

# Transport and Other Legislation (Road Safety, Technology and Other Matters) Amendment Bill 2020

## Explanatory Notes

### Short title

The short title of the Bill is the Transport and Other Legislation (Road Safety, Technology and Other Matters) Amendment Bill 2020.

### Policy objectives and the reasons for them

The objectives of the Bill are to:

- support the introduction and ongoing operation of a Digital Licence App;
- facilitate camera enforcement of seatbelt and mobile phone offences;
- make minor and technical improvements to:
  - clarify the operation of some drug and drink driving provisions;
  - preserve certain existing secondary legal interests in the Department of Transport and Main Roads' (TMR) land;
  - allow access to land for environmental activities;
  - clarify evidentiary provisions for Smart Ticketing;
  - update evidentiary provisions because of the *Road Vehicle Standards Act 2018* (Cwth) (RVS Act); and
  - update legislative referencing and definitions.

#### ***Digital Licence App***

Digital licences and the digitisation of services is becoming more prevalent with the adoption and development of digital licences in several jurisdictions both nationally and internationally. In Australia, South Australia and New South Wales (NSW) have released digital licensing products with more than one million people downloading the NSW digital licence within the first month after it was rolled out.

TMR has been working in partnership with the Department of Housing and Public Works on the 'Tell Us Once' program to deliver on the Advancing Queensland goal of being a responsive government. Amendments in this Bill facilitate the introduction of a Digital Licence App. The App will have the capability to store and deliver a suite of Queensland Government digital products and services and, in time, will provide faster and more efficient ways to access government information, products and services.

Those service improvements will be achieved by the App providing easy access to digital licensing, and identity products, including driver licences, photo identification cards and marine licence indicators.

In addition, it is important that digital authorities, and other digital products available through the App, such as digital evidence of age, will be able to be used and accepted in the same way as the physical version of the product. Government and community reliance on driver licences for proof of identity also means public confidence in the integrity of digital authorities and identity products must be maintained.

The Digital Licence App will be voluntary and will complement physical authorities. As customers will have both, they will have the choice of either using the physical card or digital authority.

In addition to reducing the number of cards a person may need to carry, the Digital Licence App is also likely to provide additional benefits for Queenslanders including:

- providing customers with greater security, protection and control in sharing their information by leveraging data encryption and phone security to protect customer data;
- providing customers with a simple and convenient mechanism for updating details, such as a change of address;
- delivering a secure mechanism for individuals, businesses (including liquor and gaming venues) and enforcement personnel to validate the authenticity of another person's digital authority or digital evidence of identity or age; and
- support cost effective and convenient real-time electronic notifications and correspondence with customers, including providing reminders and payment services for items including renewals, infringement notices, or changes to licence status.

### ***Camera detection of seatbelt and mobile phone offences***

The introduction of camera-detection for mobile phone and seatbelt offences in Queensland aims to save lives and reduce road trauma and the impact it has on families and communities.

Distracted driving is an increasing concern on Queensland's roads. In 2018, in Queensland, 33 people lost their lives and 1,359 were hospitalised with serious injuries as a result of crashes where distraction was a contributing factor. The number of deaths due to driver distraction in 2018 was 33.1 per cent greater than the previous five-year average. Driver distraction contributes to 14 per cent of road fatalities and almost 20 per cent of serious injuries. Along with speeding, drink/drug driving, fatigue and failure to wear a seatbelt, it is recognised as one of the 'Fatal Five' driving behaviours.

Using a mobile phone while driving is one of the most prevalent behaviours associated with driver distraction. Research shows that using a mobile phone while driving is just as dangerous as a drink driver with a blood/breath alcohol content (BAC) of 0.07-0.10.

It is estimated that distracted driving related crashes also cost the Queensland economy more than \$1.5b per year.

Under section 300 of the *Queensland Road Rules* (QRRs), it is an offence for the driver of a vehicle (except an emergency or police vehicle) to use a mobile phone that the driver is holding in their hand, while the vehicle is moving or is stationary but not parked. Additional restrictions apply to novice drivers with learner and P1 provisional drivers under 25 not permitted to use a phone at all while driving. This includes using hands-free, wireless headsets or a mobile phone's loudspeaker function. Their passengers are also prohibited from using a mobile phone's loudspeaker function.

Despite public education campaigns, enforcement efforts and existing penalties, unsafe mobile phone use continues at unacceptably high levels with 70 per cent of Queensland drivers admitting to using their mobile phone while driving. Drivers also do not perceive there is a risk in getting caught using their mobile phones. Enforcement currently relies on roadside police observing illegal behaviour.

On 1 February 2020, the penalty for illegally using a mobile phone while driving increased to a \$1000 fine and four demerit points. Double demerit points (eight) apply for repeat mobile phone offences committed within 12 months of an earlier offence. While the increase in the penalties has been accompanied by significant public communications, the deterrent effect of these penalties is diminished if drivers still believe the risk of getting caught is low.

To investigate new solutions, the Department of Transport and Main Roads (TMR) has been leading a national project on driver distraction, which included a national summit in July 2019. This summit brought together over 100 stakeholders from across a number of industries. One of the actions that arose from the summit was the need to encourage greater compliance through increased enforcement.

Failure to wear a seatbelt also continues to be a significant contributor to road trauma in Queensland and is another 'Fatal Five' driver behaviour. On average, 31 people are killed and 166 seriously injured on Queensland roads each year as a result of a road crash while not wearing a seatbelt.

The latest research shows eight per cent of Queenslanders still drive without wearing a seatbelt. Current enforcement of seatbelt offences also relies on roadside police observing an offence. In 2018, there were 9,607 seatbelt offences and 294 repeat offences detected.

It has been long established that seatbelts improve the outcome for drivers and passengers in a road crash. Research has shown that wearing a properly adjusted restraint reduces the risk of fatal or serious injury by half.

Sections 264 to 266 of the QRRs provide for offences relating to drivers and passengers not wearing seatbelts. The intent of the laws is that all people travelling in a vehicle that must be fitted with seatbelts are appropriately restrained, unless an exemption applies. Section 267 outlines exemptions from seatbelt requirements, for example if the person has a medical certificate.

A driver who fails to wear a seatbelt when driving can receive a fine of \$400 and three demerit points. Except in very limited circumstances (for example, a taxi or booked hire service), the driver of a vehicle is responsible for ensuring that every passenger, regardless of age, wears a seatbelt or a child restraint.

A driver who fails to ensure that a passenger is restrained can receive a fine of \$400 and three demerit points. Like mobile phone offences, double demerit points apply for seatbelt offences committed within 12 months of an earlier offence.

Both TMR's investigations and the NSW mobile phone trial have identified that camera detection is viable when vehicle occupants were not wearing their seatbelts.

Queensland already has a robust Camera Detected Offence Program (CDOP) for offences such as speeding, disobeying red traffic lights, contravening a ‘no trucks’ sign, driving motor vehicles carrying placard loads in tunnels and offences involving unregistered and uninsured vehicles.

It is proposed to include mobile phone and seatbelts offences within the existing CDOP framework. It is anticipated that expansion of the CDOP to include mobile phone and seatbelt offences will increase the perception and probability of drivers being caught, which will have a significant positive impact on compliance and road safety.

The effectiveness of Queensland’s CDOP has been repeatedly demonstrated in relation to other unsafe driving behaviours such as speeding. An independent review of Queensland’s CDOP using 2016 data found that it was associated with saving approximately 2,500 police reported casualty crashes in 2016 alone, of which 1,650 would have been fatal and serious injury crashes. This translates to annual savings of approximately \$1.5 billion per year to the community.

### ***Minor and Technical Amendments***

#### *Transport Infrastructure Act 1994 (the TIA)*

*Minor amendments to preserve certain secondary legal interests in the Department of Transport and Main Roads’ (TMR) land.*

#### *Railway*

The proposed amendments’ objectives are to:

- enable certain existing secondary interests (such as easements) in land acquired for rail purposes to continue after the land is surrendered for inclusion into the rail corridor; and
- streamline the administrative processes for including land into the rail perpetual lease.

Secondary interests in land acquired for rail purposes are frequently required to continue after the land becomes rail corridor. Easements for access and public utilities are examples of these secondary interests. Currently, secondary interests, other than public utility easements (section 240(7C)(b)) are extinguished by the process of putting land into the rail corridor.

To reinstate these interests, the State must negotiate and prepare new agreements with the affected parties. The State is usually at a disadvantage in this process, as it has a legal obligation to preserve the interests of the affected parties. Furthermore, the negotiation process is costly and time-consuming. The proposed amendments will negate the need for this occurrence by preserving secondary interests in their existing state, unaffected by the land becoming rail corridor.

#### *Busway*

The proposed amendments’ objectives are to:

- preserve certain existing secondary legal interests in TMR’s land which is declared busway land; and
- streamline the administrative processes for including land into the busway perpetual lease.

Chapter 9 of the TIA establishes a land title framework (by way of granting of a perpetual lease), to grant tenure to the land on which the busway transport infrastructure has been constructed. Apart from transport easements of support (*Transport Planning and Coordination Act 1994*, section 28AC), all existing secondary interests in land declared as busway are extinguished upon a busway declaration.

The amendments to Chapter 9 of the TIA include provisions enabling certain secondary legal interests (such as easements and leases) that currently exist over land that has busway transport infrastructure constructed on it to continue when the land is declared as busway land. The reinstatement of those existing secondary legal interests that are extinguished following declaration of the busway, under the existing regime, requires re-negotiation, preparation of new documentation, survey plans and re-registration. This reinstatement process is expensive and time consuming.

The proposed amendments will remove the need to renegotiate, by preserving secondary interests in their existing state, unaffected by the land becoming busway land.

#### *Transport Infrastructure Act 1994*

*Minor amendments for temporary access and occupation of land adjacent to TMR's land/road corridor to undertake regulated land management and environmental activities.*

The proposed amendments' objectives will enable TMR as a land manager to:

- undertake mandatory regulated land management and environmental activities. This may require access and temporary occupation of land to undertake limited mandatory regulated environmental activities including land management activities, accommodation works and road works; and
- fulfil the State's obligation to comply with environmental legislation.

#### *Transport Operations (Passenger Transport) Act 1994*

The policy objectives of the amendments to the *Transport Operations (Passenger Transport) Act 1994* (TOPTA) are to improve the operation and enforceability of TOPTA, remove duplicate definitions from TOPTA, ensure evidentiary provisions support Smart Ticketing, update existing evidentiary provisions as a consequence of the commencement of the Register of Approved Vehicles (RAV) under the RVS Act and ensure that a reference to the department's website will include the TMR website, TransLink website and the whole-of-government website.

## **Achievement of policy objectives**

This Bill achieves the policy objectives as set out below.

#### ***Digital Licence App***

The amendments in the Bill will support the implementation and ongoing operation of a Digital Licence App by:

- facilitating a digital version of authorities as well as digital evidence of age and digital evidence of identity;
- ensuring that digital products available through the App can be used to satisfy a regulatory requirement to produce a driver licence or other document;

- ensure enforcement powers and evidentiary provisions are appropriate to manage the use of digital credentials, while also ensuring devices cannot be seized or confiscated, except by police within their current powers; and
- building a flexible regulatory scheme that, over time, will be able to accommodate other digital authorities or services across government.

### ***Camera detection of seatbelt and mobile phone offences***

It is intended that camera-detected enforcement of mobile phone and seatbelt offences will be managed within the existing legislative framework for camera-detected offences outlined in Chapter 5, Part 7 of *Transport Operations (Road Use Management) Act 1995* (TORUM Act).

Camera detection of mobile phone and seatbelt offences will work alongside traditional enforcement to help deter dangerous behaviours and encourage a shift in community attitudes, particularly away from social acceptance of drivers using a hand-held mobile phone.

The amendments in this Bill will make necessary modifications to evidentiary provisions to promote efficient enforcement of these offences, including court processes, and respond to changes in technology. These amendments include:

- allowing for digital video technology;
- providing for (in the absence of proof to the contrary), certain rebuttable presumptions to apply where a photographic detection device produces an image or video. These presumptions will mean:
  - a vehicle depicted in the image or video will be taken to be moving, or stationary, but not parked and not reversing;
  - that the driver or passenger seating position in the vehicle is taken to be fitted with approved seatbelts; and
  - that the driver or passenger who is depicted not wearing a seatbelt, is taken to be not wearing an approved seatbelt;
- ensuring a person who intends to rely on a provision of the QRRs to raise an exemption, exception or defence for a camera-detected offence, provides advice to the prosecuting authority prior to the hearing; and
- allowing for a summary report for offences detected by a photographic detection device.

Separate to this Bill, amendments will also be progressed to the *Traffic Regulation 1962* and *Queensland Road Rules* to support camera detection of seatbelt and mobile phone offences.

### ***Minor and Technical Amendments***

#### ***Minor improvements to drink and drug driving provisions***

A range of drink and drug driving reforms was progressed through the *Transport Legislation (Road Safety and Other Matters) Amendment Act 2019*. To improve implementation of these reforms, this Bill includes minor amendments to:

- ensure first time mid-range drink driving offenders can apply for an interlock exemption if they are granted a restricted licence; and
- clarify that provisions imposing an extension of the interlock period for those who fail to complete the repeat offender education program can only apply to repeat drink driving offenders.

In addition, this Bill will amend the TORUM Act to remove a superfluous notice requirement from the drug driving provisions where the police officer who analyses a specimen of a driver's saliva is the same officer that made the initial requisition for that specimen.

*Transport Infrastructure Act 1994*

*Minor amendments to preserve certain secondary legal interests in TMR's land.*

*Railway/Busway*

The policy objective is achieved by the effective implementation of amendments to the TIA. The beneficiaries of the secondary interests preserved by the amendments will be able to continue to benefit from their interests, unaffected by the land becoming rail corridor or becoming busway land.

*Minor amendments for temporary access and occupation of land adjacent to TMR's land/road corridor to undertake regulated land management and environmental activities.*

The policy objective is achieved by the effective implementation of amendments to the TIA. On behalf of the State, TMR as a land manager of its land/road corridors is required to undertake mandatory regulated land management and environmental activities. For TMR to fulfil these obligations, it must be able to access and temporarily occupy land adjacent to TMR's land/road corridor. Examples of existing types of limited land management and environmental activities TMR may be required to complete include:

- a) flora surveying;
- b) weed management;
- c) pest management;
- d) fire management;
- e) emergency activities;
- f) environmental management and monitoring;
- g) cultural heritage surveys;
- h) land remediation activities;
- i) relocation of fauna and translocation of flora;
- j) implementation and monitoring of permit conditions.

The proposed amendments to sections 35 and 36 of the TIA establish a framework that enables TMR to access and temporarily occupy land (including private land but not dwellings) adjacent to the land/road corridor to undertake limited mandatory regulated land management and environmental activities that TMR is required to undertake as the land manager.

For clarity, the amendments are an extension of an existing power, to allow the State to enter private land adjacent to TMR's land/road corridor to undertake mandatory regulated land management and environmental activities on the land. Existing section 36 of the TIA, requires TMR to provide notification and affords a land owner/occupier the opportunity to make a submission based on the notification of intention to temporarily occupy. This section will be extended to include land management activities.

Similarly, land management activities must relate to road transport infrastructure or proposed road transport infrastructure. TMR will develop an implementation plan to ensure the department complies with all relevant responsibilities (including environmental responsibilities) or other statutes. For example, for matters of a biosecurity nature, TMR will ensure compliance with the *Biosecurity Act 2014*.

The proposed amendments will provide TMR the opportunity to achieve its objectives allowing for efficiencies in undertaking the regulated activities and increase flexibility and responsiveness to TMR and land owners. In turn, this new level of clarity provides TMR with cost efficiencies in administrative time and operation, the ability to achieve its objectives by meeting its regulated obligations concerning land management and environmental activities and delivers better outcomes for impacted land owners and the community.

#### *Transport Operations (Passenger Transport) Act 1994*

The policy objectives of the amendments to TOPTA are achieved by:

- providing that a reference to 'department's website' can accommodate matters published on either TMR's website, including the TransLink website, or the whole-of-government website; and
- providing evidentiary provisions for the following:
  - vehicle particulars recorded in the RAV, under the RVS Act, can be used as evidence in proceedings;
  - an evidentiary certificate stating that a stated vehicle is an approved vehicle;
  - an evidentiary certificate stating that a stated vehicle is a relevant public passenger vehicle; and
  - an evidentiary certificate stating that a stated amount was the fare payable for the use or hire of a relevant public passenger vehicle in situations where the fare is set or decided by the chief executive; and
  - removing the definitions of 'driver authorisation' and 'operator accreditation'

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

#### *Digital Licence App and Camera enforcement of seatbelt and mobile phone offences*

The Digital Licence App and camera detection of seatbelt and mobile phone offences matters contained in this Bill require legislative amendment to achieve the policy objectives.

#### *Minor and Technical Amendments*

##### *Transport Infrastructure Act 1994*

*Minor amendments to preserve certain secondary legal interests in TMR's land.*

##### *Railway/Busway*

The policy objectives can only be achieved through legislative amendment. Currently, secondary interests are extinguished by the process of putting land into the rail corridor or busway. To reinstate these interests, the State must negotiate and prepare new agreements with the affected parties. The State is usually at a disadvantage in this process, as it has a legal obligation to preserve the interests of the affected parties. Furthermore, the negotiation process is costly and time consuming. To continue using existing processes is detrimental to the State and public interests.

*Minor amendments for temporary access and occupation of land adjacent to TMR's land/road corridor to undertake regulated land management and environmental activities.*

There are no alternatives to achieve the policy objective. The current method TMR applies to access and temporarily occupy land (when undertaking mandatory regulated land management and environmental activities) adjacent to the road corridor where no legislative provisions exist, is via self-regulation.

This occurs through a letter of consent to owners/occupiers of the land advising of intended works TMR must undertake pursuant to legislation, and a request for access for temporary and temporary occupation. If consent by the owner/occupier is granted, TMR undertakes the necessary works. If consent by the owner/occupier is not provided, TMR cannot fulfil its mandatory obligations.

These proposed amendments to sections 35 and 36 of the TIA are the most efficient, effective and transparent option to achieve the policy objectives.

*Transport Operations (Passenger Transport) Act 1994*

The proposed amendments to TOPTA are the most efficient, effective and transparent option to achieve the policy objectives.

## **Estimated cost for government implementation**

*Camera detection of seatbelt and mobile phone offences*

Costs to procure and implement camera technology for mobile phone and seatbelt offences will be funded from the CDOP. Under section 117 of the TORUM Act, penalties collected for camera-detected offences in excess of administrative costs must be used for road safety education and awareness programs, road accident injury rehabilitation programs or road funding to improve the safety for roads where accidents most frequently happen.

It is estimated that distracted driving related crashes cost the Queensland economy more than \$1.5b per year. The actual cost is likely to be higher given the difficulty of confirming distraction, particularly mobile phone use, as a contributing factor in crashes.

*Minor amendments to drink and drug driving provisions*

The amendments to make minor improvements to drink and drug driving provisions will not incur any cost to government or stakeholders.

*Transport Infrastructure Act 1994*

*Minor amendments to preserve certain secondary legal interests in TMR land.*

The amendments will significantly reduce legal costs, which would otherwise be borne by affected parties when renegotiating extinguished interests.

The amendments will:

- continue to protect the legal rights of the interest holder;
- remove the risk of litigation costs against TMR from the interest holder;
- significantly reduce time and costs associated with inter-government administration;
- and
- remove the need to engage legal representation for the reinstatement of the interests.

*Minor amendments for temporary access and occupation of land adjacent to TMR's land/road corridor to undertake regulated land management and environmental activities.*

The proposed amendments are likely to reduce administrative costs in lost time captured via the current self-regulation letters of consent. Any implementation costs will be met within the TMR existing budget allocation.

*Transport Operations (Passenger Transport) Act 1994*

Government and other stakeholders will not incur costs associated with the minor technical amendments to TOPTA.

## **Consistency with fundamental legislative principles**

The Bill is generally consistent with the fundamental legislative principles.

During the development of the Bill, careful regard was given to protecting individual privacy and promoting security of information. The amendments in this Bill for the Digital Licence App do not interfere with existing privacy protections for individuals and so do not raise fundamental legislative principles issues. In many ways, the Digital Licence App will improve an individual's ability to manage how they release their personal information to others. The App will also comply with the international standard ISO 18013-5 which is currently under development.

Otherwise, potential fundamental legislative principles issues are addressed below.

*Digital licensing – evidentiary certificate – reverse onus of proof (section 4(3)(d) Legislative Standards Act 1992)*

The Bill includes an evidentiary certificate provision in Schedule 1 of the TORUM Act relating to whether or not a specified digital authority was or was not a specified relevant authority. This information is objective in nature and unlikely to be controversial.

A person may still contest the evidence provided by certificate, however, certificate evidence supports a more efficient and cost-effective court process for all parties and is justified.

*Digital licensing - transitional regulation-making power – potential retrospectivity and sufficient regard to the institution of Parliament (sections 4(3)(g) and (5) Legislative Standards Act 1992)*

It is proposed to include a transitional regulation which will allow amendments to be made to digital licence legislation by regulation for a two-year period following commencement of the pilot. This may raise the fundamental legislative principle about the legislation having sufficient regard to the institution of Parliament.

The Digital Licence App is an innovative concept. Driver licences are used for many different purposes by a broad cross-section of the community. To meet customer expectations, Government must be able to respond quickly to unforeseen issues, including ensuring that the legislation is effective. The proposed two-year period for legislation changes to be made via the transitional regulation will provide necessary flexibility to respond to legislative issues as they arise.

Similar approaches have been adopted for other significant initiatives. See for example, section 110 of the *Labour Hire Licensing Act 2017* and section 132 of the *Rail Safety National Law (Queensland) Act 2017*.

Any regulation made under this provision would still be subject to Parliamentary scrutiny and possible disallowance.

*Camera detection of seatbelt and mobile phone offences – reverse onus of proof (section 4(3)(d) Legislative Standards Act 1992)*

The Bill includes provisions that reverse the onus of proof for camera detected seatbelt and mobile phone offences. Proposed sections 120D and 120E of the TORUM Act will mean (in the absence of proof to the contrary) that an image or video produced by a photographic detection device can be used as follows:

- a vehicle depicted in the image or video is taken to be evidence that the vehicle was moving, or stationary, but not parked and not reversing;
- the driver or passenger seating position in the vehicle is taken to be fitted with approved seatbelts; and
- the driver or passenger who is depicted not wearing a seatbelt, is not wearing an approved seatbelt.

Current on-road enforcement of mobile phone and seatbelt offences relies solely on the observations and evidence collected by an intercepting police officer. However, camera-detected enforcement relies on the image or video produced by the camera system. The provisions in this Bill will ensure that those images or videos are able to be used as evidence. It is critical that prosecutions can proceed on this evidence to maintain public confidence in the CDOP and enable infringements to be issued in line with the *State Penalties Enforcement Act 1999*.

The technology that will be used in the photographic-detection devices for mobile phone and seatbelt offences is advanced, producing high-quality images and employing machine learning algorithms. The machine learning algorithms are designed to identify patterns and behaviours and identify offending behaviour. These algorithms improve over time. NSW's cameras have seen considerable improvements to achieve a high level of accurate detection in a very short period. The images will be high quality and current processes involve human adjudication by Queensland Police Service (QPS), prior to the issue of any infringement notice. This will help to ensure that infringement notices are not issued, for example, where an object in a driver's hand is not a mobile phone.

Importantly, the provisions do not remove a person's right to contest the evidence presented through the images or video. As is the current administrative practice for camera-detected offences, a person may write to the QPS to raise any issues they believe support the withdrawal of an infringement notice.

A person can also elect to have their matter heard by a court. If a matter proceeds to court, the person is in the best position to provide evidence to contest the presumptions and image or video evidence through their testimony. Ultimately, it will be a matter for the court to decide.

To promote efficient enforcement processes, the Bill will also require a person to advise the prosecution prior to a hearing if they intend to challenge the presumptions or if they wish to raise an exemption, exception or defence available through a regulation. These provisions ensure the prosecution will be able to make informed decisions about whether the matter should be withdrawn and will reduce the burden on both individuals and the courts.

In addition, proposed section 120F of the Bill will allow a number of matters that are admissible through certificate or certified image evidentiary matters to be provided to the court as a single certified report. This report will be particularly useful where there is a series of images, or where the average speed and average speed limit of a vehicle is calculated under sections 120A

and 120B. This report aims to improve the efficiency of court processes. The amendments in the Bill do not negate the ability for a defendant to challenge the matters the report contains.

Having regard to the advanced technology, the current practice of police officer adjudication prior to issue of an infringement notice and processes available to challenge the image or video evidence and presumptions, the reversal of onus provisions in this Bill are justified in the interests of the road safety benefits that will come from efficient enforcement processes.

*Camera detection of seatbelt and mobile phone offences – privacy – rights and liberties of individual (section 4(2)(a) Legislative Standards Act 1992)*

While this Bill does not make any amendments that will adversely impact a person's privacy, it is recognised that camera enforcement of mobile phone and seatbelt offences will mean images will be collected from every vehicle that passes a lane/s that has a mobile phone and seatbelt camera set up.

Images will include vehicle registration numbers as well as the vehicle interior (mostly the front cabin of the vehicle). The capture and storage of high definition photos of drivers and their passengers inside their vehicles may be seen as a violation of a person's privacy.

A key element in upholding and protecting a person's right to privacy will be that images or video that do not contain evidence of an offence will be deleted by the system and are not used or transferred to a human.

Where a possible offence is detected, the information collected by the camera system will be transmitted to the QPS for further adjudication. The QPS has responsibility for enforcing the QRRs and its processes for verifying camera-enforced offences are robust, consistent and accountable.

Additional strict privacy and security measures will apply to mitigate any privacy concerns arising from the use and storage of information captured by the cameras including:

- encryption of image files for detected offences and transferring data via secure networks;
- contractually binding the camera supplier to abide by the *Information Privacy Act 2009*;
- subjecting all supplier personnel that have access to the images to a criminal history check and training;
- including access logs to the images to determine who has accessed what image; and
- ensuring controls over physical access to the camera sites.

It is also proposed to publicly release a Privacy Impact Assessment, once completed, to ensure transparency of how data will be managed. An extensive education campaign about the new cameras will also be undertaken to provide detailed information about the use of information and how the camera system works on the Queensland Government website. This will assist in mitigating any concerns or misinformation about privacy for the community. It will also inform the community of the process for when a camera-detected offence is committed, including how a person can challenge an infringement notice.

Importantly, all drivers can avoid any privacy or reputation implications by complying with the QRRs.

Having regard to the privacy protections entrenched in the technology and processes, and the information that will be made available, any privacy implications are justified in the interests of road safety benefits for the individuals and other road users.

*Camera detection of seatbelt and mobile phone offences – institution of parliament – (sections 4(3)(g) and (5) Legislative Standards Act 1992)*

Proposed section 120(7A) of the TORUM Act will require a person to provide advice about their intention to raise certain matters that are exemptions, exceptions or defences under a transport regulation including the QRRs. The QRRs or another regulation may, over time, be amended by regulation, thus, technically potentially changing the impact of the Act provision.

The approach in the Bill is justified because the matters subject to regulation will be operational in nature. Allowing them to be prescribed by regulation provides necessary flexibility to ensure the application of the QRRs or other regulation regarding camera-detected offences is managed fairly and responsively to changing community expectations. Any regulation made under this provision would still be subject to Parliamentary scrutiny.

### ***Minor and Technical Amendments***

*Transport Infrastructure Act 1994*

*Minor amendments to preserve certain secondary legal interests in TMR's land.*

The amendments are consistent with fundamental legislative principles (FLP) as the beneficiaries of the secondary interests preserved by the amendments will continue to benefit from their interests, unaffected by the land becoming rail corridor or busway land or, if their interest is extinguished, will be entitled to fair compensation.

*Minor amendments for temporary access and occupation of land adjacent to TMR's land/road corridor to undertake regulated land management and environmental activities.*

On behalf of the State, TMR as a land manager is responsible for managing transport land including an extensive state-controlled road network.

As the land manager, TMR has a duty and is required to undertake mandatory regulated land management and environmental activities. For TMR to fulfil these obligations, TMR must be able to access and temporarily occupy land, including land adjacent to TMR land which may be private land.

The policy objectives of these amendments, as detailed above in *achievement of policy objectives*, are to provide a framework which enables TMR to access and temporarily occupy land to undertake limited mandatory regulated land management and environmental activities. The proposed amendment allows TMR to temporarily access property to undertake accommodation works, road works or land management activities.

The proposed amendments may raise FLP issues by accessing private land adjacent to the TMR land/road corridor (section 4(3)(e) of the *Legislative Standards Act 1992*). Potential FLP breaches are addressed below:

The proposed amendments may raise FLP issues by accessing private land adjacent to the TMR land/road corridor (section 4(3)(e) of the *Legislative Standards Act 1992*). Potential FLP breaches are addressed below:

- The amendments provide a clear process and framework to balance the needs of TMR and land owners. When planning, constructing, establishing and maintaining transport infrastructure, TMR has a responsibility to:
  - ensure all safety, operational and regulated land management and environmental activities are undertaken to maintain the integrity and safety of transport infrastructure in a timely manner;
  - minimise any impact of activity on private properties adjacent to TMR land/road corridor; and
  - rectify all damage and loss of use and function caused to property as a result of the activity undertaken. On rectification of any damage, some landowners may seek a replacement that is of a higher standard or quality than the original affected thing. For example, TMR will provide a replacement gate on a “like for like” basis; and in cases involving multiple owners where some of the owners cannot be contacted for consent to works, the remaining owners may continue to suffer inconvenience and potential construction hazards.

The amendments do not alter, remove or change land owner rights to compensation. Section 37 of the TIA allows land owners/occupiers who have had physical damage caused to their property due to entry, occupation or use (under section 35) to provide written notice to the chief executive claiming compensation.

- The proposed amendments make it clear that TMR must rectify any damage caused to property by entering and temporarily occupying land to undertake activity on a property and will remove uncertainty for owners' rights about impacts and damages to property caused by the activity undertaken.
- The amendments do not reduce existing rights of an owner/occupier to seek:
  - a review via the Queensland Civil and Administrative Tribunal or Judicial Review;
  - common law compensation rights or under section 37 of the TIA (Compensation for physical damage from entry etc.).
- The amendments provide that TMR must give seven days (7) notice to the owner/occupier of the property adjacent to the road corridor of its intention to enter the land and undertake activity. The owner/occupier is entitled to make a submission within the seven-day notice period to TMR in response to the notice of intention to occupy. The submission must be considered before TMR undertakes the activity. The entry provisions only allow entry onto land, not dwellings.

The proposed amendments will provide a more efficient and effective process for TMR undertaking its required activity as well as removing any ambiguity in the application of section 35 of the TIA, providing clarity for government and the community. The proposed amendments will:

- ensure regulated land management and environmental activities can be undertaken, on state or private land, adjacent to the road corridor where necessary or convenient to ameliorate impacts caused by the establishment and maintenance of road transport infrastructure or proposed road transport infrastructure;
- reduce potential land management and environmental impacts and associated costs to road transport infrastructure or proposed road transport infrastructure; and

- reduce the rate of non-compliance for TMR to undertake regulated land management and environmental activities.

#### *Transport Operations (Passenger Transport) Act 1994*

#### *Evidentiary certificate – reverse onus of proof (section 4(3)(d) Legislative Standards Act 1992)*

The amendments to TOPTA, which provide that the chief executive can sign a certificate about a particular matter and that certificate is evidence of that particular matter, potentially infringes on the fundamental legislative principle that legislation should not reverse the onus of proof in criminal proceedings without adequate justification.

The Bill provides that a certificate signed by the chief executive can be evidence of the following matters:

- vehicle particulars recorded in the RAV;
- that a stated vehicle is an approved vehicle;
- that a stated vehicle is a relevant public passenger vehicle; and
- that a stated amount was the fare payable for the use or hire of a relevant public passenger vehicle.

Information contained in the RAV will be maintained by the National Exchange of Vehicle and Driver Information Services and the RAV will be publicly available online. The matters included in the evidentiary certificate are factual in nature and non-contentious.

The amendment that allows the chief executive to certify that, at a particular time, the stated amount was the fare payable for the use or hire of a relevant public passenger vehicle, only applies in situations where the stated vehicle provides a service under an agreement by, or for the State, the department, or the chief executive, and the chief executive has set or decided the particular fare. Such fares are publicly available and factual in nature. In addition, allowing the chief executive to certify that a vehicle was an approved vehicle only applies to approved vehicles as defined under a regulation. Whether a vehicle is an approved vehicle for the Smart Ticketing equipment is a matter that is factual in nature and unlikely to be contested.

The evidentiary certificates are designed to ensure efficient court proceedings, without relying on expert witnesses in matters which are considered administrative and factual in nature and unlikely to be controversial and therefore are appropriate for certificate evidence.

The evidentiary certificates do not impact a defendant's right challenge a fact in the certificate in a court proceeding.

## **Consultation**

### ***Digital Licence App***

A detailed communication strategy was developed to guide community consultation, including in the lead up to the pilot in the Fraser Coast region. Consultation has commenced for the pilot with local police, community groups, Chambers of Commerce, schools, and businesses. Consultation has also occurred with Mr Bruce Saunders MP, Member for Maryborough, and with the Fraser Coast Regional Council.

During the Digital Licence App development, testing was undertaken with credential holders, police and persons with disabilities (including vision impairment). Consultation also occurred

with occupational users that rely on a driver licence or photo identification card to verify identity or age. Representatives included persons from financial institutions, hotels and bars, pharmacies, employment agencies, telecommunications providers, libraries, women's refuges, and real estate agents. These stakeholders helped to shape the design and functionality of the Digital Licence App.

A human centred design approach will continue to be employed during and after the pilot. This will include business and industry representatives as end users of the Digital Licence App to help ensure their business process needs are met.

During drafting of the Bill, TMR consulted with the Royal Automobile Club of Queensland (RACQ), Queensland Law Society (QLS), Queensland Council for Civil Liberties (QCCL) and ID Care.

The RACQ is supportive of the Digital Licence App.

The QLS raised no significant concerns but highlighted the need for the Digital Licence App to be secure and respect privacy.

An independent Privacy Impact Assessment was undertaken in relation to the Digital Licence App and all recommendations from this assessment will be implemented. TMR will be required, as is the current case, to protect customer information against cybercrimes and theft.

The QCCL raised concerns that the Digital Licence App may be used to collect individuals' fingerprints or track their movements. The App will not, however, collect fingerprints and will not allow Government to track a person's movements.

ID Care raised no issues regarding the Digital Licence App.

### ***Camera detection of seatbelt and mobile phone offences***

Community consultation on ideas to address driver distraction was undertaken following the National Driver Distraction Summit held in July 2019. Public feedback reflected a strong willingness for government action on this issue. Responses indicated broad support for an increase in the penalties for mobile phone offences, together with other measures such as increased education and greater enforcement, including through technology such as camera enforcement.

Consultation about camera enforcement of mobile phone and seatbelt offences was also undertaken with key stakeholders such as the RACQ, the QLS and the QCCL.

These stakeholders acknowledge the risks involved with illegal mobile phone use and failing to wear a seatbelt on Queensland roads and the contribution that these behaviours make to the annual road toll and serious injury statistics. As such there is general support from stakeholders for expanding the existing CDOP to include mobile phone and seatbelt offences.

However, the QLS and the QCCL raised similar issues about privacy and the reverse onus of proof elements, as well as the appropriateness of artificial intelligence technologies being used in the determination of an offence.

The QLS and the QCCL noted that reversing the onus of proof onto the community is inconsistent with fundamental legislative principles and for this reason it is not broadly supported.

However, the QLS and QCCL acknowledged that the reverse onus was not considered lightly and was being applied out of necessity to ensure that the enforcement of mobile phone and seatbelt offences is effective and certain for the community.

The QLS and QCCL supported the following mitigating strategies to help manage the concerns associated with the reverse onus and privacy:

- human intervention and oversight to be at the centre of the decision-making process on whether an offence has occurred;
- a clear, easy process and readily understood process for a person to be able to request a review of an infringement notice, ensuring that those with low literacy are not disadvantaged;
- information being made publicly available in relation to the camera system and how data will be managed;
- the deletion of data at the point of collection where no offence has occurred; and
- strict privacy and security measures being adopted, consistent with the *Information Privacy Act 2009*, around the use and storage of information captured by the cameras for the purposes of verifying and enforcing an offence.

#### *Transport Infrastructure Act 1994*

##### *Minor amendments to preserve certain secondary legal interests in TMR's land.*

TMR consulted with secondary legal interest holders about the proposed amendments as follows:

- APA Group (Australian Pipeline Limited);
- Unity Water;
- Energex;
- Brisbane City Council; and
- Brisbane Grammar School.

All parties who provided formal feedback during consultation supported the proposed amendments.

The amendments are administrative in nature providing clarity for both TMR and specific stakeholders. For this reason, public consultation was not undertaken.

Public consultation was not undertaken as the amendments are administrative in nature and the intent is to provide clarity for both the government and owners/occupiers.

## **Consistency with legislation of other jurisdictions**

As NSW has successfully introduced both digital licences and camera detection of mobile phone offences, consideration was given to relevant NSW provisions during the drafting of this Bill.

However, the amendments in this Bill are necessarily different to the NSW approach to ensure they operate effectively in Queensland, including being consistent with the existing CDOP framework.

The amendments to the *Transport Infrastructure Act 1994* are not inconsistent with legislation of the Commonwealth or another State.

## Notes on provisions

### Part 1 Preliminary

*Clause 1* indicates the Act may be cited as the *Transport and Other Legislation (Road Safety, Technology and Other Matters) Amendment Act 2020*.

*Clause 2* outlines which provisions will commence on a day fixed by proclamation, or upon commencement of other legislation, or on assent.

### Part 2 Amendment of Gaming Machine Act 1991

*Clause 3* indicates this part amends the *Gaming Machine Act 1991*.

*Clause 4* inserts subsection 257(3). Section 257(3) clarifies the seizure and confiscation powers and obligations in section 257 (Seizure of document wrongly used as evidence of age). In relation to a contravention of section 255, these powers do not apply to a mobile phone or other digital device used to display a digital authority, an approved digital evidence of age or an approved digital evidence of identity, or something purporting to be one of these.

*Clause 5* inserts a note for subsection 258(1). The note refers to the *Transport Planning and Coordination Act 1994*, sections 29AH and 29AI for the use of a digital authority, a digital evidence of age or a digital evidence of identity. Sections 29AH and AI ensure that requirements to produce, give or make available for inspection, a driver licence or evidence of age or identity, can be satisfied by the display of a digital authority, digital evidence of age or digital evidence of identity through an approved app.

*Clause 6* inserts subsection 259(2). Section 259(2) clarifies the seizure and confiscation powers and obligations in section 259 (Seizure of material associated with representation of age). In relation to the commission of offences mentioned in sections 255(2)(a) and (b) or 256(1) and (2), these powers do not apply to a mobile phone or other electronic device used to display a digital authority, an approved digital evidence of age or an approved digital evidence of identity, or something purporting to be one of these.

*Clause 7* amends section 329 by inserting subsection (13). Section 329(13) clarifies the seizure and confiscation powers and obligations in section 329 (General powers of inspectors) In relation to the commission of offences mentioned in sections 255 or 256 these powers do not apply to a mobile phone or other digital device used to display a digital authority, an approved digital evidence of age or an approved digital evidence of identity, or something purporting to be one of these.

*Clause 8* amends Schedule 2 (Dictionary). The definitions of digital authority, digital device, digital evidence of age and digital evidence of identity refer to provisions in the *Transport Planning and Coordination Act 1994*.

### Part 3 Amendment of Keno Act 1996

*Clause 9* indicates this part amends the *Keno Act 1996*.

*Clause 10* inserts a note for subsection 166(2). The note refers to the *Transport Planning and Coordination Act 1994*, sections 29AH and 29AI for the use of a digital authority, a digital evidence of age or a digital evidence of identity. Sections 29AH and AI ensure that requirements to produce, give or make available for inspection, a driver licence or evidence of age or identity, can be satisfied by the display of a digital authority, digital evidence of age or digital evidence of identity through an approved app.

*Clause 11* amends section 184 by inserting subsections (2) and (3). Section 184(2) and the related definitions in (3) clarify the seizure and confiscation powers and obligations in section 184 (Seizing evidence at keno gaming places). In relation to an offence mentioned in section 166(3), these powers do not apply to a mobile phone or other digital device used to display a digital authority, a digital evidence of age or a digital evidence of identity, or something purporting to be one of these.

## **Part 4      Amendment of Liquor Act 1992**

*Clause 12* indicates this part amends the *Liquor Act 1992*.

*Clause 13* amends Section 4 (Definitions). The definitions of digital authority, digital device, digital evidence of age and digital evidence of identity refer to provisions in the *Transport Planning and Coordination Act 1994*.

*Clause 14* amends section 6 which defines acceptable evidence of age for licensed premises. The amendment inserts a new subsection (1A) to recognise that a digital authority, a digital evidence of age, or a digital evidence of identity are able to be used as acceptable evidence of age.

Any digital evidence of age or identity available through the Digital Licence App will draw data from a high assurance source such as a Queensland driver licence or photo identification card.

*Clause 15* inserts subsection 160(3). Section 160(3) clarifies the seizure and confiscation powers and obligations in section 160 (Seizure of document wrongly used as evidence of age). In relation to a contravention of section 158, these powers do not apply to a mobile phone or other digital device used to display a digital authority, a digital evidence of age or a digital evidence of identity, or something purporting to be one of these.

*Clause 16* inserts a note for subsection 165A(1)(d)(i). The note refers to the *Transport Planning and Coordination Act 1994*, sections 29AH and 29AI for the use of a digital authority or a digital evidence of age or digital evidence of identity. Sections 29AH and AI ensure that requirements to produce, give or make available for inspection, a driver licence or evidence of age or identity, can be satisfied by the display of a digital authority, digital evidence of age or digital evidence of identity through an approved app.

*Clause 17* inserts a note for subsection 167(1). The note refers to the *Transport Planning and Coordination Act 1994*, sections 29AH and 29AI for the use of a digital authority, a digital evidence of age or a digital evidence of identity. Sections 29AH and AI ensure that requirements to produce, give or make available for inspection, a driver licence or evidence of

age or identity, can be satisfied by the display of a digital authority, digital evidence of age or digital evidence of identity through an approved app.

*Clause 18* amends the definition of ID scanner in section 173EE (Definitions for pt 6AA) so that it is clear that an ID scanner is a device capable of accessing information about a photo ID via a digital device that a photo ID is displayed on.

*Clause 19* amends section 173EH to cover scanning of photo ID displayed on a digital device.

*Clause 20* inserts a new subsection 177(5) and renumbers the existing (5). The new section 177(5) clarifies the seizure and confiscation powers and obligations in section 177 (Entry and search – evidence of offences). In relation to offences mentioned in section 158 or 159, these powers, do not apply to a mobile phone or other digital device used to store or display a digital authority, a digital evidence of age or a digital evidence of identity, or something purporting to be one of these.

*Clause 21* inserts a note for subsection 182(1). The note refers to the *Transport Planning and Coordination Act 1994*, sections 29AH and 29AI for the use of a digital authority, a digital evidence of age or a digital evidence of identity. Sections 29AH and AI ensure that requirements to produce, give or make available for inspection, a driver licence or evidence of age or identity, can be satisfied by the display of a digital authority, digital evidence of age or digital evidence of identity through an approved app.

*Clause 22* inserts subsection 186(2). Section 186(2) clarifies the seizure and confiscation powers and obligations in section 186 (Seizure of material associated with representation of age). These powers do not apply to a mobile phone or other digital device used to store or display a digital authority, a digital evidence of age or a digital evidence of identity, or something purporting to be one of these.

## **Part 5      Amendment of Photo Identification Card Act 2008**

*Clause 23* indicates this part amends the *Photo Identification Card Act 2008*.

*Clause 24* amends section 32 to insert new subsection (5). Subsection (5) defines department's website. This amendment ensures that the department can meet its obligations to publish information on its website if the information is published on the Queensland Government's website.

*Clause 25* amends section 47A to include a reference to the *Transport Planning and Coordination Act 1994*. This will allow the chief executive to keep and use information obtained or kept relating to digital authorities under the *Transport Planning and Coordination Act 1994* in limited circumstances. Those circumstances include if the information relates to a matter under the *Photo Identification Card Act 2008* or concerns the administration of that Act. Importantly, this provision does not apply to a digital photo or digitised signature.

## **Part 6      Amendment of Summary Offences Act 2005**

*Clause 26* indicates this part amends the *Summary Offences Act 2005*.

*Clause 27* amends section 23B (Sale of spray paint for minors), to replace the definition of acceptable evidence of age to accommodate digital authorities, digital evidence of age and digital evidence of identity.

## **Part 7      Amendment of Tobacco and Other Smoking Products Act 1998**

*Clause 28* indicates this part amends the *Tobacco and Other Smoking Products Act 1998*.

*Clause 29* inserts a note for subsection 38(4). The note refers to the *Transport Planning and Coordination Act 1994*, sections 29AH and 29AI for the use of a digital authority, a digital evidence of age or a digital evidence of identity. Sections 29AH and AI ensure that requirements to produce, give or make available for inspection, a driver licence or evidence of age or identity, can be satisfied by the display of a digital authority, digital evidence of age or digital evidence of identity through an approved app.

*Clause 30* inserts a note for subsection 39(4). The note refers to the *Transport Planning and Coordination Act 1994*, sections 29AH and 29AI for the use of a digital authority, a digital evidence of age or a digital evidence of identity. Sections 29AH and AI ensure that requirements to produce, give or make available for inspection, a driver licence or evidence of age or identity, can be satisfied by the display of a digital authority, digital evidence of age or digital evidence of identity through an approved app.

*Clause 31* inserts new section 40AC (Restriction of seizure powers). Section 40AC clarifies the seizure and confiscation powers and obligations under part 4, division 3 of that Act. These powers do not apply to a mobile phone or other digital device used to store or display a digital authority, a digital evidence of age or a digital evidence of identity, or something purporting to be one of these.

## **Part 8      Amendment of Transport Infrastructure Act 1994**

*Clause 32* indicates this part amends the *Transport Infrastructure Act 1994*.

*Clause 33* amends section 35 (Temporary occupation and use of land) to introduce the concept of *land management activity*. *Land management activity* means an activity other than accommodation or road works relating to road transport infrastructure or proposed road transport infrastructure. Examples of *land management activities* include a survey of flora, the management of weeds and other pests, the clearing of vegetation, the monitoring and management of the quality of air or water or the monitoring and management of the level of noise. Land management activities must relate to road transport infrastructure or proposed road transport infrastructure. For example, for matters of a biosecurity nature, TMR will ensure continued compliance with the *Biosecurity Act 2014*.

*Clause 34* amends section 36 (Notice of permission to enter) to allow that the chief executive, or a person authorised in writing by the chief executive under section 35, to temporarily occupy land for the purposes of carrying out *land management activity*. As outlined above, *land management activity* includes mandatory regulated environmental activity or essential activity relating to road transport infrastructure or proposed road transport infrastructure. For accommodation works or a land management activity, the temporary occupier of the land must

consider any submissions made within seven days after the notice is given, prior to carrying out the works.

*Clause 35* amends section 240 (Sublease of land to railway managers) to allow the chief executive to preserve secondary interests in land acquired for rail purposes to continue after the land becomes rail corridor. The amendments allow for freehold land and State leasehold land secondary interests to continue. Easements for access and public utilities are examples of these secondary interests.

Under the previous regime, if an entity had an existing easement, and TMR put freehold land into the rail corridor, their easement was extinguished. The easement then needed to be reinstated. This frequently resulted in legal challenges and arguments over compensation.

*Clause 36* inserts new section 240AAA (Compensation for interests not continued) inserts new section 240AAA which allows for compensation for persons, where their interest in the acquired land has been extinguished under section 240 (7D) of the TIA. There is no right to compensation for the subleasing of land under section 240. This provision is consistent with similar provisions throughout TIA for compensation as a result of a loss of interest.

*Clause 37* amends section 302 (Declaration of land as busway land) which allows the Minister when making a declaration of busway land, allow for stated interests in land to continue, without those interests being extinguished by the busway declaration.

*Clause 38* amends section 303 (Effect on land of busway declaration) by clarifying that section 303 (2C) applies to land that has been declared as busway land, including unallocated State land, road or land that becomes unallocated state land. Land that becomes unallocated state land as a result of a busway declaration under the new provisions is free of any interest in the land except for those preserved.

*Clause 39* inserts new section 303AAA (Compensation for interests not continued) which allows compensation provisions for persons for a loss of an interest as a result of the busway declaration. This provision is consistent with similar provisions throughout TIA for compensation as a result of a loss of interest.

## **Part 9      Amendment of Transport Legislation (Road Safety and Other Matters) Amendment Act 2019**

*Clause 40* indicates this part amends the *Transport Legislation (Road Safety and Other Matters) Amendment Act 2019* (the amendment Act).

*Clause 41* amends section 94 of the amendment Act. Section 94 of the amendment Act inserts section 91M(4) into the *Transport Operations (Road Use Management) Act 1995*. The amendment will clarify that provisions imposing an extension of the interlock period for those who fail to complete the repeat offender education program can only apply to repeat drink driving offenders.

*Clause 42* replaces section 96 of the amendment Act. The new provision will amend section 91P of the *Transport Operations (Road Use Management) Act 1995* to ensure first time mid-

range drink driving offenders can apply for an interlock exemption if they are granted a restricted licence.

## **Part 10 Amendment of Transport Operations (Passenger Transport) Act 1994**

### **Division 1 Preliminary**

*Clause 43* provides that this part of the Bill amends *Transport Operations (Passenger Transport) Act 1994*.

### **Division 2 Amendments commencing other than by proclamation**

*Clause 44* amends section 153B of TOPTA to allow for particulars recorded in the RAV under the RVS Act to be used as evidence in a proceeding for an offence against TOPTA. This is consistent with how a document can be evidence of a matter stated on a compliance plate. From commencement of the relevant provisions of the RVS Act, the RAV will be an online, public database of vehicles approved for use on Australian roads.

'Compliance plate' is defined in schedule 3 of TOPTA as a plate authorised to be placed on a motor vehicle under the *Motor Vehicle Standards Act 1989* (Cwlth). To reflect current drafting practices, the definition of compliance plate has been moved to section 153B of TOPTA and amended to also include plates that are authorised to be placed on a motor vehicle under the *Road Vehicle Standards (Consequential and Transitional Provisions) Act 2018* (Cwlth) or fitted to a motor vehicle under a standard determined under the RVS Act.

*Clause 45* removes the definition of 'compliance plate' from schedule 3 of TOPTA. The definition of 'compliance plate' has been moved to section 153B of TOPTA. This clause also inserts the definition of 'department's website' in schedule 3 of TOPTA, to ensure that references to 'department's website' under TOPTA can accommodate matters published on a website administered by TMR, including for example, TMR's website, the TransLink website or the whole-of-government website. This will allow for a customer centric approach, where information can be published in the most useful location for the customer, while not diminishing the enforceability of TOPTA.

### **Division 3 Amendments commencing by proclamation**

*Clause 46* inserts several new subsections.

New subsection 153B(1)(b)(xi) provides that a certificate signed by the chief executive, stating that at a particular time, a stated vehicle was an approved vehicle, is evidence of the matter in a proceeding for an offence against TOPTA. 'Approved vehicle' has been defined in section 153B(3).

New subsection 153B(1)(b)(xii) provides that a certificate signed by the chief executive, stating that a vehicle is a relevant public passenger vehicle, is evidence of the matter in a proceeding for an offence against TOPTA. 'Relevant public passenger vehicle' has been defined in section 153B(3).

New subsection 153B(1)(b)(xiii) replaces the previous subsection 153B(1)(b)(xi), however, the term 'relevant public passenger service' has been changed to 'relevant public passenger vehicle'. In subsection 153B(3), the previous definition of 'relevant public passenger service' has been replaced by a definition of 'relevant public passenger vehicle' to ensure that the chief executive can sign an evidentiary certificate (under subsection 153B(1)(b)(xii) and (xiii)) relating to a public passenger vehicle used to provide a service under particular agreements where the operator must charge fares set or decided by the chief executive.

## **Part 11 Amendment of Transport Operations (Road Use Management) Act 1995**

*Clause 47* indicates this part amends the *Transport Operations (Road Use Management) Act 1995*.

*Clause 48* inserts subsection 40(5). Section 40(5) clarifies the seizure powers and obligations in section 40 (Power to seize evidence). In relation to the commission of offences under section 53(2) or 126(1), these powers do not apply to a mobile phone or other digital device used to store or display a digital authority, an approved digital evidence of age or an approved digital evidence of identity, or something purporting to be one of these.

*Clause 49* inserts subsection 40A(3A). Section 40(3A) clarifies the seizure powers and obligations in section 40A (Further powers to seize evidence in relation to particular vehicles). In relation to the commission of offences under section 53(2) or 126(1), these powers do not apply to a mobile phone or other digital device used to store or display a digital authority, an approved digital evidence of age or an approved digital evidence of identity, or something purporting to be one of these.

*Clause 50* inserts a note for subsection 48(4). The note refers to the *Transport Planning and Coordination Act 1994*, sections 29AH and 29AI for the use of a digital authority, a digital evidence of age or a digital evidence of identity. Sections 29AH and AI ensure that requirements to produce, give or make available for inspection, a driver licence or evidence of age or identity, can be satisfied by the display of a digital authority, digital evidence of age or digital evidence of identity through an approved app.

*Clause 51* inserts a note for subsection 48A(4). The note refers to the *Transport Planning and Coordination Act 1994*, sections 29AH and 29AI for the use of a digital authority, a digital evidence of age or a digital evidence of identity. Sections 29AH and AI ensure that requirements to produce, give or make available for inspection, a driver licence or evidence of age or identity, can be satisfied by the display of a digital authority, digital evidence of age or digital evidence of identity through an approved app.

*Clause 52* amends section 80 to remove a superfluous notice requirement from the drug driving provisions where the officer who analyses a specimen of a driver's saliva is the same officer that made the initial requisition for that specimen.

*Clause 53* amends section 84A to allow for video technology for camera-detected offences relating to the driving of motor vehicles carrying placard loads in tunnels.

*Clause 54* amends section 113A to allow for video technology for camera-detected offences. The new subsection (4) allows a regulation to provide further details about the how a photographic detection device will operate in relation to verifying an offence and the deletion of data where there is no offence detected by the device or system. For example, in line with current processes, the regulation may provide that potential offences detected by the machine-learning algorithms will be passed to the QPS for human adjudication before any infringement notice is issued. As another example, the regulation may provide that, where the machine-learning algorithms do not detect an offence, the data will be deleted and not transferred to the QPS.

*Clause 55* amends section 116 to ensure that a notice accompanying a summons advises a person about the additional matters that they may seek to challenge in relation to a camera-detected seatbelt or mobile phone offence.

*Clause 56* amends section 118 to allow for video technology for camera-detected offences.

*Clause 57* makes amendments to section 120. These amendments allow video technology for camera-detected offences. This clause also ensures that certification and certificate requirements apply when video evidence is used for a camera-detected offence. Definitions are also amended to better support the use of video evidence, including where a marking or writing may be associated with the video or an image.

The addition of a new subsection (7A) ensures that a defendant who wishes to challenge a camera-detected offence based on an exemption, exception or defence in a regulation, must notify the prosecution.

The notification must be in writing and at least 14 days prior to the hearing. This information will ensure court hearings can proceed efficiently. It will also allow the prosecution to make informed decisions about whether the matter should be withdrawn.

*Clause 58* amends section 120C to allow for video technology.

*Clause 59* inserts sections 120D, 120E and 120F. Section 120D applies where an image or video evidence is used for proceeding for a camera-detected seatbelt offence. Section 120E applies where an image or video evidence is used for proceedings for a camera-detected mobile phone offence.

Both sections provide for matters that are taken to be proved, in the absence of proof to the contrary.

Section 120F allows the prosecution to produce a report for offences detected by photographic detection devices. The report is evidence of the matters contained in it. The report may only contain the matters listed in subsection (3)(b). The report must be certified or be accompanied by a certificate signed by the commissioner. The intention of this provision is to streamline processes where a matter proceeds to a court hearing by allowing evidence to be presented in a single document

*Clause 60* inserts a transitional provision to ensure the changes relating to video technology and seatbelt and mobile phone offences, and the evidentiary report, only apply to offences committed after commencement.

*Clause 61* inserts an evidentiary provision in schedule 1. This will allow the chief executive to issue a certificate as evidence that a specified digital authority was or was not a specified relevant authority.

*Clause 62* inserts definitions of video and made in schedule 4 (Dictionary) to support the use of video technology for camera-detected offences. This clause also inserts definitions of digital authority, digital device, digital evidence of age, digital evidence of identity and relevant authority by reference to the *Transport Planning and Coordination Act 1994*.

## **Part 12     Amendment of Transport Planning and Coordination Act 1994**

*Clause 63* indicates this part amends the *Transport Planning and Coordination Act 1994*.

*Clause 64* amends section 28EC to allow for the use of a digital photo and a digitised signature on a digital authority, digital evidence of age and a digital evidence of identity.

*Clause 65* inserts part 4E about digital authorities, digital evidence of age and digital evidence of identity. This part facilitates the approval of an app to display digital authorities, digital evidence of age and digital evidence of identity. This part also ensures these products can be used, such as if the person is required to produce evidence of authority, identity or age.

*Clause 66* inserts subsection 38(2) to include a regulation making power relating to administration and use of digital authorities, digital evidence of age or digital evidence of identity or the approved app.

*Clause 67* inserts a transitional regulation-making power to allow a regulation to make amendments to an Act where it is necessary to make provision to facilitate transition to the digital authority scheme.

*Clause 68* inserts definitions into schedule 1 (Dictionary) to support the provisions about digital authorities.

## **Part 13     Amendment of Wine Industry Act 1994**

*Clause 69* indicates this part amends the *Wine Industry Act 1994*.

*Clause 70* inserts subsections 40(3) and (4). Section 40(3) and the related definitions in (4) clarify the seizure and confiscation powers and obligations in section 40 (Seizure of document wrongly used as evidence of age). In relation to contravention of section 38(2) or (3), these powers do not apply to a mobile phone or other digital device used to store or display a digital authority, a digital evidence of age or a digital evidence of identity or something purporting to be one of these.

*Clause 71* inserts a note for subsection 41(1). The note refers to the *Transport Planning and Coordination Act 1994*, sections 29AH and 29AI for the use of a digital authority, a digital evidence of age or a digital evidence of identity. Sections 29AH and AI ensure that requirements to produce, give or make available for inspection, a driver licence or evidence of

age or identity, can be satisfied by the display of a digital authority, digital evidence of age or digital evidence of identity through an approved app.

## **Part 14 Other Amendments**

*Clause 72* indicates that Schedule 1 amends the Acts it mentions.

### **Schedule 1 Other Amendments**

#### **Part 1 Amendments commencing on assent**

*Part 1* outlines minor cross-referencing amendments to the *Transport Infrastructure Act 1994* and *Transport Operations (Road Use Management) Act 1995* that are commencing on assent.

#### **Part 2 Amendments subject to other commencement**

*Part 2* amends TOPTA to remove the definitions of 'driver authorisation' and 'operator accreditation'. The amendment rectifies an oversight by removing duplicate definitions from schedule 3 of TOPTA.