Parliamentary Committees

Transport Legislation (Road Safety and Other Matters) Amendment Bill 2019

Report No. 19, 56th Parliament

Transport and Public Works Committee

April 2019

Transport and Public Works Committee

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Acknowledgements

The committee acknowledges the assistance provided by the Department of Transport and Main Roads.

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Abbreviations

ATSILS	Aboriginal and Torres Strait Islander Legal Service
BAC	Blood/Breath Alcohol Concentration
BCC	Brisbane City Council
BIEP	Brief Intervention Education Program
FAS	Financial Assistance Scheme
GBRMPA	Great Barrier Reef Marine Park Authority
LGAQ	Local Government Association of Queensland
LSA	*Legislative Standards Act 1992*
OQPC	Office of the Queensland Parliamentary Counsel
QCAT	Queensland Civil and Administrative Tribunal
QCCL	Queensland Council of Civil Liberties
QLS	Queensland Law Society
QTA	Queensland Trucking Association
QTOP	Queensland Traffic Offenders Program
RACQ	Royal Automobile Club of Queensland
ROEP	Repeat Offender Education Program
TI Act	*Transport Infrastructure Act 1994*
TMR	Department of Transport and Main Roads
TORUM Act	*Transport Operations (Road Use Management) Act 1995*
TWU	Transport Workers Union

Chair's foreword

This report presents a summary of the Transport and Public Works Committee's examination of the Transport Legislation (Road Safety and Other Matters) Amendment Bill 2019.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

The committee has recommended that the Bill be passed. The committee also has made one additional recommendation that an amendment be made to the Bill to include the definition of the sigma symbol - ∑ - which is included in clause 39.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill. I also thank our Parliamentary Service staff and the Department of Transport and Main Roads for their assistance.

I commend this report to the House.

Shane King MP

Chair

Recommendations

1 Introduction

1.1 Role of the committee

The Transport and Public Works Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 15 February 2018 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.[1]

The committee's primary areas of responsibility are:

- Transport and Main Roads
- Housing, Public Works, Digital Technology and Sport.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles, and
- for subordinate legislation – its lawfulness.

The Transport Legislation (Road Safety and Other Matters) Amendment Bill 2019 (Bill) was introduced into the Legislative Assembly and referred to the committee on 13 February 2019. The committee was required to report to the Legislative Assembly by 5 April 2019.

1.2 Inquiry process

On 15 February 2019, the committee invited stakeholders and subscribers to make written submissions on the Bill. Five submissions were received. Refer Appendix A for a list of submissions

The committee received a public briefing about the Bill from the Department of Transport and Main Roads (TMR) on 25 February 2019. A transcript is published on the committee's web page. Refer Appendix B for a list of officials.

The committee received written advice from the department in response to matters raised in submissions.

The submissions, correspondence from the department, and transcript of the briefing are available on the committee's webpage.

1.3 Policy objectives of the Bill

The Bill will amend the following legislation:

- *Heavy Vehicle National Law Act 2012*
- *Traffic Regulation 1962*
- *Transport Infrastructure Act 1994* (TI Act)
- *Transport Infrastructure (Dangerous Goods by Rail) Regulation 2018*
- *Transport Operations (Marine Pollution) Act 1995* (TOMP Act)
- *Transport Operations (Road Use Management) Act 1995* (TORUM Act)
- *Transport Operations (Road Use Management – Dangerous Goods) Regulation 2018*
- *Transport Operations (Road Use Management – Driver Licensing) Regulation 2010*
- *Transport Planning and Coordination Act 1994*

[1] *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

- *State Penalties Enforcement Act 1999*

The explanatory notes advise the purpose of the Bill is to:

- enhance the Interlock Program
- introduce alcohol education programs for drink driving offenders including a Brief Intervention Education Program (BIEP) and a Repeat Offender Education Program (ROEP)
- ensure point-to-point camera enforcement can apply on lengths of road where there are multiple speed limits displayed
- ensure mobile camera speed enforcement can apply on lengths of road governed by variable speed limit signs
- apply the alcohol and drug testing regime in the TORUM Act to persons suspected of interfering with the operation of a vehicle dangerously under section 328A of the *Criminal Code*
- clarify evidentiary provisions to support the prosecution of offences relating to placard loads of dangerous goods in tunnels
- allow the State to, if requested by particular entities, recover the entities' reasonable costs and expenses incurred while assisting with a marine pollution incident
- allow a person issued an infringement notice for a camera detected offence to notify they were not the offending driver and to nominate the actual offender by an online process
- allow a court to sentence a person who has pleaded guilty to a charge of drug driving before the laboratory test results are known
- clarify that if a person has been disqualified from holding or obtaining a driver licence by a court in another Australian State or Territory, their Queensland driver licence is cancelled from the date the person became disqualified
- ensure driver licensing decisions are subject to internal review before proceeding to the Queensland Civil and Administrative Tribunal (QCAT)
- clarify the operation of existing cumulative driver licence disqualification provisions
- allow a person who is disqualified from holding or obtaining a driver licence because of an interstate Interlock Program to obtain a Queensland driver licence subject to the Queensland Interlock Program
- update existing evidentiary provisions in the TORUM Act (by consolidating and restructuring) and providing for new evidentiary certificates for use in court proceedings
- move provisions about exemptions from dangerous goods requirements into regulations and align one of those exemptions with a minor change made to national model dangerous goods legislation
- include a head of power to allow heavy vehicle inspection fees to be included in a Queensland regulation to allow them to be subject to Queensland's normal annual indexation process rather than a separate manual process
- provide for evidentiary certificates in the TI Act to confirm the identity of a toll road operator or local government tollway operator and the existence of a Road Franchise Agreement (or concession deed) for the relevant toll road
- broaden the definition of 'official' in the TI Act
- clarify what activities, structures or things are considered to be 'ancillary works and encroachments'

- provide that a person making an application under the TI Act can do so using an approved form or via the online system
- enable the chief executive to publish a notice on the department's website, rather than the current gazettal process, to exempt certain activities, structures and things from approval under the TI Act where the applicant conforms to the requirements stated in a notice for the structure, activity or thing
- clarify that a local government can exercise its powers on a state-controlled road under the *Local Government Act 2009*, *City of Brisbane Act 2010* and TORUM Act
- allow a postal address to be provided when nominating a person as the person in charge of a vehicle when a camera detected office is committed
- remove an obsolete references, update definitions, renumbering and section references.[2]

1.4 Consultation on the Bill

The first stage of consultation on the Bill occurred in early 2017 with the release of the Drink Driving Discussion Paper, which:

> *canvass[ed] a range of options for reducing drink driver reoffending, including education reforms and enhancements to the Interlock Program. It attracted over 3,000 survey responses and 9 written submissions from interested stakeholder groups. All proposals received majority support.*[3]

In regards to the Interlock Program and education program amendments, TMR consulted with Royal Automobile Club of Queensland (RACQ), Queensland Council of Civil Liberties (QCCL), the Queensland Law Society (QLS), the Queensland Trucking Association (QTA), the Transport Workers Union (TWU), Transurban and the Local Government Association of Queensland (LGAQ).[4]

Feedback from these organisations included:

> *The QTA and LGAQ supported the changes. No issues were raised by the TWU and QCCL. The RACQ indicated support for the changes but queried the cost of the BIEP which was at that time unconfirmed. The cost of the BIEP has now been confirmed at $10. The QLS raised concern about the extension of the interlock period to five years, the cost impact on low income earners and access to programs in regional areas. In response, TMR advised that the interlock period extension to five years is consistent with other jurisdictions, financial assistance is available to low income earners for the Interlock Program and exemptions are available where remoteness prevents a person participating in either the interlock or education programs.*[5]

In regard to the head of power for fees for heavy vehicle inspections, TMR consulted with the National Heavy Vehicle Regulator, QTA, RACQ, QCCL and QLS. All organisations either supported the proposed amendment or did not raise any issues.[6]

[2] Explanatory notes, pp 3, 4, 5, 6.

[3] Explanatory notes, p 12.

[4] Explanatory notes, p 12.

[5] Explanatory notes, p 12.

[6] Explanatory notes, p 12.

In relation to consultation on the marine pollution amendments, the explanatory notes state:

> *… the Great Barrier Reef Marine Park Authority (GBRMPA) and the LGAQ were supportive of the amendments allowing the State to recover discharge expenses on behalf of prescribed entities. The GBRMPA was also supportive of the other marine pollution amendments. The Australian Maritime Safety Authority did not raise any concerns about the marine pollution amendments.*[7]

In regard to amendments to the TI Act, TMR consulted with 'relevant industry and stakeholder groups including the LGAQ, Cross River Rail Development Authority, Brisbane City Council and Transurban Queensland' with all parties indicating their support for the amendments.[8]

Other consultation undertaken:

> *In relation to the remaining issues consultation was undertaken with the RACQ, QCCL and the QLS. The amendments were either supported, or no issues were raised, or, if issues were raised, they have been resolved through the provision of additional information.*
>
> *In addition, the QTA, TWU, Transurban and LGAQ were consulted on the amendments relating to placard loads, use of postal addresses for nominations, dangerous goods exemptions and the removal of the definition of court. The changes were either supported or no issues were raised.*[9]

The committee notes that several submitters raised some of the same concerns again during the committee's inquiry. These are discussed in section 2 of the report.

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

After examination of the Bill, including consideration of the policy objectives to be implemented, stakeholders' views and information provided by the department, the committee recommends that the Bill be passed.

Recommendation 1

The committee recommends the Transport Legislation (Road Safety and Other Matters) Amendment Bill 2019 be passed.

[7] Explanatory notes, p 12.

[8] Explanatory notes, p 13.

[9] Explanatory notes, p 13.

2 Examination of the Bill

This section discusses issues raised during the committee's examination of the Bill.

2.1 Drink driving

The Bill proposes to:

> *enhance the Interlock Program to encourage increased participation, align the Interlock Program with best practice programs to motivate drink drivers to separate their drinking from driving, and to introduce education programs for drink drivers*.[10]

In regard to the Interlock Program, TMR advised:

> *The program aims for long-term behaviour change by assisting participants to separate drinking and driving. A recent survey of Queenslanders found the interlock program was a key deterrent in drinking and driving. This bill makes amendments to introduce a performance based interlock program. This means that a person will not be able to have their interlock condition removed until they can show that they can separate their drinking from driving. If a person fails to comply with the performance criteria, which includes having a positive breath test during the last four months of their prescribed period, they will be subject to an automatic extension of four months. This will continue until a person can successfully separate their drinking from driving.*[11]

The Bill proposes to enhance the Interlock Program by:

- *introducing a performance-based program that requires people to demonstrate they have separated their drinking and driving to successfully complete the program;*
- *increasing the current two-year interlock period to five years, meaning a person cannot drive for five years if they choose not to participate in the Interlock Program. Extending the program will work with the new performance-based approach to the program to encourage more people to actively participate (rather than sitting it out) thereby increasing the opportunity for behaviour change;*
- *expanding the eligibility of offenders to require mid-range drink driving offenders to participate in the program; and*
- *maintaining access to restricted (work) licences for mid-range drink driving offenders who participate in the Interlock Program.*[12]

In relation to the proposed increase of the two-year interlock period to five years, TMR provided the following additional information:

> *Supporting a performance based interlock program, the amendment extended the current two-year interlock period—commonly known as the sit-out period—to five years. If a person chooses not to participate in the program, this amendment is important to influence offenders to participate in the performance based program.*[13]

[10] The Alcohol Ignition Interlock Program (Interlock Program) commenced in Queensland on 6 August 2010 to help convicted high risk drink driving offenders separate drinking from driving as they return to licensed driving. Explanatory notes, p 1. Explanatory notes, p 2.

[11] Public briefing transcript, Brisbane, 25 February 2019, p 1.

[12] Explanatory notes, p 3.

[13] Public briefing transcript, Brisbane, 25 February 2019, p 2.

In regard to proposed amendments relating to mid-range drink drivers, TMR provided further clarification:

> *The bill will also expand the interlock program to include mid-range drink-drivers, which is a BAC between .1 and .149. Mid-range drink-drivers account for more than a quarter of all offenders and have a crash risk up to 20 times greater than someone who has not had a drink. Therefore, the proposed legislative amendments require mid-range drink-driving offenders to be subject to the interlock program, promoting long-term behaviour change in a significant group of offenders. The bill also provides for those mid-range offenders who are eligible for restricted work licence to participate in the interlock program while holding a restricted work licence. The interlock related amendments are designed to promote increased and more effective participation in the interlock program, ultimately increasing safety on our roads.*[14]

The Bill also proposes to introduce alcohol education programs for drink driving offenders including a BIEP and a Repeat Offender Education Program (ROEP).[15]

The explanatory notes provide the following information about the programs:

> *The BIEP will be a one hour online brief intervention program designed to educate drink driving offenders to separate their drinking from driving. For a period of five years from conviction of a drink driving offence, the BIEP must be completed before a drink driving offender is eligible for a driver licence. The BIEP will only need to be completed once in a five-year period by an eligible participant.*
>
> *The ROEP will apply to any subsequent drink driving offence committed within a five-year period from conviction of the first offence. It will be an intensive, face-to-face program designed to teach repeat drink driving offenders about their alcohol consumption and how to separate drinking and driving. The ROEP must be completed before the person can have the interlock condition removed from their licence. The ROEP will only need to be completed once in a five-year period by an eligible participant.*[16]

2.1.1.1 *Stakeholder comments*

RACQ advised that it was 'generally comfortable with the proposed amendments'. In particular, RACQ was 'pleased to see' both a BIEP and a ROEP for drink drivers in Queensland as it had advocated for education programs like this previously. In regard to the ongoing operational costs of the ROEP, RACQ noted the intention that these costs would be fully funded via the Camera Detected Offence Program.[17] In regard to the BIEP fee, RACQ advised:

> *While there will be a one-off fee to access the BIEP of $10, RACQ does not find this to be excessive and we are not concerned about this costs to offenders.*[18]

The Queensland Traffic Offenders Program (QTOP), as a 'Court diversion program/road safety education program designed to protect the community from road trauma', also expressed support for the proposed introduction of alcohol education programs in Queensland for drink driving offenders.[19]

[14] Public briefing transcript, Brisbane, 25 February 2019, p 2.

[15] Explanatory notes, p 4.

[16] Explanatory notes, p 4.

[17] Submission 2, p 1.

[18] Submission 2, p 1.

[19] Submission 4, p 4.

Their own research and the people enrolled to date in their program demonstrate that QTOP maintains a 'recidivism rate of less than 2%.'[20]

However, QTOP stated that short programs are not as effective in changing behaviour as longer programs:

> *Studies demonstrate quick fix programs of 2-3 hours or 1-day programs do not assist in changing the mindset of offenders. Recently New South Wales legislation was amended to reflect that 1-day programs are no longer accepted in New South Wales Courts. All programs are extended in length for this same reason. Offenders need to absorb the information delivered to assist in behavioural change.*[21]

In response, TMR advised it—

> *… is currently working with academia to investigate the development of curriculum options for both programs. TMR will also investigate options for the delivery of the programs across Queensland.*[22]

QTOP also called for road safety education programs to be introduced into high schools:

> *We consistently deal with young drivers in the age group of 18-25 who are charged with traffic offences. This age bracket of offenders is 35% of our attendees. Road safety education together with driving hours should be mandatory as part of licensing for Learners/P Platers. This education will assist in the* [sic] *lowering the rate of offending in this age bracket.*[23]

QTOP suggested that first time offenders attend a full program to deter reoffending rather than the one hour online BIEP, which is 'designed to educate all first-time drink driving offenders about their alcohol consumption and how to separate drinking from driving'[24] as 'this can only alleviate a recidivist reoffending and being responsible for another fatality on our roads.'[25] However, TMR disagreed that shorter programs were not as effective:

> *The World Health Organisation identified Brief Interventions as the most effective and cost–effective evidence-based treatment methods. Requiring first time drink driving offenders to undertake the BIEP will provide them with knowledge and strategies to separate drinking and driving and avoid becoming a repeat offender.*[26]

While QTOP supports the interlock program for repeat offenders, they expressed surprise at the number of their clients who are not aware of the program. For this reason, QTOP recommended that the interlock program be advertised widely to the community.[27]

[20] Submission 4, p 1.

[21] Submission 4, p 2.

[22] Department of Transport and Main Roads, correspondence dated 21 March 2019, p 10.

[23] Submission 4, p 2.

[24] Department of Transport and Main Roads, correspondence dated 21 March 2019, p 10.

[25] Submission 4, p 4.

[26] Department of Transport and Main Roads, correspondence dated 21 March 2019, pp 10-11.

[27] Submission 4, p 4.

TMR agreed and advised the following in regard to its communication plans for first time offenders, as well as the general public:

> *TMR agrees with QTOP that individuals need to be aware of the consequences of committing a first or repeat drink driving offence. TMR will implement a comprehensive communications plan to ensure drink driving offenders are provided details of the enhanced Alcohol Ignition Interlock Program (Interlock Program) and requirements. The communication plan will also incorporate the provision of advice to the general public about the changes.*[28]

QTOP also advised that during its 'many discussions with Magistrates over the years', there have been queries as to why QTOP is not noted under section 82 of the TORUM Act.[29] In response, TMR advised it did not propose any amendments in this regard for the following reasons:

> *TMR notes that section 82 of the* Transport Operations (Road Use Management) Act 1995 *provides where a person is convicted before a court of a drink or drug driving offence (under section 79) then the court may order the offender to attend a training program. This legislation is not proposed to be amended in this Bill. The BIEP and ROEP will be administered by TMR and the current proposed legislation will ensure that eligible offenders will be required to complete the relevant education program. Ensuring all eligible offenders complete the relevant program will have the benefit of educating all offenders how to separate drinking and driving and should increase road safety outcomes.*[30]

<u>*Clauses 90 to 101 – Alcohol Ignition Interlocks*</u>

The Queensland Law Society (QLS/Society) expressed concern regarding clauses 90 to 101 of the Bill which seek to enhance the Interlock Program by increasing the current two-year interlock period to five years and expanding the eligibility of offenders to require mid-range drink drivers to participate in the program.[31] QLS stated that expanding the program beyond the current two years, 'which is not readily able to be "sat out" by an offender, is already a significant additional penalty for many people who commit relevant offences.'[32]

TMR provided the following response in support of increasing the interlock period to five years:

> *TMR notes QLS's concerns regarding the extension of the sit out period from two to five years. However, this amendment is vital to support the performance-based interlock program as if the period is not extended to five years it is possible that drink driving offenders will fall out of the program before they can separate their drinking from driving.*
>
> *Extending the two-year sit out period to five years will discourage drink drivers from not participating in the Interlock Program. There is evidence from other jurisdictions with mandatory Interlock Programs that their participation rates are much higher than Queensland. So, it is anticipated that extending the sit out period may increase active participation in the program. Participating in the Interlock Program effectively separates a person's drinking from driving and significantly reduces further drink*

[28] Department of Transport and Main Roads, correspondence dated 21 March 2019, p 11.

[29] Submission 4, p 4.

[30] Department of Transport and Main Roads, correspondence dated 21 March 2019, pp 11-12.

[31] Submission 3, p 4.

[32] Submission 3, p 4.

> *driving offences, whilst the interlock is fitted. It also encourages behaviour change by assisting drink drivers to learn to separate their drinking from their driving.*
>
> *Queensland is only one of three jurisdictions that allows a drink driver with an interlock requirement to 'sit out' the program. New South Wales has a five year sit out period and the Northern Territory has a three year sit out period. All other jurisdictions (Victoria, New South Wales, Tasmania, Western Australia and the Australian Capital Territory) have mandatory interlock programs (no sit out).*[33]

While supportive of efforts to reduce drink driving, QLS expressed reservations about the impact of these amendments on decreasing drink driving offences:

> *… the experience of our Criminal Law Committee members is that extending the interlock period will not deter habitual drink driving offenders from committing offences. Therefore, the program should not be extended to mid-range drink driving offenders. Further, there is no data or statistical basis to support the presumption that two-year period is inadequate. Therefore, the program should not be extended from two to five years.*[34]

TMR disagreed that the extension of the interlock program 'sit out' period from two to five years would be ineffectual for mid-range drink driving offenders and provided the following statistics:

> *TMR notes QLS's concerns regarding extending the Interlock Program to mid-range drink driving offenders. TMR supports extending the Interlock Program to mid-range drink driving offenders as it reflects the seriousness of committing an offence with a Blood/Breath Alcohol Concentration (BAC) of more than twice the legal limit. Driving with a BAC exceeding the middle alcohol range seriously increases a driver's relative crash risk by five to twenty times.*
>
> *Applying more requirements to those drink drivers who have higher BACs is justified by the involvement of middle range BAC drivers in road crash statistics. In the five years to 31 December 2017, almost 25 per cent of drink drivers involved in fatal crashes in Queensland had a middle range BAC reading and 30 per cent of drink drivers involved in hospitalisation crashes had a middle range BAC reading. In addition, drivers with a middle range BAC reading accounted for more than a quarter of drink driving offenders. This means drivers who are over the middle alcohol limit but not over the high alcohol limit (mid-range drink driving offenders) are a significant group of offenders that are not currently subject to the Interlock Program.*
>
> *Recent research commissioned by TMR concerning drink driving offenders found that the Interlock Program is a tangible deterrent.*[35]

QLS also advised it does not support the proposed amendments that would extend the Interlock Program to five years and include mid-range drink drivers as the program 'is already a regime that disadvantages defendants' and 'is not based on evidence or data to support the deterrent effect of the program.'[36] QLS specifically expressed concern about the impact of the proposed amendments relating to expanding the Interlock Program on low-income earners, self-represented defendants, and defendants in rural, regional, and remote areas.[37]

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[33] Department of Transport and Main Roads, correspondence dated 21 March 2019, p 7.

[34] Submission 3, p 4.

[35] Department of Transport and Main Roads, correspondence dated 21 March 2019, p 8.

[36] Submission 3, p 5.

[37] Submission 3, p 5.

In regard to the amendments to the Interlock Program potentially disadvantaging defendants, TMR advised it would 'allow those mid-range BAC offenders granted a restricted (work) licence by a court to serve their work licence and interlock period concurrently.'[38]

In relation to its concerns for low-income earners, QLS explained:

> *The proposed amendments will have significant and disproportionate impacts on low-income earners. The Interlock Program is a significant cost to the defendant. We understand the installation of the interlock device can cost in excess of $2,000 per fitting, excluding additional associated costs. The high fees associated with the fitting of interlock devices are not readily payable by many low-income earners who would not otherwise have access to the financial assistance scheme (or who otherwise would not adequately benefit from its support).*
>
> *The financial assistance scheme with respect to interlock fittings does not go far enough in supporting low-income earners in enabling the devices to be fitted. The eligibility requirements for such programs are quite stringent and does not cover the full fee in most situations.*[39]

QTOP also raised this as an issue and advised that 'many clients' had opted out of the program due to the expense.[40] TMR advised that financial assistance is available to low income earners 'to encourage them to participate in the Interlock Program'.[41]

In regard to eligibility and what the scheme covers, TMR advise:

> *The FAS has been established as a non-regulatory scheme to assist eligible low-income earners with the core costs of participating in the Interlock Program. The Henderson Poverty Line is used to determine eligibility. For those Interlock Program participants that are eligible for the FAS, the State covers 100 per cent of the minimum costs associated with completing the 12-month interlock period. This includes the costs for the fitment, rental and scheduled servicing, and the removal of an approved interlock device. The State covers these costs by making payments directly to the interlock provider on behalf of the Interlock Program participant.*
>
> *In addition, Australian government Health Care Card holders can receive a discount of 35 per cent directly from the interlock providers.*[42]

QLS stated the following in regard to implications of the proposed amendments on self-represented defendants:

> *In most Queensland locations, Legal Aid Queensland and ATSILS are not funded to offer duty lawyer services for transport offences. This means that while some Police Prosecutors and Magistrates explain some aspects of the Interlock Program to self-represented defendants, the Interlock Program is not explained to the vast majority of defendants by anyone during the court process. It is not until the person approaches the Department of Transport seeking to apply for their licence back, that the Interlock Program will be explained to the person. It is considered that the Magistrate should be required to explain the specifics and the costs involved with the Interlock Program at*

[38] Department of Transport and Main Roads, correspondence dated 21 March 2019, p 8.

[39] Submission 3, p 4.

[40] Submission 4, p 4.

[41] Department of Transport and Main Roads, correspondence dated 21 March 2019, p 11.

[42] Department of Transport and Main Roads, correspondence dated 21 March 2019, p 9.

> *the time of sentencing, as well as a written document which sets out the material for the defendant's information.*[43]

TMR responded that it would focus on a communication strategy so self-represented defendants had greater access to information about the Interlock Program:

> *TMR notes QLS's concerns regarding communications to drink driving offenders regarding the Interlock Program. TMR will develop and implement a communication strategy that will advise drink driving offenders of the new drink driving reforms once they are implemented.*[44]

Finally, in regard to defendants in rural, regional, and remote areas, QLS stated:

> *The Interlock Program poses several issues for defendants in rural, regional and remote areas. Firstly, accessibility to providers of interlock fittings is an issue. The Regulation provides for an exemption if the defendant is more than 150 kilometres away from the nearest interlock provider. However, how can a defendant, who is 100 kilometres away from the nearest provider, have their car fitted while unlicensed?*
>
> *Secondly, access to employment is an issue. Defendants in rural, regional and remote areas are often entirely dependent on their driver licences to perform their work. Without their licenses, they are likely to suffer adverse consequences in their access to employment and suffer social and economic hardship. The existing exemptions present a high bar for defendants to meet and often involves a complex process that is usually navigated without legal aid assistance. The 'severe hardship' provision also does not extend to hardship in getting themselves or a family member to/from work or study.*[45]

TMR advised that 'the current exemptions framework is sufficient to support those in regional and remote areas of Queensland':

> *The Interlock Program has been operating in Queensland since 2010 with the current exemption framework which includes providing exemptions for persons that live outside a 150km radius from the nearest interlock installer's place of business. TMR has established an Interlock Processing Unit that assists customers, including those from regional and remote areas, concerning all aspects of the Interlock Program.*

In regards to the Bill's provisions relating to the Interlock Program, TMR concluded:

> *Research supports Interlock Programs. Several systematic reviews of the effectiveness of alcohol ignition interlocks have been undertaken. The reviews found that alcohol ignition interlocks are effective at preventing re-offending while installed. Therefore, the more drink drivers that participate in the program the better the road safety outcomes.*[46]

[43] Submission 3, p 4.

[44] Department of Transport and Main Roads, correspondence dated 21 March 2019, p 9.

[45] Submission 3, p 5.

[46] Department of Transport and Main Roads, correspondence dated 21 March 2019, pp 9-10.

2.1.2 Speeding

The Bill proposes to ensure point-to-point speed camera systems can be deployed on stretches of road with multiple speed limits as well as addressing 'speed limits for camera enforcement on lengths of road where there are variable speed limit signs installed'. The explanatory notes advise this is to address the issue of speeding which 'continues to be a significant factor in crashes' and that currently 'point-to-point camera systems are only able to be used on lengths of road where there is a single speed limit, restricting the ability to apply them to roads where there is a known crash risk.'[47] Importantly, TMR advised that:

> *[p]oint-to-point cameras have been found more effective at reducing speeding over longer stretches of road than is the case for either fixed or mobile cameras*.[48]

TMR advised the following in regard to demonstrating how the point-to-point camera enforcement as proposed in the Bill could be applied on lengths of road where multiple speed limits are displayed:

> *This could apply, for example, on managed motorway environments where variable speed limit signs are used or where a speed limit has been reduced on a section of road due to road works. In these circumstances the speed limit enforced will be the highest speed limit for the length of road, or where it is practical to calculate it, the average speed limit as calculated by a formula.*[49]

2.1.2.1 Stakeholder comments

In regard to clause 39 of the Bill which would allow speed limits to be applied for camera detected offences on lengths of road where there are multiple and/or variable speed limits,[50] Brisbane City Council (BCC) expressed support for:

> *… legislative amendments that allow for increased effectiveness in the use of camera enforcement of speed limits as a measure to encourage increased compliance in locations where variable or reduced speed limits have been implemented to improve road safety, particularly of vulnerable road users*.[51]

BCC also noted:

> *It is understood that the alternative speed limits outlined in the Bill will not alter the ability for on-road police officers to apply the signed speed limit to a driver on a road that is also monitored by cameras*.[52]

2.1.3 Other road safety issues

The Bill proposes to:

> *apply the relevant parts of the alcohol and drug testing requirements to persons suspected of interfering with the operation of a vehicle dangerously to enhance the accuracy of information for courts when sentencing offenders*.'[53]

[47] Explanatory notes, p 2.

[48] Public briefing transcript, Brisbane, 25 February 2019, p 2.

[49] Explanatory notes, p 4.

[50] Explanatory notes, pp 17-18.

[51] Submission 5, p 1.

[52] Submission 5, p 3.

[53] Explanatory notes, p 2.

The Bill will achieve this by applying the alcohol and drug testing regime in the TORUM Act to persons suspected of interfering with the operation of a vehicle dangerously under section 328A of the *Criminal Code*.[54]

The Bill also proposes to address issues relating to the offence of driving a motor vehicle with a placard load in a tunnel that has a placard load prohibition sign installed as per section 84A of the TORUM Act. Currently, the cameras that detect these offences are limited 'in the extent they can capture an image of a single vehicle or vehicle combination.'[55]

In addition, the Bill proposes the following amendments to clarify 'evidentiary provisions to support the prosecution of offences relating to placard loads of dangerous goods in tunnels':[56]

> *the Bill will require persons intending to challenge the evidence produced by a camera system to notify the prosecution in advance to ensure prosecutors have sufficient time to prepare for a court hearing and call necessary witnesses. It is also proposed to clarify the term 'official' for the purpose of signing evidentiary certificates for these offences.*[57]

TMR advised:

> *The Bill will also allow a person issued with an infringement notice for a camera detected offence to notify they were not the offending driver and to nominate the actual offender using an online process*.[58]

The Bill also seeks to:

> *clarify that if a person has been disqualified from holding or obtaining a driver licence by a court in another Australian State or Territory, their Queensland driver licence is cancelled from the date the person became disqualified*.[59]

The Bill also proposes to amend section 151 of the TORUM Act regarding the transport of certain dangerous goods by:

> *… removing detailed provisions that exempted the transport of certain dangerous goods from the application of chapter 5A to instead provide that chapter 5A does not apply to 'prescribed exempt transport'. Clause 44 also inserts new section 151AA which defines 'prescribed exempt transport' to mean the transport of dangerous goods that is prescribed by regulation as exempt from the application of chapter 5A.*
>
> *Clause 45 amends section 152 to provide that a regulation may be made which prescribes when the transport of stated types of dangerous goods in certain circumstances is 'prescribed exempt transport'.*[60]

[54] Explanatory notes, p 4.

[55] Explanatory notes, p 2.

[56] Explanatory notes, p 4.

[57] Explanatory notes, pp 3-4.

[58] Public briefing transcript, Brisbane, 25 February 2019, p 2.

[59] Explanatory notes, p 5.

[60] Explanatory notes, p 18.

2.1.3.1 Stakeholder comments

Clause 35 - alcohol and drug testing

QLS expressed its support for Clause 35 which seeks to amend section 80 of the TORUM Act to allow the alcohol and drug testing provisions to be applied to persons suspected of, or arrested for, interfering with the operation of a motor vehicle dangerously under section 328A of the *Criminal Code*. The clause also seeks to amend section 80 to ensure a court can sentence a person who pleads guilty for driving while a relevant drug is present in blood or saliva, even if the results of the person's laboratory test are not known. However, QLS called for the inclusion of an 'appropriate safeguard':[61]

> *Such a safeguard should specify that the defendant should not be disadvantaged if they insist on the proper test (because the initial test is only indicative) – either in terms of credit for an early plea or costs.*[62]

TMR advised:

> *TMR notes that QLS suggests an inclusion of a safeguard for those that plead guilty early for driving while a relevant drug is present, even if the results of the person's laboratory test are not known. TMR believes there is no requirement to add a safeguard as there are no changes to the evidentiary process. The defendant can rely on the current process to safeguard them from being disadvantaged. All defendants' specimens will continue to be processed by a laboratory, despite any plea of guilty, and the subsequent production of evidential certificates will be completed.*[63]

Clauses 36 to 38 - placard loads in tunnels

Currently, it is an offence to drive a motor vehicle with a placard load[64] in a tunnel that has a placard load prohibition sign installed. The Bill would allow for amendments to section 84A of the TORUM Act to extend the evidentiary provisions for camera detected offences involving dangerous goods in tunnels. The explanatory notes state:

> *For camera detected offences involving dangerous goods in tunnels, the Bill allows evidence in the form of an image to be taken to mean particular things and requires a person to advise of their intention to contest camera evidence. Amendments will also require a defendant to notify their intention to contest information in the new evidentiary certificate about the calculation of the average speed limit.*[65]

BCC expressed support for these amendments:

> *The proposed amendments regarding placard loads in tunnels align with Council's operations. As the asset owner of a number of major road tunnels, Council acknowledges the need for effective enforcement and prosecution to ensure adequate deterrence of placard loads travelling through tunnels to ensure public safety and the protection of highly valuable public transport assets. Amending legislation to allow evidentiary requirements to be able to be met with existing camera systems, rather than requiring potentially costly upgrades to equipment that is still functional, is a practical and cost-effective alternative.*[66]

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[61] Submission 3, p 2.

[62] Submission 3, p 2.

[63] Department of Transport and Main Roads, correspondence dated 21 March 2019, p 2.

[64] A placard load is a load of dangerous goods that exceeds a threshold quantity: Brisbane City Council, submission 5, p 4.

[65] Explanatory notes, p 10.

[66] Submission 5, p 1.

Clause 41 – cancellation of Queensland driver licence

QLS also sought clarification on the intention of clause 41 of the Bill which seeks to:

- amend section 127 of the TORUM Act to allow for the automatic cancellation of a Queensland driver licence if the holder has been disqualified by any Australian court, and
- allow a person disqualified in another jurisdiction to obtain a Queensland licence subject to an interlock condition, after they have finished the court ordered period of disqualification.[67]

QLS stated:

> *Clause 41 attempts to remedy a situation where persons from Queensland are intercepted in NSW and charged with drink driving related offences. In NSW, the mandatory periods of disqualification are significantly higher than in Queensland. However, the NSW legislation provides that if a person takes part in the interlock program (which can be done during the disqualification period) they can obtain a licence within a significantly shorter period.*
>
> *While many persons voluntarily accept the conditions, they soon find that NSW will not recognise the Queensland interlock course/program, nor can they take part in the NSW program. Therefore, the persons must serve the five-year disqualification period based solely on the fact that they resided in Queensland.*
>
> *However, the drafting of Clause 41 does not allow a person to obtain a Queensland driver licence subject to an interlock condition, until after they have finished the court ordered period of disqualification. This means that the Queensland driver will still be disqualified for five years. If so, this will not solve the problem described in the preceding paragraphs.*[68]

TMR provided the following clarification:

> *The additions of sub-sections 127(7A) and 127(13A) to TORUM provide that a person who is subject to a* non-Queensland interlock requirement *can apply to obtain a Queensland driver licence subject to a Queensland interlock condition.*
>
> *A* non-Queensland interlock requirement *is defined in TORUM (see section 91I) to mean a requirement under a law of another jurisdiction allowing a person to drive only a motor vehicle fitted with an alcohol ignition interlock during a particular period.*
>
> *As an example, the* Road Transport Act 2013 *(NSW) provides that a person convicted of a relevant drink driving offence is subject to a mandatory interlock order which has the effect of: (a) imposing a compulsory disqualification period of between 1 and 12 months, depending on the severity of offence; and (b) imposing a further 5-year disqualification period that prevents the person from holding a driver licence, other than a learner or interlock licence, unless the person has completed the requirements of an interlock program.*
>
> *A person who has served their compulsory disqualification period but is still subject to the requirements of (b), above, would meet the definition of being subject to a* non-Queensland interlock requirement*.*

[67] Submission 3, p 3.

[68] Submission 3, p 3.

> *Therefore, the proposed amendments will allow a person to reapply for a Queensland driver licence subject to an interlock condition once they have served the compulsory disqualification period described at (a), above. This affords Queensland driver licence holders who are convicted of relevant drink driving offences in other States and Territories, and who are disqualified due to the requirements of an interstate interlock program, the same opportunities to re-enter the driver licensing system and participate in an interlock program as those convicted in Queensland.*
>
> *This means, for example, that a Queensland resident who is unable to participate in the NSW interlock program (due to residency requirements) is not required to wait five years until being able to participate in the Queensland interlock program.*[69]

QLS also noted:

> *… that with respect to existing Queensland licence disqualifications, which are either absolute disqualifications or disqualifications in excess of a two-year period, an applicant in Queensland has the right to lift the balance of this disqualification period under section 131(2).*[70]

In this regard, QLS recommended:

> *… that provision be made for applicants who are subject to like interstate disqualification to be given the same avenue in line with Queensland legislation to allow the interstate disqualification to be lifted.*[71]

In response, TMR advised:

> *Section 131(2) of TORUM provides that a person who has been disqualified from holding or obtaining a Queensland driver licence, by operation of law or an order, for a period of more than 2 years, may, after 2 years from the start of the disqualification period, apply for the disqualification to be removed.*
>
> *This provision already applies to a Queensland licence holder who is disqualified by an interstate court. Section 7 of the* Acts Interpretation Act 1954 *defines law to include that of another State or Territory. The proposed inclusion of subsection 127(3A) TORUM will not impact the application of this provision.*[72]

Clauses 44 and 45 – exemption of the transport of certain goods

BCC expressed support for amendments that would allow regulations to prescribe exemptions from requirements about the transport of dangerous goods, 'as this will assist in ensuring consistent application of dangerous good exemptions across jurisdictions.'[73] BCC explained further:

> *The Bill proposes amendments that allow regulations to prescribe exemptions from requirements about the transport of dangerous goods based on national model legislation. The model legislation is developed and maintained by the National Transport Commission in consultation with industry and government in each state and territory.*

[69] Public briefing transcript, Brisbane, 25 February 2019, pp 4-5.

[70] Submission 3, p 3.

[71] Submission 3, p 3.

[72] Public briefing transcript, Brisbane, 25 February 2019, p 5.

[73] Submission 5, p 1.

> *Due to the changing and technical nature of dangerous goods exemptions, the model legislation provides for exemptions to be prescribed by regulation. All other Australian states and territories have adopted this approach, allowing amendments to these exemptions to be readily adopted to maintain national consistency in the requirements for transporting dangerous goods across interstate borders. Placing the exemptions in regulations rather than primary legislation, will align Queensland with the national model legislation and facilitate the ready adoption of amendments to exemptions in Queensland.*[74]

Clause 54 – grounds for amending, suspending or cancelling licences

Clause 54 proposes to amend section 125 of the Transport Operations (Road Use Management—Driver Licensing) Regulation 2010. This amendment:

> *is consequential on the amendment in the Bill made to section 127 of the Act which provides that if a person has been disqualified from holding or obtaining a driver licence in another State, each Queensland driver licence held by the person is automatically cancelled. This amendment means that it will no longer be necessary for the chief executive to invite the holder of the licence to demonstrate why their Queensland driver licence should not be cancelled. The amendment in this clause therefore excludes from the grounds for which the 'show cause' process applies, that a person has been disqualified from driving in another state.*[75]

While QLS agrees that the show cause procedure is redundant and should be removed, it is their view that:

> *the driver should be provided with some notice so that they know (a) they are not licensed to drive in Queensland and (b) that their continued possession of the licence is an offence*.[76]

TMR provided the following assurance regarding notifying drivers of license disqualification:

> *Amendments to section 124 of the* Transport Operations (Road Use Management—Driver Licensing) Regulation 2010 *remove the requirement for the chief executive to issue a show cause notice to a Queensland licence holder, when they have been disqualified from holding or obtaining a licence in another state and subsequently their Queensland driver licence is cancelled.*
>
> *However, TMR can confirm that a notice will be provided to a Queensland licence holder who has had their licence cancelled due to an interstate disqualification under the proposed subsection 127(3A) of TORUM. This is consistent with current administrative process.*[77]

[74] Submission 5, p 3.

[75] Explanatory notes, p 20.

[76] Submission 3, p 4.

[77] Public briefing transcript, Brisbane, 25 February 2019, p 6.

2.1.4 Marine pollution

The Bill proposes amendments to the *Transport Operations (Marine Pollution) Act 1995* (TOMP Act) in relation to marine pollution and the ability of the State to recover the costs and expenses incurred in responding to a marine pollution incident:

> *When there is a marine pollution incident, a range of agencies and entities respond in accordance with the* Queensland Coastal Contingency Action Plan *(QCCAP). Under QCCAP, with the approval or guidance of a relevant Incident Controller, local entities, local governments and Commonwealth government entities have specific roles or can be called on to assist. These entities are not directly paid for their contribution but there is an expectation they will be able to recover their reasonable costs consistent with international conventions. Under the* Transport Operations (Marine Pollution) Act 1995 *(TOMP Act), where a port authority or port operator assists in an incident, the State is currently able to recover their reasonable costs and expenses on their behalf. However, other entities are required to take separate legal action to recover their costs. This Bill aims to enable the State to, on behalf of prescribed entities, recover the costs and expenses incurred in responding to a marine pollution incident.*[78]

2.1.5 Other amendments

For the purpose of improving efficiency and streamlining enforcement or administrative processes, the Bill proposes a number of administrative and technical enhancements or clarifications relating to 'restructuring evidentiary provisions, and amendments to cater for potential future uses of transport corridors.'[79]

2.1.5.1 Stakeholder comments

Clause 12 – local government powers for state-controlled roads

Clause 12 amends the *Transport Infrastructure Act 1995* (TI Act) to clarify that local government powers for a state-controlled road in its area are limited by the *Local Government Act 2009*, the *City of Brisbane Act 2010* and section 66 of the *Transport Operations (Road Use Management) Act 1995.*[80] The explanatory notes state:

> *This amendment makes clear that a local government can exercise the same powers on a state-controlled road that it can exercise for a local government road under a local law only if written agreement has been given by the chief executive under section 66 of the* Transport Operations (Road Use Management) Act 1995.[81]

BCC expressed its support for the amendments as follows:

> *Council supports the proposed amendment that clarifies the manner in which Council can exercise its powers, including those provided for under local laws, on State-controlled roads. Ensuring that there is clear governance arrangements in place regarding Council powers on State-controlled roads will allow for improved communication and understanding between both levels of government, and the public, with regard to Council's ability to exercise its powers in non-Council controlled road corridors.*[82]

[78] Explanatory notes, p 3.

[79] Explanatory notes, p 3.

[80] Explanatory notes, p 14.

[81] Explanatory notes, p 14.

[82] Submission 5, p 2.

Changes to evidentiary provisions

The Bill proposes several amendments 'to restructure, consolidate and refine the main evidentiary provisions in the TORUM Act.' The Bill

> *… also includes new evidentiary provisions, such as new section 124AA which allows an inspection certificate to be admissible in proceeding as evidence of the matters stated in the certificate. The Bill also allows additional matters for which evidence can be provided by certificate.*[83]

BCC was supportive of these amendments, stating:

> *The proposed amendments will consolidate these existing provisions to remove overlap and ensure consistency. The Bill includes several amendments to restructure, consolidate and refine the main evidentiary provisions in the TORUM Act. The Bill also allows additional matters for which evidence can be provided by certificate.*
>
> *All the matters being dealt with by the evidentiary amendments are appropriate for certificate evidence. The information is either non-contentious, a matter of departmental record or objective in nature. Allowing evidence to be provided by certificate, promotes more efficient. and cost-effective court processes by reducing the need for prosecutors to call witnesses for matters that are not in dispute.*
>
> *Council recognises the benefits of the proposed amendments, as the ability to increase the number of matters dealt with through the provision of certificate evidence will streamline the evidentiary process and reduce the need for Council officers to attend court hearings to provide evidence in person.*[84]

Clauses 13 and 14 – evidentiary certificates to confirm identify of toll road operator

The Bill makes provision for evidentiary certificates in the TI Act to:

> *confirm the identity of a toll road operator or local government tollway operator and the existence of a Road Franchise Agreement (or concession deed) for the relevant toll road. Amendments will also allow an evidentiary certificate to outline how written notice was issued to a person by the toll road operator or local government tollway operator.*[85]

BCC expressed its support for the amendments*:*

> *Council is supportive of the amendments to allow for evidentiary certificates to confirm the identity of a local government toll road operator as it is considered they streamline the evidentiary processes when prosecuting a person for failing to comply with a demand notice relating to toll road usage.*[86]

[83] Explanatory notes, p 10.

[84] Submission 5, pp 4-5.

[85] Explanatory notes, p 5.

[86] Submission 5, p 1.

The Bill also proposes amendments to the TI Act to clarify the term 'official' for the purpose of signing evidentiary certificates for offences.[87] The amendment would broaden the definition of 'official' to also include an employee of an entity acting under the authority of a toll road operator.[88] BCC expressed its support:

> *Additionally, an amendment is to be made to the definition of 'official' as to who can provide the evidentiary certificate such that another entity that issues a notice on behalf of the toll road operator can legally do so.*
>
> *Council is supportive of these amendments as it is considered they streamline the evidentiary processes when prosecuting a person for failing to comply with a demand notice relating to toll road usage.*[89]

[87] Explanatory notes, p 3

[88] Explanatory notes, p 15.

[89] Submission 5, p 3.

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

The committee has examined the application of the fundamental legislative principles to the Bill. The committee brings the following to the attention of the Legislative Assembly.

3.1.1 Rights and liberties of individuals

Section 4(2)(a) of the *Legislative Standards Act 1992* requires that legislation has sufficient regard to the rights and liberties of individuals. The reasonableness and fairness of treatment of individuals is relevant in deciding whether legislation has sufficient regard to rights and liberties of individuals.

3.1.1.1 Clauses 35 and 39 – general impact of activities on individuals

Some provisions in the Bill have a general impact on the rights and liberties of the individual.

Summary of provisions

Clause 89 introduces education programs for drink drivers and changes to the interlock program which will impose additional obligations on drink drivers.

Clause 35 amends section 80 of the *Transport Operations (Road Use Management) Act 1995* (TORUM Act) to provide that the alcohol and drug testing provisions in the TORUM Act can extend in certain circumstances, to persons other than drivers, where they are suspected of, or arrested for, interfering with the operation of a motor vehicle dangerously under section 328A of the Criminal Code.

Issues of fundamental legislative principle

The explanatory notes acknowledge the issues of fundamental legislative principle involved and give this justification for clause 89:

> *These amendments aim to support long term behaviour change by assisting these persons to separate their drinking from driving. Exemptions for the ROEP [Repeat Offender Education Program] will be available to address circumstances where the person is legitimately unable to complete the requirements. With drink driving continuing to be a major factor in road fatalities and serious injury, these changes are justified in the interests of road safety*.[90]

Regarding the clause 35 amendment of section 80 of the TORUM Act, the explanatory notes state:

> *The amendments to allow relevant parts of the alcohol and drug testing scheme in the TORUM Act to apply to persons suspected of dangerously interfering with the operation of a vehicle under section 328A of the Criminal Code will mean that persons other than drivers may be required to provide specimens for testing and so impacts on individual rights and liberties. However, the amendments only apply if police have a reasonable suspicion that the person has interfered with the operation of a motor vehicle dangerously or there has been an incident resulting in death, injury or damage to property*.[91]

[90] Explanatory notes, p 7.

[91] Explanatory notes, p 7.

Committee comment

The committee is satisfied that any breach of fundamental legislative principle is justified, having regard to the objective of the Bill to enhance road safety.

3.1.1.2 Clauses 35, 77 and 78 – creation of new offences and penalties

Summary of provisions

Clause 35 inserts proposed section 80(11AA) in the TORUM Act. This creates an offence with a penalty of 40 penalty units or 6 months imprisonment where a person fails to provide a specimen when required.

Clause 77 and clause 78 set new penalty provisions for offences under sections 52 and 53 respectively of the TORUM Act for making a false online nomination for a camera detected offence or providing a false on line declaration document. The new maximum penalties are 60 penalty units or two years imprisonment.

Issue of fundamental legislative principle

The creation of new offences might breach the fundamental legislative principle that legislation has sufficient regard to the rights and liberties of the individual. Additionally, any penalty should be proportionate to the offence.

In relation to the proportionality of penalties, the Office of Queensland Parliamentary Counsel (OQPC) Notebook states:

> *In the context of supporting fundamental legislative principles, t*he desirable attitude should be to maximise the reasonableness, appropriateness and proportionality of the legislative provisions devised to give effect to policy
>
> *… Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other.*[92]

Regarding proposed section 80(11AA), the explanatory notes state:

> *The new offence and penalty are designed to ensure a person does not fail to provide a specimen in an effort to avoid the increased penalty that would apply under section 328A(2)(a) or (4)(b) of the Criminal Code. The penalty is consistent with the penalty for failing to provide a specimen of breath or saliva for a roadside test under section 80(5A). These amendments will assist in addressing unsafe road conduct and are justified in the interests of community and road safety.*[93]

Here, the penalty is consistent with the current provisions.

In relation to the penalties for sections 52 and 53, the explanatory notes give this justification:

> *When a camera detected offence is detected, notification is sent to the registered operator for the vehicle. If that person was not the driver they may nominate the actual driver, ensuring that the correct person is subject to the penalty. The online nomination amendments will make that process easier by removing the need for a statutory declaration (although that option will continue to be available). However, if a person makes a false nomination they not only avoid the penalty for the offence, they may falsely implicate another person. As a result, a potential term of imprisonment is considered proportionate to the gravity of the offence. It is noted that the offence of*

[92] Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 120.

[93] Explanatory notes, p 7.

> *providing a false declaration under section 194 of the Criminal Code currently has a maximum penalty of three years of imprisonment*.[94]

Committee comment

The committee concludes that the offences and associated penalties are justified, in the interest of road safety, and therefore any breach of fundamental legislative principle in relation to rights and liberties of individuals is justified.

3.1.1.3 Clauses 40 and 104 – Onus of proof

Section 4(3)(d) of the *Legislative Standards Act 1992* considers whether the Bill reverses the onus of proof in criminal proceedings without adequate justification.

Summary of provisions

There are numerous 'evidentiary provisions' in the Bill. Most of these provisions provide, broadly, that a signed certificate certifying to certain matters is to be taken as evidence of those matters, in the context of court proceedings. Some of these are completely new provisions, while others 'restructure, consolidate and refine'[95] existing provisions.

The explanatory notes give this background regarding the consolidated provisions:

> *In relation to the restructuring of the evidentiary provisions, there are currently two sections in the TORUM Act that deal with the majority of evidentiary matters for that Act (section 60 and section 124). This resulted from the progressive incorporation of the now repealed Traffic Act 1949 into the TORUM Act. Both sections have also been incrementally amended over time. The amendments will consolidate the existing provisions to remove overlap and ensure consistency. The amendments will also add to the list of positions and signatures on certificates that do not need to be proved*.[96]

Clause 40 inserts a new provision - section 124AA - in the TORUM Act, to provide that in a proceeding for an offence against a transport Act, a document purporting to be:

- a print-out of an inspection certificate issued electronically under a vehicle standards and safety regulation, or
- an inspection certificate issued manually under a vehicle standards and safety regulation.

is taken to be an inspection certificate of the type it purports to be and issued under the vehicle standards and safety regulation. Further, it is 'admissible as evidence of a matter stated in the document.'

Some of the consolidated provisions are mentioned below.

Clause 104 inserts various evidentiary provisions in the TORUM Act. New section 123R of the TORUM Act (replacing the current sections section 124(4) and (5)) will require defendants to notify of any intention to challenge the accuracy of a speed detection device or a vehicle speedometer accuracy indicator for which a certificate is given under the TORUM Act.

Amendments to section 120 of the TORUM Act require defendants to notify their intention to challenge particular evidentiary matters for camera detected offences. (As observed in the explanatory notes, this is consistent with existing provisions for camera detected offences.) Amendments to section 120 of the TORUM Act will similarly require defendants to notify their intention to challenge particular evidentiary matters for camera detected offences.

[94] Explanatory notes, p 7.

[95] Explanatory notes, p 10.

[96] Explanatory notes, p 10.

The explanatory notes state:

> These provisions ensure that the *prosecution* can organise necessary witnesses to attend court only when particular information is contested resulting in more efficient court processes.[97]

Clause 104 also inserts new section 123M, which goes further than an evidentiary provision, containing a more direct reversal of the onus of proof. (Note that it replicates and replaces the current section 124(1)(q)). It provides that in a proceeding under the Act the defendant bears the onus of proof that:

- a person, vehicle, tram, train, vessel or animal was at any time exempt from a provision of the Act.
- a provision of this Act was not applicable to a person, vehicle, tram, train, vessel or animal.

There are also various evidentiary provisions added to the TI Act regarding tolling offences. Details of offence provisions are contained in Appendix C.

Issue of fundamental legislative principle

Clauses which allow for the use of evidentiary certificates effectively reverse the onus of proof by placing the onus on a defendant to rebut the presumption established by the certificate. They therefore involve a breach of section 4(3)(d) of the *Legislative Standards Act 1992* which provides that legislation should not reverse the onus of proof in criminal matters without adequate justification. Legislation should not provide that it is the responsibility of a defendant in court proceedings to prove innocence.

Generally, for a reversal to be justified, the relevant fact must be something inherently impractical to test by alternative evidentiary means and where the defendant would be particularly well positioned to disprove guilt.[98]

QLS argues that clause 40 (proposed section 124AA in the TORUM Act) goes further than might be acceptable:

> *The intention of this proposed new section appears to allow the admissibility of inspection certificates without allowing any avenue for this to be rebutted. If this is the case, the Society would not support this amendment as it abrogates from the defendant's right to fair trial under the Act. It is essential that a defendant be given the right to rebut the assessment and challenge evidence which may be crucial to matters relating to the offence itself*. [99]

Some evidentiary provisions expressly state that a certificate shall be conclusive evidence of certain matters. These clauses have on occasion been the subject of criticism by parliamentary committees. Noting that here the clause does not expressly state that the certificate will be conclusive evidence, it is probable that the right to call rebuttal evidence is not removed.

The explanatory notes acknowledge the issue of fundamental legislative principle involved. In relation to the clauses regarding evidentiary certificates, the explanatory notes state:

> *All the matters being dealt with by the evidentiary amendments are appropriate for certificate evidence. The information is either non-contentious, a matter of departmental record or objective in nature. For example, the certificate to provide evidence of average speed limit calculations for section 120B of the TORUM Act will outline the distances between particular speed limit signs and how the average speed*

[97] Explanatory notes, p 11.

[98] Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 36.

[99] Submission 3, p 2.

> *limit was calculated. As another example, the evidentiary certificate to support the information provided on an online nomination for a camera detected offence will outline the information that is recorded by the online nomination system. Allowing this type of evidence to be provided by certificate promotes more efficient and cost-effective court processes by reducing the need for prosecutors to call witnesses for matters that are not in dispute*.[100]

In relation to the more explicit reversal of the onus, in new section 123M, the explanatory notes give this justification:

> *It is believed that the reversal is justified given that the matters to prove this are peculiarly within the defendant's knowledge and it would be difficult for the prosecution to prove these matters*.[101]

In summary:

> *Importantly, none of the evidentiary related amendments in this Bill prevent a defendant contesting the information provided by certificate or through an image under either the TORUM Act or TI Act and it is considered that any impact on fundamental legislative principles is justified*.[102]

In regard to the concerns QLS raised, TMR further advised:

> *As is the case with other evidentiary provisions in the Bill, a defendant may contest the evidence in the certificate – that is, the evidence in the certificate is rebuttable. (See Explanatory Notes, Fundamental Legislative Principles, final paragraph under the heading Rights and liberties – reverse onus of proof in criminal proceedings).*
>
> *The QLS comments are in keeping with the common law rules of evidence about documentary hearsay, namely that the author of a document is the only competent witness who can give evidence about the truth and reliability of the document.*
>
> *This evidentiary provision gives a statutory exception to the rule against documentary hearsay. The new provision could apply, for example, in a proceeding concerning allegedly false or misleading inspection certificates purportedly issued by approved examiners. Without this statutory exception, the common law would prohibit the prosecution from tendering the inspection certificate without it first being adopted by the approved examiner, who, in all cases will be the defendant who has a right to silence. The provision ensures that proceedings for alleged breaches of approved examiners' obligations under the Act can be brought before a Magistrate. Given the inherent trust that the public places upon approved examiners to accurately identify defective vehicles during safety inspection, the Department considers the departure from the common law to be justified. In the usual way, the approved examiner may challenge the accuracy and authenticity of the inspection certificate, but that can only occur after the inspection certificate has been tendered by the Prosecution.*
>
> *Finally, while the provision states that the inspection certificate is admissible in a proceeding as evidence of a matter stated in the document, the provision does not stipulate the weight that a court must give to that evidence.*[103]

[100] Explanatory notes, p 10.

[101] Explanatory notes, p 11.

[102] Explanatory notes, p 12.

[103] Public briefing transcript, Brisbane, 25 February 2019, pp 2-3.

Committee comment

The committee is satisfied that, on balance, the various instances of reversal of the onus of proof are justified in the circumstances.

3.1.1.4 Clause 89 – retrospectivity

Section 4(3)(g) of the LSA considers whether the Bill adversely affect rights and liberties, or impose obligations, retrospectively.

Summary of provisions

Clause 89 inserts new Part 3A in the TORUM Act to provide for education programs for drink drivers.

The amendments introduce a performance-based program to enhance the interlock program and to increase the interlock period from the current two years to five years. This means that a person who chooses not to participate in the interlock program will be unable to lawfully drive for a five year period (the 'sit out' period), rather than two years.

This provision will apply to any person who starts on an interlock program after commencement of the amendments, even if they committed the relevant drink driving related offence was committed prior to that commencement. In this sense, the amendments will have a retrospective operation.

Potential issue of fundamental legislative principle

Strong argument is required to justify an adverse effect on rights and liberties, or imposition of obligations, retrospectively.

The explanatory notes acknowledge the retrospective operation and justify the provisions in the Bill:

> *This approach is justified because the person would already be required to participate in the Interlock Program and the enhancements aim to improve road safety by supporting participants to separate their drinking from driving.*[104]

Committee comment

The committee considers that any retrospective effect of the amendments can be regarded as relatively minor, and is justified in the context of the policy objectives of those provisions.

3.1.1.5 Clause 39

Section 4(3)(k) of the LSA considers whether the Bill is unambiguous and drafted in a sufficiently clear and precise way.

Summary of provisions

Clause 39 inserts new section 120B in the *Transport Operations (Road Use Management) Act 1995* (TORUM Act). It includes this formula for calculating the average speed limit for a length of road between two points:

> *(4)The average speed limit for a length of road between 2 points is worked out using the following formula, and expressed in kilometres per hour rounded up to the next whole number—*

$$\frac{TD}{\sum\left(\frac{D}{S}, \text{for each speed limited part of the length of road}\right)}$$

[104] Explanatory notes, p 12.

where—

***D**, for a speed limited part of the length of road, is the shortest practicable distance, expressed in metres and rounded down to the next whole number, between the start and end of the part of the length of road.*

***S**, for a speed limited part of the length of road, is the speed limit, expressed in kilometres per hour, applying to the part of the length of road.*

***speed limited part**, of the length of road, is a part of the length of road to which a particular speed limit applies.*

***TD** is the total shortest practicable distance, expressed in metres and rounded down to the next whole number, between the 2 points.*

The (uppercase) sigma symbol - ∑ - (generally described as meaning 'sum' or summation) is not defined in the Bill.

Issue of fundamental legislative principle.

Legislation should be unambiguous and drafted in a sufficiently clear and precise way.[105] Plain English is recognised as the best approach to the use of language in legislation, with the objective to produce a law that is both easily understood and legally effective to achieve the desired policy objectives.[106]

Committee comment

As mentioned, the symbol ∑ is not defined in the Bill. More generally, it is probable that the formula is not readily understood, though it could be arguable whether any better formulation is available. Noting that clause 39 will have relevance in offence proceedings, the committee queries whether the formula is sufficiently well known or understood by the general population for no definition to be necessary.

In this regard, the committee recommends that the Bill include a definition for the symbol ∑.

Recommendation 2

The committee recommends the Transport Legislation (Road Safety and Other Matters) Amendment Bill 2019 be amended to include a definition for the symbol ∑ in regard to the formula in clause 39.

3.1.2 Institution of Parliament

Section 4(2)(b) of the LSA requires legislation to have sufficient regard to the institution of Parliament.

3.1.2.1 Clauses 17, 43, 89 and 101 – scrutiny by the Legislative Assembly

Summary of provisions

The Bill contains a number of provisions for matters to be made the subject of a regulation.

Clause 89 introduces new section 91H of the TORUM Act, which provides for a regulation to prescribe circumstances where the chief executive may be satisfied as to severe hardship for an application for an exemption from the ROEP.

Clause 101 amends section 91Z of the TORUM Act to provide for additional matters to be prescribed by regulation regarding interlocks – being the way a notice of an automatic extension of the prescribed period is given to a person, and the grounds for review of such an automatic extension.

[105] *Legislative Standards Act 1992*, section 4(3)(k).

[106] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, pp 87-88.

Clause 17 amends section 442 of the TI Act which will allow regulations to prescribe exemptions from requirements about the transport of dangerous goods based on national model legislation.

Clause 43 amends section 148 of the TORUM Act to allow a regulation to be made about fees for heavy vehicle inspections and inspection certificates.

Issue of fundamental legislative principle

Whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill allows the delegation of legislative power only in appropriate cases and to appropriate persons, and sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.[107]

In turn, are these *matters appropriate for inclusion in regulation?*

In relation to the various provisions, the explanatory notes provide the following justifications:

- proposed section 91H, allowing a regulation to prescribe circumstances for severe hardship:

  For drink drivers required to undertake the ROEP, limiting their ability to obtain a licence without an interlock condition when they are unable to complete their program due to severe hardship may be unjustly harsh. This regulation making power is designed to ensure exemptions can be applied practically and flexibly to take into account various hardship circumstances that may arise.[108]

- matters relating to interlocks:

  With interlock and communications technologies continually improving, allowing the method of notification to be prescribed by regulation provides for suitable flexibility to enable the most efficient process to be adopted.[109]

- regulations about dangerous goods and national based legislation:

  The model legislation is developed and maintained by the National Transport Commission in consultation with industry and government in each state and territory. Due to the changing and technical nature of dangerous goods exemptions, the model legislation provides for exemptions to be prescribed by regulation. Every other jurisdiction has adopted this approach, so that amendments to these exemptions can be readily adopted to maintain national consistency in the requirements for transporting dangerous goods across interstate borders. Placing the exemptions in regulations rather than primary legislation will align Queensland with the national model legislation and facilitate the ready adoption of amendments to exemptions in Queensland.[110]

- fees for heavy vehicle inspections and inspection certificates:

  Allowing these inspection and certificate fees to be included in a Queensland regulation will remove the dependency on the administrative arrangement (reducing the possibility of error or delays). It will also ensure the annual fee increases are regulated using the indexation policy applied to other fees in Queensland and that accurate up to date advice on fees is available to industry.[111]

[107] *Legislative Standards Act 1992,* section (4).

[108] Explanatory notes, p 8.

[109] Explanatory notes, p 8.

[110] Explanatory notes, p 8.

[111] Explanatory notes, p 8.

These subject matters are appropriate for inclusion in regulation. Any regulations made must be tabled in Parliament will be subject to disallowance.

Committee comment

The committee is satisfied that any breach of fundamental legislative principle is justified and that sufficient regard has been given to the Institution of Parliament.

3.2 Explanatory notes

Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill.

The notes are fairly detailed and contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins. However, it would be helpful if the explanatory notes identified the specific clauses being discussed, when identifying the fundamental legislative principles.

Appendix A – Submitters

Sub #	Submitter
001	Jason Kerr
002	RACQ
003	Queensland Law Society
004	Queensland Traffic Offenders Program
005	Brisbane City Council

Appendix B – Officials at public departmental briefing

Department of Transport and Main Roads

- Mr Andrew Mahon, General Manager, Transport Regulation, Customer Services, Safety and Regulation
- Mr Mike Stapleton, Deputy Director-General, Customer Services

Appendix C – Proposed new or amended offence provisions

[NOTE: ONE PENALTY UNIT = $130.55]

Clause	Offence	Proposed maximum penalty
35	**Amendment of s 80 (Breath and saliva tests, and analysis and laboratory tests)** Section 80, before subsection (11A) - (11AA) If a police officer makes a requisition under subsection (8), (8C) or (9) in relation to a person other than a person mentioned in subsection (11), and the person fails to provide as prescribed in this section - (a) a specimen of the person's breath for analysis by a breath analysing instrument; or (b) a specimen of the person's saliva for saliva analysis; or (c) a specimen of the person's blood for a laboratory test; the person commits an offence against this Act. Maximum penalty - 40 penalty units or 6 months imprisonment	$5,222 or 6 months imprisonment
67	**Replacement of s 50 (Ancillary works and encroachments)** Section 50 - omit, insert - (2) A person, other than the chief executive, must not construct, maintain, operate or conduct ancillary works and encroachments on a State-controlled road unless the construction, maintenance, operation or conduct - (a) is approved in writing by the chief executive; or (b) conforms to requirements stated in a notice made by the chief executive under subsection (4); or (c) is done as required by a written arrangement entered into with the chief executive; or (d) is approved under this Act, other than this section; or (e) is permitted under the L*and Act 1994, the Transport Operations (Road Use Management) Act 1995, the Economic Development Act 2012 or an Act about local government.* Example for paragraph (e) - *ancillary works and encroachments permitted under a local law made under the Transport Operations (Road Use Management) Act 1995, section 66* Maximum penalty - 200 penalty units.	$26,100
77	**Amendment of s 52 (False or misleading statements)** Section 52(2), penalty – omit, insert - Maximum penalty -	

	(a) if the statement relates to a heavy vehicle, a prescribed dangerous goods vehicle or the transport of dangerous goods -100 penalty units; or (b) if paragraph (a) does not apply and the statement is made in an online declaration under section 114 - 60 penalty units or 2 years imprisonment; or (c) otherwise - 60 penalty units.	$13,055 $7,833 or 2 years imprisonment $7,833
78	**Amendment of s 53 (False or misleading documents, generally)** Section 53(2), penalty - omit, insert - Maximum penalty - (a) if the document relates to a heavy vehicle, a prescribed dangerous goods vehicle or the transport of dangerous goods - 100 penalty units; or (b) if paragraph (a) does not apply and the document is, or is part of, an online declaration under section 114 - 60 penalty units or 2 years imprisonment; or (c) otherwise - 60 penalty units.	$13,055 $7,833 or 2 years imprisonment $7,833