

Transport Infrastructure (State-controlled Roads) and Other Legislation Amendment Regulation 2020

Human Rights Certificate

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

In accordance with section 41 of the *Human Rights Act 2019*, I, the Honourable Mark Bailey MP, Minister for Transport and Main Roads, provide this human rights certificate with respect to the *Transport Infrastructure (State-controlled Roads) and Other Legislation Amendment Regulation 2020* made under and the *Transport Infrastructure Act 1994* and *State Penalties and Enforcement Act 1999*.

In my opinion, the *Transport Infrastructure (State-controlled Roads) and Other Legislation Amendment Regulation 2020* (Amendment Regulation), as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The *Transport Infrastructure (State-controlled Roads) Regulation 2017* (TISCR Regulation) provides for the continued regulation of matters consistent with the objectives of the *Transport Infrastructure Act 1994* which includes camping on a State-controlled road (SCR) or areas under the chief executive's control (section 490(3)).

The main policy objective of the Amendment Regulation is to clarify the rules pertaining to the use of the Department of Transport and Main Roads' (TMR) designated rest areas under Part 3 of the TISCR Regulation and where and when a person may camp along the SCR network.

The heavy vehicle freight industry plays a critical role in the movement of freight around Queensland. The role of the heavy freight industry is a critical element in the functioning of Queensland's economy and requires the ability to transport freight in the most productive, efficient and cost-effective manner possible.

Currently, the TISCR Regulation does not clarify rest area use, particularly the use of heavy vehicle rest areas. This has created difficulty for the heavy vehicle truck drivers seeking to manage their legislated fatigue management obligations when delivering essential freight when recreational vehicle drivers are using heavy vehicle rest areas.

The purpose of the amendments is to:

1. ensure heavy vehicle truck drivers can meet their fatigue management obligations;
2. clarify that rest opportunities on the SCR are for fatigue management purposes; and
3. clarify permissible camping along the SCR network.

The policy objectives are to clarify the use of designated rest areas along the SCR network. This ensures road users are aware that rest stop opportunities are for fatigue management purposes and, in particular, heavy vehicle rest areas are for the sole use of drivers of commercial trucks and fatigue-regulated heavy vehicles as defined under section 7 of the Heavy Vehicle National Law (Qld) (HVNL). Additionally, clarity is provided to the road user about the conditions under which camping along the SCR network is permitted.

This will be achieved by:

- clarifying that in rest areas heavy vehicle drivers are those who drive a commercial truck or those who must take legislated fatigue management breaks;
- specifying time limits in rest areas for general road users;
- classifying rest areas as part of the road, enabling improved signage under the *Transport Operations (Road Use Management—Road Rules) Regulation 2009* and how rest areas may be used; and
- specifying camping is prohibited on SCRs except for fatigue management and under certain conditions.

In effect, the Amendment Regulation will ensure that there is a safe system for fatigue management along the SCR network, thereby protecting the safety and amenity of rest area use by all road users.

Human Rights Issues

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

In my opinion, the human rights under the *Human Rights Act 2019* that are relevant to this amendment regulation are:

- Recognition and equality before the law – section 15;
- Freedom of movement – section 19;
- Property rights – section 24;
- Right to privacy and reputation – section 25;
- Right to liberty and security of person – section 29;
- Right to a fair hearing – section 31; and
- Rights in criminal proceedings – section 32.

Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

Recognition and equality before the law (section 15 of the Human Rights Act 2019)

(a) the nature of the right

Section 15 of the *Human Rights Act 2019* provides that every person has a right to recognition as a person before the law and the right to enjoy their human rights without discrimination. Every person is equal before the law and is entitled to equal protection of the law without discrimination. Every person is entitled to equal and effective protection against discrimination.

(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 purpose of the Amendment Regulation is to ensure heavy vehicle truck drivers can meet their fatigue management obligations; and clarify that rest opportunities on the SCR are for fatigue management purposes.

Currently, there is confusion around rest area use. This is addressed in the Amendment Regulation by clarifying that heavy vehicle rest areas are for the sole use of heavy vehicles, those that carry goods and freight or are fatigue-regulated under the HVNL, and not for recreational or other vehicles. All other road users are required to use general rest areas or combined rest areas for their fatigue breaks. Likewise, commercial truck drivers and fatigue-regulated heavy vehicle drivers can use combined rest areas but not general rest areas ensuring equitable access to the general road user.

The limitation is consistent with a free and democratic society based on human dignity, equality and freedom, as individuals are still equal before the law and the limitation on rest area use is based on functional needs in the same way that licensing and registration are different for different vehicle types.

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

Consistent with the objectives of the *Transport Infrastructure Act 1994* (TIA), the Amendment Regulation contributes to overall transport efficiency and takes account of the need to provide adequate levels of safety, and community access to the SCR network (section 2(2)(b)(ii–iii). The restriction on use by general road users of heavy vehicle rest areas helps realise this objective by enabling commercial truck drivers and fatigue-regulated heavy vehicle drivers to manage their fatigue and helps realise increased road safety and efficiency. Likewise, the general road user benefits from having their rest area usage protected under law.

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

The amendments are the least restrictive and most reasonable way of achieving the purpose as stated above. Recognition and equality before the law is still protected. Access to rest areas is determined based on functional needs in the same way that licensing and registration are different for vehicle types.

- (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

The limitation is reasonable and demonstrably justified because the limitation on recognition and equality before the law is only for the use of rest areas by functional needs. On balance, the limitation is justifiable to ensure drivers can manage their fatigue to realise adequate levels of safety along the SCR network. The clarification of rest area use will benefit all drivers through increased access mitigating any lost access. Moreover, as individuals, recognition and equality before the law is still protected.

Freedom of movement (section 19 of the Human Rights Act 2019)

- (a) the nature of the right

Section 19 of the *Human Rights Act 2019* provides that every person lawfully within Queensland has the right to move freely within Queensland and enter and leave it and has the freedom to choose where to live.

The right to freedom of movement is based upon Article 12 of the *International Covenant on Civil and Political Rights* (ICCPR). The ICCPR states, in part, that the right shall not be subject to any restrictions except those which are provided by law and are necessary to protect the rights and freedoms of others.

The State must not act in a way that unduly restricts the freedom of movement, though it need not take positive steps to promote the freedom of movement. A person who seeks to use the SCR network for travel is not restricted to do so.

It is important for all road users to take fatigue breaks, as necessary. Rest areas provide a rest opportunity for road users to manage their fatigue. Clarifying the rules applicable to rest area use and camping on a SCR does not prevent the general road user from accessing rest areas when fatigued, nor camping overnight for fatigue management when in accordance with the prescribed conditions.

- (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 road is the commercial truck and fatigue-regulated heavy vehicle truck drivers' workplace and driver fatigue is one of the biggest causes of crashes for these drivers. TMR's designated heavy vehicle rest areas continue to be a critical element of fatigue management for these drivers.

Currently, commercial truck drivers and fatigue-regulated heavy vehicle drivers are being impacted by general road users using designated heavy vehicle rest areas, particularly drivers of recreational vehicles. When a recreational vehicle driver uses a heavy vehicle rest area, the fatigue-regulated heavy vehicle driver may not be able to stop in the rest area due to space limitations and needs to continue driving to the next rest area and is therefore unable to meet fatigue obligations under the HVNL, thereby increasing the risk of an accident. Fatigue-regulated heavy vehicle truck drivers are required under the HVNL to manage fatigue when delivering freight or providing services across Queensland and when part of their journey includes travelling through Queensland.

To ensure a commercial heavy vehicle driver can stay as long as necessary to meet their fatigue needs or obligations under the HVNL, the Amendment Regulation will clarify that heavy vehicle rest areas are for the sole use of the heavy vehicle truck driver by inserting definitions of commercial truck, recreational vehicle and camping. Recreational vehicle drivers and other general road users will continue to be able to access the general road user rest areas and combined rest areas but will be prohibited from using a heavy vehicle rest area.

In addition, the rules pertaining to where and when a person may camp along the SCR network are clarified, by limiting camping to places where it is safe to do so for fatigue management. The limitation on accessing rest areas based on vehicle type is consistent with a free and democratic society based on human dignity, equality and freedom as individuals can still travel throughout Queensland, likewise the limitation on where and when a person can camp.

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

Any limitation on freedom of movement is only to the extent that it is necessary to realise the objectives of the TIA to contribute to overall transport efficiency and adequate levels of safety and community access for all road users on the SCR network (section 2(2)(b)(ii–iii)).

The potential limitation on accessing rest areas based on vehicle usage does not completely prohibit the use of rest areas by the general road user. What it does is clarify the rules surrounding rest area use to ensure that equitable access and use of rest areas can be achieved, by limiting rest areas designed for heavy vehicles to commercial trucks and fatigue-regulated heavy vehicles, and likewise general rest areas for general vehicles.

Likewise, the clarification on the rules surrounding where and when a person may camp along an SCR does not completely prohibit the use of the SCR network to camp overnight; it is just that the conditions are clarified to facilitate improved safety and access. The SCR network facilitates travel around Queensland and stopping on it should occur only when necessary and not as a source of accommodation.

As such, the limitation addresses safety issues for the road user, by protecting the safety and efficiency of the heavy vehicle transport industry and encouraging fair use of rest areas and camping along the SCR network, for all users' safety and amenity.

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

The amendments are the least restrictive and most reasonable way of achieving the purpose as stated above. The right to freedom of movement is still protected. Access to rest areas is determined based on functional needs in the same way that licensing and registration are different for vehicle types.

(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

The amendments clarify the intent of Part 3 of the TISCR Regulation regarding the rules pertaining to the use of general rest areas, heavy vehicle rest areas, combined rest areas and camping along the SCR network.

By clarifying the use of rest areas and when and where a person may camp along a SCR, it strikes a fair balance between potentially impacting on a person's freedom of movement only so far as what is lawful and necessary. The clarification of rest area use and camping will benefit all drivers through increased efficiency, safety and access along the SCR network.

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

(a) the nature of the right

Section 24(2) provides that a person must not be arbitrarily deprived of the person's property. In the Explanatory Notes to the *Human Rights Act 2019*, the protection against being deprived of property is limited internally to arbitrary deprivation of property.

(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

In the amendment regulation, there are restrictions on the use of a person's property, such as using a generator, in a rest area for general road users or while camping along a SCR. The Amendment Regulation may also limit property rights to the extent that it prescribes penalty infringement notice offences. The failure to pay a penalty infringement notice 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 as provided for in the *State Penalties Enforcement Act 1999* (SPE Act). The limitation is consistent with a free and democratic society based on human dignity, equality and freedom as the limitation exists insofar as is necessary to contribute to the efficiency, safety and community access to the SCR network (section 2(2)(b)(ii)–(iii) of TIA).

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

The SCR network is a transport network, facilitating the movement of goods and people around Queensland. It is considered the workplace for commercial truck drivers and fatigue-regulated heavy vehicle drivers. The SCR network is not a source of unlimited accommodation. As such, the limitation on using one's property does not arbitrarily deprive a person of property while in a rest area or camping; rather it is reflective of the need to operate an efficient, safe and accessible transport network, which should contribute to the improvement of the quality of life of Queenslanders (section 2(b) of the *Transport Planning and Coordination Act 1994*, with which TIA's objectives are consistent).

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

The amendments are the least restrictive and most reasonable way of achieving the purpose as stated above. Property rights are still protected. It is just that the use of a person's property is limited when in a rest area or when camping.

(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

The amendments clarify the intent of Part 3 of the TISCR Regulation regarding the rules pertaining to the use of general rest areas, heavy vehicle rest areas, combined rest areas and camping along the SCR network.

By clarifying the use of rest areas and when and where a person may camp on the SCR, it strikes a fair balance between potentially impacting on a person's property rights only so far as what is lawful and necessary. The clarification of rest area use and camping will benefit all drivers through increased efficiency, safety and access along the SCR network.

Right of privacy or reputation (section 25 of the Human Rights Act 2019)

(a) the nature of the right

Section 25 of the *Human Rights Act 2019* protects the individual from interferences and attacks upon their privacy, family, home, correspondence (written and verbal) and reputation. The right to privacy is broad and may include matters such as personal information, data collection and correspondence. Only lawful and non-arbitrary intrusions may occur upon privacy and reputation.

The amendments may impact privacy and reputation as authorised officers will be able to ask for a person's information when undertaking monitoring and enforcement activities when a person is in contravention of the legislation. Specifically, compliance will focus on where a road user who is not a heavy vehicle driver is using a heavy vehicle rest area, due to the risks involved when heavy vehicle truck drivers cannot safely rest, and on people overstaying in rest areas and when camping due to the limitations this places on others' amenity and access.

(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 purpose of the potential limitations on privacy and reputation is to allow authorised officers to monitor and enforce the restrictions on any person breaching the terms of the legislation. This is to ensure improved efficiency, safety and community access to the SCR network.

The monitoring and enforcement actions that will occur within the context of the offence provisions are targeted towards deterring behaviour that interferes with rest area and camping management by making a rest area or an area outside a rest area on a SCR safe for all road users. These provisions ensure that the public are able to enjoy the facilities and are able to be protected from potential road safety concerns.

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

The rest area and camping provisions may potentially limit privacy and reputation. These limitations will allow authorised officers to ask for a person's information when undertaking enforcement activities for when a person is overstaying or misusing a rest area or an area outside a rest area along a SCR. The information provided to the authorised officer will not be publicly disclosed and is for the sole use of effectively managing rest areas and camping. This will achieve the purpose of enforcement as a last resort and protect the public from road safety concerns.

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

The rest area and camping provisions included in the Amendment Regulation are the least restrictive way of achieving the policy intent of ensuring heavy vehicle drivers can meet their fatigue management obligations; and clarifying that rest opportunities on the SCR are for fatigue management purposes.

Unfortunately, there will always be people who are prepared to flout the law. As such, enforcement action needs to be taken and to act as a deterrent. It must be noted that undertaking enforcement action will be considered a last-resort activity by authorised officers, who will seek to educate and inform before undertaking enforcement.

(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

The clarification of rest area use and when and where a person may camp for fatigue management purposes requires the potential for enforcement action when a person refuses to comply with the law. As mentioned above, this is necessary to ensure the operational safety and efficiency of the SCR network.

In the event that enforcement needs to be taken, after education and directions have been given, the limitation on a person's privacy is reasonable and justifiable as the limitation is only so far as is lawful and necessary. This is also consistent with the principles of natural justice, which is addressed in greater detail in the Explanatory Notes to the Amendment Regulation.

Right to liberty and security of person (section 29 of the Human Rights Act 2019)

(a) the nature of the right

The human right to liberty and security of person under section 29 of the *Human Rights Act 2019* is limited where a person is deprived of certain protections to liberty or subject to arbitrary arrest or detention. A person must not be subject to arbitrary arrest and detention and must not be deprived of the person's liberty except on grounds, and in accordance with procedures, established by law. Enforcement action under the SPE Act may, in rare circumstances, result in arrest and imprisonment where a person fails to pay an amount specified in an enforcement order.

(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 Amendment Regulation may limit the right to liberty of a person to the extent that it prescribes penalty infringement notices and the failure to pay a penalty infringement fine may result in enforcement action under the SPE Act, which includes the issue of an arrest warrant by the registrar of the State Penalties Enforcement Registry (SPER) against a person for unpaid fines (section 63 of the SPE Act). However, the SPER charter, provided for under section 9 of the SPE Act, preferences the use of enforcement actions for unpaid fines over arrest and imprisonment to reduce the use of imprisonment for fine default.

The purpose of the amendments will allow the new provisions to be enforced under the SPE Act which may potentially limit the right to liberty through arrest and imprisonment as described above. The purpose of the amendments is to clarify the protection of the safety and efficiency of the SCR network by ensuring rest area use and camping may not occur on the SCR for extended periods.

The Amendment Regulation omits references to the existing camping offences and inserts references to the new rest area and camping offences. Replacing the existing penalty infringement notice offences will help maintain an effective enforcement response that is proportionate and consistent with the new rest area and camping offences under the Amendment Regulation. These objectives are consistent with a free and democratic society based on human dignity, equality and freedom, because, in practice, SPER will seek to use alternative enforcement actions over arrest and imprisonment, and, in the event that it occurs, the grounds for arrest will be clearly articulated.

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

Camping offences were originally prescribed in the *Transport Infrastructure (State-controlled Roads) Regulation 2017* as penalty infringement notice offences to protect the safety of all Queensland road users by ensuring camping would be undertaken on a SCR in a way that is safe and equitable for all. If the rest area and camping offence provisions did not include fines, this would contribute to the significant cost to the State for court proceedings in relation to non-compliance with the legislation which will ensure efficient and safe operation of the SCR network. It is therefore necessary to continue penalty provisions in the event that individuals refuse to comply with the legislation in order to achieve the objectives.

As a result, the new offences, which share the same number of penalty units, are needed in the event that education and direction do not work on a person. If a person refuses to pay the penalty infringement notice fine, enforcement by SPER will be undertaken, with the arrest being a last-resort action. The overall outcome then of this holistic approach is that it supports the legislative framework with education, communication and then enforcement for the rare cases.

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

There are a number of protections built into the fine enforcement system under the SPE Act to ensure that there are supports and options available to assist persons who are experiencing hardship and unable to pay their fines.

There are no practically less restrictive options to operating under the SPE Act, as without the ability issue penalty infringement notices every offence would need to be prosecuted in court (an option still available should the recipient of the penalty infringement notice elect to do so and something detailed in greater depth in the Explanatory Notes and below in relation to the rights to a fair trial and in criminal proceedings).

Under section 57(1)(b) of the *Penalties and Sentences Act 1992*, a court is required to take into account the financial circumstances of the offender and the nature of the burden that payment would have on the offender before imposing a fine.

Therefore, there are no less restrictive and reasonably viable ways to achieve the policy objective other than through issuing of fines for non-compliance of rest area use and camping on the SCR network. The possibility of arrest is a last-resort matter to be occurred only after all other options have been exhausted.

(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

The existing camping offences are already prescribed as penalty infringement notice offences. A person has several options in relation to a penalty infringement notice fine. For example, a person may pay the fine in full, elect for the matter to be heard by a court or apply for approval to pay the fine in instalments. If the person does not action 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. However, under the SPER charter, it is made clear that the use of other enforcement actions for unpaid fines is preferred over arrest and imprisonment. Other enforcement actions may include seizure and sale of property and vehicle immobilisation.

In practice, this is unlikely to occur, because it is intended that this deterrent will only be used as a last resort. Having regard to the nature and extent of the potential limitation on the right to liberty and security of a person, I consider the importance of protecting the safety and efficiency of the SCR corridor by ensuring there is an efficient system in place for issuing and enforcing fines outweighs the potential limit on the right to liberty and security.

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

(a) the nature of the right

Under section 31 of the *Human Right Act 2019*, where a person is charged with a criminal offence, there is 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 32 of the *Human Rights Act 2019* provides that, where a person charged with a criminal offence, there is the right to be presumed innocent until proven guilty according to law or deprived of the right to certain minimum guarantees.

The Amendment Regulation may limit the right to a fair hearing and rights in criminal proceedings to the extent that it prescribes penalty infringement notice fines. A person does not have to attend court in relation to a penalty infringement notice. However, a person may elect for a matter in relation to a penalty infringement notice to be heard by a court instead of paying the penalty infringement notice fine. There are several benefits for prescribing the penalty infringement notices. The alleged offender may accept culpability and decide not to contest the penalty infringement notice, including not having to attend court. They do not have to prepare their defence with or without legal representation. Additionally, a penalty infringement notice fine gives the alleged offender certainty relating to their legal liability. Once a person elects to have their matter heard in court, the person is afforded all rights in criminal proceedings guaranteed under the *Human Right Act 2019*. Arguably, this amendment in the Amendment Regulation does not limit human rights.

In the event that I am wrong, however, I believe that the limitation imposed is reasonable and demonstrably justified, as outlined below and as highlighted by the section in the Explanatory Notes on the “consideration of reasonable excuse for offence”. This is due to the circumstantial nature of the provision of penalty infringement notice fines.

(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 issuing of penalty infringement notices results in a more efficient enforcement process, with the penalty infringement notice fine being ten per cent of the maximum penalty that may be imposed by a court. This enables the service of penalty infringement notices as a deterrent, which will be a last resort after education and direction have been provided.

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

The issuing of penalty infringement notices results in a more efficient enforcement process, with the penalty infringement notice fine being ten per cent of the maximum offence penalty units. This enables the service of penalty infringement notices as a deterrent which will be a last resort after education and direction have been provided.

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

The less restrictive option on the individual who may have received a penalty infringement notice is to elect to have the matter heard in court. However, this is still an option and can actually be more burdensome on the person in the event that they are culpable of the offence.

(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

The right to a fair hearing and the rights in criminal proceedings are not limited insofar as a person can elect to go to court to challenge any enforcement action taken against them. However, the issuing of penalty infringement notice fines of ten per cent of the maximum penalty that may be imposed by a court provides for the efficient enforcement of restrictions regarding the use of rest areas and camping on the SCR network. They may also act as a deterrent to other offending behaviour to ensure compliance with measures designed to ensure efficiency, safety and access to the SCR network. On balance, the potential circumstantial limitation is reasonable and justifiable.

Conclusion

I consider that the *Transport Infrastructure (State-controlled Roads) and Other Legislation Amendment Regulation 2020* is compatible with the *Human Rights Act 2019* because, while it may limit a human right, that limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom. This is because the Amendment Regulation limits human rights only to the extent that is reasonable and justifiable in accordance with section 13 of the *Human Rights Act 2019*.

**Honourable Mark Bailey MP
Minister for Transport and Main Roads**