

# Transport and Other Legislation Amendment Regulation (No. 2) 2019

Explanatory notes for SL 2019 No. 121

made under the

*State Penalties Enforcement Act 1999*

*Transport Operations (Marine Safety) Act 1994*

*Transport Operations (Road Use Management) Act 1995*

## General Outline

### Short title

*Transport and Other Legislation Amendment Regulation (No. 2) 2019*

### Authorising law

Section 165 of the *State Penalties Enforcement Act 1999*

Section 207 of the *Transport Operations (Marine Safety) Act 1994*

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

### Policy objectives and the reasons for them

The policy objective of the *Transport and Other Legislation Amendment Regulation (No. 2) 2019* is to enhance the operation of transport legislation by:

- removing the requirement to pay interest on unpaid pilotage fees and unpaid conservancy dues outstanding after 30 days;
- providing that if a licence holder incurs demerit points under a special hardship order (SHO), their driver licence will be suspended;
- reinforcing that power-assisted bicycles do not include vehicles with a motor or motors that provide primary propulsion; and
- making it a camera detected offence to drive a vehicle that is displaying number plates when the vehicle's registration has been cancelled, and putting beyond doubt that the offence can be prosecuted together with an unregistered vehicle offence.

## Achievement of policy objectives

The amendment regulation achieves the policy objectives listed above by amending the *State Penalties Enforcement Regulation 2014*, the *Transport Operations (Marine Safety) Regulation 2016*, the *Transport Operations (Road Use Management—Driver Licensing) Regulation 2010*, the *Transport Operations (Road Use Management—Road Rules) Regulation 2009*, and the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2010*.

### *Removal of interest charges on unpaid pilotage fees and conservancy dues*

Under section 210 of the *Transport Operations (Marine Safety) Regulation 2016* (TOMSR), ship owners may be charged pilotage fees and conservancy dues.

Pilotage fees are charged for the services of a marine pilot. Pilotage is a compulsory service for ships which are 50 metres or more in length entering Queensland's ports. Any ship under 50 metres in length can request the services of a marine pilot. Port pilots are usually mariners with command experience and comprehensive port-specific knowledge. A marine pilot assists the master of a ship to navigate safely by advising on vessel manoeuvring, handling and berthing in ports.

Conservancy dues are charges used to maintain waterways and provide safety and navigational aids to ships in compulsory pilotage areas.

The majority of shipping owners and customers pay their pilotage fees and conservancy dues on time and do not require any further administrative or credit management follow up.

Section 210(3) of TOMSR prescribes interest to be charged at the daily rate of 10 per cent per annum on pilotage fees and conservancy dues that remain unpaid for a period of more than 30 days. While charging interest on unpaid fees was provided to incentivise timely payments, raising invoices and obtaining payment from debtors is inefficient. In addition to the administrative burden, it provides little return on investment and contributes to negative customer experience.

Any ship owners that consistently do not pay can be managed in other ways, for example, payment required upfront before the service is delivered or before access to ports is granted.

It is therefore intended to remove section 210(3) of TOMSR to discontinue the charging of interest.

### *Demerit point accumulation under special hardship orders*

Under the Queensland demerit point scheme, drivers are subject to a licence suspension if they accrue more than the allowable number of points in a specified period (for example, if an open licence holder incurs 12 or more points in a three-year period). The period of licence suspension ranges from three to six months depending on the number of demerit points accrued.

Open, provisional and probationary licence holders may choose either the licence suspension option or a one-year good driving behaviour (GDB) period. A GDB period provides them with their 'second chance' to continue driving. During a GDB period, a person must demonstrate GDB for one year. During the GDB period, they have a one demerit point limit. If they incur two or more demerit points, their licence is suspended for double the original suspension period.

Open and provisional licence holders who are suspended during a GDB period may be eligible to apply to the Magistrates Court for a SHO. The intention of the SHO scheme is to allow individuals to keep driving under strict court-imposed restrictions in situations where they would experience severe hardship if their licence was suspended. For example, a SHO can permit a person to drive only for work purposes, during specified times and/or days.

A SHO can be seen as providing a 'third chance' to continue to drive, subject to conditions imposed by the Magistrate.

While subject to a SHO, a licence holder is currently permitted to incur a further three demerit points before a driver licence suspension is imposed. This creates a licensing sanction scheme where demerit point limits increase from the GDB period to the SHO period, rather than decrease in a tiered manner to encourage improved driving behaviour. This potentially undermines the demerit point scheme by reducing the incentive for recidivist drivers to modify their driving behaviour.

The amendment provides that if a licence holder incurs any demerit points under a SHO, the person's driver licence will be immediately suspended. This will create a progressive decrease in available demerit points as a driver moves from a GDB period to a SHO.

The amendment seeks to enhance community safety, while sending a clear message to recidivist offenders that unsafe driver behaviours are not tolerated. The changes seek to strike a balance between road safety objectives, and the maintenance of access criteria for drivers seeking a SHO.

The change will only apply to persons who are granted a SHO after the commencement of the amendments.

*Reinforcing that power-assisted bicycles do not include vehicles with a motor or motors that provide primary propulsion*

Under current legislation, a 'bicycle' means a vehicle with two or more wheels that is built to be propelled by human power through a belt, chain or gears, whether or not it has one or more auxiliary motors. 'Bicycle' is taken to include, among other things, a power-assisted bicycle.

The Queensland Road Rules section 353B defines what a power-assisted bicycle is. If a vehicle falls within section 353B, it can be used anywhere that bicycles can be used. For example, this includes on roads and on a road-related area such as a path. Section 353B defines power-assisted bicycles by reference to aspects such as maximum power output, maximum speed and the allowable use of the motor.

One type of power-assisted bicycle that can currently be used on roads and paths is a Pedalec. A Pedalec may only have an auxiliary electric motor(s) that provides up to 250 watts of power. Its motor must cut out at 25km/h, irrespective of whether the pedals are being used, and the motor must only provide initial assistance without pedalling up to a maximum speed of 6km/h. That is, once the vehicle has reached 6km/h, the motor must not operate unless the bicycle is being pedalled. These types of power-assisted bicycles are considered safe for use on roads and paths in Queensland, including in interactions with pedestrians where bicycles are ridden on paths.

Other vehicles that have features exceeding the parameters set by the definition of power-assisted bicycle are considered to be non-compliant motorcycles. An example is an electric moped-like device that, despite being fitted with pedals, can travel at speeds up to 40km/h completely under motorised power, that is, without any pedalling.

Vehicles such as these are considered unsafe for use on roads and road-related areas. While these vehicles are considered illegal for use on paths, the current statutory definition of power-assisted bicycle does not readily support roadside enforcement. An amendment to the definition of power-assisted bicycle in the Queensland Road Rules will support roadside enforcement and thus deter the use of illegal moped-like devices.

The amendment clarifies that devices with a motor(s) that provide primary propulsion (that is, they are not auxiliary) are not considered power-assisted bicycles. The following capabilities indicate that the motor is the primary means of propulsion of a device:

- when propelled only by the motor or motors, the device is capable of going faster than 6km/hr;
- the motor or motors are capable of operating when the device is going faster than 25km/hr.

The amendment therefore provides that a device with either or both of those capabilities is not a power-assisted bicycle.

#### *Display of number plates on vehicles with cancelled registration*

The registration of a vehicle can be cancelled on grounds set out in the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2010* (vehicle registration regulation). For example, when a notice about a defective or unsafe vehicle has not been complied with. In these circumstances, the vehicle register is amended to show that the vehicle's registration has been cancelled. In addition, when the registration of a vehicle has been expired for more than three months, that vehicle's registration is automatically cancelled in the vehicle register.

It is an offence to display a number plate on a vehicle when the registration for the vehicle is recorded in the vehicle register as cancelled. It is also an offence to drive an unregistered vehicle on the road. The amendment will clarify that these two offences can be prosecuted at the same time. This clarification is important as the display of a number plate on a vehicle whose registration is cancelled incorrectly suggests that the vehicle is registered. The clarification is being achieved by redrafting the number plate offence provision in section 127(2)(h)(ii) of the vehicle registration regulation.

An amendment to the Queensland Road Rules makes the offence in section 127(2)(h)(ii) a camera-detected offence by specifying that it is a prescribed offence for chapter 5 part 7 of the Act.

## **Consistency with policy objectives of authorising law**

The amendments to the *Transport Operations (Marine Safety) Regulation 2016* are consistent with the objectives of the *Transport Operations (Marine Safety) Act 1994*.

The amendments to the *Transport Operations (Road Use Management—Driver Licensing) Regulation 2010*, the Queensland Road Rules 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.

## **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:

- an administrative process associated with recovering unpaid pilotage fees or conservancy dues is removed;
- the driver licence sanction scheme is strengthened to increase road safety benefits;
- riding of illegal vehicles, purporting to be power-assisted bicycles, on roads and paths can be prevented through more effective enforcement; and
- the offence of displaying a number plate on a vehicle that has cancelled registration can be appropriately detected and enforced in addition to the offence of driving an unregistered vehicle.

The cost of implementing the amendments is minimal and will be met from existing resources.

## **Consistency with fundamental legislative principles**

The amendment regulation may raise fundamental legislative principle considerations as further outlined in the following.

### *Demerit point accumulation under special hardship orders*

Amendments will reduce the allowable accumulation of demerit points to zero when a person is driving under a SHO. The aim of the amendment is to send a clear message to recidivist offenders that unsafe driver behaviours are not tolerated. That is, the amendment is justified as it seeks to enhance road safety.

The amendment has sufficient regard to the rights and liberties of individuals in that the access criteria for those seeking a SHO will not change. That is, drivers complying with the conditions of their order will not be affected by these amendments. It will only affect those who commit further offences. The amendments will only apply to those who are granted a SHO after the commencement of the amendments.

*Reinforcing that power-assisted bicycles do not include vehicles with a motor or motors that provide primary propulsion*

The amendment regulation will clarify the operation of the law as it currently stands by describing characteristics of vehicles with motors that provide the primary source of power, to contrast directly with vehicles that are considered legal power-assisted bicycles under the Queensland Road Rules.

The existing legislative requirement is that electric devices that are substantially capable of travelling under motorised propulsion without human power are not a legal power-assisted bicycle. The amendments will ensure this intent can be achieved without broadening the scope of existing requirements or changing what is currently a legal power-assisted bicycle.

There is no change to the current maximum power output for power-assisted bicycles and Pedalecs and, therefore, the amendment does not give rise to any change to the current policy. The legislation currently requires a motor(s) to be auxiliary in nature and have a power output of no more than 200-watts (or 250-watts for a Pedelec). Clarification of the 'auxiliary' aspect of the motor(s) will enhance the enforceability of the provision. The amendments are designed to clarify this requirement by describing characteristics of devices with motors that provide the primary source of power, to contrast directly with devices that are considered legal under the Queensland Road Rules.

It will also not expand or detract from the type of power-assisted bicycles that are currently legal, including not permitting power-assisted bicycles that have more powerful electric auxiliary motor(s).

An example of a current offence for which this is relevant is the offence of driving on a path, which carries a maximum penalty of 20 penalty units (\$2611) and an infringement notice penalty amount of 3/5 of a penalty unit (\$78). The purpose of that offence is to deter vehicles that have a motor as their main source of propulsion, that is motorcycles, from using paths intended for pedestrians and bicycles.

*Display of number plates on vehicles with cancelled registration*

Currently, under the vehicle registration regulation, it is an offence to drive an unregistered vehicle on a road. There is a separate offence in the regulation for driving a vehicle on a road displaying a number plate when the registration of the vehicle has been recorded in the vehicle register as cancelled.

The amendment regulation redrafts the offence relating to the display of the number plate. This is to put beyond doubt that the offence can be prosecuted together with the offence of driving an unregistered vehicle on the road. The amendment may raise a fundamental legislative principle issue as it may be seen to be impacting upon the rights and liberties of individuals.

However, it is believed that the amendment, which clarifies the operation of existing offences, is justified.

The purpose of the number plate offence provision is to deter people from using vehicles with cancelled registration on roads while displaying number plates, as the display of number plates incorrectly conveys that the vehicle is registered. For this reason, it is considered appropriate that a person who displays number plates in this situation should be liable for the offence of driving an unregistered vehicle on a road and the offence of driving a vehicle displaying number plates when the registration has been cancelled.

The penalty for the display of number plates offence is unchanged. The maximum penalty remains at 16 penalty units (\$2088) and the infringement notice penalty at four-fifths of a penalty unit (\$104). These existing penalties are proportionate to both the severity of the offence and to similar number plate offences.

## Consultation

### *Removal of interest charges on unpaid pilotage fees and conservancy dues*

As the amendment will not impose further regulation and will result in benefits to the shipping industry, consultation with industry has not been undertaken.

### *Demerit point accumulation under special hardship orders*

Consultation was undertaken with the Queensland Law Society (QLS), Royal Automobile Club of Queensland (RACQ), and the Queensland Council for Civil Liberties (QCCL).

The QLS is of the view that the removal of the demerit point limit will cause some strain on drivers subject to a SHO. The QLS considers the current three-point limit sufficient to incentivise GDB. However, it is noted that impacted drivers will have accrued excessive demerit points on their original licence, then accrued further demerit points during their GDB period and subsequently accrued further demerit points while driving under the SHO.

The RACQ and the QCCL did not raise any concerns about the amendments.

### *Reinforcing that power-assisted bicycles do not include vehicles with a motor or motors that provide primary propulsion*

Peak cycling and cycling related bodies, bicycle retailers and importers were consulted on the proposed amendment. Officers from the Department of Transport and Main Roads, the Queensland Police Service (QPS), and the Office of Fair Trading also attended Gold Coast businesses hiring electric moped-like devices purporting to be power-assisted bicycles. The businesses were informed of the requirements for a legal power-assisted bicycle.

No concerns were raised about the proposal to limit motor operations as proposed. However, consultation revealed some misunderstanding about what power-assisted bicycles could legally be used in Queensland, with many of the view that throttle-controlled devices are legal. These devices are illegal under the current legislation because their motors can operate independently of the pedals and are therefore not auxiliary. The amendments do not introduce a new restriction on the use of throttle-controlled devices, rather they clarify the intention of the existing provisions. This has been conveyed to relevant stakeholders.

Bicycle Queensland supports the intention of the proposed changes to improve safety for bicycle riders and pedestrians.

Bicycle retailers and importers made representations that those with a disability and the elderly make use of power-assisted bicycles that operate under throttle control and the proposed legislative changes will adversely affect these groups.

Consultation with the ‘Queenslanders with Disability Networks’ group confirmed that people with mobility impairments do not seek to use power-assisted bicycles under throttle control, and as such the proposed amendments did not present an issue for them. The Centre for Accident Research and Road Safety – Queensland also confirmed this to be the case, based on international experience.

The RACQ was also consulted on the amendments and did not raise any concerns.

*Display of number plates on vehicles with cancelled registration*

The RACQ was consulted on the amendments and did not raise any concerns.

The Office of Best Practice Regulation in the Queensland Productivity Commission has advised that the amendments do not require further regulatory impact assessment under the *Queensland Government Guide to Better Regulation*.