

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

Explanatory Notes

Short title

The short title of the Bill is the Transport Legislation (Road Safety and Other Matters) Amendment Bill 2019.

Policy objectives and the reasons for them

Death and serious injuries on Queensland's roads continue to cause significant devastation for individuals, families and the broader community and costs Queensland over \$5 billion every year. Improving safety on our roads must be a priority.

Queensland's Road Safety Strategy 2015-21 aligns with the *National Road Safety Strategy 2011-20* and has a vision of zero deaths and serious injuries. The Queensland strategy sets the ambitious target to reduce death and serious injury by 30 per cent by 2020 – meaning we need to reduce road fatalities to under 200 and serious injuries to under 4700 per annum. In 2017, 247 people were killed and an estimated 6462 were seriously injured on our roads. This Bill proposes road safety amendments intended to help achieve the 2020 target.

Drink driving

The Alcohol Ignition Interlock Program (Interlock Program) commenced in Queensland on 6 August 2010 to help convicted high risk drink driving offenders separate drinking from driving as they return to licensed driving.

A person is subject to the Interlock Program if they have been convicted of driving under the influence of alcohol, a drink driving offence with a blood/breath alcohol concentration (BAC) of 0.15 or more, failing to provide a blood/breath specimen for analysis, dangerous driving while adversely affected by alcohol, or two or more drink driving offences of any kind within a five-year period.

To complete the program the participant must hold a valid driver licence with an 'I' condition (for 'interlock') on it and have an approved alcohol ignition interlock fitted to a nominated vehicle for a minimum period of 12 months. If the person chooses not to have an approved interlock fitted, they are currently unable to legally drive a motor vehicle during the two-year interlock period after their disqualification period ends (unless they have an exemption from the program).

Despite the introduction of the Interlock Program, and other road safety measures such as random breath testing and the imposition of fines and licence disqualifications, drink driving

continues to be a significant road safety issue with drink drivers involved in, on average, one in five fatalities on Queensland roads.

Further, in the five years to 31 December 2017, almost 25 per cent of drink drivers involved in fatal crashes in Queensland had a middle range BAC reading and 30 per cent of drink drivers involved in hospitalisation crashes had a middle range BAC reading. In addition, more than a quarter of drink driving offences were middle range BAC offences. This means drivers who are over the ‘middle alcohol limit’ but not over the ‘high alcohol limit’ (mid-range drink driving offenders) are a significant group of offenders that are not currently subject to the Interlock Program.

Current legislation does not include a requirement for drink driving offenders to complete an intervention or education program. Research, including a 2009 World Health Organisation paper titled *Evidence for the effectiveness and cost-effectiveness of interventions to reduce alcohol-related harm*, indicates that brief intervention education programs delivered to first-time drink driving offenders and education programs targeted at repeat offenders are successful at encouraging participants to reduce alcohol related harm.

Amendments in the Bill aim to enhance the Interlock Program to encourage increased participation, align the Interlock Program with best practice programs to motivate drink drivers to separate their drinking from driving, and to introduce education programs for drink drivers.

Other road safety issues

Speeding continues to be a significant factor in crashes. Point-to-point cameras have been found more effective at reducing speeding over longer stretches of road than fixed or mobile cameras. Current point-to-point camera systems are only able to be used on lengths of road where there is a single speed limit, restricting the ability to apply them to roads where there is a known crash risk. This Bill aims to ensure point-to-point speed camera systems can be deployed on stretches of road with multiple speed limits. This Bill will also address speed limits for camera enforcement on lengths of road where there are variable speed limit signs installed.

Under section 328A of the *Criminal Code* it is an offence for someone, such as a passenger, to interfere with the operation of a vehicle dangerously. The maximum penalty for this offence increases if the person was adversely affected by an intoxicating substance at the time of the offence. However, the alcohol and drug testing regime in the *Transport Operations (Road Use Management) Act 1995* (TORUM Act) does not apply to these persons. This Bill aims to apply the relevant parts of the alcohol and drug testing requirements to persons suspected of interfering with the operation of a vehicle dangerously to enhance the accuracy of information for courts when sentencing offenders.

It is currently an offence to drive a motor vehicle with a placard load (that is, a load of dangerous goods that exceeds a threshold quantity) in a tunnel that has a placard load prohibition sign installed (section 84A, TORUM Act). These offences are detected by cameras which may be installed inside the tunnel or at the entrances and exits to tunnels. Some cameras record in colour, some record in black and white. The cameras are also limited in the extent they can capture an image of a single vehicle or vehicle combination. This Bill addresses these issues by providing evidentiary provisions to ensure offences relating to dangerous goods in tunnels are enforceable. In addition, the Bill will require persons intending to challenge the evidence produced by a camera system to notify the prosecution in advance to ensure

prosecutors have sufficient time to prepare for a court hearing and call necessary witnesses. It is also proposed to clarify the term ‘official’ for the purpose of signing evidentiary certificates for these offences.

Other matters

As well as addressing road safety, this Bill also includes amendments relating to marine pollution. Marine pollution incidents pose a significant risk to the Queensland environment and economy.

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

In addition, the Bill proposes a number of administrative and technical enhancements or clarifications, including restructuring evidentiary provisions, and amendments to cater for potential future uses of transport corridors. These amendments will improve efficiency and streamline enforcement or administrative processes.

Achievement of policy objectives

To meet the road safety objectives above, this Bill introduces a range of reforms including:

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

- Introducing alcohol education programs for drink driving offenders including a Brief Intervention Education Program (BIEP) and a Repeat Offender Education Program (ROEP).

The BIEP will be a one hour online brief intervention program designed to educate drink driving offenders to separate their drinking from driving. For a period of five years from conviction of a drink driving offence, the BIEP must be completed before a drink driving offender is eligible for a driver licence. The BIEP will only need to be completed once in a five-year period by an eligible participant.

The ROEP will apply to any subsequent drink driving offence committed within a five-year period from conviction of the first offence. It will be an intensive, face-to-face program designed to teach repeat drink driving offenders about their alcohol consumption and how to separate drinking and driving. The ROEP must be completed before the person can have the interlock condition removed from their licence. The ROEP will only need to be completed once in a five-year period by an eligible participant.

- Ensuring point-to-point camera enforcement can apply on lengths of road where there are multiple speed limits displayed. This could apply, for example, on managed motorway environments where variable speed limit signs are used or where a speed limit has been reduced on a section of road due to road works. In these circumstances the speed limit enforced will be the highest speed limit for the length of road, or where it is practical to calculate it, the average speed limit as calculated by a formula;
- Ensuring mobile camera speed enforcement can apply on lengths of road governed by variable speed limit signs;
- Applying the alcohol and drug testing regime in the TORUM Act to persons suspected of interfering with the operation of a vehicle dangerously under section 328A of the *Criminal Code*; and
- Clarifying evidentiary provisions to support the prosecution of offences relating to placard loads of dangerous goods in tunnels.

To achieve the marine pollution related objective outlined above, this Bill will make amendments to the TOMP Act to allow the State to, if requested by particular entities, recover the entities' reasonable costs and expenses incurred while assisting with a marine pollution incident.

In addition, the amendments in this Bill aimed at clarifying existing provisions, streamlining processes and improving efficiency will:

- allow a person issued an infringement notice for a camera detected offence to notify they were not the offending driver and to nominate the actual offender by an online process;
- allow a court to sentence a person who has pleaded guilty to a charge of drug driving before the laboratory test results are known;

- clarify that if a person has been disqualified from holding or obtaining a driver licence by a court in another Australian State or Territory, their Queensland driver licence is cancelled from the date the person became disqualified;
- ensure driver licensing decisions are subject to internal review before proceeding to the Queensland Civil and Administrative Tribunal (QCAT);
- clarify the operation of existing cumulative driver licence disqualification provisions;
- allow a person who is disqualified from holding or obtaining a driver licence because of an interstate Interlock Program to obtain a Queensland driver licence subject to the Queensland Interlock Program;
- update existing evidentiary provisions in the TORUM Act (by consolidating and restructuring) and providing for new evidentiary certificates for use in court proceedings;
- move provisions about exemptions from dangerous goods requirements into regulations and align one of those exemptions with a minor change made to national model dangerous goods legislation;
- include a head of power to allow heavy vehicle inspection fees to be included in a Queensland regulation to allow them to be subject to Queensland's normal annual indexation process rather than a separate manual process;
- provide for evidentiary certificates in the *Transport Infrastructure Act 1994* (TI Act) to confirm the identity of a toll road operator or local government tollway operator and the existence of a Road Franchise Agreement (or concession deed) for the relevant toll road. Amendments will also allow an evidentiary certificate to outline how written notice was issued to a person by the toll road operator or local government tollway operator;
- broaden the definition of 'official' in sections 105(4)(b) and 105ZO(4)(b) of the TI Act to also include an employee of an entity acting under the authority of the toll road operator or local government tollway operator;
- clarify what activities, structures or things are considered to be 'ancillary works and encroachments' by broadening the definition to be inclusive of any activity, structure or thing on a state-controlled road unless specifically excluded. The amendments will remove the prescriptive list of activities, structures and things that third parties seek to have access to and use the corridor for, without having to resort to ongoing legislative amendments to cater for innovative business practices and technologies;
- provide that a person making an application under the TI Act can do so using an approved form or via the online application system. This will introduce a consistent State-wide application process and provide clarity about the supporting information that must be provided with the application, improving customer experience;
- enable the chief executive to publish a notice on the department's website to exempt certain activities, structures and things from approval under the TI Act where the

applicant conforms to the requirements stated in a notice for the structure, activity or thing. This will replace the current gazettal process;

- clarify that a local government can exercise its powers on a state-controlled road under the *Local Government Act 2009*, *City of Brisbane Act 2010* and the TORUM Act;
- remove an obsolete reference to vehicle registration labels;
- remove the definition of ‘court’ in the TORUM Act so that ‘court’ takes the meaning from the context in which it is used;
- allow a postal address to be provided when nominating a person as the person in charge of a vehicle when a camera detected offence is committed;
- provide for consistent definitions of ‘department website’ across transport legislation;
- renumber a duplicated section number in the *Transport Planning and Coordination Act 1994*; and
- update a section reference in section 42E of the *Heavy Vehicle National Law Act 2012*.

Alternative ways of achieving policy objectives

The objectives of this Bill could not be met without the proposed legislative amendments.

Estimated cost for government implementation

Development and implementation costs of the enhanced Interlock Program and drink driver education programs will be funded by the Department of Transport and Main Roads (TMR) and the Motor Accident Insurance Commission. On-going operational costs will be funded through the increase in the interlock ‘I’ condition licence fee and the introduction of new fees for accessing the online BIEP and applying for an exemption from the ROEP. The ongoing operational costs associated with the ROEP will be funded from the Camera Detected Office Program.

The costs of developing the portal to allow for online nomination of actual drivers for camera detected offences will be funded from the Camera Detected Offence Program.

The costs of implementing the remaining amendments are minimal and will not have a significant impact on the State government or other stakeholders. Any costs will be met within existing resources.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles. Matters in the Bill which potentially raise fundamental legislative principles issues are discussed below.

Rights or liberties of individuals — section 4(2)(a) Legislative Standards Act 1992 (LS Act)

The amendments to introduce education programs for drink drivers and to enhance the Interlock Program will impose additional obligations on drink drivers. These amendments aim to support long term behaviour change by assisting these persons to separate their drinking from driving. Exemptions for the ROEP will be available to address circumstances where the person is legitimately unable to complete the requirements. With drink driving continuing to be a major factor in road fatalities and serious injury, these changes are justified in the interests of road safety.

The speed limits that can be applied under new sections 120B and 120C of the TORUM Act mean a person may be prosecuted based on a speed limit that is different to the signed speed limit that applied to them at a particular time. These new provisions will only apply to speeding offences detected by photographic detection devices. Allowing the highest speed limit or average speed limit to be applied will never result in a lower speed limit for the length of road applying to a driver than the signed speed limit so there is no disadvantage for speeding drivers. These speed limits do not alter the person's obligation to comply with the signed speed limit at all times. It should be noted, the alternate speed limits outlined in this Bill will not alter the ability for on road police officers to apply the signed speed limit to a driver on a road that is also monitored by cameras.

Speeding continues to be a significant factor contributing to the road toll. Point-to-point cameras have been found more effective at reducing speeding over longer stretches of road than fixed or mobile speed cameras. Ensuring the enforceability of point-to-point camera systems on lengths of road with multiple speed limits will allow them to be deployed to roads where there is a known risk and as a result these amendments are justified.

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

In addition, proposed section 80(11AA) will include an offence with a penalty of 40 penalty units or 6 months imprisonment where the person fails to provide a specimen when required. Section 80(11A) outlines the circumstances where a person will not be considered to be guilty of the new offence. The new offence and penalty are designed to ensure a person does not fail to provide a specimen in an effort to avoid the increased penalty that would apply under section 328A(2)(a) or (4)(b) of the *Criminal Code*. The penalty is consistent with the penalty for failing to provide a specimen of breath or saliva for a roadside test under section 80(5A). These amendments will assist in addressing unsafe road conduct and are justified in the interests of community and road safety.

In addition, the Bill includes new maximum penalty provisions for offences under sections 52 and 53 of the TORUM Act for making a false online nomination for a camera detected offence. The new maximum penalties are 60 penalty units or two years imprisonment. When a camera detected offence is detected, notification is sent to the registered operator for the vehicle. If that person was not the driver they may nominate the actual driver, ensuring that the correct person

is subject to the penalty. The online nomination amendments will make that process easier by removing the need for a statutory declaration (although that option will continue to be available). However, if a person makes a false nomination they not only avoid the penalty for the offence, they may falsely implicate another person. As a result, a potential term of imprisonment is considered proportionate to the gravity of the offence. It is noted that the offence of providing a false declaration under section 194 of the *Criminal Code* currently has a maximum penalty of three years of imprisonment.

The amendments to the TOMP Act to allow the State to recover the discharge expenses on behalf of other entities would allow the State and an entity to come to an arrangement that will impact on the management of court proceedings. However, these amendments do not deny the defendant any of their existing rights and may improve the efficiency of the proceedings, benefitting the defendant as well as the other entities.

Sufficient regard to the institution of Parliament — Section 4(2)(b) LS Act

Amendments to support exemptions for the ROEP will allow a regulation to prescribe circumstances where the chief executive may be satisfied about severe hardship for an application for an exemption. For drink drivers required to undertake the ROEP, limiting their ability to obtain a licence without an interlock condition when they are unable to complete the program due to severe hardship may be unjustly harsh. This regulation making power is designed to ensure exemptions can be applied practically and flexibly to take into account various hardship circumstances that might arise.

Amendments relating to automatic extensions of the prescribed period allow a regulation to prescribe the way a person is notified that their prescribed period has been extended. With interlock and communications technologies continually improving, allowing the method of notification to be prescribed by regulation provides for suitable flexibility to enable the most efficient process to be adopted.

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

The amendment to section 148 of the TORUM Act will allow a regulation to be made about fees relating to heavy vehicle inspections and inspection certificates. Queensland authorised officers and approved inspection stations perform heavy vehicle inspection services on behalf of the National Heavy Vehicle Regulator. While the regulation of heavy vehicles is generally done through the *Heavy Vehicle National Law*, those regulations do not currently include jurisdictional heavy vehicle inspection service fees and there is currently an administrative arrangement in place to ensure appropriate fees can be applied. This administrative arrangement operates outside the normal processes for applying annual fee increases and relies on manual notifications. Allowing these inspection and certificate fees to be included in a

Queensland regulation will remove the dependency on the administrative arrangement (reducing the possibility of error or delays). It will also ensure the annual fee increases are regulated using the indexation policy applied to other fees in Queensland and that accurate up to date advice on fees is available to industry. The amendment will not change any of the actual fees for industry. Allowing these fees to be prescribed by a regulation is appropriate and consistent with the treatment for other transport related fees.

Any regulations made as a result of the amendments in this Bill must be tabled in Parliament as part of the usual regulation making processes and may be subject to disallowance.

Rights and liberties - administrative decisions subject to appropriate review — Section 4(3)(a) LS Act

This Bill amends section 131 of the TORUM Act to ensure reviews of driver licensing decisions do not proceed to QCAT until after they have been internally reviewed. The intention of this approach is to allow the department to resolve issues with aggrieved persons directly wherever possible, reducing the matters that need to progress to QCAT. It also provides a cost effective, easy and quick mechanism for the aggrieved person to seek a review. These amendments are consistent with the Department of Justice and Attorney-General's *Administrative Review Policy* published in November 2014. Importantly, these amendments will not alter a person's right to a stay of the original decision pending the chief executive's reconsideration and will not deny the person the opportunity to have their matter considered by QCAT if the department does not resolve the matter to the person's satisfaction.

Rights and liberties - consistent with the principles of natural justice — Section 4(3)(b) LS Act

The Bill amends section 127 of the TORUM Act to allow for the automatic cancellation of a Queensland driver licence if the holder has been disqualified from holding or obtaining a driver licence by any Australian court. The Bill also amends section 124 of the *Transport Operations (Road Use Management—Driver Licensing) Regulation 2010* (Driver Licensing Regulation). This means that the 'show cause' process, which currently applies when a person has been disqualified from driving in another State, will no longer apply. This may be viewed as compromising the principles of natural justice.

However, the amendments are justified for the following reasons. Under the TORUM Act a person cannot apply for or obtain a Queensland driver licence if they have been disqualified from holding or obtaining a driver licence by another Act, including an Act of another State or Territory. Further, under the Driver Licensing Regulation if a person is disqualified by any Australian court, their licence is no longer valid (see section 7 and the definition of 'valid' in that regulation). As a result, any 'show cause' process will not alter the validity of the driver licence. There is no prospect the person will be able to show why their driver licence should not be cancelled if they have been disqualified by an interstate court. As such, the current 'show cause' process is an unnecessary burden on TMR as well as a futile exercise for a licence holder. The amendment will remove the current confusion for licence holders and the unrealistic expectations that may arise if they seek internal or external review of the decision to cancel their licence following the 'show cause' process.

Amendments in this Bill will also allow for the automatic extension of the prescribed period applicable under section 91N of the TORUM Act where an Interlock Program participant has not demonstrated that they have separated their drinking of alcohol from driving. The

circumstances where the prescribed period may be extended include where the participant, in the final four months of their prescribed period, provides a failed breath test on the interlock device or the participant has failed to meet the service requirements of the interlock. The prescribed period will continue to be extended until the participant completes four consecutive months of effective participation by demonstrating their ability to separate drinking and driving.

The types of actions that will lead to an extension of a participant's prescribed period will be able to be objectively assessed through the interlock device records. The impact on a participant will be mitigated because they will be made aware of the potential for an extension to the prescribed period when they commence the Interlock Program. In addition, when the interlock data is downloaded at the scheduled services, the participant will be provided advice about any failed tests or contraventions. The participant may apply for a review of an extension. However, it is noted that they will not be able to seek a stay of the extension pending the outcome of the review. Specifically, they will not be able to have the interlock device removed until the reviews are finalised. This approach will minimise additional costs for the participant (for example, if they pay for the removal of the interlock device and then need to pay for its reinstallation if their review is unsuccessful).

It is in the interests of road safety that an Interlock Program participant who has not demonstrated separation of drinking from driving should continue to use an interlock when driving. Extending the prescribed period automatically aims to encourage long term behaviour change in participants with a history of drink driving.

Rights and liberties - reverse onus of proof in criminal proceedings — Section 4(3)(d) (LS Act)

The Bill includes several amendments to restructure, consolidate and refine the main evidentiary provisions in the TORUM Act. It also includes new evidentiary provisions, such as new section 124AA which allows an inspection certificate to be admissible in proceeding as evidence of the matters stated in the certificate. The Bill also allows additional matters for which evidence can be provided by certificate. For camera detected offences involving dangerous goods in tunnels, the Bill allows evidence in the form of an image to be taken to mean particular things and requires a person to advise of their intention to contest camera evidence. Amendments will also require a defendant to notify their intention to contest information in the new evidentiary certificate about the calculation of the average speed limit.

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

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

camera detected offence will outline the information that is recorded by the online nomination system. Allowing this type of evidence to be provided by certificate promotes more efficient and cost-effective court processes by reducing the need for prosecutors to call witnesses for matters that are not in dispute.

New section 123M replicates and replaces section 124(1)(q). This provision states that in a proceeding under the Act the defendant bears the onus of proof that a person, vehicle, tram, train, vessel or animal was at any time exempt from a provision of this Act. The defendant also bears the onus of proving that a provision of this Act was not applicable to a person, vehicle, tram, train, vessel or animal. It is believed that the reversal is justified given that the matters to prove this are peculiarly within the defendant's knowledge and it would be difficult for the prosecution to prove these matters.

In relation to the amendments to section 84A of the TORUM Act, these changes will extend the evidentiary provisions to, in effect, ensure an image:

- of a trailer is sufficient to show that the trailer was attached to a vehicle with a motor (to satisfy the definition of 'motor vehicle' in schedule 4 of the TORUM Act);
- of a trailer or motor vehicle taken outside the tunnel, either just after the last exit from the road before the tunnel entry or before the first entry to the road after the tunnel exit, is sufficient to show the vehicle was driven into the tunnel; and
- of a placard is taken to be a placard regardless of whether the image is black and white or colour.

It should be noted that the markings and writing on an image are admissible under the existing section 120(4) of the TORUM Act.

Camera systems used for enforcement of section 84A are not able to take an image that shows the towing unit attached to a trailer and it can be safely assumed that a trailer did not get to the location without a towing unit. As a result, the amendment is both necessary and justified.

Some of the cameras used for enforcing section 84A offences are positioned so that they only take images of vehicles that have passed the prohibition signs and are just before the entry to the tunnel or just after the exit from the tunnel. There will be no entering or exiting roads between the cameras and the tunnel boundary. As a result, it can be logically assumed that the vehicle will or has travelled through the tunnel. The need to deter placard loads from going through tunnels for public safety reasons justifies the need for this amendment.

Further amendments in this Bill require defendants to notify their intention to challenge the accuracy of a speed detection device or a vehicle speedometer accuracy indicator for which a certificate is given under the TORUM Act. This requirement is contained in new section 123R which replicates and replaces section 124(4) and (5) of the TORUM Act. Amendments to section 120 of the TORUM Act also require defendants to notify their intention to challenge particular evidentiary matters for camera detected offences. This is consistent with existing provisions for camera detected offences. These provisions ensure that the prosecution can organise necessary witnesses to attend court only when particular information is contested resulting in more efficient court processes.

In addition, the Bill includes amendments to the TI Act to streamline evidentiary provisions for prosecuting tolling offences. The amendments will improve the current process of

prosecution for toll offences through the use of evidentiary certificates in proving certain matters with respect to a tolling offence.

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

Rights and liberties - retrospectivity – Section 4(3)(g) LS Act

The amendments to enhance the Interlock Program by introducing the performance-based program and increasing the current two-year interlock period to five years will apply to any person who starts their interlock period after commencement of this Bill, even if they committed the drink driving related offence prior to commencement. This approach is justified because the person would already be required to participate in the Interlock Program and the enhancements aim to improve road safety by supporting participants to separate their drinking from driving.

Consultation

In early 2017, TMR released the Drink Driving Discussion Paper canvassing a range of options for reducing drink driver reoffending, including education reforms and enhancements to the Interlock Program. It attracted over 3,000 survey responses and 9 written submissions from interested stakeholder groups. All proposals received majority support.

More recently, consultation was undertaken on the Interlock Program and education program amendments with the RACQ, Queensland Council of Civil Liberties (QCCL), the Queensland Law Society (QLS), the Queensland Trucking Association (QTA), the Transport Workers Union (TWU), Transurban and the Local Government Association of Queensland (LGAQ). The QTA and LGAQ supported the changes. No issues were raised by the TWU and QCCL. The RACQ indicated support for the changes but queried the cost of the BIEP which was at that time unconfirmed. The cost of the BIEP has now been confirmed at \$10. The QLS raised concern about the extension of the interlock period to five years, the cost impact on low income earners and access to programs in regional areas. In response, TMR advised that the interlock period extension to five years is consistent with other jurisdictions, financial assistance is available to low income earners for the Interlock Program and exemptions are available where remoteness prevents a person participating in either the interlock or education programs.

TMR has consulted with the National Heavy Vehicle Regulator, QTA, RACQ, QCCL and QLS regarding the head of power for fees for heavy vehicle inspections. All organisations either supported the proposed amendment or raised no issues.

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

In relation to the amendments to the TI Act, consultation was undertaken with relevant industry and stakeholder groups including the LGAQ, Cross River Rail Development Authority, Brisbane City Council and Transurban Queensland. All parties were supportive of the amendments.

In relation to the remaining issues consultation was undertaken with the RACQ, QCCL and the QLS. The amendments were either supported, or no issues were raised, or, if issues were raised, they have been resolved through the provision of additional information.

In addition, the QTA, TWU, Transurban and LGAQ were consulted on the amendments relating to placard loads, use of postal addresses for nominations, dangerous goods exemptions and the removal of the definition of court. The changes were either supported or no issues were raised.

Consistency with legislation of other jurisdictions

The amendments outlined in this Bill are generally specific to Queensland.

However, the formula to calculate the average speed limit to apply to point-to-point camera systems where there are multiple speed limits is based on the formula in New South Wales legislation (see section 131, *Road Transport Act 2013* (NSW)).

In addition, setting heavy vehicle inspection fees in a regulation is consistent with the approach adopted in other jurisdictions. Queensland is currently the only jurisdiction that sets heavy vehicle inspection fees under an administrative process under the *Heavy Vehicle National Law*.

Notes on provisions

Chapter 1 Preliminary

Clause 1 states that when enacted the Bill can be cited as the *Transport Legislation (Road Safety and Other Matters) Amendment Act 2019*.

Clause 2 provides that chapter 3 commences on a day to be fixed by proclamation.

Chapter 2 Amendments commencing on assent

Part 1 Amendment of Heavy Vehicle National Law Act 2012

Clause 3 states that part 1 amends the *Heavy Vehicle National Law Act 2012*.

Clause 4 replaces section 42E of the Act. Currently, section 42E has the effect of incorporating changes into section 707 of the *Heavy Vehicle National Law* for the purpose of its application in Queensland. However, from 1 October 2018, section 707 was renumbered as section 707A. Therefore, section 42E is being reinserted to reflect that renumbering.

Part 2 Amendment of Traffic Regulation 1962

Clause 5 states that part 2 amends the *Traffic Regulation 1962*.

Clauses 6 to 10 make consequential amendments to various sections in the regulation to update the cross references to section 131(1AA) of the Act, which is being changed to section 131(2) by the Bill.

Part 3 Amendment of Transport Infrastructure Act 1994

Clause 11 states that part 3 and schedule 1 amend the *Transport Infrastructure Act 1994*.

Clause 12 amends section 45(1) to clarify that local government powers for a state-controlled road in its area are limited by the *Local Government Act 2009*, the *City of Brisbane Act 2010* and section 66 of the *Transport Operations (Road Use Management) Act 1995*.

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

There will be no change in the current extent of the department's or local governments' powers in relation to state-controlled roads.

Clause 13 amends section 105(1)(c) by inserting new subsections in the list of matters whereby a certificate stating any of the matters is evidence of the matter. The amendments allow evidentiary certificates to be provided to courts to confirm the identity of the toll road operator, streamlining the court process.

The amendments also allow evidentiary certificates to be submitted to outline how a written notice was given by the toll road operator to the registered operator, information holder or person identified as driver.

The amendment to the definition of ‘official’ at section 105(4)(b) broadens the definition to also include an employee of an entity acting under the authority of a toll road operator.

Clause 14 amends section 105ZO(1)(c) by inserting new subsections in the list of matters whereby a certificate stating any of the matters is evidence of the matter. The amendments allow evidentiary certificates to be provided to confirm the identity of the local government tollway operator streamlining the court process.

The amendments also allow evidentiary certificates to be submitted to outline how a written notice was given by the local government tollway operator to the registered operator, information holder or person identified as driver.

The amendment to the definition of ‘official’ at section 105ZO(4)(b) broadens the definition to also include an employee of an entity acting under the authority of a local government tollway operator.

Clause 15 amends section 440 by removing detailed provisions that exempted the transport of certain dangerous goods by rail from the application of chapter 14 to instead provide that chapter 14 does not apply to ‘prescribed exempt transport’.

Clause 16 inserts new section 441A which defines ‘prescribed exempt transport’ to mean the transport of dangerous goods by rail that is prescribed by regulation as exempt from the application of chapter 14.

Clause 17 amends section 442 to provide that a regulation may be made which prescribes when the transport by rail of stated types of dangerous goods in certain circumstances is ‘prescribed exempt transport’.

Clause 18 inserts definitions of ‘department’s website’, ‘information holder’ and ‘prescribed exempt transport’ into Schedule 6.

Part 4 Amendment of Transport Infrastructure (Dangerous Goods by Rail) Regulation 2018

Clause 19 states that part 4 amends the *Transport Infrastructure (Dangerous Goods by Rail) Regulation 2018*.

Clause 20 inserts provisions into the regulation prescribing when the transport by rail of stated types of dangerous goods in certain circumstances is ‘prescribed exempt transport’ for the purposes of new section 441A of the *Transport Infrastructure Act 1994*. These provisions replace the provisions relating to exemptions being removed by the Bill from section 440 of the Act. This clause also adopts a clarification made to an exemption in the national model legislation by providing that the exemption in new section 440(4)(1)(b)(ii) applies when the

total quantity of each type of dangerous goods in a load is ‘no more than’ rather than ‘less than’ the specified quantity.

Part 5 Amendment of Transport Operations (Marine Pollution) Act 1995

Clause 21 states that part 5 amends the *Transport Operations (Marine Pollution) Act 1995*.

Clause 22 omits part 9, division 5 which relates to night operation restrictions.

Clause 23 renumbers part 9, division 6 to be division 5.

Clause 24 amends section 93A to provide examples of the entities that the marine pollution controller can direct or coordinate in the event of a discharge or probable discharge of pollutant into coastal waters. The examples listed include a port authority, port operator, a local government or an entity established under the law of the Commonwealth.

Clause 25 amends the definition of ‘discharge expenses’ in section 111 and inserts a definition of ‘prescribed entity’ which includes port authorities and port operators as well as an entity acting under the direction, guidance, management or supervision of the marine pollution controller. Examples of such an entity are local governments and entities established under a law of the Commonwealth. These definition changes facilitate these bodies having access to consistent processes for the recovery of discharge expenses.

Clause 26 amends section 113 to substitute the term ‘prescribed entity’ in instances that currently only refer to port authorities or port operators.

Clause 27 amends section 115 to substitute the term ‘prescribed entity’ in instances that currently only refer to port authorities or port operators. In addition, this clause clarifies that section 115 only applies in relation to discharge expenses incurred by a prescribed entity where the chief executive has made an election to secure a prescribed entity’s discharge expenses under section 113(3).

Clause 28 amends section 117M to omit references to applications that are obsolete as a result of the omission of part 9, division 5.

Clause 29 amends section 117N to correct a cross reference to section 117M.

Clause 30 amends section 122 to substitute references to prescribed entity for references to port authority or port operator and inserts a cross-reference to the definition of prescribed entity in part 13 to facilitate consistent discharge expense recovery processes.

Clause 31 inserts transitional provisions.

Clause 32 amends schedule 1 (Dictionary) to include a definition of ‘prescribed entity’ that cross references section 111 and to include breaches of section 86A(4), (5) and (8) in the definition of ‘notice offence’.

Part 6 Amendment of Transport Operations (Road Use Management) Act 1995

Clause 33 states that part 6 amends the *Transport Operations (Road Use Management) Act 1995*.

Clause 34 amends section 19I to remove obsolete references to vehicle registration labels.

Clause 35 amends section 80 to allow the alcohol and drug testing provisions to be applied to persons suspected of, or arrested for, interfering with the operation of a motor vehicle dangerously under section 328A of the *Criminal Code*.

This clause also amends section 80(16L) to ensure a court can sentence a person who pleads guilty for driving while a relevant drug is present in blood or saliva, even if the results of the person's laboratory test are not known.

Clause 36 clarifies evidentiary matters relating to section 84A (Driving of motor vehicles carrying placard loads in tunnels) to ensure they align with the operation of the camera systems installed for the tunnels. In effect, the provisions in section 84A will work together to ensure an image:

- of a trailer is sufficient to show that the trailer was attached to a vehicle with a motor (to satisfy the definition of 'motor vehicle' in schedule 4 of the *Transport Operations (Road Use Management) Act 1995*);
- of a trailer or motor vehicle taken outside the tunnel, either just after the last exit from the road before the tunnel entry or before the first entry to the road after the tunnel exit, is sufficient to show the vehicle was driven into the tunnel; and
- of a placard on a vehicle is taken to show a placard regardless of the dimensions or whether the image is black and white or colour.

Clause 37 amends section 90D to clarify that, despite any provisions in the Act or any other Act, driver licence disqualifications must be served cumulatively as provided for in sections 90B and 90C.

Clause 38 amends section 120 (7) and (8) in relation to an offence against section 84A (Driving of motor vehicles carrying placard loads in tunnels). The amendment will ensure a person wishing to challenge evidence relating to whether a motor vehicle was carrying a placard load in a tunnel or whether a 'placard load prohibited sign' was visible to a person entering the tunnel, must give notice to the prosecution prior to a hearing. This amendment will ensure the prosecution has sufficient time to contact witnesses to ensure an efficient court process.

An amendment to section 120(9) changes the description of who can certify an image and sign an evidentiary certificate in a proceeding for an offence against section 84A(1). Currently, this person is defined by reference to that person's relationship to a toll operator. However, to simplify administrative processes in relation to proceedings, the amendment changes the description of the person to one who has responsibility for testing or checking the operation of a photographic detection device used in the detection of offences against section 84A(1).

Clause 39 inserts new sections 120B and 120C into the Act to allow speed limits to be applied for camera detected offences on lengths of road where there are multiple and/or variable speed

limits. Under section 120B, for point-to-point camera enforcement, the highest speed limit for the length of road will generally apply unless it is reasonably practicable to calculate the average speed limit by the formula as included in the new section.

Under section 120C, for lengths of road where variable speed limit signs are installed, the speed limit displayed on a variable speed limit sign will be applied. However, if it is not reasonably practicable to verify the displayed speed limit, the speed limit that would apply if the speed limit is not indicated on a variable speed limit sign will be applied.

Clause 40 inserts new section 124AA into the Act. This is an evidentiary provision about inspection certificates. The provision states that a document purporting to be an inspection certificate is taken to be an inspection certificate of the type that it purports to be – either a safety certificate (issued for light vehicles) or a certificate of inspection (issued primarily for heavy vehicles). The certificate is admissible in a proceeding for an offence against a transport Act as evidence of the matters stated in the document. The provision will apply in relation to both paper form inspection certificates and electronically issued certificates.

Clause 41 amends section 127 to put beyond doubt that if a person has been disqualified absolutely or for a specified period from holding or obtaining a driver licence in another State, then that person is unable to lawfully drive in Queensland. The amendment does this by specifying that a Queensland driver licence held by the person is cancelled on and from the date the person became disqualified in that other state.

Amendments to section 127 will also allow a person who was disqualified from holding or obtaining a driver licence in another jurisdiction for a drink driving offence to, after they have finished the court ordered period of disqualification, obtain a Queensland driver licence subject to an interlock condition.

Clause 42 amends section 131 to ensure that a person who is aggrieved by a driver licensing decision must apply for a reconsideration of that decision by the chief executive, prior to applying to QCAT for a review of that decision. The clause also inserts a definition of ‘licensing decision’. The definition includes decisions to refuse to grant or renew a person’s driver licence, or to amend, suspend or cancel the licence or to impose conditions on the licence. The amendment also makes it clear however, that if the person is aggrieved by the decision reached by the chief executive after reconsidering the original decision, the person may then apply to QCAT. The remaining amendments made by the clause are consequential amendments to update cross references.

Clause 43 inserts a head of power into section 148 to allow a regulation to prescribe fees relating to heavy vehicle inspections and the obtaining of inspection certificates.

Clause 44 amends section 151 by removing detailed provisions that exempted the transport of certain dangerous goods from the application of chapter 5A to instead provide that chapter 5A does not apply to ‘prescribed exempt transport’. Clause 44 also inserts new section 151AA which defines ‘prescribed exempt transport’ to mean the transport of dangerous goods that is prescribed by regulation as exempt from the application of chapter 5A.

Clause 45 amends section 152 to provide that a regulation may be made which prescribes when the transport of stated types of dangerous goods in certain circumstances is ‘prescribed exempt transport’.

Clause 46 omits section 166A. This section contains a definition of ‘toll officer’. This definition is only relevant for the purpose of identifying the appropriate person to sign an evidentiary certificate in relation to a section 84A offence. However, since the Bill makes an amendment to change the description of the person who can sign the certificate, section 166A is no longer required and is therefore being removed.

Clause 47 inserts transitional provisions. New section 233 provides that proceedings that have started before QCAT for licensing decisions prior to the amendments contained in this Bill may continue as if the amendments had not been made.

New section 234 provides that the provisions in the Bill that allow breath and saliva testing of persons who are not drivers apply only if the offence against section 328A of the *Criminal Code* is committed after the commencement of the amendments in the Bill.

New section 235 provides that the provisions in the Bill enhancing the operation of section 84A apply only if the offence is committed after the commencement of the amendments in the Bill.

New section 236 provides that new sections 120B and 120C about speed limits apply to a proceeding only if the offence is committed after the commencement of the amendments in the Bill.

New section 237 provides that new section 124AA (an evidentiary certificate provision about inspection certificates) applies to a proceeding for an offence under a transport Act only if the offence is committed after the commencement.

Clause 48 omits the definition of ‘court’ from Schedule 4 and inserts definitions for ‘department’s website’ and ‘prescribed exempt transport’ into Schedule 4. The definition of ‘department’s website’ will facilitate circumstances where the department’s information is part of a whole of government website.

Part 7 Amendment of Transport Operations (Road Use Management—Dangerous Goods) Regulation 2018

Clause 49 states that part 7 amends the *Transport Operations (Road Use Management—Dangerous Goods) Regulation 2018*.

Clause 50 inserts provisions into the regulation prescribing when the transport of stated types of dangerous goods in certain circumstances is ‘prescribed exempt transport’ for the purposes of new section 151AA of the *Transport Operations (Road Use Management) Act 1995*. These provisions replace the provisions relating to exemptions being removed by the Bill from section 151 of that Act. This clause also adopts a clarification made to an exemption in the national model legislation by providing that the exemption in new section (5)(1)(b)(ii) applies when the total quantity of each type of dangerous goods in a load is ‘no more than’ rather than ‘less than’ the specified quantity.

Part 8 Amendment of Transport Operations (Road Use Management—Driver Licensing) Regulation 2010

Clause 51 states that part 8 amends the *Transport Operations (Road Use Management—Driver Licensing) Regulation 2010*.

Clause 52 amends section 23(4). This amendment is consequential on the amendment in the Bill made to section 131 of the *Transport Operations (Road Use Management) Act 1995* requiring reconsideration of driver licensing decisions by the chief executive prior to a review by QCAT.

Clause 53 amends section 25. This amendment is consequential on the amendment in the Bill made to section 131 of the Act requiring reconsideration of driver licensing decisions by the chief executive prior to a review by QCAT. Specifically, this clause inserts a requirement that if the chief executive decides to impose a condition on the licence the chief executive must notify the licensee of various matters, including that the licensee may apply to the chief executive to reconsider the decision, and that subsequent to this, the licensee is also able to apply to QCAT for a review of the decision on reconsideration.

Clause 54 amends section 124. This amendment is consequential on the amendment in the Bill made to section 127 of the Act which provides that if a person has been disqualified from holding or obtaining a driver licence in another State, each Queensland driver licence held by the person is automatically cancelled. This amendment means that it will no longer be necessary for the chief executive to invite the holder of the licence to demonstrate why their Queensland driver licence should not be cancelled. The amendment in this clause therefore excludes from the grounds for which the ‘show cause’ process applies, that a person has been disqualified from driving in another state.

Clause 55 amends section 125. This amendment is consequential on the amendment in the Bill made to section 131 of the Act requiring reconsideration of driver licensing decisions by the chief executive prior to a review by QCAT.

Clause 56 amends section 126. This amendment is consequential on the amendment in the Bill made to section 131 of the Act requiring reconsideration of driver licensing decisions by the chief executive prior to a review by QCAT.

Clause 57 amends section 132 to include a decision by the chief executive to impose a condition on a licence as one for which a person may apply to the chief executive to reconsider that decision. The clause also inserts a new subsection (3A) which ensures that if an application is made for reconsideration of the chief executive’s decision to suspend or cancel a licence, the suspension or cancellation is suspended pending the chief executive’s reconsidered decision.

Part 9 Amendment of Transport Planning and Coordination Act 1994

Clause 58 states that part 9 amends the *Transport Planning and Coordination Act 1994*.

Clause 59 amends section 8E and introduces a definition of ‘department’s website’ to improve consistency in legislative references when the department publishes information on a website.

Clause 60 makes a consequential amendment to the definition of ‘retention period’ in section 28E to update the reference to section 28EI.

Clause 61 makes a consequential amendment to section 28EH to update the reference to section 28EI.

Clause 62 renumbers the first section numbered 28EI to become section 28EHA.

Chapter 3 Amendments commencing by proclamation

Part 1 Amendment of State Penalties Enforcement Act 1999

Clause 63 states that part 1 amends the *State Penalties Enforcement Act 1999*.

Clause 64 amends the definitions of ‘illegal user declaration’, ‘known user declaration’, ‘sold vehicle declaration’ and ‘unknown user declaration’ in schedule 2. This will allow for online declarations that will be able to be made under amendments to section 114 of the *Transport Operations (Road Use Management) Act 1995*.

Part 2 Amendment of Transport Infrastructure Act 1994

Clause 65 states that part 2 amends the *Transport Infrastructure Act 1994*.

Clause 66 amends section 33 to include new subsection (2) to clarify that a person wishing to carry out road works on a state-controlled road may apply to the chief executive to obtain approval.

A note is included to direct applicants to part 10 about the way an application must be made.

This clause renumbers section 33(2) to be section 33(3) and section 33(2) to (5) to be section 33(2) to (6).

Clause 67 inserts a new section 50 which:

- enables the chief executive’s ability to construct, maintain, operate or conduct ancillary works and encroachments on a state-controlled road (section 50(1));
- provides that a person must not do anything on a state-controlled road unless:
 - it is approved in writing by the chief executive (section 50(2)(a)); or
 - conforms to the requirements stated in the notice (section 50(2)(b)); or
 - done as required by written arrangement as entered into with the chief executive (section 50(2)(c)); or
 - is approved under this Act other than this section (section 50(2)(d)); or
 - it is permitted under the *Land Act 1994*, the *Transport Operations (Road Use Management) Act 1995*, the *Economic Development Act 2012* or an Act about local government (section 50(2)(e));
- provides that a person wishing to access a state-controlled road to construct, maintain, operate or conduct ancillary works and encroachments may apply to the chief executive to obtain approval. A note is included to direct the applicant to part 10 about the way in which an application must be made (section 50(3));

- enables the applicant to overcome the burden of having to apply for a permit if the proposed ancillary works and encroachment conforms to the requirements stated in a notice made by the chief executive (section 50(4));
- clarifies that a notice made by the chief executive must be published on the department's website. This amendment replaces the current gazettal process (section 50(5));
- provides that any approval may be subject to conditions as fixed by the chief executive (section 50(6));
- defines an arrangement to include an agreement, contract, deed, lease and permit (section 50(7)).

The amendments are intended to clarify and simplify the current provisions. For example, section 50(2)(d) would include approval for road works approved under section 33.

Clause 68 amends section 51(1) to replace a reference to section 50(3) with a reference to section 50(2).

Clause 69 amends section 62 to include a note to direct applicants to part 10 about the way an application must be made.

Clause 70 inserts a new part 10 (General provision for particular applications). New section 105ZQ (Applications for particular decisions) makes clear that an application pursuant to section 33 (Prohibition on road works etc. on State-controlled roads), section 50 (Ancillary works and encroachments) and section 62 (Management of access between individual properties and State-controlled roads) may be made in writing in the approved form in the way stated on the form by post, facsimile or electronically using an online system provided for the purpose and accessible on, or through, the department's website. This amendment does not impact on current development applications made under section 62A. A development application under section 62A will still be taken to be an application for a section 62 decision.

Clause 71 inserts new chapter 21, part 6 (Transitional provisions for Transport Legislation (Road Safety and Other Matters) Amendment Act 2019). The transitional provisions provide that a road works application under section 33 in force before commencement continues in force on or after commencement. Additionally, it is further provided that a road works application under section 33 not yet decided before commencement continues as if it had been made under section 33. The transitional provisions provide that new section 33(2) will apply to road works applications made on or after commencement.

The transitional provisions provide that a decision made under section 62 in force before commencement continues in force on or after commencement. Additionally, it is further provided that an application for a decision made under 62(1) not yet decided before commencement continues as if it had been made under section 62. The transitional provisions provide that amended section 62(1) will apply to applications for a decision under section 62(1) made on or after commencement.

The transitional provisions provide that an application for a road corridor permit under section 50 in force before commencement continues in force on or after commencement. An approval given under section 50 before commencement will continue in force as if it had been made under section 50. The approval continues to be subject to conditions to which the approval was subject to immediately before commencement. The transitional provisions provide that an

application for a road corridor permit under section 50 not yet decided before commencement will continue as if it had been made under section 50. Additionally, the transitional provisions provide that the new section 50(2) will apply to applications made on or after commencement.

Clause 72 omits the current prescriptive definition of ‘ancillary works and encroachments’ and inserts a new general definition. This amendment broadens the definition of ‘activities, structures and things’ to be inclusive of any activity, structure or thing along, in, on, over or under a state-controlled road but does not include a public utility plant or an activity, structure or thing if permitted under the *Stock Route Management Act 2002*.

The new definition provides examples of what is meant by an activity, structure or thing which includes an advertising device, an A-frame board, a bridge, a community event, a pipeline, a remotely piloted aircraft, a rest area, roadside vending, a tunnel and an underpass.

This broad definition provides clear guidance to third parties that ancillary works and encroachments are any activity, structure or thing constructed, maintained, operated or conducted on a state-controlled road. The clause removes the prescriptive definition without having to resort to ongoing legislative amendments to cater for innovative business practices and technologies.

This amendment does not change the current scope of ancillary works and encroachments instead its intention is to consolidate the definition into a single provision and related notice removing the current prescriptive definition from three legislative sources.

As a consequence of the amendments:

- the itemised list of ancillary works and encroachments provided in Schedule 6 of the *Transport Infrastructure Act 1994* and Schedule 1 of the *Transport Infrastructure (State-controlled Roads) Regulation 2017* will be removed and placed on the department’s website as examples;
- the current *Ancillary Works and Encroachments Notice (No. 3) 2017* will be replaced with a chief executive consent notice pursuant to section 50(2)(b) and published on the department’s website.

Part 3 Amendment of Transport Operations (Road Use Management) Act 1995

Clause 73 states that part 3 amends the *Transport Operations (Road Use Management) Act 1995*.

Clause 74 amends section 18 to support cancellation of exemptions from participating in the repeat offender education program for drink drivers.

Clause 75 replaces the heading of chapter 3, part 5. This amendment is required due to the relocation of sections in division 2 to chapter 5, part 8 of the Act.

Clause 76 omits the heading of chapter 3, part 5, division 1. This is because a divisional heading is not required as the sections contained in division 2 are being relocated to chapter 5, part 8 of the Act.

Clause 77 amends section 52 to insert a penalty for making a false or misleading statement in an online declaration. The new penalty supports the amendments to section 114 that allow for online nominations for camera detected offences. Making a false nomination of a person for a camera detected offence is a serious matter warranting the new penalty of 60 penalty units or 2 years imprisonment.

Clause 78 amends section 53 to insert a penalty for providing an online declaration document that is false or misleading for consistency with the changes to section 52 above.

Clause 79 omits the heading of chapter 3, part 5, division 2. This is because a divisional heading is not required as the sections contained in division 2 are being relocated to chapter 5, part 8 of the Act.

Clause 80 inserts additional positions into section 58. This means that, for a proceeding for an offence under a transport Act, it is not necessary to prove the appointment of persons to these additional positions (for example, the chief executive officer of a local government). The holders of these positions are currently included in section 124 of the Act as being able to sign evidentiary certificates and documents. The clause also relocates and renumbers section 58 as section 123A.

Clause 81 inserts additional positions into section 59. This means that, for a proceeding for an offence under a transport Act, a signature purporting to be the signature of the holder of one of these additional positions is evidence of the signature it purports to be. For the purpose of consistency, the positions that have been inserted into this section are the same as those that have been inserted into section 58 by the Bill. The holders of these positions are currently included in section 124 of the Act as being able to sign evidentiary certificates and documents. The clause also relocates and renumbers section 59 as section 123B.

Clause 82 amends section 60 to streamline the evidentiary certificate provisions in section 60. It does this by extracting the detail of the evidentiary certificates from section 60 and placing it in a new schedule 1. The clause also relocates and renumbers section 60 as section 123C.

Clause 83 relocates and renumbers section 61 as section 123S.

Clause 84 amends section 61B to update a cross reference to reflect that section 60 has been replaced by sections 123C, 123F and 123G. The clause also relocates and renumbers section 61B as section 123T.

Clause 85 relocates and renumbers sections 61C to 62A as sections 123U to 123W.

Clause 86 amends section 65 to clarify that the *Transport Planning and Coordination Act 1994* determines when an internal review of a decision may allow for a stay of the original decision.

Clause 87 amends section 65A to ensure an external review of an automatic extension of a person's prescribed period under section 91VA does not lead to a stay of the decision.

Clause 88 amends section 87 to ensure that a person who has been granted a restricted driver licence must have completed the brief intervention education program prior to the restricted licence being issued.

The amendments to section 87 also include some notes to assist readers understand the interaction between section 87 and section 91K.

Clause 89 inserts chapter 5, part 3A relating to education programs for drink drivers. If, after commencement of the amendments, a person commits one of the listed driving offences relating to the consumption of alcohol, the person will be required to complete an education program. Upon their first conviction after commencement, the person will be required to complete the brief intervention education program. A subsequent conviction within five years will require completion of the repeat offender education program.

The requirement to complete an education program will remain for five years from the date of the conviction.

A person may apply for an exemption from the repeat offender education program if they are unable to access the course (for example, because the person lives in a remote location making it impossible to attend the program in person and the person does not have reasonable access to the internet) or for other reasons that may be prescribed by regulation. The brief intervention education program will be delivered online, but if a person does not have internet access, the material will be provided in paper form, so there will be no exemptions from completing this program.

Clause 90 amends section 91I to insert definitions for ‘approved servicing requirement’ and ‘servicing requirement’. These definitions relate to the amendments to allow for automatic extensions of prescribed periods under new section 91VA. The clause also ensures that the mid-range drink driving offenders under section 79(1F) will be subject to the Interlock Program.

Clause 91 inserts new section 91IA about servicing requirements for prescribed interlocks. The servicing requirements must be reasonable, approved by the chief executive and published on the Queensland Government website. This clause supports section 91VA as a person who fails to comply with the servicing requirement and incurs a permanent lockout during the last four months of their prescribed period will be subject to automatic extension of their prescribed period.

Clause 92 amends section 91J to ensure a mid-range drink driving offender who has been granted a restricted licence during their disqualification period may participate in the Interlock Program while on their restricted licence.

Clause 93 amends section 91K so that a restricted licence granted to a mid-range drink driving offender will be subject to an interlock condition.

An interlock condition usually only applies after the person has completed the disqualification period. However, restricted licences apply during the disqualification period. As a result, a mid-range drink driving offender on a restricted licence may be able to complete their interlock period under section 91M(2)(b)(ii) and (iii) during their disqualification period. This clause ensures the first licence issued to these people after their disqualification period ends does not impose an interlock condition.

Clause 94 replaces section 91M which describes the operation of an interlock period to ensure the interlock period for a person who does not successfully participate in the Interlock Program

is five years and to cater for mid-range drink driving offenders on restricted licences. The amendments also allow for the continuation of a person's interlock period where the person has not completed a repeat offender education program.

Clause 95 amends section 91N to ensure the example is consistent with timeframes for extension of a prescribed period under section 91V. This clause will also update the definition of 'valid' to cater for mid-range drink driving offenders on restricted licences.

Clause 96 amends section 91P to update a cross reference to section 91J(3).

Clause 97 amends section 91S to improve the drafting style for paragraph (a).

Clause 98 amends section 91U to distinguish that extensions to a prescribed period under this section are discretionary compared to the automatic exemptions under section 91VA. The amendment to section 91U also includes an example of circumstances that would meet the grounds for a discretionary extension under paragraph (1)(a).

Clause 99 amends section 91V to reflect the discretionary nature of these prescribed period extensions and to apply a standard four-month extension period in place of the current discretionary extension period of up to three months.

Clause 100 inserts new section 91VA to outline the operation of automatic extensions of prescribed periods. These automatic extensions will apply where a person has provided a specimen of breath that contains alcohol on an interlock device or where the person's interlock incurs permanent lockout for failure to meet servicing requirements in the last four months of their prescribed period. A person's prescribed period will only be extended for the period necessary to ensure the participant goes four months with a working interlock device and where they have shown they have separated their drinking from their driving. Automatic extensions are reviewable by the chief executive under section 65. If the reviewed decision is not the decision sought, it may be reviewed by QCAT under section 65A.

Clause 101 amends section 91Z to insert additional matters about which regulations relating to interlocks can be made.

Clause 102 inserts a definition of 'address' in section 113 that applies for chapter 5, part 7, division 2 so that address includes a postal address. This provides a person in charge of a vehicle with the option to use a postal address to nominate another person as the actual offender when an offence is detected by a photographic detection device.

Clause 103 amends section 114 to facilitate the use of online declarations (in addition to the current statutory declarations) to raise defences, including nominating the actual driver, of vehicles detected by photographic detection devices. If a person provides a false online declaration they will be subject to a maximum penalty of 60 penalty units or two years imprisonment (see amendments to sections 52 (False or misleading statements) and 53 (False or misleading documents) of the Act).

Clause 104 inserts new sections 123D to 123R of the Act.

New section 123D puts beyond doubt that the chief executive and the commissioner may delegate their powers under chapter 5, part 8. This includes the power to sign certificates and

other documents. This amendment provides certainty for courts about the general powers of delegation under section 37 of the *Transport Planning and Coordination Act 1994* and section 4.10 of the *Police Service Administration Act 1990* respectively applying to all the sections in this part.

New sections 123E to 123R replicate provisions that are currently in section 60 and 124 as indicated further below. These amendments are part of the process of streamlining the evidentiary provisions in the Act which involves grouping similar provisions together and providing separate sections and headings to aid in their interpretation.

New section 123E allows copies of specified documents certified by the chief executive as a true copy of the document to be evidence of the matters stated in the document. This new section incorporates existing provisions from section 124(1)(gd) of the Act which include documents relating to alcohol interlocks. Section 123E also contains new provisions that allow certified copies of documents such as applications, notices, certificates of exemption, medical certificates to be evidence of the matters stated in the document.

New section 123F retains the effect of existing sections 60(2)(o) and 124(1)(f) which are evidentiary provisions about a copy of a licence or another document issued or required to be kept under a transport Act.

New section 123G retains the effect of existing section 60(2)(o) in so far as it is an evidentiary provision about a copy of a driver licence under a corresponding law to a transport Act or another document issued or required to be kept under a corresponding law to a transport Act.

New section 123H retains the effect of existing section 124(1)(oa) which is an evidentiary provision about a copy of a plan of installation of a photographic detection device.

New section 123I retains the effect of existing section 124(1)(p) which is an evidentiary provision about stop watches, other watches and speedometers.

New section 123J retains the effect of existing section 124(1)(pa) which is an evidentiary provision about speed detection devices.

New section 123K retains the effect of existing section 124(1)(pc) which is an evidentiary provision about a speedometer accuracy indicator.

New section 123L retains the effect of existing section 124(1)(tb) which is an evidentiary provision about a breath analysing instrument or a saliva analysing instrument.

New section 123M retains the effect of existing section 124(1)(q). This provision states that in a proceeding under the Act, the defendant bears the onus of proving that a person, vehicle, tram, train, vessel or animal was at any time exempt from a provision of the Act, or that a provision of the Act was not applicable to a person, vehicle, tram, train, vessel or animal.

New section 123N retains the effect of existing section 124(1)(ta) which is an evidentiary provision about number plates showing a particular registration number attached to a motor vehicle at a particular time.

New section 123O retains the effect of existing section 124(1)(c) which sets out matters that it is not necessary to prove. For example, the provision states that it is not necessary to prove that a road or place is within a district, or the authority of the chief executive, commissioner, or police officer to do any act or take any proceedings.

New section 123P retains the effect of existing section 124(1)(u) which is an evidentiary provision about when evidence of the condition of a breath analysing instrument or saliva analysing instrument is not required.

New section 123Q retains the effect of existing section 124(1)(v) which is an evidentiary provision about when evidence of the condition of a parking meter or parkatarea is not required.

New section 123R retains the effect of existing sections 124(4) and (5) which set out the process that applies to a defendant who intends to challenge the accuracy of a speed detection device or a vehicle speedometer accuracy indicator, or the time at which, or way in which, the relevant device was used.

Clause 105 omits from section 124 the subsections that are now contained in new sections 123E to 123R or new schedule 1. The clause also renumbers the remaining provisions and updates cross references.

Clause 106 amends section 124A to update cross references to reflect that section 124(4) has been replaced by section 123R(2) and section 124(5) has been replaced by section 123R(3).

Clause 107 inserts new section 125A that retains what is currently in section 124(3). Section 125A states that this part does not lessen or affect any onus of proof otherwise falling on the defendant.

Clause 108 amends section 157A to update a cross reference to reflect that section 60 has been replaced by sections 123C, 123F and 123G.

Clause 109 amends section 162 to insert a reference to section 91G.

Clause 110 inserts new division 2 into chapter 7, part 23 to include transitional provisions.

Section 238 inserts a transitional provision for mid-range drink driving offenders who committed offences prior to commencement. Section 239 ensures the existing provisions in chapter 5, part 3B continue to apply to persons whose interlock period started before commencement.

Section 240 inserts a transitional provision to clarify that new evidentiary certificate provisions inserted by the Bill apply to proceedings only for an offence that is committed after commencement.

Section 241 ensures the continued application of specific evidentiary provisions that are being replaced in the Bill by generic provisions to offences committed before the commencement.

Clause 111 inserts a new schedule 1. This schedule replicates existing evidentiary provisions in sections 60 and 124 of the Act. Minor changes to the provisions have been made to reflect current drafting style, to ensure consistency in the provisions and to remove duplication.

Schedule 1 also contains new provisions as outlined further below.

The schedule read with new section 123C provides clear legislative provisions for evidence tended by certificate.

The table below sets out which items in the table in schedule 1 correspond to existing subsections of section 60 and 124.

<i>Item in schedule 1 table</i>	<i>Existing section of Act</i>
1	60(2)(a)
2	60(2)(c)
3	60(2)(e)
4	60(2)(f)
5	60(2)(b)
6	60(2)(b)
7	60(2)(g) + 124(1)(fa)
8	60(2)(g)
9	124(1)(ge)
10	60(2)(d)
11	60(2)(d)
12	60(2)(la)
13	60(2)(lb)
14	60(2)(t)
16	60(2)(k)
17	60(2)(h)
18	60(2)(i)
19	60(2)(j)
20	60(2)(aa)
21	60(2)(m)
22	60(2)(ma)
23	60(2)(q)
24	124(1)(ga)
27	60(2)(n)
28	60(2)(p)
29	124(1)(pb)
31	60(2)(l)
35	60(2)(r)
36	60(2)(s)

The below items contain new provisions outlining additional matters for which an evidentiary certificate can be used.

14	<ul style="list-style-type: none"> a certificate stating that a specified person had or had not notified the chief executive of a change of circumstances (14(c)).
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	<ul style="list-style-type: none"> • a certificate stating that a specified person had or had not notified the chief executive of another matter in relation to which the person must, under a transport Act, notify the chief executive of any change (14(d)).
15	<ul style="list-style-type: none"> • a certificate stating an address or postal address recorded for a person.
25	<ul style="list-style-type: none"> • a certificate stating that a specified vehicle, other than a nominated vehicle for chapter 5, part 3B, was or was not fitted with a prescribed interlock. <p>(A certificate in relation to a nominated vehicle being fitted with a prescribed interlock is in item 24).</p>
26	<ul style="list-style-type: none"> • a certificate stating that a person was or was not subject to an interlock period.
30	<ul style="list-style-type: none"> • a certificate stating that the chief executive had or had not received from a stated person a notification agreeing to be of good behaviour while driving for a year.
32	<ul style="list-style-type: none"> • a certificate stating that a specified person did or did not have an exemption, under a transport Act.
33	<ul style="list-style-type: none"> • a certificate stating that the chief executive had or had not received an application for an exemption under the Act.
34	<ul style="list-style-type: none"> • a certificate stating that the chief executive had or had not granted an exemption from a requirement under the Act, and if the chief executive had not granted the exemption, the reason for the refusal.
37	<ul style="list-style-type: none"> • certificate stating that information was notified to the chief executive or commissioner in an online declaration.

Clause 112 amends schedule 3 to insert the decisions that will be subject to review under section 65 and 65A as a result of the amendments outlined in this Bill. These decisions include a refusal to grant an exemption for completing the repeat offender education program under section 91HA and decisions to extend prescribed periods under section 91V(4) (discretionary) and section 91VA(1) (automatic).

Clause 113 introduces new definitions for ‘alcohol-related driver offence’, ‘approved servicing requirement’, ‘brief intervention education program’, ‘driver licence disqualification’, ‘exemption application’, ‘postal address’, ‘repeat offender education program’ and ‘servicing requirement’. This clause also amends the definition of ‘address’ in schedule 4 to make it distinct from the definition of ‘address’ that applies for chapter 5, part 7, division 2.

Part 4 Amendment of Transport Planning and Coordination Act 1994

Clause 114 states that part 4 amends the *Transport Planning and Coordination Act 1994*.

Clause 115 amends section 32 to ensure that, during a review process for a decision to automatically extend a prescribed period under section 91VA of the *Transport Operations (Road Use Management) Act 1995*, there is no stay of the operation of the original decision.

Schedule 1 Minor amendments of Transport Infrastructure Act 1994

Schedule 1 makes minor amendments to notes in the *Transport Infrastructure Act 1994*.