

Transport Operations (Passenger Transport) Amendment Regulation 2024

Explanatory notes for SL 2024 No. 73

made under the

Transport Operations (Passenger Transport) Act 1994

General Outline

Short title

Transport Operations (Passenger Transport) Amendment Regulation 2024

Authorising law

Sections 74(4), 76(2), 111(2), 114 and 155 of the *Transport Operations (Passenger Transport) Act 1994*.

Policy objectives and the reasons for them

The policy objectives of the *Transport Operations (Passenger Transport) Amendment Regulation 2024* (the Amendment Regulation) are to:

- clarify that authorised persons for service contracts can, where agreed, perform duties for multiple operators providing public passenger services under service contracts; and
- ensure substitute taxis can continue to be used during peak demand periods until 30 September 2026.

Authorised persons for service contracts

Fare evasion on public transport is currently estimated to cost the State about \$31 million each year. Safety concerns around passenger behaviour are also an ongoing issue.

Compliance and enforcement activities on public passenger services are performed by authorised persons appointed under section 111 of the *Transport Operations (Passenger Transport) Act 1994* (the Act). The Department of Transport and Main Roads (TMR) has been trialling the use of persons managed by operators who hold a service contract with TMR to provide public passenger services (service contract holders), undertaking compliance and enforcement activities. The aim is to ensure a more consistent presence of authorised persons across the public transport network.

To facilitate the trial, the *Transport Operations (Passenger Transport) Regulation 2018* (TOPTR) was amended in 2019 to allow for the appointment of authorised persons who are employees of, or contractors (or employees of contractors) for, a service contract holder. Their role is to:

- protect fare revenue;
- support the safety and security of drivers and customers; and
- address any other relevant behaviours on public passenger services.

These authorised persons for service contracts, known operationally as 'Network Officers', have limited powers under section 268B of TOPTR. For example, they do not have powers to detain, use force or search.

Data collected by TMR shows that since April 2023, fare evasion rates have been trending down on services where authorised persons for service contracts have been deployed, falling below the 2022 rates for the same period. This is the first time in more than a decade where fare evasion levels have decreased rather than increased.

Currently, TOPTR potentially restricts the deployment of authorised persons for service contracts to the contracted public passenger services provided by their employer, and may also prevent their deployment on the services of other operators who also hold service contracts, theoretically restricting their duties for multiple operators.

Peak demand arrangements for substitute taxis

Currently, during times of peak customer demand, substitute taxis may be used to supplement taxi fleets to provide personalised transport services. Part 8, division 4 of TOPTR provides for substitute vehicle authorities for taxi service licences. An authorised booking entity may apply for a substitute vehicle authority for a motor vehicle to be used under a taxi service licence in particular circumstances, such as where an existing taxi cannot be used due to accident or repair. These vehicles are called 'substitute taxis'. Section 284 of TOPTR is a transitional provision, which applies until the end of 30 September 2024, and provides that substitute taxis may also be approved to supplement the taxi fleet during times of peak customer demand.

TMR is currently progressing a review of the taxi licensing framework. Until this review is completed, and a longer-term solution is determined, peak demand arrangements for substitute taxis must remain in place to ensure that substitute vehicles can continue to be used to provide taxi services, and booked hire services, during peak patronage periods.

Achievement of policy objectives

Authorised persons for service contracts

The Amendment Regulation clarifies that authorised persons for service contracts can, when agreed by the relevant operators and TMR, perform duties for multiple operators providing public passenger services under service contracts. This allows increased flexibility to deploy authorised persons for service contracts, across Translink's public transport network and ensure compliance issues are addressed.

A 'service contract' is a contract between the chief executive on behalf of the State and an operator under which the operator is required to provide a public passenger service for an area or route in a way that meets or exceeds performance levels stated in the contract, as defined by section 38 of the Act. Consistent with section 32C of the *Acts Interpretation Act 1954*, throughout sections

268A and 268B, references to 'a service contract' should be read as one or more service contracts. The Amendment Regulation does not change any of the powers of an authorised person for a service contract, which are already limited by the legislation. The powers that can be exercised by authorised persons are limited by section 268B(4) to being exercised only in specific circumstances, namely in relation to:

- a public passenger service that is required to be provided under a service contract, or
- public transport infrastructure used to provide a public passenger service required to be provided under a service contract.

These powers are then further limited by section 268B(5). For example, authorised persons for service contracts can only exercise their powers in relation to services provided by their employer, who has a service contract, or another operator with a service contract where there is an agreement between the operators and TMR. In practice this means that authorised persons for service contracts, employed or contracted by an operator, will be able to be deployed on the bus services of another operator, who has no employment relationship with the authorised persons for service contracts, where this sharing arrangement is agreed between the operators and TMR.

Peak demand arrangements for substitute taxis

To maintain existing arrangements regarding the use of substitute taxis until a longer-term solution is determined, the period during which a substitute taxi can be used under a peak demand exemption notice will be extended until 30 September 2026.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the main objective of the 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

Authorised persons for service contracts

The amendment to allow increased flexibility in the deployment of authorised persons for service contracts across the public transport network will benefit passengers in South East Queensland by:

- ensuring the safety of passengers and drivers;
- providing greater confidence and protection for passengers when they travel;
- managing fare evasion; and
- addressing behavioural issues.

These are minor amendments and are within the existing funding allocation for the Network Officer program.

Peak demand arrangements for substitute taxis

Extending the period during which a substitute taxi can be used under a peak demand exemption notice will ensure operators can continue to use substitute taxis to provide services during peak periods. The continued use of substitute taxis has direct benefits for customers, who are less likely to have their travel plans adversely impacted during times of high customer demand. There will be no cost associated with extending the period that a substitute taxi can be used under a peak demand exemption notice.

Consistency with fundamental legislative principles

Authorised persons for service contracts

The Amendment Regulation is generally consistent with the fundamental legislative principles (FLPs) in section 4 of the *Legislative Standards Act 1992*.

The amendments supporting the deployment of authorised persons for service contracts on multiple operators, may raise fundamental legislative principle concerns about the delegation of administrative power in appropriate cases and to appropriate persons (see section 4(3)(c) of the *Legislative Standards Act 1994*). Importantly, the amendment does not alter the current appointment or powers of authorised persons for service contracts. However, any potential issues arising from their deployment to multiple operators are justified because both the Act and the Amendment Regulation include safeguards relating to the appointment of authorised persons for service contracts and the powers they may exercise, including:

- only the chief executive may appoint an authorised person (section 111(2) of the Act);
- the chief executive can only appoint an authorised person if, in the chief executive's opinion, the person has the necessary expertise or experience to be an authorised person, or the person has satisfactorily finished training approved by the chief executive (section 111A of the Act);
- the chief executive may restrict the powers of an authorised person by written notice given to the person (section 111(4) of the Act);
- section 268B of TOPTR limits the powers of authorised persons (they do not have powers to detain, use force or search a person);
- in limiting the powers of authorised persons, section 268B of TOPTR also limits the offences for which authorised persons can serve infringement notices; and
- section 268B of TOPTR further limits the powers of authorised persons under service contracts being exercised only in relation to the public passenger services provided under particular service contracts and related infrastructure.

Peak demand arrangements for substitute taxis

The amendment in relation to peak demand arrangements for substitute taxis is consistent with fundamental legislative principles.

Consultation

Authorised persons for service contracts

Operators participating in the Network Officer program support the amendments to allow a more flexible approach to the deployment of authorised persons for service contracts.

Peak demand arrangements for substitute taxis

TMR consulted with industry stakeholders on the previous extension of peak demand arrangements in 2022 at an industry reference group meeting and none of the stakeholders consulted opposed it. Engagement with industry stakeholders has been ongoing as part of the review of the taxi licensing framework.

The Taxi Council Queensland (TCQ) were consulted on the current arrangement that relates to the extension of peak demand arrangements. The TCQ did not oppose the current proposed extension and supports review of the taxi licensing framework being finalised in a timely manner to provide longer term arrangements to enable taxi operators to meet periods of peak passenger demand.

Office of Best Practice Regulation

In accordance with *The Queensland Government Better Regulation Policy*, a summary Impact Analysis Statement has been prepared, as is required for regulatory proposals with impacts that are not significant.

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