

TRANSPORT LEGISLATION AMENDMENT BILL (No. 2) 1998

EXPLANATORY NOTES

GENERAL OUTLINE

OBJECTIVES OF THE LEGISLATION

The objective of the Transport Legislation Amendment Bill is to provide for a number of amendments to a range of statutes administered by the Department of Transport.

REASONS FOR THE BILL

- To amend the *Traffic Act 1949* with respect to removal of vehicles from clearways by conferring this power of removal on local governments.
- To clarify under the *Transport Infrastructure Act 1994* the authority to be used with respect to future rail corridor access arrangements.
- Amendments have been made to the miscellaneous transport infrastructure provisions of the *Transport Infrastructure Act 1994*. The object is to provide a mechanism where no legislation currently exists to enable a proponent of miscellaneous transport infrastructure to establish infrastructure through intersecting government land (such as local roads).
- To amend the *Transport (Gladstone East End to Harbour Corridor) Act 1996*, in schedules one (1), two (2) and four (4)

following a realignment of part of the transport corridor and the surveying of land required for the corridor.

- To amend the *Transport Operations (Passenger Transport) Act 1994* by new definitions for “taxi” and “demand responsive service”, being inserted into the Act and amendment of the definition of “excluded passenger service” to omit charter bus services.
- The definition of “service contract area of route” is amended by including a reference to section 66 of the Act. This amendment corrects an oversight which may have prevented the effective prosecution of a person who provided a taxi administration service, whilst not holding a service contract, in a taxi service area declared under section 66 of the Act. This amendment will protect the provisions enabling market entry restrictions.
- To amend the *Integrated Planning Act 1997* to clarify that incidental operational work that may be undertaken by the rail feasibility investigation is exempt development in terms of the Act.
- To amend the *Judicial Review Act 1991* by inserting section 182D of the *Transport Infrastructure Act 1994* to that schedule.

ESTIMATED COSTS FOR GOVERNMENTAL IMPLEMENTATION

Any costs incurred are as a result of the amendments to the Transport Acts in respect to drafting and preparation of the Bill and represent a minimal cost to government.

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 as follows:

1. Applications for a rail feasibility investigators authority
2. Powers of rail feasibility investigator’s authority
3. Licensee appeals to the Minister administering the *State Development and Public Works Organisation Act 1971*
4. Retrospective amendment of the *Transport (Gladstone East End to Harbour Corridor) Act 1996*

APPLICATIONS FOR A RAIL INVESTIGATORS AUTHORITY

The *Transport Infrastructure Act 1994* is to be amended by Clause 9 to allow a person to apply to the chief executive for a rail investigator’s authority for an area of land.

The Fundamental Legislative Principle.

Section 4(3)(a) of the *Legislative Standards Act 1992* provides that legislation should not be inconsistent with the principle of making rights and liberties, or obligations dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

The Departure

The decision of the chief executive to grant or refuse to grant an applicant with a rail feasibility investigators authority is not subject to review on the basis of the merits of the decision.

This is consistent with the form of similar provisions found in other laws in relation to infrastructure development. The decision is subject to the application of the *Judicial Review Act 1991*.

The Reason for the Departure

The amendment does not grant review on the merits, but relies on the application of the *Judicial Review Act 1991*.

POWERS OF RAIL FEASIBILITY INVESTIGATORS

The *Transport Infrastructure Act 1994* is to be amended by Clause 9 to allow a rail feasibility investigator for a potential rail corridor to enter any land within the stated area for the purpose of investigating the land's potential and suitability as a rail corridor and to the extent necessary or convenient for that purpose to do anything on the land, bring anything onto the land or temporarily leave machinery, equipment or other items on the land.

The Fundamental Legislative Principle

Section 4(3)(g) of the *Legislative Standards Act 1992* provides that legislation should not adversely affect the rights and liberties, or impose obligations retrospectively.

The Departure

The amendment Clause 9 inserts sections 76 to 79G which authorise the disruption of an occupiers' rights to enjoy the use of land they occupy.

The reason for the Departure

It may be necessary to enter land temporarily to perform necessary works for rail planning. Section 79G provides for payment of compensation to an owner or occupier if they suffer loss or damage arising out of the entry on the land, anything done on the land or any use of the land in connection with the rail feasibility investigators authority.

The owner or occupier, by section 79G also require the rail feasibility investigator to carry out works in restitution for the damage, or require rectification by the rail feasibility investigator and also claim compensation for any loss or damage not restituted.

LICENSEE MAY APPLY TO MINISTER IF APPROVAL NOT GRANTED

The *Transport Infrastructure Act 1994* is to be amended by Clause 16 to allow the Minister presently responsible for the administration of the *State Development and Public Works Organization Act 1971* (The Minister), to grant or refuse an application for a miscellaneous transport infrastructure approval if it is refused or not granted within 20 days by a responsible entity.

THE FUNDAMENTAL LEGISLATIVE PRINCIPLE

Section 4(3)(b) of the *Legislative Standards Act 1992* provides that legislation should be consistent with the principles of natural justice.

THE DEPARTURE

The amendment Clause 18 inserts section 182D so that the Minister gives final approval to a licensee. This is expressly stated to not be subject to the *Judicial Review Act 1991*, parts 3 and 4. There is therefore, a departure from section 4(3)(b) of the *Legislative Standards Act 1992*.

THE REASON FOR THE DEPARTURE

The efficient facilitation of major infrastructure initiatives requires that the Minister have an ability to settle any issues concerning approval of this infrastructure without the potential for significant delays through possible judicial review holding up a project of strategic importance to the State.

RETROSPECTIVE AMENDMENT OF SCHEDULES 1, 2 AND 4 CONTAINED WITHIN THE *TRANSPORT (GLADSTONE EAST END TO HARBOUR CORRIDOR) ACT 1996*.

The Fundamental Legislative Principle

Section 4(3)(g) of the *Legislative Standards Act 1992* provides that legislation should not adversely affect the rights and liberties, or impose

obligations, retrospectively .

THE DEPARTURE

The amendments in Clauses 6 & 7 retrospectively amend the *Transport (Gladstone East End to Harbour Corridor) Act 1996* from 12 December 1996.

THE REASON FOR THE DEPARTURE

Following a survey of actual land title used in this development in Gladstone, the titles described in schedules 1, 2 and 4 have been amended to accurately describe land used for the corridor. No actual property rights are affected by this amendment. The Crown Solicitor has previously advised no Native Title Claims are adversely affected by this amendment.

CONSULTATION

The following relevant organisations have been consulted:

- Department of Premier and Cabinet
- Department of State Development
- Queensland Treasury
- Department of Communication and Information,
- Local Government and Planning
- Department of Main Roads
- Department of Natural Resources
- Queensland Rail
- Brisbane City Council
- Local Government Association of Queensland
- Queensland Police Service
- Department of Justice and Attorney-General

NOTES ON CLAUSES

Clause 1 states that the short title of the Act is to be the *Transport Legislation Amendment Act (No 2) 1998*.

PART 1—PRELIMINARY

Clause 2 states the dates on which the various parts of the act commence.

PART 2—AMENDMENT OF THE TRAFFIC ACT 1949

Clause 3 states this part amends the *Traffic Act 1949*.

Clause 4 amends section 44.

Subclause (1) inserts a new section 44(6C) to prescribe the circumstances under which the provisions of section 44(7) to (15) will apply if the chief executive officer of a local government is reasonably satisfied that a vehicle, tram or animal found in its area is creating a danger, hindrance or obstruction, or otherwise been abandoned by the last person who drove it.

Subclause (1) Inserts a new section 44(7) to clarify that local government may remove an vehicle, tram or animal mentioned in section 44(6C) from the road and detain it at a place for safe keeping.

Subclause (2) amends sections 44(8), (9), (10), (11), (12) and (14) to clarify that these sections apply to a vehicle, tram or animal that has been seized.

Subclause (3) amends sections 44(8) and (10) to clarify that it is the chief executive officer of the local government who issues notices or places advertisements.

Subclause (4) amends sections 44(11)(b) and (12) to clarify that these sections apply to a vehicle, tram or animal that has been seized.

Subclause (5) amends section 44(12) to clarify how a local government may deal with any goods, equipment or things found in or on a vehicle, tram or animal seized under this section .

Subclause (6) amends section 44(13) to clarify how the chief executive officer of a local government may deal with any perishable goods found in or on a vehicle, tram or animal seized under this section.

Subclauses (7),(8),(9) and (10) amend section 44(14) to clarify the obligation is on the chief executive officer of the local government.

Subclause (11) amends section 44(15) to clarify that this section applies to a vehicle, tram or animal that has been seized.

Subclause (12) amends section 44(16) to clarify that a local government may make a local law dealing with the seizure, removal, safe storage or disposal of a vehicle, tram or animal. A person authorised under the local law may determine whether the vehicle, tram or animal is creating a danger, hindrance or obstruction, or otherwise been abandoned by the last person who drove it.

PART 3—AMENDMENT OF TRANSPORT (GLADSTONE EAST END TO HARBOUR CORRIDOR) ACT 1996

Clause 5 states this part amends the *Transport (Gladstone East End to Harbour Corridor) Act 1996*.

Clause 6 replaces schedules 1 and 2 following a realignment of part of the corridor and the surveying of land required for the corridor. This Act commenced on 12 December 1996 and these amendments are taken to have commenced on 12 December 1996.

Clause 7 replaces schedule 4 following a realignment of part of the corridor and the surveying of land required for the corridor. This Act

commenced on 12 December 1996 and the amendments are taken to have commenced on 12 December 1996.

PART 4—AMENDMENT OF TRANSPORT INFRASTRUCTURE ACT 1994

Clause 8 states this part amends the *Transport Infrastructure Act 1994*

Clause 9 inserts a new part into the *Transport Infrastructure Act 1994* concerning the investigation of land to determine its potential and suitability as a future rail corridor.

The new section 76 sets out that the purpose of part 2 is to give a person who is considering constructing a railway, land entry powers to investigate the land's potential and suitability as a rail corridor while protecting the interests of owners and occupiers of the land. The part also applies to the investigation of a possible realignment of a rail corridor which already exists. The person may be an individual or a corporation.

New 77 section inserts the definitions used in the part.

The new section 78 provides for a person to apply to the chief executive for a rail feasibility investigator's authority. The written application must state the area of land, the general purpose for the authority, the details of the nature of the activities to be conducted and the period the authority is required for.

The new section 79 states the chief executive may request further information and make inquiries to decide the application.

The new section 79A states that the chief executive may grant or refuse to grant an authority. If the chief executive refuses to grant the authority, the applicant is to be given the reasons in writing. Before granting the authority, the chief executive must be satisfied that the area to be investigated under the authority is no more extensive than it is reasonably necessary and the person is genuinely considering constructing a railway.

The new section 79B requires the written authority to state the area of

land to which it applies, its general purpose and its expiry date. The chief executive may include other conditions. The authority allows the investigator and associated persons to enter land within the area, subject to the requirements of this part. The section also expresses that the granting of the authority is not to be taken to be a commitment by the State, the chief executive or any other person to the proposal. It is an offence for non compliance by the investigator or an associated person with a condition of the authority unless the person has a reasonable excuse.

The new section 79C requires that before land is entered under a rail feasibility investigators authority, notice must be given to the land's owner or occupier. The notice has to advise that the chief executive has granted the rail feasibility investigator's authority, the things the authority authorises, an outline of the things intended to be done and the approximate period during which the land is to be entered. The notice also has to state that the granting of the authority is not to be taken to be a commitment by the State, the chief executive or any other person to the proposal. The investigator or associated person may exercise the powers after obtaining the consent of the owner or occupier or after at least 7 clear days notice have passed.

The new section 79D requires an investigator to give an associated person a document of identification. The document must name the investigator and associated person, state the capacity of the associated person, be signed by or on behalf of the rail feasibility investigator, contain the associated person's signature and have an expiry date. The associated person must return the document as soon as possible when the person ceases to be associated with the rail feasibility investigator. If the owner or occupier of land asks an associated person for identification, the person must state his or her name and the document must be produced. However, if the owner or occupier asks an investigator who is an individual, for identification, the person must state his or her name and a copy of the rail feasibility authority has to be produced. It is an offence for non compliance with the procedures in the section.

The new section 79E establishes an offence for pretending to be an investigator or associated person.

The new section 79F requires a person exercising a power under an authority to take as much care as is practicable to minimise damage to the land or inconvenience to the owner or occupier.

The new section 79G allows the owner or occupier of the land to claim compensation from, or require rectification by, the rail feasibility investigator for loss or damage arising out of an entry onto the land under the rail feasibility investigator's authority. The amount of compensation is to be agreed between the parties. However, if they cannot agree within a reasonable time, a court can determine the amount.

Clause 10 inserts a division heading and the new section 93A states that the division only applies to railway work. This is to indicate that the power to enter land to plan a railway is no longer covered by this division, and has to be conducted under the provisions inserted by *clause 9*.

Clause 11 inserts a new division heading for the remainder of part 5.

Clause 12 introduces a new part 1 heading into chapter 8 this part sets out definitions necessary to the understanding and operation of part 2 of chapter 8. Part 2 of chapter 8, divisions 2 to 6 provides a means for miscellaneous transport infrastructure to be constructed, maintained, used or operated and through existing infrastructure corridors or areas (e.g., roads rail, port) which intersect miscellaneous transport infrastructure corridors.

Clause 13 amends the definitions for chapter 8.

Clause 14 amends the definition of miscellaneous transport infrastructure and places it in a new section.

Clause 15 inserts a new heading and definition into chapter 8, part 2.

Clause 16 inserts a new division 2 heading into chapter 8, part 2.

Clause 17 omits the previous heading to Section 182 and inserts a new heading to that section.

Clause 18 changes the heading to section 182 and inserts divisions 3 to 6 of part 2 of chapter 8 which set out a statutory regime under which a holder of a licence in respect of miscellaneous transport infrastructure can obtain permission to construct, operate and maintain that infrastructure through intersecting land where other legislation does not so provide.

Section 182B permits a licensee to apply for an approval to construct, maintain, use or operate miscellaneous transport infrastructure through the relevant land to the entity responsible for the control and management of

that land. Separate applications will have to be made in respect of each type of land controlled by a different responsible entity which is to be crossed.

Section 182D gives a right to the licensee applicant to apply to the Minister administering the *State Development and Public Works Organization Act 1971*, for approval where the approval has been refused by the responsible entity or where the responsible entity does not make any response to the application within 20 business days of the making thereof.

The Minister's decision granting or refusing the approval is not subject to judicial review.

The Minister must prepare a statement of reasons for the decision and it must be tabled in the Legislative Assembly within 14 sitting days. The statement must not include exempt matter as defined in the *Freedom of Information Act 1992*. This is to expose the reasons for the decision to the scrutiny of the Legislative Assembly whilst recognising the private or business affairs of the applicant.

Division 4 of part 2 of chapter 8 deals with the conditions to which an approval may be made subject, whether it is the approval of the responsible entity or the Minister. The conditions are to be fixed within stated time periods.

Subsection 182E(3) sets out examples of the conditions to which an approval may be made subject but in all cases the responsible entity is only entitled to fix reasonable conditions.

Division 5 of part 2 of chapter 8 containing sections 182G to 182L, sets out the mechanism pursuant to which a licensee applicant may appeal against conditions fixed by a responsible entity on the grounds that they are not reasonable. The applicant and the responsible entity are to agree on an arbitrator or if they cannot agree, then in the case where the responsible entity is a local authority, the Minister and the Minister administering the *Integrated Planning Act 1997* acting jointly and in each other case the Minister (or nominees of the Minister) may be approached to appoint an arbitrator.

An arbitrator resolves a dispute by deciding what are reasonable conditions and either confirms the conditions fixed by the relevant entity,

amends those conditions or sets aside the conditions and substitutes what the arbitrator considers to be reasonable conditions. Conditions decided by the arbitrator are taken to be conditions fixed for the approval. So far as possible the arbitration is carried out under the *Commercial Arbitration Act 1990*. However, neither the licensee applicant nor the responsible entity can appeal against the arbitrator's decision - it is final and binding as the conditions of approval.

Section 182M provides that the infrastructure remains the property of the licensee notwithstanding it is attached to the intersecting land.

Section 182N gives a statutory right to a responsible entity to recover any costs, damages, liabilities or loss it suffers due to the existence, construction, operation or maintenance of miscellaneous transport infrastructure within its area, from the licensee of that infrastructure.

Clause 19 inserts a new part 4 heading into chapter 8.

Clause 20 inserts an example of those interests which can be granted by the chief executive of the Department of Transport to licensees of miscellaneous transport infrastructure.

Clause 21 inserts a new part 5 heading into chapter 8.

Clause 22 inserts a new section 190A authorising the chief executive to approve forms for use under this Act.

Clause 23 inserts a new division 4 into part 4 of chapter 10 containing a new section 260 which is a transitional provision about forms.

Clause 24 amends schedule 1 to the *Transport Infrastructure Act 1994* to give the Governor in Council power to make regulations concerning the granting of approvals, and conditions of approvals to licensees to construct, maintain, use or operate miscellaneous transport infrastructure within intersecting land.

Clause 25 amends schedule 3 (dictionary) of the *Transport Infrastructure Act 1994*.

PART 5—AMENDMENT OF TRANSPORT OPERATIONS (PASSENGER TRANSPORT) ACT 1994

Clause 26 states this part amends the *Transport Operations (Passenger Transport) Act 1994*

Clause 27 amends schedule 3 (dictionary) and expands the existing definition for “taxi” so that the term “taxi” has a common usage meaning when it is used in the new definition for “demand responsive service”.

Clause 27 also amends schedule 3 (dictionary) to provide a definition for “demand responsive service”. The purpose of this amendment is to clarify the meaning of a “demand responsive service” so as to protect taxi operators, who are subject to market entry restrictions effected through the issue of taxi service licences, from competition from unlicensed operators.

Presently under the definition “taxi service” the concept of a ‘demand responsive service’ is used without definition. It is intended to ensure that any taxi like operation is within the definition of a “taxi service”. In particular, if a service is operated in a manner that gives the outward impression that it provides a service like that provided by taxis, then that service is a taxi service.

The effect of this amendment in conjunction with the amendment to the definition of “excluded public passenger service” is that any operator of a charter bus will require a taxi service licence if they want to provide a demand responsive service, or if they want to be able to be hailed for hire by the public, or if they want to ply or stand for hire on a road.

Clause 27 also amends the schedule 3 (dictionary) definition of “excluded public passenger service” by removing “charter bus services” from the scope of its meaning. Presently, the Act’s definition of “taxi service” describes the operation of a taxi service and provides that this definition does not apply to “excluded public passenger services”. This will mean that an operator of a charter bus cannot provide a service that comes within the meaning of a taxi service under the Act unless the operator has a taxi service licence.

Clause 27 amends the schedule 3 (dictionary) definition of “service

contract area or route” by including a reference to section 66 (Regulation may declare that service contracts are required). This amendment corrects an oversight which may prevent the effective prosecution of a person who provided a taxi administration service, whilst not holding a service contract, in a taxi service area declared under section 66 of the Act. This amendment will protect the provisions enabling market entry restrictions.

PART 6—AMENDMENT OF THE INTEGRATED PLANNING ACT 1997

Clause 28 - states this part amends the *Integrated Planning Act 1997*.

Clause 29 amends Schedule 8 of the *Integrated Planning Act 1998* to clarify that incidental operational work that may be undertaken by the rail feasibility investigator is exempt development in terms of that Act.

PART 7—AMENDMENT OF JUDICIAL REVIEW ACT 1991

Clause 30 states this part amends the *Judicial Review Act 1991*.

Clause 31 amends schedule 1, part 1 of the Judicial Review Act 1991 by inserting section 182D of the *Transport Infrastructure Act 1994* to that schedule.

This means readers of the Act will be aware of the exclusion of section 182D.

