

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

Amendments agreed to during Consideration

1 Clause 2—

At page 4, line 7, ‘part 4,’ and footnote—
omit, insert—
‘parts 2A and 4,¹’.

2 After clause 2—

At page 4, after line 8—
insert—

‘Part 1A Amendment of Tow Truck Act 1973

2A Act amended in pt 1A

This part amends the *Tow Truck Act 1973*.

2B Amendment of s 4 (Definitions)

Section 4—
insert—

‘disqualifying offence see the Transport Operations (Road Use Management) Act 1995, schedule 4, definition disqualifying offence, paragraph (a).’

1 Parts 2A (Amendment of Transport Operations (Marine Safety) Act 1994) and 4 (Amendment of Transport Operations (Road Use Management) Act 1995)

2C Insertion of new s 4C

Part 1, after section 4B—

insert—

‘4C Who is an appropriate person

- ‘(1) Without limiting what the chief executive may take into account when deciding whether a person is an appropriate person to hold or continue to hold a licence or certificate under this Act, regard must be had to the following—
- (a) the person’s criminal history;
 - (b) the person’s traffic history under the *Transport Operations (Road Use Management) Act 1995*;
 - (c) the person’s conduct while performing activities under a licence or certificate;
 - (d) whether the person has been charged with or convicted of—
 - (i) an offence against this Act; or
 - (ii) a disqualifying offence; or
 - (iii) an offence committed in another State or country that, if committed in Queensland, would be a disqualifying offence;
 - (e) whether the person has held a licence or certificate that has been cancelled and, if so, why it was cancelled;
 - (f) whether the person holds a licence or certificate that has been or is suspended and, if so, why it was suspended;
 - (g) whether the person is capable of satisfactorily performing the activities authorised under a licence or certificate, including because of any known medical condition or physical or mental incapacity;
 - (h) whether the person is subject to a domestic violence order or an interstate domestic violence order as defined in the *Domestic and Family Violence Protection Act 1989*;
 - (i) whether the person has been charged with or convicted of having committed an offence in another State or

another country that, if committed in Queensland, would be an offence against the *Weapons Act 1990*;

- (j) whether the person has been charged with or convicted of having committed an offence in another State or another country that, if committed in Queensland, would be an offence against the *Drugs Misuse Act 1986*.

‘(2) In this section—

certificate means

- (a) an assistant’s certificate; or
(b) a driver’s certificate.

criminal history, of a person—

- (a) means the person’s criminal history under the *Criminal Law (Rehabilitation of Offenders) Act 1986*; and
(b) includes a charge of a disqualifying offence or a charge of an offence against any of the following—
(i) the *Drugs Misuse Act 1986*;
(ii) the *Police Powers and Responsibilities Act 2000*, section 444;²
(iii) the *Weapons Act 1990*; and
(c) does not include a charge of an offence for which the proceeding for the offence ended without the person being convicted.’.

2D Amendment of s 6 (Application for licence)

Section 6(3)(a), ‘in all respects a fit and proper’—

omit, insert—

‘an appropriate’.

² *Police Powers and Responsibilities Act 2000*, section 444 (Offence to assault or obstruct police officer)

2E Amendment of s 9 (Renewal of licence)

Section 9, ‘a fit and proper’—

omit, insert—

‘an appropriate’.

2F Amendment of s 14 (Application for driver’s or assistant’s certificate)

Section 14(3), ‘in all respects a fit and proper’—

omit, insert—

‘an appropriate’.

2G Amendment of s 17 (Duration and renewal of driver’s or assistant’s certificate)

Section 17(2), ‘a fit and proper’—

omit, insert—

‘an appropriate’.

2H Replacement of pt 4 (Regulation of licences, certificates and permits)

Part 4—

omit, insert—

‘Part 4 Authorities and permits

‘Division 1 Preliminary

‘20 Definitions for pt 4

‘In this part—

authority means—

- (a) an assistant’s certificate; or
- (b) a driver’s certificate; or
- (c) a licence.

authority holder means a person to whom an authority granted under this Act is issued.

‘21 Consideration of public interest for pt 4

- ‘(1) When considering whether it is in the public interest to cancel, suspend or immediately suspend an authority holder’s authority, regard must be had to the following—
- (a) the need to ensure that the reputation of the tow truck industry is not affected by the involvement in the industry of persons likely to adversely affect the industry’s reputation;
 - (b) the legitimate expectation members of the public, particularly vulnerable members of the public, have that they will not be subject to assaults or aggressive, coercive or otherwise inappropriate behaviour from persons involved in the tow truck industry.

Examples for subsection (1)—

- 1 It may be in the public interest to cancel or suspend, or if authorised under section 21B, immediately suspend a tow truck driver’s or an operator’s authority because the person is charged with possessing a weapon in contravention of the *Weapons Act 1990* or a dangerous drug in contravention of the *Drugs Misuse Act 1986* and the offence was committed while performing activities under the authority.
 - 2 It may be in the public interest to cancel or suspend, or if authorised under section 21B, immediately suspend a tow truck driver’s or an operator’s authority because the person is charged with a number of offences of obstructing a police officer in the performance of the officer’s duties and the alleged offences happened while the person was not performing activities under the authority.
 - 3 It may be in the public interest to cancel or suspend, or if authorised under section 21B, immediately suspend a tow truck driver’s authority if the driver assaults a person at a crash scene.
- ‘(2) Subsection (1) does not limit what may be considered in deciding the public interest for the purposes of this Act.

‘Division 2 Cancellation and suspension of authorities

‘21A Cancellation or suspension of authorities

‘The chief executive may cancel or suspend an authority holder’s authority under section 21D on any of the following grounds—

- (a) the authority—
 - (i) was issued in error; or
 - (ii) was granted or renewed because of a false or fraudulent document, statement or representation;
- (b) the authority holder—
 - (i) is convicted of an offence against this Act; or
 - (ii) has, since the issue of the authority, been charged with or convicted of a disqualifying offence; or
 - (iii) contravenes a condition of the authority; or
 - (iv) stops being a tow truck operator, driver or assistant;
- (c) the authority holder can not properly drive the class of motor vehicle stated in the authority because of a medical condition, or physical or mental incapacity;
- (d) the motor vehicle stated in the authority is no longer suitable for use under the authority;
- (e) the authority holder has given false or misleading information to an authorised officer;
- (f) public safety has been endangered, or is likely to be endangered, because of the authority holder’s conduct;
- (g) having regard to the conduct of the authority holder, when performing activities under the authority or at any other time, the chief executive believes, on reasonable grounds—
 - (i) the person is no longer an appropriate person to hold an authority; or

- (ii) it is in the public interest to cancel or suspend the authority.

‘21B Immediate suspension of authority

- ‘(1) Despite section 21D, the chief executive may immediately suspend an authority holder’s authority by written notice given to the authority holder on either of the following grounds—
 - (a) 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;
 - (b) having regard to the conduct of the authority holder, when performing activities under the authority or at any other time, the chief executive believes, on reasonable grounds—
 - (i) the person is no longer an appropriate person to hold an authority and the authority should be immediately suspended; or
 - (ii) it is in the public interest to immediately suspend the authority.
- ‘(2) Without limiting the chief executive’s powers under subsection (1), it is enough to immediately suspend an authority holder’s authority if—
 - (a) a person complains to a police officer about the conduct of the authority holder and, having regard to the nature of the complaint, the chief executive believes, on reasonable grounds, the conduct complained of justifies taking action under subsection (1); or
 - (b) having regard to statements or other information about the conduct of the authority holder given to the chief executive, the chief executive believes, on reasonable grounds, the statements or other information justifies taking action under subsection (1).
- ‘(3) If the chief executive immediately suspends the authority, the suspension has effect under this section until the earlier of the following—

- (a) the chief executive informs the authority holder of the chief executive's decision under section 21D(5);
 - (b) the end of 56 days after the notice is given to the authority holder or the end of any further period or periods by which the suspension is extended under subsection (5).
- ‘(4) The notice of immediate suspension must state—
- (a) the reasons for the decision; and
 - (b) the general effect of subsection (3); and
 - (c) that the authority holder may apply within 28 days for a review of the decision to immediately suspend the authority; and
 - (d) how the authority holder may apply for a review of the decision; and
 - (e) that if the authority holder applies for a review, the authority holder may apply to a Magistrates Court for a stay of the decision.
- ‘(5) The chief executive may extend the period for which an authority is suspended under subsection (1) for a further period or periods of not more than 56 days on each occasion.
- ‘(6) However, in deciding whether to extend or further extend the period of the suspension of an authority holder's authority, the chief executive must have regard to—
- (a) the information that was available to the chief executive when the chief executive first suspended the authority under subsection (1); and
 - (b) any further information relevant to the suspension that is in the chief executive's possession or of which the chief executive has since become aware; and
 - (c) whether in all the circumstances it is appropriate that the suspension be further extended.

‘21C Further action after immediate suspension

- ‘(1) This section applies if—

- (a) under section 21B, the chief executive immediately suspends an authority; and
 - (b) the chief executive also proposes to take proposed action under section 21D.
- ‘(2) The notice under section 21B must also—
- (a) state the information mentioned in section 21D(3)(a), (b) and (c) in relation to the proposed action; and
 - (b) if the proposed action is suspension of the authority—state the proposed suspension period; and
 - (c) invite the person to show cause in writing, within a stated time of at least 28 days, why the proposed action should not be taken.
- ‘(3) Section 21D(4) to (6) applies to the proposed action as if the notice had been given under section 21D(3).
- ‘(4) Despite subsection (3), section 21D(4)(a)(i) or (b)(ii) does not limit the chief executive’s powers to extend the period of suspension under section 21B(5).

‘21D **Amending, suspending or cancelling authority**

- ‘(1) This section applies if the chief executive considers a ground exists under section 21A to suspend or cancel an authority holder’s authority.
- ‘(2) However, this section does not apply if section 21E applies.
- ‘(3) Before taking action to suspend or cancel the authority (the *proposed action*), the chief executive must give the authority holder a written notice—
- (a) stating the proposed action; and
 - (b) stating the grounds for the proposed action; and
 - (c) outlining the facts and circumstances forming the basis for the grounds; and
 - (d) if the proposed action is suspension of the authority—stating the proposed suspension period; and

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- (e) inviting the person to show cause in writing, within a stated time of at least 28 days, why the proposed action should not be taken.
- ‘(4) If, after considering all written representations made within the stated time, the chief executive still considers a ground exists to take the proposed action, the chief executive may—
- (a) if the proposed action was to suspend the authority—
 - (i) suspend the authority for no longer than the period stated in the notice; or
 - (ii) amend the authority in the way the chief executive considers appropriate; or
 - (b) if the proposed action was to cancel the authority—
 - (i) cancel the authority; or
 - (ii) suspend the authority for a period; or
 - (iii) amend the authority in the way the chief executive considers appropriate.
- ‘(5) However, if the proposed action relates to a matter that is the subject of a proceeding before a court that has not been finally decided, the chief executive—
- (a) need not make a decision under subsection (4) until the proceeding is finally decided; but
 - (b) must make the decision as soon as reasonably practicable after the proceeding is finally decided.
- ‘(6) The chief executive must inform the person of the decision under subsection (4) by written notice.
- ‘(7) If the chief executive decides to take action under subsection (4), the notice must state—
- (a) the reasons for the decision; and
 - (b) that the person may apply within 28 days for a review of the decision; and
 - (c) how the person may apply for a review of the decision.

‘21E Other amendments of authorities

- ‘(1) This section applies only if the chief executive proposes to amend an authority holder’s authority—
 - (a) for a formal or clerical reason; or
 - (b) in another way that does not adversely affect the person’s interests; or
 - (c) if the person asks.
- ‘(2) The chief executive may make amendments of a type mentioned in subsection (1) by written notice given to the authority holder.

‘21F Surrender of authority on authority holder’s request

- ‘(1) An authority holder may surrender the authority holder’s authority by sending it to the chief executive with written notice of the surrender.
- ‘(2) On the surrender day, the authority stops having effect.
- ‘(3) In this section—

surrender day, for a surrendered authority, means—

 - (a) the day stated in the notice of surrender as the day the surrender takes effect; or
 - (b) if no day is stated in the notice, the day the chief executive receives the notice.

‘21G Delivery of cancelled or suspended authority

‘If the chief executive cancels or suspends an authority under this division, the authority holder must deliver the authority to the chief executive within the time specified by the chief executive in the notice of cancellation or suspension.

Maximum penalty—20 penalty units.

‘Division 3 Record keeping

‘21H Records

‘The chief executive must keep the records the chief executive considers appropriate about the following in the way the chief executive considers appropriate—

- (a) applications for the grant of authorities and permits;
- (b) the grant, refusal, cancellation or suspension of authorities;
- (c) the revocation of permits.’.

2I Amendment of s 37 (Evidentiary provisions)

Section 37(1), ‘section 20’—

omit, insert—

‘section 21H’.

2J Replacement of sch (Reviewable decisions)

Schedule—

omit, insert—

‘Schedule Reviewable decisions

section 28

Part 1 Licences

- 1 Failing to grant and issue a licence under section 6
- 2 Failing to renew a licence under section 9
- 3 Imposing a condition on the grant or renewal of a licence under section 10
- 4 Varying licence conditions under section 10

- 5 Suspending or cancelling a licence under section 21B or 21D
- 6 Amending a licence under section 21D

Part 2 Driver's certificates and assistant's certificates

- 1 Failing to grant and issue a certificate under section 14
- 2 Failing to renew a certificate under section 17
- 3 Imposing a condition on the grant or renewal of a certificate under section 16
- 4 Varying certificate conditions under section 16
- 5 Suspending or cancelling a certificate under section 21B or 21D
- 6 Amending a certificate under section 21D'.?.

3 After clause 4—

At page 6, after line 25—

insert—

'Part 2A Amendment of Transport Operations (Marine Safety) Act 1994

4A Act amended in pt 2A

This part amends the *Transport Operations (Marine Safety) Act 1994*.

4B Amendment of s 215 (Pilotage fees and conservancy dues)

Section 215(1)(a)—

omit, insert—

- (a) pilotage fees for the services of a pilot in relation to a pilotage area or compulsory pilotage area, and for other matters incidental to the services, including, for example—
 - (i) setting a fee for the services of a pilot by reference to a ship's length and having regard to the need to ensure that pilotage services are provided in an efficient way; and
 - (ii) setting a fee for delay or cancellation of the services; and