

TRANSPORT INFRASTRUCTURE AMENDMENT BILL 1998

EXPLANATORY NOTES

The Transport Infrastructure Amendment Bill has been drafted to be consistent with current legislative practice and in modern language. As a consequence particular sections and clauses require little or no specific further explanation and in these Explanatory Notes those parts may be repeated or summarised in general terms only.

GENERAL OUTLINE

The Bill's Short Title

Transport Infrastructure Amendment Act 1998.

Reasons for the Bill

Under the provisions of the *Transport Infrastructure Amendment Act 1994 and the Administrative Arrangements Amendment Order (No. 4) 1994* the Chief Executive of the Department of Environment became responsible for the issuing of new permits for sand and gravel removal in tidal waters throughout Queensland from 1 July 1994. Prior to that date permits were issued by the various Port Authorities and the Harbours/Ports Corporations of Queensland under their own By-laws. Permits that existed just prior to 1 July 1994 continued in force until they expired.

However in the case of Mackay Port Authority the Authority issued new permits to dredgers in its area on 1 July 1994 for periods of up to 12 months rather than prior to that date while the Port of Brisbane Authority (now the Port of Brisbane Corporation) did not issue formal permits to dredgers on the Brisbane River prior to 1 July 1994 but allowed dredgers to continue dredging on the basis of old permits issued in March 1986 by the Director of the former Department of Harbours and Marine. Those old

Brisbane River permits had no expiry date but stated that they continued in force until cancelled.

The Mackay and Brisbane Port Authorities continued to administer dredging operations after 1 July 1994 and collect royalty payments while arrangements were made to issue new permits under the *Marine Land Dredging By-law 1987*. There is doubt over the legality of dredging carried out at that time and there is a need to validate all matters relating to extractive industry dredging carried out under the Port Authority administration and up to the time new permits were issued under the *Marine Land Dredging By-law 1987* to ensure that dredgers operated with valid permits and royalty/fee payments were collected lawfully.

Objectives of the Legislation

The objective of the Bill is to validate all matters relating to extractive industry dredging activities undertaken by dredgers operating in tidal waters within the Port of Mackay during the years 1994 to 1996 and in the Brisbane River during the years 1986 to 1997.

The way in which objectives are to be achieved in the Bill

The objectives are achieved by validating past permits, and creating new permits for the removal of sand and gravel from tidal waters at Mackay and the Brisbane River up until the dates on which permits were issued to dredgers operating in those areas under the *Marine Land Dredging By-law 1987*. The objectives are also achieved by ensuring that royalties and fees collected by the Mackay and Brisbane Port Authorities can be legally retained by those agencies and by providing a definite termination date for those permits which have no specified expiry date.

Alternatives to Bill

The objectives can only be achieved legislatively.

Assessment of the administrative cost to Government

The new legislation will validate past dredging activities. It will ensure that royalty/fees collected by the State and Port Authorities can be legally

retained. No additional administrative costs will arise from the Bill. Two dredgers at Mackay will receive refunds of overpaid royalty/fees as a result of the legislation. The refunds will be made from royalty/fee receipts in the 1997-98 financial year.

Consistency with Fundamental Legislative Principles

Because of its validating nature the Bill is retrospective. However, it is considered to comply with fundamental legislative principles. The provision of a definite cancellation date for the old Brisbane River permits does not prevent holders of those permits from applying for new permits under the *Marine Land Dredging By-law 1987*.

Consultation

Consultation in relation to the draft Bill was carried out with the following agencies:

- Treasury Department
- The Mackay Port Authority
- The Port of Brisbane Corporation (formerly the Port of Brisbane Authority).

Those agencies raised no objection to the Bill.

NOTES ON PROVISIONS

Clause 1 states the short title of the Bill.

Clause 2 states the date of commencement of certain sections of the Bill.

Clause 3 states the purpose of the Bill.

Clause 4 defines the permits which are subject of validation.

Clause 5 continues certain by-laws of the Harbours Act which allow amendments to be made to the *Marine Land Dredging By-law 1987*.

Clause 6 validates permits issued by the Mackay Port Authority on 1

July 1994;

- declares that dredgers who continued to remove sand and gravel after the expiry of the Port Authority permits set out in clause 6 are taken to have held permits under the *Marine Land Dredging By-law 1987* but with the same conditions as the Port Authority permits up until permits were issued to those dredgers under the Marine Land By-law;
- validates permits issued to dredgers by the Director of Harbours and Marine on 14 March and 15 May 1986 to dredge in the tidal reaches of the Brisbane River up until 21 May 1992 (when the Port of Brisbane Authority became responsible for the issuing of dredging permits in the River);
- declares that dredgers who continued to remove sand and gravel from the Brisbane River after 21 May 1992 and held a permit validated above are taken to have held a permit under the *Port of Brisbane Sand and Gravel By-law 1992* up until 30 June 1994;
- declares that dredgers who continued to remove sand and gravel from the Brisbane River after 30 June 1994 and held a permit under the Port of Brisbane Sand and Gravel By-law as set out above are taken to have permits under the *Marine Land Dredging By-law 1987* but ending on the day before the issue of a new permit under the *Marine Land Dredging By-law 1987* or for any other case on 30 September 1997 (This clause ensures that the permits concerned have a definite termination date as some dredgers have not been granted new permits under the By-law); and
- provides for the Port of Brisbane Corporation (formerly the Port of Brisbane Authority) to retain funds collected by it from royalty/fee payments for survey and supervision costs during the period after 30 June 1994 it continued to administer dredging operations on the Brisbane River.

Clause 7 provides for amendments to be made to the Marine Land Dredging By-law 1987.

