

Transport and Other Legislation Amendment Bill (No.2) 2004

Explanatory notes for amendments to be moved during consideration in detail by The Honourable *Paul Lucas* MP

Title of the Bill

Transport and Other Legislation Amendment Bill (No.2) 2004

Objectives of the Amendments

Tow Truck Act 1973

It is proposed to make committee amendments to the Bill to strengthen the ability of the Chief Executive of Queensland Transport to take action against tow truck licence or certificate holders where the holder's conduct has, or is likely to, endanger public safety or where the holder is no longer an appropriate person to hold the licence or certificate or where it is in the public interest.

Transport Operations (Marine Safety) Act 1994

The policy objective of the proposed amendment is to clarify and extend the head of power to make a regulation about the charging of pilotage fees for the services of a pilot in both compulsory pilotage areas and pilotage areas, and for fees to be levied for delays and cancellation of pilotage services by users. Additionally the amendment proposes to calculate pilotage fees for the services of a pilot by reference to a ship's length instead of gross tonnage.

Achievement of the Objectives

Tow Truck Act 1973

The *Tow Truck Act 1973* is to be amended to:

- consolidate all existing disciplinary provisions relating to tow truck licences and certificates into the Act; and

- allow the Chief Executive to cancel or suspend (including immediately suspend) a tow truck licence or certificate if:
 - public safety has been, or is likely to be, endangered by the holder's conduct; or
 - having regard to the conduct of the authority holder, the chief executive believes on reasonable grounds that:
 - the person is no longer an appropriate person to hold a licence or certificate; or
 - it is in the public interest.

Consequential amendments will be made to the *Tow Truck Regulation 1999* by way of an amending regulation at a later date. The amendments to the *Tow Truck Act 1973* will commence on a day to be fixed by proclamation to ensure the amendments to the Act and to the Regulation commence simultaneously.

Transport Operations (Marine Safety) Act 1994

The *Transport Operations (Marine Safety) Act 1994* is to be amended to:

- clarify that fees are payable for services of pilots in both pilotage and compulsory pilotage areas; and
- clarify the head of power for cancellation and delay fees for the services of pilots; and
- set fees for the service of a pilot by reference to a ship's length instead of based on a ship's gross tonnage.

This amendment has been recommended by the Office of Queensland Parliamentary Counsel and the Deputy Crown Solicitor.

Alternative Ways of Achieving Policy Objectives

There are no alternative ways of achieving the policy objectives.

Estimated Cost for Government Implementation

It is not anticipated that the proposed amendments will incur any additional administrative costs.

Consistency with Fundamental Legislative Principles

Tow Truck Act 1973

1. The power to suspend or cancel a licence or certificate, where it is in the public interest may be an example of a 'right made dependent on administrative power' where the power is not sufficiently defined.

However, the existing review and appeal rights contained in section 28 of the Act will apply and are not being amended. These ensure that a licence or certificate holder can ask for a decision to be reviewed and, if necessary, appeal against the reviewed decision to the Magistrates Court. The holder will also be able to apply to the Court to have the original decision and, if necessary, the reviewed decision stayed.

These provisions will ensure that a decision to suspend (including an immediate suspension) or to cancel a licence or certificate is subject to the principles of natural justice.

It is very difficult to predict the myriad of circumstances in which it may be appropriate for the chief executive to act in the public interest. Whether it is in the public interest to take action against a licence or certificate will be strongly dependent on the particular circumstances. Any attempt to define or qualify 'the public interest' could unduly limit the ability of the chief executive to respond to a particular situation.

2. Existing section 24(b) of the *Tow Truck Regulation 1999* allows disciplinary action to be taken if the holder of a licence or certificate has been "charged with or convicted of a disqualifying offence". A 'disqualifying offence' is an offence against the Queensland Criminal Code.

This provision is being relocated to the Act as it is more appropriate that all disciplinary provisions be contained in the principal Act. The wording of the provision is not being amended and no change in policy is intended.

This provision may, however, raise issues of natural justice as it allows action to be taken on the basis of charges and convictions (rather than just convictions) and on the basis of offences which may not relate to a person's duties and responsibilities under a tow truck licence or certificate.

Queensland Transport is conducting a comprehensive review of disqualifying offences. A discussion paper relating to the grounds of eligibility for, and disqualification from, holding tow

truck licences and certificates and the towing of vehicles from private car parks will be prepared by the end of 2004. That discussion paper will be released to seek input from all interested parties including industry groups, government bodies and the general public. It is expected that final recommendations with respect to tow truck licences and certificates will be presented to the Minister for Transport and Main Roads by June/July 2005.

Concerns regarding fundamental legislative principles will be taken into account in that comprehensive review and any legislative changes resulting from it.

Transport Operations (Marine Safety) Act 1994

The amendment to section 215 of the *Transport Operations (Marine Safety) Act 1994* does not breach any fundamental legislative principle. The amendment provides clarification of the basis for the charging of pilotage fees.

Consultation

Consultation has been undertaken on the amendments to the *Tow Truck Act 1973* with the Queensland Police Service, the Department of Justice and Attorney-General, the Department of Main Roads and the Department of Premier and Cabinet.

These proposed amendments are supported by stakeholders.

Consultation has been undertaken on the amendment to the *Transport Operations (Marine Safety) Act 1994* with the Office of Queensland Parliamentary Counsel, the Department of Justice and Attorney-General and industry representatives. This amendment is supported by stakeholders

Notes on Provisions

Amendments to the *Tow Truck Act 1973*

Amendment 1 amends clause 2 which is the commencement provision of the Bill. The effect of this amendment is that:

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- the amendments to the *Tow Truck Act 1973*, as inserted by amendment 2, will commence on a day to be fixed by proclamation; and
- the amendment to the *Transport Operations (Marine Safety) Act 1994*, as inserted by amendment 3, will commence on assent.

Amendment 2 inserts a new Part 1A into the Bill. Part 1A contains numerous amendments to the *Tow Truck Act 1973* as follows:

Clause 2A states that this part amends the *Tow Truck Act 1973*.

Clause 2B inserts a definition of "disqualifying offence" by reference to the definition of "disqualifying offence" that appears in the *Transport Operations (Road Use Management) Act 1995*. Only paragraph (a) of the definition from the *Transport Operations (Road Use Management) Act 1995* is adopted which specifies an offence against the Criminal Code.

Clause 2C inserts a new section 4C into the *Tow Truck Act 1973* specifying matters that the chief executive may take into account when deciding who is an appropriate person to hold or continue to hold a tow truck licence or certificate.

Clauses 2D to 2G replace the term "fit and proper person" with "appropriate person" in provisions dealing with applications for the grant or renewal of a licence or certificate under the *Tow Truck Act 1973*.

Clause 2H inserts a new Part 4 into the *Tow Truck Act 1973*.

Division 1 of Part 4 contains definitions of "authority" and "authority holder" for Part 4. "Authority" means an assistant's certificate, a driver's certificate or a licence. "Authority holder" means a person to whom an authority granted under the Act is issued.

New section 21 specifies matters to be taken into account when determining whether it is in the public interest to cancel, suspend or immediately suspend an authority holder's authority. The section contains three examples of when it may be in the public interest to cancel, suspend or immediately suspend an authority.

Division 2 of Part 4 deals with the cancellation and suspension of authorities and permits. Currently, provisions appear in both the *Tow Truck Act 1973* and the *Tow Truck Regulation 1999* relating to the grounds and procedures for cancelling or suspending an authority. New section 21A will consolidate those provisions into the Act. The amendments will introduce new grounds on which the chief executive may cancel or suspend an authority. Those new grounds are:

- under section 21A(f), where public safety has been endangered, or is likely to be endangered, because of the authority holder's conduct; and
- under section 21A(g), where, having regard to the conduct of the authority holder, the chief executive believes on reasonable grounds that:
 - the person is no longer an appropriate person to hold an authority; or
 - it is in the public interest to cancel or suspend the authority.

All other grounds contained in section 21A are existing grounds on which action can be taken in relation to a tow truck authority. The wording of some grounds has been amended to take account of current drafting practice.

New section 21B deals with immediate suspensions of authorities. Section 21B(1) states that the chief executive may, by written notice, immediately suspend an authority if:

- public safety has been endangered, or is likely to be endangered, because of the authority holder's conduct and the authority should be immediately suspended; or
- having regard to the conduct of the authority holder the chief executive believes, on reasonable grounds, that:
 - the person is no longer an appropriate person to hold an authority and the authority should be immediately suspended; or
 - it is in the public interest to cancel or suspend the authority.

New section 21B(2) allows the chief executive to immediately suspend an authority if, having regard to the nature of any complaint made to the police or to statements or information given to the chief executive, the chief executive believes on reasonable grounds that an immediate suspension is justified.

New section 21B(3) provides that unless extended under section 21D(5), an immediate suspension applies for a maximum of 56 days. The suspension will apply for a shorter period if the chief executive makes a decision on whether further action should be taken and informs the authority holder in writing of that decision. In that case, the suspension will cease to have

effect on the day the chief executive informs the authority holder of the decision.

New section 21B(4) specifies the information that must be provided in the written notice of immediate suspension to be given to the authority holder.

New sections 21B(5) and (6) provide that the chief executive can extend the 56 day suspension period in appropriate circumstances.

Once an authority has been immediately suspended, the chief executive may propose further action in relation to that authority. That proposed action can be to further suspend or cancel the authority. New section 21C requires that, if the chief executive is proposing further action, the notice of immediate suspension given to the authority holder must contain additional information on the proposed action and must invite the holder to show why that proposed action should not be taken. New section 21C(3) requires that the procedure outlined in new section 21D(4) to (6) will apply to the proposed action.

New section 21D sets out the procedure to be followed if the chief executive considers that a ground exists to suspend or cancel an authority.

Section 21D(3) will require the chief executive to give the holder of the authority a written notice stating the action proposed to be taken, the grounds for the proposed action and the facts and circumstances forming the basis for those grounds. The notice must also invite the holder to make submissions as to why the proposed action should not be taken. The holder will be given at least 28 days to make these submissions.

Section 21D(4) will require the chief executive to consider any written submissions made by the holder and specifies the action that may be taken by the chief executive if it is considered a ground still exists.

Section 21D(5) provides that, if the matter is the subject of a court proceeding, the chief executive can delay making a final decision on whether to take the proposed action until the proceeding is finally decided. The chief executive will be required to make the decision as soon as reasonably practicable after the proceeding is decided.

Under section 21D(6) the holder must be informed of the decision by written notice.

Section 21D(7) provides that the notice must advise the person of the reasons for the decision and the time limit and procedure for applying for a review of the decision.

New section 21E re-enacts existing provisions contained in sections 25(8) and 25(9) of the *Tow Truck Regulation 1999*. These provisions allow the chief executive to amend a tow truck authority by giving a written notice to the holder of the authority. This power will only be available, however, where the amendment is for a formal or clerical reason or does not adversely affect the person's interests or if the person requests an amendment. The wording of the provision has been amended to reflect current drafting practice.

New section 21F re-enacts existing provisions contained in section 26 of the *Tow Truck Regulation 1999* relating to the surrender of an authority at the request of the authority holder. The wording of the provision has been amended to reflect current drafting practice.

New section 21G re-enacts the requirement currently contained in section 21(2) of the *Tow Truck Act 1973* for the holder of a suspended or cancelled authority to deliver that authority to the chief executive within the time specified in the notice of suspension or cancellation. The amendments provide for a penalty of 20 penalty units for failing to comply with this requirement. The wording of the provision has been amended to reflect current drafting practice.

Division 3 of Part 4 re-enacts the existing provision contained in section 20 of the *Tow Truck Act 1973*. New section 21H requires the chief executive to keep records about applications for authorities and permits; the grant, refusal, cancellation or suspension of authorities; and the revocation of permits.

Clause 2I amends reference to section 20 in section 37 of the Act. As section 20 is to be replaced by new section 21H, section 37 will now refer to section 21H.

Clause 2J replaces the Schedule to the Act which specifies those decisions made under the Act which are subject to review under section 28. The new Schedule includes reference to the new sections dealing with the amending, suspending or cancelling of authorities.

Amendment to the *Transport Operations (Marine Safety) Act 1994*

Amendment 3 inserts a new Part 2A into the Bill. Part 2A amends the *Transport Operations (Marine Safety) Act 1994* as follows:

Clause 4A states that this part amends the *Transport Operations (Marine Safety) Act 1994*.

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Clause 4B amends section 215 of the *Transport Operations (Marine Safety) Act 1994* by providing that a regulation can be made about pilotage fees for services in a pilotage or compulsory pilotage area by reference to a ship's length and about setting a fee for the cancellation for pilotage services.