

Queensland Rail Transit Authority Bill 2013

Explanatory Notes

Short title

The short title of the Bill is the Queensland Rail Transit Authority Bill 2013.

Policy objectives and the reasons for them

The community is becoming increasingly aware of the taxpayer-funded investment being made to rail in Queensland and expectations are growing in the areas of:

- Improving service quality (improved reliability, increase in frequency and simplification of timetables/scheduling)
- Maintaining fare affordability
- Improving service experience (real time information, enhanced comfort, cleaner trains/stations and enhanced safety and security).

Fiscal challenges whereby budget funds are limited and the requirement to substantially increase capital investment in new transport infrastructure is evident, meaning Government must explore new ways to deliver enhanced service levels, new innovations and greater cost efficiency. This includes reviewing the capability within the current organisational structure to drive cost reduction initiatives through improved productivity, efficiency and effectiveness.

Achievement of policy objectives

The institutional restructure of Queensland Rail is designed to provide an organisational platform to allow for future reforms in rail service delivery so that community expectations can be realised.

The institutional restructure of Queensland Rail Limited is achieved by:

1. Establishing a new statutory authority (the Queensland Rail Transit Authority (QRTA)). The QRTA will be unincorporated. The QRTA will have a Board which will prepare both strategic and operational plans for ministerial approval.

2. Transferring Queensland Rail's shares to the QRTA (with the effect of making Queensland Rail a subsidiary of the new authority so they form, in effect, a Queensland Rail group). Queensland Rail Limited will no longer be a GOC.

Queensland Rail Limited will retain its assets and liabilities as well as its relevant licences, accreditations, authorisations and the like so, importantly in relation to service delivery, Queensland Rail Limited will continue to provide rail services. In practical terms, there will be a service agreement whereby QRTA provides strategic direction and staff to Queensland Rail for the continuation of rail services.

3. Transferring Queensland Rail's employees and enterprise agreements to the QRTA. The Bill provides protections for employee entitlements and clarifies the application of certain provisions of the *Industrial Relations Act 1999* on the QRTA and its employees. The transfer employees will mean the negotiations for a replacement Traincrew Agreement (which nominally expires on 30 June 2013) will be conducted under the *Industrial Relations Act 1999*.
4. Providing for the future transfer of assets, liabilities and instruments (such as licences, authorities and contracts) through transfer notices over time as rail reform progresses. Similar provisions for restructure directions and transfer notices have been used in other legislation including, for example, the *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009*.

Alternative ways of achieving policy objectives

The Bill represents the first stage in reform of Queensland Rail, and can only be achieved by primary legislation.

Estimated cost for government implementation

It is estimated that costs of implementation will ultimately be absorbed by efficiencies.

Consistency with fundamental legislative principles

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

- (a) Section 4(3)(g) of the *Legislative Standards Act 1992* – Rights and liberties of individuals – legislation that affects a person's rights or liberties or imposes obligations retrospectively

Clause 105 of the Bill allows for a transitional regulation to be made which may have retrospective application.

Clause 105 is designed provide a safety net to, for example, ensure a smooth transfer of employees and their enterprise agreements and ensure continuity of the provision of rail services. Despite best efforts, it is possible that the need for additional legislative provisions is identified after commencement. A common commencement

date may be critical for the ongoing management of employment and service provision issues. Clause 105 provides a short term (1 year) safety net to facilitate the smoothest possible transition.

- (b) Section 4(2)(a) and 4(3) of the *Legislative Standards Act 1992* – Rights and liberties of individuals – decisions not reviewable.

Clause 89 of the Bill provides that, unless the Supreme Court determines the decisions is beyond jurisdiction, decisions under this Act are final and conclusive, cannot be challenged appealed against, reviewed, quashed, set aside or called into question in any other way under the *Judicial Review Act 1991* or otherwise (whether by Supreme Court, another court, a tribunal or another entity); and is not subject to any writ or order of the Supreme Court, another Court, a tribunal or another entity on any ground.

Given the complexity and possible need for speedy processes in future stages of the Queensland Rail reform process, it is essential to ensure possible legal proceedings do not unreasonably delay implementation. Delay may mean the State would suffer significant financial detriment. Therefore it is necessary to limit the ability of third parties to unreasonably delay the ongoing restructuring process.

- (c) Section 4(2)(a), 4(3) and 4(3)(h) *Legislative Standards Act 1992* – Rights and liberties of individuals – disclosure of confidential information and deeming of a third party’s consent and conferring immunity from liability third party consent.

Clauses 78, 79 and 87 of the Bill deal with transfer notices, restructure directions and the effect on legal relationships. There are three circumstances in which third parties’ commercial rights may be affected by the Bill:

- The disclosure of confidential information without third parties’ consent; and
- The transfer of shares in Queensland Rail Limited to QRTA. This automatic transfer may potentially override requirements of third party contracts in a variety of circumstances, (for example, where consent to a change of control is required);
- The transfer of businesses, assets and liabilities between declared entities by gazetted transfer notice issued by the responsible Ministers for the purpose of any future restructuring. The transfer notice will potentially override requirements of third party contracts in a variety of circumstances, for example where consent to assign or novate a contract to another party is required.

For the purposes of the initial stage of the restructure, Queensland Rail Limited will retain its assets, liabilities and contracts and it is unlikely that a transfer notice will be required to be issued in a way that would impact on third parties.

Transfer notices and restructure directions may be used to require either the QRTA or Queensland Rail Limited or a subsidiary to cooperate with the State and its advisors in identifying and examining their assets, liabilities and other arrangements for the purposes of ongoing reform. The issue of the transfer notice and direction notice will give protection to the declared entity and their employees so they cannot be sued for breach of contract or obligations of confidence in relation to the disclosure of

confidential information. These notices, and provisions around deemed consent aim to assist the State in managing ongoing reform as efficiently as possible. If the Bill does not override some third party rights, it would not be possible for the restructure of the businesses to occur in ways that maximise the benefits and returns to the State.

Consultation

There has been no public consultation on this Bill nor was Queensland Rail Limited consulted.

Consistency with legislation of other jurisdictions

The Bill's provisions relating to the establishment of the QRTA are consistent with a range of similar legislation in Queensland and in other Australian jurisdictions.

Otherwise this Bill deals with matters specific to Queensland and while it is consistent with previous Queensland legislation, it is not based on inter-jurisdictional models.

Notes on provisions

Chapter 1 Preliminary

Clause 1 states the short title of the Act is the Queensland Rail Transit Authority Act 2013.

Clause 2 indicates the commencement of chapter 5, part 1 (as it relates to amendments to this Act) is immediately after commencement of section 2. Section 2 (and the rest of the Bill) will commence on assent.

Clause 3 states the main purpose of the Act.

Clause 4 states that the legislation is intended to apply both within and outside Queensland, to the fullest extent legally possible.

Clause 5 provides for the dictionary in schedule 2 to define particular words used in the Act.

Chapter 2 Queensland Rail Transit Authority

Part 1 Establishment, powers and functions

Clause 6 establishes the Queensland Rail Transit Authority and provides that it is not a body corporate and does not represent the State. The Authority's name will change to Queensland Rail under section 63.

Clause 7 provides that the Authority has all the powers of an individual and includes some examples. Subclause (4) indicates the Authority can sue and be sued in its name given under section 6(1), but the note clarifies that once clause 63 changes the Authority's name, it can sue and be sued in its new name.

Clause 8 provides for the authentication of the Authority's documents.

Clause 9 outlines the functions of the Authority to the extent they are consistent with the operational and strategic plans. This clause also allows the Authority to carry out its functions directly or indirectly through its subsidiaries.

Clause 10 provides that the Authority must carry out its functions commercially unless required under the Act to perform community service obligations other than as a commercial enterprise. Clauses 57 and 58 are the provisions relating to community service obligations.

Clause 11 provides that the Authority may exercise its powers and perform its functions inside and outside of Queensland.

Clause 12 provides that the responsible Ministers (being the Treasurer and the Minister administering this Act) can give the Authority written directions in relation to the Authority and its subsidiaries. The Authority must comply with the direction and, as far as practicable, the Board must ensure the Authority and subsidiary comply with a direction. Upon commencement Queensland Rail Limited will be a subsidiary of the Authority.

Clause 13 allows the Authority to delegate its functions (which includes its powers) under this Act or another Act, to the chief executive officer, an appropriately qualified employee of the Authority or an appropriately qualified employee of a subsidiary of the Authority. Upon commencement, Queensland Rail Limited will be a subsidiary of the Authority.

Part 2 Board

Division 1 Establishment, membership and related matters

Clause 14 provides that the Authority must have a board, but that the board does not constitute the Authority.

Clause 15 provides that the board is responsible for the way the Authority performs its functions and exercises its powers. This clause further outlines the role of the board.

Clause 16 provides for the board to consist of at least 3 but no more than 7 members appointed by the responsible Ministers. Initially, existing Queensland Rail Limited board members will transfer under clause 71 to the Authority and be appointed as provided in clause 95. Clause 16 further describes that prior to appointing a board member, the responsible Ministers must have regard to the person's ability to contribute to the implementation of the Authority's strategic and operational plans, however, the responsible Ministers may not appoint a board member if they are an insolvent under administration or have a conviction (other than a spent conviction) for an indictable offence.

This clause further provides, subject to clause 19 (Terms and ending of appointments), a board member's term of appointment is determined by the responsible Ministers but that term cannot exceed 3 years. A board member may be reappointed if they would otherwise be eligible.

Clause 17 requires the responsible Ministers to appoint a chairperson for the board from the board members and outlines the term of appointment for the chairperson.

Clause 18 provides the responsible Ministers may appoint a deputy chairperson for the board from the board members and outlines the term of appointment for the deputy chairperson. The clause also outlines when the deputy is to act for the chairperson.

Clause 19 provides for the terms and ending of appointments for board members, chairperson and deputy chairperson. Other than as provided in the Act, the board members' terms of appointment are as decided by the responsible Ministers. The board member is not entitled to payment, interest in property or valuable consideration or benefit in terms of remuneration for their role as board member or upon retirement or ending of their role as board member. This clause also provides that an appointment ends if the office becomes vacant under clause 20 and clarifies that a person's appointment as a board member does not end just because their appointment as chair or deputy chair has ended.

Clause 20 outlines when the office of a board member becomes vacant including any of the following:

- The member completes their term and is not reappointed;

- The member resigns by signed notice given to the responsible Ministers;
- The member becomes an insolvent under administration;
- The member is convicted of an indictable offence;
- The member is absent without the board's permission and without reasonable excuse from 3 consecutive board meetings;
- The appointment is ended by the responsible members.

The ending of an appointment by the responsible Ministers can be at any time and for any or no reason.

Clause 21 provides for the appointment of a board member if there is a casual vacancy.

Division 2 Business

Clause 22 provides the board may, subject to the Act, conduct its business and meetings in the way it considers appropriate.

Clause 23 provides that board meetings can be held at times and places as decided by the board, but must be at least every 3 months. The chairperson may call a meeting of the board at any time, and must call a meeting of the board if asked, in writing, to do so by any 2 or more members.

Clause 24 provides the quorum for the board is 3 members.

Clause 25 provides who will preside at meetings.

Clause 26 provides that questions of the board are decided by the majority of votes of the members that are present. This clause also provides that each member has a vote for each question to be decided and, if votes are equal, the presiding member also has a casting vote. If a member abstains from voting it is taken to be a vote in the negative.

This clause also indicates that the board may allow meetings to be conducted using technology, such as video or teleconferencing, to allow members to participate and be considered to be present at the meeting.

Further, if a resolution of the board that is not passed at a meeting is validly made if notice of the resolution is provided in accordance with procedures decided by the board and the majority of members give written agreement to the resolution.

Clause 27 provides the board must keep minutes of meetings and record of resolutions made under clause 26(6).

Clause 28 requires members to disclose to a board meeting possible conflict of interests where they have a direct or indirect interest in an issue being, or about to be, considered by the board, and their interest would be in conflict with their proper performance of their duties as a board member. Unless the board otherwise directs, the member must not be present during board consideration of the issue or take part in the decision. The clause also provides for situations where there is more than one member with a conflict of interests.

Part 3 Senior employees

Division 1 Chief executive officer

Clause 29 requires the Authority to have a chief executive officer. The chief executive officer will be appointed by the board with the prior written approval of the responsible Ministers. It is noted that the first chief executive officer transfers from Queensland Rail Limited pursuant to clauses 71 and 95. The chief executive officer is an employee of the authority. Clause 95 also describes the transfer of persons in acting chief executive officer and senior executive roles.

Clause 30 provides for the term of appointment of the chief executive officer.

Clause 31 provides that for matters not provided for under the Act or in their contract of employment, the chief executive officer holds office on the terms decided by the board.

Clause 32 provides that a person may not be appointed or continue as chief executive officer if they are an insolvent under administration, have a conviction, other than a spent conviction, for an indictable offence, is not able to manage a corporation under Part 2D.6 of the Corporations Act or is named in the register held by ASIC under section 1274AA of Corporation Act.

Clause 33 provides the chief executive officer is responsible for managing the Authority's affairs under the Act, other legislation and the board's policies.

Clause 34 provides that anything done in the name of, or for, the Authority by the chief executive officer is taken to have been done by the Authority.

Division 2 Senior executives

Clause 35 provides for the appointment of senior executives by the board including that one senior executive must be the chief finance officer. Please note the senior executives transfer to the Authority from Queensland Rail Limited pursuant to clause 95.

Part 4 Reporting and accountability

Division 1 Application of other Acts

Clause 36 provides the Authority is a statutory body for the purposes of both the *Financial Accountability Act 2009* and the *Statutory Bodies Financial Arrangements Act 1982*.

Clause 37 provides the Authority is a unit of public administration under the *Crime and Misconduct Act 2001*.

Division 2 Reporting generally

Clause 38 provides for the giving of quarterly reports about the Authority's operations by the board to the responsible Ministers.

Clause 39 provides some additional requirements for the board for reporting and information giving to the responsible Ministers.

Clause 40 provides that a responsible Minister may require the board or the Authority to report to their department.

Clause 41 makes it clear that reporting requirements for the board are not limited by sections 39 and 40 of the Act.

Division 3 Annual reports

Clause 42 defines the term “annual report” for the purposes of the division as being the Authority’s annual report under the *Financial Accountability Act 2009*.

Clause 43 provides that the responsible Ministers may delete commercially sensitive matters from the annual report (and accompanying documents) before they are laid before the Legislative Assembly or otherwise made public if asked to do so by the board.

Clause 44 provides that the annual report may include a summary of the matter if the summary indicates it is a summary and a full statement is laid before the Legislative Assembly at the same time as the report.

Clause 45 provides that copies of all directions to the Authority by the responsible Ministers under this chapter must be included in the annual report.

Division 4 Strategic and operational plans

Clause 46 provides for the interaction between this Act and the *Financial Accountability Act 2009*. Where this division and the *Financial Accountability Act 2009* require the same thing to be done, compliance with this division is sufficient to show compliance with the *Financial Accountability Act 2009*, otherwise the requirements in this Act are in addition to those in the *Financial Accountability Act 2009*. If there is inconsistency, a provision of this division will prevail to the extent of the inconsistency.

Clause 47 provides for the provision of the Authority’s draft strategic plan and a draft operational plan to the responsible Ministers for their agreement before 31 March each year. This clause also requires the board and responsible Ministers to try to reach agreement on the plan as soon as possible but no later than the start of the financial year.

Clause 48 outlines procedures relating to the return of a draft plan to the board by the responsible Ministers. The responsible Ministers can ask the board to further consider a thing and revise the plan and the board must comply with the request as a matter of urgency. If the plan has not been agreed to by the responsible Ministers by 1 month before the start of the financial year, the responsible Ministers may direct the board to take certain steps or make modifications to the draft plan and the board must comply immediately. A copy of this direction must be included in the plan.

Clause 49 provides that if the draft strategic or operational plan is not agreed by the start of the financial year, the last plan given to the responsible Ministers (including any modifications made by the board before or after it was submitted to the responsible Ministers)

will be taken to be the Authority's strategic or operational plan until a plan is agreed by the responsible Ministers under clause 50.

Clause 50 provides that once a draft strategic or operational plan has been agreed by the responsible Ministers, it becomes the strategic or operational plan for the Authority for the relevant financial year.

Clause 51 provides that the Authority must comply with the strategic and operational plans.

Clause 52 provides that the board may modify the strategic or operational plan with the written agreement or written direction of the responsible Ministers.

Clause 53 provides for the things that must be included in the Authority's operational plan for a financial year.

Part 5 Directions about equity and dividends

Division 1 Directions about equity

Clause 54 provides the responsible Ministers may at any time give the Authority a written direction about the payment or transfer of an asset or liability to,, or withdrawal or transfer of an asset or liability from, the Authority's equity. The Authority must comply with the direction.

Division 2 Directions about dividends

Clause 55 provides the responsible Ministers may give the Authority a written direction to pay a dividend for an amount as decided under this part. The dividend must be paid within 6 months after the end of the financial year, although the responsible Ministers can allow a longer period.

Clause 56 provides for how the dividend amount will be determined.

Part 6 Community service obligations

Clause 57 defines community service obligations for the Authority.

Clause 58 provides that the Authority's community service obligations and the costing of, funding of, or other arrangements for making adjustments of, are to be stated in the operational plan. The operational plan is conclusive between the Authority and Government regarding the nature and extent of the Authority's community service obligations and the ways and extent to which the Authority will be compensated by the Government for performing community service obligations.

Part 7 Acquisition and disposal of assets and subsidiaries

Clause 59 provides the responsible Ministers may, after consulting with the board, by written direction to the board, require the Authority or a subsidiary not to dispose of a stated asset. The board must ensure the Authority, and as far as practicable, any subsidiary, complies with

the direction. A copy of the direction must be published in the government gazette within 21 days.

Clause 60 provides the Authority can only dispose of any of its main undertakings (as defined in the clause) with the prior written approval of the responsible Ministers.

Clause 61 provides the Authority may not, without prior written approval of the responsible Ministers, form or participate in the formation of a company that will become its subsidiary or participate in any transaction that will result in a body corporate becoming or ceasing to be its subsidiary.

Part 8 Commonwealth tax equivalents

Clause 62 provides the Treasurer may issue a tax equivalents manual deciding the tax equivalents to be paid by the Authority and its subsidiaries.

Part 9 Matters relating to change of name of Authority

Clause 63 provides that 30 days after the transfer day (being the date of commencement of the Act) the Authority's name changes to Queensland Rail. The 30 day period between transfer of Queensland Rail Limited's shares to the Authority and when the Authority will take on the name of Queensland Rail will allow for practical matters to be undertaken for the name change. It is appropriate for the new Authority to take on the name Queensland Rail as it will be ultimately responsible for the provision of passenger rail services in Queensland. Upon the name change taking effect, the Authority will be able to sue and be sued in its new name.

Clause 64 provides that the change of name for the Authority does not affect its legal personality or identity, its or anyone else's rights, entitlements, liabilities or make legal proceedings defective. The Authority can still enjoy any rights or benefits that it would have enjoyed if the name did not change. Legal proceedings that may have been started under its former name can be started under the name Queensland Rail.

Clause 65 provides that a reference in an Act or document to the Authority (being the Queensland Rail Transit Authority) can be taken, if the context permits, to be a reference to Queensland Rail.

Chapter 3 Provisions for restructure of declared entities

Part 1 Interpretation

Clause 66 defines "declared entities" as being the Authority, Queensland Rail Limited, a company that has either the Authority or Queensland Rail Limited as its holding company, or a government entity declared by gazette notice by the responsible Ministers. "Ultimate holding company" is defined in this clause and it includes the Authority.

Part 2 Transfer of shares and change of status of Queensland Rail Limited

Clause 67 provides that on the transfer day Queensland Rail Limited's shares are transferred to the Authority.

Clause 68 provides that the declaration that Queensland Rail Limited is a Government Owned Corporation is revoked, but this does not affect its legal personality, functions or powers, any exception, exemption, or other entitlement under an Act that would have attached to it if it was still a Government Owned Corporation.

Part 3 Application of IRA

Clause 69 removes any doubt by providing that the *Industrial Relations Act 1999* (IRA) applies to the Authority and its employees. The Authority is declared to be an employer for the purposes of the IRA and the employees are declared to be employees for the IRA. Further, clause 69 provides that the Authority is taken to be a government entity for the purposes of the IRA, section 691B(2) and an industrial instrument that applies to employees of the Authority is taken to be an industrial instrument to which the IRA, Chapter 15, part 2 applies. The effect of these provisions is to clarify that the IRA, Chapter 15, part 2 (Particular provisions of industrial instruments) applies to certified agreements, awards and other industrial instruments of the Authority. "Industrial instrument" is defined in the *Public Service Act 2008*, schedule 4.

Part 4 Transfer of employees of Queensland Rail Limited

Clause 70 provides definitions for part 4.

Clause 71 provides that on the transfer day employees of Queensland Rail Limited become employees of the Authority and cease to be employees of Queensland Rail Limited. The records of Queensland Rail Limited that relate to the employment of the transferred employees become the records of the Authority. Any liabilities of Queensland Rail Limited that relate to a transferred employee's rights to leave (annual, sick, long service and other leave) are transferred to the Authority.

Clause 72 preserves certain rights of employees who are transferred from Queensland Rail Limited to the Authority. The transfer does not affect an employee's total remuneration. The transfer does not prejudice the employee's existing or accruing rights to superannuation, annual, sick, long service or other leave. The transfer does not interrupt an employee's continuity of service with the proviso that an employee is not entitled to 'double-dip' by claiming an entitlement more than once in relation to the same period of service. The transfer does not constitute a retrenchment, redundancy or termination at the initiative of the Queensland Rail Limited. Rather, the transfer of employees from Queensland Rail Limited to the Authority is brought about by operation of law. Because there is no termination of employment at the initiative of the employer, there is no entitlement to redundancy pay as provided for in the Fair Work Act, Section 119. The transfer does not entitle an employee to a payment or other benefit because the employee is no longer employed by Queensland Rail Limited. The clause provides that the transfer has effect despite any other contract, law or instrument although the preservation of rights of employees is subject to clause 69. For the

purposes of clause 72, an employee of Queensland Rail Limited does not include a board member or director.

Clause 73 details how certain enterprise agreements made under the *Fair Work Act 2009* become certified agreements made under the *Industrial Relations Act 1999*. Federal enterprise agreements are defined at clause 70 to mean-

- (a) QR Passenger Pty Ltd Traincrew Union Collective Workplace Agreement 2009;
- (b) Queensland Rail Administrative, Professional and Technical Enterprise Agreement 2011;
- (c) Queensland Rail Customer Service Enterprise Agreement 2011;
- (d) Queensland Rail Network Enterprise Agreement 2011;
- (e) Queensland Rail Rollingstock and Operations Enterprise Agreement 2011;
- (f) Queensland Stations Operations Enterprise Agreement 2011;
- (g) Queensland Rail Train Control Enterprise Agreement 2011;
- (h) Queensland Rail Transit Services Enterprise Agreement 2011.

Clause 73 provides that on the transfer day a federal enterprise agreement is taken to be a certified agreement that has been made by the Queensland Industrial Relations Commission under section 156 of the IRA. Each certified agreement is taken to bind the Authority and its employees. In addition, each certified agreement is taken to bind any State employee organisation affiliated (or corresponding) to a federal employee organisation that was a party to the relevant federal enterprise agreement. The relevant organisations are outlined below:

Federal employee organisation	Affiliated State employee organisation
Australian Rail Tram and Bus Industry Union, Queensland Branch	Australian Rail, Tram and Bus Industry Union of Employees, Queensland Branch
Australian Federated Union of Locomotive Employees, Queensland Union of Employees	Australian Federated Union of Locomotive Employees, Queensland Union of Employees
Australian Municipal, Administrative, Clerical and Services Union	Queensland Services, Industrial Union of Employees
Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia	The Electrical Trades Union of Employees Queensland
Automotive, Foods, Metals, Engineering, Printing and Kindred Industries Union known as the Australian Manufacturing Workers' Union (AMWU)	Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland
The Association of Professional Engineers, Scientists and Managers, Australia	The Association of Professional Engineers, Scientists and Managers, Australia, Queensland Branch, Union of Employees
Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia	Plumbers & Gasfitters Employees' Union Queensland, Union of Employees

Clause 73 further provides that the nominal expiry date of each federal enterprise agreement remains unchanged when that enterprise agreement is taken to be a certified agreement. There is no change to the nominal expiry date of a federal enterprise agreement when it becomes a certified agreement. Clause 73 prescribes specific definitions for “federal employee organisation” and “State employee organisation”.

Clause 74 deals with a dispute resolution clause in a federal enterprise agreement that is taken to be a certified agreement because of clause 73. Clause 74 provides that a reference in a dispute resolution clause to Fair Work Australia is taken to be a reference to the Queensland Industrial Relations Commission. Further, a reference to the Fair Work Act is taken to be a reference to a corresponding provision of the IRA. “Corresponding provision of the IRA” is defined at clause 70. An example of a dispute resolution clause is provided.

Clause 75 deals with a specific federal enterprise agreement which is taken to be a certified agreement – the QR Passenger Pty Limited Traincrew Union Collective Workplace Agreement 2009. This agreement nominally expires on 30 June 2013. Clause 75 provides that the requirements of the IRA, section 143 (Proposed parties to be advised when agreement is proposed) are taken to be satisfied. The effect of clause 75 is that negotiations for a replacement QR Passenger Pty Limited Traincrew Union Collective Workplace Agreement 2009 can commence without the parties having to wait 14 days as required by the IRA, section 143(3).

Clause 76 provides that on the transfer day the Queensland Rail Award – State 2003 made under the IRA is repealed. The Rail Industry Award 2010 (Modern Award) made under the Fair Work Act is taken to be an award made under the IRA. The award may have application to the Authority subject to: (1) any specific provisions regarding the relationship between awards and agreements contained within a certified agreement and (2) the operation of the IRA, section 165 (Certified agreement’s effect or awards, agreements or orders). The award will be relevant for the application of the no-disadvantage test of the IRA, section 165. Clause 76 further provides that a reference in a dispute resolution clause in the award to Fair Work Australia is taken to be a reference to the Queensland Industrial Relations Commission. A reference to the Fair Work Act is taken to be a reference to a corresponding provision of the IRA. “Corresponding provision of the IRA” is defined at clause 70.

Clause 77 applies if, immediately before the transfer day, an employee of Queensland Rail Limited has an individual contract of employment. Clause 77 does not apply to an employee of Queensland Rail Limited who, immediately before the transfer day, was covered by a federal enterprise agreement. Clause 77 provides that an employee’s individual contract of employment with Queensland Rail Limited is taken, on the transfer day, to be an individual contract of employment with the Authority.

Part 5 Transfer notices and restructure directions

Clause 78 allows the responsible Ministers to issue a transfer notice, which must be gazetted, for the purpose of the restructure of a declared entity. The transfer notice is available to transfer assets, liabilities, instruments, rights and other matters from one entity to another entity and make other incidental or consequential provision for restructuring as necessary. This provision could include the transfer or preservation of an accreditation or authority if

necessary. This provision is similar to transfer notice provisions in the *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009*.

Clause 79 provides that the responsible Ministers may give a direction to a declared entity or its board requiring it to do something necessary and convenient for effectively carrying out a restructure of a declared entity. A declared entity and its board is required to comply with a direction given under this section. This clause is similar to project direction provisions in the *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009*.

Part 6 Other matters for restructure

Clause 80 provides for the effect of changes to Queensland Rail Limited relating to its legal personality, functions and powers, any exception, exemption or other entitlement.

Clause 81 provides that no duty is payable under the *Duties Act 2001* in relation to the transfer of shares in Queensland Rail Limited to the Authority or anything done under a transfer notice.

Clause 82 provides for the preservation of employee rights if they are transferred under a transfer notice.

Clause 83 declares that, for things done under transfer notices which involve or result in disposal of a public record, for the purpose section 13 of the *Public Records Act 2002*, the disposal was under legal authority, justification or excuse.

Clause 84 provides for the effect where a transfer notice provides for an instrument to be applied to another declared entity in place of the transferor. This provision is not limiting and the definition of “right” in the dictionary includes power privilege or immunity. This provision is intended to apply broadly and may include, but would not be limited to, an accreditation, authorisation or exemption.

Clause 85 provides that the registrar of titles or other registering authority may, without formal application register the transfer of an asset or liability under a transfer notices issued under the Act. However, the registrar of titles or other registering authority must register the transfer if a written application is made by a transferee entity. This clause also requires the registration of a transaction related to a transfer under a transfer notice even if the transfer entity has not been registered as a proprietor of the asset or liability provided that the transaction is effect by an instrument otherwise in registrable form. In addition, this clause provides that the registrar of titles is not obliged to enquire as to whether an asset or liability has been transferred under a transfer notice provided that the asset or liability is registered in the name of a transferor entity before registering the dealing.

Clause 86 provides for the validity of things done under this Act despite contrary provisions in another Act or instrument.

Clause 87 is a displacement provision for the purposes of section 5F of the *Corporations Act 2001 (Cth)* to protect the responsible Ministers from liability in circumstances where they are impacting the business of the declared entity by exercising powers under this Act.

Clause 88 provides for the effect on legal relationships of things done under this Act.

Clause 89 removes any doubt that a declared thing under this Act is taken to be done under this Act if it is done by or in compliance with a transfer notice, even if steps under another Act are involved.

Clause 90 provides that, unless there is a determination by the Supreme Court that the decision under this Act is affected by jurisdictional error, a decisions about a declaration, transfer notices or restructure direction and decisions or conduct leading up to or forming part of the process of making a decision under this Act are not reviewable under the *Judicial Review Act 1991*, or otherwise.

Clause 91 provides that, if a provision of the Act or a transfer notice is found to be beyond power, invalid or unenforceable, the provision is disregarded or severed and the remaining provisions will continue to have effect and will continue to be valid.

Part 7 Miscellaneous

Clause 92 allows the responsible Ministers to delegate their functions and powers, except for sections 12, 54, 55, 56, 66 or 78.

Clause 93 provides a regulation making power.

Chapter 4 Transitional provisions for Queensland Rail Transit Authority Act 2013

Clause 94 provides for the automatic appointment of the Queensland Rail Limited's board as the board of the Authority on the transfer day.

Clause 95 provides for the appointment of the chief executive officer and senior executives of Queensland Rail Limited as chief executive officer and senior executives of the Authority on the transfer day. If a person is acting in the chief executive officer role or a senior executive officer role, they continue to act in the role after the transfer day.

Clause 96 provides for the preparation and provision to the responsible Ministers and agreement of the Authority's first strategic and operational plans after it is established.

Clause 97 provides that the Authority does not have to produce a quarterly report for the quarter before the first quarter it was operational.

Clause 98 provides the responsible Ministers may agree the first strategic and operational plans required under the *Financial Accountability Act 2009* may be prepared and submitted later than would otherwise apply.

Clause 99 provides that if the date of assent of this Act is after 15 May 2013 the Authority must give the responsible Ministers information including an estimate of the profit for the 2012-2013 financial year and a recommendation about the amount of dividend to be paid for that financial year within 7 days after date of assent.

Clause 100 provides that the giving of functions and powers to the Authority does not, of itself, deprive Queensland Rail Limited of effective management and control under the *Transport (Rail Safety) Act 2010* of its rail infrastructure and railway operations relating to rolling stock. This provision is designed to be applied broadly to ensure it preserves Queensland Rail Limited's accreditations, authorisations, obligations and other similar types of matters so that Queensland Rail Limited can continue as a provider of rail related services and there is not an interruption to the provision of rail related services as a result of the restructure.

Further this provision clarifies that despite its functions, the Authority is not required to hold accreditations, exemptions and the like under the *Transport (Rail Safety) Act 2010*, while Queensland Rail Limited has effective management and control of the infrastructure and railway operations relating to rolling stock.

Clause 101 deals with any certified agreements made under the IRA which applied to Queensland Rail or its subsidiaries before the transfer day. These certified agreements may not have been terminated or replaced under the IRA and clause 97 provides that any such certified agreements cease to operate on the transfer day. The practical effect of clause 97 is to ensure that any federal enterprise agreements which become certified agreements will operate to the exclusion of any legacy certified agreements that may have applied to Queensland Rail Limited's predecessors.

Clause 102 provides that a reference to Queensland Rail Limited in a document about a transferred employee may, if the context permits, be taken to be a reference to the Authority. This provision will allow any licences, exemptions, approvals or the like held by employees at the time of transfer that may contain a condition that the person be employed by Queensland Rail Limited to transfer with the employee despite the change of employer.

Clause 103 provides that the amendment of a regulation by this Act does not affect the power of the Governor in Council to further amend the regulation or repeal it. The amendment of regulations was included in this Act due to timing issues and not due to any complexity or controversy arising from the amendments.

Clause 104 provides a broad power for the making of transitional regulations and that these regulations may have retrospective operation. This clause intends to ensure a smooth transition for employees and all operational matters relating to the provision of rail services.

Chapter 5 Amendments of legislation

Part 1 Amendment of this Act

Clauses 105 to 107 amend the Act by removing provisions that will be obsolete once the consequential amendments of other legislation are completed upon commencement.

Part 2 Amendment of Industrial Relations Act 1999

Clause 108 provides that this part amends the *Industrial Relations Act 1999*.

Clause 109 amends section 691C of the IRA by inserting additional examples of industrial instruments that contain: contracting; employment security and organisational change provisions. These examples are provided from federal enterprise agreements that are taken to be certified agreements in accordance with section 73. *Clause 110*, in conjunction with *clause 69*, clarifies that the IRA, Chapter 15, part 2 (Particular provisions of industrial instruments) applies to certified agreements of the Authority.

Part 3 Amendment of Transport Infrastructure Act 1994

Clause 110 provides that this part amends the *Transport Infrastructure Act 1994*.

Clauses 111 to 119 provide amendments to the *Transport Infrastructure Act 1994* consequential to the change of status of Queensland Rail Limited from being a Government Owned Corporation and the inclusion of the Authority as an entity involved in the provision of rail services and rail related matters. In effect, these amendments preserve Queensland Rail Limited's operational ability to provide rail services and infrastructure related matters while allowing the Authority to also take on roles under that Act. This clause also introduces the definition of "rail government entity". The term "rail government entity" in the *Transport Infrastructure Act 1994* is then used to define references to the Authority and Queensland Rail Limited throughout various statutes (as amended through schedule 1). Both the Authority and Queensland Rail Limited are considered to be a "rail government entity" under this definition.

The definition of "railway operator" is also amended to ensure it is clear the Authority is not a railway operator.

The definition of "subsidiary" is also amended so it is clear Queensland Rail Limited is a subsidiary of the Authority.

Part 4 Consequential and minor amendments of other legislation

Clause 120 provides that schedule 1 amends the laws that it mentions.

Schedule 1 Consequential amendments

Schedule 1 includes consequential amendments to transport and other legislation arising from the creation of the Authority and the change of status of Queensland Rail Limited. In effect, these amendments preserve Queensland Rail Limited's operational ability to provide rail services and infrastructure related matters while also allowing the Authority to take on roles under these Acts and regulations. In particular, Queensland Rail Limited will retain all relevant accreditations, approvals, exemptions and the like that applied to it prior to the Authority being established. Queensland Rail Limited will also retain the status as rail infrastructure manager, railway manager, rail or railway operator and the like however defined in legislation or other instruments to allow rail and infrastructure services to continue without interruption.

Schedule 2 Dictionary

Schedule 2 defines terms for the purpose of interpreting the Act.

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