

Transport and Other Legislation Amendment and Repeal Regulation 2018

Explanatory notes for SL 2018 No. 206

made under the

State Penalties Enforcement Act 1999
Transport Operations (Marine Safety—Domestic Commercial Vessel National Law Application) Act 2016
Transport Operations (Road Use Management) Act 1995
Transport Planning and Coordination Act 1994

General Outline

Short title

Transport and Other Legislation Amendment and Repeal Regulation 2018

Authorising laws

Section 165 of the *State Penalties Enforcement Act 1999*
Section 22 of the *Transport Operations (Marine Safety—Domestic Commercial Vessel National Law Application) Act 2016*
Section 171 of the *Transport Operations (Road Use Management) Act 1995*
Section 38 of the *Transport Planning and Coordination Act 1994*

Policy objectives and the reasons for them

The policy objective of the *Transport and Other Legislation Amendment and Repeal Regulation 2018* (the amendment regulation) is to enhance the operation of transport legislation by:

- updating the list of approved instruments used for roadside drug testing;
- removing the explanation of the data block printed on images produced by camera systems for dangerous goods offence detection from the *Traffic Regulation 1962*, and specifying that the explanation is in the camera system coding manual;
- prescribing an additional alcohol ignition interlock device that may be used in the alcohol interlock program;

- clarifying that display and visibility requirements apply to all number plates attached to a vehicle, and that a person can apply to customise a number plate irrespective of whether that person is the registered operator;
- allowing local governments and the Queensland Police Service to apply for the cancellation of the registration of vehicles which can be disposed of under legislation;
- providing that a number plate must not be attached to a vehicle used on a road if the registration for the vehicle has been recorded in the register as cancelled;
- clarifying the circumstances in which the chief executive may recall a number plate;
- clarifying the circumstances in which an authorised officer may remove and recover number plates attached to a vehicle; and
- facilitating improved administrative processes associated with PrepL, the new online learning and assessment program for those wanting to obtain a learner licence (the program that is replacing the written road rules test).

The policy objective is also to repeal an obsolete maritime fee regulation as the fee is now regulated on a national basis.

Achievement of policy objectives

The amendment regulation achieves the policy objectives listed above by amending the *State Penalties Enforcement Regulation 2014*, the *Traffic Regulation 1962*, the *Transport Operations (Road Use Management—Driver Licensing) Regulation 2010*, the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2010* and the *Transport Planning and Coordination Regulation 2017* as set out below. The amendment regulation also repeals the *Transport Operations (Marine Safety—Domestic Commercial Vessel National Law Application) Regulation 2016*.

Roadside drug testing

The *Traffic Regulation 1962* prescribes collection units used to collect saliva samples for the purpose of roadside drug testing. One of the units listed is the Dräger DCH 5000 (DCH) attached to a Dräger DrugTest 5000 STK (STK).

The Queensland Police Service currently uses the DCH joined together with the STK.

The DCH, which is an absorbent foam piece, is placed on top of the STK and the two pieces joined together are placed into the mouth of a person to collect a saliva sample for analysis. Current procedures require the person to move the joined units around in a continuous motion so that they contact the inside of the mouth or tongue or both. This motion is to continue until the DCH has absorbed enough saliva to reach the STK sample piece which returns a blue indicator when enough saliva sample has been obtained for analysing.

Once the STK returns a blue indicator, it is inserted into a Dräger analysing instrument to determine if the specimen is positive for relevant drugs with the result provided by the analysing instrument. The DCH is the unit used to send the sample to the Queensland Health testing laboratory to provide the supporting evidentiary results (if the STK has a positive result).

Roadside drug testing officers report that, in some cases, even after 45 minutes the STK sample piece has not changed colour. Therefore, saliva collection options are required which enable the STK and the DCH to be separated for collection purposes.

Advice obtained from the manufacturer Dräger states the STK is also an effective collection unit when used by itself as verified by workplace testing. The DCH was developed for police to enable the saliva to be collected for a laboratory test. Further, a roadside collection trial of using only the DCH in the collection of saliva has confirmed that this unit is also effective in collecting sufficient saliva for analysis. Advice from the Queensland Health testing laboratory and the manufacturer supports that the STK and the DCH can be used separately.

An amendment is therefore being made to the *Traffic Regulation 1962* to reflect that these collection units can also be used independently of each other as well as in combination with each other. The proposed change will enable roadside drug testing officers to separate the STK and the DCH if after 30 minutes the STK sample does not return a blue indicator. The STK device will then be placed back into the person's mouth. Once the STK returns a blue indicator, the STK will be inserted into the Dräger analysing instrument to test the specimen. If the STK returns a positive result, the DCH will be sent to the Queensland Health testing laboratory to conduct an evidentiary test. This amendment will not impact on the accuracy of testing or analyses.

The amendment will mean that roadside drug testing officers will have further options available to them in the event that the collection of saliva using the two units in combination with each other is taking too long.

Amendments are also being made to remove references to collection and analysing instruments that are no longer used.

Dangerous goods in tunnels: data blocks on images

Camera systems are used in the Legacy Way, AirportLinkM7 and Clem7 tunnels to capture images of vehicles displaying a dangerous goods placard. Each image produced by the camera system has markings or writing known as a data block. Data blocks indicate information such as the place and time that the image was taken. This information is used in the prosecution of the offence of transporting a placard load of dangerous goods through a tunnel, where placard loads are prohibited.

The *Traffic Regulation 1962* sets out an explanation of each of the fields in the data block for each specified camera system. For example, the regulation provides that on an image taken by an ANPR camera system for dangerous goods offence detection, there is a series of 6 numbers included in one of the fields of the data block. The regulation explains that these numbers indicate the time, in 24-hour clock mode, when the image was taken in the order of hour, minute and second.

The explanation of the information in each of the fields of the data block that has been incorporated into the regulation is sourced from the relevant camera system coding manual.

Recent enhancements to camera systems used for dangerous goods offence detection have resulted in changes to the data blocks. Rather than updating the data block provisions, the amendment regulation omits the data block provisions and provides that the explanation of the data block can be found in the relevant camera system coding manual. The amendment regulation also specifies that the camera system coding manual can be viewed on the Department of Transport and Main Roads' website. This means that the coding manuals will be readily available to the public.

As the coding manuals can be easily updated, any enhancements to camera technology resulting in data block changes will be able to be adopted promptly, allowing continued and efficient enforcement.

Additional alcohol ignition interlock device

An amendment is being made to include the 'Guardian 2030' in the *Transport Operations (Road Use Management—Driver Licensing) Regulation 2010* as an approved interlock that may be used in the alcohol interlock program.

Display of number plates and application for customised plates

Section 30 of the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2010* (vehicle registration regulation) sets out certain display and visibility requirements that apply to number plates, and provides an offence for number plates which are attached or positioned incorrectly on a vehicle.

Under the current wording of section 30, however, in order to prove the offence it is necessary to establish that the number plates were issued for the relevant vehicle.

Personalised number plates are not issued for a particular vehicle and, subject to giving notice to the chief executive, can be transferred between vehicles. Similarly, customised number plates can be kept by a person and carried across to any vehicle a person registers. As such, an amendment will put beyond any doubt that the display and visibility requirements apply to all number plates attached to a vehicle including personalised and customised plates.

The amendment regulation also clarifies that any person may apply to the chief executive to customise a number plate, irrespective of whether that person is the registered operator of a vehicle. Customisation of a standard number plate allows a person to transfer the plate to other vehicles.

Cancellation of vehicle registration

Local councils and the Queensland Police Service have separate powers to dispose of vehicles, by auction or sale. Local councils can dispose of abandoned vehicles, while the Queensland Police Service can dispose of vehicles that have become the property of the State or vehicles that are forfeited or taken to have been forfeited to the State.

Prior to being able to dispose of a vehicle, a local government must follow the requirements in the *Transport Operations (Road Use Management) Act 1995* or the requirements in a local law – for example, requirements about the need to notify the owner and requirements about the time period that must pass prior to offering a vehicle for sale.

A vehicle can only be disposed of under the *Police Powers and Responsibilities Act 2000* if it has been used to commit serious vehicle related offences. In the instance that a person could reclaim their vehicle after a period of impoundment, the vehicle can only be disposed of if the owner does not recover the vehicle or the owner cannot be found after making reasonable enquiries. Notice of the proposed sale must also be published on the police service website and given to the owner, if known.

A vehicle with current registration cannot be disposed of until the registration has expired. However, there are no mechanisms to cancel the registration under the vehicle registration regulation in these circumstances. Many of the vehicles that could be sold have current registration. These vehicles must be stored until the registration expires.

The amendments will allow local councils and the Queensland Police Service to apply to the Department of Transport and Main Roads to cancel the registration of a vehicle if the vehicle may be disposed of under the legislation specified above. An application by a local government must be accompanied by a statement that the local government has complied with the requirements set out in section 100 of the *Transport Operations (Road Use Management) Act* or in a local law. An application by the Queensland Police Service must be accompanied by a statement that the vehicle has become the property of the State, or has been forfeited to the State, under the *Police Powers and Responsibilities Act 2000*.

Display of number plates on vehicles with cancelled registration

When the registration of a vehicle has expired for more than three months, it is automatically cancelled in the vehicle register. It is currently an offence to drive a vehicle with number plates that have been recorded in the vehicle register as cancelled. The purpose of this offence is to deter the owner or operators from using vehicles with cancelled registration from displaying number plates, as the display of number plates means that vehicles are not as readily identified as unregistered. However, number plates associated with cancelled vehicle registrations are not recorded in the vehicle register as cancelled.

Amendments are being made so that the purpose of the current offence provision is achieved. That is, the amendment will provide that persons who use, or permit the use of, a vehicle on a road displaying number plates when the registration is recorded in the register as cancelled, will be liable for an offence. An infringement notice fine of four-fifths of a penalty unit (\$104) will apply to align with other number plate offences of similar severity.

Exchange of number plates in particular circumstances

The primary purpose of number plates is the identification of vehicles. As such, it is essential that no two plates appear identical and that number plates do not contain errors. The amendments will allow the chief executive to require the exchange of a number plate, including a personalised number plate, if it was issued in error or is identical, or appears to be identical, to the number of another number plate.

Currently, if the chief executive considers that any writing or images displayed on a number plate is obscene or indecent, the chief executive may require the exchange of the number plate. The amendments will clarify that the chief executive can require the exchange of a number plate if the chief executive considers that the number plate is contrary to the public interest or likely to cause offence to a reasonable person.

On the exchange of the plate, the original plate will no longer be effective. The amendments will clarify that the person no longer has the right to use the number on a personalised number plate if the plate is required to be exchanged.

Removal and recovery of number plates in particular circumstances

The vehicle registration regulation provides that an authorised officer may require a person in charge of a vehicle to take a number plate from a vehicle and give it to the authorised officer in a number of circumstances. These include when the number plate:

- was not lawfully issued for the vehicle;
- is recorded in the register as having been cancelled, lost or stolen; and
- is required to be returned as a notice has been given for its recall (for example, the plate is considered obscene or indecent).

However, where a person refuses to take the number plate from the vehicle, there is no express power for the authorised officer to remove it. As such, an amendment will provide that if a person fails to comply with an authorised officer's requirement to remove the plate, the authorised officer can remove and recover the number plate. At the time that the authorised officer requires the person to remove the plate, the officer must also advise the person that if they fail to remove the plate, the officer may remove and recover the plate. This section will also apply in relation to the new offence provision referred to above. That is, an authorised officer can remove and recover a number plate attached to a vehicle when the registration for the vehicle is recorded in the register as cancelled.

Improving administrative processes supporting PrepL

PrepL is a new online learning and assessment program replacing the written road rules test. An applicant for a learner licence has 12 months to complete the program from the date of their enrolment. At some stage during their enrolment, a learner licence applicant must have their digital photo and signature captured by the Department of Transport and Main Roads and legislation allows that photo and signature to be retained for 12 months. This allows the department to automatically issue the learner licence once the person has completed PrepL.

Returning drivers and the holders of certain overseas driver licences will also be required to complete PrepL. As such, an amendment to the *Transport Planning and Coordination Regulation 2017* will provide the same 12-month retention period for these people.

Repeal of the Transport Operations (Marine Safety—Domestic Commercial Vessel National Law Application) Regulation 2016

A national system for regulating domestic commercial vessels commenced on 1 July 2013.

During the transition from state-based regulation and service delivery, the *Transport Operations (Marine Safety—Domestic Commercial Vessel National Law Application) Regulation 2016* allowed Queensland as a delegate of the national regulator, the Australian Maritime Safety Authority (AMSA), to continue to charge for the certification of vessels and seafarers.

Since 1 July 2018, AMSA has been providing full service delivery. The regulation therefore has no effect and is being repealed.

Consistency with policy objectives of authorising law

The amendments to the *Traffic Regulation 1962*, the *Transport Operations (Road Use Management—Driver Licensing) Regulation 2010*, and the vehicle registration regulation are consistent with the policy objectives of the *Transport Operations (Road Use Management) Act 1995*. In particular, these amendments are consistent with the objectives of providing for the effective and efficient management of road use in the State, and providing a scheme for managing the use of the State's roads that will improve road safety in ways that contribute to overall transport effectiveness and efficiency.

The amendments to the *Transport Planning and Coordination Regulation 2017* are consistent with the objectives of the *Transport Planning and Coordination Act 1994*.

Inconsistency with policy objectives of other legislation

The amendments are not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

As outlined above, the benefits of making the amendment regulation include that:

- the appropriate collection units can continue to be used for roadside drug testing;
- the explanation of the data block on images produced by dangerous goods offence detection camera systems is easily accessible from the Department of Transport and Main Roads' website;
- a new alcohol ignition interlock device is available for use in the alcohol interlock program;
- offences relating to the display of number plates can be appropriately enforced;
- number plates that are not suitable for use on a road can be recalled by the chief executive;
- the time that abandoned vehicles and vehicles forfeited to the State must be stored can be reduced; and
- an unnecessary administrative process for participants in the PrepL program can be removed.

The costs of implementing the amendments are minimal and will be met from existing resources.

Consistency with fundamental legislative principles

The amendment regulation may raise fundamental legislative principle considerations. However, any potential breach is considered justified as further outlined below.

Legislation must have sufficient regard to the rights and liberties of individuals (section 4(2)(a) of the *Legislative Standards Act 1992*).

Cancellation of registration

The amendment regulation will allow representatives from local governments and the Queensland Police Service to apply to the Department of Transport and Main Roads for the cancellation of the registration of vehicles that may be sold under legislation.

However, the amendment regulation requires that before the chief executive may cancel a vehicle's registration, a statement must be provided. In the case of an application by a local government, the statement must indicate that the local government has complied with the requirements in the *Transport Operations (Road Use Management) Act 1995* or in a local law before an abandoned vehicle can be sold – for example, requirements about the need to notify the vehicle owner or requirements about the time periods that must pass prior to offering a vehicle for sale.

The amendment regulation also provides that an application by the Queensland Police Service to cancel a vehicle's registration must be accompanied by a statement that the vehicle has become the property of, or has been forfeited to, the State under the *Police Powers and Responsibilities Act 2000*.

The requirement for the statements to be provided with the application to cancel the registration will prevent any applications to cancel registration being made where there is no lawful authority to sell the vehicle. The amendment also has sufficient regard to the rights and liberties of individuals as the registration fee attributable to the unexpired part of the registration must be refunded to the registered operator. (If the money is not claimed by the registered operator within 2 years, it is sent to the Public Trustee to administer).

Driving a vehicle with number plates when the registration is cancelled

The amendment regulation introduces an offence for driving a vehicle with a number plate attached to the vehicle when the registration for the vehicle has been recorded in the register as cancelled. The maximum penalty for this offence will be 16 penalty units (\$2088) and the infringement notice penalty will be four-fifths of a penalty unit (\$104).

The purpose of this offence is to deter the owner or operators of vehicles with cancelled registration displaying number plates, as the display of number plates means that vehicles are not as readily identified as unregistered. The maximum penalty and penalty infringement notice penalty are both proportionate to the severity of the offence and to similar number plate offences.

Exchange of number plates in particular circumstances

The amendment regulation will allow the chief executive to require a person to exchange a number plate, including a personalised number plate, if the number plate was issued in error, is contrary to the public interest, is likely to cause offence to a reasonable person, or is identical, or appears identical, to the number of another number plate. On the exchange of the plate, the original plate will no longer be effective and, for personalised number plates, the person will no longer have the right to use the number on the personalised number plate.

Section 104 of the vehicle registration regulation already provides that a number plate issued by the chief executive remains the property of the State. The new provision allows the State to assert its right of ownership of the number plate in circumstances where the plate contains an error, does not effectively identify a vehicle due to its identical appearance to another plate, or where the number on the plate conveys a message that is contrary to the public interest or is otherwise offensive. The new provision has sufficient regard to the rights and liberties of individuals in that prior to the chief executive requiring the exchange of the number plate, the chief executive must first give the person a notice requiring the exchange within the time stated in the notice and stating the reason for requiring the exchange. Because the requirement is to exchange the plate, the person will receive another number plate of the same value as the one required to be exchanged.

Legislation must have sufficient regard to the institution of Parliament (section 4(2)(b) of the *Legislative Standards Act 1992*).

The following two amendments raise the principle that legislation must have sufficient regard to the institution of Parliament in addition to the principle that legislation must have sufficient regard to the rights and liberties of individuals.

Dangerous goods in tunnels: Evidentiary-related provisions

The amendment regulation removes the explanation of the data block for images produced by camera systems detecting the offence of taking a placard load of dangerous goods through a tunnel from the *Traffic Regulation 1962*. The regulation will instead provide that the explanation of the data block is in the coding manual for the camera system. This approach is justified as the information contained in the regulation is currently sourced from the coding manual, and is technical in nature. Further, as required by the amendment, the coding manual will be published on the Department of Transport and Main Roads' website. This means that the coding manual is easily accessible and changes to the data block due to technology upgrades can be quickly given legal effect by an update to the manual rather than the regulation.

As a consequence of the above amendments, the evidentiary certificate provisions about the coding manuals are being amended and reinserted. These evidentiary certificate provisions raise the fundamental legislative principle that legislation should not reverse the onus of proof (section 4(3)(d) of the *Legislative Standards Act 1992*). However, given the matter contained in the evidentiary certificate is uncontentious and the defendant can challenge the evidence, the reversal is justified.

Removal and recovery of number plates in certain circumstances

The amendment regulation will allow an authorised officer to remove and recover number plates from vehicles in a number of circumstances, including, for example when the number plate was not lawfully issued for a vehicle, where the plate has been stolen or where the registration for the vehicle has been recorded in the register as cancelled. It is important to note that the number plates that can be removed cannot be legally used on the road. The ability to remove these number plates preserves the integrity of the number plate system and ensures they are removed from circulation and not used in the commission of other offences.

Section 104 of the vehicle registration regulation already provides that a number plate issued by the chief executive remains the property of the State. The new provision allows the State to assert its right of ownership of the number plate in circumstances where its continued use on the road is not lawful. It is therefore believed that this new provision is appropriate for inclusion in the regulation and has sufficient regard to the institution of Parliament.

Further, the new provision has sufficient regard to the rights and liberties of individuals in that prior to an authorised officer removing the number plate, the authorised officer must first ask the person in charge of the vehicle to take the number plate from the vehicle and deliver it to the authorised officer. The officer must also advise that if the person does not comply with the requirement at the time it is made, then the officer may remove and recover the number plate.

Consultation

The Royal Automobile Club of Queensland (RACQ) was consulted on the amendments and advised that it did not have any concerns.

The City of the Gold Coast Council approached the Department of Transport and Main Roads with a proposal to allow the council to request the cancellation of the registration of vehicles that had been abandoned. The department agreed to this proposal and amendments to enable this process are in the amendment regulation. The City of the Gold Coast Council and Brisbane City Council were consulted on and support this amendment. As the amendment has the potential to benefit other local governments, the Local Government Association of Queensland was also consulted on and supports the amendment.

The Office of Best Practice Regulation in the Queensland Productivity Commission has advised that the amendment allowing the cancellation of the registration of vehicles that may be sold and the amendment about the removal and recovery of number plates would not benefit from further analysis under the *Queensland Government Guide to Better Regulation* (the Guidelines).

In accordance with the Guidelines, the Department of Transport and Main Roads applied a self-assessable exclusion from undertaking further regulatory impact analysis on the remaining amendments based on Category G—Regulatory proposals that are of a machinery nature.