

Transport and Other Legislation (Road Safety, Technology and Other Matters) Amendment Bill 2020

Statement of Compatibility

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019*, I, the Honourable Mark Bailey, MP, Minister for Transport and Main Roads make this statement of compatibility with respect to the Transport and Other Legislation (Road Safety, Technology and Other Matters) Amendment Bill 2020.

In my opinion, the Transport and Other Legislation (Road Safety, Technology and Other Matters) Amendment Bill 2020 is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Bill

This Bill includes amendments to:

1. support the introduction and ongoing operation of a Digital Licence App;
2. facilitate camera enforcement of seatbelt and mobile phone offences;
3. make minor and technical amendments to:
 - the *Transport Infrastructure Act 1994* (the TIA) to provide for the Department of Transport and Main Roads' (TMR) to undertake land management activities and to preserve certain existing secondary legal interests in TMR's land;
 - the *Transport Operations (Passenger Transport) Act 1994* (TOPTA) to insert a definition of 'department's website' to accommodate matters published on the whole-of government website, TMR website or TransLink website; provide for the issue of certificates in a proceeding as evidence of certain matters relating to fare evasion and vehicle requirements; and correct duplicate definitions of 'driver authorisation' and 'operator accreditation'; and
 - the *Transport Operations (Road Use Management) Act 1995* (TORUM Act) to clarify the operation of some drug and drink driving provisions.

Digital Licence App

Digital licences and the digitisation of services is becoming more prevalent with the adoption and development of digital licences in several jurisdictions both nationally and internationally.

The Digital Licence App will have the capability to store and deliver a suite of Queensland Government digital products and services, and, in time, will provide faster and more efficient ways to access government information, products and services.

Those service improvements will be achieved by the App providing easy access to digital licensing and identity products, including driver licences, photo identification cards and marine licence indicators.

In addition, it is important that digital authorities, and other digital products available through the App, such as digital evidence of age, will be able to be used and accepted in the same way as the physical version of the product. Government and community reliance on driver licences for proof of identity also means public confidence in the integrity of digital authorities and identity products must be maintained.

The Digital Licence App will be voluntary and will complement physical authorities. Customers will have the choice of either using the physical card or digital authority. To support the implementation and ongoing operation of a Digital Licence App, this Bill makes amendments to the *Transport Planning and Coordination Act 1994* and other Acts to:

- facilitate a digital version of authorities as well as digital evidence of age and digital evidence of identity;
- ensure digital products available through the App can be used to satisfy a regulatory requirement to produce a driver licence or other document;
- ensure enforcement powers and evidentiary provisions are appropriate to manage the use of digital credentials, while also ensuring devices cannot be seized or confiscated, except by police within their current powers; and
- build a flexible regulatory scheme that will, over time, be able to accommodate other digital authorities or services across government.

Camera enforcement of seatbelt and mobile phone offences

Despite significant community education, traditional enforcement efforts and penalties, illegal mobile phone use on Queensland's roads continues at unacceptably high levels. Road fatality and serious injury statistics highlight the impact of distracted driving on the community. Community feedback on distracted driving has identified that there is a perception that unlawful mobile phone use while driving will not be detected or enforced. This has the effect of people engaging in unlawful road behaviours despite the known risks.

To help address these serious road safety issues, alongside traditional enforcement and community safety education campaigns, amendments to the TORUM Act will facilitate camera enforcement of seatbelt and mobile phone offences. These amendments aim to encourage positive behavioural change by increasing the perception and likelihood that unsafe driving will be detected and enforced, thus deterring unsafe driving behaviours.

The amendments to the TORUM Act will ensure the current legislative framework for camera-detected offences can apply to seatbelt and mobile phone offences. The amendments will also:

- allow for video technology in addition to images;
- provide for certain rebuttable presumptions to apply for camera-detected seatbelt and mobile phone offences. In the absence of proof to the contrary, where a photographic detection device produces an image or video of a vehicle, the image or video is evidence that:
 - the vehicle is moving but not reversing, or stationary but not parked;
 - the vehicle is fitted with an approved seatbelt in the seating provision occupied by the driver or passenger; and
 - the driver or passenger who is depicted not wearing a seatbelt is not wearing an approved seatbelt;

- ensure that a person proceeding to hearing for a camera-detected offence, who intends to rely on a provision of the Queensland Road Rules (QRRs) or other regulation to raise an exception, exemption or defence, advises the prosecuting authority prior to hearing; and
- allow for a summary report for offences detected by a photographic detection device.

Amendments for temporary access and occupation of land adjacent to TMR's land/road corridor to undertake regulated environmental activities

The amendments to sections 35 and 36 of the TIA are to enable TMR to enter and temporarily occupy land (including private land but not dwellings) adjacent to the road corridor to undertake 'a land management activity' that is related 'to road transport infrastructure or proposed road transport infrastructure'.

The existing power under section 35 already allows TMR to enter and temporarily occupy land to carry out road works or accommodation works. The amendment will expand this to allow temporary entry and occupation to carry out regulated land management activity – that is, a statutory obligation with which TMR must comply.

Existing associated mechanisms will continue to apply for any temporary occupation of land for land management activity, including giving of notice to the owner or occupier before TMR can enter the land.

The amendments will provide greater certainty to land owners and occupiers when a temporary occupation is proposed. For works other than road works, the affected person under the new amendments will have the ability to lodge a submission to support, or not, the proposed entry. The provisions also allow an affected person to claim compensation for any physical damage done to their land as a result of the occupation. As well as this, an affected person will also be able to appeal a decision made by TMR, through existing appeal provisions contained in the TIA.

Amendments to preserve certain existing secondary legal interests in TMR's land

Chapter 7 (Rail transport infrastructure and other matters) and Chapter 9 (Busways and busway transport infrastructure) of the TIA establish a land title framework (by way of granting of a perpetual lease) to grant tenure to the land on which the rail and busway transport infrastructure has been constructed.

Currently, for railways, apart from public utility easements, all existing secondary interests in land are extinguished upon registration of the absolute surrender of the land for rail transport corridor in section 240(7C) of the TIA.

For busways, apart from legislative transport easements of support (section 28AC of the *Transport Planning and Coordination Act 1994*), all existing secondary interests in land declared as busway are extinguished upon a busway declaration.

The amendments will allow existing easements are to be preserved and will streamline the process for including land into the rail or busway permanent lease.

Amendments to TOPTA

Historically, TMR maintained its own website and directly managed the matters published on it. However, to make it easier for customers to interact with the Queensland Government, there has been a move away from agency-centric websites to a customer-focussed approach. A definition of 'department's website' is being inserted to include the TMR website, the TransLink website and the whole-of-government website.

On commencement of the *Road Vehicle Standards Act 2018* (Cwlth) (RVSA), information that is currently recorded on a compliance plate before a vehicle is first registered, will instead be contained in the Register of Approved Vehicles (RAV). TOPTA is being amended to allow for particulars recorded in the RAV to be used as evidence in a proceeding for an offence against TOPTA, consistent with how information recorded on a compliance plate can be used.

In June 2018, the Queensland Government announced the purchase of a new ticketing system to make choosing public transport even easier by giving customers more ways to pay for their travel (Smart Ticketing). To support a proceeding for an offence relating to fare evasion under Smart Ticketing, provisions for evidentiary certificates are being inserted into TOPTA.

The *Personalised Transport Ombudsman Act 2019* includes an amendment to insert definitions of 'driver authorisation' and 'operator accreditation' into TOPTA. As TOPTA already defines these terms, an amendment will remove the definitions from TOPTA to avoid duplication.

Clarify the operation of some drug and drink driving provisions

A range of drink and drug driving reforms were progressed through the *Transport Legislation (Road Safety and Other Matters) Amendment Act 2019*. To improve implementation of these reforms, this Bill will include minor amendments to:

- ensure first time mid-range drink driving offenders can apply for an interlock exemption if they are granted a restricted licence; and
- clarify that provisions imposing an extension of the interlock period for those who fail to complete the repeat offender education program can only apply to repeat drink driving offenders.

In addition, this Bill will amend the TORUM Act to remove a superfluous notice requirement from the drug driving provisions where the police officer who analyses a specimen of a driver's saliva is the same officer that made the initial requisition for that specimen.

Human Rights Issues

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

In my opinion, the human rights that are relevant to the Bill are:

Digital Licence App

- Fair hearing (section 31 of the *Human Rights Act 2019*) (relevant clause 61)
- Rights in criminal proceedings (section 32 of the *Human Rights Act 2019*) (relevant clause 61)

Camera enforcement of seatbelt and mobile phone offences

- Right to life (section 16 of the *Human Rights Act 2019*) (relevant clauses 53 - 59)
- Right to liberty and security of person (section 29 of the *Human Rights Act 2019*) (relevant clauses 53 - 59)
- Fair hearing (section 31 of the *Human Rights Act 2019*) (relevant clauses 57 - 59)
- Rights in criminal proceedings (section 32 of the *Human Rights Act 2019*) (relevant clauses 57 - 59)

Minor and technical amendments

TOPTA

- Fair hearing (section 31 of the *Human Rights Act 2019*) and rights in criminal proceedings (section 32 of the *Human Rights Act 2019*) (relevant clauses 46 and 48)

TIA

- Property rights (section 24 of the *Human Rights Act 2019*) (relevant to clauses 33 - 39)
- Privacy and reputation (section 25 of the *Human Rights Act 2019*) (relevant to clauses 33 and 34)

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Digital Licence App

Right to a fair hearing and rights in criminal proceedings (sections 31 and 32 of the *Human Rights Act 2019*)

(a) the nature of the right

I understand the right to a fair hearing and rights in criminal proceedings require that individuals be afforded procedural fairness. In a criminal justice context these rights aim to ensure the criminal justice system operates in a way that is predictable and presumes innocence until an offence has been proved beyond reasonable doubt. These rights may be limited by amendments that provide for a reverse onus.

The Bill includes an evidentiary provision that will allow a certificate to be used to provide evidence about a digital authority.

This provision may be considered to limit a person's right to fair hearing and rights in criminal proceedings because, in effect, it reverses the onus of proof and limits an individual's right to have witnesses examined.

With this in mind, while the evidentiary provision does technically reduce the need for the prosecution to call witnesses about the matters contained in the certificates, the provision does not limit a person's ability to contest that information. This may result in the witnesses being subsequently called and, for this reason, I do not consider that the provision limits the person's right in criminal proceedings.

However, in the event I am wrong, I believe the limitation imposed by the amendments in this Bill is reasonable and demonstrably justifiable as outlined below.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The amendment in the Bill in relation to clause 63 aims to support the introduction and ongoing operation of the Digital Licence App. The amendments aim for a practical integration of digital authorities by supporting a more efficient and cost-effective court process for all parties by removing the time and costs associated with calling witnesses for uncontested issues. By allowing certificate evidence to be used, the limitation provides a practical approach for court proceedings where information about a digital authority is relevant.

As a result, I believe the limitation is reasonable and demonstrably justifiable consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation on the right to a presumption of innocence in the rights to a fair hearing and criminal proceedings are connected to the purpose of the amendments which is to support a more efficient and cost-effective court process for all parties.

Allowing for certificate evidence removes the time and costs associated with calling witnesses about uncontested issues during court proceedings. Clause 61 achieves this purpose by allowing certificates to be used to provide evidence of records relating to a digital authority.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill.

The provisions relating to the certificate for the digital authority are the least restrictive or reasonably available way of achieving the purpose. This is because the nature of the limitation posed by certificate evidence is quite narrow, and because certificate evidence is contestable and limited to objective matters of record.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

As mentioned above, the purpose of the Bill is to support an efficient introduction and operation of the Digital Licence App.

On balance, I believe that the purpose of the limitation, that is the supporting of an efficient court process outweighs the harm done to an individual's right to a presumption of innocence and the right to a fair hearing.

Camera enforcement of seatbelt and mobile phone offences.

Privacy and reputation (section 25 of the *Human Rights Act 2019*)

- (a) The nature of the right

The right to privacy and reputation protects the individual from unlawful and arbitrary interference and from attacks to their reputation; the scope of the right to privacy is very broad. It protects privacy in the sense of personal information and data collection, but also extends to an individual's private life more generally. A policy that involves surveillance of people for any purpose; collection of personal information; and storage, security, retention and access to personal information should carefully consider the proportionality of any limitations on the right to privacy.

The Bill includes amendments to facilitate camera detection of seatbelt and mobile phone offences. This is consistent with the management of other camera-detected offences under the Camera Detected Offence Program (CDOP). Images will be taken of vehicles which will include vehicle registration numbers, as well as images of inside the vehicle cabin (mostly the front cabin). The collection of images from every vehicle that passes the camera irrespective of whether an offence is being committed may be seen to limit a person's right to privacy and reputation. It is also recognised that some people may consider the cabin of a vehicle to be private space, even though they are utilising a public road network. Images of this may therefore be seen to infringe on a person's right to privacy and reputation.

It is also acknowledged that a situation may arise where a person driving a car that is registered to someone else commits a camera-detected offence. For example, an employee may be driving a vehicle registered to their employer. The amendments in the Bill mean the current notification provisions for registered operators will apply to camera-detected seatbelt and mobile phone offences. In this circumstance, the infringement notice (including the details of the offence and photograph) would be sent to the registered operator for the vehicle rather than the driver, thus potentially limiting the driver's right to privacy and reputation.

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

While some may view the amendments as limiting the right to privacy and reputation, by doing so the Bill will improve road safety by deterring unsafe driving behaviours.

In a free and democratic society, there is an expectation and a legal obligation for all drivers to conduct themselves safely on our roads and having consideration for the safety of themselves and other road users. From the statistics outlined below, camera-detection has been successful in decreasing other unsafe behaviours.

I also note that ensuring that effective measures are in place to address unsafe driving behaviours to reduce road death and trauma promotes the right to life (section 16 *Human Rights Act 2019*) and the right to liberty and security of a person (section 29 *Human Rights Act 2019*). These rights place a positive obligation on the State to ensure that measures are in place to protect life and ensure the physical safety of these who are in danger of harm. That is, it is incumbent on the State to put in place measures to make road use as safe as possible.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The purpose of the Bill is to improve road safety by deterring unsafe driving behaviours. In 2018, 33 people lost their lives and a further 1,359 were hospitalised due to serious injuries resulting from driver distraction. Distracted driving on average accounts for approximately 14 per cent of the road toll and almost 20 per cent of serious injuries each year and is one of the 'Fatal Five' road behaviours. Research has shown that using a mobile phone while driving is just as dangerous as a drink driver with a blood/breath alcohol content of 0.07 – 0.10.

Failure to wear a seatbelt (where a seatbelt is available to be worn) contributes to 25 per cent of fatalities (one in four) and a further 166 serious injuries per year. This is despite ongoing driver education and indisputable evidence over decades that shows seatbelts are effective at reducing fatalities in the event of a road crash.

Research shows that camera operations to detect speeding have been effective at both reducing crashes which result in death or serious injury and at promoting positive behavioural change through general and specific deterrence. An independent review of Queensland's CDOP using 2016 data found that the CDOP was associated with saving approximately 2,500 casualty crashes in 2016 alone, of which approximately 1,650 would have been fatal and serious injury crashes.

Based on evidence, expanding camera-detection to other life-threatening offences will encourage driver behaviour change and save lives. Therefore, the amendments to facilitate camera detection of seatbelt and mobile phone offences under CDOP are rationally connected to the purpose of deterring unsafe driving behaviours. Any limit to the right to privacy by introducing camera detection allows for effective enforcement of life-threatening seatbelt and mobile phone offences. This achieves the purpose of enforcing unsafe driving behaviours and improving road safety.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill.

There are no other less restrictive or reasonably available ways to achieve this purpose.

The cameras by nature must view inside the vehicle cabin as this is where the unlawful activity takes place.

There is no alternative to taking images inside a vehicle's cabin, or to the technology reviewing images of every vehicle that passes the camera, looking for the prescribed unlawful action. Every vehicle must be captured as to only take images of certain vehicles would unfairly discriminate against some and not others without a clear policy basis.

However, it is also important to acknowledge how the processes will help assist road users to avoid having their human right limited.

A key element in upholding and protecting the right to privacy is that images or video that do not contain evidence of an offence will be deleted by the system and are not used or transferred to a human.

Where an offence is detected by the system, the information collected will be transmitted to the Queensland Police Service (QPS). QPS personnel hold trusted positions in the community with respect to the handling sensitive information.

Additional strict privacy and security measures will apply to mitigate privacy concerns arising from the use and storage of information captured by the cameras for the purposes of verifying and enforcing offences. These are:

- encrypting image files and transferring data via secure networks;
- contractually binding the camera supplier to abide by the *Information Privacy Act 2009*;
- subjecting all supplier personnel that have access to the images to a criminal history check and training;
- including access logs to the images to determine who has accessed what image; and
- ensuring controls over physical access to the camera sites.

This is consistent with other existing camera-detected offence protocols. Importantly, all drivers can avoid any reputation implications by complying with the QRRs.

To mitigate any impact on privacy and reputation, information about the camera system, the images/videos it will be able to capture, the process that applies if an offence is detected and use of the data will be made publicly available on the Queensland Government website. A Privacy Impact Assessment will also be made publicly available.

This will assist in mitigating community concerns or misinformation about information captured by the cameras and ensure transparency of the system. It will also ensure persons driving vehicles where they are not the registered operator are forewarned of the potential privacy and reputation implications if they commit a camera-detected offence and provide further encouragement to choose safe driving behaviours.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

There is clear research showing that the road safety impacts of failing to wear a seatbelt or unlawful use of mobile phones are significant. Research also shows that camera enforcement of these offences is likely to improve road safety.

Therefore, I believe any impact on individual privacy or reputation is minor and justifiable when balanced against the road safety benefits (the right to life) and protections available to the individual and the community.

Right to fair hearing and rights in criminal proceedings (sections 31 and 32 of the *Human Rights Act 2019*)

(a) The nature of the right

The right to fair hearing and rights in criminal proceedings affirm the right of all individuals to procedural fairness before a court or tribunal. It is noted that a policy that creates a reverse onus may engage these rights.

The evidentiary provisions relating to the camera-detection of mobile phone and seatbelt offences allow for certificate and report evidence and also involve reversing the onus of proof for certain elements of the offence. The evidentiary matters include some rebuttable presumptions. These presumptions arguably limit a person's right to a fair hearing and rights in criminal proceedings by placing the obligation on the person to challenge the matters in the presumptions (as opposed to the state being required to prove the element of the offence).

Allowing evidence to be presented by certificate, may also limit a person's right to have witnesses examined.

In relation to the presumptions, for a seatbelt offence, the rebuttable presumptions are set out in proposed new section 120D.

These presumptions are that a vehicle depicted in an image is moving, but not reversing, or, if stationary is not parked and is taken to be fitted with an approved seatbelt.

It also provides for an image depicting a driver or passenger not wearing a seatbelt, the person is taken to be not wearing an approved seatbelt.

For a mobile phone offence, the rebuttable presumption is set out in proposed new section 120E. This provision operates so that it can be presumed that a vehicle shown in an image is moving, or stationary but not parked.

The evidentiary provisions mentioned above only operate in the absence of evidence to the contrary. An individual is still able to contest the matters addressed through the presumptions, certificates or report, reducing the limitation on their rights.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

As mentioned above, the purpose of the limitations on a person's right to a fair hearing and rights in criminal proceedings is necessary to improve the efficiency of enforcement processes and ultimately to reduce unsafe behaviours. In a free and democratic society, there is an expectation that all drivers will conduct themselves safely on our roads and have consideration for the safety of themselves and other road users. As per the statistics outlined above, camera-detection has been successful in responding to other unsafe behaviours.

Ensuring that effective measures are in place to address unsafe driving behaviours and hence road trauma is consistent with the right to life (section 16 of the *Human Rights Act 2019*) and the right to liberty and security of a person (section 29 of the *Human Rights Act 2019*). These rights place a positive obligation on the State to ensure that positive measures are in place to protect life and ensure the physical safety of these who are in danger of harm. That is, it is incumbent on the state to put in place measures to make road use as safe as possible.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Allowing for camera enforcement of seatbelt and mobile phone offences is designed to increase the public's perception of the likelihood of being caught for these behaviours. This will have the effect of better deterring these unsafe driving behaviours. The ability for offences to be prosecuted and setting up a system to allow for effective court processes will be critical in reinforcing the deterrent effect and encouraging behavioural change in drivers.

Current on road enforcement of seatbelt and mobile phone offences relies on the observations and evidence collected by an intercepting police officer. However, camera-detected enforcement relies solely on the image or video produced by the camera system. The provisions in this Bill will ensure that those images or videos are able to be used effectively as evidence.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill.

I consider that there are no practical, less restrictive ways to achieve the purpose of the provisions requiring a reverse onus of proof for seatbelt and mobile phone offences.

The alternative is not reversing the onus for certain elements of the offences. However, this would have the effect of relying upon the image alone to prove these elements. Some of the elements (such as a vehicle was moving) cannot be proven by a still image and by necessity must be reversed. It is also unlikely an image would provide enough information to prove that a vehicle was fitted with approved seatbelts, even though it is reasonable to presume that most vehicles on the roads are fitted with approved seatbelts.

Where an infringement notice is issued, a person who wishes to challenge it will, in the first instance, be able to contact the QPS. It is intended that this process not create undue burden, particularly on those who may be disadvantaged by low literacy. Importantly, the person can also elect to have their matter heard by a court. In practice, a court election triggers another review by QPS prior to a complaint and summons being issued.

The requirements in the Bill to notify the prosecution of certain matters prior to hearing will ensure the prosecution can make informed decisions about whether a matter should be withdrawn. This will likely reduce the burden on both individuals and courts.

If a matter proceeds to court, the person will be able to provide evidence through their own testimony or additional evidence, and then it will be a matter for the Magistrates court to decide. The provisions in the Bill do not interfere with the independence or competence of the court.

The amendments relating to camera-enforcement of mobile phone and seatbelt offences will also mean that if an offence has been detected and verified, an infringement notice will be issued to the registered operator of the vehicle, even if they were not the driver.

Consistent with current camera-detected offences, the registered operator can nominate another individual as the driver if they were not in charge of the vehicle at the time of the offence. This occurs through a declaration process, including where a person can use an online portal.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Reverse onus is not something that is proposed lightly and is only being pursued out of necessity. With the ongoing road safety risks arising from distracted driving and failure to wear a seatbelt, effective and certain enforcement of mobile phone and seatbelt offences is necessary to help save lives on Queensland roads. It is also necessary to give the community confidence that action is taken to provide a safe road network for all road users.

As outlined above, the enforcement processes are robust and will reduce any limitation of a person's rights.

In summary, while the evidentiary provisions technically may be seen to limit a person's right to presumption of innocence, the provisions do not limit a person's ability to elect court to contest the allegations against them and the matters provided by the presumptions or other evidence. If a person contests this information, this may result in the witnesses being subsequently called and, it then becomes a matter for the court to decide.

For this reason, I do not consider that the provisions in practice, will limit the person's rights to a fair trial or rights in criminal proceedings, when the whole process is considered.

However, if the amendments do limit these rights, based on the research and processes outlined above, the reverse onus provisions are reasonable and demonstrably justifiable when balanced against the positive deterrent effect that effective enforcement (including efficient court processes) will have on road safety.

Right to recognition and equality before the law (section 15 of the *Human Rights Act 2019*)

(a) The nature of the right

The right to recognition and equality before the law reflects that every person holds the same human rights by virtue of being a human and not because of some particular characteristic or membership of a particular social group. This right encompasses the right to recognition as a person before the law and the right to enjoy human rights without discrimination. The *Anti-Discrimination Act 1991* defines discrimination as including both direct and indirect discrimination.

Provisions in the Bill to support camera-detected seatbelt offences are written in neutral terms. However, it is noted that they could have the potential to have a disproportionate impact on a person with a disability who has a medical exemption from the seatbelt laws.

I note that this is a form of indirect discrimination and arises due to the rebuttable presumptions in proposed new section 120D, specifically that if a camera image depicts the driver or passenger not wearing a seatbelt, then they are taken not to be wearing an approved seatbelt.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Any limitation on the right to equality is to ensure efficient enforcement processes which will ultimately reduce unsafe behaviours. In a free and democratic society, there is an expectation and requirement that all drivers conduct themselves safely on our roads and have consideration for the safety of themselves and other road users. Drivers are responsible for their own seatbelts and those of their passengers. As you will see from statistics outlined above, camera-detection has been successful in responding to other unsafe behaviours.

I also note ensuring that effective measures are in place to address unsafe driving behaviours to reduce road death and trauma is consistent with the right to life (section 16 of the *Human Rights Act 2019*), and the right to liberty and security of a person (section 29 of the *Human Rights Act 2019*). These rights place a positive obligation on the State to ensure that positive measures are in place to protect life and ensure the physical safety of these who are in danger of harm. That is, it is incumbent on the state to put in place measures to make road use as safe as possible.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Any limit on the right to equality is to ensure efficient enforcement processes can apply to seatbelt and mobile phone offences, ultimately to encourage safer driving behaviours. The presumption contained in the Bill is necessary because it is not possible for a camera to detect whether a vehicle is required to be fitted with a seatbelt or whether a driver or passenger is exempt from wearing a seatbelt.

It is not mandated that individuals with a medical certificate that exempts them from wearing a seatbelt lodge this certificate with TMR.

This would create an undue burden on this group of people. The number of medical exemption certificates is also likely to be very low, considering the threshold for obtaining an exemption under national medical guidelines. In addition, a medical certificate may relate to a temporary condition and be for a period as determined by the person's doctor.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

In my view there are no less restrictive ways available to achieve the purpose of the Bill. However, supporting administrative processes will be put in place to reduce any limitation on an individual's rights.

It will not be made mandatory for such a person to lodge advance evidence of their exemption (medical certificate) as this would create an undue burden on all individuals who have an exemption. However, a person will be able to choose to provide their medical certificate.

This will allow their circumstances to be considered during the adjudication prior to an infringement notice being issued, particularly where they pass a camera regularly.

A person will also be able to provide a medical certificate after an infringement has been issued. In any event, it is expected that the number of individuals impacted as only small number of medical exemptions from the seatbelt laws are issued. It is also proposed to allow people with an exemption to notify TMR at any time so that their circumstances can be taken into account during the adjudication prior to an infringement notice being issued.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

For the reasons outlined above, I believe, the potential human right impact to this group in the community is also considered reasonable and justified given the road safety benefit to the broader community of encouraging increased use of seatbelts by those who are not exempt. There is clear evidence that seatbelts reduce the incidence of death and serious injury as the result of a crash.

Minor and technical amendments

TOPTA

Right to fair hearing and rights in criminal proceedings (sections 31 and 32 of the *Human Rights Act 2019*)

(a) the nature of the right

The right to fair hearing and rights in criminal proceedings affirm the right of all individuals to procedural fairness before a court or tribunal. A policy that creates a reverse onus may engage these rights.

Clauses 46 and 48 of the Bill provide that a certificate signed by the chief executive can be evidence of the following matters:

- vehicle particulars recorded in the RAV;
- that a stated vehicle is an approved vehicle;
- that a stated vehicle is a relevant public passenger vehicle; and
- that a stated amount was the fare payable for the use or hire of a relevant public passenger vehicle.

These amendments may engage a person's right to a fair hearing and rights in criminal proceedings to the extent that evidentiary certificates have the effect of reversing the onus of proof for the elements of the offences to which they relate.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the amendments is to increase the efficiency of court processes for offences relating to fare evasion and vehicle requirements under the *Transport Operations (Passenger Transport) Regulation 2018*.

Evidentiary certificates are commonly issued for non-contentious matters that a defendant is unlikely to challenge. This objective is, in my opinion, consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The amendments increase the efficiency of court processes for offences relating to fare evasion and vehicle requirements by eliminating the need to prove the matters stated in an evidentiary certificate. However, the evidentiary certificates only relate to matters that are administrative, factual in nature, non-contentious and unlikely to be disputed.

The matters include the particulars of a vehicle recorded in the RAV; whether a vehicle is an approved vehicle (that is, a vehicle that is fitted with Smart Ticketing equipment for TMR); whether a vehicle is a relevant public passenger vehicle; and the fare payable for the use or hire of a relevant public passenger vehicle for a journey. The amendments do not prevent a defendant challenging a matter stated in a certificate during a court proceeding.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill.

There is no less restrictive and reasonably available way to achieve the purpose of clauses 46 and 48 of the Bill.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Evidentiary certificates are commonly used for matters that are administrative, factual in nature, non-contentious and unlikely to be disputed.

This supports the efficiency of court processes by ensuring matters that are unlikely to be disputed in a court can be resolved quickly, focusing on the matters that are likely to be challenged by a defendant.

Although evidentiary certificates eliminate the need for the prosecution to call witnesses about the matters contained in the certificates in the first instance, the use of evidentiary certificates does not prevent a defendant challenging the information stated in the certificates.

If a person challenges an evidentiary certificate, a witness may be called and, for this reason, I do not consider that the provisions will limit a person's right to fair hearing and rights in criminal proceedings.

In consideration of the relationship between the limitation and the purpose of clauses 46 and 48 of the Bill, the importance of achieving the identified purpose outweighs the potential limitation on the human rights, and the limit is reasonably and demonstrably justifiable.

TIA

Property rights (section 24 of the *Human Rights Act 2019*)

(a) the nature of the right

Section 24(2) of the *Human Rights Act 2019* provides that a person must not be arbitrarily deprived of the person's property. Currently, TMR's ability to access and temporarily occupy land is limited by section 35 and 36 of the TIA insofar as land may be entered to conduct road works or accommodation works.

The amendments expand sections 35 and 36 of the TIA to include a land management activity. The provision to enter land adjacent to the road corridor is still limited to works that are related to road transport infrastructure or proposed road transport infrastructure.

The expansion of these provisions may amount to a limit of a person's right to property as it will allow TMR to enter property, but not dwellings, to conduct minor activities. This could include noise monitoring and management, something which would benefit the owner/occupier and is consistent with the TIA's objectives (section 2(b)(iii)). However, it is acknowledged that some of these activities may temporarily limit a person's right to use their property and thus would limit their right to property under section 24 of the *Human Rights Act 2019*.

Currently, secondary interests are extinguished by the process of including land into the rail corridor or busway. To reinstate these interests, the State must negotiate and prepare new agreements with the affected parties. With the amendments, the beneficiaries of secondary interests will continue to benefit from their interests, unaffected by the land becoming rail corridor or becoming busway land. To be clear, all functional interests (easements/leases) will continue except in the very rare situation where obsolete interests would be extinguished. The amendments include notification provisions and if an interest is extinguished the holder will be entitled to fair compensation. For example, where land is subdivided into many lots with easements carrying through on title but not physically on each lot.

If there was an instance where a functional interest required extinguishment for a busway/railway project, TMR would use its acquisition powers under the *Acquisition of Land Act 1967* to extinguish the interest. This would then convert automatically into a right for the interest holder to claim compensation. This process would occur prior to the formal declaration of busway or railway.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Currently, TMR cannot conduct land management activities without the consent of the land owner/occupier. This leaves TMR in a position where it may be in breach of its obligations under other legislation, such as the *Nature Conservation (Wildlife Management) Regulation 2006*. The amendments are required so that TMR can carry out *land management activity* on land that is adjacent to the road corridor.

The amendments to the TIA will benefit secondary interest holders by preserving their interest in land, unaffected by the land becoming rail corridor or becoming busway land.

In the rare occurrence that an interest is extinguished, the interest holder will be entitled to fair compensation.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Currently, TMR cannot conduct land management activities without the consent of the land owner/occupier. This leaves TMR in a position where it may be in breach of its obligations under other legislation, such as the *Nature Conservation (Wildlife Management) Regulation 2006*.

The amendments will enable TMR to enter property, but not dwellings, to conduct minor activities. This could include noise monitoring and management, something which would benefit the owner/occupier and is consistent with the TIA's objectives.

The amendments to the TIA will benefit secondary interest holders by preserving their interest in land, unaffected by the land becoming rail corridor or becoming busway land. In the rare occurrence that an interest is extinguished, the interest holder will be entitled to fair compensation.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill.

The amendments are the least restrictive and most reasonable way of achieving the purpose as stated above. Property rights are still protected in that notice or consent is still required to conduct the works and information needs to be provided to the land owners/occupiers prior to TMR entering the land to conduct activity on land that is adjacent to the road corridor.

Similarly, TMR must rectify any damage caused to property by entering and temporarily occupying land to undertake the necessary activity. The existing section 37 compensation provisions will also continue to apply. In addition, the amendments do not reduce existing rights of an owner or an occupier to seek either a review via the Queensland Civil and Administrative Tribunal (or Judicial Review). This all results in a limitation that comes with caveats that respect land owners'/occupiers' property rights.

The amendments to the TIA will benefit secondary interest holders by preserving their interest in land, unaffected by the land becoming rail corridor or becoming busway land. All functional interests (easements/leases) will continue except in the very rare situation where obsolete interests would be extinguished. The amendments include notification provisions and, if an interest is extinguished, the holder will be entitled to fair compensation.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The limitation is demonstrably justified because the limitations on an individual's right to property is outweighed by the need to conduct land management activities in order to help realise the TIA's objectives to manage for road transport 'environmental emissions', thereby benefitting land owners adjacent to the road corridor.

The limitation is demonstrably justified because the limitations on an individual's right to property is only in very rare situations, for the most part it is outweighed by the benefit to secondary interest holders by preserving their interest in land, unaffected by the land becoming rail corridor or becoming busway land.

TIA

Privacy and reputation (section 25 of the *Human Rights Act 2019*)

(a) the nature of the right

Section 25(1) of the *Human Rights Act 2019* provides that a person has the right not to have one's home arbitrarily interfered with. In a similar manner to the limitation on property rights, TMR's ability to access and temporarily occupy land by sections 35 and 36 of the TIA is permitted insofar as land may be entered to conduct road works or accommodation works. While access to a dwelling is not provided by the amendment, the owner's/occupier's land forms part of the 'home'.

The expansion of sections 35 and 36 of the TIA to include a *land management activity* is still limited insofar as the power to enter land adjacent to the road corridor is still limited to works that are related to road transport infrastructure or proposed road transport infrastructure. As with property rights, the expansion of these provisions may amount to a limit of a person's right to property as it will allow TMR to enter property, but not dwellings, to conduct minor activities. This could include noise monitoring and management, something which would benefit the owner/occupier and is consistent with the TIA's objectives.

However, it is acknowledged that some of these activities may temporarily limit a person's right to use their home and thus would limit their right to privacy and reputation under section 25 of the *Human Rights Act 2019*.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

As stated previously, TMR cannot conduct land management activities without the consent of the land owner/occupier. This leaves TMR in a position where it may be in breach of its obligations under other legislation. The amendments are required so that TMR can carry out required activity on land that is adjacent to the road corridor.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Currently, as TMR cannot conduct land management activities without the consent of the land owner/occupier, this leaves TMR in a position where it may be in breach of its obligations under other legislation.

The amendments will enable TMR to enter property, but not dwellings, to conduct minor activities. This could include noise monitoring and management, something which would benefit the owner/occupier and is consistent with the TIA's objectives.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill.

As stated previously, the amendments are the least restrictive and most reasonable way of achieving the purpose as stated above, The right to privacy and reputation is still protected in that notice or consent is still required to conduct the works, and information still needs to be provided to the land owners/occupiers prior to TMR entering the land to conduct the necessary activity. In addition, the amendments do not reduce existing rights of an owner or an occupier to seek either a review via the Queensland Civil and Administrative Tribunal (or Judicial Review). This all results in a limitation that comes with caveats that respect land owners'/occupiers' right to privacy and reputation.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Similar to the limitation on property rights, the limitation is demonstrably justified because the individual's right to privacy and reputation is outweighed by the need to conduct land management activities in order to help realise the TIA's objectives to manage for road transport 'environmental emissions', thereby benefitting the enjoyment of one's home adjacent to the road corridor.

Conclusion

In my opinion, the Bill is compatible with human rights under the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the Act.

Honourable Mark Bailey MP
Minster for Transport and Main Roads