

# Transport and Other Legislation Amendment Bill 2010

## Explanatory Notes

### General Outline

The Bill amends the following 14 pieces of legislation:

- *Acts Interpretation Act 1954*;
- *Adult Proof of Age Card Act 2008*;
- Police Powers and Responsibilities Act 2000;
- *Transport Infrastructure Act 1994*;
- *Transport Legislation Amendment Act 2007*;
- *Transport (New Queensland Driver Licensing) Amendment Act 2008*;
- *Transport Operations (Marine Pollution) Act 1995*;
- *Transport Operations (Marine Pollution) Regulation 2008*;
- *Transport Operations (Marine Safety) Act 1994*;
- *Transport Operations (Passenger Transport) Act 1994*;
- *Transport Operations (Road Use Management) Act 1995*;
- *Transport Operations (TransLink Transit Authority) Act 2008*;
- *Transport Planning and Coordination Act 1994*; and
- *Transport Security (Counter-Terrorism) Act 2008*.

The amendment to the *Acts Interpretation Act 1954* clarifies legislative provisions that provide for a document “purporting to be signed” by an office holder. The amendment clarifies that a properly authorised delegate of the office holder can sign such documents.

The amendments to the *Adult Proof of Age Card Act 2008* will introduce the following initiatives for the New Queensland Driver Licence project:

- provide for a limitation on the State’s liability for acts or omissions in relation to the keeping and use of a smartcard by the cardholder;

- allow the chief executive to keep and use information taken under one Act with information kept under another Act;
- authorise the use of information which may be collected under another Act and to reciprocally authorise information to be used under another Act;
- allow the chief executive to take and keep a digital photo of a person for identification purposes;
- create a consistent concept of a proof of age card;
- remove the detailed specification of the content of a proof of age card to allow the chief executive the discretion to approve what is printed on the card;
- include an evidentiary provision in relation to giving false or misleading statements or documents for which offences exist. The inclusion is consistent with other transport legislation;
- allowing a proof of age card to expire on the date stated on the card and to be issued for a period up to 10 years.

The amendments to the *Police Powers and Responsibilities Act 2000* will make minor consequential amendments to definitions and correct an error in a divisional heading.

The amendments to the *Tow Truck Act 1973* will introduce the following initiatives for the New Queensland Driver Licence project:

- declare that a smartcard driver's or assistant's certificate is the property of the State;
- provide for a limitation on the State's liability for acts or omissions in relation to the keeping and use of a smartcard by the cardholder;
- allow the chief executive to take a digital photo of a person for identification purposes specific to a driver's or assistant's certificate; and
- replace references to a "duplicate certificate" with a "replacement certificate".

The amendments to the *Transport Infrastructure Act 1994* will:

- authorise penalties received or recovered through the enforcement of offences relating to unpaid tolls on local government tollways to be paid to and retained by the local government; and

- make the administrative process for granting leases of certain tollway land consistent with the process that applies under the *Land Act 1994*.

The amendments to the *Transport (New Queensland Driver Licensing) Act 2008* will introduce the following initiatives for the New Queensland Driver Licence project:

- provide that a smartcard is the property of the State and for a limitation on the State's liability for acts or omissions in relation to the keeping and use of a smartcard by the cardholder;
- allow the chief executive to keep and use information taken under one Act with information kept under another Act;
- allow the chief executive to take a digital photo of a person for identification purposes;
- allow facial images and signatures to be taken, kept and used where a person already holds a marine licence but requests to be issued with a smartcard marine licence indicator;
- replace references to a "duplicate certificate" with a "replacement certificate"; and
- include a reference to replacement driver authorisations.

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

- clarify that prescribed ships, for example, a large trading ship, cannot discharge untreated sewage anywhere in coastal waters, and treated sewage cannot be discharged in prohibited discharge waters established under this Act;
- change the penalty provision for the existing garbage placard requirement. At present, the provision requiring all ships 12 metres or more in length to display a garbage placard has a penalty of 850 penalty units (\$85,000). The Act will be amended so that the penalty will be 20 penalty units (\$2,000); and
- clarify the application of the legislation regarding footnotes.

The Bill also makes a number of consequential and administrative amendments to the *Transport Operations (Marine Pollution) Regulation 2008* to support changes to the *Transport Operations (Marine Pollution) Act 1995*.

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

- insert an evidentiary provision to make it easier to prove a person's age. A statement in a complaint as to the person's age shall be evidence of their age, and, in the absence of evidence in rebuttal, shall be conclusive. This will overcome practical difficulties in obtaining admissible evidence of age in situations where age is an element of the offence; and
- introduce the following initiatives for the New Queensland Driver Licence project:
  - declare that a smartcard marine licence indicator is the property of the State;
  - provide for a limitation on the State's liability for acts or omissions in relation to the keeping and use of a smartcard by the cardholder;
  - allow the chief executive to take a digital photo of a person for identification purposes specific to a marine licence;
  - declare that a licence obtained by false statement or misrepresentation has no effect;
  - extend the power to take and keep a digital photo and signature to cover a person who already holds a marine licence; and
  - allow information about a person's marine history to be disclosed.

The *Transport Operations (Passenger Transport) Act 1994* amendments:

- provide the chief executive with the power to coordinate the provision of scheduled passenger services for special events in regional Queensland;
- widen TransLink's existing special event powers for south-east Queensland from the provision of mass transit (general route) services to the provision of scheduled passenger services;
- make changes in relation to the drug and alcohol testing requirements of transit officers and an amendment relating to prosecutors for exclusion orders. The amendments will remove the requirement for the commissioner of the police service to approve the alcohol breath

testing device and for a doctor to administer the transit officer urine drug test;

- enable the chief executive to appoint a specific agency to undertake transit officer drug and alcohol tests, and allow for a transit officer oral swab drug test as an alternative to the urine drug test;
- provide the chief executive with the power to declare a special event which enables the chief executive to coordinate the provision of scheduled passenger services to and from special events in non-TransLink areas (that is, regional Queensland);
- allow a civilian prosecutor of the Queensland Police Service to accept an application for amendment or revocation of an exclusion order on behalf of the commissioner of the police service;
- correct a typographical error by omitting the word “officer” and inserting the word “person” in four sections of the dangerous goods by rail related sections of the Act. Without the proposed amendments, it is possible that a number of compliance and enforcement activities may be hampered or made completely void based on the legal/technical issue surrounding the inconsistent use of “authorised person” and the incorrect insertion of “authorised officer”; and
- introduce the following initiatives for the New Queensland Driver Licence project:
  - declare that a smartcard driver authorisation is the property of the State;
  - provide for a limitation on the State’s liability for acts or omissions in relation to the keeping and use of a smartcard by the cardholder; and
  - allow the chief executive to take a digital photo of a person for identification purposes specific to driver authorisation.

The amendments to the *Transport Operations (Road Use Management) Act 1995* will:

- adopt model legislation developed by the National Transport Commission aimed at reducing crashes involving speeding heavy vehicles;
- provide for the introduction of alcohol ignition interlock devices for people convicted of certain drink driving offences;

- remove the current distinction made between younger and older licence holders in relation to the permissible level of alcohol concentration in their breath or blood. Specifically, the no alcohol limit that currently applies to unlicensed drivers and the holders of learner, provisional and probationary licences who are under 25 will be extended to apply to those aged 25 or more;
- facilitate the introduction of digital speed and redlight cameras in Queensland, in particular point-to-point speed cameras;
- ensure local governments have the power to make local laws regulating vehicle access to public places that are local government controlled areas such as parks, reserves, jetties, cemeteries and camping grounds;
- clarify the requirements regarding the making and keeping of records by motor vehicle repairers; and
- introduce the following initiatives for the New Queensland Driver Licence project:
  - declare that a smartcard authority is the property of the State;
  - provide for a limitation on the State's liability for acts or omissions in relation to the keeping and use of a smartcard by the cardholder; and
  - allow the chief executive to take a digital photo of a person for identification purposes specific to a prescribed.

The amendments to the *Transport Security (Counter-Terrorism) Act 2008* ensure users are directed to the current Risk Management Standard, following recent updating of the Standard by Standards Australia.

The amendments to the *Transport Planning and Coordination Act 1994* will be amended to authorise the keeping and using of information, obtained or kept under particular transport Acts or the *Adult Proof of Age Card Act 2008*, for another particular transport Act. The new "Smartcard transport authority" provision will allow the Department of Transport and Main Roads to issue to a person a single smartcard evidencing the grant of two or more transport authorities.

The Bill will also make some minor drafting type amendments to a number of pieces of transport legislation.

## **Short Title**

The short title of the Bill is the Transport and Other Legislation Amendment Bill 2010.

## **Policy Objectives of the Legislation**

### *Heavy vehicle speeding*

Amendments to the *Transport Operations (Road Use Management) Act 1995* adopt provisions from the *National Transport Commission (Model Act on Heavy Vehicle Speeding Compliance) Regulations 2008*. This is national model legislation developed by the National Transport Commission aimed at reducing deaths and injuries from crashes involving speeding heavy vehicles. In recognition of the role that parties other than the driver play in relation to speed compliance, the amendments focus upon parties in the chain of responsibility rather than on the driver. The parties identified in the legislation include employers, prime contractors, operators, schedulers, loading managers and certain consignors and consignees. Each of these parties who can influence whether or not speeding occurs will have a measure of responsibility to ensure that their activities do not influence, encourage or require the driver to speed. If one of these parties is found not to have discharged its responsibilities, it will be liable for a fine of between \$300 and \$8,000 depending upon the severity of the offence.

Drivers of heavy vehicles are not regulated by the model law as there is already a well-established compliance and enforcement framework that targets drivers. This framework includes the allocation of demerit points, fines and driver licence sanctions.

The model law is consistent with other nationally developed model laws governing mass, dimension and loading of heavy vehicles and fatigue management implemented in Queensland on 29 September 2008.

### *Alcohol interlocks*

The introduction of alcohol ignition interlocks into Queensland is designed to minimise drink driving on Queensland roads and to assist high-risk drink drivers to learn to separate the activities of drinking and driving. An alcohol ignition interlock is a device that, when fitted to a motor vehicle, prevents the motor vehicle from being started or driven unless it is supplied with a breath sample that contains either no alcohol or less than a specified concentration of alcohol. Alcohol ignition interlocks will complement

Queensland's existing drink driving restrictions and will play an important role in addressing this ongoing social issue.

*No alcohol limit*

A no alcohol limit currently applies to all drivers under 25 years of age who hold a learner, provisional or probationary licence or who do not hold a driver licence. Drivers in these categories who are 25 years of age or over are subject to the general alcohol limit of 0.05 blood/breath alcohol concentration. The amendments to the *Transport Operations (Road Use Management) Act 1995* extend the no alcohol limit to all learner, provisional and probationary driver licence holders and unlicensed drivers, irrespective of age.

The amendments will also provide that all new motorbike licence holders will be subject to the no alcohol limit for at least 12 months after first getting their motorbike licence.

*Digital speed and redlight cameras*

During 1 December 2008 to 30 November 2009, there were 77 fatalities because of crashes involving speeding drivers or riders within Queensland, which represents 22.6% of the Queensland road toll. Speed management is recognised in Queensland, Australia and around the world as a significant issue, which can be managed to improve road safety. The Queensland Camera Detected Offence Program (CDOP), which incorporates fixed and mobile speed cameras as well as redlight cameras, is a significant road safety program with a proven ability to reduce speed and redlight related crashes. This legislation will facilitate the expansion of the CDOP through the deployment of digital technology and the introduction of new enforcement techniques, such as combined red-light/speed cameras and point-to-point speed cameras. This will improve the efficiency and effectiveness of the program by providing a greater range of camera solutions consistent with recognised best practice leading to greater road safety benefits.

*Local government powers to regulate vehicle access to local government controlled areas*

Under their general local law making powers, local governments make local laws regulating vehicle access to “local government controlled areas” (that is, land or infrastructure owned, held in trust or otherwise controlled by a local government, such as parks, reserves, jetties, cemeteries and camping grounds). Local governments use these powers to adopt local laws



that, for example, prevent access by vehicles, or certain types of vehicles, to parks to preserve features of the environment or to ensure there is no damage to the park, or to exclude trail bikes from camping grounds to protect the health and safety of persons using the camping grounds.

During a review of a new suite of model local laws as part of the implementation of the *Local Government Act 2009*, a possible inconsistency between a model local law regulating vehicle access to local government controlled areas and the *Transport Operations (Road Use Management) Act 1995* was identified. Section 66(1) of the *Transport Operations (Road Use Management) Act 1995* prevents local governments from making local laws about matters provided for in chapter 5 of the Act. It was identified that section 147 of the Act (which is contained in chapter 5) allows the State to regulate the operation of vehicles in public places, which would prevent local governments from making local laws about these matters. The term “public place” has a defined meaning in the Act and it may overlap with areas that are “local government controlled areas”.

The policy objective of the amendments is to overcome the limitation outlined above.

#### *Keeping records of motor vehicle repairs*

The amendments to the *Transport Operations (Road Use Management) Act 1995* clarify the requirements regarding the making and keeping of records by motor vehicle repairers.

#### *Local government tollway penalty revenue*

An amendment to the *Transport Infrastructure Act 1994* will allow local governments to retain penalties received or recovered through enforcement of offences relating to non-payment of tolls on local government tollways.

#### *New Queensland Driver Licence legislation*

The amendments to the *Adult Proof of Age Card Act 2008* and the *Transport (New Queensland Driver Licensing) Act 2008*, in conjunction with the *Tow Truck Act 1973*, *Transport Operations (Marine Safety) Act 1994*, *Transport Operations (Passenger Transport) Act 1994*, *Transport Operations (Road Use Management) Act 1995* and the *Transport Planning and Coordination Act 1994* allow for:

- a smartcard to be the property of the State and for a limitation on the State’s liability for acts or omissions in relation to the keeping and use of a smartcard by the cardholder;

- the chief executive to keep information taken under one Act with information taken and kept under another Act;
- the authorisation of the use of information which may be collected under one Act and to reciprocally authorise information to be used under another Act;
- the chief executive to take a digital photo of a person for identification purposes;
- the introduction of a smartcard transport authority, which is a single smartcard evidencing the grant of one or more transport authorities; and
- miscellaneous minor amendments to facilitate the introduction of the New Queensland Driver Licence project.

### *Maritime Legislation*

#### *Ship sourced sewage provision*

The amendments to the *Transport Operations (Marine Pollution) Act 1995* and the *Transport Operations (Marine Pollution) Regulation 2008* clarify that prescribed ships, for example, a large trading or passenger ship visiting a Queensland port from overseas, cannot discharge untreated sewage anywhere in coastal waters. The proposed amendment clarifies that prescribed ships may discharge treated sewage in accordance with set conditions, except in prohibited discharge waters where no discharge of sewage is allowed. This amendment achieves the original intent of section 50A, which is to implement the *International Convention for the Prevention of Pollution from Ships, 1973* (commonly known as MARPOL) and clarifies that no ship can discharge in prohibited discharge waters in Queensland. Additionally, an amendment will adjust the penalty provision for the existing garbage placard requirement to be consistent with similar minor offence penalty provisions under the legislation.

#### *Removal of MARPOL*

The proposed amendment will direct the stakeholders to the copy of MARPOL listed on the Australian Maritime Safety Authority website, which will assist in consistent, effective and efficient implementation of MARPOL and remove the need to regularly amend the *Transport Operations (Marine Pollution) Regulation 2008* to reflect updates to MARPOL.

### *Proof of Age*

The amendments to the *Transport Operations (Marine Safety) Act 1994* insert an evidentiary provision to make it easier to prove a person's age. The Bill will amend the *Transport Operations (Marine Safety) Act 1994* to allow a prosecutor to make an allegation about the age of a person in the written complaint, which commences the prosecution. If the defendant wishes to challenge the allegation, they may raise a defence by demonstrating that a particular person is over the age alleged in the complaint.

### *Transport Security (Counter-Terrorism) Act 2008*

The amendment to the *Transport Security (Counter-Terrorism) Act 2008* updates the reference to the Risk Management Standard following the recent replacement of AS/NZS 4360: Risk Management Standard with AS/NZS ISO 31000:2009 Risk Management – Principles and Guidelines.

## **Reasons for the Bill**

### *Heavy vehicle speeding*

Previous surveys have found that speeding by heavy vehicles - that is, vehicles with a gross vehicle mass of more than 4.5 tonnes - is ranked as the highest public concern about the road transport industry in Australia. With increasing numbers of heavy vehicles on the road, community concern over heavy vehicle speeding is expected to increase.

The amendments contained in this Bill are aimed at minimising heavy vehicle speeding by placing obligations on those in the industry who are able to influence whether or not a heavy vehicle driver exceeds the speed limit.

### *Alcohol interlocks*

Drink driving continues to be a problem on Queensland roads and continues to present a risk to all Queensland road users. Research has indicated that alcohol is a contributing factor in more than 25 percent of fatal crashes. Those drivers who commit high-level drink driving offences or who commit repeat drink driving offences have demonstrated an inability to separate the activities of drinking and driving. Alcohol ignition interlocks will play an important role in establishing this separation in their lives.

*No alcohol limit*

The consumption of alcohol by learner and provisional licence holders (whatever their age) potentially increases the crash risk of these licence holders while they are still developing their on-road driving skills. Research has also shown that the first year of motorbike riding is the most critical in terms of potential crash risk. In Queensland, more fatal crashes occur in the first 12 months of a person holding a motorbike licence.

The amendments in the Bill to extend the no alcohol limit to all novice road users are aimed at reducing the prevalence of alcohol as a significant factor in crashes involving these licence holders and are intended to increase the safety of novice motorbike riders in particular.

*Digital speed and redlight cameras*

The legislation to support the introduction of digital speed and redlight cameras in Queensland will be principally through amendments to the *Traffic Regulation 1962*, proposed to be considered separately by the Governor in Council, however, a number of changes are being made to the *Transport Operations (Road Use Management) Act 1995* to facilitate the introduction of digital technology.

*Local government powers to regulate vehicle access to local government controlled areas*

The amendments in this Bill address the inconsistency between powers of local governments to make local laws and sections 66 and 147 of the *Transport Operations (Road Use Management) Act 1995*.

*Keeping records of motor vehicle repairs*

Section 133 of the *Transport Operations (Road Use Management) Act 1995* currently requires motor vehicle repairers to keep a written register of repairs and painting of vehicles. The records kept by repairers are used by the Queensland Police Service to assist them with the prevention of possible criminal activities, such as re-birthing of vehicles and investigating vehicle related offences (such as hit and run accidents).

Section 161 of the *Traffic Regulation 1962* contains further requirements about records to be kept by repairers. The regulation contains definitions of the terms “painting” and “repairs” for the purposes of section 161, which refer to painting and repairs resulting from collisions.

In order to overcome divergent record keeping practices by motor vehicle repairers, section 133 is being replaced to clarify that records must be made

and kept of all repairs and painting of vehicles. Other aspects of section 133 are also being updated.

#### *Local government tollway penalty revenue*

An amendment to section 480 of the *Transport Infrastructure Act 1994* is required to ensure that penalties received or recovered from the enforcement of offences relating to unpaid tolls on local government tollways may be paid to and retained by the local government.

#### *New Queensland Driver Licence legislation*

A number of acts will be amended to address issues associated with the New Queensland Driver Licence project, these include:

- clarifying ownership of a smartcard to be issued by the Department of Transport and Main Roads. The Bill inserts a consistent provision in the *Tow Truck Act 1973*, *Transport Operations (Marine Safety) Act 1994*, *Transport Operations (Passenger Transport) Act 1994*, and the *Transport Operations (Road Use Management) Act 1995* to declare a smartcard is State property. As a consequence of this amendment, the *Tow Truck Act 1973*, *Transport Operations (Marine Safety) Act 1994*, *Transport Operations (Passenger Transport) Act 1994*, *Transport Operations (Road Use Management) Act 1995* and the *Adult Proof of Age Card Act 2008* will also be amended to provide a limit on the State's liability for acts or omissions in the keeping and use of a smartcard by the cardholder;
- allowing information about an authority issued under the *Tow Truck Act 1973*, *Transport Operations (Passenger Transport) Act 1994*, and the *Transport Operations (Road Use Management) Act 1995* to be included on a document evidencing the grant of an authority under any other of these Acts;
- authorising the keeping of information about authorities under one Act (such as the *Transport Operations (Road Use Management) Act 1995*) with information about authorities under another Act (such as the *Transport Operations (Passenger Transport) Act 1994*). Each of the smartcard Acts will be amended which will extend to cardholder images and signatures;
- authorising the use of information, obtained or kept under a particular transport Act or the *Adult Proof of Age Card Act 2008*, for another particular transport Act. A reciprocal provision is also included under the *Adult Proof of Age Card Act 2008*. These amendments are

- required to allow the Department of Transport and Main Roads to administer the various authorities for which smartcards will be issued;
- ensuring that a digital photo can be taken and facial recognition technology can be employed in accordance with the original drafting intention to allow an image to be taken for identification purposes;
  - amending the *Adult Proof of Age Card Act 2008* to create a consistent definition of a proof of age card which will allow the definition of an adult proof of age card to be simplified;
  - authorising the release of a person’s marine history in appropriate circumstances;
  - allowing the chief executive or general manager of Maritime Safety Queensland, to take a digital photo and digitised signature of, and issue a smartcard to, a person who already holds a recreational marine licence;
  - amending appropriate sections of the *Tow Truck Act 1973* by replacing the word “duplicate” with “replacement”. The *Tow Truck Act 1973* currently allows a “duplicate certificate” to be issued. This amendment distinguishes between the “smartcard” and the certificate that it represents. Once the certificates are issued as smartcards, a lost, stolen or damaged smartcard can only be replaced with a “replacement certificate” as each smartcard has a unique identifier. Considering it is not possible to issue a duplicate smartcard, the word “duplicate” should be substituted with “replacement”;
  - amending the New Queensland Driver Licence legislation to allow the adult proof of age card to be issued for a period of less than 10 years if necessary; and
  - inserting into the *Adult Proof of Age Card Act 2008* an evidentiary provision in relation to giving false or misleading statements or documents for which offences exist. The inclusion of an evidentiary provision is consistent with other transport legislation.

The following amendments are required to the *Transport Operations (Marine Safety) Act 1994* for consistency in the management of the smartcard products:

- There is currently no provision equivalent to section 126(2) of the *Transport Operations (Road Use Management) Act 1995*, which declares that a licence obtained by false statement or misrepresentation has no effect. An equivalent provision is required to

ensure a licence obtained by false statement or misrepresentation has no effect.

- Under section 202C a person is required to return their marine licence to the Department of Transport and Main Roads when the licence has been cancelled by a court. An amendment is necessary to require the return of the smartcard marine licence indicator.
- A smartcard marine licence indicator will need to be returned when variations to the restricted marine licence have been approved by a court under section 202K.

The following amendments are required to the *Transport Operations (Passenger Transport) Act 1994* for consistency in the management of smartcard products:

- Allow information about an authority issued under the *Transport Operations (Passenger Transport) Act 1994* to be included on a document evidencing the grant of an authority under the *Transport Operations (Road Use Management) Act 1995* or the *Tow Truck Act 1973* to help facilitate the concept of Industry Authority smartcard.

The following amendments are required to the *Tow Truck Act 1973* for consistency in the management of smartcard products:

- Provide that a driver's certificate or an assistant's certificate may be issued for a period not greater than five years. Currently, a tow truck driver or assistant's certificate can only be issued for 12 months. These certificates will be shown on a transport authority smartcard, which may include other driver authorisations issued for up to five years.
- Allow information about an authority issued under the *Tow Truck Act 1973* to be included on a document evidencing the grant of an authority under the *Transport Operations (Road Use Management) Act 1995* or the *Transport Operations (Passenger Transport) Act 1994* to help facilitate the concept of a transport authority smartcard.
- The *Tow Truck Act 1973* currently allows a "duplicate certificate" to be issued. Once the certificates are issued as smartcards, a lost, stolen or damaged smartcard can only be replaced with a "replacement certificate" as each smartcard has a unique identifier. Considering it is not possible to issue a duplicate smartcard, appropriate sections of the Act have been amended to replace the word "duplicate" with "replacement". This amendment accordingly distinguishes between the "smartcard" and the certificate that it represents.

The *Transport Operations (Passenger Transport) Act 1994* will be amended to allow information about an authority issued under the *Transport Operations (Road Use Management) Act 1995* to be included on a document evidencing the grant of an authority under the *Tow Truck Act 1973* or *Transport Operations (Passenger Transport) Act 1994*. This amendment will help to facilitate the concept of a transport authority smartcard and provide consistency in the management of the smartcard products.

#### *Passenger Transport legislation*

The amendments will allow for a more flexible and less regulatory approach to administering drug and alcohol tests on transit officers while still maintaining rigorous industry and community recognised procedures in administering these tests. The amendments will also provide the chief executive with the power to declare a special event to enable the coordination of scheduled passenger services outside south-east Queensland. Currently, this power is restricted to special events in the TransLink area.

#### *Maritime Legislation*

The amendments to the *Transport Operations (Marine Pollution) Act 1995* will clarify the intent of existing legislation and enable Maritime Safety Queensland to undertake appropriate compliance activities to protect our marine environment from ship-sourced marine pollution.

The amendments to the *Transport Operations (Marine Safety) Act 1994* will facilitate proof of age in proceedings where the age of a person is relevant to:

- enhancing marine safety by enabling effective compliance and enforcement action for age related offences; and
- making the marine safety and road use legislation more consistent.

#### *Transport Security (Counter-Terrorism) Act 2008*

Standards Australia has recently replaced the Risk Management Standard AS/NZS 4360:2004 with AS/NZS ISO 31000:2009 Risk Management – Principles and Guidelines. AS/NZS 4360:2004 is referenced within the *Transport Security (Counter-Terrorism) Act 2008*. Consequently, the words AS/NZS 4360:2004 Risk Management will replace “AS/NZS ISO 31000:2009 Risk-Management – Principles and Guidelines” in Part 1, s 16(b) of the *Transport Security (Counter-Terrorism) Act 2008*.



## **Administrative Costs**

Administrative costs of the interlock scheme are to be recovered from participants in the scheme. All other amendments will be funded within existing budget allocations.

## **Achieving the Objectives**

### *Heavy vehicle speeding*

The amendments place an obligation on relevant parties in the transport chain of responsibility to take reasonable steps to ensure that their business practices and actions - for example, their scheduling, loading or consigning activities - will not cause the driver of a heavy vehicle to exceed any speed limit.

This obligation is to be imposed on employers of heavy vehicle drivers, operators of heavy vehicles, prime contractors, schedulers, loading managers, and certain consignors and consignees. These are the parties who, other than the driver, are most directly responsible for the safe operation of a heavy vehicle.

The amendments provide guidance as to what constitutes the taking of reasonable steps (for example, taking steps to identify what aspects of their activities might cause a driver to speed and to identify what steps can be taken to avoid or minimise that risk).

### *Alcohol interlocks*

A mandatory alcohol ignition interlock condition is to be imposed on the licence of those people returning to the driver licensing system after serving a disqualification for a high level drink driving offence, a repeat drink driving offence in a five year period or a specified drink driving related offence. The interlock condition will be imposed by legislation as a condition of re-entering the licensing system. A person whose licence is subject to the interlock condition will only be authorised to drive a motor vehicle that has been fitted with an approved alcohol ignition interlock.

### *No alcohol limit*

Removing the age-based distinction in the no alcohol limit requirement will allow all learner and provisional licence holders to develop their basic vehicle operation and cognitive skills (for example, hazard perception) without the added potential risks associated with alcohol impairment. To

maintain consistency, the no alcohol limit will also be extended to all probationary and unlicensed drivers regardless of age.

Requiring all new motorbike licence holders to be subject to the no alcohol limit for at least 12 months after first getting their motorbike licence will allow novice riders to develop their basic on-road riding skills during the critical first year of riding without the added potential risks associated with alcohol impairment.

#### *Digital speed and redlight cameras*

The amendments in this Bill:

- update the definition of “photographic detection device” to refer to devices or systems approved under a regulation and make it clear that the photographic detection device incorporates all of the components of the device or system. This is particularly important for the introduction of point-to-point speed cameras which rely on multiple cameras rather than being a single “device”;
- clarify and improve evidentiary provisions relating to photographic detection devices and provisions about procedural matters relating to proceedings for offences detected by these devices; and
- introduce new evidentiary provisions to allow average speed to be used as evidence of the actual speed of a vehicle. These provisions will support the prosecution of offences detected by point-to-point speed cameras.

#### *Local government powers to regulate vehicle access to local government controlled areas*

The Bill amends the *Transport Operations (Road Use Management) Act 1995* to ensure local governments may make local laws about the regulation of vehicle access to public places that are local government controlled areas. The Bill also includes a declaratory provision to ensure that any local laws made about these matters and enforcement action taken under those local laws, are valid.

#### *Keeping records of motor vehicle repairs*

The amendments will clarify the requirements regarding the making and keeping of records by motor vehicle repairers. In particular, the amendments put it beyond doubt that records must be kept of all repairs and painting of vehicles. It is proposed that a consequential amendment

will remove section 161 of the *Traffic Regulation 1962*, the requirements of which are being incorporated into the Act.

#### *Local government tollway penalty revenue*

The *Transport Infrastructure Act 1994* will be amended to provide that penalties received or recovered for particular offences relating to non-payment of tolls on a local government tollway are to be paid to and may be retained by the local government. Penalties received or recovered by an entity other than the local government are to be paid to the local government. The amendment includes penalties recovered as a result of enforcement action started either by serving an infringement notice under the *State Penalties Enforcement Act 1999* or by complaint and summons served under the *Justices Act 1886*.

#### *New Queensland Driver Licence legislation*

The amendments will assist the facilitation of the New Queensland Driver Licensing project by:

- providing for smartcards to be State property and for the protection of the State against civil liability for an act or omission by a cardholder;
- clarifying the power to take a person's facial image for identification purposes specific to authority or smartcard;
- authorising the keeping of information about authorities granted under one Act with information about authorities under another Act;
- authorising the use of information under an Act even though the information was obtained under another transport Act;
- allowing information about an authority issued under any one of the smartcard transport Acts to be included on a document evidencing the grant of an authority under any other of these Acts; and
- amending various Acts to differentiate between documents that evidence an authority (such as a smartcard) and the authority itself.

#### *Passenger Transport Legislation*

The amendments assist in achieving the objectives of the Act, which include:

- the provision of best possible public transport at a reasonable cost to the community and government;
- keeping regulation to a minimum; and

- promoting the personal safety of persons using public transport.

### *Maritime Legislation*

The amendments enable Maritime Safety Queensland to:

- effectively plan and manage marine safety and related marine operational issues; and
- protect Queensland's marine and coastal environment

by minimising deliberate and negligent discharges of ship-sourced pollutants into coastal waters.

## **Fundamental Legislative Principles**

### *Heavy vehicle speeding*

Although some of the proposed amendments relating to heavy vehicle speeding compliance potentially infringe fundamental legislative principles (FLPs), the need to address the dangerous practice of heavy vehicle speeding is considered to justify any potential impact on individual rights. For the purpose of national consistency, it is important that the model law provisions be adopted as closely as possible. Sufficient safeguards, as explained further below, have been placed in the legislation for the protection of the rights of individuals.

The reforms bring heavy vehicle speeding compliance within Queensland's existing chain of responsibility framework. Under this framework, attention is not focussed upon speeding breaches committed by drivers. Rather, the role of parties within the transport chain is expressly recognised so that the root causes of heavy vehicle speeding may be identified and relevant parties may be prosecuted.

The amendments aim to ensure that those who are in a position to influence a decision by a driver of a heavy vehicle to breach speed limits are held liable in appropriate circumstances. The amendments are consistent with current chain of responsibility legislation developed for breaches of heavy vehicle mass, dimension and loading requirements and driving hour requirements under fatigue legislation. The core obligation requiring parties in the chain to take "reasonable steps" arises in the context of two types of offences as outlined below.

The amendments create a number of offences that impose a prospective duty on identified parties within the chain of responsibility. This duty is framed so that employers, prime contractors, operators, schedulers, loading

managers and certain consignors and consignees must take all reasonable steps to ensure that their actions will not cause a driver to commit a speeding offence (new sections 163AD, 163AG, 163AI and 163AL of the *Transport Operations (Road Use Management) Act 1995* (in clause 31)). The legislation provides practical examples of reasonable steps a party may be required to take. These include, for example, for employers, prime contractors and operators: regular maintenance of vehicle components that relate to complying with speed limits (for example, speed limiters) and implementing programs to report and monitor incidents of speeding (new section 163AD of the *Transport Operations (Road Use Management) Act 1995*, in clause 31). For schedulers, examples of reasonable steps include:

- taking into account traffic delays;
- consulting drivers about their schedules and work requirements; and
- undertaking contingency planning in relation to schedules (new section 163AG of the *Transport Operations (Road Use Management) Act 1995* in clause 31).

The purpose of these new offences, as explained in the Regulatory Impact Statement that accompanied the *National Transport Commission (Model Act on Heavy Vehicle Speeding Compliance) Regulations 2008*, is to create a series of positive duties that are specifically related to the activities performed by each party in the chain of responsibility. These duties are consistent with the duties that apply in Queensland for fatigue-related offences. These new requirements are aimed at ensuring that parties in the chain work to establish an environment that will assist drivers to avoid speeding and that these parties respond to patterns of breaches that suggest systemic faults in supply chain management.

A person charged with these offences will not have access to section 24 of the Queensland Criminal Code (see amendment to section 57H of the *Transport Operations (Road Use Management) Act 1995* in clause 30). That is, a party cannot attempt to avoid liability for the offence based on an “honest and reasonable but mistaken belief”. It is considered that the exclusion of section 24 of the Queensland Criminal Code is justified on the basis that the policy underpinning these offences is to ensure that parties in the chain of responsibility will act with due diligence and care by taking proactive steps to ensure that heavy vehicle speeding offences do not occur. Furthermore, it is important to note that, as taking all reasonable steps is an element of the duty, the prosecution has the onus of proving beyond a reasonable doubt that the relevant party failed to take all reasonable steps to

ensure that a speeding offence was not committed. If the prosecution is able to prove that the party had not acted reasonably, the Queensland Criminal Code, section 24, is unlikely to be of assistance to a defendant as they will be unable to establish that they acted reasonably.

The overriding of section 24 of the Queensland Criminal Code for these offences (and for the offence discussed below) is permitted by section 24(2), which states that the operation of the section may be “excluded by express or implied provisions of the law”.

Legislation should not reverse the onus of proof in a criminal proceeding without adequate justification (s.4(3)(d) of the *Legislative Standards Act 1992*). The amendment to section 57AB of the *Transport Operations (Road Use Management) Act 1995* in clause 26 makes a speeding offence committed by a heavy vehicle driver an extended liability offence. This means that if a driver of a heavy vehicle is proved to have committed a speeding offence, then under section 57B of the *Transport Operations (Road Use Management) Act 1995*, anyone who is an “influencing person” as defined in section 57AB is taken to have committed a heavy vehicle speeding offence. Maximum penalties that apply to the influencing person depend upon the speed limit that applies to the driver of the heavy vehicle and how far that limit was exceeded (see amendment of section 57B in clause 27). While these influencing persons will not be able to rely on the Queensland Criminal Code, section 24, they will have the benefit of the reasonable steps defence and the defence of not being in a position to influence the conduct of the driver (see section 57B (2AA)).

Included in the list of “influencing persons” for a heavy vehicle speeding offence are those parties who have the highest level of liability under the national model law. Those parties are employers, prime contractors and operators. They have been identified as having a major influence over the actions of the driver. It is therefore considered appropriate that a higher standard of liability should apply to these parties. Other parties in the chain of responsibility (such as consignors, loaders and schedulers) are recognised as having more limited control over a driver’s decision to speed and are therefore not accorded liability under this offence.

The creation of this offence and any potential breach of the fundamental legislative principle of reversing the onus of proof is considered to be justified as it will assist in ensuring that employers, prime contractors and operators refrain from exerting pressure on drivers to speed, such as by imposing unrealistic deadlines or by offering financial incentives to exceed the speed limit. By removing the application of the Queensland Criminal

Code, section 24, employers, prime contractors and operators will not be able to avoid liability simply by saying they did not know the driver was speeding. To allow them to avoid liability on this basis would seriously undermine the ability of the reforms to deliver the promised road safety benefits.

Employers, prime contractors and operators will have the benefit of the reasonable steps defence. In order to be in a good position to prove this defence, these parties would need to ensure that their everyday business practices are aimed at ensuring that drivers do not commit speeding offences. The legislation has been designed to help achieve the goal that speed compliance be part of normal and reasonable business practice rather than being an extra burden placed on the business. Table 8 in the Regulatory Impact Statement accompanying the model legislation gives some illustrative examples as to what reasonable steps these parties could be expected to take. These examples of reasonable steps include:

- informing customers of the effect unreasonable scheduling or deadlines can have on speed;
- ensuring schedules enable drivers to comply with speed limits;
- informing and requiring drivers to report speeding issues; and
- staff counselling.

Furthermore, consistent with the approach taken in other areas of chain of responsibility, these parties will be able to demonstrate that they took all reasonable steps by showing that they complied with all relevant standards and procedures, including, for example, an industry code of practice in relation to matters to which the offence relates (see amendment to section 57F of the *Transport Operations (Road Use Management) Act 1995* in clause 29).

This amendment potentially infringes the fundamental legislative principle of reversing the onus of proof by excluding the operation of section 24 of the Criminal Code (an excuse that the prosecution must disprove), and replacing it with a defence that the defendant must establish on the balance of probabilities. As can be seen from the nature of the possible steps set out in the paragraph above, the information necessary to prove this defence is particularly within the defendant's knowledge, rather than the prosecutor's knowledge, and would be extremely difficult for the prosecution to prove. For example, without mounting a significant investigation, with commensurate disturbance to the defendant's operation through searches of

property and seizure of evidence, it would be almost impossible for a prosecutor to have sufficient knowledge of the defendant's business to show what steps they did not take, but reasonably could have taken, to prevent a speeding offence. It is less disruptive and hence easier for a defendant to provide evidence of its practices and procedures that are aimed at informing and requiring drivers to report speeding issues, in comparison to what the prosecution would need to do in order to establish this as part of an offence. Therefore, the reversal of the onus of proof is considered justified in this instance.

The *Transport Legislation Amendment Act 2007* amended the *Transport Operations (Road Use Management) Act 1995* to incorporate new enforcement powers from the *National Transport Commission (Road Transport Legislation—Compliance and Enforcement Bill) Regulations 2006*. The *National Transport Commission (Model Act on Heavy Vehicle Speeding Compliance) Regulations 2008* applies these powers to the investigation and enforcement of chain of responsibility speeding offences. These powers allow authorised officers to enter certain places in limited circumstances without warrant or consent and to search and seize evidence in circumstances provided for in the *Transport Operations (Road Use Management) Act 1995*. These powers are available in relation to the investigation of suspected offences against a transport Act. Therefore, they will be available to conduct investigations in relation to a suspected commission of the new chain of responsibility heavy vehicle speeding offences incorporated by this Bill. These are the offences incorporated into section 57B and the offences in the new chapter 5D of the *Transport Operations (Road Use Management) Act 1995*. This amendment raises the fundamental legislative principle relating to the entry of premises without warrant (s.4 (3) (e) of the *Legislative Standards Act 1992*). However, similar to previous national heavy vehicle reforms, tight controls will be applied to the use of this power. These include:

- a restriction to only use the power when destruction of evidence of an offence is considered imminent;
- the requirement to seek police approval prior to entry in the case of suspected death or injury; and
- the requirement to obtain a post-entry approval from a Magistrate.

Should this approval not be given, evidence seized will be returned to the defendant. In line with the national legislation, consent or a warrant is still



required if an authorised officer needs to enter either an unattended place or a place which is used predominately for residential purposes.

The extension of these powers to the investigation of suspected heavy vehicle speeding offences is justifiable. It is vital that all available evidence that would point to the involvement of a party in the chain of responsibility in the commission of a speeding offence be accessible. This will assist in ensuring these parties may be brought to account for their actions. The explanatory notes accompanying the Transport Legislation Amendment Bill 2007 discussed these powers in relation to the investigation of other heavy vehicle offences. As explained in those notes, the exercise of these powers will assist in preventing the possibility of contamination, destruction or removal of crucial evidence if consent to enter a place is denied or if a period elapses before a warrant is obtained. For example, a scenario could arise where a search of a truck intercepted at the roadside leads to a suspicion that someone else in the transport chain is responsible for exerting pressure on a driver to commit a speeding offence. These enter, search and seizure provisions will assist in limiting the amount of time during which evidence relevant to the commission of the offence may be concealed or removed.

Furthermore, in the adoption of the heavy vehicle speeding reforms, business premises that may be entered and searched without warrant or consent has been limited to the premises of those persons who may be held liable under the legislation for the commission of an offence. For example, the business premises of loaders and unloaders will not be able to be automatically entered, as these parties have not been identified as those with potential liability under the legislation. This is due to their lack of influence on speeding compliance by a driver.

This limitation on the type of business premises that may be entered without warrant or consent is a departure from the model law provisions. The approach has been adopted to adequately take into account the rights of individuals in accordance with fundamental legislative principle considerations.

It is a fundamental legislative principle that penalties should be proportionate to the offence. The Bill incorporates a new extended liability heavy vehicle speeding offence into section 57B and offences in the new chapter 5D of *Transport Operations (Road Use Management) Act 1995*. The penalties are proportionate to the offences and are consistent throughout the Act and within the nationally agreed penalty range. Also, where relevant, penalties for heavy vehicle speeding offences are consistent

with penalties for similar offences for heavy vehicle driver fatigue that have been adopted in Queensland.

### *Alcohol interlocks*

The introduction of alcohol ignition interlocks into Queensland may potentially breach fundamental legislative principles relating to the rights and liberties of individuals.

A person who is within the defined target group will be subject to the “interlock condition” and, as such, will only be authorised to drive a vehicle that is fitted with a prescribed interlock (see section 91K). It will be an offence for those people to drive a vehicle that does not have such a device fitted (see section 91W). On re-entering the licensing system following a relevant disqualification period, the person will be required to nominate the vehicle or vehicles they will be driving during the period in which the interlock condition applies (see section 91L). The nomination of vehicles is required to enable the chief executive to determine when the person has satisfied the requirement to only drive a nominated vehicle fitted with an interlock for a period of 12 months.

While these requirements may affect the individual's right to drive a motor vehicle on Queensland roads, any impact is justified by the need to ensure the person learns to appropriately separate the activities of drinking and driving. This is essential to minimise the risk these drink drivers present to both themselves and to other road users. The interlock condition will be imposed only where a person has been convicted by a court of a high level drink driving offence, a repeat drink driving offence in a five-year period or a specified drink driving related offence. In this way, the condition will be limited to those drink drivers that present the highest risk.

Once a vehicle has been fitted with an alcohol ignition interlock device, any person seeking to drive the vehicle will be required to provide a specimen of breath that contains less than the appropriate level of alcohol. Where that person's licence is not subject to an interlock condition, the device may require a lower level of alcohol than is currently permitted under the terms of the person's licence. For example, an open licence holder would normally be subject to the *general alcohol limit* as described in section 79A of the *Transport Operations (Road Use Management) Act 1995*. If that person were to drive a vehicle fitted with an alcohol interlock, they would need to have an alcohol level below that permitted by the interlock device. Any impact on the rights of these people, however, is

justified by the need to ensure the person who is subject to the interlock condition separates their activities of drinking and driving.

New section 91U specifies grounds upon which the chief executive may extend the interlock period. Included in those grounds is whether the person drove a nominated vehicle when they knew or reasonably ought to have known that the interlock device in the vehicle was not operating properly or that it had been interfered with. In relation to the “reasonably ought to have known” aspect in these provisions, there are two factors that are relevant. The first is that the devices have inbuilt mechanisms to warn users when they are not operating properly including, for example, LED warning lights or buzzers. The second is that, at the time of having an interlock device installed in a vehicle, the person receives extensive training on the use of the device and the features and functions it contains. This includes those features that indicate when the device is not operating properly.

New Division 5 contains a number of offences that can apply to interlock drivers. Under the provisions of sections 91W(2) and 91X(2), disqualification periods will be imposed on those convicted of the associated offences. The imposition of these disqualification periods is an important component in ensuring maximum compliance with the interlock condition and any restrictions that might apply to an exemption from that condition. It is consistent with the mandatory disqualification periods that already apply to a number of unlicensed driving offences as mentioned in section 78(3)(b) to (e) of the *Transport Operations (Road Use Management) Act 1995*. In addition, it reflects the mandatory minimum disqualification periods that are imposed under section 86(1), (3) and (4) for a range of offences involving alcohol and drugs while driving a motor vehicle.

Section 91Z provides the power to make regulations not only for the matters specifically identified in section 91Z(a) to (d) but also more broadly. This regulation-making power is essential to ensure sufficient flexibility in the operation and delivery of the interlock scheme. For example, it will allow the legislation to keep pace with developing technologies to ensure the scheme can take advantage of new devices and features that become available.

Clause 18 of the Bill amends section 124 to insert a number of new facilitation of proof provisions relating to interlocks into the *Transport Operations (Road Use Management) Act 1995*. These provisions allow various certificates signed by the chief executive or the commissioner and

certified copies of various documents to be evidence of the matters stated in them. Those matters are administrative matters including, for example, whether a particular vehicle was a nominated vehicle for a person, whether a person had been granted an interlock exemption and whether the chief executive had received an application for an interlock exemption. As the evidence provided by these certificates and documents will not be conclusive evidence, the relevant person will have the opportunity to challenge the matters stated in them.

*Digital speed and redlight cameras*

Amendments to section 120 of the *Transport Operations (Road Use Management) Act 1995* provide that the commissioner of police can sign a certificate as evidence that photographic detection devices are producing accurate results potentially infringe the fundamental legislative principle that legislation should not reverse the onus of proof without justification. Proposed section 120(2A) is in similar terms to existing section 124(1)(pf), but is being inserted in section 120 which deals with other evidentiary matters concerning photographic detection devices. New section 120A of *Transport Operations (Road Use Management) Act 1995* which allows a certificate to provide evidence of shortest practicable distance, time and the average speed of a vehicle between two points also potentially infringes the fundamental legislative principle that legislation should not reverse the onus of proof without justification. Although the certificates are evidence of the matters stated in them, they are not conclusive evidence. A defendant can challenge the matters stated in the certificates and lead evidence to rebut them. The evidentiary certificates merely provide a convenient way for a court to be informed by the prosecution about the matters provided for in the certificates and prevent the need to call witnesses unless the evidence is challenged, streamlining court proceedings. The *Transport Operations (Road Use Management) Act 1995* already contains a significant number of evidentiary aids and these aids are consistent with the general policy underlying the provisions of the Act.

*Local government powers to regulate vehicle access to local government controlled areas*

The *Transport Operations (Road Use Management) Act 1995* is being amended to include a validation provision to deal with a technical legislative inconsistency. This will ensure the validity of any past local laws made relating to the regulation of vehicle access to public places that are also land or infrastructure owned, held in trust or otherwise controlled by a local government. This provision will also ensure the validity of any

enforcement action taken under the local law. This curative amendment will overcome any inconsistency that may exist between provisions of existing local laws and sections 66(1) and 147 of the Act, which reserve powers about regulating vehicle access to “public places” to the State. There may be some overlap between the concept of a “public place” and land or infrastructure owned, held in trust or otherwise controlled by a local government. It is not anticipated that any rights and liberties of individuals will be affected by the amendments, as State and local authorities and the community have always conducted themselves on the basis that local governments have the necessary powers to make these local laws and the validation provision merely confirms this to be the case, restoring the reasonable and legitimate expectation of the existing law.

*Local government tollway penalty revenue*

This amendment does not raise fundamental legislative principles.

*New Queensland Driver Licence legislation*

A fundamental principle of the law is that everyone is equal before the law and each person should be liable for his or her acts or omissions. The provision granting immunity to the State from civil liability merely because a smartcard is the property of the State does not infringe this principle. The State should not be joined in a civil proceeding merely because of the State’s ownership of a smartcard.

*Passenger Transport Legislation*

***Delegation of administrative power***

*Declaration of special events to enable coordination of scheduled passenger services outside south-east Queensland*

The amendments include an offence provision whereby the chief executive's approval will be required prior to a person entering into or performing a contract; or an arrangement for the provision of scheduled passenger services for a declared special event. Any such contract or arrangement that does not receive the chief executive’s approval will have no effect with regard to these services.

This may breach fundamental legislative principles with regard to the delegation of an administrative power in appropriate cases; and to appropriate persons. However, the exercise of that power is subject to Legislative Assembly scrutiny. The amendments include a transitional provision that allows existing contracts or arrangements entered into prior to commencement of the Act, to continue for a period of 12 months.

The transitional provision has been designed to minimise the impact on any person currently relying on existing contractual arrangements for the provision of scheduled passenger services to and from special events. Importantly, the provisions enable the chief executive to ensure the most efficient and effective services are provided to special events as well as maintaining the contracted general route services for the area. The provisions are a reasonable balance between ensuring the best public transport services for an area, against the rights and liberties of individuals and the delegation of a legislative power.

The amendments also extend the TransLink special event declarations to include all scheduled passenger services. The declarations were previously limited to mass transit services, which were defined as general route services (a subset of scheduled passenger services). This amendment recognises that many scheduled passenger services to special events are not general route services. This is because they are not available to the public for general purposes as they can only be used by individuals to attend the special event. It is not expected that the extension to all scheduled passenger services will have any significant detrimental effect on operators. However, it will allow TransLink to better coordinate all public transport services to special events for the benefit of event attendees and other public transport users.

### *Maritime Legislation*

#### *Proof of Age*

The proposed amendment partially reverses the onus of proof by placing an evidentiary burden on the defendant in situations in which age is an element of an offence. The onus is reversed to the extent that where a prosecutor has provided evidence of a person's age, and the defendant knows that assertion is incorrect, it is the responsibility of the defendant to lead evidence of the correct age of the person. The assertion is conclusive only if the defendant fails to lead such evidence.

The partial reversal of the onus of proof is consistent with the general policy underlying the Act, and relates to a matter that may be peculiarly within the defendant's knowledge, but is extremely difficult for the prosecution to prove. Enforcement officers may ask a person their age, but they are not required to answer. A copy of a birth certificate cannot be obtained by enforcement officers from the Registry of Births, Deaths and Marriages as they do not meet the eligibility criteria and the Registry of Births, Deaths and Marriages will not disclose details to a third party unless

the disclosure is authorised by law. Consequently, the administration of the legislation with regard to these offences would be impractical.

In the circumstances, Maritime Safety Queensland is of the view that the enhancement of marine safety, through the efficient administration of the *Transport Operations (Marine Safety) Act 1994* justifies reversing the onus of proof, and the proposed provision does not contravene section 4(3) (d) of the *Legislative Standards Act 1992*.

#### *Discharge of sewage by prescribed ships*

Moving the “designated area” definition from the *Transport Operations (Marine Pollution) Regulation 2008* to the Schedule (Dictionary) of the *Transport Operations (Marine Pollution) Act 1995*, to support changes to section 50A (Discharge of sewage by prescribed ships), may breach section 4(4)(a) (allows the delegation of legislative power only in appropriate cases and to appropriate persons) of the *Legislative Standards Act 1992*. The proposed amendment incorporates the definition of “designated area” in the Act, specifically subsection (d) which outlines that parts of the Great Barrier Reef Coast Marine Park are a designated area. Schedule 8 of the *Transport Operations (Marine Pollution) Regulation 2008* outlines the geographical limitations of designated areas within the Great Barrier Reef Coast Marine Park, thus allowing the definition of “designated area” to be amended via Executive Council Minute.

The Great Barrier Reef Coast Marine Park is extensive; it ranges from just north of Bundaberg through to Cape York, bordering on the Commonwealth Great Barrier Reef Marine Park.

The Department of Environment and Resource Management is responsible for determining which parts of the Great Barrier Reef Coast Marine Park are “designated areas” and require a higher level of protection from ship-sourced sewage. This is important to ship owners and operators as it provides a balanced approach between areas where controlled discharges of sewage can occur and nil discharge areas for highly sensitive areas within the marine park.

The Department of Environment and Resource Management has updated schedule 8 of the *Transport Operations (Marine Pollution) Regulation 2008* because of changes to the *Marine Parks (Declaration) Regulation 2006*. These changes are in consultation with Maritime Safety Queensland. The current amendment provides for these arrangements to continue and ensures that the marine pollution legislation remains consistent with other legislation at all times.

The detailed definition of designated areas within the Great Barrier Reef Coast Marine Park (that is, the latitude and longitude marking the boundaries of these areas) needs to be maintained in the *Transport Operations (Marine Pollution) Regulation 2008* because:

- it is factually complex;
- requires extensive scientific assessment and consultation with the Department of Environment and Resource Management; and
- may be amended from time to time to ensure optimum protection of the Queensland coastal and marine environment.

Amendments to section 50A are necessary to meet our obligations to implement a national scheme of legislation, which adopts the *International Convention for the Prevention of Pollution from Ships 1978*, known as MARPOL.

## **Consultation**

### *General*

All relevant Queensland Government agencies including the Department of the Premier and Cabinet, Queensland Treasury, the Department of Justice and Attorney-General, the Department of Infrastructure and Planning and the Queensland Police Service, were consulted and support the amendments.

### *Heavy vehicle speeding*

The National Transport Commission undertook national consultation prior to the finalisation of the model law. The Queensland transport industry has been engaged about the local implementation, particularly through the Road Freight Industry Council (RFIC). The RFIC, which includes representatives from the Transport Workers Union and the Queensland Trucking Association, is supportive of the reform.

### *Keeping records of motor vehicle repairs*

Meetings have been held with the mechanical repair industry associations consisting of the Institute of Automotive Mechanical Engineers (IAME), the Motor Trades Association of Queensland (MTAQ), Commercial Vehicle Industry Association of Queensland (CVIAQ) and the Royal Automobile Club of Queensland (RACQ). The Queensland Police Service also attended the meetings. Input from all parties involved in the consultation process has been incorporated into the amendments.



### *Maritime Legislation*

Amendments to the *Transport Operations (Marine Pollution) Act 1995* are in accordance with Australia's obligations to implement MARPOL. The amendments are administrative in nature and were identified through ongoing consultation with industry to prevent pollution from ships.

## Notes on Clauses

### Chapter 1 Preliminary

#### Short Title

**Clause 1** sets out the short title of the Act as the Transport and Other Legislation Amendment Act 2010.

#### Commencement

**Clause 2** provides that the Act commences on a day to be fixed by proclamation, other than the following provisions which commence on assent:

- chapter 2, part 5;
- chapter 3, parts 1 and 2;
- chapter 4, other than the following provisions—
  - section 128;
  - part 8;
- schedule, part 1.

Chapter 4, part 5, division 2 commences immediately after the commencement of section 132.

In relation to amendments for the introduction of alcohol ignition interlocks, it is proposed to commence provisions dealing with Queensland

licence holders earlier than those provisions that deal with non-Queensland licence holders. Following commencement, a Queensland licence holder will need to serve their disqualification period before being subject to the interlock condition. Non-Queensland licence holders seeking to transfer a licence that is subject to an interlock requirement to a Queensland licence may have the interlock condition imposed from the date of commencement. For this reason, it is proposed to commence provisions dealing with non-Queensland licence holders after the provisions dealing with Queensland licence holders have been commenced. This will ensure that both groups become subject to the requirement to only drive vehicles fitted with an interlock at approximately the same time.

## **Chapter 2      Amendment of Transport Operations (Road Use Management) Act 1995 – road safety reforms**

### **Part 1            Preliminary**

**Clause 3** states that this chapter and the schedule, parts 1 and 2 amend the *Transport Operations (Road Use Management) Act 1995*.

### **Part 2            No alcohol limit**

**Clause 4** amends section 79 (Vehicle offences involving liquor or other drugs). Clauses 4(1) and 4(5) insert into relevant subsections of section 79 consequential references to the new offences in section 79(2K) and (2L). These new offences are being introduced by clause 4(4) (described below). The amendments will include reference to the new offences in provisions dealing with:

- liability for offences under section 79 where the person has been convicted of an earlier offence (sections 79(1D), (1E), (2F), (2G), (2H), (2I));
- convictions arising from the hearing of a complaint of an offence against section 79(1) (section 79(4) and (4A));
- defendants manifesting an intention to refrain from driving a motor vehicle (section 79(6), (6)(a)(iv)(B)) and 6(d); and
- the suspension of a driver licence where a defendant fails to appear in court (section 79(9)).

Clause 4(2) amends section 79(2A) to remove the current aged-based distinction in the application of the no alcohol limit. Because of the amendment, all learner, probationary and provisional driver licence holders, and unlicensed drivers, irrespective of age, will be subject to the no alcohol limit.

Clause 4(3) amends section 79(2C) to clarify that the existing no alcohol limit requirement in section 79(2B) applies when a person is driving a specially constructed vehicle (for example, an agricultural machine) and any type of tractor.

Clause 4(4) inserts new sections 79(2K), (2L) and (2M).

New section 79(2K) provides that, unless they have held a valid class RE licence for at least one year in the past five years, it is an offence for a class RE licence holder to ride a motorbike, attempt to put a motorbike in motion, or be in charge of a motorbike, whilst they are over the no alcohol limit, but not over the general alcohol limit. The maximum penalty for this offence is 14 penalty units or three months imprisonment.

The requirement for holders of a class RE licence to be subject to the no alcohol limit during the first year of holding the licence will apply whenever the person is riding a motorbike. The amendments do not affect the relevant alcohol limit that applies when the person is driving a vehicle other than a motorbike (for example, a car).

New section 79(2L) provides that it is an offence for the holder of a class RE licence to learn to ride a class R motorbike, attempt to put a class R motorbike in motion, or be in charge of a class R motorbike, whilst the person is over the no alcohol limit, but not over the general alcohol limit. It should be noted that the holder of a class RE licence is only authorised to learn to ride a class R motorbike in the circumstances described in section 5 of the *Transport Operations (Road Use Management – Driver Licensing)*

*Regulation 1999.* The maximum penalty for this offence is 14 penalty units or three months imprisonment.

New section 79(2M) provides definitions for section 79(2K) and (2L).

Clause 4(6) amends section 79(11) to provide that new sections 79(2K) and 79(2L) will apply in the same circumstances as existing sections 79(1) to 79(2J). Those circumstances are set out in section 79(11)(a) to (e).

**Clause 5** amends section 79B (Immediate suspension or disqualification) to include appropriate references to new sections 79(2K) and 79(2L). Consistent with the existing policy contained in section 79B, the amendments will ensure that an immediate driver licence suspension is imposed on a person who is charged with repeat drink driving offences, including offences under sections 79(2K) and 79(2L), as outlined in section 79B(1)(c) and (ca).

**Clause 6** amends section 80 (Breath and saliva test, and analysis and laboratory tests) to insert appropriate references to the new offences in sections 79(2K) and 79(2L). Those references are inserted into provisions of section 80 that currently deal with the no alcohol limit and need to be amended as a consequence of the extension of the no alcohol limit by sections 79(2K) and 79(2L).

**Clause 7** amends section 81 (Notices to offenders for certain first offences). Section 81 currently allows a police officer to issue a notice to a driver who the officer reasonably believes has committed a specified offence, including an offence against the no alcohol limit provisions in section 79(2A) and (2B), if the person has not previously been convicted of a drink driving offence. Where the person pays the penalty specified in the notice, the matter does not need to be dealt with by a court. The amendment in clause 7 allows a police officer to also issue a notice for an offence against section 79(2K) or (2L).

**Clause 8** amends various subsections of section 86 (Disqualification of drivers of motor vehicles for certain offences) to include references to the new offences in sections 79(2K) and 79(2L). The amendments to section 86(2), (2B), (2D) and (2F), provide the relevant disqualification periods for a person convicted of an offence against section 79(2K) or (2L). The amendments to section 86 also provide for the effect of an earlier conviction under section 79(2K) or (2L) on the relevant disqualification period for a subsequent offence dealt with under section 86.

**Clause 9** inserts appropriate references to new section 79(2K) and 79(2L) in provisions of section 87 (Issue of restricted licence to disqualified person). In line with the current position that a restricted licence is not available to a person covered by the no alcohol limit, the amendment to section 87(5)(da) provides that a restricted licence will not be available to a person who is convicted of an offence under section 79(2K) or 79(2L). Amendments to section 87(5)(db) and (dc) provide that a restricted licence will also not be available to a person convicted of being over the general alcohol limit or convicted of the drug driving offence in section 79(2AA) where that person is subject to the requirements of sections 79(2K) or 79(2L).

**Clause 10** amends section 90A (Definitions for ss 90B-90D). The amendments provide that for sections 90B to 90D, a “designated offence” and a “drink driving offence” includes an offence against section 79(2K) and (2L). Sections 90A to 90D provide that periods of multiple driver disqualifications are to take effect cumulatively and not concurrently for designated offences and drink driving offences.

### **Part 3                      Alcohol ignition interlocks**

**Clause 11** amends section 17A (Meaning of an *approval* for Pt 1A) to provide that an “approval” as defined in the section includes an interlock exemption. Interlock exemptions are introduced by amendments in clause 17.

**Clause 12** amends section 18 (Grounds for amending, suspending or cancelling approvals) to insert new grounds on which the chief executive can propose to amend, suspend or cancel an interlock exemption.

**Clause 13** amends section 60 (Evidentiary aids) of the *Transport Operations (Road Use Management) Act 1995* to provide that a certificate stating that a person had or had not notified the chief executive of a relevant change of circumstances relating to an interlock exemption certificate is evidence of that matter.

**Clause 14** inserts a new section 78(1B) that provides that an infringement notice can not be issued to a person who is driving unlicensed in circumstances where, if they had been granted a Queensland driver licence, that licence would be subject to an interlock condition. The interlock

condition is discussed below at clause 17. Clause 14 also inserts a new subsection 78(1C) which establishes that an infringement notice should not be issued to a person who had previously become an interlock driver but, during the term of their interlock period, did not continue to hold a valid Queensland driver licence. This provision would apply where, for example, a person failed to renew a licence that expired during the term of the interlock period or was suspended during the interlock period. New subsection 78(1D) will, however, still allow an infringement notice to be issued for a contravention of section 78(1) if the person's licence had only recently expired at the time of the contravention.

**Clause 14(3)** inserts section 78(3)(j) into the *Transport Operations (Road Use Management) Act 1995* which contains a new disqualification period of between one and six months for a person who drives unlicensed in circumstances where, if they had been granted a Queensland driver licence, it would have been subject to an interlock condition. It also inserts a section 78(3)(k) which contains a new disqualification period of between one and six months for a person who, as mentioned in section 78(1C), had previously been an interlock driver but, at the time of contravening section 78(1), did not hold a valid Queensland driver licence.

**Clause 15** amends section 79 of the *Transport Operations (Road Use Management) Act 1995* to impose the *no alcohol limit* on interlock drivers. An interlock driver is defined (see section 91I inserted by clause 17) to be a person whose Queensland driver licence is subject to an interlock condition or a person who holds an interlock exemption. The amendments contained in clause 15(2) provide that an interlock driver does not commit an offence where they attempt to start, or are in charge of, a nominated vehicle that is fitted with a prescribed interlock. The imposition of the interlock condition is an opportunity for the person to learn to appropriately separate the activities of drinking and driving and it is believed that a punitive approach is not suitable during this period.

**Clause 16** amends a number of definitions contained in section 90A of the *Transport Operations (Road Use Management) Act 1995*. The effect of those amendments is that a disqualification imposed under new sections 91W(2) or 91X(2) (inserted by clause 17) will be served cumulatively with disqualifications for other "drink driving offences" and "designated offences" as dealt with in sections 90B to 90D.

**Clause 17** inserts a new Chapter 5, Part 3B (Alcohol ignition interlocks) into the *Transport Operations (Road Use Management) Act 1995*. The new Part contains provisions dealing with the application of an interlock

condition to a person's driver licence, exemptions from the condition and penalties and sanctions that can be applied to interlock drivers in certain circumstances.

Section 91I (Definitions for pt 3B) contains the definitions for the new Part 3B. Importantly, it provides a definition of a "drink driving offence". This definition identifies the relevant offences that will lead to the imposition of an interlock condition to a person's driver licence.

Section 91J (Persons to whom div 2 applies) specifies the people to whom new Division 2 (Interlock condition) of Part 3B will apply. Section 91J(1) provides that the division applies to a person who has been convicted of a drink driving offence and, as a result, has been disqualified from holding or obtaining a Queensland driver licence. Section 91J(2) provides that the division also applies to a person who is subject to a law of a jurisdiction outside Queensland that allows the person to only drive motor vehicles fitted with an alcohol ignition interlock. This provision is necessary to ensure the interlock condition can be applied to the Queensland driver licence of a person who is transferring a non-Queensland licence that is subject to the equivalent of an interlock condition.

Section 91K (Interlock condition) deals with the application of the interlock condition to Queensland driver licences.

Section 91K(1) provides that, on re-entering the driver licensing system after serving the relevant disqualification period, the driver licence granted to the person will be subject to the interlock condition. Section 91K(1)(a) specifies that, unless section 91K(1)(b) or (c) applies, the person is only entitled to drive a vehicle that has been fitted with a prescribed interlock and has been nominated in writing to the chief executive. Section 91K(1)(b) provides that, if the person is receiving driver training from an accredited driver trainer, then they may also drive a vehicle provided by the driver trainer. Section 91K(1)(c) provides that, while undertaking their practical driving test, the person may drive any vehicle.

Section 91K(2) provides that a person transferring a non-Queensland driver licence that is subject to an interlock requirement will be granted a Queensland licence subject to the interlock condition.

Section 91L (Nomination of vehicle) deals with the nomination of vehicles by an interlock driver. The nomination of vehicles is required to ensure the chief executive can determine when the person has satisfied the requirement to only drive a vehicle fitted with an interlock for 12 months. Section 91L(1)(b) allows the interlock driver to nominate more than one

vehicle. This may be relevant where, for example, the person needs to drive for work and their work vehicle has been fitted with an approved interlock device. Section 91L(2) states that a particular vehicle cannot be the nominated vehicle for more than one person unless a regulation has provided a means of identifying the driver of the vehicle at any particular time.

Section 91M (Interlock period) specifies the duration of the interlock period. During the interlock period a person's driver licence will be subject to the interlock condition described above. Section 91M(a) identifies when the period starts and section 91M(b) identifies when the interlock period ends. In practice, the period will generally end when the person's 'prescribed period' ends.

Section 91N(1) defines the "prescribed period" to be a period of 12 months during which the person has:

- held a valid Queensland driver licence and either had a nominated vehicle fitted with a prescribed interlock or held an interlock exemption; or
- held a valid non-Queensland driver licence and, while driving under that licence, complied with the requirement of a non-Queensland interlock requirement or held an exemption from that requirement; or
- satisfied a combination of the above requirements.

Section 91N(3) makes clear that the "prescribed period" need not be continuous. This ensures that separate periods in which the person satisfies section 91N(1)(a) or (b) can be aggregated.

Section 91O (When interlock condition ends) states that the interlock condition ends when the interlock period ends. If a person is granted a Queensland driver licence prior to the ending of the interlock period, that licence will be granted subject to the interlock condition.

New Division 3 (Interlock exemption) provides for certain exemptions from the interlock condition and a process for applying for those exemptions.

Section 91P(1) (Applying for interlock exemption) provides that a person mentioned in section 91J(1) can apply for an interlock exemption. Under section 91P(2) the person can apply six weeks before the end of the person's disqualification period or any time after that. Where a timely application is made, the chief executive may be able to approve an exemption prior to the end of the disqualification period. Under section



91P(3) a person mentioned in section 91J(2) can apply for an exemption at any time.

Section 91Q(1) (Deciding application for interlock exemption) requires the chief executive to decide an application for an exemption in the prescribed 28-day period which is defined in section 91Q(11). Exemptions will only be available in circumstances set out in section 91Q(3). Section 91Q(4) allows the chief executive to request further information or documents from an applicant for an exemption and subsections (5) and (6) deal with the situation where the applicant fails to provide that further information or documents in the required period. Under section 91Q(7) if the chief executive has not decided the application within the prescribed 28-day period, the application is deemed to be refused. Despite that deemed decision, however, the chief executive may, under section 91Q(8) still decide the application. Both the deemed decision and any final decision are reviewable decisions under the Act.

Section 91R (Decision on application and exemption certificate) requires the chief executive to notify the applicant of the decision on the application by written notice. Where the application is granted, section 91R(3) requires the chief executive to issue the person with an exemption certificate which the person must carry with them when they drive. Under section 91R(5), if the chief executive refuses the application, the notice must also provide the person with information regarding the review provisions that apply to that decision. These include that the person can seek internal review of the decision and, if still not satisfied with the reviewed decision, apply to the Queensland Civil and Administrative Tribunal for a further review of the decision.

Section 91S (When interlock exemption stops having effect) specifies the circumstances in which a person's interlock exemption ceases to have effect.

Section 91T (What happens when interlock exemption stops having effect) provides that the interlock condition applies to a person whose interlock exemption no longer has effect and continues to apply for the remainder of the interlock period.

New Division 4 (Extending interlock driver's prescribed period) sets out the circumstances in which the prescribed period can be extended and the process the chief executive must follow for that extension.

Section 91U (Grounds for extending prescribed period) contains the grounds on which the chief executive can initiate the show cause procedure outlined in section 91V when proposing to extend a prescribed period.

Section 91V (Procedure for extending interlock period) requires that where the chief executive is proposing to extend a person's prescribed period, the person must be given a show cause notice and at least 28 days to respond to that notice. This ensures procedural fairness by providing the person the opportunity to respond before any action is taken. If, having considered any response by the person, the chief executive still considers a ground exists for extending the prescribed period then that period can be extended for not more than three months. The decision to extend the prescribed period is a reviewable decision.

Division 5 (Offences) contains a number of new offences that can apply to an interlock driver.

Section 91W (Driving a motor vehicle other than as allowed under an interlock condition) requires that an interlock driver must not drive a "prohibited vehicle" unless they have an interlock exemption. The term "prohibited vehicle" is defined in section 91W(6) to mean any motor vehicle other than a motor vehicle they are permitted to drive under their interlock condition. Where the contravention of section 91W(1) involved the person driving a vehicle that was not fitted with a prescribed interlock, the court must disqualify the person from holding or obtaining a Queensland driver licence as specified in section 91W(2). Under section 91W(4) a person who holds an interlock exemption may be required to produce it to a police officer and faces a maximum penalty of 28 penalty units if they fail to do so.

Section 91X (Noncompliance with restrictions applying to interlock exemption) contains an offence for an interlock driver who drives a motor vehicle in contravention of the restrictions of that exemption. If convicted of this offence, the person will be disqualified from holding or obtaining a Queensland driver licence as specified in section 91X(2).

Section 91Y (Person with interlock exemption must give notification of change in circumstances) contains an offence where a person who holds an interlock exemption fails to give written notice of any relevant change of circumstances within 14 days. The term "relevant change of circumstances" is defined in subsection (2). Importantly, section 91R(2)(b) requires the chief executive to notify the person in writing, at the time of

granting an exemption, the circumstances of which they must notify any changes.

Division 6 (Other provisions about interlocks) contains section 91Z (Regulations relating to interlocks) which allows the chief executive to make regulations about interlocks including regulations for the matters specified in section 91Z(a) to (d).

**Clause 18** (Amendment of s 124 (Facilitation of proof)) inserts a number of new evidentiary provisions relating to interlocks into the *Transport Operations (Road Use Management) Act 1995*.

**Clause 19** is an amendment that is consequential to the amendment made by clause 11 to section 17A.

**Clause 20** (Amendment of sch 3 (Reviewable decisions)) inserts references to a range of decisions relating to interlocks that are to be reviewable decisions under the *Transport Operations (Road Use Management) Act 1995*. This ensures that decisions made under those new sections are subject to both internal review under section 65 and also review by the Queensland Civil and Administrative Tribunal under section 65A.

**Clause 21** (Amendment of sch 4 (Dictionary)) inserts a range of new definitions relating to interlocks into the dictionary of the *Transport Operations (Road Use Management) Act 1995*.

## **Part 4                      Heavy vehicle speeding**

**Clause 22** amends section 26A (Further power to enter place of business in relation to heavy vehicle or prescribed dangerous goods vehicle). Section 26A allows authorised officers to enter certain places in limited circumstances without warrant or consent. This is so that officers may search and seize evidence in circumstances provided for in the legislation. However this power may only be used when destruction of evidence of an offence is considered imminent. Another restriction upon the use of this power is the requirement to obtain a post-entry approval from a magistrate (see section 29A).

This power is available in relation to the investigation of suspected offences against a transport Act. Therefore, this power will be available to conduct investigations in relation to a suspected commission of the new chain of

responsibility heavy vehicle speeding offences incorporated by this Bill. These are the offences incorporated into section 57B (refer to clauses 26 and 27) and the offences in the new chapter 5D (refer to clause 31). The places that may be searched under section 26A are defined as “a place of business of a responsible person”.

The term “responsible person” is defined in schedule 4 and lists those involved in the heavy vehicle industry and may have knowledge about the commission of a transport offence involving a heavy vehicle. In relation to the commission of a speeding offence by a driver, persons who pack, load, unload goods or containers, and owners and operators of weighbridges are not considered to have a significant degree of influence over whether a speeding offence may be committed by a driver. (These parties are likely to have a much higher degree of influence over whether or not an overloading offence is committed, for example). For this reason, these parties, and an agent, employer, employee or subcontractor of any one of these parties, have been omitted from the definition of “responsible person” in relation to the investigation of a heavy vehicle speeding offence. The effect of this amendment is that the business premises of packers, loaders, and owners/operators of weighbridges, and any agent, employer, employee or subcontractor of one of these persons will not be able to be searched without warrant or consent when conducting an investigation of a suspected heavy vehicle speeding offence.

**Clause 23** amends section 48A (Further power to require personal details for exercising power in relation to heavy vehicle or transport of dangerous goods). This power is available in relation to the investigation of suspected offences against a transport Act. Therefore, this power will be available to conduct investigations in relation to a suspected commission of the new chain of responsibility heavy vehicle speeding offences incorporated by this Bill. These are the offences incorporated into section 57B (refer to clauses 26 and 27) and the offences in the new chapter 5D (refer to clause 31). This means that when investigating one of these new offences, an authorised officer may require a responsible person for a heavy vehicle, who may be able to help with the investigation of the offence, to provide their personal details. However, persons who pack, load, unload goods or containers, owners and operators of weighbridges, and any agent, employer, employee or subcontractor of one of these parties will not be required to provide their details. This is achieved through the change in the definition of “responsible person” for the purpose of this section. The reason for excluding these parties in relation to the exercise of this power for a heavy vehicle speeding offence is explained in clause 22 above.

**Clause 24** amends section 49A (Direction to provide information about heavy vehicles and transport of dangerous goods). Section 49A allows an authorised officer to direct a responsible person for a heavy vehicle to provide information about a heavy vehicle. The amendment removes persons who pack, load, or unload goods or containers and owners and operators of weighbridges, and any agent, employer, employee or subcontractor of one of these parties from the definition of “responsible person” in relation to the investigation of a heavy vehicle speeding offence. The reason for excluding these parties in relation to the exercise of this power for a heavy vehicle speeding offence is explained in clause 22 above.

**Clause 25** amends section 50AB (Power to require help to find and access particular documents or information). Section 50AB allows 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 to enable the officer to effectively exercise other investigatory powers specified in the section. The amendment removes persons who pack, load, or unload goods or containers and owners and operators of weighbridges, and any agent, employer, employee or subcontractor of one of these parties from the definition of responsible person in relation to the investigation of a heavy vehicle speeding offence. The reason for excluding these parties in relation to the exercise of this power for a heavy vehicle speeding offence is explained in clause 22 above.

**Clause 26** amends section 57AB (Definitions for sdiv 2). This section contains the definitions for chapter 3, part 5, division 1, subdivision 2. This subdivision deals with extended liability offences. The definitions of “extended liability offence” and “influencing person” have been extended to cater for a speeding offence committed by the driver of a heavy vehicle. This is achieved by including a new paragraph (d) in the definition of “extended liability offence” to cover a “heavy vehicle speeding offence” (this term is defined in schedule 4, see clause 34).

Amendments in clauses 26(2) – (5) make consequential amendments to the definition of “influencing person” in section 57AB to reflect the inclusion of a new definition of “scheduler” in schedule 4 (see clause 34).

Clause 26(5) also inserts a new paragraph (g) in the definition of “influencing person”. This provides that, for a heavy vehicle speeding offence, an influencing person includes the employer of the driver of the heavy vehicle. “Employer” is defined in schedule 4 to be a person who employs someone else under a contract of employment, apprenticeship or

training, or a contract for services. That is, the definition includes a party commonly known as a prime contractor. Note that existing paragraph (a) in the definition of “influencing person” in section 57AB covers a person who is considered an influencing person in relation to heavy vehicles generally – including in relation to a suspected heavy vehicle speeding offence. The list in paragraph (a) mentions operators. Employers and operators were identified in the national model legislation as the key parties that have responsibilities to ensure that heavy vehicle drivers do not speed.

The amendments to section 57AB mean that if a driver commits a speeding offence, an influencing person (for example an employer of the driver and operator of the vehicle) will be taken to have committed an extended liability offence under section 57B(2). This is the consequence of the new definitions of “extended liability offence” and “influencing person” as they apply to section 57B which contains Queensland's chain of responsibility provision. Note however that the influencing person has access to defences under section 57B (2AA), including the defence of having taken all reasonable steps to have prevented the offence.

**Clause 27** amends section 57B (Further liability provisions for extended liability offences). This amendment inserts a new penalty regime that applies in relation to parties in the chain of responsibility who commit an extended liability offence that is a heavy vehicle speeding offence. The maximum penalty applying to those in the chain of responsibility is dependent upon the severity of the speeding offence committed by the driver of the heavy vehicle. The highest penalty that will apply to employers and operators is \$8,000. This will apply when a driver is found to have been exceeding the speed limit by greater than 15 km/h in a high speed limit environment (for example when the speed limit that applies to the driver is 100km/h).

This clause also provides that for an extended liability offence under section 57B that is a heavy vehicle speeding offence, a person in control of a heavy vehicle means the driver of the heavy vehicle.

**Clause 28** replaces existing section 57DB (Matters court may consider for deciding whether person took all reasonable steps – offences about heavy vehicle driver fatigue) and existing section 57DC (When person regarded to have taken all reasonable steps – offences about heavy vehicle driver fatigue).

Currently section 57DB outlines the matters that a court may consider when deciding whether a person took all reasonable steps to avoid the

commission of a heavy vehicle fatigue management offence. The amendments ensure that these matters may also be taken into account when considering whether a person charged with a heavy vehicle speeding offence has taken all reasonable steps to avoid the commission of the offence.

Currently section 57DC sets out when a person charged with a heavy vehicle fatigue offence is to be regarded as having taken all reasonable steps. The amendments ensure that if a person has taken all of these steps in relation to the commission of a heavy vehicle speeding offence, they will be regarded as having taken all reasonable steps to avoid the commission of the offence.

The obligation on a party in the chain of responsibility to take reasonable steps arises in the context of two types of heavy vehicle speeding offences. Firstly, employers, prime contractors, operators, schedulers, loading managers and certain consignors and consignees must take all reasonable steps to ensure that their actions will not cause a driver to commit a speeding offence (new sections 163AD, 163AG, 163AI and 163AL in clause 31). Secondly, section 57B(2AA) provides that where an influencing person is charged with an extended liability offence (including a heavy vehicle speeding offence), the person has the benefit of the reasonable steps defence. The reasonable steps defence is contained in existing section 57D. The defence is that the person did not know and could not reasonably be expected to have known, of the offence, and, either the person took all reasonable steps to prevent the offence or that there were no steps the person could reasonably be expected to have taken to prevent the offence.

**Clause 29** amends section 57F (Proof of compliance with industry code of practice). This amendment ensures that when a person is charged in relation to a heavy vehicle speeding offence, they may draw evidence of compliance with all relevant standards and procedures. This includes, for example, drawing evidence of compliance with an industry code of practice in an attempt to prove that they took all reasonable steps to prevent the commission of a speeding offence by a heavy vehicle driver.

**Clause 30** amends section 57H (Criminal Code, s 24 does not apply to particular offences). This amendment has the effect of overriding section 24 of the Criminal Code in relation to heavy vehicle speeding offences introduced in this Bill. That is, section 24 of the Criminal Code does not apply to a person charged with a heavy vehicle speeding offence under 57B(2) where the person charged has the benefit of the reasonable step defence. The amendment also specifies that section 24 of the Criminal

Code does not apply where a person is charged with the heavy vehicle speeding duties and offences contained in new chapter 5D, part 2 (refer to clause 31). The effect of this amendment is that a party charged for these offences cannot attempt to avoid liability on the basis of an “honest and reasonable but mistaken belief”. The overriding of section 24 of the Criminal Code for these offences relating to heavy vehicle speeding is consistent with the model law that designates these offences as absolute liability offences.

**Clause 31** inserts a new chapter 5D (Heavy vehicle speeding) into the *Transport Operations (Road Use Management) Act 1995*. This chapter consists of new sections 163AA – 163AP.

Part 1 contains preliminary provisions and consists of sections 163AA to 163AC.

Section 163AA sets out the main purpose of this chapter, namely, to improve road safety and compliance with road safety laws by imposing responsibility for speeding by heavy vehicles on persons whose business activities influence the conduct of the drivers of heavy vehicles.

Section 163AB outlines the main features of chapter 5D. Main features include requiring persons who are most directly responsible for the operation of a heavy vehicle (employers, prime contractors, operators) and other parties who are in a position to influence a decision by a driver to breach speed limits (schedulers, loading managers and certain consignors and consignees), to take reasonable steps to ensure their activities do not cause drivers of heavy vehicles to exceed speed limits.

Section 163AC contains definitions for chapter 5D.

Part 2 contains duties and offences placed on particular parties in the chain of responsibility. Division 1 contains sections 163AD to 163AF, which deal with duties, placed on employers, prime contractors and operators.

Section 163AD provides that employers, prime contractors and operators must take all reasonable steps to ensure that their business practices will not cause the driver to exceed a speed limit. The maximum penalty for breach of this duty is \$8,000. The section sets out examples of what steps employers, prime contractors and operators could take to discharge their duty of taking all reasonable steps to ensure that their business practices will not cause the driver to exceed a speed limit.

Section 163AE provides that an employer of an employed driver must not cause the driver to drive a heavy vehicle unless the employer has complied



with section 163AD (that is the employer has taken all reasonable steps to ensure that their business practices will not cause the driver to exceed a speed limit). The employer however must also be satisfied after making reasonable inquiries that each scheduler for the vehicle has complied with their duties sets out in sections 163AG and 163AH. The maximum penalty for breach of this section is \$4,000.

Section 163AF provides that a prime contractor of a self-employed driver or an operator of a heavy vehicle must not cause a driver to drive a heavy vehicle unless the prime contractor or operator has complied with section 163 AD (that is the prime contractor has taken all reasonable steps to ensure that their business practices will not cause the driver to exceed a speed limit). The prime contractor or operator must also be satisfied after making reasonable inquiries that each scheduler for the vehicle has complied with their duties set out in sections 163AG and 163AH. The maximum penalty for breach of this section is \$4,000.

Division 2 contains sections 163AG and 163AH, which deal with duties placed on schedulers.

Section 163AG provides that a scheduler must take all reasonable steps to ensure the schedule for the driver will not cause the driver to exceed a speed limit. The maximum penalty for a breach of this duty is \$8,000. The section sets out examples of what steps schedulers could take to discharge their duty of taking all reasonable steps to ensure that the schedule for the driver will not cause the driver to exceed a speed limit.

Section 163AH provides that a scheduler for a heavy vehicle must not cause the driver to drive a heavy vehicle unless the scheduler has complied with section 163AG (that is the scheduler has taken all reasonable steps to ensure the schedule for the driver will not cause the driver to exceed a speed limit). The scheduler however must also ensure that the schedule allows for compliance with speed limits, for the driver to take all required driver rest breaks and for traffic conditions and other delays that could reasonably be expected. The section sets out examples of what is meant by traffic conditions and other delays that could reasonably be expected. The maximum penalty for breach of this section is \$4,000.

Division 3 contains section 163AI which deals with the duty placed on loading managers.

Section 163AI provides that a loading manager must take all reasonable steps to ensure that arrangements for loading and unloading heavy vehicles will not cause a driver to exceed a speed limit. The maximum penalty for

breach of this duty is \$8,000. The section sets out examples of what steps loading managers could take to discharge their duty of taking all reasonable steps to ensure that the arrangements for loading and unloading will not cause the driver to exceed a speed limit.

Division 4 contains sections 163AJ to 163AM which deal with the duties placed on particular consignors and consignees. Not all consignors and consignees are covered by the duties placed in this new division. The reason for the more limited application of the legislation to consignors and consignees in the context of heavy vehicle speeding is to reflect the more limited control that these parties have over whether a driver exceeds any speed limit that applies to the driver.

Section 163AJ specifies the types of consignors to whom the duties in division 4 apply. “Consignor” is defined in schedule 4, however, the duties in this division only apply to a consignor who is responsible for the engagement of an operator of a heavy vehicle. If, for example, the transport of goods is organised by the consignee, then the consignor is not bound by the duties in sections 163AL and 163AM. Also, the duties in this division only apply to the transportation of goods on a consignor’s behalf for commercial purposes. This would cover consignors who consign goods in the course of his/her business.

Section 163AK specifies the types of consignees to whom the duties in this division apply. “Consignee” is defined in schedule 4. However, the duties in this division apply to a more limited number of consignees. The limitations contained in subsections (a) and (b) are aimed at ensuring that only consignees on whom the duty could reasonably be imposed are required to discharge that duty. For example, consignees who are not involved in organising the transport and who have no knowledge of the identity of the operator are not intended to be covered by the duties in the division. Similarly consignees who do not know or could not reasonably have known that the goods were to be transported by road are not intended to be covered by the duties.

Section 163AL provides that a consignor or consignee identified in sections 163AJ or 163AK must take all reasonable steps to ensure the terms of consignment will not cause:

- the driver to exceed a speed limit; or
- an employer, prime contactor or operator for the driver to cause the driver to exceed a speed limit.

The maximum penalty for breach of these duties is \$8,000. The section sets out examples of what steps consignors and consignees could take to discharge their duties contained in this section.

Section 163AM states that a consignor or consignee identified in sections 163AJ or 163AK must not make a demand that affects, or may affect, a time in a schedule for the transport of consigned goods unless the consignor or consignee has discharged the duty in section 163AL above. The consignor or consignee must also be satisfied after making reasonable inquiries that the making of the demand will not cause a scheduler to breach their duties in sections 163AG and 163AH. Consignors and consignees who breach this section are liable for a maximum penalty of \$6,000.

Division 5 contains sections 163AN to 163AP, which deal with the prohibition on making particular requests of a driver and the prohibition on entering into particular contracts.

Section 163AN lists the persons who are considered to be a party in the chain of responsibility for the purposes of the offences in sections 163AO and 163AP. Those persons are employers, prime contractors, operators, schedulers, loading managers, and certain consignees and consignees.

Section 163AO makes it an offence for a person to ask, direct or require a driver of a heavy vehicle, or a party in the chain of responsibility for a heavy vehicle, to do something that would have the effect of causing the driver to exceed a speed limit. The maximum penalty for this offence is \$8,000. The section sets out an example of a requirement that would contravene this section.

Section 163AP(1) makes it an offence for a person to enter into a contract or agreement with a driver or a party in the chain of responsibility for a heavy vehicle that would have the effect of causing the driver or another driver to exceed a speed limit. This provision would, for example, prohibit a contract that imposes unrealistic deadlines for the delivery of goods. The maximum penalty for this offence is \$8,000.

Section 163AP(2) also makes it an offence for a person to enter into a contract or agreement with a driver or a party in the chain of responsibility that would encourage or provide an incentive to a party in the chain to cause a driver to exceed a speed limit. This provision would for example, prohibit a person offering financial incentives to meet deadlines that would require a driver to exceed the speed limit. The maximum penalty for this offence is \$8,000.

**Clause 32** amends section 163D (Deciding whether person knew or ought reasonably to have known something) which is an evidentiary provision for offences about heavy vehicle driver fatigue. Currently, section 163D provides that for certain heavy vehicle driver fatigue offences, where it is relevant in a proceeding for an offence to prove that someone ought reasonably to have known something, a court must consider a number of factors when deciding whether the person ought reasonably to have known the thing. These factors include, for example, the person's abilities, experience, and qualifications as well as the circumstances of the offence. The amendment to section 163D provides that these factors also apply in relation to a proceeding for an offence against chapter 5D, part 2 (particular duties and offences related to heavy vehicle speeding, as inserted by clause 31).

**Clause 33** replaces existing section 163E (Objective reasonableness test to be used in deciding causation) and inserts new section 163F (Commission of heavy vehicle speeding offence is irrelevant to ch 5D, pt 2 prosecution).

Currently, section 163E applies in relation to proceedings for a heavy vehicle fatigue offence. The new section 163E applies also in relation to proceedings for an offence against chapter 5D, part 2 (particular duties and offences related to heavy vehicle speeding, as inserted by clause 31). This section will assist courts in deciding whether the actions or inactions of specified persons in the chain of responsibility caused a driver to drive in excess of a speed limit applying to the driver of the vehicle. In particular a court may find that the person caused the driver to drive in excess of a speed limit 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 driver to speed (section 163E(4)).

New section 163F provides that, for an offence against chapter 5D, part 2 (particular duties and offences related to heavy vehicle speeding, as inserted by clause 31), it is not necessary to prove that a driver exceeded a speed limit. This is because the duties imposed on identified parties to take all reasonable steps to ensure that their actions will not cause a driver to commit a speeding offence are prospective duties. This means that, the duties apply independently of a driver's actual behaviour. For example, a consignor or scheduler can breach their obligations by imposing a deadline for the delivery of goods on a driver that could only be achieved by the driver exceeding speed limits. An offence occurs whether or not the driver actually carries out the delivery and commits a speeding offence.

**Clause 34** amends schedule 4 (Dictionary) to insert a number of new definitions to support the adoption of the heavy vehicle speeding reforms.

## **Part 5                      Speed and redlight cameras**

**Clause 35** replaces the definition of “photographic detection device” in section 113 (Definitions for div 2). The new definition refers to devices or systems approved under a regulation, to put it beyond doubt that a “digital device” includes a camera system. The digital speed cameras, digital redlight cameras, digital combined redlight/speed cameras and point-to-point speed cameras that are to be used in Queensland are all-inclusive “systems” that have multiple components which work together to detect offences. The example included in the definition makes it clear that the “device” or “system” includes all of the components of the device, such as multiple cameras, trigger mechanisms (which activate the camera), data transfer capability and image processing.

**Clause 36** amends section 116 (Notice accompanying summons) by replacing paragraph (c) to update cross-references to provisions that are amended by the Bill.

**Clause 37** amends section 118 (Photographic evidence – inspection and challenges). Subsection (1) omits the words “and challenges” from the heading, as provisions regarding challenges to images from photographic detection devices are being moved from this section to section 120. Subsections (2) and (3) change the timeframes for examining an image from a photographic detection device before a hearing. New sections 120(7)(b) and 120(8)(c) require a defendant who intends to challenge the image from a photographic detection device to give notice to the prosecution at least 14 days before the hearing. In order to ensure the defendant can meet this timeframe, the timeframes for examining an image from a photographic detection device under section 118 have been adjusted so that a person must ask to inspect the image at least 28 days before the hearing (rather than 21 days) and the commissioner must make arrangements for inspection of the image at least 21 days before the hearing (rather than 14 days). Subsection (4) omits section 118(4) and (5), which is replaced by new section 120(7) and (8).

**Clause 38** amends section 120 (Evidentiary provisions). New subsection (2A) provides for an evidentiary certificate for the testing and accuracy of photographic detection devices. This provision has been re-located from existing section 124(1)(pf), so that all evidentiary matters relating to photographic detection devices are located in section 120. The provision no longer refers to separate components of the device or system, as these are taken to be part of the photographic detection device that is approved under the regulation.

Existing section 124(1)(pf) refers to testing of photographic detection devices in accordance with the appropriate Australian Standard, or, if there is no appropriate Australian Standard, the manufacturer's specifications. New section 120(2A) requires testing to be done in accordance with the manufacturer's specifications and any further requirements about calibration testing prescribed in a regulation.

Photographic detection devices are prescribed under regulations and as well as including current speed cameras and redlight cameras, will in the future, include combined speed/redlight cameras and point-to-point speed cameras. The Queensland Police Service advise there are no Australian Standards specifically dealing with testing of photographic detection devices. Australian Standards exist for radar and laser-based speed detection devices, but they only apply to devices with an operator present to use the device, not stand-alone speed cameras that do not require an operator. There are no Australian Standards relating to red light cameras or point-to-point speed cameras.

Even though they are not directly relevant, the Australian Standards for radar and laser-based speed detection devices include a section on calibration testing of operator devices which require the device be correctly calibrated in accordance with the manufacturer's instructions. These Australian Standards also contain other requirements related to the testing of operator devices, which the Queensland Police Service used to develop the internal standards to which speed cameras are tested in Queensland. These include matters such as using a competent testing entity and sealing of the device to prevent tampering. Those additional requirements will be formalised by including them in a regulation. As the detailed testing requirements may differ for each type of photographic detection device, these will be included the regulations rather than the Act.

The Queensland Police Service undertake testing of photographic detection devices and it is done in accordance with the manufacturer's specifications,

together with the additional requirements developed by the Queensland Police Service based on Australian Standards for similar devices.

It is appropriate that new section 120(2A) requires testing of photographic detection devices to be done in accordance with the manufacturer's specifications and any further requirements about calibration testing prescribed in a regulation. This will also remove any doubt that compliance with Australian Standards not directly relevant to the testing and accuracy of the device, such as relating to electrical safety or other imaging devices such as CCTV, are not required to be proved in the prosecution of any offence.

New subsections (7) and (8) provide that a defendant who intends to challenge certain evidence relating to an offence detected by a photographic detection device must give notice to the prosecution at least 14 days before the hearing of the charge (referred to as a "notice of challenge"). The notice of challenge is required so that the prosecution can arrange for appropriate evidence or witnesses to be available at the hearing, particularly where evidence about technical matters or expert witnesses may be required.

At present, section 118(4) and (5) require a defendant who intends to challenge certain evidence to give notice of challenge to the commissioner at least seven days before the hearing while sections 124(4) and (5) require a defendant who intends to challenge certain evidence to give notice of challenge to the prosecution at least 14 days before the hearing. These processes not only have different timeframes, but also provide that the notice be given to the commissioner in one case and the prosecution in the other.

In order to overcome these differences and to provide an appropriate notice of challenge regime for offences detected by photographic detection devices, new sections 120(7) and (8) provide a single process. The process is consistent with existing section 124(4) and (5) and incorporates the matters previously provided for in sections 118(4) and (5). The matters for which the defendant must give notice of challenge are set out in section 120(7)(a) to (d) and include evidentiary matters relating to average speed provided for in new section 120A(4)(a) to (c).

New subsection (9) inserts a definition of "on" an image. The current photographic detection devices approved under a regulation produce the marking or writing (known as a "datablock") on an image by superimposing the information on the image itself. Some of the new digital

speed and redlight cameras produce the datablock on the image in a panel at the top of the image. The definition of “on” puts it beyond doubt that the datablocks made by digital cameras are taken to be made “on” the image, including where they appear adjacent to or associated with the image.

**Clause 39** inserts a new section 120A (Average speed of motor vehicle is evidence of actual speed in certain circumstances). This provision facilitates the prosecution of speeding offences detected by point-to-point camera systems. A point-to-point camera system takes account of the time it takes a motor vehicle to travel between two camera locations to calculate the vehicle’s average speed over that distance. New section 120A provides that the average speed of a vehicle is evidence of the actual speed at which the vehicle travelled on a road between two points. Although the vehicle’s speed may have varied over the distance (at times it may have been travelling slower than the average speed, but at times it would have been travelling faster than the average speed), it must have travelled at the average speed at some point along its journey between the two points.

Subsection (3) sets out the formula for a calculating a vehicle’s average speed. The formula uses a multiplier of 3.6 to convert the distance and time measured in metres and seconds to an average speed in kilometres per hour. Subsections (2) and (3) provide that the distance used to calculate the average speed is the shortest practicable distance a vehicle could have travelled between the two camera locations. This ensures that the calculation of average speed is conservative and acts in favour of the offender, as the vehicle is likely to have travelled a longer distance.

Subsection (4) provides for an evidentiary certificate to be signed by the commissioner to facilitate putting evidence before a court of the distance travelled, time elapsed and average speed of a motor vehicle. The average speed may be calculated by the photographic detection device, as point-to-point camera systems are able to produce a report that calculates a vehicle’s average speed.

Subsection (5) provides that the shortest practicable distance is the shortest distance a vehicle could have travelled while remaining on the road (that is, without crossing an edge line or without travelling on a road-related area).

**Clause 40** amends section 124 (Facilitation of proof) by omitting section 124(1)(pf). The matters currently dealt with in section 124(1)(pf) have been moved to section 120(2A), so that all evidentiary matters relating to photographic detection devices are located in section 120.



**Clause 41** amends section 124A (Additional ground of challenge not stated in written notice required under particular provisions) to update cross-references as matters previously dealt with in section 118(4) have been moved to section 120(7) and matters previously dealt with in section 118(5) have been moved to section 120(8).

**Clause 42** inserts a new section 222 (Transitional provisions relating to photographic detection devices). The effect of subsections (1) to (3) is that for a complaint or summons issued before the commencement, the existing legislation continues to apply (for example, regarding timeframes for examination of images and notices of challenge in section 118), even if proceedings are heard after the commencement. Subsection (5) provides that a certificate under section 120(2A), has effect and can be used:

- even if testing of the device occurred before the commencement; and
- irrespective of whether:
  - the offence in relation to which the certificate is used was allegedly committed before or after the commencement; or
  - the complaint or summons for the offence was issued before or after the commencement.

Certificates under section 120(2A) will be prepared after the commencement, but testing of the device may have occurred up to one year earlier, because the testing procedure is valid for one year.

## **Chapter 3      Adult Proof of Age Card and New Queensland Driver Licensing amendments**

### **Part 1            Amendment of Adult Proof of Age Card Act 2008**

**Clause 43** states that this part amends the *Adult Proof of Age Card Act 2008*.

**Clause 44** replaces section 5 (What is an *adult proof of age card*) to define an adult proof of age card as an proof of age card issued under the *Adult Proof of Age Card Act 2008* that indicates that a person is at least 18 years of age and on which information may be stored electronically.

**Clause 45** amends section 6 (Card is property of the State) to include a declaration limiting the State's liability for acts or omissions in relation to the keeping and use of a smartcard.

An adult proof of age card may contain the cardholder's personal information and the legislation restricts access to this information. The amendment will allow the State's property interest to stand despite the cardholder's statutory right to store, or have certain information stored on the card.

**Clause 46** amends section 9 (Application for new card by electronic communication) by replacing the reference to "section 31(4)" under section 9(1)(b) to "section 31B(1)".

**Clause 47** amends section 11 (Decision on application) by replacing the reference to "and 31(2)" under section 11(1) with "and 31(5)". The reference to "section 31(4)" under section 11(3)(a)(ii) is replaced by "section 31A"..

**Clause 48** amends section 13 (Expiry of card) to clarify that an adult proof of age card expires on the day stated on the card, being a day that is not longer than 10 years after the day the card is issued.

**Clause 49** inserts a new section 23A to allow for the proof of giving false or misleading documents applicable to a proceeding for an offence against sections 22(1) or 23(1) or (2) of the *Adult Proof of Age Card Act 2008*. This section reflects section 53A of the *Transport Operations (Road Use Management) Act 1995*.

**Clause 50** amends section 30 (Restricted release of information in APA register) by removing the sectional definition of *proof of age card*.

**Clause 51** replaces section 31 (Obtaining digital photo and digitised signature) to require a person to allow the chief executive to take and keep their digital photo and digitised signature if the person applies for the issue or replacement of an adult proof of age card.

A person applying for anything else in relation to an adult proof of age card must also allow the chief executive to take and keep a digital photo or a digitised signature if required by written notice where it relates to

establishing a connection between the photo being taken and kept and the person's most recent digital photo.

The requirement relating to the issue or replacement of an adult proof of age card does not apply if:

- the chief executive is keeping the most recent digital photo and digitised signature of the person; and
- is satisfied that the photo is still a true likeness of the person; and
- the shelf life of the person's most recent digital photo and digitised signature (or the extension of shelf life) has not ended or ended before the term of the adult proof of age card ends.

If the chief executive considers it reasonably necessary to use facial recognition technology (FRT) to establish a person's connection to the person's most recent digital photo, the chief executive may give the person a written notice requiring the person to allow the chief executive to take and keep a digital photo of the person.

The chief executive may also, by written notice, take and keep the person's digitised signature if the chief executive is satisfied that there is sufficient connection between the digital photo taken for an application for anything else in relation to an adult proof of age card, and the person's most recent digital photo.

The chief executive must refuse to consider any application by a person relating to an adult proof of age card if the person does not allow the chief executive to take and keep the person's digital photo and digitised signature, as mentioned in section 31(1).

Refusal to consider also applies where the chief executive is not satisfied there is a sufficient connection between the digital photo taken for an application for anything else in relation to an adult proof of age card, and the person's most recent digital photo.

**Clause 52** amends section 32 (Using digital photo and digitised signature) by inserting a new section 32(1)(c). This amendment authorises the chief executive to use the digital photo taken to establish the person's connection to the person's most recent digital photo for the purposes of an adult proof of age card for an application for anything else in relation to a proof of age card.

A minor amendment is made to section 32(2)(b)(i) by using the word "replacement" instead of "renewal" (of an adult proof of age card).

The provision broadens the circumstances under which the chief executive may use the person's digital photo and digitised signature to help in an investigation or proceeding.

**Clause 53** amends section 33 (Restricted access to digital photo) by inserting "a prescribed smartcard Act" to broaden a police officer's access to a digital photo that may be kept under another Act. A "prescribed smartcard Act" includes the *Tow Truck Act 1973*; the *Transport Operations (Marine Safety) Act 1994*; the *Transport Operations (Passenger Transport) Act 1994*; or the *Transport Operations (Road Use Management) Act 1995*.

**Clause 54** replaces section 37 to set out the retention period for a digital photo and digitised signature taken under the *Adult Proof of Age Card Act 2008*.

The retention period for a digital photo and digitised signature is 30 years after the day the photo or signature is taken, if they are obtained for an application for the issue or replacement of an adult proof of age card. The same retention period applies for a digital photo or digitised signature obtained for an application for anything else in relation to a proof of age card if the image or signature are used or are to be used under another smartcard Act.

If the application for the issue or replacement of an adult proof of age card is not granted, the retention period is six months after the day the photo or signature is taken, or a period prescribed by the chief executive, whichever is the shorter period.

If the above retention periods do not apply, the retention period is 24 hours after the day the photo or signature was taken.

The amendment also allows the chief executive to keep the digital photo or digitised signature for a longer period for the purposes of an investigation or proceeding.

**Clause 55** inserts a new section 47A that will authorise the keeping and using of information obtained or kept under a particular transport Act to be used for the purposes of the *Adult Proof of Age Card Act 2008*. The provision will also allow the chief executive or general manager under the *Maritime Safety Queensland Act 2002*, to use the information under this Act for the purposes of a particular transport Act or the *Transport Operations (Marine Safety) Act 1994*.

**Clause 56** omits a redundant regulation-making power under section 49(4)(b) that allowed a regulation to provide for the establishment of a

person's identity for identification purposes. The remaining paragraph (a) is moved into section 49(4).

**Clause 57** amends the schedule (Dictionary) to include the definition of *proof of age card*. The reference to "this Act" in paragraph (a)(i) under the definitions of *most recent digital photo* and *most recent digitised signature* is replaced with "section 31".

## **Part 2**                      **Amendment of Transport (New Queensland Driver Licensing) Act 2008**

**Clause 58** states that this part amends the *Transport (New Queensland Driver Licensing) Act 2008*.

**Clause 59** amends section 5 (insertion of new ch 7, pt 5A). The clause amends the definition of *prescribed document* and replaces paragraphs (c) and (d) of the definition of *smartcard transport authority*. These paragraphs refer to schedule 3 of the *Transport Operations (Passenger Transport) Act 1994* and schedule 4 under *Transport Operations (Road Use Management) Act 1995* to define a *smartcard driver authorisation* and *smartcard authority* respectively. The Division 4 heading under section 5 is amended to refer to "prescribed document" instead of "smartcard transport authority". The term "prescribed document" is replaced with "smartcard transport authority" in section 195I(1).

**Clause 60** inserts a new section 8A and 8B. The new section 8A replaces sections 14-18 of the *Tow Truck Act 1973*. Sections 14-15 clarify the procedure for the making of an application for a driver's and assistant's certificate, the requirements for making a decision on an application, and the requirement to give written notice of the imposition or variation of conditions.

Section 16 states that the holder of a driver's or assistant's certificate is authorised to operate or be employed on or in connection with a tow truck respectively.

Section 17 provides that a certificate may be granted or renewed for a period not more than five years.

Section 17A provides that where the holder of certificate applies to renew a certificate the application may be made no sooner than two weeks before the certificate's expiry. Sections 14-17 apply to an application for renewal of a certificate in the same way they apply to an application for the grant of a certificate.

Section 18 is consistent with section 49 of the *Transport Operations (Road Use-Accreditation and Other Provisions) Regulation 2005* and sets out the effect on a driver's certificate if the driver licence held by the certificate holder is suspended, cancelled or surrendered.

The new section 8B amends section 19 (Permit for applicant for driver's or assistant's certificate) by replacing the concept of "issuing" permits to the "granting" of permits.

**Clause 61** amends section 9 (Insertion of new pt 3, divs 2 and 3) that replaces sections 19A, 19B and 19F, and inserts a new section 19AA.

Section 19A requires a person to allow the chief executive to take and keep a digital photo and digitised signature of the person if they apply for:

- the grant or renewal of a driver's certificate or assistant's certificate (the "authority applied for"); or
- the replacement of a document evidencing a driver's certificate or assistant's certificate.

A person applying for anything else in relation to a driver's certificate or assistant's certificate must also allow the chief executive to take and keep a digital photo or a digitised signature if required by written notice where it relates to establishing a connection between the photo being taken and kept, and the person's most recent digital photo.

The requirement relating to an application for the grant or renewal of a driver's certificate or assistant's certificate, or the replacement of a document evidencing a driver's certificate or assistant's certificate does not apply if:

- the chief executive is keeping the most recent digital photo and digitised signature of the person; and
- is satisfied that the photo is still a true likeness of the person; and
- the shelf life of the person's most recent digital photo and digitised signature (or the most recent extension of shelf life) has not ended and will not end before the term of the driver's or assistant's certificate applied for ends; or if a replacement of a document evidencing the

person's driver's certificate or assistant's certificate is applied for – the term of the driver's certificate or assistant's certificate ends.

If the chief executive considers it reasonably necessary to use FRT to establish a person's connection to the person's most recent digital photo, the chief executive may give the person a written notice requiring the person to allow the chief executive to take and keep a digital photo of the person.

The chief executive may also, by written notice, take and keep the person's digitised signature if the chief executive is satisfied that there is sufficient connection between the digital photo taken for an application for anything else in relation to a driver's certificate or assistant's certificate and the person's most recent digital photo.

The chief executive must refuse to consider any application by a person relating to a driver's certificate or an assistant's certificate if the person does not allow the chief executive to take and keep the person's digital photo and digitised signature, as mentioned in section 19A(1).

Refusal to consider also applies where the chief executive is not satisfied there is a sufficient connection between the digital photo taken for an application for anything else in relation to a driver's certificate or assistant's certificate and the person's most recent digital photo.

The power for the chief executive to extend the shelf life of a person's most recent digital photo and digitised signature for a total period of not more than six months, is relocated to a new section 19AA.

Section 19B sets out the purposes for which the chief executive may use a person's digital photo and digitised signature, that is to:

- help identify a person for the purposes of an application for a relevant certificate;
- reproduce a person's digital photo and digitised signature on a document evidencing a relevant certificate; and
- establish a person's connection to the person's most recent digital photo.

The provision broadens the circumstances under which the chief executive may use the person's digital photo and digitised signature to help in an investigation or proceeding.

Section 19C(3) is also amended by broadening a police officer's access to a digital photo also kept under a "prescribed smartcard Act". A "prescribed

smartcard Act” includes the *Adult Proof of Age Card Act 2008*; the *Transport Operations (Marine Safety) Act 1994*; the *Transport Operations (Passenger Transport) Act 1994*; or the *Transport Operations (Road Use Management) Act 1995*.

The sectional definition of *smartcard certificate* is removed from section 19E(2).

A new section 19F is inserted to set out the retention period for a digital photo and digitised signature under the *Tow Truck Act 1973*.

The retention period for a digital photo and digitised signature is 30 years after the day the photo or signature is taken, if they are obtained for an application for the grant or renewal of, or for a replacement of a document evidencing a driver’s certificate or an assistant’s certificate that is granted. The same retention period applies for a digital photo and digitised signature that is taken in relation to establishing a connection to the person’s most recent digital photo and is used to reproduce the person’s digital photo and digitised signature on a relevant certificate.

If the application is not granted, the retention period is six months after the day the photo or signature is taken or a period prescribed by the chief executive, whichever is the shorter period. In all other circumstances, the retention period is 24 hours after the photo and signature is taken.

The amendment also allows the chief executive to keep the digital photo or digitised signature for a longer period for the purposes of an investigation or proceeding mentioned under section 19B(2).

Section 19H(2)(a) is amended to refer to “a document evidencing the certificate” instead of “the certificate”.

**Clause 62** inserts new sections 9A, 9B and 9D to distinguish between the authority and the document evidencing the granting of an authority. These provisions will clarify the requirement to return the document evidencing the granting of an authority in the context of surrendering, cancelling or suspending an authority. The provisions will also clarify when an authority holder must produce a document evidencing the holder’s licence, certificate or permit to an authorised officer or produce a document evidencing a driver’s certificate or permit before commencing a tow.

New section 9C inserts a new section declares that a smartcard certificate is and remains the property of the State and limits the State’s liability for acts or omissions in relation to the keeping and use of a smartcard certificate.



A smartcard certificate may contain the cardholder's information, and the legislation restricts access to this information. The amendment will allow the State's property interest to stand despite the cardholder's statutory rights to store or have certain information stored on the card.

**Clause 63** amends section 11 (Amendment of s43 (Regulation-making power)) by replacing subsection (3). The new subsection provides that a regulation may provide for:

- a document evidencing the grant or renewing of a driver's certificate or assistant's certificate in the form of a card or similar as approved by the chief executive; and
- the use of a PIN as a security measure to protect information stored electronically on a document evidencing the certificate.

The clause also allows for a "transport authority" by inserting a new section 43(4) to provide that a regulation may also provide that a document evidencing the grant or renewal of a driver's certificate may also include on it:

- information about a certificate granted under the *Tow Truck Act 1973*;
- information about an authority under another transport Act; or
- information about another transport authority under a prescribed transport Act, if permitted under that Act.

Reciprocally, the regulation may also provide that information about a driver's certificate or an assistant's certificate under the *Tow Truck Act 1973* to be included on a document evidencing the grant of another transport authority under another transport Act if permitted under that other Act.

**Clause 64** inserts a new section 11A Amendment of sch 1 (Reviewable decisions) because of the above changes to the *Tow Truck Act 1973*.

**Clause 65** amends section 12 (Amendment of sch 2 (Dictionary)) to replace the definitions of *assistant's certificate*, *driver's certificate*, *permit*, *shelf life* and include the definition of a *smartcard certificate* that was removed by clause 61.

The reference to "this Act" in paragraph (a)(i) under the definitions of *most recent digital photo* and *most recent digitised signature* is replaced with "section 19A".

**Clause 66** replaces section 14 (Amendment of s62 (Grant, amendment and renewal of licences)) to clarify the regulation-making power for both the

form of a marine licence indicator and for a PIN to be used as a security measure to protect information stored on a smartcard marine licence indicator.

**Clause 67** inserts a new section 14A (s63AA Smartcard marine licence indicator is property of the State) that ultimately amends the *Transport Operations (Marine Safety) Act 1994* and declares that a smartcard marine licence indicator is and remains the property of the State. This provision also includes a limitation on the State's liability for acts or omissions in relation to the keeping and use of a smartcard marine licence indicator.

A smartcard marine licence indicator may contain the cardholder's personal information and the legislation restricts access to this information. The amendment will allow the State's property interest to stand despite the cardholder's statutory right to store or have certain information stored electronically on the card.

**Clause 68** amends section 15 (Insertion of new pt 5, divs 3A and 3B) by replacing sections 63A, 63B and 63G, and inserts a new section 63AB.

Section 63A requires a person to allow the chief executive and general manager to take and keep a digital photo and digitised signature of the person if they apply for the grant or renewal of a marine licence (the "authority applied for") or an amendment of the person's marine licence.

This requirement extends to a person who already holds a marine licence who applies for a marine licence indicator or the renewal, replacement or amendment of a smartcard marine licence indicator.

A person applying for anything else in relation to a marine licence or a marine licence indicator must also allow the chief executive and general manager to take and keep a digital photo or a digitised signature if required by written notice where it relates to establishing a connection between the photo being taken and kept, and the person's most recent digital photo.

The requirement relating to either an application for the grant or renewal of a marine licence or an amendment of the person's marine licence; or an application for a marine licence indicator or the renewal, replacement or amendment of a smartcard marine licence indicator does not apply if:

- the chief executive or general manager is keeping the most recent digital photo and digitised signature of the person; and
- is satisfied that the photo is still a true likeness of the person; and

- the shelf life of the person's most recent digital photo and digitised signature (or the most recent extension of shelf life) has not ended and will not end before the term of the authority applied for ends; or otherwise the term of the smartcard marine licence indicator ends.

If the chief executive or general manager considers it reasonably necessary to use FRT to establish a person's connection to the person's most recent digital photo, the chief executive may give the person a written notice requiring the person to allow the chief executive to take and keep a digital photo of the person.

The chief executive or general manager may also, by written notice, take and keep the person's digitised signature if the chief executive is satisfied that there is sufficient connection between the digital photo taken for an application for anything else in relation to a marine licence or marine licence indicator, and the person's most recent digital photo.

The chief executive or general manager must refuse to consider any application by a person relating to a marine licence or marine licence indicator if the person does not allow the chief executive to take and keep the person's digital photo and digitised signature, as mentioned in section 63A(1).

Refusal to consider also applies where the chief executive or general manager is not satisfied there is a sufficient connection between the digital photo taken for an application for anything else in relation to a marine licence or marine licence indicator, and the person's most recent digital photo.

The power for the chief executive to extend the shelf life of a person's most recent digital photo and digitised signature for a total period of not more than six months, is relocated to a new section 63AB.

Section 63B sets out the purposes for which the chief executive may use a person's digital photo and digitised signature, that is to:

- help identify a person for the purposes of an application for a marine licence;
- reproduce a person's digital photo and digitised signature on a smartcard marine licence indicator; and
- establish a person's connection to the person's most recent digital photo.

The provision broadens the circumstances under which the chief executive may use the person's digital photo and digitised signature to help in an investigation or proceeding.

Section 63C(3) is amended by inserting "a prescribed smartcard Act" to broaden a police officer's access to a digital photo that may be kept under another Act. A "prescribed smartcard Act" includes the *Adult Proof of Age Card Act 2008*; the *Tow Truck Act 1973*, the *Transport Operations (Passenger Transport) Act 1994*; or the *Transport Operations (Road Use Management) Act 1995*.

Section 63G sets out the retention period for a digital photo and digitised signature taken under the *Transport Operations (Marine Safety) Act 1994*.

The retention period for a digital photo and digitised signature is 30 years after the day the photo or signature is taken, if they are obtained for an application for:

- the grant or renewal of a marine licence, or an amendment of the person's marine licence that is granted; or
- a marine licence indicator, or the renewal, replacement or amendment of a smartcard marine licence indicator.

The same retention period applies for a digital photo and digitised signature that is taken in relation to establishing a connection to the person's most recent digital photo and is used to reproduce the person's digital photo and digitised signature on a smartcard marine licence indicator.

If the application is not granted, the retention period is six months after the day the photo and signature is taken or a period prescribed by the chief executive, whichever is the shorter period. In all other circumstances, the retention period is 24 hours after the photo and signature is taken.

The amendment also allows the chief executive or general manager to keep the digital photo or digitised signature for a longer period for the purposes of an investigation or proceeding mentioned under section 63B(2).

Section 63I(1) is amended to include the words "or marine history" after "licence". This amendment will authorise the chief executive or general manager to release information under the *Transport Operations (Marine Safety) Act 1994* about a person's marine licence or marine history.

The word “smartcard” is inserted before “marine licence indicator” under section 63I(2)(a) and (c) to refer to the document (i.e. smartcard) that evidences the authority.

**Clause 69** amends section 17 by inserting the definitions of *shelf life* and *smartcard marine licence indicator* in the Dictionary of the *Transport Operations (Marine Safety) Act 1994*. The reference to “this Act” in paragraph (a) under the definitions of *most recent digital photo* and *most recent digitised signature* is replaced with “section 63A”.

**Clause 70** replaces section 20 (Amendment of s29 (Granting, renewing or refusing driver authorisation)). It inserts a new section 29(3) to include regulation-making powers for:

- “an authorising document”;
- the form of an authorising document as approved by the chief executive; and
- the use of a PIN as a security measure to protect information stored electronically on a document evidencing the certificate.

A new section 29(4) introduces the concept of a “transport authority” stating that a regulation may provide that an authorising document may also include on it information about another transport authority under a prescribed transport Act, if permitted under that Act. Reciprocally, the regulation may also provide that information about a driver authorisation under *Transport Operations (Passenger Transport) Act 1994* may also be included on a document evidencing the grant, renewal or replacement of another transport authority, if permitted under that other Act. New section 29(5) inserts sectional definitions for a *prescribed transport Act* and *transport authority*.

**Clause 71** inserts a new section 20A (Insertion of new s29AA Smartcard driver authorisation is property of the State), that declares that a smartcard driver authorisation is and remains the property of the State and includes a limitation on the State’s liability for acts or omissions in relation to the keeping and use of a smartcard driver authorisation.

**Clause 72** amends section 21 (Insertion of new s34A) to require authorised drivers to notify the chief executive of damage, loss or theft of authorising documents issued by the chief executive. The requirement under this section will not apply to the damage, loss or theft of authorising documents that are not issued by the chief executive.

**Clause 73** amends section 22 (Insertion of new ch 4, pts 2 and 3) by replacing sections 35A and 35B.

Section 35A requires a person to allow the chief executive to take and keep a digital photo and digitised signature of the person if they apply for:

- the grant or renewal of driver authorisation (the “authority applied for”);
- an amendment of driver authorisation;
- the replacement of an authorising document.

A person applying for anything else in relation to driver authorisation must also allow the chief executive to take and keep a digital photo or a digitised signature if required by written notice where it relates to establishing a connection between the photo being taken and kept, and the person’s most recent digital photo.

The requirement relating to either an application for the grant, renewal or amendment of driver authorisation or the replacement of an authorising document does not apply if:

- the chief executive is keeping the most recent digital photo and digitised signature of the person; and
- is satisfied that the photo is still a true likeness of the person; and
- the shelf life of the person’s most recent digital photo and digitised signature (or the most recent extension of shelf life) has not ended and will not end before
  - the term of the authority applied for ends; or
  - if an amendment of the person’s driver authorisation is applied for – the term of the driver authorisation ends; or
  - if the replacement of an authorising document is applied for – the term of the driver authorisation ends.

If the chief executive considers it reasonably necessary to use FRT to establish a person’s connection to the person’s most recent digital photo, the chief executive may give the person a written notice requiring the person to allow the chief executive to take and keep a digital photo of the person.

The chief executive may also, by written notice, take and keep the person’s digitised signature if the chief executive is satisfied that there is sufficient

connection between the digital photo taken for an application for anything else in relation to driver authorisation, and the person's most recent digital photo.

The chief executive must refuse to consider any application by a person relating to driver authorisation if the person does not allow the chief executive to take and keep the person's digital photo and digitised signature, as mentioned in section 35A(1).

Refusal to consider also applies where the chief executive is not satisfied there is a sufficient connection between the digital photo taken for an application for anything else in relation to driver authorisation, and the person's most recent digital photo.

The power for the chief executive to extend the shelf life of a person's most recent digital photo and digitised signature for a total period of no more than six months is relocated to a new section 35AA.

Section 35B sets out the purposes for which the chief executive may use a person's digital photo and digitised signature, that is to:

- help identify a person for the purposes of an application for driver authorisation;
- reproduce a person's digital photo and digitised signature on an authorising document; and
- establish a person's connection to the person's most recent digital photo.

The provision broadens the circumstances under which the chief executive may use the person's digital photo and digitised signature to help in an investigation or proceeding.

Section 35C(3) is amended by inserting "a prescribed smartcard Act" to broaden a police officer's access to a digital photo that may be kept under another Act. A "prescribed smartcard Act" includes the *Adult Proof of Age Card Act 2008*; the *Tow Truck Act 1973*, the *Transport Operations (Marine Safety) Act 1994*; or the *Transport Operations (Road Use Management) Act 1995*.

The definition of *smartcard driver authorisation* is removed from section 35E(2).

Section 35F sets out the retention period for a digital photo and digitised signature taken under the *Transport Operations (Passenger Transport) Act 1994*.

The retention period for a digital photo and digitised signature is 30 years after the day the photo or signature is taken, if they are obtained for an application for the grant, renewal or amendment of driver authorisation, or the replacement of an authorising document that is granted. The same retention period applies for a digital photo and digitised signature that is taken in relation to establishing a connection to the person's most recent digital photo and is used to reproduce the person's digital photo and digitised signature on an authorising document.

If the application is not granted, the retention period is six months after the day the photo or signature is taken, or a period prescribed by the chief executive, whichever is the shorter period. In all other circumstances, the retention period is 24 hours after the day the photo or signature is taken.

The amendment also allows the chief executive to keep the digital photo or digitised signature for a longer period for the purposes of an investigation or proceeding mentioned under section 35B(2).

A minor amendment is made to section 35H(2)(a) to replace the words "the driver authorisation" with "the person's authorising document".

**Clause 74** amends section 24 (Amendment of sch 3 (Dictionary)) to insert the definition of *authorising document*, *shelf life* and *smartcard driver authorisation*. The reference to "this Act" in paragraph (a)(i) under the definitions of *most recent digital photo* and *most recent digitised signature* is replaced with "section 35A".

**Clause 75** amends section 28 (Insertion of new ch 5, pt 3A) by replacing sections 91A, 91B and 91G, and inserts a new section 91G.

Section 91A requires a person to allow the chief executive to take and keep a digital photo and digitised signature of the person if they apply for the grant, renewal or replacement of a prescribed authority (the "authority applied for").

A person applying for anything else in relation to a prescribed authority must also allow the chief executive to take and keep a digital photo or a digitised signature if required by written notice where it relates to establishing a connection between the photo being taken and kept, and the person's most recent digital photo.

The requirement relating to either an application for the grant, renewal or replacement of a prescribed authority does not apply if:

- the chief executive is keeping the most recent digital photo and digitised signature of the person; and



- is satisfied that the photo is still a true likeness of the person; and
- the shelf life of the person's most recent digital photo and digitised signature (or the most recent extension of shelf life) has not ended and will not end before the term of the authority applied for ends.

If the chief executive considers it reasonably necessary to use FRT to establish a person's connection to the person's most recent digital photo, the chief executive may give the person a written notice requiring the person to allow the chief executive to take and keep a digital photo of the person.

The chief executive may also, by written notice, take and keep the person's digitised signature if the chief executive is satisfied that there is sufficient connection between the digital photo taken for an application for anything else in relation to a prescribed authority, and the person's most recent digital photo.

The chief executive must refuse to consider any application by a person relating to a prescribed authority if the person does not allow the chief executive to take and keep the person's digital photo and digitised signature, as mentioned in section 95A(1).

Refusal to consider also applies where the chief executive is not satisfied there is a sufficient connection between the digital photo taken for an application for anything else in relation to a prescribed authority, and the person's most recent digital photo.

In this section, "grant" also includes "issue".

The power for the chief executive to extend the shelf life of a person's most recent digital photo and digitised signature for a total period of not more than six months is relocated to a new section 91AA.

Section 91B sets out the purposes for which the chief executive may use a person's digital photo and digitised signature, that is to:

- help identify a person for the purposes of an application for a prescribed authority;
- reproduce a person's digital photo and digitised signature on an prescribed authority; and
- establish a person's connection to the person's most recent digital photo.

The provision broadens the circumstances under which the chief executive may use the person's digital photo and digitised signature to help in an investigation or proceeding.

Section 91C(3) is amended by inserting "a prescribed smartcard Act" to broaden a police officer's access to a digital photo that may be kept under another Act. A "prescribed smartcard Act" includes the *Adult Proof of Age Card Act 2008*; the *Tow Truck Act 1973*, the *Transport Operations (Marine Safety) Act 1994*; or the *Transport Operations (Passenger Transport) Act 1994*.

The definition of *smartcard authority* under section 91F(3) is omitted.

Section 91G sets out the retention period for a digital photo and digitised signature taken under the *Transport Operations (Road Use Management) Act 1995*.

The retention period for a digital photo and digitised signature is 30 years after the day the photo or signature is taken, if they are obtained for an application for the grant, renewal or replacement of a prescribed authority that is granted. The same retention period applies for a digital photo and digitised signature that is taken in relation to establishing a connection to the person's most recent digital photo and is used to reproduce the person's digital photo and digitised signature on a prescribed authority.

If the application is not granted, the retention period is six months after the day the photo or signature is taken, or a period prescribed by the chief executive, whichever is the shorter period. In all other circumstances, the retention period is 24 hours after the day the photo or signature is taken.

The amendment also allows the chief executive to keep the digital photo or digitised signature for a longer period for the purposes of an investigation or proceeding mentioned under section 91B(2).

**Clause 76** inserts a new section 28A (Insertion of new s 126A (Smartcard authority is property of the State)) that declares that a smartcard authority is and remains the property of the State and limits the State's liability for acts or omissions in relation to the keeping and use of a smartcard authority.

A smartcard authority may contain the cardholder's personal information and the legislation restricts access to this information. The amendment will allow the State's property interest to stand despite the cardholder's statutory right to store or have certain information stored electronically on the card.

**Clause 77** replaces section 30 (Amendment of s150A Regulating form of licence) by inserting a new section 150A to provide for the form of and information included on, a licence under the *Transport Operations (Road Use Management) Act 1995* to be prescribed by a regulation. The provision also introduces the concept of a “transport authority” as provided for by a regulation. Accordingly, information that identifies the holder of the Queensland driver licence as a holder of a licence under another Act e.g. a marine licence under the *Transport Operations (Marine Safety) Act 1994*. Section 150A goes further to provide that a regulation may also provide for:

- the form of a document evidencing a Queensland driver licence as approved by the chief executive and on which information may be stored electronically; and
- a PIN to be used by the holder of a Queensland driver licence as a security measure to protect information stored electronically on a document evidencing a Queensland driver licence.

A new section 150BA regulates the form of a relevant prescribed authority other than a Queensland driver licence. In addition, the provision states that a regulation may also provide for:

- a document evidencing the grant of a relevant prescribed authority;
- a document evidencing the grant of a relevant prescribed authority in the form of a card or similar as approved by the chief executive; and
- security measures to be used to protect information that may be stored electronically on the certificate.

Section 150BA(3) allows a regulation to provide that a document evidencing a relevant prescribed authority may include on it, information about another transport authority under a prescribed transport Act held by the person. Reciprocally, the provision allows information about a relevant transport authority to be included on another transport authority.

Section 150BA(4) defines the terms, *prescribed transport Act*, *relevant prescribed authority* and *transport authority*.

**Clause 78** amends section 31 (Amendment of sch 4 (Dictionary)) by inserting the definition *shelf life* and of *smartcard authority*. The reference to “this Act” in paragraph (a)(i) under the definitions of *most recent digital photo* and *most recent digitised signature* is replaced with “section 91A”. The definition of *prescribed authority* is amended to also include “a

dangerous goods driver licence as defined under the dangerous goods regulation”.

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

**Clause 79** provides that this part amends the *Transport Operations (Marine Safety) Act 1994*.

**Clause 80** inserts new section 62A (When licence is void) to outline that a licence has no effect if it has been obtained by any false statement or misrepresentation.

**Clause 81** amends section 63 (Cancellation, suspension and amendment of licences). This is consequential to the amendment made to section 202C under clause 74.

**Clause 82** amends section 202C (Licence cancelled when order made under s 202A) to require the return of a smartcard marine licence indicator when a recreational marine driver licence or personal watercraft licence is cancelled by operation of law following a court disqualification.

**Clause 83** amends section 202K (Variation of restrictions) to require the return of a smartcard marine licence indicator when a restricted licence is varied by operation of law following a court disqualification.

## **Chapter 4            Other amendments**

### **Part 1                      Amendment of Transport Infrastructure Act 1994**

**Clause 84** states that this part and the schedule, part 1 amend the *Transport Infrastructure Act 1994*.

**Clause 85** amends section 84C (Effect on land of State toll road corridor land declaration). The amendment makes the administrative process for granting leases of State toll road corridor land consistent with the process that applies under the *Land Act 1994* (Land Act). Section 84C provides that land that is declared under section 84A to be State toll road corridor land becomes unallocated State land. Section 84C(4) requires the Governor in Council to lease the land to the State under section 17 of the Land Act. Section 17 of the Land Act was amended in 2007 and gave the power to lease unallocated State land to the Minister administering the Land Act, rather than the Governor in Council. The amendment to section 84C makes it consistent with section 17 of the Land Act by giving the power to lease State toll road corridor land to the Minister administering the Land Act.

**Clause 86** amends section 105J (Effect on land of local government tollway corridor land declaration). The amendment makes the administrative process for granting leases of local government tollway corridor land consistent with the process that applies under the *Land Act 1994*. Section 105J provides that land declared under section 105H to be local government tollway corridor land becomes unallocated State land. Section 105J(4) requires the Governor in Council to lease the land to the State under section 17 of the Land Act. Section 17 of the Land Act was amended in 2007 and gave the power to lease unallocated State land to the Minister administering the Land Act, rather than the Governor in Council. The amendment to section 105J makes it consistent with section 17 of the Land Act by giving the power to lease local government tollway corridor land to the Minister administering the Land Act.

**Clause 87** amends section 480 (Disposal of fees, penalties etc.) by inserting new sections 480(3) and (4).

New section 480(3) provides that penalties received or recovered by an entity other than the local government in relation to the enforcement of particular offences in the *Transport Infrastructure Act 1994* relating to local government tollways are to be paid to the local government. This would include, for example penalties received or recovered by the Department of Transport and Main Roads on behalf of a local government.

New section 480(4) provides that penalties received or recovered by a local government in relation to the enforcement of particular offences in the

*Transport Infrastructure Act 1994* relating to local government tollways may be retained by the local government.

Clause 53(1) renumbers existing sections 480(3) to (8) as sections 480(5) to (10).

Amendments to section 480(10), as renumbered, insert definitions for new sections 480(3) and (4).

For the term local government tollway used in section 480, see section 105GA(5) of the *Transport Infrastructure Act 1994*.

The definitions provide that *tolling enforcement*, in relation to a local government, means enforcement of a relevant tolling offence committed in relation to a local government tollway in the local government's area. It includes enforcement started either by serving an infringement notice under the *State Penalties Enforcement Act 1999* or by complaint and summons served under the *Justices Act 1886*.

Section 480(10) also provides that a relevant *tolling offence* is an offence against sections 105ZH(3) (Notice to vehicle's registered operator), 105AJ(4) (Notice to information holder) or 105AK(3) (Notice to person identified as driver).

## **Part 2                      Amendment of Transport Operations (Marine Pollution) Act 1995**

**Clause 88** states that this part and the schedule, part 1 amends the *Transport Operations (Marine Pollution) Act 1995*.

**Clause 89** is a consequential amendment to section 45 (Definitions for pt 7), which provides that a discharge offence includes the offences outlined in section 50A(2), (3) and now (4).

**Clause 89A** is a consequential amendment to section 47 (Discharge of untreated sewage into nil discharge wastewaters for untreated sewage prohibited), which provides that a ship for the purposes of this section does not include a declared ship under section 49 or a prescribed ship under section 50A. This amendment clarifies who must comply with the specific ship-sourced sewage provisions to address stakeholder confusion.

**Clause 89B** is a consequential amendment to section 48 (Discharge of treated sewage into nil discharge waters for treated sewage prohibited), which provides that a ship for the purposes of this section does not include a declared ship under section 49 or a prescribed ship under section 50A. This amendment clarifies who must comply with the specific ship-sourced sewage provisions to address stakeholder confusion.

**Clause 89C** is a consequential amendment to section 48A (Ship with fixed toilet operating in prescribed nil discharge waters to be able to hold or treat sewage), which provides that a ship for the purposes of this section does not include a declared ship under section 49 or a prescribed ship under section 50A. This amendment clarifies who must comply with the specific ship-sourced sewage provisions to address stakeholder confusion.

**Clause 90** amends section 50A (Discharge of sewage by prescribed ships) to:

- omit the phrase “prohibited untreated sewage discharge” in section 50A(2) and replaces it with the word “coastal” to clarify that prescribed ships cannot discharge untreated sewage into coastal waters;
- insert a new subsection 50A(2A) to provide that if treated sewage is discharged from a prescribed ship into prohibited nil discharge waters (boat harbour, canal, designated area or marina) an offence is committed. This is not a new offence, however the new subsection simplifies the intent of the existing legislation;
- omit the phrase “prohibited treated sewage discharge” in section 50A(3) and replaces it with the word “coastal” to clarify that prescribed ships cannot discharge treated sewage into coastal waters. However, if the prescribed ship complies with the conditions also provided under this subsection, they can discharge treated sewage into coastal waters, except prohibited nil discharge waters;
- omit the existing wording of section 50A(3)(a) and replaces it with a simplified requirement for ships who discharge treated sewage into coastal waters to have an International Maritime Organization (IMO) approved sewage treatment plant in operation. A note attached to the subsection advises ship owners and operators where to find information about IMO approved sewage treatment plants via the internet;

- provide that all revised subsections, that is 50A(2) to (4), apply despite the criminal code;
- omit the existing wording of section 50A(5) and replaces it with an improved definition of “prescribed ship”, which addresses the confusion about who must comply with this section. A prescribed ship is a ship on an international voyage either with a gross tonnage of at least 400 or with a gross tonnage of less than 400 and certified to carry more than 15 persons onboard; and
- renumber section 50A as a result of the abovementioned changes.

**Clause 91** amends section 55AA (Placard about garbage disposal requirements) by adjusting the penalty for an offence under this section from 850 penalty units to 20 penalty units. This adjustment is more appropriate for the minor nature of this offence and brings it in line with similar legislation in other Australian jurisdictions.

**Clause 92** is a consequential amendment to remove the definition of “Australian Maritime Safety Authority” from section 97 (Definitions for division) because it has been relocated to the schedule (Dictionary) as the term is now used in a number of locations throughout the Act.

**Clause 93** inserts a new division 5 (Transitional provision for the *Transport and Other Legislation Amendment Act 2010*) in Part 17 (Transitional provisions) to provide for transitional provisions to support amendments in this Bill. It also inserts a new section 159 (Amendment of regulation by *Transport and Other Legislation Amendment Act 2010* does not affect powers of Governor in Council) to provide that the amendments to the *Transport Operations (Marine Pollution) Regulation 2008* made through this Bill, do not restrict the Governor in Council from making further amendments to these sections of the Regulation at a later date.

**Clause 94** relocates the definition of “Australian Maritime Safety Authority” from section 97 (Definitions for division) to the schedule (Dictionary), as the term is now used in a number of locations throughout the Act. It also relocates the definitions for “boat harbour”, “canal”, “designated area”, “marina”, “Great Barrier Reef Coast Marine Park” and “prohibited discharge waters” from the *Transport Operations (Marine Pollution) Regulation 2008* to the Act, where these terms are now first referenced.



## **Part 3**                      **Amendment of Transport Operations (Marine Pollution) Regulation 2008**

**Clause 95** provides that this part amends the *Transport Operations (Marine Pollution) Regulation 2008*.

**Clause 96** omits section 4 (MARPOL) to remove references to the text of MARPOL in Schedule 1.

**Clause 97** amends section 6 (Meaning of words and expressions in pt 2) to delete references to specific parts of MARPOL by removing the notes and part of the editor's note.

**Clause 98** amends section 9 (Conditions for discharge of oil other than oil from machinery space bilges to: delete a reference to Annex 1, regulation 34.1.5 of MARPOL and replace it with a reference to the *Protection of the Seas (Prevention of Pollution from Ships) Act 1983* (Cth), section 9, which details the federal standards. Clause 98 also deletes a note that refers to a specific part of MARPOL.

**Clause 99** amends section 16 (Form of oil record book) to delete a reference to a specific part of MARPOL and replaces it with a reference to the *Protection of the Seas (Prevention of Pollution from Ships) Act 1983* (Cth), section 12, which details federal standards for oil record books.

**Clause 100** amends section 34 (Form of cargo record book) to delete a reference to a specific part of MARPOL and replaces it with a reference to the *Protection of the Seas (Prevention of Pollution from Ships) Act 1983* (Cth), section 23, which details federal standards for cargo record books.

**Clause 101** amends section 44 (Nil discharge waters for untreated sewage-Act, s 47) to remove redundant dates and provisions in subsection (a) which expired on 1 January 2010.

**Clause 102** amends section 47 (Nil discharge waters for treated sewage or untreated sewage-Act, s 49) to remove redundant dates and provisions in subsection (a) which expired on 1 January 2010.

**Clause 103** amends section 53 (Ship must be fitted with macerator) to remove the editor's note and replace it with a note that references the re-numbered schedules to the regulation.

**Clause 104** amends pt 12, div 2, hdg (Analyst’s reports and forms) to remove the words “and forms” from the heading as section 97 (Forms) is being moved to Division 3 (Miscellaneous).

**Clause 105** is a consequential amendment and inserts a new section (Insertion of new part 12, division 3 and s 96A) stating schedule 8 of the regulation details areas within the Great Barrier Reef Coast Marine Park that are designated areas for the purposes of the legislation.

**Clause 106** omits Schedule 1 to the regulation, which contains the full text of MARPOL.

**Clause 107** amends schedule 4 (Nil discharge waters for untreated sewage) to remove redundant dates and provisions in Part 1 which expired on 1 January 2010. It also renumbers the schedule because of these changes.

**Clause 108** amends schedule 6 (Nil discharge waters for treated sewage or untreated sewage from declared ship) to remove redundant dates and provisions in Part 1 which expired on 1 January 2010. It also renumbers the schedule because of these changes.

**Clause 109** is a consequential amendment to schedule 8 (Areas within the Great Barrier Reef Coast Marine Park that are designated areas) to update the reference to “schedule 9” to “paragraph (d) – section 96A” as a result of moving the definition of “designated area” to the *Transport Operations (Marine Pollution) Act 1995*.

**Clause 110** is a consequential amendment to remove the definitions for “boat harbour”, “canal”, “designated area”, “Great Barrier Reef Coast Marine Park”, “marina and prohibited discharge waters” from the *Transport Operations (Marine Pollution) Regulation 2008* as they have been relocated to the *Transport Operations (Marine Pollution) Act 1995* where they are first referenced.

**Clause 111** renumbers schedules 2 – 9 as schedules 1 to 8. This is as a consequential amendment to the omission of the text of MARPOL, which was originally schedule 1.

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

**Clause 112** provides that this part amends the *Transport Operations (Marine Safety) Act 1994*.

**Clause 113** inserts section 201 (Evidentiary provisions). This new provision introduces the concept that a statement in a complaint that a person was a certain age is evidence of the matter stated, and in the absence of evidence to the contrary, is conclusive evidence that the person is the stated age.

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

**Clause 114** provides that this part and the schedule, part 1 amends the *Transport Operations (Passenger Transport) Act 1994*.

**Clause 115** amends subsection 67B(4) which has been relocated from the *Transport Operations (Translink Transit Authority) Act 2008* and relates to declaring a special event. The term “mass transit” is replaced by the term “scheduled passenger” in subsection 67(4).

**Clause 116** amends section 67C which has been relocated from the *Transport Operations (Translink Transit Authority) Act 2008* and relates to the coordination power for mass transit services to special events. The term “mass transit” is replaced by the term “scheduled passenger” in section 67C.

**Clause 117** amends section 67D, which has been relocated from the *Transport Operations (Translink Transit Authority) Act 2008* and relates to TransLink approval required for special event services. The term “note” is omitted in 67D(1) as it referred to a redundant transitional provision while the term “mass transit” is replaced by the term “scheduled passenger” in subsection 67D(1).

**Clause 118** amends section 67E which has been relocated from the *Transport Operations (Translink Transit Authority) Act 2008* and relates to special event approvals. Section 67E(1), section 49(1) shall be omitted and replaced with “section 67D(1)”. The term “mass transit” is replaced by the term “scheduled passenger” in section 67E.

**Clause 119** inserts a new chapter 6, part 4 relating to special events. Division 1 relates to special events in the TransLink area whereas Division 2 relates to special events in a non-TransLink area. The clause inserts the following sections:

- Section 67F. Subsection 67F(1) allows the chief executive to declare a special event in a non-TransLink area. Subsection 67F(2) clarifies that a special event may include a special event or more than one special event of a stated type to be carried out in a stated place. Subsection 67F(3) outlines the matters the chief executive must consider in declaring a special event. There must be at least 5000 people at the event or events. There must also be either significant road closures or bus stop relocations as part of the management of event transport; or the provision of transport services to or from the event or events is likely to rely on an increased use of vehicles or other facilities funded by the chief executive. Subsection 67F(4) clarifies that a road closure or bus stop relocation is significant, as referred to in 67F(3)(b)(i), if it is likely to affect the provision of scheduled passenger services generally in the non-TransLink service contract area. Subsection 67F(5) requires the chief executive to declare a special event by publishing it on the department's website or in a newspaper circulated in the non-TransLink area, for it to be a declared special event.
- Section 67G allows the chief executive to coordinate scheduled passenger services to and from special events in the non-TransLink area.
- Section 67H. Subsection 67H(1) prevents a person entering into or performing a contract or arrangement for the provision of scheduled passenger services to or from a special event in a non-TransLink service contract area without the chief executive's written approval. The penalty for breaching this section is 200 penalty units. Subsection 67H(2) clarifies that any contract or arrangement made or entered into in contravention of subsection (1) has no effect, to the extent of the contravention.
- Section 67I. Subsection 67I(1) enables the chief executive to give a special event approval on his/her own initiative and for a specific scheduled passenger service or for a stated type of scheduled passenger service to or from a special event. Subsection 67I(2) stipulates that publishing the special event approval on the department's website or in a newspaper circulating in the

non-TransLink service contract area is sufficient to communicate such approval. Subsection 67I(3) clarifies that the chief executive may place conditions on special event approval. Subsection 67I(4) stipulates that a condition may include a requirement, before the special event approval applies to a person, the person must pay the chief executive a contribution to the chief executive's costs of coordinating the relevant scheduled passenger services.

**Clause 120** amends section 113D (Transit officer must not be under the influence of alcohol or drugs). The amendment includes saliva as a drug testing media and will mean that a transit officer must not have in their saliva or urine:

- evidence of a dangerous drug; or
- evidence of a prescribed substance that the officer may not lawfully take; or
- evidence of having taken a prescription substance in the way contrary to the direction of a doctor or a recommendation of the manufacture of the substance.

**Clause 121** amends section 113G (Revocation of appointment of transit officer). This amendment allows saliva (as well as urine) to be taken as a specimen, which can be used to test a transit officer for the use of drugs.

**Clause 122** replaces section 116 (Chief executive may require transit officer to undergo alcohol test or drug test) and omits section 117 (Protection from liability for doctors advising on drug test). New section 116(1) replicates the previous provision that allows the chief executive to require a transit officer to submit to an alcohol test or drug test under certain circumstances. New subsection 116(2) specifies a relevant entity must conduct an alcohol or drug test of a transit officer. New subsection 116(3) provides power to make a regulation about the requirements for notifying transit officers of the results of an alcohol or drug test. New subsection 116(4) defines a number of terms used in undertaking a drug or alcohol test on a transit officer. The subsection establishes that:

- an alcohol test is a test of the breath of the transit officer for deciding whether the officer is over the low alcohol limit set out under section 113D(2) of the Act; and
- that a drug test is a test of the saliva or urine of the transit officer for deciding whether the officer has evidence of a dangerous drug or prescribed substance as set out under section 113D(5) of the Act.

The subsection also sets out that a relevant entity is an entity the chief executive engages to conduct alcohol or drug tests of transit officers.

**Clause 123** amends section 129ZD (Amendment or revocation of exclusion order generally). The section will allow a civilian prosecutor of the Queensland Police Service to accept an application for amendment or revocation of an exclusion order on behalf of the commissioner of the police service.

**Clause 124** inserts a new chapter 13, Part 9 for transitional provisions for the relocated Translink Act provisions in Division I and for the non-Translink area in Division 2. The clause inserts the following sections:

- Division I section 184 relates to the relocated Translink Act provisions. Subsection 184(1) clarifies that the relocated TransLink Act provisions are only being moved into the Transport and Other Legislation Amendment Act 2010 and are not being re-enacted. Subsection 184(2) clarifies that the relocation of the TransLink Act provisions will have no impact on how the existing, relocated or other law provisions have operated. Subsection 184(3) clarifies that all definitions in this Act apply to all provisions of this Act. Subsection 184(4) clarifies that a reference to a provision of the TransLink Act that has been relocated to this Act can be taken as a reference to the relocated provision in this Act. Section 184(5) establishes technical definitions for division 2. These definitions are “relocated provision” and “TransLink Act”.
- Section 185. Subsection 185(1) establishes that a declaration made under the previous declaration provision and in effect immediately before the commencement has effect on and from the commencement as if it were a declaration made under section 67B. Subsection 185(2) defines “commencement” and “previous declaration provision” for the purpose of the section.
- Section 186. Subsection 186(1) establishes that a written approval given under the previous approval provision and in effect immediately before the commencement has effect on and from the commencement as if it were an approval given under section 67D. Subsection 186(2) defines “commencement” and “previous approval provision” for the purpose of the section.
- Section 187. Subsection 187(1) establishes that this section applies to a contract or arrangement made or entered into before section 67H commences. Subsection 187(2) establishes that 67H does not apply to

the performance of the contract or arrangement until the first anniversary of the commencement.

**Clause 125** amends the schedule 3 (Dictionary) to insert the terms “non-TransLink contract area”, “special event” and “TransLink”.

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

**Clause 126** provides that this part amends the *Transport Operations (Road Use Management) Act 1995*.

**Clause 127** amends section 66 (Local laws etc). The amendments to this section ensure that despite sections 66(1) and 147, local governments may make local laws about the regulation of vehicle access to public places that are local government controlled areas. This will overcome the limitation which is explained under the heading “Policy Objectives of the Legislation”. This Bill inserts a definition of “local government controlled area” in the dictionary.

**Clause 128** replaces the existing section 133. The main changes are:

- the new section 133 places the obligation to make and keep records on any person who operates a business that includes the repair of motor vehicles. This contrasts with the existing section 133, requiring records be kept by “the occupier of every garage or other premises where motor vehicles are repaired or painted for reward”. This change reflects modern business practices to ensure the operator of the business, rather than the occupier (who may be a service company merely holding the lease of premises), must make and keep records. It also ensures that mobile repairers (who may not have business premises) are required to make and keep records;
- new section 133 incorporates relevant requirements of section 161 of the *Traffic Regulation 1962*. It is proposed that a consequential amendment will remove section 161 of the regulation after passage of the Bill;

- existing section 133 requires the keeping of a “register in writing”. Some repairers have interpreted the requirement to keep a “register” as a requirement to keep a separate formal record specifically for the purpose of section 133 and therefore believe the requirements are onerous. New section 133 requires the business owner to make and keep records of certain information. Provided these records are complete and accessible, they could consist of a variety of formats, including invoices, computer records, paper-based records and job cards; and
- for some police investigations, it can be important to determine the source of particular parts and whether they have been obtained legitimately. New section 133(1)(i) requires a repairer to record details of any part supplied by a customer or the customer’s agent and the contact details of the person.

**Clause 129** inserts a new pt 15 (Transitional provisions for Transport and Other Legislation Amendment Act 2010) and new section 221 (Declaration for section 66(3)(k)). This provision validates any local laws which relate to the regulation of vehicle access to a public place that is a local government controlled area and any enforcement action taken under the local law, making them as valid as if they were made or done after the commencement of section 66(3)(k).

**Clause 130** inserts a definition of “local government controlled area” in the dictionary to the Act. The term is used in sections 66(3)(k) and 221.



## **Part 7 Amendment of Transport Operations (TransLink Transit Authority) Act 2008**

**Clause 131** provides that this part amends the *Transport Operations (TransLink Transit Authority) Act 2008*.

**Clause 132** relocates section 47-50 to the *Transport Operations (Passenger Transport) Act 1994* and in that Act, inserted and renumbered, in chapter 6, part 4, division 1, as sections 67B to 67E.

**Clause 133** omits the part 7 heading.

**Clause 134** omits section 57 (Deferral of application of s 49 for particular contracts and arrangements for special event services).

**Clause 135** omits the term “special event” from the schedule 2 (Dictionary).

## **Part 8 Amendment of Transport Planning and Coordination Act 1994**

**Clause 136** states that this part and the schedule, part 1 amend the *Transport Planning and Coordination Act 1994*.

**Clause 137** inserts a new section 36F that authorises the keeping and using of information, obtained or kept under a particular transport Act or the *Adult Proof of Age Card Act 2008*, for another particular transport Act.

The insertion of a new section 36G (Smartcard transport authority) allows the chief executive to issue to a person a single smartcard evidencing the grant of one or more transport authorities. A transport authority means

- a driver’s certificate or assistant’s certificate under the *Tow Truck Act 1973*;
- driver authorisation under the *Transport Operations (Passenger Transport) Act 1994*; or

- a prescribed authority (other than a Queensland driver licence) under the *Transport Operations (Road Use Management) Act 1995*.

The new section also provides that a regulation may provide for:

- information that may be included on the smartcard;
- a security measure (i.e. a PIN) to protect information stored electronically on the smartcard; and
- the establishment of a person's connection to the person's most recent digital photo relating to a smartcard transport authority.

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

**Clause 138** provides that the Acts mentioned in the schedule are amended. These are all minor amendments to correct cross references, amend typographical errors or update definitions.

### **Schedule Acts amended**

#### *Acts Interpretation Act 1954*

Section 27A(3D) – The amendment inserts an example into section 27A(3D). The purpose of this example is to clarify that a legislative provision that provides for something “purporting to be” done by a person can be done by another person who has been delegated this function or power of the first person. The example refers to where an Act provides for an evidentiary certificate that is purporting to be signed by an officer holder. (See, for example, section 124 of the *Transport Operations (Road Use Management) Act 1995* that provides for a number of documents or evidentiary certificates “purporting to be signed by the chief executive” to be tendered in court as evidence of certain matters). The example clarifies that where the office holder has delegated the function to issue the certificate to someone else (the delegate), the delegate, in the place of the delegator, can sign the certificate.

The Bill also makes some minor drafting type amendments to a number of pieces of transport legislation.

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