

# Transport Legislation Amendment Regulation (No. 2) 2021

Explanatory notes for SL 2021 No. 157

made under the

*Transport Operations (Marine Safety) Act 1994*

*Transport Operations (Road Use Management) Act 1995*

## General Outline

### Short title

*Transport Legislation Amendment Regulation (No. 2) 2021*

### Authorising law

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

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

### Policy objectives and the reasons for them

The policy objectives of the *Transport Legislation Amendment Regulation (No. 2) 2021* (Amendment Regulation) are to:

- amend the *Transport Operations (Marine Safety) Regulation 2016* (Marine Safety Regulation) to ensure that the established pilot boarding grounds in North Queensland no longer fall within compulsory pilotage areas;
- amend the *Transport Operations (Road Use Management—Vehicle Standards and Safety) Regulation 2021* (Vehicle Standards Regulation) to provide that the term of a certificate of inspection (COI) for all COI vehicles is 12 months (with the exception of heavy primary production vehicles);
- amend the Vehicle Standards Regulation to provide that an approved examiner may approve an inspection certificate for particular COI vehicles currently required to be inspected by a Department of Transport and Main Roads' (TMR) Authorised Officer, such as a transport inspector;
- make a small number of minor clarifications in the Vehicle Standards Regulation;
- amend the *Transport Operations (Road Use Management—Accreditation and Other Provisions) Regulation 2015* (Accreditation Regulation) to remove the requirement for assessment and workplace training qualifications for an accredited rider trainer;

- amend the *Traffic Regulation 1962* (Traffic Regulation) to provide that the chief executive can sign a certificate stating that a document is a copy of a part of the Traffic Camera Coding Manual; and
- amend the *Transport Operations (Road Use Management—Driver Licensing) Regulation 2021* (Driver Licensing Regulation) to make a consequential amendment to reference certain sections of the TORUM Act following the commencement of the relevant provisions in the *Transport Legislation (Road Safety and Other Matters) Amendment Act 2019*.

## Achievement of policy objectives

### Compulsory pilotage areas

Under the Marine Safety Act, a pilot is a licensed person who has the conduct of a ship when onboard, even though they do not belong to the ship. Pilots possess local knowledge of the particular waterway in which they operate, such as its depth, currents and hazards. They have the expertise to manoeuvre ships through dangerous or congested waters, such as harbours or river mouths. It is an offence for a person to navigate certain ships in a compulsory pilotage area unless the person uses the services of a pilot.

Pilot boarding grounds are locations where pilots can safely board ships requiring their services. Pilot boarding ground locations are determined based on safety factors such as the particular marine environment and the size of the ship being boarded. For example, the pilot boarding ground for a large ship may be located further out to sea, whereas a pilot boarding ground for a small tug may require more sheltered waters to board safely.

Currently, there are a number of pilot boarding grounds located within compulsory pilotage areas, as described in schedule 3 of the Marine Safety Regulation. This may require a ship's Master to contravene the requirements of the Marine Safety Act, because the ship must enter a compulsory pilotage area to get to the pilot boarding area to allow the pilot to board.

The Amendment Regulation amends the following compulsory pilotage areas to ensure that the established pilot boarding grounds no longer fall within those areas:

- Gladstone pilotage area;
- Abbot Point pilotage area;
- Townsville pilotage area;
- Lucinda pilotage area;
- Weipa pilotage area;
- Amrun pilotage area; and
- Karumba pilotage area.

### Certificate of inspection currency (public passenger vehicles)

COI vehicles are vehicles which present a higher risk if not properly maintained. This includes, for example, heavy vehicles, licensed tow trucks, and vehicles that provide a public passenger service. These COI vehicles are required to have programmed safety inspections to ensure the vehicle meets minimum vehicle safety standards.

In relation to public passenger vehicles, the Vehicle Standards Regulation currently provides that personalised transport vehicles (taxis, limousines and booked hire vehicles) require an inspection every 12 months, compared to other public passenger vehicles (for example, buses) which require an inspection every six months.

To align the remaining inspection requirements, the Amendment Regulation amends the Vehicle Standards Regulation to provide that the inspection requirement, for all COI vehicles, including all public passenger vehicles, is 12 months (with the exception of heavy primary production vehicles, where the COI will remain current for 2 years).

#### Inspections for certain heavy vehicles garaged in exempt areas

Registered COI vehicles require periodic inspections to ensure they meet minimum safety standards. A COI may be issued by a TMR Authorised Officer for any COI vehicle. However, TMR policy is to outsource inspections for low to medium risk vehicles to a private sector approved examiner at an approved inspection station. Private sector approved examiners are restricted from inspecting registered vehicles that are classified as high risk, which includes heavy passenger transport vehicles, trucks over 16 tonne and trailers over 10 tonne.

An amendment to the Vehicle Standards Regulation will extend the vehicles that an approved examiner is able to inspect to include any registered heavy vehicle, regardless of mass, if the vehicle's garage address is in an exempt area (which are particular regional areas listed in the Vehicle Standards Regulation). Vehicles that are only used in exempt areas are not required to have a COI, but if a vehicle is going to be used outside an exempt area then a COI is required. The amendment is intended to reduce the distance that heavy vehicles may need to be taken and reduce the service delivery burden on TMR, as an approved inspection station will often be more accessible than a TMR inspection centre.

#### Minor clarifications in the Vehicle Standards Regulation

The exempt areas, as listed in schedule 2, item 1 of the Vehicle Standards Regulation, have been amended to reflect that both the Torres and Torres Strait Island local government areas are exempt areas (previously only the Torres local government area was listed as an exempt area).

In addition, two minor clarifications were made to the drafting of sections 67 and 111 the Vehicle Standards Regulation.

#### Accredited rider trainer assessment and workplace training qualifications

The Q-Ride scheme provides the main avenue for obtaining a motorcycle licence in Queensland. Q-Ride motorcycle training and assessment is provided by registered service providers who employ, or who are, accredited rider trainers.

The assessment and workplace training qualifications were introduced as a requirement for rider trainer accreditation when the Q-Ride scheme commenced in 2001. In 2016, a standardised training and assessment program for Q-Ride (the Q-Ride program) was introduced as part of a broad range of reforms to the motorcycle licensing system in Queensland. The Q-Ride program prescribes the training and assessment content, method of delivery, and what and how a Q-Ride accredited rider trainer must assess to determine a learner rider's competency. This now covers many of the same elements as the assessment and workplace training courses.

The Amendment Regulation amends section 34 of the Accreditation Regulation to remove the obsolete requirement for an accredited rider trainer to successfully complete an approved training course in assessment and workplace training.

Certificate stating that a document is a copy of a part of the Traffic Camera Coding Manual

In July 2021, the *Transport Legislation (Distracted Driver and Other Matters) Amendment Regulation 2021* was made to facilitate camera enforcement of mobile phone and driver-related seatbelt offences.

The introduction of camera enforcement of mobile phone and driver-related seatbelt offences requires a number of elements to be proven to allow for successful prosecution, this includes that information contained in the data block on an image is consistent with what appears in the Traffic Camera Coding Manual (the TCCM).

The Traffic Regulation provides that, in a criminal proceeding, a certificate purporting to be signed by the Commissioner of the Queensland Police Service stating a document is a copy of a part of the TCCM is evidence of that fact. However, as TMR will be involved in the prosecution of the new camera detected mobile phone and seatbelt offences, an amendment provides for the chief executive to also be able to issue certificates under section 212(2) of the Traffic Regulation. However, the chief executive (or delegate) will only sign certificates for camera detected mobile phone and seatbelt offences, while the Commissioner (or delegate) will continue signing certificates for all other matters in the TCCM.

Consequential amendment to the *Transport Operations (Road Use Management—Driver Licensing) Regulation 2021* (Driver Licensing Regulation)

Section 390 of the Driver Licensing Regulation references provisions of the TORUM Act which relate to the fees payable in schedule 7 of the Driver Licensing Regulation.

From 10 September 2021, following commencement of the *Transport Legislation (Road Safety) Act 2019*, the following provisions of TORUM Act provide the power to prescribe the following fees in a regulation:

- Section 91B of the TORUM Act provides that a regulation may prescribe fees payable for a brief intervention education program for those convicted of a drink driving offence.
- Section 91G of TORUM Act provides that an application to be exempted from the requirement to undertake a repeat offender drink driving education program must be accompanied by the fee prescribed by regulation.

As these fees were included in the Driver Licensing Regulation on 10 September 2021, the Amendment Regulation will amend section 390 of the Driver Licensing Regulation to include reference to section 91B and 91G of the TORUM Act.

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

The Amendment Regulation is consistent with the objects of:

- the Marine Safety Act, with the objective of regulating the maritime industry to ensure marine safety; and
- TORUM Act, with the objective to improve road safety.

## **Inconsistency with policy objectives of other legislation**

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

## **Benefits and costs of implementation**

The benefits of making the Amendment Regulation are:

- ensuring that a ship's master can comply with their requirements relating to pilot boarding grounds;
- simplifying vehicle inspection requirements by providing for consistent COI currency for all public passenger vehicles;
- assisting those in remote areas of Queensland by providing that vehicles that are garaged in exempt areas can be inspected by approved examiners;
- simplifying the legislation by removing an obsolete assessment and workplace training requirement for accredited rider trainers; and
- assisting court efficiency by providing that the chief executive can sign evidentiary certificates for new mobile phone and seatbelt cameras.

There are no costs associated with the implementation of the amendments.

## **Consistency with fundamental legislative principles**

The Amendment Regulation is generally consistent with the fundamental legislative principles.

*Traffic Camera Coding Manual – evidentiary certificate – reverse onus of proof (section 4(3)(d) Legislative Standards Act 1992)*

The amendment to the Traffic Regulation, which provides that the chief executive can sign a certificate about a particular matter and that certificate is evidence that a document is a copy of a part of the TCCM, potentially infringes on the fundamental legislative principle that legislation should not reverse the onus of proof in criminal proceedings without adequate justification.

The amendment provides for the chief executive to sign a certificate under section 212(2) of the Traffic Regulation. The Commissioner of the Queensland Police Service is already empowered to issue certificates under section 212 but, as enforcement of camera detected mobile phone and seatbelt offences will be the responsibility of TMR, it is necessary to extend this power to the chief executive.

Evidentiary certificates are commonly used for matters that are administrative, factual in nature, non-contentious and unlikely to be disputed. This supports the efficiency of court processes by ensuring these matters can be resolved quickly and cost-efficiently, allowing the court to focus on the substantive matters required to be established by the prosecution.

Although evidentiary certificates reduce the need for the prosecution to call witnesses about the matters contained in the certificates in the first instance, the use of these certificates does not prevent a defendant challenging the information stated in the certificates.

Therefore, it is considered appropriate to provide that a certificate, signed by the chief executive, is evidence that a document is a copy of a part of the TCCM.

## Consultation

In relation to the amendments to the Vehicle Standards Regulation, TMR identified industry stakeholders likely to be impacted by the implementation of the proposed changes to inspection frequencies and remote area inspections of heavy trucks and heavy trailers. These stakeholders included proprietors of Approved Inspection Stations and holders of operator accreditation. Each of these stakeholders was contacted directly, inviting them to participate in an online survey hosted on the Queensland Government *Get Involved* website.

A combined total of 937 people participated in the survey. Respondents to the survey were generally positive towards the proposed changes. However, a small number of respondents from the approved inspection stations sector expressed some reservations about the proposed change to inspection frequencies, which may impact on the reduced number of inspections that are carried out. While there might be a reduction in the number of inspections undertaken at Approved Inspection Stations, this is expected to be balanced in consideration of the reduction in burden on public passenger vehicle operators.

In addition to the online survey, TMR also held face-to-face meetings with the peak industry bodies representing the bus industry. Both the Queensland School Bus Alliance and the Queensland Bus Industry Council are strongly supportive of the proposed changes.

The proposal, relating to the removal of assessment and workplace training qualifications, was originally raised by industry, due to the practical challenges with the continuity of the current requirement for additional training and assessment qualifications.

TMR consulted Q-Ride registered service providers at the Q-Ride Industry Forum in 2019 and Q-Ride Virtual Industry Forum hosted in November 2020. In addition, Q-ride registered service providers who were not in attendance were consulted by email on the proposal. TMR has received no objections to the proposal.

In relation to the amendments to the compulsory pilot grounds no external consultation was undertaken because the amendment is about ensuring that the pilot requirements operate as intended.

In relation to the amendments relating to the signing of a certificate stating that a document is a copy of a part of the TCCM and the consequential amendment to the Driver Licensing Regulation, the amendments are a consequence of other legislative amendments and, as such, no additional consultation was undertaken in relation to these amendments.

The Office of Best Practice Regulation was consulted on the amendments in relation to the accredited rider trainer assessment and workplace training qualifications, and considers the proposal to be excluded from further regulatory impact analysis on the basis that it is intended to reduce the burden of regulation, and it is reasonably clear there are no significant adverse impacts.

In accordance with the *Queensland Government Guide to Better Regulation* (the Guide), TMR applied a self-assessable exclusion from undertaking further regulatory impact analysis on the following amendments based on Category G – Regulatory proposals that are of a machinery nature:

- compulsory pilotage areas;
- COI currency (Public Passenger Vehicles);
- Approved examiner inspections for vehicles garaged in exempt areas; and
- certificate stating that a document is a copy of a part of the Traffic Camera Coding Manual.

In accordance with the Guide, TMR applied a self-assessable exclusion from undertaking further regulatory impact analysis for the consequential amendment to the Driver Licensing Regulation, based on category A – Regulatory proposals that make consequential amendments.

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