

Transport and Other Legislation Amendment Bill 2023

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 and Minister for Digital Services, make this statement of compatibility with respect to the Transport and Other Legislation Amendment Bill 2023.

In my opinion, the Transport and Other Legislation Amendment Bill 2023 (the Bill) is compatible with the human rights protected by the *Human Rights Act 2019* (HR Act). I base my opinion on the reasons outlined in this statement.

Overview of the Bill

The Bill will amend various transport and other Acts to:

- facilitate the transition of certain regulatory services from the Department of Transport and Main Roads (TMR) to the National Heavy Vehicle Regulator (NHVR);
- improve road safety, streamline administrative processes, and clarify existing requirements.

National Services Transition amendments

The purpose of the Bill is to amend the *Heavy Vehicle National Law Act 2012* (HVNL) and other legislation in the ways indicated below.

The amendments introduce a new division 4A into part 4 of the HVNL. This division deals with the transfer of employees and vehicles by providing that:

- the Minister may make a transfer schedule which identifies the employees and vehicles to be transferred to the NHVR.
- the date of the transfer will be indicated in the transfer schedule made by the Minister.
- transferred employees will retain existing benefits, entitlements, remuneration and rights to superannuation, recreation, sick and long service and other leave when their employment transfers to the NHVR.
- transferred employees will not be entitled to a payment or other benefit for a retrenchment or redundancy. As they will be employed by the NHVR following the transfer, the State will not be required to take any steps to find transferring employees alternative employment.
- processes or requirements under the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2021* and the *Transport Operations (Road Use Management—Vehicle Standards and Safety) Regulation 2021* associated with the transfer of a vehicle will not apply to the transfer of vehicles to the NHVR.

The Bill also makes consequential amendments as follows:

- the *Transport Operations (Passenger Transport) Act 1994* (TOPTA) and the *Transport Operations (Road Use Management) Act 1995* (TORUM Act) are being amended to allow staff who are authorised as employees of TMR to perform enforcement activities under these Acts, to continue to perform this role when they become an employee of the NHVR.
- the *Transport Operations (Road Use Management—Vehicle Standards and Safety) Regulation 2021* is being amended to reflect that transferred vehicles used for heavy vehicle enforcement will be used by the NHVR rather than TMR. This will allow, for example, the continued use of flashing lights and sirens on these vehicles.
- the TORUM Act is being amended to allow information kept in a registration and licence database to be disclosed to an authorised person of the NHVR.

Road safety amendments

To enhance safety for users of personal mobility devices (PMDs), and the vehicles and pedestrians they interact with, the Bill:

- makes it an offence for the rider of a PMD or bicycle to ride without due care and attention on a road-related area, such as a footpath;
- requires the driver (including rider) of any vehicle, tram or animal involved in an incident on a road-related area that results in injury to or death of any person to immediately stop, remain at the scene and render any necessary medical assistance to the injured person; and
- requires the rider of a PMD who is involved in a crash on a road or road-related area to stop and provide their particulars, including their name and address, to any other driver involved in the crash, anyone else injured in the crash or the owner of any property damaged in the crash.

Introduction of a consistent regulatory framework to enhance safety of road-based public passenger services

The Bill will amend the TOPTA to provide a consistent framework for safety duties across most road-based public passenger services. The duties will not apply to services provided by light rail vehicles. The duties will also not apply to services provided by volunteer associations, and their volunteers, who do not have duties under the *Work Health and Safety Act 2011* (WHS Act).

Operators and booking service providers will also need to have safety management plans. The plan must be documented, but it may be similar to, and reference any plan they have in place under the WHS Act or the HVNL.

Consistent audit and direction framework for road-based public passenger services amendments

The Bill also amends the TOPTA to expand the current audit provisions, and current direction to comply provisions, to all duty holders of road-based public passenger services (rather than only personalised transport services).

Minor and technical amendments

In addition, the Bill includes a number of minor and technical amendments as outlined below.

Cross River Rail Delivery Authority Act 2016 (CRRDAA)

The Bill will amend the CRRDAA to remove a quorum reference modernising the quorum requirements in line with conventional practice.

Maritime Safety Queensland Act 2002 (MSQ Act)

The Bill will amend Section 10 of the MSQ Act which states that the General Manager of Maritime Safety Queensland is to be employed under the *Public Sector Act 2022*. This limits the remuneration for the role and, in turn, hinders the ability to attract and retain the best qualified applicants for the role of General Manager. Section 10 will be amended to provide that the remuneration of the General Manager will instead be decided by the Governor in Council.

Sustainable Ports Development Act 2015 (Ports Act)

The Bill will amend the Ports Act to provide for the inclusion of areas of land subject to tidal waters outside of port limits in a priority port's master planned area.

Transport Infrastructure Act 1994 (TIA)

The Bill will amend the TIA to:

- simplify the process to comply with a tolling demand notice by removing the requirement for a statutory declaration to be made in the approved form, and instead permit standard statutory declarations to be made under the *Oaths Act 1867*;
- modernise the nomination process by permitting the recipient of a demand notice to nominate another driver via an online nomination facility, in addition to the statutory declaration process;
- streamline court proceedings for non-compliance with a tolling demand notice by providing for additional matters to be submitted by evidentiary certificates and providing for the presumption a demand notice is in the approved form unless there is evidence to the contrary;
- update the way in which a limited access road declaration may be advertised; and
- remove unnecessary provisions to reflect the repeal of the *Wild Rivers Act 2005* by section 95 of the *State Development, Infrastructure and Planning (Red Tape Reduction) and Other Legislation Amendment Act 2014*.

Transport Operations (Passenger Transport) Act 1994 (TOPTA)

The Bill will amend the TOPTA to:

- allow authorised persons to require information in the form of a document, including for example, vehicle security camera footage, in the same way they can require other information;

- apply a modern drafting approach to the regulation making powers relating to the charging of default fares; and
- ensure the chief executive of TMR can continue to obtain relevant information to verify eligibility for assistance with transport arrangements for students attending non-State schools.

Transport Operations (Road Use Management) Act 1995 (TORUM Act)

The Bill will amend the TORUM Act to:

- update the reference to the advertising standards entity responsible for advising TMR on whether a vehicle has been determined as displaying sexually explicit, discriminatory or otherwise offensive advertising enabling TMR to cancel that vehicle's registration;
- replace the term *motorised scooter* with *low powered toy scooter* to remove confusion regarding the road rules that apply to different devices; and
- provide flexibility for future camera enforcement of driver distraction offences, if rules are expanded beyond mobile phone use to cover, for example, media players, tablet computers and laptops.

Transport Planning and Coordination Act 1994 (TPCA)

The Bill will amend the TPCA to provide for the recognition and use in Queensland of foreign digital licences from a recognised country approved by the chief executive and published on a Queensland government website that comply with a standard prescribed by regulation. The International Standard for mobile driver licences (ISO 18013-5) is being prescribed through an amendment to the *Transport Planning and Coordination Regulation 2017*. This will simplify the process for overseas visitors to drive on Queensland roads.

Human Rights Issues

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

The following human rights protected under the HR Act may be limited by the proposed amendments:

- recognition and equality before the law (section 15 of the HR Act)
- property rights (section 24 of the HR Act)
- privacy and reputation (section 25 of the HR Act)
- protection of families and children (section 26 of the HR Act)
- right to liberty and security of person (section 29 of the HR Act)
- fair hearing (section 31 of the HR Act)
- rights in criminal proceedings (section 32 of the HR Act)

National Services Transition

In my opinion, a human right that is relevant to the National Services Transition (NST) component of the Bill is privacy and reputation (section 25 of the HR Act) due to the

amendments to allow the chief executive to release information from a registration and licence database to an authorised person of the NHVR.

For the reasons outlined below, however, I am of the view that the NST components of the Bill are compatible with these human rights.

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*)

Right to privacy and reputation (section 25)

(a) the nature of the right

Section 25 (Right to privacy and reputation) provides that a person has the right to not have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with and to not have their reputation unlawfully attacked.

This right may be limited by the Bill as it provides for the disclosure of personal information from a registration and licence database in certain circumstances.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The Bill amends the TORUM Act to allow the chief executive to disclose information contained in a *registration and licence database* to an *authorised person* of the NHVR (see clause 53 of the Bill). This information may include personal information such as name and address details and may therefore raise privacy considerations.

The release of registration and licence database information is limited to information the NHVR requires to exercise its functions under the *Heavy Vehicle National Law Act (Queensland)*.

The effective administration and enforcement of legislation is consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The disclosure of registration and licence information will assist the NHVR to carry out its functions under the HVNL. For example, it will allow authorised officers from the NHVR to conduct licence, registration and dangerous goods compliance checks, and enforce the use of heavy vehicle rest areas (by light and heavy vehicles).

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

There are no other reasonably available and less intrusive or restrictive ways of achieving the purpose mentioned. Importantly, however, there will be significant safeguards applied to the disclosure of information.

Clause 53 of the Bill provides for the chief executive to release information about a person's authority or traffic history to the NHVR for HVNL purposes through amendment to section 77 of the TORUM Act. This amendment does not change the information TMR is able to provide the NHVR under section 42 of the HVNL, but allows for the NHVR to access Queensland data through the National Exchange of Vehicle and Driver Information System administered by Austroads on behalf of all jurisdictions.

The Bill provides that the information may only be disclosed to the NHVR for purposes for which they are authorised to use the information under the *Heavy Vehicle National Law (Queensland)*, or a law of the State for purposes consistent with the agency's functions under such a law.

The disclosure of information to the NHVR will be the subject of a joint-agency Information and Communications Technology Transition Strategy (agreement) to manage operational information access arrangements. The agreement will ensure that access to information will be confined to information that is not personal information, unless there is an authorised use for the information. The agreement will clearly articulate the roles and responsibilities of the respective agencies with regard to the handling, use, storage, disclosure and destruction of the information shared. In particular, the agreement will incorporate regular reviews, require compliance with the Queensland Government *Information Security Policy (IS18:2018)*, and include annual assurance activities such as audits.

As a further protection, authorised officers of the NHVR are bound by section 143 of the TORUM Act, which provides that it is an offence for an authorised person to disclose, record or use information that the person gained through involvement in the administration of the TORUM Act, or because of an opportunity provided by that involvement. A maximum of 200 penalty units can apply.

- (e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

Given the benefits that will result from the release of information and the significant protections that will apply to them, on balance, the National Services Transition amendments do not unduly limit the right to privacy and reputation.

Road Safety – Personal Mobility Devices (PMD) Amendments

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

- The right to recognition and equality before the law (section 15 of the HR Act)
- Property Rights (section 24 of the HR Act)
- The right to privacy and reputation (section 25 of the HR Act)
- The protection of families and children (section 26 of the HR Act)
- Right to liberty and security of person (section 29 of the HR Act)

For the reasons outlined below, however, I am of the view that the PMD amendments in the Bill are compatible with these human rights.

Right to recognition and equality before the law (section 15)

- (a) the nature of the right

The right to recognition and equality before the law provides that every person has the right to recognition as a person before the law, that every person is equal before the law and that laws should not be discriminatory. Age is one of the attributes that may form the basis of prohibited discrimination under section 7 of the *Anti-Discrimination Act 1991*.

This right may be limited to the extent that the Bill imposes a financial penalty through a penalty infringement notice or court-imposed fine. This occurs through the expansion of the

requirement to ride with due care and attention to capture bicycle and PMD riders on road-related areas, and broadens the scope of offences under section 92 and 93 which require drivers to stop and render assistance and provide their information in the event of a crash. This provides consistent obligations for all vehicles on road-related areas.

The requirement to pay a fine for such a behaviour may adversely and disproportionately impact sectors of the community such as persons of a lower socio-economic status who may have more difficulty paying a monetary sum.

- (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 before the law is to ensure the efficient enforcement of non-compliance with the new and expanded road safety offences.

In a free and democratic society, there is an expectation and a legal obligation that persons in control of a vehicle will conduct themselves safely on roads and road-related areas, and have consideration for themselves and other users. By introducing and expanding road safety offences to formalise the requirements imposed on riders and drivers in road-related areas, the Bill promotes consistency in the application of the law while protecting the human rights of others and upholding the public interest. In improving the safety of riders and drivers on road-related areas, including path users that they interact with, the amendments will also promote the right to life.

- (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 where riders do not operate a bicycle and PMD with due care and attention on a road-related area, or a driver fails to stop and render assistance on a road-related area and/or provide their information in the event of a crash.

A person of low socio-economic status who may have lesser financial capacity to pay a financial penalty has the same opportunity as all other drivers to observe safe driving behaviours and obey the road rules. This in turn will avoid the impact of a financial penalty.

A person who receives a court-imposed fine or penalty infringement notice who cannot afford to pay the whole fine amount can also seek assistance from the State Penalties Enforcement Registry to pay the fine by instalments or settle the debt through other activities such as a work and development order.

Where a matter is heard by a court, if the court finds the person guilty of the offence, it has the ability to consider multiple factors when handing down the penalty, one of which may include the person's socio-economic status or ability to pay a fine.

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

It is considered that there are no less restrictive ways to achieve the purpose of the amendments contained in the Bill. The expanded application of these road safety offences ensures the same rules apply consistently in all places where vehicles are used.

Financial penalties, including penalty infringement notices, are a key measure to help deter unsafe behaviours on roads that put the lives of other road users at risk. A person can avoid having to pay a fine by observing safe driving behaviours and obeying the road rules.

- (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, any potential human right impact is considered reasonable and justified. There is a road safety benefit to ensure efficient enforcement processes can apply where riders do not operate a bicycle and PMD with due care and attention on a road-related area, and when a driver fails to stop and render assistance on road-related areas and provide their information in the event of a crash.

While the imposition of a financial penalty may have a greater impact upon a person from a lower socio-economic group, it is considered that maintaining the punishment and deterrent effect of penalties for applicable offences outweighs any potential limitation on the right.

Privacy and reputation (section 25)

- (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 requires individuals to disclose their personal information in the event of an incident on a road-related area involving PMDs, bicycles or other vehicles should carefully consider the proportionality of any limitations on the right to privacy.

The right may be limited to the extent that the Bill includes an amendment that requires PMD riders to stop and provide their particulars, including name and address, to any other driver involved in the crash, anyone else injured in the crash or the owner of any property damaged in the crash. This obligation is already imposed on all drivers (includes motor vehicles and bicycles) and this amendment will ensure consistent obligations are imposed on all persons operating a vehicle on a road or a road-related area.

- (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 an individual's right to privacy and reputation, by doing so, the Bill enhances road safety for all drivers and path users on road-related areas.

The requirement to provide details in the event of a crash on a road or road-related area is necessary to ensure these incidents can be investigated and parties involved in the incident, along with insurers and legal representatives can undertake actions for cost recovery.

The information required to be exchanged is limited to information necessary to instigate a criminal or civil action and includes the driver's name and address, the name and address of the owner of the vehicle, the vehicle's registration number and any other information necessary to identify the vehicle.

To protect a person's right to privacy, particularly vulnerable persons, the amendment to section 93 allows a driver to not comply with the requirement to provide their information to another person at the scene of the crash if the driver reasonably believes that sharing this information would be likely to expose them or another person to harm. In these circumstances, the driver is required to provide their details to a police officer to support further investigations for enforcement or insurance purposes.

In a free and democratic society, there is an expectation and a legal obligation that persons in control of a vehicle will conduct themselves safely on roads and road-related areas and have consideration for themselves and other users. By extending the duty to provide details in the event of a crash to a PMD rider and creating a safeguard to ensure that vulnerable drivers are not required to provide their information if there is a reasonable belief of harm, the Bill promotes consistency in the application of the law while protecting the human rights of others and upholding the public interest.

By ensuring that effective measures are in place to protect vulnerable persons, the amendment otherwise positively engages property rights (section 24 of the HR Act) by ensuring that incidents can be properly investigated, and prosecutions or civil litigation facilitated where 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 limitation on the right to privacy is to ensure that relevant information relating to a crash is appropriate to support further investigation for enforcement or insurance purposes.

Drivers of motor vehicles and riders of bicycles are required to stop and provide their particulars in the event of a crash on a road. This concept is already well understood by the general public and has generally proven to be successful in achieving its purpose. Expanding the requirement to PMD riders ensures that the duties imposed on drivers in the event of a crash apply consistently to all types of vehicles and in all types of crash locations. This information sharing supports further investigation for enforcement or insurance purposes.

In addition, the protection to vulnerable persons that the Bill introduces allows drivers to appropriately safeguard their personal details if they have a reasonable belief that harm will come to them or another person by sharing their details.

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

There are no less restrictive ways to achieve the purpose of the Bill. Expanding the requirement to provide information in the event of a crash to include PMD riders ensures that the duties imposed on drivers apply consistently regardless of vehicle type or crash location and supports further investigation for enforcement or insurance purposes.

Measures have been implemented as part of the Bill to ensure that vulnerable persons are protected if a driver has a reasonable belief that harm will come to them by sharing their details.

(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 amendment to section 93 balances the limitation of an individual's right to privacy and reputation with the rights of other road users. In limiting the rights of the individual in this way,

the Bill achieves its purpose of enhancing road safety. By ensuring that safeguards are in place to protect vulnerable persons, the amendment strikes a fair balance between the benefits gained by the public and potential harm caused to the individual through any potential limitation of their right.

Protection of families and children (section 26)

(a) the nature of the right

Protection of families and children recognises that every child has the right, without discrimination, to the protection that is needed by the child, and is in the child's best interests, because of being a child.

This right may be limited to the extent that the Bill imposes obligations on children who operate a bicycle or PMD. This occurs through the expansion of existing offences that require bicycle and PMD riders to stop and render assistance on road-related areas and provide their information in the event of a crash. This expansion ensures consistent obligations are imposed on all drivers and riders operating within road-related areas.

(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 rights of a child by imposing an obligation to stop and render assistance and to provide personal information in the event of a crash on a road-related area is to support positive road safety outcomes. This is achieved through the provision of timely medical assistance to any parties injured in a crash and more efficient enforcement outcomes, as information relating to a crash is shared with relevant parties to support further investigation for enforcement or insurance purposes.

This requirement applies to all drivers. It is not intended that the provisions will punish minors for failure to comply with these sections if they are unable to understand the obligations imposed on them due to their age, or if doing so would place their safety at risk.

In a free and democratic society, there is an expectation and a legal obligation that persons in control of a vehicle will conduct themselves safely on roads and road-related areas, and have consideration for themselves and other users. By extending those obligations to incidents on road-related areas involving PMDs, bicycles and other vehicles, the Bill promotes consistency in the application of the law.

The Bill positively engages the protection of families and children by including provisions to protect vulnerable persons from providing personal details in the event of a crash if the driver reasonably believes that sharing this information would be likely to expose them or another person to harm. In these circumstances, the driver is required to provide their details to a police officer to support further investigation for enforcement or insurance purposes.

A child or person who fears for their safety and fails to stop and render assistance and exchange details with another person in the event of a crash may rely on section 31 of the Criminal Code as part of their defence. Among other things, this provides that a person is not criminally responsible for doing or omitting to do an act to save themselves or another person from serious harm.

- (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 limitation on the rights of a child by imposing an obligation to stop and render assistance and to provide personal information in the event of a crash on a road-related area is to support positive road safety outcomes. This is achieved through the provision of timely medical assistance to any parties injured in a crash and more efficient enforcement outcomes, as information relating to a crash is shared with relevant parties to support further investigation for enforcement or insurance purposes.

A child who is unable to understand the obligations imposed on them due to their age, or who reasonably believes that doing so could expose them to harm may rely on excuses and defences under the Criminal Code. A child who is legally old enough to ride a PMD without adult supervision (16 years or older) is considered to have the capacity to understand the obligations imposed on them to observe safe driving behaviours and obey the road rules. This in turn will avoid the impact of a penalty. The road rules are in place for the safety and benefit of all road users equally.

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

It is considered that there is no less restrictive way to support the safety of other road users in an accident and provide efficient enforcement outcomes and information sharing to support enforcement and insurance outcomes. The amendments ensure that obligations on all drivers and riders apply consistently regardless of where the incident occurs and who is operating the vehicle, while also providing appropriate safeguards if a driver has a reasonable belief of harm.

- (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, any potential limitation is considered reasonable and justified. There is a road safety benefit associated with care and attention requirements, and the imposition of consistent duties and liabilities for drivers and riders involved in a crash.

Property rights (section 24) and Right to liberty and security of persons (section 29)

- (a) the nature of the right

Property rights reflect that all persons have the right to own property alone or in association with others (section 24(1) of the HR Act), and that a person must not be arbitrarily deprived of the person's property (section 24(2) of the HR Act).

Property includes all real and personal property interest recognised under general law and may include some statutory rights.

The right to property is limited where a person is unlawfully or arbitrarily deprived of the person's property. In the human rights context, arbitrarily is taken to mean capricious, unpredictable, unjust and unreasonable in the sense of not being proportionate to a legitimate policy objective.

The human rights under sections 29(1) and (2) of the HR Act are limited where a person is subjected to arbitrary arrest or detention or is deprived of the person's liberty other than on grounds, and in accordance with procedures, established by law.

The Bill may limit these rights to the extent that it expands the application of three offences (under section 92 and section 93 of the TORUM Act and proposed new section 84AA of the Bill) that applies potential fines and prison terms. The failure to pay a fine may result in enforcement action taken by the registrar of the State Penalty Enforcement Registry (SPER) against the person, including among other actions, the seizure of the person's property and vehicle immobilisation as provided for in the *State Penalties Enforcement Act 1999* (SPE Act). In addition, enforcement of these offences may, under certain circumstances, result in arrest and imprisonment.

The requirement to drive with due care and attention under section 84(2) is expanded under new section 84AA to capture bicycle and PMD riders on road-related areas with a maximum penalty of 40 penalty units. The drivers' duties to stop and render assistance on a road (section 92) have been extended to include road-related areas, with a maximum penalty of 20 penalty units or 1 year imprisonment. If the incident results in death or grievous bodily harm to a person, the penalty is 120 penalty units or 3 years imprisonment. The requirement to provide personal details for insurance purposes (section 93) for crashes that occur on road and road-related areas have been expanded to include riders of PMDs, with a maximum penalty of 20 penalty units and a penalty infringement notice may be prescribed.

- (b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The Bill may limit the right to property and right to liberty and security of persons to the extent that it expands the application of existing offences under the TORUM Act that may result in potential fines and prison terms.

In a free and democratic society, there is an expectation and a legal obligation that persons in control of a vehicle will conduct themselves safely on roads and road-related areas, and have consideration for themselves and other users. By expanding these offences, the Bill promotes consistency in the application of the law.

The purpose of expanding these offences and associated penalties is to address careless riding by bicycle and PMD riders on road-related areas, consistently apply driver duties in the event of a crash regardless of location, and consistently apply associated penalties.

The impact of offending can be equally severe regardless of whether the offence occurs on a road or road-related area. Adopting the existing financial penalties for the expanded offences provides a proportionate response to offending on road-related areas. The penalty of imprisonment is retained for the expanded offences under section 92, reflecting the seriousness of a driver failing in their duty to stop and render assistance to a person injured in a crash.

- (c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The Bill expands existing offences that may impose monetary fines or prison terms. These penalties are necessary to encourage safer driving behaviours, adequately protect persons on road and road-related areas and provide for the consistent application of the law.

The obligation to ride with due care and attention and the obligation to stop and render assistance in the event of a crash are requirements that already apply to all vehicles on roads. The current maximum financial penalty under section 84(2) remains appropriate and ensures consistency across road user types and location of offending. While there are different risks

associated with using a PMD carelessly on a road versus a road-related area, the potential outcomes of this behaviour can be equally severe. For example, a PMD rider operating carelessly on a road has the potential to cause serious injury to themselves, particularly when interacting with motor vehicles. However, a PMD rider operating carelessly on a shared path has the potential to cause serious injury to other path users, including pedestrians and bicycle riders. It is noted that this is a maximum penalty and courts are able to impose specific and proportionate penalties, up to this limit, based on the particular circumstances of the offending, including the risk and seriousness of outcomes.

The expanded application of section 92 to road-related areas ensures that the requirement to stop and render assistance applies consistently in locations where these vehicles are commonly used. Consistency with the offence and penalty is important for the public to clearly understand their obligations in the event of an incident resulting in death or injury, regardless of what type of vehicle they are operating and whether they are on a road or a road-related area. These obligations, often referred to as hit and run laws, are already well understood by drivers and the general public. A failure to stop and provide assistance can result in the same outcome for an injured person, regardless of the location of the crash.

The requirement to provide details in the event of a crash already applies to all types of vehicles on road and road-related areas, except PMDs. Including PMDs in this requirement and maintaining the existing penalty provides consistency in the application of the offence and aligns with existing community standards and expectations. Allowing the relevant expansion of these penalties provides a proportionate response to noncompliance, encourages the safe use of vehicles on road and road-related areas, and aligns driver duties in a crash to apply equally to all vehicles, regardless of location.

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

It is considered that there is no less restrictive and reasonably available way to achieve the desired road safety outcomes than through the consistent application of financial penalties for careless riding and failing to comply with a driver's duties in the event of a crash. This will expand these relevant sections to apply consistently to bicycle and PMD riders on both roads and road-related areas.

Importantly, there are several protections built into the fine enforcement system under the SPE Act which ensure the seizure and sale of property or vehicle immobilisation would only occur infrequently.

The threshold amount which must be owed to the State Penalties Enforcement Registry (SPER) before vehicle immobilisation can occur is prescribed under the SPE Act and is currently set at \$5,000. In terms of seizure and sale, SPER only undertakes this activity where it has registered an interest over the property to be seized. The SPE Act requires that the total amount owed by a debtor must be more than \$500 for an interest in a motor vehicle or \$1000 if otherwise, before SPER can register an interest over property. Other protections include that:

- a person who considers a fine should not have been issued may elect to have the matter heard by a court instead of paying the fine;
- if a fine is not paid within the specified timeframe and the penalty infringement notice is registered with SPER for enforcement action, the person may apply to pay their debt by instalments; and
- individuals who are experiencing hardship can apply to resolve their debt under a work and development order (which can include undertaking relevant courses, attending counselling and treatment programs or completing work with an approved hardship partner).

Authorised officers appointed to issue fines also receive significant training, in accordance with the requirement set out in section 20 of the TORUM Act. In addition, the court considers a range of influencing factors when determining an appropriate penalty for offending. This is captured under section 9 of the *Penalties and Sentences Act 1992* and includes, for example, the nature and seriousness of the offence, any damage, injury or loss caused by the offence, the offender's character, age and intellectual capacity, and the presence of any aggravating or mitigating factors.

While there may be less restrictive options available, for example, to reduce the financial penalty on road-related areas, it is considered that they would not achieve the desired positive impact on road safety.

Applying the existing financial penalties to expanded offences will provide a proportionate response to offending on road-related areas. This also demonstrates that the requirement to comply with the relevant provisions and the severity of offending is equal on both road and road-related areas. Not imposing a penalty on road-related areas, or reducing the penalties, indicates that the safety of pedestrians and other drivers on road-related areas such as footpaths is less important than those on roads, even though the impact of the offending can be equally severe.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human rights, taking into account the nature and extent of the limitation

It is important for road safety outcomes that riders of bicycles and PMDs are required to ride with due care and attention on a road-related area and that this offence along with drivers' duties in the event of a crash apply consistently to drivers on both roads and road-related areas.

As mentioned above, the existing penalties will provide a proportionate response to offending on road-related areas, and reinforce that the requirement to comply with these provisions and the severity of offences, is equal on both roads and road-related areas. Not imposing a penalty on road-related areas or reducing the penalties indicates that the safety of pedestrians and riders on road-related areas such as footpaths is less important even though the impact of the offending can be equally severe regardless of location.

In addition, a person has several options in relation to paying a fine. For example, a person may pay the fine in full, elect for a matter in relation to a penalty infringement notice offence to be heard by a court or apply for approval to pay the fine by instalments. If a person does not act in relation to a fine, the registrar of SPER may take further enforcement action relating to the unpaid amount under the SPE Act. This may, as a last resort, result in the registrar of SPER issuing an arrest and imprisonment warrant under the SPE Act. The SPER Charter makes it clear, however, that the use of other enforcement actions for unpaid fines is to be preferred over arrest and imprisonment. Other enforcement actions may include, among others, seizure and sale of property and vehicle immobilisation.

As also discussed above, penalties imposed by courts also take into consideration a range of factors when determining the appropriate penalty for the offender.

For the reasons outlined above, I consider the balance between the importance of protecting road safety and the consistent application of penalties for careless riding and drivers' duties and liabilities in the event of a crash, outweigh any potential limitation on the right to property and the right to liberty and security.

TOPTA – Introduction of a consistent regulatory framework to enhance safety of road-based public passenger services (including audit and directions)

In my opinion the following human rights protected under the HR Act are relevant to the proposed amendments:

- right to recognition and equality before the law (section 15 of the HR Act)
- property rights (section 24 of the HR Act)
- liberty and security of person (section 29 of the HR Act)

For the reasons outlined below, however, I am of the view that the TOPTA amendments in the Bill are compatible with these human rights.

Right to recognition and equality before the law (section 15)

(a) the nature of the right

Section 15 (Recognition and equality before the law) of the HR Act provides that every person has the right to recognition as a person before the law, every person is equal before the law, and that laws should not be discriminatory.

This Bill may limit this right by providing for enforcement action by way of financial penalties for contravention of a safety duty, failure to have, implement or comply with a safety management plan, and failure to comply with an audit notice or direction. This may disproportionately impact persons of a lower socio-economic status who may have more difficulty paying a monetary sum.

(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

Applying a financial penalty to the contravention of a safety duty or failure to have, implement or comply with a safety management plan is designed to encourage duty holders for road-based public passenger services to prioritise safety in the provision of their services.

Applying a financial penalty to audit and direction offences is designed to encourage duty holders to participate positively in audits and implement directions to take remedial action if required, again in the interests of safety.

The purpose of regulating these duty holders is to ensure high standards of safety for road-based public passenger services, and is in the public interest to protect the community. This is 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 safety duty and safety management plan requirements are targeted at identifying and mitigating safety issues. Audits will assist in identifying safety issues and directions provide for prompt remedial action to prevent incidents. As a result, there is a direct relationship between the offence provisions and associated penalties in the Bill, to the purposes of:

- ensuring high standards of safety for road-based public passenger services; and
- protecting the community.

The financial penalties attached to these offences also encourage compliance with the safety duty and safety management plan provisions, and with the audit and direction provisions, thereby increasing the likelihood of achieving the purposes above.

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

There are no less restrictive and reasonably available ways to achieve the purposes outlined above.

There are already protections built into the fine enforcement system under the SPE Act where a court-ordered fine has been registered with the SPER, including:

- if a person is unable to pay the full amount by the due date, the person may apply to pay their debt by instalments; and
- individuals who are experiencing hardship can apply to resolve their debt under a work and development order (which can include undertaking relevant courses, attending counselling and treatment programs or completing work with an approved hardship partner).

All persons, including those of lower socio-economic status who may have lesser financial capacity to pay a financial penalty, can avoid the impact of the fine by complying with the requirements 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

While the imposition of a financial penalty may disproportionately impact a person from a lower socio-economic group, the importance of ensuring high standards of safety for road-based public passenger services, and protecting the community, on balance, outweighs any potential limitation on the human rights identified above.

Property rights (section 24)

(a) the nature of the right

Section 24 (Property rights) of the HR Act protects the right of all persons to own property and provides that people have a right not to be arbitrarily deprived of their property. The human right under section 24(2) of the HR Act is limited where a person is unlawfully or arbitrarily deprived of the person's property. In the human rights context, arbitrarily is taken to mean capricious, unpredictable, unjust and unreasonable in the sense of not being proportionate to a legitimate policy objective.

This Bill may limit this right by:

- amending section 120 of the TOPTA to provide a power for authorised persons to enter a road-based public passenger service duty holder's place of business in certain circumstances.
- amending section 128 of the TOPTA to allow an authorised person to require a person give them a document when providing the information.
- providing for enforcement action by way of financial penalties offences in the TOPTA because failure to pay a court-imposed fine may result in enforcement action taken by the Registrar of the SPER against the person, including among other actions, the seizure of the person's property and vehicle immobilisation, as provided for in the SPE Act.

- (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 power under section 120(ca) for an authorised person to enter a place of business of a duty holder for a road-based public passenger service, where the person is not accredited or operating under an authorisation or contract, will assist compliance and enforcement investigations, including relating to safety. The new power in subsection (ca) complements section 120(c) to ensure consistency for duty holders. The power under section 120(d) for an authorised person to enter a place of business connected with the audit provisions in the TOPTA enables the audit process to be carried out for the purpose of assessing compliance with relevant transport legislation, including safety matters.

Applying a financial penalty to audit and direction offences is designed to encourage duty holders to participate positively in audits and implement directions to take remedial action if required. Applying a financial penalty to safety duty and safety management plan offences is designed to encourage duty holders to prioritise safety in relation to providing services.

The purpose of regulating these duty holders is to ensure high standards of safety for road-based public passenger services, and so it is in the public interest to protect the community. This is 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

There is a direct relationship between the offence provisions mentioned above, to the purposes of:

- ensuring high standards of safety for road-based public passenger services; and
- protecting the community.

The financial penalties encourage compliance, thereby increasing the likelihood of achieving the purposes above.

The powers of authorised persons to enter a place of business also support an efficient and effective investigations and audit process, which enables the assessment of a duty holder's compliance with relevant transport legislation, including safety matters, and supports the purposes above.

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

In relation to the amendments to powers of entry in section 120 of the TOPTA, there is no less restrictive way to achieve the purpose of the Bill. The alternative would require a warrant to be issued in all circumstances, or for entry to occur under another provision in section 120. Requiring a warrant to be issued would be inefficient, particularly when the new powers to enter are limited in their application to the place of business of a duty holder for a road-based public passenger service.

The audit related power to enter is further limited to where the person has been given an audit notice and where the authorised person reasonably believes it is reasonably necessary to enter the place to carry out the audit. Furthermore, powers of entry under another provision in section 120, for example, section 120(c), may lead to inequitable outcomes as not all duty holders would be captured by the provision.

In relation to the potential enforcement action by the SPER, there are no less restrictive and reasonably available ways to achieve the purposes outlined above. As mentioned above, there are already protections built into the fine enforcement system and all duty holders can avoid the potential impacts on their property rights by complying with the provisions in the Bill. The direction to comply section, for example, already provides a duty holder with an opportunity to remedy noncompliance without penalty.

- (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 power of entry provisions in the TOPTA have the purpose of facilitating efficient audit processes and compliance and enforcement investigations relating to road-based public passenger service safety duty holders. Furthermore, the financial penalties for offences encourage duty holders to prioritise safety. On balance, the approaches in the Bill are appropriate to ensure high standards of safety for road-based public passenger services and protecting the community.

Liberty and security of person (section 29)

- (a) the nature of the right

Section 29 (Right to liberty and security of person) of the HR Act provides a person with certain protections relating to liberty and security, ensuring a person is not subject to arbitrary arrest or detention, or is deprived of their liberty other than on grounds, and in accordance with procedures, established by law.

This Bill may limit this right by providing for enforcement action by way of financial penalties for offences in the TOPTA, that may be enforced under the SPE Act. The Registrar of the SPER may issue an arrest and imprisonment warrant to a person for failing to pay an amount stated in an enforcement order after the person fails to pay a financial penalty.

- (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

Applying a financial penalty to offences is designed to encourage duty holders for road-based public passenger services to participate positively in audits, implement directions to take remedial action, and encourage duty holders to prioritise safety through safety duty and safety management plan provisions.

The purpose of regulating these duty holders is to ensure high standards of safety for road-based public passenger services, and so it is in the public interest to protect the community. This is 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 safety duty and safety management plan requirements are targeted at identifying and avoiding safety issues. Audits will assist in identifying safety issues and directions provide for

prompt remedial action to prevent incidents, so there is a direct relationship between the offence provisions and associated penalties for audit and directions in the Bill, to the purposes of:

- ensuring high standards of safety for road-based public passenger services; and
- protecting the community.

The financial penalties attached to these offences also encourage compliance with the audit and direction provisions, thereby increasing the likelihood of achieving the purposes above.

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

There are no less restrictive and reasonably available ways to achieve the purposes outlined above.

As mentioned above, there are already protections built into the fine enforcement system under the SPE Act where a court-ordered fine has been registered with the SPER.

All duty holders can avoid the potential impacts on their rights by complying with the provisions, or by paying the financial penalty or arranging for a work and development order.

(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

While the failure to pay a financial penalty for an offence may impact on a person's liberty, the importance of ensuring high standards of safety for road-based public passenger services and protecting the community, on balance, outweighs any potential limitation on the human rights identified above.

Minor and technical amendments

Ports Act – Including land subject to tidal waters in a priority port's master planned area

In my opinion, property rights, protected under section 24 of the HR Act are limited by the proposed amendments to the Ports Act.

For the reasons outlined below, however, I am of the view that the amendments to the Ports Act are compatible with property rights.

Property rights (section 24)

(a) the nature of the right

Property rights protect individuals from being arbitrarily deprived of their property (section 24(2) of the HR Act). This right protects real and personal property as well other economic interests. This right is drawn from article 17(2) of the *Universal Declaration of Human Rights* and is internally limited to arbitrary deprivation; this means that this right protects individuals from disproportionate and unreasonable restrictions on the way that individuals may deal with their property.

A priority port's master plan is implemented via a corresponding port overlay which regulates development. This imposes additional requirements on how a person may use land in a master planned area.

The amendments to the Ports Act provide certainty that areas of land outside of port limits that may be subject to tidal waters will be subject to the port overlay, meaning that additional planning controls will be in place.

- (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 Ports Act “is to provide for the protection of the Great Barrier Reef World Heritage Area (GBRWHA) through managing port-related development in and adjacent to the area” (section 2(1) of the Ports Act).

The inclusion of areas of land provided by the amendment is to provide certainty that this land can be included in a master planned area. This aligns with the following statutory requirements in the Ports Act:

- a master plan must apply to all of the master planned area (section 7(2)(b)); and
- a port overlay must apply to all of the master planned area (section 19(2)(b)).

The Ports Act keeps development within the established priority ports and applies additional planning considerations to protect the GBRWHA; it does not prohibit development and therefore is consistent with a free and democratic society.

- (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

By providing for the inclusion of areas of land subject to tidal waters, the proposed amendment ensures that the port overlay will apply to all of the master planned area, thereby enabling the implementation of the master plans in their entirety to guide the development of their respective ports.

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

An unintended consequence of section 6(3)(a) in its current form is that areas of land that should be included in a priority port’s master planned area, to ensure that the master plan and port overlay apply to all of it, technically cannot be included because the land may in fact be subject to some tidal waters due to variations in tidal range. These are areas of land between the high-water mark, which is used for the mapping of the port limits, and the highest astronomical tide. These are areas of land that were publicly presented and consulted on.

There are no alternatives other than to amend the Ports Act to make it clear that areas of land subject to tidal waters outside of the port limits, as long as they are not in the sea, may be included as part of a master planned area.

- (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 purpose of the Ports Act is achieved by the development of master plans that establish a long-term vision for the priority ports consistent with the principles of ecologically sustainable development and implementing the master plans through port overlays (section 2(2)(b)–(c)).

The purpose of each master plan is to provide strategic direction and guide the long-term sustainable development of the port and surrounding land and marine areas to 2050. These master plans are key actions under the Australian and Queensland Governments' *Reef 2050 long-term sustainability plan*.

The master plans are subject to a statutory consultation process prior to the Minister making them and a requirement that the matters in submissions be publicly accessible.

Therefore, the application of additional planning requirements on land is not an arbitrary deprivation on someone's property.

(f) any other relevant factors

The Explanatory Notes to the *Sustainable Ports Development Bill 2015* outlined that the Ports Act would "manage key environmental values across a range of planning jurisdictions while implementing an overarching economic vision for the priority ports".

TIA – Process simplification and modernisation – Tolling demand notice compliance

In my opinion the following human rights protected under the HR Act are limited by the proposed amendments:

- privacy and reputation (section 25 of the HR Act)
- fair hearing (section 31 of the HR Act)
- rights in criminal proceedings (section 32 of the HR Act)

For the reasons outlined below, however, I am of the view that the TIA amendments in the Bill are compatible with these human rights.

Privacy and reputation (section 25)

(a) the nature of the right

The right to privacy and reputation protects individuals from having their privacy, home or correspondence unlawfully or arbitrarily interfered with (section 25(a) of the HR Act). This right essentially provides that individuals have power over their actions, and it is a right of a broad scope; this right comes from article 17 of the *International Covenant on Civil and Political Rights* (ICCPR), and it is internally limited to unlawful as well as arbitrary interferences. Arbitrary means unreasonable, unnecessary or disproportionate interference.

The right to privacy and reputation is limited insofar as individuals' personal information is used for the purposes of establishing liability for a toll debt and to contact that person to demand payment. This limits this right whether it is the registered operator in the first instance, or an individual nominated as the driver by the registered operator. This will not change if the amendments to the failure to pay toll provisions are enacted, as the proposed amendments only provide for an additional more modern method to nominate another driver and remove the requirement that a statutory declaration be in the approved form, thus simplifying the statutory declaration process.

(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 use of personal information enables free-flow (electronic) tolling along Queensland's toll roads and local government tollways (referred to collectively as toll roads in this statement).

Free-flow tolling provides for increased efficiency on toll roads by not requiring vehicles to physically stop at toll plazas to pay tolls. The use of personal information in connection with free-flow tolling assists registered operators to discharge liability for any toll debt incurred when they were not driving their vehicle. Providing personal information via an online nomination or a standard statutory declaration simplifies and modernises the process currently in the TIA and assists individuals to comply with their statutory obligations.

(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

In Queensland, a person may use a toll road whether they have an account with a toll collection provider (Linkt or an interstate provider) or not. The TIA's framework for toll roads provides for an enforcement mechanism to enable the recovery of tolling debt under the failure to pay toll provisions (sections 96–103, 105ZE–105ZK).

At each toll plaza, a camera identifies each vehicle's number plates. If payment is not made using the E Toll system nor within the toll road operator's timeframes, the registration information is used by the toll road operator to contact the registered operator to issue a tolling invoice as part of business processes. In the event that the toll debt is still outstanding, then a demand notice is issued.

In routine cases, the recipient of the demand notice can discharge liability by either:

- paying the toll; or
- nominating another driver.

The enforcement regime for Queensland's toll roads means that it is not automatically an offence to drive through a toll plaza without paying the necessary toll. Noncompliance with the demand notice without a reasonable excuse is the offence.

If another driver is nominated, then that individual will receive a new demand notice. The name and contact details for the new recipient will be those provided by the previous recipient of a demand notice. In the event that the registered operator does not know who the driver is because the vehicle was stolen, this information can be provided either via statutory declaration or online.

The use of personal information enables free-flow tolling to occur, by ensuring that the appropriate person is contacted to pay the toll debt, and assisting registered operators who did not incur tolling debt to transfer liability for that debt to the correct person.

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

If personal information were not used to identify the driver of a vehicle who has not yet paid the toll, then free-flow tolling would not be possible and toll plazas with boom gates would still be needed to ensure payment of tolls. This would reduce the operational efficiency of the toll roads and by extension the broader road network.

Relying on registration data in the first instance is the most feasible process to take as the registered operator is most likely to be the driver at the time of the tolls being incurred. This approach is similar to the approach taken for camera-detected offences under the TORUM Act. The registered operator would likewise most likely know who was using the vehicle at the time the tolls were incurred.

Tolling is a user-pays system. An individual driving a passenger vehicle in a private capacity is not obligated to use a toll road and may travel along the free alternative routes available.

Businesses do not have human rights (section 11 of the HR Act) and they can pass on the cost of tolls to customers, noting that they also receive the benefit of using toll roads.

To protect personal information, there are current built-in safeguards and substantial penalties for the misuse of personal information in the TIA. The improper use of personal information is an offence, with severe penalties attached to protect a person's privacy (sections 104 and 105ZN). There are also protections under other transport legislation (for example, section 143 of the TORUM Act and section 204 of the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2021*).

- (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

Toll roads provide a mechanism to provide additional road infrastructure with private sector investment earlier than would have been otherwise possible if dependant solely on public funds at the time.

To provide for online nominations and standard statutory declarations as accepted methods to deal with a tolling demand notice, legislative amendment is required. The amendments will assist individuals to comply with the law in line with community expectations and technological improvements. Personal information is used to enable free-flow tolling to provide for efficient toll road operations.

However, personal information can only be used in connection with tolling purposes and must be done in accordance with law, with substantial penalties in place for noncompliance. Therefore, the use of personal information in this instance is not an unlawful nor arbitrary interference with someone's privacy.

- (f) any other relevant factors

The current tolling compliance and enforcement regime was introduced by the amendments to the TIA contained in the *Transport Infrastructure and Another Act Amendment Act 2001* and included that improper use of personal information is an offence.

Fair hearing and rights in criminal proceedings (sections 31 and 32)

- (a) the nature of the right

Fair hearing provides that a person charged with a criminal offence has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing (section 31(1) of the HR Act), and rights in criminal proceedings provide a person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law (section 32(1) of the HR Act) and enshrine a number of minimum guarantees in criminal proceedings for individuals being tried, including to examine, or have examined, witnesses against the person (section 32(2)(g) of the HR Act). Due to their interconnected nature, these rights will be dealt with together.

Fair hearing is drawn from article 14(1) of the ICCPR and rights in criminal proceedings are drawn from the remainder of article 14 of the ICCPR.

The amendments to the evidence and procedure provisions limit fair hearing and rights in criminal proceedings in that the onus of proof is reversed and the guarantee to examine, or have examined, witnesses against the person is limited insofar as the amendments remove the need for a witness to appear before court to prove certain matters, as is already the case for certain matters in court proceedings for tolling offences.

- (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

Increased use of evidentiary certificates and providing for the presumption that a tolling demand notice is in the approved form unless there is evidence to the contrary will reduce inconvenience to witnesses and improve the efficiency of court proceedings in the event that noncompliance with a tolling demand notice leads to a penalty infringement notice fine being issued and the recipient of the penalty infringement notice electing to have the matter heard in a court.

- (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

Removing the need for officials to attend as witnesses by providing for matters to be submitted as evidence by certificate or as a presumed fact will mean officials are not required to explain additional routine administrative matters in court (unless challenged) and will streamline court proceedings.

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

For the additional matters to be provided for in evidentiary certificates, there are no alternatives that will streamline court proceedings and are less restrictive on human rights. Maintaining the status quo would mean that officials are still required to attend court as witnesses.

For tolling offences, most of the evidence is of the type that is suitable for submission via evidentiary certificate. This is similar to dealing with camera-detected offences under the TORUM Act, the provisions of which also provide for evidentiary certificates to be used.

Importantly, defendants can still provide evidence if they wish to contest the information provided in the evidentiary certificates.

The presumption that a demand notice is in the approved form limits fair hearing and rights in criminal proceedings in a different manner than the use of evidentiary certificates does. While the fact that the demand notice is in the approved form is information suitable for evidentiary certificates, providing for a presumption that it is in the approved form will provide for improved court proceedings to a greater degree. Likewise, the amendments still require the prosecution to prove the fact if the defendant raises evidence to the contrary, as the proposed amendments contained in clauses 23(5) and 27(5) both contain a rebuttal provision, similar to section 120(6) of the TORUM Act. This rebuttal provision reduces the limitation on an individual's rights.

Defendants in tolling cases are provided briefs of evidence prior to court hearings and have the opportunity to compare the gazetted form number of the approved form with the form number on their tolling demand notice. Although the amendments mean there is a presumption of fact, this presumption can be rebutted.

The effect of this is that the defendant's rights to fair hearing and rights in criminal proceedings are limited by the prosecution not needing to prove that the demand notice was in the approved form, which will lead to streamlined court proceedings, but it is mitigated by the fact that the prosecution will still have to prove it if evidence to the contrary is presented.

- (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 amendments to the evidence and procedure provisions are to achieve more efficient court proceedings. While the amendments limit fair hearing and rights in criminal proceedings, by reversing the onus of proof and removing the requirement for witnesses to attend court, the information to be provided in evidentiary certificates is administrative information, which is considered suitable for evidentiary certificates and defendants can still submit their own contrasting evidence. The presumption that a demand notice is in the approved form in clauses 23 and 27 of the Bill contains the ability to rebut this requirement if there is evidence to the contrary, which means that, in a court case where the defendant raises evidence to the contrary, the prosecution would still need to prove this element of the offence as if the amendment did not exist.

Given the operational considerations and safeguards in place, I consider that the improved court efficiencies outweigh any limitation on fair hearing and rights in criminal proceedings.

TIA – Advertisement of limited access road declaration

Clause 17 of the Bill updates section 60 of the TIA to clarify that advertisement of a limited access road declaration under section 54 of the TIA can occur in a way the chief executive considers appropriate.

The application of section 60 of the TIA is subject to the online publication requirement established by part 5A of the *Financial Accountability Act 2009* (FA Act). This amendment was established by the *Debt Reduction and Savings Act 2021* and a human rights statement of compatibility was tabled with the introduction of the *Debt Reduction and Savings Bill 2021*, which outlined the rationale for limiting taking part in public life (section 23 of the HR Act) and that the limitation is outweighed by the benefits of the amendments to the FA Act. As such, the statement of compatibility tabled for the *Debt Reduction and Savings Bill 2021* can be relied upon to understand the compatibility of this amendment and no further analysis will be provided for the amendment in clause 17.

TOPTA – power to obtain information in a document

In my opinion the human right to privacy and reputation (section 25 HR Act) that is protected under the HR Act, may be considered to be limited to the proposed amendments.

For the reasons outlined below, however, I am of the view that the amendments in the Bill are compatible with these human rights.

Privacy and reputation (section 25)

- (a) the nature of the right

Section 25 (Privacy and reputation) protects against unlawful or arbitrary interference with a person's privacy, family, home or correspondence. In the human rights context, arbitrarily is

taken to mean capricious, unpredictable, unjust and unreasonable in the sense of not being proportionate to a legitimate policy objective. The scope of privacy is very broad, extending to an individual's private life more generally.

The Bill may limit this right by clarifying that information found in a document (such as vehicle security camera footage) is able to be provided to an authorised person in the same way as other information is to be provided as access to documents like vehicle security camera footage may include private material.

However, as it has already generally been accepted that vehicle security camera footage is able to be obtained to assist in enforcement and compliance investigations under the current provisions, the Bill is unlikely to further limit the application of human rights regarding privacy. It is also arguable that any interference is not arbitrary, as it not capricious, unpredictable (the point of the cameras is to assist with investigations), unjust or unreasonable. However, if an alternate argument is raised, any limitation is justified 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 purpose of the limitation is to put beyond doubt that information gathered through vehicle security camera footage is able to be used in investigations of offences, including safety offences. Promoting community and driver safety is consistent with a free and democratic society based on human dignity, equality, and freedom, and supports the right to life.

- (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

Access to information in vehicle security camera footage will assist in investigations, ensuring effective enforcement of offences, and will help achieve the safety purposes of the Bill.

- (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 way to achieve this purpose.

- (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

On balance, clarifying that authorised persons can be provided vehicle security camera footage is unlikely to limit the right to privacy further. Taking into account the nature and context of the amendment and the importance of promoting public safety, any limitation on human rights is reasonably and demonstrably justifiable.

TOPTA – power to obtain information to verify eligibility for assistance with transport arrangements for students attending non-State schools

In my opinion the human right to privacy and reputation (section 25 HR Act) that is protected under the HR Act, may be considered to be limited by the proposed amendments.

For the reasons outlined below, however, I am of the view that the amendments in the Bill are compatible with these human rights.

Privacy and reputation (section 25)

(a) the nature of the right

Refer to the description of the nature of this right in paragraph (a) above (TOPTA – power to obtain information in a document).

The Bill may limit this right by ensuring the chief executive of TMR can obtain relevant information to verify eligibility for assistance with transport arrangements for students attending non-State schools.

It could be argued that any interference is not arbitrary, as it is not capricious, unpredictable (assistance is only available after a person has applied and verification processes only apply to applicants), unjust or unreasonable. However, if an alternate argument is raised, any limitation is justified 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 purpose of the limitation is to ensure the chief executive of TMR can continue to obtain relevant information to verify eligibility for assistance with transport arrangements for students attending non-State schools in the same way as currently applies. This is the same process that applies to students at State schools. Supporting education and ensuring accountability for the distribution of public funds are both objectives consistent with a free and democratic society based on human dignity, equality, and freedom, and supports the right to life.

(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

Ensuring the chief executive of TMR can obtain the relevant information will ensure current verification processes will continue to apply so that payments can continue to be made for eligible students. This is consistent with the Bill's purposes relating to streamlining processes and clarifying existing requirements.

(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 way to achieve this purpose. Section 144 already limits the information to matters relevant to administration of school transport arrangements. The request for information only applies to applicants for assistance.

(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

On balance, ensuring the chief executive of TMR can obtain relevant information to verify eligibility of applications for assistance with transport arrangements means that any limitation on human rights is reasonably and demonstrably justified.

TORUM Act – Driver distraction amendments

In my opinion the following human rights protected under the HR Act are limited by the proposed amendments:

- privacy and reputation (section 25 of the HR Act)
- fair hearing (section 31 of the HR Act)
- rights in criminal proceedings (section 32 of the HR Act)

For the reasons outlined below, however, I am of the view that the TORUMA Driver Distraction amendments in the Bill are compatible with these human rights.

Privacy and reputation (section 25)

(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 TORUM Act includes provisions relating to camera-detection of a range of offences, including the use of mobile phone. Camera-detected offences are managed through the Camera Detected Offence Program (CDOP).

The amendments in the Bill provide flexibility for future camera enforcement of driver distraction offences, if rules are expanded beyond mobile phone use to cover, for example, media players, tablet computers and laptops.

At this point, the amendments do not expand the range of driver distraction devices.

While the collection of images through CDOP may be seen to limit a person's right to privacy and reputation, these amendments pose no additional impacts to the current legislative provisions.

(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 continuing to deter 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.

The amendments in the Bill in relation to clause 62 aim to provide flexibility for future camera enforcement of driver distraction offences, if rules are expanded beyond mobile phone use to cover, for example, media players, tablet computers and laptops.

The amendments in the Bill in relation to clause 62 do not introduce any new devices or driver distraction offences not currently captured through the CDOP.

- (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, streamline and improve administrative and legislative processes, and clarify existing requirements.

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 drink drivers with a blood/breath alcohol content of 0.07 – 0.10. There is empirical evidence demonstrating that driver interactions with mobile phones, in-built vehicle infotainment systems, and wearable technologies can significantly degrade driving performance. Visual-manual interactions (for example, mobile phone texting, manual input of a destination into a navigation system) have a greater potential to interfere with activities critical for safe driving than voice interactions. However, research also found voice interactions have the potential to degrade driving performance compared to driving while not engaged in a secondary task.

Existing camera-detection for mobile phone offences encourage driver behaviour change and saves lives.

The amendments in the Bill to prepare for the adoption of a technology-neutral approach to the types of electronic devices that are expressly prohibited while driving is connected to the purpose of improving road safety and improving legislative processes.

Any limit to the right to privacy by ongoing camera-detection allows for effective enforcement of life-threatening driver distraction offences. This achieves the purpose of improving road safety.

- (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 Bill.

The amendments in the Bill provide flexibility for future camera enforcement of driver distraction offences, if rules are expanded beyond mobile phone use to cover, for example, media players, tablet computers and laptops.

There are well established safeguards already in place through CDOP which uphold and protect the right to privacy and reputation. However, all drivers can avoid any reputation implications by complying with the rules.

Should Queensland adopt the broader technology-neutral driver distraction amendments, impacts of the HR Act will be separately assessed.

- (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 unlawfully using mobile phones are significant.

Since the introduction of mobile phone cameras (1 November 2021) and until 31 May 2023, 242,910 penalty infringement notices have been issued for using a mobile phone while driving via camera-detection.

Anecdotal evidence suggests that the use of other portable electronic devices while driving have been detected – including GPS devices, tablet computers and iPods.

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

Right to fair hearing and rights in criminal proceedings (sections 31 and 32)

(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 existing evidentiary provisions relating to the camera-detection of mobile phone 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.

For a mobile phone offence, the rebuttable presumption is set out in section 120E of the TORUM Act. This provision operates so that it can be presumed that a vehicle shown in an image is moving, or stationary but not parked. The Bill amends section 120E to provide that a regulation can prescribe which driver distraction offences the evidentiary provision applies to.

The evidentiary provision only operates 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.

(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

Preparing for the adoption of further driver distraction devices via camera enforcement 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 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.

While the amendments in the Bill in relation to clause 62 do not introduce any new devices or driver distraction offences currently captured through the CDOP, the provisions will ensure that those images or videos continue to be 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 Bill.

The amendments in the Bill provide flexibility for future camera enforcement of driver distraction offences, if rules are expanded beyond mobile phone use to cover, for example, media players, tablet computers and laptops. This is consistent with the purpose of the Bill which includes improving road safety and improving legislative processes.

- (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

With the ongoing road safety risks arising from distracted driving, and the increased range of devices that may be used while driving, effective and certain enforcement of relevant 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.

Existing enforcement processes are robust and will reduce any limitation of a person's rights.

The amendments in the Bill aim to preserve the existing rebuttable presumption that a vehicle is moving or stationary but not parked for any driver distraction offence and not be limited solely to mobile phone offences.

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.

Conclusion

In my opinion, the Transport and Other Legislation Amendment Bill 2023 is compatible with human rights under the *Human Rights Act 2019* because it limits a human right only to the extent that is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.

Mark Bailey
Minister for Transport and Main Roads
Minister for Digital Services