

Transport and Other Legislation (Personalised Transport Reform) Amendment Regulation (No. 2) 2017

Explanatory notes for SL 2017 No. 143

made under the

Motor Accident Insurance Act 1994

Rural and Regional Adjustment Act 1994

State Penalties Enforcement Act 1999

Transport Operations (Passenger Transport) Act 1994

Transport Operations (Road Use Management) Act 1995

General Outline

Short title

Transport and Other Legislation (Personalised Transport Reform) Amendment Regulation (No. 2) 2017

Authorising law

Section 100 of the *Motor Accident Insurance Act 1994*

Sections 11 and 44 of the *Rural and Regional Adjustment Act 1994*

Section 165 of the *State Penalties Enforcement Act 1999*

Sections 74(4), 76(2), 80(1)(b), 91K, 91L(1)(a), 91P, 91R, 91S(1), 91T, 91W, 91Z, 91ZA, 91ZB(2), 91ZN(2)(d), 91ZP(2), 91ZR(2)(b), 91ZS(2), 91ZW(8), 91ZY, 91ZZ, 92 and 155 of the *Transport Operations (Passenger Transport) Act 1994*

Sections 146, 148, 150 and 171 *Transport Operations (Road Use Management) Act 1995*

Policy objectives and the reasons for them

The regulation of personalised transport, including taxi services and booked hire services, has been subject to analysis and intense scrutiny by government, industry and the public,

culminating in the *Transport and Other Legislation (Personalised Transport Reform) Amendment Act 2017* (the Amendment Act), which received assent on 5 June 2017.

The Amendment Act amends the *Transport Operations (Passenger Transport) Act 1994* (the Act) and other Acts to introduce a new regulatory framework for personalised transport in Queensland.

Commencement of the Amendment Act and related subordinate legislation is occurring in stages from June 2017 to give industry time to prepare for the new regulatory framework. Most of the reforms will commence on 1 October 2017, including introducing the new booked hire service licence and booking entity authorisation frameworks.

The *Transport and Other Legislation (Personalised Transport Reform) Amendment Regulation 2017* was made on 8 June 2017 to implement some of the reform measures contained in the Amendment Act. The objective of the *Transport and Other Legislation (Personalised Transport Reform) Amendment Regulation (No. 2) 2017* is to implement most of the other reform measures, including introducing the new booked hire service licence and booking entity authorisation frameworks for the provision of booked hire services, and the new industry chain of responsibility. Further regulation amendments scheduled for later this year will complete the suite of subordinate legislation amendments required to implement the personalised transport reforms.

Achievement of policy objectives

New licensing and authorisation framework

The amendments:

- provide for booked hire service licences, booking entity authorisations and prescribe associated fees;
- provide for general matters relating to licences, including transferring, leasing, amending, suspending, cancelling and surrendering licences;
- impose specific vehicle requirements for licences;
- remove the requirement for a person to hold a service contract with the chief executive to provide booking services for taxis;
- exempt operators of taxi services and booked hire services from the requirement to hold operator accreditation; and
- prescribe specific kinds of taxi services and booked hire services that do not require a licence to operate, namely cross-border taxi services and services provided using substitute taxis in accordance with peak demand exemption notices.

Provision of personalised transport services

The amendments:

- allow the chief executive to specify driver training that must be undertaken for particular kinds of taxi services and booked hire services and impose requirements on authorised booking entities, operators and drivers to ensure this training is completed;
- set out vehicle identification requirements for licensed vehicles;

- provide for the use of substitute vehicles under taxi service licences in limited circumstances;
- prescribe the maximum payment surcharge of 5 per cent of a fare paid using a non-cash method for a taxi service or booked hire service provided using a taxi;
- prescribe the content of booking records that must be kept for booked hire services provided using vehicles other than taxis;
- prescribe the offence of a driver of a vehicle that is not a taxi stopping in a taxi zone under section 182 of the Queensland Road Rules as a relevant driver offence for imposing driving sanctions for repeated non-compliance;
- prohibit vehicles that are not taxis from looking like taxis;
- prohibit advertising the provision of unauthorised public passenger services;
- provide for servicing and maintenance requirements for vehicles used to provide taxi services or booked hire services;
- provide that the *Transport Operations (Passenger Transport) Standard 2010* does not apply to drivers of vehicles used to provide taxi services or booked hire services as these drivers will instead be subject to primary safety and fatigue management duties under the Act;
- require an authorised booking entity, or operator of a taxi service or booked hire service, to notify the chief executive if the entity or operator ends an arrangement with a driver for serious misconduct;
- allow the chief executive to set maximum fares for booked hire services provided to a person using a wheelchair (in addition to taxi services and certain other booked hire services under the Act);
- provide other consumer protections relating to taxi services and booked hire services, including preserving requirements for fare estimates and itemised receipts; prohibitions on refusing a hiring for certain services; provide for continuous booking services for certain persons; and regulate the operation of a taximeter and excessive charging in some circumstances; and
- prescribe the matters that must be stated in an audit notice and audit report for an audit of a person in the chain of responsibility for taxi services or booked hire services.

Other matters

The amendments:

- allow the chief executive to publish information about the price paid for certain licences;
- simplify current restrictions on the type of vehicles that can be used to provide public passenger services so that public passenger services must be provided using passenger vehicles (with limited exceptions);
- amend various definitions to support the new regulatory framework;
- make consequential amendments to infringement notice fines under the *State Penalties Enforcement Regulation 2014*;
- clarify the meaning of ‘touting’ for the existing offence of soliciting and touting for passengers by including an example; and
- make other minor technical and consequential amendments including to clarify provisions relating to vehicle inspections for taxis, limousines and booked hire vehicles; and to clarify the vehicle types to which the new class of compulsory third party insurance for booked hire vehicles will apply.

Consistency with policy objectives of authorising law

The regulation is consistent with the policy objectives of the authorising Acts.

Inconsistency with policy objectives of other legislation

The regulation is not inconsistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

There are no alternative means of achieving the purpose of the regulation.

Benefits and costs of implementation

The reforms contained in this regulation facilitate implementation of the Queensland Government's personalised transport reforms. The benefits and costs of implementation were outlined in the explanatory notes accompanying the Amendment Act.

Consistency with fundamental legislative principles

The regulation is generally consistent with the fundamental legislative principles (FLPs). However, a potential FLP issue is addressed below.

Booking entities and operators to notify the chief executive of serious misconduct by a driver, including the provision of private information about a driver (section 31, new sections 77 and 78 of the Transport Operations (Passenger Transport) Regulation 2005)

The regulation provides that an authorised booking entity or the operator of a booked hire service or taxi service must notify the chief executive if the booking entity or operator ends an arrangement with a driver due to serious misconduct. This may raise FLP issues relating to whether the regulation has sufficient regard to individuals rights and liberties, particularly the right to privacy in relation to alleged conduct. The release of private information about a driver by a booking entity or operator is justified on the grounds of passenger and public safety including, in particular, the safety of children or other vulnerable members of the community. Without this requirement, serious incidents involving drivers may otherwise remain unreported. Further, the notification requirement applies only to serious misconduct as outlined in the regulation – that is, where the driver is believed to have committed a driver disqualifying offence, has not provided a public passenger service safely, has committed an offence against relevant transport legislation relating to using a motor vehicle, or has been a threat to the safety of any person in any way. It is not intended that this provision would involve the notification of allegations of misconduct that is not related to safety.

Immediate suspension of licences and booking entity authorisations without review or appeal (section 51, new sections 111 and 117DN of the Transport Operations (Passenger Transport) Regulation 2005)

The regulation provides for immediate suspension of a booked hire service licence, taxi service licence or limousine licence or booking entity authorisation including on specified public interest grounds. An immediate suspension will not be subject to any review or appeal. This may raise FLP issues relating to whether the regulation has sufficient regard to ensuring the rights of holders of licences and booking entity authorisations subject to administrative power are sufficiently defined and subject to appropriate review.

As noted in the explanatory notes to the Amendment Act, immediate suspension is designed to ensure inappropriate conduct ceases immediately. Any review or appeal process has the potential to delay the operation of the suspension and thereby allow the party to continue operating – effectively undermining the intent of the provision. Further, any negative consequence for a licence or authority holder is mitigated as an immediate suspension is only a temporary state. If the chief executive decides the licence or authority should be suspended beyond the timeframes or that it should be cancelled, the chief executive will, through the regulation provisions trigger the usual show cause processes. These provisions allow the licensee or authority holder to respond to any allegations, and if the licensee or authority holder does not agree with the final decision on a show cause action, they will be able to appeal to the Queensland Civil and Administrative Tribunal under Chapter 10 of the Act.

Consultation

The personalised transport reforms have been subject to extensive consultation with industry and subject to significant scrutiny during the policy development and parliamentary committee processes.