

Transport 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* (HRA), I, Mark Bailey MP, Minister for Transport and Main Roads, provide this human rights certificate with respect to the *Transport Legislation Amendment Regulation 2022* (the Amendment Regulation) made under the *Transport Operations (Marine Safety) Act 1994* (TOMSA) 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

Lifejacket servicing

Inflatable lifejackets require routine servicing to ensure the bladder, reflective tapes, buckles and straps are in working order and the inflation system and oral inflation tube are operating correctly. Currently, under the *Transport Operations (Marine Safety) Regulation 2016* (TOMSR), inflatable lifejackets must be serviced by the manufacturer or their authorised service agent. Manufacturers' requirements for servicing lifejackets mandate professional servicing at key intervals but may also allow for "self-servicing" by a person other than a manufacturer or service agent at other times. Self-servicing requirements are easy to follow and do not need specialist expertise or equipment. As professional servicing is still required at particular times, self-servicing in accordance with manufacturers' requirements will not compromise the safety of the lifejacket. Self-servicing of lifejackets in accordance with manufacturers' requirements is already available in other jurisdictions including New South Wales and Victoria.

It is proposed to amend TOMSR to remove the limitation on who can service inflatable lifejackets in Queensland. Instead, all servicing will need to be in accordance with the manufacturers' requirements.

The amendment will also provide that a person can demonstrate that a lifejacket has been serviced by marking service dates on the lifejacket, or by providing relevant documentation if it has been serviced professionally.

Prescribe the Bribie Island coastal bar

Coastal bars are shallow, shifting sandbanks below the surface of the water at the entrance to coastal channels and passages through which ships can travel. Coastal bars can have the effect of causing strong currents and dangerous waves, even in calm weather.

Section 24(2)(b) of TOMSR provides that if an open ship less than 4.8 metres in length is crossing a coastal bar, each individual on board who is aged one year or more must be wearing the lifejacket required by that paragraph. Coastal bars are listed in schedule 1 of TOMSR.

Bribie Island is a 34-kilometre island just off the Queensland coastline approximately 50 kilometres north of Brisbane. On 2 January 2022, ex-tropical cyclone Seth caused a split approximately 1.5 kilometres from the northern tip of the island, resulting in the formation of a new passage and coastal bar between the Pumicestone Passage and the Coral Sea. The dangers of the new coastal bar have been of concern to the local Volunteer Marine Rescue and Coast Guard.

Prior to the new passage forming, ships exiting the Pumicestone Passage for the Coral Sea travelled around the northern tip of the island and across the Caloundra Bar. The Caloundra Bar is currently prescribed in schedule 1 and so the lifejacket requirements under section 24(2)(b) already apply for those journeys.

To enhance maritime safety, the amendment to TOMSR will prescribe the Bribie Island Bar in schedule 1, making it mandatory for persons aged one year or more in open ships less than 4.8 meters to wear lifejackets when crossing the bar.

Clarify lifejacket labelling requirements

Section 22 of TOMSR specifies the *required lifejackets* for Queensland regulated ships based on the nature of the ship and the waters it is operating in. The *required lifejackets* include those of classification levels 100, 50 and 50S, where the levels correlate to performance criteria in the relevant Australian Standard AS4758, the International Convention for the Safety of Life at Sea (SOLAS) or the National Standard for Commercial Vessels (NSCV).

For example, a ship, other than a personal watercraft, operating in partially smooth waters can be equipped with lifejackets of level 100 or level 50. If, however, if the ship operates beyond partially smooth waters, a level 50 lifejacket is not appropriate and a level 100 lifejacket is required.

To meet AS4758, SOLAS and NSCV, manufacturers must place symbols (words and numbers) on lifejackets after they have been tested to signify compliance with the classification requirements. The amendments will recognise the symbols that must appear on different level lifejackets. This will assist ship owners and masters to ensure their ship is appropriately equipped for the waters in which it will be used. It will also assist enforcement officers and prosecutors to identify and prove when a lifejacket is not the *required lifejacket* for particular waters.

As the symbols are already required under AS4758, SOLAS and NSCV, all *required lifejackets* are believed to already be marked with the necessary symbols so there should be no adverse impact on ship owners and masters in meeting their safety equipment obligations. However, out of an abundance of caution, these amendments will not commence until 1 September 2022 to allow an opportunity for checking and replacing lifejackets if needed.

Annual vehicle inspection requirements

The *Transport Operations (Road Use Management—Vehicle Standards and Safety) Regulation 2021* (VSSR) regulates when light vehicles are required to be inspected to check compliance with vehicle standards and safety requirements. The inspection intervals are determined by the type of vehicle and the nature of its use. Certificate of inspection (COI) vehicles are those that require a certificate of inspection and include heavy vehicles (vehicles over 4.5t gross vehicle mass or aggregate trailer mass (ATM)), tow trucks, vehicles used to provide public passenger services and trailers over 3.5t ATM. COI vehicles must be inspected at regular intervals, generally once a year.

In recent years, the Queensland Ambulance Service (QAS) has started using vehicles that are over 4.5t, including some buses, as ambulances. As heavy vehicles, these ambulances are now also required to be inspected annually. However, QAS vehicles are subject to a regular maintenance regime and systematic renewal to maintain low fleet age. As a result, applying additional annual vehicle inspection requirements to these vehicles does not promote better safety outcomes.

In addition, currently trailers over 3.5t ATM and up to 4.5t ATM are subject to annual inspections, however, these trailers present no greater risk to safety than other light trailers. Similarly, light buses (also called minibuses) have a low road safety risk commensurate with other light vehicles.

The amendments to the VSSR will remove the annual inspection requirements for ambulances, trailers from 3.5t ATM up to 4.5t ATM and light buses that are not used to provide public passenger transport services. These vehicles will only be subject to a vehicle inspection when registration is being transferred to a new owner or if the vehicle is to be re-registered after a period of being unregistered. This is consistent with inspection requirements for other vehicles that do not require a COI.

Human Rights Issues

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

The proposed amendments clarifying lifejacket labelling requirements may engage the property rights protected by section 24 of the HRA. It is expected that all *required lifejackets* in circulation will meet the symbol requirements as the symbols are already placed on lifejackets by all reputable manufacturers. While it is therefore expected that the amendments will not have any real impact on existing property rights, there is a possibility that some lifejackets that otherwise meet requirements may not be marked with the requisite symbol. As a result, the amendment may limit a person's right to use their property in the way they intended.

The amendments to prescribe the Bribie Island coastal bar and clarify lifejacket labelling requirements may extend the operation of the current offence in section 44 (Safety equipment obligation) of TOMSA. An infringement notice is available for that offence under the *State Penalties Enforcement Regulation 2014* (the SPE Regulation) and, as a result, the amendments may engage or limit human rights arising from the issue of infringement notices including:

- 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 the HRA)
- Fair hearing (section 31 of the HRA)
- Rights in criminal proceedings (section 32 of HRA)

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

Clarify lifejacket labelling requirements: 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 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. 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.

(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 that clarifies lifejacket labelling requirements is to promote maritime safety. Lifejackets are crucial safety equipment for Queensland regulated ships. Lifejackets that do not meet appropriate standards risk people's lives (compromising a person's right to life). Highlighting labelling requirements for lifejackets recognises the direct relationship between the absence of the requisite symbol on a lifejacket and the lifejacket not being a *required lifejacket*.

The symbols that must be on *required lifejackets* may assist ship owners and masters to identify whether they have the appropriate lifejacket for the intended voyages. . The symbols will also assist enforcement officers to identify when a lifejacket is not the *required lifejacket* and for prosecutors to more efficiently prosecute lifejacket offences. The deterrence effect of effective prosecutions promotes awareness of lifejacket requirements improving maritime safety.

Importantly, the amendment does not change the requirement for a ship to be equipped with *required lifejackets*. As the symbols are already placed on the lifejackets by manufacturers, it is unlikely ship owners or masters will be deprived of the ability to use their existing *required lifejackets*. However, to the extent that a person's property rights may be impacted, the maritime safety purpose of the amendment, 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

The purpose of the labelling clarification is to promote maritime safety. Highlighting labelling requirements for lifejackets recognises the direct relationship between an absence of the requisite symbol on a lifejacket and evidence of a lifejacket not being a *required lifejacket*. Clarifying lifejacket labelling requirements through the regulation may assist ship owners and masters and enforcement officers to identify when lifejackets are not the *required lifejackets* for particular waters, thus improve safety. In addition, it will assist in prosecutions of lifejacket related offences. The deterrence effect of successful prosecutions promotes maritime safety. Leaving unmarked lifejackets in circulation erodes the ability for ship owners, masters and enforcement officers to identify non-compliant, potentially unsafe, lifejackets. Therefore, the limitation helps achieve the maritime safety purpose.

(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. The amendment recognises existing marking requirements and modern manufacturing processes. Out of an abundance of caution, the amendments will not commence until 1 September 2022 to allow anyone potentially impacted to check and replace their lifejackets if needed.

(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 amendment is designed to promote safety (supporting the human right to life). As the symbols are already applied through reputable manufacturing processes, there is a very low risk that a person's property rights will be impacted. On balance, the limitation is considered justified in the interests of safety.

Prescribe Bribie Island coastal bar and Clarify lifejacket labelling requirements – Issuing on penalty infringement notices:

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) 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. This right may be limited to the extent that the Amendment 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.

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. 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 infringement notice offences. The failure to pay an infringement notice fine may result in enforcement action being 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 for in the *State Penalties Enforcement Act 1999* (the SPE Act).

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. The Amendment 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 default.

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.

The Amendment Regulation may limit the right to a fair hearing and rights in criminal proceedings to the extent that it extends the operation of the infringement notice offence under section 44 of TOMSA. 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. A person may also elect for a matter in relation to an infringement notice offence that has been referred to SPER to be heard by a court. Once a person elects for a matter 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 in this regard. If there is an alternative view that the amendment does limit the human rights, it is considered that the limitation would also be reasonable and demonstrably justified as explained below.

(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 applies the existing offence under section 44 of TOMSA to the new Bribie Island coastal bar. It also extends that offence to apply to a failure to carry a required lifejacket with the required markings. The offence under section 44 can be prosecuted by way of issuing a PIN.

The section 44 offence requires ships to be properly equipped and is directly related to maritime safety. The amendments are designed to ensure that ships carry the appropriate lifejackets and that lifejackets are worn when crossing the Bribie Island coastal bar.

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.

Providing for the issuing of infringement notices for failure to comply with these requirements 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, whilst retaining the person's entitlement to a court hearing if they choose.

Allowing infringement notices to be issued for a section 44 TOMSA offence is consistent with maritime safety objectives and also:

- ensures an efficient means of enforcing this offence;
- avoids 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 Amendment Regulation which will assist in achieving the desired maritime safety outcomes.

Enabling infringement notices to be issued for section 44 TOMSA offences 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 Amendment Regulation which will assist in achieving the desired maritime 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, the increased number of prosecutions proceeding by way of complaint and summons would increase costs to alleged offenders both in terms of financial impact and the emotional impact that court attendance potentially causes. It would also increase the work required to be undertaken by Queensland courts in circumstances where people may prefer to have the matter dealt with quickly by way of simply paying a PIN.

Importantly, there are protections built into the fine enforcement system under the SPE Act which ensure 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 Amendment Regulation. The requirements in the Amendment Regulation are in place for the safety and benefit of all those involved in maritime activities. A person who receives a PIN who cannot afford to pay the whole fine can also seek assistance from the SPER to pay the fine by instalments or settle the debt through other activities such as a work and development order.

As mentioned, 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 Amendment Regulation provides a proportionate response to encourage maritime safety. 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 maritime safety, potentially affecting the safety of other persons involved in maritime activities.

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 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 PIN fines.

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 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 promoting maritime safety through ensuring an effective enforcement system outweighs the potential limitations on the right to recognition and equality before the law, a potential negative impact on 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 Amendment Regulation 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

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