Transport and Other Legislation Amendment Bill 2008

Explanatory Notes

General Outline

The Bill amends the following eleven pieces of legislation:

- *Anzac Day Act 1995;*
- *Building and Construction (Portable Long Service Leave) Act 1991;*
- *Police Powers and Responsibilities Act 2000;*
- *Tow Truck Act 1973;*
- *Transport Infrastructure Act 1994;*
- *Transport Operations (Marine Pollution) Act 1995;*
- *Transport Operations (Marine Safety) Act 1994;*
- *Transport Operations (Passenger Transport) Act 1994;*
- *Transport Operations (Road Use Management) Act 1995;*
- *Transport Planning and Coordination Act 1994; and*
- *Workers' Compensation and Rehabilitation Act 2003*

Amendments to the *Anzac Day Act 1995* will enable trustees of the Anzac Day Trust to claim travel expenses.

The *Building and Construction (Portable Long Service Leave) Act 1991* amendments will establish a new method for determining how rates of payment for long service leave claims are set.

The amendments to the *Police Powers and Responsibilities Act 2000* will provide police officers with enhanced powers in relation to the clearing of obstructions from Queensland roads. The amendments are consistent with the amendments to the *Transport Operations (Road Use Management) Act 1995*.

The *Tow Truck Act 1973* amendments will strengthen the process of criminal history checking of relevant persons in relation to certain approvals under the Act. This is consistent with amendments to the *Transport Operations (Road Use Management) Act 1995*.

Amendments to the *Transport Infrastructure Act 1994* will enable the enforcement of temporary restrictions on the use of state-controlled roads to prevent damage by vehicles; provide for registered interests over commercial corridor land sites to survive the land becoming a new rail corridor land; include provisions that allow the subleasing of busway land and public private partnerships for the construction of light rail; expand surrender of a railway manager's sublease to include expiry and termination; correct references to Queensland Rail following name changes, incorporation and establishment of subsidiaries; and ensure that assets provisions applying to a port authority apply in the same way to assets of a wholly owned subsidiary of a Government Owned Corporation port authority.

Amendments to the *Transport Operations (Marine Pollution) Act 1995* will establish that the District Court may make orders requiring the applicant or another interested party to take direct action about a ship; provide for the removal of the text of the *International Convention for the Prevention of Pollution from Ships, 1973* (commonly known as MARPOL); reflect the current consolidated version of MARPOL; and insert a head of power to allow the chief executive of Queensland Transport to approve forms for use under the *Transport Operations (Marine Pollution) Act 1995*.

The *Transport Operations (Marine Safety) Act 1994* amendments will insert an evidentiary provision requiring the owner or master of a ship to present safety equipment when asked to do so by a Shipping Inspector; establish that the District Court may make an order requiring the applicant or another interested party to take direct action about a ship; and correct a typographical error.

Amendments to the *Transport Operations (Passenger Transport) Act 1994* will improve passenger safety and manage offensive behaviour by providing TransLink transit officers with limited powers of detention and enabling courts to make order to exclude certain offenders from the public transport network.

The *Transport Operations (Road Use Management) Act 1995* amendments will clarify a number of issues relating to the adoption in Queensland of two pieces of national model legislation. The model legislation was

developed by the National Transport Commission and deals with heavy vehicle driver fatigue and with mass, dimension and loading requirements for heavy vehicles. The amendments to the Act will exclude the operation of the 'mistake of fact' defence in the Queensland Criminal Code, section 24, in relation to specific heavy vehicle driver fatigue and mass, dimension and loading offences. Amendments to the Act will also strengthen the process of criminal history checking of relevant persons in relation to certain approvals under the Act. This is consistent with amendments to the *Tow Truck Act 1973.* Amendments to the Act will ensure that a local government obtains the chief executive's approval before making a change to the management of a local government road on which there is a significant public passenger transport route or where the change will have an adverse impact on the provision of public passenger transport. These amendments are consistent with amendments being made to the *Transport Planning and Coordination Act 1994*. Amendments will also provide delegated officers with enhanced powers in relation to the clearing of obstructions from Queensland roads. These amendments are consistent with amendments to the *Police Powers and Responsibilities Act 2000*.

Amendments to the *Transport Operations (Road Use Management) Act 1995, Transport Infrastructure Act 1994* and the *Transport Operations (Passenger Transport) Act 1994* adopt national model legislation approved by the Australian Transport Council for the transport of dangerous goods. The model legislation – known as the *National Transport Commission (Model Legislation – Transport of Dangerous Goods by Road or Rail) Regulations 2007*(Cth) – supports the introduction of the 7th edition of the Australian Code for the Transport of Dangerous Goods by Road or Rail (also referred to as the Australian Dangerous Goods Code or ADG7).

Amendments to the *Transport Planning and Coordination Act 1994* will enable Queensland Transport, under the *Integrated Planning Act 1997,* to place conditions about active transport on development applications and protect priority settings for passenger transport vehicles by ensuring that a local government obtains the chief executive's approval before making a change to the management of a local government road that will have an adverse impact on the provision of public passenger transport. This amendment is consistent with amendments being made to the *Transport Operations (Road Use Management) Act 1995*.

The *Workers' Compensation and Rehabilitation Act 2003* amendments will allow the lodgement of injured workers' applications and certain other forms by telephone.

There are a number of miscellaneous amendments to the *Anti-Discrimination Act 1991*, the *Assisted Students (Enforcement of Obligations) Act 1951*, the Criminal Code, the *Dangerous Good Safety Management Act 2001,* the *Electrical Safety Act 2002*, the *Electricity Act 1994*, the *Fire and Rescue Service Act 1990*, the *Freedom of Information Act 1992*, the *Integrated Planning Act 1997*, the *Judicial Review Act 1991*, the *Mineral Resources Act 1989*, the *Metropolitan Water Supply and Sewerage Act 1909*, the *Police Powers and Responsibilities Act 2000*, the *Security Providers Act 1993*, the *South Bank Corporation Act 1989*, the *Transport Legislation Amendment Act 2007*, the *Transport (South Bank Corporation Area Land) Act 1999* and the *Valuation of Land Act 1944.*

The preliminary sections of the explanatory notes deal with each of the matters in the Bill under the following headings:

Maritime legislation – these are amendments to the *Transport Operations (Marine Pollution) Act 1995* and the *Transport Operations (Marine Safety) Act 1994*;

Passenger transport legislation – these are amendments to the *Transport Operations (Passenger Transport) Act 1994*;

Transport infrastructure legislation – these are amendments to the *Transport Infrastructure Act 1994*;

Transport operations and road use management legislation – these are amendments to the *Tow Truck Act 1973* and the *Transport Operations (Road Use Management) Act 1995*;

Transport of dangerous goods legislation – these are amendments to the *Transport Infrastructure Act 1994*, the *Transport Operations (Passenger Transport) Act 1994* and the *Transport Operations (Road Use Management) Act 1995*.

Transport planning and coordination legislation – these are amendments to the *Transport Planning and Coordination Act 1994*; and

Other legislation – these are amendments to the *Anzac Day Act 1995*, the *Building and Construction (Portable Long Service Leave) Act 1991* and the *Workers' Compensation and Rehabilitation Act 2003.*

Short Title

The short title of the Bill is the Transport and Other Legislation Amendment Act 2008.

Policy Objectives of the Legislation

Maritime legislation

The amendments to the *Transport Operations (Marine Pollution) Act 1995* are designed to:

- ensure that the District Court may make an order requiring the applicant or another interested party to take direct action about a ship;
- provide for the removal of the text of the *International Convention for the Prevention of Pollution from Ships, 1973* (commonly known as MARPOL) from the *Transport Operations (Marine Pollution) Regulation 2008*;
- reflect the current consolidated version of MARPOL; and
- insert a head of power to allow the chief executive to approve forms for use under the *Transport Operations (Marine Pollution) Act 1995*.

The amendments to the *Transport Operations (Marine Safety) Act 1994* are designed to:

- require the owner or master of a ship to present safety equipment when asked to do so by a Shipping Inspector;
- establish that the District Court may make an order requiring the applicant or another interested party to take direct action about a ship; and
- correct a typographical error.

Passenger transport legislation

The amendments to the *Transport Operations (Passenger Transport) Act 1994* seek to improve the safety and security of the public transport network by:

- extending the current powers of authorised persons (that is, TransLink transit officers) to direct, and use reasonable force if necessary, a person to leave trains, train stations and train station car parks and all general bus and ferry route services, busway stations and busway car parks, major bus interchanges and ferry stations;
- establishing a separate class of authorised persons as authorised persons (transit officer);

- providing criteria which a person has to meet to be appointed as a transit officer; these include a criminal history check, be of a good character and mental and physical fitness checks;
- requiring transit officers to have successfully completed a training course approved by the Commissioner of Police;
- requiring transit officers to not be under the influence of alcohol or drugs while performing transit officer functions;
- making transit officers accountable to the *Crime and Misconduct Act 2001* and the *Public Sector Ethics Act 1994*;
- allowing for transit officers to detain individuals who have committed or are committing wilful damage or an assault occasioning bodily harm on public transport and related infrastructure until they can be handed over to the police;
- allowing transit officers to require people to leave and/or detain individuals who are in breach of an exclusion order;
- allowing for transit officers to use handcuffs for detaining individuals;
- allowing for transit officers to require a detained person to remove their outer clothing or frisk search the detained person in certain circumstances;
- establishing certain requirements transit officers have to undertake when detaining an individual;
- establishing certain principles which transit officers have to take into account when detaining juveniles and other vulnerable people; and
- providing courts with the power to make exclusion orders for protecting the public or property.

As a consequence of the amendments to the *Transport Operations (Passenger Transport) Act 1994* amendments are also required for the Criminal Code, the *Police Powers and Responsibilities Act 2000* and the *Security Providers Act 1993* to:

- make an assault on a transit officer a serious assault under the Criminal Code;
- enable a police officer to release a detained person after a transit officer has handed over the person; and

- ensure a transit officer is not considered a security provider under the *Security Providers Act 1993*.

Transport infrastructure legislation

Temporary restrictions on the use of State-controlled roads

The aim of this amendment is to improve the enforceability of the section by clarifying the way in which the Chief Executive may declare that access to a State-controlled road is restricted, and to create an enforceable penalty provision for contravening a declaration.

Commercial corridor land

The amendments to the *Transport Infrastructure Act 1994* will insert a new provision allowing an interest on commercial corridor land to continue as an interest in the railway manager's sublease when the land is surrendered and dealt with in terms of section 240.

Surrender of a sublease

The amendments to the *Transport Infrastructure Act 1994* will extend provisions concerning the surrender of the railway manager's sublease to include expiry and termination of a railway manager's sublease.

Rapid public transport systems

The amendments to the *Transport Infrastructure Act 1994* will enable Queensland Transport to enter into commercial arrangements for the construction and/or management of busways, busways transport infrastructure, light rail or light rail infrastructure and provide for the accreditation of busway managers and to extend the existing unlawful access provisions for a busway and light rail to include busway transport infrastructure and light rail transport infrastructure.

References to Queensland Rail

The amendments to the *Transport Infrastructure Act 1994* will amend references to Queensland Rail in various Acts, depending upon the circumstances, to QR Limited, a specific subsidiary, or to the generic term railway manager or will omit the reference completely.

Port authority's subsidiary's assets

The amendments to the *Transport Infrastructure Act 1994* will extend provisions applying to assets of port authorities to apply in the same manner to assets of a wholly owned subsidiary of a Government Owned Corporation port authority.

Transport operations and road use management legislation

National heavy vehicle driver reforms

The amendments to the *Transport Operations (Road Use Management) Act 1995* will clarify a number of provisions relating to the adoption in Queensland of national model legislation developed by the National Transport Commission. That model legislation deals with heavy vehicle driver fatigue and with mass, dimension and loading requirements for vehicles. The objective of these reforms is to regulate certain aspects of the operation of heavy vehicles in a nationally consistent manner.

Criminal history checking

The amendments to the *Tow Truck Act 1973* and the *Transport Operations (Road Use Management) Act 1995* relating to criminal history checking are designed to ensure that only appropriate persons and corporations are approved to hold, and continue to hold, certain approvals under those Acts.

Clearing obstructions from roads

The amendments to the *Transport Operations (Road Use Management) Act 1995* will ensure that delegated officers have access to a uniform and more efficient process for ensuring immobilised and abandoned vehicles and other objects are cleared from Queensland roads. The Bill will also amend the *Police Powers and Responsibilities Act 2000* to ensure Queensland police officers have access to comparable powers.

Transport of dangerous goods legislation

Dangerous goods are substances or articles which due to their physical, chemical or toxicological properties may present an acute risk to life, health, property and the environment, especially when being transported. They may be corrosive, flammable, explosive, toxic, radioactive, harmful to the environment, oxidizing or react adversely when brought into contact with other substances. They are classified according to their hazard levels and potential to cause harm. Common examples of dangerous goods include gas cylinders, pool chlorine, petrol and car batteries. Based on the estimate that approximately 8% of freight is dangerous goods, there have been few major incidents in recent years where life and health have been affected by the transport of dangerous goods in Australia. To a large extent, this can be explained by the transport industry having embraced the various editions of the Australian Dangerous Goods Code (Code) published since 1980, which provides technical instructions and

recommendations for the safe transport of dangerous goods by road and rail.

The Code is based on the Recommendations on the Transport of Dangerous Goods – Model Regulations published by the United Nations Economic and Social Council's Committee of Experts on the Transport of Dangerous Goods and on the Globally Harmonized System of Classification and Labelling of Chemicals (UN Model Regulations). A committee of delegates develops the UN Model Regulations and revises them every two years to keep pace with emerging technology and best practice. Australia is an active voting member of this committee and attends these sessions.

The current version of the Code used by industry in Australia is the 6th edition (also referred to as ADG6). The Australian Transport Council tasked the National Road Transport Commission (now the National Transport Commission) with reviewing the 6th edition of the Code and related legislation.

The National Transport Commission publicly released the 7th edition of the Australian Dangerous Goods Code (also referred to as ADG7) in September 2007.

The policy objective of the Bill is to implement the national model legislation approved by the Australian Transport Council for the transport of dangerous goods, as found in the *National Transport Commission (Model Legislation – Transport of Dangerous Goods by Road or Rail) Regulations 2007* (Cth) which supports the introduction of 7th edition of the Code.

Transport planning and coordination legislation

Active transport

The policy objective of the amendments to the *Transport Planning and Coordination Act 1994* is to enable Queensland Transport, under the *Integrated Planning Act 1997*, to place conditions about active transport on development applications. These amendments support the Queensland Governments policy and plans to promote active transport in Queensland. Active transport is a physical activity, most commonly walking and cycling, undertaken as a means of transport, including as part of public transport trips. The focus of active transport is not on the recreational modes of transport, for example for sport, but rather active transport as a means of travelling to and from a destination.

Transport corridor protection

Amendments to the *Transport Planning and Coordination Act 1994* aim to protect the priority settings of passenger transport services by ensuring that a local government obtains the chief executive's approval before making a change to the management:

- of a local government road on which a scheduled passenger service, identified under section 8E as a significant passenger service is provided; or
- on any other local government road if the change would have a significant adverse impact on the provision of public passenger transport.

This amendment is consistent with amendments being made to sections 66 and 69 of the *Transport Operations (Road Use Management) Act 1995*.

Other legislation

The amendments to the *Anzac Day Act 1995* will enable trustees of the Anzac Day Trust to claim travel expenses.

The amendments to the *Building and Construction (Portable Long Service Leave) Act 1991* will assist in protecting the long-term viability of the Portable Long Service Leave Scheme by prescribing a maximum dollar amount of weekly ordinary pay for workers to be used in calculating claim payments under sections 59 and 62 of the Act and by providing for an annual review of the maximum dollar amount having regard to the Australian Bureau of Statistics Wage Price Index for the Queensland Building and Construction Industry as well as industry trends in indicative sources such as awards and workplace agreements.

The amendments to the *Workers' Compensation and Rehabilitation Act 2003* will allow the lodgement of injured workers' applications and certain other forms by telephone.

Reasons for the Bill

Maritime legislation

The amendments to the *Transport Operations (Marine Pollution) Act 1995* are necessary to maintain a high level of protection for Queensland's marine environment by:

- establishing that the District Court may make an order requiring the applicant or another interested party to take direct action about a ship;
- removing the text of the *International Convention for the Prevention of Pollution from Ships, 1973* (commonly known as MARPOL) from the *Transport Operations (Marine Pollution) Regulation 2008*;
- updating the legislation to reflect the current consolidated version of MARPOL; and
- inserting a head of power to allow the chief executive to approve forms for use under the *Transport Operations (Marine Pollution) Act 1995*.

The amendments to the *Transport Operations (Marine Safety) Act 1994* are necessary to enhance marine safety in Queensland coastal waters. This is to be achieved by:

- inserting an evidentiary provision requiring the owner or master of a vessel to present safety equipment when asked to do so by a Shipping Inspector;
- establishing that the District Court may make an order requiring the applicant or another interested party to take direct action about a ship; and
- correcting a typographical error in line with current Queensland drafting practice.

Passenger transport legislation

Although less than two percent of all crime in Queensland is committed on the Citytrain network, recent customer research shows that only 70 percent of passengers perceive that there is a satisfactory level of personal safety and security. People's overall satisfaction with security on the Citytrain network is in decline as the presence of offensive behaviour affects passenger's perception of safety and security.

Passenger safety and security on the public transport system is provided for under the *Police Powers and Responsibilities Act 2000*, the *Transport*

Operations (Passenger Transport) Act 1994 and the *Transport Infrastructure Act 1994*. Currently, only police officers have the power to detain or arrest offenders on the public transport network. As 'authorised persons' under the *Transport Operations (Passenger Transport) Act 1994*, transit officers can only direct a person (and use reasonable force if necessary) to leave railways and railway stations.

There is anecdotal evidence that there are situations where transit officers need to restrain and detain certain individuals to ensure continued public transport passenger safety. An example of such a situation is when an assault is taking place and/or has taken place, where an individual is scratching/damaging Citytrain windows, 'tagging' seats or carriages or damaging property.

Transit officers have on a few occasions successfully used the citizen's arrest power (under the Criminal Code) on the rail network. In such situations, the transit officers request the police to attend as soon as possible and then hand the detained individuals over to the police when they arrive at the scene. This practice is not encouraged as the transit officers are not trained or equipped to ensure the safety of the officer or the detained person.

Other Australian states have legislated detention provisions for their transit officers. Victorian and Western Australian transit officers have specific powers to arrest. Western Australian transit officers also carry handcuffs and batons and have vehicles to take offenders to a police station. While Victorian officers do not carry any accoutrements they are trained in police methods of putting offenders on the ground, including juveniles.

As well as transit officer detention powers existing in other States, the Queensland *State Buildings Protective Security Act 1983* provides a Queensland example for people to be detained for reasons of public security and safety. Section 24 of the Act states that if a senior protective security officer suspects on reasonable grounds that a person has committed an offence under the act or against any other law in a state building, it is lawful for that officer and any other security officer aiding that officer to detain that person, using such force as is reasonably necessary for the purpose, until the person can be surrendered to the police.

There is an increased emphasis on public transport passenger safety and security. Providing transit officers with a limited power of detention was seen as an effective way to increase safety and security and reduce troublemaking.

The Bill provides for transit officers to be able to detain individuals who have committed or are committing wilful damage or an assault occasioning bodily harm on public transport and related infrastructure until they can be handed over to the police. In recognition of the significance of this new detention power, the Bill establishes a number of criteria which a person has to meet before being appointed a transit officer as well as accountability measures that a transit officer has to meet if they detain a person.

Transport infrastructure legislation

Temporary restrictions on the use of State-controlled roads

Experience during previous wet seasons in far north Queensland have shown that the link between the Chief Executive's decision to restrict access to a road and actual enforcement was insufficient, and the wording of the actual offence provision was poorly set out. This meant that practical roadside enforcement was difficult and any prosecution that resulted would be problematic as the elements of the offence would be difficult to particularise and prove.

Commercial corridor land

Queensland Railways was commercialised to become Queensland Rail on 1 July 1995. New land tenure arrangements for railways and for land owned or vested in Queensland Railways applied from that day under the *Transport Infrastructure Act 1994*.

The intention of commercial corridor land was where land or buildings were leased commercially by Queensland Railway and the land contained rail transport infrastructure, the land would transfer to the new entity Queensland Rail in freehold. However, it was always recognised that the land containing the rail transport infrastructure would be subdivided from the lot containing commercial operations.

Commercial corridor land gazetted sites often have interests in the form of leases and easements that benefit or burden the land. The process for land to become new rail corridor land under the *Transport Infrastructure Act 1994*, section 240, requires the land to be surrendered to become unallocated State land.

Under the *Land Act 1994*, when land becomes unallocated State land, except for a few exceptions, all interests are extinguished. The interests on commercial corridor land would be there for a purpose and QR Limited or

a subsidiary, or Queensland Transport, would have to negotiate replacement registered interests.

A new provision is to be inserted into the *Transport Infrastructure Act 1994*, which ensures that when a lot containing a commercial corridor land site is surrendered under the *Transport Infrastructure Act 1994*, section 240(2), an interest in the land is to be continued as an interest in the railway manager's sublease.

Surrender of a sublease

The *Transport Infrastructure Act 1994*, sections 240A and 240B, concerns the surrender of a railway manager's sublease and continue registered interests and unregistered rights under the sublease that would normally be extinguished under property law.

Expiry and termination of a railway manager's sublease, like surrender of the sublease, mean that the sublease no longer exists. However, in this situation, under property legislation most registered interests and all unregistered rights will be extinguished creating an unequable outcome.

The *Transport Infrastructure Act 1994*, sections 240A and 240B, are to be extended to include expiry and termination of a railway manager's sublease.

Rapid public transport systems

The amendments to chapters 9 and 10 of the *Transport Infrastructure Act 1994* will enable Queensland Transport to enter into commercial arrangements for the construction and/or management of busways, busways transport infrastructure, light rail or light rail transport infrastructure and provide for the accreditation of busway managers and for unlawful access on busways, busways transport infrastructure, light rail or light rail transport infrastructure.

References to Queensland Rail

The *Government Owned Corporations Amendment Regulation (No. 1) 2007* amended Queensland Rail's name to QR. On 1 July 2007 QR was incorporated as QR Limited. The wholly owned subsidiaries QR Network Pty Ltd and QR Passenger Pty Ltd, commenced operation on 1 September 2008 under the *Government Owned Corporations (QR Restructure) Regulation 2008*. The rail corridor land subleases were transferred from QR Limited to QR Network Pty Ltd.

Provisions in various Acts referencing Queensland Rail are to be amended to QR Limited. With the formation of new wholly owned subsidiaries, where applicable, some references are to be amended to a specific subsidiary or all subsidiaries, or a railway manager. Some references dating from when Queensland Rail's predecessor Queensland Railways was a Government Department are to be omitted if it is not appropriate for the legislation to apply to a company Government Owned Corporation.

Port authority's subsidiary's assets

The *Transport Infrastructure (Ports) Amendment Regulation (No. 1) 2007* transferred the management of the Port of Bundaberg to the Port of Brisbane Corporation Limited. The *Government Owned Corporations (Bundaberg Port Authority Wind-up) Regulation 2007* transferred the assets and liabilities of the Bundaberg Port Authority to the Bundaberg Port Corporation Pty Ltd, a wholly owned subsidiary of the Port of Brisbane Corporation Limited.

While the Bundaberg Port Corporation Pty Ltd owns and controls facilities and land in the Port of Bundaberg, it is not a port authority. The Port of Brisbane Corporation Limited is the port authority for the Port of Bundaberg.

Under the *Transport Infrastructure Act 1994*, section 285B, a port authority must prepare a land use plan in relation to the port authority's land at least every eight years. Because the Port of Brisbane Corporation Limited does not own or control the port facilities and land in the Port of Bundaberg, it is unable to amend the existing or prepare a new land use plan.

Under the *Transport Infrastructure Act 1994*, section 288, the Minister's written approval is required before a port authority can dispose of freehold land. As the provision does not specifically apply to a subsidiary of a port authority, in theory the Bundaberg Port Corporation Pty Ltd potentially could dispose of freehold land without obtaining the Minister's approval.

Amendments to the port authority's asset provisions in the *Transport Infrastructure Act 1994* will apply in the same manner to assets of a wholly owned subsidiary of a port authority, which is a Government Owned Corporation.

Transport operations and road use management legislation

National heavy vehicle driver reforms

The Australian Transport Council has approved model legislation for the management of fatigue of heavy vehicle drivers and model legislation

which deals with mass, dimension and loading requirements for heavy vehicles. Queensland has agreed to adopt the model legislation for application in this state. Adoption in Queensland has required amendments to the *Transport Operations (Road Use Management) Act 1995* and significant regulatory amendments. Further amendments are now required to the Act to fully implement the national reforms.

Criminal history checking

Queensland Transport currently issues a range of approvals for people and corporations to perform specific industry roles. Individuals can, for example, be certified to work as tow truck drivers or accredited to act as driver trainers or vehicle safety inspectors. Corporations may be approved to operate a tow truck licence or to act as an Approved Inspection Station conducting vehicle safety inspections or as a Q-Ride Registered Service Provider.

Under existing transport legislation, a person or corporation can have an application for approval refused if they have been convicted of, or charged with, certain offences. To determine this, the chief executive has powers under the *Tow Truck Act 1973* and the *Transport Operations (Road Use Management) Act 1995* to conduct criminal history checks.

Currently, under the *Tow Truck Act 1973*, the chief executive can obtain a criminal history check on an individual applicant for approval and, where the applicant is a corporation, on executive officers of that corporation. The purpose of obtaining the criminal histories of executive officers is to ensure the corporation is appropriate to hold a tow truck licence. The Bill amends the *Tow Truck Act 1973* to clearly specify that the criminal history of an executive officer can be used by the chief executive in determining whether a corporation is an appropriate body to hold or continue to hold a tow truck licence. The Bill also clarifies that criminal histories are to be considered not only when assessing an application for the grant of an approval under the *Tow Truck Act 1973* but also at the time of renewing those approvals.

Currently, the *Transport Operations (Road Use Management) Act 1995* provides for criminal history checks to be conducted on an 'applicant' for an approval under the Act. The Bill clarifies that, where the applicant for or holder of an approval is a corporation, criminal history checks can be conducted on executive officers. Executive officers take part in, or are concerned with, the corporation's management and it is essential to ensure that these corporate approval holders are managed by appropriate people.

The Bill also allows for criminal history checks to be conducted on:

- an officer nominated by a Q-Ride Registered Service Provider to sign declarations verifying that participants have successfully completed Q-Ride motorbike training; and
- a nominee for an Approved Inspection Station where vehicle safety inspection certificates are issued.

Because of the approval granted by the chief executive, these people hold positions of trust with the public. This puts an obligation on the chief executive to ensure only appropriate people are granted such approvals.

The Bill amends both the *Tow Truck Act 1973* and the *Transport Operations (Road Use Management) Act 1995* to ensure that the chief executive can institute show cause proceedings against an approval holder where an executive officer, nominated officer or nominee has been convicted of an offence against the Act or a corresponding law in another jurisdiction, or convicted of a disqualifying offence. Both these Acts currently allow the police commissioner to advise the chief executive of a change to an approval holder's criminal history. The Bill amends these provisions to ensure the commissioner can advise of any change to the criminal history of an executive officer, nominated officer or nominee.

Clearing obstructions from roads

The amendments to the *Transport Operations (Road Use Management) Act 1995* and the *Police Powers and Responsibilities Act 2000* are required to strengthen the roles and responsibilities of officers to remove abandoned and immobilised vehicles and other objects in a timely and efficient manner from Queensland roads.

Transport of dangerous goods legislation

Unlike the 6th edition of the Code, the 7th edition adopts the structure, format, definitions and concepts of the United Nations Recommendations on the Transport of Dangerous Goods – Model Regulations 14th revised edition (UN14). The 7th edition of the Code brings Australia into line with changes in the UN Model Regulations while also retaining Australian-specific requirements and safety provisions not covered by UN content.

In addition to the structural and formatting differences, changes in 7th edition of the Code include:

- the incorporation of new definitions, terminology and concepts;
- a re-arranged and more comprehensive Dangerous Goods List;

- a more comprehensive set of packing and packaging requirements and updated marking and labelling requirements;
- full incorporation of new requirements for the transport of infectious substances; and
- inclusion of class 9 substances (Environmentally Hazardous Substances dangerous to the aquatic environment).

While the 7th edition of the Code was primarily a revision exercise, benefits of adopting the 7th edition and the supporting national model legislation incorporated in this Bill include:

- updated requirements based on international best practice and closer harmonisation with sea and air transport codes reducing inter-modal inefficiencies and costs for importers/exporters;
- easier adoption of international advances and changes to the UN Model Regulations due to alignment between the 7th edition and the UN Model Regulations;
- the safer transport of infectious substances;
- concessions for the transport of small quantities of dangerous goods; and
- enhanced compliance and enforcement provisions for authorised officers.

Changes to legislation are needed to support the introduction of the 7th edition of the Code. National model legislation was developed by the National Transport Commission in consultation with representatives from the Commonwealth, State and Territories' dangerous goods authorities, the transport industry and other relevant stakeholders. The national model legislation was approved by the Australian Transport Council and was made as a Commonwealth regulation entitled *National Transport Commission (Model Legislation – Transport of Dangerous Goods by Road or Rail) Regulations 2007* (Cth). Further refinements to the model legislation have been made through a maintenance package approved by the Australian Transport Council.

This Bill contains the necessary Act amendments arising out of the national model legislation and the subsequent refinements to that legislation.

Transport planning and coordination legislation

Active transport

The policy objective of the amendments to the *Transport Planning and Coordination Act 1994* is to enable Queensland Transport, under the *Integrated Planning Act 1997*, to place conditions about active transport on development applications. These amendments support the Queensland Government's policy and plans to promote active transport in Queensland. Active transport is a physical activity, most commonly walking and cycling, undertaken as a means of transport, including as part of public transport trips. The focus of active transport is not on the recreational modes of transport, for example for sport, but rather active transport as a means of travelling to and from a destination.

Transport corridor protection

To protect the priority settings of passenger transport services on local government roads the amendments to the *Transport Planning and Coordination Act 1994* will ensure that a local government obtains the chief executive's approval before making a change to the management of a local government road on which a scheduled passenger service, identified under section 8E as a significant passenger service, is provided or on any other local road if the change would have a significant adverse impact on the provision of public passenger transport. This amendment is consistent with amendments being made to the *Transport Operations (Road Use Management) Act 1995*, ss 66 and 69.

Other legislation

The amendment to the *Anzac Day Act 1995* removes the prohibition on trustees of the Anzac Day Trust claiming travel expenses while preserving the prohibition on paying fees or allowances to trustees.

The Building and Construction Industry (Portable Long Service Leave) Authority commissions a biennial independent actuarial assessment of the Portable Long Service Leave Scheme which it administers. The most recent evaluation (as at 30 June 2007) indicated that the projected long term cost of workers' entitlements under the Scheme had risen considerably and that steps should be taken to secure the Scheme's financial position. Capping the maximum weekly rate used in calculating claim payments is one of the measures which will assist in offsetting the effect of claims for payment which vastly exceed the general industry wage rates. It is anticipated that the benefits of maintaining a viable portable

long service leave system for all workers in the industry will significantly outweigh the cost to those few workers affected by a capped rate. An alternative measure of increasing the levy rate was also considered and implemented.

The amendment to the *Workers' Compensation and Rehabilitation Act 2003* allows the lodgement of certain forms via telephone.

Administrative Costs

Maritime legislation

The administrative costs associated with the introduction of the amendments to the *Transport Operations (Marine Pollution) Act 1995* and the *Transport Operations (Marine Safety) Act 1994* will be absorbed within existing budget allocations.

Passenger transport legislation

The implementation and ongoing administrative costs (for example, training and equipment provision) will be met from existing resources.

Transport infrastructure legislation

Temporary restrictions on the use of State-controlled roads

There are no mandatory administrative costs to this amendment as they are intended to allow construction of restricted road access notices with whatever materials are practically available in adverse conditions. However, discretionary allocation of the road sign budget in any district would allow for the manufacture and pre-positioning of notices as required.

Commercial corridor land

Continuing interests in commercial corridor land as interests in the railway manager's sublease will reduce costs as the interests will not have to be renegotiated.

Surrender of a sublease

Continuing registered interests and unregistered rights when a railway manager's sublease expires or is terminated will reduce costs as the registered interests and unregistered rights will not have to be renegotiated.

Rapid public transport systems

The implementation of the amendments to the *Transport Infrastructure Act 1994* that support commercial arrangements for the construction and/or

management of busways, busways transport infrastructure, light rail or light rail transport infrastructure will be administrative in nature and any implementation costs will come from existing budget allocations.

References to Queensland Rail

While there will be costs involved in the restructure of QR Limited to create the new subsidiaries, there will be no costs as a result of these legislative amendments.

Port authority's subsidiary's assets

Any costs connected with extending port authority's assets provisions to wholly owned subsidiaries of GOC port authorities will be minor and absorbed within existing budget allocations

Transport operations and road use management legislation

National heavy vehicle driver reforms

The implementation of the amendments in this Bill will be administrative in nature. The cost of implementation will not be significant and will come from within Queensland Transport's existing budget allocation.

Criminal history checking

It is not expected that these amendments will result in any significant increase in the number of criminal history checks undertaken. Any additional cost will be absorbed within Queensland Transport's existing budget allocation.

Clearing obstructions from roads

The cost of implementation will be absorbed within existing budget allocation.

Transport of dangerous goods legislation

The implementation of the Bill will be administrative in nature. All implementation costs will be covered from within Queensland Transport's existing budget allocation.

Transport planning and coordination legislation

The amendments to the *Transport Planning and Coordination Act 1994* that support active transport and the protection of priority settings of passenger transport services will be administrative in nature and any implementation costs will come from within existing budget allocations.

Other legislation

The cost of the amendment to the *Anzac Day Act 1995* is expected to be minimal, consisting of reimbursement of actual travel costs to trust meetings (held three times a year) for a maximum of four trustees. The actual cost will be dependent upon the distance travelled by trustees to meetings and whether a claim is lodged and accepted. An estimated cost, based on current members of the trust, is $528.60 per year to be paid for by the Department of Employment and Industrial Relations.

The costs of implementation for the portable long service leave amendments will be minimal and will not involve a cost to government but rather will be met through existing budget allocations of the Authority's funds.

There is no cost associated with the amendment to the *Workers' Compensation and Rehabilitation Act 2003*.

Achieving the Objectives

Maritime legislation

The Bill will enable Maritime Safety Queensland to ensure that Queensland waters are protected from ship sourced pollutants to the greatest extent possible and to manage marine safety issues.

Passenger transport legislation

The Bill achieves its objective of improving the safety and security of the public transport network by:

- extending the current powers of authorised persons (that is, a TransLink transit officer) to direct, and use reasonable force if necessary, a person to leave trains, train stations and train station car parks and all general route service bus and ferry services, busway stations and busway car parks, major bus interchanges and ferry stations; and
- establishing a new class of authorised person, 'authorised person (transit officer)' to enable transit officers to detain individuals who have committed or are committing wilful damage or an assault occasioning bodily harm on public transport and related infrastructure or breaching an exclusion order until they can be handed over to the police; and

- providing courts with the power to make exclusion orders for protecting the public or property.

However in providing transit officers with these significantly increased powers, the Bill has included a number of 'checks and balances' which a person has to meet if they are to be a transit officer. These include:

- requiring a person to meet a number of criteria before they can be appointed as a transit officer; these include notice qualifying criminal history, good character and mental and physical fitness checks;
- requiring transit officers to have successfully completed a training course approved by the Commissioner of Police.
- requiring transit officers to not be under the influence of alcohol or drugs while performing transit officer functions;
- making transit officers accountable to the *Crime and Misconduct Act 2001* and the *Public Sector Ethics Act 1994*;
- allowing for transit officers to require a detained person to remove their outer clothing or frisk search the detained person in certain circumstances;
- establishing certain requirements transit officers have to undertake when detaining an individual;
- establishing certain principles which transit officers have to take into account when detaining juveniles and other vulnerable people.

Transport infrastructure legislation

Temporary restrictions on the use of State-controlled roads

The Bill will ensure that a decision by the Chief Executive to restrict access to a State-controlled road can be quickly implemented and enforced using means that are practical in adverse conditions.

Commercial corridor land

The Bill inserts a new section 240AA in the *Transport Infrastructure Act 1994* to allow an interest on commercial corridor land to continue as an interest in the railway manager's sublease when the land is surrendered and dealt with in terms of section 240.

Surrender of a sublease

The Bill extends provisions in the *Transport Infrastructure Act 1994* concerning the surrender of the railway manager's sublease to include expiry and termination of a railway manager's sublease.

Rapid public transport systems

The Bill extends the provisions in chapters 9 (Busways and busway transport infrastructure) and 10 (Light rail and light rail transport infrastructure) of the *Transport Infrastructure Act 1994* to enable Queensland Transport to enter into commercial arrangements for the construction and/or management of busways, busways transport infrastructure, light rail or light rail transport infrastructure and provide for the accreditation of busway managers and for unlawful access on busways, busway transport infrastructure, light rail or light rail transport infrastructure.

References to Queensland Rail

The Bill amends references to Queensland Rail in various Acts, depending upon the circumstances to QR Limited or a specific subsidiary or any subsidiary or a railway manager or omits the reference.

Port authority's subsidiary's assets

The Bill amends provisions in the *Transport Infrastructure Act 1994* applying to assets of port authorities so that they apply in the same manner to assets of a wholly owned subsidiary of a GOC port authority.

Transport operations and road use management legislation

National heavy vehicle driver reforms

These amendments will adopt further aspects of the national reforms for heavy vehicle driver fatigue and mass, dimension and loading requirements. Specifically the amendments will:

- clarify the process for adopting in Queensland decisions made in other jurisdictions relating to heavy vehicle driver fatigue - for example, a decision to accredit a person to operate under the new Basic Fatigue Management or Advanced Fatigue Management schemes;
- ensure that the chief executive has the power to amend, suspend or cancel the operation in Queensland of approvals granted by another jurisdiction;

- clarify the circumstances in which an authorised officer can exercise enforcement powers in relation to a suspected work/rest hours offence;
- incorporate certain evidentiary provisions for various fatigue management matters;
- require specified parties in the chain of responsibility to ensure that drivers carry relevant documentation indicating the work and rest hour arrangements that apply to the driver;
- exclude the operation of section 24 of Queensland's Criminal Code for certain heavy vehicle driver offences – where appropriate, the defendant will have the benefit of the reasonable steps defence;
- allow for a higher penalty to be imposed on certain mass, dimension and loading offences that occur in circumstances of aggravation (for example, at night); and
- make a number of drafting enhancements.

Criminal history checking

Amendments to the *Tow Truck Act 1973* clarify that the criminal history of an executive officer can be used by the chief executive in determining whether a corporation is an appropriate body to hold or continue to hold a tow truck licence. The Bill also provides that criminal histories are to be considered not only when assessing an application for the grant of an approval under the *Tow Truck Act 1973* but also at the time of renewing those approvals.

The Bill amends the *Transport Operations (Road Use Management) Act 1995* to clarify that, where the applicant for or holder of an approval under the Act is a corporation, criminal history checks can be conducted on executive officers. The Bill also provides for criminal history checks to be conducted on:

- an officer nominated by a Q-Ride Registered Service Provider to sign declarations verifying that participants have successfully completed Q-Ride motorbike training; and
- a nominee for an Approved Inspection Station where vehicle safety inspection certificates are issued.

The Bill amends both the *Tow Truck Act 1973* and the *Transport Operations (Road Use Management) Act 1995* to ensure that the chief executive can institute show cause proceedings against an approval holder

where an executive officer, nominated officer or nominee has been convicted of an offence against the Act or a corresponding law in another jurisdiction, or convicted of a disqualifying offence. The Bill also amends these Acts to ensure the commissioner of police can advise of any change to the criminal history of an executive officer, nominated officer or nominee.

Clearing obstructions from roads

Amendments are being made to the *Transport Operations (Road Use Management) Act 1995*, chapter 3, part 4C, to:

- ensure the clearance powers apply not only in relation to vehicles, but also in relation to vehicle loads and other things that may cause an obstruction to traffic;
- extend the application of the powers to all roads;
- allow for the recovery of actual expenses incurred in moving and removing vehicles, loads and other things from roads;
- allow for the immediate disposal, in appropriate circumstances, of loads and other things removed from roads (for example, where the proceeds of the sale of such things would be unlikely to cover the moving and selling expenses); and
- ensure an appropriate level of protection from civil liability is afforded to persons exercising the powers, or for persons assisting another person exercising such powers.

Amendments are also necessary to the *Police Powers and Responsibilities Act 2000* to provide comparable powers for Queensland Police officers.

Transport of dangerous goods legislation

The national model legislation is implemented in this Bill for transport of dangerous goods by road through amendments to the *Transport Operations (Road Use Management) Act 1995* and for transport by rail through amendments to the *Transport Infrastructure Act 1994* and the *Transport Operations (Passenger Transport) Act 1994*. It is proposed that new regulations will also be made following the passage of the Bill.

Transport planning and coordination legislation

Active transport

The Bill extends the provisions of the *Transport Planning and Coordination Act 1994*, part 2A (Land use and transport coordination), to include active transport and active transport infrastructure.

Other legislation

The amendment to the *Anzac Day Act 1995* removes the prohibition on trustees of the Anzac Day Trust claiming travel expenses while preserving the prohibition on paying fees or allowances to trustees.

The amendment to the *Workers' Compensation and Rehabilitation Act 2003* allows the lodgement of certain forms via telephone.

Fundamental Legislative Principles

Maritime legislation

Establish that the District Court may make orders requiring the applicant or another nominated interested person to take direct action about a ship

This amendment may breach a fundamental legislative principle in that it provides for the compulsory acquisition of property without fair compensation.

This provision only operates after it has been proven in a District Court that there is an ongoing breach of marine safety legislation, and that a District Court has made an enforcement order in relation to that breach and that order has been contravened.

This provision operates to allow a court to make such further orders as are appropriate to remedy the contravention of marine safety legislation. It is considered that this judicial oversight provides a robust safeguard against the infringement of the person's rights. In this respect the amendment simply clarifies the intent of the *Transport Operations (Marine Safety) Act 1994*, section 183E, and gives greater efficiency to the civil enforcement regime set out in Part 13A of that Act. In addition, experience has demonstrated that a person who fails to meet their obligations under legislation is likely to ignore an enforcement order. This amendment will allow action to be taken when no other course exists.

Miscellaneous amendments for consistency with MARPOL

This amendment may breach a fundamental legislative principle in that it reverses the onus of proof in criminal proceedings. The amended section 48A now states that "this section applies despite the Criminal Code, sections 23 and 24". The affect of this is that defences which may ordinarily be available are excluded. The Criminal Code, section 23, deals with a person's criminal responsibility for an act or omission that happens independently of the person's will or for an event which is accidental. Section 24 deals with a person's criminal responsibility for an act or omission done under an honest and reasonable, but mistaken belief in the state of things. The exclusion of these sections creates a regime of strict liability, whereby intent or mistake cannot be relied upon as a defence and the Crown would not need to establish intent as an element of the offence.

This amendment merely continues the exclusion of the operation of the Criminal Code, sections 23 and 24, which was also the position before the amendment was drafted. The same scheme can be found in the other offence provisions in the *Transport Operations (Marine Pollution) Act 1995*.

The Act is part of a national scheme of legislation implementing MARPOL. The convention similarly prohibits discharges of pollutants unless it is a permitted operational discharge. The *Transport Operations (Marine Pollution) Act 1995* also provides for similar defences.

The abhorrence of ship sourced marine pollution is reflected in the convention and the large number of countries which have implemented MARPOL into their domestic legislation.

Queensland with its proximity to the Great Barrier Reef and Torres Strait, has a particular interest in preventing ship sourced marine pollution and successful prosecutions will be a powerful deterrent. The legislature has previously deemed that it is appropriate to exclude the operation of the Criminal Code, sections 23 and 24, in the offence provisions of the Act and it is consistent with the remainder of the Act that this scheme is continuing.

Provide for an owner or master of a ship to produce safety equipment when required to do so by a Shipping Inspector

The amendment potentially breaches the fundamental legislative principle that legislation should not reverse the onus of proof without adequate justification. The proposed amendment permits a failure to produce safety equipment on demand to be taken as evidence that the ship is not equipped

with the relevant equipment. The provision does not remove the ability of the owner or master to later testify or otherwise prove that the ship was equipped with safety equipment despite being unable to comply with the request.

The request is appropriate because the location of the equipment is a matter peculiarly within the person's knowledge and the owner or master is well positioned to comply with the request in all reasonable circumstances. Without this provision a thorough search of a ship would be required to be conducted by the intercepting officers. As every ship is different and many interceptions occur in a seaway, there are significant practical and safety issues involved with conducting a thorough search in many circumstances.

Further, the policy objective of having safety equipment appropriately stowed and quickly accessible in case of emergency is promoted by this provision by requiring the owner or master to be able to locate the equipment upon request.

Passenger transport legislation

Some of the provisions of the Bill may infringe the fundamental legislative principle of having sufficient regard to the rights and liberties of individuals. The Bill has addressed these issues by as far as possible minimising and limiting potential impacts on a suspected offender's rights while maximising the preservation of the offsetting rights and liberties of bystanders and passengers. As an additional safeguard to rights and liberties and to ensure proper administration, each significant new power provided to transit officers is accompanied by corresponding obligations and accountabilities.

Extend the current powers of transit officers to all public transport

Extending the current powers of authorised persons (that is, transit officers) beyond railways to all public transport may raise fundamental legislative principle issues. However, as transit officers currently administer these powers on the railway, they have developed protocols to mitigate such fundamental legislative principle issues. For example, juveniles removed from trains are only removed at the station of their choice or at an agreed station to meet police (for their welfare). These protocols will be extended to the broader public transport system with commencement of this Bill.

Provide transit officers with the power to detain individuals committing particular offences on public transport

It is recognised that detaining a person is a significant breach of the fundamental legislative principle regarding rights and liberties. However while the Bill provides transit officers with the power to detain an individual and require such individuals to remove outer clothing or submit to a frisk search in certain circumstances, there are a number of specific counterbalancing provisions to protect the rights and liberties of the detained individual as much as possible. Counter-balancing requirements include:

- high level screening (including a rigorous criminal history check process) to assess a person's suitability to be a transit officer;
- high level police commissioner approved training that targets the specific duties of transit officers. For example: de-escalating situations, when and how to use force, when and how to use handcuffs, how to deal with children and other vulnerable people, and how to frisk search a person;
- transit officers being subject to the provisions of the *Crime and Misconduct Act 2001* and the *Public Sector Ethics Act 1994*;
- detention powers only being used if transit officers reasonably believe the person has committed or is committing assault occasioning bodily harm, assault involving stealing, offences relating to rape or sexual assault, or wilful damage or is contravening an exclusion order;
- transit officers having to follow a 'due process' before exercising detention powers. This includes considering whether it would be more appropriate for the individual to leave the public transport (depending on the circumstances), whether or not the person will repeat the offence immediately or soon after, and the safety and the security of other passengers;
- transit officers only undertaking a search of the detained person in accordance with strict guidelines. These include respecting the dignity of the individual by providing as much privacy during the search as possible and same-sex frisk searching;
- transit officers informing the person responsible for a child/impaired person, who has been detained, of the detention and having regard to the principles of the *Juvenile Justice Act 1992* when detaining a child.

Powers for courts to make exclusion orders for protecting the public or property

The court's power to make exclusion orders is the other significant new measure which may breach the fundamental legislative principle regarding the rights and liberties of an individual. However, an exclusion order can only be issued by a court which has been able to consider all the facts and circumstances of the particular case.

As well, all such orders are intended to maximise the welfare of public transport users and protect public transport infrastructure. Further, the exclusion orders are only applicable to those who have offended on public transport. And in addition, the court will be asked to give careful regard to the rights of the offender and to take into account any undue hardships such an order may impose. The exclusion order can also be varied depending on changing circumstances; for example, so that the offender is not unfairly restricted in employment opportunities.

Transport infrastructure legislation

New section 547 (Declaration about particular subleases) of the *Transport Infrastructure Act 1994* provides for an amendment of sublease 701720343 and transfer of subleases 701720343, 709548151 and 709650878 to be taken to have been registered on 1 September 2008. Under section 302 of the *Land Act 1994,* upon registration the interest in the land vests in the person registered in the document. As the registration of these documents occurred after 1 September 2008, this section may impose an obligation retrospectively.

QR Limited and the Department of Transport on behalf of the State executed the amendment to sublease 701720343 on 29 August 2008. Following this, QR Limited and QR Network Pty Ltd executed the transfers of subleases 701720343, 709548151 and 709650878. The Department of Transport understood that these land documents would be stamped and lodged with Titles Office on 1 September 2008 so that the documents would become effective that day.

These land documents are linked to the restructure of QR Limited documentation. Due to delays in stamping of all documents, the land documents were not lodged in the Titles Office on 1 September 2008.

Department of Transport has legal advice that the date of registration is the effective date for these land documents. However, QR Limited and QR Network Pty Ltd have legal advice that as these land documents are linked

to the restructure documents, the effective date is 1 September 2008. Crown Law advice is that it would be desirable, at least from the point of view of removal of all doubt, that remedial legislative provisions be enacted that would deem the transfers to have been effective as of 1 September 2008.

To remove any doubt, this section provides that for section 302 of the *Land Act 1994*, these land documents are taken to have been registered on 1 September 2008.

New section 548 (Declaration about sch 4 easements) of the *Transport Infrastructure Act 1994* provided for the transfers of the benefits of easements mentioned in scheduled 4 of the Act, to be taken to have been registered on 1 September 2008. These easements contain the rail tunnels between Roma Street and Brunswick Street Railway Stations and the rail tunnels at South Brisbane. QR Limited and the Department of Transport on behalf of the State executed the transfers of the easements on 29 August 2008.

These easements are in freehold and are registered under the *Land Title Act 1994*. Under this Act, documents can be effective prior to registration in the Titles Office.

As the easements transfer documents are linked to the restructure of QR Limited documentation that mentions 1 September 2008 as the transfer date, the transfers could be considered effective from 1 September 2008.

However, the transfer of sublease 701720343 mentioned in section 547, triggered the requirement under subsection 241(4) of the *Transport Infrastructure Act 1994* for QR Limited to transfer the benefit of the easements to the State. In terms of section 302 of the *Land Act 1994* the transfer of the sublease is not effective until the registered. This requirement brings into doubt whether the transfers of the easements can be effective prior to the effective date of transfer of the sublease that triggered the requirement for the easements to be transferred.

To remove any doubt, this section provides that for section 62 of the *Land Title Act 1994*, these transfers of easements are taken to have been registered on 1 September 2008. As the registration of the transfers of the easements occurred after 1 September 2008, this section may impose an obligation retrospectively.

New section 550 (Section 260A applies in relation to transfer of sublease 701720343) of the *Transport Infrastructure Act 1994* applies to section

260A as amended by clause 142 as if it was in force on 1 September 2008 in relation to the transfer of sublease 701720343 from QR Limited to QR Network Pty Ltd. This section has imposed an obligation retrospectively on QR Network Pty Ltd.

Before the sublease was transferred, QR Network Pty Ltd entered into an agreement with the State, giving an undertaking to assume all obligations of QR Limited under sublease 701720343.

Section 260A before amendment applied where QR Limited surrendered the sublease of the railway and the railway is subleased to another railway manager. Section 260A transferred QR Limited's obligations under section 260 to the new railway manager. The provision envisaged a branch railway within sublease 701720343 being transferred to another railway manager. As the transfer would only apply to one of numerous railways within sublease 701720343, the transfer would occur by QR Limited surrendering the lots in the sublease upon which the railway was located. The State would then grant a new sublease for these lots to the new railway manager.

However, the transfer to QR Network Pty Ltd applied to all railways within sublease 701720343, permitting the sublease to be transferred. As there is a new railway manager for the railway, the same outcome has been achieved. The new railway manager should be responsible for QR Limited obligations under section 260. Clause 142 expands section 260A so that QR Limited obligations under section 260 are transferred to the new railway manager where the sublease itself is transferred to the new railway manager.

By letter QR Network Pty Ltd has agreed from 1 September 2008 to satisfy QR Limited obligations with respect to works for existing railways pursuant to the *Transport Infrastructure Act 1994*, section 260.

None of the other amendments to the *Transport Infrastructure Act 1994* relating to general rail matters, port authority's assets, or busway or light rail transport breach any of the fundamental legislative principles.

Transport operations and road use management legislation

National heavy vehicle driver reforms

Overriding provisions of the Queensland Criminal Code

The proposed amendments to the *Transport Operations (Road Use Management) Act 1995*, which are aimed at adopting the national heavy vehicle driver fatigue legislation and the mass, dimension and loading legislation, may raise the fundamental legislative principle that legislation

should not inappropriately override provisions of Queensland's Criminal Code.

(a) Heavy vehicle driver fatigue management

Queensland's new fatigue management legislation adopts provisions from the national model legislation relating to:

- a driver driving while impaired by fatigue;
- a driver failing to comply with prescribed work or rest hours;
- a driver failing to notify the chief executive of a work diary that has been filled up or has been destroyed, lost or stolen or failing to take required action if a lost or stolen work diary is recovered;
- a heavy vehicle's odometer which is malfunctioning and required action is not taken; and
- appropriate records about a heavy vehicle driver's activities not being maintained.

The core of any fatigue management scheme is the setting of appropriate work hours for heavy vehicle drivers which will ensure that they do not represent a danger to themselves or to other road users by driving while fatigued. The integrity of the scheme and the ability for it to be enforced relies heavily on appropriate documents being held and maintained. For example, it is very difficult for authorities to monitor the work and rest hours of a heavy vehicle driver who fails to carry a work diary or does not record the necessary detail in that diary.

Fatigue has long been identified as a major safety concern in the road freight industry. In recognition of the significant impact of crashes of heavy vehicles on the community as a whole, it is proposed, in line with the national model legislation, that a defendant will not have access to the defence of 'mistake of fact' that currently exists in the Queensland's Criminal Code, section 24. These heavy vehicle driver fatigue reforms place a positive duty on all parties within the supply chain to take proactive measures to manage their fatigue risks. To successfully exercise their duties, all parties from drivers through to others in the chain of responsibility are reasonably expected to have sufficient knowledge on how to minimise their fatigue risk. This knowledge and understanding is obtained through a combination of training and practical experience. Allowing parties to utilise an 'honest and reasonable but mistaken belief' substantially undermines the ability of the reforms to deliver the road safety benefits promised to the community.

For example, under section 28 of the model legislation, if a person driving a heavy vehicle is shown to be impaired by fatigue then they should not be able to avoid liability simply because they mistakenly believed they were safe to drive. This position aligns with the current position in relation to a person charged with a drink driving offence under the *Transport Operations (Road Use Management) Act 1995*. In that regard, it is worth noting that research has shown that driving while fatigued can entail a risk which is similar to driving while adversely affected by alcohol. For these reasons, it is believed to be appropriate to exclude the operation of the Queensland's Criminal Code, section 24, for these fundamental offences.

Parties in the chain of responsibility on whom a duty is imposed to take all reasonable steps to ensure that relevant fatigue offences are not committed, will need to ensure that they act with due diligence and care by taking proactive steps to ensure that heavy vehicle driver fatigue offences are prevented.

This position has been deliberately aligned with the current position under Queensland's *Workplace Health and Safety Act 1995* in relation to a person's failure to discharge a workplace health and safety obligation.

In the context of adequately taking into account fundamental legislative principle considerations it is important to note that the prosecution has the onus of proving beyond a reasonable doubt that the relevant parties failed to take all reasonable steps to ensure that relevant fatigue offences are not committed.

For a number of offences, while the person charged will not have access to section 24 of Queensland's Criminal Code, they will be granted the benefit of the "reasonable steps defence". This defence will help to ensure that fundamental legislative considerations are taken into account in the legislation. A person charged with an offence relating to a filled-up, destroyed, lost or stolen work diary, a malfunctioning odometer or a record-keeping requirement will have the benefit of this defence. That defence will also be available to a driver or a party in the chain of responsibility when a driver is charged with a work/rest hours offence. The defence will apply where the defendant can prove that:

- s/he did not know, and could not reasonably be expected to have known, of the breach of the relevant fatigue management requirement; and
- either s/he took all reasonable steps, or there were no steps that could have been taken, to prevent the breach.

- Heavy vehicle mass, dimension and loading requirements

Queensland has adopted provisions from the national model legislation relating to mass, dimension and loading of heavy vehicles. The mass of a vehicle, its dimensions and the way in which its load is restrained are critical factors in determining its safety. Poor loading and over-mass and over-dimensional vehicles have contributed to a number of crashes and pose a significant risk to the community.

It is believed that the exclusion of the Criminal Code, section 24, for certain mass, dimension and loading offences is justified on the basis of the need to ensure that all relevant parties act with due diligence and care by taking proactive steps to ensure that these offences are not committed. This justification is similar to that provided above in relation to the heavy vehicle driver fatigue reforms. Due to the risk that non complying heavy vehicles may pose to the community, it is appropriate that the 'honest and reasonable but mistaken belief' defence be excluded in relation to the following offences: -

- an offence committed by a driver who drives a vehicle that fails to comply with mass, dimension or loading requirements (under the regulation), and for a person in the chain of responsibility for the driver (under section 57B of the Act);
- an offence committed by a consignor, operator or driver in relation to the failure to comply with container weight declaration provisions under the regulation; and
- an offence committed by specified parties in the chain of responsibility who commit an offence in relation to the provision of false or misleading information in transport documentation relating to the mass, dimension or loading of any goods that are being transported (under sections 53B and 53C of the Act).

However, fundamental legislative principles have been taken into account, as persons charged with these offences will have access to the reasonable steps defence as explained above under the heavy vehicle driver fatigue section.

Reversing onus of proof (section 4(3)(d) Legislative Standards Act 1992)

The amendment to the definition of "influencing person" in section 57AB and the amendments to the definitions of “accreditation record requirement” and “fatigue management requirement” in schedule 4 of the *Transport Operations (Road Use Management) Act 1995* raise the

fundamental legislative principle that legislation should not reverse the onus of proof in criminal proceedings without adequate justification. Under the heavy vehicle driver fatigue management legislation, operators may be granted two types of accreditation – a Basic Fatigue Management accreditation or an Advanced Fatigue Management accreditation. Heavy vehicle drivers for the operators of the holders of these accreditations will be accorded more flexible driving hours than under the "standard hours" as set out in the legislation. In order to be granted such accreditations, operators must demonstrate that their business practices adequately manage fatigue risks and otherwise comply with the relevant operating standards. The legislation also allows the chief executive to grant an exemption to allow drivers to operate under different maximum periods of work and minimum periods of rest than would otherwise apply under the legislation.

The effect of the amendment to the definition in section 57AB, and the definitions of "accreditation record requirements" and "fatigue management requirement" is that a failure by the person in control of a heavy vehicle to carry a copy of the relevant Basic Fatigue Management accreditation documents or exemption notice (as applicable) is an extended liability offence as defined in section 57AB of the Act. This means that under section 57B, if the driver fails to carry these documents, then an influencing person is taken to have committed the offence unless the influencing person establishes the reasonable steps defence, or they were not in a position to influence the conduct of the driver.

The "influencing person" in relation to the failure to carry Basic Fatigue Management documents will be the owner, the registered operator and any other person who controls or directly influences the operation of the heavy vehicle, such as the operator of the vehicle. This brings the treatment of the failure to carry Basic Fatigue Management documents into line with what already applies in relation to the failure to carry Advanced Fatigue Management accreditation documents. As regards the failure to carry an exemption notice, an "influencing person" will also include an employer since the exemption is granted to the employer for utilisation by drivers covered by the terms of the exemption. For this reason the employer is clearly in a position to direct whether or not the driver carries the exemption notice, and it is appropriate that they be held liable (subject to the reasonable steps defence) for a driver failing to carry the notice.

It is vital that these documents be carried by drivers to ensure enforcement officers can determine which work and rest hour requirements apply to

those drivers. Making these offences extended liability offences will prevent influencing persons from exerting pressure on drivers to cause them not to have any record of the work and rest hours which apply. This could be used as an attempt to breach heavy vehicle operating requirements in a way that is unable to be detected by authorised officers. Those "influencing persons" in relation to each of these offences are those people in a unique position to be able to influence whether or not the driver carries these documents.

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

The potential breach of the fundamental legislative principle is considered to be justified as these amendments are important measures to ensure people in the chain of responsibility take responsibility for their actions in so far as they contribute to breaches of these important document carrying requirements.

Criminal history checking

The amendments to the *Tow Truck Act 1973* and the *Transport Operations (Road Use Management) Act 1995* relating to criminal history checking may potentially breach the principle that legislation should have sufficient regard to the rights and liberties of individuals. It is important to note that both Acts already permit the undertaking of criminal history checks (see sections 6(2) and 17B respectively) and the primary purpose of the amendments is address a number of deficiencies in those existing powers.

The power to undertake criminal history checks on applicants for and holders of approvals under those Acts is essential to ensure that only appropriate people are authorised by Queensland Transport to perform specific industry roles. These people conduct business with members of the community and are involved in determinations of some considerable significance.

The amendments will ensure that criminal history checks can be conducted on executive officers of corporations that apply for the grant or renewal of an approval to operate a tow truck licence or to act as a Q-Ride Registered Service Provider or Approved Inspection Station. Checks can already be conducted on 'applicants' for these approvals.

While the *Tow Truck Act 1973* specifically provides that, where the applicant is a corporation, checks can be conducted on executive officers of that corporation, the *Transport Operations (Road Use Management) Act 1995* does not. It is believed that specifically providing that checks can be conducted on executive officers of a corporate applicant under the *Transport Operations (Road Use Management) Act 1995* is simply clarifying the existing policy position, previously approved by Parliament, that checks can be conducted on 'applicants'. It would not be logical to apply the legislation in a way that allowed a criminal history check to be conducted on an individual who applies, for example, for an approval to operate as a Registered Service Provider but not on the executive officers of a corporation that applied for that same approval. These amendments will remove that potential interpretation.

Amendments to the *Transport Operations (Road Use Management) Act 1995* will allow checks to be conducted on two new categories of persons – that is, officers nominated to issue Q-Ride competency declarations and 'nominees' for Approved Inspection Stations. Nominated officers are involved in the training and assessment of motorbike riders and the certification of those riders as competent to hold a motorbike licence issued by Queensland Transport. Nominees for Approved Inspection Stations are involved in certifying that vehicles meet the safety requirements of the *Transport Operations (Road Use Management) Act 1995* and can, therefore, be used on our roads. These are important road safety roles which need to be performed by only those people who will honestly and reasonably make the relevant determinations.

Approved Inspection Stations, for example, issue approximately 750,000 vehicle inspection certificates each year at a cost of between $30 and $109 per certificate. There have been past examples of inappropriate issuing of these certificates where the relevant inspections have not been properly carried out. This has been done in return for financial reward. Given the significant safety concerns that may arise from this type of behaviour, it is essential it be minimised.

Any infringement of individual rights and liberties is outweighed by the need for the government to ensure only appropriate people are granted and hold these approvals and by the benefit to the broader community from undertaking criminal history checks.

Under both the *Tow Truck Act 1973* and the *Transport Operations (Road Use Management) Act 1995* the chief executive currently has the power to initiate show cause proceedings where an approval holder has been

convicted of certain offences (see sections 21D and 19 respectively). These provisions will be extended to ensure those proceedings can also be commenced where an executive officer, nominated officer or nominee has been convicted of such offences. Before any action is taken, however, the approval holder will be given the opportunity to provide evidence as to why there should be no amendment, suspension or cancellation of their approval. In this way, the legislation strikes an appropriate balance between the rights of the approval holder and the rights of the community to be confident that only appropriate people are acting in these positions of trust.

Finally, the *Tow Truck Act 1973* currently allows the police commissioner to provide the chief executive with details of convictions for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired (see definition of 'criminal history' in Schedule 2). This applies to both individual approval holders and to the executive officers of a corporate approval holder. The current amendments will clarify that these convictions by executive officers can be taken into account when determining whether a corporation is appropriate to hold or continue to hold a tow truck licence. It is believed that this is clarifying the existing policy position, previously approved by Parliament, that such convictions can be considered as part of the chief executive's deliberations. It would be inconsistent to allow those convictions to be considered for an individual approval holder or applicant but not for the executive officers of a corporate approval holder or applicant.

Clearing obstructions from roads

The strengthening of the existing road clearance powers may potentially breach the fundamental legislative principle that legislation should have sufficient regard to the rights and liberties of individuals under the *Legislative Standards Act 1992*, section 4(3). Specifically, the following expansive aspects of the scheme may be of relevance:

- extending the powers to move and remove vehicle loads and other things that may be obstructing traffic (presently only applies to vehicles);
- extending the application of the powers to all roads;
- allowing the chief executive to, in appropriate circumstances, immediately dispose of loads and other things removed from roads (for example, where the proceeds of the sale of such things would be unlikely to cover the moving and selling expenses); and

- providing an appropriate level of protection from civil liability for persons exercising the open roads powers, or for persons assisting another person exercising such powers.

However, any such breach is justified given the extent by which our road system is now under pressure from increased car use and growing freight movement. This increased traffic movement means a resultant higher incidence of stricken vehicles, and other stationary objects on our roads. Given the dramatic impact traffic incidents and other road blockages have on traffic congestion, there is an overriding public need to be able to quickly and efficiently clear all types of obstructions from our roads and ensure the State's roads operate efficiently. This greater public interest in keeping all roads free of congestion has now reached a point that it must outweigh, where appropriate, competing considerations for the individual owner. Our road network is a valuable community asset that underpins the economic and social prosperity of the State.

Further, there are already existing powers in the *Transport Operations (Road Use Management) Act 1995*, chapter 3, part 4C, and the *Police Powers and Responsibilities Act 2000* dealing with the moving and/or removing of vehicles. In this regard, the current amendments simply expand the application of those existing legislative provisions.

Transport of dangerous goods legislation

Although some of the reforms in the Bill potentially infringe fundamental legislative principles, the need to ensure dangerous goods are transported safely in Queensland 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.

The powers of authorised officers to be incorporated into the *Transport Operations (Road Use Management) Act 1995* follow the powers introduced by the *Transport Legislation Amendment Act 2007* as part of the heavy vehicle compliance and enforcement reforms. These powers raised a number of issues relating to fundamental legislative principles. Detailed justifications for any breach of those principles were provided in the explanatory notes for the *Transport Legislation Amendment Bill 2007*. Primarily, the powers in the compliance and enforcement reforms were justified on the basis of the need to ensure the safe operation of heavy vehicles on Queensland roads. The same justifications apply to the

extension of those powers in this Bill to the transport of dangerous goods. Importantly, the safeguards that were included for powers in relation to heavy vehicles have been retained in this Bill for the powers that apply to the transport of dangerous goods by road (such as the requirement to apply to a magistrate in writing for a post-entry approval order – see amendments to sections 29A to 29C of the *Transport Operations (Road Use Management) Act 1995*.

Common law right to personal liberty and freedom of movement

The power for an authorised officer to direct a person to provide information about a vehicle, the vehicle's load or equipment, dangerous goods and the journey of the vehicle may potentially breach common law rights regarding personal liberty and freedom of movement (new section 49A of the *Transport Operations (Road Use Management) Act 1995*). Importantly, however, the provision retains a person's right to silence through the privilege against self-incrimination. In addition, the power is only used to determine if transport legislation is being complied with or to investigate an offence or suspected offence. These powers are necessary to allow transport inspectors to preserve safety on Queensland roads. They will allow inspectors to take preventative action including, for example, checking that a person is not intending to use a vehicle on a route declared to be unsafe for the transport of dangerous goods and that packaging is appropriate for the type of dangerous goods being carried.

Criminal Law (Rehabilitation of Offenders) Act 1986

Any departure from the established scheme of criminal rehabilitation requires justification. The extended definition of "criminal history" (amendment of section 160 of the *Transport Operations (Road Use Management) Act 1995* and section 452 of the *Transport Infrastructure Act 1994*) may be considered a breach of this fundamental legislative principle.

However, there is no requirement for the court to take into account a person's spent convictions or charges. It is only if the court considers those matters relevant to making an exclusion order that they may be considered. As the court is making an order for the complete exclusion of a person from the industry, it is a serious matter which could impact on the person's ability to earn their livelihood. As such, it is imperative that the court can examine a person's conduct over a lengthy period of time to see if the person has established a pattern of behaviour which necessitates the making of the order. The court will be in the best position to determine if

spent convictions and charges are relevant to the making of the order and retains discretion to ignore them if it is appropriate to do so.

Appropriate delegation of legislative power (sections 4(3)(2)(b) and 4(4)(a) Legislative Standards Act 1992)

A number of provisions in the Bill allow for matters to be determined by regulation (for example, amounts of dangerous goods to be carried in exempt or concessional loads, details of transport documentation and types of licences). This is an appropriate delegation of legislative power as the matters to be determined by regulation are administrative in nature and many of them are matters of technical detail which are determined in accordance with the 7th edition of the Code.

The definition of "participating dangerous goods jurisdiction" allows a regulation to provide that a State is not a participating dangerous goods jurisdiction. This is a provision that would only be invoked in the highly unlikely situation that the law of another jurisdiction varied so significantly from the model legislation that it could no longer be considered to be part of the national scheme legislation and therefore, its decisions, approvals and licences in relation to dangerous goods should not be recognised. In the context of national scheme legislation, declaratory regulations are common.

Evidentiary facilitations

New section 153A of the *Transport Operations (Passenger Transport) Act 1994* provides that, if in a prosecution for an offence involving the transport of dangerous goods, an authorised person gives evidence of certain matters, the court considers the authorised person's belief is reasonable and there is no evidence to the contrary, the court must accept the matter as proved. Similar provisions already exist in section 457 of the *Transport Infrastructure Act 1994* and section 157 of the *Transport Operations (Road Use Management) Act 1995*, which are amended by the Bill to update the terminology used to more closely reflect the latest definitions and terminology used in the new code.

Justification is required for relaxation of the normal rules of evidence applicable to legal proceedings. In this case, these provisions are justified because:

- the evidence is not conclusive and the defence can lead evidence in rebuttal of the authorised officer's evidence;

- the evidence provided by authorised persons and officers is of a technical nature and is likely to be non-contentious, relating to matters such as the type of dangerous goods carried in a vehicle or that the markings on a package indicated a particular attribute in relation to the dangerous goods;
- they make the detailed testing and analysis of dangerous goods unnecessary, unless there is a particular reason for believing that the goods may have been marked or labelled incorrectly; and
- they mean that dangerous goods do not have to be physically produced in court as evidence.

Reversal of the onus of proof in criminal proceedings (section 4(3)(d) Legislative Standards Act 1992)

New section 154AD of the *Transport Operations (Passenger Transport) Act 1994* potentially breaches the fundamental legislative principle that legislation should not reverse the onus of proof in criminal proceedings without adequate justification as it states that if an act was done or omitted to be done by a representative of a person within the scope of the person's representatives' actual or apparent authority then the act or omission is also taken to have been committed by the person, unless the person proves they could not by the exercise of reasonable diligence have prevented the act or omission.

This potential breach is made less objectionable as it is a defence for the person to prove that the officer exercised reasonable diligence to ensure their representative complied with the provision.

Similar executive officer liability provisions exist in the *Workplace Health and Safety Act 1995*, the *Transport Operations (Road Use Management) Act 1995* and many other Queensland Acts, including other safety-related legislation.

The Bill includes offences for the consignment of "goods too dangerous to be transported" in section 458B of the *Transport Infrastructure Act 1994* and section 161Q of the *Transport Operations (Road Use Management) Act 1995*. The persons who can be considered to be the "consignor" of the goods are contained in the definition of "consignor" in the dictionary to the Bill. This includes a person who is a loader, who may not normally be considered to be the "consignor" of the goods. The definition of "consignor" is a cascading definition and a "loader" will only be a "consignor" if no other person within the higher categories can be found for

the particular offence. In most cases, the consignor will be the person named as the consignor in transport documentation, the prime contractor for the load or the person with possession or control of the goods prior to their transport. If none of these people can be identified, then it may be appropriate to proceed against the loader in circumstances where the loader was the person who made the decision to consign the load of goods too dangerous to be transported. These provisions are based on the national model legislation.

Transport planning and coordination legislation

The amendments to the *Transport Planning and Coordination Act 1994* about active transport, active transport infrastructure or the protection of priority settings for public passenger transport services on local government roads do not breach any fundamental legislative principles.

Other legislation

The amendments to the *Anzac Day Act 1995* have been drafted with regard to the fundamental legislative principles prescribed by the *Legislative Standards Act 1992* and are considered to comply with these principles. However, the amendment to the *Workers' Compensation and Rehabilitation Act 2003* does raise a potential fundamental legislative principle in that it applies the amendment retrospectively by means of a transitional provision (part 12, clause 13). This matter is explained in more detail in the explanatory note to this clause.

The amendment to the *Building and Construction Industry (Portable Long Service Leave) Act 1991,* which prescribes a maximum amount of weekly ordinary pay used in calculating claim payments raises a fundamental legislative principle issue in that it may result in limiting the existing rights/entitlements of a few workers who make claims after the implementation date. This measure is viewed as justifiable on the basis that it is projected to impact only a very small percentage of workers registered with the scheme and is in the greater public interest as it will contribute to the viability of the scheme for all the eligible workers in the industry. The amendment also provides that the maximum amount of weekly ordinary pay is subject to annual review and is set by the Minister upon recommendation by the Authority. Although the new maximum amount is not prescribed to come before Parliament each year, the amendment prescribes criteria for making the recommendation, limiting the Authority to considering two sources, the relevant Wage Price Index and indicative industry agreements in making its recommendation.

Consultation

Maritime legislation

Maritime legislation has undertaken consultation with the Department of the Premier and Cabinet, Queensland Treasury, Queensland Police Service, Department of Justice and Attorney-General, Department of Primary Industries and Fisheries, Department of Employment and Industrial Relations, Environmental Protection Agency, Australian Shipowners Association and the Queensland branch of Shipping Australia Limited. All agencies consulted support the amendments.

Passenger transport legislation

A consultation draft of the Bill was sent to the Departments of the Premier and Cabinet, Justice and Attorney-General, Employment and Industrial Relations, Communities, the Queensland Police Service and Disability Services Queensland, TransLink and QR Limited. The consultation draft was also provided to the Queensland Law Society, Legal Aid Queensland, the Queensland Police Union, the Australian Rail, Tram and Bus Union and Australian Services Union. Queensland Transport, TransLink and QR Limited had five meetings with the public transport union organisers and union delegates. Further, the Bill was placed on Queensland Transport's website and feedback about the Bill was invited from the general community. There was no community feedback. The Queensland Law Society and Legal Aid Queensland provided a written response.

The Queensland Law Society, Legal Aid Queensland and the Queensland Police Union were opposed to providing transit officers with detention powers. Their view was that such a power should remain with police officers. As well, Legal Aid Queensland was opposed to allowing courts to issue orders to exclude individuals from using public transport. It was their view that "access to public transport [was] a fundamental right of citizenship in a modern, Western democracy". While both the Queensland Law Society and Legal Aid Queensland were opposed to the Bill, a number of their issues have been addressed in the final proposed legislation. These include defining what was meant by removing "outer garments", not allowing transit officers to take statements from detained people and making it an offence to not comply with the provisions of the legislation.

Most of the transit officer concerns with the draft consultation Bill were able to be satisfactorily addressed at the consultation meetings; for example, their concerns about liability, making the assault of a transit officer a serious offence under the Criminal Code, and the mechanism for

appointing transit officers. Other concerns such as the six-monthly training requirement and the search requirements (removing outer clothing) have been addressed in the final Bill.

The transit officer unions will not support taking a urine sample for drug testing. However, such a sample is required as it and a blood sample are the only methods that provide a conclusive result.

Another concern for transit officers was what would happen to existing officers who would not be eligible or who did not want to take on the new role. Queensland Transport and TransLink advised them that there was no plan to redeploy or retrench such people and that they would continue in their current role for the foreseeable future. However, the transit officers' greatest concern was about implementation. This concern was mostly satisfied with Queensland Transport and TransLink's commitment to establish a rigorous consultation process with their unions and nominated transit officers to work through the implementation issues.

Transport infrastructure legislation

All relevant agencies including QR Limited, QR Network Pty Ltd, the Department of Natural Resources and Water, the Department of the Premier and Cabinet, Queensland Treasury, the Department of Mines and Energy, the Department of Employment and Industrial Relations, the Department of Local Government, Sport and Recreation and the Department of Justice and Attorney-General were consulted and support the general rail matters and port authority's assets provisions in the Bill.

The Queensland Police Service have been consulted and support the amendments in relation to temporary restrictions on the use of State-controlled roads.

Transport operations and road use management legislation

All relevant Queensland Government agencies including the Department of the Premier and Cabinet, the Department of Justice and Attorney-General and the Queensland Police Service, were consulted and support the heavy vehicle provisions, the criminal history checking amendments and the amendments to enhance powers to clear obstructions from roads.

Transport of dangerous goods legislation

The National Transport Commission consulted widely with government and industry stakeholders in developing the 7th edition of the Code and the national model legislation. A draft of the 7th edition of the Code was released for public comment in 2005 with corresponding information

seminars held in all States and Territories. A regulatory impact statement was also released in 2005 with the model legislation. Queensland Transport briefed key stakeholders from the road transport industry through the Road Freight Industry Council and representatives of the rail industry of ongoing changes and the implementation of the reforms.

All relevant Queensland Government agencies were consulted and support the dangerous goods amendments.

Transport planning and coordination legislation

All relevant Queensland Government agencies including the Department of the Premier and Cabinet and the Department of Justice and Attorney-General were consulted and support the amendments to the *Transport Planning and Coordination Act 1994* and the *Transport Operations (Road Use Management) Act 1995*. The Local Government Association and the Brisbane City Council were also consulted about the proposed amendments concerning the protection of passenger transport corridors.

Other legislation

All relevant Queensland Government agencies have been consulted in relation to the Anzac Day Trust and Workers' Compensation amendments. WorkCover Queensland and Q-COMP were also consulted and support the Workers' Compensation amendments.

Consultation on the amendments to the *Building and Construction (Portable Long Service Leave) Act 1991* was undertaken with QLeave Board members who represent major industry and employer stakeholders, including the Queensland Master Builders Association, Housing Industry Association, Civil Contractors Federation, the CFMEU, AWU and CEPU Plumbing Division. All QLeave Board members agree that the continued long term viability of the Scheme must be protected and that restricting the amounts at which portable long service leave claims are paid is a necessary step to ensure the Scheme's viability.

Notes on Clauses

Part 1 Preliminary

Short Title

Clause 1 sets out the short title of the Act as the Transport and Other Legislation Amendment Act 2008.

Commencement

Clause 2 provides that part 3, division 13 commences on 1 March 2009, part 12, division 2 commences on 1 January 2009 and the following provisions of the Act commence on a day to be fixed by proclamation:

- part 2;
- part 4, division 3;
- part 5;
- part 6, other than division 2, subdivision 3 (Amendment of Security Providers Act); and
- part 11, divisions 1 and 3.

Part 2 Amendment of Acts for purposes relating to dangerous goods

Division 1 Amendment of Transport Infrastructure Act 1994

Clause 3 states that this division amends the *Transport Infrastructure Act 1994*.

Clause 4 amends section 440. Clause 4(1) omits existing sections 440(2)(a) to (h) and replaces them with new sections 440(2)(a) to (c) which

outline the circumstances when chapter 14 dealing with the transport of dangerous goods does not apply.

New section 440(2)(a) replaces existing sections 440(2)(a) and (b) which are in similar terms. These provisions deal with how chapter 14 applies to the transport of radioactive substances and explosives. In general terms, the transport of radioactive substances is regulated by the *Radiation Safety Act 1999* and the transport of explosives is regulated by the *Explosives Act 1999* and chapter 14 of the Act does not apply. However, new section 440(2)(a) clarifies that where radioactive substances or explosives are being transported with other dangerous goods, the transport must comply with relevant aspects of chapter 14 and the supporting regulations, in addition to the requirements under the *Radiation Safety Act 1999* and the *Explosives Act 1999*. This will ensure, for example, that for the purposes of calculating the aggregate quantity of dangerous goods being transported, the Act and the supporting regulations will apply to radioactive substances and explosives being transported with other dangerous goods.

New sections 440(2)(b) and (c) provide that chapter 14 does not apply to the transport of certain small quantities of particular types of dangerous goods. The types and quantities of dangerous goods to which the chapter does not apply will be further prescribed in the regulations.

Clause 4(2) inserts a new section 440(3) and (4). New section 440(3) simplifies provisions which are contained in existing sections 440(2)(d) to (h). It provides that chapter 14 does not apply to dangerous goods in a vehicle which:

- are in packaging designed for and forming part of the fuel or electrical system of the rail vehicle's propulsion or auxiliary engine (for example, diesel in a rail vehicle's fuel tank or the corrosive liquid in a rail vehicle's battery);
- are in packaging that is part of and necessary for the operation of an appliance, plant or refrigeration system forming part of or attached to the rail vehicle (for example, a fuel tank for a refrigeration system forming part of a refrigerated container being transported by rail); or
- are in equipment carried in, fitted to or installed in the rail vehicle and designed for the safety or protection of an occupant of the rail vehicle, the rail vehicle or its load (for example, fire extinguishers).

New section 440(4) provides that a requirement of the Act imposed because of chapter 14 does not apply where dangerous goods are

transported by or under the direction of an authorised person or a relevant emergency service officer to prevent a dangerous situation. The terms "relevant emergency service officer", "prevent" and "dangerous situation" all have defined meanings under the Act and amendments in the Bill. A similar provision was contained in section 10 of the *Transport Infrastructure (Dangerous Goods by Rail) Regulation 2002*, but on the advice of Parliamentary Counsel, it has been moved to the Act.

Clause 4 also deletes existing section 440(2)(c). That provision previously provided that chapter 14 did not apply to the transfer of gas to or from a rail tank vehicle or bulk container under the *Petroleum and Gas (Production and Safety) Act 2004*. The removal of existing section 440(2)(c) brings those transfers within the ambit of chapter 14. This means responsibility for regulating these types of transfers will move from the Department of Mines and Energy to Queensland Transport.

Clause 5 amends section 442. Section 442 is the main head of power provision to allow the making of a dangerous goods regulation. The amendments to section 442(1) keep it broadly similar to existing section 442(1), but they update and expand the head of power to facilitate the making of the national model regulations to support the new code, including using terminology more closely aligned with the new regulations and code.

The main new aspect of the head of power is contained in new sections 442(1A) to (1D) to clarify that the regulation can:

- recognise laws of other jurisdictions relating to transporting dangerous goods by rail, including recognising the Competent Authorities Panel ("the panel");
- require certain decisions to be referred to the panel; and
- deem certain decisions of the panel as being binding in Queensland as if the decisions were made in Queensland.

The panel is a body which facilitates nationally consistent application of the model legislation across State boundaries and provides a forum for considering important technical issues in relation to the transport of dangerous goods and the Australian Dangerous Goods Code. The panel consists of representatives from the Commonwealth, each State and Territory and several members with observer status who provide technical advice and input.

The panel considers applications from industry for a variety of administrative approvals and determinations under dangerous goods legislation and the code, such as tank design and packaging approvals. However, the panel's most important role is to consider requests for exemptions from particular requirements of the regulations and code. The panel only becomes involved where the approval, determination or exemption has implications in multiple jurisdictions or is of national significance.

The panel has been operating since 1998 and has a Queensland representative with voting rights. The panel, its decisions and their effect in Queensland are referred to in the existing regulation and the new national model regulations. The head of power provision does not seek to change the way that decisions of the panel operate in Queensland, but merely to formally reflect the panel's operations and to clarify that the regulation can recognise certain decisions of the panel as binding.

Clause 6 amends section 443. The amendments incorporate a new offence of failing to comply with a condition on which an exemption was granted. The maximum penalty is $10,125 (135 penalty units) or 6 months imprisonment. The amendments also set out the procedures for notifying applicants about the grant or refusal of exemptions.

Clause 7 amends section 444. Clause 7 amends section 444(2) to clarify that being convicted of a dangerous goods offence or of an offence against a law of another State or the Commonwealth are grounds for amending, suspending and cancelling approvals and exemptions under the *Transport Infrastructure Act 1994*. Clause 7 also inserts a new section 444(3) which provides additional grounds for amending, suspending and cancelling exemptions, as follows:

- public safety has been endangered, or is likely to be endangered because of the exemption (this ground has been included for consistency with the *Transport Operations (Road Use Management) Act 1995*);
- the chief executive considers that if he or she were dealing with an application for the exemption again, the chief executive would not be satisfied about the matters needed to grant the application (this ground is new and is based on the model legislation);
- the chief executive considers it necessary in the public interest (this ground has been included for consistency with the *Transport Operations (Road Use Management) Act 1995*).

Clause 8 amends section 449. Section 449 allows the chief executive to immediately suspend an approval or exemption in the interest of public safety for a maximum period of 56 days. The amendment clarifies that the calculation of the 56-day period commences from the day the notice under section 449 is given to the holder of the approval or exemption.

Clause 9 omits existing section 450. This offence is being replaced with a new offence in section 458B of the *Transport Infrastructure Act 1994* which only applies to a person who consigns goods too dangerous to be transported. Offences for other parties who have less culpability in relation to an offence involving goods too dangerous to transport, such as the loader, prime contractor or rail operator, will be included in the regulations.

Clause 10 omits the penalty associated with section 451(1). The relevant offence provision is contained in section 451(2).

Clause 11 omits section 452 and replaces it with a new section 452. Section 452 allows a court which convicts a person of an offence against chapter 14 to make an order prohibiting the person from involvement in the transport of dangerous goods by rail for a specified period. In making the order, the court considers factors such as the person's record in the transport of dangerous goods by rail, prior convictions, circumstances surrounding the commission of the offence and any other matters the court considers appropriate. The amendments to section 452:

- in line with the terminology used in the national model legislation, name these orders "exclusion orders";
- clarify that, in addition to offences against chapter 14, an exclusion order can be made where a person is convicted of an offence against chapter 11 of the *Transport Operations (Passenger Transport) Act 1994* which involves or relates to the transport of dangerous goods by rail (see the definition of "dangerous goods offence");
- for certainty, replace the concept of "convictions" with "criminal history" as a factor the court can consider in making an exclusion order under this section. The definition of criminal history includes certain convictions and charges. Further details about this are given under the section dealing with fundamental legislative principles;
- clarify that an exclusion order cannot prohibit a person from driving a rail vehicle (other than a rail vehicle transporting dangerous goods);

- allow the court to revoke or amend the exclusion order on application of the chief executive or the person for whom the order was made. In the latter case, there must have been a change of circumstances and the chief executive must have been given reasonable notice of the application. The chief executive is entitled to appear, be heard and give and produce evidence at the application;
- extend the definition of "involvement" in the transport of dangerous goods by rail in line with the national model legislation.

Clause 12 omits section 453 and replaces it with a new section 453. Existing section 453 allows a court convicting a person of an offence against chapter 14 to order that anything used to commit the offence or anything else the subject of the offence be forfeited to the State. The amendments make it clear that:

- the order for forfeiture can include the packaging of the dangerous goods;
- the order for forfeiture does not limit the court's power to make an order for recovery of costs under section 455;
- the order for forfeiture can be made on conviction of an offence against chapter 11 of the *Transport Operations (Passenger Transport) Act 1994* which involves or relates to the transport of dangerous goods by rail (see the definition of "dangerous goods offence").

Clause 13 amends section 455. Section 455 allows a court convicting a person of an offence about the transport of dangerous goods to order the person to pay the costs incurred by a government entity or the State in prosecuting the offence, including certain costs associated with testing, transporting, storing and disposing of dangerous goods and other evidence. The amendments to section 455:

- clarify that costs associated with investigating, as well as prosecuting the offence, are recoverable;
- clarify that costs incurred after the conviction are recoverable, including whether or not there is an order for forfeiture of the dangerous goods or other evidence under section 453;
- extend the examples of the type of costs to be recovered to also include collecting, packaging, destroying and selling dangerous goods or other evidence;

- provide for evidence to be given about costs incurred or to be incurred by way of a document signed by the chief executive of a department or the chief executive of or other person responsible for another government entity.

Clause 14 replaces section 457 with new sections 457 and 457A. New section 457 is an evidentiary aid provision which enables an authorised person to give evidence about certain matters related to the transport of dangerous goods in a prosecution for a dangerous goods offence. If a court considers the authorised person's beliefs to be reasonable and there is no evidence to the contrary, the court must accept the matter as proved. The evidence is not conclusive and the defence can lead evidence in rebuttal of the authorised person's evidence. The authorised person's evidence can relate to matters that occurred at the time the authorised person attended a situation or incident on the side of the road. The terminology used in section 457 reflects the latest definitions and terminology used in the Act, regulations and Australian Dangerous Goods Code (7th edition). The evidentiary aid provision allows an authorised person to give evidence about matters related to the transport of dangerous goods such as that particular dangerous goods were dangerous goods of a particular type or that a marking on a package indicated a particular attribute in relation to the goods contained in the package. This aid is necessary because:

- it is relevant for an authorised person to be able to give evidence about the marking and labelling of dangerous goods the person found at a particular situation or incident because the authorised person may have to take action in relation to dangerous goods based on the marking and labelling of the goods;
- it makes the detailed testing and analysis of dangerous goods unnecessary, unless there is a particular reason for believing that they may have been marked or labelled incorrectly;
- it means that dangerous goods do not have to be physically produced in court as evidence.

Clause 14 also inserts a new section 457A into the Act. Section 457A is a new evidentiary aid which allows a document signed by the chief executive about particular matters to be evidence of those matters in a prosecution for a contravention of the Act. If there is no evidence to the contrary, the court must accept the document as proof of the facts stated in it. The evidence is not conclusive and the defence can lead evidence in rebuttal. The document can contain evidence of matters such as the following:

- that a person is exempt from a requirement under section 443 of the Act;
- whether an accreditation under a dangerous goods regulation about the transport of dangerous goods is held.

Clause 15 inserts a new part 7 into chapter 14 of the Act. The new part 7 deals with goods too dangerous to be transported (new sections 458A to 458C).

Section 458A provides that provisions of the Act relating to dangerous goods also apply to goods too dangerous to be transported and that references in the Act to dangerous goods include goods too dangerous to be transported. Section 458B of the Act makes it an offence to consign goods too dangerous to be transported. However, if a person consigns those goods contrary to section 458B, then section 458A would ensure that the relevant provisions of the Act relating to dangerous goods also apply to the situation involving the transport of the goods too dangerous to be transported. For example, it would ensure that authorised officers have appropriate powers to act (such as the power to give directions to prevent a dangerous situation) and in the event of an accident or emergency involving the goods, ensure the State has powers to recover the cleanup and remediation costs.

Section 458B is similar to existing section 450 which is omitted by this Bill. Existing section 450 provides an offence for any person to transport goods prescribed under a regulation as being too dangerous to transport and provides a maximum penalty of 665 penalty units ($49,875). The Bill replaces section 450 with the offence in section 458B which only applies to a person who consigns goods too dangerous to be transported. For this offence, the consignor is the most culpable person in the transport chain. The maximum penalty for the new offence in section 458B is increased to 1320 penalty units ($99,000) or 2 years imprisonment if the offence results in death or grievous bodily harm and 665 penalty units ($49,875) or 1 year's imprisonment in any other case. Offences for other parties who have less culpability in relation to an offence involving goods too dangerous to transport, such as the loader, prime contractor or rail operator, will be included in the regulations with lower penalties.

Section 458C provides the head of power to make regulations in relation to goods too dangerous to be transported. Section 458C also contains provisions allowing a regulation to make provision about the recognition of laws of other jurisdictions including the Competent Authorities Panel.

Almost identical provisions are included in the amendments to section 442. For more information about these provisions, see the explanatory notes for amendments to section 442.

Clause 16 introduces a new s476A, which provides a new power for the chief executive, in relation to the transport of dangerous goods by rail whether within or outside Queensland, to give to a corresponding authority information about action taken by the chief executive under the Act or information obtained under the Act. This new power is considered significant for seamless cross-jurisdictional delivery of increased rail safety in Australia.

Clause 17 provides various amendments to the definitions of particular words used in the Bill, for insertion into the dictionary in schedule 6.

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

Clause 18 states that this division amends the *Transport Operations (Passenger Transport) Act 1994*.

Clause 19 sets out a new penalty for a person who ceases to be an authorised person failing to return their identity card as soon as practicable and without reasonable excuse. The penalty will be increased from a maximum of $750 (10 penalty units) to $3,000 (40 penalty units).

Clause 20 sets out a new power for authorised persons to enter a place if the authorised person reasonably believes a dangerous situation exists and it is necessary for the authorised person to 'enter to take action to deal with the dangerous situation'.

Clause 21 provides an additional basis upon which a magistrate may issue a warrant. The additional ground is contained in the national model legislation.

Clause 22 sets out a new power for authorised persons to enter or board a vehicle if the authorised person reasonably believes a dangerous situation exists and it is necessary for the authorised person to 'enter to take action to deal with the dangerous situation'. Clause 22 also increases two penalties relating to offences in connection with entering and boarding vehicles. The first relates to a person failing to obey an authorised officer's signal to stop a vehicle or not to move it in order to allow the authorised officer to enter

or board, without reasonable excuse. The second is in relation to failing to give reasonable help to an authorised person who requires help to enter or board a vehicle. The penalty for both offences will be increased from a maximum of $3,000 (40 penalty units) to a maximum of $7,500 (100 penalty units).

Clause 23 of the Bill increases two maximum penalties relating to places and vehicles.

The first is for section 124(2) ('Person who is required to give reasonable help…') which is proposed to be increased from $3,000 (40 penalty units) to $7,500 (100 penalty units) so as to align with the current section 187(3) ('Person required to give reasonable help…') of the *Transport Infrastructure Act 1994*.

The second proposed penalty increase is to section 124(4) (A person, required by an authorised person, must take the vehicle to a stated reasonable place by a stated reasonable time; and (ii) if necessary, to remain in control of the vehicle at the place for a reasonable time) so as to align with the current section 189(3) (A person must not fail: (a) to give the officer reasonable help to enter or open the rolling stock or vehicle; or (b) to bring the rolling stock or vehicle to a stated reasonable place and remain in control of the rolling stock or vehicle for a reasonable period) of the *Transport Infrastructure Act 1994*. The maximum penalty increase proposed is from $3,000 (40 penalty units) to $7,500 (100 penalty units).

Clause 24 provides that for the purpose of section 126B, 'tamper' includes an "attempt to tamper". The amendment brings section 126B in line with section 41(2) of the *Transport Operations (Road Use Management) Act 1995*.

Clause 25 adopts a purpose statement for part 3A of chapter 11. It clarifies that the purpose of part 3A is to provide 'further powers' for authorised persons in relation to the transportation of dangerous goods by rail. The clause does not limit the other powers of an authorised person under the Act or chapter 14 of the *Transport Infrastructure Act 1994*.

Clause 26 introduces a new maximum penalty for a railway operator's failure to comply, without reasonable excuse, with an authorised person's requirement to hold, or stop and hold, a rail vehicle at a stated safe place. The proposed higher penalty is $15,000 (200 penalty units), up from $9,000 (120 penalty units). This amendment will align the penalty for section 126H of the Act with the current penalty for section 188(3) of the

Transport Infrastructure Act 1994 ('Power to stop rolling stock or vehicle that may be entered or opened').

Clause 27 introduces new section 126HA. Section 126HA outlines new 'inspection' powers for an authorised person, upon entry of a place or railway vehicle for purposes relating to the transport of dangerous goods. These new powers include:

- the ability to weigh, test or measure a thing relating to a railway vehicle, or any part of a railway vehicle or equipment or load;
- the power to check for and the details of placards or other information required under a dangerous goods regulation to be displayed in a railway vehicle or any load on it;
- the power for an authorised person to access or download information required to be kept under a dangerous goods regulation, that is stored (or accessible) electronically in equipment located at the place or in a railway vehicle.

Clause 28 introduces new section 126JA which contains the power for authorised persons to make seized things inoperable (used in instances where the physical removal/relocation of the thing is not logistically possible, safe or appropriate). This could include, as per the section's note, dismantling equipment or removing a component of equipment without which the equipment is not capable of being used. This section provides that 'tamper' includes an "attempt to tamper" as for section 126B above. The section also makes it an offence to tamper with equipment made inoperable. The maximum penalty for the offence is $15,000 (200 penalty units).

Clause 29 amends the maximum penalty for section 126K(6) in accordance with current drafting style. There is no change to the intent of the provision.

Clause 30 introduces new sections 126KA, 126KB and 126KC, as detailed below.

Section 126KA provides a new power for authorised persons to bring equipment onto a rail vehicle or premises where the equipment is for the examination or processing of things to decide whether they are things that may be seized. Also, the things may be moved to another place so that the examination or processing can be carried out if it is not practicable to examine or process the things in, on or at the rail vehicle or premises. Further, the authorised person, or a person helping the authorised person,

may operate equipment already in, on or at the rail vehicle or premises to carry out the examination or processing of a thing found to determine if it may be seized. The authorised person must reasonably believe that the equipment is suitable for the examination or processing and that it can be carried out without damage to the equipment or thing.

The new section 126KB introduces a new power for authorised persons, or the person helping the authorised person, to operate equipment already in, on or at the rail vehicle or premises to access information in certain circumstances defined in the section. Further, if the authorised person, or the person helping the authorised person, finds that a disk, tape or other storage device is relevant to deciding whether an offence has been committed, he or she may:

- put the information in documentary form and seize the documents produced;
- copy the information to another document or thing and remove that document or thing; or
- if it is not practicable to put the information in documentary form or to copy it, seize the document or other thing and the equipment that enables the information to be accessed.

The authorised person or assistant may only operate or seize equipment if the person reasonably believes it can be done without damage to the equipment.

Section 126KC deals with the situation where an authorised person or someone else under the authorised person's authority takes action to exercise or purportedly exercise certain powers under the Act and causes damage to a vehicle, its equipment or load or premises due to the unreasonable exercise of the power or by use of unauthorised force. In those circumstances, it provides that the authorised person must take reasonable steps to return the vehicle, equipment, load or premises to the condition it was in immediately before the action was taken.

Clause 31 omits section 126N and replaces it with new sections 126N to 126NE. The powers for giving "dangerous situation notices" under sections 126N to 126NE in the Bill are similar to existing section 126N, which is omitted by the Bill.

Section 126N sets out the process for giving a "dangerous situation notice". An authorised person can give a dangerous situation notice to a person who the authorised person reasonably believes can take steps to prevent a

dangerous situation. As part of issuing a dangerous situation notice, an authorised person can require the prime contractor or consignor of dangerous goods to provide equipment or resources necessary to:

- control the dangerous situation;
- contain, control, recover or dispose of the goods that have leaked, spilled or escaped;
- recover a vehicle involved in the dangerous situation or its equipment.

Section 126NA sets out the formal requirements for matters to be included in a dangerous situation notice. Section 126NB makes it an offence not to comply with a requirement of a dangerous situation notice, unless the person has a reasonable excuse. The maximum penalty for this offence is 270 penalty units ($20,250) if the contravention results in death or grievous bodily harm or 135 penalty units ($10,125) in any other case.

Section 126NC provides that if it is not reasonable or immediately possible to give a dangerous situation notice, for example, due to the urgency of the situation, the authorised person can give a person an oral direction in place of the written notice. The oral direction must be confirmed in writing by giving a dangerous situation notice under section 126NA as soon as practicable. The oral direction stops having effect if the dangerous situation notice is not given within 5 days.

Section 126ND allows a dangerous situation notice to be withdrawn by an authorised person, by serving notice of withdrawal.

Section 126NE clarifies that the giving of, amendment or withdrawal of a dangerous situation notice does not affect any proceedings for an offence against part 3B or Chapter 14 of the *Transport Infrastructure Act 1994*.

Clause 32 inserts a new part 3C into chapter 11 of the Act. The new part 3C deals with goods too dangerous to be transported (new section 126OA). Section 126OA provides that provisions of the Act relating to dangerous goods also apply to goods too dangerous to be transported and that references in the Act to dangerous goods include goods too dangerous to be transported. The section also provides that a reference in a provision of the Act to a dangerous goods offence includes a reference to an offence against this chapter or the *Transport Infrastructure Act 1994*, chapter 14 involving or relating to goods too dangerous to be transported by rail.

Clause 33 increases the penalty for stating false or misleading information to the chief executive; from a maximum of $4,500 (60 penalty units) to a

maximum of $15,000 (200 penalty units). The penalty has been increased for consistency with section 208 of the *Transport Infrastructure Act 1994*.

Clause 34 increases the penalty for giving false, misleading or incomplete documents to the chief executive; from a maximum of $4,500 (60 penalty units) to a maximum of $15,000 (200 penalty units). The penalty has been increased for consistency with section 209 of the *Transport Infrastructure Act 1994*.

Clause 35 increases the penalty for impersonating an authorised person; from a maximum of $6,000 (80 penalty units) to a maximum of $7,500 (100 penalty units). The penalty has been increased for consistency with section 211 of the *Transport Infrastructure Act 1994*.

Clause 36 inserts section 153A into the Act. Section 153A is in the same terms as section 457 of the Transport Infrastructure Act 1994 which is outlined above.

Clause 37 inserts a new part 1A into chapter 12 with new sections 154AB and 154AD to 154AE, as detailed below.

Section 154AB states that part 1A applies to proceedings for an offence relating to the transport of dangerous goods by rail against the Act or the *Transport Infrastructure Act 1994*.

Section 154AC introduces a new special defence to a charge for a dangerous goods offence if the person charged establishes that the act or omission that was the offence was done in compliance with an authorised person's direction.

Section 154AD provides that if it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority and the representative had the state of mind. It also provides that an act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission. The section also defines, for this clause, 'representative' and 'state of mind'. This clause gives effect to the national model law. The usual Queensland version of vicarious liability (which is found in other Queensland Acts, including section 166 of the *Workplace Health and Safety Act 1995*) is used in this clause.

Section 154AE is an evidentiary provision which makes transport documentation admissible in proceedings. The documents 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. "Status" of the parties to a transaction includes their status in relation to their involvement in the transport of dangerous goods.

Clause 38 provides various amendments to the definitions of particular words used in the Bill, for insertion into the dictionary in schedule 3.

Division 3 Amendment of Transport Operations (Road Use Management) Act 1995

Clause 39 states that this division amends the *Transport Operations (Road Use Management) Act 1995*.

Clause 40 amends section 17A. Clause 40(1) clarifies that an "administrative determination" made under a dangerous goods regulation is an approval for the purposes of chapter 3 part 1A which deals with granting, renewing, refusing, amending, suspending and cancelling approvals. Clause 40(2) provides that an exemption from compliance with a provision of a dangerous goods regulation under section 153 is not an approval for the purpose of chapter 3 part 1A. Instead, the amendment, suspension and cancellation of exemptions is dealt with in new sections 153B to 153H. These specific provisions are needed for exemptions because, under the amendments in this Bill, exemptions can be given to persons or classes of persons. The amendment, suspension and cancellation provisions deal with exemptions given to person and classes of persons.

Clause 41 amends section 18 and provides the grounds upon which certain approvals related to dangerous goods can be amended, suspended or cancelled. The types of approvals will be further defined in the regulations. The grounds are based on those in the national model legislation and some grounds which already exist under the *Transport Operations (Road Use Management – Dangerous Goods) Regulation 1998* but have been moved to the Act.

Clause 42 amends section 19(6)(b). Section 19(6) allows the chief executive to immediately suspend an approval in the public interest for a maximum period of 56 days. The amendment clarifies that the calculation

of the 56-day period commences from the day the notice under section 19(6) is given to the holder of the approval.

Clause 43 inserts a new section 19C in the Act. Section 19C provides that if a person's driver licence is no longer in force (for example, if the licence is suspended or cancelled for loss of demerit points), the person's dangerous goods driver licence is automatically suspended, without the need to follow the "show cause" process in section 19. Similarly, it also provides that if a vehicle is no longer registered (for example, the registered owner failed to pay the registration renewal fee), the vehicle's dangerous goods vehicle licence is automatically suspended without the need to follow the "show cause" process in section 19. Equivalent provisions were previously located in the regulation, but have been moved to the Act (see sections 207 and 218 of the *Transport Operations (Road Use Management – Dangerous Goods) Regulation 1998*).

Clause 44 amends a cross-reference in section 26 of the Act to refer to the equivalent provision in this Bill.

Clauses 45, 46, 48 to 55, 57 to 64, 67, 68, 71 and 74 make amendments to the powers of authorised officers. These authorised officer powers were part of the national heavy vehicle compliance and enforcement reforms inserted in the Act by the *Transport Legislation Amendment Act 2007* (Act No. 43 of 2007 – see part 6, division 2). At the time those amendments were made, the authorised officer powers applied to heavy vehicles, but not the transport of dangerous goods by road (see for example, the definition of "transport Act" in sections 26A, 26B, 30A, 35A and 40A of the Act). However, it was planned to extend the authorised officer powers to the transport of dangerous goods by road when the full suite of dangerous goods reforms were implemented, as is occurring with this Bill. A detailed explanation of the authorised officer powers is included in the explanatory notes for the *Transport Legislation Amendment Bill 2007*. These explanatory notes give a brief outline of the authorised officer powers and explain how they have been extended to apply to the transport of dangerous goods by road.

Clause 45 amends section 26A. Section 26A provides power for authorised officers to enter a place of business of a responsible person for a heavy vehicle during business hours without a warrant or consent if the authorised officer has a defined suspicion or belief and suspicion about documents, devices or evidence which may be found at the place. The amendments to section 26A provide that the same power applies to a place of business of a person involved in the transport of dangerous goods. "Involvement in the

transport of dangerous goods" is a defined term in the Bill. The safeguards and limitations built into section 26A have been retained.

Clause 46 amends section 26B which provides power for authorised officers to enter a place at any time without a warrant or consent if certain conditions are met. The amendments to section 26B provide that the same power applies where:

- an incident involving death or injury to a person or damage to property involves or may have involved a prescribed dangerous goods vehicle or the transport of dangerous goods; and
- the incident may have involved an offence against a transport Act; and
- there is a connection between the place being entered and a prescribed dangerous vehicle or the transport of dangerous goods; and
- there may be evidence of the offence at the place that may be concealed or destroyed unless the place is immediately entered and searched.

The amendments also define the circumstances in which there is a connection between the place and a prescribed dangerous vehicle or the transport of dangerous goods. The safeguards and limitations built into section 26B have been retained including the safeguard that the entry must be authorised by a police officer of at least the rank of inspector.

Clause 47 amends section 28 regarding obtaining warrants for entering places from magistrates. The amendment provides an additional basis upon which a magistrate may issue a warrant. The additional ground is contained in the national model legislation.

Clause 48 omits the words "heavy vehicle" from "heavy vehicle evidence preservation powers" in sections 29A to 29C. The defined term "heavy vehicle evidence preservation powers" has been changed to "evidence preservation powers" in the dictionary in recognition of the fact that the powers have been extended from heavy vehicles to apply to prescribed dangerous goods vehicles and the transport of dangerous goods. This means that the safeguard requiring an authorised officer to obtain a post-entry approval order under sections 29A to 29C after exercising evidence preservation powers will also apply to situations involving prescribed dangerous goods vehicles and the transport of dangerous goods.

Clause 49 amends section 30. Section 30(3) makes it an offence for a person to fail to comply with a requirement by an authorised officer to give the authorised officer reasonable help to exercise powers under section 30

unless the person has a reasonable excuse. The standard penalty for the offence is 60 penalty units, but a higher penalty of 80 penalty units applies if the power relates to a heavy vehicle. The amendment in clause 49(1) ensures that the higher penalty of 80 penalty units also applies to prescribed dangerous goods vehicles and the transport of dangerous goods.

Sections 30(5) and (6) provide that in order to decide if something found at a place may be seized, the authorised officer may move the thing to another place if it is not practicable to exercise a power under section 30(2) at the place where it is found or if the occupier of the place where it is found consents in writing. At present, section 30(5) only applies in relation to powers being exercised in relation to heavy vehicles under section 30(2). The amendment in clause 49(2) extends this to the exercise of powers under section 30(2) in relation to the transport of dangerous goods and prescribed dangerous goods vehicles.

Clause 50 amends section 30A. Section 30A provides for the powers of an authorised officer to inspect and search a place after entering it without warrant or consent under section 26A or 26B. It also provides an offence for failing to comply with an authorised officer's requirement to give the authorised officer reasonable help to exercise their powers. Section 30A is being amended to give equivalent powers to authorised officers in relation to prescribed dangerous goods vehicles and the transport of dangerous goods as currently apply for heavy vehicles. The amendments also extend the offence to exercising powers in relation to prescribed dangerous goods vehicles and the transport of dangerous goods.

After the amendments:

- if an authorised officer enters a place because of the suspicion in section 26A(2) or (3A), then the officer only has the power to inspect and copy or take an extract from relevant documents, readouts or data;
- if an authorised officer enters a place because of the belief and suspicion in section 26A(3) or (3B) or the belief in section 26B(1), the officer has the more extensive power to search or inspect anything in the place and copy or take an extract from relevant documents, readouts or data.

Clause 51 amends section 32. Clause 51(1) is an amendment to bring the penalty reference into current drafting style. Clause 51(2) ensures that a vehicle which is suspected of carrying dangerous goods (usually because it carries a placard stating it has dangerous goods on board) can be stopped to

check that the vehicle is complying with transport legislation in the same way as a vehicle that is actually carrying dangerous goods.

Clause 52 amends section 33. Section 33 gives authorised officers the power to require a prescribed heavy vehicle to be moved to enable the officer to exercise a power under a transport Act. As the definition of "prescribed heavy vehicle" already includes a dangerous goods vehicle, there is no need to extend this section for dangerous goods vehicles. However, the amendments extend the power to vehicles which are suspected of carrying dangerous goods. The amendments also ensure that this provision applies in the same way to "prescribed dangerous goods vehicles" as it does to "heavy vehicles".

Clause 53 amends section 33A. 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 amendments to section 33A extend this provision so that it also applies to prescribed dangerous goods vehicles. The amendments also provide that the power applies if the obstruction is to an event lawfully authorised to be held on a road (for example, an authorised street parade or march) or an obstruction to a vehicle entering or leaving land adjacent to the road.

Clause 54 amends section 33B. 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 amendments to section 33B extend this provision so that the power also applies to prescribed dangerous goods vehicles.

Clause 55 amends section 33C. Section 33C provides a power to move a heavy vehicle which is unattended or broken-down on a road or road-related area, 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. The amendments to section 33C extend this provision so that it also applies to prescribed dangerous goods vehicles. For prescribed dangerous goods vehicles, the power applies not only if the vehicle is on a road or road-related area, but also the other places specified in the legislation. While a heavy vehicle is only likely to cause a risk to public safety and the environment while on a road or road-related area, a

vehicle carrying dangerous goods could present a risk to safety while stationary off the road. The amendments also provide that the power applies if the obstruction is to an event lawfully authorised to be held on a road (for example, an authorised street parade or march) or an obstruction to a vehicle entering or leaving land adjacent to the road.

Clause 56 inserts a new section 33D into the Act which applies specifically to prescribed dangerous goods vehicles. The new section 33D provides that if an authorised officer reasonably believes a prescribed dangerous goods vehicle is broken down or immobilised on a road or road-related area and it is necessary to protect persons, property or the environment, the authorised officer can give a direction to the person in control of the vehicle about carrying out repair work on the vehicle, towing the vehicle, removing dangerous goods from the vehicle and dealing with dangerous goods after their removal from the vehicle. It is an offence to fail to comply with a direction given under section 33D, unless the person has a reasonable excuse. The maximum penalty for the offence is 80 penalty units ($6,000).

Clause 57 amends section 35. Section 35 contains a safeguard that where an authorised officer (who is not a police officer) enters 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 authorised officer may only exercise powers under section 35 if authorised to do so by a police officer of at least the rank of inspector. The amendment to section 35 ensures that the same safeguard applies to prescribed dangerous goods vehicles.

Clause 58 amends section 35A. Section 35A provides additional powers to inspect and search heavy vehicles located in the places specified in the section without warrant or consent. An authorised officer may inspect the heavy vehicle to check whether it complies with a transport Act or an alternative compliance scheme. Further, the officer may 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 section 35A if authorised by a police officer of at least the rank of inspector. The amendments to section 35A extend this provision so that it also applies to prescribed dangerous goods vehicles. The

amendments also give authorised officers the power to search a prescribed dangerous goods vehicle if the vehicle was or may have been involved in a "dangerous situation" (as defined).

Clause 59 amends section 35B. Section 35B provides that an authorised officer exercising powers under section 35 or 35A to enter, inspect and search heavy vehicles may do so by operating equipment specified in section 35B. The amendments to section 35B extend this provision so that it also applies to prescribed dangerous goods vehicles.

Clause 60 amends section 35C. 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 specified circumstances. The amendments to section 35C extend this provision so that it also applies to prescribed dangerous goods vehicles.

Clause 61 amends section 38. Section 38 allows an authorised officer to give a direction to any person not to drive a heavy vehicle if the authorised officer believes the person would contravene the Act by driving the vehicle. Section 38 also provides that for a heavy vehicle, the direction may be given orally or in any other way including by way of a sign or electronic or other signal. The amendments to section 38 extend this provision so that it also applies to prescribed dangerous goods vehicles.

Clause 62 amends section 39. Section 39 allows an authorised officer to require a responsible person for a heavy vehicle to give the officer reasonable help to enable the officer to effectively exercise a power under the Act. The amendments to section 39 extend this provision so that if a power is being exercised in relation to a prescribed dangerous goods vehicle or the transport of dangerous goods, the authorised officer can require a person involved in the transport of dangerous goods for the vehicle or the goods to give the officer reasonable help to exercise the officer's powers under the Act.

Existing section 39 also provides that if a responsible person for a heavy vehicle is required to run or stop the vehicle's engine, the responsible person may use the force reasonably necessary to enter the vehicle and to run or stop the vehicle's engine. The amendments to section 39 also extend this provision so that if a person involved in the transport of dangerous goods is required to run or stop the engine of a prescribed dangerous goods vehicle, the person may use the force reasonably necessary to enter the vehicle and to run or stop the vehicle's engine.

The amendments to the penalties in section 39(3) ensure that the higher penalty that applies in relation to powers exercised for prescribed heavy vehicles also applies to powers exercised in relation to suspected dangerous goods vehicles and the transport of dangerous goods.

Clause 63 amends section 39C. Section 39C requires that a person must not interfere with any equipment on a vehicle or unload or change the position of any part of the load of a vehicle for the time reasonably necessary to enable an authorised officer to perform a function or exercise a power for which the vehicle was stopped or moved. Section 39C currently applies to:

- prescribed heavy vehicles stopped under section 32;
- prescribed heavy vehicles being moved to a place under section 33; and
- heavy vehicles being moved to a place under section 33A.
- As a result of the amendments to section 39C, it will apply to:
- vehicles stopped under section 32 (which, due to the amendments to section 32, will apply to suspected dangerous goods vehicles in addition to prescribed heavy vehicles);
- prescribed heavy vehicles and suspected dangerous goods vehicles being moved to a place under section 33; and
- heavy vehicles and prescribed dangerous goods vehicles being moved to a place under section 33A.

Clause 64 amends section 40A. Section 40A provides that an authorised officer who enters a place under sections 26A(3) or 26B 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 if a disk, tape or other device is found in a place in relation to a heavy vehicle, or in a heavy vehicle, and it contains information an authorised officer reasonably believes is relevant to decide whether a transport Act or an alternative compliance scheme has been contravened. In such a case, the information may be put in documentary form and 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 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. The amendments to section 40A extend this provision so that it also applies:

- to places entered under section 26A(3B);
- to disks, tapes and others devices found in places related to a prescribed dangerous goods vehicles or the transport of dangerous goods or in a prescribed dangerous goods vehicle.

Clause 65 amends section 45 which provides that where a thing has been seized, an authorised officer must allow the owner of the thing to inspect it or, if it is a document, to copy it. The amendment to section 45 is to make the provision consistent with the existing wording of the equivalent section 126G of the *Transport Operations (Passenger Transport) Act 1994*.

Clause 66 amends the chapter 3, part 3, division 3B heading relating to embargo notices to make it clear that the division also applies to dangerous goods.

Clause 67 amends section 46B. Section 46B provides for the issuing of an "embargo notice" prohibiting any dealing with a thing related to a heavy vehicle if an authorised officer can seize the thing under chapter 3, part 3 but the thing cannot be readily physically removed. The amendments to section 46B extend this provision so that it also applies to things related to prescribed dangerous goods vehicles or the transport of dangerous goods.

Clause 68 amends section 48A. Section 48A 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 control 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 the offence or suspected offence.

The amendments to section 48A extend the range of persons an authorised officer may require to state their personal details to also apply to persons involved in the transport of dangerous goods for offences involving prescribed dangerous goods vehicles and the transport of dangerous goods.

Clause 69 amends section 49. Section 49 deals with the power of authorised officers to require persons to produce for inspection documents issued or required to be kept under transport legislation. Section 49 does not expressly deal with the situation where a document needs to be seized. The amendments to section 49 clarify that the regulations can provide power for authorised officers to seize:

- a licence which has been cancelled or suspended;
- a licence which has ended;
- a licence which has been amended and the amendment is not recorded on the licence;
- a licence where the person who produces the licence is not the licensee;
- a licence where the person who produces the licence is disqualified by an Australian court from holding or obtaining an Australian driver licence;
- a document which purports to be a licence, but which the authorised officer reasonably believes is not a licence (for example, a "fake" licence).

The licence may, for example, be a driver licence, a dangerous goods driver licence or a dangerous goods vehicle licence. These amendments support provisions such as section 42 of the *Transport Operations (Road Use Management – Driver Licensing) Regulation 1999* and proposed provisions to be included in the remake of the dangerous goods regulation.

Clause 70 inserts a new section 49A into the Act. This new section gives an authorised officer power to give a person a direction to provide information about certain vehicles, their loads and equipment to find out if the Act is being complied with and to investigate certain offences or suspected offences. The information sought can include details about the current or intended journey of the vehicle, such as the place where the vehicle's journey starts, the intended route of the journey and the vehicle's destination. For heavy vehicles, a direction can be given to a "responsible person" for the heavy vehicle (as defined). For the transport of dangerous goods or a prescribed dangerous goods vehicle, a direction can be given to

a "person involved in the transport of dangerous goods" (as defined). In giving the direction, the authorised officer must warn the person that it is an offence to fail to give the information, unless the person has a reasonable excuse. Failure to comply with the direction without a reasonable excuse is an offence with a maximum penalty of 60 penalty units ($4,500). The section contains the safeguard that it is a reasonable excuse for an individual to fail to provide the information if giving it would tend to incriminate the person.

Clause 71 amends section 50AB. Section 50AB enables an authorised officer to require a responsible person for a heavy vehicle 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. The amendments to section 50AB extend this provision so that an authorised officer can require a person involved in the transport of dangerous goods to help the officer in the same way.

Clause 72 omits chapter 3, part 3, division 5 which contains section 50A dealing with remedial action notices. The Bill replaces "remedial action notices" with a similar administrative process known as "improvement notices" contained in new sections 161B to 161E (new chapter 5A, part 5).

Clause 73 omits chapter 3, part 4A which contains sections 51A to 51E dealing with powers of authorised officers in "dangerous situations". The powers of authorised officers in dangerous situations have been extended and are now dealt with in new sections 161F to 161N (new chapter 5A, parts 6 and 7).

Clause 74 amends section 51F. Section 51F allows authorised officers in one jurisdiction to exercise powers for heavy vehicles in another jurisdiction subject to ministerial agreement. A corresponding provision to section 51F must exist in the other jurisdiction's legislation. The amendments to section 51F extend this provision so that it also applies to the exercise of powers for prescribed dangerous goods vehicles and the transport of dangerous goods.

Clause 75 amends the penalty in section 52. The penalty is for the offence of giving false or misleading statements. The amendment ensures that the higher penalty which already applies to heavy vehicles under section 52 also applies to prescribed dangerous goods vehicles and the transport of dangerous goods. The maximum penalty is 134 penalty units or $10,050.

Clause 76 amends the penalty in section 53. The penalty is for the offence of giving false or misleading documents. The amendment ensures that the higher penalty which already applies to heavy vehicles under section 53 also applies to prescribed dangerous goods vehicles and the transport of dangerous goods. The maximum penalty is 134 penalty units or $10,050.

Clause 77 amends the penalty in section 54. The penalty is for the offence of obstructing an official. The amendment ensures that the higher penalty which already applies to heavy vehicles under section 54 also applies to prescribed dangerous goods vehicles and the transport of dangerous goods. The maximum penalty is 107 penalty units or $8,025.

Clause 78 amends section 55 to replace the maximum penalty for pretending to be an authorised officer from 107 penalty units ($8,025) to 134 penalty units ($10,050). It was intended that this penalty should have been 134 penalty units after the heavy vehicle compliance and enforcement reforms in the *Transport Legislation Amendment Act 2007* (No. 43). However, 107 penalty units was inadvertently inserted rather than 134 penalty units. This amendment corrects that error.

Clause 79 amends section 60. Section 60 facilitates the giving of certificates about particular matters as evidentiary aids in court proceedings. The amendments to section 60 extend the matters for which certificates can be given to the following:

- a specified place was or was not subject to a specified prohibition, restriction or other requirement relating to the operation or use of a dangerous goods vehicle or the transport of dangerous goods;
- a specified dangerous goods vehicle was or was not insured to cover third party personal injury or death either generally or during a specified period or in a specified situation or specified circumstances.

Clause 80 amends section 61B. Section 61B is an evidentiary provision which makes transport documentation and journey documentation admissible in proceedings relating to a heavy vehicle. The documents 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. "Status" of the parties to a transaction includes the status of the parties as a "responsible person" for a heavy vehicle (as defined). The amendments to section 61B extend the provision so that:

- transport documentation and journey documentation are admissible in proceedings relating to prescribed dangerous goods vehicles and the transport of dangerous goods; and
- "status" of the parties to a transaction involving a prescribed dangerous goods vehicle or the transport of dangerous goods includes the status of the parties as a person "involved in the transport of dangerous goods" (as defined).

Clause 81 amends section 62 which deals with the time in which proceedings for offences must be commenced. For an offence involving a heavy vehicle, proceedings must be commenced 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. The amendments to section 62 bring the time in which proceedings must commence for offences relating to dangerous goods vehicles and the transport of dangerous goods into line with those applying to heavy vehicles.

Clause 82 inserts a new part heading in chapter 5A. Chapter 5A deals with transporting dangerous goods. The new part heading creates a new part 1 in chapter 5A titled "Preliminary".

Clause 83 amends section 151.

Clause 83(1) omits the phrase "by road" from section 151(1)(a). These words are no longer needed as the definition of "transport" in relation to dangerous goods has been amended to refer to transport, or preparation for transport, "by road". The transport of dangerous goods "by rail" is dealt with in the *Transport Infrastructure Act 1994* and the *Transport Operations (Passenger Transport) Act 1994*.

Clause 83(2) omits existing section 151(2) and replaces it with a new section 151(2) which outlines the circumstances when chapter 5A dealing with the transport of dangerous goods does not apply.

New section 151(2)(a) replaces existing sections 151(2)(a) and (b) which are in similar terms. These provisions deal with how chapter 5A applies to the transport of radioactive substances and explosives. In general terms, the transport of radioactive substances is regulated by the *Radiation Safety Act 1999* and the transport of explosives is regulated by the *Explosives Act 1999* and chapter 5A does not apply. However, new section 151(2)(a) clarifies that where radioactive substances or explosives are being transported with other dangerous goods, the transport must comply with

relevant aspects of chapter 5A and the supporting regulations, in addition to the requirements under the *Radiation Safety Act 1999* and the *Explosives Act 1999*. This will ensure, for example, that for the purposes of calculating the aggregate quantity of dangerous goods being transported, the Act and supporting regulations will apply to radioactive substances and explosives being transported with other dangerous goods.

New sections 151(2)(b) and (c) provide that chapter 5A does not apply to the transport of certain small quantities of particular types of dangerous goods. The types and quantities of dangerous goods to which the chapter does not apply will be further prescribed in the regulations.

New section 151(3) provides that a requirement of the Act imposed because of chapter 5A does not apply where dangerous goods are transported by or under the direction of an authorised officer or a relevant emergency service officer to prevent a dangerous situation. The terms "relevant emergency service officer", "prevent" and "dangerous situation" all have defined meanings under the Act and amendments in the Bill. A similar provision was contained in section 10 of the *Transport Operations (Road Use Management – Dangerous Goods) Regulation 1998*, but on the advice of Parliamentary Counsel, it has been moved to the Act.

New section 151(4) simplifies provisions which are contained in existing sections 151(2)(e) to (i). It provides that chapter 5A does not apply to dangerous goods in a vehicle which:

- are in packaging designed for and forming part of the fuel or electrical system of the vehicle's propulsion or auxiliary engine (for example, petrol in a vehicle's fuel tank or the corrosive liquid in a car battery);
- are in packaging that is part of and necessary for the operation of an appliance, plant or refrigeration system forming part of or attached to the vehicle (for example, an LPG cylinder fitted to a heating appliance on a bitumen tanker);
- are in equipment carried in, fitted to or installed in the vehicle and designed for the safety or protection of an occupant of the vehicle, the vehicle or its load (for example, airbags, fire extinguishers, seatbelt pretensioning devices and self-contained breathing apparatus).

Clause 83 deletes existing section 151(2)(c). That provision previously provided that chapter 5A did not apply to the transfer of gas to or from a road tank vehicle or bulk container under the *Petroleum and Gas (Production and Safety) Act 2004*. The removal of existing section

151(2)(c) brings those transfers within the ambit of chapter 5A. This means responsibility for regulating these types of transfers will move from the Department of Mines and Energy to Queensland Transport.

Clause 83 also deletes existing section 151(2)(d). This concession is being replaced by the tools of trade concession in proposed section 151A (see below).

Clause 84 inserts a new section 151A into the Act. Section 151A includes a head of power to allow a regulation to provide for concessions for the transport of dangerous goods which will be used for private or commercial purposes, known as the "tools of trade" concession. The purpose of this concession is to allow tradespeople who use and transport small quantities of dangerous goods in the course of running their business to do so while complying with certain minimum requirements, but to be exempted from the more onerous provisions of the new regulations. The concession will apply to goods such as oxy-acetylene sets, aerosols, adhesives, paint and other small quantities of dangerous goods. The types and quantities of dangerous goods to which the “tools of trade” concession applies will be prescribed in the regulations.

Clause 84 also inserts a new part heading in chapter 5A. The new part heading creates a new part 2 in chapter 5A titled “Regulations and emergency orders”.

Clause 85 omits existing section 152 and replaces it with a new section 152. Section 152 is the main head of power provision to allow the making of a dangerous goods regulation. New section 152(1) is broadly similar to existing section 152(1), but it is being updated and expanded to facilitate the making of the national model regulations to support the new code, including using terminology more closely aligned with the new regulations and code.

The main new aspect of the head of power is contained in new sections 152(2) to (5) to clarify that the regulation can:

- recognise laws of other jurisdictions relating to transporting dangerous goods, including recognising the Competent Authorities Panel (“the panel”);
- require certain decisions to be referred to the panel; and
- deem certain decisions of the panel as being binding in Queensland as if the decisions were made in Queensland.

The panel is a body which facilitates nationally consistent application of the model legislation across State boundaries and provides a forum for considering important technical issues in relation to the transport of dangerous goods and the Australian Dangerous Goods Code. The panel consists of representatives from the Commonwealth, each State and Territory and several members with observer status who provide technical advice and input.

The panel considers applications from industry for a variety of administrative approvals and determinations under dangerous goods legislation and the code, such as tank design and packaging approvals. However, the panel's most important role is to consider requests for exemptions from particular requirements of the regulations and code. The panel only becomes involved where the approval, determination or exemption has implications in multiple jurisdictions or is of national significance.

The panel has been operating since 1998 and has a Queensland representative with voting rights. The panel, its decisions and their effect in Queensland are referred to in the existing regulations and the new national model regulations. The head of power provision does not seek to change the way that decisions of the panel operate in Queensland, but merely to formally reflect the panel's operations and to clarify that the regulation can recognise certain decisions of the panel as binding.

Clause 85 also inserts a new part heading in chapter 5A. The new part heading creates a new part 3 in chapter 5A titled “Exemptions”.

Clause 86 amends section 153. The amendments to section 153 clarify that exemptions from provisions of a dangerous goods regulation can be given to a class of persons. The *Transport Infrastructure Act 1994* already allows for exemptions to be given to a class of persons for the transport of dangerous goods by rail (see section 443 of that Act). The amendments also set out the procedures for notifying applicants about the grant or refusal of exemptions.

Clause 87 inserts new sections 153A to 153H into the Act.

Section 153A(1) provides that a person who contravenes a condition of an exemption under section 153 commits an offence. The maximum penalty for the offence is 135 penalty units or 6 months imprisonment.

Section 153A(2) deals with the interaction between section 153A(1) and section 153(3). It ensures that a person can only be charged with a single offence for the same conduct.

Sections 153B to 153H provide the grounds and procedures for amending, suspending and cancelling exemptions. These provisions are based on existing sections 444 to 449 of the *Transport Infrastructure Act 1994* and some existing provisions of Part 1A of Chapter 3 of the Act. The grounds and procedures for amending, suspending and cancelling exemptions were previously dealt with in Part 1A which apply to all approvals under the Act. However, sections 153B to 153H have been included to ensure that the provisions apply appropriately to exemptions given to individuals and classes of persons, as different procedures apply to each. The Bill amends section 17A to exclude exemptions under section 153 from the definition of "approval" in Part 1A to ensure that it no longer applies to exemptions.

Section 153B provides the grounds for amending, suspending and cancelling exemptions. This section allows exemptions to be amended, suspended or cancelled on the following grounds:

- the exemption was granted because of a document or representation that is false or misleading or obtained or made in another improper way (this ground has been carried across from section 18(1)(a) of the Act);
- the person, or 1 or more of the persons, to whom the exemption applies has contravened a condition of the exemption (this ground has been carried across from section 18(1)(b) of the Act);
- the person, or 1 or more of the persons, to whom the exemption applies has been convicted of an offence against this Act or a corresponding law that is relevant to the issue of whether the person or persons should continue to be the subject of an exemption (this ground has been carried across from section 18(1)(c)(i) of the Act);
- public safety has been endangered, or is likely to be endangered because of the exemption (this ground has been carried across from section 18(1)(g)(i) of the Act);
- the chief executive considers that if he or she were dealing with an application for the exemption again, the chief executive would not be satisfied about the matters needed to grant the application (this ground is new and is based on the model legislation);

- the chief executive considers it necessary in the public interest (this ground has been carried across from section 18(1)(k) of the Act).

Sections 153C and 153D set out the requirements for written notices that must be given to the holder of an exemption before it is amended, suspended or cancelled (these requirements are similar to those in existing section 19(1) of the Act). The notice ensures the holder of the exemption is afforded the opportunity to provide justification why the exemption should not be amended, suspended or cancelled. Section 153C deals with non-class exemptions and section 153D deals with class exemptions. The same requirements apply to both, except that for a class exemption, notification must also be published in the gazette.

Section 153E empowers the chief executive to amend, suspend or cancel an exemption after considering any written representations made within the time allowed under sections 153C or 153D (this section is similar to existing section 19(2) of the Act). The chief executive must give written notice of their decision to the holder. Section 153E(3)(c) specifies that the notice must contain details of the review and appeal rights that apply to the chief executive's decision.

Section 153F provides that the "show cause" process in sections 153C, 153D and 153E does not apply if the exemption is being amended for a formal or clerical reason, in a way that does not adversely affect anyone or in a way asked for by the holder (this is similar to existing section 19(8) of the Act).

Section 153G provides the process for the immediate suspension of an exemption on public interest grounds (this is similar to existing sections 19(6) and (7) of the Act).

Section 153H provides the process for cancelling a suspended exemption for failure to take remedial action (this is similar to existing section 19A of the Act).

Clause 87 also inserts a new part heading in chapter 5A. The new part heading creates a new part 4 in chapter 5A titled "Offences and matters relating to legal proceedings".

Clause 88 amends section 154, which creates offences for failing to hold licences required under a dangerous goods regulation for transporting dangerous goods. Clause 88(1) omits the phrase "by road" from section 154. These words are no longer needed as the definition of "transport" in relation to dangerous goods has been amended to refer to transport, or

preparation for transport, "by road". Clause 88(2) replaces "regulation" with the defined term "dangerous goods regulation". Clause 88(3) retains the maximum monetary penalty of 665 penalty units ($49,875) for an offence against sections 154(3) and (4), but also makes the offence punishable by a term of imprisonment of up to 2 years. Clause 88(4) inserts a new offence in section 154(6) for consigning dangerous goods for transport on a vehicle if the consignor knows or reasonably ought to know that the vehicle is not licensed to carry dangerous goods as required by a dangerous goods regulation. The maximum penalty for this offence is 135 penalty units ($10,125).

Clause 89 omits section 155. This offence is being replaced with a new offence in section 161Q which only applies to a person who consigns goods too dangerous to be transported. Offences for other parties who have less culpability in relation to an offence involving goods too dangerous to transport, such as the loader, prime contractor or driver, will be included in the regulations.

Clause 90 amends section 156. Clause 90(1) omits the phrase "by road" from section 156. These words are no longer needed as the definition of "transport" in relation to dangerous goods has been amended to refer to transport, or preparation for transport, "by road". Section 156(2) makes it an offence for a person involved in transporting dangerous goods to contravene the Act if the person knew, or reasonably ought to have known, that the contravention would be likely to endanger a person's safety, property or the environment. Clause 90(2) increases the penalty for the offence in section 156(2) from 665 penalty units ($49,875) to 1320 penalty units ($99,000) or 2 years imprisonment if the offence results in death or grievous bodily harm and 665 penalty units ($49,875) or 1 year's imprisonment in any other case.

Clause 91 amends section 157. Section 157 is an evidentiary aid provision which enables an authorised officer to give evidence about certain matters related to the transport of dangerous goods in a prosecution for a contravention of the Act. If a court considers the authorised officer's beliefs to be reasonable and there is no evidence to the contrary, the court must accept the matter as proved. The evidence is not conclusive and the defence can lead evidence in rebuttal of the authorised officer's evidence. The amendments to section 157 clarify that an authorised officer's evidence can relate to matters that occurred at the time the authorised officer attended a situation or incident on the side of the road. The amendments also update the terminology used to reflect the latest definitions and

terminology used in the Act, regulations and Australian Dangerous Goods Code (7th edition). The evidentiary aid provision allows an authorised officer to give evidence about matters related to the transport of dangerous goods such as that particular dangerous goods were dangerous goods of a particular type or that a marking on a package indicated a particular attribute in relation to the goods contained in the package. This aid is necessary because:

- it is relevant for an authorised officer to be able to give evidence about the marking and labelling of dangerous goods the officer found at a particular situation or incident because the authorised officer may have to take action in relation to dangerous goods based on the marking and labelling of the goods;
- it makes the detailed testing and analysis of dangerous goods unnecessary, unless there is a particular reason for believing that they may have been marked or labelled incorrectly;
- it means that dangerous goods do not have to be physically produced in court as evidence.

Clause 92 inserts a new section 157A into the Act. Section 157A is a new evidentiary aid which allows a document signed by the chief executive about particular matters to be evidence of those matters in a prosecution for a contravention of the Act. If there is no evidence to the contrary, the court must accept the document as proof of the facts stated in it. The evidence is not conclusive and the defence can lead evidence in rebuttal. The document can contain evidence of matters such as the following:

- that a person is exempt from a requirement under section 153 of the Act;
- whether a licence or accreditation under a dangerous goods regulation about the transport of dangerous goods is held.

Clause 93 amends section 158. Section 158 allows a court convicting a person of an offence about the transport of dangerous goods to order the person to pay the costs incurred by a government entity or the State in prosecuting the offence, including certain costs associated with testing, transporting, storing and disposing of dangerous goods and other evidence. The amendments to section 158:

- omit the phrase “by road”. These words are no longer needed as the definition of “transport” in relation to dangerous goods has been amended to refer to transport, or preparation for transport, “by road”;

- clarify that costs associated with investigating, as well as prosecuting the offence, are recoverable;
- clarify that costs incurred after the conviction are recoverable, including whether or not there is an order for forfeiture of the dangerous goods or other evidence under section 161;
- extend the examples of the type of costs to be recovered to also include collecting, packaging, destroying and selling dangerous goods or other evidence;
- provide for evidence to be given about costs incurred or to be incurred by way of a document signed by the chief executive of a department or the chief executive of or other person responsible for another government entity.

Clause 94 amends section 159 to omit the phrase "by road". These words are no longer needed as the definition of "transport" in relation to dangerous goods has been amended to refer to transport, or preparation for transport, "by road". The amendments update a cross-reference due to a change in numbering in the Bill. Section 159 is also relocated to chapter 5A, part 7 and renumbered as section 161O.

Clause 95 amends section 160. Section 160 allows a court which convicts a person of an offence against the Act relating to the transport of dangerous goods to make an order prohibiting the person from involvement in the transport of dangerous goods for a specified period. In making the order, the court considers factors such as the person's record in the transport of dangerous goods, prior convictions, circumstances surrounding the commission of the offence and any other matters the court considers appropriate. The amendments to section 160:

- omit the phrase "by road". These words are no longer needed as the definition of "transport" in relation to dangerous goods has been amended to refer to transport, or preparation for transport, "by road";
- in line with the terminology used in the national model legislation, name these orders "exclusion orders";
- for certainty, replace the concept of "prior convictions" with "criminal history" as a factor the court can consider in making an exclusion order under this section. The definition of criminal history includes certain convictions and charges. Further details about this are given under the section dealing with fundamental legislative principles;

- clarifies that an exclusion order cannot prohibit a person from driving a vehicle (other than a dangerous goods vehicle) or registering a vehicle;
- allow the court to revoke or amend the exclusion order on application of the chief executive or the person for whom the order was made. In the latter case, there must have been a change of circumstances and the chief executive must have been given reasonable notice of the application. The chief executive is entitled to appear, be heard and give and produce evidence at the application.

Clause 96 amends section 161. Section 161 allows a court convicting a person of an offence relating to the transport of dangerous goods to order that the goods or anything used to commit the offence be forfeited to the State, which may then be destroyed or otherwise dealt with as directed by the chief executive. The amendments make it clear that the order for forfeiture can also extend to the packaging of the goods. The amendments also clarify that an order for forfeiture does not limit the court's power to make an order for recovery of costs under section 158.

Clause 97 replaces section 162 with section 161A. Existing section 162 deals with a person who helps or attempts to help in a dangerous situation without any fee or charge and the help is given honestly and without negligence. It provides that the person does not incur civil liability for helping or attempting to help, unless the person's act or omission wholly or partly caused the dangerous situation. New section 161A is in almost identical terms to existing section 162, except that:

- references to "person" have been changed to "individual" as the purpose of the clause is to protect an individual who provides help;
- references to "dangerous situation" have been changed to "emergency or accident involving the transport of dangerous goods". This ensures that an individual does not incur civil liability for helping in an emergency or accident situation which does not meet the higher threshold needed to make it a "dangerous situation".

Clause 97 also inserts new parts 5, 6 and 7 into chapter 5A. Part 5 deals with improvement notices (sections 161B to 161E), part 6 deals with dangerous situation notices and relevant oral directions (sections 161F to 161M) and part 7 deals with other matters (section 161N to 161O).

Part 5 – Improvement notices

Sections 161B sets out the process for giving an "improvement notice" where an authorised officer reasonably believes a person has contravened, is contravening or is likely to contravene a provision of the Act about the transport of dangerous goods or a prescribed dangerous goods vehicle. The notice requires the person to remedy the contravention or likely contravention and must be complied with by the date stated in the notice. Section 161C makes it an offence for a person not to comply with an improvement notice, unless the person has a reasonable excuse. The maximum penalty for this offence is the maximum penalty for the contravention of the provision about which the notice is given. Section 161D provides for giving an improvement notice by attaching it to a vehicle. Section 161E provides for the cancellation of an improvement notice. "Improvement notices" are similar to what were previously known as "remedial action notices" under section 50A of the Act, which is omitted by the Bill.

Part 6 – Dangerous situation notices and relevant oral directions

Part 6 deals with the powers of authorised officers in dangerous situations. A “dangerous situation” is defined in the existing Act as a situation involving the transport of dangerous goods which is causing or could cause an imminent risk of death, significant injury, significant harm to the environment or significant property damage.

Section 161F(1) provides that part 6 only applies if an authorised officer reasonably believes a dangerous situation exists. Section 161F(1) was previously contained in section 51A of the Act, which is omitted by this Bill. Section 161F(2) clarifies that a power in part 6 may be exercised despite anything to the contrary in chapter 3, part 3.

Section 161G sets out the process for giving a "dangerous situation notice". An authorised officer can give a dangerous situation notice to a person who the officer reasonably believes can take steps to prevent a dangerous situation. “Prevent” has an extended meaning in the dictionary to the Bill in relation to a situation involving the transport of dangerous goods to include avert, eliminate, minimise, remove or stop. As part of issuing a dangerous situation notice, an authorised officer can require the prime contractor or consignor of dangerous goods to provide equipment or resources necessary to:

- control the dangerous situation;

- contain, control, recover or dispose of the goods that have leaked, spilled or escaped;
- recover a vehicle involved in the dangerous situation or its equipment.

Section 161H sets out the formal requirements for matters to be included in a dangerous situation notice. Section 161I makes it an offence not to comply with a requirement of a dangerous situation notice, unless the person has a reasonable excuse. The maximum penalty for this offence is 270 penalty units ($20,250) if the contravention results in death or grievous bodily harm or 135 penalty units ($10,125) in any other case.

The powers for giving "dangerous situation notices" in the Bill are similar to existing provisions related to dangerous situation notices in section 51D of the Act, which is omitted by the Bill.

Section 161J provides that if it is not reasonable or immediately possible to give a dangerous situation notice, for example, due to the urgency of the situation, the authorised officer can give a person an oral direction in place of the written notice. The oral direction must be confirmed in writing by giving a dangerous situation notice under section 161G as soon as practicable. The oral direction stops having effect if the dangerous situation notice is not given within 5 days.

Section 161K provides for the cancellation of a dangerous situation notice.

Section 161L provides powers for authorised officers to require a person to give information or produce a document that the authorised officer reasonably believes may be able to help to prevent a dangerous situation. These powers are not new, but are almost identical to existing sections 51B and 51C, which are omitted by the Bill.

Section 161M provides that the fact a dangerous situation notice has been given or cancelled has no effect on proceedings for an offence against the Act.

Part 7 – Other matters

Section 161N allows an authorised office to take direct action that the authorised officer reasonably believes is necessary to prevent a dangerous situation if:

- a person given an improvement notice or dangerous situation notice has not complied with the notice; or

- having regard to the nature of the dangerous situation, action under an improvement notice or dangerous situation notice is inappropriate to prevent the dangerous situation.

Section 161N(5) clarifies that a power in section 161N may be exercised despite anything to the contrary in chapter 3, part 3 (for example, in a dangerous situation, there would be no need to comply with the requirement in section 33B(3) that an authorised officer be qualified to drive a vehicle before moving it).

Section 161O will also sit in part 7. It has been renumbered and relocated from section 159.

Clause 98 inserts a new chapter 5AB into the Act dealing with goods too dangerous to be transported (new sections 161P to 161R).

Section 161P provides that provisions of the Act relating to dangerous goods also apply to goods too dangerous to be transported and that references in the Act to dangerous goods include goods too dangerous to be transported. Section 161Q of the Act makes it an offence to consign goods too dangerous to be transported. However, if a person consigns those goods contrary to section 161Q, then section 161P would ensure that the relevant provisions of the Act relating to dangerous goods also apply to the situation involving the transport of the goods too dangerous to be transported. For example, it would ensure that authorised officers have appropriate powers to act (such as the power to give directions to prevent a dangerous situation) and in the event of an accident or emergency involving the goods, ensure the State has powers to recover the cleanup and remediation costs.

Section 161Q is similar to existing section 155 which is omitted by this Bill. Existing section 155 provides an offence for any person to transport goods prescribed under a regulation as being too dangerous to transport and provides a maximum penalty of 665 penalty units ($49,875). The Bill replaces section 155 with the offence in section 161Q which only applies to a person who consigns goods too dangerous to be transported. For this offence, the consignor is the most culpable person in the transport chain. The maximum penalty for the new offence in section 161Q is increased to 1320 penalty units ($99,000) or 2 years imprisonment if the offence results in death or grievous bodily harm and 665 penalty units ($49,875) or 1 year's imprisonment in any other case. Offences for other parties who have less culpability in relation to an offence involving goods too dangerous to

transport, such as the loader, prime contractor or driver, will be included in the regulations with lower penalties.

Section 161R provides the head of power to make regulations in relation to goods too dangerous to be transported. Section 161R also contains provisions allowing a regulation to make provision about the recognition of laws of other jurisdictions including the Competent Authorities Panel. Almost identical provisions are included in the amendments to section 152. For more information about these provisions, see the explanatory notes for amendments to section 152.

Clause 99 amends section 164A. Section 164A allows a court finding a person guilty of an offence against a transport Act in relation to a heavy vehicle to make a commercial benefits penalty order. Such an order requires a person to pay as a fine an amount not exceeding three times the amount estimated by the court to be the gross commercial benefit received or receivable from the commission of the offence. The amendments to section 164A make commercial benefits penalty orders applicable to offences in relation to prescribed dangerous goods vehicles and the transport of dangerous goods.

Clause 100 amends section 167. Section 167 provides certain officials with protection against civil liability for actions done honestly and without negligence under a transport Act. Section 167 attaches the liability instead to the State. The amendments to section 167 extend the protection against civil liability to "relevant emergency service officers" and "persons acting under the direction or authorisation of a relevant emergency service officer". This protection is needed as "relevant emergency service officer" is a new concept introduced by this Bill.

Clause 101 amends section 168B. Section 168B provides that the chief executive or the commissioner may give anything seized or any information obtained under the Act about a contravention of the Act or a corresponding law in relation to heavy vehicles to an external public authority of any Australian jurisdiction for the purposes of law enforcement. The information may not be provided if the chief executive, commissioner or external public authority would otherwise be required to maintain confidentiality about the information under an Act. The amendments to section 168B extend this provision so that it also applies in relation to "dangerous goods matters". This is a defined term in the Bill which means matters relating to, for example, the transport of dangerous goods, prescribed dangerous goods vehicles, licences for dangerous goods vehicles, licences for involvement in the transport of dangerous goods, an

application for a licence and offences relating to the transport of dangerous goods.

Clause 102 amends section 168C. Section 168C 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 the Act in relation to a heavy vehicle. The information may not be provided if the chief executive or corresponding authority would otherwise be required to maintain confidentiality about the information under an Act. The amendments to section 168C extend this provision so that it also applies in relation to "dangerous goods matters". This is a defined term in the Bill as outlined in relation to the amendments to section 168B above.

Clause 103 amends section 168D. Section 168D provides that a contract or agreement relating to a heavy vehicle is void to the extent to which it is contrary to the Act or purports to exclude, limit or otherwise change the effect of a provision of the Act. The amendments to section 168D make it also applicable to prescribed dangerous goods vehicles and the transport of dangerous goods.

Clause 104 amends a heading in chapter 7, part 11.

Clause 105 inserts a new chapter 7, part 13 dealing with transitional provisions for this Bill (new sections 218 and 219).

New section 218 is a transitional provision relating to "remedial action notices" issued under section 50A before the commencement of the Bill, where a person had not complied with the notice before commencement. The remedial action notice is taken to be an improvement notice issued under chapter 5A, part 5.

New section 219 is a transitional provision relating to exemptions granted under section 153 before the commencement of the Bill. An exemption granted under section 153 before the commencement would have exempted a person from compliance with a requirement of the *Transport Operations (Road Use Management – Dangerous Goods) Regulation 1998*. The regulation relates to and supports the 6th edition of the Australian Dangerous Goods Code. It is intended that there will be a 12-month transitional period during which a person can comply with either the 6th or 7th editions of the Australian Dangerous Goods Code. New section 219 accommodates this by continuing exemptions issued before the commencement so far as they provide for exemption from compliance with the regulation. If a person wishes to comply with the 7th edition of the

code, they will also need to comply with the new regulations and therefore, cannot rely on any exemption granted before the commencement which relates to the old regulation. In accordance with new section 219(4), all exemptions granted before the commencement will expire no later than 31 December 2009.

Clause 106 amends schedule 3. Section 65 provides that a person whose interests are affected by a decision described in schedule 3 can ask the chief executive or commissioner to review the decision. Section 65 provides for other matters in relation to the review of and appeals against decisions, including that a person can appeal a reviewed decision to the court stated in schedule 3. The amendments to schedule 3 make certain decisions provided for in this Bill subject to the review and appeal rights in section 65. All of the decisions being inserted in schedule 3 are subject to appeal in the Magistrates Court.

Clause 107 amends schedule 4 (Dictionary) to insert new definitions for this Bill.

Part 3 Amendment of Acts for purposes relating to general rail matters

Division 1 Amendment of Anti-Discrimination Act 1991

Clause 108 states that this division amends the *Anti-Discrimination Act 1991*.

Clause 109 amends section 106A (Compulsory retirement age under legislation etc.) by replacing references to Queensland Railways, Queensland Rail's predecessor, with Queensland Rail's new incorporated name QR Limited. Section 106A allows a compulsory retirement age to apply in specified circumstances.

Division 2 Amendment of Assisted Students (Enforcement of Obligations) Act 1951

Clause 110 states that this division amends the *Assisted Students (Enforcement of Obligations) Act 1951*.

Clause 111 amends section 2 (Meaning of terms) by omitting the definition of 'chief executive'. Queensland Rail's predecessor Queensland Railways was a government department but not a public service department. The definition of chief executive was required so that the provisions of the Act applied to the chief executive of Queensland Railways as well as the chief executives of public service departments. As QR Limited is a company Government Owned Corporation, it is not appropriate for the Act to apply to QR Limited's employees.

Division 3 Amendment of Criminal Code

Clause 112 states that this division amends the Criminal Code.

Clause 113 amends section 1 (Definitions) within the definition of 'person employed in the public service' by replacing the reference to chief executive and employees of Queensland Railway with chief executive and employees of QR Limited. Queensland Railways was the predecessor of Queensland Rail. QR Limited is Queensland Rail's new incorporated name.

Division 4 Amendment of Electricity Safety Act 2002

Clause 114 states that this division amends the *Electrical Safety Act 2002*.

Clause 115 amends schedule 2 (Dictionary) within the definition of 'electricity entity' by replacing Queensland Rail with QR Network Pty Ltd. QR Network Pty Ltd is a wholly owned subsidiary of QR Limited and has taken the responsibility for electrical work on the rail network since 1 September 2008. As an interim arrangement, the regulator under the *Electricity Act 1994* has granted a special approval to QN Network Pty Ltd.

As a special approval holder under the Electricity Act 1994, QR Network Pty Ltd is an electricity entity under the *Electrical Safety Act 2002*.

Division 5 Amendment of Electricity Act 1994

Clause 116 states that this division amends the *Electricity Act 1994*.

Clause 117 amends section 20Q (Exemption for Queensland Rail) by expanding the exemptions in the section from Queensland Rail to QR Limited and QR Network Pty Ltd. Section 20Q provides exemptions to supply and sell electricity to Airtrain Citylink Limited on the Brisbane Airport Rail Link and to third party access holders on the nominated network.

The clause also expands 'nominated network' to the nominated parts of QR Limited or QR Network Pty Ltd rail transport infrastructure.

QR Limited is Queensland Rail's new incorporated name. QR Network Pty Ltd is a wholly owned subsidiary of QR Limited and QR Limited's subleases of rail corridor land were transferred to QR Network Ply Ltd. As an interim arrangement, the regulator under this Act has granted a special approval to QR Network Pty Ltd to supply and sell electricity.

Division 6 Amendment of Freedom of Information Act 1992

Clause 118 states that this division amends the *Freedom of Information Act 1992*.

Clause 119 amend schedule 2 (Application of Act to GOCs) by replacing Queensland Rail with QR Limited. Section 11A of the Act applies to GOCs listed in schedule 2. QR Limited is Queensland Rail's new incorporated name.

Division 7 Amendment of Integrated Planning Act 1997

Clause 120 states that this division amends the *Integrated Planning Act 1997*.

Clause 121 amends schedule 9 (Development that is exempt from assessment against a planning scheme), table 4, item 4 by replacing Queensland Rail with a railway manager. Under item 4, operation work performed under section 260 of the *Transport Infrastructure Act 1994* is exempt from assessment against a planning scheme. Under section 260A of the *Transport Infrastructure Act 1994*, in certain circumstances, the obligations of Queensland Rail under section 260 are transferred to the new railway manager. All obligations of QR Limited have been transferred under section 260A.

Division 8 Amendment of Judicial Review Act 1991

Clause 122 states that this division amends the *Judicial Review Act 1991*.

Clause 123 amends schedule 6 (Application of Act to GOCs) by replacing Queensland Rail with QR Limited. Under schedule 6, the application of the Act applies to transport GOCs in terms of section 486 of the *Transport Infrastructure Act 1994*. QR Limited is Queensland Rail's new incorporated name.

Division 9 Amendment of Metropolitan Water Supply and Sewerage Act 1909

Clause 124 states that this division amends the *Metropolitan Water Supply and Sewerage Act 1909*.

Clause 125 amends section 31 (Interference with railway works). Section 31 sets out obligations where water and sewerage works may interfere with property vested in Queensland Rail. The provision has been amended so that the obligations apply where water and sewerage works may interfere

with rail corridor land with certain obligations applying to the railway manager of the rail corridor land rather than Queensland Rail.

Division 10 Amendment of Mineral Resources Act 1989

Clause 126 states that this division amends the *Mineral Resources Act 1989*.

Clause 127 amends section 404A (Distance of excavation from railway works) by replacing Queensland Rail with the railway manager for the railway. Section 404A makes it an offence for a holder of a mining claim or mining lease to excavate within specified distances of a railway without the written consent of the chief executive officer of Queensland Rail. As this provision applies to all railways in Queensland, the written consent should come from the railway manager for the railway.

Clause 128 amends the schedule (Dictionary) within the definition of 'reserve' under paragraph (a)(vii)(B) by adding a note that Queensland Rail was a statutory Government Owned Corporation and is now QR Limited a company Government Owned Corporation. Under paragraph (a)(vii), reserve means land that is vested in a specified person or entity. While an entity may change its name, the land was vested to the entity as known at the time of vesting. The note has been added to provide clarity.

Division 11 Amendment of South Bank Corporation Act 1989

Clause 129 states that this division amends the *South Bank Corporation Act 1989*.

Clause 130 amends section 17 (Vesting of public lands other than roads) by replacing Queensland Rail with QR Limited. Section 17 allows Governor in Council to vest in the corporation, land owned or controlled by a public agency in the South Bank Corporation area but places limitation on freehold land owned by Queensland Rail. QR Limited is Queensland Rail's new incorporated name.

Clause 131 replaces section 38 (Continuance of railway operations). Section 38 requires South Bank Corporation in preparing approved development plans for its area, to take into account, the use as a right, of Queensland Rail to conduct railway operations on Queensland Rail's land. The section also requires the approved development to provide reasonable access to the lands for conduct of the operations of the railway.

The rail corridor within the South Bank Corporation area is Commercial Corridor land under the *Transport Infrastructure Act 1994*. Proposed paragraph (1)(a) reflects the land will remain owned by QR Limited, the new incorporated name of Queensland Rail, with the approved development plan to provide for operations of the railway manager and railway operators on QR Limited's land. Proposed paragraph (1)(b) requires the approved development plan to provide reasonable access to the land used to conduct railway operations.

Proposed subsection 38(2) in defining railway manager and railway operator for railway operations conducted on land owned by QR Limited identifies the agreements required for access to the land or the use of the railway for railway operations.

Division 12 Amendment of Transport Infrastructure Act 1994

Clause 132 states that this division amends the *Transport Infrastructure Act 1994*.

Clause 133 amends section 20 (Transport GOCs) by replacing Queensland Rail with QR Limited. QR Limited is Queensland Rail's new incorporated name. Under Section 20 a transport GOC must take into account transport infrastructure strategies in preparing a corporate plan or a statement of intent.

Clause 134 amends section 240 (Sublease of land to railway managers) by replacing Governor in Council with the Minister administering the *Land Act 1994*. Subsection 240(2) requires when acquired land in subsection 240(1) is surrendered to become unallocated State land, the land must be leased to the State under subsection 17(2) of the *Land Act 1994*. The amendment reflects an amendment of *Land Act 1994* in who leases the land.

The clause also adds a cross reference to proposed section 240AA.

Clause 135 adds new section 240AA (Interests in commercial corridor land continue after acquisition). This section will apply when part of the land of a commercial corridor land site is surrendered under section 240 to become unallocated State land and then leased to the State (represented by the Department of Transport) and subleased to a railway manager. Any interest in the commercial corridor land will continue as an interest in the railway manager's sublease.

Commercial corridor land gazetted sites often have interests in the form of leases and easements that benefit or burden the land. Under the *Land Act 1994*, when land becomes unallocated State land, except for a few exceptions, all interests are extinguished. The interests on commercial corridor land would be there for a purpose and QR Limited or a subsidiary or Queensland Transport would have to negotiate replacement interests.

With regards to interests in the land, the clause retains the status quo with the registrar of titles required to register each registered interest on the railway manager's sublease.

Clause 136 amends section 240A (Registered interests in rail corridor land) by expanding surrender of a railway manager's sublease to also include expiry or termination of the railway's sublease. When a railway manager surrenders a sublease (or lots in a sublease), under section 240A, a registered interest in the sublease (or lots in the sublease), continues as a registered interest in the State's rail perpetual lease. By also including expiry and termination, the registered interests are continued in the perpetual lease no matter which way the railway manager's sublease ends.

Clause 137 amends section 240B (Unregistered rights in rail corridor land) by expanding surrender of a railway manager's sublease to also include expiry or termination of the railway's sublease. When a railway manager surrenders a sublease (or lots in a sublease), under section 240B, an unregistered right in the sublease (or lots in the sublease), continues as an unregistered right in the State's rail perpetual lease. By also including expiry and termination, all unregistered rights are continued in the perpetual lease no matter which way the railway manager's sublease ends.

Under subsection 240B(2), the railway manager is required to give the Director General of Queensland Transport a list of unregistered rights in the sublease at least three months before the surrender of the sublease. As this probably would not be possible time wise where the sublease was

terminated, the clause requires the list of unregistered rights in the sublease to be supplied within three months of a termination of a sublease.

Clause 138 amends section 240F(Cancellation of right of access) by correcting a reference.

Clause 139 amends section 241 (Railway tunnel easements) by omitting redundant provisions and updating other provisions.

Section 241 applies to easements shown in schedule 4 of the Act. These easements contain the rail tunnels between Roma Street and Brunswick Street Railway Stations and the rail tunnels at South Brisbane.

In terms of subsection 241(4) being omitted, if Queensland Rail ceased to be the sublessee of the rail corridor land that adjoins the railway tunnel corridor, Queensland Rail must transfer the benefits of the easements to the State. Effective 1 September 2008, the sublease containing the adjoining rail corridor land was transferred from QR Limited (the new incorporated name of Queensland Rail) to QR Network Pty Ltd. As the requirements of existing subsection 241(4) had eventuated, the benefits of the easement were transferred to the State effective 1 September 2008 under subsection 241(3) being omitted. The easements were licenced to QR Network Pty Ltd as railway manager under paragraph 241(6)(a) (see clause 146 for declarations).

Subsection (2) replaces existing paragraph 241(6)(a) allowing the State to licence the easements to the railway manager.

Subsection (3) replaces existing paragraph 241(6)(b) allowing the railway manager to sublicence the easements to railway operators.

Clause 140 replaces section 248 (Queensland Rail not a common carrier) with similar section "QR Limited and wholly owned subsidiaries not common carriers". QR Limited is Queensland Rail's new incorporated name. The clause has extended not being a common carrier to wholly owned subsidiaries of QR Limited.

Clause 141 amends section 260 (Works for existing railways) by replacing Queensland Rail with QR Limited. QR Limited is Queensland Rail's new incorporated name. Section 260 applies to a railway in existence as at 1 July 1995 and still operating as a railway. It imposed specified obligations on Queensland Rail concerning neighbouring land. QR Limited has no remaining obligations under this section, see clauses 142 and 146.

Clause 142 replaces section 260A (Transfer of Obligations for existing railway to new railway manager). Section 260A applies where Queensland

Rail has obligations under section 260 and surrenders the sublease of the railway with a sublease of the railway given to a new railway manager. The new railway manager has to satisfy Queensland Rail's obligations under section 260.

QR Limited transferred its sublease of the existing railway in section 260 to QR Network Pty Ltd. The existing provisions applied only if the sublease of the railway was surrendered. The replacement provisions extend the application of the section to include the transfer of the sublease. All obligations of QR Limited under section 260 have been transferred by section 260A, see clause 146.

Clause 143 amends the heading of chapter 13 (Function of Queensland Rail) by replacing Queensland Rail with QR Limited. QR Limited is Queensland Rail's new incorporated name.

Clause 144 amends section 438 (Function) by replacing Queensland Rail with QR Limited. QR Limited is Queensland Rail's new incorporated name. Section 438 determines the function of Queensland Rail.

Clause 145 amends the heading of chapter 18 (Further transitional provisions) by adding "and declaration".

Clause 146 inserts new part 10 (Transitional Provision and declaration for Transport and Other Legislation Amendment Act (No. 1) 2008, part 3, division 12) and inserts new sections 547 to 550.

Section 547 (Declaration about particular subleases) of the *Transport Infrastructure Act 1994* provides for an amendment of sublease 701720343 between QR Limited and the Department of Transport on behalf of the State and transfers of subleases 701720343, 709548151 and 709650878 which relate to rail corridor land, to be taken to have been registered on 1 September 2008. Under section 302 of the *Land Act 1994*, upon registration the interest in the land vests in the person registered in the document. However, the registration of these documents occurred after 1 September 2008.

However, these land documents are linked to the restructure of QR Limited documentation that has an effective date is 1 September 2008, creating doubt concerning the effective date.

To remove any doubt, this section provides that for section 302 of the *Land Act 1994*, these land documents are taken to have been registered on 1 September 2008.

Section 548 (Declaration about sch 4 easements) of the *Transport Infrastructure Act 1994* provides for the transfers of the benefits of easements mentioned in scheduled 4 of the Act, to be taken to have been registered on 1 September 2008. These easements contain the rail tunnels between Roma Street and Brunswick Street Railway Stations and the rail tunnels at South Brisbane.

These easements are in freehold and are registered under the *Land Title Act 1994*. Under this Act, documents can be effective prior to registration in the Titles Office.

As the easements transfer documents are linked to the restructure of QR Limited documentation that mentions 1 September 2008 as the transfer date, the transfers could be considered effective from 1 September 2008.

However, the transfer of sublease 701720343 mentioned in section 547, triggered the requirement under subsection 241(4) of the *Transport Infrastructure Act 1994* for QR Limited to transfer the benefit of the easements to the State. In terms of section 302 of the *Land Act 1994* the transfer of the sublease is not effective until registered. This requirement brings into doubt whether the transfers of the easements can be effective prior to the effective date of transfer of the sublease that triggered the requirement for the easements to be transferred.

To remove any doubt, this section provides that for section 62 of the *Land Title Act 1994*, these transfers of easements are taken to have been registered on 1 September 2008.

Section 549 (Exercise of power under s 241) is a transitional provisions continuing the affect of section 241 before the amendment by clause 139, for transactions that occurred before clause 139 commenced.

Section 550 (Section 260A applies in relation to transfer of sublease 701720343) applies to section 260A as amended by clause 142 as if it was in force on 1 September 2008 in relation to the transfer of sublease 701720343 from QR Limited to QR Network Pty Ltd.

Before the sublease was transferred, QR Network Pty Ltd entered into an agreement with the State, giving an undertaking to assume all obligations of QR Limited under sublease 701720343. By letter QR Network Pty Ltd has agreed from 1 September 2008 to satisfy QR Limited obligations with respect to works for existing railways pursuant to section 260 of the Transport Infrastructure Act 1994.

Clause 147 amends schedule 6 (Dictionary) by inserting definitions of QR Limited, QR Network Pty Ltd and registrar of titles.

Non-rail corridor land in part means land that is subleased to the State in perpetuity that was rail corridor land for which the sublease previously granted to a railway has been surrendered. The clause amends the definition of non-rail corridor land by expanding the definition to also include expiry or termination of the sublease.

Division 13 Amendment of Transport Operations (Passenger Transport) Act 1994

Clause 148 states that this division amends the *Transport Operations (Passenger Transport) Act 1994*.

Clause 149 amends section 111 (Appointment of authorised persons etc.) by replacing Queensland Rail with QR Passenger Pty Ltd. Section 111 provides the power for the chief executive to appoint authorised persons. Paragraph (2)(b) allows an employee of or a contractor for a railway manager or railway operator to be appointed an authorised officer. Paragraph (2)(c) allows an employee of a contractor mentioned in paragraph (2)(b) to be appointed an authorised officer. However, subsection 111(5) restricts an authorised person appointed under paragraphs (2)(b) and (c) to use their powers only on the railway manager's or railway operator's railway. Under subsection 111(6), subsection 111(5) does not apply if Queensland Rail is the railway manager or railway operator.

The TransLink transit officers are appointed under section 111 and are employees of Queensland Rail. Subsection 111(6) allows the TransLink transit officers to be given authority to use their powers on buses and ferries within the TransLink area.

QR Passenger Pty Ltd is a wholly owned subsidiary of QR Limited and took over the operation of Citytrain and Traveltrain on 1 September 2008. However, under the *Government Owned Corporations (QR Limited Restructure) Regulation 2008*, the TransLink Transit Officers will be transferred from Queensland Rail/QR Limited to QR Passenger Pty Ltd on 1 March 2009.

Division 14 Amendment of Transport (South Bank Corporation Area Land) Act 1999

Clause 150 states that this division amends the *Transport (South Bank Corporation Area Land) Act 1999*.

Clause 151 amends section 13 (Exemption from fees and charges) by replacing Queensland Rail with QR Limited. QR Limited is Queensland Rail's new incorporated name. Section 13 exempts specified entities from fees and charges in relation to dealings with land in certain circumstances under the Act.

Division 15 Amendment of Valuation of Land Act 1944

Clause 152 states that this division amends the *Valuation of Land Act 1944*.

Clause 153 amends section 14 (Deciding unimproved value of certain land) by omitting the reference to Queensland Rail in paragraph (5)(c). The reference was included in the Act when Queensland Rail's predecessor Queensland Railways was a government department but not a public service department. As QR Limited is a company Government Owned Corporation, it is appropriate for QR Limited's land to be valued under a general provision of this section rather than under this special provision.

Part 4 Amendment of Acts for purposes relating to heavy vehicle reform

Division 1 Amendment of Transport Legislation Amendment Act 2007

Clause 154 states that this division amends the *Transport Legislation Amendment Act 2007*.

Clause 155 amends section 70 which inserts section 163(8) into the *Transport Operations (Road Use Management) Act 1995*. The amendment provides a new definition of extreme overloading offence which clarifies that the offence can apply in relation to a heavy vehicle or components of the vehicle.

Division 2 Amendment of Transport Operations (Road Use Management) Act 1995 to commence on assent

Clause 156 states that this division amends the *Transport Operations (Road Use Management) Act 1995.*

Clause 157 amends section 18(1)(j)(ii) to correct a punctuation error.

Clause 158 inserts a new section 19B (Application of sections 18 and 19A to corresponding approvals) into the Act. The purpose of this amendment is to apply the sections in the Act dealing with the amending, suspending or cancelling an approval (sections 18 to 19A) to "corresponding approvals". A corresponding approval is defined in the section to mean an approval given or granted by a corresponding authority under or in connection with a corresponding law to a transport Act and which has effect in Queensland under section 168A or 168AA.

This means for example, that if the chief executive has recognised the grant of a particular type of fatigue management accreditation in another state (under section 168A or section 168AA of the Act) then the chief executive can use sections 18 to 19A to amend, suspend or cancel this approval to the extent which this approval has effect in Queensland.

Clause 159 amends section 39J (Meaning of fatigue regulated heavy vehicle). This amendment clarifies that in relation to a combination, the gross vehicle mass of the combination is the sum of the GVMs of each vehicle forming part of the combination.

Clause 160 amends section 39K (Requiring person to rest for a contravention of maximum work requirement) to make it clear that authorised officers may only exercise their powers in relation a suspected breach of a maximum work requirement if the officer reasonably believes that the person is impaired by fatigue, or there is a risk the person may be

impaired by fatigue having regard to the nature of the contravention and how recently it happened.

Clause 161 amends section 39L (Requiring person to rest for a contravention of minimum rest requirement) to make it clear that authorised officers may only exercise their powers in relation to a suspected breach of a minimum rest requirement if the officer reasonably believes that the person is impaired by fatigue, or there is a risk the person may be impaired by fatigue having regard to the nature of the contravention and how recently it happened.

Clause 162 amends section 57AB (Definitions for sdiv2) to insert a new paragraph into the definition of "influencing person". The amendment provides that for an offence relating to a contravention of an "exemption record requirement", an "influencing person" includes the employer of the driver of the vehicle. An "exemption record requirement" is defined in schedule 4 as inserted by clause 169. In general this is a requirement for a driver to carry a copy of the exemption notice.

Clause 169 also amends the definition of "fatigue management requirement" in schedule 4 to include an "exemption record requirement". The effect of this amendment is that a failure by the person in control of a heavy vehicle to carry a copy of an exemption notice is an extended liability offence as defined in section 57AB of the Act. This means that under section 57B of the Act, if the driver fails to carry the exemption notice, then an influencing person is taken to have committed the offence unless the influencing person establishes the reasonable steps defence, or they were not in a position to influence the conduct of the driver.

Clause 163 inserts new sections 61H, 61I and 61J which are evidentiary provisions in relation to electronic work diaries.

New section 61H provides that if a device has an electronic work diary label on it which indicates that the device is, or a part of, an approved electronic recording systems and states a number purporting to be the number of a certificate of approval issued by the chief executive, then the existence of the label on the device is evidence that the device is, or is part of, an approved electronic recording system (an electronic work diary).

New section 61I provides that a document purporting to be made by an electronic work diary is admissible in a proceeding relating to a fatigue regulated heavy vehicle (in general defined to be a vehicle with GVM of more than 12 tonne) and is evidence of the matters stated in it.

New section 61J provides that a written statement about the operation of an electronic work diary purporting to be made by a person purporting to be involved with the operation of the electronic work dairy is admissible in a proceeding relating to a fatigue regulated heavy vehicle and is evidence of the matters included in the statement. The section includes examples as to the types of statements that are envisaged by the section.

Clause 164 makes a drafting amendment to the headings in chapter 6 part 2.

Clause 165 inserts new section 163E (Objective reasonableness test to be used in determining causation) to assist courts in deciding whether the actions or inactions of specified persons in the chain of responsibility caused a driver to drive while impaired by fatigue or in breach of their work/rest hours. Subsection (4) of new section 163E provides that a court may find the person caused the other person to drive in a contravening way if the court is satisfied that a reasonable person would have foreseen that the person's act or omission would be reasonably likely to cause the other person to drive the vehicle in the contravening way.

Clause 166 amends section 168A (Effect of corresponding administrative action or corresponding order in relation to heavy vehicle) to make it clear that, a decision by a corresponding authority to amend, suspend or cancel an approval the corresponding authority originally granted, has effect in Queensland as if it were a decision of the chief executive. This section states that a regulation may provide which administrative actions of a corresponding authority are to have automatic effect in Queensland. Amendments clarify that a regulation can not prescribe decisions that are mentioned in new section 168AA (1) (a) or (b). The purpose of this amendment is to ensure that decisions under section 168AA (1) do not have automatic recognition in Queensland (refer to clause 167 for an explanation as to why these decisions are not to have automatic effect in Queensland).

Clause 167 inserts new s168AA (Effect of other administrative action in relation to fatigue regulated heavy vehicle). This section applies to the grant of an Advanced Fatigue Management accreditation by a corresponding authority under a corresponding law to a fatigue management regulation and to a decision of a corresponding authority to give or grant a person an exemption under a corresponding law to a fatigue management regulation. The section provides that the chief executive may decide whether or not the decision made by the corresponding authority is to have effect in Queensland, subject to any conditions or variations of conditions that the chief executive may impose. The reason for ensuring

that these decisions do not have automatic effect in Queensland is that these decisions are not standard in nature. Therefore the chief executive must exercise discretion when determining whether it is appropriate for these decisions to apply in Queensland.

Clause 168 amends schedule 3 (Reviewable decisions) to provide that decisions under new section 168AA are reviewable decisions.

Clause 169 amends the definitions in schedule 4 (Dictionary) to support amendments made in this Bill.

In particular, the amendment made to the definition of "accreditation record requirement" will ensure that a failure by the person in control of a heavy vehicle to carry a copy of the relevant Basic Fatigue Management accreditation documents is an extended liability offence as defined in section 57AB of the Act ("accreditation record requirement" is a "fatigue management requirement" as referred to in paragraph (c) of the definition of extended liability offence in section 57AB). This means that under section 57B of the Act, if the driver fails to carry Basic Fatigue Management documents, then an influencing person is taken to have committed the offence unless the influencing person can establish the reasonable steps defence, or they were not in a position to influence the conduct of the driver.

This brings the treatment of the failure to carry Basic Fatigue Management documents into line with what already applies in relation to the failure to carry Advanced Fatigue Management accreditation documents.

Division 3 Amendment of Transport Operations (Road Use Management) Act 1995 to commence by proclamation

Clause 170 states that this division amends the *Transport Operations (Road Use Management) Act 1995.*

Clause 171 amends section 57B (Further liability provisions for extended liability offences).

The effect of this amendment is that all parties within the chain of responsibility will have access to the reasonable steps defence, irrespective of the category of the breach of a mass, dimension or loading requirement. This amendment clarifies the application of the reasonable steps defence in

light of the removal of the application of the mistake of fact defence as provided for in clause 173.

Clause 172 amends section 57G (Reliance on container weight declaration) to clarify when any person who is seeking to establish the reasonable steps defence, can not rely on the weight stated in the relevant container weight declaration. The person can not rely on the weight stated in the container weight declaration if the person knew or ought reasonably to have known that:

- the weight stated in the container weight declaration was less than the actual weight; or
- the distributed weight of the container and its contents, together with either of the following would cause a contravention of a mass requirement for the heavy vehicle:
    - the mass or location of any other load;
    - the mass of the vehicle or any part of it.

Clause 173 inserts new section 57H (Criminal Code, s 24 does not apply to particular offences). This clause provides that section 24 of the Criminal Code does not apply to a person charged with specified offences. In general the offences fall into the following categories: -

- heavy vehicle driver fatigue or mass, dimension or loading offences for which the person charged has the benefit of the reasonable steps defence. (That is, while the person charged does not have access to section 24 of the Criminal Code, they have access to the replacement reasonable steps defence) [section 57H(1)(a), (d) and (e)];
- an offence against a fatigue management regulation that may be committed by the person in control of a fatigue regulated heavy vehicle driving the vehicle while impaired by fatigue [section 57H(1)(b)]; and
- an offence against a fatigue management regulation that may be committed by a person failing to take reasonable steps to ensure another person does not drive a fatigue regulated vehicle in a contravening way [section 57H(1)(c)].

Clause 174 amends section 150C (Proceedings for particular offences involving requirements about fatigue regulated heavy vehicles) to correct a draft anomaly in the section. The amendment also ensures that a duty or obligation under another Queensland Act is included in the definition of

"corresponding obligation". This means that a party endeavouring to establish that they took reasonable steps to prevent a driver driving while fatigued is able to provide evidence that they had complied with other Queensland legislation relating to fatigue matters (such as Workplace Health and Safety legislation). This will be taken to be evidence that they had taken reasonable steps.

Clause 175 amends section 162D (Offence). The effect of this amendment is that all persons charged under this section will have access to the reasonable steps defence. This amendment clarifies the application of the reasonable steps defence in light of the removal of the application of the mistake of fact defence as provided for in clause 173.

Clause 176 amends the heading to Chapter 5B by removing the term "Severe risk" so the heading becomes "Breach of mass, dimension or loading requirement for heavy vehicle".

Clause 177 inserts new Parts into Chapter 5B. New Part 1 defines minor risk breaches for mass requirements (new section 162AA), dimension requirements (new section 162AB) and loading requirements (new section 162AC). Part 2 similarly contains definitions of substantial risk breaches for mass, dimension and loading requirements (new sections 162AD, 162AE and 162AF respectively). New section 162AE(2) and (3) provides for certain minor risk breaches to be re-categorised as substantial risk breaches in circumstances of heightened risk – for example, if the breach occurs at night or in hazardous weather conditions.

Clause 178 amends section 162A (Severe risk breach of a mass requirement) to replace 'for a heavy vehicle' with 'applying to a heavy vehicle' and to replace 'vehicle's gross mass' with 'subject of the contravention'. These amendments clarify that mass requirements can apply to a heavy vehicle and components of that heavy vehicle such as axles or tyres.

Clause 179 amends section 162B (Severe risk breach of a dimension requirement) to replace 'for a heavy vehicle' with 'applying to a heavy vehicle'. These amendments are needed for consistency with the amendments to section 162A.

Clause 180 amends section 162C (Severe risk breach of a loading requirement) to replace 'for a heavy vehicle' with 'applying to a heavy vehicle'. These amendments are needed for consistency with the amendments to section 162A.

Clause 181 inserts a new Part 4 into Chapter 5B. New section 162CA makes provision for a load that projects from a heavy vehicle in a way that is dangerous, but does not otherwise breach a mass, dimension or loading requirement, to be taken to be a contravention of a dimension requirement. Such a contravention is taken to be a minor risk breach of a dimension requirement or, if it occurs in conditions of increased danger (at night or in hazardous weather conditions), it is taken to be a substantial risk breach of a dimension requirement.

Clause 182 amends section 163A (Noncompliance with mass, dimension or loading concession) to replace 'for a heavy vehicle' with 'applying to a heavy vehicle'. This amendment is needed for consistency with the amendments to section 162A.

Clause 183 amends the Schedule 4 (Dictionary) to make a number of consequential amendments to various defined terms.

Part 5 Amendment of Acts for purposes relating to open roads

Division 1 Amendment of Transport Operations (Road Use Management) Act 1995

Clause 184 states that this division amends the *Transport Operations (Road Use Management) Act 1995.*

Clause 185 amends the heading to Chapter 3, Part 4C to read "Chief executive's powers for vehicles, loads or other things".

Clause 186 renumbers the existing Divisions 1 and 2 of Part 4C, Chapter 3 to Divisions 2 and 3. Clause 187 of this Act inserts a new Division 1 into Chapter 3, Part 4C.

Clause 187 inserts a new Division 1 into Chapter 3, Part 4C. Division 1 comprises a new section 51GAA titled "Definitions". Section 51GAA contains definitions for the following terms for the purposes of Chapter 3, Part 4C: "control", "load", "removed thing" and "used".

Clause 188 amends the heading to Chapter 3, Part 4C, Division 2 (as renumbered by clause 186) to read "Moving vehicles, loads or other things".

Clause 189 amends section 51G as presently section 51G outlines when the chief executive can move or remove vehicles on prescribed roads when they are, for example, abandoned or otherwise stationary.

Clause 189(1) replaces a reference to "vehicle" in the heading to section 51G with a reference to "vehicle, load or other thing". Clause 189(2) replaces the existing reference to "prescribed road" in section 51G with "road". Schedule 4 of the *Transport Operations (Roads Use Management) Act 1995* defines "road". Clause 189(3) replaces the existing reference to "vehicle" in section 51G(1)(a)(i) with "vehicle or load". The new section 51GAA, inserted by clause 187, provides a definition for "load". Clause 189(4) renumbers section 51G(1)(a)(ii) as section 51G(1)(a)(iii). Clause 189(5) inserts a new section 51G(1)(a)(ii) which provides that section 51G also applies if another thing that is not abandoned property is placed or comes to rest on a road. Clause 189(6) replaces the existing reference to "vehicle" in section 51G(1)(a)(iii), as renumbered by clause 189(4), with "vehicle, load or other thing". Clause 189(7) replaces the existing reference to "vehicle" in section 51G(1)(b) and (2) to (4) with "vehicle, load or other thing". Clause 189(7) does not however change any reference to "towing vehicle". Clause 189(8) makes a consequential amendment to section 51G(4).

Clause 190 makes various amendments to Chapter 3, Part 4C, Division 3, as renumbered by clause 186.

Clause 190(1) replaces the existing reference to "vehicle" in Chapter 3, Part 4C, Division 3 with "removed thing". Clause 190(1) does not however change any reference to "towing vehicle", "removed vehicle" or any reference to "vehicle" appearing in section 51J(3). The new section 51GAA, inserted by clause 187, provides a definition for "removed thing".

Clause 190(2) replaces the existing reference to “vehicle’s” in Chapter 3, Part 4C, Division 3 with “removed thing’s”. Clause 190(2) does not change any reference appearing in section 51J(3)(b).

Clause 190(3) replaces the existing reference to “prescribed road” in Chapter 3, Part 4C, Division 3 with "road". Schedule 4 of the *Transport Operations (Roads Use Management) Act 1995* defines "road".

Clause 191 makes various amendments to section 51H. The existing section 51H defines the term "moving expenses" for the purposes of Chapter 3, Part 4C, Division 3 (as renumbered by clause 3). Clause 191(1) replaces the reference to "reasonable expenses" with "actual expenses". Clause 191(2) relocates the definition of "moving expenses" to the new section 51GAA (Definitions), which is inserted by clause 4. Clause 191(3) makes a consequential amendment to delete section 51H.

Clause 192 amends section 51I (Recovering moving expenses) to insert a new subsection (3) and (4). The new subsection (3) specifies that the moving expenses claimed under subsection (1) must be reasonable. The new subsection (4) provides that a court must act on the basis that the moving expenses were reasonable if the moving expenses were incurred because of the paramount or high degree of importance given to moving or removing the removed thing on or from the road quickly as mentioned in section 51N(2)(a) (inserted by clause 197).

Clause 193 makes various amendments to section 51J (Notice to owner). Clause 193(1) amends subsection (3) to clarify that the subsection only applies in respect of a vehicle. Clause 193(2) makes a consequential amendment to section 51J(3)(b)(i)(B) so there is consistency with the change made by clause 191(1) of this Bill. Clause 193(3) inserts a new subsection (4) to provide when the chief executive need not give a notice under section 51J(1) for a removed thing other than a vehicle. The new section 51GAA, inserted by clause 187, provides a definition for "removed thing". Clause 193(5) inserts the definitions of "removed thing other than a vehicle" as used in subsection (4) and “vehicle” as used in subsection (3). These definitions clarify the treatment of a vehicle's load or anything else that may have become separated from the vehicle during the exercise of powers under part 4C of chapter 3.

Clause 194 amends section 51K (Releasing removed vehicle). Clause 194(1) amends the heading of section 51K by replacing the reference to “removed vehicle” with “removed thing”. The new section 51GAA, inserted by clause 187, provides a definition for "removed thing". Clause 194(2) inserts a new subsection (2) in section 51K that specifies that subsection (1) does not apply if the chief executive has disposed of the removed thing under section 51L or 51M (inserted by clause 196).

Clause 195 makes various amendments to section 51L (Disposing of removed vehicles). Clause 195(1) amends the heading to section 51L by replacing the reference to "removed vehicle" with "removed thing". The new section 51GAA, inserted by clause 187, provides a definition for

"removed thing". Clause 195(2) inserts a new subsection (1AA) into section 51L that specifies that section has effect subject to section 51M (inserted by clause 196). Clause 195(3) makes a consequential amendment to add a reference to the newly inserted section 51J(4).

Clause 196 inserts new section 51M, which outlines in what circumstances the chief executive may dispose of a removed thing, other than a vehicle, when and in the way the chief executive considers appropriate. Section 51M operates despite any other provision of Chapter 3, Part 4C. Clause 196(2) defines the term “removed thing other than a vehicle”.

Clause 197 creates a new Division 4 titled "Other provisions" into Chapter 3, Part 4C. The new Division 4 contains new sections 51N, 51O and 51P.

Section 51N(1) specifies that the section applies to proceedings in relation to liability for breach of duty arising out of damage to a removed thing that happens when a person exercises power, or assists another person exercising power, under this part in relation to the removed thing. The new section 51N(2) provides that the person exercising the power, or a person assisting another person exercising the power, is not civilly liable where subsection (2)(a) or (2)(b) apply. An example of a "person assisting another person exercising the power" would be the operator of a service or towing vehicle engaged to move or remove a vehicle from the road.

The new section 51O clarifies the relationship between Chapter 3, Part 4C and section 66 (Local Laws etc.). Specifically, that the powers of the chief executive under Chapter 3, Part 4C are not limited by a local law made under section 66(3). Further, that section 66(6) does not apply to the powers of the chief executive under Chapter 3, Part 4C.

The new section 51P clarifies the relationship between Chapter 3, Part 4C and section 137 (Injurious matter on roads). Section 51P specifies that the powers of the chief executive under this part are not limited by the obligation imposed on a person by section 137(2) or anything a person is doing, attempting to do or proposing to do to comply with the person’s obligations under section 137. Under section 137(2), any person who deposits or drops or causes or suffers to be deposited or dropped upon any road any matter, substance or thing referred to in section 137(1) shall immediately upon becoming aware thereof remove or cause to be removed from such road all of such matter, substance or thing, and if the person fails to do so the person shall be guilty of an offence.

Clause 198 amends section 100 (Removal of things from roads). Clause 198(1) makes a consequential amendment to the editor’s note appearing at

the end of section 100(1). Clause 198(2) inserts a new subsection (14A). The new subsection (14A) clarifies that section 100, or a local law mentioned in section 100(12), does not apply if an officer of a local government removes a vehicle, load or other thing from a road under Chapter 3, Part 4C, under a delegation from the chief executive.

Clause 199 makes consequential amendments to the Schedule 4 dictionary. Clause 199(1) inserts cross references to the definitions of the terms "control", "load", "removed thing" and "used". Clauses 199(2) and (3) make minor consequential amendments to the existing cross-reference to the definition of "moving expenses". Clause 199(4) mades a minor consequential amendment to the existing definition of "prescribed road."

Division 2 Amendment of Police Powers and Responsibilities Act 2000

Clause 200 states that this division amends the *Police Powers and Responsibilities Act 2000.*

Clause 201 amends the heading of Chapter 5 to read "Removal powers generally for vehicles or loads or things on roads".

Clause 202 amends the heading of Chapter 5, Part 1 to read "Power to seize or remove".

Clause 203 inserts a new section 124AA that contains definitions of the terms "load", "moving expenses" and "used" for Chapter 5, Part 1.

Clause 204 makes various amendments to section 124 (Removal of vehicles from roads and other places) to allow this provision to apply to a load as it does to a vehicle. In particular, the clause inserts a new subsection (2A) to allow a police officer to move a vehicle, load or other thing from a road for the safety and convenience of people using the road.

The clause amends section 124(3) to allow a driver, owner or person in control of a vehicle, load or other thing to take possession of the vehicle, load or other thing before or while it is being moved with the consent of the police officer.

Clause 205 amends section 125 (Prescribed circumstances for section 124) by omitting subsection (d) and renumbering subsection (e) as (d) and allowing the section 125 to apply to a load as it does to a vehicle.

The clause expands the existing provision to include a vehicle or load that is immobilised or otherwise stationary in circumstances where the person in control cannot be immediately located or is unwilling to move the vehicle or load. Things other than a vehicle or load which come to rest on a road are dealt with in a similar manner to a vehicle or load under this section.

The clause mirrors amendments in clause 6 as they apply to section 51G of the *Transport Operations (Road Use Management) Act 1995*.

Clause 206 amends the heading of Chapter 5, Part 2 to read "Other provisions about seizure or moving".

Clause 207 inserts a new section 125A (Recovering moving and seizure expenses in particular circumstances) to allow the commissioner to recover moving expenses where a vehicle, load or other thing has been moved for the safety and convenience of road users.

The provision provides that the expenses associated with recovery must be reasonable and that a court must act on the basis that expenses were reasonable if they are incurred due to the high degree of importance given to moving the vehicle, load or other thing from the road. This provision mirrors new section 51I to be inserted into the *Transport Operations (Road Use Management) Act 1995* by clause 9.

Clause 208 makes various amendments to section 126 (Steps after seizing vehicle) to allow the provision to apply to a load or other thing as it does to a vehicle and moving as it does to seizing.

The provision inserts new subsections (3A) and (3B) to provide for circumstances where a notice to owner does not have to be issued, including where a vehicle, load or other thing has been abandoned and the proceeds of the sale are not likely to cover the expenses incurred with moving or selling the vehicle, load or other thing or where it is impractical to give a notice.

The clause defines a 'vehicle' and 'something other than a vehicle' for that section.

Clause 209 amends the heading section 127 (Recovery of seized vehicle) to accurately reflect that the section applies to the disposal of seized vehicles. The provision expands section 127 to allow it to apply to a load and other thing as it does to a vehicle and moving as it does to seizing.

Clause 210 amends section 128 (Application of proceeds of sale) to allow it apply to a load and other things as it does to a vehicle and moving as it does to seizing.

Clause 211 inserts new sections 128A (Immediate disposal in particular circumstances) and 128B (Protection for persons exercising power under chapter 5).

The new section 128A allows for the immediate disposal of anything other than a vehicle where it has been abandoned or the costs of moving and selling are unlikely to be recovered or it is impracticable to retain the removed thing. An example of impracticable would be where gravel has been spilled on the road by a passing truck.

The clause defines the term 'something other than a vehicle' for the purposes of section 128A.

New section 128B specifies that the section applies to proceedings in relation to liability for breach of duty arising out of damage to a vehicle, load or other thing that happens when a person exercises power, or assists another person exercising power, under Chapter 5 in relation to the vehicle, load or other thing. The new section 128B(2) provides that the person exercising the power, or a person assisting another person exercising the power, is not civilly liable where subsection (2)(a) or (2)(b) apply.

Clause 212 amends section 129 (Police officer may authorize tow after seizure under any Act) to apply to a load or other thing as it applies to a vehicle.

Clause 213 makes consequential amendments to the Schedule 6 dictionary to insert cross-references to the definitions of the terms "load", "moving expenses" and "used".

Part 6 Amendment of Acts for purposes relating to transit officers

Division 1 Amendment of Transport Operations (Passenger Transport) Act 1994

Clause 214 states that this division amends the *Transport Operations (Passenger Transport) Act 1995.*

Clause 215 amends section 2 (Objectives of Act) by inserting a new section 2(3)(c) – to promote public confidence in the personal safety of persons using public passenger transport. This clause also renumbers section 2(3)(c) and (d) to section 2(3)(d) and (e). The new objective provides for the inclusion of the new parts relating to the transit officer powers and the court exclusion powers.

Clause 216 inserts a new chapter 11, part 2, division 1 heading and subdivision 1 heading. This establishes the new division 1 "Appointment" and new subdivision 1 "Appointment of authorised persons generally".

Clause 217 amends section 111 (Appointment of authorised persons etc.) To establish an 'authorised person (transit officer)' (transit officer) as another type of authorised person. The clause also establishes who can be appointed an authorised person (transit officer). The clause allows the chief executive to only appoint public service employees or employees of a railway manager or railway operator that is a Government Owned Corporation or a fully owned subsidiary of the Government Owned Corporation to be a transit officer. As well, the clause makes such appointments subject to a number of restrictions outlined in clause 7.

Clause 218 inserts new sections 111A and 111B, new subdivision headings 2 and 3 in chapter 11, part 2, division 1 and a new division 2 heading in Chapter 11, part 2. This clause sets out the requirements for appointing authorised persons and transit officers.

New section 111A (Restrictions on appointing authorised persons) outlines the requirements that the chief executive must take account before the chief executive can appoint an authorised person or a transit officer. Subsection 111A(1) states that the requirement for an authorised person is that the person has the necessary expertise or experience or the person has satisfactorily finished training approved by the chief executive. Subsection

111A(2) states that the requirements for a transit officer are that the person can be appointed as an authorised person; that the person is suitable (as set out in section 111B) and the person has satisfactorily completed the approved training.

New section 111B (When person is suitable for appointment as transit officer) sets out the criteria for determining the suitability of a person appointed as a transit officer (that is, an authorised person (transit officer)). Subsection 111B(2) precludes a person convicted of category A or category B driver disqualifying offences from ever being appointed as a transit officer. The section allows a person convicted of indictable offences that are not category A or B offences only if the convictions have expired under the *Criminal Law (Rehabilitation of Offenders) Act 1986*. The subsection also allows the chief executive to consider whether the person is of a good character and whether the person's physical and mental fitness will allow the person to perform the functions and powers of a transit officer.

Subsection 111B(3) allows for the chief executive in deciding whether a person is of good character, to consider whether the person has shown any dishonesty or lack of integrity, used harassing tactics or associates with or has associated with criminals in a way that indicates involvement in unlawful activities. However subsection 111B(4) states that subsection 111B(3) does not limit the matters which the chief executive may consider in deciding whether the person is of good character.

New subdivision 2 heading "Assessing person's suitability for appointment as transit officer" establishes the process for appointing new transit officers.

New section 111C (Application of sdiv 2) establishes the application of subdivision 2 and allows for the chief executive to make decisions relating to appointing a transit officer or revoking a transit officer's appointment. It also allows for the subdivision to apply despite anything in the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

New section 111D (Definion for sdiv 2) establishes the definition for 'relevant information' for subdivision 2. For the purposes of the subdivision, 'relevant information' about a person means information about the person mentioned in the *Police Service Administration Act 1990* schedule for police officers and applicants to become police officers or recruits.

New section 111E (Person to be advised of duties of disclosure) requires the chief executive to tell the person to be appointed as a transit officer of that person's duty under a new section 111F to disclose 'relevant

information' (as defined in new section 111D) which may affect the person's suitability to be appointed. The section also requires the chief executive to tell the person that the chief executive may under new section 111G obtain 'relevant information' about the person from the Commissioner of Police. The chief executive must also give the person guidelines for dealing with this information.

New section 111F (Transit officers must disclose relevant information and changes to relevant information) sets out the requirements for disclosure of information by transit officers and persons seeking to be appointed as transit officers if asked to do so by the chief executive. Subsection 111F(2) requires a person seeking to be appointed as a transit officer to disclose any relevant information which may affect the person's suitability to be appointed as a transit officer before the person is appointed. As well, subsection 111F(3) requires a person who is a transit officer to disclose to the chief executive any change in the relevant information about the person that affects suitability to be a transit officer. Subsection 111F(4) requires a person to use an approved form when disclosing the information and sets out what is required to be disclosed on the approved form; that is the existence of conviction or charge, when an offence was committed or alleged to have been committed, details of the offence or alleged offence and, for a conviction, whether or not the conviction was recorded and other details of the sentence.

New section 111G (Chief executive may request information from police commissioner) provides for the chief executive to request from the police commissioner a report detailing any relevant information on a person who is seeking to be a transit officer or is a transit officer. This section applies even if the disclosure does not state any relevant information about the person. Subsections 111G(4) and 111G(5) allows for the police commissioner to notify the chief executive about any change in the person's relevant information if the police commissioner reasonably suspects that the person is a transit officer.

New section 111H (Assessment of suitability) applies to the chief executive in considering the relevant information about a person when assessing whether the person is suitable to be a transit officer. Subsection 111H(2) enables the chief executive to have regard of all relevant information that is available including (but not limited to) information under new section 111F (information provided by the person), information under new section 111G (information provided by the police commissioner), information is stored on a database kept by the chief executive or a database kept by the police

commissioner, and other information known to the chief executive. Subsection 111H(3) also requires the chief executive to have regard to whether the person has complied with new section 111F when assessing the person's suitability.

New section 111I (Particular persons to be advised if person unsuitable) provides that where a person is considered unsuitable to be a transit officer or to continue to be a transit officer the chief executive must disclose the reasons for this decision. Subsection 111I(2) allows the chief executive to not disclose the reasons if the reasons may: prejudice the investigation of a contravention or possible contravention of the law; enable the existence or identity of a confidential source of information to be ascertained; endanger a person's life or physical safety; prejudice effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law; prejudice the maintenance of enforcement of a lawful method or procedure for detecting public safety; or prejudice national security; or be prohibited under law of this or any other State or the Commonwealth.

In deciding to give information, subsection 111I(3) requires the chief executive to have regard to any advice given to the chief executive by the police commissioner in relation to disclosure of information. This section also requires the chief executive to give the person a written notice stating that the person is not suitable to be, or continue to be, a transit officer. As well, subsection 111I(4) allows the person to make representations about the information to the chief executive before the chief executive makes a decision about the suitability of the person.

New section 111J (Secrecy) This section provides that any person that has been or is the chief executive, a transit officer or a person involved in the appointment of a transit officer and in that capacity has acquired relevant information about someone else must not disclose this information. Subsections 111J(2), (3) and (4) provides for a maximum penalty of 200 penalty units if the information is provided to someone else who is not involved in the appointment or any part of the process the chief executive follows in appointing a transit officer.

Further, subsection 111J(5) states that a person involved in any way in anything done under subdivision 2 cannot be compelled to produce to a court any document, kept, or disclosed to a court any information obtained by doing something under subdivision 2. However, subsection 111J(6) states that subsection 111J(5) does not limit the operation of the Judicial Review Act 1991 or section 148C (confidentiality).

New section 111K (Guidelines for dealing with relevant information) requires the chief executive to make guidelines about how the chief executive deals with information under subdivision 2. Subsection 111K(2) states that the purpose of the guidelines is to ensure: natural justice is afforded to the person about whom the information is obtained; only relevant information is used in assessing the person's suitability; and decisions about the suitability of the person, based on the information, are made in a consistent way. Subsection 111K(3) requires the chief executive to give the guidelines to a person seeking to be appointed or is appointed as a transit officer.

New subdivision 3 heading 'Requirements about training of transit officers' establishes the process for training of transit officers.

New section 111L (Requirements for course of training) outlines the elements to be included in the training course which will be developed by the chief executive and approved by the police commissioner. Under subsection 111L(2)(b) the elements are: the use of force generally; how to decide what force is reasonably necessary; how to de-escalate a situation; deciding whether to use handcuffs and the appropriate ways to use handcuffs; dealing with children and other vulnerable persons; transportation of detained persons to police officers; appropriate ways to frisk search a person. This subsection also requires the training to be comparable to the training required of a police officer. But, subsection 111L(3) states that the course of training developed by the chief executive is not limited to those matters in subsection (2)b.

New division 2 heading 'Identity requirements' establishes the identity requirements for transit officers.

Clause 219 amends section 112 (Identity cards) to include a requirement for the chief executive to issue an identity card to transit officers.

Clause 220 inserts new sections 113A and 113B, new divisions 3, 4, 5 and 6 headings and new headings in chapter 11.

New section 113A (Uniforms for transit officers) requires the chief executive to issue a uniform to each transit officer. The transit officer must, upon ceasing employment, return the uniform.

New section 113B (Transit officer must be in uniform) requires the transit officer to be in uniform to exercise the transit officer powers.

New division 3 heading 'Requirements relating to transit officers' establishes the requirements of a transit officer.

New section 113C (Transit officers must continue to have relevant skills and abilities) requires the chief executive to ensure that transit officers continue to have the necessary skills and abilities to perform their functions. Subsection 113C(2) allows for the chief executive to require a transit officer to undertake further training at any time to maintain their skills. Subsection 113C(3) sets out what the chief executive must have regard to in deciding whether training is required. These are: when the transit officer last undertook the training; whether there have been any developments in training since the last time the transit officer was trained; and the transit officer's past performance as a transit officer.

New section 113D (Transit officer must not be under the influence of alcohol or drugs) requires a transit officer to not be under the influence of alcohol or drugs while on duty. Subsection 113D(1) states that a transit officer must not be over the 'low alcohol limit' or have present in their urine evidence of a dangerous drug; evidence of a prescribed substance that cannot be lawfully taken; or evidence of having taken a prescribed substance in a way contrary to the direction of a doctor or recommendation of the manufacturer of the substance.

Subsections 113D(2) and (3) sets maximum alcohol limit at 0.02g of alcohol in 210L of breath. Subsections 113D(4) and (5) defines what is meant when a transit officer is 'on duty' and the meanings of 'dangerous drug' and 'prescribed substance' under subsection (1).

New division 4 heading 'Cessation of appointment' establishes how a transit officer ceases to be appointed.

New section 113E (When authorised person ceases to hold office) establishes the general process by which an authorised person, including a transit officer who is not a police officer, ceases to hold office.

New section 113F (Resignation) provides an authorised person, including a transit officer, to resign by signed notice given to the chief executive.

New section 113G (Revocation of appointment of transit officer) provides for the chief executive to revoke a transit officer's appointment in certain circumstances.

Subsection 113G(1)(a) and (b) lists the circumstances under which the chief executive may consider a transit officer is no longer suitable as: having had regard of matters mentioned under new section 111B (that is, their criminal history has changed; they are no longer physically or mentally fit; or they are no longer of good character); or has failed to

comply with section 111F(3) (that is, a in change their relevant information); failed to take transit officer training as required under 113C(2); failed to comply with section 113D (not being under the influence of alcohol or drug); failed to provide a specimen of breath from alcohol test or urine for a drug test to be conducted under the new section 116; or knowingly failed to comply with chapter 11, part 4A (the functions and powers of the transit officer for protecting the safety of persons or property).

Subsection 113G(2) states that subsection (1)(b)(iv) (failure to provide a specimen of alcohol for a breath test or urine for a drug test) does not apply if the transit officer has a reasonable excuse, because of a medical condition, for not providing a specimen of breath or urine. Subsection 113G(3) allows the chief executive to inform a railway manager or railway operator of the revocation if the person is an employee of the manager or operator.

New division 5 heading 'Application of other Acts to particular transit officers' establishes what other acts apply to particular transit officers.

New section 113H (Application of Crime and Misconduct Act 2001) establishes that the *Crime and Misconduct Act 2001* (Crime and Misconduct Act) applies to a transit officer who is an employee of a railway manager or railway operator that is a company Government Owned Corporation or a wholly owned subsidiary of a company Government Owned Corporation. Subsection 113H(2) also states that the Crime and Misconduct Act applies to the railway manager or railway operator in relation to the employee as if: the railway manager or railway operator were a unit of public administration; the chief executive of the railway manager or railway operator were the chief executive officer of the unit of public administration; and a prescribed person for a railway manager or railway operator were a person holding an appointment in the unit of public administration.

However, subsection 113H(3) limits the application of the Crime and Misconduct Act to a railway manager or railway operator, and prescribed persons for the railway manager or railway operator only in relation to conduct, or a conspiracy or attempt to engage in combat, of a function or exercise of the power by the employee as a transit officer under this Act. Subsection 113H(4) states that section 113H applies despite the Crime and Misconduct Act, section 20(2)(d) (an entity declared by an Act not to be a unit of public administration) and the *Government Owned Corporations*

Act 1993, section 183 (a company government Owned Corporation is not a unit of public administration under the *Crime and Misconduct Act 2001*).

New section 113I (Application of Public Sector Ethics Act 1994) establishes that the *Public Sector Ethics Act 1994* (Public Sector Ethics Act) applies to a transit officer who is an employee of a railway manager or railway operator that is a Government Owned Corporation, or a wholly owned subsidiary of the Government Owned Corporation. Subsection 113I(2) also states that the Public Sector Ethics Act applies to the railway manager or railway operator in relation to the employee as if: the railway manager or railway operator were public sector entity; the chief executive officer of the railway manager or railway operator were the chief executive officer of the public sector entity and the responsible authority for the public sector entity; and a prescribed person for the railway manager or railway operator were a public official.

However, subsection 113I(3) limits the application of the Public Sector Ethics Act to railway manager or railway operator, and prescribed persons for railway manager or railway operator only in relation to the performance of a functional exercise of power by the employee as a transit officer under this Act. Subsection 113I(4) states that without limiting section 113I(3) the ethics obligations under the Public Sector Ethics Act, part 3 (ethics obligations of public officials) imposed on a prescribed person only in relation to the person's duties relating to the transit officer performing a function or exercising of power under this Act; and the requirement to prepare a code of conduct under the Public Sector Ethics Act, part 4 (codes of conduct for public officials) is a requirement to prepare a code of conduct only for as prescribed person's duties relating to a transit officer performing a functional exercise in power under this Act.

New division 6 'Miscellaneous' inserts a new heading that provides for other provisions to be included in the Act.

Clause 221 amends section 115 (Protection from liability) subsection (3)(a) to ensure the civil liability of a transit officer for an act done, or an omission made, honestly and without negligence under the relevant transport legislation attaches to the State when the transit officer is employed by a railway manager or railway operator

Clause 222 inserts a new chapter 11, Part 2A. This establishes the drug and alcohol testing requirements for transit officers.

New part 2A 'Drug and alcohol testing of transit officers' heading establishes the drug and alcohol testing requirements for transit officers.

New section 116 (Chief executive may require a transit officer to undergo alcohol or drug test) allows the chief executive to require transit officers to undergo alcohol or drug testing if the transit officer has been: involved in an incident in which a person being detained suffers a physical injury; or the chief executive reasonably suspects the person is under the influence of alcohol or drugs. Subsection 116(2) requires an alcohol test to be conducted using an instrument approved by the police commissioner for the purposed and used in accordance with the manufacturer's instructions. Subsection 116(3) establishes that a drug test must be conducted by a doctor. Subsection 116 (4) states that a regulation May be made to provide for how an alcohol and drug test will be conducted and the requirements for notifying the results of these tests to transit officers Subsection 116(5) provides that the alcohol test is a breath test using an instrument approved by the police commissioner and the drug test requires the transit officer to provide a urine specimen to determine whether there is evidence of a dangerous drug or prescribed substance.

New section 117 (Protection from liability for doctors advising on drug test) protects a doctor doing a drug test from potential liability for releasing results of the test to the chief executive. Subsection 117(1) makes a doctor eligible for this protection if the doctor has acted honestly, on reasonable grounds in giving the drug test results under section 116. Subsection 117(2) protects a doctor from civil or criminal liability, or under an administrative process for giving the test results. Subsection 117(3) extends and clarifies this protection from liability to providing a defence of absolute privilege in defamation proceedings, ensure that providing the results can not contravene any Act, oath, rule of law or practice requiring the practitioner to maintain confidentiality of the results and ensure the doctor is not liable for disciplinary action. Furthermore, subsection 117(4) ensures that by giving the information, the doctor can not have breached any code of professional etiquette or ethics or departed from accepted standards of professional conduct.

Section 118 (Alcohol or drug test results generally inadmissible) provides that evidence relating to alcohol or drug tests are generally inadmissible in civil or criminal proceedings. Subsection 118(1) outlines that evidence obtained under section 116 is inadmissible in a civil or criminal proceeding before a court. Subsection 118(2) clarifies that the chief executive and anyone else involved with anything under section 116 can not be compelled to produce to a court any document or any information obtained from doing the thing under section 116. Subsection 118(3) lists exemptions to this inadmissibility including a proceeding for a charge for an offence arising

from an incident in which a person detained by the transit officer suffers an injury. This section also ensure this relevant information is admissible for a Coroners Court inquest into a relevant death, a relevant proceeding under the *Industrial Relations Act 1999* for reinstatement because of unfair dismissal, an investigation or other proceeding under the *Crime and Misconduct Act 2001* or a disciplinary proceeding under the *Public Sector Ethics Act 1994*.

Clause 223 inserts a new chapter 11 parts 4A and 4B. Part 4A establishes the functions and powers of transit officers protecting safety of persons or property and part 4B establishes the powers of courts to make exclusion orders for protecting the public or property.

New part 4A heading 'Functions and powers of transit officer for protecting safety of persons or property' establishes the functions and powers of transit officers for protecting safety of persons or property.

New section 129A (Power to detain person who has committed a detainable offence) allows transit officers to detain people committing certain offences. Subsection 129A(1) enables a transit officer to detain a person if the transit officer reasonably believes that the person has committed a detainable offence on or in the public transport infrastructure. Subsection 129A(2) prescribes that a transit officer may use reasonable force to detain a person until the person can be delivered to a police officer.

'Detainable offence' is defined in part 7, clause 231, as an offence: involving assault occasioning bodily harm; involving assault of another person for the purpose of stealing; against the Criminal Code, chapter 32 (rape and sexual assaults); involving wilful damage of property on or in public transport infrastructure.

Clause 231 also defines public transport infrastructure as a railway, car parks under the control of a railway manager or rail way operator, a train, a busway, an interchange for public passenger services used by buses, car parks on busway land as defined under the *Transport Infrastructure Act 1994*, a jetty or other structure such as the ferry stop, or a bus or ferry being used for a scheduled passenger service.

New section 129B (Power to detain person to prevent continuation of detainable offence) enables a transit officer to detain a person who is committing a detainable offence. Subsection 129B(1) deems this section applies to situations where a transit officer finds a person on or in public transport infrastructure committing a detainable offence and reasonably

believes that it is necessary to detain the person, subject to a circumstance in subsection 129B(2).

Subsection 129B(2) states that for 129B(1) the circumstances are: the person has failed to comply with a prior direction to leave; or whether the persons' conduct will, or is likely to, result in bodily harm to another person or damage to property on or in public transport infrastructure. Another circumstance under this subsection is whether a person is likely to recommit an offence or a similar offence after complying with a direction to leave public transport infrastructure or whether the nature of a person's conduct makes it unlikely that the individual would comply with a direction to leave the public transport infrastructure.

Subsection 129(3) enables the transit officer to detain a person using force that is reasonably necessary until the person can be handed over to the police.

New section 129C (Power to detain person to prevent contravention of exclusion order) allows a transit officer to detain a person who is in breach of an exclusion order. Subsection 129C(1) states that this section is applicable where a person has been given a direction under new section 143AHB to leave public transport infrastructure for being in breach of an exclusion order and the a transit officer has found the person on or in, or about to enter public transport infrastructure. Subsection 129C(2) enables the transit officer to detain the person using force that is reasonably necessary for the purpose, until the person can be delivered to a police officer.

New division 2 heading 'Provisions about detaining persons generally' establishes how a person may be detained and what a transit officer must do when a person is detained.

New section 129D (Handcuffs may be used for detaining person) allows a transit officer to use handcuffs. Subsection 129D(1) specifies that handcuffs may be used for detention only if the transit officer reasonably believes the use of handcuffs is the only practicable way to properly detain the person. Subsection 129D(2) contains protection for the transit officer from an offence under section 67 of the *Weapons Act 1990*.

New section 129E (Period of detention) details the procedure for the handover to the police of the detained person. Subsection 129E(1) specifies that a transit officer must immediately contact a police officer after detaining a person to arrange delivery of the person. Subsection 129E(2) requires the transit officer to deliver the detained individual to a

police officer as requested by the contacted police officer. Subsection 129E(3) requires the transit officer to release the detained person from detention if requested to do so by the contacted police officer. Subsection 129E(4) allows the transit officer to continue to detain the person at the place, or another place set aside by the chief executive until the police officer arrives to deal with the person. This action can be taken if the detained person has not been transported according to 129E(2) or released according to 129E(3). Subsection 129(5) prescribes that for a child, the period of detention should be for the shortest period that is justified in the circumstances.

New section 129F (Information to be given to detained person) provides for how a detained person will be informed about their detention. Subsection 129F(1) requires a transit officer, as soon as reasonably practicable after detention, to tell the person that the person is detained under this part and then nature of the person's conduct for which the person is detained. Subsection 129F(2) requires the transit officer to provide the detained person with a written report of the detention before, or immediately after the detained person is delivered to a police officer or released under section 129E.

New section 129G (Written report to be given to police officer) requires that a written report be given to a police officer. Subsection 129G(1) provides that this section applies if a transit officer delivers a detained person to a police officer under section 129E. Subsection 129G(2) requires a transit officer to give a written report for the detention to the police officer when, or immediately after the delivery.

New section 129H (Written report to be given to chief executive) states that a written report about the detention shall be given to the chief executive as soon as reasonably practical after the person is delivered to a police officer or released under section 129E.

New section 129I (Requirements for written report given under this division) sets out the requirements to be contained in the written report. Subsection 129I(2) requires the written report to have: the transit officer's name; the address officer receives instructions from; and the name, address, age and date of birth of offender if it is known by the transit officer.

Further, subsection (2) requires a written report to include a number of other details such as: the conduct of the detained person that led to the detention including the details of any direction that was given that was relevant to the detained person's conduct and any other matter transit

officer considered in deciding to detain the person; any evidence of the detained person's conduct; any action taken under new division 3 by the transit officer if the detained person as a child or a person with impaired capacity.

New section 129J (Restrictions on questioning detained person) establishes the restrictions on a transit officer in questioning the detained person. Subsection 129J(1) states that a transit officer must not question the detained person about the person's involvement in the detainable offence. The subsection also states that a transit officer must not provide any encouragement or incentive for the detained person to provide such information.

New division 3 heading 'Additional provisions about detaining children or persons with impaired capacity' establishes the additional provisions in the transit officer has to take into account when detaining a child or a person with an impaired capacity.

New section 129K (Limitation on detaining child) requires the transit officer to use detention as a last resort for children.

New section 129L (Responsible person to be notified of detention) provides for a responsible person to be notified of a detention. Subsection 129L(1) states that this section applies if a transit officer detains a child or a person with an impaired capacity and the person's name is known to the transit officer. Subsection 129L(2) requires transit officer to advise the responsible person of a detention and the place of where the person is detained, if the officer is detaining the person until the police arrive. If the transit officer is taking the child to a police officer, the subsection requires the transit officer to inform the responsible person of the name and location of the relevant police officer.

Subsection 129L(3) states that subsection (2) does not apply if the transit officer has a reasonable belief that the child as an adult. Subsection 129L(4) states that a court may have regard to the child's apparent age and the circumstances of the detention in deciding whether a transit officer had reasonable grounds. Subsection 129L(5) defines 'responsible person'.

New section 129M (Giving warning etc. to child or person with impaired capacity) requires a transit officer giving a warning to a person to take reasonable steps to ensure they understand the warning. Subsection 129M(1) specifies that this section applies to situations where a transit officer gives a child or a person with an impaired capacity a warning or an opportunity to leave public transport infrastructure. Subsection 129M(2)

requires a transit officer to take all reasonable steps to ensure the child or person understands the warning or opportunity to leave. Subsection 129M(3) provides examples of some actions which the transit officer can take to explain the warning or opportunity to leave. The examples are: personally explaining the matters to the child or person; having an interpreter or other person able to communicate effectively with the child or person to give the explanation; and supplying an explanatory note in English or another language.

New section 129N (Nature of detention for child or person with impaired capacity) outlines considerations a transit officer is required to consider when detaining a child or person with impaired capacity. Subsection 129N(2) requires the transit officer to have regard to a number of considerations in deciding how and where to detain the child or person, or how to transport the child or person to a police officer. These considerations are: keeping the child or person safe and promote their physical and mental wellbeing; treating the child or person with respect and dignity; considering the child's or persons age, maturity, capacity, cultural and religious beliefs; and ensuring the child or person is detained for the least time.

New division 4 heading 'Additional powers after person detained' establishes the powers to require the removal of outer garments of the detained person, frisk search of a detained person and to take and retain particular articles.

New section 129O (Power to require detained person to remove outer garment etc.) establishes the transit officer power to direct the removal of outer garments. Subsection 129O(1) states that a transit officer may use this power if the transit officer reasonably suspects a detained person is carrying an article that could, or could be used to, cause harm to another person or someone else. Subsection 129O(2) states that in such circumstances a transit officer may direct the person to allow the transit officer to inspect the person's belongings, remove one or more outer garments and allow inspection of the garments, remove all articles from the person's clothing and allow the officer to inspect them and allow the officer to frisk search the person. Subsection 129O(3) establishes the definition of inspect for this section.

New section 129P (Limits on directing removal of outer garment worn by detained person generally) places a number of limits on this search power. Subsection 129P(1) limits a transit officer to directing an outer garment to be removed only if the transit officer considers on reasonable grounds that

a proper inspection of a garment a detainee is wearing can not be carried out unless the garment is removed. A transit officer can also only direct a garment to be removed if the transit officer believes on reasonable grounds that the removal will not result in the person being in a state of undress. A direction to remove the garment can only be given if the transit officer specifies the outer garment to be removed and if practicable, ensures the person's compliance with the direction is carried out in an area or place that is, out of view of the members of the general public. The transit officer is also required to tell the person that even if the person removes the outer garment specified by the officer, the person may or may not be examined further. 129P(2) provides the definition of state of undress. This definition is similar to that for the state of undress in the Criminal Code.

New section 129Q (Limit on directing removal of outer garment worn by detained person who is a child or person with impaired capacity) provides specific limitations for transit officers directing the removal of garments of children or persons with impaired capacity. Subsection 129Q(2) precludes a transit officer from permitting a child or person to remove an outer garment unless a responsible person for the child or person is present. If such a person is not present, this subsection requires another authorised person (under the Act) to be present. Subsection 129Q(3) defines a responsible person for this section.

New section 129R (Limits on frisk searching detained person generally) places general limits on how a transit officer may conduct a frisk search. Subsection 129R(1) requires a frisk search to only be conducted by a transit officer of the same sex. This section also requires a transit officer to tell the detained person that they have the right to request the frisk search to be carried out in an area or place that is out of view for members of the public and provides, in the transit officer's opinion, suitable privacy. The transit officer is required by this subsection to conduct the frisk search in this location, if the detained person requests the officer to do so. Subsection 129R(2) further requires a transit officer, as far as reasonably practicable, to ensure the detained person is searched in a way which causes minimal embarrassment and the transit officer takes reasonable care to protect the dignity of the detained person.

New section 129S (Limits on frisk searching detained person who is a child or person with impaired capacity) establishes specific limits on a transit officer frisk searching of a child or person with impaired capacity. Subsection 129S(2) states that a frisk search can only be undertaken in the presence of a responsible person, if such a person is in the immediate

vicinity or place where the frisk search is to be conducted. Should a responsible person not be available, this subsection also allows a transit officer to undertake the frisk search if an authorised person is present. Subsection 129S(3) defines responsible person for this section.

New section 129T (Power to take and retain particular articles) allows a transit officer to take and retain articles gathered by a search. Subsection 129T(1) applies this section to situations where a search has been conducted under section 129O and the transit officer finds an article that may cause harm to the person or someone else. Subsection 129T(2) allows the transit officer to take and retain the article while the person is being detained. Subsection 129T(3) requires the transit officer to give the article to the police officer to whom the detained person is released.

New division 5 heading 'Recording details of exercise of powers under this part' establishes the details of what has to be recorded when a transit officer uses the powers under this part.

New section 129U (Chief executive must maintain register of detentions) relates to the keeping of a register for detentions. Subsection 129U(1) requires the chief executive to keep a register of detentions. Subsection 129U(2) requires the chief executive to include each written report given to the chief executive under 129H in the register with each detention record being retained for 5 years from the date of detention. Subsection 129U(3) allows a detained person to request a copy of the written report of detention from the chief executive at any time within 3 years after the person was detained under this part. Subsection 129U(4) requires the chief executive to comply with this request as soon as reasonably practicable.

New division 6 'Other provisions about functions and powers under this part' outlines other provisions and functions and powers under part 4A.

New section 129V (Guidelines must be followed) provides that a transit officer must follow the guidelines which are part of the training course established under subsection 111L(2)(b) in the performance of their duties under this part.

New section 129W (Application of juvenile justice principles) applies the juvenile justice principles to this part. Subsection 129W(1) provides that a transit officer must have regard to the principles contained in the *Juvenile Justice Act 1992* when exercising the powers of this part on a child. Subsection 129W(2) ensures that the general application of these principles as prescribed in 129W(1) does not limit any provision of this part which specifically applies a principle in the *Juvenile Justices Act 1992*.

Section 129X (Transit officer must not fail to comply with this part) relates to transit officer non-compliance with this part. Subsection 129X(1) establishes that a transit officer must not knowingly fail to comply with this part without a reasonable excuse. A maximum penalty of 60 penalty units shall apply to a contravention. Such a contravention allows the chief executive to revoke a transit officer's appointment under section 113G. Subsection 129X(2) clarifies that a purported exercise of power under this part in contravention of the part is unlawful.

New part 4B heading 'Powers of court to make exclusion orders for protecting the public or property' provides courts with the power to exclude certain offenders or set conditions to restrict their use of the public transport network.

New section 129Y (Definitions for pt 4B) provides the definitions of 'exclusion order', 'proper officer', 'public transport network', 'relevant offence' and 'transport indictable offence'.

New section 129Z (What is an exclusion order) defines exclusion order, gives examples of restrictions and establishes that an exclusion order prohibits or restricts a person from using the public transport network for a period of up to 2 years.

New section 129ZA (Court may make exclusion order) establishes that an exclusion order can be made by a court. Subsection 129ZA(1) applies this section to situations where a court is convicting a person of a relevant offence or a transport indictable offence and provides for the making of an exclusion order in sentencing the person under the *Penalties and Sentencing Act 1992* or, if the person is a child, the *Juvenile Justices Act 1992*.

Subsection 129ZA(2) establishes that a court may make an exclusion order in relation to a person in addition to any sentence a court may make in convicting the person, if the person has been convicted of a relevant offence at least one other time during the last 12 months or at least two other times during the last 18 months. The court can make such an order if it is satisfied the order is in the public interest because it will promote the safety and wellbeing of public transport users or it will protect facilities used in connection with public transport from unlawful damage and interference or that such an order is otherwise in the public interest.

Subsection 129ZA(3) specifies that a court may make an exclusion order in relation to the person, in addition to any sentence a court may make in convicting a person for a transport indictable offence. The court can make

such an order if it is satisfied the order is in the public interest because it will promote the safety and wellbeing of public transport users or it will protect facilities used in connection with public transport from unlawful damage and interference or that such an order is otherwise in the public interest. Subsection 129ZA(4) allows a court to make an exclusion order regardless of whether the court records a conviction.

New section 129ZB (Matters court must consider in deciding whether to make exclusion order) contains a range of considerations for a court for making an exclusion order. Subsection 129ZB(1) instructs a court in deciding whether to make an exclusion order to have regard to the sentencing considerations outlined in the *Penalties and Sentencing Act 1992* and for a child, the *Juvenile Justices Act 1992*. The subsection also requires the court to give regard to whether making the order would cause substantial hardship to the person or the person's family by depriving the person of their means of earning a living or depriving them from their ability to study or maintain the person's health or the health of a member of their family. This subsection also directs the court to consider the effect the order would have on the person's safety and wellbeing with regard to their age and any physical, intellectual, cognitive or psychiatric disability. Section 129ZB(2) clarifies that this section does not limit the matters to which the court may have regard to when deciding to issue an exclusion order.

New section 129ZC (Exclusion order to be explained if person before the court) outlines the requirements for a court in explaining an exclusion order to the excluded person. Subsection 129ZC(1) outlines that, if the person to be subject to an exclusion order is before the court, the court must explain the exclusion order to the person in a way in which the court is reasonably satisfied the person will understand. This explanation will include the purpose, terms and effect of the proposed exclusion order, the potential consequences if the person does not comply with the order and that the person may apply for a variation of the order under section 129ZF. Subsection 129ZC(2) suggests that the court may explain the matters in subsection 129ZC(1) using services or help from other people to the extent the court considers appropriate. This subsection lists various examples. Subsection 129ZC(3) clarifies that a failure to comply with this section does not affect the validity of the exclusion order.

New section 129ZD (amendment or revocation of exclusion order generally) establishes the process for revoking or amending an exclusion order. Subsection 129ZD(1) details how persons subject to an order or a

prosecutor may apply for the amendment or revocation of the exclusion order. Subsection 129ZD(2) prevents the person to whom the order applies from making an application to amend or revoke an order within the first 6 months after the order was made. Subsection 129ZD(3) establishes that the application to amend or revoke the exclusion order may be made only to a court of equivalent jurisdiction to the court which made the exclusion order. Such an application may also be made to a court of equivalent jurisdiction which is convicting the person who is subject to an exclusion order, of a relevant offence or a transport indictable offence committed before or after the order was made. Subsection 129ZD (4) stipulates that where a prosecutor is applying for an exclusion order amendment or revocation, the prosecutor must give a copy of the application to the person to whom the exclusion order applies and the chief executive. Subsection also requires that if the person subject to the order has made an application, the application must be given to the prosecuting authority and the chief executive.

Subsection 129ZD(5) requires that the applicant under subsection 129ZD(4) must give the copy at least 21 days before the day on which the application is to be heard. Subsection 129ZD(6) grants an entitlement for the prosector and the subject of an exclusion order to be heard at the hearing of an application. Subsection 129ZD(7) allows a court to amend or revoke an exclusion order only if there has been a material change in the circumstances of the person to whom the order applies that justifies the amendment or revocation. Subsection 129ZD(8) contains the definition of prosecuting authority.

Section 129ZE (Order to be given to interested persons) outlines particulars about distributing the exclusion order and an order's contents. Subsection 129ZE(1) sets out how a proper officer of the court that makes, amends or revokes an exclusion order must reduce the order to writing in the approved form and cause a copy of the order to be given to relevant persons. Subsection 129ZE(2) outlines the basic contents which must be contained in the exclusion order such as the name of the person, the period for which the order applies and the prohibitions or restrictions that the order imposes. Subsection 129ZE(3) clarifies that a failure to comply with this section does not affect the validity of the exclusion order.

New section 129ZF (Amendment of exclusion order that restricts access for changes in personal circumstances) outlines the procedures for the varying of an exclusion order due to a change in personal circumstances. Subsection 129ZF(1) deems this section to apply if a court has made an

exclusion order on the basis of particular personal circumstances and those particular circumstances have changed. Subsection 129ZF(2) allows a person, subject to an exclusion order, to apply to a court of equivalent jurisdiction to the court which issued the order, to vary the restrictions contained in order.

Subsection 129ZF(3) specifies that an application for an exclusion variation order must be in the approved form and be accompanied by an affidavit made by the person showing why the variation is necessary and information the applicant intends to rely on for the application. Subsection 129ZF(4) clarifies that subsection 129ZF(3) does not prevent the applicant producing further evidence at the hearing of the application. Subsection 129ZF(5) outlines that the court may vary the restrictions applying under an exclusion order only if the court has regard to the restrictions and the matters mentioned in section 129ZB and whether the applicant has contravened the exclusion order. The court may also give regard to the broader matter as to whether the court should vary the restrictions based on the justice of the case. Subsection 129ZF(6) stipulates that the exclusion variation order must state the varied restrictions. Subsection 129ZF(7) requires a proper officer of the court to give or send a copy of the variation order in relation to the person to each person mentioned in subsection 129ZE(1). Subsection 129ZF(8) clarifies that a failure to comply with subsections 129ZF(6) and (7) does not affect the validity of the exclusion variation order.

Section 129ZG (Offence to contravene order) states that it is an offence to contravene the restrictions contained in an exclusion order. Subsection 129G(1) establishes that a person to whom an exclusion order applies must not contravene the order without reasonable excuse. A maximum penalty of 40 penalty units or 6 months imprisonment applies if convicted of contravening an exclusion order. Subsection 129G(2) clarifies that a reasonable excuse may include an emergency situation, the person has a pending application with the court to vary the exclusion order and the person's conduct is consistent with the pending exclusion order variation. It is also a reasonable excuse if, when the contravention occurs, the person was not aware and was reasonably not aware, that the order had been made. Subsection 129G(3) provides for a court to amend an exclusion order in addition to or instead of sentencing a person who is convicted of an offence under subsection (1).

Clause 224 amends section 143AE (Interfering with service, vehicle or equipment). The clause amends the section's heading and subsection (1) to

include 'public transport infrastructure' and make it an offence to interfere with it.

Clause 225 amends section 143AF (Creating a disturbance or nuisance on railway or vehicle). This clause amends 143AF to extend the application of this section beyond railways to include public transport infrastructure.

Clause 226 amends section 143AHA (Power to require person to leave train etc.). This clause amends section 143AHA to extend the application of this section beyond railways to include public transport infrastructure generally. This clause also extends the application of the 143AHA so that transit officers can use this power to require persons to leave for an offence against section 143AE (interfering with public transport infrastructure, service, vehicle or equipment) and sections 329 (trespass on busway land) and 377 (trespass on light rail land) of the *Transport Infrastructure Act 1994*.

Clause 227 inserts new section 143AHB (Power to require person to leave or not enter public transport infrastructure if person is in contravention of an exclusion order). Subsection 143AHB(1) allows an authorised person to direct a person to leave public transport infrastructure if the person is in breach of an exclusion order. This subsection also allows an authorised person to direct a person to not enter public transport infrastructure if the transit officer reasonable believes the person entering public transport infrastructure would contravene their exclusion order. Subsection 143AHB(2) enables the authorised person to use reasonable force to get the person to leave or not enter the public transport infrastructure, if the person does not obey a direction to leave or not enter. Subsection 143AHB(3) provides that an authorised person can not give a direction under this section if the authorised person is satisfied the person has a reasonable excuse for contravening the exclusion order.

Clause 228 amends the heading chapter 13, part 5 heading (Provision for Transport Operations (TransLink Transit Authority) Act 2008) to renumber it from part 5 to part 6 as it was the second occurrence of part 5.

Clause 229 amends section 180 (Existing declarations under s 42(2) for a scheduled passenger service) to the number it as section 181was the second occurrence of 180.

Clause 230 inserts a new chapter 13 part 7 heading 'Transitional provision for Transport Operations (Passenger Transport) Amendment Act 2008'. This part establishes the transitional provisions for the Amendment Act.

New section 182 (Application of ch 11, pt 4B) establishes that chapter 11, part 4B (Powers of court to make exclusion orders for checking the public or property) applies only to have offence committed after the commencement of this section.

Clause 231 amends schedule 3 (Dictionary) to amend or define the following terms 'authorised person', 'assault', 'bodily harm', 'detainable offence', 'exclusion order', 'exclusion variation order', 'frisk search', 'impaired capacity', 'police commissioner', 'prescribed person', 'proper officer', 'public transport infrastructure', 'public transport network', 'relevant information', 'relevant offence', 'transit officer', 'transit officer training', 'transport indictable offence'.

Division 2 Amendment of other Acts

Subdivision 1 Amendment of Criminal Code

Clause 232 states that this subdivision amends the Criminal Code.

Clause 233 amends the definition of public officer contained in section 340(3) of the Criminal Code to include a transit officer under the *Transport Operations (Passenger Transport) Act 1994*.

Subdivision 2 Amendment of Police Powers and Responsibilities Act 2000

Clause 234 states that this subdivision amends the *Police Powers and responsibilities Act 2000.*

Clause 235 amends section 393(2) by inserting new subsection '(g)'. New subsection (g) exempts a police officer from taking action under section 393 if a person detained under the *Transport Operations (Passenger Transport) Act 1994* is released by the police officer without being charged with an offence.

Subdivision 3 Amendment of Security Providers Act 1993

Clause 236 states that this subdivision amends the *Security Providers Act 1993*.

Clause 237 inserts new subsection (4) in section 4. New subsection (4) exempts an authorised person under the *Transport Operations (Passenger Transport) Act 1994* from the *Security Providers Act 1993*.

Part 7 Amendment of Acts for purposes relating to maritime matters

Division 1 Amendment of Transport Operations (Marine Pollution) Act 1995

Clause 238 states that this division amends the *Transport Operations (Marine Pollution) Act 1995.*

Clause 239 amends section 6 (Meaning of MARPOL) by: omitting "Pollution Protocol relating to the Convention" and replacing it with 'Protocol'; omitting 'accepted by' and replacing it with 'that has entered force for; inserting a note advising people that the text of MARPOL is accessible through the Australian Maritime Safety Authority website; omitting the requirement that a copy of the English text of the provisions of MARPOL be incorporated into a regulation and replacing it with a definition of the '1978 Protocol'.

Since 1995, management of the numerous changes to MARPOL and the time lags in amending legislation have resulted in the legislation being inconsistent with current MARPOL requirements and out of step with other jurisdictions. Also of concern is the inconsistency between Australian jurisdictions due to the constant changes and varying methods of legislative amendment in each jurisdiction.

This amendment is part of a national strategy promoted by the Australian Maritime Safety Authority to remove the text of MARPOL from state

legislation, and thus address the issue of legislative inconsistency created by numerous and ongoing changes to MARPOL.

Clause 240 amends section 38 (Certain noxious liquid substances to be treated as oil) by replacing the current section with two new provisions. The first provision outlines the requirement for particular ships to carry on board a procedures and arrangements manual, and defines what a procedures and arrangements manual is. The second provision outlines the requirement for certain ships to carry on board a shipboard marine pollution emergency plan for noxious liquid substances, and defines relevant terms.

The current version of the *Transport Operations (Marine Pollution) Act 1995* is based on a now out of date version of MARPOL. Amendments to MARPOL made by the International Maritime Organization have been ratified by Australia, and therefore references to MARPOL in the Act required change.

The ability to discharge noxious liquid substances mixed with oil is no longer allowed under MARPOL, and the current version of MARPOL requires that ships certified to carry noxious liquid substances have onboard an approved procedures and arrangements manual. This amendment simply replaces an out of date provision with a current provision of MARPOL to help protect Queensland's marine and coastal environment.

Clause 241 amends section 45 (Definitions for pt 7) regarding the definition of a discharge offence by omitting '48 or 50' and replacing it with '48, 50 or 50A(2) or (3)'. This amendment simply updates the definition to refer to the relevant sections which are discharge offences.

Clause 242 amends section 48A (Ship with fixed toilet operating in prescribed nil discharge waters to be able to hold or treat sewage). This amendment renumbers section 48A(3) as section 48A(4) and inserts a new provision as section 48A(3). The new provisions reverse the onus of proof in criminal proceedings. The effect of this is that defences which may ordinarily be available are excluded. The exclusion of these sections creates a regime of strict liability, whereby intent or mistake cannot be relied upon as a defence and the Crown would not need to establish intent as an element of the offence.

This amendment merely continues the exclusion of the operation of sections 23 and 24 of the Criminal Code, which was also the position before this amendment was drafted. The same scheme can be seen in the

other offence provisions in the *Transport Operations (Marine Pollution) Act 1995*.

Clause 243 inserts a new section 50A and outlines requirements for the discharge of sewage by prescribed ships. This amendment introduces three new offences: that the owner or master of a prescribed ship must not operate the ship unless it has a particular sewage system; that release of untreated sewage from a prescribed ship into prohibited untreated sewage discharge waters is an offence; and that each culpable person for the discharge commits an offence unless the situation falls under one of the stated exceptions. This amendment aims to further protect Queensland's marine and coastal environment from pollution.

Clause 244 inserts new section 55AA to implement a requirement for all ships over 12 metres in length to display a garbage disposal placard. The new section stipulates that a ship that is at least twelve metres in length must display a garbage disposal placard. The placard is required to contain information about the requirements under the Act for the disposal of garbage. This amendment simply implements relevant provisions of MARPOL to protect Queensland's marine and coastal environment.

Clause 245 inserts three new sections 117GA, 117GB and 117GC. The first clarifies that the District Court may make orders allowing an applicant such as Maritime Safety Queensland to carry out a previous enforcement order and take direct action about a ship. The second allows the State to recover any expenses incurred from carrying out the authorised action, and lastly another person may recover damages in particular circumstances.

The compliance provisions currently found in Part 13A of the Act do not clearly authorise the court to order Maritime Safety Queensland or another person, other than the person in breach of the enforcement order to take direct action to achieve compliance. Therefore if the recipient of the enforcement order still fails to comply, the District Court is not authorised under the Act to make an order enabling Maritime Safety Queensland to take action. This amendment will reduce the risk posed by such ships that may otherwise be a threat to the marine environment through pollution. It will also enable unseaworthy and abandoned ships to be managed more effectively.

Clause 246 inserts new section 132G to allow the chief executive to approve forms for use under the *Transport Operations (Marine Pollution) Act 1995*. Currently, the Act has no head of power to allow forms to be approved. There is currently a power to approve the Shipboard Oil

Pollution Emergency Plan in the *Transport Operations (Marine Pollution) Regulation 2008* however it is not ideal for such provisions to be in a Regulation.

Clause 247 inserts a transitional provision (part 17, division 5) which allows a prescribed ship which is an existing ship to be exempt from section 50A until 19 May 2010. Regulation 2 of MARPOL has established a transitional period for existing ships (constructed before 2 October 1983) of 400 gross tonnage and above or less than 400 gross tonnage which are certified to carry more than 15 persons. Existing ships are not required to comply with this requirement until 19 May 2010. Therefore the transitional provision in this Act will be consistent with Regulation 2 of MARPOL.

Clause 248 amends schedule (Dictionary) to include definitions of 'authorised action', 'certified to carry noxious liquid substances' and 'gross tonnage' to clarify the intent of the amendments.

Division 2 Amendment of the Transport Operations (Marine Safety) Act 1994

Clause 249 states that this division amends the *Transport Operations (Marine Safety) Act 1994.*

Clause 250 inserts a new section 167A (Power to require production of marine safety equipment). The amendment established that the owner or master of a ship may be asked by a shipping inspector to produce prescribed safety equipment. Failure to produce such safety equipment, without providing a reasonable excuse, may be used as evidence that the ship is not so equipped and used as evidence in a proceeding for an offence under section 44(1) of the *Transport Operations (Marine Safety) Act 1994,* that the ship is not equipped with the safety equipment.

Previously the *Transport Operations (Marine Safety) Regulation 1995* included a provision requiring the master of a ship to produce safety equipment to a shipping inspector. When the regulation was remade in 2004, the provision was removed as it was more suitable for primary legislation. A recent court case demonstrated that without such a provision it is very difficult to prove that the required safety equipment is not on board the ship.

This amendment is in accordance with the *Transport Operations (Marine Safety) Regulation 2004*, sections 19, 26 and 28.

Clause 251 inserts three new sections 183GA, 183GB and 183GC to clarify that the District Court may make orders allowing an applicant such as Maritime Safety Queensland to carry out a previous enforcement order and take direct action about a ship. The first clarifies that the District Court may make orders allowing an applicant such as Maritime Safety Queensland to carry out a previous enforcement order and take direct action about a ship. The second allows the State to recover any expenses incurred from carrying out the authorised action, and lastly another person may recover damages in particular circumstances.

The compliance provisions currently found in Part 13A of the *Transport Operations (Marine Safety) Act 1994* do not clearly authorise the court to order Maritime Safety Queensland or another person, other than the person in breach of the enforcement order to take direct action to achieve compliance. Therefore if the recipient of the enforcement order still fails to comply, the District Court is not authorised under the Act to make an order enabling Maritime Safety Queensland to take action. This amendment will reduce the risk posed by such ships that may otherwise be a threat to the marine environment through pollution or present a navigation hazard. It will also enable unseaworthy ships to be managed more effectively.

Clause 252 amends section 200 (Special provision for service of documents). It omits the "Meaning of owner", and replaces it with "Section 9 defines owner" in section 200(3), so that this section is in line with current drafting style. It also omits 'effects' and replaces it with 'affects' in section 200(4).

Clause 253 amends the schedule (Dictionary). It inserts a definition of 'authorised person' for Part 13A of the *Transport Operations (Marine Safety) Act 1994*. This amendment simply clarifies the intended meaning of the term.

Part 8 Amendment of Acts relating to transport corridor protection

Division 1 Amendment of Transport Planning and Coordination Act 1994

Clause 254 states that this division amends the *Transport Planning and Coordination Act 1994.*

Clause 255 amends section 8D (Impact of change of management of local government road on public passenger transport). Section 8D(a) provides that a local government must obtain the chief executive written approval to make a change to the management of a local government road on which a scheduled passenger service identified in the guidelines under section 8E as a significant scheduled passenger service is provided. Section 8D(b) provides that a local government must obtain the chief executive written approval to make a change to a local government road that if made would have a significant adverse impact on the provisions of public passenger transport.

Section 8D(1A) to provide that a change to a local government road referred to in new section 8D(b) if made, would be a change that would have a significant adverse impact on the provisions of public passenger transport: if any of the following were adversely affected:

- the route that may be taken for, or the number of stops that may be made during, a scheduled passenger service;
- the frequency of a scheduled journey for a scheduled passenger service;
- the time taken to complete a schedule journey for a schedules passenger service.

For the purposes of section 8D(1A) examples of changes that may adversely affect something mentioned in (a), (b) or (c) are, the closure of a road or lane; the removal or alteration of a bus lane or transit lane; change in the direction of traffic flow along a road; a change in priority settings on a road.

Section 8D(2B) provides that the application by a local government must be made at least 21 days before the proposed change is to take effect..

Section 8D(7) is also amended to remove a superfluous definition of IDAS. A definition of IDAS is provided in section 3 (Definitions).

Clause 256 amends section 8E to provide that a copy of the guidelines or any amendment of the guidelines must be given to every local government affected by the guidelines.

Division 2 Amendment of Transport Operations (Road Use Management) Act 1995

Clause 257 states that this division amends the *Transport Operations (Road Use Management) Act 1995.*

Clause 258 of Part 4 amends section 66 (Local Laws) to provide that a local government may make a local law that will result in a change to the management of a local government road of a kind mentioned in section 8D(1) of the *Transport Planning and Coordination Act 1994* only if the chief executive has approved the change under section 8D of the *Transport Planning and Coordination Act 1994.*

Clause 259 of Part 4 amends section 69 (Local Government may install or move official traffic signs) to provide that if the installation or removal of official traffic signs will result n a change to t he management of a local government road of a kind referred to in section 8D(1) of the *Transport Planning and Coordination Act 1994* then it may only be done with the approval of the chief executive.

Part 9 Amendment of the Transport Infrastructure Act 1994 for purposes relating to rapid public transport systems

Clause 260 states that this part amends the *Transport Planning and Coordination Act 1994.*

Clause 261 amends section 2 (Objectives of this Act) and inserts a new section 2(2)(ga) to provide for busways that an objective of the act is to

establish a regime that provides for the flexibility in the choice between private and public construction and management and land tenure arrangements allowing private management to be established on a sound financial basis.

The purpose of these provisions is to enable Queensland Transport to be able to enter into commercial arrangements for the construction and or management of busways or busways transport infrastructure.

Clause 262 inserts a new section 303AA into the Act that enables and provides for the sublease of lease of busway land.

Section 303AA(1) enables the state to sublease its lease of busway land to another persons for an existing busway or a busway proposed to be established on busway land on terms negotiated and agreed between the parties.

Section 303AA(2) clarifies that the other persons eligible to hold a sublease for the purposes of this part is a persons eligible to hold a sublease of the lease for the purposes of the *Land Act 1994*. An editor's note clarifies that section 332 of the *Land Act 1994* provides that subleases require Minister's approval.

Section 303AA(3) and (4) provide that the first sublease under subsection (1) to be known as the original sublease, may include an option to renew the sublease and any subsequent lease may in turn include an option to renew. The terms of any option and any subsequent sublease are to be those negotiated and agreed between the parties.

Section 303AA(5) states that section 336(2) (a) of the *Land Act 1994*, (that provides that the document of amending a sublease must not increase or decrease the area subleased) does not apply to this section. 303AA.

Section 303AA(6) provides that if a sublease attaches busway transport infrastructure to the land the subject of the original sublease or a subsequent sublease that busway transport infrastructure becomes the property of the chief executive unless the parties to the sublease agree it is to become the property of the chief executive at a later time.

Section 303AA(7) provides that despite an agreement under section 303AA(6) the infrastructure will, if it has not already become the property of the chief executive, becomes the property of the chief executive:

- if there is no subsequent sublease at the end of the original sublease; or

- if there is only 1 subsequent sublease, at the end of the subsequent sublease; or
- if there are two or more subsequent subleases, at the end of the last of the subsequent subleases.

Section 303AA(8) states that neither the original sublease or any subsequent sublease stops being a sublease only because persons are expressly or impliedly permitted by the chief executive under Chapter 9 (Busways and busway transport infrastructure) of the Act.

Section 303AA(9) provides that section 303AA does not stop the granting of a lease or sublease to another person for a busway, other than under this section, of land that is not busway land but on which there is, or is proposed to be, busway transport infrastructure.

Section 303AA(10) provides that busway land means busway land that is lease to the Sate under section 17 of the *Land Act 1994*.

Clause 263 states that it replaces chapter 9, part 4 division 5 (Use of busway land) .with a new division 5 and section 329. The current provisions about trespass on busway land are extended to include busway transport infrastructure.

Division 5 heading is changed to 'Use of busway land or busway transport infrastructure'.

Section 329 (Trespass on busway land or busway transport infrastructure) extends the current provisions about trespass on busway land to include busway transport infrastructure and provides that a person must not, without reasonable excuse, to be on a busway or busway transport infrastructure without the permission of the chief executive. The penalty for trespass is 40 penalty units ($3,000).

Section 329(2) provides that the permission of the chief executive can be provided expressly or impliedly. Permission may be given expressly by, for example:

- signs, structures, textured payment or painted lines designating points for vehicles or pedestrians to the busway or busway transport infrastructure; or
- signs designating the hours during the busway or busway transport infrastructure may be used by pedestrians to access a public passenger service; or

- signs designating a part of the busway or busway transport infrastructure as being open to pedestrians to access a public passenger service.

The chief executive's permission can be given impliedly by the absence of demarcation between ordinary road and the busway or busway transport infrastructure.

Section 329(3) enables a regulation to include rules about the use of a busway or busway transport infrastructure by a bus or by persons having permission of the chief executive to be on the busway.

Clause 264 inserts a new chapter 9, part 4A, and sections 335AA to 335AP into the *Transport Infrastructure Act 1994* to provide for the accreditation of busway managers. Chapter 9 part 4A provides for the application for and the granting of accreditation, applicable conditions of accreditations, period of accreditation, amendment of accreditation and suspension or cancellation of accreditation.

Section 335AA (Reference to busway in part 4A) provides that, other than in sections 335A, 335AB and 335AP a reference to a busway is a reference to a busway that is established on busway land; proposed to be established on busway land or proposed to be established on land proposed to become busway land.

Section 335AB states that a person must not manage a busway on busway land unless they are an accredited person. There is a maximum penalty of 160 penalty points for a breach of this provision.

Section 335AC and 335AD provides that a person may apply to the chief executive for accreditation as busway manager and the chief executive may by written notice require the applicant to provide additional information. The chief executive may reject the application if the applicant does not comply with the requirement with a stated reasonable time, not less than 28 days, without reasonable notice.

Section 335AE(1) states that the chief executive must promptly consider an application for accreditation and give, or refuse to give, the accreditation.

Section 335AE(2) states that the chief executive must, accredit an applicant as the busway manager if satisfied to the conditions set out in that section include the competency and capacity to manage the busway safely; an appropriate safety management system; financial capacity or public risk insurance; that the application has rights of access to all land the applicant needs for the establishment and operation of the busway and the applicant

has rights to the use of all busway transport infrastructure and other infrastructure the applicant needs for the establishment and operation of the busway.

Section 335AE(3) establishes the factors the chief executive must consider when considering a safety management system and section 335AE(4) provides that section 335AE(3) does not limit what the chief executive may consider in considering a safety management system for the purposes of accreditation.

Section 335AE(5) to 335AE(7) provides that the chief executive must promptly give the applicant a written notice granting or refusing an application for accreditation and what information must be contained in that written notice.

Section 335AF enables a regulation to be made about levies on busway managers for busways for busway accreditation and that the chief executive must give each busway manager a written notice of the amount of a levy. An outstanding levy may be recovered by the chief executive as a debt owned to the chief executive.

Section 335AG provides that an accreditation of a person as busway manger may be subject to conditions and what the conditions must be about. A person must comply with each accreditation condition. A beach of a condition can be subject to a maximum penalty of 40 penalty units.

Section 335AH states that if the chief executive reasonably believes a person has not complied with a condition of the person's accreditation as the busway manager the chief executive may by written notice require the person to remedy the breach. Failure to comply with the notice can attract a maximum penalty of 60 penalty points.

Section 335AI provides that a person's accreditation as the busway manager for a busway remains in force until it is suspended, cancelled or surrendered.

Section 335AK provides for the amendment of accreditation conditions with application. Before amendment the conditions without application the chief executive must give the persons written notice stating the proposed amendment, the reasons for the amendment and allow at least 28 days for the person to show cause why the proposed amendment should not be made.

Sections335AJ to 335AO provides for the suspending, cancelling of applications.

Section 335AP states that if a person holds an accreditation under Part 4A (Accreditation as busway manager) as the busway manager for a busway that is proposed to be established on busway land or proposed to be established on land proposed to become busway land and the busway is established on busway land substantially in the way proposed the accreditation automatically becomes an accreditation under Part 4A that the persons holds as the busway manager for the busway as established.

Clause 265 inserts a new section 360A to provide powers that enable the chief executive to carry out or enter contracts with other persons for the carrying out of light rail transport infrastructure works on a light rail or on land that is intended to become light rail or other works that contribute to the effectiveness and efficiency of the light rail network, or the operation of a light rail. These contracts may be entered into with other state or local government and another person.

Clause 266 replaces chapter 10, part 4 division 5 (Use of light rail land). The new chapter 10 part 4, division 5 extends the existing provisions for trespass of light rail to light rail transport infrastructure.

Section 377 states that a person must not without reasonable excuse be on light rail or light rail transport infrastructure without the permission of a relevant person. A maximum penalty of 40 penalty points is provided for. Permission to be on light rail or light rail transport infrastructure may be given expressly or impliedly. This section does not apply to a person who is on light rail land if under division 1 of the *Transport Infrastructure Act 1994* the light rail land is taken to be a local government road under the *Local Government Act 1993* section 901(1) or a state controlled road.

Section 377(4) enables a regulation to include rules about the use of a light rail or light rail infrastructure by light rail vehicles or persons having the permission of the chief executive to be on light rail infrastructure.

Section 377(5) provides that for the purposes of the section a relevant person means the manager for a light rail or the light rail infrastructure or for any other light rail or other light rail transport infrastructure the chief executive.

Clause 267 amends schedule (subject matter for regulations) to clarify that a regulation may be made about busways, busways transport infrastructure works, light rail or light rail infrastructure works.

Clause 268 amends Schedule 3 (Reviews and appeals) to include review and appeals provisions for sections 335AE, 335AJ(2), 335AK(3), 335AK(8), 335AL(3) and (6) and 335AM(2).

Clause **269** amends Schedule 6 (Dictionary) by inserting a definition of busway manager.

Part 10 Amendment of Transport Planning and Coordination Act 1994

Clause 270 states that this part amends the *Transport Planning and Coordination Act 1994.*

Clause 271 amends section 8A (Object of part 2A). The object of part 2A (Land use and transport coordination) is to enable the chief executive to encourage increased integration between and use and transport. Section 8A (2) is amended by inserting a new:

- section 8A(2)(f) and (g) to provide that the objects of part 2A can also be achieved by the chief executive ensuring development applications support active transport and ensuring, so far as practicable, the provisions of active transport infrastructure to support active transport; and
- Section 8A (3) to provide for definitions of active transport, active transport infrastructure and end of trip facility.

Clause 272 amends section 8B heading by inserting the phrase "or active transport". This amendment in conjunction with the amendments in clauses 1 and 2 will enable the chief executive pursuant to section 8B to assess and place conditions on development applications about active transport and active transport infrastructure under the *Integrated Planning Act 1997.*

Part 11 Amendment of Transport Acts for various purposes

Division 1 Amendment of Tow Truck Act 1973

Clause 273 states that this division amends the *Tow Truck Act 1973*.

Clause 274 amends section 4C (Who is an appropriate person) to allow the chief executive to take into account the criminal history of an executive officer of a corporation when deciding whether the corporation is an appropriate person to hold, or continue to hold, a tow truck licence under the Act.

Clause 275 amends section 6 (Application for licence) to omit the existing provision which allows the chief executive to obtain a report about the criminal history of an applicant for a tow truck licence. The power to obtain such reports is to be relocated to amended section 36 (see clause 280 below). Clause 275(2) makes a consequential amendment to section 6(3) to refer to the report given under section 36. Section 6(3) is then re-numbered due to the omission of section 6(2). For consistency with other transport acts, this clause also updates terminology within section 6. The term "body corporate" is replaced by "corporation" and references to a "director, manager and public officer" are replaced by "executive officer".

Clause 276 amends section 9 (Renewal of licence) to clarify that, when assessing an application to renew a tow truck licence, the chief executive must consider any report obtained under section 36 about the criminal history of the holder of the licence or, if the holder is a corporation, the criminal history the corporation's executive officers.

Clause 277 amends section 14 (Application for driver's or assistant's certificate) to omit the existing provision which allows the chief executive to obtain a report about the criminal history of an applicant for a tow truck driver's certificate or assistant's certificate. The power to obtain such reports is relocated to amended section 36 (see clause 280 below). Clause 277(2) makes a consequential amendment to section 14(3) to refer to the report given under section 36. Section 14(3) is then re-numbered due to the omission of section 14(2).

Clause 278 amends section 17 (Duration and renewal of driver's or assistant's certificate) to clarify that, when assessing an application to

renew a tow truck driver's certificate or assistant's certificate, the chief executive must consider any report obtained under section 36 about the criminal history of the holder of the certificate.

Clause 279 amends section 21A (Cancellation or suspension of authorities) to clarify that the chief executive may cancel or suspend a licence held by a corporation where an executive officer of the corporation has been convicted of an offence against the *Tow Truck Act 1973* or charged with or convicted of a disqualifying offence. This new section 21A(ba) complements existing section 21A(b) which provides a similar ground for the cancellation or suspension of an authority held by an individual. Importantly, the existing requirement to undertake a show cause process under section 21D will apply in relation to the new ground for cancellation and suspension of an authority held by a corporation.

Clause 280 replaces the current section 36 (Chief executive's notification to commissioner of the police service about a person) with new section 36 (Chief executive may obtain information from the commissioner of the police service). New section 36 reinserts the power for the chief executive to obtain certain criminal history reports previously located in section 6(2) and 14(2) (as described above). The chief executive may use such reports when deciding whether it is appropriate for a person or corporation to hold, or continue to hold, a licence or certificate under this Act. New section 36(3) provides express authority for the commissioner of police to provide criminal history reports to the chief executive.

Clause 281 amends section 36A (Notice of change in police information about a person) to provide that the commissioner of the police service may notify the chief executive about a change in the criminal history of an executive officer of a corporation that is the holder of a licence under the Act.

Clause 282 amends section 41 (Offences by body corporate) to replace references to "body corporate" with "corporation". This update of terminology will align the *Tow Truck Act 1973* with other transport acts.

Clause 283 amends schedule 2 (Dictionary) to include new definitions to support amendments made in this Bill.

Division 2 Amendment of Transport Infrastructure Act 1994

Clause 284 states that this division amends the *Transport Infrastructure Act 1994.*

Clause 285 amends section 46 (Temporary restrictions on use of State-controlled roads) to enforce temporary restrictions on the use of state-controlled roads to prevent damage by vehicular traffic

Clause 285(1) amends section 46(1) to specify that a decision made by the chief executive to restrict access to a State controlled road must be declared and that declaration must take the form of a restricted road use notice erected at the roadside.

Clause 285(2) amends the existing section 46(6) to change the word “decision” to the word "declaration". This is required so that the subsection remains consistent with the rest of the provision.

Clause 285(3) renumbers section 46(4) as section 42(6) to keep its place at the end of the provision after the inclusion of four new subsections.

Clause 285(4) amends section 46 by omitting subsections (2) and (3), and inserting new subsections (2) to (5).

The new section 46(2) sets out the form that a restricted road use notice must take and how such a notice must be erected and displayed.

It is necessary for the public to be informed of a declaration to restrict access to a road. As a result, the new section 46(3) requires that reasonable steps are taken to ensure that a declaration is advertised in a way that the chief executive considers appropriate in the circumstances. This requirement is additional to the placement of a restricted road use notice, and is intended to specify that further steps other than erecting a notice should be taken where practical.

The new section 46(4) provides a penalty for contravening a restricted road use notice. The offence is for contravening the notice and, by doing so, contravening the declaration. Contravention of the sign itself becomes the offence enforceable at the roadside.

A penalty for tampering with a restricted road use notice is introduced in the new section 46(5). This is necessary to deter people from damaging or

removing a restricted road use notice, since enforcement hinges on contravention of a visible notice.

Clause 285(5) inserts section 46(7) which sets out a detailed definition of "tamper". This is required to give meaning to the use of the word in the new section 46(5) provision concerning tampering with a restricted road use notice. The definition extends to damaging, defacing or destroying the notice, removing it, or hindering visibility of it.

Clause 286 amends section 178 (Power to enter places) by clarifying that an authorised officer can enter a railway workplace if it is required to be open under an accreditation.

Clause 287 amends section 267A (Meaning of port facilities) by expanding facilities or land owned or controlled by the port authority to include where the port authority is a GOC port authority, similar assets of a wholly owned subsidiary of the port authority.

While the Bundaberg Port Corporation Pty Ltd owns and controls facilities and land in the Port of Bundaberg, it is not a port authority. Its parent, the Port of Brisbane Corporation Limited is the port authority for the Port of Bundaberg. The clause will allow provisions in the Act applying to port facilities to apply to similar assets of a whole owned subsidiary of a GOC port authority.

Clause 288 amends section 276 (Port services function) by replacing a port authority that is a GOC with GOC port authority. Clause 291 inserts a definition of GOC port authority in Schedule 6 (Dictionary).

Clause 289 amends section 285 (Land use plans) within the definition of port authority land. If the port authority is a GOC port authority, the definition of port authority land is expanded to include land of a wholly subsidiary on the same basis.

While the Bundaberg Port Corporation Pty Ltd owns land in the Port of Bundaberg, it is not a port authority. Its parent, the Port of Brisbane Corporation Limited is the port authority for the Port of Bundaberg. The clause will allow a GOC port authority to prepare or amend land use plans for land owned by its wholly owned subsidiary.

Clause 290 amends section 288 (Restrictions on dealing in property) by inserting a new subsection. Under subsection 288(1), without the Minister's written approval, a port authority cannot dispose of freehold land or enter into a lease, licence or other form of tenure or its port facilities, for longer than 25 years. The clause inserts new provisions

applying the same restrictions to a wholly owned subsidiary of a GOC port authority.

Clause 291 amends schedule 6 (Dictionary) by inserting a definition of GOC port authority.

Division 3 Amendment of Transport Operations (Road Use Management) Act 1995

Clause 292 states that this division amends the *Transport Operations (Road Use Management) Act 1995.*

Clause 293 amends section 17B (Granting, renewing or refusing approval) to provide sufficient regulation-making power for amendments to allow the chief executive to refuse an application for certain approvals under the Act on the basis that a 'relevant person' for the applicant has a conviction or pending charge of a disqualifying offence. Those approvals currently relate to Approved Inspection Stations, where vehicle safety certificates are issued, and Registered Service Providers who provide Q-Ride motorbike training and assessment. New section 17C(3) (see clause 294 below) describes who is a relevant person in relation to these approvals.

Clause 294 amends section 17C (Chief executive may obtain information from commissioner) to simplify the wording of existing section 17C(1) and to enable the chief executive to obtain a report about the criminal history of a 'relevant person' in relation to certain approvals under the Act. New section 17C(1B) specifies who is a relevant person. It includes for example, executive officers of a corporation which applies for or holds an approval to operate an Approved Inspection Station or as a Q-Ride Registered Service Provider. Clauses 294(2) to (5) make a number of consequential amendments.

Clause 295 amends section 17D (Notice of change in police information about a person). Section 17D currently allows the commissioner of police to advise the chief executive of a change to the criminal history of an approval holder. To complement the amendments to section 17C (see Clause 294 above), section 17D is being amended to allow the commissioner to advise the chief executive of a change to the criminal history of a 'relevant person' for an approval holder.

Clause 296 amends section 18 (Grounds for amending, suspending or cancelling approvals). Section 18 currently provides that an approval may be amended, suspended or cancelled where the holder of the approval has been convicted of an offence against the *Transport Operations (Road Use Management) Act 1995* or a corresponding law, or for the holder of an approval prescribed under a regulation, a disqualifying offence. The amendment provides a further ground to amend, suspend or cancel an approval where a "relevant person" for the holder of an approval has been convicted of such an offence. Importantly, the existing requirement to undertake a show cause process under section 19 will apply in relation to this further ground.

Part 12 Amendment of other Acts for various purposes

Division 1 Amendment of Anzac Day Act 1995

Clause 297 states that this division amends the *Anzac Day Act 1995*.

Clause 298 amends section 22(2) of the *Anzac Day Act 1995* to remove the prohibition on trustees of the Anzac Day Trust claiming expenses, such as travel expenses, incurred in their travel to meetings.

Division 2 Amendment of Building and Construction Industry (Portable Long Service Leave) Act 1991

Clause 299 states that this division amends the *Building and Construction Industry (Portable Long Service Leave) Act 1991*.

Clause 300 alters the meaning of the variable "P" in the equation prescribed for the calculation of the long service leave payment to an amount not more than the capped amount prescribed under the new section 59A (inserted at clause 301).

Clause 301 inserts a new section 59A which prescribes that when the Authority applies the formula at section 59(2) to calculate an applicant's long service leave payment, the Authority must not use an amount greater than $1400 as the amount of ordinary pay for a normal working week payable to the registered worker. This prescribed maximum applies for the remainder of the financial year beginning from the commencement of the amendment. For every subsequent financial year the Authority must review the maximum amount in the context of the viability of the fund and take into consideration the Australian Bureau of Statistics Wage Price Index for the Queensland Building and Construction Industry, and indicative rates in relevant industry awards and agreements. Prior to 1 July each year the Authority must then make a recommendation to the Minister who after consideration will fix the amount for the following financial year. The amount must be notified in the gazette prior to 1 July each year.

Clause 302 alters the meaning of the variable "P" in the equation prescribed for the calculation of an employer payment to an amount not more than the capped amount prescribed under the new section 62AA (inserted at clause 303).

Clause 303 mirrors clause 5 with the only difference being that the provisions apply to payments made to employers under the Act (as opposed to clause 301 which deals with payments made to workers).

Clause 304 stipulates that a claim made by a person and received by the Authority on or after commencement of the transitional provision will be subject to the cap regardless of the leave period for which the claim relates. The clause also clarifies that claims in relation to leave periods occurring after commencement, but which are received prior to commencement will not be subject to the cap.

Clause 305 makes an addition to the definition of the word "award" in order to include "workplace agreements" and thus cater for changes in Commonwealth legislation.

Division 3 Amendment of Dangerous Goods Safety Management Act 2001

Clause 306 states that this division amends the *Dangerous Goods Safety Management Act 2001.*

Clause 307 amends the definition of ADG Code in Schedule 2 (Dictionary) by replacing the reference to the 'Ministerial Council for Road Transport' with 'Australian Transport Council'.

Division 4 Amendment of Fire and Rescue Service Act 1990

Clause 308 states that this division amends the *Fire and Rescue Service Act 1990*.

Clause 309 amends the definition of ADG Code in Schedule 6 (Dictionary) by replacing the reference to the 'Ministerial Council for Road Transport' with 'Australian Transport Council'.

Division 5 Amendment of Workers' Compensation and Rehabilitation Act 2003

Clause 310 states that this division amends the *Workers' Compensation and Rehabilitation Act 2003*.

Clause 311 amends section 136 of the Act to remove reference to a written notice given by a worker, on returning to work or engagement in a calling, to an insurer. While the worker is still required to give notice, the notice need not be written. This will allow the worker to provide the notice verbally, for example, by telephone.

Clause 312 amends section 586 of the Act to allow lodgement of certain approved forms by telephone, or another way acceptable to the receiver of the form. The forms are as follows:

- for all insurers, the approved form under section 132 (applying for compensation)
- for WorkCover Queensland, the approved forms under sections 50 (application for a WorkCover accident insurance policy), 133 (employer's duty to report injury) and 133A (employer's duty to tell WorkCover if worker asks for, or employer makes, a payment)

- for Q-COMP, the approved form under section 542 (applying for review)

A person is taken to have lodged one of the above forms or notices verbally by telephone, or another method acceptable to the receiver, when the following steps have been taken:

- the person gives the information required on the approved form to the receiver by telephone or other agreed method;
- if the relevant provision requires or permits the approved form to be accompanied by a document when given to the receiver (for example, a medical certificate), the person gives the document to the receiver within a reasonable period decided by the receiver; and
- if the person's signature is required on the approved form:
    - a method is used to identify the person and to indicate the person's approval of the information communicated;
    - the method was as reliable as was appropriate for the purposes for which the information was communicated; and
    - the receiver consents to the requirement being met by using this method.

This section does not limit the application of the *Electronic Transactions (Queensland) Act 2001*, which specifies other forms of electronic transmission.

Clause 313 is a transitional provision, which specifies that an application for compensation under section 132 or application for review under section 542 lodged by telephone before the commencement of this Act is taken to be in the approved form and in compliance with the Act, as if the *Transport and Other Legislation Amendment Act 2008* had always applied.

The application of the amendments to these forms is being made retrospective in order to remove doubt as to the validity of applications for workers' compensation or an application for review lodged via telephone prior to assent.

WorkCover currently accepts applications for compensation via telephone. However, the lack of a clear provision allowing telephone lodgement could lead to uncertainty over injured workers' entitlements if the validity of a telephone application is called into question.

The clause authenticates this practice to ensure that injured workers and others who have acted in good faith by giving WorkCover or Q-Comp certain required information are not disadvantaged by virtue of transmitting that information via telephone.

As this amendment serves to confirm an existing procedural obligation, it is not considered to adversely affect rights and liberties, or impose obligations retrospectively. It provides added assurance to injured workers regarding their entitlements where a telephone application has been accepted prior to assent.