

Transport Operations Legislation Amendment Bill 2007

Explanatory Notes

General Outline

The Bill makes a number of amendments to the *Transport Operations (Passenger Transport) Act 1994* (TOPTA).

Additionally, minor amendments are made to the *Transport Operations (Marine Safety) Act 1994* (TOMSA) and the *Transport Operations (Road Use Management) Act 1995* (TORUM).

Short Title

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

Policy Objectives of the Legislation

To amend TOPTA to:

- Insert a head of power to exempt taxis from the requirement to hold a Queensland (Qld) taxi service licence under specified circumstances;
- Provide for the imposition of an annual \$300 Taxi Industry Security Levy on the holders of taxi service licences in areas prescribed under a regulation;
- Establish a Taxi Industry Security Fund under the *Financial Administration and Audit Act 1977*; and
- Enable amounts collected from the levy to be deposited into the Taxi Industry Security Fund and used for improving the security of taxi services.

To amend TOMSA to correct a drafting anomaly.

To amend TORUM to make minor grammatical changes.

Reasons for the Bill

TOPTA

The reason for the Bill is to:

- Introduce legislation that will facilitate the agreement that has been made through the Memorandum of Understanding: Services in the Tweed-Gold Coast Region (MOU). The MOU was signed by the Premiers of Queensland and New South Wales on 27 February 2007 and aims to improve transport and health services in the region, particularly in the area of taxis. The MOU will provide greater flexibility and choice to taxi users in the region; and
- Allow for the imposition of a Taxi Industry Security Levy on holders of taxi service licences in areas where safety related taxi initiatives are introduced.

The purpose of the levy is to help fund taxi initiatives such as the provision of secure taxi ranks supervised by marshals and security guards. These initiatives were identified in the 17 Point Brisbane City Safety Action Plan and aim to enhance the safety and security of patrons in Brisbane's key entertainment precincts. The success of the taxi initiatives in Brisbane has seen the introduction of another eight secure taxi ranks in key entertainment areas in Queensland's regional centres, which will also require funding contribution from the Taxi Industry Security Levy.

The amendments to TOPTA are necessary to enable:

- A regulation to be made that exempts taxis from the need to hold a Qld taxi service licence under specified circumstances;
- Queensland Transport (QT) to impose a levy on holders of taxi service licences in areas prescribed under a regulation and establish a fund to administer the money paid through the levy.

The amendments to TOMSA are necessary to clarify that the penalty applies to section 125 (1), (2) and (3) of the Act.

The amendments to TORUM are necessary to correct minor grammatical inconsistencies.

Administrative Costs

The cost associated with implementing the MOU legislative amendments will be administrative in nature and will be absorbed within existing budget allocations.

There will be additional administrative costs for QT associated with the financial monitoring and reporting requirements for the levy. These will be met from within the budget approved by Cabinet Budget Review Committee (CBRC).

There are no costs related to the amendments to TORUM or TOMSA.

Achieving the Objectives

TOPTA

- The Bill allows for a regulation to be made to exempt certain taxis from the need to hold a taxi service licence. This will provide flexibility in the nature of taxi services that can be provided in Qld.
- The Bill enables QT to impose and collect a levy from the holders of taxi service licences in areas prescribed under a regulation to be used to help fund the costs of safety related taxi initiatives such as the provision of secure taxi ranks.
- The Bill will also ensure an open and transparent process with regards to Queensland Transport's use of the levy through the establishment of a controlled fund which levy amounts will be deposited into and expended from.

TOMSA

- The amendments to TOMSA will ensure that the penalty applying to marine incident reporting clearly relate to section 125 (1), (2) and (3).

TORUM

- The amendments to TORUM will correct minor grammatical inconsistencies in section 33 and section 131A.

Fundamental Legislative Principles

The amendment under clause 4 breaches the fundamental legislative principles relating to whether legislation has sufficient regard to the institution of Parliament. Clause 4 of the Bill proposes to amend section 70 of TOPTA to allow a regulation to prescribe taxi services for which a Qld

taxi service licence is not required. The proposed amendment effectively allows a regulation to amend the Act by exempting a person from the application of TOPTA.

However, by establishing the criteria for the exemption in the subordinate regulation, it allows for flexibility to respond to population growth and changing commercial requirements. It also facilitates responsiveness to local transport needs.

All other aspects of the Bill have sufficient regard to the rights and liberties of individuals and there are no potential breaches of the fundamental legislative principles under the *Legislative Standards Act 1992*.

Consultation

TOPTA

The local taxi administration booking companies affected by the proposed amendments have been consulted. The taxi companies accept that the proposed legislation will clarify the operation of taxis in the NSW/Qld border region.

Further community consultation is planned regarding the implementation of the changes.

Complete inter-departmental consultation has occurred on the proposed Bill amendments relating to the annual \$300 levy and the Taxi Industry Security Fund. There has also been consultation with the taxi industry. The Taxi Council of Queensland (TCQ) was consulted in 2005 in determining the amount of the levy. TCQ was consulted again in 2007 (along with the holders of taxi service licences in affected areas) to advise that the levy was expected to be implemented in 2007.

TOMSA

This amendment to correct a drafting anomaly was identified and has been agreed to by the Office of Queensland Parliamentary Counsel and the Department of Justice and Attorney General.

Notes on Clauses

Part 1 Preliminary

Short Title

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

Commencement

Clause 2 provides that Part 2 of the Bill will commence on a date to be fixed by proclamation.

Part 2 Amendment of Transport Operations (Passenger Transport) Act 1994

Clause 3 states that the Act amended in part 3 is the *Transport Operations (Passenger Transport) Act 1994*.

Clause 4 amends section 70 (Requirement for taxi service licences). Currently, section 70 requires any person providing a taxi service to hold a taxi service licence. Clause 4 inserts a subsection to allow a regulation to be made that exempts a person from complying with subsection 70(1). Consequential changes to the subordinate regulation will be made to define the types of taxi services exempted.

Clause 5 amends section 74AA (Notice to be kept in taxi). Section 74AA requires the operator of a taxi service to keep a written notice of any conditions relating to the taxi service licence and the area in which the taxi can operate. Where this requirement currently applies to all taxis, the insertion under Clause 5 clarifies that this section, in line with the other provisions of Chapter 7, only applies to the holders of Qld taxi service licences.

Clause 6 inserts new subsections 80A and 80B.

New subsection 80A provides a head of power to enable QT to impose an annual levy on taxi licence holders who hold a taxi service licence for a taxi service area prescribed by regulation. The annual levy is prescribed by regulation but will be \$300 for the financial year starting on 1 July 2007. The new subsection specifies that any increase in the levy by regulation cannot be greater than the Consumer Price Index increase for the same financial year. The section also details the process for notification and payment of the levy and how non payments may be recovered.

New subsection 80B establishes a fund that is a controlled fund under the *Financial Administration & Audit Act 1977*. This enables QT to deal with revenue collected from the levy as a controlled receipt and makes it clear how the levy must be administered.

Clause 7 amends section 143AJ (person given direction to be told particular things). This clause is correcting a previous drafting anomaly. Under the current wording, section 143AJ applies to "this part" when it should apply to "this chapter".

Clause 8 amends schedule 3 (Dictionary) by inserting the term 'Taxi Industry Security Levy' and references the term to new sub-section 80A.

Part 3 **Amendment of Transport Operations (Marine Safety Act) 1994**

Clause 9 states that the Act amended in part 3 is the *Transport Operations (Marine Safety) Act 1994* (TOMSA).

Clause 10 amends the TOMSA to correct a previous drafting anomaly. In the *Maritime And Other Legislation Amendment Act 2006* section 125 of TOMSA was amended by inserting new subsections (4) and (5) which set out the circumstances that may constitute a reasonable excuse for not reporting a marine incident. The purpose of this was to strengthen the reporting requirements, because a failure to report could cause delays in incident response and investigation and adversely affect safety and investigation outcomes.

An unintended consequence of inserting the new subsections was that, as a matter of statutory construction, the stated penalty of 40 penalty units

would only apply to the subsection immediately above it (section 125(3)) and not all of the subsections above it. The original intent of section 125 has always been that the penalty attaches to each of subsections (1), (2) and (3).

Part 4 Amendment of Transport Operations (Road Use Management) Act 1995

Clause 11 states that the Act amended in part 4 is the *Transport Operations (Road Use Management) Act 1995*.

Clause 12 amends section 33(2) to correct a grammatical error by clarifying that an authorised officer may require a person in control of a vehicle to 'move it' to a stated reasonable place.

Clause 13 amends section 131A to correct a drafting inconsistency in the heading to clarify that the reference to the date should read 13/3/02 instead of 13/3/2.