

# TRANSPORT AND OTHER LEGISLATION AMENDMENT BILL 2004

## AMENDMENTS AGREED TO IN COMMITTEE

### 1 Clause 2—

At page 8, lines 8 and 9—

*omit, insert—*

- sections 20 to 50
- sections 52 to 54
- section 55 (to the extent it inserts sections 157, 160 and 161)
- section 57(1)
- section 57(2) (other than to the extent it inserts definitions “SEQ area”, “Translink area” and “Translink service contract”)
- schedule, amendment of the *Land Act 1994*
- schedule, amendments of the *Transport Infrastructure Act 1994*
- schedule, amendments of the *Transport Operations (Passenger Transport) Act 1994*, item 9’.

### 2 After clause 8—

At page 10, after line 23—

*insert—*

#### **‘8A Amendment of s 206A (General manager’s power to fix speed limits for ships)**

‘(1) Section 206A(2), before ‘subordinate legislation’—

*insert—*

‘not’.

‘(2) Section 206A—

*insert—*

‘(8) It is declared that a gazette notice under this section is taken never to have been subordinate legislation.’.’.

### **3 After clause 12—**

At page 12, after line 4—

*insert—*

#### **‘12A Replacement of s 23 (Purpose of driver authorisation)**

‘Section 23—

*omit, insert—*

#### **‘23 Purpose of driver authorisation**

‘(1) The purpose of driver authorisation is to maximise public confidence in public passenger services in relation to the drivers of public passenger vehicles.

‘(2) Without limiting subsection (1), the purpose includes ensuring that drivers of public passenger vehicles—

- (a) are suitable persons to drive public passenger vehicles having regard to the need to provide for the personal safety of passengers and their property, and the public; and
- (b) conduct themselves responsibly with passengers and the public; and
- (c) are responsible in the act of driving and are capable of safely operating the relevant type of vehicle; and
- (d) are aware of their customer service responsibilities; and
- (e) are held accountable for complying with appropriate standards.

‘(3) Without limiting subsection (1) or (2), the purpose also includes ensuring that drivers do not damage the reputation of public passenger transport.

‘(4) In deciding whether to grant driver authorisation to a person, or to renew or amend, impose a condition on, or suspend or cancel a person’s driver authorisation, the chief executive must take into consideration—

- (a) the purpose of driver authorisation mentioned in subsections (1) to (3); and

- (b) the paramount principle mentioned in section 33A that children and other vulnerable members of the community must be protected.’.’.

#### **4 After clause 13—**

At page 12, after line 8—

*insert—*

#### **‘13A Amendment of s 27 (Driver must hold appropriate authorisation)**

‘Section 27, penalty ‘30’—

*omit, insert—*

‘100’.

#### **‘13B Insertion of new ss 28A–28C**

‘After section 28—

*insert—*

#### **‘28A Ineligibility for driver authorisation—category A driver disqualifying offences**

‘A person is ineligible to apply for or hold driver authorisation if the person has been convicted of a category A driver disqualifying offence.

#### **‘28B Driver authorisation—category B driver disqualifying offences**

‘(1) This section applies if the chief executive is aware that a person who is an applicant for driver authorisation or who holds driver authorisation has been convicted of a category B driver disqualifying offence.

‘(2) The chief executive must give the person written notice of the chief executive’s intention to refuse to grant or renew, or to cancel, the driver authorisation (the **“exclusion action”**) unless the person demonstrates to the chief executive’s satisfaction that an exceptional case exists.

*Example of an exceptional case—*

A person with no other criminal history was convicted of unlawful carnal knowledge 30 years ago and placed on a good behaviour bond after being involved in a consensual sexual relationship with a 15 year old when the person was 17.

‘(3) The chief executive must give the person a written notice about the exclusion action—

- (a) identifying the category B driver disqualifying offence of which the person has been convicted; and
- (b) stating the requirements of subsection (4); and
- (c) giving the person an opportunity to make written representations about the category B driver disqualifying offence and the exclusion action within 28 days.

‘(4) The chief executive must consider any written representations and must take the exclusion action unless the chief executive, subject to the paramount principle mentioned in section 33A, is satisfied that an exceptional case exists.

‘(5) For subsection (4)—

- (a) the Commissioner for Children and Young People may advise the chief executive on whether the commissioner considers an exceptional case exists; and
- (b) without limiting the chief executive’s power to take the exclusion action, the chief executive must take the advice into account.

‘(6) Nothing in this section limits action the chief executive may take under any other provision of this Act.

### **‘28C Driver authorisation—category C driver disqualifying offences**

‘(1) This section applies if the chief executive is aware that a person who is an applicant for driver authorisation or who holds driver authorisation has been convicted of a category C driver disqualifying offence.

‘(2) Without limiting the grounds on which the chief executive may deal with the application or the driver authorisation, the chief executive may do any of the following (the “**proposed action**”)—

- (a) refuse to grant driver authorisation to the person;
- (b) refuse to renew the person’s driver authorisation;
- (c) suspend or cancel the person’s driver authorisation.

‘(3) The chief executive must give the person written notice of the proposed action.

‘(4) Nothing in this section limits action the chief executive may take under any other provision of this Act.’.

**‘13C Amendment of s 29 (Granting, renewing or refusing driver authorisation)**

‘Section 29(2)—

*omit, insert—*

‘(2) Without limiting subsection (1), a regulation may authorise the chief executive—

- (a) to impose a condition when granting driver authorisation to a person or renewing a person’s driver authorisation; or
- (b) to refuse to grant driver authorisation to a person or to renew the person’s driver authorisation if the person—
  - (i) has been convicted of a category C driver disqualifying offence; or
  - (ii) has been charged with a driver disqualifying offence and the charge has not been finally disposed of.’.

**‘13D Amendment of s 31 (Applicant to notify charge for disqualifying offence etc.)**

‘(1) Section 31, heading, before ‘disqualifying’—

*insert—*

**‘driver’.**

‘(2) Section 31(1), before ‘disqualifying’—

*insert—*

**‘driver’.**

‘(3) Section 31(1)—

*insert—*

‘Maximum penalty—100 penalty units.’.

‘(4) Section 31(2), penalty, ‘10’—

*omit, insert—*

**‘100’.**

**‘13E Amendment of s 32 (Amendment, suspension and cancellation of driver authorisations)**

‘(1) Section 32—

*insert—*

‘(1A) Without limiting subsection (1), a regulation may authorise the chief executive to amend a person’s driver authorisation by imposing a condition on the authorisation.’.

‘(2) Section 32(2), ‘disqualifying offence.’—

*omit, insert—*

‘category B or category C driver disqualifying offence.’.

‘(3) Section 32(3), before ‘disqualifying’—

*insert—*

‘driver’.

**‘13F Amendment of s 33 (Authorised driver must notify charge for disqualifying offence etc.)**

‘(1) Section 33, heading, before ‘disqualifying’—

*insert—*

‘**driver**’.

‘(2) Section 33(1), before ‘disqualifying’—

*insert—*

‘driver’.

‘(3) Section 33(1)—

*insert—*

‘Maximum penalty—100 penalty units.’.

‘(4) Section 33(2), penalty ‘10’—

*omit, insert—*

‘100’.

**‘13G Insertion of new s 33A**

‘After section 33—

*insert—*

**‘33A Protection of children and vulnerable members of the community**

‘(1) This section applies to the following when making decisions about driver authorisation—

- (a) the chief executive;
- (b) persons constituting a review panel under the *Transport Planning and Coordination Act 1994*;
- (c) a court hearing an appeal against a decision about driver authorisation.

‘(2) If, because an applicant for, or a holder of, driver authorisation has been charged with or convicted of a driver disqualifying offence or for any other reason, the safety of children or other vulnerable members of the community becomes relevant, the paramount principle is that children and other vulnerable members of the community must be protected.’.

**‘13H Amendment of s 34 (Authorised driver must notify suspension or cancellation of licence etc.)**

‘Section 34, penalty, ‘10’—

*omit, insert—*

‘100’.

**‘13I Amendment of s 35 (Obligation to notify accredited operator of suspension or cancellation of licence etc.)**

‘Section 35, penalty, ‘10’—

*omit, insert—*

‘100’.’.

**5 Clause 55—**

At page 32, after line 11—

*insert—*

***‘Division 1—Authorised persons’.***

**6 Clause 55—**

At page 32, after line 19—

*insert—*

***‘Division 2—Translink service contracts’.***

**7 Clause 55—**

At page 34, after line 23—

*insert—*

***‘Division 3—Driver disqualifying offences***

**‘162 Driver disqualifying offences**

‘(1) For the purposes of a reference in this Act to a category A driver disqualifying offence, category B driver disqualifying offence or category C driver disqualifying offence, it is declared that—

- (a) the reference includes a reference to the offence whether the offence was or is committed before or after the commencement of this section; and
- (b) a reference to a conviction of the offence includes a conviction of the offence whether the conviction happened before or after the commencement of this section.

‘(2) If the person has been convicted of a category A disqualifying offence before the commencement of this section—

- (a) if the person holds driver authorisation on the commencement—the driver authorisation is immediately cancelled on the commencement; and
- (b) if the person has applied for the grant or renewal of driver authorisation before the commencement that has not been

finalised—the application is terminated on the commencement;  
and

- (c) if the person immediately before the commencement has an entitlement to have driver authorisation granted or renewed under a decision of a court on appeal from the decision of the chief executive—the entitlement is extinguished on the commencement.

### **‘163 Transitional regulation-making power**

‘(1) A regulation made after the commencement of this section may provide that a regulation in existence immediately before the commencement is amended from the commencement in order to take account of the creation of driver disqualifying offences for driver authorisations on the commencement.

‘(2) Subsection (1) applies even if the regulation is not a beneficial provision within the meaning of the *Statutory Instruments Act 1992*, section 34.<sup>1</sup>’.

### **8 After clause 55—**

At page 34, after line 23—

*insert—*

### **‘55A Insertion of new sch 1A**

‘After schedule 1—

*insert—*

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1 *Statutory Instruments Act 1992*, section 34 (Beneficial retrospective commencement)

**‘SCHEDULE 1A****‘DRIVER DISQUALIFICATION OFFENCES**

dictionary, definition “driver disqualifying offence”

**‘PART 1—CATEGORY A DRIVER DISQUALIFYING OFFENCES*****‘Division 1—Existing provisions of the Criminal Code***

1. Section 208 (Unlawful sodomy) unless, when the offence was committed, the offender was aged between 14 and 20 (both inclusive) and the person in relation to whom the offence was committed was not an intellectually impaired person and was aged between 14 and 17 (both inclusive)
2. Section 210 (Indecent treatment of children under 16) unless, when the offence was committed, the offender and the person against whom the offence was committed were both aged between 14 and 20 (both inclusive)
3. Section 213 (Owner etc. permitting abuse of children on premises), if the proscribed act mentioned in section 213(1) is a category A driver disqualifying offence mentioned in item 1, 2 or 4
4. Section 215 (Carnal knowledge with or of children under 16) unless, when the offence was committed, the offender and the person against whom the offence was committed were both aged between 14 and 20 (both inclusive)
5. Section 216 (Abuse of intellectually impaired persons)
6. Section 217 (Procuring young person etc. for carnal knowledge)
7. Section 218A (Using internet etc. to procure children under 16)
8. Section 219 (Taking child for immoral purposes), if the proscribed act mentioned in section 219(1) is a category A driver disqualifying offence mentioned in item 1, 2 or 4

9. Section 222 (Incest), if the person in relation to whom the offence was committed was a child when the offence was committed
10. Section 228 (Obscene publications and exhibitions), if section 228(2) or (3) applies
11. Section 229B (Maintaining a sexual relationship with a child), if any of the offences of a sexual nature required to be proved for the purposes of the section is a category A driver disqualifying offence
12. Section 229G (Procuring prostitution), if section 229G(2) applies
13. Section 349 (Rape)

***‘Division 2—Provisions of the Criminal Code repealed by the Criminal Law Amendment Act 1997***

1. Section 208 (Unlawful anal intercourse), if section 208(2)(b) applies
2. Section 222 (Incest by man), if the person in relation to whom the offence was committed was a child under 16 years when the offence was committed.

**‘PART 2—CATEGORY B DRIVER DISQUALIFYING OFFENCES**

**Criminal Code**

1. Section 229G (Procuring prostitution)
2. Section 229L (Permitting young person etc. to be at place used for prostitution)
3. Section 328A (Dangerous operation of a vehicle)

***Drugs Misuse Act 1986***

1. Section 7(1) (Receiving or possessing property obtained from trafficking or supplying), if paragraph (a) of the maximum penalty for the provision applies
2. Section 8 (Producing dangerous drugs), if paragraph (a), (b) or (c) of the maximum penalty for the provision applies

3. Section 8A(1) (Publishing or possessing instructions for producing dangerous drugs), if paragraph (a) or (b) of the maximum penalty for the provision applies
4. Section 9 (Possessing dangerous drugs), if paragraph (a), (b) or (d) of the maximum penalty for the provision applies
5. Section 10(1) (Possessing things), if paragraph (a) of the maximum penalty for the provision applies
6. Section 11(1)(a) (Permitting use of place), if paragraph (a) of the maximum penalty for the provision applies.

### ***Weapons Act 1990***

Section 65 (Unlawful trafficking in weapons)<sup>2</sup>

## **‘PART 3—CATEGORY C DRIVER DISQUALIFYING OFFENCES**

### ***‘Division 1—Existing provisions of the Criminal Code***

1. Chapter 9 (Unlawful assemblies—breaches of the peace)
2. Chapter 16 (Offences relating to the administration of justice)
3. Chapter 20 (Miscellaneous offences against public authority)
4. Chapter 22 (Offences against morality)
5. Chapter 26 (Assaults and violence to the person generally—justification and excuse)
6. Chapter 27 (Duties relating to the preservation of human life)
7. Chapter 28 (Homicide—Suicide—Concealment of birth)
8. Chapter 29 (Offences endangering life or health)
9. Chapter 30 (Assaults)
10. Chapter 33 (Offences against liberty)

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2 See the definition “category B driver disqualifying offence” in schedule 3 for the full list of category B driver disqualifying offences.

11. Chapter 36 (Stealing)
12. Chapter 37 (Offences analogous to stealing)
13. Chapter 38 (Stealing with violence—extortion by threats)
14. Chapter 39 (Burglary—Housebreaking—And like offences)
15. Chapter 40 (Other fraudulent practices)
16. Chapter 41 (Receiving property stolen or fraudulently obtained and like offences)
17. Chapter 42 (Frauds by trustees and officers of companies and corporations—false accounting)
18. Chapter 42A (Secret commissions)
19. Chapter 46 (Offences)
20. Chapter 49 (Punishment of forgery and like offences)
21. Chapter 52 (Personation)
22. Chapter 56 (Conspiracy)

***‘Division 2—Provisions of the Criminal Code repealed by the Criminal Law Amendment Act 1997***

1. Section 343A (Assaults occasioning bodily harm)
2. Section 344 (Aggravated assaults)

**‘55B Amendment of sch 2 (Reviewable decisions)****‘(1) Schedule 2—***insert—*

**‘28B**           Category B driver disqualifying   Magistrates  
                   offence—refusal to grant or renew driver  
                   authorisation or cancellation of driver  
                   authorisation

**28C**           Category C driver disqualifying   Magistrates’.  
                   offence—refusal to grant or renew driver  
                   authorisation or suspension or cancellation  
                   of driver authorisation

**‘(2) Schedule 2, entry for section 29, after ‘authorisation’—***insert—***‘or the imposition of a condition on driver authorisation’.****‘(3) Schedule 2, entry for section 32, after ‘authorisation’—***insert—***‘or the imposition of a condition on driver authorisation’.’.****9    Clause 57—****At page 36, after line 8—***insert—***‘ “category A driver disqualifying offence” means—**

- (a) an offence against a provision of the Criminal Code mentioned in schedule 1A, part 1; or
- (b) an offence of counselling or procuring the commission of, or attempting or conspiring to commit, an offence mentioned in paragraph (a), and to which paragraph (a) does not otherwise apply; or
- (c) an offence against a law of another jurisdiction, including a jurisdiction outside Australia, that substantially corresponds to an offence mentioned in paragraph (a) or (b).

**“category B driver disqualifying offence”** means any of the following that is not a category A driver disqualifying offence—

- (a) an offence that is a serious offence within the meaning of the *Commission for Children and Young People Act 2000*, schedule 4 (Dictionary), definition “serious offence”, paragraph (a) or (b);
- (b) an offence against a provision of an Act mentioned in schedule 1A, part 2;
- (c) an offence of counselling or procuring the commission of, or attempting or conspiring to commit, an offence mentioned in paragraph (a) or (b), and to which paragraph (a) or (b) does not otherwise apply;
- (d) an offence against a law of another jurisdiction, including a jurisdiction outside Australia, that substantially corresponds to an offence mentioned in paragraph (a), (b) or (c).

**“category C driver disqualifying offence”** means any of the following that is not a category A driver disqualifying offence or a category B driver disqualifying offence—

- (a) an offence against a provision of the Criminal Code mentioned in schedule 1A, part 3;
- (b) an offence against the *Drugs Misuse Act 1986* punishable by imprisonment for 1 year or more, even though a fine may be imposed in addition or as an alternative;
- (c) an offence against the *Weapons Act 1990* punishable by imprisonment for 1 year or more, even though a fine may be imposed in addition or as an alternative;
- (d) an offence against this Act;
- (e) an offence against the *Transport Operations (Passenger Transport) Regulation 1994*, for which the maximum penalty is at least 20 penalty units;
- (f) an offence of counselling or procuring the commission of, or attempting or conspiring to commit, an offence mentioned in paragraph (a), (b), (c), (d) or (e), and to which paragraph (a), (b), (c), (d) or (e) does not otherwise apply;
- (g) an offence against a law of another jurisdiction, including a jurisdiction outside Australia, that substantially corresponds to an offence mentioned in paragraph (a), (b), (c), (d), (e) or (f).’

**10 Clause 57—**

At page 36, after line 11—

*insert—*

‘ **“driver disqualifying offence”**, in relation to driver authorisation, means—

- (a) a category A driver disqualifying offence; or
- (b) a category B driver disqualifying offence; or
- (c) a category C driver disqualifying offence.’.

**11 Clause 57—**

At page 37, lines 24 to 26—

*omit, insert—*

‘**(3)** Schedule 3, definition “disqualifying offence”, before ‘means’—

*insert—*

‘, in relation to operator accreditation, a taxi service licence or a limousine service licence,’.

‘**(4)** Schedule 3, definition “disqualifying offence”, paragraph (e)—

*omit, insert—*

- ‘(e) an offence against a law of another jurisdiction, including a jurisdiction outside Australia, that substantially corresponds to an offence mentioned in paragraph (a), (b), (c) or (d).’.

‘**(5)** Schedule 3, definition “ferry”, after ‘boat’—

*insert—*

‘, barge’.

‘**(6)** Schedule 3, definition “information notice”, ‘of the chief executive’—

*omit.’.*

**12 After clause 71—**

At page 42, after line 25—

*insert—*

**‘71A Insertion of new s 36DA**

‘Part 5, after section 36D—

*insert—*

**‘36DA Commissioner for Children and Young People**

‘(1) This section applies if an appeal concerns a reviewed decision about driver authorisation if a driver disqualifying offence involving a child was relevant to the original decision.

‘(2) The Commissioner for Children and Young People may appear as a party.

‘(3) In this section—

**“driver authorisation”** means driver authorisation under the *Transport Operations (Passenger Transport) Act 1994*.

**“driver disqualifying offence”** means a driver disqualifying offence under the *Transport Operations (Passenger Transport) Act 1994*.’.