



Queensland

# Transport Legislation Amendment Regulation (No. 1) 2011

## Explanatory Notes for SL 2011 No. 8

made under the

*Transport Operations (Road Use Management) Act 1995*

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## General Outline

### Short title

*Transport Legislation Amendment Regulation (No. 1) 2011.*

### Authorising law

Section 171 of the *Transport Operations (Road Use Management) Act 1995*.

### Policy objectives and the reasons for them

#### ***Disability Parking***

Currently, in Australian states and territories, a person whose walking ability is impaired may apply for a disability parking permit. This permit entitles the holder to certain parking privileges. These privileges assist those with mobility impairment to access essential goods, services, employment and education.

The various schemes relating to disability parking across Australia are diverse. Therefore, the Commonwealth Government led a project, with

input from all states and territories, to review disability parking schemes across Australia. As a result of this national review, a streamlined set of eligibility criteria has been developed for adoption by the states and territories. In addition, minimum standards for parking concessions that determine how long permit holders can use a parking space have been developed. However, individual jurisdictions are at liberty to provide additional concessions above those minimum standards.

A nationally-consistent permit design has also been developed and will be adopted by all jurisdictions.

The primary policy objective of these amendments is to ensure Queensland's disability parking scheme is consistent with the nationally developed proposals.

### ***Fraser Island Hire Vehicles***

Research and crash data highlights safety concerns relating to the use of hire vehicles on Fraser Island. In response to these safety concerns, the *Transport Legislation Amendment Regulation (No. 2) 2010* (SL No. 36 of 2010) amended the *Traffic Regulation 1962* to prevent the carrying of any load on the roof of hire vehicles used on Fraser Island from 1 April 2010. The policy objective of these amendments is to supplement this load-carrying restriction by prohibiting the carrying of any load inside the vehicle above the level of the top of the door frames. This is designed to increase vehicle stability and to reduce the risk of a roll-over.

## **Achievement of policy objectives**

### ***Disability Parking***

#### *Eligibility criteria*

Currently, Queensland administers a two-tiered system of disability parking permits by issuing blue and red permits. Blue permits are issued to people who have total reliance on a wheelchair or large mobility device such as a walking frame. Red permits are issued to those with a lesser degree of mobility impairment.

The amendments will incorporate the nationally-developed criteria into Queensland legislation for the new Australian Disability Parking Permit.

From the commencement of the amendments on 31 March 2011, all new applications for a disability parking permit in Queensland will undergo an assessment to ensure they meet the national eligibility criteria. All successful applicants will be issued with the new Australian Disability Parking Permit which is a uniform, nationally-recognised permit.

As part of transitional arrangements, all blue permit holders in Queensland have been issued with a new Australia Disability Parking Permit, which contains the same expiry date as their existing blue permit. After the expiry of this permit, these individuals will be required to apply for a new permit which will be assessed according to the new eligibility criteria. In addition, Queensland will continue to recognise five-year red disability parking permits which have already been issued. Existing five-year red permit holders will be entitled to apply for a new red permit upon the expiry of their current permit and will continue to be assessed against the current eligibility criteria for a red parking permit. This transitional arrangement for the continued recognition of red permits will continue until these permits are no longer required by permit holders.

#### *Parking concessions*

The amendments will incorporate parking concessions that determine how long a driver acting under the authority of an Australian Disability Parking Permit can park in an on-street parking area regulated by a parking sign. The time limits which will be incorporated into the Queensland Road Rules exceed the minimum standards developed as part of the national initiative. In Queensland, a driver may park for 30 minutes where the parking sign specifies a period of less than 30 minutes. Where the parking sign specifies a period of 30 minutes or more, a driver may park for an unlimited time.

#### *Administrative provisions*

The eligibility criteria will be included in a newly created part 12A of the *Traffic Regulation 1962*. This new part will also contain provisions necessary for the administration of the disability parking scheme. This will ensure that administrative processes currently contained in part 16 of the regulation and in operational business rules are consolidated in the new part 12A of the *Traffic Regulation 1962*.

### *Fraser Island Hire Vehicles*

The amendments supplement the current prohibition on loads being carried on the roof of hire vehicles on Fraser Island. This is achieved by the amendments expressly preventing loads from being carried inside the vehicle above the height of the top of the door frames. This will prevent, for example, a load being carried inside the roof cavity of a 'hi-top' vehicle.

### **Consistency with policy objectives of authorising law**

The amendments are consistent with the objectives of the *Transport Operations (Road Use Management) Act 1995*. In particular, the disability parking amendments are consistent with the objectives to manage the State's roads to:

- promote the effective and efficient movement of people, goods and services; and
- support a reasonable level of community access and mobility in support of government social justice objectives.

The Fraser Island hire vehicle amendments are consistent with the Act's objective of managing the State's roads in a way that improves road safety.

### **Benefits and costs of implementation**

The key benefits of the amendments are:

- to incorporate a streamlined legislative framework to support disability parking permit policy; and
- to increase the safety of hire vehicles being used on Fraser Island.

The costs associated with implementation of the legislation are minor administrative costs. These are not considered to be significant and will be funded by existing budget allocations.

It is not expected that the proposed load-carrying restriction applying to hire vehicles on Fraser Island will result in any additional costs for industry.

## **Consistency with fundamental legislative principles**

The amendments are consistent with fundamental legislative principles.

## **Consultation**

Relevant Queensland government departments have been consulted and support the amendments.

## ***Disability Parking***

The national disability parking project was overseen by a working group of jurisdictional representatives that was supported by the Commonwealth's Department of Families, Housing, Community Services and Indigenous Affairs. The working group members included all state and territory agencies that administer parking schemes, the Australian Local Government Association and its members, state and territory advisory committees made up of permit holders and other stakeholders including medical associations.

## ***Fraser Island Hire Vehicles***

The Fraser Coast 4WD Hire Association, the Fraser Coast South Burnett Tourism Association as well as the affected vehicle hire companies were consulted during the development of the proposals.

# **Notes on Provisions**

## **Part 1 Preliminary**

### **Short title**

Clause 1 provides the short title of the regulation.

## **Commencement**

Clause 2 provides that parts 2 and 5 of the regulation relating to disability parking commence on 31 March 2011. The remaining parts relating to restrictions for hire vehicles used on Fraser Island commence on the making of the regulation.

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

### **Regulation amended**

Clause 3 specifies that part 2 amends the *Traffic Regulation 1962*.

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

Clause 4 inserts a definition of disability parking permit. This is a permit issued under section 111 of the *Transport Operations (Road Use Management) Act 1995*.

### **Insertion of new pt 12A**

Clause 5 inserts a new part 12A (Disability parking) into the *Traffic Regulation 1962* which contains administrative provisions relating to disability parking permits. This part contains new sections 60 through to 70.

New section 60 (Eligibility for disability parking permit) provides that certain individuals and organisations are eligible to apply for the grant of a disability parking permit. This section is based on the nationally-agreed eligibility criteria for the grant of an Australian Disability Parking Permit.

To be eligible, an individual must reside in Queensland and must also be:

- an individual who is unable to walk and is dependent on the use of a wheelchair (section 60(a)(i));

- an individual whose ability to walk is severely restricted by a permanent medical condition or disability affecting the functioning of the individual's legs (section 60(a)(ii)); or
- an individual whose ability to walk is severely restricted by a temporary medical condition or disability affecting the functioning of the individual's legs—the condition or disability must be of at least 6 months' duration (section 60(a)(iii)).

Therefore, to be eligible to apply for the grant of a disability parking permit, a person must have a functional mobility impairment. An individual who has a disability such as blindness or an intellectual impairment, but who does not have a disability or condition affecting the functioning of the individual's legs, is not eligible to apply for the grant of a permit. Permits are designed to specifically assist those who have an impaired ability to physically progress by lifting and setting down each foot in turn.

Subsection 60(b) provides that an organisation is eligible to apply for a disability parking permit if the application is for a specified vehicle that is 4.5t gross vehicle mass (GVM) or less and if the organisation transports individuals mentioned in section 60(a)—that is, individuals with specified mobility impairment.

New section 61 (Application for permit) sets out how a person must apply for a disability parking permit.

All applications must be accompanied by the fee specified in the regulation (see subsection (1)(c) and schedule 4). However, if a person is already the holder of a disability parking permit because of a permanent medical condition or disability, that person is exempt from paying the application fee provided they apply for a new permit prior to, or within three months of, the expiry of their existing permit (see subsection (2)). This same exemption applies to organisations that transport individuals with mobility impairment.

New section 62 (Deciding the application) places an obligation on the chief executive to either grant or refuse an application for a disability parking permit after receiving all the necessary information relevant to the application. The chief executive may only grant an application if satisfied that the individual or organisation satisfies the eligibility criteria set out in new section 60.

Subsection (4) provides the chief executive with discretion not to grant a permit when, in the previous 1 year period, the applicant has had a permit cancelled due to:

- a conviction for fraudulent use of the permit under section 126 of the Act; or
- the applicant, in breach of the permit's conditions, allows another person to use the permit to obtain parking privileges.

The purpose of this subsection is to preserve the integrity of the disability parking permit scheme.

New section 63 (Granting of, or refusing to grant, application) provides that the chief executive must issue a disability parking permit if the chief executive decides to grant the application for the permit.

If the chief executive decides to refuse to grant the application for the permit or decides to issue the permit subject to a condition, other than the standard conditions mentioned in section 65, then the chief executive must give a written notice to the applicant setting out the applicant's review rights.

New section 64 (Duration of permit) sets out the length of time for which disability parking permits are valid.

An organisational permit, a permit issued to those who are unable to walk and always require a wheelchair, and a permit issued to those whose ability to walk is severely restricted by a permanent medical condition or disability are issued for a term of 5 years.

A permit issued for a temporary medical condition or disability is issued either for 1 year or the expected duration of the medical condition or disability (whichever period is shorter).

After the expiry of a permit, an individual or organisation must apply for a new permit if it is still required.

New section 65 (Standard conditions) sets out the standard conditions of use of a disability parking permit. Currently, conditions are imposed by the chief executive and are notified to the holders of the permit but are not set out in legislation.

The standard conditions which apply to a permit issued to an individual are:



- the permit must be displayed in a vehicle whenever the permit holder is seeking to make use of the parking benefits applying to the permit;
- the permit holder must alight from or enter the vehicle whenever they are seeking to make use of the parking benefits applying to the permit;
- the permit holder must not allow the permit to be used by any other person; and
- the permit must only be used in a vehicle with a GVM of 4.5t or less.

Similar conditions apply in relation to permits issued to organisations that transport people who meet the individual eligibility criteria.

New section 66 (Review of decisions) provides that a decision to refuse to grant a disability parking permit, or to grant a permit on a condition other than a standard condition identified in section 65, are reviewable decisions under the *Transport Operations (Road Use Management) Act 1995*. This ensures that these decisions are subject to both internal review under section 65 of the Act and also review by the Queensland Civil and Administrative Tribunal under section 65A of the Act.

New section 67 (Return of suspended or cancelled permit) provides the administrative processes that apply to a disability parking permit that is suspended or cancelled under the Act.

New section 68 (Replacement permits) sets out the administrative processes that apply to the replacement of a disability parking permit that has been, or is suspected to have been, lost, stolen or destroyed.

New section 69 (Damaging permits) prohibits the wilful damaging of a disability parking permit.

New section 70 (Change of name or address) provides an obligation on the holder of a disability parking permit to notify the chief executive of any change in their name or address within 14 days of the change. The purpose of this provision is to ensure the integrity of the administration of the disability parking scheme, which requires accurate records relating to the holders of permits.

### **Insertion of new s 102 (Application of pt 16)**

Clause 6 clarifies that part 16 of the *Traffic Regulation 1962* no longer applies to disability parking permits due to the insertion of new part 12A by clause 5. Currently, the provisions of part 16 are applied to disability parking permits since a permit is included in the definition of licence in schedule 4 of the *Transport Operations (Road Use Management) Act 1995*. However, the creation of a new part 12A streamlines and clarifies the legislative basis for the disability parking scheme.

### **Omission of s 118 (Parking permit for people with disabilities)**

Clause 7 omits section 118. This provision is no longer required as it is superseded by new section 61 which sets out the administrative requirements for applying for a disability parking permit.

### **Insertion of new part 23 (Transitional provisions for the Amendment Regulation)**

Clause 8 inserts a part 23 which contains transitional provisions for the amendment regulation.

New section 213 (Definitions for pt 23) inserts definitions for this part.

New section 214 (Existing applications for disability parking permits—no decision made) provides that where an application for a disability parking permit has been made but not decided prior to the commencement of this amendment regulation, the application is to be considered as if this amendment regulation had not been made. The application will, therefore, be assessed according to the eligibility criteria that existed prior to this amendment regulation. Similarly any application for reconsideration is to be dealt with under the provisions that applied prior to this amendment regulation.

New section 215 (Refusing to grant application for disability parking permit or granting application subject to a condition) and new section 216 (Existing applications for reconsideration of decision about disability parking permit) specify the reconsideration process in relation to an application for a permit that had been refused or granted on conditions prior to the commencement of these amendments.

New sections 217 (Existing holders of temporary red permits) and 218 (Existing holders of permanent red permits) deal with red disability

parking permits that were issued prior to the commencement of the amendments.

Section 217 provides that a red permit issued for a term of 12 months or less remains valid until it expires.

Section 218 preserves the validity of existing 5 year red permits. It also ensures that, on the expiry of those permits, holders are eligible to apply for the grant of a further 5 year red permit and will be assessed under the eligibility criteria for those permits that existed prior to the commencement of the amendments.

### **Amendment of sch 4 (Fees)**

Clause 9 reinserts the fee entry for a disability parking permit, however using the description of the permit as used in new part 12A of the regulation.

## **Part 3      Amendment of Transport Legislation Amendment Regulation (No. 2) 2010**

### **Regulation amended**

Clause 10 specifies that part 3 amends the *Transport Legislation Amendment Regulation (No. 2) 2010*.

### **Replacement of s 6 (Amendment of s 77(Carrying capacity of hire vehicle—Fraser Island))**

Clause 11 replaces section 6 of the *Transport Legislation Amendment Regulation (No. 2) 2010*. The new section will amend section 77 of the *Traffic Regulation 1962* to prohibit a load being carried inside a hire vehicle being used on Fraser Island above the level of the top of the door frames (see new section 77(1)(d)(ii)). This will prevent, for example, a load being carried in the roof cavity of a 'hi-top' vehicle.

This clause also prevents a hire vehicle on Fraser Island from having a load-carrying apparatus that is attached to the roof or ceiling of the vehicle

that allows a load to be carried inside the vehicle. This provision will not, however, prevent the use of devices such as cargo barriers (see definition of approved apparatus).

## **Part 4      Amendment of Transport Operations (Road Use Management— Accreditation and Other Provisions) Regulation 2005**

### **Regulation amended**

Clause 12 specifies that part 4 amends the *Transport Operations (Road Use Management—Accreditation and Other Provisions) Regulation 2005*.

This part contains minor amendments of a drafting nature.

### **Amendment of s 67F (Codes on accreditation documents)**

Clause 13 amends section 67F to update the reference to the *Transport Operations (Road Use Management—Driver Licensing) Regulation 2010*.

### **Amendment of s 100B (Nominees)**

Clause 14 amends section 100B to correct a cross-section reference.

### **Amendment of s 100N (Refund of particular fees for AIS approval or approval as nominee)**

Clause 15 amends section 100N to correct cross-section references to items in the fee schedule.

### **Amendment of s 114 (Waiver of particular fees)**

Clause 16 amends section 114 to correct cross-section references to items in the fee schedule.

### **Amendment of sch 8 (Fees)**

Clause 17 corrects numbering anomalies for items in the fee schedule.

### **Amendment of sch 9 (Dictionary)**

Clause 18 amends schedule 9 to remove a repeated definition and to update references relating to the *Transport Operations (Road Use Management—Driver Licensing) Regulation 2010*.

## **Part 5      Amendment of Transport Operations (Road Use Management—Road Rules) Regulation 2009**

### **Regulation amended**

Clause 19 specifies that part 3 amends the *Transport Operations (Road Use Management—Road Rules) Regulation 2009*.

### **Amendment of s 206 (Time extension for people with disabilities)**

Clause 20 amends section 206 to set out the times that a driver acting under the authority of a disability parking permit may park in a parking area to which a permissive parking sign applies. This amendment provides that a permit holder may park:

- for 30 minutes where the permissive sign specifies a period of less than 30 minutes; and
- for an unlimited time where the permissive sign specifies a period of 30 minutes or more.

**Insertion of new s 353A (People with disabilities symbols—Act, sch 4, definition of people with disabilities symbol)**

Clause 21 prescribes symbols for the purpose of the definition of people with disabilities symbol in schedule 4 of the Act.

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ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Transport and Main Roads.

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