

TRANSPORT LEGISLATION AMENDMENT BILL 1998

EXPLANATORY NOTES

GENERAL OUTLINE

OBJECTIVES OF THE LEGISLATION

The objective of the *Transport Legislation Amendment Act 1998* is to provide for the amendment of three statutes administered by the Department of Transport.

REASONS FOR THE BILL

To amend the *Transport Infrastructure Act 1994* with respect to management of railway land and with respect to marine small craft facilities.

To amend the *Transport Legislation Amendment Act 1997* by repealing a section that is no longer required.

To amend the *Transport Operations (Road Use Management) Act 1995* with respect to laws concerning road use.

ESTIMATED COSTS FOR GOVERNMENTAL IMPLEMENTATION

There are no governmental costs for implementation.

RESULTS OF CONSULTATION

The proposed amendments have been supported.

CONSISTENCY WITH FUNDAMENTAL LEGISLATIVE PRINCIPLES

The *Legislative Standards Act 1992* defines fundamental legislative principles ("FLPs") as "principles relating to legislation that underlie a parliamentary democracy based on the rule of law"

The amendments depart from FLPs with respect to the retrospective nature of the amendments as they are taken to have commenced on the date stated in the Bill or on assent being given to this Bill. The actual date is specified in Clause 2 of the Bill.

The Fundamental Legislative Principle

The legislation does not adversely affect rights and liberties, or impose obligations, retrospectively. (*section 4(3)(g) Legislative Standards Act 1992*).

The Departure

The various parts of the Act are taken to have commenced on the date nominated in the Bill or on assent being given to the Bill.

The reason for the Departure;

The Bill does not substantially amend the relevant laws with respect to road use and marine small craft facilities, its effect is to ensure the law as it stood prior to 1 July 1998 remains in force until proper amending legislation can be enacted.

The expiry of this legislation has meant uncertainty has arisen with respect to legislation applicable to road use and small marine craft facilities.

This Bill cures that uncertainty. Additionally, protection against prosecution is given by Clause 15 of the Bill which inserts section 240A into the *Transport Infrastructure Act 1994*.

The new section 260 circumscribes the circumstances in which a prosecution can be brought for offences against sections 232 or 235 as a result of this retrospective amendment.

CONSULTATION

Consultation has occurred with Department of Communication, Information , Local Government and Planning, Department of Environment and Heritage, Department of Natural Resources, Queensland Rail, the Crown Solicitor and Office of the Queensland Parliamentary Counsel with respect to this Bill.

NOTES ON CLAUSES

Part 1—Preliminary

Clause 1 states that the short title of the Act is to be the *Transport Legislation Amendment Bill 1998*.

Clause 2 details the dates on which the various sections of this Act commence

Part 2—Amendment of Transport Infrastructure Act 1994.

Clause 3 states this part amends the *Transport Infrastructure Act 1994*

Clause 4 amends section 80 to provide a definition of “railway” for Part 4 that includes railways that are proposed to be constructed on future railway land. This together with other provisions clarifies that accreditation, subject to conditions, can be granted prior to construction of the railway

Clause 5 amends section 84 which is amended to clarify that, provided the other requirements of the section are met, accreditation is to be granted whether or not the railway has been constructed. Where the railway has been constructed there is a requirement for the agreement of the infrastructure's owner

Clause 6 amends section 85 which is amended to enable conditions of accreditation that relate to the construction and maintenance of a railway to be included. The provision is also amended to enable matters other than safety, to be prescribed by regulation as conditions of accreditation. For example a regulation could be drafted to enable conditions of accreditation to be applied relating to financial capacity to carry out construction of the infrastructure

Clause 7 amends section 131(4) which is amended to clarify that where a proponent is to meet the full costs of acquisition the term can be up to 100 years and for a rent of \$1 and that other terms are to be decided by the chief executive. The full costs of acquisition are deemed to include (where the land acquired comprises a leasehold interest) any rent or other money payable by the State under any lease by the State or acquired land. Where the full costs of acquisition are not met the State must lease the land to the railway manager on terms agreed between the parties

It is also provided that the lease may include an option to renew the lease. Both the option and the renewed lease are to be on terms decided by the chief executive. No specific appeal rights are included, as it is considered that the appeal regime established under the *Judicial Review Act 1991* is appropriate in the circumstances

The Clause also omits 131(6) as it will often be the case that a lease will be issued prior to construction of the railway

Clause 8 amends section 132 which provides a railway manager, for defined corridor land, with the same controls and exemptions under State and local laws that an agency of the State would have. The amended provision now clarifies that these exemptions can apply with respect to future railway land. It is further clarified with respect to construction, that the exemptions only apply for the construction of rail transport infrastructure. Other types of construction on future railway land do not receive exemptions pursuant to this provision

Clause 9 reinstates section 136 of the *Transport Infrastructure Act 1994* that was recently omitted by the passing of the *Building and Integrated Planning Amendment Act 1998*. In reinstating the section reference has now also been made to the *Integrated Planning Act 1997* which has now assumed many aspects of the *Building Act 1975*.

Clause 10 amends section 228 of the *Transport Infrastructure Act 1994* by extending the life of this section for a further twelve months

Clause 11 amends section 232 of the *Transport Infrastructure Act 1994* by omitting section 232(7) which is now unnecessary, and by extending the life of this section for a further twelve months

Clause 12 amends section 233 of the *Transport Infrastructure Act 1994* by removing redundant provisions and ensures the continued validity of the remaining provisions

Clause 13 amends section 235 of the *Transport Infrastructure Act 1994* by continuing in effect certain provisions of the now expired *Harbours Act 1955* about marine facilities (for example jetties and ramps) for a further twelve month period

Clause 14 amends section 240 of the *Transport Infrastructure Act 1994* by extending the life of this section for a further twelve months

Clause 15 inserts new section 260 into the *Transport Infrastructure Act 1994* confirming protection given to persons who may infringe these provisions as a result of their retrospectivity. Due regard has been given to

the fundamental legislative principles stated in the *Legislative Standards Act 1992* in drafting this clause.

Clause 16 schedule 3 definition of “railway manager” has been amended to clarify that a railway manager is the person accredited as such and that a person can also be accredited as a railway manager for a proposed railway.

Part 3—Amendment of Transport Legislation Amendment Act 1997.

Clause 17 states this part amends the *Transport Legislation Amendment Act 1997*

Clause 18 amends the *Transport Legislation Amendment Act 1997* by omitting the now obsolete section 132 of that Act

Part 4—Amendment of Transport Operations (Road Use Management) Act 1995.

Clause 19 states this part amends the *Transport Operations (Road Use Management) Act 1995*

Clause 20 amends the *Transport Operations (Road Use Management) Act 1995* by inserting subsection 1A into section 56, which together with new section 95 clarifies the effects on a licence or other document if it is subsequently voided following the dishonour of a cheque or other payment instrument offered in payment of the appropriate fee. The new section 95 should also be consulted with respect to the effect of this section

Clause 21 amends section 85(3) of the *Transport Operations (Road Use Management) Act 1995* by clarifying the regulation making power with particular reference to the power to exempt a person or vehicle from a provision of the Act and the effect of non-payment of a fee

Clause 22 amends Chapter 7 of the *Transport Operations (Road Use Management) Act 1995* by inserting new Parts entitled “Transitional Provisions for Transport Operations (Road Use Management) Act 1995.” Also, a new Part 2 entitled “Transitional Provisions for Transport Legislation Amendment Act 1998” is inserted. Part 2 includes the insertion of sections 94 to 97 inclusive

The new section 94 concerns the applicability of local laws made under the *Motor Vehicles Control Act 1975* to the operation of the *Transport Operations (Road Use Management) Act 1995*

This effectively continues local laws made under the Motor Vehicles Control Act 1975 after 1 July 1998

The new section 95 clarifies that section 56 of this Act does not apply to a certificate of registration issued under the Transport Infrastructure (Roads) Regulation 1991

The new section 96 is inserted into Chapter 7 of the *Transport Operations (Road Use Management) Act 1995* clarifying that an approval given under the code in force immediately before the date nominated in the Bill is taken to be an approval under the Transport Operations (Road Use Management- Dangerous Goods) Regulation 1998.

The new section 97 is inserted into Chapter 7 of the *Transport Operations (Road Use Management) Act 1995* clarifying the validity of exemptions granted to persons transporting dangerous goods pursuant to the *Carriage of Dangerous Goods by Road Act 1989*, and the Transport Operations (Road Use Management-Dangerous Goods) Regulation 1998.