

Transport Operations (Passenger Transport) Amendment Regulation (No. 1) 2016

Explanatory notes for SL 2016 No. 13

made under the

Transport Operations (Passenger Transport) Act 1994

General Outline

Short title

Transport Operations (Passenger Transport) Amendment Regulation (No. 1) 2016

Authorising law

Sections 80 and 155 of the *Transport Operations (Passenger Transport) Act 1994*.

Policy objectives and the reasons for them

The National Disability Insurance Scheme (NDIS) is a Commonwealth-administered scheme that provides individualised support for people with disability. The support covers various services including transport services. In Queensland, the transition to the NDIS will commence from early 2016.

Excluding NDIS participants from Queensland's Taxi Subsidy Scheme

The Queensland Department of Transport and Main Roads (the department) administers the Taxi Subsidy Scheme (TSS) for eligible Queensland residents with disability. TSS members receive a 50 per cent subsidy for taxi travel, up to a maximum subsidy of \$25 per journey. The TSS is administered under the *Transport Operations (Passenger Transport) Regulation 2005*.

Under the NDIS, participants will be able to use their supports to purchase taxi services. Amendments to the *Transport Operations (Passenger Transport) Regulation 2005* will preclude a person who is receiving support under the NDIS from also receiving subsidy under the TSS. However, the amendments will ensure continuity of support for existing TSS members until they transition to the NDIS.

Disclosure or use of relevant information

In addition to the *Information Privacy Act 2009*, transport laws protect disclosure and use of personal information held by the department. The *Transport Operations (Passenger Transport) Regulation 2005* makes it an offence to disclose or use TSS information other than for a prescribed authorised purpose. The *Transport Operations (Passenger Transport) Act 1994* also contains a more general restriction on disclosure, recording or use of information gained under that Act.

In order to administer the TSS and facilitate the transition of eligible TSS members to the NDIS, the department must be able to disclose relevant information to Queensland and Commonwealth government entities. For example, the department may need to disclose relevant information about a TSS member to the National Disability Insurance Agency to verify whether the person is an NDIS participant and therefore excluded from the TSS.

Amendments to the *Transport Operations (Passenger Transport) Regulation 2005* will authorise the necessary disclosure and use of relevant information for these purposes.

Regulation notice

Under the *Transport Operations (Passenger Transport) Regulation 2005*, the chief executive may refuse to approve a person's application for TSS membership or cancel a person's existing TSS membership by giving the person a 'regulation notice'. A regulation notice includes a notice stating the person's right to an internal or external review or a stay of a decision under the *Transport Operations (Passenger Transport) Act 1994*. However, review rights under that Act do not apply to a decision made in relation to the TSS.

Amendments to the *Transport Operations (Passenger Transport) Regulation 2005* will clarify the position by removing reference to a person's review rights from notices given in relation to TSS decisions. However, the affected person must still be given a written notice with reasons for the decision.

Achievement of policy objectives

Excluding NDIS participants from the Taxi Subsidy Scheme

The amendments will achieve policy objectives by precluding a person from receiving the TSS subsidy where they are currently participating in, or have voluntarily withdrawn from, the NDIS. This supports the seamless transition of eligible people with disability from the TSS to the NDIS.

Disclosure or use of relevant information

The amendments will achieve policy objectives by allowing the department to disclose and use relevant information to effectively administer the TSS and facilitate the transition of eligible TSS members to the NDIS.

Regulation notice

The amendments will achieve the objective of ensuring that the *Transport Operations (Passenger Transport) Regulation 2005* is accurate in relation to review of TSS decisions.

Consistency with policy objectives of authorising law

The amendments to the *Transport Operations (Passenger Transport) Regulation 2005* are consistent with the intention of the *Transport Operations (Passenger Transport) Act 1994* to provide the best possible public passenger transport at reasonable cost to the community and government, keeping government regulation to a minimum. In particular, the amendments are consistent with section 80 of that Act which allows for a regulation to provide a scheme under which the State pays the whole or a part of taxi fares for particular groups.

Inconsistency with policy objectives of other legislation

The amendments are consistent with the *Disability Services Act 2006* (Qld) and the *National Disability Insurance Scheme Act 2013* (Cwlth).

Benefits and costs of implementation

The amendments will ensure individuals are supported by the appropriate scheme administered by the agency funded to support them. Without these amendments, the Queensland Government would be required to continue supporting TSS members who may also be receiving NDIS support, at a potentially significant cost to the State.

The amendments providing for disclosure and use of information will benefit government and the community by facilitating a seamless transition between the two schemes through the sharing of appropriate personal information between relevant government entities.

The amendments relating to regulation notices will benefit government and the community by clarifying the application of review rights relating to decisions under the *Transport Operations (Passenger Transport) Act 1994*.

The changes will not result in significant costs for government, industry or the community.

Consistency with fundamental legislative principles

The amendment regulation removes existing statutory rights to TSS support when members transition to the NDIS (see section 3(1) definition of ‘NDIS participant’ and section 3(2) of the amendment regulation). This is justified on the basis that an NDIS participant will have access to greater and more holistic disability support under the NDIS. Also, TSS support will continue until the person becomes an NDIS participant with a participant plan in effect, ensuring continuity of support during the transition between schemes.

Currently, when it is proposed to cancel a person's TSS membership because they no longer meet the eligibility criteria, the person must first be given an opportunity to 'show cause' why their membership should not be cancelled. Under the amendment regulation, this show cause process will not apply where it is proposed to cancel a person's TSS membership because they are an NDIS participant (see section 5(2) of the amendment regulation). While this may be considered inconsistent with the principle of natural justice, the department considers this is justified because the assessment of whether a person is an NDIS participant relies on an objective data matching process. This can be contrasted with more complex and subjective assessments required under other TSS eligibility criteria where it is appropriate for a show cause process to apply.

The amendment regulation allows the department to disclose personal information to relevant government bodies (see section 6 of the amendment regulation), which may raise privacy concerns. However, this is necessary in order to effectively administer the TSS and facilitate the smooth transition of people with disability from the TSS to the NDIS. To minimise the impact on individuals' privacy, disclosure will be restricted to relevant government bodies for the purposes of administering the TSS and facilitating the transition between the two schemes.

The amendment regulation does not remove any right to a review of TSS-related decisions; it merely clarifies that there is no existing right to a review of these decisions under the *Transport Operations (Passenger Transport) Act 1994* (see section 3(1) definition of 'decision notice' and sections 4 and 5 of the amendment regulation).

The amendments are otherwise consistent with the fundamental legislative principles.

Consultation

The department has consulted with the Department of the Premier and Cabinet, Department of Justice and Attorney-General, Queensland Treasury and the Office of Best Practice Regulation, Queensland Productivity Commission on the proposed amendments.

Consultation has also been undertaken with the Department of Communities, Child Safety and Disability Services (DCCSDS) which is leading a whole of government review of Queensland legislation to identify amendments needed to support the transition to the NDIS.

All agencies consulted agree with the proposed amendments.

DCCSDS is undertaking a range of NDIS communication campaigns to assist with public awareness and inform potential NDIS participants. The department will also communicate with TSS members and other stakeholders about transitioning arrangements.