

Transport and Other Legislation Amendment Regulation 2022

Explanatory notes for SL 2022 No. 3

made under the

Heavy Vehicle National Law Act 2012

Photo Identification Card Act 2008

State Penalties Enforcement Act 1999

Tow Truck Act 1973

Transport Infrastructure Act 1994

Transport Operations (Marine Safety) Act 1994

Transport Operations (Passenger Transport) Act 1994

Transport Operations (Road Use Management) Act 1995

Transport Planning and Coordination Act 1994

General Outline

Short title

Transport and Other Legislation Amendment Regulation 2022

Authorising law

Section 43 of the *Heavy Vehicle National Law 2012*

Section 49 of the *Photo Identification Card Act 2008*

Section 165 of the *State Penalties Enforcement Act 1999*

Section 43 of the *Tow Truck Act 1973*

Section 490 of the *Transport Infrastructure Act 1994*

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

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

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

Section 38 of the *Transport Planning and Coordination Act 1994*

Policy objectives and the reasons for them

Australian Road Rules 13th Package amendments

The Australian Road Rules is national model legislation, designed to provide uniform road rules as the basis of the road rules for each Australian state and territory. The Australian Road Rules

requires ongoing review to ensure it remains contemporary. On 22 November 2019, the former Transport and Infrastructure Council approved the 13th package of Australian Road Rules amendments (the 13th package).

A policy objective of the *Transport and Other Legislation Amendment Regulation 2022* (Amendment Regulation) is to adopt a number of amendments from the 13th package to enhance road safety, accommodate electric-powered, vehicle-only parking for charging, and provide greater consistency with the road rules in other jurisdictions.

Motorbike helmet standards

The *Transport Operations (Road Use Management—Road Rules) Regulation 2009* (Queensland Road Rules) requires a person riding a motorbike, quad bike or driving a utility off-road vehicle, to wear an *approved motorbike helmet*. The definition of *approved motorbike helmet* calls up various standards, including from the United Nations Economic Commission for Europe (UN ECE). A policy objective of the Amendment Regulation is to ensure that helmets that are compliant with the most recent UN ECE 22 standard may be used in Queensland. This amendment supports the use of more modern, safer helmets.

Access to information – management of fines

A policy objective of the Amendment Regulation is to support the adoption by the Queensland Government of an integrated approach to issuing and administering infringement notices under the *State Penalties Enforcement Act 1999*. The Amendment Regulation will ensure that officers involved in the management of fines under the new integrated approach can access information contained in the Department of Transport and Main Roads' (TMR) databases. This will ensure, for example, that contact can be made with customers by using their most recent contact details.

Achievement of policy objectives

13th Package amendments

U-turns at particular crossings

Section 40 of the Queensland Road Rules prohibits U-turns at an intersection with traffic lights unless there is a U-turn permitted sign. An intersection does not include where a road and a road-related area meet, such as where a driveway enters a road.

The Amendment Regulation amends the Queensland Road Rules to provide that a driver must not make a U-turn at a place with traffic lights where a road and road-related area intersect unless there is a U-turn permitted sign at the place. For example, a person will not be able to do a U-turn at traffic lights where a road and a private driveway meet, unless there is a sign permitting U-turns. If a person breaches this new U-turn requirement, they will commit an offence with a maximum penalty of \$2,757 (20 penalty units). The *State Penalties Enforcement Regulation 2014* (SPE Regulation) is also being amended to provide for a penalty infringement notice fine of \$110 (4/5 of a penalty unit). In addition, a person who commits the offence will have two demerit points recorded on their traffic history as provided for under the *Transport Operations (Road Use Management—Driver Licensing) Regulation 2021* (Driver Licensing Regulation).

To increase safety at crossings the Amendment Regulation also amends the Queensland Road Rules to provide that a driver must not make a U-turn at a children's crossing, level crossing, marked foot crossing or pedestrian crossing, with or without traffic lights, unless there is a U-turn permitted sign. If a person breaches this new U-turn requirement, they will commit an offence with a maximum penalty of \$2,757 (20 penalty units). The SPE Regulation is also being amended to provide for a penalty infringement notice fine of \$110 (4/5 of a penalty unit). In addition, a person who commits the offence will have two demerit points recorded on their traffic history as provided for under the Driver Licensing Regulation.

Signalling by motorcycle riders

Section 44 of the Queensland Road Rules provides that the provisions of the Queensland Road Rules relating to change of direction signals, do not apply to the rider of a motorbike while lane filtering. However, the Queensland Road Rules is silent in situations where the rider of a motorbike needs to change position within their lane in order to avoid a hazard or reduce the risk of a crash. Currently, a motorbike rider must signal when repositioning in a lane because there will be instances where the rider of a motorbike may ride alongside more than one other rider if the rider is overtaking the other riders.

The Amendment Regulation amends the Queensland Road Rules to clarify that the rider of a motorbike is not required to give a change of direction signal while repositioning the motorbike within the same lane, in order to avoid a hazard or reduce the risk of a crash. This amendment does not change any obligations on other drivers or riders to signal when repositioning within a lane.

Bus only lanes

Under section 154 of the Queensland Road Rules a driver must not drive in a bus lane, unless the driver is driving a bus, bicycle or taxi; or is permitted to drive in the bus lane because of an exception provided in section 158 of the Queensland Road Rules. Queensland also has busways which are designed primarily for passenger transport services, with access tightly restricted under section 336 of the *Transport Infrastructure Act 1994*. Circumstances where access to a busway is permitted, do not include all of the circumstances in which a driver can use a bus lane.

A small number of bus lanes currently provide direct access to busways, the use of which may result in a taxi or bicycle rider legally entering a bus lane and then inadvertently entering a busway. This may cause a person to make a dangerous manoeuvre to avoid entering a busway (for example, an unsafe lane change). Therefore, there are some circumstances where the adoption of bus only lanes would be appropriate to ensure the safe movement of vehicles.

The Amendment Regulation amends the Queensland Road Rules to provide for bus only lanes. Bus only lanes are intended for the use of vehicles that can use a busway, primarily buses involved in passenger transport. Bus only lanes are identified through the use of bus only lane signs or road markings. The Queensland Road Rules will continue to also provide for bus lanes.

The Amendment Regulation provides that a driver cannot drive in a bus only lane unless they are allowed to drive on a busway under the *Transport Infrastructure Act 1994*, or if they are permitted to drive in a bus only lane under section 154A(2) of the Queensland Road Rules, such

as to avoid an obstruction. The Amendment Regulation also provides that a driver cannot drive across a bus only lane other than in accordance with section 154A(4) of the Queensland Road Rules, such as to enter or leave a road. In addition, the Amendment Regulation provides that a driver turning at an intersection immediately after a bus lane ends must give way to any vehicles driving in a bus only lane. If a person breaches these bus only lane requirements, they will commit an offence with a maximum penalty of \$2,757 (20 penalty units). The SPE Regulation is also being amended to provide for a penalty infringement notice fine of \$137 (one penalty unit).

In addition, the amendments provide that a driver must not stop in a bus only lane unless the driver of a bus is dropping off or picking up passengers and is permitted to drive in the bus only lane. If a person breaches this requirement, they will commit an offence with a maximum penalty of \$2,757 (20 penalty units). The SPE Regulation is also being amended to provide for a penalty infringement notice fine of \$55 (2/5 of a penalty unit).

Areas for the charging of electric-powered vehicles

The Amendment Regulation amends the Queensland Road Rules to allow for the creation of areas for the exclusive purpose of charging electric-powered vehicles. This provides for the efficient use of electric-powered vehicle charging infrastructure.

To achieve this policy objective, the Queensland Road Rules is being amended to include a new offence that a driver must not stop in a parking area for the charging of electric-powered vehicles other than for charging purposes. The Amendment Regulation provides for a parking area for the charging of electric-powered vehicles to be designated by signage and road markings. If a person breaches this requirement, they will commit an offence with a maximum penalty of \$2,757 (20 penalty units). The SPE Regulation is also being amended to provide for a penalty infringement notice fine of \$55 (2/5 of a penalty unit).

Funeral processions

Section 125 of the *Traffic Regulation 1962* (Traffic Regulation) contains an offence related to interrupting a funeral procession with a vehicle. For consistency with the approach taken in the Australian Road Rules, the Amendment Regulation will remove the funeral procession offence from the Traffic Regulation and insert a requirement into the Queensland Road Rules. The new offence provides that a driver must not, without reasonable excuse, interfere with or interrupt the free passage along any length of road of a funeral procession, or a vehicle or person apparently forming part of the procession. If a person breaches this requirement, they will commit an offence with a maximum penalty of \$2,757 (20 penalty units). The SPE Regulation is also being amended to provide for a penalty infringement notice fine of \$55 (2/5 of a penalty unit).

In addition, section 125 of the Traffic Regulation also provides the power for a superintendent to divert a funeral procession, by publishing a notice in a local newspaper and an offence for non-compliance with the notice. However, the power to divert a funeral procession is considered outdated and no longer used so the Traffic Regulation is being amended to remove this power and related offence.

Motorbike helmet standards

Section 270 of the Queensland Road Rules requires a person riding a motorbike, quad bike or driving a utility off-road vehicle, to wear an *approved motorbike helmet*, as defined in the section. The definition calls up various standards from Australia, New Zealand and the UN ECE. The version of the UN ECE standard currently referenced in section 270 is 22.05. An updated version of the standard, UN ECE 22.06, was released on 1 January 2021. UN ECE 22.06 includes new testing criteria, requirements for new features such as lighting and audio equipment, and also a new marking system aimed at preventing counterfeits.

Many motorbike helmets for sale in Australia are built to meet European standards. The Amendment Regulation ensures that helmets that are compliant with UN ECE 22.06 may be used in Queensland. The Amendment Regulation achieves this outcome by no longer identifying UN ECE 22 by reference to particular version of the standard. Rather, section 5(1)(c) of the Queensland Road Rules ensures that the reference to UN ECE 22 in section 270 means the standard in force from time to time. This approach also caters for the possibility of subsequent versions of UN ECE 22 being released over time. Section 5(2) of the Queensland Road Rules ensures that a UN ECE 22.05-compliant helmet, that was manufactured when that version of the standard was in force, can continue to be used in Queensland.

Access to information – management of fines

Currently, a range of penalty infringement notices are issued by TMR and the Queensland Police Service (QPS). In addition, TMR undertakes various administrative functions in relation to those notices including, for example, recording them in the registration and licensing database, responding to customer inquiries and accepting payment of the fines.

To adopt a more integrated approach, from 1 February 2022, the issuing of infringement notices for camera detected offences (for example, speeding and redlight offences) and for offences arising out of unpaid road tolls will be centralised within the Queensland Revenue Office in Queensland Treasury, as the department responsible for the administration of the *State Penalties Enforcement Act 1999*.

The Queensland Revenue Office will also assume responsibility for administering those infringement notices along with infringement notices that are issued manually by TMR and QPS officers and that are currently administered by TMR.

In order to efficiently undertake the roles of issuing and administering infringement notices, authorised persons will be required to have access to information contained in databases administered by TMR, primarily the vehicle registration and driver licensing database. This will ensure, for example, that contact can be made with customers using their most recent contact details.

The amendment to the *Transport Planning and Coordination Regulation 2017* ensures that authorised persons can access this information for the purpose of performing a function under the *State Penalties Enforcement Act 1999*. The amendment provides that a person will only be authorised if they are a member of a class of person who has involvement in the administration or enforcement of the *State Penalties Enforcement Act 1999*. They must also be a person or member of a class of persons who is authorised in writing by the chief executive to have direct access to a transport information database. A penalty provision has also been included to deter any misuse of information.

Consistency with policy objectives of authorising laws

The amendments to the Queensland Road Rules are consistent with the policy objective of the *Transport Operations (Road Use Management) Act 1995* to provide a scheme for managing the use of the State's roads that will improve road safety and the environmental impact of road use in ways that contribute to overall transport effectiveness and efficiency.

The remaining amendments are consistent with the policy objectives of the authorising laws.

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

Road users in Queensland will benefit from the adoption of nationally-agreed road rules amendments that enhance road safety and increase uniformity between the Queensland Road Rules and the road rules that apply in other Australian jurisdictions. In addition, drivers of electric-powered vehicles will benefit from the provision of areas which are for the exclusive purpose of charging electric-powered vehicles, because it provides for the efficient use of electric-powered vehicle charging infrastructure.

The costs of adopting the rules from the 13th package in Queensland, will be minimal and will be met from within existing resources.

Motorbike riders will benefit from being able to wear helmets which are being manufactured to UN ECE standard 22.06. This will help to ensure the best safety outcomes. New helmets are manufactured with new testing criteria, requirements for new features such as lighting and audio equipment and also a new marking system to prevent counterfeits. There are no costs associated with the amendment.

The benefit of the amendment to the *Transport Planning and Coordination Regulation 2017* is to facilitate the centralised management of infringement notices under the *State Penalties Enforcement Act 1999*. The costs associated with the amendment will be minimal and will be met from within existing resources.

Consistency with fundamental legislative principles

Legislation has sufficient regard to the rights and liberties of individuals (*Legislative Standards Act 1992* (LSA), section 4(2)(a))

New offence provisions

The penalty amounts for the new offences in the Queensland Road Rules being inserted by Part 2 and Part 5 of the Amendment Regulation related to U-turns, bus only lanes, parking areas for the charging of electric-powered vehicles, and funeral processions are considered appropriate and proportionate. The penalties are considered appropriate in light of the potential

consequences for road safety and for the efficient operation of the road network, and are consistent with other similar offences contained in the Queensland Road Rules.

Section 27 of the Amendment Regulation incorporates a new offence provision for a person who uses information from a transport information database for a purpose other than a purpose relating to performing a function under the *State Penalties Enforcement Act 1999* (new section 10B of the *Transport Planning and Coordination Regulation 2017*); or in contravention of a condition imposed by the chief executive in relation to the information. The offence provision is considered to be appropriate given that it is aimed at preventing the misuse of information that is likely to include personal information. The maximum penalty of 20 penalty units is considered to be appropriate and is consistent with the penalty for similar offence provisions in Part 10 of the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2021*.

Privacy considerations

Section 27 of the Amendment Regulation incorporates new provisions which allow the chief executive to disclose information contained in a transport information database to an authorised person. This information may include personal information such as name and address details and may, therefore, raise privacy considerations.

However, new section 10A(2) makes it clear that the disclosure of information is for the sole purpose of performing a function under the *State Penalties Enforcement Act 1999*. This means that the information can only be used in relation to the management of fines. Also, new section 10A(4) provides that the chief executive may provide the information on conditions the chief executive considers appropriate.

These protections are further enhanced by the creation of an offence provision in new section 10B which is aimed at preventing the misuse of any information that has been obtained from a transport information database.

As a result, the amendment has sufficient regard to an individual's privacy.

Legislation has sufficient regard to the institution of Parliament: Sub-delegation of power

Section 20 of the Amendment Regulation incorporates the UN ECE 22 standard by reference into section 270 of the Queensland Road Rules. This raises the fundamental legislative principle that subordinate legislation allows the sub-delegation of a power only in appropriate cases (sections 4(2)(b) and 4(5)(e) of the LSA).

UN ECE 22 contains details and technical specifications in relation to motorbike helmets and has been developed in consultation with relevant experts. This technical detail would not be appropriate or practical to include in the Queensland Road Rules and therefore reference to the UN ECE 22 is considered appropriate. Users of motorbike helmets in Queensland benefit from advances in helmet standards that are developed with the benefit of international expertise.

Consultation

The 13th package was developed by the National Transport Commission in collaboration with the Australian Road Rules Maintenance Advisory Group, which consists of representatives from the relevant road authority in each jurisdiction. The amendments were also subject to a public consultation process, before being approved by the former Transport and Infrastructure Council on 22 November 2019.

Following on from this national consultation process, Queensland specific stakeholders were also engaged. These stakeholders included the Local Government Association of Queensland, Royal Automobile Club of Queensland, Queensland Trucking Association, Taxi Council of Queensland, Limousine Action Group Queensland and Bicycle Queensland.

TMR will notify stakeholders and road users, including through social media activities and web updates, before the amendments to the Queensland Road Rules, the SPE Regulation, the Traffic Regulation and Driver Licensing Regulation commence on 4 February 2022.

In relation to the motorbike helmet standard amendment, consultation took place with the Queensland Motorcycle Council and Royal Automobile Club of Queensland. TMR will notify known motorbike helmet retailers of the change to helmet standards requirements.

No consultation was undertaken in relation to the amendment to the *Transport Planning and Coordination Regulation 2017* as the amendment only impacts on the internal operations of the public sector without any material impact on business or the community.

All parties consulted agree with the proposed legislative changes.

Regulatory impact analysis

The Office of Best Practice Regulation (OBPR) was consulted on the proposed changes to the Queensland Road Rules, the SPE Regulation, the Traffic Regulation, and the Driver Licensing Regulation. OBPR considers the proposed changes to be excluded from further regulatory impact analysis on the basis that they appear unlikely to result in significant adverse impacts.

In accordance with the *Queensland Government Guide to Better Regulation*, TMR applied a self-assessable exclusion from undertaking further regulatory impact analysis on the amendment to the *Transport Planning and Coordination Regulation 2017*. This was based on category C – Regulatory proposals for the internal management of the public sector.