

# Transport and Other Legislation Amendment Regulation (No. 2) 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 and Other Legislation Amendment Regulation (No. 2) 2022* (the Amendment Regulation) made under the *Rail Safety National Law (Queensland) Act 2017*, the *State Penalties Enforcement Act 1999* (SPE Act) 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

### *Improving road safety: Increasing penalties for high-risk driving offences*

Road safety statistics highlight that in 2020 and 2021, there has been a tragic increase in road trauma on Queensland roads. Despite record investment in a wide range of road safety initiatives, the number of people losing their lives and being seriously injured on Queensland roads continues to have a tragic impact on our society. The number of lives lost on Queensland roads increased from 220 in 2019 to 278 in 2020. Data currently available from the Department of Transport and Main Roads' (TMR) Crash database indicates that for 2021, there were 274 fatalities.

Failing to properly wear a seatbelt, failing to obey red traffic lights and similar traffic light signals and speeding are major contributors to this persistently high-level of road trauma. From 1 January 2021 to 30 September 2021 there were 91 fatalities as a result of these high-risk behaviours.

Those who fail to properly wear a seatbelt place themselves and their passengers at risk and place a significant burden on the State's health care system. This behaviour can have devastating consequences. From 1 January 2021 to 30 September 2021, there were 27 fatalities, and from 1 January 2021 to 31 July 2021, there were 124 hospitalisations involving vehicle occupants not wearing a seatbelt. The TMR Road Crash database suggests that occupants not wearing a seatbelt are nine times more likely to be killed in a crash. TMR's annual Driver Attitudes and Behaviour Survey found that, over the past five years, between 5 per cent and 14 per cent of Queenslanders have driven on public roads without wearing a seatbelt.

Failing to obey a traffic light signal is a serious offence that has the potential to result in significant road trauma to vehicle occupants as well as other road users, including pedestrians and cyclists. From 1 January 2021 to 30 September 2021, there were 8 fatalities, and from 1 January 2021 to 31 July 2021, there were 228 hospitalisations involving drivers running red lights. TMR's 2021 Driver Attitudes and Behaviour Survey found that 22.5 per cent of motorists self-report as having previously disobeyed a red light.

Speeding is also a significant contributor to crashes. From 1 January 2021 to 30 September 2021, there were 56 fatalities, and from 1 January 2021 to 31 July 2021, there were 264 hospitalisations as a result of crashes involving speeding drivers or riders. Speeding is also a pervasive driver behaviour, with more than one million infringements issued annually in Queensland. Speed surveys show that the majority of drivers that speed do so at lower levels. The relative risk of lower-level speeding is not as high as speeding by excessive amounts. However, due to the high volume of speeding at lower levels, the collective risk contributes to a high proportion of road trauma. Around half of all serious crashes involving speeding drivers or riders happen at less than 10 km/h above the speed limit.

The Amendment Regulation aims to improve road safety by increasing penalties for the offences aimed at preventing these three high-risk driving behaviours. The penalty increases are designed to send a strong deterrent message to drivers who engage in high-risk offending and to encourage compliance. The penalty increases will be combined with a comprehensive communications campaign to create public awareness of the increase in penalties for seatbelt, traffic light and speeding offences.

The Amendment Regulation amends the *State Penalties Enforcement Regulation 2014* (Penalties Regulation) to increase the penalty infringement fines mentioned below from 1 July 2022. The value of the 2021/22 penalty unit is \$137.85, as prescribed in section 3 of the *Penalties and Sentences Regulation 2015*. That value will be subject to annual indexation from 1 July 2022. As the indexation rate is yet to be formally approved, the fines are expressed below as penalty units only.

### Seatbelt Offences

The infringement notice fine for the following offences will be increased from three penalty units to seven and a half penalty units:

- a driver failing to properly wear a seatbelt;
- a passenger 16 years and over failing to properly wear a seatbelt;
- a driver failing to ensure a passenger properly wears a seatbelt.

The Driver Licensing Regulation is also being amended to:

- increase the number of demerit points for the seatbelt offences outlined above from three to four; and
- increase the number of additional demerit points from three to four where a driver commits one of the following seatbelt offences within 12 months of a previous such offence:
  - a driver failing to properly wear a seat belt;
  - a driver failing to ensure a passenger under 16 years properly wears a seatbelt.

### Red light and similar traffic light offences

The infringement notice fines for the following categories of offences will be increased from three penalty units to four penalty units:

- failing to obey a red traffic light or arrow;
- failing to obey a yellow traffic light or arrow;
- failing to obey bus (B) lights;
- failing to obey tram (T) lights.

### Speeding

The Penalties Regulation and the Driver Licensing Regulation are being amended to change the penalty intervals for speeding:

- from 1 – 12 km/h to 1 – 10 km/h; and
- from 13 – 20 km/h to 11 – 20 km/h

The infringement notice fines for speeding offences are being increased, as follows:

Offence		Fine in penalty units	
		From	To
Speeding	1-10 km/h	1 <sup>1/3</sup>	2
	11-20 km/h	2	3
	21-30 km/h	3 <sup>1/3</sup>	4 <sup>1/2</sup>
	31-40 km/h	4 <sup>2/3</sup>	7 <sup>1/2</sup>
	>40 km/h	9 <sup>1/3</sup>	11 <sup>1/2</sup>

### Fine levels

The fine amounts mentioned above are for individuals. Penalties for seatbelt, red light and speeding offences detected by camera, where the offending vehicle is registered to a corporation, will continue to be set at five times the penalty for an individual, as provided for in section 165(4) of the *State Penalties Enforcement Act 1999* and the Penalties Regulation. However, a corporation can nominate the responsible driver, in which case a new infringement notice is issued to that driver and the penalty for an individual is applicable.

### *Medical certificates for drivers aged 75 or older*

Under section 253 of the Driver Licensing Regulation, drivers aged 75 years and over must carry and drive in accordance with a medical certificate that has been issued within the last 13 months. These requirements recognise that medical conditions can become more prevalent with age, which may affect a person's ability to drive safely.

The Amendment Regulation omits Part 4 division 2 of the *Transport Legislation (COVID-19 Emergency Response) Regulation 2020*. This will remove the temporarily modified medical certificate arrangements that assisted older drivers to follow health advice and stay at home during the peak of the COVID period. The requirements under section 253 of the Driver Licensing Regulation are consequently reinstated by the Amendment Regulation.

*Devices used for preliminary breath tests under the Rail Safety National Law*

The Amendment Regulation amends the *Rail Safety National Law (Queensland) Regulation 2017* to update the reference to the Australian Standard for devices used for preliminary breath alcohol tests performed on rail safety workers under the *Rail Safety National Law*.

## Human Rights Issues

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

The infringement notice fines under the Penalties Regulation are being increased for seatbelt, traffic light and speeding offences. The amendments may engage Property Rights (section 24 of the HRA)

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

(a) The nature of the rights

Section 24 of the HRA (Property Rights) 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 increases infringement notice fines. 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 SPE Act.

(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 increases infringement notice fines for failing to obey the requirements in the following sections of the Queensland Road Rules:

- Section 20 (requirement to comply with speed limits);
- Sections 264(1), 264A(1), and 265(1) (requirements on drivers and passengers about properly wearing seatbelts);
- Sections 56(1) and (2), 57(1) and (2), 59(1), 60, 60A (1) and (2), 61(2), and 66(1) and (4) (requirements to obey red and yellow lights and arrows);

- Sections 274, 275, 277, and 279(2) (requirement to obey tram (T) lights); and
- Sections 281, 282, 284, and 286(2) (requirements to obey bus (B) lights).

All of the above requirements underpin the objective of deterring unsafe driving behaviours that contribute to road trauma. Road safety is inherently consistent within 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.

While these amendments will see a significant increase in the amount a person will be fined, this is a necessary change required to align penalties with the seriousness of offending and to reduce road trauma. As noted above, these high-risk driving behaviours have sadly resulted in a large number of fatalities, particularly over the past two years. The proposed penalty increases aim to send a strong deterrent message to drivers who engage in high-risk offending. It will encourage safer driving behaviours and address two of the 'Fatal Five' driving behaviours responsible for fatalities and serious injuries on Queensland roads. It is important for road safety outcomes that drivers are complying with the Queensland Road Rules and not engaging in these high-risk behaviours.

The increases in infringement notice fines for the purpose of reducing road trauma 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 increases in infringement notice fines and the purpose of reducing road trauma. The fine increases send a strong deterrent message which helps to encourage compliance with the Queensland Road Rules. This then reduces the incidence of high-risk driving behaviour which has a positive impact on the level of road trauma.

The deterrent effect of increased monetary penalties on rates of offending is evidenced by infringement data showing that from January 2019 to November 2019 (when the mobile phone penalty increases were first announced) there was an average of 1,164 mobile phone infringements issued per month. From February 2020 (post the commencement of the increased penalties) to March 2021 there was an average of 485 mobile phone infringements issued per month, a 58 per cent reduction. While reduced travel during the COVID-19 period will have had an impact on this result, the reduction in mobile phone infringements was greater than other high-risk offences during this period.

Increasing monetary fines for traffic offences has also been shown to reduce recidivism rates in Queensland. The specific deterrent effect of increased monetary penalties on rates of re-offending is evidenced by an analysis of an increase to monetary penalties for speeding offences published in 2015 which revealed a subsequent 6.3 per cent reduction in recidivism.

(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 decreasing road trauma, other than by increasing infringement notice fines for offences targeting these high-risk driving behaviours. Current penalties do not align with the serious consequences of not complying with requirements related to seatbelt, traffic lights and speed in the Queensland Road Rules.

The road toll for 2021 continues to show an unacceptable level of fatalities and hospitalisations. Therefore, positive action is required in order to reduce this level of road trauma. Increased public education campaigns in isolation may not have sufficient impact to bring about compliant driving behaviours.

However, the increased infringement notice fines introduced by the Amendment Regulation will be supported by a comprehensive communications campaign to create public awareness of the increase in penalties for these high-risk behaviours. This approach is consistent with approaches in other Australian jurisdictions, all of which employ a mix of education, communication, regulation and enforcement.

There are also protections built into the fine enforcement system under the SPE Act for a person who has been issued with an infringement notice fine:

- A person 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 who is 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).

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

Increasing infringement notice fines to deter high-risk driving behaviours provides a proportionate response to encourage road safety. A person who is issued with an infringement notice fine has a number of options available, as outlined above. These include paying the fine by instalments or settling the debt through other means. These options help to ensure that a person is not arbitrarily deprived of their property. Any limitation on property rights is justified in light of the benefit to the person and the broader road-using public due to increased compliance with the Queensland Road Rules and reduction in road trauma.

## 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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