



Queensland

# **Transport and Other Legislation Amendment Act 2008**

**Act No. 67 of 2008**





## Queensland

# Transport and Other Legislation Amendment Act 2008

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## Queensland

### **Transport and Other Legislation Amendment Act 2008**

#### **Act No. 67 of 2008**

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**An Act to amend the Anti-Discrimination Act 1991, Anzac Day Act 1995, Assisted Students (Enforcement of Obligations) Act 1951, Building and Construction Industry (Portable Long Service Leave) Act 1991, Criminal Code, Dangerous Goods Safety Management Act 2001, Electrical Safety Act 2002, Electricity Act 1994, Fire and Rescue Service Act 1990, Freedom of Information Act 1992, Integrated Planning Act 1997, Judicial Review Act 1991, Metropolitan Water Supply and Sewerage Act 1909, Mineral Resources Act 1989, Police Powers and Responsibilities Act 2000, Security Providers Act 1993, South Bank Corporation Act 1989, Tow Truck Act 1973, Transport Infrastructure Act 1994, Transport Legislation Amendment Act 2007, Transport Operations (Marine Pollution) Act 1995, Transport Operations (Marine Safety) Act 1994, Transport Operations (Passenger Transport) Act 1994, Transport Operations (Road Use Management) Act 1995, Transport Planning and Coordination Act 1994, Transport (South Bank Corporation Area Land) Act 1999, Workers' Compensation and Rehabilitation Act 2003 and Valuation of Land Act 1944 for particular purposes**

**[Assented to 1 December 2008]**

## The Parliament of Queensland enacts—

# Part 1 Preliminary

## 1 Short title

This Act may be cited as the *Transport and Other Legislation Amendment Act 2008*.

## 2 Commencement

- (1) Part 3, division 13 commences on 1 March 2009.
- (2) Part 12, division 2 commences on 1 January 2009.
- (3) The following provisions commence on a day to be fixed by proclamation—
  - (a) part 2;
  - (b) part 4, division 3;
  - (c) part 5;
  - (d) part 6, other than division 2, subdivision 3;
  - (e) part 11, divisions 1 and 3;
  - (f) part 12, divisions 3 and 4.

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## **Part 2**                      **Amendment of Acts for purposes relating to dangerous goods**

### **Division 1**                **Amendment of Transport Infrastructure Act 1994**

#### **3**            **Act amended in div 1**

This division amends the *Transport Infrastructure Act 1994*.

#### **4**            **Amendment of s 440 (Application of ch 14)**

(1) Section 440(2)(a) to (h)—

*omit, insert—*

- ‘(a) the transport of the following except if transported with other dangerous goods—
  - (i) radioactive substances under the *Radiation Safety Act 1999*;
  - (ii) explosives under the *Explosives Act 1999*;
- (b) the transport of dangerous goods if the total quantity of dangerous goods in a load on a rail vehicle is less than the quantity for which an inner package, as prescribed under a regulation, is required to be marked under the regulation;
- (c) the transport by a person of a load of dangerous goods by rail if—
  - (i) the load does not contain dangerous goods—
    - (A) in a receptacle with a capacity that is more than a capacity prescribed under a regulation; or
    - (B) in a receptacle if the quantity of dangerous goods in the receptacle is more than the

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quantity prescribed under a regulation for the receptacle; and

- (ii) the goods are not, and do not include, dangerous goods prescribed under a regulation as designated dangerous goods; and
- (iii) the aggregate quantity of the dangerous goods in the load, as worked out under a regulation, is less than 25% of a load of dangerous goods that, under a regulation, is required to be placarded; and
- (iv) the goods are not being transported by the person in the course of a business of transporting goods by rail.’.

(2) Section 440—

*insert—*

- ‘(3) Also, even if particular goods are prescribed under a regulation as dangerous goods, this chapter does not apply to the transport of the particular dangerous goods in a rail vehicle if—
- (a) the dangerous goods are in packaging that is—
    - (i) designed for, and forming part of, the fuel or electrical system of the rail vehicle propulsion engine or auxiliary engine; or
    - (ii) part of, and necessary for, the operation of an appliance, plant or refrigeration system forming part of or attached to the rail vehicle; or
  - (b) the dangerous goods are in equipment carried in, fitted to or installed in the rail vehicle and designed for the safety or protection of an occupant of the rail vehicle, the rail vehicle or its load, including, for example, a fire extinguisher or self-contained breathing apparatus.
- ‘(4) A requirement of this Act imposed because of this chapter does not apply to the transport by rail of dangerous goods to the extent the goods are transported by, or under the direction of, an authorised person or relevant emergency service officer to prevent a dangerous situation.’.

---

**5 Amendment of s 442 (Regulations about dangerous goods)**

(1) Section 442(1), from ‘A regulation may’ to ‘in bulk by rail;’—

*omit, insert—*

‘A regulation may make provision about dangerous goods and the transport of dangerous goods by rail, including, for example, the following—

- (a) identifying and classifying goods as dangerous goods, and the identification and classification of dangerous goods;
- (b) the making of decisions by the chief executive for the purposes of a regulation in relation to the following—
  - (i) the identification and classification of goods as dangerous goods;
  - (ii) the identification and classification of dangerous goods;
  - (iii) the specification of what is, and what is not, compatible with dangerous goods for transport purposes;
  - (iv) prohibiting or regulating the transport of dangerous goods;
  - (v) regulating the containment of dangerous goods that are being, or that are to be, transported;’.

(2) Section 442(1)(e) and (f)—

*omit, insert—*

‘(e) the marking and labelling of packages containing dangerous goods for transport and the placarding of rail vehicles and packaging on or in which dangerous goods are transported;’.

(3) Section 442(1)(g), after ‘containers’—

*insert—*

‘, rail vehicles’.

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(4) Section 442(1)(h)—

*omit, insert—*

‘(h) the manufacture of rail vehicles, containers, packaging, equipment and other items for use in transporting dangerous goods;’.

(5) Section 442(1)(l) and (m)—

*omit, insert—*

‘(l) the approval of—

(i) rail vehicles, packaging, equipment and other items used in relation to transporting dangerous goods; and

(ii) facilities for, and methods of, testing or using rail vehicles, packaging, equipment and other items used in relation to transporting dangerous goods; and

(iii) processes carried out in relation to transporting dangerous goods;’.

(6) Section 442(1) —

*insert—*

‘(r) the recognition of accredited providers of training, package testing, design verification and other similar activities.’.

(7) Section 442—

*insert—*

‘(1A) Without limiting subsection (1), a regulation may make provision about—

(a) the recognition of laws of other jurisdictions relating to transporting dangerous goods by rail, things done under those laws and giving effect to those things; and

(b) the recognition of an entity (the *competent authorities panel*) whose membership includes the chief executive

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and dangerous goods authorities, and other matters in relation to the competent authorities panel.

- ‘(1B) For subsection (1A)(b), a regulation may provide that the chief executive must refer to the competent authorities panel—
- (a) an application made to the chief executive for a decision, approval or exemption under this Act if the chief executive considers the decision, approval or exemption should have effect in all participating dangerous goods jurisdictions or some of those jurisdictions including this jurisdiction; or
  - (b) a decision, approval or exemption under this Act that has effect in all participating dangerous goods jurisdictions or some of those jurisdictions including this jurisdiction if—
    - (i) the chief executive considers the decision, approval or exemption should be cancelled or amended; or
    - (ii) a dangerous goods authority recommended to the chief executive that the decision, approval or exemption should be cancelled or amended; or
  - (c) a recommendation by the chief executive to a dangerous goods authority that a decision, approval or exemption given by the authority under a corresponding law, that has effect in all participating dangerous goods jurisdictions or some of those jurisdictions including this jurisdiction, if the chief executive considers a ground exists under the corresponding law for the authority to cancel or amend the decision, approval or exemption.
- ‘(1C) If a regulation provides that a matter must be referred to the competent authorities panel, the regulation may provide that the chief executive must have regard to the panel’s decision.
- ‘(1D) A regulation may make provision in relation to an action taken or decision made by the competent authorities panel or a dangerous goods authority in relation to a matter considered by the competent authorities panel, including that the action or

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decision has effect in this jurisdiction as if it were an action or decision of the chief executive.’.

(8) Section 442(3) and (4)—

*omit, insert—*

‘(3) The *Statutory Instruments Act 1992* is not limited by this section.

‘(4) In this section—

*amend* includes vary.

*corresponding law* means—

(a) a law of another State corresponding, or substantially corresponding, to this chapter; or

(b) a law of the other State that is declared under a regulation to be a corresponding law, whether or not the law corresponds, or substantially corresponds, to this chapter.’.

## **6 Amendment of s 443 (Exemptions)**

Section 443(4), (5), (6) and (7)—

*omit, insert—*

‘(4) A person operating under an exemption must comply with any conditions on which the exemption was granted.

Maximum penalty—135 penalty units or 6 months imprisonment.

‘(5) If an application is made for an exemption and the chief executive grants the exemption, the chief executive must send to each applicant a notice stating—

(a) the provisions of a dangerous goods regulation in relation to which the exemption applies; and

(b) the dangerous goods to which the exemption applies; and

(c) the time for which the exemption applies, including the date that the exemption takes effect; and

- 
- (d) the conditions to which the exemption is subject; and
  - (e) the geographical area for which the exemption applies; and
  - (f) for a class exemption—each of the following to be stated in the exemption—
    - (i) the class of person exempted;
    - (ii) the class representative for the exemption.
- ‘(6) If an application is made for an exemption and the chief executive does not grant the exemption, the chief executive must give a notice stating the following to each applicant—
- (a) that the chief executive is not granting the exemption;
  - (b) the reasons for the decision;
  - (c) that the person may—
    - (i) under section 485, ask for the decision to be reviewed and appeal against the reviewed decision; and
    - (ii) under the *Transport Planning and Coordination Act 1994*, part 5, ask for the decision or the reviewed decision to be stayed.

*Note—*

A notice is not required when an exemption is granted on conditions.

- ‘(7) The *Statutory Instruments Act 1992*, sections 24 to 26 apply to the exemption as if it were a statutory instrument.
- ‘(8) A regulation may make provision in relation to applying for, and the giving of, exemptions under this Act.
- ‘(9) In this section—
- applicant*** means—
- (a) a person who has applied under subsection (1) for himself or herself, whether or not the application is made jointly with other persons; or

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- (b) a person who is a representative of a class of persons and who has applied under subsection (1) for the class of persons; or
- (c) a person who is a member of a class of persons and whose name and address is given in an application made by a person as mentioned in paragraph (b).’

**7 Amendment of s 444 (Grounds for amending, suspending or cancelling approval or exemption)**

Section 444(2)—

*omit, insert—*

- ‘(2) It is a ground for amending, suspending or cancelling an approval or exemption if the person, or 1 or more of the persons, to whom the approval or exemption applies—
  - (a) has contravened a condition of the approval or exemption; or
  - (b) has been convicted of a dangerous goods offence or of an offence against a law of another State or the Commonwealth about transporting dangerous goods by rail.
- ‘(3) It is also a ground for amending, suspending or cancelling an exemption if—
  - (a) public safety has been endangered, or is likely to be endangered because of the exemption; or
  - (b) the chief executive considers that if he or she were dealing with an application for the exemption again (a ***notional application***), the chief executive would not be satisfied, as mentioned in section 443(2), in relation to the granting of the notional application; or
  - (c) the chief executive considers it necessary in the public interest.
- ‘(4) It is also a ground for amending, suspending or cancelling an approval if—

- (a) public safety has been endangered, or is likely to be endangered because of the exemption; or
- (b) the chief executive considers it necessary in the public interest.’.

**8 Amendment of s 449 (Immediate suspension in the public interest)**

- (1) Section 449(2)(b), ‘the notice’—  
*omit, insert*—  
‘the day the notice under this section’.
- (2) Section 449(3)(b), from ‘the notice’—  
*omit, insert*—  
‘the day the notice under this section is given to the class representative.’.

**9 Omission of s 450 (Goods too dangerous to be transported)**

Section 450—  
*omit.*

**10 Amendment of s 451 (Duties when transporting dangerous goods)**

- (1) Section 451(1), penalty—  
*omit.*
- (2) Section 451, after ‘chapter’—  
*insert*—  
‘or a dangerous goods regulation’.
- (3) Section 451(2), penalty—  
*omit, insert*—  
‘Maximum penalty—

[s 11]

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- (a) if the contravention results in death or grievous bodily harm to a person—1320 penalty units or 2 years imprisonment; or
- (b) otherwise—665 penalty units or 1 year's imprisonment.'.

**11 Replacement of s 452 (Prohibition on involvement in the transportation of dangerous goods by rail)**

Section 452—

*omit, insert—*

**'452 Exclusion orders prohibiting involvement in the transport of dangerous goods by rail**

- '(1) This section applies if a person is convicted of a dangerous goods offence.
- '(2) The court before which the person is convicted may, after having regard to the following matters, make an order (an *exclusion order*) that the person be prohibited for a stated period from involvement in the transport of dangerous goods by rail—
  - (a) the person's record in the transport of dangerous goods;
  - (b) the person's criminal history to the extent the court considers it relevant to the making of the exclusion order;
  - (c) the circumstances surrounding the commission of the offence;
  - (d) any other matters the court considers appropriate.
- '(3) However, the court must not make an exclusion order that prohibits the person from driving a rail vehicle other than a rail vehicle transporting dangerous goods.
- '(4) A person must not contravene an exclusion order.  
Maximum penalty—665 penalty units or 2 years imprisonment.

- 
- ‘(5) Subsections (2) and (4) do not limit any other penalty the court may impose for the offence.
- ‘(6) If a court has made an exclusion order, the court may revoke or amend the exclusion order on the application of—
- (a) the chief executive; or
  - (b) the person for whom the order was made but only if the court is satisfied there has been a change of circumstances warranting revocation or amendment and the chief executive was given reasonable notice of the application.
- ‘(7) For subsection (6), the chief executive is entitled to appear and be heard and to give and produce evidence at the hearing of the application for or against the granting of the revocation or amendment.
- ‘(8) In this section—
- criminal history***, of a person, means each of the following despite the *Criminal Law (Rehabilitation of Offenders) Act 1986*, sections 6, 8 and 9—
- (a) every conviction of the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this provision;
  - (b) every charge made against the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this provision.
- involvement***, in the transport of dangerous goods by rail, includes the following—
- (a) importing, or arranging for the importation of, dangerous goods;
  - (b) marking or labelling packages and unit loads containing dangerous goods for transport by rail, and placarding vehicles in which dangerous goods are transported by road;
  - (c) consigning dangerous goods for transport by rail;

[s 12]

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- (d) loading dangerous goods onto a vehicle or into a container that is to be put on a vehicle for transport by rail or unloading dangerous goods that have been transported by rail;
- (e) undertaking or being responsible for, other than as an employee or subcontractor, the transport of dangerous goods by rail;
- (f) driving a vehicle carrying dangerous goods by rail;
- (g) being a consignee of dangerous goods transported by rail;
- (h) being involved as a director, secretary or manager of a corporation or other person who takes part in the management of a corporation that takes part in something mentioned in paragraphs (a) to (g).’.

## **12 Replacement of s 453 (Forfeiture on conviction)**

Section 453—

*omit, insert—*

### **‘453 Forfeiture if conviction relates to dangerous goods**

- ‘(1) This section applies if a person is convicted of a dangerous goods offence.
- ‘(2) The court before which the person is convicted may order the dangerous goods or their packaging, or other things used to commit the offence, be forfeited to the State.
- ‘(3) Subsection (1) does not limit the court’s power to make any other order on the conviction including an order under section 455.’.

## **13 Amendment of s 455 (Recovery of costs from convicted person)**

- (1) Section 455(1)—

*omit, insert—*

- 
- ‘(1) A court convicting a person of a dangerous goods offence may order the person to pay to the State any of the following—
- (a) costs that have been reasonably incurred in investigating and prosecuting the offence including, for example, collecting, packaging, testing, transporting, storing or destroying the dangerous goods or other evidence;
  - (b) costs that, after the conviction, will be reasonably incurred in collecting, packaging, testing, transporting, storing, destroying, selling or otherwise disposing of the dangerous goods or other evidence, whether or not there is an order under section 453 for forfeiture of the dangerous goods or other things.’
- (2) Section 455—  
*insert—*
- ‘(4) A document purporting to be signed by any of the following stating details of the costs that have been or will be reasonably incurred for a matter mentioned in subsection (1) is evidence of the costs—
- (a) for the department—the chief executive;
  - (b) for another government entity—the person who is the chief executive or otherwise responsible for the entity.’

## **14 Replacement of s 457 (Certificates and documents)**

Section 457—

*omit, insert—*

### **‘457 Facilitation of proof**

- ‘(1) In a prosecution for a dangerous goods offence, if an authorised person gives evidence that he or she believes, or believed at a particular time relevant to the exercise of a power, any of the matters mentioned in subsection (2), the court must accept the matter as proved if—
- (a) it considers the belief is, or was, reasonable; and
  - (b) there is no evidence to the contrary.

[s 14]

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- ‘(2) The matters are as follows—
- (a) that dangerous goods described in transport documentation as being carried in a rail vehicle are or were carried in the rail vehicle;
  - (b) that particular goods are or were dangerous goods or dangerous goods of a particular type;
  - (c) if a marking or placard on, or attached to, a substance or container indicates or indicated that the substance is or was or the container contains or contained particular dangerous goods—that the substance is or was or the container contains or contained those dangerous goods;
  - (d) if a marking on, or attached to, a package indicates or indicated that the package contains or contained particular dangerous goods—that the package contains or contained those dangerous goods;
  - (e) if a marking or placard on, or attached to, a vehicle or equipment indicates or indicated that the vehicle or equipment is or was being used to transport dangerous goods—that the vehicle or equipment is or was being used to transport those dangerous goods;
  - (f) if a marking or placard on, or attached to, a substance or packaging indicates or indicated, in relation to the substance, the packaging or the contents of the packaging, a particular capacity, tare weight, origin, character, specification, ownership or date of manufacture—that the substance, the packaging or the contents of the packaging has or had that capacity, tare weight, origin, character, specification, ownership or date of manufacture;
  - (g) if markings on, or attached to, a package indicate or indicated, in relation to the contents of the package, a particular capacity, tare weight, origin, character, specification, ownership or date of manufacture—that the contents of the package have or had that capacity, tare weight, origin, character, specification, ownership or date of manufacture;

- (h) if a marking or placard on, or attached to, a vehicle or packaging indicates or indicated, in relation to the load of the vehicle or the contents of the packaging, a particular quantity of dangerous goods—that the vehicle or packaging contains or contained that quantity of dangerous goods;
- (i) that a person is or is not, or was or was not at a particular time, accredited in relation to the transport by rail of dangerous goods.

**‘457A Document signed by chief executive is evidence of matters stated in it if no evidence to the contrary**

- ‘(1) In a prosecution for a contravention of this Act, a court may admit each of the following documents as evidence if the document purports to be signed by the chief executive—
  - (a) a document relating to whether a person is exempt from a requirement under section 443;
  - (b) a document relating to a vehicle, equipment or another item required under a dangerous goods regulation to be approved by the chief executive;
  - (c) a document relating to an accreditation under a dangerous goods regulation about the transport of dangerous goods.
- ‘(2) If there is no evidence to the contrary, the court must accept the document as proof of the facts stated in it.’

**15 Insertion of new ch14, pt 7**

Chapter 14—

*insert—*



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**‘458B Consignment of goods too dangerous to be transported prohibited**

‘A person must not consign for transport by rail goods too dangerous to be transported.

Maximum penalty—

- (a) if the contravention results in death or grievous bodily harm to a person—1320 penalty units or 2 years imprisonment; or
- (b) otherwise—665 penalty units or 1 year’s imprisonment.

**‘458C Regulations**

‘(1) A regulation may make provision about goods too dangerous to be transported by rail, including, for example, the following—

- (a) identifying, classifying and regulating goods that are too dangerous to be transported, including prohibiting the transport of the goods;
- (b) the making of decisions by the chief executive for the purposes of a regulation in relation to the following—
  - (i) the identification and classification of goods as goods too dangerous to be transported;
  - (ii) the identification and classification of goods too dangerous to be transported.

‘(2) Without limiting subsection (1), a regulation may make provision about—

- (a) the recognition of laws of other jurisdictions relating to goods too dangerous to be transported by rail, things done under those laws and giving effect to those things; and
- (b) the recognition of an entity (the *competent authorities panel*) whose membership includes the chief executive and dangerous goods authorities, and other matters in relation to the competent authorities panel.

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- ‘(3) For subsection (2)(b), a regulation may provide that the chief executive must refer to the competent authorities panel—
- (a) an application made to the chief executive for a decision under this Act if the chief executive considers the decision should have effect in all participating dangerous goods jurisdictions or some of those jurisdictions including this jurisdiction; or
  - (b) a decision under this Act that has effect in all participating dangerous goods jurisdictions or some of those jurisdictions including this jurisdiction if—
    - (i) the chief executive considers the decision should be cancelled or amended; or
    - (ii) a dangerous goods authority recommended to the chief executive that the decision should be cancelled or amended; or
  - (c) a recommendation by the chief executive to a dangerous goods authority that a decision given by the authority under a corresponding law, that has effect in all participating dangerous goods jurisdictions or some of those jurisdictions including this jurisdiction, if the chief executive considers a ground exists under the corresponding law for the authority to cancel or amend the decision.
- ‘(4) If a regulation provides that a matter must be referred to the competent authorities panel, the regulation may provide that the chief executive must have regard to the panel’s decision.
- ‘(5) A regulation may make provision in relation to an action taken or decision made by the competent authorities panel or a dangerous goods authority in relation to a matter considered by the competent authorities panel, including that the action or decision has effect in this jurisdiction as if it were an action or decision of the chief executive.
- ‘(6) The *Statutory Instruments Act 1992* is not limited by this section.

‘(7) In this section—

*amend* includes vary.

*corresponding law* means—

- (a) a law of another State corresponding, or substantially corresponding, to this chapter; or
- (b) a law of the other State that is declared under a regulation to be a corresponding law, whether or not the law corresponds, or substantially corresponds, to this chapter.’

## 16 Insertion of new s 476A

After section 476—

*insert—*

### ‘476A Chief executive may give information to corresponding authority

‘(1) In relation to the transport of dangerous goods by rail, whether within or outside Queensland, the chief executive may give to a corresponding authority—

- (a) information about action taken by the chief executive under this Act; or
- (b) information obtained under this Act.

‘(2) Subsection (1) does not apply if the chief executive or the corresponding authority would otherwise be required to maintain confidentiality about the information under an Act.

‘(3) In this section—

*corresponding authority* means—

- (a) a government entity of the Commonwealth or another State responsible for administering a corresponding law to a transport Act; or
- (b) a person prescribed under a regulation as a corresponding authority for this Act.’

[s 17]

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## 17 Amendment of sch 6 (Dictionary)

### (1) Schedule 6—

*insert—*

*‘consign and consignor—*

- 1 A person **consigns**, and is the **consignor** in relation to, goods transported, or to be transported, by rail or goods that are dangerous goods if the person is any of the following—
  - (a) the person who has consented to being, and is, named or otherwise identified as the consignor of the goods in the transport documentation for the consignment;
  - (b) if there is no person as described in paragraph (a)—
    - (i) for goods transported or to be transported by rail—the person who engages an operator of the railway, either directly or through another person, to transport the goods by rail; or
    - (ii) for goods that are dangerous goods—the person who engages a prime contractor, either directly or through another person, to transport the goods; or
    - (iii) if there is no person as described in subparagraph (i) or (ii)—the person who has possession of, or control over, the goods immediately before the goods are transported by rail; or
    - (iv) if there is no person as described in subparagraph (i), (ii) or (iii)—the person who loads a vehicle with the goods, for transport by rail, at a place—
      - (A) where goods in bulk are stored, temporarily held or otherwise held waiting collection; and

- 
- (B) that is unattended, other than by the driver or trainee driver of the rail vehicle or someone else necessary for the normal operation of the rail vehicle, during loading;
- (c) if there is no person as described in paragraph (a) or (b) and the goods are imported into Australia through a place in Queensland—the importer of the goods.
- 2 Also, a person consigns goods for transport by rail if the person arranges for the conveyance of the goods on a rail vehicle owned or controlled by the person.

***consignee***, in relation to dangerous goods transported or to be transported by rail—

- (a) means the person who—
- (i) has consented to being, and is, named or otherwise identified as the intended consignee of the goods in the transport documentation for the consignment; or
  - (ii) actually receives the goods after they are transported; but
- (b) does not include a person who merely unloads or unpacks the goods.

***dangerous goods*** means—

- (a) goods prescribed under a regulation to be dangerous goods; or
- (b) for implied references to goods too dangerous to be transported—see chapter 14, part 7, section 458A.

***dangerous goods authority*** means an entity in a participating dangerous goods jurisdiction that has functions under a corresponding law to chapter 14 that correspond to the chief executive's functions under that chapter.

***dangerous goods offence*** means an offence against chapter 14, the *Transport Operations (Passenger Transport) Act 1994*,

[s 17]

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chapter 11, or a dangerous goods regulation, involving or relating to the transport of dangerous goods by rail.

***dangerous goods regulation*** means a regulation made under chapter 14—

- (a) applying to the transport of dangerous goods by rail; or
- (b) for implied references to goods too dangerous to be transported—see chapter 14, part 7, section 458A.

***goods too dangerous to be transported*** means goods prescribed under a dangerous goods regulation as goods too dangerous to be transported.

***loading***, in relation to loading a rail vehicle with dangerous goods, includes the following—

- (a) loading 1 or more packages of the goods in or on the rail vehicle;
- (b) placing or securing 1 or more packages of the goods on the rail vehicle;
- (c) supervising an activity mentioned in paragraph (a) or (b);
- (d) managing or controlling an activity mentioned in paragraph (a), (b) or (c);

but does not include loading goods into packaging already on the rail vehicle or placing or securing packages in or on further packaging already on the vehicle.

***pack***, in relation to dangerous goods, includes the following—

- (a) put goods in packaging, even if that packaging is already on a rail vehicle;

*Example for paragraph (a)—*

A person who uses a hose to fill the tank of a tank rail vehicle with petrol packs the petrol for transport.

- (b) enclose or otherwise contain more than 1 package, even if that packaging is already on a rail vehicle;
- (c) supervise an activity mentioned in paragraph (a) or (b);

- 
- (d) manage or control an activity mentioned in paragraph (a), (b) or (c).

**package**, in relation to dangerous goods, means the complete product of the packing of the goods for transport, and consists of the goods and their packaging.

**packaging**, in relation to dangerous goods—

- (a) means anything that contains, holds, protects or encloses the goods, whether directly or indirectly, to enable them to be received or held for transport, or to be transported; and
- (b) includes anything prescribed under a dangerous goods regulation to be packaging.

*Notes—*

- 1 It may be that a container constitutes the whole of the packaging of goods, as in the case of a drum in which goods, including, for example, dangerous goods, are directly placed.
- 2 The term is not used in the same way as it is used in United Nations publications relating to the transport of dangerous goods.

**participating dangerous goods jurisdiction** means a State that has a corresponding law to chapter 14 unless a regulation provides that the State is not a participating dangerous goods jurisdiction.

**placard** means a label or emergency information panel that is required under a dangerous goods regulation to be used in transporting dangerous goods by rail.

**prevent**, in relation to the transport of dangerous goods, includes avert, eliminate, minimise, remove and stop.

**relevant emergency service officer** means an officer of any of the following—

- (a) the Queensland Ambulance Service;
- (b) the Queensland Fire and Rescue Service;
- (c) the Queensland Police Service;
- (d) the State Emergency Service;

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- (e) a service of another State, corresponding to a service mentioned in paragraphs (a) to (d), if there is a dangerous goods authority for the State;
- (f) a unit of the Australian Defence Force corresponding to a service mentioned in paragraphs (a) to (d).

***transport***, in relation to dangerous goods, includes each of the following—

- (a) the packing, loading and unloading of the goods, and the transfer of the goods to or from a vehicle, for their transport by rail;
- (b) the marking or labelling of packages containing dangerous goods for their transport by rail;
- (c) the placarding of packaging and vehicles in which dangerous goods are transported, or are to be transported, by rail;
- (d) other matters incidental to their transport, or in preparation for their transport, by rail.

***transport documentation*** means each of the following—

- (a) for a rail vehicle—
  - (i) each contractual document directly or indirectly associated with—
    - (A) a transaction for the actual or proposed transport by rail of goods or any previous transport of the goods by any transport method; or
    - (B) goods, to the extent the document is relevant to the transaction for their actual or proposed transport by rail; or
  - (ii) each document—
    - (A) contemplated in a contractual document mentioned in subparagraph (i); or

(B) required by law, or customarily given, in connection with a contractual document or transaction mentioned in subparagraph (i);

*Examples—*

- a bill of lading
- a consignment note
- a container weight declaration
- a contract of carriage
- a delivery order
- an export receipt advice
- an invoice
- a load manifest
- a sea carriage document
- a vendor declaration
- train wire
- sequential consist
- loading form

(b) for the transport of dangerous goods—documentation required to be kept under a dangerous goods regulation.’.

(2) Schedule 6, definition *rail vehicle*, after ‘includes’—

*insert—*

‘rolling stock and’.

## **Division 2                      Amendment of Transport Operations (Passenger Transport) Act 1994**

### **18        Act amended in div 2**

This division amends the *Transport Operations (Passenger Transport) Act 1994*.

[s 19]

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**19 Amendment of s 112 (Identity cards)**

Section 112(4), penalty, ‘10’—

*omit, insert—*

‘40’.

**20 Amendment of s 120 (Entry of place)**

(1) Section 120(d)—

*renumber* as paragraph (e).

(2) Section 120—

*insert—*

‘(d) the authorised person reasonably believes a dangerous situation exists in the place and it is necessary for the authorised person to enter to take action under section 126O to deal with the dangerous situation; or’.

**21 Amendment of s 121 (Warrants)**

(1) Section 121(4), ‘only’—

*omit.*

(2) Section 121—

*insert—*

‘(4A) The magistrate may also issue a warrant if the magistrate is satisfied that—

(a) either of the following apply in relation to a particular place—

(i) a vehicle that has been or may have been involved in a dangerous situation is or has been located at the place;

(ii) the place is or may be otherwise connected, directly or indirectly, with a vehicle that has been or may have been involved in a dangerous situation; and

- (b) there is evidence at the place (including for paragraph (a)(i), the vehicle itself) that is relevant to the exercise of powers under this Act relating to dangerous situations.’.

## **22 Amendment of s 123 (Entry or boarding of vehicles)**

- (1) Section 123—

*insert—*

- ‘(1A) Also, an authorised person may enter on board a vehicle if the authorised person reasonably believes a dangerous situation exists in or at the vehicle and it is necessary for the authorised person to enter to take action under section 126O to deal with the dangerous situation.’.

- (2) Section 123(4), penalty, ‘40’—

*omit, insert—*

‘100’.

- (3) Section 123(5), penalty, ‘40’—

*omit, insert—*

‘100’.

## **23 Amendment of s 124 (General powers in relation to places and vehicles)**

- (1) Section 124(2), penalty, ‘40’—

*omit, insert—*

‘100’.

- (2) Section 124(4), penalty, ‘40’—

*omit, insert—*

‘100’.

## **24 Amendment of s 126B (Tampering with seized things)**

Section 126B—

[s 25]

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*insert—*

‘(2) In this section—

*tamper* includes attempt to tamper.’

## **25 Insertion of new s 126GA**

Chapter 11, part 3A—

*insert—*

### **‘126GA Purpose of pt 3A**

‘(1) The purpose of this part is to provide for further powers of authorised persons in relation to matters relating to the transport of dangerous goods.

‘(2) This part does not limit other powers of an authorised person under this Act or the *Transport Infrastructure Act 1994*, chapter 14.’

## **26 Amendment of s 126H (Power to hold or stop and hold rail vehicle)**

Section 126H(5), penalty, ‘120’—

*omit, insert—*

‘200’.

## **27 Insertion of new s 126HA**

After section 126H—

*insert—*

### **‘126HA Further powers if vehicle entered is rail vehicle**

‘(1) This section applies if an authorised person has—

(a) entered a place under section 120 for purposes relating to the transport of dangerous goods by rail; or

(b) entered or boarded a vehicle under section 123, the vehicle is a rail vehicle and the entry or boarding was for

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purposes relating to the transport of dangerous goods by rail.

- ‘(2) Without limiting section 124, the authorised person may do any of the following—
- (a) weigh, test or measure a thing relating to a rail vehicle, any part of a rail vehicle or equipment or load of a rail vehicle;
  - (b) check the existence or details of a placard or other information required under a dangerous goods regulation to be displayed in a rail vehicle or any load on it;
  - (c) access or download information that is required to be kept under a dangerous goods regulation and that is—
    - (i) stored electronically in equipment located at the place or in a rail vehicle; or
    - (ii) accessible electronically from equipment located at the place or in a rail vehicle.
- ‘(3) If an authorised person exercises a power mentioned in subsection (2), the authorised person is taken to be exercising a power under section 124(1)(a) to (e) and the other provisions of section 124 apply to the exercise of that power.

*Notes for subsection (3)—*

- 1 Under section 124(1)(f), an authorised person may require a person to help exercise powers as mentioned in subsection (2) and if the person does not comply with the request the person may be prosecuted under section 124(2).
- 2 Under section 124(7), an authorised person may not enter a part of a rail vehicle used only as a living area.’

## **28 Insertion of new s 126JA**

After section 126J—

*insert—*

[s 29]

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**‘126JA Further power for securing things seized relating to transport of dangerous goods**

- ‘(1) If an authorised person has seized a thing that has been used in relation to the transport of dangerous goods by rail, without limiting section 126, the authorised person may make the thing inoperable.

*Example of making equipment inoperable—*

dismantling equipment or removing a component of equipment without which the equipment is not capable of being used

- ‘(2) A person must not tamper with the equipment that has been made inoperable without an authorised person’s written approval.

Maximum penalty—200 penalty units.

- ‘(3) In this section—

*tamper* includes attempt to tamper.’.

**29 Amendment of s 126K (Power to give remedial action notices)**

Section 126K(6)—

*omit, insert—*

- ‘(6) The person must comply with the notice, unless the person has a reasonable excuse.

Maximum penalty—the maximum penalty for the contravention of the provision about which the notice is given.’.

**30 Insertion of new ss 126KA–126KC**

Chapter 11, part 3A, after section 126K—

*insert—*

**‘126KA Use of equipment to examine or process things**

- ‘(1) An authorised person exercising a power under this part or part 3B or 3C may bring onto a rail vehicle or onto premises

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equipment reasonably necessary for the examination or processing of things found in, on or at the rail vehicle or premises to decide whether they are things that may be seized.

- ‘(2) If—
- (a) it is not practicable to examine or process the things in, on or at the rail vehicle or premises; or
  - (b) the railway operator for the rail vehicle or the occupier of the premises consents in writing;

the things may be moved to another place so that the examination or processing can be carried out to decide whether they are things that may be seized.

- ‘(3) The authorised person, or a person helping the authorised person, may operate equipment already in, on or at the rail vehicle or premises to carry out the examination or processing of a thing found in, on or at the vehicle or premises to decide whether it is a thing that may be seized, if the authorised person, or a person helping the authorised person, reasonably believes that—
- (a) the equipment is suitable for the examination or the processing; and
  - (b) the examination or processing can be carried out without damage to the equipment or the thing.

### ‘126KB Use or seizure of electronic equipment

- ‘(1) The authorised person, or the person helping the authorised person, as mentioned in section 126KA(3) may operate the equipment mentioned in the subsection (the *equipment*) to access the information if—
- (a) a thing found in, on or at the rail vehicle or premises is, or includes, a document or thing used for the storage of information; and
  - (b) the equipment may be used with the document or other thing to access information; and

[s 30]

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- (c) the authorised person concerned believes on reasonable grounds that the document or storage device is relevant to deciding whether an offence has been committed.
- ‘(2) If the authorised person, or the person helping the authorised person, finds that a disk, tape or other storage device in, on or at the vehicle or premises is relevant to deciding whether an offence has been committed, he or she may—
- (a) put the information in documentary form and seize the documents so produced; or
  - (b) copy the information to another document or thing and remove that document or thing from the vehicle or premises; or
  - (c) if it is not practicable to put the information in documentary form or to copy the information—seize the document or other thing and the equipment that enables the information to be accessed.
- ‘(3) An authorised person, or a person helping the authorised person, must not operate or seize equipment for this section unless the authorised person or person helping the authorised person reasonably believes the operation or seizure of the equipment can be carried out without damage to the equipment.

**‘126KC Restoring vehicle or premises to original condition after action taken**

- ‘(1) This section applies if—
- (a) an authorised person, or a person authorised by the authorised person, has taken action in the exercise or purported exercise of a power under section 126H, 126HA, 126I, 126J, 126JA or 126KB in relation to a vehicle or its equipment or load or in relation to any premises; and
  - (b) damage was caused by the unreasonable exercise of the power or by the use of force that was not authorised under the relevant section.

- 
- ‘(2) The authorised person must take reasonable steps to return the vehicle, equipment, load or premises to the condition it was in immediately before the action was taken.’

### **31 Replacement of s 126N (Power to give directions to deal with dangerous situation)**

Section 126N—

*omit, insert—*

#### **‘126N Power to give notice about dangerous situation**

- ‘(1) This section applies if an authorised person reasonably believes a person is in a position to take steps to prevent a dangerous situation.
- ‘(2) The authorised officer may give the person a written notice (a *dangerous situation notice*) requiring the person to take the steps reasonably necessary to prevent the dangerous situation.
- ‘(3) Without limiting subsection (2), the authorised person may require the prime contractor or consignor of dangerous goods to provide equipment and other resources necessary—
- (a) to control the dangerous situation; or
  - (b) to contain, control, recover or dispose of the goods that have leaked, spilled or escaped; or
  - (c) to recover a vehicle involved in the situation or its equipment.

#### **‘126NA Dangerous situation notice**

- ‘(1) A dangerous situation notice has effect—
- (a) when it is given to the person; or
  - (b) if the notice states a later date—on that date.
- ‘(2) A dangerous situation notice given to a person must state the following—
- (a) the notice is given under section 126N;

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- (b) the authorised officer believes a dangerous situation exists;
  - (c) the grounds for the belief;
  - (d) if the authorised officer believes the dangerous situation involves a contravention of an Act—the relevant provision of the Act;
  - (e) that the person may—
    - (i) under section 102, ask for the decision to give the dangerous situation notice to be reviewed and appeal against the reviewed decision; or
    - (ii) under the *Transport Planning and Coordination Act 1994*, part 5, ask for the decision or the reviewed decision to be stayed;
  - (f) that it is an offence to fail to comply with a dangerous situation notice;
  - (g) the maximum penalty for the offence of failing to comply with a dangerous situation notice.
- ‘(3) The dangerous situation notice may include a requirement about the steps to be taken to prevent the dangerous situation.
- ‘(4) A requirement may—
- (a) offer a choice of ways to prevent the dangerous situation; and
  - (b) prohibit the carrying out of an activity by stating—
    - (i) a place where the activity may not be carried out; or
    - (ii) a thing that may not be used in connection with the activity; or
    - (iii) a procedure that may not be followed in connection with the activity.

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**‘126NB Contravention of dangerous situation notice**

‘A person given a dangerous situation notice must comply with the requirements set out in the notice unless the person has a reasonable excuse for not doing so.

Maximum penalty—

- (a) if the contravention results in death or grievous bodily harm to a person—270 penalty units; or
- (b) otherwise—135 penalty units.

**‘126NC Oral direction may be given before dangerous situation notice is served**

‘(1) This section applies if an authorised person reasonably believes—

- (a) a person is in a position to take steps to prevent a dangerous situation; and
- (b) it is not reasonable or immediately possible to give a dangerous situation notice.

‘(2) The authorised person may give an oral direction to the person instead of a written notice.

‘(3) The oral direction must include—

- (a) the matters mentioned in section 126NA(2)(b), (c) and (d); and
- (b) a statement that is an offence to fail to comply with an oral direction.

‘(4) The person must comply with the oral direction.

Maximum penalty—

- (a) if the contravention results in death or grievous bodily harm to a person—270 penalty units; or
- (b) otherwise—135 penalty units.

‘(5) The oral direction must be confirmed in writing by any authorised person giving a dangerous situation notice under section 126N as soon as practicable.

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- ‘(6) The oral direction stops having effect if the dangerous situation notice is not given to the person within 5 days after the oral direction is given.
- ‘(7) In this section—  
*oral direction* includes a direction by sign or signal.

### **‘126ND Withdrawal of dangerous situation notice**

‘A dangerous situation notice may be withdrawn by an authorised person serving notice of withdrawal on the person given the dangerous situation notice.

### **‘126NE Proceedings for an offence not affected by dangerous situation notice**

‘The giving of, amendment or withdrawal of a dangerous situation notice does not affect proceedings for an offence against this part or the *Transport Infrastructure Act 1994*, chapter 14.’

## **32 Insertion of new ch 11, pt 3C**

Chapter 11—

*insert—*

## **‘Part 3C Goods too dangerous to be transported**

### **‘126OA Application of Act to goods too dangerous to be transported**

- ‘(1) Unless otherwise provided, provisions of this Act relating to dangerous goods also apply in relation to goods too dangerous to be transported.
- ‘(2) For subsection (1)—

- 
- (a) a reference in a provision of this Act to dangerous goods includes a reference to goods too dangerous to be transported; and
  - (b) a reference in a provision of this Act to a dangerous goods offence includes a reference to an offence against this chapter or the *Transport Infrastructure Act 1994*, chapter 14 involving or relating to goods too dangerous to be transported by rail; and
  - (c) a reference in a provision of this Act to a dangerous goods regulation includes a reference to a regulation made under the *Transport Infrastructure Act 1994*, chapter 14, applying in relation to goods too dangerous to be transported by rail.
- ‘(3) Also, subsection (1) and (2) do not apply to subordinate legislation made under this Act unless a particular instrument of subordinate legislation expressly provides.
- ‘(4) A requirement of this Act imposed because of this part does not apply to the transport by rail of goods too dangerous to be transported to the extent the goods are transported by, or under the direction of, an authorised officer or relevant emergency service officer to prevent a dangerous situation.’

**33 Amendment of s 130 (False or misleading information)**

Section 130(1), penalty, ‘60’—

*omit, insert—*

‘200’.

**34 Amendment of s 131 (False, misleading or incomplete documents)**

Section 131(1), penalty, ‘60’—

*omit, insert—*

‘200’.

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**35 Amendment of s 136 (Impersonating authorised person)**

Section 136, penalty, ‘80’—

*omit, insert—*

‘100’.

**36 Replacement of s 153A (Evidentiary aids—belief of authorised person)**

Section 153A—

*omit, insert—*

**‘153A Facilitation of proof**

- ‘(1) In a prosecution for a dangerous goods offence, if an authorised person gives evidence that he or she believes, or at a particular time relevant to the exercise of a power by the officer, believed, any of the matters referred to in subsection (2), the court must accept the matter as proved if—
- (a) it considers the belief to be, or to have been, reasonable; and
  - (b) there is no evidence to the contrary.
- ‘(2) The matters are as follows—
- (a) that dangerous goods described in transport documentation carried in a rail vehicle are or were being carried in the rail vehicle;
  - (b) that particular goods are or were dangerous goods or dangerous goods of a particular type;
  - (c) if a marking or placard on or attached to a substance or packaging indicates or indicated that the substance is or was or the packaging contains or contained particular dangerous goods—that the substance is or was or the container contains or contained those dangerous goods;
  - (d) if a marking on, or attached to, a package indicates or indicated that the package contains or contained particular dangerous goods—that the package contains or contained those dangerous goods;

- (e) if a marking or placard on or attached to a vehicle or equipment indicates or indicated that the vehicle or equipment is or was being used to transport dangerous goods—that the vehicle or equipment is or was being used to transport those dangerous goods;
- (f) if a marking or placard on or attached to a substance or packaging indicates or indicated, in relation to the substance, the packaging or the contents of the packaging, a particular capacity, tare weight, origin, character, specification, ownership or date of manufacture—that the substance, the packaging or the contents of the packaging has or had that capacity, tare weight, origin, character, specification, ownership or date of manufacture;
- (g) if a marking on, or attached to, a package indicates or indicated, in relation to the contents of the package, a particular capacity, tare weight, origin, character, specification, ownership or date of manufacture—that the contents of the package has or had that capacity, tare weight, origin, character, specification, ownership or date of manufacture;
- (h) if a marking or placard on or attached to a vehicle or packaging indicates, in relation to the load of the vehicle or the contents of the packaging, a particular quantity of dangerous goods—that the vehicle or container contains or contained that quantity of dangerous goods;
- (i) that a person is or is not, or was or was not at a particular time, accredited in relation to the transport by rail of dangerous goods.’.

### **37 Insertion of ch 12, pt 1A**

Chapter 12—

*insert—*

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## **‘Part 1A                      General provisions relating to transport of dangerous goods by rail**

### **‘154AB Application of pt 1A**

‘This part applies to a proceeding for a dangerous goods offence.

### **‘154AC Special defence of compliance with direction**

‘It is a defence to a charge for the offence if the person charged establishes that the act or omission that was the offence was done in compliance with a direction given by an authorised person.

### **‘154AD Responsibility for acts or omissions of representative**

- ‘(1) If it is relevant to prove a person’s state of mind about a particular act or omission, it is enough to show—
- (a) the act was done or omitted to be done by a representative of the person within the scope of the representative’s actual or apparent authority; and
  - (b) the representative had the state of mind.
- ‘(2) An act done or omitted to be done for a person by a representative of the person within the scope of the representative’s actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.
- ‘(3) In this section—
- representative* means—
- (a) for a corporation—an executive officer, employee or agent of the corporation; or

- (b) for an individual—an employee or agent of the individual.

*state of mind*, of a person, includes—

- (a) the person’s knowledge, intention, opinion, belief or purpose; and
- (b) the person’s reasons for the intention, opinion, belief or purpose.

### **‘154AE Transport documentation**

- ‘(1) Transport documentation relating to the transport of dangerous goods by rail is admissible and is evidence of—
  - (a) the identity and status of the parties to the transaction to which it relates; and
  - (b) the destination or intended destination of the load to which it relates.
- ‘(2) The reference in subsection (1) to the status of parties includes a reference to their status in relation to their involvement in the transport of dangerous goods.’.

### **38 Amendment of sch 3 (Dictionary)**

- (1) Schedule 3, definition *dangerous goods*—  
*omit.*

- (2) Schedule 3—

*insert—*

**‘consignor—**

- 1 A person is the **consignor** in relation to goods transported, or to be transported, by rail or goods that are dangerous goods if the person is any of the following—

- (a) the person who has consented to being, and is, named or otherwise identified as the consignor of

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the goods in the transport documentation for the consignment;

- (b) if there is no person as described in paragraph (a)—
  - (i) for goods transported or to be transported by rail—the person who engages an operator of the railway, either directly or through another person, to transport the goods by rail; or
  - (ii) for goods that are dangerous goods—the person who engages a prime contractor, either directly or through another person, to transport the goods; or
  - (iii) if there is no person as described in subparagraph (i) or (ii)—the person who has possession of, or control over, the goods immediately before the goods are transported by rail; or
  - (iv) if there is no person as described in subparagraph (i), (ii) or (iii)—the person who loads a vehicle with the goods, for transport by rail, at a place—
    - (A) where goods in bulk are stored, temporarily held or otherwise held waiting collection; and
    - (B) that is unattended, other than by the driver or trainee driver of the rail vehicle or someone else necessary for the normal operation of the rail vehicle, during loading;
- (c) if there is no person as described in paragraph (a) or (b) and the goods are imported into Australia through a place in Queensland—the importer of the goods.

2 Also, a person is the consignor of goods for transport by rail if the person arranges for the conveyance of the

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goods on a rail vehicle owned or controlled by the person.

***dangerous goods*** means—

- (a) goods prescribed under a regulation to be dangerous goods; or
- (b) for implied references in relation to goods too dangerous to be transported—see chapter 11, part 3C.

***dangerous goods authority*** means an entity in a participating dangerous goods jurisdiction that has functions under a corresponding law to the *Transport Infrastructure Act 1994*, chapter 14 that correspond to the chief executive's functions under that chapter.

***dangerous goods offence*** means—

- (a) an offence against chapter 11, the *Transport Infrastructure Act 1994*, chapter 14 or a dangerous goods regulation involving or relating to the transport of dangerous goods by rail; or
- (b) for implied references in relation to goods too dangerous to be transported—see chapter 11, part 3C.

***dangerous goods regulation*** means—

- (a) a regulation made under the *Transport Infrastructure Act 1994*, chapter 14, applying to the transport of dangerous goods by rail; or
- (b) for implied references in relation to goods too dangerous to be transported—see chapter 11, part 3C.

***goods too dangerous to be transported*** means goods prescribed under a dangerous goods regulation as goods too dangerous to be transported.

***load***, in relation to goods and to a rail vehicle, includes any of the following—

- (a) load 1 or more packages of the goods in or on the rail vehicle;

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- (b) place or secure 1 or more packages of the goods on the rail vehicle;
- (c) to remove doubt—carry out an activity mentioned in paragraphs (a) and (b) in relation to a bulk container, freight container, or tank that is part of a rail vehicle;
- (d) supervise an activity mentioned in paragraph (a), (b) or (c);
- (e) manage or control an activity mentioned in paragraphs (a) to (d);

but does not include load goods into packaging already on the rail vehicle or place or secure packages in or on further packaging already on the vehicle.

***pack***, in relation to dangerous goods, includes the following—

- (a) put goods in packaging, even if that packaging is already on a rail vehicle;

*Example for paragraph (a)—*

A person who uses a hose to fill the tank of a tank rail vehicle with petrol packs the petrol for transport.

- (b) enclose or otherwise contain more than 1 package, even if that packaging is already on a rail vehicle;
- (c) supervise an activity mentioned in paragraph (a) or (b);
- (d) manage or control an activity mentioned in paragraph (a), (b) or (c).

***packaging***, in relation to dangerous goods—

- (a) means anything that contains, holds, protects or encloses the goods, whether directly or indirectly, to enable them to be received or held for transport, or to be transported; and
- (b) includes anything prescribed under a dangerous goods regulation to be packaging.

*Notes—*

- 1 It may be that a container constitutes the whole of the packaging of goods, as in the case of a drum in which goods, including for example dangerous goods, are directly placed.
- 2 The term is not used in the same way as it is used in United Nations publications relating to the transport of dangerous goods.

***placard*** means a label or emergency information panel as prescribed under a regulation.

***prime contractor***, in relation to the transport of dangerous goods, means the person who, in conducting a business for or involving the transport of dangerous goods, has undertaken to be responsible for, or is responsible for, the transport of the goods.

***relevant emergency service officer*** means an officer of any of the following—

- (a) the Queensland Ambulance Service;
- (b) the Queensland Fire and Rescue Service;
- (c) the Queensland Police Service;
- (d) the State Emergency Service;
- (e) a service of another State, corresponding to a service mentioned in paragraphs (a) to (d), if there is a dangerous goods authority for the State;
- (f) a unit of the Australian Defence Force corresponding to a service mentioned in paragraphs (a) to (d).

***transport documentation*** means each of the following—

- (a) for a rail vehicle—
  - (i) each contractual document directly or indirectly associated with—
    - (A) a transaction for the actual or proposed transport by rail of goods or any previous transport of the goods by any transport method; or

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- (B) goods, to the extent the document is relevant to the transaction for their actual or proposed transport by rail; or
- (ii) each document—
  - (A) contemplated in a contractual document mentioned in subparagraph (i); or
  - (B) required by law, or customarily given, in connection with a contractual document or transaction mentioned in subparagraph (i);

*Examples—*

- a bill of lading
  - a consignment note
  - a container weight declaration
  - a contract of carriage
  - a delivery order
  - an export receipt advice
  - an invoice
  - a load manifest
  - a sea carriage document
  - a vendor declaration
  - train wire
  - sequential consist
  - loading form
- (b) for the transport of dangerous goods—documentation required to be kept under a dangerous goods regulation.

***unit of rolling stock*** means a vehicle designed to run on rails.

*Example—*

A unit of rolling stock includes a vehicle that operates on a railway and is used, or is proposed to be used, for either of the following purposes—

- (a) transporting passengers or freight on a railway;
- (b) maintenance work, or other work associated with, a railway.’

- (3) Schedule 3, definition *rail vehicle*, after ‘includes’—  
*insert*—  
‘a unit of rolling stock and’.

### **Division 3                      Amendment of Transport Operations (Road Use Management) Act 1995**

#### **39            Act amended in div 3**

This division amends the *Transport Operations (Road Use Management) Act 1995*.

#### **40            Amendment of s 17A (Definition)**

- (1) Section 17A, definition *approval*, after ‘accreditation,’—  
*insert*—  
‘administrative determination,’.
- (2) Section 17A, definition *approval*—  
*insert*—  
‘(e) an exemption under section 153.’.

#### **41            Amendment of s 18 (Grounds for amending, suspending or cancelling approvals)**

- (1) Section 18(1)(i)—  
*omit, insert*—  
‘(i) for an approval that is an accreditation or exemption granted under a fatigue management regulation or a dangerous goods driver licence—the person to whom the accreditation, exemption or licence is granted or applies no longer satisfies the criteria, however described, under the regulation for the approval;’.

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(2) Section 18(1)(k)—

*omit, insert—*

‘(k) for an approval prescribed under a dangerous goods regulation as an approval for this paragraph—

- (i) a change in circumstances has happened after the approval was granted; and
- (ii) had the changed circumstances existed when the approval was granted, the approval would not have been granted under the regulation because of the requirements under the regulation applying to the grant;

(l) for an approval prescribed under a dangerous goods regulation as an approval for this paragraph—the holder has contravened this Act or a corresponding law and the contravention makes the holder unsuitable to continue to hold the approval;

(m) for an approval that is a dangerous goods driver licence—the holder is suffering from a medical condition or has a physical or mental incapacity, that makes the holder unsuitable to continue to hold the licence;

(n) for an approval that is a dangerous goods vehicle licence—the vehicle does not comply with this Act;

(o) the chief executive considers it necessary in the public interest.’.

(3) Section 18(2)—

*insert—*

‘***dangerous goods driver licence*** means a licence, as prescribed under a dangerous goods regulation, to drive a dangerous goods vehicle.

***dangerous goods vehicle licence*** means a licence, as prescribed under a dangerous goods regulation, of a dangerous goods vehicle.’.

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**42 Amendment of s 19 (Procedure for amending, suspending and cancelling approvals)**

Section 19(6)(b), ‘the notice’—

*omit, insert—*

‘the day the notice under this subsection’.

**43 Insertion of new s 19C**

Chapter 3, part 1A—

*insert—*

**‘19C Automatic suspension of particular licences under dangerous goods regulation**

‘(1) If the driver licence of the holder of a dangerous goods driver licence is no longer in force under this Act or a corresponding law, the dangerous goods driver licence is suspended.

‘(2) If a dangerous goods vehicle is no longer registered under this Act or a corresponding law, the dangerous goods vehicle licence is suspended.

‘(3) Section 19 does not apply to a suspension under this section.

‘(4) In this section—

*dangerous goods driver licence* means a licence, as prescribed under a dangerous goods regulation, to drive a dangerous goods vehicle.

*dangerous goods vehicle licence* means a licence, as prescribed under a dangerous goods regulation, of a dangerous goods vehicle.

*driver licence* does not include a dangerous goods driver licence.’.

**44 Amendment of s 26 (Entry to places)**

Section 26(1)(e), ‘section 51E’—

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*omit, insert—*  
‘section 161N’.

**45 Amendment of s 26A (Further power to enter place of business in relation to heavy vehicle)**

- (1) Section 26A, heading, after ‘heavy vehicle’—  
*insert—*  
**‘or prescribed dangerous goods vehicle’.**
- (2) Section 26A(1), after ‘a heavy vehicle’—  
*insert—*  
‘, or a place of business of a person involved in the transport of dangerous goods,’.
- (3) Section 26A(1)(c) and (d)—  
*omit, insert—*  
‘(c) for entry to a place of business of a responsible person for a heavy vehicle—  
(i) the suspicion mentioned in subsection (2); or  
(ii) the belief and suspicion mentioned in subsection (3); or  
(d) for entry to a place of business of a person involved in the transport of dangerous goods—  
(i) the suspicion mentioned in subsection (3A); or  
(ii) the belief and suspicion mentioned in subsection (3B).’.
- (4) Section 26A(2), ‘subsection (1)(c)’—  
*omit, insert—*  
‘subsection (1)(c)(i)’.

- 
- (5) Section 26A(3), ‘subsection (1)(d)’—  
*omit, insert—*  
‘subsection (1)(c)(ii)’.
- (6) Section 26A—  
*insert—*
- ‘(3A) For subsection (1)(d)(i), the authorised officer must reasonably suspect that there may be at the place—
- (a) a document relating to the transport of dangerous goods or a prescribed dangerous goods vehicle, that is required to be kept under a transport Act or alternative compliance scheme; or
  - (b) a device relating to the transport of dangerous goods or a prescribed dangerous goods vehicle, that is required to be installed, used or maintained under a transport Act or alternative compliance scheme.
- ‘(3B) For subsection (1)(d)(ii), the authorised officer—
- (a) must reasonably believe that there may be at the place evidence of an offence, relating to the transport of dangerous goods or a prescribed dangerous goods vehicle, against a transport Act; and
  - (b) must reasonably suspect the evidence may be concealed or destroyed unless the place is immediately entered and searched.’.

(7) Section 26A(5), ‘heavy’—  
*omit.*

(8) Section 26A(8), definition *place of business*, after ‘vehicle’—  
*insert—*  
‘or of a person involved in the transport of dangerous goods’.

(9) Section 26A(8), definition *place of business*, paragraphs (a) and (b), ‘responsible’—  
*omit.*

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- (10) Section 26A(8), definition *transport Act*—  
*omit, insert*—  
*‘transport Act does not include the Queensland Road Rules.’.*

**46 Amendment of s 26B (Further power to enter place in relation to heavy vehicle if incident involving death, injury or damage)**

- (1) Section 26B, heading, ‘place in relation to heavy vehicle’—  
*omit, insert*—  
**‘particular places’.**
- (2) Section 26B(1)(a)—  
*omit, insert*—  
‘(a) an incident involving the death of, or injury to, a person or damage to property involves or may have involved any of the following—  
(i) a heavy vehicle;  
(ii) a prescribed dangerous goods vehicle;  
(iii) the transport of dangerous goods; and’.
- (3) Section 26B(1)(c)—  
*omit, insert*—  
‘(c) there is a connection between the place and the heavy vehicle, the prescribed dangerous goods vehicle or the transport of dangerous goods; and’.
- (4) Section 26B(3), ‘a heavy vehicle is connected with a place’—  
*omit, insert*—  
‘there is a connection between a place and a heavy vehicle or a prescribed dangerous goods vehicle’.
- (5) Section 26B—  
*insert*—

- 
- ‘(3A) For subsection (1), there is a connection between a place and the transport of dangerous goods if—
- (a) dangerous goods were transported to or from the place within the period of 72 hours before the proposed entry to the place; or
  - (b) the place is, or may be, otherwise directly or indirectly connected with the dangerous goods.’.
- (6) Section 26B(5), definition *transport Act*—  
*omit, insert—*  
*‘transport Act* does not include the Queensland Road Rules.’.

#### **47 Amendment of s 28 (Warrants to enter)**

- (1) Section 28(4), ‘only’—  
*omit.*
- (2) Section 28—  
*insert—*
- ‘(4A) The magistrate may also issue a warrant if the magistrate is satisfied that—
- (a) either of the following apply in relation to a particular place—
    - (i) a vehicle that has been or may have been involved in a dangerous situation is or has been located at the place; or
    - (ii) the place is or may be otherwise connected, directly or indirectly, with a vehicle that has been or may have been involved in a dangerous situation; and
  - (b) there is evidence at the place (including for paragraph (a)(i), the vehicle itself) that is relevant to the exercise of powers under this Act relating to dangerous situations.’.

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**48 Amendment of ss 29A–29C**

Sections 29A(1), 29B and 29C(4), definition *seized thing*,  
'heavy vehicle'—

*omit.*

**49 Amendment of s 30 (General powers after entering places)**

(1) Section 30(3), penalty, paragraph (b)—

*omit, insert—*

'(b) if the requirement related to exercising powers in relation to a heavy vehicle, the transport of dangerous goods or a prescribed dangerous goods vehicle—80 penalty units.'

(2) Section 30(5), from 'by' to '(2)'—

*omit, insert—*

'under subsection (2) by an authorised officer, in relation to a heavy vehicle, the transport of dangerous goods or a prescribed dangerous goods vehicle'.

**50 Amendment of s 30A (Further powers after entering place under s 26A or 26B)**

(1) Section 30A(2), after 'section 26A(2)'—

*insert—*

'or (3A)'.

(2) Section 30A(3)(a), after 'section 26A(3)'—

*insert—*

'or (3B)'.

(3) Section 30A(4)(b), after 'place'—

*insert—*

', including, for example, dangerous goods or packaging at the place'.

- 
- (4) Section 30A(6)(b)—  
*omit, insert—*
- ‘(b) if the exercising of the power is because of a suspicion mentioned in section 26A(2) or a belief and suspicion mentioned in section 26A(3)—require a responsible person for the heavy vehicle in relation to which the power is to be exercised to give the authorised officer reasonable help to exercise the power, whether or not the person is in or at the place; or
  - (c) if the exercising of the power is because of a suspicion mentioned in section 26A(3A) or a belief and suspicion mentioned in section 26A(3B)—require a person involved in the transport of dangerous goods in relation to which the power is to be exercised to give the authorised officer reasonable help to exercise the power, whether or not the person is in or at the place.’
- (5) Section 30A(7) and (8), after ‘subsection (6)(b)’—  
*insert—*  
‘or (c)’.
- (6) Section 30A(11), definition *transport Act*—  
*omit, insert—*  
‘*transport Act* does not include the Queensland Road Rules.’.

**51 Amendment of s 32 (Power to stop prescribed heavy vehicles)**

- (1) Section 32(5), penalty, ‘for subsection (5)’—  
*omit.*
- (2) Section 32—  
*insert—*
- ‘(6) Without limiting section 31, a power under this section may be exercised in relation to a suspected dangerous goods vehicle as if it were a prescribed heavy vehicle.’.

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**52 Amendment of s 33 (Requiring vehicle to be moved for exercising power)**

- (1) Section 33(1) and (2), after ‘a heavy vehicle’—  
*insert*—  
‘or a prescribed dangerous goods vehicle’.
- (2) Section 33(3)(a), after ‘private vehicle’—  
*insert*—  
‘other than a suspected dangerous goods vehicle’.
- (3) Section 33(3)(b), after ‘prescribed heavy vehicle’—  
*insert*—  
‘or a suspected dangerous goods vehicle’.
- (4) Section 33(3A)(b), after ‘a heavy vehicle’—  
*insert*—  
‘or a prescribed dangerous goods vehicle’.
- (5) Section 33(4), penalty—  
*omit, insert*—  
‘Maximum penalty—
  - (a) for a private vehicle other than a suspected dangerous goods vehicle—60 penalty units; or
  - (b) for a suspected dangerous goods vehicle or a prescribed heavy vehicle—120 penalty units.’
- (6) Section 33(5), after ‘prescribed heavy vehicle’—  
*insert*—  
‘or a suspected dangerous goods vehicle’.
- (7) Section 33(6)—  
*omit, insert*—  
‘(6) In this section—  
***prescribed place***, for a heavy vehicle or prescribed dangerous goods vehicle, means—

- 
- (a) any of the following places relating to a responsible person for the heavy vehicle or a person involved in the transport of dangerous goods—
    - (i) a place at or from which the person carries on a business;
    - (ii) a place that is occupied by the person in connection with a business carried on by the person;
    - (iii) the registered office of a business carried on by the person; or
  - (b) a place that is—
    - (i) the garage address for the vehicle; or
    - (ii) without limiting subparagraph (i), the base of the vehicle's driver; or
  - (c) a place where a document relating to the vehicle is located or required to be kept under a transport Act or alternative compliance scheme.’.

**53 Amendment of s 33A (Requiring heavy vehicle to be moved if causing harm or obstruction etc.)**

- (1) Section 33A, heading, after ‘heavy vehicle’—  
*insert—*  
**‘or prescribed dangerous goods vehicle’.**
- (2) Section 33A(1)(a), after ‘heavy vehicle’—  
*insert—*  
**‘or a prescribed dangerous goods vehicle’.**
- (3) Section 33A(1)(b)—  
*omit, insert—*  
**‘(b) the authorised officer reasonably believes the vehicle—**
  - (i) is causing, or creating a risk of, serious harm to public safety, the environment or road infrastructure; or

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- (ii) is causing, or likely to cause, an obstruction to—
  - (A) traffic; or
  - (B) an event lawfully authorised to be held on the road; or
  - (C) a vehicle entering or leaving land adjacent to the road.’.
- (4) Section 33A(2) and (5)(a), ‘heavy’—  
*omit.*
- (5) Section 33A(6), definition *prescribed place*—  
*omit, insert—*  
*‘prescribed place see section 33(6).’.*

**54 Amendment of s 33B (Moving unattended heavy vehicle on road)**

- (1) Section 33B, heading, after ‘heavy vehicle’—  
*insert—*  
**‘or prescribed dangerous goods vehicle’.**
- (2) Section 33B(1)(a), after ‘heavy vehicle’—  
*insert—*  
**‘or a prescribed dangerous goods vehicle’.**
- (3) Section 33B(2) to (6), ‘heavy’—  
*omit.*

**55 Amendment s 33C (Moving other stationary heavy vehicle if causing harm or obstruction etc.)**

- (1) Section 33C, heading, after ‘heavy vehicle’—  
*insert—*  
**‘or prescribed dangerous goods vehicle’.**
- (2) Section 33C(1)—

---

*omit, insert—*

- ‘(1) This section applies if an authorised officer reasonably believes the following about a vehicle—
- (a) the vehicle is a heavy vehicle on a road or road-related area or is a prescribed dangerous goods vehicle in any of the following places—
    - (i) a road or road-related area;
    - (ii) a public place;
    - (iii) another place occupied or owned by the State or a government entity;
    - (iv) a prescribed place an authorised officer has entered under section 26;
    - (v) a place an authorised officer has entered under section 26A or 26B;
  - (b) the vehicle is unattended or broken down;
  - (c) the vehicle—
    - (i) is causing, or creating an imminent risk of, serious harm to public safety, the environment or road infrastructure; or
    - (ii) is causing, or likely to cause, an obstruction to—
      - (A) traffic; or
      - (B) an event lawfully authorised to be held on the road; or
      - (C) a vehicle entering or leaving land adjacent to the road.’.
- (3) Section 33C(2) to (6), ‘heavy’—
- omit.*
- (4) Section 33C—
- insert—*
- ‘(9) In this section—

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*prescribed place*, in relation to a prescribed dangerous goods vehicle, means—

- (a) any of the following places relating to a person involved in the transport of dangerous goods—
  - (i) a place at or from which the person carries on a business;
  - (ii) a place that is occupied by the person in connection with a business carried on by the person;
  - (iii) the registered office of a business carried on by the person; or
- (b) a place that is—
  - (i) the garage address for the vehicle; or
  - (ii) without limiting subparagraph (i), the base of the vehicle's driver; or
- (c) a place where a document relating to the vehicle is located or required to be kept under a transport Act or alternative compliance scheme.’.

## 56 Insertion of new s 33D

Chapter 3, part 3, division 2, subdivision 2—

*insert—*

### ‘33D Power if prescribed dangerous goods vehicle broken down or immobilised on a road

- ‘(1) This section applies if an authorised officer reasonably believes—
  - (a) a prescribed dangerous goods vehicle is broken down or immobilised on a road or road-related area; and
  - (b) it is necessary to give a direction under subsection (2) to a person in control of the vehicle to protect persons, property or the environment.
- ‘(2) The authorised officer may give a direction to the person in control of the vehicle about the following—

- 
- (a) carrying out repair work on the vehicle;
  - (b) towing the vehicle off the road or road-related area;
  - (c) removing the dangerous goods from the vehicle;
  - (d) dealing with the dangerous goods after their removal from the vehicle.
- ‘(3) A person given a direction under subsection (2) must comply with it, unless the person has a reasonable excuse.  
Maximum penalty—80 penalty units.’.

**57 Amendment of s 35 (Power to enter vehicles etc. other than for vehicle inspection)**

- (1) Section 35(2A)(a), after ‘heavy vehicle’—  
*insert—*  
‘or a prescribed dangerous goods vehicle’.
- (2) Section 35(2A)(b), ‘heavy’—  
*omit.*

**58 Amendment of s 35A (Further powers to inspect and search heavy vehicles)**

- (1) Section 35A, heading, ‘heavy vehicles’—  
*omit, insert—*  
‘**heavy vehicle or prescribed dangerous goods vehicle**’.
- (2) Section 35A(1), ‘, whether or not it’—  
*omit, insert—*  
‘, or a prescribed dangerous goods vehicle, whether or not the heavy vehicle or prescribed dangerous goods vehicle’.
- (3) Section 35A(2) to (7) and (9), ‘heavy’—  
*omit.*

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- (4) Section 35A(3), after ‘reasonably believes’—  
*insert—*  
‘any of the following’.
- (5) Section 35A(3), ‘Act; or’—  
*omit, insert—*  
‘Act;’.
- (6) Section 35A(3)—  
*insert—*  
‘(c) for a prescribed dangerous goods vehicle, the vehicle has been or may have been involved in a situation that was a dangerous situation when it happened.’.
- (7) Section 35A(10), definitions *prescribed place* and *transport Act*—  
*omit, insert—*  
‘*prescribed place* see section 33(6).  
*transport Act* does not include the Queensland Road Rules.’.

**59 Amendment of s 35B (Further powers to access stored information or to decide if anything found in a heavy vehicle may be seized)**

- (1) Section 35B(1), heading, after ‘heavy vehicle’—  
*insert—*  
‘**or prescribed dangerous goods vehicle**’.
- (2) Section 35B(1), after ‘heavy vehicle’—  
*insert—*  
‘or a prescribed dangerous goods vehicle’.
- (3) Section 35B(2)(a), ‘heavy’—  
*omit.*

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**60 Amendment of s 35C (Running or stopping heavy vehicle engine)**

(1) Section 35C, heading, after ‘heavy vehicle engine’—

*insert—*

**‘or prescribed dangerous goods vehicle engine’.**

(2) Section 35C, before subsection (1)—

*insert—*

‘(1AA) The purpose of this section is to enable an authorised officer to effectively exercise a power under this Act in relation to either of the following (each of which is *the vehicle*)—

(a) a heavy vehicle;

(b) a prescribed dangerous goods vehicle.’.

(3) Section 35C(1), from ‘may,’ to ‘vehicle and run’—

*omit, insert—*

**‘may enter the vehicle and run’.**

(4) Section 35C(1)(b)—

*omit, insert—*

**‘(b) the following applies—**

(i) for a heavy vehicle—no responsible person for the heavy vehicle is available or willing to take the prescribed action;

(ii) for a prescribed dangerous goods vehicle—no person involved with the transport of the dangerous goods in relation to that vehicle is available or willing to take the prescribed action; or’.

(5) Section 35C(1)(c), (2), (4) and (5), ‘heavy’—

*omit.*

**61 Amendment of s 38 (Power to prohibit persons driving)**

(1) Section 38(2) and (2A), after ‘heavy vehicle’—

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*insert—*

‘or a prescribed dangerous goods vehicle’.

(2) Section 38(3), penalty—

*omit, insert—*

‘Maximum penalty for subsection (3)—

- (a) for a private vehicle other than a suspected dangerous goods vehicle—60 penalty units; or
- (b) for a suspected dangerous goods vehicle or a prescribed heavy vehicle—120 penalty units.’.

## **62 Amendment of s 39 (Powers to enable effective and safe exercise of other powers)**

(1) Section 39(1)—

*omit, insert—*

‘(1) An authorised officer may require a person mentioned in the following paragraphs to give the officer reasonable help to enable the officer to effectively exercise—

- (a) a power under this Act in relation to a vehicle other than a heavy vehicle or a prescribed dangerous goods vehicle—the person in control of the vehicle;
- (b) a power under this Act in relation to a heavy vehicle—a responsible person for the vehicle;
- (c) a power under this Act in relation to a prescribed dangerous goods vehicle—a person involved in the transport of dangerous goods in relation to the vehicle;
- (d) a power under this Act in relation to the transport of dangerous goods—a person involved in the transport of the dangerous goods to which the power relates.

*Examples of requirements —*

- to hold the vehicle stationary on a weighing device to enable the vehicle to be weighed
- to open the vehicle’s bonnet to enable the engine to be inspected

- 
- to help the authorised officer to weigh or measure all or part of the vehicle, including an axle or axle group
  - to help the authorised officer to weigh, measure or take samples of all or part of the vehicle's equipment or load including a substance or packaging
  - to operate equipment or facilities
  - to give access, free of charge, to photocopying equipment.'.
- (2) Section 39(1A)(a), after 'engine'—  
*insert—*  
**'(take the prescribed action)'**.
- (3) Section 39(1B), (1C) and (1D)—  
*omit, insert—*
- '(1B) Subsections (1C) to (1F) apply to a person mentioned in subsection (1)(b) or (c) who is required to take the prescribed action.
- '(1C) The person may use the force that is reasonably necessary to enter the vehicle and take the prescribed action.
- '(1D) However subsection (1C) does not authorise the person to use force against anyone.'.
- (4) Section 39(1E) and (1F), 'responsible'—  
*omit.*
- (5) Section 39(1E), 'heavy'—  
*omit.*
- (6) Section 39(3), penalty—  
*omit, insert—*  
'Maximum penalty—
- (a) for a power exercised in relation to a private vehicle other than a suspected dangerous goods vehicle—60 penalty units; or
  - (b) for a power exercised in relation to a suspected dangerous goods vehicle, a prescribed heavy vehicle or the transport of dangerous goods—120 penalty units.'.

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**63 Amendment of s 39C (Interfering with prescribed heavy vehicle equipment or load)**

- (1) Section 39C, heading, from ‘prescribed heavy vehicle’—  
*omit, insert—*  
**‘equipment or load of particular vehicles’.**
- (2) Section 39C(1)(a), ‘prescribed heavy’—  
*omit.*
- (3) Section 39C(1)(b), ‘a heavy vehicle’—  
*omit, insert—*  
**‘suspected dangerous good vehicle’.**
- (4) Section 39C(1)(c), ‘heavy’—  
*omit.*
- (5) Section 39C(2), ‘prescribed heavy vehicle or heavy’—  
*omit.*

**64 Amendment of new s 40A (Further powers to seize evidence in relation to heavy vehicle)**

- (1) Section 40A, heading, ‘heavy vehicle’—  
*omit, insert—*  
**‘particular vehicles’.**
- (2) Section 40A(1)(a), after ‘section 26A(3)’—  
*insert—*  
**‘or (3B)’.**
- (3) Section 40A(2)(a)(i), after ‘a heavy vehicle’—  
*insert—*  
**‘, a prescribed dangerous goods vehicle or the transport of dangerous goods’.**
- (4) Section 40A(2)(a)(ii), after ‘a heavy vehicle’—  
*insert—*

‘or prescribed dangerous goods vehicle’.

(5) Section 40A(4), definition *transport Act*—

*omit, insert—*

‘*transport Act* does not include the Queensland Road Rules.’.

**65 Amendment of s 45 (Access to seized things)**

Section 45—

*insert—*

‘(2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.’.

**66 Amendment of ch 3, pt 3, div 3B, hdg (Embargo notice for evidence about heavy vehicle)**

Chapter 3, part 3, division 3B, heading, after ‘vehicle’—

*insert—*

‘or dangerous goods’.

**67 Amendment of s 46B (Embargo notice)**

(1) Section 46B(1)(a), after ‘a heavy vehicle’—

*insert—*

‘, a prescribed dangerous goods vehicle or the transport of dangerous goods’.

(2) Section 46B(5), definition *relevant entity*, paragraph (a), after ‘heavy vehicle’—

*insert—*

‘or prescribed dangerous goods vehicle’.

**68 Amendment of s 48A (Further power to require personal details for exercising power in relation to heavy vehicle)**

(1) Section 48A, heading, after ‘heavy vehicle’—

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*insert—*

**‘or transport of dangerous goods’.**

- (2) Section 48A(1)(a) and (b) and (7)(a), ‘heavy vehicle offence’—

*omit, insert—*

‘vehicle offence or dangerous goods offence’.

- (3) Section 48A(1)(c), after ‘heavy vehicle’—

*insert—*

‘or prescribed dangerous goods vehicle’.

- (4) Section 48A(1)(d)—

*omit, insert—*

‘(d) an authorised officer reasonably suspects a person is or may be any of the following and is or may be able to help in the investigation of a vehicle offence, suspected vehicle offence, dangerous goods offence or suspected dangerous goods offence—

- (i) for a vehicle offence or suspected vehicle offence involving a heavy vehicle—a responsible person for the vehicle;
- (ii) for a vehicle offence or suspected vehicle offence involving a prescribed dangerous goods vehicle—a person involved in the transport of dangerous goods by the vehicle;
- (iii) for a dangerous goods offence or suspected dangerous goods offence—a person involved in the transport of the relevant dangerous goods.’.

- (5) Section 48A(8), definition *heavy vehicle offence*—

*omit.*

- (6) Section 48A(8)—

*insert—*

*‘dangerous goods offence* means an offence against this Act that involves or relates to the transport of dangerous goods, other than a vehicle offence or an offence against the Queensland Road Rules.

*vehicle offence* means an offence against a transport Act that involves or relates to a heavy vehicle or prescribed dangerous goods vehicle, other than an offence against the Queensland Road Rules.’

**69 Amendment of s 49 (Power to require documents to be produced)**

Section 49—

*insert—*

- ‘(7) Despite subsections (3) and (6), a regulation may provide that an authorised officer may seize a document if—
- (a) the document is a licence and the authorised officer reasonably believes any of the following—
    - (i) the licence has been cancelled or suspended;
    - (ii) the licence has ended;
    - (iii) the licence has been amended and the amendment is not recorded on the licence;
    - (iv) the person who produces the licence is not the licensee or is disqualified, however described, by an Australian court from holding or obtaining an Australian driver licence; or
  - (b) the document purports to be a licence and the authorised officer reasonably believes the document is not a licence.’

**70 Insertion of new s 49A**

After section 49—

*insert—*

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**‘49A Direction to provide information about heavy vehicles and transport of dangerous goods**

- ‘(1) This section applies to each of the following—
- (a) a responsible person for a heavy vehicle;
  - (b) a person involved in the transport of dangerous goods.
- ‘(2) An authorised officer may, for compliance purposes, give a person any of the following directions—
- (a) if the person is a responsible person for a heavy vehicle—a direction to provide information to the officer about the heavy vehicle or any load or equipment carried or intended to be carried by the heavy vehicle; or
  - (b) if the person is a person involved in the transport of dangerous goods—a direction to provide information to the officer about the dangerous goods, a prescribed dangerous goods vehicle carrying or intended to be used for carrying the dangerous goods, or any other load or equipment carried or intended to be carried by the vehicle.
- ‘(3) Without limiting subsection (2), a direction under that subsection may require a person who is associated with a particular vehicle to provide information about the current or intended journey of the vehicle, including, for example, the following—
- (a) the location of the start or intended start of the journey;
  - (b) the route or intended route of the journey;
  - (c) the location of the destination or intended destination of the journey.
- ‘(4) In giving a direction under subsection (2) to a person, the authorised officer must warn the person it is an offence to fail to give the information, unless the person has a reasonable excuse.
- ‘(5) A person given a direction under subsection (2) must comply with the direction, unless the person has a reasonable excuse.
- Maximum penalty—60 penalty units.

‘(6) It is a reasonable excuse for an individual to fail to give the information if giving the information might tend to incriminate the individual.

‘(7) In this section—

*compliance purposes* means—

- (a) to find out whether this Act is being complied with; or
- (b) to investigate a vehicle offence, suspected vehicle offence, dangerous goods offence, or a suspected dangerous goods offence.

*dangerous goods offence* see section 48A(8).

*vehicle offence* see section 48A(8).’.

**71 Amendment of s 50AB (Power to require help to find and access documents or information about heavy vehicle)**

(1) Section 50AB, heading, from ‘documents’—

*omit, insert—*

**‘particular documents or information’.**

(2) Section 50AB(1), after ‘heavy vehicle’—

*insert—*

‘or a person involved in the transport of dangerous goods’.

(3) Section 50AB(1), ‘in relation to the vehicle’—

*omit.*

**72 Omission of ch 3, pt 3, div 5 (Remedial action notices)**

Chapter 3, part 3, division 5—

*omit.*

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**73 Omission of ch 3, pt 4A (Additional powers of authorised officers to prevent dangerous situation)**

Chapter 3, part 4A—

*omit.*

**74 Amendment of s 51F (Reciprocal powers)**

(1) Section 51F(3) and (4), ‘heavy vehicle’—

*omit, insert—*

‘relevant matter’.

(2) Section 51F—

*insert—*

‘(8) In this section—

*relevant matter* means—

(a) a heavy vehicle; or

(b) a prescribed dangerous goods vehicle; or

(c) the transport of dangerous goods.’.

**75 Amendment of s 52 (False or misleading statements)**

Section 52(2), penalty, paragraph (b), after ‘vehicle’—

*insert—*

‘, a prescribed dangerous goods vehicle or the transport of dangerous goods’.

**76 Amendment of s 53 (False or misleading documents, generally)**

Section 53(2), penalty, paragraph (b), after ‘vehicle’—

*insert—*

‘, a prescribed dangerous goods vehicle or the transport of dangerous goods’.

**77 Amendment of s 54 (Obstructing authorised officers or accredited persons)**

Sections 54(1), penalty, paragraph (b), after ‘vehicle’—

*insert—*

‘, a prescribed dangerous goods vehicle or the transport of dangerous goods’.

**78 Amendment of s 55 (Pretending to be an authorised officer or accredited person)**

Section 55, penalty, paragraph (a), ‘107’—

*omit, insert—*

‘134’.

**79 Amendment of s 60 (Evidentiary aids)**

(1) Section 60(2)(aa), from ‘relating to’—

*omit, insert—*

‘relating to—

(i) the operation or use of a heavy vehicle or dangerous goods vehicle; or

(ii) the transport of dangerous goods;’.

(2) Section 60(2)(ma), after ‘vehicle’—

*insert—*

‘or dangerous goods vehicle’.

**80 Amendment of s 61B (Transport and journey documentation)**

(1) Section 61B(1), from ‘relating’ to ‘transport Act’—

*omit, insert—*

‘under a transport Act relating to a heavy vehicle, prescribed dangerous goods vehicle or the transport of dangerous goods’.

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- (2) Section 61B(2), definition *status*—  
*omit, insert*—  
*‘status*, of the parties to a transaction, includes—
- (a) for a transaction involving a heavy vehicle—the status of each of the parties as a responsible person for the heavy vehicle used or intended to be used for transporting the goods the subject of the transaction; and
  - (b) for a transaction involving a prescribed dangerous goods vehicle or the transport of dangerous goods—the status of each of the parties as a person involved in the transport of dangerous goods.’.

**81 Amendment of s 62 (Proceedings for offences)**

Section 62(3), after ‘heavy vehicle’—

*insert*—

‘, a dangerous goods vehicle or the transport of dangerous goods’.

**82 Insertion of new ch 5A, pt 1, hdg**

Chapter 5A, before section 151—

*insert*—

**‘Part 1 Preliminary’.**

**83 Amendment of s 151 (Application of ch 5A)**

- (1) Section 151(1)(a), ‘by road’—

*omit*.

- (2) Section 151(2)—

*omit, insert*—

- ‘(2) However, this chapter does not apply to—

- 
- (a) the transport of the following except if transported with other dangerous goods—
    - (i) radioactive substances under the *Radiation Safety Act 1999*;
    - (ii) explosives under the *Explosives Act 1999*; or
  - (b) the transport of dangerous goods if the total quantity of dangerous goods in a load on a vehicle is less than the quantity for which an inner package, as prescribed under a dangerous goods regulation, is required to be marked under the regulation; or
  - (c) the transport of a load of dangerous goods by a person if—
    - (i) the load does not contain dangerous goods—
      - (A) in a receptacle with a capacity that is more than a capacity prescribed under a dangerous goods regulation; or
      - (B) in a receptacle if the quantity of dangerous goods in the receptacle is more than the quantity prescribed under a dangerous goods regulation for the receptacle; and
    - (ii) the goods are not, and do not include, dangerous goods prescribed under a dangerous goods regulation as designated dangerous goods; and
    - (iii) the aggregate quantity of the dangerous goods in the load, as worked out under a dangerous goods regulation, is less than 25% of a load of dangerous goods that, under the regulation, is required to be placarded; and
    - (iv) the goods are not being transported by the person in the course of a business of transporting goods by road.

‘(3) Also, a requirement of this Act imposed because of this chapter does not apply to the transport of dangerous goods to the extent the goods are transported by, or under the direction

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of, an authorised officer or relevant emergency service officer to prevent a dangerous situation.

- ‘(4) Also, even if particular goods are prescribed as dangerous goods, the chapter does not apply to the transport of the particular dangerous goods in a vehicle if—
- (a) the dangerous goods are in packaging that is—
    - (i) designed for, and forming part of, the fuel or electrical system of the vehicle’s propulsion engine or auxiliary engine; or
    - (ii) part of, and necessary for, the operation of an appliance, plant or refrigeration system forming part of or attached to the vehicle; or
  - (b) the dangerous goods are in equipment carried in, fitted to or installed in the vehicle and designed for the safety or protection of an occupant of the vehicle, the vehicle or its load, including, for example, an airbag, fire extinguisher, seatbelt pretensioning device or self-contained breathing apparatus.’.

## **84 Insertion of new s 151A and pt 2, hdg**

After section 151—

*insert—*

### **‘151A Regulation may include provision for tools of trade**

- ‘(1) The section applies to dangerous goods that—
- (a) are not transported in the course of a business of transporting goods but are transported by a person who intends to use them or so they may be used for a commercial purpose; and
  - (b) are transported as part of a load as prescribed under a regulation.
- ‘(2) A regulation may provide that provisions of the regulation (the *excluded provisions*) do not apply to the transport of the dangerous goods mentioned in subsection (1).

- ‘(3) Without limiting subsection (2), the regulation may provide the excluded provisions do not apply to a person if the person transports the dangerous goods in a way required by the regulation.

## ‘Part 2                      Regulations and emergency orders’.

### **85            Replacement of s 152 (Regulations about dangerous goods)**

Section 152—

*omit, insert—*

### **‘152        Regulations about dangerous goods and transport of dangerous goods**

- ‘(1) A regulation may make provision about dangerous goods and the transport of dangerous goods, including for example, the following—
- (a) identifying and classifying goods as dangerous goods, and the identification and classification of dangerous goods;
  - (b) the making of decisions by the chief executive for the purposes of a regulation in relation to the following—
    - (i) the identification and classification of goods as dangerous goods;
    - (ii) the identification and classification of dangerous goods;
    - (iii) the specification of what is, and what is not, compatible with dangerous goods for transport purposes;
    - (iv) prohibiting or regulating the transport of dangerous goods;

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- (v) regulating the containment of dangerous goods that are being, or that are to be, transported;
- (c) the analysis and testing of dangerous goods;
- (d) the marking and labelling of packages containing dangerous goods for transport and the placarding of vehicles and packaging on or in which dangerous goods are transported;
- (e) containers, vehicles, packaging, equipment and other items used in the transport of dangerous goods;
- (f) the manufacture of containers, vehicles, packaging, equipment and other items for use in the transport of dangerous goods;
- (g) voluntary accreditation schemes, including privileges to be accorded or sanctions to be imposed under the schemes and the cancellation or suspension of the schemes;
- (h) the loading of dangerous goods for, and the unloading of dangerous goods after, their transport;
- (i) deciding routes along which, the areas in which and the times during which dangerous goods may or may not be transported;
- (j) procedures for transporting dangerous goods, including, but not limited to—
  - (i) the quantities and circumstances in which dangerous goods, may be transported; and
  - (ii) safety procedures and equipment;
- (k) the licensing of—
  - (i) vehicles and drivers for transporting dangerous goods; and
  - (ii) persons involved in the transport of dangerous goods or vehicles used in the transport;

- (l) the mandatory accreditation of persons involved in the transport of dangerous goods or particular aspects of that transport;
  - (m) the approval of—
    - (i) vehicles, packaging, equipment and other items used in relation to transporting dangerous goods; and
    - (ii) facilities for, and methods of, testing or using vehicles, packaging, equipment and other items used in relation to transporting dangerous goods; and
    - (iii) processes carried out in relation to transporting dangerous goods;
  - (n) documents required to be prepared or kept by persons involved in the transport of dangerous goods, and the approval by the chief executive of alternative documentation;
  - (o) public liability insurance or some other form of indemnity that must be taken out by persons involved in the transport of dangerous goods;
  - (p) obligations arising, and procedures to be followed, in the event of a dangerous situation;
  - (q) the training and qualifications required of persons involved in, and the approval of training courses and qualifications relating to involvement in, transporting dangerous goods;
  - (r) the recognition of accredited providers of training, package testing, design verification and other similar activities.
- ‘(2) Without limiting subsection (1), a regulation may make provision about the recognition of laws of other jurisdictions relating to transporting dangerous goods, things done under those laws and giving effect to those things, including, for example, providing for—

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- (a) the recognition of an entity (the *competent authorities panel*) whose membership includes the chief executive and dangerous goods authorities and that may be required to make decisions, and to provide oversight on decisions made, under this chapter in the interests of national uniformity; and
  - (b) for other matters in relation to the competent authorities panel.
- ‘(3) For subsection (2)(b), a regulation may provide that the chief executive must refer to the competent authorities panel—
- (a) an application made to the chief executive for a decision, approval or exemption under this Act if the chief executive considers the decision, approval or exemption should have effect in all participating dangerous goods jurisdictions or some of those jurisdictions including this jurisdiction; or
  - (b) a decision, approval or exemption under this Act that has effect in all participating dangerous goods jurisdictions or some of those jurisdictions including this jurisdiction if—
    - (i) the chief executive considers the decision, approval or exemption should be cancelled or amended; or
    - (ii) a dangerous goods authority recommended to the chief executive that the decision, approval or exemption should be cancelled or amended; or
  - (c) a recommendation by the chief executive to a dangerous goods authority that a decision, approval or exemption given by the authority under a corresponding law, that has effect in all participating dangerous goods jurisdictions or some of those jurisdictions including this jurisdiction, if the chief executive considers a ground exists under the corresponding law for the authority to cancel or amend the decision, approval or exemption.

- 
- ‘(4) If a regulation provides that a matter must be referred to the competent authorities panel, the regulation may provide that the chief executive must have regard to the panel’s decision.
- ‘(5) A regulation may make provision in relation to an action taken or decision made by the competent authorities panel or a dangerous goods authority in relation to a matter considered by the competent authorities panel, including that the action or decision has effect in this jurisdiction as if it were an action or decision of the chief executive.
- ‘(6) The reference in subsection (1)(b) to the chief executive making decisions about particular matters does not limit the *Statutory Instruments Act 1992*, section 26, in relation to any other matter mentioned in this section.
- ‘(7) In this section—  
*amend* includes vary.

## ‘Part 3 Exemptions’.

### 86 Amendment of s 153 (Exemptions)

- (1) Section 153(1), after ‘A person’—  
*insert—*  
, or a person who is the representative of a class of persons,’.
- (2) Section 153(1), before ‘regulation’—  
*insert—*  
‘dangerous goods’.
- (3) Section 153(1), ‘by road’—  
*omit.*
- (4) Section 153(2), after ‘a person’—  
*insert—*

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‘or class of persons’.

- (5) Section 153(2), ‘regulation about transporting dangerous goods by road’—

*omit, insert—*

‘dangerous goods regulation’.

- (6) Section 153(2)(a), after ‘the person’—

*insert—*

‘or class of persons’.

- (7) Section 153(2)(b)(i)—

*omit, insert—*

‘(i) would not be likely to create a risk of death or injury to a person, or harm to the environment or to property, greater than that which would be the case if the person or class of persons was required to comply; and’.

- (8) Section 153(4), (5), (6) and (7)—

*omit, insert—*

- ‘(4) If an application is made for an exemption and the chief executive grants the exemption, the chief executive must send to each applicant a notice stating—

- (a) the provisions of a dangerous goods regulation in relation to which the exemption applies; and
- (b) the dangerous goods to which the exemption applies; and
- (c) the time for which the exemption applies, including the date that the exemption takes effect; and
- (d) the conditions to which the exemption is subject; and
- (e) the geographical area for which the exemption applies; and
- (f) for a class exemption—each of the following to be stated in the exemption—

- 
- (i) the class of person exempted;
  - (ii) the class representative for the exemption.
- ‘(5) If an application is made for an exemption and the chief executive does not grant the exemption, the chief executive must give a notice stating the following to each applicant—
- (a) that the chief executive is not granting the exemption;
  - (b) the reasons for the decision;
  - (c) that the person may—
    - (i) under section 65, ask for the decision to be reviewed and appeal against the reviewed decision; and
    - (ii) under the *Transport Planning and Coordination Act 1994*, part 5, ask for the decision or the reviewed decision to be stayed.

*Note—*

A notice is not required when an exemption is granted on conditions.

- ‘(6) The *Statutory Instruments Act 1992*, sections 24 to 26 apply to the exemption as if it were a statutory instrument.
- ‘(7) A regulation may make provision in relation to applying for, and the giving of, exemptions under this Act.
- ‘(8) In this section—
- applicant*** means—
- (a) a person who has applied under subsection (1) for himself or herself, whether or not the application is made jointly with other persons; or
  - (b) a person who is a representative of a class of persons and who has applied under subsection (1) for the class of persons; or
  - (c) a person who is a member of a class of persons and whose name and address is given in an application made by a person as mentioned in paragraph (b).’

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## **87 Insertion of new ss 153A–153H and pt 4, hdg**

After section 153—

*insert—*

### **‘153A Contravention of condition of exemption**

‘(1) A person acting under the authority of an exemption under section 153 must not contravene a condition of the exemption.

Maximum penalty—135 penalty units or 6 months imprisonment.

‘(2) If, because of the operation of section 153(3), a person commits an offence against a provision of a regulation (the *other offence provision*) the person was exempted from complying with under the exemption, the person—

- (a) may be charged with committing an offence against either subsection (1) or the other offence provision; but
- (b) must not be charged with both offences.

*Editor’s note—*

See also the Criminal Code, section 16.

### **‘153B Grounds for amending, suspending or cancelling exemption**

‘It is a ground for amending, suspending or cancelling an exemption if—

- (a) the exemption was granted because of a document or representation that is false or misleading or obtained or made in another improper way; or
- (b) the person, or 1 or more of the persons, to whom the exemption applies—
  - (i) has contravened a condition of the exemption; or
  - (ii) has been convicted of an offence against this Act or a corresponding law that is an offence relevant to the issue of whether the person or persons should continue to be the subject of an exemption; or

- (c) public safety has been endangered, or is likely to be endangered because of the exemption; or
- (d) the chief executive considers that if he or she were dealing with an application for the exemption again (a *notional application*), the chief executive would not be satisfied, as mentioned in section 153(2), in relation to the granting of the notional application; or
- (e) the chief executive considers it necessary in the public interest.

**‘153C What chief executive must do before taking proposed action, other than for class exemption**

- ‘(1) This section applies if the chief executive proposes to amend, suspend or cancel an exemption, other than a class exemption (the *proposed action*).
- ‘(2) Before taking the proposed action, the chief executive must give the holder written notice stating—
  - (a) the proposed action; and
  - (b) the grounds for the proposed action; and
  - (c) an outline of the facts and circumstances forming the basis for the grounds; and
  - (d) if the proposed action is to amend the exemption, including a condition of the exemption—the proposed amendment; and
  - (e) if the proposed action is to suspend the exemption—the proposed suspension period; and
  - (f) an invitation to the holder to show in writing, within a stated time of at least 28 days, why the proposed action should not be taken.

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**‘153D What chief executive must do before taking proposed action for class exemption**

- ‘(1) This section applies if the chief executive proposes to amend, suspend or cancel a class exemption (the *proposed action*).
- ‘(2) Before taking the proposed action, the chief executive must give written notice to the holder and in the gazette stating—
  - (a) the proposed action; and
  - (b) the grounds for the proposed action; and
  - (c) an outline of the facts and circumstances forming the basis for the grounds; and
  - (d) if the proposed action is to amend the exemption, including a condition of the exemption—the proposed amendment; and
  - (e) if the proposed action is to suspend the exemption—the proposed suspension period; and
  - (f) an invitation to the holder and any member of the class for the exemption to show in writing, within a stated time of at least 28 days, why the proposed action should not be taken.

**‘153E Decision on proposed action**

- ‘(1) If, after considering any written representations made within the time allowed under section 153C or 153D, the chief executive still considers proposed action under the section should be taken, the chief executive may—
  - (a) if the proposed action was to amend the exemption—amend the exemption; or
  - (b) if the proposed action was to suspend the exemption—suspend the exemption for no longer than the period stated in the notice under section 153C or 153D; or
  - (c) if the proposed action was to cancel the exemption—
    - (i) amend the exemption; or

- (ii) suspend the exemption for a period, including, if the grounds for taking action are capable of being remedied by the holder or any member of the class for the exemption, on the condition that—
    - (A) the grounds must be remedied to the chief executive's reasonable satisfaction within a reasonable time before the suspension period ends; and
    - (B) the chief executive may cancel the exemption under section 153H if the grounds are not remedied as mentioned in subsubparagraph (A); or
  - (iii) cancel the exemption.
- '(2) The chief executive must give written notice of the chief executive's decision to the holder.
- '(3) If the chief executive decides to amend, suspend or cancel the exemption, the notice must state—
  - (a) the reasons for the decision; and
  - (b) if the exemption is suspended on the condition mentioned in subsection (1)(c)(ii)—the exemption may be cancelled under section 153H if the holder fails to comply with the condition; and
  - (c) that the holder may—
    - (i) under section 65, ask for the decision to be reviewed and appeal against the reviewed decision; and
    - (ii) under the *Transport Planning and Coordination Act 1994*, part 5, ask for the decision or the reviewed decision to be stayed.
- '(4) The decision takes effect on the later of the following—
  - (a) the day the notice is given to the holder;
  - (b) the day stated in the notice.

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**‘153F Provisions not applying to beneficial or clerical amendment**

- ‘(1) Sections 153C, 153D or 153E do not apply—
- (a) if the chief executive proposes to amend an exemption only—
    - (i) for a formal or clerical reason; or
    - (ii) in another way that does not adversely affect the interests of any person; or
  - (b) if the chief executive proposes to amend an exemption in another way or cancel it and the holder asked the chief executive to make the amendment or to cancel the exemption.
- ‘(2) The chief executive may amend an exemption in a way mentioned in subsection (1) by written notice to the holder.

**‘153G Immediate suspension in the public interest**

- ‘(1) Despite sections 153C and 153D, this section applies if the chief executive considers it is necessary in the public interest to immediately suspend an exemption.
- ‘(2) The chief executive may, by written notice to the holder, immediately suspend the exemption until the earlier of the following—
- (a) a notice is given to the holder under section 153E(2) after complying with section 153C or 153D; or
  - (b) the end of 56 days after the day the notice under this section is given to the holder.
- ‘(3) If the chief executive immediately suspends the exemption, the notice must state—
- (a) the reasons for the decision; and
  - (b) that the holder may—
    - (i) under section 65, ask for the decision to be reviewed and appeal against the reviewed decision; and



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**88 Amendment of s 154 (Failure to hold licence etc.)**

- (1) Section 154, ‘by road’—  
*omit.*
- (2) Section 154, ‘regulation’—  
*omit, insert—*  
‘dangerous goods regulation’.
- (3) Section 154(3) and (4), penalty, after ‘units’—  
*insert—*  
‘or 2 years imprisonment’.
- (4) Section 154—  
*insert—*
- ‘(6) A person must not consign dangerous goods for transport on a vehicle if the person knows, or reasonably ought to know, that—
  - (a) a dangerous goods regulation requires the vehicle to be licensed to transport the goods; and
  - (b) the vehicle is not licensed under the dangerous goods regulation.Maximum penalty—135 penalty units.’.

**89 Omission of s 155 (Goods too dangerous to be transported)**

Section 155—  
*omit.*

**90 Amendment of s 156 (Duties when transporting dangerous goods)**

- (1) Section 156, ‘by road’—  
*omit.*
- (2) Section 156(2), penalty—

*omit, insert—*

‘Maximum penalty—

- (a) if the contravention results in death or grievous bodily harm to a person—1320 penalty units or 2 years imprisonment; or
- (b) otherwise—665 penalty units or 1 year’s imprisonment.’.

**91 Amendment of s 157 (Additional evidentiary aids for transporting dangerous goods)**

- (1) Section 157(1)(a), after ‘believes’—

*insert—*

‘, or at a particular time relevant to the exercise of a power believed,’.

- (2) Section 157(1)(a)(i) to (vi)—

*omit, insert—*

- ‘(i) that dangerous goods stated in transport documentation carried in a vehicle are or were being carried in the vehicle;
- (ii) that particular dangerous goods are or were dangerous goods or dangerous goods of a particular type;
- (iii) if a marking or placard on a substance or packaging indicates or indicated that the substance is or was, or the packaging contains or contained particular dangerous goods—that the substance is or was or the packaging contains or contained the dangerous goods indicated;
- (iv) if a marking on a package indicates or indicated that the package contains or contained particular dangerous goods—that the package contains or contained the dangerous goods indicated;

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- (v) if a marking on a package indicates or indicated an attribute in relation to the contents of the package—that the contents of the package have or had the indicated attribute;
  - (vi) if a marking or placard on a vehicle or equipment indicates or indicated the vehicle or equipment is or was being used to transport dangerous goods—that the vehicle or equipment is or was being used to transport the dangerous goods indicated;
  - (vii) if a marking or placard on a substance or packaging indicates or indicated the substance, packaging or contents of the packaging have or had an indicated attribute—that the substance, packaging or contents have or had the indicated attribute;
  - (viii) if a marking or placard on a vehicle or packaging indicates or indicated the vehicle's load is or was, or the contents of the packaging are or were, an indicated quantity of dangerous goods—that the vehicle is or was loaded with, or the packaging contained, the quantity of dangerous goods indicated; and'.
- (3) Section 157(1)(b), after 'to be'—  
*insert—*  
' , or to have been,'
- (4) Section 157(3), definition *markings*—  
*omit.*

## 92 Insertion of new s 157A

After section 157—  
*insert—*

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**‘157A Document signed by chief executive is evidence of matters stated in it if no evidence to the contrary**

- ‘(1) In a prosecution for a contravention of this Act, a court may admit each of the following documents as evidence if the document purports to be signed by the chief executive—
- (a) a document relating to whether a person is exempt from a requirement under section 153; or
  - (b) a document relating to a vehicle, equipment or another item required under a dangerous goods regulation to be approved by the chief executive; or
  - (c) a document relating to an accreditation or licence under a dangerous goods regulation about the transport of dangerous goods.
- ‘(2) If there is no evidence to the contrary, the court must accept the document as proof of the facts stated in it.
- ‘(3) This section does not limit section 60.’.

**93 Amendment of s 158 (Recovery of costs from convicted person)**

- (1) Section 158(1), ‘by road’—  
*omit.*
- (2) Section 158(1), from ‘State costs reasonably incurred’—  
*omit, insert—*  
‘State any of the following—
- (a) costs that have been reasonably incurred in investigating and prosecuting the offence including, for example, collecting, packaging, testing, transporting, storing, destroying the dangerous goods or other evidence;
  - (b) costs that, after the conviction, will be reasonably incurred in collecting, packaging, testing, transporting, storing, destroying, selling or otherwise disposing of the dangerous goods or other evidence, whether or not there

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is an order under section 161 for forfeiture of the dangerous goods or other things.’.

(3) Section 158—

*insert—*

‘(4) A document purporting to be signed by any of the following stating details of the costs that have been or will be reasonably incurred for a matter mentioned in subsection (1) is evidence of the costs—

(a) for the department—the chief executive;

(b) for another government entity—the person who is the chief executive or otherwise responsible for the entity.’.

**94 Amendment of section 159 (Recovery of costs of government action)**

(1) Section 159(1) and (3)(d), ‘by road’—

*omit.*

(2) Section 159(4)(a), ‘162’—

*omit, insert—*

‘161A’.

(3) Section 159—

*relocate and renumber* as chapter 5A, part 7, section 161O.

**95 Amendment of s 160 (Prohibition from involvement in the transport of dangerous goods by road)**

(1) Section 160, heading—

*omit, insert—*

**‘160 Exclusion orders prohibiting involvement in the transport of dangerous goods’.**

(2) Section 160, ‘by road’—

*omit.*

(3) Section 160(2), ‘order’—

*omit, insert—*

‘make an order (an *exclusion order*)’.

- (4) Section 160(2)(b)—

*omit, insert—*

‘(b) the person’s criminal history to the extent the court considers it relevant to the making of the exclusion order;’.

- (5) Section 160—

*insert—*

‘(2A) However, the court must not make an exclusion order that prohibits the person from either of the following—

(a) driving a vehicle other than a dangerous goods vehicle;  
or

(b) registering a vehicle.’.

- (6) Section 160(3), after ‘an’—

*insert—*

‘exclusion’.

- (7) Section 160(4), ‘(2) does’—

*omit, insert—*

‘(2) and (2A) do’.

- (8) Section 160(5)—

*omit, insert—*

‘(5) If a court has made an exclusion order, the court may revoke or amend the exclusion order on the application of—

(a) the chief executive; or

(b) the person for whom the order was made but only if the court is satisfied there has been a change of circumstances warranting revocation or amendment and the chief executive was given reasonable notice of the application.

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- ‘(6) For subsection (5), the chief executive is entitled to appear and be heard and to give and produce evidence at the hearing of the application for or against the granting of the revocation or amendment.
- ‘(7) In this section—
- criminal history*, of a person, means each of the following despite the *Criminal Law (Rehabilitation of Offenders) Act 1986*, sections 6, 8 and 9—
- (a) every conviction of the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act;
- (b) every charge made against the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act.’

## **96 Amendment of s 161 (Forfeiting dangerous goods)**

- (1) Section 161(1), ‘by road’—  
*omit.*
- (2) Section 161(1), from ‘, whether or not’—  
*omit, insert—*  
‘order the dangerous goods or their packaging, or other things used to commit the offence, be forfeited to the State.’
- (3) Section 161(2), ‘Goods or a thing’—  
*omit, insert—*  
‘Dangerous goods, their packaging or other things’.
- (4) Section 161—  
*insert—*
- ‘(3) Subsection (1) does not limit the court’s power to make any other order on the conviction including an order under section 158.’

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**97 Replacement of s 162 (Helping in emergencies or accidents)**

Section 162—

*omit, insert—*

**‘161A Helping in emergencies or accidents**

- ‘(1) This section applies if an individual, other than an official mentioned in section 167—
- (a) helps, or attempts to help, in a situation in which an emergency or accident involving the transport of dangerous goods happens or is likely to happen; and
  - (b) the help, or attempt to help, is given—
    - (i) honestly and without negligence; and
    - (ii) without any fee, charge or other reward.
- ‘(2) The individual does not incur civil liability for helping or attempting to help.
- ‘(3) However, this section does not apply to an individual whose act or omission wholly or partly caused the emergency or accident involving the transport of dangerous goods.

**‘Part 5 Improvement notices**

**‘161B Improvement notices**

- ‘(1) This section applies if an authorised officer reasonably believes a person has contravened, is contravening or is likely to contravene a provision under this Act about the transport of dangerous goods or relating to a prescribed dangerous goods vehicle.
- ‘(2) The authorised officer may give the person a notice (an *improvement notice*) requiring the person to remedy the contravention or likely contravention, or the matters or

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activities occasioning the contravention or likely contravention, before the date stated in the notice.

- ‘(3) The improvement notice must state a date, with or without a time, by which the person is required to remedy the contravention or likely contravention, or the matters or activities causing the contravention or likely contravention, that the officer considers is reasonable having regard to—
- (a) the severity of any relevant risks; and
  - (b) the nature of the contravention or likely contravention.
- ‘(4) The improvement notice must state each of the following—
- (a) that the authorised officer reasonably believes that a person has contravened, is contravening or is likely to contravene a provision under this Act;
  - (b) the reasons for that belief;
  - (c) the provisions under this Act in relation to which that belief is held;
  - (d) that the person may—
    - (i) under section 65—ask for the decision to give an improvement notice to be reviewed and appeal against the reviewed decision; and
    - (ii) under the *Transport Planning and Coordination Act 1994*, part 5—ask for the decision or the reviewed decision to be stayed;
  - (e) that the notice is given under this section.
- ‘(5) The improvement notice may state the way the alleged contravention or likely contravention, or the matters or activities occasioning the alleged contravention or likely contravention, are to be remedied.

### ‘161C Contravention of improvement notice

‘A person given an improvement notice must comply with the notice, unless the person has a reasonable excuse.

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Maximum penalty—the maximum penalty for the contravention of the provision about which the notice is given.

**‘161D Improvement notice may be given by attaching to vehicle**

‘(1) If an improvement notice under section 161B relates to a vehicle, it may be given by securely attaching it to the vehicle in a conspicuous position.

‘(2) A person must not remove an improvement notice from the vehicle before complying with the notice.

Maximum penalty—135 penalty units.

‘(3) However, the person to whom the notice is given does not contravene subsection (2) if the person removes the notice from the vehicle and immediately reads it and reattaches it to the vehicle.

**‘161E Cancellation of an improvement notice**

‘(1) This section applies to an improvement notice given to a person.

‘(2) The chief executive may, by written notice to the person, cancel the improvement notice.

**‘Part 6 Dangerous situation notices and relevant oral directions**

**‘161F Application**

‘(1) This part applies only if an authorised officer reasonably believes a dangerous situation exists.

‘(2) A power may be exercised under this part despite anything to the contrary in chapter 3, part 3.

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### **‘161G Power to give notice about dangerous situation**

- ‘(1) This section applies if the authorised officer reasonably believes a person is in a position to take steps to prevent a dangerous situation.
- ‘(2) The authorised officer may give the person a written notice (a *dangerous situation notice*) requiring the person to take the steps reasonably necessary to prevent the dangerous situation.
- ‘(3) Without limiting subsection (2), the authorised officer may require the prime contractor or consignor of dangerous goods to provide equipment and other resources necessary—
  - (a) to control the dangerous situation; or
  - (b) to contain, control, recover or dispose of the goods that have leaked, spilled or escaped; or
  - (c) to recover a vehicle involved in the situation or its equipment.
- ‘(4) If the notice relates to a vehicle, it may be given by securely attaching it to the vehicle in a conspicuous position.
- ‘(5) A person must not remove a dangerous situation notice from a vehicle before the steps stated in the notice are taken.  
Maximum penalty—135 penalty units.
- ‘(6) However, the person to whom the notice is given does not contravene subsection (5) if the person removes the notice from the vehicle and immediately reads it and reattaches it to the vehicle.
- ‘(7) Without limiting the power under a regulation to confer a power on a relevant emergency service officer, a regulation may authorise a relevant emergency service officer to exercise by written notice the same power as the power mentioned in subsection (3) or a similar power.

### **‘161H Dangerous situation notice**

- ‘(1) A dangerous situation notice has effect—
  - (a) when it is given to the person; or

- (b) if the notice states a later date—on that date.
- ‘(2) A dangerous situation notice given to a person must state each of the following—
- (a) the notice is given under section 161G;
  - (b) the authorised officer believes a dangerous situation exists;
  - (c) the grounds for the belief;
  - (d) if the authorised officer believes the dangerous situation involves a contravention of an Act—the relevant provision of the Act;
  - (e) the person may—
    - (i) under section 65, ask for the decision to give the dangerous situation notice to be reviewed and appeal against the reviewed decision; and
    - (ii) under the *Transport Planning and Coordination Act 1994*, part 5, ask for the decision or the reviewed decision to be stayed;
  - (f) it is an offence to fail to comply with a dangerous situation notice;
  - (g) the maximum penalty for the offence of failing to comply with a dangerous situation notice.
- ‘(3) The dangerous situation notice may include a requirement about the steps to be taken to prevent the dangerous situation.
- ‘(4) A requirement may—
- (a) offer a choice of ways to prevent the dangerous situation; and
  - (b) prohibit the carrying out of an activity by stating—
    - (i) a place where the activity may not be carried out; or
    - (ii) a thing that may not be used in connection with the activity; or

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- (iii) a procedure that may not be followed in connection with the activity.

### **‘161I Contravention of dangerous situation notice**

‘A person given a dangerous situation notice must comply with the requirements stated in the notice, unless the person has a reasonable excuse for not doing so.

Maximum penalty—

- (a) if the contravention results in death or grievous bodily harm to a person—270 penalty units; or
- (b) otherwise—135 penalty units.

### **‘161J Oral direction may be given before dangerous situation notice is served**

‘(1) This section applies if an authorised officer reasonably believes—

- (a) a person is in a position to take steps to prevent a dangerous situation; and
- (b) it is not reasonable or immediately possible to give a dangerous situation notice.

‘(2) The authorised officer may give an oral direction to the person instead of a written notice.

‘(3) The oral direction must include—

- (a) the matters mentioned in section 161H(2)(b), (c) and (d); and
- (b) a statement that is an offence to fail to comply with an oral direction.

‘(4) The person must comply with the oral direction.

Maximum penalty—

- (a) if the contravention results in death or grievous bodily harm to a person—270 penalty units; or

- 
- (b) otherwise—135 penalty units.
- ‘(5) The oral direction must be confirmed in writing by any authorised officer giving a dangerous situation notice under section 161G as soon as practicable.
- ‘(6) The oral direction stops having effect if the dangerous situation notice is not given to the person within 5 days after the oral direction is given.

### **‘161K Cancellation of dangerous situation notice**

‘The chief executive may, by written notice to a person who was given a dangerous situation notice, cancel the notice.

### **‘161L Additional power to require information or produce document**

- ‘(1) If an authorised officer reasonably believes a person may be able to give information or produce a document that will help to prevent a dangerous situation, the officer may require the person to give the information or produce the document.

*Examples of information for subsection (1)—*

- properties of dangerous goods being transported
- safe ways of handling or containing and controlling the dangerous goods

- ‘(2) The person must give the information or produce the document unless the person has a reasonable excuse.

Maximum penalty—

- (a) if the contravention results in death or grievous bodily harm to a person—270 penalty units; or
- (b) otherwise—135 penalty units.
- ‘(3) The fact that giving the information or providing the document might tend to incriminate the person is not a reasonable excuse for subsection (2).
- ‘(4) However, the information or document is not admissible in evidence against the person, other than a corporation, in

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criminal proceedings apart from proceedings for an offence against sections 52 or 53.

**‘161M Proceedings for an offence not affected by dangerous situation notice**

‘The fact that a dangerous situation notice has been given or cancelled does not affect any proceedings for an offence against this Act.

**‘Part 7 Other matters**

**‘161N Preventing injury and damage—taking direct action**

- ‘(1) This section applies if the authorised officer reasonably believes—
- (a) a person given an improvement notice or dangerous situation notice has not complied with the notice; or
  - (b) having regard to the nature of the dangerous situation, action under an improvement notice or dangerous situation notice is inappropriate to prevent the dangerous situation.
- ‘(2) The authorised officer may take, or cause to be taken, the action the officer reasonably believes is necessary to prevent the dangerous situation.
- ‘(3) The action an authorised officer may take includes asking someone the officer reasonably believes has appropriate knowledge and experience to help the officer prevent the dangerous situation.
- ‘(4) If the person agrees to help, the person is taken to have the powers of an authorised officer to the extent reasonably necessary for the person to help prevent the dangerous situation.

- ‘(5) A power may be exercised under this section despite anything to the contrary in chapter 3, part 3.’

**98 Insertion of new ch 5AB**

After section 161O, as renumbered—

*insert—*

**‘Chapter 5AB Goods too dangerous to be transported**

**‘161P Application of Act to goods too dangerous to be transported**

- ‘(1) Unless otherwise provided, provisions of this Act relating to dangerous goods also apply in relation to goods too dangerous to be transported.
- ‘(2) Subject to subsection (6), this Act does not authorise the transport of goods too dangerous to be transported.
- ‘(3) For subsection (1)—
- (a) a reference in a provision of this Act to dangerous goods includes a reference to goods too dangerous to be transported; and
  - (b) a reference in a provision of this Act to a dangerous goods regulation includes a reference to a regulation that makes provision for goods too dangerous to be transported; and
  - (c) a reference in a provision of this Act to a dangerous goods vehicle includes a reference to a vehicle, or a combination that includes a vehicle, transporting goods too dangerous to be transported; and
  - (d) a reference in a provision of this Act to a suspected dangerous goods vehicle includes a reference to a vehicle, or a combination that includes a vehicle, that an

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authorised officer reasonably believes is transporting goods too dangerous to be transported; and

- (e) a reference in a provision of this Act to a prescribed dangerous goods vehicle includes a reference to a vehicle to which paragraph (c) or (d) applies.

‘(4) Subsections (1) and (3) do not apply to the following provisions—

- (a) section 18 and section 19C;
- (b) chapter 5A, parts 1 to 3;
- (c) section 154;
- (d) section 157A(1)(c).

‘(5) Also, subsections (1) and (3) do not apply to subordinate legislation made under this Act unless a particular instrument of subordinate legislation expressly provides.

‘(6) A requirement of this Act imposed because of this chapter does not apply to the transport of goods too dangerous to be transported to the extent the goods are transported by, or under the direction of, an authorised officer or relevant emergency service officer to prevent a dangerous situation.

### **‘161Q Consignment of goods too dangerous to be transported prohibited**

‘A person must not consign for transport goods too dangerous to be transported.

Maximum penalty—

- (a) if the contravention results in death or grievous bodily harm to a person—1320 penalty units or 2 years imprisonment; or
- (b) otherwise—665 penalty units or 1 year’s imprisonment.

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**‘161R Regulations about goods too dangerous to be transported**

- ‘(1) A regulation may make provision for goods too dangerous to be transported, including, for example, the following—
- (a) identifying, classifying and regulating goods that are too dangerous to be transported, including prohibiting the transport of the goods;
  - (b) the making of decisions by the chief executive for the purposes of a regulation in relation to the following—
    - (i) the identification and classification of goods as goods too dangerous to be transported;
    - (ii) the identification and classification of goods too dangerous to be transported;
  - (c) the analysis and testing of goods too dangerous to be transported.
- ‘(2) Without limiting subsection (1), a regulation may make provision about the recognition of laws of other jurisdictions relating to goods too dangerous to be transported, things done under those laws and giving effect to those things, including, for example, providing for—
- (a) the recognition of an entity (the *competent authorities panel*) whose membership includes the chief executive and dangerous goods authorities and that may be required to make decisions, and to provide oversight on decisions made, under this chapter in the interests of national uniformity; and
  - (b) for other matters in relation to the competent authorities panel.
- ‘(3) For subsection (2)(b), a regulation may provide that the chief executive must refer to the competent authorities panel—
- (a) an application made to the chief executive for a decision under this Act if the chief executive considers the decision should have effect in all participating dangerous goods jurisdictions or some of those jurisdictions including this jurisdiction; or

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- (b) a decision under this Act that has effect in all participating dangerous goods jurisdictions or some of those jurisdictions including this jurisdiction if—
    - (i) the chief executive considers the decision should be cancelled or amended; or
    - (ii) a dangerous goods authority recommended to the chief executive that the decision should be cancelled or amended;
  - (c) a recommendation by the chief executive to a dangerous goods authority that a decision given by the authority under a corresponding law, that has effect in all participating dangerous goods jurisdictions or some of those jurisdictions including this jurisdiction, if the chief executive considers a ground exists under the corresponding law for the authority to cancel or amend the decision.
- ‘(4) If a regulation provides that a matter must be referred to the competent authorities panel, the regulation may provide that the chief executive must have regard to the panel’s decision.
- ‘(5) A regulation may make provision in relation to an action taken or decision made by the competent authorities panel or a dangerous goods authority in relation to a matter considered by the competent authorities panel, including that the action or decision has effect in this jurisdiction as if it were an action or decision of the chief executive.
- ‘(6) The reference in subsection (1)(b) to the chief executive making decisions about particular matters does not limit the *Statutory Instruments Act 1992*, section 26, in relation to any other matter mentioned in this section.
- ‘(7) In this section—  
*amend* includes vary.’.

**99 Amendment of s 164A (Commercial benefits penalty order)**

- (1) Section 164A(1), after ‘heavy vehicle’—  
*insert—*  
‘, a prescribed dangerous goods vehicle or the transport of dangerous goods’.
- (2) Section 164A(7), definition *transport Act*—  
*omit, insert—*  
‘*transport Act* does not include the Queensland Road Rules.’.

**100 Amendment of s 167 (Protection from liability)**

- (1) Section 167(1), definition *official*—  
*insert—*  
‘(ea) a relevant emergency service officer; and’.
- (2) Section 167(1), definition *official*, paragraph (f), after ‘officer’—  
*insert—*  
‘or a relevant emergency service officer’.

**101 Amendment of s 168B (Giving evidence about heavy vehicle to external public authority)**

- (1) Section 168B, heading, after ‘vehicle’—  
*insert—*  
‘**or dangerous goods matter**’.
- (2) Section 168B(3), definition *prescribed evidence*, after ‘vehicle’—  
*insert—*  
‘or a dangerous goods matter’.

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**102 Amendment of s 168C (Chief executive may give information to corresponding authority)**

- (1) Section 168C(1)(a) and (b), after ‘vehicle’—  
*insert—*  
‘or a dangerous goods matter’.
- (2) Section 168C(3), definition *transport Act*—  
*omit, insert—*  
‘*transport Act* does not include the Queensland Road Rules.’.

**103 Amendment of s 168D (Contracting out in relation to heavy vehicles prohibited)**

- (1) Section 168D, heading, after ‘vehicles’—  
*insert—*  
‘etc.’.
- (2) Section 168D, after ‘vehicle’—  
*insert—*  
‘, a prescribed dangerous goods vehicle or the transport of dangerous goods’.

**104 Amendment of ch 7, pt 11, hdg (Validating provisions)**

- Chapter 7, part 11, heading, after ‘provisions’—  
*insert—*  
‘for Transport Legislation Amendment Act 2007’.

**105 Insertion of new ch 7, pt 13**

- Chapter 7—  
*insert—*

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**‘Part 13**                      **Transitional provisions for the  
Transport and Other  
Legislation Amendment Act  
2008, part 2, division 3**

**‘218 Remedial action notices**

- ‘(1) This section applies if a remedial action notice was validly given to a person under section 50A before the commencement of this section and the person had not complied with the notice before the commencement.
- ‘(2) The remedial action notice is taken to be an improvement notice validly given to the person under chapter 5A, part 5.
- ‘(3) The remedial action notice that is taken to be an improvement notice is subject to the same conditions that were applicable to the remedial action notice.

**‘219 Persons exempted before commencement**

- ‘(1) This section applies to a person who, before the commencement, was granted an exemption under section 153 of this Act and the exemption was in force at the commencement (the *old exemption*).
- ‘(2) On the commencement, the old exemption continues in force in accordance with its terms and conditions and is taken to be an exemption granted under this Act in relation to compliance with the old regulation.
- ‘(3) Without limiting subsection (2), if—
  - (a) the old exemption was granted on condition that it has effect only while the old regulation continues in effect; and
  - (b) the old regulation is repealed and remade by another regulation (the *new regulation*); and
  - (c) the new regulation provides that compliance with the old regulation in relation to a matter is satisfactory

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compliance with the matter despite the provisions about the matter in the new regulation;

then, despite the condition, the exemption continues to have effect for the matter.

‘(4) If the old exemption continues to be in force on 31 December 2009, it expires on that day.

‘(5) In this section—

*commencement* means the commencement of this section.

*old regulation* means the *Transport Operations (Road Use Management)—Dangerous Goods) Regulation 1998*.’.

## 106 Amendment of sch 3 (Reviewable decisions)

Schedule 3—

*insert—*

‘153	refusing to give exemption or giving an exemption on conditions	Magistrates
153E	amending, suspending or cancelling an exemption	Magistrates
153G	immediately suspending an exemption	Magistrates
161B	giving an improvement notice	Magistrates
161G	giving a dangerous situation notice	Magistrates’.

## 107 Amendment of sch 4 (Dictionary)

(1) Schedule 4, definitions *consignor, dangerous goods, dangerous situation notice, heavy vehicle evidence preservation powers, holder, journey documentation, loader, packaging, packer, prevent, proposed action, remedial action notice, transport and transport documentation—*  
*omit.*

(2) Schedule 4—

*insert—*

*'administrative determination'* means a decision prescribed under a dangerous goods regulation as an administrative determination.

*class exemption*, for chapter 5A, means an exemption that states it is an exemption in relation to a class of persons.

*consign* and *consignor*—

- 1 A person *consigns*, and is the *consignor* in relation to, goods transported or to be transported by a heavy vehicle or goods that are dangerous goods, if the person is any of the following—
  - (a) the person who has consented to being, and is, named or otherwise identified as the consignor of the goods in the transport documentation for the consignment;
  - (b) if there is no person as described in paragraph (a)—
    - (i) for goods transported or to be transported by a heavy vehicle—the person who engages an operator of the heavy vehicle, either directly or through another person, to transport the goods by road; or
    - (ii) for goods that are dangerous goods or goods too dangerous to be transported—the person who engages a prime contractor, either directly or through another person, to transport the goods; or
    - (iii) if there is no person as described in subparagraph (i) or (ii)—the person who has possession of, or control over, the goods immediately before the goods are transported by road; or
    - (iv) if there is no person as described in subparagraph (i), (ii) or (iii)—the person who loads a vehicle with the goods, for road transport, at a place—

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- (A) where goods in bulk are stored, temporarily held or otherwise held waiting collection; and
  - (B) that is unattended, other than by the driver or trainee driver of the vehicle or someone else necessary for the normal operation of the vehicle, during loading;
  - (c) if there is no person as described in paragraph (a) or (b) and the goods are imported into Australia through a place in Queensland—the importer of the goods.
- 2 Also, without limiting paragraph 1, a reference to a person who consigns goods transported or to be transported by a heavy vehicle or goods that are dangerous goods includes a person who arranges for the transport of goods on a vehicle owned or controlled by the person.

***dangerous goods*** means—

- (a) goods prescribed under a regulation to be dangerous goods; or
- (b) for implied references in relation to goods too dangerous to be transported—see chapter 5AB.

***dangerous goods authority*** means an entity in a participating dangerous goods jurisdiction that has functions under a corresponding law to chapter 5A that correspond to the chief executive's functions under that chapter.

***dangerous goods matter*** means a matter relating to any of the following—

- (a) dangerous goods or the transport of dangerous goods;
- (b) a prescribed dangerous goods vehicle, including a licence for the vehicle;
- (c) a person's involvement in the transport of dangerous goods, including a person's licence for that involvement;

- 
- (d) any application for or relating to a licence mentioned in paragraph (b) or (c);
  - (e) any offence relating to a matter mentioned in paragraph (a), (b) or (c).

***dangerous goods regulation*** means a regulation—

- (a) that—
  - (i) is made under chapter 5A applying to dangerous goods, and the transport of dangerous goods including dangerous goods vehicles; and
  - (ii) states it is a dangerous goods regulation; or
- (b) for implied references in relation to goods too dangerous to be transported—see chapter 5AB.

***dangerous goods vehicle*** means—

- (a) a vehicle transporting dangerous goods if a dangerous goods regulation applies to the transporting of the dangerous goods, whether or not the vehicle is also a heavy vehicle; or
- (b) a combination that includes a vehicle mentioned in paragraph (a); or
- (c) for implied references in relation to goods too dangerous to be transported—see chapter 5AB.

***dangerous situation notice*** see section 161G(2).

***evidence preservation powers*** means powers that may be exercised under section 26A, 26B, 30A or 40A.

***exemption***, for chapter 5A, means an exemption given under section 153.

***goods too dangerous to be transported*** means goods prescribed under a dangerous goods regulation as goods too dangerous to be transported.

***holder***—

- (a) for chapter 3, part 1A, means the holder of an approval; or

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- (b) for chapter 5A, part 3, means the following—
  - (i) for an exemption other than a class exemption—the holder of the exemption;
  - (ii) for a class exemption—the person stated in the exemption as the class representative for the exemption.

***improvement notice*** see section 161B(2).

***involvement in the transport of dangerous goods*** includes any of the following—

- (a) importing, or arranging for the importation of, dangerous goods into Australia;
- (b) packing dangerous goods for transport;
- (c) marking or labelling packages containing dangerous goods for transport, and placarding vehicles and packaging in which dangerous goods are or are to be transported;
- (d) consigning dangerous goods for transport, including the preparation of transport documentation;
- (e) loading dangerous goods for transport or unloading dangerous goods that have been transported;
- (f) undertaking, or being responsible for, otherwise than as an employee or subcontractor, the transport of dangerous goods;
- (g) driving a vehicle on a road carrying dangerous goods;
- (h) being the consignee of dangerous goods transported;
- (i) being involved as a director, secretary or manager of a corporation, or other person who takes part in the management of a corporation, that takes part in something mentioned in paragraphs (a) to (h).

***journey documentation***—

- (a) means a document, other than transport documentation, in any form—

- (i) directly or indirectly associated with—
  - (A) a transaction for the actual or proposed transport of goods, other than dangerous goods, by use of a heavy vehicle, or for a previous transport of the goods in any way; or
  - (B) a transaction for the actual or proposed transport of dangerous goods by use of a vehicle, or for a previous transport of the goods in any way; or
  - (C) goods, including dangerous goods, to the extent the document is relevant to a transaction for their actual or proposed transport; and
- (ii) whether relating to a particular journey or to journeys generally; and
- (b) includes, for example, any or all of the following—
  - (i) a document kept, used or obtained by a responsible person for a heavy vehicle in connection with the transport of goods including dangerous goods;
  - (ii) a document kept, used or obtained by a person involved in the transport of dangerous goods or for a prescribed dangerous goods vehicle in connection with the transport of the dangerous goods;
  - (iii) a workshop, maintenance or repair record relating to a heavy vehicle or prescribed dangerous goods vehicle used, or claimed to be used, for transporting the goods or the dangerous goods;
  - (iv) a subcontractor's payment advice relating to the goods or the dangerous goods, or their transport;
  - (v) records kept, used or obtained by the driver of the heavy vehicle or prescribed dangerous goods vehicle used, or claimed to be used, for transporting the goods or the dangerous goods;

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*Examples—*

- a driver's run sheet
  - a logbook entry
  - a fuel docket or receipt
  - a food receipt
  - a tollway receipt
  - a pay record
  - a mobile or other phone record
- (vi) information reported through the use of an intelligent transport system;
- (vii) a driver manual or instruction sheet;
- (viii) an advice resulting from check weighing of a heavy vehicle's mass or load performed before, during or after a journey.

***load*** and ***loader***—

A person ***loads*** goods in a heavy vehicle or goods that are dangerous goods, and is the ***loader*** of the goods, if a person is either or both of the following—

- (a) for goods in a heavy vehicle, a person who—
- (i) loads the vehicle with the goods for road transport; or
  - (ii) loads a bulk container, freight container, or tank that is part of the vehicle, with the goods for road transport; or
  - (iii) loads the vehicle with a freight container, whether or not it contains goods, for road transport;
- (b) for dangerous goods in any vehicle, a person who—
- (i) loads 1 or more packages of the goods in or on the vehicle; or
  - (ii) places or secures 1 or more packages of the goods on the vehicle; or

(iii) supervises an activity mentioned in subparagraph (i) or (ii); or

(iv) manages or controls an activity mentioned in subparagraphs (i), (ii) or (iii);

but does not include loading goods into packaging already on the vehicle or placing or securing packages in or on further packaging already on the vehicle.

*Note—*

A person may be a ‘loader’ under both paragraph (a) and (b) or may be a loader under only 1 of the paragraphs depending on the type of vehicle in question and the type of good in question.

***pack*** and ***packer***—

A person ***packs*** dangerous or other goods, and is the ***packer*** of the goods, if the person—

(a) puts goods in packaging, even if that packaging is already on a vehicle; or

*Example for paragraph (a)—*

A person who uses a hose to fill the tank of a tank vehicle with petrol packs the petrol for transport.

(b) encloses or otherwise contains more than one package, even if that packaging is already on a vehicle; or

(c) supervises an activity mentioned in paragraph (a) or (b); or

(d) manages or controls an activity mentioned in paragraph (a), (b) or (c).

***package***, in relation to goods including dangerous goods, means the complete product of the packing of the goods for transport, and consists of the goods and their packaging.

***packaging***, in relation to goods—

(a) means anything that contains, holds, protects or encloses the goods, whether directly or indirectly, to enable them to be received or held for transport, or to be transported; and

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- (b) includes anything prescribed under a dangerous goods regulation to be packaging.

*Notes—*

- 1 It may be that a container constitutes the whole of the packaging of goods, as in the case of a drum in which goods, including for example dangerous goods, are directly placed.
- 2 The term is not used in the same way as it is used in United Nations publications relating to the transport of dangerous goods.

***participating dangerous goods jurisdiction*** means a State that has a corresponding law to chapter 5A unless a dangerous goods regulation provides that the State is not a participating dangerous goods jurisdiction.

***placard*** means a label or emergency information panel that is required under a dangerous goods regulation to be used in transporting dangerous goods.

***prescribed dangerous goods vehicle*** means—

- (a) a dangerous goods vehicle; or
- (b) a suspected dangerous goods vehicle; or
- (c) for implied references in relation to goods too dangerous to be transported—see chapter 5AB.

***prevent***, in relation to a situation involving the transport of dangerous goods, includes avert, eliminate, minimise, remove and stop.

***prime contractor***, in relation to the transport of dangerous goods, means the person who, in conducting a business for or involving the transport of dangerous goods, has undertaken to be responsible for, or is responsible for, the transport of the goods.

***proposed action***, for chapter 5, part 7A, division 4, see 122J.

***relevant emergency service officer*** means an officer of any of the following—

- (a) the Queensland Ambulance Service;
- (b) the Queensland Fire and Rescue Service;

- (c) the Queensland Police Service;
- (d) the State Emergency Service;
- (e) a service of another State, corresponding to a service mentioned in paragraph (a) to (d), if the State is a participating dangerous goods jurisdiction; or
- (f) a unit of the Australian Defence Force corresponding to a service mentioned in paragraph (a) to (d).

***suspected dangerous goods vehicle*** means—

- (a) any of the following vehicles or a combination that includes any of the following vehicles—
  - (i) a vehicle with a placard on it;
  - (ii) a vehicle carrying a container that has a placard on it;
  - (iii) a vehicle that an authorised officer reasonably believes is a dangerous goods vehicle;
  - (iv) a vehicle that an authorised officer reasonably believes is licensed under a dangerous goods regulation; or
- (b) for implied references in relation to goods too dangerous to be transported—see chapter 5AB.

***transport***, in relation to dangerous goods, includes each of the following—

- (a) the packing, loading and unloading of the goods, and the transfer of the goods to or from a vehicle, for their transport by road;
- (b) the marking or labelling of packages containing dangerous goods for their transport by road;
- (c) the placarding of vehicles and packaging in which dangerous goods are transported, or are to be transported, by road;

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- (d) other matters incidental to their transport, or in preparation for their transport, by road;
- (e) the actual transporting of goods by road.

***transport documentation*** means each of the following—

- (a) for a heavy vehicle—
  - (i) each contractual document directly or indirectly associated with—
    - (A) a transaction for the actual or proposed road transport of goods or any previous transport of the goods by any transport method; or
    - (B) goods, to the extent the document is relevant to the transaction for their actual or proposed road transport; or
  - (ii) each document—
    - (A) contemplated in a contractual document mentioned in subparagraph (i); or
    - (B) required by law, or customarily given, in connection with a contractual document or transaction mentioned in subparagraph (i);

*Examples—*

- a bill of lading
- a consignment note
- a container weight declaration
- a contract of carriage
- a delivery order
- an export receipt advice
- an invoice
- a load manifest
- a sea carriage document
- a vendor declaration

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- (b) for the transport of dangerous goods or for a dangerous goods vehicle—documentation required to be kept under a dangerous goods regulation.’.
- (3) Schedule 4, definition *base*, after ‘of a heavy vehicle’—  
*insert*—  
‘or a prescribed dangerous goods vehicle’.
- (4) Schedule 4, definition *consignee*, after ‘a heavy vehicle’—  
*insert*—  
‘or goods that are dangerous goods’.
- (5) Schedule 4, definition *consignee*, paragraph (a)(ii), ‘by the heavy vehicle’—  
*omit*.
- (6) Schedule 4, definition *dangerous situation*, ‘by road’—  
*omit*.
- (7) Schedule 4, definition *fit*, ‘or run’—  
*omit, insert*—  
‘or prescribed dangerous goods vehicle, or to run’.
- (8) Schedule 4, definition *fit*—  
*insert*—  
‘(d) not found at any relevant time to be under the influence of a drug or have a relevant drug present in the person’s blood or saliva.’.
- (9) Schedule 4, definition *garage address*, after ‘of a heavy vehicle’—  
*insert*—  
‘or a prescribed dangerous goods vehicle’.
- (10) Schedule 4, definition *garage address*, paragraphs (a) and (b), ‘heavy’—  
*omit*.

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- (11) Schedule 4, definition *operator*, after ‘heavy vehicle’—  
*insert*—  
‘or prescribed dangerous goods vehicle’.
- (12) Schedule 4, definition *person in control*, paragraph (d)—  
*omit, insert*—  
‘(d) for a heavy vehicle or prescribed dangerous goods vehicle—a person in or near the vehicle who is a two-up driver for it.’.
- (13) Schedule 4, definition *prescribed heavy vehicle*, paragraph (a)(iv)—  
*omit, insert*—  
‘(iv) a dangerous goods vehicle;’.
- (14) Schedule 4, definition *prescribed heavy vehicle*, paragraph (b), after ‘paragraph (a)’—  
*insert*—  
‘(i), (ii), (iii) or (vi)’.
- (15) Schedule 4, definition *qualified*, ‘or run’—  
*omit, insert*—  
‘or prescribed dangerous goods vehicle, or to run’.
- (16) Schedule 4, definition *relevant drug*, after ‘part 3’—  
*insert*—  
‘or this schedule’.
- (18) Schedule 4, definition *two-up driver*, after ‘heavy vehicle’—  
*insert*—  
‘or prescribed dangerous goods vehicle’.
- (19) Schedule 4, definition *unattended*, after ‘heavy vehicle’—  
*insert*—  
‘or prescribed dangerous goods vehicle’.

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**Part 3**                      **Amendment of Acts for  
purposes relating to general  
rail matters**

**Division 1**                **Amendment of Anti-Discrimination  
Act 1991**

**108**    **Act amended in div 1**

This division amends the *Anti-Discrimination Act 1991*.

**109**    **Amendment of s 106A (Compulsory retirement age under  
legislation etc.)**

Section 106A(1)(i) and (j)—

*omit, insert—*

‘(i) the chief executive officer of QR Limited ACN  
124649967; or

(j) an employee of QR Limited ACN 124649967; or’.

**Division 2**                **Amendment of Assisted Students  
(Enforcement of Obligations) Act  
1951**

**110**    **Act amended in div 2**

This division amends the *Assisted Students (Enforcement of  
Obligations) Act 1951*.

**111**    **Amendment of s 2 (Meaning of terms)**

Section 2, definition *chief executive*—

*omit.*

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### **Division 3                      Amendment of Criminal Code**

#### **112    Act amended in div 3**

This division amends the Criminal Code.

#### **113    Amendment of s 1 (Definitions)**

Section 1, definition *person employed in the public service*,  
from ‘of Queensland Railways’—

*omit, insert—*

‘officer of QR Limited ACN 124649967 and persons  
employed by QR Limited.’.

### **Division 4                      Amendment of Electrical Safety Act 2002**

#### **114    Act amended in div 4**

This division amends the *Electrical Safety Act 2002*.

#### **115    Amendment of sch 2 (Dictionary)**

Schedule 2, definition *electricity entity*, paragraph (c)—

*omit, insert—*

‘(c) QR Network Pty Ltd ACN 132181116.’.

### **Division 5                      Amendment of Electricity Act 1994**

#### **116    Act amended in div 5**

This division amends the *Electricity Act 1994*.

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**117 Amendment of s 20Q (Exemptions for Queensland Rail)**

- (1) Section 20Q, heading, ‘Queensland Rail’—  
*omit, insert—*  
**‘QR Limited and QR Network Pty Ltd’.**
- (2) Section 20Q(1) and (2), ‘Queensland Rail is’—  
*omit, insert—*  
**‘QR Limited and QR Network Pty Ltd are’.**
- (3) Section 20Q(3), definition *Brisbane Airport Rail Link*, ‘Queensland Rail’s’—  
*omit, insert—*  
**‘QR Network Pty Ltd’s’.**
- (4) Section 20Q(3), definition *third party access holder*, ‘Queensland Rail,’ to ‘Rail’s’—  
*omit, insert—*  
**‘QR Limited or QR Network Pty Ltd, is entitled to access and use a nominated part of its’.**
- (5) Section 20Q(3)—  
*insert—*  
**‘QR Limited** means QR Limited ACN 124649967.  
**QR Network Pty Ltd** means QR Network Pty Ltd ACN 132181116.’.

**Division 6 Amendment of Freedom of Information Act 1992**

**118 Act amended in div 6**

This division amends the *Freedom of Information Act 1992*.

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**119 Amendment of sch 2 (Application of Act to GOCs)**

Schedule 2, item 1, column 1, ‘Queensland Rail’—  
*omit, insert—*  
‘QR Limited ACN 124649967’.

**Division 7 Amendment of Integrated Planning Act 1997**

**120 Act amended in div 7**

This division amends the *Integrated Planning Act 1997*.

**121 Amendment of sch 9 (Development that is exempt from assessment against a planning scheme)**

(1) Schedule 9, table 4, item 4, heading, ‘Queensland Rail’—  
*omit, insert—*  
‘railway manager’.

(2) Schedule 9, table 4, item 4, from ‘Queensland Rail’—  
*omit, insert—*

‘a railway manager, within the meaning of the *Transport Infrastructure Act 1994*, under section 260 of that Act.’.

**Division 8 Amendment of Judicial Review Act 1991**

**122 Act amended in div 8**

This division amends the *Judicial Review Act 1991*.

**123 Amendment of sch 6 (Application of Act to GOCs)**

Schedule 6, item 1, column 1, from ‘Queensland’ to ‘that’—

*omit, insert—*

‘QR Limited ACN 124649967, or a port authority (within the meaning of the *Transport Infrastructure Act 1994*) that’.

**Division 9 Amendment of Metropolitan Water Supply and Sewerage Act 1909**

**124 Act amended in div 9**

This division amends the *Metropolitan Water Supply and Sewerage Act 1909*.

**125 Amendment of s 31 (Interference with railway works)**

(1) Section 31(1), ‘property vested in the Queensland Rail’—

*omit, insert—*

‘rail corridor land’.

(2) Section 31(1) ‘to the Queensland Rail’—

*omit, insert—*

‘to the railway manager for the land’.

(3) Section 31(2) and (3), ‘the Queensland Rail’—

*omit, insert—*

‘the railway manager’.

(4) Section 31(2), from ‘objections’ to ‘, Queensland Rail’—

*omit, insert—*

‘objections the manager has to the proposed works, the manager’.

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(5) Section 31—

*insert—*

‘(5) In this section—

*rail corridor land* has the meaning given by the *Transport Infrastructure Act 1994*.

*railway manager*, for rail corridor land, has the meaning given by the *Transport Infrastructure Act 1994*.’.

## **Division 10                      Amendment of Mineral Resources Act 1989**

### **126      Act amended in div 10**

This division amends the *Mineral Resources Act 1989*.

### **127      Amendment of s 404A (Distance of excavation from railway works)**

(1) Section 404A(3)(a), from ‘Queensland’—

*omit, insert—*

‘the railway manager for the railway; and’.

(2) Section 404A(4)—

*insert—*

‘*railway manager*, for the railway, has the meaning given by the *Transport Infrastructure Act 1994*.’.

### **128      Amendment of schedule (Dictionary)**

Schedule, definition *reserve*, paragraph (a)(vii)(B)—

*insert—*

*Note—*

Queensland Rail was a statutory GOC and is now a GOC called QR Limited ACN 124649967.’.

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## **Division 11                      Amendment of South Bank Corporation Act 1989**

### **129      Act amended in div 11**

This division amends the *South Bank Corporation Act 1989*.

### **130      Amendment of s 17 (Vesting of public lands other than roads)**

Section 17(4), definition *land*, ‘Queensland Rail’—  
*omit, insert—*  
‘QR Limited ACN 124649967’.

### **131      Replacement of s 38 (Continuance of railway operations)**

Section 38—  
*omit, insert—*

### **‘38      Continuance of railway operations**

- ‘(1) The approved development plan must provide for the following—
- (a) the as of right use of land owned by QR Limited within the corporation area, by a railway manager or railway operator for conducting railway operations for the carriage of passengers or goods on the land;
  - (b) reasonable access to land used for conducting railway operations by—
    - (i) the railway manager or railway operator conducting the operations; or
    - (ii) employees of the railway manager or railway operator conducting the operations; or
    - (iii) members of the public wishing to use the railway to which the operations relate.

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‘(2) In this section—

***QR Limited*** means QR Limited ACN 124649967.

***railway manager***, for railway operations conducted on land owned by QR Limited, means a railway manager (within the meaning of the *Transport Infrastructure Act 1994*) for a railway on the land, who has an agreement with QR Limited to access the land for conducting railway operations relating to the railway.

***railway operator***, for railway operations conducted on land owned by QR Limited, means a railway operator (within the meaning of the *Transport Infrastructure Act 1994*) for a railway on the land, who has an agreement with the railway manager for the railway operations to use the railway for railway operations.’.

## **Division 12                      Amendment of Transport Infrastructure Act 1994**

### **132    Act amended in div 12**

This division amends the *Transport Infrastructure Act 1994*.

### **133    Amendment of s 20 (Transport GOCs)**

Section 20, ‘Queensland Rail’—

*omit, insert—*

‘QR Limited’.

### **134    Amendment of s 240 (Sublease of land to railway managers)**

(1) Section 240(2), from ‘Governor’—

*omit, insert—*

‘Minister administering the *Land Act 1994* must lease it to the State under section 17(2) of that Act.’.

(2) Section 240—

*insert—*

‘(6A) Subsections (2) to (6) are subject to section 240AA.’.

### 135 Insertion of new s 240AA

After section 240—

*insert—*

#### ‘240AA Interests in commercial corridor land continue after acquisition

‘(1) This section applies if—

(a) the acquired land mentioned in section 240(1)(a) is commercial corridor land; and

(b) the land—

(i) becomes unallocated State land; and

(ii) is subleased to a railway manager under section 240(4).

‘(2) All interests in the acquired land, other than the interest of the owner, at the time the acquired land becomes unallocated State land continue in the sublease on the same terms as an interest in the acquired land, with the railway manager as sublessee substituted for the owner of the acquired land as a party to the interest.

‘(3) Subsection (2) applies despite the *Land Act 1994*, section 331(2).

‘(4) The registrar of titles must record each registered interest continued under subsection (2) on the sublease in the leasehold land register.

‘(5) In this section—

***owner***, of acquired land, means the owner of the acquired land before it becomes unallocated State land.

***registered interest*** means an interest registered under the *Land Title Act 1994*.’.

**136 Amendment of s 240A (Registered interests in rail corridor land)**

(1) Section 240A(1)(a)—

*omit, insert—*

‘(a) a railway manager’s sublease for a section of rail corridor land—

(i) expires; or

(ii) is surrendered or terminated; and’.

(2) Section 240A(2) and note, ‘surrender’—

*omit, insert—*

‘expiry, surrender or termination’.

**137 Amendment of s 240B (Unregistered rights in rail corridor land)**

(1) Section 240B(1)(a)—

*omit, insert—*

‘(a) a railway manager’s sublease for a section of rail corridor land—

(i) is to expire or be surrendered; or

(ii) is terminated; and’.

(2) Section 240B(2)—

*omit, insert—*

‘(2) If the sublease is to expire or be surrendered, the railway manager must give the chief executive details of all unregistered rights in the sublease at least 3 months before the expiry or surrender of the sublease.

‘(2A) Subsection (2) does not apply to a sublease that is to expire if the railway manager and the chief executive, acting on behalf of the State, agree to renew the sublease before or immediately after the expiry.

- 
- (2B) If the sublease is terminated, the railway manager must give the chief executive details of all unregistered rights in the sublease within 3 months after the termination of the sublease.’.
- (3) Section 240B(3), ‘surrender’—  
*omit, insert—*  
‘expiry, surrender or termination’.
- (4) Section 240B(5)(b), ‘that has been surrendered’—  
*omit, insert—*  
‘the subject of the sublease that has expired or been surrendered or terminated’.

**138 Amendment of s 240F (Cancellation of right of access)**

- Section 240F(3)(b)(i), ‘section 240A(8)(a)’—  
*omit, insert—*  
‘section 240E(8)(a)’.

**139 Amendment of s 241 (Railway tunnel easements)**

- (1) Section 241 (2) to (6)—  
*omit, insert—*
- ‘(2) The State may grant a licence in relation to the easement to a railway manager.
- ‘(3) If the State grants a licence as mentioned in subsection (2), the railway manager may grant a sublicense to a railway operator.’.
- (2) Section 241(7) and (8)—  
*renumber* as section 241(4) and (5).

[s 140]

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**140 Replacement of s 248 (Queensland Rail not a common carrier)**

Section 248—

*omit, insert—*

**‘248 QR Limited and wholly owned subsidiaries not common carriers**

- ‘(1) QR Limited is not a common carrier.
- ‘(2) A wholly owned subsidiary of QR Limited is not a common carrier.’.

**141 Amendment of s 260 (Works for existing railways)**

- (1) Section 260, ‘Queensland Rail’—

*omit, insert—*

‘QR Limited’.

- (2) Section 260(6), ‘Queensland Rail’s’—

*omit, insert—*

‘QR Limited’s’.

**142 Replacement of s 260A (Transfer of obligations for existing railway to new railway manager)**

Section 260A—

*omit, insert—*

**‘260A Transfer of obligations for existing railway to new railway manager**

- ‘(1) This section applies if—
  - (a) QR Limited has obligations under section 260 in relation to a railway that it subleases; and
  - (b) either of the following happens (the *relevant event*)—
    - (i) the railway is subleased to another railway manager following QR Limited surrendering its sublease of the railway;

- (ii) QR Limited transfers the sublease to another railway manager; and
  - (c) the other railway manager operates the railway as a railway.
- ‘(2) After the relevant event, section 260 applies to the other railway manager as if a reference in section 260 to QR Limited were a reference to the other railway manager.’

**143 Amendment of ch 13, hdg (Function of Queensland Rail)**

Chapter 13, heading, ‘Queensland Rail’—

*omit, insert—*

‘**QR Limited**’.

**144 Amendment of s 438 (Function)**

- (1) Section 438(1), ‘Queensland Rail’—

*omit, insert—*

‘**QR Limited**’.

- (2) Section 438(3)—

*omit, insert—*

- ‘(3) QR Limited is taken to have had the function from when Queensland Rail became a GOC.’

- (3) Section 438(4), ‘Queensland Rail’—

*omit, insert—*

‘**QR Limited**’.

**145 Amendment of ch 18, hdg (Further transitional provisions)**

Chapter 18, heading, after ‘provisions’—

*insert—*

‘**and declaration**’.

[s 146]

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**146 Insertion of new ch 18, pt 10**

Chapter 18—

*insert—*

**‘Part 10 Transitional provision and  
declaration for Transport and  
Other Legislation Amendment  
Act 2008, part 3, division 12**

**‘547 Declaration about particular subleases**

‘(1) This section applies to—

- (a) amendment to sublease 701720343 executed on 29 August 2008 by the State of Queensland and QR Limited and lodged with the registrar of titles under dealing number 711947329; and
- (b) transfers of the following subleases from QR Limited to QR Network Pty Ltd executed on 29 August 2008—
  - 701720343
  - 709548151
  - 709650878.

‘(2) For the *Land Act 1994*, section 302, the amendment and transfers are taken to have been registered on 1 September 2008.

**‘548 Declaration about sch 4 easements**

- ‘(1) This section applies to the transfers of schedule 4 easements from QR Limited to the State of Queensland executed on 29 August 2008.
- ‘(2) For the *Land Title Act 1994*, section 62, the transfers are taken to have been registered on 1 September 2008.

‘(3) In this section—

*schedule 4 easement* means an easement mentioned in schedule 4.

**‘549 Exercise of power under s 241**

‘(1) This section applies to an easement to which section 241 applies.

‘(2) An exercise of power under previous section 241 continues to have effect under this Act, including an exercise of power by QR Limited.

*Note—*

Previous section 241 mentioned Queensland Rail but on 1 July 2007 Queensland Rail became QR Limited.’.

‘(3) Without limiting subsection (2), in relation to the grant of a licence to a railway manager or the grant of a sublicence to a railway operator under previous section 241, the grant is taken to have been made under section 241 and may be dealt with under that section.

‘(4) In this section—

*previous section 241* means section 241 as in force immediately before the commencement of this section.

**‘550 Application of s 260A in relation to transfer of sublease 701720343**

‘(1) Section 260A as in force after the commencement applies in relation to the transfer of sublease 701720343 from QR Limited to QR Network Pty Ltd on the transfer day, as if section 260A as in force immediately after the commencement were in force at the start of the transfer day.

‘(2) In this section—

*commencement* means commencement of this section.

*transfer day* means 1 September 2008.’.

[s 147]

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## **147 Amendment of sch 6 (Dictionary)**

- (1) Schedule 6—

*insert—*

*‘QR Limited* means QR Limited ACN 124649967.

*QR Network Pty Ltd* means QR Network Pty Ltd ACN 132181116.

*registrar of titles* means a public official or authority responsible for registering title to land and dealings affecting land.’.

- (2) Schedule 6, definition *non-rail corridor land*, paragraph (b), ‘has been surrendered.’—

*omit, insert—*

‘has—

- (i) expired; or
- (ii) been surrendered or terminated.’.

## **Division 13 Amendment of Transport Operations (Passenger Transport) Act 1994**

### **148 Act amended in div 13**

This division amends the *Transport Operations (Passenger Transport) Act 1994*.

### **149 Amendment of s 111 (Appointment of authorised persons etc.)**

Section 111(6), ‘Queensland Rail’—

*omit, insert—*

‘QR Passenger Pty Ltd ACN 132181090’.

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**Division 14                      Amendment of Transport (South  
Bank Corporation Area Land) Act  
1999**

**150    Act amended in div 14**

This division amends the *Transport (South Bank Corporation Area Land) Act 1999*.

**151    Amendment of s 13 (Exemption from fees and charges)**

Section 13, 'Queensland Rail'—  
*omit, insert—*  
'QR Limited ACN 124649967'.

**Division 15                      Amendment of Valuation of Land  
Act 1944**

**152    Act amended in div 15**

This division amends the *Valuation of Land Act 1944*.

**153    Amendment of s 14 (Deciding unimproved value of  
certain land)**

Section 14(5)(c), 'Queensland Rail,'—  
*omit.*

## **Part 4**                      **Amendment of Acts for purposes relating to heavy vehicle reform**

### **Division 1**                **Amendment of Transport Legislation Amendment Act 2007**

#### **154**    **Act amended in div 1**

This division amends the *Transport Legislation Amendment Act 2007*.

#### **155**    **Amendment of s 70 (Amendment of s 163 (Forfeiture on conviction))**

Section 70, inserted section 163(8), definition *extreme overloading offence*—

*omit, insert*—

*‘extreme overloading offence* means a severe risk breach of a mass requirement applying to a heavy vehicle if the subject matter of the contravention is equal to or greater than 160% of the mass requirement (rounded up to the nearest 0.1t) applying to the vehicle under this Act.’.

*Editor’s note*—

The legislation ultimately amended is the *Transport Operations (Road Use Management) Act 1995*.

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**Division 2                      Amendment of Transport  
Operations (Road Use Management)  
Act 1995 to commence on assent**

**156      Act amended in div 2**

This division amends the *Transport Operations (Road Use Management) Act 1995*.

**157      Amendment of s 18 (Grounds for amending, suspending  
or cancelling approvals)**

Section 18(1)(j)(ii), ‘grant.’—

*omit, insert—*

‘grant;’.

**158      Insertion of new s 19B**

Chapter 3, part 1A—

*insert—*

**‘19B      Application of ss 18–19A to corresponding approvals**

‘(1) Sections 18 to 19A apply to a corresponding approval as if—

- (a) each reference in the sections to an approval included a reference to a corresponding approval; and
- (b) each reference in the sections to an approval of a particular type included a reference to a corresponding approval of the same type.

*Example for paragraph (b)—*

The reference in section 18(1)(i) to an approval that is an accreditation or exemption granted under a fatigue management regulation includes a reference to a corresponding approval that is an accreditation or exemption of the same type as the accreditation or exemption granted under the fatigue management regulation.

‘(2) However, if the chief executive amends, suspends or cancels a corresponding approval under section 19 or 19A, the

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amendment, suspension or cancellation applies only to the extent to which the corresponding approval has effect in Queensland under section 168A or 168AA.

*Example for subsection (2)—*

If the chief executive suspends a corresponding approval granted in Victoria under a corresponding law to the fatigue management regulation, the suspension only applies to the extent to which the corresponding approval has effect in Queensland under section 168A. The suspension does not apply to the effect of the corresponding approval in Victoria or any other State.

‘(3) In this section—

***corresponding approval*** means an approval of a type to which this part applies that—

- (a) is given or granted by a corresponding authority under or in connection with a corresponding law to a transport Act; and
- (b) has effect in Queensland under section 168A or 168AA.’.

**159 Amendment of s 39J (Meaning of *fatigue regulated heavy vehicle*)**

Section 39J—

*insert—*

‘(5) For this section, the GVM of a combination is the total of the GVMs of the vehicles in the combination.’.

**160 Amendment of s 39K (Requiring person to rest for contravention of maximum work requirement)**

Section 39K(1)—

*omit, insert—*

‘(1) This section applies if an authorised officer reasonably believes—

- (a) the person in control of a fatigue regulated heavy vehicle has contravened a maximum work requirement

by working for a period in excess of the maximum period allowed under the requirement; and

- (b) the person is impaired by fatigue or there is a risk the person may be impaired by fatigue having regard to the nature of the contravention and how recently it happened.’.

**161 Amendment of s 39L (Requiring person to rest for contravention of minimum rest requirement)**

Section 39L(1)—

*omit, insert—*

- ‘(1) This section applies if an authorised officer reasonably believes—
  - (a) the person in control of a fatigue regulated heavy vehicle has contravened a minimum rest requirement by taking a period of rest that is shorter than the minimum period of rest required under the requirement; and
  - (b) the person is impaired by fatigue or there is a risk the person may be impaired by fatigue having regard to the nature of the contravention and how recently it happened.’.

**162 Amendment of s 57AB (Definitions for sdiv 2)**

- (1) Section 57AB, definition *influencing person*, paragraphs (c) to (e)—

*renumber* as paragraphs (d) to (f).

- (2) Section 57AB, definition *influencing person*—

*insert—*

- ‘(c) for an offence relating to a contravention of an exemption record requirement involving a heavy vehicle, includes the employer of the driver of the heavy vehicle; and’.

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## **163 Insertion of new ss 61H–61J**

After section 61G—

*insert—*

### **‘61H Particular label indicates device is an approved electronic recording system**

- ‘(1) This section applies if a device has attached to it an electronic work diary label.
- ‘(2) The existence of the electronic work diary label on the device is evidence that the device is, or is a part of, an approved electronic recording system.
- ‘(3) In this section—

*approved electronic recording system* has the meaning given by a fatigue management regulation.

*electronic work diary label* has the meaning given by a fatigue management regulation.

### **‘61I Documents produced by an electronic work diary**

- ‘(1) A document purporting to be made by an electronic work diary—
  - (a) is admissible in a proceeding under a transport Act relating to a fatigue regulated heavy vehicle; and
  - (b) is evidence of the matters stated in it.
- ‘(2) In this section—

*electronic work diary* has the meaning given by a fatigue management regulation.

### **‘61J Statement by person involved with operation of electronic work diary**

- ‘(1) A written statement about how an electronic work diary has operated or been maintained that purports to be made by the person purporting to be involved in the operation or maintenance—

- 
- (a) is admissible in a proceeding under a transport Act relating to a fatigue regulated heavy vehicle; and
- (b) is evidence of the matters included in the statement.

*Examples of statements for subsection (1)—*

- a statement made by the driver of a fatigue regulated heavy vehicle who uses an electronic work diary about how the driver operated the work diary
- a statement made by the owner of an electronic work diary about how the owner has maintained the work diary
- a statement made by the record keeper (within the meaning given by a fatigue management regulation) of the driver of a fatigue regulated heavy vehicle who uses an electronic work diary about how information was transmitted from the electronic work diary to the record keeper

‘(2) In this section—

*electronic work diary* has the meaning given by a fatigue management regulation.’.

#### **164 Amendment of ch 6, pt 2, hdg**

Chapter 6, part 2, heading, ‘Provision’—

*omit, insert—*

‘**Provisions**’.

#### **165 Insertion of new s 163E**

Chapter 6, part 2, after section 163D—

*insert—*

#### **‘163E Objective reasonableness test to be used in deciding causation**

- ‘(1) This section applies in relation to proceedings for an offence against a fatigue management regulation that may be committed by a person failing to take reasonable steps to ensure another person does not drive a fatigue regulated heavy vehicle in a contravening way.

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- ‘(2) For subsection (1), a person failing to take reasonable steps to ensure another person does not drive in a contravening way includes—
- (a) the person failing to take reasonable steps to ensure the other person does not drive in a contravening way; and
  - (b) the person failing to take reasonable steps to ensure the person’s activities, or anything arising out of the person’s activities, do not—
    - (i) cause the other person to drive in a contravening way; or
    - (ii) result in the other person driving in a contravening way; or
    - (iii) encourage or provide an incentive for the other person to drive in a contravening way.
- ‘(3) Subsection (4) applies if—
- (a) a person does an act or makes an omission; and
  - (b) as a result of the act or omission another person drives a fatigue regulated heavy vehicle in a contravening way.
- ‘(4) A court may find the person caused the other person to drive in the contravening way if the court is satisfied that a reasonable person would have foreseen that the person’s act or omission would be reasonably likely to cause the other person to drive the vehicle in the contravening way.’.

**166 Amendment of s 168A (Effect of corresponding administrative action or corresponding order in relation to heavy vehicle)**

- (1) Section 168A, heading, after ‘Effect of’—  
*insert—*  
**‘particular’.**

(2) Section 168A—

*insert—*

‘(1A) Without limiting subsection (1)—

- (a) a corresponding administrative action that is a decision of a corresponding authority to give or grant an approval has effect in Queensland as if it were a decision of the chief executive; and
- (b) a decision by the corresponding authority who gave or granted the approval to amend, suspend or cancel the approval has effect in Queensland as if it were a decision of the chief executive.

*Note—*

Section 19B provides for the amendment, suspension or cancellation by the chief executive of a decision of a corresponding authority to grant or give an approval that has effect in Queensland under this section.’

(3) Section 168A—

*insert—*

‘(3A) A regulation can not prescribe, for subsection (4), definition *corresponding administrative action*, paragraph (b), an action of an administrative nature that is a decision mentioned in section 168AA(1)(a) or (b).’.

(4) Section 168A(4)—

*insert—*

‘**approval** means an approval of a type to which chapter 3, part 1A applies.

*Note—*

See section 17A for the definition of *approval* applying to chapter 3, part 1A.’.

## 167 Insertion of new s 168AA

After section 168A—

*insert—*

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**‘168AA Effect of other administrative action in relation to fatigue regulated heavy vehicle**

- ‘(1) This section applies to the following decisions (each a *corresponding decision*)—
- (a) a decision of a corresponding authority to give or grant a person an AFM accreditation under a corresponding law to a fatigue management regulation;
  - (b) a decision of a corresponding authority to give or grant a person an exemption under a corresponding law to a fatigue management regulation.
- ‘(2) Except for circumstances that do not exist in Queensland, the chief executive may decide whether or not a corresponding decision is to have effect in Queensland, subject to any conditions or variation of conditions under subsection (4), as if it were a decision of the chief executive.
- ‘(3) The chief executive may decide that a corresponding decision is to have effect in Queensland as mentioned in subsection (2) only if the chief executive is satisfied that the accreditation or exemption the subject of the corresponding decision would be given or granted under a fatigue management regulation, subject to any conditions or variation of conditions under subsection (4), if an application for the accreditation or exemption were made under the fatigue management regulation.
- ‘(4) The chief executive may—
- (a) impose an additional condition on the accreditation or exemption the subject of the corresponding decision; or
  - (b) vary the conditions applying to the accreditation or exemption the subject of the corresponding decision.

*Examples for subsection (4)—*

- imposing or varying conditions about the maximum work requirements or minimum rest requirements that are to apply under the accreditation or exemption in Queensland
- imposing a condition about the routes in Queensland that may or may not be used under the accreditation or exemption

- 
- varying a condition about the person to whom particular reports must be made in relation to the accreditation or exemption
- ‘(5) The imposition or variation of conditions under subsection (4) has effect only in Queensland.
- ‘(6) In deciding whether to impose or vary conditions under subsection (4), the chief executive may have regard to any recommendation made by the fatigue authorities panel.
- ‘(7) The chief executive must give the person to whom the corresponding decision relates written notice of the chief executive’s decision under this section stating the following—
- (a) the reasons for the decision; and
  - (b) if the decision is that the corresponding decision is to have effect in Queensland subject to conditions imposed or varied under subsection (4)—the conditions that are to apply to the accreditation or exemption in Queensland, to the extent the conditions are different to those applying under the corresponding decision; and
  - (c) if the decision is that the corresponding decision is not to have effect in Queensland, or the decision is that the corresponding decision is to have effect in Queensland subject to conditions imposed or varied under subsection (4), that the person may—
    - (i) under section 65—ask for the chief executive’s decision to be reviewed and appeal against the reviewed decision; and
    - (ii) under the *Transport Planning and Coordination Act 1994*, part 5—ask for the chief executive’s decision or the reviewed decision to be stayed.
- ‘(8) If the chief executive decides, under this section, that a corresponding decision is to have effect in Queensland—
- (a) the corresponding decision has effect in Queensland, subject to any conditions imposed or varied under subsection (4), as if it were a decision of the chief executive; and

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- (b) a decision by the corresponding authority, who made the corresponding decision, to amend, suspend or cancel the accreditation or exemption the subject of the corresponding decision has effect in Queensland as if it were a decision of the chief executive.

*Note—*

Section 19B provides for the amendment, suspension or cancellation by the chief executive of a corresponding decision that has effect in Queensland under this section.

- ‘(9) In this section—

*fatigue authorities panel* means the entity recognised under a fatigue management regulation under section 150AB(1)(g).’.

### **168 Amendment of sch 3 (Reviewable decisions)**

- (1) Schedule 3, entries for section 19 and 19A, second column, after ‘approvals’—

*insert—*

‘or corresponding approvals’.

- (2) Schedule 3—

*insert—*

‘168AA	not recognising corresponding decision	Magistrates
168AA	imposing an additional condition on, or varying conditions applying to, accreditation or exemption the subject of a corresponding decision	Magistrates’.

### **169 Amendment of sch 4 (Dictionary)**

- (1) Schedule 4, definitions *accreditation record requirement*, *AFM accreditation*, *alternative maximum work period* and *alternative minimum rest period*—

*omit.*

(2) Schedule 4—

*insert—*

***‘accreditation record requirement*** means a requirement of a fatigue management regulation relating to a person in control of a fatigue regulated heavy vehicle operating under a BFM accreditation or AFM accreditation under the regulation carrying—

- (a) a copy of the certificate for the accreditation; or
- (b) another document relating to the person’s ability to operate under the accreditation or the alternative work and rest arrangements applying under the accreditation.

***alternative work and rest arrangements***, in relation to the person in control of a fatigue regulated heavy vehicle, means the maximum periods of work and minimum periods of rest applying to the person that are different to the maximum periods of work and minimum periods of rest that would apply to the person under the standard work and rest arrangements.

***contravening way***, for a person driving a fatigue regulated heavy vehicle, means drive the vehicle—

- (a) while impaired by fatigue; or
- (b) while in breach of the person’s work and rest hours option under the regulation; or
- (c) in breach of another law in order to avoid driving while impaired by fatigue or while in breach of the person’s work and rest hours option under a fatigue management regulation.

***exemption record requirement*** means a requirement of a fatigue management regulation relating to a person in control of a fatigue regulated heavy vehicle operating under a work and rest hours exemption, within the meaning given by the regulation, carrying a copy of the exemption notice, within the meaning given by the regulation, for the exemption.’.

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- (3) Schedule 4, definition *fatigue management requirement*, paragraphs (b) to (e)—  
*renumber* as paragraphs (c) to (f).
- (4) Schedule 4, definition *fatigue management requirement*—  
*insert*—  
'(b) exemption record requirement; or'.

### **Division 3                      Amendment of Transport Operations (Road Use Management) Act 1995 to commence by proclamation**

#### **170    Act amended in div 3**

This division amends the *Transport Operations (Road Use Management) Act 1995*.

#### **171    Amendment of s 57B (Further liability provisions for extended liability offences)**

Section 57B(2AB)—  
*omit*.

#### **172    Amendment of s 57G (Reliance on container weight declaration)**

- Section 57G(2) and (3)—  
*omit, insert*—
- '(2) To the extent the weight of a freight container together with its contents is relevant to the offence, the person charged can not rely on the weight stated in the relevant container weight declaration if the person knew or ought reasonably to have known that—

- 
- (a) the weight stated in the relevant container weight declaration was less than the actual weight; or
  - (b) the distributed weight of the container and its contents, together with either of the following would cause a contravention of a mass requirement applying to the heavy vehicle—
    - (i) the mass or location of any other load;
    - (ii) the mass of the vehicle or any part of it.’.

**173 Insertion of new ch 3, pt 5, div 1, sdiv 4**

Chapter 3, part 5, division 1—

*insert—*

**‘Subdivision 4 Non-application of mistake of fact defence**

**‘57H Criminal Code, s 24 does not apply to particular offences**

- ‘(1) The Criminal Code, section 24 does not apply to a person charged with any of the following offences—
  - (a) an offence against section 53B(2), (3), (4) or (5), 53C(1) or (2), 57B(2) or 162D(1) if the person charged has the benefit of the reasonable steps defence;
  - (b) an offence against a fatigue management regulation that may be committed by the person in control of a fatigue regulated heavy vehicle driving the vehicle while impaired by fatigue;
  - (c) an offence against a fatigue management regulation that may be committed by a person failing to take reasonable steps to ensure another person does not drive a fatigue regulated heavy vehicle in a contravening way;
  - (d) an offence against a fatigue management regulation in relation to which the person charged has the benefit of

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the reasonable steps defence within the meaning given by the regulation;

- (e) an offence—
  - (i) that is committed by a person because there has been a contravention of a mass requirement, dimension requirement, loading requirement, or container weight declaration requirement, for a heavy vehicle; and
  - (ii) in relation to which the person charged has the benefit of the reasonable steps defence within the meaning given by the transport Act imposing the requirement.

‘(2) For subsection (1)(c), a person failing to take reasonable steps to ensure another person does not drive a fatigue regulated heavy vehicle in a contravening way includes—

- (a) the person failing to take reasonable steps to ensure the other person does not drive in that way; and
- (b) the person failing to take reasonable steps to ensure the person’s activities, or anything arising out of the person’s activities, do not—
  - (i) cause the other person to drive in a contravening way; or
  - (ii) result in the other person driving in a contravening way; or
  - (iii) encourage or provide an incentive for the other person to drive in a contravening way.

‘(3) In this section—

*container weight declaration requirement*, for a heavy vehicle, means a requirement of a transport Act relating to a freight container loaded on the vehicle being accompanied by a container weight declaration or a container weight declaration complying with particular requirements, including, for example, the following—

- (a) a requirement that a person not permit another person to transport a freight container by using a heavy vehicle on a road in Queensland unless the other person has been provided with a container weight declaration complying with particular requirements;
- (b) a requirement that a person not drive a heavy vehicle on which a freight container is loaded on a road in Queensland unless the person has a container weight declaration complying with particular requirements.’.

**174 Amendment of s 150C (Proceedings for particular offences involving requirements about fatigue regulated heavy vehicles)**

- (1) Section 150C(2)(a), ‘prescribed’—  
*omit, insert—*  
‘stated’.
- (2) Section 150C(4), definition *prescribed corresponding obligation—*  
*omit, insert—*  
‘**corresponding obligation** means a duty or obligation under—
  - (a) another Act; or
  - (b) a corresponding law to a fatigue management regulation.’.

**175 Amendment of s 162D (Offence)**

Section 162D(2) and editor’s notes—

*omit, insert—*

- ‘(2) In a proceeding for an offence against subsection (1), the person charged has the benefit of the reasonable steps defence for the offence.

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*Editor's note—*

See section 57D for the reasonable steps defence.’.

**176 Amendment of ch 5B, hdg (Severe risk breach of mass, dimension or loading requirement for heavy vehicle)**

Chapter 5B, heading, ‘Severe risk breach’—

*omit, insert—*

‘**Breach**’.

**177 Insertion of new ch 5B, pt 1, pt 2 and pt 3, hdg**

Chapter 5B, before section 162A—

*insert—*

**‘Part 1 Minor risk breach**

**‘162AA Minor risk breach of mass requirement**

‘A contravention of a mass requirement applying to a heavy vehicle is a *minor risk breach* if the subject matter of the contravention is less than the substantial risk breach lower limit for the requirement.

**‘162AB Minor risk breach of dimension requirement**

‘A contravention of a dimension requirement applying to a heavy vehicle is a *minor risk breach* if the subject matter of the contravention is less than the substantial risk breach lower limit for the requirement.

**‘162AC Minor risk breach of loading requirement**

‘A contravention of a loading requirement applying to a heavy vehicle is a *minor risk breach* if the subject matter of the contravention does not involve—

(a) a loss or shifting of the load; or



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- (b) the contravention happens—
  - (i) at night; or
  - (ii) in hazardous weather conditions causing reduced visibility; or
  - (iii) on a declared route in a declared zone.
- ‘(3) A contravention of a dimension requirement relating to length applying to a heavy vehicle is a *substantial risk breach* of the requirement if—
  - (a) the contravention would, under a regulation, be a minor risk breach of the dimension requirement if this subsection were not enacted; and
  - (b) either—
    - (i) the rear of a load on the vehicle does not carry a warning signal required under a regulation; or
    - (ii) the load on the vehicle projects in a way that is dangerous to persons or property.

### ‘162AF Substantial risk breach of loading requirement

‘A contravention of a loading requirement applying to a heavy vehicle is a *substantial risk breach* of the requirement if it is—

- (a) a contravention of the requirement involving a loss or shifting of the load not involving a risk of harm to public safety, the environment, road infrastructure or public amenity; or
- (b) a contravention of the requirement not involving, but likely to involve, a loss or shifting of the load involving a risk of harm to public safety, the environment, road infrastructure or public amenity.

## ‘Part 3 Severe risk breach’.

**178 Amendment of s 162A (Severe risk breach of mass requirement)**

- (1) Section 162A, ‘for a heavy vehicle’—  
*omit, insert—*  
‘applying to a heavy vehicle’.
- (2) Section 162A, ‘vehicle’s gross mass’—  
*omit, insert—*  
‘subject of the contravention’.

**179 Amendment of s 162B (Severe risk breach of dimension requirement)**

- (1) Section 162B, ‘for a heavy vehicle’—  
*omit, insert—*  
‘applying to a heavy vehicle’.
- (2) Section 162B(1)(a), from ‘the vehicle’s dimension,’ to ‘the contravention,’—  
*omit, insert—*  
‘the subject of the contravention’.

**180 Amendment of s 162C (Severe risk breach of loading requirement)**

- Section 162C, ‘for a heavy vehicle’—  
*omit, insert—*  
‘applying to a heavy vehicle’.

**181 Insertion of new ch 5B, pt 4**

- Chapter 5B, before section 162D—  
*insert—*



(2) Schedule 4—

*insert—*

***‘minor risk breach*** means—

- (a) for a mass requirement applying to a heavy vehicle—see section 162AA; or
- (b) for a dimension requirement applying to a heavy vehicle—see section 162AB; or
- (c) for a loading requirement applying to a heavy vehicle—see section 162AC.

***substantial risk breach*** means—

- (a) for a mass requirement applying to a heavy vehicle—see section 162AD; or
- (b) for a dimension requirement applying to a heavy vehicle—see section 162AE; or
- (c) for a loading requirement applying to a heavy vehicle—see section 162AF.’.

(3) Schedule 4, definitions *dimension requirement*, *loading requirement*, *mass requirement*, *severe risk breach*, *severe risk breach lower limit* and *substantial risk breach lower limit*, ‘for a heavy vehicle’—

*omit, insert—*

‘applying to a heavy vehicle’.

(4) Schedule 4, definitions *severe risk breach lower limit*, paragraph (a) and *substantial risk breach lower limit*, paragraph (a), ‘gross mass’—

*omit, insert—*

‘mass’.

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## **Part 5**                      **Amendment of Acts for purposes relating to open roads**

### **Division 1**                      **Amendment of Transport Operations (Road Use Management) Act 1995**

#### **184**    **Act amended by div 1**

This division amends the *Transport Operations (Road Use Management) Act 1995*.

#### **185**    **Amendment of ch 3, pt 4C, hdg (Chief executive's powers for vehicles)**

Chapter 3, part 4C, heading, 'vehicles'—  
*omit, insert—*  
**'vehicles, loads or other things'**.

#### **186**    **Renumbering of ch 3, pt 4C, divs 1 and 2**

Chapter 3, part 4C, divisions 1 and 2—  
*renumber* as divisions 2 and 3.

#### **187**    **Insertion of new ch 3, pt 4C, div 1**

Chapter 3, part 4C—  
*insert—*

### **'Division 1**                      **Definitions**

#### **'51GAA Definitions**

'In this part—

*control* includes possession.

*load* includes any goods, equipment or thing—

- (a) that is carried by, in or on a vehicle, or is attached to a vehicle, mentioned in section 51G; or
- (b) that was carried by, in or on a vehicle or attached to a vehicle, on a road but has become separated from the vehicle.

*removed thing* means a vehicle, load or other thing moved or removed under section 51G.

*used*, for something other than a vehicle, includes held in someone's possession.'

**188 Amendment of ch 3, pt 4C, div 2, heading**

Chapter 3, part 4C, division 2, as renumbered, heading, 'vehicles'—

*omit, insert*—

**'vehicles, loads or other things'**.

**189 Amendment of s 51G (Moving abandoned, or otherwise stationary, vehicle on prescribed road)**

- (1) Section 51G, heading, 'vehicle'—

*omit, insert*—

**'vehicle, load or other thing'**.

- (2) Section 51G, 'prescribed road'—

*omit, insert*—

'road'.

- (3) Section 51G(1)(a)(i), 'vehicle'—

*omit, insert*—

'vehicle or load'.

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- (4) Section 51G(1)(a)(ii)—  
*renumber* as section 51G(1)(a)(iii).
- (5) Section 51G(1)(a)—  
*insert*—  
‘(ii) another thing that is not abandoned is placed or comes to rest on a road; or’.
- (6) Section 51G(1)(a)(iii), as renumbered, ‘vehicle’—  
*omit, insert*—  
‘vehicle, load or other thing’.
- (7) Section 51G(1)(b) and (2) to (4), ‘vehicle’ (other than in the words ‘towing vehicle’)—  
*omit, insert*—  
‘vehicle, load or other thing’.
- (8) Section 51G(4), after ‘subsection (1)(a)(i)’—  
*insert*—  
‘or (ii)’.

**190 Amendment of ch 3, pt 4C, div 3 (Recovering moving expenses)**

- (1) Chapter 3, part 4C, division 3, as renumbered, ‘vehicle’ (other than in the words ‘towing vehicle’ or ‘removed vehicle’ or in section 51J(3))—  
*omit, insert*—  
‘removed thing’.
- (2) Chapter 3, part 4C, division 3, as renumbered, ‘vehicle’s’ (other than in section 51J(3)(b))—  
*omit, insert*—  
‘removed thing’s’.

- (3) Chapter 3, part 4C, division 3, as renumbered, ‘prescribed road’—

*omit, insert—*

‘road’.

### **191 Amendment and omission of s 51H (Definition for div 2)**

- (1) Section 51H, definition *moving expenses*, ‘reasonable expenses’—

*omit, insert—*

‘actual expenses’.

- (2) Section 51H, definition *moving expenses*, as amended by this section and section 190—

*relocate* to section 51GAA.

- (3) Section 51H—

*omit.*

### **192 Amendment of s 51I (Recovering moving expenses)**

Section 51I—

*insert—*

- ‘(3) The moving expenses claimed under subsection (1) must be reasonable.
- ‘(4) If moving expenses were incurred because of the paramount or high degree of importance given to moving or removing the removed thing on or from the road quickly as mentioned in section 51N(2)(a), a court must act on the basis that the expenses were reasonable.’.

### **193 Amendment of s 51J (Notice to owner)**

- (1) Section 51J(3), after ‘section’—

*insert—*

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‘for a vehicle’.

- (2) Section 51J(3)(b)(i)(B), ‘reasonably incurred’—

*omit, insert—*

‘incurred’.

- (3) Section 51J—

*insert—*

- ‘(4) The chief executive need not give the notice required by this section for a removed thing other than a vehicle if—

(a) the chief executive reasonably believes the removed thing is abandoned; or

(b) the proceeds of the removed thing’s sale are not likely to cover—

(i) the moving expenses for the removed thing; and

(ii) the expenses incurred by the chief executive in selling the removed thing; or

(c) it is otherwise impracticable to give the notice.

- ‘(5) In this section—

*removed thing other than a vehicle*, for subsection (4), includes anything, including the load of a vehicle, that has become separated from the vehicle during the exercise of powers under this part.

*vehicle*, for subsection (3), includes the vehicle’s load to the extent it has remained with the vehicle during the exercise of powers under this part.’.

## **194 Amendment of s 51K (Releasing removed vehicle)**

- (1) Section 51K, heading, ‘removed vehicle’—

*omit, insert—*

‘**removed thing**’.

(2) Section 51K—

*insert—*

‘(2) Subsection (1) does not apply if the chief executive has disposed of the removed thing under section 51L or 51M.’.

## **195 Amendment of s 51L (Disposing of removed vehicle)**

(1) Section 51L, heading, ‘removed vehicle’—

*omit, insert—*

**‘removed thing’.**

(2) Section 51L, before subsection (1)—

*insert—*

‘(1AA) This section is subject to section 51M.’.

(3) Section 51L(1)(b), after ‘51J(3)’ —

*insert—*

‘or (4)’.

## **196 Insertion of new s 51M**

Chapter 3, part 4C, division 3, as renumbered—

*insert—*

### **‘51M Immediate disposal in particular circumstances**

‘(1) Despite any other provision of this part, the chief executive may dispose of a removed thing other than a vehicle when and in the way the chief executive considers appropriate if—

(a) the chief executive reasonably believes the removed thing has been abandoned; or

(b) the proceeds of any sale of the removed thing are unlikely to cover—

(i) the moving expenses for the removed thing; and

(ii) the expenses likely to be incurred by the chief executive in selling the removed thing; or

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(c) it is otherwise impracticable to retain the removed thing.

*Example—*

The chief executive may immediately dispose of gravel spilled on a road by a passing truck by having it bulldozed off the side of the road.

‘(2) In this section—

*removed thing other than a vehicle* see section 51J(5).’.

## **197 Insertion of new ch 3, pt 4C, div 4**

Chapter 3, part 4C—

*insert—*

### **‘Division 4 Other provisions**

#### **‘51N Protection for persons exercising power under pt 4C**

‘(1) This section applies to proceedings in relation to liability for breach of duty arising out of damage to a removed thing that happens when a person exercises power, or assists another person exercising power, under this part in relation to the removed thing.

‘(2) The person, a person assisting the person, the State or a local authority is not civilly liable—

- (a) because of the paramount or high degree of importance the person gave to moving or removing the removed thing on or from the road quickly; or
- (b) to the extent there was an increased likelihood that vehicles, loads and other things would be damaged in the exercise of power under this part, because of the nature of the power.

#### **‘51O Relationship with s 66**

‘The powers of the chief executive under this part are not limited by a local law made under section 66(3) and section 66(6) does not apply to this part.

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**‘51P Relationship with s 137**

‘The powers of the chief executive under this part are not limited by the obligation imposed on a person by section 137(2) or anything a person is doing, attempting to do or proposing to do to comply with the person’s obligations under the section.’.

**198 Amendment of s 100 (Removal of things from roads)**

- (1) Section 100(1), editor’s note, ‘prescribed’—

*omit.*

- (2) Section 100—

*insert—*

‘(14A) This section, or a local law mentioned in subsection (12), does not apply if an officer of a local government removes a vehicle, load or other thing from a road under chapter 3, part 4C, under a delegation from the chief executive.’.

**199 Amendment of sch 4 (Dictionary)**

- (1) Schedule 4—

*insert—*

**‘control**, for chapter 3, part 4C, see section 51GAA.

**load**, for chapter 3, part 4C, see section 51GAA.

**removed thing**, for chapter 3, part 4C, see section 51GAA.

**used**, for chapter 3, part 4C, see section 51GAA.’.

- (2) Schedule 4, definition *moving expenses*, ‘, division 2’—

*omit.*

- (3) Schedule 4, definition *moving expenses*, ‘51H’—

*omit, insert—*

‘51GAA’.

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- (4) Schedule 4, definition *prescribed road*, ‘chapter 3, part 4C and’—

*omit.*

## **Division 2                      Amendment of Police Powers and Responsibilities Act 2000**

### **200    Act amended in div 2**

This division amends the *Police Powers and Responsibilities Act 2000*.

### **201    Replacement of ch 5, hdg (Vehicle removal powers generally)**

Chapter 5, heading—

*omit, insert—*

## **‘Chapter 5                      Removal powers generally for vehicles or loads or things on roads’.**

### **202    Replacement of ch 5, pt 1, hdg (Seizing or moving vehicles)**

Chapter 5, part 1, heading—

*omit, insert—*

## **‘Part 1                              Power to seize or remove’.**

### **203    Insertion of new s 124AA**

Chapter 5, part 1, before section 124—

*insert—*

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**‘124AA Definitions for pt 1**

‘In this part—

*load* includes any goods, equipment or thing—

- (a) that is carried by, in or on a vehicle, or is attached to a vehicle; or
- (b) that was carried by, in or on a vehicle or attached to a vehicle, but has become separated from the vehicle.

*moving expenses*, for a vehicle, load or other thing, means actual expenses relating to 1 or more of the following acts in relation to the exercise of a power in prescribed circumstances—

- (a) calling a service or towing vehicle to the vehicle, load or other thing;
- (b) seizing or moving the vehicle, load or other thing;
- (c) removing the vehicle, load or other thing;
- (d) storing the vehicle, load or other thing after it has been removed;
- (e) releasing a vehicle, load or other thing mentioned in paragraph (d) from storage;
- (f) disposing of a vehicle, load or other thing mentioned in paragraph (c) other than by selling it.

*prescribed circumstance* means a prescribed circumstance under section 125.

*used* includes held in possession.’.

**204 Amendment of s 124 (Removal of vehicles from roads and other places)**

- (1) Section 124, heading—

*omit, insert—*

**‘124 Removal of vehicle or load or other thing’.**

[s 204]

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- (2) Section 124(1), ‘prescribed circumstances’—  
*omit, insert*—  
‘a prescribed circumstance’.
- (3) Section 124(1), after ‘vehicle’—  
*insert*—  
‘, load or other thing mentioned in the prescribed circumstance’.
- (4) Section 124(2), ‘the prescribed circumstances’—  
*omit, insert*—  
‘a prescribed circumstance’.
- (5) Section 124(2), ‘125(c), (d) or (e)’—  
*omit, insert*—  
‘125(1)(c) or (d)’.
- (6) Section 124(2), after ‘vehicle’—  
*insert*—  
‘or load’.
- (7) Section 124(2), after ‘driver’—  
*insert*—  
‘or owner or person in control of it’.
- (8) Section 124—  
*insert*—  
‘(2A) In the prescribed circumstance mentioned in section 125(2), the police officer may, without seizing the vehicle, load or other thing instead move the vehicle, load or other thing, or arrange for it to be moved, off the road including to another place.’.
- (9) Section 124(3), ‘and (2)’—  
*omit, insert*—  
‘to (2A)’.

(10) Section 124(3), after ‘prevent the’—

*insert—*

‘driver, or owner or’.

(11) Section 124(3), after ‘vehicle’—

*insert—*

‘, load or other thing’.

**205 Amendment of s 125 (Prescribed circumstances for s 124)**

(1) Section 125(d)—

*omit.*

(2) Section 125(e)—

*renumber* as section 125(1)(d).

(3) Section 125—

*insert—*

‘(2) Also, without limiting subsection (1) it is a prescribed circumstance for section 124 if—

(a) either—

(i) a vehicle or load on a road is immobilised by a breakdown, collision or fuel shortage or is otherwise stationary; or

(ii) another thing that is not abandoned is placed or comes to rest on a road; or

(iii) without limiting subsection (1)(b), a police officer reasonably suspects a vehicle, load or other thing on a road is abandoned; and

(b) a police officer—

(i) can not immediately find the person in control of the vehicle, load or other thing; or

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- (ii) can immediately find the person in control of the vehicle, load or other thing but reasonably believes the person is unable or unwilling to move the vehicle, load or other thing immediately; and
- (c) the police officer reasonably believes that it is necessary for the vehicle, load or other thing to be moved off the road for the safety or convenience of people using the road.

*Example of inconvenience—*

A vehicle is stopped on a median strip on a road but, due to the distraction caused by it, traffic is banking up.’.

- (4) Section 125(1), as amended, after ‘vehicle’—  
*insert—*  
‘or load’.

**206 Amendment of ch 5, pt 2, hdg (Other provisions about seizure)**

Chapter 5, part 2, heading, after ‘seizure’—  
*insert—*  
‘or moving’.

**207 Insertion of new s 125A**

Chapter 5, part 2—  
*insert—*

**‘125A Recovering moving and seizure expenses in particular circumstances**

- ‘(1) The commissioner may recover as a debt the moving expenses for a vehicle, load or other thing incurred by a police officer in exercising powers in the prescribed circumstances.
- ‘(2) The moving expenses may be recovered from—

- (a) the person who was in control of the vehicle, load or other thing immediately before it was seized or moved;  
or
  - (b) if the identity of the person mentioned in paragraph (a) can not be discovered—the vehicle, load or other thing’s owner, unless the vehicle, load or other thing was being used without the owner’s consent.
- ‘(3) The moving expenses claimed under subsection (1) must be reasonable.
- ‘(4) If moving expenses were incurred because of the paramount or high degree of importance given to moving the vehicle, load or other thing off a road quickly as mentioned in section 128B(2)(a), a court must act on the basis that the expenses were reasonable.’.

## **208 Amendment of s 126 (Steps after seizing vehicle)**

- (1) Section 126, heading, ‘vehicle’—  
*omit, insert—*  
**‘a vehicle, load or other thing’.**
- (2) Section 126(1), after ‘seizing’—  
*insert—*  
**‘or moving’.**
- (3) Section 126(1), after ‘vehicle’—  
*insert—*  
**‘, load or other thing’.**
- (4) Section 126(1), after ‘seized’—  
*insert—*  
**‘or moved’.**
- (5) Section 126(1)(b)(ii)—  
*omit, insert—*  
**‘(ii) must pay the moving expenses; and’.**

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- (6) Section 126(3) and (4), after ‘vehicle’—  
*insert—*  
‘, load or other thing’.
- (7) Section 126—  
*insert—*
- ‘(3A) A police officer need not give the notice required by this section in relation to a vehicle seized or moved in the prescribed circumstances mentioned in section 125(2) if—
- (a) the police officer reasonably believes the vehicle is abandoned; and
  - (b) either—
    - (i) the proceeds of the vehicle’s sale are not likely to cover—
      - (A) the moving expenses for the vehicle; and
      - (B) the expenses incurred by the commissioner in selling the vehicle; or
    - (ii) it is otherwise impracticable to give the notice.
- ‘(3B) A police officer need not give the notice required by this section in relation to something other than a vehicle seized or moved in the prescribed circumstances mentioned in section 125(2) if—
- (a) the police officer reasonably believes the thing is abandoned; or
  - (b) the proceeds of the thing’s sale are not likely to cover—
    - (i) the moving expenses for the thing; and
    - (ii) the expenses incurred by the commissioner in selling the thing; or
  - (c) it is otherwise impracticable to give the notice.’.

(8) Section 126—  
*insert—*

‘(5) In this section—

*something other than a vehicle*, for subsection (3B), includes anything, including the load of a vehicle, that has become separated from the vehicle during the exercise of powers under this chapter.

*vehicle*, for subsection (3A), includes the vehicle's load to the extent it has remained with the vehicle during the exercise of powers under this chapter.'

**209 Amendment of s 127 (Recovery of seized vehicle)**

- (1) Section 127, heading—

*omit, insert—*

**'127 Disposal of seized or moved vehicle, load or other thing'.**

- (2) Section 127(1), 'after 'seizure'—

*insert—*

'or moving'.

- (3) Section 127(1) and (2), after 'vehicle'—

*insert—*

', load or other thing'.

- (4) Section 127(1), 'and anything in or on it'—

*omit.*

**210 Amendment of s 128 (Application of proceeds of sale)**

- (1) Section 128(1), after 'vehicle'—

*insert—*

', load or other thing'.

- (2) Section 128(1), '128'—

*omit, insert—*

'127'.

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(3) Section 128(1)(b)—

*omit, insert—*

‘(b) in payment of the moving expenses and giving notice under section 126;’.

## **211 Insertion of new ss 128A and 128B**

Chapter 5, part 2, after section 128—

*insert—*

### **‘128A Immediate disposal in particular circumstances**

‘(1) Despite any other provision of this part, a police officer exercising powers under part 1 may dispose of something other than a vehicle when and in the way the police officer considers appropriate if—

(a) the police officer reasonably suspects the thing has been abandoned; or

(b) the proceeds of any sale of the thing are unlikely to cover—

(i) the moving expenses for the thing; and

(ii) the expenses likely to be incurred by the chief executive in selling the thing; or

(c) it is otherwise impracticable to retain the removed thing.

*Example—*

The police officer may immediately dispose of gravel spilled on a road by a passing truck by having it bulldozed off the side of the road.

‘(2) In this section—

*something other than a vehicle—*

(a) includes anything, including the load of a vehicle, that has become separated from the vehicle during the exercise of powers under this chapter; and

(b) does not include a vehicle’s load to the extent it has remained with the vehicle during the exercise of powers under this chapter.

---

**‘128B Protection for persons exercising power under ch 5**

- ‘(1) This section applies to proceedings in relation to liability for breach of duty arising out of damage to a vehicle, load or other thing that happens when a person exercises power, or assists another person exercising power, under this chapter in relation to the seizure or moving of a vehicle, load or other thing.
- ‘(2) The person, or a person assisting the person, is not civilly liable—
- (a) because of the paramount or high degree of importance the person gave to moving the vehicle, load or other thing off the road quickly; or
  - (b) to the extent there was an increased likelihood that vehicles, loads or other things would be damaged in the exercise of power mentioned in subsection (1), because of the nature of the power.’.

**212 Amendment of s 129 (Police officer may authorise tow after seizure under any Act)**

- (1) Section 129, after ‘vehicle’—  
*insert—*  
‘, load or other thing’.
- (2) Section 129(5)—  
*insert—*  
‘**tow** includes carry, lift and tow, lift and carry and lift for the purpose of towing.’.

**213 Amendment of sch 6 (Dictionary)**

Schedule 6—

*insert—*

‘**load**, for chapter 5, part 1, see section 124AA.

***moving expenses***, for chapter 5, part 1, see section 124AA.

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*prescribed circumstance*, for chapter 5, part 1, see section 124AA.

*used*, for chapter 5, part 1, see section 124AA.’.

## **Part 6**                      **Amendment of Acts for purposes relating to transit officers**

### **Division 1**                **Amendment of Transport Operations (Passenger Transport) Act 1994**

#### **214**    **Act amended in div 1**

This division amends the *Transport Operations (Passenger Transport) Act 1994*.

#### **215**    **Amendment of s 2 (Objectives of Act)**

(1) Section 2(3)(c) and (d)—

*renumber* as section 2(3)(d) and (e).

(2) Section 2(3)—

*insert*—

‘(c) promote the personal safety of persons using public passenger transport; and’.

#### **216**    **Insertion of new ch 11, pt 2, div 1, hdg and ch 11, pt 2, div 1, sdiv 1, hdg**

Chapter 11, after part 2 heading—

*insert*—

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**‘Division 1                    Appointment**

**‘Subdivision 1            Appointment of authorised persons generally’.**

**217    Amendment of s 111 (Appointment of authorised persons etc.)**

- (1) Section 111, heading, ‘etc.’—

*omit, insert—*

**‘generally’.**

- (2) Section 111(2), from ‘The’ to ‘authorised person’—

*omit, insert—*

‘Subject to section 111A(1), the chief executive may appoint any of the following persons to be an authorised person, other than an authorised person (transit officer),’.

- (3) Section 111(3)—

*omit, insert—*

- ‘(3) Subject to section 111A(2), the chief executive may appoint any of the following persons to be an authorised person (transit officer) (a *transit officer*) for relevant transport legislation—

(a) a public service employee;

(b) an employee of a railway manager or railway operator that is a GOC or a wholly owned subsidiary of a GOC.’.

- (4) Section 111(5), after ‘subsection (2)(b) or (c)’—

*insert—*

‘or (3)(b)’.

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**218 Insertion of new ss 111A and 111B, ch 11, pt 2, div 1, sdivs 2 and 3 and ch 11, pt 2, div 2, hdg**

After section 111—

*insert—*

**‘111A Restrictions on appointing authorised persons**

- ‘(1) The chief executive may appoint a person as an authorised person, other than a transit officer, only if—
- (a) in the chief executive’s opinion, the person has the necessary expertise or experience to be an authorised person; or
  - (b) the person has satisfactorily finished training approved by the chief executive.
- ‘(2) The chief executive may appoint a person as a transit officer only if—
- (a) in the chief executive’s opinion—
    - (i) the person can be appointed as an authorised person under subsection (1); and
    - (ii) the person is suitable to be a transit officer, having regard to the matters mentioned in section 111B; and
  - (b) the person has satisfactorily finished transit officer training.

**‘111B When person is suitable to be transit officer**

- ‘(1) This section provides for when a person may be considered to be suitable to be a transit officer.
- ‘(2) A person is suitable to be a transit officer only if—
- (a) the person has not been convicted of—
    - (i) a category A driver disqualification offence; or
    - (ii) a category B driver disqualification offence other than an offence against the Criminal Code, section 328A; or

- 
- (iii) an indictable offence in Queensland not covered by subparagraph (i) or (ii); or
  - (iv) an offence outside Queensland that, if it had been committed in Queensland, would constitute an indictable offence not covered by subparagraph (i) or (ii); and
- (b) the person is of good character; and
  - (c) the person's state of physical and mental fitness will enable the person to perform the functions and exercise the powers of a transit officer.
- '(3) In deciding whether a person is of good character, the chief executive may consider the following matters as indicating that the person may not be of good character—
- (a) in dealings in which the person has been involved, the person has—
    - (i) shown dishonesty or lack of integrity; or
    - (ii) used harassing tactics;
  - (b) the person associates with, or has associated with, a criminal in a way that indicates involvement in unlawful activity.
- '(4) Subsection (3) does not limit the matters the chief executive may consider in deciding whether or not a person is of good character.
- '(5) In this section—
- conviction**, for an offence mentioned in subsection (2)(a)(iii) or (iv), does not include a spent conviction.
- spent conviction** means a conviction—
- (a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) 1986* has expired under that Act; and
  - (b) that is not revived as prescribed by section 11 of that Act.

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## **‘Subdivision 2     Assessing person’s suitability to be a transit officer**

### **‘111C Application of sdiv 2**

- ‘(1) This subdivision applies in relation to the following decisions of the chief executive—
- (a) whether or not to appoint a person as a transit officer under section 111(3);
  - (b) whether or not to revoke the appointment of a transit officer under section 113G.
- ‘(2) This subdivision applies to a person despite anything in the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

### **‘111D Definition for sdiv 2**

‘In this subdivision—

*relevant information*, about a person, means information about the person of a kind mentioned in the *Police Service Administration Act 1990*, schedule, for police officers, recruits and applicants to become police officers or recruits.

### **‘111E Person to be advised of duties of disclosure**

‘Before a person is appointed as a transit officer, the chief executive must—

- (a) tell the person—
  - (i) of the person’s duty under section 111F to disclose relevant information about the person; and
  - (ii) that the chief executive may under section 111G obtain relevant information about the person; and
- (b) give the person a copy of the guidelines for dealing with relevant information obtained by the chief executive under this subdivision.

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**‘111F Transit officers must disclose relevant information and changes to relevant information**

- ‘(1) A person who is a transit officer or seeking to be appointed as a transit officer must, if asked by the chief executive, disclose to the chief executive any relevant information known to the person that may affect the person’s suitability to be a transit officer.
- ‘(2) A person seeking to be appointed as a transit officer required to disclose relevant information under subsection (1) must disclose the information before being appointed as a transit officer.
- ‘(3) If a person who is a transit officer is aware that there is a change in relevant information about the person, the person must immediately disclose to the chief executive the details of the change.
- ‘(4) A person required to disclose relevant information under subsection (1) or (3) must give the chief executive the disclosure in the approved form.
- ‘(5) Without limiting subsection (4), the approved form must make provision for the disclosure of all of the following information—
  - (a) the existence of a conviction or charge;
  - (b) when an offence was committed or alleged to have been committed;
  - (c) details of an offence or alleged offence;
  - (d) for a conviction—whether or not a conviction was recorded and other details of the sentence.

*Notes—*

- 1 Under section 111H, when making the assessment of a person’s suitability to be, or continue to be, a transit officer, the chief executive may have regard to whether or not the person has complied with this section.
- 2 Also, if a person who is a transit officer fails to comply with subsection (3), the person’s appointment may be revoked under section 113G.

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### **‘111G Chief executive may request information from commissioner of the police service**

- ‘(1) This section applies to a person who—
  - (a) is a transit officer; or
  - (b) seeks to be appointed as a transit officer and has given the chief executive a disclosure for the purposes of section 111F.
- ‘(2) This section applies even if the disclosure does not state any relevant information about the person.
- ‘(3) The chief executive may ask the commissioner of the police service to give the chief executive a report that includes relevant information about the person.
- ‘(4) Subsection (5) applies if—
  - (a) the commissioner of the police service reasonably suspects a person is a transit officer; and
  - (b) information about the person included in a report mentioned in subsection (3) changes, including new information that would have been included in the report had the information existed when the report was made.
- ‘(5) The commissioner may notify the chief executive of the change.

*Note—*

Section 148B provides for the chief executive and the commissioner of the police service entering into arrangements for the giving and receiving of information under this Act.

### **‘111H Assessment of suitability**

- ‘(1) This section applies to the chief executive in considering relevant information about a person under this subdivision.
- ‘(2) When assessing the person’s suitability to be, or continue to be, a transit officer, the chief executive may have regard to all relevant information available to the chief executive, including, for example—

- 
- (a) information that is disclosed to the chief executive under section 111F; and
  - (b) information made available by the commissioner of the police service because of a request under section 111G; and
  - (c) information that is stored on—
    - (i) a database kept by the chief executive; or
    - (ii) a database kept by the commissioner of the police service; and
  - (d) information that is otherwise available to the chief executive.

*Example for subsection (2)(d)—*

information obtained from previous employment checks

- ‘(3) Also, when making the assessment, the chief executive may have regard to whether or not the person has complied with section 111F.

### **‘111 Particular persons to be advised if person unsuitable**

- ‘(1) If, because of information relied on by the chief executive under this subdivision, the chief executive considers a person may not be suitable to be, or continue to be, a transit officer, the chief executive must, before deciding the person is not suitable—
  - (a) disclose the information to the person; and
  - (b) allow the person a reasonable opportunity to make representations to the chief executive about the information.
- ‘(2) The chief executive must give reasons why the chief executive considers the person may not be suitable to be, or continue to be, a transit officer unless the chief executive considers the giving of the reasons may—
  - (a) prejudice the investigation of a contravention or possible contravention of the law; or

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- (b) enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained; or
  - (c) endanger a person's life or physical safety; or
  - (d) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law; or
  - (e) prejudice the maintenance or enforcement of a lawful method or procedure for protecting public safety; or
  - (f) prejudice national security; or
  - (g) be prohibited under a law of this or any other State or the Commonwealth.
- ‘(3) In deciding, under subsection (2), whether or not to give reasons why the chief executive considers the person may not be suitable to be, or continue to be, a transit officer, the chief executive must have regard to any advice given to the chief executive by the commissioner of the police service in relation to the disclosure of information given by the commissioner.
- ‘(4) If, after considering any representations made under subsection (1)(b), the chief executive decides the person is not suitable to be, or continue to be, a transit officer, the chief executive must give the person a written notice stating that the person is not suitable to be, or continue to be, a transit officer.
- ‘(5) Information relied on under this section to decide that a person is not suitable to be a transit officer can not be used for any other purpose, unless its disclosure is authorised under section 111J(3).

### **‘111J Secrecy**

- ‘(1) This section applies to a person who—
- (a) is, or has been—
    - (i) the chief executive; or

- 
- (ii) a transit officer; or
  - (iii) involved in the appointment of a transit officer; and
  - (b) in that capacity acquired relevant information about someone else.
- ‘(2) The person must not disclose the relevant information to anyone else.

Maximum penalty—200 penalty units.

- ‘(3) Subsection (2) does not apply to the disclosure of information about a person, if the disclosure—
- (a) is to the chief executive or a person involved in the appointment of a transit officer for the purpose of assessing the person’s suitability to be, or continue to be, a transit officer; or
  - (b) is with the person’s consent; or
  - (c) is required by another law.
- ‘(4) For this section, a person is involved in the appointment of a transit officer if—
- (a) the person is involved in any part of the process the chief executive follows in deciding whether or not to appoint a person as a transit officer; or

*Example—*

a person who gathers information for assessing a person’s suitability to be a transit officer and makes a recommendation to the chief executive about whether the chief executive should appoint or not appoint the person as a transit officer

- (b) a person is involved in any part of the process the chief executive follows in deciding whether or not to revoke the appointment of a transit officer.

*Example—*

a person who gathers information for assessing a person’s suitability to continue to be a transit officer, including whether or not the person has complied with provisions of this part, and makes a recommendation to the chief executive about whether the chief executive should revoke the person’s appointment as a transit officer

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- ‘(5) A person involved in any way in anything done under this subdivision can not be compelled to produce to a court any document kept, or to disclose to a court any information obtained, because of the doing of the thing.
- ‘(6) Subsection (5) does not affect the operation of the *Judicial Review Act 1991*.
- ‘(7) This section does not limit section 148C.
- ‘(8) In this section—  
*disclose*, in relation to information about a person, includes give access to information about a person.

#### **‘111K Guidelines for dealing with relevant information**

- ‘(1) The chief executive must make guidelines, consistent with this subdivision, for dealing with relevant information obtained by the chief executive under this subdivision.
- ‘(2) The purpose of the guidelines is to ensure—
  - (a) natural justice is afforded to the persons about whom the information is obtained; and
  - (b) only relevant information is used in assessing the persons’ suitability to be, or continue to be, a transit officer; and
  - (c) decisions about the suitability of persons, based on the information, are made in a consistent way.
- ‘(3) The chief executive must give a copy of the guidelines, on request, to a person seeking to be appointed, or appointed, as a transit officer.

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## **‘Subdivision 3      Requirements about training of transit officers**

### **‘111L Requirements for course of training**

- ‘(1) This section states the requirements for the course of training for qualification for appointment as a transit officer.
- ‘(2) The course of training must—
  - (a) be developed by the chief executive and approved by the commissioner of the police service; and
  - (b) provide for training in all the functions and powers of an transit officer under part 4A, and include guidelines about the following—
    - (i) the use of force generally;
    - (ii) deciding what force is reasonably necessary for particular circumstances and particular persons;
    - (iii) how to de-escalate a situation;
    - (iv) deciding whether using handcuffs is the only practicable way to detain a person and, if so, appropriate ways of using handcuffs;
    - (v) dealing with children, persons with impaired capacity, and other vulnerable persons;
    - (vi) appropriate ways of transporting detained persons to police officers;
    - (vii) appropriate ways of frisk searching a person; and
  - (c) be comparable to training undertaken by persons seeking to be engaged, or engaged, by the police service.
- ‘(3) Subsection (2)(b) does not limit the matters that may be provided for in the course of training.

## **‘Division 2                      Identity requirements’.**

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## **219 Amendment of s 112 (Identity cards)**

Section 112(3)(c)—

*omit, insert—*

‘(c) identify the person as—

- (i) if the person is a transit officer—an authorised person (transit officer); or
- (ii) otherwise—an authorised person; and’.

## **220 Insertion of new ss 113A and 113B and ch 11, pt 2, divs 3–5 and div 6, hdg**

After section 113—

*insert—*

### **‘113A Uniforms for transit officers**

- ‘(1) The chief executive must issue a uniform to each transit officer.
- ‘(2) A person who ceases to be a transit officer must, as soon as practicable, return the uniform to the chief executive unless the person has a reasonable excuse for not returning it.

Maximum penalty for subsection (2)—10 penalty units.

### **‘113B Transit officer must be in uniform**

‘A transit officer may exercise a power under part 4A in relation to a person only if the officer is in uniform.

## **‘Division 3 Requirements relating to transit officers**

### **‘113C Transit officers must continue to have relevant skills and abilities**

- ‘(1) The chief executive must ensure a person who is appointed as a transit officer continues to have the skills and abilities

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required for performing functions or exercising powers of transit officers under this part.

- ‘(2) For subsection (1), the chief executive may require a transit officer to undertake transit officer training at any time.

*Note—*

If a person appointed as a transit officer is asked to undertake transit officer training under this subsection and fails to do so, the person’s appointment may be revoked under section 113G.

- ‘(3) In deciding whether a transit officer should be required to undertake transit officer training, the chief executive must have regard to the following—
- (a) when the transit officer last undertook the training;
  - (b) whether there have been any developments in the training since the transit officer last undertook the training;
  - (c) evidence of the transit officer’s past performance in performing functions or exercising powers under this part.

### **‘113D Transit officer must not be under the influence of alcohol or drugs**

- ‘(1) A transit officer who is on duty for performing a function or exercising a power under this Act must not—
- (a) be over the low alcohol limit; or
  - (b) have present in the officer’s urine—
    - (i) evidence of a dangerous drug; or
    - (ii) evidence of a prescribed substance that the officer may not lawfully take; or
    - (iii) evidence of having taken a prescribed substance in a way contrary to a direction of a doctor or a recommendation of the manufacturer of the substance.

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*Note—*

If a person appointed as a transit officer contravenes subsection (1), the person's appointment may be revoked under section 113G.

- '(2) For subsection (1), a person is over the **low alcohol limit** if the concentration of alcohol in the person's breath is, or is more than, 0.02g of alcohol in 210L of breath.
- '(3) For this Act, the concentration of alcohol in a person's breath may be expressed as—
  - (a) a specified number of grams of alcohol in 210L of breath; or
  - (b) a specified number of grams in 210L.

*Example—*

The concentration of alcohol in a person's breath may be expressed as 0.063g of alcohol in 210L of breath or as 0.063g/210L.

- '(4) For subsection (1), a transit officer is **on duty** for performing a function or exercising a power under this Act if the officer—
  - (a) is about to perform the function or exercise the power; or
  - (b) is performing the function or exercising the power; or
  - (c) has just performed the function or exercised the power.
- '(5) In this section—

**dangerous drug** means a dangerous drug under the *Drugs Misuse Act 1986*.

**prescribed substance** means—

- (a) a substance, other than a dangerous drug, that is a controlled drug, a restricted drug or a poison under the *Health Act 1937* that may impair a person's physical or mental capacity; or
- (b) another substance, other than a dangerous drug, that may impair a person's physical or mental capacity.

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## **‘Division 4                    Cessation of appointment**

### **‘113E When authorised person ceases to hold office**

- ‘(1) An authorised person ceases to hold office if any of the following happens—
- (a) the term of office stated in a condition of office ends;
  - (b) under another condition of office, the person ceases to hold office;
  - (c) the person’s resignation under section 113F takes effect.
- ‘(2) Subsection (1) does not limit the ways an authorised person may cease to hold office.
- ‘(3) This section does not apply to a transit officer who is a police officer.
- ‘(4) In this section—
- condition of office* means a condition on which the authorised person holds office.

### **‘113F Resignation**

‘An authorised person may resign by signed notice given to the chief executive.

### **‘113G Revocation of appointment of transit officer**

- ‘(1) The chief executive may revoke the appointment of a person as a transit officer if—
- (a) the chief executive is of the opinion the person is no longer suitable to be a transit officer, having regard to the matters mentioned in section 111B; or
- Note—*
- Division 1, subdivision 2 outlines the process for assessing a person’s suitability to be, or continue to be, a transit officer.
- (b) the person—

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- (i) has failed to comply with section 111F(3); or
  - (ii) has failed to undertake transit officer training as required by the chief executive under section 113C(2); or
  - (iii) has failed to comply with section 113D(1); or
  - (iv) has failed to provide a specimen of breath for an alcohol test, or a specimen of urine for a drug test, to be conducted under section 116; or
  - (v) has knowingly failed to comply with part 4A without a reasonable excuse.
- ‘(2) Subsection (1)(b)(iv) does not apply if the transit officer has a reasonable excuse, because of a medical condition, for being unable to provide the specimen of breath or urine.
- ‘(3) If the person is an employee of a railway manager or railway operator, the chief executive may advise the railway manager or railway operator of the revocation.

## ‘Division 5                      **Application of other Acts to particular transit officers**

### ‘113H **Application of Crime and Misconduct Act 2001**

- ‘(1) This section applies if an employee of a railway manager or railway operator that is a GOC, or a wholly owned subsidiary of a GOC, becomes a transit officer under section 111(3)(b).
- ‘(2) Subject to subsection (3), the *Crime and Misconduct Act 2001* applies to the railway manager or railway operator in relation to the employee as if—
- (a) the railway manager or railway operator were a unit of public administration; and
  - (b) the chief executive officer of the railway manager or railway operator were the chief executive officer of a unit of public administration; and

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- (c) a prescribed person for the railway manager or railway operator were a person holding an appointment in a unit of public administration.
- ‘(3) The *Crime and Misconduct Act 2001* applies to a railway operator or railway manager, and prescribed persons for the railway manager or railway operator, only in relation to conduct, or a conspiracy or attempt to engage in conduct, or by a prescribed person relating to the performance of a function or exercise of a power by the employee as a transit officer under this Act.
- ‘(4) This section applies despite—
- (a) the *Crime and Misconduct Act 2001*, section 20(2)(d); and
- (b) the *Government Owned Corporations Act 1993*, section 156.

*Note—*

Under the *Crime and Misconduct Act 2001*, section 20(2)(d) and the *Government Owned Corporations Act 1993*, section 156, a GOC is not a unit of public administration under the *Crime and Misconduct Act 2001*.

### ‘113I Application of Public Sector Ethics Act 1994

- ‘(1) This section applies if an employee of a railway manager or railway operator that is a GOC, or a wholly owned subsidiary of a GOC, becomes a transit officer under section 111(3)(b).
- ‘(2) Subject to subsections (3) and (4), the *Public Sector Ethics Act 1994* applies to the railway manager or railway operator in relation to the employee as if—
- (a) the railway manager or railway operator were a public sector entity; and
- (b) the chief executive officer of the railway manager or railway operator were—
- (i) the chief executive officer of the public sector entity; and

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- (ii) the responsible authority for the public sector entity; and
  - (c) a prescribed person for the railway manager or railway operator were a public official.
- ‘(3) The *Public Sector Ethics Act 1994* applies to a railway operator or railway manager, and prescribed persons for the railway manager or railway operator, only in relation to a prescribed person’s duties relating to the performance of a function or exercise of a power by the employee as a transit officer under this Act.
- ‘(4) Without limiting subsection (3)—
- (a) the ethics obligations under the *Public Sector Ethics Act 1994*, part 3 are imposed on a prescribed person only in relation to the person’s duties relating to a transit officer performing a function or exercising a power under this Act; and
  - (b) the requirement to prepare a code of conduct under the *Public Sector Ethics Act 1994*, part 4 is a requirement to prepare a code of conduct only for a prescribed person’s duties relating to a transit officer performing a function or exercising a power under this Act.

## ‘Division 6                      Miscellaneous’.

### **221      Amendment of s 115 (Protection from liability)**

Section 115(3)(a), from ‘is employed’ to ‘operator and’—  
*omit, insert—*

‘is not a transit officer, is employed by a railway manager or railway operator, and’.

### **222      Insertion of new ch 11, pt 2A**

After section 115—  
*insert—*

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## **‘Part 2A                      Drug and alcohol testing of    transit officers**

### **‘116 Chief executive may require transit officer to undergo alcohol or drug test**

- ‘(1) The chief executive may, by written notice, require a transit officer to submit to an alcohol test or drug test if—
- (a) the officer has been involved in an incident in which a person being detained under part 4A by the officer suffers a physical injury; or
  - (b) the chief executive reasonably suspects the person is contravening or has contravened section 113D(1).

*Note—*

If a person appointed as a transit officer is asked to provide a specimen of breath for an alcohol test, or specimen of urine for a drug test, under this section and the person fails to provide the specimen, the person’s appointment may be revoked under section 113G.

- ‘(2) An alcohol test conducted under this section must be conducted—
- (a) by using an instrument approved by the commissioner of the police service for the purpose; and
  - (b) in accordance with the manufacturer’s instructions for use of the instrument.
- ‘(3) A drug test conducted under this section must be conducted by a doctor.
- ‘(4) A regulation may provide for the following—
- (a) requirements about how an alcohol test or drug test under this section may be conducted;
  - (b) requirements about notifying a transit officer of the results of an alcohol test or drug test conducted on the officer under this section.

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‘(5) In this section—

*alcohol test*, of a transit officer, means a test of the breath of the transit officer for deciding whether the officer is over the low alcohol limit within the meaning of section 113D(2).

*drug test*, of a transit officer, means a test of the urine of the transit officer for deciding whether the urine has evidence of a dangerous drug, or prescribed substance, as defined under section 113D(5).

**‘117 Protection from liability for doctors advising on drug test**

‘(1) This section applies to a doctor who, acting honestly on reasonable grounds, gives the results of a drug test conducted under section 116 to the chief executive.

‘(2) The doctor is not liable, civilly, criminally or under an administrative process, for giving the results.

‘(3) Without limiting subsection (2)—

(a) in a proceeding for defamation, the doctor has a defence of absolute privilege for publishing the results; and

(b) the doctor—

(i) does not, by giving the results, contravene any Act, oath, rule of law or practice requiring the practitioner to maintain confidentiality of the results; and

(ii) is not liable for disciplinary action for giving the results.

‘(4) Also, merely because the doctor gives the information, the doctor can not be held to have—

(a) breached any code of professional etiquette or ethics; or

(b) departed from accepted standards of professional conduct.

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**‘118 Alcohol or drug test results generally inadmissible**

- ‘(1) Evidence of the following is inadmissible in a civil or criminal proceeding before a court—
- (a) a requirement of the chief executive made under section 116(1) having been made;
  - (b) the result of any test conducted under section 116.
- ‘(2) Also, the chief executive and anyone else involved in any way in anything under section 116 can not be compelled to produce to a court any document kept or to disclose to a court any information obtained because of the doing of the thing.
- ‘(3) This section does not apply to—
- (a) a proceeding for a charge of an offence arising from an incident in which a person being detained under part 4A by the officer suffers a physical injury; or
  - (b) an inquest in a Coroners Court into the death of a person; or
  - (c) a proceeding on an application under the *Industrial Relations Act 1999*, section 74 for reinstatement because of unfair dismissal; or
  - (d) an investigation or other proceeding under the *Crime and Misconduct Act 2001*; or
  - (e) disciplinary action as provided for under the *Public Sector Ethics Act 1994*.’.

**223 Insertion of new ch 11, pts 4A and 4B**

After section 129—

*insert—*

## **‘Part 4A                      Functions and powers of transit officer for protecting safety of persons or property**

### **‘Division 1                      Powers to detain a person**

#### **‘129A Power to detain person who has committed a detainable offence**

- ‘(1) This section applies if a transit officer reasonably believes a person on or in public transport infrastructure has committed a detainable offence on or in the public transport infrastructure.
- ‘(2) The transit officer may detain the person, using force that is reasonably necessary for the purpose, until the person can be delivered to a police officer.

#### **‘129B Power to detain person to prevent continuation of detainable offence**

- ‘(1) This section applies if a transit officer—
  - (a) finds a person on or in public transport infrastructure committing a detainable offence; and
  - (b) reasonably believes that it is necessary to detain the person because of circumstances mentioned in subsection (2).
- ‘(2) For subsection (1)(b), the circumstances are—
  - (a) the person has been given a direction to leave the public transport infrastructure under this Act, and has failed to comply with the direction; or
  - (b) the person’s conduct will, or is likely to, result in—
    - (i) bodily or other harm to the person or another person on or in the public transport infrastructure;  
or

- (ii) damage to property on or in the public transport infrastructure; or
- (c) it is likely that, if the person were given a direction to leave the public transport infrastructure under this Act, the person will repeat the offence or commit a similar offence on or in other public transport infrastructure immediately or soon after complying with the direction; or
- (d) having regard to the nature of the person's conduct, the person is unlikely to comply with a direction to leave the public transport infrastructure under this Act.

*Examples of when paragraph (d) may apply—*

- 1 A person on or in public transport infrastructure is acting in a way that suggests the person is uncontrollable.
  - 2 Two or more persons on or in public transport infrastructure are engaged in an intense struggle and are unlikely to hear or register a direction to leave.
- ‘(3) The transit officer may detain the person, using force that is reasonably necessary for the purpose, until the person can be delivered to a police officer.

**‘129C Power to detain person to prevent contravention of exclusion order**

- ‘(1) This section applies if—
- (a) a person is given a direction under section 143AHB in relation to public transport infrastructure for the purpose of stopping or preventing the person from contravening an exclusion order; and
  - (b) a transit officer finds the person on or in, or about to enter, the public transport infrastructure.
- ‘(2) The transit officer may detain the person, using force that is reasonably necessary for the purpose, until the person can be delivered to a police officer.

## **‘Division 2                    Provisions about detaining persons generally**

### **‘129D Handcuffs may be used for detaining person**

- ‘(1) A transit officer may use handcuffs to detain a person under division 1 only if the transit officer reasonably believes the use of handcuffs is the only practicable way to properly effect the detention.

*Note—*

Under section 129V, the transit officer must follow the guidelines forming part of transit officer training that provide for how to decide whether using handcuffs is the only practicable way to detain a person and, if so, appropriate ways of using handcuffs.

- ‘(2) The *Weapons Act 1990*, section 67 does not apply to a transit officer who acquires or possesses handcuffs for exercising a power under this part.

*Editor’s note—*

See also the *Weapons Regulation 1996*, section 80.

### **‘129E Period of detention**

- ‘(1) A transit officer who detains a person under this part must immediately contact a police officer (***contacted police officer***) to arrange for the delivery of the person to a police officer.
- ‘(2) If the contacted police officer asks the transit officer to take the person to a police officer, the transit officer must take the person to that police officer as soon as possible.
- ‘(3) If the contacted police officer tells the transit officer to release the person from the detention, the transit officer must release the person immediately.
- ‘(4) If subsection (2) or (3) does not apply, the transit officer may detain the person at the place where the detention started, or at another place set aside by the chief executive for the purpose, until a police officer arrives to deal with the person.

*Examples for subsection (4)—*

- 1 A person detained at a train station may continue to be detained at the train station until a police officer arrives to deal with the person.
  - 2 A person detained on a train may be moved from the train to a train station and detained at the train station until a police officer arrives to deal with the person.
- ‘(5) In detaining a child under this part, the transit officer must ensure the child is detained for the shortest period that is justified in the circumstances.

**‘129F Information to be given to detained person**

- ‘(1) A transit officer who detains a person under this part must, as soon as reasonably practicable, tell the person that the person is being detained under this part and the nature of the person’s conduct for which the person is detained.
- ‘(2) Before, or immediately after, the detained person is delivered to a police officer or released under section 129E, the transit officer must give the person a written report for the detention.

**‘129G Written report to be given to police officer**

- ‘(1) This section applies if a transit officer who detains a person under this part delivers the person to a police officer under section 129E.
- ‘(2) The transit officer must give a written report for the detention to the police officer when, or immediately after, the delivery.

**‘129H Written report to be given to chief executive**

‘A transit officer who detains a person under this part must give a written report for the detention to the chief executive as soon as reasonably practicable after the person is delivered to a police officer or released under section 129E.

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**‘129I Requirements for written report given under this division**

- ‘(1) This section states the requirements for a written report for a detention under this part of a person (the *detained person*) that is required to be given under this division.
- ‘(2) The written report must include all of the following information—
- (a) the transit officer’s name;
  - (b) the address of the place the transit officer receives instructions from, or reports to, on the day the detention happened;
  - (c) if known by the transit officer, the name, address, age and date of birth of the detained person;
  - (d) details of the conduct of the detained person that led to the detention, including—
    - (i) details of any direction that has been given to the detained person that is relevant to the detained person’s conduct; and
    - (ii) any other matters the transit officer considered in deciding to detain the person;
  - (e) details of any evidence of the detained person’s conduct mentioned in paragraph (d);
  - (f) if the detained person is a child or a person with impaired capacity, the details of any action taken under division 3 by the transit officer in relation to the detained person;
  - (g) when and where the detained person was first detained;
  - (h) each place to which the person was taken during the detention, and the time spent at each place;
  - (i) any event or consideration that affected the length of the detention;
  - (j) if the detained person is delivered to a police officer under section 129E—

- (i) the name and rank of the police officer; and
  - (ii) when the detained person was delivered to the police officer; and
  - (iii) if the detained person was transported to the police officer—how the person was transported to the police officer;
- (k) if the detained person is released from the detention under section 129E—
- (i) the name and rank of the police officer who told the transit officer to release the person; and
  - (ii) when the detained person was released from the detention; and
- (l) details of any physical injury suffered by the detained person, or damage caused to the person's property, during the detention;
- (m) whether the transit officer exercised a power under section 129O in relation to the detained person and, if so—
- (i) the reason for exercising the power; and
  - (ii) when and where the power was exercised; and
  - (iii) whether the exercise of the power required the removal of an outer garment worn by the detained person or a frisk search of the detained person;
- (n) whether, under section 129T, the transit officer took and retained an article and, if so, a description of the article.

### **'129J Restrictions on questioning detained person**

'A transit officer must not while a person is being detained under this part—

- (a) question the person about the person's involvement in the detainable offence in relation to which the person is detained; or

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- (b) in any way encourage, or provide an incentive for, the person to make a statement of any kind about the person's involvement in the detainable offence in relation to which the person is detained.

### **'Division 3                    Additional provisions about detaining children or persons with impaired capacity**

#### **'129K Limitation on detaining child**

'In deciding whether to detain a child under this part, the transit officer must have regard to the need to ensure that detention is used only as a last resort.

#### **'129L Responsible person to be notified of detention**

- '(1) This section applies if—
  - (a) under this part, a transit officer detains a child or a person with an impaired capacity; and
  - (b) the child's or person's name is known to the transit officer.
- '(2) The transit officer must, as soon as practicable, advise the responsible person for the child or person of the following—
  - (a) if the officer is detaining the child or person at a place until a police officer arrives—the detention and the place where the child or person is being detained;
  - (b) if the transit officer is taking the child or person to a police officer—the name and location of the police officer to whom the child or person is being taken.
- '(3) Subsection (2) does not apply in relation to a child if the transit officer believes on reasonable grounds the child is an adult.

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- ‘(4) In deciding whether the transit officer had reasonable grounds, a court may have regard to the child’s apparent age and the circumstances of the detention.
- ‘(5) In this section—
- responsible person*** means—
- (a) for a child—
    - (i) the child’s parent or guardian; or
    - (ii) a person who has lawful custody of the child; or
    - (iii) a person who has the day-to-day care and control of the child; or
    - (iv) an adult relative or friend acceptable to the child; or
  - (b) for a person with an impaired capacity—a guardian appointed for the person under the *Guardianship and Administration Act 2000*.

**‘129M Giving warning etc. to child or person with impaired capacity**

- ‘(1) This section applies if, under this part, a transit officer gives a child or a person with an impaired capacity—
- (a) a warning; or
  - (b) an opportunity to leave public transport infrastructure.
- ‘(2) The transit officer must take reasonable steps to ensure the child or person understands the purpose, nature and effect of the warning or opportunity to leave.
- ‘(3) The steps that can be taken include, for example—
- (a) personally explaining the matters to the child or person; and
  - (b) having an interpreter or other person able to communicate effectively with the child or person give the explanation; and

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- (c) supplying an explanatory note in English or another language.

#### **‘129N Nature of detention for child or person with impaired capacity**

- ‘(1) This section applies if, under this part, a transit officer detains a child or a person with an impaired capacity.
- ‘(2) In deciding how and where to detain the child or person, or how to transport the child or person to a police officer, the transit officer must have regard to the following—
  - (a) the need to keep the child or person safe and promote the child’s or person’s physical and mental wellbeing;
  - (b) the need to treat the child or person with respect and dignity;
  - (c) the child’s or person’s age, maturity, capacity and, if appropriate, cultural and religious beliefs and practices;
  - (d) the need to ensure the child or person is detained for the least time that is justified in the circumstances.

#### **‘Division 4 Additional powers after person detained**

#### **‘129O Power to require detained person to remove outer garment etc.**

- ‘(1) This section applies if a transit officer who has detained a person under this part reasonably suspects the person is carrying an article that could, or could be used to, cause harm to the person or someone else.
- ‘(2) The transit officer may direct the person to do 1 or more of the following—
  - (a) allow the officer to inspect the person’s belongings;

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- (b) remove 1 or more outer garments worn by the person as specified by the officer and allow the officer to inspect the garments;
  - (c) remove all articles from the person's clothing and allow the officer to inspect them;
  - (d) allow the officer to frisk search the person.
- ‘(3) In this section—
- inspect*, an article, includes handle the article, open it and examine its contents.

**‘129P Limits on directing removal of outer garment worn by detained person generally**

- ‘(1) A transit officer may direct a person to remove an outer garment under this division only if the officer—
- (a) considers on reasonable grounds the person is wearing an outer garment and a proper examination of the person and garment can not be carried out unless the outer garment is removed; and
  - (b) considers on reasonable grounds that the removal of the outer garment will not result in the person being in a state of undress; and
  - (c) specifies the outer garment to be removed; and
  - (d) if practicable, ensures the person's compliance with the direction is carried out in an area or place that is out of view of members of the general public and that the officer considers, on reasonable grounds, provides suitable personal privacy to the person; and
  - (e) tells the person that even if the person removes the outer garment specified by the officer and allows the officer to examine the outer garment, the person may or may not be examined further.

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‘(2) In this section—

*state of undress*, for a person, means—

- (a) the person is naked or the person’s genital or anal region is bare or, if the person is female, the person’s breasts are bare; or
- (b) the person is wearing only underwear; or
- (c) the person is wearing only some outer garments so that some of the person’s underwear is not covered by an outer garment.

**‘129Q Limit on directing removal of outer garment worn by detained person who is a child or person with impaired capacity**

‘(1) This section applies if a transit officer gives a direction to remove an outer garment under this division to a child, or a person with impaired capacity, who may not be able to understand the purpose of the direction.

‘(2) The transit officer must not permit the child or person to remove the outer garment other than in the presence of—

- (a) if a responsible person for the child or person is at or in the immediate vicinity of the place where the outer garment is to be removed—the responsible person; or
- (b) otherwise—another authorised person.

‘(3) In this section—

*responsible person* means—

- (a) for a child—
  - (i) the child’s parent or guardian; or
  - (ii) a person who has lawful custody of the child; or
  - (iii) a person who has the day-to-day care and control of the child; or
  - (iv) an adult relative or friend acceptable to the child; or

- (b) for a person with an impaired capacity—a guardian appointed for the person under the *Guardianship and Administration Act 2000* or an adult relative or friend acceptable to the person.

**‘129R Limits on frisk searching detained person generally**

- ‘(1) A transit officer may frisk search a person only if—
  - (a) the officer is the same sex as the person; and
  - (b) the officer—
    - (i) tells the person that the person has the right to request the frisk search be carried out in an area or place that is, if practicable, out of view of members of the general public and that the officer considers, on reasonable grounds, provides suitable personal privacy to the person; and
    - (ii) takes the person to the area or place, if the person requests the officer to do so.
- ‘(2) A transit officer who frisk searches a person must—
  - (a) ensure, as far as reasonably practicable, the way the person is searched causes minimal embarrassment to the person; and
  - (b) take reasonable care to protect the dignity of the person.

**‘129S Limits on frisk searching detained person who is a child or person with impaired capacity**

- ‘(1) This section applies if a transit officer frisk searches a child, or a person with impaired capacity, who may not be able to understand the purpose of the search.
- ‘(2) The transit officer must conduct the frisk search in the presence of—
  - (a) if a responsible person for the child or person is at or in the immediate vicinity of the place where the frisk search is to be conducted—the responsible person; or

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- (b) otherwise—another authorised person.
- ‘(3) In this section—
- responsible person*** means—
- (a) for a child—
    - (i) the child’s parent or guardian; or
    - (ii) a person who has lawful custody of the child; or
    - (iii) a person who has the day-to-day care and control of the child; or
    - (iv) an adult relative or friend acceptable to the child;  
or
  - (b) for a person with an impaired capacity—a guardian appointed for the person under the *Guardianship and Administration Act 2000* or an adult relative or friend acceptable to the person.

### **‘129T Power to take and retain particular articles**

- ‘(1) This section applies if a transit officer acting under section 129O in relation to a person finds an article that may cause harm to the person or someone else.
- ‘(2) The transit officer may take and retain the article while the person is being detained under this part.
- ‘(3) The transit officer must give the article to the police officer to whom the person is delivered under this part.

*Note—*

For return of the article, see the *Police Powers and Responsibilities Act 2000*, chapter 21, part 3 (Dealing with things in the possession of police service).



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- ‘(2) Subsection (1) does not limit any provision of this part that specifically provides for the application of a principle mentioned in the *Juvenile Justice Act 1992*, schedule 1.

### ‘129X Transit officer must not fail to comply with this part

- ‘(1) A transit officer must not knowingly fail to comply with this part without a reasonable excuse.

*Note—*

The transit officer’s appointment may also be revoked under section 113G.

Maximum penalty—60 penalty units.

- ‘(2) To remove any doubt, it is declared that a purported exercise of a power under this part in contravention of this part is unlawful.

## ‘Part 4B Powers of court to make exclusion orders for protecting the public or property

### ‘129Y Definitions for pt 4B

‘In this part—

*exclusion order* see section 129Z.

*proper officer*, of a court making an exclusion order, has the meaning given by the *Penalties and Sentences Act 1992*, section 4.

*public transport network* means the following—

- (a) all general route services;
- (b) all public transport infrastructure associated with a general route service.

*relevant offence* means an offence against a relevant provision as defined under section 143AHA(3).

*transport indictable offence* means an indictable offence, including an indictable offence dealt with summarily, committed on or in public transport infrastructure.

### **‘129Z What is an *exclusion order***

‘An *exclusion order* is an order that—

- (a) prohibits a person from using the public transport network for a period of not more than 2 years; or
- (b) restricts, for a period of not more 2 years, a person’s use of the public transport network in 1 or more of the following ways—
  - (i) restricting the general route services or public transport infrastructure the person may use;
  - (ii) restricting the days, or the times or periods of a day, when the person may use the public transport network;

*Examples—*

- restricting the use of the public transport network to during the day only
  - restricting the use of the public transport network to weekdays only
- (iii) restricting the purpose for which the person may use the public transport network.

*Examples—*

- restricting the use of the public transport network to travel to and from work or an educational institution
- restricting the use of the public transport network to travel to and from a hospital or another place providing medical treatment

### **‘129ZA Court may make exclusion order**

‘(1) This section—

- (a) applies to a court convicting a person of a relevant offence or transport indictable offence (each an *exclusion order offence*); and
- (b) provides for the making of an exclusion order in sentencing the person under the *Penalties and Sentences Act 1992* or, if the person is a child, the *Juvenile Justice Act 1992*.

*Note—*

The *Penalties and Sentences Act 1992*, section 9(1) provides for the only purposes for which a sentence may be imposed on a person.

‘(2) In addition to any sentence a court may make in relation to a person the court is convicting for a relevant offence, the court may make an exclusion order in relation to the person if—

- (a) the person has been convicted of an exclusion order offence—
  - (i) at least 1 other time during the last 12 months; or
  - (ii) at least 2 other times during the last 18 months; and
- (b) the court is satisfied the order—
  - (i) is in the public interest because it will—
    - (A) promote the safety and wellbeing of members of the public who use public passenger transport; or
    - (B) protect facilities used in connection with public transport from unlawful damage or interference; or
  - (ii) is otherwise in the public interest.

‘(3) In addition to any sentence a court may make in relation to a person the court is convicting for a transport indictable offence, the court may make an exclusion order in relation to the person if the court is satisfied the order—

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- (a) is in the public interest because—
    - (i) it will promote the safety and wellbeing of members of the public who use public passenger transport; or
    - (ii) it will protect facilities used in connection with public transport from unlawful damage or interference; or
  - (b) is otherwise in the public interest.

**‘129ZB Matters court must consider in deciding whether to make exclusion order**

- ‘(1) A court considering whether or not to make, or the terms of, an exclusion order in relation to a person must have regard to the following—
  - (a) the matters to which the court must have regard when sentencing the person under the *Penalties and Sentences Act 1992* or, if the person is a child, the *Juvenile Justice Act 1992*;
  - (b) whether the making of the order would cause substantial hardship to the person or the person’s family—
    - (i) by depriving the person of the person’s means of earning a living; or
    - (ii) in another way, including, for example, by depriving the person of the ability—
      - (A) to study; or
      - (B) to maintain the person’s health or the health of a member of the person’s family;
  - (c) the effect the order would have on the person’s safety and wellbeing, having regard to the person’s age and any physical, intellectual or psychiatric disability.
- ‘(2) This section does not limit the matters to which the court may have regard in considering whether or not to make, or the terms of, an exclusion order under this part in relation to a person.

*Note—*

See, for example, the *Penalties and Sentences Act 1992*, section 189 which allows the court to consider, in particular circumstances, offences a person may have committed but for which the person has not been convicted.

**‘129ZC Exclusion order to be explained if person before the court**

- ‘(1) If the person in relation to whom a court is making an exclusion order is before the court, the court must explain the following things to the person in a way the court is reasonably satisfied the person will understand them—
- (a) the purpose, terms and effect of the proposed exclusion order;
  - (b) what may happen if the person does not comply with the proposed exclusion order, including, for example, that the person may be detained under part 4A;
  - (c) that the person may apply for a variation of the order under section 129ZF.
- ‘(2) The process that a court adopts to explain things mentioned in subsection (1) may include using services of, or help from, other people to the extent the court considers appropriate.

*Examples of services or help the court may consider appropriate—*

- 1 The court may arrange for the court’s proper officer or a public service employee at the court, to explain the exclusion order to a person.
- 2 A local interpreter or the telephone interpreter service may be used to explain the order to the person.
- 3 Explanatory notes, including explanatory notes prepared for non-English speakers, may be given to the person.
- 4 The court may arrange with a community government under the *Local Government (Community Government Areas) Act 2004*, an indigenous regional council under the *Local Government Act 1993*, a community justice group or group of elders for someone to explain the order to the person.

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- ‘(3) Failure to comply with this section does not affect the validity of the exclusion order.

**‘129ZD Amendment or revocation of exclusion order generally**

- ‘(1) The following persons may apply, in the approved form, to amend or revoke an exclusion order—
- (a) a prosecutor;
  - (b) the person to whom the order applies.
- ‘(2) However, the person to whom the exclusion order applies can not apply for an amendment or revocation under this section within 6 months after the order was made.

*Note—*

However, section 129ZF provides for applications by the person to whom an exclusion order applies for variations of particular restrictions under the order if the person’s personal circumstances change.

- ‘(3) The application—
- (a) may be made only to a court of equivalent jurisdiction to the court in which the exclusion order was made; and
  - (b) may be made to a court convicting the person to whom the exclusion order applies of a relevant offence or transport indictable offence committed before or after the order was made.
- ‘(4) The applicant must give a copy of the application to—
- (a) if the applicant is a prosecutor—
    - (i) the person to whom the exclusion order applies; and
    - (ii) the chief executive; or
  - (b) if the applicant is the person to whom the exclusion order applies—
    - (i) the prosecuting authority; and
    - (ii) the chief executive.

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- ‘(5) The applicant must give the copy at least 21 days before the day on which the application is to be heard.
- ‘(6) The prosecutor and person to whom the exclusion order applies are each entitled to be heard at the hearing of an application.
- ‘(7) A court may amend or revoke the exclusion order only if satisfied there has been a material change in the circumstances of the person to whom the order applies that justifies the amendment or revocation.
- ‘(8) In this section—  
*prosecuting authority* means—
  - (a) if the prosecutor who appeared before the court when the exclusion order was made was a police officer—the commissioner of the police service, or someone authorised to accept the application on the commissioner’s behalf; or
  - (b) if the prosecutor who appeared before the court when the exclusion order was made was a Crown prosecutor—the director of public prosecutions, or someone authorised to accept the application on the director’s behalf.

### **‘129ZE Order to be given to interested persons**

- ‘(1) A proper officer of the court that makes, amends or revokes an exclusion order in relation to a person must as soon as possible—
  - (a) reduce the order to writing in the approved form; and
  - (b) cause a copy of the order to be given or sent to—
    - (i) the person; and
    - (ii) if the prosecutor who appeared before the court when the order was made was a Crown prosecutor—the director of public prosecutions, or someone authorised to accept the order of the director’s behalf; and

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- (iii) the commissioner of the police service, or someone authorised to accept the order on the commissioner's behalf; and
  - (iv) the chief executive.
- '(2) Without limiting subsection (1)(a), an exclusion order made under this part in relation to a person must state the following—
- (a) the name of the person;
  - (b) the period for which the order applies;
  - (c) the prohibitions or restrictions that the order imposes.
- '(3) Failure to comply with this section does not affect the validity of the exclusion order.

**'129ZF Amendment of exclusion order that restricts access for changes in personal circumstances**

- '(1) This section applies if—
- (a) a court makes, in relation to a person, an exclusion order that restricts the person's use of the public transport network on the basis of particular personal circumstances of the person; and
  - (b) the personal circumstances have changed.

*Example—*

A court makes an exclusion order in relation to a person that restricts the person's use of the public transport network to only permit travel to and from a place of work, and the person's place of work changes.

- '(2) The person may apply to a court of equivalent jurisdiction to the court in which the exclusion order was made for an order (an ***exclusion variation order***) to vary the restrictions that, under the exclusion order, apply to the person's use of the public transport network.
- '(3) An application for an exclusion variation order must—
- (a) be in the approved form; and
  - (b) be accompanied by—

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- (i) an affidavit made by the person outlining why the variation mentioned in the application is necessary; and
  - (ii) the information, or details of the information, the applicant intends to rely on for the application.
- ‘(4) Subsection (3) does not prevent the applicant from producing further evidence at the hearing of the application.
- ‘(5) A court to which an application for an exclusion variation order is made may vary the restrictions applying under the exclusion order only if the court—
  - (a) has had regard to—
    - (i) the restrictions and the matters mentioned in section 129ZB; and
    - (ii) whether the applicant has contravened the exclusion order other than in circumstances mentioned in section 129ZG(2); and
  - (b) considers the justice of the case requires it to vary the restrictions.
- ‘(6) An exclusion variation order must state the restrictions, as varied, that are to apply to the applicant’s use of the public transport network for the remainder of the period for which the exclusion order applies in relation to the applicant.
- ‘(7) A proper officer of the court that makes an exclusion variation order in relation to a person must as soon as possible—
  - (a) reduce the order to writing in the approved form; and
  - (b) cause a copy of the order to be given or sent to each person mentioned in section 129ZE(1)(b).
- ‘(8) Failure to comply with subsection (6) or (7) does not affect the validity of the exclusion variation order.

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**‘129ZG Offence to contravene exclusion order**

‘(1) A person to whom an exclusion order applies must not contravene the order, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units or 6 months imprisonment.

‘(2) Without limiting what may constitute a reasonable excuse for subsection (1), it is a reasonable excuse for a person to contravene an exclusion order applying to the person—

- (a) if, when the contravention happened, the person was not aware, and was reasonably not aware, that the order had been made; or
- (b) if the person is contravening the exclusion order because of an emergency; or
- (c) if—
  - (i) the person has applied for an exclusion variation order under section 129ZF; and
  - (ii) the court has not decided the application; and
  - (iii) the contravention of the exclusion order relates to the changed circumstances in relation to which the exclusion variation order is sought.

*Example for paragraph (c)—*

A person to whom an exclusion order has a reasonable excuse if—

- (a) the person has applied for a variation of the exclusion order because—
  - (i) it restricts the person’s use of the public transport network to only permit travel to and from the person’s place of work; and
  - (ii) the person’s place of work has changed; and
- (b) the person uses the public transport network, in contravention of the exclusion order, to travel to and from the new place of work while the court is considering the application.

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- ‘(3) If a court that convicts a person of an offence against subsection (1) is of equivalent jurisdiction to the court that made the exclusion order, the court may, in addition to or instead of sentencing the person under subsection (1), amend the order.’.

**224 Amendment of s 143AE (Interfering with service, vehicle or equipment)**

- (1) Section 143AE, heading, after ‘with’—

*insert—*

‘**public transport infrastructure,**’.

- (2) Section 143AE(1), after ‘with’—

*insert—*

‘public transport infrastructure or’.

**225 Amendment of s 143AF (Creating disturbance or nuisance on railway or vehicle)**

- (1) Section 143AF, heading, ‘railway’—

*omit, insert—*

‘**or in public transport infrastructure**’.

- (2) Section 143AF, ‘a railway or’—

*omit, insert—*

‘or in public transport infrastructure or a’.

**226 Amendment of s 143AHA (Power to require person to leave train etc.)**

- (1) Section 143AHA, heading, ‘train etc.’—

*omit, insert—*

‘**public transport infrastructure if person committing particular offences**’.

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- (2) Section 143AHA(1), from ‘a railway,’ to ‘operator,’—  
*omit, insert—*  
‘public transport infrastructure’.
- (3) Section 143AHA(1)(a), from ‘section 143AC’—  
*omit, insert—*  
‘a relevant provision; and’.
- (4) Section 143AHA—  
*insert—*
- ‘(3) In this section—  
***relevant provision*** means—
- (a) section 143AC; or
  - (b) section 143AE; or
  - (c) section 143AF; or
  - (d) any of the following provisions of the *Transport Infrastructure Act 1994*—
    - (i) section 255;
    - (ii) section 257;
    - (iii) section 329;
    - (iv) section 377.’.

**227 Insertion of new s 143AHB**

After section 143AHA—

*insert—*

**‘143AHB Power to require person to leave or not enter public transport infrastructure if person contravening exclusion order**

- ‘(1) An authorised person may—

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- (a) direct a person to leave public transport infrastructure if the person is in or on the public transport infrastructure in contravention of an exclusion order; or
  - (b) direct a person not to enter public transport infrastructure if the authorised person reasonably believes the person would be in contravention of an exclusion order if the person enters the public transport infrastructure.
- ‘(2) If the person does not obey the direction, the authorised person may use force that is reasonable to get the person to leave or not enter the public transport infrastructure.
- ‘(3) An authorised person can not give a direction under this section if the authorised person is satisfied the person has a reasonable excuse mentioned in section 129ZG(2)(a), (b) or (c) for contravening the exclusion order.’.

**228 Amendment of ch 13, pt 5, hdg (Provision for Transport Operations (Translink Transit Authority) Act 2008)**

Chapter 13, part 5, second occurring, as inserted by Act No. 32 of 2008—

*renumber* as chapter 13, part 6.

**229 Amendment of s 180 (Existing declarations under s 42(2) for a scheduled passenger service)**

Section 180, second occurring, as inserted by Act No. 32 of 2008—

*renumber* as section 181.

**230 Insertion of new ch 13, pt 7**

Chapter 13—

*insert*—



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*Note—*

The Criminal Code, chapter 32 contains offences relating to rape and sexual assault.

- (d) an offence involving wilful damage of property.

***exclusion order*** see section 129Z.

***exclusion variation order*** see section 129ZF(2).

***frisk search***, a person, means search the person by quickly running hands over the person's outer garments.

***impaired capacity*** has the meaning under the *Guardianship and Administration Act 2000*.

***prescribed person***, for a railway manager or railway operator, means—

- (a) an employee of the railway manager or railway operator who is a transit officer; or
- (b) an employee of the railway manager or railway operator, or a member of the railway manager's or railway operator's board, who is responsible for managing or supervising the performance of a function or the exercise of a power by a person mentioned in paragraph (a).

***proper officer***, for chapter 11, part 4B, see section 129Y.

***public transport infrastructure*** means any of the following—

- (a) a railway;
- (b) a car park under the control of a railway manager or railway operator;
- (c) a train or other passenger vehicle being operated by a railway manager or railway operator;
- (d) a busway as defined under the *Transport Infrastructure Act 1994*;
- (e) an interchange for a public passenger service used by buses;

*Example—*

Cannon Hill Interchange

- (f) a car park on land declared to be busway land under the *Transport Infrastructure Act 1994*, chapter 9;
- (g) a jetty or other structure (*ferry stop*) at which a ferry makes a scheduled stop for a ferry service, and any other structure associated with the ferry stop;
- (h) a bus or ferry being used for a general route service.

*public transport network*, for chapter 11, part 4B, see section 129Y.

*relevant information*, for chapter 11, part 2, division 1, subdivision 2, see section 111D.

*relevant offence*, for chapter 11, part 4B, see section 129Y.

*transit officer* see section 111(3).

*transit officer training* means a course of training for qualification for appointment as a transit officer complying with section 111L.

*transport indictable offence*, for chapter 11, part 4B, see section 129Y.’

## **Division 2            Amendments of other Acts**

### **Subdivision 1        Amendment of Criminal Code**

#### **232    Act amended in sdiv 1**

This subdivision amends the Criminal Code.

#### **233    Amendment of s 340 (Serious assaults)**

Section 340(3), definition *public officer—*  
*insert—*

[s 234]

---

‘(d) a transit officer under the *Transport Operations (Passenger Transport) Act 1994*.’.

## **Subdivision 2      Amendment of Police Powers and Responsibilities Act 2000**

### **234      Act amended in sdiv 2**

This subdivision amends the *Police Powers and Responsibilities Act 2000*.

### **235      Amendment of s 393 (Duty of police officer after arrest etc. of person)**

Section 393(2)—

*insert—*

‘(g) is delivered into the custody of a police officer following a detention under the *Transport Operations (Passenger Transport) Act 1994*, chapter 11, part 4A, and is released by the police officer without having been charged with an offence.’.

## **Subdivision 3      Amendment of Security Providers Act 1993**

### **236      Act amended in sdiv 3**

This subdivision amends the *Security Providers Act 1993*.

### **237      Amendment of s 4 (Who is a security provider)**

Section 4—

*insert—*

- ‘(4) Also, an authorised person under the *Transport Operations (Passenger Transport) Act 1994* is not a security provider in performing a function or exercising a power under that Act.’.

## **Part 7**                      **Amendment of Acts for purposes relating to maritime matters**

### **Division 1**                **Amendment of Transport Operations (Marine Pollution) Act 1995**

#### **238**    **Act amended in div 1**

This division amends the *Transport Operations (Marine Pollution) Act 1995*.

#### **239**    **Amendment of s 6 (Meaning of *MARPOL*)**

- (1) Section 6(1)(b), ‘Pollution Protocol relating to the Convention’—  
*omit, insert—*  
‘Protocol’.
- (2) Section 6(1)(c), ‘accepted by’—  
*omit, insert—*  
‘that has entered force for’.
- (3) Section 6(1)—  
*insert—*

[s 240]

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*Note—*

At the commencement of this note, the text of MARPOL is accessible through the Australian Maritime Safety Authority website at <<http://www.amsa.gov.au>>.

(4) Section 6(2) to (4)—

*omit, insert—*

‘(2) In this section—

**1978 Protocol** means the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973, as affected by any amendment made under article VI of the Protocol that has entered force for Australia.’.

## **240 Replacement of s 38 (Certain noxious liquid substances to be treated as oil)**

Section 38—

*omit, insert—*

## **‘38 Procedures and arrangements manual**

‘(1) If a ship certified to carry noxious liquid substances category X, Y or Z does not have on board a procedures and arrangements manual, the ship’s owner and master each commit an offence.

Maximum penalty—350 penalty units.

‘(2) In this section—

**procedures and arrangements manual** means a Procedures and Arrangements Manual as defined in the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* (Cwlth), section 15.

## **‘38A Shipboard marine pollution emergency plan for noxious liquid substances**

‘(1) If a prescribed ship does not have on board a shipboard marine pollution emergency plan for noxious substances, the ship’s owner and master each commit an offence.

Maximum penalty—850 penalty units.

‘(2) A regulation may prescribe minimum requirements for a shipboard marine pollution emergency plan for noxious substances.

‘(3) In this section—

*prescribed ship* means a ship—

- (a) with a gross tonnage of 150 or more; and
- (b) certified to carry noxious liquid substances.

*shipboard marine pollution emergency plan for noxious substances* means a shipboard marine pollution emergency plan for noxious substances complying with the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* (Cwlth), section 22A.’.

#### **241 Amendment of s 45 (Definitions for pt 7)**

Section 45, definition *discharge offence*, ‘48 or 50’—  
*omit, insert—*  
‘48, 50 or 50A(2) or (3)’.

#### **242 Amendment of s 48A (Ship with fixed toilet operating in prescribed nil discharge waters to be able to hold or treat sewage)**

(1) Section 48A(3)—

*renumber* as section 48A(4).

(2) Section 48A—

*insert—*

‘(3) This section applies despite the Criminal Code, sections 23 and 24.’.

[s 243]

---

## **243 Insertion of new s 50A**

After section 50—

*insert—*

### **‘50A Discharge of sewage by prescribed ships**

- ‘(1) The owner or master of a prescribed ship must not operate the ship unless the ship has 1 of the following sewage systems—
- (a) a sewage treatment system;
  - (b) a sewage comminuting and disinfecting system for the temporary storage of sewage when the ship is less than 3n miles from the nearest land;
  - (c) a holding tank—
    - (i) with capacity to retain all sewage, having regard to the ship’s operation, the number of persons on board and other relevant factors; and
    - (ii) constructed to have a means to indicate visually the amount of its contents.

Maximum penalty—850 penalty units.

- ‘(2) If untreated sewage is discharged from a prescribed ship into prohibited untreated sewage discharge waters, each culpable person for the discharge commits an offence.

Maximum penalty—850 penalty units.

- ‘(3) If treated sewage is discharged from a prescribed ship into prohibited treated sewage discharge waters, each culpable person for the discharge commits an offence, unless each of the following applies—
- (a) the ship is operating a treatment system for treating sewage to reduce the levels of sewage quality characteristics in sewage to not more than the levels prescribed under a regulation for this paragraph;
  - (b) the test results of the treatment system are stated in the ship’s International Sewage Pollution Prevention Certificate;

- (c) the effluent does not produce visible floating solids or discolour the surrounding water.

Maximum penalty—850 penalty units.

- ‘(4) Subsections (2) and (3) apply despite the Criminal Code, sections 23 and 24.

- ‘(5) In this section—

*prescribed ship* means a ship—

- (a) with a gross tonnage of at least 400; or  
(b) with a gross tonnage of less than 400 and certified to carry more than 15 persons.

*prohibited treated sewage discharge waters* means coastal waters other than nil discharge waters for treated sewage.

*prohibited untreated sewage discharge waters* means coastal waters other than nil discharge waters for untreated sewage.’.

## 244 Insertion of new s 55AA

After section 55—

*insert—*

### ‘55AA Placard about garbage disposal requirements

- ‘(1) If a ship that is at least 12m in length overall does not display a placard complying with subsection (2), the ship’s owner and master each commit an offence.

Maximum penalty—850 penalty units.

- ‘(2) The placard must—
- (a) notify the ship’s crew and passengers of the prohibitions and requirements under this Act for the disposal of garbage; and
- (b) be written in English and, if the ship is owned or operated by a foreign country, the working language of the ship’s crew.’.

[s 245]

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## **245 Insertion of new ss 117GA–117GC**

Part 13A, division 2—

*insert—*

### **‘117GA Further power of District Court if enforcement order is contravened**

- ‘(1) If the respondent contravenes an enforcement order, the District Court may, by further order, authorise the prescribed applicant to take the action stated in the further order.
- ‘(2) The District Court’s power under this section is in addition to its other powers.
- ‘(3) In this section—

*prescribed applicant* means the prescribed applicant for the enforcement order.

*respondent* means the person against whom the enforcement order is made.

### **‘117GB Recovery by State of expenses of taking authorised action**

- ‘(1) This section applies if the prescribed applicant incurs expense, whether the expense is the prescribed applicant’s expense or the State’s expense, in taking the action stated in the further order.
- ‘(2) The State may recover the amount of the expense, as a debt, from the persons liable for the expense.
- ‘(3) If, under subsection (2), more than 1 person is liable for the same expense, the persons who are liable for the expense are jointly and severally liable.

### **‘117GC Recovery by other persons of damages in particular circumstances**

‘If, in taking the action stated in the further order, the prescribed applicant attaches a ship (the *first ship*) to another ship or a buoy, wharf or pile, this Act does not prevent the

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owner or master of the other ship, or the owner of the buoy, wharf or pile, from recovering damages for injury or loss suffered, because of the attachment, from the owner or master of the first ship.’.

**246 Insertion of new s 132G**

After section 132F—

*insert—*

**‘132G Approval of forms**

‘The chief executive may approve forms for use under this Act.’.

**247 Insertion of new pt 17, div 4**

Part 17—

*insert—*

**‘Division 4 Transitional provisions for  
Transport and Other Legislation  
Amendment Act 2008, part 7,  
division 1**

**‘157 Provision for prosecutions under previous s 38(4)**

- ‘(1) This section applies if a prosecution against a person for an offence against previous section 38(4) was started but not finished before the commencement.
- ‘(2) Despite the Criminal Code, section 11, the prosecution may continue and be dealt with as if the *Transport and Other Legislation Amendment Act 2008* had not been enacted.
- ‘(3) In this section—

*commencement* means the commencement of this section.

*previous section 38(4)* means section 38(4) as in force before the commencement.

[s 248]

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**‘158 Application of s 50A**

‘(1) Section 50A does not apply to a prescribed ship that is an existing ship until 19 May 2010.

‘(2) In this section—  
*prescribed ship* see section 50A.’.

**248 Amendment of schedule (Dictionary)**

Schedule—

*insert—*

*‘authorised action*, for part 13A, for a prescribed applicant, means action the prescribed applicant is authorised to take by a District Court order made under section 117GA(1).

*certified to carry noxious liquid substances*, for a ship, means issued with an International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk.

*gross tonnage*, for a ship, means the ship’s gross tonnage decided under the Tonnage Measurement Convention within the meaning of the Commonwealth Navigation Act.’.

**Division 2                      Amendment of Transport  
Operations (Marine Safety) Act 1994**

**249 Act amended in div 2**

This division amends the *Transport Operations (Marine Safety) Act 1994*.

**250 Insertion of new s 167A**

After section 167—

*insert—*

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**‘167A Power to require production of marine safety equipment**

- ‘(1) A shipping inspector may ask the owner or master operating a ship to make available, for the inspector’s inspection, prescribed safety equipment in a way that is reasonable having regard to the nature of the equipment.

*Examples of ways equipment may be made available for inspection—*

- bringing the prescribed safety equipment to the inspector for inspection
- if the prescribed safety equipment is not easily transportable, identifying where the prescribed safety equipment is kept on the ship

- ‘(2) When making a request under subsection (1), the shipping inspector must warn the owner or master that, under subsection (4), the owner’s or master’s failure to comply with the request without a reasonable excuse may be used as evidence that the ship is not equipped with the prescribed safety equipment.

- ‘(3) The owner or master of a ship must comply with a request made under subsection (1), unless the owner or master has a reasonable excuse for not complying with it.

- ‘(4) In a proceeding for an offence against section 44(1), evidence that a master or owner of a ship has failed to comply with a request made under subsection (1) without providing a reasonable excuse to the shipping inspector who made the request, is evidence that the ship is not equipped with the prescribed safety equipment.

- ‘(5) Subsection (1) does not limit the powers of shipping inspectors under sections 165 to 167 or any other provision of this Act.

- ‘(6) In this section—

*prescribed safety equipment*, for a ship, means safety equipment with which the ship is required to be equipped under a regulation.’.

[s 251]

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## **251 Insertion of new ss 183GA–183GC**

Part 13A, division 2—

*insert—*

### **‘183GA Further power of District Court if enforcement order is contravened**

- ‘(1) If the respondent contravenes an enforcement order, the District Court may, by further order, authorise the prescribed applicant to take the action stated in the further order.
- ‘(2) The District Court’s power under this section is in addition to its other powers.
- ‘(3) In this section—

*prescribed applicant* means the prescribed applicant for the enforcement order.

*respondent* means the person against whom the enforcement order is made.

### **‘183GB Recovery by State of expenses of taking authorised action**

- ‘(1) This section applies if the prescribed applicant incurs expense, whether the expense is the prescribed applicant’s expense or the State’s expense, in taking the authorised action.
- ‘(2) The State may recover the amount of the expense, as a debt, from the persons liable for the expense.
- ‘(3) If, under subsection (2), more than 1 person is liable for the same expense, the persons who are liable for the expense are jointly and severally liable.

### **‘183GC Recovery by other persons of damages in particular circumstances**

‘If, in taking the authorised action, the prescribed applicant attaches a ship (the *first ship*) to another ship or a buoy, wharf or pile, this Act does not prevent the owner or master of the

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other ship, or the owner of the buoy, wharf or pile, from recovering damages for injury or loss suffered, because of the attachment, from the owner or master of the first ship.’.

**252 Amendment of s 200 (Special provision for service of documents)**

- (1) Section 200(3), ‘(Meaning of *owner*)’—  
*omit.*
- (2) Section 200(3)—  
*insert—*  
*‘Editor’s note—*  
Section 9 defines *owner*.’.
- (3) Section 200(4), ‘effects’—  
*omit, insert—*  
*‘affects’.*

**253 Amendment of schedule (Dictionary)**

Schedule—  
*insert—*

*‘authorised action*, for part 13A, for a prescribed applicant, means action the prescribed applicant is authorised to take by a District Court order made under section 183GA(1).’.



- 
- (b) the frequency of a scheduled journey for a scheduled passenger service;
  - (c) the time taken to complete a scheduled journey for a scheduled passenger service.

*Examples of changes that may adversely affect something mentioned in (a), (b) or (c)—*

- the closure of a road or lane
- the removal or alteration of a bus lane or transit lane
- a change in the direction of traffic flow along a road
- a change in priority settings on a road

‘(1B) The application must be made at least 21 days before the proposed change is to take effect.’.

(3) Section 8D(7)—

*omit.*

(4) Section 8D(1A) to (6)—

*renumber* as section 8D(2) to (8).

## **256 Amendment of s 8E (Guidelines for pt 2A)**

Section 8E(4), from ‘give’—

*omit, insert—*

‘give a copy of the following to every local government affected by the guidelines—

- (a) the guidelines;
- (b) any amendment of the guidelines.’.

[s 257]

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## **Division 2                      Amendment of Transport Operations (Road Use Management) Act 1995**

### **257      Act amended in div 2**

This division amends the *Transport Operations (Road Use Management) 1995*.

### **258      Amendment of s 66 (Local laws etc.)**

(1) Section 66(8)—

*renumber* as section 66(9).

(2) Section 66—

*insert*—

‘(8) A local government may make a local law that will result in a change to the management of a local government road, of a kind mentioned in the *Transport Planning and Coordination Act 1994*, section 8D(1), only if the chief executive has approved the proposed change under the *Transport Planning and Coordination Act 1994*, section 8D.’.

### **259      Amendment of s 69 (Local government may install or remove official traffic signs)**

Section 69—

*insert*—

‘(4) A local government may install or remove an official traffic sign that will result in a change to the management of a local government road, of a kind mentioned in the *Transport Planning and Coordination Act 1994*, section 8D(1), only if the chief executive has approved the proposed change under the *Transport Planning and Coordination Act 1994*, section 8D.’.

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## **Part 9**                      **Amendment of the Transport Infrastructure Act 1994 for purposes relating to rapid public transport systems**

### **260 Act amended in pt 9**

This part amends the *Transport Infrastructure Act 1994*.

### **261 Amendment of s 2 (Objectives of this Act)**

- (1) Section 2(2), paragraphs (h) and (i)  
*renumber* as paragraphs (i) and (j).
- (2) Section 2(2)—  
*insert*—  
‘(h) for busways—to establish a regime that provides for—
  - (i) flexibility in the choice between private and public construction and management; and
  - (ii) land tenure arrangements allowing private management to be established on a sound financial basis; and’.

### **262 Insertion of new s 303AA**

After section 303—

*insert*—

#### **‘303AA Sublease of lease of busway land**

- ‘(1) The State may sublease its lease of busway land to another person for a busway established or proposed to be established on the busway land on terms negotiated and agreed between the parties.
- ‘(2) For the *Land Act 1994*, section 332(1)(b), the other person is eligible to hold a sublease of the lease.

- ‘(3) The first sublease under subsection (1) (the *original sublease*) may include an option to renew the sublease, and any subsequent sublease may in turn include an option to renew.
- ‘(4) The terms of any option and any subsequent sublease are to be those negotiated and agreed between the parties.
- ‘(5) The *Land Act 1994*, section 336(2)(a) does not apply to a document of amendment of the original sublease or any subsequent sublease.
- ‘(6) If a sublessee attaches busway transport infrastructure to the land the subject of the original sublease or a subsequent sublease, the infrastructure immediately becomes the property of the chief executive unless the parties to the sublease agree it is to become the property of the chief executive at a later time.
- ‘(7) Despite any agreement under subsection (6), the infrastructure, if it has not already become the property of the chief executive, becomes the property of the chief executive—
  - (a) if there is no subsequent sublease—at the end of the original sublease; or
  - (b) if there is only 1 subsequent sublease—at the end of the subsequent sublease; or
  - (c) if there are 2 or more subsequent subleases—at the end of the last of the subsequent subleases.
- ‘(8) Neither the original sublease nor any subsequent sublease stops being a sublease only because persons are expressly or impliedly permitted by the chief executive under this chapter to be on the subleased land.
- ‘(9) This section does not stop the granting of a lease or sublease to another person for a busway, other than under this section, of land that is not busway land but on which there is, or is proposed to be, busway transport infrastructure.
- ‘(10) In this section—

*busway land* means busway land that is leased to the State under the *Land Act 1994*, section 17.’.

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**263 Replacement of ch 9, pt 4, div 5 (Use of busway land)**

Chapter 9, part 4, division 5—

*omit, insert—*

**‘Division 5 Use of busway or busway transport infrastructure**

**‘329 Trespass on busway or busway transport infrastructure**

- ‘(1) A person must not, without reasonable excuse, be on a busway or busway transport infrastructure unless the person has permission of the chief executive to be on the busway or infrastructure.

Maximum penalty—40 penalty units.

- ‘(2) For subsection (1), permission may be given, for example—

(a) expressly, by—

(i) signs, structures, textured pavement or painted lines designating points for vehicles or pedestrians to cross the busway or busway transport infrastructure; or

(ii) signs designating the hours during which the busway or busway transport infrastructure may be used by pedestrians to access a public passenger service; or

(iii) signs designating a part of the busway or busway transport infrastructure as being open to pedestrians to access a public passenger service; or

(b) impliedly, by the absence of demarcation between ordinary road and the busway or busway transport infrastructure.

- ‘(3) A regulation may include rules about the use of a busway or busway transport infrastructure by a bus or by persons having the permission of the chief executive to be on the busway or infrastructure.’.

## **264 Insertion of new ch 9, pt 4A**

Chapter 9—

*insert—*

### **‘Part 4A                    Accreditation as busway manager**

#### **‘335AA Reference to busway in pt 4A**

‘In this part, other than in this section, section 335AB and section 335AP, a reference to a busway is a reference to a busway that is—

- (a) established on busway land; or
- (b) proposed to be established on busway land; or
- (c) proposed to be established on land proposed to become busway land.

#### **‘335AB Only accredited person can manage busway**

‘A person must not manage a busway on busway land unless the person is accredited as the busway manager for the busway.

Maximum penalty—160 penalty units.

#### **‘335AC Application for accreditation**

‘A person may apply to the chief executive for accreditation as the busway manager for a busway.

#### **‘335AD Additional information for application**

- ‘(1) The chief executive may, by written notice, require an applicant to give the chief executive the stated written information the chief executive reasonably requires to consider the application.

- 
- ‘(2) The chief executive may reject the application if the applicant does not comply with the requirement within a stated reasonable time, not less than 28 days, without reasonable excuse.

### **‘335AE Giving accreditation**

- ‘(1) The chief executive must promptly consider an application for accreditation and give, or refuse to give, the accreditation.
- ‘(2) The chief executive must accredit an applicant as the busway manager for a busway if satisfied—
- (a) the applicant has the competency and capacity to manage the busway safely; and
  - (b) the applicant has an appropriate safety management system; and
  - (c) the applicant has the financial capacity or public risk insurance arrangements to meet reasonable potential accident liabilities for the busway; and
  - (d) the applicant has rights of access to all land the applicant needs for the establishment and operation of the busway; and
  - (e) the applicant has rights to the use of all busway transport infrastructure and other infrastructure the applicant needs for the establishment and operation of the busway.
- ‘(3) In considering a safety management system, the chief executive must consider—
- (a) what the applicant proposes for the busway; and
  - (b) the appropriateness of the safety management system for what the applicant proposes; and
  - (c) the safety levels achievable, consistent with the nature of what the applicant proposes, at a reasonable cost; and
  - (d) the need for efficient and competitive busway transport services; and

- (e) consistency with generally accepted risk management principles; and
  - (f) the levels of safety proposed compared with the levels of safety of competing transport modes.
- ‘(4) Subsection (3) does not limit what the chief executive may consider in considering a safety management system.
- ‘(5) If the chief executive decides to give the accreditation, the chief executive must promptly give the applicant a written notice stating—
- (a) the decision; and
  - (b) the details of the accreditation, including its scope; and
  - (c) if the accreditation is given on conditions—
    - (i) the details of the conditions; and
    - (ii) the reason for the conditions.
- ‘(6) If the chief executive decides not give the accreditation, the chief executive must promptly give the applicant a written notice stating—
- (a) the decision; and
  - (b) the reason for the decision.
- ‘(7) A written notice given under subsection (5) or (6) must be accompanied by an information notice for the decision the subject of the notice.

### **‘335AF Annual levy**

- ‘(1) A regulation may impose levies on busway managers for busways relating to their accreditation on a basis prescribed under the regulation.
- ‘(2) The chief executive must give each busway manager for a busway written notice of the amount of a levy applying to the manager.
- ‘(3) The chief executive may recover the amount of a levy as a debt owed to the chief executive.

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**‘335AG Accreditation conditions**

- ‘(1) An accreditation of a person as the busway manager for a busway may be subject to conditions.
- ‘(2) However, the conditions must be about—
  - (a) constructing or maintaining the busway; or
  - (b) managing the busway safely, considering the need for efficient and competitive services; or
  - (c) the person’s financial capacity or public risk insurance arrangements to meet reasonable potential accident liabilities for the busway; or
  - (d) paying accreditation fees; or
  - (e) something else prescribed under a regulation.
- ‘(3) A person must comply with each condition of the person’s accreditation as the busway manager for a busway.

Maximum penalty for subsection (3)—40 penalty units.

**‘335AH Requiring accreditation conditions to be complied with**

- ‘(1) This section applies if the chief executive reasonably believes a person has not complied with a condition of the person’s accreditation as the busway manager for a busway.
- ‘(2) The chief executive may, by written notice, require the person to remedy the breach within a reasonable period stated in the notice.
- ‘(3) If the person has not complied with the condition of the person’s accreditation as the busway manager for a busway, the person must comply with the notice.

Maximum penalty for subsection (3)—60 penalty units.

### **‘335AI Accreditation period**

‘A person’s accreditation as the busway manager for a busway remains in force until it is suspended, cancelled or surrendered.

### **‘335AJ Amending accreditation conditions on application**

- ‘(1) A person accredited as the busway manager for a busway may apply to the chief executive for an amendment of the conditions of the person’s accreditation.
- ‘(2) The chief executive must consider the application and decide whether to make the amendment.
- ‘(3) The chief executive may amend a condition only if satisfied the condition is—
  - (a) no longer appropriate; or
  - (b) no longer consistent with generally accepted risk management principles.
- ‘(4) If the chief executive decides to amend a condition, the chief executive must promptly give the applicant a written notice stating the decision and the amendment.
- ‘(5) If the chief executive decides not to amend a condition, the chief executive must promptly give the applicant a written notice stating—
  - (a) the decision; and
  - (b) the reason for the decision.
- ‘(6) A written notice given under subsection (5) must be accompanied by an information notice for the decision the subject of the notice.
- ‘(7) If the chief executive does not decide the application within 70 days after it is made, the chief executive is taken to have made the amendment sought by the applicant at the end of the 70 days.

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**‘335AK Amending accreditation conditions without application**

- ‘(1) This section applies if the chief executive considers the conditions of a person’s accreditation as the busway manager for a busway should be amended but the person has not applied for the proposed amendment.
- ‘(2) Before amending the conditions, the chief executive must give the person a written notice—
  - (a) stating the proposed amendment; and
  - (b) stating the reason for the proposed amendment; and
  - (c) inviting the person to show, within a stated time of at least 28 days, why the proposed amendment should not be made.
- ‘(3) If, after considering all written representations made within the stated time, the chief executive still considers the conditions should be amended, the chief executive may amend the conditions—
  - (a) in the way proposed; or
  - (b) in another way, having regard to the representations.
- ‘(4) The chief executive must inform the person of the decision by written notice.
- ‘(5) If the chief executive decides to amend the conditions, the notice must also state—
  - (a) the amendment; and
  - (b) the reason for the decision.
- ‘(6) A written notice given under subsection (4) must be accompanied by an information notice for the decision the subject of the notice.
- ‘(7) Subsections (2) to (5) do not apply if the chief executive proposes to amend the conditions of a person’s accreditation as the busway manager for a busway for a formal or clerical reason not adversely affecting the person’s interests.

- ‘(8) The chief executive may amend a condition in a way mentioned in subsection (7) by written notice given to the person.

### ‘335AL Suspending or cancelling accreditation

- ‘(1) This section applies if the chief executive—
- (a) reasonably suspects a person accredited as the busway manager for a busway has not complied with a condition of the person’s accreditation; and
  - (b) considers the person’s accreditation should be suspended or cancelled (the *proposed action*).
- ‘(2) Before taking the proposed action, the chief executive must give the person a written notice—
- (a) stating the proposed action; and
  - (b) stating the reason for the proposed action; and
  - (c) if the proposed action is suspension of the accreditation, stating the proposed suspension period; and
  - (d) if the proposed action is a limited suspension of the accreditation, stating the details of the proposed limitation; and
- Editor’s note—*
- See section 335AN (Limited suspension of accreditation)
- (e) inviting the person to show, within a stated time of at least 28 days, why the proposed action should not be taken.
- ‘(3) If, after considering all written representations made within the stated time, the chief executive still considers the proposed action should be taken, the chief executive may—
- (a) if the proposed action is to suspend the accreditation—suspend the accreditation—
    - (i) for no longer than the proposed suspension period; and

- 
- (ii) if the proposed action was a limited suspension, by no more than the proposed limitation; or
    - (b) if the proposed action was to cancel the accreditation—cancel the accreditation or suspend it for a period.
  - ‘(4) The chief executive must inform the person of the decision by written notice.
  - ‘(5) If the chief executive decides to suspend or cancel the accreditation, the notice must also state the reason for the decision.
  - ‘(6) The chief executive may immediately cancel the accreditation by written notice given to the person if—
    - (a) rather than cancel the accreditation, the chief executive has suspended it on condition the person do certain things to rectify the failure to comply with a condition of the person’s accreditation; but
    - (b) the person has not rectified the failure within the suspension period.
  - ‘(7) The notice must state the reason for the decision.
  - ‘(8) A written notice given under subsection (4) or (6) must be accompanied by an information notice for the decision the subject of the notice.

### **‘335AM Immediate suspension of accreditation**

- ‘(1) This section applies if the chief executive—
  - (a) reasonably believes a person accredited as the busway manager for a busway has not complied with a condition of the person’s accreditation; and
  - (b) considers members of the public may be seriously harmed if urgent action to suspend the person’s accreditation is not taken.
- ‘(2) The chief executive may immediately suspend the accreditation by written notice given to the person.

- ‘(3) The notice must state the reason for the decision and must be accompanied by an information notice for the decision.
- ‘(4) The chief executive must at the same time give the person a notice under section 335AL(2).
- ‘(5) The accreditation is suspended under this section until the earlier of the following—
  - (a) the chief executive gives the person notice of the chief executive’s decision under section 335AL;
  - (b) the end of 60 days after the notice under subsection (2) was given to the person.

### **‘335AN Limited suspension of accreditation**

‘Under section 335AL or 335AM, the chief executive may limit a suspension of a person’s accreditation as the busway manager for a busway to, for example, a particular busway for which the person is accredited as a busway manager.

### **‘335AO Surrender of accreditation**

‘A person accredited as the busway manager for a busway may, at any time, surrender the person’s accreditation by written notice given to the chief executive.

### **‘335AP Accreditation for proposed busway**

- ‘(1) This section applies if—
  - (a) a person holds an accreditation under this part as the busway manager for a busway—
    - (i) proposed to be established on busway land; or
    - (ii) proposed to be established on land proposed to become busway land; and
  - (b) the busway is established on busway land substantially in the way proposed.

- 
- ‘(2) The accreditation automatically becomes an accreditation under this part that the person holds as the busway manager for the busway as established.’

## **265 Insertion of new s 360A**

After section 360—

*insert—*

### **‘360A Powers of chief executive for light rail transport infrastructure works contracts etc.**

- ‘(1) The chief executive may, for the State, carry out or enter into contracts with other persons for the carrying out of—
- (a) light rail transport infrastructure works on a light rail or on land that is intended to become a light rail; or
  - (b) other works that contribute to the effectiveness and efficiency of the light rail network; or
  - (c) the operation of a light rail.
- ‘(2) The chief executive, for the State, may enter into contracts with other persons for light rail transport infrastructure works to be carried out outside the State under an agreement between the State and the other State concerned.
- ‘(3) A contract with a local government under this section may include arrangements about which powers of the local government are to be exercised by the chief executive, and which are to be exercised by the local government, for the light rail.
- ‘(4) A local government may enter into a contract mentioned in subsection (1) even though the contract relates to works or operation outside the local government’s area.
- ‘(5) The chief executive, for the State, may carry out or enter into contracts for works on or adjacent to a light rail at the request of the owner of adjacent land on the basis that the owner provides consideration, whether monetary or otherwise, as agreed between the chief executive and the owner.

- ‘(6) This section does not prevent the chief executive carrying out, or entering into contracts for the carrying out, of light rail transport infrastructure works of a minor or emergency nature.
- ‘(7) In carrying out works or the operation of a light rail, the chief executive must ensure that the carrying out is done on a price competitive basis.
- ‘(8) In entering into contracts under this section, the chief executive must ensure that open competition is encouraged.
- ‘(9) Subsection (8) does not apply to a contract with a person if the person is the sole invitee and enters into a price performance contract with the chief executive.
- ‘(10) The chief executive may arrange with another person for the sharing by the chief executive with the other person of the cost of—
  - (a) acquisition of land for light rail transport infrastructure; or
  - (b) light rail transport infrastructure works on a light rail or land that is intended to become a light rail; or
  - (c) other works that contribute to the effectiveness and efficiency of the light rail network; or
  - (d) the operation of a light rail;including all necessary preliminary costs associated with the acquisition, works or operation.’.

**266 Replacement of ch 10, pt 4, div 4 (Use of light rail land)**

Chapter 10, part 4, division 4—

*omit, insert—*

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## **‘Division 4                    Use of light rail or light rail transport infrastructure**

### **‘377    Trespass on light rail land or light rail transport infrastructure**

‘(1) A person must not, without reasonable excuse, be on a light rail or light rail transport infrastructure unless the person has permission of the relevant person for the light rail or infrastructure to be on the light rail or infrastructure.

Maximum penalty—40 penalty units.

‘(2) For subsection (1), permission may be given, for example—

(a) expressly, by—

(i) signs, structures, textured pavement or painted lines designating points for vehicles or pedestrians to cross the light rail or light rail transport infrastructure; or

(ii) signs designating the hours during which the light rail or light rail transport infrastructure may be used by pedestrians to access a public passenger service; or

(iii) signs designating a part of the light rail or light rail transport infrastructure as being open to pedestrians to access a public passenger service; or

(b) impliedly, by the absence of demarcation between ordinary road and light rail or light rail transport infrastructure.

‘(3) Subsection (1) does not apply to a person who is on light rail land if, under division 1, the light rail land is taken to be—

(a) a road of which a local government has control under the *Local Government Act 1993*, section 901(1); or

(b) a State-controlled road.

‘(4) A regulation may include rules about the use of a light rail or light rail transport infrastructure by light rail vehicles or

persons having the permission of the chief executive to be on the light rail or infrastructure.

‘(5) In this section—

*relevant person* means—

- (a) for a light rail for which there is a light rail manager, or light rail transport infrastructure used for a light rail for which there is a light rail manager—the manager; or
- (b) for another light rail or other light rail transport infrastructure—the chief executive.’

## **267 Amendment of sch 1 (Subject matter for regulations)**

(1) Schedule 1, item 2, ‘or busway’—

*omit, insert—*

‘, busway transport infrastructure works or light rail’.

(2) Schedule 1, item 3, ‘or busway’—

*omit, insert—*

‘, busway transport infrastructure, light rails or light rail’.

(3) Schedule 1, item 9—

*insert—*

‘(f) light rails.’.

(4) Schedule 1, item 11, after ‘accreditation’—

*insert—*

‘for a railway’.

(5) Schedule 1, item 12(c), after ‘busways’—

*insert—*

‘or light rails’.

(6) Schedule 1, item 13, from ‘on a railway’—

*omit, insert—*

‘on—

- 
- (a) a railway; or
  - (b) a busway or busway transport infrastructure; or
  - (c) a light rail or light rail transport infrastructure.’.
- (7) Schedule 1, item 14, from ‘on a busway’—  
*omit, insert—*  
‘on—
- (a) a railway; or
  - (b) a busway or busway transport infrastructure; or
  - (c) a light rail or light rail transport infrastructure.’.
- (8) Schedule 1, item 15(a) and (b)—  
*omit, insert—*  
‘(a) on a busway, or busway transport infrastructure, against the directions of—
- (i) the busway manager for the busway, or the busway for which the busway transport infrastructure is used; or
  - (ii) the chief executive; or
- (b) on a railway against the directions of—
- (i) an accredited person for the railway; or
  - (ii) the chief executive; or
- (c) on a light rail, or light rail transport infrastructure, against the directions of—
- (i) an accredited person for the light rail, or the light rail for which the infrastructure is used; or
  - (ii) the chief executive.’.

**268 Amendment of sch 3 (Reviews and appeals)**

Schedule 3—

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*insert—*

‘335AE	giving accreditation on conditions	District
335AE	refusal to give accreditation	District
335AJ(2)	refusal to amend accreditation conditions	District or Magistrates
335AK(3)	amendment of accreditation conditions	District or Magistrates
335AK(8)	amendment of accreditation conditions	District or Magistrates
335AL(3)	suspension or cancellation of accreditation	District or Magistrates
335AL(6)	immediate cancellation of accreditation	District or Magistrates
335AM(2)	immediate suspension of accreditation	District or Magistrates’.

## **269 Amendment of sch 6 (Dictionary)**

Schedule 6—

*insert—*

‘*busway manager*, for a busway, means a person who holds an accreditation under chapter 9, part 4A as the busway manager for the busway.

# **Part 10 Amendment of Transport Planning and Coordination Act 1994**

## **270 Act amended in pt 10**

This part amends the *Transport Planning and Coordination Act 1994*.

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**271 Amendment of s 8A (Object of pt 2A)**

(1) Section 8A(2)—

*insert—*

- ‘(f) ensuring development supports active transport; and
- (g) ensuring, so far as practicable, the provision of active transport infrastructure to support active transport.’

(2) Section 8A—

*insert—*

‘(3) In this section—

***active transport*** means physical activity undertaken as a means of transport from 1 place to another, including the following—

- (a) cycling;
- (b) walking;
- (c) cycling or walking to a place to access public passenger transport, or from a place after public passenger transport has been used.

***active transport infrastructure*** means infrastructure for use in connection with active transport, including, for example, the following—

- (a) a path or walkway for use by pedestrians;
- (b) a path, lane or other infrastructure for use by cyclists;
- (c) a device or facility designed and constructed for parking bicycles;
- (d) an end of trip facility.

***end of trip facility*** means a facility or service at a potential destination for a person engaging in active transport that is designed to make active transport a more attractive, convenient and practical means of transport, including, for example, any of the following—

- (a) showers, toilets or wash basins;

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- (b) areas for changing clothes;
- (c) facilities used for grooming purposes, including, for example, mirrors, hair dryers, ironing equipment or outlets for hair dryers and other electrical equipment;
- (d) facilities for washing or drying clothes;
- (e) service for the provision of towels;
- (f) storage facilities for clothing or equipment;
- (g) drinking facilities;
- (h) services for obtaining equipment that may be used to maintain or repair bicycles, including, for example, air pumps, puncture repair kits, tyre levers and tyre tubes.’.

**272 Amendment of s 8B (Impact of particular development on public passenger transport)**

Section 8B, heading, after ‘transport’—

*insert—*

‘or active transport’.

## **Part 11 Amendment of Transport Acts for various purposes**

### **Division 1 Amendment of Tow Truck Act 1973**

**273 Act amended in div 1**

This division amends the *Tow Truck Act 1973*.

**274 Amendment of s 4C (Who is an appropriate person)**

Section 4C(1)(a), after ‘history’—

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*insert—*

‘and, if the person is a corporation, the criminal history of each of its executive officers’.

**275 Amendment of s 6 (Application for licence)**

(1) Section 6(2)—

*omit.*

(2) Section 6(3), from ‘shall consider’ to ‘relevant’—

*omit, insert—*

‘must consider any report of the commissioner of the police service given under section 36 about the applicant or an executive officer of the applicant, and any other matter the chief executive considers relevant.’.

(3) Section 6(3)—

*renumber* as section 6(2).

**276 Amendment of s 9 (Renewal of licence)**

Section 9—

*insert—*

‘(2) When deciding whether or not the holder continues to be an appropriate person to hold the licence, the chief executive must have regard to any report of the commissioner of the police service given under section 36 about the holder or, if the holder is a corporation, any of the holder’s executive officers.’.

**277 Amendment of s 14 (Application for driver’s or assistant’s certificate)**

(1) Section 14(2)—

*omit.*

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- (2) Section 14(3), from ‘shall consider’ to ‘relevant’—  
*omit, insert—*  
‘must consider any report of the commissioner of the police service given under section 36 about the applicant, and any other matter the chief executive considers relevant.’.
- (3) Section 14(3)—  
*renumber* as section 14(2).

**278 Amendment of s 17 (Duration and renewal of driver’s or assistant’s certificate)**

Section 17—

*insert—*

- ‘(3) When deciding whether or not the holder of a driver’s certificate or an assistant’s certificate continues to be an appropriate person to hold the certificate, the chief executive must have regard to any report of the commissioner of the police service given under section 36 about the holder.’.

**279 Amendment of s 21A (Cancellation or suspension of authorities)**

- (1) Section 21A—

*insert—*

‘(ba) for an authority holder that is a corporation—an executive officer of the holder is or has been—

- (i) convicted of an offence against this Act; or  
(ii) charged with or convicted of a disqualifying offence;’.

- (2) Section 21A, paragraphs (ba) to (g)—

*renumber* as paragraphs (c) to (h).

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**280 Replacement of s 36 (Chief executive's notification to commissioner of the police service about a person)**

Section 36—

*omit, insert—*

**'36 Chief executive may obtain information from the commissioner of the police service**

- '(1) The chief executive may ask the commissioner of the police service for a written report about a person's criminal history to help in deciding whether—
- (a) the person is an appropriate person to hold, or continue to hold, a licence or certificate under this Act; or
  - (b) a corporation of which the person is an executive officer is an appropriate person to hold, or continue to hold, a licence under this Act.
- '(2) For subsection (1), the chief executive's request may include the following information—
- (a) the person's name and any other name the chief executive believes the person may use or may have used;
  - (b) the person's sex and date and place of birth;
  - (c) details of the person's driver licence under the *Transport Operations (Road Use Management) Act 1995*;
  - (d) details of the person's licence or certificate under this Act.
- '(3) If asked by the chief executive, the commissioner must give the chief executive a written report about the person's criminal history.
- '(4) Subsection (3) applies to the criminal history in the commissioner's possession or to which the commissioner has access.'

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**281 Amendment of s 36A (Notice of change in police information about a person)**

Section 36A(1)(a), from ‘is’—

*omit, insert—*

‘is—

- (i) the holder of a licence or certificate under this Act;  
or
- (ii) an executive officer of a corporation that is the holder of a licence under this Act; and’.

**282 Amendment of s 41 (Offences by body corporate)**

Section 41, ‘body corporate’—

*omit, insert—*

‘corporation’.

**283 Amendment of sch 2 (Dictionary)**

Schedule 2—

*insert—*

‘*executive officer*, of a corporation, means a person who is concerned with, or takes part in, the corporation’s management, whether or not the person is a director, or the person’s position is given the name of executive officer.’.

**Division 2 Amendment of Transport Infrastructure Act 1994**

**284 Act amended in div 2**

This division amends the *Transport Infrastructure Act 1994*.

**285 Amendment of s 46 (Temporary restrictions on use of State-controlled roads)**

(1) Section 46(1), from ‘appropriate’ to ‘written decision’—

*omit, insert—*

‘necessary to prevent damage to road transport infrastructure or to ensure the safety of road users and other persons, the chief executive may, by erecting or displaying a notice (a *restricted road use notice*), declare’.

(2) Section 46(4), ‘decision’—

*omit, insert—*

‘declaration’.

(3) Section 46(4)—

*renumber* as section 46(6).

(4) Section 46(2) and (3)—

*omit, insert—*

‘(2) A restricted road use notice must—

- (a) be erected or displayed at the entrance to the road to which the notice applies; and
- (b) be easily visible to persons using the road to which the notice applies; and
- (c) identify the limits of the road to which the notice applies; and
- (d) state how the use of the road is restricted and the period for which the restriction applies; and
- (e) state that a contravention of a requirement of the notice is an offence against this section and the maximum penalty for the offence.

‘(3) The chief executive must take reasonable steps to advertise a declaration under subsection (1) in a way the chief executive considers appropriate.

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*Examples of ways declaration may be advertised—*

on the department's website, in a newspaper circulating generally in the relevant area, on television, on the radio

- '(4) A person must not contravene a restricted road use notice erected or displayed under subsection (1), unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

- '(5) A person must not unlawfully tamper with a restricted road use notice erected or displayed under subsection (1).

Maximum penalty—200 penalty units.'

- (5) Section 46—

*insert—*

- '(7) In this section—

***tamper***, with a restricted road use notice erected or displayed under subsection (1), includes—

- (a) damage, deface or destroy the notice; and
- (b) move or remove the notice; and
- (c) hinder the visibility of the notice.'

## **286 Amendment of s 178 (Power to enter places)**

Section 178(1)(d)(iii), after 'accreditation'—

*insert—*

'for a railway'.

## **287 Amendment of s 267A (Meaning of *port facilities*)**

Section 267A(a), from 'by'—

*omit, insert—*

'by—

- (i) the port authority; or

- (ii) if the port authority is a GOC port authority—a wholly owned subsidiary of the port authority; and’.

**288 Amendment of s 276 (Port services function)**

Section 276(2), ‘port authority that is a GOC’—  
*omit, insert—*  
‘GOC port authority’.

**289 Amendment of s 285 (Land use plans)**

Section 285(5), definition *port authority land*—  
*omit, insert—*

‘***port authority land***, of a port authority, means land the port authority or, if the port authority is a GOC port authority, a wholly owned subsidiary of the port authority—

- (a) holds title to; or
- (b) holds directly from the State.’.

**290 Amendment of s 288 (Restrictions on dealing in property)**

- (1) Section 288(2) and (3)—

*renumber* as section 288(3) and (4).

- (2) Section 288—

*insert—*

- ‘(2) Also, a wholly owned subsidiary of a GOC port authority must not, without the Minister’s approval—

- (a) dispose of freehold land; or
- (b) enter into a lease, licence or another form of tenure of its facilities or land that are a port authority’s port facilities, for longer than 25 years (including any renewal option).’.

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**291 Amendment of sch 6 (Dictionary)**

Schedule 6—

*insert—*

‘*GOC port authority* means a port authority that is a GOC.’.

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

**292 Act amended in div 3**

This division amends the *Transport Operations (Road Use Management) Act 1995*.

**293 Amendment of s 17B (Granting, renewing or refusing approval)**

Section 17B(2), ‘, or holder of, an approval’—

*omit, insert—*

‘or holder of an approval, or a relevant person for the applicant or holder within the meaning of section 17C(3),’.

**294 Amendment of s 17C (Chief executive may obtain information from commissioner)**

(1) Section 17C(1)—

*omit, insert—*

‘(1) This section applies if a regulation made under section 17B authorises the chief executive to grant or renew an approval.

‘(1A) The chief executive may ask the commissioner for a written report about the criminal history of any of the following persons—

(a) the applicant for or holder of the approval;

- 
- (b) a relevant person for the applicant for or holder of the approval.
- ‘(1B) For subsection (2)(b), a person is a **relevant person** for the applicant for or holder of an approval—
- (a) if the applicant or holder is a corporation and the person is an executive officer of the corporation; or
- (b) if the approval is an AIS approval and the person is a person who, under a regulation—
- (i) has been nominated by the applicant or holder to be a nominee for the applicant or holder; and
- (ii) has agreed to the nomination; or
- (c) if the approval is an approval as a registered service provider and the person is a person who, under a regulation—
- (i) has been nominated by the applicant or holder to sign declarations for the applicant or holder about another person’s competency for riding a motorbike; and
- (ii) has agreed to the nomination.’.
- (2) Section 17C(2), ‘subsection (1)’—  
*omit, insert—*  
‘subsection (2)’.
- (3) Section 17C(3), ‘the applicant or holder’—  
*omit, insert—*  
‘a person mentioned in subsection (2)’.
- (4) Section 17C—  
*insert—*
- ‘(4) In this section—
- AIS approval** means an approval granted under a regulation that authorises its holder to operate a station (whether fixed or mobile) at which vehicles may be inspected for compliance

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with vehicle standards under a regulation made under section 148.

*nominee*, for an AIS approval, has the meaning given by a regulation made under section 148.

*registered service provider* means a person registered under a regulation to provide training to, and assess the competency of, persons learning how to ride a motorbike or particular class of motorbike.’.

(5) Section 17C(1A) to (4)—

*renumber* as section 17C(2) to (6).

**295 Amendment of s 17D (Notice of change in police information about a person)**

Section 17D(1)(a), from ‘person is’—

*omit, insert*—

‘person is—

- (i) the holder of an approval; or
- (ii) a relevant person for the holder of an approval within the meaning of section 17C(3); and’.

**296 Amendment of s 18 (Grounds for amending, suspending or cancelling approvals)**

(1) Section 18(1)(c), before ‘has’—

*insert*—

‘of the approval, or any relevant person for the holder within the meaning of section 17C(3),’.

(2) Section 18(1)(c)(ii), after ‘regulation’—

*insert*—

‘, or a relevant person for the holder within the meaning of section 17C(3)’.

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## **Part 12                      Amendment of other Acts for various purposes**

### **Division 1                      Amendment of Anzac Day Act 1995**

#### **297      Act amended in div 1**

This division amends the *Anzac Day Act 1995*.

#### **298      Amendment of s 22 (Terms of appointment)**

Section 22(2), ‘fees, allowances or expenses’—

*omit, insert—*

‘fees or allowances’.

- ‘(3) A trustee is entitled to be paid expenses necessarily incurred by the trustee in acting as a trustee.’.

### **Division 2                      Amendment of Building and Construction Industry (Portable Long Service Leave) Act 1991**

#### **299      Act amended in div 2**

This division amends the *Building and Construction Industry (Portable Long Service Leave) Act 1991*.

#### **300      Amendment of s 59 (Amount of long service leave payment)**

Section 59(1), definition *P*—

*omit, insert—*

‘*P* (pay), in relation to an application by a registered worker under section 56, means the lesser of the following amounts—

[s 301]

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- (a) the amount of ordinary pay for a normal working week that is, in the authority's opinion, payable to the registered worker;
- (b) the amount fixed under section 59A(1).'

### **301 Insertion of new s 59A**

After section 59—

*insert—*

#### **'59A Maximum amount of ordinary pay for normal working week**

- '(1) For section 59(2), if P is an amount greater than \$1400, P is fixed at—
  - (a) for the period from commencement of this section until 30 June 2009—\$1400; or
  - (b) for any later financial year—the amount notified by the Minister by gazette notice.
- '(2) As soon as practicable after 1 January in each year, the authority must review the cap and recommend the change to the cap that the authority considers appropriate.
- '(3) In making its recommendation under subsection (2), the authority must take into account the following—
  - (a) WPI;
  - (b) rates of pay under building and construction industry awards and agreements that, in the authority's opinion, are representative of awards and agreements in the building and construction industry;
  - (c) the sufficiency of the funds of the authority, having regard to the current levy rate.
- '(4) Before 1 July in each year, the Minister must consider the authority's recommendation and fix the cap for the following financial year.
- '(5) The Minister must notify the cap before 1 July in the gazette.

‘(6) In this section—

*cap* means the amount for P fixed under subsection (1).

*WPI* means the Queensland wage price index for the building and construction industry available quarterly from the Australian Bureau of Statistics or, if the index ceases to be published, another similar index prescribed under a regulation.’.

### **302 Amendment of s 62 (Payments to employers)**

Section 62(2), definition *P*—

*omit, insert*—

‘*P* (pay), in relation to an application by an employer under subsection (1) in relation to benefits provided to a registered worker, means the lesser of the following amounts—

- (a) the amount of ordinary pay for a normal working week that is, in the authority’s opinion, payable to the registered worker;
- (b) the amount fixed under section 62AA(1).’.

### **303 Insertion of new s 62AA**

Part 7—

*insert*—

#### **‘62AA Maximum amount of ordinary pay for normal working week**

‘(1) For section 62(1), if P is an amount greater than \$1400, P is fixed at—

- (a) for the period from commencement of this section until 30 June 2009—\$1400; or
- (b) for any later financial year—the amount notified by the Minister by gazette notice.

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- ‘(2) As soon as practicable after 1 January in each year, the authority must review the cap and recommend the change to the cap that the authority considers appropriate.
- ‘(3) In making its recommendation under subsection (2), the authority must take into account the following—
- (a) WPI;
  - (b) rates of pay under building and construction industry awards and agreements that, in the authority’s opinion, are representative of awards and agreements in the building and construction industry;
  - (c) the sufficiency of the funds of the authority, having regard to the current levy rate.
- ‘(4) Before 1 July in each year, the Minister must consider the authority’s recommendation and fix the cap for the following financial year.
- ‘(5) The Minister must notify the cap before 1 July in the gazette.
- ‘(6) In this section—

*cap* means the amount for P fixed under subsection (1).

*WPI* means the Queensland wage price index for the building and construction industry available quarterly from the Australian Bureau of Statistics or, if the index ceases to be published, another similar index prescribed under a regulation.’.

### **304 Insertion of new pt 11, div 5**

After section 121—

*insert—*

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**‘Division 5                      Transitional provisions for  
Transport and Other Legislation  
Amendment Act 2008, part 12,  
division 2**

**‘122    Cap applicable to all applications received on or after  
commencement**

- ‘(1) This section applies to a person who has an entitlement in relation to long service leave or to a payment for benefits before the commencement of this section.
- ‘(2) Sections 59A and 62AA apply to all applications received by the authority on or after the commencement.
- ‘(3) To remove any doubt, it is declared that section 59A does not apply to an application, received by the authority before the commencement, for long service leave or payment for long service leave to be taken on or after the commencement if the applicant is entitled to take the leave applied for or to receive the payment for the leave applied for when the application is received by the authority.
- ‘(4) In this section—  
*application* means—
- (a) for section 59A—an application under section 56; or
  - (b) for section 62AA—an application under section 62.
- benefits* means benefits mentioned in section 61 provided to a registered worker.’.

**305    Amendment of schedule (Dictionary)**

Schedule, definition *award*, paragraph (b), ‘an award or AWA’—

*omit, insert*—

‘an award, AWA or workplace agreement’.

[s 306]

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### **Division 3                      Amendment of Dangerous Goods Safety Management Act 2001**

#### **306    Act amended in div 3**

This division amends the *Dangerous Goods Safety Management Act 2001*.

#### **307    Amendment of sch 2 (Dictionary)**

Schedule 2, definition *ADG Code*, ‘Ministerial Council for Road Transport’—

*omit, insert—*

‘Australian Transport Council’.

### **Division 4                      Amendment of Fire and Rescue Service Act 1990**

#### **308    Act amended in div 4**

This division amends the *Fire and Rescue Service Act 1990*.

#### **309    Amendment of sch 6 (Dictionary)**

Schedule 6, definition *ADG Code*, ‘Ministerial Council for Road Transport’—

*omit, insert—*

‘Australian Transport Council’.

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## Division 5                      **Amendment of Workers’ Compensation and Rehabilitation Act 2003**

### 310    **Act amended in div 5**

This division amends the *Workers’ Compensation and Rehabilitation Act 2003*.

### 311    **Amendment of s 136 (Worker must notify return to work or engagement in a calling)**

Section 136(1), ‘written’—  
*omit.*

### 312    **Amendment of s 586 (Approval of forms)**

Section 586—  
*insert—*

‘(3) Subsection (4) applies if a person—

- (a) is required or permitted to do something in an approved form under section 50, 132, 133, 133A or 542 (the ***relevant provision***); or

*Example—*

a requirement to send a report or give written notice in an approved form

- (b) is required under this Act to make an application for a policy in the approved form (also the ***relevant provision***).

*Editor’s note—*

See the *Workers’ Compensation and Rehabilitation Regulation 2003*, section 6.

[s 313]

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- ‘(4) Without limiting the *Electronic Transactions (Queensland) Act 2001*, the person is taken to have complied with the relevant provision when—
- (a) the person does the thing by giving the information required on the approved form by phone, or another method, acceptable to the receiver of the approved form (the *receiver*); and
  - (b) if the person’s signature is required on the approved form, the requirement is met under subsection (5); and
  - (c) if the relevant provision requires or permits the approved form to be accompanied by a document when given to the receiver, the person gives the document to the receiver within the reasonable period decided by the receiver.
- ‘(5) A requirement that the person sign the approved form as mentioned in subsection (4)(b) is met if—
- (a) a method is used to identify the person and to indicate the person’s approval of the information communicated under subsection (4)(a); and
  - (b) having regard to all the relevant circumstances when the method was used, the method was as reliable as was appropriate for the purposes for which the information was communicated; and
  - (c) the receiver consents to the requirement being met by using the method mentioned in paragraph (a).’.

### **313 Insertion of new ch 22**

After chapter 21—

*insert—*

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**‘Chapter 22    Transitional provision for  
Transport and Other  
Legislation Amendment Act  
2008, part 12, division 5**

**‘655    Validation of particular applications made by phone**

‘(1)    An application mentioned in section 132 or 542 that was made by phone before the commencement is taken to be, and to always have been, as valid as if it were made after the commencement.

‘(2)    In this section—

*commencement* means the commencement of this section.’