

Queensland



TRANSPORT LEGISLATION AMENDMENT ACT 1996

Act No. 62 of 1996

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Transport Legislation Amendment Act 1996

Act No. 62 of 1996

**An Act to amend various Acts to provide for the extension of
camera-detected offences, and for other purposes**

[Assented to 9 December 1996]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Transport Legislation Amendment Act 1996*.

Commencement

2.(1) Section 18 commences on the repeal of the *Transport Infrastructure (Roads) Act 1991*, section 9.17A.

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

PART 2—AMENDMENT OF TRAFFIC ACT 1949

Act amended in pt 2

3. This part amends the *Traffic Act 1949*.

Amendment of s 44P (Interpretation)

4.(1) Section 44P, definitions “**camera-detected offence**” and “**prescribed offence**”—

omit, insert—

“**camera-detected offence**” means a prescribed offence in respect of which—

- (a) the infringement notice under the *Justices Act 1886*, part 4A; or
- (b) the complaint or summons;

indicates that the offence was detected by a photographic detection device.

“prescribed offence” means an offence prescribed by regulation for this part that is an offence against this Act or another transport Act.’.

(2) Section 44P—

insert—

‘ **“corresponding transport 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.

“owner” means—

- (a) if the vehicle is registered—
 - (i) if there is a responsible operator—the responsible operator at the time the alleged offence happened unless subparagraph (iii) or (iv) applies; or
 - (ii) if there was no responsible operator at the time—the person in whose name the vehicle is registered under a transport Act or a corresponding transport law at the time the alleged offence happened unless subparagraph (iii) or (iv) applies; or
 - (iii) if the vehicle is bailed for more than 14 days—the bailee at the time the alleged offence happened; or
 - (iv) if the vehicle is used under a hiring agreement (not being a hire purchase agreement)—the person who contracted to use the vehicle; or
- (b) if the vehicle is unregistered—
 - (i) if there is a responsible operator—the responsible operator immediately before expiry of the registration unless subparagraph (iii) or (iv) applies; or
 - (ii) if there was no responsible operator immediately before expiry—the person in whose name the vehicle was registered under a transport Act or a corresponding transport

law immediately before the expiry unless subparagraph (iii) or (iv) applies; or

- (iii) if the vehicle is bailed for more than 14 days—the bailee at the time the alleged offence happened; or
- (iv) if the vehicle is used under a hiring agreement (not being a hire purchase agreement)—the person who contracted to use the vehicle.

“responsible operator” means a person nominated as responsible operator under the *Transport Infrastructure (Roads) Act 1991*, section 9.17A or under the *Transport Operations (Road Use Management) Act 1995* or a person corresponding to a responsible operator under a corresponding transport law.

“transport Act” means an Act administered by the Minister.’.

Replacement of s 44Q (Offences detected by photographic detection device)

5. Section 44Q—

omit, insert—

‘Offences detected by photographic detection device

‘44Q.(1) If a prescribed offence happens and the offence is detected by a photographic detection device, a person is taken to have committed the offence if the person was the owner of the vehicle that was involved in the offence at the time the offence happened even though the actual offender may have been someone else.

‘(2) If the actual offender is someone else, subsection (1) does not affect the liability of the actual offender but the owner and the actual offender can not both be punished for the offence.

‘(3) It is a defence for a person charged with a camera-detected offence under subsection (1) to prove that—

- (a) the person was not the driver of the vehicle at the time the offence happened; and
- (b) the person—
 - (i) subject to subsection (5), has notified the commissioner or

chief executive of the name and address of the person who drove the vehicle at the time the offence happened; or

- (ii) did not know and could not, with reasonable diligence, have ascertained the name and address of the person who drove the vehicle at the time the offence happened.

‘(4) For subsection (3)(b)(i) and (ii), the person must notify the commissioner or chief executive about the matters specified and other relevant information in the approved form.

‘(5) The defence under subsection 3(b)(i) is not available unless notice under subsection (3)(b)(i) is given to the commissioner or chief executive by the person within 4 months of the first given of—

- (a) written notice from the commissioner or chief executive to the owner alleging a camera-detected offence; or
- (b) an infringement notice under the *Justices Act 1886*, part 4A.

‘(6) For subsection (3)(b)(ii) a person must prove that—

- (a) at the time the offence happened, the person—
 - (i) exercised reasonable control over the vehicle’s use; and
 - (ii) had in place a reasonable way of finding out the name and address of the driver of the vehicle at any given time having regard to—
 - (A) the number of drivers; and
 - (B) the amount and frequency of use; and
 - (C) whether the vehicle was driven for business or private use; and
- (b) after the offence happened, the person made proper search and enquiry to ascertain the name and address of the person who drove the vehicle at the time the offence happened.

‘(7) Subsection (6) does not apply if the person is able to prove that at the time the offence happened the vehicle—

- (a) was stolen or illegally taken; or
- (b) had already been sold or otherwise disposed of.

‘(8) A person who falsely nominates another person under

subsection (3)(b)(i) as the driver of the vehicle at the time the offence happened, commits an offence.

Maximum penalty—40 penalty units.

‘(9) A notification purporting to have been given for a body corporate by a director, manager or secretary of the body corporate is to be taken to have been given by the body corporate.’

Replacement of s 44R (Procedure in relation to camera-detected offences)

6. Section 44R—

omit, insert—

‘Limitation of prosecution period extended in particular circumstances

‘**44R.(1)** Subsection (2) applies if a conviction or an enforcement order against a person for a camera-detected offence is set aside because the person can not be proved to be the driver of the vehicle at the time the prescribed offence happened.

‘(2) If a conviction or an enforcement order is set aside, despite any other Act, proceedings for a camera-detected offence may be started against another person within 3 months of the setting aside of the conviction or enforcement order.

‘(3) For this section, a conviction without recording the conviction, is taken to be a conviction.’

Amendment of s 44S (Notice accompanying summons)

7. Section 44S(1)—

omit, insert—

‘**44S.(1)** A notice, complaint or summons served on a person for a camera-detected offence must be accompanied by written information about—

- (a) if the person has been nominated under section 44Q(3)(b)(i) as the person who drove the vehicle at the time the offence

- happened—the particulars of the nomination; and
- (b) the provisions of section 44Q; and
 - (c) the right to examine and challenge an image from a photographic detection device under section 44U.’.

Replacement of s 44T (Payment of penalty)

8. Section 44T—

omit, insert—

‘Use of penalties collected for camera detected offences

‘**44T.(1)** All money collected for penalties imposed for camera detected offences in excess of the administrative costs of collection must be used for the following purposes—

- (a) road safety education and awareness programs;
- (b) road accident injury rehabilitation programs;
- (c) road funding to improve the safety of the sections of State-controlled roads where accidents most frequently happen.

‘**(2)** In this section “State-controlled road” means a road or route or part of a road or route declared to be a State-controlled road under the *Transport Infrastructure Act 1994*.’

Amendment of s 44U (Photographic evidence—inspection and challenges)

9.(1) Section 44U(1), (2) and (4), ‘photographic evidence’—

omit, insert—

‘image from a photographic detection device’.

(2) Section 44U(2), ‘14’—

omit, insert—

‘21’.

(3) Section 44U(3), ‘7’—

omit, insert—

‘14’.

(4) Section 44U(4), ‘3’—

omit, insert—

‘7’.

Replacement of s 44V (Effect of action under the Justices Act, pt 4A)

10. Section 44V—

omit, insert—

‘Notice of dispute about traffic control device or sign

‘**44V.** If a person intends to dispute that a traffic control device or sign was functioning without defect or was visible, the person must give the commissioner written notice of the intention, specifying the device or sign, at least 7 days before the day fixed for the hearing.’.

Amendment of s 44W (Evidentiary provisions)

11.(1) Section 44W(2), ‘A photograph’—

omit, insert—

‘An image’.

(2) Section 44W(2), ‘photograph’—

omit, insert—

‘image’.

(3) Section 44W(3), ‘a photograph’—

omit, insert—

‘an image’.

(4) Section 44W(3), ‘photographs’—

omit, insert—

‘images’.

(5) Section 44W(3), ‘photograph’—

omit, insert—

‘image’.

(6) Section 44W(4)—

renumber as section 44W(6).

(7) After section 44W(3)—

insert—

‘(4) A marking or writing made by a photographic detection device on an image is taken to have the meaning prescribed under a regulation and is evidence of what it is taken to mean.

‘(5) In a proceeding for a camera-detected offence a document purporting to be issued or signed by the chief executive of an entity responsible for the registration of motor vehicles under a law of this or another State stating that at a specified time or during a specified period a person was the owner of a vehicle is evidence of those matters.’.

Insertion of new s 44X

12. After section 44W—

insert—

‘Application of the Justices Act, pt 4A

‘**44X.(1)** The *Justices Act 1886*, part 4A, applies to camera-detected offences subject to this part.

‘(2) If there is any inconsistency between the *Justices Act 1886*, part 4A and this part, the provisions of this part prevail.

‘(3) Without limiting subsection (1) or (2), for the *Justices Act 1886*, part 4A—

- (a) “**owner**” means the owner as defined in this part; and
- (b) a reference to “**person in charge**” or “**user**” is, if the context permits, taken to be a reference to the driver of the vehicle; and
- (c) a reference to “**illegal user declaration**”, “**known user declaration**”, “**sold vehicle declaration**” or “**unknown user declaration**” or declaration generally is taken to be a reference to

the appropriate approved form for section 44Q; and

- (d) the *Justices Act 1886* sections 98G(2), 98H(5), 98I(5) and 98J(2) are subject to section 44Q and in particular section 44Q(6) applies instead of the *Justices Act 1886*, section 98J(2)(b).’.

Amendment of s 49 (Facilitation of proof)

13. Section 49(1)—

insert—

- ‘(oa) a document purporting to be signed by the commissioner or chief executive stating that the document is a true copy of a plan of installation of a photographic detection device at a place, showing any features of the installation, road infrastructure, road boundaries or road markings is evidence of the things shown in the document;
- (pd) a certificate purporting to be signed by the commissioner, chief executive or a superintendent certifying that a laser speed detection device has been—
- (i) tested at a specified time—
- (A) in accordance with the appropriate Australian Standard that is in force at the time; or
- (B) if there is no appropriate standard—in accordance with the manufacturer’s specifications; and
- (ii) found to produce accurate results at the specified time;
- is evidence of the matters stated and evidence the device was producing accurate results at the time of testing and for 1 year after the time;
- ‘(pe) a certificate purporting to be signed by a police officer stating that a specified laser speed detection device was used by the officer—
- (i) at a specified time; and
- (ii) in accordance with—
- (A) the appropriate Australian Standard that is in force at the time; or

- (B) if there is no appropriate standard—the manufacturer’s specifications;

is evidence of the matter stated;

‘(pf) a certificate purporting to be signed by the commissioner, chief executive or a superintendent certifying that a photographic detection device has been—

- (i) tested at a specified time in accordance with section 49(1)(pa) or (pd); and

- (ii) found to produce accurate results at the specified time;

is evidence of the matters stated and evidence the photographic detection device was producing accurate results at the time of testing and for 1 year after the time;

‘(ta) evidence that a number plate showing a particular registration number was attached to a motor vehicle at a particular time is evidence that the motor vehicle is the motor vehicle noted in the register of vehicles as then having that registration number;

‘(tb) a certificate purporting to be signed by the commissioner, chief executive or a superintendent certifying that a breath analysing instrument has been—

- (i) tested at a specified time—

- (A) in accordance with the appropriate Australian Standard that is in force at the time using devices or substances certified or otherwise authenticated under the *National Measurements Act 1960* (Cwlth); or

- (B) if there is no appropriate standard—in accordance with the manufacturer’s specifications using devices or substances certified or otherwise authenticated under the *National Measurements Act 1960* (Cwlth); and

- (ii) found to produce accurate results at the specified time;

is evidence of the matters stated and evidence the breath analysing instrument was producing accurate results at the time of testing and for 1 year after the time.’.

PART 3—AMENDMENT OF TRANSPORT INFRASTRUCTURE (ROADS) ACT 1991

Act amended in pt 3

14. This part amends the *Transport Infrastructure (Roads) Act 1991*.

Insertion of new s 9.17A

15. After section 9.17—

insert—

‘Nomination of responsible operator

‘9.17A.(1) If an owner has previously claimed the owner was not the driver and has failed to notify the name and address of the driver of a vehicle that was involved in a camera-detected offence, the chief executive may give written notice requesting the owner to nominate 1 responsible operator for each vehicle registered in the owner’s name whether jointly or otherwise.

‘(2) If the owner wants to nominate the responsible operator the owner must give written notice containing the prescribed particulars to the chief executive within 28 days of receipt of the notice from the chief executive.

‘(3) If a person does not nominate a responsible operator within 28 days, or nominates a person who is ineligible to be a responsible operator, the chief executive may nominate an existing registered owner as the responsible operator.

‘(4) A responsible operator must be—

- (a) an individual who is—
 - (i) 16 years or more; and
 - (ii) the holder of a licence issued under a law of a State to drive a vehicle on a road; or
- (b) a corporation that is—
 - (i) a company registered under the Corporations Law; or
 - (ii) incorporated by or under an Act; or

(iii) incorporated for a public purpose by an Act of this or another State or the Commonwealth; or

(c) this or another State or the Commonwealth.

‘(5) Except for a nomination by the chief executive, the nomination must be accompanied by the written consent of the responsible operator.

‘(6) If a licence is not required for the normal operation of the type of vehicle being registered and it is not designed to be towed, the responsible operator does not have to be the holder of a licence for the vehicle.

‘(7) A person must not nominate a person as a responsible operator knowing that—

(a) the nominated person is ineligible to be a responsible operator; or

(b) any particulars about the nominated person are inaccurate.

Maximum penalty—40 penalty units.

‘(8) A person who has been requested to nominate a responsible operator—

(a) may subsequently apply for, renew or transfer the registration of a vehicle only if a responsible operator has been nominated for the vehicle; and

(b) must ensure there is a responsible operator during the registration of the vehicle.

‘(9) If for any reason there ceases to be a responsible operator for a vehicle, the chief executive may nominate a responsible operator.’.

Amendment of sch 1 (Subject matter for regulations)

16. Schedule 1, General provisions, after ‘Management and operation of a register of vehicles including—’

insert—

‘nomination of responsible operator;’.

**PART 4—AMENDMENT OF TRANSPORT
OPERATIONS (ROAD USE MANAGEMENT)
ACT 1995**

Act amended in pt 4

17. This part amends the *Transport Operations (Road Use Management) Act 1995*.

Insertion of new s 77A

18. After section 77—

insert—

‘Nomination of responsible operator

‘77A.(1) If an owner has previously claimed the owner was not the driver and has failed to notify the name and address of the driver of a vehicle that was involved in a camera-detected offence, the chief executive may give written notice requesting the owner to nominate 1 responsible operator for each vehicle registered in the owner’s name whether jointly or otherwise.

‘(2) If the owner wants to nominate the responsible operator the owner must give written notice containing the prescribed particulars to the chief executive within 28 days of receipt of the notice from the chief executive.

‘(3) If a person does not nominate a responsible operator within 28 days, or nominates a person who is ineligible to be a responsible operator, the chief executive may nominate an existing registered owner as the responsible operator.

‘(4) A responsible operator must be—

- (a) an individual who is—
 - (i) 16 years or more; and
 - (ii) the holder of a licence issued under a law of a State to drive a vehicle on a road; or
- (b) a corporation that is—

- (i) a company registered under the Corporations Law; or
 - (ii) incorporated by or under an Act; or
 - (iii) incorporated for a public purpose by an Act of this or another State or the Commonwealth; or
- (c) this or another State or the Commonwealth.

‘(5) Except for a nomination by the chief executive, the nomination must be accompanied by the written consent of the responsible operator.

‘(6) If a licence is not required for the normal operation of the type of vehicle being registered and it is not designed to be towed, the responsible operator does not have to be the holder of a licence for the vehicle.

‘(7) A person must not nominate a person as a responsible operator knowing that—

- (a) the nominated person is ineligible to be a responsible operator; or
- (b) any particulars about the nominated person are inaccurate.

Maximum penalty—40 penalty units.

‘(8) A person who has been requested to nominate a responsible operator—

- (a) may subsequently apply for, renew or transfer the registration of a vehicle only if a responsible operator has been nominated for the vehicle; and
- (b) must ensure there is a responsible operator during the registration of the vehicle.

‘(9) If for any reason there ceases to be a responsible operator for a vehicle, the chief executive may nominate a responsible operator.’.

PART 5—AMENDMENT OF JUSTICES ACT 1886

Act amended in pt 5

19. This part amends the *Justices Act 1886*.

Amendment of s 266 (Regulations)

20. After section 266(2)(b)—

insert—

- ‘(c) for a camera-detected offence under the *Traffic Act 1949*—an infringement notice penalty for a corporation up to 5 times the amount payable by an individual for the offence under an infringement notice under part 4A.’