

Transport Operations (Road Use Management—Road Rules) 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* (HRA), I, Mark Bailey MP, Minister for Transport and Main Roads, provide this human rights certificate with respect to the *Transport Operations (Road Use Management—Road Rules) and Other Legislation Amendment Regulation 2022* (the Amendment Regulation) made under 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.

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 Amendment Regulation is made under the SPE Act for the purpose of prescribing offences and infringement notice offences.

Overview of the Subordinate Legislation

A personal mobility device (PMD) is a small electric device designed to carry one person. PMDs are mainly used for commuting short distances or for recreation. Some common examples of PMDs are electric scooters (e-scooters), electric skateboards and solo wheeled devices.

PMD popularity has increased significantly since 2018 when the Queensland Road Rules (QRRs) were amended to allow a broader range of PMDs to be used on paths and roads in Queensland. Shared e-scooter service providers reported to the Brisbane City Council Transport Committee in March 2021 that daily trips on hired e-scooters numbered around 5,000. Also, it is estimated that there are about 10 to 20 e-scooters sold each day to private owners by retailers. Shared e-scooter schemes and the increased use of privately-owned PMDs offer benefits to the environment and may help to ease traffic congestion.

With increasing use and popularity, the safety of PMDs has drawn significant public attention. Figures collated by the Jamieson Trauma Institute within Queensland Health in the 18 months to May 2020 found that 797 people were admitted to the Royal Brisbane and Women's Hospital, Princess Alexandra Hospital and Mater Hospital after being injured on an "electric personal mobility device". There were also at least 12 instances of injury to pedestrians, bystanders or users of other vehicles in incidents with PMDs during this same period.

As a result of these safety issues, changes are being introduced to enhance the safety of PMD riders and other members of the public that they may interact with. The changes are designed to address safety concerns while continuing to allow the use of PMDs on appropriate road and road-related infrastructure.

The Amendment Regulation will amend the QRRs and the *State Penalties Enforcement Regulation 2014* to:

- introduce a lower speed limit that applies to PMD riders on pedestrian infrastructure such as footpaths;
- allow the contravention of speed limits that apply to PMD riders to be dealt with under the general speeding offence within section 20 of the QRRs (mirroring the approach taken for the enforcement of speed limits for all other drivers and riders, including bicycle riders);
- allow PMD riders to access bicycle lanes that are on roads with a speed limit of no more than 50km/h, and to access all bicycle lanes that are physically separated from other lanes of traffic by a structure including, for example, a dividing strip, traffic island or row of bollards or separation kerb;
- classify a PMD as a *vehicle* and its user as a *rider* so that the general road rules applying to vehicle drivers and riders (such as give way and traffic light rules) will also apply to PMD riders;
- extend to PMD riders the protection of the minimum distance passing rule that currently applies to the driver of a motor vehicle overtaking a bicycle rider;
- consolidate the specific rules applying to PMD and bicycle riders by:
 - incorporating the PMD specific rules currently in part 14 of the QRRs into part 15 which contains the rules applying to bicycles;
 - ensuring that rules that apply in the same way to both PMD and bicycle riders are contained in the same section, while still retaining requirements that are intended to apply differently to PMD and bicycle riders;
 - ensuring that the penalties that apply to PMD and bicycle riders are the same for the same contravention;
 - applying the rule that currently applies to bicycle riders towing a trailer with a person in or on it, to PMD riders; and
 - ensuring that vehicles must give way to bicycle riders in the same way they must give way to pedestrians and PMD riders when turning at intersections;
- facilitate efficient enforcement against non-compliant PMDs through changes to the definition of a PMD and the inclusion of new offence provisions for a PMD that does not have an effective stopping system or that has sharp protrusions;
- increase infringement notice fines applying to PMD riders who engage in high-risk behaviours such as speeding and mobile phone use while riding;
- require a working warning device to be fitted to a PMD that has handlebars, such as an e-scooter;
- allow PMD riders to choose to wear either an approved bicycle helmet or an approved motorbike helmet; and
- incorporate into the QRRs an image of additional signage which is reflective of an e-scooter.

The Amendment Regulation also makes consequential changes to the *Transport Operations (Road Use Management—Driver Licensing) Regulation 2021* to reflect the classification of a PMD as a *vehicle* and the user as a *rider*.

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)
- 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)

The Amendment Regulation raises the above human rights as it creates the possibility of the imposition of financial penalties on PMD riders and other road users. These financial penalties may be in the form of either a court-imposed fine or an infringement notice fine for the offence provisions that are impacted by the Amendment Regulation as outlined below.

Increased maximum court-imposed fine and infringement notice fine

- PMD rider failing to comply with the applicable speed limit.

Application of existing general offence provisions to PMD riders

- All relevant offences in the QRRs that apply to the driver of a vehicle will apply to a PMD rider. This includes all offences for the contravention of safety-related rules such as those requiring compliance with traffic light signals and give way requirements. It also includes the offence for the contravention of the rule aimed at preventing the unlawful use of parking spaces designated for use by people with disabilities.
- As a result of PMD riders being subject to the rules applying to a driver of a vehicle, PMD riders will be subject to the same penalties that apply to the drivers of all other vehicles and the riders of bicycles and animals for the same offence, apart from the offence of speeding. This means, that there will be an increase in the infringement notice fine that will apply to a PMD rider drinking liquor while riding, and a significant increase in the infringement notice fine that will apply to a PMD rider using a mobile phone. Applying the general mobile phone rule to PMD riders will also mean that there will be greater restrictions on how a rider may use and carry their phone.

Extension of existing driver offences

- The offence for a driver of a motor vehicle failing to pass a bicycle rider on a road by the prescribed minimum passing distance will be extended to apply to failing to pass a PMD rider on a road by the prescribed minimum passing distance.
- Offences about a driver failing to give way to a pedestrian or PMD rider at intersections will be extended to a driver failing to give way to a bicycle rider.

Consolidation of PMD and bicycle rules

- The following offences applying specifically to bicycle riders will be applied to a PMD rider:
 - Failure to comply with the requirements that apply to towing a trailer with a person in or on it;
 - Failure to comply with the prohibition on leading an animal;
 - Failure to comply with the give way requirements when entering a bicycle storage area.

- The following behaviours will attract an increase in the infringement notice fine as a result of aligning PMD penalties with bicycle penalties for the same offence:
 - PMD rider crossing a road at a crossing contrary to requirements;
 - PMD rider causing a traffic hazard;
 - PMD rider obstructing other drivers or pedestrians.

Minor increase in the infringement notice fine for PMD-specific offence

- PMD rider using a prohibited road.

New PMD-specific offence provisions

- PMD rider using a PMD that has handlebars but without a working warning device;
- PMD rider using a PMD without an effective stopping system;
- PMD rider using a PMD with sharp protrusions.

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

(a) The nature of the rights

Section 15 (Right to recognition and equality before the law) of the HRA 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 an infringement notice fine, for failing to comply with requirements in the QRRs. 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.

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.

The Amendment Regulation may limit property rights to the extent that it introduces new financial penalties, through court-imposed fines or infringement notice fines, for failing to comply with requirements in the QRRs. 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.

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.

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.

Section 31 (Fair Hearing) 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.

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 prescribes penalty infringement notice (PIN) offences. This may arise because a person does not have to attend court in relation to a PIN 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

Road safety is inherently consistent with a free and democratic society. It is considered to be in the public interest to both reduce road trauma and to promote a person's right to life. The above offence provisions (and their associated financial penalties) are underpinned by the purpose of enhancing road safety.

The only offence provision that will be extended to PMD riders by the Amendment Regulation that is not aimed at furthering road safety is the offence provision in relation to the unlawful use of parking spaces designated for use by people with disabilities. Ensuring that people with disabilities are able to maintain their human dignity by safely accessing the broader community is also inherently consistent with a free and democratic society.

The Amendment Regulation also allows infringement notices to be issued for non-compliance with the offence provisions outlined above. The purpose of this is to:

- ensure an efficient means of enforcing these offences;
- avoid the costs and inconvenience to both the individual and the State 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 QRRs which will assist in achieving the desired road safety outcomes.

In summary, the Amendment Regulation enhances road safety and enables safe parking access to people with disabilities by enabling financial penalties (either through a court-imposed or infringement notice fine) to be imposed. This 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 offence provisions and their financial penalties, and the purpose of improving the safety of PMD riders and other road users. The fines will send a strong deterrent message to encourage compliance with the requirements in the QRRs. This may then reduce the incidence of potentially dangerous behaviours of PMD riders and other

road users which has a positive impact on the level of road trauma. There is also a direct relationship between the offence provision being extended to PMD riders about the unlawful stopping in a parking area for people with disabilities, and the purpose of enabling safe parking access to people with disabilities. By extending this offence provision to PMD riders will help to ensure that the riders do not unlawfully use these areas to the detriment of people with disabilities.

In addition, 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 QRRs which will assist in achieving the desired road 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 purpose of improving the safety of PMD riders and other road users other than by maintaining a system that contains offences and associated penalties for failing to comply with safety requirements in the QRRs. It is also considered that there is no less restrictive and reasonably available way to achieve the purpose of ensuring safe access to parking spaces for people with disabilities other than by extending the existing rule so as to prevent the unlawful access of these spaces by PMD riders.

The offence and financial penalty changes introduced by the Amendment Regulation will be supported by a communications campaign to create public awareness of the introduction of the new requirements placed on PMD riders. This approach is consistent with approaches in other Australian jurisdictions, which employ a mix of education, communication, regulation and enforcement.

In addition, it is considered that there is no less restrictive and reasonably available way to achieve the purpose of ensuring efficient enforcement, 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, there would be a cost to alleged offenders caused by compulsory court attendance. 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 position. Further, if these offences are not prescribed as infringement notice offences, there would also be a cost to the broader community of court proceedings that may affect the State's ability to ensure road safety, potentially affecting the safety of other road users in the broader community.

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 an infringement notice fine 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 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 in the QRRs. These requirements are in place for the safety and benefit of all road users.

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

Financial penalties for PMD riders and other road users who do not comply with the requirements in the QRRs provide a proportionate response to encourage road safety, and to support safe access to parking spaces for people with disabilities

In addition, allowing infringement notices to be issued for non-compliance provides an efficient enforcement option. If this enforcement option were 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 road safety, potentially affecting the safety of other road users in the broader community.

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 position. 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. Even those prepared to plead guilty would be liable to pay the offender levy and the cost of issuing of the complaint and summons, which they would otherwise not have been liable for if an infringement notice could have been issued. In addition, there are various protections to assist persons who are unable to pay their PIN fines.

However, the Amendment Regulation does not affect the ability for individuals 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 decided by a court, which

promotes awareness that persons have this option 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.

The importance of protecting road safety, enabling safe access to parking spaces for people with disabilities, and ensuring an effective enforcement system also outweigh the potential limitations 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 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