



Queensland

# Transport Legislation Amendment Regulation (No. 2) 2007

## Subordinate Legislation 2007 No. 226

made under the

*Transport Operations (Road Use Management) Act 1995*

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## **Part 1 Preliminary**

### **1 Short title**

This regulation may be cited as the *Transport Legislation Amendment Regulation (No. 2) 2007*.

### **2 Commencement**

Part 3 commences on 29 October 2007.

## **Part 2 Amendment of Traffic Regulation 1962**

### **3 Regulation amended in pt 2**

This part amends the *Traffic Regulation 1962*.

### **4 Amendment of s 4 (Definitions)**

Section 4, definition *ANPR camera*—  
*omit, insert—*

‘*ANPR camera system* see section 208(c)’.’.

### **5 Amendment of s 208 (Approved photographic detection devices)**

(1) Section 208, from ‘For’ to ‘device’—

*omit, insert—*

‘The following are approved for section 113 of the Act, definition *photographic detection device*’.

(2) Section 208(c), after ‘camera’—

*insert—*

‘system’.

## 6 Amendment of s 210A (ANPR cameras)

- (1) Section 210A, heading—

*omit, insert—*

### **‘210A ANPR camera systems’.**

- (2) Section 210A(1), after ‘camera’—

*insert—*

‘system’.

- (3) Section 210A(2), after ‘an ANPR camera’—

*insert—*

‘system’.

- (4) Section 210A(2)(a), ‘ANPR camera must’—

*omit, insert—*

‘camera part of the ANPR camera system must’.

- (5) Section 210A(2)(a)(i) and (ii), ‘the ANPR camera’—

*omit, insert—*

‘the camera part’.

- (6) Section 210A(2)(b), from ‘must’ to ‘has’—

*omit, insert—*

‘system must operate in a way that indicates whether an image taken by the camera part of the ANPR camera system has’.

- (7) Section 210A(3), ‘on an image captured by the camera’—

*omit, insert—*

‘system on an image taken by the camera part of the ANPR camera system’.

- (8) Section 210A(3)(c), ‘camera’s location’—

*omit, insert—*

‘location of the camera part of the ANPR camera system’.

- (9) Section 210A(3), example, ‘camera’—  
*omit, insert—*  
‘camera part of the ANPR camera system’.

**7 Amendment of s 211 (Markings or writings on photographic detection device images other than ANPR camera images)**

- Section 211, heading, after ‘camera’—  
*insert—*  
‘system’.

**Part 3 Amendment of Transport Operations (Road Use Management—Driver Licensing) Regulation 1999**

**8 Regulation amended in pt 3**

This part amends the *Transport Operations (Road Use Management—Driver Licensing) Regulation 1999*.

**9 Amendment of s 5 (Motorbike licences)**

- Section 5(3AA), ‘section 79E’—  
*omit, insert—*  
‘relevant’.

**10 Amendment of s 6 (Other types of licences)**

- Section 6(7A), ‘section 79E’—  
*omit, insert—*  
‘relevant’.

### 11 Amendment of s 14D (Application)

Section 14D(2)(a) and (b), ‘section 79E’—  
*omit, insert—*  
‘relevant’.

### 12 Amendment of s 22F (Late night driving)

- (1) Section 22F(1)(a)(i)(A), ‘under section 25(2)’—  
*omit.*
- (2) Section 22F(8), definition *relevant date*, paragraph (a), ‘under section 25(2)’—  
*omit.*

### 13 Amendment of s 25 (Queensland driver licence holder)

- (1) Section 25(1A), ‘or 30P’—  
*omit, insert—*  
‘, 25B, 30P, 30ZI or 30ZJ’.
- (2) Section 25(7)—  
*omit, insert—*
- ‘(7) If the licence is an open or provisional licence, the notice must also inform the person that the person may be eligible to apply for a special hardship order under part 6C in relation to the suspension.  
*Note—*  
Section 30W provides for the stay of the suspension of a person’s open or provisional licence if the person makes an application for a special hardship order.’.
- (3) Section 25(8)—  
*insert—*  
*Note—*  
Section 30ZB provides for the ending of the suspension of a person’s open or provisional licence under subsection (8) if a court makes a special hardship order in relation to the person.’.

**14 Amendment of s 25A (Recording of demerit points while subject to section 79E order)**

- (1) Section 25A(1)(a), '(a *previous offence*)'—  
*omit.*
- (2) Section 25A(1)(c), from 'either'—  
*omit, insert—*  
'one of the following happens—
- (i) the person is convicted of the demerit points offence or interstate offence;
  - (ii) an order is made against the person for the demerit points offence under the *State Penalties Enforcement Act 1999*, section 38;
  - (iii) an order is made against the person for the interstate offence under a corresponding law to the *State Penalties Enforcement Act 1999*, section 38; and'.
- (3) Section 25A(1)(d) and (e), 'previous offence'—  
*omit, insert—*  
'demerit points offence or interstate offence'.

**15 Insertion of new s 25B**

After section 25A—

*insert—*

**'25B Recording of demerit points while subject to special hardship order**

- '(1) This section applies to a person who holds an open or provisional licence if—
- (a) the person commits a demerit points offence or interstate offence when there is no special hardship order in relation to the person; and
  - (b) a special hardship order is subsequently made in relation to the person; and



- (c) while the person is authorised to continue to drive motor vehicles under the special hardship order, one of the following happens—
    - (i) the person is convicted of the demerit points offence or interstate offence;
    - (ii) an order is made against the person for the demerit points offence under the *State Penalties Enforcement Act 1999*, section 38;
    - (iii) an order is made against the person for the interstate offence under a corresponding law to the the *State Penalties Enforcement Act 1999*, section 38; and
  - (d) because of the conviction or the order mentioned in paragraph (c), demerit points are recorded on the person's traffic history for the demerit points offence or interstate offence; and
  - (e) because of the recording of the demerit points for the demerit points offence or interstate offence, section 25(1)(b) or (c) applies in relation to the person.
- '(2) The chief executive must give the person a written notice stating the person's Queensland driver licence is suspended for the requisite suspension period, starting on the date stated in the notice.
- '(3) The date stated must not be less than 21 days after the date of the notice.
- '(4) The person's Queensland driver licence is suspended for the requisite suspension period starting on—
- (a) the date stated in the notice; or
  - (b) if the person notifies the chief executive that the person wants the suspension to start earlier than the date stated in the notice—the day, not before the date on which the person gives the notice to the chief executive, chosen by the person.'

**16 Amendment of s 26 (Non-Queensland driver licence holder)**

Section 26(1)(c)(iii), ‘a open licence’—

*omit, insert—*

‘an open licence’.

**17 Omission of s 29 (Appeal against suspension for double the requisite period)**

Section 29—

*omit.*

**18 Amendment of s 30 (Application of pt 6A)**

Section 30(2), after ‘section 30Q’—

*insert—*

‘or 30ZK’.

**19 Amendment of s 30A (Queensland driver licence holder)**

(1) Section 30A(1), from ‘on the day’—

*omit, insert—*

‘on—

- (a) the day stated in a notice given under subsection (2); or
- (b) if the person notifies the chief executive that the person wants the suspension to start earlier than the day stated in the notice—the day, not before the day on which the person gives the notice to the chief executive, chosen by the person.

*Note—*

Section 30ZB provides for the ending of the suspension of a person’s open or provisional licence under subsection (1) if a court makes a special hardship order in relation to the person.’.

(2) Section 30A(2)(b)—

*omit, insert—*

‘(b) if the licence is an open or provisional licence—that the person may be eligible to apply for a special hardship order under part 6C in relation to the suspension.

*Note—*

Section 30W provides for the stay of the suspension of a person’s open or provisional licence if the person makes an application for a special hardship order.’.

**20 Omission of s 30D (Appeal against suspension)**

Section 30D—

*omit.*

**21 Replacement of pt 6B, div 1, heading (Purpose of part 6B)**

Part 6B, division 1, heading—

*omit, insert—*

**‘Division 1 Preliminary’.**

**22 Amendment of s 30E (Purpose of pt 6B)**

Section 30E, note, ‘the licence, including a renewal of the licence,’—

*omit, insert—*

‘a Queensland driver licence’.

**23 Amendment of s 30G (Persons who are eligible, or not eligible, to apply for order)**

Section 30G(2)(b)(vi), from ‘choose’ to ‘that section’—

*omit, insert—*

‘choose, but before the person had chosen as mentioned in section 25(2)’.

## 24 Amendment of s 30H (Applying for order)

(1) Section 30H(1), from ‘a court’—

*omit, insert—*

‘a relevant court for the person.’.

(2) Section 30H—

*insert—*

‘(5) In this section—

**relevant court**, for a person, means any of the following applying to the person—

- (a) if the relevant charge for the person’s suspended licence was laid in the Brisbane Magistrates Courts District—a court in the division of the Brisbane Magistrates Courts District in which the relevant charge for the person’s suspended licence was laid;
- (b) if the relevant charge for the person’s suspended licence was laid in another Magistrates Courts district—a court in the Magistrates Courts district in which the relevant charge for the person’s suspended licence was laid;
- (c) if the person resides in the Brisbane Magistrates Courts District—a court in the division of the Brisbane Magistrates Courts District in which the person resides;
- (d) if the person resides in another Magistrates Courts district—a court in the Magistrates Courts district in which the person resides.’.

## 25 Amendment of s 30J (Criteria for deciding application for order)

Section 30J(1)(a) and (d), ‘section 79E’—

*omit.*

## 26 Amendment of s 30K (What order must state and restrictions applying to licence to which order relates)

(1) Section 30K, heading, ‘relates’—

*omit, insert—*

**‘applies’.**

- (2) Section 30K(1)(b), from ‘person’s licence’ to ‘licence is’—

*omit, insert—*

‘person, a Queensland driver licence held by the person is’.

- (3) Section 30K(2) and (3), ‘section 79E’—

*omit.*

- (4) Section 30K(3)—

*insert—*

*‘Examples of other restrictions for paragraph (c)—*

- that a person wear the person’s work uniform at all times while driving under the licence
- that a person carry a logbook containing the details of all driving under the licence that is work-related travel, including, for example, start and end times, destinations and odometer readings’.

## **27 Amendment of s 30L (Person may apply for order to vary restrictions)**

- (1) Section 30L(1)(a), ‘the person’s licence, including a renewal of the licence,’—

*omit, insert—*

‘a Queensland driver licence’.

- (2) Section 30L(1), example, ‘the person’s licence, including a renewal of the licence,’—

*omit, insert—*

‘a Queensland driver licence’.

- (3) Section 30L(2), from ‘applying’—

*omit, insert—*

‘that, under the section 79E order, apply to Queensland driver licences held by the person.’.

(4) Section 30L—

*insert—*

‘(3) However, the court may vary the restrictions only if the court—

(a) has had regard to the restrictions; and

(b) considers the justice of the case requires it to vary the restrictions.’.

## **28 Amendment of s 30M (Applying for order)**

(1) Section 30M(1), from ‘a court’—

*omit, insert—*

‘a relevant court for the person.’.

(2) Section 30M(2)(b)—

*omit, insert—*

‘(b) accompanied by—

(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.’.

(3) Section 30M(3), ‘subsection (2)(b)’—

*omit, insert—*

‘subsection (2)(b)(ii)’.

(4) Section 30M(5)—

*omit.*

(5) Section 30M(6), from ‘information’ to ‘subsection (2)(b)’—

*omit, insert—*

‘affidavits, and the information or details, accompanying the application’.

(6) Section 30M(6)—

*renumber* as section 30M(5).

(7) Section 30M—

*insert*—

‘(6) In this section—

***relevant court***, for a person in relation to whom a section 79E order applies, means any of the following applying to the person—

- (a) if the relevant charge for the person’s suspended licence in relation to which the order applies was laid in the Brisbane Magistrates Courts District—a court in the division of the Brisbane Magistrates Courts District in which the relevant charge for the person’s suspended licence in relation to which the order applies was laid;
- (b) if the relevant charge for the person’s suspended licence in relation to which the order applies was laid in another Magistrates Courts district—a court in the Magistrates Courts district in which the relevant charge for the person’s suspended licence in relation to which the order applies was laid;
- (c) if the person resides in the Brisbane Magistrates Courts District—a court in the division of the Brisbane Magistrates Courts District in which the person resides;
- (d) if the person resides in another Magistrates Courts district—a court in the Magistrates Courts district in which the person resides.’

## 29 Insertion of new s 30MA

After section 30M—

*insert*—

### ‘30MA Hearing of application

‘(1) For an application for a section 79E variation order—

- (a) the applicant must, if required by the court, submit himself or herself as a witness; and

(b) other persons may be called as witnesses;

to give evidence in relation to all matters relevant to the application and may be cross-examined in relation to the evidence.

‘(2) The commissioner may—

(a) appear and be heard at the hearing of the application; and

(b) give and produce evidence at the hearing for or against the making of the order; and

(c) examine and cross-examine witnesses called to give evidence at the hearing.’.

### **30 Amendment of s 30N (What order must state)**

Section 30N, from ‘the applicant’s’—

*omit, insert—*

‘Queensland driver licences held by the applicant for the remainder of the period for which the section 79E order applies in relation to the applicant.’.

### **31 Amendment of s 30O (Failing to comply with order)**

Section 30O(1), from ‘applying’ to ‘stated in the order’—

*omit, insert—*

‘stated in the order that apply to Queensland driver licences held by the person’.

### **32 Amendment of s 30P (Suspension for allocation of demerit points while order applies)**

(1) Section 30P(1)—

*omit, insert—*

‘(1) This section applies if—

(a) a section 79E order applies in relation to a person who holds a Queensland driver licence; and



- (b) 4 or more demerit points are allocated to the person's traffic history during any continuous 1 year period while the order applies in relation to the person.'
- (2) Section 30P(2)(b), 'applies'—  
*omit, insert*—  
'was made'.
- (3) Section 30P(3)(b), 'applies'—  
*omit, insert*—  
'was made'.

**33 Amendment of s 30Q (Committing high speed offence while driving under order)**

- (1) Section 30Q(1), 'replacement licence holder'—  
*omit, insert*—  
'person who is a section 79E driver'.
- (2) Section 30Q(2), from 'the holder' to 'the holder's'—  
*omit, insert*—  
'the person a written notice stating that the person's'.
- (3) Section 30Q(2)(b), from 'holder's' to 'applies'—  
*omit, insert*—  
'person's suspended licence in relation to which the person is a section 79E driver'.
- (4) Section 30Q(3), 'The holder's'—  
*omit, insert*—  
'The person's'.
- (5) Section 30Q(3)(b), from 'holder's' to 'applies'—  
*omit, insert*—  
'person's suspended licence in relation to which the person is a section 79E driver'.

- (6) Section 30Q(5)—  
*omit.*

### **34 Insertion of new pt 6C**

After part 6B—  
*insert—*

## **‘Part 6C Special hardship orders**

### **‘Division 1 Preliminary**

#### **‘30R Purpose of pt 6C**

‘This part provides for the following—

- (a) the making of a special hardship order in relation to a person whose open or provisional licence has been suspended under a relevant provision;
- (b) other matters relating to a special hardship order mentioned in paragraph (a).

#### **‘30S Definitions for pt 6C**

‘In this part—

*relevant provision* means—

- (a) section 25(8); or
- (b) section 30A(1).

*suspended open or provisional licence*, of a person, means the person’s open or provisional licence that has been suspended under a relevant provision.

## **‘Division 2                    Court may make special hardship order**

### **‘30T    Court may authorise particular person whose licence has been suspended to continue to drive**

- ‘(1) This section applies to a person who—
- (a) has a suspended open or provisional licence; and
  - (b) is eligible, and applies, for a special hardship order under division 3.
- ‘(2) On application to a court by the person, the court may make a special hardship order authorising the person to continue to drive motor vehicles under a Queensland driver licence in stated circumstances.

## **‘Division 3                    Application for special hardship order**

### **‘30U    Persons who are eligible, or not eligible, to apply for order**

- ‘(1) A person who has a suspended open or provisional licence is eligible to apply for a special hardship order if the application relates to a licence of the same class as the suspended open or provisional licence.
- ‘(2) A person who has a suspended open or provisional licence is not eligible to apply for a special hardship order if, within 5 years before the licence became a suspended open or provisional licence—
- (a) a Queensland driver licence held by the person had been suspended or cancelled, or the person had been disqualified from holding or obtaining a Queensland driver licence; or
  - (b) an authority to drive on Queensland roads under a non-Queensland driver licence previously held by the person had been suspended; or

- (c) the person was made ineligible to hold a Queensland driver licence under section 28(2) or 30C; or
  - (d) the person had been convicted of an offence against the Criminal Code, section 328A.
- ‘(3) In subsection (2)(a), the reference to a suspension, cancellation or disqualification does not include the following—
- (a) a suspension under section 79(9) of the Act;
  - (b) a suspension under section 79B(2) of the Act;
  - (c) a 24 hour suspension under section 80(22AA) of the Act;
  - (d) a suspension, cancellation or disqualification that was set aside under section 38(4);
  - (e) a suspension, cancellation or disqualification that was set aside on appeal other than under—
    - (i) section 29 of this regulation as in force before the commencement of this section; or
    - (ii) section 30D of this regulation as in force before the commencement of this section;
  - (f) a suspension, cancellation or disqualification because of the person’s mental or physical incapacity;
  - (g) a suspension under the *State Penalties Enforcement Act 1999*, section 105.<sup>1</sup>

### ‘30V Applying for order

- ‘(1) A person may apply for a special hardship order only to a relevant court for the person.
- ‘(2) An application for a special hardship order must be—
- (a) made within 21 clear days after the applicant’s open or provisional licence was suspended under a relevant provision; and

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<sup>1</sup> *State Penalties Enforcement Act 1999*, section 105 (Suspension of driver licence)

- (b) made in the approved form; and
- (c) accompanied by the information, or details of the information, the applicant intends to rely on for the application.

*Note—*

See section 30Z(2) and (3) for particular evidence the applicant must give to the court.

- ‘(3) Subsection (2)(c) does not prevent the applicant from producing further evidence at the hearing of the application.
- ‘(4) The applicant must give the chief executive a copy of the application, including the information or details mentioned in subsection (2)(c)—
  - (a) if the day of the hearing is within 8 days after the day the application is made—as soon as practicable but before the day of the hearing; or
  - (b) otherwise—as soon as practicable but at least 7 days before the day of the hearing.
- ‘(5) In this section—

***relevant court***, for a person, means—

  - (a) if the person resides in the Brisbane Magistrates Courts District—a court in the division of the Brisbane Magistrates Courts District in which the person resides; or
  - (b) otherwise—a court in the Magistrates Courts district in which the person resides.

### ‘30W Making of application for order stays suspension

‘The suspension of a person’s open or provisional licence is stayed from the day the chief executive receives a copy of the person’s application for a special hardship order until the day preceding the day of the hearing of the application.

## **‘Division 4                    Deciding application for special hardship order**

### **‘30X    Hearing of application**

- ‘(1) For an application for a special hardship order—
- (a) the applicant must, if required by the court, submit himself or herself as a witness; and
  - (b) other persons may be called as witnesses;
- to give evidence in relation to all matters relevant to the application and may be liable to cross-examination in relation to the evidence.
- ‘(2) The chief executive may—
- (a) appear and be heard at the hearing of the application; and
  - (b) give and produce evidence at the hearing for or against the making of the order; and
  - (c) examine and cross-examine witnesses called to give evidence at the hearing.

### **‘30Y    Similar applications for orders may be considered together**

- ‘(1) This section applies if—
- (a) a person’s open or provisional licence is suspended under both section 25(8) and 30A(1) in relation to the same contravention of the Queensland Road Rules, section 20;<sup>2</sup> and
  - (b) the person makes an application for a special hardship order in relation to both of the suspensions.
- ‘(2) The court may consider both applications together, and must try to ensure both applications are considered together.

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<sup>2</sup> Queensland Road Rules, section 20 (Obeying the speed limit)

### **‘30Z Criteria for deciding application for order**

- ‘(1) A court may make a special hardship order only if the court is satisfied—
- (a) the applicant for the order is a fit and proper person to continue to drive, having regard to the applicant’s traffic history and the safety of other road users and the public generally; and
  - (b) a refusal to make the order would—
    - (i) cause extreme hardship to the applicant or the applicant’s family by depriving the applicant of the applicant’s means of earning a living; or
    - (ii) cause severe and unusual hardship to the applicant or the applicant’s family, other than by depriving the applicant of the applicant’s means of earning a living; and
  - (c) when the order is made, the applicant holds an open or provisional licence that would be valid but for the suspension, under a relevant provision, to which the order relates.

*Note—*

See also sections 30T and 30U for requirements about eligibility for a special hardship order and the licence suspensions in relation to which a special hardship order may be made.

- ‘(2) For subsection (1)(b)(i), the applicant must give the following to the court—
- (a) an affidavit made by the applicant outlining how the refusal to make the order would cause extreme hardship to the applicant or the applicant’s family;
  - (b) if the applicant is not self-employed—an affidavit made by the applicant’s employer confirming the applicant would be deprived of the applicant’s means of earning a living if the application is refused.
- ‘(3) For subsection (1)(b)(ii), the applicant must give the court an affidavit made by the applicant that—

- (a) outlines how the refusal to make the order would cause severe and unusual hardship to the applicant or the applicant's family; and
- (b) has attached to it statutory declarations from persons other than the applicant, other documentary evidence, or certified copies of evidence, in support of each matter stated in the affidavit.

**'30ZA What order must state and restrictions applying to licence to which order applies**

- '(1) If a court decides to make a special hardship order in relation to a person, the order must state the following—
  - (a) that the order only applies—
    - (i) while the person holds a valid open or provisional licence; and
    - (ii) until the end of the order period stated in the order;
  - (b) that, despite the matters mentioned in paragraph (a), if during the order period stated in the order the person is, for any reason, disqualified by a court for a period from holding or obtaining a Queensland driver licence, the order stops applying in relation to the person;
  - (c) that while the order applies in relation to the person, a Queensland driver licence held by the person is subject to the restrictions stated in the order.
- '(2) For subsection (1)(a)(ii)—
  - (a) the order period stated in the order must be equivalent to the length of the suspension period applicable under the relevant provision under which the person's licence was suspended; and
  - (b) any part of the suspension period served before the suspension was stayed under section 30W must be disregarded.
- '(3) The restrictions stated in the order must include the following—



- (a) the purpose for which a motor vehicle may be driven under the licence;
  - (b) the class of motor vehicle that may be driven under the licence;
  - (c) the times at which or period of time during which a motor vehicle may be driven under the licence;
  - (d) that a motor vehicle may be driven under the licence only if the licence holder is carrying a copy of the order.
- ‘(4) Also, the restrictions stated in the order may include the following—
- (a) restrictions on where a motor vehicle may be driven under the licence, including, for example, the starting and ending places for journeys under the licence;
  - (b) whether or not passengers may be carried in a motor vehicle being driven under the licence, and if they can be carried, the names or other identifying details of the passengers who may be carried;
  - (c) any other restriction the court considers appropriate.

*Examples of other restrictions for paragraph (c)—*

- that a person wear the person’s work uniform at all times while driving under the licence
- that a person carry a logbook containing the details of all driving under the licence that is work-related travel, including, for example, start and end times, destinations and odometer readings

### **‘30ZB Effect of court’s decision**

- ‘(1) If a court makes a special hardship order in relation to a person—
- (a) the suspension of the person’s open or provisional licence ends when the order is made; and
  - (b) while the order applies in relation to the person, the person is authorised to continue to drive under a Queensland driver licence subject to the restrictions stated in the order.

- ‘(2) If a court refuses to make a special hardship order in relation to a person, the suspension of the person’s open or provisional licence continues for the period of the licence’s suspension under the relevant provision that had not been served before the application for the order was made.

## ‘Division 5                    Obtaining replacement licence

### ‘30ZC Replacement licence if there is a special hardship order

- ‘(1) This section applies to a person authorised to continue to drive motor vehicles by a special hardship order.
- ‘(2) Unless the person has a reasonable excuse, the person must, in the way required under subsection (3), apply for a form of licence (a *replacement licence*) that is the same kind, class or description as the licence suspended under a relevant provision except for the inclusion of a code indicating that the holder of the licence is authorised to drive motor vehicles only under a special hardship order.

Maximum penalty—20 penalty units.

- ‘(3) An application under subsection (2) must be—
- (a) in the approved form; and
  - (b) accompanied by a copy of the order; and
  - (c) made within 14 days after the order is made.
- ‘(4) In making a decision about the application, the chief executive must—
- (a) have regard to the special hardship order; and
  - (b) deal with the application as if it were an application for a Queensland driver licence.
- ‘(5) Despite subsection (4)(b), the chief executive may only refuse the application if under an Act—
- (a) the person’s open or provisional licence is suspended or cancelled, or the person is disqualified from holding or obtaining a Queensland driver licence, for a reason other

than the reason that resulted in the suspension to which the special hardship order relates; or

- (b) the person's open or provisional licence would have been suspended or cancelled, or the person would have been disqualified from holding or obtaining a Queensland driver licence, except the person's open or provisional licence was already suspended under a relevant provision.

## **'Division 6                      Special hardship variation order**

### **'30ZD Person may apply for order to vary restrictions**

- '(1) This section applies if—
  - (a) a court makes a special hardship order authorising a person to continue to drive motor vehicles under a Queensland driver licence in stated circumstances; and
  - (b) the circumstances have changed.

*Example—*

A person is authorised under a special hardship order to continue to drive motor vehicles under a Queensland driver licence to and from a stated place of work, and the person's place of work changes.

- '(2) On application to a court by the person, the court may, by order (a *special hardship variation order*), vary the restrictions that, under the special hardship order, apply to Queensland driver licences held by the person.
- '(3) However, the court may vary the restrictions only if the court—
  - (a) has had regard to the restrictions; and
  - (b) considers the justice of the case requires it to vary the restrictions.

### **‘30ZE Applying for order**

- ‘(1) A person may apply for a special hardship variation order only to a relevant court for the person.
- ‘(2) An application for a special hardship variation order must be—
  - (a) made in the approved form; and
  - (b) accompanied by—
    - (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.
- ‘(3) Without limiting subsection (2)(b)(ii), if the reason for the application is that the applicant has changed employer, the applicant must produce to the court an affidavit made by the applicant’s new employer confirming the applicant—
  - (a) is currently employed by the new employer; and
  - (b) would be deprived of the applicant’s means of earning a living if the application is refused.
- ‘(4) Subsection (2)(b) does not prevent the applicant from producing further evidence at the hearing of the application.
- ‘(5) The applicant must give the chief executive a copy of the application, including the affidavits and the information or details accompanying the application—
  - (a) if the day of the hearing is within 8 days after the day the application is made—as soon as practicable but before the day of the hearing; or
  - (b) otherwise—as soon as practicable but at least 7 days before the day of the hearing.
- ‘(6) In this section—

**relevant court**, for a person, means—

  - (a) if the person resides in the Brisbane Magistrates Courts District—a court in the division of the Brisbane

Magistrates Courts District in which the person resides;  
or

- (b) otherwise—a court in the Magistrates Courts district in which the person resides.

### **‘30ZF Hearing of application**

- ‘(1) For an application for a special hardship variation order—
- (a) the applicant must, if required by the court, submit himself or herself as a witness; and
- (b) other persons may be called as witnesses;  
to give evidence in relation to all matters relevant to the application and may be cross-examined in relation to the evidence.
- ‘(2) The chief executive may—
- (a) appear and be heard at the hearing of the application; and
- (b) give and produce evidence at the hearing for or against the making of the order; and
- (c) examine and cross-examine witnesses called to give evidence at the hearing.

### **‘30ZG What order must state**

‘A special hardship variation order must state the new restrictions that are to apply to Queensland driver licences held by the applicant for the remainder of the period for which the special hardship order applies in relation to the applicant.

## **‘Division 7                      Driving under special hardship order**

### **‘30ZH Failing to comply with order**

- ‘(1) A person authorised to continue to drive motor vehicles under a special hardship order must comply with the order,

including the restrictions stated in the order that apply to Queensland driver licences held by the person, subject to any variation of the restrictions under a special hardship variation order.

Maximum penalty—20 penalty units.

- ‘(2) If a person is convicted of an offence against subsection (1), the court must disqualify the person from holding or obtaining a Queensland driver licence for the following period—
- (a) if the person is convicted while the special hardship order applies in relation to the person—the period comprising—
    - (i) the period between the day of the conviction and the end of the order period for the person; and
    - (ii) 3 months from the end of the order period for the person;
  - (b) if the person is convicted after the special hardship order stops applying to the person—3 months from the day of the conviction.

**‘30ZI Suspension for allocation of demerit points—licence subject to good behaviour requirement**

- ‘(1) This section applies to a person if—
- (a) for the same contravention of the Queensland Road Rules, section 20<sup>3</sup>—
    - (i) demerit points were recorded on the person’s traffic history resulting in the person being given a notice to choose; and
    - (ii) the person’s Queensland driver licence was suspended under section 30A; and
  - (b) for the notice to choose, the person agreed, under section 25(2)(b), to be of good behaviour while driving for a year; and

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3 Queensland Road Rules, section 20 (Obeying the speed limit)

- (c) for the suspension under section 30A, a special hardship order applies in relation to the person; and
  - (d) the person holds a Queensland driver licence; and
  - (e) 2 or more demerit points are allocated to the person's traffic history during any continuous 1 year period while the special hardship order applies in relation to the person.
- '(2) The chief executive must give the person a written notice stating that the person's Queensland driver licence is suspended for double the order period for the person, starting on the date stated in the notice.
- '(3) The date stated in the notice must not be less than 21 days after the date of the notice.
- '(4) The person's Queensland driver licence is suspended for double the order period for the person, starting on—
- (a) the date stated in the notice; or
  - (b) if the person notifies the chief executive that the person wants the suspension to start earlier than the date stated in the notice—the day, not before the date on which the person gives the notice to the chief executive, chosen by the person.

**'30ZJ Suspension for allocation of demerit points—other licence**

- '(1) This section applies to a person if—
- (a) a special hardship order applies in relation to the person; and
  - (b) the person holds a Queensland driver licence; and
  - (c) 4 or more demerit points are allocated to the person's traffic history during any continuous 1 year period while the order applies in relation to the person.
- '(2) However, this section does not apply if section 30ZI applies to the person.
- '(3) The chief executive must give the person a written notice stating that the person's Queensland driver licence is

suspended for double the order period for the person, starting on the date stated in the notice.

- ‘(4) The date stated in the notice must not be less than 21 days after the date of the notice.
- ‘(5) The person’s Queensland driver licence is suspended for double the order period for the person, starting on—
  - (a) the date stated in the notice; or
  - (b) if the person notifies the chief executive that the person wants the suspension to start earlier than the date stated in the notice—the day, not before the date on which the person gives the notice to the chief executive, chosen by the person.

### **‘30ZK Committing high speed offence while driving under order**

- ‘(1) This section applies to a person if—
  - (a) a special hardship order applies in relation to the person; and
  - (b) the person holds a Queensland driver licence; and
  - (c) either—
    - (i) the person is convicted for a contravention of the Queensland Road Rules, section 20<sup>4</sup> for driving a motor vehicle under the licence at more than 40km/h over the speed limit; or
    - (ii) an order under the *State Penalties Enforcement Act 1999*, section 38<sup>5</sup> for the contravention is made against the person.
- ‘(2) The chief executive must give the person a written notice stating that the person’s Queensland driver licence is suspended for double the order period for the person, starting on the date stated in the notice.

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4 Queensland Road Rules, section 20 (Obeying the speed limit)

5 *State Penalties Enforcement Act 1999*, section 38 (Issue of enforcement order)



- ‘(3) The date stated in the notice must not be less than 21 days after the date of the notice.
- ‘(4) The person’s Queensland driver licence is suspended for double the order period for the person, starting on—
  - (a) the date stated in the notice; or
  - (b) if the person notifies the chief executive that the person wants the suspension to start earlier than the date stated in the notice—the day, not before the date on which the person gives the notice to the chief executive, chosen by the person.’.

### **35 Amendment of sch 1 (Fees)**

- (1) Schedule 1, items 6 to 11—  
*renumber* as items 7 to 13.
- (2) Schedule 1—  
*insert*—

‘6 Issue of replacement licence under section 30ZC . . . . . 25.30’.

### **36 Amendment of sch 2 (Licence codes)**

Schedule 2, part 1, after entry for X1—  
*insert*—

‘X3 . . . . . licensee may only drive while carrying, and in accordance with, a special hardship order and any special hardship variation order’.

### **37 Amendment of sch 7 (Dictionary)**

- (1) Schedule 7, definition *section 79E order*—  
*omit*.
- (2) Schedule 7—  
*insert*—  
*‘notice to choose* see section 25(2).



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*omit, insert—*

**‘particular’.**

(2) Section 204(2), examples, from ‘In example 1’—

*omit, insert—*

‘In example 1, the sign indicates that a driver must not park continuously for longer than 1 hour on Saturdays between 9a.m. and midday.

In example 2, the sign indicates that, unless permitted by information on or with another traffic control device, a person must not park in the area for longer than 2 hours on—

- Mondays to Fridays between 8:30a.m. and 5p.m.
- Saturdays between 8:30a.m. and midday.’.

(3) Section 204(3), example, from ‘on Mondays’—

*omit, insert—*

‘between 9a.m. and 4p.m. on Mondays to Fridays.’.

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#### ENDNOTES

- 1 Made by the Governor in Council on 13 September 2007.
- 2 Notified in the gazette on 14 September 2007.
- 3 Laid before the Legislative Assembly on . . .
- 4 The administering agency is the Department of Transport.