

Transport Operations (Passenger Transport) Amendment Regulation (No. 2) 2020

Explanatory notes for SL 2020 No. 194

made under the

Transport Operations (Passenger Transport) Act 1994

General Outline

Short title

Transport Operations (Passenger Transport) Amendment Regulation (No. 2) 2020

Authorising law

Sections 74(4), 76(2), 91R, 143AB, 153B(3) and 155, and schedule 3, definition of *public passenger service*, 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 (No. 2) 2020* (the amendment regulation) are to:

- ensure the Department of Transport and Main Roads (the department) has sufficient information to decide an application for a substitute vehicle authority;
- allow the department to issue certain evidentiary certificates in a proceeding for an offence against a fare evasion provision;
- clarify that a driver hire service is excluded from the application of the *Transport Operations (Passenger Transport) Act 1994* (TOPTA);
- ensure the department can give the holder of a relevant authority or service contract, who has consented to receiving correspondence by email, important information about the authority or service contract;
- allow substitute taxis to continue to be used to provide taxi services and booked hire services during peak patronage periods until new taxi service licences are implemented; and
- ensure consistency with other legislation as a result of the *Transport and Other Legislation (Road Safety, Technology and Other Matters) Amendment Act 2020* (Amendment Act) and *Road Vehicles Standards Act 2018* (Cwlth) (RVS Act).

Information for substitute vehicle authority application

Part 8, division 4 of *Transport Operations (Passenger Transport) Regulation 2018* (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 that may be used under a taxi service licence in particular circumstances and on particular conditions. The chief executive may require further information from the applicant to decide the application. However, there is currently no provision in TOPTR that allows the chief executive to ask for additional information to decide an application for a substitute vehicle authority.

Revenue protection device

To support a proceeding for an offence against a fare evasion provision, TOPTA allows the chief executive to certify that any of the following matters is evidence of the matter:

- at a particular time, a stated authorised person was trained and authorised to use a 'revenue protection device'; and
- at a particular time, a stated ticket or other item was electronically read or scanned by a 'revenue protection device', and a stated document is a record or report of the reading or scan.

Section 153B(3) of TOPTA defines a revenue protection device as an instrument that can be used to electronically read or scan a ticket or other item for the purpose of determining whether a person is contravening, or has just contravened, a fare evasion provision and that is prescribed by regulation. It is necessary to prescribe revenue protection devices by regulation to allow for the use of the abovementioned evidentiary certificates.

Driver hire services

Services involving the hire of a driver, without a vehicle, currently operate in Queensland. The services are largely marketed as a driver service to people who need someone to drive their vehicle to the hirer's home safely for a fee, often with the hirer as a passenger.

A service involving the hire of a driver, without a vehicle, may be considered a public passenger service under TOPTA, and as a result, subject to the requirements of TOPTA, including operator accreditation and driver authorisation. However, the department does not intend to impose the requirements of TOPTA on operators and drivers providing driver hire services because, on balance, the risk associated with this kind of service does not warrant a similar level of regulation to other public passenger services and the requirements of TOPTA relating to operator accreditation would not be able to be easily complied with in practice.

Notifying the department about change of current email address

Section 277 (Change of name, address or postal address) of TOPTR currently requires a holder of various authorities or a service contact to notify the chief executive within 10 business days of a change to the holder's name, address and, if the holder has a current postal address, the holder's postal address. Holders of authorities are increasingly nominating their email address for receiving correspondence from the department, which would include regulation notices about administrative decisions made under TOPTA.

It is important that a holder of an authority under TOPTA, who has given the department consent to correspond with the holder by email, notifies the department if the holder's email address changes so the department can send any important correspondence about the authority to the correct address. If the holder does not notify the department and the department takes administrative action against the holder's authority (for example, suspending the person's booked hire service licence), the holder may not receive a regulation notice and may continue

to provide a public passenger service unlawfully. That may also have broader safety implications for passengers if the department's action was taken for safety reasons.

Peak demand transitional arrangements for substitute taxis

Sections 284 (Continued use of substitute vehicles during peak patronage periods until 30 September 2019) and 302 (Application of s 284) of TOPTR allow substitute taxis stated in a peak demand exemption notice to be used to provide taxi services and booked hire services until 30 September 2020. The peak demand transitional arrangements for substitute taxis must remain in place until the department implements a framework for new, more flexible, taxi service licences.

The department has not implemented the new taxi service licences. As such, amendments are needed to allow substitute taxis to continue to be used to provide taxi services and booked hire services during peak patronage periods until new taxi service licences can be implemented.

Consequential amendments

The RVS Act forms part of a package of legislation to regulate the importation and provision of road vehicles and replaces the *Motor Vehicle Standards Act 1989* (Cwlth). *The Road Vehicle Standards Legislation Amendment Act 2019* (Cwlth), delayed commencement of the RVS Act until a day to be fixed by proclamation or 1 July 2021, if not commenced before that date.

The Amendment Act updated evidentiary provisions as a consequence of the RVS Act. The Amendment Act also amended TOPTA to clarify evidentiary certificates for fare evasion. Consequential amendments to TOPTR are required to ensure consistency with the Amendment Act and RVS Act.

Achievement of policy objectives

Information for substitute vehicle authority application

The objective of ensuring the department has sufficient information to decide an application for a substitute vehicle authority is achieved by allowing the chief executive to require further information or a document the chief executive reasonably requires to decide the application for a substitute vehicle authority. This is a similar approach to what already happens for applications for booked hire service licences and booking entity authorisations, where the chief executive may, by written notice given to the applicant, require the applicant to give the chief executive further information or a document the chief executive reasonably requires to decide the application under sections 153 and 186 of TOPTR.

Revenue protection device

The objective of allowing the department to issue certain evidentiary certificates in a proceeding for an offence against a fare evasion provision is achieved by prescribing the following as revenue protection devices for section 153B(3), definition *revenue protection device*, of TOPTA:

- PAX Technology A77;
- Samsung Galaxy J3 (2016); and
- Cubic Transportation Systems CDRL 48.

Driver hire services

The objective of clarifying that a driver hire service is excluded from the application of TOPTA is achieved by excluding a service provided by the hire of a person to drive a motor vehicle if

the service does not include the hire of the vehicle from schedule 3, definition of *public passenger service*, of TOPTA. If a service includes the provision of another vehicle to carry passengers with a driver, the exemption will not apply to the part of the service provided using the other vehicle.

Notifying the department about change of current email address

The objective of ensuring the department can give the holder of a relevant authority or service contract, who has consented to receiving correspondence by email, important information about the authority or service contract, is achieved by requiring the holder to notify the chief executive within 10 business days of a change to the holder's email address. The offence will not apply if a holder has retracted the consent for the department to send correspondence to the email address.

Peak demand transitional arrangements for substitute taxis

The objective of allowing substitute taxis to continue to be used to provide taxi services and booked hire services during peak patronage periods until new taxi service licences are implemented is achieved by providing that a reference to 30 September 2019 in section 284 is modified to be a reference to 30 September 2022.

Consequential amendments

The objective of ensuring consistency with other legislation is achieved by making consequential amendments to refer to a relevant public passenger vehicle under TOPTA and update the definitions of *forward-control passenger vehicle*, *off-road passenger vehicle* and *passenger vehicle*.

Consistency with policy objectives of authorising law

The amendment regulation is consistent with the objectives of TOPTA.

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 implementation of the amendments will not result in additional costs for government, industry or the general public.

The amendments will provide several benefits to industry, including reducing the regulatory burden on operators and drivers of driver hire services and ensuring substitute taxis can continue to be used to provide taxi services and booked hire services during peak patronage periods. The amendment relating to revenue protection devices will benefit the department and courts by facilitating prosecutions relating to fare evasion.

Consistency with fundamental legislative principles

The amendments are consistent with fundamental legislative principles.

Consultation

The Taxi Council Queensland (TCQ) was consulted on the amendments relating to peak demand transitional arrangements for substitute taxis, information for substitute vehicle authority applications and notifying the department about change of current email address. The TCQ did not oppose the amendments.

TCQ was also consulted on the driver hire services amendment. The TCQ expressed some views about the operation of driver hire services, but overall was comfortable with the proposed amendment.

The department did not undertake consultation on the consequential amendments or the amendment about revenue protection devices because the amendments are considered to be minor and technical in nature.

In accordance with the *Queensland Government Guide to Better Regulation*, the department applied a self-assessable exclusion from undertaking further regulatory impact analysis based on category (a) – regulatory proposals that make consequential amendments and category (g) – regulatory proposals that are machinery in nature for the amendments relating to the information for substitute vehicle authority applications, revenue protection devices, notifying the department about change of current email address, and peak demand transitional arrangements for substitute taxis.

The Office of Best Practice Regulation assessed an exclusion from undertaking further regulatory impact analysis on the amendment relating to driver hire services based on exclusion category (k) – proposals designed to reduce the burden of regulation, or that clearly do not add to the burden, and it is reasonably clear there are no significant adverse impacts.