

# **Transport Operations (Passenger Transport) and Other Legislation Amendment Regulation 2023**

Explanatory notes for SL 2023 No. 111

made under the

*State Penalties Enforcement Act 1999*

*Transport Operations (Passenger Transport) Act 1994*

## **General Outline**

### **Short title**

*Transport Operations (Passenger Transport) and Other Legislation Amendment Regulation 2023*

### **Authorising laws**

Section 165 of the *State Penalties Enforcement Act 1999*

Sections 91ZY and 155(g) of the *Transport Operations (Passenger Transport) Act 1994*

### **Policy objectives and the reasons for them**

#### Taximeters

There have been a number of incidents of taxis, providing a taxi service, reportedly charging over the maximum fare amounts set under section 91ZR of the *Transport Operations (Passenger Transport) Act 1994* (the PT Act), or refusing to carry passengers who requested that the taximeter be operated. For example:

- A person was charged \$80 for a journey from the International Airport to Hendra, a journey that would normally cost approximately \$25 at that particular time of night.
- Another person was charged \$183 from Fortitude Valley to Mt Gravatt, a journey that would normally cost approximately \$50 at that particular time of night.

These are not isolated incidents, and despite ongoing communication and engagement with industry on the matter, the numbers and seriousness of complaints has not declined. As a small number of drivers are refusing to use taximeters to calculate fares, it can be difficult to prove that the driver charged more than the maximum fare.

### Lift Payment Scheme

There have been increasing concerns about the declining availability and levels of service being provided to Taxi Subsidy Scheme (TSS) members who are required to travel in a wheelchair accessible taxi (WAT). In December 2016, the Department of Transport and Main Roads (TMR) introduced an incentive payment (referred to as a 'lift payment') to encourage drivers of WATs to pick up wheelchair passengers. The incentive acknowledges that picking up wheelchair passengers may take more time and require the driver to actively help the passenger.

Currently, TMR remits the lift payment to taxi booking companies to pass on through taxi operators to drivers. This is the most operationally efficient means of distributing these funds. However, some taxi operators have been retaining a component of the lift payment and passing the remainder to the driver, and currently TMR is unable to compel a taxi booking entity or taxi operator to pass on a driver incentive payment to drivers, in part or in full.

This practice of operators retaining all or part of the lift payment substantially reduces the incentive for drivers to undertake wheelchair journeys, especially relatively short journeys that TSS members often use to do their shopping, attend medical appointments, employment, education, and training, and otherwise participate in the community and economy.

### Default Fares

Under section 218M of the *Transport Operations (Passenger Transport) Regulation 2018* (the PT Regulation, TMR may charge a 'default fare' when a customer fails to 'tap on or tap off' with their payment token (for example, their go card, credit card or debit card). The default fare amount cannot exceed the 'maximum fare' published on the TMR website. Default fares encourage correct use of the ticketing system to record the start and end of each journey, so accurate data is collected, and lost fare revenue is minimised. Default fares do not currently exist on regional urban bus services outside of South East Queensland (SEQ) due to their paper-based ticketing systems, but will be required when Smart Ticketing technology is rolled out regionally.

## **Achievement of policy objectives**

### Taximeters

The *Transport Operations (Passenger Transport) and Other Legislation Amendment Regulation 2023* (the Amendment Regulation) intends to provide greater confidence and protection for the passenger and provide evidence of the journey and the fare charged to the passenger.

The Amendment Regulation amends the Regulation to address the issue of overcharging by:

- Clarifying the requirement for the driver of a taxi to activate and use a taximeter to calculate the fare in a taxi providing a taxi service or a booked hire service where the fare for the journey has not been pre-agreed, as has always been the intent of section 85 of the PT Regulation.
- Creating a new requirement to activate and use the taximeter to apply to a taxi providing any booked hire service or taxi service for which a maximum fare has been gazetted under section 91ZR of the PT Act where the fare has been agreed in advance. Requiring the taximeter to display the maximum fare will ensure the driver does not breach section 91ZR of the PT Act by charging an agreed fare that exceeds the maximum fare for the journey.

- Creating an offence for failing to use the taximeter in the above circumstances, with a maximum penalty of 20 penalty units and an infringement notice amount of two penalty units.
- Creating an offence for tampering with a taximeter, with a maximum penalty of 40 penalty units and an infringement notice amount of four penalty units.

### Lift Payment Scheme

The Amendment Regulation establishes a lift payment scheme to strengthen the incentive nature of the payment for the driver and improve services to TSS members who require a wheelchair to travel, including those TSS members who have been approved to temporarily travel in a wheelchair. The Amendment Regulation amends the PT Regulation to provide that:

- The driver is entitled to a lift payment for booked hire services and taxi services provided to TSS members who require a wheelchair to travel, including TSS members who have been approved to temporarily travel in a wheelchair.
- The lift payment must be paid to the driver by the authorised booking entity or an operator of a taxi service or booked hire service (who receive the payment from TMR) within 14 days of receipt, unless they have a reasonable excuse.
- The payee (authorised booking entity or an operator) will face a maximum penalty of 20 penalty units, with a penalty infringement amount of two penalty units, if they fail to pass the total lift payment to the driver.
- The lift payment scheme is administered by the chief executive.

The lift payment is an incentive payment, not a fare payable by the passenger and therefore there is no additional cost to a TSS member under the lift payment scheme. Information about the lift payment, including the payment amount and eligibility, will be published on the TMR website.

### Default Fares

The amendment to section 218M enables greater flexibility in the setting of default fares for regional bus services. It provides the option of charging a standard default fare across the regional urban bus network that is up to, but not more than, the maximum fare payable in all regions. This option allows a standard regional default fare to be set at a reasonable level that provides adequate fare revenue recovery for regional delivery partners. It would also align more closely with the approach to setting the default fare in SEQ.

This approach would encourage customers to use the system correctly in regional areas and reduce complexity for the system and customer communications. Regional customers would be supported through the transition to the new 'tap on, tap off' system through communication and education. Customers will be able to use the Translink website or contact the Translink contact centre to correct their trip details and receive a trip adjustment to the correct fare. and the default fare would be waived or reduced for an initial period to allow customers to get used to the new system. This approach will meet the fare policy principles of simplicity, fairness and financial sustainability.

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

The Amendment Regulation is consistent with the main objective of the PT Act to achieve the provision of the best possible public passenger transport at reasonable cost to the community and government, keeping government regulation to a minimum.

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

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

## **Benefits and costs of implementation**

### Taximeters

The amendment will benefit passengers travelling in taxis by providing them with greater confidence that the fare will accurately reflect the journey. The mandatory activation of the taximeter is a protection mechanism that will ensure passengers are not overcharged. A further benefit of the amendment is that it provides evidence of the journey and the fare charged to the passenger. There is no cost to industry associated with the amendment as it requires the activation of a taximeter in taxis that are already required to be fitted with a taximeter.

### Lift Payment Scheme

By ensuring drivers receive the full lift payment, the amendments will strengthen the incentive for drivers to provide wheelchair accessible taxi services and thereby improve the quality and reliability of taxi services to vulnerable members of the community who are reliant on a wheelchair to travel. There are no overall costs to industry as a result of this amendment, as the payment is simply required to be passed on to the driver, although there may be differential impacts for operators and for drivers. As the lift payment is an incentive payment, paid by TMR and not a fare payable by the passenger, there is also no additional costs to a taxi subsidy scheme member (TSS member) under the lift payment scheme.

### Default Fares

The benefits of the amendments include:

- Encouraging customers in the regional urban bus network to correctly tap on and tap off for a journey.
- Protecting the fare revenue for regional delivery partners while ensuring the default fare cannot be set at an unreasonable amount.
- Achieving a consistent and simple state-wide approach to default fares.

The default fare will be payable by a customer who does not 'tap on or tap off' for the journey. However, customers will be able to use the Translink website or contact the Translink contact centre to correct their trip details and receive a trip adjustment to the correct fare.

## Consistency with fundamental legislative principles

The Amendment Regulation is generally consistent with the fundamental legislative principles (FLPs) in section 4 of the *Legislative Standards Act 1992*. The decision of the chief executive in section 136B(b) of the PT Regulation, to approve or refuse the temporary use of a wheelchair by specific categories of TSS member (other than category 1), may be seen to infringe on the rights and liberties of individuals, specifically an individual's right to review a decision.

Membership of the taxi subsidy scheme (TSS member) as a relevant person, under section 120 of the PT Regulation, is a reviewable decision. However, the decision of whether the chief executive is satisfied that a TSS member is temporarily dependent on a wheelchair to use a taxi is not intended to be a reviewable decision because they are already an approved relevant person under section 120 of the PT Regulation and are not disadvantaged by the decision. Rather, all eligible wheelchair users benefit from the existence of the Lift Payment Scheme, with improved levels of service and availability of wheelchair accessible taxis as a result of the incentive payment to drivers. Therefore, it is considered justified that there is no right of review in relation to the approval of temporary wheelchair use by an already approved TSS member.

The chief executive's discretionary power to set default fares is considered to be an appropriate subdelegation of power as the chief executive is an appropriately qualified officer of the administering department. In addition, administrative decisions made by the chief executive are subject to a range of accountability mechanisms such as those under the *Judicial Review Act 1991* and the *Ombudsman Act 2001*.

## Consultation

### Taximeters

The matter has been the subject of engagement with taxi operators following the increase in complaints received in relation to overcharging. There will be ongoing engagement as part of the Personalised Transport Insights and Delivery Group and directly with industry representatives.

Discussions have also been held with the Taxi Council Queensland (TCQ) about enforcement of maximum fares provisions and the complaints being received. TCQ has called upon TMR to effectively enforce its own laws. This will be improved by this amendment.

### Lift Payment

The issue of incentives for drivers was a key action item that emerged from the Ministerial Roundtable conference with the taxi and disability sector on 10 February 2023. Improving driver incentives for the carriage of passengers using wheelchairs received support from stakeholders in attendance, albeit with calls to increase the current incentive.

Members of TMR's Accessible Taxi Services Working Group were informed on 4 July 2023 that TMR is progressing this amendment. Whilst they raised concerns with TMR regulating commercial arrangements between drivers and operators and about the impacts on operators, TMR considers that the lift payment was introduced as a driver incentive and that this approach will increase its effectiveness consistent with its purpose. On 10 July 2023, the Queensland Accessible Transport Advisory Council supported measures to ensure the driver incentive lift payment was paid to drivers.

More detailed information will be provided to industry to ensure they are fully prepared for implementation of the measure.

#### Default Fares

No consultation has been undertaken with service delivery partners, customers, or other external stakeholders. Appropriate external consultation, including with the TMR Public Transport Fares Advisory Panel, is planned in relation to setting the regional default fare amount in the second half of 2023.

#### Office of Best Practice Regulation

The Office of Best Practice Regulation (OBPR) was also consulted. OBPR considered that no further regulatory impact analysis is required in relation to any of the proposed amendments under the Queensland Government Guide to Better Regulation.