

# Surat Basin Rail (Infrastructure Development and Management) Bill 2012

## Explanatory Notes

### Short title

The short title of the Bill is the Surat Basin Rail (Infrastructure Development and Management) Bill 2012.

### Policy objectives and the reasons for them

The objective of the Bill is to create a specific legislative framework for the development and management of the Surat Basin Rail (SBR) which will complement existing statutory arrangements for rail infrastructure in Queensland and protect the State's interests under the concession agreements which will govern the construction and long-term operation of the SBR.

On 4 December 2006, the Queensland government granted an exclusive mandate for the SBR project pursuant to Appendix One of the *Public Private Partnership Policy* and *Value for Money Framework*. The SBR project, often referred to as the 'Southern Missing Link', proposes the construction of a new 214 kilometre greenfield railway between Wandoan and Banana to enable the large-scale mining and export of thermal coal from the Surat Basin via the existing QR National Moura rail system and the Wiggins Island Coal Export Terminal at the Port of Gladstone. The *Public Private Partnership Policy* requires that the SBR project be developed through to financial close at no cost or risk to the State.

If the SBR project achieves financial close, the State intends to grant the Surat Basin Rail Joint Venture (SBRJV) a concession to construct and operate the SBR. The suite of concession agreements will include a Development Agreement and Licence for construction of the railway and an Operating Agreement and Lease for operation of the railway over the long-term. These agreements will codify the rights of the parties and ensure the allocation of costs and risks is consistent with the *Public Private Partnership Policy*.

Under the terms of the *Exclusive Mandate*, the State is obliged to secure the corridor for the railway, at the SBRJV's cost, and provide appropriate tenure to the SBRJV for construction and long-term operation of the SBR. The form of tenure provided to the SBRJV will need to be appropriate for its proposed financing arrangements. As the SBR is the first private rail development in Queensland in which the proponent is an investor, rather than a railway manager, the State must create certainty as to the legislative and regulatory frameworks which apply to the SBR.

### **Achievement of policy objectives**

To achieve its objective the Bill will:

- enable the SBR Lease to be exempt from section 121 and part 8, division 3 of the *Property Law Act 1974* (PLA) and section 67(3)(a) of the *Land Title Act 1994* (LTA), if required;
- enable the Coordinator-General to grant access to land for purposes related to the SBR project, if required;
- provide for relevant provisions of the *Transport Infrastructure Act 1994* (TIA), with appropriate amendments, to apply to the SBR and the SBR corridor;
- enable the construction, maintenance and operation of watercourse crossings over non-tidal boundary watercourses traversed by the SBR corridor;
- provide for the ability to designate land surrounding the SBR corridor as a transport noise corridor under the *Building Act 1975*, if required;
- enable the lessee of the SBR Lease to grant easements across the SBR corridor to adjoining landowners for the term of the SBR Lease; and
- enable severance of the rail infrastructure from the SBR corridor, if required.

#### *Exemptions to the Property Law Act 1974*

The Bill will enable the State to effectively manage conditions of assignment and termination of the SBR Lease under the contractual regime set out in the SBR Operating Agreement by removing the potential for the lessee to have recourse to an alternative legal regime under section 121 and part 8, division 3 of the PLA.

Section 121 of the PLA imposes statutory restrictions on a lessor's ability to withhold consent to a proposed assignment by a lessee. Given the nature of the project and the length of the SBR Lease, the State considers that the contractual arrangements with the SBRJV ought to comprehensively govern the circumstances in which the SBRJV may assign the SBR Lease.

Part 8, division 3 of the PLA prescribes general provisions for breach proceedings and rights of lessees to seek relief from forfeiture. It is intended that the SBR Operating Agreement will 'codify' the rights and obligations of the parties in relation to issues of default and termination.

The proposal to exempt the SBR Lease from section 121 and part 8, division 3 of the PLA is considered reasonable and appropriate as, in lieu of lost statutory rights, the SBRJV will have the benefit of a negotiated assignment, default and termination regime in the SBR Operating Agreement.

#### *Exemption to the Land Title Act 1994*

The Bill will provide for efficient administration of the SBR Lease by permitting adjustments to the boundaries of the Lease. Amendments to lease boundaries are presently prohibited by section 67(3)(a) of the LTA.

If in the future it is necessary to adjust the area of the SBR Lease (for example, to allow for the expansion or realignment of the SBR), the parties would not be able to amend the Lease boundaries without negotiating and executing a new Lease. Negotiation of a new Lease would be less efficient and more costly than amending the existing Lease.

The exemption of the SBR Lease from section 67(3)(a) of the LTA will not impact on the rights of adjacent landholders or the acquisition powers available to the Coordinator-General to acquire land in the Surat Basin Infrastructure Corridor State Development Area or under any other provisions within the *State Development and Public Works Organisation Act 1971* (SDPWO Act). The exemption also does not oblige the Coordinator-General to acquire additional land or exempt any future acquisition process from being administered in accordance with the *Acquisition of Land Act 1967*.

The proposal to exempt the SBR Lease from section 67(3)(a) of the LTA is considered reasonable and appropriate to enable the State to manage administration of the Lease in an efficient and cost effective manner.

*Statutory access rights to undertake SBR works and investigations*

Section 136 of the SDPWO Act provides the Coordinator-General, and persons authorised by the Coordinator-General, with the ability to enter land and undertake specified activities in connection with works undertaken pursuant to an authority conferred under the SDPWO Act. The chief executive of the Department of Transport and Main Roads (DTMR) and accredited persons are provided with similar powers for carrying out 'railway works' under chapter 7, part 4, division 1 of the TIA. Chapter 7, part 2 of the TIA also provides the chief executive of DTMR, and persons authorised by the chief executive, with the ability to enter land and undertake specified activities for the purpose of investigating the land's potential and suitability as a rail corridor.

Due to the limitations on the powers contained in the SDPWO Act and the TIA for private projects, the Bill provides powers for the Coordinator-General to enter land and undertake specified activities for carrying out railway works for the SBR and investigating the suitability of land for an expansion or realignment of the SBR, if necessary in the future.

The Bill also allows the Coordinator-General to, upon application, authorise the exercise of these powers by the SBRJV (as the licensee of the SBR corridor (for construction) and the lessee of the SBR Lease (for operation)) or a railway manager for the SBR, subject to conditions and limitations the Coordinator-General considers appropriate. Any authority granted by the Coordinator-General cannot exceed a specified period to ensure that the powers are exercised within a certain time and the inconvenience to the land's owner or occupier is not of a long-term nature.

The Bill contemplates that associated persons may exercise these powers on behalf of the Coordinator-General or an authorised person. This is a practical consideration, given that particular works may require specialised skills or equipment. The Bill requires all associated persons to be issued with identification that includes particular information about the person and the authority under which the person is acting.

Consistent with the comparable powers under the SDPWO Act and the TIA, the Bill provides appropriate protections for landowners by:

- requiring a person applying for an authority to consult with the owner or occupier of the land about the entry prior to applying to the Coordinator-General for an authority to carry out railway works or investigations on the land;

- requiring seven days' written notice (containing prescribed information) or the written agreement of the land's owner or occupier prior to entry onto their land;
- requiring identification to be produced to the land's owner or occupier, if requested; and
- placing obligations on persons exercising the powers to take as much care as is practicable to minimise damage to the land or inconvenience to the land's owner or occupier.

A landowner or occupier is able to claim compensation under the Bill from the Coordinator-General or an authorised person for loss or damage suffered by the land's owner or occupier arising from the entry and railway works or investigations carried out on their land, or the taking or use of materials. Alternatively, the land's owner or occupier may require the carrying out of restitution works for any damage to their land, and claim compensation for any loss or damage not restituted.

It is considered the statutory access powers provided to the Coordinator-General under the Bill are reasonable and appropriate to enable the effective and efficient development and management of the SBR, while also ensuring the interests of landowners and occupiers are sufficiently protected.

#### *Application of the Transport Infrastructure Act 1994*

The TIA regulates the planning and management of transport infrastructure in Queensland. Chapters 7 and 16 of the TIA provide the Minister and chief executive responsible for the TIA with certain powers in relation to railways and rail corridors. Chapters 7 and 16 also empower railway managers and railway operators to construct and manage rail transport infrastructure and operate rolling stock and place obligations directed at safety on persons in relation to their interaction with railways and rail corridors.

As the SBR Lease will be a freehold lease issued under the LTA, rather than a lease issued under the TIA, there is some uncertainty as to which parts of chapter 7 and 16 of TIA will apply to the SBR and SBR corridor.

The Bill reproduces relevant provisions from chapters 7 and 16 of the TIA, with appropriate amendments suitable for the nature of the SBR, and applies them to the SBR and SBR corridor. The Coordinator-General is given the powers of the chief executive of DTMR in the reproduced TIA

provisions. The Bill provides that chapters 7 and 16 of the TIA do not apply to TIA matters covered in the Bill.

The amendments to the TIA provisions are necessary to provide for the private nature of the project over the concession period and the lease arrangements for the project. Under the TIA, railway managers hold the lease interest in the rail corridor and the accreditation for railway operations relating to the railway. In contrast, the SBR Lease will be granted to the SBRJV, who is not a railway manager, and a separate person will hold the accreditation for railway operations for the SBR.

The application of these provisions is considered reasonable and appropriate to ensure the SBR and SBR corridor is regulated in a manner consistent with other statutory arrangements for railways and rail infrastructure in Queensland.

#### *Watercourse crossings over non-tidal boundary watercourses*

The Bill will enable the construction, maintenance and operation of watercourse crossings over non-tidal boundary watercourses traversed by the SBR corridor.

Section 13A of the *Land Act 1994* provides that the beds and banks of a non-tidal boundary watercourse are the ‘property of the State’. Due to this provision, there is no legislative ability to grant freehold title in the beds and banks of non-tidal boundary watercourses to the Coordinator-General.

To enable the construction and operation of the SBR over non-tidal boundary watercourses, consistent with other statutory arrangements in the TIA for road, railway and busway crossings, the Bill will enable a ‘common area’ to be declared where the route of the SBR traverses a non-tidal boundary watercourse. Following the declaration of a common area, the Bill will provide rights to:

- the Coordinator-General, railway manager and persons authorised by the Coordinator-General to survey, construct, maintain and operate a watercourse crossing in the common area; and
- the SBRJV, as the licensee of the SBR corridor and lessee of the SBR Lease, to use and occupy the common area for the period it holds the Licence and Lease in a way consistent with the Licence and Lease.

The Bill includes provisions dealing with the removal of the watercourse crossing when it is no longer required.

The provision of these rights in the Bill will not remove or diminish any existing rights of the State or other persons with respect to non-tidal boundary watercourses, including rights of adjoining landowners under section 13A of the *Land Act 1994*, and the exercise of the powers will be compatible with the continued operation of the *Water Act 2000*.

It is considered these provisions are reasonable and appropriate to allow the construction and operation of the SBR over non-tidal boundary watercourses traversed by the SBR corridor in the context of the existing legislative environment.

*Application of the Building Act 1975 (Transport Noise Corridor)*

The Bill will ensure the SBR is regulated in a manner similar to other rail infrastructure in Queensland by enabling the designation of land adjacent to parts of the SBR corridor as a transport noise corridor under chapter 8B of the *Building Act 1975*.

The purpose of designating a transport noise corridor is to reduce the effects of transport noise on the occupants of residential buildings in the vicinity. Following designation, higher noise mitigation standards apply to the construction and alteration of habitable rooms in residential buildings within the designated area (for example, double glazing of windows).

The chief executive of DTMR has powers under the *Building Act 1975* to make a transport noise corridor designation for rail corridors under the TIA. The enactment of a similar provision in the Bill will resolve any uncertainty as to whether these provisions in the *Building Act 1975* are applicable to the SBR corridor.

*Grant of easements to adjoining landowners by lessee of SBR corridor*

The Bill will enable the SBRJV, as the lessee of the SBR Lease, to grant easements across the SBR corridor to adjoining landowners for the term of the SBR Lease.

It is intended that following construction of the SBR adjoining landholders will be granted access rights for private railway crossings over the SBR corridor by way of a registered easement. Under section 83 of the LTA, the only person who can grant an easement over land to be burdened is the registered owner. In this case, this will be the Coordinator-General as the owner of the SBR corridor.

In order to enable the safe and efficient operation of the SBR, it is considered appropriate that the SBRJV (as the entity granted the SBR Lease and the concession to operate the SBR by the State) should grant and

administer easements over the SBR corridor to adjoining landholders for the term of the SBR Lease. This approach is consistent with the powers available to railway managers under the TIA.

The Bill will not prevent the Coordinator-General from granting or registering an easement that burdens the SBR corridor.

#### *Severance of SBR infrastructure from SBR corridor*

As the Coordinator-General will retain ownership of the SBR corridor at all times and the SBR will be affixed to the SBR corridor, common law principles and Commonwealth income tax legislation will treat the State as the legal owner of the SBR infrastructure constructed by the SBRJV on the land.

The Bill enables the State to make a regulation which ‘severs’ the legal ownership of the SBR infrastructure from the legal ownership of the SBR corridor land on which it is situated for the duration of the concession period, if required. If a regulation is made, the severed SBR infrastructure will be taken to be, and must be dealt with as, personal property separate from the land. The making of any regulation to give effect to severance will remain at the discretion of the State.

The severance of any SBR infrastructure will not affect the right of the infrastructure to be situated on the SBR corridor or a person’s rights or obligations under an agreement relating to the severed infrastructure, other than to the extent stated in the agreement.

This provision in the Bill will provide certainty to enable the SBR project to proceed, while not altering the right of the State to ownership of the SBR corridor, or the reversionary right of the State to own the SBR infrastructure on the SBR corridor at the end of the concession period.

### **Alternative ways of achieving policy objectives**

There are no non-legislative methods by which the objectives of the Bill can be achieved.

Amending the primary legislation (the PLA, LTA, TIA, SDPWO Act, *Land Act 1994* and *Building Act 1975*) was considered as an alternative to the proposed special legislation.

The enactment of project specific legislation, rather than wide-ranging amendments of general application to existing legislation, is preferred as it will enable the State to develop a customised legislative environment for

the SBR project in line with the timeframes set by the government for the project and the State's existing legal obligations. Amendments to the primary legislation would need to be subject to due consideration and consultation with all relevant stakeholders, and taking into account a wider range of issues than the SBR project. This was not considered to be achievable in the timeframe required.

It is also considered that, at this point in time, project specific legislation will avoid the potential to cause unintended consequences for future private infrastructure development in an environment where funding and delivery models continue to evolve.

### **Estimated cost for government implementation**

It is not expected that there will be significant budgetary implications for government in relation to the implementation of the proposed Bill. There are likely to be some administrative costs associated with:

- monitoring and enforcement of the State's rights under the assignment and termination provisions within the SBR Operating Agreement and Lease;
- enforcing and administering the powers provided for in the Bill;
- preparation of a regulation to sever the SBR infrastructure from the SBR corridor land, should this be required; and
- the management of non-tidal boundary watercourses.

It is unlikely that the monitoring and enforcement of the State's rights under the concession agreements will have a significant ongoing cost, however there may be intermittent costs over the concession period. Many of these actions would routinely be undertaken under the TIA, SDPWO Act, *Building Act 1975* and associated legislation in relation to an operating railway and are unlikely to impose any significant additional costs to government. The Bill provides ability for the Coordinator-General to establish, by regulation, a fee regime for the administration of the Bill.

Any costs the State government may incur in connection with the Bill need to be considered in balance with the benefits the State receives from the royalties from the mining and export of thermal coal reserves in the Surat Basin through the Port of Gladstone. The Environmental Impact Statement for the SBR project (released in 2009) estimated that the State will receive approximately \$300 million in royalties per year if the project's full transport capacity of 42 million tonnes per annum is utilised. The SBR will

also generate employment and stimulate local economies during construction and operation.

The Bill is considered an appropriate course of action to:

- reduce the State’s risk associated with the construction and operation phases of the SBR project;
- provide the State and the SBRJV with greater certainty of the legal and regulatory framework applying to the SBR; and
- enhance the potential economic gains for the State from the development of new rail infrastructure and mines in the Surat Basin.

### **Consistency with fundamental legislative principles**

The Bill is generally consistent with fundamental legislative principles. However, two potential breaches of fundamental legislative principles are addressed below.

*Legislation should be consistent with the principles of natural justice—Legislative Standards Act 1992, section 4(3)(b)*

The principle of natural justice requires that a decision should not be made which deprives a person of some right, interest or legitimate expectation of a benefit without being given an adequate opportunity to be heard.

There could be a concern that the proposed exemption to section 121 and part 8, division 3 of the PLA in part 2 of the Bill is inconsistent with the principle of natural justice. Section 121 of the PLA imposes on a lessor an obligation to act reasonably when considering an assignment request from a lessee. Part 8, division 3 of the PLA prescribes general provisions for breach proceedings and rights of lessees to seek relief against forfeiture.

It is intended that the State will manage the conditions regulated by these PLA provisions in the SBR Operating Agreement, which will ‘codify’ the rights of the parties. In lieu of lost rights under the PLA, the SBRJV will have the benefit of a negotiated assignment, default and termination regime in the Operating Agreement.

The potential inconsistency of part 2 of the Bill with fundamental legislative principles is considered justified because:

- of the commercial nature of the SBR project;
- the State’s risk exposure is reduced;

- the uncertainty which would otherwise result from the application of the sections under the PLA to the SBR Lease is removed; and
- the SBRJV has the safeguard of a reasonable legal regime in the SBR Operating Agreement.

*Whether legislation has sufficient regard to the rights and liberties of individuals—Legislative Standards Act 1992, section 4(2)(a)*

Part 3 of the Bill provides the Coordinator-General and persons authorised by the Coordinator-General with powers to enter private land to carry out railway works and investigations for the SBR project. The purpose of these provisions is to ensure sufficient powers are available to the Coordinator-General to facilitate the effective and efficient development and management of the SBR. The provisions are similar to existing powers of the Coordinator-General under the SDPWO Act and the chief executive of DTMR under the TIA.

The ability in the Bill for the SBRJV (as the licensee of the SBR corridor and the lessee of the SBR Lease), a private entity which is not controlled by the State, to apply for and, if granted, exercise the statutory access powers given to the Coordinator-General in the Bill raises concerns about the ability of the Coordinator-General to monitor and review the use of these powers.

To address this concern, the Coordinator-General is given powers under the Bill when deciding an application to consider any information that the Coordinator-General considers relevant and to impose conditions on the use of the authority (which may include requirements relating to insurance or securities). The Coordinator-General is also given powers under the Bill to place restrictions on the extent of the authority by limiting the land to which it applies, the powers of the Coordinator-General which may be exercised and the purpose for which it is granted.

In addition, an authority to carry out railway works may not be granted for longer than three years and an authority for investigations cannot be granted for more than one year. This will ensure that any powers given to the SBRJV are exercised within a reasonable time and the inconvenience to the land's owner or occupier is not of a long-term nature.

Failure to comply with a condition of an authority is an offence, unless a person has a reasonable excuse. The Coordinator-General may cancel an authority if the Coordinator-General is reasonably satisfied that an

authorised person, or an associated person of an authorised person, has not complied with the Bill or a condition of an authority.

The statutory access provisions in the Bill will impact on the common law rights of landowners to possession and quiet enjoyment of their land. Consistent with the provisions for comparable powers under the SDPWO Act and the TIA, the Bill provides the following protections for landowners:

- requiring a person applying for an authority to consult with the owner or occupier of the land about the entry prior to applying to the Coordinator-General for an authority to carry out railway works or investigations on the land;
- requiring seven days' written notice (containing prescribed information) or the written agreement of the land's owner or occupier prior to entry onto their land;
- requiring identification to be produced the land's owner or occupier, if requested; and
- placing obligations on persons exercising the powers to take as much care as is practicable to minimise damage to the land or inconvenience to the land's owner or occupier.

The Coordinator-General, the SBRJV or railway manager is liable to compensate the land's owner or occupier for any loss or damage suffered by the land's owner or occupier arising from the entry onto the land and the carrying out of railway works or investigations. The land's owner or occupier may claim compensation for the entry and railway works or investigations carried out on the land, or the taking or use of materials. Alternatively, the land's owner or occupier may require the carrying out of restitution works for any damage to the land, and claim compensation for any loss or damage not restituted.

The potential inconsistency of part 3 of the Bill with fundamental legislative principles is considered justified as the powers granted to the Coordinator-General are reasonable and appropriate to enable the effective and efficient development and management of the SBR while ensuring the interests of landowners and occupiers are protected.

## **Consultation**

The Bill has been prepared in consultation with the Office of the Queensland Parliamentary Counsel (OQPC) and is supported by OQPC.

During the course of identifying the appropriate legislative methods to achieve the objectives and drafting the Bill, the Department of State Development, Infrastructure and Planning (DSDIP) has consulted with the SBRJV and given consideration to matters raised by the SBRJV.

DSDIP has also consulted with relevant State agencies including the Department of Justice and Attorney-General, the Department of Transport and Main Roads, the Department of Natural Resources and Mines, Queensland Treasury and Trade and the Department of the Premier and Cabinet.

The SBRJV supports the State's objectives in preparing the special legislation. Further consideration will be given to the implications of the Bill in the context of negotiations on the SBR Development Agreement, Lease and Operating Agreement.

Community consultation was not undertaken during the preparation of the Bill. Consultation has been previously been undertaken on other aspects of the State's involvement with the SBR project, including:

- the Coordinator-General's assessment of the Environmental Impact Statement for the SBR project under part 4 of the SDPWO Act;
- the proposal to declare the Surat Basin Infrastructure Corridor State Development Area under section 77 of the SDPWO Act; and
- the issuing of Notices of Intention to Resume to acquire the SBR corridor under section 82 of the SDPWO Act.

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

The Bill is specific to the State of Queensland, and is complementary to other legislation within Queensland, including the *Transport Infrastructure Act 1994 (Qld)*, *Building Act 1975 (Qld)*, *Dalrymple Bay Coal Terminal (Long-term Lease) Act 2001 (Qld)*, *Airport Assets (Restructuring and Disposal) Act 2008 (Qld)* and *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009 (Qld)*.

Other jurisdictions have legislation analogous to the Bill, including South Australia and the Northern Territory for the Alice to Darwin Railway (*Alice*

*Springs to Darwin Railway Act 1997 (SA) and AustralAsia Railway (Special Provisions) Act 1999 (NT).*

## **Notes on provisions**

### **Title**

The long title of the Bill states that this is a Bill to provide for the development and management of a railway within the Surat Basin rail corridor land in a safe, effective and efficient way and for related purposes.

### **Part 1 Preliminary**

#### **Division 1 Introduction**

*Clause 1* provides that the short title of the Bill is the Surat Basin Rail (Infrastructure Development and Management) Bill 2012.

*Clause 2* provides that the Bill commences on a day to be fixed by proclamation.

*Clause 3* provides that the object of the Bill is to facilitate the development and operation of the railway and sets out how the object is primarily intended to be achieved.

#### **Division 2 Interpretation**

*Clause 4* provides that the dictionary in the schedule defines particular words used in the Bill.

*Clause 5* provides the meaning of ‘railway’. Railway is defined to mean the railway and rail transport infrastructure situated, or proposed to be situated, within the Surat Basin rail corridor land. This definition limits the

meaning of ‘railway’ in the Bill to the Surat Basin Rail (SBR). The Bill will not apply to other railways in Queensland due to this definition.

*Clause 6* provides the meaning of ‘railway works’. Railway works is defined to mean works for constructing, maintaining, altering or operating the railway. This definition limits the meaning of ‘railway works’ in the Bill to railway works for the SBR. The Bill will not apply to railway works for other railways in Queensland due to this definition.

*Clause 7* provides the meaning of ‘Surat Basin rail corridor land’. Surat Basin rail corridor land is defined to mean land that is within the Surat Basin Infrastructure Corridor State Development Area, owned by the Coordinator-General and prescribed under a regulation to be Surat Basin rail corridor land. This definition limits the meaning of ‘Surat Basin rail corridor land’ in the Bill to land within the Surat Basin Infrastructure Corridor State Development Area declared under the *State Development and Public Works Organisation Act 1971* and acquired by the Coordinator-General for the SBR. The Bill will not apply to other rail corridor land in Queensland due to this definition.

## **Part 2                      Exempt leases**

*Clause 8* provides that the Minister responsible for the Bill may, by written instrument, declare a railway lease to be an exempt lease. A declaration by the Minister that a railway lease is an exempt lease will result in the non-application of section 121 and part 8, division 3 of the *Property Law Act 1974* and section 67(3)(a) of the *Land Title Act 1994* to the railway lease under clause 9. The Minister must provide a copy of any instrument made to the railway lessee and publish a gazette notice with details of the instrument within a certain time period.

Following construction of the railway, the State intends to grant the Surat Basin Rail Joint Venture (SBRJV) a railway lease to operate the railway. Clause 8 will enable the Minister to exempt the railway lease from the stated provisions of the *Property Law Act 1974* and *Land Title Act 1994*. This power has been included in the Bill due to the nature of the SBR project and the long-term nature of the railway lease.

If the railway lease is declared an exempt lease, the provisions in the concession agreements between the State and the SBRJV will ‘codify’ the

rights of the parties in relation to the issues of assignment, default and termination covered in the exempt *Property Law Act 1974* provisions. The SBRJV in such circumstances will have the safeguard of the negotiated regime for these matters in the concession agreements.

The declaration of the railway lease as an exempt lease will enable the boundaries of the lease to be amended (for example, to allow the expansion or realignment of the railway) without the parties having to negotiate and enter into a new lease, by removing the application of section 67(3)(a) of the *Land Title Act 1994*. This will enable the State to manage administration of the railway lease in an efficient and cost effective manner.

*Clause 9* provides for the non-application of section 121 and part 8, division 3 of the *Property Law Act 1974* and section 67(3)(a) of the *Land Title Act 1994* to a lease declared to be an exempt lease by the Minister under clause 8.

## **Part 3                      Entering land and carrying out activities for railway works or investigations of land**

### **Division 1                Interpretation**

*Clause 10* sets out the definitions of particular words used in part 3.

### **Division 2                Applications for works authority or investigation authority**

*Clause 11* provides that Division 2 provides for the railway licensee, railway lessee or a railway manager to apply for a works authority or investigation authority.

*Clause 12* provides that the railway licensee, railway lessee or a railway manager may apply to the Coordinator-General for an authority:

- to enter land adjacent to the Surat Basin rail corridor land and carry out activities mentioned in clause 20 for carrying out railway works (works authority); or
- to enter any land and carry out activities mentioned in clause 22 for investigating the potential suitability of land as an expansion or realignment of the Surat Basin rail corridor land (investigation authority).

Clause 12 will enable the SBRJV and a railway manager for the railway to apply to the Coordinator-General for a works authority or investigation authority. The ability for these persons to apply for a works authority or an investigation authority has been included in the Bill to enable the effective and efficient development and management of the railway.

Before applying for an authority, an applicant must consult with the owner or occupier of land about the proposed entry to their land. The applicant must include the information set out in clause 12 with their application. The inclusion of this information in an application will enable the Coordinator-General to make an informed decision about whether or not to grant an authority.

*Clause 13* provides that the Coordinator General may consider any information that the Coordinator-General considers relevant when deciding an application under clause 12 for a works authority or investigation authority. The Coordinator-General may also make inquiries to decide the application and ask the applicant to give the Coordinator-General additional information that the Coordinator-General considers relevant to decide the application.

*Clause 14* provides that the Coordinator-General may grant or refuse to grant an application for a works authority. The grant of a works authority may be made with or without conditions and must only be for land which the Coordinator-General is satisfied is reasonably necessary for carrying out the railway works. If the Coordinator-General refuses to grant a works authority, the Coordinator-General must give the applicant written reasons for the decision.

A works authority cannot be granted for longer than three years and remains in force for the term stated in the authority, unless cancelled earlier under clause 19. A maximum period has been placed on the term of a works authority to ensure the activities under the authority are carried out within a reasonable time and the inconvenience to the land's owner or occupier is not of a long-term nature.

*Clause 15* provides that the Coordinator-General may grant or refuse to grant an application for an investigation authority. The grant of an investigation authority may be made with or without conditions and must only be for land which the Coordinator-General is satisfied is reasonably necessary for investigating the potential suitability of the land as an expansion or realignment of the Surat Basin rail corridor land. If the Coordinator-General refuses to grant an investigation authority, the Coordinator-General must give the applicant written reasons for the decision.

An investigation authority cannot be granted for longer than one year and remains in force for the term stated in the authority, unless cancelled earlier under clause 19. A maximum period has been placed on the term of an investigation authority to ensure the activities under the authority are carried out within a reasonable time and the inconvenience to the land's owner or occupier is not of a long-term nature.

*Clause 16* provides that a works authority and investigation authority granted by the Coordinator-General under clauses 14 or 15 must be written and state certain information. The information set out in clause 16 is required to be included in an authority to create certainty of the extent of the authority. This information will also enable the land's owner or occupier to be clearly informed about what the Coordinator-General has authorised to be conducted on their land under an authority.

*Clause 17* declares that the grant of a works authority or investigation authority is not an indication of a commitment or approval by the State, the Coordinator-General or any other person to any proposal and, in particular, does not commit the State to acquiring any land. Clause 17 further declares that a person is not an employee or agent of the State merely because the person has been granted a works authority or investigation authority.

*Clause 18* provides that authorised persons, and associated persons of authorised persons, must comply with each condition of a works authority or an investigations authority. Failure to comply with a condition of an authority is an offence, unless the person has as reasonable excuse. The failure to comply with a condition has been made an offence to enable the Coordinator-General to effectively enforce compliance with conditions imposed on an authority by the Coordinator-General.

*Clause 19* provides that the Coordinator-General may cancel an authorised person's works authority or investigation authority if the Coordinator-General is reasonably satisfied that the authorised person, or

an associated person of the authorised person, has not complied with the Bill or a condition of the works authority or investigation authority. Clause 19 has been included in the Bill to enable the Coordinator-General to effectively enforce compliance with the requirements of the Bill and conditions imposed on an authority by the Coordinator-General.

The Coordinator-General must give an authorised person written notice of the cancellation of a works authority or investigation authority. Upon receipt of a notice of cancellation, the authorised person must inform all associated persons of the authorised person of the cancellation and stop all activities being carried out under the authority as soon as practicable. The authorised person must give the Coordinator-General any identification issued by the authorised person under clause 28 if an authority is cancelled.

### **Division 3                    Powers for entering land and carrying out activities for railway works or investigations**

*Clause 20* provides that the Coordinator-General, or an associated person authorised in writing by the Coordinator-General, may:

- enter the Surat Basin rail corridor land and land adjacent to the Surat Basin rail corridor land for carrying out railway works;
- to the extent reasonably necessary or convenient to achieve the purpose of the entry, undertake certain activities on the land.

The power to enter land in clause 20 includes power to enter and re-enter the land, remain on the land for the period necessary to achieve the purpose of the entry and to take assistants, vehicles, materials, equipment and things necessary to achieve the purpose of the entry.

The Coordinator-General has been granted these powers in clause 20 to enable the effective and efficient development and management of the railway. The powers given to the Coordinator-General in clause 20 are consistent with the powers the Coordinator-General may exercise under section 136 of the *State Development and Public Works Organisation Act 1971* in connection with the undertaking by the Coordinator-General of authorised works or in connection with any other works undertaken or to be undertaken pursuant to authority conferred under the *State Development and Public Works Organisation Act 1971*. The powers have been provided

in the Bill due to the private nature of the SBR project and the objective of the Bill to create a ‘stand-alone’ legislative framework for the railway.

*Clause 21* provides that an authorised person under a works authority, or an associated person of the authorised person, may enter the land to which the works authority applies and exercise the powers stated in the works authority. The powers given in a works authority and the land to which it applies are decided by the Coordinator-General under clause 14. The powers given may include some or all of the powers of the Coordinator-General in clause 20. The land subject to a works authority must be limited to the land the Coordinator-General is satisfied is reasonably necessary for carrying out the railway works.

*Clause 22* provides that the Coordinator-General, or an associated person authorised in writing by the Coordinator-General, may:

- enter any land to investigate the land’s potential suitability for an expansion or realignment of the Surat Basin rail corridor land;
- to the extent reasonably necessary or convenient to achieve the purpose of the entry, do anything on the land, bring anything onto the land or temporarily leave machinery, equipment or other items on the land.

The power to enter land in clause 22 includes power to enter and re-enter the land, remain on the land for the period necessary to achieve the purpose of the entry and to take assistants, vehicles, materials, equipment and things necessary to achieve the purpose of the entry.

The Coordinator-General has been granted these powers in clause 22 to enable the effective and efficient development and management of the railway. The powers given to the Coordinator-General in clause 22 are consistent with the powers the chief executive of the Department of Transport and Main Roads may exercise under section 109A of the *Transport Infrastructure Act 1994* to investigate land’s potential and suitability as a rail corridor under the *Transport Infrastructure Act 1994*. The powers have been provided in the Bill due to the objective of the Bill to create a ‘stand-alone’ legislative framework for the railway and the non-application of chapter 7 of the *Transport Infrastructure Act 1994* to the matters covered under the Bill in the reproduced *Transport Infrastructure Act 1994* provisions.

*Clause 23* provides that an authorised person under an investigation authority, or an associated person of the authorised person, may enter the

land to which the investigation authority applies and exercise the powers stated in the investigation authority. The powers given in an investigation authority and the land to which it applies are decided by the Coordinator-General under clause 15. The powers given may include some or all of the powers of the Coordinator-General in clause 22. The land subject to an investigation authority must be limited to the land the Coordinator-General is satisfied is reasonably necessary for investigating the suitability of the land.

## **Division 4            Requirements for entering land**

*Clause 24* provides that, before entering someone else's land, the Coordinator-General, an authorised person and an associated person must give at least seven days' written notice of the entry to the land's owner or occupier or get the written agreement of the land's owner or occupier to the entry.

A notice provided to a land owner or occupier under clause 24 must attach a copy of the relevant authority and state certain information. The information set out in clause 24 is required to be provided in the notice to enable the land owner or occupier to understand the statutory basis on which their land is being entered, the use intended to be made of their land and the extent of the activities proposed to be undertaken on their land. The notice will also ensure the land's owner or occupier is informed prior to the entry of their rights to claim compensation for the entry and activities carried out on their land.

A person need not comply with clause 24 for carrying out urgent remedial action on the railway or maintenance on a road. However, if urgent remedial action is required, the person entering the land must give the land's owner or occupier as much oral notice as it practicable.

*Clause 25* places an obligation on persons entering land to carry out railway works or to investigate the potential suitability of the land for an expansion or realignment of the Surat Basin rail corridor land to take as much care as is practicable to minimise damage to the land or inconvenience to the land's owner and do anything necessary or desirable to minimise the damage or inconvenience. This obligation has been included to minimise the impact of the exercise of powers under part 3 of the Bill to the land's owner or occupier.

*Clause 26* creates a statutory right to compensation to an owner and occupier of land affected by an exercise of powers under part 3 of the Bill by providing that the Coordinator-General and an authorised person are liable to compensate the land owner or occupier for any loss or damage suffered by the land owner or occupier arising from entry onto the land and carrying out of railway works or investigations on the land. The clause specifies that the Coordinator-General is liable to compensate the land owner or occupier for an entry by the Coordinator-General or an associated person of the Coordinator-General and the authorised person is liable to compensate the land owner or occupier for an entry by the authorised person or an associated person of the authorised person.

*Clause 27* provides that the owner or occupier of the land entered into under part 3 of the Bill may:

- claim compensation for loss or damage caused by the entry and railway works carried out on the land or the entry and investigation carried out on the land;
- claim compensation for the taking or use of materials;
- require works in restitution for the damage; or
- require works in restitution for the damage, and then claim compensation for any loss or damage not restituted.

A claim by an owner or occupier of land under clause 27 is made by written notice. A notice for an entry by the Coordinator-General or an associated person of the Coordinator-General and an authorised person or an associated person of an authorised person under a works authority must be given to the Coordinator-General. A notice for an entry by an authorised person or associated person of an authorised person under an investigation authority must be given to the authorised person. The notice must be given within one year after the railway works or investigation of the land is completed or at a later time allowed by the Coordinator-General.

A land owner or occupier may make a claim for compensation under clause 27: whether or not the act or omission giving rise to the claim was authorised under division 3 or a works authority or investigation authority; whether or not the person who made the entry, carried out the railway works or carried out the investigation took steps to prevent the loss or damage; and even though the loss or damage was caused, or contributed to, by an associated person of the Coordinator-General or an authorised person.

The amount of compensation for loss or damage caused by an entry to carry out of railway works is the amount agreed between the Coordinator-General and the person claiming compensation, or if the Coordinator-General and the person cannot agree within a reasonable time, the amount decided by the Land Court. The amount of compensation for loss or damage caused by an entry to investigate land is the amount agreed between the relevant parties, or if the parties cannot agree within a reasonable time, the amount decided by the Land Court.

## **Division 5            Miscellaneous provisions**

*Clause 28* provides that the Coordinator-General and an authorised person must issue an associated person with identification before the associated person enters someone else's land and carries out activities under division 3. The identification for the associated person must meet the requirements set out in clause 28. Failure by an authorised person to issue identification to an associated person is an offence.

*Clause 29* provides that an authorised person or an associated person must, if requested, immediately state their name and produce a copy of their authority or identification to a person who claims or appears to be the owner or occupier of land. Failure to comply with this requirement is an offence, unless the person has a reasonable excuse.

*Clause 30* provides that if a person stops being an associated person must return the identification issued to them under clause 28 to the Coordinator-General or authorised person within 21 days. Failure to return the identification within 21 days is an offence, unless the person has a reasonable excuse.

## **Part 4**                      **Roads, crossings and watercourses**

### **Division 1**                **General provisions about roads and crossings**

*Clause 31* provides that in constructing or managing the railway, a railway manager may alter the level of a road or require the authority responsible for the road to alter its level. Unless the railway manager and the authority otherwise agree, the railway manager must pay all reasonable expenses incurred by the authority in altering the road level.

A person whose land is directly affected by the alteration may claim compensation from the railway manager. The amount of compensation is the amount agreed by the parties or, if the parties cannot agree within a reasonable time, the amount decided by a court with jurisdiction for the recovery of the amount of compensation.

*Clause 32* provides that a railway manager must maintain a part of the railway on a road and, in a character keeping with the road, the surface of the road between the rails and outside the outmost rails to a distance of two metres. If there is no railway manager, the railway licensee or railway lessee must fulfil this maintenance obligation. If there is no railway manager, railway licensee and railway lessee, the authority that maintained the road before the railway was built must fulfil this maintenance obligation.

The maintenance obligation on the railway manager, railway licensee and railway lessee in clause 32 does not apply if a part of the railway is built by way of a bridge or other structure over or under a road. In these circumstances, the authority that maintained the road before the railway was built must continue to maintain the road over or under the bridge or structure.

*Clause 33* provides that a local government must apply to the Coordinator-General for written approval to construct, maintain and operate a road on the Surat Basin rail corridor land by way of:

- a bridge or other structure over a part of the railway;

- a bridge or other structure that allows the road to pass under a part of the railway; or
- a crossing at the same level as a part of the railway.

Before deciding the application, the Coordinator-General must consult with a railway manager and the railway licensee or railway lessee. The Coordinator-General must consider the application and may decide to grant the approval or refuse to grant the approval. The grant of an approval may be with or without conditions. Without limitation, a condition of the approval may provide for the future expansion or realignment of the railway on the Surat Basin rail corridor land.

The Coordinator-General must give the local government written notice of the Coordinator-General's decision. An approval given by the Coordinator-General must be recorded by the registrar of titles in the appropriate register for the Surat Basin rail corridor land. The railway manager, railway licensee and railway lessee may continue to use the land under the approval other than any land excluded by a condition of the approval. The Coordinator-General, railway manager, railway licensee and railway lessee, and their agents or employees, do not have any duty or liability for the road and its use or operation.

Once the road is used, it is taken to be a road under the local government's control and a road under any Act about the use of vehicles on a road. Unless the Coordinator-General and the local government otherwise agree, the local government is responsible for maintaining the road and the bridge, structure or crossing and, if the road stops being used, the cost of taking the bridge, structure or crossing away and restoring the part of the railway on the land.

*Clause 34* provides that a local government must apply to the Coordinator-General for written approval to make a change to the management of a local government road that, if made, would require works to be carried out on the railway or would have a significant adverse impact on the safety and operational integrity of the railway.

The Coordinator-General must consider the application within 30 days or a longer period notified to the local government in writing by the Coordinator-General. The Coordinator-General may decide to approve the proposed change or refuse to approve the proposed change. The approval of a proposed change may be with or without conditions. The Coordinator-General must give the local government written notice of the Coordinator-General's decision.

Clause 34 does not apply if the Coordinator-General has considered the change to the management of the local government road as part of the Coordinator-General's consideration of a development approval under the *Sustainable Planning Act 2009*.

*Clause 35* provides that a railway manager may temporarily close or regulate a railway crossing if the railway manager is satisfied it is necessary because of an immediate threat to the safety of the railway or the public using it or who may use it.

If the railway manager decides to close or regulate a railway crossing, the railway manager must, as soon as practicable after the closure or regulation, notify the authority responsible for the railway crossing of the closure or regulation (unless the authority has agreed that notification is unnecessary).

It is intended that adjoining landowners of the Surat Basin rail corridor land will be granted access rights for private railway crossings across the Surat Basin rail corridor land, which will be constructed at the same time as the railway. If the railway manager decides to close or regulate a private railway crossing, the railway manager must:

- notify the grantee of the licence to use the railway crossing or the easement for the railway crossing of the closure or regulation (unless the person has agreed that notification is unnecessary);
- notify the grantee that they may apply to the Coordinator-General under clause 60 for an internal review of the decision to close or regulate the railway crossing; and
- give the grantee written reasons for the decision.

The grantee of a licence or easement for a private railway crossing may, by written notice, claim compensation from the railway manager for loss or damage directly suffered by the grantee arising from the closure or regulation of the crossing. The notice must be provided within one year after the closure or regulation ends or at a later time allowed by the Coordinator-General. The amount of compensation for the loss or damage is the amount agreed by the parties or, if the parties cannot agree within a reasonable time, the amount decided by a court with jurisdiction for the recovery of the amount of compensation claimed.

The requirements for private railway crossings in clause 35 have been included in the Bill to provide accountability measures for the actions of railway managers and to alleviate the impact of the closure and regulation

of private railway crossings on adjoining landowners of the Surat Basin rail corridor land.

## **Division 2            Public use of Surat Basin rail corridor land**

*Clause 36* provides that if the public uses the Surat Basin rail corridor land as a road or otherwise for access purposes, the land is not taken to have been dedicated for use as a road even though the use is authorised or allowed by the Coordinator-General, railway licensee, railway lessee or a railway manager.

*Clause 37* places an obligation on pedestrians and drivers of vehicles to give way to a railway operator's rolling stock and a railway manager's rail vehicles on railway tracks at a level crossing. If an accident happens at a level crossing because a person fails to give way, the railway operator and railway manager are not liable for any injury or damage caused in the accident and the person must pay the railway operator or railway manager the cost of any damage caused to the property of the railway operator or railway manager. However, these liability and cost provisions in subsection (2) do not apply if the railway operator or railway manager, or an agent or employee of the operator or manager, were negligent in relation to the accident.

## **Division 3            Watercourses**

*Clause 38* provides that, to carry out railway works, a railway manager may, with the Coordinator-General's written approval, divert a watercourse or construct a temporary or permanent watercourse. In deciding whether to approve the diversion of a watercourse, the Coordinator-General must consider the effect the works for the diversion would have on the watercourse's physical integrity and flow characteristics. An approval by the Coordinator-General may be given with or without conditions.

*Clause 39* provides that the Coordinator-General may cancel a railway manager's approval under clause 38 if the Coordinator-General is reasonably satisfied that the railway manager has not complied with a condition of the approval. Clause 39 has been included in the Bill to enable

the Coordinator-General to effectively enforce compliance with any conditions imposed on an approval granted by the Coordinator-General to a railway manager under clause 38. The Coordinator-General must give the railway manager written notice of the cancellation of an approval. Upon receipt of a notice of cancellation, the railway manager must stop all activities being carried out under the approval as soon as practicable.

*Clause 40* provides that if the Coordinator-General considers that water from a watercourse has collected and obstructs, or is likely to collect and obstruct, traffic on the railway, the Coordinator-General, or a person authorised by the Coordinator-General under clause 40, may enter the land on which the watercourse is situated and take the action that the Coordinator-General considers necessary or desirable to reduce or prevent the collection of water.

Before the Coordinator-General exercises the powers in subsection (1) to enter land and take action, the Coordinator-General may, by written notice, require the owner of the land on which the watercourse is situated to take such action. It is an offence for the land's owner not to comply with the notice, unless the owner has a reasonable excuse. If the land's owner does not comply with the notice, the Coordinator-General may exercise the Coordinator-General's powers in subsection (1) to enter land and take action. The land's owner is liable to pay Coordinator-General the costs incurred because of the exercise of the powers.

Clause 40 applies even if the water collected, or was likely to collect, as a result of action that was authorised under an Act or whether the water collects, or was likely to collect, permanently, temporarily or intermittently.

*Clause 41* provides that, before entering someone else's land, the Coordinator-General and a person authorised by the Coordinator-General under clause 40 must give at least seven days' written notice to the land's owner or occupier of the entry or get the written agreement of the land's owner or occupier to the entry. A person need not comply with these requirements for urgent remedial action on the railway or maintenance on a road. However, if urgent remedial action is required, the person entering the land must give the land's owner or occupier as much oral notice as is practicable.

## **Part 5**                      **Declaration of common areas and carrying out works near the railway**

### **Division 1**                **Minister may declare common areas**

*Clause 42* provides that the Minister may, by gazette notice, declare the part of a relevant road where it interrupts the route of the Surat Basin rail corridor land to be a common area for the relevant road and the route of the Surat Basin rail corridor land. If the Minister declares a common area:

- a railway manager may construct, maintain and operate a railway on the common area in a way consistent with its use as a relevant road;
- the railway licensee may use and occupy the common area for the period that it holds the railway licence in a way consistent with its use as a relevant road and the railway licence;
- the railway lessee may use and occupy the common area for the period that it holds the railway lease in a way consistent with its use as a relevant road and the railway lease;
- the relevant person for the relevant road may construct, maintain and operate the relevant road on the common area in a way consistent with its use as a railway; and
- the relevant person for the relevant road and relevant person's agents and employees do not have any liability for the railway or its use on the common area.

The registrar of titles must record the declaration of a common area in the appropriate register for the Surat Basin rail corridor land.

If the railway on a common area is not used, or stops being used, the railway licensee or railway lessee is responsible for the cost of removing the rail transport infrastructure from the common area and restoring the road, unless the Coordinator-General and railway licensee or railway lessee otherwise agree. Before entering into an agreement with the railway licensee or railway lessee, the Coordinator-General must consult with the responsible person for the relevant road.

The arrangements in clause 42 to declare a common area over part of a relevant road and grant statutory rights for the construction and operation of the railway infrastructure are consistent with the statutory arrangements for road crossings of rail corridor land under section 249 of the *Transport Infrastructure Act 1994* and the concession agreements between the State and the SBRJV which will govern the construction and long-term operation of the railway.

*Clause 43* provides that the Minister may, by gazette notice, declare the part of a non-tidal boundary watercourse where it interrupts the route of the Surat Basin rail corridor land to be a common area for the non-tidal boundary watercourse and the route of the Surat Basin rail corridor land. If the Minister declares a common area:

- the Coordinator-General, a railway manager or a person authorised by the Coordinator-General under clause 43 may survey, resurvey, construct, augment, improve, maintain, operate, replace, name and number a watercourse crossing on the common area;
- the railway licensee may use and occupy the common area for the period that it holds the railway licence in a way consistent with the railway licence; and
- the railway lessee may use and occupy the common area for the period that it holds the railway lease in a way consistent with the railway lease.

‘Watercourse crossing’ is defined in clause 43 to mean rail transport infrastructure that is, or is proposed to be, situated over, under on or in a non-tidal boundary watercourse. The registrar of titles must record the declaration of a common area in the appropriate register for the Surat Basin rail corridor land.

If a watercourse crossing on a common area is not used, or stops being used, the railway licensee or railway lessee is responsible for the cost of removing the watercourse crossing from the common area and restoring the non-tidal boundary watercourse, unless the Coordinator-General and the railway licensee or railway lessee otherwise agree.

Clause 43 has been included in the Bill because there is no legislative ability to grant freehold title to the Coordinator-General in the beds and banks of non-tidal boundary watercourses traversed by the Surat Basin rail corridor due to the operation of section 13A of the *Land Act 1994*. The

Coordinator-General therefore cannot grant the SBRJV rights to construct or operate the railway over these non-tidal boundary watercourses.

The arrangements in clause 43 to declare a common area over part of a non-tidal boundary watercourse and grant statutory rights for the construction and operation of the railway infrastructure are consistent with the statutory arrangements in the *Transport Infrastructure Act 1994* for watercourse crossings (section 477F) and the intersections of roads, railways and busways (sections 26, 84B, 249 and 303A) and the concession agreements between the State and the SBRJV which will govern the construction and long-term operation of the railway.

To ensure that any common area declared over a non-tidal boundary watercourse is not inconsistent with the existing legislative environment, the Bill explicitly states that the declaration of a common area under clause 43 does not remove or diminish any existing rights the State or other persons may have in relation to a non-tidal boundary watercourse, including the rights of an owner of occupier of land adjoining the Surat Basin rail corridor land under section 13A of the *Land Act 1994*.

## **Division 2            Works near the railway**

*Clause 44* provides that a person must not, without the Coordinator-General's written approval, carry out works near the railway if the works threaten, or are likely to threaten, the railway's safety or operational integrity. The Coordinator-General may give a person a written approval if the Coordinator-General reasonably believes the works do not threaten, or are not likely to threaten, the railway's safety or operational integrity. The Coordinator-General's approval under clause 44 does not affect any requirement under another Act that the person must comply with to carry out the works. Clause 44 binds all persons, including the State.

*Clause 45* provides that if the Coordinator-General reasonably believes that a person is carrying out, or proposes to carry out, works near the railway that threaten, or are likely to threaten, the railway's safety or operational integrity, the Coordinator-General may give the person a written direction to stop, alter or not start the works. Failure to comply with the direction is an offence, unless the person has a reasonable excuse.

If works are carried out without an approval under clause 44 or contrary to a direction under clause 45, the Coordinator-General may, by written

notice, require the owner of the land where the works are situated to alter, demolish or take away the works within a stated reasonable period. Failure to comply with the requirement is an offence, unless the person has a reasonable excuse. If the person does not comply with the requirement, the Coordinator-General may alter, demolish or take away the works and recover the cost of doing so from the land's owner as a debt payable by the owner.

A person authorised by the Coordinator-General for clause 45 may enter land and inspect works. The inspection may be conducted after giving three days' written notice of the entry to the land's owner or occupier or with the written agreement of the land's owner or occupier to the entry. If the Coordinator-General reasonably believes there is an immediate and significant threat to the railway's safety or operational integrity, the inspection may be conducted without written notice or approval but by giving the land's owner or occupier as much oral notice as is practicable.

Clause 45 binds all persons, including the State.

*Clause 46* provides that, if the Coordinator-General reasonably believes works near the railway that may be conducted on land are likely to threaten the safety or operational integrity of the railway, the Coordinator-General may give the registrar of titles a signed notice:

- identifying the land;
- identifying the nature of the works that may be conducted on the land the Coordinator-General reasonably believes are likely to threaten the safety or operational integrity of the railway; and
- stating that the owner of the land must obtain the Coordinator-General's written approval under clause 44 before conducting works of that nature of the land.

The registrar of titles must ensure that a notice appears in the relevant register for the land under the *Land Act 1994* or the *Land Title Act 1994* so that a search of the register will show that an owner of the land must obtain the Coordinator-General's written approval under clause 44 prior to conducting works of the nature specified in the notice on the land.

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## **Part 6**                      **Giving or requiring information**

*Clause 47* provides that the Coordinator-General may give information to a corresponding authority about action taken by the Coordinator-General under the Bill or information obtained under the Bill in relation to the transport of dangerous goods on or over the Surat Basin rail corridor land. However, this does not apply if the Coordinator-General or the corresponding authority would otherwise be required to maintain confidentiality about the information under an Act.

*Clause 48* provides that the Coordinator-General may, by written notice, require a local government to give to the Coordinator-General or a specified person information on a particular issue relevant to the discharge of the Coordinator-General's functions or exercise of powers under the Bill or the discharge of the local government's functions or exercise of powers under the *Sustainable Planning Act 2009*. The notice must state a reasonable period for compliance and may state the way in which it is to be complied with. The local government must comply with the notice. However, the local government may appeal to the Minister against the notice. If an appeal is made, the local government only has to comply with the notice if, and to the extent that, the Minister directs.

## **Part 7                      General offence provisions**

*Clause 49* provides that it is an offence for a person to intentionally or recklessly trespass on the railway.

*Clause 50* provides that it is an offence for a person in or on the Surat Basin rail corridor land to interfere with, or attempt to interfere with, the railway, unless:

- if there is a railway manager, the person has the railway manager's written approval;
- if there is no railway manager, the person has Coordinator-General's written approval;
- the interference is permitted or authorised under a right of access under clause 33 or the *Transport (Rail Safety) Act 2010*; or
- the interference is otherwise approved, authorised or permitted under the Bill or another Act.

The offence provisions in clause 50 do not apply to a person who carries out urgent maintenance of the railway.

An approval to interfere with the railway may be subject to a reasonable condition. It is an offence not to comply with a condition of an approval. If the Coordinator-General or a railway manager refuses to give an approval, or gives an approval subject to a condition, the Coordinator-General or a railway manager must give the person a notice stating reasons for the decision. A decision of a railway manager to refuse to give an approval, or give an approval subject to a condition, is subject to internal review by the Coordinator-General under clause 60.

*Clause 51* provides that if a person contravenes clause 50 by interfering with the railway, a railway manager may, by written notice, require the person to rectify the interference within a stated reasonable time. Failure to comply with the requirement of a railway manager is an offence, unless the person has a reasonable excuse. If the person does not comply with the requirement, the railway manager may rectify the interference. The person must pay the railway manager's costs of rectifying the interference or altering the construction, maintenance or operation of the railway because of the interference.

*Clause 52* provides that it is an offence for a person, without a reasonable excuse, to alter, or attempt to alter a watercourse in a way that adversely affects the railway.

*Clause 53* provides that it is an offence to, without a reasonable excuse, alter, or attempt to alter, any naturally occurring materials, stockpile of material or railway works on the railway. Clause 53 further provides that it is an offence to deposit rubbish or abandon goods or materials on the railway other than at places approved by, and under conditions fixed by, a railway manager or the Coordinator-General.

*Clause 54* provides that it is an offence for a person to pretend to be an authorised person or an associated person of the Coordinator-General or an authorised person.

## **Part 8                      Relationship with other Acts**

### **Division 1                  Transport noise corridors under Building Act 1975**

*Clause 55* provides for the application of chapter 8B, parts 1 and 3 of the *Building Act 1975* to the Surat Basin rail corridor land and land adjoining it and for the Coordinator-General to exercise the chief executive of the Department or Transport and Main Roads powers for ‘railway land’ under these provisions for the Surat Basin rail corridor land.

The application of these provisions of the *Building Act 1975* will enable the Coordinator-General to designate land surrounding the Surat Basin rail corridor land as a transport noise corridor under the *Building Act 1975*. The purpose of designating a transport noise corridor is to reduce the effects of transport noise on the occupants of residential buildings in the vicinity. If a designation is made, higher noise mitigation standards apply to the construction and alteration of habitable rooms in residential buildings within the designated area.

The Coordinator-General will be subject to the notice requirements under chapter 8B, part 3 of the *Building Act 1975* if the Coordinator-General designates a transport noise corridor under the Bill. This includes giving notice of the designation and specified matters about the levels of noise within the corridor to the chief executive of the department which administers the *Building Act 1975* and the local government in whose area the transport noise corridor is situated. Under the *Building Act 1975*, the local government must include a record of the transport noise corridor in its planning scheme.

The application of these provisions of the *Building Act 1975* will enable the Surat Basin rail corridor land to be regulated in a manner consistent with other statutory arrangements for rail corridors in Queensland.

*Clause 56* provides that the Coordinator-General may give the registrar of titles a written notice about land within a transport noise corridor declared by the Coordinator-General under clause 55. If a notice is given, the registrar of titles must keep a record to show the land to which the notice relates is land within a transport noise corridor. The record must be kept in such a way that a search of the register kept by the registrar of titles under any Act relating to title to land will show the land is within a transport

noise corridor. If the land in the notice is no longer within a transport noise corridor, the Coordinator-General must inform the registrar of titles as soon as practicable and the registrar of titles must remove the record from the registrar's records.

## **Division 2                    Easements under Land Title Act 1994**

*Clause 57* provides that the railway lessee may grant an easement that burdens the railway lease to the owner of a lot which adjoins the Surat Basin rail corridor land and that the instrument creating the easement may be registered under the *Land Title Act 1994*.

It is intended that adjoining landowners of the Surat Basin rail corridor land will be granted access rights for private railway crossings across the Surat Basin rail corridor land, which will be constructed at the same time as the railway. Under section 83 of the *Land Title Act 1994*, the only person who can grant an easement over land to be burdened is the registered owner of the land. In this case, this will be the Coordinator-General as the owner of the Surat Basin rail corridor land. Clause 57 will enable the SBRJV, once it has been granted the railway lease and the concession by the State to operate the railway, to grant an easement in favour of adjoining landowners of the Surat Basin rail corridor land. The SBRJV is not given a power under clause 57 to grant a public utility easement.

The railway lessee may register more than one instrument creating an easement that burdens the railway lease. An easement granted by the railway lessee over the railway lease ends when the railway lease ends.

Clause 57 does not prevent the Coordinator-General from granting or registering an easement that burdens the lot of the land the subject of the railway lease.

## **Division 3                    Transport Infrastructure Act 1994**

*Clause 58* provides that chapters 7 and 16 of the *Transport Infrastructure Act 1994* do not apply to:

- railway works that are carried out, or are to be carried out, under the Bill;

- investigations for the expansion or realignment of the Surat Basin rail corridor land that are carried out, or are to be carried out, under the Bill;
- the Surat Basin rail corridor land; or
- the railway.

Clause 58 gives effect to the policy intent of the Bill as a ‘stand-alone’ legislative framework for the railway and will ensure there is no conflict between the *Transport Infrastructure Act 1994* and the matters covered under the Bill in the reproduced *Transport Infrastructure Act 1994* provisions.

## **Part 9                      Severance of rail transport infrastructure**

*Clause 59* provides that a regulation may be made which declares that certain rail transport infrastructure (the declared infrastructure) is severed from the Surat Basin rail corridor land on which it is situated, or proposed to be situated. The regulation may state the day when the declared infrastructure is severed. On and after the day the declared infrastructure is severed, the infrastructure is taken to be, and must be dealt with as, personal property separate from the land.

As the Coordinator-General will retain ownership of the Surat Basin rail corridor land at all times and the railway will be affixed to the Surat Basin rail corridor land, common law principles and Commonwealth income tax legislation will treat the State as the legal owner of the rail infrastructure constructed on the land. Clause 59 will provide for the SBRJV to achieve its commercial objectives in depreciating the rail infrastructure, while not altering the right of the State to ownership of the Surat Basin rail corridor land, or the reversionary right of the State to own the declared infrastructure on the corridor at the end of the concession period.

The severance of the declared infrastructure from land under clause 59:

- does not affect the right of the declared infrastructure to be situated in the land;

- does not affect a person's rights or obligations under an agreement relating to the declared infrastructure, other than to the extent stated in the agreement;
- does not affect any right to drain water or sewage from the declared infrastructure across and through the land or to use any means of drainage of water or sewage across and through the land; and
- is not a dutiable transaction under the *Duties Act 2001*.

## Part 10                      Reviews

*Clause 60* provides that a person whose interests are affected by a decision of a railway manager under clauses 35 or 50 of the Bill may ask the Coordinator-General to review the railway manager's decision. The process in part 5, division 2 of the *Transport Planning and Coordination Act 1994* applies to the Coordinator-General's review of the railway manager's decision, with the Coordinator-General exercising the functions and powers of the chief executive of the Department of Transport and Main Roads under the process provided for in that Act.

The arrangements for the internal review of railway manager's decisions in clause 60 are consistent with the statutory arrangements for the review of railway manager's decisions under comparable provisions in the *Transport Infrastructure Act 1994*.

*Clause 61* provides for the external review by the Queensland Civil and Administrative Tribunal of a decision made by the Coordinator-General under clause 60. If the outcome of the internal review by the Coordinator-General of a railway manager's decision is not the decision sought by the applicant, the applicant may apply to the Queensland Civil and Administrative Tribunal for a review and a stay of the Coordinator-General's decision. An application to the Queensland Civil and Administrative Tribunal is made as provided under the *Queensland Civil and Administrative Tribunal Act 2009*.

The arrangements for the external review of the Coordinator-General's internal review decisions in clause 61 are consistent with the statutory arrangements for the external review of internal review decisions of the

chief executive of the Department of Transport and Main Roads under comparable provisions in the *Transport Infrastructure Act 1994*.

## **Part 11                    Legal proceedings**

### **Division 1                Evidence**

*Clause 62* provides that in a proceeding for an offence against the Bill, a person who is granted a works authority or investigation authority must be presumed to be an authorised person unless a party to the proceeding, by reasonable notice, requires proof of it.

*Clause 63* provides certain matters about the conduct of corporations and individuals in proceedings for offences against the Bill.

*Clause 64* provides that a statement in a complaint for an offence against the Bill that the matter of the complaint came to the knowledge of the complainant on a stated day is evidence of when the matter came to the complainant's knowledge.

### **Division 2                Offence proceedings**

*Clause 65* provides that an offence against the Bill is a summary offence.

*Clause 66* provides that a summary proceeding under the *Justices Act 1886* for a summary offence must start within the later of the following periods to end: one year after the commission of the offence; or 6 months after the offence comes to the complainant's knowledge, but within two years after the commission of the offence.

## **Part 12                    Miscellaneous provisions**

*Clause 67* provides that if a person intentionally, recklessly or negligently damages railway works on the railway, the person is liable to pay the

relevant person for the railway works the cost of repairing the damage. However, if the damage is caused by the driver of a vehicle whose identity is unknown, or who cannot be located, the registered operator of the vehicle is liable for the costs of repairing the damage, unless the vehicle was being used without the registered operator's knowledge or permission.

The provisions in subsections (2) and (3) apply whether or not the damage establishes, or relates to, an offence against the Bill. However, if a court finds a person guilty of an offence against the Bill, and in committing the offence the person damaged works, the court may, as well as imposing a penalty, order the person to pay an amount towards the cost of repairing the damage.

*Clause 68* provides that an amount payable to the Coordinator-General under the Bill is a debt owing to the State.

*Clause 69* provides that all fees, penalties, and other amounts received or recovered under the Bill are to be paid to the consolidated fund.

*Clause 70* provides that the Coordinator-General may delegate the Coordinator-General's functions or powers under the Bill to:

- a person appointed or employed under sections 5, 7A, 14 or 15 of the *State Development and Public Works Organisation Act 1971*;
- an appropriately qualified public service employee; or
- an appropriately qualified employee of a local body.

*Clause 71* provides that the Governor in Council may make regulations under the Bill. A regulation made under the Bill may provide for: fees payable under the Bill and the matters for which they are payable; and a maximum penalty of 20 penalty units for contravention of a regulation.

## **Schedule                      Dictionary**

The Schedule contains the Dictionary (clause 4) and defines particular words used in the Bill.