

Transport Infrastructure (State-controlled Roads) and Other Legislation Amendment Regulation 2020

Explanatory notes for SL 2020 No. 203

made under the

State Penalties Enforcement Act 1999
Transport Infrastructure Act 1994

General Outline

Short title

Transport Infrastructure (State-controlled Roads) and Other Legislation Amendment Regulation 2020

Authorising law

Section 165 of the *State Penalties Enforcement Act 1999*
Section 490 of the *Transport Infrastructure Act 1994*

Policy objectives and the reasons for them

The heavy vehicle freight industry plays a critical role in the movement of freight around Queensland. As the most decentralised of the mainland states, Queensland relies heavily on a safe, efficient and resilient transport network.

The amount of freight being moved in Queensland (as well as throughout Australia) is increasing; the nature of truck types is changing; and the road freight industry is undergoing changes.¹ The regulation of the road transport freight industry, and in particular heavy vehicles, is undergoing national scrutiny, due to the Australian Parliament's Senate Rural and Regional Affairs and Transport References Committee's inquiry into the importance of a viable, safe, sustainable and efficient road transport industry, the Productivity Commission's inquiry into national transport regulatory reform, and the National Transport Commission's review of the *Heavy Vehicle National Law*.

¹ National Transport Commission, *Who Moves What Where: Freight and Passenger Transport in Australia – Final Report*, August 2016

In spite of the changing context and amid technological developments, heavy vehicles are still driven by people, and people must take rest breaks to manage fatigue. Driver fatigue has long been established as a leading source of road trauma. It is for this reason that the Department of Transport and Main Roads (TMR) provides rest areas. As commercial trucks and fatigue-regulated heavy vehicles do not have access to the same types of rest opportunities as the general road user due to size limitations, route requirements and scheduling, rest areas are provided for heavy vehicles to assist with achieving road safety objectives.

In early 2020, the COVID-19 pandemic brought to the nation's attention the significance of the road freight industry, and the role of heavy vehicle truck drivers, with the industry vital to keeping critical supply chains open. As we unite and recover for Queensland jobs, the role of the heavy vehicle freight industry is a critical element in rebuilding Queensland's economy. The road freight industry requires the ability to transport freight in the most productive, efficient and cost-effective manner possible, essential for moving non-bulk and time-sensitive goods, a task in which this industry dominates. In this context, the reforms to the *Transport Infrastructure (State-controlled Roads) Regulation 2017* will assist with realising this goal as well as contributing to improved outcomes for all road users and the general public.

Collected data indicates that there were 32 fatigue-related fatalities on Queensland roads in 2018, increasing from 23 in 2017, and an increase of 2.6 per cent over the previous five-year average.² Further to this, there was a reported increase in fatalities involving heavy vehicles by 22.7 per cent over the previous five-year average.³ Most notably, the proportion of heavy freight vehicles involved in accidents per 10,000 motor vehicles on the register was 5.12 in 2018, but for light vehicles it was only 0.63,⁴ highlighting how heavy vehicles are disproportionately involved in road trauma. Due to the size of these vehicles, the severity of heavy vehicle crashes is greater. It is for this reason that fatigue management is a focus of the *Heavy Vehicle National Law (Queensland)* (HVNL (Qld)). These regulatory changes will assist with ensuring commercial truck and fatigue-regulated heavy vehicle drivers can access rest areas.

In addition, notwithstanding the economic cost of road trauma, there is a broader social impact, which is much harder to quantify and has not been studied in great detail.

Further to this, the scale of the heavy vehicle industry is a major part of Queensland's economic activity with 33,406 people employed in road freight transport or 45 per cent of the Queensland transport and logistics workforce, of which 15,129 are directly truck drivers.⁵ Given the size of the industry, these reforms will have a substantial impact upon Queensland's economy.

The modal share of road freight transport has been steadily increasing due to changing economic structures within Queensland and the inherent flexibility of road freight.⁶ As such, it is imperative that the rules about the use of rest areas are clarified to achieve their purpose of managing fatigue.

² Department of Transport and Main Roads (TMR), *2018 Summary Road Crash Report: Queensland Road Fatalities*, May 2018, page 10.

³ *Ibid*, pages 2 and 10.

⁴ *Ibid*, page 12.

⁵ TMR, *Queensland transport and logistics workforce: Current and future trends report*, November 2018, pages 7 and 58, based off the 2016 Census.

⁶ Queensland Transport Logistics Council, *A focus on future freight in Queensland from a global supply chain perspective: An examination of global supply chain trends, policy imperatives and freight infrastructure*, March 2015, page 21.

While light commercial vehicles make up a considerably higher proportion of the vehicle fleet, commercial trucks and fatigue-regulated heavy vehicles travel considerably more kilometres. In 2018, commercial trucks and fatigue-regulated trucks travelled 4,458 million kilometres in Queensland, averaging 84.1 million kilometres for articulated trucks and 23.6 million kilometres for rigid trucks.⁷

Currently, the *Transport Infrastructure (State-controlled Roads) Regulation 2017* does not provide clear guidelines around rest area use, particularly the use of heavy vehicle rest areas. General road users have been confused about rest area use and camping on and near state-controlled roads (SCR).

This has been exacerbated by the interaction of Part 3 of the *Transport Infrastructure (State-controlled Roads) Regulation 2017* and, pursuant to section 50 of the *Transport Infrastructure Act 1994* (TIA), the Ancillary Works and Encroachment Notice – 2019 (the Notice), which provides guidelines on camping on the SCR network. This confusion has created issues for heavy vehicle truck drivers meeting their legislated fatigue management obligations in a safe place that caters for their vehicles. Recreational users have been occupying space at rest areas dedicated to heavy vehicles or overstaying in rest areas or on the SCR network.

Demonstrating this, over the past number of years, there has been an increasing number of problems and complaints in and around:

- the use of heavy vehicle rest areas by recreational vehicles preventing heavy vehicle drivers accessing the facilities for legislated fatigue management purposes;
- overstaying by recreational vehicles in general vehicle rest areas; and
- unlawful camping in and out of rest areas for extended periods.

The purpose of the amendments is to:

1. ensure heavy vehicle truck drivers can meet their fatigue management obligations;
2. clarify that rest opportunities on the SCR are for fatigue management purposes; and
3. clarify the conditions under which camping is permitted on the SCR network.

The policy objectives are to clarify the use of rest areas on the SCR network and the conditions under which camping within the SCR corridor is permitted. This ensures road users are aware that rest stop opportunities are for fatigue management purposes and heavy vehicle rest areas are for the sole use of drivers of commercial trucks and fatigue-regulated heavy vehicles, and accompanying pilot or escort vehicles. Additionally, the conditions under which camping is permitted clarifies that it is for fatigue management purposes only and not extended accommodation.

Achievement of policy objectives

The *Transport Infrastructure (State-controlled Roads) and Other Legislation Amendment Regulation 2020* (Amendment Regulation) replaces Part 3 of the *Transport Infrastructure (State-controlled Roads) Regulation 2017* in order to clarify the use of rest areas by removing any doubt that rest areas are intended for fatigue management use and not for general camping.

⁷ Australian Bureau of Statistics, *Survey of Motor Vehicle Use, Australia, 12 months ended 30 June 2018*, Catalogue No. 9208.0.

Ensuring heavy vehicle rest areas are for the sole use of commercial truck drivers and fatigue-regulated heavy vehicle drivers, and not for recreational vehicles, will be achieved by:

- clarifying that in rest areas, heavy vehicle drivers are those who drive a commercial truck or those who must take legislated fatigue management breaks;
- specifying time limits in rest areas for general road users;
- classifying rest areas as part of the road, enabling improved signage under the *Transport Operations (Road Use Management—Road Rules) Regulation 2009* and how rest areas may be used; and
- specifying camping is prohibited on SCRs except for fatigue management and under certain conditions.

In order to manage rest areas and camping, some actions and behaviours need to be regulated in order to provide public safety, protect the rights of those using rest areas, and to ensure adequate amenity for the public.

The Amendment Regulation addresses these issues by including some offence provisions as a deterrent to behaviour that could interfere with rest area and camping management, cause damage to property, affect other persons' enjoyment of the facilities and area and threaten the public's safety. For example, restrictions apply to the use of heavy vehicle rest areas, permitting only commercial truck drivers and fatigue-regulated heavy vehicle drivers, as defined by the HVNL (Qld), along with their escort and pilot vehicles, to use them.

The Amendment Regulation also introduces offence provisions for rest areas where penalty infringement notices may be applied where a person has not complied with the requirements for rest area use. Offence provisions are also provided in relation to camping on the SCR network. The penalty infringement notice amounts for these offences align with the existing camping offence provisions. These provisions act as a deterrent to behaviour that could interfere with rest area management and the use of the SCR network in the case of camping outside of a rest area. The offence provisions for rest areas and camping will operate in conjunction with non-regulatory measures such as providing information, education of uses, and collaboration with business and community groups.

The Amendment Regulation also makes amendments to the *State Penalties Enforcement Regulation 2014*, to update references to the *Transport Infrastructure (State-controlled Roads) Regulation 2017* and section numbers, in order to allow for penalty infringement notices to apply to rest area and camping offences.

The listing of offences in the *State Penalties Enforcement Regulation 2014*, under the Amendment Regulation as infringement notice offences supports effective enforcement by allowing enforcement action to be taken through the use of infringement notice fines by authorised officers. This approach is more efficient and incurs significantly lower cost (for both the State and the offender), than having the matter dealt with by a court.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the policy objectives of the authorising laws. Specifically, it is consistent with the objectives of TIA, which provides for the safe and efficient management of the SCR network. This includes influence over the total road network in a way that contributes to overall transport efficiency, taking into account the need to provide adequate levels of safety and community access to the road network (section 2(2)(b)(ii–iii)). Rest areas are provided to help drivers manage fatigue, which is one of the “fatal five” contributors to road trauma.

The Amendment Regulation allows for effective management of rest areas and camping on the SCR network to achieve the object of TIA and is consistent with regulation-making powers under TIA as camping is a matter for which regulations may be made (section 490(3) and schedule 1).

The Amendment Regulation makes amendments to the *State Penalties Enforcement Regulation 2014* to provide for the introduction of infringement notice offences and penalties for rest area and camping offences. This contributes to achieving the objectives of the *State Penalties Enforcement Act 1999* and is consistent with the regulation-making power under the TIA.

Inconsistency with policy objectives of other legislation

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

Benefits and costs of implementation

The cost to implement the Amendment Regulation will be funded within TMR’s existing budget allocation.

Rest areas are a matter of national significance and their provision and use has been raised as part of the Senate Inquiry into the importance of a viable, safe, sustainable and efficient road transport industry. The provision and use of rest areas are key amenities that assist commercial truck and fatigue-regulated heavy vehicle truck drivers manage their fatigue.

As detailed above, driving while fatigued is a contributing factor in road trauma. Therefore, a more effective regulatory regime for the use of rest areas will benefit all road users by ensuring that rest areas are used for their intended purpose of contributing to road safety by way of fatigue management. Likewise, the regulatory regime for camping on the SCR network will benefit the travelling public, local residents and business by ensuring that the road corridor is not misused by long-term camping.

The road freight and heavy vehicle industry will benefit from the amendments reducing the impact of heavy vehicles not being able to use heavy vehicle rest areas when fatigued. Clarifying that rest stop opportunities are for fatigue management purposes will protect the safety and efficiency of the heavy vehicle transport industry while also encouraging fair use of rest areas for all users’ safety and amenity.

Consistency with fundamental legislative principles

The Amendment Regulation is generally consistent with the fundamental legislative principles outlined in section 4 of the *Legislative Standards Act 1992*. Careful examination was undertaken during drafting of the Amendment Regulation and to remove doubt the following matters are discussed to articulate how any possible issues are justifiable.

Signs to regulate use of rest areas – consistent with the principle of appropriateness of delegation of administrative power (section 4(3)(c) Legislative Standards Act 1992)

The Amendment Regulation allows for the use of signs to regulate the use of rest areas in order to provide for public safety and the rights of people using rest areas. The provisions to allow restrictions to be imposed by signs might be considered to breach fundamental legislative principles relating to delegation of power only in appropriate cases and to appropriate persons.

However, the power to use signs for these purposes is considered appropriate and necessary because:

- it ensures that information about requirements is conveyed fully and directly to the public;
- it is consistent with contemporary practice and public expectations for the use of rest areas; and
- the directness and convenience of using these signs to achieve operational management objectives and encourage voluntary compliance ensures greater efficiency in the use of limited staff time and resources.

The use of regulatory signs in designated rest areas is managed through signage guidelines and standards (*Queensland Manual of Uniform Traffic Control Devices*) to ensure consistency.

Right to be heard and procedural fairness – consistent with the principles of natural justice (section 4(3)(b) Legislative Standards Act 1992)

The application of the Amendment Regulation considers the 'right to be heard' and 'procedural fairness' with all authorised persons trained to consider the particular situation, including any mitigating circumstances, before deciding whether to take any action, such as issue a direction or proceed with infringement action.

Further, if an authorised officer determines as a last resort to issue an infringement notice, the alleged offender has a right to have the matter determined by a court.

As part of the implementation of the Amendment Regulation's provisions, informative communication (education and engagement activities) would occur between the authorised officer and the person who may be incorrectly using a heavy vehicle rest area, general vehicle rest area or camping outside a rest area on the SCR network. This approach affords the person who may be incorrectly using a heavy vehicle rest area, general vehicle rest area or camping on the SCR network every opportunity to comply with the authorised officer's directions over a reasonable period of time, before an infringement notice is issued.

There may be other situations where a direct infringement notice may be issued depending on the severity of the situation, for example, if a situation endangers public safety with the high likelihood of personal injury or damage to property. For clarity, however, the underlying premise of the application of the Amendment Regulation is to educate and engage with persons who may be breaching the provisions to direct and educate them on how to comply with the legislative requirements.

The Amendment Regulation brings clarity and transparency to regulation surrounding rest areas and camping on the SCR network, which supports voluntary compliance with the legislation.

Consultation

The Amendment Regulation provides for the clarification of existing policy. As the amendments to the *Transport Infrastructure (State-controlled Roads) Regulation 2017* will benefit the road freight industry, formal consultation with industry while drafting has not been undertaken. This is because the new infringement notice offences will be less than if the offence were prosecuted under section 50 of TIA.

The Local Government Association of Queensland and the Queensland Trucking Association generally expressed support for the legislative amendments and did not raise any concerns. In addition, caravanning and recreational vehicle industry groups have made public statements expressing the need to allow heavy vehicles to use rest areas.

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.