

# Transport Operations (Road Use Management) (Road Safety) and Other Legislation Amendment Regulation 2019

Explanatory notes for SL 2019 No. 240

made under the

*State Penalties Enforcement Act 1999*

*Transport Operations (Road Use Management) Act 1995*

## General Outline

### Short title

*Transport Operations (Road Use Management) (Road Safety) and Other Legislation  
Amendment Regulation 2019*

### Authorising laws

Section 165 of the *State Penalties Enforcement Act 1999*

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

### Policy objectives and the reasons for them

*Increasing penalties for illegally using a mobile phone while driving or riding*

Section 300 of the *Queensland Road Rules* prevents drivers and riders from using a mobile phone that they are holding in their hand while the vehicle is moving or is stationary but not parked. The section allows limited use of a mobile phone if it is used hands-free – for example, in the case of a driver, if the mobile phone is in a cradle attached to the vehicle’s windscreen. Learner and P1 provisional licence holders aged under 25 years are prohibited from using any function on a mobile phone while driving, under section 68 of the *Transport Operations (Road Use Management—Driver Licensing) Regulation 2010*.

Despite education campaigns, illegal mobile phone usage on Queensland roads continues at unacceptably high levels with 70 per cent of Queensland drivers admitting to illegally using their mobile phone. Driver distraction is one of the fatal five driving behaviours and contributes to almost 20 percent of serious injuries and 14 percent of fatalities on a road.

The policy objective of the *Transport Operations (Road Use Management) (Road Safety) and Other Legislation Amendment Regulation 2019* (the amendment regulation) is to reduce the incidence and the associated road safety risks of drivers and riders illegally using their mobile phones on the road network, by increasing the penalties that apply.

#### *Defective Takata airbags*

Following an Australian Competition and Consumer Commission (ACCC) investigation, a compulsory recall notice for all vehicles with faulty Takata airbags was issued in February 2018, under the Australian Consumer Law.

When a faulty Takata airbag deploys, it can rupture resulting in sharp metal fragments projecting from the airbag. This has the potential to kill or seriously injure vehicle occupants and to impact the safety of other road users. Faulty Takata airbags have already caused a death in Australia as well as a serious injury.

The compulsory recall notice requires suppliers of vehicles with faulty Takata airbags to take action to replace the airbags. Suppliers have an obligation to contact vehicle owners in a way that actively encourages them to present their vehicle for repair, and that emphasises that replacements are free. If owners do not present their vehicle for replacement of the affected airbag, suppliers must be able to show that they have undertaken subsequent notifications across multiple channels (for example, letters, text messages, emails, social media and by phone).

Supplier efforts to date have resulted in the overwhelming majority of faulty airbags being replaced. However, there are some vehicles that, despite multiple and varied attempts by the supplier to contact the owners, still have not had the faulty airbags replaced. The ACCC will provide the Department of Transport and Main Roads with a list of those vehicles that are registered in Queensland, and in relation to which suppliers have completed their contact protocols. To further encourage those vehicle owners to replace the faulty airbags, TMR will then initiate action in relation to the registration of those vehicles.

There are two types of unsafe Takata airbags. Alpha airbags present a higher safety risk than beta airbags. If alpha airbags are not replaced, TMR can issue a defect notice to the registered operator requiring the replacement of the airbag. If the owner does not comply with the notice, this is an existing ground for the cancellation of the registration under the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2010* (registration regulation). However, it is not clear that this process can be used in relation to beta airbags.

To put the matter beyond doubt, amendments are being made to the registration regulation to allow action in relation to the registration of a vehicle with any type of faulty Takata airbag.

The policy objective of the amendment regulation is to enhance road safety by encouraging vehicle owners to replace affected Takata airbags and, in circumstances where they do not comply, by ensuring that a Queensland registered vehicle with a faulty airbag can no longer be used on the road.

## **Achievement of policy objectives**

### *Increasing penalties for illegally using a mobile phone while driving or riding*

The amendment regulation achieves the policy objective by:

- amending the entries for section 300 of the *Queensland Road Rules* and section 68 of the *Transport Operations (Road Use Management—Driver Licensing) Regulation 2010* in the *State Penalties Enforcement Regulation 2014*. This amendment means that the infringement notice fine for drivers and riders illegally using a mobile phone is increased from \$400 (3 penalty units) to \$1,000 (7.5 penalty units). Bicycle riders are recognised as legitimate road users and are classified as drivers under the *Queensland Road Rules*. As such, the increased fine amount will also apply to bicycle riders who use a mobile phone while riding on a road or road-related area;
- amending the *Transport Operations (Road Use Management—Driver Licensing) Regulation 2010* to:
  - increase the demerit points for using a mobile phone while driving from three to four; and
  - increase the number of additional demerit points allocated for a mobile phone offence committed within 12 months of a previous mobile phone offence from three to four.

The demerit point increases will not apply to bicycle riders as demerit points apply in relation to a person's driver licence and bicycle riders are not required to hold a driver licence.

The current fine of \$400 (3 penalty units) is being retained for users of personal mobility devices, including e-scooters such as those hired out by Lime and Neuron Mobility, who illegally use a mobile phone while riding. This reflects the lower risk of these pedestrian-like devices which do not have general access to the road network. The current fine of \$400 (3 penalty units) is also being retained for passengers of learners and P1 provisional licence holders under age 25 who illegally use a mobile phone's loudspeaker function. This also reflects the decreased risk associated with the activity as the offender is not actively in charge of a vehicle.

### *Defective Takata airbags*

The amendment regulation achieves the policy objective by amending the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2010* to insert a new ground that applies to the refusal of registration or renewal of registration, and to the cancellation of an existing registration. This ground will only be enlivened if a vehicle is subject to a Takata airbag compulsory recall notice, the supplier has taken all practical steps to notify the registered operator of the need to have the airbag replaced, but the faulty airbag has not been replaced.

This will mean that vehicles that have faulty Takata airbags can be deregistered and any applications for registration or renewal can be refused until the airbags are replaced.

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

The amendments to the *Transport Operations (Road Use Management—Driver Licensing) Regulation 2010* and the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2010* are consistent with the policy objectives of the *Transport Operations (Road Use Management) Act 1995*. In particular, these amendments are consistent with the objective of 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**

### *Increasing penalties for illegally using a mobile phone while driving or riding*

As mentioned above, driver distraction is one of the fatal five driving behaviours and contributes to 14 percent of fatalities and almost 20 percent of serious injuries. It is also one of only two fatal five behaviours that is increasing. In addition to the devastating impact crashes can have on individuals and their families, it is estimated that the economic cost of a road fatality equates to \$8.3M and \$542K for a person who is hospitalised.

The benefit of implementing the amendments is to improve road safety outcomes by increasing fines to deter the dangerous practice of illegally using a mobile phone on Queensland's road network.

There is a cost to road users of incurring a \$1,000 fine for misusing a mobile phone while using the road network. If a person cannot afford to pay their debt immediately, there are options available through the State Penalties Enforcement Registry such as payment by regular instalments.

The increase in demerit points for the mobile phone offences from three to four also has a potential cost to road users. Learner and provisional drivers will incur a demerit point suspension for their first mobile phone offence.

The number of additional points allocated for a mobile phone offence committed within 12 months of a previous mobile phone offence is also being increased from three to four. This means that a repeat offence would incur eight demerit points. For most licence holders, this would result in a licence suspension. However, drivers other than learner drivers, will still have the option to choose either the licence suspension option or a one-year good driving behaviour (GDB) period. 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. However, open and provisional licence holders who are suspended during a GDB period may be eligible to apply to the Magistrates Court for a special hardship order. This allows individuals to keep driving under strict court-imposed restrictions in situations where they would experience severe hardship if their licence was suspended.

Further, any of the above potential costs to road users can be avoided by compliance with Queensland's existing mobile phone laws by not engaging in the dangerous practice of illegally using a mobile phone while driving or riding. Prior to the increased penalties coming into effect on 1 February 2020, a public education campaign will be run to inform Queensland road users about the increased fines and demerit points for illegal mobile phone use and to encourage them to leave their phones alone while they are behind the wheel.

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

#### *Defective Takata airbags*

The benefit of the amendment regulation is that there will be a clear legislative basis to refuse or cancel the registration of vehicles with faulty Takata airbags. The resulting road safety benefit is that the new ground will help to motivate the replacement of the faulty airbags, and to otherwise make it clear that vehicles with faulty airbags can no longer be used on the road. This will prevent any future deaths or serious injuries.

The cost to road users resulting from not being able to use their vehicle on a road due to cancelled registration can be avoided by having the faulty airbag replaced. This replacement is provided free of charge by vehicle suppliers. Cancellation of registration will only take place after registered operators have been notified that registration cancellation is possible and have been afforded the opportunity to replace the faulty airbag. Registration cancellation will be used as a last resort only after the following:

- a public education campaign run by the ACCC
- multiple and varied communication attempts by vehicle suppliers
- the issue of a notice by TMR to the registered operator giving the person 28 days to show why the vehicle's registration should not be cancelled (for example, by having the airbag replaced).

When all attempts to have the faulty airbag replaced have failed, and the vehicle registration is cancelled, the balance of the registration fee is refunded to the registered operator.

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

## Consistency with fundamental legislative principles

### *Increasing penalties for illegally using a mobile phone while driving or riding*

The increase in penalties for illegal mobile phone use while driving or riding may raise fundamental legislative principle (FLP) considerations under section 4(2)(a) of the *Legislative Standards Act 1992*, rights and liberties of individuals.

However, any potential FLP breach is justified for the reasons outlined below.

While there is wide spread community acknowledgement of the risk that illegal mobile phone use on the road presents, many people continue to illegally use their devices. For example, in 2018, there were over 14,000 individuals caught committing a mobile phone offence in Queensland, including 305 repeat offenders.

Current penalties and deterrent approaches have not achieved the desired level of compliance among the driving public and have not resulted in a reduction in crashes caused by driver inattention over the past five years. Driver distraction is one of two Fatal Five driving behaviours that is increasing. It also represents approximately 14 per cent of Queensland's road toll each year.

The penalties for mobile phone offences in Queensland have not significantly changed since the offence was first created in 1999. However, the functionality of mobile phones, and their consequential ability to distract, has increased exponentially in that time. The risks associated with use of modern mobile phones while driving or riding is high, with distraction occurring both visually and cognitively.

Research has shown that using a phone while driving is just as dangerous as a drink driver with a blood/breath alcohol content (BAC) of 0.07-0.10. Even if a driver takes their eyes off the road for just two seconds, at 60 km/h they will have travelled blind for 33 metres. At higher speeds, the distance increases.

Increasing monetary fines for traffic offences has been shown to reduce recidivism rates in Queensland. The specific deterrent effect of increased monetary penalties on rates of re-offending is evidenced by an analysis of an increase to monetary penalties for speeding offences in 2003 which revealed a subsequent 6.3 per cent reduction in recidivism.

It is therefore believed that significantly increasing the fine, combined with increasing demerit points for the offence, is justified as being the most likely approach to improve road safety outcomes and promote behavioural change. The deterrent effect of these new penalties will be enhanced by a public education campaign that reiterates the dangers of illegally using a mobile phone while driving and the new penalties that will apply.

In Queensland, bicycle riders are recognised as legitimate road users and have the same rights and obligations as motorists. As legitimate road users, they must comply with the same road rules as motorists in addition to specific bicycle road rules. They can also receive the same fines as motorists for breaches of the road rules.

As such, it is appropriate that the increased fine for illegal mobile phone use apply equally to bicycle riders. However, the increase in demerit points does not apply to bicycle riders as it is not a requirement to hold a driver licence to ride a bicycle on a road or road-related area.

### *Defective Takata airbags*

The amendment regulation may raise FLP considerations under section 4(2)(a) of the *Legislative Standards Act 1992*, rights and liberties of individuals, in so far as it introduces a ground under which an existing vehicle registration may be cancelled.

However, it is believed that any potential FLP breach is justified as explained below.

- A decision to cancel vehicle registration in these circumstances is in the interests of public safety. That is, there is clear evidence demonstrating the potential for these faulty airbags to rupture resulting in death or serious injury.
- Prior to the cancellation ground being enlivened, the vehicle suppliers must have made numerous and varied attempts to contact the registered operator to advise them of the need to replace the faulty airbag.
- Prior to commencing the cancellation process, the chief executive must give the registered operator a notice. That notice must invite the holder to show within 28 days why the proposed action should not be taken (see section 19(1) of the *Transport Operations (Road Use Management) Act 1995*). This will give the registered operator another opportunity to be advised of the fault which gave rise to the recall notice, and the opportunity to have the fault addressed. If the registered operator makes arrangements with a vehicle supplier and notifies TMR that the airbag will be fixed on a specified date, the cancellation process will be put on hold. When the affected airbag is replaced and TMR receives confirmation from either the vehicle manufacturer or the registered operator and produces evidence, the cancellation process will cease.

Similarly, if the chief executive decides to refuse to register or to renew a registration, the chief executive must tell the applicant the reason for the refusal (see section 17(5) and section 43(11) of the registration regulation). This then gives the applicant the opportunity to have the fault remedied and the vehicle subsequently registered.

Finally, if a person is dissatisfied with a decision to refuse to register or renew or cancel a registration, that person may apply to have that decision reviewed, initially by the chief executive. If the person is still dissatisfied, they may apply to the Queensland Civil and Administrative Tribunal for a review of the decision of the chief executive.

## **Consultation**

### *Increasing penalties for illegally using a mobile phone while driving or riding*

As part of a Driver Distraction Project, TMR engaged with over 80 stakeholders through interviews, targeted workshops and the National Summit on Driver Distraction. In addition, from 1 July to 2 August 2019, the community was invited to provide feedback on the proposal to increase penalties to \$1,000 for the illegal use of mobile devices while driving.

There were over 1,250 comments and 275 shares on the TMR and 'StreetSmarts' Facebook pages, 90 emails with comments and ideas and 21 pieces of correspondence received. 50 per cent of respondents supported some increase in penalties, 32 per cent were neutral and the remaining 17 per cent were against increased penalties. In addition, an ABC Brisbane online poll of over 4,700 people showed 75 per cent were in favour of increased fines.

The RACQ is generally supportive of the increased penalties. The RACQ also notes that the increase in penalties needs to be coupled with active enforcement of the mobile phone offences by the QPS, and targeted education to the public.

Bicycle Queensland raised no objections about the increased penalties.

#### *Defective Takata airbags*

In 2018, following the issue of the compulsory recall notice dealing with vehicles containing faulty Takata airbags, the ACCC launched a public education campaign aimed at informing the public about the dangers of the faulty air bags and the need for owners to bring their vehicles in for replacement of the airbag.

The ACCC also formed a multi-jurisdictional working group to assist in the management of the recall process. This group, chaired by the ACCC, consists of representatives from transport agencies and Offices of Fair Trading in all jurisdictions. Flowing out of the discussions in the working group, the ACCC requested support from transport agencies in implementing action against vehicle registrations in relation to vehicles that have not had the faulty air bag replaced. It was agreed however that action against a vehicle's registration would only be initiated against vehicles in relation to which there had been multiple communication attempts made by suppliers aimed at replacing the faulty airbag.

The RACQ supports the amendments.

The Office of Best Practice Regulation in the Queensland Productivity Commission reviewed a *Preliminary Impact Assessment* for both proposals and has advised that the amendments do not require further regulatory impact assessment under the Queensland Government Guide to Better Regulation.