



Transport Planning and Coordination Act 1994

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Queensland

Transport Planning and Coordination Act 1994

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Transport Planning and Coordination Act 1994

An Act about the planning and coordination of transport, and other matters for which the Minister is responsible

Part 1 Preliminary

1 Short title

This Act may be cited as the *Transport Planning and Coordination Act 1994*.

2 Objectives

The objectives of this Act are, within the government's overall policy agenda, to improve—

- (a) the economic, trade and regional development performance of Queensland; and
- (b) the quality of life of Queenslanders;

by achieving overall transport effectiveness and efficiency through strategic planning and management of transport resources.

3 Definitions

The dictionary in schedule 1 defines particular words used in this Act.

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- (a) an adequate framework for the coordinated planning for transport; and
 - (b) a way of achieving effective and efficient use of land for transport purposes.

6 Transport coordination plan to be consistent with overall strategic planning for government etc.

Each transport coordination plan must—

- (a) be consistent with the government's overall strategic planning for Queensland; and
- (b) take into account—
 - (i) national transport strategies; and
 - (ii) regional transport and other development strategies; and
 - (iii) local government interests; and
 - (iv) the government's land use planning; and
 - (v) the government's environmental policies.

7 Tabling of transport coordination plan

The Minister must cause a copy of each transport coordination plan, and of each amendment of a transport coordination plan, approved by the Minister, to be tabled in the Legislative Assembly.

8 Effect of failure to comply with pt 2

- (1) It is Parliament's intention that this part be complied with.
- (2) However—
 - (a) this part is directory only and does not create rights or impose legally enforceable obligations on the State, Minister, chief executive or anyone else; and

[s 8A]

- (b) failure to comply with this part does not affect the validity of anything done or not done under this Act or another Act.
- (3) In addition, a decision made, or appearing to be made, under this part—
 - (a) is final and conclusive; and
 - (b) can not be challenged, appealed against, reviewed, quashed, set aside, or called in question in another way, under the *Judicial Review Act 1991* (whether by the Supreme Court, another court, a tribunal or another entity); and
 - (c) is not subject to any writ or order of the Supreme Court, another court, a tribunal or another entity on any ground.
- (4) In this section—

decision includes—

 - (a) conduct engaged in to make a decision; and
 - (b) conduct related to making a decision; and
 - (c) failure to make a decision.

Part 2A **Land use and transport coordination**

8A **Object of pt 2A**

- (1) The object of this part is to enable the chief executive to encourage increased integration between land use and transport.
- (2) The way the object is to be achieved includes—
 - (a) ensuring, as far as practicable, development does not have a significant adverse impact on any of the following—
 - (i) existing or future public passenger transport;

-
- (ii) existing or future public passenger transport infrastructure; and
 - (b) ensuring development addresses any impacts on the development from environmental emissions generated by any of the following—
 - (i) existing or future public passenger transport;
 - (ii) existing or future public passenger transport infrastructure; and
- Examples of environmental emissions—*
air particles, fumes, light, noise
- (c) ensuring, as far as practicable, public passenger transport offers an attractive alternative to private transport in a way that reduces the overall economic, environmental and social costs of transport; and
 - (d) promoting urban development that maximises the use of public passenger transport; and
 - (e) increasing opportunities for people to access public passenger transport, including access by cycling and walking; and
 - (f) ensuring, as far as practicable, the provision of public passenger transport infrastructure to support public passenger transport; and
 - (g) ensuring development supports active transport; and
 - (h) ensuring, as far as practicable, the provision of active transport infrastructure to support active transport.
- (3) In this section—

active transport means physical activity undertaken as a means of transport from 1 place to another, including the following—

- (a) cycling;
- (b) walking;

[s 8B]

- (c) cycling or walking to a place to access public passenger transport, or from a place after public passenger transport has been used.

active transport infrastructure means infrastructure for use in connection with active transport, including, for example, the following—

- (a) a path or walkway for use by pedestrians;
- (b) a path, lane or other infrastructure for use by cyclists;
- (c) a device or facility designed and constructed for parking bicycles;
- (d) an end of trip facility.

end of trip facility means a facility or service at a potential destination for a person engaging in active transport that is designed to make active transport a more attractive, convenient and practical means of transport, including, for example, any of the following—

- (a) showers, toilets or wash basins;
- (b) areas for changing clothes;
- (c) facilities used for grooming purposes, including, for example, mirrors, hair dryers, ironing equipment or outlets for hair dryers and other electrical equipment;
- (d) facilities for washing or drying clothes;
- (e) service for the provision of towels;
- (f) storage facilities for clothing or equipment;
- (g) drinking facilities;
- (h) services for obtaining equipment that may be used to maintain or repair bicycles, including, for example, air pumps, puncture repair kits, tyre levers and tyre tubes.

8B Impact of particular development on public passenger transport or active transport

- (1) This section applies if the chief executive is—

-
- (a) a referral agency under the Planning Act for a development application under that Act; or
 - (b) the responsible entity or a referral agency under the Planning Act for a change application under that Act.
- (2) For performing the chief executive's functions as responsible entity or referral agency, the chief executive must consider the extent to which the proposed development satisfies the objectives of this part.
- (3) Subsection (2) is in addition to, and does not limit, the Planning Act, sections 55, 81 and 82.

8C Impact of road works on local government road

- (1) This section applies in relation to road works on a local government road if the road works—
- (a) are to be carried out on a road that forms part of a route used for a public passenger service; or
 - (b) will do either of the following while the works are being carried out or when the works are finished—
 - (i) restrict or limit access to public passenger transport infrastructure;
 - (ii) result in the removal of public passenger transport infrastructure.
- (2) However, this section applies in relation to a route used for a public passenger service only if the chief executive advises the relevant local government, in writing, that a code, prescribed by regulation for this section, about road works on local government roads, applies to the route.
- (3) Without limiting subsection (2), the chief executive may identify as a route to which a code applies—
- (a) a route used for a scheduled passenger service; or
 - (b) a route identified in a passenger transport implementation strategy or program under the *Transport Operations (Passenger Transport) Act 1994*.

[s 8D]

- (4) A person who undertakes road works on a local government road to which this section applies must comply with a code prescribed under a regulation for this section.

8D Impact of change of management of local government road on public passenger transport

- (1) A local government must apply to the chief executive to obtain the chief executive's written approval to make a change to the management of—
- (a) a local government road on which a scheduled passenger service identified in the guidelines under section 8E as a significant scheduled passenger service is provided; or
 - (b) another local government road if the change would, if made, have a significant adverse impact on the provision of public passenger transport.
- (2) Without limiting subsection (1)(b), a change to the management of a local government road that, if made, would adversely affect any of the following is a change that would have a significant adverse impact on the provision of public passenger transport—
- (a) the route that may be taken for, or the number of stops that may be made during, a scheduled passenger service;
 - (b) the frequency of a scheduled journey for a scheduled passenger service;
 - (c) the time taken to complete a scheduled journey for a scheduled passenger service.

Examples of changes that may adversely affect something mentioned in paragraph (a), (b) or (c)—

- the closure of a road or lane
 - the removal or alteration of a bus lane or transit lane
 - a change in the direction of traffic flow along a road
 - a change in priority settings on a road
- (3) The application must be made at least 21 days before the proposed change is to take effect.

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- (4) The chief executive—
- (a) must consider the application within—
 - (i) 21 days after receiving it; or
 - (ii) the longer time notified to the local government by the chief executive, in writing, before the end of the 21 days; and
 - (b) may—
 - (i) approve the proposed change, with or without conditions; or
 - (ii) refuse to approve the proposed change.
- (5) The chief executive must give the local government written notice of the chief executive's decision on the application.
- (6) If the chief executive does not do any of the following within the 21 days, the chief executive is taken to have approved the proposed change—
- (a) approve the proposed change;
 - (b) refuse to approve the proposed change;
 - (c) give the local government a notice under subsection (4)(a)(ii).
- (7) Part 5 applies to a decision of the chief executive under subsection (4)(b).
- (8) This section does not apply if—
- (a) the chief executive or planning chief executive has considered the change of management of the local government road as part of considering an application for a development approval, or a change application, under the Planning Act; or
 - (b) it is reasonably necessary for the change to be made without delay including, for example, because of an emergency affecting the safety of the road network.
- (9) In this section—

planning chief executive means the chief executive of the department in which the Planning Act is administered.

8E Guidelines for pt 2A

- (1) The chief executive may make guidelines—
 - (a) about a matter mentioned in section 8A; or
 - (b) for the purposes of sections 8B to 8D.
- (2) The guidelines may also—
 - (a) identify a particular transport facility, transport corridor or parcel of land; and
 - (b) include other matters relevant to subsection (1)(a) or (b).
- (3) A person must have regard to relevant guidelines when—
 - (a) planning or carrying out development under the Planning Act; or
 - (b) making changes to the management of a local government road; or
 - (c) making proposals in relation to the provision of public passenger transport.
- (4) The chief executive must give a copy of the following to every local government affected by the guidelines—
 - (a) the guidelines;
 - (b) any amendment of the guidelines.
- (5) In this section—

transport corridor includes a future transport corridor.

transport facility includes a future transport facility.

Part 4 Functions, powers and property

Division 1 General

22 Chief executive's coordination and strategic planning functions

- (1) The chief executive's functions under the transport Acts include—
 - (a) coordinating the strategic planning and operation of integrated transport systems in the State; and
 - (b) managing the allocation of funds to achieve this outcome.
- (2) Without limiting subsection (1), the chief executive is to achieve the functions mentioned in subsection (1) by—
 - (a) ensuring more effective integration of land use and transport planning by—
 - (i) evaluating the effectiveness of proposed and existing transport systems in the State; and
 - (ii) developing and implementing integrated regional transport plans that complement the objectives of regional and land use plans in the State; and
 - (b) ensuring the effective planning and development of transport infrastructure; and
 - (c) developing and implementing travel demand management initiatives, including marketing and promotion initiatives, to more efficiently use road capacity.

23 Functions of chief executive not limited by implication

- (1) No transport Act limits, by implication, the chief executive's functions under another Act or law.

Note—

This Act (and the chief executive's functions under it) does not limit, by implication, the following functions under other Acts or laws—

- the chief executive's responsibilities as chief executive under the *Public Service Act 2008*, especially section 98
- the chief executive's functions as accountable officer under the *Financial Accountability Act 2009*, especially section 61
- the chief executive's functions, whether at common law or under statute, as the person in control, under the Minister, of a department of government of the State
- the chief executive's functions under the *Transport Infrastructure Act 1994*, including, for example, the chief executive's functions for road transport infrastructure, busway transport infrastructure and light rail transport infrastructure under that Act.

(2) This section is enacted to remove any doubt about the chief executive's functions.

(3) In this section—

function includes responsibility.

law includes any common law rule.

24 General powers of chief executive

(1) The chief executive has, under the Minister and as agent of the State, all the powers of the State that are necessary or desirable for performing the chief executive's functions.

(2) Anything done in the name of, or for, the State by the chief executive in performing the chief executive's functions is taken to have been done for, and binds, the State.

(3) Without limiting subsection (1), the chief executive may, for example, in performing the chief executive's functions—

- (a) enter into arrangements, agreements, contracts and deeds; and
- (b) acquire, hold, deal with and dispose of property; and
- (c) appoint agents and attorneys; and
- (d) charge, and fix terms, for goods, services, facilities and information supplied; and

-
- (e) seal any document; and
 - (f) do other things necessary or convenient to be done for, or in connection with, the chief executive's functions.
- (4) Without limiting subsection (1), the chief executive has the powers given to the chief executive under this or another Act or at common law.
- (5) No transport Act limits, by implication, the powers that the chief executive has under another Act or law, and, in particular, no transport Act prevents, by implication—
- (a) the chief executive doing anything in trade or commerce; or
 - (b) the chief executive doing anything outside Queensland, including outside Australia.
- (6) However, the chief executive's powers are subject to any restriction expressly imposed on the chief executive under this or another Act.
- (7) This section is enacted to remove any doubt about the chief executive's powers.
- (8) In this section—
- function* includes responsibility.
 - law* includes any common law rule.
 - power* includes legal capacity.
 - restriction* includes prohibition.
 - trade or commerce* includes—
- (a) a business or professional activity; and
 - (b) anything else done for gain or reward.

25 General powers regarding property

- (1) The chief executive may, for the State, acquire, hold, dispose of or otherwise deal with property for the purposes of transport, for an incidental purpose, for the purpose of a

[s 25]

transport associated development or for a combination of these purposes.

Note—

See subsections (2) and (2A) if land is to be acquired by resumption.

- (2) The power conferred by subsection (1) includes power to acquire land by resumption in accordance with this part if the land is, in the chief executive's opinion, required for the purposes of transport, for an incidental purpose, for the purpose of a transport associated development or for a combination of these purposes.
- (2A) If land is acquired by resumption for the purpose of a transport associated development as mentioned in subsection (1) or (2), at the time of acquisition the land must also be acquired for the purposes of transport or for an incidental purpose.
- (3) Without limiting subsection (1) or (2), the chief executive may, for the State, acquire property for any of the following purposes—
 - (a) the facilitation of transport infrastructure;
 - (b) the supply or improvement of facilities for users of transport infrastructure;
 - (c) the amelioration of negative environmental effects associated with transport infrastructure;
 - (d) the construction or relocation of ancillary works and encroachments and public utility plant within the meaning of the *Transport Infrastructure Act 1994*, chapter 6.
- (4) In acquiring land under this part, the chief executive must have regard to any relevant provisions of—
 - (a) the transport coordination plan; and
 - (b) transport infrastructure strategies in force under the *Transport Infrastructure Act 1994*.
- (5) The chief executive may have regard to any other matters the chief executive considers relevant.

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- (6) The power to acquire land under this part includes power to acquire land or an easement, including a transport easement for support, or other interest in land above or beneath the surface without acquiring rights in the surface.
 - (7) Subsection (6) applies to the acquisition of an easement even though the easement—
 - (a) is not attached to, or used and enjoyed with, a dominant tenement; or
 - (b) must not be used and enjoyed in common with any other person.
 - (8) For the *Acquisition of Land Act 1967*—
 - (a) the chief executive is a constructing authority within the meaning of that Act; and
 - (b) without limiting the chief executive's powers to take land under that Act, the chief executive, as a constructing authority under that Act, may take land for purposes mentioned in subsections (1), (2) and (3).
 - (9) The chief executive may, as a constructing authority under the *Acquisition of Land Act 1967*, obtain or resume a lease of State land or some other interest in State land that is less than freehold.
 - (10) If the chief executive issues a notice of intention to resume a lease of State land, or some other interest in State land that is less than freehold, the chief executive must file a copy of the notice in the appropriate land register kept under the *Land Act 1994*.
 - (11) If the chief executive amends or discontinues a resumption mentioned in subsection (10), the chief executive must immediately file a notice of the amendment or discontinuance in the register.
 - (12) If an acquisition of land by the chief executive would sever land of the owner from other land of the owner, the chief executive may, with the Minister's approval, acquire by agreement or resumption the whole or a part of the severed area.

[s 26]

- (13) Land acquired under this part may be described in the instrument acquiring the land in any way sufficient to identify the land.

26 Taking of land by the chief executive for future transport purposes

An acquisition of land that will be required at some future time for a purpose for which land may be taken under this Act by the chief executive is an acquisition of land for the purposes of this Act even if the time when the land will be required is indefinite or presently can not be worked out.

26A Changing requirement for transport land

- (1) This section applies to transport land taken under the *Acquisition of Land Act 1967* for a particular transport purpose.
- (2) The Minister may, by gazette notice under this Act, declare that the land is required for another stated transport purpose.
- (3) The land is taken to have been acquired for the other transport purpose from the day the declaration is published in the gazette.
- (4) The *Acquisition of Land Act 1967*, section 41 does not apply to the land because of the change of purpose.
- (5) This section does not affect any right of a person to compensation because of the acquisition.
- (6) To remove doubt, it is declared that a declaration under subsection (2)—
 - (a) is not an acquisition of the land; and
 - (b) does not give a right to compensation.

27 Power of chief executive to lease, sell or otherwise dispose of land for transport purpose

- (1) The chief executive may, for the State, lease, sell or otherwise dispose of transport land—

-
- (a) if the land is for busway transport infrastructure or bus passenger services—to any person for busway transport infrastructure or bus passenger services; or
 - (aa) if the land is for franchised road or toll road purposes—to any person for franchised road or toll road purposes; or
 - (b) if the land is for light rail transport infrastructure or light rail passenger services—to any person for light rail transport infrastructure or light rail passenger services; or
 - (ba) if the land is for a combination of purposes (***combined purposes***) including the purpose of a transport associated development (***relevant purpose***)—to any person for a relevant purpose, whether or not the person is going to deal with the land for any other purpose included in the combined purposes; or
 - (c) if the land is for a transport purpose other than a purpose mentioned in paragraph (a), (aa), (b) or (ba)—to a transport government entity or railway manager under the *Transport Infrastructure Act 1994*.

- (2) Subsection (1) applies despite the *Acquisition of Land Act 1967*.

Note—

Subsection (1) would operate, for example, despite any implication in the *Acquisition of Land Act 1967* that the chief executive must carry out the development for which land is acquired and despite the requirements of section 41 of that Act.

- (3) To remove any doubt, it is declared that the power of the chief executive to acquire land by resumption or otherwise under this part applies even if the acquisition is carried out with the intention of disposing of land—
 - (a) under subsection (1); or
 - (b) as mentioned in subsection (1)(aa), (b) or (c) under the *Transport Infrastructure Act 1994*, section 84C, 240 or 355.

[s 27A]

- (4) Subsection (3) does not limit the power to acquire land under this part.

27A Power of chief executive to dispose of land

- (1) This section applies if—
- (a) land has been acquired under this part, and is no longer required by the chief executive as the constructing authority, under the *Acquisition of Land Act 1967*; and
 - (b) the chief executive intends to offer the land to the former owner.
- (2) Also, this section applies despite the *Acquisition of Land Act 1967*, section 41.
- (3) The chief executive may take an easement over all or part of the land to ensure the structural and operational integrity of transport infrastructure.
- (5) The chief executive must, within 7 years after the date of acquisition, give notice of the chief executive's intention (the ***chief executive's notice***) to offer the land to the former owner.
- (6) The chief executive's notice must—
- (a) be in writing; and
 - (b) state that—
 - (i) the chief executive intends to sell the land; and
 - (ii) if the chief executive has registered an easement—the easement has been registered and the nature and terms of the easement; and
 - (iii) the former owner must, within 28 days after the notice is given (the ***relevant time***), give written notice to the chief executive (the ***former owner's notice***) about whether the former owner is interested in buying the land; and
 - (iv) if the chief executive does not receive the former owner's notice within the relevant time, the formal offer lapses and the chief executive may dispose of the land subject to any easement.

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- (7) Subsection (8) applies if the chief executive—
- (a) receives, within the relevant time, the former owner's notice stating the former owner is not interested in buying the land; or
 - (b) does not receive the former owner's notice within the relevant time.
- (8) The chief executive may, for the State, dispose of the land subject to any easement in favour of the chief executive.
- (9) Subsection (10) applies if the chief executive receives, within the relevant time, the former owner's notice stating the former owner is interested in buying the land.
- (10) The chief executive must offer (the *formal offer*) the land, subject to any easement, for sale to the former owner at a price (the *sale price*) decided by the chief executive.
- (11) The formal offer must be in writing.
- (12) In deciding the price at the which the land may be sold under subsection (8) or the sale price, the chief executive must take into account—
- (a) a valuation by a registered valuer; and
 - (b) the policies and systems relating to the management of government assets; and
 - (c) the existence of any easement.
- (13) A person contracting or otherwise dealing with the chief executive is not concerned to inquire whether the requirements of this section have been complied with, and the title of the person to land acquired from the chief executive is not affected by a failure to comply with the requirements.
- (14) In this section—
- former owner* see the *Acquisition of Land Act 1967*, section 41(2).
- registered valuer* means a valuer registered under the *Valuers Registration Act 1992*.

28 Value of particular works does not affect compensation payable

- (1) This section applies—
 - (a) for deciding the amount of compensation payable to a person for land resumed under this part; and
 - (b) despite the *Acquisition of Land Act 1967*, section 20(2).
- (2) The value of works carried out on the land after a notice of intention to resume the land has been sent to a person entitled to compensation for the land, or after agreement to acquire has been reached, must be disregarded.

Division 2 Transport easement for support

28AB Definitions for div 2

In this division—

benefited land see section 28AE(1).

burdened land see section 28AE(1).

original owner, for benefited land or burdened land for a transport easement for support, means the owner of the land when the easement was created.

owner, of land, means—

- (a) for freehold land—the registered owner or lessee of the land; or
- (b) for non-freehold land—
 - (i) the lessee or licensee of the land; or
 - (ii) if the land is a reserve or unallocated State land—the State.

registered means registered under the *Land Act 1994* or *Land Title Act 1994*.

transport easement for support see section 28AC.

transport infrastructure has the meaning given in the *Transport Infrastructure Act 1994*, schedule 6.

unallocated State land means unallocated State land under the *Land Act 1994*.

28AC Meaning of *transport easement for support*

- (1) A *transport easement for support* is an easement created for the purpose of support.
- (2) A transport easement for support may be created only—
 - (a) in relation to adjoining lots; and
 - (b) if the benefited land is transport land.
- (3) A document or instrument of easement for a transport easement for support must state that the easement is created for the purpose of support.
- (4) The approval of the Minister administering the *Land Act 1994* is not required for—
 - (a) the creation of a transport easement for support under section 362(1) of that Act; or
 - (b) the registration of a document creating a transport easement for support under section 363(1) of that Act.
- (5) In this section—

adjoining lot, for a transport easement for support, includes a lot (*contiguous lot*) adjoining the adjoining lot for the easement, if the contiguous lot is needed for support.

transport land includes land—

- (a) proposed to be acquired for transport purposes or for an incidental purpose; and
- (b) used, or proposed to be used, for transport purposes or for an incidental purpose.

28AD Application of div 2

- (1) This division applies to a registered easement that is a transport easement for support.
- (2) A provision of an Act that provides for the creation, recording or taking of an easement applies to a transport easement for support to the extent the provision is not varied under this division.
- (3) In this section—
Act includes the *Acquisition of Land Act 1967*, *Land Act 1994* and *Land Title Act 1994*.

28AE Rights and liabilities relating to benefited land and burdened land

- (1) An easement for lateral, subjacent or superjacent support exists in favour of land (the *benefited land*) against other land (the *burdened land*) if the burdened land is capable of supplying lateral, subjacent or superjacent support to the benefited land.
- (2) The easement entitles the owner of the benefited land to enter the burdened land, other than a part of the land where a person resides, for the easement—
 - (a) to inspect the burdened land for the purpose of preventing or rectifying any infringement of the rights of the owner of the benefited land; and
 - (b) to maintain, change or replace all or part of a structure providing support.
- (3) An owner of the burdened land—
 - (a) must do all things necessary to ensure that support for the benefited land by the burdened land is maintained; and
 - (b) must not, without the written consent of the owner of the benefited land—

-
- (i) remove, or allow another person to remove, support for the benefited land, other than as required under paragraph (a); or
 - (ii) change, or allow another person to change, support for the benefited land, other than as required under paragraph (a); or
 - (iii) do, or allow another person to do, anything that interferes with, or otherwise compromises, support for or the structural integrity of the benefited land, other than as required under paragraph (a).
- (4) If the owner of the burdened land does not comply with subsection (3)(a) or (b), the owner of the benefited land may recover the cost of maintaining or replacing any support from the owner of the benefited land as a debt payable to the owner of the benefited land.
- (5) In a proceeding, subsection (3) is to be read in favour of the owner of the benefited land.

28AF Notice of entry

- (1) This section applies if the owner of benefited land is entitled to enter the burdened land under section 28AE.
- (2) Before exercising the right of entry, the owner of the benefited land must give the owner of the burdened land reasonable notice in writing of—
 - (a) the owner’s intention to enter the burdened land; and
 - (b) details of the inspection or the maintenance, change or replacement to be carried out.
- (3) However, if in the circumstances, urgent maintenance, change or replacement is required (because the structure has been destroyed, for example) and it is impractical to give a notice under subsection (2)—
 - (a) the owner of the benefited land may exercise the right of entry without giving the notice to carry out the urgent maintenance or replacement; and

[s 28AG]

- (b) as soon as practicable after the entry, the owner of the benefited land must give the owner of the burdened land written notice of the entry and details of the maintenance or replacement carried out.

28AG Continuation of transport easement for support

- (1) A transport easement for support continues over affected land.
- (2) *Affected land* is land that is benefited, or burdened, by a transport easement for support and—
 - (a) is dealt with under the *Land Act 1994* or *Land Title Act 1994*; or
 - (b) becomes unallocated State land.
- (3) The owner of the affected land is taken to be the successor in title of the original owner of the land.
- (4) The benefit of a transport easement for support passes with the benefited land.
- (5) The burden of a transport easement for support passes with the burdened land.
- (6) This section applies to affected land that becomes unallocated State land despite the following—
 - (a) section 28AC(2)(b);
 - (b) the *Land Act 1994*, section 372;
 - (c) the *Land Title Act 1994*, section 85(3).
- (7) In this section—

dealt with means—

 - (a) for land under the *Land Act 1994*—
 - (i) granted in fee simple or in fee simple in trust; or
 - (ii) leased; or
 - (iii) dedicated as a reserve under an Act; or
 - (iv) surrendered as a lease; or

-
- (b) for land under the *Land Title Act 1994*—reconfigured under that Act.

28AH Terms bind successors in title

- (1) Each term, whether positive or negative, for a transport easement for support—
 - (a) is for the benefit of any successors in title of the benefited land; and
 - (b) is binding on any successors in title of the burdened land.
- (2) However, subsection (1) does not apply to a term expressed to apply only to the original owner of the benefited land or burdened land.
- (3) In this section—

term, for a transport easement for support, means—

 - (a) a covenant or other term stated in the document or instrument of easement; and
 - (b) a requirement under section 28E(3).

Part 4A Special provisions for busways

28A Definitions for part

In this part—

Acquisition Act means the *Acquisition of Land Act 1967*.

agreement means a resumption agreement under the Acquisition Act, section 15(1).

busway means—

- (a) a route especially designed and constructed for, and dedicated to, the priority movement of buses for passenger transport purposes; and

[s 28B]

- (b) places for the taking on and letting off of bus passengers using the route.

commencement means the commencement of section 28B.

constructing authority, for a land acquisition, means the constructing authority for the land acquisition under the Acquisition Act.

land acquisition means the taking of land under the authority of this Act and the Acquisition Act if, regardless of the particular purpose for the taking of the land, the taking of land is concerned with the construction or proposed construction of a busway.

notice of intention to resume means a notice of intention to resume under the Acquisition Act.

taking of land means the taking of land under a gazette resumption notice under the Acquisition Act.

28B Busway land acquisition

- (1) Subsections (2) and (3) apply to a land acquisition that—
 - (a) happened before the commencement; or
 - (b) happens after the commencement if—
 - (i) the notice of intention to resume for the land acquisition was served before the commencement; or
 - (ii) the date of the agreement for the land acquisition was earlier than the commencement.
- (2) It is declared that the validity and effectiveness of the land acquisition was not, and is not, affected by—
 - (a) whether the constructing authority was or is, or purported or purports to be—
 - (i) the chief executive with administrative responsibilities concerning matters connected with transport infrastructure; or

-
- (ii) the chief executive with administrative responsibilities concerning matters connected with roads; or
 - (b) for the application of the Acquisition Act, part 2, whether the person assuming the role of relevant Minister was or is the Minister mentioned in the Acquisition Act, section 2, definition *relevant Minister*, paragraph (b) or another Minister.
- (3) It is declared that, despite anything done for the land acquisition, the constructing authority for the acquisition is taken to be, and always to have been, the chief executive with administrative responsibilities concerning matters connected with roads.

28BA Further provisions relating to land acquisitions for busways on or after 13 October 2000

- (1) This section applies to a land acquisition that—
 - (a) happened on or after 13 October 2000 and before the relevant date; or
 - (b) happens after the relevant date if—
 - (i) the notice of intention to resume for the land acquisition was served on or after 13 October 2000 and before the relevant date; or
 - (ii) the date of the agreement for the land acquisition was on or after 13 October 2000 and earlier than the relevant date.
- (2) It is declared that the validity and effectiveness of the land acquisition was not, and is not, affected by—
 - (a) whether the constructing authority was or is, or purported or purports to be—
 - (i) the chief executive with administrative responsibilities concerning matters connected with transport infrastructure; or

[s 28C]

- (ii) the chief executive with administrative responsibilities concerning matters connected with roads; or
 - (b) for the application of the Acquisition Act, section 9 or 15—whether the person assuming the role of Minister was or is the Minister mentioned in the Acquisition Act, section 9(1), definition *Minister*, paragraph (b) or another Minister.
- (3) It is declared that, despite anything done for the land acquisition, the constructing authority for the acquisition is taken to be, and always to have been, the chief executive with administrative responsibilities concerning matters connected with roads.
- (4) In this section—
relevant date means the date of the commencement of this section.

28C Construction contracts

- (1) It is declared that the validity and effectiveness of a construction contract entered into before or after the commencement was not, and is not, affected by whether the entity entering into the contract for the State was or is—
- (a) the chief executive with administrative responsibilities concerning matters connected with transport infrastructure; or
 - (b) the chief executive with administrative responsibilities concerning matters connected with roads.
- (2) In this section—
construction contract means a contract concerning the construction of a busway.

Part 4B **Special provision for local government tollways**

28D Powers regarding property

- (1) A local government may acquire, hold, dispose of or otherwise deal with land for—
 - (a) an approved tollway project under the *Transport Infrastructure Act 1994*; or
 - (b) a local government tollway under the *Transport Infrastructure Act 1994*.
- (2) Without limiting subsection (1), a local government may—
 - (a) acquire land for an approved tollway project or local government tollway with the intention of disposing of it to another person to operate as a tollway; and
 - (b) dispose of land acquired by the local government for an approved tollway project or local government tollway to another person.
- (3) The power conferred by subsection (1) includes power to acquire land by taking it under the *Acquisition of Land Act 1967* if the land is, in the local government's opinion, required for an approved tollway project or local government tollway, or for an incidental purpose.
- (4) The power to acquire land under this section includes power to acquire land or an easement or other interest in land above or beneath the surface without acquiring rights in the surface.
- (5) Subsection (4) applies to the acquisition of an easement even though the easement—
 - (a) is not attached to, or used and enjoyed with, a dominant tenement; or
 - (b) must not be used and enjoyed in common with any other person.

[s 28DA]

- (6) A local government acquiring land under this section is a constructing authority within the meaning of the *Acquisition of Land Act 1967*.
- (7) If an acquisition of land by a local government would sever land of the owner from other land of the owner, the local government may acquire the whole or a part of the severed area by agreement or by taking the land under the *Acquisition of Land Act 1967*.
- (8) Land acquired under this section may be described in the instrument acquiring the land in any way sufficient to identify the land.

28DA Approved tollway project becomes local government tollway

- (1) This section applies if—
 - (a) a local government has started acquiring land for an approved tollway project as mentioned in section 28D; and
 - (b) before the acquisition is complete, a local government tollway is declared for the approved tollway project.
- (2) The acquisition is not affected by the declaration of the local government tollway and the local government may continue the acquisition as if the declaration had not been made.

Part 4C Biometric data and other information for prescribed authorities

Division 1 Preliminary

28E Definitions for pt 4C

In this part—

administrator means—

- (a) for the *Transport Operations (Marine Safety) Act 1994*—the general manager under the *Maritime Safety Queensland Act 2002* or the chief executive; or
- (b) for a transport Act (other than the *Transport Operations (Marine Safety) Act 1994*)—the chief executive; or
- (c) for a prescribed authorisation Act (other than a transport Act)—the office holder (however described) whose function it is, under the Act, to decide whether to grant a prescribed authority.

grant includes issue and give.

most recent digital photo, of a person, means the most recent digital photo of the person kept under this Act by the chief executive.

most recent digitised signature, of a person, means the most recent digitised signature of the person kept under this Act by the chief executive.

prescribed authorisation document means a prescribed authority on which a person's digital photo is reproduced.

retention period, for a person's digital photo or digitised signature, see section 28EH(2).

shelf life, of a person's digital photo or digitised signature, means 10 years after the person's digital photo or digitised signature is taken under this Act or, if taken before the commencement under another Act, under that Act.

take, a digital photo and digitised signature of a person, includes obtain.

[s 28EA]

Division 2 Taking, keeping and using biometric data and other information

28EA Taking a digital photo and digitised signature for use under this or another Act

- (1) A person (*applicant*) must allow the chief executive to take and keep for use under this Act, or for use as provided under another Act, a digital photo and digitised signature of the applicant (as required by the chief executive) if the applicant—
 - (a) applies to the administrator for a prescribed authorisation Act for the grant, renewal, amendment or replacement of a prescribed authority (the *authority applied for*); or
 - (b) applies to, or asks, the administrator for a transport Act about something else relevant to the administration of a transport Act and, to deal with the application or request, the administrator considers it reasonably necessary to use facial recognition technology to establish the applicant's connection to the most recent digital photo of the person the applicant is claiming to be.
- (2) Subsection (1) does not apply if the applicant withdraws the application or request.
- (3) Subsection (1)(a) does not apply if—
 - (a) as allowed under this Act, the chief executive is keeping the applicant's most recent digital photo and most recent digitised signature; and
 - (b) the chief executive has no evidence to suggest that the applicant's most recent digital photo is not a true likeness of the applicant; and
 - (c) the shelf life of the applicant's most recent digital photo and most recent digitised signature, or the most recent extension of the shelf life under section 28EB, has not ended and will not end before the expiry of any

prescribed authorisation document that is granted on the approval of the authority applied for.

- (4) If an applicant makes an application mentioned in subsection (1)(a) to the administrator for a prescribed authorisation Act that is not a transport Act, the chief executive must advise the administrator if—
- (a) the applicant has not complied with subsection (1)(a); or
 - (b) the chief executive is not satisfied there is a sufficient connection between the digital photo taken under subsection (1)(a) and the most recent digital photo of the person the applicant is claiming to be; or
 - (c) the chief executive is satisfied there is a sufficient connection between the digital photo taken under subsection (1)(a) and the most recent digital photo of someone other than the person the applicant is claiming to be.
- (5) The administrator for a transport Act must refuse to consider any application or request mentioned in subsection (1) if—
- (a) the applicant has not complied with subsection (1); or
 - (b) the administrator is not satisfied there is a sufficient connection between the digital photo taken under subsection (1) and the most recent digital photo of the person the applicant is claiming to be; or
 - (c) the administrator is satisfied that there is a sufficient connection between the digital photo taken under subsection (1) and the most recent digital photo of someone other than the person the applicant is claiming to be.
- (6) Subsection (5) has effect despite any other provision of a transport Act.

[s 28EB]

28EB Extending shelf life of a digital photo and digitised signature

- (1) The chief executive may extend the shelf life of the most recent digital photo and most recent digitised signature of a person.
- (2) The period for which the shelf life may be extended under subsection (1) must not result in the shelf life being extended under the subsection for periods totalling more than 6 months.

Example—

If the shelf life has been extended previously under subsection (1) for 2 months, the next extension under the subsection must not be for more than 4 months.

28EC Using a digital photo and digitised signature

- (1) The chief executive may use a person's most recent digital photo and most recent digitised signature for either of the following purposes—
 - (a) to help identify the person for the purpose of any application or request under section 28EA(1);
 - (b) to reproduce the person's digital photo and digitised signature on a prescribed authorisation document.
- (2) The chief executive may also use a person's most recent digital photo and most recent digitised signature in an investigation of, or a proceeding for, an offence that—
 - (a) happens—
 - (i) in making an application or request mentioned in section 28EA(1) for which the digital photo and digitised signature are taken; or
 - (ii) during the retention period for the digital photo and digitised signature; and
 - (b) involves a person obtaining or attempting to obtain, by a false statement or misrepresentation or in any other dishonest way—

-
- (i) the grant, renewal, amendment or replacement of a prescribed authority; or
 - (ii) something else under a transport Act.

28ED Restricted access to a digital photo and digitised signature

- (1) The chief executive may allow a person to access the person's digital photo kept under this Act if—
 - (a) the person establishes, to the chief executive's reasonable satisfaction, it is the person's digital photo; and
Examples of how a person may establish a digital photo is the person's digital photo—
 - allowing the use of facial recognition technology
 - presenting a valid Australian passport
 - (b) the person applies to the chief executive, in the approved form, for the access.
- (2) The chief executive may allow an entity that grants driver licences under a corresponding law to the *Transport Operations (Road Use Management) Act 1995* to access a person's digital photo kept under this Act if the access is for granting a driver licence under the corresponding law.
- (3) An application mentioned in subsection (1)(b) may be made by electronic communication.
- (4) The chief executive must allow a police officer to access a person's digital photo kept under a prescribed authorisation Act if the access is for a permitted purpose within the meaning of section 28EP(2).
- (4A) To remove any doubt, it is declared that access to a digital photo under subsection (4) is not subject to any requirement under part 4D.
- (5) The chief executive must allow the administrator of a prescribed authorisation Act, other than a transport Act, to access a person's digital photo and digitised signature kept under this Act (as required by the administrator) if the

[s 28EE]

administrator considers it reasonably necessary to use the photo or signature in an investigation of, or proceeding for, an offence that—

- (a) happens—
 - (i) in making the application under the prescribed authorisation Act for which the person's digital photo and digitised signature are taken under section 28EA(1)(a); or
 - (ii) during the retention period for the digital photo and digitised signature; and
- (b) involves a person obtaining or attempting to obtain, by a false statement or misrepresentation or in any other dishonest way, the grant, renewal, amendment or replacement of a prescribed authority under the prescribed authorisation Act.

(6) In this section—

access, a digital photo or digitised signature, means obtain a copy of the digital photo or digitised signature.

corresponding law, to the *Transport Operations (Road Use Management) Act 1995*, means a law of the Commonwealth or another State that provides for the same matter as that Act.

28EE Deleting a digital photo or digitised signature from register or similar record

When the retention period for a person's digital photo or digitised signature kept under this Act ends, the chief executive must delete the person's digital photo or digitised signature from any register or similar record kept under this Act by the chief executive.

28EF Destruction of a digital photo or digitised signature

- (1) This section applies to a copy of a person's digital photo or digitised signature—

-
- (a) accessed under this part by the administrator of a prescribed authorisation Act that is not a transport Act; and
 - (b) in the possession of that administrator, including by electronic communication.
- (2) The administrator may retain the copy for the period necessary to conduct an investigation of, or for use in a proceeding for, an offence mentioned in section 28ED(5).
- (3) However, the administrator must take reasonable steps to destroy each copy of a person's digital photo or digitised signature accessed for the investigation or prosecution of an offence if a proceeding for the offence has not started within 1 year after the day the photo or signature was first accessed.
- (4) The destruction of a copy of a digital photo or digitised signature must be carried out within a reasonable period—
- (a) after the administrator stops having a reason to retain the photo or signature under subsection (2); or
 - (b) if subsection (3) applies.
- (5) In this section—
- destroy***, a digital photo or digitised signature, includes—
- (a) delete an electronic copy of the photo or signature; and
 - (b) end the way in which the photo or signature may be accessed electronically.

28EG Restricted access to information stored electronically on a smartcard identification authority

- (1) A person may access information stored electronically on a smartcard identification authority only if—
- (a) the person is the holder of the smartcard identification authority; or
 - (b) the person has the holder's consent to access the information; or

[s 28EH]

- (c) the person is an authorised officer for the smartcard identification authority and the access to the information is for exercising a power under the Act under which the smartcard identification authority is granted;
- (d) the person is a police officer who is authorised under the *Police Powers and Responsibilities Act 2000* to access the information.

Maximum penalty—20 penalty units.

- (2) In this section—

access, in relation to information stored electronically on a smartcard identification authority, means view or take a copy of the information.

authorised officer, for a smartcard identification authority, means a person—

- (a) authorised, under an Act, to perform a function or exercise a power in relation to the smartcard identification authority; and
- (b) prescribed under a regulation for this definition.

smartcard identification authority means a prescribed authority in the form of a card, or something similar, that is approved by the administrator of the prescribed authorisation Act under which the authority is issued and on which information may be stored electronically.

28EH Retention period for a digital photo or digitised signature

- (1) This section sets out the retention period for a person’s digital photo or digitised signature taken under this Act.
- (2) Unless subsection (3) applies, the ***retention period*** for a person’s digital photo or digitised signature taken under section 28EA(1) is—
 - (a) if an application mentioned in section 28EA(1)(a) is granted or the person’s digital photo or digitised signature taken under section 28EA(1)(b) is to be used

-
- under section 28EC(1)(b)—30 years after the relevant day; or
- (b) if an application mentioned in section 28EA(1)(a) is not granted—the shorter of the following periods—
 - (i) 6 months after the relevant day;
 - (ii) the period decided by the chief executive; or
 - (c) if paragraph (a) or (b) does not apply—24 hours after the relevant day.
- (3) Despite subsection (2), if—
- (a) an investigation as mentioned in section 28EC(2) is started within the retention period worked out under subsection (2)(b) or (c) of this section for a person’s digital photo or digitised signature; and
 - (b) the chief executive reasonably requires a person’s digital photo or digitised signature to be kept for a longer period for the investigation or a proceeding resulting from the investigation;

the retention period for the digital photo or digitised signature is the longer period mentioned in paragraph (b) of this subsection.

- (4) In this section—

relevant day, in relation to a person’s digital photo or digitised signature, means the day on which the digital photo or digitised signature is taken.

Part 4D National identity matching services

Division 1 Preliminary

28EI Definitions for part

In this part—

[s 28E]

document verification service means the service enabling biographical information on identity documents to be verified against corresponding records held by a participating entity for the service.

face matching services means the following services involving facial biometric matching—

- (a) the service (known as the face verification service) enabling the comparison of a facial image associated with an individual against a facial image held on a specific government record associated with the individual to verify the individual's identity;
- (b) the service (known as the face identification service) enabling the comparison of a facial image against multiple images held on a database of government records to establish an individual's identity;
- (c) the service (known as the one person one licence service) enabling the comparison of an individual's facial image against other facial images used on driver licences and other identity documents to identify whether the individual holds multiple licences, in the same or a different identity, in 1 or more jurisdictions;
- (d) the service (known as the facial recognition analysis utility service) enabling a participating entity for the service that has responsibility for driver licensing in a State to undertake biometric matching using its own data.

host agency, for an identity matching service, means the Commonwealth agency responsible for maintaining the service under an agreement between the Commonwealth and the States.

identity document means a document that—

- (a) contains or incorporates identity information; and
- (b) is capable of being used as evidence of identity.

identity information means information relating to an individual, whether living, dead, real or fictitious, that is

capable of being used, alone or in conjunction with other information, to identify or purportedly identify the individual.

Examples—

- a photo of, or other information about, an individual on a drivers licence, passport or other identity document
- other information about an individual submitted to verify the individual's identity

identity matching services means the following services administered by the Commonwealth in accordance with an agreement entered into by the Commonwealth and the States—

- (a) the document verification service;
- (b) the service (known as the identity data sharing service) enabling the sharing of identity information between the Commonwealth and the States to ensure the accuracy and integrity of identity-based records;
- (c) the face matching services;
- (d) any other service prescribed by regulation, to the extent the operation of the service relates only to a permitted purpose within the meaning of section 28EP(2).

information includes a document.

participating entity, in relation to an identity matching service, means an entity—

- (a) participating in the service; and
- (b) with whom the chief executive has entered into an agreement in relation to the use of the service.

28EJ Part binds all persons

- (1) This part binds all persons, including the State and, to the extent the legislative power of the Parliament permits, the Commonwealth and the other States.
- (2) However, the State, the Commonwealth or another State can not be prosecuted for an offence against this part.

[s 28EK]

Division 2 Document verification service

28EK Disclosure of information about prescribed authorities

- (1) For a purpose related to the operation of the document verification service, the chief executive may disclose, in writing or electronically, information kept by the chief executive under an Act about a person's prescribed authority to an entity that, under an agreement between the State and other Australian jurisdictions, maintains a database containing information about identity documents.
- (2) Before disclosing information under subsection (1), the chief executive must be satisfied any disclosure of the information by the entity will be only for the operation of the document verification service.

Division 3 Other identity matching services

28EL Application of division

This division applies in relation to an identity matching service other than the document verification service.

28EM Disclosure of identity information by chief executive

For a purpose related to the operation of an identity matching service, the chief executive may disclose identity information kept under a prescribed authorisation Act to—

- (a) the host agency for the service; or
- (b) a participating entity for the service.

28EN Collection and use of identity information by chief executive

The chief executive may collect and use identity information, by the operation of an identity matching service, from—

- (a) the host agency for the service; or

-
- (b) a participating entity for the service.

28EO Collection, use and disclosure by host agency

The host agency may, for a purpose related to the operation of an identity matching service—

- (a) collect or use identity information disclosed to it under this division; or
- (b) disclose the identity information to the chief executive or a participating entity for the service.

28EP Disclosure, use or collection must be for permitted purpose

- (1) Despite sections 28EM, 28EN and 28EO, identity information may be disclosed, collected or used under this division only for a permitted purpose.
- (2) Each of the following purposes is a *permitted purpose*—
- (a) preventing, detecting, investigating or prosecuting crimes involving fabricated, manipulated, stolen or otherwise assumed identities;
- (b) preventing, detecting, investigating or prosecuting other offences against Commonwealth or State laws;
- (c) conducting investigations or gathering intelligence for purposes related to national security within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004* (Cwlth);
- (d) promoting the security of the assets, facilities or personnel of a participating entity that is a government entity;

Examples—

- protecting and managing legally assumed identities
 - security or background checking
- (e) identifying individuals who are at risk of, or have experienced, physical harm;

[s 28EQ]

Examples—

- investigating individuals reported missing
 - identifying individuals reported as dead, or unidentified human remains
 - identifying individuals when addressing significant risks to public health or safety
 - identifying individuals in relation to disaster events or major events
- (f) improving road safety, including the detection of unlicensed and disqualified drivers and individuals who hold multiple licences;
- (g) verifying an individual's identity with the individual's consent or as authorised or required by law.

28EQ Misuse of identity information

- (1) A person must not collect, use or disclose relevant identity information for a purpose other than a permitted purpose within the meaning of section 28EP(2).

Maximum penalty—100 penalty units.

- (2) In this section—

relevant identity information means identity information—

- (a) disclosed by the chief executive under this division; and
- (b) obtained by operation of an identity matching service.

28ER Inconsistency with other laws

To the extent this division is inconsistent with part 4C or another law, this division prevails to the extent of the inconsistency.

Part 5 Review of and appeals against decisions

Division 1 General

29 What part applies to

This part applies if a transport Act states that this part applies to—

- (a) a review, by the chief executive, of a decision (the *original decision*) under the transport Act; or
- (b) an appeal to a court stated in the transport Act (the *appeal court*) against a reviewed decision.

30 Definitions

In this part—

appeal court see section 29(b).

chief executive means, if the original decision is made by the commissioner of the police service under the *Transport Operations (Road Use Management) Act 1995*, section 43—the commissioner.

original decision see section 29(a).

reviewed decision see section 34.

Division 2 Review of original decisions

31 Applying for review

- (1) A person may apply for a review of an original decision only within 28 days after notice of the original decision was given to the person under the transport Act.
- (2) However, if—

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- (a) the notice did not state the reasons for the original decision; and
 - (b) the person asked for a statement of the reasons within the 28 days mentioned in subsection (1);
- the person may apply within 28 days after the person is given the statement of the reasons.
- (3) In addition, the chief executive may extend the period for applying.
 - (4) An application must be written and state in detail the grounds on which the person wants the original decision to be reviewed.

32 Stay of operation of original decision

- (1) If a person applies for review of an original decision, the person may immediately apply for a stay of the decision to the relevant entity.
- (2) The relevant entity may stay the original decision to secure the effectiveness of the review and any later appeal to or review by the relevant entity.
- (3) In setting the time for hearing the application, the relevant entity must allow at least 3 business days between the day the application is filed with it and the hearing day.
- (4) The chief executive is a party to the application.
- (5) The person must serve a copy of the application showing the time and place of the hearing and any document filed in the relevant entity with it on the chief executive at least 2 business days before the hearing.
- (6) The stay—
 - (a) may be given on conditions the relevant entity considers appropriate; and
 - (b) operates for the period specified by the relevant entity; and
 - (c) may be revoked or amended by the relevant entity.

-
- (7) The period of a stay under this section must not extend past the time when the chief executive reviews the original decision and any later period the relevant entity allows the applicant to enable the applicant to appeal against the decision or apply for a review of the decision as provided under the QCAT Act.
 - (8) The making of an application does not affect the original decision, or the carrying out of the original decision, unless it is stayed.
 - (9) In this section—
relevant entity means—
 - (a) if the reviewed decision may be reviewed by QCAT—
QCAT; or
 - (b) if the reviewed decision may be appealed to the appeal court—the appeal court.

33 Review panels

- (1) The chief executive may establish review panels for this part.
- (2) Subject to subsection (5), a review panel consists of persons nominated by the chief executive.
- (3) A member of a review panel may be paid the fees and allowances decided by the Governor in Council.
- (4) The chief executive may refer an application for a review of an original decision to a review panel for advice.
- (5) The person who made the original decision can not be a member of a review panel reviewing the decision.

34 Decision on review

- (1) A decision on an application for review of an original decision must be made within 28 days after the application is made.
- (2) If the chief executive was not the original decision maker, the chief executive, in reviewing the decision, has the same powers as the original decision maker.

[s 34A]

- (3) If within the 28 days, the chief executive confirms or amends the original decision or substitutes another decision, the chief executive must give the applicant written notice (the *decision notice*) of the confirmed, amended or substituted decision (the *reviewed decision*).
- (4) If the reviewed decision is not the decision sought by the applicant for the review, the decision notice—
 - (a) for a reviewed decision that may be reviewed by QCAT—must comply with the QCAT Act, section 157(2); or
 - (b) for a reviewed decision that may be appealed to the appeal court—must state—
 - (i) the reasons for the reviewed decision; and
 - (ii) that the applicant may, within 28 days, appeal against the reviewed decision to the appeal court.
- (5) However, if a decision is not made on the application within the 28 days, the chief executive is taken to have made a decision (also the *reviewed decision*) at the end of the 28 days confirming the original decision and the reasons given for it.
- (6) In applying to QCAT for a review or appealing to the appeal court, the decision subject to review or appeal is the reviewed decision and not the original decision.

Division 3 Appeals against reviewed decisions

34A Application of div 3

This division does not apply to a reviewed decision if, under the transport Act providing for the review, a person may apply to QCAT for a review of the reviewed decision.

35 Time for making appeals

- (1) A person may appeal against a reviewed decision only within—

-
- (a) if a decision notice is given to the person—28 days after the notice was given to the person; or
 - (b) if the chief executive is taken to have confirmed the decision under section 34(5)—56 days after the application was made.
- (2) However, if—
- (a) the decision notice did not state the reasons for the decision; and
 - (b) the person asked for a statement of the reasons within the 28 days mentioned in subsection (1)(a);
- the person may apply within 28 days after the person is given a statement of the reasons.
- (3) Also, the appeal court may extend the period for appealing.

36 Starting appeals

- (1) An appeal must be started by—
 - (a) filing a written notice of appeal with the appeal court; and
 - (b) serving a copy of the notice on the chief executive.
- (2) An appeal to a Magistrates Court or District Court may be made to the Magistrates Court or District Court nearest the place where the applicant resides or carries on business.

36A Stay of operation of reviewed decision

- (1) If a person appeals against a reviewed decision to the appeal court, the person may immediately apply to the appeal court for a stay of the decision.
- (2) The appeal court may stay the reviewed decision to secure the effectiveness of the appeal.
- (3) In setting the time for hearing the stay application, the appeal court must allow at least 3 business days between the day the application is filed with it and the hearing day.

[s 36B]

- (4) The chief executive is a party to the application.
- (5) The person must serve a copy of the application showing the time and place of the hearing and any document filed in the appeal court with it on the chief executive at least 2 business days before the hearing.
- (6) The stay—
 - (a) may be given on conditions that the appeal court considers appropriate; and
 - (b) operates for the period specified by the appeal court, but not extending past the time when the court decides the appeal; and
 - (c) may be revoked or amended by the appeal court.
- (7) Apart from a stay of the operation of a decision, an appeal does not affect the operation or carrying out of the decision.

36B Powers of appeal court on appeal

- (1) In deciding an appeal against a reviewed decision, the appeal court—
 - (a) has the same powers as the person who made the original decision; and
 - (b) is not bound by the rules of evidence; and
 - (c) must comply with natural justice; and
 - (d) may hear the appeal in court or in chambers.
- (2) An appeal is by way of rehearing.
- (3) The appeal court may—
 - (a) confirm the reviewed decision; or
 - (b) set aside the reviewed decision and substitute another decision that it considers appropriate; or
 - (c) set aside the reviewed decision and return the issue to the person who made the original decision with the directions that it considers appropriate.

36C Effect of decision of appeal court on appeal

If the appeal court substitutes another decision for the reviewed decision, the substituted decision is, for the relevant provision of the transport Act, taken to be that of the person who made the original decision.

36D Assessors

If the judge hearing an appeal in a District Court is of the opinion that the appeal against a reviewed decision involves a question of special knowledge and skill, the judge may appoint 1 or more assessors to help the judge in deciding the appeal.

Part 6 General

36E Advisory committees

- (1) The Minister may establish as many advisory committees as the Minister considers appropriate for the administration of a transport Act.
- (2) An advisory committee has the functions the Minister decides.
- (3) A member of an advisory committee may be paid the fees and allowances decided by the Governor in Council.

36F Keeping and using information obtained or kept under particular transport Acts or Adult Proof of Age Card Act 2008

- (1) The chief executive may, for a particular transport Act, keep or use information obtained or kept under another particular transport Act or the *Adult Proof of Age Card Act 2008* if the information—
 - (a) relates to any matter under the particular transport Act;or

[s 36G]

- (b) concerns the administration of the particular transport Act.
- (2) The general manager under the *Maritime Safety Queensland Act 2002* may, for the *Transport Operations (Marine Safety) Act 1994*, keep or use information obtained or kept under another particular transport Act or the *Adult Proof of Age Card Act 2008* if the information—
 - (a) relates to any matter under the *Transport Operations (Marine Safety) Act 1994*; or
 - (b) concerns the administration of the *Transport Operations (Marine Safety) Act 1994*.
- (3) Information that may be kept or used under subsection (1) or (2) does not include a digital photo and digitised signature.
- (4) This section applies despite a provision of another Act.
- (5) In this section—

particular transport Act means—

 - (a) the *Tow Truck Act 1973*; or
 - (b) the *Transport Infrastructure Act 1994*; or
 - (c) the *Transport Operations (Marine Safety) Act 1994*; or
 - (d) the *Transport Operations (Passenger Transport) Act 1994*; or
 - (e) the *Transport Operations (Road Use Management) Act 1995*; or
 - (f) the *Transport Security (Counter-Terrorism) Act 2008*.

36G Smartcard transport authority

- (1) The chief executive may issue to a person a smartcard (***smartcard transport authority***) evidencing 1 or more transport authorities held by the person and containing information about the authorities.
- (2) A regulation may provide for the following—
 - (a) information that may be included on the smartcard;

-
- (b) a PIN to be used by the holder of the smartcard as a security measure to protect information stored electronically on it;
 - (c) verification of a person's connection to the person's most recent digital photo relating to a smartcard transport authority.
- (3) In this section—

smartcard means a document in the form of a card or something similar approved by the chief executive, and on which information may be stored electronically.

transport authority means a certificate, licence, appointment or other authority prescribed under a regulation for this definition.

36GA Confidentiality

- (1) A person must not disclose, record or use information the person gained—
- (a) through involvement in the administration of this Act; or
 - (b) because of an opportunity provided by the involvement.
- Maximum penalty—200 penalty units.
- (2) However, a person may disclose, record or use the information—
- (a) in the discharge of a function under this Act; or
 - (b) if it is authorised—
 - (i) under another Act or a regulation; or
 - (ii) by the person to whom the information relates; or
 - (c) in a proceeding before a court or tribunal in which the information is relevant.
- (3) Also, a person may disclose information, other than a person's digital photo or digitised signature, to the administrator of a prescribed authorisation Act that is not a transport Act—

[s 36H]

- (a) to the extent it is relevant to an application mentioned in section 28EA(1)(a); or
 - (b) if the person reasonably suspects the information is relevant to the possible commission of an offence against the prescribed authorisation Act.
- (4) Subsection (3) does not limit section 28ED(5).
- (5) In this section—
- disclose* information means—
- (a) intentionally or recklessly disclose the information; or
 - (b) allow access to the information.
- information* includes a person's digital photo and digitised signature.

36H Service of document by post

- (1) This section applies if a transport Act requires or permits a document to be served on a person.
 - (2) The *Acts Interpretation Act 1954*, section 39 applies as if the reference to a person's address included a reference to the postal address that the person last notified to the department.
 - (3) In this section—
- person's address* means the address of the place of residence or business of the person, or the head office, a registered office or a principal office of the body corporate.

36I Giving information to approved agencies to enable use of information for particular purposes

- (1) The chief executive may, in accordance with an MoU, give the chief executive officer of an approved agency all or any information in a transport information database to enable the approved agency to use the information for a law enforcement purpose.
- (2) Without limiting subsection (1), the chief executive may give the information to the chief executive officer of the approved

agency by allowing an authorised member of the approved agency to have direct access to the transport information database.

- (3) The chief executive may give the information to the chief executive officer of an approved agency under subsection (1) on the conditions the chief executive considers appropriate.
- (4) This section applies despite any other Act.
- (5) In this section—

authorised member, of an approved agency, means a member, or a member of a class of members, of the approved agency authorised in writing by the chief executive to have direct access to a transport information database.

36J Use of information permitted despite other provisions

- (1) This section applies if information is given, under section 36I, by the chief executive to the chief executive officer of an approved agency.
- (2) Despite any other Act, the approved agency may use the information for a law enforcement purpose.

36K Misuse of particular information given

- (1) This section applies to a member of an approved agency who has information because it has been given, under section 36I, by the chief executive to the chief executive officer of the agency.
- (2) The member must not use the information—
 - (a) for a purpose other than a law enforcement purpose; or
 - (b) in contravention of—
 - (i) a condition, if any, imposed by the chief executive under section 36I(3); or
 - (ii) the terms of the MoU about the information.

Maximum penalty for subsection (2)—100 penalty units.

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36L Extra-territorial application of offence provision

A person commits an offence against section 36K(2) if—

- (a) the person is a member of an approved agency who, outside the State, uses information given, under section 36I, by the chief executive to the chief executive officer of the agency; and
- (b) the use of the information would constitute an offence against section 36K(2) if it were used by the person within the State.

36M Protection from liability

- (1) This section applies if a person, acting honestly and without negligence, gives information under section 36I.
- (2) The person is not liable, civilly, criminally or under an administrative process, for giving the information.
- (3) If subsection (2) prevents a civil liability attaching to a person, the liability attaches instead to the State.
- (4) Also, merely because the person gives the information, the person can not be held to have—
 - (a) breached any code of professional etiquette or ethics; or
 - (b) departed from accepted standards of professional conduct.
- (5) Without limiting subsections (2) and (4)—
 - (a) in a proceeding for defamation, the person has a defence of absolute privilege for publishing the information; and
 - (b) if the person would otherwise be required to maintain confidentiality about the information under an Act, oath or rule of law or practice, the person—
 - (i) does not contravene the Act, oath or rule of law or practice by giving the information; and
 - (ii) is not liable to disciplinary action for giving the information.

37 Delegation by the Minister or the chief executive

- (1) The Minister or the chief executive (the *delegator*) may delegate to a person a function or power of the delegator under this or another Act.
- (2) A function or power may be subdelegated if the delegation allows the subdelegation of the function or power.

38 Regulation-making power

- (1) The Governor in Council may make regulations for the purposes of this Act.
- (2) Without limiting subsection (1), a regulation may be made about—
 - (a) a code for proposed activities mentioned in part 2A; or
 - (b) consideration, whether monetary or otherwise, to be given to compensate the chief executive in taking action to rectify the impact a proposed activity mentioned in part 2A will have; or
 - (c) action to be taken to rectify the impact a proposed activity mentioned in part 2A will have.

Part 7 Transitional provisions

Division 1 Provision for Transport and Other Legislation Amendment Act 2014

39 Easement for support registered before commencement

- (1) This section applies if an easement for support is registered over State land before the commencement of this section.
- (2) The easement for support is taken to be a transport easement for support under section 28AC.

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(3) Part 4, division 2 applies to the easement for support as if that division was in force when the easement for support was registered.

(4) In this section—

easement for support means a document or instrument of easement that, when registered, complied with section 28AC(1), (2) and (3) as if those provisions were in force before the commencement.

State land has the meaning given by the *Transport Infrastructure Act 1994*.

Division 2 Provisions for Holidays and Other Legislation Amendment Act 2015

40 **Extension of shelf life of a digital photo or digitised signature under another Act**

(1) This section applies to an extension of the shelf life of a person's digital photo or digitised signature by the chief executive under another Act before the commencement.

(2) For section 28EB(2), the shelf life is taken to have been extended under section 28EB(1).

41 **Retention period for a digital photo or digitised signature taken under another Act**

(1) This section applies to a digital photo or digitised signature taken or kept, under an Act, other than this Act, by the general manager within the meaning of the *Maritime Safety Queensland Act 2002* or the chief executive before the commencement.

(2) On the commencement, the *retention period* for a person's digital photo or digitised signature for this Act is—

(a) if the photo or signature was taken under the *Adult Proof of Age Card Act 2008*—the retention period that applied

to the photo or signature under repealed section 37 of that Act; or

- (b) if the photo or signature was taken under the *Tow Truck Act 1973*—the retention period that applied to the photo or signature under repealed section 19F of that Act; or
- (c) if the photo or signature was taken under the *Transport Operations (Marine Safety) Act 1994*—the retention period that applied to the photo or signature under repealed section 63G of that Act; or
- (d) if the photo or signature was taken under the *Transport Operations (Passenger Transport) Act 1994*—the retention period that applied to the photo or signature under repealed section 35F of that Act; or
- (e) if the photo or signature was taken under the *Transport Operations (Road Use Management) Act 1995*—the retention period that applied to the photo or signature under repealed section 91G of that Act.

42 Access to digital photos under other Transport Acts to be included in annual report

- (1) This section applies if, in a financial year, access to digital photos could be had under this Act, section 28ED and under any of the following provisions—
 - (a) *Adult Proof of Age Card Act 2008*, section 33;
 - (b) *Tow Truck Act 1973*, section 19C;
 - (c) *Transport Operations (Marine Safety) Act 1994*, section 63C;
 - (d) *Transport Operations (Passenger Transport) Act 1994*, section 35C;
 - (e) *Transport Operations (Road Use Management) Act 1995*, section 91C.
- (2) The number of occasions during the financial year on which access to a digital photo was allowed under section 28ED(4) that is to be included in the annual report prepared under section 37A must also include the number of occasions during

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the financial year on which access to a digital photo was allowed under the following provisions—

- (a) *Adult Proof of Age Card Act 2008*, section 33(3);
 - (b) *Tow Truck Act 1973*, section 19C(3);
 - (c) *Transport Operations (Marine Safety) Act 1994*, section 63C(3);
 - (d) *Transport Operations (Passenger Transport) Act 1994*, section 35C(3);
 - (e) *Transport Operations (Road Use Management) Act 1995*, section 91C(3).
- (3) For the annual report prepared under section 37A, it is enough to mention the total number of occasions that access was allowed without mentioning the particular provision under which the access was allowed.

Division 4 Transitional provision for Police and Other Legislation (Identity and Biometric Capability) Amendment Act 2018

46 Transitional regulation-making power

- (1) A regulation (a *transitional regulation*) may make provision about a matter for which—
 - (a) it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the operation of this Act as it was in force immediately before the commencement to the operation of this Act as amended by the *Police and Other Legislation (Identity and Biometric Capability) Amendment Act 2018*; and
 - (b) this Act does not make provision or sufficient provision.
- (2) A transitional regulation may have retrospective operation to a day not earlier than the day of commencement.

- (3) A transitional regulation must declare it is a transitional regulation.
- (4) A transitional regulation may only be made within 2 years after the commencement.
- (5) This division and any transitional regulation expire 3 years after the day of commencement.

Schedule 1 Dictionary

section 3

Acquisition Act, for part 4A, see section 28A.

administrator, for part 4C, see section 28E.

agreement, for part 4A, see section 28A.

appeal court, for part 5, see section 29(b).

approved agency means an entity that is—

- (a) established under a law of the Commonwealth or a State; and
- (b) prescribed under a regulation as an approved agency for this paragraph.

benefited land, for part 4, division 2, see section 28AE(1).

burdened land, for part 4, division 2, see section 28AE(1).

busway, for part 4A, see section 28A.

busway transport infrastructure has the meaning given in the *Transport Infrastructure Act 1994*, schedule 6.

chief executive, for part 5, see section 30.

commencement, for part 4A, see section 28A.

complementary purposes, for the purposes of transport land, includes purposes for a transport associated development.

constructing authority, for part 4A, see section 28A.

digital photo, of a person, means the person's facial image encoded in a digital form.

digitised signature, of a person, means the person's signature encoded in a digital form.

document verification service, for part 4D, see section 28EI.

face matching services, for part 4D, see section 28EI.

ferry service see the *Transport Operations (Passenger Transport) Act 1994*, schedule 3.

franchised road see the *Transport Infrastructure Act 1994*, schedule 6.

grant, for part 4C, see section 28E.

host agency, for an identity matching service, for part 4D, see section 28EI.

identity document, for part 4D, see section 28EI.

identity information, for part 4D, see section 28EI.

identity matching services, for part 4D, see section 28EI.

information, for part 4D, see section 28EI.

land acquisition, for part 4A, see section 28A.

law enforcement purpose, in relation to the use of information by a member of an approved agency, means a purpose—

- (a) for which the agency is authorised to use the information under a law of the Commonwealth or a State; or
- (b) consistent with the agency's functions under a law of the Commonwealth or a State.

light rail transport infrastructure has the meaning given in the *Transport Infrastructure Act 1994*, schedule 6.

local government road means a road under the control of a local government.

member, of an approved agency, includes a person employed or engaged by the agency.

most recent digital photo, of a person, for part 4C, see section 28E.

most recent digitised signature, of a person, for part 4C, see section 28E.

MoU means an agreement between the chief executive and the chief executive officer of an approved agency that generally describes the basis on which the chief executive will give

information to the chief executive officer of the approved agency.

notice of intention to resume, for part 4A, see section 28A.

original decision, for part 5, see section 29(a).

original owner, for part 4, division 2, see section 28AB.

owner, for part 4, division 2, see section 28AB.

participating entity, in relation to an identity matching service, for part 4D, see section 28EI.

Planning Act means the *Planning Act 2016*.

prescribed authorisation Act means an Act prescribed by regulation for this definition.

prescribed authorisation document, for part 4C, see section 28E.

prescribed authority means a certificate, licence or other authority or document prescribed by regulation for this definition.

public passenger service see the *Transport Operations (Passenger Transport) Act 1994*, schedule 3.

public passenger transport means the carriage of passengers by a public passenger service using a public passenger vehicle.

public passenger transport infrastructure means infrastructure for or associated with the provision of public passenger transport, including, but not limited to, the following—

(a) a transit terminal for public passenger services;

Examples—

an airport terminal, a coach terminal, a cruise ship terminal

(b) a ferry terminal, jetty, pontoon or landing for ferry services;

(c) a bus stop, bus shelter, bus station or bus lay-by;

(d) a busway station;

- (e) a light rail station;
- (f) a taxi rank;
- (g) a railway station;
- (h) vehicle parking and set-down facilities;
- (i) pedestrian and bicycle paths and bicycle facilities;
- (j) a road on which a public passenger service operates.

public passenger vehicle see the *Transport Operations (Passenger Transport) Act 1994*, schedule 3.

registered, for part 4, division 2, see section 28AB.

retention period, for part 4C, see section 28E.

reviewed decision, for part 5, see section 34.

road, for part 2A, see the *Transport Infrastructure Act 1994*, schedule 6, definition *road*, paragraphs (c) and (d).

road works see the *Transport Infrastructure Act 1994*, schedule 6.

scheduled passenger service see the *Transport Operations (Passenger Transport) Act 1994*, schedule 3.

shelf life, for part 4C, see section 28E.

take, a digital photo or digitised signature, for part 4C, see section 28E.

taking of land, for part 4A, see section 28A.

toll road see the *Transport Infrastructure Act 1994*, section 92.

transport Act means an Act prescribed by regulation to be a transport Act.

transport associated development means a development that—

- (a) primarily is or, when constructed, will be a development that supports the object of part 2A; and
- (b) includes, or will include, commercial, community, educational, government, high or medium density

residential, medical, retail or recreational facilities, places of worship or open or recreational spaces.

transport easement for support, for part 4, division 2, see section 28AC.

transport government entity means—

- (a) a rail government entity or GOC port authority under the *Transport Infrastructure Act 1994*; or
- (b) any other GOC or candidate GOC under the *Government Owned Corporations Act 1993* on which functions are conferred under the *Transport Infrastructure Act 1994*.

transport information database means a register or record kept or obtained under a transport Act.

transport infrastructure, for part 4, division 2, see section 28AB.

transport land means land that—

- (a) has been acquired for transport purposes or for an incidental or complementary purpose; and
- (b) is required for—
 - (i) the operations of a transport government entity; or
 - (ii) franchised road or toll road purposes; or
 - (iii) the operations of a rail infrastructure manager, as defined under the Rail Safety National Law (Queensland), who is an accredited person under that Law; or
 - (iv) busway transport infrastructure or bus passenger services; or
 - (v) light rail transport infrastructure or light rail passenger services; or
 - (vi) a transport associated development.

transport purpose includes any purpose for which the Minister is responsible.

unallocated State land, for part 4, division 2, see section 28AB.

use, in relation to information, includes the following—

- (a) disclose;
- (b) give;
- (c) give access to;
- (d) make available;
- (e) publish;
- (f) record.