

Transport and Other Legislation Amendment Bill 2014

Explanatory Notes

Short title

The short title of the Bill is the Transport and Other Legislation Amendment Bill 2014.

Summary

The Bill amends a number of transport and non-transport Acts to support the delivery of infrastructure projects, improve legislative processes, reduce red tape and clarify existing definitions and requirements to simplify the regulatory framework.

Significant amendments include:

- allowing the Department of Transport and Main Roads to redirect unclaimed smartcard credit to public transport initiatives that promote or facilitate the objectives of the *Transport Operations (Passenger Transport) Act 1994*, while also preserving a smartcard holder's entitlement to a refund;
- providing for watercourse crossings to be noted on land titles to support private sector investment in transport infrastructure that crosses over a watercourse;
- creating a statutory easement of support that is enforceable, registrable and permanent to provide for protection of subterranean transport infrastructure;
- discouraging the use of unregistered vehicles and vehicles without compulsory third party insurance on the road, particularly due to the removal of registration labels for light vehicles from 1 October 2014, by allowing automatic number plate recognition camera systems to be used to detect these offences, through amendments to the *Transport Operations (Road Use Management) Act 1995*; and
- ensuring there are sufficient deterrents and penalties for drivers transporting commercial quantities of dangerous goods, explosives or radioactive substances through tunnels to protect public safety, transport infrastructure and the environment by creating a new offence and allowing infringement notices to be issued where the offence is detected by camera systems installed in the tunnels, through amendments to the *Transport Operations (Road Use Management) Act 1995*.

Policy objectives and the reasons for them

Legislative framework for service contracts

The current legislative framework for service contracts is prescriptive and can limit government's ability to negotiate service contracts that drive value for money outcomes for government and the community. Amendments to the *Transport Operations (Passenger Transport) Act 1994* will simplify and clarify the contracting framework under the legislation.

Unclaimed smartcard credit

The 'go card' system was introduced in South East Queensland in 2008. The go card system involves the use of funds stored on a smartcard for the convenient payment of fares on the public transport network.

Currently, the *Public Trustee Act 1978* requires the Department of Transport and Main Roads to transfer all credit on smartcards that is 'unclaimed money' under that Act to the Public Trustee Office. Government incurs an administrative cost each time unclaimed smartcard credit is transferred to the Public Trustee Office and there are practical difficulties with transferring this credit. Also, transferring unclaimed smartcard credit to the Public Trustee Office does not provide a smartcard holder with any benefit in terms of ease of locating their smartcard credit. For these reasons, it is proposed to exclude smartcard credit from the application of the *Public Trustee Act 1978*.

The Department of Transport and Main Roads will instead use credit on smartcards that have been inactive for five or more years for public transport initiatives, subject to the approval of the Minister for Transport and Main Roads. This use of credit on a smartcard will not affect the smartcard holder's entitlement to a refund of the credit.

Busway safety officers

Busway safety officers are appointed under the *Transport Infrastructure Act 1994* to provide customer service and ensure passenger and driver safety on the busway. While busway safety officers are also authorised to issue fines for offences on the busway, they do not perform this activity as part of their current role. Instead, enforcement functions are performed across the public transport network by "authorised persons" appointed under the *Transport Operations (Passenger Transport) Act 1994*. The legislation needs to be updated to reflect the current roles of busway safety officers and authorised persons. There is also unnecessary duplication in appointment processes and other relevant provisions that should be removed to streamline the legislation and reduce regulatory burden.

Failure to produce evidence of concession entitlement

A person travelling on a concession ticket must carry evidence of their concession entitlement when buying the ticket and travelling on the journey for which the ticket is issued. For operational reasons, a driver or authorised person may need to ask a person travelling on a concession ticket to produce evidence of their concession entitlement after the person has completed their journey. An amendment is needed to clarify that this may occur.

Minor amendments to the Transport Operations (Passenger Transport) Act 1994 and Transport Operations (Marine Safety) Act 1994

Following a series of legislative amendments, unlawful stalking under the Criminal Code inadvertently ceased to be a driver disqualifying offence under the *Transport Operations (Passenger Transport) Act 1994*. Unlawful stalking is commensurate with other driver disqualifying offences and should be reinstated as a category C driver disqualifying offence.

Part 5 of the *Statutory Instruments Act 1992* was omitted in November 2012. This change inadvertently removed certain exemptions from the requirement to consult on draft standards under the *Transport Operations (Passenger Transport) Act 1994* and *Transport Operations (Marine Safety) Act 1994*. These exemptions should be reinstated to allow for minor amendments to standards without public consultation.

A *proper officer* is defined in the *Transport Operations (Passenger Transport) Act 1994* to mean an officer of a court making a civil banning order or exclusion order. Given that the term proper officer is no longer relevant to a civil banning order, the reference to a civil banning order can be removed from this definition.

Watercourse crossings

In a linear transport project, infrastructure will often be constructed over a watercourse. For example, bridges and associated structures which support transport infrastructure, such as road, rail, light rail or busway. Under Queensland law, the State cannot grant tenure (rights to hold or have an interest in property) over a watercourse. This is the position in all Australian States and many overseas jurisdictions. This is due to the fact that a body of water is not land and therefore cannot have a tenure nor be registered as land.

The common law of fixtures normally holds that where a structure is permanently affixed to land, that fixture becomes part of the land and therefore, owned by the land owner. The land, together with the fixture, may be the subject of mortgages and leases, which can be registered on the title of the land.

As a result, currently where transport infrastructure passes over a watercourse:

- there is no mechanism for registering any interest on a title deed for the watercourse;
- the titles registry cannot record ownership of the attached infrastructure as part of the land;
- the tenure will be interrupted by watercourse and there cannot be a continuous corridor.

Section 477F (Watercourse crossings) provides for a licence over a watercourse allowing for continuity of a transport infrastructure corridor. This provision was successfully used to establish a light rail corridor for the Gold Coast Rapid Transit consortia and its financiers. Under section 355A of the *Transport Infrastructure Act 1994*, a licence can be granted over the light rail corridor for the construction, operation and maintenance of the light rail corridor, including the infrastructure over the watercourse. The licence can be recorded with the registry of titles for tenured land.

The amendments to section 477F of the *Transport Infrastructure Act 1994* will:

- enable the details of an arrangement for a watercourse crossing, including licences to occupy and use, to be recorded on the land register of the adjoining lands;
- capture all types of deeds, contracts and arrangements (including licences) to construct, maintain, operate, use, occupy or commercialise all transport infrastructure; and
- support private sector investment in all modes of transport infrastructure that crosses tidal and non-tidal State-owned watercourses by providing a mechanism for continuous occupation.

Quarry Material

An amendment to section 35 of the *Transport Infrastructure Act 1994* (Temporary occupation and use of land) will:

- clarify that the Department of Transport and Main Roads has the clear and direct power to enter and temporarily occupy land to access, extract and use State-owned quarry material, as administered under the *Forestry Act 1959*, for the State road network;
- put beyond doubt that the Department of Transport and Main Roads may, under section 35, access, extract and use State-owned quarry material, without having to obtain a sales permit under the *Forestry Act 1959* or pay royalties; and
- provide a consistent process for accessing quarry material for all State lands administered by the Department of Natural Resources and Mines and State-owned quarry material administered by the Department of Agriculture, Fisheries and Forestry.

To be consistent with the *Acquisition of Land Act 1967* and other *Transport Infrastructure Act 1994* provisions, the notice of entry will be amended from three days to seven days.

Compliance Management Plans

Section 477G (Chief executive may approve compliance management plan) was inserted into the *Transport Infrastructure Act 1994* in 2011 to:

- enable a streamlined approach for multiple approvals that may be required for a project;
- provide greater certainty for government and developers for approvals;
- reduce contract prices being loaded with a high premium for risk; and
- provide alternative and innovative ways of complying with requirements for permits or legislation and standards.

On a literal reading, the section applies to licenses under the Act, namely light rail and busway projects. Amendments to existing section 477G and with the insertion of a new section 477H, this will allow compliance management plans to:

- be available for all transport infrastructure projects regardless of mode;
- enable the chief executive of the Department of Transport and Main Roads to make compliance management plans for projects delivered by the department or any other third party, including a local authority;
- encourage innovative ways to meet requirements for all transport infrastructure projects without compromising regulatory outcomes; and

- provide a mechanism to reduce project and planning risk, which could result in potential cost savings.

The amendments will support the government's commitment to reduce red tape, cost and administrative burdens, without compromising the objectives of the regulations or delivery of services to the State.

Chapter 9 and 10 of the Transport Infrastructure Act 1994

Minor amendments are proposed to the *Transport Infrastructure Act 1994* to the wording of sections 303AB (Licence in relation to busway or busway transport infrastructure) and 355A (Licence in relation to light rail land or infrastructure) to provide that if the chief executive gives written notice of the licence to the registrar of titles, the registrar must register the licence in the land registry. This provisions reduces the regulatory burden of registration by removing the unnecessarily onerous requirements to record minor licences in the land registry and providing consistency across transport legislation.

For clarification, a licence granted under section 355A (Licence in relation to light rail land or infrastructure) does not exempt a person from complying with the accreditation scheme under Part 5 of the *Transport (Rail Safety) Act 2010*.

Accommodation Works

Accommodation works are temporary or permanent works carried out as a consequence of busway transport infrastructure, busway transport infrastructure works, light rail transport infrastructure, light rail transport infrastructure works or road works carried out on land, in order to minimise the impact of works, restore the land to its former condition, purpose or use and provide for safety to persons who use the land. Amendments to the *Transport Infrastructure Act 1994* will:

- ensure that permanent and temporary accommodation works can be undertaken, on state or private land, where necessary or convenient to prevent or ameliorate impacts caused by the establishment of transport infrastructure;
- enable the Department of Transport and Main Roads to deliver accommodation works;
- reduce potential project uncertainty, additional costs and reputational damage to the department involved with delay of projects; and
- reduce the duration of inconvenience caused by the works.

Owner's consent

Amendments to the *Transport Infrastructure Act 1994* will clarify that for the purposes of the *Sustainable Planning Act 2009*, the chief executive of the Department of Transport and Main Roads is the owner of State land administered by the department.

Protective easements – withdrawing support

Amendments to the *Transport Planning and Coordination Act 1994* will:

- provide for a new statutory transport easement of support that reflects modern engineering design and construction;
- allow these easements and obligations relating to support to be enforceable, registrable and run with the land so that subsequent owners are bound by the covenants in easement documents;
- ensure that the Department of Transport and Main Roads can:
 - acquire a transport easement of support; or
 - acquire land, register an easement (including an easement of support), and offer the land, subject to this easement, to the former owner under the provisions of section 41(1) of the *Acquisition of Land Act 1967*; and
- protect the structural integrity and operational efficiency of the Department of Transport and Main Roads transport infrastructure in a resilient way, recognising the future redevelopment potential of adjoining land.

Amendments to Chapter 15A of the Transport Infrastructure Act 1994

The amendments to Chapter 15A (Transport interface management) of the *Transport Infrastructure Act 1994* will extend the application of the transport interface management provisions to all transport modes and transport infrastructure works.

Section 240 of the Transport Infrastructure Act 1994

Rail corridor land is leased under the *Land Act 1994* to the State of Queensland, represented by the Department of Transport and Main Roads, for inclusion in the department's perpetual transport lease. Land acquired for railway purposes, which includes land that is gifted or purchased, must be subsequently subleased to a railway manager under section 240 of the *Transport Infrastructure Act 1994*.

Currently, when the Department of Transport and Main Roads has acquired land in freehold, either gifted or purchased, the department must make an application to the Department of Natural Resources and Mines to include the land into the transport perpetual lease, and subsequently included into the railway manager's sublease.

The amendment to section 240 of the *Transport Infrastructure Act 1994* will refine this administrative process so that a delegate for the chief executive of the Department of Transport and Main Roads can lodge the required paperwork directly in the Titles Registry. The amendment will, in effect, remove the Department of Natural Resources and Mines from the administrative process of including the land in the perpetual transport lease.

The Department of Transport and Main Roads is the appropriate agency to conduct these rail corridor tenure transactions, which are not part of the Department of Natural Resources and Mines core business. In removing the Department of Natural Resources and Mines from the administrative process, the amendment reduces inter-departmental red tape.

Rail feasibility investigator's authority

Provisions within the *Transport Infrastructure Act 1994* allow for the chief executive of the Department of Transport and Main Roads to issue a rail feasibility investigator's authority. The issuing of a rail feasibility investigator's authority allows for someone authorised in writing by the chief executive to access approved land under the rail feasibility investigator's authority for the purpose of investigating the land's potential and suitability as a rail corridor. This could include undertaking works such as surveying and taking soil samples, clearing vegetation and otherwise disturbing the land and constructing temporary access tracks on the land.

The Queensland Government is encouraging private investment in rail, specifically in the regional coal networks, and the planning and construction of other non-passenger networks. Given this, it is now more than likely that rail feasibility investigator's authority applicants will be private entities, such as Aurizon (formerly QR National), or a mining company seeking to construct its own rail network.

A rail feasibility investigator's authority can potentially have significant impacts on landowners and because of these impacts, the chief executive's decision and the process of considering the rail feasibility investigator's authority need to be defensible in court should it be legally challenged by the landowner.

As a result, significant legal costs are incurred by the Department of Transport and Main Roads in assessing a rail feasibility investigator's authority application and it is considered inappropriate for the State to bear the legal costs of rail feasibility investigator's authority applications, given that the application process is for the benefit of a private, commercial entity.

The amendment to the *Transport Infrastructure Act 1994* will ensure that the Department of Transport and Main Roads can be reimbursed for costs incurred in considering a rail feasibility investigator's authority application.

Definition of railway

There is currently no definition of *railway* in the *Transport Infrastructure Act 1994*, which has created ambiguity in the application of legislation. The amendment will clarify the meaning of the term by inserting a definition of *railway* into Schedule 6 (Dictionary) of the *Transport Infrastructure Act 1994*.

Mining leases over rail corridor land

The process of underground mining can lead to subsidence and ground movement, which can have significant impacts upon the integrity of the surface of the land and on rail infrastructure when mining activity is undertaken in rail corridor land. Should subsurface mining activity be too shallow or the mine design or construction be incompatible with rail operations above, this may impact on the integrity of the rail corridor and associated infrastructure.

The amendments to the *Mineral Resources Act 1989* will ensure that a mining lease over rail corridor land should only be granted where mining lease applicants consult with and seek the approval of either the Minister for Transport and Main Roads or the Coordinator-General, depending on who the owner of the land is.

This will provide better protection to the State's rail network and facilitate consultation between the State, railway manager and mining lease applicant. A further amendment to the *Mineral Resources Act 1989* will place the obligation on the miner to ensure that any excavation around a rail corridor does not adversely affect the safe operation of that railway. Currently, the quantified distances of how close to railway works mining operations can take place do not adequately protect the railway.

The current distance prohibiting excavation around a railway (12 metres horizontally, or 15 metres vertically from the railway works) is not adequate. It is difficult to quantify a safe distance for excavation given that there are several variable factors that can influence that distance, such as mining methods and ground or soil composition.

A minor amendment to section 404A(3)(a) will provide a better reflection of the ownership of rail by removing reference to the chief executive officer of the railway manager and replacing it with reference to the owner.

Definition of *owner* and *rail corridor land* are also amended to reflect the changing rail environment where the Coordinator-General may own rail corridor land which is taken or acquired under the *State Development and Public Works Organisation Act 1971*.

Amendments to the Heavy Vehicle National Law Act 2012

The *Heavy Vehicle National Law Act 2012* commenced on 10 February 2014 providing a single body of heavy vehicle law for all Australian states and territories, excluding Western Australia and the Northern Territory. Sections 468, 469 and 470 of the *Heavy Vehicle National Law Act 2012* place obligations on drivers and operators of heavy vehicles operating under a heavy vehicle accreditation.

Under the corresponding provisions of recently repealed State transport laws, the requirement for drivers to carry and return accreditation documentation and operators to induct drivers into relevant management systems were limited to fatigue management accreditation. No such requirement was applied to drivers and operators operating under alternative compliance schemes for mass or maintenance accreditation.

In drafting sections 468, 469 and 470, the requirements applying to drivers and operators were inadvertently extended to include all forms of heavy vehicle accreditation, including mass and maintenance accreditation. This has resulted in increased red tape and an unnecessary regulatory burden on industry. The penalty for non-compliance with the requirements in sections 468 and 470 is an infringement penalty of \$300 for drivers and \$600 for operators, or maximum court imposed penalties of up to \$3 000 and \$6 000 respectively.

Amendments are required to clarify that the requirements under sections 468, 469 and 470 are limited to fatigue management accreditation only. These amendments will ensure that the consistent and equitable regulation of the heavy vehicle industry across participating jurisdictions is maintained. While Western Australia and the Northern Territory have not applied the national law, they have been consulted on these amendments.

Discourage the use of unregistered vehicles and vehicles without Compulsory Third Party insurance

Amendments to the *Transport Operations (Road Use Management) Act 1995* will discourage the use of unregistered vehicles and vehicles without compulsory third party (CTP) insurance on the road. This is particularly important due to the removal of registration labels for light vehicles from 1 October 2014.

Statistics indicate that approximately 3% of Queensland's 4.5 million vehicles could potentially be unregistered (up to 135 000 vehicles). Generally, when a vehicle is unregistered, that also means it does not have CTP insurance ("uninsured vehicle"). However, CTP insurance continues for a grace period of 30 days after the expiry of a vehicle's registration, so it is possible for a vehicle to be unregistered, but retain CTP insurance during this time.

Police officers and transport inspectors employed by the Department of Transport and Main Roads have been intercepting vehicles and manually issuing infringement notices for unregistered and uninsured vehicle offences for many years. In more recent times, portable automatic number plate recognition camera systems have been used to detect these offences. However, under current arrangements, once an unregistered vehicle is detected, a police officer or transport inspector must still physically intercept the vehicle and manually issue an infringement notice.

The Government has announced that registration labels will no longer be issued for light vehicles from October 2014. The amendments will assist in ensuring that the removal of registration labels does not lead to an increase in the use of unregistered or uninsured vehicles on the road.

Transporting dangerous goods in tunnels

With the introduction of tunnels to the South East Queensland road network in recent years, amendments are being made to the *Transport Operations (Road Use Management) Act 1995* to ensure there are sufficient deterrents and penalties for drivers transporting commercial quantities of dangerous goods, explosives or radioactive substances through tunnels to protect public safety, transport infrastructure and the environment.

Dangerous goods include, for example, toxic gases, flammable liquids, corrosive substances and substances liable to spontaneously combust. The general term "dangerous goods" is used throughout the explanatory notes to also include radioactive substances and explosives, except where there are specific references to radioactive substances and explosives. Any incident in a tunnel involving a significant quantity of dangerous goods may be life-threatening or damage valuable transport infrastructure or the environment.

Reporting traffic crashes to police

Amendments to the *Transport Operations (Road Use Management) Act 1995* will clarify the circumstances in which traffic crashes need to be reported to police to minimise the number of crashes unnecessarily reported.

Section 92 of the *Transport Operations (Road Use Management) Act 1995* and section 287 of the *Queensland Road Rules* require drivers involved in crashes and other incidents that result in more than \$2 500 damage to report those incidents to police. Drivers must also report to police if a person is injured or killed in the crash or a motor vehicle involved in the crash needs to be towed from the scene.

The \$2 500 threshold has been in place for many years without being increased and no longer reflects a requirement to only report more serious crashes to police. Further, it does not reflect the fact that a majority of crashes now involve damage exceeding \$2 500 because modern vehicles are designed to crumple to preserve passenger safety. It also leads to uncertainty, as drivers are unsure whether damage to their vehicle meets the threshold, which leads to unnecessary reports to police.

Keeping records about the repair and painting of vehicles

Amendments to the *Transport Operations (Road Use Management) Act 1995* will clarify the requirements for motor vehicle repairers to keep records about the repair and painting of vehicles.

Online driver licence verification service

Amendments to the *Transport Operations (Road Use Management) Act 1995* will allow the Department of Transport and Main Roads to offer an online driver licence verification service, which will confirm the validity of driver licences to the licence holder or to a third party.

A person may wish to check the status of their own licence (for example, to check whether their licence remains suspended). The transport industry has requested an easy to use service to confirm these details for their employee truck drivers. Often these vehicles and the loads they carry are very valuable and employers want to be able to check licence details to ensure their vehicles are operating safely, assist in providing a safe workplace for their employees and avoid difficulties with insurance. Currently, there is no quick or convenient way for an employer to confirm that a driver holds a valid driver licence.

Service of notices to postal addresses

Amendments to the *Transport Planning and Coordination Act 1994* will improve the effectiveness of the service of notices required to be given under transport legislation to help ensure people receive important notices issued by the Department of Transport and Main Roads.

Transport legislation requires the chief executive to serve certain documents on people (for example, driver licence sanction notices). Under section 39 of the *Acts Interpretation Act 1954*, service of a notice by post must be to a residential address or business address. In some rural and remote areas, however, a postal service is not available to all residential addresses. In other cases, a person may have chosen to rely on a postal address and not check for mail posted to a residential address. In these situations, a person may not receive important information from the Department of Transport and Main Roads.

The department currently collects address information which allows a person to nominate a postal address in addition to their residential address. This allows notices that are not required to be served on the person to be sent to a more convenient address. Almost 25% of driver licence holders have nominated a postal address.

The Bill aims to improve the effectiveness of service of written notices by allowing them to be validly served by being sent to a postal address nominated by the customer.

Removal of provisions about emergency contact information

Amendments will remove provisions in transport and police legislation about recording emergency contact information on smartcard licences and adult proof of age cards, due to limited take up by the community and the lack of availability of smartcard readers.

Section 36H of the *Transport Planning and Coordination Act 1994* facilitates emergency contact information being stored on smartcard driver licences, adult proof of age cards and smartcard marine licence indicators. The emergency contact information initiative was intended to allow a person to electronically store the contact details of a person they would like police to contact in an emergency.

The Department of Transport and Main Roads has reviewed the emergency contact information initiative and found that:

- there has been extremely limited take up of card-readers in the community (for example, in homes or at readily accessible service outlets) and without access to reader technology, smartcard holders are not able to readily store and maintain up-to-date emergency contact information details;
- police do not have access to smartcard readers to allow them to access emergency contact information;
- it is not compulsory to carry an open driver licence for most drivers, so there is no guarantee a smartcard will be available to police officers, even if a cardholder chose to store emergency contact information; and
- there is negligible public demand for storing emergency contact information on smartcards as demonstrated by the fact that since late 2010, just 25 people have provided their emergency contact information details to be stored on a smartcard.

Accordingly, it is no longer intended to store or make available emergency contact information on transport smartcards.

Streamline processes associated with toll road land declarations

Amendments to the *Transport Infrastructure Act 1994* will streamline processes associated with toll road land declarations.

Release of information to foreign licensing authorities

Amendments to the *Transport Operations (Road Use Management) Act 1995* will assist Queenslanders living or working overseas who need to transfer their driver licence to one issued by another country.

Under section 77(1)(c) of the *Transport Operations (Road Use Management) Act 1995*, information about a person's prescribed authority (such as a driver licence or a dangerous goods driver licence) or traffic history may be released to an interstate driver licensing authority. This precludes the release of information to foreign driver licensing authorities who request information about a person's Queensland driver licence when a person applies for a foreign licence.

Increasing the penalty for unlicensed driving where a person has never held a driver licence

Amendments to the *Transport Operations (Road Use Management) Act 1995* will increase the penalty for unlicensed driving where a person has never held a driver licence to more appropriately reflect the severity of the offence.

Under section 78 of the *Transport Operations (Road Use Management) Act 1995*, a person must not drive a motor vehicle on a road unless the person holds the appropriate driver licence. This section specifies a range of penalties for driving without a licence, the severity of which depend on the circumstances. Currently, infringement notices may be issued for the less serious incidents of unlicensed driving, for example, where the person has a recently expired licence. In more serious circumstances, for example, if a person is driving despite having been previously disqualified from holding a licence by a court, an infringement notice cannot be issued and the offender must be dealt with by a court.

Currently, a person who drives unlicensed in circumstances where they have never held a licence can be issued an infringement notice fine of four and seven-fifteenths penalty units. They do not have to appear in court and do not face a disqualification period.

A person who has never held a driver licence, however, presents a significant safety risk to other road users, as the person has never demonstrated knowledge of the road rules or had their driving ability assessed. As such, the existing penalty is considered to be inconsistent with the severity of the offence.

Clarify that users of personal mobility devices do not have to hold a driver licence

Amendments to the *Transport Operations (Road Use Management) Act 1995* will clarify that users of personal mobility devices do not have to hold a driver licence.

The use of personal mobility devices is governed by the Queensland Road Rules. Although the Queensland Road Rules generally do not permit these devices to be used on roads, there are limited instances where they can be used on roads, such as to avoid an obstacle on a footpath or when crossing a road.

Definition of traffic history

Amendments to the *Transport Operations (Road Use Management) Act 1995* will ensure that offences for evading police and associated licence disqualifications are taken into account when considering a person's traffic history.

It is an offence under section 754 of the *Police Powers and Responsibilities Act 2000* to fail to stop a motor vehicle when directed to do so by police (commonly referred to as "evading police"). The penalty for this offence was amended in 2012 to provide that a court must

disqualify a person convicted of the offence from holding or obtaining a Queensland driver licence for two years.

The offence is relevant to a person's traffic history and should be considered by decision makers when making decisions about various driver licensing matters.

For example, a person's traffic history must be considered when a court is sentencing a person for certain unlicensed driving offences or determining an application for a restricted licence (a licence that may be issued to a person following a conviction for a low or mid-range alcohol offence).

A person's traffic history must also be considered by officers of the Department of Transport and Main Roads when deciding matters such as:

- applications for a special need driver licence;
- logbook exemptions from 100 hours of driving experience;
- high powered vehicle restriction exemptions; and
- late night driving restriction exemptions (imposed after sanctions for accumulating excessive demerit points/high speed offences etc. committed while under 25 years of age).

Streamlining laboratory testing of blood and saliva for drink and drug driving purposes

Amendments to the *Transport Operations (Road Use Management) Act 1995* will provide greater flexibility for the laboratory testing of blood and saliva specimens collected by police for drink and drug driving purposes.

Under the drink and drug driving provisions of the *Transport Operations (Road Use Management) Act 1995*, police officers can obtain a specimen of blood or saliva from drivers. These specimens can be sent for laboratory testing to indicate whether alcohol or any drug is present in the driver's system and, if so, whether charges can be instituted against that driver. Section 80(16B) of the *Transport Operations (Road Use Management) Act 1995* currently provides that the analyst that undertook the laboratory testing can issue a certificate which states the level of alcohol or drugs that were present in the specimen. This certificate can be presented to court as evidence that a driver was contravening the drink or drug driving provisions.

For efficiency reasons, the normal process in testing laboratories is to "batch" specimens from different analysts together when testing for the same drug type. This allows a single analyst to test, for example, up to 20 specimens at one time. It costs less per sample and is more efficient to analyse 20 samples at once, compared to a single sample or a couple of samples being handled by the same analyst. The current wording of legislation, however, does not permit the batching of specimens. The legislation requires that the analyst that signs the certificate must be the analyst that undertook the actual testing process on any one specimen.

Mandatory driver licence disqualifications

Amendments to the *Transport Operations (Road Use Management) Act 1995* will ensure that mandatory driver licence disqualifications apply where a driver is convicted of certain transport offences, even if a court orders no other penalty.

Certain provisions of the *Transport Operations (Road Use Management) Act 1995* provide that if a court convicts a person of a particular offence, then the court must disqualify the person from holding or obtaining a driver licence. These provisions deal with the more serious incidents of unlicensed driving (section 78(3)), racing and speed trials on roads (section 85(6)), certain drink and drug driving offences (section 86(6)), driving outside the terms of a restricted licence (section 87(10A)), failure to comply with an alcohol ignition interlock requirement (sections 91W(2) and 91X(2)) and applying for a driver licence while disqualified (section 127(11)). A court must also disqualify a person who commits the offence of evading police (section 754 of the *Police Powers and Responsibilities Act 2000*) from holding or obtaining a driver licence.

These provisions currently use wording to the effect of '*the court, in addition to imposing a penalty, must disqualify the person from holding or obtaining a Queensland driver licence...*'. In a number of recent cases in the Magistrates Court and District Court, some Magistrates and judges have decided that this wording left open the possibility that where no other penalty had been imposed, it was not mandatory to disqualify the person from holding a licence.

The original policy intention of the legislation was that if a person was convicted of one of the identified serious offences, it was mandatory for a court to impose the specified licence disqualification.

Achievement of policy objectives

Legislative framework for service contracts

The Bill will achieve its objective of simplifying and clarifying the legislative framework for service contracts by amending the *Transport Operations (Passenger Transport) Act 1994* to:

- provide greater flexibility to negotiate arrangements for reimbursing concessions;
- allow the chief executive to publish declarations, including amendments to declarations, of service contract areas and routes on the Department of Transport and Main Roads' website;
- allow for existing service contract areas and routes to be updated to reflect the gradual improvements the Department of Transport and Main Roads has made to the public transport network over time; and
- clarify the definition of *general route service*.

Unclaimed smartcard credit

The Bill will achieve its objective of allowing unclaimed smartcard credit to be re-directed to public passenger transport initiatives by amending the *Transport Operations (Passenger Transport) Act 1994* to:

- allow the chief executive of the Department of Transport and Main Roads to use unclaimed smartcard credit for an objective of the *Transport Operations (Passenger Transport) Act 1994*, subject to the approval of the Minister for Transport and Main Roads; and
- preserve a smartcard holder's entitlement to a refund of their smartcard credit; and
- provide that section 102B of the *Public Trustee Act 1978* does not apply to credit on smartcards.

Busway safety officers

The Bill will achieve its objective of streamlining legislation in relation to busway safety officers and other authorised persons operating on the public transport network by consolidating appointment processes for these personnel and transferring relevant busway safety officer provisions from the *Transport Infrastructure Act 1994* to the *Transport Operations (Passenger Transport) Act 1994*.

Failure to produce evidence of concession entitlement

The Bill will enhance the offence of failure to produce evidence of concession entitlement by amending the *Transport Operations (Passenger Transport) Act 1994* to clarify that the driver or an authorised person may request evidence of a person's concession entitlement if they reasonably suspect the person has just travelled on a concession ticket.

Minor amendments to the Transport Operations (Passenger Transport) Act 1994 and Transport Operations (Marine Safety) Act 1994

The Bill will achieve its objective of correcting drafting errors by amending the *Transport Operations (Passenger Transport) Act 1994* to:

- reinstate unlawful stalking as a category C driver disqualifying offence for the purposes of driver authorisation; and
- remove a reference to a civil banning order from the definition of proper officer.

The Bill will also achieve this objective by amending the *Transport Operations (Passenger Transport) Act 1994* and the *Transport Operations (Marine Safety) Act 1994* to reinstate previous exemptions from public consultation on draft standards.

Watercourse crossings

The amendments to section 477F (Watercourse crossings) extend the current watercourse crossing provision in the *Transport Infrastructure Act 1994* to address the inability to record arrangements for a watercourse crossing on a land title. These amendments will apply to all infrastructure and have the same effect to the existing sections 477F (Watercourse crossings) and either 303AB (Licence in relation to busway land or busway transport infrastructure) or 355A (Licence in relation to light rail land or infrastructure) of the *Transport Infrastructure Act 1994* used to establish the licence for the Gold Coast Rapid Transit project corridor which included watercourse crossings.

Under the terms of the arrangement, the chief executive or person authorised in writing will be able to survey and re-survey, construct, augment, improve, maintain, operate and replace the watercourse crossing.

The chief executive may give prescribed details of the watercourse crossing to the registrar of titles for noting against the relevant land, which includes:

- the name of the operator, the person occupying the infrastructure, the name of the watercourse crossing;

- details of an investigator's authority for rail under the *Transport Infrastructure Act 1994*;
- aspects of a project deed for construction of a watercourse crossing; and
- a licence to use or occupy a watercourse crossing included within the terms of a registered lease or sublease for the remaining transport corridor.

The amendments allow for watercourse crossing arrangements to be customised to cater for individual circumstances, for example, where there are rights, obligations and arrangements for third parties. This type of customised watercourse crossing arrangement may be necessary where there are layers of different transport or other infrastructure or assets with different owners or operators. For example, a bridge structure which provides the platform for the operation of rail infrastructure can be treated differently to any pipeline, pylon or bridge in the airspace below where third parties may be involved. Sketch plans, rather than volumetric survey plans, can be used to identify and particularise the assets of a watercourse crossings.

Amended section 477F (Watercourse crossings) will apply to all modes of transport and provide continuity that may be required by financiers investing in significant transport infrastructure projects.

The amendments will enable the Department of Transport and Main Roads to:

- provide a private or third party entity with continuity of rights and obligations about the establishment, use and occupation of infrastructure from one side of a watercourse crossing to the other;
- construct, augment, improve, maintain, operate, occupy, replace, name and number transport infrastructure over a watercourse;
- protect and manage the watercourse crossing as transport infrastructure;
- grant continuous management, revenue, operational and occupational rights over corridor transport infrastructure through sub-licencing or other arrangements with flexibility to customise; and
- have flexibility in being able to identify and particularise the transport infrastructure that is the subject of the arrangement, including dealing with other infrastructure or other assets which may be located on part of the watercourse crossing structure.

Quarry Material

Amendments to section 35 (Temporary occupation and use of land) of the *Transport Infrastructure Act 1994* will:

- clarify that the Department of Transport and Main Roads has clear and direct power to access, extract and use State-owned quarry material as administered under the *Forestry Act 1959*;
- only apply to:
 - temporary occupation and use of State land;
 - the construction and maintenance of transport infrastructure on State-controlled roads or future State-controlled roads constructed under the *Transport Infrastructure Act 1994* (the amendments do not apply to any other forms of transport infrastructure); and

- provide a notice to be given to agencies administering the relevant resource and State lands (Department of Natural Resources and Mines and the Department of Agriculture, Fisheries and Forestry).

The amendments will not apply to:

- State-owned quarry material administered under the *Water Act 2000* or *Coastal Protection and Management Act 1995*;
- quarry material from a quarry owned and operated by a private third party, including local councils, where a sales permit has been issued to that third party under the *Forestry Act 1959*; or
- quarry material not owned by the State. This primarily applies to some land holdings where there is no reservation of quarry materials to the State, for example, some land under the *Aboriginal Land Act 1991*.

The amendment does not affect other legislative requirements. For example, where the extraction of quarry materials is subject to the *Environmental Protection Act 1994*.

The Department of Transport and Main Roads must still comply with the provisions of more specific legislation in accessing quarry material, for example, in the case of protected areas under the *Nature Conservation Act 1992* or certain lands under the *Aboriginal Land Act 1991*.

The amendment to section 36 (Notice of entry provisions) of the Act will extend the notice period from three days to seven days for consistency with the *Acquisition of Land Act 1967*. The amendment obliges the Department of Transport and Main Roads to give notice to each chief executive administering the *Land Act 1994* and the *Forestry Act 1959* of the Department of Transport and Main Roads intention to access, extract or use State-owned quarry material. This process seeks to ensure security of access to materials by the Department of Transport and Main Roads for its road network, while allowing the other administering authorities to manage any conflicts that may arise in the allocation of quarry materials and land use.

Compliance Management Plans

Amendments to section 477G and the insertion of new section 477H of the *Transport Infrastructure Act 1994* will:

- ensure that a compliance management plan can apply to licences, contracts, franchises, permissions, approvals and agreements with the chief executive for the construction, establishment, augmentation or maintenance of all transport infrastructure;
- change the reference in section 477G from “under this Act” to “under a transport Act” thereby extending the application of the provision to transport projects and infrastructure under all transport Acts to include, for example, requirements under the *Transport Planning and Coordination Act 1994* and the *Transport Operations (Road Use Management) Act 1995*;
- insert a definition of relevant entity into subsection 477G(11) to clarify that the State can be a relevant entity under 477G allowing the department or other relevant persons to enter into an arrangement with the chief executive;
- enable conditions to be imposed on the approval of a compliance management plan;

- provide that conditions to the approval of a compliance management plan form part of the compliance management plan; and
- allow the chief executive of the Department of Transport and Main Roads to make a compliance management plan for departmental works and projects, after consulting with the administering agencies and being satisfied that the compliance management plan adequately addresses the compliance issues.

The amendments to section 477G (Chief executive may approve compliance management plan) and insertion of new section 477H (Chief executive may make a compliance management plan) are designed to ensure the application of compliance management plans to all infrastructure projects by extending the provision to include all arrangements for infrastructure delivery, rather than be restricted by a literal interpretation of “licence” as it currently stands. Use of the term “arrangement” is intended to capture all contracts, agreement, authorities and any arrangement to deliver, construct or maintain all transport infrastructure by or on behalf of the Department of Transport and Main Roads, including contracts with local government. The amendments will facilitate integrated transport infrastructure projects and the Department of Transport and Main Roads’ road network program, whether delivered by the department or through contracted entities.

Under the amendments, the chief executive may publish the compliance management plan approval notice with any additional information where considered necessary or desirable, for example, in cases affecting public or community interests.

The amendments grant the chief executive the clear power to make an approval of a compliance management plan, subject to conditions, enhancing management of the compliance management plan process. For example, the chief executive may impose conditions related to ongoing compliance or consultation, including with an administering agency. Any conditions must be included on the approval notice and complied with by the relevant person. If there is non-compliance, with the compliance management plan the relevant law applies.

Proposed section 477H allows the chief executive of the Department of Transport and Main Roads to make a compliance management plan for departmental works and projects, after consulting with the administering agencies and being satisfied that the compliance management plan adequately addresses the compliance issues.

Chapter 9 and 10 of the Transport Infrastructure Act 1994

The amendments make minor changes to the *Transport Infrastructure Act 1994* to the wording of sections 303AB and 355A for licences over busway and light rail land and infrastructure. If the chief executive gives written notice of the licence to the registrar of titles the registrar must register the licence in the land registry. This provision reduces the regulatory burden of registration by removing the unnecessarily onerous requirements to record minor licences in the land registry and providing consistency across transport legislation.

It should be noted that a licence granted under section 355A does not exempt a person from complying with the accreditation scheme under Part 5 of the *Transport (Rail Safety) Act 2010*.

Accommodation Works

The provisions in the *Transport Infrastructure Act 1994* relating to authority to enter or temporarily use land, for State-controlled roads (sections 35 - 36), busway (sections 298 - 299) and light rail (sections 349 - 350), have previously been relied upon by the Department of Transport and Main Roads in order to carry out accommodation works.

Examples of accommodation works that may be required as a result of a transport infrastructure project include drainage and works for ground water, water storage, reconnection of services, relocation of fences, driveways, letter boxes and services, and regrading of driveway access due to changes in levels of the adjoining road.

Section 36 of the *Acquisition of Land Act 1967* provides a power to enter land for investigation purposes, and section 37 provides a power to enter land for the purpose of constructing works. Section 37 of the *Acquisition of Land Act 1967* provides for temporary occupation for the taking or depositing of stone, gravel, earth or material on the land, forming and using temporary roads, manufacturing materials on the land, or erecting workshops, sheds or other temporary buildings. The provision does not extend explicitly to constructing permanent works (such as accommodation works) on the land.

Amendments to the *Transport Infrastructure Act 1994* will provide clarification in relation to the provisions that provide for temporary occupation and use for road, busway or light rail infrastructure works. The amendments provide a clear power to enter private land to construct permanent works on the land.

The Department of Transport and Main Roads requires provisions in both the *Transport Infrastructure Act 1994* as well as the existing provisions in the *Acquisition of Land Act 1967* to provide a clear head of power to undertake works which are required to facilitate a transport infrastructure project or to prevent or ameliorate the impact of project works on private land.

The framework provided by the amendments to sections 29, 35 and 36 are specific provisions required for the Department of Transport and Main Roads project delivery. The provisions are intended to apply in addition to and are not to be constrained by the operation of relevant sections of the *Acquisition of Land Act 1967*.

The amendments will allow the Department of Transport and Main Roads to deliver necessary accommodation works while undertaking project works, thereby providing the opportunity for efficiencies in scale and scope, greater flexibility and responsiveness for both projects and the land owners. The amendments will allow accommodation works to be delivered by the Department of Transport and Main Roads with reduced cost and time to the department and better outcomes for impacted land owners and the community.

This provision is not intended to allow the Department of Transport and Main Roads to construct the necessary infrastructure on private land in circumstances where the department should or could acquire the property or where this property is required for transport infrastructure. For example, a noise barrier should be constructed on transport land rather than private land.

Protective easements – withdrawing support

The existing provisions provide that the chief executive may take an easement over land adjoining transport land to protect the structural and operational integrity of transport infrastructure. Examples of easements that protect structural and operational integrity include easements for support, access, drainage, light and air.

Amendments to section 27A (Power of chief executive to dispose of land subject to easement) of the *Transport Planning and Coordination Act 1994* will enhance the protection offered by easements for the structural and operational integrity of transport infrastructure.

The amendments will allow these easements to be enforceable and registrable under the *Land Title Act 1994*.

These amendments will also extend the current provisions to include all property held by the Department of Transport and Main Roads either acquired under the *Acquisition of Land Act 1967* or as freehold.

Other amendments to section 28AC to AI of the *Transport Planning and Coordination Act 1994* will ensure that the covenants contained in the easement document run with the land and bind subsequent owners of the title, notwithstanding any subsequent dealings with the land, for example, subdivision of the burdened land or dealing with the benefited land.

Amendments to Chapter 15A of the Transport Infrastructure Act 1994

The amendments extend the application of Chapter 15A (Transport interface management) of the *Transport Infrastructure Act 1994* relating to the management of interfaces to all transport infrastructure. These interfaces can include public utility plant providers.

A definition of *public marine transport infrastructure works* has been included to ensure that interface management agreements can apply to these works.

As a desired outcome, this provision will enhance the department's ability to manage the interface of anything, place or activity to any transport infrastructure. By virtue of section 477F, this includes all infrastructure, and a watercourse crossing.

Section 240 of the Transport Infrastructure Act 1994

The amendment to section 240 of the *Transport Infrastructure Act 1994* will grant the chief executive of the Department of Transport and Main Roads with the power to approve the administrative process of including the land into the transport lease. The chief executive of the Department of Transport and Main Roads or their delegate will be able to lodge the required paperwork in the Titles Registry for the land to be included into the perpetual transport lease without the requirement for any approval from the Department of Natural Resources and Mines.

Costs of a rail feasibility investigator's authority

The amendment of section 110 (How to apply for a rail feasibility investigator's authority) of the *Transport Infrastructure Act 1994* will ensure that the Department of Transport and Main Roads can be reimbursed for the reasonable costs and expenses incurred by the chief executive in considering a rail feasibility investigator's authority application.

Definition of a railway

The amendment inserts a definition of *railway* into Schedule 6 (Dictionary) of the *Transport Infrastructure Act 1994*, ensuring legislative clarity.

Mining leases over rail corridor land

The amendment to section 271A (Deciding mining lease application) of the *Mineral Resources Act 1989* will clarify that that a mining lease over rail corridor land should only be granted where mining lease applicants consult with and seek the approval of either the Minister for Transport and Main Roads or the Coordinator-General, depending on who the owner is.

Additionally, section 404A of the *Mineral Resources Act 1989* will be amended to remove the quantified distances and replaced with an obligation on the holder of a mining claim or lease to not impact upon railway works.

Amendments to section 404A(3)(a) in addition to the definitions of *owner* and *rail corridor land* will better reflect the ownership structure of rail corridors in Queensland.

Amendments to the Heavy Vehicle National Law Act 2012

Amendments to the *Heavy Vehicle National Law Act 2012* will clarify that the requirements under sections 468, 469 and 470 are limited to fatigue management accreditation only, removing unnecessary red tape and regulatory burden for industry, and restoring the original intent of the provisions.

Discourage the use of unregistered vehicles and vehicles without Compulsory Third Party insurance

To deter the use of unregistered and uninsured vehicles on the road, it is proposed to use fixed and mobile automatic number plate recognition (ANPR) camera systems to detect these vehicles and to automatically issue infringement notices through the mail. These devices will be used by both the Department of Transport and Main Roads and the Queensland Police Service.

The Department of Transport and Main Roads already sends a reminder notice to the registered operator after a vehicle has been unregistered for 28 days notifying them that their vehicle is unregistered and it is an offence to use it on the road. These reminder notices will continue to be issued.

Before the ANPR camera systems start being used to detect unregistered and uninsured vehicle offences, a number of education activities are planned to take place, including:

- information about the removal of registration labels will be included in registration renewal letters and details of the use of ANPR camera systems to detect unregistered and uninsured vehicles will be incorporated;
- a media release will be distributed informing the public about the use of ANPR camera systems;
- a phase-in period will apply, during which a warning notice will be issued, rather than an infringement notice; and
- details of the location of the fixed ANPR cameras will be made available on the Department of Transport and Main Roads' website.

To facilitate the use of these camera systems by the Department of Transport and Main Roads, the Bill amends section 120 of the *Transport Operations (Road Use Management) Act 1995* to allow the chief executive to sign an evidentiary certificate for photographic detection devices operated by the Department of Transport and Main Roads, stating that an image was properly taken by the device and allowing the image to be used as evidence of an offence.

The Bill also includes a consequential amendment to section 118 of the *Transport Operations (Road Use Management) Act 1995* to allow prosecutors from the Queensland Police Service or the Department of Transport and Main Roads to make arrangements for the inspection of images captured by a device. Currently, inspection of images under section 118 is only undertaken by the Queensland Police Service.

The Bill also includes the following amendments to the *Transport Operations (Road Use Management) Act 1995* to ensure the ANPR camera system scheme to detect unregistered and uninsured vehicles can be administered effectively:

- the most recent registered operator will be responsible for the offence because, regardless of who is driving the vehicle, it is the registered operator's responsibility to ensure the vehicle is registered and has compulsory third party insurance before it is used on the road. The registered operator will have a defence where they provide a statutory declaration stating that the vehicle was stolen, illegally taken or had already been sold or disposed of (see amendments to section 114);
- an information technology system will be used to receive data from photographic detection devices (namely ANPR camera systems) and detect when an offence prescribed by regulation has been committed. It is intended to prescribe unregistered and uninsured offences as offences for which a photographic detection device may be linked to an information technology system. The information technology system will match vehicles being used on the road with information held by the department to detect when an offence has been committed (see new section 113A(2));
- an infringement notice issued by an information technology system is taken to be an infringement notice served by an authorised person under the *State Penalties Enforcement Act 1999*, and in particular section 13(1) of that Act (see new section 113A(3)).

Transporting dangerous goods in tunnels

Dangerous goods are regulated by the Department of Transport and Main Roads under the *Transport Operations (Road Use Management) Act 1995*, while explosives are regulated by the Department of Natural Resources and Mines under the *Explosives Act 1999* and radioactive substances are regulated by Queensland Health under the *Radiation Safety Act 1999*. All of these substances are generically referred to by the transport industry as “dangerous goods” and are generally dealt with in a similar way, with licences required for transport of certain quantities and types of dangerous goods, a requirement for specialised training for personnel and ensuring appropriate safety equipment and procedures are in place.

Under all of the legislative regimes outlined above, a vehicle carrying a large or commercial quantity of dangerous goods, explosives or radioactive substances must display a “placard”. In practical terms, a placard is a sign or label placed on the outside of the vehicle warning of the presence of dangerous goods.

Due to the serious road safety, public infrastructure and environmental risks associated with transporting these substances through tunnels, the Bill inserts a new offence into the *Transport Operations (Road Use Management) Act 1995* prohibiting the carriage of a placard load of dangerous goods through tunnels. The offence will carry a maximum penalty of 200 penalty units or 1 year’s imprisonment if the contravention harms a person, property or the environment. Otherwise, the penalty will be 100 penalty units. An infringement notice penalty of 10 penalty units for individuals and 50 penalty units for corporations is intended to be included in the *State Penalties Enforcement Regulation 2000*.

In the interests of streamlining the prohibition of transporting dangerous goods through tunnels, the new offence has been created in a single piece of legislation, namely the *Transport Operations (Road Use Management) Act 1995*, but applies to dangerous goods, explosives and radioactive substances. This has been done to avoid adopting similar provisions in different pieces of legislation.

Due to the difficulty of conducting effective enforcement in tunnels, it is proposed that the offence be detected by automatic number plate recognition camera systems located in tunnels. As the camera systems may be operated by the chief executive or a toll road operator (for State toll roads) or a local government tollway operator, the Bill will allow these parties to sign an evidentiary certificate under the *Transport Operations (Road Use Management) Act 1995* stating that the image was properly taken by a photographic detection device and that operation and testing requirements for the device were complied with.

The Bill also allows the evidentiary certificate to be signed by a contractor where approved by the chief executive or the chief executive officer of a local government. This is necessary where camera systems in a tunnel are installed, tested and maintained by a contractor, such as a camera manufacturer, on behalf of the tunnel operator.

These amendments also provide that, unless there is proof to the contrary, a motor vehicle is taken to be carrying a commercial quantity of dangerous goods if the vehicle displays a placard indicating that it is carrying dangerous goods. This potentially infringes the fundamental legislative principle that legislation should not reverse the onus of proof without adequate justification. The reversal of the onus of proof is considered to be justified and is discussed below under the heading “Consistency with fundamental legislative principles”.

Reporting traffic crashes to police

The Bill amends section 92 of the *Transport Operations (Road Use Management) Act 1995* to remove the requirement to report crashes to police where property damage exceeds an amount fixed by regulation (currently \$2 500). Subsequently, the same requirement will be removed from the *Queensland Road Rules*.

The requirement to report crashes to police where a person is injured or killed will be retained. The requirement to report to police if any vehicle needs to be towed from the scene will also be retained. This crash data is used to identify lengths of road which have a high crash frequency and which require improvement as well as forming the basis for the development of targeted road safety policies and programs.

Keeping records about the repair and painting of vehicles

Section 133 of the *Transport Operations (Road Use Management) Act 1995* currently requires motor vehicle repairers to keep written records of repairs and painting of vehicles. Section 161 of the *Traffic Regulation 1962* provides additional detail about records to be kept. These records are used by the Queensland Police Service to assist them in preventing criminal activities, such as the re-birthing of vehicles and investigating certain offences, such as “hit-and-run” incidents.

To simplify the record-keeping requirements, the Bill combines the two provisions into a single location in the *Transport Operations (Road Use Management) Act 1995*. The Bill also updates the requirements of the section. For example, the new provision:

- puts beyond doubt that there is no need for the records to be kept in a separate, formal register. It makes clear that the records may be kept through ordinary documents used by repairers such as invoices, computer records, job cards, paper records or a combination of these. The records must, however, be complete and accessible should the need arise;
- requires that records must be kept in relation to the repair and painting of trailers, as well as motor vehicles; and
- clarifies the circumstances in which records must be kept by limiting the record-keeping requirements to repairs required due to a collision or corrosion and painting required as a result of a collision or to change the predominant colour of the vehicle.

The amendments will provide increased flexibility for industry about the way records are kept, while still ensuring that information required by police is appropriately maintained.

Online driver licence verification service

The Bill inserts a new section 77AB into the *Transport Operations (Road Use Management) Act 1995* to enable the chief executive to verify driver licence details to licence holders and third parties (such as employers and car hire companies) and to confirm that a licence is valid (that is, not expired, cancelled or suspended).

The new provision will allow the Department of Transport and Main Roads to develop an online licence verification system. The system will require the person verifying the driver licence to obtain the licence holder’s details, including their name, date of birth, licence number

and details prescribed by regulation (which may include, for example, licence class and conditions). If the details do not match the department's records, the system will simply report that there is "no match", without stating which identifier did not match. If the details match the department's records, the system will confirm this and report if the licence is valid. The system will not release any other personal information about a person's licence, such as their residential address, traffic history or information about demerit points.

Establishment of this scheme was sought by industry and it will allow employers to make regular and easy checks of their employees' licence status to ensure they remain properly licensed. The scheme has the potential to contribute to road safety by allowing individuals to confirm their licence status and by allowing employers and other third parties to check that drivers hold a valid driver licence.

Service of notices to postal addresses

The Bill inserts a new section 36H in the *Transport Planning and Coordination Act 1994* to allow written notices required or permitted to be given under a transport Act to be validly served by being sent to a postal address nominated by the customer. This will allow the Department of Transport and Main Roads to decide whether to effect service to a postal address, where one is nominated by the customer, or to a residential address. For driver licence sanction notices, where a person has both a residential and postal address recorded, the department proposes to initially send the notice to the person's postal address and a copy to their residential address. The department will review the effectiveness of this approach over time.

The amendments are designed to improve the effectiveness of the service of notices to help ensure people receive important notices from the department. They will benefit any person who nominates a postal address which is different to their residential address and will especially benefit those in rural and remote areas who have no mail delivery service to their residential address.

The Bill also makes minor consequential amendments to refer to postal addresses in sections 99 and 105ZH of the *Transport Infrastructure Act 1994* and sections 60 and 140 of the *Transport Operations (Road Use Management) Act 1995*. Consequential regulation amendments will also be made to require customers to keep their postal address with the department updated.

Removal of provisions about emergency contact information

The Bill omits section 36H of the *Transport Planning and Coordination Act 1994* and makes consequential amendments omitting references to emergency contact information in the *Adult Proof of Age Card Act 2008*, the *Transport Operations (Marine Safety) Act 1994*, the *Transport Operations (Road Use Management) Act 1995* and the *Police Powers and Responsibilities Act 2000*. A number of minor and technical drafting amendments are also being made to the smartcard provisions of the *Transport Operations (Road Use Management) Act 1995* and the *Police Powers and Responsibilities Act 2000*.

The removal of these provisions will simplify the legislation. Due to the limited take up in the community and limited availability of card readers, there is no public benefit in maintaining the emergency contact information on the card.

Streamline processes associated with toll road land declarations

The Bill inserts new sections 84CB and 105JAB in the *Transport Infrastructure Act 1994*, which provide that a declaration of land to be either State toll road corridor land or local government tollway corridor land has the effect of automatically revoking any earlier declaration of that land as State-controlled road. This will reduce red tape and regulation by streamlining administrative processes and combining two departmental and Ministerial processes into one.

Currently, before the Minister can declare land to be State toll road or local government tollway corridor land, the Minister must first revoke any earlier declaration of the land as State-controlled road, which leads to duplication and separate documentation being prepared for each process.

A consequential amendment is also being made to section 24 of the *Transport Infrastructure Act 1994* to insert a note to refer to the new sections.

Release of information to foreign licensing authorities

The Bill amends section 77 of the *Transport Operations (Road Use Management) Act 1995* to allow the release of information to foreign licensing authorities to assist the authority to decide whether to issue a foreign driver licence. The information will only be released on the condition that the foreign licensing authority cannot use the information for another purpose without the consent of the person it relates to. This is a red tape reduction measure which will aid those Queenslanders living or working overseas who need to transfer their driver licence to one issued by another country.

Increasing the penalty for unlicensed driving where a person has never held a driver licence

The Bill amends section 78 of the *Transport Operations (Road Use Management) Act 1995* to remove the option for an infringement notice fine to be issued where a person has never held a driver licence and instead requires a court to impose a three month driver licence disqualification period. Imposing a three month disqualification is commensurate with the penalty for a class C learner licence holder who is convicted of driving without an appropriate supervisor. Amendments were made in 2012 that effectively impose a three month licence suspension on these drivers (because the offence attracts 4 demerit points and class C learner drivers do not have the option of a good driving behaviour period).

The amendments will ensure that the penalty for unlicensed driving where a person has never held a licence is commensurate with the seriousness of the offence. They will also remove any incentive for a person not to enter the licensing scheme by not obtaining a learner licence, as it aligns the penalty with that applying to a class C learner licence holder driving without a supervisor.

Section 90C of the *Transport Operations (Road Use Management) Act 1995* provides for driver licence disqualifications to apply cumulatively where a person is disqualified from driving as a result of both drink or drug driving and unlicensed driving. The Bill makes a consequential amendment to section 90C(1)(c) so that the new licensing disqualification (where the person has never held a driver licence) is treated as a cumulative disqualification. At the time of making this consequential amendment, it was identified that licence disqualifications under

section 78(3)(j) should also apply cumulatively and this amendment should have been made when section 78(3)(j) was inserted. So, the Bill also inserts a reference to section 78(3)(j) in section 90C(1)(c) so that a licence disqualification under section 78(3)(j) applies cumulatively.

Clarify that users of personal mobility devices do not have to hold a driver licence

The Bill amends the definition of *motor vehicle* in the *Transport Operations (Road Use Management) Act 1995* to exclude personal mobility devices from being considered motor vehicles. The main effect of this amendment is to clarify that a person does not need to hold a driver licence to use a personal mobility device. The amendment will also mean that for drink driving purposes, personal mobility devices will be treated like bicycles. Personal mobility devices will continue to be defined under the *Transport Operations (Road Use Management – Vehicle Registration) Regulation 2010*.

Definition of traffic history

The Bill amends the definition of *traffic history* so that it includes the offence of evading police in section 754 of the *Police Powers and Responsibilities Act 2000*.

Making the offence of evading police part of a person's traffic history will ensure decision makers have more complete information when making decisions about a person's driver licence.

Streamlining laboratory testing of blood and saliva for drink and drug driving purposes

To remove the inefficiencies associated with current testing requirements, the Bill includes amendments to section 80(16B) of the *Transport Operations (Road Use Management) Act 1995* to allow the analyst who is case managing a blood or saliva specimen to sign the evidentiary certificate where more than one qualified analyst carried out testing on the specimen. To ensure the continuity of evidence and that best practice is adhered to, the analyst signing the certificate will be required to carry out a comprehensive peer review which entails examining the laboratory's records relating to the receipt, storage and testing of the sample and confirming that all quality assurance procedures were complied with. Similar provisions already exist in section 95A of the *Evidence Act 1977* in relation to evidentiary certificates for DNA analysis.

The amendments will streamline the testing process for the Queensland Health Forensic and Scientific Services laboratory, reducing the turnaround time for analysis and reporting and making more efficient use of resources such as instrumentation. It is expected that the revised procedures will lead to a reduction in the number of test runs carried out in the order of 75 per year which equates to a cost saving of approximately \$100 000 per year. The amendments will also allow the laboratory to better manage any increases in sample numbers, thereby reducing the need to employ additional staff.

Mandatory driver licence disqualifications

To ensure the original policy intent of the legislation is achieved, the Bill amends the *Transport Operations (Road Use Management) Act 1995* to change the existing wording in the relevant offences to "the court, whether or not any other sentence is imposed, must disqualify the person from holding or obtaining a Queensland driver licence...". The amendments adopt the

definition of *sentence* from section 4 of the *Penalties and Sentences Act 1992* which is as follows:

sentence means any penalty or imprisonment ordered to be paid or served, or any other order made, by a court after an offender is convicted, whether or not a conviction is recorded.

The use of the term *sentence* in the amendments makes it clear that whether or not any penalty or imprisonment is imposed or other order is made by a court (such as an order under section 19 of the *Penalties and Sentences Act 1992*), the licence disqualification is mandatory. The same amendment is also being made to the offence of evading police in section 754 of the *Police Powers and Responsibilities Act 2000*.

These amendments do not introduce any new disqualification periods, but simply clarify the wording of existing disqualification provisions. Also, the amendments are not intended to affect a court imposing an appropriate monetary fine, penalty or imprisonment (where applicable) for the offence. The mandatory disqualification is to apply as well as, not instead of, any fine, penalty or imprisonment for the offence.

Alternative ways of achieving policy objectives

Watercourse crossings

An alternative to amending section 477F of the *Transport Infrastructure Act 1994* to extend the watercourse crossing provision would be to insert specific legislation for each watercourse crossing with provisions similar to those for the Gateway Bridge in section 93AA of the *Transport Infrastructure Act 1994* with potential amendments to the *Land Act 1994* to provide for tenure.

This option would involve vast administrative departmental resources for both the Department of Transport and Main Roads and the Department of Natural Resources and Mines. The Department of Transport and Main Roads' policy is to implement/pursue general purpose legislation capable of wider application, rather than project specific legislation which will add to the regulatory burden.

Quarry Material

An alternative to the amendments to the *Transport Infrastructure Act 1994* relating to the access, use and extraction of quarry material would be to amend the *Forestry Act 1959* to provide an exemption for the Department of Transport and Main Roads road based activities. However, given that amendments are needed in relation to the Department of Transport and Main Roads activity, it is more appropriate to address the issue within a transport Act.

By doing so, the department will ensure a sufficient process is in place, particularly around consultation with relevant administering authorities for the Department of Transport and Main Roads' access and use of State-owned quarry materials and land.

Compliance Management Plans

The Department of Transport and Main Roads has collaborated with other agencies as part of its regulatory simplification program to streamline approvals and compliance processes through legislative reform. However, these reforms are often not sufficiently broad to cover the myriad of projects, contracts, delivery models and challenges within the department's operations. In this dynamic business environment, the Department of Transport and Main Roads requires greater flexibility. Compliance management plans encourage innovative ways of complying with regulatory requirements, while achieving project outcomes and the objectives of the regulations.

Protective easements

The alternative to the amendments to the *Transport Planning and Coordination Act 1994* relating to transport easements of support would be to amend the *Land Act 1994* and the *Land Title Act 1994* because easements are also dealt with under these Acts.

However, given that the subject of protection is transport infrastructure and the transport network, it is more logical to locate such provisions in a transport Act.

Amendments to Chapter 15A of the Transport Infrastructure Act 1994

The alternative to the amendments to Chapter 15A of the *Transport Infrastructure Act 1994* would be to make amendments to the Acts regulating each possible interface object. This would be a cumbersome and unresponsive process which would not serve the Department of Transport and Main Roads well in dealing with interface issues and third parties.

Transporting dangerous goods in tunnels

The Department of Transport and Main Roads, in conjunction with BrisConnections (who currently manage the AirportLink M7 tunnel), conducted an education and communication campaign in order to reduce the incidence of vehicles transporting dangerous goods in tunnels.

The Department of Transport and Main Roads sent a letter to all dangerous goods driver licence holders in Queensland, informing them of the prohibition of transporting placard loads of dangerous goods in tunnels and warning that it is an offence to disobey an official traffic sign and transport a placard load in a tunnel. BrisConnections also placed variable message signs at tunnel entrances to AirportLink M7 displaying safety warnings about the prohibition of transporting dangerous goods in the tunnel. The Department of Transport and Main Roads also initiated a warning system where drivers who continued to carry placards loads into a tunnel were sent a warning letter. The letter advised of the alleged offence and the subsequent prosecution action that may occur if the behaviour continued. The warning system is still in place.

These initiatives have resulted in a 75% decrease in the number of vehicles transporting dangerous goods in the Airport Link tunnel. Despite this significant behaviour change, a small number of drivers continue to transport dangerous goods in tunnels, putting life, transport infrastructure and the environment at risk.

As such, it is considered necessary to create a new offence, with a significant penalty and issue infringement notices for non-compliance in order to reduce the incidence of this behaviour even further. The new offence will carry a higher maximum penalty than the existing offence of disobeying an official traffic sign and it is also proposed to be a camera-detected offence, which will allow for effective enforcement in a tunnel environment.

Estimated cost for government implementation

The implementation of the Bill is largely administrative in nature and will not involve significant costs, with any costs being met within existing budget allocations.

The amendments to allow unregistered and uninsured vehicle offences to be detected by automatic number plate recognition camera systems will have some ongoing administrative costs associated with them, but it is expected that the revenue obtained will cover the costs. Section 117 of the *Transport Operations (Road Use Management) Act 1995* requires that all money collected for camera-detected offences in excess of administrative costs must be used for road safety and associated purposes.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below.

Definition of general route service

The amendment to the definition of *general route service* authorises the amendment of the *Transport Operations (Passenger Transport) Act 1994* by subordinate legislation. A *general route service* is now defined broadly. However, particular kinds of scheduled passenger services can be excluded from the definition by regulation.

The objective of the amendment is to more clearly define a kind of market that is typically subject to market entry restrictions. This change will provide greater clarity and legal certainty to operators about the types of services that are not subject to market entry restrictions. Operators may provide services that are not subject to market entry restrictions freely without holding a service contract with the State.

Allowing the definition of *general route service* to be amended by regulation will provide flexibility to ensure relevant scheduled passenger services that service niche markets are not subject to market entry restrictions (that is, where State intervention in a particular market is not in the public interest).

The former Scrutiny of Legislation Committee report on [The Use of 'Henry VIII Clauses' in Queensland Legislation](#) stated that provisions that allowed a definition to be expanded by subordinate legislation will not be regarded as Henry VIII clauses because they do not change the subject of an Act.

It is also worth noting that the *Transport Operations (Passenger Transport) Act 1994* already contains definitions that allow matters to be excluded by regulation, including, for example, the definition of *public passenger service*.

Busway safety officers

The proposed amendments to the *Transport Infrastructure Act 1994* and the *Transport Operations (Passenger Transport) Act 1994* relating to busway safety officers will remove duplication between relevant provisions. Currently, it is an offence under the *Transport Infrastructure Act 1994* to contravene a direction given by a busway safety officer, with a maximum penalty of 20 penalty units.

The equivalent offence under the *Transport Operations (Passenger Transport) Act 1994* of contravening a direction given by an authorised person has a maximum penalty of 40 penalty units. The amendments will consolidate these provisions and remove duplication, creating a single offence with a maximum penalty of 40 penalty units. While this is greater than the existing penalty under the *Transport Infrastructure Act 1994*, the change is considered justified on the basis that 40 penalty units is proportionate to the offence and aligns with the current penalty under the *Transport Operations (Passenger Transport) Act 1994*.

Accommodation works

The amendment does not change land owner rights to compensation. The provision provides a mechanism for transport projects to address impacts from the project works on private property. The amendment provides a clear process and framework to balance the needs of projects and land owners.

When constructing and establishing transport infrastructure, the Department of Transport and Main Roads has a responsibility to:

- ensure safety and operational integrity of transport infrastructure;
- ensure safe access for entry to and exit from property to the transport infrastructure;
- ameliorate the impact of transport infrastructure works on private properties;
- rectify all damage and loss of use and function caused to property as a result of the works; and
- ensure that all public utility plant are located in a safe place and can be safely accessed by the utility company for maintenance and repair purposes in a timely manner;
- some landowners and businesses may be adversely impacted where necessary works to restore the safe use and function of their properties cannot occur in a timely and efficient manner. This may also have a negative impact on the amenity and social amenity of a neighbourhood or business precinct;
- third party works, such as reconnection of services, can be delayed. In projects involving the private sector, the disruption to construction scheduling translates to delay costs and uncertainty. Demobilisation and remobilisation costs can be substantial;
- some landowners may seek a replacement that is of a higher standard or quality than the original affected thing. For example, the Department of Transport and Main Roads will provide a replacement gate on a “like for like” basis; and
- in cases involving multiple owners where some of the owners cannot be contacted for consent to works, the remaining owners may continue to suffer inconvenience and potential construction hazards.

The amendments will make it clear that the Department of Transport and Main Roads can rectify any damage caused to property by entering and temporarily occupying land to undertake permanent ‘accommodation works’ on a property and will:

- remove uncertainty for owner’s rights about impacts and damages to property caused by infrastructure projects;
- reduce impacts for commercial activities (namely, commercial premises impacted by the works and business users of the road (couriers, freight)) by being able to proceed with infrastructure projects with greater certainty and within shorter timeframes; and
- reduce the risk contingency costing incorporated in a transport project to be managed by the government or a private partnership arrangement or a contractor tender for transport projects.

The amendments *do not* impact on the rights of an owner or occupier to seek:

- a review via the Queensland Civil and Administrative Tribunal or Judicial Review;
- common law compensation rights or the ability to seek compensation for any actual damage to private property under the *Acquisition of Land Act 1967* or under section 37 of the *Transport Infrastructure Act 1994* (Compensation for physical damage from entry etc.).

The amendments provide that the proposed occupier must give seven days’ notice to the owner or occupier of the property of its intention to enter the land and undertake accommodation works. The owner or occupier is entitled to make a submission within this seven day notice period to the proposed occupier about the nature of the accommodation works. The submission must be taken into account before the proposed occupier undertakes the work. The entry provisions only allow entry onto land, and not dwellings.

Protective easements – withdrawing support

The amendments may be a potential breach of a fundamental legislative principle in that the covenants for transport easements of support extend beyond the current common law principles of easements. The amendments could also be perceived to have insufficient regard to the rights and liberties of individuals and their property rights.

Existing section 27A of the *Transport Planning and Coordination Act 1994* provide that the chief executive may take an easement over land adjoining transport land to ensure the structural and operational integrity of transport infrastructure. This provision is particularly important for subterranean infrastructure, primarily tunnels and associated equipment. An easement on the title serves as notice to the owners and potential owners about the existence of underground infrastructure.

Underground structures are designed, engineered and constructed for certain loadings and geo-technical forces at the time of design and construction. When a tunnel is subject to additional, uneven or asymmetric loading or unloading, this has the effect of withdrawal of support of the underground structure. This can occur by the addition of certain loadings, excavation or vibration within a distance from the tunnel. Easements have been developed to provide a “zone of protection”, inside which certain activities are to be avoided. The land inside this zone is required for structural integrity and protection of the tunnel. The area of likely impact to a tunnel depends on engineering principles and construction method.

Modern engineering principles of support have outpaced the development of prescriptive rights of support at common law and under section 179 of the *Property Law Act 1974*. The amendments consolidate and codify some of the existing law relating to easements and clarify the application of these statutory and common law principles relating to the obligation not to withdraw support.

Additionally, there is an existing statutory obligation not to interfere with transport infrastructure under the *Transport Infrastructure Act 1994*. To this extent, there is no breach of fundamental legislative principles.

Enhancements to the existing legal position made by the amendments will:

- validate positive covenants with obligations to maintain (rather than just not withdraw) support;
- ensure that both positive and negative covenants are enforceable;
- ensure that transport easements of support are capable of being registered on title;
- ensure that the easements and covenants continue to run with the land and bind subsequent owners in title; and
- provide retrospective validity for existing transport easements of support.

These enhancements could be perceived to have insufficient regard to the rights and liberties of individuals and their property rights. Additionally, the provision is retrospective in its application, and provides for covenants that extend beyond the current common law principles of easements. However the amendments are justified as:

- if the department resumes or acquires the easement, compensation or payment is made to the land owner. If the land, subject to an easement of support, is offered back to the former owner under section 41(1) of the *Acquisition of Land Act 1967*, the purchase price paid by the owner will be reduced to reflect the value of the easement;
- the positive covenants to maintain support are binding as a personal obligation and therefore enforceable by the State against the current owner. The proposed amendments will ensure that registration of easements containing positive covenants apply to subsequent owners of land;
- the proposed amendments do not impose additional legal obligations. These obligations already exist at law under the *Transport Infrastructure Act 1994*, the *Property Law Act 1974* and at common law – for example, negligence or trespass;
- ensuring the registration of transport easements of support and the continued registration to successors in title is justified given the need to provide permanent notice that obligations exist regarding infrastructure;
- the retrospectivity of the provision only applies to burdened land that is the property of the State. Therefore, the interests of private persons are not affected by the retrospective nature of the provision;
- if the State sells land that is subject to a transport easement of support, the sale price will reflect the impact of the easement. Subsequent purchasers will have notice on title and their purchase price will consider the easement;
- the amendments provide that where an owner takes away support within the burdened land (that is, the land impacting on transport infrastructure) they are required to replace the support with a structure to provide equivalent support. This requirement is the end result of the application of the common law, section 179 of the *Property Law Act 1974* and the

remedial sections of the *Transport Infrastructure Act 1994* (for example, sections 34, 256, 312 and 363). The amendment is expressed as proactive obligation, whereas the existing law was expressed as a negative obligation. The previous legal position already provided for the consequences of a failing to comply with that obligation. To that extent there is no breach of fundamental legislative principles;

- the amendments contemplate the ability of land owners to change the support, for example, in the case of redevelopment of their land;
- public safety dictates the highest practical levels of protection for subterranean transport infrastructure, particularly tunnels. The busway tunnel at the Cultural Centre, South Brisbane is used by over 4,500 buses per day and this figure is expected to increase with increased bus patronage and busway extensions. Brisbane has over \$1 billion worth of busway tunnels; and
- increased urbanisation in South East Queensland will add pressure to the need for redevelopment of sites which may adjoin tunnels. While encouraging increased patronage of infrastructure, there must also be in place sufficient and resilient mechanisms for asset protection and consultation with developers to achieve appropriate levels of safety and efficiency.

Quarry Material

Amendments to section 35 of the *Transport Infrastructure Act 1994* to allow for the extraction and use of State-owned quarry material may be considered to be inconsistent with the principles of natural justice (*Legislative Standards Act 1992*, section 4(3)(b)) by denying stakeholders equal and fair access to land to quarry for material.

The Bill potentially breaches the principle of natural justice that a decision should not be made that will deprive a person of some right, interest or legitimate expectation of a benefit without the person being given an adequate opportunity to be heard by the decision maker properly and fairly consulted.

Currently, the Department of Transport and Main Roads acts as the State in the extraction and use of State-owned quarry materials for the state road network where royalties are not applicable. The amendment is provided to remove any doubt in this area and is not intended to impinge on any private rights and therefore is not considered a breach of a fundamental legislative principle.

However, royalties are only exempt from the payment where the State-owned quarry material is used for the construction and maintenance of State-controlled roads or future State-controlled roads constructed under the *Transport Infrastructure Act 1994*. The amendments do not apply to any other forms of transport infrastructure. Royalties are payable in all other circumstances.

The amendment to section 35 only applies to State-owned quarry material, and does not apply to private owners of quarry material. If the department extracts quarry material owned by a private or third party, then it pays royalties as part of the market price paid to that third party - no private quarry owners will be deprived of existing rights or interests.

The notice of entry provisions under section 35 to the relevant administering state agencies provide a mechanism whereby these agencies can:

- manage the allocation of quarry materials;
- manage access to state lands in accordance with normal processes; and
- avoid the Department of Transport and Main Roads accessing private allocations of quarry material.

Schedule 6, definition of busway transport infrastructure works and light rail transport infrastructure works

The inclusion of (e) for both definitions may give rise to a potential breach of a fundamental legislative principle, as per section 4(4)(c) of the *Legislative Standards Act 1992*. New subsection (e) for both definitions allows other works declared under a regulation to extend the definition and may conflict with this particular principle.

The insertion of (e) is consistent with existing provisions contained in definitions of *railway works* and *road works* in the *Transport Infrastructure Act 1994*. The inclusion of the clause does not enable the Act to be expressly or impliedly by subordinate legislation. The amendment adds to a lengthy list of matters already having similar clauses stated in legislation for a purpose. The scope for prescribing additional matter for the purpose would be limited by the nature of the matters as prescribed in the regulation.

Mining under a rail corridor

The insertion of section 271A(3) into the *Mineral Resources Act 1989* could be seen to raise a fundamental legislative principle as the application process could become more onerous for the applicant as a result of the amendment, potentially impacting on the rights and liberties of an individual. However the department considers the amendment to be justified, as individuals do not generally apply for mining leases where mining under the rail corridor is likely.

Additionally, this provision is justified on the basis that unauthorised mining under the rail corridor could have significant negative impacts on the land and railway infrastructure. The intention of the amendment is not to stop mining development but to ensure communication between the mining proponent, the respective railway manager and the state.

Rail feasibility investigator's authority

Proposed section 110(3) of the *Transport Infrastructure Act 1994* will ensure that the reasonable costs and expenses incurred by the chief executive in considering a rail feasibility investigator's authority application are paid by the applicant. The insertion of this clause could be seen to infringe upon the rights and liberties of individuals by applying retrospectively to existing rail feasibility investigator's authority applications.

The Department of Transport and Main Roads is of the view that the retrospectivity of the amendment is justified as the sole existing applicant has been advised that the chief executive will require reimbursement of reasonable costs. The amendment is also justified given that such applications are for the sole benefit of a private entity. It is not appropriate that the tax payer be required to absorb the substantial costs the chief executive incurs as a direct result of the application.

Transporting dangerous goods in tunnels

The amendments to the *Transport Operations (Road Use Management) Act 1995* about transporting dangerous goods in tunnels provide that, unless there is proof to the contrary, a motor vehicle is taken to be carrying a commercial quantity of dangerous goods if the vehicle displays a “placard” (a warning label or sign) indicating that it is carrying dangerous goods. This potentially infringes the fundamental legislative principle that legislation should not reverse the onus of proof without adequate justification. The reversal of the onus of proof is justified for the reasons set out below.

It is very difficult for enforcement patrols to be effective in tunnel environments where there are high volumes of traffic and no physical space to stop vehicles. As such, it is considered that camera-detection of these offences, based on the presence of a dangerous goods placard, is the most effective method.

There are a number of important requirements under the *Transport Operations (Road Use Management - Dangerous Goods) Regulation 2008* that are relevant, including:

- all drivers transporting dangerous goods must receive appropriate instruction and training (section 21 of the regulation) or hold a dangerous goods driver licence (section 154(2) of the *Transport Operations (Road Use Management) Act 1995* and section 186 of the regulation). To obtain the licence, they must undergo specialised training in the transport of dangerous goods which includes their obligations under legislation (sections 22, 188 and 190);
- a vehicle carrying dangerous goods in certain quantities must be placarded (sections 83 and 84);
- a driver must not drive a vehicle unless it is appropriately placarded, including removing the placard if the vehicle is no longer carrying dangerous goods (section 88);
- the driver must carry transport documentation which shows details of the dangerous goods being transported (section 128); and
- similar requirements for training, placarding and carrying transport documentation apply to the transport of radioactive substances and explosives.

The matter to be proved (whether a vehicle is carrying dangerous goods) is peculiarly within the defendant's knowledge, as the driver of a vehicle is in the best position to know whether their vehicle is or is not carrying dangerous goods.

Given the nature of dangerous goods, it is very difficult for enforcement officers on the roadside to test whether a vehicle is carrying dangerous goods. Even if a vehicle is suspected of carrying dangerous goods, it would often require technical or forensic experts to be able to determine whether the goods being carried are dangerous goods and the engagement of these experts would incur considerable expense.

A defendant is able to produce evidence during the enforcement or prosecution phase to prove that they were not carrying dangerous goods (including transport documentation showing that the goods had already been delivered). An infringement notice would not be issued or a prosecution would not proceed if the evidence supported the defendant's assertions.

It is clear from the matters outlined above that a driver must know whether their vehicle is carrying dangerous goods. As the matter is peculiarly within the defendant's knowledge, the reversal of onus of proof is justified.

Mandatory driver licence disqualifications

The amendments to the *Transport Operations (Road Use Management) Act 1995* which clarify that a mandatory driver licence disqualification applies to certain offences potentially affect judicial discretion in sentencing. The amendments relate to the serious offences of unlicensed driving, racing and speed trials on roads, drink and drug driving, driving outside the terms of a restricted licence, circumventing an alcohol ignition interlock condition or exemption, applying for a licence while disqualified and evading police (section 754 of the *Police Powers and Responsibilities Act 2000*). When these provisions were introduced, the intent was to provide that a mandatory period of licence disqualification would accompany any conviction for these serious offences (that is, there was not meant to be any discretion as to whether a disqualification was imposed).

Some recent court decisions have indicated there is some uncertainty in applying these provisions where no other penalty (such as a fine) is imposed for conviction of the offence. The amendments merely seek to remove any ambiguity and clarify the original intent that a mandatory licence disqualification apply. As such, it is not considered that the amendments create any greater impact on judicial discretion than already existed. In any event, it is considered that the seriousness of the offences warrants a mandatory driver licence disqualification.

Evidentiary certificates signed by an analyst

Section 80(16B) of the *Transport Operations (Road Use Management) Act 1995* is a long-standing provision authorising evidentiary certificates to be provided to a court about the presence and concentration of alcohol or other drugs in a person's blood or saliva for drink or drug driving purposes. The amendments to this section in the Bill allow an analyst who is case managing a specimen to sign an evidentiary certificate about the presence of alcohol or drugs in a driver's system even where another qualified analyst undertook the testing process of the specimen as part of a "batch" of specimens.

These amendments potentially infringe the fundamental legislative principle that legislation should not reverse the onus of proof without adequate justification because they extend the circumstances in which certificate evidence can be used. The reversal of onus of proof is justified for the following reasons:

- the certificates are about technical and scientific matters which are likely to be non-contentious, namely the concentration of alcohol or drugs in a person's blood or saliva;
 - the amendments relate to an existing regime that provides for certificates to be provided in proceedings for drink and drug driving offences, which has been in place for a significant amount of time and is generally accepted by the courts and the community;
 - the evidence will not be conclusive evidence and a defendant can lead evidence to disprove the matters in the certificate;
 - similar arrangements apply to DNA evidence under section 95A of the *Evidence Act 1977*;
- and

- the evidentiary certificates merely provide a convenient way for a court to be informed by the prosecution about the matters provided for in the certificates and prevent the need to call witnesses unless the evidence is challenged, streamlining court proceedings and reducing court costs for both parties including witness expenses.

Evidentiary certificates in relation to camera-detected offences

The amendments to section 120 of the *Transport Operations (Road Use Management) Act 1995* will allow the chief executive of the Department of Transport and Main Roads to sign an evidentiary certificate stating that an image was properly taken by a photographic detection device and that operational and testing procedures had been complied with. The amendments will also allow a *toll officer* (as defined in section 166A) to sign a similar certificate for the new offence of transporting a placard load of dangerous goods in a tunnel (new section 84A). These amendments potentially infringe the fundamental legislative principle that legislation should not reverse the onus of proof without adequate justification. The reversal of onus of proof is justified for the following reasons:

- the certificates are about technical matters which are likely to be non-contentious, namely that the operational and testing procedures for the device had been complied with or that testing was carried out in accordance with the manufacturer's specifications;
- the certificates are not conclusive evidence and a defendant can challenge the matters stated in the certificates and lead evidence to rebut them (see sections 120(2) and (2A) which provide that the certificates are evidence but not conclusive evidence, and sections 120(7) and (8) which deal with challenges to the certificates); and
- the evidentiary certificates merely provide a convenient way for a court to be informed by the prosecution about the matters provided for in the certificates and prevent the need to call witnesses unless the evidence is challenged, streamlining court proceedings and reducing court costs for both parties including witness expenses.

The amendments to allow a *toll officer* to sign an evidentiary certificate also potentially infringe the fundamental legislative principle that a Bill should only allow the delegation of administrative power in appropriate cases and to appropriate persons. Allowing a *toll officer* to sign an evidentiary certificate is considered appropriate because:

- for a toll road, the State has given authority under a road franchise agreement to the toll road operator to control and operate the toll road. As such, the toll road operator controls and manages the photographic detection devices within the toll road and is in the best position to be able to sign an evidentiary certificate about the operation and testing of the devices. Only the highest ranking executive of the toll road operator or an employee with the necessary expertise or experience appointed by the highest ranking executive is able to sign the evidentiary certificates, which limits the delegation to the most senior officer or someone appointed by that person;
- similar considerations and restrictions apply to a local government tollway, where the local government has given authority under a local government tollway franchise agreement to the local government tollway operator to control and operate the local government tollway; and
- in some situations, a toll road operator or local government tollway operator may decide to contract out the installation, operation, maintenance or testing of its photographic detection devices to a third party supplier, given the specialised nature of the technology. In these

cases, the chief executive of the Department of Transport and Main Roads or the chief executive officer of a local government can approve the highest ranking executive or an employee of the contractor who has the necessary expertise or experience to sign the evidentiary certificate. This reflects the commercial nature of toll roads and tollways and the operational requirements of modern transport infrastructure. Before approving a contractor, the chief executive of the Department of Transport and Main Roads or the chief executive officer of a local government will need to be satisfied that the contractor is an appropriate entity to be able to sign the evidentiary certificates.

Personal mobility devices

The amendments to the *Transport Operations (Road Use Management) Act 1995* which clarify that a person does not need to hold a driver licence to use a personal mobility device potentially infringe the fundamental legislative principle that a Bill should only authorise the amendment of an Act by another Act. The amendments define a personal mobility device to be a vehicle designed to be used by one person and prescribed under a regulation to be a personal mobility device.

Given that technology associated with these devices is developing rapidly, using a regulation to define the details of what constitutes such a device is considered appropriate because the details to be specified in regulations are technical in nature. This approach also enables the government to respond quickly to changes in technology.

Release of information to foreign licensing authorities

The amendments to section 77 of the *Transport Operations (Road Use Management) Act 1995* authorising the release of driver licence and traffic history information to foreign licensing authorities potentially infringes the fundamental legislative principle about privacy of personal information. The amendments are justified because:

- the release of information to the foreign licensing authority will be triggered by the person applying for a driver licence in a foreign country, where the person would provide their personal details, which would then be passed on to the Department of Transport and Main Roads;
- in order to make an informed decision about issuing a licence and the appropriate type or class of licence, the foreign country may require information or verification of the person's licence details or traffic history from the Department of Transport and Main Roads;
- the release of information to the foreign country by the chief executive will only be made on the condition that the information is used to decide whether to issue a driver licence (unless the person gives consent to another use) and that the information cannot be released further without the person's consent; and
- the amendments will be beneficial to former Queensland residents who are now living overseas by assisting them with the process of obtaining a foreign licence.

Online driver licence verification service

The amendments which insert new section 77AB of the *Transport Operations (Road Use Management) Act 1995* authorising a scheme to verify the validity of driver licences potentially infringes the fundamental legislative principle about privacy of personal information.

The amendments are justified because:

- the person verifying the licence details must provide a person's name, date of birth, licence number and any other information prescribed by a regulation (such as licence classes and conditions) in order to access the service. This means that the person verifying the licence would need to either obtain the person's physical licence from them for the purpose of conducting the check or seek the details from the person (for example, through an employment details form or a car hire agreement);
- if the details match the department's records, the only information that the service will provide that is not already available from the physical licence is whether or not the licence is valid (that is, not expired, cancelled or suspended);
- if the details do not match the department's records, the system will simply report that there is "no match", without stating which identifier did not match. This means that the service is only verifying information that is already held by the person using the service and restricts the release of personal information to licence validity; and
- the information about licence validity is required by third parties such as employers or car-hire companies to ensure that persons to whom they are providing vehicles are legally able to drive them.

Consultation

Consultation on individual initiatives was undertaken with relevant industry and stakeholder groups, including the Royal Automobile Club of Queensland (RACQ), Queensland Law Society, Queensland Trucking Association, BrisConnections, Queensland Motorways Limited, Queensland Road Freight Industry Council, Plastics and Chemicals Industries Association, Motor Trades Association of Queensland, Commercial Vehicle Industry Association of Queensland, Institute of Automotive Mechanical Engineers, Centre for Accident Research and Road Safety Queensland (CARRS-Q), National Heavy Vehicle Regulator, Queensland Bus Industry Council, Taxi Council, Brisbane City Council and Local Government Association of Queensland.

The industry and stakeholder groups listed above are supportive of the amendments, except where outlined below.

RACQ provided feedback on the changes to crash reporting requirements. The changes to the *Transport Operations (Road Use Management) Act 1995* in the Bill will mean that crashes involving property damage exceeding \$2 500 (where no vehicle requires towing) will no longer be required to be reported to police. RACQ does not directly oppose the legislative change but believes the change, together with a change to Queensland police procedures for attending crashes, could lead to a reduction in the availability of Queensland Police Traffic Incident Reports which are used in assessing insurance claims. It is noted however, that crashes involving injury or death or where a vehicle must be towed from the scene will still need to be reported to the police. As such, the amendment itself is not expected to result in any significant reduction in availability of Queensland Police Traffic Incident Reports.

CARRS-Q believes that the legislative changes may affect the availability of crash data involving property damage only crashes for road safety research and countermeasure evaluation. The Department of Transport and Main Roads does not believe that the legislative changes will have any significant effect on the availability of crash data, because the

overwhelming majority of property damage crashes involving damage exceeding \$2 500 also involve a vehicle being towed and these crashes will still be required to be reported to police.

RACQ and the Queensland Law Society are opposed to the amendments which clarify the mandatory driver licence disqualification for serious driving offences. RACQ and the Law Society believe that courts should retain the discretion to impose or not impose a licence disqualification. Alternatively, the Law Society suggested allowing Magistrates to exercise discretion in “exceptional circumstances”. The Department of Transport and Main Roads believes the mandatory driver licence disqualification is warranted, as it is limited to only the most serious offences. The amendments in this Bill do not introduce a mandatory disqualification, but merely clarify the original intent of the existing provisions.

The Law Society also did not support the changes which will allow notices to be sent to a customer’s nominated postal address. The Law Society is concerned about situations where a person does not receive a driver licence sanction notice and as a result of a licence suspension, may drive unlicensed leading to a mandatory licence disqualification. The Law Society argued that sanction notices may not be received because of an inadvertent failure to update an address, mail going missing or being stolen or not being received for some other reason.

The amendments in the Bill will facilitate the Department of Transport and Main Roads putting in place an administrative arrangement where driver licence sanction notices are sent to a postal address with a copy being sent to the residential address (where the addresses are different). This approach is expected to improve the likelihood that a person receives the notice and therefore it will help to alleviate some of the issues currently being experienced. The department will review the effectiveness of this approach over time to ensure it is having the desired outcome.

The Department of Transport and Main Roads will continue to send multiple reminder notices to customers who have exceeded their demerit point threshold if no response is received. The combination of these measures should reduce the instances of non-receipt of sanction notices to an absolute minimum. In the rare situations where a notice is not received, the department will continue to offer a number of other options to address this, such as re-issuing of notices or hand delivery of notices at a departmental customer service centre. Where the Department of Transport and Main Roads is aware that a customer’s address is out of date (for example if mail is returned unopened), the department does not impose a driver licence sanction until the customer contacts the department.

Consistency with legislation of other jurisdictions

The *Heavy Vehicle National Law Act 2012* commenced on 10 February 2014 providing a single body of heavy vehicle law for all Australian states and territories, excluding Western Australia and the Northern Territory. The amendments to sections 468, 469 and 470 of the Act will ensure that the consistent and equitable regulation of the heavy vehicle industry across participating jurisdictions is maintained. While Western Australia and the Northern Territory have not applied the national law, they have been consulted on these amendments.

The remaining provisions in the Bill are not uniform with, or complementary legislation to, legislation of the Commonwealth or another State.

Notes on provisions

Part 1 Preliminary

Clause 1 provides that this Act may be cited as the *Transport and Other Legislation Amendment Act 2014*.

Clause 2 provides that the following provisions commence on a day to be fixed by proclamation—

- (a) part 3;
- (b) sections 15, 28, 30, 41;
- (c) section 54(2);
- (d) sections 59, 62, 64, 67 to 71 and 73;
- (e) section 76(2), (4), (5), (7), (8) and (9);
- (f) sections 78, 79 and 81;
- (g) section 82(1), (2) and (4);
- (h) sections 84, 88, 92 to 100, and 102 to 106;
- (i) section 107(2), (4), (5) and (6);
- (j) section 115;
- (k) schedule 1, amendments for the *Transport Infrastructure Act 1994*, amendment 40.

Part 2 Amendment of Adult Proof of Age Card Act 2008

Clause 3 provides that part 2 amends the *Adult Proof of Age Card Act 2008*.

Clause 4 amends section 36 (Restricted access to information electronically stored on card) to omit provisions dealing with emergency contact information.

Part 3 Amendment of Heavy Vehicle National Law Act 2012

Clause 5 provides that part 3 amends the *Heavy Vehicle National Law Act 2012* by amending the Heavy Vehicle National Law set out in the Schedule to that Act.

Clause 6 amends the Schedule, section 468 of the *Heavy Vehicle National Law Act 2012* to provide that the application of this section is to drivers of heavy vehicles operating under advanced fatigue management or basic fatigue management accreditation only.

Clause 7 amends the Schedule, section 469 of the *Heavy Vehicle National Law Act 2012* to clarify that an accreditation document provided by an operator to a driver relates to accreditation documents for advanced fatigue management or basic fatigue management accreditation only.

Clause 8 amends the Schedule, subsections 470(2), 470(4)(b), 470(4)(d), 470(5)(b), 470(5)(c) and 470(7)(a) to limit the application of these sub-sections to relate to advanced fatigue management or basic fatigue management accreditation only.

Part 4 Amendment of Mineral Resources Act 1989

Clause 9 provides that part 4 amends the *Mineral Resources Act 1989*.

Clause 10 amends section 271A (Deciding mining lease application) to ensure that a mining lease applicant seeks the consent of the owner of rail corridor land to conduct subsurface mining under the rail corridor land. The amendment provides that either the applicant must have obtained written consent to the grant for the land from the owner of the land, and lodged the consent with the chief executive, or that the Governor in Council must have consented to the grant of the mining lease over the surface area. Section 271A(2A) and (3) are also renumbered as section 271A(3) and (4).

Clause 11 amends section 404A (Distance of excavation from railway works) by removing from subsection (2) the quantified distances from which any excavation must be undertaken from a railway and places the obligation on the miner to ensure that any excavation around a rail corridor does not adversely affect the safe operation of that railway, irrespective of the distance. The current distance prohibiting excavation around a railway (12 metres horizontally, or 15 metres vertically from the railway works) is not adequate. It is difficult to quantify a safe distance for excavation given that there are several variable factors that can influence that distance, such as mining methods and ground or soil composition. Therefore a more general obligation is appropriate.

Subsection 404A(3)(a) is amended to omit the reference to “chief executive officer of the railway manager for the railway” and insert “owner for the rail corridor land where the railway works are situated”, to avoid conflicting with section 271A of the *Mineral Resources Act 1989*. Subsection 404A(4) is amended to omit the definition of *railway manager*.

Clause 12 inserts a new Chapter 15, part 7 (Transitional provision for Transport and Other Legislation Amendment Act 2014). The transitional provisions provide that the new section 271A(3) will apply to any mining lease application for land mentioned in section 271A(3) as in force on commencement that is not yet decided under section 271A.

Clause 13 amends Schedule 2 (Dictionary) to omit the definition of *rail corridor land* and insert a new definition of *rail corridor land*, in order to identify that rail corridor land can be land taken or acquired under the *State Development and Public Works Organisation Act 1971* for a railway purpose, in addition to existing rail corridor land or new rail corridor land under the *Transport Infrastructure Act 1994*.

The definition of *owner* is also amended to include the Coordinator General as an owner of rail corridor land, if the rail corridor land is land taken or acquired under the *State Development and Public Works Organisation Act 1971* for a railway purpose.

Part 5 Amendment of Police Powers and Responsibilities Act 2000

Clause 14 provides that part 5 amends the *Police Powers and Responsibilities Act 2000*.

Clause 15 makes minor consequential amendments to section 22 (Power to enter etc. for relevant laws) as a result of changes to section 133 of the *Transport Operations (Road Use Management) Act 1995*.

Clause 16 amends section 195A (Definitions for pt 5A) to omit definitions that will no longer be used in this part as a result of the Bill. The clause also updates the definition of *relevant entity* to refer to a “registered digital photo” rather than a “prescribed document”.

Clause 17 amends the heading of Chapter 7, part 5A, division 4.

Clause 18 amends section 195I (Accessing information stored electronically on a prescribed document) to omit provisions dealing with emergency contact information. The clause also updates the heading.

Clause 19 amends section 195J (Giving copy of access approval order to relevant entity) to replace a reference to “prescribed document” with “registered digital photo”. Access approval orders and post-access approval orders referred to in section 195J deal with “registered digital photos” rather than “prescribed documents”. The clause also makes a minor drafting change to section 195J.

Clause 20 amends section 754 (Offence for driver of motor vehicle to fail to stop motor vehicle) to clarify that it is mandatory for a court to order a driver licence disqualification if a person is convicted of an offence against section 754(2). The clause also adopts the definition of *sentence* from the *Penalties and Sentences Act 1992*. Further details about this amendment and the rationale for it can be found under the heading “Mandatory driver licence disqualifications” in the introductory sections of the explanatory notes.

Clause 21 amends Schedule 6 (Dictionary) to omit definitions that will no longer be used in the Act as a result of the Bill.

Part 6 Amendment of Transport Infrastructure Act 1994

Clause 22 provides that part 6 amends the *Transport Infrastructure Act 1994*.

Clause 23 amends section 24 (Declaration of State-controlled roads) to insert a note referring to new sections 84CB and 105JAB which are inserted by the Bill.

Clause 24 amends section 29 (Powers of chief executive for road works contracts etc.) to provide that the chief executive may, for the State, carry out, or enter into contracts with other persons to carry out accommodation works that are necessary or convenient to be done as a result of road works.

Clause 25 amends section 35 (Temporary occupation and use of land) to provide that the chief executive, or a person authorised in writing by the chief executive, may temporarily occupy

land for the purposes of accommodation works. The chief executive may temporarily occupy land to extract and use quarry material reserved to the State and administered under the *Forestry Act 1959*.

Clause 26 amends section 36 (Notice of entry or permission to enter) to extend the relevant notice period of proposed entry to an owner or occupier of land from three days to seven days.

Clause 27 inserts a new section 84CB (Effect of State toll road corridor land declaration on State-controlled road declaration) which provides that a declaration of land to be State toll road corridor land has the effect of automatically revoking any earlier declaration of that land as State-controlled road. The new section 84CB also provides that section 25 does not apply, which would normally require the Minister to consult affected local governments before any revocation of State-controlled road. However, affected local governments would be consulted as part of the process required before the State toll road corridor land declaration is made.

Clause 28 makes a consequential amendment to section 99 (Notice to vehicle's registered operator) as a result of new section 36H of the *Transport Planning and Coordination Act 1994*, which will allow notices required or permitted to be given under transport legislation to be served by sending them to a postal address. Section 99 is being amended so that it recognises that a notice may be sent to a postal address in accordance with new section 36H.

Clause 29 inserts a new section 105JAB (Effect of local government tollway corridor land declaration on State-controlled road declaration) which provides that a declaration of land to be local government tollway corridor land has the effect of automatically revoking any earlier declaration of that land as State-controlled road. The new section 105JAB also provides that section 25 does not apply, which would normally require the Minister to consult affected local governments before any revocation of State-controlled road. However, affected local governments would be consulted as part of the process required before the local government tollway corridor land declaration is made.

Clause 30 makes a consequential amendment to section 105ZH (Notice to vehicle's registered operator) as a result of new section 36H of the *Transport Planning and Coordination Act 1994*, which will allow notices required or permitted to be given under transport legislation to be served by sending them to a postal address. Section 105ZH is being amended so that it recognises that a notice may be sent to a postal address in accordance with new section 36H.

Clause 31 inserts new subsection (3) into section 110 (How to apply for a rail feasibility investigator's authority) to confirm that an applicant for a rail feasibility investigator's authority is required to reimburse the reasonable costs and expenses incurred by the chief executive in acting under sections 111 and 112 of the Act in relation to the application.

Clause 32 amends section 240 to provide the chief executive with the power to directly request the registrar of titles to include acquired freehold land into the perpetual transport lease. This would remove the requirement for the chief executive to absolutely surrender the freehold land back to unallocated state land and subsequently request a delegate of the Minister for Natural Resources and Mines to include the land into the perpetual transport lease.

Clause 33 amends section 283ZZC (Restriction on designation for community infrastructure) by omitting section 283ZZC(4).

Clause 34 amends section 297 (Functions) to detail the functions of the chief executive in relation to busway and busway transport infrastructure for the chapter. Section 297(a) has the new inclusion of “constructing” and “construct” as part of the chief executive’s function in relation to busway and busway transport infrastructure. “Construct” was identified as a missing function in the development of transport infrastructure and has now been included.

Section 297(b) has the new inclusion of “establishment” and “maintenance”. These functions are required to allow the chief executive, when undertaking associated services or works, to establish or undertake maintenance to transport infrastructure.

New section 297(da) to become new (e) provides the chief executive with the power to investigate, plan or carry out accommodation works, as a result of busway transport infrastructure or busway transport infrastructure works. A definition of *accommodation works* is now included in Schedule 6.

Clause 35 amends section 299 (When land may be entered, occupied or used) to insert new subsection 299(5)(f) to provide an owner/occupier with the ability to make a submission within the seven day period after notice has been provided that accommodation works are proposed on the land. Schedule 6 now includes a definition of *accommodation works* which includes works that may be permanent.

Section (6A) and (7) will be renumbered as (7) and (8), and provides that a person proposing to undertake the accommodation works must consider any submission made regarding the proposed work within seven days after the notice has been provided to the owner/occupier.

Clause 36 amends section 301, by including State-controlled road in the definition of *road* for busway thereby removing a limitation

Clause 37 amends section 303AB (Licence in relation to busway land or busway transport infrastructure). The objective of this change to section (3) is to remove the unnecessarily onerous requirements for the chief executive to have to register every licence with the registrar of titles. The change provides the chief executive with the flexibility to determine what licences should be registered. If the notice is provided by the chief executive to the registrar of titles, the registrar of titles must record the licence in the registry. This change provides consistency with the registrar of titles’ internal policy and commercial practice, and reduces the regulatory burden. The inclusion of new subsection (3AA) makes it clear that the department will not be liable to pay a fee to the registrar of titles for the recording of the licence.

Clause 38 omits sections 303A to 303C. The common area provisions have been omitted from the Busway chapter as they have never been utilised and are superfluous. The removal of these provisions will streamline the Busway chapter and reduce unnecessary regulation.

Clause 39 omits Chapter 9, part 4, division 3 (Ancillary works and encroachments) as these provisions were never used, and the more modern and flexible licensing provisions are more appropriate.

Clause 40 amends section 336 (Who may drive on a busway) to remove the words “other than a busway common area”, to provide consistency with the omission of corresponding common area provisions.

Clause 41 omits Chapter 9, part 6 (Busway safety officers). These provisions have been removed from the *Transport Infrastructure Act 1994*. Busway Safety Officers will still be employed by the Department of Transport and Main Roads to provide customer service and ensure safety on the busway. However, instead of being appointed as “Busway Safety Officers” under the *Transport Infrastructure Act 1994*, they will be appointed as “authorised persons” under existing provisions of the *Transport Operations (Passenger Transport) Act 1994* and exercise busway-related powers under the *Transport Operations (Passenger Transport) Act 1994* instead of the *Transport Infrastructure Act 1994*.

Clause 42 amends section 348 (Functions) to detail the functions of the chief executive in relation to light rail and light rail transport infrastructure for the chapter. Section 348(a) has the new inclusions of “constructing” and “construct” as part of the chief executive’s functions in relation to light rail and light rail transport infrastructure. “Construct” was identified as a missing function in the development of transport infrastructure and has now been included. Section 348(b) has the new inclusion of “establishment” and “maintenance”. These functions are required to allow the chief executive, when undertaking associated services or works, to establish or undertake maintenance to transport infrastructure.

New section 348(ca) to become new (d) is a new provision that provides the chief executive with the power to investigate, plan or carry out accommodation works, as a result of light rail transport infrastructure or light rail transport infrastructure. A definition of “accommodation works” is now included in Schedule 6.

Clause 43 amends section 350 (When land may be entered, occupied or used). New section (5)(f) provides an owner/occupier with the ability to make a submission within the seven day period after notice has been given that accommodation works are proposed on the land. A definition of “accommodation works” is included in Schedule 6. Subsection (6A) will be renumbered as (7) and provides that a person proposing to undertake the accommodation works must consider any submission made regarding the proposed work within 7 days after the notice is provided to the owner/occupier. Subsection (7) will be renumbered as (8).

Clause 44 amends section 355A (Licence in relation to light rail land or infrastructure). The objective of this change to section (3) is to remove the unnecessarily onerous requirement for the chief executive to have to register every licence with the registrar of titles. The change provides the chief executive with the flexibility to determine what licences should be registered. If the notice is provided by the chief executive to the registrar of titles, the registrar of titles must record the licence in the registry. This change provides consistency with the registrar of titles’ internal policy and commercial practice, and reduces the regulatory burden.

The inclusion of new subsection (3AA) makes it clear that the department will not be liable to pay a fee to the registrar of titles for the recording of the licence.

Clause 45 amends section 475ZG (Definitions for Chapter 15A, to omit the definition of *transport interface object* and insert several definitions, including a new definition of *transport interface object*, for Chapter 15A. The new definition of *transport interface object* includes all relevant modes of transport that may interface in some manner. Clause 45 also inserts a new definition of *transport infrastructure works* which also includes the new definition of *public marine transport infrastructure works*.

The definition of *transport interface* is amended to omit the reference in (b)(i) and (ii) to “or road” and insert “road or watercourse”. This amendment expands the definition of “thing” or “place” to include a road or watercourse.

Clause 46 amends section 475ZI (Declaration of transport interface management area) to insert new subsections (4A) and (4B). These new subsections provide that transport interface management areas declared by the chief executive *must* be noted by the registrar of titles as an administrative notice on the relevant titles, at no cost to the chief executive of the Department of Transport and Main Roads. The ability to record the interface management areas serves as public notice of the declaration of interface area as the land register and is the point of truth for land dealings in Queensland.

Clause 47 inserts new section 477AA (Chief executive taken to be owner of particular transport land for particular circumstances under Planning Act). New section 477AA clarifies the chief executive’s administering authority for the provision of owner’s consent for transport corridor land, other than rail corridor land or non-rail corridor land, for the purpose of the *Sustainable Planning Act 2009*. Prior to assent of the *Sustainable Planning and Other Legislation Amendment Act (No.2) 2012* on 22 November 2012, the lack of clarity around the term owner did not impact on development applications as the resource entitlement provisions of the *Sustainable Planning Act 2009* prevailed. As a result of the removal of section 264 of the *Sustainable Planning Act 2009*, the requirement for an applicant to obtain an ‘owner’s consent’ in relation to State transport corridors prior to lodging a properly made development application is unclear and inconsistently dealt with under the *Sustainable Planning Act 2009* and the *Transport Infrastructure Act 1994*. The new section is consistent with existing arrangements for rail corridor land established under section 247 of the *Transport Infrastructure Act 1994*.

Clause 48 amends section 477F (Watercourse crossings) to broaden the existing provision. A transport corridor (for example, a railway corridor) can cross over a number of non-tidal watercourses, resulting in several gaps in the tenure of the corridor. The amendments to section 477F will provide for an effective way to register this interest. Amendments to section 477F(1) will broaden the existing provision, allowing the chief executive to authorise a person to undertake any of the current functions referred to in section 477F. Before authority may be given, the chief executive must ensure the proposed construction is not contrary to the objectives of, for tidal watercourses, other Acts dealings with construction in tidal watercourses such as the *Coastal Protection and Management Act 1995* and for watercourses in the *Water Act 2000*. New subsection 477F(1A) enables an interest in a watercourse crossing to be noted in the relevant land registry.

Clause 49 replaces section 477G (Chief executive may approve a compliance management plan) to extend the existing provisions to all transport infrastructure projects regardless of mode. The new section 477G:

- allows the chief executive to make or approve a compliance management plan for an arrangement for the establishment, construction, maintenance, management or operation of transport infrastructure;
- provides that the compliance management plan can be for an arrangement with a person or government entity, which includes the Department of Transport and Main Roads;
- enables the chief executive to ask a person or government entity to submit a compliance management plan;

- enables the chief executive to give consent to the submission of a compliance management plan for approval, where a person or government entity requests that a compliance management plan be submitted;
- provides that the compliance management plan may be in respect of one or more compliance matters; and
- provides that a compliance management plan may apply, adopt or incorporate any document.

The intention of section 477G(2) and (3) is that only where the chief executive requests or consents to the submission, can a compliance management plan be submitted.

Section 477(5) allows the chief executive to approve a compliance management plan only if the relevant agencies have been consulted and is satisfied that the compliance matter is addressed in the compliance management plan. Section 477 (6) provides a power to impose conditions on the compliance management plan that the chief executive considers necessary or desirable. Section 477(7) provides that any subject to a compliance management plan form part of the approved compliance management plan.

477G(8) provides the mechanism for the approval and any conditions. The chief executive must give notice to the relevant person that the compliance management plan is approved, the conditions, the commencement and end dates for the compliance management plan, and which compliance matters have been addressed.

477G(9) requires the chief executive to publish the approval notice and any other information the chief executive considers appropriate on the departments website.

477G(10) provides that if the relevant entity complies with the approved compliance management plan, which includes any conditions, then the relevant entity is deemed to have met the requirements for the approved compliance matters under the relevant laws.

Definitions in 477G have been developed to extend the application of compliance management plans to *arrangements* rather than *licences* under the existing section. *Arrangements* has been defined widely to include any agreement, authority, approval, contract, lease, licence or permit. This definition is not exhaustive. The definition of *compliance matter* has been broadened also to extend to arrangements.

The broad definitions of *relevant entity* and *government entity* means that a person, local, State or commonwealth government entity may request the submission of a compliance management plan under 477G(2) and meet the requirements of a compliance management plan under 477G(6).

Clause 50 inserts new section 477H (Chief executive may make a compliance management plan). New section 477H(1) extends the application of compliance management plans to works conducted by the chief executive for establishment, constructions, maintenance, management or operation of transport infrastructure. New section 477H(2) and (3) allows the chief executive to make a compliance management plan which may apply, adopt or incorporate any document. For example, a compliance management plan may incorporate a self-assessable code.

Similar to section 477G(5), section 477H(4) requires the chief executive to consult with the agency administering the relevant compliance matter prior to any approval.

For the most part, the definitions in 477H mirror the definitions in section 477G as amended by this Bill.

Clause 51 amends section 488 (Altering materials etc.) to clarify that the definition *works*, for a busway, means *busway transport infrastructure works*.

Clause 52 amends section 489 (Recovery of cost of damage) to clarify that the definition *works* for a busway means *busway transport infrastructure works*.

Clause 53 inserts new Chapter 21, part 4, Transitional provisions for Transport and Other Legislation Amendment Act 2014.

Clause 54 amends Schedule 6 (Dictionary).

The amendments omit the definitions of *busway common area*, *railway*, *watercourse* and *relevant busway legislation*. The amendments include new definitions for:

- *accommodation works* are temporary or permanent transport-incident works that are carried out where it is necessary or convenient to make good on the impact to private land caused by the establishment of transport infrastructure. The amendments will ensure the State provides restoration, reparation or making good on any damages or impact to a property. This restoration work, called accommodation work, is to restore and replace as well as ensuring safe access and egress points to and from affected property. The amendments make clear that the works may be permanent;
- *railway* - a new definition of *railway* is inserted into Schedule 6 to clarify the meaning of the term under the Act. The definition states that a *railway* is a guided system, or proposed guided system, designed for the movement of rolling stock having the capability of transporting passengers or freight, or both, on a railway track that includes rail transport infrastructure, and a railway being or proposed to be built on future railway land, but does not include rolling stock and a railway mentioned in section 107(2). *Community infrastructure* to reference the Planning Act, Schedule 3;
- *transport associated development* – for the purposes of Chapter 15A;
- *watercourse* – for Chapter 15A, see 475ZG or otherwise, meaning a lake, spring, stream or swale; and
- insertion of subsection (d) and (e) to the definition of *busway transport infrastructure*.

Consequential amendments to the definition of *busway transport infrastructure works* are necessary in order to include safety, efficiency and operational integrity and ‘other works’ as types of works that can be undertaken for consistency with the amendment to railway works.

- insertion of subsection (d) and (e) to the definition of *light rail transport infrastructure works*;
- consequential amendments to the definition of *light rail transport infrastructure works* are necessary in order to include safety, efficiency and operational integrity and ‘other works’ as types of works that can be undertaken for consistency with the amendment to railway works;

- insertion of subsection (b) and (c) to the definition of *railway works*. The definition of *railway works*, was narrowly defined and did not always adequately reflect the various types of works associated with the establishment and construction of a corridor that may be necessary to support it. The definition provides that other works are works that are associated with the establishment or construction of a transport corridor (for example, realignment of a road consequential to railway works) and are necessary to ensure the safety and integrity of the transport network, to protect the public, property and environment;
- insertion of subsection (a) to the definition of *road works*. Consequential amendments to the definition of *road works* are necessary in order to include safety, efficiency and operational integrity and ‘other works’ as types of works that can be undertaken for consistency with the amendment to railway works;
- *railway works*, *road works*, *busway transport infrastructure works* and *light rail transport infrastructure* were narrowly defined in the *Transport Infrastructure Act 1994* and did not adequately reflect the various types of other works associated with the establishment and construction of a transport corridor necessary to support it;
- the amendments to the definitions have been broadened to reduce confusion, provide clarity to affected land holders;
- the inclusion of safety, efficiency and the operational integrity of the transport infrastructure is to provide protection to the public, property and environment; and
- insertion of new (c) *other rail infrastructure* and (d) *active transport infrastructure* to the definition of *transport infrastructure*. The current definition of *transport infrastructure* includes air, busway, light rail, miscellaneous, public marine, rail and road transport infrastructure, and transport infrastructure relating to ports. The definition now includes *other rail infrastructure* (as defined in Schedule 6 of the TIA) and *active transport infrastructure* (as defined in section 8A(3) of the *Transport Planning and Coordination Act 1994*).

The Department of Transport and Main Roads is responsible for protecting state transport assets through the *Sustainable Planning Act 2009* and its instruments. In order to effectively and efficiently do this, the Department of Transport and Main Roads uses the defined term *government supported transport infrastructure*. The current definition is incomplete as it does not include “other rail infrastructure” or “active transport infrastructure”. This means that a small but important number of assets are not appropriately protected.

Government supported transport infrastructure is defined in Schedule 6 of the *Transport Infrastructure Act 1994*, and incorporates the definition of *transport infrastructure* as referred to in paragraph one. As the definition of *transport infrastructure* does not include *other rail infrastructure* or *active transport*, the definition of *government supported transport infrastructure* also does not include them.

Part 7 Amendment of Transport Operations (Marine Safety) Act 1994

Clause 55 provides that part 7 amends the *Transport Operations (Marine Safety) Act 1994*.

Clause 56 amends section 54, to reinstate a number of grounds for exemption from sections 47 to 50 of the *Transport Operations (Marine Safety) Act 1994*. These grounds were inadvertently omitted by the *Fiscal Repair Amendment Act 2012*.

Clause 57 amends section 63F (Restricted access to information stored electronically on a smartcard marine licence indicator) to omit provisions dealing with emergency contact information.

Part 8 Amendment of Transport Operations (Passenger Transport) Act 1994

Clause 58 provides that part 8 amends the *Transport Operations (Passenger Transport) Act 1994*.

Clause 59 provides that a service contract may require the holder to provide improved levels of productivity. This provision has been relocated from section 51 as a consequence of amendments to that section.

Clause 60 provides that the chief executive may declare that a service contract is required under section 42 by notice on the department's website rather than in a newspaper. This will simplify the declaration process and enhance transparency in relation to areas and routes that are subject to market entry restrictions for existing and prospective operators.

Clause 61 provides that the chief executive may amend, under section 42B, a service contract area or route the subject of a declaration under section 42, by notice on the department's website rather than in a newspaper. This will simplify the amendment process for existing declarations and enhance transparency in relation to areas and routes that are subject to market entry restrictions for existing and prospective operators.

Clause 62 inserts new section 51 (Concessions under a service contract). New section 51 provides that a service contract may require the holder to provide a concession to a class of persons. Where a *standard service contract*, as defined in Schedule 3, requires the holder to provide a concession to a class of persons, the contract must provide for the State to reimburse the holder for a concession to a class of persons unless the concession is for a class of persons prescribed under a regulation. Where the concession is for a class of persons prescribed under a regulation, the contract may provide for the State to reimburse the holder for the concession. This amendment provides flexibility to require the holder of a standard service contract to provide concessions to classes of persons that do not need to be reimbursed.

Clause 63 amends section 99 to reinstate a number of grounds for exemption from sections 93 to 96 of the *Transport Operations (Passenger Transport) Act 1994*. These grounds were inadvertently omitted by the *Fiscal Repair Amendment Act 2012*.

Clause 64 inserts new section 126DA (Forfeiture on conviction). This section has been relocated from the *Transport Infrastructure Act 1994* as a result of the amendment under clause 41 of this Bill and will apply to an offence against the *Transport Operations (Passenger Transport) Act 1994*, Chapter 14 of the *Transport Infrastructure Act 1994* or a regulation in relation to a railway made under the *Transport Infrastructure Act 1994*.

Clause 65 omits the definitions of *tag off* and *tag on* from Chapter 11A. These definitions have been relocated to Schedule 3.

Clause 66 replaces the word "anyone" with "a person" for consistency with similar provisions.

Clause 67 clarifies that if the driver or an authorised person reasonably suspects that a person has just travelled on a concession ticket, the driver or authorised person may require the person to produce evidence of their concession entitlement and makes it an offence not to comply with this new requirement. This clause also clarifies the requirement for when a person must carry evidence of their concession entitlement.

Clause 68 omits section 143AF to ensure consistency with offences in a regulation made under this Act.

Clause 69 makes a minor amendment to section 143AHA that is required as a consequence of the omission of section 143AF. A relevant provision for the purpose of directing a person to leave public transport infrastructure will now include a provision of this Act prescribed by regulation that is about creating a disturbance or nuisance instead of a reference to section 143AF.

Clause 70 inserts new sections 143AHC (Direction to ensure orderly movement) and 143AHD (Direction to ensure safety and security). New sections 143AHC and 143AHD have been relocated from the *Transport Infrastructure Act 1994* where they only applied to a busway or busway transport infrastructure. The new sections will now apply to all public transport infrastructure. New section 143AHD(2) clarifies that an authorised person may give a direction to ensure safety and security about driving or parking a vehicle on public transport infrastructure or leaving property on public transport infrastructure.

Clause 71 provides that a person giving a direction under Chapter 11A must tell the person to whom the direction is given the reason the person has been given the direction. The current requirement is limited to a direction to leave a vehicle. However, this provision should also apply to other directions in Chapter 11A that relate to public transport infrastructure more broadly, including, for example, directions to leave public transport infrastructure and ensure the orderly movement of persons on public transport infrastructure.

New subsection (1) does not apply if the direction is given because of an emergency. It is not reasonable for the driver or an authorised person to comply with the requirements under subsection (1) in an emergency situation.

Clause 72 inserts new section 143C (Unclaimed credit on smartcards). New section 143C provides that the chief executive may use credit on dormant smartcards for an objective of the Act with the approval of the Minister for Transport and Main Roads. This provision only applies in relation to a smartcard that is in credit and has not been used or topped up in the previous five years (that is, a *dormant smartcard*). A person's right to a refund of the credit on the person's smartcard is not in any way affected by the use of the credit. New section 143C also provides that section 102B of the *Public Trustee Act 1978* does not apply to any credit on a smartcard.

Clause 73 provides that a regulation may provide for a matter relating to persons, vehicles or other property on public transport infrastructure to reflect the transfer of busway safety officer provisions from the *Transport Infrastructure Act 1994*.

Clause 74 inserts new sections 203 (Extended services under integrated mass transit service contracts) and 204 (Extended services under standard service contracts).

New section 203 provides that where before commencement a person was permitted, required or invited to provide, under an integrated mass transit service contract, a road-based general route service for an undeclared area or route, the undeclared area or route is taken to be, and to have always been, part of the integrated mass transit area. The chief executive must, by notice on the department's website, add the undeclared area or route to a service contract area or route within the integrated mass transit area within 56 days of commencement of the section.

New section 204 provides that where before commencement a person was permitted, required or invited to provide, under a standard service contract for a service contract area or route, a road-based general route service for an undeclared area or route, the undeclared area is taken to be, and to have always been, part of the service contract area or route. The chief executive must, by notice on the department's website, add the undeclared area or route to the service contract area or route within 56 days of commencement of the section. This provision will only apply to a road-based general route service that is a school service if the service runs to a timetable that is fixed under the contract.

These provisions are intended to ensure that service contract areas and routes reflect the gradual improvements the Department of Transport and Main Roads has made to the public transport network over time.

Clause 75 reinstates the offence of unlawful stalking under the Criminal Code as a category C driver disqualifying offence. This offence was inadvertently omitted following an amendment to the *Commission for Children and Young People and Child Guardian Act 2000*.

Clause 76 makes a number of minor and consequential definitional changes. Key changes to Schedule 3 include:

- the insertion of new definitions of *road-based general route service*, and *undeclared area or route* for the purpose of new sections 203 and 204;
- the insertion of a new definition of *standard service contract* for the purpose of new sections 51, 203 and 204;
- the insertion of a new definition of *general route service* which clarifies the meaning as intended when the term was first introduced in 2008 and provides that a scheduled passenger service may be excluded from the definition by regulation; and
- an amendment to the definition of *public transport infrastructure* to include *busway transport infrastructure* as defined under the *Transport Infrastructure Act 1994*.

Part 9 Amendment of Transport Operations (Road Use Management) Act 1995

Clause 77 provides that part 9 amends the *Transport Operations (Road Use Management) Act 1995*.

Clause 78 makes a consequential amendment to section 60 (Evidentiary aids) as a result of new section 36H of the *Transport Planning and Coordination Act 1994*, which will allow notices required or permitted to be given under transport legislation to be served by sending them to a postal address. Section 60 is being amended so that an evidentiary certificate can be provided stating that a person had or had not notified the chief executive of a postal address or a change in the person's postal address.

Clause 79 makes a consequential amendment to section 62 (Proceedings for offences) as a result of amendments to section 92 of the *Transport Operations (Road Use Management) Act 1995*. The amendments to section 92 remove the requirement to report road incidents involving property damage to police, which means that the section will only apply to road incidents involving injury or death. As a result, the reference in section 62(2) limiting its application to incidents involving injury or death is no longer required and is being deleted by this clause.

Clause 80 amends section 77 (Restricted written or electronic release of person's prescribed authority and traffic history information) to allow information about a person's prescribed authority (such as their driver licence) or traffic history to be released to a foreign licensing authority. This will assist the authority to decide whether to issue a foreign driver licence and for example, the type and class of licence the person may be entitled to under the foreign country's licensing regime. The information will only be released on the condition that the foreign licensing authority cannot use the information for another purpose without the written consent of the person it relates to.

Clause 81 inserts a new section 77AB (Confirming Queensland driver licence is valid), which will allow the Department of Transport and Main Roads to develop an online licence verification system. The system will enable the chief executive to verify driver licence details to licence holders and third parties (such as employers and car hire companies) and to confirm that a licence is valid (that is, not expired, cancelled or suspended).

Clause 82 amends section 78 (Driving of motor vehicle without a driver licence prohibited). Subclause (1) makes a consequential amendment to refer to new section 78(1E). The amendments in subclauses (2) and (4) are related. Subclause (2) inserts a new subsection (1E) which prevents an infringement notice being issued for an offence of unlicensed driving where a person has never held a driver licence. Subclause (4) inserts a new paragraph (k) which provides that if an offence of unlicensed driving occurs where a person has never held a driver licence, the court must disqualify the person from holding or obtaining a Queensland driver licence for 3 months.

Subclause (3) deals with a separate issue. Subclause (3) amends section 78(3) to clarify that it is mandatory for a court to order a driver licence disqualification if a person is convicted of an offence against section 78(1) and any of the circumstances mentioned in section 78(3) apply. The revised wording uses the term "sentence" and the Bill adopts the definition of "sentence" from the *Penalties and Sentences Act 1992* in the dictionary in Schedule 4. Further details about this amendment and the rationale for it can be found under the heading "Mandatory driver licence disqualifications" in the introductory sections of the explanatory notes.

Clause 83 amends section 80 (Breath and saliva tests, and analysis and laboratory tests). The amendment in subclause (1) will allow an analyst who is case managing a blood or saliva specimen to sign an evidentiary certificate about laboratory testing where more than one qualified analyst carried out testing on the specimen. To ensure the continuity of evidence and that best practice is adhered to, the amendment in subclause (2) requires the analyst signing the certificate to examine the laboratory's records about the receipt, storage and testing of the specimen and confirm that all quality assurance procedures were complied with. The amendment in subclause (3) allows a person who gave a blood or saliva specimen to request a copy of laboratory records about the receipt, storage or testing of the specimen and requires the commissioner to provide a copy of the records within 7 business days.

Clause 84 inserts a new section 84A (Driving of motor vehicles carrying placard loads in tunnels) to create a new offence prohibiting a person from driving a motor vehicle carrying a placard load of dangerous goods in a tunnel which has a placard load prohibited sign clearly visible to a person entering the tunnel. Section 84A(3)(b) provides that in the absence of proof to the contrary, a placard load prohibited sign is taken to be clearly visible to a person entering a tunnel. This provision is consistent with the position that applies to all traffic control devices (such as traffic signs), as provided for in section 322 of the *Queensland Road Rules*, especially section 322(7).

The definition of placard in section 84A(4) refers to a placard used in transporting dangerous goods, explosives or radioactive substances as required under the *Transport Operations (Road Use Management) Act 1995*, another Act or by a condition of a licence or other authority granted under an Act. In practical terms, a placard is a sign or label placed on the outside of a vehicle warning of the presence of dangerous goods, explosives or radioactive substances.

Sections 83 and 84 of the *Transport Operations (Road Use Management – Dangerous Goods) Regulation 2008* deal with the requirement to display a placard in the transport of dangerous goods.

Section 50(2)(a) of the *Explosives Act 1999* provides that a person who is authorised to transport explosives must ensure it is transported in the way required by that Act. Under section 114 of the *Explosives Regulation 2003*, a person transporting an explosive in a vehicle must comply with the Australian explosives code. The explosives code sets out when a placard is required to be used for a vehicle transporting explosives.

Section 14 of the *Radiation Safety Act 1999* requires a person who is transporting a radioactive substance by road in a vehicle to hold a transport licence. Section 75(4) of the *Radiation Safety Act 1999* provides that a transport licence is subject to the condition that the holder comply with a code prescribed under a regulation about the transport of radioactive substances to which the licence relates. Section 13(2) of the *Radiation Safety Regulation 2010* makes a transport licence subject to the condition that the holder of the licence comply with the Code of Practice for the Safe Transport of Radioactive Material. The code sets out when a placard is required to be used for a vehicle transporting a radioactive substance.

Clause 85 amends section 85 (Racing and speed trials on roads) to clarify that it is mandatory for a court to order a driver licence disqualification if a person is convicted of an offence against section 85(1). The revised wording uses the term “sentence” and the Bill adopts the definition of “sentence” from the *Penalties and Sentences Act 1992* in the dictionary in Schedule 4. Further details about this amendment and the rationale for it can be found under the heading “Mandatory driver licence disqualifications” in the introductory sections of the explanatory notes.

Clause 86 amends section 86 (Disqualification of drivers of motor vehicles for certain offences) to clarify that it is mandatory for a court to order a driver licence disqualification if a person is convicted of an offence against section 86. The revised wording uses the term “sentence” and the Bill adopts the definition of *sentence* from the *Penalties and Sentences Act 1992* in the dictionary in Schedule 4. Further details about this amendment and the rationale for it can be found under the heading “Mandatory driver licence disqualifications” in the introductory sections of the explanatory notes.

Clause 87 amends section 87 (Issue of restricted licence to disqualified person) to clarify that it is mandatory for a court to order a driver licence disqualification if a person is convicted of an offence against section 87(10). The revised wording uses the term “sentence” and the Bill adopts the definition of *sentence* from the *Penalties and Sentences Act 1992* in the dictionary in Schedule 4. Further details about this amendment and the rationale for it can be found under the heading “Mandatory driver licence disqualifications” in the introductory sections of the explanatory notes.

Clause 88 makes a consequential amendment to section 90C (Cumulative periods of disqualification for acts done and offences committed at same time) to include a reference to new section 78(3)(k). Section 90C of the *Transport Operations (Road Use Management) Act 1995* provides for driver licence disqualifications to apply cumulatively where a person is disqualified from driving as a result of both drink or drug driving and unlicensed driving. The consequential amendment to section 90C(1)(c) refers to the new licensing disqualification (where the person has never held a driver licence) in section 78(3)(k) and ensures that it is treated as a cumulative disqualification. At the time of making this consequential amendment, it was identified that licence disqualifications under section 78(3)(j) should also apply cumulatively and this amendment should have been made when section 78(3)(j) was inserted. So, the Bill also inserts a reference to section 78(3)(j) in section 90C(1)(c) so that a licence disqualification under section 78(3)(j) applies cumulatively.

Clause 89 amends section 91F (Restricted access to information stored electronically on a smartcard driver licence) to omit provisions dealing with emergency contact information.

Clause 90 amends section 91W (Driving a motor vehicle other than as allowed under an interlock condition) to clarify that it is mandatory for a court to order a driver licence disqualification if a person is convicted of an offence against section 91W(1). The revised wording uses the term “sentence” and the Bill adopts the definition of “sentence” from the *Penalties and Sentences Act 1992* in the dictionary in Schedule 4. Further details about this amendment and the rationale for it can be found under the heading “Mandatory driver licence disqualifications” in the introductory sections of the explanatory notes.

Clause 91 amends section 91X (Noncompliance with restrictions applying to interlock exemption) to clarify that it is mandatory for a court to order a driver licence disqualification if a person is convicted of an offence against section 91X(1). The revised wording uses the term “sentence” and the Bill adopts the definition of *sentence* from the *Penalties and Sentences Act 1992* in the dictionary in Schedule 4. Further details about this amendment and the rationale for it can be found under the heading “Mandatory driver licence disqualifications” in the introductory sections of the explanatory notes.

Clause 92 amends section 92 (Duties and liabilities of drivers involved in road incidents) to remove the requirement to report crashes to police where property damage exceeds an amount fixed by regulation (currently \$2 500 which is specified in section 287 of the *Queensland Road Rules*). Subclause (1) omits words that refer to incidents involving property damage. Subclause (2) omits section 92(1)(i), which is the main obligation to report incidents involving property damage. Subclause (3) renumbers paragraphs (c) and (j). Subclause (4) amends the maximum penalty for the offence by removing existing paragraph (b). This is because as a result of removing section 92(1)(i), all offences under this section will relate to road incidents involving death or injury to a person. Subclause (5) updates a cross-reference.

Subclauses (6) and (7) make amendments to section 92(4) to remove and amend specific references to incidents involving injured persons, because all offences under this section will relate to road incidents involving death or injury to a person. Subclause (8) amends section 92(5) to remove existing section 92(5)(a). It is no longer required because by removing section 92(1)(i), information will no longer be reported under this section. The amended wording of section 92(5) also refers to the “Queensland Police Service” rather than a “police officer” to ensure that the offence applies to reports made to police services such as PoliceLink, which may not be to a sworn “police officer”. Subclause (9) omits section 92(6), which is a consequential amendment to removing section 92(1)(i). Subclause (10) amends section 92(7) to clarify when the provision applies. Subclause (11) renumbers subsections 92(4) to (8).

Clause 93 amends section 113 (Definitions for div 2). Subclause (1) omits the definition of *photographic detection device*. Subclause (2) inserts new definitions of *photographic detection device* and *unregistered or uninsured offence*. The definition of *unregistered or uninsured offence* is intended to refer to certain camera-detected offences that are prescribed offences under section 353 of the *Queensland Road Rules*. Paragraph (a) of the definition is referring to the offence that, at the time of the Bill, is located in section 11 of the *Transport Operations (Road Use Management – Vehicle Registration) Regulation 2010*. Paragraph (b) of the definition is referring to the offence that, at the time of the Bill, is located in section 20(1) and (2) of the *Motor Accident Insurance Act 1994*.

Subclause (3) amends the definition of *camera-detected offence* to clarify that a camera-detected offence may be detected by a *photographic detection device* linked to an information technology system described in new section 113A(2).

Subclause (4) amends the definition of *person in charge* to refer to persons named in statutory declarations given under new sections 114(3A)(b) and (c).

Clause 94 inserts a new section 113A (Photographic detection device defined). Section 113A(1) reinserts the existing definition of a photographic detection device. Section 113A(2)(a) provides that a device or system may be linked to an information technology system that accesses information held by the department in order to detect offences prescribed by regulation. It is intended to prescribe unregistered and uninsured offences as offences for which a photographic detection device may be linked to an information technology system. This is required because the information technology system will match images of vehicles used on the road captured by the photographic detection device with information held by the department to determine whether a vehicle is unregistered or uninsured and therefore, whether an offence has been committed. Under section 113A(2)(b), if the information technology system detects an offence prescribed by regulation has been committed, the system will automatically issue an infringement notice.

For unregistered and uninsured offences, the infringement notice will be sent to the previous registered operator of the vehicle. Section 113A(3) provides that an infringement notice issued by the information technology system under subsection (2)(b) is taken, for the *State Penalties Enforcement Act 1999* and for section 13(1) in particular, to be an infringement notice served by an authorised person under that Act. The displacement of section 13(1) is required because the infringement notice will be issued automatically by the information technology system where an offence is detected, rather than being issued by an authorised person. Section 13(2) of the *State Penalties Enforcement Act 1999* will continue to apply to service of an infringement notice issued under new subsection (3).

Clause 95 amends section 114 (Offences detected by photographic detection device). Subclause (1) amends section 114(3) to retain the existing defences to camera-detected offences for offences other than unregistered or uninsured offences. Subclause (2) inserts a new section 114(3A) to provide for specific defences for unregistered or uninsured offences. Under section 114(1), the “person in charge” of a vehicle is taken to have committed the offence. For an unregistered or uninsured offence, the “person in charge” will ordinarily be the previous registered operator before the registration expired, under paragraph (c)(i) of the definition of “person in charge”. Section 114(3A) provides that it will be a defence for an unregistered or uninsured offence if a person can prove that a vehicle was stolen or illegally taken or had been sold or otherwise disposed of. Unlike section 114(3), there will be no defence available to nominate a driver for these offences.

Subclause (3) makes consequential amendments to section 114(4) and (5) to refer to new section 114(3A).

Subclause (4) inserts an “inclusive” definition of *photographic detection device* for section 114. The definition clarifies that section 114(1) applies where a prescribed offence happens and the offence is detected by a *photographic detection device* linked to an information technology system described in section 113A(2).

Clause 96 makes a consequential amendment to section 115 (Limitation of prosecution period extended in particular circumstances) so that it applies to unregistered and uninsured offences.

Clause 97 makes a consequential amendment to section 116 (Notice accompanying summons) to refer to a notification given in a statutory declaration under new section 114(3A)(b)(i) or (c)(i).

Clause 98 amends section 118 (Photographic evidence—inspection) to provide that a person charged with a camera-detected offence may ask the prosecution (rather than the commissioner) to examine a copy of the image on which the offence is based. As the Department of Transport and Main Roads will be operating some photographic detection devices for unregistered and uninsured offences and issuing infringement notices for these offences, this amendment will facilitate prosecutors from either the department or the Queensland Police Service being able to arrange inspection of images.

Clause 99 amends section 119 (Notice of dispute about traffic control device or sign) to provide that a person must give a notice under section 119 to the prosecution (rather than the commissioner). This will facilitate prosecutions for certain camera-detected offences being undertaken by either the Department of Transport and Main Roads or the Queensland Police Service. For example, whether a sign is visible may be an issue in proceedings for an offence against proposed new section 84A of the *Transport Operations (Road Use Management) Act 1995* and prosecutions for this offence would be undertaken by the Department of Transport and Main Roads.

Clause 100 amends section 120 (Evidentiary provisions) to allow an *official* (as defined) to sign an evidentiary certificate under section 120(2) and (2A). This will allow the chief executive to sign evidentiary certificates about images taken by photographic detection devices operated by the Department of Transport and Main Roads and the operation and testing of these devices, including testing under section 120(2)(d) and (2A).

These same powers will be given to a toll official (within the meaning of proposed new section 166A) to sign evidentiary certificates in proceedings for an offence against proposed new section 84A(1).

Clause 101 amends section 127 (Effect of disqualification) to clarify that it is mandatory for a court to order a driver licence disqualification if a person is convicted of an offence against section 127(8). The revised wording uses the term “sentence” and the Bill adopts the definition of *sentence* from the *Penalties and Sentences Act 1992* in the dictionary in Schedule 4. Further details about this amendment and the rationale for it can be found under the heading “Mandatory driver licence disqualifications” in the introductory sections of the explanatory notes.

Clause 102 replaces section 133 (Occupiers of garages etc. to keep register of repairs) with new sections 133, 133A and 133B to simplify and clarify the requirements for motor vehicle repairers to keep written records of repairs and painting of vehicles.

New section 133 sets out the information that must be recorded by the repairers of motor vehicles and trailers. Section 133(7) includes new definitions of *paint* and *repair* a motor vehicle or trailer, to clarify the circumstances in which records need to be kept under this section. New section 133A sets out when the information in section 133 must be recorded. New section 133B provides that records must be kept for three years.

Clause 103 makes a consequential amendment to section 140 (Service if address unknown etc.) as a result of new section 36H of the *Transport Planning and Coordination Act 1994*, which will allow notices required or permitted to be given under transport legislation to be served by sending them to a postal address. Section 140 is being amended so that it can be used if a person’s place of business, address and postal address is unknown to the commissioner or chief executive.

Clause 104 amends section 151 (Application of Chapter 5A) to insert a note referring a reader of the chapter dealing with transporting dangerous goods that there is an additional provision dealing with the transport of dangerous goods in section 84A.

Clause 105 inserts a new section 166A (Toll officers) which specifies who is a toll officer for the purpose of signing an evidentiary certificate under section 120(9).

Clause 106 inserts a new Chapter 7, part 18 (Transitional provision for Transport and Other Legislation Amendment Act 2014). The transitional provision requires a person who was required to keep a register under section 133 as it existed before the commencement of the section, to continue to keep the register for three years after the work was carried out and that failing to do so constitutes an offence.

Clause 107 amends Schedule 4 (Dictionary) to omit definitions, amend definitions and insert new definitions required for provisions in the Bill.

Part 10 Amendment of Transport Planning and Coordination Act 1994

Clause 108 provides that part 10 amends the *Transport Planning and Coordination Act 1994*.

Clause 109 amends section 3 (Definitions) to insert new definitions to support the new transport easement of support provisions.

Clause 110 inserts new part 4, division 1, heading (General).

The provisions are, in part, modelled on the high-density development easements contained in part 6, division 4AA of the *Land Title Act 1994*. However, the provisions in the *Land Title Act 1994* LTA also apply to common wall easements whereas, generally, transport infrastructure is located wholly within the lot comprising transport land. This has been accommodated in the drafting of the transport easement for support provisions.

Generally, the provisions are designed to allow the chief executive to enter into an easement for support with an adjoining lot owner. This transport easement for support is registered under the *Land Title Act 1994* and / or the *Land Act 1994*. Accordingly, the relevant provisions of those Acts will apply, subject to the provisions in the *Transport Planning and Coordination Act 1994*.

The benefited land of a transport easement for support must always be transport land, as defined. Generally, a transport easement for support can benefit or burden any land under the *Land Act 1994* that may be subject to an easement.

A transport easement of support only burdens land in a lot, and not necessarily the whole of the land in a lot. The land which is burdened by the easement will be described in the relevant instrument or document of easement. Equally, the land to be benefited by the easement will be described in the relevant instrument or document. That land will usually be a lot or lots (which may be one or a number of lots in a title that consists of many more lots). The owner of the burdened land will be under an obligation to do all things necessary to maintain support as a primary obligation.

Clause 111 amends section 25 (General powers regarding property) by providing that an easement under section 25(6) includes a *transport easement for support*.

Clause 112 amends section 27A (Power of chief executive to dispose of land) by omitting current subsections 27A(3), (4) and (6)(b)(ii) and inserting new provisions.

The amendments to section 27A provide the chief executive with a head of power to take a transport easement of support, in addition to other easements that may be required to preserve the structural and operational integrity of transport infrastructure. Once taken and registered, the existing provisions of sections 27A and 27B will allow any land offered back to a former owner under section 41(1) of the *Acquisition of Land Act 1967* to be subject to an easement, including (by virtue of the proposed amendment to section 27A) a transport easement of support. The provisions of existing 27A provide the mechanisms by which the former owner is compensated for the taking of easement.

Clause 113 inserts division 2 (Transport easement for support) into part 4, after section 288AA. Transport easements for support are easements of support over burdened land in favour of adjoining transport land. Transport easements for support are intended to ensure the structural support provided to transport infrastructure (especially tunnels but potentially also bridge foundations and the like) by adjacent properties is maintained. Removal of the support provided by the adjacent property, for example by excavation or filling, can change the structural loads on the transport infrastructure. This could lead to damage to the infrastructure and in extreme cases catastrophic failure with associated loss of life, damage to property etc.

The proposed provisions allow easements to be taken out over some or all of the adjacent properties to ensure this structural support is maintained. The easements make property owners aware of the existence of the infrastructure, particularly for tunnels, whose existence under the ground may not otherwise be apparent. It is not intended that the easements preclude development in the easement area. If a land owner wishes to develop their land they should consult with the Department of Transport and Main Roads to determine if the development can be undertaken in a way that maintains the necessary structural support.

New section 28AB (Definitions for div 2) contains a number of definitions for the proposed Division 2 Transport Easement of Support with cross references to section 28AE(1) for benefited land and burdened land and 28AC for transport easement of support. The definitions inserted are:

- *benefited land* includes any improvements and reconfigurations to that land to ensure that infrastructure located within the lot, any offspring lots following subdivision or other interests following reconfiguration of the land is given the protection of the transport easement for support. Generally, benefited land will be transport land;
- *burdened land* is the land which is subject to the transport easement for support and includes infrastructure or structures located within the lot, any offspring lots following subdivision or other interests following reconfiguration of the land to ensure the support protection of the benefited land;
- *owner* is defined to include the *occupier* to ensure lessees and licensees have certain support obligations. This definition is meant to refer to those persons who may grant an easement or who may be bound by an easement under the *Land Act 1994* or the *Land Title Act 1994*. For freehold land, the owner can be a registered owner or a lessee. For non-freehold land, the owner can be a lessee or licensee and, for unallocated State land or land in a reserve, the State;
- *transport easement of support* is developed in section 28AC and expands upon the common law nature of easements to give effect to the division; and
- *Transport infrastructure* is given the same meanings as in the *Transport Infrastructure Act 1994*.

New section 28AC (Meaning of *transport easement for support*) provides that:

- a *transport easement of support* is an easement created for the purpose of support (subsection (1)). This is similar to section 94(1)(a) of the *Land Title Act 1994*. The purpose of the reference to a resumed easement in section 28AC(1) is to remove any doubt that a transport easement of support includes a resumed easement. This is consistent with subsection (2) in section 28AD;

- a transport easement for support can only be created over adjoining lots and if the benefited land is transport land (subsection (2)). Accordingly, section 28AC(2)(b) limits the operation of a transport easement for support to particular land;
- an instrument (under the *Land Title Act 1994*) or document (under the *Land Act 1994*) creating a transport easement for support needs to state that the easement is created for the purpose of support (subsection (3)). The proposed section 39 extends the transport easement for support provision to 'support' easements registered before the commencement of the provisions;
- by registering an easement of support – which is a recognised easement at law and, therefore, is registrable – section 28AD will be engaged. Accordingly, when that provision is read with section 25AC(4), it is the *Transport Planning and Coordination Act 1994*, not the easement document, that expands the operation of the easement to include provisions and obligations that might not otherwise qualify as the grant of an easement at law. The registrar of titles will not be able to refuse registration of the easement, providing the easement complies with the ordinary requirements of the *Land Title Act 1994* or *Land Act 1994* and sections 28AC(2) and (3);
- proposed section 28AC(4) says that the approvals of the Minister under the *Land Act 1994* are not required for the creation of a transport easement for support under section 362 or the registration of a transport easement for support under section 363 of that Act. This is necessary because section 390A of the *Land Act 1994* only applies to transport land under that Act (that is, land subject to a perpetual lease for a transport corridor). *Transport land* for a transport easement for support provision in the *Transport Planning and Coordination Act 1994* is wider in meaning;
- *Transport land* is defined to include land proposed to be acquired. This is to ensure that easements of support can be acquired at the same time or before acquisition of land required for location of infrastructure. In some cases, this may avoid the acquisition of land, registering of an easement of support and then offering the land back to the former owner. Transport land is defined to include land that is subject to a perpetual lease that is a transport corridor and other land acquired for transport purposes and incidental or complementary purposes. Also, *transport land* includes land to be acquired or used for transport purposes or an incidental purpose (for example, a reserve under the *Land Act 1994* that it is proposed to be used for a transport purpose); and
- the definition of *adjoining land* links to section 28AC(2)(a) to limit where a transport easement for support can be registered.

New section 28AD (Application of div 2) applies the provisions for transport easement for support if an easement registered under the *Land Title Act 1994* or *Land Act 1994* is a transport easement for support (as defined in section 28AC(1)). Accordingly, the intention is that the transport easement for support will be an easement under either of those Acts and, as such, will, subject to the *Transport Planning and Coordination Act 1994*, need to comply with the ordinary requirements for the creation of easements under those Acts. A transport easement of support can include an easement resumed in terms of section 25 (General powers regarding property)

New section 28AE (Rights and liabilities relating to benefited land and burdened land) provides:

- subsection (1) is based on section 95(2) of the *Land Title Act 1994*. And provides that the support exists in favour of the benefited land. The support is for lateral, subadjacent and

superjacent support if the burdened land is capable of supplying that support. That is a question of fact and, as such, the easement plan will reflect where the support is required, that is the “zone of protection”. Having defined the area required for support, the obligation of the owner of the burdened land is to provide the relevant support to the extent the burdened land can supply that support;

- subsection (2) is based on section 95(5) of the *Land Title Act 1994*;
- subsection (3) contains support provisions. Proposed section 28AE(3)(a), (b) and (c) ensure that certain support obligations can form the subject of a grant of a transport easement for support where common law may not recognise these obligations;
- section 28AE contains a support provision. It prohibits doing something that could compromise the structural integrity of the benefited land. This includes doing anything that involves removing or interfering with support or any activity that compromises the structural integrity of the benefited land or the structures within;
- removal or interfering with support includes the aspect of loading and unloading effects through filling, excavation, construction activities, blasting, demolition, loading or stockpiling of construction equipment or machinery and vibration;
- section 28AC does not purport to state that the provisions form part of a 'grant' or otherwise. Rather, they are given effect by the *Transport Planning and Coordination Act 1994*. These provisions bind the original owners and successors because of sections 28AG and 28AH; and
- subsection (5) is linked to sections 28AG and 28AH to ensure continuity and enforceability.

New section 28AF (Notice of entry). This provision is modelled on section 96E (Notice of Entry) of the *Land Title Act 1994* to provide an entitlement of the owner of the benefited land to a transport easement for support to enter the burdened land to inspect for prevention, rectification or enforcement of the rights under the transport easement for support and for maintenance or replacement of any support structures.

Subsection (2) provides that prior notice of reasonable entry must be given unless there is some urgency, in which case, the provisions of subsection (3) apply.

New section 28AG (Continuation of transport easement for support). Subsections (1) to (3) cover the situation where the benefited or burdened land is to become unallocated State land or land tenure. In this instance, the easement will continue over the affected land, despite section 28AC(2)(b), and section 85(3) of the *Land Title Act 1994* and section 372 of the *Land Act 1994*. The latter provisions deal with the approval of the Minister to allowing a 'continuation' of an easement. Section 28AG(3) and (4) are considered necessary because it cannot confidently be said that the owner of benefited or burdened land would ordinarily be a successor in title to the original owner of land (for the purposes of section 28AH).

The definition of *affected land* covers the situation where the burdened or benefited land is 'dealt with'. This includes dealing with land under the *Land Act 1994*, *Land Title Act 1994* or a transport act. Examples include:

- granting land in fee simple, or in fee simple in trust;
- leasing (under section 15);
- dedicating land as a reserve (under section 31);
- surrendering a lease (under section 327A);
- where land is declared or gazetted under a the TIA under the toll road provisions;

- under section 477A of TIA; and
- the subdivision of a lot under the *Land Title Act 1994* where the land becomes unallocated State land under the *Land Act 1994*.

The issuing of a permits over unallocated State land or a reserve as that will not change the underlying nature of the land are not captured because these actions do not change the underlying nature of the land. Similarly for changes of boundaries of reserves, amendments, subdivisions, renewals or conversions of leases and grants in fee simple under section 358. In such cases, the transport easements of support will continue.

The expression “dealt with” will include situations where the dealing under the *Land Act 1994* (as defined) is required by another Act (such as under the *Transport Infrastructure Act 1994*).

For the *Land Title Act 1994*, any subdivision will not change the land as freehold land and the easement will simply be carried forward to the newly created subdivided offspring lots.

New section 28AH (Terms bind successors in title). Section 28AH is intended to ensure that the TES (that is, the subject of the grant of the easement), all covenants and terms in the TES, and each support provision – whether positive or negative in nature – bind successors in title. However, subsection (2) and subsection (3) definition of original owner provide an exception in the case of easement covenants expressed to apply only to the original owner of the benefited or burdened land. This is because the parties may decide that certain covenants are personal covenants only (for example, to effect repairs to specific improvements within a certain timeframe).

It should be noted that, when land becomes unallocated State land, it comes under the 'control' of a department or agency. This is not always the Department of Natural Resources and Mines as it will depend on how the land is intended to be dealt with. Regardless, the effect of section 28AH (1) is that the State, represented by the relevant department or agency, will be bound by a transport easement of support while the land is unallocated State land. It is not expected this will cause too many difficulties in respect of benefited land (as not many obligations would be imposed on the owner of the benefited land). Where the 'affected' land is the burdened land, generally the State is the owner of the burdened land *and* the benefited land (unless the benefited land has somehow been transferred to a non-State entity).

A related issue is the nature of the benefited land that becomes unallocated State land or later 'dealt with' land if, for some reason, it is no longer transport land. This would be a rare occurrence. As such it is not considered necessary to deal with the issue. Section 181 of the *Property Law Act 1974* (Power to modify or extinguish easements and restrictive covenants) will apply.

A definition of *term* has been included to explain that any covenant or term in a document or instrument of easement.

The effect of sections 28AG and 28AH and the definitions in within sections 28AB and 28AE make it clear that the land which was burdened or benefited included that land as reconfigured or dealt with under the *Land Act 1994*, *Land Title Act 1994* or a transport act or as unallocated state land.

Clause 114 omits section 36H (Storing emergency contact information electronically on a relevant prescribed document) which deals with storing emergency contact information on smartcard driver licences, adult proof of age cards and smartcard marine licence indicators.

Clause 115 inserts a new section 36H (Service of document by post) to allow documents required or permitted to be given under a transport Act to be validly served by being sent to a postal address of a person or body corporate last notified to the department. This is achieved by providing that section 39 of the *Acts Interpretation Act 1954* applies as if a reference to a person's address included a reference to the postal address that the person last notified to the department.

Clause 116 inserts new part 7, Transitional provision for the Transport and Other Legislation Amendment Act 2014, relating to easements of support.

Part 11 Minor and consequential amendments

Clause 117 provides that Schedule 1 amends the provisions mentioned in it. These are minor and consequential amendments to update cross-references, make minor drafting corrections and changes to reflect current drafting practices.