

Transport Operations (Road Use Management—Driver Licensing) Regulation 2021

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* (HRA), I, Mark Bailey MP, Minister for Transport and Main Roads, provide this human rights certificate with respect to the *Transport Operations (Road Use Management—Driver Licensing) Regulation 2021* (the proposed Regulation) made under the *Transport Operations (Road Use Management) Act 1995*, the *Photo Identification Card Act 2008*, the *State Penalties Enforcement Act 1999* (SPE Act), the *Tow Truck Act 1973*, the *Transport Operations (Marine Safety) Act 1994*, the *Transport Operations (Passenger Transport) Act 1994* and the *Transport Planning and Coordination Act 1994*.

In my opinion, the proposed Regulation as tabled in the Legislative Assembly is compatible with the human rights protected by the HRA. I base my opinion on the reasons outlined in this statement.

Shannon Fentiman MP, Attorney-General and Minister for Justice, Minister for Women, and Minister for the Prevention of Domestic and Family Violence has granted authority for the preparation of this human rights certificate to the extent the proposed Regulation is made under the SPE Act.

Overview of the Subordinate Legislation

Driver licensing in Queensland has been regulated under the *Transport Operations (Road Use Management—Driver Licensing) Regulation 2010* (the 2010 Regulation). In accordance with Part 7 of the *Statutory Instruments Act 1992*, the 2010 Regulation will automatically expire on 31 August 2021. The proposed Regulation replaces the 2010 Regulation and continues to appropriately regulate driver licensing matters.

Driver licensing regulatory framework in Queensland

The proposed Regulation provides a legislative framework through which driver licensing functions operate – including the issue, variation, renewal, suspension and cancellation of licences. In line with the nationally agreed national driver licensing system, the proposed Regulation is intended to improve road safety through the adoption of a uniform system of graduated licence classes and largely uniform rules for demerit points and licence sanctions.

The proposed Regulation also provides for the administration of the graduated licensing system. This system was implemented to help reduce fatalities on the roads, particularly among young drivers. Research suggests that young drivers, aged 16 to 24 years, are 60 per cent more likely to be involved in a serious crash than licensed mature adult drivers, aged 25 to 59 years.

The aim of the system is to develop safer, more proficient drivers. This is achieved by requiring novice drivers to gain experience and improve their driving skills before they can progress to a higher type or class of licence. The proposed Regulation sets out requirements that are integral to the system, including supervised driving, level of experience, minimum age and various other requirements or restrictions that apply as drivers progress through the system.

The proposed Regulation provides for monetary fines and other licence sanctions, such as suspensions, to apply to a range of driving offences. These provisions are intended to deter drivers from engaging or operating vehicles in an unsafe manner and to encourage drivers to improve their behaviours and attitudes. The proposed Regulation also incorporates a system of demerit points which applies to drivers who do not comply with the licensing system, road rules, or other regulatory requirements.

Enforcement through the State Penalties Enforcement Regulation 2014

Chapter 17, part 2 of the proposed Regulation amends the *State Penalties Enforcement Regulation 2014* to make certain offences under the proposed Regulation offences for which a penalty infringement notice (PIN) may be issued under the *State Penalties Enforcement Act 1999*. The offences are about:

- breaching supervision requirements when learning to drive a car or ride a motorbike;
- non-compliance with conditions of a Queensland or non-Queensland licence;
- verification of learner logbook records by an unauthorised person;
- holding more than one driver licence of the same class and type;
- holding a driver licence under a name which is not a person's legal name;
- failing to properly display, or unauthorised display of, L and P plates;
- non-compliance with mobile phone restrictions by young drivers and their passengers;
- driving a restricted high-powered vehicle by a young driver without an exemption;
- late night driving by young drivers who are subject to a sanction, without an exemption;
- exceeding passenger limits in a vehicle driven by a young driver late at night;
- failing to produce documents such as exemptions in absence of reasonable excuse;
- failing to notify of a relevant change in circumstance by the holder of an exemption;
- carrying passengers by motorbike riders who do not hold the correct licence type;
- non-compliance with the general requirements when towing a motor vehicle;
- driving a vehicle by a person 75 years or older without a valid medical certificate;
- unauthorised destruction of an interlock driver record;
- failing to notify of change of name or address by a licence holder;

- failing to attach change of information labels to a driver licence;
- failing to apply for a replacement licence, licence receipt or label;
- failing to return a driver licence for the removal of a marine code; and
- wilfully damaging a driver licence.

PIN offences are an alternative to prosecution through the court system. A person who is issued a PIN for an offence may discharge their liability by payment of a financial penalty. There is no requirement for the offence to be prosecuted through the court system, although a person may elect to go to court to challenge the offence or the penalty imposed by the PIN.

Human Rights Issues

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

The proposed Regulation engages the following human rights protected by the HRA:

- Recognition and equality before the law (section 15 of the HRA);
- Freedom of movement (section 19 of the HRA);
- Property rights (section 24 of the HRA);
- Privacy and reputation (section 25 of the HRA);
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28 of the HRA);
- Right to liberty and security of person (section 29 of the HRA);
- Fair hearing (section 31 of the HRA); and
- Rights in criminal proceedings (section 32 of HRA).

Driver licensing regulatory framework in Queensland

Recognition and equality before the law (section 15 of the HRA)

The right to recognition and equality before the law reflects 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.

The Regulation may limit the right to recognition and equality before the law. There are several sections in the Regulation, which impose additional requirements on people based on attributes mentioned in the *Anti-Discrimination Act 1991*, namely, age, country of issue of licence, and impairment.

Chapter 3 of the Regulation establishes eligibility criteria which draw distinctions based on age. These sections establish the framework for the graduated licensing system, which specifically targets younger drivers.

Sections 228, 229, 230 and 248 of the proposed Regulation apply additional offence provisions to novice drivers in relation to unsafe driving practices. These offence provisions are in relation to mobile phone usage, the use of high-powered vehicles and the carriage of peer passengers.

Section 253 of the proposed Regulation imposes a requirement on older drivers.

Sections 54, 62, 116, 124, 166 and 180 of the proposed Regulation establish eligibility criteria which draw distinctions based on the country of issue of a previous licence held by the relevant person.

Sections 176, 213, 352 and 358 of the proposed Regulation draw a distinction based on impairment.

Section 391 of the proposed Regulation provides that consular officials are exempt from the payment of certain fees under the proposed Regulation.

Freedom of movement (section 19 of the HRA)

The right to freedom of movement protects a person's right to move freely within Queensland and to enter and leave it, and a choice of residence, if they are lawfully within Queensland.

Chapter 6 part 2 may limit the right to freedom of movement by restricting an individual's ability to operate a motor vehicle without displaying identifying L or P plates. Section 248 may limit the right to freedom of movement by restricting certain individual's ability to drive a car at certain times based on the number and type of passengers that are present in the car at the time.

Section 251 may limit the right to freedom of movement by restricting an individual's ability to ride on public roads with, or as, a passenger on a motorbike if the rider does not meet certain experience and licence requirements.

Section 252 may limit the right to freedom of movement by restricting the ability of an individual to occupy the driver's seat of a vehicle being towed based on the type of licence they hold, and by restricting the ability of an individual to tow a vehicle unless the vehicle being towed is being controlled by another, suitably licenced person.

Property rights (section 24 of the HRA)

The human right under section 24(2) of the HRA provides that a person should not be 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.

Sections 376 and 377 may engage property rights to the extent that they enable the seizure of property, being an individual's driver licence in specified circumstances.

The provision serves a public safety function in that it ensures individuals hold properly obtained licences. It also prevents the circulation of invalid driver licences.

It is believed that property rights are not limited as the potential deprivation of the person's licence is not arbitrary. This is because the power cannot be exercised in relation to a valid licence produced by the licensee. It can only be exercised when:

- a person who produces a licence is not the licensee; or
- a driver of a motor vehicle produces a licence that has been cancelled or has expired or the person has been disqualified from holding or obtaining an Australian driver licence; or
- a person produces a document that purports to be a licence, but the authorised officer reasonably believes the document is not a licence.

If there is an alternative view that the power limits the property rights, it is considered that the limitation would also be reasonable and demonstrably justified using the proportionality factors under section 13 of the HRA as explained below.

Right to privacy and reputation (section 25 of the HRA)

The right to privacy and reputation protects a person's right to not have their privacy and reputation unlawfully or arbitrarily interfered with. The nature of the right to privacy and reputation is very broad but contains internal limitations. The protection against interference with privacy is limited to unlawful or arbitrary interference. The notion of arbitrary interference extends to those interferences which may be lawful, but are unreasonable, unnecessary and disproportionate.

Sections 177, 178, 208, 363 and Chapter 14 of the proposed Regulation require the provision of information and therefore engage the human right to privacy and reputation.

Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28 of the HRA)

The human right under section 28 of the HRA explicitly protects the right to live as an Aboriginal person or Torres Strait Islander who is free to practise their culture. This includes rights in relation to traditional knowledge, spiritual practices, language, kinship ties, relationship with land and resources, and protection of the environment.

The proposed Regulation contains an exemption provision which in certain circumstances allows a young driver to drive a high-powered vehicle and a provision which specifies when an alcohol ignition interlock exemption may be granted under the Act.

The proposed Regulation also contains a requirement that specified young licence holders must not drive late at night with more than one passenger under 21 years who is not an immediate family member.

For a person to obtain a benefit under each of these provisions, requires the consideration of whether there is a sufficiently close family relationship between the driver and another person. Each of the provisions contains a definition which sets out when a person is to be regarded as being in a close family relationship with the driver.

The 2010 Regulation considered Aboriginal people's and Torres Strait Island people's cultural rights in the corresponding provision dealing with alcohol ignition interlock exemptions. It did this by including, in the definition of *family member* of an applicant, anyone who was regarded under either Aboriginal tradition or Torres Strait Island custom as being a family member (as mentioned in the first part of the definition). It also included anyone who was regarded under Aboriginal tradition or Torres Strait Islander custom as an aunt or uncle of the applicant. This definition has been retained in the proposed Regulation.

This extended definition of *family member* was not, however, included in the 2010 Regulation in relation to the provisions dealing with high-powered vehicle exemptions and the peer passenger restriction.

The proposed Regulation, however, extends the definition of *family member* to recognise family relationships under Aboriginal tradition and Torres Strait Islander custom for the purpose of the high-powered vehicle exemption.

As the proposed Regulation now expressly recognises the unique kinship ties for an Aboriginal person and Torres Strait Islander for the purpose of the alcohol ignition interlock exemption and the high-powered vehicle exemption, it is believed that the human right about cultural rights is not limited in the context of these exemptions.

In the proposed Regulation, the definition of *family member* in relation to the peer passenger restriction does not include everyone who is regarded under either Aboriginal tradition or Torres Strait Island custom as being a family member of the applicant. Therefore, the proposed Regulation may limit the cultural rights of Aboriginal peoples and Torres Strait Islander peoples.

Fair hearing (section 31 of the HRA) and rights in criminal proceedings (section 32 of the HRA)

The human right under section 31 of the HRA is limited where a person is deprived of the right to have a criminal charge or a civil proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing. The human right under section 32 of the HRA is limited where a person charged with a criminal offence is deprived of the right to be presumed innocent until proven guilty according to law or deprived of the right to certain minimum guarantees.

The proposed Regulation may limit the right to a fair hearing and rights in criminal proceedings to the extent that section 248 reverses the onus of proof in relation to establishing that a driver has an immediate family relationship with a passenger. This onus reversal is for the purpose of proving whether a person has breached a restriction relating to the carriage of peer passengers.

The proposed Regulation contains a number of requirements for a person to produce a certificate of exemption or a particular record, to return a document, or to take a particular action in relation to a document. Where a person fails to comply with one of these requirements, the proposed Regulation places an evidential burden on them to establish that they had a reasonable excuse for that failure. This applies in relation to the following requirements:

- section 240 in relation to producing a current certificate of exemption when driving a high-powered vehicle;
- section 247 in relation to producing a current certificate of exemption for late night driving;

- section 250 which requires the holder of a certificate of exemption to advise the chief executive of a change of circumstances;
- section 338 in relation to producing the person’s interlock driver record for a stated period, when requested by the chief executive in writing;
- sections 360 and 361 in relation to complying with a notice to return a Queensland driver licence or returning driver certificate. The proposed Regulation provides that a reasonable excuse might be that the licence or certificate has been, or the holder of the licence or certificate reasonably suspects it has been, destroyed, lost or stolen;
- section 363 which requires a person to advise the chief executive of a change of address and to attach the change of address label to the back of their licence; and
- sections 367, 368 and 369 which require a licence holder to apply for a replacement licence, driver licence receipt or replacement label, if the holder becomes aware that their licence, receipt, or change of address label has been damaged, lost or stolen.

Section 321 of the proposed Regulation also provides that a person does not commit the offence of not applying for the correct licence within 14 days of having a special hardship order made, if the person has a reasonable excuse.

Enforcement through the State Penalties Enforcement Regulation 2014

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

The right to recognition and equality before the law reflects 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.

This right may be limited to the extent that the proposed Regulation imposes penalty infringement fines for failing to comply with certain requirements. The obligation to pay a fine may disproportionately impact persons of a lower socio-economic status who may have more difficulty paying a monetary sum.

Property rights (section 24 of the HRA)

As mentioned above, the human right under section 24(2) of the HRA 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 proposed Regulation may limit property rights to the extent that it prescribes infringement notice offences. The failure to pay an 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 and vehicle immobilisation as provided for in the SPE Act.

Right to liberty and security of person (section 29 of the HRA)

The human rights under sections 29(1) and (2) of the HRA 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 proposed Regulation may limit the right to liberty and security to the extent that it prescribes infringement notice offences. 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. Importantly, however, the SPER Charter, provided for under section 9 of the SPE Act, preferences the use of other enforcement actions for unpaid fines over arrest and imprisonment to reduce the use of imprisonment for fine defaults.

Fair hearing (section 31 of the HRA) and rights in criminal proceedings (section 32 of the HRA)

The human right under section 31 of the HRA is limited where a person is deprived of the right to have a criminal charge or a civil proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing. The human right under section 32 of the HRA is limited where a person charged with a criminal offence is deprived of the right to be presumed innocent until proven guilty according to law or deprived of the right to certain minimum guarantees.

The proposed Regulation may limit the right to a fair hearing and rights in criminal proceedings to the extent that it prescribes infringement notice offences. This may arise because a person does not have to attend court in relation to an infringement notice offence. However, a person may elect for a matter, in relation to an infringement notice offence, to be heard by a court instead of paying an infringement notice fine, including multiple opportunities to elect for the matter that has been referred to SPER to be heard by a court. Once a person elects for a matter, in relation to an infringement notice offence, to be heard by a court, the person is afforded all the rights in criminal proceedings guaranteed under the HRA. As a result, the proposed Regulation arguably does not limit the human rights.

If there is an alternative view that the power limits the human rights, it is considered that the limitation would also be reasonable and demonstrably justified using the proportionality factors under section 13 of the HRA as explained below.

Consideration of reasonable limitations on human rights (section 13 of the HRA)

Driver licensing regulatory framework in Queensland – Right to recognition and equality before the law (section 15 of the HRA)

(a) the nature of the right

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

Provisions which establish the Graduated Licensing System

(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

Chapter 3 of the proposed Regulation imposes different requirements based on age and underpins the framework of the graduated licensing system. The purpose of these provisions is to allow novice drivers to gain driving experience and improve their driving skills in a safe and supervised manner before progressing to higher types or classes of licences. Young drivers are at greater risk of crashes overall due to a range of factors including developing visual and perceptual skills, and inability to accurately perceive or respond to hazards.

Two independent evaluations of Queensland's graduated licensing system showed that the changes to young driver licensing through the graduated licensing system were associated with a significant reduction in crashes involving novice drivers. Results of the evaluation showed that the young driver licensing changes were associated with a 30 per cent reduction in fatal crashes involving novice drivers.

This purpose of the limitations is to ultimately reduce the risk of road trauma not only to the young driver themselves but also to other road users. This is considered consistent with a free and democratic society as it is based on the broader public interest.

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

There is a rational relationship between the provisions of the graduated licensing system and the purpose of building the driving skills of novice drivers before allowing them to move on to less restrictive types of licences and higher classes of licences. The system has been shown to be significantly effective in reducing the crash risk of novice drivers because it operates to establish competencies in low-risk conditions before allowing a person to move to less restrictive licences that expose them to higher risk conditions.

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

There is no other, less restrictive, reasonably available way of achieving this purpose. The provisions relating to the graduated licensing system also provide for exemptions to certain requirements if a person can prove that they would suffer severe hardship as a result. These exemptions may be provided upon application to, and review by the chief executive. These exemptions are intended to minimise any undue burden of the system.

(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 importance of the graduated licensing system lies in its purpose of reducing fatal and serious road incidents by requiring novice drivers to gain practical experience, prior to moving onto a licence with less restrictions. The benefit of these provisions to novice drivers and to all other road users reasonably and demonstrably outweighs any discrimination based on age.

Provisions which apply separate penalties to novice drivers

(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

Sections 228, 229, 230, and 248 of the proposed Regulation impose additional restrictions on novice drivers in relation to mobile phone use, the use of high-powered vehicles and the carriage of peer passengers. The purpose of these limitations is to deter potentially unsafe driving practices by novice drivers.

Driver distraction, including using mobile phones, is a significant risk factor for drivers on Queensland roads, being one of the 'fatal five'. Research has shown that using a mobile phone when driving is just as dangerous as a drink driver with a blood alcohol of 0.07-0.10. In addition to this, young drivers are a high-risk group due to their lack of driving experience and are over-represented in crash statistics.

To deter distracted driving in the drivers least able to cope with additional stimuli, section 228 provides specified licence holders under 25 years, including a class C learner or P1 licence holder, cannot use any function of a mobile phone, including hands-free use. Section 229 provides that a passenger in a car driven by the young driver cannot use a mobile phone in loudspeaker mode while the car is moving, or stationary but not parked.

Similarly, a young driver's risk of crashing is higher when they are carrying peers as passengers. However, it is also recognised that there is a reasonable need for transportation, and that by imposing limitation it may restrict access to the road network for some. As a result, only the high-risk peer group (that is, a passenger under the age of 21 years who is not an immediate family member) have been captured by this restriction. Only the higher-risk time period, being late at night, is captured by this provision, so the restriction is not considered to be unreasonable.

These restrictions about mobile phone use and the carriage of peer passengers that apply to younger drivers are consistent with a free and democratic society in that they are in the public interest of safety on the roads by reducing or removing distractions from novice drivers.

Section 230 of the proposed Regulation provides certain restrictions on the type of cars that P1 and P2 licence holders under 25 years can drive, based on the power-to-weight ratio of those cars. These restrictions recognise the higher risk involved in operating high-powered vehicles and prevent P1 and P2 licence holders under 25 years from driving these vehicles. This restriction ensures that inexperienced drivers are not driving high-powered vehicles that they are ill-equipped to handle or that may encourage them to take more risks on the road. The high-powered vehicle restriction is consistent with a free and democratic society as it aligns with the interest of public safety by requiring novice drivers to operate lower powered and easier to control vehicles until they have more on-road experience.

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

There is a rational relationship between sections 228, 229, 230 and 248 of the proposed Regulation and the purpose of reducing driver distraction and the crash risk for novice drivers.

Given the aims of the graduated licensing system, and that young drivers are a particularly high-risk group due to their lack of driving experience, these restrictions are intended to create a lower-risk and more controlled environment in which novice drivers can safely gain experience.

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

There is no other, less restrictive, reasonably available way of achieving this purpose.

The mobile phone restriction cannot be limited in any way, due to the inherent risk of using a mobile phone in a car.

Novice drivers may apply for an exemption from the high-powered vehicle restriction where they can demonstrate a genuine need to drive, and that the only car reasonably available to them is, a high-powered vehicle. Businesses may also apply for exemptions for their employees to drive high-powered vehicles where that is necessary in the course of their duties. This might be for example, where an employee apprentice motor mechanic needs to test drive vehicles after they have been serviced to ensure the vehicle is functioning as intended.

The peer passenger restriction is only in force late at night, due to the potential distraction increasing where the young passengers are intoxicated, the likelihood of which increases exponentially during late-night hours. However, recognising access and transportation requirements, and transport strategies for sober people to drive intoxicated people home, the carriage of one peer passenger under 21 years is allowed, as is the carriage of peer passengers who are immediate family members. This balances safety and need.

(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

These provisions are based on reducing the risk of serious and fatal road incidents. For example, evidence shows that removing mobile phone and other on-road distractions can significantly reduce road trauma. Similarly, young novice drivers who are inexperienced in handling high-powered vehicles increase their risk of unsafe driving behaviours in such vehicles. Restricting access lessens this specific risk.

These restrictions are intended to maintain a safer environment for novice drivers to gain experience on the roads, and to minimise their risk of a crash as a result of established dangerous practices. The limitation of the human right of equality before the law is justifiably and demonstrably outweighed by the overriding benefit of reducing the significantly higher crash risk among novice drivers.

Provision which draws distinctions between people based on age (older drivers)

(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

Section 253 of the proposed Regulation requires any person aged 75 years or over to carry a medical certificate, to demonstrate that they are fit to drive, and requires them to renew it every 13 months. The purpose of this requirement is to reduce the risk of fatalities on the road as a result of licensed drivers developing medical conditions which may adversely impact their ability to drive. As individuals age, the risk of developing temporary or long-term medical conditions that can adversely impact driving skills is significantly higher. Although not every driver over 75 years of age will develop a condition, or have their driving skills degrade, the purpose of the section is to increase the likelihood of detecting conditions that may pose a significant risk to their ability to drive safely. This is for the safety of not only the driving individual but also for the safety of other road users. This limitation on the human right of equality before the law is considered in the interest of the public and justified in a free and democratic society.

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

There is a rational relationship between requiring drivers aged 75 years and over to obtain a medical certificate to confirm that they are medically fit to drive, and the purpose of increasing the likelihood of detecting conditions that may pose a significant risk to the person's ability to drive safely. Driving a vehicle on the road amongst other road users requires a range of complex cognitive and physical skills, and medical conditions can significantly impair these requisite skills.

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

There is no other, less restrictive, reasonably available way of achieving this purpose. While no exemption to this rule exists, the section provides flexibility by allowing the presentation of the medical certificate within 48 hours after being asked to produce it, rather than requiring immediate production.

(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

There is a higher probability of medical conditions developing in individuals as they age. These conditions potentially adversely impact a person's ability to drive safely. The purpose of the requirement of medical assessment and carriage of a medical certificate indicating a fitness to drive closely aligns with the purpose of safety on the roads. Ensuring a person is medically fit to drive on the road benefits both the individual person and all other road users. The limitation of the human right of equality before the law imposed by this provision is considered to be reasonably and demonstrably justified by its nature and purpose.

Provisions which draw distinctions between people based on the country of issue of a person's licence

(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

Sections 54, 62, 116, 124, 166 and 180 of the proposed Regulation impose requirements on individuals that are applying for a Queensland licence based on the country in which their non-Queensland licence was issued. Persons from countries that are recognised by Austroads may be able to transfer their licence without meeting, or only having to meet limited, testing requirements. However, for countries not recognised by Austroads, persons applying with a non-Queensland licence issued in one of those countries will have to meet the full testing requirements. This approach is consistent with that taken by road authorities in other Australian states and territories. The Austroads country recognition criteria were established and agreed nationally and are applied to determine whether further driver testing is required.

Austroads is a national body that was formed to co-ordinate transport policy in the Australian and New Zealand transport authorities. It provides a number of guides and recommendations regarding best practice for road management organisations.

As part of this, Austroads conducts eligibility assessments to determine foreign jurisdictions who have comparable standards to those in Australia based on several factors including testing regimes. The discrimination between non-Queensland licences is consistent with the principles of a free and democratic society as it provides accessibility to the road system where it is demonstrably low risk, without compromising the safety and integrity of the licensing system in Queensland.

The purpose of this requirement is to provide recognition for drivers with foreign licences while maintaining high-safety standards for licensing and road use in Queensland.

Non-Queensland licence holders are also required to provide an English translation of the non-Queensland driver licence by someone appropriately qualified. This imposes an additional obligation on someone from a non-English speaking country. The purpose of this requirement is to ensure that the chief executive of TMR is able to transfer the non-Queensland driver licence to the appropriate Queensland licence, in line with the requirements set out under the proposed Regulation. It would not be reasonable to require the chief executive to translate all possible non-Queensland licences.

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

Sections 54, 62, 116, 124, 166 and 180 of the proposed Regulation allow for accessibility to public roads by those who have foreign licences while also maintaining a minimum standard of safety and driver experience requirements. This is achieved by assessing the standards of foreign licensing systems compared to Queensland's and by identifying similarities and distinctions based on the country of issue's licensing practices. For countries that have similar road rules and licensing systems, a number of testing and eligibility requirements may not need to be met to transfer their non-Queensland licence to a Queensland licence. The non-Queensland licence, if written in a foreign language, must also be able to be understood by the chief executive. As such, there is a clear rational relationship between the requirements and the purpose of the provisions.

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

Any alternative approach would be to either require testing of all foreign licence holders regardless of country of origin. This is despite the fact that some applicants may have gone through similar, robust testing procedures. Alternatively, inconsistent standards under which foreign licence holders could obtain a Queensland licence without meeting the same licensing and testing requirements that other applicants must meet could be applied. The latter would likely result in poor road safety outcomes.

Similarly, to not require the applicant to provide an English translation of their driver licence would require the chief executive to obtain translation services on an ad-hoc basis which would significantly impact the ability for the licence to be transferred in a timely manner.

There is therefore no other, less restrictive, reasonably available way of achieving this purpose.

(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 specific purpose of this provision, which is maintaining a balance of accessibility and safety for foreign licence holders, is considered to reasonably and demonstrably outweigh any impact on the human right of equality before the law.

Provision which draws distinctions between people based on impairment

(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

Section 176 of the proposed Regulation provides that a person is not eligible for the grant or renewal of a Queensland licence if the chief executive reasonably believes that the person has a mental or physical incapacity that is likely to adversely affect their ability to drive. In addition, section 352 of the proposed Regulation includes a ground to amend, suspend or cancel a Queensland driver licence if the licence holder has a mental or physical incapacity that is likely to adversely affect the holder's ability to drive safely. Section 358 allows the chief executive to immediately suspend a Queensland licence holder's licence on the basis of a mental or physical incapacity that is likely to adversely affect the holder's ability to drive safely and section 213 provides that the chief executive may immediately withdraw the authority of a non-Queensland driver licence holder to drive in Queensland on the basis of a mental or physical incapacity that is likely to adversely affect the holder's ability to drive safely.

The purpose of these provisions is to ensure that drivers are both mentally and physically capable of driving safely. Common medical conditions that would be seen as a barrier to safe driving include, for example, blackouts and vision problems. This restriction, placed on the driver licence of a person with a mental or physical incapacity that is likely to adversely affect their ability to drive safely, is considered to be consistent with the values of a free and democratic society as it is in the best interest of the public.

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

There is a rational relationship between sections 176, 213, 352 and 358 of the proposed Regulation, and the purpose of ensuring that drivers are both mentally and physically capable of safely operating a motor vehicle in a road environment. There have been numerous tragic crashes where people have been seriously injured or killed as a result of a driver experiencing a medical episode or having some medical incapacity. Between 2010 and 2019, 71 lives were lost, and 2401 people hospitalised, as a result of crashes on Queensland roads involving drivers with a medical condition.

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

There is no other, less restrictive, reasonably available way of achieving this purpose. Consistent with the intent of the policy, it will only apply to a person who has a mental or physical incapacity which is likely to adversely affect their ability to drive. Also, section 176 provides that if the chief executive reasonably believes that by stating a condition on the licence, the person's incapacity is not likely to adversely affect the person's ability to driver safely, that person can continue to drive. For example, the chief executive may require a person to drive only during the day, or only when they wear prescription glasses.

As a safeguard for the proposed action to amend, suspend or cancel a person's licence, the proposed Regulation provides that if the chief executive considers that grounds exist to amend, suspend or cancel a person's licence because the licence holder has a mental or physical incapacity that is likely to adversely affect the holder's ability to drive safely, the chief executive must give the person a show cause notice. This provides the licence holder with 28 days to make representations about the proposed action to amend, suspend or cancel their licence. For example, a person may then provide evidence that they do not have a mental or physical incapacity, or they do but it is not likely to adversely affect their ability to drive.

In addition, if action is taken to amend, suspend or cancel a person's licence, following the show cause period, the affected licence holder may apply for a review of the decision. A person who is not satisfied with the decision reached on internal review, also has the option of having that reviewed decision considered by the Queensland Civil and Administrative Tribunal.

(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 purpose of these provisions, which are aimed at ensuring physical and mental capability to safely operate a vehicle, is considered to reasonably and demonstrably outweigh any impact on the human right of equality before the law.

Provision which draws distinction based on consular-related roles

(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

Section 391 of the proposed Regulation provides that the following people are exempt from the payment of specified fees in the proposed Regulation:

- the head of a consulate;
- a career consular officer under the *Consular Privileges and Immunities Act 1972* (Cwlth);
- the head of the Taipei Economic and Cultural Office (TECO) in Brisbane;

- an officer of TECO in Brisbane; and
- an immediate family member of a person mentioned above.

The purpose of the exemption is to recognise the public service that consular officials perform for citizens of their home country, and to ensure the efficient performance of their consular posts. The exemption also reflects international reciprocal agreements under the United Nations, Vienna Convention on Diplomatic Relations.

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

There is a rational relationship between section 391 and the purpose of recognising the public service that consular officials perform.

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

There are no other less restrictive and reasonably available ways of achieving this purpose.

- (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 purpose of the exemption is considered to reasonably and demonstrably outweigh any impact on the human right of equality before the law.

Driver licensing regulatory framework in Queensland – Freedom of movement (section 19 of HRA)

- (a) the nature of the right

The right to freedom of movement states that every person lawfully within Queensland has the right to move freely within Queensland, to enter and leave Queensland, and has the freedom to choose where to live.

- (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

Chapter 6 part 2 and section 248 of the proposed Regulation are part of the graduated licensing system.

Chapter 6 part 2 provides that while driving, learner drivers and the holders of P1 and P2 type licences must display L or P plates in a way that is clearly visible to other road users. The purpose of this requirement is to identify road users who have less practical driving experience.

This is so other road users can accommodate them and be alert for driving errors that might occur more frequently as a result of inexperience.

Section 248 allows only one passenger aged under 21 years in a car driven by young P1 type licence holders between the hours of 11pm and 5am. This restriction does not apply to passengers who are immediate family members of the driver. Peer passengers under 21 years have been shown to increase crash risk for novice drivers late at night, primarily due to distraction associated with intoxication. The purpose of the restriction is therefore to reduce this potential for driver distraction and to deter novice drivers from engaging in behaviours which have been shown to increase their risk of serious crash or injury.

Young drivers are overrepresented in fatal crashes, on average, making up 25 per cent of the road toll whilst only comprising 14 per cent of licence holders in Queensland. As novice drivers are statistically at higher risk of crashing, chapter 6, part 2 and section 248 are considered to align with the public interest of safety on public roads. They are also aligned more broadly with the purpose of the graduated licensing system, which is to provide a safe, lower risk environment for them to gain practical driving experience. These restrictions are evidence-based policies that aim to reduce the crash risk and fatality risk for novice drivers, who are shown to be a particularly high-risk group. As a result, these sections are considered reasonable and justifiable in a free and democratic society based on human dignity, equality and freedom.

Section 251 forms part of the graduated licensing system for motorbike riders. It provides that a motorbike must not be ridden with a passenger unless the rider has held a class RE licence (other than a learner licence) for at least a year or holds a Class R licence (other than a learner licence). The purpose of this provision is to protect passengers on motorbikes and to reduce distractions for less experienced riders, and to provide them a safer environment to develop safe riding behaviours. It is seen as particularly important, as motorbike riders are some of the most vulnerable road users and face significant road safety risk. On average, motorbike riders consistently make up 20 per cent of lives lost on our roads. As at 1 August 2021, 42 of the 162 fatalities on Queensland's roads in 2021 were motorbike riders or their passengers.

Section 252 provides that a person in the driver seat of a vehicle being towed must hold a P1, P2, P or open type licence and that a person must not tow a vehicle without a person with an appropriate licence in the driver seat. This provision is in the interest of public safety in that it ensures towed vehicles are always under the control of a person, and that the person has sufficient experience to operate the towed vehicle in a safe manner.

Sections 251 and 252 are considered reasonable and justifiable in 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

Chapter 6, part 2 set out the rules relating to the clear display of L or P plates while driving. These provisions have a clear relation to their purpose, which is to aid other drivers in identifying novice drivers. This allows them to modify their own behaviour to accommodate less experienced drivers on the road. Therefore, the requirement achieves its purpose.

There is a clear relationship between the peer passenger restriction in section 248 and its purpose. The section helps to achieve this purpose by preventing late night driving scenarios that are significantly high-risk by reducing the incidence of driver distraction during these times. The limitations of Chapter 6, part 2 and section 248 also help more broadly with the purpose of the graduated licensing system, which is to provide safe environments for novice drivers to gain practical experience on the roads.

There is a clear relationship between the requirements of section 251 and its purpose of providing a safer environment for novice riders to gain driving skills and experience. The section helps to achieve this purpose by reducing the risk of distraction and other risks associated with carrying passengers when riding a motorbike.

Section 252 achieves the purpose of ensuring that vehicles are towed in a safe and controlled manner on public roads.

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

For Chapter 6, part 2 and sections 248, 251 and 252 there are no other reasonably available and less restrictive ways of achieving their specific purposes.

Under section 248, a novice driver may carry one passenger who is under 21 years and who is not an immediate family member. There is no limit on the number of immediate family members the driver may carry at any time.

(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

In light of the nature and the importance of the requirements in Chapter 6, part 2, sections 248, 251 and 252 in contributing to a safe road environment, the purpose of these provisions outweighs any limited impact on freedom of movement. This is especially in light of the importance of Chapter 6, part 2, sections 248 and 251 to the graduated licensing system. In addition, the nature and extent of the impact on freedom of movement is not excessively onerous. For example, in relation to Chapter 6, part 2, provided that the relevant inexpensive plates are displayed, an affected driver is free to use the road network.

Driver licensing regulatory framework in Queensland – Property rights (section 24 of the HRA)

(a) the nature of the right

Section 24 (Property rights) of the HRA protects the right of all persons to own property and provides that people have a right not be arbitrarily deprived of their property. Property includes all real and personal property interests recognised under general law and may include some statutory rights. Relevantly this would include property interests in a driver licence.

(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

Section 376 and 377 enable the seizure of property, being an individual's driver licence where:

- a person who produces a licence is not the licensee; or

- a driver of a motor vehicle produces a licence that has been cancelled or has expired or the person has been disqualified from holding or obtaining an Australian driver licence; or
- a person produces a document that purports to be a licence, but the authorised officer reasonably believes the document is not a licence.

The objective of the provision is to prevent the circulation and use of invalid driver licences, the misuse of valid licences and to help combat identity theft. These objectives are 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

There is a rational relationship between the power to be able to seize driver licences as outlined above and the purpose of ensuring that the circulation of invalid driver licences and the misuse of valid licences is minimised.

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

It is considered that there is no less restrictive and reasonably available way to achieve the purpose of ensuring that the circulation of invalid driver licences and the misuse of valid licences is minimised, other than to allow authorised officers to seize licences as outlined above.

The following safeguards have been included in section 376 and 378:

- the authorised officer must act only on a reasonable belief in the circumstances listed above; and
- the authorised officer must return the licence, within 28 days, in the circumstances listed in section 378 (including that the licence is a valid licence that was produced by the licensee).

(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

Allowing for the seizure of driver licences as outlined above helps to prevent the circulation and use of invalid driver licences, the misuse of valid licences and to combat identity theft. Therefore, the importance of achieving this purpose outweighs the potential negative impact on the human right related to property.

Driver licensing regulatory framework in Queensland – Right to privacy and reputation (section 25 of the HRA)

(a) the nature of the right

Section 25 of the HRA sets out the right to privacy and reputation. It 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. The proposed Regulation contains a number of sections about the provision of personal information.

(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

Sections 177, 178 and 208 of the proposed Regulation compel individuals to report personal information pertaining to medical conditions that are likely to adversely impact their ability to safely operate a motor vehicle. This section may limit an individual's right to privacy through the mandatory reporting of personal, medical information. The purpose of this requirement is to ensure that a person has the mental and physical capacity to safely operate a motor vehicle. As this is an essential component of ensuring public safety on the roads, this requirement is consistent with a free and democratic society based on human dignity, equality and freedom.

Similarly, section 363 of the proposed Regulation compels individuals to provide personal information pertaining to changes of name or address. The purpose of this provision is to maintain the currency of the licensing database. Ensuring the Department of Transport and Main Roads (TMR) has up-to-date contact information allows for the efficient communication of any notices, including licence sanction notices, required to be sent to licence holders. It also facilitates the effective enforcement of traffic and other laws by police and authorised officers.

Driver licences are also important as government forms of identification. A key component of maintaining the integrity of this form of identification is maintaining a current record of personal information such as name and address. Considering the broader use of the driver licence database, this provision is consistent with a free and democratic society based on human dignity, equality and freedom.

Chapter 14 of the proposed Regulation allows the chief executive of TMR to collect information for the purpose of certain applications and to request further information that may be reasonably necessary to decide the application. The purpose of this requirement is to ensure that administrative decisions made by the chief executive are based on all relevant information. These decisions can have direct road safety consequences and can include, for example, a decision to grant or renew a driver licence or to issue an exemption from certain requirements in the proposed Regulation. Obtaining and considering all relevant information assists the chief executive to make the best decisions in the interests of road safety. As such, the purpose of this provision is consistent with a free and democratic society based on dignity, equality and freedom.

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

For sections 177, 178 and 208 of the proposed Regulation, there is a clear and rational relationship between the requirement to report a medical condition which affects the person's ability to drive safely, and the purpose of achieving the highest levels of safety on the road. The section helps to achieve this purpose by ensuring that every driver has the mental and physical capacity to safely operate a motor vehicle.

Section 363 of the proposed Regulation has a clear and rational relationship to its purpose of maintaining a high standard of identification, security and accuracy in the licensing database and in Queensland licences, which are approved forms of government identification. Ensuring information contained in the licensing database, such as licence holders' current names and addresses, is essential to the proper administration of the licensing system. It allows, for example, the chief executive to provide timely information to licence holders about the status of their licence. It also allows licence holders to use their licence as a form of identification and to ensure that their identification is not rejected due to a mismatch in their details and those details held in the database. Finally, it allows enforcement officers to efficiently identify people when enforcing transport and other laws. The information required to be updated is within the licence holder's knowledge and, as such, it is logical to place the obligation on them to provide that information to the chief executive.

Chapter 14 of the proposed Regulation requires an applicant to provide all information necessary for the chief executive to decide the application. This has a clear and rational relationship to the part's purpose of ensuring the chief executive can make the best decisions on applications in the interests of road safety.

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

For sections 177, 178, 208, 363 and Chapter 14 of the proposed Regulation, there are no other reasonably available and less intrusive or restrictive ways of achieving the purposes mentioned. In each case, the information required is in the licence holder's, or applicant's, knowledge and the chief executive would not be able to obtain that information without far more intrusive, and less acceptable, means.

Chapter 14 limits the collection of information from applicants to only information that is relevant to the application being made and does not allow for the collection of irrelevant personal information or information that would be excessively intrusive to personal privacy. These protections prevent the chief executive from arbitrarily collecting personal information.

(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

Considering the nature and extent of the requirement in 177, 178 and 208 of the proposed Regulation and balancing it against the identified purpose of ensuring that a person is medically fit to drive, the benefit of this provision outweighs any limitation of the human right to privacy. This is because the section underpins an important aspect of road safety by helping to ensure that drivers have the capacity to operate a vehicle safely. However, TMR does seek to uphold a driver's right to privacy by limiting the number of staff with access to a customer's medical information and ensuring that staff are regularly trained in the importance of protecting personal information.

Regarding the nature and extent of the requirements imposed by section 363 of the proposed Regulation, the benefit of maintaining a current and correct licencing database for the purposes of the efficient administration and enforcement of the licensing system and of providing a trustworthy form of government identification, outweighs any limitation of the human right to privacy. The information to be provided is limited to name, address and postal address information.

The information required to be given under Chapter 14 of the proposed Regulation allows the chief executive to properly determine applications made under the proposed Regulation. The balance clearly favours the provision of this information as, without it, the chief executive may, for example, issue a driver licence or an exemption from certain licensing requirements in circumstances where the licence or exemption would not otherwise be issued. As mentioned above, Chapter 14 of the proposed Regulation does not allow the collection of information that is not relevant to the application or the collection of information that would be excessively intrusive to personal privacy. These protections prevent the chief executive from arbitrarily collecting personal information.

While TMR collects personal information as part of its licensing functions, it has a number of mechanisms in place to protect individual privacy. Access to customer records is limited to authorised staff, and all access is logged and monitored. All departmental staff are regularly trained in their obligations regarding information privacy and the protection of personal information and there are serious consequences for any misuse of that information. Personal information is only disclosed to third parties when the individual consents to such disclosure or a law authorises or requires TMR to release it. The security of information communication and technology systems used to collect, store, maintain and, where required, transmit personal information, complies with relevant Queensland Government information security policies, as mandated by the Queensland Government Customer and Digital Group.

Driver licensing regulatory framework in Queensland – Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28 of HRA)

(a) the nature of the right

The human right under section 28 of the HRA explicitly protects the right to live life as an Aboriginal person or Torres Strait Islander who is free to practise their culture. They must not be denied certain rights in relation to traditional knowledge, spiritual practices, language, kinship ties, relationship with land and resources, and protection of the environment.

(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

Section 248 aims to reduce driver distraction for novice drivers. It does this by allowing only one passenger under 21 years in a car driven by young P1 type licence holders between the hours of 11pm and 5am. This period was established to balance essential transportation needs and high-risk driving periods for novice drivers, particularly when considering the increased potential for distracting peers due to intoxication which is more likely to occur late at night when pubs and clubs are open, or when social gatherings are occurring.

This restriction does not apply to passengers who are immediate family members. A definition of *immediate family member* has been included for the purpose of the restriction. The definition covers family relationships that apply across all cultural backgrounds. In addition, the definition recognises those individuals who are regarded as a child of the driver according to Aboriginal tradition or Torres Strait Island custom.

Unlike other provisions in the proposed Regulation, however, it does not extend the definition to include others who would be regarded as family members listed in the section only based on Aboriginal tradition or Torres Strait Island custom. It also does not include a person who would be regarded as an aunt or uncle of the driver according to that tradition or custom respectively.

The purpose of section 248 is to ensure that a young driver with limited driving experience should not have the additional distractions that other young people can bring while in the car. That is, the restriction is aimed at minimising the number of young people aged under 21 years in the car. The provision attempts to incorporate a balance by allowing immediate family members of any age, in addition to one other person under 21 years, in the vehicle. However, if there is not some boundary around who is an allowable family member, the purpose of the provision might not be achieved as a broad definition could potentially allow a carload of young people in the vehicle. For this reason, the extension of the definition to recognise family relationships under Aboriginal tradition and Torres Strait Island custom has been limited to traditional and customary recognition of children of the driver.

The provision 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

There is a rational link between the relationships that have been recognised in the definition of *immediate family member* and the purpose of limiting the number of passengers under 21 years being carried in a car driven by a novice driver.

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

There is no other, less restrictive, reasonably available way of achieving this purpose.

Any Aboriginal person or Torres Strait Islander will be covered in the definition of *immediate family member* if they fall within the family relationships listed in the definition. In addition, anyone who is at least 21 years old, including those who may be regarded as an aunt or uncle of the driver, can be carried in the vehicle driven by a novice driver. Finally, the restriction only applies during the late-night period of between 11pm and 5am.

(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

Section 248 is based on evidence which shows that reducing on-road distraction can significantly reduce the risk of serious and fatal road incidents. The definition of *immediate family member* has been suitably framed to recognise some traditional and cultural relationships, without being drafted too broadly. This achieves an appropriate balance of recognising cultural rights while also ensuring that on-road driver distractions are reduced.

Driver licensing regulatory framework in Queensland – Fair hearing (section 31 of HRA) and rights in criminal proceedings (section 32 of HRA)

(a) the nature of the right

The human right under section 31 of the HRA is limited where a person is deprived of the right to have a criminal charge or a civil proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing. The human right under section 32 of the HRA is limited where a person charged with a criminal offence is deprived of the right to be presumed innocent until proven guilty according to law or deprived of the right to certain minimum guarantees.

The proposed Regulation may limit the right to a fair hearing and rights in criminal proceedings to the extent that section 248 reverses the onus of proof in relation to establishing that a driver has an immediate family relationship with a passenger. This onus reversal is for the purpose of proving whether a person has breached a restriction relating to the carriage of peer passengers.

The proposed Regulation contains a number of requirements for a person to produce a certificate of exemption or a particular record, to return a document, or to take a particular action in relation to a document. Where a person fails to comply with one of these requirements, the proposed Regulation places an evidentiary burden on them to establish that they had a reasonable excuse for that failure.

This may limit the right to a fair hearing and the rights in criminal proceedings in respect of the right to be presumed innocent.

(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

Section 248 aims to reduce driver distraction for novice drivers. It does this by allowing only one passenger under 21 years in a car driven by young P1 type licence holders between the hours of 11pm and 5am. This restriction does not apply to passengers who are immediate family members. However, section 248 places the onus on the driver of proving that the driver has an immediate family relationship with the passenger.

For the purposes of enforcement, officers have no ability to practically establish whether the peer passengers are family members. This is opposed to other roadside enforcement where the police officer would be well placed to identify the existence of an offence such as contravening a red light.

For this road safety initiative aimed at reducing driver distractions to be effective in practice, a reversal of the onus of proof is considered necessary.

The reversal of the onus of proof is consistent with a free and democratic society based on human dignity, equality and freedom.

The proposed Regulation provides the ability for a person to establish they had a reasonable excuse for failing to comply with a requirement to produce a certificate of exemption, to return a document, or to take a particular action in relation to a document. Providing a reasonable excuse defence ensures that people are not unjustly held liable for these offences. While this imposes an evidentiary burden on the person, it also ensures that the evidence can be produced by the party best able to satisfy the requirements of the statutory protection. In many cases, the information required to establish the defence will be solely within their knowledge. If they do establish a reasonable excuse on the balance of probabilities, the onus then returns to the prosecution to disprove that excuse beyond a reasonable doubt.

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

There is a rational relationship between the reversal of the onus of proof in relation to the establishment of whether a passenger has an immediate family relationship with the driver, and the purpose of ensuring that a provision aimed at reducing driver distraction is enforceable. Without reversal of the onus of proof, the provision will not be easily enforceable and therefore there would be a risk that drivers would not abide by the restriction. This would have a negative impact on road safety.

Placing an evidentiary burden on a person to establish they had a reasonable excuse for failing to comply with certain requirements under the proposed Regulation is a rational measure as it allows the evidence to be produced by the person best able to do so.

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

There is no other, less restrictive, reasonably available way of achieving this purpose.

Further, the matter that is subject to proof by the defendant is of a nature that the defendant is in a position to demonstrate. That is, proving a family relationship is peculiarly within the defendant's knowledge and would be more difficult for the State to establish than for the defendant to establish. Similarly, the basis for establishing a reasonable excuse for failing to comply with certain requirements is within the defendant's knowledge.

(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

Section 248 is based on evidence which shows that reducing on-road distraction can significantly reduce the risk of serious and fatal road incidents. Placing the onus on the driver to prove that a passenger is a family member facilitates enforcement and encourages compliance. The reversal is considered justified as the matter that is the subject of proof by the defendant is peculiarly within the defendant's knowledge and would be difficult for the State to prove.

Therefore, any limitation of the human rights related to a fair hearing, and rights in criminal proceedings, is outweighed by the need for a provision aimed at preventing driver distraction to be enforceable.

Without reasonable excuse provisions, a number of offences in the proposed Regulation could be unjust in a range of circumstances. Placing an evidentiary onus on the defendant to establish, on the balance of probabilities, a reasonable excuse for contravening the relevant requirements is appropriate given that this information will typically be peculiarly within that defendant's knowledge, so they will be best placed to bring themselves within the protection that the law provides.

Enforcement through the State Penalties Enforcement Regulation 2014:

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

Property rights (section 24 of the HRA)

Right to liberty and security of person (section 29 of HRA)

Fair hearing (section 31 of HRA) and rights in criminal proceedings (section 32 of HRA)

(a) the nature of the rights

Section 15 (Right to recognition and equality before the law) of the HRA 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. Enforcement action by way of penalty infringement notice may disproportionately impact persons of a lower socio-economic status who may have more difficulty paying a monetary sum.

Section 24 (Property Rights) of the HRA protects the right of all persons to own property and provides that people have a right not to be arbitrarily deprived of their property. Property includes all real and personal property interests recognised under general law and may include some statutory rights.

Section 29 (Right to liberty and security of person) of the HRA 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. 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.

Section 31 (Fair hearing) of the HRA provides individuals the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing. This facilitates procedural fairness and protects natural justice.

Section 32 (Rights in criminal proceedings) of the HRA provides the right to be presumed innocent until proven guilty according to law as well as rights to certain minimum guarantees, including the right of accused persons to be informed of the nature and reason for a charge and to defend themselves personally or through legal assistance.

(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 offences which may be enforced through the issuing of an infringement notice under the SPE Act is set out below.

Offences with the objective of improving road safety

Road safety is inherently consistent with a free and democratic society. It is considered both in the public interest to reduce road trauma, and to promote a person's right to life. The offence provisions that fall in line with this objective include a number of offence provisions that form part of the graduated licensing system, and are about matters such as:

- supervision and logbook requirements for learner licence holders;
- display of L or P plates on cars and motorbikes; and
- restrictions relating to mobile phone, peer passengers and high-powered vehicles.

The proposed Regulation also includes other miscellaneous offence provisions in relation to:

- the requirement that the person occupying the driver's seating position of a towed vehicle must be appropriately licensed;
- the requirement that people aged 75 and over must carry a medical certificate when driving; and
- non-compliance with conditions stated on a person's licence.

Offences with the objective of maintaining the integrity of the licencing database

The integrity of the licensing database is an important part of both road safety and the use and administration of licences more broadly as a secure and government-approved form of identification. Accurate information is required to be collected and routinely updated for identification purposes. This also has a direct road safety impact through the use of the information to aid enforcement and communication with members of the public. The offences in relation to the integrity of the licensing database are about matters such as:

- requirements to report changes of information relevant to the licencing database; and
- the requirement to return a licence for the removal of a code.

There are also offence provisions relating to the need to maintain the integrity of driver licences such as offences relating to:

- holding a driver licence under a name other than that person's legal name;
- holding more than one driver licence of the same class and type;
- the requirement to apply for replacement licences, licence receipts or labels when the original is lost, damaged or stolen; and
- the requirement to attach change of information labels when received.

Allowing infringement notices to be issued for non-compliance with the offence provisions supports the objectives mentioned above. The purpose of the prescription of PINs for the offences in the proposed Regulation is to:

- ensure an efficient means of enforcing these offences;
- avoid the costs and inconvenience to both the individual and the State associated with consideration before a court in relation to offences that are objective in nature; and

- encourage individuals to comply with the requirements in the proposed Regulation which will assist in achieving the desired road safety outcomes.

Enabling infringement notices to be issued is a proportionate response 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

There is a direct relationship between the prescription of PINs for the offences and the purpose of providing an efficient means of enforcing these offences and avoiding court costs. This is because the infringement notice system allows enforcement through the issue of a fine by an authorised officer which the alleged offender can pay while avoiding a court process. This system also encourages individuals to comply with the proposed Regulation which will assist in achieving the desired road safety outcomes.

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

It is considered that there is no less restrictive and reasonably available way to achieve the above purposes, other than by prescribing the offences to be infringement notice offences under the SPE Regulation.

If these offences are not prescribed as infringement notice offences, there would be a cost to the broader community of court proceedings that may affect the State's ability to ensure road safety, potentially affecting the safety of other road users in the broader community. There would also be a cost to alleged offenders caused by compulsory court attendance. Prescribing infringement notice offences provides several benefits to alleged offenders who decide not to contest the infringement notice. These benefits include not having to attend court or prepare their defence with or without legal representation, as well as giving them certainty about their legal position.

Importantly, there are several protections built into the fine enforcement system under the SPE Act which ensure seizure and sale of property or vehicle immobilisation as a consequence of non-payment of an infringement notice fine would only occur infrequently. Importantly, the threshold amount which must be owed to the 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 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 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).

All persons, including those of low socio-economic status who may have lesser financial capacity to pay a penalty infringement fine, can avoid the impact of any PIN by complying with the requirements of the proposed Regulation. The requirements in the proposed Regulation are in place for the safety and benefit of all road users equally. A person who receives a PIN who cannot afford to pay the whole fine 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.

A person may also elect to have a matter heard by a court. If the court finds the person guilty of the offence, it has the ability to take into account multiple factors when handing down the penalty, one of which may include the person's socio-economic status or ability to pay a fine.

(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

Allowing infringement notices to be issued for non-compliance with the above provisions in the proposed Regulation provides a proportionate response to encourage compliance with the requirements underpinning the driver licensing system. If these enforcement actions are not available, there would likely be reduced deterrence. This is because a decision to prosecute is made on public interest grounds, including the consideration of the cost of prosecution. If there were a reduction in prosecutions due to cost, some offenders may consider that the State is unlikely to issue a complaint and summons to anyone other than the most recidivist offenders thereby reducing the deterrent effect of the offences. This would directly affect the State's ability to ensure road safety, potentially affecting the safety of other road users in the broader community.

Prescribing infringement notice offences provides several benefits to alleged offenders who decide not to contest the infringement notice. These benefits include not having to attend court or prepare their defence with or without legal representation, as well as giving them certainty about their legal position. Without that option, all persons charged under the offences outlined above would be forced to expend the time, effort and stress involved in court proceedings. If found guilty, they would also be required to pay the costs associated with the offender levy and the issuing of the complaint and summons, whether or not they wanted their matter heard before a court. In addition, there are various protections to assist persons who are unable to pay their PIN fines.

However, the proposed Regulation does not affect the ability for individuals to elect to have the matter heard by a court. In particular, section 15 of the SPE Act requires that all PINs must indicate that the alleged offender may elect to have the matter decided by a court, which promotes awareness that persons have this option at the time the person is issued with an infringement notice fine. This gives the person the choice between electing to have the matter dealt with under the SPE Regulation or electing to have the matter heard by a court. This enables individuals to choose the option that best suits their individual circumstances.

In respect of the right to recognition and equality before the law, while the imposition of a penalty infringement fine may disproportionately impact a person from a lower socio-economic group, the importance of maintaining the punishment and deterrent effect of penalties for applicable offences outweighs the impact on the right.

Therefore, the importance of protecting road safety through ensuring an effective enforcement system outweighs the potential limitations on the right to recognition and equality before the law, property rights, the right to liberty and security of person, the right to a fair hearing, and rights in criminal proceedings.

Conclusion

I consider that the *Transport Operations (Road Use Management—Driver Licensing) Regulation 2021* is compatible with the HRA because it does limit human rights, but that limitation is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.

Honourable Mark Bailey MP
Minister for Transport and Main Roads