

Holidays and Other Legislation Amendment Bill 2015

Explanatory Notes

Short title

The short title of the Bill is the *Holidays and Other Legislation Amendment Bill 2015*.

Policy objectives and the reasons for them

The policy objectives of the Holidays and Other Legislation Amendment Bill 2015 (the Bill) are:

- to give effect to the Government's pre-election commitment 'Honouring the real Labour Day' by restoring the Labour Day public holiday to the first Monday in May. The commitment also provided for the movement of the Queen's Birthday public holiday from June to October;
- to support the implementation of an online application service for high risk work (HRW) licences using electronic identity verification and the Department of Transport and Main Roads' (DTMR) digital bank of customer image sets and card production processes.

Public Holidays

In 2012, the then Labor Government moved the Queen's Birthday public holiday from the second Monday in June to the first Monday in October. This move responded to preferences expressed by the Queensland community.

From 2013, the then LNP Government moved the Labour Day public holiday from the first Monday in May (where it had been observed since 1891) to the first Monday in October and also moved the Queen's Birthday public holiday back to the second Monday in June.

On 17 March 2015, the Government announced that the Labour Day public holiday would be returned to its traditional date of the first Monday in May in 2016, in time for the 125th anniversary of the 1891 Shearers' Strike, and the Queen's Birthday would also be moved from the second Monday in June to the first Monday in October each year.

In addition to honouring the advancements of the labour movement in Queensland on a date of significance, the proposed movement of the Labour Day and Queen's Birthday public holidays spreads public holidays across the calendar similar to other States and Territories. The proposed arrangements will maintain some consistency with the other States and Territories in observing a public holiday in the second half of the year around October.

The maintenance of a holiday in the second half of the year also responds to the preferences expressed by the Queensland community. In September 2011, the then Labor Government conducted a review of the *Holidays Act 1983* and released a discussion paper – ‘Getting the balance right: A proposal on holidays in Queensland’ - inviting public comment on holiday arrangements in Queensland. The results of this public consultation process showed overwhelming support for shifting the Queen’s Birthday holiday from June to the second half of the year and to a Monday in October.

It is appropriate that the proposed changes do not commence until 2016 so that workers, industry and the community have prior notice and an opportunity to make alternative arrangements for any events already planned for the long weekends associated with the current dates of observance for Labour Day and the Queen’s Birthday.

HRW licence applications – using DTMR database

Under work health and safety laws across Australia, a HRW licence is required for persons operating certain high risk equipment such as cranes and forklifts, or performing scaffolding duties. HRW licensing ensures those who operate this type of equipment or perform these duties can do so safely and competently.

The amendments to support the implementation of an online application service for HRW licences will:

- streamline service delivery, achieve operational and financial efficiencies for government and improve the customer experience in obtaining HRW licences issued by the Office of Fair and Safe Work Queensland (OFSWQ);
- create a legislative scheme that contains sufficient flexibility so that additional types of government licences or authorities could be authorised by regulation in future to use the DTMR digital bank of customer image sets and card production processes, if so desired.

The reasons underpinning the policy objectives are:

- Currently, applications for the initial grant of HRW licences are processed by Australia Post as a service agent of OFSWQ. Accordingly, a person must attend an Australia Post outlet to lodge their application and have their identity verified by Australia Post staff.
- The requirement to lodge an application for a new HRW licence in person places a significant impost on customers, employers and government, both in terms of money and time.
- Effective use of existing government service delivery channels and technology can streamline the process for HRW licence applications, renewals and replacements, remove duplication, reduce costs for government and customers and improve the customer experience.

Achievement of policy objectives

Public Holidays

The Bill will achieve its objective by amending the *Holidays Act 1983* to provide that, commencing in 2016:

- Labour Day is to be moved from the first Monday in October to be observed on the first Monday in May; and
- the Birthday of the Sovereign (Queen's Birthday) is to be moved from the second Monday in June to be observed on the first Monday in October.

The Bill also makes a consequential amendment to the *Industrial Relations Act 1999* to ensure that the definition of 'public holiday' in that legislation reflects the new dates of observance of Labour Day and the Queen's Birthday.

HRW licence applications – using DTMR database

The Bill will establish a legislative framework authorising the DTMR chief executive to take, keep and use image sets of HRW licence applicants for reproduction on a HRW licence. This will include using image sets previously taken, for example on the grant of a person's driver licence, to issue a HRW licence. Similarly, the Bill will allow image sets provided as part of a HRW licence application to be used to issue a transport authority in future, such as renewal of the person's driver licence. These amendments will facilitate an online application service for HRW licences and streamline the HRW licence application process.

The legislative framework established by the Bill will also consolidate the existing provisions about digital photos and digitised signatures contained in the *Adult Proof of Age Card Act 2008*, *Tow Truck Act 1973*, *Transport Operations (Marine Safety) Act 1994*, *Transport Operations (Passenger Transport) Act 1994* and *Transport Operations (Road Use Management) Act 1995* into the *Transport Planning and Coordination Act 1994*. This approach will simplify transport legislation by removing duplication.

The consolidated provisions will make appropriate provision where the processes for taking, keeping and using digital photos and digitised signatures for transport and non-transport products differ. For example, as the DTMR chief executive cannot fully investigate or prosecute offences where a person dishonestly obtains or attempts to obtain a non-transport prescribed authority, provision will be made for a non-transport administrator to access photos and signatures to investigate and prosecute these offences.

Amendments in the Bill will allow a regulation to prescribe those authorities to which the provisions apply. It is proposed to make a regulation to ensure that, on commencement, the provisions apply to those transport authorities that currently utilise the image set provisions and to HRW licences. This also provides a mechanism to allow other government agencies and licence applicants to gain the same benefits as have been identified in relation to HRW licences in future.

The consolidated provisions will also contain a number of technical and minor amendments to better align the provisions relating to the capture and management of digital information with contemporary practice. These enhancements will improve customer service for transport customers, remove unnecessary administrative processes and allow the DTMR chief executive to provide greater support to other jurisdictions in relation to particular law enforcement functions. For example, the amendments in the Bill will permit the use of facial recognition technology to confirm the identity of a customer wishing to undertake a transaction with DTMR, without the need for the customer to produce separate identification. This can be useful if a customer does not have any written identification with them and would allow the person to undertake transactions without having to return home to obtain identification.

This approach is reasonable, appropriate, effective and proportionate to the issue being addressed because:

- it is expected that most HRW licence applicants would have a transport authority (such as a driver licence), so their image set may already be held on DTMR's database;
- a person whose image set is not held by DTMR (e.g. interstate customers) will have their photograph taken at one of the DTMR's licence issuing centres;
- as the image set captured for a HRW licence may be used to issue a transport authority (such as a driver licence), customers would not be required to return to a DTMR licence issuing centre to have their photo taken if they subsequently apply for a transport product online and the shelf life of their digital photo and digitised signature is sufficient;
- many customers will be able to apply for a HRW licence online anytime and from any location, and have their licence card delivered to a nominated address;
- the process will improve the accessibility and ease of obtaining a HRW licence providing significant time savings for customers, especially those living in rural or regional areas;
- the online process will also reduce delays in processing applications, facilitating a faster more efficient service;
- alternative application processes are available for those customers who cannot use the online process;
- using DTMR's existing digital bank of customer image sets and its card production process will avoid duplication of government services and provide benefits from using DTMR's existing robust and secure process;
- security outcomes will be enhanced as using a consistent source for photos and signatures from DTMR's image capture process, which incorporates facial recognition technology, will minimise the opportunity for identity fraud, providing a more secure HRW licence.

Alternative ways of achieving policy objectives

Public Holidays

The *Holidays Act 1983* permits the Minister responsible for that legislation to gazette a substitute day for any public holiday.

Given the permanency of the proposed changes, it is more appropriate to implement them by a legislative amendment. This will promote more certainty of the date of observance of public holidays for workers, industry and the community generally.

HRW licence applications – using DTMR database

Two main alternatives for achieving the policy objectives were considered as outlined below.

The first alternative considered was to retain the status quo and to continue to require an over-the-counter application at an Australia Post outlet. This alternative was rejected because:

- it was not considered a customer-focussed approach. This option would require customers to continue to travel to the nearest Australia Post outlet during business hours and provide a passport photo. Some Australia Post outlets do not offer a passport photo service, meaning the customer has to source one from another provider before making the application;

- it did not provide time and cost savings for government, business and customers. Continuing to use Australia Post as a service agent incurs a significant cost to government and requires additional operating costs for OFSWQ.

The second alternative considered was to implement an online application with an over-the-counter identity verification process by OFSWQ. This alternative was rejected because:

- it was not considered a customer-focussed approach. This option would continue to require customers to complete an over-the-counter transaction during business hours to verify their identity;
- it did not provide time and cost savings for government, business and customers. This approach would not provide any time or cost savings compared to the existing process and would not provide any additional flexibility for regional or fly in/fly out workers. This option would also require the re-establishment of OFSWQ front counter services across the State, with the additional expense of administrative staff and training. However, this would not be cost effective as it does not offer any additional benefit over the current arrangements with Australia Post.

There is no alternative way to achieve the preferred policy objective other than through legislative reform.

Estimated cost for government implementation

Public Holidays

There are no costs for Government implementation of the changes to public holidays.

There are no costs to industry as the proposed amendments only move the date of observance of existing public holidays. No additional public holidays will be appointed, eliminating the need for any additional public holiday penalty payments in industry.

HRW licence applications – using DTMR database

The capital investment required to enhance information technology systems and implement operational arrangements will be funded from OFSWQ's existing budget allocations. The information technology system enhancements will establish re-usable infrastructure, allowing additional government licences and authorities to be produced under similar arrangements in the future. This has the potential to yield an increasing return on investment if other licences administered by OFSWQ are produced using the developed system infrastructure.

Consistency with fundamental legislative principles

Public Holidays

The Office of the Queensland Parliamentary Counsel (OQPC) has commented that the proposed legislation may impact on the rights and liberties of individuals as it is expected that some members of the community have arranged their business or other affairs for 2016 having regard to the current public holiday dates. However, it is considered that advance notice of the changes before they take effect in 2016 will mitigate the potential for a person's affairs to be adversely affected by the changes.

HRW licence applications – using DTMR database

The Bill is generally consistent with fundamental legislative principles.

The Bill establishes a legislative framework which authorises a regulation to prescribe the licences, certificates and other authorities that will use the image set processes (see clause 43 which inserts new Part 4C into the *Transport Planning and Coordination Act 1994*, particularly the definitions of *prescribed authorisation Act* and *prescribed authority* in section 28E). This potentially raises issues about whether the Bill infringes the fundamental legislative principle that legislation should have sufficient regard to the institution of Parliament.

As the privacy controls for the scheme are contained in primary legislation, the image set process will be subject to direct consideration and approval by Parliament. All other Acts that might be added to the scheme will be subject to these controls approved by the Parliament. The implementation of the scheme in the regulation is administrative in nature and therefore an appropriate matter for subordinate legislation. The regulation that will prescribe other authorities will be subject to the *Statutory Instruments Act 1992* and will be tabled in the Legislative Assembly after it is published on the Queensland legislation website.

In addition, enabling additional authorities to utilise the image sets provisions is beneficial to individuals holding those authorities. It will enable many applicants to apply for their prescribed authority online and have it sent to a nominated address without having to attend an Australia Post outlet or other government office. It will also assist in the future issuing of particular transport products the person may apply for during the shelf-life of the image sets.

For these reasons, it is believed that any issues relating to the Fundamental Legislative Principles are adequately dealt with in the Bill.

Consultation

Public Holidays

The Government's intentions in relation to changing public holiday arrangements were publicly announced in its pre-election commitment 'Honouring the real Labour Day'. Furthermore, the decision for the changes to commence in 2016 was announced by the Treasurer on 17 March 2015 and widely reported in the State's media.

HRW licence applications – using DTMR database

There has been no formal community consultation with respect to HRW licences, however it is anticipated that the changes will benefit the affected community (applicants, licence holders and their employers) through direct time and cost savings. There will be no adverse community impacts with alternative processing methods available for those who are unable to use the proposed online application service.

Consistency with legislation of other jurisdictions

Public Holidays

Labour Day is observed on various dates in other States and Territories. The Queen's Birthday is currently observed on the second Monday in June in all States and Territories other than Western Australia.

The proposed arrangements will achieve some consistency in observing a public holiday in the second half of the year. In Western Australia the Queen's Birthday public holiday is observed on a date proclaimed each year in or around October, and in New South Wales, South Australia and the Australian Capital Territory a public holiday for Labour Day holiday is observed on the first Monday in October.

HRW licence applications – using DTMR database

The provisions in the Bill are not uniform or complementary with legislation of the Commonwealth or another State.

Notes on provisions

Part 1 Preliminary

Clause 1 provides that the Act may be cited as the *Holidays and Other Legislation Amendment Act 2015*.

Clause 2 provides that parts 3 and 4 of the Act, which deal with amendments to the *Holidays Act 1983* and consequential amendments to the *Industrial Relations Act 1999*, will commence on 6 October 2015. This is the day after the 2015 Labour Day public holiday ensuring that the amendments do not take effect until the 2016 observance of the Labour Day and Birthday of the Sovereign (Queen's Birthday) public holidays.

The remaining parts of the Act will commence on a day to be fixed by proclamation.

Part 2 Amendment of Adult Proof of Age Card Act 2008

Clause 3 provides that part 2 amends the *Adult Proof of Age Card Act 2008*.

Clause 4 amends section 9 (Application for new card by electronic communication) to update the reference to the section under which the shelf life of a digital photo and digitised signature may be extended required as a result of the consolidation of the biometric provisions into the *Transport Planning and Coordination Act 1994*.

Clause 5 makes consequential amendments to section 11 (Decision on application) to reflect the consolidation of biometric provisions into the *Transport Planning and Coordination Act 1994*.

Clause 6 removes the requirement in section 26 (Chief executive must maintain a register) for the chief executive to keep a digital photo and digitised signature of an adult proof of age card holder in the register kept under the Act (the APA register). As digital photos and digitised signatures will be kept under the *Transport Planning and Coordination Act 1994*, it is no longer appropriate to keep this information in the APA register.

Clause 7 amends section 30 (Restricted written release of information in APA register) which deals with the release of information kept in the APA register. Subsection 30(4) provides that information that may be released under subsections (1) or (2) does not include a digital photo and digitised signature. As digital photos and digitised signatures will no longer be kept in the APA register this subsection is not required and will be omitted.

Clause 8 omits part 5 (Biometric data and other information relating to adult proof of age card holders). These provisions will be consolidated with other provisions relating to biometric data and other information into the *Transport Planning and Coordination Act 1994*.

Clause 9 inserts a new Part 9 (Transitional provision for Holidays and Other Legislation Amendment Act 2015). New section 50 provides that a digital photo or digitised signature currently kept by the chief executive under the legislative scheme in part 5 of the *Adult Proof of Age Card Act 2008* will be taken to be kept by the chief executive under the consolidated legislative scheme being inserted into the *Transport Planning and Coordination Act 1994* by

the Bill. This will ensure that photos and signatures already obtained from existing card holders may be used under the provisions in the new scheme.

Clause 10 amends the schedule (Dictionary) to omit definitions that are no longer required and to update other definitions by reference to the *Transport Planning and Coordination Act 1994*.

Part 3 Amendment of the Holidays Act 1983

Clause 11 provides that part 3 amends the *Holidays Act 1983*.

Clause 12 provides for new dates of observance for the Labour Day (first Monday in May) and Birthday of the Sovereign (first Monday in October) public holidays in the Schedule to the *Holidays Act 1983*.

Part 4 Amendment of Industrial Relations Act 1999

Clause 13 provides that part 4 amends the *Industrial Relations Act 1999*.

Clause 14 amends the definition of the Labour Day and Birthday of the Sovereign public holidays in Schedule 5 (Dictionary) of the *Industrial Relations Act 1999* to reflect the new dates appointed in the *Holidays Act 1983*.

Part 5 Amendment of Police Powers and Responsibilities Act 2000

Clause 15 provides that part 5 amends the *Police Powers and Responsibilities Act 2000*.

Clause 16 amends section 195A (Definitions for pt 5A) by making amendments to definitions to reflect that registered digital photos will be kept under the *Transport Planning and Coordination Act 1994* on commencement of the amendments.

Clause 17 amends section 195J (Giving copy of access approval order to relevant entity) to reflect changed defined terms.

Clause 18 amends section 195L (Destruction of registered digital photo) so that registered digital photos accessed under the *Transport Planning and Coordination Act 1994* must also be destroyed as provided for in the section.

Clause 19 amends schedule 6 (Dictionary) to update defined terms amended by clause 16.

Part 6 Amendment of Tow Truck Act 1973

Clause 20 provides that part 6 amends the *Tow Truck Act 1973*.

Clause 21 makes consequential amendments to section 14A (Decision on application) to reflect the consolidation of biometric provisions into the *Transport Planning and Coordination Act 1994*.

Clause 22 omits part 3, division 2 (Biometric data and other information relating to driver's certificate or assistant's certificate). These provisions will be consolidated with other

provisions relating to biometric data and other information into the *Transport Planning and Coordination Act 1994*.

Clause 23 amends section 19H (Restricted written release of information) which deals with the release of information kept under the *Tow Truck Act 1973* about a person's driver's certificate or assistant's certificate. Subsection 19H(3) provides that information that may be released under subsections (1) or (2) does not include a digital photo and digitised signature. As digital photos and digitised signatures will no longer be kept under the *Tow Truck Act 1973* this subsection is not required and will be omitted.

Clause 24 inserts a new part 8, division 3 (Transitional provision for Holidays and Other Legislation Amendment Act 2015). New section 46 provides that a digital photo or digitised signature currently kept by the chief executive under the legislative scheme in part 3, division 2 of the *Tow Truck Act 1973* will be taken to be kept by the chief executive under the consolidated legislative scheme being inserted into the *Transport Planning and Coordination Act 1994* by the Bill. This will ensure that photos and signatures already obtained from existing card holders may be used under the provisions in the new scheme.

Clause 25 amends schedule 2 (Dictionary) to omit definitions that are no longer required and to update other definitions by reference to the *Transport Planning and Coordination Act 1994*.

Part 7 Amendment of Transport Operations (Marine Safety) Act 1994

Clause 26 provides that part 7 amends the *Transport Operations (Marine Safety) Act 1994*.

Clause 27 omits part 5, division 3A (Biometric data and other information relating to marine licences). These provisions will be consolidated with other provisions relating to biometric data and other information into the *Transport Planning and Coordination Act 1994*.

Clause 28 amends section 63I (Restricted written release of information) which deals with the release of information kept under the *Transport Operations (Marine Safety) Act 1994* about a person's marine licence or marine history. Subsection 63I(4) provides that information that may be released under subsections (1) or (2) does not include a digital photo and digitised signature. As digital photos and digitised signatures will no longer be kept under the *Transport Operations (Marine Safety) Act 1994* this subsection is not required and will be omitted.

Clause 29 inserts a new part 19, division 6 (Provision for Holidays and Other Legislation Amendment Act 2015). New section 247 provides that a digital photo or digitised signature currently kept by the chief executive under the legislative scheme in part 5, division 3A of the *Transport Operations (Marine Safety) Act 1994* will be taken to be kept by the chief executive under the consolidated legislative scheme being inserted into the *Transport Planning and Coordination Act 1994* by the Bill. This will ensure that photos and signatures already obtained from existing card holders may be used under the provisions in the new scheme.

Clause 30 amends the schedule (Dictionary) to omit definitions that are no longer required, to amend definitions to reflect the changes in the Bill and to update other definitions by reference to the *Transport Planning and Coordination Act 1994*.

Part 8 Amendment of Transport Operations (Passenger Transport) Act 1994

Clause 31 provides that part 8 amends the *Transport Operations (Passenger Transport) Act 1994*.

Clause 32 omits chapter 4, part 2 (Biometric data and other information relating to driver authorisation). These provisions will be consolidated with other provisions relating to biometric data and other information into the *Transport Planning and Coordination Act 1994*.

Clause 33 amends section 35H (Restricted written release of information) which deals with the release of information kept under the *Transport Operations (Passenger Transport) Act 1994* about a person's driver authorisation. Subsection 35H(3) provides that information that may be released under subsections (1) or (2) does not include a digital photo and digitised signature. As digital photos and digitised signatures will no longer be kept under the *Transport Operations (Passenger Transport) Act 1994* this subsection is not required and will be omitted.

Clause 34 inserts a new chapter 13, part 15 (Transitional provision for Holidays and Other Legislation Amendment Act 2015). New section 205 provides that a digital photo or digitised signature currently kept by the chief executive under the legislative scheme in chapter 4, part 2 of the *Transport Operations (Passenger Transport) Act 1994* will be taken to be kept by the chief executive under the consolidated legislative scheme being inserted into the *Transport Planning and Coordination Act 1994* by the Bill. This will ensure that photos and signatures already obtained from existing card holders may be used under the provisions in the new scheme.

Clause 35 amends schedule 3 (Dictionary) to omit definitions that are no longer required and to update other definitions by reference to the *Transport Planning and Coordination Act 1994*.

Part 9 Amendment of Transport Operations (Road Use Management) Act 1995

Clause 36 provides that part 9 amends the *Transport Operations (Road Use Management) Act 1995*.

Clause 37 amends section 77 (Restricted written or electronic release of person's prescribed authority and traffic history information). Subsection 77(6) provides that information that may be released under subsections (1) or (2) does not include a digital photo and digitised signature. As digital photos and digitised signatures will no longer be kept under the *Transport Operations (Road Use Management) Act 1995* this subsection is not required and will be omitted.

Clause 38 omits chapter 5, part 3A (Biometric data and other information relating to prescribed authority holders). These provisions will be consolidated with other provisions relating to biometric data and other information into the *Transport Planning and Coordination Act 1994*.

Clause 39 inserts a new chapter 7, part 19 (Transitional provision for Holidays and Other Legislation Amendment Act 2015). New section 228 provides that a digital photo or digitised signature currently kept by the chief executive under the legislative scheme in chapter 5, part

3A of the *Transport Operations (Road Use Management) Act 1995* will be taken to be kept by the chief executive under the consolidated legislative scheme being inserted into the *Transport Planning and Coordination Act 1994* by the Bill. This will ensure that photos and signatures already obtained from existing card holders may be used under the provisions in the new scheme.

Clause 40 amends schedule 4 (Dictionary) to omit definitions that are no longer required and to update other definitions by reference to the *Transport Planning and Coordination Act 1994*.

Part 10 Amendment of Transport Planning and Coordination Act 1994

Clause 41 provides that part 10 amends the *Transport Planning and Coordination Act 1994*.

Clause 42 amends section 3 (Dictionary) to insert new definitions which will be required as a result of the amendments in the Bill and to amend the definition of *transport Act*. The concept of a *transport Act* is relevant to a number of provisions within the *Transport Planning and Coordination Act 1994* including, for example, provisions dealing with appeals, biometric provisions and the functions of the chief executive. Currently, the definition of *transport Act* refers to Acts administered by the Minister and relies on reference to the Administrative Arrangements Order. The new definition of *transport Act* will authorise a regulation to prescribe those Acts which are transport Acts.

Clause 42 will also relocate the definitions in section 3 to a schedule in accordance with current drafting practice.

Clause 43 inserts a new part 4C (Biometric data and other information for prescribed authorities) into the *Transport Planning and Coordination Act 1994*. Part 4C consolidates provisions relating to biometric data (the current provisions) currently located in part 5 of the *Adult Proof of Age Card Act 2008*, part 3, division 2 of the *Tow Truck Act 1973*, part 5, division 3A of the *Transport Operations (Marine Safety) Act 1994*, chapter 4, part 2 of the *Transport Operations (Passenger Transport) Act 1994* and chapter 5, part 3A of the *Transport Operations (Road Use Management) Act 1995*. Consolidating the provisions will significantly reduce the number of provisions in transport legislation dealing with biometric data and will assist in ensuring consistent application of the provisions across the different authorities. The consolidated provisions include amendments to enable the provisions to be applied to additional authorities, including authorities granted by other agencies, where it is appropriate to do so. The consolidated provisions also include minor amendments to the current operation of the provisions which are described below.

New section 28E (Definitions for pt 4C) inserts definitions required for part 4C.

Under part 5, division 3A of the *Transport Operations (Marine Safety) Act 1994*, the general manager under the *Maritime Safety Queensland Act 2002* can take and keep digital photos and digitised signatures. This is associated with the general manager's role of granting marine licences and marine licence indicators under the *Transport Operations (Marine Safety) Act 1994*. The general manager will continue to grant these licences and indicators and this is reflected in the consolidated provisions in the definition of *administrator* (see section

28E). However, only the chief executive will take and keep digital photos and digitised signatures and, as such, those functions will be removed from the general manager.

New section 28EA (Taking digital photo and digitised signature for use under this or another Act) provides for matters relating to the taking of a person's digital photo and digitised signature.

Subsection (1)(a) provides that an applicant must allow the chief executive to take and keep, for use under this or another Act, a digital photo and digitised signature if the applicant applies to the administrator for a prescribed authorisation Act for the grant, renewal, amendment or replacement of a prescribed authority. It is proposed to make a regulation which will provide that *prescribed authorities* are those transport authorities to which the biometric provisions currently apply as well as high risk work licences or a licence document for a high risk work licence under the *Work Health and Safety Act 2011*. New section 28E will insert a definition of *prescribed authorisation Act* which allows a regulation to be made listing the relevant Acts under which the prescribed authorities are issued. Initially, it is proposed to make a regulation listing the *Adult Proof of Age Card Act 2008*, *Tow Truck Act 1973*, *Transport Operations (Marine Safety) Act 1994*, *Transport Operations (Passenger Transport) Act 1994*, *Transport Operations (Road Use Management) Act 1995* and *Work Health and Safety Act 2011* as prescribed authorisation Acts.

Subsection (1)(b) provides that an applicant must allow the chief executive to take and keep, for use under this or another Act, a digital photo and digitised signature if the applicant makes an application or request about anything else relevant to the administration of a transport Act. This requirement applies if the administrator considers it reasonably necessary, to deal with the application or request, to use facial recognition technology to establish the applicant's connection to the most recent digital photo of the person the applicant is claiming to be. This provision can assist a person who attends a DTMR licence issuing centre to undertake a transaction or inquiry but does not have sufficient evidence of identity with them. If the person already has a digital photo held by DTMR (for example, because they are a driver licence holder), then a further photo can be taken of them to be compared with the existing photo to provide the required evidence of identity.

Under the current legislation, this process of taking a further photo to assist with evidence of identity is limited to applications about an authority already held by the person. So, for example, it would not assist a driver licence holder who wanted to undertake a new vehicle registration transaction. The new provisions will assist customers by providing greater flexibility in this process.

The current sections which require a person to allow their digital photo and digitised signature to be taken for purposes of evidence of identity state that the chief executive must give the person a written notice (section 31(3) and (4) *Adult Proof of Age Card Act 2008*; section 19A(3) and (4) *Tow Truck Act 1973*; section 63A(3) and (4) *Transport Operations (Marine Safety) Act 1994*; section 35A(3) and (4) *Transport Operations (Passenger Transport) Act 1994*; and section 91A(3) and (4) *Transport Operations (Road Use Management) Act 1995*). The requirement to provide written notice was drafted at the time that the biometric provisions were originally introduced by the Transport (New Queensland Driver Licensing) Amendment Bill 2008, as the use of facial recognition technology was in its infancy and as a result, the provisions were drafted in a prescriptive way to alleviate concerns about the technology and what it would be used for. The use of this technology is now common practice and widely

accepted amongst customers. When a person allows their digital photo and digitised signature to be taken as part of the application process for a transport authority, as part of processing the transaction the customer is advised what their photo and signature is being taken for the customer is therefore aware that the photo may be used for purposes of evidence of identity. As a result there is no longer a need to require the chief executive to provide written notice. Removing the requirement to provide written notice will streamline the process of taking digital photos and digitised signatures and using facial recognition for purposes of evidence of identity.

New subsection 28EA(2) confirms that an applicant does not need to allow the chief executive to take and keep their digital photo and digitised signature if the person withdraws the application or request.

Subsection (3) provides that an applicant does not need to allow the chief executive to take and keep their digital photo or digitised signature under subsection (1)(a) if:

- the chief executive is keeping the applicant's most recent digital photo or digitised signature; and
- the chief executive has no evidence to suggest that the applicant's most recent digital photo is not a true likeness of the person; and
- the shelf life, and any extension of the shelf life under section 28EB, has not expired and will not end before the expiry of any prescribed authorisation document that is granted.

This supports the online renewal of prescribed authorities where this option is available by ensuring that, in appropriate circumstances, the holder is not required to attend a DTMR licence issuing centre to provide a new photo or signature.

Subsection (4) requires the chief executive to advise the administrator of a prescribed authorisation Act that is not a transport Act if an applicant makes an application under the prescribed authorisation Act and:

- the applicant does not allow the chief executive to take and keep a digital photo and digitised signature of the person; or
- the chief executive is not satisfied that the digital photo taken under subsection (1)(a) matches the most recent photo of the person the applicant is claiming to be; or
- the chief executive is satisfied that the digital photo taken under subsection (1)(a) matches the most recent digital photo of another person.

This will allow the administrator to take appropriate action under the relevant prescribed authorisation Act in relation to the application.

Subsection (5) provides that the administrator of a transport Act must refuse to consider an application or request mentioned in subsection (1) if:

- an applicant does not allow the chief executive to take and keep a digital photo and digitised signature of the person;
- the administrator is not satisfied that the digital photo taken under subsection (1)(a) matches the most recent photo of the person the applicant is claiming to be; or

- the administrator is satisfied that the digital photo taken under subsection (1)(a) matches the most recent digital photo of another person.

Subsection (6) provides that subsection (5) has effect despite any other provision of a transport Act.

New section 28EB (Extending shelf life of digital photo and digitised signature) provides that the chief executive may extend the shelf life of a person's most recent digital photo and most recent digitised signature for a period of no more than 6 months. New section 28E defines *shelf life* as 10 years after a person's digital photo or digitised signature is taken either under the *Transport Planning and Coordination Act 1994* or under another Act before the commencement of the Bill. The shelf life of a photo or signature may be extended if, for example, a driver licence holder applies to renew their driver licence one month after the previous five year licence has expired. By extending the shelf life of their existing photo and signature, a further five year licence may be issued using an existing digital photo and digitised signature.

New section 28EC (Using a digital photo and digitised signature) provides for when the chief executive may use a person's most recent digital photo and most recent digitised signature.

Subsection (1) provides that the chief executive may use a person's most recent digital photo and most recent digitised signature to help identify the person for the purpose of any application or request under section 28EA(1) or to reproduce on a prescribed authorisation document.

This differs from the current provisions dealing with this matter which require that the chief executive may only use a person's digital photo and digitised signature for these purposes with their consent. However, when the person allows the chief executive to take their digital photo and digitised signature under section 28EA(1), as part of processing the transaction the customer is advised what their photo and signature is being taken for; the customer is therefore aware that the photo and signature may be used for these purposes. If they do not wish to allow the chief executive to take their photo for use under the *Transport Planning and Coordination Act 1994*, they may withdraw their application or request as provided for in section 28EA(2). Therefore, it is not considered necessary to obtain a specific additional consent prior to using the photo and signature for these purposes.

Subsection (2) provides that the chief executive may also use a person's most recent digital photo and digitised signature in an investigation of, or proceeding for, certain offences. Those offences must happen in making an application or request under section 28EA(1) for which the photo and signature were taken or during the retention period for the photo and signature and involve a person obtaining or attempting to obtain the grant, renewal, amendment or replacement of a prescribed authority or something else under a transport Act by a false statement, misrepresentation or in any other dishonest way.

For offences relating to the grant, renewal, amendment or replacement of a prescribed authority granted under a non-transport Act, the chief executive will carry out the initial investigation of the offence as it may not be clear whether the offence was committed under a transport Act or another Act. If it appears that the offence was committed under a prescribed authorisation Act that is not a transport Act, the chief executive must give the administrator of the relevant Act access to the photo and signature for further investigation and prosecution (see section 28ED(5)).

New section 28ED (Restricted access to a digital photo and digitised signature) provides for access to digital photos and digitised signatures kept by the chief executive for particular persons.

Subsection (1) provides that the chief executive may allow a person to access their own digital photo if they establish to the chief executive's satisfaction that it is their photo and apply in the approved form. Subsection (3) provides that this application may be made by electronic communication.

Subsection (2) provides that the chief executive may allow an entity who grants driver licences under a corresponding law to the *Transport Operations (Road Use Management) Act 1995* to access a person's digital photos if the access is for granting a driver licence under the corresponding law. Currently, this access is only provided to photos kept under the *Transport Operations (Road Use Management) Act 1995* (section 91C(1)(b)). The chief executive exercises this discretion to assist other jurisdictions with investigating offences involving a person attempting to dishonestly obtain a driver licence in that jurisdiction. As all digital photos will be kept under the *Transport Planning and Coordination Act 1994*, and to enable the chief executive to fully assist other jurisdictions in their law enforcement functions, the consolidated provisions will allow access to all digital photos kept under that Act.

Subsection (4) provides that the chief executive must allow a police officer to access a person's digital photo if the access is:

- for exercising a power in relation to a prescribed authorisation Act that is a transport Act or the offence of dangerous operation of a vehicle in section 328A of the Criminal Code;
- for exercising a power in relation to a corresponding law to the *Transport Operations (Road Use Management) Act 1995*; or
- authorised under the *Police Powers and Responsibilities Act 2000*.

This access for police officers is the same as provided for in the current provisions.

Subsection (5) provides that the chief executive must allow the administrator of a prescribed authorisation Act other than a transport Act to access a person's most recent digital photo and digitised signature as required by the administrator, if the administrator considers it reasonably necessary to use the photo or signature in an investigation of, or proceeding for particular offences. The offences must happen in making the application mentioned in section 28EA(1)(a) for which the photo and signature were taken or during the retention period for the photo and signature and involve a person obtaining or attempting to obtain the grant, renewal, amendment or replacement of a prescribed authority under the Act by a false statement, misrepresentation or in any other dishonest way. This access will allow the administrator of a prescribed authorisation Act other than a transport Act to use a person's digital photo and digitised signature for the same purpose authorised for the chief executive under section 28EC(2) in relation to transport prescribed authorities.

Subsection (6) inserts definitions for section 28ED.

New section 28EE (Deleting a digital photo or digitised signature from register or similar record) provides that, when the retention period for a person's digital photo or digitised

signature kept under the Act ends, the chief executive must delete the photo and signature from any register or similar record kept by the chief executive under the Act.

New section 28EF (Destruction of a digital photo or digitised signature) applies to a copy of a person's digital photo or digitised signature accessed under this part by the administrator of a prescribed authorisation Act that is not a transport Act and in the possession of that administrator, including by electronic communication.

Subsection (2) provides that the administrator may retain the copy for the period necessary to conduct an investigation of, or for use in a proceeding for, an offence mentioned in section 28ED(5).

Subsection (3) provides that the administrator must take reasonable steps to destroy each copy of a person's digital photo or digitised signature accessed for the investigation or prosecution of an offence if a proceeding for the offence has not started within 1 year after the day the photo or signature was first accessed.

Subsection (4) provides that the destruction of the digital photo or digitised signature must be carried out within a reasonable period after the need to retain the copy under subsection (2) ends, or if subsection (3) applies.

Subsection (5) inserts a definition for section 28EF.

New section 28EG (Restricted access to information stored electronically on a smartcard identification authority) provides that a person may access information stored electronically on a smartcard identification authority only if the person:

- is the holder of the smartcard identification authority; or
- has the holder's consent to access the information; or
- is an authorised officer for the smartcard identification authority and the access is for exercising a power under the Act under which the smartcard identification authority is granted; or
- is a police officer who is authorised under the *Police Powers and Responsibilities Act 2000* to access the information.

A definition of *authorised officer* will allow a regulation to specify those officers who can access this information. It is proposed to make a regulation that specifies those officers who can access the information under existing provisions, that is, an authorised officer under the *Tow Truck Act 1973*, a shipping inspector under the *Transport Operations (Marine Safety) Act 1994*, an authorised person under the *Transport Operations (Passenger Transport) Act 1994*, and an authorised officer under the *Transport Operations (Road Use Management) Act 1994*.

A maximum penalty of 20 penalty units applies for this offence. This is the same maximum penalty that applies under the equivalent sections in the current provisions.

Subsection (2) inserts definitions for section 28EG.

New section 28EH (Retention period for a digital photo or digitised signature) sets out the retention periods that apply for digital photos or digitised signatures taken under the Act. At

the end of the retention period, under new section 28EE (described above), the chief executive must delete a digital photo or digitised signature. The periods set out in new section 28EH are the same as the retention periods set out in the current provisions.

Subsection (2)(a) provides that a retention period of 30 years after the day a person's digital photo or digitised signature is taken applies if an application mentioned in section 28EA(1)(a) is granted or the photo or signature taken under section 28EA(1)(b) is to be used under section 28EC(1)(b) for reproduction on a prescribed authorisation document.

Subsection (2)(b) provides that a retention period of 6 months after the day a person's digital photo or digitised signature is taken or a shorter period decided by the chief executive applies if an application mentioned in section 28EA(1)(a) is not granted.

Subsection (2)(c) provides that a retention period of 24 hours applies in other situations.

However, subsection (3) provides that, despite subsection (2), if an investigation mentioned in section 28EC(2) is started within the retention period worked out under subsection (2)(b) or (c) and the chief executive reasonably requires a person's digital photo or digitised signature to be kept for a longer time for the investigation or proceeding, the retention period is that longer time.

Subsection (4) inserts a definition of *relevant day* for section 28EH.

Clause 44 amends section 36F (Keeping and using information obtained or kept under particular transport Acts or Adult Proof of Age Card Act 2008) to omit definitions that are no longer required in that section as a result of the Bill.

Clause 45 amends section 36G (Smartcard transport authority) to insert a new definition of *transport authority*. Section 36G provides that a smartcard may evidence one or more transport authorities held by a person. The new definition will allow the relevant transport authorities to be prescribed in a regulation. Initially, it is proposed to make a regulation prescribing tow truck driver and assistant certificates, passenger transport driver authorisations, certain accreditations under the *Transport Operations (Road Use Management) Act 1995* and dangerous goods driver licences. Additional industry-related transport authorities may be inserted into the regulation if this is considered appropriate in future.

Clause 46 inserts a new section 36GA (Confidentiality). This section is consistent with confidentiality provisions applying in the *Adult Proof of Age Card Act 2008* (section 46), the *Tow Truck Act 1973* (section 36C), the *Transport Operations (Marine Safety) Act 1994* (section 205AC), the *Transport Operations (Passenger Transport) Act 1994* (section 148C) and the *Transport Operations (Road Use Management) Act 1995* (section 143).

Subsection (1) provides that a person must not disclose, record or use information the person gained through involvement in the administration of the Act or because of an opportunity provided by the involvement. This information includes digital photos and digitised signatures. A maximum penalty of 200 penalty units applies for this offence. This is the same maximum penalty that applies to the equivalent offences in the sections mentioned above.

However, subsection (2) provides that a person may disclose, record or use information in the discharge of a function under the Act, if it is authorised under another Act or regulation or by

the person to whom the information relates, or in a proceeding before a court or tribunal in which the information is relevant.

To support the consolidated biometric provisions, subsection (3) provides that a person may disclose information, other than a digital photo or digitised signature, to the administrator of a prescribed authorisation Act other than a transport Act, if:

- it is relevant to an application mentioned in section 28EA(1)(a); or
- the person reasonably suspects the information is relevant to the possible commission of an offence against that Act.

This will support the online application process for HRW licences, for example, by allowing DTMR to verify an applicant's identity from information provided by the person. It will also allow information relevant for investigation or prosecution of an offence to also be provided to the administrator in addition to the digital photo and digitised signature which may be accessed under section 28ED(5). Subsection (4) confirms that subsection (3) does not limit section 28ED(5).

Subsection (5) inserts definitions for section 36GA.

Clause 47 inserts a new section 37A (Annual report about access to digital photos). This section requires that, within 4 months after the end of each financial year, the chief executive must prepare and give to the Minister an annual report stating the number of occasions during that financial year on which access within the meaning of section 28ED was allowed under section 28ED(4).

Subsection (2) requires the Minister to table a copy of the report in the Legislative Assembly within 14 days after the Minister receives it.

Clause 48 replaces the part 7 heading (Transitional provisions for the Transport and Other Legislation Amendment Act 2014) and creates a new part 7, division 1 (Provision for Transport and Other Legislation Amendment Act 2014) for the existing transitional provision.

Clause 49 inserts a new part 7, division 2 (Provisions for Holidays and Other Legislation Amendment Act 2015) to provide for transitional matters for the Bill.

New section 40 (Extension of shelf life of a digital photo or digitised signature under another Act) provides that any extension of shelf life granted by the chief executive under another Act before commencement is taken to be an extension under section 28EB(1).

New section 41 (Retention period for a digital photo or digitised signature taken under another Act) provides that, for digital photos and digitised signatures which were taken under the *Adult Proof of Age Card Act 2008*, the *Tow Truck Act 1973*, the *Transport Operations (Marine Safety) Act 1994*, the *Transport Operations (Passenger Transport) Act 1994* and the *Transport Operations (Road Use Management) Act 1995* before the commencement of the section, the retention period that applies is the retention period that applied under the relevant Act.

New section 42 (Access to digital photos under other Transport Acts to be included in annual report) provides that, if digital photos are accessed under any of the equivalent provisions to section 28ED(4) during a financial year, the annual report prepared under section 37A must

include the number of occasions during that financial year digital photos were accessed under the other provisions. Subsection (3) provides that it is enough to mention in the annual report the total number of occasions that access was allowed without mentioning the particular provision under which the access was allowed.

Clause 50 inserts a new schedule 1 (Dictionary).