

Transport and Other Legislation Amendment Regulation (No. 3) 2013

Explanatory notes for SL 2013 No. 281

made under the

Adult Proof of Age Card Act 2008

State Penalties Enforcement Act 1999

Transport Operations (Road Use Management) Act 1995

General Outline

Short title

Transport and Other Legislation Amendment Regulation (No. 3) 2013

Authorising laws

Section 49 of the *Adult Proof of Age Card Act 2008*

Section 165 of the *State Penalties Enforcement Act 1999*

Sections 149, 150, 150AA and 171 of the *Transport Operations (Road Use Management) Act 1995*

Policy objectives and the reasons for them

This amendment regulation will implement changes that are designed to:

- enhance road safety outcomes, particularly for motorbike riders and young drivers;
- simplify the driver licensing system in Queensland; and
- reduce the regulatory burden that the driver licensing system places on the community.

Achievement of policy objectives

Amendments will be made to the *Adult Proof of Age Card Regulation 2010*, *State Penalties Enforcement Regulation 2000*, *Transport Operations (Road Use Management—Accreditation and Other Provisions) Regulation 2005*, *Transport Operations (Road Use Management—Driver Licensing) Regulation 2010* and

Transport Operations (Road Use Management—Vehicle Registration) Regulation 2010. Details of those amendments are outlined below.

Enhancing road safety outcomes

Q-Ride motorbike training and assessment

Amendments to the *Transport Operations (Road Use Management—Driver Licensing) Regulation 2010* will require all motorbike licence applicants who live within a 100km radius of a Q-Ride training area to undertake Q-Ride training and assessment. It has been identified that Q-Ride training and assessment, which is competency-based, is a preferable mechanism to address aspects of safer riding, especially for novice riders who are particularly at risk of crashing due to inexperience. Currently, approximately 94% of motorbike licence applicants undertake Q-Ride training and assessment.

In October 2012, the Transport, Housing and Local Government Committee of the Queensland Parliament tabled its report titled *Inquiry into the Motorcycle Licensing Process in Queensland* (Report No. 8). In that report, the Committee recommended that:

“...the Department of Transport and Main Roads restrict QSAFE to areas that are not serviced by Q-Ride and that all riders be encouraged to undertake a competency-based training course wherever possible.” (Recommendation 8)

Amendments in this regulation will implement that recommendation by requiring all those seeking a motorbike licence who live within a 100km radius of a Q-Ride training area to undertake Q-Ride training and assessment.

Those who live outside the 100km radius will retain the option to either undertake Q-Ride training and assessment or to complete a Q-SAFE practical riding test.

Motorbike road rules test

Currently, to obtain a motorbike learner licence in Queensland, the applicant must undertake a written road rules test. The test is comprised of questions which deal with general road rules that apply to all vehicle types as well as matters specifically related to motorbikes. The existing questions are all rule-based (for example, rules relating to the wearing of helmets by riders and passengers and to the correct seating position while riding a motorbike).

Research has shown, however, that there is a need to introduce an enhanced test that includes an assessment of broader motorbike skills and attitudes - in particular, higher order cognitive skills such as risk management and hazard perception.

An amendment to the *Transport Operations (Road Use Management—Driver Licensing) Regulation 2010* will provide that the road rules test for a person applying for a motorbike licence can include questions based on the *Queensland Motorcycle Riders' Guide*. This document is published by the Department of Transport and Main Roads and covers a range of topics including safe riding techniques, off-road riding, licensing and registration, road rules and protective gear.

Late night driving restriction – extended application

If a young provisional or probationary licence holder has their licence suspended for a high speed offence or for accumulating excessive demerit points or is disqualified by a court from holding a driver licence, they will be subject to a late night driving restriction once they are authorised to recommence driving. That restriction prohibits them from driving between the hours of 11pm and 5am for a period of one year.

A person whose licence is suspended can, in certain circumstances, obtain a Special Hardship Order from the courts which allows them to drive subject to the restrictions outlined in the order (for example, they may be permitted to drive to and from work or at certain times of the day).

Currently, a person who has their licence suspended due to further offences committed while driving under a Special Hardship Order does not have the late night driving restriction imposed upon them once they have served their suspension period. Amendments to the *Transport Operations (Road Use Management—Driver Licensing) Regulation 2010* will address this by imposing the restriction in these circumstances.

Foreign licence holders who fail a practical driving test

Licence holders from certain overseas countries must pass a practical driving test before being able to transfer to a Queensland driver licence. Currently, if they fail that practical driving test, they may continue to drive in Queensland on their foreign licence, in some circumstances indefinitely. This poses a potential road safety risk.

As a result, amendments to the *Transport Operations (Road Use Management—Driver Licensing) Regulation 2010* will withdraw a foreign licence holder's authority to drive on Queensland roads if they fail a practical driving test. Before being authorised to continue driving in Queensland, they will be required to sit and pass a subsequent practical driving test or, in certain circumstances, obtain a Q-Ride motorbike competency declaration.

Simplifying the driver licensing system

High-powered vehicles

Provisional and probationary licence holders under the age of 25 are prohibited from driving high-powered vehicles. These include, for example, cars with eight or more cylinders, with a turbocharged or supercharged petrol engine or with an engine that has a power output of more than 210kW.

Queensland is one of four Australian jurisdictions that impose a high-powered vehicle restriction on young provisional and probationary licence holders. There are some inconsistencies between the various jurisdictions which creates confusion for young drivers and for enforcement officers. In addition, car makers have begun using devices such as turbochargers to increase the fuel efficiency of their engines rather than to increase the engine's power output.

In May 2013, the Standing Council on Transport and Infrastructure approved a national position defining a high-powered vehicle as a vehicle with a power-to-weight ratio of more than 130kW per tonne.

Accurate information to assess a vehicle's power-to-weight ratio is readily available for vehicles manufactured from 1 January 2010. As such, amendments to the *Transport Operations (Road Use Management—Driver Licensing) Regulation 2010* will adopt this simplified definition for these vehicles. This will provide young drivers with access to a broader range of moderately-powered vehicles.

Late night driving restriction – one year application

As noted above, if a young provisional or probationary licence holder has their licence suspended for a high speed offence or for accumulating excessive demerit points or is disqualified by a court from holding a licence, they are prohibited from driving between the hours of 11pm and 5am for a period of one year once they recommence driving.

Currently, this one year period does not include any period of time during which the person did not hold a valid licence (for example, if their licence expired for a short period). In practice, this means the restriction is put on hold for any time during which they did not hold a valid licence and, once they hold a valid licence again, the balance of the one year period must be served.

This increases the complexity of the restriction and the likelihood the young driver may not understand the period for which the restriction applies. To address this, amendments to the *Transport Operations (Road Use Management—Driver Licensing) Regulation 2010* provide that the restriction will be imposed for a period of one calendar year once their licence is reinstated. That one year period will apply irrespective of whether the person holds a valid licence or not during that period.

These changes will apply to young drivers who commit offences on or after 1 January 2014.

Minimum age for P2 type and Open driver licences

Currently, a person is not eligible for a P1 type licence unless they are at least 17 years of age. The requirements of Queensland's graduated licensing system generally mean that a person will, therefore, not be eligible for a P2 type licence until they are 18 years old and an Open licence until they are 20 years old.

There are, however, some circumstances in which drivers in Queensland can obtain a P2 type or Open licence before these ages. For example a foreign licence holder may obtain a Queensland Open licence from the age of 17. This is inconsistent and can create inequitable outcomes as drivers coming through the Queensland system may be ineligible to drive particular work vehicles until such time as they hold an Open licence at 20 years.

Amendments to the *Transport Operations (Road Use Management—Driver Licensing) Regulation 2010* will impose a minimum age of 18 years to be eligible for a P2 type licence and 20 years to be eligible for an Open licence. This will simplify the system and ensure that young drivers progressing through the Queensland system are not unfairly disadvantaged. The amendments will not impact on those people who, on 1 January 2014, already hold a P, P1 or P2 type licence or an Open licence.

Reducing the regulatory burden

Renew P, P1 and P2 type licences electronically

Currently, Open driver licence holders are able to renew their licences electronically provided they meet certain criteria (for example, their name has not changed and they do not need to provide a current medical certificate). Under this arrangement, an Open licence holder only needs to attend a driver licence issuing centre every 10 years to update their digital photo and signature.

Amendments to the *Transport Operations (Road Use Management—Driver Licensing) Regulation 2010* will allow P, P1 and P2 type licences to be renewed electronically in the same circumstances as Open licences. As more than 16,000 of these licence types are renewed each year, this will result in a significant reduction of the regulatory burden on the community as eligible licence holders will no longer need to attend a licence issuing centre.

Fee waiver following a natural disaster

Currently, a fee is charged for the replacement of a driver licence, a learner logbook or an Adult Proof of Age Card. These fees are designed to cover the cost of the Department of Transport and Main Roads providing this service.

However, requiring payment of a fee for those who have been affected by a natural disaster may not be appropriate. Amendments to the *Adult Proof of Age Card Regulation 2010* and the *Transport Operations (Road Use Management—Driver Licensing) Regulation 2010* will allow the chief executive to waive the fee for the replacement of an Adult Proof of Age Card, a driver licence or a learner logbook where the product has been lost or damaged in a natural disaster.

Automatic application of P2 time credit

Where a person holds a P1 type licence for more than the required minimum period, they are able to make a written application to claim credit for that additional time towards the time they must hold a P2 type licence.

Amendments to the *Transport Operations (Road Use Management—Driver Licensing) Regulation 2010* will remove the need for people to make this written application by providing that the time credit will be automatically calculated and applied towards their P2 type licence. This reduces the obligations on licence holders and will save processing time for the Department of Transport and Main Roads.

The amendments will apply to those P1 type licence holders who complete a hazard perception test on or after 1 January 2014.

Replacement driver licences

Currently, if a person successfully applies for a driver licence, the physical smartcard licence is posted to the address provided by the person in their application.

Section 136 of the *Transport Operations (Road Use Management – Driver Licensing) Regulation 2010* requires that if a smartcard driver licence is not received by the person within the stated time then the person must promptly notify the chief executive.

The person is then required to apply on the approved form for a replacement licence and provide that form to the Department of Transport and Main Roads (e.g. in person at a customer service centre or by post). On review, it has been determined that the requirement to complete an approved form imposes an unnecessary regulatory burden on the licence holder and an unnecessary administrative burden on the Department of Transport and Main Roads.

The amendments will remove that requirement and will allow the chief executive to replace a driver licence lost in the post without requiring the person to complete the approved form. The person will still be required to notify the chief executive that the licence was not received but that notification can be done in person at a customer service centre, electronically or over the phone.

Countries approved for foreign licence transfers

Under the driver licensing schemes of all Australian states and territories, a valid foreign licence authorises a person to drive while visiting Australia.

Foreign licence holders wishing to transfer to an Australian driver licence may be exempt from testing requirements for a car or motorbike licence if their foreign licence was issued by a country that is approved for exemptions by Austroads, the national association of transport authorities.

Austroads assesses countries seeking recognition of their driver licences and, if approved, these countries are recognised by national agreement in all jurisdictions. In Queensland, approved countries are specifically listed in legislation. Where a new country is approved by Austroads, an amendment to that legislation must be made before the testing exemptions can be extended to licence holders from that country.

To remove this delay and to ensure licence holders from approved countries can be provided with testing exemptions as quickly as possible, amendments to the *Transport Operations (Road Use Management—Driver Licensing) Regulation 2010* will provide that as soon as a country is approved by Austroads, licence holders from the country will be immediately eligible for the relevant licence testing exemptions. The list of approved countries will no longer appear in the legislation but will, instead, appear on the website of the Department of Transport and Main Roads.

Driver licensing requirements for specially constructed vehicles

The licensing requirements for specially constructed vehicles (for example, tractors, agricultural equipment and certain cranes) vary between jurisdictions. In Queensland, a person is authorised to drive a specially constructed vehicle if they hold either a class UD licence (a class unique to Queensland) or the relevant class of heavy vehicle licence.

This imposes a greater regulatory burden than in most other jurisdictions where a person may drive a specially constructed vehicle on their car licence. This inconsistency has resulted in cross-border issues including the lack of recognition of class UD licence for Queenslanders driving interstate and enforcement issues created by the different licensing requirements.

Amendments to the *Transport Operations (Road Use Management—Driver Licensing) Regulation 2010* will rectify this by allowing specially constructed vehicles to be driven on a Queensland class C licence. This will reduce potential impediments to industry. The amendments will also make clear that mobile cranes of more than 4.5t gross vehicle mass are not categorised as specially constructed vehicles.

Confirmation of vehicle status

As noted above, provisional and probationary licence holders under the age of 25 are prohibited from driving high-powered vehicles. Amendments to the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2010* will allow the chief executive, without charging a fee, to advise a person whether a particular vehicle is a high-powered vehicle. This will assist in ensuring that people are not inadvertently driving vehicles that their licence does not authorise them to drive.

The amendments will also allow the chief executive to advise whether a particular vehicle is currently registered or not. This will assist in a range of circumstances including, for example, when borrowing or hiring a car or when test driving a vehicle. Release of this information, without fee, will allow a person to check that they are not unknowingly driving an unregistered vehicle. This will be particularly useful when vehicle registration labels are phased out for light vehicles from 1 October 2014.

It is planned to make this information available through a variety of channels, including online, by phone or in person at a customer service centre. Personal information, such as the name or address of the registered operator of a vehicle, will not be released as part of this initiative.

Consequential amendments

A small number of amendments are being made to the *State Penalties Enforcement Regulation 2000* to reflect the renumbering of certain subsections in the *Transport Operations (Road Use Management—Driver Licensing) Regulation 2010*.

Consistency with policy objectives of authorising laws

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

Also, the amendments are consistent with the policy objectives in section 3 of the *Adult Proof of Age Act 2008* which allow the chief executive to issue adult proof of age cards.

Inconsistency with policy objectives of other legislation

The regulation is consistent with the policy objectives of other legislation.

Benefits and costs of implementation

As outlined above, the amendments are designed to enhance road safety outcomes, particularly for motorbike riders and young drivers.

They will simplify the driver licensing system in Queensland and reduce the regulatory burden that system places on the community by, for example:

- reducing the need for customers to attend a customer service centre by:
 - automatically crediting any additional time they have held a P1 type licence towards the period they must hold a P2 type licence; and
 - allowing them to renew a provisional or probationary licence electronically; and
- simplifying the high-powered vehicle restrictions and the late night driving restriction for young drivers; and
- waiving the fees for replacing certain licensing products that are lost or damaged during a natural disaster.

There are no additional costs for government arising from these amendments. Costs incurred from changes to the licensing and registration database will be managed within existing budgets.

Consistency with fundamental legislative principles

The amendments are generally consistent with the fundamental legislative principles.

The amendments relating to Q-Ride training and assessment, the extension of the late night driving restriction and the withdrawal of a foreign licence holder's authority to drive on Queensland roads if they fail a practical driving test may raise issues relating to the rights and liberties of individuals.

These amendments are designed, however, to yield road safety benefits not only for the affected individuals but also for road users more generally. For the reasons outlined below, it is believed that any infringement of the fundamental legislative principles arising out of these amendments is justified.

The Transport, Housing and Local Government Committee of the Queensland Parliament, following a detailed inquiry into the motorcycle licensing process in Queensland, recommended that all riders be encouraged to undertake competency-based training and that the Q-SAFE practical riding test be restricted to areas that are not serviced by Q-Ride. This recommendation reflected the Committee's firm preference, on safety grounds, for riders to get their licence through Q-Ride. The amendments implement that recommendation.

The late night driving restriction is being applied to those people who have already had their licence suspended or been disqualified from holding a licence, who are subsequently granted a court order allowing them to drive in restricted circumstances and then commit additional offences resulting in a further licence suspension. It is believed these people present a road safety risk and, for that reason, it is appropriate to impose conditions on their driving behaviour. Research has shown that the late night driving restriction can contribute to crash, fatality and injury reductions. Late night driving is generally a high crash risk situation for young, novice drivers. They are more likely to be driving recreationally (e.g. going to parties or clubs) and more likely to be carrying passengers of similar age. Restricting night driving for these young drivers targets this high crash risk situation and, based on international evaluation studies, has a significant crash reduction effect.

Where a person fails a practical driving test, it is clear that they do not yet have the requisite skills and abilities to drive unsupervised on Queensland roads. The current system, however, allows a foreign licence holder to continue driving in Queensland despite having failed a practical driving test. The amendments will address this road safety risk by withdrawing the foreign licence holder's authority to drive on Queensland roads under their foreign licence. The foreign licence holder will, however, still be entitled to undertake a subsequent practical driving test or, for those who hold a motorbike licence, to receive Q-Ride training if they live within a 100km radius of a Q-Ride training area. They will also be eligible for a Queensland learner licence for the relevant class of vehicle and will not be required to satisfy other requirements such as the logbook requirements or the requirement to hold a class C licence for at least one year before being eligible for a motorbike learner licence.

Amendments to the *Transport Operations (Road Use Management—Driver Licensing) Regulation 2010* will expressly state that mobile cranes of more than 4.5t gross vehicle mass are not categorised as specially constructed vehicles. This will ensure that these vehicles, which can be driven at relatively high speeds and for long distances, can not be driven on a class C licence. Instead, drivers will be required to hold the relevant heavy vehicle licence. Although not common, it is possible that

some people may be currently driving these vehicles on a class UD licence without holding the relevant heavy vehicle licence. To allow these people time to obtain the appropriate heavy vehicle licence, a transitional period of two years is provided for during which they can continue to drive these vehicles on their class UD licence.

Consultation

Consultation has been undertaken with the Department of the Premier and Cabinet, Queensland Treasury and Trade, the Department of Justice and Attorney-General and the Queensland Police Service. All agencies agree with the proposed amendments.

Consultation has been undertaken on specific amendments with the Royal Automobile Club of Queensland, Austroads (the national association of transport authorities), the Federal Chamber of Automotive Industries and relevant industry groups including Agforce, Canegrowers, Q-Ride Registered Service Providers, the Crane Industry Association of Queensland and the Road Freight Industry Council. All parties supported the proposed changes that were relevant to them.

In relation to the motorbike licensing related amendments, extensive community consultation was undertaken by the Transport, Housing and Local Government Committee in its review of motorcycle licensing. This consultation included media releases and emails to Committee subscribers and letters to specifically invite input from 144 relevant stakeholders. These stakeholders included all Q-Ride Registered Service Providers, motorbike peak bodies, state, territory and commonwealth government ministers and road safety experts.

A total of 43 written submissions were received by the Committee and a public hearing was held on 22 August 2012 where invited stakeholders presented evidence to the Committee. All responses provided to the Committee relating to the motorbike road rules test supported enhancing the test. The majority of responses relating to practical rider training and assessment supported increased use of Q-Ride competency based training.