TRANSPORT LEGISLATION AMENDMENT BILL 2001

EXPLANATORY NOTES

GENERAL OUTLINE

OBJECTIVES OF THE LEGISLATION

The objective of the Transport Legislation Amendment Bill 2001 is to provide for amendments to a range of statutes administered by the Department of Transport and Department of Main Roads.

REASONS FOR THE BILL

To amend the *Air Navigation Act 1937* to simplify procedures for legal redress following damages arising from debris falling from a plane.

To amend the *Civil Aviation (Carrier's Liability) Act 1964* to ensure a penalty of imprisonment can be converted to a monetary penalty where the offender is a corporation. This will bring Queensland legislation into line with Commonwealth practice.

To amend the *Transport (Busway and Light Rail) Amendment Act 2000* with respect to the operation of Busways, including the establishment of contracts, providing for the regulation of Busway environs and the authorisation of Busway use.

To amend the *Transport Infrastructure Act 1994* with respect of the carriage of dangerous goods including regulation making powers, approval and exemption processes and the recovery of incident related costs.

To amend the *Transport Operations (Marine Safety) Act 1994* to enable shipping inspectors to give directions in cases of unlicensed or unregistered shipping, to enable the removal of abandoned property and to provide for the use of laser speed detection equipment.

To amend the *Transport Operations (Marine Pollution) Act 1995* to create an ability to prosecute crew members whose actions cause pollution

and to expand the range of ships required to have onboard oil pollution plans.

To amend the *Transport Operations (Passenger Transport) Act 1994* to clarify that a person who leases a taxi or limousine license to another person is an operator, and to define the powers of dangerous goods investigators.

To amend the *Transport Operations (Road Use Management) Act 1995* in areas relating to driver and traffic management, particularly driver licensing and speed management, and including license suspension and the definition of a detection device.

ESTIMATED COSTS FOR GOVERNMENT IMPLEMENTATION

No costs are estimated for governmental implementation of these amendments.

RESULTS OF CONSULTATION

The proposed amendments have been supported.

CONSISTENCY WITH FUNDAMENTAL LEGISLATIVE PRINCIPLES

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

The principles are not absolute but it is important that in the drafting process proper regard is paid to them. The following identifies the infringements of FLPs contained in the Bill. For each infringement a brief rationale is provided.

The amendment proposed to s 11 of the *Air Navigation Act 1937* is an FLP concern in relation to whether the legislation has sufficient regard to the rights and liberties of individuals, and whether the legislation authorises the amendment of an Act only by another Act.

The proposed amendment of the *Air Navigation Act 1937* will reflect clauses 10 and 11 of the *Damage by Aircraft Act 1999* (Cwlth). The clauses make owners and operators of aircraft and certain other persons liable before a court, without proof of negligence, for injury, loss, damage or destruction caused to persons or property on the ground by aircraft impacts

and falling objects. Generally, legislation should not impose civil liability on innocent parties without sufficient justification.

The purpose of the Commonwealth legislation is to relieve an injured person from the expense and delay of suing every potential defendant and then having to establish which of them was negligent — a process that can be very long and expensive if, for example, 2 aircraft collide. Owners and operators are already largely covered by insurance for third party on-ground liability.

The amendment proposed to s.13 of the *Transport (Busway and Light Rail) Amendment Act 2000* is an FLP departure because it reverses the onus of proof.

This amendment proposes for a prosecution in relation to an illegal advertising notice (within a busway) that each person whose product or service is advertised is taken to maintain the notice, unless the person proves the advertisement was placed without their knowledge or permission.

This provision is modelled on similar provisions which exist for advertising affecting state controlled roads. It may be very difficult for the chief executive to successfully deal with illegal advertising if no reliance can be placed on the information assumed from the product or service being advertised. On this basis it is considered reasonable to assume that it is within the knowledge of the advertiser as to who is responsible for maintaining the notice.

The amendment proposed to the *Transport Infrastructure Act 1994* inserting a new s.131A is an FLP concern in relation to providing for the compulsory acquisition of property only with fair compensation.

This amendment proposes a provision which deems that the benefit of some railway tunnel easements in the inner city are taken to be vested in Queensland Rail.

The easements have been granted over the last 80 years as part of Queensland Rail's continuous involvement in providing urban rail services. During that time the terminology in the easements referencing Queensland Rail has varied significantly. References can be found to the Commissioner for Railways, the Railway Commissioner etc. Parliamentary Counsel advised it was necessary to remove any doubt in dealing with the easements deeming that the benefit of the easements is held by Queensland Rail.

The amendment which proposes the inserting of a new s.187AE into the *Transport Infrastructure Act 1994* is an FLP issue in terms of whether the legislation allows the delegation of administrative power only in appropriate cases and to appropriate persons.

This amendment proposes to establish a power for the chief executive to grant exemptions about compliance requirements for the carriage of dangerous goods by rail.

Without the flexibility of an exemption power the ability of the chief executive to facilitate the efficient and safe carriage of dangerous goods would be severely hampered. Given the vast array of goods and methods for packaging and carriage it is impossible for the legislation to contemplate every circumstance conceivable. Accordingly, consistent with the regime for the carriage of dangerous goods by road, it is proposed to provide for an exemption power.

Safeguards are built in to the power. The chief executive can impose conditions to be applied with the exemption and notice must be given in the Gazette.

The amendment proposed to the *Transport Infrastructure Act 1994* inserting a new s.187AK is an FLP concern in relation to whether the legislation is consistent with the principles of natural justice.

New section 187AK provides for the chief executive to immediately suspend an approval or exemption if the chief executive reasonably considers it is necessary in the interest of public safety. The suspension operates immediately without the holder being given an opportunity to make any submission about the suspension.

The immediate suspension is required in the interests of public safety and it is considered unworkable if the chief executive was required to consider submissions before any action could be taken.

The amendment proposed to the *Transport Infrastructure Act 1994* inserting a new s.187AR is an FLP concern in relation to whether the legislation has sufficient regard to the rights and liberties of individuals.

The new s.187AR provides that, if a government entity incurs costs because of a dangerous situation or certain incidents, the entity may recover the costs reasonably incurred as a debt. The costs are recoverable as a joint and several liability from persons involved in the transportation of dangerous goods, including the person who owned the dangerous goods.

The intention of this provision is to ensure that the State has a reasonable means of recovering the costs associated with an incident. This relieves the

State of excessive expense and delay in bringing an action involving many parties to court. However, costs are not recoverable from a person who establishes the event was primarily caused by someone else or who establishes other stated grounds. It should be noted that this is not a reversal of a criminal onus of proof.

The amendments proposed which insert a new s.126M and amend s.129 of the *Transport Operations (Passenger Transport) Act 1994* are an FLP concern in regard to whether the legislation provides appropriate protection against self-incrimination.

Section 126M provides that a person must give information or produce a document to an authorised person that will help prevent a dangerous situation. Self-incrimination is specifically excluded from being a reasonable excuse for not complying with the section. However, protection is given against the use that may be made of the information or document directly or indirectly other than in a proceeding about the falsity of the information or document.

Section 129 is amended to provide that an authorised person may require a person to produce for inspection a document issued, or required to be kept, under the *Transport Infrastructure Act 1994*, chapter 8AA, or a law of another State or the Commonwealth that substantially corresponds to this chapter. No protection against self-incrimination is given. However, it is considered reasonable for ensuring public safety that a person be required to produce government licenses etc. to confirm the appropriateness of the person's actions.

The amendment proposed to s.80 of the *Transport Operations (Road Use Management) Act 1995* is an FLP concern in relation to the reversal of the onus of proof.

This amendment seeks to establish that the printout from an Evidential Breath Analyser is to be conclusive evidence that the EBA was properly operated and correctly provided a reading of the level of alcohol concentration in the person's blood.

Currently the information from the printout is transcribed by hand to a certificate which can be used as evidence. By recognising the printout as evidence the potential for error in transcription is minimised. The person is given a copy of the printout at the time of its issue. A further benefit is reduction in administrative burden placed on police officers who are seeking to quickly and efficiently conduct roadside operations. Similar arrangements have existed for many years in Victoria.

NOTES ON CLAUSES

PART 1—PRELIMINARY

Clause 1 states that the short title of the Act is to be the *Transport Legislation Amendment Act 2001*.

Clause 2 states how and when this Act commences.

PART 2—AMENDMENT OF AIR NAVIGATION ACT 1937

Clause 3 states that this part amends the *Air Navigation Act 1937*.

Clause 4 expands the title of the Act so that the Act can address issues in relation to liability for certain injury, loss, damage or destruction by aircraft. It was determined to use this Act rather than create a new Act to deal with these issues.

Clause 5 inserts a new "Part 1 – Preliminary" heading to assist in formatting the Act to accommodate the new legislative provisions.

Clause 6 provides a definition of aircraft that can be used in defining liability for certain injury, loss, damage or destruction by aircraft. The term "inflight" and "operator" are cross referenced to the relevant sections of the Act where these terms are defined.

Clause 7 inserts a new "Part 2 – Application of Regulations" heading to assist in formatting the Act to accommodate the new legislative provisions.

Clause 8 amends s.9 such that the operation of that section is confined to part 2 (created by clause 7). Thus, the reference to Act in s.9 is omitted and part inserted.

Clause 9 omits a provision of the Act that referred to the *State Transport Facilities Act 1946*, which was repealed in 1960.

Clause 10 amends s.11 to correct a reference to the powers of the Governor. Currently the reference is written as a power of the Governor in

Council; the reference should be to the Governor as it is the Governor who makes Proclamations.

Clause 11 inserts a new "Part 3 – Recovery of Certain Damages" establishing the legislative scheme to establish liability for certain injury, loss, damage or destruction by aircraft. The new provisions apply to a situation where a person or property on the ground suffers damages as a result of an impact with an aircraft, or an item falling from an aircraft. Damages are to be recoverable without proof of intention or negligence in a court of competent jurisdiction. The following persons are automatically subject to the Court's determination:

- the operator of the aircraft;
- the aircraft's owner;
- the person using the aircraft; and
- a person controlling the aircraft's navigation.

The purpose of the amendment is to relieve an injured person from the expense and delay of suing every potential defendant and then having to establish which of them was negligent — a process that can be very long and expensive if, for example, 2 aircraft collide. Owners and operators are already largely covered by insurance for third party on-ground liability.

PART 3—AMENDMENT OF CIVIL AVIATION (CARRIERS' LIABILITY) ACT 1964

Clause 12 states that this part amends the *Civil Aviation (Carriers' Liability) Act 1964.*

Clause 13 amends s.6A to allow a penalty of imprisonment to be converted to a monetary penalty where the offender is a corporation. This will bring Queensland legislation into line with Commonwealth practice.

PART 4—AMENDMENT OF TOW TRUCK ACT 1973

Clause 14 states that this part amends the *Tow Truck Act 1973.*

Clause 15 amends s.21(2) to omit a reference to the deleted s 28 in the existing Act.

Clause 16 provides for the replacement of review and appeal provisions in Part 6 of the Act consistent with Part 5 of the *Transport Planning and Coordination Act 1994*.

The *Tow Truck Act 1973* included a cumbersome and dated system whereby persons adversely affected by decisions of a delegate of the chief executive to refuse, suspend or cancel a licence issued under the Act could only seek redress through an Appeal Tribunal consisting of a Magistrate, an impartial officer of the Department of Transport and a person appointed by the Minister from within the towing industry. The process is not consistent with the provisions of the *Transport Planning and Coordination Act 1994.*

The replacement provisions provide for the chief executive to review decisions which adversely affect a person at the request of the person. The person is entitled to be given reasons for the original decision. .

The review decision is to be provided to the person together with reasons for the decision. If the person remains unsatisfied, the person may have the matter heard in the Magistrates Court.

Clause 17 inserts a new schedule of reviewable decisions to facilitate the revised scheme of review and appeal.

PART 5—AMENDMENT OF TRANSPORT (BUSWAY AND LIGHT RAIL) AMENDMENT ACT 2000

Clause 18 states that this part amends the *Transport (Busway and Light Rail) Amendment Act 2000.*

Clause 19 amends s.13 which inserts the new chapters 7A – 7C.

The new s.180A is omitted which removes the definition of "construction" of busway transport infrastructure and inserts the definition in the Dictionary in Schedule 3.

The insertion of a new s.180KA allows the chief executive to divert or construct a watercourse when carrying out busway transport infrastructure works. Where the watercourse is not on busway land the chief executive may enter and occupy private land using existing entry powers which have regard to the rights of the landowners and occupiers.

The new ss.180M and 180N inserted by the *Transport (Busway and Light Rail) Amendment Act 2000* are omitted and replaced by s.180M. These sections primarily dealt with how maintenance would be carried out on a busway where the busway was designated as a state controlled road or road under local government control.

The new provision does not involve the designation of busway land and simply enables the chief executive to enter into contracts for the state with other persons (including local government) for works involving the construction and maintenance of a busway. This provision is based on a similar provision in Chapter 5 of the *Transport Infrastructure Act* in relation to powers of the chief executive for road works contracts.

Section 180N is a new provision dealing with the powers of the chief executive and the distraction of traffic on the busway from advertising which is situated adjacent to the busway.

A new Division 2A inserts ss.180QA – 180QC into Chapter 7A dealing with ancillary works and encroachments on the busway. The ancillary works and encroachments have been defined for Busways in the Dictionary in Schedule 3.

Section 180QA is a new provision which establishes the power of the chief executive to approve and control ancillary works and encroachments on the busway.

Section 180QA(2) allows the chief executive to issue a notice stating that an ancillary work or encroachment may not be placed or carried out on a busway without approval.

Section 180QA(3) provides it is an offence for a person to construct, maintain, operate or conduct ancillary works and encroachments contrary to a notice under s.180QA(2).

Under s.180QA(4) subsection (3) does not apply where the ancillary works and encroachments conform to a requirement specified under gazette notice or done as required by a contract entered into with the chief executive.

Section 180QA(5) provides that an approval or requirement from the chief executive about ancillary works and encroachments may be subject to conditions fixed by the chief executive.

Section 180QB provides a deeming provision in order to identify alleged offenders who place unauthorised advertising on the busway. The deemed person has the opportunity to prove that the advertisement was placed without their knowledge or permission.

This provision is modelled on similar provisions which exist for advertising affecting railways. It may be very difficult for the chief executive to successfully deal with illegal advertising if no reliance can be placed on the information assumed from the product or service being advertised. On this basis it is considered reasonable to assume that it is within the knowledge of the advertiser as to who is responsible for maintaining the notice.

180QC inserts a new provision which gives power to the chief executive to deal with unauthorised ancillary works and encroachments including the ability to recover costs for work carried out by the chief executive from the owners of the unauthorised ancillary works and encroachments. The power also includes the ability of the chief executive to deal with authorised ancillary works and encroachments and to enter into cost sharing arrangements with the owners of the ancillary works and encroachments for work carried out by the chief executive.

The new Part 5 inserts ss.180ZKA to 180ZKJ into Chapter 7A dealing with Busway Service Provider Authorisation. This Part enables the chief executive to determine who may drive on the busway.

Section 180ZKA provides that a person must not drive on a busway unless the person is in one of the stated categories which include, for example, drivers of emergency services and employee drivers of the holders of service contracts that require the holders to provide services on a busway. Section 180ZKA(1)(a)(i) creates a category for authorised busway service providers for the busway.

"Emergency services" are defined within s.180KZA(2) to include the Queensland Ambulance Service or the Queensland Fire and Rescue Authority or the police service among others as stated.

Section 180ZKB to s.180ZKK sets out the process available to a person making an application to the chief executive for authorisation as a busway service provider.

Section 180ZKC provides for the consideration of the application by the chief executive.

Section 180ZKD provides for the chief executive to make conditions for the authorisation.

Section 180ZKE requires the busway service provider to comply with the authorisation conditions.

Section 180ZKF provides for the period of the authorisation.

Section 180ZKG sets out the process for amending the authorisation conditions on application by the holder of the authorisation.

Section 180ZKH sets out the process for amending the authorisation conditions without an application.

Section 180ZKI sets out the process for suspending or cancelling authorisation.

Section 180ZKJ provides a process where the chief executive may immediately suspend an authorisation. Immediate suspension may be required to ensure public safety. If the chief executive were to provide notice and allow a process of "show cause" then the delay in taking action could jeopardise public safety.

Section 180ZKK provides that a busway service provider may at any time surrender the authorisation by written notice to the chief executive.

Clause 20 amends *s*.19 to provide that the definition of "construction" in Schedule 3 of the Dictionary is amended to include busway, light rail or road transport infrastructure.

PART 6—AMENDMENT OF THE TRANSPORT (GLADSTONE EAST END TO HARBOUR CORRIDOR) ACT 1996

Clause 21 states that this part amends the *Transport (Gladstone East End to Harbour Corridor) Act 1996*.

Clause 22 and *Clause 23* amend property descriptions provided in schedules to the Act.

One of the objectives of the Act was to acquire land for a railway. Property descriptions for the land are included in schedules. After the railway was constructed some of the descriptions required change to reflect a realignment of the corridor. The schedule to the Act was subsequently amended by the Transport Legislation Amendment Act (No. 2) 1998.

In lodging survey plans for the revised property descriptions it was revealed that two small parcels of State land had been omitted. The amendments insert property descriptions for the omitted land into the respective schedules of the Act.

PART 7—AMENDMENT OF THE TRANSPORT INFRASTRUCTURE ACT 1994

Clause 24 states that this part amends the *Transport Infrastructure Act 1994*.

Clause 25 omits s.22 from Chapter 5. This section provided definitions for ancillary works and encroachments on roads. The definition has been inserted into the Dictionary in schedule 3.

Clause 26 omits subsection 45(2) from Chapter 5. The effect of the subsection has then been subsumed into the new section 199A which contains an offence provision where there is interference with watercourses.

The chief executive may apply conditions to the approval of public utility plant located on a state-controlled road. The conditions may include the payment of a fee or charge.

Clause 27 increases the scope of conditions that may be applied to an approval for the location of public utility plant on a state-controlled road. Previously the range of conditions that could be applied was limited to location, road works and traffic operations. Wider conditioning powers are required to deal with increased demands on limited available road space.

Clause 28 provides that where road upgrading works require the temporary removal of public utility plant on a state-controlled road, the chief executive is not required to approve the replacement in its previous location. Further, any public utility plant that is relocated or reconstructed is required to be done so in accordance with the chief executive's requirements. This is because there may be insufficient room for the plant within the available width of road reserve or for safety reasons it may not be appropriate for the plant to remain located within the state-controlled road. An example of this is where the road is upgraded to a Motorway standard and it is no longer safe to maintain the plant from the lanes of the road.

Clause 29 inserts a new s.131A that adds a set of standard terms to existing tunnel and associated ventilation and access easements set out in a new schedule 2A (see clause 43). The easements apply only to the rail tunnels between Brunswick Street and Roma Street Stations and the rail tunnels immediately south of South Bank Station.

Subsection (2) confirms that the benefit of each easement is held by Queensland Rail, thereby clarifying references in the existing documentation to predecessors of Queensland Rail.

Subsection (3)(a) allows benefit of the easements only to be transferred to the state. Subsection (3)(b) requires Queensland Rail to obtain the state's consent to surrender the easement. This is consistent with the principle that the easements were established for the benefit of the state or Queensland Rail and ensures the benefit of the easements either remains with Queensland Rail or may only be transferred to the state.

Subsection (4) provides that if for some reason in the future Queensland Rail is no longer the holder of the sublease for rail corridor land that adjoins the tunnels, the benefits of the easements have to be transferred to the state. This ensures that the tunnels and associated ventilation and access rights revert to the state if the connecting rail corridor reverts to the state or is transferred to another accredited railway manager.

Subsection (5) provides for Queensland Rail to be able to license other accredited railway operators to use the tunnels. The easement documentation varies in its form and scope, reflecting the time at which it was prepared. The easement documentation established since 1980, including those for the specific ventilation and access easements, allow licensing of the easement benefits to others, which provides for third party access. The older documentation that dates from the 1880s is mainly Memorandums of Transfer that grant and transfer the right to enter, make and construct, and maintain and use for railway purposes a tunnel. In this era, volumetric subdivision to provide for the tunnels was not available and there was only one railway operator in Queensland.

Subsection (6) provides for the state to license the benefits of the easement to an accredited railway manager and for the railway manager to be able to sublicense accredited railway operators, should the state become the grantee of the easements through subsection (3)(a) or (4).

Subsection (7) provides for no compensation to be paid with respect to any vesting, transfer, licence or sublicence under this section. This reflects the situation that the existing easements other than the specific access and ventilation easements burden subterranean land. They contain existing tunnels and other railway infrastructure and in their current form restrict or prohibit access by the above land owner to the tunnel area for obvious safety and operational concerns. All the specific access and ventilation easements have been established since 1995 and these legislative provisions only affect the transfer rights of the grantee. Therefore the new provisions will not, in practice, decrease the owner's rights, nor in any way

change the status quo with respect to construction or alteration to the existing infrastructure.

A new s.131B is inserted. Subsection (1) picks up the process of declaring "future railway land" which was in Schedule 3 (Dictionary).

Subsection (2) provides for "future railway land" when leased to a railway manager under section 131(4) to cease being future railway land. Subsection (3) provides a procedure to reverse the declaration of future railway land.

Clause 30 omits s.138. Section 138 regulated dangerous goods transportation upon the rail network in Queensland by attaching liability to passengers and consignors. This arrangement will become redundant upon the commencement of clause 34.

Clause 31 amends s.152 by adding s.336(2)(a) and (c) to the list of provisions under the *Land Act 1994* that do not apply to a lease of existing rail corridor land, new rail corridor land or non-corridor land to allow for an increase or decrease in the area subleased and to increase the term. This allows for the surrender of unused corridor land or the addition of new corridor land to existing leases from the state to railway managers and to extend the period of an existing lease.

Clause 32 omits s.154 that continued certain harbour boards as bodies corporate which, through other provisions, became port authorities. These body corporate port authorities have been subsequently superseded by port authorities that are Government Owned Corporations.

Clause 33 amends s.181B to reflect a contemporary spelling convention.

Clause 34 inserts a new chapter 8AA into the *Transport Infrastructure Act 1994.*

Section 187AA outlines the purposes of the Chapter, (to provide regulatory consistency with a national scheme for rail transport, and with road transport of dangerous goods).

Section 187AB describes the intended application of Part 8AA to the transport of dangerous goods by rail. The section excludes from the Chapter's operation those substances that are already adequately provided for under alternative regulatory arrangements in Queensland. The section also excludes construction and loads and safety devices from the operation of the legislation to prevent the Chapter unintentionally prohibiting the carriage of (for example) fire extinguishers or fuel sources.

Section 187AC explicitly recognises the legislation's intended application to all persons, (including the state of Queensland and its commercial organs) as far as permitted under the state's legislative authority.

Section 187AD provides for the making of regulations on a wide range of matters relating to the transport of dangerous goods by rail.

Section 187AE enables a person or class of persons to apply to the chief executive for an exemption from compliance with a provision of the regulations to be made under the Chapter. Without the flexibility of an exemption power the ability of the chief executive to facilitate the efficient and safe carriage of dangerous goods would be severely hampered. Given the vast array of goods and methods for packaging and carriage it is impossible for the legislation to contemplate every circumstance conceivable. Accordingly, consistent with the regime for the carriage of dangerous goods by road, it is proposed to provide for an exemption power.

Safeguards are built in to the power. The chief executive can impose conditions to be applied with the exemption and notice must be given in the Gazette.

Section 187AF describes the grounds upon which an approval, exemption or administrative discretion made under the Chapter may be suspended, amended or cancelled.

Section 187AG provides the procedures to be followed by the chief executive before taking action under 187AF other than for class exemption.

Section 187AH provides the procedures to be followed by the chief executive before taking action under 187AF for class exemption.

Section 187AI describes the procedures to be followed by the chief executive upon receipt of a representation made under 187 AG or 187AH.

Section 187AJ authorises the chief executive to make a beneficial or clerical amendment with respect to approvals, exemptions, class exemptions or administrative approvals other than by complying with the procedures set out in 187AG – 187AI.

Section 187AK authorises the chief executive to immediately suspend an approval, exemption or administrative determination other than by complying with the procedures set out in 187AG – 187AI. The provision describes the circumstances in which the discretion may be exercised, and the procedures to be followed by the chief executive.

The ability to effect an immediate suspension is required in the interests of public safety and it is considered unworkable if the chief executive was required to consider submissions before any action could be taken.

Section 187AL provides that a person who transports by rail goods prescribed in regulations as too dangerous to transport commits an offence.

Section 187AM provides that persons involved in the transport of dangerous goods by rail must ensure as far as practical that the goods are transported safely.

Section 187AN allows a court to prohibit a person for a stated period from involvement in the transport of dangerous goods by rail. For this to occur the court is entitled to consider the person's record in the transportation of dangerous goods by rail in Australia, any convictions under Queensland law, or a law of another state or the Commonwealth that substantially corresponds to this chapter, relating to dangerous goods.

Section 187AO authorises a court convicting a person for an offence in relation to the transport of dangerous goods by rail to order the dangerous goods or anything used in connection with the commission of the offence be forfeited to the state.

Section 187AP provides that forfeited goods may be destroyed or otherwise dealt with as directed by the chief executive after the expiration of any period allowed for an appeal that might be relevant to the forfeited goods.

Section 187AQ allows a court to order a person convicted of an offence against this chapter to pay to the state costs reasonably incurred by the state in prosecuting the offence, including the cost of testing, transporting, storing and disposing of dangerous goods and other evidence.

Section 187AR allows a court to make an order enabling a government entity which incurs costs as a result of an event involving a dangerous situation or the escape of dangerous goods or an explosion or fire involving dangerous goods or the risk of such an escape, explosion or fire, to recover so much of the costs as were reasonably incurred. These costs may be recovered from the person who owned the dangerous goods when the event happened, the person who had possession or control of the dangerous goods when the event happened, the person who caused the event and the person responsible (other than as an employee, agent or subcontractor of someone else) for the transportation of the dangerous goods by rail.

The intention of this provision is to ensure that the State has a reasonable means of recovering the costs associated with an incident. This relieves the

State of excessive expense and delay in bringing an action to court. However, costs are not recoverable from a person who establishes the event was primarily caused by someone else or who establishes other stated grounds. It should be noted that this is not a reversal of a criminal onus of proof.

Section 187AS provides that the chief executive may certify whether a document issued under this chapter was held, and that a court may admit such a certificate as evidence of its contents.

Section 187AT 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 an emergency or accident. Liability in such instances is imposed upon the state. This protection is not extended to a person whose actions contributed to the event.

Clause 35 provides that minor changes to Waterways Transport Management Plans can be made without the need for a full process of community consultation. This will have the effect that if a simple error requires correction or a fee needs adjustment to reflect changes in the consumer price index then these changes can be made without prohibitive administrative requirements.

Clause 36 provides that any fees collected under s.59 are not required to be paid into consolidated funds but may instead be retained by the chief executive. This establishes consistency with an agreement made between Treasury and other government departments.

Clause 37 inserts a new s.199A into Chapter 9 to provide that it is an offence for a person to alter a watercourse that affects a transport route. A transport route may involve a busway, railway or road.

Section 199A(2) enables the chief executive to deal with the watercourse which has caused the problems on the transport route. If the work involves the entry of other land then existing powers from the *Transport Infrastructure Act 1994* in the relevant modal chapter are used to enable the lawful entry of the other property having regard to the rights of the occupants and owners of the land.

Section 199A(3) provides that before entering the other land the chief executive may require by issue of a written notice that the owner of the land is to take action to remedy the problems caused by the water from a watercourse on the owner's land.

Section 199A(7) provides that the chief executive may take action in relation to the watercourse even though the works are authorised under another Act, and irrespective of how frequently the water collects.

In s.199A "chief executive" is defined to include, in relation to a railway, a railway manager or operator for whom an accreditation for the railway is in force under chapter 6.

A new s.199B(1) is inserted into Chapter 9 which provides that it is an offence for a person, without lawful excuse, to alter any naturally occurring materials, stockpile of material, or works on a busway or railway.

A new s.199B(2) provides that a person must not deposit rubbish or abandon goods or materials on a busway or railway other than where the chief executive approves or affixes conditions as to where this may be done.

A reference to the "chief executive" in s.199B in relation to a railway includes a railway manager or an accredited operator under Chapter 6.

"Works" for this section means, for a busway, ancillary works and encroachments or busway transport infrastructure works, and for a railway, railway works.

A new s.199C is inserted that allows the chief executive to recover the cost of repairing damage caused to works on the busway or railway.

A reference to the "chief executive" in s.199C in relation to a railway includes a railway manager or an accredited operator under Chapter 6.

199C(3) provides that where the damage is caused by the driver of a vehicle whose identity is unknown, the registered operator of the vehicle is to be liable for the costs of repairing the damage unless the vehicle was used without the registered operator's knowledge or permission.

Section 199C(4) provides that subsections (2) and (3) apply whether or not the damage constitutes, or was done in connection with, an offence against the *Transport Infrastructure Act 1994*.

Section 199C(5) provides a mechanism for enabling the court to order costs in relation to damage which arose from the commission of an offence under the *Transport Infrastructure Act 1994*.

Section 199C (6) provides definitions for terms such as "chief executive", "registered operator", "repairing" and "works" which are needed for the operation of this section.

Clause 38 omits definitions which are now redundant in relation to sand and gravel permits.

Clause 39 amends ss.2, 3, 10, 12 13, 14, and 15 of Schedule 1 (Subject matter for regulations) to provide a regulation making power for the operation of busways and busway infrastructure, removal of abandoned vehicles and property, and the removal of parked vehicles.

Clause 40 amends schedule 2 to ensure that decisions made by the chief executive in relation to ancillary works and encroachments in chapter 7A are capable of review and appeal.

Clause 41 inserts a new schedule 2A that lists the rail tunnel easements to which new s.131A applies (see clause 29).

Clause 42 amends schedule 3 (Dictionary) to insert various definitions of terms used in the amendments presented in this part.

Clause 43 omits an attachment that was provided in the Act at the time of the establishment of Government Owned Corporations (GOCs). This related to competition principles which were then relevant but are now considered redundant as the GOCs are long established.

PART 8—AMENDMENT OF THE TRANSPORT OPERATIONS (MARINE POLLUTION) ACT 1995

Clause 44 states that this part amends the *Transport Operations (Marine Pollution) Act 1995*.

Clause 45 amends s.26 to extend the class of person who may be prosecuted for discharge offences under the Act to include members of the ship's crew whose act or omission caused the discharge. Prior to this amendment, in Queensland, members of a ship's crew have been immune from prosecution for discharge offences. This amendment continues to hold the ship's owner and master criminally responsible but it now includes any other member of the ship's crew whose act or omission caused the discharge. It is a defence, however, if the crew member was acting under the direct supervision of the master, or a person authorised by the master for the purpose.

Clause 46 amends s.28 with respect to the defences available to a person prosecuted pursuant to the amended s.26 (see Clause 47 of this Bill).

Clause 47 amends s.30 to give a new definition to the meaning of "ship" in that section. The current definition is by reference to tonnage. Many

shipowners have no specific knowledge of the tonnage of their ship, and it is not easily measured. A reference to length overall makes the applicability of which ships require shipboard oil emergency plans much simpler. The amended section also includes a ship carrying a vehicle carrying more than 400 litres of oil as cargo. This contemplates, for instance, barges which carry road tankers to islands, which have the potential if a spill occurs to cause significant environmental harm.

Clause 48 amends s.35 to replicate the new scheme of making members of a ship's crew as well as the master and owner criminally responsible for a discharge offence when the pollutant is a noxious liquid substance.

Clause 49 amends s.36 to replicate the new scheme of making members of a ship's crew as well as the master and owner criminally responsible for a discharge offence when the pollutant is a noxious liquid substance.

Clause 50 amends s.42 to replicate the new scheme of making members of a ship's crew as well as the master and owner criminally responsible for a discharge offence when the pollutant is a packaged harmful substance.

Clause 51 amends s.47 to replicate the new scheme of making members of a ship's crew as well as the master and owner criminally responsible for a discharge offence when the pollutant is sewage.

Clause 52 amends s.50 to permit an exemption to be given to an existing ship by the chief executive from the requirement to be fitted with a toilet and sewage holding tank connected to the toilet if the ship is unsuitable to be fitted with a sewage holding tank.

Clause 53 amends s.55 to replicate the new scheme of making members of a ship's crew as well as the master and owner criminally responsible for a discharge offence when the pollutant is garbage.

Clause 54 amends s.58 to add members of a ship's crew to a ship's master and owner as persons who may be responsible for a discharge occurring during or because of a transfer operation involving a pollutant.

Clause 55 amends s.61 to replicate the new scheme of making members of a ship's crew as well as the master and owner criminally responsible for a discharge offence that occurs during a transfer operation.

Clause 56 amends s.67 to clarify that a marine pollution report must be given to an authorised officer in the time prescribed and must contain the particulars required in the *Transport Operations (Marine Pollution) Regulation 1995*.

Clause 57 amends s.89 to include as documents that an authorised officer may require to be produced, those that are required to be kept under *the Transport Operations (Marine Safety) Act 1994*. This will assist in establishing identity, a ship's particulars, whether a ship has appropriate registration, and whether its crew is appropriately qualified.

Clause 58 amends the heading of Part 13 to make it clear that as well as dealing with security for costs incurred, the Part also deals with the recovery of discharge expenses when security has not been obtained by detaining a ship.

Clause 59 amends the definition of discharge expenses at s.111 to make it clear that costs incurred by the state or a port authority in preventing a discharge or likely discharge, even if no discharge ultimately occurs, can be recovered. Prior to this amendment it was unclear whether or not these costs could be recovered when a response action was so successful that no discharge eventuated.

Clause 60 omits s.112 so that the operation of the Part is not restricted to situations when a ship is detained as security for discharge expenses, but generally when discharge expenses are incurred.

Clause 61 amends s.113 to clarify that a security given to release a detained ship under the Act includes a guarantee.

Clause 62 amends s.114 to clarify the preconditions for the release of a ship detained under the Act.

Clause 63 amends s.115 to expand the operation of the Part to the recovery of discharge expenses generally, and not merely when a ship is detained as security against costs incurred. By this means it addresses an existing deficiency in the Act, by making it clear that discharge expenses are recoverable jointly and severally from the owner and master of the ship from which the pollutant was discharged or was likely to be discharged. This also makes it clear which ship's owner and master are responsible for discharge expenses when more than one ship is involved in an incident, for instance a collision at sea causing pollution.

Clause 64 amends the heading of s.122 to more accurately reflect its meaning, which is that discharge expenses may be recovered as a debt. The amended Part 13 addresses when and who they are recoverable from.

Clause 65 amends s.127 to remove the limitation on the jurisdiction of a court to make orders for the payment of discharge expenses. The amendment no longer restricts this capacity for the court to make such orders to prosecutions on indictment.

Clause 66 amends the schedule (Dictionary) to define an "act" to include an "omission". This complements the amendments that enable the prosecution for discharge offences of members of a ship's crew whose act or failure to act caused or contributed to a discharge.

PART 9—AMENDMENT OF THE TRANSPORT OPERATIONS (MARINE SAFETY) ACT 1994

Clause 67 states that this part amends the *Transport Operations (Marine Safety) Act 1994*.

Clause 68 amends s.4 to add "compulsory pilotage area" to the definitions. This amendment is a part of a new scheme for the Act which characterises two types of pilotage areas, non-compulsory areas (simply referred to as "pilotage areas") and "compulsory pilotage areas". In all pilotage areas, harbour masters have jurisdiction to direct the master of a ship to navigate or otherwise operate a ship in a specified way. Certain ships must use the services of a state licensed marine pilot in compulsory pilotage areas. This new scheme aims to enhance marine safety, and also to allow Commonwealth licensed marine pilots to lawfully bring ships into pilotage areas so that state licensed pilots can take over the conduct of certain ships as their pilot.

Clause 69 amends s.12 to remove examples that show how the *Navigation Act 1912* (cwlth) may override the operation of the *Transport Operations (Marine Safety) Act 1994*. The examples have been deleted because the Commonwealth Navigation Act is currently being reviewed, and some of the examples have become redundant.

Clause 70 amends s.35 to provide for the designation of compulsory pilotage areas within pilotage areas.

Clause 71 amends s.71 to create a regulation making power for the designation of compulsory pilotage areas within pilotage areas.

Clause 72 amends s.99 to make it an offence to navigate a ship, to which the requirement for pilotage applies, in a compulsory pilotage area without using the services of a pilot.

Clause 73 amends s.101 to further the implementation of the new scheme of two types of pilotage areas by making it clear that the immunity from civil suit for pilots applies in compulsory pilotage areas.

Clause 74 creates a new s.172A outlining the powers of a shipping inspector to give directions to the person operating a ship found to be

unregistered or inappropriately registered, or being operated by an unlicensed or inappropriately licensed master or crew. Presently s.171 provides for a shipping inspector to direct the master of a ship that is found to be unsafe, to immediately take the ship to a nominated mooring or port. However, s.171 does not provide for a shipping inspector to direct a ship be taken to a nominated mooring or port in the earlier mentioned circumstances. The proposed new s. 172A also indemnifies the master and/ or crew from further breaches of the respective registration or licensing requirements while the ship is being taken directly to the nominated mooring or port in accordance with a written direction. These new provisions will avoid the potential stranding of ships and crew because of registration and licensing breaches.

Clause 75 inserts a new part 13, division 4A, to create the capacity for a shipping inspector appointed under the Act to seize and remove property reasonably believed to be abandoned. The amendment is primarily aimed at abandoned vessels which create a hazard to marine safety and the environment. Before seizing and removing the abandoned property the shipping inspector must, if practicable, attach to the property a seizure notice in the approved form, and publish a seizure notice in a newspaper circulating in the locality. If after a minimum of 28 days no one claims the property it may be sold by public auction, or destroyed. The proceeds of sale are to be applied against the expenses incurred, with any balance to be paid to the owner of the property if located, otherwise into the consolidated fund. The current legislation provides a capacity for a harbour master to remove property if no one can be directed to do so, however it does not authorise the ultimate sale or disposal of the property. This has meant that cost recovery of removing a hazard is not possible, and that abandoned property has to be stored indefinitely. This amendment will remedy this situation.

Clause 76 amends s.199 to extend the time in which summary proceedings under the *Justices Act 1886* (Qld) must be commenced — from 1 year to 2 years from when the offence was committed — or within 3 years of when it comes to the complainant's knowledge. The previous limitation period has been found to be too short, particularly when an investigation is complex. This amendment brings it into line with the limitation period in the *Transport Operations (Marine Pollution) Act 1995*.

Clause 77 amends s.201 by including evidentiary provisions relating to the use of laser speed detection devices (speed guns) for on-water enforcement of speed limits. The evidentiary provisions mirror the evidentiary provisions for speed guns already in place for on-road enforcement of speed limits for motor vehicles as set out in s.124 of the

Transport Operations (Road Use Management) Act 1995. At the present time, in the absence of these evidentiary provisions, it is necessary for the Crown to present expert witnesses in person at proceedings where a defendant challenges the accuracy of a speed gun or manner in which it was used.

Clause 78 inserts a new s.206B to allow the chief executive to approve forms for use under the Act.

Clause 79 amends s.215 providing a head of power for a regulation to set pilotage fees to be charged for the use of the services of a pilot in a compulsory pilotage area.

Clause 80 removes the existing provision at s.224(6)(b) expiring all former speed boat licences on 30 June 2002. Licences to operate recreational boats are now issued as perpetual or lifetime licenses, rather than the former 5 year licence period. Removal of the current expiry provision will ensure continuity of existing speed boat licences and avoid unnecessary and inconvenient administrative licence renewal processes for holders of a former speed boat license.

PART 10—AMENDMENT OF THE TRANSPORT OPERATIONS (PASSENGER TRANSPORT) ACT 1994

Clause 81 states that this part amends the *Transport Operations (Passenger Transport) Act 1994*.

Clause 82 inserts new ss.126A–126G and a new part 3 into chapter 11.

Section 126A provides for an authorised person to move a thing that has been seized or to restrict access to it.

Section 126B prohibits a person from tampering with seized things to which access has been restricted, without a reasonable excuse.

Section 126C enables an authorised person to require the person in control of a thing that is to be seized to take the thing to a stated place and, if necessary, remain in control of it. The requirement must be made in writing, or confirmed as soon as practicable in writing. A person is required to comply with the requirement unless the person has a reasonable excuse.

Section 126D provides that a seized thing may be forfeited in certain circumstances. The section further describes the steps that must be taken by the chief executive in relation to the seizure of goods.

Section 126E describes the actions that may be taken by the chief executive in dealing with seized goods, including their destruction or disposal.

Section 126F defines the time frames for the return to its owner of a thing that has been seized but not forfeited.

Section 126G requires an authorised person to allow an owner reasonable access to a thing that has been seized to inspect it, or if it is a document, copy it.

Section 126H empowers an authorised person to require a rail vehicle to be stopped or held where it is reasonably believed that the dangerous goods are being transported in contravention of the *Transport Infrastructure Act 1994*, chapter 8AA. The power is limited by a requirement that the rail vehicle is stopped or held at a safe place. The identification of such a place is to be undertaken in consultation with the train controller for the relevant section of track.

Section 126I empowers an authorised person to require the owner of a rail vehicle that has been, or is being used, to transport dangerous goods, other than in compliance with the *Transport Infrastructure Act 1994*, chapter 8AA, to submit the rail vehicle for inspection. The requirement must be reasonable in respect of time and place, and must be made by the issuing of a notice in the approved form

Section 126J empowers an authorised person to prohibit, by the issuing of a notice in the approved form, the use of a rail vehicle used to transport dangerous goods where the rail vehicle does not comply with the *Transport Infrastructure Act 1994*, chapter 8AA.

The requirement remains in force until an inspection finds compliance with the *Transport Infrastructure Act 1994*, chapter 8AA or until stated reasonable action is taken in relation to the rail vehicle to ensure it complies with the chapter.

Section 126K enables an authorised person to issue a remedial action notice to a person whom the officer reasonably believes is contravening a provision of the *Transport Infrastructure Act 1994*, chapter 8AA, or has contravened the chapter 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.

Section 126L describes the application of the new Part 3B as applying if an authorised person reasonably believes a dangerous situation exists. A dangerous situation is defined as "a situation involving the transport of dangerous goods by rail that is causing or is likely to cause imminent risk of death or grievous bodily harm to a person, or significant harm to the environment or significant damage to property."

Section 126M empowers an authorised person to require a person to provide information or produce a document that will help deal with a dangerous situation. A person must comply unless the person has a reasonable excuse. However, a reasonable excuse does not include self-incrimination. This section also provides that the information given to an authorised person can then not be used as evidence against an individual in criminal proceedings except for an offence set out in ss. 130 and 131 relating to giving false or misleading statements or false, misleading or incomplete documents.

Section 126M enables an authorised person to require a person involved in the transport of dangerous goods to help deal with a dangerous situation involving those goods. It is an offence for a person to fail to comply with this requirement unless the person has a reasonable excuse.

Section 126O enables an authorised person to take the action believed necessary to alleviate a danger if 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. If a person agrees to assist the authorised person in such an instance the person is taken to have the powers of an authorised person to the extent necessary to alleviate the danger, other than stopping or holding vehicles.

Clause 83 amends s.127 to ensure that an authorised person has the capacity to require a person's name and address in relation the operation of Chapter 8AA of the *Transport Infrastructure Act 1994*.

Clause 84 amends s.129 to provide an authorised person with the power to require a person to produce documents produced or required under chapter 8AA of the *Transport Infrastructure Act 1994*. Further, if the authorised person copies documents a person may be required to certify those documents. A penalty is prescribed for failure to comply with the provisions without a reasonable excuse.

Clause 85 amends s.137 to expand the powers of an authorised person for railway to ask a person, found committing an offence, to state their

name and address and in some circumstances their age. The expanded powers relate to the new chapter 8AA of the *Transport Infrastructure Act 1994* (Transportation of Dangerous Goods by Rail) as well as any regulation for rail functions under the *Transport Infrastructure Act 1994.*

Clause 86 amends s.143AE to correct a typographical error in the definition of "interfere with".

Clause 87 inserts a new section 153A to provide that in a prosecution for a contravention of chapter 11 of the *Transport Operations (Passenger Transport) Act 1994* or of chapter 8AA of the *Transport Infrastructure Act 1994,* an authorised person may give evidence that the officer believes certain matters in relation to dangerous goods. 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.

Clause 88 amends schedule 2 to correct a minor typographical error relating to reviewable decisions.

Clause 89 amends schedule 3 to define the meanings of particular words used in this Bill, and to clarify that the meaning of "operator" includes a person who leases a taxi service license or limousine service license to another person.

PART 11—AMENDMENT OF THE TRANSPORT OPERATIONS (ROAD USE MANAGEMENT) ACT 1995

Clause 90 states that this part amends the *Transport Operations (Road Use Management) Act 1995*.

Clause 91 amends s.17B (Granting, renewing or refusing approval). Subclause (1) makes provision for parking permits for persons with disabilities under s 111 to be an approval under Part 1A of the Act. Decisions by the chief executive about whether to grant or refuse a permit will therefore be subject to the requirements of ss.18, 19 and 65 of the Act. The existing regime under the *Traffic Regulation 1962* will be subsequently omitted. The precise amendment excludes permits issued under s.111 from the disqualifying offence provisions of the Part.

Subclause (2) renumbers subsection (3) as subsection (5). Subclause (3) inserts new subsections (3) and (4) to provide for the chief executive to be able to seek criminal histories from the Commissioner of Police for

applicants for approvals about which a regulation has been made under subsection 1. Subsection (4) requires the Commissioner to give the information to the chief executive.

Clause 92 amends s.18 (Grounds for amending, suspending or cancelling approvals). The insertion of subsection (f) provides for a limitation on persons with disabilities continuing to hold a permit when their mobility is no longer impaired as a ground for amending, suspending or cancelling the permit.

Clause 93 amends s.32 (Power to stop heavy vehicles). Subclause 1 renumbers section 32(3) as 32(4). Subclause 2 inserts a new subsection 32(3) to provide authorised officers with the power to give directions to the persons in charge of heavy vehicles. This change will allow authorised officers to direct vehicles into specific lanes in multi-lane situations or to exit high-speed roads such as the Pacific Motorway for the purposes of vehicle and document inspection and for weighing. This is desirable for more efficient enforcement and in the interests of safety for all road users. This head of power will enable authorised officers to give directions via remote control, subject to the drafting of appropriate regulations.

Clause 94 amends s.60 (Evidentiary aids) to provide broader evidentiary provisions for vehicle related offences. This will allow any information contained in the register of vehicles, and relevant to the prosecution of offences, to be supplied to the courts in the chief executive's certificate.

The existing provisions only allow the chief executive's certificate to detail information about whether or not a specified person was recorded as the registered operator. Other details relevant to the prosecution must be provided to the courts in person by either a Queensland Transport representative or another witness. This amendment will reduce the expense to Queensland Transport, the courts and alleged offenders who are found guilty and then have to pay travel and court attendance costs for witnesses.

This section has also been extended to allow a certificate containing information and issued under a corresponding law to be acceptable in court. This will allow information contained in a certificate from an interstate vehicle registration authority, and relevant to a vehicle related offence in Queensland, to be acceptable in court.

Clause 95 inserts a new s.72A which requires that the installation of an official traffic sign must in accordance with the Manual of Uniform Traffic Control Devices (MUTCD).

Clause 96 amends s.78 (Driving of motor vehicle without a driver licence prohibited) to provide that a person is guilty of an offence if they

drive a motor vehicle on a road when not holding a driver licence authorising them to drive that vehicle.

The maximum penalty for the offence if it happened when they were already disqualified by a court from holding or obtaining a driver licence is 60 penalty units or 18 months imprisonment.

If the offence happened when they were otherwise disqualified from holding or obtaining a driver licence, the maximum penalty is 40 penalty units or 1 year's imprisonment. They may have been otherwise disqualified if their driver licence was suspended because of unpaid fines or the accumulation of enough demerit points.

Section 78(2) clarifies the matters that a court must consider when deciding the penalty to be imposed on a person who has been found guilty of driving a motor vehicle when disqualified.

Section 78(3) clarifies that a person found guilty under s.78(1) must be further disqualified from holding or obtaining a driver licence by the court. If the offence happened when they were already disqualified by a court, then the court must impose an absolute disqualification. If the offence happened when they were otherwise disqualified, the court must impose a 6 months disqualification.

Section 78(4) clarifies that section 78(3) applies whether or not a conviction is recorded for the offence.

Section 78(5) provides that a person is guilty of an offence if they knowingly allow someone who does not hold a driver licence to drive a particular vehicle on a road. The maximum penalty is 20 penalty units or 6 months imprisonment.

Clause 97 amends s.79 (1A), (1B), (1E) and (2I) by substituting the existing penalty provision with a new penalty provision that is more fitting as a sanction against persons who are found guilty of a second drink driving offence or other serious offence involving the driving of a motor vehicle within a five year period. This penalty provision is identical to the penalty provision that is to be applied to a person who is found guilty of driving a motor vehicle when already disqualified from holding or obtaining a driver licence by a court.

Clause 98 amends s.80 (Provisions with respect breath tests and laboratory tests). Subsection (15A) provides for the printout from an Evidential Breath Analysis (EBA) instrument to be the certificate prescribed by subsection (15). This simplifies the provision of evidence of the analysis of a person's breath. The printout from the EBA instrument is

evidence that the instrument operated by a doctor or officer was a breath analysing instrument; that the instrument was in proper working order and properly operated by the doctor or officer; that all regulations relating to breath analysing instruments were complied with; and is presumed to have been given to the person whose breath was analysed, unless the contrary is proved.

Subsections (15D) and (15E) are to be omitted as they are replaced by subsection (15A). The new arrangements reduce the number of certificates to be issued to one certificate instead of two, and avoids the possibility of errors in transferring the printout data from the EBA instrument to separate certificates. These amendments mirror arrangements that have existed in Victoria for a number of years.

As a safety precaution, subsections (22)(e), (22AA), (22A), (22C), and (22D) provide for the suspension of a person's Queensland driver licence for a period of 24 hours upon the person's blood alcohol content (BAC) level being in excess of a prescribed limit. This helps to ensure that the person does not drive during the period when their BAC may remain in excess of prescribed limits. The purpose of this amendment is to provide for the suspension period to be applied to all drivers detected on Queensland roads in excess of prescribed limits. Persons with driver licences other than Queensland driver licences will also be suspended for 24 hours from driving on roads in Queensland.

Clause 99 amends s.87 (Issue of restricted licence to disqualified person). Section 87 provides a system where drivers, upon conviction for drink or drug driving in a number of circumstances, can apply to the court for and be granted a restricted driver licence.

- Persons are precluded from applying for a restricted driver licence if:
- the person has been convicted of the same offence, a similar offence or dangerous driving in the last 5 years;
- the circumstances of the offence for which the person is convicted relates to an activity directly connected with the person's means of earning livelihood;
- the offence was committed whilst the offender was unlicenced or whilst the offender was driving on a restricted licence;
- the person was driving a type of vehicle carrying out an activity mentioned in s.79(2C) such as driving a truck or a pilot vehicle escorting an over-dimensional load on a heavy vehicle; or

- the person's level of blood alcohol concentration (BAC) is in excess of 150mg of alcohol per 100mL of blood.

These preclusions did not take account of persons who were convicted of being under the influence of a drug or who refused to supply a specimen of breath or blood for testing when required to do so.

The amendments in subclause (1) and (2) of this clause will have the effect of precluding persons convicted of being under the influence of a drug whilst driving or in charge of a motor vehicle as well as persons who refuse to provide a specimen of breath or blood for analysis. The amendment also continues the preclusion of persons who have a BAC in excess of 150mg per 100mL of blood from applying for a restricted driver licence.

Clause 100 amends s.100 (Removal of things from roads) to provide for the chief executive officer of a local government to be able to authorise the removal of things from roads in the local government's area. These amendments are necessary to prevent a local government from removing vehicles from a busway.

Clause 101 amends s.102 (Parking regulation involves installing official traffic signs). Under the current provisions of s.102 a local government may install parking signs and under subsection (3)(a), "declare" under a local law, an area to be a traffic area in which parking is regulated. The Department of Local Government and Planning has requested that subsection (3)(a) be amended in a way that would allow the Minister for Local Government and Planning to approve a model local law for regulated parking to assist local governments to make consistent local laws about regulated parking. The amendment allows "traffic areas" to be defined under a local law rather than being "declared".

Clause 102 amends s.113 (Definitions for Div 2—Photographic detection devices). The existing definition of "owner" is to be amended as the existing definition does not allow, for example, some rented vehicle drivers to be identified as traffic offenders.

The proposed changes provide for the identification of persons in charge of vehicles detected by camera as breaching transport legislation, eg. exceeding the speed limit or driving an unregistered vehicle on a road. Clause (2) provides for future use of new technologies for camera detection of offences. Digital technology is currently in use in New South Wales, Victoria, Tasmania and the Australian Capital Territory.

Clause 103 amends s.114 (Offences detected by photographic detection devices) to recognise the amended definition of "owner". The significant

changes are referring to "the person in charge of the vehicle" rather than "the driver of the vehicle" and reducing the time from 4 months to 28 days allowed for a person in charge of the vehicle to nominate another person as being in charge of the vehicle or nominating the person who was the driver when the offence happened. The proposed changes will overcome technical flaws in existing legislation that has impeded the successful prosecution of some offenders.

Clause 104 amends s.116 (Notice accompanying summons) to acknowledge the change to the definition of "owner".

Clause 105 amends s.120 (Evidentiary provisions). Subsection (5) is to be omitted because it is duplicated by the amendment of section 60 (see clause 96).

Clause 106 amends s.121 (Application of the *State Penalties Enforcement Act 1999*) to acknowledge the change to the definition of "owner".

Clause 107 amends s.124 (Facilitation of proof). The existing provisions require that a defendant who wishes to challenge the accuracy of a speed detection device, or how the device was operated, must supply the prosecution a notice of that intention at least 14 days before the date set for a hearing.

The existing provisions are limited to a radar speed detection device or a vehicle speedometer. The amendment is designed to extend this requirement to laser speed detection devices.

Clause 108 deletes s.129 (Effect of cancellation pursuant to regulations) as this clause is no longer required.

Clause 109 amends s.130 (Delivery of cancelled or suspended licences, or licences for endorsement). To support the changes initiated by the National Driver Licensing Scheme, the surrender of driver licences to Queensland Transport as a result of demerit points accumulation will no longer be required. The amendment will allow drivers who have their licence suspended through demerit point sanctions to retain it during the suspension period. This amendment will also compliment and support the implementation of licence suspension under the *State Penalties Enforcement Act 1999*.

The amendment will reduce confusion, administrative burden and cost, and allow licence holders to continue to use their licence product for identification. The surrender of licences for court imposed

disqualifications, medical show cause and voluntary surrender will still be necessary.

Clause 110 amends s.147 (Regulating vehicles etc. in public places) to adopt the national uniform vehicle registration regime regarding conditional registration of vehicles used infrequently on roads.

Previously, vehicles could be registered as recreational vehicles under the *Motor Vehicles Control Act 1975* (Repealed by the *Transport Legislation Amendment Act 1998*). The provisions of this Act were transferred to the *Transport Operations (Road Use Management) Act 1995*. Section 147 provided for the continuation of recreationally registered vehicles. These provisions (subsections (1)(c) to (e) and (2)) are to be omitted as they are duplicated in s.149 of the Act and the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 1999.*

Clause 111 amends s.151 (Application of the part) to correct a reference to the *Explosives Act 1999*. Subsection (2) provides for matters that are not dangerous goods within the meaning of chapter 5A. Experience has identified the need to add items that are an essential part of a dangerous goods vehicle, including such components as the vehicle's fuel supply and battery, to subsection (2) as matters which are not subject to chapter 5A—Transporting Dangerous Goods. This clearly separates dangerous goods which are part of a dangerous goods vehicle or carried on the vehicle for the use of the driver, from dangerous goods in the load of the vehicle. The provision is consistent with preclusions contained in another part of this Bill about the carriage of dangerous goods by rail.

Clause 112 amends s.153 (Exemptions). A person may currently apply to the chief executive for an exemption from a regulation about transporting particular dangerous goods by road. This clause will allow the chief executive, as the competent authority in Queensland, to exempt a person from complying with a provision of a regulation about transporting dangerous goods by road without an application from the person.

Clause 113 omits s.166(1) and renumbers the remaining provisions. Refer Clause 97 for the relocated provision.

Clause 114 omits schedule 1 (Disqualifying offences—approvals). This schedule is no longer necessary as the breadth of disqualifying offences has been reviewed and reduced to that defined in clause 93.

Clause 115 amends schedule 4 (Dictionary) to define terms used in that the Act.