

# Transport Operations (Passenger Transport) and Other Legislation Amendment Bill 2012

## Explanatory Notes

### Short title

The short title of the Bill is the *Transport Operations (Passenger Transport) and Other Legislation Amendment Bill 2012*.

### Policy objectives and reasons for the Bill

The primary objectives of the *Transport Operations (Passenger Transport) and Other Legislation Amendment Bill 2012* (the Bill) are to:

1. Dissolve the TransLink Transit Authority (TransLink) as a statutory authority by repealing the *Transport Operations (TransLink Transit Authority) Act 2008* (the TransLink Act).

Through dissolving TransLink as a statutory authority, the Bill will remove unnecessary duplication and help resolve community and operator interface issues that have resulted from two separate units of administration for public passenger services. The Bill will also dissolve the TransLink Transit Authority Employing Office (TTAEO). This change accords with the Queensland Government's plan to lower the cost of living for families by cutting waste; deliver better infrastructure and better planning; revitalise front line services; and restore accountability in government.

2. Make minor amendments to the *Transport Operations (Passenger Transport) Act 1994* (the Act) to:

- improve the administration of civil banning orders;
- enhance the definition of public transport infrastructure;
- extend the maximum term for an emergency service contract without inviting offers;

- clarify that a transit officer may either release a detained person on direction of a police officer or hold the person until a police officer arrives to deal with the person; and
- create offences for equipping, or requiring or allowing the use of, a taximeter in a vehicle other than a taxi.

These changes will help ensure the safe, secure and efficient delivery of public passenger services in Queensland.

### **Achievement of policy objectives**

To achieve the objective of reducing unnecessary duplication and resolving community and operator interface issues, the Bill will dissolve TransLink and the TTAEO by repealing the TransLink Act.

The Bill will achieve its objective of making administrative improvements to the civil banning order provisions in the Act by:

- clarifying when a penalty infringement notice is ‘dealt with’ for the purpose of applying for a civil banning order;
- changing the period for accruing ten or more penalty infringement notices to any 12-month period in the two years before the application;
- clarifying that the applicant does not need to provide evidence of the respondent’s personal circumstances to the court when preparing a civil banning order application;
- removing the requirement for the proper officer of the Magistrates Court to prepare and give the order to relevant parties; and
- allowing an authorised person to direct a person in contravention of a civil banning order to leave, or not enter, public transport infrastructure consistent with exclusion orders.

The Bill will achieve its objective of enhancing the definition of public transport infrastructure in the Act by:

- ensuring that public transport infrastructure includes all infrastructure that is related to the provision of public passenger services for rail, light rail, bus and ferry modes; and
- broadening the definition to include bus stops to allow authorised persons to exercise their enforcement powers effectively and safely at

bus stops, while also ensuring that there is minimal encroachment on public space.

The Bill will achieve its other objectives by:

- changing the maximum term for an emergency service contract without inviting offers from six to 12 months;
- removing the requirement for a transit officer to transport a detained person to a police officer; and
- creating offences for equipping, or requiring or allowing the use of, a taximeter in a vehicle other than a taxi.

### **Alternative ways of achieving policy objectives**

The only option for achieving the objective of removing duplication and resolving community and operator interface issues was to consolidate the passenger transport functions of the Department of Transport and Main Roads (the department) and TransLink. This option is achieved by repealing the TransLink Act.

Civil banning orders are a court-based enforcement mechanism intended to deter violent or repeat offenders on the public transport network. The orders can prohibit offenders from using, or restricting offenders' use of, the public transport network for a period of not more than 12 months. Enhancing the civil banning order provisions in the Act may only be achieved through a series of legislative amendments.

The definition of public transport infrastructure is crucial for enforcing certain offences on, or in relation to, the public transport network. The definition must be sufficiently broad to capture all infrastructure that is related to the provision of a public passenger service for rail, light rail, bus and ferry modes. The definition must also include bus stops to allow authorised persons to exercise their powers at bus stops. If a person is creating a disturbance on a bus, it is reasonable for an authorised person to be able to direct a person to leave the bus, as this minimises disruption to the service and ensures the safety of other passengers, and deal with the person at the bus stop. Given that this definition relates to offences in the Act, this change can only be achieved through an amendment to the Act.

The other minor policy objectives relate to issues that have been identified with the existing legislation. As such, the changes can only be made through amendments to the Act. Legislative amendments provide the

greatest net benefit for the community as they provide greater certainty and clarity for the public on existing provisions in the legislation.

### **Estimated cost for government implementation**

The Bill seeks to reduce administrative duplication and resolve community and operator interface issues by dissolving TransLink through the repeal of the TransLink Act. The Bill is expected to result in cost savings for government over time including accommodation, staffing and overheads. Creating a single unit of administration for public passenger services in Queensland will also help facilitate service contract reform, which may result in cost savings and efficiencies for government and industry over time.

The other minor administrative amendments will not result in additional costs for government as they seek to clarify or simplify existing legislation. These amendments will create greater certainty for government, the general public and industry.

### **Consistency with fundamental legislative principles**

The department considers that the Bill is consistent with fundamental legislative principles. The Bill includes sufficient safeguards to ensure that any liabilities that TransLink currently holds in relation to an external party will be preserved on transfer to the State. The Bill also preserves TransLink employee entitlements.

The Office of the Queensland Parliamentary Counsel has not advised that the Bill is inconsistent with fundamental legislative principles.

### **Consultation**

The department consulted the Limousine Association Queensland and Taxi Council of Queensland in relation to the amendment to prohibit the use of taximeters in vehicles other than taxis. Both entities are supportive of the amendments. The department did not consult the community or industry about the other amendments contained in the Bill.

All relevant government stakeholders have been consulted on relevant aspects of the Bill including the Department of the Premier and Cabinet; Justice and Attorney-General; Queensland Treasury and Trade; Queensland Police Service; and Queensland Rail. All government stakeholders support the Bill.

## Notes on provisions

### Part 1 Preliminary

Clause 1 states, when enacted, the Bill may be cited as the *Transport Operations (Passenger Transport) and Other Legislation Amendment Act 2012*.

Clause 2 provides that certain provisions of the Act commence on a day to be fixed by proclamation. Provisions that are not mentioned will commence on Assent.

### Part 2 Amendment of Transport Operations (Passenger Transport) Act 1994

Clause 3 specifies that this part amends the *Transport Operations (Passenger Transport) Act 1994*.

Clause 4 provides that a passenger transport strategy for an area must not be inconsistent with, and must give effect to, an integrated regional transport plan for the area. This change is necessary as a consequence of the repeal of the TransLink Act.

Clause 5 removes the distinction between TransLink service contracts and other service contracts in section 43(1) as a consequence of the repeal of the TransLink Act. The maximum penalty for contravening section 43(1) if the service contract area or route is in the integrated mass transit area, which corresponds with the former TransLink area, will remain 160 penalty units. Section 43(2) limitations will apply to a written agreement with the chief executive for a service contract area or route that is not in the integrated mass transit area.

Clause 6 amends section 48C(2) to allow the chief executive to enter into emergency service contracts without inviting offers for a maximum term of 12 months to ensure continuity of a public passenger service. The chief

executive may currently enter into emergency service contracts without inviting offers for a maximum term of six months. However, this period does not give sufficient time to complete an open tender process.

Clause 7 clarifies that each annual report of the department must include details of funding or other financial assistance for each holder of a service contract who receives State funding or other assistance as a consequence of the repeal of the TransLink Act.

Clause 8 defines the integrated mass transit area. This new area replaces the current TransLink area and is determined by the combination of service contract areas or routes mentioned in schedule 1B. The service contract areas or routes listed in schedule 1B mirror the service contract areas or routes in the current TransLink area. Additional service contract areas or routes may be added to the integrated mass transit area under a regulation if they are in the SEQ area. The purpose of defining the integrated mass transit area is to limit the use of integrated mass transit service contracts to service contracts in the area.

Clause 9 describes an integrated mass transit service contract and amends section 62AAC to replace each reference to a TransLink service contract with a reference to an integrated mass transit service contract. An integrated mass transit service contract is a service contract for a general route service in the integrated mass transit area.

Clause 10 replaces an erroneous reference to section 42A with a reference to section 42. A related declaratory provision under clause 28, new section 194, declares that the definition of specified kind in section 62AAG(6) is taken always to have referred to section 42.

Clause 11 removes the special event provisions for the TransLink area. The Act currently contains two sets of special event provisions that apply separately to the TransLink and non-TransLink area. The provisions are substantially the same other than applying over different areas of the State. As the responsibility for special events will now reside within the one agency, it is not necessary to retain two sets of provisions for special events. This change will not materially affect the application of the special event provisions.

Clause 12 removes the redundant heading for special events in the non-TransLink area.

Clause 13 inserts a new definition of 'non-integrated mass transit area' for part 4.

New definition of ‘non-integrated mass transit area’ means an area other than the integrated mass transit area. This term is not intended to imply that services in the non-integrated mass transit area are not integrated or not mass transit.

Clause 14 provides that a road closure or bus stop relocation is significant if, for an event in the integrated mass transit area, it is likely to affect the provision of services generally in the integrated mass transit area. A road closure or bus stop relocation is significant if, for an event in the non-integrated mass transit area, it is likely to affect the provision of services generally in the non-integrated mass transit area. This clause also makes it clear that if the event is in the integrated mass transit area, a special event declaration may be published in a newspaper circulating in the integrated mass transit area; otherwise, the declaration may be published in a newspaper circulating in the non-integrated mass transit area. Clause 14 also omits a redundant reference to the non-TransLink area and renumbers section 67F to 67C.

Clause 15 omits a reference to the non-TransLink area and renumbers section 67G to section 67D.

Clause 16 omits a reference to the non-TransLink area, omits a redundant note and renumbers section 67H to section 67E.

Clause 17 replaces a reference to section 67H(1) with a reference to section 67E(1) and renumbers section 67I to section 67F. Clause 17 also provides for publishing special event approvals in the integrated mass transit area and non-integrated mass transit area.

Clause 18 inserts new offences for equipping, or requiring or allowing the use of, a taximeter in a vehicle other than a taxi.

New section 74AC(1) prohibits the operator of a public passenger service from equipping a vehicle used, or intended to be used, to provide the service with a taximeter or similar instrument unless the vehicle is a taxi (this offence includes keeping the taximeter in the vehicle). The maximum penalty for this offence is 160 penalty units.

New section 74AC(2) prohibits the operator of a public passenger service from requiring or allowing the driver of a vehicle being used to provide the service to use a taximeter or similar instrument unless the vehicle is a taxi. The maximum penalty for this offence is 160 penalty units.

New section 74AC(3) specifies that this section does not apply to the operator of a cross-border taxi service.

New section 74AC(4) defines ‘hiring a vehicle’ and ‘similar instrument’ for this section.

New definition of ‘hiring a vehicle’ includes hiring a vehicle, hiring a driver or hiring a vehicle and driver for the journey.

New definition of ‘similar instrument’ means an instrument that is designed to calculate the amount of a fare for hiring a vehicle for a journey during or after the journey by reference to time, distance or another matter relating to the journey similar to a taximeter.

Clause 19 removes the requirement for a transit officer to take a detained person to a police officer. Transit officers currently use the public transport network while undertaking enforcement activities and do not have access to an appropriate vehicle for transporting detained persons to a police officer. The current requirement for a transit officer to take a detained person to a police officer could affect the safety and security of passengers using the network. Amended section 129E will require that a transit officer contact a police officer after detaining a person to seek direction on whether to release the person or continue detaining the person until a police officer arrives to deal with the person.

Clause 20 clarifies that a transit officer must give a written report to a police officer if the police officer takes a detained person into their custody.

Clause 21 removes the requirement for a written report to state how a person was transported to a police officer as transit officers will no longer be required to transport detained persons to police officers. This clause also inserts a new requirement for the report to state the time when the police officer took the detained person into their custody if this occurs.

Clause 22 removes the requirement for a transit officer to advise the responsible person of certain matters where the transit officer is transporting a detained child or person with an impaired capacity to a police officer as transit officers will no longer be required to do this. If the transit officer is detaining the child or person with impaired capacity at a place until a police officer arrives, the transit officer must advise the responsible person for the child or person with an impaired capacity of certain matters as soon as practicable.

Clause 23(1) amends section 129ZL(1)(c) to specify that the application for a civil banning order must state the information necessary to satisfy the court of the matters mentioned in section 129ZO(1) or (2)(a) to (f). This change makes it clear that the applicant does not need to provide

information to the court about the respondent's personal circumstances. The respondent will be responsible for providing this information.

Clause 23(2) inserts a new requirement in section 129ZL that the application must state that if the respondent would like the court to consider a matter relating to the respondent's personal circumstances, the respondent must provide that information.

Clause 23(3) renumbers subsections within section 129ZL.

Clause 24(1) omits references to part 3 of the *State Penalties Enforcement Act 1999* from section 129ZO as a consequence of the amendment to the definition of 'dealt with'.

Clause 24(2) amends section 129ZO(1)(a) to allow a court to make a civil banning order if satisfied that within any 12-month period occurring in the 2 years before the date of the application, the respondent was served 10 or more infringement notices for relevant offences.

Clause 24(3) amends the definition of 'dealt with' by inserting the event where an order has been made against the respondent under section 38 of the *State Penalties Enforcement Act 1999*. This new paragraph will cover the situation where a person defaults on an infringement notice after being given an opportunity to pay the fine, elect for the matter to be dealt with by a Magistrates Court or apply for approval to pay the fine by instalments.

Clause 25 clarifies that if a court makes a civil banning order or interim civil banning order for a respondent, the order must be served on the respondent. This clause also clarifies that certain provisions in this section apply where a legal or other representative of the respondent is present or not present at the court hearing.

Clause 26 removes certain requirements for the proper officer of the Magistrates Court under section 129ZT.

Clause 27 amends section 143AHB to allow authorised persons to direct a person in contravention of a civil banning order to leave, or not to enter, public transport infrastructure. This amendment aligns enforcement powers of authorised persons for civil banning orders with existing powers for exclusion orders.

Clause 28 inserts a new part 13 for transitional and declaratory provisions for this Act that will commence on Assent.

New section 193 contains relevant definitions for part 13 including 'repealed Act', 'transfer day' and 'TransLink'.

New definition of ‘repealed Act’ means the *Transport Operations (TransLink Transit Authority) Act 2008*.

New definition of ‘transfer day’ means the day on which section 32 of this Act (Repeal) commences and TransLink is dissolved.

New definition of ‘TransLink’ means either the TransLink Transit Authority or TransLink Transit Authority Employing Office established under the TransLink Act.

New section 194 declares that the definition of ‘specified kind’ in section 62AAG(6), as inserted in 2008, is taken always to have referred to section 42. This provision clarifies that the reference to section 42A was erroneous.

Clause 29 inserts transitional provisions for this Act that will commence on a day to be fixed by proclamation.

New section 195 applies to contracts other than service contracts, work performance arrangements or contracts of employment to which TransLink is a party immediately before the transfer day. This new section provides that despite any provision of the contract, the State is taken to be a party to the contract instead of TransLink. The State assumes all liabilities and rights under the contract and a reference to TransLink in the contract is taken to be a reference to the State. This provision provides certainty for the State and other parties to a contract with TransLink.

New section 196 clarifies that the repeal of the TransLink Act does not alter or affect an existing service contract and a TransLink service contract is taken to be an integrated mass transit service contract.

New section 197 provides for the transfer of TransLink assets and liabilities to the State. At the beginning of the transfer day, TransLink’s assets and liabilities become the State’s assets and liabilities.

New section 198 clarifies that the State is the successor in law of TransLink.

New section 199 provides for the registration of TransLink assets that are transferred to the State. The registrar of titles or other person responsible for keeping a register must, if asked in the appropriate form and on payment of any fees, record the transfer.

New section 200 clarifies that a reference to TransLink in a document is taken to be a reference to the State. A reference to TransLink in an industrial instrument is expressly excluded from this provision.

New section 201 transfers any employees of TransLink to the department. New section 201(2) ensures that employee rights and entitlements are preserved on repeal of the TransLink Act.

New section 202 clarifies that a special event declaration or written approval made or given immediately before the transfer day has effect as if it were a special event declaration or written approval under the amended special event provisions.

Clause 30 inserts new schedule 1B prescribing all the service contract areas or routes for the purpose of defining the integrated mass transit area.

Clause 31(1) omits the definition of ‘public transport infrastructure’ from schedule 3. A new definition of ‘public transport infrastructure’ is inserted by clause 31(3).

Clause 31(2) omits redundant definitions from schedule 3.

Clause 31(3) inserts new definitions for ‘cross-border taxi rank’, ‘cross-border taxi service’, ‘NSW taxi’, ‘public transport infrastructure’ and ‘taximeter’.

New definition of ‘cross-border taxi rank’ is relocated from the *Transport Operations (Passenger Transport) Regulation 2005* as a consequence of the creation of new offences relating to taximeters.

New definition of ‘cross-border taxi service’ is relocated from the *Transport Operations (Passenger Transport) Regulation 2005* as a consequence of the creation of new offences relating to taximeters.

New definition of ‘NSW taxi’ is relocated from the *Transport Operations (Passenger Transport) Regulation 2005* as a consequence of the creation of new offences relating to taximeters.

New definition of ‘public transport infrastructure’ includes infrastructure that is related to the provision of public passenger services for rail, light rail, bus and ferry modes. The definition also includes bus stops and the area in the immediate vicinity of bus stops. The inclusion of bus stops will allow authorised persons to more safely resolve enforcement-related matters by moving offenders off buses and onto bus stops, while ensuring there is minimal encroachment on public space.

New definition of ‘taximeter’ is relocated from the *Transport Operations (Passenger Transport) Regulation 2005* as a consequence of the creation of new offences relating to taximeters.

Clause 31(4) inserts new definitions for ‘integrated mass transit area’, ‘integrated mass transit service contract’, ‘non-integrated mass transit area’ and ‘special event’.

New definition of ‘integrated mass transit area’ refers to section 62AAA.

New definition of ‘integrated mass transit service contract’ refers to section 62AAC.

New definition of ‘non-integrated mass transit area’ refers to chapter 6, part 4, section 67B.

New definition of ‘special event’ is defined as an event the subject of a declaration under section 67C.

## **Part 3                      Repeal**

Clause 32 repeals the TransLink Act, dissolving TransLink and the TTAE0.

## **Part 4                      Minor and consequential amendments**

Clause 33 specifies that the schedule amends the Acts mentioned in it.

The schedule makes consequential amendments to the *Integrity Act 2009*, *Public Service Act 2008*, *Transport Infrastructure Act 1994*, *Transport Operations (Passenger Transport) Act 1994* and *Transport Planning and Coordination Act 1994*.

The schedule also makes minor amendments to the *Transport Infrastructure Act 1994* and *Transport Operations (Road Use Management) Act 1995* to clarify that a transport infrastructure strategy or road use management strategy for an area must not be inconsistent with, and must give effect to, an integrated regional transport plan for the area.

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