

# Transport Legislation Amendment Regulation (No. 3) 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 Legislation Amendment Regulation (No. 3) 2021* (Amendment Regulation), made under the *Transport Infrastructure Act 1994*, the *Transport Operations (Marine Safety) Act 1994*, and the *Transport Operations (Road Use Management) Act 1995*.

In my opinion, the Amendment 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.

## Overview of the Subordinate Legislation

The purpose of the Amendment Regulation is to:

- amend the *Transport Infrastructure (Public Marine Facilities) Regulation 2011* to commence, vary and end the appointment of managers of particular public marine facilities;
- amend the *Transport Operations (Marine Safety) Regulation 2016* (Marine Safety Regulation) to:
  - ensure the definition of *ABP Standard* reflects the updated Australian Builders Plate (ABP) Standard;
  - extend Vessel Traffic Services reporting requirements to additional areas within the Gladstone pilotage area;
  - provide that Cawarral Creek Bar is a designated coastal bar requiring the wearing of lifejackets by persons 12 years and older while crossing the bar;
  - ensure consistency in the safety management system requirements that apply to an *other Queensland regulated ship* and similar nationally regulated ships; and
  - ensure that Queensland Parks and Wildlife Service Officers can carry out their duties in an effective way; and
- amend the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2021* to clarify when prescribed evidence of an inspection certificate must be provided with a vehicle registration application.

## Human Rights Issues

### Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 HRA)

The Amendment Regulation may engage the human right to freedom of movement (section 19 of the HRA).

Clause 13 of the Amendment Regulation may limit the right to freedom of movement by requiring all persons over 12 years old to wear a lifejacket when crossing the Cawarral Creek Bar in an open boat that is less than 4.8 metres in length.

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

#### *Designate Cawarral Creek Bar as a coastal bar – Freedom of movement (section 19 of the 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 or leave Queensland, and to choose where they 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

To comply with safety obligations under Queensland maritime legislation, all passengers aged 1 year or more travelling in an open boat that is less than 4.8 metres in length must wear an appropriate lifejacket while crossing any of the coastal bars named in schedule 1 of the Marine Safety Regulation.

Coastal bars form at the entrance to rivers and inshore waterways because of sand drifting along the coast. Crossing coastal bars is often the only way boats can access, or reach shelter from, open waters but the conditions on a bar can change quickly and without warning. An open boat that is less than 4.8 metres in length can capsize quickly in rough waters, making it difficult to access any equipped lifejackets. It is for this reason that the legislation requires the wearing of lifejackets while crossing specified coastal bars.

The Cawarral Creek Bar and the waters of the entrance to Cawarral Creek are now considered dangerous, even on good weather days. As a result, the Amendment Regulation will insert the Cawarral Creek Bar into schedule 1 of the Marine Safety Regulation. As a result, all persons over 1 year old will need to wear an appropriate lifejacket while crossing the bar. Other maritime laws already require the wearing of lifejackets at all times by those aged 1 to 11 years so the amendment will impact only those aged 12 years or more.

Requiring a lifejacket is an important safety measure that protects human life and is considered 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

As noted above, the conditions on coastal bars can change without warning, and an open boat that is less than 4.8m in length can capsize quickly in rough waters, making it difficult to access any equipped lifejackets.

A lifejacket is the single most important piece of safety equipment a person can carry on their boat and wearing a life jacket significantly increases the odds of surviving a recreational boating accident.

Imposing a requirement to wear a lifejacket is a crucial component in ensuring maritime safety and the protection of human life while crossing the Cawarral Creek Bar.

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

Imposing an obligation to wear a lifejacket when crossing the Cawarral Creek Bar is the least intrusive means of achieving the purpose. Without lifejackets, there is a danger that, should a boat capsize on the bar, passengers in the boat may be at risk of drowning.

(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

It is considered that there is an appropriate balance between the importance of mitigating the risk to human life by requiring lifejackets when crossing the Cawarral Creek Bar and the potential limitation upon the freedom of movement imposed by the requirement.

(f) any other relevant factors

Due to the safety benefit of prescribing Cawarral Creek Bar as a coastal bar under section 24 of the Marine Safety Regulation, the purpose of clause 13 of the Amendment Regulation outweighs any limited impact on freedom of movement. In addition, the nature and extent of any impact on freedom of movement is not excessively onerous. Lifejackets are readily available and are easy to fit and wear. There is already a requirement that if an open boat is less than 4.8m in length, each individual on board who is between 1 and 11 years (inclusive) must wear the lifejacket required by section 24(2)(a) of the Marine Safety Regulation. Therefore, the change only relates to persons 12 years and over wearing a lifejacket.

## Conclusion

I consider that the Amendment Regulation is compatible with the HRA because, while it may limit, restrict or interfere with a human right, any potential 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