

# Transport Legislation (Distracted Driver and Other Matters) Amendment Regulation 2021

Explanatory notes for SL 2021 No. 102

made under the

*Forestry Act 1959*

*Nature Conservation Act 1992*

*Recreation Areas Management Act 2006*

*State Penalties Enforcement Act 1999*

*Transport Operations (Road Use Management) Act 1995*

## General Outline

### Short title

*Transport Legislation (Distracted Driver and Other Matters) Amendment Regulation 2021*

### Authorising law

Section 97 of the *Forestry Act 1959*

Section 175 of the *Nature Conservation Act 1992*

Section 232 of the *Recreation Areas Management Act 2006*

Section 165 of the *State Penalties Enforcement Act 1999*

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

### Policy objectives and the reasons for them

The policy objectives of the *Transport Legislation (Distracted Driver and Other Matters) Amendment Regulation 2021* (Amendment Regulation) are to:

- address unsafe driving behaviours by providing that it is an offence for the driver of a vehicle to hold a mobile phone in the driver's hand or rest a mobile phone on any part of the driver's body while the vehicle is moving, or is stationary but not parked;
- facilitate camera enforcement of mobile phone and driver-related seatbelt offences; and
- encourage corporations to nominate the drivers of corporately-registered vehicles in which mobile phone or driver-related seatbelt offences are detected.

## Achievement of policy objectives

The Amendment Regulation achieves the policy objectives listed above by:

- amending the *Traffic Regulation 1962* (Traffic Regulation), the *Transport Operations (Road Use Management—Driver Licensing) Regulation 2010* (Driver Licensing Regulation), the *Transport Operations (Road Use Management—Road Rules) Regulation 2009* (QRRs) and the *State Penalties Enforcement Regulation 2014* (SPE Regulation); and
- making consequential amendments to the *Forestry Regulation 2015*, the *Nature Conservation (Protected Areas Management) Regulation 2017* and the *Recreation Areas Management Regulation 2017*.

### Camera enforcement of mobile phone and driver-related seatbelt offences

The introduction of camera-detection of mobile phone and driver-related seatbelt offences in Queensland aims to save lives and reduce road trauma and the impact it has on families and communities.

Driver distraction is one of the 'Fatal Five' driving behaviours, together with failure to wear a seatbelt, speeding, drink and drug driving, and fatigue. Driver distraction contributes to almost 20 per cent of serious injuries and 14 per cent of fatalities on Queensland roads each year. Road trauma has a devastating and life-long impact on families and communities. It also results in a considerable cost to the Queensland economy each year.

### Mobile phone use

Mobile phone use while driving is one of the most prevalent behaviours associated with driver distraction. Research shows that a person is four times more likely to be involved in a serious crash if they are using a mobile phone while driving. It also shows that using a mobile phone while driving is just as dangerous as driving with a blood alcohol content (BAC) of 0.07-0.10.

Despite the recognised dangers, over 5,700 fines were issued for the period from 1 January 2020 to 30 November 2020. The average total number of mobile phone offences committed each year in the previous five years was 17,262.

Reducing illegal mobile phone use requires a multi-faceted approach. On 1 February 2020, the penalty for illegally using a mobile phone while driving increased to a \$1000 fine (indexed in 2021-22 to \$1033) and four demerit points. Double demerit points (eight points) apply for a repeat mobile phone offence committed within 12 months of an earlier offence. While the increase in the penalties has been supported by significant public education and communications, the deterrent effect of these penalties is diminished if drivers still believe the risk of getting caught is low.

Current enforcement of mobile phone offences relies on roadside police observing an offence. Research by the Centre for Accident Research and Road Safety Queensland (CARRS-Q) shows that holding a mobile phone down around the driver's lap is a common strategy of drivers to avoid police detection for dangerous behaviours such as texting and internet browsing. The road safety risk of these behaviours is high because they involve a driver taking their eyes off the road, their mind away from the driving task and their hand/s off the steering wheel.

A driver with a phone resting on their lap will also be tempted to take their eyes off the road to look down at the phone, especially with active notifications. They may also interact with the phone by touching or tapping it to browse or access social media content.

In addition, if the unsecured phone falls from their lap, which could easily happen while turning or braking, a driver is also likely to reach down to the footwell to pick it up while driving. Alternatively, not picking it up is also dangerous as the phone may become lodged behind one of the vehicle's pedals and obstruct its function.

These behaviours are unsafe, unnecessary and result in an unacceptable road safety risk to every road user.

The introduction of camera enforcement of mobile phone offences presents an opportunity to address these high-risk driving behaviours. To realise this opportunity, amendments to the current rules are necessary. Camera detection of offences will work alongside traditional enforcement to help deter dangerous behaviours and encourage a shift in community attitudes, particularly away from social acceptance of drivers using a hand-held mobile phone while driving.

The Amendment Regulation amends section 300 of the QRRs to make it an offence for the driver of a vehicle (except a police or emergency vehicle) that is moving, or is stationary but not parked, to:

- hold a mobile phone in the driver's hand regardless of how the phone is being used, whether it is operating, and whether it is being partially supported by another part of the driver's body or another thing; or
- rest a mobile phone on any part of the driver's body regardless of how the phone is being used, whether it is operating, and whether it is being partially or wholly supported by another part of the driver's body or another thing.

The rules, as amended, will be able to be enforced through either the camera technology or at the roadside.

The amended rules allow a driver to hold or touch a phone in very limited circumstances. This includes where the driver is required by a police officer to produce a digital authority that is on the phone. A driver can also, while their vehicle is stationary, use a phone to pay for goods or services at a drive-through or to gain access to a road-related area or land adjacent to a road related area (for example, operating a boom gate at the entry of a property). A person can also pick up their phone wallet to remove a physical authority such as a driver licence, document, money, or card for these allowable purposes.

A driver can also keep their phone in a pocket of their clothing or in a pouch they are wearing; however, they must not operate the phone or a function of the phone, other than by voice control, and the screen of the phone must not be in their view. This will not prevent a person from listening to, for example, music or spoken navigational instructions that are playing on or through their phone while it is in a pocket of their clothing or a pouch they are wearing, as long as they control the function of the phone only by voice. It would also not prohibit the use of controls on a steering wheel that control the phone. For example, controls that adjust the volume of the phone. This is because touching the steering wheel is not a prohibited 'use' as defined in the provision. Using a phone that is in a cradle or mounting will continue to be permissible.

Additional restrictions currently apply to novice drivers, with learner and P1 provisional drivers under 25 not permitted to use a mobile phone at all while driving. This includes using hands-free, wireless headsets or a mobile phone's loudspeaker function. Their passengers are also prohibited from using a mobile phone's loudspeaker function. These restrictions are set out in the Driver Licensing Regulation.

Given the ongoing high road-safety risks for novice drivers, these additional restrictions remain in place. However, the Amendment Regulation makes changes to the Driver Licensing Regulation to allow the limited exceptions that apply for other drivers to also apply to novice drivers. That is, a novice driver will also be able, while their vehicle is stationary, to produce a digital authority when requested by police, pay for goods and services at a drive-through and gain access to a road-related area or land adjacent to a road related area. They can also pick up their phone wallet to remove a physical authority, document, money, or card for these allowable purposes. However, as noted above, these drivers cannot otherwise use a phone at all while driving, including hands-free, headsets, or on loudspeaker.

A novice driver will be permitted to keep their phone in a pocket of their clothing or in a pouch they are wearing. However, they must not operate the phone or a function of the phone in any way. This means, for example, they must not touch the phone while it's in their pocket, use voice control or any other external control to operate the phone or a function of the phone, play music or navigation on or through the phone, or look at the screen of the phone.

#### Driver-related seatbelt requirements

Failure to wear a seatbelt also continues to be a serious contributor to road trauma in Queensland and is another of the fatal five driver behaviours. On average, 31 people are killed and 166 seriously injured on Queensland roads each year as a result of a road crash while not wearing a seatbelt or restraint. This is despite extensive research over many decades that shows that seatbelts save lives in the event of a crash. Research indicates that a person is nine times more likely to be killed in a crash if they are not properly restrained.

The QRRs provide for offences relating to drivers and passengers not wearing seatbelts. The intent of the laws is that all people travelling in a vehicle that is fitted with seatbelts are appropriately restrained, unless an exemption applies. In relation to passengers in a vehicle, a driver generally has an obligation to ensure that their passengers are appropriately restrained.

The QRRs also provide for exemptions from the seatbelt requirements in section 267. These include for vehicles that are not required and do not have seatbelts fitted (for example, a vintage car) and for a person who has a medical certificate from a doctor that states they should not wear a restraint due to a medical condition or a disability. There are also limited exceptions for drivers of certain vehicles to ensure their passengers are restrained, set out in section 267A. This includes the driver of a bus, and a driver of a taxi or booked hire vehicle for certain passengers. It also includes where the passenger has a medical exemption.

Currently, a driver who fails to wear a seatbelt when driving can receive a fine of \$413 and three demerit points. A driver who fails to ensure that a passenger is restrained can receive a fine of \$413 and three demerit points for each unrestrained passenger. Like mobile phone offences, double demerit points apply for seatbelt offences committed within 12 months of an earlier offence.

The Amendment Regulation restructures, but does not change, the current seatbelt rules and exemptions. The changes are necessary to support both camera and roadside enforcement of seatbelt offences where a person (driver or passenger) sitting in the front seat of a vehicle is not wearing a restraint while the vehicle is being driven.

The requirement on the driver to wear a seatbelt while the vehicle is moving, or stationary but not parked, is set out in section 264 and will apply unless the driver is exempt for one of the reasons stated in section 267.

Section 264A sets out the requirements on a driver in relation to a passenger while the vehicle is moving, or is stationary but not parked. The requirement on the driver in subsection 264A(1) has two limbs. The first is that each passenger in or on the vehicle must be wearing an approved seatbelt that is properly adjusted and fastened. The second is that the driver must ensure that their passengers comply with other requirements in sections 265 or 266 in relation to a passenger. If either of these limbs is not met, unless an exemption applies under section 267 or section 267A, the driver is liable to a maximum penalty of 20 penalty units or an infringement notice fine of 3 penalty units and three demerit points for each unrestrained passenger. For example, if no exemption applies and a passenger is not wearing an approved seatbelt, the driver will have committed an offence under section 264A(1), irrespective of whether the passenger is otherwise complying with the requirements of sections 265 or 266.

The requirements for children to be restrained in a child restraint appropriate to their age are set out in section 266. Sections 265 and 266 also set out other requirements about the seating of passengers in vehicles. These requirements will continue to be roadside enforced where the age of the passenger and the appropriate restraint and seating requirements can be determined. A driver who does not ensure these specific requirements are met in relation to a passenger commits an offence under section 264A. The enforcement of seatbelt offences for passengers sitting in seats behind the front seats will also continue to be enforced at the roadside.

In relation to the exemption for drivers of certain vehicles to ensure their passengers are appropriately restrained, the Amendment Regulation collates these into a single new section 267A. This is intended to make the exemptions clearer and easier to understand.

For medical certificates that exempt a person from wearing a restraint, currently a person is not exempt unless they (or the driver) immediately produce a valid medical certificate to a police officer when asked. While this requirement will not change for roadside enforcement, amendments are included to ensure medical certificates can be provided for camera-enforced offences. The Amendment Regulation provides that for a camera-detected seatbelt offence, a person has up to 28 days to provide the certificate. They can also provide it in advance of any infringement by lodging it with the Department of Transport and Main Roads (TMR) at any time. Lodging it with TMR is optional and the person will be able to provide a copy of the certificate to TMR, allowing them to retain the original to carry while in a vehicle.

It is recognised that in extraordinary circumstances, a driver may not be able to produce a medical certificate. If a driver has misplaced their own certificate, they will be able to instead provide a letter from their doctor stating that they had a valid certificate at the relevant time. A driver will also not be required to produce a certificate for a passenger who is exempt if the driver has a reasonable excuse for not doing so. Examples of a reasonable excuse are where the passenger has since died, gone overseas or otherwise refuses to provide the certificate.

In addition to setting out the mobile phone and seatbelt road rules, the QRRs set out the offences that are prescribed as camera-detected offences for the purposes of Chapter 5, Part 7 of the *Transport Operations (Road Use Management) Act 1995* (TORUM Act). The Amendment Regulation adds the mobile phone offence and driver-seatbelt offences to the list of prescribed camera-detected offences.

#### *Addition of the digital driver behaviour camera system into the Camera Detected Offence Program*

Queensland already has a robust Camera Detected Offence Program (CDOP) for offences such as speeding, disobeying red traffic lights, driving motor vehicles carrying placard loads in tunnels, and offences involving unregistered and uninsured vehicles. The enforcement of offences through the CDOP has been successful over two decades at deterring illegal and dangerous driver behaviours. Using the available technology to enforce speeding and failure to obey traffic lights in particular has helped to reduce lives lost and serious injury from these dangerous behaviours.

Technological advancements have now made camera systems available to successfully detect drivers unlawfully using a mobile phone while driving and instances where drivers and passengers in the front seat of a vehicle are not wearing a restraint. The purpose of adopting this technology is to help save lives, reduce the road toll and address the ongoing impact of the Fatal Five driving behaviours.

Camera-detected mobile phone and driver-related seatbelt offences will be managed similarly to the existing camera-detected offences under the CDOP. It is anticipated that expansion of the CDOP to include mobile phone and driver-related seatbelt offences will increase the perception and probability of drivers being caught, which will have a significant positive impact on compliance and road safety.

The camera systems that operate under the CDOP and the technical and operational requirements for these systems are set out in the Traffic Regulation. The Amendment Regulation makes changes to the Traffic Regulation to insert the details of the new mobile phone and seatbelt camera system, referred to as a 'digital driver behaviour system' in the Traffic Regulation.

The Amendment Regulation:

- prescribes the digital driver behaviour camera system (schedule 10, part 9);
- sets out the operating and testing requirements associated with the camera system (section 210EA); and
- provides data block information for the camera system (schedule 17).

#### *Penalty infringement notice amount for corporations*

The penalties for serious traffic offences such as illegal mobile phone use and failure to wear a seatbelt reflect the high road safety risk associated with such unsafe driving behaviour and include both a monetary fine and demerit points. The demerit point system is in place to help modify repeated, poor driving behaviour. A driver can face a period of licence suspension for exceeding their demerit point limit, which helps to act as a deterrent to repeat offending. However, corporations do not acquire demerit points.

In relation to monetary fines, the *Penalties and Sentences Act 1992* provides that a court may impose a maximum penalty on a corporation of five times the maximum fine for an individual.

To support the road safety benefits of camera enforcement of mobile phone and driver-related seatbelt offences, the Amendment Regulation amends the SPE Regulation. This provides for corporation penalty unit amounts that are five times higher than the penalty unit amount for individuals for mobile phone and seatbelt offences. This is the same as other camera-detected offences such as speeding or disobeying a red traffic light. Higher corporation penalty unit amounts are in place to help encourage corporations who (as the registered operator of a vehicle) receive a camera-detected infringement notice to nominate the responsible driver for the offence.

Where a corporation does nominate the responsible driver, the individual penalty unit amount (which is one-fifth of the amount for the corporation) will apply. The applicable demerit points are also recorded on the driver's traffic history.

The same outcome will apply for roadside enforcement of the offence by police in relation to the driver of a corporately-registered vehicle.

*Matters to be prescribed consequential to the commencement of the Transport and Other Legislation (Road Safety, Technology and Other Matters) Amendment Act 2020*

It is recognised that camera enforcement of mobile phone and driver-related seatbelt offences means images are captured from every vehicle that passes a lane that has a digital driver behaviour camera system in operation.

Images include vehicle registration numbers as well as the vehicle's interior at a shallow angle and at a steep angle. The capture of high definition images of drivers and their front seat passengers inside their vehicles may be seen as a violation of a person's privacy.

A key element in upholding and protecting a person's right to privacy is that images or video that do not contain evidence of a possible mobile phone or seatbelt offence, as determined by the system's artificial intelligence, must not be used or retained.

Section 113A of the TORUM Act provides that a regulation may provide information about how an image or video made by the system is accepted as having detected a prescribed offence. It must also specify how the system provides for the deletion of images/video and associated information that do not detect a prescribed offence. The Amendment Regulation inserts a new section 208AA into the Traffic Regulation to provide information about these matters in relation to the digital driver behaviour camera system.

The Amendment Regulation provides that the digital driver behaviour system includes functionality that automatically deletes images. This functionality will apply where a possible prescribed offence is not detected and the image does not need to be kept for the proper operation of the system or for testing the system to ensure it is operating correctly.

The Amendment Regulation also provides that an image or video made by the camera system that detects a possible prescribed offence will only be accepted as having detected a prescribed offence if an authorised officer has viewed the image or video and reasonably believes it has detected the offence. This ensures that adjudication of whether an offence has occurred ultimately rests with an authorised officer who has viewed images from the camera system before an offence is confirmed and any infringement is issued. An authorised officer is defined under section 20 of the TORUM Act. It includes police officers and officers/employees of the public service who are appointed by the chief executive (provided the chief executive is satisfied they have the necessary expertise).

To promote efficient court processes, the Amendment Regulation also prescribes that a person will be required to advise the prosecution before a hearing if they wish to raise an exemption available through a regulation. These are the seatbelt exemptions under section 267, 267A, and exemptions for road workers under section 310 of the QRRs. This will ensure the prosecution will be able to make informed decisions about whether the matter should be withdrawn and will reduce the burden on both individuals and the courts.

#### Minor, technical, and consequential amendments

The Amendment Regulation includes a number of minor technical and consequential amendments. These amendments:

- ensure consistent terminology and clarify that references to images or videos captured by a camera in the camera system are references to the images, sounds or data captured by the camera to make the image or video;
- ensure consistent terminology with the TORUM Act to reflect that a camera captures images/video and that a camera system makes images/video (including the data block information) for evidentiary purposes; and
- update cross-references to restructured driver-related seatbelt provisions in the QRR in the *Forestry Regulation 2015*, the *Nature Conservation (Protected Areas Management) Regulation 2017* and the *Recreation Areas Management Regulation 2017*.

## **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 *Forestry Act 1959* in relation to State forest or timber reserves;
- the *Nature Conservation Act 1992* for the conservation of nature while allowing for the involvement of indigenous people in the management of protected areas in which they have an interest under Aboriginal tradition or Island custom;
- the *Recreation Areas Management Act 2006* for the establishment, maintenance and use of recreation areas; and
- the TORUM Act 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**

As outlined above, the benefits of making the Amendment Regulation are:

- ensuring the mobile phone and driver seatbelt offences can be detected by camera system technology;
- ensuring that common dangerous behaviours with the use of hand-held mobile phones while driving can be effectively and consistently enforced, both through roadside and camera enforcement;
- clarifying the limited circumstances where the use of hand-held mobile phones is permitted under the road rules;
- better supporting road safety public communications campaigns on driver distraction and wearing seatbelts;
- helping to reduce the road toll, improve road safety and encourage behavioural change and community attitudes about dangerous mobile phone use while driving and not wearing a seatbelt;
- harnessing the success of the CDOP by expanding the current framework to help address two of the five 'Fatal Five' road behaviours.

Costs to procure and implement camera technology for mobile phone and seatbelt offences is being funded from the CDOP. Under section 117 of the TORUM Act, penalties collected for camera-detected offences in excess of administrative costs must be used for road safety education and awareness programs, road accident injury rehabilitation programs or road funding to improve the safety for roads where accidents most frequently happen.

Implementation of the amendments will be accompanied by a significant two-phase public communications campaign. This will inform the community about the implementation of the new camera system on Queensland's road network, including that mobile phone and seatbelt offences will be camera-detected. It will also advise the community of the changes to the mobile phone road rules. Communication channels will include social media, direct stakeholder communications, and a warning notice period prior to the commencement of camera-detected enforcement activities. Phase two of the campaign will add television, radio and outdoor communications in conjunction with additional online and social media communications. The costs of the communications campaign will be funded through the CDOP.

There are no other costs associated with the implementation of the amendments.

## Consistency with fundamental legislative principles

Issues relating to the fundamental legislative principles are discussed below.

*Camera detection of seatbelt and mobile phone offences – privacy – rights and liberties of individual (section 4(2)(a) Legislative Standards Act 1992)*

It is recognised that camera enforcement of mobile phone and driver-related seatbelt offences means that images are captured from every vehicle that passes a lane with a digital driver behaviour camera system in operation.

A key element in upholding and protecting a person's right to privacy is that images that do not detect a possible prescribed offence, or that are not needed for the proper operation of the system, are automatically deleted. The functionality of the digital driver behaviour camera system in this regard is reflected in the changes to the Traffic Regulation made by the Amendment Regulation.

Having regard to the privacy protections entrenched in the technology and processes, and that information on the camera system will be made publicly available, any privacy implications are justified in the interests of road safety benefits for the individuals and other road users.

*Mobile phone offence – rights and liberties of individual (section 4(2)(a) Legislative Standards Act 1992)*

It is recognised that the amendments to the offence for a driver using a mobile phone will not prohibit all use of the phone. In light of the great utility of mobile phones to modern day life, the provision recognises that a realistic and practical balance must be struck. So, for example, the rules will still allow a driver to use a mobile phone while in a cradle. This would include, for example, to be used for navigation or voice-controlled functions. This also allows commercial and professional drivers to use the functionality on a mobile phone as part of the professional driving task, as long as the phone is not in their hand or resting on their body.

In recognition of the higher road safety risk applying to novice drivers, additional restrictions will continue to apply to learner and P1 drivers aged under 25. These drivers are not permitted to use a phone in any way while driving. This includes hands-free, headsets and a phone's loudspeaker function. Their passengers are also not permitted to use a mobile phone's loudspeaker.

It should be noted that there are a number of other offences that indirectly regulate the use of mobile phones by drivers and seek to minimise the risk of driver distraction from those phones. For example, it is an offence for a driver to drive a vehicle unless the driver has proper control of the vehicle. A driver who fails to obey this rule is liable to a maximum penalty of 20 penalty units or an infringement notice fine of 2 1/3 penalty units. It is also an offence for a person to drive a motor vehicle without due care and attention or without reasonable consideration for other persons using the road. The penalties for this offence can include a substantial fine and demerit points, or a term of imprisonment if ordered by a court.

Under the current QRRs, it is also an offence for a driver to drive a vehicle that has a television or visual display if any part of the image or screen is visible to the driver. A driver who fails to obey this rule is liable to a maximum penalty of 20 penalty units or an infringement notice fine of 1 1/3 penalty units and three demerit points.

As mentioned, research shows that holding a mobile phone down around the driver's lap is a common strategy of drivers to avoid police detection and carries a high safety risk because it involves the driver taking their eyes off the road, their mind away from the driving task and their hand/s off the steering wheel. A driver with a phone resting on their lap will also be tempted to take their eyes off the road to look down at the phone. If the unsecured phone falls from their lap, which could easily happen while turning or braking, a driver may reach down to the footwell to pick it up, resulting in a reduction in attention to the driving task. Alternatively, not picking it up is also dangerous as the phone may become lodged behind one of the vehicle's pedals and obstruct its function.

Having regard to these behaviours, which are unsafe, unnecessary and result in an unacceptable road safety risk to every road user, the scope of the mobile phone offence is justified.

*Seatbelt exemption for the rider of a motorbike in respect of a passenger under 16 years old – rights and liberties of individual (section 4(2)(a) Legislative Standards Act 1992)*

For the majority of motorbikes, the seatbelt rules have no application as motorbikes are not required to be fitted with seatbelts. Section 267 states that a person is exempt from wearing a seatbelt if the seating position that the person occupies is not fitted with a seatbelt and there is no requirement for that seating position to be fitted with a seatbelt.

However, where a motorbike has a sidecar attached that has a seatbelt fitted, the rules can apply. Specifically, section 264A(1) requires the rider of the motorbike to ensure that a passenger in the sidecar who is 16 years or older must wear the seatbelt properly adjusted and fastened.

However, the rules do not apply to children as sidecars will not have suitable anchorage points to properly fit an Australian Standard approved child restraint and have insufficient space to utilise an approved booster seat.

While this may be perceived to impact rights and liberties based on age, the rules reflect the practicalities of the physical dimensions of sidecars. On that basis, the exemption for passengers on motorbikes under 16 years is considered justified.

*QRR – evidentiary certificate and evidential burden – reverse onus of proof (section 4(3)(d) Legislative Standards Act 1992)*

The Amendment Regulation includes evidentiary certificate provisions in section 353AC of the QRR relating to whether:

- a stated motor vehicle was or was not a booked hire vehicle, limousine or taxi under the *Transport Operations (Passenger Transport) Act 1994*; and
- an exemption certificate under section 267(3A) was or was not given to the chief executive or the commissioner for a driver-related seatbelt offence within the required period.

This information is objective in nature and unlikely to be controversial. A person may still contest the evidence provided by certificate. However, certificate evidence supports a more efficient and cost-effective court process for all parties and is justified.

In addition, the Amendment Regulation places an evidential burden upon a defendant in criminal proceedings if the defendant wishes to raise a reasonable excuse defence for being unable to produce a medical exemption certificate, or a copy of the certificate, in relation to a seatbelt offence (section 267(4)).

The purpose of placing the evidential burden on the defendant is to ensure that the provision allows for all those who are able to bring themselves within the statutory protection afforded to them by the law. This is done by ensuring that the evidence can be adduced by the party best able to satisfy the requirements of the defence. On that basis, the evidential burden of proving a reasonable excuse is considered justified.

## Consultation

The Royal Automobile Club of Queensland (RACQ), the Queensland Trucking Association (QTA), the Queensland Law Society (QLS) and the Queensland Council for Civil Liberties (QCCL) were consulted on the changes in the Amendment Regulation.

In relation to the proposed changes to the mobile phone road rules, the RACQ and the QTA indicated support for improving road safety by capturing common unsafe behaviours and better aligning Queensland's mobile phone rules with national model law. These stakeholders did not oppose the amendments but noted the importance of clear public communications about the mobile phone rules.

The QLS and QCCL indicated support for the broad policy intent to improve road safety, however, expressed some concern about the rules capturing a phone on a driver's lap regardless of its use. While these views are acknowledged, the changes to the mobile phone rules are appropriate given the prevalence of the unsafe use of mobile phones by drivers and the range of available, safer options for a person to store a mobile phone while driving.

In addition, targeted engagement with the community on the mobile phone rules and the risks of a phone being on a driver's lap indicate that a high percentage of people support a mobile phone on a driver's lap being prohibited by the rules.

The former Queensland Productivity Commission was consulted on the proposed changes to the mobile phone road rules and the introduction of corporate penalty unit amounts for camera-detected mobile phone and seatbelt offences and have advised the proposals appear unlikely to result in significant adverse impacts and no further regulatory impact analysis is required under the *Queensland Government Guide to Better Regulation* (the Guidelines).

In accordance with the Guidelines, TMR applied a self-assessable exclusion from undertaking further regulatory impact analysis on the remaining amendments based on Category G – Regulatory proposals that are of a machinery nature.