

Queensland



TRANSPORT LEGISLATION AMENDMENT ACT 2001

Act No. 79 of 2001

Queensland



**TRANSPORT LEGISLATION
AMENDMENT ACT 2001**

TABLE OF PROVISIONS

Section		Page
PART 1—PRELIMINARY		
1	Short title	10
2	Commencement	10
PART 2—AMENDMENT OF AIR NAVIGATION ACT 1937		
3	Act amended in pt 2	10
4	Amendment of title	10
5	Insertion of pt hdg	11
6	Amendment of s 4 (Definitions)	11
7	Insertion of pt hdg	11
8	Amendment of s 9 (Purpose of this Act)	11
9	Amendment of s 10 (Construction of the regulations in their application by virtue of this Act)	11
10	Amendment of s 11 (Power of Governor in Council to declare that provision of the regulations shall not apply in Queensland by virtue of this Act)	12
11	Insertion of new pt 3	12
PART 3—RECOVERY OF CERTAIN DAMAGES		
12	Meaning of “in flight”	12
13	Meaning of “operator”	12
14	Part binds all persons	13
15	Use of an aircraft by employees	13
16	Liability for injury, loss, damage or destruction	13
17	Recovery of damages without proof of intention, negligence or other cause of action	14
PART 4—MISCELLANEOUS		

18	Regulation-making power	14
PART 3—AMENDMENT OF CIVIL AVIATION (CARRIERS’ LIABILITY) ACT 1964		
12	Act amended in pt 3.	15
13	Amendment of s 6A (Administration of the applied provisions as Commonwealth laws)	15
PART 4—AMENDMENT OF TOW TRUCK ACT 1973		
14	Act amended in pt 4.	15
15	Amendment of s 21 (Cancellation or suspension of licences or certificates)	15
16	Replacement of pt 6 (Appeals)	15
PART 6—REVIEW OF AND APPEALS AGAINST DECISIONS		
28	Review of and appeals against decisions	16
17	Insertion of new schedule	17
SCHEDULE		
REVIEWABLE DECISIONS		
PART 5—AMENDMENT OF TRANSPORT (BUSWAY AND LIGHT RAIL) AMENDMENT ACT 2000		
18	Act amended in pt 5.	18
19	Amendment of s 13 (Insertion of new chs 7A–7C).	18
	180KA Watercourses and busway transport infrastructure works	18
	180M Powers of chief executive for busway transport infrastructure works contracts etc.	18
	180N Distraction of traffic on busway.	20
<i>Division 2A—Ancillary works and encroachments</i>		
	180QA Ancillary works and encroachments.	21
	180QB Presumptions about advertising sign	21
	180QC Alteration etc. of ancillary works and encroachments	22
PART 5—BUSWAY SERVICE PROVIDER AUTHORISATION		
	180ZKA Who may drive on a busway	23
	180ZKB Applying for authorisation as busway service provider	24
	180ZKC Considering application for authorisation	24
	180ZKD Authorisation conditions	24
	180ZKE Requiring authorisation conditions to be complied with	25
	180ZKF Authorisation period	25

	180ZKG Amending authorisation conditions on application	25
	180ZKH Amending authorisation conditions without application	26
	180ZKI Suspending or cancelling authorisation	27
	180ZKJ Immediate suspension of authorisation	28
	180ZKK Surrender of authorisation	29
20	Amendment of s 19 (Amendment of sch 3 (Dictionary))	29
	PART 6—AMENDMENT OF TRANSPORT (GLADSTONE EAST END TO HARBOUR CORRIDOR) ACT 1996	
21	Act amended in pt 6	30
22	Amendment of sch 1 (Land for rail transport corridor)	30
23	Amendment of sch 4 (Roads partially closed)	30
	PART 7—AMENDMENT OF TRANSPORT INFRASTRUCTURE ACT 1994	
24	Act amended in pt 7	30
25	Omission of s 22 (Definitions for ch 5)	31
25A	Insertion of new s 24A	31
26	Amendment of s 45 (Removal of materials etc.)	32
27	Replacement of s 59 (Location and requirements)	32
	59 Location	33
	59A Chief executive's requirements for public utility plant	33
28	Amendment of s 62 (Liability for damage or expenses)	33
29	Insertion of new ss 131A and 131B	33
	131A Railway tunnel easements	33
	131B What is "future railway land"	34
30	Replacement of s 138 (Carrying dangerous goods)	35
31	Amendment of s 152 (Application of Land Act 1994)	36
32	Omission of s 154 (Continuation of port authorities)	36
33	Amendment of s 181B (Definition for pt 2)	36
34	Insertion of new ch 8AA	37
	CHAPTER 8AA—TRANSPORTING DANGEROUS GOODS BY RAIL	
	PART 1—INTRODUCTORY	
	187AA Purposes of ch 8AA	37
	187AB Application of ch 8AA	37

187AC Ch 8AA binds all persons	38
PART 2—REGULATIONS	
187AD Regulations about dangerous goods	39
PART 3—APPROVALS AND EXEMPTIONS	
<i>Division 1—Exemptions</i>	
187AE Exemptions	40
<i>Division 2—Amending, suspending or cancelling approval or exemption</i>	
187AF Grounds for amending, suspending or cancelling approval or exemption	42
187AG What chief executive must do before taking proposed action, other than for class exemption	42
187AH What chief executive must do before taking proposed action for class exemption	43
187AI Decision on proposed action	43
187AJ Sections 187AG–187AI do not apply to beneficial or clerical amendment	44
187AK Immediate suspension in the public interest.	45
PART 4—OFFENCES	
187AL Goods too dangerous to be transported.	45
187AM Duties when transporting dangerous goods	45
187AN Prohibition on involvement in the transportation of dangerous goods by rail	46
PART 5—RECOVERY OF COSTS AND FORFEITURE	
187AO Forfeiture on conviction	47
187AP Dealing with forfeited things etc.	47
187AQ Recovery of costs from convicted person	48
187AR Recovery of costs of government action.	48
PART 6—MISCELLANEOUS	
187AS Certificates and documents	49
187AT Helping in accidents or emergencies.	49
35 Amendment of s 187Q (Notice of draft waterway transport management plan)	50
36 Amendment of s 191 (Disposal of fees, penalties etc.)	50
37 Insertion of new ss 199A–199C	51
199A Altering watercourse to adversely affect transport route.	51

	199B Altering materials etc.	52
	199C Recovery of cost of damage.	53
38	Omission of s 227 (Definitions)	54
39	Amendment of sch 1 (Subject matter for regulations)	54
40	Amendment of sch 2 (Reviews and appeals).	55
41	Insertion of new sch 2A.	56
	SCHEDULE 2A	
	RAILWAY TUNNEL EASEMENTS	
42	Amendment of sch 3 (Dictionary).	59
43	Omission of attachment.	62
	PART 8—AMENDMENT OF TRANSPORT OPERATIONS (MARINE POLLUTION) ACT 1995	
44	Act amended in pt 8.	63
44A	Amendment of s 2 (Commencement)	63
45	Amendment of s 26 (Discharge of oil into coastal waters prohibited)	63
46	Amendment of s 28 (Defences to discharge offence)	63
47	Amendment of s 30 (Shipboard oil pollution emergency plan)	64
48	Amendment of s 35 (Discharge of noxious liquid substances into coastal waters prohibited)	64
49	Amendment of s 36 (Defences to discharge offence)	64
50	Amendment of s 42 (Jettisoning of harmful substances into coastal waters prohibited)	65
51	Amendment of s 47 (Discharge of sewage into coastal waters prohibited)	65
52	Amendment of s 50 (Ships to have holding tanks)	66
53	Amendment of s 55 (Disposal of garbage into coastal waters prohibited)	66
54	Amendment of s 58 (Responsibility for pollution from transfer operations and other matters)	66
55	Amendment of s 61 (Discharge of pollutant into coastal waters prohibited)	66
56	Amendment of s 67 (Duty to report certain incidents)	67
57	Amendment of s 89 (Power to require production of documents)	67
58	Amendment of pt 13 heading (Security).	67
59	Amendment of s 111 (Definitions for part)	67
60	Omission of s 112 (Application of part)	68
61	Amendment of s 113 (Detained ship must be released on giving security)	68

62	Amendment of s 114 (Other ways detained ship may be released)	68
63	Amendment of s 115 (Claims on security)	68
64	Amendment of s 122 (Recovery of discharge expenses)	69
65	Amendment of s 127 (Court may make orders about compensation and other matters)	69
66	Amendment of sch (Dictionary)	69
PART 9—AMENDMENT OF TRANSPORT OPERATIONS (MARINE SAFETY) ACT 1994		
67	Act amended in pt 9.	69
68	Amendment of s 4 (Definitions)	69
69	Amendment of s 12 (Relationship with Commonwealth Navigation Act generally)	70
70	Amendment of s 35 (How is safety in Queensland waters achieved)	70
71	Amendment of s 71 (Declaration and closing of pilotage areas)	70
72	Amendment of s 99 (Pilots required for ship navigation in pilotage areas) .	70
73	Amendment of s 101 (Immunity for pilots and general employers)	71
74	Insertion of new s 172A	71
	172A Other directions	71
75	Insertion of new pt 13, div 4A.	72
	<i>Division 4A—Removing abandoned property</i>	
	175A Removing abandoned property	72
76	Amendment of s 199 (Limitation on time for starting summary proceedings)	73
77	Amendment of s 201 (Evidentiary provisions)	74
78	Insertion of new s 206B.	75
	206B Approval of forms	75
79	Amendment of s 215 (Pilotage fees and conservancy dues)	75
80	Amendment of s 224 (Existing approvals, consents, licences, permits etc.).	75
PART 10—AMENDMENT OF TRANSPORT OPERATIONS (PASSENGER TRANSPORT) ACT 1994		
81	Act amended in pt 10.	75
82	Insertion of new ss 126A–126G and pts 3A and 3B	76
	126A Securing seized things	76
	126B Tampering with seized things	76

126C	Powers supporting seizure	76
126D	Forfeiture of seized things	77
126E	Dealing with forfeited things etc.	78
126F	Return of seized things	78
126G	Access to seized things	78
PART 3A—POWERS OF AUTHORISED PERSONS FOR RAIL VEHICLES		
126H	Power to hold or stop and hold rail vehicle	79
126I	Power to require rail vehicle inspection.	80
126J	Power to prohibit use of rail vehicle	80
126K	Power to give remedial action notices	81
PART 3B—POWERS OF AUTHORISED PERSONS FOR DANGEROUS SITUATIONS INVOLVING RAIL VEHICLES		
126L	Application of part	82
126M	Additional power to require information or produce document	82
126N	Power to give directions to deal with dangerous situation.	83
126O	Power to take direct action to deal with dangerous situation.	84
83	Amendment of s 127 (Power to require name and address)	85
84	Amendment of s 129 (Power to require production of certain documents)	85
85	Amendment of s 137 (Power to require name and address etc.)	86
86	Amendment of s 143AE (Vehicle and equipment not to be interfered with)	86
87	Insertion of new s 153A	86
	153A Evidentiary aids—belief of authorised person.	86
88	Amendment of sch 2 (Reviewable decisions)	88
89	Amendment of sch 3 (Dictionary).	88
PART 11—AMENDMENT OF TRANSPORT OPERATIONS (ROAD USE MANAGEMENT) ACT 1995		
90	Act amended in pt 11.	90
91	Amendment of s 17B (Granting, renewing or refusing approval).	90
92	Amendment of s 18 (Grounds for amending, suspending or cancelling approvals)	91
93	Amendment of s 32 (Power to stop heavy vehicles)	91
94	Amendment of s 60 (Evidentiary aids)	91
95	Insertion of new s 72A	92

	72A	Way to install official traffic sign	92
96		Replacement of s 78 (Driving of motor vehicle without a driver licence prohibited)	92
	78	Driving of motor vehicle without a driver licence prohibited	92
97		Amendment of s 79 (Driving etc. whilst under influence of liquor or drugs or with prescribed concentration of alcohol in blood)	94
98		Amendment of s 80 (Provisions with respect to breath tests and laboratory tests)	94
99		Amendment of s 87 (Issue of restricted licence to disqualified person)	95
100		Amendment of s 100 (Removal of things from roads)	95
101		Amendment of s 102 (Parking regulation involves installing official traffic signs)	95
102		Amendment of s 113 (Definitions for div 2)	95
103		Amendment of s 114 (Offences detected by photographic detection device)	97
104		Amendment of s 116 (Notice accompanying summons)	98
105		Amendment of s 120 (Evidentiary provisions)	98
106		Amendment of s 121 (Application of the State Penalties Enforcement Act 1999)	98
107		Amendment of s 124 (Facilitation of proof)	98
108		Omission of s 129 (Effect of cancellation pursuant to regulations)	99
109		Amendment of s 130 (Delivery of cancelled or suspended licences, or licences for endorsement)	99
109A		Amendment of s 132 (Appeals against licence cancellation under regulations)	99
110		Amendment of s 147 (Regulating vehicles etc. in public places)	100
111		Amendment of s 151 (Application of part)	100
112		Amendment of s 153 (Exemptions)	101
113		Amendment of s 166 (Official traffic sign approvals)	101
114		Omission of sch 1 (Disqualifying offences—approvals)	101
115		Amendment of sch 4 (Dictionary)	101

Queensland



Transport Legislation Amendment Act 2001

Act No. 79 of 2001

**An Act to amend legislation administered by the Minister for
Transport and the Minister for Main Roads**

[Assented to 29 November 2001]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the *Transport Legislation Amendment Act 2001*.

2 Commencement

(1) Section 44A commences on assent.

(2) Sections 96, 109 and 109A commence on 3 December 2001.

(3) The remaining provisions of this Act commence on a day to be fixed by proclamation.

PART 2—AMENDMENT OF AIR NAVIGATION ACT 1937

3 Act amended in pt 2

This part amends the *Air Navigation Act 1937*.

4 Amendment of title

Title, after ‘State’—

insert—

‘, and to provide in relation to liability for certain injury, loss, damage or destruction by aircraft’.

5 Insertion of pt hdg

Before section 1—

insert—

‘PART 1—PRELIMINARY’.**6 Amendment of s 4 (Definitions)**

Section 4—

insert—

‘**“aircraft”** means any machine or craft that can derive support in the atmosphere from the reactions of the air, other than the reactions of the air against the earth’s surface, but does not include model aircraft.

“in flight” see section 12.

“operator” see section 13.’.

7 Insertion of pt hdg

Before section 5—

insert—

‘PART 2—APPLICATION OF REGULATIONS’.**8 Amendment of s 9 (Purpose of this Act)**

Section 9, ‘Act’—

omit, insert—

‘part’.

9 Amendment of s 10 (Construction of the regulations in their application by virtue of this Act)

(1) Section 10(2)(b)—

omit.

(2) Section 10(2)(c)—

renumber as section 10(2)(b).

10 Amendment of s 11 (Power of Governor in Council to declare that provision of the regulations shall not apply in Queensland by virtue of this Act)

Section 11, heading, and section 11(1) and (2), ‘in Council’—
omit.

11 Insertion of new pt 3

After section 11—

insert—

‘PART 3—RECOVERY OF CERTAIN DAMAGES

‘12 Meaning of “in flight”

‘(1) For this part, an aircraft that is lighter than air is taken to be **“in flight”** from the moment when it becomes detached from the earth’s surface until the moment when it again becomes attached to the earth’s surface.

‘(2) For this part, a power-driven aircraft that is heavier than air is taken to be **“in flight”** from the moment when power is applied for the purpose of take-off until the moment when its landing run ends.

‘(3) For this part, an aircraft that is heavier than air but is not power-driven is taken to be **“in flight”** from the moment when it becomes airborne (whether or not it is then attached to any other aircraft or machine) until the moment when its landing run ends.

‘13 Meaning of “operator”

‘(1) For this part, a person who uses an aircraft is taken to be the operator of the aircraft.

‘(2) However, if a person authorises the use of an aircraft but retains control of its navigation—

- (a) the person who is authorised to use the aircraft is not taken to be the operator of the aircraft; and
- (b) the person who retains control of the aircraft’s navigation is taken to be the operator of the aircraft.

‘14 Part binds all persons

‘This part binds all persons, including the State, and, in so far as the legislative power of the State permits, the Commonwealth and the other States.

‘15 Use of an aircraft by employees

‘If a person’s employee uses an aircraft in the course of the employee’s employment, whether or not the employee is authorised to do so—

- (a) the employee is not taken to use the aircraft; and
- (b) the person is taken to use the aircraft.

‘16 Liability for injury, loss, damage or destruction

‘(1) This section applies if a person or property on, in or under land or water suffers personal injury, loss of life, material loss, damage or destruction caused by—

- (a) an impact with an aircraft that is in flight, or that was in flight immediately before the impact happened; or
- (b) an impact with part of an aircraft that was damaged or destroyed while in flight; or
- (c) an impact with a person, animal or thing that fell from an aircraft in flight; or
- (d) something that results from an impact of a kind mentioned in paragraph (a), (b) or (c).

‘(2) The following people are jointly and severally liable in respect of the injury, loss, damage or destruction—

- (a) the operator of the aircraft immediately before the impact happened;
- (b) the owner of the aircraft immediately before the impact happened;
- (c) if the operator of the aircraft immediately before the impact happened was authorised to use the aircraft but did not have the exclusive right to use it for a period of more than 14 consecutive days—the person who authorised the use of the aircraft;

- (d) if the operator of the aircraft immediately before the impact happened was using the aircraft without the authority of the person entitled to control its navigation—the person entitled to control the navigation of the aircraft.

‘(3) Subsection (2)(d) does not apply if the person entitled to control the navigation of the aircraft had taken all reasonable steps to prevent the unauthorised use of the aircraft.

‘(4) If—

- (a) an injury, loss, damage or destruction of the kind mentioned in subsection (1) is the result of a collision or interference between 2 or more aircraft in flight; or
- (b) 2 or more aircraft jointly cause an injury, loss, damage or destruction of that kind;

this section applies in relation to each of the aircraft.

‘17 Recovery of damages without proof of intention, negligence or other cause of action

‘(1) Damages for an injury, loss, damage or destruction of the kind mentioned in section 16(1) are recoverable in an action in a court of competent jurisdiction against all or any of the persons (the “**defendants**”) who are jointly and severally liable under that section.

‘(2) The damages are recoverable without proof of intention, negligence or other cause of action, as if the injury, loss, damage or destruction had been caused by the wilful act, negligence or default of the defendant.

‘PART 4—MISCELLANEOUS

‘18 Regulation-making power

‘The Governor in Council may make regulations under this Act.’.

PART 3—AMENDMENT OF CIVIL AVIATION (CARRIERS' LIABILITY) ACT 1964

12 Act amended in pt 3

This part amends the *Civil Aviation (Carriers' Liability) Act 1964*.

13 Amendment of s 6A (Administration of the applied provisions as Commonwealth laws)

(1) Section 6A(3)—

renumber as section 6A(4).

(2) Section 6A—

insert—

‘(3) Despite subsection (2)(b) and (c), the *Penalties and Sentences Act 1992*, section 181A¹ applies to offences against the applied provisions.’.

PART 4—AMENDMENT OF TOW TRUCK ACT 1973

14 Act amended in pt 4

This part amends the *Tow Truck Act 1973*.

15 Amendment of s 21 (Cancellation or suspension of licences or certificates)

Section 21(2), ‘, given pursuant to section 28’—

omit.

16 Replacement of pt 6 (Appeals)

Part 6—

¹ Sections 181A (Corporations to be fined if imprisonment is the only penalty)

omit, insert—

‘PART 6—REVIEW OF AND APPEALS AGAINST DECISIONS

‘28 Review of and appeals against decisions

‘(1) A person whose interests are affected by a decision (the **“original decision”**) described in the schedule may ask the chief executive to review the decision.

‘(2) The person is entitled to receive a statement of reasons for the original decision.

‘(3) The *Transport Planning and Coordination Act 1994*, part 5, division 2—

(a) applies to the review; and

(b) provides—

- (i) for the procedure for applying for the review and the way it is to be carried out; and
- (ii) that the person may apply to the Magistrates Court for a stay of the original decision.

‘(4) Also, after the chief executive confirms or amends the original decision or substitutes another decision, the person may appeal against the confirmed, amended or substituted decision (the **“reviewed decision”**) to the Magistrates Court.

‘(5) The *Transport Planning and Coordination Act 1994*, part 5, division 3—

(a) applies to the appeal; and

(b) provides—

- (i) for the procedure for the appeal and the way it is to be disposed of; and
- (ii) that the person may apply to the Magistrates Court for a stay of the reviewed decision.’.

17 Insertion of new schedule

After section 44—

insert—

‘SCHEDULE**‘REVIEWABLE DECISIONS**

section 28

Licence

1. Failing to grant and issue a licence under section 6
2. Failing to renew a licence under section 9
3. Imposing conditions on the grant or renewal of a licence under section 10
4. Varying licence conditions under section 10
5. Cancelling or suspending a licence under section 21

Driver’s certificate or assistant’s certificate

1. Failing to grant and issue a certificate under section 14
2. Failing to renew a certificate under section 17
3. Imposing conditions on the grant or renewal of a certificate under section 16
4. Varying certificate conditions under section 16
5. Cancelling or suspending a certificate under section 21’.

PART 5—AMENDMENT OF TRANSPORT (BUSWAY AND LIGHT RAIL) AMENDMENT ACT 2000

18 Act amended in pt 5

This part amends the *Transport (Busway and Light Rail) Amendment Act 2000*.

19 Amendment of s 13 (Insertion of new chs 7A–7C)

(1) Section 13, new section 180A—

omit.

(2) Section 13, new chapter 7A, part 4, division 1—

insert—

‘180KA Watercourses and busway transport infrastructure works

‘(1) To carry out busway transport infrastructure works, the chief executive may—

(a) divert a watercourse; or

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

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

(3) Section 13, new sections 180M and 180N—

omit, insert—

‘180M Powers of chief executive for busway transport infrastructure works contracts etc.

‘(1) The chief executive may, for the State, carry out or enter into contracts with other persons for the carrying out of—

(a) busway transport infrastructure works on a busway or on land that is intended to become a busway; or

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

(c) the operation of a busway.

‘(2) The chief executive, for the State, may enter into contracts with other persons for busway transport infrastructure works to be carried out outside the State under an agreement between the State and the other State concerned.

‘(3) A contract with a local government under this section may include arrangements about which powers of the local government are to be exercised by the chief executive, and which are to be exercised by the local government, for the busway.

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

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

‘(6) This section does not prevent the chief executive carrying out, or entering into contracts for the carrying out, of busway transport infrastructure works of a minor or emergency nature.

‘(7) In carrying out works or the operation of a busway, the chief executive must ensure that the carrying out is done on a price competitive basis.

‘(8) In entering into contracts under this section, the chief executive must ensure that open competition is encouraged.

‘(9) Subsection (8) does not apply to a contract with a person if the person is the sole invitee and enters into a price performance contract with the chief executive.

‘(10) The chief executive may arrange with another person for the sharing by the chief executive with the other person of the cost of—

- (a) acquisition of land for busway transport infrastructure; or
- (b) busway transport infrastructure works on a busway; or
- (c) other works that contribute to the effectiveness and efficiency of the busway network; or
- (d) the operation of a busway;

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

‘180N Distraction of traffic on busway

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

- (a) visible from a busway; and
- (b) reasonably likely to create a traffic hazard for the busway.

‘(2) For subsection (1), the chief executive may make guidelines to which local governments must have regard in deciding whether the chief executive’s approval is required for a particular busway.

‘(3) An approval may be subject to conditions.

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

‘(5) The permission criteria may include conditions.

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

‘(7) An approval must be given—

- (a) within 21 days after receiving the application for approval; or
- (b) within a longer period notified to the local government by the chief executive within the 21 day period.

‘(8) If the chief executive does not respond to a local government’s application within 21 days after receiving it, the chief executive is taken to have given approval at the end of the 21 days.

‘(9) The chief executive must publish a copy of each notice mentioned in subsection (10) in the gazette.

‘(10) In this section—

“**busway**” includes land that the chief executive has notified the local government in writing is intended to become a busway.’.

(4) Section 13, new section 180P(2)—

omit.

(5) Section 13, new chapter 7A, part 4—

insert—

‘Division 2A—Ancillary works and encroachments**‘180QA Ancillary works and encroachments**

‘(1) The chief executive may construct, maintain, operate or conduct ancillary works and encroachments on a busway.

‘(2) The chief executive may, by gazette notice, decide that stated ancillary works and encroachments must not be constructed, maintained, operated or conducted on busways, without the chief executive’s written approval.

‘(3) A person must not construct, maintain, operate or conduct ancillary works and encroachments on a busway contrary to a notice under subsection (2).

Maximum penalty—200 penalty units.

‘(4) Subsection (3) does not apply to the construction, maintenance, operation or conduct of ancillary works and encroachments on a busway if the construction, maintenance, operation or conduct—

- (a) conforms to requirements specified by the chief executive by gazette notice; or
- (b) is done as required by a contract entered into with the chief executive.

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

‘180QB Presumptions about advertising sign

‘(1) This section applies to a prosecution for an offence against section 180QA(3) in relation to an advertising sign.

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

‘180QC Alteration etc. of ancillary works and encroachments

‘(1) If ancillary works and encroachments are constructed, maintained, operated or conducted contrary to section 180QA², the chief executive may—

- (a) cause them to be altered, relocated, made safe or removed; or
- (b) for activities—direct that their conduct be altered or that they stop being conducted.

‘(2) A person who constructed, maintained or operated ancillary works and encroachments contrary to section 180QA is liable to pay to the chief executive the cost of altering or relocating them, making them safe or removing them.

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

‘(4) If the chief executive considers ancillary works and encroachments, or the use of ancillary works and encroachments, that were constructed, maintained, operated or conducted on a busway under an approval, requirements or contract under section 180QA—

- (a) by themselves or with other factors—
 - (i) are creating, or may create, a traffic hazard; or
 - (ii) are reducing, or may reduce, safety; or
 - (iii) are having, or may have, an adverse effect on traffic operations; or
- (b) require emergency action; or
- (c) have become, or may become, an obstacle to the carrying out of busway transport infrastructure works on the busway or to the construction, augmentation, alteration or maintenance of public utility plant on the busway;

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

‘(5) A person must comply with a direction under subsection (4).

Maximum penalty—200 penalty units.

2 Section 180QA (Ancillary works and encroachments)

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

(6) Section 13, new section 180ZE(3)—

omit.

(7) Section 13, new chapter 7A—

insert—

‘PART 5—BUSWAY SERVICE PROVIDER AUTHORISATION

‘180ZKA Who may drive on a busway

‘(1) A person must not drive on a busway unless the person is—

- (a) driving in the course of the person’s duty as an employee of—
 - (i) an authorised busway service provider for the busway; or
 - (ii) the holder of a service contract that requires the holder to provide a public passenger service for the busway; or
 - (iii) an emergency service; or
- (b) authorised by the chief executive to drive on the busway.

Maximum penalty—160 penalty units.

‘(2) In this section—

“emergency service” means—

- (a) the Queensland Ambulance Service; or
- (b) the Queensland Fire and Rescue Authority; or
- (c) the Queensland Police Service; or
- (d) the State Emergency Services; or
- (e) another entity approved by the chief executive.

‘180ZKB Applying for authorisation as busway service provider

‘(1) A person may apply to the chief executive for authorisation as a busway service provider for a busway.

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

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

‘180ZKC Considering application for authorisation

‘(1) The chief executive must promptly consider an application for authorisation as a busway service provider and decide to grant, or refuse to grant, the authorisation.

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

- (a) the decision; and
- (b) the details of the authorisation, including its scope; and
- (c) if the authorisation is subject to a condition—
 - (i) the details of the condition; and
 - (ii) the reason for the condition.

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

- (a) the decision; and
- (b) the reason for the decision.

‘(4) A notice under subsection (2) or (3) must be accompanied by an information notice.

‘180ZKD Authorisation conditions

‘(1) An authorisation may be subject to conditions.

‘(2) A condition may relate only to—

- (a) safely using a busway; or

(b) something else prescribed under a regulation.

‘(3) An authorised busway service provider must comply with each condition of the provider’s authorisation.

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

‘180ZKE Requiring authorisation conditions to be complied with

‘(1) This section applies if the chief executive reasonably believes an authorised busway service provider has not complied with a condition of the provider’s authorisation.

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

‘(3) If the provider has not complied with the condition, the provider must comply with the notice.

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

‘180ZKF Authorisation period

‘A busway service provider’s authorisation remains in force until suspended, cancelled or surrendered.

‘180ZKG Amending authorisation conditions on application

‘(1) An authorised busway service provider may apply to the chief executive for an amendment of the conditions of the provider’s authorisation.

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

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

(a) no longer appropriate; or

(b) no longer consistent with generally accepted risk management principles.

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

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

- (a) the decision; and
- (b) the reason for the decision.

‘(6) A notice under subsection (5) must be accompanied by an information notice.

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

‘180ZKH Amending authorisation conditions without application

‘(1) This section applies if the chief executive considers the conditions of a busway service provider’s authorisation should be amended although the provider has not applied for the amendment.

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

- (a) the proposed amendment; and
- (b) the reason for the amendment; and
- (c) an invitation to the provider to show in writing, within a stated time of at least 28 days, why the amendment should not be made.

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

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

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

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

- (a) the amendment; and
- (b) the reason for the decision.

‘(6) A notice under subsection (5) must be accompanied by an information notice.

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

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

‘180ZKI Suspending or cancelling authorisation

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

- (a) reasonably suspects an authorised busway service provider has contravened a condition of the provider’s authorisation; and
- (b) considers the authorisation should be suspended or cancelled (the **“proposed action”**).

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

- (a) the proposed action; and
- (b) the reason for the proposed action; and
- (c) if the proposed action is to suspend the authorisation—the proposed suspension period; and
- (d) if the proposed action is to suspend the authorisation only in relation to a particular service operated by the provider—the service; and
- (e) an invitation to the provider to show in writing, within a stated time of at least 28 days, why the proposed action should not be taken.

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

- (a) if the proposed action was to suspend the authorisation—suspend the authorisation—
 - (i) for no longer than the proposed suspension period; and
 - (ii) if the proposed suspension was limited to a particular service—only in relation to the service; or

- (b) if the proposed action was to cancel the authorisation—cancel the authorisation or suspend it for a period.

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

‘(5) If the chief executive decides to suspend or cancel the authorisation, the notice must also state the reason for the decision.

‘(6) If—

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

the chief executive may immediately cancel the authorisation by written notice to the provider.

‘(7) A notice under subsection (4) or (6) must be accompanied by an information notice.

‘180ZKJ Immediate suspension of authorisation

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

- (a) reasonably believes an authorised busway service provider has contravened a condition of the provider’s authorisation; and
- (b) considers members of the public may be seriously harmed if urgent action to suspend the authorisation is not taken.

‘(2) The chief executive may immediately suspend the authorisation by written notice to the provider.

‘(3) The notice must state the reason for the decision and must be accompanied by an information notice.

‘(4) The chief executive must at the same time give the provider a notice under section 180ZKI(2).

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

- (a) the chief executive gives the provider notice of the chief executive’s decision under section 180ZKI;

- (b) the end of 60 days after the notice under subsection (2) was given to the provider.

‘180ZKK Surrender of authorisation

‘An authorised busway service provider may, at any time, surrender the provider’s authorisation by written notice to the chief executive.’.

(8) Section 13, new section 180ZL—

omit.

20 Amendment of s 19 (Amendment of sch 3 (Dictionary))

(1) Section 19(2), definition “**construction**”—

omit, insert—

‘ “**construction**” of busway, light rail, or road transport infrastructure includes each of the following for the infrastructure, to the extent it involves the development of the infrastructure—

- (a) initial construction;
- (b) improvement of its standard;
- (c) realignment;
- (d) widening;
- (e) extension to accommodate the extension of a busway, light rail or road.’.

(2) Section 19(8)—

omit.

**PART 6—AMENDMENT OF TRANSPORT
(GLADSTONE EAST END TO HARBOUR CORRIDOR)
ACT 1996**

21 Act amended in pt 6

This part amends the *Transport (Gladstone East End to Harbour Corridor) Act 1996*.

22 Amendment of sch 1 (Land for rail transport corridor)

(1) Schedule 1, section reference—

omit, insert—

‘sections 2(1) and 6(1)(b)’.

(2) Schedule 1, part 3—

insert—

‘**27A.** Lot 25 on plan SP103896 in the parish of Calliope, county of Clinton.’.

23 Amendment of sch 4 (Roads partially closed)

Schedule 4—

insert—

‘**17A.** Lot 35 on plan SP101571 in the parish of Nolan, county of Deas Thompson.’.

**PART 7—AMENDMENT OF TRANSPORT
INFRASTRUCTURE ACT 1994**

24 Act amended in pt 7

This part amends the *Transport Infrastructure Act 1994*.

25 Omission of s 22 (Definitions for ch 5)

Section 22—

omit.

25A Insertion of new s 24A

Chapter 5, part 2, division 1—

insert—

‘24A State-controlled roads on rail corridor land

‘(1) This section applies if, under section 23, the Minister intends to declare a road or route, or part of a road or route, that crosses rail corridor land and continues on the other side of the rail corridor land to be a State-controlled road.

‘(2) Before making the declaration, the Minister must—

- (a) consult with the railway manager, if any, for the rail corridor land; and
- (b) give the railway manager a reasonable opportunity to make submissions to the Minister on the declaration.

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

‘(4) When the common area is declared—

- (a) the chief executive may construct, maintain and operate the State-controlled road on the common area in a way not inconsistent with its use as rail corridor land; and
- (b) a railway manager for the rail corridor land may construct, maintain and operate a railway on the common area in a way not inconsistent with its use as State-controlled road; and
- (c) the railway manager and its agents or employees do not have any liability for the State-controlled road or its use or operation on the common area.

Examples for paragraph (a)—

- a level crossing

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

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

- (a) subject to section 140,³ the chief executive is responsible for maintaining the State-controlled road on the common area; and
- (b) if the State-controlled road on the common area stops being used, the chief executive is responsible for the cost of removing road transport infrastructure from the common area and restoring the railway.

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

- (a) the Minister’s declarations; or
- (b) anything done by the chief executive under chapter 5 for the common area.

‘(7) After the common area is declared—

- (a) the chief executive must promptly give a copy of the gazette notice of the declarations to the registrar of titles; and
- (b) the registrar of titles must record the declarations on the relevant lease of the rail corridor land to the State and any affected sublease in the leasehold land register.’.

26 Amendment of s 45 (Removal of materials etc.)

Section 45(2)—

omit.

27 Replacement of s 59 (Location and requirements)

Section 59—

omit, insert—

3 Section 140 (Maintaining roads crossing railways)

‘59 Location

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

‘59A Chief executive’s requirements for public utility plant

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

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

28 Amendment of s 62 (Liability for damage or expenses)

(1) Section 62(3), ‘replace or reconstruct’—

omit, insert—

‘approve the replacement or reconstruction of’.

(2) Section 62(4)—

omit, insert—

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

29 Insertion of new ss 131A and 131B

After section 131—

insert—

‘131A Railway tunnel easements

‘(1) This section applies to an easement described in schedule 2A, despite the terms of the easement.

‘(2) The benefit of the easement is taken to be vested in Queensland Rail.

‘(3) Queensland Rail may—

(a) transfer the benefit of the easement only to the State; or

(b) surrender the easement only with the State's consent.

'(4) If—

- (a) Queensland Rail remains the grantee of the easement; and
- (b) the easement is over, or adjoins, part of a railway tunnel corridor; and
- (c) Queensland Rail—
 - (i) surrenders a part of the sublease of rail corridor land that adjoins the railway tunnel corridor to the State; or
 - (ii) transfers the sublease of rail corridor land that adjoins the railway tunnel corridor to a railway manager;

Queensland Rail must transfer the benefit of the easement to the State.

'(5) If Queensland Rail remains the grantee of the easement, Queensland Rail may grant a licence in relation to the easement to a railway operator.

'(6) If the State becomes the grantee of the easement—

- (a) the State may grant a licence in relation to the easement to a railway manager; and
- (b) the railway manager may grant a sublicense to a railway operator.

'(7) No compensation is payable to the grantor of the easement because of any vesting, transfer, licence or sublicense under this section.

'(8) In this section—

“railway tunnel corridor” means a corridor of land within which a tunnel containing rail transport infrastructure is situated.

‘131B What is “future railway land”

'(1) Land becomes **“future railway land”** when the chief executive, by written notice to the relevant local government and in the gazette, indicates that the land is intended to be used for a railway.

'(2) Future railway land ceases to be future railway land when it is leased under section 131(4).

'(3) If the chief executive decides that future railway land is no longer to be used for a railway, the chief executive must give written notice of that fact to the relevant local government and in the gazette.'

30 Replacement of s 138 (Carrying dangerous goods)

Section 138—

omit, insert—

‘138 Railways on State-controlled roads

‘(1) This section applies if—

- (a) a railway manager—
 - (i) holds a sublease of rail corridor land; or
 - (ii) has access to future railway land; and
- (b) the route of the rail corridor land or future railway land—
 - (i) is interrupted by a State-controlled road; and
 - (ii) continues on the other side of the State-controlled road.

‘(2) The Minister may, by gazette notice, declare the part of the State-controlled road where it interrupts the route to be a common area (“**common area**”) for the State-controlled road and the route of the rail corridor land or future railway land.

‘(3) If the Minister declares a common area—

- (a) the railway manager for the rail corridor land or future railway land may construct, maintain and operate a railway on the common area in a way not inconsistent with its use as a State-controlled road; and
- (b) the chief executive for chapter 5 may construct, maintain and operate the State-controlled road on the common area in a way not inconsistent with its use as a railway; and
- (c) the chief executive for chapter 5 and the chief executive’s agents or employees do not have any liability for the railway or its use or operation on the common area.

Examples for paragraph (a)—

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

‘(4) After a common area is declared—

- (a) the chief executive must give a copy of the gazette notice to the registrar of titles—
- (i) promptly after the gazette notice is published, if the land is rail corridor land; or
 - (ii) promptly after the land is leased to the railway manager under section 131(4), if the land is future railway land; and
- (b) the registrar of titles must record the declaration on the relevant lease of the rail corridor land to the State and the sublease in the leasehold land register.

‘(5) If a railway on a common area stops being used, the railway manager for the railway is responsible for the cost of removing rail transport infrastructure from the common area and restoring the road, unless the chief executive and the railway manager otherwise agree.’.

31 Amendment of s 152 (Application of Land Act 1994)

(1) Section 152, second dot point, after ‘payable’—

insert—

‘generally’.

(2) Section 152—

insert—

- ‘section 336(2)(a) and (c).⁴’.

32 Omission of s 154 (Continuation of port authorities)

Section 154—

omit.

33 Amendment of s 181B (Definition for pt 2)

Section 181B, ‘*Organization*’—

omit, insert—

‘*Organisation*’.

4 *Land Act 1994*, section 336 (Amending a sublease)

34 Insertion of new ch 8AA

After section 187A—

insert—

‘CHAPTER 8AA—TRANSPORTING DANGEROUS GOODS BY RAIL**‘PART 1—INTRODUCTORY****‘187AA Purposes of ch 8AA**

‘The purposes of this chapter are—

- (a) to reduce risk arising from transporting dangerous goods by rail; and
- (b) to help create a substantially uniform national rail transport law about dangerous goods; and
- (c) to promote consistency between the regulation of the transport of dangerous goods by rail and by other modes of transport.

‘187AB Application of ch 8AA

‘(1) This chapter—

- (a) applies only to the transportation of dangerous goods by rail; and
- (b) applies in addition to, and does not limit, any other provision of this Act or any other Act.

‘(2) However, this chapter does not apply to any of the following—

- (a) the transportation of radioactive substances under the *Radiation Safety Act 1999*;
- (b) the transportation of explosives under the *Explosives Act 1999*;
- (c) the transfer, under the *Gas Act 1965*, of gas within the meaning of that Act from a rail tank vehicle or bulk container;
- (d) dangerous goods in a container that is—
 - (i) designed to form part of, and forms part of, the fuel system of—

-
- (A) a rail vehicle's engine; or
 - (B) another part of a rail vehicle's propulsion equipment; or
 - (C) an engine that is part of a rail vehicle's refrigeration system; or
 - (D) another auxiliary engine of a rail vehicle; or
 - (ii) designed as a fuel storage container for a fuel burning appliance, or an engine, that is—
 - (A) built into a rail vehicle; or
 - (B) designed to be attached to a rail vehicle; or
 - (C) part of a refrigeration system attached to a freight container; or
 - (D) prescribed under a regulation;
 - (e) a battery installed in a rail vehicle or on its load for the purpose of operating a function of the vehicle or of equipment relating to the load;
 - (f) a fire extinguisher fitted to or carried in a rail vehicle to be used for the protection of the vehicle or its load;
 - (g) equipment installed in a rail vehicle to provide a safety or protective system for an occupant of the vehicle;
 - (h) compressed air, compressed oxygen or oxygen releasing chemicals that are part of self contained breathing or rebreathing apparatus for use by a rail vehicle's driver.'.

'187AC Ch 8AA binds all persons

'(1) This chapter binds all persons, including every Queensland government entity, and, so far as the legislative power of the Parliament permits, every government entity of the Commonwealth or of another State.

'(2) In this section—

“government entity” includes—

- (a) the State, the Commonwealth or another State; and

- (b) an instrumentality, agent, authority, company, GOC or entity of the State, the Commonwealth or another State.

‘PART 2—REGULATIONS

‘187AD Regulations about dangerous goods

‘(1) A regulation may prescribe matters about the transportation of dangerous goods by rail, including for example, the following matters—

- (a) types and categories of dangerous goods;
- (b) ways of deciding types and categories of dangerous goods;
- (c) deciding which goods are—
 - (i) dangerous; or
 - (ii) dangerous goods of a particular type; or
 - (iii) too dangerous to be transported by rail; or
 - (iv) too dangerous to be transported in bulk by rail;
- (d) the analysis and testing of dangerous goods;
- (e) the marking of packages, and unit loads, containing dangerous goods;
- (f) the placarding of containers and rail vehicles containing dangerous goods;
- (g) containers, packaging equipment and other items to be used for transporting dangerous goods;
- (h) the manufacture of rail vehicles and containers for use in transporting dangerous goods;
- (i) the loading of dangerous goods for, and the unloading of dangerous goods after, their transportation;
- (j) deciding routes along which, the areas in which and the times during which, dangerous goods may or may not be transported;
- (k) procedures for transporting dangerous goods, including—
 - (i) the quantities and circumstances in which dangerous goods may be transported; and

- (ii) safety procedures and equipment;
 - (l) the approval of packages, containers, equipment and other items used for transporting dangerous goods;
 - (m) the approval of processes to be carried out when transporting dangerous goods;
 - (n) other approvals;
 - (o) documents to be prepared or kept by persons involved in transporting dangerous goods and the approval of alternative documentation;
 - (p) obligations arising, and procedures to be followed, in a dangerous situation;
 - (q) the training and qualifications required of persons involved in, and the approval of training courses and qualifications relating to involvement in, transporting dangerous goods.
- ‘(2) Without limiting subsection (1), a regulation may provide—
- (a) for the granting or renewing of, or refusing to grant or renew, an approval or exemption; or
 - (b) grounds for amending, suspending or cancelling an approval or exemption.
- ‘(3) A regulation may allow the chief executive to make provision about a matter mentioned in subsection (1)(j).
- ‘(4) A decision about a matter mentioned in subsection (1)(c), other than an approval, may only be made by regulation.

‘PART 3—APPROVALS AND EXEMPTIONS

‘Division 1—Exemptions

‘187AE Exemptions

‘(1) A person, or a representative of a class of person, may apply to the chief executive for an exemption from complying with a provision of a regulation about transporting dangerous goods by rail.

‘(2) The chief executive may, on an application under subsection (1) or on the chief executive’s own initiative, exempt a person or a class of person from complying with the provision if satisfied—

- (a) it is not reasonably practicable for the person or class of person to comply with the provision; and
- (b) granting the exemption—
 - (i) would not be likely to create a risk of a dangerous situation, greater than would be the case if the person or class of person did comply; and
 - (ii) would not cause unnecessary administrative or enforcement difficulties, particularly about maintaining national substantially uniform rail transport laws about dangerous goods.

‘(3) If an exemption is given on conditions, the exemption operates only if the conditions are complied with.

‘(4) The chief executive must, as soon as is practicable after giving a class exemption, give notice of the exemption in the gazette.

‘(5) The notice must state the following—

- (a) the class of person to whom the exemption applies;
- (b) the provision of the regulation from which the class is exempt;
- (c) the dangerous goods to which the exemption applies;
- (d) the time for which the exemption applies;
- (e) the conditions, if any, to which the exemption is subject;
- (f) the geographical area in which the exemption applies.

‘(6) The *Statutory Instruments Act 1992*, sections 24 and 25 apply to an exemption as if it were a statutory instrument.

‘(7) A regulation may regulate the giving of an exemption under this section.

‘Division 2—Amending, suspending or cancelling approval or exemption**‘187AF Grounds for amending, suspending or cancelling approval or exemption**

‘(1) It is a ground for amending, suspending or cancelling an approval or exemption if the approval or exemption was—

- (a) granted because of a document or representation that is false or misleading; or
- (b) obtained or made in another improper way.

‘(2) It is a ground for amending, suspending or cancelling an approval or exemption if the person, or 1 or more of the persons, to whom the approval or exemption applies—

- (a) has contravened a condition of the approval or exemption; or
- (b) has been convicted of an offence against this chapter or a law of another State or the Commonwealth about transporting dangerous goods by rail.

‘187AG What chief executive must do before taking proposed action, other than for class exemption

‘(1) This section applies if the chief executive proposes to amend, suspend or cancel an approval or exemption, other than a class exemption (the “**proposed action**”).

‘(2) Before taking the proposed action, the chief executive must give the holder of the approval or exemption written notice stating—

- (a) the proposed action; and
- (b) the grounds for the proposed action; and
- (c) an outline of the facts and circumstances forming the basis for the grounds; and
- (d) if the proposed action is to amend the approval or exemption, including a condition of the approval or exemption—the proposed amendment; and
- (e) if the proposed action is to suspend the approval or exemption—the proposed suspension period; and

- (f) an invitation to the holder of the approval or exemption to show in writing, within a stated time of at least 28 days, why the proposed action should not be taken.

‘187AH What chief executive must do before taking proposed action for class exemption

‘(1) This section applies if the chief executive proposes to amend, suspend or cancel a class exemption (the “**proposed action**”).

‘(2) Before taking the proposed action, the chief executive must give written notice to the class representative for the exemption and in the gazette stating—

- (a) the proposed action; and
- (b) the grounds for the proposed action; and
- (c) an outline of the facts and circumstances forming the basis for the grounds; and
- (d) if the proposed action is to amend the exemption, including a condition of the exemption—the proposed amendment; and
- (e) if the proposed action is to suspend the exemption—the proposed suspension period; and
- (f) an invitation to any member of the class for the exemption to show in writing, within a stated time of at least 28 days, why the proposed action should not be taken.

‘187AI Decision on proposed action

‘(1) If, after considering any written representations made within the time allowed under section 187AG or 187AH, the chief executive still considers the proposed action should be taken, the chief executive may—

- (a) if the proposed action was to amend the approval or exemption—amend the approval or exemption; or
- (b) if the proposed action was to suspend the approval or exemption—suspend the approval or exemption for no longer than the period stated in the notice under section 187AG or 187AH; or

- (c) if the proposed action was to cancel the approval or exemption—amend or cancel the approval or exemption, or suspend the approval or exemption for a period.

‘(2) The chief executive must give written notice of the chief executive’s decision to—

- (a) for an approval or exemption, other than a class exemption—the holder; or
- (b) for a class exemption—the class representative for the exemption.

‘(3) If the chief executive decides to amend, suspend or cancel the approval or exemption, the notice must state the reasons for the decision and be accompanied by an information notice.

‘(4) The decision takes effect on the day notice is given under subsection (2) or a later day stated in the notice.

‘187AJ Sections 187AG–187AI do not apply to beneficial or clerical amendment

‘(1) Sections 187AG to 187AI do not apply—

- (a) if the chief executive proposes to amend an approval or exemption only—
 - (i) for a formal or clerical reason; or
 - (ii) in another way that does not adversely affect the interests of any person; or
- (b) if the chief executive proposes to amend an approval or exemption in another way or cancel it and the holder has asked the chief executive to take the proposed action.

‘(2) The chief executive may amend an approval or exemption in a way mentioned in subsection (1) by written notice to—

- (a) for an approval or exemption, other than a class exemption—the holder; or
- (b) for a class exemption—the class representative for the exemption.

‘187AK Immediate suspension in the public interest

‘(1) Despite sections 187AG and 187AH, this section applies if the chief executive considers it is necessary in the interest of public safety to immediately suspend an approval or exemption.

‘(2) The chief executive may, by written notice to the holder of the approval or exemption, other than a class exemption, immediately suspend the approval or exemption until the earlier of the following—

- (a) a notice is given to the holder under section 187AI(2); or
- (b) the end of 56 days after the notice is given to the holder.

‘(3) The chief executive may, by written notice to the class representative for a class exemption, immediately suspend the exemption until the earlier of the following—

- (a) a notice is given for the exemption under section 187AI(2); or
- (b) the end of 56 days after the notice is given to the holder.

‘(4) If the chief executive suspends a class exemption, the chief executive must give notice of the suspension in the gazette.

‘(5) A notice under subsection (2) or (3) must state the reasons for the decision and be accompanied by an information notice.

‘PART 4—OFFENCES**‘187AL Goods too dangerous to be transported**

‘A person must not transport by rail goods prescribed under a regulation as being too dangerous to transport by rail if the person knows, or reasonably ought to know, the goods are too dangerous to be transported by rail.

Maximum penalty—665 penalty units.

‘187AM Duties when transporting dangerous goods

‘(1) A person involved in transporting dangerous goods by rail must ensure, as far as is practicable, that the goods are transported safely.

Maximum penalty—665 penalty units.

‘(2) A person involved in transporting dangerous goods by rail must not contravene this chapter in circumstances in which the person knew, or ought reasonably to have known, that the contravention would be likely to endanger the safety of another person or of property or the environment.

Maximum penalty—665 penalty units.

‘(3) This section applies in addition to, and does not limit, any other provision of this chapter.

‘187AN Prohibition on involvement in the transportation of dangerous goods by rail

‘(1) A court convicting a person of an offence against this chapter may order that the person be prohibited, for a stated period, from involvement in the transportation of dangerous goods by rail after having regard to the following matters—

- (a) the person’s record in the transportation of dangerous goods by rail in Australia;
- (b) the person’s convictions under Queensland law, or a law of another State or the Commonwealth relating to dangerous goods;
- (c) the circumstances surrounding the commission of the offence;
- (d) any other matters the court considers appropriate.

‘(2) A person must not contravene an order made under subsection (1).

Maximum penalty—665 penalty units or 2 years imprisonment.

‘(3) Subsection (1) does not limit any other penalty the court may impose for the offence.

‘(4) In this section—

“**involvement**” in the transportation of dangerous goods by rail includes the following—

- (a) importing, or arranging for the importation of, dangerous goods into Australia;
- (b) packing or labelling dangerous goods for transportation by rail;
- (c) consigning dangerous goods for transportation by rail;
- (d) loading dangerous goods onto a rail vehicle or into a container that is to be put on a rail vehicle;

- (e) unloading dangerous goods that have been transported by rail;
- (f) undertaking or being responsible for the transportation of dangerous goods by rail, other than as an employee or sub-contractor;
- (g) being a consignee of dangerous goods transported by rail;
- (h) being involved as a director, secretary or manager of a corporation or other person who takes part in the management of a corporation that takes part in an activity mentioned in paragraphs (a) to (g).

‘PART 5—RECOVERY OF COSTS AND FORFEITURE

‘187AO Forfeiture on conviction

‘(1) A court convicting a person of an offence against this chapter may order the forfeiture to the State of—

- (a) anything used to commit the offence; or
- (b) anything else the subject of the offence.

‘(2) The court may make the order—

- (a) whether or not the thing has been seized; and
- (b) if the thing has been seized, whether or not the thing has been returned to its owner.

‘(3) The court may make any order to enforce the forfeiture that it considers appropriate.

‘(4) This section does not limit the court’s powers under the *Penalties and Sentences Act 1992* or another law.

‘187AP Dealing with forfeited things etc.

‘(1) On the forfeiture of a thing to the State, the thing becomes the State’s property and may be dealt with by the chief executive as the chief executive considers appropriate.

‘(2) Without limiting subsection (1), the chief executive may destroy or dispose of the thing.

‘(3) The chief executive must not deal with the thing until any review of, or appeal against, the decision to forfeit the thing is decided.

‘187AQ Recovery of costs from convicted person

‘(1) A court convicting a person of an offence against this chapter may order the person to pay to the State the costs reasonably incurred by the State in prosecuting the offence, including the cost of testing, transporting, storing and disposing of dangerous goods and other evidence.

‘(2) An amount ordered to be paid under subsection (1) is a debt owing to the State.

‘(3) A court may make an order under subsection (1) in addition to any other order the court may make.

‘187AR Recovery of costs of government action

‘(1) This section applies if any of the following events happen in relation to the transportation of dangerous goods by rail—

- (a) a dangerous situation;
- (b) an incident wholly or partly constituted by or arising from—
 - (i) the escape of dangerous goods; or
 - (ii) an explosion or fire involving dangerous goods; or
- (c) an incident involving the risk of the escape of dangerous goods or an explosion or fire involving dangerous goods.

‘(2) If a government entity incurs costs because of the event, the entity may recover the costs reasonably incurred in dealing with the event as a debt owing to the entity.

‘(3) The costs are recoverable as a joint and several liability from the following persons—

- (a) the person who owned the dangerous goods when the event happened;
- (b) the person who had possession or control of the dangerous goods when the event happened;
- (c) the person who caused the event;

- (d) the person responsible (other than as an employee, agent or subcontractor of someone else) for the transportation of the dangerous goods by rail.

‘(4) However, costs are not recoverable from a person—

- (a) who does not incur civil liability because of section 187AT; or
- (b) who establishes that—
- (i) the event was primarily caused by someone else; or
- (ii) the person could not, exercising reasonable care, have prevented the event; or
- (iii) the event was not attributable to the person or to an employee, agent or subcontractor of the person.

‘(5) This section does not limit the powers a government entity has apart from this chapter.

‘PART 6—MISCELLANEOUS

‘187AS Certificates and documents

‘(1) A certificate purporting to be signed by the chief executive and stating that a stated person held or did not hold a stated approval or exemption under this chapter on a stated day or throughout a stated period is evidence of the matters stated.

‘(2) A court may admit into evidence a copy of a document made by an authorised person under this chapter.

‘187AT Helping in accidents or emergencies

‘(1) This section applies if a person, other than an official—

- (a) helps, or attempts to help, in a situation in which an accident or emergency involving dangerous goods happens or is likely to happen; and
- (b) the help, or attempt to help, is given—
- (i) honestly and without negligence; and

(ii) without any fee, charge or other reward.

‘(2) The person does not incur civil liability for helping or attempting to help.

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

‘(4) This section does not apply to a person whose act or omission wholly or partly caused the accident, emergency or likely accident or emergency.

‘(5) In this section—

“official” means a person who is, or is acting under the control of, an authorised person under the *Transport Operations (Passenger Transport) Act 1994*.’.

35 Amendment of s 187Q (Notice of draft waterway transport management plan)

Section 187Q—

insert—

‘(5) This section does not apply if the draft deals only with—

- (a) a minor error; or
- (b) an amendment of a fee or levy consistent with announced government policy.

‘(6) In this section—

“minor error” includes—

- (a) a typographical error; and
- (b) a grammatical error; and
- (c) an error of punctuation; and
- (d) an error in cross-referencing to a provision of a law.’.

36 Amendment of s 191 (Disposal of fees, penalties etc.)

(1) Section 191(2), ‘*Justices Act 1886*, part 4A’—

omit, insert—

‘*State Penalties Enforcement Act 1999*’.

(2) Section 191(5)—

omit, insert—

‘(5) A declared amount received or recovered by the chief executive is to be retained by the chief executive and not paid into the consolidated fund.’.

(3) Section 191—

insert—

‘(8) In this section—

“**declared amount**” means any of the following—

- (a) a fee or charge under section 59A(2);
- (b) a fee under section 187B(3);
- (c) a levy under schedule 1, item 20.’.

37 Insertion of new ss 199A–199C

Chapter 9—

insert—

‘199A Altering watercourse to adversely affect transport route

‘(1) A person must not, without lawful excuse, alter a watercourse in a way that adversely affects a transport route.

Maximum penalty—40 penalty units.

‘(2) If the chief executive considers that water from a watercourse has collected or is likely to collect, and obstruct or be likely to obstruct, traffic on a transport route, the chief executive may—

- (a) under section 33, 95 or 180D,⁵ enter the land on which the watercourse is situated; and
- (b) take the action that the chief executive considers necessary or desirable to reduce or prevent the collection of water.

‘(3) Before exercising the powers under subsection (2), the chief executive may, by written notice, require the owner of the land on which the watercourse is situated to take the action that the chief executive

5 Section 33 (Temporary occupation and use of land), 95 (Entry to land by notice or with approval) or 180D (Authority to enter or temporarily occupy or use land)

considers necessary or desirable to reduce or prevent the collection of water.

‘(4) The owner must comply with the notice, unless the owner has a reasonable excuse.

Maximum penalty—200 penalty units.

‘(5) If the owner fails to comply with the notice, the chief executive may exercise the powers mentioned in subsection (2).

‘(6) The owner is liable to pay the chief executive the costs incurred because of the exercise of powers.

‘(7) This section applies—

- (a) even if the water collected as a result of action that was authorised under an Act; or
- (b) whether the water collects permanently, temporarily or intermittently.

‘(8) In this section—

“alter” includes damage and interfere with.

“chief executive”, in relation to a railway, includes a railway manager or operator for whom an accreditation for the railway is in force under chapter 6.

“transport route” means a busway, railway or road.

‘199B Altering materials etc.

‘(1) A person must not, without lawful excuse, alter any naturally occurring materials, stockpile of material or works on a busway or railway.

Maximum penalty—200 penalty units.

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

Maximum penalty—200 penalty units.

‘(3) In this section—

“alter” includes damage, interfere with and remove.

“chief executive”, in relation to a railway, includes a railway manager or operator for whom an accreditation for the railway is in force under chapter 6.

“works” means—

- (a) for a busway—
 - (i) ancillary works and encroachments; or
 - (ii) busway transport infrastructure works; or
- (b) for a railway—railway works.

‘199C Recovery of cost of damage

‘(1) This section applies if a person intentionally, recklessly or negligently damages works on a busway or railway.

‘(2) The person is liable to pay the chief executive the cost of repairing the damage.

‘(3) However, if the damage is caused by the driver of a vehicle whose identity is unknown, or who can not be located, the registered operator of the vehicle is liable for the costs of repairing the damage, unless the vehicle was being used without the registered operator’s knowledge or permission.

‘(4) Subsections (2) and (3) apply, whether or not the damage constitutes, or is done in connection with, an offence against this Act.

‘(5) However, if—

- (a) a court finds a person guilty of an offence against this Act; and
- (b) in committing the offence, the person damaged works;

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

‘(6) In this section—

“chief executive”, in relation to a railway, includes a railway manager or operator for whom an accreditation for the railway is in force under chapter 6.

“registered operator” means the person in whose name the vehicle is registered.

“repairing” includes replacing and reconstructing.

“works” means—

- (a) for a busway—
 - (i) ancillary works and encroachments; or
 - (ii) busway transport infrastructure works; or
- (b) for a railway—railway works.’.

38 Omission of s 227 (Definitions)

Section 227—

omit.

39 Amendment of sch 1 (Subject matter for regulations)

(1) Schedule 1, section 2, after ‘road works’—

insert—

‘or busway transport infrastructure works’.

(2) Schedule 1, section 3, after ‘roads’—

insert—

‘or busways’.

(3) Schedule 1, section 10—

insert—

‘(e) busways.’.

(4) Schedule 1, section 12, after ‘railway’—

insert—

‘or busway’.

(5) Schedule 1, sections 13 to 15—

omit, insert—

‘13. The removal and disposal of vehicles or property that are abandoned on a busway or railway.

‘14. The removal of vehicles parked or property left—

- (a) on a busway against the chief executive’s directions; or
- (b) on a railway against the railway manager’s directions.

‘15. The recovery of the costs of doing the things mentioned in sections 13 and 14.’.

40 Amendment of sch 2 (Reviews and appeals)

Schedule 2—

insert—

‘180N(1)	Refusal to approve erection of, alteration or operation of sign or device	Planning and Environment
180N(3) and (5)	Imposition or inclusion of conditions	Planning and Environment
180QA	Refusal of chief executive to approve construction, maintenance, operation or conduct of ancillary work or encroachment	Magistrates
180QC(1)	Decision to cause ancillary works and encroachments to be altered, relocated, made safe or removed, or to direct that the conduct of ancillary works and encroachments be altered or stopped	District or Magistrates
180QC(2)	Decision of chief executive about cost of alteration, making safe or removing ancillary work and encroachments	District or Magistrates
180QC(4)	Decision to alter, relocate, make safe or remove ancillary works and encroachments or that activities are to be altered or to stop	Magistrates
187AE	Refusing to give exemption	Magistrates
187AI	Amendment, suspension or cancellation of approval or exemption	Magistrates
187AK	Immediate suspension of approval or exemption	Magistrates
199C	Decision of chief executive about cost of repair, replacement or reconstruction of damaged works	District or Magistrates’.

41 Insertion of new sch 2A

After schedule 2—

*insert—***‘SCHEDULE 2A****‘RAILWAY TUNNEL EASEMENTS**

section 131A

Servient land

Lot 325 CP SL 1633

Lot 408 CP SL 7151

Lot 515 CP SL 6565

Lot 461 CP SL 3741

Lot 13 CP B32219

Lot 1 RP 115152

Lot 5 SP 115364

Lot 5 SP 115364

Lot 5 SP 115364

Lot 5 SP 115364

Lot 5 SP 115364

Lot 5 SP 115364

Lot 5 SP 115364

Lot 5 SP 115364

Lot 2 RP 124155

Lot 2 RP 124155

Lot 2 RP 118622

Lot 2 RP 118622

Lot 1 RP 152576

Lot 1 RP 152576

Lot 2 RP 152576

Lot 2 RP 85223 and Lot 1 RP 105765

Easement

Easements A and B RP 852852

Lots C and D CP 852851

Easement G RP 852850

Lot H CP 852849

Easement K RP 136379

Easement H RP 115158

Easement A SP 118572

Easement B SP 118573

Easement E SP 118574

Easement F SP 118575

Easement G SP 118576

Easement H SP 118577

Easement K SP 134045

Easement L SP 123675

Easement A RP 852844

Easement B RP 893936

Easement in gross no. 602205520

Easement B RP 852845

Easement in gross no. 602205520

Easement C RP 852845

Easement D RP 852845

Easement B RP 852848

Servient land

Lot 21 RP 178644
 Lot 21 RP 178644
 Lot 1 RP 188351
 Lot 1 RP 117227
 Lot 2 RP 117227
 Lot 1 RP 155774
 Lot 1 RP 197728
 Lot 2 RP 10133
 Lot 2 RP 10133
 Lot 3 RP 10133
 Lot 3 RP 10133
 Lot 13 RP 10122
 Lot 2 RP 60443
 Lot 2 RP 197728
 Lot 13 RP 10124
 Lot 13 RP 10124 and Lot 2 RP 10129
 Lot 12 RP 10124
 Lot 1 RP 196222
 Lot 1 RP 196222
 Lot 9 RP 814964
 Lot 0 BUP 4313 (CMS 10872)
 Lot 0 BUP 4313 (CMS 10872)
 Lots 22 and 23 RP 10122
 Lot 2 RP 888141
 Lot 5 RP 127273
 Lot 0 BUP 9977 (CMS 5362)
 Lot 15 SP 126957
 Lot 16 SP 120013
 Lot 2 RP 9449
 Lot 1 RP 9449
 Lot 10 SP 120689
 Lot 10 SP 120689
 Lot 10 SP 120689

Easement

Easement in gross no. 602106739
 Easements A, B and C RP 183623
 Easement in gross no. 602505742
 Easement A RP 880802
 Easement A RP 852848
 Easement E RP 852846
 Easement F RP 852847
 Easement in gross no. 601608083
 Easement H RP 852847
 Easement in gross no. 601401832
 Easement K RP 852847
 Easement D RP 852846
 Easement C RP 852846
 Easement G RP 852847
 Easement in gross no. 601539792
 Easement J RP 852847
 Easement in gross no. 601544351
 Easement in gross no. 602129535
 Easement in gross no. 602129536
 Easement A RP 852846
 Easement in gross no. 601201902
 Easement B RP 852846
 Easement in gross no. 602279385
 Easement in gross no. 601837139
 Easement A RP 852853
 Easement B RP 852853
 Easements C and D RP 852853
 Easements C and E RP 852853
 Easement F RP 852854
 Easement G RP 852854
 Lot B RP 852855
 Easement H RP 852853
 Lot J RP 852854

Servient land

Lot 10 SP 120689
 Lot 10 SP 120689
 Lot 10 SP 120689
 Lot 10 SP 120689
 Lot 10 SP 120689
 Lot 10 SP 120689
 Lot 8 RP 151540
 Lot 1 RP 202674
 Lot 1 RP 202674
 Lot 0 BUP 105422 (CMS 15376)
 Lot 3 RP 9399
 Lot 103 RP 48101
 Lots 67 to 69 RP 46061
 Lots 67 to 69 RP 46061
 Lot 60 RP 46062
 Lot 59 RP 46062
 Lot 59 RP 46062
 Lot 58 RP 46062
 Lots 55 to 57 RP 46062
 Lot 54 RP 47036
 Lots 51 and 52 RP 47036
 Lot 1 RP 126496
 Lot 2 RP 11632
 Lot 4 RP 11657
 Lot 5 RP 11657
 Lot 6 RP 11657
 Lot 6 RP 11657
 Lot 7 RP 11657
 Lot 7 RP 11657
 Lot 12 RP 11657
 Lots 21 to 26 RP 11653
 Lots 21, 22, 24 and 26 RP 11653
 Lots 27 and 28 RP 11653

Easement

Easements M and N RP 885880
 Easement in gross no. 601481648
 Easement in gross no. 601922003
 Easement in gross no. 601922004
 Easement in gross no. 601993708
 Easement in gross no. 602418143
 Easement A RP 852855
 Easement in gross no. 601481648
 Easement E RP 852855
 Easements C and D RP 852855
 Easement A RP 880804
 Easement F RP 852855
 Easement in gross no. 602009566
 Easement in gross no. 602009567
 Easement A RP 852856
 Easement in gross no. 601842947
 Easement B RP 852856
 Easement C RP 852856
 Easements A, B, and C RP 880805
 Easement D RP 852856
 Easement E RP 852856
 Easements A and B RP 126496
 Easement in gross no. 602230916
 Easement in gross no. 602063425
 Easement A RP 46641
 Easement in gross no. 602443214
 Easement in gross no. 602443215
 Easement in gross no. 601262452
 Easement in gross no. 702217998
 Easement in gross no. 602820194
 Easement in gross no. 602464557
 Easement in gross no. 602464558
 Easement in gross no. 602784029

Servient land

Lot 28 RP 11653

Lot 29 RP 11668

Lot 29 RP 11668

Easement

Easement in gross no. 602563205

Easement in gross no. 602784029

Easement in gross no.
602784030’.**42 Amendment of sch 3 (Dictionary)**

(1) Schedule 3, definitions “**ancillary works and encroachments**”, “**approval**”, “**competition principles**”, “**future railway land**”, “**means of access**”, “**plant**” and “**transport infrastructure**”—

omit.

(2) Schedule 3—

insert—

‘**“ancillary works and encroachments”**, for chapters 5 and 7A, means—

(a) the following things—

(i) cane railways;

(ii) monorails;

(iii) bridges, overhead conveyors or other overhead structures;

(iv) tunnels;

(v) rest area facilities;

(vi) monuments or statues;

(vii) advertising signs or other advertising devices;

(viii) traffic and service signs;

(ix) bores, wells, pumps, windmills, water pipes, channels, culverts, viaducts, water tanks or dams;

(x) pipes;

(xi) tanks;

(xii) cables;

(xiii) road access works;

(xiv) paths or bikeways;

(xv) grids or other stock facilities;

- (xvi) buildings, shelters, awnings or mail boxes;
 - (xvii) poles, lighting, gates or fences;
 - (xviii) pumps and bowsers; or
 - (b) any of the following activities—
 - (i) drilling;
 - (ii) clearing;
 - (iii) trimming;
 - (iv) slashing;
 - (v) landscaping;
 - (vi) planting;
 - (vii) burning off;
 - (viii) removing trees;
 - (ix) road safety related activities;
 - (x) sporting activities;
 - (xi) camping;
 - (xii) conducting a business (for example, a market);
 - (xiii) moving stock, other than under the *Rural Lands Protection Act 1985*;
 - (xiv) holding meetings; or
 - (c) other encroachments declared under a regulation to be ancillary works and encroachments;
- but does not include public utility plant.

“approval”—

- (a) for chapter 8—see section 181; or
- (b) for chapter 8AA—means an approval by the chief executive.

“class exemption” means an exemption granted to a class of person under section 187AE(2).

“class representative”, for a class exemption, means the representative of a class of person who applied for the exemption.

“convicting” a person includes a court finding the person guilty, or the person pleading guilty, whether or not a conviction is recorded.

“dangerous goods” means goods prescribed under a regulation to be dangerous goods

“dangerous situation” means a situation involving the transportation of dangerous goods by rail that is causing, or is likely to cause, imminent risk of—

- (a) death of, or significant injury to, a person; or
- (b) significant harm to the environment; or
- (c) significant damage to property.

“exemption”, for chapter 8AA, means an exemption under section 187AE.

“future railway land” has the meaning given by section 131B.

“in” a rail vehicle includes on the vehicle.

“rail”, for chapter 8AA, includes cableway.

“rail vehicle”, for chapter 8AA, includes a cableway car.

“road access works”, for chapters 5 and 7A, means—

- (a) a physical means of entry or exit for traffic between land and a road; or

Example—

A driveway.

- (b) road works providing entry or exit for traffic between works mentioned in paragraph (a) and the part of the road formed or prepared for use by general traffic.

Example—

An acceleration or deceleration lane, or a laneway, lane or track, connecting a driveway of a property adjacent to a road to a lane on the road designed to carry through traffic.

“road works”, for chapter 5, means—

- (a) works done for—
 - (i) constructing roads or things associated with roads; or
 - (ii) maintaining roads or things associated with roads (other than public utility plant); or
 - (iii) facilitating the operation of road transport infrastructure; or
- (b) works declared under a regulation to be road works.

“State government body”, for chapter 5, means—

- (a) a department or a division, branch or other part of a department; or
- (b) a State instrumentality, agency, authority or entity or a division, branch or other part of a State instrumentality, agency, authority or entity; or
- (c) a GOC;

but does not include a local government.

“traffic” includes the passing back and forth of persons, vehicles and animals.

“transport” dangerous goods includes—

- (a) pack, load and unload the goods, and transfer them to or from a rail vehicle, for their transport; and
- (b) mark packages, and unit loads, containing dangerous goods; and
- (c) placard containers and rail vehicles in which dangerous goods are transported.

“transport infrastructure” includes—

- (a) air, busway, light rail, miscellaneous, public marine, rail or road transport infrastructure; and
- (b) transport infrastructure relating to ports.

“watercourse” includes a lake, spring, stream or swale.’.

(3) Schedule 3, definition **“land”**, paragraphs (a)(ii) and (b)(ii), ‘stream,’—

omit.

(4) Schedule 3, definition **“port authority”**, paragraph (d)—

omit.

43 Omission of attachment

Attachment for *Transport Infrastructure Act 1994* not forming part of any Act—

omit.

PART 8—AMENDMENT OF TRANSPORT OPERATIONS (MARINE POLLUTION) ACT 1995

44 Act amended in pt 8

This part amends the *Transport Operations (Marine Pollution) Act 1995*.

44A Amendment of s 2 (Commencement)

Section 2(3), ‘1 January’—

omit, insert—

‘1 July’.

45 Amendment of s 26 (Discharge of oil into coastal waters prohibited)

Section 26(1)—

omit, insert—

‘(1) If oil is discharged from a ship into coastal waters, the following persons each commit an offence—

- (a) the ship’s owner;
- (b) the ship’s master;
- (c) another member of the ship’s crew whose act caused or contributed to the discharge, unless the member was complying with an instruction from the master or of someone authorised by the master to give the instruction.

Maximum penalty—3 500 penalty units.’.

46 Amendment of s 28 (Defences to discharge offence)

Section 28(2), after ‘master’—

insert—

‘or, for a discharge offence against section 26(1), another member of the ship’s crew’.

47 Amendment of s 30 (Shipboard oil pollution emergency plan)

Section 30(2)—

omit, insert—

‘(2) In this section—

“**ship**” means a ship—

- (a) more than 24 m in length overall if the ship is carrying—
 - (i) oil as cargo; or
 - (ii) a vehicle that is carrying more than 400 L of oil as cargo; or
- (b) otherwise, more than 35 m in length overall.’.

48 Amendment of s 35 (Discharge of noxious liquid substances into coastal waters prohibited)

Section 35(1)—

omit, insert—

‘(1) If a noxious liquid substance is discharged from a ship into coastal waters, the following persons each commit an offence—

- (a) the ship’s owner;
- (b) the ship’s master;
- (c) another member of the ship’s crew whose act caused or contributed to the discharge, unless the member was complying with an instruction from the master or of someone authorised by the master to give the instruction.

Maximum penalty—3 500 penalty units.’.

49 Amendment of s 36 (Defences to discharge offence)

Section 36(2), ‘or master’—

omit, insert—

‘, master or other member of the ship’s crew’.

50 Amendment of s 42 (Jettisoning of harmful substances into coastal waters prohibited)

Section 42(1)—

omit, insert—

‘(1) If a harmful substance carried as cargo in packaged form is jettisoned from a ship into coastal waters, the following persons each commit an offence—

- (a) the ship’s owner;
- (b) the ship’s master;
- (c) another member of the ship’s crew whose act caused or contributed to the jettisoning, unless the member was complying with an instruction from the master or of someone authorised by the master to give the instruction.

Maximum penalty—3 500 penalty units.’.

51 Amendment of s 47 (Discharge of sewage into coastal waters prohibited)

(1) Section 47(1), (2) and (3), ‘the ship’s owner and master each commit’

omit, insert—

‘each culpable person commits’.

(2) Section 47—

insert—

‘(5) In this section—

“**culpable person**”, for a discharge of sewage from a ship, means—

- (a) the ship’s owner; or
- (b) the ship’s master; or
- (c) another member of the ship’s crew whose act caused or contributed to the discharge, unless the member was complying with an instruction from the master or of someone authorised by the master to give the instruction.’.

52 Amendment of s 50 (Ships to have holding tanks)

Section 50(3), 'An' to 'subsection (2)'—

omit, insert—

'A ship may be exempted from subsection (1) or (2)'.

53 Amendment of s 55 (Disposal of garbage into coastal waters prohibited)

Section 55(1)—

omit, insert—

'(1) If garbage is disposed of from a ship into coastal waters, the following persons each commit an offence—

- (a) the ship's owner;
- (b) the ship's master;
- (c) another member of the ship's crew whose act caused or contributed to the disposal, unless the member was complying with an instruction from the master or of someone authorised by the master to give the instruction.

Maximum penalty—3 500 penalty units.'

54 Amendment of s 58 (Responsibility for pollution from transfer operations and other matters)

Section 58(a), 'and master are'—

omit, insert—

',' master or other crew member is'.

55 Amendment of s 61 (Discharge of pollutant into coastal waters prohibited)

Section 61(1)—

omit, insert—

'(1) If a pollutant is discharged into coastal water during a transfer operation, the following persons each commit an offence—

- (a) the ship's owner;

- (b) the ship's master;
- (c) another member of the ship's crew whose act caused the discharge, unless the member was complying with an instruction from the master or of someone authorised by the master to give the instruction.

Maximum penalty—3 500 penalty units.’.

56 Amendment of s 67 (Duty to report certain incidents)

Section 67(5)—

omit, insert—

‘(5) The report must include the particulars, and be given to an authorised officer within the time, prescribed under a regulation.’.

57 Amendment of s 89 (Power to require production of documents)

Section 89(1)(a), after ‘Act’—

insert—

‘or the *Transport Operations (Marine Safety) Act 1994*’.

58 Amendment of pt 13 heading (Security)

Part 13, heading—

omit, insert—

‘**Discharge expenses**’.

59 Amendment of s 111 (Definitions for part)

Section 111, definition “**discharge expenses**”, paragraph (a)—

insert—

‘(ia) taking action to prevent or minimise the effects of a likely discharge of pollutant if—

- (A) the State or port authority reasonably believes the discharge is likely to happen and takes action to prevent or minimise its effects; and
- (B) the likely discharge does not happen; and’.

60 Omission of s 112 (Application of part)

Section 112—

omit.

61 Amendment of s 113 (Detained ship must be released on giving security)

(1) Section 113(1)—

omit, insert—

‘(1) The chief executive must release a ship detained under this Act if a security is given under this section.’.

(2) Section 113(5), ‘or guarantee’—

omit.

62 Amendment of s 114 (Other ways detained ship may be released)

Section 114, ‘detained ship’—

omit, insert—

‘ship detained under this Act’.

63 Amendment of s 115 (Claims on security)

(1) Section 115, heading—

omit, insert—

‘115 Recovery of discharge expenses’.

(2) Section 115(1), ‘the detained ship’—

omit, insert—

‘a discharge or likely discharge of pollutant from a ship into coastal waters’.

64 Amendment of s 122 (Recovery of discharge expenses)

Section 122, heading—

omit, insert—

‘122 How discharge expenses may be recovered’.

65 Amendment of s 127 (Court may make orders about compensation and other matters)

Section 127(1), ‘on indictment for a’—

omit, insert—

‘for an’.

66 Amendment of sch (Dictionary)

Schedule—

insert—

‘**“act”** includes an omission.’.

PART 9—AMENDMENT OF TRANSPORT OPERATIONS (MARINE SAFETY) ACT 1994

67 Act amended in pt 9

This part amends the *Transport Operations (Marine Safety) Act 1994*.

68 Amendment of s 4 (Definitions)

Section 4—

insert—

‘**“compulsory pilotage area”** means a pilotage area, or part of a pilotage area, declared under a regulation to be a compulsory pilotage area.’.

69 Amendment of s 12 (Relationship with Commonwealth Navigation Act generally)

Section 12(2), example—

omit.

70 Amendment of s 35 (How is safety in Queensland waters achieved)

(1) Section 35—

insert—

‘(2A) The Act also allows a pilotage area, or part of a pilotage area, to be declared as a compulsory pilotage area.’.

(2) Section 35(3), after ‘within a’—

insert—

‘compulsory’.

71 Amendment of s 71 (Declaration and closing of pilotage areas)

(1) Section 71, heading—

omit, insert—

‘71 Pilotage areas and compulsory pilotage areas’.

(2) Section 71(a)—

omit, insert—

‘(a) declare—

(i) an area of Queensland waters to be a pilotage area; or

(ii) a pilotage area, or part of a pilotage area, to be a compulsory pilotage area; or’.

72 Amendment of s 99 (Pilots required for ship navigation in pilotage areas)

(1) Section 99, heading—

omit, insert—

‘99 Pilots required for ship navigation in compulsory pilotage area’.

(2) Section 99(1), after ‘ship in a’—

insert—

‘compulsory’.

73 Amendment of s 101 (Immunity for pilots and general employers)

Section 101(5), definition “**general employer**”, after ‘services in a’—

insert—

‘compulsory’.

74 Insertion of new s 172A

Part 13, division 3—

insert—

‘172A Other directions

‘(1) This section applies if a shipping inspector finds—

(a) a person operating a ship that—

(i) is not registered; or

(ii) is registered, but is operating in waters beyond the waters in which the ship is authorised to operate under its registration;
or

(b) a person operating a ship as its master, or acting as a crew member of the ship, and the person is not appropriately licensed.

‘(2) If subsection (1)(a)(i) or (b) applies, the inspector may, by written notice, require the master of the ship—

(a) to take the ship to a reasonable anchorage, berth or mooring stated in the notice (“**stated destination**”) within the reasonable time stated in the notice; and

(b) to not operate the ship for any purpose other than taking it to the stated destination.

‘(3) If subsection (1)(a)(ii) applies, the inspector may, by written notice, require the master of the ship—

- (a) to take the ship to waters in which it is authorised to operate under its registration (“**operating waters**”) within the reasonable time stated in the notice; and
- (b) to not operate the ship for any purpose other than taking it to the operating waters.

‘(4) The master must comply with a requirement under subsection (2) or (3), unless the master has a reasonable excuse.

Maximum penalty—200 penalty units.

‘(5) If a master takes a ship to a stated destination as required under subsection (2)—

- (a) the master does not contravene section 57; or
- (b) the master or crew member does not contravene section 61(1) or (2);

while operating the ship to take it to the destination.

‘(6) If a master takes a ship to its operating waters as required under subsection (3), the master does not contravene section 57 while operating the ship to take it to the waters.

‘(7) If a master complies with a requirement under subsection (2) or (3), the requirement ceases to have effect when the ship reaches the stated destination or operating waters.

‘(8) A notice under subsection (2) or (3) must include a brief statement of the grounds for giving the notice.’.

75 Insertion of new pt 13, div 4A

Part 13—

insert—

Division 4A—Removing abandoned property

‘175A Removing abandoned property

‘(1) This section applies if a shipping inspector reasonably believes that property the inspector finds in Queensland waters is abandoned property.

‘(2) The inspector may seize the property and remove it to a place the inspector decides is appropriate.

‘(3) Before seizing and removing the property, the inspector must—

- (a) if practicable, attach to the property an intention to seize and remove notice in the approved form (“**seizure notice**”); and
- (b) publish the seizure notice in a newspaper circulating in the locality where the property is.

‘(4) A seizure notice must include the following particulars—

- (a) the date the notice is given;
- (b) a description of the property;
- (c) where and when the property was found;
- (d) a time, not less than 28 days after the date of the notice, after which, if no one claims the property, the inspector may seize and remove it to the place stated in the notice;
- (e) a statement to the effect of subsection (5).

‘(5) If no one claims the property within the stated time and the inspector seizes and removes it, the inspector may, having regard to the value and condition of the property—

- (a) sell the property by public auction; or
- (b) destroy it.

‘(6) The proceeds from a sale of the property must be applied as follows—

- (a) firstly, in payment of the expenses of the sale;
- (b) secondly, in payment of the costs of seizing, removing and storing the property and the seizure notice;
- (c) thirdly, in payment of the balance to the owner of the property, or if the owner can not be found, to the consolidated fund.

‘(7) In this section—

“**property**” does not include land, or an interest in land.’.

76 Amendment of s 199 (Limitation on time for starting summary proceedings)

(1) Section 199, ‘1 year’—

omit, insert—

‘2 years’.

(2) Section 199(b), ‘2 years’—

omit, insert—

‘3 years’.

77 Amendment of s 201 (Evidentiary provisions)

Section 201—

insert—

‘(5) A certificate purporting to be signed by the chief executive or a shipping inspector certifying that a laser speed detection device (“**device**”) has been—

(a) tested at a specified time—

- (i) in accordance with the appropriate Australian Standard that was in force at the time; or
- (ii) if there was no appropriate standard—in accordance with the manufacturer’s specifications; and

(b) found to produce accurate results at the specified time;

is evidence of the matters stated and evidence that the device was producing accurate results at the time of testing and for 1 year after the time.

‘(6) A certificate purporting to be signed by a shipping inspector stating that a specified device was used by the inspector—

(a) at a specified time; and

(b) in accordance with—

- (i) the appropriate Australian Standard that was in force at the time; or
- (ii) if there was no appropriate standard—the manufacturer’s specifications;

is evidence of the matters stated.

‘(7) If a defendant intends to challenge—

(a) the accuracy of a device; or

(b) the time at which, or the way in which, the device was used;

at the hearing of a charge against the defendant under an Act mentioned in subsection (1), the defendant must give written notice of the challenge to the prosecution (“**challenge notice**”).

‘(8) The challenge notice must be—

- (a) signed by the defendant; and
- (b) given at least 14 days before the day fixed for the hearing.’.

78 Insertion of new s 206B

Part 17—

insert—

‘206B Approval of forms

‘The chief executive may approve forms for use under this Act.’.

79 Amendment of s 215 (Pilotage fees and conservancy dues)

Section 215(1)(a), after ‘pilot in a’—

insert—

‘compulsory’.

80 Amendment of s 224 (Existing approvals, consents, licences, permits etc.)

Section 224(6)(b)—

omit.

PART 10—AMENDMENT OF TRANSPORT OPERATIONS (PASSENGER TRANSPORT) ACT 1994

81 Act amended in pt 10

This part amends the *Transport Operations (Passenger Transport) Act 1994*.

82 Insertion of new ss 126A–126G and pts 3A and 3B

Chapter 11, part 3, after section 126—

insert—

‘126A Securing seized things

‘Having seized a thing, an authorised person may—

- (a) move the thing from the place where it was seized (the “**place of seizure**”); or
- (b) leave the thing at the place of seizure but take reasonable action to restrict access to it.

Examples of restricting access to a thing—

1. Sealing a thing and marking it to show access to it is restricted.
2. Sealing the entrance to a room where the seized thing is situated and marking the entrance to show access to the room is restricted.

‘126B Tampering with seized things

‘If an authorised person restricts access to a seized thing, a person must not tamper with the thing, or something restricting access to the thing, unless the person has a reasonable excuse.

Maximum penalty—60 penalty units.

‘126C Powers supporting seizure

‘(1) To enable a thing to be seized, an authorised person may require the person in control of it—

- (a) to take it to a stated reasonable place by a stated reasonable time; and
- (b) if necessary, to remain in control of it at the stated place for a reasonable time.

‘(2) The requirement must be made by notice in the approved form.

‘(3) However, if for any reason it is not practicable to give the notice, the requirement may be made orally and confirmed by notice in the approved form as soon as practicable.

‘(4) A further requirement may be made under this section about seizing the thing if it is necessary and reasonable to make the further requirement.

Examples of a further requirement—

A requirement that the thing—

- be transported during stated off-peak hours
- be transported along a particular route
- be transported in a particular way
- have appropriate placards or markings attached to it while it is being transported.

‘(5) A person of whom a requirement is made under subsection (1) or (3) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty for subsection (5)—60 penalty units.

‘126D Forfeiture of seized things

‘(1) A seized thing is forfeited to the State if the authorised person who seized the thing—

- (a) can not find its owner, after making reasonable inquiries; or
- (b) can not return it to its owner, after making reasonable efforts; or
- (c) reasonably believes it is necessary to keep the thing to prevent it being used to commit an offence against the *Transport Infrastructure Act 1994*, chapter 8AA.⁶

‘(2) In applying subsection (1)—

- (a) subsection (1)(a) does not require the authorised person to make inquiries if it would be unreasonable to make inquiries to find the owner; and
- (b) subsection (1)(b) does not require the authorised person to make efforts if it would be unreasonable to make efforts to return the thing to its owner.

‘(3) If the authorised person decides it is necessary to keep something under subsection (1)(c), the authorised person must immediately give the owner a statement of the reasons for the decision and an information notice.

⁶ *Transport Infrastructure Act 1994*, chapter 8AA (Transporting dangerous goods by rail)

‘(4) Subsection (3) does not apply if the authorised person can not find the owner, after making reasonable inquiries.

‘(5) Regard must be had to the thing’s nature, condition and value in deciding—

- (a) whether it would be unreasonable to make inquiries or efforts under this section; and
- (b) if making inquiries or efforts, what inquiries or efforts, including the period over which they are made, are reasonable.

‘126E Dealing with forfeited things etc.

‘(1) On the forfeiture of a thing to the State, the thing becomes the State’s property and may be dealt with by the chief executive as the chief executive considers appropriate.

‘(2) Without limiting subsection (1), the chief executive may destroy or dispose of the thing.

‘(3) The chief executive must not deal with the thing until any review of, or appeal against, the decision to forfeit the thing is decided.

‘126F Return of seized things

‘(1) If a seized thing has not been forfeited, the authorised person must return it to its owner—

- (a) at the end of 6 months after the thing is seized; or
- (b) if a proceeding for an offence involving the thing is started within 6 months after the thing is seized, at the end of the proceeding and any appeal from the proceeding.

‘(2) Despite subsection (1), unless the thing has been forfeited, the authorised person must immediately return a thing seized as evidence to its owner if the authorised person stops being satisfied its continued retention as evidence is necessary.

‘126G Access to seized things

‘(1) Until a seized thing is forfeited or returned, an authorised person must allow its owner to inspect it and, if it is a document, to copy it.

‘(2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

‘PART 3A—POWERS OF AUTHORISED PERSONS FOR RAIL VEHICLES

‘126H Power to hold or stop and hold rail vehicle

‘(1) This section applies if an authorised person reasonably believes that—

- (a) dangerous goods are on a rail vehicle and a provision of the *Transport Infrastructure Act 1994*, chapter 8AA is being contravened in relation to their transportation; and
- (b) the interests of safety require the authorised person to stop or hold the vehicle.

‘(2) The authorised person may require the railway operator for the vehicle to hold, or stop and hold, the vehicle at a stated safe place.

‘(3) Before making the requirement, the authorised person must tell the railway operator the grounds for the belief.

‘(4) For subsection (2), a place is a “safe place” if—

- (a) the train controller tells the authorised person that it is safe, so far as other rail traffic is concerned, to stop or hold the vehicle at the place; and
- (b) the presence of the vehicle at the place is unlikely to endanger human life or property.

‘(5) The railway operator must comply with a requirement under subsection (2), unless the railway operator has a reasonable excuse.

Maximum penalty—120 penalty units.

‘(6) The train controller must give any advice asked for by the authorised person about whether it is safe, so far as other rail traffic is concerned, to stop or hold the vehicle at a place.

Maximum penalty—40 penalty unit.

‘(7) This section does not limit any other power under this part or part 3B.⁷

‘(8) In this section—

“**train controller**”, in relation to a rail vehicle, means an individual who is in control of train control signalling and communication for the section of track on which the rail vehicle is travelling or standing.

‘126I Power to require rail vehicle inspection

‘(1) If an authorised person reasonably believes a rail vehicle that has been, or is being used, to transport dangerous goods may not comply with the *Transport Infrastructure Act 1994*, chapter 8AA, the authorised person may require its owner to have it inspected at a stated reasonable time and place.

‘(2) The requirement must be made by notice in the approved form.

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

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

‘126J Power to prohibit use of rail vehicle

‘(1) This section applies if an authorised person reasonably believes a rail vehicle that has been used, or is being used, to transport dangerous goods does not comply with the *Transport Infrastructure Act 1994*, chapter 8AA.

‘(2) The authorised person may, by notice in the approved form, require the owner of the vehicle not to use the vehicle, or permit it to be used, until—

- (a) it, its equipment and any load on it are inspected at a stated reasonable place and are found to comply with the chapter; or
- (b) stated reasonable action is taken in relation to the rail vehicle to ensure it complies with the chapter.

Examples of action that may be reasonable under paragraph (b)—

1. Adjusting or moving a vehicle’s load.

⁷ Part 3B (Powers of authorised persons for dangerous situations involving rail vehicles)

2. Rearranging the order of rail vehicles.
3. Carrying out stated repairs to a vehicle and then having the vehicle inspected at a stated reasonable place and found to comply with the chapter.

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

Maximum penalty for subsection (3)—120 penalty units.

‘126K Power to give remedial action notices

‘(1) This section applies if an authorised person reasonably believes a person—

- (a) has contravened a provision of the *Transport Infrastructure Act 1994*, chapter 8AA in circumstances that indicate that it is likely the contravention will be repeated; or
- (b) is contravening a provision of the chapter.

‘(2) The authorised person may give the person a written notice (a “**remedial action notice**”) requiring the person to remedy the cause of the contravention.

‘(3) The notice must state the following—

- (a) the provision the authorised person believes the person has contravened or is contravening;
- (b) the reasons for the belief;
- (c) that the person must remedy the cause of the contravention within a stated reasonable time;
- (d) if the notice is attached to a rail vehicle—a warning that it is an offence for a person to remove the notice from the vehicle until the notice is complied with, but that the person to whom the notice is given may remove the notice to immediately read it and reattach it to the vehicle.

‘(4) The notice may also state the steps the authorised person reasonably believes are necessary to remedy the cause of the contravention.

‘(5) If the notice relates to a rail vehicle, the notice may be given by securely attaching it to the vehicle in a conspicuous place.

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

Maximum penalty—the maximum penalty for the contravention of the provision mentioned in the notice as the provision the authorised person believes the person has contravened or is contravening.

‘(7) The person does not commit an offence against subsection (6) if the person is not proved to have contravened the provision mentioned in the notice as the provision the authorised person believes the person has contravened or is contravening.

‘(8) A person must not remove a remedial action notice from a rail vehicle before the notice is complied with.

Maximum penalty—135 penalty units.

‘(9) However, the person to whom the notice is given does not contravene subsection (8) if the person removes the notice from the vehicle and immediately reads it and reattaches it to the vehicle.

‘PART 3B—POWERS OF AUTHORISED PERSONS FOR DANGEROUS SITUATIONS INVOLVING RAIL VEHICLES

‘126L Application of part

‘(1) This part applies only if an authorised person reasonably believes a dangerous situation exists.

‘(2) A “**dangerous situation**” is a situation involving the transportation of dangerous goods by rail that is causing, or is likely to cause, imminent risk of—

- (a) death of, or significant injury to, a person; or
- (b) significant harm to the environment; or
- (c) significant damage to property.

‘126M Additional power to require information or produce document

‘(1) This section applies if an authorised person reasonably believes a person may be able to give information or produce a document that will help deal with a dangerous situation.

‘(2) The authorised person may require the person to give the information or produce the document.

‘(3) The person must give the information or produce the document, unless the person has a reasonable excuse.

Maximum penalty—

- (a) if the contravention results in the death of, or grievous bodily harm to, a person—270 penalty units; or
- (b) otherwise—135 penalty units.

‘(4) The fact that giving the information or providing the document might tend to incriminate the person is not a reasonable excuse for subsection (3).

‘(5) However, evidence of, or directly or indirectly derived from, the information or the production of the document that might tend to incriminate the person is not admissible in evidence against the person in a proceeding, other than a proceeding for—

- (a) an offence against section 130 or 131;⁸ or
- (b) another offence about the falsity of the information or document.

‘126N Power to give directions to deal with dangerous situation

‘(1) This section applies if an authorised person reasonably believes a person involved in the transportation of dangerous goods is in a position to take steps to deal with a dangerous situation involving the goods.

‘(2) The authorised person may give the person a written notice (a “**dangerous situation notice**”) requiring the person to take reasonable steps to deal with the dangerous situation.

‘(3) The notice must state the following—

- (a) what it is that the authorised person believes is causing the dangerous situation;
- (b) the grounds for the belief;
- (c) the reasonable steps the person must take to deal with the dangerous situation;

⁸ Section 130 (False or misleading information) or 131 (False, misleading or incomplete documents)

- (d) that the person must take the steps within a stated reasonable time;
- (e) if the notice is attached to a rail vehicle—a warning that it is an offence for a person to remove the notice from the vehicle until the notice is complied with, but that the person to whom the notice is given may remove the notice to immediately read it and reattach it to the vehicle.

‘(4) If the notice relates to a rail vehicle, the notice may be given by securely attaching it to the vehicle in a conspicuous place.

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

Maximum penalty—

- (a) if the contravention results in the death of, or grievous bodily harm to, a person—270 penalty units; or
- (b) otherwise—135 penalty units.

‘(6) A person must not remove a dangerous situation notice from a rail vehicle before the notice is complied with.

Maximum penalty—135 penalty units.

‘(7) However, the person to whom the notice is given does not contravene subsection (6) if the person removes the notice from the vehicle and immediately reads it and reattaches it to the vehicle.

‘1260 Power to take direct action to deal with dangerous situation

‘(1) This section applies if an authorised person reasonably believes—

- (a) a person given a remedial action notice or dangerous situation notice has not complied with the notice; or
- (b) having regard to the nature of the dangerous situation, action under a remedial action notice or dangerous situation notice is inappropriate to deal with the dangerous situation.

‘(2) The authorised person may take the action the authorised person reasonably believes is necessary to deal with the dangerous situation.

‘(3) The action the authorised person may take includes asking someone the authorised person reasonably believes has appropriate knowledge and experience to help the authorised person deal with the dangerous situation.

‘(4) If the person agrees to help, the person is taken to have the powers of an authorised person to the extent reasonably necessary for the person to help deal with the dangerous situation.

‘(5) A rail vehicle can not be stopped or held under this section.’.

83 Amendment of s 127 (Power to require name and address)

Section 127(1)(a), after ‘Act’—

insert—

‘or the *Transport Infrastructure Act 1994*, chapter 8AA⁹’.

84 Amendment of s 129 (Power to require production of certain documents)

Section 129(2) to (4)—

omit, insert—

‘(2) An authorised person may require a person to produce for inspection a document issued, or required to be kept, under the *Transport Infrastructure Act 1994*, chapter 8AA¹⁰ or a law of another State or the Commonwealth about transporting dangerous goods by rail.

‘(3) The person must comply with the requirement under subsection (1) or (2), unless the person has a reasonable excuse.

Maximum penalty—60 penalty units.

‘(4) The authorised person may keep the document to copy it.

‘(5) If the authorised person copies it, the authorised person may ask the person responsible for keeping the document to certify the copy as a true copy of the document.

‘(6) The authorised person must return the document to the person as soon as practicable after copying it.’.

9 *Transport Infrastructure Act 1994*, chapter 8AA (Transporting dangerous goods by rail)

10 *Transport Infrastructure Act 1994*, chapter 8AA (Transporting dangerous goods by rail)

85 Amendment of s 137 (Power to require name and address etc.)

(1) Section 137(1)(a)—

omit, insert—

‘(a) finds the person committing an offence (a **“relevant offence”**) against railway legislation; or’.

(2) Section 137(2), from ‘this Act’ to ‘chapter 6’—

omit, insert—

‘railway legislation’.

(3) Section 137—

insert—

‘(7) In this section—

“railway legislation” means—

(a) a provision of this Act relating to a railway; or

(b) the *Transport Infrastructure Act 1994*, chapter 6; or

(c) a regulation in relation to a railway made under the *Transport Infrastructure Act 1994* other than under chapter 8AA of that Act.’.

86 Amendment of s 143AE (Vehicle and equipment not to be interfered with)

Section 143AE(2), definition **“interfere with”**, after ‘improperly interfere’—

insert—

‘with’.

87 Insertion of new s 153A

After section 153—

insert—

‘153A Evidentiary aids—belief of authorised person

‘(1) If, in a prosecution for a contravention of chapter 11¹¹ or the *Transport Infrastructure Act 1994*, chapter 8AA¹²—

- (a) an authorised person gives evidence that the authorised person believed any of the following matters—
- (i) that dangerous goods, stated in shipping documents carried in a rail vehicle, were being carried in the vehicle;
 - (ii) that particular goods were dangerous goods or dangerous goods of a particular type;
 - (iii) that goods were the particular dangerous goods as indicated by markings on the goods;
 - (iv) that a container contained the particular dangerous goods as indicated by markings on the container;
 - (v) that a rail vehicle was being used to transport the particular dangerous goods as indicated by markings on the vehicle;
 - (vi) that goods, a container or its contents had the particular attribute that was indicated by the markings on the goods, container or contents;
 - (vii) that a rail vehicle was loaded with, or a container contained, the quantity of dangerous goods as indicated by markings on the vehicle or container; and
- (b) the court considers the belief to be reasonable given the authorised person’s experience or qualifications; and
- (c) there is no evidence to the contrary;

the court must accept the matter as proved.

‘(2) In this section—

“**attribute**” means—

- (a) capacity; or
- (b) character; or
- (c) date of manufacture; or
- (d) origin; or
- (e) ownership; or

11 Chapter 11 (Enforcement)

12 *Transport Infrastructure Act 1994*, chapter 8AA (Transporting dangerous goods by rail)

(f) specification; or

(g) tare.

“**markings**” include labels and placards.

“**on**” includes attached to.’.

88 Amendment of sch 2 (Reviewable decisions)

(1) Schedule 2—

insert—

‘**126D** Forfeiture of seized things Magistrates’.

(2) Schedule 2, ‘a District Court’—

omit, insert—

‘the District Court’.

89 Amendment of sch 3 (Dictionary)

(1) Schedule 3, definition “**railway**”—

omit.

(2) Schedule 3—

insert—

‘“**dangerous goods**” means goods prescribed under the *Transport Infrastructure Act 1994*, chapter 8AA,¹³ to be dangerous goods.

“**dangerous situation**” see section 126L.

“**dangerous situation notice**” see section 126N.

“**in**” a rail vehicle includes on the vehicle.

“**information notice**”, for a decision of the chief executive, means a notice stating that a person affected by the decision may—

- (a) under section 102¹⁴—ask for the decision to be reviewed and appeal against the reviewed decision; and

13 *Transport Infrastructure Act 1994*, chapter 8AA (Transporting dangerous goods by rail)

14 Section 102 (Review of and appeals against decisions)

- (b) under the *Transport Planning and Coordination Act 1994*, part 5¹⁵—ask for the decision or the reviewed decision to be stayed.

“rail”, for chapter 11 in relation to the transportation of dangerous goods by rail, includes cableway.

“rail vehicle”, for chapter 11 in relation to the transportation of dangerous goods by rail, includes a cableway car.

“railway”, for chapter 11—

- (a) includes a carpark or bus station under a railway manager’s control; and
- (b) in relation to the transportation of dangerous goods by rail, includes a cableway.

“remedial action notice” see section 126K.

“tare” means the weight of a vehicle equipped for travelling on a railway, but not including any load.

“transport” dangerous goods includes—

- (a) pack, load and unload the goods, and transfer them to or from a rail vehicle, for their transport; and
- (b) mark packages, and unit loads, containing dangerous goods; and
- (c) placard containers and rail vehicles in which dangerous goods are transported.’.

(3) Schedule 3, definition **“holder”**, paragraph (b), ‘section 48(a)’—
omit, insert—

‘section 48(1)(a) or (b)’.

(4) Schedule 3, definition **“operator”**, after ‘taxi service’—
insert—

‘and the lessor of a limousine service licence or taxi service licence’.

15 *Transport Planning and Coordination Act 1994*, part 5 (Review of and appeals against decisions)

PART 11—AMENDMENT OF TRANSPORT OPERATIONS (ROAD USE MANAGEMENT) ACT 1995

90 Act amended in pt 11

This part amends the *Transport Operations (Road Use Management) Act 1995*.

91 Amendment of s 17B (Granting, renewing or refusing approval)

(1) Section 17B(2), after ‘under a regulation’—

insert—

‘, other than a permit under section 111,¹⁶’.

(2) Section 17B(3)—

renumber as section 17B(5).

(3) Section 17B—

insert—

‘(3) If a regulation made under subsection (1) authorises the chief executive to grant or renew an approval, the chief executive may ask the commissioner for a written report about the criminal history of the applicant for, or holder of, the approval.

‘(4) If requested, the commissioner must give the chief executive a written report about the criminal history of the applicant or holder—

(a) that is in the commissioner’s possession; or

(b) to which the commissioner ordinarily has access through arrangements with the police service of the Commonwealth or another State.’.

(4) Section 17B(5), as renumbered—

insert—

‘**“criminal history”** of a person—

(a) means the person’s criminal history as defined under the *Criminal Law (Rehabilitation of Offenders) Act 1986*, other than

16 Section 111 (Parking permits for people with disabilities)

a conviction for which the rehabilitation period has expired but the conviction has not been revived as prescribed by section 11 of that Act; and

- (b) despite the *Criminal Law (Rehabilitation of Offenders) Act 1986*, includes a charge made against the person for an offence, whether made in Queensland or elsewhere, other than a charge the proceedings for which have ended without the person being convicted.’

92 Amendment of s 18 (Grounds for amending, suspending or cancelling approvals)

Section 18—

insert—

- ‘(f) for a permit under section 111(1)(a)¹⁷—the holder’s ability to walk is no longer impaired.’

93 Amendment of s 32 (Power to stop heavy vehicles)

(1) Section 32(3)—

renumber as section 32(4).

(2) Section 32—

insert—

‘(3) Without limiting subsection (2), the requirement may require the person to move the vehicle in preparation for stopping it.

Examples—

1. A requirement to change lanes.
2. A requirement to exit a motorway at a particular exit.
3. A requirement to enter a heavy vehicle inspection site.’

94 Amendment of s 60 (Evidentiary aids)

(1) Section 60(1)—

omit, insert—

17 Section 111 (Parking permits for people with disabilities)

‘(1) In this section—

“**certificate**” means a certificate purporting to be signed by—

- (a) for a certificate containing information under a corresponding law to a transport Act—the chief executive administering the corresponding law; or
- (b) otherwise—the chief executive or commissioner.’.

(2) Section 60(2)(d)—

omit, insert—

‘(d) that specified information was or was not in—

- (i) the register of vehicles; or
- (ii) a register of vehicles established under a corresponding law to a transport Act;’.

(3) Section 60(2)—

insert—

‘(p) a specified document is the manufacturer’s specification for a specified type of vehicle.’.

95 Insertion of new s 72A

After section 72—

insert—

‘72A Way to install official traffic sign

‘An official traffic sign must be installed in a way specified by the MUTCD.’.

96 Replacement of s 78 (Driving of motor vehicle without a driver licence prohibited)

Section 78—

omit, insert—

‘78 Driving of motor vehicle without a driver licence prohibited

‘(1) A person must not drive a motor vehicle on a road unless the person holds a driver licence authorising the person to drive the vehicle on the road.

Maximum penalty—

- (a) if the person committed the offence while the person was disqualified, under a court order, from holding or obtaining a driver licence—60 penalty units or 18 months imprisonment; or
- (b) otherwise—40 penalty units or 1 year's imprisonment.

‘(2) If the person committed the offence while the person was disqualified from holding or obtaining a driver licence, the court, in deciding what penalty to impose on the person, must consider—

- (a) all the circumstances of the case, including circumstances of aggravation or mitigation; and
- (b) the public interest; and
- (c) the person's criminal history and traffic history; and
- (d) any information before it relating to the person's medical history, or the person's mental or physical capacity, that the court considers relevant; and
- (e) whether the offence was committed in association with the commission or attempted commission of another offence and, if so, the nature of the other offence; and
- (f) any other matters that the court considers relevant.

‘(3) A person convicted of an offence under subsection (1) is, in addition to the penalty imposed, disqualified from holding or obtaining a Queensland driver licence—

- (a) if the person committed the offence while the person was disqualified, under a court order, from holding or obtaining a driver licence—absolutely; or
- (b) otherwise—for 6 months.

‘(4) Subsection (3) applies whether or not a conviction is recorded for the offence.

‘(5) A person must not allow another person to drive a motor vehicle on a road if the person knows the other person does not hold a driver licence authorising the other person to drive the vehicle on the road.

Maximum penalty—20 penalty units or 6 months imprisonment.’.

97 Amendment of s 79 (Driving etc. whilst under influence of liquor or drugs or with prescribed concentration of alcohol in blood)

Section 79(1A), (1B), (1E) and (2I), ‘penalty not exceeding 34 penalty units or to imprisonment for a term not exceeding 18 months’—

omit, insert—

‘maximum penalty of 60 penalty units or 18 months imprisonment’.

98 Amendment of s 80 (Provisions with respect to breath tests and laboratory tests)

(1) Section 80—

insert—

‘(15A) A copy of a certificate under subsection (15)—

- (a) is evidence that the instrument operated by the doctor or officer was a breath analysing instrument; and
- (b) is evidence that the instrument was in proper working order and properly operated by the doctor or officer; and
- (c) is evidence that all regulations relating to breath analysing instruments were complied with; and
- (d) is presumed to have been given to the person whose breath was analysed, unless the contrary is proved.’.

(2) Section 80(15D) and (15E)—

omit.

(3) Section 80(22)(e), (22AA), (22A), (22C) and (22D), ‘Queensland’—

omit.

(4) Section 80—

insert—

‘(28) In this section—

“suspend”, in relation to a driver licence issued outside Queensland, includes suspend the authority to drive on a Queensland road under the licence.’.

99 Amendment of s 87 (Issue of restricted licence to disqualified person)

(1) Section 87(5)(da), ‘79(2A)’—

omit, insert—

‘79(1), (2A)’.

(2) Section 87(5)(g)—

omit.

100 Amendment of s 100 (Removal of things from roads)

(1) Section 100(1), after ‘on a road’—

insert—

‘, other than a busway,’.

(2) Section 100(12)(a), after ‘on a road’—

insert—

‘, other than a busway’.

101 Amendment of s 102 (Parking regulation involves installing official traffic signs)

Section 102(3)(a)—

omit, insert—

‘(a) the boundaries of the traffic area have been defined under a local law; and’.

102 Amendment of s 113 (Definitions for div 2)

(1) Section 113, definition “owner”—

omit.

(2) Section 113—

insert—

‘ “**person in charge**” of a vehicle, in relation to an alleged offence, means—

-
- (a) if there was a responsible operator for the vehicle at the time the offence allegedly happened—
 - (i) the responsible operator; or
 - (ii) if the responsible operator gives a notice under section 114(3)(b)—the person named, in any notice under the section, as the person in charge of the vehicle at the time; or
 - (b) if there was no responsible operator for the vehicle, and the vehicle was registered under a transport Act or a corresponding transport law, at the time the offence allegedly happened—
 - (i) the registered operator of the vehicle at the time; or
 - (ii) if the registered operator gives a notice under section 114(3)(b)—the person named, in any notice under the section, as the person in charge of the vehicle at the time; or
 - (c) if there was no responsible operator for the vehicle, and the vehicle was not registered under a transport Act or a corresponding transport law, at the time the offence allegedly happened—
 - (i) the person who, immediately before the registration expired, was the registered operator; or
 - (ii) if the person who was the registered operator gives a notice under section 114(3)(b)—the person named, in any notice under the section, as the person in charge of the vehicle at the time.’.

(3) Section 113, definition “**photographic detection device**”, after ‘a device’—

insert—

‘that captures an image, including, for example, a digital device.’.

(4) Section 113, definition “**responsible operator**”, ‘this Act’—

omit, insert—

‘section 170¹⁸’.

103 Amendment of s 114 (Offences detected by photographic detection device)

(1) Section 114(1) and (2), ‘owner’—

omit, insert—

‘person in charge’.

(2) Section 114(3), from ‘for a person’ to ‘under subsection (1)’—

omit, insert—

‘to a camera detected offence for a person’.

(3) Section 114(3)(b)(i)—

omit, insert—

‘(i) has notified the commissioner or chief executive of the name and address of the person in charge of the vehicle at the time the offence happened; or’.

(4) Section 114(3)(b)(ii), ‘who drove’—

omit, insert—

‘in charge of’.

(5) Section 114(5)—

omit, insert—

‘(5) The defence under subsection (3) is not available unless notice under subsection (3)(b)(i) is given to the commissioner or chief executive by the person within 28 days of the first given of—

(a) written notice from the commissioner or chief executive to the person alleging a camera-detected offence; or

(b) an infringement notice under the *State Penalties Enforcement Act 1999*.’.

(6) Section 114(6)(a)(ii), ‘driver’—

omit, insert—

‘person in charge’.

(7) Section 114(6)(b), ‘who drove’—

omit, insert—

‘in charge of’.

(8) Section 114(8), ‘driver’—
omit, insert—
‘person in charge’.

104 Amendment of s 116 (Notice accompanying summons)

Section 116(1)(a), ‘who drove’—
omit, insert—
‘in charge of’.

105 Amendment of s 120 (Evidentiary provisions)

Section 120(5)—
omit.

106 Amendment of s 121 (Application of the State Penalties Enforcement Act 1999)

(1) Section 121(3)(a) and (b)—
omit, insert—

‘(a) a reference to “**person in charge**” or “**user**” is, if the context permits, taken to be a reference to the person in charge of the vehicle; and’.

(2) Section 121(3)(c) and (d)—
renumber as section 121(3)(b) and (c).

107 Amendment of s 124 (Facilitation of proof)

Section 124(4)(a) and (b), after ‘radar’—
insert—
‘or laser’.

108 Omission of s 129 (Effect of cancellation pursuant to regulations)

Section 129—

omit.

109 Amendment of s 130 (Delivery of cancelled or suspended licences, or licences for endorsement)

(1) Section 130, heading, ‘**suspended**’—

omit, insert—

‘**surrendered**’.

(2) Section 130(1), ‘or suspended’—

omit.

(3) Section 130(1)(a) and (3), ‘, suspension,’—

omit.

(4) Section 130(4)—

omit.

109A Amendment of s 132 (Appeals against licence cancellation under regulations)

(1) Section 132, heading ‘**cancellation**’—

omit, insert—

‘**suspension**’.

(2) Section 132, ‘cancellation’—

omit, insert—

‘suspension’.

(3) Section 132—

insert—

‘(2) Despite subsection (1), the regulation may provide that the court may dismiss an appeal if, considering the appellant’s traffic history, the court considers it would be inappropriate to allow the appeal.’.

110 Amendment of s 147 (Regulating vehicles etc. in public places)

(1) Section 147(1)(c) to (e) and (2)—

omit.

(2) Section 147(3)—

renumber as section 147(2).

111 Amendment of s 151 (Application of part)

(1) Section 151(2)(b), ‘1952’—

omit, insert—

‘1999’.

(2) Section 151(2)—

insert—

‘(e) dangerous goods in a container that is—

(i) designed to form part of, and forms part of, the fuel system of—

(A) a vehicle’s engine; or

(B) another part of a vehicle’s propulsion equipment; or

(C) an engine that is part of a vehicle’s refrigeration system; or

(D) another auxiliary engine of a vehicle; or

(ii) designed as a fuel storage container for a fuel burning appliance, or an engine, that is—

(A) built into a vehicle; or

(B) designed to be attached to a vehicle; or

(C) part of a refrigeration system attached to a freight container; or

(D) prescribed under a regulation; or

(f) a battery installed in a vehicle or its load for the purpose of operating a function of the vehicle or of equipment relating to the load; or

- (g) a fire extinguisher fitted to or carried in a vehicle to be used for the protection of the vehicle or its load; or
- (h) equipment, for example an airbag or seatbelt pretensioning device, installed in a vehicle to provide a safety or protective system for an occupant of the vehicle; or
- (i) compressed air, compressed oxygen or oxygen releasing chemicals that are part of self contained breathing or rebreathing apparatus for use by the vehicle's driver.'

112 Amendment of s 153 (Exemptions)

Section 153(2), from 'exempt' to 'if'—

omit, insert—

' , on an application under subsection (1) or on the chief executive's own initiative, exempt a person from complying with a provision of a regulation about transporting dangerous goods by road if'.

113 Amendment of s 166 (Official traffic sign approvals)

(1) Section 166(1)—

omit.

(2) Section 166(2) to (4)—

renumber as section 166(1) to (3).

114 Omission of sch 1 (Disqualifying offences—approvals)

Schedule 1—

omit.

115 Amendment of sch 4 (Dictionary)

(1) Schedule 4, definitions "dangerous situation", "MUTCD" and "official traffic sign"—

omit.

(2) Schedule 4—

insert—

‘**“criminal history”**—

- (a) for section 17B—see section 17B(5); and
- (b) for section 138—see section 138(8).

“dangerous situation” means a situation involving the transportation of dangerous goods by road that is causing or is likely to cause imminent risk of—

- (a) death of, or significant injury to, a person; or
- (b) significant harm to the environment; or
- (c) significant damage to property.

“MUTCD” means the Manual of Uniform Traffic Control Devices issued by the chief executive.

“official traffic sign” means a sign, marking, light or device placed or erected to regulate, warn or guide traffic.’.

(3) Schedule 4, definition **“declared road”**, after ‘means a’—

insert—

‘busway or’.

(4) Schedule 4, definition **“disqualifying offence”**, paragraph (a)—

omit, insert—

‘(a) an offence against the Criminal Code; or’.

(5) Schedule 4, definition **“road”**, paragraphs (a) and (b)—

renumber as paragraphs (b) and (c).

(6) Schedule 4, definition **“road”**—

insert—

‘(a) includes a busway under the *Transport Infrastructure Act 1994*; and’.