

TRANSPORT LEGISLATION AMENDMENT BILL 1997

EXPLANATORY NOTES

GENERAL OUTLINE

OBJECTIVES OF THE LEGISLATION

The objective of the Transport Legislation Amendment Bill is to provide for a number of amendments to a range of statutes administered by the Department of Transport. This type of Bill is often referred to as an “omnibus Bill” and is directed at correcting anomalies and errors and generally tidying up legislation administered by the department.

REASONS FOR THE BILL

- To clarify under the *Tow Truck Act 1973* and the *Traffic Act 1949* a number of local government powers and functions, to provide clarification of evidentiary provisions used by the Queensland Police Service and to streamline a number of administrative functions undertaken by the Department of Transport.
- The Bill will incorporate into Queensland Legislation provisions of the *Road Transport Reform (Dangerous Goods) Act 1995 (Commonwealth)* as developed by the National Road Transport Commission.
- The Bill will create power in the Transport Operations (Road Use Management) Act 1995 to make regulations establishing an accreditation scheme for the driving instruction industry and transition provisions to the new scheme. The *Motor Vehicle Driving Instruction School Act 1969* will be repealed.
- To Transfer from the *State Transport Act 1960* to the *Transport Operations (Road Use Management) Act 1995* certain sections of the *State Transport Act 1960* concerning road use and transportation of goods by road.
- To introduce into the *Transport Operations (Road Use*

Management) Act 1995 upgraded vehicle inspection procedures and systems to ensure a high proportion of safer vehicles on Queensland Roads and to provide a safer purchasing environment for consumers.

- To repeal the *Motor Vehicles Control Act 1975* and incorporate the powers contained in that Act into the *Transport Operations (Road Use Management) Act 1995*.
- To amend the provisions of the *Transport Operations (Passenger Transport) Act 1994* concerning certain aspects of Operation Accreditation and Driver Accreditation and provisions of service contracts. The Bill will amend legislation concerning the Limousine, Bus and Coach Industries.
- To clarify certain land related aspects and other issues concerning legislation amended by the department.

ESTIMATED COSTS FOR GOVERNMENTAL IMPLEMENTATION

The only additional costs incurred are with road transport reform and a reduction in licensing income to Queensland.

RESULTS OF CONSULTATION

The Proposed amendments have been supported.

NOTES OF PROVISIONS

The proposed amendments depart from FLP's in regard to the pursuit of two policy issues:-

1. Ban the use of wheel clamps
2. Adoption of national scheme legislation for the transport of dangerous goods
3. Development of the motor vehicle safety scheme

BANNING THE USE OF WHEEL CLAMPS

The *Traffic Act 1949* is to be amended to enable the banning of the use of wheel clamps and empower local governments to regulate “off street” parking through agreements with land owners.

1. The Fundamental Legislative Principle

The legislation does not adversely affect rights and liberties, or impose obligations, retrospectively (Section 4(3)(g) *Legislative Standards Act 1992*.)

The Departure

The amendment clause 36 to insert section 72, *Traffic Act 1949* will provide that any agreement entered into either before or after the commencement of the *Transport Legislation Amendment Act 1997*, clause 34, section 60 (the section banning the use of wheel clamps), is void to the extent to which it authorises, or purports to authorise, a person to do an act in contravention of that section.

The reason for the Departure

- The subject of wheel clamping and vehicle removal for trespass on land is based on dubious use of the common law remedy of distress damage feasant as the basis of most private property parking management contracts between parking management contractors and property owners or occupiers. The wheel clamp operator or tow truck operator demands payment of “damages” before the vehicle is released.
- It is necessary to void agreements to the extent to which they authorise or purport to authorise a person to detain vehicles. This is to ensure the overriding public interest in good government, peace and good order by reducing the altercations caused by wheel clamping or vehicle removal in the community and replacing the use of wheel clamps with a formal infringement notice process for parking offences where the rights of individuals are protected by formal legal remedy.

ADOPTION OF NATIONAL SCHEME LEGISLATION FOR THE TRANSPORT OF DANGEROUS GOODS

The *Transport Operations (Road Use Management) Act 1995* is to be amended to include the nationally developed legislation relating to the

transport of dangerous goods. The departures from fundamental legislative principles are made in the national scheme legislation, and are regarded as vital for the effective operation of this legislation.

1. The Fundamental Legislative Principle

The legislation confers power to enter premises only with a warrant. (Section 4(3)(e), *Legislative Standards Act 1992*.)

The Departure

The amendment by clause 113(d) to section 26 (Entry to places), *Transport Operations (Road Use Management) Act 1995* allows an authorised officer to enter a place if the officer reasonably believes a dangerous situation exists in the place and it is necessary for the officer to enter it to take action to alleviate the danger.

The reason for the departure

This FLP is departed from only in the event of a situation involving the transport of dangerous goods by road that is causing (or likely to cause) imminent risk of death or injury to a person, or harm to the environment or to property.

Due to the nature of dangerous goods, the potential for disaster is heightened if a dangerous situation exists and an authorised officer is unable to enter immediately to assess what action is necessary to alleviate the danger.

2. The Fundamental Legislative Principle

The legislation ‘confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer...’ (Section 4(3)(e), *Legislative Standards Act 1992*)

The Departure

The amendment, by clause 116, to section 35 (Power to enter vehicles...), *Transport Operations (Road Use Management) Act 1995* enables an authorised officer to enter a vehicle other than for vehicle inspection if the officer reasonably believes a vehicle in a place that has been entered under section 26 (Entry to places) is used or is being used to transport dangerous goods or a heavy vehicle is being or has been used to transport dangerous goods.

Reason for the Departure

Due to the nature of dangerous goods, the potential risk to public safety and the environment is significant if the goods are not being transported safely. It is therefore necessary for authorised officers to be able to inspect heavy vehicles transporting or that have just transported dangerous goods to ensure compliance with the standards set out in the Act and Regulation.

3. The Fundamental Legislative Principle

The legislation ‘provides appropriate protection against self-incrimination...’ (Section 4(3)(f), *Legislative Standards Act 1992*.)

The Departure

The amendment, by clause 122, to section 51C (Self-incrimination no excuse), *Transport Operations (Road Use Management) Act 1995* departs from the FLP in the following manner:-

Section 51B enables an authorised officer, who reasonably believes a person may be able to give information or produce a document that will help to alleviate the dangerous situation, to require the person to give the information or produce the document unless the person has a reasonable excuse. Section 51C provides that it is not a reasonable excuse that the giving of the information or the providing of the document might tend to incriminate the person. However, the information or document is not admissible in evidence against the person, other than a corporation, in criminal proceedings, i.e. the information can only be used for the purposes of the transport Act.

Reason for the Departure

In the interests of public safety, it is critical that authorised officers know in a dangerous situation what category of dangerous goods are being carried in a vehicle or are contained within a place in order to determine the best method of alleviating the danger.

Although an individual’s rights in relation to self-incrimination are waived, it is important to note that the information provided can not be used as evidence against an individual in criminal proceedings.

The proposed provision, though it contains the deeming provision, also provides defences against that provision.

The proposed provision also ensures effective compliance with the

requirements set out in the Act and Regulation relating to the transport of dangerous goods by road.

4. The Fundamental Legislative Principle

The legislation ‘does not reverse the onus of proof in criminal proceedings without adequate justification...’, (Section 4(3)(d), *Legislative Standards Act 1992*).

The Departure

Amendment by clause 129, to Section 79H (Additional evidentiary aids for transporting dangerous goods), *Transport Operations (Road Use Management) Act 1995* provides that in a prosecution for a contravention of this Act an authorised officer may give evidence that the officer believes certain matters and where the court considers the belief to be reasonable and there is no evidence to the contrary, the court may accept the matter as proved.

Reason for the Departure

The requirement that the court accept the evidence of the documents or markings to the effect that the dangerous good so declared is that dangerous good, is purely on the basis that to do otherwise would be to risk the safety of the authorised officer, the carrier, and any other road user or person within the vicinity of the action of testing the substance in order to determine the true nature of the substance.

The alternative to this is to require samples to be taken for testing to establish the identity and properties of the dangerous goods. To do this would require the vehicle to be either taken to a place where qualified chemists could sample and test the goods, or to wait at the point of interception while such people came to the vehicle and performed on-site sampling and testing.

The vehicle would be required to wait until the goods were identified as safe before being permitted to proceed or alternatively breached for an offence. This would represent a significant cost to industry if this procedure was undertaken each time a vehicle believed to be carrying dangerous goods contrary to regulation was intercepted. In addition, authorised officers are not trained in chemistry or the methods used to take samples of an unknown and presumably dangerous good.

This provision is necessary to ensure effective compliance with the requirements set out in the Act and Regulation relating to the transport of dangerous goods by road.

5. The Fundamental legislative Principle

The legislation ‘does not confer immunity from proceeding or prosecution without adequate justification...’ Section 4(3)(h), *Legislative Standards Act 1992*.

The Departure

Amendment by clause 129 of the Bill to Section 79L (Helping in emergencies or accidents), *Transport Operations (Road Use Management) Act 1995* protects a person from civil liability for an act done honestly and without negligence and without any fee, charge or other reward, for the purpose of helping or attempting to help in a dangerous situation. It does not apply to a person whose act or omission was wholly or partly the cause of the dangerous situation.

The Reason for the Departure

It is necessary to take into account that in a dangerous situation it would be desirable for a person to provide assistance if they were in a position to do so. This assistance may avert a potentially life threatening situation or serious damage to the environment.

MOTOR VEHICLE SAFETY SCHEME

1. The Fundamental Legislative Principle

The legislation ‘confers power to enter premises, and search for or seize documents or other property, only with a warrant...’ (Section 4(3)(e), *Legislative Standards Act 1992*).

The Departure

Amendment by clause 113(e) of the Bill, to section 26, *Transport Operations (Road Use Management) Act 1995* enables an authorised officer to enter a place other than a dwelling house, if the officer reasonably believes a vehicle is offered for sale and entry to that place is open to anyone interested in purchasing the vehicle. Entry is made between sunrise and sunset.

The Reason for the Departure

In regard to entry to places, the powers of authorised officers are

proposed to be expanded to allow entry to all places other than a dwelling house. The intent of this expansion of powers is to ensure enforcement officers are adequately able to deal with the increasingly prevalent practice of “backyard” operations where vehicles are repaired improperly and subsequently sold to unsuspecting buyers. The powers would give authorised officers access to the yard of a private residence, but not any area in or underneath the dwelling house itself.

To ensure people’s liberties are protected, this power is only sought between the hours of sunrise and sunset. It is clearly not the intent of these powers to remove anyone’s access to a chosen means of disposing of their vehicle.

Entry to a dwelling house is limited to when a warrant is obtained.

2. The Fundamental Legislative Principle

The legislation confers ‘power to enter premises, and search for or seize documents or other property, only a warrant...’ (Section 4(3)(e), *Legislative Standards Act 1992*).

The Departure

Amendment by clause 119 to section 46A, *Transport Operations (Road Use Management) Act 1995* will provide that where:-

- (a) A vehicle is offered for sale in a place other than a motor dealer’s premises; and
- (b) A motor safety certificate is not displayed (or the details are misleading); and
- (c) An authorised officer reasonably believes an offence involving the vehicle has been committed; and
- (d) The authorised officer has made reasonable attempts to locate the seller, then the authorised officer may seize the vehicle.

The Reason for the Departure

In recent years, there has been an emerging trend for vehicles to be offered for sale at prominent roadside locations. While some local governments have attempted to remove the practice by introducing by-laws prohibiting this method of sale for visual pollution reasons, in most of the state, vehicles are still able to be sold by this method.

The proposed reforms do not intend to remove an individual’s right to

sell their vehicle in prominent locations. However, as this method of selling vehicles has been identified as a frequent source of disposal of stolen and improperly repaired vehicles, special provisions are proposed to eliminate this avenue of disposal by spurious operators.

These will be that in cases where a vehicle is being sold in a location other than a licensed motor dealer's premises or from a private residence, and that vehicle is either not displaying a Safety Certificate or is displaying a Safety Certificate inconsistent with the condition of the vehicle, that vehicle may be able to be seized if officers are unable to locate and identify the owner of the vehicle after making reasonable attempts to do so.

Reasonable attempts would be to attending to the address identified on the vehicle that is not more than 10 kilometres from the vehicle; or by making a telephone call to a number displayed on the vehicle.

3. The Fundamental Legislative Principle

The legislation does not reverse the onus of proof in criminal proceedings without adequate justification (section 4(3)(d) *Legislative Standards Act 1992*).

The Departure

The amendment by clause 124 of the Bill inserting new sections 57, 57A and 57B ensures that a person who influences the conduct of a driver will be prosecuted if a liability offence is committed. The provision deems the influencing person to have also committed the offence. The provision does not apply if the influencing person is prosecuted pursuant to section 57 or section 57A.

Reason for the Departure

These amendments primarily create vicarious liability. It enables the situation where employers take responsibility for supervising their employees and directors of companies to be responsible for the supervision of the company. It enables them to be free of liability if they can show that they took reasonable precautions and exercised appropriate diligence in their role.

An example of where these provisions are required is when operators of businesses which examine vehicles and issue Certificates of Roadworthiness place similar pressure on employees to provide certificates at the expense of safety considerations and obligations

under the law.

CONSISTENCY WITH FUNDAMENTAL LEGISLATIVE PRINCIPLES

The *Legislative Standards Act 1992* defines fundamental legislative principles (“FLP’s”) as “principles relating to legislation that underlie a parliamentary democracy based on the rule of law.”

CONSULTATION

Other than for minor amendments the following relevant organisations have been consulted.

Department of Justice

Department of Local Government and Planning

Queensland Police Service

Queensland Treasury

Department of Tourism, Small Business and Industry

Department of Mines and Energy

Department of Main Roads

Department of Natural Resources

Local Government Association of Queensland

Local Government Commission

Driver Industry Working Group (Individual Members)

Royal Automobile Club of Queensland

Queensland Road Transport Association Limited

Transport and Distribution Industry Training and Advisory Board

Institute of Automotive and Mechanical Engineers

Taxi Council of Queensland

Bus and Coach Association (Queensland) Inc

North Queensland Limousine Group

Limousine Association of Queensland Inc
Bus Operations Association of (Queensland) Inc
Queensland United Cab Drivers Guild
Caravan Industry Association
Queensland Rail

NOTES ON CLAUSES

PART 1—PRELIMINARY

Clause 1 states that the short title of the Act is to be the Transport Legislation Amendment Act 1997.

Clause 2 provides that the Act commences on a day to be fixed by proclamation.

PART 2—AMENDMENT OF *TOW TRUCK ACT 1973*

Clause 3 states the Act to be amended.

Clause 4 amends section 4.

Section 4(1A) is amended to correct a minor drafting inconsistency. The section has been renumbered as section 4A, and a heading inserted to clarify its legislative link to the existing definition of “motor vehicle” in section 4.

Section 4(2) is amended to correct a minor drafting inconsistency. The section has been renumbered as section 4B, and a heading inserted to clarify its application.

Clause 5 amends section 5 by omitting an expired transitional arrangement. The provision applied to a person who wished to operate a tow truck prior to 31 December 1973.

Clause 6 amends section 12(2)(e) to clarify a licence condition under the Act that a licence holder must not tow a damaged or seized motor vehicle by a licensed tow truck without proper authorisation including a signed towing authority.

Subclause (2) amends section 12(2)(g) to clarify that it is a condition of

every licence issued under the Act that the holder and the driver of a licensed tow truck must take all reasonable precautions to prevent loss or damage to a damaged or seized motor vehicle at all times while the vehicle is in his or her control.

Subclause (3) amends section 12(2)(h) to clarify that it is a condition of every licence issued under the Act that the holder must have an inventory made, and kept at the holder's premises, listing all movable property found in a damaged or seized motor vehicle as soon as the vehicle arrives at the holder's premises.

Subclause (4) amends section 12(2)(i) to clarify that it is a condition of every licence issued under the Act that the driver of the licensed tow truck may only take the damaged or seized motor vehicle to the place nominated in the signed towing authority.

Subclause (5) amends section 12(2)(k) to clarify that it is a condition of every licence issued under the Act that the damaged or seized motor vehicle must be given back to the registered owner or the owner's agent when all reasonable charges for the towing and storage or any authorised repair work have been paid.

Subclause (6) amends section 12(2)(l) to clarify that it is a condition of every licence issued under the Act that the only person that may travel in a licensed tow truck going to, or coming from, a scene of an incident or seizure is the tow truck driver and his or her licensed assistant, the owner (or owner's agent) of the damaged or seized motor vehicle or a passenger who had been travelling in that vehicle.

Subclause (7) amends section 12(2)(m) to clarify that it is a condition of every licence issued under the Act that only the licensed tow truck driver at a scene of an incident or seizure may obtain, or try to obtain, a signed towing authority to tow the damaged or seized motor vehicle.

Subclauses (8) and (9) amend section 12(2)(o) to clarify that it is a condition of every licence issued under the Act that the licensed tow truck driver must not stand the tow truck at a scene of an incident or seizure so as to cause an obstruction to other traffic or for an unreasonable length of time after the signing towing authority has been obtained.

Subclause (10) amends section 12(2)(p) to clarify that it is a condition of every licence issued under the Act that a licensed tow truck must not be

used to tow a damaged or seized motor vehicle while any passenger is in the damaged or seized motor vehicle.

Subclause (11) amends section 12(2)(q), as a consequence of the replacement of section 13 mentioned in clause 7, by updating language in accordance with current drafting practice.

Clause 7 substitutes section 13 with a new section 13 which removes an expired transitional arrangement. The matters addressed in the provision dealt with the types of persons who could travel in a tow truck, or operate or be employed on or in connection with the use of a tow truck prior to 31 December 1973.

Clause 8 amends section 15(c) as a consequence of the replacement of section 13 mentioned in clause 7, by updating language in accordance with current drafting practice.

Clause 9 amends section 19(1), as a consequence of the replacement of section 13 mentioned in clause 7, by updating language in accordance with current drafting practice.

Clause 10 amends section 23.

Subclause (1) amends section 23(1)(a) to clarify that a person must not give or receive or agree to give or receive any valuable thing to or from another person in consideration of any information or advice about an incident or seizure that has happened or the presence of a damaged or seized motor vehicle.

Subclause (2) amends section 23(2) to clarify that the term “valuable thing” does not include any reasonable charge for the towing, salvage or storage of a damaged motor vehicle or the towing and storage of a seized motor vehicle.

Clause 11 amends section 24 to clarify that a person must not use force or undue influence to obtain or attempt to obtain a consent to remove a damaged or seized motor vehicle or a signature on a towing authority.

Clause 12 amends section 40(3) to prescribe that the maximum penalty for an offence committed against the Act is 40 penalty units. This penalty level is now commensurable with the penalty level for an offence committed against the *Traffic Act 1949*.

Clause 13 amends section 43.

Subclause (1) amends section 43(2)(g), as a consequence of the

replacement of section 13 mentioned in clause 7, by updating language in accordance with current drafting practice.

Subsection (2) amends section 43(2)(p) to clarify that a regulation may make provision about investigations being made into the costs incurred, or that should have been incurred, for the towing or salvaging damaged or seized motor vehicles as well as the appointment, and the powers and duties, of persons to make such investigations.

Subsection (3) amends section 43(2)(u) to prescribe that the maximum penalty for an offence committed against a regulation is 20 penalty units. This penalty level is now commensurable with the penalty level for an offence committed against the *Traffic Regulation 1962*.

PART 3—AMENDMENT 3—AMENDMENT OF THE *TRAFFIC ACT 1949*

Clause 14 states the Act that is to be amended.

Clause 15 inserts a new simplified section 5(3)(a) to clarify that a local law may be made by a local government about the driving or leading of animals across a road.

Clause 16 amends section 9.

Subclause (1) repeals the obsolete terms “trolley bus”, “trolley vehicle”, “sidecar”, “specially constructed vehicle”, “tractor or traction engine”.

Subclause (2) relocates the existing definitions of the terms “agricultural implement”, “incapacitated person”, “power-assisted bicycle”, “power-assisted cycle”, “power-assisted tricycle”, “power source”, “propellant”, “toy vehicle” and “wheelchair” from the *Traffic Regulation 1962*. These terms apply to the Act as well as the regulation and have been relocated for ease of understanding and compliance.

Subclause (2) inserts new definitions for the terms “appropriately qualified” and “approved form”, as required by the amendments.

Subclause 2 substitutes the existing definitions of the following terms

principally for the purpose of driver licensing:

- “sidecar” to clarify that a sidecar may be attached to either a motorcycle or velociped
- “specially constructed vehicle” to clarify that a motorcycle or tractor is not a specially constructed vehicle. For ease of understanding, examples of the type of vehicles that are specially constructed vehicles have also been provided
- “tractor” to clarify that a tractor is not a specially constructed vehicle. A tractor of not more than 4.5 t GVM may be driven as of right under a motor car driver's licence or, if it is more than 4.5 t GVM, under the appropriate rigid motor truck driver's licence

Subclause 3 amends the definition of “indication” by omitting a redundant example

Subclause 4 amends the definition of “moped” by substituting a simplified statement that a moped does not include a power-assisted cycle. The existing definition of power-assisted cycle has been relocated from the *Traffic Regulation 1962* to qualify this term.

Subclause 5 amends the definition “motor vehicle” by omitting the obsolete reference to a trolley vehicle.

Subclause 6 amends the definition “owner” by omitting the redundant reference to section 45A omitted by these amendments.

Subclause 7 amends the definition “vehicle” to clarify that a wheelchair is not a vehicle under the Act.

Clause 17 amends section 10 to provide for a simplified arrangement for the appointment of authorised persons by the chief executive, by removing the limitation on such appointments to officers of the public service only. It will allow any appropriately qualified person, such as a crown employee and a person employed in a government agency and acting on behalf of the department, to be appointed as an authorised officer. A definition for the expression “appropriately qualified” has been provided, see clause 16.

Clause 18 replaces section 11 and inserts a new section 11(1) to clarify that the chief executive is a superintendent of traffic, and the chief executive may appoint an appropriately qualified person to be a superintendent of traffic.

Clause 18 inserts a new section 11(2) to clarify that the commissioner of

police is a superintendent of traffic and that the commissioner may appoint a police officer or an appropriately qualified officer of the public service to be a superintendent of traffic.

Clause 19 amends section 16A.

Subclause 1 amends section 16A(1) by amending the existing definition of “breath analysing instrument” to clarify that only an instrument approved by regulation may be used to find out the concentration of alcohol in a person's blood by analysing a specimen of a person's breath.

Subclause 2 also amends section 16A(1) by amending the existing definition of “breath test” to clarify that such a test may only be performed on a specimen of breath using a device that has been approved by regulation.

Subclause 3 inserts a new section 16A(1A) clarifying the circumstance under which a person, who has been required to provide a specimen of breath for a breath test or analysis or a specimen of blood for a laboratory test, will be taken not to have provided the specimen.

Subclause 4 amends section 16A(2) clarifying that a person has a legal obligation to provide a specimen of breath for a breath test when required to do so by a police officer. This is now consistent with the legal obligation of a person who has been arrested, or has been taken to a police station or other authorised place, to provide a specimen of breath for analysis or a specimen of blood for a laboratory test.

Subclause 5 amends section 16A(2A) clarifying that a person has a legal obligation to provide a specimen of breath for a breath test when required to do so by a police officer. This is now consistent with the legal obligation of a person who has been arrested, or has been taken to a police station or other authorised place, to provide a specimen of breath for analysis or a specimen of blood for a laboratory test.

Subclause 6 inserts a new section 16A(2B) to clarify the circumstances under which the provisions of section 16A(1C) may be applied to authorise a police officer to require a person to provide a further specimen of breath, or as many specimens of breath as the officer considers reasonably necessary, to enable the test to be satisfactorily carried out.

Subclause 6 inserts a new section 16A(2C) to clarify that a police officer may require a person to provide as many specimens of breath as the officer

considers reasonable necessary to be given to enable a test to be satisfactorily carried out on a specimen that the person has been required to provide under section 16A(2) or (2A).

Subclauses 7 and 8 amend section 16A(3) clarifying that a person has a legal obligation to provide a specimen of breath for a breath test when required to do so by a police officer. This is now consistent with the legal obligation of a person who has been arrested, or has been taken to a police station or other authorised place, to provide a specimen of breath for analysis or a specimen of blood for a laboratory test.

Subclause 9 and 10 amend section 16A(4) to clarify the circumstances under which a requirement for a specimen of breath shall not be made under section 16A(2) or (2A).

Subclause 11 to amend section 16A(5) to clarify that if a person who is required to provide a specimen of breath for a breath test under section 16A(2) or (2A) at a police station or other place by a police officer declines to go to the station or other place, may be taken by the officer, using such force as is necessary.

Subclauses 12 ,13 and 14 amend section 16A(5A) to clarify that if a person, who has been required by a police officer to provide a specimen of breath or to provide the specimen of breath in the manner directed by the police officer, fails to do so, the person then commits an offence.

Subclause 15 substitutes section 16A(5B)(a) to clarify that a person does not commit an offence under section 16A(5A) if the person, immediately after being required to provide a specimen of breath, produces to the police officer a medical certificate in the approved form stating a reason why the person can not comply with that requirement.

Subclauses 16, 17 and 18 amend section 16A(6)(b) to clarify that if a person, who has been required to do so by a police officer under section 16A(2) or (2A), fails to provide a specimen of breath or fails to provide the specimen of breath in the manner directed by the police officer or declines to wait for a reasonable length of time to enable the test to be carried out, the person may be taken to another authorised place where the person will be required to provide a specimen of breath for analysis or a specimen of blood for a laboratory test.

Subclauses 19 inserts a new section 16A(6)(ba) to clarify that if a police officer reasonably suspects that a person, who produced a certificate

mentioned in section 16A(5B)(a) immediately after being required to provide a specimen of breath, is affected by liquor or a drug, the police officer may take the person to another authorised place where the person will be required to provide a specimen of blood for a laboratory test.

Subclause 20 amends section 16A(8C) to clarify that if a person who may be required to provide a specimen of breath under section 16A(2) or (2A) is at a hospital for treatment they may be required by a police officer to provide a specimen of breath for analysis or a specimen of blood for a laboratory test provided a doctor who is familiar with the person's injuries approves of the requirement.

Subclause 21 amends section 16A(8D) to clarify the circumstances under which a requirement for a specimen of breath or blood shall not be made under section 16A(8C).

Subclause 22 amends section 16A(8E) to clarify that a person shall be required by a police officer to provide a specimen of blood for a laboratory test if the person produces a certificate mentioned in section 16A(5B)(a) stating a reason why the person can not comply with a requirement to provide a specimen of breath.

Subclause 23 amends section 16A(8J) by omitting the existing paragraphs (b) and (c) and inserting a new paragraph (b) to clarify that neither the police officer who arrested the person for an offence mentioned in section 16A(8) or the police officer who is to operate the breath analysing instrument can require the person to provide a specimen of breath for analysis.

Subclause 24 inserts a new section 16A(8L) to clarify the circumstances under which the provisions of section 16A(8M) may be applied to authorise a police officer to require a person to provide as many specimens of breath or blood as the officer considers reasonably necessary, to enable the analysis to be satisfactorily carried out.

Subclause 24 also inserts a new section 16A(8M) to clarify the circumstances under which the provisions of section 16(A)(8) or 16(A)(8C) may be applied to authorise a police officer to require a person to provide as many specimens of breath or blood as the officer considers reasonably necessary, to enable an analysis to be satisfactorily carried out.

Subclause 25 amends section 16A(15) by omitting a redundant reference

to the prescribing of particulars that may be included on a certificate used under this section.

Subclause 26 omits section 16A(15A).

Subclause 27 amends section 16A(15B) by omitting the redundant paragraph (f).

Subclause 28 omits section 16A(15C).

Subclause 29 amends section 16A(16C) by omitting the redundant paragraph (d).

Subclause 30 omits section 16A(16D).

Subclause 31 amends section 16A(22) to clarify its legislative link to the new section 16(22AA) inserted by these amendments.

Subclause 32 inserts a new section 16A(22)(ba) to clarify that a person who has been arrested for an offence under section 16(1), even though he or she has not been required to provide a specimen of breath or a specimen of blood because of a prescribed reason, may have his or her driver's licence dealt with under section 16A(22AA).

Subclause 33 amends section 16A(22E) by omitting subsections 9—9B and inserts the words “this section”.

Subclause 34 amends section 16A(22)(AA) to prescribe the time when a 24 hour suspension of a driver's licence of a person mentioned in section 16A(22) will commence. This matter was addressed inadequately under section 16A(22) and has been rewritten incorporating current drafting styles for ease of understanding.

Clause 20 replaces section 16C.

Section 16C(1) inserts a new section 16C(1) clarifying that section 16C applies to a person (the “**offender**”) convicted at a prescribed place of an offence under section 16.

Clause 20 also inserts a new section 16C(2) stating that the justices who convicted the offender may order the offender to attend and complete a training program during the period the offender is disqualified from holding or obtaining a driver's licence in addition to any other penalty or imprisonment imposed on the offender.

Clause 20 further inserts a new section 16C(3) prescribing the person who is to approve the training program as well as the person who is to

conduct the program.

Clause 20 further inserts a new section 16C(4) prescribing the person who is to give a written notice to the offender directing the offender to attend the program on a stated day and time at a stated place.

Clause 21 amends section 20A.

Subclause 1 amends section 20A(2A) by replacing the redundant term 'prescribed' with 'approved' as required by the amendments.

Subclause 2 inserts a new section 20A(3A) clarifying that even though a court makes an order directing that a person who has been convicted of an offence under section 16 or 16A(5A) be issued with a provisional licence, the person is still disqualified from holding or obtaining a driver's licence other than that provisional licence, and the person may not drive a motor vehicle during the period of that disqualification unless the person applies for and obtains the provisional license the court ordered to be issued.

Clause 22 amends section 20B(2) by replacing the redundant term 'prescribed' with 'approved' as required by the amendments.

Clause 23 amends section 37 by inserting a new section 37(3) to clarify that an application for the closure of a road for a private commercial purpose must be made in writing and accompanied by the prescribed fee.

Clause 24 amends section 44.

Subclause 1 amends section 44(5)(c)(iv) clarifying that a thing no longer required to be held in police custody may be released to the owner of the thing (the "**applicant**") provided all outstanding fees have been paid and the applicant has signed a receipt accepting the return of the thing.

Subclause 2 inserts a new section 44(6A) clarifying section 44(6B) applies when a police officer has lawfully seized a vehicle that is causing, or likely to cause, a danger, hindrance or obstruction to other traffic in an off-street regulated parking area.

Subclause 2 also inserts a new section 44(6B) clarifying that a police officer may only cause a vehicle mentioned in section 44(6A) to be removed or detained in a place for safe keeping by a tow truck licensed under the *Tow Truck Act 1973* that is being operated by a person holding a driver's certificate.

Clause 25 amends section 44B by inserting a new section 44B(4)(a)(iii) prescribing an official traffic sign, applying to parking throughout a traffic

area of a local government, may also indicate the types of vehicle that a person may park for a maximum specified time in that area..

Clause 26 inserts a new section 44BB(1) clarifies this section applies if a local government and an occupier (a person who owns, or has an interest in, an area of land) have an arrangement provided for under section 44BA(5) allowing the local government to control the land as an off-street regulated parking area.

Clause 26 inserts a new section 44BB(2) clarifying that an agreement establishing an arrangement mentioned in section 44BB(1) must provide for the matters prescribed under a regulation.

Clause 27 amends section 44D by replacing section 44D(3)(b) to clarify that the notice to be attached to a vehicle for a parking offence must be an infringement notice under the *Justices Act 1886*, part 4A.

Clause 28 omits redundant sections 44F, 4G and 4H. These provisions are now obsolete as part 4A of the *Justices Act 1886* controls all matters dealing with the issue of infringement notices under all Acts.

Clause 29 omits redundant section 45A. These provisions are now obsolete as part 4A of the *Justices Act 1886* controls all matters dealing with the issue of infringement notices under all Acts.

Clause 30 omits section 48 and inserts a new section 48 which has been rewritten to remove a number of redundant administrative arrangements, and to simplify the existing scheme for the keeping of records of particulars of instruments issued under the Act by the chief executive, commissioner or a superintendent.

The new section 48(1) prescribes the place where a record of the particulars of an instrument issued under the Act by a responsible person must be kept.

The new section 48(2) prescribes the place where a record of the particulars of a person's driver's licence (including the person's traffic history) must be kept.

The new section 48(3) prescribes the person who is taken to have custody of the record mentioned in both sections 48(1) and 48(2).

The new section 48(4) provides that if the person who has custody of the record certifies that an extract from, or a copy of, any entry of any

particulars of the record is an extract from or copy of the record, it is taken to be evidence of the particulars in the record.

The new section 48(5) provides definitions for the terms “instrument”, “issues” and “responsible person” for the purposes of this section.

Clause 31 amends section 49.

Subclause 1 amends section 49(1)(a) by omitting the redundant reference to a person having custody of the record of the particulars of drivers' licences as a consequence of the insertion of the new section 48 mentioned in clause 30.

Subclause 2 amends section 49(1)(b) by substituting the obsolete expression ‘officer ordinarily’ with the expression ‘person’ as a consequence of the insertion of the new section 48 mentioned in clause 30.

Subclause 3 replaces section 49(1)(f) which has been rewritten as new sections 49(1)(f) and (1)(fa) as a consequence of the insertion of the new section 48 mentioned in clause 30.

Subclause 4 inserts a new section 49(1)(ga) to clarify that a certificate signed by the chief executive about a person's traffic history on a stated date may be accepted as evidence of the matters stated in it.

Subclause 5 amends section 49(1)(k) by substituting the obsolete expression ‘officer ordinarily’ with the expression ‘person’ as a consequence of the insertion of the new section 48 mentioned in clause 30.

Clause 32 amends section 57.

Subclause 1 amends section 57(2)(a), as a consequence of the amendment of section 57(2)(b) to correct a minor drafting inconsistency.

Subclause 2 replaces the existing section 57(2)(b) with a new simplified section 57(2)(b) clarifying the particular court that a person, depending where the person is residing at the time of the application, may apply to for the removal of the person's absolute disqualification, or a disqualification imposed for a period greater than 2 years.

Clause 33 amends section 58(1) clarifying that the register that a person who repairs and paints motor vehicles for reward is required to keep about pertinent details of the particular repairs and painting carried out on motor vehicles at the person's place needs only to be in writing instead of being in the prescribed form.

Clause 34 replaces section 60.

Clause 34 inserts a new section 60(1) to clarify that, unless a person has the consent of the owner, a person must not drive, or in any way use, a vehicle on a road, interfere with the mechanism or equipment of a vehicle, or the harness or other equipment attached to an animal.

It further clarifies that a person must not, unless the person has the consent of the owner, detain a vehicle that is parked or standing in a parking space on a road or elsewhere by attaching an immobilising device to, or by placing an immobilising device near, the vehicle so as to prevent the vehicle from being driven out of the space. For ease of understanding, an example has been provided to illustrate how an immobilising device may be placed near the vehicle.

Clause 34 also inserts a new section 60(2) to clarify that section 60(1) does not apply to a police officer while exercising a power or performing a function under the Act or any other Act, or another person acting under a lawful direction of a police officer.

Clause 34 inserts a new section 60(3) to clarify that section 60(1)(c) does not apply to a person lawfully executing a warrant of execution against the motor vehicle.

Clause 34 inserts a new section 60(4) to clarify that the application of this section does not limit a person who holds a security interest in a vehicle from exercising a power over the vehicle.

Clause 34 inserts a new section 60(5) to clarify that the common law remedy of distress damage feasant no longer applies to trespass of a vehicle on land but only to the extent it is inconsistent with section 60(1)(c).

Distress damage feasant is a common law remedy to an action in trespass to land (the direct physical interference by a person of another person's exclusive possession of an area of land). It permits the owner or occupier of the land to seize the object which is causing the damage, and to impound it until the owner or user of the object pays for the damage caused.

Clause 34 inserts a new section 60(6) to clarify that the right of a person to remove, or cause to be removed, a vehicle that is parked or left standing on the person's land has not been limited by the application of section 60(5).

Clause 34 inserts a new section 60(7) to clarify that section 60(6) does not apply to a person who has illegally detained a vehicle parked on a road or elsewhere by the use of an immobilising device.

Clause 34 inserts a new section 60(8) to provide individual definitions of the terms “detain”, “immobilising device”, “interfere with”, “owner” and “security interest” for the purpose of this section.

Clause 35 inserts a new section 69 to allow the chief executive to approve forms for use under the Act.

Clause 36 inserts a new Part 9 and new sections 71 and 72.

Clause 36 also inserts a new section 71(1) to clarify that section 71 applies if there was a prescribed form in use immediately before this section commences, or an approved form is required to be used after the commencement of this section.

Clause 36 also inserts a new section 71(2) to clarify that a prescribed form for a matter in use immediately before the commencement of this section is to be accepted as an approved form for the matter after the commencement of this section.

Clause 36 also inserts a new section 71(3) to clarify that section 71 will expire 6 months after the section commences.

Clause 36 also inserts a new section 72(1) to clarify that an agreement, entered into before or after the commencement of this amending Act between a private parking control organisation and a person who owns or has an interest in an area of land, that establishes an arrangement to allow the organisation to provide parking services on the land as an off-street regulated parking area is void to the extent that an authorised, or purported to authorise, a person to interfere with, or detain a vehicle on the land.

Clause 36 also inserts a new section 72(2) to clarify that a party to an agreement, which is wholly or partly void because of section 72(1), is not entitled to recover any money due for the providing of the services under the void agreement from the person who owns or has an interest in the land.

This section further clarifies that the party to the agreement must repay to the person any money received both before and after the commencement of this section for services that were to be provided either before or after its commencement.

Clause 36 also inserts a new section 72(3) to clarify that a person may recover any money not repaid by the party as required under section 72(2) as a debt.

PART 5 AMENDMENT OF *TRANSPORT INFRASTRUCTURE ACT 1994*

Clause 37 states the Act to be amended.

Clause 38 amends section 75(2) by omitting subsection (c). The chapter will not then apply to an amusement railway that is not connected to a railway used to transport passengers, by right or reward.

Clauses 39, 40, 41, 42 and 43 apply the *Transport Planning and Coordination Act 1994* to appeals against and reviews of decisions.

Clause 44 substitutes section 131 with a new section 131 clarifying the mechanism for the State to lease land to railway managers for new rail corridors. The section applies to land that is acquired for use by a railway manager. The section also applies to land that was identified as non rail corridor land under Section 215 of the *Transport Infrastructure Act 1994* or surrendered by another railway manager.

For land that is acquired for use as rail corridor, the section now makes a distinction between land that can be returned to unallocated State land and land that needs to be dealt with directly by the State in another form of tenure. For land that is acquired and able to be returned to unallocated State land, the Governor in Council must lease the land to the State (in perpetuity and for peppercorn rental) under the *Land Act 1994* section 17. For land that is unable to be returned to unallocated State land (for example Commonwealth land leased to the State) the land may be dealt with directly by the State.

Previously a fixed term of 100 years was envisaged where the railway manager agreed to meet the full costs of an acquisition. The section has been amended to provide more flexibility by enabling terms of less than 100 years with an option of a further term of up to 100 years prescribed by Regulation.

Section 336(2)(a) of the *Land Act 1994* does not apply to an amendment of the sublease. Variations to the corridor held by a railway manager under the sublease will be frequent. This provision will enable the area of a sublease to be varied without the need for surrender and reissue of sublease documentation.

A broad inclusive definition of “acquires” is provided to clarify that other land including non corridor land and surrendered existing rail corridor land may be dealt with under this section.

Clause 45 amends section 134 to clarify that the railway manager for the relevant rail transport infrastructure is able to carry out their functions and responsibilities despite the land not being owned or leased by the manager and that the manager and other railway operators may operate rolling stock on the infrastructure.

Clause 46 amends section 140 clarifying that if a railway is built over or under a road the authority which previously maintained the road retains that responsibility.

Clause 47 substitutes section 142 with a new section 142 specifying that the chief executive may allow a local government to extend a road across rail corridor land. This recognises the State's responsibility for the integrity of the rail corridor. Such an approval may be subject to conditions and is taken not to breach the States obligation's under the lease/sublease.

Clause 48 amends section 144 clarifying that interference with the railway under a permission or authorisation given under the Act is permissible.

Clause 49 amends section 151 to specify, for consistency with other provisions, that the chief executive's permission rather than the Minister's permission is required to construct a non-accredited railway on a watercourse.

Clause 50 amends section 191 to provide that those penalties received or recovered under the SETON system of the *Justices Act 1886* relating to vehicle parking offences are to be paid to the relevant Government owned Corporation.

Clause 51 applies the *Transport Planning and Coordination Act 1994* to appeals against and reviews of decisions.

Clause 52 amends section 214 to specify that Section 336(2)(a) of the *Land Act* does not apply to an amendment of the sublease. This is to enable the area of the sublease to be varied without the need for surrender and reissue.

Clause 53 amends Schedule 1 to replace “owner” with the correct terminology of “manager”.

Clause 54 amends Schedule 3 to insert a number of definitions to further clarify provisions of the Act.

PART 5 AMENDMENT OF *TRANSPORT OPERATIONS (MARINE POLLUTION) ACT 1995*

Clause 55 states the Act to be amended.

Clause 56 omits section Part 15, division 3 of the Act.

PART 6 AMENDMENT OF *TRANSPORT OPERATIONS (MARINE SAFETY) ACT 1994*

Clause 57 states the Act to be amended.

Clause 58 amends section 110 of the Act by increasing the membership of the Marine Board from 5 to 6 members.

Clause 59 inserts section 113A of the Act giving the Chairperson or the member presiding in the absence of the Chairperson, a casting vote if the members of the board divide equally when deciding a matter.

Clause 60 amends section 115 of the Act by ensuring a board member with a direct or indirect financial interest in an issue being considered or about to be considered by the board, and the interest could conflict with the proper performance of the member's duties about the consideration of the issue, the member must disclose the nature of the interest to the Board.

The Board must inform the Minister or the chief executive of the conflict of interest.

Clause 61 amends section 203(1) of the Act by allowing an appeal to a District Court against a decision concerning the approval of the design of a

ship or part of a ship.

PART 7 AMENDMENT OF THE *TRANSPORT OPERATIONS (PASSENGER TRANSPORT) ACT 1994*

Clause 62 specifies that part of the Act to be amended.

Clause 63 omits sections 12 and 13 and inserts a new section 12. Operator Accreditation is extended to all operators of public passenger services unless exempted by the Act or by regulation. Currently, Operator Accreditation is only required to certain categories of public passenger services. This clause ensures that all providers of public passenger services will have to meet minimum requirements in terms of safety and customer service.

Clause 64 substitutes a new section 24 and omits section 25 thereby extending Driver Authorisation to all drivers of public passenger services unless exempted by the Act or by regulation. Currently, Driver Authorisation is only required to certain categories of public passenger services. This clause ensures that all providers of public passenger services will have to meet minimum requirements in terms of safety and customer service.

Clause 65 amends section 37 and removes the requirement for a service contract holder to hold Operator Accreditation. Some holders of service contracts will not be required to hold Operator Accreditation.

Clause 66 inserts a new section 38A which provides for temporary service contracts to have a maximum period of two years.

Clause 66 also inserts a new section 38B which clarifies that the chief executive may enter into service contracts for the State and also that the chief executive may enter into temporary service contracts to ensure continuity of service or to establish a new public passenger service. This extends the current ability of the chief executive to enter into temporary service contracts only to ensure continuity of service.

Clause 67 amends section 40(1) and replaces the word “operator” with the word “holder”. This clarifies that the section applies to the holder of the

service contract.

Clause 68 amends section 41(1)(f) to (k) replaces the word ‘operator’ with the word ‘holder’. This clarifies that the section applies to the holder of the service contract.

Clause 69(1) amends section 43 and replaces the word ‘type’ with the word ‘kind’. This provides consistency with other sections of the Act.

Subclause 2 amends section 43(b) by omitting the word “an” and inserting “a written”.

Subclause 3 amends section 43(a) by omitting the words “an operator” and inserting the words “holder of a service contract”.

Clause 70 (1) amends section 44(2) by substituting a new section 44(2) which clarifies that the provision of the five year contract is subject to the provisions regarding temporary service contracts and provisions relating to termination of service contracts for breach of the contract conditions or unsatisfactory performance specified in sections 47 and 53 of the *Transport Operations (Passenger Transport) Act 1994*.

Subclause 2 omits section 44(3) and inserts a new subsection (3) ensuring that subsection (1) is subject to sections 47 and 53.

Clause 71 amends section 46 by replacing the word ‘operator’ with the word ‘holder’. This clarifies that the section applies to the holder of the service contract. In addition, this clause removes any legislative requirement to undertake a mid term review for a temporary service contract. Such reviews are considered an administrative burden on both the Government and operators when contracts are for only a short period.

Clause 72 amends section 47 replacing the word ‘operator’ with the word ‘holder’. This clarifies that the section applies to the holder of the service contract.

Clause 73 amends section 48 replacing the word ‘operator’ with the word ‘holder’. This clarifies that the section applies to the holder of the service contract.

Clause 74 amends section 50 (2) and (3) by replacing the word ‘operator’ with the word ‘holder’. This clarifies that the section applies to the holder of the service contract.

Clause 75 amends section 51 replacing the word ‘operator’ with the word ‘holder’. This clarifies that the section applies to the holder of the service contract.

Clause 76 amends section 52 (3) (a) by replacing the word ‘operator’ with the word ‘holder’. This clarifies that the section applies to the holder of the service contract.

Clause 77 (1) amends section 55 clarifying that Part 2 of Chapter 6 applies to scheduled passenger services as defined in the *Transport Operations (Passenger Transport) Act 1994*. The term ‘scheduled passenger service’ is defined in the Act. ‘Scheduled service’ is not defined in the Act.

Subclause 2 also clarifies when the chief executive is obliged to seek submissions from the public for the operation of a public passenger service under a service contract by linking any public offer with the non-existence of any person with an entitlement under section 56 of the Act.

Subclause 3 replaces the word ‘submissions’ with ‘offers’ to ensure consistency throughout the Act.

Clause 78 omits section 56 and substitutes a new section 56. The new section states when a person will have an entitlement to make a first offer for a service contract for scheduled passenger services. For an entitlement to exist, a service contract area or route must have been declared under section 42 of the *Transport Operation (Passenger Transport) Act 1994*. An operator must be providing a scheduled passenger service of the same kind that is to be provided under the proposed new contract. There must be no existing operator providing a service under a contract. All operators with an entitlement will be entitled to make an offer.

The clause specifies that a operator will not have an entitlement if the operator operates under a service contract that states that there is no right of renewal. Entitlements under this clause will also not apply if performance under the contract has been unsatisfactory and the service contract holder has been informed that performance has been unsatisfactory or if the service contract holder surrenders the contract. Entitlements under this clause will also not extend to subcontractors of service contract holders.

Clause 79 omits section 57 and substitutes a new section 57. The new section states the process to be followed when inviting an operator with an entitlement to offer for a new service contract.

Clause 80 omits section 58 of the *Transport Operations (Passenger Transport) Act 1994*.

Clause 81 omits section 59 and substitutes a new section 59. The new section extends the current section 59 of the *Transport Operations (Passenger Transport) Act 1994* to require the chief executive to have regard to certain things when deciding whether an offer for a service contract is acceptable.

Clause 82 omits section 60(2) and substitutes new sections 60(2) to 60(4). The new section imposes a process to be followed when amending a service contract area. The chief executive will be required to give the holder of a service contract and any other operator (for example, an operator operating under a subcontract agreement with the holder of a service contract) a reasonable opportunity to make a written representation of the chief executive offer within 28 days to being notified of the decision. The chief executive is obliged to consider the representations before making any decision. If a decision is taken to extend an area, the existing service contract holder must be given first opportunity to provide the service in the amended service contract area.

If the offer made by the existing service contract holder is not acceptable to the chief executive, particularly given the requirements specified in clause 21, or the service contract holder does not respond within 60 days, the chief executive must invite the public to offer to provide the service.

Clause 83 amends section 61 and extends the instances in which an operator who is successful in obtaining a service contract can be required to compensate an unsuccessful operator to when a service contract holder is not awarded a service contract for a service contract area or route that was amended under section 60 of the *Transport Operations (Passenger Transport) Act 1994*.

Clause 84 also replaces the word 'operator' with the word 'holder'. This clarifies that the section applies to the holder of the service contract where appropriate.

Clause 84 amends section 62 by providing an offer of a new service contract to an existing service contract holder. The clause amends the existing right to enter into a new service contract embodied in section 62 by stating the chief executive must decide if a service contract holder's performance has been satisfactory.

The clause also makes amendments to section 62(2)(c) of the Act which relates to the making of an offer for a new service contract that does not meet or substantially meet the requirements of section 59 of the Act. The requirements of this section must be applied when deciding whether an offer is acceptable and in deciding between two or more offers. This clause reflects that amendment.

The clause also amends section 62(3) replacing the word 'operator' with the word 'holder'. This clarifies that the section applies to the holder of the service contract where appropriate.

Clause 85 inserts a new section 62A in the *Transport Operations (Passenger Transport) Act 1994* that will require a service contract holder whose performance has been unsatisfactory to give formal notice of the unsatisfactory performance. A service contract holder who is not given a notice under this clause will be entitled to an offer for a new service contract under section 62 so long as the proposed service contract area or route remains the same or substantially the same.

Clause 86 inserts a new chapter 6, part 2, division 3 and inserts a new section 62B which allows the chief executive to enter into temporary service contracts that are expressly to ensure continuity of service either by inviting offers from the public or from one or more operators. The clause also provides that any renewal rights that a service contract holder would ordinarily have under section 62 (Offer of a new service contract) will not apply unless the temporary service contract commenced immediately after the expiration of an existing five year service contract and the holder of the temporary service contract was the holder of the existing five year contract and section 62 applies to the existing five year contract.

Clause 87 amends section 67(2) replacing the word 'operator' with the word 'holder'. This clarifies that the section applies to the holder of the service contract where appropriate.

Clause 88 amends section 73(2) explicitly requiring the chief executive to renew a taxi service licence if the licence holder's performance under the licence has been satisfactory.

Clause 89(1) amends section 74 amending the conditions that must be included on a taxi service licence so that a taxi that is being used as a substitute taxi vehicle does not necessarily require the display of a distinctive registration plate. This will allow operators of taxis in small towns throughout Queensland to receive approval to operate specialist

vehicles when conditions warrant (for example approval may be given to use four wheel drives in wet weather) without the need to register them as taxis.

Subclause 2 also replaces the word ‘holder’ with the word ‘operator’. This clarifies that the section applies to the operator of the taxi service licence. In some instances, the operator of the licence may be a different person to the holder of the licence.

Subclause 3 amends section 74(4) by omitting the expression “for subsection (4)” .

Subclause 4 amends section 74 (5) and (6) by extending the requirement to comply with licence conditions to drivers of taxi services and requires drivers to be informed of licence conditions through the provision of a written notice that must be kept inside the taxi stating the area within which the taxi may be operated and any other restrictions to which the licence is subject. It also omits the word “maximum” setting a mandatory penalty of 40 penalty units.

Clause 90 inserts a new section 74B providing a power to make a regulation relating to substitute taxis.

Clause 91 amends section 86 explicitly requiring the chief executive to renew a limousine service licence if the licence holder's performance under the licence has been satisfactory.

Clause 92(1) amends section 87 concerning the conditions that must be included on a limousine service licence.

Subclause 2 replaces the word ‘holder’ with the word ‘operator’. This clarifies that the section applies to the operator of the limousine service licence. In some instances, the operator of the licence may be a different person to the holder of the licence.

Subclause 3 omits the words “for subsection 4”.

Subclause 4 also extends the requirement to comply with licence conditions to drivers of limousine services and requires drivers to be informed of licence conditions through the provision of a written notice that must be kept inside the limousine stating the area within which the limousine may be operated and any other restrictions to which the licence is subject.

Clause 93 inserts a new section 87A providing a power to make a

regulation relating to substitute limousines.

Clause 94 omits chapter 10 of the Act and inserts a new chapter 10 dealing with review of and appeals against decisions.

Clause 95 provides that a police officer is automatically an authorised person under the *Transport Operations (Passenger Transport) Act 1994* and the chief executive may appoint certain other persons to be authorised persons.

Clause 96 amends section 113 so that an authorised person must produce an identity card as soon as practicable rather than at the first reasonable opportunity.

Clause 97(1) amends Section 116 to enable persons other than employees of a railway manager or operator to be appointed a authorised persons. Where it is intended that authorised persons for railways be provided with powers pursuant to the *Transport Infrastructure Act 1994* to conduct investigations of incidents the person may be an employee of a railway manager or employee or another person. Where it is intended that the authorised persons be granted powers pursuant to the *Transport Operations (Passenger Transport) Act 1994* these persons may be employees of a railway manager or operator or a person prescribed by regulation.

Subclause 2 amends Section 116 to enable persons other than employees of a railway manager or operator to be appointed as authorised persons.. Where it is intended that authorised persons for railways be provided powers pursuant to the *Transport Infrastructure Act 1994* to conduct investigations of incidents the person may be an employee of a railway manager or employee or another person. Where it is intended that the authorised person be granted powers pursuant to the *Transport Operations (Passenger Transport) Act 1994* these persons may be employees of a railway manager or operator or a person prescribed by regulation.

Clause 98 amends Section 117 to provide consequential amendments regarding identity cards for authorised persons for railways.

Clause 99 omits section 124 and allows an authorised officer to make a requirement of a person in control of a vehicle without the authorised officer having to enter or board the vehicle.

Clause 100 inserts section 124A giving authorised persons the power to require a limousine driver to move the limousine to another place if the authorised person reasonably believes that the limousine is plying or

standing for hire other than at a place where it is authorised to do so. The authorised person may require the driver to move the limousine to a place where it may lawfully ply or stand for hire. It is made an offence to fail to remove the limousine once this warning has been received without a reasonable excuse.

Clause 101 inserts the word 'against' in section 125 to fix an error in drafting.

Clause 102 amends section 128 by giving authorised persons the power to require a person who is able to give information about an offence against the *Transport Operations (Passenger Transport) Act 1994* or an offence relating to the operation, maintenance or repair of a public passenger vehicle to attend the office of the authorised person at a stated reasonable time to give the information. The authorised officer must warn the person it is an offence to fail to give the requested information or attend as required by the notice.

Clause 103 inserts new Section 143A which was a provision previously included in the *Transport Infrastructure (Rail) Regulation 1996* and which is now more appropriately located in the principal legislation with other ticketing provisions. The section provides that for a person to buy or use a concessionary ticket the person must be entitled to the concession. A person must not buy or use a concessionary ticket unless carrying evidence of their entitlement to the concession. This evidence must be produced on the demand of an authorised person.

Clause 104 inserts section 143B providing a power to enter into funding arrangements for a transport purpose other than under a service contract.

Clause 105 amends section 148 to allow inquiries to be made about a person's suitability to hold driver authorisation. This addresses an omission made in error in the original drafting.

Clause 106 makes a consequential amendment in relation to section 62 (Offer of a new service contract) of the *Transport Operations (Passenger Transport) Act 1994*.

Clause 107 amends the category of reviewable decisions by clarifying the category of persons who may appeal or seek a review of a decision and omitting section dealing with stays of decisions.

Clause 108 amends the dictionary of terms used in the Act.

PART 8 AMENDMENT OF *TRANSPORT OPERATIONS (ROAD USE MANAGEMENT) ACT 1995*

Clause 109 states the Act to be amended.

Clause 110 amends section 3(1) and clarifies the overall objectives of the amended Act in a way that makes it clear that they include matters concerning use and operation of vehicles in a public place in addition to the road network.

Subclause 2 amends section 3(2) by ensuring performance standards apply to vehicles, drivers and road users.

Clause 111 inserts Part Heading entitled Part 1A—Approvals.

Clause 111 also inserts new sections 17A ,17B and 18. These heads of power provide a regulation making power for the granting, issuing, renewing or refusal to grant or renew various licences, certificates, accreditations or other approvals.

Clause 112 amends section 19 prescribing grounds for suspending or cancelling one of those licences, certificates, accreditations or other approvals.

Clause 113 amends section 26 further defining the limitations on certain places able to be entered by authorised officers.

Clause 114 inserts a new section 33(3A) rationalising the section in the Act requiring heavy vehicles to move a reasonable distance to enable the vehicle to be weighed or inspected. Presently the vehicle may be moved a certain distance in any direction from the point at which it has been stopped. The amendment enables it to be moved to a point within that distance of the route the vehicle will take to its destination. This is likely to result in less inconvenience for drivers, operators and enforcement agencies.

Clause 115 substitutes a new section 34(1) relating to the power of an authorised officer to inspect a vehicle stationary on a road or stopped pursuant to sections 26, 31 or 32.

Clause 116 substitutes a new section 35(1) relating to the power of an authorised officer to inspect a vehicle in a place and the officer believes the vehicle is used to transport dangerous goods and that vehicle may have been used in the committal of an offence.

Clause 117 amends section 37 and broadens the power of authorised officers to prohibit the use of unsafe vehicles on a road to apply to use of unsafe vehicles in public places also. This power is presently in the *Motor Vehicles Control Act 1975* which will soon be repealed. It can only apply until the vehicle is made to conform with the provisions of the amended Act.

Clause 118 amends section 43 by omitting section 43(4)(b) to (d) and inserting section 43(6) (c) and (ii). The amended section confers review and appeal rights on the owner of a forfeited thing. Those review and appeal rights are in the *Transport Planning and Coordination Act 1994*.

Clause 119 inserts a new chapter 3, part 3, division 3A of the *Transport Operations (Road Use Management) Act 1995*. The new division contains additional seizure powers for certain vehicles for sale.

Clause 119 also inserts a new section 46A provides for authorised officers, after having been unable to contact a person identifying themselves as the owner of the vehicle, to seize that vehicle if it is either not displaying a Safety Certificate; or is displaying a Safety Certificate which is inconsistent with either the vehicle or its condition. The section also provides for methods by which notice the vehicle's seizure must be advertised and eventually disposed of if the vehicle is not claimed.

Clause 120 amends section 50 broadening the application of information offences (power to require information) to cover circumstances relating to standards with which vehicles must comply to use the road network, vehicle inspection, the issue of certificates and the approval of premises. The reference to regular inspection is intended to be limited to heavy vehicles as defined in the *Transport Operations (Road Use Management) Act 1995*.

Clause 121 inserts a new chapter 3, part 3, division 5 of the *Transport Operations (Road Use Management) Act 1995*.

Clause 121 also inserts section 50A enabling an authorised officer to issue a remedial action notice to a person whom the officer reasonably believes is contravening the Act or has contravened the Act in circumstances that make it likely that the contravention will be repeated. The notice must specify the provision believed to be being contravened, the grounds for this belief and will require the person to remedy the matters causing the contravention.

The new section sets out formal matters in relation to the notice and makes it an offence for a person to fail to comply with the notice or to remove the notice from a vehicle before the necessary action has been taken.

Clause 122 inserts a new part 4A into chapter 3 of the *Transport Operations (Road Use Management) Act 1995*.

The clause also inserts a new section 51A outlining the application of Part 4A which applies if an authorised officer reasonably believes a dangerous situation exists. A dangerous situation is defined as “a situation involving the transport of dangerous goods by road that is causing or is likely to cause imminent risk of death or injury to a person, or harm to the environment or to property.”

It also inserts a new section 51B which enables an authorised officer to require a person to give information or produce a document if the authorised officer reasonably believes that it will help to alleviate a dangerous situation.

The section makes it an offence for a person to fail to comply with this requirement unless the person has a reasonable excuse.

Clause 122 inserts a new section 51C which states that in relation to section 51B (Additional power to require information or produce a document), a reasonable excuse does not include self incrimination.

This section also provides that the information given to an authorised officer can then not be used as evidence against an individual in criminal proceedings except for an offence set out in sections 52 and 53 relating to giving false or misleading statements or false, misleading or incomplete documents.

The substantive provisions of section 51C do not apply to a corporation.

This section forms part of the nationally uniform dangerous goods legislation prepared as part of the 1992 Heads of Government Agreement.

Although an individual's rights in relation to self-incrimination are waived, it is important to note that the information provided can not be used as evidence against an individual in criminal proceedings.

Clause 122 inserts a new section 51D which enables an authorised officer to issue a dangerous situation notice against a person when the officer reasonably believes that a dangerous situation exists and that person

is in a position to take steps to alleviate the danger. The notice must state the situation the authorised officer believes is causing the danger, the grounds for this belief and the steps to be taken by the person to alleviate the danger.

The section sets out formal matters in relation to the notice and makes it an offence for a person to fail to comply with the notice or to remove the notice before the necessary action has been taken.

Clause 122 inserts a new section 51E which enables an authorised officer to take the action the officer believes is necessary to alleviate a danger if, either a person has failed to comply with a remedial action or dangerous situation notice or, a remedial action or dangerous situation notice is inappropriate to alleviate the danger.

The action an authorised officer may take under this section includes asking a person whom the officer believes has appropriate knowledge and experience to assist in alleviating the danger. In this circumstance the person is taken to have the powers of an authorised officer necessary to assist in alleviating the danger.

Clause 123 amends section 53 and is a minor drafting amendment that does not affect the intent of this section. Section 53(1) is amended to read section 53(2).

Clause 124 substitutes a new section 57 making the executives of corporations accountable for offences against provisions of a transport Act. In the context of vehicle inspections, this means that the owner of a number of franchises will now be just as accountable as the proprietor of individual premises and the mechanic carrying out the inspection on the vehicle.

Clause 124 also inserts a section 57A emphasising that proceedings for an offence against a transport Act are contingent on proving a person's state of mind about a particular offence. For the purposes of this section, it is enough to show the act was done by a person acting as a representative of the company at the time; or that the representative had the state of mind.

Clause 124 further inserts a new section 57B which applies to a person, in a position of influence over a driver or person in control of a vehicle, if that driver or person in control of a vehicle commits an offence, then the influencing person is deemed to have also committed the offence unless the influencing person can prove they tried to prevent the offence or proves they could not influence the driver or controlling person.

Clause 125 substitutes a new chapter 4 dealing with review of and appeals against decisions.

Clause 126 amends section 75 to include an example which allows a regulation to be created relating to traffic density, routes, and load restrictions for vehicles with a load of more than 4.5t.

Clause 127 substitutes a new section 76 to provide for vehicle standards regulations which relate to vehicle inspections at nominated times for certain classifications of vehicles, the issuing of certificates and approval of premises.

Clause 128 amends section 78 to require drivers to be in a fit state of health and that emphasise the obligations on employers and consignors to adhere to responsible practices. This section also applies to regulations that flow from it such as those relating to driving hours restrictions.

Clause 128 also amends section 78 inserting new regulation making powers about the training of drivers, and the approval of driver trainers and driver trainer competency assessors.

Clause 129 inserts a new part 5 into chapter 5 and inserts a chapter 5A into the *Transport Operations (Road Use Management) Act 1995*. The new section 79A outlines the application of Part 5 which applies to the transport of dangerous goods by road. This section will have the effect of continuing a policy introduced in 1993 when the *Carriage of Dangerous Goods by Road Act* was amended to cover the road transport of LPG.

Clause 129 inserts the following new sections:

The new section 79A which defines the application of the part.

The new section 79B which provides for the making of regulations on a wide range of matters relating to the transport of dangerous goods by road.

The new section 79C enables a person to apply to the chief executive for an exemption from compliance with a provision of the regulations.

The new section 79D sets out the offences and penalties relating to the failure to hold a licence or to be accredited as required by the regulations.

The new section 79E provides that a person who transports by road goods prescribed in regulations as too dangerous to transport commits an offence.

The new section 79F outlines duties concerning the safe transport of

dangerous goods by road.

The new section 79G provides that in a prosecution for a contravention of this Act an authorised officer may give evidence that the officer believes certain matters and where the court considers the belief to be reasonable and there is no evidence to the contrary, the court may accept the matter as proved.

The new section 79H enables a court to require a person convicted of an offence to pay any costs to a government entity or to the State that were reasonably incurred by the government entity or the State in taking action against the person. Such costs include costs for testing, transporting, storing and disposing of the dangerous goods and other evidence.

The new section 79I enables a government entity which incurs costs as a result of an event involving the escape of dangerous goods or an explosion or fire involving dangerous goods or the danger of such an escape, explosion or fire, to recover so much of the costs as were reasonably incurred.

The new section 79J this section allows a court to prohibit a person for a stated period from involvement in the transport of dangerous goods by road. For this to occur the person must be convicted of an offence against the *Transport Operations (Road Use Management) Act 1995* relating to the transport of dangerous goods by road.

The new section 79K enables a court which has convicted a person for an offence in relation to the transport of dangerous goods by road to order the dangerous goods or anything used in connection with the commission of the offence be forfeited to the State. Goods or a thing so forfeited may be destroyed or otherwise dealt with as directed by the chief executive.

The new section 79L protects a person from civil liability for an act done honestly and without negligence and without any fee, charge or other reward, for the purpose of helping or attempting to help in a dangerous situation.

The new section 79M authorises sub-ordinate legislation about the operation of vehicles in public places (other than roads).

Clause 130 inserts a new section 84A facilitating an administrative mechanism by providing that the chief executive of the Department of Transport may approve forms for use under the Act.

Clause 131 omits section 85(3)(e).

Clause 132 inserts new sections 92 to 92B.

The new section 92 provides for continuation of certain Local Laws, made under the *Motor Vehicles Control Act 1975* to remain in force for a period of one year in order to enable the transfer without undue inconvenience to systems and procedures under the amended Act.

The new section 92A provides for transitional provisions for the *Motor Vehicles Safety Act 1980* and the *Carriage of Dangerous Goods Act 1984*.

The new section 92B makes provision for the transition of existing licensed driving instructors to this Act.

Clause 133 inserts a new section 93A which repeals the *Motor Vehicle Driving Instruction School Act 1969*.

Clause 134 inserts Schedules to the *Transport Operations (Road Use Management) Act 1995*.

Clause 135 inserts schedule 2A to the *Transport Operations (Road Use Management) Act 1995* listing reviewable decisions pursuant to section 65 of the Act.

Clause 136 amends schedule 3 (dictionary).

Clause 137 states the Act to be amended.

Clause 138 inserts a new Part 5 into the *Transport Planning and Coordination Act 1994*.

The new Part 5 provides the machinery and manner of appeals from decisions made by the chief executive, and reviews of decisions made by the chief executive.

Clause 139 inserts section 36E into the *Transport Planning and Coordination Act 1994* by empowering the Minister to establish advisory committees for the administration of a transport Act.

