

Transport and Other Legislation Amendment Regulation (No. 2) 2022

Explanatory notes for SL 2022 No. 41

made under the

Rail Safety National Law (Queensland) Act 2017

State Penalties Enforcement Act 1999

Transport Operations (Road Use Management) Act 1995

General Outline

Short title

Transport and Other Legislation Amendment Regulation (No. 2) 2022

Authorising laws

Section 63 of the *Rail Safety National Law (Queensland) Act 2017*

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

Improving road safety: Increasing penalties for high-risk driving offences

Road safety statistics highlight that in 2020 and 2021, there has been a tragic increase in road trauma on Queensland roads. Despite record investment in a wide range of road safety initiatives, the number of people losing their lives and being seriously injured on Queensland roads continues to have a tragic impact on our society. The number of lives lost on Queensland roads increased from 220 in 2019 to 278 in 2020. Data currently available from the Department of Transport and Main Roads' (TMR) Crash database indicates that for 2021, there were 274 fatalities.

Failing to properly wear a seatbelt, failing to obey red traffic lights and similar traffic light signals and speeding are major contributors to this persistently high-level of road trauma. From 1 January 2021 to 30 September 2021, there were 91 fatalities as a result of these high-risk behaviours.

Those who fail to properly wear a seatbelt place themselves and their passengers at risk and place a significant burden on the State's health care system. This behaviour can have devastating consequences. From 1 January 2021 to 30 September 2021, there were 27 fatalities, and from 1 January 2021 to 31 July 2021, there were 124 hospitalisations involving vehicle occupants not wearing a seatbelt. The TMR Road Crash database suggests that occupants not wearing a seatbelt are nine times more likely to be killed in a crash. TMR's annual Driver Attitudes and Behaviour Survey found that, over the past five years, between 5 per cent and 14 per cent of Queenslanders have driven on public roads without wearing a seatbelt.

Failing to obey a traffic light signal is a serious offence that has the potential to result in significant road trauma to vehicle occupants as well as other road users, including pedestrians and cyclists. From 1 January 2021 to 30 September 2021, there were 8 fatalities, and from 1 January 2021 to 31 July 2021, there were 228 hospitalisations involving drivers running red lights. TMR's 2021 Driver Attitudes and Behaviour Survey found that 22.5 per cent of motorists self-report as having previously disobeyed a red light.

Speeding is also a significant contributor to crashes. From 1 January 2021 to 30 September 2021, there were 56 fatalities, and from 1 January 2021 to 31 July 2021, there were 264 hospitalisations as a result of crashes involving speeding drivers or riders. Speeding is also a pervasive driver behaviour with more than one million infringements issued annually in Queensland. Speed surveys show that the majority of drivers that speed do so at lower levels. The relative risk of lower-level speeding is not as high as speeding by excessive amounts. However, due to the high volume of speeding at lower levels, the collective risk contributes to a high proportion of road trauma. Around half of all serious crashes involving speeding drivers or riders happen at less than 10 km/h above the speed limit.

A policy objective of the *Transport and Other Legislation Amendment Regulation (No. 2) 2022* (the Amendment Regulation) is to improve road safety by increasing penalties for the offences aimed at preventing these three high-risk driving behaviours. The penalty increases are designed to send a strong deterrent message to drivers who engage in high-risk offending and to encourage compliance. The penalty increases will be combined with a comprehensive communications campaign to create public awareness of the increase in penalties for seatbelt, traffic light and speeding offences.

The Amendment Regulation will also reinforce to the driving public that speeding at all levels is a high-risk decision and that there is no such thing as 'safe' speeding. The Amendment Regulation will change the lowest two speeding offence brackets from 1-12 km/h and 13-20 km/h to 1-10 km/h and 11-20 km/hr. This change addresses a current penalty discrepancy. That is, the same penalty is currently applied for speeding 11-12 km/h over the limit as speeding 1-5 km/h over the limit. This is despite the crash risk being more than double for 11-12 km/h over the limit. This change also aligns Queensland's speeding brackets to other jurisdictions.

Medical certificates for drivers aged 75 or older

Under section 253 of the *Transport Operations (Road Use Management—Driver Licensing) Regulation 2021* (the Driver Licensing Regulation), all Queensland licence holders aged 75 or older must carry and drive in accordance with a valid medical certificate issued within the previous 13 months.

These requirements recognise that medical conditions can become more prevalent with age, which may affect a person's ability to drive safely.

Section 15 of the *Transport Legislation (COVID-19 Emergency Response) Regulation 2020* (COVID Regulation) modifies the application of section 253. It provides that, during a defined *special measures period*, certain medical certificates are taken to be a valid medical certificate for the purposes of section 253 of the Driver Licensing Regulation. These are:

- a medical certificate that was valid on 29 January 2020 (which was the beginning of the COVID-19 period in Queensland) but had ceased to be valid before the commencement of the COVID Regulation on 10 April 2020; and
- a medical certificate that was valid at the commencement of the COVID Regulation but would cease to be valid during the *special measures period*.

The *special measures period* is defined in the COVID Regulation as starting on commencement of the regulation (10 April 2020) and ending six months after the day the COVID-19 emergency ends (as declared under the *Public Health Act 2005*).

Section 15 of the COVID Regulation also provides that the medical certificate requirements in section 253 of the Driver Licensing Regulation do not apply to a person who does not hold a medical certificate. This could apply where, for example, the person turned 75 after 10 April 2020 but, having regard to COVID-19, it would not be practical or reasonable for the person to obtain a certificate, or that attempting to get a certificate would risk spreading COVID-19 in the community.

The modification to section 253 of the Driver Licensing Regulation was introduced as a temporary measure to assist older licence holders to follow health advice and stay at home during lockdown periods to help stop the spread of COVID-19 in the community. TMR recognised that requiring older licence holders to obtain a medical certificate may have exposed potentially vulnerable drivers to unnecessary risk. The modified arrangements have allowed older drivers to continue to drive with an expired medical certificate. They have also meant that those who turned 75 during this period have not had to obtain a medical certificate.

While the medical certificate requirements for older drivers are a key element of Queensland's medical reporting requirements, the health risks from COVID-19 and the impact on the community of measures such as lockdowns were unprecedented and emerging at the time the COVID Regulation was made. The modified medical certificate requirements for older drivers were among a number of measures implemented to assist licence holders during this challenging time.

However, the impact of COVID-19 on the Queensland community and the level of public health risk has changed significantly since 2020. The rollout of the vaccine program has and will continue to lessen the health risks and community impacts. The availability of, and access to, medical services has also stabilised or increased with medical practices now offering additional services.

Given the high vaccination rates in the community and increased options to access medical services, the public health risk caused by COVID-19 no longer outweighs the road safety risk of continuing to allow medical certificates for older drivers to be valid under the modified arrangements. In some cases, it may have been over two years since a driver aged 75 or over has been medically assessed as being fit to drive. This is inconsistent with the operation and intent of section 253 of the Driver Licensing Regulation and poses road safety risks to older drivers and others sharing the road.

A policy objective of the Amendment Regulation is to support road safety by reinstating the medical certificate requirements for drivers aged 75 years and over as set out in section 253 of the Driver Licensing Regulation.

Devices used for preliminary breath tests under the Rail Safety National Law

Under the *Rail Safety National Law*, it is an offence for a rail safety worker to carry out rail safety work while under the influence of alcohol. A rail safety worker may therefore be required to submit to a preliminary breath test. A policy objective of the Amendment Regulation is to ensure that a device that complies with the most recent Australian Standard for breath alcohol testing devices can be used to perform a preliminary breath test.

Achievement of policy objectives

Improving road safety: Increasing penalties for high-risk driving offences

The Amendment Regulation amends the *State Penalties Enforcement Regulation 2014* (Penalties Regulation) to increase the penalty infringement fines outlined below from 1 July 2022. The value of the 2021-22 penalty unit is \$137.85, as prescribed in section 3 of the *Penalties and Sentences Regulation 2015*. That value will be subject to annual indexation from 1 July 2022. As the indexation rate is yet to be formally approved, the fines are expressed below as penalty units only.

Seatbelt Offences

The infringement notice fine for the following offences will be increased from three penalty units to seven and a half penalty units:

- a driver failing to properly wear a seatbelt;
- a passenger 16 years and over failing to properly wear a seatbelt;
- a driver failing to ensure a passenger properly wears a seatbelt.

The Driver Licensing Regulation is also being amended to:

- increase the number of demerit points for the seatbelt offences outlined above from three to four; and
- increase the number of additional demerit points from three to four where a driver commits one of the following seatbelt offences within 12 months of a previous such offence:
 - a driver failing to properly wear a seat belt;
 - a driver failing to ensure a passenger under 16 years properly wears a seatbelt.

Red light and similar traffic light offences

The infringement notice fines for the following categories of offences will be increased from three penalty units to four penalty units:

- failing to obey a red traffic light or arrow;
- failing to obey a yellow traffic light or arrow;
- failing to obey bus (B) lights;

- failing to obey tram (T) lights.

Speeding

The Penalties Regulation and the Driver Licensing Regulation are being amended to change the penalty intervals for speeding:

- from 1 – 12 km/h to 1 – 10 km/h; and
- from 13 – 20 km/h to 11 – 20 km/h

The infringement notice fines for speeding offences are being increased, as follows:

Offence		Fine in penalty units	
		From	To
Speeding	1-10 km/h	1 ^{1/3}	2
	11-20 km/h	2	3
	21-30 km/h	3 ^{1/3}	4 ^{1/2}
	31-40 km/h	4 ^{2/3}	7 ^{1/2}
	>40 km/h	9 ^{1/3}	11 ^{1/2}

Fine levels

The fine amounts mentioned above are for individuals. Penalties for seatbelt, red light and speeding offences detected by camera, where the offending vehicle is registered to a corporation, will continue to be set at five times the penalty for an individual, as provided for in section 165(4) of the *State Penalties Enforcement Act 1999* and the Penalties Regulation. However, a corporation can nominate the responsible driver, in which case a new infringement notice is issued to that driver and the penalty for an individual is applicable.

Medical certificates for drivers aged 75 or older

The Amendment Regulation omits Part 4 division 2 of the COVID Regulation. This will reinstate the requirement in section 253 of the Driver Licensing Regulation that licence holders aged 75 and over must carry and drive in accordance with a medical certificate issued within the past 13 months. The amendment will commence on 1 August 2022 to allow time for public education activities to be undertaken and affected drivers to obtain a medical certificate.

Devices used for preliminary breath tests under the Rail Safety National Law

Section 5 of the *Rail Safety National Law (Queensland) Regulation 2017* (the Rail Safety Regulation) currently prescribes a device that complies with AS 3547—1997 as the device that is approved for performing a preliminary breath test as required under the *Rail Safety National Law*.

An updated version of the standard, AS 3547—2019, was published on 28 June 2019. An amendment to section 5 ensures that a device that complies with this latest standard can be used for performing a preliminary breath test under the *Rail Safety National Law*. The Amendment Regulation achieves this outcome by no longer identifying AS 3547 by reference to a particular version of the standard. Rather, a new definition included in section 5 ensures that the reference to AS 3547 means the standard that is in force from time to time. This approach also caters for the possibility of subsequent versions of AS 3547 being released over time. AS 3547—1997 will continue in force until 28 June 2022.

Consistency with policy objectives of authorising laws

The increased infringement notice fines are consistent with the policy objectives outlined in section 4 of the *State Penalties Enforcement Act 1999*, including maintaining the integrity of fines as a viable punitive option for offenders (see section 4(a)).

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

Inconsistency with policy objectives of other legislation

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

Benefits and costs of implementation

Improving road safety: Increasing penalties for high-risk driving offences

Failing to properly wear a seatbelt, failing to obey red lights and similar traffic light signals and speeding are major contributors to serious injury resulting in fatalities and hospitalisations.

The data that has so far been analysed for 2021, reveals 707 serious casualties (fatalities and hospitalisations) resulting from road crashes involving seatbelt, speeding or red light offending. This equates to a cost to the community of almost \$1.3 billion. Every fatality as a result of a crash has a ripple effect that sees far reaching and enduring impacts on entire communities. Even in crashes with no fatalities, serious injuries can create life-long difficulties and a range of costs for individuals.

The benefit of implementing the amendments is to improve road safety outcomes by increasing penalties to deter the incidence of these high-risk driving behaviours.

There is a potential cost to road users of incurring increased fines – the highest of which is a fine in excess of \$1,000 for non-compliance with seatbelt requirements. The increase in demerit points for seatbelts offences from three to four also has a potential cost to road users. Learner and provisional drivers will reach their allowable demerit point limit for their first offence and will incur a licensing sanction. The number of additional points allocated for certain seatbelt offences committed within 12 months of a previous such seatbelt offence is also being increased from three to four. This means that a repeat offence would incur eight demerit points. For many licence holders this could result in a licence sanction.

However, these fines and sanctions can be avoided by road users complying with the requirements in the Queensland Road Rules about seatbelts, traffic light signals and speed limits. Further, if a person cannot afford to pay their fine immediately, there are options available through the State Penalties Enforcement Registry such as payment by regular instalments. Also, if a licence holder (other than a learner licence holder) reaches their allowable demerit point limit, they are given the option to choose a one-year good driving behaviour period. This enables the licence holder to continue to drive during this period, while they have a one demerit point limit.

A comprehensive communications campaign will raise public awareness about the increase in penalties before they commence on 1 July 2022. There will be a Government Approved Communications Campaign which will focus on an "Anywhere, Anytime" campaign. This campaign will highlight the increased penalties and raise awareness of increased camera/police presence and enforcement of the penalties and encourage road users to wear seatbelts, obey traffic lights and to drive to the speed limit/conditions. Activities will include a media launch, mass media campaign for television and radio, billboards, social media and inclusions on the TMR website.

The Government Approved Communications Campaign budget is \$848,803 which includes pre- and post-research, production and media placement. Existing TMR budget will be utilised as well as federal funding.

Other communication activities will be funded through existing TMR resources.

Medical certificates for drivers aged 75 or older

The amendment to reinstate the requirement for drivers aged 75 years or older to have a medical certificate issued within the previous 13 months has the benefit of restoring an important element of Queensland's medical reporting requirements.

The maximum 13-month validity period for a medical certificate allows for the early detection and management of any health issues that may impact on an individual's ability to drive safely. Ensuring medical fitness to drive is a key safety requirement in Queensland's driver licensing system and is an obligation on all driver licence holders.

Reinstating the pre-pandemic medical certificate requirements will mean that drivers aged 75 or over who do not have a current medical certificate will need to make an appointment with their doctor or health professional to obtain one prior to 1 August 2022. This may have a cost to these licence holders. However, the modified medical certificate arrangements have relieved these costs for older drivers since 2020. The costs of obtaining a certificate may also be in part absorbed by a person's usual consultations with their doctor or health professional. Some medical practices also now offer additional services which may benefit some licence holders.

The removal of the modified medical certificate arrangement and reinstatement of the requirement under section 253 of the Driver Licensing Regulation will not commence until 1 August 2022. This will allow time for licence holders aged 75 and over or who will turn 75, to be informed of the requirement to hold a valid medical certificate issued within the previous 13 months. It will also allow sufficient time for them to make an appointment with their doctor or health professional to obtain a medical certificate.

Proposed communication mechanisms to advise relevant licence holders of this change include updated information on the Queensland Government website, a social media campaign and writing to individual licence holders.

The cost to government associated with implementing the amendments will be minimal and will be met from within existing resources.

Devices used for preliminary breath tests under the Rail Safety National Law

The benefit of the amendment to the Rail Safety Regulation is that devices used to perform breath alcohol testing as required under the *Rail Safety National Law* comply with the specifications and requirements contained in the latest Australian Standard that applies to those devices. This will ensure that breath testing continues to be conducted in the most effective and efficient manner.

There are no costs associated with the amendment.

Consistency with fundamental legislative principles

Fundamental legislative principles issues raised by the amendments are discussed below.

Improving road safety: Increasing penalties for high-risk driving offences

The increase in penalties for seatbelt, traffic light and speeding offences in section 6 may raise fundamental legislative principle (FLP) considerations under section 4(2)(a) of the *Legislative Standards Act 1992* (LSA), rights and liberties of individuals.

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

Current penalties and deterrent approaches have not achieved the desired level of compliance among the driving public and have not resulted in the desired reduction in crashes.

The deterrent effect of increased monetary penalties on rates of offending is supported by infringement data showing that from January 2019 to November 2019 (when the mobile phone penalty increases were first announced) there was an average of 1,164 mobile phone infringements issued per month. From February 2020 (post the commencement of the increased penalties) to March 2021 there was an average of 485 mobile phone infringements issued per month, a 58 per cent reduction. While reduced travel during COVID-19 will have had an impact on this result, the reduction in mobile phone infringements was greater than other high-risk offences during this period.

Increasing monetary fines for traffic offences has also 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 published in 2015 which revealed a subsequent 6.3 per cent reduction in recidivism.

The fine for not wearing a seatbelt will increase from three penalty units to seven and a half penalty units. This applies to both the driver and passenger seatbelt offences. The number of demerit points will also increase from three to four demerit points.

This will align the penalty for seatbelt offences with existing mobile phone offences and reflects the potentially devastating personal consequences of a lack of proper restraint in a vehicle. It also takes into account the significant burden on the State's health care system in the treatment of those seriously injured in a crash due to lack of proper restraint. These penalty increases aim to send a strong deterrent message to the small portion of the community that refuse to properly wear a seatbelt.

It is therefore believed that significantly increasing the infringement notice 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.

Similarly, the increase in infringement notice fines for the offences for traffic light noncompliance and speeding is justified as the approach most likely to increase compliance with the legislative requirements.

The deterrent effect of these new penalties will be enhanced by an extensive public education campaign that will highlight the new penalties that will apply.

Devices used for preliminary breath tests under the Rail Safety National Law

Section 4 of the Amendment Regulation incorporates Australian Standard AS 3547 by reference into section 5 of the Rail Safety Regulation. This raises the fundamental legislative principle that subordinate legislation should allow the sub-delegation of a power only in appropriate cases (sections 4(2)(b) and 4(5)(e) of the LSA).

AS 3547 specifies detailed technical requirements for the performance, testing and marking of breath alcohol testing devices for uses such as, but not limited to, personal, workplace and medical screening purposes. Incorporating the standard by reference allows any developments and improvements to be quickly applied in Queensland as the standard is updated. Due to the technical detail contained in the standard, it would not be practical to include it in the Rail Safety Regulation and therefore reference to the AS 3547 is considered appropriate.

Consultation

Consultation regarding the implementation of the penalty increases was carried out with the Queensland Council for Civil Liberties, the Queensland Law Society and the Royal Automobile Club of Queensland. The consultation focussed on potential adverse impacts of the penalty increases and possible ways of mitigating these, including through education and awareness.

Concerns were raised by these groups with respect to the impacts on the community associated with increased penalties. They emphasised the importance of an effective communication and education package prior to the commencement of the increased penalties on 1 July 2022. However, these organisations acknowledged the rationale behind the penalty increases in achieving road safety outcomes.

In response to the concerns raised, TMR provided information about the options available for payment of fines as well as details of the comprehensive communication and education campaign that is scheduled to commence in early May 2022, prior to the commencement of the penalty increases. TMR also advised that there will be further communications from 1 July 2022 to raise awareness of the changes.

Consultation on the amendments to reinstate medical certificate requirements was not undertaken as the modified medical certificate arrangements in the COVID Regulation were introduced only as a temporary measure. The temporary nature of the modified arrangements has been publicly communicated since they were introduced.

Relevant licence holders will be informed of the reinstatement of medical certificate requirements in the Driver Licensing Regulation through individual letters, updates to information on the Queensland Government website and a social media campaign.

The amendment to update the Australian Standard reference for breath analysing instruments is administrative in nature and has not been subject to public consultation.

The Office of Best Practice Regulation (OBPR) was consulted on the increases in seatbelt, traffic light and speeding penalties and on the repeal of the modified medical certificate arrangement for licence holders aged 75 and over. Based on their assessment, OBPR considers that no further regulatory impact analysis is required under the *Queensland Government Guide to Better Regulation* (the guidelines).

In accordance with the guidelines, TMR applied a self-assessable exclusion from undertaking further regulatory impact analysis on the amendment to the Rail Safety Regulation. This was based on category (g) – regulatory proposals that are of a machinery nature without any substantial policy change.