

Queensland



**TRANSPORT
INFRASTRUCTURE
AMENDMENT (RAIL) ACT
1995**

Act No. 32 of 1995

Queensland



TRANSPORT INFRASTRUCTURE AMENDMENT (RAIL) ACT 1995

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ATTACHMENT FOR TRANSPORT

~~FOR INFRASTRUCTURE ACT 1991~~ NOT . . . 92

**EXTRACT FROM COMPETITION PRINCIPLES
AGREEMENT—PROVISIONS ABOUT ACCESS TO
SIGNIFICANT INFRASTRUCTURE FACILITIES**

Queensland



**Transport Infrastructure Amendment (Rail)
Act 1995**

Act No. 32 of 1995

An Act about rail infrastructure and other matters

[Assented to 14 June 1995]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Transport Infrastructure Amendment (Rail) Act 1995*.

Commencement

2.(1) Section 23¹, so far as it relates to the amendments in the schedule of the following Acts, commences on assent—

- *Land Act 1962*
- *Land Act 1994*
- *Transport Operations (Road Use Management) Act 1995*.

(2) The remaining provisions commence on the day Queensland Rail becomes a GOC².

PART 2—AMENDMENT OF TRANSPORT INFRASTRUCTURE ACT 1994

Act amended

3. This part amends the *Transport Infrastructure Act 1994*.

¹ Section 23 (Amendment of other Acts)

² Under the *Government Owned Corporations Regulation 1993*, Queensland Rail is a candidate GOC. A regulation under s 63 of the GOC Act (Declaration of entity as GOC) may declare a candidate GOC to be a GOC.

Amendment of s 3 (Objectives of this Act)**4. Section 3(2)(d)—**

omit, insert—

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

- (i) contributes to overall transport effectiveness and efficiency; and
- (ii) contributes to lower transport costs by allowing the maximum flexibility in rail transport operations consistent with achieving safety objectives; and
- (iii) provides a high level of accountability; and
- (iv) allows railway managers and operators to make decisions on a commercial basis; and
- (v) provides a framework under which Queensland Rail³ may operate as required by the *Government Owned Corporations Act 1993*; and’.

Amendment of s 10 (Obligations about government supported transport infrastructure)

5. Section 10, ‘the Queensland Railways Board and the board of each port authority’—

omit, insert—

‘, and the boards of Queensland Rail and each port authority,’.

Amendment of s 11 (Report on giving effect to s 10)

6. Section 11, ‘Queensland Railways’—

omit, insert—

‘Queensland Rail’.

³ Queensland Rail is a body corporate to be established under the *Government Owned Corporations Act 1993*.

Insertion of new ch 4, pt 1A**7. Chapter 4—***insert—***‘PART 1A—RAIL IMPLEMENTATION PROGRAMS****‘Development of programs**

‘14A.(1) The chief executive must, each year, develop for the Minister’s approval rail implementation programs for the year and for 1 or more later years for rail transport infrastructure that is government supported transport infrastructure.

‘(2) Rail implementation programs must include—

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

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

- (a) consult with local governments and railway managers and operators that the chief executive considers would be affected by the programs; and
- (b) minimise conflict between the programs and expenditure programs of local governments and railway managers and operators.

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

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

‘(6) The Minister may—

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

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

‘Consistency with transport infrastructure strategies

‘**14B.(1)** Subject to the Minister’s directions, a rail implementation program must be consistent with transport infrastructure strategies.

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

‘Report on implementation of programs

‘**14C.** Each annual report of the department must include a report on the implementation of the rail implementation program for the year of the report.’.

Amendment of s 18 (Transport GOCs)

8. Section 18(1) and (2), ‘Queensland Railways’—

omit, insert—

‘Queensland Rail’.

Amendment of s 20 (Definitions)

9.(1) Section 20, heading—

omit, insert—

‘Definitions for ch 5’.

(2) Section 20, definitions “**maintenance**” and “**on**”—

omit.

(3) Section 20, definition “**ancillary works and encroachments**”, paragraph (a)(i)—

omit, insert—

‘(i) sugar tramways;

(ia) monorails;’.

(4) Section 20, definitions “**franchised road**”, “**franchisee**”, “**local government road**”, “**motorway**” and “**road**”—

relocate to the dictionary.

Omission of s 68 (Power of chief executive to lease or dispose of land to franchisees)

10. Section 68—

omit.

Insertion of new ch 5A

11. After chapter 5—

insert—

**‘CHAPTER 5A—RAIL TRANSPORT
INFRASTRUCTURE**

‘PART 1—PRELIMINARY

‘Ways of achieving objectives

‘71A. The objectives of this Act for rail are intended to be achieved by—

- (a) providing for the development and implementation of rail transport infrastructure strategies; and
- (b) providing a framework to—
 - (i) allow railway managers to manage rail transport infrastructure in an effective and efficient way; and
 - (ii) allow railway operators to operate rolling stock in an effective and efficient way; and

- (c) introducing a safety accreditation system to maintain appropriate levels of safety in the rail transport industry.

‘Scope of chapter

‘71B.(1) This chapter applies to rail transport infrastructure and rolling stock used, or proposed to be used, to transport passengers or freight for reward.

‘(2) This chapter does not apply to—

- (a) a cable car; or
- (b) a monorail; or
- (c) a railway that—
 - (i) is used solely for amusement purposes; and
 - (ii) is not connected to a railway used to transport passengers, or freight, for reward; or
- (d) a railway that—
 - (i) is part of, and used solely for, a mining operation; and
 - (ii) is not connected to a railway used to transport passengers, or freight, for reward; or
- (e) a sugar tramway; or
- (f) a tramway operated solely on roads; or
- (g) another railway prescribed under a regulation.

‘PART 2—FUNCTIONS OF QUEENSLAND RAIL

‘Functions

‘71C. The functions of Queensland Rail are—

- (a) to establish, maintain, manage and operate, or arrange for, rail transport services and infrastructure; and

- (b) to provide or arrange for ancillary services or works that are necessary or convenient for the effective and efficient maintenance, management and operation of—
 - (i) rail transport services; and
 - (ii) rail transport infrastructure; and
 - (iii) other rail infrastructure; and
- (c) to do other things that are incidental or complementary to the performance of its functions or are likely to enhance the provision of—
 - (i) rail transport services; and
 - (ii) rail transport infrastructure; and
 - (iii) other rail infrastructure; and
- (d) to perform any other functions conferred on it under an Act or a regulation.

‘PART 3—ACCESS TO RAIL TRANSPORT INFRASTRUCTURE

‘Objectives of part

‘71D. The objectives of this part are—

- (a) to make interim provision to give effect to the principles in the Competition Principles Agreement between the Commonwealth and the States about access to services provided by means of significant infrastructure facilities (the “**competition principles**”); and

- (b) in particular, to make provision to ensure agreements for access comply with the competition principles and the objectives of this Act.⁴

‘Application of part

‘71E.(1) This part applies to services provided by means of significant rail transport infrastructure facilities.

‘(2) However, this part does not apply to access to Queensland Rail coal carrying services until 5 years after the commencement of the *Trade Practices Act 1974* (Cwlth), part IIIA.⁵

‘Regulations about access to rail transport infrastructure

‘71F.(1) For this part, a regulation may make provision about anything necessary or convenient to be prescribed for carrying out or giving effect to the competition principles and objectives of this Act.

‘(2) A regulation may, for example, be made about the following—

- (a) the basis for negotiating access to a service provided by rail transport infrastructure facilities;
- (b) services provided by facilities for which a person has a right to negotiate access;
- (c) the enforcement of a person’s right to negotiate access;
- (d) how long a right to negotiate access lasts, and the review and extension of the right;
- (e) how a railway manager may or must meet the requirements of persons seeking access;
- (f) allowing different persons access on different conditions;

⁴ To aid readers, the relevant provisions of the Competition Principles Agreement are in the attachment to this Act. The attachment is not part of the Act.

⁵ The *Trade Practices Act 1974* (Cwlth), part IIIA (Access to services) is to be inserted by the *Competition Policy Reform Bill 1995* (Cwlth).

- (g) disputes about access, arbitration of disputes, the powers of arbitrators, restrictions on their powers, and the effect of awards (including awards of compensation) of an arbitrator;⁶
- (h) the circumstances in which a railway manager may be required to extend, or permit the extension of, a facility used to provide a service;
- (i) reviewing agreements for access;
- (j) hindering access;
- (k) accounting arrangements;
- (l) access to services involving facilities in Queensland and another State.

‘(3) However, a regulation cannot limit the operation of the competition principles.

‘Expiry of part

‘71G.(1) This part expires 1 year after it commences.

‘(2) A regulation made within 1 year after the commencement may extend the period mentioned in subsection (1) by not more than 1 year.

‘PART 4—ACCREDITATION

‘Accreditation of managers and operators

‘71H.(1) A person must not manage a railway unless the person is accredited as the railway manager for the railway.

Maximum penalty—160 penalty units.

‘(2) A person must not operate rolling stock on a railway unless the person is accredited as a railway operator for the railway.

⁶ General provisions about arbitration, judicial review of arbitrators awards, and appeals on a question of law are in the *Commercial Arbitration Act 1990*.

Maximum penalty—160 penalty units.

‘(3) Subsection (1) does not apply to a person who—

- (a) owns or manages a railway for a purpose that is incidental to the person’s main business; and
- (b) has an agreement with a person who is accredited as the railway manager for another railway for the connection of the railway to the other railway; and
- (c) maintains the railway, or arranges for it to be maintained, in a way that is acceptable to the other person.

‘Applications for accreditation

‘71I. A person may apply to the chief executive for accreditation as—

- (a) the railway manager for a railway; or
- (b) a railway operator for a railway; or
- (c) the railway manager and a railway operator for a railway.

‘Additional information for applications

‘71J.(1) The chief executive may, by written notice, require an applicant to give the chief executive stated written information that the chief executive reasonably requires to consider the application.

‘(2) The chief executive may reject the application if the applicant fails to comply with the requirement within a stated reasonable time, of not less than 28 days, without reasonable excuse.

‘Granting accreditation

‘71K.(1) The chief executive must promptly consider an application for accreditation and grant, or refuse to grant, the accreditation.

‘(2) The chief executive must accredit an applicant as the railway manager for a railway if satisfied—

- (a) the applicant—

- (i) is accredited in another State to manage a similar type of railway; or
- (ii) has the competency and capacity to manage the railway safely; and
- (b) the applicant has an appropriate safety management system; and
- (c) the applicant has the financial capacity or public risk insurance arrangements to meet reasonable potential accident liabilities for the railway; and
- (d) the applicant has a right—
 - (i) of access to the land where the railway is constructed either under this Act or with the agreement of the land's owner; and
 - (ii) to use the rail transport infrastructure or other rail infrastructure with the agreement of the infrastructure's owner.

‘(3) The chief executive must accredit an applicant as a railway operator for a railway if satisfied—

- (a) the applicant—
 - (i) is accredited in another State to operate rolling stock on a railway for a similar type of service; or
 - (ii) has the competency and capacity to operate rolling stock on the railway safely; and
- (b) the applicant has an appropriate safety management system; and
- (c) the applicant has the financial capacity or public risk insurance arrangements to meet reasonable potential accident liabilities for the railway; and
- (d) unless the applicant is applying for accreditation as the railway manager and operator of a railway—the applicant has an agreement with the railway's manager to operate particular rolling stock on the railway, and the agreement includes appropriate arrangements for the safe operation of the rolling stock.

‘(4) In considering a safety management system, the chief executive must consider—

- (a) the applicant's rail transport proposal; and
- (b) the appropriateness of the safety management system for the proposal; and
- (c) the safety levels achievable, consistent with the nature of the proposal, at a reasonable cost; and
- (d) the need for efficient and competitive rail transport services; and
- (e) consistency with generally accepted risk management principles; and
- (f) the levels of safety proposed relative to the levels of safety of competing transport modes.

‘(5) Subsection (4) does not limit by implication the matters the chief executive may consider in considering a safety management system.

‘(6) If the chief executive decides to grant the accreditation, the chief executive must promptly give the applicant a written notice stating—

- (a) the decision; and
- (b) the details of the accreditation, including its scope; and
- (c) if the accreditation is granted subject to a condition—
 - (i) the details of the condition; and
 - (ii) the reason for the condition; and
 - (iii) the applicant may appeal against the imposition of the condition within 28 days after the notice is given to the applicant; and
 - (iv) how the applicant may appeal.

‘(7) If the chief executive decides not to grant the accreditation, the chief executive must promptly give the applicant a written notice stating—

- (a) the decision; and
- (b) the reason for the decision; and
- (c) the applicant may appeal against the decision within 28 days after the notice is given to the applicant; and
- (d) how the applicant may appeal.

‘Accreditation conditions

‘71L.(1) An accreditation may be subject to conditions.

‘(2) A condition may relate only to—

- (a) for the accreditation of a person as the manager of a railway—managing the railway safely, considering the need for efficient and competitive services; or
- (b) for the accreditation of a person as an operator of a railway—
 - (i) operating rolling stock safely, considering the need for efficient and competitive services; or
 - (ii) the person having an agreement with the manager of the railway to operate particular rolling stock on the railway, and the agreement, including appropriate arrangements for the safe operation of rolling stock; or
- (c) for all accreditations—the person’s financial capacity or public risk insurance arrangements to meet reasonable potential accident liabilities for the railway; or
- (d) for all accreditations—the payment of accreditation fees; or
- (e) safety related matters prescribed under a regulation.

‘(3) An accredited person must comply with each condition of the person’s accreditation.

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

‘Requiring accreditation conditions to be complied with

‘71M.(1) This section applies if the chief executive reasonably believes an accredited person has not complied with a condition of the person’s accreditation.

‘(2) The chief executive may, by written notice, require the person to remedy the breach within a reasonable period stated in the notice.

‘(3) If the person has not in fact complied with the condition of the person’s accreditation, the person must comply with the notice.

Maximum penalty for subsection (3)—60 penalty units.

‘Accreditation period

‘71N. An accreditation remains in force until it is suspended, cancelled or surrendered.

‘Amending accreditation conditions on application

‘71O.(1) An accredited person may apply to the chief executive for an amendment of the conditions of the person’s accreditation.

‘(2) The chief executive must consider the application and may grant, or refuse to grant, the amendment.

‘(3) The chief executive may amend a condition only if satisfied the condition is—

- (a) no longer appropriate; or
- (b) no longer consistent with generally accepted risk management principles.

‘(4) If the chief executive decides to amend a condition, the chief executive must promptly give the applicant a written notice stating the decision and the amendment.

‘(5) If the chief executive decides not to amend a condition, the chief executive must promptly give the applicant a written notice stating—

- (a) the decision; and
- (b) the reason for the decision; and
- (c) the applicant may appeal against the decision within 28 days after the notice is given to the applicant; and
- (d) how the applicant may appeal.

‘(6) If the chief executive does not decide the application within 70 days after it is made, the chief executive is taken to have made the amendment sought by the accredited person at the end of the 70 days.

‘Amending accreditation conditions without application

‘71P.(1) This section applies if the chief executive considers the conditions of a person’s accreditation should be amended.

‘(2) Before amending the conditions, the chief executive must give the person a written notice—

- (a) stating the proposed amendment; and
- (b) stating the reason for the amendment; and
- (c) inviting the person to show, within a stated time of at least 28 days, why the amendment should not be made.

‘(3) If, after considering all written representations made within the stated time, the chief executive still considers the conditions should be amended, the chief executive may amend the conditions—

- (a) in the way proposed; or
- (b) in another way, having regard to the representations.

‘(4) The chief executive must inform the person of the decision by written notice.

‘(5) If the chief executive decides to amend the conditions, the notice must also state—

- (a) the amendment; and
- (b) the reason for the decision; and
- (c) the person may appeal against the decision within 28 days after the notice is given to the person; and
- (d) how the person may appeal.

‘(6) Subsections (2) to (5) do not apply if the chief executive proposes to amend the conditions of a person’s accreditation for a formal or clerical reason that does not adversely affect the person’s interests.

‘(7) The chief executive may amend a condition in a way mentioned in subsection (6) by written notice given to the person.

‘**Suspending or cancelling accreditation**

‘**71Q.(1)** This section applies if the chief executive—

- (a) reasonably suspects an accredited person has failed to comply with a condition of the person’s accreditation; and

- (b) considers the person's accreditation should be suspended or cancelled (the **“proposed action”**).

‘(2) Before taking the proposed action, the chief executive must give the person a written notice—

- (a) stating the proposed action; and
- (b) stating the reason for the proposed action; and
- (c) if the proposed action is suspension of the accreditation—stating the proposed suspension period; and
- (d) if the proposed action is a limited suspension of the accreditation⁷—stating the details of the proposed limitation; and
- (e) inviting the person to show, within a stated time of at least 28 days, why the proposed action should not be taken.

‘(3) If, after considering all written representations made within the stated time, the chief executive still considers the proposed action should be taken, the chief executive may—

- (a) if the proposed action was to suspend the accreditation—suspend the accreditation—
 - (i) for no longer than the proposed suspension period; and
 - (ii) if the proposed action was a limited suspension—by no more than the proposed limitation; or
- (b) if the proposed action was to cancel the accreditation—cancel the accreditation or suspend it for a period.

‘(4) The chief executive must inform the person of the decision by written notice.

‘(5) If the chief executive decides to suspend or cancel the accreditation, the notice must also state—

- (a) the reason for the decision; and
- (b) the person may appeal against the decision within 28 days after the notice is given to the person; and
- (c) how the person may appeal.

⁷ See section 71S (Limited suspension of accreditation).

‘(6) If—

- (a) rather than cancel the accreditation, the chief executive suspends it on condition that the person do certain things to rectify the failure to comply with a condition of the person’s accreditation; and
- (b) the person does not rectify the failure within the suspension period;

the chief executive may immediately cancel the accreditation by written notice given to the person.

‘(7) The notice must state—

- (a) the reason for the decision; and
- (b) the person may appeal against the decision within 28 days after the notice is given to the person; and
- (c) how the person may appeal.

‘Immediate suspension of accreditation

‘71R.(1) This section applies if the chief executive—

- (a) reasonably believes an accredited person has failed to comply with a condition of the person’s accreditation; and
- (b) considers members of the public may be seriously harmed if urgent action to suspend the accreditation is not taken.

‘(2) The chief executive may immediately suspend an accreditation by written notice given to the person.

‘(3) The notice must state—

- (a) the reason for the decision; and
- (b) the person may appeal against the decision within 28 days after the notice is given to the person; and
- (c) how the person may appeal.

‘(4) The chief executive must at the same time give the person a notice under section 71Q(2).⁸

⁸ Section 71Q (Suspending or cancelling accreditation)

‘(5) The accreditation is suspended under this section until the earlier of the following—

- (a) the chief executive gives the person notice of the chief executive’s decision under section 71Q;
- (b) the end of 60 days after the notice under subsection (2) was given to the person.

‘Limited suspension of accreditation

‘71S. Under section 71Q or 71R⁹, the chief executive may limit a suspension to, for example—

- (a) a particular railway for which the accredited person is accredited;
or
- (b) a particular service operated by the accredited person.

‘Surrender of accreditation

‘71T. An accredited person may, at any time, surrender the person’s accreditation by written notice given to the chief executive.

‘PART 5—RAIL TRANSPORT INFRASTRUCTURE POWERS

‘Entering land for railway works etc.

‘71U. For railway works, the chief executive or an accredited person may enter someone else’s land and carry out the works.

⁹ Section 71Q (Suspending or cancelling accreditation)
Section 71R (Immediate suspension of accreditation)

‘Entry to land by notice or with approval

‘71V.(1) Before entering someone else’s land to carry out railway works, the chief executive or an accredited person must—

- (a) give at least 7 days written notice to the land’s owner or occupier; or
- (b) get the written agreement of the land’s owner or occupier to the entry.

‘(2) The notice must—

- (a) state the use intended to be made of the land; and
- (b) include a general outline of the intended works; and
- (c) state an approximate period when the works are expected to be carried out on the land.

‘(3) The chief executive or accredited person need not comply with subsection (1) for—

- (a) urgent remedial action on a railway; or
- (b) maintenance on a road.

‘(4) If urgent remedial action is required, the chief executive or accredited person must give the land’s owner or occupier as much oral notice as is practicable.

‘Care to be taken in carrying out works etc.

‘71W. In entering land and carrying out railway works on the land, the chief executive or an accredited person—

- (a) must take as much care as is practicable to minimise damage to the land or inconvenience to the land’s owner or occupier; and
- (b) may do anything necessary or desirable to minimise the damage or inconvenience; and
- (c) must get the agreement of the owner or occupier to take or use the materials of the land’s owner or occupier, unless urgent remedial action on a railway is required.

‘Compensation for carrying out works etc.

‘71X.(1) An owner or occupier of land entered under this part by the chief executive or an accredited person may, by written notice given to the chief executive or accredited person—

- (a) claim compensation for loss or damage caused by the entry or railway works carried out on the land; or
- (b) claim compensation for the taking or use of materials; or
- (c) require the person to carry out works in restitution for the damage; or
- (d) require the person to carry out works in restitution for the damage and then claim compensation for any loss or damage not restituted.

‘(2) The notice must be given—

- (a) within 1 year after the railway works are completed; or
- (b) at a later time allowed by the chief executive or accredited person.

‘(3) The amount of compensation is—

- (a) the amount agreed between the parties; or
- (b) if the parties can not agree within a reasonable time—the amount decided by a court with jurisdiction for the recovery of the amount of compensation claimed.

‘(4) However, the amount of compensation for damage to the land and its fixtures, and for taking or use of materials, can not be more than the amount that would have been awarded if the land had been acquired.

‘Watercourses

‘71Y.(1) To carry out railway works, an accredited person may, with the chief executive’s written approval—

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

‘(2) In deciding whether to approve the diversion of a watercourse, the chief executive must consider the effect the works would have on the

watercourse's physical integrity and flow characteristics.

'(3) Subsection (2) does not limit the matters the chief executive may consider.

'Power to require works to stop

'71Z.(1) A person must not, without the chief executive's written approval, carry out works near a railway if the works threaten, or are likely to threaten, the railway's safety or operational integrity.

Maximum penalty—100 penalty units.

'(2) If—

- (a) a person is carrying out, or proposes to carry out, works near a railway; and
- (b) the chief executive reasonably believes they threaten, or are likely to threaten, the railway's safety or operational integrity;

the chief executive may give the person a written direction to stop, alter or not to start the works.

'(3) The person must comply with the direction, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

'(4) If works are carried out contrary to subsection (1) or a direction under subsection (2), the chief executive may, by written notice, require the owner of the land where the works are situated to alter, demolish or take away the works within a stated reasonable time.

'(5) The person must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

'(6) If the person does not comply with the requirement, the chief executive may—

- (a) alter, demolish or take away the works; or
- (b) alter, demolish or take away the works and recover the cost of doing so from the land's owner as a debt payable by the owner.

‘(7) For this section, a person authorised by the chief executive may enter land and inspect works—

- (a) after giving 3 days written notice to the land’s owner or occupier; or
- (b) with the written agreement of the land’s owner or occupier; or
- (c) without notice or approval, if the chief executive reasonably believes there is an immediate and significant threat to the railway’s safety or operational integrity.

‘(8) This section binds all persons, including the State, the Commonwealth and the other States.

‘Closing railway crossings

‘71ZA.(1) A railway manager may temporarily close or regulate a railway crossing if satisfied it is necessary because of an immediate threat to—

- (a) the safety of the railway; or
- (b) the public using it or who may use it.

‘(2) If the manager decides to close or regulate a crossing—

- (a) the manager must, as soon as practicable after its closure or regulation, notify the authority responsible for the crossing of its closure or regulation, unless the authority has agreed that notification is unnecessary; and
- (b) the manager may construct a substitute crossing.

‘PART 6—RAILWAY INCIDENTS

‘Division 1—Report of railway incident

‘Reporting serious incidents

‘71ZB.(1) If an accredited person for a railway becomes aware that a serious incident has happened on or involving a railway, the person must report the incident to the chief executive in accordance with any guidelines under subsection (2).

Maximum penalty—10 penalty units.

‘(2) The chief executive may make, and give to all accredited persons, written guidelines—

- (a) to which they are to have regard in deciding whether an incident is one to which subsection (1) applies; or
- (b) about the information that must be included in reports under the subsection; or
- (c) about the times within which reports must be made to the chief executive; or
- (d) about the form in which reports must be made.

‘(3) In making guidelines, the chief executive must consult with accredited persons.

‘Request for report or incident details

‘71ZC.(1) This section applies if the chief executive becomes aware that a serious incident on or involving a railway may have happened, even if it has not been reported.

‘(2) The chief executive may require an accredited person for the railway to give the chief executive a written report, or stated written details, about the incident within a stated reasonable period.

‘(3) The person must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty for subsection (2)—10 penalty units.

‘Division 2—Investigation of railway incident

‘Investigations by authorised person

‘**71ZD.(1)** This section applies if—

- (a) a serious incident on or involving a railway happens; or
- (b) the chief executive becomes aware that a serious incident on or involving a railway may have happened, even if it has not been reported.

‘**(2)** The chief executive may require an authorised person for the railway to investigate the matter.

‘**(3)** If a report has been given to the chief executive about the incident, the chief executive may require the authorised person to investigate the matter by reviewing the report.

‘**(4)** After finishing the investigation, the authorised person must report the results of the investigation to the chief executive.

‘Power of authorised person to investigate incident

‘**71ZE.(1)** This section applies if—

- (a) an incident on or involving a railway has, or may have, happened; and
- (b) an authorised person for the railway is investigating the incident, whether or not at the chief executive’s request.

‘**(2)** If the authorised person reasonably needs help in investigating the incident, the authorised person may require a person to give the authorised person reasonable help in the investigation.

‘**(3)** A requirement may only be made of a person who the authorised person reasonably believes is competent to give the help.

‘**(4)** The authorised person may require a person who the authorised person reasonably suspects was at or near the scene of the incident when it happened to—

- (a) answer questions relevant to the incident; or
- (b) produce documents or other things relevant to the incident.

‘**(5)** The authorised person may require an employee of a railway manager or operator to take an alcohol breath test, drug test or medical

examination if the person reasonably suspects—

- (a) the employee caused, or was directly involved in, the incident; and
- (b) the result of the test or examination may help in deciding the circumstances and probable causes of the incident.

‘(6) The test or examination must take place within 2 hours after the incident happens.

‘(7) The cost of the test or examination must be paid by the employee’s employer.

‘(8) A person must comply with a requirement under this section, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

‘(9) When making a requirement of a person under this section, an authorised person must warn the person it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.

‘(10) If the person refuses to take a test or examination, the person may be taken, for a purpose prescribed under a regulation, to have been under the influence of alcohol or a drug when the incident happened, in the absence of evidence to the contrary.

‘False or misleading statements

‘71ZF.(1) A person must not—

- (a) state anything to an authorised person for a railway that the person knows is false or misleading in a material particular; or
- (b) omit from a statement made to an authorised person for a railway anything without which the statement is, to the person’s knowledge, misleading in a material particular.

Maximum penalty—60 penalty units.

‘(2) It is enough for a complaint against a person for an offence against subsection (1) to state that the statement made was false or misleading to the person’s knowledge.

‘False, misleading or incomplete documents

‘71ZG.(1) A person must not give the chief executive or an authorised person for a railway a document containing information the person knows is false, misleading or incomplete in a material particular.

Maximum penalty—60 penalty units.

‘(2) Subsection (1) does not apply to a person if the person, when giving the document—

- (a) tells the chief executive or person, to the best of the person’s ability, how it is false, misleading or incomplete; and
- (b) if the person has, or can reasonably get, the correct information—gives the correct information.

‘(3) It is enough for a complaint against a person for an offence against subsection (1) to state that the document was false, misleading or incomplete to the person’s knowledge.

‘(4) In this section—

“document” includes a report under division 1.¹⁰

‘Obstructing authorised person

‘71ZH.(1) A person must not obstruct an authorised person for a railway in the exercise of a power under this or another Act, unless the person has a reasonable excuse.

Maximum penalty—60 penalty units.

‘(2) If a person has obstructed an authorised person and the authorised person decides to exercise the power, the authorised person must warn the person.

‘(3) In warning the person, the authorised person must tell the person—

- (a) it is an offence to obstruct the authorised person, unless the person has a reasonable excuse; and
- (b) the authorised person considers the person’s conduct is an obstruction.

¹⁰ Division 1 (Report of railway incident)

‘Impersonating authorised person

‘71ZI. A person must not pretend to be an authorised person for a railway for this or another Act.

Maximum penalty—80 penalty units.

‘Compensation

‘71ZJ.(1) This section applies if a person incurs loss or expense because of the exercise or purported exercise by an authorised person for a railway of a power under this part, including, for example, in complying with a requirement made of the person.

‘(2) The person may claim compensation for the loss or expense from the employing authority.

‘(3) Payment of compensation may be claimed and ordered in a proceeding—

- (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
- (b) for an offence against this Act brought against the person claiming compensation.

‘(4) A court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

‘(5) A regulation may prescribe matters that may, or must, be taken into account by the court in considering whether it is just to make the order.

‘(6) In this section—

“employing authority”, of an authorised person, means—

- (a) if the authorised person is employed by an accredited person—the accredited person; or
- (b) in any other case—the State.

Division 3—Boards of inquiry***Subdivision 1—General*****‘Minister may establish or re-establish boards of inquiry**

‘71ZK.(1) The Minister may, by gazette notice, establish or re-establish a board of inquiry about an incident that—

- (a) has happened on or involving a railway; and
- (b) the Minister considers is a serious incident.

‘(2) The notice, or a subsequent gazette notice, may specify matters relevant to the inquiry, including, for example, the number and appointment of members, the chairperson and the terms of reference.

‘(3) The Minister may exercise powers under this section for an incident—

- (a) whether or not the incident has been investigated under division 2¹¹; or
- (b) whether or not a board of inquiry has previously inquired into the incident.

‘Role of board of inquiry

‘71ZL.(1) The board of inquiry must—

- (a) inquire into the circumstances and probable causes of the relevant incident; and
- (b) give the Minister a written report of the board’s findings.

‘(2) The report may contain the recommendations the board considers appropriate and other relevant matters.

‘(3) The Minister must table a copy of the report in the Legislative Assembly within 14 days after receiving the report.

¹¹ Division 2 (Investigation of railway incident)

‘(4) However, if the board gives the Minister a separate report of matters that the board considers should not be made public, the Minister need not table the separate report in the Legislative Assembly.

‘Conditions of appointment

‘71ZM.(1) Members of the board of inquiry are entitled to be paid the fees and allowances that may be decided by the Minister.

‘(2) The members hold office on the terms not provided by this Act that may be decided by the Minister.

‘Chief executive to arrange for services of staff and financial matters for board of inquiry

‘71ZN. As soon as practicable after the board of inquiry is established, the chief executive must consult with the chairperson of the board and arrange—

- (a) for the services of officers and employees of the department, authorised persons for a railway and other persons to be made available to the board for the conduct of the inquiry; and
- (b) for financial matters relevant to the board.

‘Authorised person may exercise powers for board’s inquiry

‘71ZO.(1) This section applies to an authorised person for a railway whose services have been made available to the board of inquiry.

‘(2) The person may exercise the powers of an authorised person under division 2¹² for the incident the subject of the board’s inquiry.

¹² Division 2 (Investigation of railway incident)

Subdivision 2—Conduct of inquiry**Procedure**

71ZP.(1) In conducting its inquiry, the board of inquiry—

- (a) must observe natural justice; and
- (b) must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues.

(2) In conducting the inquiry, the board—

- (a) is not bound by the rules of evidence; and
- (b) may inform itself in any way it considers appropriate, including, for example, holding hearings; and
- (c) may decide the procedures to be followed for the inquiry.

(3) However, the board must comply with this division and any procedural rules prescribed under a regulation.

(4) The chairperson presides at the inquiry.

Notice of inquiry

71ZQ. The chairperson of the board of inquiry must give at least 14 days written notice of the time and place of the inquiry to anyone who the chairperson has reason to believe should be given the opportunity to appear at the inquiry.

Inquiry to be held in public other than in special circumstances

71ZR.(1) An inquiry must be held in public.

(2) However, the board may, of its own initiative or on the application of a person represented at the inquiry, direct that the inquiry, or a part of the inquiry, be held in private, and give directions about the persons who may be present.

(3) The board may direct that the inquiry be held in private only if satisfied it is proper to make the order in the special circumstances of the inquiry.

‘Protection of members, legal representatives and witnesses

‘71ZS.(1) A member of the board of inquiry has, in the performance of the member’s duties, the same protection and immunity as a judge of the Supreme Court.

‘(2) A lawyer or other person appearing before the board for someone else has the same protection and immunity as a barrister appearing for a party in a proceeding in the Supreme Court.

‘(3) A person summoned to attend or appearing before the board as a witness has the same protection as a witness in a proceeding in the Supreme Court.

‘Record of proceedings to be kept

‘71ZT. The board of inquiry must keep a record of its proceedings.

‘Procedural fairness and representation

‘71ZU. In conducting the inquiry, the board must give anyone directly concerned in the incident the subject of the inquiry, the opportunity of making a defence to all claims made against the person either in person or by lawyer or agent.

‘Board’s powers on inquiry

‘71ZV.(1) In conducting the inquiry, the board may—

- (a) act in the absence of any person who has been given a notice under section 71ZQ¹³ or some other reasonable notice; and
- (b) receive evidence on oath or affirmation or by statutory declaration; and
- (c) adjourn the inquiry; and
- (d) disregard any defect, error, omission or insufficiency in a document; and

¹³ Section 71ZQ (Notice of inquiry)

- (e) permit or refuse to permit a person, including a lawyer, to represent someone else at the inquiry.

‘(2) A member of the board may administer an oath or affirmation to a person appearing as a witness before the inquiry.

‘Notice to witness

‘71ZW.(1) The chairperson of the board of inquiry may, by written notice given to a person, require the person to attend the inquiry at a stated time and place to give evidence or produce stated documents or things.

‘(2) A person required to appear as a witness before the board is entitled to the witness fees prescribed under a regulation or, if no witness fees are prescribed, the reasonable witness fees decided by the chairperson.

‘Inspection of documents or things

‘71ZX.(1) If a document or other thing is produced to the board at the inquiry, the board may—

- (a) inspect the thing; and
- (b) make copies of, photograph, or take extracts from, the thing if it is relevant to the inquiry.

‘(2) The board may also take possession of the thing, and keep it while it is necessary for the inquiry.

‘(3) While it keeps a thing, the board must permit a person otherwise entitled to possession of the thing to inspect, make copies of, photograph, or take extracts from, it, at a reasonable place and time that the board decides.

‘Inquiry may continue despite court proceedings unless otherwise ordered

‘71ZY. The inquiry of the board of inquiry may start or continue, and a report may be prepared or given, despite a proceeding before any court or tribunal, unless a court or tribunal with the necessary jurisdiction orders otherwise.

‘Offences by witnesses

‘71ZZ.(1) A person given a notice under section 71ZW¹⁴ must not—

- (a) fail, without reasonable excuse, to attend as required by the notice; or
- (b) fail, without reasonable excuse, to continue to attend as required by the chairperson of the board of inquiry until excused from further attendance.

Maximum penalty—60 penalty units

‘(2) A person appearing as a witness at the inquiry must not—

- (a) fail to take an oath or make an affirmation when required by the chairperson of the board; or
- (b) fail, without reasonable excuse, to answer a question the person is required to answer by a member of the board; or
- (c) fail, without reasonable excuse, to produce a document or thing the person is required to produce by a notice under section 71ZW.

Maximum penalty—60 penalty units.

‘Self-incrimination

‘71ZZA.(1) A person appearing as a witness at the inquiry is not excused from—

- (a) answering a question put to the person at the inquiry; or
- (b) producing a document or other thing at the inquiry;

on the ground that the answer or producing the thing might tend to incriminate the person.

‘(2) However, neither the answer, nor the fact that the person has produced the thing, is admissible in evidence against the person in a criminal proceeding (other than a proceeding about the falsity or misleading nature of the answer or thing) if—

¹⁴ Section 71ZW (Notice to witness)

- (a) before answering the question or producing the thing, the person claims that the answer or producing the thing might tend to incriminate the person; and
- (b) the answer or producing the thing might in fact tend to incriminate the person.

‘False or misleading statements

‘71ZZB.(1) A person must not—

- (a) state anything to the board of inquiry that the person knows is false or misleading in a material particular; or
- (b) omit from a statement made to the board of inquiry anything without which the statement is, to the person’s knowledge, misleading in a material particular.

Maximum penalty—200 penalty units.

‘(2) It is enough for a complaint against a person for an offence against subsection (1) to state that the statement made was false or misleading to the person’s knowledge.

‘False, misleading or incomplete documents

‘71ZZC.(1) A person must not give to the board of inquiry a document containing information the person knows is false, misleading or incomplete in a material particular.

Maximum penalty—200 penalty units.

‘(2) Subsection (1) does not apply to a person if the person, when giving the document—

- (a) tells the board, to the best of the person’s ability, how it is false, misleading or incomplete; and
- (b) if the person has, or can reasonably get the correct information—gives the correct information.

‘(3) It is enough for a complaint against a person for an offence against subsection (1) to state that the document was false, misleading or incomplete to the person’s knowledge.

‘Contempt of board

‘71ZZD. A person must not—

- (a) insult the board of inquiry; or
- (b) deliberately interrupt the inquiry; or
- (c) create or continue or join in creating or continuing, a disturbance in or near a place where the board is conducting its inquiry; or
- (d) do anything that would be contempt of court if the board were a judge acting judicially.

Maximum penalty—60 penalty units.

‘Change of membership of board

‘71ZZE. The inquiry of the board of inquiry is not affected by a change in its membership.

‘PART 7—LAND FOR RAILWAY PURPOSES**‘Lease of land to railway managers**

‘71ZZF.(1) This section applies if the State acquires land for use by a railway manager as part of a rail transport corridor.

‘(2) The State must lease the land to the manager—

- (a) if the manager agrees to meet the full costs of the acquisition—on terms that—
 - (i) the lease is for a term of 100 years and, if demanded, for a rent of \$1 per year; and
 - (ii) the manager has an option to take up a further lease on the same terms for a further 100 years; or
- (b) otherwise—on terms agreed between the parties.

‘(3) Before the land is leased, all necessary approvals for the construction of a railway must be obtained.

‘(4) If the manager attaches any rail transport infrastructure and any other works or structures to the land, they remain the manager’s property until the manager disposes of them.

‘Status of railway land

‘71ZZG.(1) The railway manager for corridor land is subject to the same controls and exemptions under State and local laws that an agency of the State would be if it had the manager’s interest in the land.

‘(2) In this section—

“corridor land” means—

- (a) commercial corridor land that is not leased by the railway manager on a commercial basis; or
- (b) existing rail corridor land, or new rail corridor land, that is not subleased by the railway manager on a commercial basis.

‘Application of Queensland Heritage Act

‘71ZZH. The *Queensland Heritage Act 1992* applies to the following property of Queensland Rail as if Queensland Rail were an agency of the State—

- (a) property that is on existing rail corridor land or new rail corridor land; and
- (b) other property that is entered on the heritage register and is identified by the chief executive by gazette notice.

‘Existing rail transport infrastructure on land

‘71ZZI.(1) This section applies if at the commencement—

- (a) rail transport infrastructure was on land that is not owned or leased by Queensland Rail; and
- (b) the previous rail corporation had managed a railway using the rail transport infrastructure.

‘(2) After the commencement—

- (a) the rail transport infrastructure may stay on the land; and
- (b) Queensland Rail may—
 - (i) alter the rail transport infrastructure; and
 - (ii) manage the railway using the rail transport infrastructure, whether or not altered; and
 - (iii) operate rolling stock on the railway.

‘(3) A person has no interest in, or right to, the rail transport infrastructure (whether or not altered) on land only because the person has an interest in the land.

‘Existing buildings on land

‘**71ZZJ.(1)** If, immediately before the commencement, a building of the previous rail corporation was lawfully on land—

- (a) it may stay on the land; and
- (b) its construction is not subject to any approval that did not affect it immediately before the commencement.

‘(2) If, immediately before the commencement, the previous rail corporation’s activities were lawfully being carried out on the land, they may still be carried out on the land despite any change to the zoning of the land.

‘(3) In this section—

“**building**” includes a structure or works.

‘Railway works on corridor land

‘**71ZZK.(1)** The chief executive must exercise or perform any power or function that, under the Building Code, would be exercised or performed by a local government for any railway works carried out on corridor land.

‘(2) In this section—

“**Building Code**” means the Building Code of Australia.

“**corridor land**” means commercial corridor land, existing rail corridor land, new rail corridor land or non-rail corridor land.

‘PART 8—GENERAL

‘Queensland Rail not a common carrier

‘71ZZL. Queensland Rail is not a common carrier.

‘Carrying dangerous goods

‘71ZZM.(1) While on or travelling by a railway, a person must not possess or have in their luggage any dangerous goods.

Maximum penalty—100 penalty units.

‘(2) A person does not commit an offence against subsection (1) if—

- (a) the goods are of a type commonly used for personal, domestic or household use; and
- (b) the quantity of the goods is reasonable considering their nature and common use.

‘(3) A person must not send dangerous goods (code) by railway unless the goods are packed, marked and labelled as required by the code.

Maximum penalty—100 penalty units.

‘(4) A person must not send dangerous goods (other) by railway unless—

- (a) the goods are marked and labelled to show clearly that they are dangerous goods; and
- (b) the goods are packed, and otherwise marked and labelled, in a reasonable way considering—
 - (i) the goods’ nature and quantity; and
 - (ii) the safety of the railway and people working or travelling on it.

Maximum penalty—40 penalty units.

‘(5) In a proceeding for an offence against subsection (1) or (3), a document purporting to be the code is evidence of the code.

‘(6) In this section—

“**code**” means a document, or parts of a document, prescribed under a regulation to be the code.

“**dangerous goods**” means—

- (a) dangerous goods (code); or
- (b) dangerous goods (other).

“**dangerous goods (code)**” means—

- (a) substances in the code that are prescribed under a regulation; or
- (b) other substances or things declared by a regulation to be dangerous goods.

“**dangerous goods (other)**” means substances or things that, because of their nature, quantity or condition, could, if brought onto a railway or carried by railway, endanger the safety of—

- (a) the railway; or
- (b) a person on the railway.

‘Altering road levels

‘71ZZN.(1) In constructing or managing a railway, the railway manager for the railway may alter the level of a road or require the authority responsible for the road to alter its level.

‘(2) Unless the railway manager and the authority responsible for the road agree, the railway manager must pay all reasonable expenses incurred by the authority in altering the road level.

‘(3) A person whose land is directly affected by the alteration is entitled to be paid compensation by the railway manager.

‘(4) The amount of compensation is—

- (a) the amount agreed between the parties; or
- (b) if the parties can not agree within a reasonable time—the amount decided by a court with jurisdiction for the recovery of the amount of compensation claimed.

‘(5) However, the amount of compensation can not be more than the amount that would have been awarded if the land had been acquired.

‘Maintaining roads crossing railways

‘71ZZO.(1) A railway manager for a railway must maintain—

- (a) the part of the railway on a road; and
- (b) the surface of a road, in a character in keeping with the road—
 - (i) between the rails; and
 - (ii) outside the outermost rails to a distance of 0.6 m.

‘(2) If a railway is built by way of a bridge over a road, the authority that maintained the road before the railway was built must continue to maintain the road under the bridge.

‘No presumption of dedication of roads

‘71ZZP. If the public uses railway land as a road or otherwise for access purposes, the land is not taken to have been dedicated for use as a road even though the use is authorised or allowed by the railway manager.

‘Extending roads etc. through or over railway land

‘71ZZQ.(1) A railway manager may allow a local government to construct, maintain and operate a road on railway land by way of—

- (a) a bridge over the railway; or
- (b) a bridge that allows the road to pass under the railway; or
- (c) a level crossing.

‘(2) The permission may be subject to conditions.

‘(3) The railway manager may continue to use the land, and the airspace above the land, other than any land and airspace excluded by a condition of the permission.

‘(4) The railway manager, and its agents or employees, do not have any duty or liability for the road or its use or operation.

‘(5) Once the road is used, it is taken to be—

- (a) a road under the relevant local government’s control; and
- (b) a road under any Act about the use of vehicles on a road.

‘(6) Unless the railway manager and the local government otherwise agree—

- (a) the local government is responsible for maintaining the road and the bridge or level crossing ; and
- (b) if the road stops being used—the local government is responsible for the cost of taking the bridge or level crossing away and of restoring the railway.

‘Level crossings

‘71ZZR.(1) Pedestrians and drivers of vehicles must give way to—

- (a) a railway operator’s rolling stock on railway tracks at a level crossing; and
- (b) a railway manager’s rail vehicle on railway tracks at a level crossing.

‘(2) If an accident happens at a level crossing because a person does not comply with subsection (1)—

- (a) the railway manager or operator is not liable for any injury or damage caused in the accident; and
- (b) the person must pay the railway manager or operator the cost of any damage caused to property of the manager or operator.

‘(3) However, subsection (2) does not apply if the manager or operator, or its agents or employees, were negligent in relation to the accident.

‘Interfering with railway

‘71ZZS.(1) A person must not interfere with a railway, unless the person has the railway manager’s written approval.

Maximum penalty—160 penalty units.

‘(2) An approval may be subject to a reasonable condition.

‘(3) The person must comply with the condition.

Maximum penalty—40 penalty units.

‘(4) Subsection (1) does not apply to a person who carries out urgent maintenance of a railway.

‘(5) This section binds all persons, including the State, the Commonwealth and the other States.

‘Rectifying unauthorised interference

‘71ZZT.(1) If a person contravenes section 71ZZS(1)¹⁵ by interfering with a railway, the railway manager for the railway may, by written notice, require the person to rectify the interference within a stated reasonable time.

‘(2) The person must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

‘(3) If the person does not comply with the requirement, the railway manager may rectify the interference.

‘(4) The person must pay the manager the manager’s costs of—

- (a) rectifying the interference; or
- (b) altering the construction, maintenance or operation the railway because of the interference.

‘(5) In this section—

“rectify the interference” means—

- (a) alter, dismantle or take away any works; or
- (b) fix any damage caused by the interference.

‘Trespassing on railway

‘71ZZU. A person must not wilfully trespass on a railway.

Maximum penalty—40 penalty units.

¹⁵ Section 71ZZS (Interfering with railway)

‘Power to arrest

‘71ZZV.(1) This section applies to any of the following offences—

- an offence against section 71ZH (Obstructing authorised person)
- an offence against section 71ZZU (Trespassing on railway)
- an offence against the Criminal Code, section 469 (Malicious injuries in general) constituted by wilful and unlawful destruction or damage to rail transport infrastructure, other rail infrastructure or rolling stock.

‘(2) A police officer may arrest a person without a warrant if the police officer reasonably believes—

- (a) the person has just committed the offence; and
- (b) proceedings by way of complaint and summons against the person would be ineffective.

‘Impact of certain decisions by local governments on railways

‘71ZZW.(1) The chief executive may make guidelines about what a local government must consider in relation to the safety and operational integrity of a railway if—

- (a) it intends to—
 - (i) approve a subdivision, rezoning or development of land; or
 - (ii) carry out road works on a local government road; or
 - (iii) make changes to the management of a local government road; and
- (b) the approval, works or change would—
 - (i) require works to be carried out on a railway; or
 - (ii) otherwise have a significant adverse impact on a railway; or
 - (iii) have a significant impact on the planning of a railway or a future railway.

‘(2) The chief executive must give a copy of any guidelines to each relevant local government.

‘Fencing new railways

‘71ZZX.(1) A railway manager need not contribute to the fencing of any part of the boundary of land that is—

- (a) a future railway; or
- (b) acquired for a widening or deviation of a railway.

‘(2) Subsection (1) does not apply if—

- (a) the land acquired was substantially fenced; and
- (b) the railway’s presence may make the fencing ineffective.

‘Works for existing railways

‘71ZZY.(1) This section applies—

- (a) while a railway existing at the commencement (the “**existing railway**”) continues to be operated as a railway; and
- (b) to the owners and occupiers of land next to the existing railway (the “**neighbouring land**”).

‘(2) Queensland Rail must, within a reasonable time, construct and maintain—

- (a) works that are necessary to make good any interruptions caused by the existing railway to the use of the neighbouring land; and
- (b) works that are necessary to—
 - (i) separate the existing railway from the neighbouring land; and
 - (ii) protect the stock straying from the neighbouring land onto the railway; and
- (c) sufficient works to ensure the neighbouring land’s drainage is as good, or nearly as good, as it was before the existing railway was constructed.

‘(3) Queensland Rail may satisfy its obligation under subsection (2)(b) by constructing and maintaining a fence of substantially similar quality to any fence around the neighbouring land when the railway was constructed.

‘(4) This section does not require Queensland Rail to—

- (a) construct or maintain works in a way that would prevent or obstruct the use of the existing railway; or
- (b) construct or maintain works for owners or occupiers who agreed to receive, and have been paid, compensation in place of the works.

‘(5) The Land Court must decide any dispute about the adequacy of works or maintenance under this section.

‘(6) If the owner or occupier of neighbouring land considers that works carried out under this section are insufficient for the convenient use of the land, the owner or occupier may, with Queensland Rail’s agreement, carry out further works at the owner’s or occupier’s expense.

‘(7) Queensland Rail may, by written notice given to the owner or occupier, require the further works to be carried out—

- (a) under the supervision of a person nominated by Queensland Rail; and
- (b) according to plans and specifications approved by Queensland Rail.

‘(8) Queensland Rail must attempt to keep the cost of the further works to a reasonable level.

‘(9) Until Queensland Rail carries out the works mentioned in subsection (2), the owner or occupier of the neighbouring land, and their employees and agents, may cross the existing railway next to the land with vehicles and livestock.

‘(10) The crossing must be made directly, and in a way that is safe and does not damage or obstruct the railway.

‘(11) However, subsection (9) does not apply to an owner or occupier who agreed to receive, and has been paid, compensation in place of the works.

‘(12) A person must shut and lock a gate set up under this section at either side of an existing railway as soon as the person, and any vehicles or livestock in the person’s care, have passed through the gate.

Maximum penalty for subsection (12)—10 penalty units.

‘Non-accredited railways

‘71ZZZ.(1) A non-accredited railway may be connected, either directly or through another non-accredited railway, to the railway of an accredited railway manager with the manager’s written agreement.

‘(2) Unless the parties otherwise agree, the manager is not liable for any injury, loss or damage arising from an act done, or omission made, honestly and without negligence, on the non-accredited railway.

‘(3) Subject to any agreement between the manager and the non-accredited railway manager, the manager may—

- (a) disconnect the non-accredited railway from the railway; or
- (b) close the connection between the non-accredited railway and the railway.

‘(4) Before taking action under subsection (3), the manager must—

- (a) give at least 3 months notice of the proposed action; or
- (b) get the written agreement of the non-accredited railway manager to the proposed action.

‘(5) For the disconnection, the manager may, by written notice, require the non-accredited railway manager to take away any part of the railway on land managed by the manager.

‘(6) If the non-accredited railway manager does not take it away within a reasonable time, the manager may take it away and recover the costs from the non-accredited manager.

‘(7) If the manager maintains the non-accredited railway the manager may exercise its powers under this Act in relation to the non-accredited railway.

‘(8) A person must not construct a non-accredited railway on a watercourse without the Minister’s written approval.

‘(9) If a railway operator operates rolling stock over a non-accredited railway, the railway operator may exercise its powers under this Act in relation to the non-accredited railway.

‘(10) In this section—

“**non-accredited railway**” means a railway managed by a non-accredited railway manager.

“**non-accredited railway manager**” means a person who is not required to be accredited for a railway because of section 71H(3).¹⁶

‘Application of Land Act 1994

‘**71ZZZA**. The following provisions of the *Land Act 1994* do not apply to a lease of existing rail corridor land, new rail corridor land or non-rail corridor land—

- section 157 (Expiry of lease)
- section 183 (Rent payable)
- section 204 (Survey condition)
- section 211 (Conditions must be reviewed).’.

Amendment of s 72 (Definitions)

12. Section 72, heading—

omit, insert—

‘**Definitions for chapter**’.

Omission of ss 99 and 100

13. Sections 99 and 100—

omit.

Insertion of new ss 105A and 105B

14. After section 105—

insert—

¹⁶ Section 71H (Accreditation of managers and operators)

‘No need to prove appointments

‘**105A.** In a proceeding for an offence against this Act, there is no need to prove the appointment of a person who is an authorised person for a railway.

‘Prosecutions for railway offences

‘**105B.(1)** This section applies to an offence against this Act committed by a person while the person was travelling on a railway.

‘**(2)** A complaint for the offence may be heard at a place appointed for holding Magistrates Courts within any of the districts through which the person travelled on the railway.

‘**(3)** This section has effect despite, but does not limit, the *Justices Act 1886*, section 139.¹⁷’.

Insertion of new s 110A

15. In chapter 7—

insert—

‘Application of Freedom of Information Act and Judicial Review Act

‘**110A.(1)** The *Freedom of Information 1992* does not apply to a document received or brought into existence by a transport GOC in carrying out its excluded activities.

‘**(2)** The *Judicial Review Act 1991* does not apply to a decision of a transport GOC made in carrying out its excluded activities.

‘**(3)** A regulation may declare the activities of a transport GOC that are taken to be, or are taken not to be, activities conducted on a commercial basis.

‘**(4)** In this section—

“commercial activities” means activities conducted on a commercial basis.

¹⁷ Section 139 (Where summary cases to be heard)

“**community service obligations**” has the same meaning as in the *Government Owned Corporations Act 1993*.

“**excluded activities**” means—

- (a) commercial activities; or
- (b) community service obligations prescribed under a regulation.

“**transport GOC**” means a GOC whose functions relate mainly to transport.’.

Insertion of ch 8, new pt 1A

16. In chapter 8—

insert—

‘PART 1A—SAVINGS AND TRANSITIONAL PROVISIONS ABOUT RAILWAYS

‘Division 1—Provisions about land

‘Existing rail corridor land

‘126A.(1) On the commencement—

- (a) existing rail corridor land becomes unallocated State land; and
- (b) the Governor in Council must lease the land to the State under the *Land Act 1994*, section 17(b)¹⁸.

‘(2) The lease is in perpetuity and, if demanded, for a rent of \$1 per year.

‘(3) The land must be immediately subleased to Queensland Rail.

‘(4) The sublease is to be for a term of 100 years and, if demanded, for a rent of \$1 per year.

‘(5) The sublease is to give Queensland Rail an option to take up a further sublease on the same terms for a further 100 years.

¹⁸ Section 17 (Granting land to the State)

‘(6) Subsection (1) has effect even though the boundaries of the land may not be precisely identified.

‘(7) Despite subsection (1), any structures attached to the land (whether before or after the commencement) are Queensland Rail’s property until Queensland Rail disposes of them.

‘(8) In this section—

“**structures**” includes rail transport infrastructure and any other works.

‘Boundary identification etc.

‘**126B.(1)** Queensland Rail and the chief executive must progressively, and within 5 years after the commencement, identify—

- (a) the boundaries of existing rail corridor land; and
- (b) the parts and boundaries of old QR land (other than existing rail corridor land or commercial corridor land) that—
 - (i) are mentioned in transport infrastructure strategies; and
 - (ii) they consider are of strategic importance to the State as part of a transport corridor.

‘(2) The identification may be done by compilation, survey or another way sufficient to identify the land.

‘(3) The chief executive must notify the boundaries in the gazette.

‘(4) For land identified under subsection (1)(b), the notice must declare the land to be non-rail corridor land.

‘(5) On the declaration of the land as non-rail corridor land—

- (a) the land becomes unallocated State land; and
- (b) the Governor in Council must lease the land to the State under the *Land Act 1994*, section 17(b).¹⁹

‘(6) The lease is in perpetuity and, if demanded, for a rent of \$1 per year.

‘(7) A regulation made within 5 years after the commencement may extend the period mentioned in subsection (1) by not more than 2 years.

¹⁹ Section 17 (Granting land to the State)

‘Effect of land becoming unallocated State land

‘**126C.(1)** Subsection (2) applies if, immediately before becoming unallocated State land under this division, existing rail corridor land or non-rail corridor land was subject to a lease to someone else.

‘(2) The lease continues on the same terms as a sublease—

- (a) for existing rail corridor land—from Queensland Rail to the person; or
- (b) for non-rail corridor land—from the State to the person.

‘(3) If, immediately before land becomes unallocated State land under this part, a person had a right to use the land that does not derive from a lease, the right continues.

‘Exemption from fees

‘**126D.** No fee is payable for the lodgment and registration of any instrument required to give effect to this division or section 126I.²⁰

‘Expiry of division etc.

‘**126E.(1)** This division is a law to which the *Acts Interpretation Act 1954*, section 20A²¹ applies.

‘(2) This division expires 7 years after it commences.

Division 2—Other provisions**‘Interim accreditation**

‘**126F.(1)** Queensland Rail is taken to be accredited as the railway manager for a railway that—

²⁰ Section 126I (Continuation of Transport Infrastructure Railways Act 1991, ss 49 and 51)

²¹ Section 20A (Repeal does not end savings, transitional or validating effect etc.)

- (a) was, immediately before the commencement, built or being maintained by the previous rail corporation; or
- (b) is built or maintained by Queensland Rail before this section expires.

‘(2) Queensland Rail is taken to be accredited as a railway operator for a railway on which—

- (a) immediately before the commencement, the previous rail corporation was operating rolling stock; or
- (b) rolling stock is operated by Queensland Rail before this section expires.

‘(3) Each other person who, immediately before the commencement, maintained a railway is taken to be accredited as the railway manager for the railway.

‘(4) Each other person who, immediately before the commencement, operated rolling stock on a railway is taken to be accredited as a railway operator for the railway.

‘(5) Subsection (3) or (4) does not apply to a person to whom section 71H(3)²² applies.

‘(6) This section expires 2 years after it commences or, if an earlier date is prescribed under a regulation, on that date.

‘(7) A regulation made before the expiry of this section may extend the 2 year period mentioned in subsection (6) by not more than 6 months.

‘Advertising on railway land

‘**126G.(1)** This section applies if a site on old QR land was being used for advertising immediately before the commencement.

‘(2) The site may be used for advertising while the land remains commercial corridor land, existing rail corridor land, non-rail corridor land or old QR land.

²² Section 71H(3) (Accreditation of managers and operators)

‘(3) The approval of a body other than Queensland Rail is not necessary for advertising on the site.

‘(4) This section expires 5 years after it commences.

‘Permissions to extend roads etc.

‘**126H.(1)** A permission in force under the *Transport Infrastructure (Railways) Act 1991*, section 58²³ is taken to be a permission under section 71ZZQ.²⁴

‘(2) This section is a law to which the *Acts Interpretation Act 1954*, section 20A²⁵ applies.

‘(3) This section expires on the day it commences.

‘Continuation of Transport Infrastructure (Railways) Act 1991, ss 49 and 51

‘**126I.(1)** The *Transport Infrastructure (Railways) Act 1991*, sections 49 and 51²⁶ continue to have effect.

‘(2) The sections have effect as if a reference to Queensland Railways were a reference to Queensland Rail.

‘(3) This section has effect despite the repeal of the *Transport Infrastructure (Railways) Act 1991*.

‘(4) This section expires 5 years after it commences.

‘(5) A regulation made within 5 years after the commencement may extend the period mentioned in subsection (4) by not more than 2 years.

²³ Section 58 (Agreement for extension of certain roads through or over lands of Queensland Railways)

²⁴ Section 71ZZQ (Extending roads etc. through or over railway land)

²⁵ Section 20A (Repeal does not end savings, transitional or validating effect etc.)

²⁶ Section 49 (Land vests in Queensland Railways)
Section 51 (Title under repealed Act)

‘Continuation of Transport Infrastructure (Railways) Act 1991, ss 47, 48 and 50

‘126J.(1) The *Transport Infrastructure (Railways) Act 1991*, sections 47, 48 and 50²⁷ continue to have effect for the resumption of land that—

- (a) was started by the previous rail corporation before the commencement; but
- (b) had not finished at the commencement.

‘(2) The sections have effect as if a reference to Queensland Railways were a reference to Queensland Rail.

‘(3) Under subsection (1), a resumption of land started when a notice of intention to resume was given to the land’s owner.

‘(4) This section has effect despite the repeal of the *Transport Infrastructure (Railways) Act 1991*.

‘(5) This section expires 5 years after it commences or, if an earlier date is prescribed under a regulation, on that date.

‘Existing contracts

‘126K.(1) To remove any doubt about contracts entered into by the previous rail corporation before the commencement, Queensland Rail is taken to represent the State for the contracts.

‘(2) This section is a law to which the *Acts Interpretation Act 1954*, section 20A²⁸ applies.

‘(3) This section expires 7 years after it commences.

‘Existing transaction documents

‘126L.(1) The purpose of this section is to remove any doubt about the effect of this Act in relation to transaction documents in existence immediately before the introduction day.

²⁷ Section 47 (Land may be taken for the purposes of Act)
Section 48 (Queensland Railways may acquire certain small parcels)
Section 50 (Taking Crown land)

²⁸ Section 20A (Repeal does not end savings, transitional or validating effect etc.)

‘(2) On and after the introduction day, Queensland Rail is taken to represent the State under each transaction document, and the duties and obligations of the previous rail corporation under each transaction document are taken to be duties and obligations of the State.

‘(3) The State may guarantee payments and obligations under a transaction document.

‘(4) This section has effect, and is taken always to have had effect, as if it commenced on the introduction day.

‘(5) This section is a law to which the *Acts Interpretation Act 1954*, section 20A applies.

‘(6) In this section—

“introduction day” means the day the *Transport Infrastructure Amendment (Rail) Bill 1995* was introduced into the Legislative Assembly.

“transaction document” means—

- (a) a document, including a lease, sublease or guarantee, connected with a financial arrangement listed in Queensland Railways schedule of leases approved by the Minister on or before the introduction day; or
- (b) a document declared under a regulation to be a transaction document.

‘(7) A regulation made under subsection (6), definition “transaction document”, paragraph (b) may be given retrospective operation to a day not earlier than the introduction day.

‘(8) This section is in addition to the *Government Owned Corporations Act 1993*.

‘(9) This section expires 7 years after it commences.

‘Existing regulations

‘**126M.(1)** A regulation in force under the *Transport Infrastructure (Railways) Act 1991* immediately before the commencement remains in force for this Act, but subject to amendment or repeal by a regulation under this Act.

‘(2) The regulation is to be read with the changes necessary to make it consistent with, and adapt its operation to, this Act.

‘(3) The regulation expires 6 months after the commencement unless earlier repealed.

‘(4) This section expires 6 months after the commencement.

‘**Transitional regulations**

‘**126N.(1)** A regulation may make provision about a matter for which—

- (a) provision is made under the *Transport Infrastructure (Railways) Act 1991*; and
- (b) in the opinion of the Governor in Council, no provision, or insufficient provision, is made about the matter under this part.

‘(2) A regulation made for this part may be given retrospective effect to a day not earlier than the commencement.

‘(3) This section, and any regulation under it, expire on 1 July 1996.

‘**Numbering and renumbering of Act**

‘**126O.** The *Reprints Act 1992*, section 43²⁹ must be used in the next reprint of this Act produced under the *Reprints Act 1992*.’.

Insertion of new ch 8, pt 3, div 1A

17. Chapter 8, part 3—

insert—

‘*Division 1A—Transition of references about railways*

‘**Application of division**

‘**151A.** This division applies to references in Acts (other than this Act) in existence at its commencement.

²⁹ Section 43 (Numbering and renumbering of provisions)

‘Railways Act 1914 references

‘151B. A reference to the *Railways Act 1914* is taken to be a reference to this Act.

‘Transport Infrastructure (Railways) Act 1991 references

‘151C. A reference to the *Transport Infrastructure (Railways) Act 1991* is taken to be a reference to this Act.

‘Commissioner for railways references

‘151D. A reference to the commissioner for railways is taken to be a reference to—

- (a) for the commissioner as a corporation sole—Queensland Rail; or
- (b) for the commissioner as an individual—the chief executive of Queensland Rail.

‘Railways Department references

‘151E. A reference to the Railways Department is taken to be a reference to Queensland Rail.

‘Queensland Railways references

‘151F. A reference to Queensland Railways is taken to be a reference to Queensland Rail.’.

Omission of ch 8, pt 3, div 3 (Transition of references about railways)

18. Chapter 8, part 3, division 3—

omit.

Amendment of sch 1 (Subject matter for regulations)

19. Schedule 1—

insert—

‘11. The rights and obligations of persons on a railway.

‘12. The removal by a railway owner of vehicles, goods or other property that are—

- (a) abandoned on its railway; or
- (b) parked or left against the railway manager’s directions.

‘13. The sale or other disposal by a railway manager of vehicles, goods or other property abandoned on its railway.

‘14. The recovery by a railway manager of the costs of doing the things mentioned in items 12 and 13.

‘15. Alcohol breath tests, drug tests and medical examinations that may be required by an authorised person for a railway.’.

Amendment of sch 2 (Appeals)

20. Schedule 2—

insert—

‘71K	Refusal to grant accreditation	District
71K	Granting accreditation subject to conditions	District
71O(2)	Refusal to amend accreditation conditions	District or Magistrates
71P(3)	Amendment of accreditation conditions	District or Magistrates
71P(7)	Amendment of accreditation conditions	District or Magistrates
71Q(3)	Suspension or cancellation of accreditation	District or Magistrates
71R(2)	Immediate suspension of accreditation	District or Magistrates
71X(2)	Refusal to allow later time to give notice for compensation	Magistrates
71Y	Refusal to approve diversion	Magistrates

	or construction of watercourse	
71Z(2)	Direction requiring works to stop, be altered or not started	District or Magistrates
71Z(4)	Requirement to alter, demolish or take away works	District or Magistrates
71Z(6)	Decision to alter, demolish or take away works	District or Magistrates
71Z(6)	Decision about cost of altering, demolishing or taking away works	District or Magistrates’.

Amendment of sch 3 (Dictionary)

21.(1) Schedule 3, definitions “**occupier**”, “**on**”, “**owner**” and “**rail transport infrastructure**”—

omit.

(2) Schedule 3—

insert—

‘ “**accredited person**”, for chapter 5A³⁰, means a railway manager or operator for whom an accreditation is in force under the chapter.

“**alter**” includes add to.

“**authorised person**”, for a railway, means—

- (a) a police officer; or
- (b) a person who holds an appointment as an authorised person for the railway under the *Transport Operations (Passenger Transport) Act 1994*, section 115B.³¹

“**carry out**” road or railway works means do anything on land that is reasonably necessary or desirable for the works, including, for

³⁰ Chapter 5A (Rail transport infrastructure)

³¹ Section 115B (Appointment of authorised person by chief executive)

example, temporarily occupy or use the land.

“commercial corridor land” means old QR land—

- (a) on or within which rail transport infrastructure is situated; and
- (b) notified by the chief executive in the gazette.

“competition principles” see section 71D.

“existing rail corridor land” means old QR land—

- (a) on or within which rail transport infrastructure is situated; and
- (b) that is not commercial corridor land.

“future railway land” means land about which the chief executive has, by written notice to the relevant local government and in the gazette, indicated that the land is intended to be used for a railway.

“interfere with” a railway means—

- (a) carry out works on the railway; or
- (b) otherwise interfere with the railway or its operation.

“maintenance”, for chapters 5 and 5A³², includes—

- (a) rehabilitation; and
- (b) replacement; and
- (c) repair; and
- (d) recurrent servicing; and
- (e) preventive and remedial action; and
- (f) removal; and
- (g) alteration; and
- (h) maintaining systems and services for transport infrastructure.

“new rail corridor land” means land that is leased to a railway manager under section 71ZZG.³³

³² Chapter 5 (Road transport infrastructure)
Chapter 5A (Rail transport infrastructure)

³³ Section 71ZZG (Lease of land to railway managers)

“non-rail corridor land” means old QR land declared to be non-rail corridor land.³⁴

“occupier”, of land, for chapters 5, 5A and 7³⁵, means—

- (a) the person in actual occupation of the land; or
- (b) if there is no person in actual occupation—the person entitled to possession of the land;

and, for a watercourse or reserve, includes the person responsible for the care and management of the watercourse or reserve.

“old QR land” means land (other than an easement in land) that, immediately before the commencement of the *Transport Infrastructure Amendment (Rail) Act 1995*, section 4—

- (a) was held by the previous rail corporation in fee simple; or
- (b) could be granted in fee simple to the previous rail corporation under the *Transport Infrastructure (Railways) Act 1991*, section 49(2).³⁶

“on” a railway, road or other land includes over or under the land.

“other rail infrastructure” means—

- (a) freight centres or depots; or
- (b) maintenance depots; or
- (c) office buildings or housing; or
- (d) rolling stock or other vehicles that operate on a railway; or
- (e) workshops; or
- (f) any railway track, works or other thing that is part of anything mentioned in paragraphs (a) to (e).

“owner”, of land, includes—

³⁴ See section 111B (Boundary identification).

³⁵ Chapter 5 (Road transport infrastructure)
Chapter 5A (Rail transport infrastructure)
Chapter 7 (General provisions)

³⁶ Section 49(2) (Land vests in Queensland Railways)

- (a) the lessee or licensee from the State of the land; or
- (b) the person who has lawful control of the land, on trust or otherwise; or
- (c) the person who is entitled to receive the rents and profits of the land.

“previous rail corporation” means Queensland Railways.

“rail transport infrastructure” means facilities necessary for operating a railway, including—

- (a) railway track and works built for the railway, including, for example—
 - cuttings
 - drainage works
 - excavations
 - land fill
 - track support earthworks; and
- (b) any of the following things that are associated with the railway’s operation—
 - bridges
 - communication systems
 - machinery and other equipment
 - marshalling yards
 - notice boards, notice markers and signs
 - overhead electrical power supply systems
 - over-track structures
 - platforms
 - power and communication cables
 - service roads
 - signalling facilities and equipment
 - stations

- survey stations, pegs and marks
- train operation control facilities
- tunnels
- under-track structures

but does not include other rail infrastructure.

“railway crossing” means a level crossing, bridge or another structure used to cross over or under a railway.

“railway manager”, for a railway, means the person who—

- (a) is legally entitled to manage the rail transport infrastructure of a railway; and
- (b) operates the railway’s train control, signalling and communication facilities.

“railway operator” means a person who operates rolling stock on a railway.

“railway works” means works for—

- (a) planning a railway; or
- (b) constructing, maintaining, altering or operating a railway or rolling stock, and

includes works declared by regulation to be railway works.

“reasonably” means on grounds that are reasonable in all the circumstances.

“rolling stock” means a vehicle that—

- (a) operates on a railway; and
- (b) is used, or proposed to be used, to transport passengers or freight on a railway track for reward.

“serious incident” means an incident that has caused, or could have caused, significant property damage, serious injury or death.

“sugar tramway” means a tramway—

- (a) operated, entirely or partly, on an easement under the *Sugar*

Industry Act 1991, part 11³⁷ or the *Sugar Milling Rationalisation Act 1991*, part 4³⁸; and

- (b) used, or proposed to be used, to transport sugar cane, sugar or sugar cane by-products; and
- (c) that does not transport passengers or other freight for reward.

“**wilfully**” means deliberately or recklessly.

“**works**” includes activities.’.

(3) Schedule 3, definition “**land**”, paragraph (b)—

omit, insert—

- ‘(b) for chapter 5A³⁹ includes—
 - (i) a reserve within the meaning of the *Land Act 1994* or a road; and
 - (ii) land within the beds or banks of a stream, watercourse or inundated land; or
- (c) for chapter 5A, part 7—includes the airspace above, and the land below, the surface; or
- (d) for chapter 6—see section 72.’.

PART 3—REPEALS AND AMENDMENTS OF OTHER ACTS

Acts repealed

22. The following Acts are repealed—

³⁷ Part 11 (Easements and permits to use land)

³⁸ Part 4 (Easements)

³⁹ Chapter 5A (Rail transport infrastructure)
Chapter 5A, part 7 (Land for railway purposes)
Chapter 6 (Port infrastructure)

- Railways Land Acquisition Act 1977 No. 17
- Transport Infrastructure (Railways) Act 1991 No. 28
- Transport Infrastructure (Railways) Amendment Act 1993 No. 69.

Amendment of other Acts

23. The schedule amends the Acts mentioned in it.

SCHEDULE

AMENDMENT OF OTHER ACTS

section 23 of the Act

CITY OF BRISBANE ACT 1924

1. Section 47(1)—

insert—

‘(e) the following land under the *Transport Infrastructure Act 1994*—

- (i) strategic port land occupied by a port authority, the State, or a government entity (within the meaning of the *Government Owned Corporations Act 1993*); and
- (ii) existing or new rail corridor land; and
- (iii) commercial corridor land that is not subject to a lease.’

FREEDOM OF INFORMATION ACT 1992

1. Schedule 2, item 1—

insert—

‘1. Queensland Rail, or a port authority (within the meaning of the *Transport Infrastructure Act 1994*), that is a GOC

Transport Infrastructure Act 1994, s 110A’.

JUDICIAL REVIEW ACT 1991

1. Schedule 6, item 1—

insert—

‘1. Queensland Rail, or a port authority (within the meaning of the *Transport Infrastructure Act 1994*), that is a GOC *Transport Infrastructure Act 1994*, s 110A’.

LAND ACT 1962

1. Section 40(1)—

omit, insert—

‘40.(1) A single member sitting alone constitutes the court for the exercise of its jurisdiction under any Act, unless the Act expressly provides that the court’s jurisdiction must be exercised by the court constituted in another way.’.

LAND ACT 1994

1. Section 98(1)—

omit, insert—

‘98.(1) If, after inquiry and notice the Minister considers appropriate, the Minister is satisfied a road is not needed, the Minister may, by gazette notice, permanently or temporarily close the road.’.

2. Section 183(5)—

insert—

‘(c) for a lease, licence or permit given or issued to the State or a government owned corporation.’.

3. Section 257—

insert—

‘(f) if existing rail corridor land, new rail corridor land, non-rail corridor land or commercial corridor land (within the meaning of the *Transport Infrastructure Act 1994*) is not subject to a commercial lease—a person to clear trees from the land for routine transport corridor management and safety purposes.’.

4. Section 340(2)—

omit, insert—

‘(2) If the mortgagor is registered as a trustee, a document stating the details of the trust, or the document creating the trust, must be deposited with the mortgage, unless—

- (a) a document has already been produced for the trust under section 374(2)⁴⁰ or deposited under section 375(2)⁴¹ with a transfer; and
- (b) the details of the trust have not since changed.’.

5. Section 393—

insert—

‘(5) If the chief executive delegates powers about the land registry to the registrar of titles, the registrar may subdelegate the powers to an officer or employee of the department under the control of the registrar.

‘(6) A person acting under a subdelegation given under subsection (5) may act under the title ‘registrar of titles’.’.

⁴⁰ Section 374 (Details of trust must be given)

⁴¹ Section 375 (Interests held in trust must be registered)

6. Section 521(1), ‘sections 39 and 40’—

omit, insert—

‘section 39’.

7. Schedule 6, definition “pre-Wolfe freeholding lease”, paragraph (f)—

omit, insert—

‘(f) a mining titles freeholding lease.’.

8. Schedule 5, amendment 7, s 73(2) of the Land Title Act 1994, ‘borrowing’—

omit, insert—

‘registered’.

9. Schedule 6—

insert—

‘**“mining titles freeholding lease”** means a mining titles freeholding lease issued under the *Mining Titles Freeholding Act 1980*, and includes a replacement document issued under section 502.⁴²’.

LOCAL GOVERNMENT ACT 1993

1. Section 515—

insert—

‘(3) However, a local government cannot make a local law about a

⁴² Section 502 (Replacement mining titles freeholding leases)

railway to which the *Transport Infrastructure Act 1994*, chapter 5A⁴³ applies.’.

2. Section 553(1)(e)—

renumber as paragraph (f).

3. Section 553(1)—

insert—

‘(e) the following land under the *Transport Infrastructure Act 1994*—

- (i) strategic port land occupied by a port authority, the State, or a government entity; and
- (ii) existing or new rail corridor land; and
- (iii) commercial corridor land that is not subject to a lease; and’.

TRANSPORT OPERATIONS (PASSENGER TRANSPORT) ACT 1994

1. Section 14(2)(a)—

omit, insert—

‘(a) public passenger services provided by a railway operator; or’.

2. Section 26(2)(a)—

omit, insert—

‘(a) public passenger services provided by a railway operator; or’.

⁴³ Chapter 5A (Rail transport infrastructure)

3. After section 101—

insert—

‘Standards do not apply to railway managers or operators

‘101A. Standards do not apply to railway managers or operators.’.

4. In chapter 11—

insert—

**‘PART 1A—AUTHORISED PERSONS FOR
RAILWAYS****‘Appointment of authorised persons for railways**

‘115B.(1) Every police officer is an authorised person for every railway.

‘(2) The chief executive may appoint an employee of a railway manager or operator to be an authorised person for the railway.

‘(3) The chief executive may appoint a person to be an authorised person for the railway only if—

- (a) the chief executive considers the person has the necessary expertise or experience to be an authorised person; or
- (b) the person has satisfactorily finished training approved by the chief executive.

‘(4) The chief executive may limit the powers of an authorised person (other than a police officer) by written notice given to the person.

‘(5) An authorised person may only exercise a power under this Act for the railway for which the person was appointed.

‘Identity cards

‘115C.(1) This section does not apply to an authorised person for a railway who is a police officer.

‘(2) A railway manager or operator must give each of its employees who is an authorised person an identity card.

‘(3) The identity card must—

- (a) contain a recent photograph of the person; and
- (b) be signed by the person; and
- (c) identify the person as an authorised person for the railway; and
- (d) state an expiry date.

‘(4) A person who stops being an authorised person for the railway must return the person’s identity card to the railway manager or operator as soon as practicable (but within 21 days) after the person stops being an authorised person, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

‘(5) This section does not prevent the giving of a single identity card to the person for this and other Acts.

‘Producing or displaying authorised person’s identity card

‘115D.(1) This section does not apply to a uniformed police officer.

‘(2) An authorised person for a railway may exercise a power in relation to anyone only if—

- (a) the person—
 - (i) for an authorised person who is a police officer—first produces the person’s police identity card for the other person’s inspection; or
 - (ii) for any other authorised person—first produces the person’s identity card for the other person’s inspection; or
- (b) the authorised person has the person’s identity card displayed so it is clearly visible to the other person.

‘(3) However, if for any reason it is not practicable to comply with subsection (2) before exercising the power, the authorised person must produce the identity card as soon as it is practicable.

‘Protection from liability

‘115E.(1) In this section—

“official” means—

- (a) an authorised person for a railway; or
- (b) a person acting under an authorised person’s direction.

‘(2) An official is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.

‘(3) If subsection (2) prevents a civil liability attaching to a person, the liability attaches instead to—

- (a) if the authorised person is employed by a railway manager or operator—the manager or operator; or
- (b) in any other case—the State.’.

5. In chapter 11—

insert—

‘PART 5—POWERS OF AUTHORISED PERSONS FOR RAILWAYS

‘Power to require name and address etc.

‘**132A.(1)** An authorised person for a railway may require a person to state the person’s name and address if the authorised person—

- (a) finds the person committing an offence (a **“relevant offence”**) against this Act or the *Transport Infrastructure Act 1994*, chapter 5A⁴⁴; or
- (b) finds the person in circumstances that lead, or has information that leads, the authorised person to reasonably suspect the person has just committed a relevant offence.

‘(2) The authorised person may also require the person to state the person’s age if the authorised person reasonably suspects the person’s age is required for the enforcement of this Act or the *Transport Infrastructure Act 1994*, chapter 5A.

⁴⁴ Chapter 5A (Rail transport infrastructure)

‘(3) When making the requirement, the authorised person must warn the person that it is an offence to fail to state the person’s name and address and, if relevant, age unless the person has a reasonable excuse.

‘(4) The authorised person may require the person to give evidence of the correctness of the person’s stated name, address or age if the authorised person reasonably suspects the stated name, address or age is false.

‘(5) A person must comply with the authorised person’s requirement under subsection (1), (2) or (4), unless the person has a reasonable excuse for not complying with it.

Maximum penalty—40 penalty units.

‘(6) A police officer may arrest a person without a warrant if the police officer reasonably believes—

- (a) the person has just committed an offence against subsection (5); and
- (b) proceedings by way of complaint and summons against the person would be ineffective.

‘(7) A person does not commit an offence against this section if—

- (a) the person was required to state the person’s name and address by an authorised person who suspected the person had committed a relevant offence; and
- (b) the person is not proved to have committed the offence.

‘Power to require information from certain persons

‘132B.(1) This section applies if an authorised person for a railway reasonably suspects—

- (a) an offence against this Act has just been committed; and
- (b) the offence relates to the construction, operation or maintenance of a railway; and
- (c) a person may be able to give information about the offence.

‘(2) The authorised person may require the person to give information about the offence.

‘(3) When making the requirement, the authorised person must warn the person it is an offence to fail to give the information, unless the person has a reasonable excuse.

‘(4) The person must give the information, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

‘(5) It is a reasonable excuse for an individual to fail to give information if giving it might tend to incriminate the individual.

‘(6) The person does not commit an offence against this section if the information sought by the authorised person is not in fact relevant to the offence.

‘Power to require production of tickets

‘**132C.(1)** An authorised person for a railway may require anyone who is travelling by rail to produce to the authorised person the person’s ticket for the journey.

‘(2) If an authorised person reasonably suspects a person who is at a railway station has just travelled by rail, the person may require the person to produce to the authorised person the person’s ticket for the journey.

‘(3) If an authorised person reasonably suspects a ticket produced to the authorised person is an invalid ticket, the authorised person may require the person to give it to the authorised person.

‘(4) The person must comply with a requirement under subsection (1) to (3), unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

‘(5) A person does not commit an offence against subsection (4) because of subsection (1) if, immediately before the person started the journey, the railway station where the person started the journey—

- (a) was not open for business; and
- (b) was not equipped with an automatic ticket machine that was able to dispense tickets at the time.

‘Power to require person to leave train etc.

‘132D.(1) An authorised person for a railway may direct a person to leave a railway, or a train or other passenger vehicle being operated by a railway manager or operator, if—

- (a) the authorised person finds the person committing an offence against section 132E, 132F or 132G, or the *Transport Infrastructure Act 1994*, section 71ZZU;⁴⁵ and
- (b) the authorised person reasonably believes the person may continue to commit or immediately repeat the offence.

‘(2) However, the authorised person may not give the direction if obeying the direction could put the person’s safety at risk.

‘(3) The person must obey the direction, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

‘(4) If the person does not obey the direction, the authorised person may use force that is reasonable to get the person to leave.

‘PART 6—RAILWAY OFFENCES**‘Creating disturbance on trains etc.**

‘132E. A person must not create a disturbance or create a nuisance while on a railway, or a train or other passenger vehicle being operated by a railway manager or operator, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

‘(2) A police officer may arrest a person without a warrant if the police officer reasonably believes—

⁴⁵ Section 132E (Creating a disturbance on trains etc.)
 Section 132F (Travelling without paying fare etc.)
 Section 132G (Travelling on invalid ticket)
 Section 71ZZU (Interfering with railway)

- (a) the person has just committed an offence against subsection (1); and
- (b) proceedings by way of complaint and summons against the person would be ineffective.

‘Travelling without paying fare etc.

‘132F.(1) A person must not, without reasonable excuse, travel by railway unless—

- (a) before starting the journey, the person—
 - (i) had paid the correct fare and obtained a ticket for the journey; or
 - (ii) if the correct fare could not be paid—had obtained a ticket for the journey from an automatic ticket machine and the cost of the ticket was more than the correct fare, or was less than the correct fare but as close as possible as could be obtained from the machine; or
- (b) the person already had a ticket that authorised the person to travel on the journey.

Maximum penalty—20 penalty units.

‘(2) A person does not commit an offence against subsection (1) if, immediately before the person started on the journey, the railway station at which the person started the journey—

- (a) was not open for business; and
- (b) was not equipped with an automatic ticket machine that was capable of dispensing tickets.

‘(3) If—

- (a) a person obtains a ticket from an automatic ticket machine before starting a journey by railway; and
- (b) the cost of the ticket is less than the correct fare for the journey;

the person must, at or before the end of the journey, pay the difference to the railway operator, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

‘(4) If—

- (a) a person cannot comply with subsection (1)(a) before starting a journey by railway because of circumstances mentioned in subsection (2); and
- (b) the person did not already have a ticket that authorised the person to travel on the journey;

the person must, at or before the end of the journey, pay the correct fare for the journey to the railway operator, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

‘(5) A person does not commit an offence against subsection (3) or (4) for a journey if—

- (a) the person was not required by an authorised person for a railway to produce the person’s ticket for the journey before the person left the railway station where the journey ended; and
- (b) that railway station was not open for business when the journey ended.

‘(6) However, if at or before the end of the journey mentioned in subsection (3) or (4), the person is required by an authorised person for a railway to produce the person’s ticket, the person must immediately offer to pay the fare payable for the journey.

Maximum penalty—20 penalty units.

‘(7) A person must not, without reasonable excuse, travel by another transportation system provided by a railway manager or operator unless, before starting the journey, the person—

- (a) had paid the correct fare and obtained a ticket for the journey; or
- (b) the person already had a ticket that authorised the person to travel on the journey.

Maximum penalty—20 penalty units.

‘Travelling on invalid tickets

‘132G.(1) A person must not travel, or attempt to travel—

- (a) by railway or by another transportation system provided by a railway manager or operator using an invalid ticket, unless the person has a reasonable excuse; or
- (b) by railway in a railway carriage of a higher class to the class shown on the person's ticket for the journey, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.’.

6. After section 140—

insert—

‘No need to prove appointments

‘**140A.** In a proceeding for an offence against this Act, there is no need to prove the appointment of an authorised person for a railway.

‘Prosecutions for railway offences

‘**140B.(1)** This section applies to an offence against this Act committed by a person while the person was travelling by rail.

‘**(2)** A complaint for the offence may be heard at a place appointed for holding Magistrates Courts within any of the districts through which the person travelled on the rail journey.

‘**(3)** This section has effect despite, but does not limit, the *Justices Act 1886*, section 139⁴⁶.’.

7. In chapter 13—

insert—

⁴⁶ Section 139 (Where summary cases to be heard)

‘PART 6—NUMBERING AND RENUMBERING OF ACT

‘Numbering and renumbering of Act

‘175. The *Reprints Act 1992*, section 43⁴⁷ must be used in the next reprint of this Act produced under the *Reprints Act 1992*.’

8. Schedule 5, definition “authorised person”—

omit.

9. Schedule 5—

insert—

‘**“authorised person”** means—

- (a) for an authorised person for a railway—a person who holds an appointment under this Act as an authorised person for the railway; or
- (b) a person who holds and appointment under this Act as an authorised person.

“invalid ticket”, for chapter 11, parts 5 and 6⁴⁸ means a ticket for a rail journey that—

- (a) is used by a person after the end of the journey for which the ticket was issued; or
- (b) is used by a person for a journey that is not the journey for which the ticket was issued; or
- (c) is used by a person after the expiry time on the ticket; or
- (d) has been altered or defaced; or
- (e) was obtained by a false statement about a concession fare; or

⁴⁷ Section 43 (Numbering and renumbering of provisions)

⁴⁸ Chapter 11 (Enforcement), part 5 (Powers of authorised persons for railways) and part 6 (Railway offences)

(f) is counterfeit.

“railway manager” has the meaning given by the *Transport Infrastructure Act 1994*.

“railway operator” has the meaning given by the *Transport Infrastructure Act 1994*.

“reasonably” means on grounds that are reasonable in all the circumstances.’.

TRANSPORT OPERATIONS (ROAD USE MANAGEMENT) ACT 1995

1. After section 93—

insert—

‘Declaration about Act’s assent

‘94.(1) To remove any doubt, it is declared that this Act is, and always has been, valid, and in particular that the assent given to this Act on 5 April 1995 is, and always has been, valid.

‘(2) To remove any doubt, it is also declared that this Act has effect, and has always had effect, as if the following changes had been made to the Act from immediately before assent—

‘1. Schedule 1, amendments of *Transport Infrastructure Act 1994*, provisions after amendment 20, from ‘13’ ‘to insert—’ (first mention)—

omit.

‘2. Schedule 1, amendments of *Transport Infrastructure Act 1994*, provisions after amendment 20, from ‘5’ to ‘jointly and severally liable.’—

relocate to schedule 1, amendments of *Transport Operations (Marine Safety) Act 1994*.

‘(3) This section is a law to which the *Acts Interpretation Act 1954*, section 20A applies.

‘(4) This section expires on the day on which it commences.’.

TRANSPORT PLANNING AND COORDINATION ACT 1994

1. Section 4—

insert—

‘ **“transport land”** means land that—

- (a) has been acquired for transport purposes or for an incidental or complementary purpose; and
- (b) is required for—
 - (i) the operations of a transport GOC; or
 - (ii) road transport infrastructure to which a road franchise agreement under the *Transport Infrastructure Act 1994*, chapter 5, part 6⁴⁹ applies; or
 - (iii) the operations of a person who is a railway manager under the *Transport Infrastructure Act 1994*, chapter 5A.⁵⁰

“transport GOC” means a GOC, or a candidate GOC (within the meaning of the *Government Owned Corporations Act 1993*), whose functions relate mainly to transport.’.

2. Section 8A (in part 3)—

renumber as section 8B.

⁴⁹ Chapter 5 (Road transport infrastructure), part 6 (Franchised roads)

⁵⁰ Chapter 5A (Rail transport infrastructure)

3. Section 10—

insert—

‘(4A) The chief executive may have regard to any other matters the chief executive considers relevant.

‘(4B) The power to acquire land under this part includes power to acquire land or an easement in land beneath the surface without acquiring rights in the surface.

‘(4C) Subsection (4B) applies to the acquisition of an easement even though the easement—

- (a) is not attached to, or used and enjoyed with, a dominant tenement;
or
- (b) must not be used and enjoyed in common with any other person.’.

4. Section 10(6), after ‘obtain’—

insert—

‘or resume’.

5. Section 10—

insert—

‘(8) Land acquired under this part may be described in the instrument acquiring the land in any way sufficient to identify the land.’.

6. Section 10 (4A) to (8)—

renumber.

7. Section 12(1)—

omit, insert—

‘Power of chief executive to lease, sell or otherwise dispose of land to transport GOC etc.

‘12.(1) The chief executive may, for the State, lease, sell or otherwise dispose of transport land to a transport GOC, a franchisee or a railway manager.

‘(2) Subsection (1) applies despite the *Acquisition of Land Act 1967*.’.

**ATTACHMENT FOR TRANSPORT
INFRASTRUCTURE ACT 1994 NOT FORMING PART
OF ANY ACT**

**EXTRACT FROM COMPETITION PRINCIPLES
AGREEMENT—PROVISIONS ABOUT ACCESS TO
SIGNIFICANT INFRASTRUCTURE FACILITIES**

Access to services provided by means of significant infrastructure facilities

6.(1) Subject to sub-clause (2), the Commonwealth will put forward legislation to establish a regime for third party access to services provided by means of significant infrastructure facilities where:

- (a) it would not be economically feasible to duplicate the facility;
- (b) access to the service is necessary in order to permit effective competition in a downstream or upstream market;
- (c) the facility is of national significance having regard to the size of the facility, its importance to constitutional trade or commerce or its importance to the national economy; and
- (d) the safe use of the facility by the person seeking access can be ensured at an economically feasible cost and, if there is a safety requirement, appropriate regulatory arrangements exist.

(2) The regime to be established by Commonwealth legislation is not intended to cover a service provided by means of a facility where the State or Territory Party in whose jurisdiction the facility is situated has in place an access regime which covers the facility and conforms to the principles set out in this clause unless:

- (a) the Council determines that the regime is ineffective having regard to the influence of the facility beyond the jurisdictional boundary of the State or Territory; or
- (b) substantial difficulties arise from the facility being situated in more than one jurisdiction.

(3) For a State or Territory access regime to conform to the principles set out in this clause, it should:

- (a) apply to services provided by means of significant infrastructure facilities where:
 - (i) it would not be economically feasible to duplicate the facility;
 - (ii) access to the service is necessary in order to permit effective competition in a downstream or upstream market; and
 - (iii) the safe use of the facility by the person seeking access can be ensured at an economically feasible cost and, if there is a safety requirement, appropriate regulatory regimes exist; and
- (b) incorporate the principles referred to in sub-clause (4).

(4) A State or Territory access regime should incorporate the following principles:

- (a) Wherever possible third party access to a service provided by means of a facility should be on the basis of terms and conditions agreed between the owner of the facility and the person seeking access.
- (b) Where such agreement cannot be reached, Governments should establish a right for persons to negotiate access to a service provided by means of a facility.
- (c) Any right to negotiate access should provide for an enforcement process.
- (d) Any right to negotiate access should include a date after which the right would lapse unless reviewed and subsequently extended; however, existing contractual rights and obligations should not be automatically revoked.
- (e) The owner of a facility that is used to provide a service should use all reasonable endeavours to accommodate the requirements of persons seeking access.
- (f) Access to a service for persons seeking access need not be on exactly the same terms and conditions.
- (g) Where the owner and a person seeking access cannot agree on terms and conditions for access to the service; they should be

required to appoint and fund an independent body to resolve the dispute, if they have not already done so.

- (h) The decision of the dispute resolution body should bind the parties; however, rights of appeal under existing legislative provisions should be preserved.
- (i) In deciding on the terms and conditions for access, the dispute resolution body should take into account:
 - (i) the owner's legitimate business interests and investment in the facility;
 - (ii) the costs to the owner of providing access, including any costs of extending the facility but not costs associated with losses arising from increased competition in upstream or downstream markets;
 - (iii) the economic value to the owner of any additional investment that the person seeking access or the owner has agreed to undertake;
 - (iv) the interests of all persons holding contracts for use of the facility;
 - (v) firm and binding contractual obligations of the owner or other persons (or both) already using the facility;
 - (vi) the operational and technical requirements for the safe and reliable operation of the facility;
 - (vii) the economically efficient operation of the facility; and
 - (viii) the benefit to the public from having competitive markets.
- (j) The owner may be required to extend, or to permit extension of, the facility that is used to provide a service if necessary but this would be subject to:
 - (i) such extension being technically and economically feasible and consistent with the safe and reliable operation of the facility;
 - (ii) the owner's legitimate business interests in the facility being protected; and

- (iii) the terms of access for the third party taking into account the costs borne by the parties for the extension and the economic benefits to the parties resulting from the extension.
- (k) If there has been a material change in circumstances, the parties should be able to apply for a revocation or modification of the access arrangement which was made at the conclusion of the dispute resolution process.
- (l) The dispute resolution body should only impede the existing right of a person to use a facility where the dispute resolution body has considered whether there is a case for compensation of that person and, if appropriate, determined such compensation.
- (m) The owner or user of a service shall not engage in conduct for the purpose of hindering access to that service by another person.
- (n) Separate accounting arrangements should be required for the elements of a business which are covered by the access regime.
- (o) The dispute resolution body, or relevant authority where provided for under specific legislation, should have access to financial statements and other accounting information pertaining to a service.
- (p) Where more than one State or Territory access regime applies to a service, those regimes should be consistent and, by means of vested jurisdiction or other cooperative legislative scheme, provide for a single process for persons to seek access to the service, a single body to resolve disputes about any aspect of access and a single forum for enforcement of access arrangements.