

Transport Legislation (COVID-19 Emergency Response) Regulation 2020

Explanatory notes for SL 2020 No. 51

made under the

Tow Truck Act 1973

Transport Operations (Passenger Transport) Act 1994

Transport Operations (Road Use Management) Act 1995

General Outline

Short title

Transport Legislation (COVID-19 Emergency Response) Regulation 2020

Authorising law

Section 43 of the *Tow Truck Act 1973*

Section 155 of the *Transport Operations (Passenger Transport) Act 1994*

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

Policy objectives and the reasons for them

On 29 January 2020, the Minister for Health and Minister for Ambulance Services declared a public health emergency under section 319 of the *Public Health Act 2005* (PHA) due to the outbreak of a virus, known as COVID-19. On 11 March 2020, the Director-General of the World Health Organization declared COVID-19 a global pandemic.

During a public health emergency, under section 362B of the PHA, public health directions can be issued. Public health directions related to COVID-19 have been issued including directions that restrict movement, prohibit large gatherings, restrict border crossings and which can require self-quarantine.

Similar directions have been made in other Australian jurisdictions. Generally, the public is being asked to undertake ‘social distancing’, which is to limit physical contact with others wherever possible and, in turn, limit the spread of COVID-19.

The Department of Transport and Main Roads (TMR) administers legislation that aims to deliver road safety outcomes, efficient transport network access, and the provision of the best possible public passenger transport. With directions that the public undertake social distancing and restrict movement, many requirements which would normally be able to be complied with are difficult or impossible to meet. For instance, older Queenslanders are finding it difficult to obtain or renew their medical certificate in order to comply with the obligation to carry a medical certificate while driving. Given the high risk that COVID-19 poses for older Australians, they have been strongly advised to stay home. Such drivers are legally unlicensed once their medical certificate expires.

There are also significant economic impacts associated with the COVID-19 emergency affecting individuals and Queensland businesses. The Queensland Government is delivering a raft of measures aimed at easing these financial impacts and stimulating the economy.

The policy objectives of the *Transport Legislation (COVID-19 Emergency Response) Regulation 2020* (the Regulation) are to provide exemptions from, or otherwise modify the application of, particular transport requirements to:

- minimise the risks to the health and safety of people caused by the COVID-19 emergency;
- alleviate the financial burden on people caused by the emergency; and
- ensure the effective and efficient regulation and administration of land transport activities during the emergency and for a period after the emergency ends.

Achievement of policy objectives

The Regulation will provide the chief executive of TMR with the ability to:

- provide exemptions from certain requirements;
- extend the duration of existing transport approvals;
- extend the period of time in which a person must do a particular thing required by a transport regulation;
- extend the time for a customer to comply with motor vehicle certificate of inspection requirements by up to six months without the customer first having to apply;
- issue disability parking permits without application to existing permit holders whose permit will expire during the COVID-19 emergency or within six months after the emergency ends; and
- provide fee relief from certain fees under transport regulations to help alleviate the financial impacts of the COVID-19 emergency on individuals and businesses.

The Regulation will also:

- extend the validity of medical certificates required to be held by drivers aged 75 years and older; and
- during the COVID-19 emergency and for a further six months, remove the requirement for those older drivers to carry a medical certificate if they do not have one and cannot reasonably obtain one due to the emergency.

The Regulation deals with specified approvals and requirements within the following regulations:

- *Tow Truck Regulation 2009*
- *Traffic Regulation 1962*
- *Transport Operations (Passenger Transport) Regulation 2018*
- *Transport Operations (Road Use Management–Accreditation and Other Provisions) Regulation 2015*
- *Transport Operations (Road Use Management–Dangerous Goods) Regulation 2018*
- *Transport Operations (Road Use Management–Driver Licensing) Regulation 2010*
- *Transport Operations (Road Use Management–Vehicle Registration) Regulation 2010*
- *Transport Operations (Road Use Management–Vehicle Standards and Safety) Regulation 2010*

Exemptions from requirements relating to applications

When a person applies for products, services or approvals under transport regulations, they are often required to provide particular documents or information as part of their application. This happens when a person applies for a product or service such as vehicle registration, a driver licence or a disability parking permit, and when they apply for approvals to undertake particular activities and seek industry accreditations, such as approval to be a driver trainer, drive a tow truck or a dangerous goods vehicle, or carry out vehicle safety inspections.

Applications are also required when a person wishes to renew a particular product, service or approval. As part of completing their application, the person may be required to undertake multiple steps, such as providing evidence of a vehicle safety inspection when applying for a vehicle's registration or returning their vehicle's number plates to a customer service centre. In addition, fees may be payable as part of the application process.

As part of the process of obtaining a transport approval, applicants may also need to satisfy certain eligibility criteria.

Due to the nature of the COVID-19 emergency, some aspects of these application processes are proving difficult, if not impossible, for people to comply with. Part 2 of the Regulation, therefore, provides that exemptions may be granted from all or part of the requirements relating to particular application processes. The relevant provisions for these application processes are listed in Schedule 1.

The chief executive may activate these exemptions by publishing a notice on the department's website. This can occur where, having regard to the COVID-19 emergency:

- it would not be practicable for people to have to comply with, or satisfy, a requirement;
- it would not be reasonable to require people to have to comply with, or satisfy, a requirement;
- where complying with the requirement may risk the spread of COVID-19 within the community;
- where exempting people from the payment of all or part of a fee may alleviate the financial burden on them; or
- where exempting the person would promote the effective and efficient regulation and administration of land transport activities.

The notice takes effect on the day it is published on the department's website or on a later day stated in the notice and can continue to have effect for a period of up to six months following the end of the COVID-19 public health emergency.

Once the notice is published and the exemption is activated, the chief executive may decide the application as if the exempted requirement does not apply.

Extending the duration of existing approvals

The chief executive issues a range of approvals under transport legislation. These include, for example, vehicle registrations, industry accreditations and disability parking permits. Typically, these approvals are issued for a finite period and the holder must apply for a new approval or a renewal of the existing approval prior to its expiry.

Part 3 of the Regulation provides that the term or duration of existing approvals may be extended by the chief executive publishing a notice on the department's website. This may occur where, having regard to the COVID-19 emergency:

- it would not be practicable or reasonable for persons who hold an approval to make an application for the renewal of the approval or the grant of a new approval;
- applying for the grant or renewal of an approval may risk the spread of COVID-19 within the community;
- continuing the effect of the approval may alleviate the financial burden for persons; or
- continuing the effect of the approval would promote the effective and efficient regulation and administration of land transport activities.

The notice takes effect on the day it is published on the department's website or on a later day stated in the notice and can extend approvals for up to six months following the end of the COVID-19 public health emergency.

Part 3 applies in relation to the provisions listed in Schedule 2.

Extending the period for compliance

Provisions within transport regulations may require people to do particular things within particular periods and, in certain instances, a failure to do so is an offence.

The Regulation provides that, in relation to the provisions mentioned in Schedule 3, the time by which a thing is required to be done may be extended by the chief executive publishing a notice on the department's website. This may occur where, having regard to the COVID-19 emergency:

- it would not be practicable for the person to do the particular thing within the particular period;
- it would not be reasonable to require the person to do the particular thing within the particular period;
- doing the particular thing within the particular period may risk the spread of COVID-19 within the community; or
- providing a longer period for doing the thing would promote the effective and efficient regulation and administration of land transport activities.

The notice takes effect on the day it is published on the department's website or on a later day stated in the notice and can continue to have effect for a period of up to six months following the end of the COVID-19 public health emergency.

Modification of specific provision relating to medical certificates

The Regulation modifies the application of a provision in the *Transport Operations (Driver Licensing) Regulation 2010* that requires people aged 75 years or more to carry a valid medical certificate with them when driving.

The Regulation ensures that medical certificates that have expired since the declaration of the public health emergency on 29 January 2020, or that will expire during the period up to six months following the end of the COVID-19 emergency, will be taken to be valid. This will allow the holders of those certificates to continue to drive lawfully.

The Regulation also provides that during the COVID-19 emergency and for a further six months after the emergency ends, the requirement to carry a medical certificate while driving does not apply to those older drivers if they do not have a certificate and if:

- it would not be practicable or reasonable for them to obtain a certificate due to the COVID-19 emergency; or
- attempting to obtain a valid medical certificate may risk the spread of COVID-19 within the community.

Expiry

The Regulation will expire six months after the day the COVID-19 emergency ends.

Allowing the modification of transport requirements, as outlined above, for up to six months after the emergency ends will ensure there is sufficient time for people to once again comply with those requirements.

Amendment of transport regulations

The Regulation will also amend the *Tow Truck Regulation 2009*, the *Traffic Regulation 1962* and the *Transport Operations (Road Use Management—Vehicle Standards and Safety) Regulation 2010* as follows:

Tow Truck Regulation 2009

The Regulation will allow the chief executive, up until 6 months after the end of the COVID-19 emergency, to waive all or part of various fees contained in Schedule 2 of the *Tow Truck Regulation 2009*. These fees relate to approvals to operate a tow truck, to be a tow truck driver or assistant and for the issue of replacement approval documents.

Traffic Regulation 1962

The Regulation will allow the chief executive to issue a disability parking permit to a person or organisation whose existing permit will come to an end sometime during the period up to six months after the COVID-19 emergency ends. This can be done without the person or

organisation having to apply to the chief executive for that new permit. The new permit can be issued for a period up to the same period the person's or organisation's existing permit is for.

Transport Operations (Road Use Management–Vehicle Standards and Safety) Regulation 2010

Under the *Transport Operations (Road Use Management–Vehicle Standards and Safety) Regulation 2010*, certain vehicles are required to be inspected to clear a defect notice issued in relation to the vehicle or for the purpose of obtaining a certificate of inspection. During the COVID-19 emergency, it is likely that some, and perhaps many, vehicle inspection stations will close. As a result, the Regulation will allow the chief executive to extend the time for a customer to have their vehicle inspected by up to 6 months without requiring the customer to apply for that extension. To allow sufficient time for stations to reopen and customers to book their vehicles in for inspection, extensions of time without application may remain in force for up to one year following the end of the COVID-19 emergency.

Consistency with policy objectives of authorising law

The Regulation is consistent with the policy objectives of the authorising laws.

Specifically, it is consistent with:

- the general policy objective of the *Tow Truck Act 1973* to regulate certain aspects of the tow truck industry in specified areas;
- the objective of the *Transport Operations (Passenger Transport) Act 1994* to achieve the provision of the best possible public passenger transport at a reasonable cost to the community and government; and
- the policy objectives of the *Transport Operations (Road Use Management) Act 1995* to:
 - provide for the effective and efficient management of road use in the State;
 - promote the effective and efficient movement of people, goods and services; and
 - support a reasonable level of community access and mobility in support of government social justice objectives.

Inconsistency with policy objectives of other legislation

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

Benefits and costs of implementation

As outlined above, the benefits of the Regulation are to alleviate the impact of the COVID-19 emergency on Queensland individuals and businesses and, in particular, to minimise the burden imposed on the community by transport regulations.

Any cost incurred by the Regulation will be absorbed by government.

Consistency with fundamental legislative principles

The Regulation may raise fundamental legislative principle considerations under section 4(2)(b) of the *Legislative Standards Act 1992* relating to the institution of Parliament.

Provisions of the Regulation allowing the chief executive to publish a notice that activates exemptions from requirements and extensions of time to comply with requirements under transport regulations may be considered a breach of section 4(4)(b) of the *Legislative Standards Act 1992*, which requires legislation to sufficiently subject the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.

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

The chief executive's powers to modify the application of the specified legislative requirements are limited:

- to circumstances arising from the current COVID-19 public health emergency;
- to circumstances generally where requiring compliance with the requirement would not be practicable or reasonable due to the COVID-19 emergency or may risk the spread of COVID-19 within the community or where modifying the requirement may alleviate the financial burden on people; and
- by the modification powers only applying to provisions which are specifically listed in Schedules to the Regulation.

Additionally, the Regulation will automatically expire six months after the day the COVID-19 emergency ends.

As the delegated legislative power is limited to providing exemptions only from prescribed provisions and is beneficial in nature, any breach of the fundamental legislative principles is justified.

Consultation

As the Regulation provides for the relaxation of requirements, extension of expiry dates on approvals, and the waiver of fees it is beneficial to Queenslanders. For this reason, and due to the urgent nature of the Regulation, public consultation has not been undertaken.

The Office of Best Practice Regulation in the Queensland Productivity Commission has advised that the Regulation is unlikely to result in significant adverse impacts, and no further analysis is required under the *Queensland Government Guide to Better Regulation*.