

Transport Legislation Amendment Bill 2007

Explanatory Notes

General Outline

The Bill amends the following six pieces of transport legislation:

- *Maritime and Other Legislation Amendment Act 2006* (MAOLAA);
- *Transport Infrastructure Act 1994* (TIA);
- *Transport Operations (Marine Pollution) Act 1995* (TOMPA);
- *Transport Operations (Passenger Transport) Act 1994* (TOPTA);
- *Transport Operations (Road Use Management) Act 1995* (TORUM);
- *Transport Planning and Coordination Act 1994* (TPCA).

The most significant amendments in this Bill are:

- the adoption of national compliance and enforcement reforms for heavy vehicles; and
- improvements to the taxi and limousine industries to enhance the range of services available throughout Queensland.

The Bill also makes some other minor changes to ensure delivery of the Government's transport infrastructure program and to improve or clarify legislation.

Due to the fact that the Bill introduces a range of reforms to transport legislation, the preliminary sections of the explanatory notes deal with each of the matters in the Bill under the following headings:

- *Compliance and enforcement reforms* – these are amendments to TORUM and are contained in Part 6, Division 2 of the Bill;
- *Road safety and other miscellaneous TORUM amendments* – these are amendments to TORUM and MAOLAA and are contained in Part 2 and Part 6, Division 3 of the Bill;
- *Taxi and limousine industry reforms* – these are amendments to TOPTA and are contained in Part 5 of the Bill;

- *Tolling amendments* – these are amendments to TIA and TPCA and are contained in Part 3 and Part 7 (clauses 89 and 90) of the Bill;
- *Busway land acquisition* – these are amendments to TPCA and are contained in Part 7 (clauses 91 and 92 of the Bill); and
- *Marine pollution amendments* – these are amendments to TOMPA and are contained in Part 4 of the Bill.

Short Title

The short title of the Bill is the Transport Legislation Amendment Bill 2007.

Policy Objectives of the Legislation

Compliance and enforcement reforms

The amendments to TORUM adopt provisions from the national *Road Transport Reform (Compliance and Enforcement) Bill 2003* (the national Bill) and will strengthen current heavy vehicle compliance and enforcement processes in Queensland. The national Bill is model legislation developed by the National Transport Commission (NTC) which is designed to achieve national uniformity and to improve compliance with, and enforcement of, heavy vehicle operating requirements.

The objective of the reforms is to make positive changes to the on-road behaviour of those involved in the heavy vehicle transport industry and to ensure accountability of all parties influencing compliance with heavy vehicle transport laws. This extends to off-road parties and is referred to as the "chain of responsibility". The aim of chain of responsibility laws is to ensure that all parties who influence on-road behaviour are held accountable for breaches of road transport laws. Under this concept, legal liability can reach beyond the driver to other parties both within and outside the road transport industry so that the real causes of non-compliance with road transport laws are targeted.

The national Bill includes provisions dealing with the enforcement powers of authorised officers, a range of sanctions and penalties, and evidentiary provisions to aid with the prosecution of offences. The national Bill also contains chain of responsibility provisions in respect of heavy vehicle mass, dimension and load restraint compliance. The Bill also refines the concept of risk-based categorisation of offences so that the enforcement response and the penalty imposed is commensurate with the risk to public

safety, the risk of unfair commercial advantage and/or the risk of infrastructure damage.

This Bill adopts only those provisions from the national Bill that strengthen current heavy vehicle compliance and enforcement processes, while also meeting Queensland's commitment to achieve national outcomes.

Road safety and other miscellaneous TORUM amendments

The Bill amends TORUM to:

- extend the period in which proceedings can be commenced for the prosecution of a person involved in a road incident who fails to comply with their statutory duties and liabilities;
- validate certain codes of practice relating to the modification of motor vehicles;
- amend the immediate driver licence suspension provisions for high risk drink drivers to reflect recent changes to the *Criminal Code*;
- require a defendant challenging the image from a photographic detection device, the functioning or visibility of a traffic control device or the accuracy or operation of a speed detection device to give written notice of the grounds of challenge they intend to rely upon;
- update the reference to a Commonwealth statute, namely the *National Transport Commission Act 2003* (Cwlth);
- amend the definition of "bicycle" to exclude vehicles fitted with an internal combustion engine;
- make minor amendments to definitions to enable the subsequent adoption in a regulation of the Australian Road Rules (ARR) reforms on motorised foot scooters; and
- ensure Transport Inspectors have sufficient investigatory powers in respect of offences under the *Motor Accident Insurance Act 1994* (MAIA).

The Bill also amends MAOLAA to extend cumulative driver disqualification provisions to apply to disqualifications resulting from drug driving offences.

Taxi and limousine industry reforms

The Bill amends TOPTA to:

- require all taxi service holders to develop and submit for Queensland Transport (QT) approval, an annual peak demand management plan;

- introduce peak demand taxi (PTD) permits to increase the number of taxis during peak times such as Friday and Saturday nights and major events;
- increase penalties for passenger transport contract holders that fail to meet key requirements of their service contract;
- introduce special purpose limousine (SPL) service licences for weddings, school formals and tourist services; and
- require limousine operators to use a passenger booking and recording system (for limousines operating on a limousine service licence, this must be an electronic system) and impose penalties for non-compliance.

Tolling amendments

The Bill amends the *Transport Infrastructure Act 1994* to:

- ensure that land the State has leased for a toll road is able to be subleased; and
- provide the Minister with the ability to impose an end date (or the method to calculate an end date) for the tolling period.

The Bill also amends the *Transport Planning and Coordination Act 1994* to remove any doubt regarding the power of the chief executive to acquire or resume land for a transport or incidental purpose with the intention of disposing to a third party under s.27 of the *Transport Planning and Coordination Act 1994* – (power of chief executive to lease, sell or otherwise dispose of land) or under sections 84A, 240 or 355 of the *Transport Infrastructure Act 1994*.

Busway land acquisition

The Bill amends the TPCA to confirm that in relation to acquisitions of land for the purposes of a busway occurring after 13 October 2000 that regardless of whether the acquisition was by the chief executive of the Department of Main Roads (MR) or Queensland Transport (QT), it is taken to have been a lawful and valid acquisition made by the chief executive of MR.

Marine pollution amendments

The Bill amends TOMPA to:

- make minor amendments to references to the International Convention for the Prevention of Pollution from Ships (commonly referred to as MARPOL) throughout the Act;

- reflect new definitions for noxious liquid substances; and
- reflect the new categorisation of noxious liquid substances in MARPOL.

Reasons for the Bill

Compliance and enforcement reforms

Heavy vehicles are significantly over-represented in crashes causing fatalities, relative to other classes of vehicles. For example, articulated heavy vehicles such as road trains, b-doubles and b-triples have a fatal crash rate 18 times higher than that of cars.

Recent increases in fatal crashes involving trucks can be attributed, in part, to increases in the amount of truck travel on Queensland roads. It is estimated that, as a consequence of Queensland's strong economic performance, the use of trucks to transport freight will double between the years 2000 and 2020. Without tighter regulation of the road freight industry, this has the potential to significantly impact on Queensland's future road toll.

The evidence of potential heavy vehicle offences is often located in diverse locations and is impermanent in nature, making it easy to destroy or alter. The adoption of provisions from the national model legislation by the amendments to TORUM contained in this Bill will assist in the investigations of these offences.

In aiming to minimise the adverse impacts of heavy vehicle road transport on the community and remove any unfair competitive advantage that may result from the breach of transport legislation, the amending Bill will benefit Queensland by:

- providing an effective, efficient and equitable scheme for encouraging compliance with the requirements of Queensland's road transport law and for the enforcement of those requirements;
- making a demonstrable, positive change in the on-road behaviour of those involved in the transport industry by removing commercial benefit for breaching heavy vehicle road rules;
- strengthening powers for enforcement officers to improve intelligence gathering and prosecution outcomes;
- refining the chain of responsibility provisions to recognise *all* parties who affect road transport compliance and ensure that they can be held

accountable for their acts and omissions where they result in a breach of transport law; and

- implementing our commitment to national heavy vehicle compliance and enforcement measures, thereby removing cross jurisdictional variations.

Road safety and other miscellaneous TORUM amendments

The amendments to TORUM are necessary to:

- ensure any person who fails to comply with their obligations to stop and render assistance to a person who has been injured or has died as a result of a road incident can be appropriately dealt with through the justice system;
- validate the industry codes of practice used for the inspection and approval of modifications to motor vehicles operating on Queensland roads;
- ensure the immediate driver licence suspension provisions for high risk drink drivers reflect recent changes to the dangerous driving provisions in the *Criminal Code*;
- ensure a defendant challenging the image from a photographic detection device, the functioning or visibility of a traffic control device or the accuracy or operation of a speed detection device gives written notice of the grounds of challenge they intend to rely upon;
- ensure references to specified Commonwealth statutes are current;
- ensure that bicycles fitted with internal combustion engines as an auxiliary motor can not be used on Queensland roads;
- provide for the subsequent adoption of ARR reforms on motorised foot scooters; and
- ensure appropriate compliance and enforcement of offences under the MAIA.

The amendments to MAOLAA will ensure, for consistency, that the scheme providing for periods of multiple driver disqualifications to take effect cumulatively and not concurrently for certain drink driving related offences, is also applied to disqualifications resulting from drug driving offences.

Taxi and limousine industry reforms

The Bill introduces reforms to the taxi and limousine industries that will improve standards of performance and accountability for meeting those

standards. The initiatives contained in this Bill are a result of the National Competition Policy (NCP) Review of the regulation of the taxi and limousine industries. These reforms include:

- *Peak demand management plans* – Meeting demand at peak patronage periods and public safety are key related issues for the community. A major challenge for passenger transport services is finding the flexibility to meet demand at peak times (Friday and Saturday nights) and special events (such as Melbourne Cup, Magic Millions and State of Origin).

The amendments proposed will provide an environment for the taxi industry to structure and position itself to meet this changing demand through the introduction of annual peak demand management plans for taxi contract holders.

Through the peak demand taxi plans, a taxi booking company will be required to manage and report on their performance during peak periods. The plan will also nominate the number of PDT permits they require to meet demand during identified peak periods.

- *Peak demand taxi permits* – To provide additional taxis during peak periods without saturating the non-busy times, taxi contract holders will be able to apply for annual PDT permits (\$3500 per permit). A PDT will only be able to operate during the peak demand periods identified in the peak demand management plan.
- *Increased penalties for contract holders that do not meet key contract requirements* – TOPTA allows QT to contract passenger transport operators to provide certain public transport services under a service contract. Currently, up to four penalty units (or \$300) can be imposed on commercial contract holders that breach their contract requirements.

As a penalty will only be applied to key performance indicators (KPIs), a \$300 penalty is not seen as a sufficient deterrent for breaching a key contract condition (such as meeting minimum service levels). Consequently, it is proposed to increase the penalty to up to 40 penalty units (or \$3000). Forty penalty units aligns with a number of other TOPTA breaches of conditions (for example breaching a taxi service licence condition by an operator (section 74(4)).

While this may be seen as a substantial increase, it should be noted that a 'standard' commercial contract is negotiated with the relevant industry body and that this would include the application of penalties. As well, key performance issues such as minimum service levels,

route networks and vehicle requirements are further negotiated with individual contract holders.

In addition to this, many intermediate steps are taken before any penalty would be issued. QT works with contract holders throughout the duration of the contract to monitor and review the contract holder's performance.

As an extra safeguard to contract holders, section 47 (Amendment, suspension or cancellation of service contracts for breach of service contracts) of TOPTA will be amended to prevent a contract being amended during its term to increase the penalty for a breach of a KPI.

- *Special purpose limousines (SPLs)* – There is strong demand from the public who want to use a 'special' vehicle (for example, Holden Monaro GTS or a classic American car, such as a 1963 Chevrolet BelAir) to add to the experience of their special event, particularly weddings. As a result, a new category of annual limousines service licences (SPL) has been developed. This new category of limousines will significantly broaden the types of vehicles that can be used as limousines, but services will be restricted to weddings, school formals and tourist services.
- *Limousine passenger booking and recording system* – Despite the requirement that a limousine service can only be provided if there is a prior booking, TOPTA does not require operators or drivers to keep a record of the bookings. As a result, QT has difficulties in enforcing the prior booking requirement.

Consequently a number of limousine operators and drivers are taking advantage of this to "cruise" streets (especially in nightclub areas) in their vehicles looking for impromptu work that has not been prior booked. The taxi industry, with its much higher operating costs, has made a number of complaints about this unfair competition from the rogue limousine operators and drivers.

Amendments contained in this Bill will require all limousine operators and drivers to use a passenger booking recording system that can verify that a booking has been made.

Tolling amendments

The Bill will make changes to the *Transport Infrastructure Act 1994* providing the ability to sublease land to third parties thus facilitating the possibility of future public private partnership arrangements.

The current declaration process for a Government Tollway under the *Transport Infrastructure Act 1994* contains conditions regarding the declaration of the tollway. The declaration provides for the ability to toll, however does not provide for when the tolling period is to cease. The provisions in the Bill will provide the Minister with the ability to impose an end date (or the method to calculate an end date) for the tolling period.

The proposed change to the *Transport Planning and Coordination Act 1994* provides the Government the ability to resume land for a transport or incidental purpose with the intention of leasing, selling or otherwise disposing of the land in certain specified circumstances thus allowing a public private partnership arrangement to operate.

Busway land acquisition

The amendments to the TPCA concerning busway land acquisitions are the result of legal advice that compulsory acquisitions by the chief executive of QT since 13 October 2000 for certain busways are invalid. The proposed amendments do not create any injustice or hardship to the parties concerned and the parties' rights in relation to compensation are not affected.

Marine pollution amendments

The amendments to TOMPA are necessary to reflect changes made to MARPOL that came into effect on 1 January 2007.

Administrative Costs

Compliance and enforcement reforms

Implementation costs for the Queensland Government in relation to the amendments to TORUM to adopt the national compliance and enforcement reforms in this Bill are not expected to be significant. These costs relate to marketing and communications costs to inform industry of the proposed changes and training and development costs for Queensland Transport staff. These costs will be absorbed within existing budget allocations.

Taxi and limousine industry reforms

The cost of implementing the taxi and limousine reforms will be met within existing budget allocations.

Revenue collected from the sale of the PDT permits and SPL service licences will be treated as administered revenue and remitted to consolidated revenue.

Other amendments

Any costs connected with introduction of the remaining amendments in this Bill will be minor and absorbed within existing budget allocations.

Achieving the Objectives*Compliance and enforcement reforms*

The TORUM amendments aim to strengthen existing enforcement powers in relation to potential breaches of heavy vehicle mass, dimension, load restraint and fatigue management requirements by:

- introducing a new concept of "responsible person" for a heavy vehicle to ensure inquiries can be made of all relevant parties;
- introducing the power for authorised officers to enter and search places and seize evidence in relation to suspected heavy vehicle offences without warrant or consent in specified circumstances;
- extending authorised officers' powers in relation to the moving of heavy vehicles on roads;
- inserting a power to enable authorised officers to issue an embargo notice to prohibit dealing with anything which may be seized under the Act;
- extending the list of people from whom an authorised officer may require personal details for the purpose of exercising a power in relation to a heavy vehicle;
- enhancing the exercise of reciprocal powers by authorised officers in different jurisdictions;
- creating new offences for the provision of false or misleading information;
- amending chain of responsibility provisions, including the introduction of the concept of a "reasonable steps" defence;
- recognising in Queensland, administrative decisions and judicial actions from other jurisdictions in relation to a heavy vehicle; and
- allowing courts to make a commercial benefit penalty order.

The Bill also makes the following amendments specifically for heavy vehicle mass, dimension and load restraint offences:

- the incorporation of a "risk based categorisation" of offences involving severe, substantial or minor risk breaches with appropriate penalties for each category of offence;
- the inclusion of new powers for authorised officers to give directions to a driver or operator of a vehicle which is subject to one or more severe, substantial or minor risk breaches;
- the inclusion of an offence provision in relation to a breach of a concession (typically in Queensland this would entail breaching a guideline or a permit); and
- the incorporation of a new provision regarding the matters a court must consider when imposing a sanction for non-compliance with a mass, dimension or load restraint requirement.

In line with the national Bill, the new provisions contained in this Bill are in relation to vehicles with a GVM of more than 4.5t, or a combination that includes a vehicle with a GVM of more than 4.5t. As offences or suspected offences against the Queensland Road Rules or an offence involving the carriage of dangerous goods are not intended to be covered by this Bill, regulations dealing with these types of offences have been excluded from the definition of transport Act in the new provisions.

Road safety and other miscellaneous TORUM amendments

The amendments to TORUM are necessary to:

- allow for the extension of time for commencing proceedings under section 92(1) of TORUM against a driver involved in a road incident who fails to stop and render assistance where a person is injured or killed;
- provide for a retrospective curative amendment to validate the industry codes of practice used for the inspection and approval of safe modifications to motor vehicles;
- ensure the immediate licence suspension provisions in section 79B of TORUM adopt consistent terminology to that used in section 328A of the *Criminal Code*;
- ensure a defendant challenging the image from a photographic detection device, the functioning or visibility of a traffic control device or the accuracy or operation of a speed detection device gives written notice of the grounds of challenge they intend to rely upon;

- update the current reference in section 171(4) to the *National Road Transport Commission Act 1991* (Cwlth) to instead refer to the *National Transport Commission Act 2003* (Cwlth);
- amend the Schedule 4 definition of “bicycle” to exclude bicycles fitted with internal combustion engines;
- ensure relevant definitions in TORUM will cater for the subsequent adoption of ARR reforms on motorised foot scooters; and
- expand the investigatory powers available to Transport Inspectors for offences under the MAIA.

The objective of the amendment to section 144A of MAOLAA is to insert a reference to the new drug driving offence under the unproclaimed section 79(2AA) of TORUM and to amend the definition of "dangerous driving offence" to remove the requirement that the relevant intoxicating substance must have been alcohol.

Taxi and limousine industry reforms

The Bill, through the introduction of peak demand management plans and peak demand taxi permits, places a requirement on taxi contract holders to manage and respond to peak patronage periods. This will ensure a greater supply of transport services during peak times and therefore minimise the situations that can lead to violent or ill-fated incidents.

The Bill will achieve better public transport services (including taxi and urban scheduled services) by placing greater emphasis on QT contract holders to meet their contract obligations.

The Bill provides the public as well as passenger transport operators, a greater choice of limousine vehicles through the introduction of SPLs.

The Bill will ensure limousine operators do not compete with taxis by plying or standing for hire.

Tolling amendments

The Bill amends chapter 6, part 8 of the *Transport Infrastructure Act 1994* including in particular section 84C and Schedule 5 of that Act. The proposed amendments will provide for a tollway project to have certainty regarding the need to sublease State land for the purposes of building and operating a tollway. The State's interests will be protected by a new provision to allow the Minister to place the condition of an end toll date on the Tollway declaration.

The Bill also amends the *Transport Planning and Coordination Act 1994* to remove any doubt regarding the power of the chief executive to acquire or

resume land for a transport or incidental purpose with the intention of disposing to a third party under s.27 of the *Transport Planning and Coordination Act 1994* – (power of chief executive to lease, sell or otherwise dispose of land) or under sections 84A, 240 or 355 of the *Transport Infrastructure Act 1994*.

Busway land acquisition

The objective of the amendments to the TPCA concerning busway land acquisitions is to confirm that in relation to acquisitions of land for the purposes of a busway occurring after 13 October 2000 that regardless of whether the acquisition was by the chief executive of MR or QT, it is taken to have been a lawful and valid acquisition made by the chief executive of MR.

Marine pollution amendments

The amendment to TOMPA will ensure that Queensland waters are protected from ship sourced pollutants to the greatest extent possible.

Fundamental Legislative Principles

In general, the Bill has sufficient regard to the rights and liberties of individuals and fundamental legislative principles. However, potential breaches of the fundamental legislative principles (FLPs) under the *Legislative Standards Act 1992* are outlined below.

Compliance and enforcement reforms

Although some of the compliance and enforcement reforms in the Bill potentially infringe fundamental legislative principles (FLPs), the need to improve the safety outcomes in relation to the operation of heavy vehicles on Queensland roads is considered to override any potential impact on individual rights. For the purpose of national consistency and to facilitate the ability of authorised officers to exercise reciprocal powers in different jurisdictions, it is important that the model law provisions be adopted as closely as possible. Sufficient safeguards, as explained further below, have been placed in the legislation for the protection of the rights of individuals.

Entry to premises, seizing evidence and interfering with property (sections 4(2)(a) and 4(3)(e) Legislative Standards Act 1992 (LSA)).

The Bill includes amendments to allow authorised officers to enter certain places in limited circumstances without warrant or consent. Specifically, authorised officers may enter a "place of business" in relation to a heavy vehicle or, if there has been an incident involving death, injury or damage, enter any place related to a heavy vehicle (new sections 26A and 26B,

clause 35). In line with the national Bill, the Bill contains a safeguard by providing that consent or a warrant is still required if an authorised officer needs to enter either an unattended place or a place which is used predominately for residential purposes.

In addition, Queensland will provide safeguards for the exercise of these powers by requiring:

- that an authorised officer may only enter without a warrant or consent if the officer reasonably suspects (section 26A) or reasonably believes (section 26B) that evidence may be concealed or destroyed unless the place is immediately entered and searched; and
- that, following any exercise of this power, an authorised officer must apply to a magistrate in writing for a post-entry approval order (new sections 29A - 29C, clause 36).

While the definition of "place of business" is broad in the new section 26A, the potential breach of an FLP is considered to be justified due to the need to prevent a business evading an authorised officer's inspection powers, by moving evidence to other business premises which are not related to transport. Further, entry to business premises under this power can only occur during the business' usual operating hours. In addition, the power to search (after entering) the premises may only be exercised if the authorised officer reasonably believes that there may be evidence of an offence, relating to a heavy vehicle, against a transport Act. The power to search is also limited to obtaining evidence of this sort of offence (new section 30A, clause 38).

An authorised officer must only enter under section 26B and search under section 30A (clause 38) where the officer has a reasonable belief of a number of matters including that a heavy vehicle connected with the place has, or may have been involved in an incident involving the death of, or injury to, a person or damage to property, and the incident may have involved an offence against a transport Act.

The Bill also includes a power to allow authorised officers to enter and search a heavy vehicle without warrant or consent to check whether it complies with a transport Act or an alternative compliance scheme (new section 35A, clause 44). However, this power may only be exercised if the officer reasonably believes that the vehicle has been used, is being used, or is likely to be used, to commit an offence or the vehicle may have been involved in an incident involving injury to, or the death of, a person or damage to property. Furthermore, a power cannot be exercised under this section in relation to a personal possession found in a vehicle.

The new sections 26A and 26B and 35A will assist in preventing the possibility of contamination, destruction or removal of crucial evidence if consent to enter a place is denied or if a period of time elapses before a warrant is obtained. For example, a scenario could arise where a search of a truck intercepted at the roadside leads to a suspicion that someone else in the transport chain is responsible for a relevant transport Act offence. These new enter and search provisions will assist in limiting the amount of time during which the evidence may be concealed or removed.

None of these provisions will authorise the use of force.

Seizing evidence and interfering with property in relation to a heavy vehicle

The Bill includes an amendment that allows an authorised officer to seize an information storage device (for example a disk or tape) and equipment that enables the information to be accessed (new section 40A, clause 48). It is possible that the exercise of this power may infringe an individual's rights by impacting on their ability to run a business.

However, it is considered that the potential breach of the FLP is justifiable on the overriding basis of ensuring that crucial information for road safety investigations is preserved. In addition, a number of safeguards are included in the legislation. For example, the legislation provides that the seizure can only take place if the information cannot be obtained in a documentary form or the information from the original information storage device cannot be copied on to another information storage device. Also, the authorised officer must reasonably believe that the device and equipment can be seized without being damaged. A further safeguard is that the authorised officer must reasonably believe that the information is relevant to deciding whether a transport Act has been contravened. Any seized equipment must be returned immediately after the equipment has been used to access the information (see amendment to section 46, clause 49).

The Bill also introduces the following provisions which allow for interference with a person's property:

- the power for an authorised officer to gain access and move unattended or broken down heavy vehicles (new sections 33B and 33C, clause 41);
- the power for an authorised officer to run or stop a heavy vehicle's engine (new section 35C, clause 44);

- powers in relation to the operation of equipment to gain access to stored information or to determine whether something may be seized (new sections 35B, clause 44); and
- the power to issue an embargo notice which prohibits any dealing with a thing which is the subject matter of the embargo notice (new section 46B, clause 50).

In relation to each of these provisions it is considered that any possible breach of the FLPs is justified on the basis of improving safety outcomes in relation to heavy vehicles.

Reversing onus of proof (section 4(3)(d) LSA)

Legislation should not reverse the onus of proof in criminal proceedings without adequate justification. Several amendments in this Bill contain a reverse onus of proof. The first is the amendment that expressly identifies additional persons (eg consignors, packers, loaders and operators) in the definition of "influencing person" in the extended liability provision (amendment section 57B, clause 62). If a person in control of a heavy vehicle is proved to have committed an offence, an influencing person is taken to have committed the offence unless the influencing person proves the reasonable steps defence, or they were not in a position to influence the conduct of the person in control of the vehicle.

This amendment does not introduce a new concept into Queensland legislation. Rather, it clarifies the scope of the existing concept of an "influencing person" to ensure that all those in the chain of responsibility can be held accountable for their acts or omissions. The specific identification of the additional parties who may be an "influencing person" reflects the intent of the existing provision. Each of the additional people who are expressly identified are considered to potentially have an integral role in influencing a breach of a mass, dimension or loading requirement by the driver of a heavy vehicle. Their inclusion in the definition of "influencing person" is therefore considered to be justified.

The Bill also inserts a new offence provision for providing false or misleading information in transport documentation or a container weight declaration (new sections 53B and 53C, clause 58). Specified persons within the chain of responsibility (eg consignor, packer, loader, receiver, operator) will be taken to have committed an offence if the documentation contains false or misleading information, unless they prove that they took all reasonable steps to provide/convey accurate information.

The potential breaches of the FLP are considered to be justified as these amendments are important measures to help ensure compliance with heavy

vehicle operating requirements. Furthermore, the "reasonable steps" defence is available to these persons within the chain of responsibility. The information necessary to prove this defence is peculiarly within the defendant's knowledge rather than the prosecution's knowledge and would be difficult for the prosecution to prove.

There are other provisions in the Bill which provide a defence for a person charged with specific offences. The onus is on the defendant to prove a defence in relation to failing to comply with a requirement to move a heavy vehicle causing harm or obstruction (new section 33A, clause 41), failing to comply with an embargo notice (new section 46C, clause 50) or failing to comply with a requirement to state a person's business address. It is considered that, in each of these cases, the reversal of the onus of proof is justified on the basis that the subject of proof is peculiarly within the defendant's knowledge and would be much more onerous for the prosecution to prove.

Appropriateness of penalties for offences (section 4(2)(a) LSA)

It is an FLP that penalties should be proportionate to the offence. The Bill includes amendments that increase maximum penalties for existing offences. It also introduces new offences for which penalties are provided. The penalties provided for are proportionate to the relevant offences and are consistent throughout the Act and with the nationally agreed penalties. The Bill also includes a provision which allows a court to make a commercial benefits penalty order which may require the person to pay an amount not exceeding 3 times the amount estimated by the court to be the gross commercial benefit received as a result of breaching the law. This new penalty is set to redress the commercial benefit that a person may gain from dangerous and unlawful behaviour and to provide a significant deterrent to engaging in that behaviour.

Appropriate delegation of legislative power (section 4(3)(2)(b) and section (4)(a) LSA)

A number of provisions in the Bill allow for matters to be determined by regulation (for example definitions of declared routes, declared zones and freight container). It is considered that these provisions represent an appropriate delegation of legislative power as the matters to be determined by regulation are either administrative in nature or will allow for swift action to be taken in the case of an emergency or other extraordinary circumstance.

Road safety and other miscellaneous TORUM amendments

Adversely affect rights and liberties or impose obligations retrospectively (sections 4(2)(a) and 4(3)(g) LSA)***Industry Codes of Practice***

The proposed amendments to remedy the absence of documented approvals for industry codes of practice (clause 86 of the Bill) may adversely affect the rights and liberties of individuals by imposing obligations retrospectively (sections 4(2)(a) and 4(3)(g) of the LSA).

However, there is a strong basis to justify any potential breach in the circumstances. Firstly, amendments having a retrospective validating effect are not without precedent in Queensland. Secondly, the community and industry have always conducted themselves on the basis that the industry codes of practice were valid, and the amendment merely restores their reasonable and legitimate expectation of the existing law. Thirdly, the codes fulfil a significant road safety objective as part of a scheme for the inspection and approval of modifications to motor vehicles operating on Queensland roads. Finally, this is not a case where the rights and liberties of individuals are in any way materially impacted, as the amendment merely corrects any unintended consequences.

Extension of time for commencing proceedings

The proposed amendment to extend the time for commencing proceedings against a person charged with an offence against section 92(1) (Duties and liabilities of drivers involved in road accidents) of TORUM (clause 78 of the Bill) may be considered a situation in which the rights and liberties of individuals are adversely affected (sections 4(2)(a) and 4(3)(g) of the LSA).

However, the proposed amendment will only apply in circumstances where an incident under section 92(1) involves injury to or death of a person, and not where the incident involves only property damage. Further, the proposed amendment will only be applicable to a person charged (with an offence against section 92(1) of TORUM) in relation to an incident that happened after the commencement of the amendment.

There is a strong road safety basis to justify the amendment, which outweighs the potential breach of an FLP. The proposed amendment recognises that in some cases due to the nature of “hit and run” offences it might take longer to identify an offender. The amendment increases the reach of the law where a person fails to comply with their obligations to stop and render assistance to a person who has been injured or died as a result of a road incident. As an illustration of the extent of the current problem, during the period 1 January 2005 to 26 March 2007 there were

1,115 casualties as a result of crashes involving hit and run incidents in Queensland - of that figure there were 10 fatalities and 287 hospitalised casualties.

Finally, the amendment will be of benefit to persons other than the government, in particular, community members and the immediate family of victims of hit and run incidents.

Busway land acquisition

Adversely affect rights and liberties or impose obligations retrospectively (sections 4(2) and 4(3)(g) LSA)

The proposed amendment to validate certain land acquisitions (clauses 91 and 92 of the Bill) may be considered a breach of the fundamental legislative principle regarding retrospectivity of legislation. However, it is considered that the need for retrospective legislation in this case is justified because it:

- is curative in nature;
- does not create any injustice or hardship to the parties concerned other than to validate a legal technicality;
- does not affect the rights of any party to compensation for the compulsory acquisition of their land; and
- provides certainty to the State in relation to an important transport project concerning busways which could otherwise be the subject of litigation, delay and associated costs.

Consultation

Compliance and enforcement reforms

Both QT and the National Transport Commission ran extensive public consultation programs for the development of the national Bill, with QT holding additional information sessions in Brisbane and major regional centres in 2004/2005. QT undertook further consultation with key stakeholders from the road freight industry through the Road Freight Industry Council at their meetings in March and June 2007, and also discussed the imminent implementation of the reforms with the Queensland Trucking Association in March 2007. QT also met with representatives of the Transport Workers' Union in May 2007 to outline the proposed changes and the program for implementation of the reforms in Queensland.

Stakeholders from key rural and business groups were also consulted through QT's participation in the Remote Area Consultative Group meetings and in presentations forming part of the Livestock Transporters Association of Queensland's annual conference in May 2007. QT also provided information of the upcoming implementation of the reforms to importers, exporters and other interested parties in the Port of Brisbane Corporation's Landside Logistics Forum in April 2007.

Road safety and other miscellaneous TORUM amendments

The Motor Accident Insurance Commission was consulted in regard to the amendment ensuring Transport Inspectors have sufficient investigatory powers in respect of offences under the MAIA.

The Royal Automobile Club of Queensland Limited was briefed on 19 July 2007 with respect to the proposed changes.

Taxi and limousine industry reforms

The *Taxi and Limousine Development Discussion Paper* was released in May 2004 as the basis for extensive consultation with industry, the community and other stakeholders. Three hundred written responses were received and eleven workshops were run across the state to canvass policy directions. Input was received from a wide range of stakeholders including community groups, local government, police officers, business representatives, tourism representatives, aged peoples groups, people with disabilities, and the taxi and limousine industries.

Ongoing consultation has continued with the taxi and limousine industries to develop the policy and procedural details.

Tolling amendments

Consultation has been undertaken with Queensland Motorways Limited, Brisbane City Council and City Northern Infrastructure Pty Ltd.

Marine pollution amendments

The amendments to TOMPA have not been subject to community consultation as they merely reflect changes to an international convention to which Australia is a signatory. The nature of the amendments is technical and they do not have any practical effect on stakeholders.

Government consultation

All relevant Queensland Government agencies were consulted and support the provisions in the Bill. Key agencies consulted on the entire Bill include the Department of the Premier and Cabinet and Queensland Treasury. Other relevant agencies consulted on appropriate parts of the Bill include

the Department of Justice and Attorney-General, the Queensland Police Service, the Department of Communities, the Department of Employment and Industrial Relations, the Department of Tourism, Fair Trading and Wine Industry Development, the Department of Local Government, Planning, Sport and Recreation and the Department of Natural Resources and Water.

Notes on Clauses

Part Preliminary

Short Title

Clause 1 sets out the short title of the Act as the *Transport Legislation Amendment Act 2007*.

Commencement

Clause 2 provides that the following provisions of the Act commence on a day to be fixed by proclamation:

- parts 4 and 5;
- part 6, division 2;
- sections 79(2), 80 to 83, 87(3) to (5), (7) and (8);
- schedule.

Section 79(1) commences immediately after the commencement of the *Transport Legislation and Another Act Amendment Act 2007*, section 56(2).

The remaining provisions of the Act commence on assent in accordance with section 15A of the *Acts Interpretation Act 1954*.

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

Clause 3 states that Part 2 amends the *Maritime and Other Legislation Amendment Act 2006* (MAOLAA).

Clause 4 amends section 144A of the MAOLAA (presently unproclaimed), which will insert sections 90A to 90D into the *Transport Operations (Road Use Management) Act 1995* (TORUM). Sections 90A to 90D provide that periods of multiple driver disqualifications are to take effect cumulatively and not concurrently for designated drink driving offences. The present amendment extends the application of sections 90A to 90D to include disqualifications due to drug driving offences.

Clause 4(1) amends the definition of “dangerous driving offence” to ensure consistency with section 328A(4) of the *Criminal Code*.

Clause 4(2) amends the definitions of “designated offence” and “drink driving offence” to insert a reference to the unproclaimed section 79(2AA) “Offence of driving etc while relevant drug is present in blood or saliva”. Section 79(2AA) is to be inserted into TORUM by section 55(3) of the *Transport Legislation and Another Act Amendment Act 2007*.

Part 3 **Amendment of Transport Infrastructure Act 1994**

Clause 5 provides that Part 3 amends the *Transport Infrastructure Act 1994*.

Clause 6 inserts a new section 84C(6A) providing that a lessee of State toll road corridor land may lease the land to another person.

Clause 7 inserts an additional matter into schedule 5 (Tolling matters for toll road or local government tollway). Existing sections 93 and 105GA of the *Transport Infrastructure Act 1994* provide for the Minister to declare toll roads and local government tollways. For toll roads, the declaration must include the matters listed in schedule 5 and for local government tollways, the Minister may impose conditions on the declaration listed in schedules 5 and 5A. This amendment inserts a further matter into schedule

5 that provides for a date that the toll stops being payable, or a method for calculating a date.

Part 4 Amendment of Transport Operations (Marine Pollution) Act 1995

Clause 8 states that Part 4 amends the *Transport Operations (Marine Pollution) Act 1995* (TOMPA).

Clause 9 removes the definition of Annex II and replaces the definition of noxious liquid substance. The new definition reflects the definition of "noxious liquid substance" in Annex II of MARPOL.

Clause 10 inserts a new section 34A which provides a head of power for a regulation to declare category X, Y, Z or Other substances to be substances of a different category. The regulation has effect despite the substance being differently categorised under the International Bulk Chemical Code. This provision replaces existing head of power provisions in section 133(3).

Clause 11 amends sections 38(1) and 38(2) to remove the references to category C or D substance and replaces them with references to category Z or other. The clause also inserts an editor's note for guidance to the reader to explain that "Other substance" has a particular meaning in MARPOL.

Clause 12 amends section 59 to ensure that the definition of "noxious liquid substance" for the purposes of Part 9 (Transfer operations) is the same as for Part 5 (Prevention of pollution by noxious liquid substances in bulk).

Clause 13 amends section 66(1)(a) to amend the cross-references to regulations in MARPOL by changing the reference to regulation 12 of Annex I to be regulation 38 of Annex I, and changes the reference to regulation 7 of Annex II to be regulation 18 of Annex II.

Clause 14 amends section 133(3) to:

- in paragraph (a) – change the cross-reference to a regulation in MARPOL by changing the reference to “regulation 8 of Annex II” to be “regulation 16 of Annex II”;

- remove paragraphs (b), (c) and (e). These paragraphs are replaced with a new section 34A – recategorisation of substances. This is an administrative change which better references the changes to Annex II of MARPOL;
- in paragraph (d) – change the cross-reference to MARPOL from “regulation 3(4)” to “regulation 6.3” and remove the references to “A, B, C or D” substances and replace them with a reference to “X, Y, Z or Other” substances;
- in paragraph (f) – to replace the reference to “category A” substance with a reference to “category X” substance and update the cross-reference to MARPOL from “Appendix II, column III or IV” to “regulation 13.6 of Annex II”;
- renumber paragraphs (d) and (f) as (b) and (c).

Clause 15 amends the definition of sewage to refer to MARPOL for consistency with the rest of TOMPA, rather than "the Convention".

Part 5 Amendment of Transport Operations (Passenger Transport) Act 1994

Clause 16 states that Part 5 amends the *Transport Operations (Passenger Transport) Act 1994*.

Clause 17 amends section 45 (Conditions of service contracts). Currently, section 45 allows a penalty of up to four penalty units (\$300) to be imposed on contract holders that breach their contract requirements (for example, not meeting their minimum service levels). A \$300 penalty is not seen as a sufficient deterrent for breaching key contract conditions. Consequently, this amendment increases the maximum penalty to 40 penalty units. This will give contract holders a clear indication of the high standards Queensland Transport expects from contract passenger transport services providers.

Clause 18 inserts a new subsection in section 47 (Amendment, suspension or cancellation of service contracts for breach of service contracts) to safeguard a contract holder from having the penalty attached to the breach of a KPI from being increased during the term of the contract.

Clause 19 inserts a new section 67A (Peak demand management plans). Section 67A(1) requires a person who administers a taxi service (contract holder), for example taxi booking companies such as Yellow Cabs and B&W Cabs, to develop a peak demand management plan. To ensure compliance with section 67A(1), section 67A(2) establishes a maximum penalty of 40 penalty units (\$3000) for contract holders that do not submit their peak demand management plan to the chief executive within the time prescribed under a regulation. Section 67A(3) sets out what the management plan must contain, while section 67A(4) notes the plan does not diminish the contract holder's responsibility under the service contract. Also, through section 67A(5), the Bill allows for a regulation to be made that provides for matters relating to peak demand management plans, such as when a plan must be given to the chief executive, the duration of the plan and how a plan can be amended.

Clause 20 amends section 70 (Requirement for taxi service licences) to include a reference to peak demand taxis. Section 70 currently states that a person must not provide a taxi service unless the person has a taxi service licence. It is being amended to provide that a person cannot provide a taxi service unless they hold a taxi service licence or a peak demand taxi permit.

Clause 21 amends section 73 (Term of taxi service licences) which relates to the period of time a taxi licence is issued for. The amendment allows taxi licences to be issued on a renewable or non-renewable basis. It also clarifies that a taxi licence will be renewed for five years if all conditions are met, unless the applicant requests a shorter time period.

Clause 22 amends section 74 (Conditions of taxi service licences) to make a minor drafting change to section 74(2)(b) and a minor grammatical change to section 74(3)(b)(ii) to bring it into line with the wording of the new section 80G(3)(b)(ii).

Clause 23 amends section 74AA (Notice to be kept in taxi) which relates to specific information that must be kept in a taxi. The amendment clarifies that this section applies to licensed taxis as well as substitute taxis. If a taxi is unable to be used due to a major mechanical fault or accident, the chief executive, Queensland Transport, may approve another vehicle to provide the taxi service. The stand-in vehicle is referred to as a substitute taxi.

Clause 24 amends section 74AB (Prohibitions on using taxis). Section 74AB makes it an offence for a taxi operator or driver to use a taxi outside the taxi service area stated in the licence or contravene any restrictions placed on the licence. As in the previous clause, this amendment extends this requirement to substitute taxis.

Clause 25 amends section 75(1) (Amendment of taxi service licence conditions). Section 75(1) states the chief executive may amend the 'conditions of a taxi service licence' if it is in the public interest. The amendment provides that the chief executive may amend the 'conditions of taxi service licences'. This allows the chief executive to amend a number of taxi service licences at the one time.

Clause 26 inserts a new chapter 7A (Peak demand taxi permits). Peak demand taxi permits have been introduced to reduce taxi waiting times in peak patronage periods and consequently improve public safety. They are linked to a taxi contract holder's (for example, Yellow Cabs) peak demand management plan, which is required under the new section 67A (see clause 19).

Sections 80C to 80L introduce the head of power and other provisions relating to peak demand taxis, including the purpose, description, issue, term, conditions, notices to be kept in peak demand taxis, prohibitions on use, amendment of conditions, the lease and surrender of peak demand taxi permits, and the suspension and cancellation of peak demand taxi permits. These provisions will assist in the management and effective use of the vehicles, as well as ensuring taxi companies are held accountable for their use.

Clause 27 replaces section 86 (Term of limousine service licence) to incorporate special purpose limousines, a new category of limousine licence. It states a limousine licence can be issued for five years, unless it is a special purpose limousine licence which can only be issued for one year. It also states a limousine licence (not including special purpose limousine licences) will be renewed for five years if all conditions are met, unless the applicant requests a shorter time period.

Clause 28 amends section 87 (Conditions of limousine service licences). Section 87 relates to vehicles that can be used to provide limousine services and the type of registration plate to be displayed by those vehicles. Section 87 is amended to incorporate appropriate references to the new special purpose limousines and special purpose limousine service licences.

Clause 29 inserts new sections 87B to 87G. These sections introduce a new requirement for limousine operators and drivers to use a passenger booking and recording system. Section 87B requires limousine operators, other than those provided under a special purpose limousine licence, to use an electronic passenger booking and recording system. It also requires a limousine driver to not use a limousine unless it is fitted with an electronic booking and recording system and a prior booking is displayed on the system.

Section 87C requires an operator to keep electronic records of prior bookings made for five years and make them available to an authorised person if requested. Section 87D requires a limousine driver to produce the electronic booking system to a Queensland Transport authorised person (for the purpose of checking a prior booking has been made) if requested.

Section 87E relates to special purpose limousines that are not required to maintain an electronic passenger booking and recording system. Under this section, a special purpose limousine operator must maintain either a paper based system or an electronic system that can show a prior booking has been made. Section 87F requires these records to be kept for five years. Section 87G requires a driver of a special purpose limousine to provide evidence of a prior booking to a Queensland Transport authorised person if requested.

Clause 30 amends section 155 (Regulations) which allows the Governor in Council to make regulations under TOPTA. Currently, section 155(3)(a) states a regulation 'may prescribe fees and charges payable for the issue of instruments or doing other things under this Act'. This is being amended to 'may prescribe fees, charges and taxes payable ...'. This will facilitate the introduction of proposed annual fees for peak demand taxi permits and special purpose limousine service licences.

Clause 31 amends schedule 2 (Reviewable decisions) to nominate the courts where departmental decisions relating to the amendment, suspension or cancellation of a peak demand taxi permit can be appealed. In the case of an amendment to a peak demand taxi permit, a decision can be appealed in a Magistrates Court, while a decision to suspend or cancel a peak demand taxi permit can be appealed in either a Magistrates or District Court.

Clause 32 amends schedule 3 (Dictionary). A number of new definitions have been inserted to clarify what is required under the new peak demand taxi, special purpose limousine and limousine passenger booking and recording provisions and to limit their application. Of particular importance are the definitions for electronic booking system, peak patronage period, special purpose limousine, special purpose limousine service licence and taxi.

Part 6 Amendment of Transport Operations (Road Use Management) Act 1995

Division 1 Preliminary

Clause 33 states that Part 6 and the schedule amend the *Transport Operations (Road Use Management) Act 1995*.

Division 2 Amendments relating to compliance and enforcement of heavy vehicles

Clause 34 increases the maximum penalty for a person who stops being an authorised officer and fails to return the person's identity card to the chief executive as soon as practicable from \$750 (10 penalty units) to \$2 025 (27 penalty units).

Clause 35 inserts new sections 26A and 26B.

Currently, section 26 of TORUM provides authorised officers with the power to enter a place if the occupier consents, if the entry is authorised by a warrant or in certain other limited circumstances. New section 26A provides that an authorised officer may enter a place of business of a responsible person for a heavy vehicle at any time during the usual business hours of the business, whether or not the place is actually being used at that time for carrying on the business. Neither a warrant nor the consent of the occupier is required in order to enter the place if the authorised officer:

- reasonably suspects that there may be a document relating to a heavy vehicle that is required to be kept under a transport Act or an alternative compliance scheme; or
- reasonably suspects that there may be a device relating to a heavy vehicle that is required to be installed, used or maintained under a transport Act or an alternative compliance scheme; or
- reasonably believes that there may be anything that may provide evidence of an offence relating to a heavy vehicle against a transport Act and the officer reasonably suspects that the evidence may be

concealed or destroyed unless the place is immediately entered and searched.

An authorised officer may not use force under this section, although the officer may open unlocked doors and other unlocked panels and things at the place for gaining entry to it.

A "responsible person for a heavy vehicle" is a newly created term which has been inserted into the definitions in schedule 4 (inserted by clause 77). This definition is cast broadly and, in general, means a person having, at a relevant time, a role or responsibility associated with road transport by use of a heavy vehicle. It includes owners, operators, consignors, packers, loaders, unloaders, receivers of goods and extends to agents, employers, employees and subcontractors.

Consent or a warrant is still required in order to enter a place in the following circumstances:

- where a business is carried on at the place and the proposed entry is to be made outside the usual business operating hours of the business (new section 26A(1));
- where the place is apparently unattended (unless the officer reasonably believes the place is attended) (new section 26A(4)(a));
- where the place or any part of a place is used predominantly for residential purposes (new section 26A(4)(b)). Subsection (5) provides that a place, or part of a place, is not used predominantly for residential purposes if it is used merely for temporary or casual sleeping or other accommodation for drivers of heavy vehicles.

Section 26B allows an authorised officer, without the occupier's consent or a warrant, to enter a place at any time if the officer reasonably believes a heavy vehicle has, or may have, been involved in an incident involving the death or injury of a person, or damage to property, and the incident may have involved an offence against a transport Act, and the vehicle is connected with the place. Subsection (3) sets out in what circumstances a heavy vehicle is considered to be connected with a place. The authorised officer must also reasonably believe that there may be at the place evidence of the offence mentioned in section 26B(1)(b) that may be concealed or destroyed unless the place is immediately entered and searched.

An authorised officer who is not a police officer may only enter a place under this section if the entry is authorised by a police officer of at least the rank of inspector.

An authorised officer may not use force under this section, although the officer may open unlocked doors and other unlocked panels and things at the place for gaining entry to it.

Consent or a warrant is still required in order to enter a place that is apparently unattended (unless the officer reasonably believes the place is attended) or it is a place or any part of a place that is used predominantly for residential purposes.

Clause 36 inserts new sections 29A to 29C. These provisions are similar to sections 161 to 163 of the *Police Powers and Responsibilities Act 2000*.

Section 29A provides that, as soon as is reasonably practicable after exercising "heavy vehicle evidence preservation powers", an authorised officer must apply to a magistrate in writing for an order approving the exercise of the powers (post entry-approval order). "Heavy vehicle evidence preservation powers" is a new defined term inserted into schedule 4 by clause 77. These are defined to be powers exercised by an authorised officer under section 26A, 26B, 30A, or 40A. These are powers that can be exercised without warrant or consent. The purpose of these powers is to prevent the possibility of contamination or removal of crucial evidence if a period of time elapses before a warrant is able to be obtained.

Section 29B provides that a magistrate may make a post entry approval order only if satisfied that in the circumstances existing before the exercise of the evidence preservation powers:

- the authorised officer had the required suspicion or belief for exercising the powers; and
- there was a reasonable likelihood that the evidence would be concealed or destroyed.

The magistrate may also make the order if having regard to the nature of the evidence found during the search it is in the public interest to make the order.

Section 29C provides an avenue of appeal to the chief executive if the magistrate refuses to make a post-entry approval order.

Clause 37 makes minor amendments to section 30 so that the existing powers relating to search and inspection are clarified to ensure that they cover all scenarios envisaged by the national Bill.

Existing section 30(2)(f) of TORUM requires a person in the place being inspected or searched to give authorised officers reasonable help to exercise their powers. The amendments provide examples of what reasonable help

an authorised officer may require a person in the place to provide in order for an authorised officer to exercise powers relating to inspection and search under section 30(2). The penalty for failing to provide an authorised officer with reasonable help to exercise a power relating to inspection or search in relation to a heavy vehicle will be increased from \$4 500 (60 penalty units) to \$6 000 (80 penalty units).

The amendment reinserts the existing provision, in section 30(4), that a requirement under section 30(2)(f) does not include a requirement to produce a document or give information. The amendment adds an additional clarification that the requirement also does not include a requirement to help the authorised officer find and gain access to a document or information. These requirements are found in different sections as identified in the editor's note in section 30, as inserted by this amendment.

The amendment also provides that in order to decide if anything found at the place may be seized under division 3, the authorised officer may move the thing to another place if it is not practicable to exercise a power under subsection (2) in relation to the thing at the place where it is found or if the occupier of the place where it is found consents in writing.

Clause 38 inserts new sections 30A and 30B.

Section 30A contains the powers that an authorised officer has in relation to inspection and searching after entering a place without warrant or consent under section 26A or 26B. If an officer enters under section 26A(2) then the officer only has the power to inspect and copy or take an extract from relevant documents, readouts or data. If the authorised officer enters a place under section 26A(3) or section 26B (1), then the officer has the more extensive power to search anything at the place in addition to being able to inspect anything at the place and copy or take an extract from relevant documents, documents, readouts or data.

Section 30A also provides that the authorised officer may use photocopying equipment in the place free of charge. The authorised officer may also take the person, equipment and materials the officer reasonably requires for exercising the power into the place or require a responsible person for the heavy vehicle to give the officer reasonable help to exercise the power. It is an offence for a responsible person to fail to comply with a requirement to give the officer reasonable help unless the person has a reasonable excuse (maximum penalty 80 penalty units).

The amendment provides that a requirement to give the officer reasonable help does not include a requirement to produce a document or give

information. The amendment also provides that a requirement to help the authorised officer find and gain access to a document or information is not covered by this section. These requirements are found in different sections as identified in the editor's note inserted by this amendment.

The amendment also provides that in order to decide if anything found at the place may be seized under division 3, the authorised officer may move the thing to another place if it is not practicable to exercise a power in relation to the thing at the place where it is found or if the occupier of the place where it is found consents in writing.

Section 30B allows an authorised officer or a person helping an authorised officer to operate equipment in relation to a thing for exercising a power under sections 30 or 30A. Section 30B means, for example, that electronic equipment may be used to access information that may be on a disk or tape or other device found at a place that has been lawfully entered. However, this power may only be exercised where the person exercising it reasonably believes that the equipment is suitable for exercising the power and the power can be exercised without damaging the equipment or the thing.

Clause 39 transfers the provisions of section 118 of the *Transport Operations (Road Use Management - Accreditation and Other Provisions) Regulation 2005* (the Accreditation Regulation) into section 31 of TORUM. Section 118 of the Accreditation Regulation deals with the restrictions on the power of an authorised officer who is not a police officer in relation to private vehicles. This amendment is not part of the implementation of the national compliance and enforcement reforms. During a review of provisions in the Accreditation Regulation, section 118 was identified as a provision that is more appropriately placed in the primary Act because it deals with powers of authorised officers. Section 118 of the Accreditation Regulation will be repealed to coincide with the commencement of the amendments to section 31 of TORUM.

Clause 40 amends section 33 of TORUM. These amendments relate to the power of an authorised officer to require a prescribed heavy vehicle or a heavy vehicle to be moved to enable the officer to exercise a power under a transport Act. The amendments specify the location of the heavy vehicle which may be directed to be moved. The amendments also provide that a prescribed heavy vehicle may be required to be moved to a place within a 30km radius from where the vehicle was stationary or stopped or any point along the forward route of the journey. The existing distance specified in section 33 is 25 km. The amendment also provides that a direction may be given to the person in control or the operator of a heavy vehicle, and also provides that a direction to move the vehicle may be made orally or in any

other way, including for example by way of a sign, electronic or other signal (in the case of a direction given to a person in control of the vehicle) or by telephone, facsimile, electronic mail, or radio (in the case of the operator of a heavy vehicle). (Refer to the explanatory note for clause 77 for an explanation of "prescribed heavy vehicle" and "heavy vehicle").

Clause 41 inserts new sections 33A to 33C.

Section 33A allows an authorised officer to require a heavy vehicle located in specified places to be moved if the officer reasonably believes that the vehicle is causing or creating a risk of serious harm to public safety, the environment or road infrastructure or is causing or is likely to cause an obstruction to traffic. The authorised officer may require the person in control or operator of the heavy vehicle to move the vehicle, or cause it to be moved, or do, or cause to be done, anything else the officer reasonably requires to avoid the harm or obstruction. The direction may be made in any way mentioned in the new section 33(3A). Failing to comply with the direction is an offence with a maximum penalty of \$9 000 (120 penalty units), unless a person has a reasonable excuse. Subsection (5) provides that without limiting what may be a reasonable excuse for subsection (4), in a proceeding for an offence against the subsection, it is a defence if the person charged with the offence proves that it was not possible to move the vehicle because it was broken-down for a physical reason beyond the person's control and the breakdown could not be readily rectified in a way that would enable the person to comply with the requirement within a reasonable time.

Section 33B provides a power to move an unattended heavy vehicle when an authorised officer intends to exercise a power under the Act and reasonably believes it is necessary to move the vehicle to enable the exercise of the power. The authorised officer, or a service or towing vehicle operator who is asked by the authorised officer to move or remove the vehicle, may take steps that are reasonably necessary to move or remove the vehicle on the road, or a road-related area. However, the authorised officer may only drive or authorise someone else (the assistant) to drive the heavy vehicle if the authorised officer or the assistant are "qualified" and "fit" to drive it. ("Qualified" and "fit" are new defined terms inserted into schedule 4 by clause 77. This means, for example, that an authorised officer or an assistant cannot drive a heavy vehicle unless they hold a driver licence of the appropriate class to drive the vehicle. They also cannot drive the vehicle unless they are physically and mentally fit and are not affected by either alcohol or a drug that affects a person's ability to drive).

The power in section 33B includes a power to use reasonable force to:

- open unlocked doors and other unlocked panels and things in the heavy vehicle;
- gain access to the vehicle, its engine or other mechanical components to enable it to be moved; or
- enable the vehicle to be towed.

The section does not allow the use of force against a person.

Section 33C provides a power to move an unattended or broken-down heavy vehicle, or any vehicle forming part of a heavy vehicle combination, where an authorised officer reasonably believes the vehicle is causing or creating an imminent risk of serious harm to public safety, the environment or road infrastructure, or is causing or is likely to cause an obstruction to traffic. If the authorised officer believes there is no-one else near the vehicle who is more capable of driving it and fit (as defined by a new definition inserted in schedule 4 - see clause 77) and willing to drive it, the authorised officer may drive the vehicle or authorise someone else (the assistant) to drive it even if the officer or the assistant is not qualified (as defined by a new definition inserted in schedule 4 - see clause 77) to drive it. In driving the vehicle, the authorised officer or the assistant is exempt from a provision of a transport Act to the extent the provision would require the person to be licensed to drive the vehicle.

The power allows the authorised officer or the assistant to enter the vehicle to enable the authorised officer or the assistant to move it. It also allows the officer or the assistant to separate any or all of the vehicles forming part of a combination for the purpose of moving them.

The provision also enables the authorised officer or the assistant to use reasonable force to the extent it is reasonably necessary to avoid the harm or obstruction. The section does not allow the use of force against a person.

Clause 42 omits section 34 (4) as this paragraph is redundant.

Clause 43 amends section 35 in so far as the section relates to an authorised officer (who is not a police officer) entering a heavy vehicle that the authorised officer reasonably believes has or may have been involved in an incident involving death injury or property damage. The officer may only exercise a power under this section if authorised by a police officer of at least the rank of inspector. The officer may open unlocked doors, panels and other things for gaining entry. However force must not be used for exercising a power in these circumstances.

Clause 44 inserts new sections 35A to 35C.

Section 35A provides further powers to inspect and search heavy vehicles located in the places specified in the section. These powers may be exercised without consent or warrant. An authorised officer may inspect the heavy vehicle to check whether it complies with a transport Act or an alternative compliance scheme. However, the officer may only search the heavy vehicle to check whether it complies with a transport Act or an alternative compliance scheme if the authorised officer reasonably believes the heavy vehicle has been used, is being used, or is likely to be used, to commit an offence against a transport Act or the vehicle may have been involved in an incident involving injury to, or the death of, a person or damage to property. When there has been an incident or a suspected incident involving death, injury or property damage, the officer may only exercise a power under this section if authorised by a police officer of at least the rank of inspector. The officer may open unlocked doors, panels and other things for gaining entry. However force must not be used for exercising a power in these circumstances.

This section does not allow the exercise of the powers in relation to a personal possession found in the vehicle.

Section 35B applies to help an authorised officer who exercises a power under section 35 or 35A (powers in relation to inspection and search of heavy vehicles):

- to access information contained on anything found in or at the vehicle (for example information may be contained on a disk, tape or other device); or
- to decide whether anything found in the vehicle may be seized under division 3.

The authorised officer or person helping the officer may exercise the power by operating the equipment that is specified in subsection (2). However the power may only be exercised if the authorised officer or the person assisting reasonably believes that the equipment can be operated without damaging the equipment or the thing containing the information.

In order to decide if anything found in the vehicle may be seized under division 3, the authorised officer may move the thing to somewhere else if it is not practicable to exercise the power where the thing is found or if the person in control of the vehicle consents in writing.

Section 35C allows an authorised officer to enter a heavy vehicle and run or stop its engine or to authorise someone else (the assistant) to enter the vehicle and run or stop the engine in specific circumstances. These circumstances are:

- where a person fails to comply with a requirement made by an authorised officer under section 39 to run or stop the engine; or
- where there is no responsible person available or willing to run or stop the engine; or
- where the authorised officer reasonably believes there is no-one else in or near the vehicle who is more capable of running the engine and fit (as defined by a new definition inserted in schedule 4 - see clause 77) and willing to run it.

The section provides that it is immaterial that the authorised officer or the assistant is not qualified to drive the heavy vehicle or to run or stop its engine. It also provides that authorised officers and assistants who run an engine under this section are exempt from a provision of a transport Act to the extent the provision would require the person to be qualified to run or stop the engine. The term "qualified" as it relates to driving a heavy vehicle or running or stopping its engine, is inserted into schedule 4 by clause 77. This means, for example, that an authorised officer or assistant is not prevented from running or stopping an engine merely because they do not hold a driver licence of the appropriate class to drive the vehicle in question. The power under this section does not authorise the authorised officer or assistant to drive the heavy vehicle.

While reasonable force may be used to enter the vehicle and run or stop the engine, the section does not authorise the use of force against a person.

Clause 45 amends section 38 so that a direction to require a person not to drive a heavy vehicle may be given to any person. As a result of this amendment, a direction could be given, for example, to a person who was a passenger prior to the vehicle being stopped.

The amendment also provides how a direction may be given in relation to a heavy vehicle - that is, the direction may be given orally or in any other way including by way of a sign or electronic or other signal.

Clause 46 amends section 39 so that an authorised officer may require a responsible person for a heavy vehicle (as defined by the newly inserted definition in schedule 4, clause 77) to give the officer reasonable help to enable the officer to effectively exercise a power under this Act. Existing section 39 provides that the direction may be given to the person in control of the vehicle. The amendment effectively extends the number of persons to whom a direction to provide reasonable help may be given in relation to a heavy vehicle. The amendment also inserts additional examples of what reasonable help an authorised officer may require to be given.

The section also provides that a requirement under this section in relation to heavy vehicles includes a requirement to run the vehicle's engine but does not include a requirement to drive the vehicle. The amendment also provides that if a responsible person for a heavy vehicle is required under this section to run or stop the vehicle's engine, the responsible person may use reasonably necessary force to enter the vehicle and to run or stop the vehicle's engine. Force may not, however, be used against a person.

The section provides that it is immaterial that the responsible person is not qualified to drive the heavy vehicle or to run or stop its engine. It also provides that responsible persons who run an engine under this section are exempt from a provision of a transport Act to the extent the provision would require the person to be qualified to run or stop the engine. The term "qualified", as it relates to driving a heavy vehicle or running or stopping its engine, is inserted into schedule 4 by clause 77. This means, for example, that a responsible person is not prevented from running or stopping an engine because they do not hold a driver licence of the appropriate class to drive the vehicle in question.

A direction under this section may be made orally, in writing or in any other way, including for example by way of a sign, electronic or other signal, post, telephone, facsimile, electronic mail or radio.

Clause 47 inserts a new chapter 3, part 3, division 2, subdivisions 4 and 5. Subdivision 4 contains further provisions about stopping and moving vehicles in new sections 39B and 39C. These provisions replicate sections 119 and 121 of the Accreditation Regulation. This amendment is not part of the implementation of the national compliance and enforcement reforms. During a review of provisions in the Accreditation Regulation, these sections were identified as provisions more appropriately placed in the primary Act, due to the fact that these are provisions in relation to the powers of authorised officers. Sections 119 and 121 of the Accreditation Regulation will be repealed to coincide with the commencement of the new provisions of 39B and 39C of TORUM.

Section 39C differs from section 121 of the Accreditation Regulation in that it requires that a person must not unload or alter the position of any part of the load for the time reasonably necessary to enable the authorised officer to perform a function or exercise a power for which the vehicle was stopped or moved. Section 121 of the Accreditation Regulation currently provides that if the person in control of a heavy vehicle has been required to move the vehicle, that person must not unload or alter the position of any part of the load for the time reasonably necessary to enable the authorised officer to weigh the vehicle. The minor amendment extends the operation

of the section to ensure that once a direction not to unload a vehicle has been given, it applies to any person and not just the person in control of the vehicle. Also, it is not limited to the circumstance of enabling the vehicle to be weighed.

Subdivision 5 contains further powers in relation to heavy vehicles if a mass, dimension or loading requirement is contravened. This subdivision contains sections 39D to 39H. These sections refer to minor, substantial and severe risk breaches of a mass, dimension or loading requirement. These terms refer to a new categorisation of breaches for each of these requirements based on the severity of the breach. These are defined terms that will be incorporated into schedule 4 of TORUM by clause 77. These sections contain the powers of authorised officers who are in a position to make a direction in relation to a vehicle that may be subject to one or more of these breaches. The nature of the direction is dependent upon which category of breach the vehicle is subject to.

Section 39E contains the enforcement power in relation to a heavy vehicle which is subject to a minor risk breach of a mass, dimension or loading requirement (but is not also subject to a substantial or severe risk breach). This section enables the authorised officer to authorise the driver or operator to continue the journey (conditionally or unconditionally). For minor risk breaches, this will be the usual approach. However, the officer has the power if the officer reasonably believes it appropriate in the circumstances to direct the driver to rectify the breaches immediately or to move the vehicle to a stated reasonable place (within a limited distance) and not proceed until the breaches are rectified. Examples of such circumstances include where rectification is reasonable and can be carried out easily, and rectification is necessary in the public interest to avoid potential risk of harm to public safety, the environment, road infrastructure or public amenity.

An authorisation or direction given under this section is to be in writing and may be given with or without conditions. However, a direction may be given orally if the moving of the vehicle is carried out in the presence, or under the supervision, of an authorised officer. There is a maximum penalty of \$9 000 (120 penalty units) for a person who fails to comply with a direction given under this section without reasonable excuse.

Section 39F contains the enforcement power in relation to a heavy vehicle which is subject to a substantial risk breach of a mass, dimension or loading requirement (but is not also subject to a severe risk breach). The authorised officer must direct the driver not to proceed until the stated breaches are rectified. However, in particular circumstances the officer

must direct the driver to move the vehicle to the nearest stated reasonable place and not proceed until the breaches are remedied. Particular circumstances include where moving the vehicle is necessary in the public interest to avoid potential risk of harm to public safety, the environment, road infrastructure or public amenity.

A direction given under this section is to be in writing and may be given with or without conditions. However, a direction to move a vehicle may be given orally if the moving of the vehicle is carried out in the presence, or under the supervision, of an authorised officer. There is a maximum penalty of \$9 000 (120 penalty units) for a person who fails to comply with a direction given under this section, unless the person has a reasonable excuse.

Section 39G contains the enforcement power in relation to a heavy vehicle which is subject to a severe risk breach of a mass, dimension or loading requirement. The effect of this provision is that, as a general rule, a heavy vehicle with severe risk breaches will be required to remain stationary until stated breaches of mass, dimension or loading requirements relating to the vehicle are rectified. However, the section also provides that in particular exceptional circumstances, authorised officers must direct the vehicle to be moved, to the nearest stated safe location. (Safe location is defined in the section to mean a location that the authorised officer reasonably believes poses a reduced risk or no appreciable risk of harm to public safety, the environment, transport infrastructure or public amenity). The particular circumstances that trigger the giving of a direction to move to the nearest stated safe location are where there is either an appreciable risk of harm to the environment, road infrastructure or public amenity; or there is a risk to the safety of people, or live animals in the vehicle.

A direction given under this section must be in writing and may be given with or without conditions. However, a direction to move a vehicle may be given orally if the moving of the vehicle is carried out in the presence, or under the supervision, of an authorised officer. There is a maximum penalty of \$9 000 (120 penalty units) for a person who fails to comply with a direction given under this section, unless the person has a reasonable excuse.

The amendments make a distinction between directing a heavy vehicle to a stated reasonable place (section 39F - in relation to direction given to a vehicle with a substantial risk breach) and directing a heavy vehicle to the nearest stated safe location (section 39G - in relation to direction given to a vehicle with a severe risk breach). The nearest safe location may be the nearest safe place to park the vehicle on the road - irrespective of whether

that place can be considered “reasonable” in terms of preservation of particular cargo being carried or the intended direction of the driver or any other consideration.

Section 39H enables a component vehicle in a combination to be separately driven or moved provided the component vehicle is not itself the subject of a contravention of a mass, dimension or loading requirement and it is not otherwise unlawful to drive or move that component vehicle. The component vehicle cannot, however, be driven or moved if a condition of the direction in relation to the heavy combination prevents the component vehicle from being separately driven or moved.

Clause 48 inserts new section 40A. Currently, the power to seize evidence is contained in section 40 of the TORUM. In general, this section provides that the power of seizure can be exercised in relation to anything in vehicles that have been entered under the Act, and things found in places that have been entered with consent or with a warrant.

Section 40A provides that an authorised officer who enters a place under the new sections 26A(3) or 26B (see clause 35) may seize a document, device or other thing that is in the place if the officer reasonably believes that it is, or may provide, evidence of an offence against a transport Act. The section also applies to the situation of a disk, tape or other device being found in a place in relation to a heavy vehicle, or in a heavy vehicle, and an authorised officer reasonably believes it is relevant to decide whether a transport Act or an alternative compliance scheme has been contravened. The information may be put in documentary form and then the document seized, or the information may be copied from the original information storage device to another storage device and the latter device seized. If however, it is not practicable to do either of these things, the original storage device and the equipment necessary for accessing the information may be seized if it is reasonably believed that the device and the equipment can be seized without being damaged.

Clause 49 amends section 46 of TORUM so that the equipment seized under section 40A(3)(c) (refer clause 48) must be returned immediately after the equipment is no longer needed to access the information contained in an information storage device. The amendment also provides that if the chief executive or the commissioner has given the seized thing to an external public authority under section 168B, sections 46(1) and (2) do not apply and the chief executive or the commissioner must ensure that the seized thing is returned to its owner as soon as practicable after they are satisfied its retention as evidence for the external public authority's law enforcement purpose is no longer necessary.

Clause 50 inserts a new chapter 3, part 3, division 3B entitled "Embargo notice for evidence about heavy vehicle". This division contains new sections 46B and 46C.

Section 46B provides that if an authorised officer may seize anything under this part and that thing cannot be readily physically removed, the authorised officer may issue an embargo notice prohibiting any dealing with the thing. The word "dealing" is defined in subsection (5) to include moving, selling, leasing or transferring the thing or part and changing or deleting information. The section also includes the formal requirements of an embargo notice and the manner of issuing it.

Section 46C provides that a person who knows that an embargo notice is in force commits an offence if they do anything prohibited by the notice or they instruct someone else to do something prohibited by the notice. There is a maximum penalty of \$8 025 (107 penalty units) for this offence. A defence is provided if person can prove the person moved the thing to protect or preserve it or they notified the authorised officer of the move and the new location within 48 hours of move.

It is also an offence for person served with an embargo notice to fail to take reasonable steps to stop any other person from doing anything forbidden by the notice - maximum penalty \$8 025 (107 penalty units).

Clause 51 inserts new section 48A which empowers an authorised officer to require a range of people to provide their personal details. These include:

- a person an authorised officer finds committing a heavy vehicle offence;
- a person an authorised officer reasonably suspects has committed or is about to commit a heavy vehicle offence;
- a person an authorised officer reasonably suspects is or may be the driver or other person in charge of a heavy vehicle that has or may have been involved in an incident involving injury to, or death of, a person or damage to property; and
- a person an authorised officer reasonably suspects is or may be a responsible person for a heavy vehicle involved in a heavy vehicle offence or suspected heavy vehicle offence and who may be able to help in the investigation of a heavy vehicle offence or a suspected heavy vehicle offence.

Personal details are defined in the section to be details of the person's name, date of birth, address and business address. The authorised officer

must provide a warning that failure to state the personal details is an offence. The officer may also require the person to give evidence of the correctness of the stated personal details if the officer reasonably suspects the stated personal details are false or misleading. It is an offence to fail to provide the personal details or to fail to give evidence of the correctness of the stated details, unless the person has a reasonable excuse (maximum penalty \$4 500 (60 penalty units)).

Subsection (6) provides that without limiting what may be a reasonable excuse in a proceeding for an offence of contravening a requirement to state a business address, it is a defence if the person charged with the offence proves the person did not have a business address or the person's business address was not connected directly or indirectly with road transport involving heavy vehicles.

The section also provides that a person does not commit an offence if the person was required to state the person's personal details by an authorised officer who suspected the person had committed a heavy vehicle offence and the person is not proved to have committed the offence.

Clause 52 amends section 49 of TORUM to clarify that an authorised officer has the power to require the driver of a heavy vehicle to produce for inspection a driver licence or a log book. These two documents have been included as examples of something that is a document issued or required to be kept under a transport Act or a corresponding law. The amendment also provides that only an authorised officer who is a police officer may require the driver of a private vehicle to produce his or her driver licence.

Clause 53 amends the heading of section 50AA to distinguish the section from section 50 which currently has the same heading. The clause also makes drafting improvements and clarifies that the reasonable excuse of self incrimination can only apply in relation to individuals. These amendments are not part of the implementation of the national compliance and enforcement reforms.

Clause 54 inserts new section 50AB. This section enables an authorised officer to require a "responsible person for a heavy vehicle" (the definition of which will be inserted into schedule 4 by clause 77) to help the officer find and gain access to any documents or information (including electronically stored information) to enable the officer to effectively exercise a power under specified sections. Examples of documents or information which an authorised officer may require help in finding and accessing include: a record required to be kept in the vehicle under a transport Act about the vehicle's performance, specifications, capabilities or authorised operations or a weighing document or a telephone record. It

is an offence to fail to comply with the requirement unless the person has a reasonable excuse. The maximum penalty for this offence is \$9 000 (120 penalty units).

Clause 55 inserts into chapter 3 new parts 4B and 4C. Part 4B (Reciprocal powers of authorised officers) contains new section 51F. This section allows authorised officers in one jurisdiction to exercise like powers in another jurisdiction subject to ministerial agreement. This will facilitate the cross-border investigation of chain of responsibility cases by the primary investigating authority.

Part 4C (Chief executive's powers for vehicles) contains new sections 51G to 51L. These sections relate to the chief executive's powers to remove vehicles from prescribed roads. These sections have been transferred from Part 6 of the Accreditation Regulation. The inclusion of Part 4C is not part of the implementation of the national compliance and enforcement reforms. During a review of provisions in the Accreditation Regulation, these sections were identified as provisions more appropriately placed in the primary Act due to the nature of these powers. Part 6 of the Accreditation Regulation will be repealed to coincide with the commencement of Part 4C of the TORUM.

Clause 56 amends section 52 so that if a person provides a false or misleading statement relating to a heavy vehicle to an officer for a transport Act, the maximum penalty will be \$10 050 (134 penalty units). The existing penalty is \$4 500 (60 penalty units).

Clause 57 amends section 53 so that if a person gives an official for a transport Act a document containing information relating to a heavy vehicle that the person knows is false or misleading, the maximum penalty will be \$10 050 (134 penalty units). The existing penalty is \$4 500 (60 penalty units).

Clause 58 inserts new sections 53B to 53D.

Section 53B applies if goods are consigned for transport by road, or partly by road and partly by another method, and all or part of the road transport happens or is to happen in Queensland by use of a heavy vehicle. The section provides offence provisions for consignors, packers, loaders and receivers if the transport documentation for the consignment of the goods is false or misleading in a material particular relating to the mass, dimension or loading of all or any of the goods. The maximum penalty will be \$10 050 (134 penalty units). A person charged with this offence is entitled to the reasonable steps defence (refer to new section 57D inserted by clause 63).

Section 53C provides that it is an offence for a responsible entity for a freight container to give the operator of a heavy vehicle a container weight declaration for the container containing information that is false or misleading in a material particular. (Refer to the new definition of "responsible entity" and "container weight declaration" inserted into schedule 4 by clause 77. In general a responsible entity has the main responsibility in relation to the consignment of the freight container. A container weight declaration means a declaration or a copy of a declaration in writing stating or purporting to state the weight of a freight container and its contents).

Section 53C also provides that it is an offence for the operator of a heavy vehicle who arranges for a freight container to be transported in Queensland to give a driver a container weight declaration that contains information that is false or misleading in a material particular.

The maximum penalty for both these offences is \$10 050 (134 penalty units). Information in a container weight declaration is not false or misleading merely because it overstates the actual weight of the freight container and its contents (see new section 53C(3)).

A person charged with either of these offences is entitled to the reasonable steps defence (refer to new section 57D inserted by clause 63).

Section 53D provides that a responsible person for a heavy vehicle (the information giver) must not give another responsible person for a heavy vehicle (the affected person) information that the information giver knows or could reasonably be expected to know is false or misleading in a material particular. A material particular is defined in the section to mean a particular relating to an element of a relevant offence that is or could be committed by a responsible person for a heavy vehicle if the responsible person relies, or were to rely, on the particular. There is a maximum penalty of \$10 050 (134 penalty units) for this offence. However, an offence is not committed in the following circumstances:

- if the affected person knew, or could reasonably be expected to know, that the information was false or misleading in the material particular (section 53D(2)); or
- if the information giver gives the information in writing and, when giving the information tells the affected person, to the best of the information giver's ability, how it is false or misleading and, if the information giver has or can reasonably obtain the correct information, the information giver gives the affected person the correct information in writing.

In a prosecution for an offence under this section, the issue of whether a person could reasonably be expected to have known that information was false or misleading must be decided having regard to the person's abilities, experience, qualifications and training, and the circumstances surrounding the offence.

Clause 59 amends section 54 of TORUM so that if a person obstructs an authorised officer in exercising a power in relation to a heavy vehicle, that person commits an offence. The maximum penalty will be \$8 025 (107 penalty units). The existing maximum penalty is \$4 500 (60 penalty units).

Clause 60 amends section 55 so that if a person pretends to be an authorised officer that person commits an offence. The maximum penalty will be \$8 025 (107 penalty units). The existing maximum penalty is \$4 500 (60 penalty units).

Clause 61 inserts a new subdivision 2 heading (Extended liability offences) into chapter 3, part 5, division 1. It also inserts a new section 57AA which provides that the subdivision applies in addition to subdivision 1 for proceedings in relation to a heavy vehicle.

Clause 62 amends section 57B. Section 57B contains Queensland's existing chain of responsibility provision. This section is worded broadly in an attempt to cover all people who may be involved in influencing compliance with heavy vehicle transport laws. In relation to mass, dimension and load restraint offences the amendment clarifies the intent of the provision by specifying that "an influencing person" includes any or all of the following persons - the consignor of any goods in the vehicle, the packer of any goods in the vehicle, the loader of any goods in the vehicle and the operator of the vehicle. Each of these terms is defined in schedule 4 as inserted by clause 77.

Each of these influencing persons is a key party that has been identified as having responsibilities in relation to mass, dimension and load restraint offences. This amendment means that if the person in control of a heavy vehicle (for example, the driver) commits a mass, dimension or load restraint offence then each of these parties is taken to have committed the offence unless they can prove one of the defences specified in the provision.

The clause also enlarges on the defence that is currently available to an influencing person who can prove that they exercised reasonable diligence and took reasonable steps to prevent the act or omission that constitutes the offence. The amendment replaces this defence with the "reasonable steps defence". Section 57D (refer clause 63) sets out what this new defence

entails and also sets out the matters a court may have regard to when deciding whether the reasonable steps defence has been proved. This amendment will provide some certainty and consistency in relation to what a person needs to prove in relation to the taking of reasonable steps.

The amendment specifies that the reasonable steps defence is available to all influencing persons apart from an operator, irrespective of the category of the mass, dimension or load restraint offence - that is, irrespective of whether the breach is minor, substantial or severe. The terms minor risk breach, substantial risk breach and severe risk breach are defined in schedule 4 as inserted by clause 77.

If the influencing person is an operator, that person has the benefit of the reasonable steps defence only if the breach is a minor risk breach. Where, however, there has been reliance on an inaccurate container weight declaration, the defence is available irrespective of the severity of the breach. (A container weight declaration is defined in schedule 4 as inserted by clause 77. See also new section 57F as inserted by clause 63 which is a provision dealing with the reliance on a container weight declaration).

Clause 63 inserts new sections 57C to 57G.

Section 57C provides an offence for a consignee who engages in conduct that results, or is likely to result, in inducing or rewarding a contravention of a mass, dimension, loading requirement for a heavy vehicle. The consignee must either have intended this result or have been reckless or negligent in relation to the conduct. There is a maximum penalty of \$10 050 (134 penalty units). The section sets out when the person is taken to have intended the result of inducing or rewarding a contravention of the mass, dimension or loading requirement.

Section 57D sets out the components of the reasonable steps defence for a person charged with an offence against sections 53B(2), (3), (4) or (5), 53C(1) or (2), 57B(2) or 162D(1). The person must show that the person did not know, and could not reasonably be expected to have known, of the contravention concerned and either the person took all reasonable steps to prevent the contravention or there were no steps the person could reasonably be expected to have taken to prevent the contravention. Section 57D also sets out examples of what the court may have regard to when considering what constitutes reasonable steps. For example, the court may consider the circumstances of the alleged offence including any risk category for the contravention constituting the offence. The section also sets out specific examples of what these circumstances might be.

Section 57E specifies that for any provision of the Act that provides that a person may avoid liability for an offence by proving the person took all reasonable steps in relation to a matter, the taking of all reasonable steps includes the exercise of reasonable diligence.

Section 57F applies to a person charged with an offence against sections 53B(2), (3), (4) or (5), 53C(1) or (2), 57B(2) or 162D(1). If the person proves that they complied with all relevant standards and procedures (including, for example, an industry code of practice) in respect of matters to which the offence relates, then this will be evidence that the person took reasonable steps to prevent the contravention. However, this provision does not apply unless the person has given written notice to the prosecution of the intention to prove the matters referred to.

Section 57G applies if the operator or driver of a heavy vehicle is charged with an offence involving a contravention of a mass requirement for the vehicle and is seeking to prove the reasonable steps defence. To the extent the weight of a freight container together with its contents is relevant to the offence, the person charged may rely on the weight stated in the relevant container weight declaration. However, the defence does not apply if the person knew or ought reasonably to have known that the weight stated in the relevant container weight declaration was lower than the actual weight. Further, the defence does not apply if the person knew or ought reasonably to have known that the distributed weight of the container and its contents, together with either the mass or location of any other load, or the mass of the vehicle or any part of it, would cause a contravention of a mass requirement for the heavy vehicle.

Clause 64 amends section 58 so that it is not necessary to prove the appointment of the following additional persons - the chief executive administering a corresponding law to a transport Act, the head of the Queensland Police Service or the police service of another jurisdiction, a person appointed as an authorised officer under a corresponding law to a transport Act or a member of the police force or police service of the Commonwealth or another state.

Clause 65 amends section 59 to include the additional persons inserted into section 58 by clause 64 as those for whom it is not necessary to prove their signature.

Clause 66 amends section 60 to include additional evidentiary aids which will assist in the prosecution of offences involving heavy vehicles.

Clause 67 inserts new sections 61A to 61C.

Section 61A is a new evidentiary provision which provides that statements made by a manufacturer and tendered by either the prosecution or the defence relating to a vehicle or a vehicle component's mass rating, or the strength or performance rating of load restraint equipment, will be evidence of the matters stated.

Section 61B is a new evidentiary provision which states that transport documentation and journey documentation (as inserted in schedule 4 by clause 77) are admissible in a proceeding relating to a heavy vehicle under a transport Act, and are evidence of the identity and status of the parties to the transaction to which the documentation relates and the destination or intended destination of the load to which the documentation relates.

Section 61C is a new evidentiary provision which states that evidence obtained about a vehicle because of the exercise of a power under this Act relating to a prescribed heavy vehicle is not affected merely because the vehicle is not a prescribed heavy vehicle. Clause 77 inserts the definition of prescribed heavy vehicle. (Refer to the explanatory note for clause 77 for an explanation of "prescribed heavy vehicle").

Clause 68 amends section 62 to extend the time period within which proceedings relating to heavy vehicle offences must be commenced to within two years after the offence was committed, or within one year after the offence comes to the complainant's knowledge, but within three years after the offence was committed.

Currently, proceedings for an offence against TORUM must start within one year after the offence was committed, or within six months after the offence comes to the complainant's knowledge, but within two years after the offence was committed.

The amendment also reinserts the time period within which a proceeding for an offence against section 92(1) of TORUM must be commenced. This time period is inserted by clause 78.

Clause 69 inserts a new chapter 5B (Severe risk breach of mass, dimension or loading requirement for heavy vehicle). This chapter contains sections 162A to 162D.

Under current Queensland legislation only mass requirements contain a form of risk based categorisation of offences. This Bill adopts the national proposal to introduce a three tiered categorisation of offences for mass, dimension and loading - that is, minor, substantial and severe risk breaches, where the level of penalty is commensurate with the risk to public safety, the risk of unfair commercial advantage and/or the risk of infrastructure damage that may be caused by the offence. Due to the severity of the

maximum penalties, the offence provisions for severe risk breaches are placed in this chapter of the primary legislation. Offence provisions dealing with substantial and minor risk breaches will be incorporated into the *Transport Operations (Road Use Management – Mass, Dimension and Loading) Regulation 2005* (the MDL regulation).

This new chapter incorporates the nationally determined breakpoints and applies them in relation to mass requirements, thereby changing the existing risk categorisation of mass offences that currently exists in Queensland in Part 2, division 2 of the MDL Regulation. It also applies the risk categorisation to dimension and load restraint requirements.

Section 162A provides that a contravention of a mass requirement for a heavy vehicle is a severe risk breach of the mass requirement if the vehicle's gross mass is equal to or greater than the severe risk breach lower limit for the mass requirement. The severe risk breach lower limit is defined in schedule 4 as a gross mass equalling 120% of the maximum mass (rounded up to the nearest 0.1t) permitted for the vehicle under this Act (refer clause 77).

Section 162B provides that a contravention of a dimension requirement for a heavy vehicle is a severe risk breach if the vehicle's dimension, the subject of the contravention, is equal to or greater than the severe risk breach lower limit of the dimension requirement. The severe risk breach lower limit is defined in schedule 4, as inserted by clause 77. This definition sets out the lower limits relating a heavy vehicle's length, width, height and load projection. These lower limits are defined to be the maximum relevant dimensions permitted under the Act plus an additional specified measurement. These additional measurements are 60 millimetres in the case of length, 80 millimetres in the case of width, 300 millimetres in the case of height and 80 millimetres in the case of the projection of any load.

Section 162B also provides that a severe risk breach includes breaches that would otherwise be classified according to the substantial categorisation but because of certain circumstances, the breach is regarded as a severe risk breach. In relation to a contravention of a width dimension requirement, the circumstances are that the contravention happens at night, in hazardous weather conditions causing reduced visibility or on a declared route or in a declared zone. In relation to a contravention of a length dimension requirement, the circumstances are either: that the rear of a load on the vehicle does not carry a warning signal required under a regulation, or, the load on the vehicle projects from it in a way that is dangerous to persons or property.

Section 162C provides that a contravention of a loading requirement for a heavy vehicle is a severe risk breach if the contravention involves a loss or shifting of the heavy vehicle's load and the loss or shifting of the load involves a risk of harm to public safety, the environment, road infrastructure or public amenity.

Section 162D provides that a person commits an offence in relation to a heavy vehicle if there is a contravention of a mass, dimension or loading requirement that is a severe risk of the requirement; and the person is in control of the heavy vehicle. Sections 162A to 162C, as described above, set out what a severe risk breach is. A "person in control" is defined in schedule 4. Clause 77 amends the definition of a "person in control" in relation to a heavy vehicle to include a two-up driver. A two-up driver for a heavy vehicle is defined to mean a person accompanying a driver of the vehicle on a journey or part of a journey, who has been, is or will be, sharing the task of driving the vehicle during the journey.

The maximum penalty for the offence is \$10 050 (134 penalty units). A person charged with this offence has the benefit of the reasonable steps defence (refer new section 57D inserted by clause 63) only to the extent that the defence relates to reliance on the weight stated in a container weight declaration. Section 162D also contains a note which refers to section 57F (inserted by clause 63) which deals with the reliance on a container weight declaration in deciding whether a person charged under this section (and other specified sections) took reasonable steps to prevent an act or omission that is the offence.

Clause 70 amends the definition of "extreme overloading offence" used in section 163. This amendment is a consequential amendment so that the definition uses the new terminology introduced by this Bill - that is, an extreme overloading offence is a severe risk breach of a mass requirement for a heavy vehicle if its gross mass is equal to or greater than 160% of the maximum mass (rounded up to the nearest 0.1t) permitted for it under this Act.

Clause 71 inserts a new chapter 5C (Mass, dimension or loading concession). This chapter contains new section 163A. Subsection (1) provides that if a person is acting under the authority of a mass, dimension or loading concession they must not engage in conduct that contravenes a condition of the concession. A mass dimension or loading concession is defined in the section to mean an exemption given under this Act exempting a person or vehicle from a provision of this Act relating to a mass, dimension or loading requirement. In Queensland, these concessions are usually in the form of permits or guidelines. There is a maximum

penalty of \$6 000 (80 penalty units for this offence). The purpose of this section is to provide an adequate penalty for those who are exploiting the privilege of acting under a concession.

Subsection (2) provides that if a person commits the offence of breaching a mass, dimension or loading concession, the concession does not operate in the person's favour while the contravention continues, and accordingly, the concession must be disregarded in deciding whether there has been a contravention of a mass, dimension or loading requirement and the risk category for the contravention. This will then be decided by the provision of the transport Act from which the person would otherwise have been exempted under the mass, dimension or loading concession. However, subsection (3) provides that in relation to a contravention of a concession that relates to a mass requirement for a heavy vehicle or a dimension requirement for a B-double or road train relating to its length, the category of offence will be determined by the limits set pursuant to the concession under which they are purporting to operate.

Subsection (4) provides that if, because of the operation of subsection (2), a person commits an offence against a provision of a transport Act from which the person was exempted under the concession, that person may be charged with an offence against either subsection (1) or the offence against the transport Act from which they were exempted under the concession. A person cannot, however, be charged with both offences.

Clause 72 inserts new sections 163B and 163C.

Section 163B sets out the matters that the court must consider when deciding the kind and level of sanction (including the level of a fine) to be imposed for a contravention of a mass, dimension, or loading requirement. Under section 163B(2) these matters include the fact that the different categories of breach result in the specified risk of accelerated road wear, unfair commercial advantage, damage to road infrastructure, increased traffic congestion and diminished public amenity relevantly resulting from different categories of breach. The section does not, however, limit the matters the court may consider in deciding the sanction for the contravention. Nothing in the section authorises or requires the court to assign the contravention to a different risk category. Nothing in the section requires evidence to be adduced about any of the matters that are listed in subsection (2).

Section 163C provides that if a court is satisfied there has been a contravention of a mass, dimension or loading requirement but is not satisfied the contravention is a substantial risk breach or a severe risk breach, the court may treat the contravention as a minor risk breach.

Similarly, if a court is satisfied there has been a contravention of a mass, dimension or loading requirement and that the contravention is at least a substantial risk breach but is not satisfied the contravention is a severe risk breach, the court may treat the contravention as a substantial risk breach.

Clause 73 inserts new sections 164A.

Section 164A provides for a new commercial benefits penalty order that a court may impose requiring the offender to pay an amount up to three times the amount calculated to be the commercial benefit that was, or would have been, derived from the offence. In estimating the gross commercial benefit that was or would have been derived from the offence, the court may take into account any relevant considerations including:

- benefits of any kind, whether monetary or not; and
- any other matters that it considers relevant including, for example, the value of any goods involved in the offence and the distance over which the goods were, or were to be, carried.

However, in estimating the gross commercial benefit, the court must disregard any costs, expenses or liability incurred by the person or by an associate of the person. Nothing in the section prevents the court from ordering payment of an amount that is less than 3 times the estimated gross commercial benefit or less than the estimated gross commercial benefit.

This penalty is directed against the financial incentives to commit breaches of the mass, dimension and load restraint requirements and is intended as a powerful deterrent.

Clause 74 inserts new sections 168A to 168D.

Section 168A ensures that corresponding administrative actions and corresponding orders of a court or tribunal in other jurisdictions under a corresponding law have the same effect in Queensland in relation to a heavy vehicle as they have in the other jurisdiction. (Corresponding administrative actions and orders are defined in the section). However, nothing in this section gives a corresponding administrative action or order effect in Queensland, to the extent that the action or order is incapable of having effect in Queensland, if any terms of the action or order expressly provide that it does not extend to Queensland, or if any terms of the action or order expressly provide that it has effect only in the other jurisdiction.

Section 168B provides that chief executive or the commissioner may give anything seized or any information obtained under this Act about a contravention of this Act in relation to heavy vehicles to an external public authority of any Australian jurisdiction for the purposes of law

enforcement. However, the information may not be provided if the chief executive, commissioner or external public authority would be otherwise required to maintain confidentiality about the information under an Act.

Section 168C provides that a contract or agreement relating to a heavy vehicle is void to the extent to which it is contrary to this Act or purports to exclude, limit or otherwise change the effect of a provision of this Act.

Section 168D provides that the chief executive may give information to a corresponding authority about any action taken by the chief executive under a transport Act, or any information obtained under this Act, including any information contained in any document, device or other thing inspected or seized under this Act. However, the chief executive may not give the information if the chief executive or corresponding authority would otherwise be required to maintain confidentiality about the information under an Act.

Clause 75 contains transitional provisions necessary as a result of the passage of this Bill.

Clause 76 amends schedule 3 so as to include the issuing of an embargo notice as a decision that may be reviewed and appealed against to the Magistrates Court.

Clause 77 inserts a number of new definitions into schedule 4.

Vehicles currently covered by the TORUM definition of "heavy vehicle" will now be defined as "prescribed heavy vehicles". This new definition clarifies that a prescribed heavy vehicle includes a combination that includes a prescribed heavy vehicle and also clarifies wording relating to vehicles transporting dangerous goods.

A new definition of "heavy vehicle" will be inserted and will cover only those vehicles with a GVM of more than 4.5t or a combination that includes a vehicle with a GVM of more than 4.5t.

These new definitions are being used to enable the powers which relate to the national compliance and enforcement reforms to only apply to the newly defined "heavy vehicles".

Division 3 Other amendments

Clause 78 amends section 62 to provide for a new limitation period for commencing a proceeding for an offence against section 92(1) of TORUM. Presently section 62(2) of TORUM imposes a limitation period on

commencing proceedings for an offence against a transport Act one year after the offence was committed or within 6 months after the offence comes to the complainant's knowledge, but within 2 years after the offence was committed. The clause firstly amends section 62(2) to make the subsection subject to the new subsection (2A). The clause secondly inserts a new section 62(2A), the effect of which is that a proceeding for a person charged with an offence against section 92(1) must start within 3 years after the offence was committed. The new section 62(2A) will only apply in circumstances where an incident under section 92(1) involved injury to or death of a person, and not where the incident involved only property damage. Further, the new section 62(2A) will only be applicable to an incident (under section 92(1)) that happened after the commencement of the subsection.

Clause 79(1) amends section 79B(1)(ca) of TORUM to include a reference to the unproclaimed section 79(2AA) "Offence of driving etc while relevant drug is present in blood or saliva". Clause 79(2) provides for a minor amendment to section 79B(1)(d) of TORUM to ensure consistency with the general term "intoxicating substance" as used in section 328A "Dangerous operation of motor vehicle" of the *Criminal Code*. Sections 4(3) and (4) of the *Criminal Code and Civil Liability Amendment Act 2007* amended section 328A of the *Criminal Code* to remove the distinction in penalty based on the person's level of intoxication. The immediate suspension provisions in the TORUM Act apply to a person charged under section 328A and the clause removes the reference to a person's level of intoxication.

Clause 80 amends section 118 of TORUM by inserting a new subsection (5). Subsection (5) requires that where a person gives the commissioner written notice under subsection (4) (a notice that the person intends to challenge the image from a photographic detection device), the notice must be in the approved form and state the grounds on which the person intends to rely to challenge the image from a photographic detection device.

Clause 81 amends section 119 of TORUM by inserting a new subsection (2). Subsection (2) requires that where a person gives the commissioner written notice under subsection (1) (a notice that the person intends to dispute that a traffic control device or sign was functioning without defect or was visible), the notice must be in the approved form and state the grounds on which the person intends to rely to dispute that a traffic control device or sign was functioning without defect or was visible.

Clause 82 amends section 124(5) of TORUM by inserting a new subsection (5)(b). Subsection (5)(b) provides that where a person gives the

prosecution written notice under subsection (4) (a notice that the defendant intends to challenge a matter mentioned in subsection (4)(a) or (b)), the notice be in the approved form and state the grounds on which the person intends to rely to challenge a matter mentioned in subsection (4)(a) or (b).

Clause 83 inserts new section 124A into TORUM. Section 124A(1) specifies that the section applies to a hearing in relation to which a person has given written notice under section 80(27), 118(4), 119(1) and 124(4). Section 124A(2) provides a basis by which a person may raise a ground of challenge, to the evidence at a hearing, that was not stated in a written notice required under section 80(27)(c), 118(5), 119(2) and 124(5) of TORUM.

Section 124(3) provides that the court may adjourn the hearing to a time, and on terms as to costs, the court considers appropriate, where a person raises a ground at the hearing that was not stated in a written notice under section 80(27), 118(4), 119(1) and 124(4). Finally, section 124(4) provides that subsection (3) does not otherwise limit the powers of the court.

Clause 84 amends section 171(4) of TORUM to update the reference to a Commonwealth Statute. The *National Road Transport Commission Act 1991* (Cwlth) was repealed in 2003 and replaced with the *National Transport Commission Act 2003* (Cwlth). A general validation provision for any regulations made under section 171(4) that were in force immediately before the commencement is provided for in clause 86 of this Bill.

Clause 85 amends the heading to chapter 7 of TORUM to read “Transitional and validation provisions”.

Clause 86 inserts a new Part 11 of Chapter 7 of TORUM titled “Validating provisions”.

The clause inserts a new section 213 “Validation provision for section 171(4)” into Chapter 7, Part 11 of TORUM. This is a general validating provision for any regulations made under section 171(4) that were in force immediately before the commencement of this section. The new section is required because of the amendment to section 171(4) set out in clause 84 of this Bill.

The clause also inserts three new provisions, sections 214 to 216, which will ensure certain codes of practice are, and always have been, valid despite any absence of approval by the chief executive. These codes of practice are referred to in section 30(2)(a) of the *Transport Operations (Road Use Management - Vehicle Standards and Safety) Regulation 1999* (VSS Regulation). Section 30(2)(a) of the VSS regulation provides that an

approved person must not approve a modification to a vehicle unless the modification complies with one of the following codes of practice approved by the chief executive:

- Code of Practice – Light Vehicles;
- Code of Practice – Commercial Motor Vehicle Modifications; or
- National Code of Practice – Heavy Vehicle Modifications.

Section 214 validates the codes of practice as originally made, section 215 validates any amendments to the codes of practice, and finally section 216 validates all acts, matters and things done in reliance on the codes of practice.

Clause 87 amends Schedule 4 of TORUM. Firstly, clause 87(1) and (2) amend the definition of "bicycle" to specifically exclude vehicles fitted with an auxiliary motor that is an internal combustion engine.

Clause 87(3) inserts new definitions for "scooter" and "motorised scooter". These amendments will provide for the later adoption, through regulation, of the ARR reforms on motorised foot scooters. The ARR reforms were initiated by the Australian Transport Council (ATC) because of concerns about safety arising from the growing use of motorised foot scooters on roads and road related areas.

Clause 87(4) provides for a separate amendment to paragraph (e) of the definition of "scooter". The definition of "scooter" is inserted by clause 87(3) of this Bill. Clause 87(4) inserts a new subparagraph (e)(i) that requires that a scooter's maker certify (either by means of a plate attached to the motor or each motor, or by means of engraving on the motor or each motor) the ungoverned power output of the motor, or each motor. This part of the definition of "scooter" will be commenced at a later date to the main part of the definition in clause 87(3), so as to allow time for compliance with this new requirement.

Clauses 87(5), (7) and (8) amend the Schedule 4 definitions of "motor vehicle", "wheeled recreational device" and "wheeled toy" of TORUM to exclude a motorised scooter. The definition for "motorised scooter" is inserted by clause 87(3) of this Bill. These amendments will provide for the later adoption of the ARR reforms on motorised foot scooters.

Clause 87(6) amends the definition of "transport Act" to provide transport inspectors with the power to seize a thing, under section 40 of TORUM, if the inspector reasonably believes the thing is evidence of an offence against the MAIA. It will also provide for the forfeiture to the State, under section 43 of TORUM, of a seized thing if the chief executive or commissioner

reasonably believes possession of the thing is an offence against the MAIA, it is necessary to keep the thing to prevent an offence against the MAIA or the thing does not comply with the MAIA.

Part 7 **Amendment of Transport Planning and Coordination Act 1994**

Clause 88 provides that Part 7 amends the *Transport Planning and Coordination Act 1994* (TPCA).

Clause 89 amends section 3 of the Act by inserting definitions for "franchised road" and "toll road" and by amending the definition of "transport land" to include franchised road and toll road purposes. This supports the reference in section 27 of the *Transport Planning and Coordination Act 1994* to "franchised road" or "toll road" as transport land which the chief executive may dispose of for franchised road or toll road purposes.

Clause 90 amends section 27 to include "franchised road" or "toll road" as a type of transport land which the chief executive may acquire, by resumption or otherwise, for a transport or incidental purpose in order to lease, sell or otherwise dispose of to any person. It omits a previous reference to "a franchisee" as the need to refer to this term has been made redundant by the inclusion of "franchised road".

Section 27 is also amended to remove any doubt that the Chief Executive has power under Part 4 of the TPCA to acquire transport land by resumption or otherwise with the intention of disposing of the transport land for a purpose specified in section 27(1) (for example, to a public private partnership proponent), even in circumstances where the disposal is intended to occur under sections 84C, 240 or 355 of the *Transport Infrastructure Act 1994*.

Clause 91 omits sections 28B(4), (5) and (6). These provisions came into force on 13 October 2000 and were intended to be an interim measure to be repealed at the time of introduction of detailed busway legislation. The suite of busway legislation came into force in October 2002. However, the interim provisions were not repealed and remained in the legislation. This amendment removes the declaration that the constructing authority for land acquisition must be the chief executive with administrative responsibilities

connected with roads. The effect of removing the declaration is that QT will be able to acquire land for busways in future. QT has administrative responsibility for establishing busways and in the normal course would have been the appropriate department to carry out acquisitions of busway land (except for the presence of the sections being omitted by this amendment which were only intended to be an interim measure).

Clause 92 inserts a new section 28BA which validates busway land acquisitions that have taken place since 13 October 2000 or are in train. This provision is required to validate the compulsory acquisitions by the chief executive of QT for certain busway projects since 13 October 2000, as they should have been acquired by the chief executive of MR, in accordance with section 28B(5) of the TPCA.

Subsection (1) provides that it applies to land acquisitions that happened on or after 13 October 2000 and before the commencement of the section or land acquisitions in train at the commencement of the section. Subsection (2) validates land acquisitions whether the land was taken by the chief executive of MR or QT. Subsection (3) declares that regardless of anything done for the land acquisition, the constructing authority is considered to be and always have been, the chief executive of MR. The effect of this is that any acquisition done by QT is taken to have been done by MR and therefore in accordance with existing section 28B(5) of the TPCA.

Schedule – Minor amendments of Transport Operations (Road Use Management) Act 1995

The **Schedule** inserts a series of minor drafting amendments into TORUM.