

Transport and Other Legislation Amendment Regulation 2022

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 and Other Legislation Amendment Regulation 2022* (Amendment Regulation), made under the *Heavy Vehicle National Law Act 2012*, the *Photo Identification Card Act 2008*, the *State Penalties Enforcement Act 1999* (SPE Act), the *Tow Truck Act 1973*, the *Transport Infrastructure Act 1994*, the *Transport Operations (Marine Safety) Act 1994*, the *Transport Operations (Passenger Transport) Act 1994*, the *Transport Operations (Road Use Management) Act 1995* and the *Transport Planning and Coordination Act 1994*.

In my opinion, the Amendment Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019* (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:

- adopt a number of the 13th package of Australian Road Rules amendments into the *Transport Operations (Road Use Management—Road Rules) Regulation 2009* (Queensland Road Rules). This is to enhance road safety, accommodate electric-powered vehicle only parking for charging, and provide greater consistency with the road rules in other jurisdictions;
- ensure that motorbike helmets that are compliant with the most recent version of United Nations Economic Commission for Europe (UN ECE) standard 22 may be used in Queensland;
- make new offences in the Queensland Road Rules, for which a Penalty Infringement Notice (PIN) may be issued under the SPE Act; and
- support the adoption by the Queensland Government of an integrated approach to issuing and administering PINs under the SPE Act. The Amendment Regulation will ensure that officers involved in the management of fines under the new integrated approach can access information contained in the Department of Transport and Main Roads' (TMR) databases. This will ensure, for example, that contact can be made with customers by using their most recent contact details.

Human Rights Issues

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

In my opinion the human rights that are relevant to the Amendment Regulation are:

- right to recognition and equality before the law (section 15 of the HRA);
- property rights (section 24 of the HRA);
- privacy and reputation (section 25 of the HRA);
- right to liberty and security of person (section 29 of HRA); and
- fair hearing (section 31 of HRA) and rights in criminal proceedings (section 32 of HRA).

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 should not be subject to discrimination.

This right may be limited to the extent that the Amendment Regulation imposes PINs 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)

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 Amendment Regulation may limit property rights to the extent that it prescribes PIN offences. The failure to pay a PIN may result in enforcement action taken by the Registrar of the State Penalties Enforcement Registry (SPER) against the person, including among other actions, the seizure of the person's property and vehicle immobilisation, as provided in the SPE Act.

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

The human rights under sections 29(2) and (3) 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 Amendment Regulation may limit the right to liberty and security to the extent that it creates PIN 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 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 default.

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 Amendment Regulation may limit the right to a fair hearing and rights in criminal proceedings to the extent that it prescribes PIN offences, because a person does not have to attend court in relation to a PIN offence. However, a person may elect for a matter in relation to a PIN offence to be heard by a court instead of paying the PIN amount. A person also has multiple opportunities to elect for a matter in relation to a PIN offence that has been referred to SPER to be heard by a court. Once a person elects for a matter in relation to a PIN 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 Amendment 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.

Access to information – management of fines

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. The notion of arbitrary interference extends to those interferences which may be lawful, but are unreasonable, unnecessary and disproportionate.

Section 27 of the Amendment Regulation inserts provisions into the *Transport Planning and Coordination Regulation 2017* to allow the disclosure of information contained in a transport information database to officers who are performing a function under the SPE Act. This therefore engages the human right to privacy and reputation.

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

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

(a) The nature of the right

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 should not be subject to discrimination.

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 Amendment Regulation may limit the above-mentioned rights to the extent that it prescribes PINs under the SPE Act. Providing for the issuing of PINs has a range of benefits to both the alleged offender and the State. This includes the effective and efficient prosecution of alleged offences, without requiring a court appearance by the alleged offender, while retaining the person's entitlement to a court hearing if they choose.

A contrary view of the PIN process is that it may result in a person not attending court and having the evidence in their matter presented and tested. Although the majority of PINs are not taken to court, it is considered this typically occurs because it is preferable for the offender to simply pay the PIN if they consider they committed the offence. This creates efficiencies for the offender and does not unduly burden the court system. It is therefore considered the issuance of PINs is consistent with a free and democratic society based on human dignity, equality and freedom.

The offences which may be enforced through the issuing of a PIN under the *State Penalties Enforcement Regulation 2014* (SPE Regulation) are set out below:

- a driver must not make a U-turn at a children's crossing, level crossing, marked foot crossing, or pedestrian crossing, with or without traffic lights, unless there is a U-turn permitted sign;
- a driver must not make a U-turn at a place with traffic lights where a road and road-related area intersect unless there is a U-turn permitted sign at the place;
- a driver, other than a driver permitted to drive on a busway under the *Transport Infrastructure Act 1994* or permitted under section 154A(2) of the Queensland Road Rules, must not drive in a bus only lane;
- a driver must not drive across a bus only lane, unless the driver is permitted to drive across the bus only lane in accordance with section 154A(4) of the Queensland Road Rules;
- a driver turning at an intersection immediately after a bus only lane ends must give way to any vehicles driving in the bus only lane;
- a driver must not stop in a bus only lane unless the driver of a bus is dropping off and picking up passengers and is permitted to drive in the bus only lane;
- a driver must not stop in a parking area for the charging of electric-powered vehicles unless the electric-powered vehicle is plugged in to an external source of electricity; and
- a driver must not, without reasonable excuse, interfere or interrupt the free passage along any length of road of any funeral procession, or any vehicle or person apparently forming part of the procession.

The nature of these offences and their compatibility with a free and democratic society based on human dignity, equality and freedom has been outlined at length above. In summary, all of the above offences are underpinned by the objectives of enhancing road safety, accommodating electric-powered, vehicle-only parking for charging, and providing greater consistency with the road rules in other jurisdictions.

Road Safety is inherently consistent with a free and democratic society. It is considered both in the public interest to reduce road trauma and is considered to promote a person's right to life.

Providing for electric-powered vehicle only parking for charging, will encourage the use of electric-powered vehicles, which is in the public interest because a greater uptake of zero emission vehicles will deliver better environmental outcomes.

Providing greater consistency with the road rules in other jurisdictions is considered in the public interest because a national scheme provides that the road rules and their enforcement are largely consistent across borders.

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

- ensure an efficient means of enforcing these offences;

- avoid the costs 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 regulation which will assist in achieving the desired objectives of enhancing road safety, encouraging the uptake of electric-powered vehicles, and providing greater consistency with other jurisdictions.

Enabling PINs 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 PIN 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 Queensland Road Rules which will assist in achieving the desired objectives of enhancing road safety, accommodating electric-powered, vehicle-only parking for charging, and providing greater consistency with the road rules in other jurisdictions.

(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 as PIN offences under the SPE Regulation.

If these offences are not prescribed as PIN offences, the increased number of prosecutions proceeding by way of complaint and summons may lead to injustices due to the delay in hearing cases. The cost to the State of court proceedings may affect the State's ability to ensure the objectives are met, potentially affecting other road users in the broader community. There would also be a cost to alleged offenders both in terms of financial impact and the emotional impact that court attendance potentially causes.

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 a PIN 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 believes 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 PIN 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 the PIN amount, can avoid the impact of any PIN by complying with the requirements of the Amendment Regulation. The requirements in the Amendment Regulation are in place for the safety and benefit of all road users. A person who receives a PIN who cannot afford to pay the whole fine can also seek assistance from SPER 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 PINs to be issued for non-compliance with the above provisions in the Amendment Regulation provides a proportionate response to encourage compliance with the requirements of the Queensland Road Rules. 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 the objectives are met.

Prescribing PIN offences provides several benefits to alleged offenders who decide not to contest the PIN. 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 liability. 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 fines.

However, the Amendment Regulation does not affect the ability for individuals to elect to pay the PIN amount or 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 of the offence decided by a court, which promotes awareness that persons may elect for the matter of the offence to be heard by a court at the time the person is issued with a PIN. 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 PIN 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 enhancing road safety, encouraging the uptake of electric-powered vehicles, and providing greater consistency with other jurisdictions 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.

Access to information – management of fines

(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 and to not have their reputation unlawfully attacked.

(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 27 of the Amendment Regulation amends the *Transport Planning and Coordination Regulation 2017* to allow the chief executive to give information contained in a transport information database to an authorised person. This information may include personal information such as name and address details and may therefore raise privacy considerations. The purpose of this provision, however, is only for performing a function under the SPE Act. That is, the information can only be released for the purpose of managing the issuing and administration of fines. 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

There is a clear and rational relationship between the purpose of performing a function under the SPE Act and the ability for authorised persons to access information in a transport information database. This is because authorised persons require the most recent contact details recorded in a transport information database when they are issuing or administering PINs.

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

There are no other reasonably available and less intrusive or restrictive ways of achieving the purpose mentioned, as contact details of customers are required to administer the SPE Act.

New section 10A(4) of the *Transport Planning and Coordination Regulation 2017* as inserted by section 27 of the Amendment Regulation provides that the chief executive may release the information on conditions that the chief executive considers appropriate. Further, new section 10B contains an offence provision which is aimed at deterring any misuse of information that is authorised to be released under section 10A. These two provisions have been incorporated as safeguards aimed at protecting an individual's privacy.

- (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 the extent of new sections 10A and 10B of the *Transport Planning and Coordination Regulation 2017*, the benefit of facilitating the performance of functions under the SPE Act outweighs any limitation of the human right to privacy.

Access to customer records will be limited to authorised persons, that is those persons who are a member of a class which has been authorised in writing by the chief executive. Prior to gaining access, all authorised persons will be required to be criminal history checked and acknowledge their understanding of the Queensland Public Service Code of Conduct, which includes an obligation to keep personal information confidential and secure. Access to TMR's registration and licensing database will be logged. There are serious consequences for any misuse of information. The authorised person is advised of these consequences via a warning message displayed to them when logging into TMR's registration and licensing database.

The security of information communication and technology systems that will be used to transmit personal information, complies with relevant Queensland Government information security policies, as mandated by the Queensland Government Customer and Digital Group.

Conclusion

I consider that the *Transport and Other Legislation Amendment Regulation 2022* is compatible with the *Human Rights Act 2019* because it does 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