

Surat Basin Rail (Infrastructure Development and Management) Bill 2012

Explanatory Notes for amendments to be moved during consideration in detail by the Deputy Premier and Minister for State Development, Infrastructure and Planning

Title of the Bill

Surat Basin Rail (Infrastructure Development and Management) Bill 2012

Objectives of the amendments

The amendments will amend the Surat Basin Rail (Infrastructure Development and Management) Bill 2012 to give effect to the Government's response to recommendations made by the State Development, Infrastructure and Industry Committee following its examination of the Bill.

The objectives of the amendments are to:

- clarify the matters to be considered by the Coordinator-General when deciding whether to grant a works authority or investigation authority under clauses 14 or 15 or grant an approval to divert or construct a watercourse in carrying out railway works under clause 38;
- clarify a potential inconsistency between the powers provided to the Coordinator-General and a railway manager in clauses 44, 45 and 50 in relation to the carrying out of works near the railway and interference with the railway;
- ensure consultation occurs with a railway manager and the railway licensee or railway lessee before the Coordinator-General exercises certain powers under clauses 44 and 45; and
- require the Bill to be reviewed within 10 years of the Bill's commencement.

Achievement of the objectives

The objectives are achieved by way of amendments to the Bill as described below in the notes on provisions.

Alternative ways of achieving policy objectives

Legislative amendments are the only means of achieving the policy objectives.

Estimated cost for government implementation

The amendments do not change the estimated cost for government implementation.

Consistency with fundamental legislative principles

The amendments do not breach fundamental legislative principles.

Consultation

The amendments to the Bill are made as a result of the Government's response to the State Development, Infrastructure and Industry Committee's report on the Bill.

The amendments have been prepared in consultation with the Office of the Queensland Parliamentary Counsel.

Notes on Provisions

Amendment 1 amends clause 14 to provide that the Coordinator-General must not grant a works authority unless satisfied the applicant has made reasonable efforts to consult with the owner or occupier of the land to be entered under the authority.

Clause 12 of the Bill requires an applicant for a works authority to consult with the owner or occupier of the land about the proposed entry before making an application to the Coordinator-General and to include details of its consultation with the owner or occupier in its application.

The amendment will require the Coordinator-General to be satisfied about the nature of the consultation undertaken by the applicant with the land owner or occupier before granting a works authority in relation to the land. This will ensure that appropriate consultation occurs with a land owner or occupier before a works authority is granted to the applicant to enable entry onto the land and the exercise of powers under the authority.

Amendment 2 amends clause 15 to provide that the Coordinator-General must not grant an investigation authority unless satisfied the applicant has made reasonable efforts to consult with the owner or occupier of the land to be entered under the authority.

This amendment is consistent with the amendment to clause 14 for a works authority in amendment 1, and will ensure appropriate consultation occurs with a land owner or occupier before an investigation authority is granted to the applicant to enable entry onto the land and the exercise of powers under the authority.

Amendment 3 amends clause 38 to clarify the matters that the Coordinator-General must take into account in deciding whether to approve the construction or diversion of a watercourse in carrying out railway works.

Clause 38 of the Bill enables the Coordinator-General to approve a railway manager to construct a temporary or permanent watercourse or divert a watercourse in carrying out railway works. Clause 38 currently provides that in deciding whether to approve a diversion, the Coordinator-General must consider the effect the works for the diversion would have on the watercourse's physical integrity and flow characteristics.

The amendment introduces a new requirement that the Coordinator-General must additionally consider the impact of the construction or diversion of a watercourse on adjacent land. This will ensure that the interests of the owners and occupiers of land adjacent to the watercourse are taken into account by the Coordinator-General when making a decision under clause 38.

Amendment 4 amends clause 44 to provide that the Coordinator-General must consult with a railway manager and the railway licensee or railway lessee before giving an approval under clause 44.

Clause 44 enables the Coordinator-General to approve a person to carry out works near the railway if the Coordinator-General reasonably believes the works do not threaten, or are not likely to threaten, the railway's safety or operational integrity.

The amendment will ensure that parties with a relevant interest in the Surat Basin rail corridor land and the railway have an opportunity to present their views before the Coordinator-General gives an approval to carry out works under clause 44.

Amendment 5 amends clause 45 to provide that the Coordinator-General must consult with a railway manager and the railway licensee or railway lessee prior to giving a direction under subsection (2) or a requirement under subsection (4).

Clause 45 provides the Coordinator-General with certain powers to stop and require certain action to be taken in relation to works near the railway which the Coordinator-General reasonably believes threaten, or are likely to threaten, the railway's safety or operational integrity.

The amendment will ensure that parties with a relevant interest in the Surat Basin rail corridor land and the railway have an opportunity to present their views before the Coordinator-General exercises powers under clause 45.

Amendment 6 makes a minor amendment to clause 50(1)(a) to clarify that the approval of a relevant person in the sub-clause relates to an approval given under clause 50.

Amendment 7 makes a minor amendment to clause 50(1)(b) to clarify that the sub-clause also covers interference permitted or authorised by the Coordinator-General under clause 44, in addition to interference permitted or authorised under a right of access under clause 33 or the *Transport (Rail Safety) Act 2010*. This amendment makes clear that an approval of the Coordinator-General under clause 44 will operate to approve an interference with the railway under clause 50.

Amendment 8 amends clause 50 to give effect to the policy objective of the primacy of the Coordinator-General's powers in relation to the carrying out of works near the railway.

Clause 44 provides the Coordinator-General with powers to approve works near the railway if the Coordinator-General reasonably believes that the works do not threaten, or are not likely to threaten, the railway's safety or operational integrity. Clause 45 provides the Coordinator-General with powers to stop and require certain action to be taken in relation to works near the railway which the Coordinator-General reasonably believes threaten, or are likely to threaten, the railway's safety or operational integrity.

Clause 50 provides that a railway manager may approve a person to interfere with the railway. The Coordinator-General may also exercise powers under clause 50 to approve a person to interfere with the railway if there is no railway manager.

The State Development, Infrastructure and Industry Committee considered that there may be a potential inconsistency in relation to an exercise of powers by the Coordinator-General under clauses 44, 45 or 50 and an exercise of powers by a railway manager under clause 50, in a circumstance where both powers are exercised.

The amendment ensures that an exercise of the Coordinator-General's powers under clauses 44, 45 or 50 will prevail to the extent of any inconsistency, by providing that an approval given by a railway manager under clause 50 is of no effect to the extent that the approval:

- is inconsistent with an approval given by the Coordinator-General under clause 50 or 44; or
- is for works for which the Coordinator-General has given a direction under clause 45(2) or a notice under clause 45(4); or
- is for works or another thing for which the Coordinator-General has refused to give an approval under clause 50.

The amendment also requires a railway manager to provide notice to the Coordinator-General of an approval given by the railway manager to interfere with the railway under clause 50. Following this notice, the Coordinator-General will be able to exercise any relevant powers in relation to those works if considered necessary.

Amendment 9 amends clause 50 to clarify that 'relevant person' in clause 50 means a railway manager, or if there is no railway manager, the Coordinator-General.

Amendment 10 introduces a new clause, 70A. Clause 70A requires the Minister to review the operation of the Bill no later than 10 years after the commencement of the clause. The clause also requires the Minister to, as soon as practicable after the review is finished, table in the Legislative Assembly a report on the outcome of the review.

This timeframe will ensure that a review of the Bill is undertaken once construction has been completed and the railway is in its early years of operation. As key aspects of the Bill will not be implemented until the railway is in operation, a review of the Bill within an earlier timeframe would be limited in scope and not achieve the relevant objectives.