

# **TRANSPORT INFRASTRUCTURE AND ANOTHER ACT AMENDMENT BILL 2001**

## **EXPLANATORY NOTES**

### **GENERAL OUTLINE**

#### **Bill's short title**

This bill may be cited as the *Transport Infrastructure and Another Act Amendment Bill 2001*.

#### **Policy objectives of the bill**

*Transport Infrastructure Act 1994*

To alleviate increasing congestion on Queensland's tollways and to ensure the continued viability of electronic toll collection facilities, Queensland Motorways Limited (QML), the current operator of tolls in Queensland, plans to introduce a new electronic toll collection system on designated lanes on the Gateway and Logan Motorway toll roads. The new system will allow vehicles to pass through the toll plazas at up to 30kph. The system is called "E toll".

Such systems are becoming increasingly common throughout Australia. The Standing Committee of Transport, comprised of the chief executives of the states' transport and road agencies, adopted a set of legislative principles so that motorists can easily use electronic toll systems in all states. These principles help ensure consistent and interoperable systems across Australia and protect the privacy interests of motorists using electronic toll collection systems.

The bill proposes an effective enforcement regime for Queensland's planned system of electronic toll collection, consistent with the Standing Committee of Transport legislative principles.

*Transport Operations (Marine Safety) Act 1994*

The objectives of the legislation are to:

- reflect the new operating environment for marine pilots as a result of the full devolution of pilotage services from Queensland Transport to port authorities from 1 July 2001
- provide greater flexibility for port authorities to determine the most appropriate pilotage service delivery model for their port
- introduce a degree of contestability for pilotage services in Queensland ports.

**Reasons for the policy objectives**

*Transport Infrastructure Act 1994*

Enforcement on Queensland tollways prior to the introduction of electronic toll collection relied on boom gates at each toll plaza lane. Because electronic toll collection allows non-stop lanes, reliance on boom gates is no longer adequate. The bill provides a legislative structure to enable collection of tolls and enforcement for failure to pay by way of camera monitoring, triggered by electronic sensing equipment.

This new system provides improved customer service by meeting rapidly increasing traffic volumes and overcoming consequent delays. The system will replace the current electronic tolling system, which has a number of defects, including the unavailability of spare parts, transponders that operate on the same frequency as mobile telephones and the incompatibility of this system with those used in other eastern states.

*Transport Operations (Marine Safety) Act 1994*

This legislation is as a consequence of a National Competition Policy (NCP) review of pilotage services and changed pilotage service delivery arrangements in Queensland ports.

The legislation also supports the introduction of a more rigorous licensing and training regime for Queensland port pilots by extending immunity from civil liability to include pilots who are involved in training or assessing the competence of other pilots. This will provide for the introduction of “hands-on training” for marine pilots prior to licensing.

## **Ways in which the policy objectives are to be achieved**

### *Transport Infrastructure Act 1994*

The bill will amend the *Transport Infrastructure Act 1994* to create an enforcement regime to support the effective operation of the E toll system. The bill allows for the use of electronic transponders to enable motorists to meet their toll liability. The transponders send a message to computers at a toll plaza to enable the recording of a payment of a toll or, in the case of credit account holders, of a liability for a toll.

The bill creates a “deferred toll” regime. When a driver passes through an E toll lane without a valid transponder, an image of the vehicle is “grabbed” and recorded. The regime provides such drivers an opportunity to pay the “deferred toll”, which consists of the toll due and an administrative charge to cover the reasonable cost of collecting the deferred toll.

Thus, mere failure to pay the toll does not itself give rise to an offence. An offence occurs only where a motorist, who has been notified of the obligation to pay a deferred toll, fails to do so within the prescribed period (not less than thirty days). The offence is a penalty infringement notice (PIN) issued under the *State Penalties Enforcement Act 1999*. (For the offence to be enforced as a PIN it will be necessary to make a consequential amendment to the *State Penalties Enforcement Regulation 2000*.) Only one offence will be issued for a single trip on a tollway, even where more than one toll is avoided on a single trip (for instance, where a motorist, in a single trip, travels through all three toll plazas on the Logan Motorway without a valid transponder).

As the system relies on registration plates to identify the driver, the bill provides for the notice of deferred toll to be sent to the registered operator of the vehicle recorded as using the E toll lane without a valid transponder. Similar to provisions in the *State Penalties Enforcement Act 1999*, the bill provides that, where appropriate, the registered operator may identify another as the driver who avoided the toll. Anyone identified as the actual driver may in turn be sent a notice of deferred toll.

Because the electronic tolling system will store personal details of account customers and their traffic movements, the bill provides that the improper use of such information is an offence.

### **Alternatives to the bill**

There are no alternatives to this bill that would create an effective enforcement regime applicable to electronic toll collection. As the scheme proposed in the bill will only give rise to an offence when a person fails either to pay a notice of deferred toll or to reasonably identify who the actual driver was, it will result in considerably fewer offences than would a scheme that provides for an offence upon the failure to pay the toll. As such, the scheme is the least burdensome option available.

### **Administrative cost to government of implementing the bill**

#### *Transport Infrastructure Act 1994*

It is anticipated that the administrative costs will be met from the administrative charge and from the increased capacity on the toll roads resulting from the introduction of the E toll system.

The operator of toll roads existing in Queensland at the time of introduction of the legislation is Queensland Motorways Limited (QML). Queensland Transport is working with QML to assist in the administration of toll enforcement, including issuing of deferred toll notices. The bill provides that the administrative charge is to be no more than the reasonable cost of collecting the deferred toll. This would include the set-up and running costs of the deferred toll scheme.

Should the costs of implementing the system exceed the amount of the administrative charges, the difference will be borne by QML and offset by increased toll revenue resulting from the increased capacity occasioned by the E toll system.

#### *Transport Operations (Marine Safety) Act 1994*

There is no additional cost to the government in implementing the provisions of this Bill.

### **Consistency with fundamental legislative principles**

#### *Transport Infrastructure Act 1994*

The amendments relating to the *Transport Infrastructure Act 1994* comply with all fundamental legislative principles.

*Transport Operations (Marine Safety) Act 1994*

The legislation possibly breaches the fundamental legislative principle of “conferring immunity from proceeding from prosecution without adequate justification”. The reasons supporting non-compliance with this fundamental legislative principle follow.

- Immunity for pilots and their employers is conferred in every Australian state and territory as well as in the United States and all Commonwealth countries because of the risks assumed by pilots and the vital role they play in facilitating port movements.
- If pilots and their employers were liable for incidents involving pilots, there is a high probability that vessel movements would be delayed due to extreme caution being exercised, particularly with respect to tidal windows, wind and other adverse weather conditions. This would have serious financial implications for Queensland's trading ports which would flow on to the Queensland economy.
- Ship owners are required to have insurance (provided by Protection and Indemnity [P&I] Clubs) for all ship movements. P&I Clubs support the maintenance of this arrangement as they believe a form of "double dipping" would occur if pilots were also required to take similar insurance.

**Extent of consultation carried out in relation to the bill**

*Transport Infrastructure Act 1994*

1. Consultation has been undertaken with the following government agencies:

- Queensland Transport
- Queensland Police Service
- Department of the Premier and Cabinet
- Queensland Treasury
- Queensland Office of Parliamentary Council
- Department of Justice and Attorney-General.

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2. Consultation has been undertaken with the following organizations:

- Queensland Trucking Association
- Queensland Motorways Limited
- Taxi Council of Queensland
- RACQ.

*Transport Operations (Marine Safety) Act 1994*

Consultation occurred with the following government agencies:

- Department of Premier and Cabinet
- Queensland Treasury
  - National Competition Policy Unit
  - Office of Government Owned Corporations
- Department of Justice and the Attorney-General.

In the course of conducting the NCP review, devolution of pilotage negotiations and the development of pilotage standards, extensive consultation has been conducted with pilotage service providers, port authorities, the Australian Chamber of Shipping and Maritime Unions.

## **NOTES ON CLAUSES**

### **Section 1 Short title**

*Clause 1* provides a short title of the Act.

### **Section 2 Commencement**

*Clause 2* provides that the Act commences on date of proclamation.

### **Section 3 Act amended**

*Clause 3* states that the Acts amended by this Act are the *Transport Infrastructure Act 1994* and the *Transport Operations (Marine Safety) Act 1994*.

### **Section 4 Amendment of section 70 (Rateability of land)**

*Clause 4* inserts the words “road infrastructure agreement” before the word “land” in section 70 (2) to limit the application of the section to land subject to a road infrastructure agreement.

### **Section 5 Replacement of section 73 (Franchised roads to be roads for other purposes)**

*Clause 5* amends Chapter 5 of the *Transport Infrastructure Act 1994*, which deals with road transport infrastructure, by inserting a new part, Part 7. Current section 73 is omitted as it is no longer applicable due to the repeal of the *Transport Infrastructure (Roads) Act 1991*.

The new part consists of the following sections:

#### ***Section 73 Definitions for part 7***

Meaning of “administration charge”.

The administrative charge applies only when a toll has not been paid. The charge is designed to recover the administrative costs associated with issuing notices under sections 73G, 73H and 73I and is paid in addition to the specified toll.

Meaning of “designated vehicle”.

This term is defined as a vehicle that is liable for a toll. The definition expressly excludes an exempt vehicle, which is later defined. The types of vehicles liable for a toll are to be specified in a regulation made under section 73A.

Meaning of “E toll only pay point”.

This term defines the part of a toll plaza for the exclusive use of vehicles using the E toll system where payment may only be made electronically. This part of the plaza is designated by signage. The exclusive use ensures payment by other means is not allowed, thereby maintaining increased capacity in the E toll only lane.

Meaning of “E toll system”.

The E toll system is used by a toll road operator:

- to electronically record the payment of a toll by users of a toll road who have a debit account with the toll operator
- record a liability to pay the toll where credit account holders will be invoiced by the toll operator for their toll road usage over a period of time.

Meaning of “exempt vehicle”.

This term describes a vehicle that has no liability for payment of a toll for the use of a road under an Act of Queensland or another state or the Commonwealth. The definition ensures that vehicles are not subjected to a toll if exempted by legislation such as:

- *State Counter-Disaster Organisation Act 1975*
- *Police Service Administration Act 1990*
- *Fire and Rescue Authority Act 1990*
- *Corrective Services Act 1988*
- *Ambulance Service Act 1991.*

Meaning of “prescribed time”.

The prescribed time is the time in which a person has to pay or otherwise respond to a notice given to a person under division 3, “Failure to pay toll”. The time is that period stated in the notice, calculated from the time the notice is given, which may not be less than thirty days.



Meaning of “registered operator”.

Because the scheme relies on the use of vehicle registration numbers of vehicles passing through the toll plaza to issue a notice of deferred toll, the bill identifies the registered operator as the person in whose name the vehicle was registered under a registration Act.

Meaning of “registration Act”.

This term encompasses Australian acts that provide for the registration of vehicles.

Meaning of “toll plaza”.

A toll plaza is defined as the part of a toll road where facilities are constructed for the collection of tolls from the drivers of vehicles using the toll road. The method of collection may be by various methods, including by way of the E toll system.

Meaning of “toll road”.

This term is described as all or part of a State-controlled road or all or part of a franchised road for the use of which a toll is payable under section 73B. A regulation made under section 73A will identify those roads on which tolls may be collected.

Meaning of “toll road operator”.

Where the toll road is a franchised road or part of a franchised road the operator is described as the person who has a road franchise agreement for the road. Where the toll road is not a franchised road the toll road operator means the chief executive of the Department of Main Roads.

Meaning of “valid account”.

This is a debit or credit account established so that a user of a toll road may utilise the E toll system. It is valid if, under the contractual arrangements between the toll operator and the toll road user, the account is available to pay the toll.

### ***Section 73A Tolls***

Subsection (1) provides that a regulation may declare certain roads (that is, a State-controlled road or part of a State-controlled road, or the whole or part of a franchised road) to be toll roads.

Subsection (2) lists the things that must be addressed if a regulation is made under subsection (1). The regulation must state the date from which tolls become payable. It must also identify the types of vehicles that are

liable for tolls. This allows different toll amounts to be set for different types of vehicles. For example, generally a truck will be levied at a higher rate than a car because of the increased capacity used and wear and tear on the road.

The regulation must either set the amount of toll payable at each toll plaza for each toll road or it must authorise the setting and publication of the amount of toll payable at each plaza. In authorising the setting of the toll, the regulation must give any necessary directions to enable the toll to be set. These directions may include, but are not limited to, specifying the person to whom the delegation is given and the method by which the amount is fixed, for example, by gazettal.

Subsection (3) is similar to subsection (2)(c) but relates to the setting of an administration charge payable as part of the deferred toll. The provision allows for the amount of the charge to be set directly by way of regulation or for a regulation to authorise another person to set the amount. It also provides for the regulation to give details of the method authorised for the setting of the charge.

Subsection (4) limits the amount of the administrative charge to the reasonable cost of issuing of notices under sections 73G, 73H and 73I and collecting the deferred toll amount, defined in section 73E. This provision allows the toll operator to recover reasonable costs incurred in processing the collection of an unpaid toll.

Subsection (5) provides that the section is not meant to limit the application of section 200 of the Act. Although section 73A provides for regulations to be made regarding declaration of toll roads and the tolls associated with those roads, it does not limit the regulation-making power under section 200 and schedule 1 of the Act.

### ***Section 73B Liability for toll and satisfying the liability***

Subsection (1) creates a liability to pay a prescribed toll for the driver of a designated vehicle entering, or on, a toll road. It states that the toll is payable at each toll plaza through which the vehicle passes and that the payment is for the use of the toll road. The subsection imposes a liability because, under the deferred toll scheme, a person incurs a debt rather than an obligation to pay immediately the car passes the toll plaza.

Subsection (2) allows the toll operator to recover unpaid toll as a debt subject to any contractual arrangements between the toll road operator and the toll road user.

Subsection (3) provides three ways in which drivers may satisfy their liability for payment of a toll:

- in cash where this payment type is available at a toll plaza
- by touch tag
- using the E toll system in accordance with section 73C(1).

Subsection (4) applies when the driver is at a lane designated only for use of the E toll system. In this situation, the driver may only use the method of payment described in section 73C(1).

### ***Section 73C Using the E toll system***

Subsection (1)(a) provides that the driver of a designated vehicle may satisfy the liability to pay the toll by having a properly operating transponder or other electronic device in or fitted to the vehicle. (The choice of “other electronic device” allows for advances in technology and the possibility that a device other than a transponder is developed.)

Subsection (1)(b)(i) provides that where satisfying the toll liability under section 73C, the transponder or other device must have been issued for a vehicle of the same type as the designated vehicle. This ensures that the vehicle is in the same class or range of vehicles included in the description for a particular toll price. Subsection (1)(b)(ii) provides that the transponder or device must also be linked to a valid account for the E toll system operating for the toll road being used. Subsection (1)(b)(iii) provides that the E toll system must be properly activated.

The E toll system allows a credit payment where a driver is invoiced at the end of a specified interval of time for the debt incurred during that time. The toll operator is then able to give its customers the flexibility of choice between a debit account or a credit account. A toll is debited from a debit account as soon as the vehicle passes the plaza. Where there is a credit account the driver only incurs a liability, the payment of which is subject to the contractual agreement.

Subsection (2) clarifies that the satisfying of the obligation to pay a toll under subsection (1) does not affect any contractual obligation owed to a toll operator. It explains that, even though a driver may satisfy the obligation under the Act by having a correctly operating transponder, a further or subsequent obligation to the toll operator such as payment of a credit account may still be outstanding.

### ***Section 73D Application of div 3***

Section 73D explains the scope of application of *Division 3-Failure to pay toll*. It states that the division applies if a designated vehicle passes through a toll plaza and does not satisfy the liability for the toll under section 73B(3). The section limits the application of the division therefore, to instances in which a driver has failed to pay a toll.

### ***Section 73E Definition for div 3***

This section defines the term “deferred toll amount”. It is the total of the amount of the toll for which the liability under section 73B(3) was not satisfied and the amount of the administration charge set under section 73A.

### ***Section 73F Liability for administration charge in addition to unpaid toll***

This section provides that, if *Division 3* applies (see section 73D), the driver immediately becomes liable to pay the deferred toll amount. In other words, if the driver of a car passing through a toll plaza does not pay the toll or otherwise satisfy payment or liability under section 73B(3), the driver immediately becomes liable for the amount of the toll and the administration charge. Failure to pay the prescribed toll at the toll plaza does not give rise to an offence.

### ***Section 73G Notice to vehicle’s registered operator***

Subsection (1) provides the circumstances that must apply for a notice under subsection (2) to be given. The toll operator may only give the notice if the toll operator has not received the deferred toll amount.

Subsection (2) provides that, where the driver has become liable for a deferred toll amount under section 73F, the toll operator may give the registered operator of a vehicle a written notice in the approved form. The notice may require the registered operator, within the time prescribed on the notice, to either pay the deferred toll amount to the toll operator or give the toll operator a statutory declaration made by the registered operator. The declaration must (1) be in the approved form, (2) contain information that establishes that the registered operator was not the driver and (3) give the toll operator all reasonable help necessary to establish the name and address of the driver.

Subsection (3) provides that where, without reasonable excuse, the registered operator fails to comply with subsection (2) (that is, either by paying the amount of the deferred toll or by assisting in identifying the

driver of the vehicle), the registered operator commits an offence under this part.

Subsection (4) allows service of the notice to be effected by sending the notice to the address recorded for the registered operator under the registration act applying to the designated vehicle's registration.

### ***Section 73H Notice to information holder***

This section allows the toll operator to obtain information about a driver who failed to pay a toll from a person other than the registered operator of the vehicle used by the driver.

Subsection (1) provides the conditions under which a toll operator may provide a notice to an information holder: (1) the toll operator has not received the deferred toll amount; and (2) believes, on reasonable grounds, that a person other than the registered operator (the "information holder") has information that could assist in establishing the name and address of the driver liable for a deferred toll under section 73F.

Subsection (2) provides that a written notice, in the prescribed form, may be given to the information holder requiring that person to give a statutory declaration containing information as described in subsection (3). Subsection (3) provides that the declaration by the information holder must be in the approved form and give the toll operator all reasonable help necessary to establish the name and address of the driver.

Subsection (4) makes it an offence for the information holder without reasonable excuse to fail to comply with the notice given under subsection (2).

### ***Section 73I Notice to person identified as driver***

This section allows the toll road operator to provide a notice to a person identified as a result of a statutory declaration given by the registered operator under section 73G or by the information holder under section 73H.

Subsection (1) provides that the section will apply only if the toll operator has not received the deferred toll amount and considers on reasonable grounds that the driver has been correctly identified. That person is called the identified person.

Subsection (2) provides that the toll road operator may give the identified person a written notice in the approved form. The notice may

require the identified person within the prescribed time as defined in the part to:

- pay the deferred toll amount to the toll road operator; or
- give a statutory declaration in the approved form that contains information that establishes that the registered operator was not the driver and that gives the toll operator all reasonable help necessary to establish the name and address of the driver.

Subsection (3) provides that, if the identified person without reasonable excuse does not comply with the notice, the identified person commits an offence.

### ***Section 73J Statutory declarations for div 3***

Subsection (1) provides that a statutory declaration given under Division 3, of Part 7, Chapter 5 may be supported by statutory declarations from other persons.

Subsection (2) provides that when a statutory declaration is required to be given under the division by a body corporate, the statutory declaration must be given by a person authorised to act on behalf of the body corporate.

### ***Section 73K Limit on offences***

This section limits to one the number of offences that a person may be charged with resulting from a single journey on one toll road. If a person is liable for more than one deferred toll because of the failure to pay a toll at each of two or more toll plazas on the one toll road in a single journey, that person may not be punished for more than one offence in relation to that journey. This section satisfies one of the legislative principles adopted by the Standing Committee on Transport.

### ***Section 73L Confidentiality***

This section is included for the protection of personal information used in the course of toll collection consistent with one of the legislative principles adopted by the Standing Committee on Transport.

Subsection (1) provides that a person must not, intentionally or recklessly, disclose, allow access to, record or use personal information. The provision is primarily aimed at employees of a toll operator but applies to any person who may have access to such information. A penalty of 200 penalty units applies for contravention of the section.

Subsection (2) provides exemptions to subsection (1). It allows a person to disclose, allow access to, record or use personal information in five circumstances. These are:

- in the discharge of a function related to the administration of Part 7 of the Act. The toll road operator must use information about toll road customers to collect the deferred toll.
- if expressly or impliedly authorised under another provision of the *Transport Infrastructure Act 1994* or another Act or by the person whose identity can be ascertained from the personal information.
- if the information is being used in a court or tribunal and the information is admissible as evidence in the proceeding
- if the information is being used for a purpose directly related to the purpose for which the information was obtained
- if the person using the information reasonably believes that the use is necessary to prevent or lessen a serious or imminent threat to the life or health of an individual. This may occur, for instance, where the whereabouts of a vehicle is required in the case of a kidnapping or some other crime endangering a person's life.

Subsection (3) defines the term “administration of this part” to include the operation of a road toll under Part 7 of the Act. This means that any action for the operation of a toll road justifies the disclosure, allowing of access to, recording or use of personal information. This subsection also defines “personal information” as information or an opinion. It may form part of a database, be true or not true and may be recorded in a material form. To be considered personal information, the information or opinion must have been gained or brought into existence through involvement in the administration of Part 7 or because of an opportunity provided by such involvement. The information or opinion must also be about an individual whose identity is apparent from the information or opinion or can reasonably be ascertained from the information or opinion.

### ***Section 73M Evidence and procedure***

This section relates to the proving of an offence under Part 7. It mirrors in part certain evidentiary provisions of the *Transport Operations (Road Use Management) Act 1995* that facilitate the introduction of certain types of evidence into legal proceedings.

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Subsection (1) provides that, when presenting evidence to establish certain matters in a proceeding under Part 7:

- it is not necessary to prove the appointment of an official
- the signature of an official is admissible without proof unless challenged
- a certificate is admissible that states:
  - the location of the toll road and toll plaza [subsection (1)(c)(i)&(ii)]
  - the identity of the registered operator [subsection (1)(c)(iii)]
  - a stated vehicle was a vehicle subject to a particular toll (a toll for a car) [subsection (1)(c)(iv)]
  - the toll or administration for a toll has not been paid [subsection (1)(c)(v)&(vi)]
  - the toll road operator did or did not receive a statutory declaration under division 3 [subsection (1)(c)(vii)]
  - a recording is a recording of a type mentioned in subsection (3) [subsection (1)(c)(viii)].

Subsection (2) provides that a certificate may relate to a stated time or period of time and has the effect mentioned in subsection (1)(c) for the entire particular period for which it was issued.

Subsection (3) provides that a recording by photographic, mechanical, electronic or other devices produced for administering Part 7 is evidence that the recording was made, of the accuracy of the recording and of the matters stated in the recording. These recordings would include the image and toll data stored on an electronic image file. This means, for example, that a hardcopy of an image file presented in a court or tribunal, purporting to represent that a particular vehicle passed through a particular toll plaza lane at a particular time and that payment or the liability to pay was not fulfilled, will be taken to be evidence of those facts.

Subsection (4) defines “certificate” as a certificate purporting to be signed by an official. It also defines “official” as the chief executive of the department or of a toll road operator or a suitably qualified officer or employee of the department or toll road operator acting under the authority of the chief executive of the department or toll operator.



### **Section 6 Amendment of sch 1 (Subject matter for regulations)**

*Clause 6* amends schedule 1 (Subject matter for regulations) by omitting item 6. This item gave power, by virtue of section 200, to regulate about tolls payable through the use of roads and the collection of the tolls. This power is now contained in section 73A.

### **Section 7 Amendment of sch 3 (Dictionary)**

*Clause 7* inserts the definition of various terms used in the preceding amendments.

### **Section 8 Act amended in pt 3**

*Clause 8* provides that Part 3 amends the *Transport Operations (Marine Safety) Act 1994*.

### **Section 9 Amendment of s4 (Definitions)**

*Clause 9* inserts a new definition of “port authority”. This term is used in the replacement section 101 and the new section 102A and has not been previously defined.

### **Section 10 Amendment of s60 (Regulation may require licences)**

*Clause 10* omits section 60(2) which places restrictions on who can hold a pilot’s licence. The removal of this restriction will allow Queensland Transport to issue a pilot’s licence to any person who meets the eligibility criteria established in s.69 of the Transport Operations (Marine Safety) Regulation 1995. This supports the findings of the NCP review which supported the introduction of contestability for pilotage services in ports at the discretion of port authorities.

### **Section 11 Amendment of s99 (Pilots required for ship navigation in pilotage areas)**

*Clause 11* amends section 99 which establishes a penalty for evading pilotage. The penalty for evaded pilotage is calculated using a formula based on the fee that would have been applicable for pilotage had the ship taken a pilot. As from 1 July 2001, the fees for pilotage in the majority of Queensland’s commercial ports will be removed from regulation and will

be determined by port authorities. This section establishes a maximum penalty using penalty units.

The clause also omits section 99(2) which describes the formula for establishing the maximum penalty for the offence of evaded pilotage.

### **Section 12 Replacement of s101 (Immunity for pilots and their employers)**

*Clause 12* replaces section 101 with a similar provision which extends immunity from civil liability to include another pilot onboard the ship and the principal in a contract for the provision of pilotage services. The legislation seeks to ensure that the immunity from liability afforded to a pilot's general employer covers port authorities and the department if they choose to contract the services of a pilotage provider rather than directly employ pilots. The legislation also seeks to remove any doubt as to whether a pilot who is accompanying another pilot for the purposes of training or assessing that pilot (a supervising pilot), also has immunity.

### **Section 13 Insertion of new s102A (Restriction on conduct of shipping by pilot)**

*Clause 13* creates a new section 102A outlining who may have conduct of a ship as its pilot. The National Competition Policy review into marine pilotage legislation supported the maintenance of single service providers for pilotage in each of Queensland's ports. This section allows port authorities and Queensland Transport to deliver pilotage services either directly or through agents in their respective ports. It also ensures that any person wishing to obtain a pilot's licence who is not an employee or agent of Queensland Transport or a port authority, can have conduct of a ship to obtain such a licence. This will effectively increase the number of potential service providers who would be eligible to tender for the right to provide a pilotage service