



Queensland

Transport and Another Regulation Amendment Regulation (No. 1) 2012

Explanatory Notes for SL 2012 No. 174

made under the

State Penalties Enforcement Act 1999

Transport Operations (Road Use Management) Act 1995

General outline

Short title

Transport and Another Regulation Amendment Regulation (No. 1) 2012.

Authorising law

Section 165 of the *State Penalties Enforcement Act 1999*.

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

Policy objectives and the reasons for them

The policy objective is to enhance the management of written-off vehicles in Queensland by:

- adopting the nationally-agreed *Damage Assessment Criteria for the Classification of Statutory Write-offs* for passenger and light commercial vehicles not over 4.5 tonnes;
- adopting the *Damage Assessment Criteria for the Classification of Statutory Write-offs – Motorbikes, Caravans, Heavy Trailers and*

Other Vehicles, as developed by the Department of Transport and Main Roads; and

- making a number of supporting amendments to the written-off vehicle scheme to reduce red tape and further enhance consumer protection.

Background to the written-off vehicle scheme

The written-off vehicle scheme has operated in Queensland since 2002. A vehicle is written-off when an event, such as a collision, fire or flood, damages the vehicle to the extent that its fair salvage value and the costs of repair would be more than the vehicle's fair market value immediately before the event. A written-off vehicle must be classified as either a statutory write-off or a repairable write-off.

A **statutory write-off** is a vehicle that is so badly damaged that it can not be safely repaired for use on roads. Statutory write-offs are only suitable for dismantling for parts or processing for scrap and cannot be re-registered in Australia.

A **repairable write-off** is a vehicle that has been damaged, but can be repaired without compromising the safety of the vehicle's occupants and other road users. In most cases, a repairable write-off must undergo a written-off vehicle inspection before the vehicle can be re-registered (unless the damage to the vehicle is superficial, such as hail damage).

The assessment of whether a vehicle should be written-off is undertaken by insurers and self-insurers. These parties must notify the chief executive that a vehicle has been written-off so it can be recorded on the written-off vehicle register. A number of other parties who deal with written-off vehicles (such as loss adjusters, motor dealers, auctioneers and auto parts dismantlers) also have an obligation to notify the chief executive if they have possession of a written-off vehicle which has not already been recorded on the register. All these parties are commonly referred to as "notifiers".

Achievement of policy objectives

Nationally-agreed damage assessment criteria

On 25 May 2011, the Association of Australian and New Zealand Road Transport and Traffic Authorities (known as Austroads) approved the national adoption of the *Damage Assessment Criteria for the Classification*

of Statutory Write-offs as developed by the National Motor Vehicle Theft Reduction Council (NMVTRC).

The current damage criteria for written-off vehicles were developed in the mid-1990s. Changes in vehicle construction over recent years and the rapid acceleration in the use of new and composite materials make it increasingly more complex to ensure a complete and safe repair of a modern vehicle.

The new, more stringent damage assessment criteria:

- are designed to consistently identify those written-off vehicles that should not be repaired on safety grounds and are suitable only for dismantling or scrap; and
- use clearer indicators of damage which are more aligned with modern vehicle design and fabrication technologies.

Vehicle manufacturers have expressed concern about the hazard posed by the delayed corrosion of key electronic components (including primary safety components such as airbags, anti-lock braking and stability control systems) in respect of vehicles immersed in water or other liquids. Under the new damage assessment criteria, all vehicles written-off due to water inundation will be recorded as statutory write-offs.

Queensland damage assessment criteria

The new national criteria only apply to passenger and light commercial vehicles with a gross vehicle mass of not more than 4.5 tonnes. The department has also developed equivalent criteria for the assessment of motorcycles, caravans and heavy trailers, which will also be adopted as part of the changes.

In addition to the national criteria, Queensland proposes that a vehicle assessed as a total loss due to damage by corrosion, be classified as a statutory write-off. This change is being made in response to specific issues identified in Queensland where vehicles used in harsh environments, such as the mining sector, are rusted or corroded to the point they can never be safely repaired. As these vehicles currently are not covered by the written-off vehicle scheme, criminal enterprise has taken a keen interest in these vehicles for re-birthing as the vehicles do not attract an identification inspection prior to being re-registered.

Supporting amendments

The following amendments are being progressed to the written-off vehicle scheme to reduce red tape and further enhance consumer protection.

Written-off vehicle labels

The amendments provide that where it is impractical for a notifier to attach a written-off vehicle label to a vehicle, the notifier may instead give the label to the registered operator or owner of the vehicle to attach to the vehicle. This may occur, for example, where a vehicle is located in a remote area and the notifier has written the vehicle off based on photographic evidence or a report from a loss adjuster at the remote location.

Temporarily authorise the use of written-off vehicles on roads

The amendments allow the chief executive to authorise the use of a vehicle on roads while the vehicle's written-off status is under investigation by the department. For example, this may occur where it is believed the vehicle may be incorrectly recorded on the written-off vehicle register due to a clerical error (such as a notifier transcribing an incorrect vehicle identification number).

Prohibiting a vehicle's use on the road is a significant impost on the vehicle owner and this amendment will provide discretion to the chief executive to allow a vehicle to be used in appropriate circumstances. To minimise any administrative inefficiencies, the amendment does not limit the means by which the chief executive's approval may be granted. For example, the legislation notes that the approval can be granted by phone, fax, radio or some other form of communication.

Maintain the integrity of written-off vehicle register

The amendments will clarify the chief executive's ability to record information in the register about a written-off vehicle that has been provided by legitimate entities such as the Queensland Police Service, interstate police or an interstate registration authority or notifier. The amendments will also allow the chief executive to correct clerical or technical errors on the register. These amendments will ensure that the written-off vehicle register remains as up-to-date as possible.

Additional information to be provided to owners about written-off vehicles

Currently, notifiers must inform the registered operator or owner that a vehicle is classified as a written-off vehicle. The amendments will extend this requirement so that notifiers must also inform the person whether the vehicle is a statutory write-off or a repairable write-off, and the implication of this classification (for example, for a repairable write-off, that the vehicle must pass a written-off vehicle inspection before being

re-registered). The new requirements are only imposed when the vehicle owner retains the vehicle after it is written-off.

Ensure notifiers undertake appropriate searches to qualify for exemption

Currently, motor dealers and auctioneers are exempt from the requirement to notify the chief executive about a written-off vehicle that the dealer/auctioneer is selling if another notifier (for example, an insurer) has already told the chief executive that the vehicle is a written-off vehicle. The amendments will clarify that to rely on this exemption, the dealer/auctioneer must be able to show that they undertook appropriate searches to establish the vehicle's written-off status. This will ensure that dealers and auctioneers must put appropriate systems in place to check a vehicle's written-off status and not rely on insurers automatically having done so. This protects consumers buying a vehicle from a dealer or auctioneer.

Penalty infringement notices

The regulation will also amend the *State Penalties Enforcement Regulation 2000* to increase fines for corporations that commit written-off vehicle offences to be five times the amounts for individuals. This is in recognition of the seriousness of offences relating to written-off vehicles and the need to increase compliance by corporations with written-off vehicle requirements. The highest fine will be for failing to notify the chief executive that a vehicle is a written-off vehicle and will carry a fine of \$2750.

Consistency with policy objectives of authorising law

The amendments made to regulations under the *Transport Operations (Road Use Management) Act 1995* are consistent with the policy objectives in section 3 of that Act which include providing for the effective and efficient management of road use in the State and improving road safety.

The amendments to the *State Penalties Enforcement Regulation 2000* are consistent with the policy objective in section 4 of the *State Penalties Enforcement Act 1999* which is to maintain the integrity of fines as a viable sentencing or punitive option for offenders and to reduce the cost to the State of enforcing fines and other money penalties.

Benefits and costs of implementation

The costs of implementing the amendments will be met from existing budget allocations.

Consistency with fundamental legislative principles

The amendments are consistent with fundamental legislative principles.

Consultation

Extensive consultation was undertaken in development of the national damage assessment criteria. A Regulatory Impact Statement (RIS) entitled *Damaged Vehicle Criteria for Statutory Written-off Vehicles* was prepared by the NMVTRC in August 2011. Appendix B of the RIS outlines the extensive consultation process that was undertaken. A copy of the RIS is available here:

<http://www.carsafe.com.au/images/stories/New%20Criteria%20for%20S WOs%20Final%20RIS%20Aug%202011.pdf>

The department also held a consultation session with industry stakeholders within Queensland in June 2012 about the Queensland specific changes. Industry stakeholders were supportive of the changes.

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

ENDNOTES

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