

# Transport Operations (TransLink Transit Authority) Bill 2008

## Explanatory Notes

### General Outline

The primary purpose of the Bill is to deliver in south east Queensland the best possible mass transit services at a reasonable cost to Government and community by bringing responsibility for public transport under one organisation and providing:

- a wider and improved range of all TransLink mass transit services with enhanced scheduling and integration, through increased overall control of the network;
- a single point of contact for customer service issues, including the provision of service information and complaints handling;
- a seamless introduction of new technology to improve TransLink mass transit services such as real time passenger information and widespread use of *go* card smartcard technology across the region;
- the single branding of all TransLink mass transit services in the region to create greater clarity of the State Government's role as the major funding provider and decision maker for the public transport system;
- improved governance of the TransLink mass transit network with local government, consumer and independent expert representation;
- the delivery of mass transit services as a part of the Congestion Management Plan;
- the delivery of, planning for, and purchasing of integrated public transport services;
- the network planning for public transport and the management and maintenance of public transport infrastructure such as bus stops and on-road bus facilities;

- the delivery and management of critical transport infrastructure;
- a service contract framework that ensures value for taxpayers funds by providing performance based incentives to operators that promote integrated public transport services, on time running, customer service, and minimising fare evasion;
- the development of integrated ticketing such as enhancing fare products, and information to passengers;
- high quality customer service through improved customer relations management such as the establishment of a "one stop shop";
- integrated scheduling across public transport services;
- the expansion of revenue sources by exploring commercial opportunities such as selling advertising rights on public transport system facilities and third party applications for go cards.

### **Short Title**

The short title of the Bill is the *Transport Operations (TransLink Transit Authority) Act 2008*.

### **Policy Objectives of the Legislation**

Population growth, land development and congestion issues are significant and exponential challenges for the State particularly in the south east Queensland region where it is recognised for its unique environment and lifestyle and strong economic performance. The effect of these factors results in an accelerated growth rate. It is estimated that Queensland will need to accommodate an extra one million residents in the next 20 years with the south east Queensland region expected to bear the majority of this growth. The impact of this on the transport system alone will be significant.

On 9 October 2007, Government announced the creation of one new Authority to manage all public transport services in south east Queensland. The announcement mentioned that the Authority would bring responsibility for public transport under one organisation, make it simpler and easier for customers by offering a “one stop shop” for scheduling, customer needs and complaints, and that it would be more accountable to the needs of customers and have greater control over service delivery.

These things will be delivered through the enactment of the Transport Operations (TransLink Transit Authority) Bill 2008, which includes:

- the establishment of the TransLink Transit Authority (the Authority) to provide in south east Queensland: an improved wider range of mass transit services with enhanced scheduling and integration across all TransLink services; a single point of contact for customer service issues; the seamless introduction of new technology to improve TransLink mass transit services such as real time passenger information and widespread use of *go* card smartcard; the single branding of all TransLink services to create greater clarity and recognition of the State Government's role as the major funding provider and decision maker for the public transport system; and improved governance of the TransLink mass transit system with local government, consumer and independent expert representation.
- the establishment of a board of management consisting of 7 members to oversee, manage and report on the strategic direction, mass transit network planning and the performance of the mass transit system against its role, functions, responsibilities and objectives; and
- amendments to the *Transport Operations (Passenger Transport) Act 1994*, and relevant amendments to the *Public Service Act 1996*, *Transport Infrastructure Act 1994*, *Transport Operations (Road Use Management) Act 1995*, and the *Transport Planning and Coordination Act 1994*.

## Reasons for the Bill

Legislation is required to establish the Authority to adopt the existing responsibilities of TransLink, and embrace new responsibilities to better manage, and deliver improved mass transit services in south east Queensland.

Amendments to the *Public Service Act 1996* are required to:

- enable the TransLink Transit Authority Employing Office to operate as a public service office and to enable the chief executive officer of the Authority to perform the role of head of office.

Amendments to the *Transport Infrastructure Act 1994* are required to:

- make minor wording changes to section 6 to ensure the requirement for transport infrastructure strategies to be consistent with and give effect to any integrated regional transport plan in force for the area applies to the TransLink area, and to section 20 to ensure that any network plans of the Authority are taken into account in the preparation of any transport Government Owned Corporation corporate plans or statements of corporate intent.

Amendments to the *Transport Operations (Passenger Transport) Act 1994* are required to:

- ensure that local government and privately owned infrastructure is always able to be used for public transport services even in circumstances of redevelopment or changes to ownership or leasing arrangements by defining certain infrastructure as "essential public transport infrastructure", and provide for the application of penalties if necessary;
- enable the making of subordinate legislation to declare particular infrastructure and provide conditions under which compensation can be made;
- facilitate the extension of TransLink services into developing urban areas on the fringes of the TransLink area and the provision of TransLink services to growing, stand-alone population centres elsewhere in south east Queensland;
- clarify and reinforce the existing statutory market entry restriction for urban bus services;
- provide the ability for Government to negotiate financial arrangements with contracted operators that do not create inadvertent Goods and Services Tax liabilities;
- remove the requirement for mid term review of service contracts if the contract is for a term less than 2 years;
- delete provisions made obsolete upon the creation of the TransLink Transit Authority or as a consequence of the preceding amendments;
- make minor wording changes to chapter 6 that are also consequential upon the preceding amendments.

Amendments to the *Transport Operations (Road Use Management) Act 1995* are required to:

- make minor wording changes to section 8 (contents of strategies) to ensure the requirement for road use management strategies to be consistent with and give effect to any integrated regional transport plan in force for the area applies to the TransLink area.

Amendments to the *Transport Planning and Coordination Act 1994* are required to:

- remove provisions and definitions pertaining to the defunct South East Queensland Transit Authority, and long distance scheduled passenger services, and insert a new section 22 to make clear that the previous functions of the South East Queensland Transit Authority to coordinate strategic planning, the operation of integrated transport systems, and integrated regional transport planning are functions performed by the chief executive of Queensland Transport; and
- Remove references to the chief executive of the South East Queensland Transit Authority that is now a defunct entity.

### **Achieving the Objectives**

In order to achieve the policy objectives, this Bill creates the appropriate structure and governance arrangements for a statutory body corporate, and provides the powers necessary for the Authority to achieve its functions and responsibilities of:

- delivering, planning and purchasing integrated mass transit services;
- improving and expanding mass transit services;
- mass transit network planning;
- managing and maintaining public transport infrastructure such as bus stops and on road bus facilities;
- delivering and managing mass transit infrastructure;
- managing transport service contracts to ensure value for taxpayers funds through performance based incentives that promote integrated mass transit services, on time running, customer service, and minimising fare evasion;
- managing integrated ticketing including development of fare products;

- providing information to passengers;
- delivering high quality customer service through improved customer relations management, that is, a "one stop shop";
- ensuring integrated scheduling occurs across mass transit services;
- improving the governance of mass transit services with local government, consumer and independent expert representation;
- managing the introduction of new technology in the mass transit network area; and
- exploring commercial opportunities for non-traditional revenue sources, for example, the sale of advertising rights on public transport facilities and third party applications for new ticketing technology.

### **Administrative Costs**

The creation of the Authority as a new legal entity will lead to additional functions and activities that will increase administrative costs. Some of these costs may not be able to be recouped, for example, new functions taken up from operators that need to be enhanced such as customer management and scheduling.

Additional costs are associated with meeting requirements under the *Financial Administration and Audit Act 1977* and the *Statutory Bodies Financial Arrangements Act 1982* and include the preparation of annual reports, managing risk and compliance requirements and internal audit costs. Some of these costs will be met by reprioritising within the Authority.

There are four key operational deliverables associated with the objectives and responsibilities of the Authority which are:

- A single integrated customer relationship management system. This includes a call centre operational 24 hours a day, 7 days a week that provides an option for the public to deal directly with a person rather than an automated system;
- A single point of accountability for marketing, media and branding;

- Integrated timetabling and scheduling, including the skills, resources and information technology systems to provide strategic scheduling for mass transit services; and
- A revised contract regime that aligns current transport service contract performance measures with the Authority's accountabilities and provides incentives to operators and business partners to optimise system efficiencies, and incentives to ensure revenue is collected on behalf of the Authority.

In addition to corporate costs, the additional operational deliverables mentioned above also increase the cost of operating the TransLink system. This includes the expansion of the scope and function of the existing call centre and the procurement of a common scheduling platform across all operators. In addition, it is anticipated that there will be capital costs associated with enhancements to information systems for integrated scheduling and customer relationship systems.

It is expected, however, that over five years, any additional costs will be outweighed by benefits associated with integrated scheduling and additional non-fare revenue from exploitation of commercial opportunities. It is also possible that additional fare revenue could be used to offset some costs. Some relatively minor savings are also expected to be made from reductions in duplication, particularly call centre reductions in QR Limited.

A new fare strategy is being developed for Government consideration for the 2008-2009 financial year. Any additional funding requirements for the Authority in the future (such as the expansion of existing services or the introduction of new services or initiatives) will also be subject to Government consideration.

## **Fundamental Legislative Principles**

Some of the proposed provisions may infringe some fundamental legislative principles. A full analysis and justification of all identified breaches is detailed below.

### ***Transport Operations (TransLink Transit Authority) Act 2008***

**Does the legislation have sufficient regard to the rights and liberties of individuals – *Legislative Standards Act 1992* section 4(3)**

## **What is the TransLink area**

Clause 7 states that the TransLink area is defined as the service contract areas or routes mentioned in schedule 1 and another service contract area or route in the SEQ area as prescribed under a regulation. The definition of a TransLink area has been transferred from the *Transport Operations (Passenger Transport) Act 1994* to this Act. Its adoption will provide consistency for operators involved with providing services in the TransLink area and will not impact on the general public.

### ***The following justifications are provided***

Allowing a regulation to change the definition of the TransLink area contained in the Act may be viewed as a breach of fundamental legislative principles. The definition of TransLink area in the *Transport Operations (TransLink Transit Authority) Act 2008* has merely been transferred from *Transport Operations (Passenger Transport) Act 1994* and does not represent a change in policy. The ability to extend the TransLink area by regulation is limited to the specified areas within south east Queensland and is subject to stringent criteria.

### ***Coordination of mass transit services to and from special events***

Part 7 includes an offence provision whereby TransLink's approval is required prior to a person entering into or performing a contract or arrangement for the provision of mass transit services to and from special events. Part 7 also makes it clear that any contract or arrangement made or entered into for the provision of mass transit services to and from special events without TransLink's approval has no effect. However, for existing contracts or arrangements, clause 57 allows a 12 month transitional period from the date of commencement of the section.

### ***The following justifications are provided***

The 12 month transitional period is designed to minimise the impact on any person currently relying on existing contracts or arrangements for the provision of mass transit services to and from special events. As there is only one known contract that would be impacted by these clauses, the timeframe should allow sufficient time for operators or the event organiser with the existing contract to approach TransLink to seek approval. Importantly, the application of Part 7 is limited to larger events (at least 5000 participants or spectators) and where the provision of services will impact on TransLink in some way. In its role as "one-stop-shop" it is



important that TransLink have the ability to manage and control the provision of mass transit services to and from special events.

### **Novation of particular operational contracts to TransLink**

Clause 58 of the Bill 'Novation of particular operational contracts to TransLink' applies to contracts to be carried over to the Authority to which the State is a party (including manifestations of the State such as the *Transport Operations (Passenger Transport) Act 1994* department, and the former unincorporated body known as Translink) before commencement of this section and provides that, despite any provision in the contract, the Authority is a party to the contract instead of the State and assumes the rights and liabilities of the State. All references in a contract to the State are taken to be references to the Authority, and all changes are taken to have been made. These provisions make clear that the novation of contracts to the Authority does not discharge or affect the contract or its performance, nor does it fulfil any condition allowing for termination or release from the contract, or a liability under it. This clause clarifies that in this section, the term contracts includes a deed or other instrument under which a guarantee, indemnity or other form of surety that is given. In addition, the term contracts in relation to the performance of a function of the Authority includes a guarantee, indemnity or other form of surety that is given for the performance of the function.

#### ***The following justification is provided***

The provision does not adversely impact on the interests of any other party. The novation of operational contracts from the State to the Authority is merely a name change and none of the conditions or obligations, or liabilities under the contracts will change beyond name substitution. As a number of State contracts relevant to the Authority's functions will be novated to the Authority (as a State entity) by a regulation, the use of the regulation will allow all relevant contracts to be identified and there will be no adverse impacts for the parties.

#### ***Transport Operations (Passenger Transport) Act 1994***

**Does the legislation have sufficient regard to the rights and liberties of individuals – *Legislative Standards Act 1992* section 4(3)**

### **Declaration of essential public transport infrastructure**

Clause 70 inserts a new chapter 5A 'Essential public transport infrastructure'. The purpose of this chapter is to ensure existing public

transport infrastructure retains its use in the event of the property being redeveloped or sold.

Section 36A allows a regulation to declare infrastructure to be "essential public transport infrastructure" if the Minister considers it to be essential to the continuity of public transport services. Under section 36B, if a piece of infrastructure is considered to be essential, the chief executive may issue a direction to the owner that (a) states the conditions which public transport operators may use it and/or (b) prevents the owner from making any changes that restricts its use. A maximum penalty of 1665 penalty units for non-compliance with an "essential public transport infrastructure" direction has been set under section 36D. While section 36F provides for the owner to be compensated for costs incurred by complying with the direction, it does not compensate for (a) loss of income or profit by having to retain the infrastructure use, or (b) diminished property value because of the direction.

It can be argued that the above provisions breach the following four fundamental legislative principles – (1) whether regulation-making power is appropriate for declaring essential infrastructure, (2) the effect of a direction on the commercial rights of the owner, (3) the size of the penalty, and (4) the limited compensation rights.

***The following justification is provided***

It is submitted that the provisions are critical to ensure that local government and privately owned infrastructure is always able to be fully used for public transport services even in circumstances of redevelopment or changes to ownership or leasing arrangements. The public transport network relies heavily on the existing infrastructure and any changes would severely disrupt the public transport system and damage the reputation of public transport services.

It should be noted that the essential infrastructure provisions only apply to infrastructure that is already used for public transport purposes. For example, under the current situation, if the owner of the Bulimba ferry terminal (which is privately owned) was to sell the land to a developer, the Government could not prevent the developer from removing the ferry terminal. This new chapter will allow the Government to declare the ferry terminal as "essential public transport infrastructure" and issue a direction that it must retain its current use. This would not prevent the new owner from developing the land, it would just require the owner to ensure the ferry terminal, and access to it, is part of the new development. Other

examples of “essential public transport infrastructure” include the Queen Street Bus station (currently leased to the Brisbane City Council) and bus interchanges at major shopping centres.

While the subordinate regulation is being used to declare essential infrastructure, it is the Minister who must approve the declaration. In approving the declaration, the infrastructure must meet specific defined criteria. Further, any direction given in relation to the infrastructure must only be made after the owner has been given the chance to make representations on the direction and an agreement with the State cannot be reached. In addition to this, the owner of the infrastructure can appeal the declaration in the District Court.

Due to the increasing reliance on public transport to address traffic congestion, it is critical to maintain the current public transport network and build upon it. To deter infrastructure owners from disregarding a direction and restricting or limiting the use of the infrastructure, a significant penalty has been assigned. The same penalty applies under the *Urban Land Development Authority Act 2007* to a person who (a) carries out a UDA assessable development in an urban development area without a UDA development approval, or (b) contravenes a UDA development approval. A smaller repetitive daily penalty was originally sought, however, the Office of the Queensland Parliamentary Counsel advised repetitive penalties are no longer used in drafting.

As a declaration will not prevent the development of an infrastructure site, full compensation has not been established. If an owner is unhappy with their property being declared as essential infrastructure (and any associated loss of value/income), they can appeal the declaration. If a large amount of compensation was required, the State would consider the acquisition of the land under *Acquisition of Land Act 1967*.

On the whole, the essential infrastructure provision is a key measure to ensure an integrated and reliable public transport system that will continue to attract new patronage.

## **Consultation**

Consultation with government agencies and departments has been selective due to timeframes. Key agencies and departments consulted include: Office of the Premier; Department of the Premier and Cabinet; Department of Employment and Industrial Relations; Queensland Treasury; Department of Infrastructure and Planning; Queensland Office of

Regulatory Efficiency; Department of Communities; Crown Law; Department of Main Roads; Office of the Queensland Parliamentary Counsel; Department of Justice and Attorney-General; and the Queensland Police Service.

## **Local Government**

In relation to targeted local government consultation, the Chief Executive Officer of Brisbane City Council was consulted on 27 March 2008 in regard to the proposed function and scope of the Authority, and its relationship with Councils transport planning, policy and public transport operations activities. Discussions have also been about service contracts and bus purchasing, and the new customer relationship management systems and functions as well as new integrated scheduling arrangements for the Authority.

## **Operators**

These new arrangements will require further consultation with operators. Operators will have views about these initiatives which may result in delays and require wider Government resolution. For example, the Government may need to provide directives to QR Limited to achieve the desired outcomes with respect to improving customer services and a single point of accountability. Government may also need to consider linking the customer interface objectives with broader capital funding negotiations with Brisbane Transport, for example, its request to the State for assistance with bus fleet renewal funding.

On April 1 2008, the Chief Executive Officer of QR Limited and relevant QR Limited senior management were briefed on the proposed functions and scope of the authority and its relationship with QR Limited passenger services functions.

Operators have been kept informed about progress on the Authority through the TransLink Advisory Board, bus operators' forum and the QR Limited quarterly contract meeting.

## **Unions**

Consultation with unions has been ongoing in regard to the broader QR Limited reform agenda. A facilitated workshop was held on 30 November 2007 with representatives of the transport industry, unions and senior

officers of Queensland Transport, Department of Employment and Industrial Relations and QR Limited. A number of threshold issues were identified including the scope of the new Authority around operational and system maintenance issues, on-going rail structural reforms, the service purchasing model of the new Authority and proposed arrangements for future discussions, ensuring the protection of existing staff employment conditions and establishing a forum for operators, unions and the Authority to work together to deliver improved and integrated transport services.

On 4 February 2008 a letter was sent to the unions responding to some of the issues raised at the consultation workshop. Further consultation with the unions occurred on 10 April 2008 to brief them on the draft legislation. Unions involved in consultation regarding the Authority include: Queensland Public Sector Union; Australian Federated Union of Locomotive Employees; Rail, Tram and Bus Union; Transport Workers Union; and the Australian Services Union (which includes ferries).

### **Staff**

Transport staff have been informed about progress on the Authority through the TransLink Advisory Board, bus operators' forum and the QR Limited quarterly contract meeting. A consultation committee has been established to work through issues impacting on employees of the new Authority. The committee includes unions representing staff and potential staff of the Authority.

### **Public**

Consultation with the public has been conducted via the establishment of a feedback forum for the new Authority, and online consultation commenced in March 2008 through the ConsultQld website.

## Notes on Clauses

### Part 1 Preliminary

#### Division 1 Introduction

**Clause 1** sets out the short title of the Act as the *Transport Operations (TransLink Transit Authority) Act 2008*.

**Clause 2** provides for commencement of the Act on proclamation.

**Clause 3** ‘Purposes of Act and their achievement’ provides that the main purpose of the Act is to deliver (in the TransLink area) the best possible mass transit services at a reasonable cost to the community and Government, while keeping Government regulation to a minimum. Other purposes of the Act are consistent with the objectives of the *Transport Planning and Coordination Act 1994* to:

- enable the effective operational planning and efficient management of mass transit services (for the TransLink area) in a way that is responsive; offers attractive alternatives to private transport; addresses the challenges of future growth; provides a high level of accountability; and
- provide a reasonable level of community access and mobility in support of the Government’s social justice objectives; and
- provide a framework for coordinating the provision of services under service contracts to form a comprehensive, integrated and efficient mass transit network; and
- help the Government achieve its congestion management priorities relating to transport.

**Clause 4** provides that the Act binds all persons and the State and to the extent the legislative power of the Parliament permits, the Commonwealth and the other States, and provides that nothing in the Act will make the State liable to be prosecuted for an offence.

**Clause 5** ‘Relationship with *Transport Operations (Passenger Transport) Act 1994*’ provides that the Act does not limit or affect the chief executive’s

functions or powers or the rights and obligations of drivers and operators, and passengers using public passenger services under the *Transport Operations (Passenger Transport) Act 1994*.

## **Division 2            Interpretation**

**Clause 6** defines particular words used in the Act.

**Clause 7** provides the definition of the TransLink area. The definition of TransLink area has merely been transferred from the *Transport Operations (Passenger Transport) Act 1994* and does not represent a change in policy. The TransLink area is the contract areas or routes mentioned in schedule 1 of the Act, and another service contract area or route in the south east Queensland area prescribed under a regulation. The ability to extend the TransLink area by regulation is limited to specified areas within south east Queensland and is subject to stringent criteria.

The definition clarifies that for this section, the terms:

**SEQ area** means the combined local government areas under the *Local Government Act 1993* in force immediately before 15 March 2008 and include:

- the cities of Brisbane, Caloundra, Gold Coast, Ipswich, Logan, Redcliffe and Toowoomba;
- the shires of Beaudesert, Boonah, Caboolture, Esk, Gatton, Kilcoy, Laidley, Maroochy, Noosa, Pine Rivers and Redland; and

**Service contract area or route** refers to the definition in schedule 3 of the *Transport Operations (Passenger Transport) Act 1994* which means an area or route for which a service contract is required under section 42 or 66 of the *Transport Operations (Passenger Transport) Act 1994* to provide particular public passenger services.

**Clause 8** defines the term "mass transit network" as a centrally planned and coordinated system of mass transit services and related infrastructure, technology and facilities for example ticketing, fares, and customer information facilities, and bus stops and stations. The purpose of including examples of infrastructure is to make it clear the types of infrastructure that form a part of the network.

## **Part 2**                      **Establishment and status of TransLink**

**Clause 9** establishes the TransLink Transit Authority.

**Clause 10** states that the legal status of the Authority is a body corporate which has board members provided for under Part 4 of the Act, has perpetual succession and can sue or be sued in its corporate name.

**Clause 11** ‘TransLink represents the State’. The TransLink Transit Authority represents the State, and has the status, privileges and immunities of the State.

**Clause 12** provides exclusion in relation to the whole of the Corporations legislation. A general declaration under section 13A of the *Statutory Bodies Financial Arrangements Act 1982* would provide partial exclusion. Full exclusion is considered necessary for a number of reasons including that the complex nature and wide scope of the Authority makes it unchartered territory in legislative terms, and raises the legal uncertainty in identifying where Corporations legislation actually applies and to which extent post commencement. Cross border issues complicate the matter further, that is, the Authority may operate services and/or conduct business in the border area extending into New South Wales. Intrastate operations would possibly require Australian Securities and Investment Commission registration if the Authority were to be subject to Corporations legislation.

Corporate reporting responsibilities of the Authority, particularly in regard to board responsibility and financial matters, provided for under this Act are considered sufficient to protect the interests of the State and public.

**Clause 13** ensures that the Authority is a statutory body under the *Financial Administration and Audit Act 1977*, and the *Statutory Bodies Financial Arrangements Act 1982*, and refers to part 2B of the *Statutory Bodies Financial Arrangements Act 1982* with regard to how the Authority's powers are effected. Part 2B of the *Statutory Bodies Financial Arrangements Act 1982* includes provisions about the exercising of powers, general banking powers, borrowing and investment powers, relationships to other parts of the Act and other Acts, acting as trustees or otherwise holding property, the application of future laws to statutory bodies, excluded matters for Corporations legislation and conditions precedent to financial arrangements.



## **Part 3**                      **Functions and powers of TransLink**

**Clause 14** provides that the Authority's main function is to give effect to the purposes of the Act and perform particular duties in the TransLink area, including:

- operational planning for the mass transit network;
- planning, purchasing and delivering integrated mass transit services, including, for example, by coordinating the scheduling of mass transit service modes. To achieve maximum efficiency in the scheduling of mass transit services will require greater control and the use of a common scheduling system. TransLink will therefore build integrated scheduling capability for the mass transit network for connectivity of transport services and improved service delivery across the transit system;
- managing and maintaining infrastructure for the services, including, for example, bus stops and on-road bus facilities;
- delivering and managing infrastructure that is critical for the services;
- improving and expanding the range of mass transit services;
- establishing a single point of contact for customer service issues, including, for example, the provision of service information and complaints handling;
- managing the introduction of new technology to improve mass transit services; for example real time passenger information and the widespread use of new ticketing technology;
- improving the governance of mass transit services, with local government, consumer and independent expert representations;
- managing service contracts and other contracts to ensure value for taxpayers through performance-based incentives that promote integrated mass transit services, on-time running, customer service and minimising fare evasion;
- managing integrated ticketing, including, for example, by developing fare products;

- providing information to passengers;
- carrying out commercial activities related to mass transit services to obtain revenue for the performance of its other functions. Examples of commercial activities that TransLink may carry out include the sale of advertising rights on TransLink facilities and commercial arrangements for the application of new ticketing technology;
- making recommendations to the Minister about fare strategies and service levels;
- giving the Minister and other relevant officers such as the chief executive information to help the development of plans and strategies under other Acts relating to transport; and
- implementing Government policies for, or in association with, other governmental agencies.

Further, this clause reinforces the Authority's complaints management role for all customer service issues by making clear that once the Authority has established a point of contact for customer service issues, no other operator of any relevant mass transit service (provided for under an agreement entered into by the Authority) can establish or continue with any similar point of contact for the service.

This clause clarifies the terms "commercial activities" in this section to mean commercial activities that are not within the ordinary functions of the State; and commercial activities of a competitive nature, and the term "relevant mass transit services" in this section to mean a mass transit service provided for under an agreement entered into by the Authority in its own right or as a delegate.

**Clause 15** 'General powers' provides the Authority with the powers necessary or convenient to perform its functions, and enables the Authority to acquire, hold, dispose of, and deal with, property; appoint agents and attorneys; and engage consultants. Subject to sections 16 [Service contracts] and 17(5) [Work performance arrangements], the Authority also has the power to enter into contracts, joint ventures and other commercial arrangements. For example, the Authority may choose to enter into contracts to aid the fruition of commercial initiatives such as allowing intellectual property held by the Authority (for example *go* card smartcard) to be used for commercial gain. This could include expanding *go* card smartcard capability to incorporate other purposes like banking as well as

ticketing purposes. Other examples include entering into contracts for promotional and marketing arrangements like advertising on transport infrastructure and fleets, or in collaboration with locating outlets such as newsagencies that connect with public transport infrastructure like train stations.

Further, the Authority may do anything necessary or convenient (in the performance of its functions) under this or another Act. In carrying out its functions, the Authority may act alone or in conjunction with public sector units, local governments, agencies or instrumentalities of the Commonwealth and other entities. Under the *Acts Interpretation Act 1954* 'entity' includes 'person or unincorporated body', by including the term 'other entities' this allows the Authority to enter into commercial activities or arrangements with private sector organisations. The exercise of the Authority's powers is subject to Ministerial direction.

**Clause 16** prevents the Authority from entering (in its own right) into a contract that is in the nature of a service contract, but provides that the chief executive of the Authority can enter into service contracts, perform functions or exercise powers for service contracts as the delegate of the chief executive of the *Transport Operations (Passenger Transport) Act 1994*. It should be noted that as a delegate of the chief executive, this provides the Authority with the power to enter and manage service contracts in the TransLink area.

**Clause 17** enables the Authority to engage services (through the employing office) of staff it considers appropriate to perform its functions under a work performance arrangement (a relevant arrangement). Matters that may be provided for in a relevant arrangement include appointment, authorisation of powers, and payment. The intent of this provision is to make clear that a person performing work for the Authority under a relevant arrangement is not an employee of the Authority and is an employee of the TransLink Transit Authority Employing Office and public servant under the *Public Service Act 1996*. This approach is consistent with Division 7 section 34 of the *Forestry Plantations Queensland Act 2006* and does not limit the Authority's ability to engage consultants and contractors. However, the Authority does not have power to employ a person directly if that person performs work for the Authority under a relevant arrangement.

**Clause 18** clarifies that the exercise of TransLink's powers is subject to Ministerial directions.

## **Part 4                      TransLink's board**

### **Division 1                  Board membership**

**Clause 19** provides for the compilation of the board and is to consist of 7 persons (each a member of the board) made up of the chairperson, 4 other members, and the chief executive officer of a local government whose area includes the TransLink area and which substantially funds passenger transport services in the area (these members are 'appointed members') and 1 non appointed member, the chief executive of the department in which the *Transport Operations (Passenger Transport) Act 1994* is administered.

**Clause 20** provides that appointed members are to be appointed by the Governor in Council on a full-time or part-time basis, and clarifies that appointed members are appointed under this Act and not the *Public Service Act 1996*.

**Clause 21** allows for appointment as an appointed member only if the person meets specific criteria including that the person has extensive knowledge of and experience in 1 or more of the following categories:

- the representation of the interests of customers of public transport services;
- the representation of the interests of employees in the public transport sector;
- transport coordination and operational planning;
- mass transit network planning;
- law, economics or accounting;
- social policy;
- customer relations;
- commercial and marketing development;
- has other knowledge and experience the Minister considers appropriate.

An example of when the latter category may apply is the development of a new transport system or service in a tourist area. The Minister may

consider that the knowledge and experience in the area of tourism might be beneficial to the membership of the board. This clause provides the Minister with the flexibility to ensure competent representation across evolving and emerging issues.

**Clause 22** provides that subject to section 23 [Terms and conditions of appointment], an appointed member holds office for the term stated in the member's instrument of appointment, and the stated term must not be longer than 5 years. This does not limit the application of the *Acts Interpretation Act 1954*, section 25 which provides for the termination of a person appointed to office without reason.

**Clause 23** provides that an appointed member is paid the remuneration and allowances decided by the Governor in Council, and holds office on the terms and conditions decided by the Governor in Council.

**Clause 24** provides that an appointed member may resign by signed notice given to the Minister.

**Clause 25** allows a board member who is a chief executive officer of a local government to delegate their functions to an appropriately qualified employee of the local government. However, the delegation can not be given to a person who would otherwise be disqualified from being a member (for example, if the person was an elected counsellor) or if they or a close relative had a direct or indirect pecuniary interest that would be in conflict with the proper performance in their role as member. Further, the delegation cannot be given to an employee of the local government whose local government functions would relate to TransLink's functions. In particular, if the local government is an operator providing public passenger services through service contracts managed by TransLink, persons working in the area relating to the negotiation, entering, management or operational performance of the contract or related activities, and any person who has responsibility relating to these types of functions would not be able to be delegated the board member's functions. This clause aims to allow the chief executive officer the necessary flexibility to ensure an appropriate person is able to fulfil their role on the board, but ensures there are no conflicts of interest between the employees' duties for the local government and their role on the TransLink board.

## **Division 2            Meetings and other business of board**

**Clause 26** provides that a regulation may provide for how the board must conduct its business, including its meetings, however, the Authority may conduct its business, including its meetings, in the way it considers appropriate.

**Clause 27** enables the chairperson to decide the times and places of board meetings, and places a requirement on the chairperson to call a meeting if requested to do so (in writing) by at least two members. As well, this clause sets a minimum requirement for meetings to be called at least once in each quarter.

**Clause 28** specifies that a quorum for a board meeting is more than half of the number of members.

**Clause 29** provides that the chairperson is to preside at all board meetings at which the chairperson is present, and if not able to be present, must choose the presiding member and advise the chief executive of the department in which the *Transport Operations (Passenger Transport) Act 1994* is administered. Otherwise, the presiding member is chosen by the members present.

**Clause 30** provides that the board may hold meetings, or allow members to take part in its meetings, by using any technology allowing reasonably contemporaneous and continuous communication between persons taking part in the meeting. A person who takes part in a board meeting is taken to be present at the meeting, and a decision at a board meeting must be a majority decision of the members present. If there is an equality of votes cast on a particular matter the chairperson makes the casting vote.

**Clause 31** provides that a decision of the board that is made other than at a board meeting, may be made only with the written agreement of a majority of the members.

**Clause 32** provides that the board must keep minutes of its meetings, and a record of any decision made under clause 31 [Decisions outside meetings].

## **Division 3            Miscellaneous provisions**

**Clause 33** provides protection for members from civil liability for an act done, or omission made, honestly and without negligence under this Act or a direction or a requirement under this Act. Instead, the civil liability attaches to the State.

## **Part 5                Staffing**

### **Division 1            Chief executive officer of TransLink**

**Clause 34** ‘Chief executive officer’ provides for the appointment of the chief executive officer of the Authority by the Governor in Council, and requires the remuneration, allowances, and other terms and conditions decided by the Governor in Council to be included in the instrument of appointment. Only persons that are not disqualified persons can be appointed as the chief executive officer. The chief executive officer is not a public servant and must report to the board about the Authority's operations.

**Clause 35** ‘Acting chief executive officer’ provides for the appointment of an ‘acting’ chief executive officer by the Minister in certain circumstances including where no chief executive officer has been appointed; or the office is vacant; or the appointed chief executive officer is absent, or unwell. The appointment ends if the Governor in Council appoints a chief executive officer and the term of that appointment starts, or the Minister gives notice that the chief executive officer has resumed duties.

### **Division 2            Employing office**

**Clause 36** establishes the TransLink Transit Authority Employing Office as a separate entity to the Authority.

**Clause 37** provides that the main function of the employing office is to enter into work performance arrangements with the Authority under which

employees of the employing office are to perform work for the Authority; and employ, for the State, staff to perform work for TransLink under the work performance arrangement.

**Clause 38** clarifies that the employing office can employ staff and that the staff are employed under the *Public Service Act 1996*. The intent of these provisions is to adequately protect those who work for the employing office from the scope of the *Workplace Relations Act 1996*.

## **Part 6**                      **Directions, reporting and information**

**Clause 39** ‘Ministerial directions or guidelines to TransLink’ expands existing Ministerial powers to enable the Minister to give the Authority written directions and guidelines about the performance of its functions. A Ministerial direction may prohibit the Authority from acquiring assets of a particular type. The Authority will have the capacity to own minor assets like ticketing machines and *go* card smartcard intellectual property and may need to own bus stops, fleets and depots. The State will own major assets such as busways and corridors. These provisions allow the Minister to differentiate minor from major assets that the Authority seeks to own.

**Clause 40** ‘Infrastructure project reporting’ places a requirement on the Authority to provide (at stated intervals and on written request) to the Minister or a public service officer of a department or a stated person in a stated Government entity, reports about infrastructure projects.

**Clause 41** ‘Ministerial access to information’ places a requirement on the Authority to prepare, approve and provide to the Minister (when requested) or a stated public service officer of a department or a stated person in a stated Government entity, information or documents in the Authority's possession. This provision enables the Minister to make reasonable requests for relevant information that may assist with monitoring the performance and activities of the Authority.

**Clause 42** ‘TransLink network plan’ places a requirement on the Authority to provide to the Minister (at least once every four years) an approved written network plan about funded improvements in mass transit services and infrastructure for the TransLink area. The network plan can not be implemented unless it has been approved by the Minister. In relation to



major infrastructure enhancements emerging from the network plan, Queensland Transport, (as sponsor), will continue to be responsible for confirming transport mode, concept design and impact management process and will lead the process to business case (with the Authority's input) to secure funding for the project.

The Authority will have a formal role in the planning process through the network plan and impact assessment process as the senior user representative. This approach requires that, Queensland Transport as the owner, and the Authority as the senior user, have a suitable governance model in place to ensure the needs of customers are reflected in outcome specifications and design requirements. This flow of planning is a logical progression from broad to specific and ensures whole-of-government outcomes are considered throughout the development of the project. This arrangement is not dissimilar to that which exists between Queensland Transport and QR Limited in regard to business case and funding submissions for the South East Queensland Infrastructure Plan and Program rail projects, and similar governance arrangements may need to be established for the overall south east Queensland public transport infrastructure program when the Authority commences.

**Clause 43** 'Fare strategies' places a requirement on the Authority to provide to the Minister for approval a fare strategy for each 5 year period (from commencement of the Authority), or for a shorter period if directed by the Minister about recommendations to fares for mass transit services under service contracts for the TransLink area. The fare strategy will include cost indexation and will deal with a range of other matters including options for the delivery of off-peak *go* card pricing, different products as well as examining options relating to zone changes and premium pricing. A fare strategy can not be implemented unless it has been approved by the Minister. Once approved, the fare strategy could facilitate regular approvals of fare increases by the Minister. The fare strategy will be developed with state policy settings embedded, for example concessional fares.

**Clause 44** 'System performance reports' places a requirement on the Authority to provide to the Minister (at quarterly intervals or more frequently) for approval a report about the performance of its functions in addressing mass transit service issues including customer complaints management reporting; patronage reporting; service faults and rectification; safety; contractual issues and revenue and expenditure reporting.

**Clause 45** ‘Annual report’ places a requirement on the Authority to provide to the Minister (as soon as practicable after the end of each financial year but within 2 months) an approved report about the performance of its functions. The report must include details about its performance in comparison to expectations under the network plan, and include copies of any Ministerial directions issued by the Minister. The Minister must table the report in the Legislative Assembly within 14 sitting days. These provisions do not limit or affect the Authority's obligations for reporting under the *Financial Administration and Audit Act 1977*.

**Clause 46** ‘Provisions for making plan or recommendation to Minister’ applies if the Authority proposes to make a network plan (or other plan or recommendation) to the Minister and provides that the plan or recommendation must (as far as practicable) be consistent with existing strategies, plans and programs relating to the TransLink area, contractual liabilities of the State of which the board is aware, and must be responsive to customer needs, provide value for money, promote efficiency and include performance indicators (if it is a plan).

## **Part 7                      Special events**

**Clause 47** ‘Declaration of special events’ allows TransLink to declare an event within the TransLink area as a "special event" in limited circumstances including where there are expected to be at least 5000 participants or spectators at the event and either there would be significant road closures or bus stop relocations required to manage the provision of mass transit services, or the provision of the mass transit services is likely to rely on an increased use of vehicles or facilities funded or managed by TransLink. TransLink will publish the declaration on its website or in a newspaper circulating in the TransLink area. This clause, and the following clauses relating to special events, ensure TransLink is able to monitor and control how the provision of mass transit services to and from special events will impact on TransLink. This includes whether TransLink funded vehicles and facilities will be used and whether there will be consequences for other TransLink services through road closures or bus stop relocations.

**Clause 48** ‘Coordination power for mass transit services to special events’ clearly states that TransLink has a coordination role in the provision of mass transit services to and from special events.

**Clause 49** ‘TransLink approval required for special event services’ creates an offence for a person to enter into or perform a contract or arrangement for the provision of mass transit services to or from a special event in the TransLink area without TransLink's written approval. The maximum penalty is 200 penalty units. To support this provision, the clause also indicates that a contract or arrangement made or entered into without TransLink's written approval has no effect to the extent of the contravention. Importantly, clause 57 allows a transitional period of 12 months for existing contracts and arrangements to allow operators or event organisers to seek approval from TransLink.

**Clause 50** ‘Special event approvals’ allows TransLink to issue written approvals about the provision of mass transit services for special events on its own initiative and in relation to specific types of mass transit services or special events or for a type of mass transit service or special event. These approvals may be published on the website or in a newspaper circulating within the TransLink area. This clause allows TransLink to anticipate events and types of mass transit services that are not of particular concern in that they do not have significant negative implications for TransLink's ability to coordinate and provide its services. In addition, a prior approval of an event means operators and event organisers are not inconvenienced by needing to seek approval.

This clause also allows TransLink to impose conditions on an approval, and can include (that before the special event approval applies) a requirement to pay TransLink a contribution to TransLink's costs of coordinating the relevant mass transit services. This clause is designed to address situations where TransLink funded and branded vehicles and facilities, such as ticketing facilities, are being used without notification to TransLink, involvement from TransLink or compensation for TransLink for their contribution to the provision of services for the event. In addition, the clause aims to give TransLink the ability to issue conditions to protect the Authority's reputation and to ensure other services under their mandate are not compromised.

## **Part 8**                      **Miscellaneous provisions**

**Clause 51** ‘Request for information from prospective appointees’ applies if a person is being considered for appointment as an appointed member or the chief executive officer, and provides that the Minister may request a written statement from the person about whether they are a disqualified person, and if they (or a close relative) have any direct or indirect pecuniary interests that would conflict with their performance if appointed. These provisions set a maximum penalty for giving a false or misleading statement to the Minister of 100 penalty units.

**Clause 52** ‘Criminal history report about appointee or prospective appointee’ applies to a member, chief executive officer, or a person who is being considered for appointment as a member or chief executive officer, and provides that the Minister may ask the commissioner of the police service for a report about a person's criminal history. If the Minister is asking for a criminal history report for a person who is being considered for appointment as a member or chief executive officer, consent must first be obtained from the person, otherwise no consent is required. The usual safeguard of destruction of the report applies. The need for such reports to extend to all offences is justified by the legitimate need for the board to maintain public confidence. A key function of the board includes being accountable for the performance of the Authority which will be under intense scrutiny from within the Government and the public. For example, it would not be appropriate for a member of the board to be convicted of a minor offence such as public transport fare evasion as this could erode public confidence in these offices.

**Clause 53** ‘Disclosure of disqualification by appointees’ applies to a person who is an appointed member or the chief executive officer, and provides that the person must (as soon as practicable) notify the Minister if the person becomes a disqualified person. This provision sets a maximum penalty for non compliance of 100 penalty units.

**Clause 54** ‘Disclosure of conflicts of interests by appointees’ applies if a member or the chief executive officer has a close relative that has a direct or indirect pecuniary interest that conflicts (or may conflict) with the performance of their functions, and provides that they must (as soon as practicable) disclose the information to the board or the Minister and sets a maximum penalty for non compliance of 100 penalty units. Further, if the matter is being or about to be considered by the board, the member must

not partake in the consideration of the matter. The penalty for non compliance is also 100 penalty units.

**Clause 55** ‘Delegations by TransLink’ allows the Authority to delegate its functions or powers to a member, the chief executive officer, or an appropriately qualified person, except in relation to requirements to approve a document to be given to the Minister under clauses 42 (TransLink network plan), 43 (Fare strategies), 44 (System performance reports), and 45 (Annual report). A member other than an appointed member (that is the chief executive of the department in which the *Transport Operations (Passenger Transport) Act 1994* is administered may delegate a members functions to an appropriately qualified public service officer.

**Clause 56** ‘Regulation making power’ enables the Governor in Council to make regulations under this Act.

## **Part 9 Transitional provisions**

**Clause 57** minimises the impact on existing contracts and enables existing contracts that are in place prior to commencement of section 49 to continue for 12 months from the commencement of this provision.

Currently, promoters of special events contract with operators to deliver mass transit services for large events at facilities like the Gabba and Suncorp Stadium for payment of fee. Clause 49 provides the Authority with power to coordinate the provision of mass transit services to and from special events and effectively prevents a person from entering into or performing under a contract or arrangement to provide mass transit services for special events without written approval from the Authority.

**Clause 58** ‘Novation of particular operational contracts to TransLink’ applies to contracts to be carried over to the Authority to which the State is a party (including manifestations of the State such as the TOPTA Act department, and the former unincorporated body known as Translink) before commencement of this section, and provides that, despite any provision in the contract, the Authority is a party to the contract instead of the State and assumes the rights and liabilities of the State. All references in a contract to the State are taken to be references to the Authority, and all changes are taken to have been made. These provisions make clear that the

novation of contracts to the Authority does not discharge or affect the contract or its performance, nor does it fulfil any condition allowing for termination or release from the contract, or a liability under it. This clause clarifies that in this section, the term contracts includes a deed or other instrument under which a guarantee, indemnity or other form of surety that is given. In addition, the term contracts in relation to the performance of a function of TransLink includes a guarantee, indemnity or other form of surety that is given for the performance of the function. The provision does not adversely impact on the interests of any other party. The novation of operational contracts from the State to the Authority is merely a name change and none of the conditions or obligations or liabilities under the contracts will change beyond name substitution.

**Clause 59** ‘Existing service contracts not affected’ makes clear that the enactment of this Act does not, of itself, alter or in any way affect a service contract.

**Clause 60** ‘Transfer of particular State assets and liabilities to TransLink’ enables the Minister to prepare a register of assets and liabilities of the State that are to be transferred to the Authority. The register has effect upon approval under a regulation. Upon approval the assets and liabilities become assets and liabilities of the Authority. Nobody's interests are adversely affected by the transfer of liabilities. The Authority will have sufficient funds and assets to honour any financial obligations or liabilities that are brought about through the transfer of liabilities.

**Clause 61** ‘Registration of transferred assets’ applies to the registrar of titles (meaning a public official or authority responsible for registering title to land, or dealings affecting land) or another person responsible for keeping a register for an asset that becomes an asset of the Authority under section 60(3)(a), and places a requirement on the registrar or person to record a transfer of an asset to the Authority, if asked to, and on payment of a fee.

**Clause 62** ‘References to former body known as Translink’ clarifies that a reference in a document to the former body known as 'Translink' that formed part of the department in which the *Transport Operations (Passenger Transport) Act 1994* is administered, is taken to be a reference to TransLink (the Authority).

**Clause 63** ‘Existing industrial instruments that bind employing office’ provides that (on commencement of this section) the employing office is taken to be bound by the industrial instruments under the *Industrial*

*Relations Act 1999* that apply to public service employees whose employment is carried out in the *Transport Operations (Passenger Transport) Act 1994*. These provisions protect employees of the employing office from the scope of the *Workplace Relations Act 1996*.

## **Part 10                   Amendment of *Public Service Act 1996***

**Clause 64** amends the *Public Service Act 1996*.

**Clause 65** inserts a new item 12 in schedule 1 to enable the TransLink Transit Authority Employing Office to operate as a public service office under this Act and to enable the chief executive officer of the Authority to perform the role of head of office.

## **Part 11                   Amendment of *Transport Infrastructure Act 1994***

**Clause 66** amends the *Transport Infrastructure Act 1994*.

**Clause 67** ‘Amendment of s 6 (Contents of transport infrastructure strategies)’ amends section 6(4). This section provides for transport infrastructure strategies for the South East Queensland Transit Authority area (under the *Transport Planning and Coordination Act 1994*) to be consistent with and give effect to any integrated regional transport plan in force for the area. While the South East Queensland Transit Authority is now a defunct entity (dissolved and discontinued by Government decision in 1996), the requirement still needs to apply to transport infrastructure strategies for the TransLink area. The amendment omits the term South East Queensland Transit Authority area, and inserts ‘TransLink area’ to ensure the requirement applies.

**Clause 68** ‘Amendment of s 20 (Transport GOCs)’ makes minor wording changes to ensure that in preparing a corporate plan or a statement of corporate intent, QR Limited and each port authority must take into account the transport infrastructure strategies and any network plans of the

TransLink Transit Authority under the *Transport Operations (TransLink Transit Authority) Act 2008*.

## **Part 12                      Amendment of *Transport Operations (Passenger Transport) Act 1994***

**Clause 69** ‘Amendment of *Transport Operations (Passenger Transport) Act 1994*’ amends the *Transport Operations (Passenger Transport) Act 1994*.

**Clause 70** inserts a new chapter 5A (Essential public transport infrastructure). This new chapter provides for infrastructure, critical to the transport network and the continuity of public transport services, to be deemed essential infrastructure. This chapter will ensure public transport infrastructure that is already part of the transport network (or is identified by the Minister as needing to be part of the transport network) but is not owned by the Queensland Government (such as bus interchanges – including access to the interchange, depots, transit centres and the Bulimba ferry terminal) retains its infrastructure function.

Section 36A (Declaration of essential public transport infrastructure) allows certain infrastructure to be “essential public transport infrastructure”. It states that essential public transport infrastructure can only be declared by the Minister and must be part of the State's transport network and essential to the continuity of public passenger services. It also requires essential public transport infrastructure to be declared in the subordinate regulation, and that any declaration must identify the infrastructure and the relevant passenger transport service.

Section 36B (Chief executive's power to give direction about use of essential public transport infrastructure) provides the basis on which the chief executive can give a direction in relation to a piece of essential public transport infrastructure.

Section 36C (Persons bound by essential infrastructure direction) defines who the essential infrastructure declarations will apply to, while section 36D (Failure to comply with essential infrastructure direction) sets a maximum penalty for non-compliance at 1665 penalty units (\$124,875).



Section 36E (Record of essential infrastructure direction in land registry) requires the chief executive to give the registrar a copy of the essential infrastructure direction. The registrar must keep a record of the direction in a way that a search of any register kept by the registrar will show that the direction has been given. Further, if the direction is amended or repealed, the chief executive must notify the registrar of the change.

Section 36F (Compensation) provides for the owner of the essential infrastructure to be compensated for costs incurred by complying with the direction. Compensation would not be given for (a) loss of income or profit for any use of the infrastructure other than that required to be allowed under the direction, and (b) diminution in the value of the infrastructure or land related to the infrastructure because of the direction. If the chief executive and owner cannot agree on the amount of compensation, the Bill allows for an arbitrator to be appointed.

Section 36G (Chief executive's power to decide matters about rail safety unaffected) clarifies section 139 of the *Transport Infrastructure Act 1994* still applies, despite any existence of an essential infrastructure direction. Section 139 allows the chief executive access to privately owned rail infrastructure for the purpose of assessing safety issues involved in other parties using the infrastructure.

**Clause 71** amends section 39 to remove a reference to *long distance passenger services* which has been made redundant as a consequence of the amendment to the definition of a *scheduled passenger service* (clause 100 refers).

**Clause 72** inserts a requirement for the chief executive to consider submissions from existing operators before making a declaration under section 42. Under this provision, the chief executive must give existing operators written notice of the proposal, provide them with a reasonable opportunity to make submissions and consider any submissions received.

**Clause 73** inserts section 42B (Amendment of service contract area or route). This section provides the ability to amend an existing service contract area or route if the chief executive is satisfied the amendment is necessary (a) to extend the service into developing areas, (b) because of changed traffic conditions, (c) for public safety or (d) to improve the service in the public interest. It also requires the chief executive to give existing operators written notice of the proposal, provide them with a reasonable opportunity to make submissions and consider any submissions

received. These provisions will apply to service contract areas or routes both within the TransLink area and outside the TransLink area.

**Clause 74** extends the discretion currently available to the chief executive to allow non-contracted operators to provide services under a written agreement within a TransLink service contract area to any service contract area. It also limits the chief executive's extended discretion under subsection 43(1) to take account of the exclusive rights held by service contract holders outside the TransLink area.

**Clause 75** exempts service contracts with a term of less than two years from the requirement for a midterm review. This exemption previously only applied to emergency service contracts.

**Clause 76** omits section 54 which has been made redundant by the amended definition of a *scheduled passenger service* (clause 100 refers).

**Clause 77** amends the heading to chapter 6, part 2, division 2 to reflect a generic amendment throughout this division that replaces *scheduled passenger service* and *public passenger service* with the new term *general route service*. This change has been made to take into account the changes to these terms in schedule 3 (Definitions). Refer to clause 100.

**Clause 78** replaces the term *scheduled passenger service* with the term *general route services*, other than TransLink service contracts in accordance with the revised definitions (refer to clause 95).

**Clause 79** replaces the terms *scheduled passenger service* and *public passenger service* with the term *general route service* in accordance with the revised definitions (refer to clause 95).

**Clause 80** replaces the term *scheduled passenger service* with the term *general route service* in accordance with the revised definitions (refer to clause 100).

**Clause 81** replaces the term *scheduled passenger service* with the term *general route service* in accordance with the revised definitions (refer to clause 100) and for clarity, the term *holder* with the term *operator*.

**Clause 82** makes a minor change to section 59 to reflect the amendment to section 60 (as per clause 83).

**Clause 83** replaces the current section 60 with a new section 60 (Service contract for amended service contract area or route). This section allows the chief executive to amend a service contract to take into account any changes (made under section 42B) to the relevant service contract area or

route. To make such changes, the chief executive must give existing operators written notice of the proposal, provide them with a reasonable opportunity to make submissions and consider any submissions received.

**Clause 84** makes minor word changes to clarify the terminology being used.

**Clause 85** omits the reference to a *prescribed school service* contract in section 62. This reference has been made redundant as a consequence of amendments to the definition of a *scheduled passenger service* (clause 100 refers).

**Clause 86** makes a minor word change to the heading to chapter 6, part 2, division 2AA to reflect a generic amendment throughout this division by replacing *Translink* with *TransLink*.

**Clause 87** omits the purpose of Division 2AA. The purpose has been made redundant by the establishment of the TransLink Transit Authority under the *Transport Operations (TransLink Transit Authority) Act 2008*.

**Clause 88** amends the heading of section 62AAC by replacing the term Translink with TransLink. It also amends subsection 62AAC(1) to align the section with the function of the TransLink Transit Authority under the *Transport Operations (TransLink Transit Authority) Act 2008*. While subsection 62AAC(2) is amended to replace the term scheduled passenger service with general route service.

**Clause 89** inserts section 62AACA (Entering into a TransLink service contract) that applies the provisions of the existing section 62AAG to service contract areas or routes newly declared in the TransLink area under section 42. This clause provides the same process for entering into both TransLink and non-TransLink contracts.

**Clause 90** makes minor word changes to replace the terms *Translink* with *TransLink* and *scheduled passenger service* with *general route service*.

**Clause 91** makes minor word changes to replace the terms *Translink* with *TransLink* and *scheduled passenger service* with *general route service*.

**Clause 92** makes a minor word change to replace the term *Translink* with *TransLink*.

**Clause 93** replaces the existing section 62AAG with a new section 62AAG (Service contract for amended service contract area or route). The new section 62AAG mirrors the provisions of the old section but in respect of service contract areas and routes amended under the new section 42A. This

clause provides the same process for entering into both TransLink and non-TransLink contracts.

**Clause 94** amends section 62AAH to take account of new section 62AACA.

**Clause 95** makes a minor word change to replace the term *Translink* with *TransLink*.

**Clause 96** omits section 62AB in its entirety. This section relates to contracts made using the transitional provisions that enabled the initial Translink contracts to be put in place. As the provisions only related to contracts made before 6pm on 25 June 2004, this section is now obsolete.

**Clause 97** makes minor amendments to section 62AD to omit references to the transitional provisions omitted in clause 96.

**Clause 98** makes minor amendments to section 62AE to omit references to section 62AB (refer to clause 96).

**Clause 99** makes minor amendments to section 62AE to omit references to section 62AB (refer to clause 96).

**Clause 100** omits chapter 13, part 1A, division 2 in its entirety. This part contains transitional provisions that enabled the initial Translink contracts to be put in place. As the provisions only related to contracts made before 6pm on 25 June 2004, this section is now obsolete.

**Clause 101** inserts part 5 in chapter 13 and provides a transitional arrangement to allow a service contract made under a declaration to provide a scheduled passenger service or a long distance scheduled passenger service prior to the commencement of the *Transport Operations (TransLink Transit Authority) Act 2008* (the Act) to apply after the Act commences. Such service contracts will be a service contract to provide a general route service.

**Clause 102** amends schedule 2 (Reviewable decisions) to allow decisions about essential infrastructure (made pursuant to new section 36B) to be reviewed in a District Court.

**Clause 103** removes schedule 2A (Particular service contracts in SEQ area). This schedule has been moved to the *Transport Operations (TransLink Transit Authority) Act 2008*.

**Clause 104** amends schedule 3 to clarify and give better effect to the statutory market entry restriction that applies to urban bus services and which is essential to protecting the revenue stream of the TransLink Transit

Authority. In particular, the definition of a *scheduled passenger service* is amended to remove loopholes in the existing definition. It is replaced with the definition of a *general route service* to more effectively define the sub-category of scheduled passenger services to which the market entry restriction is intended to apply. In addition to “a scheduled passenger service available to the public for general purposes”, the definition of a *general route service* includes a ‘subscription service’ which is a scheduled passenger service available to any person if the person pays a subscription or a membership fee that is paid principally for the service. Other new definitions have been inserted to make clear the nature and scope of these two important definitional changes. Certain existing definitions, which have been made redundant as a consequence, are also omitted.

## **Part 13**                      **Amendment of *Transport Operations (Road Use Management) Act 1995***

**Clause 105** amends the *Transport Operations (Road Use Management) Act 1995* in part 13.

**Clause 106** ‘Amendment of s 8 (Contents of strategies)’ amends section 8(4). This section provides for road use management strategies for the South East Queensland Transit Authority area (under the *Transport Planning and Coordination Act 1994*) to be consistent with and give effect to any integrated regional transport plan in force for the area. While the South East Queensland Transit Authority is now a defunct entity (dissolved and discontinued by Government decision in 1996), the requirement still needs to apply to road use management strategies for the TransLink area. The amendment omits the term South East Queensland Transit Authority area, and inserts ‘TransLink area’ to ensure the requirement applies.

## **Part 14**                      **Amendment of *Transport Planning and Coordination Act 1994***

**Clause 107** amends the *Transport Planning and Coordination Act 1994* in part 14.

**Clause 108** ‘Amendment of s 3 (Definitions) makes minor wording changes, and amends section 3 to remove definitions pertaining to the defunct South East Queensland Transit Authority and the South East Queensland Transit Authority area, and long distance scheduled passenger services.

**Clause 109** removes section 6(b) which requires transport coordination plans not to be inconsistent with any integrated regional transport plan for the South East Queensland Transit Authority area. Integrated regional transport planning is a function undertaken by the chief executive in which the *Transport Operations (Passenger Transport) Act 1994* is administered.

**Clause 110** removes section 8C(3)(b) which enabled the chief executive to identify a route used for a long distance scheduled passenger service to which a code for Infrastructure Development Assessment Schemes applies.

**Clause 111** removes Part 3 which are defunct provisions pertaining to the South East Queensland Transit Authority that are no longer utilised. The South East Queensland Transit Authority was established in 1995 and dissolved by Government decision and discontinued in 1996. This Authority is a defunct entity and nobody's interests are affected by its formal dissolution.

**Clause 112** amends Part 4 to insert a new section 22 to provide for the chief executive's coordination and strategic planning functions. The insertion of this clause is to make clear that these functions (previously a responsibility of the South East Queensland Transit Authority) to coordinate strategic planning, the operation of integrated transport systems, and integrated regional transport planning are functions performed by the chief executive of Queensland Transport.

**Clause 113** amends section 37(1) to remove references to the chief executive of the South East Queensland Transit Authority which is a defunct entity.

## **Schedule 1      Service contract areas or routes for the TransLink area**

Schedule 1 provides the service contract areas or routes for the TransLink area (7(1)(a)):

- Arana Hills, Albany Creek and Dayboro–Petrie service contract area/route;
- Bribie Island and Bribie Island–Caboolture service contract area/route;
- Brisbane service contract area/route;
- Burbank/McKenzie service contract area/route;
- Caboolture service contract area/route;
- Camira/Springfield and Wacol Railway Station to Inala Plaza via Carole Park, Ellengrove, Forest Lake and Doolandalla service contract area/route;
- Cleveland/Redland Bay service contract area/route;
- Deception Bay/Narangba service contract area/route;
- Gold Coast service contract area;
- Gold Coast–Coomera service contract area;
- Ipswich/Goodna service contract area;
- Logan service contract area;
- Park Ridge and Beaudesert–Brisbane service contract area/route;
- Ormeau–Beenleigh service contract route;
- Redcliffe, Kallangur, Petrie and Redcliffe–Brisbane service contract area/route;
- Samford Valley–Ferny Grove service contract route Strathpine and Murrumba Downs service contract area/route;
- Sunshine Coast service contract area; and
- Sunshine Coast service contract area no. 2’.

## Schedule 2      Dictionary

The Dictionary defines the following terms in the Act:

**appointed member** holds the definition described in section 19;

**appropriately qualified**, in relation to a delegated function or power, includes having the qualifications, experience or standing to perform the function or exercise the power. Example of standing is a person's classification level in the public service;

**board** means the board of TransLink;

**chairperson** means the chairperson of TransLink;

**chief executive officer** means the TransLink's chief executive officer, appointed under section 34;

**close relative**, of a person, means the person's spouse; or parent or grandparent; or brother or sister; or child or grandchild;

**conviction** includes a finding of guilt or the acceptance of a plea of guilty by a court, whether or not a conviction is recorded;

**disqualified person** means—

(a) a party to a contract as follows (a relevant contract—

(i) a service contact relating to the TransLink area;

(ii) a contract with TransLink relating to a public transport system; or

(b) a person who, under the Corporations Act, is a related entity of a body corporate that is a party to a relevant contract; or

(c) an employee of a party to a relevant contract, unless the party is a Local Government. Excluding local government employees from this disqualification criteria, allows the chief executive officer of a local government that also has contracts with TransLink, to delegate their board member functions to an employee. However, clause 25 ensures the employees' functions for the local government would not relate to any of TransLink's functions; or

(d) a member of the Legislative Assembly, or of a Parliament of the Commonwealth or another State; or

(e) a councillor of a local government; or



(f) a person who has been convicted of an indictable offence; or

(g) a person who is or has been an insolvent under administration under the Corporations Act, section 9; or

(h) a person who is disqualified from managing corporations under the Corporations Act, part 2D.6;

**employing office** means the TransLink Transit Authority Employing Office established under section 36;

**general route service** see TOPTA, schedule 3;

**government entity** see the *Public Service Act 1996*, section 21;

**mass transit network** see section 8;

**mass transit services** means general route services for the carriage of large numbers of passengers;

**member** see section 19;

**Ministerial direction** see section 39;

**network plan** means a network plan given to the Minister under section 42;

**notice** means a notice in writing;

**service contract** see TOPTA, section 38;

**special event** means an event the subject of a declaration under section 47;

**TOPTA means** the *Transport Operations (Passenger Transport) Act 1994*. TOPTA department means the department in which TOPTA is administered;

**TOPTA chief executive** means the chief executive of the TOPTA department;

**TransLink** means the TransLink Transit Authority, established under section 9;

**TransLink area** see section 7; and

**work performance arrangement** means an arrangement under which an employee of a Government entity performs work for another Government entity.

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