

Transport Legislation Amendment Regulation 2023

Explanatory notes for SL 2023 No. 4

made under the

Transport Infrastructure Act 1994

Transport Operations (Marine Safety) Act 1994

Transport Operations (Road Use Management) Act 1995

Transport Planning and Coordination Act 1994

General Outline

Short title

Transport Legislation Amendment Regulation 2023

Authorising laws

Section 490 of the *Transport Infrastructure Act 1994*

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

Sections 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

Reduced Learner Licence fee

The fees for a Queensland learner licence are prescribed in Schedule 7 of the *Transport Operations (Road Use Management—Driver Licensing) Regulation 2021* (the Driver Licensing Regulation).

The learner licence fee structure was originally set in 2007 as part of a package of changes to the Graduated Licensing System. Since that time, learner licences have been issued for three years and the fee has been indexed each year in the same way as other driver licence fees. The three-year term was chosen to provide time and flexibility for learner licence holders to complete 100 hours of supervised on-road driving and develop their driving knowledge and skills to progress to a provisional licence.

The three-year learner licence currently costs \$186.55 (182 fee units). If an applicant already holds a valid Photo Identification Card issued by the Department of Transport and Main Roads (TMR) they pay a reduced fee of \$143.15 (139.65 fee units).

Having a driver licence provides access to employment, education and community services, particularly for young people. A policy objective of the *Transport Legislation Amendment Regulation 2023* (the Amendment Regulation) is to assist learner licence applicants to deal with cost-of-living pressures by reducing the cost of the learner licence.

Mobile phone rules for drivers

Driver distraction is one of the fatal five driving behaviours, along with failure to wear a seatbelt, speeding, drink/drug driving and fatigue. Driver distraction contributes to almost 20 percent of serious injuries and 14 percent of fatalities from crashes on a road. Despite education campaigns and offences relating to mobile phone use in vehicles, illegal mobile phone usage on Queensland roads continues at an unacceptably high level. Seventy per cent of Queensland drivers admit having illegally used their mobile phone while driving.

In 2021, Mobile Phone and Seatbelt Technology cameras were rolled out throughout Queensland to further detect and deter this dangerous behaviour and improve road safety outcomes. To enable this rollout, legislative amendments were progressed to support the camera-detection of mobile phone offences. This included amendments to section 300 of the *Transport Operations (Road Use Management—Road Rules) Regulation 2009* (the Queensland Road Rules) to ensure the section was compatible with camera-detected enforcement and to capture other high-risk driving behaviours such as having a mobile phone resting on a driver's lap. A key goal of these amendments was to enhance road safety by capturing illegal mobile phone use regardless of how the phone was being used and whether it was on or operating at the time of the offence.

It has now been identified that amendment of section 300 is required to put beyond doubt that mobile phone use remains illegal irrespective of the functionality of the phone at the relevant time.

Personalised number plate auctions

Under the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2021* (the Registration Regulation), the chief executive can issue personalised number plates to those who apply and pay the relevant fee. In practice, the sale and marketing of personalised plates is done through the Personalised Plates Queensland business, better known as PPQ.

PPQ offers personalised plates for sale through a variety of channels, including web sales, phone sales and sales through TMR customer service centres. In the future, it is anticipated that PPQ will also offer certain personalised plates for sale through an online auction facility.

While the Registration Regulation already provides for this sales channel, clarification of the relevant provisions is needed to ensure the plates can be sold for the highest genuine bid received at auction. Specifically, the amendments remove the requirement that plates can only be sold at an auction "*in exchange for the payment of the published fee*".

Disclosure of maritime information

Currently, Maritime Safety Queensland collects and holds a range of information under the *Transport Operations (Marine Safety) Act 1994* and the *Transport Infrastructure Act 1994*. This includes, for example, information about the registration of Queensland regulated ships and personal information about the holders of certain marine licences.

This information is essential to regulating marine safety and other maritime operations within Queensland. This information is also of use to other Queensland partner agencies and agencies from other jurisdictions involved in maritime and other regulation. This includes, for example, the Queensland Police Service, the Australian Maritime Safety Authority and the Gold Coast Waterways Authority.

The Amendment Regulation enables the information to be disclosed to an *authorised person* of a *prescribed agency* but only for purposes for which the agency is authorised to use the information under a law of the Commonwealth or a State or purposes consistent with the agency's functions under a Commonwealth or State law. So, for example, prescribed agencies may have access to the information database for enforcement or other administrative purposes such as planning.

Achievement of policy objectives

Reduced Learner Licence fee

Amendments to the Driver Licensing Regulation reduce the fee for the grant or renewal of a learner licence to \$75 (73.18 fee units). The amendments also remove the discounted fee for applicants that already hold a Photo Identification card, reflecting that the new fee amount of \$75 is significantly below the discounted fee. This will simplify and streamline the learner licence fee structure, as all applicants will pay the same fee for their learner licence.

The amendments will apply to any learner licence which commences on or after 1 March 2023. This includes a person applying for a learner licence for the first time and an existing learner licence holder who is renewing their learner licence.

Mobile phone rules for drivers

Section 300 of the Queensland Road Rules prohibits a driver using a mobile phone while the vehicle is moving or is stationary but not parked. The term *use* is defined broadly within section 300 to include the driver holding the phone in their hand or resting the phone on any part of their body.

The term *mobile phone* is defined within section 300 to not include a CB radio or any other two-way radio. The term otherwise takes its natural and ordinary meaning. To provide greater certainty, the definition of *mobile phone* is being amended to clarify that it includes a mobile phone whose telephone function is not capable of being used and a mobile phone that is being used for a function other than the telephone function. The amendment does not expand the range of devices that are captured by section 300 beyond the original intention.

The amendment will assist in addressing driver distraction caused by the misuse of mobile phones. It aligns with community expectations of mobile phone technology and appropriate restrictions on use while driving and preserves the initial policy intention of the mobile phone offence.

Personalised number plate auctions

Amendments to the Registration Regulation will remove the requirement that personalised number plates can only be sold at auction "*in exchange for the payment of the published fee*". This will ensure that the plate auctions can operate in the normal manner with the final sale being made to the highest bidder for an amount bid at the auction, not a pre-determined, published amount.

Disclosure of maritime information

Amendments to the *Transport Planning and Coordination Regulation 2017* (the TPC Regulation) provide for information kept in a *marine transport information database* to be disclosed to an *authorised person* of a *prescribed agency*. The prescribed agencies are those which work in partnership with Maritime Safety Queensland (MSQ) on maritime and other functions and include:

- the Australian Maritime Safety Authority;
- the Department of Environment and Science;
- the Department of Agriculture and Fisheries;
- the Gold Coast Waterways Authority;
- the Great Barrier Reef Marine Park Authority;
- Transport for New South Wales (NSW);
- the NSW Police Force; and
- the Queensland Police Service.

The amendments provide that the information may be used by an authorised person in a prescribed agency for a purpose for which the agency is authorised to use the information under a Commonwealth or State law or that is consistent with the agency's functions under such a law. The Amendment Regulation introduces a new offence with a maximum penalty of \$2875 (20 penalty units) for an authorised person who uses the information for an unauthorised purpose or in contravention of a condition imposed by the chief executive.

Consistency with policy objectives of authorising laws

The amendments to the Driver Licensing Regulation, the Queensland Road Rules and the Registration Regulation are consistent with the policy objective of the *Transport Operations (Road Use Management) Act 1995* (the Act) to provide for the effective and efficient management of road use in the State. The amendments enhance schemes established under the Act for the identification of vehicles, drivers and road users and the setting of rules for on-road behaviour.

The amendments relating to the disclosure of maritime information are consistent with the objective of the *Transport Planning and Coordination Act 1994* to achieve overall transport effectiveness and efficiency.

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 significant reduction in the learner licence fee will assist learner drivers to deal with cost-of-living pressures. The clarification of the mobile phone rules will assist in minimizing driver distraction and thereby enhance road safety for all road users. The amendment relating to personalised plate auctions will ensure that this new channel for the sale of personalised plates can operate effectively and efficiently. The disclosure of maritime information will assist other government entities in the performance of their statutory functions.

There will be minimal cost in implementing the majority of the amendments and that cost will be met within existing budget allocations. The reduction in the learner licence fee will result in a decrease in government revenue, the cost of which will be met from the Consolidated Fund.

Consistency with fundamental legislative principles

The amendments to reduce the learner licence fee and to clarify the operation of auctions for personalised plates are consistent with fundamental legislative principles.

Mobile phone rules for drivers

An amendment to the Queensland Road Rules clarifies the definition of *mobile phone* for the purposes of section 300 which relates to the use of mobile phones by drivers (see section 10 of the Amendment Regulation). Specifically, the amendment provides that a mobile phone whose telephone function is not capable of being used and a mobile phone that is being used for a function other than the telephone function are still mobile phones for the purposes of section 300. The amendment gives the example of a mobile phone that may not have a SIM card in it or does not have another means of connecting to a cellular radio network. Section 300 may limit a driver's rights and liberties while they are driving.

The use of a mobile phone at any time by the driver of a vehicle, however, and the level of distraction from the driving task that it entails, presents a high safety risk to the driver and to other road users. The driver should not have a mobile phone in their hand or resting on their body while driving and this applies whether or not the mobile phone's telephone function is capable of being used at that particular time. It also applies irrespective of whether the driver is using a function other than the telephone function on the mobile phone.

Driver distraction contributes to almost 20 percent of serious injuries and 14 percent of fatalities from crashes on a road. As such, the benefit of minimizing that distraction outweighs any limitation on the driver's rights and liberties in relation to the use of a mobile phone while driving.

Disclosure of maritime information

An amendment to the TPC Regulation allows the chief executive to disclose information contained in a *marine transport information database* to an *authorised person* of a *prescribed agency* (see section 18 of the Amendment Regulation). This information may include personal information such as the name and address of a particular marine licence holder. This may raise fundamental legislative principles relating to individuals' right to privacy.

Importantly, information may only be disclosed to agencies that are specifically prescribed within the TPC Regulation. This ensures transparency of the sharing arrangements. The prescribed agencies include those that MSQ works closely with on maritime and other legislative administration and enforcement activities. For example, MSQ and the New South Wales (NSW) Police Force co-operate in relation to the enforcement of maritime laws around the Queensland-NSW border and the disclosure of maritime information by the chief executive will support that co-operative effort.

The Amendment Regulation provides that the information may only be disclosed to those prescribed agencies for purposes for which they are authorised to use the information under a law of the Commonwealth or a State or purposes consistent with the agency's functions under such a law (see new section 10E).

The disclosure of information to the prescribed agencies will be the subject of detailed Information Sharing Agreements. These agreements will clearly articulate the roles and responsibilities of the respective agencies with regard to the handling, use, storage, disclosure and destruction of the information shared. In particular, the agreements will incorporate regular reviews, require compliance with the Queensland Government Information Security Policy (IS18:2018) and include annual assurance activities such as audits. The agreements will also more clearly identify who the authorised persons of the prescribed agency are.

The amendments provide that an authorised person must not misuse information provided under the legislation and a penalty of 20 penalty units applies where an authorised officer breaches that requirement (see new section 10F).

As a result of the protections outlined above, on balance, the amendments have sufficient regard to the fundamental legislative principles and an individual's right to privacy.

Offence provision

The Amendment Regulation introduces a new offence for an authorised person who uses information from a marine transport information database for a purpose other than an approved purpose or in contravention of a condition imposed by the chief executive on the disclosure of the information (see new section 10F inserted by section 18 of the Amendment Regulation). As authorised persons will have access to personal information, it is essential that the information is handled appropriately and confidentially and in accordance with any requirements set by the chief executive.

The maximum penalty of 20 penalty units is appropriate and is consistent with the existing penalty for an equivalent offence in section 10B of the TPC Regulation and for similar offences in the information release provisions within Part 10 of the Registration Regulation.

Consultation

No public consultation has been undertaken on the Amendment Regulation. The significant reduction in the learner licence fee is a beneficial measure that was a decision of government designed to assist with cost-of-living pressures. The amendment to the mobile phone rules clarifies the operation of the existing rules. The amendment relating to the auction of personalised number plates removes the unnecessary and impractical restriction that plates can only be sold at auction for a published price. The amendments dealing with the disclosure of maritime information relate only to the operation of government departments and statutory authorities.

The Office of Best Practice Regulation (OBPR) was consulted on the amendments to reduce the fee for the grant or renewal of a learner driver licence, clarify the mobile phone rules for drivers and facilitate the disclosure of information from a marine safety transport information database.

OBPR excluded both the learner licence fee amendment and the amendment to the mobile phone rules from further regulatory impact analysis on the basis that they will not add to the burden of regulation and are unlikely to result in significant adverse impacts. OBPR excluded the amendment for the disclosure of maritime information from further regulatory impact analysis on the basis that the amendment will not change the regulatory burden on business and the community and will make for more efficient and effective compliance and enforcement on Queensland and neighbouring waterways.

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 clarify the rules for the auction of personalised number plates based on Category G, "Regulatory proposals that are of a machinery nature and where no substantive policy change has been made".