

Transport and Other Legislation (Personalised Transport Reform) Amendment Bill 2017

Explanatory Notes

FOR

Amendments To Be Moved During Consideration In Detail By The Honourable Mark Bailey MP

LAID UPON THE TABLE OF PARLIAMENT

No: SS177784

 24 MAY 2017

MP: Bailey

Clerk's Signature: _____

Title of the Bill

Transport and Other Legislation (Personalised Transport Reform) Amendment Bill 2017

Objectives of the Amendments

The objectives of the amendments to the Transport and Other Legislation (Personalised Transport Reform) Amendment Bill 2017 (the Bill) are to:

- provide a specific power to make a regulation that allows for the disclosure of security recordings to, and use of the recordings by, a police officer performing the officer's duties;
- clarify the circumstances in which a booking may be accepted 'in person' for the definition of a booking service;
- simplify the term of a booking entity authorisation;
- eliminate potential unintended consequences relating to the place of business of an authorised booking entity's local nominee;
- strengthen provisions relating to driving sanctions for relevant driver offences;
- deter the act of taking steps to avoid the detection of, or prosecution for, an offence under new chapter 7 of the *Transport Operations (Passenger Transport) Act 1994* (TOPTA);
- clarify the power of the police commissioner to disclose to the chief executive a person's criminal history for determining the person's (or another person's) suitability to hold a booking entity authorisation;
- correct a minor typographical error; and
- ensure consistency with the *State Penalties Enforcement Act 1999* (the SPE Act) due to recent amendments made by the *State Penalties Enforcement Amendment Act 2017* (the SPE Amendment Act).

Achievement of the Objectives

The objectives of the amendments will be achieved by:

- extending the regulation-making power for security cameras to allow a regulation to provide for access to, and the disclosure and use of, information captured by the security cameras in vehicles used to provide taxi services or booked hire services, including for purposes related to a police officer performing the officer's duties generally;
- including an example of a person accepting a booking 'in person' for the definition of booking service;
- providing that a booking entity authorisation is for a term of not more than 5 years and that a regulation may provide for renewing a booking entity authorisation;
- removing the provision that deems a place of business of an authorised booking entity's local nominee to be a place of business of the entity;
- providing that a relevant driver offence for a driving sanction includes an offence against a provision prescribed by regulation where the offence is committed while the driver is providing a taxi service or booked hire service;
- increasing the period of a second or later driving sanction to 3 months;
- providing for a driver licence disqualification period where a driver commits 3 or more relevant driver offences within 3 years and is unlicensed at the time the driving sanction is imposed;
- creating a new offence for a person taking steps to avoid the detection of, or prosecution for, an offence under new chapter 7 of TOPTA;
- allowing the chief executive to make inquiries about a person (for example, by asking the police commissioner for the person's criminal history) in deciding whether the person, another person or a corporation of which the person is an executive officer is suitable to hold a booking entity authorisation;
- amending new section 213 of TOPTA to replace the word 'forced' with 'force'; and
- providing that an infringement notice for an offence has been dealt with when a person makes an application for early referral of the fine to pay the fine under a payment plan under new section 23 of the SPE Act.

Alternative Ways of Achieving Policy Objectives

The policy objectives can only be achieved through legislative amendment.

Estimated Cost for Government implementation

The proposed amendments will not increase the administrative costs to government.

Consistency with Fundamental Legislative Principles

The amendments are consistent with Fundamental Legislative Principles.

Consultation

Amendments 2, 11 to 15, 20 and 22 are proposed in response to public consultation undertaken as part of the Public Works and Utilities Committee's (the Committee) detailed consideration of the Bill and the Committee's recommendations 4, 13 and 14 of its report.

Extensive consultation with industry and other stakeholders has been undertaken on the personalised transport reforms.

NOTES ON PROVISIONS

Amendment 1 amends the Bill to insert new clause 16A. New clause 16A inserts new section 80BA of TOPTA allowing a regulation to provide for access to, and the disclosure and use of, information captured by the security cameras in vehicles used to provide taxi services or booked hire services. This provision is needed to ensure a regulation may allow a police officer to access security camera recordings for general purposes related to performing the officer's duties. This provision will ultimately be repealed when chapter 7 of TOPTA is repealed and replaced. New chapter 7 of TOPTA will include a substantially similar provision (refer to amendment 18).

Amendment 2 amends clause 18 (new section 72(4)(a) of TOPTA) to include an example of a booking accepted in person for the purpose of defining a booking service. The example clarifies that a booking for a booked hire service journey may be accepted in person for a journey to start at a later time (for example, 2 days). This differs from the hiring of a vehicle and its driver on-the-spot, which is an arrangement made for a journey to commence immediately or shortly after the vehicle and its driver are hired and not a booking made in advance.

Amendment 3 amends clause 18 (new section 89(2) of TOPTA) as a consequence of, and for consistency with, amendment 16.

Amendments 4, 5 and 6 amend clause 18 (new section 91W of TOPTA) to clarify that a regulation may provide for renewing a booking entity authorisation as a consequence of amendments 7 and 8.

Amendments 7 and 8 amend clause 18 (new section 91X of TOPTA) to simplify the term of a booking entity authorisation. A booking entity authorisation will be for a term of not more than 5 years stated in the authorising document. This change will simplify the administration of the new booking entity authorisation product by allowing for a booking entity authorisation to be renewed on expiry of the authorisation.

Amendment 9 amends clause 18 (heading of new section 91ZF of TOPTA) as a consequence of amendment 10.

Amendment 10 amends clause 18 (new section 91ZF of TOPTA) to omit subsection (3). This change removes the potential for any unintended consequences from deeming a place of business of an authorised booking entity's local nominee to be a place of business of the entity for chapter 11 of TOPTA without impacting on the effectiveness of the Bill.

Amendment 11 amends clause 18 (heading of new chapter 7, part 5, division 1 of TOPTA) to omit the heading and insert a new heading 'Driving sanctions for driver offences' and new section 91ZHA.

New section 91ZHA(1) provides that the division applies if a person has committed 3 or more relevant driver offences within a 3-year period; or if a driving sanction has been imposed previously and a further 3 or more relevant driver offences have been committed within a subsequent 3-year period.

New section 91ZHA(2) provides that if more than one relevant driver offence is committed at the same time, it is considered to be the one offence for the purposes of determining the number of relevant driver offences a person has committed over a period.

New section 91ZHA(3) clarifies that for a subsequent 3-year period it does not matter whether the period has started before, during or after the period a previous driving sanction was in effect. For example, a person may commit 3 relevant driver offences in a 1-year period and the chief executive imposes a driving sanction on the person 1 month after the third offence is committed. Subsection (1)(b) would apply to the person even if the person committed 1 relevant driver offence in the month before the driving sanction is imposed and a further 2 relevant driver offences after the sanction ends.

Amendments 12 and 13 amend clause 18 (new section 91ZI of TOPTA) to provide that an offence committed by the driver of a motor vehicle is a relevant driver offence if the offence is committed against a provision prescribed by regulation to be a provision to which this section applies. However, the offence will only be a relevant driver offence if the offence was committed while the driver is providing a taxi service or booked hire service. It is intended to initially prescribe by regulation the offence under section 182 of the Queensland Road Rules for a driver stopping in a taxi zone in a vehicle that is not a taxi.

Amendment 14 amends clause 18 (new section 91ZJ of TOPTA) of the Bill to omit and insert a new section 91ZJ, which provides for the driving sanctions that the chief executive may impose on a person.

New section 91ZJ(1) provides that the chief executive may suspend the person's Queensland driver licence, suspend the person's authority to drive on a Queensland road under a driver licence other than a Queensland driver licence or disqualify the person from holding or obtaining a driver licence (each being a 'driving sanction').

New section 91ZJ(2) provides that the driving sanction period is 1 month for the first driving sanction and 3 months for a second or subsequent driving sanction. For example, if a person holds a Queensland driver licence at the time the chief executive takes action under new section 91ZJ and the driving sanction is the person's first sanction, the chief executive may suspend the person's Queensland driver licence for 1 month. If the person does not hold a driver licence at the time the chief executive takes action under new section 91ZJ and the driving sanction is the person's second sanction, the chief executive may disqualify the person from holding or obtaining a driver licence for 3 months.

New section 91ZJ(3) provides that the chief executive imposes a driving sanction by written notice stating the matters prescribed in subsection (3), including the nature of, and reasons for, the sanction.

Amendment 15 amends clause 18 (new section 91ZK of TOPTA) of the Bill to omit and insert a new section 91ZK.

New section 91ZK provides that while a person's Queensland driver licence is suspended under section 91ZJ, the person is not eligible to apply for a special hardship order under the *Transport Operations (Road Use Management) Act 1995* (TORUM).

Amendment 16 amends clause 18 of the Bill to insert new sections 91ZQA and 91ZQB of TOPTA.

New section 91ZQA makes it an offence for a person to take steps to avoid detection of, or prosecution for, conduct that involves the commission of an offence under new chapter 7 of TOPTA by the person or another person. This offence is intended to deter methods used to evade compliance and enforcement activities of the department in a systematic way (for example, blocking access to apps on mobile devices). A person may take steps to avoid detection in many ways including, for example, by organising or facilitating the methods used to avoid detection.

New section 91ZQB provides for an executive officer liability if a corporation commits an offence against new section 91ZQA and the officer authorised or permitted the corporation's conduct or was knowingly concerned in the corporation's conduct. An executive officer may be proceeded against for, and convicted of, the offence against section 91ZQA even if the corporation has not been proceeded against for, or convicted of, the offence.

Amendment 17 amends clause 18 (heading of new chapter 7, part 6, division 3 of TOPTA) as a consequence of amendment 18.

Amendment 18 amends clause 18 of the Bill to insert new section 91ZZ of TOPTA, which replaces the regulation-making power in new section 80BA (refer to amendment 1) as a consequence of the ultimate repeal and replacement of chapter 7 of TOPTA.

Amendment 19 amends the Bill to insert new clauses 22A and 22B. New clauses 22A and 22B of the Bill amend sections 148 and 148A of TOPTA to allow the police commissioner to disclose to the chief executive the criminal history of a person related to a booking entity authorisation. This change is consistent with the treatment of the criminal history of persons related to a driver authorisation or operator accreditation.

Amendment 20 amends clause 23 (new section 150C(1)(a) of TOPTA) of the Bill to replace a cross-reference with a reference to new section 91ZHA as a consequence of amendments 11 and 14.

Amendment 21 amends clause 28 (new section 213(1)(a) of TOPTA) of the Bill to correct a typographic error.

Amendment 22 amends clause 36 (amended section 129A(7) of TORUM) of the Bill to replace a cross-reference with a reference to new section 91ZJ as a consequence of amendments 14 and 15.

Amendment 23 amends schedule 1 of the Bill to amend the SPE Amendment Act (ultimately amending TOPTA) in relation to the circumstances in which an infringement notice for a

relevant offence has been 'dealt with' under section 129ZO of TOPTA to ensure consistency with the SPE Act.

Amendment 24 amends schedule 1 of the Bill to amend new section 150C(3) of TOPTA in relation to the circumstances in which an offence has been committed to ensure consistency with the SPE Act.

©The State of Queensland 2017