

Queensland



**TRANSPORT LEGISLATION  
AMENDMENT ACT (NO. 2)  
2002**

**Act No. 71 of 2002**



Queensland



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AMENDMENT ACT (NO. 2) 2002**

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Queensland



**Transport Legislation Amendment Act (No. 2)  
2002**

**Act No. 71 of 2002**

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**An Act to amend legislation administered by the Minister for  
Transport and the Minister for Main Roads**

*[Assented to 13 December 2002]*

**The Parliament of Queensland enacts—**

## **PART 1—PRELIMINARY**

### **1 Short title**

This Act may be cited as the *Transport Legislation Amendment Act (No. 2) 2002*.

### **2 Commencement**

Sections 21, 22, 25 and 26, to the extent that it inserts section 197(3) and (4), commence on a day to be fixed by proclamation.

## **PART 2—AMENDMENT OF CENTURY ZINC PROJECT ACT 1997**

### **3 Act amended in pt 2**

This part amends the *Century Zinc Project Act 1997*.

### **4 Amendment of s 21 (Regulation-making power)**

Section 21(2) to (6)—

*omit.*

### **5 Amendment of sch 1 (Land in which interests are or may be taken)**

Schedule 1, part 2—

*omit, insert—*

**‘PART 2—LAND IN WHICH NATIVE TITLE AND AN  
EASEMENT MAY BE TAKEN**

Land 100 m wide following the route shown on the plan in schedule 5 across the following land—

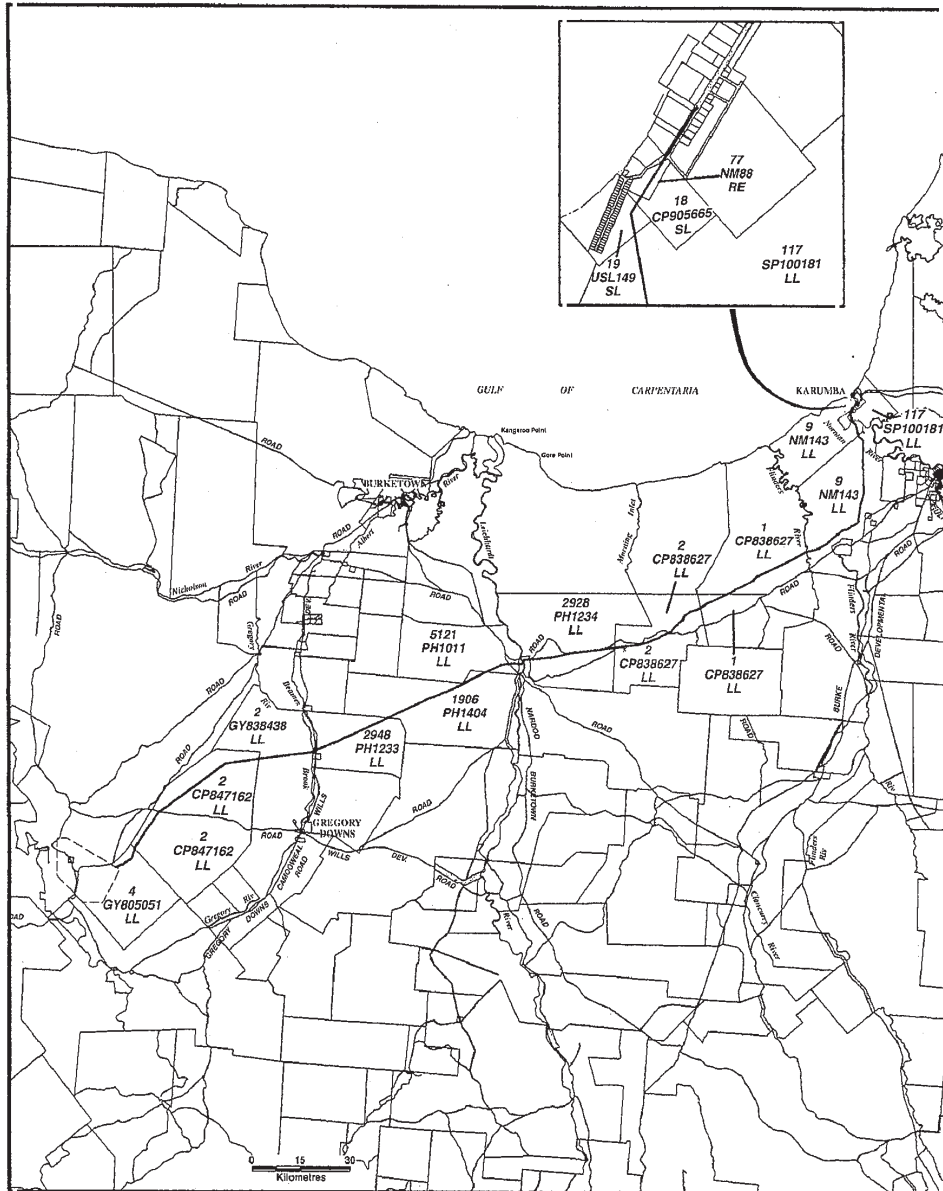
- lot 4 on GY805051 on SP132944
- lot 2 on CP847162 on SP132945
- lot 2 on CP847162 on SP110463
- lot 2 on GY838438 on SP110453
- lot 2948 on PH1233 on SP110446
- lot 2948 on PH1233 on SP110447
- lot 1906 on PH1404 on SP110448
- lot 5121 on PH1011 on SP110449
- lot 5121 on PH1011 on SP110450
- lot 5121 on PH1011 on SP110452
- lot 2928 on PH1234 on SP110451
- lot 2928 on PH 1234 on SP110462
- lot 2 on CP838627 on SP110461
- lot 2 on CP838627 on SP121434
- lot 1 on CP838627 on SP121435
- lot 9 on NM143 on SP121436
- lot 117 on SP100181 on SP110457
- lot 77 on NM88 on SP110454.’.

**6 Replacement of sch 5 (Plan (Schedule 1, part 1, item 7 and part 2))**

Schedule 5—

*omit, insert—*

### ‘SCHEDULE 5—PLAN (SCHEDULE 1, PART 1, ITEM 7 AND PART 2)



Map Projection: Geographical Latitude & Longitude (AGD84)  
 Compilation: Land Tenure Information obtained from the Digital Cadastral Data Base  
 Department of Natural Resources Brisbane.



## **PART 3—AMENDMENT OF TOW TRUCK ACT 1973**

### **7 Act amended in pt 3**

This part amends the *Tow Truck Act 1973*.

### **8 Amendment of s 7 (Form and authority of licence)**

Section 7(2), ‘the *Transport Infrastructure (Roads) Act 1991*’—  
*omit, insert—*

‘a regulation under the *Transport Operations (Road Use Management) Act 1995*’.

### **9 Amendment of s 12 (Conditions of licence)**

Section 12(2)(d), from ‘by’ to ‘of it’—  
*omit, insert—*

‘under a regulation under the *Transport Operations (Road Use Management) Act 1995* and there is a current certificate of inspection under that regulation for the vehicle’.

## **PART 4—AMENDMENT OF TRANSPORT INFRASTRUCTURE ACT 1994**

### **10 Act amended in pt 4**

This part amends the *Transport Infrastructure Act 1994*.

### **11 Insertion of new s 136A**

Chapter 6, part 7—  
*insert—*

**‘136A Integrated Planning Act consent for rail corridor land and non-rail corridor land**

‘(1) This section applies if a provision of the *Integrated Planning Act 1997* requires the consent of the owner of land.

‘(2) If the land is rail corridor land or non-rail corridor land, the chief executive is taken to be the owner of the land.’.

**12 Amendment of s 161 (Functions of port authorities)**

(1) Section 161(1)(f)—

*renumber* as section 161(1)(g).

(2) Section 161(1)—

*insert*—

‘(f) for the Cairns Port Authority, to provide or arrange for the development and use of its strategic port land for residential and tourist accommodation; and’.

**13 Insertion of new s 174A**

Chapter 7, part 4, division 2—

*insert*—

**‘174A Port marine operational area**

‘In an Act, a reference to the marine operational area of a port is a reference to an area of land that is—

- (a) within the limits of the port; and
- (b) below the ordinary high water mark at spring tides; and
- (c) at least 1 of the following—
  - (i) in, or within 200 m of, marked shipping channels and recognised entry and exit shipping corridors;

- (ii) in, or within 100 m of, swing basins, commercial shipping wharves, moorings, anchorages and spoil grounds;
- (iii) declared under a regulation to be a marine operational area for the port.’.

## **PART 5—AMENDMENT OF TRANSPORT OPERATIONS (ROAD USE MANAGEMENT) ACT 1995**

### **14 Act amended in pt 5**

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

### **15 Amendment of s 18 (Grounds for amending, suspending or cancelling approvals)**

Section 18—

*insert—*

- ‘(g) for an approval that exempts a person from complying with a provision of this Act—
  - (i) public safety has been endangered, or is likely to be endangered because of the approval; or
  - (ii) transport infrastructure within the meaning of the *Transport Infrastructure Act 1994* has been damaged, or is likely to be damaged because of the approval.’.

### **16 Amendment of s 50 (Power to require information)**

(1) Section 50(1)—

*insert—*

‘**“information”** includes a document containing information.’.

(2) Section 50—

*insert—*

‘(3A) The requirement may be made—

- (a) orally; or
- (b) by written notice requiring the person to give information about the offence to the officer at a stated reasonable time and place.’.

## **17 Insertion of new s 50AA**

Chapter 3, part 3, division 4—

*insert—*

### **‘50AA Power to require information**

‘(1) This section applies if the chief executive or commissioner has information that leads the chief executive or commissioner reasonably to suspect that—

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

‘(2) The chief executive or commissioner may, by written notice, require the person to give information about the information offence to the chief executive or commissioner.

‘(3) The written notice must—

- (a) require the person to give information about the information offence to the chief executive or commissioner at a stated reasonable time and place; and
- (b) warn the person it is an offence to fail to give the information, unless the person has a reasonable excuse; and
- (c) advise the person that it is not a reasonable excuse for the person to fail to give the information because the information might tend to incriminate the person; and
- (d) advise the person that the information, and any evidence directly or indirectly derived from the information that might tend to incriminate the person, is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding for an offence about the falsity of the information.

‘(4) The person must give the information, unless the person has a reasonable excuse.

Maximum penalty—120 penalty units.

‘(5) It is not a reasonable excuse for the person to fail to give the information because the information might tend to incriminate the person.

‘(6) However, the information, and any evidence directly or indirectly derived from the information that might tend to incriminate the person, is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding for an offence about the falsity of the information.

‘(7) In a proceeding for an offence against subsection (4), it is a defence for a person to prove that the information sought was not in fact relevant to the information offence suspected to have been committed.

‘(8) The dismissal of an employee because the employee gave information under this section is a harsh, unjust or unreasonable dismissal under the *Industrial Relations Act 1999*, chapter 3.

‘(9) In this section—

“**information**” includes a document containing information.

“**information offence**” means an information offence under section 50.’

## **18 Replacement of s 54 (Obstructing authorised officers or accredited persons)**

Section 54—

*omit, insert—*

### **‘54 Obstructing authorised officers or accredited persons**

‘(1) A person must not obstruct an official in the exercise of a power, unless the person has a reasonable excuse.

Maximum penalty—60 penalty units.

‘(2) If a person has obstructed an official under subsection (1) and the official decides to exercise the power, the official must, if practicable, warn the person—

- (a) that the official considers the person’s conduct is obstructing the official; and
- (b) that it is an offence to obstruct the official unless the person has a reasonable excuse.

‘(3) In this section—

“**obstruct**” includes abuse, hinder, insult, intimidate, resist and threaten and attempt to obstruct.

“**official**” means an authorised officer or accredited person.’.

## **19 Amendment of s 57B (Further liability provisions for extended liability offences)**

Section 57B—

*insert—*

‘(2A) Subsection (2) applies even if the driver or other person is not prosecuted for the offence, as long as, in the proceedings brought against the influencing person, the driver or other person is proved beyond a reasonable doubt to have committed the offence.’.

## **20 Amendment of s 61 (Instruments)**

Section 61(4), ‘notice, in the approved form,’—

*omit, insert—*

‘written notice’.

## **21 Amendment of s 78 (Driving of motor vehicle without a driver licence prohibited)**

(1) Section 78(1A)—

*omit, insert—*

‘(1A) An infringement notice under the *State Penalties Enforcement Act 1999* may be issued to a person for a contravention of subsection (1) only if—

- (a) the person is an unlicensed driver for the motor vehicle driven by the person; and
- (b) the person has not, in the 5 years before the contravention, been convicted of an offence against subsection (1).’.

(2) Section 78(2), from ‘the person committed’ to ‘a driver licence’—

*omit, insert—*

‘a person commits an offence against subsection (1) when the person is a disqualified driver, or is a repeat unlicensed driver for the offence’.

(3) Section 78(3)(a), ‘; or’—

*omit, insert—*

‘;’.

(4) Section 78(3)(b) to (d)—

*omit, insert—*

- ‘(b) if the person committed the offence while the person was disqualified<sup>1</sup> from holding or obtaining a driver licence because of the allocation of demerit points—6 months;
- (c) if the person committed the offence while the person’s authority to drive on a Queensland road under a non-Queensland driver licence was suspended because of the allocation of demerit points—6 months;
- (d) if the person committed the offence while the person’s driver licence was suspended under the *State Penalties Enforcement Act 1999*—a period, of at least 1 month but not more than 6 months, decided by the court;
- (e) if the person committed the offence while the person’s authority to drive on a Queensland road under a non-Queensland driver licence was suspended under the *State Penalties Enforcement Act 1999*—a period, of at least 1 month but not more than 6 months, decided by the court;
- (f) if the person committed the offence while the person was a repeat unlicensed driver for the offence—a period, of at least 1 month but not more than 6 months, decided by the court.’.

(5) Section 78(3B)—

*omit.*

(6) Section 78(4), ‘or (3B)’—

*omit.*

(7) Section 78(6), definitions “**expired**” and “**recently expired**”—

*omit.*

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<sup>1</sup> For a disqualification because of the allocation of demerit points, see section 127(4)(b) for the effect of a suspension because of the allocation of demerit points under the *Transport Operations (Road Use Management—Driver Licensing) Regulation 1999*.

(8) Section 78(6)—

*insert—*

‘**“disqualified driver”** means a person—

- (a) who is disqualified from holding or obtaining a driver licence because of any court order; or
- (b) who is disqualified from holding or obtaining a driver licence because—
  - (i) of the allocation of demerit points; or
  - (ii) the person’s driver licence is suspended under the *State Penalties Enforcement Act 1999*; or
- (c) whose authority to drive on a Queensland road under the person’s non-Queensland driver licence is suspended—
  - (i) because of the allocation of demerit points; or
  - (ii) under the *State Penalties Enforcement Act 1999*.

**“repeat unlicensed driver”**, for an offence, means a person who—

- (a) is an unlicensed driver for the motor vehicle driven by the person when the offence is committed; and
- (b) has, in the 5 years before committing the offence, been convicted of an offence against subsection (1).

**“unlicensed driver”**, for a motor vehicle, means a person, other than a disqualified driver, who does not hold a driver licence authorising the person to drive the vehicle on the road.’.

## **22 Amendment of s 78A (Permit to drive—recently expired driver licence)**

(1) Section 78A(1), after ‘to a person’—

*insert—*

‘with a recently expired licence’.

(2) Section 78A—

*insert—*

‘(6) In this section—



**“recently expired licence”**, in relation to a person’s contravention of section 78(1), means—

- (a) a driver licence that has been expired for no more than 1 year before the contravention; or
- (b) a non-Queensland driver licence if, within the 1 year before the contravention, the authority to drive on a Queensland road under the licence has been withdrawn, other than because—
  - (i) the person was granted a Queensland driver licence; or
  - (ii) the chief executive reasonably believed the person had a mental or physical incapacity that was likely to adversely affect the person’s ability to drive safely.’.

### **23 Amendment of s 114 (Offences detected by photographic detection device)**

(1) Section 114(3)(b)(ii), before ‘did not know’—

*insert—*

‘has notified the commissioner or chief executive that the person’.

(2) Section 114(4)—

*omit, insert—*

‘(4) The person must notify the commissioner or chief executive about the matters specified in subsection (3)(b)(i), or the matters specified in subsections (3)(b)(ii) and (6), in a statutory declaration.’.

(3) Section 114(5), after ‘subsection (3)(b)(i)’—

*insert—*

‘or (ii)’.

(4) Section 114(8)—

*omit, insert—*

‘(8) Nothing in this section stops a person notifying the commissioner or chief executive, in a statutory declaration, that the person was the driver of the vehicle involved in a camera-detected offence.’.

### **24 Amendment of s 120 (Evidentiary provisions)**

Section 120(1), ‘a camera-detected offence’—

*omit, insert—*

‘an offence involving a motor vehicle under this or another Act’.

## **25 Amendment of s 131 (Appeals with respect to issue of licences etc.)**

**(1)** Section 131(2)—

*omit, insert—*

‘**(2)** A person who has been disqualified, by operation of law or an order, from holding or obtaining a Queensland driver licence absolutely or for a period of more than 2 years, may, at any time after the expiration of 2 years from the start of the disqualification period, apply for the disqualification to be removed.

‘**(2AA)** The application for the disqualification to be removed must be made to—

- (a) if the disqualification was ordered by a judge of the Supreme Court—a judge of the Supreme Court; or
- (b) if the disqualification was ordered by a judge of the District Court—a judge of the District Court; or
- (c) if the disqualification was not ordered by a judge of the Supreme or District Court—
  - (i) if the person lives in Queensland—the Magistrates Court exercising jurisdiction at the place where the person lives; or
  - (ii) if the person lives outside Queensland—the Magistrates Court, central division of the Brisbane district.’

**(2)** Section 131(2E), from ‘shall further order’ to ‘shall in any case’—

*omit.*

## **26 Amendment of ch 7 (Transitional provisions)**

Chapter 7—

*insert—*

**‘PART 5—TRANSITIONAL PROVISIONS FOR  
TRANSPORT LEGISLATION AMENDMENT ACT  
(No. 2) 2002**

**‘197 What Transport Legislation Amendment Act (No. 2) 2002 applies to**

‘(1) Section 18(g) applies to an approval issued before or after the commencement of this section.

‘(2) Section 50AA applies to an information offence committed after the commencement of this section.

‘(3) Section 78(3), as in force immediately before the commencement of this section, continues to apply to an offence committed before the commencement.

‘(4) Section 131(2), as amended by the *Transport Legislation Amendment Act (No. 2) 2002*, applies to a disqualification that happened before or after the commencement of this section.’.

**27 Amendment of sch 4 (Dictionary)**

(1) Schedule 4—

*insert—*

‘**“interstate licence”** means—

- (a) an Australian driver licence that is not a Queensland driver licence; or
- (b) a driver licence granted in an external Territory that corresponds to a Queensland driver licence.

**“non-Queensland driver licence”** means—

- (a) an interstate licence; or
- (b) a foreign driver licence.’.

(2) Schedule 4, definition **“convicting”**, paragraph (b), ‘*Justices Act 1886*, part 4A’—

*omit, insert—*

‘*State Penalties Enforcement Act 1999*’.

## **PART 6—REPEALS**

### **28 Repeal of Hay Point Harbour (Ratification of Agreements) Act 1987**

The *Hay Point Harbour (Ratification of Agreements) Act 1987* is repealed.