

TRANSPORT LEGISLATION AMENDMENT BILL 1996

EXPLANATORY NOTES*

The Transport Legislation Amendment Bill 1996 has been drafted consistent with current legislative drafting practice.

GENERAL OUTLINE

Objectives of Legislation

On 29 July 1996 Cabinet endorsed the introduction of speed cameras in Queensland from December 1996. The Bill implements the legislative changes necessary for the efficient introduction of speed cameras and rectifies existing deficiencies in camera detected offence legislation.

The legislation:

- facilitates the efficient processing of camera detected offences by providing for use of infringement notices and enabling unpaid notices to be processed by the Self-Enforcing Ticketable Offence Notice System (SETONS) Court;
- addresses potential deficiencies in the relevant evidentiary and deeming provisions contained in the *Traffic Act 1494* relating to red light cameras and extends these provisions for speed cameras;
- expands the range of camera detected offences to cover offences under any transport portfolio act;
- provides for the application of an increased penalty where a vehicle is owned by a corporation and the owner cannot or will not nominate a driver (thus maintaining the integrity of the speed management strategy and providing more equitable penalties);

* These Explanatory Notes relate to the Bill as introduced into the Legislative Assembly. This Bill was amended in Committee—see Endnotes.

and

- provides within the vehicle registration scheme for the identification of a person or corporation who is responsible for the operation of a vehicle.

Reasons for Legislation

To allow for the successful introduction of speed cameras it is necessary to amend Queensland's existing owner onus and camera detected offence provisions under the *Traffic Act 1949* as well as other miscellaneous changes to the *Transport Infrastructure (Roads) Act 1991*, *Transport Operations (Road Use Management) Act 1995* and the *Justices Act 1886*.

The effectiveness of Queensland's existing legislation in relation to the enforcement of red light camera detected offences was carefully examined when preparing these amendments. So far as possible, when amending legislation to allow for the introduction of speed cameras, weaknesses which currently permit persons to evade the effect of the law have been addressed.

The Transport Legislation Amendment Bill provides the legislative framework to efficiently address issues such as driver identification and owner onus whilst ensuring social justice.

Estimated Cost for Government Implementation

The introduction of speed cameras in Queensland is expected to generate \$30 million in the first year of full operation. Cabinet has approved the recovery of implementation costs from speed camera revenue as follows:

- \$5 million by the Queensland Police Service for the purchase of 15 speed cameras, processing systems and implementation costs;
- \$1.5 million by Queensland Transport for increased public education;
- \$920,000 by Main Roads for a review of speed limits on state controlled roads;
- \$200,000 by Queensland Transport to reduce illegible number plates;
- \$2.3 million per annum for operation of the speed camera system.

Fundamental Legislative Principles

Because of the nature of camera detected offences, it is necessary for the legislation to breach certain FLPs if effective enforcement is to be achieved. A precedent has been established with existing camera detected offence legislation.

The Bill is contrary to the following FLPs:

Reversal of Onus of Proof: Because offences detected by speed cameras are remotely detected offences, it is not possible to positively identify the driver at the time of the offence (as is the case when a driver is intercepted by a Police Officer).

This necessitates certain presumptions regarding the identity of the driver of the vehicle (i.e. the driver is the owner of the vehicle). Onus is then on the owner to prove that he or she was not the driver of the vehicle at the time of the offence. Provision is made for an owner to nominate a person other than themselves as the driver of their vehicle. Defences are also provided if the owner was not the driver but cannot ascertain who was.

The Bill provides a balanced approach to protecting the rights of individuals whilst ensuring guilty persons cannot evade the law.

Vicarious Liability: A person may avoid liability for a camera detected offence by identifying the driver or using the defence provisions made available but if the person can do neither the person will be held liable. Where a corporation is held liable a higher penalty will be applied in lieu of demerit points which would otherwise be issued to a natural person. This will negate the present dis-incentive for a corporate owner to nominate the driver.

The introduction of a corporate penalty for infringement notices issued for camera detected speeding offences is simply a further application of the current law. This penalty will only be imposed where a driver has not been nominated and will in effect be in lieu of demerit points.

The application of a corporate penalty will close a loophole and provide equity in the application of penalties.

Making an appropriate person or body liable for the operation of their vehicle is critical to the success of camera detected offence schemes.

Consultation

The Transport Legislation Amendment Bill 1996 was jointly prepared by the portfolios of Transport and Police who are responsible for the administration and enforcement of the significantly affected legislation. The Department of Justice and the Attorney-General were consulted regarding the minor amendments to the Justices Act.

The policy initiatives espoused in the legislation were approved by Cabinet on 29 July 1996 at which time extensive consultation was undertaken.

The issues raised by major stakeholders have been reconciled and there are no unresolved substantive issues.

PART 1—PRELIMINARY

Section 1 sets out the short title of the Bill.

Section 2 provides for commencement of the provisions of the Bill. Amendments to the *Transport Operations (Road Use Management) Act 1995* will not commence until the repeal of the *Transport Infrastructure (Roads) Act 1991* (as required by S.93(1) of the *Transport Operations (Road Use Management) Act 1995*).

The remaining provisions of the Bill will commence on a day to be fixed by proclamation.

PART 2—AMENDMENT OF TRAFFIC ACT 1949

Section 3 identifies the act to be amended.

Section 4 amends and inserts various definitions applicable to *Division 2* of *Part 6B* of the *Traffic Act 1949* which deals with camera detected offences.

It amends the existing definitions of “**camera detected offence**” and “**prescribed offence**” to allow for:

- processing through SETONS for infringement notices issued for camera detected offences
- expanding the range of offences currently able to be prescribed by regulation as camera detected offences to include an offence under any transport act (currently restricted to the *Traffic Act 1949*)

As is currently the case, offences that are camera detected offences will be prescribed by regulation and will undergo the associated scrutiny.

The following additional definitions have been included:

“corresponding law” and **“transport act”**—have been added for ease of drafting and interpretation.

“owner” and **“responsible operator”**—As camera detected offences are remotely detected offences, certain presumptions need to be made regarding the identity of the driver. These definitions have been added to establish a clear chain of responsibility when determining who should be responsible for a camera detected offence.

In the first instance, the following person/company will be held liable for a camera detected offence:

- (a) the nominated responsible operator; or
- (b) in the absence of a nominated responsible operator, the registered owner; or
- (c) if the vehicle is bailed, the bailee; or
- (d) if the vehicle is a hire vehicle, the person who contracted to use the vehicle.

Section 5 replaces the exiting *Section 44Q* of the *Traffic Act 1949*.

Subsection 1 minor changes are made to modernise the wording. Apart from the changes caused by the definitions of *owner* and *responsible operator*, (refer *section 3* above) this subsection remains essentially unchanged. It provides that the *responsible operator* or *owner* may be taken to have committed a camera detected offence.

Subsection 2 prevents more than one person being punished for the same offence.

Subsection 3 provides the defences a person may use to avoid liability for a camera detected offence. A person must nominate the driver or show that she or he exercised reasonable diligence to try and identify the driver.

Subsection 4 requires that an approved form must be used to notify the nomination of another driver or the inability to identify the driver.

Subsection 5 requires that where a person intends to nominate another person as the driver the person must make the appropriate notification within four months. If after four months a person claims a form was lodged within the period but the notification was not received, the person may be asked to prove that the notification was sent. A person's testimony, if credible, may be sufficient proof that a form was sent.

Subsection 6 clarifies what a person will be required to prove in order to demonstrate they exercised reasonable diligence when trying to identify the driver of their vehicle.

Subsection 7 provides that where a person can prove that at the time of the camera detected offence the vehicle in question was either stolen or being used illegally or had been sold or disposed of, the requirement to prove reasonable diligence will not apply.

Subsection 8 makes it an offence to falsely nominate a person as the driver of the vehicle.

Subsection 9 provides that notification can be made by an office holder on behalf of a body corporate.

Section 6 replaces the existing *section 44R* of the *Traffic Act* relating to infringement notices for camera detected offences with provisions outlining the consequences of a person penalised for an offence having it reviewed and rescinded on the grounds that the person was not the driver. The new section will allow proceedings to be started against a person nominated as the driver within three months of this rescission despite provisions which would otherwise impose a limit of one year from the time the offence occurred. (Infringement notices will now be processed under the *Justices Act 1886*.)

Section 7 replaces the existing provision relating to notification accompanying a complaint and summons with a requirement that any infringement notice or notice alleging a camera detected offence must be accompanied with information about the person's rights and details related to the offence.

Section 8 repeals the existing provision about payments under the abandoned infringement notice scheme for camera detected offences as it is now redundant.

Section 9 relates to periods of notice to be given before examination or challenge of photographic evidence and response times. This section extends the current periods moderately (to the benefit of both the challenger and the prosecution) and provides for emerging technology such as digital imaging by replacing the term *photograph* with *image*.

Section 10 replaces an existing provision now redundant because of the abandonment of the present infringement notice scheme for camera detected offences with a provision requiring a person who wishes to claim that a traffic control instrument (such as traffic lights or a speed sign) was defective or not visible to give seven days notice to the prosecution. (Infringement notices will now be processed under the *Justices Act 1886*.)

Section 11 provides for emerging technology such as digital imaging by replacing the term *photograph* with *image*. It also provides that a regulation may prescribe what the information contained in the data block on an image means (such as speed measured, time of the offence). This section also provides that the data block on an image may be admitted into evidence.

This section also provides that a certificate issued by the registration authority identifying a registered owner or nominated responsible operator should be accepted by a court as evidence of what it says.

Section 12 provides that where the *Justices Act 1886* provides things which are the same as or inconsistent with the intent of this Bill the provisions of this Bill will apply. It specifies particular provisions which do not apply for the purposes of clarity.

Section 13 prescribes that a certificate about the accuracy of a speed measuring or breath analysis instrument is to be taken as evidence that the instrument was accurate for one year after being tested in accordance with approved guidelines. It prescribes similar things about a certificate stating the device was used in accordance with certain guidelines. These provisions are consistent with similar existing provisions. A copy of a plan of installation of a photographic detection device certified by Queensland Transport or Queensland Police Service will also be accepted as evidence of the things shown in it.

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

Section 14 identifies the act to be amended.

Section 15 provides that the chief executive or commissioner may require the nomination of a responsible operator for a vehicle where the owner(s) have previously been involved in a camera detected offence and have failed to identify the driver. If the owner does not nominate a responsible operator, one of the registered owners may be nominated by the registration authority. The responsible operator is to be an individual person or a corporation or other legal entity. If the responsible operator is a natural person, that person must be 16 years of age or more and hold a licence to drive a vehicle.

Section 16 authorises regulations to be made for the nomination of a responsible operator.

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

Section 17 identifies the act to be amended.

Section 18 replicates *sections 13 and 14* in the *Transport Operations (Road Use Management) Act 1995*. Duplicated provisions are required as this act will authorise regulations about the registration of vehicles after the expiry of the *Transport Infrastructure (Roads) Act 1991* on or before 1 July 1997.

PART 5—AMENDMENT OF JUSTICES ACT 1886

Section 19 identifies the act to be amended.

Section 20 authorises a regulation to provide for a penalty for a corporation of five times the monetary penalty applicable to a natural person for the same offence. A similar provision currently exists under the Penalties and Sentencing Act for court imposed penalties. This Section has been included to extend this concept to include infringement notice penalties

for camera detected offences and has been included in the *Justices Act 1886* for clarity of legislation.

A corporate penalty will only be applied to those companies that fail to nominate the driver of a vehicle and is in effect in lieu of the additional demerit point penalty incurred by individuals.

Amendments agreed to in Committee

Clause 8, lines 7 to 9

At page 9, lines 7 to 9—

omit, insert—

‘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*.’.’.