

Information Bulletin

PT 18 (10.18)

Reviews of decisions affecting Operator Accreditation or Driver Authorisation

General

The *Transport Operations (Passenger Transport) Act 1994* (TOPTA) regulates public passenger services in Queensland and prescribes requirements for operator accreditation (OA) and driver authorisation (DA) for specified services. The Department of Transport and Main Roads (TMR) has responsibility for administering OA and DA.

A person affected by a decision relating to OA or DA may apply to TMR for an **internal review** of that decision. The internal review process will determine a **review decision**. If the review decision is not the decision sought by the applicant, the applicant may apply to the **Queensland Civil and Administrative Tribunal (QCAT)** for an **external review** of the review decision.

The *Transport Planning and Coordination Act 1994* applies to internal reviews by TMR and the *Queensland Civil and Administrative Tribunal Act 2009* applies to external reviews by QCAT.

Decisions that are reviewable are listed in schedule 2 of the TOPTA and schedule 6 of the *Transport Operations (Passenger Transport) Regulation 2018*.

Reviewable decisions

A person may apply to TMR for an internal review if they are affected by a decision –

- to refuse to grant or renew OA (under section 17 of TOPTA)
- to amend, suspend or cancel OA (under section 20 of TOPTA)
- in relation to a category B driver disqualifying offence, to refuse to grant or renew DA or cancel DA (under section 28B of TOPTA)
- in relation to a category C driver disqualifying offence, to refuse to grant or renew DA or cancel DA (under section 28C of TOPTA)
- to refuse to grant or renew DA or to impose a condition on DA (under section 29 of TOPTA)
- to amend, suspend, cancel or impose a condition on DA (under section 32 of TOPTA)
- to impose a condition when granting DA or amend a DA to impose a condition (under section 47(2) of the *Transport Operations (Passenger Transport) Regulation 2018*).

Category A and category B driver disqualifying offences

TOPTA, section 28A, provides that a person is ineligible to apply for or hold DA if the person has been convicted of a category A driver disqualifying offence. There is no provision to appeal against this ineligibility.

A person convicted of a category B driver disqualifying offence cannot hold DA unless they can demonstrate that an exceptional case exists. TOPTA section 28B(6) provides that the chief executive (TMR) cannot be

satisfied an exceptional case exists if the Chief Executive (Employment Screening) advises it considers an exceptional case does not exist. In these instances, TOPTA requires TMR to refuse or cancel DA.

For more information about driver disqualifying offences, refer to information bulletin [PT17 Driver Authorisation - Effect of a Driver Disqualifying Offence](#).

Internal reviews

Application for internal review of original decision

A person affected by a decision outlined above may apply to TMR for a review of that decision. This process is referred to as a **review of the original decision**.

An application for review of an original decision must be made within 28 days after the notice of the original decision was given to the person. The application for review must be written and state in detail the grounds on which the applicant seeks a review of the original decision.

However, if the notice of the original decision did not state the reasons for the original decision, and the person asked for a statement of the reasons within the 28 days after the notice was given to the person, the person may apply for a review of the original decision within 28 days after the person is given the statement of the reasons.

TMR may also extend the period for applying for a review.

Stay of operation of original decision

Under section 32 of the *Transport Planning and Coordination Act 1994*, if a person applies to TMR for a review of an original decision, the person may immediately apply for a stay of the decision to QCAT.

Information on lodging an application for a stay of the original decision to QCAT can be found on the QCAT website at www.qcat.qld.gov.au or by contacting QCAT on 1300 753 228. Your application should state the reasons you are applying for the stay and comply with the QCAT Rules.

QCAT may stay the original decision to secure the effectiveness of the internal review and any later (external) review by QCAT.

The period of the stay cannot extend past the time when TMR reviews the original decision or beyond any later time that QCAT has allowed the applicant to enable the applicant to apply for an (external) review of the decision by QCAT.

In setting the time for hearing the application, QCAT must allow at least three business days between the day the application is filed with QCAT and the hearing day.

The person must serve a copy of the application showing the time and place of the hearing and also any associated documents filed with QCAT along with the application to the local Manager (Passenger Transport Operations), TransLink at least two business days before the hearing.

QCAT has the power to make a stay on TMR's original decision while the review process takes its course.

A stay –

- may be given on conditions QCAT considers appropriate
- operates for the period specified by QCAT
- may be revoked or amended by QCAT.

A holder of a current authority who is granted a stay by QCAT may continue to use that authority pending the outcome of the review of the original decision or for the time specified by QCAT. In some cases, QCAT may state the stay is valid until the outcome of any subsequent external review by QCAT or until another date. QCAT can also extend the period of a stay.

When QCAT grants a stay on a decision, a person's eligibility to continue to drive under DA or operate a service under OA is dependent on the DA or OA being current. For example, regardless of a stay being issued, if an application to renew an authority has been refused, then the holder will not be able to provide a service under the authority after its expiry date. Similarly, a stay is of no value to a new applicant whose application has been refused because the person does not hold a current authority enabling them to drive or operate a service.

In the absence of any specific date set by QCAT, the stay concludes when the person is notified of the outcome of the review of the original decision.

The making of an application for a stay does not affect the original decision, or the carrying out of the original decision, unless QCAT orders a stay of the decision.

Reference to a review panel

An application for internal review of an original decision, may be referred to a review panel for advice.

A review panel consists of persons nominated by the chief executive or delegate. The person who made the original decision cannot be a member of the review panel. Review panels may allow the applicant an opportunity to make representations to the panel.

After considering the representations of the applicant, the review panel will make a recommendation to the decision-maker for the internal review.

Internal review decision

A written notice of the **review decision** must be given to the applicant within 28 days of the review application being made with TMR. The review decision must either confirm the original decision, amend the original decision or substitute a new decision.

If the review decision is not the decision sought by the applicant, a *QCAT Information Notice* must be issued to the applicant. This notice will provide information about –

- the decision and the reasons for the reviewed decision
- the person's right to apply to QCAT for an external review of the review decision
- the person's right to apply to QCAT for a stay of the reviewed decision.

External reviews - QCAT

External review by the Queensland Civil and Administrative Tribunal

If a review decision by TMR is adverse to the applicant, then they may apply to QCAT for an external review of that decision.

An application to QCAT for review of a TMR review decision must be made within 28 days of the person being notified of the TMR review decision and of the reasons for the review decision. QCAT may extend the period for making an application for external review.

Applications for a QCAT review of a decision can be made by lodging an application in the approved form at the QCAT Registry, Level 9, 259 Queen Street, Brisbane or any Magistrates Court outside the Brisbane CBD. An application should state the reason for the application and comply with the QCAT rules by serving a copy of the application on the Department of Transport and Main Roads. This copy should be provided to the local Manager (Passenger Transport Operations), TransLink.

Applications to QCAT must be accompanied by the prescribed application fee. For more information on QCAT fees or the review process please refer to the QCAT website at www.qcat.qld.gov.au or contact QCAT on 1300 753 228.

Stay of operation of the reviewed decision

The *Queensland Civil and Administrative Tribunal Act 2009*, section 22(3) provides that QCAT may stay the operation of the reviewed decision, either on application by a person or on its own initiative.

A copy of an application must be served on TMR as a party to the proceeding. In accordance with QCAT rules, the copy must be given as soon as practicable but no later than 7 days after the application has been accepted by QCAT. The copy of the application should be given to the local Manager (Passenger Transport Operations), TransLink.

A holder of a current authority, who is granted a stay, may continue to drive or operate until the outcome of the external review or for the period of time specified by QCAT. Continuing to drive or operate is dependant on the person's respective DA or OA remaining current. For example, a person who was unsuccessful in renewing their authority is unable to drive or operate after the expiry date of their authority. Furthermore, a stay is of no value to a new applicant as the applicant does not hold a current authority enabling them to operate or drive.

Additional information

This bulletin has been produced as a guideline and is not a reference to a point of law. Clarification of any information in this bulletin may be obtained by contacting your local passenger transport office. Details of passenger transport locations can be accessed at www.translink.com.au/contact-us

The *Transport Operations (Passenger Transport) Act 1994*, *Transport Operations (Passenger Transport) Regulation 2018* and *Transport Operations (Passenger Transport) Standard 2010* can be accessed on the internet at www.legislation.qld.gov.au

Additional information about public passenger services is available on the Department of Transport and Main Roads internet site at www.tmr.qld.gov.au/information_bulletins.