

Transport Operations (Road Use Management—Accreditation and Other Provisions) (AIS approvals) Amendment Regulation 2024

Explanatory notes for SL 2024 No. 224

made under the

Transport Operations (Road Use Management) Act 1995

General Outline

Short title

Transport Operations (Road Use Management—Accreditation and Other Provisions) (AIS approvals) Amendment Regulation 2024

Authorising law

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

Policy objectives and the reasons for them

The Department of Transport and Main Roads (TMR) requires that vehicles be inspected to ensure they meet minimum safety standards. An Approved Inspection Station (AIS) is a place at which vehicles are inspected. An AIS approval holder, or their nominee if they are required to have one, is responsible for managing the operations of the AIS in accordance with the legislation and prescribed rules. An approved examiner (AE) is a person employed to carry out vehicle inspections at an AIS and complete inspection certificates. AIS participants include holders of AIS approvals, nominee approvals and AE accreditations. An AIS applicant is a person applying for the grant of an AIS approval, nominee approval or AE accreditation.

As a result of rising AIS audit failures and complaints in recent years, TMR engaged TAFE Queensland to develop AIS training modules. The modules have been designed to provide education and information about the responsibilities and operating requirements involved in operating an AIS and conducting vehicle inspections.

The policy objective of the *Transport Operations (Road Use Management—Accreditation and Other Provisions) (AIS approvals) Amendment Regulation 2024* (the Amendment Regulation) is to ensure that only AIS participants and AIS applicants who are trained to the required standard, in performing the function of their role, are able to operate an AIS or carry out a vehicle inspection, thereby reducing the risk of unsafe vehicles passing inspections and being driven on Queensland roads.

Achievement of policy objectives

The Amendment Regulation meets the policy objective by amending the *Transport Operations (Road Use Management – Accreditation and Other Provisions) Regulation 2015* (the AOP Regulation) to:

- Require AIS participants to complete approved training to retain their approval or accreditation.
- Require AIS applicants to complete approved training to be granted an approval or accreditation.

Specifically, the Amendment Regulation:

- Enables the chief executive (the Director General of TMR) to approve training courses to be completed by AIS participants and applicants.
- Enables the chief executive to approve a registered training organisation to conduct an approved training course.
- Includes successful completion of all relevant approved training courses as a prerequisite for the grant of a new AIS approval, nominee approval or AE accreditation.
- Requires the chief executive to set a completion period of no less than three months for AIS participants (i.e., those who hold an approval or accreditation at the time the chief executive approves the training) to complete the approved training.
- Includes successful completion of the approved training as a statutory condition for approvals and accreditations granted or renewed after commencement of the amendments.
- Provides that failure to complete the training in the completion period is a ground for suspension, cancellation or refusing renewal of an approval or accreditation.
- Provides that holders of, and applicants for, AIS approvals that are required to have a nominee for operating the AIS (e.g. companies) will not need to complete the approved training, however their nominee must complete it within the required completion period.
- Introduces an offence for a person who completes training on behalf of a person who is required to complete the training.
- Empowers the chief executive to share relevant information, with an approved registered training organisation, for the purpose of monitoring compliance.

Refusal to grant (or renew) an AIS approval, nominee approval or AE accreditation is a reviewable decision under section 140 of the AOP Regulation. A decision to suspend or cancel an AIS approval, nominee approval or AE accreditation is reviewable under sections 65 and 65A of the *Transport Operations (Road Use Management) Act 1995* (the TORUM Act). The Amendment Regulation does not make any changes to these rights of review, however it expands their scope by introducing new grounds for refusal, suspension or cancellation.

The offence for completing training on behalf of another person has a maximum penalty of 40 penalty units. This is consistent with, and has been modelled off, a similar offence provision, being section 191 (Offence of taking road rules test for another person) of the *Transport Operations (Road Use Management – Driver licensing) Regulation 2021*.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the policy objectives of the TORUM Act to—

- Establish a scheme to allow establishment of performance standards for vehicles, drivers and road users.
- Improve road safety and the environmental impact of road use in ways that contribute to 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.

Alternative ways of achieving policy objectives

There are no feasible alternative ways to achieve the objectives other than through regulatory amendments.

Benefits and costs of implementation

The introduction of training requirements for AIS participants and applicants ensures the AIS industry is educated to a consistently high standard about their functions. This is expected to improve performance and compliance, which will reduce the risk of unsafe vehicles being driven on roads, therefore providing safety benefits for road users. The training requirement also provides the ancillary benefits of skill development for operators and public confidence in the AIS scheme.

The costs of enrolment in approved training for existing AIS participants will be fully subsidised. New applicants will bear the costs of enrolling in approved training, through a fee for service paid to the registered training organisation approved to conduct the training. The cost per applicant is expected to be \$370 for a core module, which is to be completed for all approval and accreditation types, plus \$95 for each module relating to an inspection type, which will be required for AE accreditations only. The cost per applicant is not considered significant and is therefore not considered a barrier to entering the AIS scheme. It is comparable to the cost in other Australian jurisdictions with mandatory AIS training.

Consistency with fundamental legislative principles

The Amendment Regulation is largely consistent with the fundamental legislative principles as required under the *Legislative Standards Act 1992* (the LSA). However, the Amendment Regulation inserts new provisions into the AOP Regulation that may be seen to have retrospective application.

Section 4(3)(g) of the LSA provides that whether legislation has sufficient regard to the rights and liberties of individuals may depend on whether the legislation adversely affects rights and liberties, or imposes obligations, retrospectively.

Requirement to complete training for existing nominee, AE or AIS approval holder

Under section 21(1) of the TORUM Act, the chief executive may only appoint an accredited person if satisfied that person has the necessary expertise to perform prescribed functions. Pursuant to this, the AOP Regulation prescribes the necessary expertise needed to hold an AE accreditation. The AOP Regulation also sets out criteria for determining whether a person is suitable to hold an AIS approval or to be approved as a nominee. These provisions are designed to ensure AIS participants are appropriately knowledgeable and capable of carrying out their functions.

New section 105A (inserted by section 13 of the Amendment Regulation) provides that a nominee must successfully complete training courses approved for a nominee under new section 106A, including if the person's application for approval as a nominee was granted before the commencement of the amendments. Failure to do so within the completion period for the training gives the chief executive a ground to suspend or cancel the person's approval as a nominee.

New sections 9A, 175 and 176 (inserted by sections 5 and 17 of the Amendment Regulation) provide that the holder of an existing AE accreditation or AIS approval (if they are not required to have a nominee) must successfully complete any relevant approved training course within the completion period. Failure to do so gives the chief executive a ground to suspend or cancel the accreditation or approval.

These provisions create an obligation that, for some holders, must be met during the period of the accreditation or approval. This may be seen to impose obligations retrospectively because the nominee, AE or AIS approval holder may have held an expectation that they would not be required to complete additional education or training except as a condition for the grant or renewal of their accreditation or approval.

It is necessary for the Amendment Regulation to impose a completion period for the training and to give the chief executive the power to take administrative action during the period of the accreditation or approval. This is because some approvals and accreditations do not routinely come up for renewal. In particular:

- A person's approval as a nominee continues until they stop holding the position of responsibility for the conduct of the AIS, regardless of how many times the AIS approval is renewed, which can result in a person being a nominee for an extended period of time.
- A large proportion of AE accreditations are not required to be renewed, making them effectively perpetual.

If the amendments were only introduced for new grant or renewal applications, this would result in inequity in the obligations for new applicants versus existing participants, and inconsistency in the standards of AIS participants, with poorer outcomes for consumers.

There are appropriate safeguards in place for existing AIS participants. These new provisions only apply—

- until a suspension or cancellation procedure under section 19 of the TORUM Act has been finalised, which provides procedural rights for the holder and the right to internal and external review of the decision;

- until the accreditation or approval is renewed, at which time the requirement to complete training becomes a statutory condition; or
- until the accreditation or approval ends.

No term for continuing AE accreditation – beneficial provision

As noted above, some AE accreditations are perpetual and are not required to be renewed (non-renewable accreditations). To make it legislatively clear that these accreditations have not expired, and to remove any doubt about whether these accreditations need to be renewed, the Amendment Regulation inserts new section 174 to provide that a term of an AE accreditation is taken to have never applied to an accreditation under section 154 of the AOP Regulation. This has a retrospective effect that is beneficial to holders of these accreditations. Section 34 of the *Statutory Instruments Act 1992* provides that a provision of subordinate legislation may apply retrospectively if it is beneficial to a person, in that it does not decrease a person's rights and does not impose a liability on a person. These amendments provide legislative clarity about the status of non-renewable accreditations, ensuring holders of these accreditations can continue to operate under their accreditation.

Training requirement to apply whether notification about approved training course is before or after renewal

The Amendment Regulation clarifies that a statutory condition applies if it is in force at the time of granting a new or renewal application for an approval or accreditation, other than a non-renewable accreditation. The Amendment Regulation inserts section 7A and Schedule 2 sections 16 and 17, which further provide that, once the statutory condition regarding training completion takes effect for an approval or accreditation, any training course approved by the chief executive is to be completed by the approval or accreditation holder within the completion period. This includes where the training course was notified before or after the approval or accreditation was last renewed. These provisions do not have retrospective effect because they only apply once the statutory condition takes effect for an approval or accreditation.

Consultation

TMR conducted consultation with AIS participants in the development of the training proposal through public meetings, emails and postal correspondence. In 2016, eleven information sessions were held across the state. TMR invited participants to provide survey feedback on the topics discussed at the information sessions, including the proposed introduction of training for new applicants. During further consultation in April 2023, AIS participants were advised of the proposal for both participants and applicants to have training requirements. Feedback was also sought on appropriate timeframes for existing participants to complete the training.

The response rate for the April 2023 consultation was 1.5 per cent, with a total of 250 responses received by TMR. There were mixed views about the proposed training requirements. Although many survey respondents agreed that there was a problem with non-compliance, there was disagreement about the causes of the non-compliance and how it should be addressed. Concerns were raised over potential costs of training, particularly if it was an annual requirement or if the core module fee was charged more than once per person. Only 13 respondents included feedback on the timeframe for training completion, with the majority of these favouring a six to 12-month period.

The Motor Trades Association Queensland (MTAQ) and the Australian Automotive Aftermarket Association (AAAA) also provided feedback on behalf of their members. Many AIS participants are represented by the MTAQ and AAAA. MTAQ is generally supportive of the introduction of training for AIS participants and applicants, given the possible link between the quality of safety inspections and road safety outcomes. However, broader concerns were raised about detecting and resolving non-compliance with AIS requirements. AAAA expressed general support for training that benefits the AIS industry but held concerns about how TMR is addressing deliberate non-compliance. Both MTAQ and AAAA mirrored industry's concerns about the financial impact of training requirements on industry.

Concerns about the potential cost of training have been addressed by making the completion of an approved training course a once-only requirement and by subsidisation of the full cost of training for existing participants. Concerns about deliberate non-compliance in the industry are being addressed through TMR's establishment of a taskforce to tackle non-compliant and fraudulent vehicle safety certificates.

TMR considered the preference for a six to 12-month training completion period as indicated in a small subset of responses to industry consultation. However, TMR has become aware of high-risk non-compliance in the AIS industry, and this has been weighted heavily in determining appropriate timeframes. Consequently, a shorter period of three months is considered appropriate and sufficient. Self-paced, online delivery of approved training courses will ensure participants can access and complete modules rapidly.

In accordance with *The Queensland Government Better Regulation Policy*, a summary Impact Analysis Statement has been prepared. The IAS found, in summary, that the amendments did not create significant regulatory impacts for the community or the government.