

# Transport Legislation Amendment Regulation 2023

## 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* (HR Act), I, Mark Bailey MP, Minister for Transport and Main Roads, provide this human rights certificate with respect to the *Transport Legislation Amendment Regulation 2023* (the Amendment Regulation) made under the *Transport Infrastructure Act 1994*, the *Transport Operations (Road Use Management) Act 1995*, the *Transport Operations (Marine Safety) Act 1994* and the *Transport Planning and Coordination Act 1994*.

In my opinion, the Amendment Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

## Overview of the Subordinate Legislation

The purpose of the Amendment Regulation is to:

- amend the *Transport Operations (Road Use Management—Driver Licensing) Regulation 2021* to reduce the three-year learner licence fee to \$75 (73.18 fee units);
- amend the *Transport Operations (Road Use Management—Road Rules) Regulation 2009* to clarify that a *mobile phone* for section 300 includes a mobile phone whose telephone function is not capable of being used and a mobile phone that is being used for a function other than the telephone function;
- amend the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2021* to remove the requirement that personalised number plates can only be sold at auction in exchange for the payment of a published fee; and
- amend the *Transport Planning and Coordination Regulation 2017* (the TPC Regulation) to allow information kept in a *marine transport information database* to be disclosed to an *authorised person* of a *prescribed agency*.

## Human Rights Issues

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

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

- Property rights (section 24 of the HR Act) due to the introduction of a financial penalty for an authorised person that misuses information obtained from a marine transport information database.

- Privacy and reputation (section 25 of the HR Act) due to the amendments to allow the chief executive to release information from a marine transport information database.

For the reasons outlined below, however, I am of the view that the Amendment Regulation is compatible with these human rights.

**Consideration of reasonable limitations on human rights (section 13 of the HR Act):**

*Property rights (section 24 of the HR Act)*

(a) The nature of the right

Section 24 of the HR Act 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 as it inserts a new offence into the TPC Regulation with a maximum penalty of 20 penalty units (see new section 10F inserted by section 18 of the Amendment Regulation). The offence will be committed where an authorised person uses information disclosed by the chief executive from a marine transport information database for an unauthorised purpose or in contravention of a condition imposed by the chief executive. The payment of a court-imposed fine may deprive a person of their property.

(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

Information able to be disclosed by the chief executive under new provisions in the TPC Regulation will include personal information such as name and address details of marine licence holders. The misuse of such information can have serious consequences so it is essential that appropriate protections, such as the new offence provision, are put in place to address this risk. Maintaining the confidentiality of information held by the chief executive is consistent with a free and democratic society.

(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 provision and its financial penalty, and the purpose of ensuring that authorised persons do not misuse information disclosed to them. The risk of a court-imposed penalty will send a strong deterrent message to encourage compliance with the requirements of the TPC Regulation.

(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 protecting the privacy of individuals while allowing for the reasonable disclosure of information to prescribed agencies.

The Amendment Regulation prescribes the limited circumstances in which information may be disclosed from a marine transport information database. Specifically, information may only be released to agencies that are prescribed within the TPC Regulation. This ensures transparency of the sharing arrangements. The Amendment Regulation also provides that the information may only be disclosed to those prescribed agencies for purposes for which they are authorised to use the information under a law of the Commonwealth or a State or purposes consistent with the agency's functions under such a law. The disclosure of information to the prescribed agencies will be the subject of detailed Information Sharing Agreements.

To complement these protections, it is essential that a specific deterrent is included against the potential misuse of the information by authorised persons. The proposed maximum penalty provides that deterrent. All persons, including those of low socio-economic status who may have lesser financial capacity to pay a court-ordered fine, can avoid the impact of the fine by only using information for an approved purpose and in accordance with any conditions imposed by the chief executive.

It is noted that the offence is not one for which an infringement notice can be issued and it must instead be heard by a court. This will ensure the protection of other human rights that may arise from the imposition of a financial penalty.

For example, the court has a range of sentencing options available to it for those who may have a reduced capacity to pay a fine. This will protect the offender's right to equality before the law (section 15 of the HR Act). The court will ensure that a person is not arrested or detained other than in accordance with the law, thereby protecting the person's right to liberty (section 29 of the HR Act). Finally, the court will ensure that the person receives a fair hearing and that their rights in the criminal proceeding are protected (sections 31 and 32 of the HR Act).

(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 authorised persons who misuse confidential information provide a proportionate response that encourages the protection of people's privacy, while enabling maritime information to be disclosed in prescribed circumstances.

*Right to privacy and reputation (section 25 of the HR Act)*

(a) The nature of the right

Section 25 of the HR Act provides that a person has the right to not have their privacy, family, home or correspondence unlawfully or arbitrarily interfered and to not have their reputation unlawfully attacked.

This right may be limited by the Amendment Regulation as it provides for the disclosure of personal information from a marine transport information database in certain circumstances.

(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 amends the TPC Regulation to allow the chief executive to disclose information contained in a *marine transport information database* to an *authorised person* of a *prescribed agency* (see section 18 of the Amendment Regulation). This information may include personal information such as name and address details and may therefore raise privacy considerations.

The release of information to prescribed agencies will assist those agencies to perform functions under legislation. The prescribed agencies include those that Maritime Safety Queensland (MSQ) works closely with on maritime and other legislative administration and enforcement activities. For example, MSQ and the New South Wales (NSW) Police Force co-operate in relation to the enforcement of maritime laws around the Queensland-NSW border and the disclosure of maritime information by the chief executive will support that co-operative effort.

The effective administration and enforcement of legislation 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 disclosure of maritime information will assist other statutory bodies to administer and enforce relevant legislation. For example, it will allow officers from the Queensland Boating and Fisheries Patrol to more accurately identify and prosecute those who may be breaching fisheries legislation.

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

There are no other reasonably available and less intrusive or restrictive ways of achieving the purpose mentioned. Importantly, however, there will be significant safeguards applied to the disclosure of information.

Information may only be disclosed to agencies that are specifically prescribed within the TPC Regulation. This ensures transparency of the sharing arrangements. The prescribed agencies include those that MSQ works closely with on maritime and other legislative administration and enforcement activities. The Amendment Regulation provides that the information may only be disclosed to those prescribed agencies for purposes for which they are authorised to use the information under a law of the Commonwealth or a State or purposes consistent with the agency's functions under such a law.

The disclosure of information to the prescribed agencies will be the subject of detailed Information Sharing Agreements. These agreements will clearly articulate the roles and responsibilities of the respective agencies with regard to the handling, use, storage, disclosure and destruction of the information shared. In particular, the agreements will incorporate regular reviews, require compliance with the Queensland Government Information Security Policy (IS18:2018) and include annual assurance activities such as audits.

As a further protection, the Amendment Regulation provides that it is an offence for an authorised person to misuse information provided under the legislation and a maximum penalty of 20 penalty units can apply (see new section 10F inserted by section 18 of the Amendment Regulation).

- (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

Given the benefits that will result from these information sharing arrangements and the significant protections that will apply to them, on balance, the amendments do not unduly limit the right to privacy and reputation.

## Conclusion

I consider that the Amendment Regulation is compatible with the HR Act 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