

# **Transport Legislation and Another Act Amendment Bill 2006**

## **Explanatory Notes**

### **General Outline**

This Bill makes changes to eight transport Acts. The most important and noteworthy amendments are those which introduce initiatives to improve road safety in Queensland.

The Bill makes amendments to the following transport legislation:

*Maritime and Other Legislation Amendment Act 2006*

*Tow Truck Act 1973*

*Transport Infrastructure Act 1994*

*Transport Operations (Marine Pollution) Act 1995*

*Transport Operations (Marine Safety) Act 1994*

*Transport Operations (Passenger Transport) Act 1994*

*Transport Operations (Road Use Management) Act 1995*

*Transport Planning and Co-ordination Act 1994*

There are also consequential amendments made to the *Police Powers and Responsibilities Act 2000*.

### **Short Title**

The short title of the Bill is Transport Legislation and Another Act Amendment Bill 2006.

### **Policy Objectives of the Legislation**

The main objective of this Bill is to improve road safety by:

- ensuring the effective detection, prosecution and deterrence of people using certain illicit drugs and then driving motor vehicles;
- further addressing the problem of young drivers being over represented in Queensland road crash statistics; and

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- providing for potential technologies that may be used in conjunction with fixed speed cameras in Queensland.

These matters are addressed through amendments to the *Transport Operations (Road Use Management) Act 1995* (TORUM) and consequential amendments to the *Police Powers and Responsibilities Act 2000* (PPRA).

The Bill also makes a number of non-road safety related amendments to various transport legislation.

The *Transport Infrastructure Act 1994* (TIA) is to be amended to:

- allow agreements under a rail sublease to continue when the sublease is surrendered;
- require noting on title of permissions to build local roads on rail corridor land;
- clarify the owner of rail land for certain provisions in the *Integrated Planning Act 1997*; and
- clarify Queensland Transport's (QT) referral agency role under the Integrated Development Assessment System.

The *Transport Operations (Passenger Transport) Act 1994* (TOPTA) is to be amended to:

- clarify that a condition may be applied immediately when a driver authorisation is amended; and that the chief executive may require a person who is the holder of driver authorisation to provide evidence of their medical fitness;
- provide for driver disqualifying offences that have been amended or renumbered to continue to be disqualifying offences; and provide for the chief executive of QT to approve forms for use under TOPTA; and
- amend the definition of 'disqualifying offence'; and insert a definition of a 'school student' to replace the term 'school children'.

TORUM is to be amended to broaden the definition of 'disqualifying offence' to include similar offences committed outside Queensland. Minor changes are being made to the *Tow Truck Act 1973* (TTA) in relation to disqualifying offences to make the terminology consistent with TORUM and to correct a cross-referencing error.

The *Transport Planning and Co-ordination Act 1994* (TPC) is to be amended to clarify the provisions relating to the use of guidelines under the *Integrated Planning Act 1997*.

This Bill will also include an amendment to TOPTA, TORUM, TTA and the *Transport Operations (Marine Safety) Act 1994* (TOMSA) to allow the Commissioner of Police (the Commissioner) to:

- monitor criminal history information on a daily basis for charges against authorised, approved or accredited persons, and
- for the Commissioner to provide the information to the chief executive of QT.

The TIA, TOMSA, TOPTA, TORUM and the *Transport Operations (Marine Pollution) Act 1995* (TOMPA) are to be amended to assist the prosecution of transport offences by facilitating proof of the date when an alleged offence came to the complainant's knowledge.

The *Maritime and Other Legislation Amendment Act 2006* is being amended to correct a cross-reference.

## **Reasons for the Bill**

The amendments to TORUM are necessary to:

- introduce a legislative scheme allowing Queensland police to test drivers for certain drugs and to prosecute those drivers who have a presence of those drugs in their saliva or blood;
- allow age-specific regulations to be made regulating the behavior of young drivers; and
- ensure the legislation adequately caters for evidentiary provisions related to potential technologies that may be used in conjunction with fixed speed cameras in Queensland; and
- ensure that criminal offences committed outside Queensland can be taken into account when the chief executive is determining whether to grant a new approval under the Act or to take disciplinary action in relation to an existing approval.

The amendments to TIA are necessary to improve processes relating to the administration of railways by QT.

The amendments to TIA, TOMPA, TOMSA, TOPTA, and TORUM assist the prosecution of transport offences by facilitating proof of the date when an alleged offence came to the complainant's knowledge.

The amendments to TOMSA, TOPTA, TORUM and the TTA support daily monitoring of criminal histories. The Commissioner will be able to monitor criminal history information on a daily basis for charges against authorised, approved or accredited persons, and the Commissioner will be able to provide the information to the chief executive of QT.

The amendments to the TPC will clarify provisions relating to guidelines made under that Act.

### **Administrative Costs**

The implementation of amendments relating to random drug testing of drivers will result in administrative costs for Queensland Transport, the Queensland Police Service and Queensland Health. Funding has been sought for this purpose for 2006-07, with further funding to be sought for subsequent years. There are no administrative costs associated with the introduction of the young driver safety amendments within this Bill. However, there will be funding implications for young driver safety initiatives as a result of subsequent regulations.

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

### **Achieving the Objectives**

In order to achieve the objective of improving road safety, it is necessary to amend TORUM to:

- introduce a scheme that will prohibit a person driving with a presence (irrespective of the concentration) in their system of certain drugs as specified in a regulation;
- allow Queensland Police to test for certain drugs for drivers of motor vehicles, trams, trains and vessels;
- enable regulations to prescribe rules about the behaviour and licensing of young drivers; and

- ensure the evidentiary provisions adequately cater for potential technologies that may be used in conjunction with fixed speed cameras in Queensland.

In order to support the introduction of the random drug testing scheme, amendments to the PPRA are also necessary to permit a police officer to stop a vehicle in order to conduct a saliva test.

The other objectives of the Bill are to clarify and enhance existing powers and to introduce legislation to support new policies and administrative arrangements. These objectives will be achieved through the passage of this Bill.

## **Fundamental Legislative Principles**

### **TIA**

#### ***Continuation of agreements under a rail sublease when a lease is surrendered***

Section 240B of TIA (clause 21 of the Bill) deals with the continuation of unregistered agreements under a sublease. When the lease is surrendered by a railway manager, it is proposed to restrict when compensation is payable where the right to use rail corridor land is revoked. This could be considered a breach of a FLP. It is proposed to provide compensation where the right to use rail corridor land is revoked because its use would affect the safety or operational integrity of the land as a railway or would adversely affect another transport purpose. Compensation will be further limited to where the person paid for the right or where land had been acquired from an adjoining property for use as a railway and as part of the acquisition agreement or settlement, an access right was granted. In other cases if the person had not paid for the right to use rail corridor land, the person should not be compensated if the right is revoked. No compensation is payable if the right of access is cancelled due to non-compliance with any conditions imposed by the chief executive on the right of access or the right is contrary to the rail perpetual lease. This is the penalty for non-compliance. If agreement cannot be reached about reasonable compensation, the compensation is decided by a court. The proposed amendment will not abrogate the general power to make an *ex gratia* payment under the *Financial Administration and Audit Act 1977* (clause 21, proposed section 240B(8) of the Bill).

Section 240D of TIA (clause 21 of Bill) deals with subleasing a section of non-rail corridor land to a local government or government entity. Non-rail corridor land (land from a closed railway) is often subleased to a local government for use as a walking trail or bikeway. Generally, the sublease is at a nominal rent in return for the local government providing administration and maintenance of the non-rail corridor land.

Subsection 240D(2) requires that when the registrar of titles registers the sublease, that the sublease be the next vested right to or be next in priority to, the rail perpetual lease of the land to the State (represented by QT). However, subsection 240D(3) provides that section 240D(2) does not apply to an already registered interest if a provision in the sublease states that section 240D(2) does not apply to that interest. That is, the existing registered interest specified in the sublease will continue to rank in priority to the local government's or government entity's sublease. This could be considered a breach of a FLP as a provision of a sublease under subsection 240D(3) would be overriding a decision of Parliament as set out in subsection 240D(2).

However, there may be special reasons why an existing registered interest should remain administered by QT. For example, for rail corridor land, an easement may have been granted burdening the rail perpetual lease (which would be administered by QT) rather than the normal practice of granting easements to burden the railway manager's sublease (which would be administered by the railway manager). When the railway manager's sublease is surrendered and a new railway sublease granted, the easement needs to remain administered by QT and the only way to ensure this is by relying on proposed new section 240D(3). Another example is for non-rail corridor land, an easement may have been granted burdening the rail perpetual lease and benefiting a State government entity to locate a recycled water pipeline. If the non-rail corridor land was subsequently subleased to a local government, the State may prefer the easement to remain burdening the rail perpetual lease rather than the local authority's sublease. Again, the only way to achieve this outcome is by relying on the new legislative provision section 240D(3). The provision in a sublease under subsection 240D(3) would only be returning the specified existing registered interest to priority over the sublease that would have existed if there was no subsection 240D(2). It is expected that subsection 240D(3) will be only used on rare occasions. Furthermore, its use is limited by the legislation as it has to be included at the time when the sublease is registered. That is, it cannot be inserted into the sublease after the sublease is registered.

## **TOPTA**

### ***Clarify medical fitness requirements***

The proposed amendment to clarify that medical fitness requirements apply to a current driver authorisation (DA) holder (clause 37 of the Bill) may be considered to breach an FLP. It may retrospectively adversely affect rights of or impose obligations on current DA holders. That is, some current DA holders who are not medically fit may not be able to continue as a public transport driver. However, the public benefit of a high level of fitness requirement for public transport drivers far outweighs any possible breach of this fundamental legislative principle.

## **TORUM**

### ***Random drug testing, based on analysis of saliva, for the drivers of motor vehicles, trams, trains and vessels.***

This legislative amendment may arguably adversely affect the rights and liberties of individuals (that is, section 4(3)(g) of the *Legislative Standards Act 1992*). However, the introduction of a random drug testing scheme is expected to enhance road safety for the benefit of the entire community. In 2005, alcohol and other drug use were identified as a contributing factor in 114 deaths on Queensland roads, or almost 35% of the Queensland road toll. Research has revealed random based drug testing appears to be a more effective deterrent against drug driving than either increasing sanctions or providing factual or educational information about the risks associated with drug driving.

The provisions in the Bill largely complement the existing scheme for the random detection and prosecution of drink driving offences (RBT program). The existing RBT program has had a positive effect on the behaviour of drivers. In 1989, shortly after RBT commenced in Queensland, 1 in 40 drivers tested were found to have an illegal blood alcohol concentration (BAC). In 2005, this number had decreased to 1 in 92 drivers tested. The random drug testing scheme will complement the RBT program and significantly contribute to reducing the number of people driving with a relevant drug in their saliva or blood.

### ***Provision of rules about the behaviour and licensing of young drivers (that is, drivers under the age of 25).***

This legislative amendment may arguably adversely affect the rights and liberties of individuals (section 4(3)(g) of the *Legislative Standards Act 1992*). In particular, it may breach the principle that all persons should be

treated in the same way under the law and should not be discriminated against on the basis of their age.

Young drivers as a road user group are over-represented in Queensland road crash statistics. Despite young driver fatalities between 1993 and 2004 reducing by 26%, young people are still twice as likely to be involved in fatal crashes. In 2005, there were 106 Queensland fatalities as a result of young driver crashes, which amounted to 32% of the road toll. The new powers to make regulations specific to young drivers are justified due to the need to protect drivers, their passengers and all other road users.

### ***Amending definition of 'disqualifying offence'***

The proposed amendment to widen the definition of '*disqualifying offence*' in TORUM to include corresponding offences committed outside Queensland will not have a retrospective effect (clause 53 of the Bill). It may impact on an existing accreditation holder who, after the commencement of these amendments, will be required to disclose any corresponding offences upon renewing their accreditation. If an offence is disclosed that indicates that the person is inappropriate to continue to hold the accreditation, QT will, under the new provisions, be able to refuse to renew that accreditation. The holder of an existing accreditation must be given a statement of reasons for the decision and can ask for the decision to be reviewed. The person may also appeal against the reviewed decision to a court. The provisions of the *Transport Planning and Coordination Act 1994* apply to both the review of the decision and the appeal to a court.

## **Consultation**

Extensive consultation has occurred with the Department of the Premier and Cabinet, the Department of Justice and Attorney-General and Queensland Treasury.

Issues relating to road safety were discussed at the Queensland Road Safety Summit held on 21 and 22 February 2006. There was a wide range of community and industry representation at the summit.

The Queensland Police Service was consulted in relation to the changes to allow the daily exchange of criminal history information. The Department of Natural Resources and Water (including the Titles Office) and Queensland Rail were consulted regarding the changes to rail provisions in TIA.

The Office of Rural Communities within the Department of Communities was consulted in relation to any potential impact on rural communities.



The Department of State Development, Trade and Employment was consulted regarding any possible employment implications of the changes.

All parties agreed with the proposed changes.

## **Notes on Clauses**

### **Part 1                      Preliminary**

#### **Short Title**

**Clause 1** sets out the short title as the Transport Legislation and Another Act Amendment Act 2006.

#### **Commencement**

**Clause 2** provides that the Act will commence on a date to be fixed by proclamation, apart from the following provisions which commence on assent:

- part 9 heading;
- part 9, division 1 heading;
- section 48;
- section 52; and
- section 53(2).

### **Part 2                      Amendment of Maritime and Other Legislation Amendment Act 2006**

**Clause 3** states that the Act amended in this part is the *Maritime and Other Legislation Amendment Act 2006*.

**Clause 4** corrects a cross-referencing error by replacing the reference to section 202D(4) with section 202D(6).

### **Part 3                      Amendment of Police Powers and Responsibilities Act 2000**

**Clause 5** states that the Act amended in this part is the *Police Powers and Responsibilities Act 2000* (PPRA).

**Clause 6(1)** amends section 60(3)(e) of the PPRA by providing that a prescribed purpose for requiring a person to stop a vehicle under section 60 includes to allow a police officer to conduct a saliva test. Section 60(5) has also been amended to include reference to a police officer entering a vehicle and remaining in it to conduct a saliva test. Clause 8 of this Bill inserts a definition for "saliva test".

**Clause 6(2)** makes an amendment to the two examples for section 60(5) to include a reference to "saliva". Previously the examples only referred to breath.

**Clause 7** inserts new sections 69A(4), (5) and (6) into the PPRA. The purpose of these new sections is to ensure that the scope of the vehicle impoundment provisions in the PPRA is not altered by amendments in this Bill to section 80 of TORUM. Specifically the impoundment provisions will not apply to the new offences under section 80 that are associated with the introduction of random drug testing.

**Clause 8** inserts new definitions for "saliva analysis" and "saliva test" into Schedule 6 of the PPRA. Both definitions refer to section 80(1) of TORUM. Clause 57 of this Bill inserts definitions for "saliva analysis" and "saliva test" into section 80(1) of TORUM.

### **Part 4                      Amendment of Tow Truck Act 1973**

**Clause 9** states that the Act amended in this part is the *Tow Truck Act 1973* (TTA).

**Clause 10** removes the definitions currently listed in section 4 of the TTA to a newly created schedule 2. The clause also inserts a definition of 'driver licence' and amends the definition of '*disqualifying offence*' to correct a cross reference. Currently, that definition cross-references paragraph (a) of the definition of '*disqualifying offence*' in the *Transport Operations (Road Use Management) Act 1995* (TORUM) rather than paragraph (b). The clause also includes a drafting improvement to include an 'or' between the two paragraphs of the definition of tow truck.

**Clause 11** makes a consequential amendment to section 4A of the TTA to refer to the definitions in the newly created schedule 2.

**Clause 12** omits subparagraph 4C(1)(d)(iii) from the TTA. This subparagraph is no longer required as the TORUM definition of '*disqualifying offence*', which is cross-referenced in the TTA, is being amended by clause 53 of this Bill to include offences committed in other jurisdictions that substantially correspond to Queensland Criminal Code offences.

**Clause 13** replaces outdated terminology by replacing the reference to 'fame and character' with a reference to 'criminal history'. The provision has also been re-drafted in accordance with current legislative drafting practice.

**Clause 14** replaces outdated terminology by replacing the reference to 'fame and character' with a reference to 'criminal history'.

**Clause 15** replaces the reference to 'the schedule' with 'schedule 1'. This amendment is consequential upon the creation of a new schedule 2 in clause 10.

**Clause 16** inserts new sections 36 to 36C. Existing sections 6(2) and 14(2) of TTA (as amended by this Bill) enable the chief executive to ask the Commissioner for a report about a person's criminal history. The new section 36 (Chief executive's notification to commissioner of the police service about a person) specifies information that may be included in a notification from the chief executive to the Commissioner when seeking a report on an applicant's criminal history. The new section 36A (Notice of change in police information about a person) enables the Commissioner to notify the chief executive of changes to the criminal history of the holder of a licence, driver's certificate or assistant's certificate. The new section 36B (Chief executive may enter into arrangement about giving and receiving information with commissioner of the police service) provides that the chief executive and the Commissioner may enter into a written

arrangement by which information is given or received and that the arrangement may provide for the electronic transfer of information including on a daily basis. The new section 36C (Confidentiality) contains a restriction on the disclosing, recording or use of information gained through involvement in the administration of the TTA or because of an opportunity provided by the involvement.

The provisions are modelled on similar provisions in the *Commission for Children and Young People and Child Guardian Act 2000*. The new provisions may restrict the ability of people to continue their employment, if, as a result of the exchange of information, they are found to have been charged with or convicted of certain disqualifying offences. However, the new provisions do not change the disqualifying offences that apply. Rather, the changes merely ensure that the department has access to daily information about criminal histories, rather than having to wait for periods of approximately 6 months as may happen presently. This will significantly increase the department's ability to ensure greater security and protection for the community.

**Clause 17** replaces the reference to 'the schedule' with 'schedule 1'. This amendment is consequential upon the creation of a new schedule 2 in clauses 10 and 18.

**Clause 18** sets up the heading for a new Schedule 2 – Dictionary.

## **Part 5                      Amendment of Transport Infrastructure Act 1994**

**Clause 19** states that the Act amended in this part and in the schedule is the *Transport Infrastructure Act 1994* (TIA).

**Clause 20** inserts new section 239AH (Definitions for part 7) which defines 'registered interest' and 'unregistered right' for the purposes of chapter 7, part 7.

**Clause 21** inserts new sections 240A to 240D.

Section 240A (Registered interests in rail corridor land) applies if a railway manager surrenders the railway's sublease for a section of rail corridor land and there is a registered interest over the railway manager's sublease for that section of rail corridor land.

Under section 372 of the *Land Act 1994*, a registered easement over a sublease is revoked if the sublease is surrendered. The effect of subsection 240A(2) is that all registered interests (including easements) over the surrendered section of the sublease will continue on the same terms as a registered interest over the lease for non-rail corridor land (the rail perpetual lease held by QT). The State as lessee is substituted for the railway manager as a party in the registered interest.

Section 240B(Unregistered rights in rail corridor land) applies if a railway manager surrenders the railway's sublease for a section of rail corridor land and there is an unregistered right over the railway manager's sublease for that section of rail corridor land.

Subsection 240B(2) applies if a railway manager intends to surrender the railway manager's sublease for a section of rail corridor land and there is an unregistered right over the sublease in this section. At least 3 months before the intended surrender, the railway manager must give the chief executive the details of all unregistered rights.

An unregistered right over a sublease (such as a licence) is normally revoked if the sublease is surrendered. The effect of subsection 240B(3) is that all unregistered rights over the surrendered section of the sublease will continue on the same terms as an unregistered right over the lease for the non-rail corridor land (the rail perpetual lease held by QT) . The State as lessee is substituted for the railway manager as a party in the unregistered right.

However, under subsection 240B(4) the chief executive may revoke an unregistered right at any time that is continued under subsection 240B(3) if the chief executive considers any of the detailed situations set out in subsections 240B(4)(a) to (c) apply.

Subsections 240B(5) to (8) set out when compensation is payable to a person whose interest is affected by a decision by the chief executive under subsection 240B(4)(a).

Under schedule 3 of the Act, the chief executive's decisions under subsection 240B(4) are reviewable and appealable.

Section 240C (Lease of non-rail corridor land to railway manager) applies when the chief executive subleases a section of non-rail corridor land to a railway manager.

Subsection 240C(2) requires that when the registrar of titles registers the sublease that the sublease be the next vested right to or be next in priority to, the rail perpetual lease of the land to the State (represented QT). The

railway manager as sublessee is substituted for the State as a party in any lesser registered interest (the registered interests other than perpetual lease or the railway manager's sublease).

Similarly, upon registration of the sublease, the State's right in any unregistered right in that section of non-rail corridor land, is taken to be vested in the railway manager as sublessee who is substituted for the State as a party in the unregistered right.

Subsection 240C(4) indicates that the provisions of subsection 240C(2) override section 115 of the *Property Law Act 1994* and section 298 of the *Land Act 1994*.

Under section 115 of the *Property Law Act 1994* generally when a lease is surrendered, the next interest in the land takes priority. For example, if a sublease is surrendered and there is a sub-sublease, the sub-sublease is deemed to be a sublease.

At present, to transfer responsibility for rail corridor land from one railway manager to another railway manager, the first railway manager usually surrenders its sublease to the relevant section of rail corridor land. The second railway manager would enter into a new sublease for that section of rail corridor land. However, if there was a sub-sublease, say to a charitable organisation, for a portion of that section of rail corridor land, when the surrender is registered, under section 115 of the *Property Law Act 1994*, the charity's sub-sublease would become a sublease. Even if the second railway manager's 'sublease' was registered immediately after the surrender, it would become a sub-sublease and would be subject to the lesser interest of the charity. As the prime purpose of rail corridor land is to provide rail transport it is important that the railway manager's interest should take priority over any lesser interests. Therefore, subsections 240C(2) and (3) are needed to deem the new sublease to be next in priority to the rail perpetual lease.

Under section 298 of the *Land Act 1994*, registered documents have priority according to when each of them is lodged. The need to override this section is the same case as explained for section 115 of the *Property Law Act 1994*.

Section 240D (Lease of non-rail corridor land to local government or government entity) applies when the chief executive subleases a section of non-rail corridor land to a local government or government entity that is not a railway manager.

Non-rail corridor land (land from a closed railway) is often subleased to a local government for use as a walking trail or bikeway. Generally, the sublease is at a nominal rent in return for the local government providing administration and maintenance of the non-rail corridor land.

Subsection 240D(2) requires that when the registrar of titles registers the sublease, that the sublease be the next vested right to or be next in priority to, the rail perpetual lease of the land to the State (represented by QT). The local government or government entity as sublessee is substituted for the State as a party in any lesser registered interest.

However, there may be special reasons why an existing registered interest, for example an easement, should remain administered by QT. Subsection 240D(3) provides that section 240D(2) does not apply to an already registered interest if a provision in the sublease states that section 240D(2) does not apply to that interest. That is, the existing registered interest specified in the sublease will continue to rank in priority to the local government's or government entity's sublease.

Under subsection 240D(4), upon registration of the sublease, the State's right in any unregistered right in that section of non-rail corridor land, is taken to be vested in the local government or government entity as sublessee who is substituted for the State as a party in the unregistered right.

Subsection 240D(5) indicates that the provisions of subsections 240D(2) and (3) override section 115 of the *Property Law Act 1994* and section 298 of the *Land Act 1994*.

**Clause 22** omits section 247 (Integrated Planning Act consent for rail corridor and non rail corridor land) and inserts a new section 247 (Chief executive taken to be the owner of rail corridor land and non-rail corridor land for particular circumstances under Integrated Planning Act). The clause clarifies that the chief executive is to be taken to be the owner of rail corridor land and non-rail corridor land under the *Integrated Planning Act 1997* where:

- (i) the consent of the owner of that land is needed;
- (ii) notice has to be given to the adjoining land owner (where the adjoining land is rail or non-rail corridor land); or
- (iii) where rail or non-rail corridor land is to be designated as community infrastructure.

**Clause 23** amends section 253 (Extending roads through or over rail corridor land). Under section 253, the chief executive may give permission, subject to conditions, for a local government to build a road on rail corridor land. The amendment requires the chief executive to immediately give a copy of the permission to the registrar of titles. The registrar of titles must record the permission on the rail perpetual lease and the relevant railway manager's sublease.

**Clause 24** amends section 258A (impact of change of management of local government road on railway). The current section requires a local government to obtain the chief executive's written approval to make a change to the management of a local government road under certain circumstances. However, the effect of section 258A(5) enables a local government to avoid seeking the chief executive's approval, for changing the management of a local government road. This is inconsistent with section 8D of the *Transport Planning and Coordination Act 1994*, which requires a local government to apply to the chief executive to obtain the chief executive's written approval to make a change to the management of local government road. It is therefore proposed to delete section 258A(5) to remove this inconsistency. As a consequence of omitting section 258A(5), section 258A(6) and (7) has been renumbered as section 258A(5) and (6).

**Clause 25** inserts a new subsection (3) into section 483 (Proceedings for offences). The new subsection provides that a statement can be made within a complaint for an offence against TIA specifying that the matter of the complaint came to the complainant's knowledge on a stated day and that such a statement is evidence of when the matter came to the complainant's knowledge. This amendment will assist the prosecution of transport offences by facilitating proof of the date when an alleged offence came to the complainant's knowledge. This change will not prevent a defendant from challenging the evidence in the complaint, in which case the prosecution may need to call further evidence to prove the point. Similar amendments are being made to other transport Acts in this Bill for consistency.

**Clause 26** amends schedule 3 (Reviews and appeals) by making reviewable and appealable a decision made under the new section 240B(4) (Decision of chief executive to revoke continued unregistered right over non-rail corridor land).



**Clause 27** amends schedule 6 (Dictionary) to add a definition of 'leasehold land register' and amend the definition of 'non-rail corridor land' to include a rail perpetual lease component.

## **Part 6                      Amendment of the Transport Operations (Marine Pollution) Act 1995**

**Clause 28** states that the Act amended in this part is the *Transport Operations (Marine Pollution) Act 1995* (TOMPA).

**Clause 29** inserts a new sub section (2) into section 126 (Limitation on time for starting summary proceedings). The new subsection provides that a statement can be made within a complaint for an offence against TOMPA specifying that the matter of the complaint came to the complainant's knowledge on a stated day and that such a statement is evidence of when the matter came to the complainant's knowledge. This amendment will assist the prosecution of transport offences by facilitating proof of the date when an alleged offence came to the complainant's knowledge. This change will not prevent a defendant from challenging the evidence in the complaint, in which case the prosecution may need to call further evidence to prove the point. Similar amendments are being made to other transport Acts in this Bill for consistency.

## **Part 7                      Amendment of Transport Operations (Marine Safety) Act 1994**

**Clause 30** states that the Act amended in this part is the *Transport Operations (Marine Safety) Act 1994* (TOMSA).

**Clause 31** inserts a new sub section (2) into section 199 (Limitation on time for starting summary proceedings). The new subsection provides that a statement can be made within a complaint for an offence against TOMSA specifying that the matter of the complaint came to the complainant's knowledge on a stated day and that such a statement is evidence of when the matter came to the complainant's knowledge. This amendment will

assist the prosecution of transport offences by facilitating proof of the date when an alleged offence came to the complainant's knowledge. This change will not prevent a defendant from challenging the evidence in the complaint, in which case the prosecution may need to call further evidence to prove the point. Similar amendments are being made to other transport Acts in this Bill for consistency.

**Clause 32** amends existing section 205A (Inquiries about person's suitability to conduct examinations or conduct training programs). Section 205(1A) currently enables the chief executive or general manager of Maritime Safety Queensland (MSQ) to ask the Commissioner for a written report about a person's criminal history. The new section 205(1B) specifies information that may be included in a request from the chief executive or general manager of MSQ to the Commissioner when seeking a report on a person's criminal history.

Clause 32 also amends existing section 205A by relocating and renumbering sections 205A(4) and 205A(5) under new section 205AC (Confidentiality) and relocating the definition of 'criminal history' to the schedule of the Act.

**Clause 33** inserts new sections 205AA, 205AB and 205AC heading. The new section 205AA (Notice of change in police information about a person) enables the Commissioner to notify the chief executive or the general manager of MSQ of changes to the criminal history of the holder of an approval to conduct examinations for issuing licences or an approval to conduct training programs in the operation of ships. The new section 205AB (Chief executive or general manager may enter into arrangement about giving and receiving information with commissioner of the police service) provides that the chief executive or the general manager of MSQ and the Commissioner may enter into a written arrangement by which information is given or received and that the arrangement may provide for the electronic transfer of information including on a daily basis. The existing sections concerning confidentiality are relocated in section 205AC. The confidentiality provisions ensure that there are restrictions on the disclosing, recording or use of information gained through involvement in the administration of TOMSA or because of an opportunity provided by the involvement.

The numbering of these sections has been done in this way to allow for the eventual proclamation of section 205B of TOMSA, which was inserted by section 95 of the *Maritime and Other Legislation Amendment Act 2006*, but has not yet come into force.

The provisions are modelled on similar provisions in the *Commission for Children and Young People and Child Guardian Act 2000*. The new provisions may restrict the ability of people to continue their employment, if, as a result of the exchange of information, they are found to have been charged with or convicted of certain disqualifying offences. However, the new provisions do not change the disqualifying offences that apply. Rather, the changes merely ensure that the department has access to daily information about criminal histories, rather than having to wait for periods of approximately 6 months as may happen presently. This will significantly increase the department's ability to ensure greater security and protection for the community, in cases that involve children and other vulnerable members of the community.

## **Part 8                      Amendment of Transport Operations (Passenger Transport) Act 1994**

**Clause 34** states that the Act amended in this part is the *Transport Operations (Passenger Transport) Act 1994* (TOPTA).

**Clause 35** inserts a new section 4B which provides that despite amendments to an Act or provisions being renumbered, an offence against an Act that is a disqualifying offence or a driver disqualifying offence remains such. That is, the amendment or renumbering of an offence provision does not affect the fact that the offence is and remains a disqualifying offence or a driver disqualifying offence.

**Clause 36** amends section 20 (Amendment, suspension and cancellation of operator accreditation) by omitting the words 'immediately to suspend' and inserting the words 'to immediately suspend'. This is an administrative amendment as a grammatical correction to provide consistency with the rest of the Act.

**Clause 37** amends section 26 (Driver authorisation standards) to clarify that the chief executive may require a person who is the 'holder' of driver authorisation to provide evidence of their medical fitness. Under the existing section 26, the chief executive already has the power to require 'applicants' for driver authorisation to provide evidence of their medical fitness. Under section 41 of the *Transport Operations (Passenger Transport) Regulation 2005* (TOPT Regulation), the chief executive may

request a holder of driver authorisation to provide evidence of their medical fitness if the chief executive suspects a person is no longer medically fit to operate a public passenger vehicle under the driver authorisation.

**Clause 38** amends section 32 (Amendment, suspension and cancellation of driver authorisation) to clarify that the chief executive may *immediately* amend a person's driver authorisation.

The immediate amendment of a person's driver authorisation by the imposition of a condition on the authorisation may be less detrimental to the driver authorisation holder than either an immediate suspension or cancellation of driver authorisation. For example, if a bus driver is allegedly involved in an altercation with a school student, the chief executive may decide to immediately amend the person's driver authorisation by imposing a condition that the person cannot drive school buses. This amendment would allow the person to continue to drive other types of public passenger services, such as a tourist service.

Section 12 (Immediate suspension of operator accreditation-Act, s20) of the TOPT Regulation sets out the circumstances for which a person's driver authorisation can be immediately amended and the process to be taken by the chief executive. The chief executive must give the affected person a 'regulation notice' under section 11(4) of the TOPT Regulation about the immediate amendment to ensure that the person is notified in writing of the decision, the reasons for the decision and advising the person of their review and appeal rights. This procedure ensures the person is afforded their natural justice rights by providing a right to seek a review, and if necessary, an appeal or stay of the decision made by the chief executive.

Clause 38 also amends section 32(3) by omitting the words 'immediately to suspend' and inserting the words 'to immediately suspend'. This is an administrative amendment as a grammatical correction to provide consistency with the rest of the Act.

**Clause 39** amends section 79 (Suspension and cancellation of taxi service licences) by omitting the words 'to suspend immediately' and inserting the words 'to immediately suspend'. This is an administrative amendment as a grammatical correction to provide consistency with the rest of the Act.

**Clause 40** amends section 91 (Suspension and cancellation of limousine service licences) by omitting the words 'to suspend immediately' and inserting the words 'to immediately suspend'. This is an administrative amendment as a grammatical correction to provide consistency with the rest of the Act.

**Clause 41** amends section 143AI (Direction not to be given in particular circumstances) by omitting the word 'child' and inserting 'student'. This is an administrative amendment as a grammatical correction to provide consistency between the terminology used in the *Transport Operations (Passenger Transport) Regulation 2005* and the Act.

**Clause 42** amends section 144 (Transport arrangements for pupils) by replacing the term 'pupils' with 'school students'. This is an administrative amendment as a grammatical correction to provide consistency between the terminology used in the *Transport Operations (Passenger Transport) Regulation 2005* and the Act.

**Clause 43** amends section 148 (Inquiries about person's suitability to hold accreditation or authorisation) by renumbering the current sections 148(2) and (3) as 148(4) and (5). The clause also includes two new sections 148(2) and (3).

New section 148(2) enables the chief executive to ask the Commissioner for a written report about a person's criminal history. The new section 148(3) specifies information that may be included in a request from the chief executive to the Commissioner when seeking a report on a person's criminal history.

**Clause 44** inserts new sections 148A to 148C. The new section 148A (Notice of change in police information about a person) enables the Commissioner to notify the chief executive of changes to the criminal history of the holder of operator accreditation or driver authorisation. The new section 148B (Chief executive may enter into arrangement about giving and receiving information with commissioner of the police service) provides that the chief executive and the Commissioner may enter into a written arrangement by which information is given or received and that the arrangement may provide for the electronic transfer of information including on a daily basis. The new section 148C (Confidentiality) contains a restriction on the disclosing, recording or use of information gained through involvement in the administration of TOPTA or because of an opportunity provided by the involvement.

The provisions are modelled on similar provisions in the *Commission for Children and Young People and Child Guardian Act 2000*. The new provisions may restrict the ability of people to continue their employment, if, as a result of the exchange of information, they are found to have been charged with or convicted of certain disqualifying offences. However, the new provisions do not change the disqualifying offences that apply. Rather, the changes merely ensure that the department has access to daily

information about criminal histories, rather than having to wait for periods of approximately 6 months as may happen presently. This will significantly increase the department's ability to ensure greater security and protection for the community, in cases that involve children and other vulnerable members of the community.

**Clause 45** inserts a new section 150A (Approval of forms) that provides for the chief executive with the authority to approve forms for use under TOPTA.

**Clause 46** inserts a new subsection 151(3) into section 151 (Proceedings for offences). The new subsection provides that a statement can be made within a complaint for an offence against TOPTA specifying that the matter of the complaint came to the complainant's knowledge on a stated day and that such a statement is evidence of when the matter came to the complainant's knowledge. This amendment will assist the prosecution of transport offences by facilitating proof of the date when an alleged offence came to the complainant's knowledge. This change will not prevent a defendant from challenging the evidence in the complaint, in which case the prosecution may need to call further evidence to prove the point. Similar amendments are being made to other transport Acts in this Bill for consistency.

**Clause 47** amends schedule 3 (Dictionary) to omit the definition of '*eligible school children*' from the Act. This term is used only in the TOPT Regulation and has been included in the dictionary of the Regulation.

A definition of '*school student*' is inserted into schedule 3 (dictionary). This definition has been relocated from the *Transport Operations (Passenger Transport) Regulation 2005*.

The definitions of '*restricted school service*' and '*school service*' have been amended to replace the term '*school children*' with '*school students*'. This amendment provides consistency between the terminology used in the TOPT Regulation and the Act, as well as reflecting the terminology used in the *Education (General Provisions) Act 2006*.

## **Part 9                   Amendment of Transport Operations (Road Use Management) Act 1995**

### **Division 1           General amendments of Transport Operations (Road Use Management) Act 1995**

**Clause 48** provides that this division amends the *Transport Operations (Road Use Management) Act 1995* (TORUM).

**Clause 49** replaces section 17B with new sections 17B to 17E. This amendment makes drafting improvements to the existing section 17B including the removal of the definition of 'criminal history' (This definition has been transferred to the Dictionary in schedule 4 – refer to clause 53). The new section 17C (Chief executive may obtain information from commissioner) incorporates subsections (3) and (4) from the existing section 17B. This new section enables the chief executive to request and obtain a written report about the criminal history of the applicant for, or holder of, an approval under TORUM (examples of approvals under TORUM include approvals for traffic controllers, Q-Ride providers, driver trainers, approved examiners and pilot and escort drivers). The section also includes what information may be included in the request for the report. The new section 17D (Notice of change in police information about a person) enables the Commissioner to notify the chief executive of changes to the criminal history of the holder of an approval. The new section 17E (Chief executive may enter into arrangement about giving and receiving information with commissioner) provides that the chief executive and the Commissioner may enter into a written arrangement by which information is given or received and that the arrangement may provide for the electronic transfer of information including on a daily basis.

The provisions are modelled on similar provisions in the *Commission for Children and Young People and Child Guardian Act 2000*. The new provisions may restrict the ability of people to continue their employment, if, as a result of the exchange of information, they are found to have been charged with or convicted of certain disqualifying offences. However, the new provisions do not change the disqualifying offences that apply. Rather, the changes merely ensure that the department has access to daily

information about criminal histories, rather than having to wait for periods of approximately 6 months as may happen presently. This will significantly increase the department's ability to ensure greater security and protection for the community.

**Clause 50** inserts a new subsection (3) into section 62 (Proceedings for offences). The new subsection provides that a statement can be made within a complaint for an offence against a transport Act specifying that the matter of the complaint came to the complainant's knowledge on a stated day and that such a statement is evidence of when the matter came to the complainant's knowledge. This amendment will assist the prosecution of transport offences by facilitating proof of the date when an alleged offence came to the complainant's knowledge. This change will not prevent a defendant from challenging the evidence in the complaint, in which case the prosecution may need to call further evidence to prove the point. Similar amendments are being made to other transport Acts in this Bill for consistency.

**Clause 51** makes a minor amendment to section 143(2)(c) to make the wording consistent with that used in similar provisions inserted in other transport legislation by this Bill.

**Clause 52** introduces a new section 150AA "Regulating young drivers" into TORUM. Section 150AA(1) provides that a regulation made under section 150, to the extent that it is about the management of young drivers, may also provide for the following: - standards about young driver skills and knowledge; training of young drivers; the keeping and production of logbooks to record driving experience; the retention of logbooks; the testing and licensing of young drivers; rules about licences held by young drivers including, in particular, the circumstances in which, and the reasons for which, they can be cancelled or suspended or conditions imposed on them; the granting of exemptions from conditions of licences; the passengers who may travel in a vehicle driven by a young driver; the use of mobile phones and other similar forms of communication in a vehicle driven by a young driver; and the vehicles that may and may not be driven by young drivers. A young driver is defined in subsection (3) to be a driver under 25 years.

The new section 150AA(2)(a) provides for a provision of a regulation about the management of young drivers as mentioned in the new section 150AA(1) to be declared under the regulation as a provision that is not unlawful discrimination on the basis of age for the *Anti-Discrimination Act 1991*. This will allow laws to be put in place to enhance the safety of young



drivers and road users more generally. Section 150AA(2)(b) provides that it is not unlawful discrimination on the basis of age under the *Anti-Discrimination Act 1991* to do an act that is necessary to comply with, or that is authorised, by a provision declared under paragraph (a).

**Clause 53** inserts the definition of ‘*criminal history*’ in Schedule 4 (Dictionary) that was previously in section 17B.

This clause also amends the definition of ‘*disqualifying offence*’ in Schedule 4, which is used in connection with applications for accreditation and registration. QT currently accredits people under TORUM to undertake various roles including, for example, traffic controllers, pilot and escort drivers, driver trainers and vehicle safety examiners. QT also registers service providers to provide Q-Ride motorbike training. The chief executive of QT can refuse an application for accreditation or registration if an applicant has been convicted of a disqualifying offence or charged with a disqualifying offence and that charge has not been finally dealt with. The chief executive of QT can also amend, suspend or cancel an existing accreditation or registration on the basis of a conviction or an unresolved charge of a disqualifying offence.

At present, "disqualifying offence" is defined in schedule 4 of TORUM to be an offence against the Criminal Code, but does not include similar offences committed outside Queensland. As a result, there is no specific ground in the legislation to refuse an application or to discipline the holder of an existing accreditation or registration where the person is convicted of an offence outside Queensland. In cases where an offence has been committed outside Queensland, the department currently relies on the general ground that the refusal to grant accreditation or registration is in the public interest.

The amendment in the Bill broadens paragraph (b) of the definition of ‘disqualifying offence’ by including offences against laws of jurisdictions outside Queensland that substantially correspond to Queensland Criminal Code offences. This amendment will ensure that criminal offences committed outside Queensland can be taken into account when the chief executive is determining whether to grant a new approval under the Act or to take disciplinary action in relation to an existing approval. Although the ‘public interest’ ground can currently be relied on, the amendment will make the process clearer for applicants, accredited persons and registered persons, as well as making it easier for the department to take action where a disqualifying offence was committed outside Queensland.

This clause also makes amendments to the definition of 'provisional licence' in Schedule 4. These amendments make it clear that a provisional licence is subject to conditions, including restrictions, based on the holder's limited driving experience (as per the existing definition) or because of the holder's age.

## **Division 2            Amendments of Transport Operations (Road Use Management) Act 1995 for road safety purposes involving relevant drugs etc.**

**Clause 54** provides that this division amends the *Transport Operations (Road Use Management) Act 1995* (TORUM).

**Clause 55(1)** amends the heading to section 79 of TORUM to read "Vehicle offences involving liquor or other drugs".

**Clause 55(2)** inserts a number of references to the new section 79(2AA) offence provision (which is introduced by clause 55(3) of this Bill and discussed below) into section 79 of TORUM. These references relate primarily to the appropriate penalty for various offences under section 79. Specifically they establish the appropriate penalty where:

- an offender has been convicted of an offence under section 79(1) and within the period of 5 years prior to conviction the offender:
  - has been previously convicted of an offence under section 79(2), (2AA), (2A), (2B), (2D) or (2J) – under section 79(1D); and
  - has been twice previously convicted of an offence under section 79(2), (2AA), (2A), (2B), (2D) or (2J) – under section 79(1E).
- an offender has been convicted of an offence under section 79(2), (2AA), (2A), (2B), (2D) or 2(J) and within the period of 5 years prior to conviction the offender:
  - has been previously convicted under any of those same subsections – under section 79(2F);
  - has been twice previously convicted under any of those same subsections – under section 79(2G);
  - has been previously convicted upon indictment of any offence in connection with or arising out of the driving of a motor vehicle

by the person or has been summarily convicted of an offence against any provision of the Criminal Code, section 328A or has been previously convicted under section 79(1) of TORUM – under section 79(2H); and

- has been previously convicted under those same subsections and has been:
  - previously convicted upon indictment of any offence in connection with or arising out of the driving of a motor vehicle by the person;
  - summarily convicted of an offence against any provision of the Criminal Code, section 328A; or
  - previously convicted under section 79(1) of TORUM, –under section 79(2I);

The amendment to section 79(6)(d), in combination with the amendments contained in clause 55(5) and (6), provides that a court shall not convict a person of the new offence under section 79(2AA) if certain circumstances are met. The primary circumstance is that the person had manifested an intention not to drive the vehicle.

The amendment to section 79(9) will extend the current requirement for the court to suspend the licence of a person who fails to appear on certain charges under section 79 to a person who does not appear in relation to a charge under new section 79(2AA).

**Clause 55(3)** inserts a new section 79(2AA) "Offence of driving etc while a relevant drug is present in blood or saliva" into TORUM which provides that any person who, while a relevant drug is present in the person's blood or saliva –

- (a) drives a motor vehicle, tram, train or vessel; or
- (b) attempts to put in motion a motor vehicle, tram, train or vessel; or
- (c) is in charge of a motor vehicle, tram, train or vessel;

is guilty of an offence and liable to a penalty not exceeding 14 penalty units or to imprisonment for a term not exceeding 3 months. This new offence provision will support the new random drug testing scheme and will operate when there is a presence of a relevant drug in a person's body. The relevant drugs will be prescribed by regulation.

**Clause 55(4)** inserts a new section 79(5) "Conviction for offence under subsection (2AA) in particular circumstances" into TORUM. This new subsection mirrors existing section 79(4) which applies in relation to alcohol. It provides that where a court is satisfied of all the elements of an offence against subsection (1), except that the defendant is under the influence of liquor or drug at the material time, and at the material time there was a relevant drug present in the defendant's blood or saliva, the court must convict the defendant of an offence under subsection (2AA) that is established on the evidence.

The clause also inserts a new section 79(5A) into TORUM which provides that the new subsection (5) does not limit the application of the existing subsections (4) and (4A).

**Clauses 55(5) and (6)** amend section 79(6) of TORUM. The effect of these amendments, together with the amendment to section 79(6)(d) which is made by clause 55(2), is discussed above at clause 55(2).

**Clause 56(1)** amends section 79B(1)(b) of TORUM to provide that an immediate driver licence suspension or disqualification under section 79B will also apply where a person is charged under section 80(11) with failing to provide a specimen of saliva for analysis. Section 80(11) has been amended by clause 57(46) of this Bill to include a reference to a person failing to provide a specimen of the person's saliva for analysis. Accordingly, it is intended that section 79B(1)(b) will now apply equally where a person is charged under section 80(11) with either failing to provide a specimen of breath or saliva for analysis, or a specimen of blood for a laboratory test.

**Clause 56(2)** amends section 79B(1)(c) of TORUM to include reference to the new drug driving offence in section 79(2AA) (as discussed at clause 55(3)). Presently, only a person charged with a prescribed drink driving offence under section 79B(1)(c), when the earlier such charge has not been finalised, will attract an immediate driver licence suspension or disqualification. The amendment widens section 79B(1)(c) to include reference to the section 79(2AA) drug driving provision.

**Clause 57(1)** amends the heading to section 80 of TORUM to read "Breath and saliva tests and analysis and laboratory tests".

**Clause 57(2)** deletes the definition of "authorised police officer" in section 80(1) of TORUM. A new replacement definition for "authorised police officer" is inserted by clause 57(3) of this Bill.

**Clause 57(3)** inserts new definitions in section 80(1) of TORUM for "authorised police officer", "saliva analysing instrument", "saliva analysis", "saliva test", and "specimen".

In respect of the definition for "saliva analysis", when a saliva specimen is provided for saliva analysis, it is proposed the practice will involve dividing the specimen into parts and placing those parts into separate containers. One part will be used in a saliva analysing instrument. If the analysis by the saliva analysing instrument indicates the presence of a relevant drug in that part of the specimen, it is proposed that another part of the specimen will be scientifically analysed for a relevant drug by an analyst at a laboratory.

As indicated by the definitions, both the device to conduct a "saliva test" and the "saliva analysing instrument" will be approved under a regulation. The definitions are necessary to support various amendments of section 80 to cater for the new random drug testing scheme.

**Clause 57(4)** amends section 80(1A) of TORUM to include a reference to a person providing a specimen of saliva for a saliva test or for saliva analysis. The definitions for "saliva test" and "saliva analysis" were inserted by clause 57(3) of this Bill. The purpose of the amendment is to ensure that sufficient saliva is provided by the person to allow the test or analysis to be conducted and the objectives of that test or analysis to be achieved. This mirrors the current requirements in section 80(1) in relation to the provision of a specimen of breath for a breath test or a specimen of blood for a laboratory test.

**Clause 57(5)** introduces a new section 80(2AA) "Request for specimen of saliva" into TORUM. The amendment provides the basis by which a police officer can require a person to provide a specimen of saliva for saliva test. The new subsection operates in a similar manner as the current section 80(2) relating to a police officer requiring a person to provide a specimen of breath for a breath test, except that new section 80(2AA) imposes a 3 hour time limit. The longer time period is appropriate where a saliva test is conducted because one of the consequences of taking some drugs is that the person may be unable to provide a sufficient saliva sample for some time.

**Clause 57(6)** amends section 80(2A) of TORUM to include reference to "a specimen of saliva for a saliva test by the person". The amendment ensures that where a motor vehicle, tram, train or vessel is involved in an incident resulting in injury or death to any person or damage to property, a police officer can require a person suspected of driving the vehicle (as set out in

paragraphs (a) to (c)) to provide a specimen of saliva for a saliva test or breath for a breath test, or both.

**Clauses 57(7), (8), (9) and (10)** amend sections 80(2B) and (2C) of TORUM. The effect of these amendments is to ensure that, if the circumstances set out in amended section 80(2B) are met, the police officer may require the person to provide as many specimens of breath or saliva, or both, as the officer considers reasonably necessary to carry out the breath test or saliva test. Those circumstances include where a person is taken under section 80(1A) to have not provided the required specimen and also where the person does provide the specimen but for some reason the test can not be completed.

**Clauses 57(11) and (12)** amend section 80(3) of TORUM to extend the current power in section 80(3) in relation to requiring a specimen of breath to apply to requiring a specimen of saliva. Section 80(3) deals generally with when and where a requirement for a specimen can be made of a person.

**Clause 57(13)** replaces section 80(4) "Time limits for requirement for specimen" to cater for the different time limits for a police officer requiring a specimen of saliva for a saliva test and a specimen of breath for a breath test under subsection (2), (2AA) and (2A). Clause 57(5) inserted the new section 80(2AA) and is discussed above.

**Clause 57(14)** amends section 80(5) of TORUM to include a reference to subsection "(2AA)" and a specimen of "saliva for a saliva test". The amendment ensures a police officer has the same power to take a person to a police station or other place, where a person fails to go voluntarily, for the purpose of providing a specimen of breath or saliva.

**Clause 57(15)** amends section 80(5A) of TORUM to include a reference to subsection "(2AA)" and "specimen of saliva for a saliva test". The reason for the amendment is to ensure there is an offence for a person who fails to provide a specimen of saliva for initial testing, just as there currently exists for a person who fails to provide a specimen of breath for a breath test.

**Clauses 57(16) to (20)** amend section 80(5B) of TORUM to make appropriate references to saliva specimens. The amendments are necessary because of the expanded application of the offence in subsection (5A) and provide that a person is not guilty of an offence under subsection (5A) in particular circumstances. Those circumstances include, but are not limited to, where a person immediately produces a certificate from a doctor indicating they are incapable of providing the required specimen and where

the person satisfies the court that the requisition to provide the specimen was not lawfully made.

**Clauses 57(21) to (23)** amend section 80(6) of TORUM. Paragraphs 80(6)(c) to (e) set out the powers of police to deal with a person for the purposes of subsections (8) to (8L) where the circumstances in paragraphs (a) to (ba) apply. For example, if a breath test indicates to a police officer that a person is over the general alcohol limit, the officer may take the person to a police station or to a vehicle where there is a breath analysing instrument. The amendments will apply the existing powers for police under section 80(6) to cover situations such as when a saliva test indicates to the officer that a relevant drug is present in the person's saliva or when a person fails to provide a saliva specimen for testing. This is achieved by the insertion of a new section 80(6)(ab) into TORUM and by the amendment of various paragraphs in section 80(6).

The clause also amends section 80(8)(c) of TORUM to insert reference to "or by a saliva analysing instrument of a specimen of saliva". The amendment is necessary to recognise that, under amended section 80(6), a person may be detained at or taken to a police station or a vehicle or vessel where there is a saliva analysing instrument for the analysis of a saliva specimen.

**Clause 57(24)** amends section 80(8) of TORUM to reflect that a police officer may require a person to provide a specimen of the person's saliva for analysis by a saliva analysing instrument. The clause creates subsection 8(d) to 8(f) to reflect the three types of specimens a police officer may now require, namely a specimen of the person's breath, specimen of the person's saliva, and a specimen of the person's blood. For example, where an initial saliva test indicates the presence of a relevant drug in the person's saliva (see new section 80(6)(ab)), a police officer will have the power under amended section 80(8) to require a second specimen of saliva for analysis by a saliva analysing instrument or a specimen of a person's blood for a laboratory test. The power to require a specimen of the person's blood could be exercised where, for example, the person is unable to provide sufficient saliva for the second specimen.

**Clause 57(25)** amends section 80(8B)(b) of TORUM to provide any person referred to in subsection (8) may, for the purposes of subsections (8) to (8L), be taken to a police station, vehicle or vessel where facilities are available for either or both of the following-

- analysing a specimen of breath by a breath analysing instrument;

- analysing a specimen of saliva by a saliva analysing instrument.

The purpose of the amendment is to provide the power to take a person to one or more specified locations where saliva analysing instrument facilities are available, or both saliva analysing instrument facilities and breath analysing instrument facilities are available. Previously the subsection only referred to a breath analysing instrument.

**Clause 57(26)** replaces section 80(8C) "Police officer may require specimen if person at hospital" of TORUM to provide that if a person whom a police officer may require under subsection (2), (2AA) or (2A) to provide a specimen of breath for a breath test or a specimen of saliva for a saliva test (an *authorising requirement*) is at the hospital for treatment, that person may be required by any police officer to provide at the hospital -

- if the specimen that may be required under the authorising requirement is a specimen of breath – a specimen of the person's breath for analysis by a breath analysing instrument or a specimen of the person's blood for a laboratory test; or
- if the specimen that may be required under the authorising requirement is a specimen of saliva – a specimen of person's saliva for saliva analysis or a specimen of the person's blood for a laboratory test.

The power under section 80(8C) is, however, limited by section 80(8D). Clause 57(26) also amends section 80(8D) "Limitation applying to requisition under subsection (8C)" of TORUM to provide that a requirement for a person to provide a specimen under subsection (8C) must not be made unless -

- a doctor who is familiar with the person's injuries and apparent state of health at the time of the requirement approves of the person providing the specimen; and
- the requirement is made as soon as practicable and–
  - if the authorising requirement is to provide a specimen of breath for a breath test – within 2 hours of the event that authorises the police officer to make the authorising requirement; or
  - if the authorising requirement is to provide a specimen of saliva for a saliva test – within 3 hours of the event that authorises the police officer to make the authorising requirement.

**Clause 57(27)** provides the first of two amendments to section 80(8E) of TORUM. This amendment makes additional reference to a specimen of the



person's saliva, so as to expand the application of the section to where a specimen of breath or specimen of saliva is required. The effect is that a person who has a doctor's certificate as mentioned in paragraph (5B)(a) will not be required to provide a specimen covered by the certificate but will be required to provide a specimen of blood.

**Clause 57(28)** provides the second of two amendments to section 80(8E) of TORUM to provide that the certificate should be material to the provision of the specimen. The amendment is necessary because the certificate mentioned in subsection (5B)(a) can now concern itself with either a specimen of breath, specimen of saliva, or both a specimen of breath and of saliva.

**Clause 57(29)** inserts a new section 80(8FA) "Providing a specimen of saliva" into TORUM. Section 80(8FA) provides that a person required under subsection (8) or (8C) to provide a specimen of the person's saliva for saliva analysis must do so by –

- placing a collection unit, that is prescribed under a regulation, into or adjacent to the person's mouth when directed by the doctor or authorised police officer operating, or who is to operate, a saliva analysing instrument; and
- while providing the specimen, holding or otherwise dealing with the collection unit in a way prescribed under a regulation until told to stop by the doctor or authorised police officer.

The section complements the existing section 80(F) outlining the process for providing a specimen of breath for analysis.

**Clause 57(30)** amends section 80(8G) of TORUM to provide that the commissioner may now authorise a police officer to operate either or both a breath analysing instrument or saliva analysing instrument. Previously the section only referred to a breath analysing instrument.

**Clause 57(31)** amends section 80(8I) of TORUM to reflect that a certificate indicating that an officer is authorised to operate a saliva analysing instrument is, in the absence of proof to the contrary, proof that the officer is so authorised. Previously the section only referred to certificates relating to breath analysing instruments.

**Clauses 57(32) and (33)** amend section 80(8J) of TORUM to ensure that the police officer who operates a saliva analysing instrument is not the same officer who arrested the person or made the requirement for the provision of a specimen of saliva.

**Clauses 57(34) to (39)** amend section 80(8L) of TORUM which specifies when the power to require additional specimens under section 80(8M) applies. The amendments ensure section 80(8L) uniformly applies in relation to a specimen of the person's breath for analysis by a breath analysing instrument, specimen of a person's blood for a laboratory test, or specimen of the person's saliva for saliva analysis. The effect is that a police officer will be entitled to require additional specimens of saliva be provided where, for example, a person is taken under subsection (1A) to not have provided a specimen.

**Clause 57(40)** amends section 80(8L)(b)(ii)(C) of TORUM to clarify that the section only refers to an analysis by a breath analysing instrument. The amendment is necessary because clause 57(36) amended the introductory words to section 80(8L)(b)(ii) to refer to both a specimen of breath for analysis by a breath analysing instrument and specimen of saliva for saliva analysis. At this time, saliva analysing instruments do not have the facility to indicate whether alcohol or some other substance is present in the mouth of the person providing a saliva specimen.

**Clause 57(41)** amends section 80(8M) of TORUM to include reference to a police officer also requiring a person to provide specimens of saliva. At present the section only refers to providing specimens of breath or blood. The section provides that under subsection (8) or (8C) a police officer is authorised to require a person to provide as many specimens of breath, saliva or blood, as the officer considers reasonably necessary to carry out the analysis or test. The section only applies, however, if the circumstances set out in section 80(8L) exist.

**Clause 57(42)** amends section 80(9) of TORUM to additionally refer to "or the person's saliva for saliva analysis", whereas previously the section only addressed a specimen of breath for analysis by a breath analysing instrument. The purpose of the amendment is to provide a uniform approach, when the circumstances in paragraphs 9(c) and 9(d) exist, to requiring a person to provide a specimen of the person's blood and, subject to a direction of a doctor or nurse, a specimen of the person's urine for a laboratory test.

**Clause 57(43)** replaces section 80(9)(d) of TORUM and creates new subparagraphs (d)(i) and (d)(ii). Section 80(9)(d) will now specify that if:

- (i) the analysis of the breath analysing instrument of the specimen of breath provided under the requisition indicates either that there is no alcohol in the person's blood or breath or that the concentration of

alcohol in the person's blood or breath does not reasonably explain the external signs exhibited and observed; or

- (ii) the analysis by the saliva analysing instrument of the specimen of saliva provided under the requisition indicates that there is no relevant drug in the person's saliva.

The amended section 80(9) will allow, for example, a police officer to require a person to provide a specimen of blood where the person exhibited external signs indicating they were affected by drugs but the analysis of their saliva indicated there was no relevant drug in their saliva.

**Clause 57(44)** amends section 80(10)(a) to allow a police officer to require a doctor or nurse attending a person at hospital for treatment to obtain a specimen of the person's blood for a laboratory test where the officer could have required the person to provide a specimen of saliva for a saliva test. Under section 80(10)(b) this power can only be exercised where the person is (or appears to be) unable to consent to the taking of the blood because they are (or appear to be) unconscious or otherwise unable to communicate.

**Clause 57(45)** makes a minor amendment to section 80(10E) to clarify that it relates only to a person mentioned in subparagraph (10)(a)(i).

**Clause 57(46)** introduces a new section 80(10EA) "Limitation on requiring specimen of blood" into TORUM which mirrors existing section 80(10E). The section provides that a police officer must not make a requirement under section 80(10) for a specimen of person's blood for a laboratory test if the circumstances specified in paragraphs (10EA)(a) to (c) exist. Specifically, a police officer must not make a requirement under subsection (10) if the person has provided a specimen of saliva for saliva analysis in relation to the occurrence of the event in relation to which the police officer may require a specimen of saliva for a test as mentioned in subsection (10)(a) and the specimen for saliva analysis has been analysed by a saliva analysing instrument and a notice has been given to the officer under subparagraph (15AB)(b)(i) (discussed below at clause 57(48)).

**Clause 57(47)** amends section 80(11) "Guilt of offence and liability for failing to provide specimen" of TORUM to include reference to a failure to provide a specimen of the person's saliva for saliva analysis when a requisition is made for such a specimen. The section previously only referred to failure to provide a specimen of the person's breath for analysis by a breath analysing instrument or a specimen of the person's blood for a laboratory test. Section 80(11) describes particular circumstances where a

person is guilty of an offence which is deemed to be an offence against the appropriate provision of section 79(1) of TORUM, and is therefore liable to the same punishment in all respects as if the person committed an offence against the appropriate provision of section 79(1).

**Clause 57(48)** inserts a new section 80(15AB) "Saliva analysis instrument record and notices" into TORUM to specify as soon as practicable after a specimen of saliva provided under a requisition has been analysed by means of a saliva analysing instrument, the doctor or authorised police officer operating the instrument must undertake certain steps. Specifically, they must –

- enter details in a record prescribed under a regulation, about the analysis, including the date and time at which the analysis was made and whether a relevant drug was present in the saliva that has been analysed, and sign the record for the entry; and
- give a notice, in the approved form, about the result of the analysis to the police officer who made the requisition and to the person whose saliva has been analysed or to someone else for that person on request by that person.

The purpose of the new section 80(15AB) is to set up a process for the recording of the test result and distribution of appropriate approved notices following an analysis of a specimen of saliva by a saliva analysing instrument. The process to be followed in the case of an analysis of a specimen of breath by a breath analysing instrument is currently set out in section 80(15) of TORUM.

The clause also provides for a new section 80(15AC) "Approved form for person whose saliva is tested is to include particular matters" into TORUM. The new section provides that if a relevant drug is present in the analysed saliva, the approved form given to the person must include notice of certain prescribed information.

**Clauses 57(49) to (53)** amend section 80(15B) of TORUM to provide for the issuing of a certificate where a person fails to provide a specimen of saliva for analysis. This certificate will be similar to the certificate currently issued under section 80(15B) to a person who fails to provide a specimen of breath for analysis.

**Clauses 57(54) to (57)** amend section 80(15F) of TORUM to provide for the evidentiary value of a certificate issued under subsection (15B) in relation to a failure to provide a specimen of saliva for analysis.

**Clause 57(58)** replaces existing section 80(16) and includes provision for the delivery of a specimen of saliva to a laboratory where an analysis by a saliva analysing instrument has indicated a relevant drug to be present in the saliva of a person. It should be noted that the definition of "specimen" inserted by clause 57(2) includes parts of the saliva specimen. The clause also replaces section 80(16A) to include a requirement that the delivery of the specimen of saliva to the laboratory must be in the way prescribed under a regulation.

**Clause 57(59)** amends section 80(16B)(a) of TORUM to reflect that a specimen sent for a laboratory test can either be a specimen of blood, urine or saliva. The amendment introduces the term "delivered specimen" which may be a specimen of blood or saliva.

**Clause 57(60)** amends section 80(16B)(b) of TORUM to now refer to the term "delivered specimen".

**Clause 57(61)** amends section 80(16B)(c) of TORUM to reflect that the certificate issued under subsection (16B) may now indicate that the laboratory test showed a specified drug or metabolite of a specified drug was present in a person's saliva.

**Clause 57(62)** amends section 80(16C) and (16E)(a) to insert appropriate references to saliva for saliva analysis in relation to certificates issued by a health care professional where a person fails to provide a specimen as required.

**Clause 57(63)** amends section 80(16C)(c) and (f) and (16E)(b) to insert appropriate references to "saliva" in relation to certificates issued by a health care professional where a person fails to provide a specimen as required.

**Clause 57(64)** inserts a Note into section 80(16F) to clarify that the reference to the term "drug" in this subsection would include a reference to a relevant drug.

**Clause 57(65)** inserts a new section 80(16FA) "Three hours proof of relevant drug presence by laboratory test" into TORUM. The new section specifies that evidence by an analyst, or by a certificate referred to in subject (16B), that a stated relevant drug or a metabolite of a stated relevant drug is indicated to be present in the blood or saliva of a person is, subject to subsection (16G), conclusive evidence of the presence of the stated relevant drug or the metabolite of the stated relevant drug in the person's blood or saliva –

(a) at the time the person provided the specimen; and

- (b) at a material time in any proceedings if the specimen was provided not more than 3 hours after the material time; and
- (c) at all material times between those times.

Section 80(16FA) generally reflects the provisions of existing section 80(16F) which applies in relation to the laboratory testing of a specimen of blood for alcohol or specified drugs.

The clause also provides for a consequential amendment to section 80(16G) "Evidence may be negated" of TORUM to now make reference to both section 80(16F) and 16(FA) and additionally refer to a specimen of saliva. Previously section 80(16G) only referred to negating evidence mentioned in section 80(16F) relating to the results of testing of a specimen of blood.

**Clause 57(66)** amends section 80(16H) of TORUM to insert reference to a "specimen of saliva for saliva analysis" (previously the section only referred to a specimen of blood). Section 80(16H) concerns where the Court shall adjourn the hearing as necessary to enable the production into evidence of the certificate of the analyst.

**Clause 57(67)** amends section 80(16L) of TORUM to insert reference to "saliva" (previously the section only referred to a specimen of blood). Section 80(16L) concerns where the Court may deal with a charge for an offence against section 79(1) notwithstanding that at the time the result of the laboratory test is unknown.

**Clause 57(68)** amends section 80(18) of TORUM to insert reference to the "a specimen of saliva for saliva analysis" (previously the section only referred to a specimen of blood). Section 80(18) provides an evidential rule for a certificate purporting to be signed by a health care professional.

**Clause 57(69)** amends section 80(19) of TORUM to include a reference to the delivery, or arranging for delivery, of a specimen of saliva (previously the section only referred to a specimen of blood). The aim of the amendment is to ensure the evidence rule concerning compliance with subsection (16A) applies equally to a specimen of blood and part of a specimen of saliva.

**Clause 57(70)** amends section 80(19)(b) of TORUM to refer only to "specimen" and not "specimen of blood". The aim of the amendment is to ensure that subsection (19)(b) has application to all types of specimens contemplated in the introductory paragraph of section (19)(b). The amendment is as a consequence the amendment provided by clause 57(69) of this Bill.

**Clauses 57(71) and (72)** amend section 80(20) of TORUM to include reference to "a specimen of saliva for saliva analysis". Section 80(20) concerns a person, who is required to provide a specimen under subsection (8), (8C) or (9), being able to request the health care professional or police officer to also give them a specimen. The aim of the amendments is to ensure such a request can equally be made for a specimen of blood or a specimen of saliva.

**Clause 57(73)** amends section 80(20A) of TORUM as a consequence of the amendment provided by clauses 57(71) and (72) of this Bill. In particular, the amendment provides that, where a request is made for a second specimen of blood or saliva, the health care professional or police officer must provide that second specimen.

**Clause 57(74)** inserts a new section 80(22)(ab) into TORUM. Section 80(22) outlines the circumstances where a person's driver licence is suspended for 24 hours under section 80(22AA). The new section 80(22)(ab) provides that section 80(22AA) applies where the analysis by means of a saliva analysing instrument of a specimen of saliva of a person required by a police officer to be provided under subsection (8) or (8C) indicates that the relevant drug is present in the person's saliva.

The clause also amends section 80(22) of TORUM which provides for a 24-hour suspension of a driver licence in certain circumstances. Those circumstances are being extended to include where a saliva analysis indicates a relevant drug is present in the person's saliva or where there is a failure to provide a specimen of saliva for saliva analysis when required.

**Clause 57(75)** amends section 80(22)(ba) of TORUM to include a reference to "a specimen of saliva for saliva analysis". The section previously only referred to a specimen of breath for analysis or a specimen of blood for a laboratory test.

**Clause 57(76)** amends section 80(22)(ba)(iii)(A) of TORUM to now include a reference to a saliva analysing instrument not being available to analyse a specimen of a person's saliva. This extends the scope of the 24-hour suspension that can be imposed for circumstances mentioned in section 80(22)(ba).

**Clause 57(77)** amends section 80(22)(ba)(iii)(B) of TORUM now refer to an inability to take a specimen of blood "or saliva" from the person. The section previously only referred to a specimen of blood. The amendment is as a consequence the amendment provided by clause 57(75) of this Bill.

**Clauses 57(78) to (80)** amend section 80(22)(c) of TORUM to insert a reference to a police officer requiring a specimen of "saliva for a saliva test". The section will also now apply where a person permits a specimen of blood to be taken for a laboratory test when required pursuant to subsection (8) or (8C), and the thereupon the police officer requires either the person to provide a specimen of breath for a breath test or saliva for a saliva test, and one of the circumstances in subsections (c)(i), the amended (c)(ii) or the new (c)(ia) (as inserted by clause 57(79)) apply. The section would apply, for example, where the breath analysing instrument or saliva analysing instrument is not in working order.

**Clauses 57(81) and (82)** amend section 80(22AA) of TORUM to clarify when a 24-hour driver licence suspension commences where it relates to the testing or analysis of a person's saliva for the presence of a relevant drug.

**Clause 57(83)** amends section 80(23) of TORUM to refer to taking of a specimen of "saliva". At present the section only refers to a specimen of blood. The amendment will allow, in specified circumstances, a police officer to take a person to a place where to the officer's knowledge or reasonable belief a doctor is available to take the relevant specimen.

**Clause 57(84)** amends section 80(24) of TORUM to specify that evidence of the presence of a relevant drug in the blood or saliva of a person is admissible in certain court proceedings.

**Clause 57(85)** amends section 80(26)(b) of TORUM to provide that a defendant who proposes to lead evidence to prove in any proceeding that the result of a laboratory test of a specimen of saliva was not a correct result, must give notice to the complainant as prescribed under section 80(26).

**Clause 57(86)** provides for the inclusion of a reference to a specimen of "saliva" (presently there is only a reference to a specimen of "blood") in the following provisions:

- where the defendant, with the court's leave, requires a person who was involved in the taking, receipt, storage or testing of the specimen to attend the hearing to give evidence – under section 80(28);
- in one of the criteria of which the court must be satisfied before granting leave to a defendant for a request pursuant to section 80(28) – under section 80(29)(b)(i).

**Clause 57(87)** amends section 80(30)(b) of TORUM to include reference to a specimen of saliva. Presently the section only makes reference to a



specimen of blood. The amendment provides that, in a proceeding for an offence against section 79 of TORUM, any equipment used in a laboratory test of a specimen of saliva is to be taken to have given accurate results unless the contrary is proved.

**Clause 58** inserts new section 80AA "Limitation on use of saliva for saliva test or saliva analysis and related matters" into TORUM. The section applies to a specimen of saliva for a saliva test or analysis obtained under section 80. The section provides that the specimen must not be used for:

- DNA analysis to help decide whether or not the person may be a suspect in relation to an offence; or
- for a purpose stated in the PPRA, section 537.

The section in addition provides that if the saliva test or saliva analysis:

- does not indicate the presence of a relevant drug in the person's saliva, the specimen must be destroyed as soon as possible after the result is known;
- does indicate the presence of a relevant drug in the person's saliva, the specimen must be destroyed as soon as possible after the results are no longer necessary for proceedings against the person, including an appeal about a conviction under TORUM or another Act.

**Clause 59(1)** amends various subsections of section 86 "Disqualification of drivers of motor vehicles for certain offences" of TORUM to include reference to the new section 79(2AA) offence. Clause 55(3) of this Bill inserted the new section 79(2AA) and is discussed above. The purpose of this amendment is to insert appropriate references to section 79(2AA) into the provisions of section 86 dealing with disqualification periods for various offences. Most relevantly, the clause provides that a person convicted of an offence against new section 79(2AA) will be disqualified in accordance with amended section 86(2) or, if there are previous convictions for relevant offences, in accordance with section 86(2B), (2D), (2D) or (2F).

**Clause 59(2)** amends both section 86(2A) and (2C) of TORUM by including reference to "or presence of a relevant drug in the defendant's blood or saliva". The amendment will allow the court to have regard to the presence of a relevant drug in the person's body (for a section 79(2AA) offence) and real or potential danger to the public in the circumstances of the case, in determining the period of disqualification.

**Clause 60** inserts a new section 87(5)(dc) into TORUM. The aim of the amendment is to ensure a restricted licence (commonly known as a 'work licence') should not be available to a person who is convicted of the new section 79(2AA) drug driving offence if that person is someone to whom the no alcohol limit applies – that is, a person for which sections 79(2A), (2B), (2D) or (2J) would apply if at the time of the offence that person was over the no alcohol limit but not over the general alcohol limit. The amendment largely mirrors the existing section 87(5)(db) provision and will ensure a consistent outcome for these people for both drugs and alcohol.

**Clause 61** redrafts section 112 of TORUM to provide that, when using a radar or laser-based speed detection device, a police officer must comply with the appropriate Australian Standard or, if there is no appropriate Australian Standard, the manufacturer's specifications for the device. This amendment does not alter the intent of the section and is consistent with the changes to section 124 in clause 62.

**Clause 62(1)** restructures sections 124 (1)(pa), (pb), (pd) and (pe) of TORUM to group similar provisions together. Provisions in relation to evidentiary certificates for the testing of speed detection devices will now be placed in new subparagraph (1)(pa). Provisions in relation to evidentiary certificates for the use of speed detection devices will now be placed in new subparagraph (1)(pb). Clause 62 also removes reference to specific Australian Standards and replaces them with a reference to the appropriate Australian Standard, or if there is no appropriate Australian Standard, the manufacturer's specifications. The reason for this amendment is to cater for the possibility that there is no relevant Australian Standard in force for a stated speed detection device. In this case, the testing must be done in accordance with the manufacturer's specifications. The amendment also makes the provisions relating to the testing of all speed detection devices consistent.

The new section 124(1)(pa) includes reference to speed detection devices additional to the radar and laser-based speed detection devices already referred to in the existing sections 124(1)(pa) and (pd). This amendment will extend the current evidentiary aid provision to piezo strip and induction loop speed detection devices. Piezo strip and induction loops are technologies that may be required to be used in conjunction with fixed speed cameras.

This amendment means that a certificate purporting to be signed by the commissioner and stating that a stated induction loop or a piezo strip speed

detection device has been tested in accordance with section 124(1)(pa)(i)(A) or (B) and found to produce accurate results at the time of testing is evidence that the device was producing accurate results at the time of testing and for 1 year after that time.

The new section 124(1)(pb) deals with evidentiary certificates for the use of laser-based speed detection devices and radar speed detection devices by a police officer. As piezo strip and induction loop speed detection devices do not require operator involvement, these speed detection devices are not included in this section.

**Clause 62(2)** deletes sections 124(1)(pd) and 124(1)(pe) of TORUM. Clause 62(1) incorporates these provisions into sections 124(1)(pa) and 124(1)(pb).

**Clause 62(3)** amends the introductory paragraph of section 124(1)(pf) of TORUM to clarify that a photographic detection device is used in conjunction with the relevant speed detection device – that is, a stated induction loop, laser-based, piezo strip or radar speed detection device.

**Clause 62(4)** redrafts sections 124(1)(pf)(i) and 124(1)(pf)(ii) in accordance with current legislative drafting practice. This amendment does not change the intent of the existing sections.

**Clause 62(5)** amends sections 124(1)(tb) and 124(1)(u) of TORUM to also insert reference to "saliva analysing instrument". The reason for the amendment is to ensure the evidential provision uniformly applies to both a breath analysing instrument and saliva analysing instrument.

**Clause 62(6)** makes a consequential amendment to section 124(4)(a) of TORUM to ensure that the requirement for the defendant to give a written notice of an intention to challenge the accuracy of a speed detection device or a vehicle speedometer accuracy indicator will apply to all speed detection devices referred to in section 124 including those introduced by clause 62(1), that is induction loop and piezo strip speed detection devices.

**Clause 62(7)** makes a consequential amendment to section 124(4)(b) of TORUM consistent with the amendment made by clause 62(6).

**Clause 63(1)** amends section 143(1) of TORUM to insert a Note which clarifies that the confidentiality provisions contained in the *Police Service Administration Act 1990* (see especially section 10.1) apply to police officers in relation to the disclosure of information rather than the provisions of section 143.

**Clause 63(2)** amends section 143(3) of TORUM to provide that a specimen provided by or taken from a person is information which is protected by the confidentiality provision contained in section 143.

**Clause 64** inserts a new Chapter 7, Part 9 "Transitional provision for Transport Legislation and Another Act Amendment Act 2006" into TORUM. The clause inserts a number of transitional provisions required as a result of the amendments made in this Bill.

The clause inserts section 207 "No saliva testing or saliva analysis for 1 month after commencement". The section delays the practical application of the legislation for one month and will allow for the reprint of the Act. This delay will allow the courts time to become familiar with the new provisions before cases start appearing.

This clause inserts section 208 "Certificates under section 124" which is a transitional provision required as a result of the amendments made to section 124 of TORUM in clause 62 of this Bill. This provision maintains the validity of certificates given under the existing sections 124(1)(pa), (pb), (pd), (pe) or (pf) in relation to a proceeding started before the commencement of the amendments in clause 62 of this Bill.

The clause also inserts section 209 "Updated text" which specifies the object of the amendment of TORUM by schedules 2 and 3 of the amending Act is to improve the readability of the provisions amended in the schedules and is not intended to affect their meaning. Clause 66 of this Bill incorporates schedules 2 and 3.

**Clause 65** inserts new definitions for "relevant drug", "saliva analysis", "saliva test" and "specimen" in to the Schedule 4 dictionary of TORUM.

**Clause 66(1)** provides that schedule 2 makes further amendments to TORUM. The new section 209 inserted by clause 64 of the Bill clarifies that the amendments contained in the schedules are not intended to affect the meaning of the provisions amended.

**Clause 66(2)** provides for the insertion, by schedule 3, of various subsection headings for the subsections of section 79 and 80 of TORUM. The new section 209 inserted by clause 64 of the Bill clarifies that the amendments contained in the schedules are not intended to effect the meaning of the provisions amended.

## **Part 10                    Amendment of Transport Planning and Coordination Act 1994**

**Clause 67** states that the Act amended in this part is the *Transport Planning and Coordination Act 1994*.

**Clause 68** replaces the existing section 8E (Guidelines for ss8B-8D). The amendment will clarify that the guideline making power is intended to apply generally in relation to the provision of public passenger transport.

## **Schedule 1                Minor amendments of Transport Infrastructure Act 1994**

**Item 1** renumbers section 239A.

**Items 2 to 9** make minor amendments to chapter 7 of TIA (Rail transport infrastructure and other matters) to amend the use of the word ‘lease’ (and related words such as leases and leased) to make it consistent throughout the Act. In theory, ‘lease’ includes ‘sublease’. However, while some provisions use ‘sublease’ when referring to a sublease, other provisions use ‘lease’. Where ‘lease’ has been used to refer to a sublease in the Act, to achieve consistency, it has been amended to ‘sublease’ (or the relevant related word, such as subleases or subleased).

## **Schedule 2                Further amendment of the Transport Operations (Road Use Management) Act 1995**

**Schedule 2** updates provisions of TORUM in accordance with current legislative drafting practice.

## **Schedule 3      Insertion of subsection headings**

**Schedule 3** introduces subsection headings for sections 79 and 80 of TORUM to improve readability for users of the legislation.