

Personalised Transport Ombudsman Bill 2019

Explanatory Notes

Short title

Personalised Transport Ombudsman Bill 2019

Policy objectives and the reasons for them

The main policy objective of the Personalised Transport Ombudsman Bill 2019 (the **Bill**) is to establish the Personalised Transport Ombudsman (the **PTO**) to help resolve complaints relating to personalised transport services.

The other policy objectives of the Bill are to:

- support the protection of fare revenue under the new ticketing solution; and
- clarify and improve the enforceability of existing provisions of the *Transport Operations (Passenger Transport) Act 1994 (TOPTA)*.

Personalised Transport Ombudsman

The Queensland Government released *Queensland's Personalised Transport Horizon: Five Year Strategic Plan for Personalised Transport Services 2016-2021* (the **Strategic Plan**) on 11 August 2016. The Strategic Plan included measures to reform Queensland's personalised transport industry in response to changing customer expectations resulting from the emergence of new technology and related personalised transport business models.

The Queensland Government has delivered stages 1 and 2 of the Strategic Plan, with most reforms implemented through the *Transport and Other Legislation (Personalised Transport Reform) Amendment Act 2017*. The former Public Works and Utilities Committee (the **Former Committee**), in its report on the *Transport and Other Legislation (Personalised Transport Reform) Amendment Bill 2017* (the **Personalised Transport Reform Bill**) recommended, in response to industry representations, that an ombudsman or similar entity be established to deal with disputes in the industry. Delivering on this recommendation, a key policy objective of this Bill is to establish the PTO to help resolve complaints relating to personalised transport services.

New ticketing solution

In June 2018, the Queensland Government announced the purchase of a new ticketing solution to be rolled out across all urban public transport services in South East Queensland and 18 regional areas in Queensland. The new ticketing solution will allow customers to access public transport using a broader range of payment methods, including paper tickets, *go* cards and other items issued by the Department of Transport and Main Roads (the **Department**) as well as contactless debit and credit cards, smartphones or wearable devices held by customers.

The Queensland Government's long-standing policy has been to protect fare revenue by enforcing fare evasion and ensuring only people entitled to a concession fare can access the

benefit of the concession fare. The objective of the policy is to reduce the overall impact of public passenger transport subsidies on the State's budget, ensuring the quality and sustainability of public passenger transport. Further, since 2014, the Queensland Government's policy has been to use unclaimed credit on dormant *go* cards to further improve public passenger transport. The objective of the Bill is to support these policies under the new ticketing solution.

Miscellaneous amendments

Several miscellaneous amendments aim to clarify and improve the enforceability of existing provisions in TOPTA. These amendments further support the objectives of TOPTA, particularly the objectives of promoting the safety of passengers and providing a system of public passenger transport that is responsive to community needs.

Achievement of policy objectives

Personalised Transport Ombudsman

The Bill provides for the appointment of the PTO and establishes the office of the PTO (**OPTO**). The Bill also outlines the PTO's functions, powers and responsibilities. The amendments in the Bill will ensure that the PTO can operate independently in helping to resolve complaints from anyone relating to personalised transport services. The range of complaints that may be considered by the PTO is broad and includes, for example, a complaint about the cleanliness of a vehicle used to provide a personalised transport service or a complaint about a personalised transport driver's working conditions. The PTO will also identify, and report to the Minister on, systemic issues arising from personalised transport complaints.

New ticketing solution

The Bill supports the protection of fare revenue under the new ticketing solution by:

- relocating fare evasion and related offences to a regulation to provide greater flexibility to make changes to the regulation as ticketing technology develops;
- providing continued support for the sharing of information to verify a person's entitlement to a concession in line with current practice;
- providing evidentiary aids for fares and revenue protection devices; and
- making consequential amendments to provide for the continued use of unclaimed credit on dormant passenger accounts.

Miscellaneous amendments

The Bill clarifies and improves the enforceability of existing provisions in TOPTA by:

- clarifying the public passenger services for which operator accreditation (**OA**) and driver authorisation (**DA**) are required;
- reducing the penalty for failing to hold the proper category of OA or DA, reflecting the less serious nature of these offences;
- providing evidentiary aids for establishing whether, at a particular time, a person holds or does not hold a category of OA or DA;
- providing that in a proceeding for an offence against relevant transport legislation about a public passenger service, the defendant bears the evidential burden of proving the service is excluded from the definition of public passenger service;
- clarifying an existing power of an authorised person to require information from certain persons;

- changing the period for determining the maximum consumer price index (CPI) percentage increase for the taxi industry security levy to better align with the timing of the Department's annual fees and charges regulation;
- removing the ability of a holder of a taxi service licence to request that the Department transfer the holder's licence to another taxi service area, ensuring licence transfers occur through a formalised process that treats all licence holders fairly;
- allowing a driving sanction to be imposed when a person driving a taxi, booked hire vehicle or limousine commits an offence against a provision prescribed by regulation;
- providing evidentiary aids for the categories and descriptions of motor vehicles; and
- making other minor consequential amendments.

Alternative ways of achieving policy objectives

Personalised Transport Ombudsman

The PTO is considered the most effective way to help resolve complaints relating to personalised transport services. Other options considered to achieve the policy objectives include self-regulation of complaints by industry, a complaints helpline and an independent industry regulator with a complaints function. It was noted that the establishment of an independent industry regulator was not previously supported by the Former Committee. Establishing the PTO was also considered the best way to deliver the greatest net benefit when compared with other options. Although the PTO may impose some compliance costs on parties (for example, the requirement to provide information or attend a meeting), these costs are expected to be outweighed by the savings that result from the timely resolution of disputes.

New ticketing solution

Introducing the new ticketing solution without legislative amendment was considered as an option. This option would, however, negatively impact the Department's ability to protect fare revenue, and as a result, affect the quality and sustainability of public passenger transport. Failing to make consequential amendments to the provision about using unclaimed credit on dormant passenger accounts would impact on the ability of the Department to use unclaimed credit for improving public passenger transport.

Miscellaneous amendments

The remaining amendments contained in this Bill make improvements to existing provisions to provide clarity and improve enforceability. As they relate to existing provisions, amending the legislation was identified as the best means to achieve the existing policy objectives.

Estimated cost for government implementation

The Queensland Government will incur additional costs in the implementation and ongoing operation of the PTO. These costs will provide for the PTO, the OPTO and other associated resources such as office accommodation and information technology.

The new ticketing solution is fully funded by the Queensland Government with allocation of \$371.1 million, over a four-year project delivery timeframe, to design, build and implement the new ticketing solution across Queensland.

The cost of implementing the remaining proposals will be negligible and will be met from existing budget allocations.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles (FLPs). Potential breaches of FLPs have been addressed below.

Powers to regulate certain matters

The Bill allows a regulation to prescribe public passenger services to which the requirement to hold OA and DA does not apply (clauses 118 and 121). This approach is consistent with the existing provisions and provides flexibility to prescribe, by regulation, new types of public passenger services that should not be subject to the requirement to hold OA or DA.

The Bill also allows a regulation to provide for matters relating to the payment of fares (clause 124). This may raise concern with the FLP requiring that legislation has sufficient regard to the institution of Parliament. The matters to be regulated are largely technical in nature and this approach will ensure sufficient flexibility to respond effectively to changes in technology and emerging insights about system functionalities and enforcement issues. This flexibility will help ensure the sustainability of public passenger transport.

The matters proposed for regulations are sufficiently routine or administrative in nature to be appropriate for a regulation. Importantly, any regulation made under these provisions is subject to scrutiny of the Legislative Assembly through the usual regulation-making process.

Authorising the amendment of an Act by regulation (Henry VIII clause)

Certain minor consequential amendments may breach the FLP about the use of Henry VIII clauses:

- Clause 127 allows a driver or authorised person to direct a person contravening a ‘fare evasion provision’ to leave or not enter a public passenger vehicle.
- Clause 128 allows an authorised person to direct a person contravening a ‘fare evasion provision’ to leave public transport infrastructure.
- Clause 132 provides that the offence of attempting to commit an offence does not apply to an offence against a ‘fare evasion provision’.

Clause 123(2) defines a fare evasion provision as a provision of a regulation that creates an offence about fare evasion in relation to the use or hire of a public passenger vehicle. The amendments are required as a result of moving the offence of fare evasion to a regulation (refer to clause 125) and they support the continuation of the existing policy.

The amendments allow the Governor in Council to broaden the application of the relevant provisions by regulation. However, the potential FLP breach is justified as the relevant provisions can only be extended to apply to an offence provision prescribed by regulation that replaces existing section 143AC (Fare evasion) of TOPTA.

Clause 130 inserts new section 148BB (Information sharing in relation to entitlements to concession fares), which provides for the sharing of information with a ‘relevant entity’ about a person’s entitlement to a concession fare. A relevant entity is defined to include another entity prescribed by regulation. The definition allows the Governor in Council to broaden the

application of new section 148BB by regulation. However, the potential FLP breach is justified to provide for the efficient administration of concession fares by allowing for additional relevant entities to be prescribed by regulation if the scope of concession fares changes over time. Any information shared under this section is limited to information about whether a person is entitled to a concession fare.

Any regulation made under these provisions is subject to scrutiny of the Legislative Assembly through the usual regulation-making process.

New offences

The Bill introduces new offence provisions with maximum penalties for non-compliance. The new offence provisions potentially breach the FLP that legislation has sufficient regard to the rights and liberties of individuals. The new offences are considered justified to both ensure confidence in the OPTO and provide for the effective operation of the PTO. The levels of the penalties are also considered appropriate as they are broadly consistent with similar provisions in other legislation that establishes ombudsmen in Queensland or with TOPTA.

Clause 16 requires a person appointed as the PTO to disclose to the Minister if the person is disqualified from continuing as the PTO (for example, has been convicted for an indictable offence). The maximum penalty for the offence is 100 penalty units. This offence is essential to maintain the integrity of the position.

Clause 23 prohibits a person from disclosing a criminal history report unless certain exemptions apply. The maximum penalty for the offence is 100 penalty units. This offence supports the FLP about privacy by protecting a person's criminal history.

Clauses 50 and 51 give the PTO powers to require a person to provide information or to attend a meeting and answer questions. Parties must comply with the requirements unless they have a reasonable excuse. The maximum penalty varies depending on whether a person is an individual or corporation and are set at a level to ensure the PTO can undertake the PTO's key function of investigating and helping to resolve personalised transport complaints.

Clause 55 creates a new offence for taking detrimental action against a person in reprisal for making a complaint, or giving information about a complaint, to the PTO. Although a range of offences under the *Criminal Code Act 1899* (**Criminal Code**) may apply to a reprisal action, depending on the nature of the action, other actions may be taken which could severely impact on a person that are beyond the scope of the Criminal Code (for example, a passenger may be denied access to a personalised transport service or a personalised transport driver may not be allocated work by a booking entity). The new offence is necessary to encourage aggrieved persons to make complaints to the PTO with reduced risk of reprisal. The proposed maximum penalty of 75 penalty units is significantly lower than the maximum penalty for similar offences in the *Local Government Act 2009* and *Public Interest Disclosure Act 2010*, reflecting the broad scope of matters that may be dealt with by the PTO.

In addition, the Bill includes offences relating to the investigation and enforcement of PTO related offences. These offences and penalties are justified as they are necessary to enforce compliance with the PTO-related offences in the Bill and are consistent with established precedents.

Clause 65 requires an authorised officer to return the officer's identity card to the PTO within 21 days of the officer ceasing office. The maximum penalty of 30 penalty units is the same penalty for a similar offence, which applies to authorised persons, in section 112 (Identity cards) of TOPTA. The new offence is necessary as it ensures a person who is no longer an authorised officer cannot pretend to be an authorised officer, supporting the public's trust in the authority of officers.

Clause 82 makes it an offence to contravene a help requirement. A help requirement is a standard enforcement power that allows an authorised officer to exercise their general powers and the maximum penalty is consistent with a similar provision in section 124 (General powers in relation to places and vehicles) of TOPTA.

Clause 84 makes it an offence to contravene an information or attendance requirement. Such requirements are standard enforcement powers and are necessary to allow an authorised officer to undertake enforcement activities. The maximum penalties are consistent with similar provisions in other Acts.

Clause 88 makes it an offence to obstruct an authorised officer in the exercise of the officer's powers. This offence is a standard enforcement provision and is necessary to ensure an authorised officer can exercise their powers effectively.

Clause 89 makes it an offence to impersonate an authorised officer. This offence is a standard enforcement provision. The maximum penalty for the offence is consistent with a similar provision in section 136 (Impersonating authorised person) of TOPTA. The provision is necessary to ensure the public's trust in the authority of officers and that the public cannot be misled into thinking a person who is not an authorised officer is an authorised officer.

Clause 93 makes it an offence to give false or misleading information, with a maximum penalty of 100 penalty units. This offence is necessary to ensure any information provided to the PTO can be relied on by the PTO.

Clause 94 prohibits the disclosure of confidential information, subject to certain exemptions. The maximum penalty varies depending on whether a person is an individual, corporation or official. The new offence is necessary to protect confidential information, supporting the FLP regarding privacy.

Indemnity from civil liability

Clause 95 provides that the PTO is not civilly liable for an act done or omission made honestly and without negligence. This provision may also be seen to breach the FLP about having insufficient regard to individual rights and liberties by restricting an individual's ability to seek legal redress. It is not considered appropriate for the PTO to be made personally liable because of carrying out his or her responsibilities under the legislation in good faith. The potential FLP breach is justified as it attaches civil liability to the State and it only applies to acts done honestly and without negligence.

Immunity from proceeding

Clause 54 provides that a person is not liable, civilly, criminally or under an administrative process for giving information to the PTO under the Act. This provision may be seen to breach the FLP about having insufficient regard to individual rights and liberties by restricting an

individual's ability to seek legal redress. The potential FLP breach is justified to encourage persons to give information to the PTO and participate in resolving complaints in good faith, provided the persons act honestly. The Bill ensures complaints are managed confidentially and any recommendation made by the PTO will be nonbinding, so the impact on another party as a result of the immunity will be limited.

Privacy

Clause 22 enables the Minister to request from the Commissioner of the Queensland Police Service a written report about the criminal history of a person for the purposes of deciding if a person is disqualified from becoming, or continuing as, the PTO. This provision may breach a person's privacy rights. However, the potential FLP breach is considered justified as criminal history checking is appropriate to maintain the integrity of the position of the PTO. In addition, clause 22 provides safeguards around the access and disclosure of the information by requiring consent of the person and requiring the Minister to destroy the report as soon as practicable. Clause 23 also makes it an offence for a person to disclose the information in a criminal history report unless authorised in limited circumstances. The maximum penalty for this offence is 100 penalty units.

Clause 53 will allow the PTO to enter into information sharing arrangements with government entities. These arrangements are limited to information about whether a party to the arrangement is dealing, or has dealt, with a matter raised in a personalised transport complaint. These provisions are justified as they will promote efficient investigations by the PTO and prevent unnecessary duplication of effort among government entities. Clause 95 is designed to minimise the impact on the privacy of persons involved in PTO matters and would apply to a person who gains information about a person through any information sharing arrangement.

Clause 130, new section 148BB (Information sharing in relation to entitlements to concession fares) allows the chief executive to enter into an information sharing arrangement to determine whether a person is entitled to a concession fare. The information will only be disclosed to assess a person's eligibility for a concession fare and to prescribed relevant entities, ensuring only people eligible for a concession fare receive the benefit. The potential FLP breach is justified as a concession fare is not a statutory right and it ensures, consistent with long-standing government policy, that only people entitled to a concession fare can access the benefit of the concession fare. This will help maintain the quality and sustainability of public passenger transport. Further, the existing legislation prohibits the disclosure and use of information for purposes that are not authorised, and this protection will continue to apply for the new ticketing solution.

Evidentiary aids

Clause 90 includes evidentiary aids to simplify the evidence for various non-contentious matters for a legal proceeding under this Act.

Clauses 114(1) and 131 introduce several evidentiary aids, which may breach the FLP regarding the appropriateness of reversing the onus of proof. The evidentiary aids are designed to ensure efficient court proceedings, without relying on expert witnesses, in matters relating to the PTO, the new ticketing solution and other offences under TOPTA. These evidentiary matters are all administrative in nature and unlikely to be controversial and so are appropriate for certificate evidence. None of the evidentiary aids impact a defendant's right to provide evidence to the contrary in a court proceeding.

Clauses 114(2) to (3) places the evidential burden on a defendant to prove a service is a public passenger service excluded from TOPTA by regulation. The definition of a public passenger service contains multiple negative elements prescribed by regulation (for example, a service was not a service provided by the Australian Defence Force or a service was not an ambulance service). The prosecution may need to prove that each of these negative elements do not apply to a public passenger service before commencing a proceeding for any offence relating to the service. Given such matters are particularly within the defendant's knowledge and that the defendant has a general privilege against self-incrimination, the potential breach is considered justified.

Consultation

Extensive community and industry consultation regarding the personalised transport reforms was undertaken as part of the independent *Opportunities for Personalised Transport Review* in 2016 and the consideration of the Personalised Transport Reform Bill by the Former Committee. In response to submissions made by industry on the Personalised Transport Reform Bill, the Former Committee recommended establishing an ombudsman responsible for dealing with disputes in the industry.

The Department undertook consultation on the proposed PTO with a range of industry stakeholders during the policy development phase of the PTO proposal. During those meetings some industry representatives further advocated for the establishment of an independent commission for the personalised transport industry, which would be responsible for licensing, compliance and enforcement, and policy development. This proposal was not supported by the government as it would duplicate existing functions of the Department, did not meet the Queensland Government's Public Interest Map test and would significantly increase implementation and ongoing administration costs for industry and government.

During the drafting of the Bill, the Department undertook further consultation on the proposed PTO and other amendments relevant to the personalised transport industry with relevant industry stakeholders, including:

- Taxi Council of Queensland (TCQ);
- Gold Coast Cabs;
- Black and White Cabs;
- 13 Cabs Queensland;
- Limousine Association of Queensland;
- Limo Action Group;
- Uber;
- Shebah;
- Go Catch;
- Ride Share Drivers' Association of Australia;
- RACQ;
- Transport Workers Union; and
- Spinal Life Australia.

Key stakeholders across industry and government were also consulted during the procurement phase of the new ticketing solution, which included specification design and market sounding.

Although direct, specific consultation with public transport customers and industry stakeholders was constrained by probity restrictions, general insights were obtained and applied through customer research, focus groups and panel surveys to ensure that the technical specifications of the new ticketing solution would meet customer needs.

The Department also undertook consultation on the proposed amendments to support the new ticketing solution and other amendments relevant to the mass transit industry with relevant industry stakeholders, including:

- Queensland Bus Industry Council;
- Queensland School Bus Alliance;
- Brisbane Transport;
- Queensland Rail; and
- Keolis Downer (the Gold Coast light rail operator).

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland and is not uniform with or complementary to legislation of the Commonwealth or another state.

Notes on provisions

Part 1 Preliminary

Division 1 Introduction

Clause 1 provides that, when enacted, the Bill may be cited as the *Personalised Transport Ombudsman Act 2019*.

Clause 2 outlines the provisions of this Act that will commence by proclamation. All other provisions will commence on Royal Assent.

Clause 3 specifies the purpose of this Act.

Clause 4 specifies how the purpose is to be achieved.

Clause 5 provides that this Act binds all persons, including the State, but that the State cannot be prosecuted for an offence against this Act.

Division 2 Interpretation

Clause 6 indicates that schedule 1 contains the dictionary defining words used in this Act.

Clause 7 defines a *personalised transport service* for the definition of *personalised transport complaint* and other provisions of this Act.

Clause 8 defines a *personalised transport complaint* for limiting the scope of the complaints that the PTO can investigate. A reference to a personalised transport complaint includes a reference to part of the complaint.

Part 2 Personalised transport ombudsman and office of personalised transport ombudsman

Division 1 Personalised transport ombudsman

Subdivision 1 Appointment

Clause 9 provides that there will be a personalised transport ombudsman (PTO) who is appointed by the Governor in Council. To ensure the PTO's independence, the employment terms contained in the *Public Service Act 2008* will not apply. In line with section 25 of the *Acts Interpretation Act 1954*, the PTO's appointment may also be terminated by the Governor in Council.

Clause 10 provides that the PTO's appointment is for not more than 3 years. The PTO may be reappointed but for a total period of not more than 10 years.

Clause 11 provides that the PTO will be paid and employed on the terms decided by the Governor in Council.

Clause 12 outlines the grounds on which a person is disqualified from becoming, or continuing as, the PTO. The objective of having grounds for disqualification is to ensure the integrity of the PTO by preventing a person with criminal charges, insolvency, corporate disqualification or a conflict of interest from being the PTO.

Clause 13 allows the Minister to approve a leave of absence for the PTO and to appoint an acting PTO for the duration of that period. This provides flexibility and continuity by ensuring that the PTO can take any necessary leave.

Clause 14 provides for the resignation of the PTO.

Clause 15 prescribes the circumstances in which the OPTO becomes vacant.

Clause 16 requires a person appointed as the PTO to immediately notify the Minister if the person is disqualified from being the PTO under clause 12.

Subdivision 2 Functions and powers

Clause 17 outlines the functions of the PTO. The key functions of the PTO include investigating and helping to resolve personalised transport complaints and giving information and advice about resolving personalised transport complaints.

Clause 18 provides that the PTO in performing the PTO's functions must act independently, impartially and in the public interest.

Clause 19 provides that the PTO may do all things necessary or convenient in the performance of the PTO's functions.

Clause 20 provides that the PTO is not subject to direction by any person. This provision enshrines the PTO's independence.

Clause 21 allows the Minister to refer matters to the PTO for the PTO's review and to report back to the Minister.

Subdivision 3 Miscellaneous

Clause 22 allows the Minister to conduct criminal history checks with the commissioner of the police service to assess the eligibility of a person to be appointed the PTO or to check whether the PTO is disqualified under clause 12.

Clause 23 prohibits a person who possesses a criminal history report from disclosing the report or information contained in the report unless certain exemptions apply. The person must ensure the report or a document containing the information is destroyed as soon as practicable after it is no longer needed. The provision supports the FLP about privacy.

Clause 24 provides for the preservation of public service employment rights if a person is appointed as the PTO. This provision is consistent with similar approaches in other statutory

appointment instruments to ensure the recognition of service remains while the person is appointed outside the *Public Service Act 2008*.

Division 2 Office of the Personalised Transport Ombudsman

Clause 25 establishes the OPTO and provides that the function of the OPTO is to assist the PTO in performing the PTO's functions.

Clause 26 provides that OPTO is under the control of the PTO.

Clause 27 provides that the officers of the OPTO are appointed under the *Public Service Act 2008*.

Clause 28 provides that officers of the OPTO are not subject to direction by any person, other than from within the OPTO. This provision enshrines the independence of officers of the OPTO.

Clause 29 allows the PTO to enter into arrangements with other government agencies for the services of officers, employees or facilities of the other government agencies. This provision aims to allow the PTO to use existing government resources in a cost-effective manner. Any person reassigned under this clause is not subject to direction by any person outside OPTO.

Clause 30 provides that the OPTO is not a statutory body for the *Statutory Bodies Financial Arrangements Act 1982* or the *Financial Accountability Act 2009*.

Part 3 Personalised transport complaints

Division 1 Complaints process

Clause 31 provides that a person may make a personalised transport complaint to the PTO in writing or orally. The PTO must make a record of a complaint made orally.

Clause 32 sets out how the PTO must deal with complaints.

Clause 33 allows the PTO to make preliminary inquiries to determine how to deal with a personalised transport complaint under clause 32.

Clause 34 allows a complainant to withdraw a complaint.

Division 2 Refusal to investigate complaints

Clause 35 outlines the circumstances in which the PTO must refuse to investigate or continue to investigate a personalised transport complaint. This provision aims to ensure that the PTO does not investigate matters that are the primary responsibility of other bodies.

Clause 36 outlines circumstances in which the PTO may refuse to investigate or continue to investigate a personalised transport complaint, including, for example, where a complaint is frivolous or vexatious or where the complainant does not have a sufficient interest in the matter.

However, outside the specific circumstances identified in subclause (1), the PTO has broad discretion to refuse to investigate or continue to investigate a complaint.

Clause 37 provides that the PTO must give a notice to each party to a personalised transport complaint of a decision to refuse to investigate the complaint, including the reasons for the refusal. The PTO may decide not to give notice to a party other than the complainant if the PTO considers that it is not appropriate to do so in the circumstances.

Division 3 Referrals to chief executive (transport)

Clause 38 allows the PTO to refer a matter raised in a personalised transport complaint to the chief executive of the department administering TOPTA or the *Transport Operations (Road Use Management) Act 1995* (**chief executive (transport)**) if the PTO reasonably suspects that the matter may constitute an offence under a transport Act. The PTO must give a notice about the referral to each party to a personalised transport complaint as soon as practicable after referring the matter. The PTO may decide not to give notice to a party other than the complainant if the PTO considers that it is not appropriate to do so in the circumstances.

Clause 39 requires the PTO to defer investigating a personalised transport complaint where a matter raised in the complaint has been referred to a chief executive (transport) under clause 38. The PTO must defer dealing with the complaint until the PTO receives advice from the chief executive (transport) under clause 40.

Clause 40 requires the chief executive (transport) to consider a matter referred under clause 38 and advise the PTO in writing whether the chief executive (transport) will deal with the matter. The chief executive (transport) must advise the PTO within two months after the matter raised in a personalised transport complaint is referred. If the chief executive (transport) advises that the chief executive (transport) will deal with the matter further, the PTO must refuse to investigate the complaint. This ensures that the chief executive (transport) maintains full responsibility for compliance matters under a transport Act. If the chief executive (transport) advises that the chief executive (transport) will not deal with the matter further, the PTO may investigate the complaint. The PTO must give notice to each party stating whether the chief executive (transport) will deal with the matter or whether the PTO will investigate the complaint. The PTO may decide not to give notice under this clause to a party other than the complainant if the PTO considers that it is not appropriate to do so in the circumstances.

Division 4 Investigating complaints

Subdivision 1 General

Clause 41 requires the PTO to give an investigation notice to the parties to a personalised transport complaint if the PTO decides to investigate the complaint. The investigation notice must state certain matters.

Clause 42 provides that the PTO decides the investigation procedure. However, the procedure must not bind the parties to the complaint. In carrying out an investigation, the PTO must act in a way that is fair and reasonable and maintains confidentiality. The investigation is not bound by the rules of evidence but must comply with natural justice and the PTO may make inquiries the PTO considers appropriate.

Clause 43 requires the parties to an investigation about a personalised transport complaint to participate in the investigation in good faith. Good faith is not defined, but examples are included to aid interpretation. This requirement ensures that parties actively participate in the investigation and genuinely attempt to resolve complaints fairly and equitably.

Clause 44 provides that where the PTO considers a party to a personalised transport complaint has not acted in good faith and it is in the public interest for the chief executive of the department administering TOPTA (**chief executive (passenger transport)**) to know about the party's conduct, the PTO may give the chief executive (passenger transport) a conduct report. A person who is the subject of a conduct report must be invited by the PTO to make a submission on a draft conduct report before the report is finalised. The PTO must give a copy of the conduct report to the party after giving the report to the chief executive (passenger transport). Based on the contents of a conduct report, the chief executive (passenger transport) may decide that it is in the public interest to take action against a person in relation to a licence, accreditation or authorisation under existing powers in TOPTA.

Clause 45 provides that as soon as practicable after completing an investigation, the PTO must prepare an investigation report, stating certain matters. An investigation report is not binding on the parties and is by way of information and advice only to the parties.

Clause 46 provides that if an investigation report relied on a document or information given by a person that was given in confidence and may be detrimental to the person's commercial interests, or personal affairs or reputation, the document or information cannot be disclosed in the report.

Clause 47 provides that if an investigation report prepared under clause 45 contains an adverse comment about a person, the PTO must, before finalising the report, give the person a copy of the proposed comment and ask the person to make a submission about the comment. If the person makes a submission about the comment, the PTO may include the comment in the report only if the report includes the person's submission or a fair summary of the submission. This provision gives a person who is the subject of an adverse comment a right of reply.

Clause 48 provides that the PTO must give each party to the personalised transport complaint a copy of the investigation report after the report is finalised. The PTO may give the chief executive (passenger transport) the report if the PTO believes it is in the public interest to do so. Based on the contents of an investigation report, the chief executive (passenger transport) may decide that it is in the public interest to take action against a person in relation to a licence, accreditation or authorisation under existing powers in TOPTA. If the PTO gives the chief executive (passenger transport) the report, the PTO must advise the parties to the complaint.

Subdivision 2 Powers

Clause 49 provides that this subdivision applies if the PTO is investigating a personalised transport complaint.

Clause 50 allows the PTO to require a person give to the PTO a document or information for an investigation. A person must comply with the requirement unless the person has a reasonable excuse. It is a reasonable excuse not to comply with the requirement if the person does not have

the document or information, or if complying with the requirement might incriminate the person.

Clause 51 allows the PTO to require the attendance of a person to answer questions. A person must comply with the requirements unless the person has a reasonable excuse. It is a reasonable excuse not to comply with the requirement to answer a question, if answering the question might incriminate or expose the person to a penalty.

Division 5 Confidentiality and information sharing

Clause 52 allows the PTO to keep documents for a reasonable period to carry out an investigation and take extracts or make copies of it. If a person has a right to inspect the documents if the documents were not in the PTO's possession, the PTO must allow the person to inspect the documents.

Clause 53 allows the sharing of information between the PTO and government agencies for determining whether a matter raised in a personalised transport complaint is or has been the subject of a complaint or proceeding being, or that has been, dealt with by the entity. This provision is intended to reduce duplication between government agencies and discourage complainants from using multiple forums at the same time.

Division 6 Protections

Clause 54 provides that a person is not liable for giving information if the person, acting honestly, gives the information under this Act to the PTO or an officer in relation to a personalised transport complaint. This provision will protect persons who give information to the PTO under this Act to support the effectiveness of the PTO in performing the PTO's functions.

Clause 55 provides that a person must not take detrimental action in reprisal for a personalised transport complaint. This provision aims to encourage aggrieved persons to make complaints to the PTO by reducing the risk of being penalised for doing so.

Clause 56 provides that a person who takes detrimental action against another person in reprisal for a personalised transport complaint is liable in damages to any person who suffers detriment as a result. This provision further discourages reprisals and encourages aggrieved persons to make complaints to the PTO.

Part 4 Enforcement

Division 1 General provisions about authorised officers

Subdivision 1 Appointment

Clause 57 outlines the purpose of this part and that this part includes provision for appointing authorised officers and giving authorised officers powers.

Clause 58 provides that the PTO is an authorised officer and that clauses 60, 61, 62 and 65 do not apply to the PTO as an authorised officer.

Clause 59 allows the PTO to appoint an officer of the OPTO as an authorised officer if the person is appropriately qualified.

Clause 60 provides that an authorised officer holds office on any conditions stated in an instrument of appointment, notice signed by the PTO given to the authorised officer or a regulation.

Clause 61 provides for when the office of a person as an authorised officer ends.

Clause 62 provides for the process by which an authorised officer can resign.

Subdivision 2 Identity cards

Clause 63 requires the PTO to issue an identity card to an authorised officer. The identity card must include certain details.

Clause 64 requires an authorised officer to produce or display the officer's identity card when exercising a power under this Act to a person unless it is not practicable to do so.

Clause 65 requires a person to return the person's identity card within 21 days after the office of the person as an authorised officer ends.

Subdivision 3 Miscellaneous provisions

Clause 66 provides that if a provision refers to the exercise of a power generally by an authorised officer, the reference is to the exercise of all or any of authorised officers' powers under this part or a warrant.

Clause 67 provides that a reference in this part to a document includes a reference to an image or writing produced, or capable of being produced, from an electronic document.

Division 2 Entry of places by authorised officers

Subdivision 1 Power to enter

Clause 68 gives an authorised officer a general power to enter a place if the occupier consents, the place is a public place, or the entry is authorised by warrant.

Subdivision 2 Entry by consent

Clauses 69 to 72 outline the procedures an authorised officer must follow when intending to enter a place by consent.

Subdivision 3 Entry under warrant

Clauses 73 to 78 outline the procedures an authorised officer must follow regarding the application for a warrant to enter a place and for entering the place under the warrant. The process for issuing the warrant is also outlined.

Division 3 General powers of authorised officers after entering places

Clause 79 provides that the powers under this division may be exercised, subject to any conditions of entry, if an authorised officer enters a place by consent or under a warrant.

Clause 80 outlines the general powers that an authorised officer may exercise after entering a place including, for example, searching any part of the place or inspecting, examining or filming any part of the place or anything at the place.

Clause 81 provides that the authorised officer may make a help requirement of a person to exercise a general power under clause 80.

Clause 82 requires a person to comply with a help requirement under clause 81.

Division 4 Other information-obtaining powers of authorised officers

Clause 83 allows an authorised officer to require a person to give certain information or attend a place to answer questions or produce documents about an offence against this Act if the authorised officer reasonably believes that the offence has been committed and the person may be able to give information about the offence.

Clause 84 requires a person to comply with a requirement under clause 83.

Division 5 Miscellaneous provision relating to authorised officers

Subdivision 1 Damage

Clauses 85 and *86* deal with damage that may be caused by an authorised officer in exercising the officer's powers, including provision to avoid or minimise damage and to give notice of any damage to the person who appears to be the owner or in control of the damaged thing.

Subdivision 2 Compensation

Clause 87 provides that a person may claim compensation from the State if the person incurs loss because of the exercise of a power by an authorised officer. A court may order compensation only if the court is satisfied that it is just to make the order in the circumstances of the particular case.

Subdivision 3 Other offences relating to authorised officers

Clause 88 makes it an offence to obstruct an authorised officer in the exercise of the officer's powers.

Clause 89 makes it an offence to impersonate an authorised officer.

Part 5 Miscellaneous provisions

Clause 90 provides general evidentiary aids to simplify the evidence for various non-contentious matters.

Clause 91 allows a chief executive (transport) to share information with the PTO for performing the PTO's functions.

Clause 92 allows the PTO to delegate the PTO's functions and powers to an appropriately qualified officer to streamline administration of this Act.

Clause 93 makes it an offence for a person to give information to the PTO, an officer of the OPTO or an authorised officer that the person knows is false or misleading.

Clause 94 provides that a person must not make a record of, disclose or use confidential information unless an exemption applies. This provision principally aims to protect the privacy of any person who is part of, or mentioned in, an investigation.

Clause 95 protects the PTO from civil liability for any honest act done or omission made without negligence in the performance of the PTO's duties and attaches any civil liability to the State. This protection is similar to a protection given to authorised officers under TOPTA.

Clause 96 requires the Minister to complete a review of the effectiveness of this Act within three years and report the findings to the Legislative Assembly. This provision applies a requirement of the Queensland Government's Public Interest Map policy.

Clause 97 provides that the Governor in Council can make regulations under this Act.

Part 6 Transitional provision

Clause 98 allows the PTO to consider a personalised transport complaint about a matter which happened before the commencement of this Act.

Part 7 Amendment of Acts

Division 1 Amendment of this Act

Clause 99 provides that this division amends this Act.

Clause 100 amends the long title of this Act.

Division 2 Amendment of Integrity Act 2009

Clause 101 specifies that this division amends the *Integrity Act 2009*.

Clause 102 amends schedule 1 of the *Integrity Act 2009* to insert a reference to the PTO under the *Personalised Transport Ombudsman Act 2019* as a statutory office holder to require the PTO to give the integrity commissioner and relevant Minister a statement about the PTO's interests.

Division 3 Amendment of Public Service Act 2008

Clause 103 specifies that this division amends the *Public Service Act 2008*.

Clause 104 amends schedule 1 of the *Public Service Act 2008* to prescribe the OPTO as a public service office and the PTO as a public service head for that Act.

Division 4 Amendment of Tobacco and Other Smoking Products Act 1998

Clause 105 specifies that this division amends the *Tobacco and Other Smoking Products Act 1998*.

Clause 106 updates a reference to the *Transport Operations (Passenger Transport) Regulation 2018* as remade.

Division 5 Amendment of Transport Infrastructure Act 1994

Clause 107 specifies that this division amends the *Transport Infrastructure Act 1994*.

Clause 108 updates a reference to the *Transport Operations (Passenger Transport) Regulation 2018*, part 10 as remade.

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

Subdivision 1 Preliminary

Clause 109 provides that this division amends TOPTA.

Subdivision 2 Amendments commencing on assent

Clause 110 amends section 91G (Transfer of taxi service licence between taxi service areas) to remove the ability for a holder of a taxi service licence to apply to change the taxi service area for the licence to another taxi service area. The Department's current process for transferring of a licence to another taxi service area requires it to first assess demand for taxi services in the relevant areas through a taxi area review. This allows the Department to ensure there are enough taxis in a taxi service area to meet demand for services in the area consistent with the chief executive's obligations under section 91ZT (Taxi service areas) of TOPTA. The change will have the effect of allowing the Department to transfer a taxi service licence to another taxi service area after it has conducted a taxi area review.

Clause 111 amends section 91ZI (What is a relevant driver offence) to extend the circumstances in which a *relevant driver offence* is committed in subsection (2) to provide that the offence is also committed while the driver is driving a taxi, booked hire vehicle or limousine. This amendment will improve the ability of the chief executive to impose driving sanctions, particularly in relation to offences committed against section 182 of the Queensland Road Rules (Stopping in a taxi zone).

Clause 112 amends section 91ZW (Annual taxi industry security levy payable) to change the period for determining the maximum CPI percentage increase for the taxi industry security levy to better align with the timing of the Department's annual fees and charges regulation. As an example, the change will have the effect of basing the taxi industry security levy for the financial year 2018-19 on the percentage increase in the CPI index as at March 2017 and March 2018.

Clause 113 amends section 128 (Power to require information from certain persons) to clarify the power of an authorised person to require a person to provide information about an offence if the authorised person reasonably suspects a relevant offence has been committed that relates to the provision of a public passenger service.

Clause 114 inserts additional matters in section 153B (Facilitation of proof—general) to support prosecutions for various offences under TOPTA.

Clause 115 omits chapter 12, part 4 (Other provision) as the provision is no longer required.

Clause 116 amends schedule 3 (Dictionary) to omit, replace, amend and insert definitions.

Subdivision 3 Amendments commencing by proclamation

Clause 117 replaces the existing definition of OA with a new definition.

Clause 118 replaces section 15 (Duty of operator) with a new offence for providing a public passenger service without holding OA (new section 15 (Operator must hold operator accreditation)). This change aims to clarify that an operator must hold OA to provide all public passenger services other than services that are exempt from the requirement to hold OA. The change also implements a reduced maximum penalty for failing to hold the proper category of OA.

Clause 119 clarifies that evidence that a person is involved in providing a public passenger service and holds OA is evidence that the person is the operator of the service.

Clause 120 replaces the existing definition of DA with a new definition.

Clause 121 separates the offence under section 27 (Driver must hold appropriate authorisation) into two separate offences.

New section 27 (Driver must hold driver authorisation) creates an offence for driving a vehicle to provide a public passenger service without holding DA. This change aims to clarify that a person must hold DA to drive a vehicle to provide all public passenger services other than services that are exempt from the requirement to hold DA. The change also implements a reduced maximum penalty for failing to hold the proper category of DA.

New section 27A (Person must use drivers that hold driver authorisation) creates an offence for using a driver who does not hold DA to drive a vehicle to provide a public passenger service. This change aims to clarify that a person must use a driver who holds DA to drive a vehicle to provide all public passenger services other than services that are exempt from the requirement

to hold DA. The change also implements a reduced maximum penalty for failing to use a driver who holds the proper category of DA.

Clause 122 replaces the heading of chapter 11A.

Clause 123 omits the definition of *fare* and inserts a new definition of *fare evasion provision*.

Clause 124 replaces section 143AB (When does a person evade payment of a fare) with a new section 143AB (Regulation may provide for matters relating to payment of fares). New section 143AB will allow fare evasion and related offences to be relocated to a regulation to provide greater flexibility as ticketing technology develops.

Clause 125 omits section 143AC (Fare evasion) as a consequence of clause 124.

Clause 126 omits sections 143ADA (Power to require production of tickets) and 143ADB (Evidence of concession entitlement) as a consequence of clause 124.

Clause 127 amends section 143AG (Direction to leave, or not to enter, vehicle) to replace a reference to omitted section 143AC (Fare evasion) with a reference to a *fare evasion provision* as defined in clause 123.

Clause 128 amends section 143AHA (Power to require person to leave public transport infrastructure if person committing particular offences) to replace a reference to omitted section 143AC (Fare evasion) with a reference to a *fare evasion provision* as defined in clause 126.

Clause 129 replaces section 143C (Unclaimed credit on smartcards) with new section 143C (Unclaimed credit in passenger accounts). This change supports the continued use of unclaimed credit in dormant passenger accounts under the new ticketing solution.

Clause 130 inserts new section 148BB (Information sharing in relation to entitlements to concession fares) to allow the chief executive to enter into information sharing arrangements with relevant entities for the specific purpose of determining whether a person is entitled to a concession fare. This provision further supports the current practice of sharing of information to verify a person's entitlement to a concession fare and ensures only a person entitled to a concession fare can receive the concession fare.

Clause 131 inserts additional matters in section 153B (Facilitation of proof—general) to support prosecutions for offences about fares under TOPTA.

Clause 132 amends section 154 (Attempt to commit offence) to replace a reference to omitted section 143AC (Fare evasion) with a reference to a *fare evasion provision* as defined in clause 123.

Clause 133 amends section 154A (Direction to pay operator the penalty recovered for fare evasion etc.) to remove the reference to a ticket concession to reflect new terminology.

Clause 134 includes a transitional provision for the Personalised Transport Ombudsman Act 2019.

Clause 135 amends schedule 3 (Dictionary) to omit, amend and insert definitions.

Schedule 1

This schedule outlines the definitions for the parts of the Bill that relate to the PTO.

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