

Transport Infrastructure and Other Legislation Amendment Bill 2005

Explanatory Notes

Short Title of the Bill

Transport Infrastructure and Other Legislation Amendment Bill 2005

Policy Objectives of the Legislation

To amend the *Transport Infrastructure Act 1994* to provide for the continuation of appropriate controls over port operations with the impending expiry of the *Transport Infrastructure (Ports) Regulation 1994* and the *Transport Infrastructure (Airport Management) Regulation 1994*.

To amend the *Transport Operations (Marine Safety) Act 1994 (TOMSA)* to extend its heads of power to manage the operation and activities of ships for other than safety reasons. For the purposes of TOMSA, a ship is any kind of boat or other vessel which is used in navigation by water, regardless of its size or how it is propelled or moved.

To amend the *Maritime Safety Queensland Act 2002* to make it a function of Maritime Safety Queensland (MSQ) to manage the operation and activities of ships in Queensland waters for other than safety reasons.

Reason for the Bill

Transport Infrastructure Act 1994

Under the provisions of Section 54(1) of the *Statutory Instruments Act 1992*, all subordinate legislation expires on 1 September first occurring after the 10th anniversary of the day of its making. Under this legislation, the *Transport Infrastructure (Ports) Regulation 1994* and the *Transport Infrastructure (Airport Management) Regulation 1994* are scheduled to expire on 31 August 2005 following an extension under 56A (1) of the *Statutory Instruments Act 1992*. The current regulations provide sufficient authority for Queensland port authorities to effectively and efficiently manage their ports on a day-to-day basis.

A review of the 1994 regulations covering Queensland port and airport operations has confirmed that the powers and controls over port and airport operations are more appropriate for inclusion in the *Transport Infrastructure Act 1994*, to ensure alignment with best legislative practice.

Transport Operations (Maritime Safety) Act 1994

MSQ currently manages the safe operation of ships on water under *TOMSA*. The objectives of this Act are limited to protecting and preserving marine safety and supporting the effectiveness and efficiency of the marine industry.

In many cases, the predominant issue surrounding the operation of a type of ship or activity is not that of safety but of amenity and nuisance caused by the ship interacting with other waterways users and waterside residents.

For this reason, it is proposed to extend the objectives and regulation making powers of *TOMSA* to enable effective regulation of the operation and activities of ships on water for other than safety reasons.

As a consequence, it is also necessary to amend the functions of MSQ described in the *Maritime Safety Queensland Act 2002* to reflect that the objectives and regulation making powers of *TOMSA* have been extended.

Achieving the Objectives

The provisions of the current *Transport Infrastructure (Ports) Regulation 1994* and the *Transport Infrastructure (Airport Management) Regulation 1994* are to be transferred into the *Transport Infrastructure Act 1994* except for the port limits and other minor matters which will be remade in a regulation.

Provisions to be inserted into the *Transport Infrastructure Act 1994* include determining who is liable for port charges and expenses in relation to ships utilising port facilities, aircraft at airports including goods being transferred to and from ships and aircraft and passengers on the ships and aircraft. Cairns International Airport and Mackay Airport are the only relevant airports for this legislation.

The current regulations provide the detention and sale powers of ships, aircraft and goods by port authorities to cover overdue charges without having to gain prior approval of the Court. This was a breach of fundamental legislative principles. These detention and sale powers have not been included in these provisions. Instead, provisions allow a port

authority the option to request a security deposit from persons liable for port charges for the use of port facilities to cover existing or potential liabilities.

Provisions to provide for port notices to control port and airport activities on strategic port land, port facilities and other areas of the port are to be included in the *Transport Infrastructure Act 1994*. Port notices may also control the movement and mooring of ships, the parking of aircraft and vehicles, the movement, handling and storage of goods at ports and airports and the movement of persons and railway rolling stock at these facilities.

Furthermore, provisions allow the appointment of authorised officers for a port authority to enforce provisions for the safe, secure and efficient operation of the port and airport.

Under the existing Section 287 of the Act "strategic port land" is not subject to a planning scheme under the *Integrated Planning Act 1997*. The new provisions amend the requirements for port authorities to prepare land use plans to reflect the procedural requirements specified in the *Integrated Planning Act 1997*.

Administrative Costs

It is not anticipated that the proposed amendments will incur any additional administrative costs.

Fundamental Legislative Principles

The principles relating to legislation that underlie a parliamentary democracy based on the rule of law are the fundamental legislative principles. Examples of those principles are set out in the *Legislative Standards Act 1992*, sections 4(3) to (5).

Some aspects of the Bill may impact on the fundamental legislative principles.

New sections 283A and 283B provide powers to authorised officers without a warrant to inspect documents and goods including entering ships, aircraft, vehicles and railway rolling stock in a port area, to determine charges. The power to inspect these facilities is restricted to determining whether port charges are payable or the amount of the charges. The entry power is limited to entering these conveyances within a port area. This power is considered essential to determine that correct charges are being paid by port and airport users and continues the essential components of the

current provisions outlined in the *Transport Infrastructure (Ports) Regulation 1994*.

New sections 280 to 281B, 281D and 281E determine who is liable for port authority charges and damage to port facilities. This includes making another person responsible for the actions of another. Ships are often owned by complicated company structures with companies resident in different foreign countries. A ship may be registered under "a flag of convenience". Likewise, aircraft are often leased or chartered and the owner has little or no control where the aircraft is operating. Ships and aircraft can quickly exit Australian territorial waters and airspace. This requirement to impose liability on other persons for outstanding charges for the use of port and airport facilities is an accepted practice. It is part of commercial reality when these persons enter into these arrangements.

New section 285 sets out the purposes for which strategic port land, is used or may be used (land in current approved land use plan is strategic port land). Subparagraph (1) (b) (vii) allows for other purposes of a port authority, prescribed under a regulation, to be added. Currently, section 275(1) (g) provides for additional functions, conferred under *Transport Infrastructure Act 1994* or another Act or prescribed by a regulation, to be added to the functions of a port authority. Subparagraph 285(1) (b) (vii) is required so there is flexibility for a port authority's land use plan to reflect, if needed, a purpose that corresponds to an additional function conferred or prescribed under paragraph 275(1)(g).

The other provisions of the *Transport Infrastructure and Other Legislation Amendment Bill 2005* are consistent with the fundamental legislative principles provided for under the *Legislative Standards Act 1992*.

Consultation

The proposed amendments to port and airport provisions have been supported by key stakeholders. A Discussion Paper was released in August 2004 to all Queensland port authorities, shipping interests and key State government agencies. A key outcome from submissions to the Discussion Paper was that continuing a strong legislative platform to control port and airport operations in Queensland was essential to ensure safe, efficient and effective port operations at Queensland ports and Cairns International Airport and Mackay Airport.

The proposal to amend the TOMSA to extend its heads of power to enable the effective regulation of ships for other than safety reasons was canvassed

in the government's Jet Ski Management Plan, released for public comment on 6 December 2004.

Extensive consultation has been undertaken with the Local Government Association of Queensland, individual local councils, boating industry groups and the general public, with the majority of stakeholders supporting the proposed legislative amendments.

The single biggest issue arising from consultation on both the initial Discussion Paper and the Jet Ski Management Plan was the issue of zones.

Jet ski operators and their representative organisations expressed strong concerns about any proposal to blanket ban the use of jet skis from entire areas, similar to action taken in Sydney Harbour by the NSW Maritime Authority.

To a lesser but still considerable extent, respondents expressed concerns about the creation of exclusion zones at all for jet skis. In particular, respondents were concerned that local and state authorities would be arbitrary in their decision making regarding where such exclusion zones would be created. Other issues raised included the inequity of excluding one class of boat from an area but not others.

Conversely, local councils, community groups and individual waterside residents, are strongly in favour of the creation of legislation that would enable government to restrict or limit the use of jet skis or other nuisance craft in a particular area.

To ensure a high degree of consistency and transparency in decision making on these matters, MSQ is working with the Local Government Association of Queensland and local councils to establish a set of assessment criteria to be applied in cases where a local council wishes to propose the establishment of a zone. One of the key criteria will be that the council undertakes full public consultation before a zone is approved and regulated.

In discussions with councils to date, a range of assessment criteria have been considered. These include considerations of safety, environmental protection, accessibility and suitability (for example, the availability of boat ramps and facilities in other, non-restricted areas), amenity, noise, enforceability and equity issues. Further work will be done with councils over the assessment criteria and any other outstanding issues in May 2005.

Broadly, it is envisaged that the role of councils will encompass consultation with their communities over proposed zones to limit or restrict jet ski activities (in accordance with the agreed assessment criteria),

education and awareness raising about local jet ski provisions, and land-based enforcement through council officers who will be authorised under legislation administered by MSQ.

Recommendations for zones to limit or restrict activity will be made to the Minister for Transport and Main Roads. If approved, these areas will subsequently be created by Gazette Notice.

Consultation on the draft Bill has also been undertaken with government agencies.

Notes on Provisions

Part 1- Preliminary

Short Title

Clause 1 states the short title of the Act is to be the *Transport Infrastructure and Other Legislation Amendment Act 2005*.

Commencement

Clause 2 states that Part 3 of the Bill commences on proclamation. The remainder of the Bill commences on assent.

Part 2 – Amendment of the Maritime Safety Queensland Act 2002

Clause 3 states that this part amends the *Maritime Safety Queensland Act 2002*.

Clause 4 amends section 8 (Functions and powers of MSQ) to make it clear that it is a function of MSQ to manage the operation and activities of ships in Queensland waters for reasons other than safety.

Queensland waters are defined as all waters within the limits of the State and coastal waters of the State.

Part 3- Amendment of the Transport Infrastructure Act 1994

Clause 5 states that this part amends the *Transport Infrastructure Act 1994*.

Clause 6 omits the definition of "train controller" from section 188. Clause 17 inserts the definition in Schedule 6 (Dictionary).

Clause 7 amends the heading of Chapter 8 to "Port Infrastructure and other matters".

Clause 8 adds definitions in Chapter 8 (Port Infrastructure and other matters) for "airport", "port area" and "requirement".

Clause 9 inserts new section 267A which defines port facilities as facilities that are port authority owned or controlled and land that is used in the operation or strategic management of the port. By definition, Cairns International Airport and Mackay Airport are ports of the Cairns Port Authority and Mackay Port Authority respectively.

Clause 10 inserts subsection 275(3) that reflects old section 281 with reference to old section 279 omitted. It requires a port authority whose functions have been extended by a regulation under section 275(1) (g), to have a copy of a document, detailing the function, to be available for inspection and purchase during business hours at the port authority's nearest office to which the function applies.

Clause 11 omits existing provisions of sections 279 to 283 and inserts new provisions.

Omitted sections 279, 282 and 283 provided power to make regulations on certain specified matters. This Bill includes provisions on these specified matters.

New part heading "Part 3A Liability for, and recovery of, charges and expenses" is inserted.

New section 279 reflects old section 280 and allows a port authority to impose a charge for the use of its port area.

New section 280 details who is jointly and severally liable where a charge is payable for a ship.

New section 281 specifies who is jointly and severally liable where a charge is payable for an aircraft.

New section 281A determines who is jointly and severally liable where a charge is payable for goods.

New section 281B details who is jointly and severally liable where a charge is payable for passengers.

New section 281C reflects old section 293 and allows a port authority to determine the time when a charge has to be paid by. If the charge remains unpaid by this date, the port authority may charge interest on the unpaid amount at a rate determined by the port authority.

A regulation may exempt the payment of a charge. Furthermore, a port authority may exempt or partly exempt a person from payment of a charge by the port authority.

New section 281D provides that where an authorised officer has had a ship, aircraft, a vehicle, goods or rolling stock moved and a reasonable expense has been incurred by the port authority, the expense is a debt owing to the port authority. The person who would be liable for a charge payable for the ship, aircraft or goods is as applicable under sections 280, 281 and 281A. Where a vehicle or rolling stock is moved, the owner or driver of the vehicle or rolling stock is liable for the charge.

New section 281E details who is jointly and severally liable for damage to a port authority's work or infrastructure where damage is caused by a ship, an aircraft or floating or submerged material.

New section 281F allows a port authority, if it desires to request a security deposit as security for payment of a charge that has been or may be incurred by the person under sections 280 to 281D. The security deposit may also be security to cover damage or potential damage to port facilities by a ship or aircraft under section 281E.

The port authority determines the form of the security deposit and the amount of the security that has to be reasonable for the circumstances. The form of the security deposit can be cash, a guarantee from a financial institution or another form decided by the port authority.

If the depositor of the security deposit does not meet its liability for the charge or damage by the due date, the port authority may appropriate the security deposit to meet this liability.

The port authority may require the person to lodge a further security deposit if the security deposit has been appropriated or partly appropriated. Likewise, the port authority may require the person to lodge a security deposit in a greater amount, or in a different form, or both, if the port

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authority believes that the depositor's potential liability under this part should be more adequately guaranteed.

New part heading "Part 3B Control of activities at ports" and division heading "Division 1 Port Notices" are inserted.

New section 282 provides for where activities may affect port operations or cause damage to strategic port land or the environment, for port notices to be displayed or published by a port authority to control activities or conduct, on its port area which includes Cairns International Airport and Mackay Airport.

New section 282A allows a port authority to issue or erect a port notice to control the movement or mooring of a ship at its port facilities or its port area including activities on ships if the activities may affect the port's operation.

New section 282B authorises the Cairns Port Authority or Mackay Port Authority to issue a port notice to control parking of aircraft at its airport. Commonwealth legislation applies to most movements of aircraft within the airports.

New section 282C provides power for a port authority to issue or erect a port notice to control the movement, handling or storage of goods at or on its port facilities including Cairns Port Authority and Mackay Port Authority at their airports.

New section 282D authorises a port authority to issue or erect a port notice to control the movement of persons on or using port facilities including at Cairns International Airport and Mackay Airport.

New section 282E allows a port authority to issue or erect a port notice to control the stopping and parking of vehicles on or at port facilities or strategic port land including at Cairns International Airport and Mackay Airport. However, the port authority's control is subject to the chief executive under *Transport Operations (Road Use Management) Act 1995* installing an official traffic sign.

New section 282F provides power for a port authority to issue or erect a port notice to control the movement, stopping or parking of railway rolling stock on or at port facilities.

New section 282G states that for a port notice to be effective it must be displayed on or near the item to which the notice relates. Alternatively there is provision for a port notice to be displayed on the port authority's web site. However, before displaying the port notice on the web site, the port authority must publish the details of the port notice twice in a

newspaper distributed in the port's locality. A copy of a port notice has to be available for inspection or purchase at the port authority's nearest office during normal business hours.

New section 282H allows a port notice to refer to a document held by a port authority. The document may be a standard issued by Standards Australia, Civil Aviation Safety Authority or by a listed international organisation. Alternatively if the document is not a standard, the document has to be available free of charge at the nearest office of the port authority during normal business hours.

New section 282I requires a port notice to indicate the area to which the notice applies and if non compliance with the notice is an offence, indicate the maximum penalty for the offence.

New section 282J makes non compliance with a port notice an offence unless the person has a reasonable excuse for not complying with the port notice. The maximum penalties for non compliance are based upon the maximum penalties for non compliance in the existing regulations.

New division heading "Division 2 Authorised officers" is inserted.

New section 282K provides for the port authority to appoint a person as an authorised officer for the port authority. However, before appointing a person, the port authority must be satisfied the person has the necessary expertise or experience.

New section 282L specifies the different ways that conditions can apply to the appointment of an authorised officer and how the authorised officer's powers may be limited.

New section 282M requires the port authority to issue an identity card to each authorised officer and details what information the identity card is to contain.

New section 282N details the circumstances when an authorised officer must show the identity card to ensure that persons with whom the officer deals knows he or she is an authorised officer.

New section 282O identifies ways in which an authorised officer ceases to hold office.

New section 282P requires a person to return the identity card if they cease to be an authorised officer. Unless there is a reasonable excuse, it is an offence if the card is not returned within 21 days of ceasing office.

New division heading "Division 3 Directions" is inserted.

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New section 282Q allows an authorised officer to verbally direct a person on the port authority's port area if the person's activities may affect the port's operation or the safety or security of the port, or the port users or the port authority's employees may be affected.

The provision allows an authorised officer to direct a person to leave port facilities if the authorised officer finds a person committing an offence against section 283G, or suspects on reasonable grounds that the person has just committed an offence against section 283G.

A person may also be directed to leave if the authorised officer reasonably believes the person's presence may pose a threat to the safety or security of the port facilities or to the port users or the port authority's employees. The direction may include a direction not to re-enter the port facility or part of the port facilities for 24 hours.

New section 282R applies if the person does not comply with the verbal direction, given under section 282Q. The authorised officer may give the person a written direction. If it is not possible or practicable to give the written direction to the person at that time, a further verbal direction may be given with the written direction to be given as soon as it is possible or practicable to do so.

When the authorised officer gives the written direction (or further verbal direction), the authorised officer must warn the person that the person may commit an offence if the person does not comply with the direction within the stated time in the direction.

New section 282S makes non compliance with a direction within the time stated in a written direction under section 282R (1) or with further verbal direction under section 282R(2) by an authorised person, an offence unless the person has a reasonable excuse for not complying with the direction. The maximum penalties for non compliance generally reflect the maximum penalties for non compliance in the existing regulations. However, an additional offence with a maximum penalty of 200 penalty units has been added where not complying with a direction results in a significant delay to port operation.

New division heading "Division 4 Moving contravening property" is inserted.

New section 282T defines "contravening property" as a ship, an aircraft, a vehicle, goods or railway rolling stock that is moored, parked or left in a port including Cairns International Airport or Mackay Airport or at a port facility breaching the requirements of a port notice or a direction of an authorised officer.

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The provision allows an authorised officer, who reasonably believes that a ship, an aircraft, a vehicle, goods or railway rolling stock in a port or at a port facility is contravening property, to take steps that are necessary and reasonable to have the contravening property moved. However, before taking action, the authorised officer must believe the contravening property may affect efficient operation of the port or that the safety or security of the port, or the port users or the port authority's employees may be affected.

Furthermore, before the authorised officer can move the rolling stock, the authorised officer must check with the train controller employed by the railway manager for the railway that it is safe to move the rolling stock.

New division heading "Division 5 Other powers and offences" is inserted.

New section 283 provides for an authorised officer in certain circumstances to ask a person in a port area to state their name and address and if the authorised officer suspects that a false name or address has been given, ask for proof.

New section 283A provides power for an authorised officer to require a person who is or may be liable to pay a charge to the port authority, to produce documents under the person's control that would be relevant in determining if the person is liable to pay the charge or determining the amount of the charge.

The person must comply with the requirement unless the person has a reasonable excuse.

New section 283B applies only to the extent necessary for an authorised officer to determine if a charge is payable for a ship, an aircraft or goods or determine the amount of the charge.

A person in charge of a ship, aircraft, vehicle or rolling stock in a port area must allow an authorised officer to inspect the conveyance, or enter and inspect goods on or in the conveyance.

New section 283C makes it an offence to obstruct an authorised officer in exercising their powers in a port authority's port area.

New section 283D makes it an offence to give a false or misleading statement to an authorised officer.

New section 283E makes it an offence to give a false or misleading document to an authorised officer, unless the person tells the authorised officer where the document is false or misleading to the best of the person's knowledge and, if known, gives the correct information.

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New section 283F makes it an offence to pretend to be an authorised officer.

New section 283G makes disorderly behaviour or creating a disturbance at port facilities, an offence.

New section 283H makes it an offence to remove or damage or interfere with a port notice displayed in a port authority's port area.

Clause 12 omits existing sections 284 and 285 and inserts new sections 284 to 285D.

Under existing section 287, "strategic port land" is not subject to a planning scheme under the *Integrated Planning Act 1997*. These amendments add *Integrated Planning Act 1997* type procedural requirements to the existing requirements to determine or amend the land use plans which detail the port authority's "strategic port land".

New section 284 inserts definitions for Division 1.

New section 285 states that this section applies to land that a port authority owns or holds directly from the State and is used or may be used for the listed uses. Other than for an airport, the strategic port land has to be on or close to the interface of the land and the waters within the port limits of the port and used for port-related purposes.

The section requires a land use plan for this land to be prepared by the port authority at least every 8 years. In addition, the Minister may direct that the port authority prepare a new or amend an existing land use plan for approval by the Minister (or the Governor in Council in certain circumstances) under section 286.

The section also specifies the details the land use plan must contain.

New section 285A requires a port authority to prepare a statement of proposal when preparing a new or amending an existing land use plan. The section specifies the information to be included in each statement. The statement has to be supplied to each local government whose area the port authority's port area is in or adjoins.

However, a statement of proposal is not required where the amendment of a land use plan is to remove land from that land use plan or for land that is already strategic port land if the land use is not to change.

Land removed from the land use plan falls under the local authority's planning control. An example of where the land use plan is amended but its use does not change is when a lot of strategic port land is reconfigured and the use of a lot does not change.

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New section 285B requires a port authority, after consulting on a statement of proposals under sections 285A and 285C, to take appropriate account of the issues raised by the public consultation and prepare a draft land use plan or a draft amendment of the existing land use plan. This draft land use plan or draft amendment must be supplied to the local governments whose area the port authority's port area is in or adjoins.

New section 285C sets out the procedures for public consultation to be carried out, after a statement of proposal has been prepared under section 285A or a draft land use plan or draft amendment has been produced under section 285B.

New section 285D allows the Minister to return a draft land use plan for amendment as directed by the Minister for Transport. This direction must be gazetted within 21 days.

Clause 13 amends subsection 286(1) to add an additional provision, that State interests will not be adversely affected by the draft land use plan or amendment. Existing provisions that the Minister has to be satisfied that the port authority has taken appropriate account of issues raised in the public consultation process and that no local government has a substantial objection to the proposed plan or amendment have been retained.

Subsection (2) applies where the Minister believes that requirements (a), (b) and (d) in subsection 1 have been met but a local government has a substantial objection to the draft land use plan and allows Governor in Council to approve the plan.

In addition, new subsection (6) requires a port authority's current approved land use plan to be published on the port authority's web site.

Clause 14 inserts into Chapter 8 new parts "Part 4A Port approvals" and "Part 4B Disposal of abandoned property".

New part heading "Part 4A Port approvals" is inserted.

New section 289A states that Part 4A only applies if a port authority decides to regulate a controlled activity and has issued a port notice to that effect under section 282. A controlled activity is defined in new section 289B and means operating a tug service, a refuelling facility in a port or in relation to a ship, the activities of burning, welding, riveting, refuelling, spray painting or sand blasting.

New section 289B inserts definitions in the part for "approval" and "controlled activity".

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New section 289C allows a person to apply to a port authority for an approval to carry out a controlled activity. The section specifies the details to be included in the application.

New section 289D allows the port authority to approve the application with or without conditions or to refuse the application.

An approval may or may not give an exclusive right to the holder to operate a tug service in the port area.

New section 289E gives a port authority the power to revoke, suspend or impose or change a condition on, an approval having regard to the efficient operation of the port or the safety or security of the port, port user and port authority's employees.

New section 289F requires where the port authority decides to refuse, suspend or revoke an approval, or imposes or changes a condition on an approval, for the port authority to advise the applicant or approval holder in writing, the decision, the reason for the decision, that the person can request that decision be reviewed and a reviewed decision be appealed under section 289G, and the person may apply for the decision or reviewed decision to be stayed.

New section 289G provides for a person, whose interests are affected by a decision, to which section 289F applies, to request the port authority to review the decision.

If a port authority confirms or amends the original decision or substitutes another decision and the person is still not satisfied, the person may appeal to a Magistrates Court against the confirmed, amended or substituted decision.

The procedures for the review and appeal are as per *Transport Planning and Coordination Act 1994*, Part 5, Divisions 2 and 3 respectively with references to the chief executive to be read as references to the chief executive of the port authority.

New part heading "Part 4B Disposal of abandoned property" is inserted.

New section 289H defines "abandoned property" and "insufficient value property" for the part.

New section 289I requires the port authority if it finds abandoned property at its port facilities to take reasonable steps to locate the owner and have the property moved to an appropriate place. However, these requirements do not apply to abandoned property of nil or insufficient value to justify its

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sale or property that is perishable and it is impracticable for the authority to keep the perishable property having regard to its nature and condition.

If the owner is located, within 28 days of finding the property, the port authority by written notice to the owner, must describe the property, state it has been found, how it may be recovered and advise that it may be sold or disposed of if it is not recovered.

If the owner is not located within 28 days of finding the property, the port authority must publish the notice in a newspaper circulating generally in the State.

New section 289J requires the port authority to return the abandoned property to a person if the person claims the property within 28 days of the notice under section 289I is given or published. However, before returning the property, the person is to pay the expenses reasonably incurred by the port authority in dealing with the property under this part and the port authority must be satisfied that the person is the owner of the property.

New section 289K applies if the abandoned property is not claimed within 28 days of the notice under section 289I is given or published. The port authority may sell property.

New section 289L allows a port authority to sell perishable abandoned property if it is impracticable for the port authority to keep it having regard to its nature and condition.

New section 289M sets out the order in which the proceeds from the sale of abandoned property are to be applied. The listed expenses of the port authority are to be met first with the balance of the proceeds to be paid to the owner. If the listed expenses of the port authority are not covered by the sale of the abandoned property, the difference is a debt owing to the port authority by the owner.

In addition, compensation is not payable by a port authority for a payment under this section.

New section 289N allows a port authority to dispose of the abandoned property in the way it considers appropriate if the port authority considers the property is of nil or insufficient value to justify its sale.

Clause 15 omits section 293 (Payment of charges and interest on unpaid charges). Clause 11 inserts the provisions of that section as new section 281C.

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Clause 16 inserts new part "Part 5 Transitional provisions for the Transport Infrastructure and Other Legislation Amendment Act 2005" in Chapter 18 "Further Transitional Provisions".

New section 532 inserts the definitions for "Part 5 Transitional provisions for the Transport Infrastructure and Other Legislation Amendment Act 2005" for "commencement" and "repealed regulation".

New section 533 provides for written approval for an activity under the repealed *Transport Infrastructure (Ports) Regulation 1994*, now defined in clause 14 as a "controlled activity", in force at commencement, to remain in force for six months after commencement or to expire prior to that date when a port authority issues a new approval to the person for the controlled activity under the provisions of clause 13.

New section 534 provides for the continuation of proceedings by or against a port authority under a repealed regulation, underway at the commencement of this section, under the provisions of the repealed regulation.

New section 535 provides where consultation for a new land use plan or amendment to an existing land use plan had commenced but the Minister had not approved the new land use plan or amendment at the commencement of the section, the process to continue under the provisions as they existed prior to the commencement of this section.

New section 536 provides that where a ship, an aircraft, goods, a vehicle or a train is being detained immediately before commencement for non payment of a charge owing to a port authority, the port authority may continue to deal with the property under the provisions of the repealed regulation.

New section 537 provides for where a port or airport notice in the form of an official traffic notice was at commencement, erected or displayed under a repealed regulation, the port or airport notice is deemed to be an official traffic notice under the *Transport Operations (Road Use Management) Act 1995*. This section expires 1 year after it commences.

New section 538 provides for subject provisions of new sections 533 to 537, where a thing was in force immediately before commencement under a provision of a repealed regulation and there is a similar provision in this Bill, the thing continues to have effect.

Clause 17 amends Schedule 6 (Dictionary) and alters the defined terms of "approval", "authorised officer" and "commencement" to incorporate new cross references from these amendments. It provides a cross reference for

the defined terms “abandoned property”, “airport”, “controlled activities”, “draft plan”, “insufficient value property”, “port area”, “port notice”, “port facilities”, “repealed regulation”, “requirement” and “statement of proposal”. The definition of “train controller” is moved from section 188(6).

The reference to Gladstone Port Authority in the definition of "port authority" is amended to the Central Queensland Ports Authority to reflect its name change under the *Government Owned Corporations Act 1993* when it amalgamated with the Rockhampton Port Authority.

Part 4 – Amendment of the Transport Operations (Marine Safety) Act 1994

Clause 18 states that this part amends the *Transport Operations (Marine Safety) Act 1994*.

Clause 19 extends the objectives of the Act from being strictly related to safety or promoting the effectiveness and efficiency of the maritime industry, to include the management of the operation and activities of ships for reasons other than safety.

Clause 20 amends section 29(1) to make it clear that the Act, while primarily about safety, is not limited to dealing with issues only for safety.

Clause 21 amends section 197(2) (b) where it first appears, by renumbering it to section 197(2) (a). This is an administrative amendment to address a section numbering anomaly.

Clause 22 amends section 218 to establish a new power to make regulations regarding the operation and activities of ships for reasons other than safety and provides examples of instances where this power could apply.