

TRANSPORT OPERATIONS (ROAD USE MANAGEMENT) AND ANOTHER ACT AMENDMENT BILL 2003

EXPLANATORY NOTES

GENERAL OUTLINE

OBJECTIVES OF THE LEGISLATION

The objective of the Transport Operations (Road Use Management) and Another Act Amendment Bill 2003 is to provide for amendments to the *Transport Operations (Road Use Management) Act 1995* and the *State Transport (People Movers) Act 1989*.

REASONS FOR THE BILL

Power to require information and extended liability provisions

The *Transport Legislation Amendment Act (No. 2) 2002* (TLAA) inserted provisions requiring a driver or another person to give information about an influencing person's role in an extended liability offence. This is often the only way to ensure that the root causes of offending behaviour in the heavy vehicle industry can be identified and enforcement action taken. The TLAA also allowed the chief executive to give indemnity to drivers and other persons giving information to authorised persons during investigations.

Testimony in court is generally essential to the conviction of an "influencing person". The *Transport Operations (Road Use Management) Act 1995* (TORUM) must therefore be amended to clarify that if a driver or other person is required to answer a question in court in relation to an "information offence", the person's answer and any evidence derived from the answer is not admissible against the person in any proceeding for an "information offence".

TORUM is also to be amended to further improve the operation of the extended liability provisions. The definition of "influencing person" will be expanded to include all persons who influence the loading or operation

of a heavy vehicle or heavy vehicle combination. This will clarify that the owner of a prime mover may influence the loading or operation of trailers in a heavy vehicle combination even if someone else owns the trailers. It will also insert the concept of an “associate” of an “influencing person”. This will mean that an “influencing person” cannot avoid liability simply on the basis that an “associate” of the “influencing person” rather than the “influencing person” was in a position to influence the conduct of the driver.

Driving when licence suspended

TORUM is to be amended to provide sanctions for those who drive when their licence has been suspended for exceeding the speed limit by more than 40 km/h.

New standard for evidential breath analysers

Drink driving legislation relies on sampling the breath, blood or urine of persons who are in charge of vehicles. The principle method of sampling is by roadside random breath testing. This is the process by which a person is asked to provide a specimen of breath for a test. The test indicates whether a person has a blood alcohol concentration (BAC) above the limit that is prescribed for that category of driver.

The sample is measured in accordance with the provisions of the *National Measurements Act 1960 (Commonwealth)* under a National Standards Commission (NSC) standard. The NSC has developed a new standard for evidential breath analysers (EBAs) used in drink driving enforcement (NSC R 126:2000). This new standard is consistent with the international standard developed by the International Organization of Legal Metrology (OILM) to which Australia is a signatory. The new standard requires that EBAs report a person’s breath alcohol concentration (BrAC). This is in contrast to the existing EBAs that use a sample of a person’s breath to report their blood alcohol concentration (BAC).

TORUM must therefore be amended to accommodate the new standard. If these amendments are not made there will be a discrepancy between the way that Queensland’s breath testing measurements are reported and those endorsed by the NSC. This would have the potential of seriously undermining the Queensland government’s initiatives to address drink driving.

The amendments will allow for a measuring of BrAC as well as retaining the ability to measure BAC. The ability to test blood alcohol concentration will also be retained for the purpose of direct testing of a person's blood usually in a non-roadside environment. In addition, the amendments introduce a greater degree of flexibility in the delivery of blood samples to the analyst.

The amendments also introduce new terminology for describing alcohol concentration limits. While these changes do not impact on the actual alcohol limits for the various categories of driver, they simplify the legislation. The "no alcohol limit" applies to learner, probationary, provisional licence holders under the age of 25, restricted licence holders, and professional drivers while driving in the course of their profession. The "general alcohol limit" applies to all other drivers. If a driver is over the "high alcohol limit", the driver is conclusively presumed to be under the influence of liquor.

State Transport (People Movers) Act 1989

The *State Transport (People Movers) Act 1989* is to be amended to limit its application to the two existing licencees at Kuranda and the Gold Coast. As current planning and development provisions are contained in other legislation, future people mover systems will be developed under this more appropriate legislation (for example, the *Integrated Planning Act 1997*).

ESTIMATED COSTS OF GOVERNMENT IMPLEMENTATION

Queensland Police Service (QPS) has determined that the cost of replacing EBAs will be \$1.3M and that this cost will be met with carryover funds approved in the 2002/2003 financial year. The remaining amendments have no financial impacts.

RESULTS OF CONSULTATION

Consultation with respect to all the proposed amendments has occurred with the Department of the Premier and Cabinet, Queensland Police Service and the Department of Justice and Attorney-General. Additional consultation regarding changes to the *State Transport (People Movers) Act 1989* has occurred with Queensland Treasury and the Department of Local Government & Planning. 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 FLPs have been identified.

Proposed changes to section 50AA of TORUM mean that a person called as a witness in a proceeding against someone else for the “information offence” cannot refuse to answer a question in relation to the “information offence” because answering the question might tend to incriminate the person for an “information offence”. This may potentially breach the principle of protection from self-incrimination. This is considered to be justified by the need to improve safety outcomes in the heavy vehicle industry.

In any event, the person’s answer, and any evidence derived from the answer is not admissible against the person in a proceeding for an “information offence”. This limited immunity from prosecution may in itself constitute a breach of fundamental legislative principles. However this protection is warranted to safeguard the rights of individuals generally, and to encourage the giving of information that is essential to achieving convictions in extended liability offences and achieving significant road safety outcomes.

NOTES ON CLAUSES

PART 1—PRELIMINARY

Clause 1 states that the short title of the Act is to be the *Transport Operations (Road Use Management) and Another Act Amendment Act 2003*.

Clause 2 states that Part 2 amends the *Transport Operations (Road Use Management) Act 1995*, and the schedule amends the *State Transport (People Movers) Act 1989*.

PART 2 – AMENDMENT OF TRANSPORT OPERATIONS (ROAD USE MANAGEMENT) ACT 1995

Clause 3 amends section 50AA (Power to require information) by inserting subsections (6A), (6B) and (6C) and (6D).

Section 50AA(6A) indicates that section 50AA(6B) applies if the person is called as a witness in a proceeding against someone else for the “information offence”.

Section 50AA(6B) states that a person is not entitled to refuse to answer a question about the “information offence” because answering the question might tend to incriminate the person for an “information offence”.

Section 50AA(6C) provides that the person’s answer, and any evidence derived directly or indirectly from the answer, is not admissible against the person in a civil or criminal proceeding for an “information offence”. The purpose of this amendment is to provide limited immunity to a person who gives evidence in proceedings for an “information offence”.

Section 50AA(6D) clarifies that subsection (6B) does not require the person to answer a question that might tend to incriminate the person of an offence that is not an “information offence”.

Clause 4 amends section 57B (Further liability provisions for extended liability offences).

Subclause (1) amends section 57B(2)(a) by inserting ‘or any associate of the influencing person’. This means that if the “influencing person” or any “associate” of the “influencing person” was in a position to influence the conduct of the driver or other person, the “influencing person” can avoid liability by proving that the “influencing person” exercised reasonable diligence and took reasonable steps to prevent the act or omission.

Subclause (2) amends section 57B(2)(b) so that the “influencing person” can avoid liability by proving that neither the “influencing person” nor an “associate” was in a position to influence the conduct of the driver or other person in relation to the act or omission.

Subclause (3) amends section 57B(2)(a) and section 57B(2)(b) to clarify that the provisions apply to the act or omission that is the offence.

Subclause (4) amends section 57B(3) by omitting the definition of “influencing person”. A new definition is inserted by *subclause (5)*.

Subclause (5) amends section 57B(3) by inserting the definitions of “associate”, “holding company”, “influencing person”, “security interest” and “subsidiary”.

An “associate” has some connection with the “influencing person” as specified in the definition. The definition also has the effect of “lifting the corporate veil”. Although legislation about corporations is the subject of the Commonwealth *Corporations Act 2001*, this Act does allow for state parliaments to make laws about corporations under Part 1.1A of that Act. Section 5E of the Commonwealth Act states that the legislation is not intended to exclude or limit the concurrent operation of any law of a state that, among other things, “imposes additional obligations or liabilities (whether criminal or civil) on a director or other officer of a company or other corporation or a company or other body.”

The Queensland Parliament has legislatively decided to lift the corporate veil in the *Environmental Protection Act 1994*, section 493 (3) and in the *Fair Trading Act 1989*.

The definition of “associate” also includes a person who is accustomed, or under an obligation, whether formal or informal, to act in accordance with the directions, instructions, or wishes of the “influencing person”.

Subclause (5) also inserts a new definition of an “influencing person”. The concept of “influencing person” is fundamental to the ability to link persons other than the driver to the conduct of the vehicle or load. In most cases involving heavy vehicle combinations, the owner of the prime mover is able to influence the mass and load security of freight carried by the trailers in the combination. Without the prime mover, the trailers would not be involved in the commission of any offences.

The enhancement of the definition of an “influencing person” acknowledges that the driver and/or owner of a prime mover can be influenced by other persons who own the trailer or trailers being moved in the combination. This provision recognises that in the heavy vehicle industry drivers may be requested, instructed or directed by a variety of influencing persons to perform their duties in a way that would lead them to commit certain heavy vehicle offences which result in unsafe driving practices.

These important amendments recognise the role that persons other than a driver may play in the way that heavy vehicles are used on the road. The concept of the ‘chain of responsibility’ is based on the idea that all persons that influence the operation of a vehicle or load on a journey bear some responsibility for ensuring the load and vehicle operate safely.

The government sees these key reforms as being central to enhancing road safety outcomes and the safety of the workplace environment.

Clause 5 provides for an amendment to section 78 (Driving of motor vehicle without a driver licence prohibited).

Subclause (1) renumbers section 78(3)(d) to (f) as section 78(3)(f) to (h).

Subclause (2) inserts new section 78(3)(d) and (e). Section 78(3)(d) clarifies that a court must disqualify a person who has been convicted of driving while the person was disqualified from holding or obtaining a driver licence because the person had been convicted of an offence against the Queensland Road Rules, section 20 for driving more than 40 km/h over the speed limit, for a period of 6 months.

Section 78(3)(e) clarifies that a court must disqualify a person who has been convicted of driving when the person’s authority to drive on a Queensland road under a non-Queensland driver licence was suspended because the person had been convicted of an offence against the Queensland Road Rules, section 20 for driving more than 40 km/h over the speed limit, for a period of 6 months.

This amendment supports the new sanction for the Queensland Road Rules, section 20, for driving more than 40 km/h over the speed limit, which was introduced on 17 April 2003, and provides consistency in sanctions for unlicensed driving offences.

Subclause (3) amends section 78(6), definition “disqualified driver” by renumbering paragraph (b)(ii) as paragraph (b)(iii).

Subclause (4) amends section 78(6), definition “disqualified driver”, by inserting a new paragraph (b)(ii). This amendment clarifies that a person who has been disqualified from holding or obtaining a driver licence because the person was convicted of an offence against the Queensland Road Rules, section 20, for driving more than 40 km/h over the speed limit, is defined as a disqualified driver for the purpose of section 78.

Subclause (5) amends section 78(6), definition “disqualified driver” by renumbering paragraph (c)(ii) as paragraph (c)(iii).

Subclause (6) amends section 78(6), definition “disqualified driver” by inserting a new paragraph (c)(ii). This amendment clarifies that a person whose authority to drive on a Queensland road under the person’s non-Queensland driver licence is suspended because the person was convicted of an offence against the Queensland Road Rules, section 20, for driving more than 40 km/h over the speed limit, is defined as a disqualified driver for the purpose of section 78.

Clauses 6-11

It has long been recognised that drink driving is a significant safety risk on Queensland’s roads. Queensland Transport (in conjunction with Queensland Police Service) has dedicated many resources towards public education and enforcement to reduce drink driving. While these efforts have been rewarded by reductions in the road toll, drink driving remains the most significant contributing factor to road fatalities. As a result, Queensland Transport continues to promote initiatives to address drink driving.

Following an initial assessment by a breath testing device (for example, a Lion alcolmeter), a person who is suspected of having a blood alcohol concentration (BAC) more than the prescribed BAC limit is subjected to a roadside breath analysis using an evidential breath analysis (EBA) instrument. Roadside breath testing and breath analysis has proved to be an effective and efficient way of assessing drivers in random breath testing at the roadside. It provides minimal interruption to the journey of those who are under the recognised limits and also quickly identifies those that exceed it.

Clauses 6 – 11 implement the National Standards Commission’s new standard (NSC R 126:2000) so that accurate EBAs will continue to be used to detect drink drivers in order to improve the safety of Queensland road users. The new standard requires that EBAs produce an outcome which results in a measurement stated as grams of alcohol in 210 litres of breath sample. The output from an EBA will be called a Breath Alcohol Concentration (BrAC). This is in contrast to current processes that state the number of milligrams of alcohol per 100 millilitres of blood - a Blood Alcohol Concentration (BAC). For all intents and purposes drivers will not notice any difference in the way breath testing is conducted between the existing and new processes. The driver will still exhale into a device and the device will still record a reading. The formulation of the grams/litres of breath is also designed to ensure that existing alcohol concentration limits continue to apply.

Clause 6 amends section 79 (Driving etc. whilst under the influence of liquor or drugs or with prescribed concentration of alcohol in blood).

Subclause (1) inserts into the heading of section 79 the words ‘or breath’. This reflects the new Australian standard that requires detection instruments to measure a person’s breath alcohol concentration.

The remaining *subclauses* of *clause 6* redraft provisions of section 79 to use the new terminology to describe the corresponding alcohol concentration limits for various drivers. These limits are explained by *clause 7* that inserts a new section 79A to provide for the measurement of alcohol concentration in either a person’s blood or breath.

Subclause (2) amends section 79 (2) so that the specified alcohol concentration limits are expressed using the new terminology.

Subclause (3) amends section 79(2A), 79 (2B) and 79 (2D) so that the specified alcohol concentration limits are expressed using the new terminology.

Subclause (4) amends section 79 (2J) so that the specified alcohol concentration limits are expressed using the new terminology.

Subclause (5) amends section 79 (3) so that the specified alcohol concentration limit is expressed using the new terminology.

Subclauses (6) and (7) amend section 79 (4) (b) so that the specified alcohol concentration limits are expressed using the new terminology.

Subclause (8) amends section 79 (6)(a) so that the specified alcohol concentration limits are expressed using the new terminology.

Subclause (9) amends section 79(6)(b)(ii) to clarify that the measurement of the concentration of alcohol can either be in the defendant’s blood or breath.

Clause 7 inserts a new section 79A. This section sets out when a person is over the corresponding alcohol limits that are specified in section 79. The descriptions include both the relevant concentration of alcohol in a person’s blood and in a person’s breath.

A person is over the “no alcohol limit” if the concentration of alcohol in the person’s blood is more than 0 mg of alcohol in 100mL of blood; or the concentration of alcohol in the person’s breath is more than 0g of alcohol in 210 L of breath.

A person is over the “general alcohol limit” if the concentration of alcohol in the person’s blood is, or is more than, 50mg of alcohol in 100mL

of blood; or the concentration of alcohol in the person's breath is, or is more than, 0.050g of alcohol in 210L of breath.

A person is over the "high alcohol limit" if the concentration of alcohol in the person's blood is, or is more than, 150mg of alcohol in 100mL of blood; or the concentration of alcohol in the person's breath is, or is more than, 0.150g of alcohol in 210L of breath.

The new section 79A(4) specifies that the concentration of alcohol in a person's blood may be expressed either as a specified number of milligrams of alcohol in 100mL of blood or as a percentage. Similarly the concentration of alcohol in a person's breath may be expressed either as a specified number of grams of alcohol in 210L of breath or as a specified number of grams in 210L.

Clause 8 amends section 80 (Provisions with respect to breath tests and laboratory tests).

Subclause (1) amends the definition of "breath analysing instrument" to include an instrument to find out the concentration of alcohol in a person's breath. This enlarges the previous definition that specified that the instrument is for finding out the concentration of alcohol in a person's blood.

Subclause (2) amends the definition of "breath test" from meaning a test to indicate the concentration of alcohol in a person's blood, to being a test to determine the concentration in a person's breath.

Subclauses (3) and (4) amend sections 80 (6)(a) and 80 (6)(aa) so that the specified alcohol concentration limits are expressed using the new terminology.

Subclause (5) amends section 80(8B)(d). This section sets out where a person who has been arrested or detained as specified in section 80 (8) may be taken. This has been expanded to include a place where there are reasonable grounds for believing a nurse is available. Previously there needed to be reasonable grounds for believing that a doctor is available. This addition will simplify procedures, for example, in remote areas where doctors may not be available.

Subclause (6) amends section 80(9)(d) to include alcohol in a person's breath.

Subclause (7) amends section 80(9) to include a nurse. This addition will simplify procedures, for example, in remote areas where doctors may not be available.

Subclause (8) amends section 80(9A) to include a nurse. This addition will simplify procedures, for example, in remote areas where doctors may not be available.

Subclause (9) omits section 80 (14). This section defined how the concentration of alcohol in a person's blood could be expressed. This has been included in the new section 79A. (inserted by *clause 7*)

Subclause (10) amends sections 80 (15) and 80 (15G) so that the concentration of alcohol in the blood or breath may be specified. Previously only the concentration of alcohol in the blood was specified.

Subclause (11) amends section 80(16) to enable a police officer to either deliver a specimen or to arrange for it to be delivered on the officer's behalf to the laboratory of an analyst. Previously only the officer who requested the sample could deliver the sample to the analyst's laboratory. This was onerous, particularly in remote areas as the analyst's laboratory is located in Brisbane.

Subclauses (12) and (13) amend section 80 (19) to take into account delivery of a specimen of blood on a police officer's behalf.

Subclauses (14) and (15) amend section 80(22)(a) so that the specified alcohol concentration limits are expressed using the new terminology.

Subclauses (16) and (17) amend section 80(22)(c)(i) so that the specified alcohol concentration limits are expressed using the new terminology.

Subclause (18) amends section 80 (24) so that evidence of the presence of the concentration of alcohol in the blood or breath of a person is admissible.

Subclause (19) amends section 80(24A)(c) so that the specified alcohol concentration limit is expressed using the new terminology.

Clause 9 amends section 81 (Notices to offenders for certain first offences)

Subclause (1) expands the description of the concentration of alcohol in section 81(1)(b) to include a concentration in the person's breath.

Subclause (2) expands how the description of the concentration of alcohol can be described in section 81(3)(f). This can now include a description of the concentration of alcohol in the person's breath.

Clause 10 amends section 86 (Disqualification of drivers of motor vehicles for certain offences) to include the concentration of alcohol in the breath of the defendant in section 86(2A) and 86(2C).

Clause 11 amends section 87 (Issue of restricted licence to disqualified person).

Subclause (1) amends section 87 (5)(db)(ii) so that the specified alcohol concentration limit is expressed using the new terminology.

Subclause (2) amends section 87(5B)(c). This section stated that a reference to a suspension, cancellation or disqualification in subsection (5)(b) does not include a suspension that resulted from non-payment of a penalty. This has been changed to correct the reference to a suspension under the *State Penalties Enforcement Act 1999*.

Clause 12 amends Chapter 7 (Transitional Provisions) by inserting a new part 6 – Transitional Provisions for the *Transport Operations (Road Use Management) and Another Act Amendment Act 2003* and a new section 198 (Evidentiary value of certificates preserved)

Section 198 clarifies that a certificate or a copy of the certificate, stating the concentration of alcohol present in a person’s blood as indicated by a breath analysing instrument issued before the commencement of this section continues, after the commencement to be as effectual as it was before commencement. The purpose of this section is to preserve the value of previously issued certificates which may be used in any civil or criminal proceedings.

Clause 13 inserts into the Schedule 4 Dictionary definitions for “general alcohol limit”, “high alcohol limit” and “no alcohol limit”.

SCHEDULE

AMENDMENT OF STATE TRANSPORT (PEOPLE MOVERS) ACT 1989

Clause 1 inserts a new section 2 ‘Operation of Act after commencement of section’

Subsection 1 – Provides that the amendment Act is to be effective only for the existing licence-holders.

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New people mover systems that are developed under other legislation (for example, the *Integrated Planning Act 1997*) cannot be held to have committed an offence under s17 (1)(a) or (b) on the grounds that they have not entered into an agreement or obtained a licence under the *State Transport (People Movers) Act 1989*.

Subsection 2 – Clarifies that the purpose of this amendment is to ensure that no new people mover systems are developed under the *State Transport (People Movers) Act 1989*.

Subsection 3 – Provides that on the expiry of an existing licence, the chief executive must not issue a further license to the person who was the holder of the expired licence.

Subsection 4 – confirms that if an existing licence provides for the renewal of a licence, then renewal of the licence may proceed in accordance with the licence provisions.

Subsection 5 – provides clarifying definitions.