

Queensland



# TRANSPORT INFRASTRUCTURE ACT 1994

**Reprinted as in force on 11 January 2002  
(includes amendments up to Act No. 93 of 2001)**

**Warning—see last endnote for uncommenced amendments**

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# TRANSPORT INFRASTRUCTURE ACT 1994

[as amended by all amendments that commenced on or before 11 January 2002]

## **An Act about infrastructure and related matters**

### **CHAPTER 1—PRELIMINARY**

#### **1 Short title**

This Act may be cited as the *Transport Infrastructure Act 1994*.

#### **2 Objectives of this Act**

(1) The overall objective of this Act is, consistent with the objectives of the *Transport Planning and Coordination Act 1994*, to provide a regime that allows for and encourages effective integrated planning and efficient management of a system of transport infrastructure.

(2) In particular, the objectives of this Act are—

- (a) to allow the Government to have a strategic overview of the provision and operation of all transport infrastructure; and
- (b) for roads—to establish a regime under which—
  - (i) a system of roads of national and State significance can be effectively planned and efficiently managed; and
  - (ii) influence can be exercised over the total road network in a way that contributes to overall transport efficiency; and
  - (iii) account is taken of the need to provide adequate levels of safety, and community access to the road network; and
- (c) for miscellaneous transport infrastructure—to establish a regime for the effective planning and efficient management of the infrastructure; and
- (d) for rail—to establish a regime that—

- (i) contributes to overall transport effectiveness and efficiency; and
  - (ii) contributes to lower transport costs by allowing the maximum flexibility in rail transport operations consistent with achieving safety objectives; and
  - (iii) provides a high level of accountability; and
  - (iv) allows railway managers and operators to make decisions on a commercial basis; and
  - (v) provides a framework under which Queensland Rail<sup>1</sup> may operate as required by the *Government Owned Corporations Act 1993*; and
- (e) for ports—to establish a regime under which a ports system is provided and can be managed within an overall strategic framework by GOCs in accordance with the principles specified in the *Government Owned Corporations Act 1993*; and
- (f) for air—to promote basic access to air services, and regional development, by making provision about air transport infrastructure;
- (g) for public marine transport—to establish a regime under which—
- (i) public marine facilities are effectively and efficiently managed; and
  - (ii) the use of waterways for transport purposes is effectively and efficiently managed.

### **3 Definitions—the dictionary**

(1) A dictionary in schedule 3 defines particular words used in this Act.

(2) Definitions found elsewhere in the Act are signposted in the dictionary.

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<sup>1</sup> Queensland Rail is a GOC under the *Government Owned Corporations Act 1993*.

#### **4 State/Commonwealth agreements or arrangements**

The powers and discretions conferred by this Act may be exercised in accordance with an agreement or arrangement between the State and the Commonwealth about the funding of transport infrastructure.

## **CHAPTER 2—TRANSPORT INFRASTRUCTURE STRATEGIES**

#### **5 Development of transport infrastructure strategies**

(1) The chief executive must, from time to time, develop for the Minister's approval transport infrastructure strategies that are designed to give effect to the coordination plan in relation to transport infrastructure in accordance with the objectives of this Act.

(2) In developing transport infrastructure strategies, the chief executive must take reasonable steps to engage in public consultation.

(3) The Minister may, at any time, direct the chief executive to prepare new transport infrastructure strategies for the Minister's approval or to amend transport infrastructure strategies in the way the Minister directs.

(4) The Minister may approve transport infrastructure strategies that are submitted for approval or require the chief executive to amend the strategies in the way the Minister directs.

#### **6 Contents of transport infrastructure strategies**

(1) Transport infrastructure strategies must include—

- (a) a statement of the specific objectives sought to be achieved; and
- (b) proposals for the provision of transport infrastructure; and
- (c) investment criteria for deciding priorities for government supported transport infrastructure between and within the different transport modes and options for financing the priorities; and
- (d) criteria for deciding which roads should be controlled by the chief executive as State-controlled roads; and

- (e) appropriate performance indicators for deciding whether, and to what extent, the objectives of the strategies have been achieved.

(2) Transport infrastructure strategies must aim to provide an adequate framework for coordinating and integrating the provision of transport infrastructure as between the different transport modes.

(3) Transport infrastructure strategies must take account of agreements or arrangements between the State and the Commonwealth about the funding of transport infrastructure.

(4) Transport infrastructure strategies for the SEQTA area under the *Transport Planning and Coordination Act 1994* must not be inconsistent with, and must give effect to any integrated regional transport plan in force for the area.

## **7 Tabling of transport infrastructure strategies**

The Minister must cause transport infrastructure strategies, and each amendment of transport infrastructure strategies, approved by the Minister to be tabled in the Legislative Assembly.

# **CHAPTER 3—OBLIGATIONS ABOUT TRANSPORT INFRASTRUCTURE**

## **8 Objective of chapter**

In giving effect to the objective of this Act, this chapter is intended to ensure value for money for resources applied to the construction, maintenance and operation of transport infrastructure.

## **9 Obligations about government supported transport infrastructure**

The chief executive must ensure that—

- (a) the construction, maintenance and operation of all government supported transport infrastructure for which the chief executive is responsible is carried out in accordance with standards published by the chief executive that are designed to achieve—

- (i) efficiency; and
  - (ii) affordable quality; and
  - (iii) cost effectiveness; and
- (b) construction, maintenance or operation is carried out in a way that—
- (i) takes into account national and international benchmarks and international best practice; and
  - (ii) promotes, within overall transport objectives, the safe transport of persons and goods; and
  - (iii) encourages efficient and competitive behaviour in the construction and maintenance of transport infrastructure; and
- (c) contracts that are let for the construction, maintenance or operation of transport infrastructure are designed in a way that encourages efficient performance by the contractor.

## **10 Report on giving effect to s 9**

Each annual report of the department must include a report on the way in which effect has been given to section 9 (Obligations about government supported transport infrastructure) during the year to which the report relates.

# **CHAPTER 4—IMPLEMENTATION OF TRANSPORT INFRASTRUCTURE STRATEGIES**

## **PART 1—ROADS IMPLEMENTATION PROGRAMS**

### **11 Development of roads implementation programs**

(1) The chief executive must, each year, develop for the Minister's approval roads implementation programs for the year and for 1 or more later years.

(2) Roads implementation programs must include—

- (a) a program of projects, and policies and financial provisions, for implementing the transport infrastructure strategies in relation to road transport infrastructure, including roads that are not State-controlled roads; and
- (b) performance targets for road transport infrastructure.

(3) Roads implementation programs may include proposals to spend amounts on transport infrastructure other than road transport infrastructure if the spending would contribute to intermodal effectiveness and efficiency.

(4) In developing roads implementation programs, the chief executive must take reasonable steps to consult with local governments that, in the opinion of the chief executive, would be affected by the programs.

(5) Roads implementation programs are to be made publicly available in the way decided by the Minister.

(6) The Minister may at any time direct the chief executive to amend roads implementation programs.

(7) The Minister may approve roads implementation programs that are submitted for approval or require the chief executive to amend the programs in the way the Minister directs.

## **12 Consistency with transport infrastructure strategies**

(1) Subject to directions of the Minister, roads implementation programs must be consistent with transport infrastructure strategies.

(2) If the Minister gives a direction under this section that results in roads implementation programs being inconsistent with transport infrastructure strategies, the Minister must cause a copy of the direction to be tabled in the Legislative Assembly within 5 sitting days after it is given.

## **13 Report on operation of roads implementation programs**

Each annual report of the department must include a report on the operation of the roads implementation programs during the year to which the annual report relates.

## **PART 2—RAIL IMPLEMENTATION PROGRAMS**

### **14 Development of programs**

(1) The chief executive must, each year, develop for the Minister's approval rail implementation programs for the year and for 1 or more later years for rail transport infrastructure that is government supported transport infrastructure.

(2) Rail implementation programs must include—

(a) a program of projects, and policies and budgets, for implementing the transport infrastructure strategies for rail transport infrastructure that is government supported transport infrastructure; and

(b) performance targets for the rail transport infrastructure.

(3) In developing rail implementation programs, the chief executive must take reasonable steps to—

(a) consult with local governments and railway managers and operators that the chief executive considers would be affected by the programs; and

(b) minimise conflict between the programs and expenditure programs of local governments and railway managers and operators.

(4) Rail implementation programs are to be made publicly available in the way decided by the Minister.

(5) The Minister may, at any time, direct the chief executive to amend a rail implementation program.

(6) The Minister may—

(a) approve a rail implementation program submitted for approval; or

(b) require the chief executive to amend a rail implementation program submitted for approval.

### **15 Consistency with transport infrastructure strategies**

(1) Subject to the Minister's directions, a rail implementation program must be consistent with transport infrastructure strategies.

(2) If a direction of the Minister results in a rail implementation program being inconsistent with a transport infrastructure strategy, the Minister must table a copy of the direction in the Legislative Assembly within 5 sitting days after it is given.

## **16 Report on implementation of programs**

Each annual report of the department must include a report on the implementation of the rail implementation program for the year of the report.

## **PART 3—IMPLEMENTATION PROGRAMS FOR MISCELLANEOUS TRANSPORT INFRASTRUCTURE**

### **17 Development of implementation programs for miscellaneous transport infrastructure**

(1) The chief executive must, each year, develop for the Minister's approval implementation programs for miscellaneous transport infrastructure for the year and for 1 or more later years.

(2) Implementation programs for miscellaneous transport infrastructure must include—

- (a) a program of projects, and policies and budgets, for implementing the transport infrastructure strategies about the miscellaneous transport infrastructure covered by the programs; and
- (b) performance targets for that miscellaneous transport infrastructure.

(3) Implementation programs for miscellaneous transport infrastructure may include proposals to spend amounts on transport infrastructure other than miscellaneous transport infrastructure if the spending would contribute to intermodal effectiveness and efficiency.

(4) In developing implementation programs for miscellaneous transport infrastructure, the chief executive must take reasonable steps to consult with local governments that, in the opinion of the chief executive, would be affected by the programs.



(5) Implementation programs for miscellaneous transport infrastructure are to be made publicly available in the way decided by the Minister.

(6) The Minister may at any time direct the chief executive to amend implementation programs for miscellaneous transport infrastructure.

(7) The Minister may approve implementation programs for miscellaneous transport infrastructure that are submitted for approval or require the chief executive to amend the programs in the way the Minister directs.

## **18 Consistency with transport infrastructure strategies**

(1) Subject to directions of the Minister, implementation programs for miscellaneous transport infrastructure must be consistent with transport infrastructure strategies.

(2) If the Minister gives a direction under this section that results in implementation programs for miscellaneous transport infrastructure being inconsistent with transport infrastructure strategies, the Minister must cause a copy of the direction to be tabled in the Legislative Assembly within 5 sitting days after it is given.

## **19 Report on operation of implementation programs for miscellaneous transport infrastructure**

Each annual report of the department must include a report on the operation of the implementation programs for miscellaneous transport infrastructure during the year to which the annual report relates.

# **PART 4—TRANSPORT GOCS**

## **20 Transport GOCs**

(1) In preparing a corporate plan or a statement of corporate intent, Queensland Rail and each port authority must take into account the transport infrastructure strategies.

(2) Queensland Rail or a port authority may spend amounts on transport infrastructure other than rail transport infrastructure or port infrastructure if the spending would contribute to effectiveness and efficiency.

## **CHAPTER 4A—AIR TRANSPORT INFRASTRUCTURE**

### **20A Air transport infrastructure funding programs**

(1) The chief executive may develop, for the Minister's approval, an air transport infrastructure funding program.

(2) The purpose of a program is to facilitate basic access to air transport services and regional development.

(3) An air transport infrastructure funding program must include a program of government funding to facilitate the upgrading or building of runways, landing strips or ancillary works.

(4) The chief executive may, with the Minister's approval, amend an air transport infrastructure funding program.

(5) The chief executive may develop guidelines, consistent with the objectives of this Act and government policy, for assessing funding applications under a program.

(6) The chief executive must make any current program or guidelines publicly available.

### **20B Report on implementation of program**

Each annual report of the department must include a report on the implementation of the air transport infrastructure funding program for the year of the report.

## **CHAPTER 5—ROAD TRANSPORT INFRASTRUCTURE**

### **PART 1—PRELIMINARY**

#### **21 Scope of chapter**

(1) To give effect to the objectives of this Act in relation to road transport infrastructure, the chief executive has, subject to the Minister and as required by this chapter—

- (a) the function of influencing the total road network; and
- (b) control over roads of State significance in the total road network, including roads of national significance that are managed in accordance with agreements or arrangements between the State and the Commonwealth about the funding of road transport infrastructure.

(2) This chapter establishes a framework under which the construction, maintenance or operation of a State-controlled road can be done by the chief executive, or by a local government or someone else under agreements or arrangements with the chief executive.

#### **22 Definitions for ch 5**

In this chapter—

**“ancillary works and encroachments”** means—

- (a) the following things—
  - (i) cane railways;
  - (ii) monorails;
  - (iii) bridges, overhead conveyors or other overhead structures;
  - (iv) tunnels;
  - (v) rest area facilities;
  - (vi) monuments or statues;
  - (vii) advertising signs or other advertising devices;
  - (viii) traffic and service signs;

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- (ix) bores, wells, pumps, windmills, water pipes, channels, culverts, viaducts, water tanks or dams;
  - (ixa) pipes;
  - (ixb) tanks;
  - (x) cables;
  - (xi) road access works
  - (xii) paths or bikeways;
  - (xiii) grids or other stock facilities;
  - (xiv) buildings, shelters, awnings or mail boxes;
  - (xv) poles, lighting, gates fences;
  - (xvi) pumps and bowsers; or
  - (b) any of the following activities—
    - (i) drilling;
    - (ii) clearing;
    - (iii) trimming;
    - (iv) slashing;
    - (v) landscaping;
    - (vi) planting;
    - (vii) burning off;
    - (viii) removing trees;
    - (ix) road safety related activities;
    - (x) sporting activities;
    - (xi) camping;
    - (xii) conducting a business (for example, a market);
    - (xiii) movement of stock, other than under the *Rural Lands Protection Act 1985*;
    - (xiv) holding meetings; or
  - (c) other encroachments declared by regulation to be ancillary works and encroachments;
- but does not include public utility plant.

**“construction”**, in relation to road transport infrastructure, includes—

- (a) initial construction; and
- (b) improvement of the standard; and
- (c) realignment; and
- (d) widening;

that involves the development of road transport infrastructure.

**“plant”** includes any of the following things—

- (a) a railway, monorail and tramway;
- (b) viaduct and aqueduct;
- (c) conduit and cable;
- (d) overhead conveyor;
- (e) pipeline;
- (f) pole;
- (g) electrical installation within the meaning of the *Electricity Act 1994*;
- (h) telecommunications plant;
- (i) water channel.

**“public utility plant”** means plant that is permitted under another Act or a Commonwealth Act to be on a road.

**“road access works”** means—

- (a) a physical means of entry or exit for traffic between land and a road; or

*Example—*

a driveway.

- (b) road works providing entry or exit for traffic between works mentioned in paragraph (a) and the part of the road formed or prepared for use by general traffic.

*Example—*

An acceleration or deceleration lane, or a laneway, lane or track, connecting a driveway of a property adjacent to a road to a lane on the road designed to carry through traffic.

**“road franchise agreement”** see section 66.

**“road works”** means works done for—

- (a) constructing roads or things associated with roads; or
  - (b) the maintenance of roads or of things associated with roads (other than public utility plant); or
  - (c) facilitating the operation of road transport infrastructure;
- and includes works declared by the regulations to be road works.

**“State government body”** means—

- (a) a department or a division, branch or other part of a department; or
- (b) a State instrumentality, agency, authority or entity or a division, branch or other part of a State instrumentality, agency, authority or entity; or
- (c) a GOC;

but does not include a local government.

**“traffic”** includes the passing back and forth of persons, vehicles and animals.

## **PART 2—STATE-CONTROLLED ROADS**

### *Division 1—Declaration of State-controlled roads*

#### **23 Declaration of State-controlled roads**

(1) The Minister may, by gazette notice, declare a road or route, or part of a road or route, to be a State-controlled road.

(2) A declaration must be consistent with criteria about the declaration of State-controlled roads in the transport infrastructure strategies.

(3) A declaration must enable the location of the road to be identified.

(4) The location may be identified by specifying—

- (a) the starting and ending points of the road; and
- (b) the alignment of the road; and

- (c) the width of the road by reference to the constructed centre line of the road pavement or surface.

(5) Unless otherwise specified in a declaration, the width of a State-controlled road through a State reserve, State forest, timber reserve, vacant State land or pastoral holding is 30 m each side of the centre line of the trafficked route.

## **24 Consultation before declaration**

Before making or revoking a declaration under section 23 (Declaration of State-controlled roads), the Minister must—

- (a) notify each local government that would, in the Minister's opinion, be affected by the proposed declaration or revocation; and
- (b) give the local governments a reasonable opportunity to make submissions to the Minister on the proposed declaration or revocation.

### *Division 2—Motorways*

## **25 Declaration of motorways**

(1) The Minister may, by gazette notice, declare that the whole or a part of a State-controlled road is a motorway.

(2) A declaration must enable the location of the motorway to be identified.

(3) Before making or revoking a declaration, the Minister must—

- (a) notify each local government that would, in the Minister's opinion, be affected by the proposed declaration or revocation; and
- (b) give the local governments a reasonable opportunity to make submissions to the Minister on the proposed declaration or revocation.

***Division 3—Chief executive to have powers of a local government*****26 Chief executive to have power of a local government for State-controlled roads**

The chief executive may exercise, for a State-controlled road in the area of a local government, all of the powers that the local government may exercise for a local government road in the area.

**PART 3—CONSTRUCTION, MAINTENANCE AND OPERATION****27 Powers of chief executive for road works contracts etc.**

(1) The chief executive may, in accordance with the relevant roads implementation program, carry out, or enter into contracts for the State with other persons (including local governments, State government bodies and agencies of the Government of some other State or of a Territory) for the carrying out of—

- (a) road works on a State-controlled road or on land that is intended to become a State-controlled road; or
- (b) other works that contribute to the effectiveness and efficiency of the road network; or
- (c) the operation of a State-controlled road.

(2) The chief executive may, for the State, carry out road works on a local government road in accordance with an agreement between the chief executive and the local government.

(3) The chief executive may, for the State, enter into contracts with other persons for road works to be carried out outside the State by the chief executive, a local government, a State government body or a contractor to the chief executive in accordance with an agreement between the State and the other State or Territory concerned.

(4) A contract with a local government under this section about the maintenance and operation of a State-controlled road may include arrangements about which powers of the local government are to be



exercised by the chief executive and which of the powers are to be exercised by the local government for the State-controlled road.

(5) A local government may enter into a contract mentioned in subsection (1) even though the contract relates to works or operation outside the local government's area.

(6) The chief executive may, for the State, carry out, or enter into contracts for, works on or adjacent to a State-controlled road at the request of the owner of adjacent land on the basis that the owner provides consideration, whether monetary or otherwise, as agreed between the chief executive and the owner.

(7) This section does not prevent the chief executive carrying out, or entering into contracts for the carrying out, of road works of a minor or emergency nature.

## **28 Obligations in carrying out of works or operation of roads by the chief executive**

In carrying out works, or the operation of roads, mentioned in section 27 (Powers of chief executive for road works contracts etc.), the chief executive must ensure that the carrying out is done on a price competitive basis.

## **29 Contracts to encourage efficiency**

(1) In entering into contracts of the kind mentioned in section 27 (Powers of chief executive for road works contracts etc.), the chief executive must ensure that open competition is encouraged.

(2) Subsection (1) does not apply to a contract with a person if the person is the sole invitee and enters into a price performance contract with the chief executive.

## **30 Cost sharing arrangements**

The chief executive may arrange with another person (including a local government and a State government body) for the sharing by the chief executive with the other person of the cost of—

- (a) acquisition of land for transport infrastructure; or
- (b) road works on a State-controlled road; or

- (c) other works that contribute to the effectiveness and efficiency of the road network; or
- (d) the operation of a State-controlled road;

including all necessary preliminary costs associated with the acquisition, works or operation.

### **31 Prohibition on road works etc. on State-controlled roads**

(1) A person must not, without lawful excuse or the written approval of the chief executive—

- (a) carry out road works on a State-controlled road; or
- (b) interfere with a State-controlled road or its operation.

Maximum penalty—200 penalty units.

(2) An approval may be subject to conditions decided by the chief executive.

(3) A person must not contravene a condition that applies to the person under subsection (2).

Maximum penalty—200 penalty units.

(4) Subsection (1) does not apply to a person who carries out maintenance of ancillary works and encroachments or landscaping that does not interfere with a State-controlled road or its operation.

### **32 Offender to pay cost of remedying unauthorised works**

(1) If a person carries out works contrary to section 31(1) (Prohibition on road works etc. on State-controlled roads), the chief executive may—

- (a) dismantle or alter the works; or
- (b) remedy damage caused by the works.

(2) If the chief executive causes the works to be dismantled or altered or the damage to be remedied under subsection (1), the person is liable to pay to the chief executive the costs incurred by the chief executive.

### **33 Temporary occupation and use of land**

To carry out road works, the chief executive may temporarily occupy and use land, including roads, and do anything on the land that is necessary or convenient to be done.

### **34 Notice of entry or permission to enter**

(1) The person who is proposing to occupy or use land under section 33 (Temporary occupation and use of land) must—

- (a) give at least 3 days written notice to the owner or occupier of the land; or
- (b) obtain the written approval of the owner or occupier to the occupation or use.

(2) The notice must state—

- (a) the road works to be carried out; and
- (b) the use proposed to be made of the land; and
- (c) details of the things proposed to be done on the land; and
- (d) an approximate period when the occupation or use is expected to continue.

(3) A notice may be given under subsection (1) in relation to land even if it is proposed to resume the land for road works.

(4) After the end of 3 days after service of a notice under subsection (1), or with the agreement of the owner or occupier, the land may be entered and the road works specified in the notice carried out.

(5) If urgent remedial attention is required, subsection (1) does not apply but the person who is proposing to occupy or use the land must, if it is practicable, notify the owner or occupier of the land orally.

### **35 Compensation for physical damage from entry etc.**

(1) An owner of land that is entered, occupied or used under section 33 (Temporary occupation and use of land) may give a written notice to the chief executive claiming compensation for physical damage caused by the entry, occupation or use or for the taking or consumption of materials.

(2) Compensation is not payable unless a claim is received by the chief executive within 1 year after occupation or use has ended.

(3) However, the chief executive may allow a claim to be made at a later time.

(4) Compensation awarded under this section must not be more than the compensation that would have been awarded if the land had been acquired.

### **36 Fencing State-controlled roads**

(1) The chief executive does not have to contribute to the fencing of the whole or a part of the boundary between land and—

- (a) an existing State-controlled road; or
- (b) a road or land that is intended to become a State-controlled road; or
- (c) a widening or deviation of a State-controlled road involving the acquisition of land.

(2) However, subsection (1)(b) does not apply to an existing road if the land is substantially fenced and the presence of the road will make the fencing ineffective.

(3) Subsection (1)(c) does not apply if the previous boundary of the road was substantially fenced.

### **37 Watercourses and road works**

(1) To carry out road works, the chief executive may—

- (a) divert a watercourse; or
- (b) construct a watercourse, whether temporary or permanent.

(2) In taking action under subsection (1), the chief executive must consider the effect that the action will have on the physical integrity and flow characteristics of the watercourse.

(3) The chief executive may enter and occupy private land under section 33 (Temporary occupation and use of land) and carry out works that the chief executive considers necessary or desirable to enable a watercourse to operate effectively and efficiently.

## **PART 4—RELATIONSHIP WITH LOCAL GOVERNMENTS**

### **38 Funds for works on, or operation of, local government roads etc.**

(1) The chief executive may enter into an agreement with a local government under which the chief executive supplies funds to the local government for road works on a local government road, for other works that contribute to the effectiveness and efficiency of the road network or for the operation of a local government road.

(2) The agreement—

- (a) must provide for the works or operation to be carried out in accordance with an agreement between the chief executive and the local government that is designed to ensure value for money in the application of the funds; and
- (b) may be subject to other conditions.

### **39 Improvement of State-controlled road as an economic alternative to improvement of the local road network**

If a local government concludes that improvements to a State-controlled road in its area would be beneficial to the local road network, the local government may make financial arrangements with the chief executive for the improvements to be made.

### **40 Impact of certain local government decisions on State-controlled roads**

(1) A local government must obtain the chief executive's written approval if—

- (a) it intends to carry out road works on a local government road or make changes to the management of a local government road; and
- (b) the works or changes would—
  - (i) require the carrying out of road works on a State-controlled road; or
  - (ii) otherwise have a significant adverse impact on a State-controlled road; or

(iii) have a significant impact on the planning of a State-controlled road or a future State-controlled road.

**(1A)** Subsection (1) does not apply if the chief executive has considered the works or changes as part of consideration of a development application under IDAS, within the meaning of the *Integrated Planning Act 1997*.

**(2)** The chief executive may make guidelines to which local governments must have regard in deciding whether an approval of the chief executive under subsection (1) is required.

**(3)** An approval by the chief executive under subsection (1) may be subject to conditions, including a condition that consideration, whether monetary or otherwise, be given in compensation for the impact that the road works or changes will have.

**(4)** Subsection (1) does not apply if the conditions applied and enforced by the local government for the road works or changes comply with permission criteria fixed by the chief executive.

**(5)** The permission criteria may include conditions, including a condition that consideration, whether monetary or otherwise, be given in compensation for the impact that the road works or changes will have.

**(6)** A local government must comply with conditions that apply to it under this section.

**(8)** If a local government contravenes subsection (1) or a condition that applies to it under this section, the local government is liable to compensate the chief executive for the cost of road works to State-controlled roads that are reasonably required because of the contravention.

**(9)** An approval by the chief executive under subsection (1) must be given—

- (a) within 21 days after receiving the application for approval; or
- (b) within a longer period notified to the local government by the chief executive within the 21 day period.

**(10)** If—

- (a) a local government applies for an approval under subsection (1); and
- (b) the chief executive does not respond to the application within 21 days after receiving the application;

the chief executive is taken to have given approval at the end of the 21 days.

(11) In this section—

**“future State-controlled road”** means a road or land that the chief executive has notified the local government in writing is intended to become a State-controlled road.

(12) The chief executive must cause a copy of each notice under subsection (11) to be published in the gazette.

#### **41 Distraction of traffic on motorways**

(1) A local government must obtain the chief executive’s written approval if it intends to approve the erection, alteration or operation of an advertising sign or other advertising device that would be—

- (a) visible from a motorway; and
- (b) beyond the boundaries of the motorway; and
- (c) reasonably likely to create a traffic hazard for the motorway.

(2) The chief executive may make guidelines to which local governments must have regard in deciding whether an approval of the chief executive under subsection (1) is required for particular motorways.

(3) An approval by the chief executive under subsection (1) may be subject to conditions.

(4) Subsection (1) does not apply if the conditions applied by the local government to the erection, alteration or operation of the sign or device comply with permission criteria fixed by the chief executive.

(5) The permission criteria may include conditions.

(6) A local government must comply with conditions that apply to it under this section.

(7) An approval by the chief executive under subsection (1) must be given—

- (a) within 21 days after receiving the application for approval; or
- (b) within a longer period notified to the local government by the chief executive within the 21 day period.

(8) If—

- (a) a local government applies for an approval under subsection (1); and

- (b) the chief executive does not respond to the application within 21 days after receiving the application;

the chief executive is taken to have given approval at the end of the 21 days.

(9) In this section—

“**motorway**” includes a road or land that the chief executive has notified the local government in writing is intended to become a motorway.

(10) The chief executive must cause a copy of each notice under subsection (9) to be published in the gazette.

## **42 Effect of decisions of Planning and Environment Court**

(1) If—

- (a) an approval under section 40(1) (Impact of certain local government decisions on State-controlled roads) is subject to conditions; and
- (b) a local government imposes conditions on the road works or changes to which the approval relates; and
- (c) the Planning and Environment Court amends the conditions mentioned in paragraph (b);

then, to the extent to which the amendment relates to the conditions of the approval under section 40(1), the conditions of the approval are taken to be amended accordingly.

(2) If—

- (a) there are permission criteria relevant to road works or changes mentioned in section 40; and
- (b) a local government imposes conditions on the road works or changes; and
- (c) the Planning and Environment Court amends the conditions mentioned in paragraph (b);

then, to the extent to which the amendment relates to the permission criteria, the permission criteria are taken to be amended accordingly in their application to the road works or changes.

(3) If—

- (a) an approval under section 41(1) (Distraction of traffic on motorways) is subject to conditions; and



- (b) a local government imposes conditions on the relevant erection, alteration or operation of the sign or other device; and
- (c) the Planning and Environment Court amends the conditions mentioned in paragraph (b);

then, to the extent to which the amendment relates to the conditions of the approval under section 41(1), the conditions of the approval are taken to be amended accordingly.

(4) If—

- (a) there are permission criteria relevant to the erection, alteration or operation of a sign or other device mentioned in section 41; and
- (b) a local government imposes conditions on the erection, alteration or operation; and
- (c) the Planning and Environment Court amends the conditions mentioned in paragraph (b);

then, to the extent to which the amendment relates to the permission criteria, the permission criteria are taken to be amended accordingly in their application to the erection, alteration or operation.

(5) The Planning and Environment Court is not to amend conditions as mentioned in this section without giving the chief executive a chance to be heard.

### **43 Management of particular functions on State-controlled roads by local governments**

(1) A local government may exercise, for a State-controlled road in its area, all the powers that it may exercise for a local government road in its area.

(2) However, if there is a contract of the kind mentioned in section 27(4) (Powers of chief executive for road works contracts etc.) between the chief executive and a local government, the exercise of the powers must be done as required by the contract.

(3) If there is no contract of the kind mentioned in section 27(4) between the chief executive and a local government, the chief executive may direct the local government not to exercise any or some of its powers for a State-controlled road specified in the direction.

(4) A direction under subsection (3) may be subject to conditions.

(5) A local government must comply with directions or conditions under this section.

(6) The exercise of a power by a local government under this section is not a contravention of this Act.

## **PART 5—MANAGEMENT OF STATE-CONTROLLED ROADS**

### *Division 1—Prevention of damage and ensuring safety*

#### **44 Temporary restrictions on use of State-controlled roads**

(1) If the chief executive considers that it is appropriate that a decision be made to prevent damage to road transport infrastructure or to ensure the safety of road users and other persons, the chief executive may make a written decision that—

- (a) a State-controlled road is temporarily closed to all traffic or traffic of a particular class; or
- (b) a State-controlled road may, during a specified limited period, only be used—
  - (i) at specified times; or
  - (ii) by particular classes of vehicles; or
  - (iii) in accordance with conditions (including restrictions on the weight of loads of vehicles) fixed by the chief executive.

(2) A decision under subsection (1) must be advertised by appropriate signs and, if practicable, by notice in a newspaper circulating in the area.

(3) Road users must comply with a decision in force under subsection (1).

Maximum penalty—200 penalty units.

(4) Neither the State nor the chief executive is liable for damage or injury caused directly because of a contravention of a decision in force under subsection (1).

**45 Removal of materials etc.**

(1) A person must not, without lawful excuse, damage, remove or interfere with naturally occurring materials, stockpiles of materials, watercourses, road works or ancillary works and encroachments on a State-controlled road.

Maximum penalty—200 penalty units.

(2) A person must not, without lawful excuse, alter or interfere with a watercourse in a way that adversely affects a State-controlled road.

Maximum penalty—40 penalty units.

(3) A person must not deposit rubbish or abandon goods or materials on a State-controlled road other than at places approved by, and under conditions fixed by, the chief executive.

Maximum penalty—200 penalty units.

**46 Recovery of cost of damage**

(1) If—

- (a) a person intentionally, recklessly or negligently causes damage to road works or ancillary works and encroachments on a State-controlled road, whether or not an offence is committed; and
- (b) the chief executive repairs the damage or replaces or reconstructs as necessary the road works or ancillary works and encroachments;

the person is liable to pay to the chief executive the cost of repair, replacement or reconstruction.

(2) If—

- (a) the damage is caused by the operation of a vehicle; and
- (b) the driver of the vehicle is unknown or cannot be located;

the person in whose name the vehicle is registered is liable for the costs of repair, replacement or reconstruction for which the driver would be liable.

(3) Subsection (2) does not apply if the vehicle was being used without the agreement or knowledge of the person in whose name the vehicle is registered.

(4) If—

- (a) a court finds a person guilty of an offence against this Act; and
- (b) in committing the offence, the person caused damage to road works or ancillary works and encroachments;

the court may, in addition to imposing a penalty, order the person to pay an amount towards the cost of repairing the damage.

### *Division 2—Ancillary works and encroachments and roadside facilities*

#### *Subdivision 1—General rules for ancillary works and encroachments*

## **47 Ancillary works and encroachments**

(1) The chief executive may construct, maintain, operate or conduct ancillary works and encroachments on a State-controlled road.

(2) The chief executive may, by gazette notice, decide that specified ancillary works and encroachments must not be constructed, maintained, operated or conducted on State-controlled roads, or on State-controlled roads in a specified district, without the written approval of the chief executive.

(3) A person must not construct, maintain, operate or conduct ancillary works and encroachments on a State-controlled road contrary to a notice under subsection (2).

Maximum penalty—200 penalty units.

(4) Subsection (3) does not apply to the construction, maintenance, operation or conduct of ancillary works and encroachments on a State-controlled road if the construction, maintenance, operation or conduct—

- (a) conforms to requirements specified by the chief executive by gazette notice; or
- (b) is done as required by a contract entered into with the chief executive.

(5) An approval or requirements under this section may be subject to conditions (including conditions about the payment of fees and other charges) fixed by the chief executive.

(6) If approval is required under subsection (2) for ancillary works and encroachments that are road access works, the approval—

- (a) may only be given if there is a permitted road access location under a decision in force under section 52(1) in relation to the road access works;<sup>2</sup> and
- (b) is in force only while the decision specifying the permitted road access location remains in force.

(7) A thing is not done contrary to this section if it is permitted under the *Land Act 1994*, the *Transport Operations (Road Use Management) Act 1995* or an Act about local government.

#### **48 Presumptions about advertising notices**

(1) This section applies to a prosecution for an offence against section 47(3) in relation to an advertising notice.

(2) Each person whose product or service is advertised on the notice is taken to maintain the notice, unless the person proves the advertisement was placed without the person's knowledge or permission.

#### **49 Alteration etc. of ancillary works and encroachments**

(1) If ancillary works and encroachments are constructed, maintained, operated or conducted contrary to section 47 (Ancillary works and encroachments), the chief executive may—

- (a) cause them to be altered, relocated, made safe or removed; or
- (b) for activities—direct that their conduct be altered or that they stop being conducted.

(2) A person who constructed, maintained or operated ancillary works and encroachments contrary to section 47 is liable to pay to the chief executive the cost of altering or relocating them, making them safe or removing them.

(3) If ancillary works and encroachments are removed under subsection (1), the chief executive may cause them to be sold or destroyed.

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<sup>2</sup> For an application to obtain a permitted road access location, see section 52 (Management of access between individual properties and State-controlled roads)

(4) If the chief executive is of the opinion that ancillary works and encroachments, or the use of ancillary works and encroachments, that were constructed, maintained, operated or conducted on a State-controlled road under an approval, requirements or contract under section 47—

- (a) by themselves or with other factors—
  - (i) are creating or may in the future create a traffic hazard; or
  - (ii) are reducing or may in the future reduce safety; or
  - (iii) are having or may in the future have an adverse effect on traffic operations; or
- (b) require emergency action; or
- (c) have become or may in the future become an obstacle to the carrying out of road works on the road or to the construction, augmentation, alteration or maintenance of public utility plant on the road;

the chief executive may cause them to be, or direct that they be, altered, relocated, made safe or removed or, for activities, direct that their conduct be altered or that they stop being conducted.

(5) Subsection (4) does not apply to road access works.

(6) A person must comply with a direction under this section.

Maximum penalty—200 penalty units.

(7) If ancillary works and encroachments are altered, relocated, made safe or removed because of a direction under subsection (4), the chief executive may enter into an agreement with the owner of the ancillary works and encroachments for making a contribution towards the cost of the alteration, relocation, making safe or removal.

### *Subdivision 2—Special arrangements about access*

## **50 Definitions**

In this subdivision—

“**declaration**” has the meaning given by section 51(1).

“**land**”, adjacent to a State-controlled road, includes land that is not adjacent to the road but is benefited by an easement, registered under the *Land Title Act 1994*—

- (a) that is over land that is adjacent to the road; and
- (b) that starts at the boundary between the land mentioned in paragraph (a) and the road.

**“owner”** includes a lessee under the *Land Act 1994*.

**“permitted road access location”** means a permitted road access location under a decision in force under section 52(1).

**“road access location”** means a location on a property boundary between land and a road for the entry or exit of traffic.

**“State-controlled road”** includes a road or land that the chief executive has notified the relevant local government in writing is intended to become a State-controlled road.

## 51 Limited access roads

(1) The chief executive, by gazette notice complying with sections 51B and 51C, may declare part or all of a State-controlled road to be a limited access road (a **“declaration”**).

(2) For each limited access road proposed to be declared, the chief executive must make a policy about the application of section 52 to access between the limited access road and adjacent land.

(3) For a State-controlled road that is a limited access road under section 264(1),<sup>3</sup> the chief executive may—

- (a) develop a policy about the application of section 52 to access between the road and adjacent land; and
- (b) publish a gazette notice complying with section 51C about the policy.

(4) If a gazette notice mentioned in subsection (1) or (3) is published for a limited access road, the chief executive—

- (a) must ensure there is always a policy for the road while it is a limited access road; and
- (b) by gazette notice complying with section 51C, may replace the policy as it exists at any time for the road; and

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3 Section 264 (Transitional—access-limited roads)

- (c) without a gazette notice, may amend the policy under section 51D; and
- (d) must apply the policy as made, amended or replaced.

### **51A Local government to be consulted on proposed declaration or policy**

The chief executive must, before giving effect to a proposal to publish a gazette notice to make, amend or revoke a declaration or to make, amend or replace a policy for a limited access road—

- (a) notify each local government, that the chief executive considers is affected by the proposal, of the proposal; and
- (b) give each notified local government a reasonable opportunity to make a submission to the chief executive on the proposal.

### **51B Information in s 51 gazette notice about a declaration**

A gazette notice under section 51(1) must state—

- (a) the reasons for the declaration; and
- (b) that any person whose interests are affected by the declaration may—
  - (i) under section 196<sup>4</sup>—ask for the decision to be reviewed and appeal against the reviewed decision; and
  - (ii) under the *Transport Planning and Coordination Act 1994*, part 5<sup>5</sup>—ask for the decision or the reviewed decision to be stayed.

### **51C Information in s 51 gazette notice about new or replacement policy**

(1) A gazette notice under section 51(1), (3)(b) or (4)(b) for a limited access road must state the following—

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4 Section 196 (Review of and appeals against decisions)

5 *Transport Planning and Coordination Act 1994*, part 5 (Review of and appeals against decisions)



- (a) that there is a policy, that will be applied, about the application of section 52 to access between the road and adjacent land;
- (b) if the policy is replacing another policy, that a policy identified in the notice is being replaced;
- (c) the text of section 51G;
- (d) either—
  - (i) the text of the policy; or
  - (ii) a notice that the policy is available for inspection, free of charge, during business hours at stated places;
- (e) that the policy may be amended at any time without a gazette notice if—
  - (i) the amendment merely changes or repeals specific provision for 1 or more particular properties; and
  - (ii) the owner or occupier of each property has been given written notice of the amendment;
- (f) that any person whose interests are affected by a policy, or, if the policy is a replacement policy, any change of the policy being replaced, may—
  - (i) under section 196—ask for the decision to be reviewed and appeal against the reviewed decision; and
  - (ii) under the *Transport Planning and Coordination Act 1994*, part 5—ask for the decision or the reviewed decision to be stayed.

(2) If the policy for the limited access road is replacing another policy, the rights mentioned in subsection (1)(f) of a person mentioned in subsection (1)(f) are limited to any change the policy makes to the replaced policy.

### **51D Amendment of policy for a limited access road in limited circumstances**

(1) The chief executive may amend a policy for a limited access, as opposed to replacing the policy, if—

- (a) the amendment is a mere change or repeal of a specific provision for 1 or more particular properties; and

- (b) the chief executive has given the owner or occupier of each property written notice of the amendment.
- (2) The written notice mentioned in subsection (1)(b) must state—
- (a) the notice is given under this section; and
  - (b) the reasons for the decision; and
  - (c) that any person whose interests are affected by the decision may—
    - (i) under section 196—ask for the decision to be reviewed and appeal against the reviewed decision; and
    - (ii) under the *Transport Planning and Coordination Act 1994*, part 5—ask for the decision or the reviewed decision to be stayed.

### **51E Gazette notices must show location of limited access road**

A gazette notice under section 51 must contain enough information to allow the location of the limited access road to be identified, for example by including the following information—

- (a) the points at which the limited access road starts or ends;
- (b) its alignment;
- (c) the boundaries of the State-controlled road to which limitation of access is to be applied.

### **51F Advertisement of gazette notice**

The publishing of a gazette notice under section 51 must be advertised in a newspaper circulating in the area of the limited access road, or if there is no newspaper circulating in the area, in a newspaper circulating throughout the State.

### **51G Offence for limited access roads**

A person must not construct or change a physical means of entry or exit for traffic between land and a limited access road without first obtaining a decision under section 52(1) that authorises the construction or change.

Maximum penalty—200 penalty units.

## **52 Management of access between individual properties and State-controlled roads**

(1) The chief executive may, for 1 or more State-controlled roads and particular adjacent land, on application by a person with an interest in the land or the chief executive's own initiative, make a written decision stating any of the following—

- (a) the location or locations at which access between the land and the road is permitted (a “**permitted road access location**”);
- (b) restrictions on the use of a permitted road access location;
- (c) conditions on the use of a permitted road access location;
- (d) where particular road access works, or a stated type of road access works, must be situated;
- (e) conditions or restrictions on the use of road access works;
- (f) that access at a location or locations is no longer permitted;
- (g) that road access works for construction at a place must be of a stated type, standard or extent or be constructed in a stated way;
- (h) that either the type, construction or extent of existing road access works must be changed in a way stated by the chief executive or the use of the works must be discontinued;
- (i) that all access between the road and the land is prohibited or no longer prohibited;
- (j) that stated existing road access works must be removed by the owner within a stated reasonable time;
- (k) without limiting paragraphs (f) to (j), that anything mentioned in paragraphs (a) to (e) is changed or must be changed as stated in the decision.

(2) A condition or restriction under subsection (1) may, for example, be any of the following—

- (a) a prohibition on the use of the permitted road access location or road access works by pedestrians;
- (b) a prohibition on turns by vehicles going in or out of the land;
- (c) a restriction on the type and number of vehicles the owner, occupier or person who applied for the decision may allow to use the permitted road access location;

- (d) a requirement that the owner, occupier or person who applied for the decision take reasonable, or stated reasonable, steps to ensure the permitted road access location is used by others in accordance with the conditions;
- (e) a restriction on when the permitted road access location may be used.

(3) All or part of a decision may be limited to a stated period by reference to time or circumstance.

(4) A decision must be consistent with any policy under section 51 that is applicable to the decision.

### **52A Chief executive may require additional information from applicant**

The chief executive may—

- (a) require an applicant for a decision under section 52(1) to give the chief executive any additional information the chief executive reasonably needs to decide the application; and
- (b) refuse to consider the application until the applicant gives the required information.

### **52B Decision under s 52(1) may impose construction or financial obligation**

A decision under subsection 52(1) made on application by a person with an interest in the land, other than on an application in compliance with a direction given under section 52G, may include either or both of the following conditions—

- (a) that the applicant construct, pay for, or contribute to the cost of, stated road access works to be constructed to a stated standard;
- (b) that the applicant maintain, pay for, or contribute to the cost of, maintaining stated road access works to a stated standard.

### **52C Limitation on new decisions under s 52(1)**

If there is a permitted road access location for land, the chief executive may make a new decision under section 52(1) for the land on the chief executive's own initiative only if the chief executive considers the

permitted road access location, road access works associated with it, or the use of either of them—

- (a) by themselves, or with other factors—
  - (i) are creating or may in the future create a traffic hazard; or
  - (ii) are reducing or may in the future reduce safety; or
  - (iii) are having or may in the future have an adverse effect on traffic operations; or
- (b) require emergency action; or
- (c) has become or may in the future become an obstacle to—
  - (i) the carrying out of road works on a State-controlled road; or
  - (ii) the construction, augmentation, alteration or maintenance of ancillary works and encroachments, or public utility plant, on a State-controlled road.

### **52D Road access works within State-controlled road**

(1) To remove doubt, it is declared that—

- (a) a decision under section 52(1) does not give rise to any rights whether beneficial or otherwise in any property that is on, or part of, a State-controlled road; and
- (b) section 52 does not limit the chief executive's powers to change, remove, construct or deal with road access works to the extent they are on, or part of, a State-controlled road.

(2) Also, it is declared that the chief executive is not obliged to consider making or obliged to make a decision for a person under section 52(1) in relation to road access works to the extent they are on, or part of, a State-controlled road if none of the following circumstances relevant to the decision exist—

- (a) action by the chief executive in substance changing the effect of a previous decision, binding on the person, in force under section 52(1) about anything mentioned in section 52(1)(a) to (c);
- (b) action by the chief executive affecting a written agreement under this Act between the chief executive and the person bound by a decision under 52(1).

(3) Subsection (2) does not limit the discretion of the chief executive under section 52(1).

### **52E Notice of decision under s 52(1)**

(1) If the chief executive makes a decision under section 52(1), the chief executive must give written notice of the decision to each of the following persons—

- (a) the owner of the land;
- (b) the occupier of the land;
- (c) any person who may have applied for the decision.

(2) The notice must state the following—

- (a) the notice is given under this section;
- (b) the reasons for the decision;
- (c) the person is bound by the decision because of section 53;
- (d) the text of section 53;
- (e) that any person whose interests are affected by the decision may—
  - (i) under section 196—ask for the decision to be reviewed and appeal against the reviewed decision; and
  - (ii) under the *Transport Planning and Coordination Act 1994*, part 5—ask for the decision or the reviewed decision to be stayed;
- (f) that there is no guarantee of the continuation of road access arrangements, as this depends on future traffic safety and efficiency circumstances.

(3) A person who has an interest in particular land may ask the chief executive, in writing, to give the person a copy of any decision in force under section 52(1) for the land.

(4) The chief executive must give the person the copy.

**52F Other persons may, by notice, also become bound by a decision under s 52(1)**

(1) If a particular person is not already bound by a decision under section 52(1), the chief executive may—

- (a) give the person a copy of the decision and of section 53; and
- (b) notify the person, in writing, that the person is bound, under this section, by the decision.

(2) A person notified under subsection (1) is bound by the decision.

**52G Direction to owner or occupier to apply for permitted road access location**

(1) This section applies to land adjacent to a State-controlled road, if there is no decision in force under section 52(1) for the land.

(2) The chief executive may give a person who is the owner or occupier of the land a written direction that the person must do either or both of the following—

- (a) within 28 days of the direction, apply under section 52(1) to have the chief executive make a decision about access between the land and the State-controlled road;
- (b) not use, or permit anyone else to use, any road access location on any boundary between the land and the State-controlled road until the person has applied to the chief executive for a decision under section 52(1).

(3) The direction must state the penalty for not complying with the direction.

(4) A person given a direction under subsection (2) must comply with the direction.

Maximum penalty for subsection (4)—200 penalty units.

**53 Offences about road access locations and road access works, relating to decisions under s 52(1)**

(1) This section applies to—

*Transport Infrastructure Act 1994*

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- (a) a person who has been given notice under section 52E or 52F of a decision under section 52(1) about access between a State-controlled road and adjacent land; and
  - (b) all present owners of that adjacent land if the decision was made in conjunction with a development approval issued under the *Integrated Planning Act 1997*;<sup>6</sup> and
  - (c) all future owners of that adjacent land if—
    - (i) the decision was made in conjunction with a development approval issued under the *Integrated Planning Act 1997*; and
    - (ii) the approval does not indicate that the decision does not apply to future owners.<sup>7</sup>
- (2) A person to whom this section applies must not—
- (a) obtain access between the land and the State-controlled road other than at a location at which access is permitted under the decision; or
  - (b) obtain access using road access works to which the decision applies, if the works do not comply with the decision and the noncompliance was within the person's control; or
  - (c) obtain any other access between the land and the road contrary to the decision; or
  - (d) use a road access location or road access works contrary to the decision; or
  - (e) contravene a condition stated in the decision; or
  - (f) permit another person to do a thing mentioned in paragraphs (a) to (e); or
  - (g) fail to remove road access works in accordance with the decision.

Maximum penalty—200 penalty units.

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6 For access to approval details, see the *Integrated Planning Act 1997*, section 5.7.4 (Documents assessment manager must keep available for inspection and purchase)

7 For access to approval details, see the *Integrated Planning Act 1997*, section 5.7.4 (Documents assessment manager must keep available for inspection and purchase)



(3) However, subsection (2)(g) does not apply to a person who is bound by the decision because of section 52F.

#### **54 Chief executive may take steps to prevent or deal with contravention**

(1) The chief executive may take reasonable and necessary steps to prevent, or protect the public from the consequences of, a person's contravention of section 53.

(2) If the chief executive takes steps under subsection (1), because a person contravenes or attempts to contravene section 53, the chief executive may recover from the person as a debt the reasonable costs of taking the steps.

#### **55 Chief executive may supply or contribute to new access arrangements**

(1) This section applies if a decision under section 52(1) has an effect mentioned in section 56(1) or (2), and section 57 does not prevent the payment of compensation or remove the chief executive's liability to pay compensation.

(2) The chief executive may enter into an agreement with the owner, or the owner and the occupier, of the land for—

- (a) the supply by the chief executive of, or a contribution towards the supply by the chief executive of, alternative road access works between the State-controlled road and the adjacent land or between the adjacent land and another road; or
- (b) the carrying out, or a contribution towards the carrying out, of other works in relation to the land.

#### **56 Compensation**

(1) This section applies if a decision under section 52(1) has the effect that all access between a State-controlled road and particular adjacent land is prohibited and—

- (a) there is—
  - (i) no practical alternative road access location for the land, that is, the land becomes effectively landlocked; and

- (ii) no previous decision in force under section 52(1) under which the land was effectively landlocked; or
- (b) there is a permitted road access location between the land and the road, and paragraph (a) does not apply.

(2) This section also applies if a decision under section 52(1) has the effect of changing in substance the effect of a previous decision in force under section 52(1) about anything mentioned in 52(1)(a) to (c) other than in a way that has the effect mentioned in subsection (1).

(3) However, this section only applies if the owner or occupier claiming compensation is adversely affected by the decision and—

- (a) an agreement can not be reached with the chief executive under section 55; or
- (b) the chief executive decides it is not practicable to take action under section 55.

(4) The owner or occupier may recover as a debt from the chief executive compensation for the diminution in value because of the prohibition or change.

(5) To remove doubt, it is declared that—

- (a) in deciding compensation, access to and from the land that could be made available at other locations must be taken into account; and
- (b) compensation is not payable to the extent that the diminution in value is attributable to a prohibition or change that affects—
  - (i) the supply of access to and from a traffic stream; or
  - (ii) road works mentioned in paragraph (b) of the definition “road access works”.

## **57 Cases where compensation not payable**

(1) Compensation is payable under section 56 (Compensation where access prohibited) to a person only if a claim is given to the chief executive within 1 year after—

- (a) the day when the relevant decision took effect; or
- (b) the day when the person was first notified by the chief executive of the decision;

whichever is the later.

(2) However, the chief executive may allow a claim to be made at a later time.

(3) The chief executive is not liable to pay compensation for action under this subdivision in relation to land if action is taken to acquire the land.

(4) Also, the chief executive is not liable to pay compensation for the effect of a decision under section 52(1) made on an application by a person with an interest in the land in any of the following circumstances—

(a) if—

- (i) there is a proposed, ongoing or completed development of the land that involves a material change of use of premises or a reconfiguration of a lot; and
- (ii) the development was taken into account in making the decision, and the decision has the effect mentioned in section 56(1)(a);

(b) if—

- (i) there is a proposed, ongoing or completed development of the land that—
  - (A) involves a material change of use of premises or a reconfiguration of a lot; or
  - (B) has had or is likely to have a significant impact on traffic safety or efficiency on the State-controlled road to which the decision relates; and
- (ii) the development was taken into account in making the decision, and the decision has the effect mentioned in section 56(1)(b);

(c) if the decision has the effect mentioned in section 56(2).

(5) Subsection (4) applies whether or not the application results from action taken under section 52G.

(6) For subsection (4)(a) and (b), “development”, “material change of use”, “premises” and “reconfiguration of a lot” have the meaning given by the *Integrated Planning Act 1997*, schedule 10.<sup>8</sup>

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8 *Integrated Planning Act 1997*, schedule 10 (Dictionary)

**57A Conditions in development approval under Integrated Planning Act 1997**

For sections 55 to 57, if—

- (a) a development approval under the *Integrated Planning Act 1997* includes conditions about access between land and a State-controlled road; and
- (b) the conditions were included because of the chief executive's response as a concurrence agency for the development application; and
- (c) the development approval has not lapsed under that Act;

a decision, that includes the conditions, is taken to be in force under section 52(1) for the proposed development of the land.

***Subdivision 3—Roadside facilities*****58 Roadside facilities**

(1) The chief executive may supply, or enter into an agreement with another person for the supply of, roadside service centres, roadside rest facilities and other roadside businesses adjacent to or near State-controlled roads.

(2) The agreement may include—

- (a) arrangements for supplying access to the facility from the road; and
- (b) provision for payment of amounts to the chief executive, whether by lump sum or annual rental, in consideration for supplying the access or for supplying access to the traffic stream.

***Division 3—Public utility plant on State-controlled roads*****59 Location**

For the purposes of this division, the location of public utility plant on a State-controlled road includes the line, level and boundary of the plant on the road.

**59A Chief executive's requirements for public utility plant**

(1) The chief executive may, by written notice to the owner of public utility plant on a State-controlled road, make requirements about matters prescribed under a regulation in relation to the plant.

(2) The requirements may include the imposition of conditions, including conditions about the payment of a fee or other charge fixed by the chief executive.

**60 Specification of chief executive's requirements about public utility plant**

(1) The construction, augmentation, alteration or maintenance of public utility plant on a State-controlled road must be undertaken in accordance with the chief executive's requirements and at the expense of the owner of the plant.

(2) Road works on a State-controlled road made necessary by the construction, augmentation, alteration or maintenance of public utility plant on a State-controlled road must be undertaken in accordance with the chief executive's requirements and at the expense of the owner of the plant.

(3) Requirements mentioned in subsection (1) or (2) are to be notified in writing to the owner of the plant within a reasonable period.

**61 Information by owner of public utility plant to chief executive**

(1) A person who wants to take action mentioned in section 60 (Specification of chief executive's requirements about public utility plant) must give a written notice to the chief executive of the person's intention to carry out work on a State-controlled road within a reasonable time before taking the action.

(2) If public utility plant is constructed, augmented, altered or maintained on a State-controlled road, the owner of the plant must prepare records that adequately define the location of the plant on the road at the time of the construction, augmentation, alteration or maintenance of the plant.

(3) The owner of public utility plant on a State-controlled road must, if asked by the chief executive, supply information to the chief executive to define adequately the location of the plant in a specified area.

Maximum penalty for subsection (3)—40 penalty units.

**62 Liability for damage or expenses**

(1) Unless the chief executive otherwise agrees, the chief executive is not liable for damage caused by the chief executive to public utility plant on a State-controlled road if—

- (a) the chief executive had, before the damage was caused, asked for information under section 61(3) (Information by owner of public utility plant to chief executive) from the owner of the plant and—
  - (i) the owner had not, within a reasonable time, complied with the request; and
  - (ii) the damage was caused because of the failure to comply with the request; or
- (b) information supplied to the chief executive under section 61(3) does not define in adequate detail the location of the plant and the damage was caused because of the failure to define in adequate detail the location of the plant; or
- (c) the damage was caused because of the plant having been constructed, augmented, altered or maintained other than under the chief executive's requirements under this division.

(2) If the chief executive incurs additional expense in carrying out road works on a State-controlled road because—

- (a) the owner of public utility plant had not supplied within a reasonable time information asked for by the chief executive under section 61(3); or
- (b) information supplied to the chief executive did not define in adequate detail the location of public utility plant; or
- (c) public utility plant had not been constructed, augmented, altered or maintained under the chief executive's requirements;

the owner of the plant is liable to pay to the chief executive the additional expense.

(3) If the construction of road works by or for the chief executive requires the removal or replacement of public utility plant on a State-controlled road, the chief executive cannot be compelled to approve the replacement or reconstruction of the plant in its previous location and form.

(4) If the chief executive approves the replacement or reconstruction of plant, the replacement or reconstruction must be done under the chief executive's requirements.

### **63 Chief executive and owner of public utility plant may share costs**

The chief executive may arrange with the owner of public utility plant (whether existing or proposed) for the sharing by the chief executive and the owner of the cost of all or any of—

- (a) acquisition of land associated with the plant; or
- (b) construction, augmentation, alteration or maintenance of the plant; or
- (c) construction of road works affected by the plant;

including all necessary preliminary costs associated with the acquisition, construction, augmentation, alteration or maintenance.

### **64 Division not to apply to public utility plant constructed under the Electricity Act**

This division does not apply to public utility plant constructed under the *Electricity Act 1994*.

## **PART 6—FRANCHISED ROADS**

### **65 Objectives of part**

The objectives of this part are—

- (a) to assist and encourage private investment in the construction, maintenance and operation of road transport infrastructure; and
- (b) by the involvement of private investment, to enable road transport infrastructure projects to be undertaken at an earlier time than would otherwise be possible; and
- (c) to provide an appropriate management structure for the construction, maintenance and operation of road transport infrastructure on a commercial basis.

## **66 Power to enter into road franchise agreements**

(1) The Minister may, for the State, enter into an agreement (a “**road franchise agreement**”) with a person under which, or as part of which, the person is to invest in the construction, maintenance or operation of road transport infrastructure.

(2) The agreement must be consistent with—

- (a) the coordination plan; and
- (b) the objectives of this Act; and
- (c) the current transport infrastructure strategies; and
- (d) the obligations about government supported transport infrastructure set out in section 9.

(3) The agreement may include, for example—

- (a) provisions about the ownership of the road transport infrastructure; or
- (b) provisions about tolls for the use of the road transport infrastructure.

## **67 Tabling of road franchise agreements**

The Minister must table each road franchise agreement, and each amendment of a road franchise agreement, in the Legislative Assembly as soon as practicable after it is entered into.

## **68 Report on operation of part**

Each annual report of the department must include a report on the operation of this part during the financial year to which the report relates.

## **69 Recovery of money**

If a road franchise agreement provides that the Minister may recover an amount from a franchisee, the amount may be recovered as a debt payable by the franchisee to the State.

## **70 Rateability of land**

(1) In this section—



**“road franchise agreement land”** means land on which is situated road transport infrastructure to which a road franchise agreement applies.

(2) A regulation may provide that road franchise agreement land is not rateable under the *Local Government Act 1993* or the *City of Brisbane Act 1924*.

## **71 Application of other provisions of this chapter**

(1) The provisions of the other parts of this chapter, and of regulations made for this chapter, apply to a franchised road as if it were a State-controlled road.

(2) A regulation may—

- (a) prescribe changes to the way the provisions apply to a particular franchised road; or
- (b) declare that some of the provisions do not apply to a particular franchised road.

## **72 Guarantees, undertakings and stamp duty**

For the purpose of giving guarantees, undertakings or stamp duty exemptions to a franchisee, the following sections of the *Statutory Bodies Financial Arrangements Act 1982* apply, with all necessary changes and any changes prescribed by regulation, to the franchisee as if the franchisee were a statutory body within the meaning of the Act—

- section 14 (Conditions precedent to financial arrangements and other matters)
- section 16 (Guarantees for the State)
- section 18 (Requirement for security)
- section 19 (Guarantee may include waiver of immunity and other provisions)
- section 20 (Guarantee not affected by transfer of liability)
- part 3, division 3 (Consequences if payment required under guarantee)
- section 77 (Exemption from stamp duty).

## PART 7—TOLL ROADS

### *Division 1—Preliminary*

#### 73 Definitions for pt 7

In this part—

**“administration charge”**, for a toll, means the administration charge set in relation to non-payment of the toll.

**“designated vehicle”** means a vehicle, other than an exempt vehicle, of a type liable for a toll under a regulation under section 73A.

**“E toll only pay point”**, means a part of a toll plaza, designated by appropriate signs, for the exclusive use of vehicles using the E toll system.

**“E toll system”** means an electronic system operated by a toll road operator for the recording, or the recording and meeting, of liability for a toll for use of the toll road.

**“exempt vehicle”** means a vehicle exempted under an Act or an Act or law of the Commonwealth or another State from the payment of tolls on roads.

**“prescribed time”**, for a notice given to a person under division 3, means 30 days, or the greater number of days stated in the notice, after the notice is given.

**“registered operator”**, of a vehicle that has passed through a toll plaza, means a person who, when the vehicle passed through the toll plaza, was the person in whose name the vehicle was registered under a registration Act.

**“registration Act”** means—

- (a) the *Transport Operations (Road Use Management) Act 1995* or another Act dealing with the registration of vehicles prescribed under a regulation; or
- (b) a law of the Commonwealth or another State dealing generally with the registration of vehicles.

**“toll plaza”** means a part of a toll road where facilities are constructed for either or both of the following—

- (a) the collection of tolls from the drivers of vehicles using the toll road;
- (b) the operation of an E toll system for vehicles using the toll road.

**“toll road”** means a road or part of a road declared under a regulation under section 73A to be a toll road.

**“toll road operator”** means—

- (a) if the relevant toll road is the subject of a road franchise agreement—the person stated in the agreement as the person who is to operate the toll road; or
- (b) otherwise—the chief executive.

**“valid account”**, for an E toll system operating for a toll road, means an account that—

- (a) has been established by a person for using the E toll system; and
- (b) is, under the arrangements under which the account was established, available to be operated for using the toll road.

### *Division 2—Toll roads and toll payment requirements*

#### **73A Tolls**

(1) A regulation may declare that a State-controlled road or part of a State-controlled road, or a franchised road or part of a franchised road, is a toll road.

(2) A regulation under subsection (1) must state—

- (a) when tolls become payable for use of the toll road; and
- (b) the types of vehicles liable for tolls; and
- (c) for the use of toll road by each of the types of vehicles—
  - (i) the amount of toll payable at each toll plaza; or
  - (ii) another way that is authorised for the setting and publication of the amount of toll payable at each toll plaza, including any necessary directions for the setting and publication of the amount.

(3) A regulation under subsection (1) may, for a toll, state—

- (a) the administration charge to be payable under this part; or

- (b) another way that is authorised for the setting and publication of the amount of the administration charge to be payable under this part, including any necessary directions for the setting and publication of the amount.

(4) An administration charge for a toll must not be more than the reasonable cost, under division 3, of issuing a notice and collecting the unpaid toll and administration charge for the toll.

(5) This section does not limit section 200.<sup>9</sup>

### **73B Liability for toll and satisfying the liability**

(1) The driver of a designated vehicle entering, or on, a toll road is liable, at each toll plaza through which the vehicle passes, for the toll payable at the toll plaza for the use of the toll road by the vehicle.

(2) The amount of any unpaid toll may be recovered by the toll road operator as a debt from the driver, subject to any applicable agreement made by the toll road operator.

(3) The driver may satisfy the driver's liability for the toll payable at a toll plaza by—

- (a) at a part of the toll plaza designated by appropriate signs as available for making a toll payment in cash, making a payment in cash of the toll payable; or
- (b) at a part of the toll plaza designated by appropriate signs as available for making a toll payment by using a touch tag, paying the toll payable by using a touch tag in accordance with the requirements of the toll road operator; or
- (c) at an E toll only pay point at the toll plaza, or at another part of the toll plaza designated by appropriate signs as available for using the E toll system, using the E toll system in accordance with the requirements of section 73C(1).

(4) If the designated vehicle is at an E toll only pay point at the toll plaza, the driver may satisfy the driver's liability for the toll only by using the E toll system in accordance with the requirements of section 73C(1).

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9 Section 200 (Regulations)

**73C Using the E toll system**

(1) The following requirements apply for using the E toll system to satisfy a driver's liability under section 73B for the toll payable at a toll plaza—

- (a) a properly operating transponder or other electronic device is in, or fitted to, the designated vehicle;
- (b) the transponder or other device—
  - (i) was issued for a vehicle of the same type as the designated vehicle; and
  - (ii) is linked to a valid account for the E toll system operating for the toll road; and
  - (iii) properly activates the E toll system.

(2) To remove doubt, it is declared that using the E toll system to satisfy the liability of a designated vehicle's driver for the toll payable at a toll plaza does not affect another contractual obligation owed by the driver or another person to a toll road operator under an applicable agreement made by the toll road operator.

*Example for subsection (2)—*

The arrangements for a person's account with a toll road operator may provide that the person will be billed at the end of each month for all the times the transponder issued to the person has been used at toll plazas in the month.

***Division 3—Failure to pay toll*****73D Application of div 3**

This division applies if—

- (a) a designated vehicle passes through a toll plaza; and
- (b) the driver does not, under section 73B(3), satisfy the driver's liability for the toll payable at the toll plaza.

**73E Definition for div 3**

In this division—

**“deferred toll amount”** means the total of the following amounts—

- (a) the amount of the toll for which the driver's liability was not satisfied under section 73B(3);
- (b) the amount of the administration charge for the toll.

### **73F Liability for administration charge in addition to unpaid toll**

If this division applies, the driver immediately becomes liable to pay the toll road operator, in addition to the unpaid toll, the administration charge for the toll.

### **73G Notice to vehicle's registered operator**

(1) The toll road operator may give a notice under this section only if the toll road operator has not received the deferred toll amount.

(2) The toll road operator may give the registered operator of the vehicle a written notice in the approved form requiring the registered operator, within the prescribed time for the notice—

- (a) to pay the toll road operator the deferred toll amount; or
- (b) to give the toll road operator the registered operator's statutory declaration in the approved form containing information that—
  - (i) establishes, to the extent it is reasonably practicable for the registered operator to do so, that the registered operator was not the driver; and
  - (ii) gives the toll road operator all the help the registered operator can reasonably give for establishing the driver's name and address.

(3) The registered operator must comply with the notice given under subsection (2) unless the registered operator has a reasonable excuse.

Maximum penalty—15 penalty units.

(4) For giving the notice under subsection (2), the registered operator's address for service may be taken to be the address recorded for the registered operator under the registration Act applying to the designated vehicle's registration.

**73H Notice to information holder**

(1) The toll road operator may give a notice under this section only if the toll road operator—

- (a) has not received the deferred toll amount; and
- (b) considers, on reasonable grounds, that a person (the “**information holder**”) other than the vehicle’s registered operator has information that could help the toll road operator establish the name and address of the driver.

(2) The toll road operator may give the information holder a written notice in the approved form requiring the information holder, within the prescribed time for the notice, to give the toll road operator a statutory declaration complying with subsection (3).

(3) The statutory declaration must—

- (a) be made by the information holder; and
- (b) be in the approved form; and
- (c) contain information giving the toll road operator all the help the information holder can reasonably give for establishing the driver’s name and address.

(4) The information holder must comply with the notice given under subsection (2) unless the information holder has a reasonable excuse.

Maximum penalty for subsection (4)—15 penalty units.

**73I Notice to person identified as driver**

(1) The toll road operator may give a notice under this section only if the toll road operator—

- (a) has not received the deferred toll amount; and
- (b) considers, on reasonable grounds, that the toll road operator has correctly identified the person (the “**identified person**”) who was the driver.

(2) The toll road operator may give the identified person a written notice in the approved form requiring the identified person, within the prescribed time for the notice—

- (a) to pay the toll road operator the deferred toll amount; or

- (b) to give the toll road operator the identified person's statutory declaration in the approved form containing information that—
- (i) establishes, to the extent it is reasonably practicable for the identified person to do so, that the identified person was not the driver; and
  - (ii) gives the toll road operator all the help the identified person can reasonably give for establishing the driver's name and address.

(3) The identified person must comply with the notice given under subsection (2) unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—15 penalty units.

### **73J Statutory declarations for div 3**

(1) A statutory declaration given by a person under this division may, if appropriate, be supported by statutory declarations in the approved form from other persons.

(2) If a person required to give a statutory declaration under this division is a body corporate, the statutory declaration must be given by a person authorised to act for the body corporate.

### **73K Limit on offences**

If this division applies more than once because of a failure to pay a toll at each of 2 or more toll plazas on the 1 toll road in a single journey, a person liable for an offence under this division arising out of the journey may not be punished for more than 1 offence.

## ***Division 4—Miscellaneous***

### **73L Confidentiality**

(1) A person must not, intentionally or recklessly, disclose, allow access to, record or use personal information.

Maximum penalty—200 penalty units.

(2) However, a person may disclose, allow access to, record or use personal information—



- (a) in the discharge of a function related to the administration of this part; or
- (b) if authorised, expressly or impliedly—
  - (i) under another provision of this Act, or under another Act; or
  - (ii) by the individual whose identity is apparent, or can reasonably be ascertained, from the personal information; or
- (c) for a proceeding in a court or tribunal, if the personal information is admissible as evidence in the proceeding; or
- (d) if the purpose for which the action is taken is directly related to the purpose for which the personal information was obtained; or
- (e) if the person believes on reasonable grounds that the action is necessary to prevent or lessen a serious and imminent threat to the life or health of an individual.

(3) In this section—

**“administration of this part”** includes the operation of a toll road under this part.

**“personal information”** means information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, that—

- (a) has been gained or otherwise brought into existence—
  - (i) through involvement in the administration of this part; or
  - (ii) because of an opportunity provided by involvement in the administration of this part; and
- (b) is about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

### **73M Evidence and procedure**

(1) For this part—

- (a) it is not necessary to prove the appointment of an official; and
- (b) a signature purporting to be the signature of an official is evidence of the signature it purports to be; and
- (c) a certificate stating any of the following matters is evidence of the matter—

- (i) a stated place was or was not a toll road or part of a toll road;
- (ii) a stated place was or was not a toll plaza or part of a toll plaza;
- (iii) a stated person was or was not recorded as the registered operator of a stated vehicle;
- (iv) a stated vehicle was or was not a designated vehicle of a stated type;
- (v) the toll payable for a vehicle's use of a toll road has not been paid;
- (vi) the administration charge for a toll has not been paid;
- (vii) a statutory declaration required for division 3 was or was not received;
- (viii) a recording is a recording of a type mentioned in subsection (3).

**(2)** A certificate—

- (a) may relate to a stated time or period of time; and
- (b) if it is issued for a particular period, has the effect mentioned in subsection (1)(c) for the entire period.

**(3)** A recording by a photographic, mechanical, electronic or other device for the purpose of administering this part, including for the operation of a toll road under this part, is evidence—

- (a) that the recording was made; and
- (b) of the accuracy of the recording; and
- (c) of the matters stated in the recording.

**(4)** For this section—

**“certificate”** means a certificate purporting to be signed by an official.

**“official”** means—

- (a) the chief executive, or a suitably qualified officer or employee of the department acting under the authority of the chief executive; or

- (b) the chief executive officer, however named, of a toll road operator, or a suitably qualified employee of the toll road operator acting under the authority of the chief executive officer.

## **CHAPTER 6—RAIL TRANSPORT INFRASTRUCTURE**

### **PART 1—PRELIMINARY**

#### **74 Ways of achieving objectives**

The objectives of this Act for rail are intended to be achieved by—

- (a) providing for the development and implementation of rail transport infrastructure strategies; and
- (b) providing a framework to—
  - (i) allow railway managers to manage rail transport infrastructure in an effective and efficient way; and
  - (ii) allow railway operators to operate rolling stock in an effective and efficient way; and
- (c) introducing a safety accreditation system to maintain appropriate levels of safety in the rail transport industry.

#### **75 Scope of chapter**

(1) This chapter applies to rail transport infrastructure and rolling stock used, or proposed to be used, to transport passengers or freight for reward.

(2) This chapter does not apply to—

- (a) a cable car; or
- (b) a monorail; or
- (c) an amusement railway; or
- (d) a railway that—
  - (i) is part of, and used solely for, a mining operation; and

- (ii) is not connected to a railway used to transport passengers, or freight, for reward; or
- (e) a cane railway; or
- (f) a tramway operated solely on roads; or
- (g) another railway prescribed under a regulation.

## **PART 2—INVESTIGATING POTENTIAL RAIL CORRIDOR**

### **76 Purpose of pt 2**

The purpose of this part is—

- (a) to facilitate the development of railway infrastructure by giving a person who is genuinely considering constructing a railway authorisation to enter land to enable the land's potential and suitability as a rail corridor to be investigated; and
- (b) to safeguard the interests of owners and occupiers of land affected by the entry.

### **77 Definitions for pt 2**

In this part—

**“associated person”**, of an investigator, means any of the following—

- (a) if the investigator is a corporation—the corporation's chief executive, secretary or directors;
- (b) the investigator's employees or partners who are individuals;
- (c) a person who is an agent of, or contractor for, the investigator, and engaged in writing for the purposes of the investigator's authority;
- (d) employees of an agent or contractor mentioned in paragraph (c);
- (e) if a person mentioned in paragraph (c) is a corporation—the corporation's chief executive, secretary, directors or employees.

“**authority**” means a rail feasibility investigator’s authority.

“**investigator**” means a person who holds an authority.

### **78 How to apply for a rail feasibility investigator’s authority**

(1) A person may apply to the chief executive for a rail feasibility investigator’s authority for an area of land.

(2) The application must be in writing and state the following information—

- (a) the area of land;
- (b) the purpose for which the authority is sought;
- (c) details of the nature of the activities proposed to be conducted in the area;
- (d) the period for which the authority is sought.

### **79 Additional information for application**

(1) The chief executive may—

- (a) make inquiries to decide the application; and
- (b) require the applicant to give the chief executive additional information to decide the application.

(2) The chief executive may reject the application if the applicant fails, without reasonable excuse, to give the additional information within a stated reasonable time of not less than 28 days.

### **79A Granting authority**

(1) The chief executive may grant or refuse to grant an authority.

(2) The chief executive must grant the authority if the chief executive is satisfied the person is genuinely considering constructing a railway and is acting reasonably and in good faith.

(3) If the chief executive refuses to grant an authority, the chief executive must give the applicant written reasons for the refusal.

(4) In deciding the area for an authority, the chief executive must be satisfied the area is no more extensive than is reasonably necessary.

**79B Rail feasibility investigator's authority**

(1) An authority must be in writing stating the following—

- (a) the area to which it applies;
- (b) the purpose for which it is granted;
- (c) when it expires;
- (d) any conditions that may be imposed on the authority.

*Example of conditions—*

Lodging a bond with the chief executive or taking out insurance.

(2) An authority authorises the investigator and associated persons—

- (a) to enter and re-enter any land within the area to which it applies for the purpose of investigating the land's potential and suitability as a rail corridor; and
- (b) to the extent reasonably necessary or convenient for that purpose—
  - (i) to do anything on the land; or
  - (ii) to bring anything onto the land; or
  - (iii) to temporarily leave machinery, equipment or other items on the land.

*Examples of things authorised by the authority—*

1. To conduct surveys and take soil samples.
2. To clear vegetation, or otherwise disturb the land, to the extent reasonably necessary.
3. To construct temporary access tracks using the land or using materials brought onto the land.

(3) The grant of an authority is not an indication of a commitment or approval by the State, the chief executive or any other person in relation to any proposal, and in particular, does not commit the State to acquiring any land as a rail corridor.

(4) An investigator or associated person must comply with each condition of the investigator's authority, unless the investigator or associated person has a reasonable excuse.

Maximum penalty for subsection (4)—200 penalty units.

**79C What investigator must do before land is entered for the first time**

(1) Before land is entered for the first time under an investigator's authority, the investigator must give a written notice to the land's owner or occupier.

(2) The notice must state—

- (a) the chief executive has granted to the investigator a rail feasibility investigator's authority for an area that is part of or includes the land; and
- (b) the things the investigator and associated persons of the investigator are authorised to do under the authority; and
- (c) a general outline of the things intended to be done on the land, including the construction of any temporary access track; and
- (d) the approximate period during which the land is to be entered under the authority; and
- (e) the grant of the authority is not an indication of a commitment or approval by the State, the chief executive or any other person in relation to any proposal, and in particular, does not commit the State to acquiring any land as a rail corridor.

(3) The investigator or associated person may enter onto land only if—

- (a) the owner or occupier of the land gives written consent to the entry; or
- (b) at least 7 days have passed since the notice was given.

**79D Investigator to issue associated person with identification**

(1) Before an investigator allows an associated person to act under the investigator's authority, the investigator must issue the associated person with identification.

Maximum penalty—10 penalty units.

(2) The identification must—

- (a) state the names of the investigator and the person to whom the identification is issued; and
- (b) indicate that, for the purposes of this Act, the person is associated with the holder of a rail feasibility investigator's authority; and

- (c) state the capacity in which the associated person is an associated person; and
- (d) be signed by or for the investigator; and
- (e) be signed by the associated person; and
- (f) state an expiry date.

(3) A person who stops being an associated person of an investigator must return the person's identification issued under subsection (1) to the investigator as soon as practicable, but within 21 days, after the person stops being an associated person, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

(4) Subsections (5) and (6) apply if a person who claims to be or appears to be the owner or occupier of land within the area for an authority asks an individual who has entered, is entering or is about to enter land under an authority—

- (a) for identification; or
- (b) about the person's authority to enter the land.

(5) If the request is made of an investigator, the investigator must immediately state the investigator's name and show the person a copy of the investigator's authority.

Maximum penalty—10 penalty units.

(6) If the request is made of an associated person of an investigator, the associated person must immediately state his or her name and show the other person the identification issued to the associated person under subsection (1).

Maximum penalty for subsection (6)—10 penalty units.

### **79E Pretending to be an investigator etc.**

A person must not pretend—

- (a) to be an investigator; or
- (b) to be an associated person of an investigator.

Maximum penalty—80 penalty units.



**79F Investigator to take care in acting under authority**

An investigator—

- (a) must take as much care as is practicable to minimise damage to the land or inconvenience to the land's owner or occupier; and
- (b) may do anything necessary or desirable to minimise the damage or inconvenience; and
- (c) is liable to compensate the land's owner or occupier for any loss or damage suffered by the owner or occupier arising out of the entry onto the land, any use made of the land, anything brought onto the land or anything done or left on the land in connection with the investigator's authority.

**79G Compensation payable by investigator**

(1) An owner or occupier of land may, by written notice given to an investigator—

- (a) claim compensation from the investigator for loss or damage arising out of an entry onto the land, any use made of the land, anything brought onto the land or anything done or left on the land in connection with the investigator's authority; or
- (b) require the investigator to carry out works to rectify the damage within a reasonable time after the investigator has finished investigating the land under the authority; or
- (c) require the investigator to carry out works under paragraph (b) and then claim compensation for any loss or damage not rectified.

(2) A claim may be made—

- (a) whether or not the act or omission giving rise to the claim was authorised under the authority; and
- (b) whether or not the investigator prohibited, or took steps to prevent, the loss or damage; and
- (c) even though the loss or damage was caused or contributed to by an associated person.

(3) The notice must be given—

- (a) within 1 year after the loss or damage happened; or

- (b) at a later time allowed by a court.
- (4) The amount of compensation is—
  - (a) the amount agreed between the parties; or
  - (b) if the parties can not agree within a reasonable time—the amount decided by a court with jurisdiction for the amount of compensation claimed.

## **PART 4—ACCREDITATION**

### **80 Definition for pt 4**

In this part—

“**railway**” includes a railway proposed to be constructed on future railway land.

### **81 Accreditation of managers and operators**

(1) A person must not manage a railway unless the person is accredited as the railway manager for the railway.

Maximum penalty—160 penalty units.

(2) A person must not operate rolling stock on a railway unless the person is accredited as a railway operator for the railway.

Maximum penalty—160 penalty units.

- (3) Subsection (1) does not apply to a person who—
  - (a) owns or manages a railway for a purpose that is incidental to the person’s main business; and
  - (b) has an agreement with a person who is accredited as the railway manager for another railway for the connection of the railway to the other railway; and
  - (c) maintains the railway, or arranges for it to be maintained, in a way that is acceptable to the other person.

**82 Applications for accreditation**

A person may apply to the chief executive for accreditation as—

- (a) the railway manager for a railway; or
- (b) a railway operator for a railway; or
- (c) the railway manager and a railway operator for a railway.

**83 Additional information for applications**

(1) The chief executive may, by written notice, require an applicant to give the chief executive stated written information that the chief executive reasonably requires to consider the application.

(2) The chief executive may reject the application if the applicant fails to comply with the requirement within a stated reasonable time, of not less than 28 days, without reasonable excuse.

**84 Granting accreditation**

(1) The chief executive must promptly consider an application for accreditation and grant, or refuse to grant, the accreditation.

(2) The chief executive must accredit an applicant as the railway manager for a railway if satisfied—

- (a) the applicant—
  - (i) is accredited in another State to manage a similar type of railway; or
  - (ii) has the competency and capacity to manage the railway safely; and
- (b) the applicant has an appropriate safety management system; and
- (c) the applicant has the financial capacity or public risk insurance arrangements to meet reasonable potential accident liabilities for the railway; and
- (d) the applicant has a right—
  - (i) of access to the land where the railway is constructed, or proposed to be constructed, either under this Act or with the agreement of the land's owner; and

- (ii) to use rail transport infrastructure or other rail infrastructure for the railway with the agreement of the infrastructure's owner.

**(3)** The chief executive must accredit an applicant as a railway operator for a railway if satisfied—

- (a) the applicant—
  - (i) is accredited in another State to operate rolling stock on a railway for a similar type of service; or
  - (ii) has the competency and capacity to operate rolling stock on the railway safely; and
- (b) the applicant has an appropriate safety management system; and
- (c) the applicant has the financial capacity or public risk insurance arrangements to meet reasonable potential accident liabilities for the railway; and
- (d) unless the applicant is applying for accreditation as the railway manager and operator of a railway—the applicant has an agreement with the railway's manager to operate particular rolling stock on the railway, and the agreement includes appropriate arrangements for the safe operation of the rolling stock.

**(4)** In considering a safety management system, the chief executive must consider—

- (a) the applicant's rail transport proposal; and
- (b) the appropriateness of the safety management system for the proposal; and
- (c) the safety levels achievable, consistent with the nature of the proposal, at a reasonable cost; and
- (d) the need for efficient and competitive rail transport services; and
- (e) consistency with generally accepted risk management principles; and
- (f) the levels of safety proposed relative to the levels of safety of competing transport modes.

**(5)** Subsection (4) does not limit by implication the matters the chief executive may consider in considering a safety management system.

(6) If the chief executive decides to grant the accreditation, the chief executive must promptly give the applicant a written notice stating—

- (a) the decision; and
- (b) the details of the accreditation, including its scope; and
- (c) if the accreditation is granted subject to a condition—
  - (i) the details of the condition; and
  - (ii) the reason for the condition; and
  - (iii) the applicant may—
    - (A) under section 196—ask for the decision to be reviewed and appeal against the reviewed decision; and
    - (B) under the *Transport Planning and Coordination Act 1994*, part 5—ask for the decision or the reviewed decision to be stayed.

(7) If the chief executive decides not to grant the accreditation, the chief executive must promptly give the applicant a written notice stating—

- (a) the decision; and
- (b) the reason for the decision; and
- (c) the applicant may—
  - (i) under section 196—ask for the decision to be reviewed and appeal against the reviewed decision; and
  - (ii) under the *Transport Planning and Coordination Act 1994*, part 5—ask for the decision or the reviewed decision to be stayed.

### **84A Annual levy**

(1) A regulation may impose levies on railway managers relating to their accreditation on a basis prescribed under the regulation.

(2) A regulation may impose levies on railway operators relating to their accreditation on a basis prescribed under the regulation.

(3) The chief executive must give the railway manager or railway operator written notice of the amount of a levy.

(4) The chief executive may recover the amount of a levy as a debt owed to the chief executive.

**85 Accreditation conditions**

(1) An accreditation may be subject to conditions.

(2) A condition may relate only to—

(a) for the accreditation of a person as the manager of a railway—

- (i) constructing or maintaining the railway; or
- (ii) managing the railway safely, considering the need for efficient and competitive services; or

(b) for the accreditation of a person as an operator of a railway—

- (i) operating rolling stock safely, considering the need for efficient and competitive services; or
- (ii) the person having an agreement with the manager of the railway to operate particular rolling stock on the railway, and the agreement, including appropriate arrangements for the safe operation of rolling stock; or

(c) for all accreditations—

- (i) the person's financial capacity or public risk insurance arrangements to meet reasonable potential accident liabilities for the railway; or
- (ii) paying accreditation fees; or
- (iii) another matter prescribed under a regulation.

(3) An accredited person must comply with each condition of the person's accreditation.

Maximum penalty for subsection (3)—40 penalty units.

**86 Requiring accreditation conditions to be complied with**

(1) This section applies if the chief executive reasonably believes an accredited person has not complied with a condition of the person's accreditation.

(2) The chief executive may, by written notice, require the person to remedy the breach within a reasonable period stated in the notice.

(3) If the person has not in fact complied with the condition of the person's accreditation, the person must comply with the notice.

Maximum penalty for subsection (3)—60 penalty units.

**87 Accreditation period**

An accreditation remains in force until it is suspended, cancelled or surrendered.

**88 Amending accreditation conditions on application**

(1) An accredited person may apply to the chief executive for an amendment of the conditions of the person's accreditation.

(2) The chief executive must consider the application and may grant, or refuse to grant, the amendment.

(3) The chief executive may amend a condition only if satisfied the condition is—

- (a) no longer appropriate; or
- (b) no longer consistent with generally accepted risk management principles.

(4) If the chief executive decides to amend a condition, the chief executive must promptly give the applicant a written notice stating the decision and the amendment.

(5) If the chief executive decides not to amend a condition, the chief executive must promptly give the applicant a written notice stating—

- (a) the decision; and
- (b) the reason for the decision; and
- (c) the applicant may—
  - (i) under section 196—ask for the decision to be reviewed and appeal against the reviewed decision; and
  - (ii) under the *Transport Planning and Coordination Act 1994*, part 5—ask for the decision or the reviewed decision to be stayed.

(6) If the chief executive does not decide the application within 70 days after it is made, the chief executive is taken to have made the amendment sought by the accredited person at the end of the 70 days.

**89 Amending accreditation conditions without application**

(1) This section applies if the chief executive considers the conditions of a person's accreditation should be amended.

(2) Before amending the conditions, the chief executive must give the person a written notice—

- (a) stating the proposed amendment; and
- (b) stating the reason for the amendment; and
- (c) inviting the person to show, within a stated time of at least 28 days, why the amendment should not be made.

(3) If, after considering all written representations made within the stated time, the chief executive still considers the conditions should be amended, the chief executive may amend the conditions—

- (a) in the way proposed; or
- (b) in another way, having regard to the representations.

(4) The chief executive must inform the person of the decision by written notice.

(5) If the chief executive decides to amend the conditions, the notice must also state—

- (a) the amendment; and
- (b) the reason for the decision; and
- (c) the person may—
  - (i) under section 196—ask for the decision to be reviewed and appeal against the reviewed decision; and
  - (ii) under the *Transport Planning and Coordination Act 1994*, part 5—ask for the decision or the reviewed decision to be stayed.

(6) Subsections (2) to (5) do not apply if the chief executive proposes to amend the conditions of a person's accreditation for a formal or clerical reason that does not adversely affect the person's interests.

(7) The chief executive may amend a condition in a way mentioned in subsection (6) by written notice given to the person.



**90 Suspending or cancelling accreditation**

(1) This section applies if the chief executive—

- (a) reasonably suspects an accredited person has failed to comply with a condition of the person's accreditation; and
- (b) considers the person's accreditation should be suspended or cancelled (the **“proposed action”**).

(2) Before taking the proposed action, the chief executive must give the person a written notice—

- (a) stating the proposed action; and
- (b) stating the reason for the proposed action; and
- (c) if the proposed action is suspension of the accreditation—stating the proposed suspension period; and
- (d) if the proposed action is a limited suspension of the accreditation<sup>10</sup>—stating the details of the proposed limitation; and
- (e) inviting the person to show, within a stated time of at least 28 days, why the proposed action should not be taken.

(3) If, after considering all written representations made within the stated time, the chief executive still considers the proposed action should be taken, the chief executive may—

- (a) if the proposed action was to suspend the accreditation—suspend the accreditation—
  - (i) for no longer than the proposed suspension period; and
  - (ii) if the proposed action was a limited suspension—by no more than the proposed limitation; or
- (b) if the proposed action was to cancel the accreditation—cancel the accreditation or suspend it for a period.

(4) The chief executive must inform the person of the decision by written notice.

(5) If the chief executive decides to suspend or cancel the accreditation, the notice must also state—

- (a) the reason for the decision; and

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<sup>10</sup> See section 92 (Limited suspension of accreditation).

- (b) the person may—
  - (i) under section 196—ask for the decision to be reviewed and appeal against the reviewed decision; and
  - (ii) under the *Transport Planning and Coordination Act 1994*, part 5—ask for the decision or the reviewed decision to be stayed.

**(6)** If—

- (a) rather than cancel the accreditation, the chief executive suspends it on condition that the person do certain things to rectify the failure to comply with a condition of the person's accreditation; and
- (b) the person does not rectify the failure within the suspension period;

the chief executive may immediately cancel the accreditation by written notice given to the person.

**(7)** The notice must state—

- (a) the reason for the decision; and
- (b) the person may—
  - (i) under section 196—ask for the decision to be reviewed and appeal against the reviewed decision; and
  - (ii) under the *Transport Planning and Coordination Act 1994*, part 5—ask for the decision or the reviewed decision to be stayed.

## **91 Immediate suspension of accreditation**

**(1)** This section applies if the chief executive—

- (a) reasonably believes an accredited person has failed to comply with a condition of the person's accreditation; and
- (b) considers members of the public may be seriously harmed if urgent action to suspend the accreditation is not taken.

**(2)** The chief executive may immediately suspend an accreditation by written notice given to the person.

**(3)** The notice must state—

- (a) the reason for the decision; and
- (b) the person may—
  - (i) under section 196—ask for the decision to be reviewed and appeal against the reviewed decision; and
  - (ii) under the *Transport Planning and Coordination Act 1994*, part 5—ask for the decision or the reviewed decision to be stayed.

(4) The chief executive must at the same time give the person a notice under section 90(2).

(5) The accreditation is suspended under this section until the earlier of the following—

- (a) the chief executive gives the person notice of the chief executive's decision under section 90;
- (b) the end of 60 days after the notice under subsection (2) was given to the person.

## **92 Limited suspension of accreditation**

Under section 90 or 91,<sup>11</sup> the chief executive may limit a suspension to, for example—

- (a) a particular railway for which the accredited person is accredited;  
or
- (b) a particular service operated by the accredited person.

## **93 Surrender of accreditation**

An accredited person may, at any time, surrender the person's accreditation by written notice given to the chief executive.

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11 Section 90 (Suspending or cancelling accreditation) or 91 (Immediate suspension of accreditation)

## **PART 5—RAIL TRANSPORT INFRASTRUCTURE POWERS**

### *Division 1—Railway works*

#### **93A Application of div 1**

This division applies only to railway works.

#### **94 Entering land for railway works etc.**

For railway works, the chief executive or an accredited person may enter someone else's land and carry out the works.

#### **95 Entry to land by notice or with approval**

(1) Before entering someone else's land to carry out railway works, the chief executive or an accredited person must—

- (a) give at least 7 days written notice to the land's owner or occupier;  
or
- (b) get the written agreement of the land's owner or occupier to the entry.

(2) The notice must—

- (a) state the use intended to be made of the land; and
- (b) include a general outline of the intended works; and
- (c) state an approximate period when the works are expected to be carried out on the land.

(3) The chief executive or accredited person need not comply with subsection (1) for—

- (a) urgent remedial action on a railway; or
- (b) maintenance on a road.

(4) If urgent remedial action is required, the chief executive or accredited person must give the land's owner or occupier as much oral notice as is practicable.

**96 Care to be taken in carrying out works etc.**

In entering land and carrying out railway works on the land, the chief executive or an accredited person—

- (a) must take as much care as is practicable to minimise damage to the land or inconvenience to the land's owner or occupier; and
- (b) may do anything necessary or desirable to minimise the damage or inconvenience; and
- (c) must get the agreement of the owner or occupier to take or use the materials of the land's owner or occupier, unless urgent remedial action on a railway is required.

**97 Compensation for carrying out works etc.**

(1) An owner or occupier of land entered under this part by the chief executive or an accredited person may, by written notice given to the chief executive or accredited person—

- (a) claim compensation for loss or damage caused by the entry or railway works carried out on the land; or
- (b) claim compensation for the taking or use of materials; or
- (c) require the person to carry out works in restitution for the damage; or
- (d) require the person to carry out works in restitution for the damage and then claim compensation for any loss or damage not restituted.

(2) The notice must be given—

- (a) within 1 year after the railway works are completed; or
- (b) at a later time allowed by the chief executive or accredited person.

(3) The amount of compensation is—

- (a) the amount agreed between the parties; or
- (b) if the parties can not agree within a reasonable time—the amount decided by a court with jurisdiction for the recovery of the amount of compensation claimed.

(4) However, the amount of compensation for damage to the land and its fixtures, and for taking or use of materials, can not be more than the amount that would have been awarded if the land had been acquired.

## **98 Watercourses**

(1) To carry out railway works, an accredited person may, with the chief executive's written approval—

- (a) divert a watercourse; or
- (b) construct a watercourse, whether temporary or permanent.

(2) In deciding whether to approve the diversion of a watercourse, the chief executive must consider the effect the works would have on the watercourse's physical integrity and flow characteristics.

(3) Subsection (2) does not limit the matters the chief executive may consider.

### *Division 2—Other powers*

## **99 Power to require works to stop**

(1) A person must not, without the chief executive's written approval, carry out works near a railway if the works threaten, or are likely to threaten, the railway's safety or operational integrity.

Maximum penalty—100 penalty units.

(2) If—

- (a) a person is carrying out, or proposes to carry out, works near a railway; and
- (b) the chief executive reasonably believes they threaten, or are likely to threaten, the railway's safety or operational integrity;

the chief executive may give the person a written direction to stop, alter or not to start the works.

(3) The person must comply with the direction, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(4) If works are carried out contrary to subsection (1) or a direction under subsection (2), the chief executive may, by written notice, require the owner of the land where the works are situated to alter, demolish or take away the works within a stated reasonable time.

(5) The person must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(6) If the person does not comply with the requirement, the chief executive may—

- (a) alter, demolish or take away the works; or
- (b) alter, demolish or take away the works and recover the cost of doing so from the land's owner as a debt payable by the owner.

(7) For this section, a person authorised by the chief executive may enter land and inspect works—

- (a) after giving 3 days written notice to the land's owner or occupier; or
- (b) with the written agreement of the land's owner or occupier; or
- (c) without notice or approval, if the chief executive reasonably believes there is an immediate and significant threat to the railway's safety or operational integrity.

(8) This section binds all persons, including the State, the Commonwealth and the other States.

### **100 Closing railway crossings**

(1) A railway manager may temporarily close or regulate a railway crossing if satisfied it is necessary because of an immediate threat to—

- (a) the safety of the railway; or
- (b) the public using it or who may use it.

(2) If the manager decides to close or regulate a crossing—

- (a) the manager must, as soon as practicable after its closure or regulation, notify the authority responsible for the crossing of its closure or regulation, unless the authority has agreed that notification is unnecessary; and
- (b) the manager may construct a substitute crossing.

## **PART 6—RAILWAY INCIDENTS**

### *Division 1—Report of railway incident*

#### **101 Reporting serious incidents**

(1) If an accredited person for a railway becomes aware that a serious incident has happened on or involving a railway, the person must report the incident to the chief executive in accordance with any guidelines under subsection (2).

Maximum penalty—10 penalty units.

(2) The chief executive may make, and give to all accredited persons, written guidelines—

- (a) to which they are to have regard in deciding whether an incident is one to which subsection (1) applies; or
- (b) about the information that must be included in reports under the subsection; or
- (c) about the times within which reports must be made to the chief executive; or
- (d) about the form in which reports must be made.

(3) In making guidelines, the chief executive must consult with accredited persons.

#### **102 Request for report or incident details**

(1) This section applies if the chief executive becomes aware that a serious incident on or involving a railway may have happened, even if it has not been reported.

(2) The chief executive may require an accredited person for the railway to give the chief executive a written report, or stated written details, about the incident within a stated reasonable period.

(3) The person must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—10 penalty units.



***Division 2—Investigation of railway incident*****103 Investigations by authorised person**

(1) This section applies if—

- (a) a serious incident on or involving a railway happens; or
- (b) the chief executive becomes aware that a serious incident on or involving a railway may have happened, even if it has not been reported.

(2) The chief executive may require an authorised person for the railway to investigate the matter.

(3) If a report has been given to the chief executive about the incident, the chief executive may require the authorised person to investigate the matter by reviewing the report.

(4) After finishing the investigation, the authorised person must report the results of the investigation to the chief executive.

**104 Power of authorised person to investigate incident**

(1) This section applies if—

- (a) an incident on or involving a railway has, or may have, happened; and
- (b) an authorised person for the railway is investigating the incident, whether or not at the chief executive's request.

(2) If the authorised person reasonably needs help in investigating the incident, the authorised person may require a person to give the authorised person reasonable help in the investigation.

(3) A requirement may only be made of a person who the authorised person reasonably believes is competent to give the help.

(4) The authorised person may require a person who the authorised person reasonably suspects was at or near the scene of the incident when it happened to—

- (a) answer questions relevant to the incident; or
- (b) produce documents or other things relevant to the incident.

(5) The authorised person may require an employee of a railway manager or operator to take an alcohol test, drug test or medical examination if the person reasonably suspects—

- (a) the employee caused, or was directly involved in, the incident; and
- (b) the result of the test or examination may help in deciding the circumstances and probable causes of the incident.

(6) The test mentioned in subsection (5) must take place within 2 hours after the incident happens.

(6A) The medical examination mentioned in subsection (5) must take place within a reasonable time after the authorised person forms the reasonable suspicions about the employee under the subsection.

(7) The cost of the test or examination must be paid by the employee's employer.

(8) A person must comply with a requirement under this section, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

(9) When making a requirement of a person under this section, an authorised person must warn the person it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.

(10) If the person refuses to take a test mentioned in subsection (5), the person may be taken, for a purpose prescribed under a regulation, to have been under the influence of alcohol or a drug when the incident happened, in the absence of evidence to the contrary.

(11) In this section—

**“alcohol test”** includes—

- (a) a preliminary test to give an indication of the presence or absence of alcohol in a person's breath; and
- (b) a test to analyse a person's blood or breath to determine the person blood alcohol concentration.

**“drug”** means—

- (a) every substance or article which is a dangerous drug under and within the meaning of the *Drugs Misuse Act 1986*; or
- (b) any other substance, article, preparation or mixture (with the exception of liquor) whether gaseous, liquid, solid, or in any

other form that, when consumed or used by any person, deprives the person either temporarily or permanently of any of the person's normal mental or physical faculties.

### **109 Compensation**

(1) This section applies if a person incurs loss or expense because of the exercise or purported exercise by an authorised person for a railway of a power under this part, including, for example, in complying with a requirement made of the person.

(2) The person may claim compensation for the loss or expense from the employing authority.

(3) Payment of compensation may be claimed and ordered in a proceeding—

- (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
- (b) for an offence against this Act brought against the person claiming compensation.

(4) A court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

(5) A regulation may prescribe matters that may, or must, be taken into account by the court in considering whether it is just to make the order.

(6) In this section—

**“employing authority”**, of an authorised person, means—

- (a) if the authorised person is employed by an accredited person—the accredited person; or
- (b) in any other case—the State.

***Division 3—Boards of inquiry******Subdivision 1—General*****110 Minister may establish or re-establish boards of inquiry**

(1) The Minister may, by gazette notice, establish or re-establish a board of inquiry about an incident that—

- (a) has happened on or involving a railway; and
- (b) the Minister considers is a serious incident.

(2) The notice, or a subsequent gazette notice, may specify matters relevant to the inquiry, including, for example, the number and appointment of members, the chairperson and the terms of reference.

(3) The Minister may exercise powers under this section for an incident—

- (a) whether or not the incident has been investigated under division 2;<sup>12</sup> or
- (b) whether or not a board of inquiry has previously inquired into the incident.

**111 Role of board of inquiry**

(1) The board of inquiry must—

- (a) inquire into the circumstances and probable causes of the relevant incident; and
- (b) give the Minister a written report of the board's findings.

(2) The report may contain the recommendations the board considers appropriate and other relevant matters.

(3) The Minister must table a copy of the report in the Legislative Assembly within 14 days after receiving the report.

(4) However, if the board gives the Minister a separate report of matters that the board considers should not be made public, the Minister need not table the separate report in the Legislative Assembly.

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<sup>12</sup> Division 2 (Investigation of railway incident)

**112 Conditions of appointment**

(1) Members of the board of inquiry are entitled to be paid the fees and allowances that may be decided by the Minister.

(2) The members hold office on the terms not provided by this Act that may be decided by the Minister.

**113 Chief executive to arrange for services of staff and financial matters for board of inquiry**

As soon as practicable after the board of inquiry is established, the chief executive must consult with the chairperson of the board and arrange—

- (a) for the services of officers and employees of the department, authorised persons for a railway and other persons to be made available to the board for the conduct of the inquiry; and
- (b) for financial matters relevant to the board.

**114 Authorised person may exercise powers for board's inquiry**

(1) This section applies to an authorised person for a railway whose services have been made available to the board of inquiry.

(2) The person may exercise the powers of an authorised person under division 2<sup>13</sup> for the incident the subject of the board's inquiry.

***Subdivision 2—Conduct of inquiry*****115 Procedure**

(1) In conducting its inquiry, the board of inquiry—

- (a) must observe natural justice; and
- (b) must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues.

(2) In conducting the inquiry, the board—

- (a) is not bound by the rules of evidence; and

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13 Division 2 (Investigation of railway incident)

- (b) may inform itself in any way it considers appropriate, including, for example, holding hearings; and
- (c) may decide the procedures to be followed for the inquiry.

(3) However, the board must comply with this division and any procedural rules prescribed under a regulation.

(4) The chairperson presides at the inquiry.

### **116 Notice of inquiry**

The chairperson of the board of inquiry must give at least 14 days written notice of the time and place of the inquiry to anyone who the chairperson has reason to believe should be given the opportunity to appear at the inquiry.

### **117 Inquiry to be held in public other than in special circumstances**

(1) An inquiry must be held in public.

(2) However, the board may, of its own initiative or on the application of a person represented at the inquiry, direct that the inquiry, or a part of the inquiry, be held in private, and give directions about the persons who may be present.

(3) The board may direct that the inquiry be held in private only if satisfied it is proper to make the order in the special circumstances of the inquiry.

### **118 Protection of members, legal representatives and witnesses**

(1) A member of the board of inquiry has, in the performance of the member's duties, the same protection and immunity as a judge of the Supreme Court.

(2) A lawyer or other person appearing before the board for someone else has the same protection and immunity as a barrister appearing for a party in a proceeding in the Supreme Court.

(3) A person summoned to attend or appearing before the board as a witness has the same protection as a witness in a proceeding in the Supreme Court.

**119 Record of proceedings to be kept**

The board of inquiry must keep a record of its proceedings.

**120 Procedural fairness and representation**

In conducting the inquiry, the board must give anyone directly concerned in the incident the subject of the inquiry, the opportunity of making a defence to all claims made against the person either in person or by lawyer or agent.

**121 Board's powers on inquiry**

(1) In conducting the inquiry, the board may—

- (a) act in the absence of any person who has been given a notice under section 116<sup>14</sup> or some other reasonable notice; and
- (b) receive evidence on oath or affirmation or by statutory declaration; and
- (c) adjourn the inquiry; and
- (d) disregard any defect, error, omission or insufficiency in a document; and
- (e) permit or refuse to permit a person, including a lawyer, to represent someone else at the inquiry.

(2) A member of the board may administer an oath or affirmation to a person appearing as a witness before the inquiry.

**122 Notice to witness**

(1) The chairperson of the board of inquiry may, by written notice given to a person, require the person to attend the inquiry at a stated time and place to give evidence or produce stated documents or things.

(2) A person required to appear as a witness before the board is entitled to the witness fees prescribed under a regulation or, if no witness fees are prescribed, the reasonable witness fees decided by the chairperson.

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14 Section 116 (Notice of inquiry)

**123 Inspection of documents or things**

(1) If a document or other thing is produced to the board at the inquiry, the board may—

- (a) inspect the thing; and
- (b) make copies of, photograph, or take extracts from, the thing if it is relevant to the inquiry.

(2) The board may also take possession of the thing, and keep it while it is necessary for the inquiry.

(3) While it keeps a thing, the board must permit a person otherwise entitled to possession of the thing to inspect, make copies of, photograph, or take extracts from, it, at a reasonable place and time that the board decides.

**124 Inquiry may continue despite court proceedings unless otherwise ordered**

The inquiry of the board of inquiry may start or continue, and a report may be prepared or given, despite a proceeding before any court or tribunal, unless a court or tribunal with the necessary jurisdiction orders otherwise.

**125 Offences by witnesses**

(1) A person given a notice under section 122<sup>15</sup> must not—

- (a) fail, without reasonable excuse, to attend as required by the notice; or
- (b) fail, without reasonable excuse, to continue to attend as required by the chairperson of the board of inquiry until excused from further attendance.

Maximum penalty—60 penalty units.

(2) A person appearing as a witness at the inquiry must not—

- (a) fail to take an oath or make an affirmation when required by the chairperson of the board; or

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15 Section 122 (Notice to witness)



- (b) fail, without reasonable excuse, to answer a question the person is required to answer by a member of the board; or
- (c) fail, without reasonable excuse, to produce a document or thing the person is required to produce by a notice under section 122.

Maximum penalty—60 penalty units.

### **126 Self-incrimination**

- (1) A person appearing as a witness at the inquiry is not excused from—
- (a) answering a question put to the person at the inquiry; or
  - (b) producing a document or other thing at the inquiry;

on the ground that the answer or producing the thing might tend to incriminate the person.

(2) However, neither the answer, nor the fact that the person has produced the thing, is admissible in evidence against the person in a criminal proceeding (other than a proceeding about the falsity or misleading nature of the answer or thing) if—

- (a) before answering the question or producing the thing, the person claims that the answer or producing the thing might tend to incriminate the person; and
- (b) the answer or producing the thing might in fact tend to incriminate the person.

### **127 False or misleading statements**

- (1) A person must not—
- (a) state anything to the board of inquiry that the person knows is false or misleading in a material particular; or
  - (b) omit from a statement made to the board of inquiry anything without which the statement is, to the person's knowledge, misleading in a material particular.

Maximum penalty—200 penalty units.

(2) It is enough for a complaint against a person for an offence against subsection (1) to state that the statement made was false or misleading to the person's knowledge.

**128 False, misleading or incomplete documents**

(1) A person must not give to the board of inquiry a document containing information the person knows is false, misleading or incomplete in a material particular.

Maximum penalty—200 penalty units.

(2) Subsection (1) does not apply to a person if the person, when giving the document—

- (a) tells the board, to the best of the person's ability, how it is false, misleading or incomplete; and
- (b) if the person has, or can reasonably get the correct information—gives the correct information.

(3) It is enough for a complaint against a person for an offence against subsection (1) to state that the document was false, misleading or incomplete to the person's knowledge.

**129 Contempt of board**

A person must not—

- (a) insult the board of inquiry; or
- (b) deliberately interrupt the inquiry; or
- (c) create or continue or join in creating or continuing, a disturbance in or near a place where the board is conducting its inquiry; or
- (d) do anything that would be contempt of court if the board were a judge acting judicially.

Maximum penalty—60 penalty units.

**130 Change of membership of board**

The inquiry of the board of inquiry is not affected by a change in its membership.

## PART 7—LAND FOR RAILWAY PURPOSES

### 131 Lease of land to railway managers

(1) This section applies if—

- (a) the State acquires land (the “**acquired land**”) for use by a railway manager as part of a rail transport corridor; or
- (b) the chief executive decides that land (also “**acquired land**”) leased to the State under section 215 should be used by a railway manager as part of a rail transport corridor.

(2) If the acquired land mentioned in subsection (1)(a) becomes unallocated State land, the Governor in Council must lease it to the State under the *Land Act 1994*, section 17.<sup>16</sup>

(3) The lease is in perpetuity and, if demanded, for a rent of \$1 per year.

(4) The State must lease acquired land mentioned in subsection (1)(a) or (b) to the manager—

- (a) if the manager agrees to meet the full costs of the acquisition—
  - (i) for a term of not more than 100 years; and
  - (ii) for a rent, if demanded, of \$1 per year; and
  - (iii) on other terms decided by the chief executive; or
- (b) otherwise—on terms agreed between the parties.

(5) A lease by the State under subsection (4)(a) may include an option to renew the lease.

(6) The terms of the option and the renewed lease are to be decided by the chief executive.

(7) The *Land Act 1994*, section 336(2)(a)<sup>17</sup> does not apply to a document of amendment of a sublease to a railway manager under subsection (4) or a sublease to a railway manager granted under the exercise of an option mentioned in subsection (5).

(8) If the manager attaches any rail transport infrastructure or any other works or structures to the acquired land, they remain the manager’s property until the manager disposes of them.

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<sup>16</sup> *Land Act 1994*, section 17 (Granting land to the State)

<sup>17</sup> *Land Act 1994*, section 336 (Amending a sublease)

(9) In this section—

“**acquires**” includes acquires by—

- (a) gift; and
- (b) surrender of a lease previously granted to a railway manager; and
- (c) exchange; and
- (d) purchase.

“**full costs**”, of an acquisition, includes (if the acquired land consists of a lease to the State) all rent or other money payable by the State under the lease granted to the State during the term of—

- (a) the lease of the acquired land from the State to the manager under subsection (4); and
- (b) any renewal of the lease to the manager.

### **131A Railway tunnel easements**

(1) This section applies to an easement described in schedule 2A, despite the terms of the easement.

(2) The benefit of the easement is taken to be vested in Queensland Rail.

(3) Queensland Rail may—

- (a) transfer the benefit of the easement only to the State; or
- (b) surrender the easement only with the State’s consent.

(4) If—

- (a) Queensland Rail remains the grantee of the easement; and
- (b) the easement is over, or adjoins, part of a railway tunnel corridor; and
- (c) Queensland Rail—
  - (i) surrenders a part of the sublease of rail corridor land that adjoins the railway tunnel corridor to the State; or
  - (ii) transfers the sublease of rail corridor land that adjoins the railway tunnel corridor to a railway manager;

Queensland Rail must transfer the benefit of the easement to the State.

(5) If Queensland Rail remains the grantee of the easement, Queensland Rail may grant a licence in relation to the easement to a railway operator.

(6) If the State becomes the grantee of the easement—

- (a) the State may grant a licence in relation to the easement to a railway manager; and
- (b) the railway manager may grant a sublicense to a railway operator.

(7) No compensation is payable to the grantor of the easement because of any vesting, transfer, licence or sublicense under this section.

(8) In this section—

**“railway tunnel corridor”** means a corridor of land within which a tunnel containing rail transport infrastructure is situated.

### **131B What is “future railway land”**

(1) Land becomes **“future railway land”** when the chief executive, by written notice to the relevant local government and in the gazette, indicates that the land is intended to be used for a railway.

(2) Future railway land ceases to be future railway land when it is leased under section 131(4).

(3) If the chief executive decides that future railway land is no longer to be used for a railway, the chief executive must give written notice of that fact to the relevant local government and in the gazette.

### **132 Status of railway land**

(1) The railway manager for corridor land is, for any rail transport infrastructure on the land or proposed to be constructed on the land, subject to the same controls and exemptions under State and local laws that an agency of the State would be if it had the manager’s interest in the land.

(2) In this section—

**“corridor land”** means—

- (a) commercial corridor land that is not leased by the railway manager on a commercial basis; or
- (b) existing rail corridor land, or new rail corridor land, that is not subleased by the railway manager on a commercial basis; or
- (c) future railway land.

### **133 Application of Queensland Heritage Act**

The *Queensland Heritage Act 1992* applies to the following property of Queensland Rail as if Queensland Rail were an agency of the State—

- (a) property that is on existing rail corridor land or new rail corridor land; and
- (b) other property that is entered on the heritage register and is identified by the chief executive by gazette notice.

### **134 Existing rail transport infrastructure on land**

(1) This section applies if at the commencement—

- (a) rail transport infrastructure was on land that is not owned or leased by Queensland Rail; and
- (b) the previous rail corporation had managed a railway using the rail transport infrastructure.

(2) After the commencement—

- (a) the rail transport infrastructure may stay on the land; and
- (b) the railway manager may—
  - (i) alter the rail transport infrastructure; and
  - (ii) manage the railway using the rail transport infrastructure, whether or not altered; and
  - (iii) operate, or authorise a railway operator to operate, rolling stock on the railway.

(3) A person has no interest in, or right to, the rail transport infrastructure (whether or not altered) on land only because the person has an interest in the land.

### **135 Existing buildings on land**

(1) If, immediately before the commencement, a building of the previous rail corporation was lawfully on land—

- (a) it may stay on the land; and
- (b) its construction is not subject to any approval that did not affect it immediately before the commencement.

(2) If, immediately before the commencement, the previous rail corporation's activities were lawfully being carried out on the land, they may still be carried out on the land despite any change to the zoning of the land.

(3) In this section—

“**building**” includes a structure or works.

### **136 Railway works on corridor land**

(1) The chief executive, for works carried out on corridor land that relate to rail transport infrastructure, must perform a function or exercise a power that, under the *Building Act 1975* or the *Integrated Planning Act 1997*, would be performed or exercised by a local government if this section had not been passed.

(2) In this section—

“**corridor land**” means commercial corridor land, existing rail corridor land, new rail corridor land, future railway land or non-rail corridor land.

## **PART 8—GENERAL**

### **137 Queensland Rail not a common carrier**

Queensland Rail is not a common carrier.

### **138 Carrying dangerous goods**

(1) While on or travelling by a railway, a person must not possess or have in their luggage any dangerous goods.

Maximum penalty—100 penalty units.

(2) A person does not commit an offence against subsection (1) if—

- (a) the goods are of a type commonly used for personal, domestic or household use; and
- (b) the quantity of the goods is reasonable considering their nature and common use.

(3) A person must not send dangerous goods (code) by railway unless the goods are packed, marked and labelled as required by the code.

Maximum penalty—100 penalty units.

(4) A person must not send dangerous goods (other) by railway unless—

- (a) the goods are marked and labelled to show clearly that they are dangerous goods; and
- (b) the goods are packed, and otherwise marked and labelled, in a reasonable way considering—
  - (i) the goods' nature and quantity; and
  - (ii) the safety of the railway and people working or travelling on it.

Maximum penalty—40 penalty units.

(5) In a proceeding for an offence against subsection (1) or (3), a document purporting to be the code is evidence of the code.

(6) In this section—

“**code**” means a document, or parts of a document, prescribed under a regulation to be the code.

“**dangerous goods**” means—

- (a) dangerous goods (code); or
- (b) dangerous goods (other).

“**dangerous goods (code)**” means—

- (a) substances in the code that are prescribed under a regulation; or
- (b) other substances or things declared by a regulation to be dangerous goods.

“**dangerous goods (other)**” means substances or things that, because of their nature, quantity or condition, could, if brought onto a railway or carried by railway, endanger the safety of—

- (a) the railway; or
- (b) a person on the railway.



**139 Altering road levels**

(1) In constructing or managing a railway, the railway manager for the railway may alter the level of a road or require the authority responsible for the road to alter its level.

(2) Unless the railway manager and the authority responsible for the road agree, the railway manager must pay all reasonable expenses incurred by the authority in altering the road level.

(3) A person whose land is directly affected by the alteration is entitled to be paid compensation by the railway manager.

(4) The amount of compensation is—

- (a) the amount agreed between the parties; or
- (b) if the parties can not agree within a reasonable time—the amount decided by a court with jurisdiction for the recovery of the amount of compensation claimed.

(5) However, the amount of compensation can not be more than the amount that would have been awarded if the land had been acquired.

**140 Maintaining roads crossing railways**

(1) A railway manager for a railway must maintain—

- (a) the part of the railway on a road; and
- (b) the surface of a road, in a character in keeping with the road—
  - (i) between the rails; and
  - (ii) outside the outermost rails to a distance of 0.6 m.

(2) If a railway is built by way of a bridge or other structure over or under a road, the authority that maintained the road before the railway was built must continue to maintain the road under or over the bridge or structure.

**141 No presumption of dedication of roads**

If the public uses railway land as a road or otherwise for access purposes, the land is not taken to have been dedicated for use as a road even though the use is authorised or allowed by the railway manager.

**142 Extending roads through or over rail corridor land**

(1) The chief executive may allow a local government to construct, maintain and operate a road on rail corridor land by way of—

- (a) a bridge or other structure over a railway; or
- (b) a bridge or other structure that allows the road to pass under the railway; or
- (c) a level crossing.

(2) The permission may be subject to conditions.

(3) Before deciding a request for the permission, the chief executive must consult with the railway manager for the land.

(4) The railway manager may continue to use the land, and the airspace above the land, other than any land and airspace excluded by a condition of the permission.

(5) The chief executive and the railway manager and their agents or employees, do not have any duty or liability for the road or its use or operation.

(6) Once the road is used, it is taken to be—

- (a) a road under the relevant local government's control; and
- (b) a road under any Act about the use of vehicles on a road.

(7) Unless the chief executive and the local government otherwise agree—

- (a) the local government is responsible for maintaining the road and the bridge or level crossing; and
- (b) if the road stops being used—the local government is responsible for the cost of taking the bridge or level crossing away and of restoring the railway.

(8) The State is taken not to be in breach of any of its obligations in a sublease of the rail corridor land between the State and the railway manager by—

- (a) giving the permission; or
- (b) anything done by the local government under the permission.

**143 Level crossings**

(1) Pedestrians and drivers of vehicles must give way to—

- (a) a railway operator's rolling stock on railway tracks at a level crossing; and
- (b) a railway manager's rail vehicle on railway tracks at a level crossing.

(2) If an accident happens at a level crossing because a person does not comply with subsection (1)—

- (a) the railway manager or operator is not liable for any injury or damage caused in the accident; and
- (b) the person must pay the railway manager or operator the cost of any damage caused to property of the manager or operator.

(3) However, subsection (2) does not apply if the manager or operator, or its agents or employees, were negligent in relation to the accident.

**144 Interfering with railway**

(1) A person must not interfere with a railway unless—

- (a) the person has the railway's manager written approval; or
- (b) the interference is authorised—
  - (i) under a permission under section 142; or
  - (ii) under another provision of this Act.

Maximum penalty—160 penalty units.

(2) An approval may be subject to a reasonable condition.

(3) The person must comply with the condition.

Maximum penalty—40 penalty units.

(4) Subsection (1) does not apply to a person who carries out urgent maintenance of a railway.

(5) This section binds all persons, including the State, the Commonwealth and the other States.

**145 Rectifying unauthorised interference**

(1) If a person contravenes section 144(1) by interfering with a railway, the railway manager for the railway may, by written notice, require the person to rectify the interference within a stated reasonable time.

(2) The person must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(3) If the person does not comply with the requirement, the railway manager may rectify the interference.

(4) The person must pay the manager the manager's costs of—

- (a) rectifying the interference; or
- (b) altering the construction, maintenance or operation of the railway because of the interference.

(5) In this section—

“**rectify the interference**” means—

- (a) alter, dismantle or take away any works; or
- (b) fix any damage caused by the interference.

**146 Trespassing on railway**

A person must not wilfully trespass on a railway.

Maximum penalty—40 penalty units.

**148 Impact of certain decisions by local governments on railways**

(1) The chief executive may make guidelines about what a local government must consider in relation to the safety and operational integrity of a railway if—

- (a) it intends to—
  - (i) approve a subdivision, rezoning or development of land; or
  - (ii) carry out road works on a local government road; or
  - (iii) make changes to the management of a local government road; and
- (b) the approval, works or change would—

- (i) require works to be carried out on a railway; or
- (ii) otherwise have a significant adverse impact on a railway; or
- (iii) have a significant impact on the planning of a railway or a future railway.

(2) The chief executive must give a copy of any guidelines to each relevant local government.

### **149 Fencing new railways**

(1) A railway manager need not contribute to the fencing of any part of the boundary of land that is—

- (a) a future railway; or
- (b) acquired for a widening or deviation of a railway.

(2) Subsection (1) does not apply if—

- (a) the land acquired was substantially fenced; and
- (b) the railway's presence may make the fencing ineffective.

### **150 Works for existing railways**

(1) This section applies—

- (a) while a railway existing at the commencement (the “**existing railway**”) continues to be operated as a railway; and
- (b) to the owners and occupiers of land next to the existing railway (the “**neighbouring land**”).

(2) Queensland Rail must, within a reasonable time, construct and maintain—

- (a) works that are necessary to make good any interruptions caused by the existing railway to the use of the neighbouring land; and
- (b) works that are necessary to—
  - (i) separate the existing railway from the neighbouring land; and
  - (ii) protect the stock straying from the neighbouring land onto the railway; and

- (c) sufficient works to ensure the neighbouring land's drainage is as good, or nearly as good, as it was before the existing railway was constructed.

(3) Queensland Rail may satisfy its obligation under subsection (2)(b) by constructing and maintaining a fence of substantially similar quality to any fence around the neighbouring land when the railway was constructed.

(4) This section does not require Queensland Rail to—

- (a) construct or maintain works in a way that would prevent or obstruct the use of the existing railway; or
- (b) construct or maintain works for owners or occupiers who agreed to receive, and have been paid, compensation in place of the works.

(5) The Land Court must decide any dispute about the adequacy of works or maintenance under this section.

(6) If the owner or occupier of neighbouring land considers that works carried out under this section are insufficient for the convenient use of the land, the owner or occupier may, with Queensland Rail's agreement, carry out further works at the owner's or occupier's expense.

(7) Queensland Rail may, by written notice given to the owner or occupier, require the further works to be carried out—

- (a) under the supervision of a person nominated by Queensland Rail; and
- (b) according to plans and specifications approved by Queensland Rail.

(8) Queensland Rail must attempt to keep the cost of the further works to a reasonable level.

(9) Until Queensland Rail carries out the works mentioned in subsection (2), the owner or occupier of the neighbouring land, and their employees and agents, may cross the existing railway next to the land with vehicles and livestock.

(10) The crossing must be made directly, and in a way that is safe and does not damage or obstruct the railway.

(11) However, subsection (9) does not apply to an owner or occupier who agreed to receive, and has been paid, compensation in place of the works.

(12) A person must shut and lock a gate set up under this section at either side of an existing railway as soon as the person, and any vehicles or livestock in the person's care, have passed through the gate.

Maximum penalty for subsection (12)—10 penalty units.

### **151 Non-accredited railways**

(1) A non-accredited railway may be connected, either directly or through another non-accredited railway, to the railway of an accredited railway manager with the manager's written agreement.

(2) Unless the parties otherwise agree, the manager is not liable for any injury, loss or damage arising from an act done, or omission made, honestly and without negligence, on the non-accredited railway.

(3) Subject to any agreement between the manager and the non-accredited railway manager, the manager may—

- (a) disconnect the non-accredited railway from the railway; or
- (b) close the connection between the non-accredited railway and the railway.

(4) Before taking action under subsection (3), the manager must—

- (a) give at least 3 months notice of the proposed action; or
- (b) get the written agreement of the non-accredited railway manager to the proposed action.

(5) For the disconnection, the manager may, by written notice, require the non-accredited railway manager to take away any part of the railway on land managed by the manager.

(6) If the non-accredited railway manager does not take it away within a reasonable time, the manager may take it away and recover the costs from the non-accredited manager.

(7) If the manager maintains the non-accredited railway the manager may exercise its powers under this Act in relation to the non-accredited railway.

(8) A person must not construct a non-accredited railway on a watercourse without the chief executive's written approval.

(9) If a railway operator operates rolling stock over a non-accredited railway, the railway operator may exercise its powers under this Act in relation to the non-accredited railway.

(10) In this section—

“**non-accredited railway**” means a railway managed by a non-accredited railway manager.

“**non-accredited railway manager**” means a person who is not required to be accredited for a railway because of section 81(3).<sup>18</sup>

## 152 Application of Land Act 1994

The following sections of the *Land Act 1994* do not apply to a lease of existing rail corridor land, new rail corridor land or non-rail corridor land—

- section 157 (Expiry of lease)
- section 183 (Rent payable generally)
- section 204 (Survey condition)
- section 211 (Conditions must be reviewed)
- section 336(2)(a) and (c).<sup>19</sup>

# CHAPTER 7—PORT INFRASTRUCTURE

## PART 1—PRELIMINARY

### 153 Definitions for chapter

In this chapter—

“**charge**” means an amount charged by a port authority.

“**corporate plan**” means a corporate plan required by the *Government Owned Corporations Act 1993*.

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<sup>18</sup> Section 81 (Accreditation of managers and operators)

<sup>19</sup> *Land Act 1994*, section 336 (Amending a sublease)



“**extractive material**” means sand, gravel, boulders, clay, silt, mud or other material in or on land under tidal water, but does not include a mineral within the meaning of the *Mineral Resources Act 1989*.

“**land**” means any land, whether above or below the ordinary high water mark at spring tides.

“**ship**” has the same meaning as in the *Transport Operations (Marine Safety) Act 1994*.

“**statement of corporate intent**” means a statement of corporate intent required by the *Government Owned Corporations Act 1993*.

“**strategic port land**” means land that is strategic port land under section 171 (Approval of land use plans).

## **PART 2—CONTINUATION, ESTABLISHMENT AND ABOLITION OF PORT AUTHORITIES**

### **155 Establishment of new port authority**

(1) A regulation may establish a new port authority as a body corporate that has a seal and may sue and be sued in its corporate name.

(2) A regulation may also—

- (a) specify the name of the port authority; or
- (b) specify the name of the port it is to manage; or
- (c) transfer assets and liabilities to the authority.

### **156 Abolition of port authority**

(1) A regulation may abolish a port authority and transfer its functions to another port authority, the State or a local government (the “**transferee**”).

(2) A regulation may also transfer to the transferee, or to a port authority, the State or a local government, assets and liabilities of the abolished port authority.

(3) A legal proceeding by or against the abolished port authority about the port, or transferred assets and liabilities, that is unfinished when the

relevant regulation commences may be continued and finished by or against—

- (a) the transferee; or
- (b) if the assets or liabilities concerned are transferred to a person mentioned in subsection (2) who is not the transferee—the person.

### **157 Transfer of management of a port**

(1) A regulation may transfer the management of a port from a port authority, the State or a local government (the “**transferor**”) to a port authority, the State or a local government (the “**transferee**”).

(2) A regulation may also transfer to the transferee, or to a port authority, the State or a local government, assets and liabilities of the transferor.

(3) A legal proceeding by or against the transferor about the port, or transferred assets or liabilities, that is unfinished when the relevant regulation commences may be continued and finished by or against—

- (a) the transferee; or
- (b) if the assets or liabilities concerned are transferred to a person mentioned in subsection (2) who is not the transferee—the person.

### **158 Regulation may make transitional arrangements**

(1) If a port authority is established or abolished, or the management of a port is transferred, under this part, a regulation may make transitional arrangements about the establishment, abolition or transfer.

(2) The transitional arrangements may include—

- (a) arrangements for the transfer of staff, and their superannuation and other entitlements; or
- (b) allowing the transfer of assets and liabilities without payment of stamp duty; or
- (c) other transitional arrangements necessary or convenient for the establishment, abolition or transfer.

**159 Management of port by State or local government**

If the State or a local government is given the management of a port under this chapter, the Minister or the local government has, for the port, all the functions and powers, and all the obligations, of a port authority under this chapter.

**160 Regulation may define port limits etc.**

A regulation may—

- (a) define or amend the limits of a port; or
- (b) give a name to a port or change the name of a port; or
- (c) for a new port—transfer the management of the port to an existing port authority, the State or a local government; or
- (d) change the name of a port authority.

**PART 3—FUNCTIONS AND POWERS OF PORT  
AUTHORITIES****161 Functions of port authorities**

(1) The functions of a port authority are—

- (a) to establish, manage, and operate effective and efficient port facilities and services in its port; and
- (b) to make land available for—
  - (i) the establishment, management and operation of effective and efficient port facilities and services in its port by other persons; or
  - (ii) other purposes consistent with the operation of its port; and
- (c) to provide or arrange for the provision of ancillary services or works necessary or convenient for the effective and efficient operation of its port; and
- (d) to keep appropriate levels of safety and security in the provision and operation of the facilities and services; and

- (e) to provide other services incidental to the performance of its other functions or likely to enhance the usage of the port; and
- (f) to perform any other functions conferred on it under this or another Act or under the regulations.

(2) A port authority's functions as provided under subsection (1) may be removed, restricted or limited by regulation.

### **161A Port services function**

(1) A port authority has, in addition to its functions under section 161, the function of providing port services and ancillary services—

- (a) whether in or outside its port; and
- (b) whether in or outside Australia; and
- (c) whether for another port authority or for someone else.

(2) A port authority that is a GOC is taken to have had the function mentioned in subsection (1) from when it became a GOC.

(3) In this section—

**“ancillary services”** means services ancillary to the provision of port services, including services appropriate for complementing or enhancing the provision of port services.

**“port”** includes airport.

**“port services”** means any of the following—

- (a) services relating to the establishment, operation or administration of ports;
- (b) dredging services;
- (c) services relating to the reclamation of land;
- (d) pilotage services;
- (e) consultancy services about any of the services mentioned in paragraphs (a) to (d).

### **162 Powers of port authorities subject to Marine Safety Act**

The powers of a port authority under this chapter, including powers conferred by a regulation, must be exercised subject to the powers of a

harbour master under the *Transport Operations (Marine Safety) Act 1994* about marine safety and navigation.

### **163 Powers of port authorities**

(1) In addition to the powers a port authority has because of this chapter or the *Government Owned Corporations Act 1993*, each port authority has all powers necessary or convenient for performing its functions.

(2) Without limiting subsection (1), a port authority's powers include power—

- (a) to dredge and otherwise maintain or improve navigational channels in its port; and
- (b) to reduce or remove a shoal, bank or accumulation in its port that, in the port authority's opinion, impedes navigation in its port.

(3) A port authority is not liable to pay royalties or similar charges for extractive material removed—

- (a) to maintain or improve navigational channels in its port, or improve navigation in its port, if the material is disposed of—
  - (i) in an area associated with port activities and approved by the Minister; and
  - (ii) under relevant statutory environmental controls; or
- (b) to reclaim land that is, or is proposed to be, strategic port land.

### **164 Additional powers**

(1) A regulation may—

- (a) allow a port authority to control, whether by using notices, markings, fences, barriers, directions or otherwise—
  - (i) access to or the use of its strategic port land or port facilities, or access to or the use of areas in its port where activities may affect the port's operation; or
  - (ii) the movement or mooring of ships at its port facilities, or the movement or mooring of ships in its port if the movement or mooring may affect the port's operation; or

- (iii) the movement of passengers to or from ships or aircraft using its port facilities or on its port facilities or strategic port land; or
  - (iv) the movement, handling or storage of goods loaded, unloaded or transhipped to or from ships or aircraft using its port facilities or on its port facilities or strategic port land; or
  - (v) the movement, stopping or parking of vehicles, aircraft or trains on its strategic port land or at its port facilities; or
  - (vi) other activities and conduct in its port, on its strategic port land or at its port facilities; or
- (b) allow a port authority to detain, using any necessary and reasonable force, ships, aircraft, goods or vehicles for which the authority's charges are payable until the charges are paid, or to sell the ships, aircraft, goods or vehicles if the charges are not paid; or
  - (c) allow a port authority to require a person to produce documents relevant to the authority's charges, and allow the authority to inspect and make copies of them; or
  - (d) allow a port authority to remove ships, aircraft, vehicles, trains, goods or other property that are—
    - (i) abandoned in its port, on its strategic port land or at its port facilities; or
    - (ii) moored, parked or left against the authority's directions; or
  - (e) allow a port authority to sell or otherwise dispose of ships, aircraft, vehicles, goods or other property abandoned in its port, on its strategic port land or at its port facilities; or
  - (f) allow a port authority to recover from a prescribed person the costs of doing the actions mentioned in paragraphs (b), (d) and (e); or
  - (g) allow a port authority to enter and inspect ships or inspect aircraft, goods or vehicles on its strategic port land, at its port facilities, or in an area in its port where activities may affect the port's operation, to ensure compliance with this chapter and, if necessary, enter by passing through land or over facilities under someone else's control; or
  - (h) provide that a breach of a notice mentioned in paragraph (a) is an offence; or

(i) allow the appointment of authorised officers and provide for their functions and powers, including power to take persons to police officers; or

(k) confer any other powers on a port authority, including, for example, powers similar to those mentioned in this section.

(2) A regulation under subsection (1) for a port authority applies—

(a) in the area mentioned in the relevant paragraph or subparagraph of subsection (1); or

(b) if no area is mentioned—in its port and its strategic port land;

but does not apply outside its port and strategic port land.

(3) After consulting with a port authority, the Minister may direct the authority to perform a function or exercise a power under this section only for a specified area of its port or specified strategic port land or port facilities.

(4) A regulation under this section may create offences and prescribe penalties for the offences of not more than 100 penalty units.

(5) In this section—

“**port facilities**” of a port authority means port facilities owned or controlled by it.

### **165 Power to impose charges**

(1) A port authority may impose charges for the use of its port or for the State.

(2) Charges may, for example, be imposed by reference to—

(a) ships or aircraft using its port; and

(b) goods or passengers loaded, unloaded or transhipped to or from ships or aircraft using port facilities in its port, whether or not the facilities are owned or controlled by it.

(3) This section does not limit the powers a port authority has apart from this section.

**166 Copies of additional functions or powers to be available**

If functions or powers are conferred on a port authority by a regulation under section 161 (Functions of port authorities) or section 164 (Additional powers), it must ensure that copies of a document specifying details of the functions or powers, and the area where the functions or powers may be exercised or performed, are available for inspection and purchase (at reasonable cost) during business hours at its offices in the locality to which the functions or powers relate.

**167 Liability for charges**

A regulation may prescribe the persons who are liable for charges of a port authority.

**168 Liability for damage**

A regulation may prescribe the persons who are liable for damage to the works or infrastructure of a port authority.

**PART 4—LAND MANAGEMENT*****Division 1—Strategic port land*****169 Land use plans**

(1) Each port authority must, from time to time, prepare a land use plan for approval under section 171 (Approval of land use plans).

(2) After discussing the matter with a port authority, the Minister may direct it to prepare a land use plan or an amendment of a land use plan for approval under section 171.

(3) A port authority's land use plan must specify details of—

- (a) the authority's strategic port land; and
- (b) land the authority wishes to become strategic port land; and
- (c) the current and proposed uses of the land.



**170 Consultation on land use plans**

(1) If a port authority considers that land to which it holds title or that it holds directly from the State is or may be needed—

- (a) for the operation of its port; or
- (b) for use by industries requiring port facilities or that would enhance the usage of the port; or
- (c) for integration between sea or air transport and another transport mode; or
- (d) for a buffer between land required for a purpose mentioned in paragraph (a), (b) or (c) and other land;

the authority may include details of the land, and the current and proposed uses of the land, in a proposed land use plan or an amendment of a land use plan.

(2) The port authority must—

- (a) take reasonable steps to engage in public consultation about the proposed land use plan or amendment; and
- (b) consult with each local government in whose area land included in the plan or amendment is situated.

(3) However, consultation is not required—

- (a) for an amendment to remove land from the land use plan; or
- (b) for land that already is strategic port land whose use is not to change.

(4) After discussing the matter with the port authority, the Minister may return the proposed land use plan or amendment for amendment in the way directed by the Minister.

(5) A copy of the direction must be published in the gazette within 21 days after it is given.

**171 Approval of land use plans**

(1) The Minister may approve a proposed land use plan, or an amendment of a land use plan, if satisfied that—

- (a) the land included in the plan or amendment is or may be needed for a use mentioned in section 170(1) (Consultation on land use plans); and

- (b) the port authority has taken appropriate account of issues raised by the public consultation; and
- (c) no local government in whose area the land is situated has a substantial objection to the proposed plan or amendment.

(2) If the Minister is satisfied that any of the local governments has a substantial objection, the Governor in Council may approve the proposed land use plan or amendment if satisfied that, on balance, the approval should be given.

(3) Approval of a land use plan, or an amendment of a land use plan, must be notified in the gazette within 21 days after it is given.

(4) The approval takes effect when it is notified in the gazette.

(5) Land included in a port authority's current approved land use plan is its strategic port land.

### **172 Strategic port land not subject to planning schemes**

(1) Strategic port land is not subject to a planning scheme.

(2) Subsection (1) has effect despite the *Integrated Planning Act 1997*, section 2.1.2.<sup>20</sup>

## ***Division 2—General***

### **174 Restrictions on dealing in property**

(1) A port authority must not, without the Minister's written approval—

- (a) dispose of freehold land; or
- (b) enter into a lease, licence or another form of tenure of its strategic port land, or its port facilities, for longer than 25 years (including any renewal option).

(2) An approval may be subject to conditions.

(3) A purported dealing in land or port facilities contrary to this section has no effect.

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<sup>20</sup> *Integrated Planning Act 1997*, section 2.1.2 (Area to which planning schemes apply)

## PART 5—GENERAL

### 175 Protection from liability

(1) In this section—

“**official**” means a director of the board of a port authority, an employee of a port authority or a person acting for a port authority.

(2) A regulation may provide that an official is not civilly liable for an act or omission done honestly and without negligence for a port authority.

(3) If subsection (2) prevents a civil liability attaching to an official, the liability attaches instead to the port authority.

(4) This section is in addition to, and does not limit, the following sections of the *Government Owned Corporations Act 1993*—

- section 138 (Statutory GOC not to indemnify officers)
- section 139 (Statutory GOC not to pay premiums for certain liabilities of officers).

### 176 Carrying on port activities outside port limits

(1) The Governor in Council may decide that port activities of a substantial nature may be carried on at a place that is not a port managed by a port authority, the State or a local government.

(2) In this section—

“**port**” does not include an airport.

### 177 Offences

(1) A person must not intentionally or recklessly—

- (a) damage a port authority’s works or infrastructure; or
- (b) interfere with or disrupt a port’s operations; or
- (c) dump refuse or goods at a port or into the waters of a port.

Maximum penalty—200 penalty units.

(2) A person must not intentionally or recklessly evade the payment of a port authority’s charges.

Maximum penalty—200 penalty units.

(3) A person must not carry on port activities of a substantial nature at a place unless the place is in a port or a place where a decision under section 176 (Carrying on port activities outside port limits) applies.

Maximum penalty—200 penalty units.

(4) In subsection (3)—  
“port” does not include an airport.

### **178 Payment of charges and interest on unpaid charges**

(1) Charges of a port authority are payable within the time decided by the authority.

(2) If charges of a port authority remain unpaid after the day when they are required to be paid, the authority may charge interest on the amount unpaid at the rate decided by the authority.

(3) A regulation may provide for exemptions from charges of a port authority, but this section does not affect the power of a port authority to exempt or partially exempt a person from charges of the authority.

### **179 Transitional provisions applying in relation to port authorities that are candidate GOCs**

(1) This section applies in relation to a port authority that is a candidate GOC.

(2) A regulation may prescribe matters about the administration and operation of the port authority, including, for example, matters about—

- (a) the port authority’s board, chief executive officer and senior management; and
- (b) the port authority’s powers; and
- (c) the port authority’s employees; and
- (d) the port authority’s superannuation schemes; and
- (e) dealings with the port authority.

(3) Without limiting subsection (2), a regulation under the subsection may make provision to the same or similar effect as the following provisions of the *Government Owned Corporations Act 1993*—

- chapter 3 (Government Owned Corporations (GOCs))

- part 5 (Board of directors), division 1 (Statutory GOCs)
- part 6 (Chief executive officer), division 1 (Statutory GOCs)
- part 10 (General reserve powers of shareholding Ministers)
- part 12 (Duties and liabilities of directors and other officers), divisions 1 (Statutory GOCs) and 3 (GOCs generally)
- part 13 (Legal capacity and powers), division 1 (Statutory GOCs)
- part 16 (Employees), divisions 2 (Statutory GOCs) and 4 (GOCs generally)
- schedule 1 (Additional provisions relating to board of statutory GOC)
- schedule 2 (Additional provisions relating to chief executive officer of statutory GOC).

(4) Subsections (2) and (3) are in addition to, and do not limit, section 175 (Protection from liability).

(5) A regulation under this section may create offences and prescribe penalties for the offences of not more than 100 penalty units.

(6) A regulation may prescribe transitional provisions about the port authority and an entity to which its assets and liabilities are to be transferred by a regulation under the *Government Owned Corporations Act 1993*.

(7) The port authority is a statutory body for the purposes of the *Statutory Bodies Financial Arrangements Act 1982*.

(8) This section ceases to apply to the port authority when its assets and liabilities are transferred to an entity by regulation under the *Government Owned Corporations Act 1993* or 18 months after it first applied to the authority.

## **180 Notices at entrances**

(1) If—

- (a) a port authority erects or displays a notice at each entrance commonly used by persons to gain access to its port; and
- (b) the notice contains information about the port; and

- (c) in a case where use of its port or facilities gives rise to a liability for charges—the notice states this and indicates generally the nature of the charges; and
  - (d) in a case where a contravention of a requirement of the notice is an offence—the notice states this and indicates generally the penalties that apply; and
  - (e) a person gains access to the port by using another entrance;
- the person is taken to be aware of the information.

**(2) If—**

- (a) a port authority erects or displays a notice at each entrance commonly used by persons to gain access to its strategic port land; and
  - (b) the notice contains information about the strategic port land; and
  - (c) in a case where use of its strategic port land or facilities gives rise to a liability for charges—the notice states this and indicates generally the nature of the charges; and
  - (d) in a case where a contravention of a requirement of the notice is an offence—the notice states this and indicates generally the penalties that apply; and
  - (e) a person gains access to the strategic port land by using another entrance;
- the person is taken to be aware of the information.

## **CHAPTER 8—MISCELLANEOUS TRANSPORT INFRASTRUCTURE**

### **PART 1—PRELIMINARY**

#### **181 Definitions for ch 8**

In this chapter—

“**approval**” means an approval granted under section 182B.

**“approval conditions”** see section 182E(1).

**“dispute notice”** see section 182G(1).

**“intersecting area”** means an area (other than an area of land that is required land) or a thing that—

- (a) intersects required land; and
- (b) is owned, administered, controlled, or managed by a GOC or a local government.

*Examples—*

- an area of water
- land covered by water
- miscellaneous transport infrastructure works
- a port
- rail corridor land
- a road.

**“licensee”** means the holder of an operational licence.

**“operational licence”** means a licence in force granted—

- (a) under section 182; or
- (b) under another Act, for infrastructure that is miscellaneous transport infrastructure.

**“required land”** means land that has been acquired for miscellaneous transport purposes or an incidental purpose.

**“responsible entity”**, for an intersecting area, means an entity responsible for administering, controlling, or managing the area under any Act.

### **181A Meaning of “miscellaneous transport infrastructure”**

**(1) “Miscellaneous transport infrastructure”** means—

- (a) infrastructure relating to the transportation, movement, transmission or flow of anything, including, for example, goods, material, substances, matter, particles with or without charge, light, energy, information and anything generated or produced; or
- (b) anything declared under a regulation to be miscellaneous transport infrastructure, whether or not it is infrastructure under paragraph (a).

(2) However, road transport infrastructure, rail transport infrastructure, air transport infrastructure, public marine transport infrastructure and port infrastructure are not miscellaneous transport infrastructure.

## **PART 2—OPERATIONAL LICENCES AND APPROVALS FOR LICENSEES**

### *Division 1—Definitions*

#### **181B Definition for pt 2**

In this part, other than division 2—

“**Minister**” means the Minister administering the *State Development and Public Works Organisation Act 1971*.

### *Division 2—Granting operational licences*

#### **182 Minister may grant operational licence**

The Minister may grant to a person a licence to construct, maintain, use or operate stated miscellaneous transport infrastructure on stated conditions.

### *Division 3—Approvals for licensees for intersecting areas*

#### **182A Purpose and scope of div 3**

(1) The purpose of this division is to provide a mechanism for a licensee to obtain an approval from a responsible entity for an intersecting area.

(2) However, this division does not apply to an approval if the approval is required under another Act.

(3) This division applies only for ensuring miscellaneous transport infrastructure can be constructed, maintained, used or operated across, over or under the area.



**182B Approvals**

(1) A licensee may apply for an approval by a responsible entity to construct, maintain, use or operate miscellaneous transport infrastructure stated in the licensee's operational licence across, over or under an intersecting area.

(2) The application must—

- (a) be written; and
- (b) identify the area and the miscellaneous transport infrastructure; and
- (c) state any other thing prescribed under a regulation.

(3) The entity may grant or refuse the approval.

(4) If the approval is granted, the licensee may, subject to any approval conditions, construct, maintain, use or operate the miscellaneous transport infrastructure identified in the application across, over or under the area.

**182C Refusal to grant approval**

If an application has been made to a responsible entity and the entity refuses the application, it must give the applicant written notice within 14 days after refusing the application stating—

- (a) the decision; and
- (b) the reasons for the decision; and
- (c) that the applicant may apply in writing to the Minister for the approval.

**182D Licensee may apply to Minister if approval not granted**

(1) This section applies if—

- (a) an application has been made to a responsible entity for an approval; and
- (b) the entity refuses the application or does not grant the application within 20 business days after it is made.

(2) The applicant may apply in writing to the Minister for the approval.

(3) The Minister may grant or refuse the approval.

(4) The Minister must give the applicant and the entity notice of the granting or refusal.

(5) If the Minister grants the approval, it is taken to have been granted by the entity.

(6) If the Minister decides to grant or refuse the approval, the Minister must prepare a statement of the reasons for the decision for this section.

(7) The statement of reasons must be tabled in the Legislative Assembly within 14 sitting days after the day of the decision.

(8) In preparing the statement of reasons, the Minister must not include matter that is exempt matter.

(9) A failure to comply with subsections (6) to (8) is of no effect.

(10) The *Judicial Review Act 1991*, parts 3 and 4,<sup>21</sup> do not apply to any decision the Minister makes or fails to make for this section.

(11) In this section—

“**exempt matter**” means matter defined as exempt matter under the *Freedom of Information Act 1992*, part 3, division 2.<sup>22</sup>

#### *Division 4—Conditions for approvals*

##### **182E Approval conditions**

(1) If a responsible entity or the Minister grants an approval, the entity may impose reasonable conditions for the approval (“**approval conditions**”).

(2) However, a condition may only be imposed within 20 business days of—

- (a) if the approval was granted by the entity—the making of the application to the entity; or
- (b) if the approval was granted by the Minister—the giving of notice of the approval by the Minister to the entity.

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21 *Judicial Review Act 1991*, parts 3 (Statutory orders of review) and 4 (Reasons for decision)

22 *Freedom of Information Act 1992*, part 3 (Access to documents), division 2 (Exempt matter)

(3) An approval condition may, for example, provide for the following—

- (a) reinstating land disturbed by construction;
- (b) installing signs, markings or warning devices about or for the miscellaneous transport infrastructure for which the approval was granted on the intersecting area;
- (c) surveying or siting the infrastructure on the area;
- (d) adding to, altering or replacing the infrastructure, at the applicant's cost—
  - (i) to ensure the safe operation or use of other infrastructure or works on the area; or
  - (ii) to preserve, promote or protect the environmental condition of the area;
- (e) how the approval may be amended, suspended or cancelled.

### **182F Notice of approval conditions**

If a responsible entity imposes approval conditions, it must give the applicant for the approval written notice within 14 days after imposing the conditions stating—

- (a) the conditions; and
- (b) that the applicant may appeal against the conditions to an arbitrator; and
- (c) that an appeal may be started by giving the entity a written notice of dispute within 20 business days after receiving the notice of the conditions.

### *Division 5—Arbitration of approval conditions*

### **182G Notice of dispute**

(1) If a responsible entity imposes approval conditions, the applicant for the approval may, by written notice to the entity (a “**dispute notice**”), dispute the reasonableness of the conditions.

(2) However, if notice of the conditions has been given to the applicant under section 182F, a dispute notice may only be given within 20 business days after the giving of the notice of the conditions.

### **182H Appointment of arbitrator**

(1) Within 10 business days after the giving of a dispute notice, the responsible entity and the applicant for approval must join in appointing an independent arbitrator to resolve the dispute.

(2) If the entity and the applicant do not appoint an arbitrator within the 10 business days, the following persons may, on the application of the applicant or entity, appoint the arbitrator—

- (a) if the entity is a local government—the Minister and the Minister administering the *Integrated Planning Act 1997*, acting jointly;
- (b) if the entity is not a local government—the Minister.

(3) However, each Minister may nominate another person to exercise the power under subsection (2).

### **182I Arbitrator's functions**

The arbitrator must—

- (a) resolve the dispute by deciding what are reasonable conditions for the approval; and
- (b) give the entity and the applicant notice of, and reasons for, the decision.

### **182J Arbitrator's powers**

(1) In resolving the dispute, the arbitrator may—

- (a) confirm the approval conditions imposed by the responsible entity; or
- (b) amend the conditions; or
- (c) set aside the conditions and substitute other conditions.

(2) The arbitrator may exercise the powers of an arbitrator under the *Commercial Arbitration Act 1990*.

**182K Hearing procedures**

(1) An arbitration must be by way of rehearing, unaffected by the responsible entity's decision on the approval conditions.

(2) Unless this division or a regulation made under schedule 1 otherwise provides, the practice and procedure for an arbitration follow the practice and procedure for an arbitration under the *Commercial Arbitration Act 1990*.

**182L Effect of arbitrator's decisions**

(1) An arbitrator's decision under this division is final.

(2) The entity and the applicant may not apply for review of, or appeal against, the decision.

(3) The approval conditions decided by the arbitrator are, other than for section 182F<sup>23</sup> and this division, taken to be the approval conditions imposed by the responsible entity.

***Division 6—Miscellaneous*****182M Miscellaneous transport infrastructure remains property of licensee**

(1) This section applies if—

- (a) a licensee constructs, maintains, uses or operates miscellaneous transport infrastructure across, over or under an intersecting area; and
- (b) the licensee has obtained an approval from each responsible entity for the area.

(2) Subject to a condition of the licensee's operational licence or an agreement between the licensee and the State, the infrastructure remains the licensee's property despite—

- (a) the attaching of the infrastructure to the area; or
- (b) an approval condition.

(3) However, an approval condition may provide for—

- (a) if the State agrees—the disposal of the infrastructure to the State on reasonable terms if the licensee no longer holds an operational licence for the infrastructure; or
- (b) if the State and licensee agree—someone else to own or acquire the infrastructure.

### **182N Compensation to responsible entity from licensee**

(1) This section applies if—

- (a) a licensee constructs, maintains, uses or operates miscellaneous transport infrastructure across, over or under an intersecting area; and
- (b) a responsible entity for the area incurs a cost, damage, liability or loss because of the existence, construction, maintenance, use or operation of the infrastructure.

(2) The licensee must pay the entity the amount of the cost, damage, loss or liability.

(3) The entity may claim the amount in a proceeding in a court with jurisdiction for the amount claimed.

## **PART 3—AUTHORITIES TO OCCUPY AND USE LAND**

### **183 Temporary use and occupation of land**

To carry out miscellaneous transport infrastructure works, the chief executive, or anyone authorised in writing by the chief executive, may temporarily occupy and use land, including roads, and do anything on the land that is necessary or convenient.

### **184 Notice of entry or permission to enter**

(1) If a person proposes to occupy or use land under this chapter, the person must—

- (a) give at least 3 days written notice to the owner or occupier of the land; or
- (b) obtain the written permission of the owner or occupier to the occupation or use.

(2) The notice must state—

- (a) the miscellaneous transport infrastructure works to be carried out; and
- (b) the use proposed to be made of the land; and
- (c) details of the things proposed to be done on the land; and
- (d) an approximate period when the occupation or use is expected to continue.

(3) A notice may be given under subsection (1) in relation to land even though it is proposed to resume the land for miscellaneous transport infrastructure.

(4) After the end of 3 days after service of a notice under subsection (1), or with the permission of the owner or occupier, the land may be entered and the miscellaneous transport infrastructure works specified in the notice carried out.

(5) If a person proposes to occupy or use land to carry out urgent remedial work to miscellaneous transport infrastructure or miscellaneous transport infrastructure works, subsection (1) does not apply but the person must, if practicable, notify the owner or occupier of the land orally before entering the land.

### **185 Compensation for physical damage from entry etc.**

(1) An owner of land that is entered, occupied or used under this chapter may give a written notice to the chief executive claiming compensation for physical damage caused by the entry, occupation or use or for the taking or consumption of materials.

(2) Compensation is not payable unless a claim is received by the chief executive within 1 year after occupation or use has ended.

(3) However, the chief executive may allow a claim to be made at a later time.

(4) Compensation awarded under this section must not be more than the compensation that would have been awarded if the land had been acquired.

## **PART 4—POWERS OF CHIEF EXECUTIVE OVER REQUIRED LAND**

### **186 Chief executive may grant interests in land**

(1) The chief executive may, for the State, grant or dispose of an interest in required land used, or proposed to be used, for miscellaneous transport infrastructure to—

- (a) a licensee; or
- (b) someone else authorised under another Act to construct, maintain, use or operate miscellaneous transport infrastructure.

*Example of an interest in land under subsection (1)—*

A licence or right to use or occupy required land.

(2) The chief executive may grant the interest on conditions, including, for example, a condition that the interest ends if the person ceases to be a person entitled to be granted the interest.

(3) This section has effect despite the *Acquisition of Land Act 1967*.

## **PART 5—MISCELLANEOUS**

### **187 Effect of chapter on other Acts**

This chapter has effect despite a provision of another Act about—

- (a) constructing miscellaneous transport infrastructure; or
- (b) acquiring interests in land, or doing anything else, to enable the construction of miscellaneous transport infrastructure.



## CHAPTER 8A—FUNCTION OF QUEENSLAND RAIL

### 187A Function

(1) The function of Queensland Rail is to provide comprehensive transport services and services ancillary to those services, whether in or outside Queensland or Australia.

(2) Without limiting subsection (1), the function includes—

- (a) the provision of passenger and freight transport services; and
- (b) the provision of consultancy and training services relating to transport services; and
- (c) establishing, maintaining and arranging for the provision of transport infrastructure; and
- (d) doing anything likely to complement or enhance the function or something mentioned in paragraphs (a) to (c).

(3) Queensland Rail is taken to have had the function from when it became a government owned corporation.

## CHAPTER 8B—PUBLIC MARINE TRANSPORT INFRASTRUCTURE

### PART 1—PUBLIC MARINE FACILITIES

#### 187B Appointment of manager of public marine facility

(1) The Governor in Council may, by regulation, appoint a person (the “**manager**”) to manage a public marine facility.

*Examples of persons who may be appointed—*

A local government, a port authority, the chief executive or the person who is for the time being the manager of a resort.

(2) The appointment may only be made if the person consents to the appointment.

(3) The appointment may be on conditions stated under the regulation, including the payment of a fee to the chief executive for moorings in the facility.

(4) Under a regulation, a condition may be changed if the manager consents to the change.

(5) However, the consent of the manager is not required to change the fee payable under a regulation to the chief executive for moorings in the facility.

(6) Subsection (3) does not limit the power to impose, under a regulation, fees for moorings in a public marine facility, whether or not a manager has been appointed to manage the facility.

### **187C Manager's responsibility for maintenance and injuries etc.**

(1) The manager is responsible for maintaining the public marine facility in good condition to a standard appropriate to its use.

(2) The facility is taken, for the purposes of all adverse civil proceedings in relation to death, injury, damage or loss, to be solely owned, occupied and under the management, control and responsibility of the manager.

(3) However, subsection (2) does not apply to the extent any death, injury, damage or loss is attributable to a structural defect in the facility unless—

- (a) the defect is attributable to the manager's failure to—
  - (i) properly construct, extend or alter the facility in accordance with a sanction under a provision continuing to have effect under section 236;<sup>24</sup> or
  - (ii) properly maintain the facility; or
- (b) the defect or its continuation is attributable to a contravention by the manager of the conditions of the manager's appointment.

### **187D Management by chief executive**

(1) If, apart from this section, there is no current manager of a public marine facility, the chief executive is taken to be the manager of the facility

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24 Section 236 (Continuation of certain provisions of Harbours Act requiring approval for certain matters)

until the chief executive or someone else is appointed as the manager under section 187B.

(2) If the chief executive is the manager of a public marine facility, the chief executive—

- (a) has any powers, conferred under a regulation, to limit or prohibit the use of the facility; and
- (b) may exercise any other of the chief executive's powers, and do anything the chief executive considers necessary or convenient, for the facility's effective and efficient management.

(3) This section does not limit a power the chief executive has apart from this section.

### **187E Management by local government**

If a local government is the manager of a public marine facility, the local government—

- (a) has, for the facility, all the functions, powers and obligations of a local government under the *Local Government Act 1993*; and
- (b) may make local laws and do anything it considers necessary or convenient for the facility's effective and efficient management.

### **187F Management by port authority**

If a port authority is the manager of a public marine facility, the port authority—

- (a) has, for the facility, all the functions, powers and obligations of a port authority under chapter 7 or the *Government Owned Corporations Act 1993*; and
- (b) may exercise its powers, and do anything it considers necessary or convenient for the facility's effective and efficient management.

### **187G Management by another person**

If the manager of a public marine facility is not the chief executive, a local government or a port authority, the manager's management powers

include any power, conferred under a regulation, to limit or prohibit the use of the facility.

### **187H Exercise of manager's powers to be consistent with conditions**

Anything done by a manager under sections 187D to 187G must be consistent with any conditions imposed on the manager's appointment.

### **187I Fees**

(1) The manager of a public marine facility may impose fees payable to the manager for the use of the facility, whether as a condition of an approval to use the facility or otherwise.

(2) The fee may, for example, be imposed by reference to—

- (a) ships using the facility; or
- (b) goods or passengers loaded, unloaded or transhipped to or from ships using the facility; or
- (c) vehicular access to the facility.

(3) However, a fee may not be imposed for the genuine, transient private recreational use of a boat ramp, jetty, landing or pontoon.

*Example of transient use—*

Loading fishing gear onto a ship that only takes 15 minutes.

(4) Also, if the manager is—

- (a) the chief executive—the amount of the fee must be prescribed under a regulation; and
- (b) a local government—the amount of the fee must be prescribed under a local law; and
- (c) a port authority—the amount of the fee must be fixed by a resolution of the board of the port authority.

(5) A manager, other than the chief executive,<sup>25</sup> who imposes a fee under this section may recover the fee as a debt owing to the manager.

(6) This section does not limit the powers a manager has apart from this section.

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<sup>25</sup> For the recovery of fees payable to the chief executive see section 188.

**187J When manager may resign**

A manager may resign with the consent of the Governor in Council.

**187K Removal of improvements added by manager**

(1) If a manager resigns under section 187J or the manager's appointment is revoked, the manager may, within the next 3 months, remove any improvements to the facility added by the manager that do not form an integral part of the facility.

(2) Any of those improvements not removed within the 3 months then become the State's property.

(3) This section does not apply to improvements that were funded by the State or intended to become State-owned under an agreement between the State and the manager or under the conditions of the manager's appointment.

**187L Regulation prevails over action taken by a manager under this part**

(1) If there is any inconsistency between a regulation and action taken under this part by a manager, the regulation prevails to the extent of the inconsistency.

*Example—*

A regulation about the management of public marine facilities prevails over a local law made for the purposes of this part to the extent they are inconsistent.

(2) Subsection (1) applies whether the action was taken before or after the regulation.

**PART 2—MANAGEMENT OF WATERWAYS****187M Object of pt 2**

(1) This part recognises that particular waterways require a system of regulation to balance demands on the use, by water traffic, of the waterways and associated infrastructure.

(2) The object of this part is to promote the overall effective and efficient use of waterways for transport by establishing a management regime that—

- (a) is consistent with the objectives of other transport laws; and
- (b) promotes community input; and
- (c) supplements other relevant laws; and
- (d) reflects a coordinated approach to meeting community transport needs.

(3) To achieve the object, particular regard must be had to—

- (a) alternative means that do not involve regulation through waterway transport management plans; and
- (b) transport infrastructure needs; and
- (c) the need to facilitate both recreational and commercial use of waterways; and
- (d) the impact of proposed waterway transport management plans on community transport needs.

### **187N Functions of chief executive under pt 2**

The chief executive has the following functions under this part—

- (a) to consult with public authorities, industry, interested groups and persons, and the public;
- (b) to assess current and future demands of water traffic and for the use of waterways;
- (c) to plan for the effective and efficient management of—
  - (i) water traffic and associated infrastructure; and
  - (ii) the use of waterways;
- (d) to prepare proposals for transport management plans under this part;
- (e) to make recommendations to the Minister for this part.

**187O Waterway transport management plan**

(1) The Minister may make a transport management plan under this Act for an area (a “**waterway transport management plan**”).

(2) A waterway transport management plan is subordinate legislation.

(3) A waterway transport management plan is not effective until it is approved by the Governor in Council.

(4) A waterway transport management plan applies to—

- (a) waters within the area described in the waterway transport management plan; and
- (b) watercraft infrastructure specified in the plan; and
- (c) the airspace above the area to a height above the surface specified in the plan.

**187P Contents of a waterway transport management plan**

A waterway transport management plan may provide for a matter mentioned in schedule 1A<sup>26</sup> or a matter about which a regulation may be made.

**187Q Notice of draft waterway transport management plan**

(1) The chief executive must give public notice of a draft waterway transport management plan.

(2) The notice must be published—

- (a) once a week for 2 consecutive weeks in a newspaper circulating generally throughout the State; and
- (b) if the waterway transport management plan applies only to a particular area of the State—in a newspaper circulating generally in the area.

(3) The notice must state the following—

- (a) the addresses where copies of the draft waterway transport management plan may be inspected and, on payment of the fee prescribed by regulation, purchased;

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<sup>26</sup> Schedule 1A (Subject matter for waterway transport management plans)

- (b) an invitation for submissions on the draft plan from public authorities, industry, interested groups and persons, and the public;
  - (c) a day, not earlier than 1 month from the first publication of a notice under subsection (2)(a), by which submissions may be made to the chief executive.
- (4) The chief executive must consider all submissions made by that day.
- (5) This section does not apply if the draft deals only with—
- (a) a minor error; or
  - (b) an amendment of a fee or levy consistent with announced government policy.
- (6) In this section—
- “minor error”** includes—
- (a) a typographical error; and
  - (b) a grammatical error; and
  - (c) an error of punctuation; and
  - (d) an error in cross-referencing to a provision of a law.

### **187R Other laws prevail over waterway transport management plan**

(1) If there is any inconsistency between a waterway transport management plan and another law the other law prevails to the extent of the inconsistency.

(2) Subsection (1) applies whether the waterway transport management plan was made before or after the other law.

(3) In this section—

**“another law”** means any subordinate legislation and action taken under part 1.



## CHAPTER 9—GENERAL PROVISIONS

### 188 Amounts payable to chief executive are debts owing to the State

An amount payable by a person to the chief executive under this Act or the *Integrated Planning Act 1997* is a debt owing to the State.

### 189 Power to require information from local governments

(1) The chief executive may, by written notice given to a local government, require that the local government give to the chief executive, or to a specified person, information on a particular issue relevant to the discharge of functions or the exercise of powers under this Act or the *Integrated Planning Act 1997*.

(2) The notice must specify a reasonable time within which the notice is to be complied with and may specify the way in which it is to be complied with.

(3) The local government must comply with the notice.

(4) However, the local government may appeal to the Minister against the notice and, if the local government appeals, the local government only has to comply with the notice if, and to the extent that, the Minister directs.

### 190 Conduct of company directors, employees or agents

(1) In this section—

“**engaging**” in conduct includes failing to engage in conduct.

“**representative**” means—

- (a) in relation to a corporation—an executive officer, employee or agent of the corporation; or
- (b) in relation to an individual—an employee or agent of the individual.

“**state of mind**” of a person includes—

- (a) the person’s knowledge, intention, opinion, belief or purpose; and
- (b) the person’s reasons for the intention, opinion, belief or purpose.

(2) If, in a proceeding for an offence against this Act, it is necessary to establish the state of mind of a corporation about particular conduct, it is sufficient to show—

- (a) the conduct was engaged in by a representative of the corporation within the scope of the representative's actual or apparent authority; and
- (b) the representative had the state of mind.

(3) Conduct engaged in on behalf of a corporation by a representative of the corporation within the scope of the representative's actual or apparent authority is taken, in a proceeding for an offence against this Act, to have been engaged in also by the corporation unless the corporation establishes it took reasonable precautions and exercised proper diligence to avoid the conduct.

(4) If, in a proceeding for an offence against this Act, it is necessary to establish the state of mind of an individual about particular conduct, it is sufficient to show—

- (a) the conduct was engaged in by a representative of the individual within the scope of the representative's actual or apparent authority; and
- (b) the representative had the state of mind.

(5) Conduct engaged in on behalf of an individual by a representative of the individual within the scope of the representative's actual or apparent authority is taken, in a proceeding for an offence against this Act, to have been engaged in also by the individual unless the individual establishes the individual took reasonable precautions and exercised proper diligence to avoid the conduct.

### **190A Approval of forms**

The chief executive may approve forms for use under this Act.

### **191 Disposal of fees, penalties etc.**

(1) Fees or other amounts received or recovered under this Act in relation to the operations of a GOC, or a local government under chapter 8B, are to be paid to the GOC or local government.

(2) A penalty received or recovered in relation to the operations of a GOC for an infringement notice offence under the *State Penalties*

*Enforcement Act 1999* concerning a vehicle parking or stopping offence under this Act is to be paid to the GOC.

(3) To remove doubt, it is declared that a penalty received or recovered in relation to the operations of a local government for an offence under a local law authorised by chapter 8B is to be paid to the local government.

(4) The following amounts are controlled receipts for the purpose of the *Financial Administration and Audit Act 1977*—

- (a) a fee paid to the chief executive under a regulation mentioned in section 187B(3) or 187I(4)(a);<sup>27</sup>
- (b) a levy paid to the chief executive under a regulation mentioned in schedule 1, item 20.

(5) A declared amount received or recovered by the chief executive is to be retained by the chief executive and not paid into the consolidated fund.

(6) Fees or other amounts under section 187I received or recovered by a manager of a public marine facility are to be retained by the manager and not paid into the consolidated fund.

(7) All other fees, penalties and other amounts received or recovered under this Act are to be paid to the consolidated fund.

(8) In this section—

“**declared amount**” means any of the following—

- (a) a fee or charge under section 59A(2);
- (b) a fee under section 187B(3);
- (c) a levy under schedule 1, item 20.

## **192 No need to prove appointments**

In a proceeding for an offence against this Act, there is no need to prove the appointment of a person who is an authorised person for a railway.

## **193 Prosecutions for railway offences**

(1) This section applies to an offence against this Act committed by a person while the person was travelling on a railway.

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<sup>27</sup> Section 187B (Appointment of manager of public marine facility) or 187I (Fees)

(2) A complaint for the offence may be heard at a place appointed for holding Magistrates Courts within any of the districts through which the person travelled on the railway.

(3) This section has effect despite, but does not limit, the *Justices Act 1886*, section 139.<sup>28</sup>

### **194 Proceedings for offences**

(1) An offence against this Act is a summary offence.

(2) A proceeding for an offence must start—

- (a) within 1 year after the commission of the offence; or
- (b) within 6 months after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

### **195 Attempts to commit offences**

(1) A person must not attempt to commit an offence against this Act.

Maximum penalty—half the maximum penalty for committing the offence.

(2) The Criminal Code, section 4 (Attempts to commit offences) applies to subsection (1).

### **196 Review of and appeals against decisions**

(1) A person whose interests are affected by a decision (the “**original decision**”) described in schedule 2 may ask the chief executive to review the decision.

(2) The person is entitled to receive a statement of reasons for the original decision whether or not the provision of the Act under which the decision is made requires that the person be given a statement of reasons for the decision.

(3) The *Transport Planning and Coordination Act 1994*, part 5, division 2—

- (a) applies to the review; and

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<sup>28</sup> *Justices Act 1886*, section 139 (Where summary cases to be heard)

(b) provides—

- (i) for the procedure for applying for the review and the way it is to be carried out; and
- (ii) that the original decision may be stayed by the person by applying to the court mentioned in subsection (4).

(4) Also, after the chief executive confirms or amends the original decision or substitutes another decision, the person may appeal against the confirmed, amended or substituted decision (the “**reviewed decision**”) to the court stated in schedule 2.

(5) The *Transport Planning and Coordination Act 1994*, part 5, division 3—

(a) applies to the appeal; and

(b) provides—

- (i) for the procedure for the appeal and the way it is to be disposed of; and
- (ii) that the reviewed decision may be stayed by the person by applying to the court mentioned in subsection (4).

## **199 Application of Freedom of Information Act and Judicial Review Act**

(1) The *Freedom of Information Act 1992* does not apply to a document received or brought into existence by a transport GOC in carrying out its excluded activities.

(2) The *Judicial Review Act 1991* does not apply to a decision of a transport GOC made in carrying out its excluded activities.

(3) A regulation may declare the activities of a transport GOC that are taken to be, or are taken not to be, activities conducted on a commercial basis.

(4) In this section—

“**commercial activities**” means activities conducted on a commercial basis.

“**community service obligations**” has the same meaning as in the *Government Owned Corporations Act 1993*.

“**excluded activities**” means—

- (a) commercial activities; or
- (b) community service obligations prescribed under a regulation.

**“transport GOC”** means a GOC whose functions relate mainly to transport.

## **200 Regulations**

(1) The Governor in Council may make regulations for the purposes of this Act.

(2) A regulation may create offences and prescribe penalties for the offences of not more than 40 penalty units.

(3) In particular, regulations may be made for the matters specified in schedule 1.

(4) A regulation may confer functions or powers on a local government or a State government body.

# **CHAPTER 10—SAVINGS AND TRANSITIONAL PROVISIONS, AMENDMENTS AND REPEALS**

## **PART 1—SAVINGS AND TRANSITIONAL PROVISIONS ABOUT ROADS**

### **201 Definition**

In this part—

**“corporation”** means the corporation sole previously constituted by the *Urban Public Passenger Transport Act 1984*.

## **PART 2—SAVINGS AND TRANSITIONAL PROVISIONS ABOUT RAILWAYS**

### *Division 1—Provisions about land*

#### **214 Existing rail corridor land**

(1) On the commencement—

- (a) existing rail corridor land becomes unallocated State land; and
- (b) the Governor in Council must lease the land to the State under the *Land Act 1994*, section 17(b).<sup>29</sup>

(2) The lease is in perpetuity and, if demanded, for a rent of \$1 per year.

(3) The land must be immediately subleased to Queensland Rail.

(4) The sublease is to be for a term of 100 years and, if demanded, for a rent of \$1 per year.

(5) The sublease is to give Queensland Rail an option to take up a further sublease on the same terms for a further 100 years.

(6) Subsection (1) has effect even though the boundaries of the land may not be precisely identified.

(7) Despite subsection (1), any structures attached to the land (whether before or after the commencement) are Queensland Rail's property until Queensland Rail disposes of them.

(7A) The *Land Act 1994*, section 336(2)(a)<sup>30</sup> does not apply to a document of amendment of the sublease.

(8) In this section—

“**structures**” includes rail transport infrastructure and any other works.

#### **215 Boundary identification etc.**

(1) Queensland Rail and the chief executive must progressively, and within 5 years after the commencement, identify—

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29 *Land Act 1994*, section 17 (Granting land to the State)

30 *Land Act 1994*, section 336 (Amending a sublease)

- (a) the boundaries of existing rail corridor land; and
- (b) the parts and boundaries of old QR land (other than existing rail corridor land or commercial corridor land) that—
  - (i) are mentioned in transport infrastructure strategies; or
  - (ii) they consider are of strategic importance to the State as part of a transport corridor.

(2) The identification may be done by compilation, survey or another way sufficient to identify the land.

(3) The chief executive must notify the boundaries in the gazette.

(4) For land identified under subsection (1)(b), the notice must declare the land to be non-rail corridor land.

(5) On the declaration of the land as non-rail corridor land—

- (a) the land becomes unallocated State land; and
- (b) the Governor in Council must lease the land to the State under the *Land Act 1994*, section 17(b).<sup>31</sup>

(6) The lease is in perpetuity and, if demanded, for a rent of \$1 per year.

(7) A regulation made within 5 years after the commencement may extend the period mentioned in subsection (1) by not more than 2 years.

## **216 Effect of land becoming unallocated State land**

(1) Subsection (2) applies if, immediately before becoming unallocated State land under this division, existing rail corridor land or non-rail corridor land was subject to a lease to someone else.

(2) The lease continues on the same terms as a sublease—

- (a) for existing rail corridor land—from Queensland Rail to the person; or
- (b) for non-rail corridor land—from the State to the person.

(3) If, immediately before land becomes unallocated State land under this part, a person had a right to use the land that does not derive from a lease, the right continues.

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<sup>31</sup> *Land Act 1994*, section 17 (Granting land to the State)



**217 Exemption from fees**

No fee is payable for the lodgment and registration of any instrument required to give effect to this division or section 221.

**218 Expiry of division etc.**

(1) This division is a law to which the *Acts Interpretation Act 1954*, section 20A<sup>32</sup> applies.

(2) This division expires 7 years after it commences.

***Division 2—Other provisions*****221 Continuation of Transport Infrastructure (Railways) Act 1991, ss 49 and 51**

(1) The *Transport Infrastructure (Railways) Act 1991*, sections 49 and 51 continue to have effect.

(2) The sections have effect as if a reference to Queensland Railways were a reference to Queensland Rail.

(3) This section has effect despite the repeal of the *Transport Infrastructure (Railways) Act 1991*.

(4) This section expires 5 years after it commences.<sup>33</sup>

(5) A regulation made within 5 years after the commencement may extend the period mentioned in subsection (4) by not more than 2 years.

**223 Existing contracts**

(1) To remove any doubt about contracts entered into by the previous rail corporation before the commencement, Queensland Rail is taken to represent the State for the contracts.

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32 *Acts Interpretation Act 1954*, section 20A (Repeal does not end saving, transitional or validating effect etc.)

33 This section now expires 1 July 2002 (see *Transport Infrastructure Amendment Regulation 1995*, section 4).

(2) This section is a law to which the *Acts Interpretation Act 1954*, section 20A applies.

(3) This section expires 7 years after it commences.

## **224 Existing transaction documents**

(1) The purpose of this section is to remove any doubt about the effect of this Act in relation to transaction documents in existence immediately before the introduction day.

(2) On and after the introduction day, Queensland Rail is taken to represent the State under each transaction document, and the duties and obligations of the previous rail corporation under each transaction document are taken to be duties and obligations of the State.

(3) The State may guarantee payments and obligations under a transaction document.

(4) This section has effect, and is taken always to have had effect, as if it commenced on the introduction day.

(5) This section is a law to which the *Acts Interpretation Act 1954*, section 20A applies.

(6) In this section—

**“introduction day”** means the day the *Transport Infrastructure Amendment (Rail) Bill 1995* was introduced into the Legislative Assembly.<sup>34</sup>

**“transaction document”** means—

- (a) a document, including a lease, sublease or guarantee, connected with a financial arrangement listed in Queensland Railways schedule of leases approved by the Minister on or before the introduction day; or
- (b) a document declared under a regulation to be a transaction document.

(7) A regulation made under subsection (6), definition “transaction document”, paragraph (b) may be given retrospective operation to a day not earlier than the introduction day.

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34 The Bill was introduced into the Legislative Assembly on 24 May 1995.

(8) This section is in addition to the *Government Owned Corporations Act 1993*.

(9) This section expires 7 years after it commences.

## **PART 3—SAVINGS AND TRANSITIONAL PROVISIONS ABOUT PORTS**

### **233 Continuation of certain by-laws and provisions of Harbours Act**

(1) The *Marine Land Dredging By-law 1987*, as well as the following provisions of the *Harbours Act 1955*, continue to have effect—

- (a) sections 67(2), 98 and 101<sup>35</sup> so far as they relate to the by-law;
- (b) any definitions in the Act relevant to the by-law and the provisions mentioned in paragraph (a).

(1A) The provisions of the *Harbours Act 1955* mentioned in subsection (1) have effect as if—

- (a) a reference to a harbour board or the Harbours Corporation were a reference to the chief executive of the department; and
- (b) for section 101—the words ‘under its seal’ were omitted.

(2) The by-law has effect as if—

- (a) a reference to the Harbours Corporation, the director, or the Department of Harbours and Marine, were a reference to the chief executive of the department; and
- (b) by-law 4, definition of “marine land” were amended by omitting ‘for which no Harbour Board is constituted’.

(5) The Minister may delegate to an officer of the public service or a port authority a power that the Minister has under subsection (1).

(7) For the purpose of the continuing effect of the *Marine Land Dredging By-law 1987*, a reference in it to an authorised person or officer

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35 *Harbours Act 1955*, sections 67 (Removal of certain materials from Queensland waters), 98 (Power to make by-laws) and 101 (By-laws made by Harbours Corporation).

is a reference to a person who, immediately before 1 July 1994, was an authorised person or officer under the by-law.

(8) This section has effect despite the repeal of the *Harbours Act 1955*.

(9) This section expires on 31 December 2002 or, if an earlier date is prescribed under a regulation, on that date.

### **236 Continuation of certain provisions of Harbours Act requiring approval for certain matters**

(1) The following provisions of the *Harbours Act 1955* and regulations under that Act continue to have effect—

- section 59(3) to (6) (Power of Harbour Board to construct harbour works etc.)
- section 67 (other than subsection (2)) (Removal of certain materials from Queensland waters)
- section 86 (Works on tidal lands or waters etc. not to be constructed without sanction of Governor in Council)
- section 89 (Powers of Minister in respect of works)
- section 90 (Minister may employ engineers etc. to abate works)
- section 91 (Reclamations etc. to be authorised)
- section 92 (Application for authority to reclaim)
- section 93 (Regulations in relation to reclamations)
- section 163 (Regulations) so far as it relates to the regulations mentioned in this subsection
- *Construction of Harbour Works (Fees) Regulation 1992*
- *Harbours (Reclamation of Land) Regulation 1979*
- any definitions in the Act relevant to the provisions or regulations.

(2) The provisions and regulations mentioned in subsection (1) continue to have effect as if—

- (a) references to the Governor in Council (other than the reference in section 163(1)) were references to the Minister; and
- (b) references to an order in council were references to a decision of the Minister.

(3) The Minister may delegate to an officer of the public service or a port authority a power under the *Harbours Act 1955*, section 67 that the Minister has under subsection (1).

(4) The Minister may delegate to an officer of the public service, a port authority or a local government a power under the *Harbours Act 1955*, section 86 that the Minister has under subsection (1).

(5) The *Harbours Act 1955*, section 59(3) to (6) has effect as if references in the provisions to powers under subsection (1) were references to powers of the relevant port authority.

(6) The *Harbours Act 1955*, section 67 has effect as if—

- (a) references to a harbour board or the Harbours Corporation were a reference to the chief executive of the department; and
- (b) subsection (2A) were amended by omitting ‘subsection (2)’ and substituting ‘the *Marine Land Dredging By-law 1987*’.

(7) This section has effect despite the repeal of the *Harbours Act 1955*.

(8) This section expires on 31 December 2002 or, if an earlier date is prescribed by regulation, on that date.

### **239 Continuation of pt 5, div 2 of Port of Brisbane Authority Act**

(1) The *Port of Brisbane Authority Act 1976*, part 5, division 2 as well as any definitions in the Act relevant to the division, continue to apply to leases for which compensation could be claimed under the division.

(2) This section has effect despite the repeal of the *Port of Brisbane Authority Act 1976*.

(3) This section expires on a date to be fixed by regulation.

### **240A Expiries under this part**

If a provision of this part allows a regulation to prescribe an earlier day than the day stated in the provision for the expiry of a section, a regulation may be made prescribing an earlier day than the stated day for part of the section.

## **PART 4—GENERAL SAVINGS AND TRANSITIONAL PROVISIONS**

### *Division 1—Transition of references about roads*

#### **241 Application of division**

This division applies to references in Acts in existence at its commencement.

#### **242 Transport Infrastructure (Roads) Act 1991 references**

A reference to the *Transport Infrastructure (Roads) Act 1991* is, in relation to transport infrastructure or another matter dealt with under this Act, taken to be a reference to this Act.

#### **243 Main Roads Act 1920 references**

A reference to the *Main Roads Act 1920* may, in relation to transport infrastructure or another matter dealt with under this Act, be taken to be a reference to this Act.

#### **244 Commissioner of Main Roads references**

A reference to the Commissioner of Main Roads (either as a natural person or corporation sole) is taken to be a reference to the chief executive.

#### **245 Declared road references**

(1) A reference to a declared road under the *Main Roads Act 1920* is taken to be a reference to a State-controlled road under this Act.

(2) A reference to a declared road under the *Transport Infrastructure (Roads) Act 1991* is taken to be a reference to a State-controlled road under this Act.

#### **246 Motorway references**

A reference to a motorway under the *Transport Infrastructure (Roads) Act 1991* is taken to be a reference to a motorway under this Act.

**247 Main Roads Fund references**

A reference to the Main Roads Fund is taken to be a reference to the funds of the department.

***Division 2—Transition of references about railways*****248 Application of division**

This division applies to references in Acts (other than this Act) in existence at its commencement.

**249 Railways Act 1914 references**

A reference to the *Railways Act 1914* is taken to be a reference to this Act.

**250 Transport Infrastructure (Railways) Act 1991 references**

A reference to the *Transport Infrastructure (Railways) Act 1991* is taken to be a reference to this Act.

**251 Commissioner for railways references**

A reference to the commissioner for railways is taken to be a reference to—

- (a) for the commissioner as a corporation sole—Queensland Rail; or
- (b) for the commissioner as an individual—the chief executive of Queensland Rail.

**252 Railways Department references**

A reference to the Railways Department is taken to be a reference to Queensland Rail.

**253 Queensland Railways references**

A reference to Queensland Railways is taken to be a reference to Queensland Rail.

***Division 3—Transition of references about ports*****254 Application of division**

This division applies to references in Acts in existence at its commencement.

**255 Harbours Act 1955 and Port of Brisbane Authority Act 1976 references**

A reference to the *Harbours Act 1955* or *Port of Brisbane Authority Act 1976* is taken to be a reference to this Act.

**256 Harbour board references**

(1) A reference to a harbour board is taken to be a reference to a port authority under this Act.

(2) A reference to the Port of Brisbane Authority is taken to be a reference to the Port of Brisbane Corporation.

**257 Harbour references**

A reference to a harbour is taken to be a reference to a port under this Act.

**258 Harbours Corporation and Harbours Trust references**

(1) A reference to the Harbours Corporation or Harbours Trust is taken to be a reference to—

- (a) for a port to which subsection (2) applies or for the *Aurukun Associates Agreement Act 1975*—the Ports Corporation of Queensland; or
- (b) in any other case—the State.

(2) This subsection applies to the following ports—

- Abbot Point
- Burketown
- Cape Flattery



- Cooktown
- Hay Point
- Innisfail
- Karumba
- Lucinda
- Margaret Bay
- Maryborough
- Port Kennedy
- Quintell Beach
- St Lawrence
- Weipa.

### **259 Gold Coast Waterways Authority references**

A reference to the Gold Coast Waterways Authority is taken to be a reference to the State.

## **CHAPTER 11—FURTHER TRANSITIONAL PROVISIONS**

### **PART 1—TRANSITIONAL PROVISIONS FOR THE INTEGRATED PLANNING ACT 1997**

#### **261 Continuing application of previous provisions to non-IDAS applications**

(1) This section applies if—

- (a) a local government would have had to apply under section 40 for the approval of a subdivision, rezoning or development of land (the “**work**”) under the section as in force immediately before its amendment by the *Integrated Planning and Other Legislation Amendment Act 1999*; and

(b) a development approval for the same work is not required under the *Integrated Planning Act 1997*.

(2) Sections 40 and 42 and schedule 2, as in force immediately before their amendment by the *Integrated Planning and Other Legislation Amendment Act 1999*, apply to the work.

## **262 Applications for approval of subdivisions, rezoning or development**

If an approval was applied for under section 40(1)(a)(i), as in force immediately before its amendment by the *Integrated Planning and Other Legislation Amendment Act 1999*, processing of the application and all matters incidental to the processing, including any review or appeal made in relation to a decision about the application, must proceed as if that Act had not been enacted.

## **PART 2—TRANSITIONAL PROVISIONS FOR THE TRANSPORT LEGISLATION AMENDMENT ACT 2000**

### **263 Definitions for pt 2**

In this part—

“**amendment Act**” means the *Transport Legislation Amendment Act 2000*.

“**repealed section 51**” means section 51 repealed by section 17 of the amendment Act.

“**repealed section 52**” means section 52 repealed by section 17 of the amendment Act.

### **264 Transitional—access-limited roads**

(1) A State-controlled road or part of a State-controlled road that immediately before the commencement of this section was an access-limited road is taken to be a limited access road declared under section 51.

(2) For subsection (1), an access-limited road includes a State-controlled road, or part of a State-controlled road, to which access was limited

immediately before the commencement of repealed section 51 to the extent not inconsistent with a declaration made under repealed section 51.<sup>36</sup>

(3) A policy made under repealed section 51 in force immediately before the commencement of this section is taken, with necessary changes, to be a policy gazetted under section 51(3).

### **265 Transitional—previous decisions about access**

(1) A decision under repealed section 52<sup>37</sup> in force immediately before the commencement of this section (a **“previous decision”**) is taken, from the commencement, with necessary changes, to be a decision under section 52(1).

(2) A decision prohibiting or limiting access to a State-controlled road in force immediately before the commencement of repealed section 52, to the extent not inconsistent with a decision under the repealed section 52 in force immediately before the commencement of this section, (a **“previous decision”**) is taken from the commencement, with necessary changes, to be a decision under section 52(1).

(3) Without limiting subsection (1) or (2)—

- (a) a location at which access was permitted under the previous decision is taken to be a permitted road access location; and
- (b) means of access, under the previous decision, that are physical works are taken to be road access works.

### **266 Transitional—ancillary works and encroachments**

(1) A reference in a gazette notice to an approval or contract under section 47,<sup>38</sup> published, given or made before the commencement of this section, is taken to be a reference to road access works.

(2) Anything that, immediately before the commencement of this section was a means of access constructed, maintained or operated under an approval, requirements or a contract under section 47, is taken from the

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36 Repealed section 51 (Access-limited roads)

37 Repealed section 52 (Management of access between individual properties and State-controlled roads)

38 Section 47 (Ancillary works and encroachments)

commencement, for sections 55 to 57, to be road access works relating to a permitted road access location under a decision under section 52(1).

### **267 Transitional—wharf or other harbour work**

(1) This section applies if management and control of a wharf or other harbour work was vested in a person under the repealed *Harbours Act 1955*, section 140<sup>39</sup> immediately before the commencement of this section.

(2) From the commencement, the person is taken to be appointed under section 187B as the manager of the public marine facility constituted by the harbour work (“**the facility**”).

(3) A provision of a by-law under the *Local Government Act 1936*, or local law, about the facility that was in force immediately before the commencement continues in force from the commencement until the manager makes a local law under section 187E that replaces, or is inconsistent with, the provision.

(4) A resolution of the board of a port authority about the facility that was in force immediately before the commencement continues in force from the commencement until the port authority takes action under section 187F that replaces, or is inconsistent with, the resolution.

(5) Despite subsections (3) and (4), an amount that immediately before the commencement was fixed under section 140(4A) of the repealed *Harbours Act 1955* in relation to the facility continues to be fixed from the commencement until a fee is imposed, under section 187I for the facility for any matter.

(6) A right, permit or license granted under any of the following by-laws, that was in force immediately before the commencement, is taken from the commencement to be an approval granted by the chief executive as manager of the facility—

- *Bowen Harbour Board By-law 1977*, by-laws 1, 2, 9 and 10
- *Mooloolaba Boat Harbour By-law 1976*
- *Roslyn Bay Boat Harbour By-law 1980*
- *Snapper Creek and Urangan Boat Harbours By-law 1976*.

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39 Repealed *Harbours Act 1955*, section 140 (Management of government wharf may be vested in harbour board, etc.)

**SCHEDULE 1****SUBJECT MATTER FOR REGULATIONS**

section 200

1. The conditions of use of motorways or limited access roads, including limitations on access or use, and removal of stationary vehicles.
2. Regulation of traffic (including for safety purposes) during construction of road works.
3. Regulation of animals on State-controlled roads.
4. Camping on State-controlled roads or areas under the chief executive's control.
5. Regulation of ancillary works and encroachments.
7. Exemptions from regulations.
8. Allowing the chief executive to give a fee concession or a full or part refund of a fee or levy.
9. Fees, charges, allowances, royalties, costs or expenses to be paid.
10. The operation by the chief executive of electronic and other devices for monitoring, recording or controlling the passage of vehicles or the flow of traffic on—
  - (a) State-controlled roads; or
  - (b) roads that are proposed to be State-controlled roads; or
  - (c) franchised roads; or
  - (d) other roads with the agreement of the relevant local government.
11. Regulation of miscellaneous transport infrastructure or miscellaneous transport infrastructure works.
12. The rights and obligations of persons on a railway.
13. The removal by a railway manager of vehicles, goods or other property that are—
  - (a) abandoned on its railway; or

## SCHEDULE 1 (continued)

(b) parked or left against the railway manager's directions.

**14.** The sale or other disposal by a railway manager of vehicles, goods or other property abandoned on its railway.

**15.** The recovery by a railway manager of the costs of doing the things mentioned in items 13 and 14.

**16.** Alcohol breath tests, drug tests and medical examinations that may be required by an authorised person for a railway.

**17.** The granting of approvals to licensees under chapter 8.

**18.** Conditions of approvals to licensees under chapter 8.

**19.** The management of public marine facilities by the chief executive, including matters about abandoned property, property moored, left, moved or parked contrary to a notice or direction, the appointment and powers of authorised officers and fees for producing or preparing documents.

**20.** A levy on a person who has a tenure over boat harbour land managed by the chief executive as a contribution towards the dredging and maintenance of public marine transport infrastructure.

**21.** How a levy is to be calculated, the date by which it must be paid, and for the payment of a levy by instalments.

**22.** The suspension or cancellation of an accreditation for non-payment of a levy.

**23.** Protection of, and consequences of damage to, State-owned or State-controlled transport infrastructure, including a State-controlled road, a future State-controlled road and ancillary works and encroachments on them.

**SCHEDULE 1A—SUBJECT MATTER FOR WATERWAY  
TRANSPORT MANAGEMENT PLANS**

section 187P

1. Regulating the mooring and anchoring of watercraft.
2. Regulating the types of water traffic that may use certain waters or certain marine infrastructure.
3. Regulating, when and for how long, watercraft may remain at a place or locality.
4. Regulating living on board watercraft.
5. Regulating recreational activities involving the use of waterways or watercraft, for example, private or commercial skiing, use of personal watercraft, diving, parasailing and sailing.
6. Nuisances caused by the use of watercraft or persons on board watercraft or by cargo or things associated with the use of watercraft or waterways infrastructure.
7. A levy on marina owners, as a contribution towards dredging and maintenance of public marine transport infrastructure.
8. The appointment of authorised persons and their powers.
9. The issue of directions by authorised persons under a waterway transport management plan.
10. Protection of public marine transport infrastructure and recovery of expenses incurred as a result of a contravention of a waterway transport management plan from a person contravening it.

**SCHEDULE 2****REVIEWS AND APPEALS**

section 196

| <b>Section of the Act</b> | <b>Description of decision</b>                                                                  | <b>Court</b>             |
|---------------------------|-------------------------------------------------------------------------------------------------|--------------------------|
| 31                        | Refusal to approve carrying out of proposed road works                                          | Magistrates              |
|                           | Refusal to approve action interfering with State-controlled road or its operation               | Magistrates              |
|                           | Imposition of conditions on approval                                                            | Magistrates              |
| 32                        | Decision of chief executive about amount of costs incurred                                      | District or Magistrates  |
| 35                        | Decision of chief executive about amount of compensation                                        | District or Magistrates  |
| 35                        | Decision not to extend time                                                                     | District or Magistrates  |
| 36                        | Decision of chief executive not to contribute to fencing                                        | Magistrates              |
| 40(1)                     | Refusal to approve road works or changes                                                        | Planning and Environment |
| 40(3) and (5)             | Imposition of conditions                                                                        | Planning and Environment |
| 40(8)                     | Decision of chief executive about amount of compensation                                        | District or Magistrates  |
| 41(1)                     | Refusal to approve erection of, alteration or operation of sign or device                       | Planning and Environment |
| 41(3) and (5)             | Imposition or inclusion of conditions                                                           | Planning and Environment |
| 46                        | Decision of chief executive about cost of repair, replacement or reconstruction of damaged work | District or Magistrates  |



## SCHEDULE 2 (continued)

|       |                                                                                                                                                                                           |                          |
|-------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|
| 47    | Refusal of chief executive to approve construction, maintenance, operation or conduct of ancillary work or encroachment                                                                   | Magistrates              |
| 49(1) | Decision to cause ancillary works and encroachments to be altered, relocated, made safe or removed, or to direct that the conduct of ancillary works and encroachments be altered or stop | District or Magistrates  |
| 49(2) | Decision of chief executive about cost of alteration, making safe or removing ancillary work and encroachments                                                                            | District or Magistrates  |
| 49(4) | Decision to alter, relocate, make safe or remove ancillary works and encroachments or that activities are to be altered or to stop                                                        | Magistrates              |
| 51(1) | Decision to declare a limited access road                                                                                                                                                 | Planning and Environment |
| 51    | Policy for limited access road made, replaced or amended                                                                                                                                  | Planning and Environment |
| 52    | Decision about access between State-controlled road and particular adjacent land                                                                                                          | Planning and Environment |
| 56    | Decision of chief executive about amount of compensation                                                                                                                                  | District or Magistrates  |
| 57(2) | Decision not to extend time for claim                                                                                                                                                     | District or Magistrates  |
| 59    | Requirement by chief executive about public utility plant on State-controlled road                                                                                                        | District                 |
| 62    | Decision of chief executive about amount of additional expense                                                                                                                            | District or Magistrates  |
| 84    | Refusal to grant accreditation                                                                                                                                                            | District                 |
| 84    | Granting accreditation subject to conditions                                                                                                                                              | District                 |
| 88(2) | Refusal to amend accreditation conditions                                                                                                                                                 | District or Magistrates  |

## SCHEDULE 2 (continued)

|       |                                                                   |                         |
|-------|-------------------------------------------------------------------|-------------------------|
| 89(3) | Amendment of accreditation conditions                             | District or Magistrates |
| 89(7) | Amendment of accreditation conditions                             | District or Magistrates |
| 90(3) | Suspension or cancellation of accreditation                       | District or Magistrates |
| 91(2) | Immediate suspension of accreditation                             | District or Magistrates |
| 97(2) | Refusal to allow later time to give notice for compensation       | Magistrates             |
| 98    | Refusal to approve diversion or construction of watercourse       | Magistrates             |
| 99(2) | Direction requiring works to stop, be altered or not started      | District or Magistrates |
| 99(4) | Requirement to alter, demolish or take away works                 | District or Magistrates |
| 99(6) | Decision to alter, demolish or take away works                    | District or Magistrates |
| 99(6) | Decision about cost of altering, demolishing or taking away works | District or Magistrates |

If this schedule indicates that an appeal may be made to a District Court or to a Magistrates Court, the appeal is to be made to a District Court if the amount involved exceeds \$40 000 and to a Magistrates Court in any other case.

**SCHEDULE 2A****RAILWAY TUNNEL EASEMENTS**

section 131A

**Servient land**

Lot 325 CP SL 1633  
 Lot 408 CP SL 7151  
 Lot 515 CP SL 6565  
 Lot 461 CP SL 3741  
 Lot 13 CP B32219  
 Lot 1 RP 115152  
 Lot 5 SP 115364  
 Lot 5 SP 115364  
 Lot 5 SP 115364  
 Lot 5 SP 115364  
 Lot 5 SP 115364  
 Lot 5 SP 115364  
 Lot 5 SP 115364  
 Lot 5 SP 115364  
 Lot 5 SP 115364  
 Lot 2 RP 124155  
 Lot 2 RP 124155  
 Lot 2 RP 118622  
 Lot 2 RP 118622  
 Lot 1 RP 152576  
 Lot 1 RP 152576  
 Lot 2 RP 152576  
 Lot 2 RP 85223 and Lot 1 RP 105765  
 Lot 21 RP 178644  
 Lot 21 RP 178644  
 Lot 1 RP 188351  
 Lot 1 RP 117227

**Easement**

Easements A and B RP 852852  
 Lots C and D CP 852851  
 Easement G RP 852850  
 Lot H CP 852849  
 Easement K RP 136379  
 Easement H RP 115158  
 Easement A SP 118572  
 Easement B SP 118573  
 Easement E SP 118574  
 Easement F SP 118575  
 Easement G SP 118576  
 Easement H SP 118577  
 Easement K SP 134045  
 Easement L SP 123675  
 Easement A RP 852844  
 Easement B RP 893936  
 Easement in gross no. 602205520  
 Easement B RP 852845  
 Easement in gross no. 602205520  
 Easement C RP 852845  
 Easement D RP 852845  
 Easement B RP 852848  
 Easement in gross no. 602106739  
 Easements A, B and C RP 183623  
 Easement in gross no. 602505742  
 Easement A RP 880802

## SCHEDULE 2A (continued)

| <b>Servient land</b>               | <b>Easement</b>                 |
|------------------------------------|---------------------------------|
| Lot 2 RP 117227                    | Easement A RP 852848            |
| Lot 1 RP 155774                    | Easement E RP 852846            |
| Lot 1 RP 197728                    | Easement F RP 852847            |
| Lot 2 RP 10133                     | Easement in gross no. 601608083 |
| Lot 2 RP 10133                     | Easement H RP 852847            |
| Lot 3 RP 10133                     | Easement in gross no. 601401832 |
| Lot 3 RP 10133                     | Easement K RP 852847            |
| Lot 13 RP 10122                    | Easement D RP 852846            |
| Lot 2 RP 60443                     | Easement C RP 852846            |
| Lot 2 RP 197728                    | Easement G RP 852847            |
| Lot 13 RP 10124                    | Easement in gross no. 601539792 |
| Lot 13 RP 10124 and Lot 2 RP 10129 | Easement J RP 852847            |
| Lot 12 RP 10124                    | Easement in gross no. 601544351 |
| Lot 1 RP 196222                    | Easement in gross no. 602129535 |
| Lot 1 RP 196222                    | Easement in gross no. 602129536 |
| Lot 9 RP 814964                    | Easement A RP 852846            |
| Lot 0 BUP 4313 (CMS 10872)         | Easement in gross no. 601201902 |
| Lot 0 BUP 4313 (CMS 10872)         | Easement B RP 852846            |
| Lots 22 and 23 RP 10122            | Easement in gross no. 602279385 |
| Lot 2 RP 888141                    | Easement in gross no. 601837139 |
| Lot 5 RP 127273                    | Easement A RP 852853            |
| Lot 0 BUP 9977 (CMS 5362)          | Easement B RP 852853            |
| Lot 15 SP 126957                   | Easements C and D RP 852853     |
| Lot 16 SP 120013                   | Easements C and E RP 852853     |
| Lot 2 RP 9449                      | Easement F RP 852854            |
| Lot 1 RP 9449                      | Easement G RP 852854            |
| Lot 10 SP 120689                   | Lot B RP 852855                 |
| Lot 10 SP 120689                   | Easement H RP 852853            |
| Lot 10 SP 120689                   | Lot J RP 852854                 |
| Lot 10 SP 120689                   | Easements M and N RP 885880     |
| Lot 10 SP 120689                   | Easement in gross no. 601481648 |
| Lot 10 SP 120689                   | Easement in gross no. 601922003 |

## SCHEDULE 2A (continued)

| <b>Servient land</b>            | <b>Easement</b>                 |
|---------------------------------|---------------------------------|
| Lot 10 SP 120689                | Easement in gross no. 601922004 |
| Lot 10 SP 120689                | Easement in gross no. 601993708 |
| Lot 10 SP 120689                | Easement in gross no. 602418143 |
| Lot 8 RP 151540                 | Easement A RP 852855            |
| Lot 1 RP 202674                 | Easement in gross no. 601481648 |
| Lot 1 RP 202674                 | Easement E RP 852855            |
| Lot 0 BUP 105422 (CMS 15376)    | Easements C and D RP 852855     |
| Lot 3 RP 9399                   | Easement A RP 880804            |
| Lot 103 RP 48101                | Easement F RP 852855            |
| Lots 67 to 69 RP 46061          | Easement in gross no. 602009566 |
| Lots 67 to 69 RP 46061          | Easement in gross no. 602009567 |
| Lot 60 RP 46062                 | Easement A RP 852856            |
| Lot 59 RP 46062                 | Easement in gross no. 601842947 |
| Lot 59 RP 46062                 | Easement B RP 852856            |
| Lot 58 RP 46062                 | Easement C RP 852856            |
| Lots 55 to 57 RP 46062          | Easements A, B, and C RP 880805 |
| Lot 54 RP 47036                 | Easement D RP 852856            |
| Lots 51 and 52 RP 47036         | Easement E RP 852856            |
| Lot 1 RP 126496                 | Easements A and B RP 126496     |
| Lot 2 RP 11632                  | Easement in gross no. 602230916 |
| Lot 4 RP 11657                  | Easement in gross no. 602063425 |
| Lot 5 RP 11657                  | Easement A RP 46641             |
| Lot 6 RP 11657                  | Easement in gross no. 602443214 |
| Lot 6 RP 11657                  | Easement in gross no. 602443215 |
| Lot 7 RP 11657                  | Easement in gross no. 601262452 |
| Lot 7 RP 11657                  | Easement in gross no. 702217998 |
| Lot 12 RP 11657                 | Easement in gross no. 602820194 |
| Lots 21 to 26 RP 11653          | Easement in gross no. 602464557 |
| Lots 21, 22, 24 and 26 RP 11653 | Easement in gross no. 602464558 |
| Lots 27 and 28 RP 11653         | Easement in gross no. 602784029 |
| Lot 28 RP 11653                 | Easement in gross no. 602563205 |

## SCHEDULE 2A (continued)

**Servient land**

Lot 29 RP 11668

Lot 29 RP 11668

**Easement**

Easement in gross no. 602784029

Easement in gross no. 602784030

**SCHEDULE 3****DICTIONARY**

section 3

**“accredited person”**, for chapter 6, means a railway manager or operator for whom an accreditation is in force under the chapter.

**“administration charge”**, for chapter 5, part 7, see section 73.

**“air transport infrastructure”** includes transport infrastructure relating to aircraft or to the operation of aircraft.

**“alter”** includes add to.

**“amusement railway”** means a railway that—

- (a) is operated solely within an amusement or theme park—
  - (i) that is registered as an amusement device under the *Workplace Health and Safety Act 1995*; and
  - (ii) that does not operate on, or across, a road; or
- (b) operates on a track with a gauge of less than 600 mm on a place other than a road.

**“ancillary works and encroachments”**, for chapter 5, see section 22.

**“approval”**, for chapter 8, see section 181.

**“approval conditions”**, for chapter 8, see section 181.

**“associated person”**, for chapter 6, part 2, see section 77.

**“authorised person”**, for a railway, means—

- (a) a police officer; or
- (b) a person who holds an appointment as an authorised person for the railway under the *Transport Operations (Passenger Transport) Act 1994*, section 116.

**“authority”**, for chapter 6, part 2, see section 77.

## SCHEDULE 3 (continued)

**“busway”** means—

- (a) a route especially designed and constructed for, and dedicated to, the priority movement of buses for passenger transport purposes; and
- (b) places for the taking on and letting off of bus passengers using the route.

**“candidate GOC”** has the same meaning as in the *Government Owned Corporations Act 1993*.

**“cane railway”** means a tramway or railway—

- (a) operated, entirely or partly, on—
  - (i) an easement under the *Sugar Industry Act 1991*, part 11; or
  - (ii) an easement under the *Sugar Milling Rationalisation Act 1991*, part 4; or
  - (iii) an access right under the *Sugar Industry Act 1999*, chapter 2, part 4; and
- (b) used, or proposed to be used, to transport sugar cane, sugar or sugar cane by-products; and
- (c) that does not transport passengers or other freight for reward.

**“carry out”** road or railway works means do anything on land that is reasonably necessary or desirable for the works, including, for example, temporarily occupy or use the land.

**“charge”** see section 153.

**“commercial corridor land”** means old QR land—

- (a) on or within which rail transport infrastructure is situated; and
- (b) notified by the chief executive in the gazette.

**“competition principles”** see section 77.

**“construction”**, for chapter 5, see section 22.

**“coordination plan”** means the transport coordination plan developed under the *Transport Planning and Coordination Act 1994*.

**“corporate plan”**, for chapter 7, see section 153.

**“designated vehicle”**, for chapter 5, part 7, see section 73.



## SCHEDULE 3 (continued)

**“dispute notice”**, for chapter 8, see section 181.

**“E toll only pay point”**, for chapter 5, part 7, see section 73.

**“E toll system”**, for chapter 5, part 7, see section 73.

**“exempt vehicle”**, for chapter 5, part 7, see section 73.

**“existing rail corridor land”** means old QR land—

- (a) on or within which rail transport infrastructure is situated; and
- (b) that is not commercial corridor land.

**“franchised road”** means a road to which a road franchise agreement<sup>40</sup> applies, and includes facilities identified in the road franchise agreement that are on or adjacent to the road and relate to the operation or servicing of the road or facilities for road users.

**“franchisee”** means a person with whom the Minister has entered into a road franchise agreement.

**“future railway land”** has the meaning given by section 131B.

**“GOC”** includes a candidate GOC.

**“government supported transport infrastructure”** means transport infrastructure that—

- (a) is funded, wholly or partly, by appropriations from the consolidated fund; or
- (b) is funded, wholly or partly, by borrowings made by the Government (other than commercial borrowings made by the Queensland Treasury Corporation acting as an agent); or
- (c) is funded, wholly or partly, by borrowings guaranteed by the Government other than borrowings for commercial investments; or
- (d) is provided by a person on the basis of conditions agreed to by the Government that are intended to support the commercial viability of the infrastructure.

**“interfere with”** a railway means—

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<sup>40</sup> Road franchise agreements are entered into under section 66 (Power to enter into road franchise agreements).

## SCHEDULE 3 (continued)

- (a) carry out works on the railway; or
- (b) otherwise interfere with the railway or its operation.

**“intersecting area”**, for chapter 8, see section 181.

**“investigator”** means a person who holds an authority.

**“land”**—

- (a) for chapters 5 and 8—includes—
  - (i) an interest in land; and
  - (ii) land within the beds and banks of a stream, watercourse or inundated land; and
  - (iii) land beneath the internal waters of Queensland; or
- (b) for chapter 6 includes—
  - (i) a reserve within the meaning of the *Land Act 1994* or a road; and
  - (ii) land within the beds or banks of a stream, watercourse or inundated land; or
- (c) for chapter 6, part 7 and for chapter 8—includes the airspace above, and the land below, the surface; or
- (d) for chapter 7—see section 153.

**“licensee”**, for chapter 8, see section 181.

**“local government road”** means a road that is under the control of a local government.

**“maintain”** includes repair.

**“maintenance”**, for chapters 5, 6 and 8, includes—

- (a) rehabilitation; and
- (b) replacement; and
- (c) repair; and
- (d) recurrent servicing; and
- (e) preventive and remedial action; and
- (f) removal; and

## SCHEDULE 3 (continued)

- (g) alteration; and
- (h) maintaining systems and services for transport infrastructure.

**“means of access”**, for chapter 5, see section 22.

**“miscellaneous transport infrastructure”** see section 181A.

**“miscellaneous transport infrastructure works”** means—

- (a) works done for—
  - (i) constructing miscellaneous transport infrastructure or things associated with miscellaneous transport infrastructure; or
  - (ii) the maintenance of miscellaneous transport infrastructure or of things associated with miscellaneous transport infrastructure; or
  - (iii) facilitating the operation of miscellaneous transport infrastructure or things associated with miscellaneous transport infrastructure; or
- (b) works declared under a regulation to be miscellaneous transport infrastructure works.

**“motorway”** means a State-controlled road that is declared to be a motorway under section 25 (Declaration of motorways).

**“new rail corridor land”** means land that is leased to a railway manager under section 131.

**“non-rail corridor land”** means old QR land declared to be non-rail corridor land.

**“notice”** means a notice, sign or pictograph of any type of material and whether fixed or moveable.

**“occupier”**, of land, for chapters 5, 6 and 8, means—

- (a) the person in actual occupation of the land; or
- (b) if there is no person in actual occupation—the person entitled to possession of the land;

and, for a watercourse or reserve, includes the person responsible for the care and management of the watercourse or reserve.

## SCHEDULE 3 (continued)

**“old QR land”** means land (other than an easement in land) that, immediately before the commencement of the *Transport Infrastructure Amendment (Rail) Act 1995*, section 4—

- (a) was held by the previous rail corporation in fee simple; or
- (b) could be granted in fee simple to the previous rail corporation under the *Transport Infrastructure (Railways) Act 1991*, section 49(2).

**“on”** a railway, road or other land includes over or under the land.

**“operational licence”**, for chapter 8, see section 181.

**“other rail infrastructure”** means—

- (a) freight centres or depots; or
- (b) maintenance depots; or
- (c) office buildings or housing; or
- (d) rolling stock or other vehicles that operate on a railway; or
- (e) workshops; or
- (f) any railway track, works or other thing that is part of anything mentioned in paragraphs (a) to (e).

**“owner”**, of land, includes—

- (a) the lessee or licensee from the State of the land; or
- (b) the person who has lawful control of the land, on trust or otherwise; or
- (c) the person who is entitled to receive the rents and profits of the land.

**“personal watercraft”** means a power driven ship that is designed to be operated by a person standing, crouching or kneeling on it or sitting astride it.

**“plant”**, for chapter 5, see section 22.

**“port”**, of a port authority, means a port for which the authority is responsible, and includes an airport for which the authority is responsible.

**“port authority”** means—

## SCHEDULE 3 (continued)

- (a) the Ports Corporation of Queensland; or
- (b) the Port of Brisbane Corporation; or
- (c) the Gladstone Port Authority; or
- (d) a harbour board continued in existence by section 154 (Continuation of port authorities); or
- (e) a port authority established under section 155 (Establishment of new port authority); or
- (f) another body established under the *Government Owned Corporations Act 1993* and declared by regulation to be a port authority;

but does not include a port authority that has been abolished under section 156 (Abolition of port authority).

**“port infrastructure”** includes transport infrastructure relating to ports.

**“prescribed time”**, for chapter 5, part 7, see section 73.

**“previous rail corporation”** means Queensland Railways.

**“public marine facility”** means public marine transport infrastructure, including—

- (a) land or waters associated with the infrastructure that are affected by its use; and
- (b) land or waters specified for the infrastructure under a regulation made with the objective of clarifying what are the land or waters associated with the infrastructure that are affected by its use.

*Examples—*

1. An area of land and waters, specified under a regulation, that constitutes a boat harbour.
2. Breakwaters, jetties, landings, mooring piles, pontoons, carparks and land or waters affected by the use of the infrastructure.

**“public marine transport infrastructure”** means State-owned or State-controlled transport infrastructure relating to Queensland waters, other than port or miscellaneous transport infrastructure.

**“rail corridor land”** means existing rail corridor land or new rail corridor land.

## SCHEDULE 3 (continued)

**“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;

but does not include other rail infrastructure.

**“railway”**, for chapter 6, part 4, see section 80.

## SCHEDULE 3 (continued)

**“railway crossing”** means a level crossing, bridge or another structure used to cross over or under a railway.

**“railway manager”**, for a railway or a proposed railway, means the person who is accredited under chapter 6, part 4 as the railway manager for the railway or proposed railway.

**“railway operator”** means a person who operates rolling stock on a railway.

**“railway works”** means—

- (a) works for constructing, maintaining, altering or operating a railway or rolling stock, or
- (b) other works declared under a regulation to be railway works.

**“reasonably”** means on grounds that are reasonable in all the circumstances.

**“registered operator”**, for chapter 5, part 7, see section 73.

**“registration Act”**, for chapter 5, part 7, see section 73.

**“required land”**, for chapter 8, see section 181.

**“responsible entity”**, for chapter 8, see section 181.

**“reviewed decision”** see section 196.

**“road”** means—

- (a) an area of land dedicated to public use as a road; or
- (b) an area that is open to or used by the public and is developed for, or has as 1 of its main uses, the driving or riding of motor vehicles; or
- (c) a bridge, culvert, ferry, ford, tunnel or viaduct; or
- (d) a pedestrian or bicycle path; or
- (e) a part of an area, bridge, culvert, ferry, ford, tunnel, viaduct or path mentioned in paragraphs (a) to (d).

**“road franchise agreement”**, for chapter 5, see section 66.

**“road transport infrastructure”** includes transport infrastructure relating to roads.

**“rolling stock”** means a vehicle, including a train, that—

## SCHEDULE 3 (continued)

- (a) operates on a railway; and
- (b) is used, or proposed to be used, to transport passengers or freight on a railway track for reward.

**“serious incident”** means an incident that has caused, or could have caused, significant property damage, serious injury or death.

**“ship”**, for chapter 7, see section 153.

**“State-controlled road”** means a road or land, or part of a road or land, declared under section 23 to be a State-controlled road, and, for chapter 5, part 5, division 2, subdivision 2, see section 50.

**“statement of corporate intent”**, for chapter 7, see section 153.

**“strategic port land”**, for chapter 7, see section 153.

**“tenure”**, over boat harbour land, means a lease, licence, permit or other authority conferring a right of possession or occupation for the land.

**“toll plaza”**, for chapter 5, part 7, see section 73.

**“toll road”**, for chapter 5, part 7, see section 73.

**“toll road operator”**, for chapter 5, part 7, see section 73.

**“train”** means a conveyance or group of connected conveyances that travels on a rail or rails of a railway or sugar tramway.

**“transport infrastructure”** includes road, rail, port, air, public marine and miscellaneous transport infrastructure.

**“transport purpose”** includes any purpose for which the Minister is responsible.

**“valid account”**, for chapter 5, part 7, see section 73.

**“vehicle”**, see the *Transport Operations (Road Use Management) Act 1995*.

**“watercraft”** includes any thing that is water traffic or a device, for example, a sailboard, used for the movement of persons who are on or in water

**“water traffic”** includes a hovercraft and a vehicle, person, aircraft or other craft on or in water.



## SCHEDULE 3 (continued)

“**wilfully**” means deliberately or recklessly.

“**works**” includes activities.

**ENDNOTES****1 Index to endnotes**

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**2 Date to which amendments incorporated**

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 11 January 2002. Future amendments of the Transport Infrastructure Act 1994 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

| Key    | Explanation                    | Key    | Explanation                             |
|--------|--------------------------------|--------|-----------------------------------------|
| AIA    | = Acts Interpretation Act 1954 | prev   | = previous                              |
| amd    | = amended                      | (prev) | = previously                            |
| amdt   | = amendment                    | proc   | = proclamation                          |
| ch     | = chapter                      | prov   | = provision                             |
| def    | = definition                   | pt     | = part                                  |
| div    | = division                     | pubd   | = published                             |
| exp    | = expires/expired              | R[X]   | = Reprint No.[X]                        |
| gaz    | = gazette                      | RA     | = Reprints Act 1992                     |
| hdg    | = heading                      | reloc  | = relocated                             |
| ins    | = inserted                     | renum  | = renumbered                            |
| lap    | = lapsed                       | rep    | = repealed                              |
| notfd  | = notified                     | s      | = section                               |
| o in c | = order in council             | sch    | = schedule                              |
| om     | = omitted                      | sdiv   | = subdivision                           |
| orig   | = original                     | SIA    | = Statutory Instruments Act 1992        |
| p      | = page                         | SIR    | = Statutory Instruments Regulation 1992 |
| para   | = paragraph                    | SL     | = subordinate legislation               |
| prec   | = preceding                    | sub    | = substituted                           |
| pres   | = present                      | unnum  | = unnumbered                            |

### 4 Table of earlier reprints

#### TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

| Reprint No. | Amendments included   | Reprint date     |
|-------------|-----------------------|------------------|
| 1           | none                  | 27 April 1994    |
| 2           | to Act No. 32 of 1994 | 26 July 1994     |
| 3           | to Act No. 81 of 1994 | 27 January 1995  |
| 4           | to Act No. 32 of 1995 | 7 July 1995      |
| 5           | to Act No. 57 of 1995 | 1 February 1996  |
| 5A          | to Act No. 13 of 1996 | 3 September 1996 |
| 5B          | to Act No. 74 of 1996 | 25 April 1997    |
| 5C          | to Act No. 9 of 1997  | 15 August 1997   |
| 6           | to Act No. 66 of 1997 | 6 February 1998  |
| 6A          | to Act No. 23 of 1998 | 25 June 1998     |
| 7           | to Act No. 43 of 1998 | 8 January 1999   |
| 7A          | to Act No. 42 of 1999 | 12 November 1999 |
| 7B          | to Act No. 59 of 1999 | 4 February 2000  |
| 7C          | to Act No. 6 of 2000  | 8 September 2000 |
| 7D          | to Act No. 46 of 2000 | 8 November 2000  |
| 7E          | to Act No. 64 of 2000 | 15 December 2000 |
| 7F          | to Act No. 64 of 2000 | 12 January 2001  |
| 7G          | to Act No. 64 of 2000 | 23 March 2001    |

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|             |                       |                  |
|-------------|-----------------------|------------------|
| Reprint No. | Amendments included   | Reprint date     |
| 8           | to Act No. 36 of 2001 | 7 September 2001 |

## 5 Tables in earlier reprints

### TABLES IN EARLIER REPRINTS

|                                   |               |
|-----------------------------------|---------------|
| Name of table                     | Reprint No.   |
| Changed citations and remade laws | 3, 4, 5       |
| Corrected minor errors            | 3, 4, 5       |
| Renumbered provisions             | 3, 4, 5, 6, 7 |

## 6 List of legislation

### **Transport Infrastructure Act 1994 No. 8**

date of assent 7 March 1994

ss 1–2 commenced on date of assent

s 132 sch 3 amendments of the Harbours Act 1955 never proclaimed into force and  
om Act No. 32 of 1994 s 13(1) (as from 1 July 1994)

ss 86, 122, 132 sch 3 amendments of the State Transport (People-movers) Act 1984  
and the Urban Public Passenger Transport Act 1984 and sch 3 amendment 5 of  
the Transport Infrastructure (Roads) Act 1991 commenced 7 November 1994  
(1994 SL No. 378)

remaining provisions commenced 15 April 1994 (1994 SL No. 128)

as amended by—

### **Transport Infrastructure Amendment Act 1994 No. 32**

date of assent 30 June 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1994 (see s 2)

### **Queensland Investment Corporation Amendment Act 1994 No. 38 pts 1, 5**

date of assent 14 September 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 1 October 1994 (see s 2 and 1994 SL No. 341  
ss 2, 8)

### **Transport Operations (Passenger Transport) Act 1994 No. 43 ss 1–2, 143 sch 3**

date of assent 14 September 1994

ss 1–2 commenced on date of assent

amendments 5–8 commenced 1 July 1994 (see s 2(2))

remaining provisions commenced 7 November 1994 (1994 SL No. 378)

### **Transport Infrastructure Amendment Act (No. 2) 1994 No. 49**

date of assent 14 September 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 18 November 1994 (1994 SL No. 399)

**Land Act 1994 No. 81 ss 1–2, 527 sch 5**

date of assent 1 December 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1995 (1995 SL No. 185)

**Transport Operations (Road Use Management) Act 1995 No. 9 ss 1–2, 92 sch 1 (as  
amd 1995 No. 32 s 23 sch as from 14 June 1995 (see s 2(1))**

date of assent 5 April 1995

commenced on date of assent (see s 2(1))

**Transport Infrastructure Amendment (Rail) Act 1995 No. 32 pts 1–2**

date of assent 14 June 1995

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1995 (see s 2(2), 1995 SL No. 162  
ss 2(3), 19)

**Coastal Protection and Management Act 1995 No. 41 ss 1–2, 105 sch 1**

date of assent 9 November 1995

ss 1–2 commenced on date of assent

remaining provisions commenced 1 February 1996 (1996 SL No. 8)

**Transport Planning and Coordination Amendment Act 1995 No. 48 pts 1, 3**

date of assent 22 November 1995

ss 1–2 commenced on date of assent

remaining provisions commenced 15 December 1995 (1995 SL No. 365)

**Statute Law Revision Act 1995 No. 57 ss 1–2, 4 sch 1**

date of assent 28 November 1995

commenced on date of assent

**Primary Industries Legislation Amendment Act 1996 No. 13 pts 1, 10**

date of assent 23 May 1996

commenced on date of assent

**Statutory Bodies Financial Arrangements Amendment Act 1996 No. 54 ss 1–2, 9 sch**

date of assent 20 November 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 June 1997 (1997 SL No. 128)

**Transport (Gladstone East End to Harbour Corridor) Act 1996 No. 74 ss 1, 10**

date of assent 12 December 1996

commenced on date of assent

**Justice and Other Legislation (Miscellaneous Provisions) Act 1997 No. 9 ss 1, 2(1), (4)  
pt 23**

date of assent 15 May 1997

s 87(1) commenced 1 July 1997 (see s 2(4))

remaining provisions commenced on date of assent (see s 2(1))

**Transport Legislation Amendment Act 1997 No. 66 pts 1, 4**

date of assent 1 December 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 12 December 1997 (1997 SL No. 439)

**Building and Integrated Planning Amendment Act 1998 No. 13 ss 1, 2(3), 191 sch**

date of assent 23 March 1998

ss 1–2 commenced on date of assent

remaining amdts commenced 30 March 1998 (1998 SL No. 55)

**Government Owned Corporations and Other Legislation Amendment Act 1998****No. 21 ss 1, 2(3), pt 4**

date of assent 1 May 1998

ss 1–2 commenced on date of assent

remaining provisions commenced 22 May 1998 (1998 SL No. 144)

**Transport Infrastructure Amendment Act 1998 No. 23**

date of assent 14 May 1998

ss 5(1)–(2), 7 commenced on 1 July 1994 (see s 2)

remaining provisions commenced on date of assent

**Integrated Planning and Other Legislation Amendment Act 1998 No. 31 ss 1, 2(5)****pt 8**

date of assent 3 September 1998

ss 1–2 commenced on date of assent

remaining provisions commenced 12 October 1998 (1998 SL No. 270)

**Transport Legislation Amendment Act 1998 No. 33 ss 1–2 pt 2**

date of assent 23 September 1998

ss 1–2, 15 commenced on date of assent

s 9 commenced 31 March 1998 (see s 2(1))

remaining provisions commenced 1 July 1998 (see s 2(4))

**Transport Legislation Amendment Act (No. 2) 1998 No. 43 s 1 pt 4**

date of assent 27 November 1998

commenced on date of assent

**Integrated Planning and Other Legislation Amendment Act 1999 No. 11 ss 1–2(1)****pt 5**

date of assent 30 March 1999

ss 1–2, 26, 31–32 commenced on date of assent (see s 2(1))

remaining provisions commenced 1 December 1999 (1999 SL No. 280)

**Statutory Instruments and Another Act Amendment Act 1999 No. 24 ss 1, 2(2) sch**

date of assent 4 June 1999

commenced on date of assent

**Road Transport Reform Act 1999 No. 42 ss 1–2(1), 54(3) sch pt 3**

date of assent 2 September 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 1999 (see s 2(1))

**Sugar Industry Act 1999 No. 51 ss 1, 2(2), 228 sch 1**

date of assent 18 November 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2000 (see s 2(2))

**Local Government and Other Legislation Amendment Act (No. 2) 1999 No. 59  
ss 1, 2(7), pt 11**

date of assent 29 November 1999  
commenced on date of assent

**Local Government and Other Legislation Amendment Act 2000 No. 4 ss 1, 2(4) pt 9**

date of assent 16 March 2000  
ss 1–2 commenced on date of assent  
remaining provisions commenced 1 December 2000 (2000 SL No. 292)

**Police Powers and Responsibilities Act 2000 No. 5 ss 1–2, 461 (prev s 373) sch 3**

date of assent 23 March 2000  
ss 1–2, 461 commenced on date of assent (see s 2(2))  
remaining provisions commenced 1 July 2000 (see s 2(1), (3) and 2000 SL No. 174)

**Transport Legislation Amendment Act 2000 No. 6 ss 1, 2(2) pt 3**

date of assent 20 April 2000  
ss 1–2 commenced on date of assent  
ss 25 (to the extent it ins new ch 8B pt 1), 26, 34, 35(2), 35(3) (to the extent it ins items 19, 20 and 22), 38(2) (to the extent it ins the defs “public marine facility”, “public marine transport infrastructure” and “tenure”) commenced 1 January 2001 (2000 SL No. 338)  
remaining provisions commenced 1 July 2000 (2000 SL No. 150)

**Transport (Busway and Light Rail) Amendment Act 2000 No. 40 pts 1–2 (as amd  
2001 No. 79 ss 1–2, pt 5 (as from not yet proclaimed into force (see s 2(3))))**

date of assent 13 October 2000  
ss 1–2 commenced on date of assent  
pt 2 hdg, ss 3, 12 and 16 commenced 12 March 2001 (2000 SL No. 9)  
s 19 (to the extent it ins the def “busway”) commenced 21 December 2001 (2001 SL No. 278)  
remaining provisions not yet proclaimed into force (automatic commencement under AIA s 15DA(2) deferred to 14 October 2002 (2001 SL No. 183 s 2))

**Statute Law (Miscellaneous Provisions) Act 2000 No. 46 ss 1, 3 sch**

date of assent 25 October 2000  
commenced on date of assent

**Environmental Protection and Other Legislation Amendment Act 2000 No. 64  
ss 1, 2(2), pt 6**

date of assent 24 November 2000  
ss 1–2 commenced on date of assent  
remaining provisions commenced 1 January 2001 (2000 SL No. 350)

**Transport Infrastructure and Another Act Amendment Act 2001 No. 36 pts 1–2**

date of assent 7 June 2001  
ss 1–2 commenced on date of assent  
remaining provisions commenced 25 June 2001 (2001 SL No. 78)

**Dutes Act 2001 No. 71 ss 1–2(1), 551 sch 1**

date of assent 13 November 2001  
ss 1–2 commenced on date of assent  
remaining provisions not yet proclaimed into force (see s 2(1))

**Transport Legislation Amendment Act 2001 No. 79 ss 1, 2(3), pt 7**

date of assent 29 November 2001

ss 1–2 commenced on date of assent

pt 7 hdg, ss 24, 27–29, 31–33, 35–36, 38, 41, 42(1) (to the extent it om the def “future railway land”), 42(2) (to the extent it ins the def “future railway land”) and 43 commenced 21 December 2001 (2001 SL No. 279)

remaining provisions not yet proclaimed into force (see s 2(3))**Costal Protection and Management and Other Legislation Amendment Act 2001 No. 93 ss 1–2, 25(c)**

date of assent 10 December 2001

ss 1–2 commenced on date of assent

remaining provisions not yet proclaimed into force (see s 2)

## 7 List of annotations

This reprint has been renumbered—see tables of renumbered provisions in endnote 9.

**Title** amd 2000 No. 6 s 7

**Objectives of this Act**

**s 2** prev s 2 om R4 (see RA s 37)

pres s 2 amd 1995 No. 32 s 4; 2000 No. 6 s 8; 2000 No. 40 s 4**Definitions—the dictionary**

**s 3** amd 1994 No. 32 s 4(3); 1994 No. 49 s 3 sch 1

sub 1995 No. 9 s 92 sch 1

def “**chief executive**” om 1995 No. 9 s 92 sch 1def “**coordination plan**” reloc to sch 3 1995 No. 9 s 92 sch 1def “**GOC**” om 1995 No. 9 s 92 sch 1def “**government supported transport infrastructure**” reloc to sch 3 1995 No. 9 s 92 sch 1def “**miscellaneous transport infrastructure**” om 1995 No. 9 s 92 sch 1def “**port**” reloc to sch 3 1995 No. 9 s 92 sch 1def “**port authority**” reloc to sch 3 1995 No. 9 s 92 sch 1def “**port infrastructure**” reloc to sch 3 1995 No. 9 s 92 sch 1def “**rail transport infrastructure**” reloc to sch 3 1995 No. 9 s 92 sch 1def “**road transport infrastructure**” reloc to sch 3 1995 No. 9 s 92 sch 1def “**State-controlled road**” reloc to sch 3 1995 No. 9 s 92 sch 1def “**transport infrastructure**” reloc to sch 3 1995 No. 9 s 92 sch 1def “**transport purpose**” reloc to sch 3 1995 No. 9 s 92 sch 1**Contents of transport infrastructure strategies**

**s 6** amd 1995 No. 48 s 10

**Obligations about government supported transport infrastructure**

**s 9** amd 1995 No. 32 s 5; 2000 No. 6 s 9

**Report on giving effect to s 9**

**s 10** amd 1995 No. 32 s 6; 2000 No. 6 s 10



**PART 2—RAIL IMPLEMENTATION PROGRAMS****pt hdg** ins 1995 No. 32 s 7**Development of programs****s 14** ins 1995 No. 32 s 7**Consistency with transport infrastructure strategies****s 15** ins 1995 No. 32 s 7**Report on implementation of programs****s 16** ins 1995 No. 32 s 7**Transport GOCs****s 20** amd 1995 No. 32 s 8**CHAPTER 4A—AIR TRANSPORT INFRASTRUCTURE****ch 4A (ss 20A–20B)** ins 2000 No. 6 s 11**Definitions for ch 5****prov hdg** sub 1995 No. 32 s 9(1)**s 22** amd 1995 No. 9 s 92 sch 1def **“ancillary works and encroachments”** amd 1995 No. 32 s 9(3); 2000 No. 6 s 12(1)–(6)def **“franchised road”** ins 1994 No. 49 s 4  
reloc to sch 3 1995 No. 32 s 9(4)def **“franchisee”** ins 1994 No. 49 s 4  
reloc to sch 3 1995 No. 32 s 9(4)def **“land”** om 1995 No. 9 s 92 sch 1def **“local government road”** reloc to sch 3 1995 No. 32 s 9(4)def **“maintenance”** om 1995 No. 32 s 9(2)def **“means of access”** om 2000 No. 6 s 12(7)def **“motorway”** reloc to sch 3 1995 No. 32 s 9(4)def **“occupier”** om 1995 No. 9 s 92 sch 1def **“on”** om 1995 No. 32 s 9(2)def **“owner”** om 1995 No. 9 s 92 sch 1def **“person”** om 1995 No. 9 s 92 sch 1def **“plant”** om 2000 No. 40 s 5def **“public utility plant”** om 2000 No. 40 s 5def **“road”** reloc to sch 3 1995 No. 32 s 9(4)def **“road access works”** ins 2000 No. 6 s 12(8)def **“road franchise agreement”** ins 1994 No. 49 s 4  
om 2001 No. 79 s 25**State-controlled roads on rail corridor land****s 24A** ins 2001 No. 79 s 25A**Prohibition on road works etc. on State-controlled roads****s 31** amd 1995 No. 9 s 92 sch 1**Impact of certain local government decisions on State-controlled roads****s 40** amd 1998 No. 13 s 191 sch; 1999 No. 11 s 27**Effect of decisions of Planning and Environment Court****s 42** amd 1999 No. 11 s 28

**Temporary restrictions on use of State-controlled roads**

s 44      amd 1995 No. 9 s 92 sch 1

**Removal of materials etc.**s 45      amd 1995 No. 9 s 92 sch 1; 2001 No. 79 s 26**Ancillary works and encroachments**

s 47      amd 1995 No. 9 s 92 sch 1; 1999 No. 42 s 54(3) sch pt 3; 2000 No. 6 s 13

**Presumptions about advertising notices**

s 48      ins 1995 No. 9 s 92 sch 1

**Alteration etc. of ancillary works and encroachments**

s 49      amd 1995 No. 9 s 92 sch 1; 2000 No. 6 s 14

**Subdivision 2—Special arrangements about access**

sdiv hdg    sub 2000 No. 6 s 15

**Definitions**

s 50      def “**approved means of access**” om 2000 No. 6 s 16(1)  
           def “**declaration**” ins 2000 No. 6 s 16(2)  
           def “**land**” ins 2000 No. 6 s 16(2)  
           def “**owner**” ins 2000 No. 6 s 16(2)  
           def “**permitted road access locations**” ins 2000 No. 6 s 16(2)  
           def “**road access location**” ins 2000 No. 6 s 16(2)

**Limited access roads**

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**Local government to be consulted on proposed declaration or policy**

s 51A     ins 2000 No. 6 s 17

**Information in s 51 gazette notice about a declaration**

s 51B     ins 2000 No. 6 s 17

**Information in s 51 gazette notice about new or replacement policy**

s 51C     ins 2000 No. 6 s 17

**Amendment of policy for a limited access road in limited circumstances**

s 51D     ins 2000 No. 6 s 17

**Gazette notices must show location of limited access road**

s 51E     ins 2000 No. 6 s 17

**Advertisement of gazette notice**

s 51F     ins 2000 No. 6 s 17

**Offence for limited access roads**

s 51G     ins 2000 No. 6 s 17

**Management of access between individual properties and State-controlled roads**

s 52      sub 2000 No. 6 s 17

**Chief executive may require additional information from applicant**

s 52A     ins 2000 No. 6 s 17

**Decision under s 52(1) may impose construction or financial obligation**

s 52B     ins 2000 No. 6 s 17

**Limitation on new decisions under s 52(1)**

s 52C ins 2000 No. 6 s 17

**Road access works within State-controlled road**

s 52D ins 2000 No. 6 s 17

**Notice of decision under s 52(1)**

s 52E ins 2000 No. 6 s 17

**Other persons may, by notice, also become bound by a decision under s 52(1)**

s 52F ins 2000 No. 6 s 17

**Direction to owner or occupier to apply for permitted road access location**

s 52G ins 2000 No. 6 s 17

**Offences about road access locations and road access works, relating to decisions under s 52(1)**

s 53 amd 1995 No. 9 s 92 sch 1  
sub 2000 No. 6 s 17

**Chief executive may take steps to prevent or deal with contravention**

s 54 sub 2000 No. 6 s 17

**Chief executive may supply or contribute to new access arrangements**

s 55 sub 2000 No. 6 s 17

**Compensation**

s 56 sub 2000 No. 6 s 17

**Cases where compensation not payable**

s 57 amd 2000 No. 6 s 18

**Conditions in development approval under Integrated Planning Act 1997**

s 57A ins 2000 No. 6 s 19

**Location**

s 59 sub 2001 No. 79 s 27

**Chief executive's requirements for public utility plant**

s 59A ins 2001 No. 79 s 27

**Liability for damage or expenses**

s 62 amd 2001 No. 79 s 28

**PART 6—FRANCHISED ROADS**

pt hdg ins 1994 No. 49 s 5

**Objectives of part**

s 65 ins 1994 No. 49 s 5

**Power to enter into road franchise agreements**

s 66 ins 1994 No. 49 s 5

**Tabling of road franchise agreements**

s 67 ins 1994 No. 49 s 5

**Report on operation of part**

**s 68**      prev s 68 ins 1994 No. 49 s 5  
               om 1995 No. 32 s 10  
               pres s 68 ins 1994 No. 49 s 5

**Recovery of money**

**s 69**      ins 1994 No. 49 s 5

**Rateability of land**

**s 70**      ins 1994 No. 49 s 5  
               amd 2001 No. 36 s 4

**Application of other provisions of this chapter**

**s 71**      ins 1994 No. 49 s 5

**Guarantees, undertakings and stamp duty**

**prov hdg**    sub 2001 No. 71 s 551 sch 1

**s 72**      ins 1994 No. 49 s 5  
               amd 1996 No. 54 s 9 sch; 2001 No. 71 s 551 sch 1

**PART 7—TOLL ROADS**

**pt hdg**      ins 2001 No. 36 s 5

**Division 1—Preliminary**

**div hdg**      ins 2001 No. 36 s 5

**Definitions for pt 7**

**s 73**      ins 1994 No. 49 s 5  
               sub 2001 No. 36 s 5

**Division 2—Toll roads and toll payment requirements**

**div hdg**      ins 2001 No. 36 s 5

**Tolls**

**s 73A**      ins 2001 No. 36 s 5

**Liability for toll and satisfying the liability**

**s 73B**      ins 2001 No. 36 s 5

**Using the E toll system**

**s 73C**      ins 2001 No. 36 s 5

**Division 3—Failure to pay toll**

**div hdg**      ins 2001 No. 36 s 5

**Application of div 3**

**s 73D**      ins 2001 No. 36 s 5

**Definition for div 3**

**s 73E**      ins 2001 No. 36 s 5

**Liability for administration charge in addition to unpaid toll**

**s 73F**      ins 2001 No. 36 s 5

**Notice to vehicle's registered operator**

**s 73G**      ins 2001 No. 36 s 5

**Notice to information holder**

s 73H ins 2001 No. 36 s 5

**Notice to person identified as driver**

s 73I ins 2001 No. 36 s 5

**Statutory declarations for div 3**

s 73J ins 2001 No. 36 s 5

**Limit on offences**

s 73K ins 2001 No. 36 s 5

**Division 4—Miscellaneous**

div hdg ins 2001 No. 36 s 5

**Confidentiality**

s 73L ins 2001 No. 36 s 5

**Evidence and procedure**

s 73M ins 2001 No. 36 s 5

**CHAPTER 6—RAIL TRANSPORT INFRASTRUCTURE**

ch hdg ins 1995 No. 32 s 11

**PART 1—PRELIMINARY**

pt hdg ins 1995 No. 32 s 11

**Ways of achieving objectives**

s 74 ins 1995 No. 32 s 11

**Scope of chapter**

s 75 prev s 75 om 1994 No. 49 s 3 sch 1  
 AIA s 20A applies (see prev s 126(1))  
 pres s 75 ins 1995 No. 32 s 11  
 amd 1997 No. 66 s 38; 2000 No. 6 s 20; 2000 No. 40 s 6

**PART 2—INVESTIGATING POTENTIAL RAIL CORRIDOR**

pt hdg prev pt 2 hdg ins 1995 No. 32 s 11  
 om 1998 No. 21 s 38  
 pres pt 2 hdg ins 1998 No. 43 s 9

**Purpose of pt 2**

s 76 prev s 76 ins 1995 No. 32 s 11  
 om 1998 No. 21 s 38  
 pres s 76 ins 1998 No. 43 s 9

**PART 3—ACCESS TO RAIL TRANSPORT INFRASTRUCTURE**

pt hdg ins 1995 No. 32 s 11  
 exp 1 July 1996 (see s 80)

**Definitions for pt 2**

s 77 orig s 77 om 1994 No. 49 s 3 sch 1  
 AIA s 20A applies (see prev s 126(1))  
 prev s 77 ins 1995 No. 32 s 11  
 exp 1 July 1996 (see s 80)  
 pres s 77 ins 1998 No. 43 s 9

**How to apply for a rail feasibility investigator's authority**

- s 78** orig s 78 om 1994 No. 49 s 3 sch 1  
 AIA s 20A applies (see prev s 126(1))  
 prev s 78 ins 1995 No. 32 s 11  
 exp 1 July 1996 (see s 80)  
 pres s 78 ins 1998 No. 43 s 9

**Additional information for application**

- s 79** orig s 79 om 1994 No. 49 s 3 sch 1  
 AIA s 20A applies (see prev s 126(1))  
 prev s 79 ins 1995 No. 32 s 11  
 exp 1 July 1996 (see s 80)  
 pres s 79 ins 1998 No. 43 s 9

**Granting authority**

- s 79A** ins 1998 No. 43 s 9

**Rail feasibility investigator's authority**

- s 79B** ins 1998 No. 43 s 9

**What investigator must do before land is entered for the first time**

- s 79C** ins 1998 No. 43 s 9

**Investigator to issue associated person with identification**

- s 79D** ins 1998 No. 43 s 9

**Pretending to be an investigator etc.**

- s 79E** ins 1998 No. 43 s 9

**Investigator to take care in acting under authority**

- s 79F** ins 1998 No. 43 s 9

**Compensation payable by investigator**

- s 79G** ins 1998 No. 43 s 9

**PART 4—ACCREDITATION**

- pt hdg** ins 1995 No. 32 s 11

**Definition for pt 4**

- s 80** orig s 80 om 1994 No. 49 s 3 sch 1  
 AIA s 20A applies (see prev s 126(1))  
 prev s 80 ins 1995 No. 32 s 11  
 exp 1 July 1996 (see s 80)  
 pres s 80 ins 1998 No. 33 s 4

**Accreditation of managers and operators**

- s 81** ins 1995 No. 32 s 11

**Applications for accreditation**

- s 82** prev s 82 om 1994 No. 49 s 3 sch 1  
 AIA s 20A applies (see prev s 126(1))  
 pres s 82 ins 1995 No. 32 s 11

**Additional information for applications**

- s 83** ins 1995 No. 32 s 11

**Granting accreditation**

- s 84** prev s 84 om 1994 No. 49 s 3 sch 1  
 AIA s 20A applies (see prev s 126(1))  
 pres s 84 ins 1995 No. 32 s 11  
 amd 1997 No. 66 s 39; 1998 No. 33 s 5; 2000 No. 40 s 7

**Annual levy**

- s 84A** ins 2000 No. 6 s 21

**Accreditation conditions**

- s 85** ins 1995 No. 32 s 11  
 amd 1998 No. 33 s 6

**Requiring accreditation conditions to be complied with**

- s 86** prev s 86 om 1994 No. 49 s 3 sch 1  
 pres s 86 ins 1995 No. 32 s 11

**Accreditation period**

- s 87** ins 1995 No. 32 s 11

**Amending accreditation conditions on application**

- s 88** ins 1995 No. 32 s 11  
 amd 1997 No. 66 s 40; 2000 No. 40 s 8

**Amending accreditation conditions without application**

- s 89** ins 1995 No. 32 s 11  
 amd 1997 No. 66 s 41; 2000 No. 40 s 9

**Suspending or cancelling accreditation**

- s 90** prev s 90 renum and reloc as s 129 1994 No. 32 s 12  
 pres s 90 ins 1995 No. 32 s 11  
 amd 1997 No. 66 s 42; 2000 No. 40 s 10

**Immediate suspension of accreditation**

- s 91** ins 1995 No. 32 s 11  
 amd 1997 No. 66 s 43; 2000 No. 40 s 11

**Limited suspension of accreditation**

- s 92** prev s 92 ins 1994 No. 32 s 10  
 exp 1 August 1994 (see prev s 92(3))  
 AIA s 20A applies (see s 240(1))  
 pres s 92 ins 1995 No. 32 s 11

**Surrender of accreditation**

- s 93** prev s 93 ins 1994 No. 32 s 10  
 exp 1 July 1994 (see prev s 93(3))  
 AIA s 20A applies (see s 240(1))  
 pres s 93 ins 1995 No. 32 s 11

**PART 5—RAIL TRANSPORT INFRASTRUCTURE POWERS**

- pt hdg** ins 1995 No. 32 s 11

**Division 1—Railway works**

- div hdg** ins 1998 No. 43 s 10

**Application of div 1**

s 93A ins 1998 No. 43 s 10

**Entering land for railway works etc.**

s 94 ins 1995 No. 32 s 11

**Entry to land by notice or with approval**

s 95 ins 1995 No. 32 s 11

**Care to be taken in carrying out works etc.**

s 96 ins 1995 No. 32 s 11

**Compensation for carrying out works etc.**

s 97 ins 1995 No. 32 s 11

**Watercourses**

s 98 ins 1995 No. 32 s 11

**Division 2—Other powers**

div hdg ins 1998 No. 43 s 11

**Power to require works to stop**s 99 prev s 99 ins 1994 No. 38 s 24  
om 1995 No. 32 s 13  
pres s 99 ins 1995 No. 32 s 11**Closing railway crossings**s 100 prev s 100 ins 1994 No. 32 s 10  
exp 1 August 1994 (see prev s 100(2))  
AIA s 20A applies (see s 240(1))  
prev s 100 ins 1994 No. 32 s 5  
om 1995 No. 32 s 13  
pres s 100 ins 1995 No. 32 s 11**PART 6—RAILWAY INCIDENTS**

pt hdg ins 1995 No. 32 s 11

**Division 1—Report of railway incident**

div hdg ins 1995 No. 32 s 11

**Reporting serious incidents**

s 101 ins 1995 No. 32 s 11

**Request for report or incident details**s 102 ins 1995 No. 32 s 11  
amd 1995 No. 57 s 4 sch 1**Division 2—Investigation of railway incident**

div hdg ins 1995 No. 32 s 11

**Investigations by authorised person**

s 103 ins 1995 No. 32 s 11

**Power of authorised person to investigate incident**s 104 ins 1995 No. 32 s 11  
amd 2000 No. 6 s 22



**False or misleading statements**

**s 105** ins 1995 No. 32 s 11  
om 2000 No. 6 s 23

**False, misleading or incomplete documents**

**s 106** ins 1995 No. 32 s 11  
om 2000 No. 6 s 23

**Obstructing authorised person**

**s 107** ins 1995 No. 32 s 11  
om 2000 No 6 s 23

**Impersonating authorised person**

**s 108** ins 1995 No. 32 s 11  
om 2000 No. 6 s 23

**Compensation**

**s 109** prev s 109 ins 1994 No. 32 s 10  
exp 1 July 1994 (see prev s 109(2))  
AIA s 20A applies (see s 240(1))  
pres s 109 ins 1995 No. 32 s 11

**Leases and licences under s 64 of Harbours Act**

**s 109A** ins 1994 No. 43 s 143 sch 3  
exp 1 October 1994 (see s 109A(2))  
AIA s 20A applies (see s 109A(3))

**Leases and licences under s 196 of Harbours Act**

**s 109B** ins 1994 No. 43 s 143 sch 3  
exp 1 October 1994 (see s 109B(2))  
AIA s 20A applies (see s 109B(3))

**Division 3—Boards of inquiry**

**div hdg** ins 1995 No. 32 s 11

**Subdivision 1—General**

**sdiv hdg** ins 1995 No. 32 s 11

**Minister may establish or re-establish boards of inquiry**

**s 110** prev s 110 ins 1994 No. 32 s 10  
exp 1 July 1994 (see prev s 110(2))  
AIA s 20A applies (see s 240(1))  
pres s 110 ins 1995 No. 32 s 11

**Role of board of inquiry**

**s 111** prev s 111 ins 1994 No. 32 s 10  
exp 1 October 1994 (see prev s 111(3))  
AIA s 20A applies (see s 240(1))  
pres s 111 ins 1995 No. 32 s 11

**Conditions of appointment**

**s 112** ins 1995 No. 32 s 11

**Chief executive to arrange for services of staff and financial matters for board of inquiry**

s 113 ins 1995 No. 32 s 11

**Authorised person may exercise powers for board's inquiry**

s 114 ins 1995 No. 32 s 11

**Subdivision 2—Conduct of inquiry**

sdiv hdg ins 1995 No. 32 s 11

**Procedure**

s 115 ins 1995 No. 32 s 11

**Notice of inquiry**

s 116 ins 1995 No. 32 s 11

**Inquiry to be held in public other than in special circumstances**

s 117 ins 1995 No. 32 s 11

**Protection of members, legal representatives and witnesses**

s 118 prev s 118 ins 1994 No. 49 s 3 sch 1  
 exp 18 May 1995 (see prev s 118(2))  
 AIA s 20A applies (see prev s 126(1))  
 pres s 118 ins 1995 No. 32 s 11

**Record of proceedings to be kept**

s 119 ins 1995 No. 32 s 11

**Procedural fairness and representation**

s 120 ins 1995 No. 32 s 11

**Board's powers on inquiry**

s 121 ins 1995 No. 32 s 11

**Notice to witness**

s 122 ins 1995 No. 32 s 11

**Inspection of documents or things**

s 123 ins 1995 No. 32 s 11

**Inquiry may continue despite court proceedings unless otherwise ordered**

s 124 ins 1995 No. 32 s 11

**Offences by witnesses**

s 125 ins 1995 No. 32 s 11

**Self-incrimination**

s 126 prev s 126 ins 1994 No. 49 s 3 sch 1  
 exp 18 May 1995 (see prev s 126(2))  
 pres s 126 ins 1995 No. 32 s 11

**Permissions to extend roads etc.**

s 126H ins 1995 No. 32 s 16  
 exp 1 July 1995 (see s 126H(3))  
 AIA s 20A applies (see s 126H(2))

**Numbering and renumbering of Act**

**s 126O** ins 1995 No. 32 s 16  
om R4 (see RA s 37)

**False or misleading statements**

**s 127** ins 1995 No. 32 s 11

**False, misleading or incomplete documents**

**s 128** ins 1995 No. 32 s 11

**Contempt of board**

**s 129** orig s 129 (prev s 90) renum and reloc as s 132 1994 No. 43 s 143 sch 3  
prev s 129 ins 1994 No. 32 s 10  
(1), (3)–(4) exp 1 August 1994 (see prev s 94(4))  
(1)–(2) exp 20 June 1995 (see prev s 129(2), 1994 SL No. 252 s 53(1) as ins  
1995 SL No. 215 s 3)  
AIA s 20A applies (see s 240(1))  
pres s 129 ins 1995 No. 32 s 11

**Change of membership of board**

**s 130** prev s 130 ins 1994 No. 32 s 10  
exp 1 July 1995 (see prev s 130(2))  
AIA s 20A applies (see s 240(1))  
pres s 130 ins 1995 No. 32 s 11

**PART 7—LAND FOR RAILWAY PURPOSES**

**pt hdg** ins 1995 No. 32 s 11

**Lease of land to railway managers**

**s 131** ins 1995 No. 32 s 11  
sub 1997 No. 66 s 44  
amd 1998 No. 33 s 7

**Railway tunnel easements**

**s 131A** prev s 131A ins 1994 No. 49 s 3 sch 1  
om R3 (see RA s 37)  
pres s 131A ins 2001 No. 79 s 29

**What is “future railway land”**

**s 131B** ins 2001 No. 79 s 29

**PART 4—AMENDMENTS OF OTHER ACTS**

**pt hdg** prev pt 4 hdg (prev pt 2 hdg) renum 1994 No. 32 s 11  
om R3 (see RA s 37)

**Status of railway land**

**s 132** (prev s 129) renum and reloc 1994 No. 43 s 143 sch 3  
om R3 (see RA s 40)  
pres s 132 ins 1995 No. 32 s 11  
amd 1998 No. 33 s 8

**Application of Queensland Heritage Act**

**s 133** ins 1995 No. 32 s 11

**Existing rail transport infrastructure on land**

**s 134** ins 1995 No. 32 s 11  
amd 1997 No. 66 s 45

**Existing buildings on land**

**s 135** prev s 135 ins 1994 No. 32 s 10  
exp 20 June 1995 (see prev s 135(3), 1994 SL No. 252 s 53(1) as ins 1995  
SL No. 215 s 3)  
AIA s 20A applies (see s 240(1))  
pres s 135 ins 1995 No. 32 s 11

**Railway works on corridor land**

**s 136** prev s 136 ins 1995 No. 32 s 11  
amd 1996 No. 74 s 10  
om 1998 No. 13 s 191 sch  
pres s 136 ins 1998 No. 33 s 9

**PART 8—GENERAL**

**pt hdg** ins 1995 No. 32 s 11

**Queensland Rail not a common carrier**

**s 137** ins 1995 No. 32 s 11

**Carrying dangerous goods**

**s 138** ins 1995 No. 32 s 11  
sub 2001 No. 79 s 30

**Altering road levels**

**s 139** ins 1995 No. 32 s 11

**Maintaining roads crossing railways**

**s 140** ins 1995 No. 32 s 11  
amd 1997 No. 66 s 46

**No presumption of dedication of roads**

**s 141** ins 1995 No. 32 s 11

**Extending roads through or over rail corridor land**

**s 142** ins 1995 No. 32 s 11  
sub 1997 No. 66 s 47

**Level crossings**

**s 143** prev s 143 ins 1994 No. 32 s 10  
exp 1 July 1995 (see prev s 143(4))  
AIA s 20A applies (see s 240(1))  
pres s 143 ins 1995 No. 32 s 11

**Interfering with railway**

**s 144** ins 1995 No. 32 s 11  
amd 1997 No. 66 s 48

**Rectifying unauthorised interference**

**s 145** ins 1995 No. 32 s 11

**Trespassing on railway**

**s 146** ins 1995 No. 32 s 11

**Power to arrest**

s 147 ins 1995 No. 32 s 11  
om 2000 No. 5 s 461 sch 3

**Impact of certain decisions by local governments on railways**

s 148 ins 1995 No. 32 s 11

**Fencing new railways**

s 149 ins 1995 No. 32 s 11

**Works for existing railways**

s 150 ins 1995 No. 32 s 11

**Non-accredited railways**

s 151 ins 1995 No. 32 s 11  
amd 1997 No. 66 s 49

**Application of Land Act 1994**

s 152 ins 1995 No. 32 s 11  
amd 2001 No. 79 s 31

**CHAPTER 7—PORT INFRASTRUCTURE**

ch hdg ins 1994 No. 32 s 5

**PART 1—PRELIMINARY**

pt hdg ins 1994 No. 32 s 5

**Definitions for chapter**

prov hdg sub 1995 No. 32 s 12  
s 153 ins 1994 No. 32 s 5  
def “**candidate GOC**” om 1995 No. 9 s 92 sch 1  
def “**GOC**” om 1995 No. 9 s 92 sch 1  
def “**notice**” om 1995 No. 9 s 92 sch 1  
def “**vehicle**” om 1995 No. 57 s 4 sch 1

**PART 2—CONTINUATION, ESTABLISHMENT AND ABOLITION OF PORT AUTHORITIES**

pt hdg ins 1994 No. 32 s 5

**Continuation of port authorities**

s 154 ins 1994 No. 32 s 5  
om 2001 No. 79 s 32

**Establishment of new port authority**

s 155 ins 1994 No. 32 s 5

**Abolition of port authority**

s 156 ins 1994 No. 32 s 5

**Transfer of management of a port**

s 157 ins 1994 No. 32 s 5

**Division 3—Transition of references about railways**

div hdg prev div 3 hdg ins 1994 No. 32 s 10  
om 1995 No. 32 s 18

**Regulation may make transitional arrangement**

**s 158**      prev s 158 ins 1994 No. 32 s 10  
               om 1995 No. 32 s 18  
               pres s 158 ins 1994 No. 32 s 5  
               amd 2001 No. 71 s 551 sch 1

**Management of port by State or local government**

**s 159**      prev s 158 ins 1994 No. 32 s 10  
               om 1995 No. 32 s 18  
               pres s 159 ins 1994 No. 32 s 5

**Regulation may define port limits etc.**

**s 160**      prev s 160 ins 1994 No. 32 s 10  
               om 1995 No. 32 s 18  
               pres s 160 ins 1994 No. 32 s 5

**PART 3—FUNCTIONS AND POWERS OF PORT AUTHORITIES**

**pt hdg**     ins 1994 No. 32 s 5

**Functions of port authorities**

**s 161**      prev s 161 ins 1994 No. 32 s 10  
               om 1995 No. 32 s 18  
               pres s 161 ins 1994 No. 32 s 5

**Port services function**

**s 161A**    ins 2000 No. 40 s 12

**Division 4—General**

**div hdg**    prev div 4 hdg ins 1994 No. 32 s 10  
               om 1995 No. 9 s 92 sch 1

**Powers of port authorities subject to Marine Safety Act**

**s 162**      prev s 162 ins 1994 No. 32 s 10  
               om 1995 No. 9 s 92 sch 1  
               pres s 162 ins 1994 No. 32 s 5

**Powers of port authorities**

**s 163**      ins 1994 No. 32 s 5

**Additional powers**

**s 164**      ins 1994 No. 32 s 5  
               amd 1994 No. 43 s 143 sch 3; 2000 No. 5 s 461 sch 3

**Power to impose charges**

**s 165**      ins 1994 No. 32 s 5

**Copies of additional functions or powers to be available**

**s 166**      ins 1994 No. 32 s 5

**Liability for charges**

**s 167**      ins 1994 No. 32 s 5

**Liability for damage**

**s 168**      ins 1994 No. 32 s 5

**PART 4—LAND MANAGEMENT****pt hdg** ins 1994 No. 32 s 5**Division 1—Strategic port land****div hdg** ins 1994 No. 32 s 5**Land use plans****s 169** ins 1994 No. 32 s 5**Consultation on land use plans****s 170** ins 1994 No. 32 s 5**Approval of land use plans****s 171** pres s 90 ins 1994 No. 32 s 5**Strategic port land not subject to planning schemes****s 172** ins 1994 No. 32 s 5  
amd 1998 No. 13 s 191 sch  
sub 1998 No. 31 s 87; 2000 No. 4 s 92**Use of strategic port land to be consistent with approved land use plan****s 173** ins 1994 No. 32 s 5  
om 2000 No. 4 s 93**Division 2—General****div hdg** ins 1994 No. 32 s 5**Restrictions on dealing in property****s 174** ins 1994 No. 32 s 5**PART 5—GENERAL****pt hdg** ins 1994 No. 32 s 5**Protection from liability****s 175** ins 1994 No. 32 s 5**Carrying on port activities outside port limits****s 176** ins 1994 No. 32 s 5**Offences****s 177** ins 1994 No. 32 s 5**Payment of charges and interest on unpaid charges****s 178** ins 1994 No. 32 s 5**Transitional provisions applying in relation to port authorities that are candidate  
GOCs****s 179** ins 1994 No. 32 s 5  
amd 1994 No. 43 s 143 sch 3**Notices at entrances****s 180** ins 1994 No. 32 s 5**CHAPTER 7A—BUSWAYS AND BUSWAY TRANSPORT INFRASTRUCTURE****ch hdg** ins 2000 No. 40 s 13**PART 1—PRELIMINARY****pt hdg** ins 2000 No. 40 s 13

**Definition for ch 7A**

s 180A ins 2000 No. 40 s 13 (as om 2001 No. 79 s 19(1))

**Ways of achieving busway objectives**

s 180B ins 2000 No. 40 s 13

**PART 2—CHIEF EXECUTIVE’S FUNCTIONS AND POWERS**

pt 2 (ss 180C–180F) ins 2000 No. 40 s 13

**PART 3—ESTABLISHMENT OF BUSWAYS**

pt 3 (ss 180G–180J) ins 2000 No. 40 s 13

**PART 4—MANAGEMENT OF BUSWAY LAND AND BUSWAY TRANSPORT INFRASTRUCTURE**

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**Division 1—Transport infrastructure interaction**

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**Altering road levels by a local government**

s 180K ins 2000 No. 40 s 13

**Watercourses and busway transport infrastructure works**

s 180KA ins 2000 No. 40 s 13 (as ins 2001 No. 79 s 19(2))

**Permitted construction by local government of roads over or under busway land**

s 180L ins 2000 No. 40 s 13

**Designation of busway land for use as road under local government control**

s 180M ins 2000 No. 40 s 13 (as sub 2001 No. 79 s 19(3))

**Designation of busway land for use as State-controlled road**

s 180N ins 2000 No. 40 s 13 (as sub 2001 No. 79 s 19(3))

**No presumption of dedication of road**

s 180O ins 2000 No. 40 s 13

**Division 2—Interfering with busway transport infrastructure**

div hdg ins 2000 No. 40 s 13

**Interfering with busway transport infrastructure**

s 180P ins 2000 No. 40 s 13 (as amd 2001 No. 79 s 19(4))

**Rectifying unauthorised interference or works**

s 180Q ins 2000 No. 40 s 13

**Division 2A—Ancillary works and encroachments**

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div hdg ins 2000 No. 40 s 13

**Trespass of busway land**

s 180ZE ins 2000 No. 40 s 13 (as amd 2001 No. 79 s 19(6))



**Division 5—Compensation entitlements****div 5** (ss 180ZF–180ZK) ins 2000 No. 40 s 13**PART 5—BUSWAY SERVICE PROVIDER AUTHORISATION****pt 5** (ss 180ZKA–180ZKK) ins 2000 No. 40 s 13 (as ins 2001 No. 79 s 19(7))**CHAPTER 7B—LIGHT RAIL AND LIGHT RAIL TRANSPORT  
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def “**miscellaneous transport infrastructure works**” ins 1995 No. 9 s 92  
sch 1

reloc to sch 3 1998 No. 43 s 13(4)

def “**operational licence**” ins 1998 No. 43 s 13(3)

def “**required land**” ins 1995 No. 9 s 92 sch 1

def “**responsible entity**” ins 1998 No. 43 s 13(3)

**Meaning of “miscellaneous transport infrastructure”**

s 181A ins 1998 No. 43 s 14

amd 2000 No. 6 s 24; 2000 No. 40 s 14

**PART 2—OPERATIONAL LICENCES AND APPROVALS FOR LICENSEES**

pt hdg ins 1998 No. 43 s 15

**Division 1—Definitions**

div hdg ins 1998 No. 43 s 15

**Definition for pt 2**

s 181B ins 1998 No. 43 s 15

amd 2001 No. 79 s 33

**Division 2—Granting operational licences**

div hdg ins 1998 No. 43 s 16

**Minister may grant operational licence**

prov hdg sub 1998 No. 43 s 17

s 182 ins 1995 No. 9 s 92 sch 1

**Division 3—Approvals for licensees for intersecting areas**

div hdg ins 1998 No. 43 s 18

**Purpose and scope of div 3**

s 182A ins 1998 No. 43 s 18

**Approvals**

s 182B ins 1998 No. 43 s 18

**Refusal to grant approval**

s 182C ins 1998 No. 43 s 18

**Licensee may apply to Minister if approval not granted**

s 182D ins 1998 No. 43 s 18

**Division 4—Conditions for approvals**

div hdg ins 1998 No. 43 s 18

**Approval conditions**

s 182E ins 1998 No. 43 s 18

**Notice of approval conditions**

s 182F ins 1998 No. 43 s 18

**Division 5—Arbitration of approval conditions**

div hdg ins 1998 No. 43 s 18

**Notice of dispute**

s 182G ins 1998 No. 43 s 18

**Appointment of arbitrator**

s 182H ins 1998 No. 43 s 18

**Arbitrator's functions**

s 182I ins 1998 No. 43 s 18

**Arbitrator's powers**

s 182J ins 1998 No. 43 s 18

**Hearing procedures**

s 182K ins 1998 No. 43 s 18

**Effect of arbitrator's decisions**

s 182L ins 1998 No. 43 s 18

**Division 6—Miscellaneous**

div hdg ins 1998 No. 43 s 18

**Miscellaneous transport infrastructure remains property of licensee**

s 182M ins 1998 No. 43 s 18

**Compensation to responsible entity from licensee**

s 182N ins 1998 No. 43 s 18

**PART 3—AUTHORITIES TO OCCUPY AND USE LAND**

pt hdg ins 1998 No. 43 s 18

**Temporary use and occupation of land**

s 183 ins 1995 No. 9 s 92 sch 1

**Notice of entry or permission to enter**

s 184 ins 1995 No. 9 s 92 sch 1

**Compensation for physical damage from entry etc.**

s 185 ins 1995 No. 9 s 92 sch 1

**PART 4—POWERS OF CHIEF EXECUTIVE OVER REQUIRED LAND**

pt hdg ins 1998 No. 43 s 19

**Chief executive may grant interests in land**

s 186 ins 1995 No. 9 s 92 sch 1  
amd 1998 No. 43 s 20

**PART 5—MISCELLANEOUS**

pt hdg ins 1998 No. 43 s 21

**Effect of chapter on other Acts**

s 187 ins 1995 No. 9 s 92 sch 1

**CHAPTER 8A—FUNCTION OF QUEENSLAND RAIL**

ch hdg ins 1998 No. 21 s 39

**Function**

s 187A ins 1998 No. 21 s 39

**CHAPTER 8AA—TRANSPORTING DANGEROUS GOODS BY RAIL**

ch hdg ins 2001 No. 79 s 34

**PART 1—INTRODUCTION****pt 1** (ss 187AA–187AC) ins 2001 No. 79 s 34**PART 2—REGULATIONS****pt 2** (s 187AD) ins 2001 No. 79 s 34**PART 3—APPROVALS AND EXEMPTIONS****pt 3** (ss 187AE–187AK) ins 2001 No. 79 s 34**PART 4—OFFENCES****pt 4** (ss 187AL–187AN) ins 2001 No. 79 s 34**PART 5—RECOVERY OF COSTS AND FORFEITURE****pt 5** (ss 187AO–187AR) ins 2001 No. 79 s 34**PART 6—MISCELLANEOUS****pt 6** (ss 187AS–187AT) ins 2001 No. 79 s 34**CHAPTER 8B—PUBLIC MARINE TRANSPORT INFRASTRUCTURE****ch hdg** ins 2000 No. 6 s 25**PART 1—PUBLIC MARINE FACILITIES****pt 1** (ss 187B–187L) ins 2000 No. 6 s 25**PART 2—MANAGEMENT OF WATERWAYS****pt hdg** ins 2000 No. 6 s 25**Object of pt 2****187M** ins 2000 No. 6 s 25**Functions of chief executive under pt 2****187N** ins 2000 No. 6 s 25**Waterway transport management plan****187O** ins 2000 No. 6 s 25**Contents of a waterway transport management plan****187P** ins 2000 No. 6 s 25**Notice of draft waterway transport management plan****187Q** ins 2000 No. 6 s 25  
amd 2001 No. 79 s 35**Other laws prevail over waterway transport management plan****187R** ins 2000 No. 6 s 25**Amounts payable to chief executive are debts owing to the State****s 188** sub 1999 No. 11 s 29**Power to require information from local governments****s 189** amd 1999 No. 11 s 30**Approval of forms****s 190A** ins 1998 No. 43 s 22**CHAPTER 9—GENERAL PROVISIONS****ch hdg** (prev ch 7 hdg) renum 1995 No. 9 s 92 sch 1

**Disposal of fees, penalties etc.**

s 191      amd 1997 No. 66 s 50  
              sub 2000 No. 6 s 26  
              amd 2001 No. 79 s 36

**No need to prove appointments**

s 192      ins 1995 No. 32 s 14

**Prosecutions for railway offences**

s 193      ins 1995 No. 32 s 14

**Proceedings for offences**

s 194      ins 1994 No. 32 s 6

**Attempts to commit offences**

s 195      ins 1994 No. 32 s 6

**Review of and appeals against decisions**

s 196      sub 1997 No. 66 s 51

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s 197      om 1997 No. 66 s 51

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s 198      om 1997 No. 66 s 51

**Application of Freedom of Information Act and Judicial Review Act**

s 199      ins 1995 No. 32 s 15  
              amd 2000 No. 46 s 3 sch

**Altering watercourse to adversely affect transport route**

s 199A     ins 2001 No. 79 s 37

**Altering materials etc.**

s 199B     ins 2001 No. 79 s 37

**Recovery of cost of damage**

s 199C     ins 2001 No. 79 s 37

**Numbering and renumbering of Act**

s 200A     ins 2000 No. 40 s 15

**CHAPTER 10—SAVINGS AND TRANSITIONAL PROVISIONS, AMENDMENTS AND REPEALS**

ch 10 hdg (prev ch 8 hdg) amd 1994 No. 32 s 7  
              renum 1995 No. 9 s 92 sch 1

**PART 1—SAVINGS AND TRANSITIONAL PROVISIONS ABOUT ROADS**

pt hdg     amd 1994 No. 32 s 8

**Definition**

prov hdg   amd 1994 No. 32 s 9(1)  
 s 201        amd 1994 No. 32 s 9(2)  
              def “**corporation**” amd 1994 No. 43 s 143 sch 3

**State-controlled roads**

- s 202** prev (1) om 1994 No. 49 s 3 sch 1  
 AIA s 20A applies to prev (1) (see prev s 126(1))  
 pres (1)–(2) exp 18 November 1995 (see s 202(2))

**Access to and from State-controlled roads**

- s 203** amd 1994 No. 49 s 3 sch 1  
 exp 18 November 1996 (see s 203(5))  
 (1)–(3) AIA s 20A applies (see s 203(4))

**Motorways**

- s 204** amd 1994 No. 49 s 3 sch 1  
 exp 18 November 1996 (see s 204(3))  
 (1) AIA s 20A applies (see s 204(2))

**Notices to local governments**

- s 205** amd 1994 No. 49 s 3 sch 1  
 exp 18 November 1996 (see s 205(2))

**Naturally occurring materials**

- s 206** amd 1994 No. 49 s 3 sch 1  
 exp 18 November 1996 (see s 206(2))  
 AIA s 20A applies (see prev s 126(1))

**Temporary occupation and use of land**

- s 207** amd 1994 No. 49 s 3 sch 1  
 exp 18 November 1995 (see s 207(4))

**Things done where chief executive now has power**

- s 208** amd 1994 No. 49 s 3 sch 1  
 exp 18 November 1996 (see s 208(2))

**Legal proceedings**

- s 209** amd 1994 No. 49 s 3 sch 1  
 exp 18 November 1996 (see s 209(2)–(3))

**Land acquisitions and related transactions**

- s 210** amd 1994 No. 49 s 3 sch 1  
 exp 18 November 1996 (see s 210(3)–(4))

**Delegations**

- s 211** amd 1994 No. 49 s 3 sch 1  
 exp 18 November 1996 (see s 211(3))

**Preparation of first implementation programs**

- s 212** amd 1994 No. 49 s 3 sch 1  
 exp 18 November 1996 (see s 212(2))

**Existing franchised road**

- s 213** ins 1994 No. 49 s 3 sch 1  
 exp 18 November 1995 (see s 213(5))

**PART 2—SAVINGS AND TRANSITIONAL PROVISIONS ABOUT RAILWAYS**

- pt hdg** ins 1995 No. 32 s 16

**Division 1—Provisions about land****div hdg** ins 1995 No. 32 s 16**Existing rail corridor land****s 214** ins 1995 No. 32 s 16  
amd 1997 No. 66 s 52  
exp 1 July 2002 (see s 218(2))  
AIA s 20A applies (see s 218(1))**Boundary identification etc.****s 215** ins 1995 No. 32 s 16  
amd 2000 No. 40 s 16  
exp 1 July 2002 (see s 218(2))  
AIA s 20A applies (see s 218(1))**Effect of land becoming unallocated State land****s 216** ins 1995 No. 32 s 16  
exp 1 July 2002 (see s 218(2))  
AIA s 20A applies (see s 218(1))**Exemption from fees****s 217** ins 1995 No. 32 s 16  
exp 1 July 2002 (see s 218(2))  
AIA s 20A applies (see s 218(1))**Expiry of division etc.****s 218** ins 1995 No. 32 s 16  
exp 1 July 2002 (see s 218(2))  
AIA s 20A applies (see s 218(1))**Division 2—Other provisions****div hdg** ins 1995 No. 32 s 16**Interim accreditation****s 219** ins 1995 No. 32 s 16  
exp 1 July 1997 (see s 219(6)–(7))**Advertising on railway land****s 220** ins 1995 No. 32 s 16  
exp 1 July 2000 (see s 220(4))**Continuation of Transport Infrastructure (Railways) Act 1991, ss 49 and 51****s 221** ins 1995 No. 32 s 16  
exp 1 July 2002 (see s 221(4)–(5) and 1995 SL No. 342 s 4)**Continuation of Transport Infrastructure (Railways) Act 1991, ss 47, 48 and 50****s 222** ins 1995 No. 32 s 16  
exp 1 July 2000 (see s 222(5))**Existing contracts****s 223** ins 1995 No. 32 s 16  
exp 1 July 2002 (see s 223(3))  
AIA s 20A applies (see s 223(2))

**Existing transaction documents**

- s 224** ins 1995 No. 32 s 16  
 exp 1 July 2002 (see s 224(9))  
 AIA s 20A applies (see s 224(5))

**Existing regulations**

- s 225** ins 1995 No. 32 s 16  
 amd 1995 No. 48 s 11  
 exp 22 November 1996 (see s 225(4))

**Transitional regulations**

- s 226** ins 1995 No. 32 s 16  
 exp 1 July 1996 (see s 226(3))

**PART 3—SAVINGS AND TRANSITIONAL PROVISIONS ABOUT PORTS**

- pt hdg** prev pt 2 hdg renum as pt 4 hdg 1994 No. 32 s 11  
 pres pt 2 hdg ins 1994 No. 32 s 10

**Definitions**

- s 227** ins 1994 No. 32 s 10  
 amd 1996 No. 13 s 57  
 prev s 227 exp 1 July 1997 (see s 227(2))  
 AIA s 20A applies (see s 240(1))  
 pres s 227 ins 1998 No. 23 s 4  
 def “**1986 permit**” ins 1998 No. 23 s 4  
 def “**1992 permit**” ins 1998 No. 23 s 4  
 def “**1994–95 permit**” ins 1998 No. 23 s 4  
 def “**1996–97 permit**” ins 1998 No. 23 s 4  
 def “**permit**” ins 1998 No. 23 s 4  
 om 2001 No. 79 s 38

**Continuation of harbours under Harbours Act or port under Port of Brisbane Authority Act etc.**

- s 228** ins 1994 No. 32 s 10  
 amd 1996 No. 13 s 57; 1997 No. 9 s 84; 1998 No. 33 s 10; 1999 No. 24 s 2(2)  
 sch; 2000 No. 6 s 27  
 exp 31 December 2000 (see s 228(3))  
 AIA s 20A applies (see s 240(1))

**Management of certain boat harbours**

- s 229** ins 1994 No. 32 s 10  
 amd 1996 No. 13 s 57  
 exp 1 July 1997 (see s 229(2))  
 AIA s 20A applies (see s 240(1))

**Harbour and industrial lands**

- s 230** ins 1994 No. 32 s 10  
 amd 1996 No. 13 s 57  
 exp 1 July 1997 (see s 230(5))  
 AIA s 20A applies (see s 240(1))



**Submission of land use plans**

- s 231** ins 1994 No. 32 s 10  
 amd 1996 No. 13 s 57  
 exp 1 July 1997 (see s 231(3))  
 AIA s 20A applies (see s 240(1))

**Harbours Corporation of Queensland**

- s 232** ins 1994 No. 32 s 10  
 amd 1996 No. 13 s 57; 1997 No. 9 s 85; 1998 No. 33 s 11; 1999 No. 24 s 2(2)  
 sch; 2000 No. 6 s 28  
 exp 31 December 2000 (see s 232(8))  
 AIA s 20A applies (see s 240(1))

**Continuation of certain by-laws and provisions of Harbours Act**

- prov hdg** sub 1998 No. 23 s 5(1)
- s 233** ins 1994 No. 32 s 10  
 amd 1994 No. 43 s 143 sch 3; 1996 No. 13 s 57; 1997 No. 9 s 86; 1998 No. 23  
 s 5(2)–(3); 1998 No. 33 s 12; 1999 No. 11 s 31; 2000 No. 64 s 172  
 om 2001 No. 93 s 25(c)  
 exp 31 December 2002 (see s 233(9))  
 AIA s 20A applies (see s 240(1))

**Validation of permits issued for Mackay Harbour**

- s 233A** ins 1998 No. 23 s 6  
 exp 15 May 1998 (see s 233A(4))  
 AIA s 20A applies (see s 240(1))

**Certain persons taken to have permits for Mackay Harbour**

- s 233B** ins 1998 No. 23 s 6  
 exp 15 May 1998 (see s 233B(3))  
 AIA s 20A applies (see s 240(1))

**Certain persons taken to have had permits for Brisbane River under By-law No. 2, 1994**

- s 233C** ins 1998 No. 23 s 6  
 exp 15 May 1998 (see 233C(5))  
 AIA s 20A applies (see s 240(1))

**Certain persons taken to have had permits for Brisbane River under Port of Brisbane Sand and Gravel By-law 1992**

- s 233D** ins 1998 No. 23 s 6  
 exp 15 May 1998 (see s 233D(4))  
 AIA s 20A applies (see s 240(1))

**Certain persons taken to have permits for Brisbane River under Marine Land Dredging By-law 1987**

- s 233E** ins 1998 No. 23 s 6  
 exp 15 May 1998 (see s 233E(4))  
 AIA s 20A applies (see s 240(1))

**Survey and supervision cost to be retained by Port of Brisbane Corporation**

**s 233F** ins 1998 No. 23 s 6  
 exp 15 May 1998 (see s 233F(2))  
 AIA s 20A applies (see s 240(1))

**Continuation of certain provisions of Harbours Act about land**

**s 234** ins 1994 No. 32 s 10  
 amd 1994 No. 81 s 527 sch 5; 1996 No. 13 s 57  
 exp 1 July 1997 (see s 234(4))  
 AIA s 20A applies (see s 240(1))

**Continuation of certain provisions of Harbours Act about jetties and ramps etc.**

**s 235** ins 1994 No. 32 s 10  
 amd 1994 No. 43 s 143 sch 3; 1996 No. 13 s 57; 1997 No. 9 s 87; 1998 No. 33 s 13; 1999 No. 24 s 2(2) sch; 2000 No. 6 s 29  
 (3) exp 1 July 1997 (see s 235(5A))  
 exp 31 December 2000 (see s 235(5))  
 AIA s 20A applies (see s 240(1))

**Continuation of certain provisions of Harbours Act requiring approval for certain matters**

**s 236** ins 1994 No. 32 s 10  
 amd 1995 No. 41 s 105 sch 1; 1997 No. 9 s 88; 1998 No. 23 s 7; 1999 No. 11 s 32; 1999 No. 59 s 59; 2000 No. 64 s 173  
om 2001 No. 93 s 25(c)  
exp 31 December 2002 (see s 236(8))  
 AIA s 20A applies (see s 240(1))

**Continuation of certain provisions of Harbours Act about Queensland Sugar Corporation**

**s 237** ins 1994 No. 32 s 10  
 amd 1996 No. 13 s 56  
 exp 31 October 1996 (see s 237(4))  
 AIA s 20A applies (see s 240(1))

**Continuation of s 62A of Harbours Act**

**s 238** ins 1994 No. 32 s 10  
 amd 1996 No. 13 s 57  
 exp 1 July 1997 (see s 238(3))  
 AIA s 20A applies (see s 240(1))

**Continuation of pt 5, div 2 of Port of Brisbane Authority Act**

**s 239** ins 1994 No. 32 s 10  
exp on a date to be fixed by regulation (see s 239(3))  
 AIA s 20A applies (see s 240(1))

**Application of Acts Interpretation Act, s 20A to this part**

**s 240** ins 1994 No. 32 s 10  
 amd 1996 No. 13 s 57; 1997 No. 9 s 89; 1998 No. 33 s 14; 1999 No. 24 s 2(2) sch; 2000 No. 6 s 30  
 exp 30 June 2001 (see s 240(2))  
 AIA s 20A applies (see s 240(1))

**Expiries under this part**

s 240A ins 2000 No. 6 s 31  
AIA s 20A applies (see s 240(1))

**PART 4—GENERAL SAVINGS AND TRANSITIONAL PROVISIONS**

pt hdg ins 1994 No. 32 s 10

**Division 1—Transition of references about roads**

div hdg ins 1994 No. 32 s 10

**Application of division**

s 241 ins 1994 No. 32 s 10

**Transport Infrastructure (Roads) Act 1991 references**

s 242 ins 1994 No. 32 s 10  
amd 1995 No. 9 s 92 sch 1

**Main Roads Act 1920 references**

s 243 ins 1994 No. 32 s 10  
sub 1995 No. 9 s 92 sch 1; 1995 No. 57 s 4 sch 1

**Commissioner of Main Roads references**

s 244 ins 1994 No. 32 s 10

**Declared road references**

s 245 ins 1994 No. 32 s 10

**Motorway references**

s 246 ins 1994 No. 32 s 10

**Main Roads Fund references**

s 247 ins 1994 No. 32 s 10

**Division 2—Transition of references about railways**

div hdg ins 1995 No. 32 s 17

**Application of division**

s 248 ins 1995 No. 32 s 17

**Railways Act 1914 references**

s 249 ins 1995 No. 32 s 17

**Transport Infrastructure (Railways) Act 1991 references**

s 250 ins 1995 No. 32 s 17

**Commissioner for railways references**

s 251 ins 1995 No. 32 s 17

**Railways Department references**

s 252 ins 1995 No. 32 s 17

**Queensland Railways references**

s 253 ins 1995 No. 32 s 17

**Division 3—Transition of references about ports**

div hdg ins 1994 No. 32 s 10

**Application of division**

s 254 ins 1994 No. 32 s 10

**Harbours Act 1955 and Port of Brisbane Authority Act 1976 references**

s 255 ins 1994 No. 32 s 10

**Harbour board references**

s 256 ins 1994 No. 32 s 10

**Harbour references**

s 257 ins 1994 No. 32 s 10

**Harbours Corporation and Harbours Trust references**

s 258 ins 1994 No. 32 s 10

**Gold Coast Waterways Authority references**

s 259 ins 1994 No. 32 s 10

**PART 5—TRANSITIONAL PROVISIONS FOR TRANSPORT LEGISLATION  
AMENDMENT ACT 1998**pt hdg ins 1998 No. 33 s 15  
exp 23 September 1998**Division 4—Transition of forms**div hdg ins 1998 No. 43 s 23  
exp 27 May 1999 (see s 260(3))**Transitional provision about forms**s 260 prev s 260 ins 1998 No. 33 s 15  
exp 23 September 1998  
pres s 260 ins 1998 No. 43 s 23  
exp 27 May 1999 (see s 260(3))**Division 5—Transitional provisions about the Integrated Planning Act 1997**div hdg ins 1999 No. 11 s 33  
om 2000 No. 6 s 32**CHAPTER 11—FURTHER TRANSITIONAL PROVISIONS**

ch hdg ins 2000 No. 6 s 32

**PART 1—TRANSITIONAL PROVISIONS FOR THE INTEGRATED PLANNING  
ACT 1997**

pt hdg ins 2000 No. 6 s 32

**Continuing application of previous provisions to non-IDAS applications**

s 261 ins 1999 No. 11 s 33

**Applications for approval of subdivisions, rezoning or development**

s 262 ins 1999 No. 11 s 33

**PART 2—TRANSITIONAL PROVISIONS FOR THE TRANSPORT  
LEGISLATION AMENDMENT ACT 2000**

pt 2 (ss 263–266) ins 2000 No. 6 s 33

**Transitional—wharf or other harbour work**

s 267 ins 2000 No. 6 s 34

**SCHEDULE 1—SUBJECT MATTER FOR REGULATIONS**

amd 1994 No. 49 s 3 sch 1; 1995 No. 9 s 92 sch 1; 1995 No. 32 s 19; 1997 No. 66 s 53; 1998 No. 43 s 24; 2000 No. 6 s 35; 2000 No. 40 s 17; 2001 No. 36 s 6; 2001 No. 79 s 39

**SCHEDULE 1A—SUBJECT MATTER FOR WATERWAY TRANSPORT MANAGEMENT PLANS**

ins 2000 No. 6 s 36

**SCHEDULE 2—REVIEWS AND APPEALS**

**sch hdg** amd 2000 No. 6 s 37(1)  
amd 1994 No. 49 s 3 sch 1; 1995 No. 32 s 20; 1999 No. 11 s 34; 2000 No. 6 s 37(2)–(3); 2000 No. 40 s 18; 2001 No. 79 s 40

**SCHEDULE 2A—RAILWAY TUNNEL EASEMENTS**

ins 2001 No. 79 s 41

**SCHEDULE 3—DICTIONARY**

prev sch 3 amd R1 (see RA s 40); 1994 No. 32 s 13  
om R3 (see RA s 40)  
pres sch 3 ins 1995 No. 9 s 92 sch 1  
def “**access**” ins 2000 No. 40 s 19(2)  
def “**accredited person**” ins 1995 No. 32 s 21(2)  
sub 2000 No. 40 s 19(1)–(2)  
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 SIGNIFICANT INFRASTRUCTURE FACILITIES**

om 2001 No. 79 s 43

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pubd gaz 24 November 2000 p 1181

**Form M3977 Version 2—October 2001—Notice of Demand for Non-payment of Toll**

pubd gaz 19 October 2001 p 576

**Form M3978 Version 2—October 2001—Notice of Demand for Non-payment of  
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pubd gaz 19 October 2001 p 576

**Form M3979 Version 2—October 2001—Notice of Demand for Information  
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pubd gaz 19 October 2001 p 576

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## **10 Provisions that have not commenced and are not incorporated into reprint**

The following provisions are not incorporated in this reprint because they had not commenced before the reprint date (see Reprints Act 1992, s 5(c)).

**Transport (Busway and Light Rail) Amendment Act 2000 No. 40 ss 4–11, 13–15 and 17–19 read as follows—**

### **4 Amendment of s 2 (Objectives of this Act)**

Section 2(2)—

*insert—*

‘(h) for busways and light rail—to establish a regime for each that—

- (i) contributes to overall transport effectiveness and efficiency; and
- (ii) provides for safely constructed, managed and operated infrastructure; and
- (iii) is responsive to community needs; and
- (iv) offers an appealing alternative to private transport in a way that takes into account overall environmental, economic and social influences of transport; and
- (v) addresses the challenges of future growth; and
- (vi) provides busway and light rail transport infrastructure and passenger services at a reasonable cost to the community and government; and
- (vii) results in minimal interference with access to and from the road network, but provides for reasonable compensation for interference; and
- (viii) encourages the facilitation and use of public transport; and
- (ix) gives priority to public transport over private vehicles; and
- (i) for light rail—to establish a regime that provides for—
  - (i) flexibility in the choice between private and public construction and management; and
  - (ii) land tenure arrangements allowing private management to be established on a sound financial basis.’.

## **5 Amendment of s 22 (Definitions for ch 5)**

Section 22, definitions “**plant**” and “**public utility plant**”—  
*omit.*

## **6 Amendment of s 75 (Scope of chapter)**

Section 75(2)(f)—  
*omit, insert—*

- ‘(f) light rail or light rail transport infrastructure; or’.

**7 Amendment of s 84 (Granting accreditation)**

(1) Section 84(6)(c)(iii) and (7)(c)—

*omit.*

(2) Section 84—

*insert—*

‘(8) Written notice of a decision given under subsection (6) or (7) must be accompanied by an information notice for the decision.’.

**8 Amendment of s 88 (Amending accreditation conditions on application)**

(1) Section 88(5)(c)—

*omit.*

(2) Section 88(6)—

*renumber* as section 88(7).

(3) Section 88—

*insert—*

‘(6) The written notice must be accompanied by an information notice for the decision.’.

**9 Amendment of s 89 (Amending accreditation conditions without application)**

(1) Section 89(5)(c)—

*omit.*

(2) Section 89(7), ‘subsection (6)’—

*omit, insert—*

‘subsection (7)’.

(3) Section 89(6) and (7)—

*renumber* as section 89(7) and (8).

(4) Section 89—

*insert—*

‘(6) If subsection (5) applies, written notice of the decision given under subsections (4) and (5) must be accompanied by an information notice for the decision.’.

## **10 Amendment of s 90 (Suspending or cancelling accreditation)**

(1) Section 90(5), from ‘state—’

*omit, insert—*

‘state the reason for the decision.’.

(2) Section 90(7)—

*omit, insert—*

‘(7) The notice must state the reason for the decision.

‘(8) Written notice of a decision given under subsections (4) and (5) or (6) and (7) must be accompanied by an information notice for the decision.’.

## **11 Amendment of s 91 (Immediate suspension of accreditation)**

Section 91(3)—

*omit, insert—*

‘(3) The notice must state the reason for the decision and must be accompanied by an information notice for the decision.’.

## **13 Insertion of new chs 7A—7C**

After section 180—

*insert—*

### **‘CHAPTER 7A—BUSWAYS AND BUSWAY TRANSPORT INFRASTRUCTURE**

#### **‘PART 1—PRELIMINARY**

#### **‘180A Definition for ch 7A**

‘In this chapter—

**“construction”**, of busway transport infrastructure, includes each of the following for the infrastructure, to the extent it involves the development of the busway transport infrastructure—

- (a) initial construction;
- (b) improvement of its standard;
- (c) realignment;
- (d) widening;
- (e) extension to accommodate the extension of a busway.

### **‘180B Ways of achieving busway objectives**

‘The objectives of this Act for busways are intended to be achieved by—

- (a) developing and putting into effect busway transport infrastructure strategies; and
- (b) establishing a legal framework to allow the construction, maintenance, management and operation of busway transport infrastructure in an effective and efficient way.

## **‘PART 2—CHIEF EXECUTIVE’S FUNCTIONS AND POWERS**

### **‘180C Functions**

‘The chief executive has the following functions in relation to busways, including proposed busways, and busway transport infrastructure, including proposed busway transport infrastructure—

- (a) investigating, planning, establishing, maintaining, managing or operating, or arranging for someone else to investigate, plan, establish, maintain, manage or operate;
- (b) providing or arranging for associated services or works necessary or convenient for effective and efficient construction, management and operation;
- (c) efficiently integrating with any transport infrastructure, including light rail transport infrastructure;

- (d) providing for appropriate levels of safety in construction, management and operation;
- (e) doing other things that directly or indirectly—
  - (i) are likely to enhance the provision of busway transport infrastructure and passenger services on busways; or
  - (ii) are incidental or complementary to the performance of another function.

### **‘180D Authority to enter or temporarily occupy or use land**

‘(1) For the performance of a function under this chapter, the chief executive, or someone authorised in writing by the chief executive, may—

- (a) do 1 or more of the following in relation to land—
  - (i) enter the land, whether or not for temporarily occupying or using the land;
  - (ii) temporarily occupy the land;
  - (iii) temporarily use the land; and
- (b) do anything on the land necessary or convenient for the function, including, for example, for busway transport infrastructure works.

‘(2) However, the chief executive must not authorise a person to enter land under this section if the entry is a type of entry able to be authorised under an investigator’s authority under chapter 7C.

### **‘180E When land may be entered, occupied or used**

‘(1) This section applies if a person proposes to enter, occupy or use land under this part.

‘(2) The person may enter, occupy or use the land without the permission of, or notice to, the owner or occupier of the land to perform urgent remedial work to facilitate or maintain the operation of busway transport infrastructure.

‘(3) However, the person must, if practicable, notify the occupier orally or in writing before entering the land.



‘(4) If the entry, occupation or use is other than for the performance of urgent remedial work, the person may enter, occupy or use the land if the person—

- (a) obtains the written permission of—
  - (i) each person who is an owner of the land; and
  - (ii) each person who is an occupier of the land; or
- (b) gives at least 7 days written notice to the occupier before the entry, occupation or use.

‘(5) The notice under subsection (4)(b) must state—

- (a) all works proposed to be performed; and
- (b) all uses proposed to be made of the land; and
- (c) details of anything else proposed to be done on the land; and
- (d) the approximate period when occupation or use is expected to continue; and
- (e) an owner or occupier of the land may claim compensation from the chief executive for loss or damage caused by the entry, occupation or use.

‘(6) A notice may be given under this section even though it is proposed to resume the land for busway transport infrastructure.

‘(7) Power to enter, occupy or use land under this part does not authorise entry, occupation or use of a structure on the land used solely for residential purposes without the permission of the occupier of the land.

### **‘180F Compensation**

‘(1) This section applies if land is entered, occupied or used under this part.

‘(2) An owner or occupier of the land may claim compensation from the chief executive for loss or damage caused by the entry, occupation or use, including by the taking or consumption of materials.

‘(3) However, compensation is payable only if written notice of the claim or proposed claim is given to the chief executive—

- (a) after the loss or damage happens, but within 1 year after the entry, occupation or use ends; or

(b) at a later time allowed by the chief executive.

‘(4) In the absence of agreement between the owner or occupier and the chief executive about the payment of compensation, payment of compensation may be claimed and ordered in a proceeding brought in the Land Court.

‘(5) The Land Court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

‘(6) Compensation paid under this section for loss or damage caused to land must not be more than the compensation that would have been awarded if the land had been acquired.

### ‘PART 3—ESTABLISHMENT OF BUSWAYS

#### ‘180G Definition for pt 3

‘In this part—

“road” means a road under the *Land Act 1994*, but does not include a State-controlled road.

#### ‘180H Declaration of land as busway land

‘(1) The Minister may, by gazette notice, declare land to be busway land.

‘(2) Land declared to be busway land—

(a) must be—

(i) identified specifically in the gazette notice; or

(ii) identified generally in the gazette notice, and identified specifically in documents described in the gazette notice and available for perusal at an office of the department mentioned in the gazette notice; and

(b) must consist only of land for a busway and necessary busway transport infrastructure.

‘(3) The identification of land declared to be busway land may, but need not, be by reference to strata occupied by the land.

‘(4) Land may be declared to be busway land only if it is—

- (a) land acquired by the State or the chief executive for busway purposes, including for busway transport infrastructure; or
- (b) a road.

### ‘180I Effect on land of busway declaration

‘(1) If a road or a part of a road is declared under this part to be busway land, the road or part—

- (a) stops being a road; and
- (b) becomes unallocated State land.

‘(2) If a lot or a part of a lot under the *Land Title Act 1994* is declared under this part to be busway land, the lot or part becomes unallocated State land.

‘(3) Busway land can not be declared under section 23 to be a State-controlled road.

‘(4) The Governor in Council must lease busway land that is unallocated State land to the State under the *Land Act 1994*, section 17.<sup>41</sup>

‘(5) The lease is in perpetuity and, if demanded, for a rent of \$1 a year.

### ‘180J Development of busway and busway transport infrastructure

‘(1) This section applies to the establishment of a busway, including any investigating, planning, maintaining, managing, operating, and arranging for the busway or for busway transport infrastructure for the busway.

‘(2) Nothing in this chapter is intended to affect the operation of the *Integrated Planning Act 1997* to the extent that the establishment of the busway is development under that Act.

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41 *Land Act 1994*, section 17 (Granting land to the State)

## **‘PART 4—MANAGEMENT OF BUSWAY LAND AND BUSWAY TRANSPORT INFRASTRUCTURE**

### *‘Division 1—Transport infrastructure interaction*

#### **‘180K Altering road levels by a local government**

‘(1) The chief executive may require a local government having control of a road to alter the level of the road for—

- (a) busway transport infrastructure works; or
- (b) the management or operation of a busway.

‘(2) However, the chief executive—

- (a) must consult with the local government about the nature and extent of the alteration of the level of the road before the alteration is started; and
- (b) subject to an agreement between the chief executive and the local government arising out of the consultation, pay all reasonable costs incurred by the local government in altering the road level.

‘(3) The local government must comply with the chief executive’s requirement.

#### **‘180L Permitted construction by local government of roads over or under busway land**

‘(1) Despite section 180I(1), the chief executive may permit a local government to construct, maintain and operate a road located on busway land, consisting of—

- (a) a bridge or other structure allowing traffic to pass over the level at which buses use the busway land; or
- (b) a structure allowing traffic to pass under the level at which buses use the busway land.

‘(2) The permission may be given on reasonable conditions.

‘(3) In deciding whether to give the permission, the chief executive must consider the limiting effect the use of the road is likely to have on the use of the busway land for busway passenger services.

‘(4) While the bridge or other structure is being used for the road—

- (a) neither the chief executive nor any person the chief executive has permitted to operate a bus using the busway land has any duty or liability for the road or its use or operation; and
- (b) the road is taken to be a road of which the local government has control under the *Local Government Act 1993*, section 901(1); and
- (c) the road is taken to be a road under any Act about the use of vehicles on a road.

‘(5) Unless the chief executive and the local government otherwise agree—

- (a) the local government is responsible for maintaining the road and the bridge or other structure; and
- (b) if the bridge or other structure stops being used for the road, the local government is responsible for the cost of taking the bridge or other structure away and of restoring the busway land.

**‘180M Designation of busway land for use as road under local government control**

‘(1) Despite section 180I(1), the chief executive may, by gazette notice, designate busway land described in the notice as busway land that is to be used as a road under a local government’s control.

‘(2) The chief executive must also—

- (a) give a copy of the notice to the local government; and
- (b) publish a copy of the notice in a newspaper circulating generally in the area of the busway land.

‘(3) The land described in the notice must be land generally suitable for both of the following—

- (a) use as a road;
- (b) the operation of a busway.

‘(4) The notice may include directions with which the local government must comply, including directions about the local government’s exercise of powers under the *Local Government Act 1993* for roads it controls.

‘(5) However, the chief executive must consult with the local government before including any directions in the notice.

‘(6) While the notice is in force, the land described in the notice is taken to be—

- (a) a road of which the local government has control under the *Local Government Act 1993*, section 901(1); and
- (b) a road under any Act about the use of vehicles on a road.

‘(7) However, in taking the necessary steps mentioned in the *Local Government Act 1993*, section 901(2), the local government must comply with all directions included in the notice, including the notice as amended from time to time.

#### **‘180N Designation of busway land for use as State-controlled road**

‘(1) Despite section 180I(1), the Minister may, by gazette notice, designate busway land described in the notice as busway land to be used as a State-controlled road.

‘(2) The Minister must also publish a copy of the notice in a newspaper circulating generally in the area of the busway land.

‘(3) The land described in the notice must be land generally suitable for both of the following—

- (a) use as a State-controlled road;
- (b) the operation of a busway.

‘(4) The notice may include operational arrangements applying to the use of the busway land as a State-controlled road.

‘(5) While the notice is in force, the land described in the notice is, except to the extent provided for in the notice, taken to be—

- (a) a State-controlled road for the provisions of this Act, other than chapter 5, part 2, division 1 and part 5, division 3, and of any other Act applying to State-controlled roads; and
- (b) a road under any Act about the use of vehicles on a road.

#### **‘180O No presumption of dedication of road**

‘(1) This section applies if the public uses busway land as a road, or for access purposes other than as a road.

‘(2) The busway land does not at law, either because the use is authorised or permitted by the chief executive or for another reason, become dedicated to public use as a road.

***‘Division 2—Interfering with busway transport infrastructure***

**‘180P Interfering with busway transport infrastructure**

‘(1) A person must not interfere with or carry out works on busway transport infrastructure unless—

- (a) the person has the written approval of the chief executive; or
- (b) the interference or works are for the construction, maintenance or operation of a road permitted under this part to be constructed, maintained and operated across, over or under the busway transport infrastructure; or
- (c) the interference or works are otherwise authorised under this Act or another Act.

Maximum penalty—160 penalty units.

‘(2) Subsection (1) applies even if the interference or works are for the carrying out of functions that apart from subsection (1) are lawful on busway land that, under division 1, is taken to be—

- (a) a road of which a local government has control under the *Local Government Act 1993*, section 901(1); or
- (b) a State-controlled road for provisions of any Act applying to State-controlled roads.

‘(3) An approval under subsection (1)(a) may be given on reasonable conditions.

‘(4) The person given the approval must comply with the conditions of the approval.

Maximum penalty—40 penalty units.

‘(5) Subsection (1) does not apply to the carrying out of urgent maintenance of a busway or busway transport infrastructure.

**‘180Q Rectifying unauthorised interference or works**

‘(1) This section applies if a person (the “**identified person**”) interferes with or carries out works on busway transport infrastructure in contravention of section 180P(1).

‘(2) The chief executive may, by written notice given to the identified person, require the person to rectify the interference, or the effect of the carrying out of the works, within a stated reasonable time.

‘(3) The identified person must comply with the notice unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

‘(4) If the identified person does not comply with the notice, the chief executive may rectify the interference or the effect of the carrying out of the works.

‘(5) The identified person must pay the amount of the chief executive’s reasonable costs of—

- (a) rectifying the interference or the effect of the carrying out of the works; or
- (b) changing the way the busway transport infrastructure is built, maintained or operated because of the interference or the effect of the carrying out of the works.

‘(6) The chief executive may recover the amount as a debt.

‘(7) In this section—

“**rectify the interference**” includes the following—

- (a) alter, dismantle or take away works;
- (b) fix damage caused by the interference.

***‘Division 3—Public utility plant*****‘180R Definition for div 3**

‘In this division—

“**busway land**” means busway land that, when declared under this chapter to be busway land, was a road or part of a road.



**‘180S Retention of ownership of public utility plant**

‘(1) This section applies if, immediately before the declaration of land as busway land public utility plant is located on the land.

‘(2) The declaration does not affect the ownership of the public utility plant.

**‘180T Public utility plant on busway land**

‘(1) A public utility provider may do the following things on busway land—

- (a) build, replace or take away, or alter, other than for maintenance or repair, its public utility plant;
- (b) maintain or repair, or alter, for maintenance or repair, its public utility plant;
- (c) take reasonable steps to stop obstruction or potential obstruction to, or interference or potential interference with, its public utility plant.

‘(2) However, the provider may do things mentioned in subsection (1) only if the chief executive agrees in writing.

‘(3) The chief executive must not unreasonably withhold agreement.

‘(4) Despite subsection (2), a public utility provider may, if acting in the interests of public safety, carry out urgent maintenance of its public utility plant on busway land without the written agreement of the chief executive, but only if the provider—

- (a) makes all reasonable attempts to obtain the chief executive’s oral agreement to the carrying out of the maintenance; and
- (b) whether or not the chief executive’s oral agreement is obtained, acts as quickly as possible to advise the chief executive of the details of the maintenance being carried out.

‘(5) Building or altering public utility plant under subsection (1)(a) does not affect the ownership of the plant.

**‘180U Chief executive must give provider information**

‘If asked in writing by a public utility provider, the chief executive must give the provider information about lines and levels for planned busway

transport infrastructure on busway land necessary to enable the provider to minimise possible adverse affects of the establishment of the infrastructure on the provider's works.

**‘180V Public utility provider to consult with chief executive before replacing public utility plant**

‘(1) If a public utility provider proposes to replace the whole or a substantial proportion of its public utility plant on busway land, the provider must, before seeking written agreement under section 180T, consult with the chief executive.

‘(2) The object of the consultation is to identify mutually beneficial arrangements for the replacement of the public utility plant, having regard to existing development plans for the busway land.

**‘180W Public utility provider to comply with chief executive’s agreement**

‘(1) This section applies if, in relation to busway land, a public utility provider does something mentioned in section 180T(1) (the “**relevant action**”)—

- (a) without the written or oral agreement of the chief executive required under section 180T; or
- (b) in a way inconsistent with an agreement with the chief executive; or
- (c) in a way inconsistent with a regulation about how things mentioned in section 180T(1) are to be done.

‘(2) The chief executive may, by written notice given to the public utility provider, require the provider, at the provider’s cost, and within the time stated in the notice, to take action to remedy the relevant action.

‘(3) The time stated in the notice must be a time that is reasonable in the circumstances.

‘(4) If the provider does not comply with the notice, the chief executive may arrange for action the chief executive considers necessary to remedy the relevant action.

‘(5) The chief executive’s reasonable expenses in arranging for the action to be carried out is a debt payable by the provider to the chief executive.

**‘180X Chief executive may require public utility provider to alter position of public utility plant**

‘(1) The chief executive may require a public utility provider to alter the position of the provider’s public utility plant on busway land if the chief executive considers that the plant will interfere with the exercise of the chief executive’s powers for the busway land.

‘(2) The chief executive is responsible only for the cost of altering the position of the public utility plant.

**‘180Y Information by public utility provider to chief executive**

‘(1) If, in relation to public utility plant on busway land, a public utility provider does something mentioned in section 180T(1), the provider must prepare records adequately defining the location of the plant.

‘(2) A public utility provider owning public utility plant located on busway land must, if asked by the chief executive, give the chief executive information adequately defining the location of the plant.

Maximum penalty for subsection (2)—40 penalty units.

**‘180Z Liability for damage caused by failure to comply with request for information**

‘(1) This section applies if—

- (a) the chief executive causes damage to public utility plant located on busway land; and
- (b) before the damage was caused, the chief executive had asked for information under section 180Y(2) from the public utility provider owning the public utility plant; and
- (c) the provider had not, within a reasonable time, complied with the request; and
- (d) the damage was caused because of the failure to comply with the request.

‘(2) Unless the chief executive otherwise agrees, the chief executive is not liable for the damage.

**‘180ZA Liability for damage caused by failure to give enough detail about location of public utility plant**

‘(1) This section applies if—

- (a) the chief executive causes damage to public utility plant located on busway land; and
- (b) information supplied to the chief executive under section 180Y(2) did not define in enough detail the location of the plant; and
- (c) the damage was caused because of the failure to define in enough detail the location of the plant.

‘(2) Unless the chief executive otherwise agrees, the chief executive is not liable for the damage.

**‘180ZB Liability for damage caused because of failure to comply with chief executive’s requirements**

‘(1) This section applies if—

- (a) the chief executive causes damage to public utility plant located on busway land; and
- (b) the damage is caused because the public utility provider owing the plant did something mentioned in section 180T(1) in relation to the plant other than under the chief executive’s requirements under this division.

‘(2) Unless the chief executive otherwise agrees, the chief executive is not liable for the damage.

**‘180ZC Liability of public utility provider to pay additional expenses incurred by chief executive**

‘(1) This section applies if the chief executive incurs additional expense in carrying out busway transport infrastructure works on busway land because a public utility provider—

- (a) did not supply within a reasonable time information asked for by the chief executive under section 180Y(2); or
- (b) in supplying information to the chief executive, did not define in enough detail the location of public utility plant; or

- (c) did something mentioned in section 180T(1) in relation to public utility plant other than under the chief executive's requirements under this division.

‘(2) The public utility provider is liable to pay the chief executive the additional expense.

### **‘180ZD Replacement or reconstruction of public utility plant**

‘(1) If the carrying out of busway transport infrastructure works on busway land by or for the chief executive requires taking away or replacing public utility plant, the chief executive can not be compelled to replace or reconstruct the plant in its previous location and form.

‘(2) If the plant is replaced or reconstructed—

- (a) it must be done under the chief executive's requirements; and
- (b) it must be at the chief executive's expense, but the cost to the chief executive of replacement or reconstruction may be reduced by agreement between the chief executive and the public utility provider owning the plant after taking into account—
  - (i) the remaining life of the plant; and
  - (ii) the salvage or scrap value of the plant; and
  - (iii) additional expense incurred because of inaccurate information supplied by the provider about the location of the plant; and
  - (iv) additional expense incurred because the plant was not constructed in accordance with the chief executive's requirements.

### ***‘Division 4—Use of busway land***

#### **‘180ZE Trespass on busway land**

‘(1) A person must not be on busway land if the person does not have the permission of the chief executive to be on the busway land.

Maximum penalty—40 penalty units.

‘(2) For subsection (1), permission may be given, for example—

- (a) expressly, by signs, structures, textured pavement or painted lines designating points for vehicles or pedestrians to cross the busway land; or
- (b) impliedly, by the absence of demarcation between ordinary road and the pavement of the busway land.

‘(3) Subsection (1) does not apply to a person who is on busway land if, under division 1, the busway land is taken to be—

- (a) a road of which a local government has control under the *Local Government Act 1993*, section 901(1); or
- (b) a State-controlled road.

‘(4) A regulation may include rules about the use by the following of busway land—

- (a) buses operating on a busway established on the busway land;
- (b) persons having the permission of the chief executive to be on the busway land.

### *‘Division 5—Compensation entitlements*

#### **‘180ZF Definitions for div 5**

‘In this division—

**“access”**, for land, means—

- (a) access to the land from the road network, whether or not through other land; or
- (b) access from the land to the road network, whether or not through other land.

**“busway land”** means busway land that, when declared under this chapter to be busway land, was a road or part of a road.

**“establishment”**, of busway transport infrastructure on busway land, includes the following—

- (a) initial construction of the busway transport infrastructure on the busway land;
- (b) construction for changing or adding to busway transport infrastructure previously constructed on the busway land;

- (c) putting in place the arrangements under which persons are permitted or not permitted to be on the busway land.

“**interference**”, with access, includes loss or reduction of access.

#### **‘180ZG No entitlement to compensation for particular matters**

‘(1) A person having an interest in land (the “**relevant land**”) has no entitlement at law, except to the extent this division provides, to compensation for a matter listed in subsection (2), to the extent the matter is caused by—

- (a) the establishment of a busway; or
- (b) the establishment or proposed establishment of busway transport infrastructure on busway land; or
- (c) the operation of a busway on busway land.

‘(2) The matters are—

- (a) the adverse affect on the amenity or likely amenity of the neighbourhood of the relevant land; and
- (b) interference with an activity of a business, commercial, industrial or residential nature carried out on the relevant land; and
- (c) loss or damage arising directly or indirectly from interference with access for the relevant land; and
- (d) the reduction or loss of a right of access for the relevant land and loss or damage caused by the reduction or loss of the right of access.

#### **‘180ZH Compensation for reduced market value of interest in land**

‘(1) A person who has an interest in land (the “**relevant land**”) is entitled to compensation if the establishment of busway transport infrastructure on busway land (the “**infrastructure**”), when completed, is a cause of interference (the “**interference**”) with access for the relevant land.

‘(2) Subsection (1) applies only if—

- (a) either of the following applies—

- (i) the busway land joins directly with the relevant land or with land (“**access land**”) giving access for the relevant land because of an easement or other right or interest;
- (ii) the busway land does not join directly with the relevant land or with access land, but it is possible to travel from the relevant land or access land to the busway land by travelling only over road; and
- (b) the practical effect of the interference is substantially greater in nature and extent than the practical effect of interference with access for the relevant land that might reasonably be expected to be experienced from time to time in changes to the operation of the road network; and
- (c) the practical effect of the interference is that there is a direct and substantial interference with practicable access for the relevant land compared with the practicable access existing for the relevant land before the establishment of the infrastructure.

‘(3) The amount of the compensation is the amount by which the market value of the interest may fairly be said to have been reduced because of the interference now affecting the relevant land.

‘(4) However, the compensation must not be more than the compensation that would have been awarded if the interest had been acquired.

**‘180ZI Compensation of person in actual occupation for interference with enjoyment of land**

‘(1) A person is entitled to compensation if—

- (a) the person is in actual occupation of land (the “**relevant land**”) when the establishment of busway transport infrastructure on busway land (the “**infrastructure**”) is happening or when it is completed; and
- (b) the establishment of the infrastructure is a cause of interference with access (the “**access interference**”) for the relevant land; and
- (c) the access interference is a cause of interference (the “**enjoyment interference**”) with the person’s enjoyment of the relevant land.

‘(2) Subsection (1) applies only if—



- (a) either of the following applies—
  - (i) the busway land joins directly with the relevant land or with land (“**access land**”) giving access for the relevant land because of an easement or other right or interest;
  - (ii) the busway land does not join directly with the relevant land or with access land, but it is possible to travel from the relevant land or access land to the busway land by travelling only over road; and
- (b) the practical effect of the access interference is substantially greater in nature and extent than the practical effects of interference with access for the relevant land that might reasonably be expected to be experienced from time to time in changes to the operation of the road network; and
- (c) the practical effect of the access interference is that there is a direct and substantial interference with practicable access for the relevant land compared with the practicable access existing for the relevant land before the establishment of the infrastructure.

‘(3) The amount of compensation is an amount fairly representing, in the particular circumstances—

- (a) if the person is in occupation of the relevant land at any time during the establishment of the infrastructure—the reasonable cost to the person of the enjoyment interference during the establishment; and
- (b) if the person is in occupation of the relevant land when the establishment of the infrastructure is completed—the reasonable cost to the person of the enjoyment interference, starting from when the establishment of the infrastructure is completed.

‘(4) In calculating the compensation, no regard is to be had to the reduction in the market value of an interest the person may have in the relevant land.

### ‘180ZJ Chief executive may supply or contribute to new access arrangements

‘(1) The chief executive may, having regard to the establishment, or proposed establishment, of busway transport infrastructure on busway land, enter into an agreement with a person who is the owner or occupier of land (the “**relevant land**”) for—

- (a) the supply by the chief executive, or a contribution by the chief executive towards the supply, of works for alternative access for the relevant land; or
- (b) the carrying out, or a contribution towards the carrying out, of other works in relation to the relevant land for the purpose of access for the land.

‘(2) A person’s entitlement to compensation under this division is reduced to the extent provided for in an agreement under subsection (1).

### **‘180ZK Obtaining compensation**

‘(1) A person claiming to be entitled to compensation under this division may apply in writing to the chief executive for the compensation.

‘(2) The application must be made—

- (a) within 12 months after the establishment of busway transport infrastructure on busway land giving rise to the claim for compensation; or
- (b) within a longer time agreed by the chief executive.

‘(3) If, within 60 days after the person applies under subsection (1), or a longer time agreed between the person and the chief executive, no agreement has been reached between the person and the chief executive on the application—

- (a) the person may apply to the Land Court for the compensation; or
- (b) the chief executive may apply to the Land Court to have the compensation decided by the court.

‘(4) The Land Court has jurisdiction to deal with an application made to it under subsection (3), including jurisdiction to require the chief executive to pay the person compensation decided by the court.

‘(5) Nothing in subsection (2)(a) stops a person from applying for compensation before the establishment of the busway transport infrastructure is completed if the claim relates to the person’s occupation of land during the establishment of the infrastructure.

## **‘CHAPTER 7B—LIGHT RAIL AND LIGHT RAIL TRANSPORT INFRASTRUCTURE**

### **‘PART 1—PRELIMINARY**

#### **‘180ZL Definition for ch 7B**

‘In this chapter—

**“construction”**, of light rail transport infrastructure, includes each of the following for the infrastructure, to the extent it involves the development of the light rail transport infrastructure—

- (a) initial construction;
- (b) improvement of its standard;
- (c) realignment;
- (d) widening;
- (e) extension to accommodate the extension of a light rail.

#### **‘180ZM Ways of achieving light rail objectives**

‘The objectives of this Act for light rail are intended to be achieved by—

- (a) developing and putting into effect light rail transport infrastructure strategies; and
- (b) establishing a legal framework to allow the construction, maintenance, management and operation of light rail transport infrastructure in an effective and efficient way.

## **‘PART 2—CHIEF EXECUTIVE’S FUNCTIONS AND POWERS**

### **‘180ZN Functions**

‘The chief executive has the following functions in relation to light rail, including a proposed light rail, and light rail transport infrastructure, including proposed light rail transport infrastructure—

- (a) investigating, planning, establishing, maintaining, managing or operating, or arranging for someone else to investigate, plan, establish, maintain, manage or operate;
- (b) providing or arranging for associated services or works necessary or convenient for effective and efficient construction, management and operation;
- (c) efficiently integrating with any transport infrastructure, including busway transport infrastructure;
- (d) providing for appropriate levels of safety in construction, management and operation;
- (e) doing other things that directly or indirectly—
  - (i) are likely to enhance the provision of light rail transport infrastructure and passenger services on light rail; or
  - (ii) are incidental or complementary to the performance of another function.

### **‘180ZO Authority to enter or temporarily occupy or use land**

‘(1) For the performance of a function under this chapter, the chief executive, or someone authorised in writing by the chief executive, may—

- (a) do 1 or more of the following in relation to land—
  - (i) enter the land, whether or not for temporarily occupying or using the land;
  - (ii) temporarily occupy the land;
  - (iii) temporarily use the land; and
- (b) do anything on the land necessary or convenient for the function, including, for example, for light rail transport infrastructure works.

‘(2) However, the chief executive must not authorise a person to enter land under this section if the entry is a type of entry able to be authorised under an investigator’s authority under chapter 7C.

**‘180ZP When land may be entered, occupied or used**

‘(1) This section applies if a person proposes to enter, occupy or use land under this part.

‘(2) The person may enter, occupy or use the land without the permission of, or notice to, the owner or occupier of the land to perform urgent remedial work to facilitate or maintain the operation of light rail transport infrastructure.

‘(3) However, the person must, if practicable, notify the occupier orally or in writing before entering the land.

‘(4) If the entry, occupation or use is other than for the performance of urgent remedial work, the person may enter, occupy or use the land if the person—

- (a) obtains the written permission of—
  - (i) each person who is an owner of the land; and
  - (ii) each person who is an occupier of the land; or
- (b) gives at least 7 days written notice to the occupier before the entry, occupation or use.

‘(5) The notice under subsection (4)(b) must state—

- (a) all works proposed to be performed; and
- (b) all uses proposed to be made of the land; and
- (c) details of anything else proposed to be done on the land; and
- (d) the approximate period when occupation or use is expected to continue; and
- (e) that an owner or occupier of the land may claim compensation from the chief executive for loss or damage caused by the entry, occupation or use.

‘(6) A notice may be given under this section even though it is proposed to resume the land for light rail transport infrastructure.

‘(7) Power to enter, occupy or use land under this part does not authorise entry, occupation or use of a structure on the land used solely for residential purposes without the permission of the occupier of the land.

### **‘180ZQ Compensation**

‘(1) This section applies if land is entered, occupied or used under this part.

‘(2) An owner or occupier of the land may claim compensation from the chief executive for loss or damage caused by the entry, occupation or use, including by the taking or consumption of materials.

‘(3) However, compensation is payable only if written notice of the claim or proposed claim is given to the chief executive—

- (a) after the loss or damage happens, but within 1 year after the entry, occupation or use ends; or
- (b) at a later time allowed by the chief executive.

‘(4) In the absence of agreement between the owner or occupier and the chief executive about the payment of compensation, payment of compensation may be claimed and ordered in a proceeding brought in the Land Court.

‘(5) The Land Court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

‘(6) Compensation paid under this section for loss or damage caused to land must not be more than the compensation that would have been awarded if the land had been acquired.

## **‘PART 3—ESTABLISHMENT OF LIGHT RAIL**

### **‘180ZR Definition for pt 3**

‘In this part—

“**road**” means a road under the *Land Act 1994*, but does not include a State-controlled road.

**‘180ZS Declaration of land as light rail land**

‘(1) The Minister may, by gazette notice, declare land to be light rail land.

‘(2) Land declared to be light rail land—

(a) must be—

- (i) identified specifically in the gazette notice; or
- (ii) identified generally in the gazette notice, and identified specifically in documents described in the gazette notice and available for perusal at an office of the department mentioned in the gazette notice; and

(b) must consist only of land for a light rail and necessary light rail transport infrastructure.

‘(3) The identification of land declared to be light rail land may, but need not, be by reference to strata occupied by the land.

‘(4) Land may be declared to be light rail land only if it is—

- (a) land acquired by the State or the chief executive for light rail purposes, including for light rail transport infrastructure; or
- (b) busway land, but only if it is the subject of a lease to the State under the *Land Act 1994*, section 17;<sup>42</sup> or
- (c) a road.

**‘180ZT Effect on land of light rail declaration**

‘(1) If a road or a part of a road is declared under this part to be light rail land, the road or part—

- (a) stops being a road; and
- (b) becomes unallocated State land.

‘(2) If a lot or a part of a lot under the *Land Title Act 1994* is declared under this part to be light rail land, the lot or part becomes unallocated State land.

‘(3) If busway land is declared under this part to be light rail land—

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42 *Land Act 1994*, section 17 (Granting land to the State)

- (a) any lease of the land under the *Land Act 1994*, section 17 provided for under chapter 7A ends; and
- (b) the land stops being busway land and becomes unallocated State land.

‘(4) Light rail land can not be declared under section 23 to be a State-controlled road.

‘(5) The Governor in Council must lease light rail land that is unallocated State land to the State under the *Land Act 1994*, section 17.

‘(6) The lease is in perpetuity and, if demanded, for a rent of \$1 a year.

#### **‘180ZU Sublease of lease of light rail land**

‘(1) The State may sublease its lease of light rail land to a light rail manager for a light rail established or proposed to be established on the light rail land on terms negotiated and agreed between the parties.

‘(2) For the *Land Act 1994*, section 332(1)(b),<sup>43</sup> the light rail manager is eligible to hold a sublease of the lease.

‘(3) The first sublease under subsection (1) (the “**original sublease**”) may include an option to renew the sublease, and any subsequent sublease may in turn include an option to renew.

‘(4) The terms of any option and any subsequent sublease are to be those negotiated and agreed between the parties.

‘(5) The *Land Act 1994*, section 336(2)(a)<sup>44</sup> does not apply to a document of amendment of the original sublease or any subsequent sublease.

‘(6) If the light rail manager attaches light rail transport infrastructure to the land the subject of the original sublease or a subsequent sublease, the infrastructure immediately becomes the property of the chief executive unless the parties to the sublease agree it is to become the property of the chief executive at a later time.

‘(7) Despite any agreement under subsection (6), the infrastructure, if it has not already become the property of the chief executive, becomes the property of the chief executive—

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<sup>43</sup> *Land Act 1994*, section 332 (Subleases require Minister’s approval)

<sup>44</sup> *Land Act 1994*, section 336 (Amending a sublease)



- (a) if there is no subsequent sublease—at the end of the original sublease; or
- (b) if there is only 1 subsequent sublease—at the end of the subsequent sublease; or
- (c) if there are 2 or more subsequent subleases—at the end of the last of the subsequent subleases.

‘(8) Neither the original sublease nor any subsequent sublease stops being a sublease only because—

- (a) under part 4, land the subject of the sublease is taken to be a State-controlled road or a road under the control of a local government; or
- (b) persons are expressly or impliedly permitted by the chief executive under this chapter to be on the subleased land.

‘(9) This section does not stop the granting of a lease or sublease to a light rail manager for a light rail, other than under this section, of land that is not light rail land but on which there is, or is proposed to be, light rail transport infrastructure.

‘(10) In this section—

“**light rail land**” means light rail land that is leased to the State under the *Land Act 1994*, section 17.<sup>45</sup>

### **‘180ZV Development of light rail and light rail transport infrastructure**

‘(1) This section applies to the establishment of a light rail, including all investigating, planning, maintaining, managing, operating, and arranging for the light rail or for light rail transport infrastructure for the light rail.

‘(2) Nothing in this chapter is intended to affect the operation of the *Integrated Planning Act 1997* to the extent that the establishment of the light rail is development under that Act.

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<sup>45</sup> *Land Act 1994*, section 17 (Granting land to the State)

## **‘PART 4—MANAGEMENT OF LIGHT RAIL LAND AND LIGHT RAIL TRANSPORT INFRASTRUCTURE**

### *‘Division 1—Transport infrastructure interaction*

#### **‘180ZW Altering road levels by a local government**

‘(1) The chief executive may require a local government having control of a road to alter the level of the road for—

- (a) light rail transport infrastructure works; or
- (b) the management or operation of a light rail.

‘(2) However, the chief executive—

- (a) must consult with the local government about the nature and extent of the alteration of the level of the road before the alteration is started; and
- (b) subject to an agreement between the chief executive and the local government arising out of the consultation, pay all reasonable costs incurred by the local government in altering the road level.

‘(3) The local government must comply with the chief executive’s requirements.

#### **‘180ZX Permitted construction by local government of roads over or under light rail land**

‘(1) Despite section 180ZT(1), the chief executive may permit a local government to construct, maintain and operate a road located on light rail land, consisting of—

- (a) a bridge or other structure allowing traffic to pass over the level at which light rail vehicles use the light rail land; or
- (b) a structure allowing traffic to pass under the level at which light rail vehicles use the light rail land.

‘(2) However, if there is a light rail manager for a light rail established on the light rail land, the chief executive must consult with the light rail manager before deciding whether to give the permission.

‘(3) The permission may be given on reasonable conditions.

‘(4) In deciding whether to give the permission, the chief executive must consider the limiting effect the use of the road is likely to have on the use of the light rail land for light rail passenger services.

‘(5) While the bridge or other structure is being used for the road—

- (a) none of the following has any duty or liability for the road or its use or operation—
  - (i) the chief executive;
  - (ii) if there is a light rail manager for a light rail established on the light rail land, the manager;
  - (iii) if there is a light rail operator for a light rail established on the light rail land, the operator; and
- (b) the road is taken to be a road of which the local government has control under the *Local Government Act 1993*, section 901(1); and
- (c) the road is taken to be a road under any Act about the use of vehicles on a road.

‘(6) Unless the chief executive and the local government otherwise agree—

- (a) the local government is responsible for maintaining the road and the bridge or other structure; and
- (b) if the bridge or other structure stops being used for the road, the local government is responsible for the cost of taking the bridge or other structure away and of restoring the light rail land.

**‘180ZY Designation of light rail land for use as road under local government control**

‘(1) Despite section 180ZT(1), the chief executive may, by gazette notice, designate light rail land described in the notice as light rail land that is to be used as a road under a local government’s control.

‘(2) The chief executive must also—

- (a) give a copy of the notice to the local government; and
- (b) publish a copy of the notice in a newspaper circulating generally in the area of the light rail land.

‘(3) If there is a light rail manager for a light rail established on the light rail land, the chief executive must consult with the light rail manager before designating the light rail land under the notice.

‘(4) The land described in the notice must be land generally suitable for both of the following—

- (a) use as a road;
- (b) the operation of a light rail.

‘(5) The notice may include directions with which the local government must comply, including directions about the local government’s exercise of powers under the *Local Government Act 1993* for roads it controls.

‘(6) However, the chief executive must consult with the local government before including any directions in the notice.

‘(7) While the notice is in force, the land described in the notice is taken to be—

- (a) a road of which the local government has control under the *Local Government Act 1993*, section 901(1); and
- (b) a road under any Act about the use of vehicles on a road.

‘(8) However, in taking the necessary steps mentioned in the *Local Government Act 1993*, section 901(2), the local government must comply with all directions included in the notice, including the notice as amended from time to time.

### **‘180ZZ Designation of light rail land for use as State-controlled road**

‘(1) Despite section 180ZT(1), the Minister may, by gazette notice, designate light rail land described in the notice as light rail land to be used as a State-controlled road.

‘(2) The Minister must also publish a copy of the notice in a newspaper circulating generally in the area of the light rail land.

‘(3) If there is a light rail manager for a light rail established on the light rail land, the Minister must consult with the manager before designating the light rail land under the notice.

‘(4) The land described in the notice must be land generally suitable for both of the following—

- (a) use as a State-controlled road;

(b) the operation of a light rail.

‘(5) The notice may include operational arrangements applying to the use of the light rail land as a State-controlled road.

‘(6) While the notice is in force, the land described in the notice is, except to the extent provided for in the notice, taken to be—

- (a) a State-controlled road for the provisions of this Act, other than chapter 5, part 2, division 1 and part 5, division 3,<sup>46</sup> and of any other Act, applying to State-controlled roads; and
- (b) a road under any Act about the use of vehicles on a road.

### **‘180ZZA No presumption of dedication of road**

‘(1) This section applies if the public uses light rail land as a road, or for access purposes other than as a road.

‘(2) The light rail land does not at law, either because the use is authorised or permitted by the chief executive or for another reason, become dedicated to public use as a road.

### ***‘Division 2—Interfering with light rail transport infrastructure***

### **‘180ZZB Interfering with light rail transport infrastructure**

‘(1) A person must not interfere with or carry out works on light rail transport infrastructure unless—

- (a) the person has the written approval of—
  - (i) if there is a light rail manager for a light rail established for the light rail transport infrastructure—the manager; or
  - (ii) otherwise—the chief executive; or
- (b) the interference or works are for the construction, maintenance or operation of a road permitted under this part to be constructed, maintained and operated across, over or under the light rail transport infrastructure; or

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<sup>46</sup> Chapter 5 (Road transport infrastructure), part 2 (State-controlled roads), division 1 (Declaration of State-controlled roads) and part 5 (Management of State-controlled roads), division 3 (Public utility plant on State-controlled roads)

- (c) the interference or works are otherwise authorised under this Act or another Act.

Maximum penalty—160 penalty units.

‘(2) Subsection (1) applies even if the interference or works are for the carrying out of functions that apart from subsection (1) are lawful on light rail land that, under division 1, is taken to be—

- (a) a road of which a local government has control under the *Local Government Act 1993*, section 901(1); or
- (b) a State-controlled road for provisions of any Act applying to State-controlled roads.

‘(3) An approval under subsection (1)(a) may be given on reasonable conditions.

‘(4) However, a light rail manager for a light rail may give the approval only if the chief executive—

- (a) has been consulted about the giving of the approval; and
- (b) has approved all conditions to which the approval is subject.

‘(5) The person given the approval must comply with the conditions of the approval.

Maximum penalty—40 penalty units.

‘(6) Subsection (1) does not apply to the carrying out of urgent maintenance of a light rail or light rail transport infrastructure.

### **‘180ZZC Rectifying unauthorised interference or works**

‘(1) This section applies if a person (the **“identified person”**) interferes with or carries out works on light rail transport infrastructure in contravention of section 180ZZB(1).

‘(2) If there is a light rail manager for a light rail established for the light rail transport infrastructure, the manager may, by written notice given to the identified person, require the person to rectify the interference or the effect of the carrying out of the works within a stated reasonable time.

‘(3) The light rail manager may give the identified person the notice only if the chief executive—

- (a) has been consulted about the giving of the notice; and
- (b) has approved the terms of the notice.

‘(4) If subsection (2) does not apply, the chief executive may, by written notice given to the identified person, require the person to rectify the interference, or the effect of the carrying out of the works, within a stated reasonable time.

‘(5) The identified person must comply with a notice given under subsection (2) or (4), unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

‘(6) If the identified person does not comply with the notice, the person who gave the notice (the “**notifier**”) may rectify the interference or the effect of the carrying out of the works.

‘(7) The identified person must pay the amount of the notifier’s reasonable costs of—

- (a) rectifying the interference or the effect of the carrying out of the works; or
- (b) changing the way the light rail transport infrastructure is built, maintained or operated because of the interference or the effect of the carrying out of the works.

‘(8) The notifier may recover the amount as a debt.

‘(9) In this section—

“**rectify the interference**” includes the following—

- (a) alter, dismantle or take away works;
- (b) fix damage caused by the interference.

### *‘Division 3—Public utility plant*

#### **‘180ZZD Definitions for div 3**

‘In this division—

“**busway land**” means busway land that, when declared under chapter 7A to be busway land, was a road or part of a road.

“**light rail authority**”, for light rail land, means—

- (a) if there is a light rail manager for a light rail established, or proposed to be established, on the light rail land—each of the following—

- (i) the chief executive;
- (ii) the light rail manager; or
- (b) otherwise—the chief executive.

**“light rail land”** means light rail land that, when declared under this chapter to be light rail land, was—

- (a) a road or part of a road; or
- (b) busway land.

#### **‘180ZZE Retention of ownership of public utility plant**

‘(1) This section applies if, immediately before the declaration of land as light rail land public utility plant is located on the land.

‘(2) The declaration does not affect the ownership of the public utility plant.

#### **‘180ZZF Public utility plant on light rail land**

‘(1) A public utility provider may do the following things on light rail land—

- (a) build, replace or take away, or alter, other than for maintenance or repair, its public utility plant;
- (b) maintain or repair, or alter, for maintenance or repair, its public utility plant;
- (c) take reasonable steps to stop obstruction or potential obstruction to, or interference or potential interference with, its public utility plant.

‘(2) However, the provider may do things mentioned in subsection (1) only if each light rail authority for the light rail land agrees in writing.

‘(3) A light rail authority must not unreasonably withhold agreement.

‘(4) Despite subsection (2), a public utility provider may, if acting in the interests of public safety, carry out urgent maintenance of its public utility plant on light rail land without the written agreement of each light rail authority for the light rail land, but only if the provider—

- (a) makes all reasonable attempts to obtain each authority’s oral agreement to the carrying out of the maintenance; and



- (b) whether or not each authority's oral agreement is obtained, acts as quickly as possible to advise each authority of the details of the maintenance being carried out.

‘(5) Building or altering public utility plant does not affect the ownership of the plant.

**‘180ZZG Chief executive must give provider information**

‘If asked in writing by a public utility provider, the chief executive must give the provider information about lines and levels for planned light rail transport infrastructure on light rail land necessary to enable the provider to minimise possible adverse affects of the establishment of the infrastructure on the provider's works.

**‘180ZZH Public utility provider to consult with chief executive before replacing public utility plant**

‘(1) If a public utility provider proposes to replace the whole or a substantial proportion of its public utility plant on light rail land, the provider must, before seeking written agreement under section 180ZZF, consult with each entity that is a light rail authority for the light rail land.

‘(2) The object of the consultation is to identify mutually beneficial arrangements for the replacement of the public utility plant, having regard to existing development plans for the light rail land.

**‘180ZZI Public utility provider to comply with light rail authority's agreement**

‘(1) This section applies if, in relation to light rail land, a public utility provider does something mentioned in section 180ZZF(1) (the “**relevant action**”)—

- (a) without the written or oral agreement of a light rail authority required under section 180ZZF; or
- (b) in a way inconsistent with an agreement with a light rail authority for the light rail land; or
- (c) in a way inconsistent with a regulation about how things mentioned in section 180ZZF(1) are to be done.

‘(2) If this section applies because of subsection (1)(a) or (b), the light rail authority may, by written notice given to the public utility provider, require the provider, at the provider’s cost, and within the time stated in the notice, to take action to remedy the relevant action.

‘(3) If this section applies because of subsection (1)(c), the chief executive may, by written notice given to the public utility provider, require the provider, at the provider’s cost, and within the time stated in the notice, to take action to remedy the relevant action.

‘(4) The time stated in a notice under subsection (2) or (3) must be a time that is reasonable in the circumstances.

‘(5) If the provider does not comply with the notice, the light rail authority giving the notice to the provider may arrange for action the authority considers necessary to remedy the relevant action.

‘(6) The light rail authority’s reasonable expenses in arranging for the action to be carried out is a debt payable by the provider to the light rail authority.

**‘180ZZJ Chief executive may require public utility provider to alter position of public utility plant**

‘(1) The chief executive may require a public utility provider to alter the position of the provider’s public utility plant on light rail land if the chief executive considers that the plant will interfere with the exercise of the chief executive’s powers for the light rail land.

‘(2) The chief executive is responsible only for the cost of altering the position of the public utility plant.

**‘180ZZK Information by public utility provider to chief executive**

‘(1) If, in relation to public utility plant on light rail land, a public utility provider does something mentioned in section 180ZZF(1), the provider must prepare records adequately defining the location of the plant.

‘(2) A public utility provider owning public utility plant located on light rail land must, if asked by a light rail authority for the light rail land, give the light rail authority information adequately defining the location of the plant.

Maximum penalty for subsection (2)—40 penalty units.

**‘180ZZL Liability for damage caused by failure to comply with request for information**

‘(1) This section applies if—

- (a) a light rail authority for light rail land causes damage to public utility plant located on the light rail land; and
- (b) before the damage was caused, the light rail authority had asked for information under section 180ZZK(2) from the public utility provider owning the public utility plant; and
- (c) the provider had not, within a reasonable time, complied with the request; and
- (d) the damage was caused because of the failure to comply with the request.

‘(2) Unless the light rail authority otherwise agrees, the authority is not liable for the damage.

**‘180ZZM Liability for damage caused by failure to give enough detail about location of public utility plant**

‘(1) This section applies if—

- (a) a light rail authority for light rail land cause damage to public utility plant located on the light rail land; and
- (b) information supplied to the light rail authority under section 180ZZK(2) did not define in enough detail the location of the plant; and
- (c) the damage was caused because of the failure to define in enough detail the location of the plant.

‘(2) Unless the light rail authority otherwise agrees, the authority is not liable for the damage.

**‘180ZZN Liability for damage caused because of failure to comply with light rail authority’s requirements**

‘(1) This section applies if—

- (a) a light rail authority for light rail land causes damage to public utility plant located on the light rail land; and

- (b) the damage was caused because the public utility provider owing the plant did something mentioned in section 180ZZF(1) in relation to the plant other than under the light rail authority's requirements under this division.

‘(2) Unless the light rail authority otherwise agrees, the authority is not liable for the damage.

**‘180ZZO Liability of public utility provider to pay additional expenses incurred by light rail authority**

‘(1) This section applies if a light rail authority for light rail land incurs additional expense in carrying out light rail transport infrastructure works on the light rail land because a public utility provider—

- (a) did not supply within a reasonable time information asked for by the authority under section 180ZZK(2); or
- (b) in supplying information to the authority, did not define in enough detail the location of public utility plant; or
- (c) did something mentioned in section 180ZZF(1) in relation to public utility plant other than under the authority's requirements under this division.

‘(2) The public utility provider is liable to pay the light rail authority the additional expense.

**‘180ZZP Replacement or reconstruction of public utility plant**

‘(1) If the carrying out of light rail transport infrastructure works by or for a light rail authority for light rail land requires taking away or replacing public utility plant, the light rail authority can not be compelled to replace or reconstruct the plant in its previous location and form.

‘(2) If the plant is replaced or reconstructed—

- (a) it must be done under the light rail authority's requirements; and
- (b) it must be at the authority's expense, but the cost to the authority of replacement or reconstruction may be reduced by agreement between the authority and the public utility provider owning the plant after taking into account—
  - (i) the remaining life of the plant; and
  - (ii) the salvage or scrap value of the plant; and

- (iii) additional expense incurred because of inaccurate information supplied by the provider about the location of the plant; and
- (iv) additional expense incurred because the plant was not constructed in accordance with the authority's requirements.

***‘Division 4—Use of light rail land***

**‘180ZZQ Trespass on light rail land**

‘(1) A person must not be on light rail land if the person does not have the permission of the relevant person for the light rail land to be on the light rail land

Maximum penalty—40 penalty units.

‘(2) For subsection (1), permission may be given, for example—

- (a) expressly, by signs, structures, textured pavement or painted lines designating points for vehicles or pedestrians to cross the light rail land; or
- (b) impliedly, by the absence of demarcation between ordinary road and pavement incorporating light rail track on the light rail land.

‘(3) Subsection (1) does not apply to a person who is on light rail land if, under division 1, the light rail land is taken to be—

- (a) a road of which a local government has control under the *Local Government Act 1993*, section 901(1); or
- (b) a State-controlled road.

‘(4) A regulation may include rules about the use by the following of light rail land—

- (a) light rail vehicles operating on a light rail established on the light rail land;
- (b) persons having the permission of the relevant person for the light rail land to be on the light rail land.

‘(5) In this section—

**“relevant person”**, for light rail land, means—

- (a) if there is a light rail manager for a light rail established on the light rail land—the light rail manager; or
- (b) otherwise—the chief executive.

### ***‘Division 5—Compensation entitlements***

#### **‘180ZZR Definitions for div 5**

‘In this division—

**“access”**, for land, means—

- (a) access to the land from the road network, whether or not through other land; or
- (b) access from the land to the road network, whether or not through other land.

**“busway land”** means busway land that, when declared under chapter 7A to be busway land, was a road or part of a road.

**“establishment”**, of light rail transport infrastructure on light rail land, includes the following—

- (a) initial construction of the light rail transport infrastructure on the light rail land;
- (b) construction for changing or adding to light rail transport infrastructure previously constructed on the light rail land;
- (c) putting in place the arrangements under which persons are permitted or not permitted to be on the light rail land.

**“interference”**, with access, includes loss or reduction of access.

**“light rail land”** means light rail land that, when declared under this chapter to be light rail land, was—

- (a) a road or part of a road; or
- (b) busway land.

#### **‘180ZZS No entitlement to compensation for particular matters**

‘(1) A person having an interest in land (the **“relevant land”**) has no entitlement at law, except to the extent this division provides, to

compensation for a matter listed in subsection (2), to the extent the matter is caused by—

- (a) the establishment of a light rail; or
- (b) the establishment or proposed establishment of light rail transport infrastructure on light rail land; or
- (c) the operation of a light rail on light rail land.

‘(2) The matters are—

- (a) the adverse affect on the amenity or likely amenity of the neighbourhood of the relevant land; and
- (b) interference with an activity of a business, commercial, industrial or residential nature carried out on the relevant land; and
- (c) loss or damage arising directly or indirectly from interference with access for the relevant land; and
- (d) the reduction or loss of a right of access for the relevant land and loss or damage caused by the reduction or loss of the right of access.

### ‘180ZZS Compensation for reduced market value of interest in land

‘(1) A person who has an interest in land (the “**relevant land**”) is entitled to compensation if the establishment of light rail transport infrastructure on light rail land (the “**infrastructure**”), when completed, is a cause of interference (the “**interference**”) with access for the relevant land.

‘(2) Subsection (1) applies only if—

- (a) either of the following applies—
  - (i) the light rail land joins directly with the relevant land or with land (“**access land**”) giving access for the relevant land because of an easement or other right or interest;
  - (ii) the light rail land does not join directly with the relevant land or with access land, but it is possible to travel from the relevant land or access land to the light rail land by travelling only over road; and
- (b) the practical effect of the interference is substantially greater in nature and extent than the practical effect of interference with access for the relevant land that might reasonably be expected to

be experienced from time to time in changes to the operation of the road network; and

- (c) the practical effect of the access interference is that there is a direct and substantial interference with practicable access for the relevant land compared with the practicable access existing for the relevant land before the establishment of the infrastructure.

‘(3) The amount of the compensation is the amount by which the market value of the interest may fairly be said to have been reduced because of the interference now affecting the relevant land.

‘(4) However, the compensation must not be more than the compensation that would have been awarded if the interest had been acquired.

**‘180ZZU Compensation of person in actual occupation for interference with enjoyment of land**

‘(1) A person is entitled to compensation if—

- (a) the person is in actual occupation of land (the “**relevant land**”) when the establishment of light rail transport infrastructure on light rail land (the “**infrastructure**”) is happening or when it is completed; and
- (b) the establishment of the infrastructure is a cause of interference with access (the “**access interference**”) for the relevant land; and
- (c) the access interference is a cause of interference (the “**enjoyment interference**”) with the person’s enjoyment of the relevant land.

‘(2) Subsection (1) applies only if—

- (a) either of the following applies—
  - (i) the light rail land joins directly with the relevant land or with land (“**access land**”) giving access for the relevant land because of an easement or other right or interest;
  - (ii) the light rail land does not join directly with the relevant land or with access land, but it is possible to travel from the relevant land or access land to the light rail land by travelling only over road; and
- (b) the practical effect of the access interference is substantially greater in nature and extent than the practical effects of



interference with access for the relevant land that might reasonably be expected to be experienced from time to time in changes to the operation of the road network; and

- (c) the practical effect of the access interference is that there is a direct and substantial interference with practicable access for the relevant land compared with the practicable access existing for the relevant land before the infrastructure.

‘(3) The amount of compensation is an amount fairly representing, in the particular circumstances—

- (a) if the person is in occupation of the relevant land at any time during the establishment of the infrastructure—the reasonable cost to the person of the enjoyment interference during the establishment; and
- (b) if the person is in occupation of the relevant land when the establishment of the infrastructure is completed—the reasonable cost to the person of the enjoyment interference, starting from when the establishment of the infrastructure is completed.

‘(4) In calculating the compensation, no regard is to be had to the reduction in the market value of an interest the person may have in the relevant land.

### **‘180ZZV Chief executive may supply or contribute to new access arrangements**

‘(1) The chief executive may, having regard to the establishment, or proposed establishment, of light rail transport infrastructure on light rail land, enter into an agreement with a person who is the owner or occupier of land (the “**relevant land**”) for—

- (a) the supply by the chief executive, or a contribution by the chief executive towards the supply, of works for alternative access for the relevant land; or
- (b) the carrying out, or a contribution towards the carrying out, of other works in relation to the relevant land for the purpose of access for the land.

‘(2) A person’s entitlement to compensation under this division is reduced to the extent provided for in an agreement under subsection (1).

**‘180ZZW Obtaining compensation**

‘(1) A person claiming to be entitled to compensation under this division may apply in writing to the chief executive for the compensation.

‘(2) The application must be made—

- (a) within 12 months after the establishment of light rail transport infrastructure on light rail land giving rise to the claim for compensation; or
- (b) within a longer time agreed by the chief executive.

‘(3) If, within 60 days after the person applies under subsection (1), or a longer time agreed between the person and the chief executive, no agreement has been reached between the person and the chief executive on the application—

- (a) the person may apply to the Land Court for the compensation; or
- (b) the chief executive may apply to the Land Court to have the compensation decided by the court.

‘(4) The Land Court has jurisdiction to deal with an application made to it under subsection (3), including jurisdiction to require the chief executive to pay the person compensation decided by the court.

‘(5) Nothing in subsection (2)(a) stops a person from applying for compensation before the establishment of the light rail transport infrastructure is completed if the claim relates to the person’s occupation of land during the establishment of the infrastructure.

**‘PART 5—ACCREDITATION PROVISIONS FOR LIGHT RAIL****‘180ZZX Reference to light rail in pt 5**

‘In this part, other than in this section, section 180ZZY and section 180ZZZM, a reference to a light rail is a reference to a light rail that is—

- (a) established on light rail land; or
- (b) proposed to be established on light rail land; or

- (c) proposed to be established on land proposed to become light rail land.

#### **‘180ZZY Accreditation of managers and operators**

‘(1) A person must not manage a light rail on light rail land unless the person is accredited as the light rail manager for the light rail.

Maximum penalty—160 penalty units.

‘(2) A person must not operate rolling stock on a light rail on light rail land unless the person is accredited as a light rail operator for the light rail.

Maximum penalty—160 penalty units.

#### **‘180ZZZ Applications for accreditation**

‘A person may apply to the chief executive for accreditation as—

- (a) the light rail manager for a light rail; or
- (b) a light rail operator for a light rail; or
- (c) the light rail manager and a light rail operator for a light rail.

#### **‘180ZZZA Additional information for applications**

‘(1) The chief executive may, by written notice, require an applicant to give the chief executive the stated written information the chief executive reasonably requires to consider the application.

‘(2) The chief executive may reject the application if the applicant does not comply with the requirement within a stated reasonable time, not less than 28 days, without reasonable excuse.

#### **‘180ZZZB Giving accreditation**

‘(1) The chief executive must promptly consider an application for accreditation and give, or refuse to give, the accreditation.

‘(2) The chief executive must accredit an applicant as the light rail manager for a light rail if satisfied—

- (a) the applicant—

- (i) is accredited in another State to manage a similar type of light rail; or
- (ii) has the competency and capacity to manage the light rail safely; and
- (b) the applicant has an appropriate safety management system; and
- (c) the applicant has the financial capacity or public risk insurance arrangements to meet reasonable potential accident liabilities for the light rail; and
- (d) the applicant has rights of access to all land the applicant needs for the establishment and operation of the light rail; and
- (e) the applicant has rights to the use of all light rail transport infrastructure and other infrastructure the applicant needs for the establishment and operation of the light rail.

‘(3) The chief executive must accredit an applicant as a light rail operator for a light rail if satisfied—

- (a) the applicant—
  - (i) is accredited in another State to operate rolling stock on a light rail for a similar type of service; or
  - (ii) has the competency and capacity to operate rolling stock on the light rail safely; and
- (b) the applicant has an appropriate safety management system; and
- (c) the applicant has the financial capacity or public risk insurance arrangements to meet reasonable potential accident liabilities for the light rail; and
- (d) the applicant has or will have an agreement with the light rail’s manager that—
  - (i) authorises the applicant to operate particular rolling stock on the light rail; and
  - (ii) includes appropriate arrangements for the safe operation of the rolling stock.

‘(4) Subsection (3)(d) does not apply if the applicant is applying for accreditation as both the light rail manager and the light rail operator for the light rail.

‘(5) In considering a safety management system, the chief executive must consider—

- (a) what the applicant proposes for the light rail; and
- (b) the appropriateness of the safety management system for what the applicant proposes; and
- (c) the safety levels achievable, consistent with the nature of what the applicant proposes, at a reasonable cost; and
- (d) the need for efficient and competitive light rail transport services; and
- (e) consistency with generally accepted risk management principles; and
- (f) the levels of safety proposed compared with the levels of safety of competing transport modes.

‘(6) Subsection (5) does not limit what the chief executive may consider in considering a safety management system.

‘(7) If the chief executive decides to give the accreditation, the chief executive must promptly give the applicant a written notice stating—

- (a) the decision; and
- (b) the details of the accreditation, including its scope; and
- (c) if the accreditation is given on conditions—
  - (i) the details of the conditions; and
  - (ii) the reason for the conditions.

‘(8) If the chief executive decides not give the accreditation, the chief executive must promptly give the applicant a written notice stating—

- (a) the decision; and
- (b) the reason for the decision.

‘(9) A written notice given under subsection (7) or (8) must be accompanied by an information notice for the decision the subject of the notice.

### **‘180ZZZC Annual levy**

‘(1) A regulation may impose levies on light rail managers and operators for light rail relating to their accreditation on a basis prescribed under the regulation.

‘(2) The chief executive must give each light rail manager and light rail operator for a light rail written notice of the amount of a levy applying to the manager or operator.

‘(3) The chief executive may recover the amount of a levy as a debt owed to the chief executive.

**‘180ZZZD Accreditation conditions**

‘(1) An accreditation may be subject to conditions.

‘(2) For the accreditation of a person as the light rail manager for a light rail, a condition must be about—

- (a) constructing or maintaining the light rail; or
- (b) managing the light rail safely, considering the need for efficient and competitive services.

‘(3) For the accreditation of a person as a light rail operator for a light rail, a condition must be about—

- (a) operating rolling stock safely, considering the need for efficient and competitive services; or
- (b) the person having an agreement with the light rail’s manager that—
  - (i) authorises the person to operate particular rolling stock on the light rail; and
  - (ii) includes appropriate arrangements for the safe operation of the rolling stock.

‘(4) However, for either type of accreditation, a condition may also be about—

- (a) the person’s financial capacity or public risk insurance arrangements to meet reasonable potential accident liabilities for the light rail; or
- (b) paying accreditation fees; or
- (c) something else prescribed under a regulation.

‘(5) An accredited person must comply with each condition of the person’s accreditation.

Maximum penalty for subsection (5)—40 penalty units.

**‘180ZZZE Requiring accreditation conditions to be complied with**

‘(1) This section applies if the chief executive reasonably believes an accredited person has not complied with a condition of the person’s accreditation.

‘(2) The chief executive may, by written notice, require the person to remedy the breach within a reasonable period stated in the notice.

‘(3) If the person has not complied with the condition of the person’s accreditation, the person must comply with the notice.

Maximum penalty for subsection (3)—60 penalty units.

**‘180ZZZF Accreditation period**

‘An accreditation remains in force until it is suspended, cancelled or surrendered.

**‘180ZZZG Amending accreditation conditions on application**

‘(1) An accredited person may apply to the chief executive for an amendment of the conditions of the person’s accreditation.

‘(2) The chief executive must consider the application and decide whether to make the amendment.

‘(3) The chief executive may amend a condition only if satisfied the condition is—

- (a) no longer appropriate; or
- (b) no longer consistent with generally accepted risk management principles.

‘(4) If the chief executive decides to amend a condition, the chief executive must promptly give the applicant a written notice stating the decision and the amendment.

‘(5) If the chief executive decides not to amend a condition, the chief executive must promptly give the applicant a written notice stating—

- (a) the decision; and
- (b) the reason for the decision.

‘(6) A written notice given under subsection (5) must be accompanied by an information notice for the decision the subject of the notice.

‘(7) If the chief executive does not decide the application within 70 days after it is made, the chief executive is taken to have made the amendment sought by the accredited person at the end of the 70 days.

### **‘180ZZZH Amending accreditation conditions without application**

‘(1) This section applies if the chief executive considers the conditions of a person’s accreditation should be amended but the person has not applied for the proposed amendment.

‘(2) Before amending the conditions, the chief executive must give the person a written notice—

- (a) stating the proposed amendment; and
- (b) stating the reason for the proposed amendment; and
- (c) inviting the person to show, within a stated time of at least 28 days, why the proposed amendment should not be made.

‘(3) If, after considering all written representations made within the stated time, the chief executive still considers the conditions should be amended, the chief executive may amend the conditions—

- (a) in the way proposed; or
- (b) in another way, having regard to the representations.

‘(4) The chief executive must inform the person of the decision by written notice.

‘(5) If the chief executive decides to amend the conditions, the notice must also state—

- (a) the amendment; and
- (b) the reason for the decision.

‘(6) A written notice given under subsections (4) and (5) must be accompanied by an information notice for the decision the subject of the notice.

‘(7) Subsections (2) to (5) do not apply if the chief executive proposes to amend the conditions of a person’s accreditation for a formal or clerical reason not adversely affecting the person’s interests.

‘(8) The chief executive may amend a condition in a way mentioned in subsection (7) by written notice given to the person.



**‘180ZZZI Suspending or cancelling accreditation**

‘(1) This section applies if the chief executive—

- (a) reasonably suspects an accredited person has not complied with a condition of the person’s accreditation; and
- (b) considers the person’s accreditation should be suspended or cancelled (the “**proposed action**”).

‘(2) Before taking the proposed action, the chief executive must give the person a written notice—

- (a) stating the proposed action; and
- (b) stating the reason for the proposed action; and
- (c) if the proposed action is suspension of the accreditation, stating the proposed suspension period; and
- (d) if the proposed action is a limited suspension of the accreditation,<sup>47</sup> stating the details of the proposed limitation; and
- (e) inviting the person to show, within a stated time of at least 28 days, why the proposed action should not be taken.

‘(3) If, after considering all written representations made within the stated time, the chief executive still considers the proposed action should be taken, the chief executive may—

- (a) if the proposed action is to suspend the accreditation—suspend the accreditation—
  - (i) for no longer than the proposed suspension period; and
  - (ii) if the proposed action was a limited suspension, by no more than the proposed limitation; or
- (b) if the proposed action was to cancel the accreditation—cancel the accreditation or suspend it for a period.

‘(4) The chief executive must inform the person of the decision by written notice.

‘(5) If the chief executive decides to suspend or cancel the accreditation, the notice must also state the reason for the decision.

‘(6) The chief executive may immediately cancel the accreditation by written notice given to the person if—

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<sup>47</sup> See section 180ZZZK (Limited suspension of accreditation).

- (a) rather than cancel the accreditation, the chief executive has suspended it on condition the person do certain things to rectify the failure to comply with a condition of the person's accreditation; but
- (b) the person has not rectified the failure within the suspension period.

‘(7) The notice must state the reason for the decision.

‘(8) A written notice given under subsection (4) or (6) must be accompanied by an information notice for the decision the subject of the notice.

### **‘180ZZZJ Immediate suspension of accreditation**

‘(1) This section applies if the chief executive—

- (a) reasonably believes an accredited person has not complied with a condition of the person's accreditation; and
- (b) considers members of the public may be seriously harmed if urgent action to suspend the accreditation is not taken.

‘(2) The chief executive may immediately suspend an accreditation by written notice given to the person.

‘(3) The notice must state the reason for the decision and must be accompanied by an information notice for the decision.

‘(4) The chief executive must at the same time give the person a notice under section 180ZZZI(2).<sup>48</sup>

‘(5) The accreditation is suspended under this section until the earlier of the following—

- (a) the chief executive gives the person notice of the chief executive's decision under section 180ZZZI;
- (b) the end of 60 days after the notice under subsection (2) was given to the person.

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48 Section 180ZZZI (Suspending or cancelling accreditation)

**‘180ZZZK Limited suspension of accreditation**

‘Under section 180ZZZI or 180ZZZJ, the chief executive may limit a suspension to, for example—

- (a) a particular light rail for which the accredited person is accredited; or
- (b) a particular service operated by the accredited person.

**‘180ZZZL Surrender of accreditation**

‘An accredited person may, at any time, surrender the person’s accreditation by written notice given to the chief executive.

**‘180ZZZM Accreditation for proposed light rail**

‘(1) This section applies if—

- (a) a person holds an accreditation under this part as the light rail manager, a light rail operator, or the light rail manager and a light rail operator, for a light rail—
  - (i) proposed to be established on light rail land; or
  - (ii) proposed to be established on land proposed to become light rail land; and
- (b) the light rail is established on light rail land substantially in the way proposed.

‘(2) The accreditation automatically becomes an accreditation under this Act that the person holds as the light rail manager, a light rail operator, or the light rail manager and a light rail operator, for the light rail as established.

**‘PART 6—LIGHT RAIL INCIDENTS****‘180ZZZN Application of ch 6, pt 6 and other provisions**

‘(1) Chapter 6, part 6<sup>49</sup> applies for a light rail in the same way it applies for a railway.

‘(2) For applying chapter 6, part 6 for a light rail—

- (a) a reference to a railway is taken to be a reference to a light rail; and
- (b) a reference to an accredited person is taken to be a reference to an accredited person for this chapter; and
- (c) a reference to an authorised person for a railway is taken to be a reference to a person who is an authorised person for the light rail.

**‘CHAPTER 7C—INVESTIGATING POTENTIAL  
BUSWAY OR LIGHT RAIL****‘180ZZZO Purpose of ch 7C**

‘The purpose of this chapter is—

- (a) to allow persons authorised by the chief executive to enter land to investigate the land’s potential and suitability for the development of busway or light rail transport infrastructure (the “**development**”) before powers under chapter 7A or 7B are exercised; and
- (b) to safeguard the interests of the owners and occupiers of land affected by the entry.

**‘180ZZZP Definitions for ch 7C**

‘In this chapter—

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49 Chapter 6 (Rail transport infrastructure), part 6 (Railway incidents)

**“affected person”** for land, means each person who is an owner or occupier of the land.

**“associated person”**, of an investigator, means any of the following—

- (a) if the investigator is a corporation, the corporation’s chief executive, secretary or directors;
- (b) the investigator’s employees or partners who are individuals;
- (c) a person who is an agent of, or contractor for, the investigator, and engaged in writing for the investigator’s authority;
- (d) employees of an agent or contractor mentioned in paragraph (c);
- (e) if a person mentioned in paragraph (c) is a corporation, the corporation’s chief executive, secretary, directors or employees.

**“compensation notice”** see section 180ZZZY.

**“development”** see section 180ZZZO.

**“investigator”** means a person who holds an investigator’s authority.

**“investigator’s authority”** means an investigator’s authority given under this chapter.

**“rectification notice”** see section 180ZZZY.

### **‘180ZZZQ How to apply for investigator’s authority**

‘(1) This section applies if the person proposing the development can not successfully negotiate entry to the land with all affected persons for the land.

‘(2) The person may apply to the chief executive for an investigator’s authority for the land.

‘(3) The applicant must give the chief executive the following in support of the application—

- (a) details of the proposed development, including the land on which the development is proposed to be located;
- (b) the likely demand for the services associated with the proposed development;
- (c) advice as to how the proposed development would satisfy an identified need;

- (d) details of the applicant's financial and technical capacity to establish the proposed development;
- (e) details of the steps the applicant has taken, or tried to take, to satisfy its obligations under subsection (1);
- (f) all other information the chief executive considers is necessary to assess the application.

'(4) The application must be in writing and state the following information—

- (a) the land intended to be entered under the investigator's authority;
- (b) the purpose for which the authority is sought;
- (c) details of the nature of the activities proposed to be conducted on the land;
- (d) the period for which the authority is sought.

'(5) The chief executive must advise the affected persons for the land—

- (a) that an application for an investigator's authority has been made for the land; and
- (b) the powers a person given an authority may exercise under this division.

#### **'180ZZZR Additional information about application**

'(1) Before deciding the application, the chief executive—

- (a) must consult with the affected persons for the land about the proposed entry to the land; and
- (b) may require the applicant to give additional information about the proposed entry.

'(2) The chief executive may reject the application if the applicant fails, without reasonable excuse, to give the additional information within a stated reasonable time of not less than 28 days.

#### **'180ZZZS Giving investigator's authority**

'(1) The chief executive may—

- (a) give an investigator's authority, with or without conditions; or
- (b) refuse to give the authority.

‘(2) If the chief executive refuses to give the investigator’s authority, the chief executive must give the applicant written reasons for the refusal.

‘(3) Without limiting subsection (1)(a), a condition may require lodging a bond or security deposit with the chief executive.

‘(4) The investigator’s authority must be only for the part of the land the chief executive is satisfied is reasonably necessary for conducting the investigations.

### **‘180ZZZT Investigator’s authority**

‘(1) The investigator’s authority must be in writing stating the following—

- (a) the land to which it applies;
- (b) the purpose for which it is given;
- (c) when it ends;
- (d) all conditions imposed on the authority.

‘(2) The investigator’s authority authorises the investigator and associated persons of the investigator—

- (a) to enter and re-enter land the subject of the authority for investigating the land’s potential and suitability for the development; and
- (b) to the extent reasonably necessary or convenient for the purpose—
  - (i) to do anything on the land; or
  - (ii) to bring anything onto the land; or
  - (iii) to temporarily leave machinery, equipment or other items on the land.

*Examples of actions authorised by the investigator’s authority—*

1. To conduct surveys, investigate and take samples.
2. To clear vegetation, or otherwise disturb the land, to the extent reasonably necessary.
3. To construct temporary access tracks using the land or using materials brought onto the land.

‘(3) It is declared that—

- (a) the giving of the investigator's authority is not an indication of a commitment or approval by the State, the chief executive or anyone else to any proposal, and in particular, does not commit the State to acquiring land for the development; and
- (b) a person is not an employee or agent of the State only because the person is an investigator.

‘(4) The investigator's authority does not authorise entering or doing anything to a structure on the land used solely for residential purposes without the permission of the occupier of the land.

‘(5) The investigator and each associated person of the investigator, must comply with each condition of the authority, unless the investigator or associated person has a reasonable excuse.

Maximum penalty for subsection (5)—200 penalty units.

**‘180ZZZU What investigator must do before land is entered for the first time**

‘(1) Before land is entered for the first time under the investigator's authority, the investigator must give a written notice to the affected persons for the land together with a copy of the authority.

‘(2) The notice must state the following—

- (a) the investigator has been given the investigator's authority;
- (b) the things the investigator and associated persons of the investigator are authorised to do under the authority;
- (c) a general outline of the things intended to be done on the land, including the construction of any temporary access track;
- (d) the approximate period during which the land is to be entered under the authority;
- (e) the rights of the affected persons under this chapter for the rectification of, and to compensation for, loss or damage suffered because of the investigation;
- (f) the giving of the authority is not an indication of a commitment or approval by the State, the chief executive or anyone else in relation to any proposal, and in particular, does not commit the State to acquiring land for the development.



‘(3) The investigator or an associated person of the investigator may enter the land only if—

- (a) the affected persons give written consent to the entry; or
- (b) at least 7 days have passed since the notice was given.

**‘180ZZZV Investigator to issue associated person with identification**

‘(1) Before the investigator allows an associated person of the investigator to act under the investigator’s authority, the investigator must give the associated person an identification document in the approved form.

Maximum penalty—10 penalty units.

‘(2) The identification document must—

- (a) state the names of the investigator and the person to whom the identification document is given; and
- (b) indicate that, for this Act, the person is associated with the holder of the investigator’s authority; and
- (c) state the capacity in which the associated person is an associated person; and
- (d) be signed by or for the investigator; and
- (e) be signed by or for the associated person; and
- (f) state when it ends.

‘(3) A person who stops being an associated person of an investigator must return the person’s identification document to the investigator as soon as practicable, but within 21 days, after the person stops being an associated person, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

‘(4) Subsections (5) and (6) apply if a person who claims to be, or appears to be, an affected person for the land asks an individual who has entered, is entering or is about to enter land under the investigator’s authority—

- (a) for identification; or
- (b) about the person’s authority to enter the land.

‘(5) If the request is made of an investigator, the investigator must immediately state the investigator’s name and show the person a copy of the investigator’s authority.

Maximum penalty—10 penalty units.

‘(6) If the request is made of an associated person of the investigator, the associated person must immediately state his or her name and show the other person the associated person’s identification document.

Maximum penalty for subsection (6)—10 penalty units.

### **‘180ZZZW Pretending to be an investigator or associated person**

‘A person must not pretend to be an investigator or an associated person of an investigator.

Maximum penalty—80 penalty units.

### **‘180ZZZX Investigator to take care in acting under investigator’s authority**

‘The investigator and all associated persons of the investigator—

- (a) must take as much care as is practicable to minimise damage to the land or inconvenience to the affected persons for the land; and
- (b) may do anything necessary or desirable to minimise the damage or inconvenience.

### **‘180ZZZY Rectification of damage by investigator**

‘(1) An affected person for the land may, by written notice (“**rectification notice**”) given to the investigator, require the investigator, within a reasonable time after the investigator has finished investigating the land under the investigator’s authority, to rectify loss or damage suffered by the affected person arising out of—

- (a) the investigator entering the land; or
- (b) use made of the land by the investigator; or
- (c) anything brought onto the land by the investigator; or
- (d) anything done or left on the land while the investigator was on the land under, or purportedly under, the investigator’s authority.

‘(2) If the loss or damage mentioned in subsection (1) is not rectified or can not be rectified, the affected person may, by written notice (“**compensation notice**”) given to the investigator, claim compensation for the loss or damage not rectified.

‘(3) A rectification or compensation notice must be given—

- (a) within 1 year after the loss or damage was suffered; or
- (b) at a later time allowed by the Land Court.

‘(4) The claim for compensation may be made—

- (a) whether or not the act or omission giving rise to the claim was authorised under the investigator’s authority; and
- (b) whether or not the investigator took steps to prevent the loss or damage; and
- (c) even though the loss or damage was caused, or contributed to, by an associated person of the investigator.

‘(5) In subsection (1)—

“**investigator**” includes an associated person of the investigator.

### **‘180ZZZZ Compensation payable by investigator**

‘(1) The investigator must compensate each affected person for the land for the loss or damage the affected person has suffered and that has not been rectified.

‘(2) The amount of compensation is—

- (a) the amount agreed between the parties; or
- (b) if the parties can not agree on the amount within a reasonable time, the amount decided by the Land Court.

### **‘180ZZZZA Release of bond or security deposit**

‘(1) This section applies if, under a condition of the investigator’s authority, a bond or security deposit is required to be lodged with the chief executive.

‘(2) If an affected person for the land does not give a rectification or compensation notice within the prescribed time, the chief executive may

keep the bond or security deposit until 1 year after the investigator's authority expires.

'(3) If an affected person for the land gives a rectification or compensation notice within the prescribed time, the chief executive may keep the bond or security deposit until the chief executive is satisfied the damage or loss has been repaired or rectified or any compensation agreed or awarded for the damage or loss has been paid to the affected person.

'(4) In this section—

**“prescribed time”**, for giving a rectification or compensation notice arising out of the entry of land by the investigator, means 1 year after the investigator was last on the land under, or purportedly under, the investigator's authority.

**'180ZZZZB Use of bond or security deposit to repair or rectify**

'(1) This section applies if—

- (a) under a condition of the investigator's authority, a bond or security deposit is required to be lodged with the chief executive; and
- (b) an affected person for the land gives a rectification or compensation notice within the prescribed time; and
- (c) the chief executive is satisfied the damage or loss has not been repaired or rectified or compensation agreed or awarded for the damage or loss has not been paid to the affected person.

'(2) The chief executive—

- (a) may use the bond or security deposit to repair or rectify the damage or loss or pay the compensation; and
- (b) must pay the balance, if any, to the investigator.

'(3) In this section—

**“prescribed time”**, for giving a rectification or compensation notice arising out of the entry of land by the investigator, means 1 year after the investigator was last on the land under, or purportedly under, the investigator's authority.'

## 14 Amendment of s 181A (Meaning of “miscellaneous transport infrastructure”)

Section 181A—

*insert—*

‘(3) Also, busway transport infrastructure and light rail transport infrastructure are not miscellaneous transport infrastructure.’.

## 15 Insertion of new s 200A

Chapter 9—

*insert—*

### ‘200A Numbering and renumbering of Act

‘In the next reprint of this Act produced under the *Reprints Act 1992*, the provisions of this Act must be numbered and renumbered as permitted by the *Reprints Act 1992*, section 43.’.

## 17 Amendment of sch 1 (Subject matter for regulations)

Schedule 1, item 11—

*omit, insert—*

‘11. Regulation of—

- (a) busway, light rail or miscellaneous transport infrastructure; or
- (b) busway, light rail or miscellaneous transport infrastructure works.’.

## 18 Amendment of sch 2 (Appeals)

Schedule 2—

*insert—*

|             |                                                                          |                         |
|-------------|--------------------------------------------------------------------------|-------------------------|
| ‘180F(3)(b) | Refusal to allow later time to give notice for compensation              | Magistrates             |
| 180X        | Requirement by chief executive about public utility plant on busway land | District                |
| 180ZC       | Decision of chief executive about amount of additional expense           | District or Magistrates |

|             |                                                                              |                           |
|-------------|------------------------------------------------------------------------------|---------------------------|
| 180ZQ(3)(b) | Refusal to allow later time to give notice for compensation                  | Magistrates               |
| 180ZZJ      | Requirement by chief executive about public utility plant on light rail land | District                  |
| 180ZZO      | Decision of chief executive about amount of additional expense               | District or Magistrates   |
| 180ZZZB     | Giving accreditation on conditions                                           | District                  |
| 180ZZZB     | Refusal to give accreditation                                                | District                  |
| 180ZZZG(2)  | Refusal to amend accreditation conditions                                    | District or Magistrates   |
| 180ZZZH(3)  | Amendment of accreditation conditions                                        | District or Magistrates   |
| 180ZZZH(8)  | Amendment of accreditation conditions                                        | District or Magistrates   |
| 180ZZZI(3)  | Suspension or cancellation of accreditation                                  | District or Magistrates   |
| 180ZZZI(6)  | Immediate cancellation of accreditation                                      | District or Magistrates   |
| 180ZZZJ(2)  | Immediate suspension of accreditation                                        | District or Magistrates’. |

## 19 Amendment of sch 3 (Dictionary)

(1) Schedule 3, definitions “**accredited person**”, “**associated person**”, “**authorised person**”, “**construction**”, “**investigator**”, “**plant**”, “**railway**” and “**road**”—

*omit.*

(2) Schedule 3—

*insert—*

“**access**” for—

- (a) chapter 7A, part 4, division 5—see section 180ZF; or
- (b) chapter 7B, part 4, division 5—see section 180ZZR.

“**accredited person**” means—

- (a) for chapter 6—a railway manager or operator for whom an accreditation is in force under the chapter; or
- (b) for chapter 7B—a light rail manager or operator for a light rail for whom an accreditation is in force under the chapter.

**“acquire”**, for chapter 7A, part 3 and chapter 7B, part 3, includes acquire by gift, exchange or purchase.

**“affected person”**, for chapter 7C, see section 180ZZZP.

**“approved form”** see section 199A.

**“associated person”** for—

- (a) chapter 6, part 2—see section 77; or
- (b) chapter 7C—see section 180ZZZP.

**“authorised person”**, for a railway or light rail, means a person who is an authorised person for the railway or light rail under the *Transport Operations (Passenger Transport) Act 1994*, section 116.

**“busway land”**—

1. “Busway land” means land declared to be busway land under chapter 7A.
2. Additionally, the following apply—
  - (a) for chapter 7A, part 4, division 3, see section 180R;
  - (b) for chapter 7A, part 4, division 5, see section 180ZF;
  - (c) for chapter 7B, part 4, division 3, see section 180ZZD;
  - (d) for chapter 7B, part 4, division 5, see section 180ZZR.

**“busway transport infrastructure”** means each of the following—

- (a) the pavement on which buses run for a busway;
- (b) the stations for operating a busway;
- (c) other facilities necessary for managing or operating a busway, including for example—
  - (i) infrastructure put in place for the busway, including the following—
    - support earthworks
    - cuttings
    - drainage works
    - excavations
    - land fill; and

- (ii) the following things, if associated with the busway's operation—
- access or service lanes
  - bridges, including bridges over water
  - busway operation control facilities
  - communication systems
  - depots
  - machinery and other equipment
  - noise barriers
  - notice boards, notice markers and signs
  - office buildings
  - passenger interchange facilities between the busway and other modes of transport
  - platforms
  - power and communication cables
  - signalling facilities and equipment
  - survey stations, pegs and marks
  - ticketing equipment
  - tunnels
  - under-busway structures
  - workshops;
- (d) vehicle parking and set down facilities for intending passengers for a busway;
- (e) pedestrian facilities, including paving of footpaths, for a busway;
- (f) landscaping or associated works for a busway.

**“busway transport infrastructure works”** means works done for—

- (a) constructing busway transport infrastructure or things associated with busway transport infrastructure; or
- (b) the maintenance of busway transport infrastructure or of things associated with busway transport infrastructure; or



- (c) facilitating the operation of busway transport infrastructure or things associated with busway transport infrastructure.

**“compensation notice”**, for chapter 7C, see section 180ZZZY.

**“construction”** for—

- (a) chapter 5—see section 22; or
- (b) chapter 7A—see section 180A; or
- (c) chapter 7B—see section 180ZL.

**“development”**, for chapter 7C, see section 180ZZZP.

**“establishment”** for—

- (a) chapter 7A, part 4, division 5—see section 180ZF; or
- (b) chapter 7B, part 4, division 5—see section 180ZZR.

**“information notice”**, for a decision the subject of a written notice given to a person, is a written notice stating that the person may—

- (a) under section 196, ask for the decision to be reviewed and appeal against the reviewed decision; and
- (b) under the *Transport Planning and Coordination Act 1994*, part 5, ask for the decision or the reviewed decision to be stayed.

**“interference”** for—

- (a) chapter 7A, part 4, division 5—see section 180ZF; or
- (b) chapter 7B, part 4, division 5—see section 180ZZR.

**“investigator”** means—

- (a) other than for chapter 7C—a person who holds an authority; or
- (b) for chapter 7C—a person who holds an investigator’s authority under that chapter.

**“investigator’s authority”**, for chapter 7C, see section 180ZZZP.

**“light rail”** means—

- (a) a route especially designed and constructed for, and wholly or partly dedicated to, the priority movement of light rail vehicles for passenger transport purposes, and
- (b) places for the taking on and letting off of light rail vehicle passengers using the route.

**“light rail authority”**, for chapter 7B, part 4, division 3, see section 180ZZD.

**“light rail land”**—

1. “Light rail land” means land declared to be light rail land under chapter 7B.
2. Additionally, the following apply—
  - (a) for chapter 7B, part 4, division 3, see section 180ZZD;
  - (b) for chapter 7B, part 4, division 5, see section 180ZZR.

**“light rail manager”**, for a light rail, means a person who holds an accreditation under chapter 7B, part 5 as the light rail manager for the light rail.

**“light rail operator”**, for a light rail, means a person who holds an accreditation under chapter 7B, part 5 as a light rail operator for the light rail.

**“light rail transport infrastructure”** means each of the following—

- (a) the rails on which light rail vehicles run for a light rail and pavement incorporating the rails;
- (b) the stations for operating a light rail;
- (c) other facilities necessary for managing or operating a light rail, including, for example—
  - (i) works built for the light rail, including the following—
    - cuttings
    - drainage works
    - excavations
    - land fill
    - track support earthworks; and
  - (ii) light rail vehicles that operate on a light rail; and
  - (iii) the following things if they are associated with the light rail’s operation—
    - access or service lanes
    - bridges, including bridges over water
    - communication systems

- light rail operation control facilities
  - machinery and other equipment
  - maintenance depots
  - marshalling yards
  - noise barriers
  - notice boards, notice markers and signs
  - office buildings
  - overhead electrical power supply systems and support structures
  - over-track structures
  - passenger interchange facilities between light rail and other modes of transport
  - platforms
  - power and communication cables
  - power supply substations and equipment
  - signalling facilities and equipment
  - survey stations, pegs and marks
  - tunnels
  - ticketing equipment
  - under-track structures
  - workshops;
- (d) vehicle parking and set down facilities for intending passengers for a light rail;
- (e) pedestrian facilities, including paving of footpaths, for a light rail;
- (f) landscaping or associated works for a light rail.

**“light rail transport infrastructure works”** means works done for—

- (a) constructing light rail transport infrastructure or things associated with light rail transport infrastructure; or
- (b) the maintenance of light rail transport infrastructure or of things associated with light rail transport infrastructure; or

- (c) facilitating the operation of light rail transport infrastructure or things associated with light rail transport infrastructure.

**“light rail vehicle”** means a type of transport that—

- (a) is intended wholly or mainly for the carriage of passengers or for track maintenance; and
- (b) travels on flanged wheels on parallel rails; and
- (c) is designed to operate in line of sight on road-like areas.

**“plant”** includes any of the following—

- (a) a conduit or cable;
- (b) an electrical installation under the *Electricity Act 1994*;
- (c) an overhead conveyor;
- (d) a pipeline;
- (e) a pole;
- (f) a railway, monorail or tramway;
- (g) a telecommunications plant;
- (h) a viaduct or aqueduct;
- (i) a water channel.

**“public utility plant”** means plant permitted under another Act or a Commonwealth Act to be on a road.

**“public utility provider”** means an entity that owns public utility plant.

**“railway”** does not include a light rail or light rail transport infrastructure, and for chapter 6, part 4, see also section 80.

**“rectification notice”**, for chapter 7C, see section 180ZZZY.

**“road”**—

- (a) for chapter 7A, part 3, has the meaning given in section 180G; and
- (b) for chapter 7B, part 3, has the meaning given in section 180ZR; and
- (c) does not include an area or thing that is busway land, busway transport infrastructure, light rail land or light rail transport infrastructure; and

- 
- (d) subject to paragraphs (a) to (c), means—
- (i) an area of land dedicated to public use as a road; or
  - (ii) an area that is open to or used by the public and is developed for, or has as 1 of its main uses, the driving or riding of motor vehicles; or
  - (iii) a bridge, culvert, ferry, ford, tunnel or viaduct; or
  - (iv) a pedestrian or bicycle path; or
  - (v) a part of an area, bridge, culvert, ferry, ford, tunnel, viaduct or path mentioned in subparagraphs (i) to (iv).’.
- (3) Schedule 3, definition “**land**”, paragraph (a), ‘chapters 5 and 8’—  
*omit, insert—*  
‘chapters 5 and 7A to 8’.
- (4) Schedule 3, definition “**land**”, paragraph (c), ‘chapter 8’—  
*omit, insert—*  
‘chapters 7A to 8’.
- (5) Schedule 3, definition “**occupier**”, ‘chapters 5, 6 and 8’—  
*omit, insert—*  
‘chapters 5, 6, 7A, 7B, 7C and 8’.
- (6) Schedule 3, definition “**rolling stock**”, after ‘train’—  
*insert—*  
‘or light rail vehicle’.
- (7) Schedule 3, definition “**rolling stock**”, after ‘railway’—  
*insert—*  
‘or light rail’.
- (8) Schedule 3, definition “**transport infrastructure**”, after ‘port’—  
*insert—*  
‘, busway, light rail’.

**Note—** The uncommenced provisions below amend the Transport (Busway and Light Rail) Amendment Act 2000 No. 40 ss 13 and 19 (appearing above).

**Transport Legislation Amendment Act 2001 No. 79 ss 19–20 read as follows—**

## **PART 5—AMENDMENT OF TRANSPORT (BUSWAY AND LIGHT RAIL) AMENDMENT ACT 2000**

### **19 Amendment of s 13 (Insertion of new chs 7A–7C)**

(1) Section 13, new section 180A—

*omit.*

(2) Section 13, new chapter 7A, part 4, division 1—

*insert—*

#### **‘180KA Watercourses and busway transport infrastructure works**

‘(1) To carry out busway transport infrastructure works, the chief executive may—

(a) divert a watercourse; or

(b) construct a watercourse, whether temporary or permanent.

‘(2) In taking action under subsection (1)(a), the chief executive must consider the effect that the action will have on the physical integrity and flow characteristics of the watercourse.’

(3) Section 13, new sections 180M and 180N—

*omit, insert—*

#### **‘180M Powers of chief executive for busway transport infrastructure works contracts etc.**

‘(1) The chief executive may, for the State, carry out or enter into contracts with other persons for the carrying out of—

(a) busway transport infrastructure works on a busway or on land that is intended to become a busway; or

(b) other works that contribute to the effectiveness and efficiency of the busway network; or

(c) the operation of a busway.

‘(2) The chief executive, for the State, may enter into contracts with other persons for busway transport infrastructure works to be carried out outside the State under an agreement between the State and the other State concerned.

‘(3) A contract with a local government under this section may include arrangements about which powers of the local government are to be exercised by the chief executive, and which are to be exercised by the local government, for the busway.

‘(4) A local government may enter into a contract mentioned in subsection (1) even though the contract relates to works or operation outside the local government’s area.

‘(5) The chief executive, for the State, may carry out or enter into contracts for works on or adjacent to a busway at the request of the owner of adjacent land on the basis that the owner provides consideration, whether monetary or otherwise, as agreed between the chief executive and the owner.

‘(6) This section does not prevent the chief executive carrying out, or entering into contracts for the carrying out, of busway transport infrastructure works of a minor or emergency nature.

‘(7) In carrying out works or the operation of a busway, the chief executive must ensure that the carrying out is done on a price competitive basis.

‘(8) In entering into contracts under this section, the chief executive must ensure that open competition is encouraged.

‘(9) Subsection (8) does not apply to a contract with a person if the person is the sole invitee and enters into a price performance contract with the chief executive.

‘(10) The chief executive may arrange with another person for the sharing by the chief executive with the other person of the cost of—

- (a) acquisition of land for busway transport infrastructure; or
- (b) busway transport infrastructure works on a busway; or
- (c) other works that contribute to the effectiveness and efficiency of the busway network; or
- (d) the operation of a busway;

including all necessary preliminary costs associated with the acquisition, works or operation.

**‘180N Distraction of traffic on busway**

‘(1) A local government must obtain the chief executive’s written approval if it intends to approve the erection, alteration or operation of an advertising sign or other advertising device that would be—

- (a) visible from a busway; and
- (b) reasonably likely to create a traffic hazard for the busway.

‘(2) For subsection (1), the chief executive may make guidelines to which local governments must have regard in deciding whether the chief executive’s approval is required for a particular busway.

‘(3) An approval may be subject to conditions.

‘(4) Subsection (1) does not apply if the conditions applied by the local government to the erection, alteration or operation of the sign or device comply with permission criteria fixed by the chief executive.

‘(5) The permission criteria may include conditions.

‘(6) A local government must comply with conditions that apply to it under this section.

‘(7) An approval must be given—

- (a) within 21 days after receiving the application for approval; or
- (b) within a longer period notified to the local government by the chief executive within the 21 day period.

‘(8) If the chief executive does not respond to a local government’s application within 21 days after receiving it, the chief executive is taken to have given approval at the end of the 21 days.

‘(9) The chief executive must publish a copy of each notice mentioned in subsection (10) in the gazette.

‘(10) In this section—

“**busway**” includes land that the chief executive has notified the local government in writing is intended to become a busway.’.

(4) Section 13, new section 180P(2)—

*omit.*

(5) Section 13, new chapter 7A, part 4—

*insert—*



***‘Division 2A—Ancillary works and encroachments*****‘180QA Ancillary works and encroachments**

‘(1) The chief executive may construct, maintain, operate or conduct ancillary works and encroachments on a busway.

‘(2) The chief executive may, by gazette notice, decide that stated ancillary works and encroachments must not be constructed, maintained, operated or conducted on busways, without the chief executive’s written approval.

‘(3) A person must not construct, maintain, operate or conduct ancillary works and encroachments on a busway contrary to a notice under subsection (2).

Maximum penalty—200 penalty units.

‘(4) Subsection (3) does not apply to the construction, maintenance, operation or conduct of ancillary works and encroachments on a busway if the construction, maintenance, operation or conduct—

- (a) conforms to requirements specified by the chief executive by gazette notice; or
- (b) is done as required by a contract entered into with the chief executive.

‘(5) An approval or requirements may be subject to conditions, including conditions about the payment of fees and other charges, fixed by the chief executive.

**‘180QB Presumptions about advertising sign**

‘(1) This section applies to a prosecution for an offence against section 180QA(3) in relation to an advertising sign.

‘(2) Each person whose product or service is advertised on the sign is taken to maintain the sign, unless the person proves the advertisement was placed without the person’s knowledge or permission.

**‘180QC Alteration etc. of ancillary works and encroachments**

‘(1) If ancillary works and encroachments are constructed, maintained, operated or conducted contrary to section 180QA<sup>50</sup>, the chief executive may—

- (a) cause them to be altered, relocated, made safe or removed; or
- (b) for activities—direct that their conduct be altered or that they stop being conducted.

‘(2) A person who constructed, maintained or operated ancillary works and encroachments contrary to section 180QA is liable to pay to the chief executive the cost of altering or relocating them, making them safe or removing them.

‘(3) If ancillary works and encroachments are removed under subsection (1), the chief executive may cause them to be sold or destroyed.

‘(4) If the chief executive considers ancillary works and encroachments, or the use of ancillary works and encroachments, that were constructed, maintained, operated or conducted on a busway under an approval, requirements or contract under section 180QA—

- (a) by themselves or with other factors—
  - (i) are creating, or may create, a traffic hazard; or
  - (ii) are reducing, or may reduce, safety; or
  - (iii) are having, or may have, an adverse effect on traffic operations; or
- (b) require emergency action; or
- (c) have become, or may become, an obstacle to the carrying out of busway transport infrastructure works on the busway or to the construction, augmentation, alteration or maintenance of public utility plant on the busway;

the chief executive may cause them to be, or direct that they be, altered, relocated, made safe or removed or, for activities, direct that their conduct be altered or that they stop being conducted.

‘(5) A person must comply with a direction under subsection (4).

Maximum penalty—200 penalty units.

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<sup>50</sup> Section 180QA (Ancillary works and encroachments)

‘(6) If ancillary works and encroachments are altered, relocated, made safe or removed because of a direction under subsection (4), the chief executive may enter into an agreement with the owner of the ancillary works and encroachments for making a contribution towards the cost of the alteration, relocation, making safe or removal.’.

(6) Section 13, new section 180ZE(3)—

*omit.*

(7) Section 13, new chapter 7A—

*insert—*

## **‘PART 5—BUSWAY SERVICE PROVIDER AUTHORISATION**

### **‘180ZKA Who may drive on a busway**

‘(1) A person must not drive on a busway unless the person is—

- (a) driving in the course of the person’s duty as an employee of—
  - (i) an authorised busway service provider for the busway; or
  - (ii) the holder of a service contract that requires the holder to provide a public passenger service for the busway; or
  - (iii) an emergency service; or
- (b) authorised by the chief executive to drive on the busway.

Maximum penalty—160 penalty units.

‘(2) In this section—

**“emergency service”** means—

- (a) the Queensland Ambulance Service; or
- (b) the Queensland Fire and Rescue Authority; or
- (c) the Queensland Police Service; or
- (d) the State Emergency Services; or
- (e) another entity approved by the chief executive.

**‘180ZKB Applying for authorisation as busway service provider**

‘(1) A person may apply to the chief executive for authorisation as a busway service provider for a busway.

‘(2) The chief executive may, by written notice, require an applicant to give the chief executive stated written information that the chief executive reasonably requires to consider the application.

‘(3) The chief executive may reject the application if the applicant fails to comply with the requirement within a stated reasonable time, of not less than 28 days, without reasonable excuse.

**‘180ZKC Considering application for authorisation**

‘(1) The chief executive must promptly consider an application for authorisation as a busway service provider and decide to grant, or refuse to grant, the authorisation.

‘(2) If the chief executive decides to grant the authorisation, the chief executive must promptly give the applicant a written notice stating—

- (a) the decision; and
- (b) the details of the authorisation, including its scope; and
- (c) if the authorisation is subject to a condition—
  - (i) the details of the condition; and
  - (ii) the reason for the condition.

‘(3) If the chief executive decides not to grant the authorisation, the chief executive must promptly give the applicant a written notice stating—

- (a) the decision; and
- (b) the reason for the decision.

‘(4) A notice under subsection (2) or (3) must be accompanied by an information notice.

**‘180ZKD Authorisation conditions**

‘(1) An authorisation may be subject to conditions.

‘(2) A condition may relate only to—

- (a) safely using a busway; or

(b) something else prescribed under a regulation.

‘(3) An authorised busway service provider must comply with each condition of the provider’s authorisation.

Maximum penalty for subsection (3)—40 penalty units.

**‘180ZKE Requiring authorisation conditions to be complied with**

‘(1) This section applies if the chief executive reasonably believes an authorised busway service provider has not complied with a condition of the provider’s authorisation.

‘(2) The chief executive may, by written notice, require the provider to remedy the breach within a reasonable period stated in the notice.

‘(3) If the provider has not complied with the condition, the provider must comply with the notice.

Maximum penalty for subsection (3)—40 penalty units.

**‘180ZKF Authorisation period**

‘A busway service provider’s authorisation remains in force until suspended, cancelled or surrendered.

**‘180ZKG Amending authorisation conditions on application**

‘(1) An authorised busway service provider may apply to the chief executive for an amendment of the conditions of the provider’s authorisation.

‘(2) The chief executive must consider the application and decide to grant, or refuse to grant, the amendment.

‘(3) The chief executive may amend a condition only if satisfied the condition is—

(a) no longer appropriate; or

(b) no longer consistent with generally accepted risk management principles.

‘(4) If the chief executive decides to amend a condition, the chief executive must promptly give the applicant a written notice stating the decision and the amendment.

‘(5) If the chief executive decides not to amend a condition, the chief executive must promptly give the applicant a written notice stating—

- (a) the decision; and
- (b) the reason for the decision.

‘(6) A notice under subsection (5) must be accompanied by an information notice.

‘(7) If the chief executive does not decide the application within 70 days after it is made, the chief executive is taken to have made the amendment sought by the applicant at the end of the 70 days.

### **‘180ZKH Amending authorisation conditions without application**

‘(1) This section applies if the chief executive considers the conditions of a busway service provider’s authorisation should be amended although the provider has not applied for the amendment.

‘(2) Before amending the conditions, the chief executive must give the provider a written notice stating—

- (a) the proposed amendment; and
- (b) the reason for the amendment; and
- (c) an invitation to the provider to show in writing, within a stated time of at least 28 days, why the amendment should not be made.

‘(3) If, after considering all written representations made within the stated time, the chief executive still considers the conditions should be amended, the chief executive may amend the conditions—

- (a) in the way proposed; or
- (b) in another way, having regard to the representations.

‘(4) The chief executive must inform the provider of the decision by written notice.

‘(5) If the chief executive decides to amend the conditions, the notice must also state—

- (a) the amendment; and
- (b) the reason for the decision.

‘(6) A notice under subsection (5) must be accompanied by an information notice.

‘(7) Subsections (2) to (5) do not apply if the chief executive proposes to amend the conditions of a busway service provider’s authorisation for a formal or clerical reason that does not adversely affect the provider’s interests.

‘(8) The chief executive may amend a condition in a way mentioned in subsection (7) by written notice to the provider.

### **‘180ZKI Suspending or cancelling authorisation**

‘(1) This section applies if the chief executive—

- (a) reasonably suspects an authorised busway service provider has contravened a condition of the provider’s authorisation; and
- (b) considers the authorisation should be suspended or cancelled (the **“proposed action”**).

‘(2) Before taking the proposed action, the chief executive must give the provider a written notice stating—

- (a) the proposed action; and
- (b) the reason for the proposed action; and
- (c) if the proposed action is to suspend the authorisation—the proposed suspension period; and
- (d) if the proposed action is to suspend the authorisation only in relation to a particular service operated by the provider—the service; and
- (e) an invitation to the provider to show in writing, within a stated time of at least 28 days, why the proposed action should not be taken.

‘(3) If after considering all written representations made within the stated time, the chief executive still considers the proposed action should be taken, the chief executive may—

- (a) if the proposed action was to suspend the authorisation—suspend the authorisation—
  - (i) for no longer than the proposed suspension period; and
  - (ii) if the proposed suspension was limited to a particular service—only in relation to the service; or

- (b) if the proposed action was to cancel the authorisation—cancel the authorisation or suspend it for a period.

‘(4) The chief executive must inform the provider of the decision by written notice.

‘(5) If the chief executive decides to suspend or cancel the authorisation, the notice must also state the reason for the decision.

‘(6) If—

- (a) rather than cancel the authorisation, the chief executive suspends it on condition that the provider do certain things to rectify the failure to comply with a condition of the provider’s authorisation; and
- (b) the provider does not rectify the failure within the suspension period;

the chief executive may immediately cancel the authorisation by written notice to the provider.

‘(7) A notice under subsection (4) or (6) must be accompanied by an information notice.

### **‘180ZKJ Immediate suspension of authorisation**

‘(1) This section applies if the chief executive—

- (a) reasonably believes an authorised busway service provider has contravened a condition of the provider’s authorisation; and
- (b) considers members of the public may be seriously harmed if urgent action to suspend the authorisation is not taken.

‘(2) The chief executive may immediately suspend the authorisation by written notice to the provider.

‘(3) The notice must state the reason for the decision and must be accompanied by an information notice.

‘(4) The chief executive must at the same time give the provider a notice under section 180ZKI(2).

‘(5) The authorisation is suspended under this section until the earlier of the following—

- (a) the chief executive gives the provider notice of the chief executive’s decision under section 180ZKI;



- (b) the end of 60 days after the notice under subsection (2) was given to the provider.

**‘180ZKK Surrender of authorisation**

‘An authorised busway service provider may, at any time, surrender the provider’s authorisation by written notice to the chief executive.’.

(8) Section 13, new section 180ZL—

*omit.*

**20 Amendment of s 19 (Amendment of sch 3 (Dictionary))**

(1) Section 19(2), definition “**construction**”—

*omit, insert—*

‘ “**construction**” of busway, light rail, or road transport infrastructure includes each of the following for the infrastructure, to the extent it involves the development of the infrastructure—

- (a) initial construction;
- (b) improvement of its standard;
- (c) realignment;
- (d) widening;
- (e) extension to accommodate the extension of a busway, light rail or road.’.

(2) Section 19(8)—

*omit.*

Duties Act 2001 No. 71 s 551 sch 1 reads as follows—

**TRANSPORT INFRASTRUCTURE ACT 1994**

**3 Section 72, heading—**

*omit, insert—*

**‘Guarantees and undertakings’.**

**4 Section 72, ‘, undertakings’ to ‘exemptions’—**

*omit, insert—*

‘or undertakings’.

**5 Section 72, last dot point—**

*omit.*

**6 Section 158(2)(b)—**

*omit.*

Transport Legislation Amendment Act 2001 No. 79 ss 25–26, 30, 34, 37, 39, 40, 42(1) (except to the extent it om the def “future railway land”), 42(2) (except to the extent it ins the def “future railway land”) and 42(3)–(4) read as follows—

**25 Omission of s 22 (Definitions for ch 5)**

Section 22—

*omit.*

**25A Insertion of new s 24A**

Chapter 5, part 2, division 1—

*insert—*

**‘24A State-controlled roads on rail corridor land**

‘(1) This section applies if, under section 23, the Minister intends to declare a road or route, or part of a road or route, that crosses rail corridor land and continues on the other side of the rail corridor land to be a State-controlled road.

‘(2) Before making the declaration, the Minister must—

- (a) consult with the railway manager, if any, for the rail corridor land; and
- (b) give the railway manager a reasonable opportunity to make submissions to the Minister on the declaration.

‘(3) If the Minister decides to declare the road or route, or part of the road or route, to be a State-controlled road, the Minister must, when making the declaration, declare in the gazette notice the part of the rail corridor land where it is crossed by the road or route to be a common area (“**common area**”) for the rail corridor land and the State-controlled road.

‘(4) When the common area is declared—

- (a) the chief executive may construct, maintain and operate the State-controlled road on the common area in a way not inconsistent with its use as rail corridor land; and
- (b) a railway manager for the rail corridor land may construct, maintain and operate a railway on the common area in a way not inconsistent with its use as State-controlled road; and
- (c) the railway manager and its agents or employees do not have any liability for the State-controlled road or its use or operation on the common area.

*Examples for paragraph (a)—*

- a level crossing
- a bridge or other structure over a railway
- a bridge or other structure that allows the road to pass under the railway.

‘(5) Unless the chief executive and a railway manager for the rail corridor land otherwise agree—

- (a) subject to section 140,<sup>51</sup> the chief executive is responsible for maintaining the State-controlled road on the common area; and
- (b) if the State-controlled road on the common area stops being used, the chief executive is responsible for the cost of removing road transport infrastructure from the common area and restoring the railway.

‘(6) The State is taken not to be in breach of any of its obligations in a sublease of the rail corridor land between the State and the railway manager by—

- (a) the Minister’s declarations; or
- (b) anything done by the chief executive under chapter 5 for the common area.

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51 Section 140 (Maintaining roads crossing railways)

‘(7) After the common area is declared—

- (a) the chief executive must promptly give a copy of the gazette notice of the declarations to the registrar of titles; and
- (b) the registrar of titles must record the declarations on the relevant lease of the rail corridor land to the State and any affected sublease in the leasehold land register.’

## **26 Amendment of s 45 (Removal of materials etc.)**

Section 45(2)—

*omit.*

## **30 Replacement of s 138 (Carrying dangerous goods)**

Section 138—

*omit, insert—*

### **‘138 Railways on State-controlled roads**

‘(1) This section applies if—

- (a) a railway manager—
  - (i) holds a sublease of rail corridor land; or
  - (ii) has access to future railway land; and
- (b) the route of the rail corridor land or future railway land—
  - (i) is interrupted by a State-controlled road; and
  - (ii) continues on the other side of the State-controlled road.

‘(2) The Minister may, by gazette notice, declare the part of the State-controlled road where it interrupts the route to be a common area (“**common area**”) for the State-controlled road and the route of the rail corridor land or future railway land.

‘(3) If the Minister declares a common area—

- (a) the railway manager for the rail corridor land or future railway land may construct, maintain and operate a railway on the common area in a way not inconsistent with its use as a State-controlled road; and

- (b) the chief executive for chapter 5 may construct, maintain and operate the State-controlled road on the common area in a way not inconsistent with its use as a railway; and
- (c) the chief executive for chapter 5 and the chief executive's agents or employees do not have any liability for the railway or its use or operation on the common area.

*Examples for paragraph (a)—*

- a level crossing
- a bridge or other structure over the road
- a bridge or other structure that allows the railway to pass under the road.

‘(4) After a common area is declared—

- (a) the chief executive must give a copy of the gazette notice to the registrar of titles—
  - (i) promptly after the gazette notice is published, if the land is rail corridor land; or
  - (ii) promptly after the land is leased to the railway manager under section 131(4), if the land is future railway land; and
- (b) the registrar of titles must record the declaration on the relevant lease of the rail corridor land to the State and the sublease in the leasehold land register.

‘(5) If a railway on a common area stops being used, the railway manager for the railway is responsible for the cost of removing rail transport infrastructure from the common area and restoring the road, unless the chief executive and the railway manager otherwise agree.’.

### **34 Insertion of new ch 8AA**

After section 187A—

*insert—*

## **‘CHAPTER 8AA—TRANSPORTING DANGEROUS GOODS BY RAIL**

### **‘PART 1—INTRODUCTORY**

#### **‘187AA Purposes of ch 8AA**

‘The purposes of this chapter are—

- (a) to reduce risk arising from transporting dangerous goods by rail; and
- (b) to help create a substantially uniform national rail transport law about dangerous goods; and
- (c) to promote consistency between the regulation of the transport of dangerous goods by rail and by other modes of transport.

#### **‘187AB Application of ch 8AA**

‘(1) This chapter—

- (a) applies only to the transportation of dangerous goods by rail; and
- (b) applies in addition to, and does not limit, any other provision of this Act or any other Act.

‘(2) However, this chapter does not apply to any of the following—

- (a) the transportation of radioactive substances under the *Radiation Safety Act 1999*;
- (b) the transportation of explosives under the *Explosives Act 1999*;
- (c) the transfer, under the *Gas Act 1965*, of gas within the meaning of that Act from a rail tank vehicle or bulk container;
- (d) dangerous goods in a container that is—
  - (i) designed to form part of, and forms part of, the fuel system of—
    - (A) a rail vehicle’s engine; or
    - (B) another part of a rail vehicle’s propulsion equipment; or

- (C) an engine that is part of a rail vehicle’s refrigeration system; or
- (D) another auxiliary engine of a rail vehicle; or
- (ii) designed as a fuel storage container for a fuel burning appliance, or an engine, that is—
  - (A) built into a rail vehicle; or
  - (B) designed to be attached to a rail vehicle; or
  - (C) part of a refrigeration system attached to a freight container; or
  - (D) prescribed under a regulation;
- (e) a battery installed in a rail vehicle or on its load for the purpose of operating a function of the vehicle or of equipment relating to the load;
- (f) a fire extinguisher fitted to or carried in a rail vehicle to be used for the protection of the vehicle or its load;
- (g) equipment installed in a rail vehicle to provide a safety or protective system for an occupant of the vehicle;
- (h) compressed air, compressed oxygen or oxygen releasing chemicals that are part of self contained breathing or rebreathing apparatus for use by a rail vehicle’s driver.’.

### **‘187AC Ch 8AA binds all persons**

‘(1) This chapter binds all persons, including every Queensland government entity, and, so far as the legislative power of the Parliament permits, every government entity of the Commonwealth or of another State.

‘(2) In this section—

**“government entity”** includes—

- (a) the State, the Commonwealth or another State; and
- (b) an instrumentality, agent, authority, company, GOC or entity of the State, the Commonwealth or another State.

**‘PART 2—REGULATIONS****‘187AD Regulations about dangerous goods**

‘(1) A regulation may prescribe matters about the transportation of dangerous goods by rail, including for example, the following matters—

- (a) types and categories of dangerous goods;
- (b) ways of deciding types and categories of dangerous goods;
- (c) deciding which goods are—
  - (i) dangerous; or
  - (ii) dangerous goods of a particular type; or
  - (iii) too dangerous to be transported by rail; or
  - (iv) too dangerous to be transported in bulk by rail;
- (d) the analysis and testing of dangerous goods;
- (e) the marking of packages, and unit loads, containing dangerous goods;
- (f) the placarding of containers and rail vehicles containing dangerous goods;
- (g) containers, packaging equipment and other items to be used for transporting dangerous goods;
- (h) the manufacture of rail vehicles and containers for use in transporting dangerous goods;
- (i) the loading of dangerous goods for, and the unloading of dangerous goods after, their transportation;
- (j) deciding routes along which, the areas in which and the times during which, dangerous goods may or may not be transported;
- (k) procedures for transporting dangerous goods, including—
  - (i) the quantities and circumstances in which dangerous goods may be transported; and
  - (ii) safety procedures and equipment;
- (l) the approval of packages, containers, equipment and other items used for transporting dangerous goods;



- (m) the approval of processes to be carried out when transporting dangerous goods;
- (n) other approvals;
- (o) documents to be prepared or kept by persons involved in transporting dangerous goods and the approval of alternative documentation;
- (p) obligations arising, and procedures to be followed, in a dangerous situation;
- (q) the training and qualifications required of persons involved in, and the approval of training courses and qualifications relating to involvement in, transporting dangerous goods.

‘(2) Without limiting subsection (1), a regulation may provide—

- (a) for the granting or renewing of, or refusing to grant or renew, an approval or exemption; or
- (b) grounds for amending, suspending or cancelling an approval or exemption.

‘(3) A regulation may allow the chief executive to make provision about a matter mentioned in subsection (1)(j).

‘(4) A decision about a matter mentioned in subsection (1)(c), other than an approval, may only be made by regulation.

## ‘PART 3—APPROVALS AND EXEMPTIONS

### ‘*Division 1—Exemptions*

#### ‘187AE Exemptions

‘(1) A person, or a representative of a class of person, may apply to the chief executive for an exemption from complying with a provision of a regulation about transporting dangerous goods by rail.

‘(2) The chief executive may, on an application under subsection (1) or on the chief executive’s own initiative, exempt a person or a class of person from complying with the provision if satisfied—

- (a) it is not reasonably practicable for the person or class of person to comply with the provision; and
- (b) granting the exemption—
  - (i) would not be likely to create a risk of a dangerous situation, greater than would be the case if the person or class of person did comply; and
  - (ii) would not cause unnecessary administrative or enforcement difficulties, particularly about maintaining national substantially uniform rail transport laws about dangerous goods.

‘(3) If an exemption is given on conditions, the exemption operates only if the conditions are complied with.

‘(4) The chief executive must, as soon as is practicable after giving a class exemption, give notice of the exemption in the gazette.

‘(5) The notice must state the following—

- (a) the class of person to whom the exemption applies;
- (b) the provision of the regulation from which the class is exempt;
- (c) the dangerous goods to which the exemption applies;
- (d) the time for which the exemption applies;
- (e) the conditions, if any, to which the exemption is subject;
- (f) the geographical area in which the exemption applies.

‘(6) The *Statutory Instruments Act 1992*, sections 24 and 25 apply to an exemption as if it were a statutory instrument.

‘(7) A regulation may regulate the giving of an exemption under this section.

### ***‘Division 2—Amending, suspending or cancelling approval or exemption***

#### **‘187AF Grounds for amending, suspending or cancelling approval or exemption**

‘(1) It is a ground for amending, suspending or cancelling an approval or exemption if the approval or exemption was—

- (a) granted because of a document or representation that is false or misleading; or
- (b) obtained or made in another improper way.

‘(2) It is a ground for amending, suspending or cancelling an approval or exemption if the person, or 1 or more of the persons, to whom the approval or exemption applies—

- (a) has contravened a condition of the approval or exemption; or
- (b) has been convicted of an offence against this chapter or a law of another State or the Commonwealth about transporting dangerous goods by rail.

**‘187AG What chief executive must do before taking proposed action, other than for class exemption**

‘(1) This section applies if the chief executive proposes to amend, suspend or cancel an approval or exemption, other than a class exemption (the “**proposed action**”).

‘(2) Before taking the proposed action, the chief executive must give the holder of the approval or exemption written notice stating—

- (a) the proposed action; and
- (b) the grounds for the proposed action; and
- (c) an outline of the facts and circumstances forming the basis for the grounds; and
- (d) if the proposed action is to amend the approval or exemption, including a condition of the approval or exemption—the proposed amendment; and
- (e) if the proposed action is to suspend the approval or exemption—the proposed suspension period; and
- (f) an invitation to the holder of the approval or exemption to show in writing, within a stated time of at least 28 days, why the proposed action should not be taken.

**‘187AH What chief executive must do before taking proposed action for class exemption**

‘(1) This section applies if the chief executive proposes to amend, suspend or cancel a class exemption (the **“proposed action”**).

‘(2) Before taking the proposed action, the chief executive must give written notice to the class representative for the exemption and in the gazette stating—

- (a) the proposed action; and
- (b) the grounds for the proposed action; and
- (c) an outline of the facts and circumstances forming the basis for the grounds; and
- (d) if the proposed action is to amend the exemption, including a condition of the exemption—the proposed amendment; and
- (e) if the proposed action is to suspend the exemption—the proposed suspension period; and
- (f) an invitation to any member of the class for the exemption to show in writing, within a stated time of at least 28 days, why the proposed action should not be taken.

**‘187AI Decision on proposed action**

‘(1) If, after considering any written representations made within the time allowed under section 187AG or 187AH, the chief executive still considers the proposed action should be taken, the chief executive may—

- (a) if the proposed action was to amend the approval or exemption—amend the approval or exemption; or
- (b) if the proposed action was to suspend the approval or exemption—suspend the approval or exemption for no longer than the period stated in the notice under section 187AG or 187AH; or
- (c) if the proposed action was to cancel the approval or exemption—amend or cancel the approval or exemption, or suspend the approval or exemption for a period.

‘(2) The chief executive must give written notice of the chief executive’s decision to—

- (a) for an approval or exemption, other than a class exemption—the holder; or
- (b) for a class exemption—the class representative for the exemption.

‘(3) If the chief executive decides to amend, suspend or cancel the approval or exemption, the notice must state the reasons for the decision and be accompanied by an information notice.

‘(4) The decision takes effect on the day notice is given under subsection (2) or a later day stated in the notice.

**‘187AJ Sections 187AG–187AI do not apply to beneficial or clerical amendment**

‘(1) Sections 187AG to 187AI do not apply—

- (a) if the chief executive proposes to amend an approval or exemption only—
  - (i) for a formal or clerical reason; or
  - (ii) in another way that does not adversely affect the interests of any person; or
- (b) if the chief executive proposes to amend an approval or exemption in another way or cancel it and the holder has asked the chief executive to take the proposed action.

‘(2) The chief executive may amend an approval or exemption in a way mentioned in subsection (1) by written notice to—

- (a) for an approval or exemption, other than a class exemption—the holder; or
- (b) for a class exemption—the class representative for the exemption.

**‘187AK Immediate suspension in the public interest**

‘(1) Despite sections 187AG and 187AH, this section applies if the chief executive considers it is necessary in the interest of public safety to immediately suspend an approval or exemption.

‘(2) The chief executive may, by written notice to the holder of the approval or exemption, other than a class exemption, immediately suspend the approval or exemption until the earlier of the following—

- (a) a notice is given to the holder under section 187AI(2); or
- (b) the end of 56 days after the notice is given to the holder.

‘(3) The chief executive may, by written notice to the class representative for a class exemption, immediately suspend the exemption until the earlier of the following—

- (a) a notice is given for the exemption under section 187AI(2); or
- (b) the end of 56 days after the notice is given to the holder.

‘(4) If the chief executive suspends a class exemption, the chief executive must give notice of the suspension in the gazette.

‘(5) A notice under subsection (2) or (3) must state the reasons for the decision and be accompanied by an information notice.

## **‘PART 4—OFFENCES**

### **‘187AL Goods too dangerous to be transported**

‘A person must not transport by rail goods prescribed under a regulation as being too dangerous to transport by rail if the person knows, or reasonably ought to know, the goods are too dangerous to be transported by rail.

Maximum penalty—665 penalty units.

### **‘187AM Duties when transporting dangerous goods**

‘(1) A person involved in transporting dangerous goods by rail must ensure, as far as is practicable, that the goods are transported safely.

Maximum penalty—665 penalty units.

‘(2) A person involved in transporting dangerous goods by rail must not contravene this chapter in circumstances in which the person knew, or ought reasonably to have known, that the contravention would be likely to endanger the safety of another person or of property or the environment.

Maximum penalty—665 penalty units.

‘(3) This section applies in addition to, and does not limit, any other provision of this chapter.

**‘187AN Prohibition on involvement in the transportation of dangerous goods by rail**

‘(1) A court convicting a person of an offence against this chapter may order that the person be prohibited, for a stated period, from involvement in the transportation of dangerous goods by rail after having regard to the following matters—

- (a) the person’s record in the transportation of dangerous goods by rail in Australia;
- (b) the person’s convictions under Queensland law, or a law of another State or the Commonwealth relating to dangerous goods;
- (c) the circumstances surrounding the commission of the offence;
- (d) any other matters the court considers appropriate.

‘(2) A person must not contravene an order made under subsection (1).

Maximum penalty—665 penalty units or 2 years imprisonment.

‘(3) Subsection (1) does not limit any other penalty the court may impose for the offence.

‘(4) In this section—

“**involvement**” in the transportation of dangerous goods by rail includes the following—

- (a) importing, or arranging for the importation of, dangerous goods into Australia;
- (b) packing or labelling dangerous goods for transportation by rail;
- (c) consigning dangerous goods for transportation by rail;
- (d) loading dangerous goods onto a rail vehicle or into a container that is to be put on a rail vehicle;
- (e) unloading dangerous goods that have been transported by rail;
- (f) undertaking or being responsible for the transportation of dangerous goods by rail, other than as an employee or sub-contractor;

- (g) being a consignee of dangerous goods transported by rail;
- (h) being involved as a director, secretary or manager of a corporation or other person who takes part in the management of a corporation that takes part in an activity mentioned in paragraphs (a) to (g).

## **‘PART 5—RECOVERY OF COSTS AND FORFEITURE**

### **‘187AO Forfeiture on conviction**

‘(1) A court convicting a person of an offence against this chapter may order the forfeiture to the State of—

- (a) anything used to commit the offence; or
- (b) anything else the subject of the offence.

‘(2) The court may make the order—

- (a) whether or not the thing has been seized; and
- (b) if the thing has been seized, whether or not the thing has been returned to its owner.

‘(3) The court may make any order to enforce the forfeiture that it considers appropriate.

‘(4) This section does not limit the court’s powers under the *Penalties and Sentences Act 1992* or another law.

### **‘187AP Dealing with forfeited things etc.**

‘(1) On the forfeiture of a thing to the State, the thing becomes the State’s property and may be dealt with by the chief executive as the chief executive considers appropriate.

‘(2) Without limiting subsection (1), the chief executive may destroy or dispose of the thing.

‘(3) The chief executive must not deal with the thing until any review of, or appeal against, the decision to forfeit the thing is decided.



**‘187AQ Recovery of costs from convicted person**

‘(1) A court convicting a person of an offence against this chapter may order the person to pay to the State the costs reasonably incurred by the State in prosecuting the offence, including the cost of testing, transporting, storing and disposing of dangerous goods and other evidence.

‘(2) An amount ordered to be paid under subsection (1) is a debt owing to the State.

‘(3) A court may make an order under subsection (1) in addition to any other order the court may make.

**‘187AR Recovery of costs of government action**

‘(1) This section applies if any of the following events happen in relation to the transportation of dangerous goods by rail—

- (a) a dangerous situation;
- (b) an incident wholly or partly constituted by or arising from—
  - (i) the escape of dangerous goods; or
  - (ii) an explosion or fire involving dangerous goods; or
- (c) an incident involving the risk of the escape of dangerous goods or an explosion or fire involving dangerous goods.

‘(2) If a government entity incurs costs because of the event, the entity may recover the costs reasonably incurred in dealing with the event as a debt owing to the entity.

‘(3) The costs are recoverable as a joint and several liability from the following persons—

- (a) the person who owned the dangerous goods when the event happened;
- (b) the person who had possession or control of the dangerous goods when the event happened;
- (c) the person who caused the event;
- (d) the person responsible (other than as an employee, agent or subcontractor of someone else) for the transportation of the dangerous goods by rail.

‘(4) However, costs are not recoverable from a person—

- (a) who does not incur civil liability because of section 187AT; or
- (b) who establishes that—
  - (i) the event was primarily caused by someone else; or
  - (ii) the person could not, exercising reasonable care, have prevented the event; or
  - (iii) the event was not attributable to the person or to an employee, agent or subcontractor of the person.

‘(5) This section does not limit the powers a government entity has apart from this chapter.

## ‘PART 6—MISCELLANEOUS

### ‘187AS Certificates and documents

‘(1) A certificate purporting to be signed by the chief executive and stating that a stated person held or did not hold a stated approval or exemption under this chapter on a stated day or throughout a stated period is evidence of the matters stated.

‘(2) A court may admit into evidence a copy of a document made by an authorised person under this chapter.

### ‘187AT Helping in accidents or emergencies

‘(1) This section applies if a person, other than an official—

- (a) helps, or attempts to help, in a situation in which an accident or emergency involving dangerous goods happens or is likely to happen; and
- (b) the help, or attempt to help, is given—
  - (i) honestly and without negligence; and
  - (ii) without any fee, charge or other reward.

‘(2) The person does not incur civil liability for helping or attempting to help.

‘(3) If subsection (2) prevents civil liability attaching to a person, the liability attaches instead to the State.

‘(4) This section does not apply to a person whose act or omission wholly or partly caused the accident, emergency or likely accident or emergency.

‘(5) In this section—

“official” means a person who is, or is acting under the control of, an authorised person under the *Transport Operations (Passenger Transport) Act 1994*.’.

### **37 Insertion of new ss 199A–199C**

Chapter 9—

*insert—*

#### **‘199A Altering watercourse to adversely affect transport route**

‘(1) A person must not, without lawful excuse, alter a watercourse in a way that adversely affects a transport route.

Maximum penalty—40 penalty units.

‘(2) If the chief executive considers that water from a watercourse has collected or is likely to collect, and obstruct or be likely to obstruct, traffic on a transport route, the chief executive may—

- (a) under section 33, 95 or 180D,<sup>52</sup> enter the land on which the watercourse is situated; and
- (b) take the action that the chief executive considers necessary or desirable to reduce or prevent the collection of water.

‘(3) Before exercising the powers under subsection (2), the chief executive may, by written notice, require the owner of the land on which the watercourse is situated to take the action that the chief executive considers necessary or desirable to reduce or prevent the collection of water.

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52 Section 33 (Temporary occupation and use of land), 95 (Entry to land by notice or with approval) or 180D (Authority to enter or temporarily occupy or use land)

‘(4) The owner must comply with the notice, unless the owner has a reasonable excuse.

Maximum penalty—200 penalty units.

‘(5) If the owner fails to comply with the notice, the chief executive may exercise the powers mentioned in subsection (2).

‘(6) The owner is liable to pay the chief executive the costs incurred because of the exercise of powers.

‘(7) This section applies—

- (a) even if the water collected as a result of action that was authorised under an Act; or
- (b) whether the water collects permanently, temporarily or intermittently.

‘(8) In this section—

“alter” includes damage and interfere with.

“chief executive”, in relation to a railway, includes a railway manager or operator for whom an accreditation for the railway is in force under chapter 6.

“transport route” means a busway, railway or road.

### **‘199B Altering materials etc.**

‘(1) A person must not, without lawful excuse, alter any naturally occurring materials, stockpile of material or works on a busway or railway.

Maximum penalty—200 penalty units.

‘(2) A person must not deposit rubbish or abandon goods or materials on a busway or railway other than at places approved by, and under conditions fixed by, the chief executive.

Maximum penalty—200 penalty units.

‘(3) In this section—

“alter” includes damage, interfere with and remove.

“chief executive”, in relation to a railway, includes a railway manager or operator for whom an accreditation for the railway is in force under chapter 6.

“works” means—

- (a) for a busway—
  - (i) ancillary works and encroachments; or
  - (ii) busway transport infrastructure works; or
- (b) for a railway—railway works.

### **‘199C Recovery of cost of damage**

‘(1) This section applies if a person intentionally, recklessly or negligently damages works on a busway or railway.

‘(2) The person is liable to pay the chief executive the cost of repairing the damage.

‘(3) However, if the damage is caused by the driver of a vehicle whose identity is unknown, or who can not be located, the registered operator of the vehicle is liable for the costs of repairing the damage, unless the vehicle was being used without the registered operator’s knowledge or permission.

‘(4) Subsections (2) and (3) apply, whether or not the damage constitutes, or is done in connection with, an offence against this Act.

‘(5) However, if—

- (a) a court finds a person guilty of an offence against this Act; and
- (b) in committing the offence, the person damaged works;

the court may, as well as imposing a penalty, order the person to pay an amount towards the cost of repairing the damage.

‘(6) In this section—

“**chief executive**”, in relation to a railway, includes a railway manager or operator for whom an accreditation for the railway is in force under chapter 6.

“**registered operator**” means the person in whose name the vehicle is registered.

“**repairing**” includes replacing and reconstructing.

“**works**” means—

- (a) for a busway—
  - (i) ancillary works and encroachments; or

- (ii) busway transport infrastructure works; or
- (b) for a railway—railway works.’.

### **39 Amendment of sch 1 (Subject matter for regulations)**

(1) Schedule 1, section 2, after ‘road works’—

*insert—*

‘or busway transport infrastructure works’.

(2) Schedule 1, section 3, after ‘roads’—

*insert—*

‘or busways’.

(3) Schedule 1, section 10—

*insert—*

‘(e) busways.’.

(4) Schedule 1, section 12, after ‘railway’—

*insert—*

‘or busway’.

(5) Schedule 1, sections 13 to 15—

*omit, insert—*

‘**13.** The removal and disposal of vehicles or property that are abandoned on a busway or railway.

‘**14.** The removal of vehicles parked or property left—

- (a) on a busway against the chief executive’s directions; or
- (b) on a railway against the railway manager’s directions.

‘**15.** The recovery of the costs of doing the things mentioned in sections 13 and 14.’.

### **40 Amendment of sch 2 (Reviews and appeals)**

Schedule 2—

*insert—*

|                 |                                                                                                                                                                                              |                           |
|-----------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|
| '180N(1)        | Refusal to approve erection of, alteration or operation of sign or device                                                                                                                    | Planning and Environment  |
| 180N(3) and (5) | Imposition or inclusion of conditions                                                                                                                                                        | Planning and Environment  |
| 180QA           | Refusal of chief executive to approve construction, maintenance, operation or conduct of ancillary work or encroachment                                                                      | Magistrates               |
| 180QC(1)        | Decision to cause ancillary works and encroachments to be altered, relocated, made safe or removed, or to direct that the conduct of ancillary works and encroachments be altered or stopped | District or Magistrates   |
| 180QC(2)        | Decision of chief executive about cost of alteration, making safe or removing ancillary work and encroachments                                                                               | District or Magistrates   |
| 180QC(4)        | Decision to alter, relocate, make safe or remove ancillary works and encroachments or that activities are to be altered or to stop                                                           | Magistrates               |
| 187AE           | Refusing to give exemption                                                                                                                                                                   | Magistrates               |
| 187AI           | Amendment, suspension or cancellation of approval or exemption                                                                                                                               | Magistrates               |
| 187AK           | Immediate suspension of approval or exemption                                                                                                                                                | Magistrates               |
| 199C            | Decision of chief executive about cost of repair, replacement or reconstruction of damaged works                                                                                             | District or Magistrates'. |

## 42 Amendment of sch 3 (Dictionary)

(1) Schedule 3, definitions “**ancillary works and encroachments**”, “**approval**”, “**competition principles**”, “**means of access**”, “**plant**” and “**transport infrastructure**”—

*omit.*

(2) Schedule 3—

*insert—*

‘**“ancillary works and encroachments”**, for chapters 5 and 7A, means—

- (a) the following things—
  - (i) cane railways;
  - (ii) monorails;
  - (iii) bridges, overhead conveyors or other overhead structures;
  - (iv) tunnels;
  - (v) rest area facilities;
  - (vi) monuments or statues;
  - (vii) advertising signs or other advertising devices;
  - (viii) traffic and service signs;
  - (ix) bores, wells, pumps, windmills, water pipes, channels, culverts, viaducts, water tanks or dams;
  - (x) pipes;
  - (xi) tanks;
  - (xii) cables;
  - (xiii) road access works;
  - (xiv) paths or bikeways;
  - (xv) grids or other stock facilities;
  - (xvi) buildings, shelters, awnings or mail boxes;
  - (xvii) poles, lighting, gates or fences;
  - (xviii) pumps and bowsers; or
- (b) any of the following activities—
  - (i) drilling;
  - (ii) clearing;
  - (iii) trimming;
  - (iv) slashing;
  - (v) landscaping;
  - (vi) planting;



- (vii) burning off;
  - (viii) removing trees;
  - (ix) road safety related activities;
  - (x) sporting activities;
  - (xi) camping;
  - (xii) conducting a business (for example, a market);
  - (xiii) moving stock, other than under the *Rural Lands Protection Act 1985*;
  - (xiv) holding meetings; or
  - (c) other encroachments declared under a regulation to be ancillary works and encroachments;
- but does not include public utility plant.

**“approval”**—

- (a) for chapter 8—see section 181; or
- (b) for chapter 8AA—means an approval by the chief executive.

**“class exemption”** means an exemption granted to a class of person under section 187AE(2).

**“class representative”**, for a class exemption, means the representative of a class of person who applied for the exemption.

**“convicting”** a person includes a court finding the person guilty, or the person pleading guilty, whether or not a conviction is recorded.

**“dangerous goods”** means goods prescribed under a regulation to be dangerous goods

**“dangerous situation”** means a situation involving the transportation of dangerous goods by rail that is causing, or is likely to cause, imminent risk of—

- (a) death of, or significant injury to, a person; or
- (b) significant harm to the environment; or
- (c) significant damage to property.

**“exemption”**, for chapter 8AA, means an exemption under section 187AE.

**“in”** a rail vehicle includes on the vehicle.

**“rail”**, for chapter 8AA, includes cableway.

**“rail vehicle”**, for chapter 8AA, includes a cableway car.

**“road access works”**, for chapters 5 and 7A, means—

- (a) a physical means of entry or exit for traffic between land and a road; or

*Example—*

A driveway.

- (b) road works providing entry or exit for traffic between works mentioned in paragraph (a) and the part of the road formed or prepared for use by general traffic.

*Example—*

An acceleration or deceleration lane, or a laneway, lane or track, connecting a driveway of a property adjacent to a road to a lane on the road designed to carry through traffic.

**“road works”**, for chapter 5, means—

- (a) works done for—
  - (i) constructing roads or things associated with roads; or
  - (ii) maintaining roads or things associated with roads (other than public utility plant); or
  - (iii) facilitating the operation of road transport infrastructure; or
- (b) works declared under a regulation to be road works.

**“State government body”**, for chapter 5, means—

- (a) a department or a division, branch or other part of a department; or
- (b) a State instrumentality, agency, authority or entity or a division, branch or other part of a State instrumentality, agency, authority or entity; or
- (c) a GOC;

but does not include a local government.

**“traffic”** includes the passing back and forth of persons, vehicles and animals.

**“transport”** dangerous goods includes—

- (a) pack, load and unload the goods, and transfer them to or from a rail vehicle, for their transport; and

- (b) mark packages, and unit loads, containing dangerous goods; and
- (c) placard containers and rail vehicles in which dangerous goods are transported.

**“transport infrastructure”** includes—

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

**“watercourse”** includes a lake, spring, stream or swale.’.

(3) Schedule 3, definition **“land”**, paragraphs (a)(ii) and (b)(ii), ‘stream,’—

*omit.*

(4) Schedule 3, definition **“port authority”**, paragraph (d)—

*omit.*

**Costal Protection and Management and Other Legislation Amendment Act 2001 No. 93 s 25(c) reads as follows—**

## **25 Legislation repealed**

The following legislation is repealed—

- (c) *Transport Infrastructure Act 1994*, sections 233 and 236.