

Queensland



**TRANSPORT OPERATIONS  
(ROAD USE MANAGEMENT)  
ACT 1995**

**Act No. 9 of 1995**

Queensland



**TRANSPORT OPERATIONS (ROAD USE  
MANAGEMENT) ACT 1995**

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Queensland



## **Transport Operations (Road Use Management) Act 1995**

**Act No. 9 of 1995**

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**An Act about road use management, and other purposes related to  
transport**

*[Assented to 5 April 1995]*



**The Parliament of Queensland enacts—**

## **CHAPTER 1—PRELIMINARY**

### **Short title**

**1.** This Act may be cited as the *Transport Operations (Road Use Management) Act 1995*.

### **Commencement**

**2.(1)** Section 92 commences on assent.

**(2)** The remaining provisions commence on a day to be fixed by proclamation.

### **Objectives**

**3.(1)** The overall objectives of this Act are, consistent with the objectives of the *Transport Planning and Coordination Act 1994*, to—

- (a) provide for the effective and efficient management of road use in the State; and
- (b) provide a scheme for managing the use of the State's roads that will—
  - (i) promote the effective and efficient movement of people, goods and services; and
  - (ii) contribute to the strategic management of road infrastructure in ways consistent with the *Transport Infrastructure Act 1994*; and
  - (iii) improve road safety and the environmental impact of road use in ways that contribute to overall transport effectiveness and efficiency; and
  - (iv) support a reasonable level of community access and mobility in support of government social justice objectives.

- (2) This Act establishes a scheme to allow—
- (a) identification of vehicles, drivers and other road users; and
  - (b) establishment of performance standards for vehicles, drivers and other road users; and
  - (c) establishment of rules for on-road behaviour; and
  - (d) monitoring of compliance with this Act, including by using alternative compliance schemes; and
  - (e) management of non-performing vehicles, drivers and other road users; and
  - (f) control of access to the road network, or parts of the road network, for vehicles, drivers and other road users; and
  - (g) management of traffic to enhance safety and transport efficiency.

### **Achieving an appropriate balance between safety and cost**

4.(1) Although it may be possible to regulate to achieve the highest level of safety, doing so would ignore the impact of the regulation on the effectiveness and efficiency of road use.

(2) Therefore, this Act acknowledges the need to achieve an appropriate balance between safety, and the costs that regulation imposes on road users and the community.

### **Definitions—the dictionary**

5.(1) A dictionary in Schedule 3 defines particular words used in this Act.<sup>1</sup>

(2) Definitions found elsewhere in the Act are signposted in the dictionary.<sup>2</sup>

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<sup>1</sup> In some Acts, definitions are contained in a dictionary that appears as the last Schedule and forms part of the Act—*Acts Interpretation Act 1954*, section 14.

<sup>2</sup> The signpost definitions in the dictionary alert the reader to the terms defined elsewhere in the Act and tell the reader where the section definitions can be found. For example, the definition “**performance standard**” see section 15, tells the reader that the term “**performance standard**” is defined in section 15.

**Act binds everyone, including government entities**

**6.(1)** In this section—

“**government entity**” includes—

- (a) the State, the Commonwealth or another State; or
- (b) an instrumentality or agent of the State, the Commonwealth or another State.

**(2)** This Act binds everyone, including every government entity.

**(3)** However, a regulation may exempt a government entity from this Act or a provision of this Act.

## **CHAPTER 2—RESPONSIBILITIES FOR ROAD USE MANAGEMENT STRATEGIES AND PROGRAMS**

### **PART 1—ROAD USE MANAGEMENT STRATEGIES**

**Development of strategies**

**7.(1)** The chief executive must, from time to time, develop for the Minister’s approval a road use management strategy designed to give effect to the Transport Coordination Plan in accordance with this Act’s objectives.

**(2)** In developing a road use management strategy, the chief executive must take reasonable steps to engage in public consultation.

**(3)** The Minister may, at any time, direct the chief executive—

- (a) to prepare a new road use management strategy for the Minister’s approval; or
- (b) to amend a road use management strategy.

(4) The Minister may—

- (a) approve a road use management strategy submitted for approval; or
- (b) require the chief executive to amend a road use management strategy submitted for approval.

### **Contents of strategies**

8.(1) A road use management strategy must include—

- (a) a statement of the specific objectives to be achieved; and
- (b) road use management initiatives; and
- (c) criteria for deciding priorities for government spending on road use management initiatives; and
- (d) appropriate performance indicators for deciding whether, and to what extent, the strategy's objectives have been achieved.

(2) A road use management strategy must aim to provide an adequate framework for coordinating and integrating road use management policies as between the different transport modes and levels of government.

(3) A road use management strategy may also take into account agreements about transport between the State and the Commonwealth, a local government or another State.

### **Tabling of strategies**

9. The Minister must table a copy of each road use management strategy, and each amendment of a road use management strategy, approved by the Minister in the Legislative Assembly within 5 sitting days after it is approved.

## **PART 2—ROAD USE IMPLEMENTATION PROGRAMS**

### **Development of programs**

**10.(1)** Before the start of each financial year, the chief executive must develop, for the Minister's approval, a road use implementation program for the year and for 1 or more later years.

**(2)** A road use implementation program must include—

- (a) a statement of the policies, projects and financial provisions for implementing the road use management strategy; and
- (b) a statement of the performance targets to be achieved.

**(3)** A road use implementation program may include a proposal to spend an amount not directly related to road use, if the proposal would contribute to the effectiveness and efficiency of road use management.

**(4)** In developing a road use implementation program, the chief executive must take reasonable steps to engage in public consultation.

**(5)** A road use implementation program must be made available to the public in the way decided by the Minister.

**(6)** The Minister may, at any time, direct the chief executive to amend a road use implementation program.

**(7)** The Minister may—

- (a) approve a road use implementation program submitted for approval; or
- (b) require the chief executive to amend a road use implementation program submitted for approval.

### **Consistency with strategies**

**11.(1)** Subject to the Minister's directions, a road use implementation program must be consistent with a road use management strategy.

(2) If the Minister's directions result in a road use implementation program being inconsistent with a road use management strategy, the Minister must table a copy of the directions in the Legislative Assembly within 5 sitting days after they are given.

### **Report on operation of programs**

12. Each annual report of the department must include a report on the implementation of the road use implementation program during the year of the report.

## **PART 3—GUIDELINES**

### **Guidelines**

13.(1) This section applies to the Minister and chief executive in developing and implementing policies about road use management, and in exercising powers under this Act.

(2) The Minister and chief executive must endeavour to—

- (a) achieve an appropriate balance between safety, and the costs that regulation imposes on road users and the community; and
- (b) establish the benefits and costs of policy alternatives; and
- (c) take account of national and international benchmarks and best practice; and
- (d) promote efficiency, affordable quality and cost-effectiveness; and
- (e) ensure competition is not unjustifiably restricted; and
- (f) ensure accountability for, and transparency of, decisions affecting road use.

(3) Each annual report of the department must include a report on how effect has been given to this section during the year of the report.

## **PART 4—OBJECTIVES**

### **Objectives**

**14.(1)** The following objectives are, as far as practicable, to be applied by anyone wanting to encourage a high level of road user performance and compliance with this Act—

- (a) information about their obligations under this Act should be made available to road users;
- (b) voluntary compliance should be sought in preference to enforcement;
- (c) enforcement should be aimed primarily at deterring noncompliance by road users;
- (d) enforcement strategies should, accordingly, try to increase road users' perceptions of the risk of being detected if they offend;
- (e) measures aimed at encouraging compliance should—
  - (i) target the road users who are least likely to comply with this Act; and
  - (ii) try to avoid imposing costs on the road users who are likely to comply voluntarily;
- (f) appropriate alternative compliance schemes should be used as a way of demonstrating compliance.

**(2)** Preventing the continued commission of offences and imposing appropriate penalties should be seen as objectives that support the other objectives in subsection (1).

## CHAPTER 3—ROAD USER PERFORMANCE AND COMPLIANCE

### PART 1—ALTERNATIVE COMPLIANCE

#### Alternative ways of complying with Act

**15.(1)** In this Part—

**“alternative compliance scheme”** means a way of demonstrating that vehicles operated by a person, or drivers of vehicles operated by a person, achieve and maintain at least a performance standard other than by directly complying with provisions of this Act.

**“performance standard”** means a provision of this Act that—

- (a) imposes an obligation to achieve a particular outcome; and
- (b) is identified under a regulation as a performance standard.

**(2)** A person who operates a vehicle (an **“operator”**) may apply in writing to the chief executive for approval of an alternative compliance scheme for a performance standard.

**(3)** The chief executive may approve the scheme by written notice to the operator.

**(4)** The approval must specify—

- (a) the performance standard; and
- (b) the provisions of this Act that are not to apply to the operator’s vehicles or drivers.

**(5)** The approval may be given on conditions stated in it and operates for the period stated in it.

**(6)** The chief executive may approve a scheme only if satisfied it provides an effective way of demonstrating the operator’s vehicles or drivers operating under it in Queensland achieve and maintain at least the performance standard.



### **Approving alternative compliance schemes operating interstate**

**16.(1)** In this section—

**“interstate scheme”** means an alternative compliance scheme approved under a corresponding law to this Chapter for an operator.

**(2)** The chief executive may approve an interstate scheme for Queensland only if satisfied it provides an effective way of demonstrating the operator’s vehicles or drivers operating under it in Queensland achieve and maintain at least the performance standard to which it applies.

**(3)** The approval must specify—

- (a) the performance standard; and
- (b) the provisions of this Act that are not to apply to the operator’s vehicles or drivers.

**(4)** The approval may be subject to conditions stated in it and operates for the period stated in it.

### **Specified provisions of Act do not apply while scheme complied with**

**17.** While—

- (a) an approval of an alternative compliance scheme is in force under this Act for an operator; and
- (b) the operator complies with the scheme, including the conditions of its approval;

the provisions of this Act specified in the scheme do not apply to the operator’s vehicles or drivers as provided under the scheme.

### **Grounds for amending, suspending or cancelling approvals**

**18.** Each of the following is a ground for amending, suspending or cancelling the approval of an alternative compliance scheme—

- (a) the approval was obtained because of incorrect or misleading information, whether the information was given for the approval or the approval of an alternative compliance scheme under a corresponding law;

- (b) the operator has contravened a condition of the approval;
- (c) the operator has committed an offence against this Act or a corresponding law;
- (d) the scheme is not, or is no longer, an effective way of demonstrating the operator's vehicles or drivers operating under it in Queensland achieve and maintain at least the relevant performance standard;
- (e) for an interstate scheme—the approval under a corresponding law to this Chapter is amended, suspended or cancelled.

### **Procedure for amending, suspending or cancelling approvals**

**19.(1)** If the chief executive considers a ground exists to amend, suspend or cancel an approval (the “**proposed action**”), the chief executive must give the operator written notice—

- (a) stating the proposed action; and
- (b) stating the ground for the proposed action; and
- (c) outlining the facts and circumstances forming the basis for the ground; and
- (d) if the proposed action is to amend the approval (including a condition of the approval)—stating the proposed amendment; and
- (e) if the proposed action is to suspend the approval—stating the proposed suspension period; and
- (f) inviting the operator to show (within a stated time of at least 28 days) why the proposed action should not be taken.

**(2)** If, after considering all written representations made within the stated time, the chief executive still considers a ground exists to take the proposed action, the chief executive may—

- (a) if the proposed action was to amend the approval—amend the approval; or
- (b) if the proposed action was to suspend the approval—suspend the approval for no longer than the period stated in the notice; or

- (c) if the proposed action was to cancel the approval—amend the approval, suspend the approval for a period or cancel it.

(3) The chief executive must inform the operator of the decision by written notice.

(4) If the chief executive decides to amend, suspend or cancel the approval, the notice must state—

- (a) the reasons for the decision; and
- (b) that the holder may apply within 28 days for the decision to be reviewed; and
- (c) how the holder may apply for the review; and
- (d) that the holder may apply for a stay of the decision if the person applies for a review.

(5) The decision takes effect on the later of the following—

- (a) the day the notice is given to the holder;
- (b) the day stated in the notice.

(6) However, despite subsection (1), if the chief executive considers it necessary in the public interest, the chief executive may, by written notice given to the operator, immediately suspend the approval until the earliest of the following—

- (a) the chief executive informs the operator of the chief executive's decision by notice under subsection (3), given after complying with subsections (1) and (2);
- (b) the end of 56 days after the notice is given to the holder.

(7) If the chief executive immediately suspends the approval, the notice must state—

- (a) the reasons for the decision; and
- (b) that the holder may apply within 28 days for the decision to be reviewed; and
- (c) how the holder may apply for the review; and
- (d) that the holder may apply for a stay of the decision if the person applies for a review.

**(8)** Subsections (1) to (7) do not apply—

(a) if the chief executive proposes to amend the approval only—

(i) for a formal or clerical reason; or

(ii) in another way that does not adversely affect the operator's interests; or

(b) if the operator asks the chief executive to amend or cancel the approval and the chief executive proposes to give effect to the request.

**(9)** The chief executive may amend or cancel an approval under subsection (8) by written notice given to the operator.

## **PART 2—AUTHORISED OFFICERS AND ACCREDITED PERSONS**

### **Appointment of authorised officers**

**20.(1)** Every police officer is an authorised officer.

**(2)** The chief executive may appoint any of the following persons to be an authorised officer—

(a) officers and employees of the public service;

(b) other persons prescribed under a regulation.

**(3)** The chief executive may appoint a person as an authorised officer only if satisfied the person has the necessary expertise to be an authorised officer.

### **Appointment of accredited persons**

**21.(1)** The chief executive may appoint a person to be an accredited person to perform functions prescribed under a regulation only if satisfied the person has the necessary expertise to be an accredited person to perform the functions.

(2) A regulation may provide for accreditation documents for accredited persons.

### **Powers**

22.(1) An authorised officer or accredited person—

- (a) has the powers given under this or another Act; and
- (b) is subject to the directions of the chief executive or Commissioner in exercising the powers.

(2) The powers may be limited—

- (a) under a regulation; or
- (b) under a condition of appointment; or
- (c) by written notice given by the chief executive or Commissioner to the authorised officer or accredited person.

### **Appointment conditions**

23.(1) An authorised officer or accredited person holds office on the conditions stated in the instrument of appointment.

(2) An authorised officer or accredited person—

- (a) if the appointment provides for a term of appointment—ceases holding office at the end of the term; and
- (b) if the conditions of appointment provide—ceases holding office on ceasing to hold another office stated in the appointment conditions (the “**main office**”); and
- (c) may resign by signed notice given to the chief executive or Commissioner.

(3) However, an authorised officer or accredited person may not resign from the office under this Act (the “**secondary office**”) if a term of employment to the main office requires the officer or person to hold the secondary office.

**Identity cards**

**24.(1)** This section does not apply to an authorised officer who is a police officer.

**(2)** The chief executive must give each authorised officer an identity card.

**(3)** The identity card must—

- (a) contain a recent photo of the person; and
- (b) be signed by the person; and
- (c) identify the person as an authorised officer; and
- (d) state an expiry date.

**(4)** A person who stops being an authorised officer must return the person's identity card to the chief executive as soon as practicable (but within 21 days) after the person stops being an authorised officer, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

**(5)** This section does not prevent the giving of a single identity card to a person for this and other Acts.

**Production or display of identity cards**

**25.(1)** This section does not apply to a uniformed police officer.

**(2)** An authorised officer may exercise a power in relation to a person only if—

- (a) the officer—
  - (i) for an officer who is a police officer—first produces the officer's police identity card for the person's inspection; or
  - (ii) for any other officer—first produces the officer's identity card for the person's inspection; or
- (b) the officer has the officer's identity card displayed so it is clearly visible to the person.

**(3)** However, if for any reason it is not practicable to comply with subsection (2) before exercising the power, the officer must produce the identity card as soon as it is practicable.

## **PART 3—POWERS OF AUTHORISED OFFICERS**

### *Division 1—Powers for places*

#### **Entry to places**

**26.(1)** An authorised officer may enter a place if—

- (a) its occupier consents to the entry; or
- (b) the entry is authorised by a warrant; or
- (c) it is mentioned in a licence or other document prescribed under a regulation as a place of business, or another place, required to be open to inspection and the entry is made when the place is—
  - (i) open for the conduct of business or otherwise open for entry; or
  - (ii) required under the licence or document to be open for inspection.

**(2)** An authorised officer, without the occupier's consent or a warrant, may—

- (a) enter a public place when the place is open to the public; or
- (b) enter the land around premises to ask its occupier for consent to enter the premises.

#### **Consent to entry**

**27.(1)** This section applies if an authorised officer intends to ask an occupier of a place to consent to the officer or another officer entering the place.

**(2)** Before asking for the consent, the officer must inform the occupier—

- (a) of the purpose of the entry; and
- (b) that the occupier is not required to consent.

**(3)** If the consent is given, the officer may ask the occupier to sign an acknowledgment of the consent.

(4) The acknowledgment must state that—

- (a) the occupier was informed—
  - (i) of the purpose of the entry; and
  - (ii) that the occupier is not required to consent; and
- (b) the occupier gives an authorised officer consent to enter the place and exercise powers under this Act; and
- (c) the time and date the consent was given.

(5) If the occupier signs an acknowledgment of consent, the officer must immediately give a copy to the occupier.

(6) Subsection (7) applies to a court if—

- (a) a question arises, in a proceeding in or before the court, whether the occupier of a place consented to an authorised officer entering the place under this Act; and
- (b) an acknowledgment under this section is not produced in evidence for the entry; and
- (c) it is not proved that the occupier consented to the entry.

(7) The court may presume that the occupier did not consent.

### **Warrants to enter**

**28.(1)** An authorised officer may apply to a Magistrate for a warrant to enter a place.

(2) The application must be sworn and state the grounds on which the warrant is sought.

(3) The Magistrate may refuse to consider the application until the officer gives the Magistrate all the information the Magistrate requires about the application in the way the Magistrate requires.

*Example—*

The Magistrate may require additional information supporting the application to be given by statutory declaration.

(4) The Magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—



- (a) there is a particular thing or activity (the “**evidence**”) that may provide evidence of an offence against a transport Act; and
  - (b) the evidence is, or may be within the next 7 days, at the place.
- (5) The warrant must state—
- (a) that an authorised officer may, with necessary and reasonable help and force, enter the place and exercise the officer’s powers under this Act; and
  - (b) the offence for which the warrant is sought; and
  - (c) the evidence that may be seized under the warrant; and
  - (d) the hours when the place may be entered; and
  - (e) the date, within 7 days after the warrant’s issue, the warrant ends.

### **Warrants—applications made other than in person**

**29.(1)** An authorised officer may apply for a warrant by phone, fax, radio or another form of communication if the officer considers it necessary because of—

- (a) urgent circumstances; or
- (b) other special circumstances, including, for example, the officer’s remote location.

(2) Before applying for the warrant, the officer must prepare an application stating the grounds on which the warrant is sought.

(3) The officer may apply for the warrant before the application is sworn.

(4) After issuing the warrant, the Magistrate must immediately fax a copy to the officer if it is reasonably practicable to fax a copy.

(5) If it is not reasonably practicable to fax a copy to the officer—

- (a) the Magistrate must—
  - (i) tell the officer what the terms of the warrant are; and
  - (ii) tell the officer the date and time the warrant was issued; and
- (b) the officer must complete a form of warrant (“**warrant form**”) and write on it—

- (i) the Magistrate's name; and
- (ii) the date and time the Magistrate issued the warrant; and
- (iii) the warrant's terms.

(6) The facsimile warrant, or the warrant form properly completed by the officer, authorises the entry and the exercise of the other powers stated in the warrant issued by the Magistrate.

(7) The officer must, at the first reasonable opportunity, send the Magistrate—

- (a) the sworn application; and
- (b) if the officer completed a warrant form—the completed warrant form.

(8) On receiving the documents, the Magistrate must attach them to the warrant.

(9) Subsection (10) applies to a court if—

- (a) a question arises, in a proceeding in or before the court, whether a power exercised by an authorised officer was not authorised by a warrant issued under this section; and
- (b) the warrant is not produced in evidence.

(10) The court must presume that the exercise of the power was not authorised by a warrant issued under this section, unless the contrary is proved.

### **General powers after entering places**

**30.(1)** This section applies to an authorised officer who enters a place with the occupier's consent or a warrant.

(2) The officer may, for monitoring or enforcing compliance with this Act—

- (a) search any part of the place; or
- (b) inspect, measure, test, photograph or film the place or anything in the place; or
- (c) take samples of anything in the place; or

- (d) copy a document in the place; or
- (e) take the persons, equipment and materials the officer reasonably requires for exercising a power under this Act into the place; or
- (f) require a person in the place to give the officer reasonable help to exercise the powers mentioned in paragraphs (a) to (e).

(3) A person must comply with a requirement under subsection (2)(f), unless the person has a reasonable excuse.

Maximum penalty—60 penalty units.

(4) A requirement under subsection (2)(f) does not include a requirement to produce a document or give information.<sup>3</sup>

### *Division 2—Powers for vehicles*

#### **Power to stop private vehicles**

**31.(1)** A police officer may require the person in control of a private vehicle to stop the vehicle to check whether the vehicle or person is complying with a transport Act.

(2) An authorised officer, who is not a police officer, may require the person in control of a private vehicle to stop the vehicle—

- (a) at a checkpoint—only if the vehicle is a type of vehicle that the officer is stopping at the checkpoint by reference to objective criteria that are part of a program approved under section 47;<sup>4</sup> or
- (b) if the officer reasonably believes the vehicle does not comply with a transport Act.

(3) A requirement may be made under subsection (1) or (2) in a way prescribed under a regulation.

(4) A person must comply with a requirement under subsection (1) or (2), unless the person has a reasonable excuse.

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<sup>3</sup> For the power to require documents to be produced see section 49. For the power to require information see section 50.

<sup>4</sup> Section 47 (Power to set up checkpoints)

Maximum penalty—60 penalty units.

*Example of a reasonable excuse—*

It is a reasonable excuse for a person not to comply with a requirement if—

- (a) the person reasonably believes that to immediately comply would endanger the person or someone else; and
- (b) the person complies with the requirement at the first reasonable opportunity.

(5) A regulation may impose restrictions on the stopping of private vehicles by authorised officers who are not police officers, including restrictions on stopping private vehicles at night.

### **Power to stop heavy vehicles**

**32.(1)** An authorised officer may require the person in control of a heavy vehicle to stop the vehicle to check whether the vehicle or person is complying with a transport Act.

(2) The requirement may be made in a way prescribed under a regulation.

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

Maximum penalty for subsection (3)—120 penalty units.

### **Power to require vehicles to be moved**

**33.(1)** This section applies to a motor vehicle that is stationary on a road or has been stopped under section 31 or 32.<sup>5</sup>

(2) To enable an authorised officer to exercise a power under a transport Act, the officer may require the person in control of the vehicle to move to a stated reasonable place.

*Example—*

The officer may require the person to move the vehicle onto a weighing or testing device.

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<sup>5</sup> Section 31 (Power to stop private vehicles)  
Section 32 (Power to stop heavy vehicles)

(3) However, the place must not be more than—

- (a) for a private vehicle—5 km from where the vehicle was stopped;  
or
- (b) for a heavy vehicle—25 km from where the vehicle was stopped.

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

Maximum penalty—

- (a) for a private vehicle—60 penalty units; or
- (b) for a heavy vehicle—120 penalty units.

(5) For a heavy vehicle, if the person does not comply with the requirement, the officer may move the vehicle to the required place.

### **Power to inspect vehicles**

**34.(1)** This section applies to a motor vehicle that is stationary on a road or has been stopped under section 31 or 32.<sup>6</sup>

(2) To check whether the vehicle complies with a transport Act, an authorised officer may inspect or test it.

(3) To enable the officer to inspect or test the vehicle, the officer may do anything reasonable to be done for the inspection or test.

*Examples of what may be reasonable for an inspection or test—*

The officer may—

- (a) enter the vehicle; or
- (b) unlock, unfasten, open or remove any part of it; or
- (c) move its load.

(4) To avoid any doubt, the officer does not have the powers mentioned in section 35.<sup>7</sup>

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<sup>6</sup> Section 31 (Power to stop private vehicles)  
Section 32 (Power to stop heavy vehicles)

<sup>7</sup> Section 35 (Power to enter vehicles etc. other than for vehicle inspection)

**Power to enter vehicles etc. other than for vehicle inspection**

**35.(1)** This section applies to an authorised officer who reasonably believes—

- (a) a vehicle is being, or has just been, used to commit an offence against a transport Act; or
- (b) a vehicle, or a thing in the vehicle, may provide evidence of an offence against a transport Act that is being, or has just been, committed.

**(2)** The officer may, for enforcing a transport Act—

- (a) enter the vehicle, using necessary and reasonable help and force;<sup>8</sup> or
- (b) search any part of the vehicle; or
- (c) inspect, measure, test, photograph or film the vehicle or anything in the vehicle; or
- (d) take samples of the vehicle or anything in the vehicle; or
- (e) copy a document in the vehicle; or
- (f) move the vehicle's load; or
- (g) take the persons, equipment and materials the officer reasonably requires into the vehicle.

**(3)** An authorised officer may not exercise the powers under subsection (2) in relation to the following things found in a vehicle—

- (a) a personal possession;
- (b) for a private vehicle—a document that is not issued, or required to be kept, under a transport Act or a corresponding law.

**Power to require vehicle inspections**

**36.(1)** If an authorised officer reasonably believes a vehicle may not comply with this Act, the officer may require its owner to have it inspected

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<sup>8</sup> In addition, to enable the vehicle to be entered, the officer may stop the vehicle under section 31 (Power to stop private vehicles) or 32 (Power to stop heavy vehicles).

at a stated reasonable time and place.

(2) The requirement—

- (a) must be made by notice in the approved form; or
- (b) if for any reason it is not practicable to give the notice—may be made orally and confirmed by notice in the approved form as soon as practicable.

(3) A person must comply with a requirement under subsection (1), unless the person has a reasonable excuse.

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

### **Power to prohibit use of vehicles**

**37.(1)** If an authorised officer reasonably believes a vehicle is unsafe, the officer may, by notice in the approved form, require its owner not to use it, or permit it to be used, on a road until—

- (a) it is inspected at a stated reasonable place and found to comply with this Act; or
- (b) stated reasonable action is taken in relation to the vehicle to ensure it complies with this Act.

*Examples of action that may be reasonable under paragraph (b)—*

1. The vehicle's load be adjusted or moved.
2. Stated repairs be carried out to the vehicle and the vehicle be inspected at a stated place and found to comply with this Act.

(2) A person must not contravene, or attempt to contravene, a requirement under subsection (1), unless the person has a reasonable excuse.

Maximum penalty for subsection (2)—

- (a) for a private vehicle—60 penalty units; and
- (b) for a heavy vehicle—120 penalty units.

### **Power to prohibit persons driving**

**38.(1)** This section applies to the driver of a motor vehicle that is

stationary on a road or has been stopped under section 31 or 32.<sup>9</sup>

(2) If an authorised officer reasonably believes the driver would contravene this Act by driving a vehicle, the officer may, by notice in the approved form, require the driver not to drive a vehicle in contravention of this Act.

(3) A person must not contravene, or attempt to contravene, a requirement under subsection (2), unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—

- (a) for a private vehicle—60 penalty units; and
- (b) for a heavy vehicle—120 penalty units.

### **Powers to enable effective and safe exercise of other powers**

**39.(1)** An authorised officer may require the person in control of a vehicle to give the officer reasonable help to enable the officer to effectively exercise a power under this Act in relation to the vehicle.

*Examples of requirements for effectively exercising powers—*

1. Requiring the vehicle to be held stationary on a weighing device to enable the vehicle to be weighed.
2. Requiring the vehicle's bonnet to be opened to enable the engine to be inspected.

(2) An authorised officer may require the person in control of a vehicle, or a person who is in or just left the vehicle, to do or not to do anything the officer reasonably believes is necessary—

- (a) to enable the officer to safely exercise a power under a transport Act in relation to the vehicle; or
- (b) to preserve the safety of the officer, the person or other persons.

*Examples of safety requirements—*

1. Requiring the persons in a vehicle to get out of the vehicle while the officer inspects the vehicle's undercarriage.

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<sup>9</sup> Section 31 (Power to stop private vehicles)  
Section 32 (Power to stop heavy vehicles)



2. Requiring a person who has just left the vehicle to stand back from the carriageway of the road.

3. Requiring a person to remain in control of a vehicle for a reasonable time.

(3) A person must comply with a requirement under subsection (1) or (2), unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—

(a) for a private vehicle—60 penalty units; or

(b) for a heavy vehicle—120 penalty units.

### *Division 3—Power to seize evidence*

#### **Power to seize evidence**

**40.(1)** An authorised officer who enters a place under this Part with the occupier's consent may seize a thing in the place if—

(a) the officer reasonably believes the thing is evidence of an offence against a transport Act; and

(b) seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier's consent.

(2) An authorised officer who enters a place under this Part with a warrant may seize the evidence for which the warrant was issued.

(3) An authorised officer may also seize anything else in a place mentioned in subsection (1) or (2) if the officer reasonably believes—

(a) the thing is evidence of an offence against a transport Act; and

(b) the seizure is necessary to prevent the thing being hidden, lost, destroyed or used to continue or repeat the offence.

(4) An authorised officer who enters a vehicle under this Part may seize anything in the vehicle if the officer reasonably believes the thing is evidence of an offence against a transport Act.

#### **Powers supporting seizure**

**41.(1)** Having seized a thing under this Division, an authorised officer

may—

- (a) move the thing from the place or vehicle where it was seized (the **“place of seizure”**); or
- (b) leave the thing at the place of seizure but take reasonable action to restrict access to it.

*Examples of restricting access to a thing—*

1. Sealing a thing and marking it to show access to it is restricted.
2. Sealing the entrance to a room where the seized thing is situated and marking it to show access to it is restricted.

(2) If an authorised officer restricts access to a seized thing, a person must not tamper, or attempt to tamper, with it without an authorised officer’s approval.

Maximum penalty—60 penalty units.

(3) To enable a thing to be seized, an authorised officer may require the person in control of it to take it to a stated reasonable place by a stated reasonable time.

(4) The requirement—

- (a) must be made by notice in the approved form; or
- (b) if for any reason it is not practicable to give the notice—may be made orally and confirmed by notice in the approved form as soon as practicable.

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

Maximum penalty—60 penalty units.

### **Receipt for seized things**

42.(1) As soon as practicable after an authorised officer seizes a thing, the officer must give a receipt for it to the person from whom it was seized.

(2) However, if for any reason it is not practicable to comply with subsection (1), the officer must leave the receipt at the place of seizure, in a reasonably secure way and in a conspicuous position.

(3) An authorised officer need not give a receipt for a seized thing if—

- (a) the thing is unattended when seized; and
- (b) the officer does not know who the owner of the thing is; and
- (c) the officer cannot find the owner after making reasonable inquiries (given the thing's value).

(4) The receipt must generally describe each thing seized and its condition.

### **Forfeiture of seized things**

**43.(1)** A seized thing is forfeited to the State if the chief executive or Commissioner—

- (a) cannot find its owner after making reasonable inquiries (given the thing's value); or
- (b) is unable, after making reasonable efforts, to return it to its owner; or
- (c) reasonably believes—
  - (i) possession of the thing is an offence against a transport Act; or
  - (ii) it is necessary to keep the thing to prevent it being used to commit an offence against a transport Act; or
  - (iii) the thing does not comply with a transport Act and cannot be repaired or otherwise changed to comply with a transport Act; or
  - (iv) the thing is inherently unsafe.

(2) If the chief executive or Commissioner decides to forfeit a thing under subsection (1)(c), the chief executive or Commissioner must inform the owner of the thing of the decision by written notice.

(3) Subsection (2) does not apply if the chief executive or Commissioner cannot find the owner after making reasonable inquiries (given the thing's value).

(4) The notice must state—

- (a) the reasons for the decision; and

- (b) that the owner may apply within 28 days for the decision to be reviewed; and
- (c) how the owner may apply for the review; and
- (d) that the owner may apply for a stay of the decision if the owner applies for a review.

### **Dealing with forfeited things**

**44.(1)** On the forfeiture of a thing—

- (a) it becomes the State's property; and
- (b) it may be dealt with as the chief executive or Commissioner considers appropriate.

**(2)** The chief executive or Commissioner must not deal with the thing until any review of, or appeal against, the decision to forfeit the thing is decided.

### **Access to seized things**

**45.** Until a seized thing is forfeited or returned, an authorised officer must allow its owner—

- (a) to inspect it; or
- (b) if it is a document—to copy it.

### **Return of seized things**

**46.(1)** If a seized thing has not been forfeited, the chief executive or Commissioner must return it to its owner at the end of—

- (a) 6 months; or
- (b) if a proceeding for an offence involving it is started within the 6 months—the proceeding and any appeal from the proceeding.

**(2)** Despite subsection (1), the authorised officer must return the seized thing to its owner immediately the officer stops being satisfied its retention as evidence is necessary.

### ***Division 4—General powers***

#### **Power to set up checkpoints**

**47.(1)** The chief executive may approve a program under which authorised officers may set up checkpoints to inspect motor vehicles to ensure the vehicles comply with a transport Act.

**(2)** Under an approved program, an authorised officer may set up a checkpoint on a road, or elsewhere with its occupier's consent.

#### **Power to require name and address**

**48.(1)** This section applies if—

- (a) an authorised officer finds a person committing an offence against a transport Act; or
- (b) an authorised officer finds a person in circumstances that lead, or has information that leads, the officer to suspect, on reasonable grounds, the person has just committed an offence against a transport Act; or
- (c) for an authorised officer who is a police officer—a vehicle is stationary on a road or has been stopped under section 31 or 32;<sup>10</sup> or
- (d) for an authorised officer who is not a police officer—a vehicle is stationary on a road or has been stopped under section 32.<sup>11</sup>

**(2)** The officer may require the following person to state the person's name and address—

- (a) for paragraph (a) or (b)—the person mentioned in the paragraph;
- (b) for paragraph (c) or (d)—the person in control of the vehicle mentioned in the paragraph.

**(3)** When making the requirement, the officer must warn the person it is

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<sup>10</sup> Section 31 (Power to stop private vehicles)  
Section 32 (Power to stop heavy vehicles)

<sup>11</sup> Section 32 (Power to stop heavy vehicles)

an offence to fail to state the person's name or address, unless the person has a reasonable excuse.

(4) The officer may require the person to give evidence of the correctness of the stated name or address if the officer suspects, on reasonable grounds, the stated name or address is false.

(5) A person must comply with a requirement under subsection (2) or (4), unless the person has a reasonable excuse.

Maximum penalty—60 penalty units.

(6) A person does not commit an offence against subsection (5) if—

- (a) the person was required to state the person's name and address by an authorised officer who suspected the person had committed an offence against this Act; and
- (b) the person is not proved to have committed the offence.

### **Power to require documents to be produced**

**49.(1)** An authorised officer may require a person to produce for inspection a document issued, or required to be kept, under a transport Act or a corresponding law.

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

Maximum penalty—60 penalty units.

(3) The officer may keep the document to make a note on it or copy it.

(4) If the officer copies it, the officer may require the person responsible for keeping the document to certify the copy as a true copy of the document.

(5) The person must certify the copy, unless the person has a reasonable excuse.

Maximum penalty—60 penalty units.

(6) The officer must return the document to the person as soon as practicable after making the note or copying it.

**Power to require information**

**50.(1)** In this section—

**“information offence”** means an offence against a transport Act that—

- (a) involves a heavy vehicle; and
- (b) is declared under a regulation to be an information offence.

**(2)** This section applies if an authorised officer reasonably believes—

- (a) an information offence has been committed; and
- (b) a person may be able to give information about the offence.

**(3)** The officer may require the person to give information about the offence.

**(4)** When making the requirement, the officer must warn the person it is an offence to fail to give the information, unless the person has a reasonable excuse.

**(5)** The person must give the information, unless the person has a reasonable excuse.

Maximum penalty—120 penalty units.

**(6)** It is a reasonable excuse for an individual to fail to give the information if giving the information might tend to incriminate the individual.

## **PART 4—ADDITIONAL POWERS OF POLICE OFFICERS**

**Power of arrest**

**51.(1)** A police officer may arrest a person if—

- (a) the officer—
  - (i) finds a person committing an offence against a section mentioned in subsection (2); or

- (ii) finds a person in circumstances that lead, or has information that leads, the officer to suspect, on reasonable grounds, the person has just committed an offence against a section mentioned in subsection (2); and
- (b) the officer reasonably believes proceedings by way of complaint and summons against the person would be ineffective.
- (2) The sections are—
- section 31 (Power to stop private vehicles)
  - section 32 (Power to stop heavy vehicles)
  - section 33 (Power to require vehicles to be moved)
  - section 37 (Power to prohibit use of vehicles)
  - section 38 (Power to prohibit persons driving)
  - section 48 (Power to require name and address)
  - section 50 (Power to require information)
  - section 52 (False or misleading statements)
  - section 53 (False, misleading or incomplete documents)
  - section 54 (Obstructing authorised officers or accredited persons)
  - section 55 (Impersonating authorised officers or accredited persons).
- (3) This section does not limit the powers a police officer has as an authorised officer.

## **PART 5—LEGAL PROCEEDINGS**

### *Division 1—Offences*

#### **False or misleading statements**

**52.(1)** In this section—



**“official”** means the chief executive, the Commissioner, an authorised officer or an accredited person.

(2) A person must not—

- (a) state anything to an official for a transport Act that the person knows is false or misleading in a material particular; or
- (b) omit from a statement made to an official for a transport Act anything without which the statement is, to the person’s knowledge, misleading in a material particular.

Maximum penalty—60 penalty units.

(3) It is enough for a complaint against a person for an offence against subsection (2) to state that the statement made was false or misleading to the person’s knowledge.

### **False, misleading or incomplete documents**

**53.(1)** In this section—

**“official”** means the chief executive, the Commissioner, an authorised officer or an accredited person.

(2) A person must not give, for a transport Act, an official a document containing information the person knows is false, misleading or incomplete in a material particular.

Maximum penalty—60 penalty units.

(3) Subsection (2) does not apply to a person if the person, when giving the document—

- (a) informs the official, to the best of the person’s ability, how it is false, misleading or incomplete; and
- (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

(4) It is enough for a complaint against a person for an offence against subsection (1) to state that the statement made was false, misleading or incomplete to the person’s knowledge.

**Obstructing authorised officers or accredited persons**

**54.(1)** In this section—

“**obstruct**” includes hinder, intimidate, resist or threaten.

(2) A person must not obstruct an authorised officer or accredited person in the exercise of a power, unless the person has a reasonable excuse.

Maximum penalty—60 penalty units.

**Impersonating authorised officers or accredited persons**

**55.** A person must not pretend to be an authorised officer or accredited person.

Maximum penalty—60 penalty units.

**Using documents voided for non-payment**

**56.(1)** This section applies to a person (the “**applicant**”) who pays the fee for a licence or other document under a transport Act by cheque or other method of payment.

(2) If the cheque or payment is not honoured on presentation or is later dishonoured—

- (a) the licence or document is void from the day it was issued; and
- (b) the applicant must, on demand by the chief executive or Commissioner, immediately give the licence or document to the department or a police officer.

(3) If, after the demand—

- (a) the applicant fails to immediately give the licence or document to the department or a police officer; or
- (b) uses, continues to use, or allows someone else to use, the licence or document; or
- (c) a person other than the applicant (the “**other person**”) uses, continues to use, or allows someone else to use, the licence or document;

the applicant and the other person commit an offence.

Maximum penalty—60 penalty units.

(4) It is a defence for the other person to prove he or she did not know a demand had been made under subsection (2)(b).

(5) If the State incurs expense because a cheque or payment is not honoured or is later dishonoured—

- (a) the applicant must reimburse the expense; and
- (b) the amount of the expense may be recovered as a debt payable by the applicant to the State.

### **Liability for offences**

**57.(1)** In this section—

**“liability offence”** means an offence against a transport Act that—

- (a) involves a heavy vehicle; and
- (b) is declared under a regulation to be a liability offence.

(2) If the driver, or other person in control, of a heavy vehicle commits a liability offence, the following persons are also taken to have committed the offence—

- (a) the owner of the vehicle;
- (b) if someone else controls or directly influences the loading or operation of the vehicle—the other person.

(3) It is a defence for the owner or other person to prove he or she took reasonable precautions and exercised appropriate diligence to avoid the conduct alleged to constitute the offence.

### ***Division 2—Evidence and procedure***

#### **Proof of appointments unnecessary**

**58.** For a transport Act, it is not necessary to prove the appointment of the following persons—

- (a) the chief executive;

- (b) the Commissioner;
- (c) an authorised officer;
- (d) an accredited person;
- (e) a police officer.

### **Proof of signatures unnecessary**

**59.** For a transport Act, a signature purporting to be the signature of 1 of the following persons is evidence of the signature it purports to be—

- (a) the chief executive;
- (b) the Commissioner;
- (c) an authorised officer;
- (d) an accredited person;
- (e) a police officer.

### **Evidentiary aids**

**60.(1)** In this section—

“**certificate**” means a certificate purporting to be signed by the chief executive or Commissioner.

**(2)** A certificate stating any of the following matters is evidence of the matter—

- (a) a specified place was within a specified type of area declared under a transport Act;
- (b) a specified licence or other document under a transport Act or a corresponding law was or was not in force in relation to a specified person or vehicle;
- (c) a specified place was or was not a road;
- (d) a specified person was or was not registered as the owner of a specified vehicle;
- (e) a specified thing was State or local government property;
- (f) a specified sign—

- (i) was or was not an official traffic sign; or
  - (ii) contained specified words; or
  - (iii) was on a specified place;
- (g) specified particulars of a specified conviction, disqualification, suspension, cancellation or licence or other condition under a transport Act or a corresponding law;
- (h) a specified vehicle was or was not inspected;
- (i) a specified vehicle was or was not inspected in accordance with a specified requirement of an authorised officer;
- (j) the results of a specified vehicle inspection;
- (k) a specified fee under a transport Act was or was not paid by a specified person;
- (l) a specified application under a transport Act was or was not received;
- (m) a specified vehicle was or was not of a specified type or was carrying specified goods;
- (n) the contents of a specified substance that was tested by a specified analyst;
- (o) that a specified copy of a licence or other document was a copy of a licence or other document issued, or required to be kept, under a transport Act or a corresponding law.
- (3)** A certificate—
- (a) may relate to a specified time or period; and
  - (b) if it is issued for a particular period—has the effect mentioned in subsection (1) for the entire period.
- (4)** A regulation may provide for evidence of other matters to be provided by a certificate.
- (5)** A document, or a copy of a document, purporting to be made or given by a person under a transport Act containing personal particulars given by the person is evidence of the particulars.
- (6)** Anything recorded by a photographic, mechanical, electronic or other device under a transport Act is evidence—

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

(7) Evidence by an authorised officer of the contents of a document issued, required to be kept, under a transport Act or a corresponding law, that was examined by the officer while in someone else's possession, may be given by the officer without the document being produced.

*Example of subsection (7)—*

An authorised officer who examines a driver's log book may return the log book to the driver to enable the driver to continue driving. The officer may give evidence of the contents of the log book without producing it.

## **Instruments**

**61.(1)** In this section—

**“instrument”** means an instrument declared under a regulation to be an instrument for this section, and includes—

- (a) a speedometer; and
- (b) a breath analysing instrument; and
- (c) a weighing device.

(2) A certificate stating that, on a specified day or at a specified time on a specified day, a specified instrument—

- (a) was in a proper condition; or
- (b) had a specified level of accuracy;

is evidence of those matters on the specified day or at the specified time, and for any period, prescribed under a regulation, after that day.

(3) Evidence of the condition of the instrument, or the way in which it was operated, is not required unless evidence that the instrument was not in proper condition or was not properly operated has been given.

(4) A defendant who intends to challenge the condition of an instrument, or the way in which it was operated, must give the complainant or arresting

police officer (if any) notice, in the approved form, of the intention to challenge.

(5) The notice must be given at least 3 working days before the return date of the summons or the appointed date for the hearing of the charge.

### **Proceedings for offences**

**62.(1)** A proceeding for an offence against a transport Act is a summary proceeding under the *Justices Act 1886*.

(2) The proceeding must start—

- (a) within 1 year after the offence was committed; or
- (b) within 6 months after the offence comes to the complainant's knowledge, but within 2 years after the offence was committed.

## **PART 6—GENERAL**

### **Notice of damage**

**63.(1)** This section applies if—

- (a) an authorised officer damages anything when exercising or purporting to exercise a power under a transport Act; or
- (b) a person acting under the direction of an authorised officer damages anything.

(2) The officer must promptly give written notice of particulars of the damage to the person who appears to be the owner of the thing.

(3) If the officer believes the damage was caused by a latent defect in the thing or circumstances beyond the officer's control, the officer may state it in the notice.

(4) If, for any reason, it is not practicable to comply with subsection (2), the officer must leave the notice where the damage happened, in a reasonably secure way and in a conspicuous position.

(5) This section does not apply to damage the officer reasonably believes

is trivial.

### **Compensation**

**64.(1)** This section does not apply to the exercise of a power (including the making of a requirement) to which section 31(2)(a)<sup>12</sup> applies.

**(2)** A person may claim compensation from the State if the person incurs loss or expense because of the exercise or purported exercise of a power under a transport Act, including, for example, in complying with a requirement made of the person.

**(3)** Compensation may be claimed and ordered in a proceeding—

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

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

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

## **CHAPTER 4—REVIEW OF AND APPEALS AGAINST DECISIONS**

### **PART 1—REVIEW OF DECISIONS**

#### **Who may apply for review**

**65.(1)** A person whose interests are affected by a decision under

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<sup>12</sup> Section 31 (Power to stop private vehicles)



section 15, 16, 18 or 43<sup>13</sup> may apply to the person who made the decision for the decision to be reviewed.

(2) The person has a right to receive a statement of the reasons for the decision.

### **Applying for review**

**66.(1)** A person may apply for the review of a decision only within 28 days after notice of the decision was given to the person.

(2) However, if—

- (a) the notice did not state the reasons for the decision; and
- (b) the person asked for a statement of the reasons within the 28 days mentioned in subsection (1);

the person may apply within 28 days after the person is given the statement of the reasons.

(3) In addition, the chief executive or Commissioner may extend the period for applying.

(4) An application must be written and state in detail the grounds on which the applicant wants the decision to be reviewed.

### **Stay of operation of decision**

**67.(1)** If a person applies under this Part for a decision to be reviewed, the person may immediately apply to a Magistrates Court for a stay of the decision.

(2) The court may stay the decision to secure the effectiveness of the review and any later appeal to the court.

(3) A stay—

- (a) may be given on conditions the court considers appropriate; and

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<sup>13</sup> Section 15 (Alternative ways of complying with Act)  
Section 16 (Approving alternative compliance schemes operating interstate)  
Section 18 (Grounds for amending, suspending or cancelling approvals)  
Section 43 (Forfeiture of seized things)

- (b) operates for the period fixed by the court; and
- (c) may be revoked or amended by the court.

(4) The period of a stay must not extend past the time when the chief executive or Commissioner reviews the decision and any later period the court allows the person to appeal against the decision.

(5) A decision, or the carrying out of a decision, is affected by an application made under this Part for the decision to be reviewed only if the decision is stayed.

### **Reference to review panel**

**68.(1)** If an application is made under this Part for a decision to be reviewed, the chief executive must refer the application to a review panel for advice.

(2) However, the chief executive or Commissioner need not refer an application to a review panel if the chief executive or Commissioner considers the application is frivolous or vexatious.

### **Review panels**

**69.(1)** The chief executive or Commissioner may establish review panels for this Part.

(2) A review panel consists of persons nominated by the chief executive or Commissioner.

(3) Each review panel must include—

- (a) at least 1 representative of the department; and
- (b) if the vehicle involved is a private vehicle—at least 1 representative of the community; and
- (c) if the vehicle involved is a heavy vehicle—at least 1 representative of the community or transport industry; and
- (d) at least 1 independent representative.

(4) A review panel may include a representative of the Commissioner.

(5) A regulation may make provision about review panels, including, for

example, the conduct of their proceedings and the making of recommendations by them.

### **Consideration of application by review panel**

**70.(1)** If an application made under this Part for the review of a decision is referred to a review panel, the panel must give the applicant or the applicant's representative an opportunity to make representations to the panel.

**(2)** After considering the representations, the review panel must recommend to the chief executive or Commissioner whether or not the decision should be confirmed or amended or another decision substituted.

### **Decision on reconsideration**

**71.(1)** After considering the review panel's recommendation, the chief executive or Commissioner may confirm or amend the decision or substitute a new decision.

**(2)** The chief executive or Commissioner must immediately give the applicant written notice of the decision.

**(3)** If the decision is not the decision sought by the applicant, the notice must state—

- (a)** the reasons for the decision; and
- (b)** that the applicant may appeal against the decision to a specified court within 28 days.

## **PART 2—APPEALS**

### **Who may appeal**

**72.** A person whose interests are affected by a decision of the chief

executive or Commissioner under section 71<sup>14</sup> may appeal against the decision to a Magistrates Court.

### **Appealing**

**73.(1)** A person may appeal against a decision under this Part only within 28 days after notice of the decision was given to the person.

**(2)** However, if—

- (a) the notice did not state the reasons for the decision; and
- (b) the person asked for a statement of the reasons within the 28 days mentioned in subsection (1);

the person may apply within 28 days after the person is given a statement of the reasons.

**(3)** In addition, the court may extend the period for appealing.

**(4)** Sections 17 to 23 of the *Transport Planning and Coordination Act 1994* apply to an appeal.<sup>15</sup>

## **CHAPTER 5—ROAD USE**

### **PART 1—VEHICLE AND ROAD USE FEES**

#### **Fees for road use**

**74.(1)** Fees for road use (other than registration fees) must take into account, but must not be more than, the costs of the road use to other road users and the community and the administrative costs involved.

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<sup>14</sup> Section 71 (Decision on reconsideration)

<sup>15</sup> *Transport Planning and Coordination Act 1994*, sections 17 (Starting appeals), 18 (Stay of operation of decisions), 19 (Powers of court on appeal), 20 (Effect of decision of court on appeal), 21 (Procedure of District Court), 22 (Assessors) and 23 (Procedure of Magistrates Court)

*Examples of costs of road use to other road users and the community—*

1. Accelerated road wear
2. Costs of ensuring safety
3. Congestion
4. Noise
5. Pollution

(2) A regulation may prescribe a way of calculating or deciding the costs of road use.

## **PART 2—VEHICLE OPERATIONS**

### **Vehicle operations and road rules**

**75.** A regulation may prescribe rules about the operation of vehicles and use of the road network, including, for example, rules about—

- (a) driver behaviour; and
- (b) loading, unloading and securing loads; and
- (c) keeping and producing records; and
- (d) vehicle mass and dimension; and
- (e) defective vehicles and ways of managing them; and
- (f) the environmental impact of vehicle use; and
- (g) rules for using the road network for vehicles, trains, trams, drivers, cyclists, pedestrians and animals; and
- (h) removing vehicles from the road network if they pose a risk to safety or impede the use of the road network; and
- (i) the recovery of removed vehicles by their owners, and fees for removing and storing the vehicles.

## **PART 3—VEHICLE MANAGEMENT**

### **Vehicle standards**

**76.** A regulation may prescribe vehicle standards with which vehicles must comply to use the road network.

### **Identification of vehicles**

**77.** A regulation may—

- (a) prescribe ways of identifying vehicles; and
- (b) require the keeping of a register of the vehicles identified in those ways; and
- (c) provide for the circumstances in which details of the register's contents can be given to someone.

## **PART 4—DRIVER MANAGEMENT**

### **Regulations about driver management**

**78.** A regulation may prescribe rules about the management of drivers, including, for example—

- (a) standards about driver skills and knowledge; and
- (b) the testing and licensing of drivers; and
- (c) rules about licences, including, in particular, the circumstances in which, and the reasons for which, they can be cancelled or suspended or conditions imposed on them; and
- (d) requiring the keeping of a register of licences; and
- (e) providing for the circumstances in which details of the register's contents can be given to someone; and
- (f) the granting of exemptions from conditions of licences.

**Restriction on releasing information from register of licences**

**79.(1)** The chief executive may only release information from the register of licences about a person's personal particulars or driving history to—

- (a) the person; or
- (b) the Commissioner; or
- (c) a person who keeps a register of licences under a corresponding law; or
- (d) with the person's written consent—someone else.

**(2)** Before releasing information under subsection (1)(c), the chief executive must be satisfied the release of information from the register kept under the corresponding law is adequately regulated.

## CHAPTER 6—MISCELLANEOUS

**Court orders for payment**

**80.(1)** In this section—

“**convicts**” a person includes finds a person guilty, and accepts a plea of guilty from a person, whether or not a conviction is recorded.

**(2)** If—

- (a) a court convicts a person of an offence against a transport Act; and
- (b) the person owes fees in relation to the offence;

the court may, in addition to or instead of imposing a penalty, order the person to pay an amount of not more than double the amount of the fees.

**(3)** If—

- (a) a court convicts a person of an offence against a transport Act; and
- (b) in committing the offence, the person caused damage to road transport infrastructure, including, for example, accelerated wear

of road pavements or structures through overloading;  
the court may, in addition to imposing a penalty, order the person to pay an amount of not more than the cost of the damage.

### **Special provision for serving documents**

**81.(1)** A document about a vehicle may be given to the vehicle's owner under a transport Act by securely fixing the document to a part of the vehicle in a way that a driver of the vehicle is likely to notice the document.

**(2)** This section does not affect—

- (a) the operation of another law that permits service of a document other than as provided in this section;<sup>16</sup> or
- (b) the power of a court or tribunal to authorise service of a document other than as provided in this section.

### **Official traffic sign approvals**

**82.(1)** In this section—

**“MUTCD”** means the Manual of Uniform Traffic Control Devices issued by the chief executive.

**“official traffic sign”** means a sign, marking, light or device placed or erected to regulate, warn or guide traffic.

**(2)** The chief executive may approve the design of, and a method, standard or procedure about, an official traffic sign.

**(3)** The approved design, method, standard or procedure must be contained in the MUTCD or an approved notice.

**(4)** The MUTCD or approval notice must be available for purchase or inspection by the public at the department's head office or the other offices of the department that the chief executive directs.

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<sup>16</sup> See for example *Acts Interpretation Act 1954*, Part 10 (Service of documents).



**Protection from liability**

**83.(1)** In this section—

**“official”** means—

- (a) the Minister; and
- (b) the chief executive; and
- (c) the Commissioner; and
- (d) an authorised officer; and
- (e) an accredited person; and
- (f) a person acting under the direction of an authorised officer; and
- (g) an officer or employee of the department or the Police Service; and
- (h) the chief executive officer, or an officer or employee, of a local government.

**(2)** An official is not civilly liable for an act done, or omission made, honestly and without negligence under a transport Act.

**(3)** If subsection (2) prevents civil liability attaching to an official, the liability attaches instead to—

- (a) for a person mentioned in subsection (1)(a) to (g)—the State; or
- (b) for a person mentioned in subsection (1)(h)—the local government.

**Effect of failure to comply with Ch 2<sup>17</sup>**

**84.(1)** It is Parliament’s intention that Chapter 2 be complied with.

**(2)** However—

- (a) Chapter 2 is directory only and does not create rights or impose legally enforceable obligations on the State, Minister, chief executive or anyone else; and
- (b) failure to comply with Chapter 2 does not affect the validity of

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<sup>17</sup> Chapter 2 (Responsibilities for road use management strategies and programs)

anything done or not done under this Act.

(3) In addition, a decision made, or appearing to be made, under Chapter 2—

- (a) is final and conclusive; and
- (b) cannot be challenged, appealed against, reviewed, quashed, set aside, or called in question in another way, under the *Judicial Review Act 1991* (whether by the Supreme Court, another court, a tribunal or another entity); and
- (c) is not subject to a writ or order of the Supreme Court, another court, a tribunal or another entity on any ground.

(4) In this section—

“**decision**” includes—

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

## **Regulations**

**85.(1)** The Governor in Council may make regulations under this Act.

(2) A regulation may be made prescribing offences for a contravention of a regulation and fixing a maximum penalty of not more than 80 penalty units for a contravention.

(3) A regulation may—

- (a) prescribe fees payable for a transport Act; or
- (b) allow the chief executive to refund fees completely or partly or provide concessions; or
- (c) prescribe circumstances in which roads may be closed; or
- (d) prescribe offences for misuse of roads; or
- (e) provide for review of and appeals against decisions made under the regulation; or
- (f) require the collection, keeping or production of records; or

- (g) establish requirements for the certification of instruments (within the meaning of section 61<sup>18</sup>); or
- (h) exempt a person or vehicle from a provision of this Act.

*Example of subsection (3)(d)—*

Offences for throwing rocks or other things onto roads.

(4) If the Commonwealth has enacted a law for the scheme to create uniform or consistent national road transport legislation envisaged by the agreements scheduled to the *National Road Transport Commission Act 1991* (Cwlth), a regulation may enact provisions for the State that are the same as, or substantially similar to, the law.

(5) For the provisions mentioned in subsection (4), a regulation may—

- (a) confer powers on the chief executive, the Commissioner, an authorised officer or an accredited person; or
- (b) make transitional provisions.

## **CHAPTER 7—TRANSITIONAL PROVISIONS, AMENDMENTS AND REPEALS**

### **Carriage of Dangerous Goods by Road Act 1984 references**

**86.** A reference to the *Carriage of Dangerous Goods by Road Act 1984* is taken to be a reference to this Act.

### **Main Roads Act 1920 references**

**87.** A reference to the *Main Roads Act 1920* is, other than in relation to transport infrastructure or another matter dealt with under the *Transport Infrastructure Act 1994*, taken to be a reference to this Act.

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<sup>18</sup> Section 61 (Instruments)

**Motor Vehicles Control Act 1975 references**

**88.** A reference to the *Motor Vehicles Control Act 1975* is taken to be a reference to this Act.

**Motor Vehicles Safety Act 1980 references**

**89.** A reference to the *Motor Vehicles Safety Act 1980* is taken to be a reference to this Act.

**State Transport Act 1960 references**

**90.** A reference to the *State Transport Act 1960*, other than a reference (whether express or implied) to a provision of that Act repealed by the *Transport Operations (Passenger Transport) Act 1994*, is taken to be a reference to this Act.

**Transport Infrastructure (Roads) Act 1991 references**

**91.** A reference to the *Transport Infrastructure (Roads) Act 1991* is, other than in relation to transport infrastructure or another matter dealt with under the *Transport Infrastructure Act 1994*, taken to be a reference to this Act.

**Amendment of Acts**

**92.** Schedule 1 amends the Acts mentioned in it.

**Repeal of Acts**

**93.(1)** An Act mentioned in Schedule 2, Part 1 is repealed on a day to be fixed by proclamation.

**(2)** A proclamation under subsection (1) may fix—

- (a) a single day or time for the repeal of an Act; or
- (b) different days or times for the repeal of different provisions of an Act; or
- (c) a day or time for the repeal of only some provisions of an Act.

(3) If an Act, or provision of an Act, mentioned in Schedule 2 has not been repealed within 2 years of the commencement of this section, it is repealed by this subsection on the next day.

(4) A regulation may provide that subordinate legislation, or a provision of subordinate legislation, made under an Act or provision of an Act mentioned in Schedule 2 continues to have effect under this Act (with all necessary changes and any changes prescribed under a regulation) for a specified period of not longer than 1 year.

(5) Subsection (4) applies despite the repeal of the Act or provision.

(6) This section expires 3 years after it commences or, if an earlier date is prescribed under a regulation, on that date.

(7) An Act mentioned in Schedule 2, Part 2 is repealed on assent.

**SCHEDULE 1****AMENDMENT OF ACTS**

section 92 of the Act

**STATE TRANSPORT (PEOPLE–MOVERS) ACT 1989****1. Section 3, definition “Director-General”—***omit.***2. Sections 13, 14(1), (2) and (3), 17(1)(a) and (b), 18(1), (3)(h), (4)(a) and (b) and (5), 19(1) and (2), 20(1), (2), (3) and (4), 21, 22(2), (3), (4), and (5), 23(1) and (2), 25(1), (2) and (4)(a), 26(1), (2) and (3), 27(1), (2) and (4), 28(1), 29(2), 30(a), 34(1), 35, 38 1st mention, 39(1), (2) and (3) and Schedule, sections 1, 2, 3, 10, 18, 21 and 24, ‘Corporation’—***omit, insert—*

‘chief executive’.

**3. Section 14, section heading, ‘Corporation’s’—***omit, insert—*

‘Chief executive’s’.

**4. Section 24, section heading, ‘Corporation’s’—***omit, insert—*

‘chief executive’s’.

**5. Section 23(1), ‘, by writing under its official seal, ’—***omit.*

## SCHEDULE 1 (continued)

**6. Sections 23(1) and (2), 24(2), 36(2), 38 and Schedule, section 5, 'Director-General'—***omit, insert—*

'chief executive'.

**7. Section 23(2), 'its'—***omit.***8. Sections 23(3), 24(1), 24(2)(a) and (b) and (3), 27(2), 'Corporation's'—***omit, insert—*

'chief executive's'.

**9. Section 27(1), 'Director-General's'—***omit, insert—*

'chief executive's'.

**10. Section 28(1), 'by its agents and servants,'—***omit.***11. Section 34(1), 'or the Director-General'—***omit.***12. Section 35, section heading, 'Corporation and Director-General'—***omit, insert—*

'Chief executive'.

## SCHEDULE 1 (continued)

**13. Section 35, ‘and the Director-General’—**

*omit.*

**14. Section 35, ‘their functions’—**

*omit, insert—*  
‘the functions’.

**15. Section 35, ‘their powers’—**

*omit, insert—*  
‘the powers’.

**16. Section 38, 2nd mention, ‘Corporation’—**

*omit, insert—*  
‘State’.

**TRAFFIC ACT 1949****1. Section 9, definition ‘road’ after paragraph (c)—**

*insert—*  
*‘Example of paragraph (c)—*

Under a regulation, a public parking area at a specified type of shopping centre may be declared to be a road for the purpose of Part 6A.’.

**2. Section 44BA—**

*insert—*



## SCHEDULE 1 (continued)

‘**(5A)** For subsection (5), land controlled by a local government includes land over which the local government may exercise control for the purpose of this Part under an arrangement with a person who owns or has an interest in the land.

*Example—*

Under subsection (5), a local government may, under an arrangement with the owner of a shopping centre, specify a public parking area at the shopping centre as an off-street regulated parking area and regulate the use of the area.’

**3. After section 70—**

*insert—*

**‘Regulation offence penalty**

‘**71.(1)** To remove any doubt, it is declared that a person who contravened the *Traffic Regulation 1962*, after the commencement of the Schedule to the *Traffic Amendment Act 1994* and before the commencement of the *Traffic Amendment Regulation (No. 1) 1995*, committed an offence, and was liable to a maximum penalty of 20 penalty units unless the regulation provided for another penalty or maximum penalty for the particular contravention.

‘**(2)** This section has effect despite the *Penalties and Sentences Act 1992*, section 46 (Fine limitations of certain courts).

‘**(3)** This section expires on the day it commences.

‘**(4)** The *Acts Interpretation Act 1954*, section 20A applies to this section.’

## SCHEDULE 1 (continued)

**TRANSPORT INFRASTRUCTURE ACT 1994**

**1. Section 4(1), definitions, “Coordination Plan”, “government supported infrastructure”, “port”, “port authority”, “Port infrastructure”, “rail transport infrastructure”, “road transport infrastructure”, “State-controlled road”, “transport infrastructure”, “transport purpose”—**

*relocate* to schedule 3, as inserted by this Act.

**2. Section 4, other than relocated definitions—**

*omit, insert—*

**‘Definitions—the dictionary**

**‘4.(1)** A dictionary in Schedule 3 defines particular words used in this Act.<sup>19</sup>

**‘(2)** Definitions found elsewhere in the Act are signposted in the dictionary.<sup>20</sup>’.

**3. Section 20(1), definitions “land”, “occupier”, “owner” and “person”—**

*omit.*

**4. Section 20(2)—**

*omit.*

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<sup>19</sup> In some Acts, definitions are contained in a dictionary that appears as the last schedule and forms part of the Act—*Acts Interpretation Act 1954*, section 14.

<sup>20</sup> The signpost definitions in the dictionary alert the reader to the terms defined elsewhere in the Act and tell the reader where the definitions can be found.

## SCHEDULE 1 (continued)

**5. Section 29(1) and (3), penalty—***omit, insert—*

‘Maximum penalty—200 penalty units.’.

**6. Section 42(3), penalty—***omit, insert—*

‘Maximum penalty—200 penalty units.’.

**7. Section 43(1) and (3), penalty—***omit, insert—*

‘Maximum penalty—200 penalty units.’.

**8. Section 45(3), penalty—***omit, insert—*

‘Maximum penalty—200 penalty units.’.

**9. After section 45—****‘Presumptions about advertising notices**

**‘45A.(1)** This section applies to a prosecution for an offence against section 45(3) in relation to an advertising notice.

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

**10. Section 46(6), penalty—***omit, insert—*

‘Maximum penalty—200 penalty units.’.

## SCHEDULE 1 (continued)

**11. Section 50(1)—***insert—*

‘Maximum penalty—200 penalty units.’.

**12. Section 50(2), penalty—***omit, insert—*

‘Maximum penalty—200 penalty units.’.

**13. Section 72, definitions “candidate GOC”, “GOC” and “notice”—***omit.***14. Chapters 7 and 8—***renumber* as chapters 8 and 9.**15. After section 101—***insert—***‘CHAPTER 7—MISCELLANEOUS TRANSPORT  
INFRASTRUCTURE****‘Definitions****‘101A.** In this chapter—**“licence”** means a licence for miscellaneous transport infrastructure granted under this or another Act.**“licensee”** means the holder of a licence.**“miscellaneous transport infrastructure works”** means—

(a) works done for—

## SCHEDULE 1 (continued)

- (i) constructing miscellaneous transport infrastructure or things associated with miscellaneous transport infrastructure; or
  - (ii) the maintenance of miscellaneous transport infrastructure or of things associated with miscellaneous transport infrastructure; or
  - (iii) facilitating the operation of miscellaneous transport infrastructure or things associated with miscellaneous transport infrastructure; or
- (b) works declared under a regulation to be miscellaneous transport infrastructure works.

**“required land”** means land that has been acquired for miscellaneous transport purposes or an incidental purpose.

**‘Licence for miscellaneous transport infrastructure**

**‘101B.** The Minister may grant to a person a licence to construct, maintain, use or operate stated miscellaneous transport infrastructure on stated conditions.

**‘Temporary use and occupation of land**

**‘101C.** To carry out miscellaneous transport infrastructure works, the chief executive, or anyone authorised in writing by the chief executive, may temporarily occupy and use land, including roads, and do anything on the land that is necessary or convenient.

**‘Notice of entry or permission to enter**

**‘101D.(1)** If a person proposes to occupy or use land under this chapter, the person must—

- (a) give at least 3 days written notice to the owner or occupier of the land; or

## SCHEDULE 1 (continued)

(b) obtain the written permission of the owner or occupier to the occupation or use.

‘(2) The notice must state—

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

‘(3) A notice may be given under subsection (1) in relation to land even though it is proposed to resume the land for miscellaneous transport infrastructure.

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

‘(5) If a person proposes to occupy or use land to carry out urgent remedial work to miscellaneous transport infrastructure or miscellaneous transport infrastructure works, subsection (1) does not apply but the person must, if practicable, notify the owner or occupier of the land orally before entering the land.

**‘Compensation for physical damage from entry etc.**

‘**101E.(1)** An owner of land that is entered, occupied or used under this chapter may give a written notice to the chief executive claiming compensation for physical damage caused by the entry, occupation or use or for the taking or consumption of materials.

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

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

## SCHEDULE 1 (continued)

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

**‘Chief executive may grant interests in land**

‘**101F.(1)** The chief executive may, for the State, grant or dispose of an interest in required land used, or proposed to be used, for miscellaneous transport infrastructure to—

- (a) a licensee; or
- (b) someone else authorised under another Act to construct, maintain, use or operate miscellaneous transport infrastructure.

‘(2) The chief executive may grant the interest on conditions, including, for example, a condition that the interest ends if the person ceases to be a person entitled to be granted the interest.

‘(3) This section has effect despite the *Acquisition of Land Act 1967*.

**‘Effect of chapter on other Acts**

‘**101G.** This chapter has effect despite a provision of another Act about—

- (a) constructing miscellaneous transport infrastructure; or
- (b) acquiring interests in land, or doing anything else, to enable the construction of miscellaneous transport infrastructure.’.

**16. Section 146, after ‘is’—**

*insert—*

‘, in relation to transport infrastructure or another matter deal with under this Act,’.

## SCHEDULE 1 (continued)

**17. Section 147—***omit, insert—***‘Main Roads Act 1920 references**

‘147. A reference to the *Main Roads Act 1920* is, other than in relation to transport infrastructure or another matter dealt with under the *Transport Infrastructure Act 1994*, taken to be a reference to this Act.’

**18. Chapter 8, part 3, division 4 (as in force before this amendment)—***omit.***19. Schedule 1—***insert—*

‘11. Regulation of miscellaneous transport infrastructure or miscellaneous transport infrastructure works.’

**20. After schedule 2—***insert—***‘SCHEDULE 3****DICTIONARY**

section 4 of the Act

“**ancillary works and encroachments**”, for chapter 5, see section 20.

“**approved means of access**”, for chapter 5, part division 2, subdivision 2, see section 47.

“**candidate GOC**” has the same meaning as in the *Government Owned*



## SCHEDULE 1 (continued)

*Corporations Act 1993.*

“**charge**” see section 72.

“**construction**”, for chapter 5, see section 20.

“**corporate plan**”, for chapter 6, see section 72.

“**franchised road**”, for chapter 5, see section 20.

“**franchisee**”, for chapter 5, see section 20.

“**GOC**” includes a candidate GOC.

“**land**”—

(a) for chapters 5 and 7—includes—

(i) an interest in land; and

(ii) land within the beds and banks of a stream, watercourse or inundated land; and

(iii) land beneath the internal waters of Queensland; or

(b) for chapter 6—see section 72.

“**local government road**”, for chapter 5, see section 20.

“**maintenance**”, for chapter 5, see section 20.

“**means of access**”, for chapter 5, see section 20.

“**miscellaneous transport infrastructure**” means transport infrastructure that is not road transport infrastructure, rail transport infrastructure or port infrastructure, and includes anything declared under a regulation to be miscellaneous transport infrastructure.

“**motorway**”, for chapter 5, see section 20.

“**notice**” means a notice, sign or pictograph of any type of material and whether fixed or moveable.

“**occupier**” of land, for chapters 5 and 7, means the person in actual occupation of the land or, if there is no person in actual occupation, the person entitled to possession of the land.

“**on**”, for chapter 5, see section 20.

## SCHEDULE 1 (continued)

**“owner”** of land, for chapters 5 and 7, means—

- (a) the registered proprietor of the land; or
- (b) the lessee or licensee from the State of the land; or
- (c) the person who has lawful control of the land, on trust or otherwise; or
- (d) the person who is entitled to receive the rents and profits of the land.

**“plant”**, for chapter 5, see section 20.

**“ship”**, for chapter 6, see section 72.

**“State controlled road”**, for chapter 5, part 5, division 2, subdivision 2, see section 47.

**“statement of corporate intent”**, for chapter 6, see section 72.

**“strategic port land”**, for chapter 6, see section 72.

**“vehicle”**, for chapter 6, see section 72.’.

**13. Schedule 1, page 69, after line 22—**

*insert—*

**‘5. Section 94(1), ‘in relation to a ship’—**

*omit.*

**‘6. Section 94(2), ‘from the owner or master of the ship’—**

*omit, insert—*

‘from the persons liable for the expense.’.

**‘7. Section 94—**

*insert—*

**‘(3) The following persons are liable for the expense—**

## SCHEDULE 1 (continued)

- (a) if a direction under section 88 was given to the master of a ship<sup>21</sup> and the master did not comply with the direction—the master and the owner of the ship;
- (b) if a direction under section 88 could have been given to the master of a ship but was not given for the reasons mentioned in section 93(2)—the master and the owner of the ship;
- (c) if a direction was given to a person under section 89, 90, 91 or 92 and the person did not comply with the direction—the person;
- (d) if a direction under section 89, 90, 91 or 92 could have been given to a person but was not given for the reasons mentioned in section 93(2)—the person.<sup>22</sup>

‘(4) If, under subsection (3), more than 1 person is liable for the same expense, the persons who are liable for the expense are jointly and severally liable.’.

## TRANSPORT INFRASTRUCTURE (ROADS) ACT 1991

### 1. Part 2, Division 1, heading, ‘Corporation and’—

*omit.*

<sup>21</sup> Under section 86(3) and (4) (General limitation on harbour master’s power to give directions under Subdivision) a direction may be given to a crew member of a ship and, if so given, is taken to have been given to the master.

<sup>22</sup> Section 88 (Direction to master about operation of ship)  
 Section 89 (Direction to person in charge of a place)  
 Section 90 (Direction to person carrying out works)  
 Section 91 (Direction to person about obstruction)  
 Section 92 (Direction to person to put out certain lights etc.)  
 Section 93 (Harbour master may carry out direction.)

## SCHEDULE 1 (continued)

**2. Section 2.4, section heading, ‘Corporation and’—**

*omit.*

**3. Section 2.4, ‘the corporation and’—**

*omit.*

**4. Section 2.4, ‘have’—**

*omit, insert—*

‘has’.

**5. Sections 2.14(2)(b) and (e) and (3), 2.15, 9.1(4)(b), 9.19(b), 9.20, 9.23(1)(b), 9.23(1)(d) and 9.24(7), ‘Corporation’—**

*omit, insert—*

‘chief executive’.

**6. Section 2.15(c), ‘Corporation’s’—**

*omit, insert—*

‘chief executive’s’.

**7. Section 9.22(1)(e), 1st mention ‘the Corporation or’—**

*omit.*

**8. Section 9.22(1)(e), ‘Corporation’—**

*omit, insert—*

‘chief executive’.

## SCHEDULE 1 (continued)

**9. Section 9.23(1)(b), ‘and sealed with its seal’—**

*omit.*

**10. Section 9.23(1)(m), ‘Corporation’—**

*omit, insert—*

‘State’.

**11. Section 9.24(1), ‘the Corporation or’—**

*omit.*

**12. Schedule 1, Administration, ‘Corporation,’—**

*omit.*

**13. Schedule 1, General Provisions, ‘Corporation’—**

*omit, insert—*

‘chief executive’.

**14. Schedule 3, sections 7(1)(a) to (c),(e) and (f), 7(2) 1st and 3rd mentions, ‘Corporation’—**

*omit, insert—*

‘State’.

**15. Schedule 3, section 7(2), 2nd mention, ‘Corporation’—**

*omit, insert—*

‘chief executive’.

## SCHEDULE 1 (continued)

**TRANSPORT OPERATIONS (MARINE SAFETY) ACT  
1994****1. Sections 42(3)(a)(i), after ‘a certificate’—**

*insert—*

‘of survey or a certificate’.

**2. Section 60—**

*insert—*

‘(2) However, the only persons who may hold a licence to have the conduct of a ship as its pilot are—

- (a) officers and employees of the department; or
- (b) agents and employees of an entity prescribed under the regulations.’.

**3. After section 66—**

*insert—*

**‘Building of ships**

‘**66A.** A person must not issue a certificate of compliance for the building of a ship or part of a ship unless the person is a ship builder who is accredited to issue the certificate.

Maximum penalty—500 penalty units or imprisonment for 1 year.’.

**4. Section 67, heading—**

*omit, insert—*

**‘Restriction on building of ships’.**

## SCHEDULE 1 (continued)

**TRANSPORT PLANNING AND COORDINATION  
ACT 1994****1. After section 8 in Part 2—**

*insert—*

**‘Effect of failure to comply with Part 2**

**‘8A.(1)** It is Parliament’s intention that this Part be complied with.

**‘(2)** However—

- (a) this Part is directory only and does not create rights or impose legally enforceable obligations on the State, Minister, chief executive or anyone else; and
- (b) failure to comply with this Part does not affect the validity of anything done or not done under this Act or another Act.

**‘(3)** In addition, a decision made, or appearing to be made, under this Part—

- (a) is final and conclusive; and
- (b) cannot be challenged, appealed against, reviewed, quashed, set aside, or called in question in another way, under the *Judicial Review Act 1991* (whether by the Supreme Court, another court, a tribunal or another entity); and
- (c) is not subject to any writ or order of the Supreme Court, another court, a tribunal or another entity on any ground.

**‘(4)** In this section—

**“decision”** includes—

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

## **SCHEDULE 2**

### **REPEALED ACTS**

section 93 of the Act

#### **PART 1—PRINCIPAL ACTS**

Carriage of Dangerous Goods by Road Act 1984 No. 73

Motor Vehicles Control Act 1975 No. 39

Motor Vehicles Safety Act 1980 No. 3

State Transport Act 1960 Eliz 2 No. 48

Transport Infrastructure (Roads) Act 1991 No. 29

#### **PART 2—AMENDING ACTS**

Carriage of Dangerous Goods by Road Amendment Act 1988 No. 5

Carriage of Dangerous Goods by Road Amendment Act 1993 No. 16

Motor Vehicles Control Amendment Act 1988 No. 28

Motor Vehicles Safety Act and Other Acts Amendment Act 1985 No. 30

Motor Vehicles Safety Amendment Act 1990 No. 53

Motor Vehicles Safety Amendment Act 1993 No. 45

State Transport Amendment Act 1965 No. 63

State Transport Acts Amendment Act 1981 No. 93

State Transport Act and Another Act Amendment Act 1990 No. 16

Traffic Amendment Act 1994 No. 8



## SCHEDULE 2 (continued)

Transport Infrastructure Amendment Act 1994 No. 32

Transport Legislation Amendment Act 1993 No. 5

Transport Legislation Amendment Act (No 2) 1993 No. 61

## SCHEDULE 3

### DICTIONARY

section 5 of the Act

“**accredited person**” means a person who holds an appointment as an accredited person under section 21.<sup>23</sup>

“**alternative compliance scheme**” see section 15.

“**approved form**” means a form approved by the chief executive.

“**authorised officer**” means a person who holds an appointment as an authorised officer under section 20.<sup>24</sup>

“**breath analysing instrument**” means an instrument of a type prescribed under a regulation for verifying, by analysis of a specimen of a person’s breath, what concentration of alcohol is present in the person’s blood.

“**Commissioner**” means the Commissioner of the Police Service.

“**compliance plate**” means a plate authorised to be placed on a vehicle, or taken to have been placed on a motor vehicle, under the *Motor Vehicle Standards Act 1989* (Cwlth).

“**corresponding law**”, to a transport Act or a provision of a transport Act, means a law of the Commonwealth or another State that provides for the same matter as—

- (a) for a transport Act—the Act or a provision of the Act; or
- (b) for a provision of a transport Act—the provision.

“**deal with**” includes sell, dispose of and destroy.

“**fee**” includes a tax.

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<sup>23</sup> Section 21 (Appointment of accredited persons)

<sup>24</sup> Section 20 (Appointment of authorised officers)

## SCHEDULE 3 (continued)

**“GVM”** (gross vehicle mass) means the maximum loaded mass of a vehicle—

- (a) stated on the vehicle’s compliance plate; or
- (b) if the maximum loaded mass is not stated on the compliance plate—prescribed under a regulation.

**“heavy vehicle”** means—

- (a) a vehicle with a GVM of more than 4.5 t; or
- (b) a public passenger vehicle; or
- (c) another vehicle providing services on a road for which a licence is required under a transport Act.

**“in”** a place or vehicle includes on the place or vehicle.

**“interstate scheme”** see section 16.

**“licence”** means a licence, permit or certificate under a transport Act, and includes—

- (a) a renewal of the licence, permit or certificate; and
- (b) an endorsement on the licence, permit or certificate.

**“motor vehicle”** means a vehicle propelled by a motor that forms part of the vehicle, and includes a trailer attached to the vehicle.

**“MUTCD”** see section 82(1).

**“number plate”** means a plate or other device designed to be attached to a vehicle to identify the vehicle.

**“occupier”** of a place includes a person who reasonably appears to be the occupier, or in charge, of the place.

**“official traffic sign”** see section 82(1).

**“on”** a place includes within, under and over the place.

**“operator”** see section 15(2).

## SCHEDULE 3 (continued)

**“owner”** includes—

- (a) for a seized thing—the person from whom the thing was seized unless the chief executive or Commissioner is aware of the actual owner; or
- (b) for a vehicle—
  - (i) each person who is the owner, joint owner or part owner of the vehicle; and
  - (ii) a person who has the use and control of the vehicle under a hiring agreement, hire purchase agreement or leasing arrangement; and
  - (iii) the person in whose name the vehicle is registered under a transport Act or a corresponding law;

but does not include the driver of a vehicle when the driver has been provided as part of a hiring agreement for the vehicle.

**“performance standard”** see section 15.

**“person in control”** of a vehicle includes—

- (a) the driver of the vehicle; or
- (b) the person who reasonably appears to be the driver; or
- (c) the person who appears to be, claims to be or acts as if he or she is in control of a vehicle.

**“place”** includes land, premises and water, but does not include a vehicle.

**“private vehicle”** means a vehicle other than a heavy vehicle.

**“public passenger vehicle”** has the same meaning as in the *Transport Operations (Passenger Transport) Act 1994*.

**“reasonably believe”** means believe on reasonable grounds.

**“registered”** means registered in a register of vehicles kept by the chief executive under a transport Act.

**“road”** has the meaning given by the *Transport Infrastructure Act 1994*, Chapter 5 (Road Transport Infrastructure).

## SCHEDULE 3 (continued)

**“trailer”** means a vehicle that is built to be towed, or is towed, by a motor vehicle, but does not include a motor vehicle being towed.

**“transport Act”** means—

- (a) this Act; or
- (b) another Act, or a provision of another Act, administered by the Minister that is prescribed under a regulation.

**“Transport Coordination Plan”** means the Transport Coordination Plan developed under the *Transport Planning and Coordination Act 1994*.

**“unsafe”**, for a thing, means the thing is likely to cause loss of life, bodily injury or damage to property if used in a normal way.

**“vehicle”** includes any type of transport that moves on wheels and a hovercraft but does not include a train or tram.