

# **Maritime and Other Legislation Amendment Bill 2006**

## **Explanatory Notes for amendments to be moved during consideration in detail by the Honourable Paul Lucas MP**

### **Title of the Bill**

Maritime and Other Legislation Amendment Bill 2006

### **Objectives of the Amendments**

Amendment 1— clause 92 will be amended to ensure that fundamental legislative principles are observed. The amendment will omit proposed section 203D(d) of the *Transport Operations (Marine Safety) Act 1994* (TOMSA). In doing so, section 203D(c) becomes the final sub section.

Amendments 2 – 5 — The objective of these amendments is to enhance road safety by strengthening the deterrent effect of driver disqualifications that result from multiple drink driving related offences. They are designed to ensure that the imposition of these disqualifications reflects the seriousness of repeated drink driving related offences. In this way, the amendments complement the policy objectives of the *Transport Operations (Road Use Management) Act 1995* (TORUM Act) amendments in the Bill.

The amendments also clarify existing cross-references in section 80 of the TORUM Act.

### **Achievement of the Objectives**

Amendment 1 — The objective is to address a concern raised by the Scrutiny of Legislation Committee (the Committee) about section 203D(d) of TOMSA which allows for a regulation to be made regarding decisions which would not be subject to appeal. The objective will be achieved by removing section 203D(d) from the Bill.

Amendments 2 – 5 — The amendments provide that where a person is subject to multiple driver disqualifications as a result of more than one

drink driving related offence, those disqualifications must be served cumulatively and not concurrently.

### **Estimated Cost for Government Implementation**

There are no costs associated with the implementation of the amendment to TOMSA. However, there will be additional administrative costs to Queensland Transport as a result of the amendments to the TORUM Act.

### **Consistency with Fundamental Legislative Principles**

Amendment 1 — A provision equivalent to s.203D(d) currently exists in s.203(3)(d) of TOMSA and has been carried over into this Bill with the same intent but different numbering. The Committee notes that TOMSA (including the existing s.203(3)(d)) was drafted prior to the Committee's establishment and in terms which the Committee considers not compliant with fundamental legislative principles. In the opinion of the Committee it is objectionable to include a power to expand the range of decisions which are not subject to appeal in a regulation. Although the power to declare decisions that cannot be appealed against in a regulation has existed since TOMSA commenced in 1994, no regulation has ever been made for this purpose. In light of this and the adverse impact of breaching fundamental legislative principles, the provision is considered unnecessary. This amendment removes the breach of fundamental legislative principles and addresses the Committee's concern.

Amendments 2 – 5 — The amendments to the TORUM Act do not breach the fundamental legislative principles. The amendments will ensure that driver disqualifications for drink driving related offences are served cumulatively and not concurrently. Generally speaking, these disqualification periods will have been imposed by a Court after due consideration of the particular circumstances of the case. These amendments will not interfere with or constrain the Courts' existing discretion to take into account factors such as the offender's character and age, aggravating or mitigating factors or any other relevant circumstance. The amendments will also not alter any appeal right the offender may have.

Disqualifications other than by virtue of a court order may arise under sections 81 and 87(10A)(b) of the TORUM Act. Under section 81 a person suspected of committing a drink driving offence that does not involve being over the high alcohol limit, may, where the person has no previous drink driving convictions, be proceeded against by the issue of a notice which does not require a court appearance. The person may chose to have the

matter dealt with by a court but may also elect to simply pay the prescribed penalty in which case a disqualification for a prescribed period is imposed. A disqualification under section 87(10A)(b) occurs where a person convicted of drink driving is granted a restricted licence by a court to drive under certain conditions but then fails to abide by those court-imposed conditions. In that circumstance, an additional 3 months is added onto the existing driver disqualification that led to the issue of the restricted licence by virtue of section 87(10A)(b).

### **Consultation**

The Department of the Premier and Cabinet has been consulted on the amendment to TOMSA.

The Department of the Premier and Cabinet, Department of Justice and Attorney-General and the Queensland Police Service have been consulted on the amendments to the TORUM Act.

### **Notes on Provisions**

Amendment 1 amends clause 92. The original clause 92 included new provisions relating to appeals processes which included proposed section 203D(d) of TOMSA. Section 203D(d) provided for decisions declared under a regulation to be decisions that cannot be appealed against. This provision was carried over from the existing appeals provisions in section 203(3)(d) of TOMSA.

This amendment removes the proposed section 203D(d) to address concerns raised by the Scrutiny of Legislation Committee that section 203D(d) breached fundamental legislative principles because it provided for a power to expand the range of decisions which are not subject to appeal by regulation.

Removing proposed section 203D(d) eliminates any concern that a regulation may be used to set matters that are not subject to appeal.

While the power to declare decisions that cannot be appealed against in a regulation has existed since TOMSA commenced in 1994, no regulation has ever been made for this purpose. The amendment has no impact on the intended application of the Act or appeals processes.

Amendment 2 inserts new clause 143A. That new clause clarifies a number of cross-references that appear in existing section 80 of the TORUM Act. Subsections 22A, 22C and 22D of section 80 currently refer to suspensions prescribed by or pursuant to subsection 22 of section 80. These references will be amended to refer directly to suspensions under subsection 22AA of section 80.

Amendment 3 inserts a new clause 144A which, in turn, inserts sections 90A to 90D into the TORUM Act. The effect of these new sections is to provide that periods of driver disqualifications resulting from drink driving are to take effect cumulatively and not concurrently.

Section 90A inserts definitions for the purposes of sections 90B to 90D.

Under section 90B, disqualifications will take effect cumulatively where a person is disqualified in one of the circumstances set out in section 90B(1)(a) and, before that 'initiating disqualification' ends, they are again disqualified, on one or more occasions, in one of those circumstances.

Section 90B(2) provides that section 90B will not apply if section 90C applies.

Section 90C will apply where a person is charged with a drink driving related offence (defined in section 90A as a 'designated offence') and, at the time of the act on which the charge is based, the person commits an offence against section 78(1) as they did not hold a licence authorising them to drive the vehicle on a road.

Section 90C(2) provides that section 90C(3) applies if, when the person does the act that results in the charge for a designated offence, they are unlicensed for reasons other than those covered by section 90C(4). For example, section 90C(3) would apply where a person who had never held a relevant driver licence was charged with drink driving under section 79. It would also apply where, for example, at the time of committing the drink driving offence, the person's licence was suspended due to the accrual of excessive demerit points. The effect of section 90C(3) is that any drink driving disqualification will take effect cumulatively with any unlicensed driving disqualification. Section 90C(3) does not require, however, that these disqualifications be served cumulatively with the relevant disqualification or suspension that gave rise to the unlicensed driving charge.

Section 90C(4) deals with the situation where, at the time of the relevant act, the person was unlicensed due to an 'existing disqualification' based on one of the circumstances set out in paragraphs (a) to (c) of section 90C(4) – that is:

- the person is disqualified under a 'relevant disqualifying provision' for a 'drink driving offence', as those terms are defined in section 90A; or
- the person is disqualified under a 'section 89 disqualification' or a 'section 90 disqualification', as defined in section 90A.

In these circumstances, and in contrast to section 90C(3), section 90C(5) provides that the drink driving disqualification and the unlicensed driving disqualification will be served cumulatively with each other and with the existing disqualification.

Section 90D(1) clarifies that the cumulative effect will apply whether the disqualifications are ordered by a court dealing with multiple charges at the same hearing or by courts dealing with charges on separate occasions. It also provides that the chronological order of the relevant offences, convictions, sentences or disqualifications will not influence the cumulative effect imposed by section 90B and 90C. Section 90D(2) specifies that disqualifications that under these new provisions will take effect cumulatively, will do so in the order in which they are imposed or ordered.

Amendment 4 amends a heading inserted by clause 146 of the Bill to reflect the insertion, by amendment 5, of an additional transitional provision.

Amendment 5 inserts an additional transitional provision for new sections 90A to 90D into clause 146. That transitional provision provides that the new cumulative disqualification provisions in sections 90A to 90D only apply in relation to acts and related charges that occur after the new provisions commence.