

Transport Operations (Passenger Transport) (Ticketing) and Other Legislation Amendment Regulation 2020

Explanatory notes for SL 2020 No. 26

made under the

State Penalties Enforcement Act 1999

Transport Operations (Passenger Transport) Act 1994

General Outline

Short title

*Transport Operations (Passenger Transport) (Ticketing) and Other Legislation Amendment
Regulation 2020*

Authorising law

Section 165 of the *State Penalties Enforcement Act 1999*

Sections 143AB, 148BB and 155 of the *Transport Operations (Passenger Transport) Act
1994*

Policy objectives and the reasons for them

In June 2018, the Queensland Government announced the purchase of a new ticketing solution (Smart Ticketing) to be rolled out across Queensland. Smart Ticketing aims to make choosing public transport even easier by giving customers more options to pay for their travel. Under Smart Ticketing, customers will be able to use cash, *go* cards and other tokens issued by the Department of Transport and Main Roads (TMR) as well as contactless debit and credit cards, smartphones or wearable devices held by customers, to pay for public transport.

The main policy objective of the *Transport Operations (Passenger Transport) (Ticketing) and Other Legislation Amendment Regulation 2020* (the amendment regulation) is to protect fare revenue for the use or hire of public passenger vehicles. This objective supports the ongoing quality, financial sustainability and integration of public passenger transport across Queensland, as customers transition to Smart Ticketing.

Achievement of policy objectives

The key provisions outlined below achieve the main policy objective of the amendment regulation.

New section 218C (Fare evasion) protects fare revenue by creating a new offence of evading the payment of the fare for the use or hire of a public passenger vehicle.

New section 218D (When a person using a token evades payment of a fare in relation to an approved vehicle) sets out the circumstances in which a person fare evades using a token under Smart Ticketing.

A token is anything that can be electronically read or scanned by a token reader to enable the payment of a fare for a journey or to record the start or end of a journey (for example, a debit card stored on a smartphone, a scannable QR code on a paper ticket or *go* card). The definition of token is intentionally broad to allow for the introduction of new types of tokens that can be electronically read or scanned by a token reader as technology develops into the future.

A person using a token fare evades if the person does not 'tap on' the token on or before starting a journey or does not 'tap off' the same token on finishing the journey. In addition, a person fare evades if the person taps off the token before finishing the journey or causes the payment of the fare for the journey to be processed or the end of the journey to be recorded before the end of the journey through other means. Other means of causing the payment of the fare for the journey to be processed or the end of the journey to be recorded would include, for example, creating a virtual 'tap off' for the token online through TMR's app or website.

New section 218E (When a person otherwise evades payment of a fare) sets out other circumstances in which a person fare evades, including under Smart Ticketing and for a taxi (for example, a person travelling on a long-distance rail ticket that is in another person's name and is not transferrable).

New section 218I (Power to require production of tickets or tokens) protects fare revenue by allowing drivers and authorised persons to require a person who travels on a public passenger vehicle to produce a ticket or token. The requirement only applies if a person is required under the terms or conditions for travel to have a ticket or 'tap on' a token for the journey. The requirement would not apply, for example, where a person is required under the terms or conditions for travel to pay the fare shown on a taximeter at the end of the journey.

New section 218J (Power to seize particular tickets or tokens) reduces potential fraud or misuse of tickets or tokens and, as a result, protects fare revenue by allowing drivers and authorised persons to seize particular tickets or tokens. The power applies where the driver or an authorised person reasonably suspects a person is using a ticket or token that is materially altered or defaced, cancelled, counterfeit, expired or is someone else's ticket or token. The power would not permit the seizure of an electronic device used to store or display an electronic ticket or token (for example, a smartphone), a ticket or token issued by someone other than the chief executive or operator (for example, a credit card issued by a bank) or a ticket or token issued for another primary purpose (for example, a concert ticket or a driver licence).

New sections 218K (Power to require evidence of concession entitlement) and 218L (Power to require evidence to verify identity in particular circumstances) further protect fare revenue by allowing a driver or authorised person to require a person travelling on a concession fare to produce evidence of the person's entitlement to the concession fare. In certain circumstances, the driver or authorised person may also require the person to produce other evidence to verify that the person stated in a document evidencing a person's concession entitlement is the person (for example, a driver licence or Medicare card).

New section 218M (Chief executive may charge amount as default fare in particular circumstances) further protects fare revenue by allowing the chief executive to charge a default fare when a person does not 'tap on' or 'tap off' the token for the journey. Smart Ticketing requires a person using a token for a journey to 'tap on' and 'tap off' the token to calculate the fare according to the number of zones travelled. If a person does not 'tap on' and 'tap off' a token for a journey (for example, a person taps on a token for a journey but does not 'tap off' the token), the person is charged a default fare because Smart Ticketing cannot determine the number of zones the person travelled and calculate a zone-based fare accordingly. The provision allows the chief executive to charge an amount, of not more than the maximum fare, as a default fare. The charging of a default fare is in line with current practice.

New section 262A (Relevant entity—Act, s. 148BB) prescribes additional relevant entities to support the sharing of information to verify a person's entitlement to certain concession fares, in line with current practice.

The amendment regulation also makes consequential amendments to provide for certain authorised person powers, and to update cross-references to the new fare evasion provisions in the *State Penalties Enforcement Regulation 2014*.

Consistency with policy objectives of authorising law

The amendment regulation is consistent with the main objective of *Transport Operations (Passenger Transport) Act 1994* (TOPTA) to achieve the provision of public passenger transport at a reasonable cost to the community and government, keeping government regulation to a minimum.

Inconsistency with policy objectives of other legislation

The legislation is not inconsistent with the policy objectives of other legislation in Queensland.

Alternative ways of achieving policy objectives

The *Personalised Transport Ombudsman Act 2019* (PTO Act) removes fare evasion provisions from TOPTA and provides that a regulation may provide for matters relating to the payment of fares. The amendment regulation makes provision for those matters as well as relating to a matter relating to fares charged. Making the amendment regulation is the most suitable and legally effective way to support the objectives of TOPTA.

Introducing Smart Ticketing without legislative amendment would negatively impact TMR's ability to continue to protect fare revenue, impacting the quality and sustainability of public passenger transport across Queensland.

Benefits and costs of implementation

The key benefit of making the amendment regulation is that it supports the continued protection of fare revenue for the use or hire of public passenger vehicles under Smart Ticketing. In 2018-19, TMR received about \$360 million in fare revenue (excluding fare revenue received by delivery partners under regional service contracts), with fare evasion estimated to cost the State about \$25 million per year.

The amendment regulation is not expected to result in an increase in administrative or compliance costs for government. Smart Ticketing is fully funded by the Queensland Government with allocation of \$371 million, over a four-year project delivery timeframe, to design, build and implement the new ticketing solution across Queensland. Enforcement and staff training is conducted within TMR's existing revenue protection program and budget.

Consistency with fundamental legislative principles

The amendment regulation is generally consistent with fundamental legislative principles (FLPs). Potential breaches of FLPs have been addressed below.

New offences – rights and liberties of individuals

New section 218L (Power to require evidence to verify identity in particular circumstances) includes a power for drivers and authorised persons to require a person who is 15 years or more and produces a document evidencing the person's entitlement to a concession fare that does not contain a photograph to produce evidence to verify that the person stated in the document is the person. Failure to comply with this requirement is an offence with a maximum penalty of 20 penalty units. This section protects fare revenue by allowing drivers and authorised persons to verify that the person travelling on the concession fare is the person stated in the document evidencing a person's entitlement to the concession.

The potential breach to the rights and liberties of individuals is justified because it supports the objective of ensuring only people entitled to a concession fare can access the benefit of the lower fare. It is reasonable and necessary for drivers and authorised persons to check a person is paying the correct fare and, in some circumstances, the only way to verify whether a person travelling on a concession fare is the person who is entitled to the concession fare is to require additional forms of identification. The requirement does not apply to persons travelling on the normal full fare or a child who is 14 years or less, or where evidence of an entitlement to a concession fare contains a photograph (for example, a student identification card) or is not in the form of a document (for example, a student wearing a school uniform).

Privacy

Section 148BB (Information sharing in relation to entitlements to concession fares) of TOPTA allows the chief executive to enter into an information sharing arrangement with relevant entities to determine whether a person is entitled to a concession fare. The amendment regulation inserts new section 262A (Relevant entity—Act, s 148BB) to prescribe additional relevant entities for section 148BB of TOPTA. Information shared with a relevant entity under an arrangement can relate only to information about whether a person is eligible for a concession fare. The potential privacy breach is justified to provide for the efficient administration of concession fares and ensure only people entitled to a concession fare can

access the benefit of the fare. This supports the quality and sustainability of public passenger transport. Further, the current legislation already restricts the disclosure, recording and use of information for other purposes and this protection will continue to apply under Smart Ticketing.

Delegation of administrative power

The amendment regulation inserts new sections 218I (Power to require production of tickets or tokens), 218J (Power to seize particular tickets or tokens), 218K (Power to require evidence of concession entitlement) and 218L (Power to require evidence to verify identity in particular circumstances). These provisions allow drivers and authorised persons to require a person to produce or give certain things to verify whether the person has paid the correct fare or to reduce fraud (for example, tickets, tokens, concession cards and supporting identification). The provisions may breach the FLP about delegating of administrative power only in appropriate cases and to appropriate persons to the extent the powers apply to drivers of public passenger vehicles. The potential FLP breach is justified because it is reasonable and necessary for drivers to be able to check that someone has paid the correct fare to protect fare revenue and drivers already had similar powers under former sections 143ADA and 143ADB of TOPTA. A driver cannot take enforcement action for failing to comply with any of the requirements (for example, a driver cannot serve an infringement notice for failure to produce a ticket or token). The only action a driver may take where the driver reasonably suspects that a person is fare evading because, for example, the person fails to produce a ticket or token, is to direct the person to leave or not enter a public passenger vehicle (see section 143AG of TOPTA).

Consultation

During the drafting of the bill for the PTO Act, TMR undertook targeted consultation on the proposed amendments to support Smart Ticketing with key industry stakeholders, including, among others, the following:

- Queensland Bus Industry Council;
- Queensland School Bus Alliance;
- Transport for Brisbane;
- Queensland Rail;
- Keolis Downer (the Gold Coast light rail operator); and
- Taxi Council of Queensland.

Key stakeholders across industry and government were also consulted during the procurement phase of Smart Ticketing, which included specification design and market sounding. Although direct, specific consultation with public transport customers and industry stakeholders was constrained by probity restrictions, general insights were obtained and applied through customer research, focus groups and panel surveys to ensure that the technical specifications of Smart Ticketing would meet customer needs. Further targeted consultation with public transport customers and industry stakeholders is ongoing as the Smart Ticketing project moves through the design, build and implementation phases.

Industry stakeholders generally expressed support for the legislative amendments and did not raise any concerns.

The Office of Best Practice Regulation (OBPR) in the Queensland Productivity Commission was also consulted on the proposed amendments to support Smart Ticketing contained in the bill for the PTO Act, which included the proposed amendments contained in the amendment regulation. OBPR advised that the proposed amendments do not require further regulatory impact assessment.

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