

Transport Legislation Amendment Bill 2007

Explanatory Notes for Amendments to be moved during consideration in detail by the Honourable John Mickel MP, Minister for Transport, Trade, Employment and Industrial Relations

Title of the Bill

Transport Legislation Amendment Bill 2007

Objectives of the Amendments

The amendments will insert certain evidentiary aid provisions into the *Transport Operations (Road Use Management) Act 1995* (TORUM Act) to support the adoption in Queensland of the *National Transport Commission (Model Legislation – Intelligent Access Program) Regulations 2006*.

The Intelligent Access Program (IAP) will enable concessions to be given to operators of heavy vehicles, from statutory requirements otherwise applying, in return for the heavy vehicles being fitted with technology that can reliably monitor the use of a heavy vehicle. These concessions could provide a heavy vehicle with greater access to sections of the road network or allow it to carry more tonnes per kilometre.

The amendments also further extend the period in which proceedings can be commenced against a driver who fails to comply with the requirement to stop and render assistance following a road incident.

The amendments finally make some minor editorial corrections to the Transport Legislation Amendment Bill 2007 (“the Bill”).

Achievement of the Objectives

The amendments achieve the objectives by:

- outlining matters that can be the subject of evidentiary certificates signed by the chief executive or the Transport Certification Authority;

- providing for evidentiary aids supporting certain aspects of the IAP, including the intelligent access map, the approved intelligent transport system and the reports made by the system;
- further extending the period in which proceedings can be commenced against a driver who fails to comply with the requirement to stop and render assistance following a road incident under s.92(1) of the TORUM Act; and
- providing for some minor editorial amendments to the Bill.

Alternative Ways of Achieving Policy Objectives

The policy objectives of these amendments can only be achieved by legislative enactment.

Estimated Cost for Government Implementation

Any costs directly associated with the amendments will be minor and absorbed within existing budgetary allocations.

Consistency with Fundamental Legislative Principles

Legislation should not reverse the onus of proof in criminal proceedings without adequate justification. The use of evidentiary certificates and other evidentiary aids may be considered to be a breach of the fundamental legislative principle of reversing the onus of proof (amended s.60 and new ss.61D – 61G, Amendments 3 to 6).

However, the evidentiary aids are prima facie evidence only, and evidence can be led by the defendant to refute the assumptions made by the provisions. The certificates covering the technical processes are appropriate as they eliminate the need to prove these issues in every court case, with the exception of cases where the defendant chooses to challenge these issues.

Finally, the need to improve the safety outcomes in relation to the operation of heavy vehicles (in terms of monitoring of over-mass and specialised vehicles on Queensland roads) is considered to outweigh any potential infringement of individual rights.

Consultation

The Department of the Premier and Cabinet, Queensland Treasury, the Department of Justice and Attorney-General, the Queensland Police Service, and the Department of Employment and Industrial Relations, Division of Workplace Health & Safety have been consulted on the amendments connected with the IAP. The Department of the Premier and Cabinet and the Department of Justice and Attorney-General have been consulted on the amendments connected with further extension of the period for commencing proceedings for an offence under s.92(1) of the TORUM Act. All parties are supportive of the provisions contained in the amendments.

Notes On Provisions

Amendment 1 amends clause 44 of the Bill which inserts a new section 35C (Running or stopping heavy vehicle engine) into the TORUM Act. The amendment clarifies that new section 35C only applies for the purposes of enabling an authorised officer to effectively exercise a power under the TORUM Act.

Amendment 2 amends clause 51 of the Bill which inserts a new section 48A (Further power to require personal details for exercising power in relation to heavy vehicle) into the TORUM Act. The amendment corrects a minor drafting inconsistency in the new section 48A(8) by clarifying the application of the definition of “heavy vehicle offence”.

Amendment 3 amends clause 66 of the Bill which amends section 60 (Evidentiary aids) of the TORUM Act. The amendment provides for additional matters that can be the subject of an evidentiary certificate signed by the chief executive. The amendment inserts new sections 60(2)(la) and 60(2)(lb) which deal with either the receipt or non receipt, on or by a specified day, of specified reports or information required to be given to the chief executive under a transport Act. For example, obligations of parties under the IAP to report knowledge of tampering with an intelligent transport system.

Amendment 4 amends clause 66 of the Bill which amends section 60 (Evidentiary aids) of the TORUM Act, providing for an additional matter

that can be the subject of an evidentiary certificate signed by the chief executive. The new section 60(2)(u) deals with a specified mathematical or statistical procedure being carried out by an approved intelligent transport system and the results of the procedure being carried out. These provisions would cover, for example, the mathematical or statistical procedure needed to be undertaken by an approved intelligent transport system in order to convert raw data (for example, GPS information as to a heavy vehicle's position) into a reportable or readable form. The definition of "intelligent transport system" is provided by clause 77(2) of the Bill. The definition of "approved intelligent transport system" is provided in Amendment 7.

Amendment 5 amends clause 66 of the Bill which amends section 60 (Evidentiary aids) of the TORUM Act. The amendment inserts a new section 60(3A) into the TORUM Act, which supports section 60(2)(u) inserted by Amendment 4. The new section 60(3A) provides that the procedure specified in a certificate under section 60(2)(u) (described above) is presumed, unless the contrary is proved, to be valid and reliable for the purpose for which it was used and to have been correctly carried out.

Amendment 6 inserts clause 67A into the Bill which inserts new sections 61D to 61G into the TORUM Act. The new section 61D (Certificates of TCA) provides for matters that can be the subject of an evidentiary certificate signed by a person on behalf of the TCA. The TCA is defined by Amendment 12 as meaning Transport Certification Australia Limited ACN 113 3769 936. The TCA is a national body (public company) established by road transport authorities of State, Territory and Commonwealth governments to administer the intelligent access program. The definition of "intelligent access program" is provided in Amendment 8.

The matters the evidentiary certificate can relate to are the identification of the intelligent access map, or a document that is a copy of an intelligent access map or part of an intelligent access map (the map issued by the TCA showing the national road network), for a specified date or for a specified period (new section 61D(1)); the identification of an approved intelligent transport system (new section 61D(2)(a)); and the specified parties that make up part of the operating model for the IAP (i.e. the IAP Service Provider and IAP Auditor) (new section 61D(2)(b) and (2)(c)). The new section 61D(3) provides that a person who signs a certificate mentioned in subsection (1) or (2), on behalf of the TCA, is presumed, unless the contrary is proved, to be properly authorised by the TCA to sign the certificate on its behalf. The new section 61D(4) provides definitions for "IAP auditor" and "IAP service provider".

Clause 67A also inserts a new section 61E (Intelligent access map) into the TORUM Act. The definition of “intelligent access map” is provided by Amendment 8. The new section 61E(1) provides that an intelligent access map, or document that is a copy of an intelligent access map or part of the intelligent access map, as issued by the TCA for a specified date or for a specified period:

- is admissible in a proceeding under a transport Act relating to a heavy vehicle; and
- is presumed, unless the contrary is proved, to be a correct representation of the national road network or part of the national road network.

New sections 61E(2) and 61E(3) provide that if a defendant wishes to challenge the matters mentioned in subsection (1), written notice of the grounds of challenge must be given to the chief executive at least 14 days before the day fixed for the hearing of the charge. These new provisions reflect the technical nature of the matters covered in subsection (1) and corresponding greater preparation time and cost when these matters are contested in court. However, Amendments 14 to 16 amend clause 83 of the Bill, which inserts a new section 124A (Additional ground of challenge not stated in written notice required under particular provisions) into the TORUM Act, to provide a basis by which the defendant may raise a ground of challenge to the evidence at a hearing that was not stated in a written notice.

Clause 67A also inserts a new section 61F (Approved intelligent transport system) into the TORUM Act. The new section 61F(1) provides that an approved intelligent transport system, including all equipment and software that makes up the system, is presumed, unless the contrary is proved, to have operated correctly on any particular occasion. Without limiting subsection (1), the new section 61F(2) provides that information is presumed, unless the contrary is proved, to be correctly generated, recorded, stored, displayed, analysed, transmitted and reported by the system. Without limiting subsection (1) and (2), the new section 61F(3) provides that information generated by an approved intelligent transport system is presumed, unless the contrary is proved, not to have been changed by being recorded, stored, displayed, analysed, transmitted or reported by the system. The new section 61F(4) provides that if contrary evidence that particular information recorded or stored by an approved intelligent transport system is not a correct representation of the information generated by the system, the presumption in subsection (3)

continues to apply to the remaining information recorded or stored by the system.

New sections 61F(5) and 61F(6) provide that if a defendant wishes to challenge the matters listed in subsections (5)(a) to 5(c), written notice of the grounds of challenge must be given to the chief executive. The purpose and intended operation of these sections is consistent with the new sections 61E(2) and 61E(3) detailed above. Finally, new section 61F(7) provides that section 61F does not limit existing sections 60(6) or 61 of the TORUM Act, which already provide for evidentiary provisions.

Clause 67A also inserts a new section 61G (Reports and statements made by approved intelligent transport system) into the TORUM Act. The new section 61G(1) provides that a report made by the approved intelligent transport system is presumed, unless the contrary is proved:

- to have been properly made by the system;
- to be a correct representation of the information generated, recorded, stored, displayed, analysed, transmitted and reported by the system;
- to be admissible in a proceeding under a transport Act relating to a heavy vehicle; and
- to be evidence of the matters stated within it.

New section 61G(2) clarifies that the presumption in subsection (1)(c) does not apply to information that has been manually entered into the system by an operator or driver of a heavy vehicle. The new section 61F(3) provides that if it is established by contrary evidence that part of a report made by an approved intelligent transport system is not a correct representation of particular information generated, recorded, stored, displayed, analysed, transmitted or reported by the system, the presumption in subsection (1)(a) continues to apply to the remaining parts of the report.

New sections 61G(4) and 61F(5) provide that if a defendant wishes to challenge the matters listed in subsections (4)(a) to 4(c), written notice of the grounds of challenge must be given to the chief executive. The purpose and intended operation of these sections is consistent with the new sections 61E(2) and 61E(3), detailed above. Finally, new section 61G(6) provides that section 61F does not limit existing sections 60(6) or 61 of the TORUM Act

Amendment 7 amends clause 77 of the Bill which amends Schedule 4 (Dictionary) of the TORUM Act. The amendment inserts a definition for “approved intelligent transport system”.

Amendment 8 amends clause 77 of the Bill which amends Schedule 4 (Dictionary) of the TORUM Act. The amendment inserts definitions for “intelligent access map” and “intelligent access program”.

Amendment 9 amends clause 77 of the Bill which amends Schedule 4 (Dictionary) of the TORUM Act. The amendment makes a minor change to the definition of “intelligent transport system”.

Amendment 10 amends clause 77 of the Bill which amends Schedule 4 (Dictionary) of the TORUM Act to correct a typographical error in a measurement which appears in the definition of “severe risk breach lower limit”.

Amendment 11 amends clause 77 of the Bill which amends Schedule 4 (Dictionary) of the TORUM Act to correct a typographical error in a measurement which appears in the definition of “substantial risk breach lower limit”.

Amendment 12 amends clause 77 of the Bill which amends Schedule 4 (Dictionary) of the TORUM Act. The amendment inserts a definition for “TCA” as meaning Transport Certification Australia Limited ACN 113 379 936. The TCA is a national body (public company) established by road transport authorities of State, Territory and Commonwealth governments to administer the intelligent access program.

Amendment 13 amends clause 78(2) of the Bill which amends section 62 (Proceedings for offences) in the TORUM Act. The amendment replaces the reference to “3 years” with “5 years”. Identifying drivers in hit-and-run crashes can be very difficult, and there can, on occasion, be a delay in identifying an offender after a hit-and-run offence is committed. A period of 5 years in which to commence proceedings is more effective in ensuring that hit-and-run drivers are able to be dealt with by the justice system.

Amendment 14 amends clause 83 of the Bill which inserts a new section 124A (Additional ground of challenge not stated in written notice required under particular provisions) into the TORUM Act.

Section 124A(1) specifies that the section applies to a hearing in relation to which a person has given written notice under section 80(27), 118(4), 119(1) and 124(4). Section 124A(2) provides a basis by which a person may raise a ground of challenge to the evidence at a hearing that was not stated in the written notice previously given. Section 124(3) provides that the court may adjourn the hearing to a time, and on terms as to costs, the court considers appropriate where a person raises a ground at the hearing that was not stated in a written notice under section 80(27), 118(4), 119(1)

and 124(4). Finally, section 124(4) provides that subsection (3) does not otherwise limit the powers of the court.

The present amendment expands section 124A(1) to include a reference to the written notices specified in sections 61E(2), 61F(5) and 61G(4).

Amendment 15 amends clause 83 of the Bill which inserts a new section 124A (Additional ground of challenge not stated in written notice required under particular provisions) into the TORUM Act. The present amendment expands section 124A(2) to include a reference to the written notices specified in sections 61E(3), 61F(6) and 61G(5).

Amendment 16 amends clause 83 of the Bill which inserts a new section 124A (Additional ground of challenge not stated in written notice required under particular provisions) into the TORUM Act. The present amendment expands section 124A(3) to include a reference to the written notice specified in sections 61E(2), 61F(5) and 61G(4).

Amendment 17 makes minor editorial amendments to the Schedule of the Bill to correct cross references.