

# Transport Legislation Amendment Regulation (No. 2) 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*, I, Mark Bailey MP, Minister for Transport and Main Roads, provide this human rights certificate with respect to the *Transport Legislation Amendment Regulation (No. 2) 2021*, made under the *Transport Operations (Marine Safety) Act 1994* (Marine Safety Act) and the *Transport Operations (Road Use Management) Act 1995* (TORUM Act).

In my opinion, the *Transport Legislation Amendment Regulation (No. 2) 2021*, 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 purpose of the *Transport Legislation Amendment Regulation (No. 2) 2021* (Amendment Regulation) is to:

- amend the *Transport Operations (Marine Safety) Regulation 2016* (Marine Safety Regulation) to ensure that the established pilot boarding grounds in North Queensland no longer fall within compulsory pilotage areas;
- amend the *Transport Operations (Road Use Management—Vehicle Standards and Safety) Regulation 2021* (Vehicle Standards Regulation) to provide that the term of a certificate of inspection (COI) for all COI vehicles is 12 months (with the exception of heavy primary production vehicles);
- amend the Vehicle Standards Regulation to provide that an approved examiner may approve an inspection certificate for particular COI vehicles currently required to be inspected by a Department of Transport and Main Roads' (TMR) transport inspector;
- make a small number of minor clarifications in the Vehicle Standards Regulation;
- amend the *Transport Operations (Road Use Management—Accreditation and Other Provisions) Regulation 2015* (Accreditation Regulation) to remove the requirement for assessment and workplace training qualifications for an accredited rider trainer;
- amend the *Traffic Regulation 1962* (Traffic Regulation) to provide that the chief executive can sign a certificate stating that a document is a copy of a part of the Traffic Camera Coding Manual; and
- amend the *Transport Operations (Road Use Management—Driver Licensing) Regulation 2021* (Driver Licensing Regulation) to make a consequential amendment to reference certain sections of the TORUM Act following the commencement of the relevant provisions in the *Transport Legislation (Road Safety and Other Matters) Amendment Act 2019*.

## Human Rights Issues

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

Upon analysis, given the technical and beneficial nature of the amendments, the Amendment Regulation does not engage or limit any human rights.

The amendment to the Marine Safety Regulation ensures that the established pilot boarding grounds no longer fall within compulsory pilotage areas thereby removing the potential for ships' masters to have to contravene the regulation to access those boarding grounds. The amendments to the Vehicle Standards Regulation reduce the regulatory burden by providing consistency in the currency of certificates of inspection and also providing that an approved examiner may approve an inspection certificate for particular vehicles with a garage address in a rural or regional area. The amendment to the Accreditation Regulation removes an obsolete training requirement. The amendment to the Driver Licensing Regulation is a consequence of the commencement of the *Transport Legislation (Road Safety and Other Matters) Amendment Act 2019*.

In my opinion, in relation to the signing of the evidentiary certificate (clause 4 of the Amendment Regulation), the following human rights are relevant:

- Fair hearing (section 31 of the *Human Rights Act 2019*); and
- Rights in criminal proceedings (section 32 of the *Human Rights Act 2019*).

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

#### (a) the nature of the right

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

Clause 4, which amends the Traffic Regulation, provides that the chief executive can sign a certificate about a particular matter and that certificate is evidence that a document is a copy of a part of the Traffic Camera Coding Manual.

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

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

The purpose of the amendment is to increase the efficiency of court processes relating to camera enforcement for mobile phone and driver related seatbelt offences.

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

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

The amendments increase the efficiency of court processes, relating to mobile phone and driver related seatbelt offences, by reducing the need to physically call witnesses to establish the matters stated in an evidentiary certificate. The evidentiary certificate only relates to a matter that is administrative, factual in nature, non-contentious and unlikely to be disputed.

The amendment provides for the chief executive to sign a certificate under section 212(2) of the Traffic Regulation. The Commissioner of the Queensland Police Service is already empowered to issue certificates under section 212 but, as enforcement of camera detected mobile phone and seatbelt offences will be the responsibility of TMR, it is necessary to extend this power to the chief executive.

The amendments do not prevent a defendant challenging a matter stated in a certificate during a criminal proceeding.

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

There is no less restrictive and reasonably available way to achieve the purpose of clause 4 of the Amendment Regulation.

(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

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

This supports the efficiency of court processes by ensuring these matters can be resolved quickly and cost-efficiently, allowing the court to focus on the substantive matters required to be established by the prosecution.

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

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

In consideration of the relationship between the limitation and the purpose of clause 4 of the Amendment Regulation, the importance of achieving the identified purpose outweighs the potential limitation on the human rights, and the limit is reasonably and demonstrably justifiable.

## Conclusion

I consider that the *Transport Legislation Amendment Regulation (No. 2) 2021* is compatible with the *Human Rights Act 2019* because it does not limit, restrict or interfere with a human right, but that limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

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

© The State of Queensland 2021