

Transport and Other Legislation Amendment Regulation (No. 3) 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. 3) 2022* (the Amendment Regulation) made under the *State Penalties Enforcement Act 1999* (SPE Act), the *Transport Operations (Marine Safety) Act 1994* and the *Transport Operations (Road Use Management) Act 1995*.

Shannon Fentiman MP, Attorney-General and Minister for Justice, Minister for Women, and Minister for the Prevention of Domestic and Family Violence has granted authority for the preparation of this human rights certificate to the extent the proposed Regulation is made under the SPE Act.

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 the safety of emergency response workers: Move over, slow down (MOSLO) laws

Emergency response workers, including police officers, paramedics, firefighters, state emergency service officers, break-down assistance providers, tow truck drivers and transport inspectors are exposed to significant risk when working at the roadside from vehicles passing at close proximity and high speeds. These workers typically work in unplanned, unpredictable, and high-risk locations where they are often unable to deploy appropriate traffic management controls to effectively slow and divert passing traffic. The consequences of an incident involving a passing vehicle are likely to be severe, including serious injury or death.

The safety of emergency response workers on Queensland roads is a known road safety issue, with the Department of Transport and Main Roads (TMR) having previously delivered educational materials and road safety campaigns to illicit driver behaviour change. The Queensland Government made an election commitment prior to the 2020 State Election to undertake a policy review (the review) to investigate how to better protect roadside workers, including first responders and roadside assistance workers. The review found that the combination of a regulatory approach and increased education and communication was the best combination of initiatives to improve the safety of emergency response workers.

As a result of the review, MOSLO laws are being implemented to protect the safety of emergency response workers.

The Amendment Regulation will do the following:

- Amend the *Transport Operations (Road Use Management—Road Rules) Regulation 2009* (Queensland Road Rules) to:
 - Require that the driver of a vehicle passing a parked Emergency Response Vehicle (ERV) displaying a flashing warning light on a multi-lane road, must pass with a clear lane between the driver’s vehicle and the ERV. If unable to leave a clear lane on a multi-lane road, or the driver is on a single lane road, the driver must leave a sufficient distance between their vehicle and the ERV, any associated vehicle and any associated person to avoid a collision and to pass the ERV at a speed that does not put at risk the safety of any associated person.
 - Establish that an ERV will include the following:
 - Queensland Ambulance Service vehicles;
 - Queensland Fire and Emergency Service vehicles;
 - Queensland Police Service vehicles;
 - Rural Fire Brigade vehicles;
 - State Emergency Service vehicles;
 - Transport Compliance vehicles including:
 - TMR incident response vehicles; and
 - National Heavy Vehicle Regulator vehicles;
 - Motor breakdown service vehicles that are clearly marked and identifiable; and
 - Tow trucks.
 - Set a maximum court-imposed penalty for the MOSLO offences of 30 penalty units (\$4312).
 - Increase the maximum speed that a B-triple combination can travel from 90km/h to 100km/h.
- Amend the *State Penalties Enforcement Regulation 2014* (Penalties Regulation) to introduce two penalty infringement notice fines of three penalty units (\$431) for failing to obey the MOSLO requirements under new section 78A(2) and (4) (MOSLO requirements).
- Amend the *Transport Operations (Road Use Management—Driver Licensing) Regulation 2021* to provide that the number of demerit points to be applied for an offence under the MOSLO requirements is three.
- Amend the *Transport Operations (Marine Safety) Regulation 2016* to correct a reference to a coordinate that sets out the bounds of the Townsville compulsory pilotage area.

Human Rights Issues

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

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)
- Right to life (section 16 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) and rights in criminal proceedings (section 32 of the HRA)

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

Right to recognition and equality before the law (section 15 of the HRA)

(a) The nature of the right

The right to recognition and equality before the law reflects that every person holds the same human rights by virtue of being a human and not because of some particular characteristic or membership of a particular social group. This right encompasses the right to recognition as a person before the law and the right to enjoy human rights without discrimination.

This right may be limited to the extent that the Amendment Regulation imposes a financial penalty, through a court-imposed fine or a penalty infringement notice, for failing to comply with the MOSLO requirements. The requirement to pay a fine for such a behaviour may adversely and disproportionately impact sectors of the community such as persons of a lower socio-economic status who may have more difficulty paying a monetary sum.

(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

Any limitation on the right to equality before the law is to ensure the efficient enforcement of non-compliance with the new MOSLO requirements. In a free and democratic society, there is an expectation and requirement that all drivers conduct themselves safely on Queensland roads and have consideration for the safety of themselves and other road users. In improving the safety of emergency response workers, the MOSLO requirements will also promote the right to life.

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

Any limit on the right to equality is to ensure efficient enforcement processes can apply where drivers do not follow the MOSLO requirements when passing ERVs, putting at risk the safety of emergency response workers.

A person of low socio-economic status who may have lesser financial capacity to pay a financial penalty has the same opportunity as all other drivers to observe safe driving behaviours and obey the road rules. This in turn will avoid the impact of a financial penalty.

The road rules are in place for the safety and benefit of all road users equally. A person who receives a court-imposed fine or penalty infringement notice who cannot afford to pay the whole fine amount can also seek assistance from the State Penalties Enforcement Registry to pay the fine by instalments or settle the debt through other activities such as a work and development order.

Where a matter is 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.

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

It is considered that there are no less restrictive ways available to achieve the purpose of efficient enforcement of non-compliance with the MOSLO requirements, to improve the safety of emergency response workers.

Financial penalties, including penalty infringement notices, are a key measure to help deter unsafe behaviours on the roads that put the lives of other road users at risk. A person can avoid having to pay a fine by observing safe driving behaviours and obeying the road rules.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human rights, taking into account the nature and extent of the limitation

For the reasons outlined above, any potential human right impact is considered reasonable and justified. There is a road safety benefit to emergency response workers and to the broader community of requiring drivers to comply with the MOSLO requirements.

While the imposition of a financial penalty may have a greater impact upon a person from a lower socio-economic group, it is considered that the importance of maintaining the punishment and deterrent effect of penalties for applicable offences outweighs any potential limitation on the right.

Right to life (section 16 of the HRA)

The right to life reflects that every person has the right to life and has the right not to be arbitrarily deprived of life.

Ensuring that effective measures are in place to protect emergency response workers is consistent with the right to life.

Property rights (section 24 of the HRA)

(a) The nature of the right

Property rights protect the right of all persons to own property and provides that people have a right not to be arbitrarily deprived of their property.

The Amendment Regulation may limit property rights to the extent that it introduces new financial penalties, through court-imposed fines or penalty infringement notices, for failing to comply with the MOSLO requirements under section 78A(2) and (4) of the Queensland Road Rules. The failure to pay a 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

Any limitation on property rights is to ensure the efficient enforcement of non-compliance with the new MOSLO requirements. The MOSLO requirements underpin the objective of improving the safety of emergency response workers. Road safety is inherently consistent with a free and democratic society.

While these amendments will see the introduction of two new offences, with financial penalties for non-compliance, it is considered that the penalties are commensurate to the risk of offending and are 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 introduction of the offences, with financial penalties, and the purpose of improving the safety of emergency response workers. The fines will send a strong deterrent message to encourage compliance with the new requirements. This may then reduce the incidence of potentially dangerous driving when passing ERVs which has a positive impact on the level of road trauma.

(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 regulating the passing of parked ERVs to improve the safety of emergency response workers.

The new offences, and financial penalties, introduced by the Amendment Regulation will be supported by a communications campaign to create public awareness of the introduction of the new MOSLO laws and penalties for failing to move over and slow down when passing a parked ERV displaying a flashing warning light. This approach is consistent with approaches in other Australian jurisdictions, 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 a fine. For example:

- A person who cannot afford to pay the whole fine can also seek assistance from the SPER to pay the fine by instalments.
- 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).

Where a matter is 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

Financial penalties for drivers who do not comply with the requirements to move over and slow down when passing a parked ERV displaying a flashing warning light provides a proportionate response to encourage road safety and improve the safety of emergency response workers. A person who is issued a court-imposed fine or a penalty infringement notice has a number of options available, including 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 by the anticipated increase in compliance with the new MOSLO requirements and the consequent increase in road safety.

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

(a) The nature of the right

The human right to liberty and security of person, under sections 29(1) and (2) of the HRA, is 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 prescribes financial penalties that may be enforced under the SPE Act. The registrar of SPER may issue an arrest and imprisonment warrant to a person for failing to pay an amount stated in an enforcement order, after the person fails to pay a financial penalty. 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.

(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

Any limitation on the right to liberty and security of person is to ensure the efficient and effective enforcement of non-compliance with the new MOSLO requirements to encourage compliance and improve the safety of emergency response workers.

These objectives are 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

If these offences were not prescribed as penalty infringement notice offences, and if this resulted in a lower amount of prosecutions, the threat of enforcement action against an offender may no longer be credible due to the significant cost to the State of court proceedings in relation to offences that aim to ensure road safety. This would likely reduce the deterrent effect of the offences, which would directly affect the effectiveness of the MOSLO laws, resulting in ongoing risks to the safety of emergency response workers.

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

As discussed above, there are a number of protections built into the fine enforcement system under the SPE Act to ensure that there are supports and options available to assist persons who are experiencing hardship and are unable to pay their fines. In addition, the SPE Charter ensures the powers of SPER to issue arrest and imprisonment warrants are rarely used in practice.

While there may be less restrictive options, it is considered that they would not achieve the purpose of regulating the passing of parked ERVs displaying a flashing warning light to improve the safety of emergency response workers. For example, an option which could potentially be considered less restrictive is to prosecute these offences through a court. Under the *Penalties and Sentences Act 1992*, a court is required to consider the financial circumstances of the offender and the nature of the burden that payment of the fine will have on the offender before imposing a fine. However, the cumulative burden on both the State and on alleged offenders of prosecuting all instances of non-compliance with the MOSLO requirements in a court means that this option is not feasible and would not achieve the purpose of efficiently enforcing compliance with the new laws to ensuring road safety.

Therefore, there is no less restrictive and reasonably available way to achieve the purpose of improving the safety of emergency response workers.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Introducing offences for failing to comply with the MOSLO requirements, including prescribing the offences as penalty infringement notice offences, will create a proportionate and effective enforcement response when a driver fails to safely pass a parked ERV displaying a flashing warning light or any other associated vehicle or associated person.

As previously discussed, a person has several options in relation to financial penalties to avoid arrest or imprisonment. For example, the person may pay the fine in full, elect for a matter in relation to a penalty infringement notice offence to be heard by a court, or apply for approval to pay the fine by instalments. If the person does not act in relation to a fine, the registrar of SPER may take further enforcement action relating to the unpaid amount under the SPE Act. This may, as a last resort, result in the registrar of SPER issuing an arrest and imprisonment warrant under the SPE Act. The SPER Charter makes it clear, however, that the use of other enforcement actions for unpaid fines is to be preferred over arrest and imprisonment. Other enforcement actions may include, among others, seizure and sale of property and vehicle immobilisation.

Having regard to the nature and extent of the potential limitation on the right to liberty and security of persons, I consider that the importance of improving the safety of emergency response workers by ensuring there is an efficient system for enforcing compliance with the MOSLO requirements outweighs the potential limit on the right to liberty and security, which in practice is unlikely to occur as a result of enforcement under the SPE Act of unpaid fines.

Fair hearing (section 31 of the HRA) and rights in criminal proceedings (section 32 of the HRA)

(a) The nature of the right

The human right to a fair hearing 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.

Human rights in criminal proceedings under section 32 of the HRA are 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 penalty infringement notice offences. This may arise because a person does not have to attend court in relation to a penalty infringement notice offence.

(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

A person may elect for a matter in relation to a penalty infringement notice offence to be heard by a court instead of paying the fine. If a person elects for the matter to be heard by a court, the person has access to all the rights given under sections 31 and 32 of the HRA so, arguably, the Amendment Regulation does not limit these human rights. However, it is recognised that there may be disincentives to persons electing to have these matters heard in court, including the time, effort and stress involved in court processes and the costs, such as the offender levy, which will be imposed on the person in any case where a court imposes a sentence. This is in addition to any court-imposed fine.

Prescribing the MOLSO offences as penalty infringement notice offences provides the benefit to alleged offenders who decide not to contest the penalty infringement notice of not having to attend court. A person always retains the right to have the matter heard by a court and, if they exercise that right, they are afforded all the rights in criminal proceedings guaranteed under the HRA.

The purpose of these amendments is to regulate the passing of parked ERVs displaying a flashing warning light to improve the safety of emergency response workers. The Amendment Regulation retains the ability for individuals to elect to pay the penalty infringement fine or to have the matter heard by a court, enabling them to choose the option that best suits their individual circumstances. These objectives are 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 Amendment Regulation will improve the safety of emergency response workers, along with other associated persons, by ensuring there is an efficient system for enforcing compliance with the MOSLO requirements, which encourages compliance with the law. If the offence

provisions are not prescribed as penalty infringement notice offences, the threat of enforcement action against an offender may no longer be credible due to the significant cost to the State of court proceedings and the reduced likelihood of prosecution in relation to offences that aim to protect road safety.

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

There are various protections built into the fine enforcement system under the SPE Act, including the ability for persons to elect to have the matter relating to a penalty infringement notice heard by a court at various stages of the process. In addition, the SPE enforcement system includes a number of protections to ensure that there are supports and options available to assist persons who are experiencing hardship and are unable to pay their fines.

There is no less restrictive and reasonably available way to improve the safety of emergency response workers. If the MOSLO offences were not prescribed as penalty infringement notice 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 compliance with the MOSLO requirements.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Prescribing the offences under section 78A(2) and (4) as penalty infringement notice offences will create a proportionate and effective enforcement response when a driver fails to safely pass a parked ERV displaying a flashing warning light and any other associated vehicle or person.

Prescribing the offences for failing to comply with the MOSLO requirements as penalty infringement notice offences will ensure that there are proportionate and effective enforcement responses where a person fails to comply with the MOSLO requirements.

Although this may limit the right to fair hearing and rights in criminal proceedings, there are various protections under the SPE Act including the option for persons to elect to have a matter relating to a penalty infringement notice heard by a court at various stages of the process. In particular, section 15 of the SPE Act requires that all penalty infringement notices 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 to be heard by a court at the time the person is issued with a penalty infringement notice. Without the option to enforce the offence by way of a penalty infringement notice, all persons charged under the MOSLO requirements 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.

Having regard to the nature and extent of the potential limitation on the right to a fair hearing and rights in criminal proceedings, I consider that the importance of meeting the purpose of effectively enforcing compliance with the MOSLO requirement to improve the safety of emergency response workers outweighs any potential impact on these rights.

Conclusion

I consider that the Amendment Regulation is compatible with the HRA because it does potentially limit human rights but any 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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