

THIS PUBLIC BILL has this day been read a Third time and passed

*The Clerk of the Parliament.*

*Legislative Assembly Chamber,  
Brisbane, September 2019*



Queensland

**No.  
A BILL for**

**An Act to provide for a personalised transport ombudsman to investigate complaints relating to personalised transport services and facilitate resolution of the complaints, and to amend this Act, the Integrity Act 2009, the Public Service Act 2008, the Tobacco and Other Smoking Products Act 1998, the Transport Infrastructure Act 1994 and the Transport Operations (Passenger Transport) Act 1994 for particular purposes**





Queensland

# Personalised Transport Ombudsman Bill 2019

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# 2019

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## A Bill

for

**An Act to provide for a personalised transport ombudsman to investigate complaints relating to personalised transport services and facilitate resolution of the complaints, and to amend this Act, the *Integrity Act 2009*, the *Public Service Act 2008*, the *Tobacco and Other Smoking Products Act 1998*, the *Transport Infrastructure Act 1994* and the *Transport Operations (Passenger Transport) Act 1994* for particular purposes**

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[s 1]

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**The Parliament of Queensland enacts—**

## **Part 1                      Preliminary**

### **Division 1                Introduction**

#### **1                      Short title**

This Act may be cited as the *Personalised Transport Ombudsman Act 2019*.

#### **2                      Commencement**

This Act, other than the following provisions, commences on a day to be fixed by proclamation—

- (a) part 7, divisions 4 and 5;
- (b) part 7, division 6, subdivisions 1 and 2.

#### **3                      Purpose of Act**

The purpose of this Act is to give people a timely, effective and independent service to investigate complaints relating to personalised transport services and facilitate resolution of the complaints.

#### **4                      How purpose is achieved**

The purpose is to be achieved by providing for the appointment of a personalised transport ombudsman to receive, investigate and facilitate resolution of personalised transport complaints.

## **5 Act binds all persons**

- (1) This Act binds all persons, including the State.
- (2) However, the State can not be prosecuted for an offence against this Act.

## **Division 2 Interpretation**

### **6 Definitions**

The dictionary in schedule 1 defines particular words used in this Act.

### **7 Meaning of *personalised transport service***

Each of the following services under the *Transport Operations (Passenger Transport) Act 1994* is a ***personalised transport service***—

- (a) a booked hire service;
- (b) a booking service;
- (c) a taxi service.

### **8 Meaning of *personalised transport complaint***

- (1) A ***personalised transport complaint*** is a complaint about—
  - (a) a personalised transport service; or
  - (b) the activities, including business practices and making decisions, of a person in the chain of responsibility for a booked hire service or taxi service relating to providing the service.
- (2) In this Act, a reference to a personalised transport complaint includes a reference to a part of a personalised transport complaint.
- (3) In this section—

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*business practices* see the *Transport Operations (Passenger Transport) Act 1994*, section 83.

*person in the chain of responsibility*, for a booked hire service or taxi service, see the *Transport Operations (Passenger Transport) Act 1994*, section 84.

## **Part 2**

# **Personalised transport ombudsman and office of personalised transport ombudsman**

### **Division 1**

## **Personalised transport ombudsman**

#### **Subdivision 1**

### **Appointment**

#### **9**

### **Personalised transport ombudsman**

- (1) There is to be a personalised transport ombudsman.
- (2) The personalised transport ombudsman is appointed by the Governor in Council.
- (3) The personalised transport ombudsman is appointed under this Act and not the *Public Service Act 2008*.

#### **10**

### **Term of appointment**

- (1) The personalised transport ombudsman holds office for the term stated in the ombudsman's instrument of appointment.
- (2) The term must not be more than 3 years.
- (3) The personalised transport ombudsman may be reappointed.
- (4) However, a person must not be reappointed as the personalised transport ombudsman if the total of the person's term of appointment would be more than 10 years.

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## 11 Conditions of appointment

- (1) The personalised transport ombudsman is to be paid the remuneration and allowances decided by the Governor in Council.
- (2) The personalised transport ombudsman holds office on the terms and conditions, not provided by this Act, that are decided by the Governor in Council.

## 12 Disqualification as personalised transport ombudsman

- (1) A person is disqualified from becoming, or continuing as, the personalised transport ombudsman if the person—
  - (a) has a conviction, other than a spent conviction, for an indictable offence; or
  - (b) is an insolvent under administration; or
  - (c) is disqualified from managing corporations under the Corporations Act, part 2D.6; or
  - (d) is a member of the Parliament of the State, another State or the Commonwealth; or
  - (e) holds office as the mayor or a councillor of a local government; or
  - (f) holds an office in another State equivalent to an office mentioned in paragraph (e); or
  - (g) holds, or has held within the previous 3 years, a personalised transport licence; or
  - (h) is, or has been within the previous 3 years, an authorised booking entity's local nominee; or
  - (i) is an employee, member or representative of an advocacy group, peak body or trade union that is involved in personalised transport services; or
  - (j) has been, within the previous 3 years, an employee, member or representative of an advocacy group, peak body or trade union that was involved in personalised

[s 13]

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transport services when the person was an employee, member or representative; or

- (k) is an executive officer of a corporation, or a trustee of a trust, that holds, or has held within the previous 3 years, a personalised transport licence.

- (2) In this section—

*authorised booking entity* see the *Transport Operations (Passenger Transport) Act 1994*, section 91V(2).

*insolvent under administration* see the Corporations Act, section 9.

*local nominee*, of an authorised booking entity, see the *Transport Operations (Passenger Transport) Act 1994*, section 91ZD(1).

*personalised transport licence* means any of the following authorisations or licences under the *Transport Operations (Passenger Transport) Act 1994*—

- (a) a booked hire service licence;
- (b) a booking entity authorisation;
- (c) a driver authorisation to drive a vehicle to provide a booked hire service or taxi service;
- (d) a limousine licence;
- (e) a taxi service licence.

### 13 Leave of absence

- (1) The Minister may approve a leave of absence for the personalised transport ombudsman.
- (2) The Minister may appoint another person to act in the office of the personalised transport ombudsman during the leave of absence.
- (3) Subsection (2) does not limit the Governor in Council's power under the *Acts Interpretation Act 1954*, section 25(1)(b)(v).

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## 14 Resignation

- (1) The personalised transport ombudsman may resign by signed notice given to the Minister.
- (2) The resignation takes effect on—
  - (a) the day the notice is given; or
  - (b) if a later day is stated in the notice—the later day.

## 15 Vacancy in office

The office of the personalised transport ombudsman becomes vacant if—

- (a) the personalised transport ombudsman—
  - (i) completes a term of office and is not reappointed; or
  - (ii) is disqualified under section 12 from continuing as the personalised transport ombudsman; or
  - (iii) resigns under section 14; or
- (b) the personalised transport ombudsman's appointment is terminated.

## 16 Notice of disqualification

If a person appointed as the personalised transport ombudsman is disqualified under section 12 from continuing as the personalised transport ombudsman, the person must immediately give the Minister notice of the disqualification unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

## **Subdivision 2      Functions and powers**

### **17      Functions**

The personalised transport ombudsman has the following functions—

- (a) to receive personalised transport complaints;
- (b) to investigate personalised transport complaints and facilitate resolution of the complaints, including by using alternative dispute resolution;
- (c) to give information or advice about resolving personalised transport complaints;
- (d) to identify, and report to the Minister about, systemic issues arising from personalised transport complaints received by the ombudsman;
- (e) to monitor the outcome of personalised transport complaints dealt with by other entities;
- (f) to provide advice, or make recommendations, to the Minister about ways to prevent, minimise or resolve personalised transport complaints;
- (g) to promote public awareness of the ombudsman's functions;
- (h) another function conferred on the personalised transport ombudsman under this Act or another Act.

### **18      Obligations in performing functions**

The personalised transport ombudsman must, in performing the ombudsman's functions, act independently, impartially and in the public interest.



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**19 General powers**

The personalised transport ombudsman has power to do all things necessary or convenient to perform the ombudsman's functions.

**20 Personalised transport ombudsman not subject to direction**

The personalised transport ombudsman is not subject to direction by any person about—

- (a) the way the ombudsman performs the ombudsman's functions or exercises the ombudsman's powers; or
- (b) the priority given to investigations of personalised transport complaints or their resolution.

**21 Minister may refer matter to personalised transport ombudsman**

- (1) The Minister may—
  - (a) refer a matter relevant to the personalised transport ombudsman's functions to the ombudsman; and
  - (b) ask the ombudsman to review the matter and give the Minister a written report about the matter that includes, for example, advice or recommendations about the matter.
- (2) The personalised transport ombudsman must comply with the request.
- (3) However, the personalised transport ombudsman need not comply with the request if the ombudsman—
  - (a) reasonably believes the matter is or has been the subject of a personalised transport complaint made to the ombudsman; and
  - (b) gives the Minister notice of the belief.

## **Subdivision 3      Miscellaneous**

### **22      Criminal history report**

- (1) To decide if a person is disqualified from becoming, or continuing as, the personalised transport ombudsman, the Minister may ask the commissioner of the police service for a written report about the person's criminal history that includes a brief description of the circumstances of a conviction mentioned in the criminal history.
- (2) However, the Minister may make the request only if the person has given the Minister written consent for the request.
- (3) The commissioner of the police service must comply with the request.
- (4) The duty to comply applies only to information in the commissioner's possession or to which the commissioner has access.
- (5) In this section—

*criminal history*, for a person, means the person's criminal history within the meaning of the *Criminal Law (Rehabilitation of Offenders) Act 1986*, other than spent convictions.

### **23      Criminal history information confidential**

- (1) This section applies to a person who possesses a report about a person's criminal history given under section 22 or information contained in the report.
- (2) The person must not, directly or indirectly, disclose to anyone else the report or information unless the disclosure is permitted under subsection (3).

Maximum penalty—100 penalty units.

- (3) The person may disclose the report or information to another person—

- 
- (a) to the extent necessary to perform the person's functions under this Act; or
  - (b) if the disclosure is authorised under an Act; or
  - (c) if the disclosure is otherwise required or permitted by law; or
  - (d) if the person to whom the disclosure relates consents to the disclosure; or
  - (e) if the disclosure is in a form that does not identify the person to whom the report or information relates; or
  - (f) if the report or information is, or has been, lawfully accessible to the public.
- (4) The person must ensure the report, or a document containing the information, is destroyed as soon as practicable after the report is no longer needed for the purpose for which it is given under section 22.

## **24 Preservation of existing rights and entitlements**

- (1) This section applies if a public service employee is appointed as the personalised transport ombudsman.
- (2) The person keeps all rights accrued or accruing to the person as a public service employee as if service as the personalised transport ombudsman were a continuation of service as a public service employee.
- (3) When the person stops being the personalised transport ombudsman, the person's service as the personalised transport ombudsman is taken to be service of a like nature in the public service for deciding the person's rights as a public service employee.

## **Division 2                      Office of the Personalised Transport Ombudsman**

### **25            Office of the Personalised Transport Ombudsman**

- (1) An office called the Office of the Personalised Transport Ombudsman is established.
- (2) The office's function is to help the personalised transport ombudsman perform the ombudsman's functions.
- (3) The office consists of the personalised transport ombudsman and the officers of the office.

### **26            Control of the office**

- (1) The personalised transport ombudsman controls the office.
- (2) Subsection (1) does not prevent the office being attached to the department for the purposes of ensuring the office is supplied with the administrative support services it requires to perform its functions effectively and efficiently.

### **27            Officers**

Officers of the office are appointed under the *Public Service Act 2008*.

### **28            Officers not subject to outside direction**

An officer is not subject to direction by any person, other than from within the office, about—

- (a) the way the personalised transport ombudsman's functions or powers for a personalised transport complaint under this Act are performed or exercised; or
- (b) the priority given to investigations of personalised transport complaints or their resolution.

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## 29 Alternative staffing arrangements

- (1) The personalised transport ombudsman may arrange with the chief executive of a government entity for the services of officers or employees, or for facilities, of the entity to be made available to the ombudsman.
- (2) An officer or employee whose services are made available under subsection (1)—
  - (a) continues to be an officer or employee of the entity; and
  - (b) continues to be employed or otherwise engaged by the entity on the same terms and conditions applying to the officer or employee before the services were made available; and
  - (c) is, for the period the services are made available and for carrying out the personalised transport ombudsman's functions, taken to be an officer of the office.
- (3) In this section—

*government entity* see the *Public Service Act 2008*, section 24.

## 30 Office not a statutory body for particular Acts

To remove any doubt, it is declared that the office is not a statutory body for the *Financial Accountability Act 2009* or the *Statutory Bodies Financial Arrangements Act 1982*.

# Part 3 Personalised transport complaints

## Division 1 Complaints process

### 31 Making a complaint

- (1) A person may make a personalised transport complaint to the personalised transport ombudsman—

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- (a) orally, including by telephone; or
  - (b) in writing.
- (2) If a personalised transport complaint is made orally, the personalised transport ombudsman must make a record of the complaint.

### **32 Dealing with complaints**

The personalised transport ombudsman must deal with a personalised transport complaint by—

- (a) investigating the complaint under this part; or
- (b) refusing to investigate, or continue to investigate, the complaint under section 35, 36 or 40(3); or
- (c) referring a matter raised in the complaint to a chief executive (transport) under section 38.

### **33 Preliminary inquiries**

The personalised transport ombudsman may make reasonable inquiries to decide how to deal with a personalised transport complaint under section 32.

### **34 Withdrawal of complaint**

- (1) A complainant may withdraw the complainant's personalised transport complaint by giving notice about the withdrawal to the personalised transport ombudsman.
- (2) On the withdrawal, any investigation relating to the personalised transport complaint ends.
- (3) As soon as practicable after receiving a notice under subsection (1), the personalised transport ombudsman must give the complainant and each other party to the personalised transport complaint notice of the withdrawal.
- (4) However, the personalised transport ombudsman need not give the notice to a party other than the complainant if the

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ombudsman considers it is not appropriate to do so in the circumstances.

*Examples of circumstances—*

The party is not aware of the complaint or has not been contacted by the personalised transport ombudsman in relation to the complaint.

- (5) The withdrawal of a personalised transport complaint does not limit the powers of the personalised transport ombudsman under section 38.

## **Division 2                      Refusal to investigate complaints**

### **35            When investigation of complaint must be refused**

The personalised transport ombudsman must refuse to investigate, or continue to investigate, a personalised transport complaint if—

- (a) the ombudsman reasonably believes the complaint relates to any of the following—
- (i) the content of legislation or government policies;
  - (ii) a decision made by Cabinet, a Minister or a chief executive;
  - (iii) a decision made to implement a decision mentioned in subparagraph (ii);
  - (iv) an administrative action of an agency within the meaning of the *Ombudsman Act 2001*;
  - (v) a matter that is or has been the subject of a proceeding; or
- (b) both of the following apply—
- (i) the ombudsman reasonably suspects a matter raised in the complaint may constitute an offence under a transport Act;
  - (ii) the ombudsman decides not to refer the matter to a chief executive (transport) under section 38.

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*Note—*

See division 3 for when the personalised transport ombudsman may refer a matter raised in a personalised transport complaint to a chief executive (transport).

## **36 When investigation of complaint may be refused**

- (1) The personalised transport ombudsman may refuse to investigate, or continue to investigate, a personalised transport complaint if the ombudsman reasonably believes—
- (a) the complaint—
    - (i) is frivolous, vexatious or has not been made in good faith; or
    - (ii) is trivial or lacks substance; or
    - (iii) has been resolved or otherwise finalised by the ombudsman or another appropriate entity; or
  - (b) the complainant does not have a sufficient interest in the matter raised in the complaint; or
  - (c) both of the following apply—
    - (i) the complainant has not made a reasonable attempt to resolve the matter raised in the complaint with the person who is the subject of the complaint;
    - (ii) it would be reasonable in the circumstances to require the complainant to attempt to resolve the matter before the ombudsman investigates, or continues to investigate, the complaint; or
  - (d) both of the following apply—
    - (i) the complainant has a right of appeal, reference, review or another remedy in relation to the complaint that the complainant has not exhausted;
    - (ii) it would be reasonable in the circumstances to require the complainant to exhaust the right or remedy before the ombudsman investigates, or continues to investigate, the complaint; or



- (e) the matter raised in the complaint may be, or has been, dealt with by another agency of the State or an agency of another State or the Commonwealth that has the power to deal with the complaint; or
  - (f) the circumstances giving rise to the complaint happened more than 12 months before the complaint was made; or
  - (g) that, having regard to all the circumstances, it is unnecessary or unjustifiable to investigate, or continue to investigate, the complaint.
- (2) This section does not limit the grounds on which the personalised transport ombudsman may refuse to investigate, or continue to investigate, a personalised transport complaint.

### **37 Notice about refusal to investigate complaint**

- (1) This section applies if the personalised transport ombudsman refuses to investigate, or continue to investigate, a personalised transport complaint.
- (2) The personalised transport ombudsman must give the complainant and each other party to the personalised transport complaint a notice that states the ombudsman has decided not to investigate, or continue to investigate, the complaint and the reasons for the decision.
- (3) However, the personalised transport ombudsman need not give the notice to a party other than the complainant if the ombudsman considers it is not appropriate to do so in the circumstances.

*Examples of circumstances—*

The party is not aware of the complaint or has not been contacted by the personalised transport ombudsman in relation to the complaint.

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## **Division 3                      Referrals to chief executive (transport)**

### **38            Referring matter raised in complaint to chief executive (transport)**

- (1) This section applies if the personalised transport ombudsman reasonably suspects a matter raised in a personalised transport complaint may constitute an offence under a transport Act.
- (2) The personalised transport ombudsman may refer the matter to the chief executive (transport) of the department in which the transport Act is administered.
- (3) When referring the matter, the personalised transport ombudsman—
  - (a) must give the chief executive (transport) the information about the matter the ombudsman holds; and
  - (b) may give the chief executive (transport) a report about—
    - (i) the matter; and
    - (ii) the basis for the ombudsman’s reasonable suspicion that the matter may constitute an offence under a transport Act.
- (4) As soon as practicable after referring the matter, the personalised transport ombudsman must give the complainant and each other party to the personalised transport complaint a notice about the referral.
- (5) However, the personalised transport ombudsman need not give the notice to a party other than the complainant if the ombudsman considers it is not appropriate to do so in the circumstances.

*Examples of circumstances—*

The party is not aware of the complaint or has not been contacted by the personalised transport ombudsman in relation to the complaint.

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### **39 Investigation of complaint must be deferred**

- (1) If the personalised transport ombudsman refers a matter raised in a personalised transport complaint to a chief executive (transport) under section 38, the ombudsman must defer dealing with the complaint until the chief executive (transport) gives the ombudsman advice about the complaint under section 40.
- (2) Without limiting subsection (1), the personalised transport ombudsman—
  - (a) must stop investigating, or continuing to investigate, the personalised transport complaint; and
  - (b) must not accept information or a document relevant to the complaint from a person other than the chief executive (transport).
- (3) This section does not limit—
  - (a) section 34; or
  - (b) the personalised transport ombudsman’s power to deal with any part of the personalised transport complaint that was not referred to the chief executive (transport) under section 38.

### **40 Dealing with complaint after advice from chief executive (transport)**

- (1) Within 2 months after a matter raised in a personalised transport complaint is referred to a chief executive (transport) under section 38, the chief executive (transport) must—
  - (a) consider the matter; and
  - (b) advise the personalised transport ombudsman in writing whether the chief executive (transport) will deal with the matter.
- (2) After receiving the advice, the personalised transport ombudsman must give each party to the personalised transport complaint a notice that states—

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- (a) whether the chief executive (transport) will deal with the matter; and
  - (b) whether the ombudsman will investigate, or continue to investigate, the complaint under this part.
- (3) If the advice is that the chief executive (transport) will deal with the matter, the personalised transport ombudsman must refuse to investigate, or continue to investigate, the personalised transport complaint.
- (4) The personalised transport ombudsman need not give a notice mentioned in subsection (2) to a party other than the complainant if the ombudsman considers it is not appropriate to do so in the circumstances.

*Examples of circumstances—*

The party is not aware of the complaint or has not been contacted by the personalised transport ombudsman in relation to the complaint.

- (5) This section does not apply if the personalised transport complaint is withdrawn under section 34.

## **Division 4            Investigating complaints**

### **Subdivision 1        General**

#### **41        Notice of investigation**

- (1) If the personalised transport ombudsman decides to investigate a personalised transport complaint, the ombudsman must, as soon as practicable, give each party to the complaint a notice (an *investigation notice*) about the investigation.
- (2) The investigation notice must state—
- (a) the subject matter of the personalised transport complaint; and

- (b) the action the personalised transport ombudsman proposes to take to investigate the complaint and facilitate its resolution; and
  - (c) the powers the ombudsman may exercise in the investigation; and
  - (d) that the party must participate in the investigation in good faith; and
  - (e) the effect of sections 44 and 48(2).
- (3) This section does not apply for a party to the personalised transport complaint if, before an investigation notice is given to the party, the complaint is withdrawn under section 34.

## **42 Investigation procedure**

- (1) Subject to this Act, the procedure for investigating a personalised transport complaint is the procedure decided by the personalised transport ombudsman.
- (2) The procedure may involve alternative dispute resolution.
- (3) However, the procedure must not bind the parties to the personalised transport complaint.
- (4) The personalised transport ombudsman, in carrying out an investigation—
  - (a) must act in a way that is fair and reasonable; and
  - (b) must maintain confidentiality; and
  - (c) is not bound by the rules of evidence, but must comply with natural justice; and
  - (d) may make inquiries the ombudsman considers appropriate.

## **43 Duty of parties to complaint**

Each party to a personalised transport complaint must participate in an investigation of the complaint in good faith.

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*Examples of participating in the investigation in good faith—*

- attending meetings the party has agreed to attend
- taking part for the purpose of resolving the personalised transport complaint rather than to gain another benefit (for example, to obtain information for another purpose)

#### **44 Report to chief executive (passenger transport) if party does not participate in good faith**

- (1) The personalised transport ombudsman may give the chief executive (passenger transport) a report (a *conduct report*) about the conduct of a party to a personalised transport complaint during the investigation of the complaint.
- (2) However, the personalised transport ombudsman may give the conduct report only if, in the ombudsman’s opinion—
  - (a) the party has not participated in the investigation in good faith; and
  - (b) it is in the public interest for the chief executive (passenger transport) to know about the party’s conduct during the investigation having regard to the objectives of the *Transport Operations (Passenger Transport) Act 1994* and the main purpose of chapter 7 of that Act.
- (3) For subsection (2)(a), a party does not participate in an investigation other than in good faith only because the party fails to comply with a requirement under subdivision 2 if the party has a reasonable excuse for the noncompliance.
- (4) Before finalising the conduct report, the personalised transport ombudsman must—
  - (a) give the party a draft of the report; and
  - (b) give the party a notice that—
    - (i) states the ombudsman intends to give the chief executive (passenger transport) the report under this section; and
    - (ii) invites the party to make written submissions to the ombudsman about the draft report within a

reasonable period of at least 14 days after the draft is given to the party.

- (5) If the party makes a submission under subsection (4), the personalised transport ombudsman must—
  - (a) consider the submission before finalising the conduct report; and
  - (b) include the party's submission, or a fair summary of it, in the report.
- (6) As soon as practicable after the personalised transport ombudsman gives the chief executive (passenger transport) the conduct report, the ombudsman must give the party a copy of the report.

#### **45 Preparing report about investigation**

- (1) This section applies to an investigation of a personalised transport complaint unless—
  - (a) the complaint is withdrawn under section 34; or
  - (b) the investigation is discontinued because of section 35, 36 or 40(3).
- (2) As soon as practicable after completing the investigation, the personalised transport ombudsman must prepare a written report (an *investigation report*) about the investigation.
- (3) The investigation report—
  - (a) must state—
    - (i) that the personalised transport ombudsman has finished dealing with the personalised transport complaint; and
    - (ii) the outcome of the investigation; and
    - (iii) if the outcome of the investigation is that the complaint is resolved—details about how the complaint was resolved; and
  - (b) may state—

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- (i) the findings of the investigation; and
  - (ii) recommendations the ombudsman considers appropriate.
- (4) The investigation report is not binding on the parties to the personalised transport complaint and is prepared only to give information or advice to the parties.

#### **46 Including particular documents or information in investigation report**

- (1) This section applies if—
  - (a) a person gives the personalised transport ombudsman a document or information for—
    - (i) an inquiry under section 33 about a personalised transport complaint; or
    - (ii) an investigation of a personalised transport complaint; and
  - (b) the ombudsman relied on the document or information in investigating the complaint; and
  - (c) the ombudsman is satisfied the document or information—
    - (i) was given in confidence; and
    - (ii) that disclosing it may be detrimental to the person's commercial interests, personal affairs or reputation.
- (2) The investigation report must state that the personalised transport ombudsman relied on a document or information given by a person that is confidential, without identifying the person, document or information.

#### **47 Opportunity to respond to adverse comment in investigation report**

- (1) This section applies if an investigation report being prepared under section 45 contains an adverse comment about a person.



- (2) Before finalising the report, the personalised transport ombudsman must give the person a copy of the proposed comment and a reasonable period, of at least 14 days, within which to make a submission about the comment.
- (3) If the person makes a submission about the comment, the personalised transport ombudsman—
  - (a) must have regard to the submission before finalising the investigation report; and
  - (b) may only include the adverse comment in the report if the ombudsman also includes the person's submission, or a fair summary of it, in the report.

## **48 Final investigation report**

- (1) After the personalised transport ombudsman finalises an investigation report about a personalised transport complaint, the ombudsman must give a copy of the final report to each party to the complaint.
- (2) Also, the personalised transport ombudsman may give a copy of the final investigation report to the chief executive (passenger transport) if, in the ombudsman's opinion, it is in the public interest to do so having regard to the objectives of the *Transport Operations (Passenger Transport) Act 1994* and the main purpose of chapter 7 of that Act.
- (3) If the personalised transport ombudsman gives the chief executive (passenger transport) an investigation report under subsection (2), the ombudsman must give the parties to the complaint notice of that fact.

## **Subdivision 2 Powers**

### **49 Application of subdivision**

This subdivision applies if the personalised transport ombudsman is investigating a personalised transport complaint.

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## **50 Power to require information**

- (1) The personalised transport ombudsman may, by notice given to a person, require the person to give the ombudsman—
  - (a) a stated document or information reasonably required for the investigation in a stated way and within 14 days after the notice is given; or
  - (b) access to a stated document or information reasonably required for the investigation.
- (2) A person of whom a requirement is made under subsection (1) must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—

- (a) for an individual—40 penalty units; or
  - (b) for a corporation—100 penalty units.
- (3) It is a reasonable excuse for a person not to comply with the requirement if—
    - (a) the document or information is not in the person's possession or control; or
    - (b) for an individual—complying with the requirement might tend to incriminate the individual or expose the individual to a penalty.

## **51 Power to require attendance**

- (1) The personalised transport ombudsman may, by notice given to a person, require the person to—
  - (a) attend before the ombudsman at a stated reasonable time and place; and
  - (b) answer questions, related to the investigation, asked by the ombudsman.
- (2) The time stated in the notice must be at least 14 days after the notice is given.

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- (3) A person of whom a requirement is made under subsection (1) must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—

- (a) for an individual—40 penalty units; or
- (b) for a corporation—100 penalty units.
- (4) It is a reasonable excuse for an individual to refuse to answer a question if answering the question might tend to incriminate the individual or expose the individual to a penalty.

## **Division 5                      Confidentiality and information sharing**

### **52            Documents in personalised transport ombudsman's custody**

- (1) If a document is given to the personalised transport ombudsman for an investigation, the ombudsman may—
- (a) keep it for a reasonable period to carry out the investigation; and
- (b) take an extract from, or copy, the document.
- (2) While the personalised transport ombudsman has custody of the document, the ombudsman must allow it to be inspected at any reasonable time by a person who would have the right to inspect it if it were not in the ombudsman's possession.

### **53            Information sharing arrangements**

- (1) The personalised transport ombudsman may enter into an arrangement with a government entity for the purpose of sharing or exchanging information held by the ombudsman or the government entity.
- (2) The arrangement may relate only to information about whether a matter raised in a personalised transport complaint

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is or has been the subject of a complaint or proceeding being, or that has been, dealt with by a party to the arrangement.

(3) Despite any other Act or law of the State, the personalised transport ombudsman and the government entity are authorised to, under the arrangement—

- (a) ask for and receive information mentioned in subsection (2) held by the other party to the arrangement; and
- (b) disclose information mentioned in subsection (2) to the other party.

(4) In this section—

**government entity** means—

- (a) a government entity under the *Public Service Act 2008*, section 24; or
- (b) an entity of the Commonwealth or another State that is equivalent to an entity mentioned in paragraph (a).

## Division 6                      Protections

### 54                      Giving of information protected

- (1) This section applies if a person, acting honestly, gives information to the personalised transport ombudsman or an officer under this Act in relation to a personalised transport complaint.
- (2) The person is not liable, civilly, criminally or under an administrative process, for giving the information.
- (3) Without limiting subsection (2)—
  - (a) no contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the person; and
  - (b) in a proceeding for defamation, the person has a defence of absolute privilege for publishing the information; and

- (c) if the person would otherwise be required to maintain confidentiality about the information under an Act, oath or rule of law or practice, the person—
  - (i) does not contravene the Act, oath or rule of law or practice by giving the information; and
  - (ii) is not liable to disciplinary action for giving the information.

## 55 Protection from reprisal

- (1) A person must not take detrimental action against another person in reprisal for a personalised transport complaint.  
Maximum penalty—75 penalty units.
- (2) A person takes detrimental action against another person (the *protected person*) in reprisal for a personalised transport complaint if the person takes the action because, or in the belief that—
  - (a) the protected person has made, or intends to make, a personalised transport complaint to the personalised transport ombudsman; or
  - (b) the protected person has provided, or intends to provide, information or other assistance to the ombudsman or an officer in relation to a personalised transport complaint.
- (3) A reference in this section to taking detrimental action includes—
  - (a) attempting to take detrimental action; and
  - (b) inciting, permitting or conspiring with another person to take detrimental action.
- (4) In determining whether a person takes detrimental action in reprisal, it does not matter whether a reason stated in subsection (2)(a) or (b) is the only or main reason for taking the action, as long as it is a substantial reason.

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## **56 Damages for reprisal**

- (1) Taking detrimental action against another person in reprisal for a personalised transport complaint under section 55 is a tort and a person who takes the action is liable in damages to any person who suffers detriment as a result.
- (2) Any appropriate remedy that may be granted by a court for a tort, including exemplary damages, may be granted by a court for the taking of the action.
- (3) If the claim for damages goes to trial in the Supreme Court or the District Court, it must be decided by a judge sitting without a jury.
- (4) The right of a person to bring proceedings for damages under this section does not affect any other right or remedy available to the person arising from the action.
- (5) Proceedings for damages may be brought under this section even if a prosecution in relation to the action has not been brought, or can not be brought, for the offence under section 55(1).
- (6) The *Workers' Compensation and Rehabilitation Act 2003* does not apply to proceedings for damages brought under this section.

## **Part 4 Enforcement**

### **Division 1 General provisions about authorised officers**

#### **Subdivision 1 Appointment**

### **57 Authorised officers under part**

- (1) This part provides for the appointment of authorised officers, and gives authorised officers particular powers.

- (2) The purpose of these provisions is to ensure the personalised transport ombudsman has suitably qualified persons who can help the ombudsman deal with issues about compliance under this Act.

## **58 Personalised transport ombudsman is an authorised officer**

- (1) The personalised transport ombudsman is an authorised officer.
- (2) However, sections 60, 61, 62 and 65 do not apply to the personalised transport ombudsman as an authorised officer.

## **59 Appointment and qualifications**

- (1) The personalised transport ombudsman may, by instrument in writing, appoint an officer of the office as an authorised officer.
- (2) However, the personalised transport ombudsman may appoint a person as an authorised officer only if the ombudsman is satisfied the person is appropriately qualified.

## **60 Appointment conditions and limit on powers**

- (1) An authorised officer holds office on any conditions stated in—
  - (a) the authorised officer’s instrument of appointment; or
  - (b) a signed notice given to the authorised officer; or
  - (c) a regulation.
- (2) The instrument of appointment, a signed notice given to the authorised officer or a regulation may limit the authorised officer’s powers.
- (3) In this section—  
*signed notice* means a notice signed by the personalised transport ombudsman.

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## **61 When office ends**

- (1) The office of a person as an authorised officer ends if any of the following happens—
  - (a) the term of office stated in a condition of office ends;
  - (b) under another condition of office, the office ends;
  - (c) the authorised officer’s resignation under section 62 takes effect.
- (2) Subsection (1) does not limit the ways the office of a person as an authorised officer ends.
- (3) In this section—

*condition of office* means a condition under which the authorised officer holds office.

## **62 Resignation**

An authorised officer may resign by signed notice given to the personalised transport ombudsman.

## **Subdivision 2 Identity cards**

### **63 Issue of identity card**

- (1) The personalised transport ombudsman must issue an identity card to each authorised officer.
- (2) The identity card must—
  - (a) contain a recent photo of the authorised officer; and
  - (b) contain a copy of the authorised officer’s signature; and
  - (c) identify the person as an authorised officer under this Act; and
  - (d) state an expiry date for the card.
- (3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.



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## **64 Production or display of identity card**

- (1) In exercising a power in relation to a person in the person's presence, an authorised officer must—
  - (a) produce the officer's identity card for the person's inspection before exercising the power; or
  - (b) have the identity card displayed so it is clearly visible to the person when exercising the power.
- (2) However, if it is not practicable to comply with subsection (1), the authorised officer must produce the identity card for the person's inspection at the first reasonable opportunity.
- (3) For subsection (1), an authorised officer does not exercise a power in relation to a person only because the officer has entered a place as mentioned in section 68(1)(b).

## **65 Return of identity card**

If the office of a person as an authorised officer ends, the person must return the person's identity card to the personalised transport ombudsman within 21 days after the office ends unless the person has a reasonable excuse.

Maximum penalty—30 penalty units.

## **Subdivision 3 Miscellaneous provisions**

### **66 References to exercise of powers**

If—

- (a) a provision of this part refers to the exercise of a power by an authorised officer; and
  - (b) there is no reference to a specific power;
- the reference is to the exercise of all or any authorised officers' powers under this part or a warrant, to the extent the powers are relevant.

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## **67 Reference to document includes reference to reproductions from electronic document**

A reference in this part to a document includes a reference to an image or writing—

- (a) produced from an electronic document; or
- (b) not yet produced, but reasonably capable of being produced, from an electronic document, with or without the aid of another article or device.

## **Division 2 Entry of places by authorised officers**

### **Subdivision 1 Power to enter**

#### **68 General power to enter places**

- (1) An authorised officer may enter a place if—
  - (a) an occupier at the place consents under subdivision 2 to the entry and section 71 has been complied with for the occupier; or
  - (b) it is a public place and the entry is made when the place is open to the public; or
  - (c) the entry is authorised under a warrant and, if there is an occupier of the place, section 78 has been complied with for the occupier.
- (2) If the power to enter arose only because an occupier of the place consented to the entry, the power is subject to any conditions of the consent and ceases if the consent is withdrawn.
- (3) If the power to enter is under a warrant, the power is subject to the terms of the warrant.
- (4) In this section—

***public place*** means a place, or part of a place—

- (a) that the public is entitled to use, that is open to members of the public or that is used by the public, whether or not on payment of money; or

*Examples of a place that may be a public place under paragraph (a)—*

a beach, a park, a road

- (b) the occupier of which allows, whether or not on payment of money, members of the public to enter.

*Examples of a place that may be a public place under paragraph (b)—*

a saleyard, a showground

## **Subdivision 2      Entry by consent**

### **69      Application of subdivision**

This subdivision applies if an authorised officer intends to ask an occupier of a place to consent to the officer or another authorised officer entering the place under section 68(1)(a).

### **70      Incidental entry to ask for access**

For the purpose of asking the occupier for the consent, an authorised officer may, without the occupier's consent or a warrant—

- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
- (b) enter part of the place the officer reasonably considers members of the public ordinarily are allowed to enter when they wish to contact an occupier of the place.

### **71      Matters authorised officer must tell occupier**

Before asking for the consent, the authorised officer must—

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- (a) explain to the occupier the purpose of the entry, including the powers intended to be exercised; and
- (b) tell the occupier that—
  - (i) the occupier is not required to consent; and
  - (ii) the consent may be given subject to conditions and may be withdrawn at any time.

## **72 Consent acknowledgement**

- (1) If the consent is given, the authorised officer may ask the occupier to sign an acknowledgement of the consent.
- (2) The acknowledgement must state—
  - (a) the purpose of the entry, including the powers to be exercised; and
  - (b) that the occupier has been given an explanation about the purpose of the entry, including the powers intended to be exercised; and
  - (c) that the occupier has been told—
    - (i) that the occupier is not required to consent; and
    - (ii) that the consent may be given subject to conditions and may be withdrawn at any time; and
  - (d) that the occupier gives the authorised officer or another authorised officer consent to enter the place and exercise the powers; and
  - (e) the day and time the consent was given; and
  - (f) any conditions of the consent.
- (3) If the occupier signs the acknowledgement, the authorised officer must immediately give a copy to the occupier.
- (4) If—
  - (a) an issue arises in a proceeding about whether the occupier consented to the entry; and

- (b) a signed acknowledgement complying with subsection (2) for the entry is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

### **Subdivision 3      Entry under warrant**

#### **73      Application for warrant**

- (1) An authorised officer may apply to a magistrate for a warrant for a place.
- (2) The authorised officer must prepare a written application that states the grounds on which the warrant is sought.
- (3) The written application must be sworn.
- (4) The magistrate may refuse to consider the application until the authorised officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the written application to be given by statutory declaration.

#### **74      Issue of warrant**

- (1) The magistrate may issue the warrant for the place only if the magistrate is satisfied there are reasonable grounds for suspecting there is at the place, or will be at the place within the next 7 days, a particular thing or activity that may provide evidence of an offence against this Act.
- (2) The warrant must state—
  - (a) the place to which the warrant applies; and
  - (b) that a stated authorised officer or any authorised officer may with necessary and reasonable help and force—

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- (i) enter the place and any other place necessary for entry to the place; and
- (ii) exercise the authorised officer's powers; and
- (c) particulars of the offence that the magistrate considers appropriate; and
- (d) the name of the person suspected of having committed the offence unless the name is unknown or the magistrate considers it inappropriate to state the name; and
- (e) the hours of the day or night when the place may be entered; and
- (f) the magistrate's name; and
- (g) the day and time of the warrant's issue; and
- (h) the day, within 14 days after the warrant's issue, the warrant ends.

## **75 Electronic application**

- (1) An application under section 73 may be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the authorised officer reasonably considers it necessary because of—
  - (a) urgent circumstances; or
  - (b) other special circumstances, including, for example, the officer's remote location.
- (2) The application—
  - (a) may not be made before the authorised officer prepares the written application under section 73(2); but
  - (b) may be made before the written application is sworn.

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## 76 Additional procedure if electronic application

- (1) For an application made under section 75, the magistrate may issue the warrant (the *original warrant*) only if the magistrate is satisfied—
  - (a) it was necessary to make the application under section 75; and
  - (b) the way the application was made under section 75 was appropriate.
- (2) After the magistrate issues the original warrant—
  - (a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the authorised officer, including, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the officer; or
  - (b) otherwise—
    - (i) the magistrate must tell the authorised officer the information mentioned in section 74(2); and
    - (ii) the officer must complete a form of warrant, including by writing on it the information mentioned in section 74(2) provided by the magistrate.
- (3) The copy of the warrant mentioned in subsection (2)(a), or the form of warrant completed under subsection (2)(b) (in either case the *duplicate warrant*), is a duplicate of, and as effectual as, the original warrant.
- (4) The authorised officer must, at the first reasonable opportunity, send to the magistrate—
  - (a) the written application complying with section 73(2) and (3); and
  - (b) if the officer completed a form of warrant under subsection (2)(b), the completed form of warrant.
- (5) Despite subsection (3), if—

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(a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and

(b) the original warrant is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.

(6) This section does not limit section 73.

## **77 Defect in relation to a warrant**

(1) A warrant is not invalidated by a defect in—

(a) the warrant; or

(b) compliance with this subdivision;

unless the defect affects the substance of the warrant in a material particular.

(2) In this section—

*warrant* includes a duplicate warrant mentioned in section 76(3).

## **78 Entry procedure**

(1) This section applies if an authorised officer is intending to enter a place under a warrant issued under this subdivision.

(2) Before entering the place, the authorised officer must do or make a reasonable attempt to do the following things—

(a) identify himself or herself to a person who is an occupier of the place and is present by producing the officer's identity card or another document evidencing the officer's appointment;

(b) give the person a copy of the warrant;

(c) tell the person the officer is permitted by the warrant to enter the place;



- (d) give the person an opportunity to allow the officer immediate entry to the place without using force.
- (3) However, the authorised officer need not comply with subsection (2) if the officer reasonably believes that entry to the place without compliance is required to ensure the execution of the warrant is not frustrated.
- (4) In this section—  
*warrant* includes a duplicate warrant mentioned in section 76(3).

## **Division 3                      General powers of authorised officers after entering places**

### **79            Application of division**

- (1) The powers under this division may be exercised if an authorised officer enters a place under section 68(1)(a) or (c).
- (2) However, if the authorised officer enters under section 68(1)(a) or (c), the powers under this division are subject to any conditions of the consent or terms of the warrant.

### **80            General powers**

- (1) The authorised officer may do any of the following (each a *general power*)—
  - (a) search any part of the place;
  - (b) inspect, examine or film any part of the place or anything at the place;
  - (c) take for examination a thing, or a sample of or from a thing, at the place;
  - (d) place an identifying mark in or on anything at the place;
  - (e) take an extract from, or copy, a document at the place, or take the document to another place to copy;

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- (f) produce an image or writing at the place from an electronic document or, to the extent it is not practicable, take a thing containing an electronic document to another place to produce an image or writing;
  - (g) take to, into or onto the place and use any person, equipment and materials the officer reasonably requires for exercising the officer's powers under this part;
  - (h) remain at the place for the time necessary to achieve the purpose of the entry.
- (2) The authorised officer may take a necessary step to allow the exercise of a general power.
  - (3) If the authorised officer takes a document from the place to copy it, the officer must copy the document and return it to the place as soon as practicable.
  - (4) If the authorised officer takes from the place an article or device reasonably capable of producing a document from an electronic document to produce the document, the officer must produce the document and return the article or device to the place as soon as practicable.
  - (5) In this section—
    - examine* includes analyse, test, account, measure, weigh, grade, gauge and identify.
    - film* includes photograph, videotape and record an image in another way.
    - inspect*, a thing, includes open the thing and examine its contents.

## 81 Power to require reasonable help

- (1) The authorised officer may make a requirement (a *help requirement*) of an occupier of the place or a person at the place to give the officer reasonable help to exercise a general power under section 80, including, for example, to produce a document or to give information.

- (2) When making the help requirement, the authorised officer must give the person an offence warning for the requirement.
- (3) In this section—  
*offence warning*, for a requirement by an authorised officer, means a warning that, without a reasonable excuse, it is an offence for the person of whom the requirement is made not to comply with it.

## **82 Offence to contravene help requirement**

- (1) A person of whom a help requirement has been made must comply with the requirement unless the person has a reasonable excuse.  
Maximum penalty—75 penalty units.
- (2) It is a reasonable excuse for an individual not to comply with a help requirement if complying might tend to incriminate the individual or expose the individual to a penalty.
- (3) In this section—  
*help requirement* see section 81(1).

## **Division 4 Other information-obtaining powers of authorised officers**

### **83 Power to require information or attendance**

- (1) This section applies if an authorised officer reasonably believes—
  - (a) an offence against this Act has been committed; and
  - (b) a person may be able to give information about the offence.
- (2) The authorised officer may, by notice given to the person, require the person to—
  - (a) give the officer information related to the offence by a stated reasonable time; or

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- (b) attend before the officer at a stated reasonable time and place to answer questions, or produce documents, related to the offence.
- (3) For information that is an electronic document, compliance with the requirement requires the giving of a clear image or written version of the electronic document.
- (4) In this section—  
*information* includes a document.

#### **84 Offence to contravene information or attendance requirement**

- (1) A person of whom a requirement is made under section 83(2)(a) must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—

- (a) for an individual—40 penalty units; or
- (b) for a corporation—100 penalty units.
- (2) For subsection (1), it is a reasonable excuse for an individual not to give the information if giving the information might tend to incriminate the individual or expose the individual to a penalty.
- (3) A person of whom a requirement is made under section 83(2)(b) must not fail, without reasonable excuse, to—
  - (a) attend as required by the notice; and
  - (b) continue to attend as required by the authorised officer until excused from further attendance; and
  - (c) answer a question the person is required to answer by the officer; and
  - (d) produce a document the person is required to produce by the notice.

Maximum penalty—

- (a) for an individual—40 penalty units; or

- (b) for a corporation—100 penalty units.
- (4) For subsection (3), it is a reasonable excuse for an individual to fail to answer a question or produce a document if answering the question or producing the document might tend to incriminate the individual or expose the individual to a penalty.

## **Division 5                    Miscellaneous provisions relating to authorised officers**

### **Subdivision 1            Damage**

#### **85            Duty to avoid inconvenience and minimise damage**

In exercising a power, an authorised officer must take all reasonable steps to cause as little inconvenience, and do as little damage, as possible.

*Note—*

See also section 87.

#### **86            Notice of damage**

- (1) This section applies if—
  - (a) an authorised officer damages something when exercising, or purporting to exercise, a power; or
  - (b) a person (the *assistant*) acting under the direction or authority of an authorised officer damages something.
- (2) However, this section does not apply to damage the authorised officer reasonably considers is trivial or if the officer reasonably believes—
  - (a) there is no-one apparently in possession of the thing; or
  - (b) the thing has been abandoned.

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- (3) The authorised officer must give notice of the damage to a person who appears to the officer to be an owner, or person in control, of the thing.
- (4) However, if for any reason it is not practicable to comply with subsection (3), the authorised officer must—
  - (a) leave the notice at the place where the damage happened; and
  - (b) ensure it is left in a conspicuous position and in a reasonably secure way.
- (5) The authorised officer may delay complying with subsection (3) or (4) if the officer reasonably suspects complying with the subsection may frustrate or otherwise hinder the performance of the officer's functions.
- (6) The delay may be only for so long as the authorised officer continues to have the reasonable suspicion and remains in the vicinity of the place.
- (7) If the authorised officer believes the damage was caused by a latent defect in the thing or other circumstances beyond the control of the officer or the assistant, the officer may state the belief in the notice.
- (8) The notice must state—
  - (a) particulars of the damage; and
  - (b) that the person who suffered the damage may claim compensation under section 87.
- (9) In this section—

***person in control***, of a thing, includes any person who reasonably appears to be, claims to be, or acts as if he or she is, the person in possession or control of the thing.

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## Subdivision 2 Compensation

### 87 Compensation

- (1) A person may claim compensation from the State if the person incurs loss because of the exercise, or purported exercise, of a power by or for an authorised officer.
- (2) The compensation may be claimed and ordered in a proceeding—
  - (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
  - (b) for an alleged offence against this Act the investigation of which gave rise to the claim for compensation.
- (3) A court may order the payment of compensation only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (4) In considering whether it is just to order compensation, the court must have regard to any relevant offence committed by the claimant.
- (5) A regulation may prescribe other matters that may, or must, be taken into account by the court when considering whether it is just to order compensation.
- (6) Section 85 does not provide for a statutory right of compensation other than as provided by this section.
- (7) In this section—

*loss* includes costs and damage.

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### **Subdivision 3      Other offences relating to authorised officers**

#### **88      Obstructing authorised officer**

- (1) A person must not obstruct an authorised officer exercising a power, or someone helping an authorised officer exercising a power, unless the person has a reasonable excuse.

Maximum penalty—75 penalty units.

- (2) If a person has obstructed an authorised officer, or someone helping an authorised officer, and the officer decides to proceed with the exercise of the power, the officer must warn the person that—

- (a) it is an offence to cause an obstruction unless the person has a reasonable excuse; and  
(b) the officer considers the person's conduct an obstruction.

- (3) In this section—

*obstruct* includes assault, hinder, resist, attempt to obstruct and threaten to obstruct.

#### **89      Impersonating authorised officer**

A person must not impersonate an authorised officer.

Maximum penalty—75 penalty units.

## **Part 5                      Miscellaneous provisions**

#### **90      Evidentiary aids**

- (1) This section applies to a legal proceeding under this Act.  
(2) The authority of the following to do anything under this Act must be presumed unless a party to the proceeding, by reasonable notice, requires proof of it—



- (a) the personalised transport ombudsman;
  - (b) an officer;
  - (c) an authorised officer.
- (3) A certificate purporting to be signed by the personalised transport ombudsman and stating any of the following matters is evidence of the matter—
- (a) a stated document is 1 of the following things made or given under this Act—
    - (i) an appointment or decision;
    - (ii) a notice or requirement;
    - (iii) a report, or an extract from a report;
  - (b) a stated document is a copy of a thing mentioned in paragraph (a);
  - (c) on a stated day, a stated person was given a stated notice under this Act;
  - (d) on a stated day, a stated requirement was made of a stated person.

## **91 Disclosure by chief executive (transport)**

A chief executive (transport) may give the personalised transport ombudsman information obtained or kept by the chief executive (transport) under a transport Act for the purpose of the ombudsman performing the ombudsman's functions.

## **92 Delegations**

- (1) The personalised transport ombudsman may delegate the ombudsman's functions under this Act, other than the ombudsman's powers under part 4 as an authorised officer, to an appropriately qualified officer.
- (2) If a function of the personalised transport ombudsman is delegated to an officer, the officer may subdelegate it only—

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- (a) if the delegation permits the subdelegation; and
  - (b) to an appropriately qualified officer.
- (3) In this section—  
*functions* includes powers.

### **93 Giving false or misleading information**

- (1) A person must not, in relation to the administration of this Act, give the personalised transport ombudsman, an officer or an authorised officer information the person knows is false or misleading in a material particular.  
Maximum penalty—100 penalty units.
- (2) Subsection (1) applies to information given in relation to the administration of this Act whether or not the information was given in response to a specific power under this Act.
- (3) Subsection (1) does not apply to a person if the person, when giving information in a document—
- (a) tells the personalised transport ombudsman, officer or authorised officer, to the best of the person’s ability, how the document is false or misleading; and
  - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

### **94 Confidential information not to be disclosed**

- (1) This section applies to a person who—
- (a) is or has been engaged in the administration of this Act; or
  - (b) obtains confidential information in the course of, or because of—
    - (i) an inquiry under section 33 about a personalised transport complaint; or
    - (ii) an investigation of a personalised transport complaint.

- 
- (2) The person must not—
- (a) make a record of the confidential information; or
  - (b) whether directly or indirectly, disclose the confidential information to another person; or
  - (c) use the confidential information.

Maximum penalty—

- (a) for a person other than an official—
    - (i) if the person is an individual—40 penalty units; or
    - (ii) if the person is a corporation—100 penalty units;  
or
  - (b) for an official—200 penalty units.
- (3) However, subsection (2) does not apply if the record is made, or the confidential information is disclosed or used—
- (a) for a purpose under this Act; or
  - (b) for confidential information in a conduct report or investigation report—for a purpose under the *Transport Operations (Passenger Transport) Act 1994*; or
  - (c) with the consent of the person to whom the confidential information relates; or
  - (d) for an official—to protect the health, safety or security of a person or property; or
  - (e) as authorised or required by law.

- (4) In this section—

**conduct report** see section 44(1).

**confidential information** means information, other than information that is publicly available—

- (a) about a person's personal affairs or reputation; or
- (b) that would be likely to damage the commercial activities of a person to whom the information relates.

**official** means—

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- (a) the chief executive; or
- (b) a chief executive (transport); or
- (c) the personalised transport ombudsman; or
- (d) a public service officer.

## **95 Protection from liability**

- (1) The personalised transport ombudsman does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to the personalised transport ombudsman, the liability instead attaches to the State.

*Note—*

For protection from civil liability in relation to State employees, see the *Public Service Act 2008*, section 26C.

## **95A Matters for annual report**

The annual report under the *Financial Accountability Act 2009* in relation to the office, for a financial year, must include—

- (a) details of the number of personalised transport complaints received and how the personalised transport ombudsman dealt with those complaints, including—
  - (i) the number of complaints the ombudsman investigated; and
  - (ii) the number of complaints the ombudsman refused to investigate or continue to investigate; and
  - (iii) the number of complaints that were withdrawn; and
  - (iv) the number of complaints referred to the chief executive (transport) under section 38; and

- (v) the number of complaints for which alternative dispute resolution was used; and
- (b) information about systemic issues, identified by the ombudsman, arising from personalised transport complaints; and
- (c) details of the matters prescribed by regulation.

## **96 Review of Act and operations of office**

- (1) The Minister must complete a review of the effectiveness of this Act and the operation of the office within 3 years after the commencement.
- (2) The Minister must table in the Legislative Assembly a report on the outcome of the review as soon as practicable after the review is completed.

## **97 Regulation-making power**

The Governor in Council may make regulations under this Act.

# **Part 6 Transitional provision**

## **98 Pre-commencement matters may be dealt with**

- (1) A personalised transport complaint may be made and dealt with under this Act even if the matter raised in the complaint arose before the commencement.
- (2) This section applies subject to sections 35, 36 and 40(3).

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## **Part 7                      Amendment of Acts**

### **Division 1                      Amendment of this Act**

#### **99      Act amended**

This division amends this Act.

#### **100     Amendment of long title**

Long title, from ‘, and to amend’—  
*omit.*

### **Division 2                      Amendment of Integrity Act 2009**

#### **101     Act amended**

This division amends the *Integrity Act 2009*.

#### **102     Amendment of sch 1 (Statutory office holders for section 72C)**

Schedule 1—  
*insert—*

*Personalised Transport Ombudsman Act 2019*

- the personalised transport ombudsman

### **Division 3                      Amendment of Public Service Act 2008**

#### **103     Act amended**

This division amends the *Public Service Act 2008*.

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**104 Amendment of sch 1 (Public service offices and their heads)**

Schedule 1—

*insert—*

Office of the Personalised Transport  
Ombudsman under the *Personalised  
Transport Ombudsman Act 2019*

personalised transport  
ombudsman under the  
*Personalised Transport  
Ombudsman Act 2019*

**Division 4 Amendment of Tobacco and Other  
Smoking Products Act 1998**

**105 Act amended**

This division amends the *Tobacco and Other Smoking  
Products Act 1998*.

**106 Amendment of s 26ZKB (Person must not smoke at or  
near public transport waiting point)**

Section 26ZKB(4), ‘2005’—

*omit, insert—*

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**Division 5 Amendment of Transport  
Infrastructure Act 1994**

**107 Act amended**

This division amends the *Transport Infrastructure Act 1994*.

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**108 Amendment of s 377C (Operating public passenger service under agreement)**

Section 377C(3), ‘2005, part 8’—

*omit, insert—*

2018, part 10

**Division 6 Amendment of Transport Operations (Passenger Transport) Act 1994**

**Subdivision 1 Preliminary**

**109 Act amended**

This division amends the *Transport Operations (Passenger Transport) Act 1994*.

**Subdivision 2 Amendments commencing on assent**

**110 Amendment of s 91G (Transfer of taxi service licence between taxi service areas)**

(1) Section 91G(1)(c)—

*omit.*

(2) Section 91G(2) and (3), ‘or (c)’—

*omit.*

**111 Amendment of s 91ZI (What is a *relevant driver offence*)**

Section 91ZI(2)(b)—

*omit, insert—*



- (b) either—
  - (i) while the driver is driving a taxi, booked hire vehicle or limousine; or
  - (ii) while the driver is providing a taxi service or booked hire service.

**112 Amendment of s 91ZW (Annual taxi industry security levy payable)**

Section 91ZW(8), definition *CPI percentage increase*—  
*omit, insert*—

*CPI percentage increase*, for a financial year (the *current financial year*), means the percentage increase in the CPI between the following quarters—

- (a) the March quarter for the financial year ending 2 years before the end of the current financial year;
- (b) the March quarter for the financial year ending 1 year before the end of the current financial year.

**113 Amendment of s 128 (Power to require information from certain persons)**

Section 128(1)(b)—  
*omit, insert*—

- (b) the offence relates to—
  - (i) the construction, operation, maintenance or repair of a vehicle or a railway; or
  - (ii) the provision of a public passenger service; and

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## 114 Amendment of s 153B (Facilitation of proof—general)

(1) Section 153B(1)(b)—

*insert—*

- (iv) at a particular time, a person did, or did not, hold operator accreditation;
- (v) at a particular time, a person did, or did not, hold driver authorisation;
- (vi) at a particular time, a person did, or did not, hold operator accreditation to provide a particular kind of public passenger service;
- (vii) at a particular time, a person did, or did not, hold driver authorisation to drive a vehicle to provide a particular kind of public passenger service;
- (viii) at a particular time, a particular compliance plate was, or was not, on a motor vehicle; and

(2) Section 153B—

*insert—*

- (1A) In a proceeding for an offence against relevant transport legislation relating to the provision of a public passenger service, the defendant bears the evidential burden of proving the service is a public passenger service excluded from this Act by regulation under the definition *public passenger service*.

(3) Section 153B(2)—

*insert—*

***relevant transport legislation*** see section 69.

(4) Section 153B(1A) and (2)—

*renumber* as section 153B(2) and (3).

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**115 Omission of ch 12, pt 4 (Other provision)**

Chapter 12, part 4—

*omit.*

**116 Amendment of sch 3 (Dictionary)**

- (1) Schedule 3, definitions *non-State school*, *NSW taxi*, *school student* and *State school*—

*omit.*

- (2) Schedule 3—

*insert—*

***compliance plate*** means a plate authorised to be placed on a motor vehicle, or taken to have been placed on a motor vehicle, under the *Motor Vehicle Standards Act 1989* (Cwlth).

***NSW taxi*** means a motor vehicle used to provide a taxi service—

- (a) under the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* (NSW); or
- (b) under a taxi licence continued in force under schedule 2, section 3 of that Act.

***school student*** means a school student attending, as a student—

- (a) a State school under the *Education (General Provisions) Act 2006*; or
- (b) an accredited school under the *Education (Accreditation of Non-State Schools) Act 2017*.

- (3) Schedule 3, definition *category C driver disqualifying offence*, paragraph (e), ‘2005’—

*omit, insert—*

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### **Subdivision 3 Amendments commencing by proclamation**

#### **117 Replacement of s 12 (What is operator accreditation)**

Section 12—

*omit, insert—*

##### **12 What is operator accreditation**

*Operator accreditation* is an accreditation that authorises the holder of the accreditation to provide, as an operator, a public passenger service of a particular kind.

#### **118 Replacement of s 15 (Duty of operator)**

Section 15—

*omit, insert—*

##### **15 Operator must hold operator accreditation**

- (1) A person must not provide, as an operator, a public passenger service unless the person holds operator accreditation for the service.

Maximum penalty—

- (a) if the person does not hold operator accreditation—160 penalty units; or
- (b) if the person holds operator accreditation to provide a public passenger service other than the public passenger service provided by the person—20 penalty units.
- (2) Subsection (1) does not apply to a person providing, as an operator, a public passenger service if the service is—
- (a) not provided on a road; or
- (b) provided using a light rail vehicle; or

- (c) prescribed by regulation as a service to which this section does not apply.

**119 Amendment of s 22A (Operator accreditation is evidence of being the operator)**

Section 22A(b)—

*omit, insert—*

- (b) holds operator accreditation;

**120 Replacement of s 24 (What is driver authorisation)**

Section 24—

*omit, insert—*

**24 What is driver authorisation**

*Driver authorisation* is an authorisation that authorises the holder of the authorisation to drive a vehicle to provide a public passenger service of a particular kind.

**121 Replacement of s 27 (Driver must hold appropriate authorisation)**

Section 27—

*omit, insert—*

**27 Driver must hold driver authorisation**

- (1) A person must not drive a vehicle to provide a public passenger service unless the person holds driver authorisation for the service.

Maximum penalty—

- (a) if the person does not hold driver authorisation—

- (i) for a first offence—100 penalty units;  
or

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- (ii) for a second or later offence—200 penalty units;

*Note—*

See sections 150B and 150C in relation to the application of the penalty for this subsection.

- (b) if the person holds driver authorisation to provide a public passenger service other than the public passenger service provided by the person—20 penalty units.
- (2) Subsection (1) does not apply to a person driving a vehicle to provide a public passenger service if the service is—
- (a) not provided on a road; or
  - (b) provided using a light rail vehicle; or
  - (c) prescribed by regulation as a service to which this section does not apply.

### **27A Person must use drivers that hold driver authorisation**

- (1) A person must not provide a public passenger service unless the person uses a driver who holds driver authorisation for the service.

Maximum penalty—

- (a) if the driver does not hold driver authorisation—160 penalty units; or
  - (b) if the driver holds driver authorisation to provide a public passenger service other than the public passenger service provided by the driver—20 penalty units.
- (2) For subsection (1), a person provides a public passenger service if the person—
- (a) is an operator of the service; or

- (b) for a booked hire service—provides a booking service for the service.
- (3) Subsection (1) does not apply to a person providing a public passenger service if the service is—
  - (a) not provided on a road; or
  - (b) provided using a light rail vehicle; or
  - (c) prescribed by regulation as a service to which this section does not apply.

**122 Replacement of ch 11A, hdg (Fare evasion and other offences)**

Chapter 11A, heading—

*omit, insert—*

**Chapter 11A Payment of fares  
and directions and  
offences**

**123 Amendment of s 143AA (Definitions for ch 11A)**

- (1) Section 143AA, definition *fare*—

*omit.*

- (2) Section 143AA—

*insert—*

*fare evasion provision* means a provision of a regulation that creates an offence about fare evasion in relation to the use or hire of a public passenger vehicle.

[s 124]

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**124 Replacement of s 143AB (When does a person evade payment of a fare)**

Section 143AB—

*omit, insert—*

**143AB Regulation may provide for matters relating to payment of fares**

- (1) A regulation may provide for a matter relating to the payment of a fare in relation to the use or hire of a public passenger vehicle.
- (2) Without limiting subsection (1), a regulation may—
  - (a) prescribe offences for fare evasion in relation to the use or hire of a public passenger vehicle; or
  - (b) enable a driver or authorised person to request that a person—
    - (i) produce evidence that the person is not contravening, or has not contravened, a fare evasion provision; or
    - (ii) produce evidence of the person's entitlement to a concession fare for the person's use or hire of a public passenger vehicle.
- (3) In this section—

*fare*, for a taxi, includes an amount a taxi driver may charge a person under a regulation for cleaning a taxi soiled by the person.

**125 Omission of s 143AC (Fare evasion)**

Section 143AC—

*omit.*



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**126 Omission of ss 143ADA and 143ADB**

Sections 143ADA and 143ADB—

*omit.*

**127 Amendment of s 143AG (Direction to leave, or not to enter, vehicle)**

(1) Section 143AG(1)(c), from ‘section 143AC’—

*omit, insert—*

section 143AE or a fare evasion provision prescribed by regulation.

(2) Section 143AG(3) and (5)—

*omit.*

(3) Section 143AG(4)—

*renumber* as section 143AG(3).

**128 Amendment of s 143AHA (Power to require person to leave public transport infrastructure if person committing particular offences)**

(1) Section 143AHA(4), definition *relevant provision*, paragraph (a)—

*omit.*

(2) Section 143AHA(4), definition *relevant provision*—

*insert—*

(ca) a fare evasion provision prescribed by regulation; or

(3) Section 143AHA(4), definition *relevant provision*, paragraphs (b) to (ca)—

*renumber* as paragraphs (a) to (c).

[s 129]

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## **129 Replacement of s 143C (Unclaimed credit on smartcards)**

Section 143C—

*omit, insert—*

### **143C Unclaimed credit in passenger accounts**

- (1) This section applies in relation to a passenger account that is in credit, including credit of a deposit paid in relation to the account.
- (2) The chief executive may, with the Minister's approval, use the credit in the passenger account for an objective of this Act mentioned in section 2 if, in the previous 5 years, no transaction has been recorded on the account.
- (3) Subsection (2) does not affect a person's right to a refund of the credit in the person's passenger account.
- (4) The *Public Trustee Act 1978*, section 102B does not apply in relation to the credit in the passenger account.
- (5) In this section—

*passenger account* means an account with the department held by a person for the purpose of paying a fare for the use or hire of a public passenger vehicle.

## **130 Insertion of new s 148BB**

After section 148BA—

*insert—*

### **148BB Information sharing in relation to entitlements to concession fares**

- (1) The chief executive may enter into an arrangement with a relevant entity for sharing or exchanging information held by the chief executive or relevant entity.

- (2) The arrangement may relate only to information about whether a person is entitled to a concession fare for the person's use or hire of a public passenger vehicle.
- (3) In this section—
- public passenger vehicle* does not include a booked hire vehicle, limousine or taxi.
- relevant entity* means—
- (a) an educational institution; or
  - (b) an entity of the State, another State or the Commonwealth; or
  - (c) another entity prescribed by regulation.

### 131 Amendment of s 153B (Facilitation of proof—general)

- (1) Section 153B(1)(b)—

*insert—*

- (ix) at a particular time, a stated authorised person was trained and authorised to use a revenue protection device;
- (x) at a particular time, a stated ticket or other item was electronically read or scanned by a revenue protection device, and a stated document is a record or report of the reading or scan;
- (xi) at a particular time, a stated amount was the fare payable for the use of a relevant public passenger service for a stated journey; and

- (2) Section 153B(1)—

*insert—*

- (e) a certificate purporting to be signed by the chief executive stating that, at a particular time, a stated motor vehicle had a particular characteristic or other attribute is evidence

[s 132]

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of the matter, and, in the absence of evidence to the contrary, is proof of the matter; and

- (f) a document purporting to be a record of a matter stated on a compliance plate is evidence of the matter and, in the absence of evidence to the contrary, is proof of the matter.

(3) Section 153B(3)—

*insert—*

***relevant public passenger service*** means a public passenger service provided under an agreement that—

- (a) is entered into—
- (i) under this Act by the chief executive; or
  - (ii) under the *Transport Infrastructure Act 1994* by the Minister administering that Act; and
- (b) requires the operator of the service to charge fares set or decided by the chief executive.

***revenue protection device*** means an instrument—

- (a) that can be used to electronically read or scan a ticket or other item for the purpose of determining whether a person is contravening, or has just contravened, a fare evasion provision; and
- (b) that is prescribed by regulation.

## 132 Amendment of s 154 (Attempt to commit offence)

Section 154(3), from ‘under’—

*omit, insert—*

against section 143AD or a fare evasion provision

---

prescribed by regulation.

**133 Amendment of s 154A (Direction to pay operator the penalty recovered for fare evasion etc.)**

Section 154A(1), ‘, ticket or ticket concession’—

*omit, insert—*

or ticket

**134 Insertion of new ch 13, pt 20**

Chapter 13—

*insert—*

**Part 20 Transitional provision  
for Personalised  
Transport Ombudsman  
Act 2019**

**218 Proceedings for particular offences**

- (1) This section applies if a person is alleged to have committed an offence against any of the following provisions before the commencement—
  - (a) former section 143AC;
  - (b) former section 143ADA;
  - (c) former section 143ADB.
- (2) Without limiting the *Acts Interpretation Act 1954*, section 20, a proceeding for the offence may be continued or started, and the person may be punished for the offence, as if the *Personalised Transport Ombudsman Act 2019*, sections 125 and 126 had not commenced.
- (3) Subsection (2) applies despite the Criminal Code, section 11.

[s 135]

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(4) In this section—

*former*, in relation to a provision, means as in force before the commencement.

### 135 Amendment of sch 3 (Dictionary)

(1) Schedule 3, definitions *evade payment of a fare, smartcard, tag off, tag on and ticket*—

*omit.*

(2) Schedule 3—

*insert*—

*driver authorisation* see section 24.

*fare evasion provision* see section 143AA.

*operator accreditation* see section 12.

(3) Schedule 3, definition *relevant offence*, paragraph (b)—

*omit, insert*—

(b) for chapter 11, part 4B or 4C, means—

(i) an offence against a relevant provision as defined in section 143AHA(4); or

(ii) an offence against section 143AC as in force before the commencement of the *Personalised Transport Ombudsman Act 2019*, section 125.

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## Schedule 1      Dictionary

### section 6

**authorised officer** means a person who holds office under part 4, division 1, subdivision 1 as an authorised officer.

**booked hire service** see the *Transport Operations (Passenger Transport) Act 1994*, section 71.

**chief executive (passenger transport)** means the chief executive of the department in which the *Transport Operations (Passenger Transport) Act 1994* is administered.

**chief executive (transport)** means—

- (a) the chief executive (passenger transport); or
- (b) the chief executive of the department in which the *Transport Operations (Road Use Management) Act 1995* is administered.

**complainant**, for a personalised transport complaint, means the person who makes the complaint to the personalised transport ombudsman.

**identity card**, for a provision about an authorised officer, means an identity card issued under section 63.

**investigation report** see section 45(2).

**notice** means written notice.

**occupier**, of a place, includes the following—

- (a) if there is more than 1 person who apparently occupies the place—any 1 of the persons;
- (b) any person at the place who is apparently acting with the authority of a person who apparently occupies the place;
- (c) if no-one apparently occupies the place—any person who is an owner of the place.

**of**, a place, includes at or on the place.

***office*** means the office of the personalised transport ombudsman established under section 25.

***officer*** means an officer of the office mentioned in section 27.

***party***, to a personalised transport complaint, means—

- (a) the complainant; and
- (b) the person the subject of the complaint; and
- (c) another person the personalised transport ombudsman reasonably considers has a sufficient interest in the matter raised in the complaint.

***personalised transport complaint*** see section 8.

***personalised transport ombudsman*** means the personalised transport ombudsman appointed under section 9.

***personalised transport service*** see section 7.

***place*** includes the following—

- (a) premises;
- (b) vacant land;
- (c) a place in Queensland waters;
- (d) a place held under more than 1 title or by more than 1 owner;
- (e) the land or water on or in which a building or other structure, or a group of buildings or other structures, is situated.

***premises*** includes—

- (a) a building or other structure; and
- (b) a part of a building or other structure; and
- (c) a caravan or vehicle; and
- (d) a cave or tent; and
- (e) premises held under more than 1 title or by more than 1 owner.

***spent conviction*** means a conviction—



- (a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
- (b) that is not revived as prescribed by section 11 of that Act.

**taxi service** see the *Transport Operations (Passenger Transport) Act 1994*, section 70.

**transport Act** means—

- (a) the *Transport Operations (Passenger Transport) Act 1994*; or
- (b) the *Transport Operations (Road Use Management) Act 1995*.

**vehicle**—

- (a) means a vehicle under the *Transport Operations (Road Use Management) Act 1995*; and
- (b) includes a vessel under that Act.

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