

# Cross River Rail Delivery Authority Bill 2016

## Explanatory Notes

### Short title

The short title of the Bill is the Cross River Rail Delivery Authority Bill 2016.

### Policy objectives and the reasons for them

The objective of this Bill is to set up the statutory framework for the Cross River Rail Delivery Authority.

The Cross River Rail project will deliver a new rail connection across the Brisbane River, as well as generating wider economic benefits. The Cross River Rail economic development strategy will articulate the 40-year blueprint to capitalise on government investment in Cross River Rail. The Cross River Rail innovation and economic development corridor will incorporate a series of major clusters of economic activity and opportunities, centred around the Cross River Rail stations, and linking to major facilities such as hospitals and universities.

This includes the potential for renewing and repurposing surplus and underutilised State land to deliver better community outcomes, create jobs and drive economic growth. Significant economic development opportunities will become multi-billion dollar transit oriented developments, creating thousands of ongoing jobs, and structured to attract international investment, visitation and exports. They will deliver a balance of economic and community development, infrastructure provision and clusters of knowledge-intensive and innovation activity.

### Achievement of policy objectives

The objective will be achieved through setting up the Cross River Rail Delivery Authority (the Authority) to facilitate economic development and deliver the Cross River Rail project and the associated prescribed 'transport-related projects'. The Authority will be an independent statutory body, operating on a commercial basis, with the power to acquire land connected to the Cross River Rail project and associated prescribed 'transport-related projects'. It will operate outside of the political framework with an independent board, while still being subject to the oversight of the Queensland Government. It will provide a whole-of-government approach that addresses multiple government priorities, private sector demand, planning, and stakeholder and community engagement, providing project certainty for private sector investment. To the extent that they are required, the Authority will also undertake community service obligations relating to the projects<sup>1</sup>.

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<sup>1</sup> Note: the 'projects' for the Authority are the Cross River Rail project and any associated prescribed 'transport-related projects'.

Given the size of this project, and the potential economic benefits to Queensland, a statutory body is the most effective way to deliver the Cross River Rail project and the associated prescribed ‘transport-related projects’.

## Alternative ways of achieving policy objectives

The alternative delivery options for the Cross River Rail project include:

- a statutory body established under special purpose legislation (preferred option);
- establishment of a project office within a Queensland Government department; or
- establishment of a company incorporated under the *Corporations Act 2001* (Cwlth).

In identifying the preferred delivery mechanism for the Cross River Rail project, the Queensland Government canvassed national and international projects costing in excess of \$1 billion as a benchmarking exercise. This included investigation of:

- Barangaroo Delivery Authority (NSW) – this is a statutory authority constituted by project specific legislation, to procure and manage the Barangaroo redevelopment and deliver associated infrastructure
- Linking Melbourne Authority – this was a statutory authority established to develop, construct, deliver and operate any road related project in Victoria
- Crossrail Limited (UK) – this is a Limited Liability Company owned by Transport for London (UK) and supported by project specific legislation. The functions of the company include procurement and management of project implementation
- HS2 Limited (UK) – this is a government company non-departmental public body sponsored and funded by the Department of Transport (UK). The role of the public body is to deliver an operational high speed railway for the Department of Transport.

The case studies identified that there is no consistent model adopted for the delivery of major projects. The outcomes being sought for the major project and the jurisdictional setting ultimately determine the preferred governance model. However, the Queensland Government considered that the global trend over recent years has been towards statutory bodies or companies, as opposed to a project office within a government department.

A statutory body, established under special purpose legislation, was determined to be the preferred model for the Cross River Rail Delivery Authority because:

- It enables collective decision-making in the performance of its statutory functions, including the possible participation of the Commonwealth Government and local governments;
- It has perpetual succession;
- There is a level of separation from government and political cycles;
- It has the ability to specify land acquisition powers and any value sharing mechanisms<sup>2</sup>;
- It has the ability to involve project partners from outside the Queensland Government for stronger governance;
- It reports directly to the responsible Minister (rather than through a department);
- It has increased flexibility for resourcing, including attraction and retention of a quality team; and

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<sup>2</sup> Note: ‘value sharing’ is a form of funding that recovers some or all of the private sector value created by public investment in infrastructure.

- It is able to act commercially in carrying out its functions and focus on specific outputs or outcomes.

## **Estimated cost for government implementation**

The Queensland Government will incur an additional cost in the implementation and support of the independent Cross River Rail Delivery Authority. One-off funding has been provided to support the establishment of the Authority. In the 2016/2017 Queensland Government budget, \$50 million was allocated for the establishment of the Authority and readiness for market activities. This included:

- \$11 million for employee expenses, including employees of the Authority and other employees seconded from government agencies;
- \$30 million for contractors and consultants; and
- \$9 million for other expenses.

## **Consistency with fundamental legislative principles**

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

### **Legislation should allow the delegation of administrative power only in appropriate cases and to appropriate persons -**

#### ***Legislative Standards Act 1992, section 4(3)(c)***

Clause 73 (Delegations) raises the principle that delegation of administrative power should only be in appropriate cases and to appropriate persons.

Under clause 33 of this Bill, the Cross River Rail Delivery Board (the board) will be made up of board members who are considered to be appropriately qualified by reference to their position (for permanent board members) or who have qualifications or experience in a field relevant to a function of the Authority (for appointed members). Under clause 50 of this Bill, the chief executive officer is accountable to the board and must comply with the written policies and directions of the board. Under this clause of the Bill, a function or power can only be delegated to an appropriately qualified member of the staff of the Authority. The functions and powers cannot be delegated outside of the Authority.

Clause 78 (Amendment of s 169 (Delegations)) also raises the principle that delegation of administrative power should only be in appropriate cases and to appropriate persons.

The power of MEDQ<sup>3</sup> to delegate its functions and powers to the Authority is similar to the existing power for MEDQ to delegate to the Commonwealth Games Infrastructure Authority. In practice, MEDQ might not delegate any of its powers or functions but, by providing for the ability to delegate, this allows for flexibility in the future. This may be needed to ensure the smooth economic development of the Cross River Rail area.

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<sup>3</sup> Note: MEDQ is the corporation sole constituted by the Minister for the *Economic Development Act 2012* under the name Minister for Economic Development Queensland.

In addition, under section 170 of the *Economic Development Act 2012*, MEDQ can give both general direction about the performance of delegated functions or the exercise of delegated powers, and specific direction to an entity to which a function or power is delegated (a delegate). The delegate must comply with these directions.

**Legislation should make rights dependent on administrative power only if the power is sufficiently defined and subject to appropriate review**

*Legislative Standards Act 1992, section 4(3)(a)*

**Legislation should provide for the compulsory acquisition of property only with fair compensation -**

*Legislative Standards Act 1992, section 4(3)(i)*

Clause 20 (Power to take land) raises the principles that administrative powers should be sufficiently defined and subject to appropriate review, and that compulsory acquisition of property should only be with fair compensation.

The Bill balances the rights of individual landowners against the needs of the Authority in performing its functions by defining the power to acquire land narrowly. The Authority can only acquire land for the Cross River Rail projects that the Authority will deliver (i.e. not all land in the priority development area).

If the Authority needs to acquire land for the prescribed associated ‘transport-related projects’, then the regulation prescribing the project must also prescribe that land may be taken under this provision (see clause 20(1)(b)). This ensures that the need to acquire land is considered when the project is prescribed and that Parliament considers both the project and any acquisition of land (i.e. in deciding whether to disallow the regulation).

This ensures that the right of the community to a functional public transport system and the transformational aspects of the projects are balanced against the traditional rights of individual landowners to the use and enjoyment of their land.

Landowners are fairly compensated through the application of the *Acquisition of Land Act 1967* provisions to the taking of land under this Bill. The *Acquisition of Land Act 1967* includes both compensation provisions and appropriate review and appeal rights under that Act.

**Legislation should have sufficient regard to the institution of Parliament -**

*Legislative Standards Act 1992, section 4(4)*

The following clauses raise the principles that legislation should have sufficient regard to the institution of Parliament because they allow for matters to be prescribed by regulation:

- Clause 6 – development for a Cross River Rail priority development area excluded from the meaning of Cross River Rail project;
- Clause 7 – transport-related projects;
- Clause 12 – functions of the Authority;
- Clause 20 – power to take land for a ‘transport-related project’;
- Schedule 1 (Dictionary) – definition of ‘government agency’.

Clause 6 does not prescribe matters to be included in the definition, but rather allows for development in the Cross River Rail priority development area to be excluded by regulation. This is because some development would need to be assessable to ensure that it is consistent with the overall vision for the area, but may not be appropriate for the Authority to deliver. This could include, for example, where a proponent applies to intensify an existing use, such as from light industry to commercial industry. Clause 6 allows for such development to be excluded from the definition of the Cross River Rail project.

Clause 7 provides that ‘transport-related projects’ may only be prescribed in specific circumstances, i.e. where the project involves providing transport infrastructure in South-East Queensland and relates to the operation of the Cross River Rail, but is not part of the Cross River Rail project. Since the full extent of these projects is not likely to be known until after the Authority is established, and possibly after the Cross River Rail project is well underway, they will be prescribed by regulation. Equally, clause 20 requires the regulation prescribing the ‘transport-related projects’ to specifically state whether land can be acquired under this Bill for the purposes of those projects.

Clause 12(5)(b) provides for functions to be clarified by regulation. This power to prescribe a function by regulation is limited to it being a function relating to the Authority’s main functions under the Bill, so this is effectively a clarifying power as additional functions outside of the main functions in clause 12(1) cannot be prescribed. This is needed in case the more detailed list of functions in clause 12(2) and (3) requires further functions added to be clear about the scope of the Authority’s functions.

The definition of ‘government agency’ includes entities that can be prescribed by regulation (i.e. entities established under an Act which do not represent the State), and entities that can be excluded from being a ‘government agency’ for this Act. This is because the list of government agencies is very comprehensive and allowing for some agencies to be prescribed via regulation to be included or excluded ensures that there are no unintended consequences as a result of new agencies being formed or the functions of an agency changing.

### **Consequences imposed by legislation should be proportionate and relevant to the actions to which the consequences are applied**

#### **Appropriate defences to liability must be provided**

The following clauses impose offences and penalties for failure to comply and therefore raise the fundamental legislative principle of proportion and relevance:

- Clause 62 – Duty to act honestly
- Clause 63 – Duty to give notice of new conviction
- Clause 64 – Use of confidential information.

These offences are justified because they reinforce the expectation that board members and staff members are to observe ethical and legal behaviour in carrying out their functions and reflects the potential for significant financial gain or loss that could be made from the kind of information to which the Authority will have access. For example, the Authority could have access to commercial-in-confidence information in evaluating proposals for delivery of projects, or Cabinet-in-confidence material in evaluating cost sharing mechanisms to advise and make recommendations to the Queensland Government.

The rights and liberties of the person are protected because the offences are either flexible in how they are applied, or allow for the person to have a reasonable excuse for non-compliance.

The offences and penalties are similar to sections 54, 55 and 56 of the *Building Queensland Act 2015*.

Consequently, these offences are considered to have penalties which are proportionate to the offence.

## **Consultation**

The Queensland Government has published a website, which is dedicated to the Cross River Rail project. This website is available at <http://www.crossriverrail.qld.gov.au/>

As part of this website, any interested person can sign up to receive newsletters about the Cross River Rail project. This allows the community to stay informed as the project develops.

Part of the Cross River Rail project was the subject of an environmental impact statement and community consultation was undertaken as part of that process. The environmental impact statement, submissions and report on the environmental impact statement are available at <http://www.statedevelopment.qld.gov.au/assessments-and-approvals/cross-river-rail-project.html>

No community consultation has been undertaken with respect to the matters specifically addressed by this Bill. This is because this Bill sets up the framework for the Cross River Rail Delivery Authority and, of itself, does not have any community benefits or disadvantages.

The Queensland Government intends to consult the community prior to any potential value sharing arrangements being developed.

## **Consistency with legislation of other jurisdictions**

The Bill is specific to the Cross River Rail project and therefore specific to the State of Queensland. It is not uniform with or complementary to legislation of the Commonwealth Government or another state.

# Notes on provisions

## Part 1 Preliminary

### Division 1 Introduction

#### Short title

*Clause 1* states the short title of the Bill.

#### Commencement

*Clause 2* states that this Bill commences on a day to be fixed by proclamation. This is to ensure that consequential amendments can be made to regulations and the appointed members of the board have been approved prior to commencement. If no proclamation is done, the Bill will automatically commence on 1 July 2017 rather than the usual 12 months after assent under section 15DA of the *Acts Interpretation Act 1954*. This is to give certainty about commencement next year.

#### Purpose

*Clause 3* states that the purpose of the Act is to establish the Cross River Rail Delivery Authority as an independent statutory body. The Authority will facilitate economic development and development for community purposes in the Cross River Rail priority development area, and deliver the projects (i.e. the Cross River Rail project and the associated prescribed ‘transport-related projects’).

Note: the term ‘development’ in this section is intended to be used broadly so is excluded from the definition of ‘development’ in the Dictionary to the Bill. It is intended to have the same meaning as for the *Economic Development Act 2012* (outside of chapter 3 of that Act).

It is intended that the Authority will be brought to an end when the projects are completed. In this context, the projects will be completed when all of the Authority’s functions have come to an end and the Authority is no longer required. Note that subsection (2) is not intended to change the legal status of the Authority. It is still intended that the Authority, and its functions and powers, will only come to an end when this Act is repealed. However, subsection (2) makes it clear that it is not the intention that the Authority will continue in perpetuity.

#### Act binds all persons

*Clause 4* states the Act binds all persons, including the State, but the State cannot be prosecuted for an offence because of this Act. This is because the Cross River Rail Delivery Authority is to operate as an independent statutory body.

This clause is modelled on section 4 of the *Building Queensland Act 2015*.

## Division 2 Interpretation

### Definitions

*Clause 5* states that the definitions for words used in this Act are in the Dictionary at schedule 1. Further explanation of particular defined terms is outlined in the explanation for schedule 1.

#### **Meaning of *cross river rail project***

*Clause 6* states that the Cross River Rail project is the project described in the environmental impact statement (EIS) for the project, plus any development for a priority development area (PDA) for the Cross River Rail project. Some development in the PDA (or PDA-associated development) may be excluded by regulation because it is development which is assessable for the PDA, but it is not necessary for the Authority to deliver that aspect of development – for example, a material change of use to intensify an existing use from light industry to commercial industry may still be triggered as assessable development but not be relevant to the delivery of the Cross River Rail project. In this case, the application would still be assessed for consistency with the overall vision for the area, but this type of development could be excluded by a regulation for this section as the Authority would not be responsible for delivery of the development.

Note that the project described in the EIS for the project is linked in the definition to the Coordinator-General's report on the EIS and any subsequent change reports for the EIS. This is because the reference design for the Cross River Rail project has changed over time.

PDA-associated development for a Cross River Rail PDA is also included in the definition of Cross River Rail project (unless it is excluded by regulation).

PDA-associated development is defined by the *Economic Development Act 2012* to be development that is—

- (a) declared to be PDA-associated development for the area by a declaration by MEDQ<sup>4</sup>;  
or
- (b) identified as PDA-associated development for the area in the relevant development instrument for the area.

Examples of PDA-associated development may include road and intersection upgrades on roads connected to the PDA, trunk sewer and water connections, or a water reservoir.

#### **Meaning of *transport-related project***

*Clause 7* states that a transport-related project is a project that involves providing transport infrastructure in South-East Queensland and that the Minister is satisfied relates to the operation of rail transport infrastructure as a result of the Cross River Rail project. However, it should be noted that, in this context, the operation of the Cross River Rail project is intended to include its performance – that is, a project which helps to maximise the potential of the Cross River Rail project could also be prescribed for delivery by the Authority. These

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<sup>4</sup> Note: MEDQ is the corporation sole constituted by the Minister for the *Economic Development Act 2012* under the name Minister for Economic Development Queensland.



projects must be prescribed by regulation, which will ensure there is certainty about which projects are within the scope of the Authority. The detail of which projects should be included will become evident during the delivery of the Cross River Rail project.

Note that the terms ‘transport infrastructure’ and ‘rail transport infrastructure’ are both defined by reference to the *Transport Infrastructure Act 1994*.

Under the *Transport Infrastructure Act 1994*:

***rail transport infrastructure*** means facilities necessary for operating a railway, including—

- (a) railway track and works built for the railway, including, for example—
  - cuttings
  - drainage works
  - excavations
  - land fill
  - track support earthworks; and
- (b) any of the following things that are associated with the railway’s operation—
  - bridges
  - communication systems
  - machinery and other equipment
  - marshalling yards
  - notice boards, notice markers and signs
  - overhead electrical power supply systems
  - over-track structures
  - platforms
  - power and communication cables
  - service roads
  - signalling facilities and equipment
  - stations
  - survey stations, pegs and marks
  - train operation control facilities
  - tunnels
  - under-track structures; and
- (c) vehicle parking and set down facilities for intending passengers for a railway that are controlled or owned by a railway manager or the chief executive; and
- (d) pedestrian facilities, including footpath paving, for the railway that are controlled or owned by a railway manager or the chief executive;

but does not include other rail infrastructure.

***transport infrastructure*** includes—

- (a) air, busway, light rail, miscellaneous, public marine, rail or road transport infrastructure; and
- (b) transport infrastructure relating to ports; and
- (c) other rail infrastructure; and
- (d) active transport infrastructure.

The term ‘PDA-associated land’ is defined by reference to the *Economic Development Act 2012*. Under the *Economic Development Act 2012*, PDA-associated land means:

- (a) on which PDA-associated development for the area is located or proposed to be located; and

- (b) as described in the declaration, or identified in the relevant development instrument, for the PDA-associated development.

## **Part 2                      Cross River Rail Delivery Authority**

### **Division 1                Establishment**

#### **Establishment**

*Clause 8* establishes the Cross River Rail Delivery Authority when this Bill is proclaimed into force. For the remainder of the Bill, the term “Authority” is used.

This clause is modelled on section 6 of the *Building Queensland Act 2015*.

#### **Legal status**

*Clause 9* states that the Authority is a body corporate which may sue and be sued in its own name. This is because the Cross River Rail Delivery Authority is to operate as an independent statutory body.

This clause is modelled on section 7 of the *Building Queensland Act 2015*.

#### **Authority represents the State**

*Clause 10* states the Authority represents the State and has the status, privileges and immunities of the State. This is because the Authority is delivering the projects for the State and will be using funding provided by or through the State in carrying out its functions.

#### **Application of other Acts**

*Clause 11* sets out how the Authority is governed by other Acts.

The Authority is a unit of public administration under the *Crime and Corruption Act 2001*. This ensures that the provisions relating to corrupt conduct will apply to the Authority (see section 30 of the *Crime and Corruption Act 2001*).

The Authority is also a statutory body under the *Financial Accountability Act 2009* and the *Statutory Bodies Financial Arrangements Act 1982*. This ensures that these Acts apply to the Authority and that it must manage its financial affairs in accordance with the usual Queensland Government requirements.

The intent is that the *Statutory Bodies Financial Arrangements Regulation 2007* will also be amended by an amendment regulation to list the Cross River Rail Delivery Authority in:

- schedule 2 so that the Authority can borrow under part 5 of the *Statutory Bodies Financial Arrangements Act 1982*;
- schedule 5 so that the Authority has category 3 investment powers under part 6 of the *Statutory Bodies Financial Arrangements Act 1982*;
- schedule 8 so that the Authority can enter into derivative transactions under part 7 of the *Statutory Bodies Financial Arrangements Act 1982*.

This will ensure that, with the Treasurer's approval, the Authority will have the ability to operate as an independent body, with the powers of an individual under clause 14 of this Bill.

## **Division 2            Functions and powers**

### **Functions**

*Clause 12* sets out the Authority's functions. These functions are required so that the Authority can deliver the projects and achieve its purpose. These functions have been crafted to ensure that the Authority operates as a commercial, for profit, entity which acts commercially and competes in a market.

These functions will enable the Authority to act through the three implementation phases:

- **Readiness for Market:** finalise the implementation plan, secure government funding commitments, develop a detailed procurement and packaging plan (including technical specifications and further consideration of interface risks), undertake additional market sounding and prepare for the procurement phase.
- **Procurement:** includes an Expression of Interest stage and a Request for Proposals stage for each of the work packages, as agreed during the Readiness for Market phase.
- **Construction and contract management:** the Authority will take lead responsibility for managing construction contracts. The Authority will be focused on overseeing performance and contract management for the projects.

Note: the term 'development' in this section is intended to be used broadly so is excluded from the definition of 'development' in the Dictionary to the Bill. It is intended to have the same meaning as for the *Economic Development Act 2012* (outside of chapter 3 of that Act).

### **Functions to be carried out commercially**

*Clause 13* states that the Authority must carry out its functions as a commercial enterprise, to the extent that this is practicable. This is because the Authority is intended to operate as a separate entity which operates commercially and competes within a market. This is a common structure for government owned corporations and statutory bodies within the energy, water and transport sectors. Non-commercial functions would include the Authority's community service obligations (see clause 29 of this Bill).

### **Powers**

*Clause 14* sets out the powers that the Authority will have. This is a standard provision for the necessary powers for an independent statutory body to enable it to perform its functions effectively. These powers are necessary for the Authority to fulfil its duties and core roles of building a tunnel and realising the city building objectives for the Cross River Rail project. The intent is that these powers will be consistent with the Queensland Government's intentions for the Authority whilst maintaining transparency and accountability.

The Authority will have all of the powers of an individual and may, for example, enter into contracts or agreements, deal in land and other property, and charge government agencies for its services.

The Authority will also have land acquisition powers under the *Acquisition of Lands Act 1967* (see clauses 18 to 27 of this Bill).

These powers are based on section 20(1) and (2) of the *Building Queensland Act 2015* and section 53(5) and (7) of the *Financial Accountability Act 2009*.

### **Performing functions and exercising powers inside and outside Queensland**

*Clause 15* states that the Authority may perform its functions or exercise its powers both within Queensland and outside of Queensland. This is needed, for example, if the Authority wishes to enter into a contract or engage a consultant whose business is located outside of Queensland.

This provision is based on section 20(3) of the *Building Queensland Act 2015*.

### **Ministerial direction**

*Clause 16* allows the Minister responsible for this Act to give the Authority written directions about how it performs its functions or exercises its powers. Compliance with the Minister's direction will be taken into account in determining whether the Authority has satisfied its duties pursuant to clause 72 of this Bill and the *Financial Accountability Act 2009*. While it is not anticipated that Ministerial direction would be a normal occurrence, the ability for the Minister to provide a statutory body with direction is consistent with Queensland Government policy and is intended to ensure the necessary flexibility for the Minister to take a 'best for project' approach where required.

The Minister must not give a direction about the content of any advice or recommendations given by the Authority. This is to maintain the independence of the Authority.

This provision is based on section 19 of the *Building Queensland Act 2015*.

### **Authentication of documents**

*Clause 17* provides for how documents can be authenticated. This is an administrative section which provides legal certainty and ease of administration in entering into or signing documents such as contracts, instruments of delegation, or instruments for registration under the *Land Title Act 1994*.

Note that, while clause 9 of this Bill does not require the Authority to have a seal, nothing in this Bill prevents the Authority from having a seal if it is required to provide sealed documents under another Act.

This section is based on section 8(1) of the *Queensland Rail Transit Authority Act 2013*.

## **Division 3      Dealing in land or other property**

Currently, land acquisition powers for transport projects are set out in the *Transport Planning and Coordination Act 1994*. Under that Act, the chief executive may (for the State) acquire, hold, dispose of or otherwise deal with property:

- for the purposes of transport;
- for an incidental purpose (including construction or supporting activities);
- for the purpose of transport associated development; or
- a combination of these purposes.

The powers in this division are modelled on the *Transport Planning and Coordination Act 1994* provisions. However, they do not require a clear nexus between the transport purpose and the incidental purpose. This is because the Cross River Rail project has transformational city building potential and dealing in land is not just compulsory acquisition, but includes acquiring land at market value through normal purchasing powers. Therefore, this broader power is required to ensure the Authority is capable of fulfilling the project's city building capacity. This approach is consistent with the *Barangaroo Delivery Authority Act 2009* (NSW) where land can be acquired for the purposes of the Act, which include the creation of a high quality commercial and mixed use precinct connected to and supporting the economic development of Sydney.

### **What power to deal in land or other property includes**

*Clause 18* clarifies that the Authority's power to deal in land or other property includes the power to deal in an interest in land or other property. It also includes the power to deal in improvements on land. This is intended to clarify the term to "deal in", and not limit the *Acts Interpretation Act 1954* definitions of 'land' and 'property'.

This section is based on section 16 of the *Economic Development Act 2012*, updated to reflect modern drafting practices.

### **Dealing in land or other property generally**

*Clause 19* states when the Authority may deal in land or other property. The Authority can deal in any land and other property in any areas which will help it to fulfil its functions. This clause is not limited to the Cross River Rail PDA since, for example, it may be useful to buy or lease land in nearby areas on commercial terms to fulfil the economic development aspects of the Cross River Rail project.

This clause is modelled on section 25 of the *Transport Planning and Coordination Act 1994* and provides similar powers for dealing in land.

### **Power to take land**

*Clause 20* sets out when the Authority may take land under the *Acquisition of Land Act 1967*. While most of the Cross River Rail project will be undertaken on State-owned land, there may be a need to acquire property rights for works underground, and to create economic development precincts for the major clusters to be commercially viable. The acquisition power in this clause is limited to land that is required for the Cross River Rail project or an associated prescribed 'transport-related project'. However, if it is intended to use this power for a transport-related project, the regulation must specify this. This ensures that this power is not automatically triggered when a transport-related project is prescribed in the regulation, since it may not be required.

This clause also states that State land can be acquired by the Authority. In this case, the *Acquisition of Land Act 1967* provisions apply as if the lease or other interest is freehold land. State land is defined in the Dictionary to this Bill to be land under the *Land Act 1994* that is not freehold land.

This clause makes the Authority a ‘constructing authority’ for the purposes of the *Acquisition of Land Act 1967*. This means that the process for acquiring land is under that Act, with the associated powers and obligations.

This clause is modelled on sections 25 and 26 of the *Transport Planning and Coordination Act 1994* and provides similar powers for acquiring land.

### **Taking additional land**

*Clause 21* recognises that the acquisition of land can sever part of an owner’s land from other parts of an owner’s land. This may be required on large blocks where transport infrastructure needs to go through the block. This section allows the Authority to take all or part of the remaining land, provided the Authority has the Minister’s approval.

This clause is modelled on section 25 of the *Transport Planning and Coordination Act 1994* and provides for similar abilities to sever part of the land.

### **Taking an interest in State land**

*Clause 22* sets out the process for taking State land. Since State land is not freehold, the process is slightly different than the process in the *Acquisition of Land Act 1967*. The process involves giving the chief executive for the *Land Act 1994* notice to ensure that the land registry under that Act is current.

This clause is modelled on section 25 of the *Transport Planning and Coordination Act 1994* and provides for a similar process.

### **Changing requirement for land taken**

*Clause 23* sets out how the Minister can change the purpose for which land is taken. This does not change the land that is taken, just the purpose for which it is taken, so compensation provisions do not apply and the date of the acquisition of the land is not changed.

This clause is modelled on section 26A of the *Transport Planning and Coordination Act 1994* and provides for a similar process.

### **Matters affecting compensation payable**

*Clause 24* states that the compensation payable to a person for acquisition of their land must not take into account the value of works carried out on the land after the notice etc is given, or any change in value because of a Cross River Rail PDA declaration. This is because land values tend to increase with additional infrastructure works, which would give a windfall to the owner which would not occur without the infrastructure works.

This clause is modelled on section 28 of the *Transport Planning and Coordination Act 1994* and provides for similar matters.

### **Power to use, lease or dispose of land**

*Clause 25* sets out when the Authority can lease or sell land, or make an agreement about the land. It also removes any doubt that the power to acquire land can be exercised even if the ultimate intention is to dispose of the land or enter into an agreement about the land (for example, for another party to develop the land for commercial purposes). This is because, for example, additional land can be required during the construction phase of the projects which is ultimately not needed once construction is completed.

This clause is modelled on section 27 of the *Transport Planning and Coordination Act 1994* and provides similar powers for acquiring land.

### **Notice of intention to dispose of land that is not required**

*Clause 26* requires the Authority to offer land that is no longer needed for the projects to the owner of the land as a first right of refusal. This requirement only applies for seven years after the day the land is taken because that is the timeframe in which section 41 of the *Acquisition of Land Act 1967* applies. This provides a fair and equitable process to the former owner whose land was resumed by the Authority for the Cross River Rail project or the associated prescribed ‘transport-related projects’.

This clause is modelled on section 27A of the *Transport Planning and Coordination Act 1994* and provides similar powers for disposing of land.

### **Power to dispose of land that is not required**

*Clause 27* gives the Authority the power to dispose of any land which is not required – either to the former owner (see clause 26 of this Bill) or to another person. This ensures that land that was acquired for the purposes of the projects does not need to be retained by the Authority once it is no longer needed. This could include, for example, land which was resumed but ultimately was not required, or land which was required during the construction phase of the projects but is not required once the projects are operational.

This clause is modelled on section 27A of the *Transport Planning and Coordination Act 1994* and provides similar powers for disposing of land.

### **Holding land or other property obtained as security**

*Clause 28* applies where the Authority is a creditor for a debt owing to the Authority, and the Authority becomes entitled to land or other property as security for that debt. In these circumstances, the Authority does not need to comply with clauses 26 and 27 of the Bill in disposing of the land or property, since these clauses only apply if land is taken under the *Acquisition of Land Act 1967*. Therefore, this section states that the Authority may hold the land or property described in this clause until it can be advantageously disposed of. This clause assists the Authority to carry out its functions under clause 12 of the Bill.

This clause is based on section 22 of the *Economic Development Act 2012* and provides for similar powers for disposing of land.

## **Division 4            Community service obligations**

### **Community service obligations to be stated in operational plan**

*Clause 29* requires the Authority to state its community service obligations in its operational plan. It is necessary to state the community service obligations since these activities do not need to be carried out as a commercial enterprise under clause 13 of the Bill, and the exemption from the application of the *Right to Information Act 2009* (see clause 80 of the Bill) does not apply to these activities.

This clause is modelled on section 58 of the *Queensland Rail Transit Authority Act 2013*.

## **Part 3                    Cross River Rail Delivery Board**

### **Division 1            Establishment, functions and powers**

#### **Establishment**

*Clause 30* establishes the board of management for the Authority. In the rest of this Bill, the board is referred to as the Cross River Rail Delivery Board or the board.

This is similar to section 22 of the *Building Queensland Act 2015*.

#### **Functions**

*Clause 31* sets out the functions of the board, including ensuring the proper, efficient and effective performance of the Authority. The board will develop and decide the objectives, strategies and policies under which the Authority will operate. This clause is not restrictive – if another clause of this Bill gives the board a function, this is included as the functions of the board.

Note that subclause (c) requires compliance with the strategic plan and operational plan under the *Financial Accountability Act 2009*. These documents form part of the financial and performance management standard which must be complied with under section 57 of the *Financial Accountability Act 2009*.

These functions are modelled on section 23 of the *Building Queensland Act 2015*.

#### **Powers**

*Clause 32* sets out the powers the board has in performing its functions. It includes the power to do anything necessary or convenient in the performance of its functions. The board may also give written directions to the chief executive officer of the Authority about the performance of the officer's responsibilities.



Additionally, any action done in the name of the Authority, or for the Authority, is taken to have been done by the Authority if it was done by the board or with the authority of the board. This is a standard provision for providing the necessary power for boards of independent statutory bodies to enable the independent operation of the body.

These powers are modelled on section 24 of the *Building Queensland Act 2015*.

## **Division 2            Membership**

### **Membership of board**

*Clause 33* provides for membership of the board, including permanent board members and appointed board members.

The first four members are Directors-General from Queensland Government departments relevant to the operation of the Cross River Rail Delivery Authority (or their nominee). They are appointed to the board by virtue of their office and are referred to as ‘permanent board members’.

Note: the Director-General of the Department of Transport and Main Roads is identified by reference to the *Rail Safety National Law (Queensland) Act 2016*. This legislation is currently a Bill before Parliament, but it is anticipated that it will be passed prior to this Bill commencing.

The Governor in Council may also appoint up to six other members on the recommendation of the responsible Minister (‘appointed board members’). The intent is that this will include independent experts in matters relevant to the Authority and may include members nominated by other levels of government.

For any of the appointed board members, the Minister must be satisfied that they have the necessary qualifications or skills relevant to the functions of the Authority. For example, the Minister may consider that the person has qualifications or experience in one or more of the following areas: economics, project management, infrastructure, major projects, urban planning and design, project finance, public private partnerships, business case development, engineering, construction, procurement, legal, transport/logistics, and environment.

The membership of the board is intended to generate an appropriate mix of skills and experience to enable the Authority to perform all of its functions effectively.

This provision is based on section 25 of the *Building Queensland Act 2015*.

### **Chairperson and deputy chairperson**

*Clause 34* states that the Governor in Council may appoint a chairperson and deputy chairperson from the members of the board. The chairperson is appointed, rather than elected, since they will usually be the presiding member at any board meetings and will therefore have the casting vote for any questions to be decided by the board where the votes are equal (see clause 45 of this Bill) .

Since the board for the Authority is quite large, this clause also makes provision for the appointment of a deputy chairperson. The deputy chairperson acts as the chairperson when the chairperson is unable to attend meetings.

This section is modelled on section 133 of the *Economic Development Act 2012*.

### **Disqualification as appointed board member**

*Clause 35* sets out when a board member is disqualified from being a board member. This clause applies to both current and proposed board members. For example, a person may be disqualified if they have a conviction for an indictable offence or are an insolvent under administration.

Paragraphs (a) to (c) are standard provisions which ensure board members remain appropriately qualified throughout their term of appointment. Paragraph (d) is specific to this type of statutory body to ensure that members could not have a possible conflict of interest between performing a role as an employee or contractor of the Authority and as a member of the board.

This provision is modelled on section 26 of the *Building Queensland Act 2015*.

Note that the *Acts Interpretation Act 1954* defines the term ‘Corporations Act’ to mean the *Corporations Act 2001* (Cwlth).

### **Term of appointment**

*Clause 36* states that the board members hold office for the term stated in their instrument of appointment. This term must not be longer than three years, but the board member may be reappointed for another term (of not longer than three years each time).

This provision is modelled on section 27 of the *Building Queensland Act 2015*.

### **Conditions of appointment**

*Clause 37* states that the Governor in Council decides the remuneration, allowances and conditions of appointment for the board member.

This provision is modelled on section 28 of the *Building Queensland Act 2015*.

### **Vacancy in office**

*Clause 38* states that the board member’s office becomes vacant if their term is completed (and they are not reappointed), they resign, or they become disqualified. Provision for resignation by signed notice to the Minister is a standard provision for independent statutory body board member’s appointments, and the other provisions merely point to other provisions of this Bill.

This provision is modelled on section 29 of the *Building Queensland Act 2015*.

## **Leave of absence**

*Clause 39* states that the Minister may approve a leave of absence for the chairperson or deputy chairperson and that the chairperson may approve a leave of absence for any other appointed board member. In each case, another person may be appointed to act for the board member during their absence. However, there is no need to appoint another person to act for the chairperson as this role will automatically be taken by the deputy chairperson.

The leave arrangements for permanent members of the board (the departmental Directors-General or their nominee) are provided for under their relevant terms of appointment under the *Public Service Act 2008*.

These provisions ensure that the board can always make a quorum for board meetings.

This provision is modelled on section 30 of the *Building Queensland Act 2015*.

## **Register of interests**

*Clause 40* requires the Authority to keep a register of each board member's pecuniary interests. Board members must inform the Minister for this Act and the Queensland Integrity Commissioner under the *Integrity Act 2009* of their pecuniary interests and any substantial changes to their pecuniary interests.

This provides transparency and mitigates the potential for conflicts of interest to arise while a board member is performing a function of the Authority.

This provision is modelled on section 31 of the *Building Queensland Act 2015*.

## **Division 3 Board meetings**

### **Conduct of business**

*Clause 41* states that the board may conduct its business in any way it considers to be appropriate. This includes the board's meetings. This clause gives the board flexibility with how it manages its functions and exercises its powers, providing the requirements of this Bill are met.

This provision is modelled on section 38 of the *Building Queensland Act 2015*.

### **Board meetings**

*Clause 42* sets out when the chairperson may and must convene a board meeting. Board meetings must be convened at least 3 times a year and if requested by 3 or more board members or requested by the Minister. This ensures that the board meets with sufficient regularity to carry out its functions and meet its statutory obligations (e.g. financial reporting obligations).

This provision is modelled on section 32 of the *Building Queensland Act 2015*.

## **Presiding at board meetings**

*Clause 43* sets out who presides at board meetings. This is important because, if the votes are equal on a question, then the presiding member has the casting vote. This ensures that all questions to be decided at a board meeting can be decided, and need not be held over until agreement can be reached.

This provision is modelled on section 33 of the *Building Queensland Act 2015*.

## **Quorum at board meetings**

*Clause 44* states that a quorum for a board meeting is a majority of the board members at that time. This means that meetings can be held, and questions decided, if only half of the board is present at the meeting. This ensures that the board for the Authority does not need to be reconvened if some members cannot attend.

However, there is not a quorum if the majority of board members present are permanent board members (i.e. Directors-General of Queensland Government departments or their nominees). This balances the need to have a quorum at board meetings with maintaining the Authority's independent status.

This provision is modelled on section 34 of the *Building Queensland Act 2015*.

## **Voting at board meetings**

*Clause 45* states that, at a board meeting, a question is decided by the majority of the votes of board members present. The board members must also be able to vote on the question (see clause 46 of this Bill regarding when a board member may be unable to vote). If there are equal votes for both sides, then the presiding member has the casting vote (i.e. the deciding vote).

This provision is modelled on section 35 of the *Building Queensland Act 2015*.

## **Disclosure of interests at board meetings**

*Clause 46* sets out when material personal interests of board members must be disclosed to the board. This applies to a board member if the member, a close relative, or a named associate has a material personal interest in a matter being considered and the interest could conflict, or be perceived to conflict, with the proper and honest performance of the member's duties in considering the matter.

As soon as practicable after the facts come to the board member's knowledge, they must disclose the nature of the interest to the other members at the meeting. The board member may keep on participating in the meeting if a majority of the other members agree, but they will be ineligible to vote on the matter. The disclosure must be recorded in the minutes of the meeting, but failing to do so does not (of itself) invalidate a decision of the board. For clarity, this clause provides that a 'material personal interest' is where the board member (or their close relative or named associate) stands to benefit or suffer a loss because of the outcome of the consideration of the matter.

This clause seeks to maintain transparency and openness of the board's decisions.

Note: 'government agency' is defined in the Dictionary to this Bill to include Commonwealth Government agencies and local government agencies since a Commonwealth Government and/or a local government nominee may be an 'appointed board member'.

This provision is modelled on section 36 of the *Building Queensland Act 2015*.

## **Minutes**

*Clause 47* states that the board must keep minutes of its meetings. This is to ensure that records of discussions are maintained for audit purposes.

This provision is modelled on section 37 of the *Building Queensland Act 2015*.

## **Decisions of the board without board meetings**

*Clause 48* allows the board to make a decision on a question without having a board meeting. The board procedures outlined in this provision must be followed and a record of the decision kept. This allows more routine matters to be decided without needing a quorum of board members. This limits operational and administrative red-tape for the Authority by allowing certain decisions to be made in between meetings.

This provision is modelled on section 39 of the *Building Queensland Act 2015*.

## **Part 4 Chief executive officer**

### **Appointment**

*Clause 49* states that the board must appoint the chief executive officer in consultation with the Minister responsible for this Act. The chief executive officer is employed by the board under this Act and not the *Public Service Act 2008*. This is to ensure that the board has the ability to attract a chief executive officer with relevant experience in project delivery at commercial market rates.

This provision is modelled on section 40 of the *Building Queensland Act 2015*.

### **Chief executive officer's responsibilities**

*Clause 50* sets out the role and responsibilities of the chief executive officer. This clause makes it clear that the chief executive officer must act in accordance with the written policies and directions of the board, and will be held accountable to the board.

Note: 'government agency' is defined in the Dictionary to this Bill to include Commonwealth Government agencies and local government agencies since the Commonwealth Government and/or a local government may second an officer or employee to the Authority.

This provision is modelled on section 41 of the *Building Queensland Act 2015*.

## **Disqualification as chief executive officer**

*Clause 51* sets out when the chief executive officer would be disqualified from taking (or continuing in) the role. These disqualifying events are similar to when the chief executive officer would be disqualified from the role in other statutory authorities, such as Building Queensland. Paragraphs (a) to (c) are standard provisions which ensure the chief executive officers of independent statutory bodies remain appropriately qualified throughout the term of their appointment.

Paragraph (d) ensures that the chief executive officer cannot have any possible conflict of interest between performing a role as a contractor and their role as chief executive officer for the Authority.

Paragraph (e) ensures that there cannot be any possible conflict between the chief executive officer's role with the Authority and their role as another paid worker or in managing a business. Paragraph (e) also ensures that the chief executive officer is disqualified if they breach the conflict of interest provisions.

This provision is modelled on section 42 of the *Building Queensland Act 2015*.

Note that the *Acts Interpretation Act 1954* defines the term 'Corporations Act' to mean the *Corporations Act 2001* (Cwlth).

## **Term of appointment**

*Clause 52* states that the chief executive officer's term of appointment is stated in their instrument of appointment. The term must not be longer than 5 years, but the person can be reappointed into the role (for not longer than 5 years each time). This ensures that the chief executive officer's role remains relevant to the role of the Authority.

Note: the instrument which appoints the chief executive office will usually be a contract of employment.

This provision is modelled on section 43 of the *Building Queensland Act 2015*.

## **Conditions of appointment**

*Clause 53* states that the board decides the chief executive officer's remuneration, allowances and conditions of employment.

Note: the instrument which appoints the chief executive office will usually be a contract of employment.

This provision is modelled on section 44 of the *Building Queensland Act 2015*.

## **Vacancy in office**

*Clause 54* states that the chief executive officer's role becomes vacant if they complete their term and are not reappointed, resign, or become disqualified under clause 51 of this Bill. Providing for resignation by signed notice to the board is a standard provision for the chief

executive officer's appointment to an independent statutory body. This clause also makes it clear when another chief executive officer can be appointed.

This provision is modelled on section 45 of the *Building Queensland Act 2015*.

### **Chief executive officer not to engage in other paid employment**

*Clause 55* requires the chief executive officer to be only employed by the Authority. However, the chief executive officer may take other paid employment with the board's permission. This ensures that the chief executive officer's role is not compromised by another business.

This provision is modelled on section 46 of the *Building Queensland Act 2015*.

### **Conflicts of interest**

*Clause 56* requires the chief executive officer to disclose any conflicts of interest to the board. This ensures that the chief executive officer acts in the best interests of the Authority and is not swayed by outside interests.

This provision is modelled on section 47 of the *Building Queensland Act 2015*.

## **Part 5                    Other staff**

### **Authority staff**

*Clause 57* states that the Authority can employ other staff in order to perform its functions. These staff will be employed by the Authority under this Act and not under the *Public Service Act 2008*. This is to ensure that the Authority has the ability to attract staff with relevant experience in project delivery at commercial market rates.

This provision is modelled on section 48 of the *Building Queensland Act 2015*.

### **Alternative staffing arrangements**

*Clause 58* allows the Authority to employ government officers on secondment to the Authority. These arrangements are made with the chief executive of the government agency (e.g. the Director-General of a department). Government officers who are currently employed under the *Public Service Act 2008* would remain employed under the *Public Service Act 2008* but would be taken to be a member of the staff of the Authority for the period their services are made available to the Authority. This allows the Authority to access the expertise of Queensland Government public servants without the public servants losing their permanent position or rights and conditions of employment under the *Public Service Act 2008*.

Note: 'government agency' is defined in the Dictionary to this Bill to include Commonwealth Government agencies and local government agencies since the Commonwealth Government and/or a local government may second an officer or employee to the Authority. These officers would not be employed under the *Public Service Act 2008* and they would not become employed under the *Public Service Act 2008* by virtue of their secondment to the Authority.

This provision is modelled on section 49 of the *Building Queensland Act 2015*.

## **Part 6 Cross River Rail Delivery Fund**

### **Establishment**

*Clause 59* establishes a fund called the Cross River Rail Delivery Fund. In the remainder of this Bill, the fund is referred to as ‘the fund’. The fund does not form part of the consolidated fund. The consolidated fund is for income and expenditure for the government as a whole. The Cross River Rail Delivery fund is designed to ensure that any amounts that come into the fund are only spent on matters relating to the Cross River Rail project or the other prescribed ‘transport-related projects’.

This fund will account for the proceeds from commercial activities and the proceeds of any rates and charges which are raised for the Cross River Rail projects under the *Economic Development Act 2012*. Rates and charges can be raised under the existing provisions of the *Economic Development Act 2012* (see section 115 of the *Economic Development Act 2012*) and the delegation can specify that any special rates and charges charged by the Authority on behalf of MEDQ<sup>5</sup> can be retained by the Authority if the delegation provides for it (see section 26(3) of the *Economic Development Act 2012*). Consequently, this money would not be paid into the Economic Development Fund, but would be paid into the Cross River Rail Delivery Fund.

Note: ‘consolidated fund’ is defined under the *Acts Interpretation Act 1954* to mean the consolidated fund established under section 16 of the *Financial Accountability Act 2009*.

This provision is based on section 25 of the *Economic Development Act 2012*.

### **Payment of amounts into fund**

*Clause 60* sets out which amounts received by the Authority must be paid into the fund. This ensures that amounts which are designated for the projects to be delivered by the Authority are paid into the Cross River Rail Delivery Fund and not into the consolidated fund.

This provision is based on section 26 of the *Economic Development Act 2012*.

### **Payments of amounts from fund**

*Clause 61* sets out when amounts may be paid from the fund by the Authority. This ensures that there is transparency around what amounts paid into the fund will be used for – for example, in paying for the Authority’s costs in performing its functions or exercising its powers.

This provision is based on section 27 of the *Economic Development Act 2012*.

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<sup>5</sup> Note: MEDQ is the corporation sole constituted by the Minister for the *Economic Development Act 2012* under the name Minister for Economic Development Queensland.



## **Part 7                    Offences and legal proceedings**

### **Division 1            Offences**

#### **Duty to act honestly**

*Clause 62* requires all board members, chief executive officers, members of staff and contractors of the Authority to act honestly in the performance of their functions and the exercise of their powers. This is similar to the obligations upon Queensland Government officers under each department's Code of Conduct.

This clause raises fundamental legislative principles as it creates a new offence and the penalty must be justifiable. The offence and its penalty of 200 penalty units are justified because of the potential for significant financial gain or loss that could be made from the kind of information to which the Authority will have access. For example, the Authority could have access to commercial-in-confidence information in evaluating proposals for delivery of projects, or Cabinet-in-confidence material in evaluating cost sharing mechanisms to advise and make recommendations to the Queensland Government. Since this information is available to Authority officers when it would not be available to the Authority's competitors, it is essential that all officers of the Authority have a duty to act honestly.

The offence and penalty are similar to section 54 of the *Building Queensland Act 2015*.

#### **New convictions must be disclosed**

*Clause 63* requires all board members and the chief executive officer to give notice to the Minister of all convictions for indictable offences during the term of their appointment. This ensures that all board members and the chief executive officer remain eligible to hold office.

This clause raises fundamental legislative principles as it creates a new offence and the penalty must be justifiable. The offence and its penalty of 100 penalty units is justified because the penalty reinforces the expectation that board members and Authority staff are to observe ethical and legal behaviour in carrying out their functions. The rights and liberties of the person are protected because the provision allows for the person to have a reasonable excuse for non-compliance.

The offence and penalty are similar to section 55 of the *Building Queensland Act 2015*.

#### **Use of confidential information**

*Clause 64* requires all board members, chief executive officers, staff and contractors (including when they have held that role in the past) to keep confidential any confidential information that they obtain while administering or performing a function under this Act. This is similar to the obligations upon Queensland Government officers under each department's Code of Conduct.

This clause raises fundamental legislative principles as it creates a new offence and the penalty must be justifiable. The offence and its penalty of 200 penalty units are justified because of the potential for significant financial gain or loss that could be made from the kind

of information to which the Authority will have access . For example, the Authority could have access to commercial-in-confidence information in evaluating proposals for delivery of projects, or Cabinet-in-confidence material in evaluating cost sharing mechanisms to advise and make recommendations to the Queensland Government.

The offence and penalty are similar to section 56 of the *Building Queensland Act 2015*.

## **Division 2            Evidentiary provisions**

### **Offences against this Act**

*Clause 65* states that offences against this Act are summary offences and must be prosecuted within the statutory timeframe. This ensures that proceedings are commenced in a timely manner.

This provision is modelled on sections 57 and 58 of the *Building Queensland Act 2015*.

### **Appointments and authority**

*Clause 66* provides an evidentiary aid which presumes that appointments and functions performed under this Act are proven, unless a party to the proceeding requires proof of the matter. This ensures that legal proceedings are not delayed by requiring proof of matters which are not in contention.

This provision is modelled on section 59 of the *Building Queensland Act 2015*.

### **Signatures**

*Clause 67* provides an evidentiary aid which presumes that the purported signature of a board member or the chief executive officer is actually their signature. This ensures that legal proceedings are not delayed by requiring proof of matters which are not in contention.

This provision is modelled on section 60 of the *Building Queensland Act 2015*.

### **Other evidentiary aids**

*Clause 68* provides for other evidentiary aids which allow matters to be proven by a certificate from the chairperson. This ensures that legal proceedings are not delayed by requiring proof of matters which are not in contention.

This clause also provides an evidentiary aid for the time in which a prosecution for an offence may be commenced. This provides that a statement from a complainant in the complaint for the offence that the matter came to their knowledge on a particular day is evidence that the matter came to their knowledge on that day. This avoids the need for routine statements to be introduced into evidence when prosecuting a matter.

This provision is modelled on section 61 of the *Building Queensland Act 2015*.

## Part 8 Other matters

### Relationship with Queensland Heritage Act 1992

*Clause 69* sets out the relationship of this Act to the *Queensland Heritage Act 1992*. This clause has the effect that development which is delivered by the Authority which affects Queensland heritage is assessed under the State development mechanism (i.e. section 71 of the *Queensland Heritage Act 1992*) and not through the usual Planning Act provisions for assessable development. It is intended to make a further amendment to the provisions of the regulation for the Planning Act to ensure that this is not assessable development under those provisions.

### Criminal history report

*Clause 70* permits the Minister to request a criminal history check for a person who is (or is to be) appointed as a board member or the chief executive officer. The criminal history report allows the Minister to determine whether a person is disqualified from becoming or continuing as a board member or chief executive officer under clauses 35 and 51 of this Bill.

This clause raises fundamental legislative principles about adversely affecting the rights and liberties of a person. However, the provision is justified because the Minister may only make the request if the person has first given the Minister written consent for the request. The clause also includes safeguards about the use of the person's criminal history and requires the Minister to ensure the report is destroyed as soon as it is no longer needed.

This provision is modelled on section 62 of the *Building Queensland Act 2015*.

### Annual budgets and financial management policies

*Clause 71* sets out when the Authority is required to prepare its budget and financial management policies and the process for having them approved. This ensures that the Authority will meet its obligations under the *Financial Accountability Act 2009*.

This clause is based on section 50 of the *Building Queensland Act 2015*. However, in order to preserve the operational independence of the Authority, the strategic and operation planning requirements are to be approved directly by the Minister, rather than through an administering department.

### Annual report

*Clause 72* sets out the mandatory content requirements for the Authority's annual report. This ensures that the Authority will meet its obligations under the *Financial Accountability Act 2009*.

This clause is based on section 51 of the *Building Queensland Act 2015*. However, in order to preserve the operational independence of the Authority, the strategic and operation planning requirements are to be approved directly by the Minister, rather than through an administering department. In addition, there is no need to specify the infrastructure projects being delivered by the Authority since these are limited to the Cross River Rail project and those transport-related infrastructure projects which are prescribed in the regulation.

This clause is in addition to the annual report requirements under section 63 of the *Financial Accountability Act 2009*. For example, the *Financial Accountability Act 2009* sets out the timeframe for giving the report to the Minister, and requires the Minister to table the annual report in Parliament (see section 63 of the *Financial Accountability Act 2009*).

## **Delegations**

*Clause 73* provides for the delegation of the Authority's functions to a board member or the chief executive officer. The board and the chief executive officer may also delegate their powers. The delegated power may be subdelegated to an appropriately qualified staff member of the Authority. This ensures that the functions and powers of the Authority, the board and the chief executive officer can be carried out or exercised in a timely manner by the appropriate level of staff member.

This section raises the fundamental legislative principle that delegation and subdelegation of administrative power should only be in appropriate cases and to appropriate persons. Under clause 33 of this Bill, the board is made up of board members who are considered to be appropriately qualified by reference to their position (for permanent board members) or who have qualifications or experience in a field relevant to a function of the authority (for appointed members). Under clause 50 of this Bill, the chief executive officer is accountable to the board and must comply with the written policies and directions of the board. Under this clause of the Bill, a function or power can only be delegated to an appropriately qualified member of the staff of the Authority. The functions and powers cannot be delegated outside of the Authority. Consequently, it is considered that the delegation and subdelegation of administrative power is appropriate.

## **Regulation-making power**

*Clause 74* provides a head of power to make regulations under this Act. There are a number of matters which can be prescribed by regulation under this Act, including which projects are transport-related projects for this Bill under clause 7, functions of the Authority under clause 12, and a prescribed government agency under the definition of 'government agency'.

## **Part 9                   Amendment of Acts**

### **Division 1           Amendment of this Act**

#### **Act amended**

*Clause 75* states that part 9, division 1 of this Bill amends the *Cross River Rail Delivery Authority Act 2016* (once it is passed and receives assent).

#### **Amendment of long title**

*Clause 76* amends the long title of the Bill to remove references to the other Acts amended this part. This ensures that the Act, once it has passed and commenced, will only contain the provisions of the Act, not the other Acts amended (as required under the *Reprints Act 1992*).

## **Division 2            Amendment of Economic Development Act 2012**

### **Act amended**

*Clause 77* states that part 9, division 2 of this Bill amends the *Economic Development Act 2012*.

### **Amendment of s 169 (Delegations)**

*Clause 78* amends section 169 of the *Economic Development Act 2012* to allow for the functions and powers of MEDQ<sup>6</sup> to be delegated to the Cross River Rail Delivery Authority. This is similar to the existing power for MEDQ to delegate to the Commonwealth Games Infrastructure Authority. In practice, MEDQ might not delegate any of its powers or functions, but by providing for the ability to delegate, this allows for flexibility in the future. This may be needed to ensure the smooth economic development of the Cross River Rail projects or the associated prescribed ‘transport-related projects’.

If MEDQ delegates its functions and power to the Authority under this section, the Authority may subdelegate those functions and powers to a board member, its chief executive officer, or a member of its staff. This ensures that the functions and powers of the Authority can be carried out or exercised in a timely manner by the appropriate level of staff member.

This section raises the fundamental legislative principle that delegation of administrative power should only be in appropriate cases and to appropriate persons. The delegation of MEDQ’s functions and powers to the Authority are considered to be appropriate for the reasons expressed above. Under clause 33 of this Bill, the board is made up of board members who are considered to be appropriately qualified by reference to their position (for permanent board members) or who have qualifications or experience in a field relevant to a function of the authority (for appointed members). Under clause 50 of this Bill, the chief executive officer is accountable to the board and must comply with the written policies and directions of the board. The functions and powers cannot be delegated outside of the Authority. In addition, under section 170 of the *Economic Development Act 2012*, MEDQ can give both general direction about the performance of delegated functions or the exercise of delegated powers, and specific direction to an entity to whom a function or power is delegated (a delegate). The delegate must comply with these directions.

Consequently, it is considered that the subdelegation of MEDQ’s administrative power is appropriate.

## **Division 3            Amendment of Right to Information Act 2009**

### **Act amended**

*Clause 79* states that part 9, division 3 of this Bill amends the *Right to Information Act 2009*.

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<sup>6</sup> Note: MEDQ is the corporation sole constituted by the Minister for the *Economic Development Act 2012* under the name Minister for Economic Development Queensland.

## **Amendment of sch 2 (Entities to which this Act does not apply)**

*Clause 80* amends schedule 2 of the *Right to Information Act 2009* so that the commercial functions of the Cross River Rail Delivery Authority are not subject to the right to information framework. This is consistent with other government entities which operate as a commercial enterprise, such as CS Energy Limited, the Stanwell Corporation Limited, and a rail government entity under the *Transport Infrastructure Act 1994* (i.e. Queensland Rail Limited and the Queensland Rail Transit Authority). This is because the Authority's functions are to be carried out as a commercial enterprise and to make these functions subject to the right to information framework could place the Authority at a commercial disadvantage. The Authority's community service obligations will still be subject to the right to information framework.

## **Schedule 1      Dictionary**

Schedule 1 inserts a Dictionary of the terms used in the Bill.

The following terms are defined by cross-references to this or other Acts:

- appointed board member
- authority
- board
- board meeting
- board member
- chairperson
- chief executive officer
- community service obligations
- Cross River Rail Delivery Board
- Cross River Rail project
- Cross River Rail purpose
- deputy chairperson
- development
- fund
- insolvent under administration
- notice of intention to resume
- PDA-associated land
- permanent board member
- Planning Act
- priority development area
- Queensland Rail Transit Authority
- response notice
- spent conviction
- State land
- transport infrastructure
- transport-related project.

The term Cross River Rail PDA is defined to be a priority development area (PDA) declared under the *Economic Development Act 2012* for proposed development for the Cross River Rail project or a part of the project. The Cross River Rail PDA has not yet been declared, so

the definition is intended to include any PDA that MEDQ<sup>7</sup> makes which is relevant to the Cross River Rail project.

The term ‘confidential information’ is used in the offence provisions in clause 64 of the Bill. This offence provision is similar to the obligations about use of confidential information in the *Building Queensland Act 2015*, *Gasfields Commission Act 2013* and *Jobs Queensland Act 2015*. Therefore, this definition is consistent with the definitions in those Acts. Note: this Bill also requires the annual report for the Authority to be prepared in a way that maintains the confidentiality of information (see clause 72 of the Bill).

The terms ‘contractor’, ‘spent conviction’ and ‘subsidiary’ are defined to be consistent with the same term in the *Building Queensland Act 2015*.

The term ‘conviction’ is defined to include both recorded convictions and unrecorded convictions. This is because unrecorded convictions can also impact on a person’s suitability to be a member of the board or the chief executive officer. This is consistent with the *Economic Development Act 2012*.

The term ‘deal’ in land or other property is defined broadly to include acquiring, developing, disposing, holding, leasing, licensing, managing, and subleasing (amongst other things). This is because the Authority should not be restricted in how it deals with land or other property in order to operate as a commercial enterprise. This is consistent with how the *Transport Planning and Coordination Act 1994* describes dealing with land and other property in section 25. Note that the *Economic Development Act 2012* also includes rehabilitation of contaminated land as part of its definition of ‘deal’ in land or other property. However, rehabilitation of contaminated land is part of development of the land and therefore, this limb of the definition is not needed.

The term ‘delivery’ is defined to include the development (as defined by reference to the Planning Act) for the projects, and to include construction, commissioning and operation of the transport infrastructure that results from the projects. This ensures that the functions of the Authority are broad enough to encompass the economic delivery aspect of the Cross River Rail project.

The term ‘former owner’ has a meaning which is consistent with the definition in section 41(2) of the *Acquisition of Land Act 1967*. This makes the use of this term consistent with how it is used in the *Transport Planning and Coordination Act 1994*.

The term ‘government agency’ is taken from the *Building Queensland Act 2015* as it is used in a similar context. However, the definition has been expanded to include Commonwealth Government agencies and local government agencies as these agencies may also be represented on the board and may second employees to be staff of the Authority.

The term ‘notice’ means written notice. This clarifies that any verbal notices under this legislation have no effect until they are received in writing.

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<sup>7</sup> Note: MEDQ is the corporation sole constituted by the Minister for the *Economic Development Act 2012* under the name Minister for Economic Development Queensland.

The term ‘subsidiary’ is used in the definition of ‘government agency’. The definition refers to the *Government Owned Corporations Act 1993* for subsidiaries of government owned corporations and the *Queensland Rail Transit Authority Act 2013* for subsidiaries of the Queensland Rail Transit Authority.

Note: the term ‘Planning Act’ in this schedule refers to the *Sustainable Planning Act 2009* because the new *Planning Act 2016* has not yet been proclaimed into force. However, section 289 of the *Planning Act 2016* ensures that a reference to the *Sustainable Planning Act 2009* is taken to be a reference to the *Planning Act 2016* and a reference to a provision of the *Sustainable Planning Act 2009* is taken to be a reference to the equivalent provision of the *Planning Act 2016*.

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