

TRANSPORT OPERATIONS (ROAD USE MANAGEMENT) AMENDMENT BILL 2002

EXPLANATORY NOTES

GENERAL OUTLINE

OBJECTIVES OF THE LEGISLATION

The objective of the Transport Operations (Road Use Management) Amendment Bill 2002 is to amend the penalties for driving with an expired licence under the *Transport Operations (Road Use Management) Act 1995*.

REASONS FOR THE BILL

The penalties for unlicensed driving were recently revised with the passing of the Transport Legislation Amendment Act 2001. Since this scheme took effect there has been feedback to indicate that an automatic penalty of six months disqualification for those who have neglected to renew their driver licence is too harsh. There is a consensus that the great majority of expired licence offences are not deliberately committed, and do not result in an increased risk to public safety.

Accordingly, it is proposed to recognise driving under an expired licence as a separate offence. Different penalties will apply depending upon how long the licence was expired and whether it was a first offence. Police will also be able to authorise persons detected with an expired licence to continue their journey under certain circumstances. In other changes, courts are to be given discretion in the sentencing of persons convicted of driving when already subject to a court-imposed disqualification, and persons detected driving on an expired licence since 3 December 2001 will have any disqualification removed according to the new legislative scheme.

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 Parliamentary Counsel, under the *Legislative Standards Act 1992*, has a responsibility to provide advice on the application of FLPs. On the basis of this advice the following FLP has been identified.

The automatic six month disqualification which applies to persons who have been detected driving when disqualified (other than by a court); or, who have never held a licence; or, the driver licence has expired by more than 5 years—may represent a breach of FLPs. However, this is a continuation of an existing provision and its review is outside the scope of this Bill.

NOTES ON CLAUSES

Clause 1 states the short title of the Act.

Clause 2 states the Act to be amended.

Clause 3 amends section 78 of the Act.

Subclause (1) clarifies that the penalty of 60 penalty units or 18 months imprisonment applies to a person detected driving on a licence disqualified by an order of any Australian court, rather than just a Queensland magistrates court.

Subclause (2) inserts a new 78 (1A) to provide for an infringement notice under the *State Penalties Enforcement Act 1999* to be issued to a person whose licence has recently expired and who has not had a conviction against subsection 1 in the last 5 years.

Subclause (3) amends section 78 by deleting the existing section 78(3) and inserting new sections 78(3), 78(3A) and 78(3B).

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Inserts a new subsection 78(3) to state the circumstances whereby, if the court convicts a person of an offence under section 78(1), the court must, in addition to imposing a fine, disqualify the person from holding or obtaining a driver licence for a period of time. If the offence happened when the person was already disqualified under a court order, then the court must impose a further disqualification period. This disqualification period may be decided by the court, however, the disqualification period must be at least 2 years but not more than 5 years. If the offence happened because the person had never held a driver licence for the class of vehicle the person was found driving, or at a time when the person was otherwise disqualified, or the person's driver licence had expired by more than 5 years, then the court must impose a 6 months disqualification.

The person may be otherwise disqualified from holding or obtaining a driver licence because of unpaid fines or the accumulation of excess demerit points.

Inserts a new subsection 78(3A) to require that a person committing an offence while disqualified by any court order shall receive the disqualification appropriate to that offence and not to a lesser offence which may also have been committed.

Inserts a new subsection 78(3B) to clarify when a court may exercise a discretion in the imposition of a disqualification period on a person who has been found guilty of an offence under section 78(1), providing the person was not already disqualified when the offence happened. The court may decide, in addition to imposing a fine, to disqualify the person for a period not less than 1 month but not more than 6 months if the offence happened at a time either when the person's driver licence had been expired less than 12 months but the person had been convicted of another offence under section 78(1) within 5 years prior to this conviction, or where the person's licence had expired more than 12 months but not more than 5 years prior to this conviction.

Subclause (4) amends subsection 78(4) which provides that subsections 78(3) or 78(3B) will apply whether or not a conviction is recorded for the offence.

Subclause (5) inserts a new subsection 78(6) to define for the purpose of section 78, the terms "any court order", "expired" licence and "recently expired" licence.

Clause 4 inserts a new section 78A.

Inserts a new section 78A(1) to clarify that this section applies if a police officer issues an infringement notice to a person found driving a motor

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vehicle at a time when the person's driver licence had expired not more than 12 months prior to the offence happening.

Inserts a new section 78A(2) to clarify that if an infringement notice is issued, a police officer may issue a permit to a person mentioned in section 78A(1) authorising the person to drive the motor vehicle to a stated place.

Inserts a new section 78A(3) to clarify the information that must be included on the permit mentioned in section 78A(2).

Inserts a new section 78A(4) to clarify that if the person fails to comply with a stated condition on the permit, then the permit is cancelled.

Inserts a new section 78A(5) to clarify that the police officer who issues a permit mentioned in section 78A(2) does not commit an offence under section 78(5) by allowing the person to drive a motor vehicle when the officer knows the person does not hold a valid driver licence.

Clause 5 amends chapter 7.

Subclause 1 amends the heading to chapter 7 to reflect the correct application of the chapter as required by the amendments.

Subclause 2 inserts a new part 4 in chapter 7, and a new section 195 and 196.

Inserts a new section 195(1) to clarify that the provisions of this section apply to a person who has been convicted of an offence of unlicensed driving between 3 December 2001 and the day this section commences and who has been automatically disqualified from holding or obtaining a driver licence for 6 months. However, the person must not have already been disqualified from holding or obtaining a driver licence, nor found to be driving at a time when the person's driver licence had expired for more than 5 years.

Inserts a new section 195(2) to clarify that a person mentioned in section 195(1) is no longer to be considered to be disqualified once section 195 commences.

Inserts a new section 195(3) to clarify that no compensation is payable in relation to any disqualification period served by a person mentioned in section 195(1).

Inserts a new section 196(1) to clarify that this section applies to a person who is alleged to have contravened section 78(1) that was in force between 3 December 2001 and the commencement of this section, provided the alleged contravention had not been dealt with prior to the commencement.

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Inserts a new section 196(2) to clarify that if a court subsequently decides that a person mentioned in section 196(1) is guilty of the offence as charged, then the court may only apply the provisions of section 78(1) as in force after the commencement.