

# Transport Legislation Amendment Bill 2005

## Explanatory Notes

### General Outline

The Bill makes a number of amendments to transport legislation and consequential amendments to other legislation. The following transport acts are amended:

- *Transport Infrastructure Act 1994* (TIA);
- *Transport Operations (Marine Pollution) Act 1995* (TOMPA);
- *Transport Operations (Marine Safety) Act 1994* (TOMSA);
- *Transport Operations (Passenger Transport) Act 1994* (TOPTA);
- *Transport Operations (Road Use Management) Act 1995* (TORUM);
- *Transport Planning and Coordination Act 1994* (TPC); and
- *Transport (South Bank Corporation Area Land) Act 1999* (Transport South Bank Land Act).

There are minor or consequential amendments to the following acts:

- *Commission for Children and Young People and Child Guardian Act 2000*;
- *Integrated Planning Act 1997*; and
- *South Bank Corporation Act 1989*.

### Short Title

The short title of the Bill is the *Transport Legislation Amendment Bill 2005*.

### Policy Objectives of the Legislation

To amend the *Transport Infrastructure Act 1994* to:

- clarify the provisions relating to port authorities, differential tolling, and the appointment and powers of busway safety officers;

- clarify which provisions for the establishment and abolition of a port authority do or do not apply to a government owned corporation (GOC) that is declared to be a port authority;
- clarify the land that may be declared busway land; and
- make minor changes to existing provisions and processes relating to non-rail corridor land, miscellaneous transport infrastructure, busways and busway transport infrastructure.

To amend the *Transport Operations (Marine Pollution) Act 1995* and the *Transport Operations (Marine Safety) Act 1994* to:

- enable Maritime Safety Queensland (MSQ) to take a stronger role in the prevention and control of ship sourced pollution and marine incidents; and
- improve vessel safety through new powers including the temporary closure of pilotage areas and the creation of exclusion zones around ships.

To amend the *Transport Operations (Passenger Transport) Act 1994* to:

- enhance existing provisions that ensure drivers of public passenger vehicles are suitable with regard to public safety; and
- clarify service contracts areas and the obligation to hold service contracts in the TransLink area.

To amend the *Transport Operations (Road Use Management) Act 1995* to implement policy developments into legislation to:

- ensure consistency of sanctions for high speed offences and suspended drivers;
- introduce a legislative scheme for crossing supervisors to help children safely cross roads; and
- clarify a number of technical and legislative issues.

To amend the *Transport Planning and Coordination Act 1994* to make minor changes to the Integrated Development Assessment System provisions introduced by the *Transport and Other Legislation Amendment Act 2004*.

To amend the *Transport (South Bank Corporation Area Land) Act 1999* to resolve land planning and land control issues for the South East Busway at South Bank. This means making amendments to clarify that land required for the busway is excluded from the South Bank corporation area and

facilitate a change of ownership from Queensland Rail (QR) to the State and from South Bank Corporation to the State for the busway.

## **Reasons for the Bill**

### ***Transport Infrastructure Act 1994 (TIA)***

The amendments to TIA are necessary to:

- clarify that the legislation supports more flexible toll setting within a maximum toll amount, for example, to enable the practice of offering discounts to electronic toll customers and clarifying the date from which a new or revised toll applies;
- clarify which provisions for the establishment and abolition of a port authority do or do not apply to a GOC that is declared to be a port authority;
- clarify the definition of "miscellaneous transport infrastructure". The amendment adopts the wording currently in section 2 of the *Transport Infrastructure Regulation 1995* as the regulation will expire on 1 September 2006; and
- ensure the busway provisions of TIA operate as they were intended. They:
  - ensure land acquired and other land held for the purposes of busway and busway transport infrastructure may be declared busway land;
  - provide for the operation of common areas consistent with the operation of busway and road;
  - reflect current drafting practice for the appointment and powers of busway safety officers;
  - ensure busway safety officers have basic powers consistent with authorised persons and the safety and customer service role for busway safety officers;
  - ensure the regulation making power applies in respect of both busway and busway transport infrastructure; and
  - make a minor amendment to correct a legislative anomaly by ensuring condition setting powers of the chief executive apply equally to a busway service provider and another person authorised by the chief executive to drive on the busway (that is, an authorised busway user).

***Transport Operations (Marine Pollution) Act 1995******Transport Operations (Marine Safety) Act 1994***

Since the legislation was introduced in 1994 and 1995 a number of provisions have proved to be limited in what they allow MSQ to do in relation to maintaining the safety of Queensland's waterways and protection of the marine environment from the risk of discharge of pollutants.

In particular, the grounding of the MV *Karma* in November 2003 highlighted that the ability of MSQ to intervene to minimise the threat of a marine incident was limited. This incident also highlighted the need for the State to be able to clearly identify the owner of a ship involved in an incident for the purposes of being able to take action when ships are lost, abandoned or stranded.

Other incidents such as the grounding of the MV *Peacock* on Piper Reef in 1996 and the MV *Bunga Terati Satu* in 2000 demonstrated the need to be able to declare an area around a ship a no-go zone to facilitate salvage or pollution cleanup and prevention response.

The increasing need to manage the safety of navigation efficiently in pilotage areas has led to a need for a harbour master to be able to temporarily close a pilotage area without there necessarily being an emergency.

***Transport Operations (Road Use Management) Act 1995 (TORUM)***

TORUM is to be amended to:

- clarify the penalties applied for certain driving offences and the processes following administrative driver licence suspensions;
- clarify a number of technical issues relating to the use and testing of various devices used by the Queensland Police Service (QPS) for speed detection and enforcement;
- allow a licence issued under TORUM to include other information, for example, indicating that the holder of the licence also holds a marine licence;
- clarify and enhance provisions dealing with the crossing supervisor scheme and the authorisation of persons to act under that scheme. To ensure the protection of children, the Bill will also strengthen the power of the chief executive to take disciplinary action against crossing supervisors where such action is warranted;

- improve consumer protection by clarifying offence provisions that apply where a person is involved in unlawful interference with an identifying number on a motor vehicle. These offences can apply, for example, where a person attempts to "re-birth" a vehicle which, for safety reasons, has previously been classified as a statutory write-off; and
- adopt, in line with Queensland's commitment to nationally uniform road rules, a number of definitions from the national model legislation, the Australian Road Rules.

### ***Transport Planning and Coordination Act 1994 (TPC)***

The Bill makes minor amendments to TPC to ensure that legislative provisions on the Integrated Development Assessment System included in the *Transport and Other Legislation Amendment Act 2004* operate effectively.

### ***Transport (South Bank Corporation Area Land) Act 1999 (Transport South Bank Act)***

Amendments are required to the Transport South Bank Act to:

- make changes to the South Bank Corporation Area by clarifying the exact boundaries of the land to be excluded from the Corporation Area – having regard to the land already excluded by the Transport South Bank Act;
- for land required for busway but in the ownership of QR facilitate a change in ownership to the State;
- for land required for busway but in the ownership of South Bank Corporation facilitate a change in ownership to the State;
- enable the registration of the plans of subdivision and create indefeasible title necessary for these transactions; and
- enable the registration of plans of subdivision.

## **Achieving the Objectives**

### ***Transport Infrastructure Act 1994 (TIA)***

The Bill will ensure that section 93 of TIA contains a head of power to support a variety of differential tolling arrangements. It will also clarify that the "when" referred to in section 93 is the date on which a specific toll

amount becomes payable, for example, if the amount of a particular toll is changed either the regulation or another authorised way for setting and publication of tolls will specify the date from which the new amount of toll will apply.

The Bill extends the definition of "non-rail corridor land" to include former rail corridor land where a railway manager has surrendered the land back to the State (represented by Queensland Transport). "Non-rail corridor land" at present is basically old railway land that was not operational as at 1 July 1995 and is being held for a future strategic transport purpose. Following the amendment, all disused railway land being held in the rail perpetual lease for a future strategic transport purpose will be classified as "non-rail corridor land".

The Bill amends the provisions for establishment and abolition of a port authority to clarify which provisions apply to a port authority established under TIA or alternatively to both a port authority established under TIA and a body established under the *Government Owned Corporations Act 1993* (GOC Act) and declared to be a port authority.

When the Gladstone Port Authority and Rockhampton Port Authorities were amalgamated in 2004 to establish the Central Queensland Ports Authority, a regulation was required to be made under both TIA and the GOC Act for the same transaction. The change introduced by this Bill will ensure that in future, only a single regulation will be required to be made for any individual transaction.

The Bill makes a number of amendments to ensure the legislation relating to busways operates as it was intended to operate. This includes making amendments to TIA and the Transport South Bank Act.

In relation to the declaration of busway land, the amendments will clarify the land that may be declared busway land, including land that the State already holds, but acquired for purposes other than busway purposes. For this land, the fact that busway transport infrastructure is located on the land is a clear indication that the land is intended for busway purposes. This is consistent with the original intention of the declaration process.

Currently, there is inconsistency throughout the *Transport Infrastructure (Busway) Regulation 2002* (the Busway Regulation) in its reference to obligations on busway users. For example, section 11 of the Busway Regulation provides that a person must not leave litter on busway transport infrastructure. Section 12 of the Busway Regulation provides that a person must not drink alcohol on a busway. The regulation-making power is

intended to be consistent in its reference to "busway" and "busway transport infrastructure" and the Bill will ensure this consistency.

The proposed amendments will also provide a clear legislative authority for the appointment of busway safety officers and the exercise of their powers.

### ***Transport Operations (Marine Pollution) Act 1995 (TOMPA)***

### ***Transport Operations (Marine Safety) Act 1994 (TOMSA)***

In order to achieve the objectives, it is necessary to amend TOMPA and TOMSA to:

- provide for length rather than gross tonnage to be used to know when a Shipboard Waste Management Plan is required is to be carried;
- provide for a ship's owner and ship's master to ensure that a member of the ship's crew monitors transfer operations of fuel, oil and other potential pollutants;
- establish the role and function of the Marine Pollution Controller in the event of a major marine incident;
- allow for MSQ to intervene earlier to avert potentially serious pollutant threats to Queensland's marine or coastal environment;
- establish for a person to be identified as the owner of a ship that is lost, abandoned or stranded;
- allow for a harbour master to temporarily close a pilotage area without requiring the need for closure to be urgent;
- allow for the temporary declaration of an exclusion zone by the general manager;
- allow for the chief executive (Fisheries) to provide the chief executive (Transport) with information from the Vessel Monitoring System for safety reasons;
- provide for courts to order defendants to pay costs to the State in relation to breaches of TOMSA; and
- provide for the chief executive to obtain criminal history checks on persons who wish to be approved to conduct examinations for issuing licences or to conduct training programs for the operation of recreational ships.

***Transport Operations (Road Use Management) Act 1995  
(TORUM)***

In order to achieve the objectives, it is necessary to amend TORUM to:

- impose a minimum six month driver disqualification on persons convicted of racing and speed trials on roads. This will bring consistency in penalties applied for high-risk speed related offences;
- insert reference to the appropriate Australian Standard that applies to the use by a police officer of a laser-based speed detection device;
- specify that a regulation may provide for information to be included on a licence issued under TORUM. This includes, for example, information that identifies the holder of the licence as being the holder of a licence under another act;
- introduce a legislative scheme for crossing supervisors that will:
  - clearly establish when an application to become a crossing supervisor can be refused;
  - ensure all relevant criminal offences can be considered when determining who is appropriate to be, or continue to be, a crossing supervisor;
  - allow a criminal history check to be undertaken on a crossing supervisor if it is necessary for the protection of children;
  - strengthen disciplinary provisions applying to crossing supervisors (including an express power to immediately suspend a crossing supervisor's authority); and
  - ensure crossing supervisors can apply to the Magistrates Court to seek a stay of, or appeal against, any decision to refuse to authorise them, to impose conditions on their authorisation or to amend, suspend or cancel their authority;
- bring the testing intervals that apply to stop watches, speedometers and vehicle speedometer accuracy indicators used by the QPS into line with the benchmarks set by the National Association of Testing Authorities (NATA);
- clarify that when a court elects to impose a disqualification under section 187 of the *Penalties and Sentences Act 1992* for a speeding offence of driving more than 40km/h over the speed limit, this should be for a period of at least six months. This will bring consistency in penalties applied for high-risk speeding related offences and prevent shorter disqualification periods from being imposed;

- encourage better driving behaviour by replacing the appeals process for administrative driver licence suspensions with a special hardship order. The provisions for special hardship orders following a suspension will be similar to restricted licence provisions for drink driving offences. The regulation will provide for eligibility guidelines for the special hardship orders and restrictions or conditions placed on the order;
- clarify that offences relating to unlawfully interfering with identifying numbers on motor vehicles include unlawful interference with a Vehicle Identification Number (VIN); and
- replace the existing definitions of "bicycle" and "wheeled recreational device" with the definitions that appear in the national model legislation, the Australian Road Rules.

### ***Transport Infrastructure Act 1994***

### ***Transport (South Bank Corporation Area Land) Act 1999 (Transport South Bank Act)***

Amendments to the Transport South Bank Act clarify ownership and land use issues for the busway land at South Bank following completion of the busway infrastructure and final survey of the busway corridor. They are not the result of the implementation of new policy concerning the ownership, construction or operation of the South East Busway.

### **Administrative Costs**

The administrative costs associated with the introduction of the amendments in this Bill will be absorbed within existing budget allocations.

### **Fundamental Legislative Principles**

#### ***Transport Operations (Marine Pollution) Act 1995 (TOMPA)***

#### ***Transport Operations (Marine Safety) Act 1994 (TOMSA)***

Three of the proposed amendments are potentially in breach of fundamental legislative principles. The paragraphs below outline why the breaches are considered necessary and steps taken to minimise the impact of the breaches.

Establish for a person to be identified as the owner of a ship that is lost, abandoned or stranded

In initial analysis of this amendment, MSQ considered that it might breach section 4(3)(d) of *Legislative Standards Act 1992* (reversing the onus of proof).

However, nomination of an owner of a wrecked or abandoned vessel as the person who had control of the vessel at the time of the wreckage or abandonment is imperative for ascertaining a person to whom directions can be given and for prosecution purposes and recovery of claimable expenses under existing provisions of TOMSA and TOMPA.

Experience with wrecked and abandoned vessels has shown that vessels are often on-sold at the time of an incident with the purpose of walking away from responsibility for cleanup and salvage. Without the ability to nominate a person as having responsibility for the vessel or directions about the vessel, the State alone has in the past, and would continue to be faced with the costs involved in cleanup or salvage.

Allow for MSQ to intervene to avert potentially serious threats to Queensland's marine or coastal environment.

Initial consideration of this amendment indicated that it might breach section 4(3)(a) and (j) of the *Legislative Standards Act 1992* (which makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review and has sufficient regard to Aboriginal tradition and Island custom).

Section 98 of TOMPA provides extensive powers through either the Minister or the general manager to intervene after a maritime incident when there is a "grave and imminent" danger to the Queensland coast or related Queensland interests.

The proposed amendment to remove the words "grave and imminent" as the threshold criteria and replace them with "potentially serious" will enable the powers of intervention to be used before the risk becomes an incident requiring a response.

This is a preventative power and experience with grounded vessels such as MV *Bunga Terati Satu*, MV *Doric Chariot* and the MV *Karma* demonstrates that having the ability to intervene earlier will enhance the protection of Queensland's coast.

MSQ considers that the potential breaches of the fundamental legislative principles listed above are balanced in that:

- the decision to intervene can only be made if the Minister or the general manager is satisfied on advice and evidence that a ship may

present a legitimate serious threat to the marine or coastal environment; and

- having sufficient regard to Aboriginal tradition and Island custom, the powers of intervention would only be applied in consultation with appropriate Aboriginal and Islander stakeholders should the proposed intervention encroach or affect identified Aboriginal or Islander interests (for example: seabed) or holdings.

*Allow for the temporary declaration of an exclusion zone by the general manager*

Initial consideration of this amendment indicated that it might breach section 4(3)(a) of the *Legislative Standards Act 1992* (makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review).

In the development of this amendment, extensive consultation with stakeholders occurred and consideration has been given to ensuring that the establishment of exclusion zones cannot occur without sufficient regard to appropriate and relevant factors.

The threshold for the declaration of an exclusion zone is that the general manager is reasonably satisfied, on consideration of advice from all involved parties, that an exclusion zone is necessary to ensure the preservation of marine safety and the protection of the marine environment.

An exclusion zone cannot be declared without the general manager taking steps necessary to ensure all ships that may be affected by the declaration are aware of the declaration.

Additionally, the general manager must revoke the declaration when the closure is no longer required to ensure safety or the protection of the environment, or after 28 days. The general manager must also ensure that ships affected by the closure are aware of its ending.

While it is a strict liability offence for a ship or person to enter a declared exclusion zone without the general manager's permission, a person is afforded the defence of "reasonable excuse".

The outcome of not being able to formally declare an exclusion zone is that if a person or ship were to enter a dangerous area and the person is injured or the ship is damaged, the State would be potentially exposed to liability.

***Transport Operations (Road Use Management) Act 1995 (TORUM)***

The proposed amendments to TORUM relating to crossing supervisors may breach fundamental legislative principles.

The power to amend, suspend or cancel a crossing supervisor's authority on the ground of "public interest" may be an example of a right made dependent on administrative power where the power is not sufficiently defined.

However, the existing review and appeal rights contained in section 65 of TORUM will apply and are not being amended. These ensure that a crossing supervisor can ask for a decision based on the public interest to be reviewed by the chief executive and, if necessary, appeal against the reviewed decision to the Magistrates Court. The crossing supervisor will also be able to apply to the court to have the original decision and, if necessary, the reviewed decision stayed.

It is very difficult to predict the myriad of circumstances in which it may be appropriate for the chief executive to act in the public interest. The determination of whether it is in the public interest to suspend or cancel a crossing supervisor's authority will be strongly dependent on the particular circumstances. Any attempt to define or qualify "the public interest" could unduly limit the ability of the chief executive to respond to a particular situation.

Proposed section 122I provides that the chief executive may take action against a crossing supervisor who has, since becoming a crossing supervisor, been charged with a disqualifying offence. This provision may raise issues of natural justice as the person has not yet been convicted of any offence. The provision is, however, seen as appropriate to ensure the protection of children. For example, where a crossing supervisor is charged with an offence such as possession of child pornography it is essential that the chief executive can act immediately to suspend the crossing supervisor and not have to wait for a conviction which could take many months. In general, the making of any final decision regarding the crossing supervisor's authority to act will be deferred until the conclusion of any court proceedings and proposed sections 122K(2) and 122N(3) provide for this.

***Transport (South Bank Corporation Area Land) Act 1999  
(Transport South Bank Act)***

A proposed amendment to the Transport South Bank Act may breach fundamental legislative principles. In particular, proposed sections 7 and 8

will apply retrospectively to ensure that changes in the corporation area are consistent with the *Transport (Southbank Corporation Area Land) Act 1999* which was enacted to protect the integrity and viability of the South East Busway by excluding land required for the busway from the corporation area. The Transport South Bank Act was enacted in response to the decision of *Re Noble and Elenis*. Now that the busway has been constructed, survey descriptions of the land required for the busway and excluded from the corporation area, are complete. The amendments to the Transport South Bank Act formalise this process and ensure the corporation area is accurately reflected in the legislation. This is consistent with the purpose of the Transport South Bank Act which is to protect the whole of the busway development, including minor areas which were unintentionally included in the corporation area following the commencement of the Transport South Bank Act in 1999.

## **Consultation**

Complete inter-departmental consultation has occurred on the proposed Bill. There has also been consultation with relevant stakeholders on specific provisions in the Bill. These include consultation with the RACQ, Queensland Motorways Limited, the Magistrates Court, the South Bank Corporation and port authorities. There has also been consultation with relevant local and federal government organisations.

## **Notes on Clauses**

### **Part 1—Preliminary**

#### **Short Title**

Clause 1 sets out the short title of the Act as the *Transport Legislation Amendment Act 2005*.

#### **Commencement**

Clause 2 provides that the following sections will commence on a date to be fixed by proclamation:

- section 4;
  - section 28;
  - section 32, to the extent it inserts section 541 and 542;
  - section 58;
  - sections 62 to 64;
  - sections 66 to 68;
  - section 71, to the extent it inserts sections 200 and 203;
  - sections 72 to 74; and
  - the schedule to the extent it amends, the *Commission for Children and Young People and Child Guardian Act 2000*,
- and the other provisions will commence on assent.

## **Part 2 – Amendment of *Transport Infrastructure Act 1994* (TIA)**

Clause 3 provides that this part amends TIA.

Clause 4 omits subsection (2) of section 93 of TIA and inserts a revised subsection (2) which:

- provides that a reference in the regulation, or another way authorised in the regulation for the setting of tolls, to the amount of toll payable at each toll plaza is the maximum amount payable. This removes any doubt that a toll operator may charge an amount of toll less than the maximum for use of a toll road; and
- clarifies that the regulation, or another way authorised in the regulation for the setting of tolls, must provide the day on which a new or amended amount of toll for a specified toll plaza commences. Accordingly, when the amount of toll (at any plaza) is set either for the first time or is increased or decreased, the regulation or another way authorised in the regulation for the setting of tolls, must specify the day on which the amount or new amount of toll will take effect.

This clause also inserts a new subsection (2A) in section 93 of TIA which makes it clear that there is a head of power to support a variety of differential tolling arrangements based on different classes of vehicles or stated exceptions or factors. An example of a stated exception would be the discounting of the maximum amount of toll payable by vehicles where payment of an amount specified by a toll operator is made in advance for use of electronic toll facilities. Another example would be a reduction in the amount of the maximum toll payable on a toll road if the facility is used between specified hours of the day or night.

Clause 5 amends section 240(1) (b) (Lease of land to railway managers) by replacing the reference to expired section 215 (Boundary identification etc.) with the defined term "non-rail corridor land". Under expired section 215 certain "old QR land" (which is a defined term in TIA) was gazetted "non-rail corridor land". Clause 34 expands the definition of "non-rail corridor land" to also include former rail corridor land where a railway manager has surrendered the sublease to the land.

Clause 6 amends the heading of chapter 8, part 2 to "Establishment, declaration and abolition of port authorities". Section 154 (Continuation of port authorities) (old numbering) that continued certain harbour boards as port authorities was previously repealed.

Clause 7 qualifies section 270 (Abolition of port authority) to only apply to a port authority established under section 268 of TIA. Clause 11 provides for the revoking of the declaration of a GOC as a port authority.

Clause 8 inserts new subsection (4) into section 271 (Transfer of management of a port). Existing subsection (2) provides for the transfer of assets and liabilities following the transfer of management of a port. Existing subsection (3) deals with legal proceedings by or against the transferor. New subsection (4) states that subsection (2) and (3) do not apply where the transferor and transferee are Government Owned Corporations (GOCs) and the assets and liabilities are to be transferred between these GOCs under the *Government Owned Corporations Act 1993*.

Clause 9 inserts new subsection (3) into section 272 (Regulation may make transitional arrangements). The section provides for a regulation to make transitional arrangements about the establishment or abolition of a port authority or the transfer of the management of a port. New subsection (3) states this section does not apply where the management of a port is transferred from one GOC to another GOC. In these circumstances, a regulation under *Government Owned Corporations Act 1993* would make the transitional arrangements.

Clause 10 amends section 274 (Regulation may define port limits etc.). Paragraph (d) of the section allows a regulation to change the name of a port authority. The amendment restricts this power to a port authority established under section 268 of TIA. Where the name of a GOC port authority is to be changed, it would be by a regulation made under the *Government Owned Corporations Act 1993*.

Clause 11 inserts a new section 274A (Regulation may declare government owned corporation to be port authority) which provides for a GOC to be

declared a port authority. The power was previously contained in paragraph (f) of the definition of "port authority" that is being omitted by clause 34.

The section also provides for a regulation to stipulate a port that the GOC port authority is to manage and the power to revoke the declaration of a GOC as a port authority.

Clause 12 amends section 302(4) to clarify that State land which has busway transport infrastructure on it may also be declared busway land (in addition to road and land acquired by the State for busway purposes). This includes land on which a busway is established and operating. The fact that busway transport infrastructure is constructed on land is a clear indication that this land is required for busway purposes even though it may have been originally acquired for other purposes. This amendment is consistent with the intention of the busway legislation and clarifies a legislative anomaly to ensure that land intended for busway purposes, rather than only land acquired for busway purposes, may be declared busway land.

Clause 13 makes a consequential amendment to section 303 by including a new section 303(2A) to clarify that an interest in land is revoked following the declaration of land as busway land. This is consistent with the effect of the existing sections 303(1) and (2) and is intended to apply to land which has busway transport infrastructure located on it and was not acquired for busway purposes.

Clause 14 inserts a new section 303A in relation to common areas for busways and roads. This clause ensures that the busway common area is consistent with the operations of both busways and roads. To ensure the safety and operational integrity of the busway, the chief executive may declare a busway common area by gazette notice and set conditions for the busway common area. If the area becomes busway land, the chief executive may also impose conditions for the use of the busway land under section 329 of TIA. New section 303B provides that the busway common area will operate in a way to ensure the operation of a road and busway.

However the new section 303C ensures that the operation of the busway has priority at the intersecting area.

Clause 15 amends the heading of chapter 9, part 5 to ensure the part applies generally to busway authorisations.

Clause 16 inserts a new definition of "authorised busway user" and "busway service provider" for chapter 9, part 5.

The amendment clarifies a legislative anomaly and ensures that the provisions of this part apply equally to an authorised busway service provider and another person who is authorised by the chief executive to drive on the busway (now defined as an "authorised busway user"). The amendments also make it clear that a maintenance vehicle or a bus providing a public passenger service (including a long distance scheduled passenger service, charter bus service, or a tourist transfer service, accommodation transfer service, unscheduled long distance passenger service or, tourist service but not including a taxi, limousine or scheduled passenger service referred to in section 336(1)(a)(ii)) may be authorised to operate as a busway service provider on a busway.

Clause 17 amends section 336 for consistency with the new sections 303A and 335A.

Clause 18-27 also amends sections 337 to 346 for consistency with sections 335A and 336. The amendments ensure that the provisions of chapter 9, part 5 apply to authorised busway users rather than only authorised busway service providers.

Clause 28 inserts a new chapter 9, part 6 for busway safety officers. In general, the new part outlines the requirements in relation to the appointment and powers of busway safety officers, issue of identity cards and when a busway safety officer ceases to hold office.

The new division 1 includes a new definition for "relevant busway legislation". Divisions 2 and 3 replicate the provisions currently in sections 22-25 and 27-29 of the *Transport Infrastructure (Busway) Regulation 2002*. These have been moved to TIA to reflect current drafting practice.

In division 3 the amended section 346D provides a requirement for the chief executive to issue each busway safety officer an identity card containing a recent photograph and signature of the busway safety officer. The new section 346E requires a busway safety officer to display for inspection by a person their identity card before exercising a power in relation to a person. This clause also provides that a busway safety officer must produce the identity card for inspection by the person at the first reasonable opportunity if for any reason it is not practical to produce it before exercising the power.

The new division 4 sections 346F to 346H outlines when a busway safety officer ceases to hold office and requires a person who ceases to be a busway safety officer, to return their identity card within 21 days of ceasing to hold office.

Division 5 of the new part sets out the powers of busway safety officers. Section 346I replicates the existing section 26 of the *Transport Infrastructure (Busway) Regulation 2002*.

The new section 346J replicates the existing section 7 of the *Transport Infrastructure (Busway) Regulation 2002*. This clause provides that busway safety officers have a power to ensure the safety of the busway by giving directions for the orderly movement of persons.

Section 346K replicates the existing section 9 of the *Transport Infrastructure (Busway) Regulation 2002*. The section also clarifies that a disturbance includes throwing injurious matter, including a ball or other objects, onto the busway or busway transport infrastructure. This provision ensures that a busway safety officer may direct a person off a busway or busway transport infrastructure, for example, to ensure passenger safety and that the operation of buses on the busway are not obstructed by objects thrown onto the busway.

Section 346L introduces a new section consistent with the role of busway safety officers to ensure the safety, security and operational integrity of the busway.

Section 346M is consistent with section 127 of the *Transport Operations (Passenger Transport) Act 1994*. It provides that busway safety officers have a power to require a person to provide their name and address in respect of an offence under this chapter or the *Transport Infrastructure (Busway) Regulation 2002*.

Division 6, sections 346N to 346V are consistent with seizure powers for authorised persons under the *Transport Operations (Passenger Transport) Act 1994*. These provisions are intended to allow a busway safety officer to seize an object (such as a football or skateboard, for example) to stop the continuation of an offence under this chapter or a regulation relating to busway or busway transport infrastructure. It is not intended that busway safety officers use this power to seize a car or other large objects. The busway safety officer must, as soon as practicable after an object is seized, provide a receipt for it to the person from whom it was seized. Division 6 further sets out the conditions by which a seized thing may be returned to its owner. However, the seized thing may be retained by the busway safety officer, if he or she believes on reasonable grounds that the continued retention is necessary to prevent its use in committing an offence in relation to a busway.

Division 7, sections 346W to 346ZC introduces a range of provisions for general consistency with the powers of authorised persons under the

*Transport Operations (Passenger Transport) Act 1994.* These provisions ensure that busway safety officers have fundamental rights and obligations which are necessary for the exercise of their powers. This includes providing busway safety officers with protection from liability and making it an offence for a person to:

- give false or misleading information;
- provide a document which that person knows to be false, misleading or incomplete; and
- obstruct or impersonate a busway safety officer.

Other compensation and damage requirements are also included in the new sections 346Z and 346ZA.

Clause 29 amends section 353(4) of TIA to clarify that land which has light rail transport infrastructure on it may be declared light rail land in addition to land acquired by the State for light rail purposes, busway land and road. This amendment is consistent with the original intention of the light rail legislation and clarifies a legislative anomaly to ensure that land intended for light rail purposes, rather than only land acquired for light rail purposes, may be declared light rail land. This might include land on which light rail is established and operating. The fact that light rail transport infrastructure is constructed on land which was not acquired for light rail purposes is a clear indication that this land is required for light rail purposes even though it may have been originally acquired for other purposes.

Clause 30 makes a consequential amendment to section 354. The new section 354(3A) clarifies that an interest in land, including reserves and leases, is revoked following the declaration of land as light rail land. This is consistent with the effect of the existing sections 354(1) and (2) and is intended to apply to land which has light rail transport infrastructure, but was not acquired for light rail purposes. This amendment is also consistent with the amendment required for busways in section 303 of TIA (see clause 13).

Clause 31 makes a minor amendment to section 416(1)(a) to clarify the definition of "miscellaneous transport infrastructure" by reference to wording currently included in section 2 of the *Transport Infrastructure Regulation 1995*. This amendment is required because the *Transport Infrastructure Regulation 1995* expires on 1 September 2006.

Clause 32 inserts section 539 which is a transitional provision. Clause 34 removes the specific references to the Ports Corporation of Queensland, the Port of Brisbane Corporation and the Central Queensland Ports Authority

in the definition of "port authority". This transitional provision provides that these port authorities continue as port authorities if they had been declared as such under the *Transport Infrastructure (Ports) Regulation 1994*.

This clause also inserts a transitional provision to ensure the continuation of a busway safety officer's appointment and that the prosecution of an offence under the *Transport Infrastructure (Busway) Regulation 2002* is not compromised by the amendments.

Clause 33 amends schedule 1 of TIA to provide consistent regulation making powers for both busways and busway transport infrastructure.

Clause 34 amends the definitions of "non-corridor land" and "port authority".

Paragraph (a) of the definition of "non-corridor land" is the existing provision and represents disused Queensland Railways land as at 1 July 1995 that has been transferred to the State (represented by Queensland Transport) and considered to be of strategic importance to the State as part of a transport corridor. Paragraph (b) extends the definition of "non-rail corridor land" to include former rail corridor land where the railway manager has surrendered the lease to the land.

The normal process for a railway manager to transfer a railway corridor to another railway manager is for the first railway manager to surrender the lease for the rail corridor back to the State. Under paragraph (b) of the definition, this land will become "non-rail corridor land". The State then leases the land to the new railway manager under section 240. Changes to section 240 introduced by clause 5 of the Bill enable the chief executive to lease "non-rail corridor land" to a railway manager.

The definition of "port authority" has been amended to remove specific references to three GOCs in former paragraphs (a) to (c). Clause 32 contains a transitional provision that continues these port authorities as if they had been declared to be a port authority. The other four GOC port authorities are already declared by this process under the *Transport Infrastructure (Ports) Regulation 1994*. The changes introduced in clause 11 incorporate the provisions of former paragraph (f) of the definition of "port authority" in new section 274A. The new definition provides cross references to how port authorities are established, declared, abolished or the declaration is revoked.

## **Part 3—Amendment of *Transport Operations (Marine Pollution) Act 1995 (TOMPA)***

Clause 35 provides that part 3 amends TOMPA.

Clause 36 amends section 55A (shipboard waste management plan) of TOMPA to establish that ships greater than 35 metres in length overall must carry a shipboard waste management plan. Previously, the requirement to carry plans related to the gross tonnage of a ship exceeding 400 tonnes.

Clause 37 inserts a new section 60A in part 9, division 3 of TOMPA. This new section requires a ship's owner and the ship's master to ensure that a transfer operation is monitored by a member of the ship's crew. A transfer operation is where a pollutant (such as fuel or oil) is transferred between two ships or between a ship and shore based point. Transfer operations of pollutants are a high risk activity. A maximum penalty has been established for this new section of 850 penalty units. This is consistent with penalties for other similar offences, such as section 30 (failure to have a shipboard oil pollution emergency plan), section 38 (contravention of conditions for carrying a prescribed oil-like substance), section 47 (discharge of untreated sewage), section 48 (discharge of treated sewage), section 49 (failure to have a sewage holding device), section 50 (discharge of sewage), section 55A (not holding a shipboard waste management plan), section 63 (contravening night transfer operations), section 67 (failing to report certain incidents) and section 67A (failing to have insurance), all of which carry a maximum penalty of 850 penalty units.

Clause 38 inserts a reference to the position of the Marine Pollution Controller in the purpose of division 6 of part 12 of TOMPA.

Clause 39 inserts new sections 93A and 93B in TOMPA. These new sections establish the appointment and function of the Marine Pollution Controller (MPC). The MPC's position is activated in the event a discharge or probable discharge of pollutant into coastal waters is serious or potentially serious. The marine pollution controller may only perform his or her function if the marine pollution controller is reasonably satisfied it is necessary to perform the function and has given written notice to the chief executive of the intention to perform the function.

The MPC is responsible for the direction and management of the response to a potential or serious pollutant spill on behalf of the State Government and for advising government in respect of combating a serious pollutant

spill. Effective command and control during a response to a serious marine incident is critical to the success of that operation.

The amendment provides the MPC with a statutory immunity. This protection from liability is justified by the unique position of the MPC in being called to make crucial decisions on an urgent basis. This immunity is broader than that afforded to authorised officers under section 76 of TOMPA which indemnifies authorised officers for acts done "honestly and without negligence" under TOMPA.

The MPC's role involves critical high level decisions and the very nature of disasters is that they have the potential to be unpredictable and actions may need to be taken on the basis of limited information. The MPC only acts on the advice of experts, but notwithstanding this, there are a potential for the MPC to be exposed to personal liability. If no immunity were provided, there could be exposure to substantial personal liability in carrying out the MPC's functions as, for example, in a catastrophic event. A lack of protection could give rise to uncertainty and undue hesitation in the making of vital decisions with potentially serious negative consequences.

The provision by which liability attaches to the State rather than the MPC as an individual serves to alleviate the effect of the immunity provision by providing a mechanism to provide relief to those who would ordinarily be eligible to claim.

Clause 40 amends section 98 (Power of intervention). This amendment removes the words "grave and imminent" and replaces them with "a potentially serious". This amendment will enable Maritime Safety Queensland (MSQ) to intervene in the event of a ship presenting a potential threat to Queensland's marine and coastal environment.

Clause 41 inserts a new section 132A into TOMPA. This amendment will allow the person acting as the MPC to delegate the functions of that role under TOMPA to an employee of MSQ or an authorised officer.

## **Part 4—Amendment of *Transport Operations (Marine Safety) Act 1994 (TOMSA)***

Clause 42 provides that part 4 amends TOMSA.

Clause 43 inserts a new section 87A into TOMSA. This new section establishes, without doubt, that a particular person is to be responsible at

law for the carrying out of a direction, and the payment of costs incurred by MSQ when that direction is not carried out.

Clause 44 amends section 95 (temporary closure of pilotage area by harbour master). Harbour masters have power under section 95 of TOMSA to temporarily close pilotage areas or parts of pilotage areas, but this power can only be used if the closure is urgently required for a limited period to ensure safety, for example, during marine catastrophe such as a cyclone or an oil spill. The amendment to section 95 of TOMSA will allow the temporary closure of pilotage areas or part of a pilotage area by a Harbour Master for a limited period to ensure safety. This amendment will allow such closures without an emergency situation having to be in place before the power can be used.

An example where this could apply is in the situation where two ships may be conducting a ship to ship transfer of fuel. It would enhance the safety of this operation if the part of the pilotage area around these ships could be closed temporarily to other ships. This would have the effect of minimising wash impacts on the ships conducting the transfer.

This amendment will also facilitate planning for marine safety for events such as the annual Riverfire Festival, conducted in the Brisbane River. Closure of parts of the pilotage area will now be possible without the threshold of "urgently" needing to be met.

Clause 45 inserts two new sections into TOMSA. New section 125A provides for the temporary declaration of an exclusion zone by the general manager. This provides a clear power to create exclusion zones around ships outside of pilotage areas when there is a danger to persons or ships during marine incidents.

New section 125B (failure to comply with declaration of exclusion zone by general manager) establishes that entering a declared exclusion zone without a reasonable excuse will result in a penalty. The maximum penalty for entering a declared exclusion zone without the permission of the general manager, or a reasonable excuse, has been set at 200 penalty units (currently \$15,000).

These amendments will operate in parallel with the powers of other agencies and will not impede them, such as the Queensland Police Service under the *Public Safety Preservation Act 1986* (Qld).

Clause 46 inserts a new section 186A into TOMSA. This new section provides for data currently collected by the Queensland Fisheries Service (QFS) under their Vessel Monitoring System (VMS), under the *Fisheries Act 1994* to be provided to the chief executive (Transport) if the chief

executive (Transport) is satisfied that the data is necessary to enhance navigational safety and minimise the risk of marine incidents.

Since 1 July 1999 the Australian Transport Safety Bureau (ATSB) has investigated six collisions in shipping lanes involving ships and fishing vessels or small craft. The ATSB found that contributing factors in collisions occurring in Australia included failure aboard fishing vessels to maintain an appropriate lookout, and fishing vessels operating or anchored in shipping lanes and fishing vessels being difficult to detect on radar due to their size.

Clause 47 inserts a new section 199A into TOMSA to allow a court to order a defendant to pay for the State's expenses when a criminal offence is proven, in relation to carrying out a direction or for damage to an aid of navigation. The proposed amendment does not seek the recovery of legal costs.

Clause 48 inserts a new section 205A into TOMSA. This amendment will permit criminal history checks of training providers to be made and to ensure that persons responsible for training and those who have contact with vulnerable persons are fit and proper persons. For example, schoolchildren can undertake marine studies as part of their school curriculum. These studies lead to these school children undertaking an examination for a boat licence, which is provided outside the school system. This is consistent with the provisions relating to training providers under TORUM. It is also consistent with the meaning of "criminal history" under the *Criminal Law (Rehabilitation of Offenders) Act 1986*, except that it allows unheard charges to be considered in assessing a person's suitability. The use of criminal history data has confidentiality protection.

## **Part 5—Amendment of *Transport Operations (Passenger Transport) 1994 (TOPTA)***

Clause 49 provides that part 5 amends TOPTA.

Clause 50 inserts a new section 22B which requires accredited operators to notify the chief executive if the operator reasonably believes that an authorised driver for the operator has been charged or convicted of a disqualifying offence. However, the operator does not need to notify the chief executive if the operator reasonably believes the chief executive already has this information. An operator who provides information to the

chief executive in accordance with this section cannot be held liable civilly, criminally or under an administrative process for the disclosure.

Clause 51 amends section 28B (Driver authorisation—category B driver disqualification offences). The term “Commissioner for Children and Young People” is changed to the “Commissioner for Children and Young People and Child Guardian” as a consequential amendment from the name change introduced by the *Child Safety Legislation Amendment Act 2004* (No. 13 of 2004).

Clause 52 amends section 43 (Obligation to hold service contracts). Formerly, section 43(1)(a) required operators of services in the Translink area to hold either: “(i) a Translink service contract; or (ii) a written agreement with the chief executive that is not a service contract; or (iii) with the chief executive’s approval, a written agreement with the holder of a Translink service contract.” The amendment omits the words “that is not a service contract” from section 43(1)(a)(ii).

The amendment of section 43(1)(a) is needed to recognise the fact that the chief executive has ongoing service contracts, other than “Translink service contracts”, with operators for the provision of specified public passenger services within the Translink area. As service contracts are a form of written agreement with the chief executive, this clause provides the required recognition. This amendment is complemented by clause 55 which provides for the validation of ongoing service contracts in the Translink area.

Clause 53 amends section 62AAG (New service contract area or route in the Translink area) to correct an error in terminology. The phrase “service area or route” is corrected to state “service contract area or route” which has a defined meaning under TOPTA.

Clause 54 amends the heading of Chapter 13.

Clause 55 inserts a new part 3 (Validation of particular service contracts) in chapter 13. This amendment complements the amendment made to section 43 of TOPTA. This amendment validates service contracts, other than Translink service contracts, that provided for the provision of public passenger services in the Translink area prior to the commencement of the changes to section 43(1)(a)(ii) (which corrects an anomaly).

Clause 56 amends schedule 1A, part 1 (Category A driver disqualification offences). The amendment specifies a number of repealed or expired child-related sexual offences that are to be considered as category A driver disqualification offences. A person convicted of an offence identified in

this part is ineligible under section 28A of TOPTA to hold or apply for driver authorisation.

Clause 56 also corrects an anomaly in schedule 1A (Driver disqualification offences). Under TOPTA, category B driver disqualifying offences are held to be more serious than category C driver disqualifying offences. Both category B and category C driver disqualifying offences include offences against the *Drugs Misuse Act 1986*. This clause corrects an anomaly under which a lesser offence against the *Drugs Misuse Act 1986*, section 9 (Possessing dangerous drugs) was identified as a category B driver disqualifying offence while a more serious offence against that same section was identified as a category C driver disqualifying offence.

## **Part 6—Amendment of *Transport Operations (Road Use Management) Act 1995* (TORUM)**

Clause 57 states that this part amends TORUM.

Clause 58 amends section 17A by clarifying that the term “approval” does not include an authorised scheme under chapter 5, part 7A or the authorisation of a person to perform a role under such an authorised scheme.

Clause 59 corrects an incorrect reference in section 19(6)(a) of TORUM by replacing the word "operator" with the word "holder".

Clause 60 replaces reference to the "Queensland Road Rules" in section 78 with reference to the full title of this legislation, the *Transport Operations (Road Use Management - Road Rules) Regulation 1999*.

Clause 61 amends section 85 by inserting a new subsection (6). Although section 90 of TORUM already provides courts with the power to disqualify a person convicted under section 85 (racing and speed trials on roads), this amendment specifies that a minimum six month driver disqualification is to apply to persons convicted of this offence. Courts will still have the power to impose disqualifications for longer periods if appropriate. This amendment will provide for consistency in sanctions applied for high-risk speed-related offences.

Clause 62 replaces Division 1 in Chapter 5, part 7 of TORUM. Currently, Division 1 refers only to the Australian Standard that applies to the use by police officers of radar speed detection devices. The new Division will

insert reference to Australian Standard 4691.2 that applies to the use of laser-based speed detection devices.

Clause 63 introduces a new part 7A into Chapter 5 of TORUM which establishes a legislative scheme for crossing supervisors to help children safely cross roads.

Section 122 contains the defined terms that appear in new part 7A.

Section 122A gives the chief executive the power to authorise a scheme to help children to cross roads safely and to authorise a person to perform a role under the scheme.

Section 122B provides that it is an offence for a person who is not an authorised crossing supervisor to perform a role under an authorised scheme to help children safely cross roads. It is also an offence for a person to hold him or herself out as being a crossing supervisor if they are not authorised as a crossing supervisor under an authorised scheme.

Section 122C allows the chief executive to refuse to authorise a person to act as a crossing supervisor in certain circumstances. Those circumstances include where the person has been convicted of a disqualifying offence or charged with a disqualifying offence and the charge has not yet been fully dealt with. "Disqualifying offence" is defined in section 122 and includes, for example, certain offences against Queensland's Criminal Code or against the *Drugs Misuse Act 1986* as well as serious offences and serious child-related sexual offences listed in the *Commission for Children and Young People and Child Guardian Act 2000*.

Section 122D allows the chief executive to impose conditions on an authority to act as a crossing supervisor.

Section 122E will apply if the chief executive refuses to authorise a person to act as a crossing supervisor or authorises them to act subject to certain conditions. The section will require the chief executive to inform the person of this decision in writing, setting out the reasons for the decision and advising the person of their review and appeal rights.

Section 122F requires a person who is acting as, or applying to become, a crossing supervisor to provide the chief executive with details of the person's criminal history and any changes to that history. The section also specifies when those details are to be provided. "Criminal history" is a defined term under section 122 and includes details of any charge or conviction of a disqualifying offence. The definition overrides provisions in the *Criminal Law (Rehabilitation of Offenders) Act 1986* dealing with the exclusion of matters from a person's criminal history and the non-

disclosure of convictions after the relevant rehabilitation period. Generally, failure to provide details of criminal history at the specified time will be an offence under section 122F(1).

Section 122G provides that a crossing supervisor who fails to provide the details required by section 122F does not commit an offence if, at the appropriate time, they give the chief executive a written notice stating that they will immediately stop acting as a crossing supervisor. The crossing supervisor's authority will be taken to be cancelled on the day such written notice is given to the chief executive.

Section 122H allows the chief executive to ask the commissioner of police for a written report about the criminal history of a person who has applied to become a crossing supervisor. It also allows the chief executive to ask for a report about an existing crossing supervisor where the chief executive is satisfied on reasonable grounds that it is necessary to do so to ensure the protection of children. Subsection (4) of section 122H provides that the chief executive's power to ask for a report on the criminal history of an applicant or of an existing crossing supervisor will expire one year after the commencement of the section.

Section 122I specifies the grounds on which the chief executive may amend, suspend or cancel a person's authority to act as a crossing supervisor.

Section 122J outlines the show cause procedure to be followed where the chief executive is proposing to amend, suspend or cancel a crossing supervisor's authority to act. The procedure ensures that the person is notified in writing of the proposed action and the ground for proposing that action together with an outline of the facts and circumstances forming the basis for that ground. In accordance with the principles of natural justice, section 122J(f) requires that the person be given an opportunity to show why the proposed action should not be taken.

Section 122K(1) specifies the action that can be taken where, after considering all written representations, the chief executive still considers a ground exists to amend, suspend or cancel a crossing supervisor's authority.

Section 122K(2) provides that if the proposed action relates to a matter that is before a court then the chief executive can delay making a final decision on what action to take until after the court proceeding is complete.

Section 122L requires the chief executive to inform the crossing supervisor of the chief executive's decision under section 122K(1) by written notice. If the crossing supervisor's authority is to be amended, suspended or cancelled, the notice must state the reasons for that and inform the crossing

supervisor that they can ask for the decision to be reviewed and appeal against the reviewed decision. It must also inform the crossing supervisor that they can ask for the decision or the reviewed decision to be stayed. Under section 122L the chief executive's decision will take effect on the day the notice is given to the crossing supervisor or on the day stated in the notice, whichever is the later.

Section 122M allows the chief executive to immediately suspend a crossing supervisor's authority where the chief executive believes on reasonable grounds that it is necessary to do so because:

- public safety, particularly the safety of children, has been endangered or is likely to be endangered because of the authority; or
- it is otherwise in the public interest.

Section 122M(2) makes clear that an immediate suspension of a crossing supervisor can be based on a complaint to a police officer or on statements or other information given to the chief executive about the crossing supervisor's conduct provided the chief executive reasonably believes that the complaint, statements or other information justifies that action. Section 122M(2)(a)(i) also requires the chief executive to reasonably believe that any complaint to police is not trivial, vexatious or otherwise lacking in substance.

Section 122N(1) provides that an immediate suspension applies for a maximum of 56 days unless that time period is extended under section 122N(3). The suspension will apply for a shorter period if, within that 56 day period, the chief executive makes a decision on whether further action should be taken and informs the authority holder in writing of that decision. In that case, the suspension will cease to have effect on the day the chief executive informs the authority holder of the decision. The suspension will also apply for a shorter period if the decision to immediately suspend is set aside on review or appeal.

Section 122N(2) specifies the information that must be provided in the written notice of immediate suspension to be given to the crossing supervisor. That information includes informing the crossing supervisor that they can ask for the decision to immediately suspend to be reviewed and can appeal against the reviewed decision. It must also inform the crossing supervisor that they can ask for the decision or the reviewed decision to be stayed.

Section 122N(3) provides that, if the immediate suspension relates to a matter that is the subject of a court proceeding, the chief executive may delay making a final decision until after that proceeding is completed.

If a person's authority to act as a crossing supervisor has been immediately suspended, the chief executive may propose to take further action in relation to that authority. That proposed action can be to amend, further suspend or cancel the authority. New section 122O requires that the chief executive must, within 14 days of the immediate suspension, give a notice to the crossing supervisor about any further proposed action and must invite the person to show why that proposed action should not be taken. Section 122O(4) provides that the procedure outlined in section 122K and section 122L will apply to the proposed further action.

Section 122P allows the chief executive to amend a crossing supervisor's authority by giving a written notice to the crossing supervisor. This power will only be available, however, where the amendment is for a formal or clerical reason or does not adversely affect the crossing supervisor's interests or if the crossing supervisor requests an amendment.

Clause 64 amends section 124 of TORUM which deals with the facilitation of proof of certain matters in proceedings under TORUM or for the purpose of TORUM. The amendment specifies that a certificate issued by the chief executive, the commissioner or a superintendent stating that a stop watch, other watch, speedometer or vehicle speedometer accuracy indicator has been tested and found to produce accurate results is evidence that the particular device was accurate at the time of testing and is accurate for the next six months.

Currently, section 124 requires these devices to be tested every 60 days. This is excessive and an unnecessary call on police resources. The six-monthly testing intervals introduced by this amendment are in line with the testing intervals for these devices specified by the National Association of Testing Authorities.

This clause also provides that, under section 124(1)(pa) the appropriate Australian Standard that applies to the testing of radar speed detection devices is AS 2898.2.

Clause 65 introduces a new section 129B. This amendment clarifies that when a court elects to impose a disqualification under section 187 of the *Penalties and Sentences Act 1992* for a speeding offence of driving more than 40km/h over the speed limit (section 20 of the *Transport Operations (Road Use Management – Road Rules) Regulation 1999*), this must be for a period of at least six months. Persons convicted of driving more than 40km/h over the speed limit receive an administrative six month driver licence suspension under the *Transport Operations (Road Use Management – Driver Licensing) Regulation 1999*, part 6A. This

amendment will provide for consistency in sanctions applied for high-risk speeding related offences.

Clause 66 repeals section 132 which is the regulation making power relating to appeals against driver licence suspensions. This section will be replaced by a new regulation making power included in subsection (1A) of section 150 that specifies that a regulation may provide that a court may make an order, on the basis of special hardship, for persons whose licences have been suspended.

Clause 67 amends section 134 of TORUM which contains various offences for interfering with numbers recorded on a vehicle's engine or chassis. Vehicle Identification Numbers (VIN) are the primary identifier of vehicles manufactured after 31 August 1989. The section will be amended to refer to interfering with an "identifying number" of a vehicle where identifying number is defined to include the vehicle's chassis number, engine number or VIN. The penalty for offences under section 134 is also increased to recognise the seriousness of the offence and to enhance consumer protection.

Clause 68 omits section 138 of TORUM as a result of the insertion, by clause 63, of new chapter 5, part 7A on crossing supervisors.

Clause 69 inserts a new subsection (1A) into section 150 specifying that a regulation may provide that a court may make an order, on the basis of special hardship, for persons whose licences have been suspended. The regulation may include how applications for the orders are to be made, the criteria for deciding applications, the type of conditions, the variation of orders and the consequences for failing to comply with the order.

Clause 70 inserts a new section 150A specifying that a regulation may provide for information to be included on a licence issued under TORUM. This includes, for example, information that identifies the holder of the licence as being the holder of a licence under another Act. An example is provided in the section, explaining that a licence issued under TORUM may include information indicating that the holder of the licence also holds a licence under TOMSA.

Clause 71 inserts a new chapter 7, part 7 which provides transitional provisions for the *Transport Legislation Amendment Act 2005*.

Section 199 clarifies that section 85(6) (as amended by clause 61) applies to a conviction for an offence committed before the commencement of the section, as if the offence had happened after the commencement.

Section 200 provides that the amendments to section 124(1)(p) and (pc) (contained in clause 64) will not effect the period of time during which a certificate issued under the repealed provisions can be relied upon as evidence of the matters stated in it.

Section 201 clarifies that section 129B(2) (as inserted by clause 65) applies to a conviction for an offence committed before the commencement of the section, as if the offence had happened after the commencement.

Section 202 provides that a regulation may make transitional provisions about appeals under a section 132 regulation and an application for an order under a section 150(1A) regulation.

Section 203 clarifies that an authorised scheme or persons authorised as crossing supervisors under the repealed provisions are taken to be authorised under the new provisions. This section also clarifies that at the commencement of the section, any undecided application made under the repealed provisions, is taken to be an application under the new provisions.

Clause 72 replaces schedule 2 of TORUM. The existing definition of "disqualifying offence" that appears in section 138 of TORUM and applies to crossing supervisors includes offences mentioned in schedule 2. The definition of "disqualifying offence" is to be amended by clause 63 to include serious offences and serious child-related sexual offences under the *Commission for Children and Young People and Child Guardian Act 2000*. As a result, a number of offences currently appearing in schedule 2 can be deleted. The offences remaining in schedule 2 will be offences that are not included in the concept of a serious offence or a serious child-related sexual offence under the *Commission for Children and Young People and Child Guardian Act 2000*.

Clause 73 amends schedule 3 of TORUM by inserting a reference to decisions by the chief executive to:

- refuse to authorise a person to act as a crossing supervisor under section 122C;
- impose conditions on a crossing supervisor's authority under section 122D;
- amend, suspend or cancel a crossing supervisor's authority under section 122K(1); or
- immediately suspend a crossing supervisor's authority under section 122M(1).

Decisions listed in schedule 3 are subject to review and appeal under existing section 65 of TORUM. As a result of the amendment to schedule 3, a crossing supervisor who is the subject of one of the decisions listed above can ask the chief executive to review that decision and can appeal that reviewed decision to the Magistrates Court. The crossing supervisor can also apply to the Magistrates Court for a stay of the original decision and the reviewed decision.

Clause 74 amends the dictionary in schedule 4 of TORUM. The definitions of "bicycle" and "wheeled recreational device" are amended to adopt the definitions contained in the national model legislation, the Australian Road Rules. As a result, the definitions of "power-assisted bicycle", "power-assisted cycle", "power-assisted tricycle" and "power source" are redundant and are removed. To reflect amendments to section 134 of TORUM (see clause 67) new definitions of "chassis number", "engine number", "identifying number" and "VIN" are inserted. Clause 74 also inserts into schedule 4 cross-references to a number of definitions contained in section 122 relating to crossing supervisors (see clause 63).

## **Part 7—Amendment of *Transport Planning & Coordination Act 1994* (TPC)**

Clause 75 states that this part amends TPC.

Clause 76 makes an amendment to section 3 (Definitions). This amendment will ensure that Queensland Transport can influence road networks in a way that allows public transport services to operate safely and efficiently. For example, this includes ensuring road networks are appropriately designed for the effective operation of scheduled passenger services by conditioning development approvals, adequate road widths and street connectivity. This supports the objectives of the TPC which includes promoting urban development that maximises the use of public passenger transport.

Clause 77 makes a minor amendment by removing section 8D(5) to correct a legislative oversight. Section 8D requires local government to obtain the chief executive's written approval if it intends to change the management of a local government road, and the change would have a significant adverse impact on the provision of public passenger transport. Section 8D(5) currently operates in a way which appears to provide a mechanism for a

local government to avoid seeking approval. This is contrary to the intention of the legislation.

Clause 78 makes an amendment to section 8E. Development that occurs within future and existing public passenger transport facilities and corridors may affect the ability of that facility or corridor to function efficiently. For example, a major urban subdivision in the middle of a future public transport corridor could render the corridor unviable. The guideline making provisions in TPC currently provide a power to make guidelines for specific matters identified in sections 8B to 8D, such as identifying a corridor (either as a road, railway, light rail or busway) used for a scheduled passenger service. This amendment clarifies a legislative anomaly and ensures a guideline making power applies for the provision of public passenger transport generally. This includes identifying future and existing public passenger transport facilities and future public transport corridors for the purposes of the *Integrated Planning Regulation 1998*. This amendment is consistent with the guideline making power which applied under s145 of TOPTA now replaced by section 8E.

Clause 79 amends section 36DA of the TPC. This amendment changes the term “Commissioner for Children and Young People” to the term “Commissioner for Children and Young People and Child Guardian” in response to changes given effect by the *Child Safety Legislation Amendment Act 2004*.

## **Part 8—Amendment of *Transport (South Bank Corporation Area Land) Act 1999* (Transport South Bank Land Act)**

Clause 80 states that this part amends the Transport South Bank Land Act.

Clause 81 inserts a new part 1 heading of the Transport South Bank Land Act.

Clause 82 inserts a new part 2 heading of the Transport South Bank Land Act to clarify the application of the Act for the construction of the busway in or about South Bank.

Clauses 83-85 make minor amendments to sections 2-4 of the Transport South Bank Land Act to clarify that land originally excluded from the

corporation area for the construction of the busway is now included in schedule 1.

Clause 86 inserts a new part 3 of the Transport South Bank Land Act to clarify the arrangements in relation to land which is currently excluded from the south bank corporation area. The new part consists of new sections 5-13 and includes a new definitions section. This part has specific application now that the construction of the busway is complete and survey descriptions are finalised.

The new section 7 includes the schedule 1 land in the corporation area. The new section 8 then clarifies the exact boundaries of land excluded from the south bank corporation area by reference to land described in the new schedule 2. These changes apply retrospectively for consistency with the Transport South Bank Act. However to remove any doubt, the notices of intention to resume and proclamations referred to in the Transport South Bank Land Act continue to be validated. Accordingly, despite these amendments, the instruments made under the *Acquisition of Land Act 1967* continue to be valid.

The new section 9 facilitates a change in ownership to the State in respect of land required for busway described in the new section 9(1). The change in ownership applies to land from Queensland Rail (QR) to the State and from the South Bank Corporation (SBC) to the State. It is intended that administrative arrangements will apply to ensure the lot descriptions do not change prior to its registration.

The new section 10 provides for the registration of the plans and the creation of indefeasible title necessary for the change in section 9. Section 11 then provides that the particulars of any interest in land vesting in the State, may be recorded.

Under section 7 of the *South Bank Corporation Act 1989*, the corporation is empowered to deal with land within the corporation area. Because land is excluded from the corporation area and to ensure the process of signing plans is valid, section 12 provides that the State is empowered to give approval to plans. The new sections 12(3) and (4) provide an exemption from seeking local government approval for a plan of subdivision or reconfiguration of a lot.

To remove any doubt, the new section 13 clarifies that fees or charges are not payable by the State, corporation or QR, particularly because section 7 has the effect of including land in the corporation area and section 8 has the effect of excluding it. Under section 23 of the *South Bank Corporation Act 1989*, fees and charges are not payable by the corporation for any transfer

within the corporation area. Similarly, under the *Duties Act 2001*, the State is exempt from paying any duty as the transferee.

The new section 14 provides that a building management statement is terminated in respect of land mentioned in section 9 (QR and SBC land excluded from the corporation area), but continues for land other than section 9 land. Under the *South Bank Corporation Act 1989*, a building management statement for South Bank is intended to have application to stratum lots within the corporation area. It is not intended that a building management statement (for land within the corporation area) continue to apply to land that is no longer within the corporation area.

Clause 87 renames the existing schedule as schedule 1.

Clause 88 inserts a new schedule 2 to describe land excluded from the corporation area.

## **Part 9—Minor and consequential amendments**

Clause 89 states that the schedule amends the Acts it mentions.

### **Schedule**

#### **Amendment of *Commission For Children And Young People And Child Guardian Act 2000***

**Item 1** amends section 6F in schedule 1 to the Act. The existing reference to section 138 of TORUM will be replaced by reference to section 122A(1)(b) of TORUM which, as a result of amendments made by clause 63 of the Bill, is the new provision dealing with the authorisation of crossing supervisors.

#### **Amendment of *Integrated Planning Act 1997***

**Items 1 and 2** renumber two items in Part 1, table 2 of schedule 8 to correct a numbering error.

#### **Amendment of *South Bank Corporation Act 1989***

**Item 1** amends section 106 of the *South Bank Corporation Act 1989* as section 61 of the *Transport Infrastructure (Railways) Act 1991* no longer applies. Accordingly, this clause amends section 106 so that it refers to section 255 of the *Transport Infrastructure Act 1994*.

**Item 2** inserts a new plan of the corporation area in Schedule 2 of the Act. This area applies in accordance with the definition of "corporation area" in section 3 of the Act.