

Transport Legislation (Disability Parking and Other Matters) Amendment Bill 2019

Explanatory Notes

Short title

The short title of the Bill is the Transport Legislation (Disability Parking and Other Matters) Amendment Bill 2019.

Policy objectives and the reasons for them

Disability Parking Permit Scheme

The Department of Transport and Main Roads is responsible for administering Queensland's Disability Parking Permit Scheme. Those who are issued with a permit under this scheme can access convenient parking spaces that are provided at facilities such as shopping centres, hospitals and entertainment venues.

Permits are issued to individuals and to organisations who transport individuals who are eligible for a permit.

Eligibility for a disability parking permit is currently based on the applicant's ability to walk. That is, only those individuals who cannot walk and always use a wheelchair, or those whose functional ability to walk is severely restricted, are eligible to apply for a permit.

Members of the community and organisations representing vision impaired individuals have requested that those who have a vision impairment be included in the scheme. In recognition that the vision impaired community faces heightened and specific mobility challenges, the Bill expands the eligibility criteria for a disability parking permit to include vision impaired persons who are legally blind. The definition of *blind* that has been included in the Bill is the same as that contained in the Social Security Guide which is used for the purposes of the *Social Security Act 1991* (Commonwealth). Individuals who are permanently blind will be eligible to apply for a permit. Individuals who have temporary blindness will also be eligible to apply provided that their condition is of at least 6 months duration as certified by a doctor, ophthalmologist or optometrist.

The amendments in the Bill will provide consistency with schemes in New South Wales, the Australian Capital Territory, South Australia and Tasmania.

Currently, the police-issued infringement notice fine for the offence of stopping in a disability parking bay without a permit is \$266 (2 penalty units). Local governments can set their own parking fines and issue tickets under a local law. Many local governments have adopted the same fine as the state-based law.

The availability of disability parking bays is impacted by people who do not hold a permit unlawfully occupying existing parking spaces, depriving those who have a genuine need.

Therefore, the amendments in the Bill increase the police-issued fine amount to \$533 (4 penalty units). This is aimed at helping to deter the misuse of disability parking bays. It is recognised that the penalty itself is only one element of deterrence. Therefore, in addition, the Department of Transport and Main Roads will continue a range of targeted measures, including education and communications, to support awareness and deter misuse.

The Bill will improve the lives of permanently and temporarily blind Queenslanders and will encourage other members of the public to leave disability parking bays vacant for those who hold a disability parking permit.

Rail Safety National Law – reliance on national definitions

The Rail Safety National Law is set out in the schedule to the *Rail Safety National Law (South Australia) Act 2012*. The *Rail Safety National Law (Queensland) Act 2017* adopts the Rail Safety National Law as a law of Queensland. When the law was adopted in Queensland in 2017, specific Queensland definitions of *level crossing* and *rail or road crossing* were inserted. This was to reflect that there are different requirements applying to signed and unsigned crossings for heavy rail and for trams, as already provided for in the Queensland Road Rules. These different rules reflect the different traffic controls that exist at unsigned crossings, such as traffic lights that direct the right of way for trams and other vehicles at the crossing.

On 1 July 2019, amendments were made by the South Australian Parliament to the Rail Safety National Law to change definitions to cater for these different requirements. However, these amendments impacted upon the legislative mechanism applying in Queensland. Therefore, a transitional regulation was made to retain Queensland's definitions until amendments could be made to Queensland's application law to recognise the new national law definitions. The transitional regulation expires on 30 June 2020.

The Bill removes the Queensland specific definitions so as to rely on the national law definitions. These amendments do not introduce any policy change. Rather, they ensure that current safety requirements relating to rail or road crossings, such as interface coordination and the ability to close or regulate crossings, continue unchanged.

Grounds to amend, suspend or cancel an approval

The chief executive issues various approvals, such as registrations and exemptions, under the *Transport Operations (Road Use Management) Act 1995*. Section 18 of the Act currently provides a list of grounds on which approvals may be amended, suspended or cancelled under the procedure set out in section 19 of the Act. Regulations made under the Act contain provisions dealing with various approvals and provide additional grounds on which those approvals may be amended, suspended or cancelled. For legislative clarity, the Bill amends section 18 of the Act to insert an express regulation-making power to support those grounds set out in regulations.

Achievement of policy objectives

To meet the objectives above, the Bill amends:

- the *Transport Operations (Road Use Management) Act 1995*, to ensure there is a clear regulation-making power to support extending the disability parking eligibility criteria in the *Traffic Regulation 1962*;
- the *Traffic Regulation 1962* to extend the disability parking eligibility criteria to include vision impaired persons who are temporarily or permanently blind;
- the *State Penalties Enforcement Regulation 2014* to increase the penalty that applies for using a disability parking area without a permit;
- the *Rail Safety National Law (Queensland) Act 2017* to omit the Queensland specific definitions of *level crossing* and *rail or road crossing*; and
- the *Transport Operations (Road Use Management) Act 1995* to provide that grounds to amend, suspend or cancel an approval can be specified in a regulation.

Alternative ways of achieving policy objectives

The objectives of this Bill could not be met without the proposed legislative amendments.

Estimated cost for government implementation

The costs of implementing the disability parking amendments relate to the administrative cost of processing additional applications for a disability parking permit. These costs are minimal and will not have a significant impact on the State government or other stakeholders. Any costs will be met from within existing resources.

There are no costs associated with implementing the amendment of the *Rail Safety National Law (Queensland) Act 2017* or the amendment that specifies that a regulation can provide grounds to amend, suspend or cancel an approval. This is because the amendments do not change the effect of the current legislative provisions.

Consistency with fundamental legislative principles

The following matters in the Bill may raise fundamental legislative principles issues.

Rights and liberties of individuals — section 4(2)(a) Legislative Standards Act 1992

The increase in the infringement notice fine in clause 6 for using a disability parking area without a permit may be considered to impact on the rights and liberties of individuals. The increase is, however, considered appropriate. The fine of \$533 is higher than the fine for other parking offences. However, this is justified as the potential impact of misusing a disability parking area is significantly greater than the impact of failing to comply with other parking

restrictions. Specifically, using a disability parking area without a permit potentially deprives a person with a disability from participating in basic everyday activities such as shopping or attending medical appointments.

It is expected that the penalty increase will impact the basic ‘risk to reward’ assessment a person makes before they offend. That is, the potential for the existing \$266 fine may not be sufficient to deter the ‘reward’ of a convenient car parking space, especially during peak periods. However, a significant increase to the fine is likely to impact this calculation and help outweigh the perceived benefits of misusing the parking space.

Sufficient regard to the institution of Parliament — Section 4(2)(b) Legislative Standards Act 1992

Amendments in clause 16 will allow a regulation to specify the eligibility criteria for the grant of a disability parking permit and will allow standard conditions for disability parking permits to be specified in a regulation.

Allowing the criteria to be prescribed by a regulation is considered appropriate to ensure sufficient flexibility to respond to future changing society expectations in relation to eligibility for a disability parking permit. Standard conditions for disability parking permits are administrative in nature and therefore are appropriate to be specified in a regulation.

Any regulations made as a result of the amendments in this Bill must be tabled in Parliament as part of the usual regulation-making processes. They will be subject to Queensland Parliamentary scrutiny and are subject to disallowance.

An amendment in clause 15 expressly provides that grounds to amend, suspend or cancel an approval can be specified in a regulation. Currently, regulations made under the *Transport Operations (Road Use Management) Act 1995* contain provisions dealing with various approvals such as registrations and exemptions. Those regulations also contain grounds on which the chief executive can call upon the holder of an approval to show cause why their approval should not be amended, suspended or cancelled. Those grounds work in tandem with procedural provisions set out in the Act. To provide legislative clarity to this inter-connected scheme, the Bill amends section 18 of the Act to insert an express regulation-making power to support those grounds set out in regulations.

Rail Safety National Law — reliance on national definitions — Sections 4(2)(b) and 4(4)(b) Legislative Standards Act 1992

Removing the Queensland specific definitions to apply the national definitions of *level crossing* and *rail or road crossing* in clause 4 may raise the fundamental legislative principles due to the application of predetermined legislative provisions. However, the national definitions reflect Queensland’s existing approach to the regulation of railway crossings as currently provided for in a transitional regulation. As such, the amendments do not implement any change to the existing policy.

Maintaining consistency in the application of the Rail Safety National Law delivers efficiencies to government and industry, particularly operators working across different states and territories.

To ensure changes to the Rail Safety National Law are not made without the support of the Queensland Government, the *Intergovernmental Agreement on Rail Safety Regulation and Investigation Reform* as signed by the Council of Australian Governments, provides that amendments and additions to the Rail Safety National Law and regulations will be carried upon the unanimous agreement of Ministers of the relevant Standing Council, currently the Transport and Infrastructure Council.

This is confirmed, in relation to national regulations, by section 264 of the Rail Safety National Law, which provides that the Governor of the State of South Australia can only make a national regulation on the unanimous recommendation of the responsible Ministers.

Consultation

Disability Parking Permit Scheme

Representations have been received from members of the community and organisations representing vision impaired persons about including vision impairment in the eligibility criteria for the scheme.

The Queensland Blind Association, Vision Australia, Guide Dogs Queensland, Spinal Life Australia, Physical Disabilities Australia, the Local Government Association of Queensland, 14 individual local governments, and the RACQ have been consulted regarding changes to the disability parking permit scheme.

The Queensland Blind Association, Vision Australia, Guide Dogs Queensland and Physical Disabilities Australia were supportive of the proposal to expand the eligibility criteria to include legal blindness.

Spinal Life Australia expressed concerns about the inclusion of vision impaired persons in the scheme. It felt that vision impaired persons may not have the same needs as those who have a more traditional mobility impairment and could use alternatives such as drop-off areas. However, it is considered that legally blind people present with unique mobility issues and would have their safety improved through the use of disability parking bays.

Spinal Life Australia and some local governments raised concerns about the potential impact on existing permit holders. However, it is expected that this expansion will not have a significant impact on the availability of disability parking bays.

While the RACQ was not opposed to an increase in the fine, it indicated that any increase should be made in conjunction with other activities such as increased enforcement and education.

Rail Safety National Law – reliance on national definitions

The Office of the National Rail Safety Regulator and GoldLinQ, which operates and maintains the Gold Coast light rail system, support the amendments in the Bill.

Grounds to amend, suspend or cancel an approval

The amendment to section 18 of the *Transport Operations (Road Use Management) Act 1995* relating to the amendment, suspension or cancellation of an approval under the Act is a technical amendment and has not been the subject of consultation.

Consistency with legislation of other jurisdictions

Disability Parking Permit Scheme

Following a Commonwealth review of all state and territory disability parking permit schemes in 2010, national eligibility criteria were developed. It was agreed by jurisdictions that the scheme was a mobility scheme and the assessment process should focus on the applicant's functional ability to walk. Queensland adopted the national eligibility criteria. However, harmonisation was not achieved and some jurisdictions who previously granted permits to other impairment types, such as blindness, retained these eligibility categories in their schemes.

Queensland's current focus on functional ability to walk is consistent with Western Australia, Northern Territory and Victoria. However, New South Wales, the Australian Capital Territory, South Australia, and Tasmania include legal blindness as an express eligibility criterion for their schemes. This can lead to some confusion, particularly where people live close to the New South Wales border.

The infringement notice fine for the equivalent offence of parking in a disability parking bay without a permit in other jurisdictions range from between \$155 and \$600. Queensland's current fine of \$266 is one of the lowest in Australia. The increase to \$533 will make Queensland's fine one of the highest in Australia.

Rail Safety National Law – reliance on national definitions

The Rail Safety National Law, as drafted in South Australia, has been applied as a law of Queensland, New South Wales, Victoria, Tasmania, South Australia, the Australian Capital Territory and the Northern Territory. The Rail Safety National Law has been mirrored in Western Australia. The amendments in the Bill retain the nationally consistent approach to rail safety regulation in Australia.

Notes on provisions

Part 1 Preliminary

Clause 1 states that when enacted the Bill can be cited as the *Transport Legislation (Disability Parking and Other Matters) Amendment Act 2019*.

Clause 2 provides that part 2 commences on 1 July 2020 and that parts 3 and 4 and clauses 15(1), 16 and 17 commence on a day to be fixed by proclamation.

Part 2 Amendment of Rail Safety National Law (Queensland) Act 2017

Clause 3 states that part 2 amends the *Rail Safety National Law (Queensland) Act 2017*.

Clause 4 omits the definitions of *level crossing* and *rail or road crossing* from section 8 of the Act. This means that the meaning of these terms will be provided by the definitions in section 4 of the Rail Safety National Law.

Part 3 Amendment of State Penalties Enforcement Regulation 2014

Clause 5 states that part 3 amends the *State Penalties Enforcement Regulation 2014*.

Clause 6 amends the entry for section 203(1) of the *Queensland Road Rules* to provide that the infringement notice fine for parking in an area for people with disabilities without a permit, is \$533 (4 penalty units).

Part 4 Amendment of Traffic Regulation 1962

Clause 7 states that part 4 amends the *Traffic Regulation 1962*.

Clauses 8 extends the eligibility criteria for section 111 of the *Transport Operations (Road Use Management) Act 1995* to include persons who are permanently or temporarily blind. This clause retains the current eligibility criteria in relation to persons whose ability to walk is impaired. The clause also retains the current requirement that an organisation's specified vehicle must have a GVM of not more than 4.5t for the organisation to be eligible for a permit.

The clause provides a definition of *blind* for the purposes of the eligibility criteria relating to permanent or temporary blindness.

The clause also provides a definition of *mobility impairment*, which retains the current eligibility requirements.

The clause also inserts definitions of *ophthalmologist* and *optometrist* as these health professionals are able to assess visual loss for the purpose of the new eligibility criteria.

The clause also inserts a definition of *temporary* that provides for the purpose of the new eligibility criteria, that temporary blindness must be of at least 6 months duration, as certified by a doctor, ophthalmologist or optometrist. The existing requirement that a temporary medical condition or disability causing mobility impairment must be of at least 6 months duration is being retained.

Clause 9 makes a consequential amendment to section 61(2) of the regulation. This is to reflect the changes made to section 60 to accommodate blindness.

Clause 10 makes consequential amendments to section 62 of the regulation. The omission of subsections (2) and (3) is because section 111 of the Act provides for the requirements covered by these subsections. Their inclusion in the regulation is an unnecessary duplication.

Clause 11 makes consequential amendments to section 64 of the regulation. This is to reflect the changes made to section 60 to accommodate blindness.

Clause 12 makes consequential amendments to section 65 of the regulation. This is to reflect the changes made to section 60 to accommodate blindness.

Part 5 Amendment of Transport Operations (Road Use Management) Act 1995

Clause 13 states that part 5 amends the *Transport Operations (Road Use Management) Act 1995*.

Clause 14 makes a minor amendment to section 17B of the Act which is the regulation-making power for granting, renewing or refusing an approval. The amendment takes into account current drafting practice to provide that ‘granting’ an approval includes ‘giving’ an approval.

Clause 15 makes a consequential amendment to section 18 of the Act. This section sets out the grounds on which the chief executive can amend, suspend or cancel an approval. Relevantly, a disability parking permit is an approval. Currently, the ground is expressed as being that the permit holder’s ability to walk is no longer impaired. This ground is being amended to reflect that the eligibility criteria is being expanded to include blindness. It will be a ground to amend, suspend or cancel a disability parking permit if the holder no longer meets the eligibility criteria.

A further amendment to section 18 expressly recognises that a ground to amend, suspend or cancel an approval can be prescribed in a regulation.

Clause 16 amends section 111 of the Act. Currently, this section allows the chief executive to issue a permit only if an applicant’s ability to walk is impaired. The Bill amends this section to allow a regulation to specify the eligibility criteria for the grant of a parking permit for people with disabilities. This amendment retains the current availability of permits to organisations for a specified vehicle that transports persons who satisfy the eligibility criteria. It also retains the current ability for the chief executive to issue the permit subject to conditions stated in it, while further providing for a regulation to prescribe standard conditions for disability parking permits.

Clause 17 provides a transitional provision that ensures that current permits that are in effect immediately before the commencement of the amendments will be taken to have been given under the amended section 111 of the Act. This will ensure that current permits remain in force.

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