

Transport and Other Legislation Amendment Regulation 2020

Explanatory notes for SL 2020 No. 220

made under the

State Penalties Enforcement Act 1999

Transport Infrastructure Act 1994

Transport Operations (Road Use Management) Act 1995

General Outline

Short title

Transport and Other Legislation Amendment Regulation 2020

Authorising law

Section 165 of the *State Penalties Enforcement Act 1999*

Sections 442 and 490 of the *Transport Infrastructure Act 1994*

Sections 148, 152 and 171 of the *Transport Operations (Road Use Management) Act 1995*

Policy objectives and the reasons for them

The policy objectives of the *Transport and Other Legislation Amendment Regulation 2020* (Amendment Regulation) are to:

- adopt the 6th package of nationally agreed amendments to the Model Subordinate Instrument on the Transport of Dangerous Goods by Road or Rail;
- introduce a requirement for electric and hydrogen powered vehicles to display identification labels on number plates;
- clarify how an approved examiner and the proprietor of an approved inspection station (AIS) can approve an inspection certificate that is issued electronically; and
- make consequential amendments to the *State Penalties Enforcement Regulation 2014* (SPE Regulation) to renumber the entries for sections 52 and 53 of the *Transport Operations (Road Use Management) Act 1995* (TORUM Act) to ensure that the entries correspond to renumbered offence provisions in that Act.

Achievement of policy objectives

The Amendment Regulation achieves the policy objectives listed above by amending the SPE Regulation, the *Transport Infrastructure (Dangerous Goods by Rail) Regulation 2018* (Rail Regulation), the *Transport Operations (Road Use Management—Dangerous Goods) Regulation 2018* (Road Regulation) and the *Transport Operations (Road Use Management—Vehicle Standards and Safety) Regulation 2010* (Vehicle Standards Regulation) as set out below.

Transport of dangerous goods by road and rail

National model laws have been developed to ensure a nationally consistent approach to the transport of dangerous goods by road and rail in all Australian jurisdictions. These laws are based on the internationally accepted United Nations (UN) Recommendations on the Transport of Dangerous Goods Model Regulations which are revised every two years. These laws also provide the model to give effect to the Australian Code for the Transport of Dangerous Goods by Road and Rail (ADG Code).

The Transport and Infrastructure Council has approved the 6th package of amendments to the national Model Subordinate Instrument on the Transport of Dangerous Goods by Road or Rail and the ADG Code.

The Amendment Regulation implements these changes in Queensland through amendments to the Rail Regulation, the Road Regulation and the SPE Regulation, as explained below.

To assist industry transition to the new ways of complying under the ADG Code, for a 12-month period they will be able to choose to comply with either the new ADG Code requirements or those that currently apply.

Dangerous goods packed in limited quantities

Small packages containing certain dangerous goods, such as cosmetics and personal care products, are known under the ADG Code as dangerous goods packed in limited quantities (LQ dangerous goods). Domestic consumable dangerous goods are those that are frequently consumed by households and include goods such as domestic smoke detectors, lighters, lighter refills, party poppers and fire extinguishers.

The proposed amendments outlined below aim to reduce the regulatory burden on stakeholders within the following industries:

- cosmetics and personal care products;
- household cleaning products;
- home, garden and pest products; and
- paints, coatings and related products.

The amendments will result in closer alignment with international jurisdictions, while still accounting for risks unique to the Australian transport environment, such as the use of higher capacity vehicles.

Placarding requirements

The transportation of LQ dangerous goods and domestic consumable dangerous goods is classed as a lower-risk activity than transporting a bulk quantity of dangerous goods. As such, currently less than 2000 litres/kilograms aggregate quantity of these dangerous goods can be transported without the need for the vehicle to display a placard (that is, a warning sign placed on the outside of the vehicle).

The proposed amendments specify that a placard will be required only when the gross mass of these dangerous goods is eight tonnes or more, unless the load contains 2000 litres/kilograms aggregate quantity or more of dangerous goods of a single UN number from a single consignor.

The increase to the placarding threshold will enhance Australia's productivity competitiveness and harmonise Australian practices with UN standards.

However, if the load contains 2000 litres/kilograms aggregate quantity or more of dangerous goods of a single UN number from a single place of consignment, the vehicle will still be required to display a placard.

The amendments also introduce the placarding thresholds for a load that contains a combination of LQ dangerous goods, domestic consumables dangerous goods and other dangerous goods.

Transport documentation/information

There are currently general transport documentation requirements in the ADG Code that apply to the transport of LQ dangerous goods in the same way as they do to the transport of other dangerous goods. The amendments will allow for more flexibility in the way information can be provided for LQ dangerous goods.

The Amendment Regulation creates new duties and associated offences for consignors and prime contractors in relation to the provision of information about LQ dangerous goods. As a result of the changes, information will need to be readily ascertainable during transport, including if it is requested by police, transport inspectors or emergency services officers.

Amendments to the SPE Regulation will prescribe appropriate offences under the Road Regulation as infringement notice offences.

New offences for prime contractors

The Road Regulation contains specified restrictions relating to a tank vehicle transporting a placard load that is equipped with a burner to heat the load (for example, a bitumen tanker). It also contains restrictions in relation to parking a vehicle transporting a placard load. However, the offences relating to these restrictions are currently driver only offences.

In many instances, a prime contractor may exert influence over the driver and may in some cases direct a driver not to comply with the restrictions. Therefore, the amendments introduce new offences aimed at a prime contractor who directs or induces a driver to not comply with the restrictions. Amendments to the SPE Regulation will prescribe the new offences of directing a driver to not comply with the restrictions as infringement notice offences.

Nominally empty storage vessels

Nominally empty storage vessels are empty tanks or hoppers that have been used for the storage of certain dangerous goods. While the amount of dangerous goods remaining in these vessels is small, there may still be a safety risk posed by the presence of any quantity of dangerous goods. Further, there is a risk to first responders to an incident who, without appropriate placarding, may unknowingly be dealing with small amounts of dangerous substances. It is important that these vessels are transported with appropriate documentation, labelling and placarding. To clarify existing requirements in relation to the transport of nominally empty storage vessels, specific offence provisions have been incorporated into the Road Regulation and the Rail Regulation. Amendments to the SPE Regulation will prescribe appropriate offences under the Road Regulation as infringement notice offences.

Minor amendments

The amendments will:

- put beyond doubt that dangerous goods that are purported to be packed in limited or excepted quantities, but do not comply with the specific requirements of the ADG Code that apply to them, will be subject to the general packaging requirements under the ADG Code; and
- ensure an offence applies to selling, supplying or offering to sell non-compliant packaging for excepted quantities of dangerous goods.

Labels for electric and hydrogen powered vehicles

Electric vehicles have high voltage cabling and battery charge which can pose a risk of fire or shock if the vehicle is involved in an incident. Hydrogen is highly flammable and burns practically clear in oxygen so is almost invisible during daylight and consequently poses a fire and safety risk if a hydrogen powered vehicle is involved in an incident.

The Amendment Regulation will amend the Vehicle Standards Regulation to, in effect, require electric and hydrogen powered vehicles to have identification labels fitted conspicuously to the vehicle's number plates if the vehicle is driven or parked on a road. Labelling these vehicles will assist first responders to identify and respond to vehicle specific risks at incident scenes. A similar provision already applies to LPG (liquefied petroleum gas) powered vehicles.

The labelling requirements for electric and hydrogen powered vehicles are included in the Australian Light Vehicle Standards Rules 2015 (ALVSRs) and have been implemented by most jurisdictions. The ALVSRs were developed and are maintained by the National Transport Commission (NTC) working with jurisdictions to provide the basis for nationally-consistent vehicle standards. The ALVSRs are applied in Queensland through the Vehicle Standards Regulation.

There will be a 12-month transitional period applied to the labelling requirements to allow currently registered vehicles time to comply.

Approving electronic inspection certificates

Under the Vehicle Standards Regulation, safety inspections are undertaken on vehicles and *safety certificates* or *certificates of inspection* are issued. For light vehicles, a safety certificate

is required when the vehicle is registered, offered for sale and when its registration is transferred. For heavy vehicles, public passenger transport vehicles, buses, driver trainer vehicles and licensed tow trucks, safety inspections to issue certificates of inspection are required at set periods prescribed in legislation.

Inspection certificates are issued by AISs either in paper form or electronically using an electronic system known as Inspection Certificates Online.

Under section 19(4) of the Vehicle Standards Regulation, an approved examiner must not sign an inspection certificate for a vehicle unless certain criteria are met. These criteria include:

- the examiner is satisfied about the identity of the vehicle;
- the examiner has carried out a thorough inspection of the vehicle; and
- the examiner reasonably considers the vehicle is not defective.

Before the inspection certificate is issued, the proprietor of the AIS where the vehicle inspection occurred must ensure certain matters have been complied with in relation to the form of the certificate, including that the certificate is completed correctly and legibly, after which the proprietor must sign the certificate.

The current provisions of the Vehicle Standards Regulation envisage signing using an electronic method that does not require a traditional signature.

Amendments will more closely align the language used in the provisions with the language used in the Inspection Certificates Online system to put beyond doubt the intent of the provisions that a traditional signature is not required on an electronic inspection certificate. The amendments will provide for inspection certificates to be approved, rather than "signed". For paper certificates, approval will continue to mean signing the certificate. For electronic certificates, approval will occur within the electronic system, which requires an approved examiner to submit the certificate in the system to the proprietor of the AIS, who then approves the certificate in the system.

Renumbering entries in the State Penalties Enforcement Regulation 2014

Section 52 of the TORUM Act provides that a person must not state anything to an official that the person knows is false or misleading in a material particular. Similarly, section 53 of that Act provides that a person must not give an official a document containing information that the person knows is false or misleading in a material particular. The offence provisions in these sections set out the penalties that apply in relation to specified circumstances. There are corresponding entries in the SPE Regulation which set the amount of the penalty infringement fine for each of the paragraphs of the penalty.

The *Transport Legislation (Road Safety and Other Matters) Amendment Act 2019* amended the penalty provisions in sections 52 and 53 of the TORUM Act. An additional paragraph was included in the penalty provisions to cater for false or misleading statements made in an online portal. The existing subsections in the penalty provisions were also renumbered as a result of the additional paragraph.

Consequential amendments are now being progressed to the SPE Regulation to renumber the entries for sections 52 and 53 of the TORUM Act to ensure that they correspond to the

renumbered offence provisions in that Act. A penalty infringement amount is not being inserted for the new paragraph relating to a false or misleading statement made in an online portal. These statements involve the nomination of another person as the driver of a vehicle involved in a camera-detected offence and, as a result, a false or misleading statement can have significant consequences for the person nominated. The maximum penalty for making such a false or misleading statement includes a potential imprisonment term and the offence is therefore considered to be inappropriate for a penalty infringement fine.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the policy objectives of:

- the *State Penalties Enforcement Act 1999* to maintain the integrity of fines as a viable sentencing or punitive option for offenders;
- the *Transport Infrastructure Act 1994* to establish a regime that provides for the safety of railways and persons at, on or near railways; and
- the *Transport Operations (Road Use Management) Act 1995* to provide for the effective and efficient management of road use in the State and provide a scheme for managing the use of the State's roads that will improve road safety in ways that contribute to overall transport effectiveness and efficiency.

Inconsistency with policy objectives of other legislation

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

Benefits and costs of implementation

The benefits of the amendments relating to transporting dangerous goods by road and rail include maintaining nationally consistent and up-to-date laws for the transportation of dangerous goods. The amendments also result in reduced red tape and regulatory burden on certain sectors of the dangerous goods industry. The cost of implementing these amendments is expected to be insignificant and will be met by the existing budget allocation.

It is anticipated that labels for electric and hydrogen powered vehicles will cost the same as those for LPG powered vehicles (approximately \$15 for a pair of metal plates and sticker labels). It is expected that most vehicle owners will manage supply of the labels themselves or through relevant dealers. The Electric Vehicle Council has undertaken to provide the labels to new vehicle owners (including hybrid vehicles).

In addition, member dealers of the council have advised they will provide labels to other owners of previously purchased vehicles. There are currently no hydrogen powered vehicles registered in Queensland, but labels are available on line if needed. If hydrogen powered vehicle numbers grow, label supply is likely to be managed by dealers (as is the case for electric and LPG vehicles).

In addition, the Department of Transport and Main Roads (TMR) will purchase a small supply of labels as a precaution to be provided if requested by members of the public and this cost will be met from existing TMR budget allocation. It is considered the safety benefits for first responders and the community outweigh any impost.

As outlined above, the benefits of making the amendments relating to vehicle inspection certificates and renumbering entries in the SPE Regulation include that:

- outcomes remain unchanged for users of the electronic and paper systems for issuing inspection certificates by aligning the language of the provisions with the system to make it clear that a traditional signature is not required on an electronically issued inspection certificate. This will maintain customer and user confidence in the inspection certificates issued using the Inspection Certificates Online system; and
- entries in the SPE Regulation for sections 52 and 53 of the TORUM Act correspond to renumbered offence provisions in that Act. Those provisions deter the giving of false or misleading statements or documents containing information that the person knows is false or misleading.

The cost of implementing the amendments is minimal and will be met from existing resources.

Consistency with fundamental legislative principles

The Amendment Regulation is consistent with the fundamental legislative principles as required under the *Legislative Standards Act 1992*.

The amendments incorporate references to the ADG Code, which is a lengthy document containing the detailed and technical requirements for classifying and transporting dangerous goods by road and rail and which, where possible, gives effect to international requirements for transporting dangerous goods. The technical detail contained in the ADG Code would be inappropriate to incorporate into the Road Regulation and the Rail Regulation and would expand the size of these regulations considerably. Stakeholders support the use of the ADG Code as they have a high level of understanding and familiarity with it. The ADG Code has also been adopted in each jurisdiction in Australia and is developed and maintained by the NTC in consultation with each jurisdiction and industry.

The latest version of the ADG Code, and any proposed amendments to the ADG Code, are also readily accessible by the public on the NTC's website. For these reasons, it is believed that referencing the ADG Code in the Road Regulation and the Rail Regulation is appropriate and adequately considers fundamental legislative principle considerations.

The offences and penalty amounts contained in the Amendment Regulation align with the penalties imposed for other similar offences in the Road Regulation and the Rail Regulation. The offence provisions and corresponding maximum penalties have been reviewed to ensure that the penalties are proportionate to the seriousness of the offences.

As mentioned above, to assist industry transition to the new ways of complying under the ADG Code, for a 12-month period they will be able to choose to comply with either the new ADG Code requirements or those that currently apply.

Consultation

Transport of dangerous goods by road and rail

The NTC undertook public consultation on the 6th package of amendments to the national model laws. Feedback on the proposed amendments was invited from members of the public

including relevant industry groups. Extensive consultation also occurred through the NTC's annual legislative maintenance process, including consultation and meetings of the Competent Authorities Panel (CAP) and the Dangerous Goods Maintenance Advisory Group (MAG).

Membership of the MAG includes the NTC, the Transport and Infrastructure Council, the National Heavy Vehicle Regulator, all state and territory CAP members, Australasian Fire and Emergency Service Authorities Council (AFAC) representing national emergency services and peak industry associations. These associations include the Australian Trucking Association, Australian Logistics Council, Chemistry Australia, Aerosol Association Australia, Freight Trade Alliance, ACCORD (peak national body representing manufacturers and marketers of the hygiene, cosmetic and specialty product industries) and the Plastics and Chemicals Industries Association.

TMR also undertook Queensland specific stakeholder consultation with the following groups:

- Queensland Trucking Association;
- Transport Workers Union;
- Queensland United Fire Fighters Union;
- Queensland Fire and Emergency Services; and
- Registered Training Organisations who provide dangerous goods driver licence training in Queensland.

The proposed amendments were generally supported by all stakeholders except for the LQ dangerous goods and domestic consumables dangerous goods amendments. The AFAC identified that higher placarding thresholds for LQ dangerous goods and domestic consumable dangerous goods may result in implications for emergency response, training and planning, and may possibly lead to more costly clean-up delays and traffic congestion at dangerous goods incidents.

As a result of the issues raised, the NTC undertook further consultation with concerned stakeholders, including AFAC, as well as with other jurisdictions.

To address any ongoing concerns, the NTC has committed to reviewing the amendments in two years as part of the next update of the ADG Code and to work collaboratively with regulators to resolve any issues arising from the amendments. Further, if there is an incident involving LQ dangerous goods or domestic consumables dangerous goods, the NTC will participate in an investigation to the extent of identifying if the incident was caused by, or escalated because of, the changes to the requirements applying to LQ dangerous goods.

The NTC is also working closely with regulators, emergency services and industry to develop guidance material to underpin the new limited quantity requirements and assist compliance. As the Queensland Regulator, TMR will continue to monitor the effectiveness of all amendments, including those related to LQ dangerous goods and domestic consumables dangerous goods, to ensure appropriate action can be taken should circumstances warrant.

The proposed amendments were unanimously endorsed by Ministers at the Transport and Infrastructure Council meeting on 5 June 2020.

In accordance with the *Queensland Government Guide to Better Regulation*, the Office of Best Practice Regulation (OBPR) was consulted in relation to the amendments and advised that no further regulatory impact analysis is required on the basis that it is reasonably clear that the amendments will not add to the burden of regulation and are unlikely to result in significant adverse impacts.

Labels for electric and hydrogen powered vehicles

The requirement for labels for electric and hydrogen powered vehicles was included in the ALVSR 2017 Amendment Package developed by the NTC working with the Vehicle Standards Action Group. Bodies represented within the Action Group include the National Heavy Vehicle Regulator, the Heavy Vehicle Industry Australia, the Australian Trucking Association, the Australian Livestock and Transporters Association, the Federal Chamber of Automotive Industries and all state, federal and territory road agencies.

The NTC also consulted with relevant stakeholders, including automotive industry bodies and representatives, police and road safety experts, motoring organisations and members of the public.

In addition to the national consultation, TMR contacted key stakeholder groups including the Motor Trades Association of Queensland, the Heavy Vehicle Industry Association, the Electric Vehicle Council and the Royal Automobile Club of Queensland.

The NTC received overwhelming support for the proposal as it will aid the safety of first responders when attending road crashes involving alternative fuelled vehicles. No issues were raised by any of the stakeholder groups consulted by TMR.

In accordance with the *Queensland Government Guide to Better Regulation*, TMR applied a self-assessable exclusion from undertaking further regulatory impact analysis (Category G—Regulatory proposals that are of a machinery nature).

Approving electronic inspection certificates and renumbering entries in the SPE Regulation

The amendments relating to vehicle inspection certificates will ensure that outcomes for users of the system will remain the same and, as such, no consultation was undertaken on them. The amendments to the entries in the SPE Regulation are technical amendments and have not been the subject of consultation.

In accordance with the *Queensland Government Guide to Better Regulation*, TMR applied a self-assessable exclusion from undertaking further regulatory impact analysis on the following basis:

- for the amendments relating to inspection certificates: Category G—Regulatory proposals that are of a machinery nature; and
- for the amendments relating to renumbering entries in the SPE Regulation: Category A—Regulatory proposals that make consequential amendments.