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2012
MP. Han Secney
Clerk's Signature: 

**Government Response to the
State Development, Infrastructure Industry Committee**

Report No. 9

Surat Basin Rail (Infrastructure Development and Management Bill) 2012

The committee's recommendations

The Government supports recommendations 1, 3, 4, 5, 6 and 7 made by the committee with one modification described in the response to recommendation 4. Except where noted below, amendments will be moved during consideration in detail of the *Surat Basin Rail (Infrastructure Development and Management Bill) 2012* (the Bill) to give effect to the relevant amendments.

The Government does not support recommendations 2 and 8 made by the committee for the reasons set out below.

Recommendation 1

The committee recommends that the Surat Basin Rail (Infrastructure Development and Management) Bill 2012 be passed.

The Government thanks the committee for this recommendation.

Recommendation 2

The committee suggests that the Minister facilitate the development of a Memorandum of Understanding between affected landholders and occupiers (or their representatives) and Surat Basin Rail Pty Ltd to address concerns arising from Part 3 of the Surat Basin Rail (Infrastructure Development and Management) Bill 2012.

The Government does not support this recommendation, but considers that the current drafting of the Bill will allow the intent of the recommendation to be supported.

The recommendation relates to the powers in Part 3 of the Bill to access land outside the rail corridor to carry out railway works and investigations. The Government considers that there would be difficulties with implementing this recommendation, noting that it is uncertain how often these powers will be exercised, if at all. In particular, the Government is aware that Surat Basin Rail Pty Ltd, on behalf of the Surat Basin Rail Joint Venture, presently intends to negotiate and enter into a number of agreements with landowners relating to the interface between their properties and the railway. The Government has concerns about landowners being compelled to enter into a further agreement with Surat Basin Rail Pty Ltd regarding potential statutory access.

The Government considers that any issues between landowners and Surat Basin Rail Pty Ltd regarding the exercise of Part 3 powers could be dealt with under the current powers in the Bill. The Bill provides for the Coordinator-General to impose conditions on a works authority or an investigation authority. If considered

appropriate, the Coordinator-General could set conditions regarding on-going consultation with landowners and matters of particular concern to landowners. Failure to comply with such a condition would be an offence and allow the Coordinator-General to cancel the authority. This measure would be consistent with the committee's recommendation and have the force of legislation which would not be available under the proposed Memorandum of Understanding.

Additionally, if considered appropriate, the Department of State Development, Infrastructure and Planning could prepare and distribute communication material to assist landowners in understanding Part 3.

In circumstances where access is required to land outside the rail corridor on a more permanent basis or there is material disruption to properties, an acquisition under the *Acquisition of Land Act 1967* could occur.

Recommendation 3

The committee recommends that clauses 14 and 15 of the Surat Basin Rail (Infrastructure Development and Management) Bill 2012 be amended so that the Coordinator-General may only grant a works authority or an investigation authority if satisfied that the applicant made reasonable efforts to consult with the owner or occupier of the land.

The Government supports this recommendation. Clause 12 of the Bill requires an applicant for a works authority or investigation authority to consult with the owner or occupier of the land before making an application to the Coordinator-General and to include details of the consultation in its application.

The proposed amendment will require the Coordinator-General to be satisfied about the nature of the consultation undertaken with landowners before granting an authority under clauses 14 and 15 of the Bill. The Government considers that this requirement is already implicit in the Bill, however, for clarity, the Bill will be amended to make the requirement explicit.

Recommendation 4

The committee recommends that the Bill include a provision requiring a review of the proposed Act within five years of its commencement.

The Government supports this recommendation with modification. Given the size and significance of the task to build the railway, the Government considers that it would be more beneficial for the review of the Bill to be undertaken once construction has been completed and the railway is in its early years of operation. Typically, construction of a railway which is suitable for hauling coal across varied terrain would be expected to take from three to five years after financial close. Further the contemplation of a potential review of the Bill during construction may be seen as increasing risk to potential financiers of the project

As key aspects of the Bill will not be implemented until the railway is in operation, a review of the Bill within five years may be limited in scope. To achieve the intent of the committee's recommendation, but take into account the relevant phases of the

Surat Basin Rail project, the Bill will be amended to provide for a review to be conducted within ten years of the Bill's commencement.

Recommendation 5

The committee recommends that the apparent inconsistency between clauses 44 – 46 and clause 50 of the Surat Basin Rail (Infrastructure Development and Management) Bill 2012 be resolved.

The Government supports this recommendation. Clauses 44 and 50 of the Bill enable the Coordinator-General and the railway manager for the railway to approve certain works in the rail corridor. The committee has noted there may be confusion about the Coordinator-General and a railway manager's powers under these clauses, in a scenario where both are exercised.

The Government considers that the Bill as currently drafted provides that clause 44 prevails over clause 50 in the event of an inconsistency. However, for clarity, the Bill will be amended to provide for the primacy of the Coordinator-General's powers in relation to carrying out of works in the rail corridor.

Recommendation 6

The committee recommends that cl 44 be amended to include a subsection along the lines of cl 33(4).

The Government support this recommendation. Clause 33(4) of the Bill requires the Coordinator-General to consult with Surat Basin Rail Pty Ltd (as railway licensee and railway lessee) and the railway manager for the railway in relation to an application by a local government for approval to construct, maintain and operate a new road across the railway by way of a bridge, other structure or an at-grade crossing. Clause 44 enables the Coordinator-General to approve an application by a person to conduct certain works in the rail corridor.

The Government considers that placing a consultation obligation on the Coordinator-General with respect to an application under clause 44 is consistent and reasonable with the Coordinator-General's obligations in relation to an application by a local government under clause 33.

Recommendation 7

The committee recommends that cl 38 of the Surat Basin Rail (Infrastructure Development and Management) Bill 2012 be amended to place the Coordinator-General under a duty to consider the impact that the diversion or construction of a watercourse would have on adjacent landowners and occupiers.

The Government supports this recommendation. Clause 38 of the Bill replicates section 167 of the *Transport Infrastructure Act 1994*. The acceptance of this recommendation will depart from the requirements of the *Transport Infrastructure Act 1994* by expanding the mandatory matters which must be considered by the Coordinator-General when deciding whether to approve a railway manager to construct or divert a watercourse in carrying out railway works to include the impact on adjacent landowners and occupiers.

The Government's aim in transposing the sections of the *Transport Infrastructure Act 1994* in the Bill is to ensure consistency in the regulation of the Surat Basin Rail and other railways in Queensland. However, given the priority placed on dealing fairly with landowners in other sections of the Bill, the Government accepts the committee's recommendation.

Any discrepancy between the Bill and the *Transport Infrastructure Act 1994* arising from this change can be dealt with at a policy level.

Recommendation 8

The committee recommends that the Transport Infrastructure Act 1994 be reviewed at the same time as the proposed Surat Basin Rail (Infrastructure Development and Management) Act.

The Government does not support this recommendation. The committee has raised a number of concerns in relation to the transposed sections of the *Transport Infrastructure Act 1994* in the Bill. The object of the Bill in transposing these *Transport Infrastructure Act 1994* provisions is to ensure that the Surat Basin Rail is regulated in a manner which is consistent with the regulation of other railways in Queensland.

The Government does not consider that it is appropriate that the Bill require the *Transport Infrastructure Act 1994* to be reviewed at the same time as the Bill. The Government will consider the impact of any future amendments to the *Transport Infrastructure Act 1994* on the Bill at the relevant time.

Fundamental legislative principles

The committee has raised a number of issues in relation to fundamental legislative principles with the Bill in its report. The majority of these issues relate to the transposed sections of the *Transport Infrastructure Act 1994*, which currently regulates other railways in Queensland and has been in force for some time. An issue has also been raised with respect to the making of regulations under the Bill.

The Government notes the concerns of the committee with some provisions of the Bill, in particular in relation to the powers given to the Coordinator-General. The Bill's objective is to facilitate the development and operation of the Surat Basin Railway by providing a specific legislative framework which complements existing statutory arrangements for rail infrastructure in Queensland and protects the state's interests under the concession agreements which will govern the construction and long-term operation of the railway.

The Bill was prepared in consultation with the Office of the Queensland Parliamentary Counsel and seeks to mitigate or avoid any potential breach of the fundamental principles, where possible. The Government accepts that where necessary for the purposes of the Bill, there may potentially be a breach of fundamental legislative principles. However, the Government considers any potential breach of the fundamental legislative principle is appropriate under the circumstances and necessary to ensure the effective implementation of the Bill.