

TRANSPORT AND OTHER LEGISLATION AMENDMENT BILL 2004

EXPLANATORY NOTES (AMNDMENTS IN COMMITTEE)

General Outline

OBJECTIVES OF THE AMENDED LEGISLATION

The Transport and Other Legislation Amendment Bill 2004 (TAOLAB) is to be amended in committee to:

- commence certain provisions by proclamation rather than on assent;
- deem that gazette notices fixing speed limits for ships are not subordinate legislation, and declare that they have never been subordinate legislation;
- require the chief executive to take into consideration the paramount principle of protecting passengers and the community when making a decision about driver authorisation;
- permanently exclude people with child-related sexual offences from driving public passenger services; and
- strengthen criminal history screening processes for driver authorisation (DA) applicants regarding other serious disqualifying offences.

REASONS FOR THE AMENDMENTS

Commencement of the Bill

The TAOLAB provides penalties for passenger transport related offences. When introduced into Parliament the Bill was drafted so that the passenger transport offences would commence on assent. However, these provisions need to be commenced by proclamation to allow the simultaneous amendment of the State Penalties Enforcement Regulation 2000 (SPER) to allow enforcement by the issuing of infringement notices.

Gazette notices not subordinate legislation

The introduction of section 206A of the Transport Operations (Marine Safety) Act 1994 allowed speed limits for ships to be set by gazette notice. A provision of section 206A stated that these gazette notices were subordinate legislation, which meant that they needed to be tabled in Parliament. An amendment in committee will deem that such notices are not subordinate legislation, and declare that notices previously gazetted were not subordinate legislation. This will allow speed limits for ships to be quickly and easily varied if there is a genuine safety case.

Driver Authorisation amendments

An appeal ruling by a Magistrate on 29 April 2004 overturned a decision by Queensland Transport (QT) not to grant driver authorisation (DA) to a person convicted of child-related sexual offences. While QT was already working to tighten driver authorisation arrangements, the Magistrate's decision merits swift action to address this matter and to ensure such situations do not arise again.

The Government also wishes to take urgent action as part of its commitment to strengthening child protection in Queensland.

Category A offences

From the date of assent, the proposed legislation will introduce mandatory exclusions for persons convicted of child-related sexual offences (new Category A offences). Importantly, a "conviction" includes cases where no conviction was recorded, convictions for similar offences elsewhere in Australia and overseas, and also applies in cases where the convictions had occurred before the commencement of the new provisions.

These crimes are considered to be the most heinous examples of offences against children. Examples are indecent treatment of a child, maintaining a sexual relationship with a child, taking a child for an immoral purpose, and procuring a child for prostitution.

The proposed measures will weed out convicted sexual predators currently holding DA. The measures will ensure, as far as possible, that no person with a history of paedophilia will be permitted to drive or operate school bus or taxi services, or any other public passenger service on which a child may be travelling. Only a small number of individuals (out of 41000) who currently possess DA could have their DA cancelled.

It is important to note that by strengthening the legislation to remove the chief executive's discretion in assessing a person's DA application in these limited instances, the person will have no right of appeal.

While this measure may be considered extreme, it is considered that it strikes a balance between the rights of an individual and the public interest, specifically the protection of our children – to maximise public confidence in the accreditation system. There is a strong view in the community supported by research to indicate that child sexual offenders suffer from compulsive behaviour and are prone to reoffend. This research includes Smallbone and Wortley, (2001) 'Child Sexual Abuse: Offender characteristics and modus operandi' *Trends and Issues in Crime and Criminal Justice*, Australian Institute of Criminology.

Category B offences

The amendments will also introduce automatic exclusion for convictions of other serious disqualifying offences (new Category B offences) such as murder, manslaughter, etc unless the applicant can demonstrate it would be an exceptional case such that the issuing of DA would not harm the public interest. That is, it will put these applicants in a "show cause" situation similar to that provided for under the *Working with Children Check (Commission for Children and Young People Act 2000, s.102(4))*.

Whilst these offences are serious, it is not appropriate for convictions of these offences to result in an automatic preclusion from holding or obtaining DA. For example, the offence of unlawful carnal knowledge may occur between a 17 year old and 15 year old in a boyfriend and girlfriend relationship, who later marry. Therefore discretion is required to take the facts of the case into account when making a DA assessment.

To further assist QT in its decision-making process, specifically if QT is considering issuing a DA to a person convicted of a Category B offence, it is proposed to enable QT to request, and take into account, advice from the Commissioner for Children and Young People regarding whether an "exceptional case" exists to warrant the issuing of the DA.

This will be subject to guidelines established between QT and the Commissioner. The Commissioner would also assist QT in developing screening guidelines and expertise through knowledge sharing and professional development of QT decision makers. Given the strengthening of QT's guidelines, it is not anticipated that this will impose an onerous obligation on the Commissioner.

The existing procedure allowing review and ultimately appeal to the Magistrates Court will continue to apply for category B disqualification offences.

It is also proposed to permit the Commissioner to elect to appear in the court upon an applicant's appeal against a decision not to grant DA. It is proposed that the Commissioner appear as a separate party to QT, as a representative of the children and young people of Queensland.

Category C offences

In relation to the remaining disqualifying offences, applicants for and holders of DA will be screened in accordance with strengthened QT guidelines.

In conjunction with the above proposed amendments, it is proposed to enable the chief executive to issue conditional driver authorisation. The *Transport Operations (Passenger Transport) Regulation 1994* will be amended to enable the chief executive of Queensland Transport to issue conditional driver authorisation, and to increase penalties for non-compliance with related sections of the Act.

The *Transport Planning and Coordination Act 1994* and *Transport Operations (Passenger Transport) Act 1994* will also be amended to require original decision makers, internal review panels and the Magistrates Court to take into consideration as the paramount principle, the protection of children and other vulnerable members of society when making their decisions.

ALTERNATIVE WAYS OF ACHIEVING POLICY OBJECTIVES

Nil

ESTIMATED COST FOR GOVERNMENT IMPLEMENTATION

To be met within current departmental allocations.

CONSISTENCY WITH FUNDAMENTAL LEGISLATIVE PRINCIPLES

The amendments to the *Transport Operations (Marine Safety) Act 1994* will breach s.4(3)(g) of the *Legislative Standards Act 1992*, in that it

operates retrospectively. This breach of fundamental legislative principles is considered the only option available to make all gazetted speed limits effective immediately and achieve the required outcome of validating all marine speed infringement notices that have been issued.

This issue is considered to be of extreme importance. Effectively, there are no speed limits outside those regulated in Schedule 4 of the Transport Operations (Marine Safety) Regulation 1995 in Queensland waters.

The amendments relating to driver authorisation have been drafted with the requirements of the fundamental legislative principles in mind.

CONSULTATION

Transport Operations (Marine Safety) Act 1994

Office of Parliamentary Counsel and Crown Law have been consulted.

Driver authorisation

Due to the urgency of the situation, consultation has been limited to the Department of the Premier and Cabinet, the Commissioner for Children and Young People, the Crown Solicitor and the Department of Justice and Attorney-General. The Department of the Premier and Cabinet and Commissioner for Children and Young People support the proposals contained in this submission.

RESULTS OF CONSULTATION

The amendments are supported.

NOTES ON PROVISIONS

(Clause 1 amends the Transport and Other Legislation Amendment Bill 2004, Part 1—Preliminary.)

Clause 1 (Clause 2) states that certain sections of this Act are to commence by proclamation. The balance of the Act will commence on Assent.

(Clause 2 amends the Transport and Other Legislation Amendment Bill 2004, Part 3—Amendment of the *Transport Operations (Marine Safety) Act 1994*.)

Clause 2 (After clause 8—) inserts a new clause 8A to amend section 206A of the *Transport Operations (Marine Safety) Act 1994* (General manager's power to fix speed limits for ships).

Clause 8A(1) makes gazette notices under section 206A not subordinate legislation.

Clause 8A(2) declares that all gazette notices under the section have never been subordinate legislation.

(Clauses 3 to 10 amend the Transport and Other Legislation Amendment Bill 2004, Part 4—Amendment of the *Transport Operations (Passenger Transport) Act 1994*.)

Clause 3 (After clause 12—) inserts a new clause 12A (Replacement of s 23 (Purpose of driver authorisation)) into the Transport and Other Legislation Amendment Bill 2004 (TAOLAB).

Clause 12A omits section 23 and inserts a new section 23. The new section 23 strengthens previous requirements for driver authorisation and requires the chief executive to take into consideration the paramount principle of protecting passengers and the community.

Clause 4 (After clause 13—) inserts new clauses 13A to 13I into TAOLAB.

Clause 13A (Amendment of s 27 (Driver must hold appropriate authorisation)) increases penalties for not holding an appropriate authorisation.

Clause 13B (Insertion of new ss 28A to 28C) provides a framework for excluding unsuitable persons from the driver authorisation scheme.

Section 28A provides that a person convicted of a 'category A' offence (generally child-related sexual offences and other heinous crimes) may not apply for or hold driver authorisation.

Section 28B provides for the exclusion of persons who have committed other serious crimes unless they can substantiate exceptional circumstances. Provision is made for the chief executive to consult with the Commissioner for Children and Young People.

Section 28C provides a discretion for the chief executive to exclude persons who have committed other serious crimes if the circumstances warrant this.

Clause 13C (Amendment of s 29 (Granting, renewing or refusing driver authorisation)) clarifies that the chief executive can place conditions upon a driver's authorisation.

Clause 13D (Amendment of s 31 (Applicant to notify charge for disqualifying offence etc.)) is procedural and increases penalties.

Clause 13E (Amendment of s 32 (Amendment, suspension and cancellation of driver authorisations)) is a procedural clause and clarifies conditions of existing driver authorisations.

Clause 13F (Amendment of s 33 (Authorised driver must notify charge for disqualifying offence etc.)) is procedural and increases penalties.

Clause 13G (Insertion of new s 33A) establishes the paramount principle of protection of children and other vulnerable members of the community for decisions made by the chief executive, review panels and appeal courts.

Clause 13H (Amendment of s 34 (Authorised driver must notify suspension or cancellation of licence etc.)) is procedural and increases penalties.

Clause 13I (Amendment of s 35 (Obligation to notify accredited operator of suspension or cancellation of licence etc.)) is procedural and increases penalties.

Clause 5 (Clause 55—) inserts a new division heading '*Division 1—Authorised Persons*' into clause 55 of TAOLAB.

Clause 6 (Clause 55—) inserts a new division heading '*Division 2—Translink service contracts*' into clause 55 of TAOLAB.

Clause 7 (Clause 55—) inserts a new division heading '*Division 3—Driver disqualifying offences*' and new sections 162 and 163 into clause 55 of TAOLAB.

Section 162 clarifies the application of the new laws and ensures that these new laws are applicable to existing holders, new applicants, applications in progress and any application subject to a current court order.

Section 163 allows regulations to be amended to deal with the new mandatory exclusions.

Clause 8 (After clause 55—) inserts new clauses 55A and 55B into TAOLAB.

Clause 55A (Insertion of new sch 1A) inserts a new schedule listing the disqualifying offences.

Clause 55B (Amendment of sch 2 (Reviewable decisions)) is procedural allowing review and appeal on the imposition of a condition to a driver authorisation.

Clause 9 (Clause 57—) inserts into clause 57 of TAOLAB definitions for the purposes of the driver authorisation amendments.

Clause 10 (Clause 57—) inserts into clause 57 of TAOLAB a further definition for the purposes of the driver authorisation amendments.

Clause 11 (Clause 57—) inserts into clause 57 of TAOLAB amendments to the definitions of “disqualifying offence” and “information notice” for the purposes of the driver authorisation amendments.

(Clause 12 amends the Transport and Other Legislation Amendment Bill 2004, Part 4—Amendment of the *Transport Planning and Coordination Act 1994*.)

Clause 12 (After clause 71—) inserts a new clause 71A into TAOLAB.

Clause 71A (Insertion of new s 36DA) amends the *Transport Planning and Coordination Act 1994* by allowing the Commissioner for Children and Young People to appear in courts hearing appeals concerning a disqualifying offence involving a child.