

Information Bulletin

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Reviews of Decisions Affecting Operator Accreditation and Driver Authorisation

General

The *Transport Operations (Passenger Transport) Act 1994* requires operators of public passenger services in Queensland to have operator accreditation (OA) and for drivers to hold driver authorisation (DA).

A person affected by a decision to refuse, amend, suspend or cancel an OA or a DA may apply to the department for an **internal review** of that decision. The internal review will then determine a **review decision**. If the reviewed decision is not the decision sought by the applicant then the applicant may apply to the **Queensland Civil and Administrative Tribunal (QCAT)** for an **external review** of the reviewed decision.

The *Transport Operations (Passenger Transport) Act 1994* specifies the types of decisions that are reviewable. The *Transport Planning and Coordination Act 1994* applies to the internal review of decisions. The *Queensland Civil and Administrative Tribunal Act 2009* applies to external reviews of decisions.

Decisions that may affect OA or DA

Applicants for, and holders of, OA and DA must meet and maintain specific requirements. Other information bulletins provide details about the requirements for OA and DA.

If a person fails to meet the requirements for holding OA, a decision may be made to—

- refuse an application to grant or renew OA; or
- amend, suspend or cancel an OA held by the person.

If a person fails to meet the requirements for holding DA, a decision may be made to:

- refuse an application to grant or renew DA; or
- amend, suspend, cancel or impose a condition on DA held by the person.

Internal reviews

Application for internal review of original decision

A person whose interests are affected by a decision described in *Attachment 1* may apply to the chief executive of the Department of Transport and Main Roads for a review of that decision. This process is referred to as a **review of the original decision**.

Note: If a person has been convicted of a category A driver disqualifying offence for which an imprisonment order was imposed, or is subject to an order or obligation under section 170(b) of the *Working with Children (Risk Management and Screening) Act 2000*, there is no provision to appeal against the ineligibility to apply for, or hold, driver authorisation.

An application by a person for a review of a decision must be made within 28 days after the notice of the 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 decision.

A person who seeks an internal review of a decision is entitled to receive a statement of reasons for the original decision.

However, if –

- (1) the original notice of the decision did not state reasons for the decision, and
- (2) the person asked for a statement of reasons for the decision within the 28 day period mentioned above, then the deadline for applying for a review is within 28 days after the person is given the statement of reasons, rather than after receiving the original notice.

The department may also extend the period for applying for a review.

Stay of operation of original decision

If a person applies for a review of an original decision, the person may immediately apply for a stay of the decision to the **Queensland Civil and Administrative Tribunal (QCAT)**.

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

The period of the stay cannot extend past the time when the chief executive 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 it 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 in QCAT with the application to the chief executive, Department of Transport and Main Roads, at least two business days before the hearing. These documents should be served to the local Manager (Passenger Transport Operations).

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

A stay—

- (a) may be given on conditions QCAT considers appropriate;
- (b) operates for the period specified by QCAT; and
- (c) 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 or operate a service is dependant on their DA or OA remaining current. For example, regardless of a stay being issued, an applicant whose application to renew an authority was refused will be unable to drive or operate after the expiry date of their DA or OA. Furthermore, a stay has no benefit to a new applicant for DA or OA as the applicant does not hold a current authority entitling them to drive or operate a service during the period of the stay.

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

When an application is made for an internal review of a decision, the application may be referred by the decision maker to a review panel for advice.

A review panel consists of persons nominated by the chief executive or delegate. Under departmental policy, a review panel will include -

- (a) at least one representative of the department, and
- (b) at least one representative of the relevant part of the passenger transport industry, an interested union or both, and
- (c) at least one independent representative.

The person who made the original decision cannot be a member of the review panel reviewing the decision.

Review panels will allow the applicant an opportunity to make representations to the panel.

After considering the representations of the applicant, the review panel must make a recommendation to the decision-maker on whether the decision should be confirmed, amended or substituted with a new decision.

Note – for driver authorisation, section 28B (6) of the *Transport Operations (Passenger Transport) Act 1994* states, the Department can not be satisfied that an exceptional case exists for a category B driver disqualifying offence, if the Chief Executive (Employment Screening), has advised the Department that an exceptional case does not exist.

This means the review cannot be successful unless the Department made an error about the categorisation of the driver disqualifying offence and this was not detected until an internal review was undertaken or the affected person was not offered natural justice as part of their exceptional case process.

If the affected person does not agree with the outcome of the reviewed decision, he/she can seek an external review of the decision. To do this, he/she will need to apply to the Queensland Civil and Administrative Tribunal.

Internal Review Decision

After considering a review panel's advice, the decision-maker must confirm the decision, amend the decision or substitute a new decision.

A written notice of the reviewed decision must be given to the applicant within 28 days from the receipt of application.

If the reviewed 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

External review by the Queensland Civil and Administrative Tribunal

If a decision of an internal review is adverse to the applicant then the applicant may apply to QCAT for an external review of that decision.

An application to QCAT for external review of an internally reviewed decision must be made within 28 days of the person being notified of that decision and of the reasons for that decision.

QCAT may extend the period for making an application for external review.

An application for review may be made to QCAT by lodging an application in the approved form, stating the reasons for the application at a local Magistrates Court or at the QCAT Registry, 259 Queen Street, Brisbane. 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).

Section 33 of the *Queensland Civil and Administrative Tribunal Act 2009* contains the requirement for making an application to QCAT. Information on lodging an application for review to QCAT can be found on the QCAT website at www.qcat.qld.gov.au or by contacting 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 the department as a party to the proceeding. In accordance with the 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), Department of Transport and Main Roads.

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

The information contained in this bulletin has been produced as a guide to assist in the understanding of the legislation and policy. Clarification of any information in this bulletin may be obtained from The Department of Transport and Main Roads by contacting your local Passenger Transport office of the Department.

This bulletin is an interpretation of the relevant Acts, Regulations and Standard should not be used as a reference to a point of law.

Copies of the *Transport Operations (Passenger Transport) Act 1994*, *Transport Operations (Passenger Transport) Regulation 2005* and *Transport Operations (Passenger Transport) Standard 2010* can be purchased from LitSupport Pty Ltd on 07 3223 9202 or email legislation@litsupport.com.au.

The legislation may be viewed 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.transport.qld.gov.au/information_bulletins.