain times;
 - (g) regulating the sale of tickets and the conditions under which they are to be sold;
 - (h) fixing the fares and charges for the conveyance of passengers and goods and charges for any other use of the railway;
 - (i) regulating the disposal of unclaimed goods;
 - (j) preventing damage or injury to railways or any property thereon or therein;
 - (k) prescribing the insurance charges or the factors upon which insurance charges are to be calculated in respect of freight or passengers' luggage with a value greater than the prescribed value;
 - (l) the powers, functions and duties of persons engaged in the administration of this Act;
 - (m) all matters that arise in connection with the entitlements of and the conditions of employment of employees of Queensland Railways and the qualifications required of candidates for employment in the various branches of Queensland Railways;
 - (n) prescribing a scale of allowances to be paid to any witness summoned under this Act for their travelling expenses and maintenance while absent from their usual place of abode;
 - (o) regulating any matter or thing which by this Act is required or permitted to be prescribed or is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The power to regulate includes the power to prohibit.
- (3) A regulation may be of general operation throughout Queensland or be limited in its operation to a particular area of Queensland.
- (4) A regulation may impose a penalty not exceeding 20 penalty units for a breach of the regulation.
- (5) A regulation may, where a breach of it is a continuing breach, impose a daily penalty for the breach not exceeding 2 penalty units.

8.5 Transfer of assets and liabilities. (1) On the commencement of this Act—

- (a) all moneys that immediately before that commencement are standing at credit in a Fund or account administered by the previous Corporation together with interest accrued and due thereon vest in Queensland Railways;
- (b) all moneys and liquidated and unliquidated claims that immediately before that commencement were payable to or recoverable by the previous Corporation are payable to and recoverable by Queensland Railways;
- (c) all real and personal property of the previous Corporation is divested from the previous Corporation and vested in Queensland Railways;
- (d) all contracts and agreements entered into by or on behalf of the previous Corporation and all guarantees, undertakings and securities given by or on behalf of or to the previous Corporation, and in force immediately before that commencement are to be taken to have been entered into or, as the case may be, given by or to Queensland Railways and may be enforced against or by Queensland Railways accordingly;
- (e) all actions, suits and proceedings pending or existing immediately prior to that commencement at the suit of the previous Corporation may be continued or discontinued by Queensland Railways, which is to be substituted as a party thereto in place of the previous Corporation;
- (f) all debts owing and moneys payable by and liquidated or unliquidated claims recoverable against the previous Corporation and subsisting immediately before that commencement become and are debts owing or moneys payable by or, as the case may be, claims recoverable against Queensland Railways.

(2) Unless a contrary intention appears, a reference in any Act, document or writing to—

- (a) the previous Corporation is to be construed as a reference to Queensland Railways;
- (b) the Commissioner for Railways appointed under the *Railways Act 1914-1989* is to be construed as a reference to the Chief Executive.

8.6 Duty to facilitate transfer of property etc. (1) Between the passing of this Act and the commencement of this Act the previous Corporation and all persons connected with the operations of the previous Corporation are to do all acts and things necessary or desirable to facilitate—

- (a) the transfer to Queensland Railways of the property and liabilities provided for by this Act;
- and

- (b) the delivery to Queensland Railways or its nominee on the commencement of this Act of—
 - (i) all contracts, agreements, guarantees, undertakings and securities entered into by or given by or to the previous Corporation;
and
 - (ii) all documents, writings and other records pertaining to the operations of the previous Corporation.

(2) The Registrar of Titles and all other persons charged with the keeping of a register with respect to dealings with property vested in Queensland Railways by section 8.5 are, upon request made by or on behalf of Queensland Railways, to make in that register all endorsements necessary to record the vesting in Queensland Railways of the property in question under that section.

(3) Notwithstanding any Act to the contrary, a request made for the purposes of subsection (2) is not liable to stamp duty and no fees or charges are payable in respect of it.

8.7 Validation. It is hereby declared that—

- (a) the *Regulatory Reform Act 1986* did not and never did apply to by-law No. 1139 (published in the Gazette on 26 May 1983 at pages 641-829) nor to any by-law amending by-law No. 1139;
and
- (b) by-law No. 1139 and all by-laws amending by-law No. 1139 were validly made notwithstanding any non-compliance with section 134 of the *Railways Act of 1914* as amended and in force from time to time.

8.8 Savings and transitional. If in any case in respect of the transition from the law in force before the commencement of this Act to the provisions of this Act it appears to the Governor in Council that no provision or no sufficient provision is made to effectuate that transition, the Governor in Council may by Order in Council make such provision as the Governor in Council considers appropriate with respect to it providing for and supplying such omission or insufficiency, and that provision is to have effect accordingly.

8.9 Consequential amendments. (1) The *Financial Administration and Audit Act 1977-1990* is amended—

(a) in section 5, by omitting from the definition “department” the words “(a) the Railway Department;”;

(b) in section 35 (1), by omitting the words “, and the person holding the appointment Commissioner for Railways”;

(c) in section 36 (4), by omitting the words “The Commissioner for Railways or” where they twice occur and the words “the Railway Department or, as the case may be,”.

(2) The *Financial Administration and Audit Act 1977-1990* as amended by subsection (1) may be cited as the *Financial Administration and Audit Act 1977-1991*.

8.10 Repeals. The Acts specified in the following Table are repealed.

TABLE

Year and Number of Act	Short Title
47 Vic. No. 5	<i>Railway Companies Preliminary Act Repeal Act of 1884</i>
24 Geo. 5 No. 3	<i>Railway Superannuation Acts, 1930 to 1932, Repeal Act of 1933</i>
5 Geo. 5 No. 24	<i>Railways Act of 1914</i>
6 Geo. 5 No. 28	<i>Railways Act Amendment Act of 1915</i>
14 Geo. 5 No. 15	<i>Railways Act Amendment Act of 1923</i>
17 Geo. 5 No. 13	<i>Railways Acts Amendment Act of 1926</i>
20 Geo. 5 No. 20	<i>Railways Acts Amendment Act of 1929</i>
25 Geo. 5 No. 25	<i>Railways Acts Amendment Act of 1934</i>
10 Geo. 6 No. 19	<i>Railways Acts Amendment Act of 1946</i>
14 Geo. 6 No. 29	<i>Statutory Salaries and Allowances Act of 1950</i>
15 Geo. 6 No. 34	<i>Railways Acts Amendment Act of 1951</i>
2 Eliz. 2 No. 23	<i>Statutory Salaries and Allowances Act of 1953</i>
3 Eliz. 2 No. 4	<i>Railways Acts Amendment Act of 1954</i>
4 Eliz. 2 No. 9	<i>Statutory Salaries and Allowances Act of 1955</i>
4 Eliz. 2 No. 10	<i>Railways Acts Amendment Act of 1955</i>
4 Eliz. 2 No. 31	<i>Railways Acts Amendment Act of 1955 (No. 2)</i>
4 Eliz. 2 No. 36	<i>Statutory Salaries and Allowances Act of 1955 (No. 2)</i>
7 Eliz. 2 No. 6	<i>Statutory Salaries and Allowances Act of 1958</i>
7 Eliz. 2 No. 72	<i>Railways Acts Amendment Act of 1958</i>
8 Eliz. 2 No. 56	<i>Railways Acts Amendment Act of 1959</i>
9 Eliz. 2 No. 40	<i>Statutory Salaries and Allowances Act of 1960</i>
10 Eliz. 2 No. 9	<i>Railways Acts Amendment Act of 1961</i>
No. 7 of 1963	<i>Statutory Salaries and Allowances Act of 1963</i>
No. 25 of 1964	<i>Railways Acts Amendment Act of 1964</i>

TABLE—*continued*

Year and Number of Act	Short Title
No. 17 of 1965	<i>Railways Acts Amendment Act of 1965</i>
No. 39 of 1970	<i>Railways Act Amendment Act 1970</i>
No. 23 of 1971	<i>Railways Act Amendment Act 1971</i>
No. 59 of 1976	<i>Railways Act Amendment Act 1976</i>
No. 57 of 1978	<i>Railways Act Amendment Act 1978</i>
No. 21 of 1982	<i>Railways Act Amendment Act 1982</i>
No. 19 of 1985	<i>Railways Act Amendment Act 1985</i>
No. 61 of 1989	<i>Railways Act Amendment Act 1989</i>

Minister's Second Reading Speech made on 11 April 1991.