

# Transport and Other 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* (the 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 2023* (the Amendment Regulation) made under the *State Penalties Enforcement Act 1999* (the SPE Act), the *Transport Infrastructure Act 1994* 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.

The Honourable 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 as infringement notice offences.

## Overview of the Subordinate Legislation

### New photographic detection device for speeding offences

The Camera Detected Offence Program is a key road safety program aimed at preventing crashes on Queensland roads. This program has a proven record in reducing road trauma.

The Amendment Regulation amends the *Traffic Regulation 1962* to approve a new speed camera system as a photographic detection device for speed enforcement.

### Transport of dangerous goods

National model laws have been developed to ensure a nationally consistent approach to the regulation of the transport of dangerous goods by road and rail. These laws are based on the internationally accepted United Nations Recommendations on the Transport of Dangerous Goods Model Regulations, which are revised every two years. These laws also provide the model to give effect to the Australian Code for the Transport of Dangerous Goods by Road and Rail (the ADG Code).

The Infrastructure and Transport Ministers Meeting held on 9 December 2022 approved the 7th package of amendments to the national Model Subordinate Instrument on the Transport of Dangerous Goods by Road or Rail (MSI) and approved the ADG Code edition 7.8. In accordance with the Inter-Governmental Agreement for Regulatory and Operational Reform

in Road, Rail and Intermodal Transport, states and territories are expected to amend their local legislation to reflect the latest round of changes made to the MSI.

The Amendment Regulation implements these changes in Queensland by amending the *Transport Infrastructure (Dangerous Goods by Rail) Regulation 2018* (the DG Rail Regulation), the *Transport Operations (Road Use Management—Dangerous Goods) Regulation 2018* (the DG Road Regulation) and the *State Penalties Enforcement Regulation 2014* (the SPE Regulation) to:

- Update and add definitions to be consistent with the ADG Code edition 7.8 definitions.
- Update cross references to reflect the renumbering of sections within the ADG Code as a result of the incorporation of a new chapter 6.9 that deals with portable tanks with shells made of fibre reinforced plastic.
- Provide that compliance plates attached to a portable tank that has a shell of fibre reinforced plastic must indicate that the shell is made of this material rather than metal.
- Renumber offence provisions relating to the attachment of compliance plates to multiple element gas containers and tank vehicles.
- Incorporate transitional provisions that apply whenever changes are made to ADG Code.
- Provide greater clarity to customers by reflecting existing administrative practices that benefit customers relating to a dangerous goods vehicle licence by:
  - expressly specifying that the duration of a licence is 12 months, and
  - providing that a reduced fee is payable for a dangerous goods vehicle to be added to the licence if that vehicle is added part way through the term of the licence. In those circumstances, the fee is calculated based on the number of months still available on the licence when the new vehicle is added to it.

## Human Rights Issues

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

The Amendment Regulation engages the following human rights under the HRA:

- 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 the HRA)

The Amendment Regulation updates the definition of portable tank in the DG Rail Regulation and the DG Road Regulation to be consistent with definitions in the ADG Code. This change in definition is minor and should have minimal impact on the dangerous goods transport industry as they already operate under the ADG Code. However, in so far as this term is incorporated into existing offence provisions in the DG Rail Regulation and the DG Road Regulation, the scope of these provisions has been potentially altered. These offence provisions relate to the packaging, marking, labelling, placarding, loading, compliance plate display, tank suitability and bulk transfer requirements that apply to the transport of dangerous goods.

For this reason, the Amendment Regulation raises the above human rights as it creates a change as to when the imposition of financial penalties may apply to persons involved in the transport of dangerous goods.

These financial penalties may be in the form of either a court-imposed fine or in the case of the penalties under the DG Road Regulation, an infringement notice fine.

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

#### **(a) The nature of the rights**

Section 15 (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 extends the scope of existing offences for which a financial penalty applies, through a court-imposed fine or an infringement notice fine. The requirement to pay a fine may adversely and disproportionately impact persons of 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 extends the scope of existing infringement notice offences. The failure to pay an infringement notice fine may result in enforcement action including, for example, vehicle immobilisation or seizure and sale of property (for example, a vehicle owned by the individual), as provided for under 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 and not 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 the State Penalties Enforcement Registry (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 provides that a person has 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 extends the scope of existing infringement notice offences. This may arise because a person does not have to attend court in relation to an 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

The purpose of the offence provisions, the scope of which may be potentially affected by the Amendment Regulation, is to enhance safety in the transport of dangerous goods. Rail and road safety are inherently consistent with a free and democratic society. It is considered in the public interest to both reduce rail and road trauma and to promote a person's right to life. By its nature, the transport of dangerous goods has the potential to pose a significant safety risk. The affected offence provisions, and the associated financial penalties, are underpinned by the purpose of enhancing safety.

The Amendment Regulation also extends the scope of existing offences in the DG Road Regulation for which infringement notice fines may be issued. The purpose of this is to promote road safety by:

- Ensuring an efficient means of enforcing these offences.
- Avoiding 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.
- Encouraging individuals to comply with the requirements in the DG Road Regulation which will assist in achieving the desired road safety outcomes.

Enhancing rail and road safety by enabling financial penalties to be imposed (either through a court-imposed fine or infringement notice fine), 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 safety in the transport of dangerous goods. The fines send a strong deterrent message to encourage compliance with the requirements in the DG Rail Regulation and the DG Road Regulation.

In addition, there is a direct relationship between the prescription of an infringement notice fine for offences under the DG Road Regulation and the purpose of providing an efficient means of enforcing these offences and avoiding court costs. This is because the infringement notice fine 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 DG Road Regulation which will assist in achieving the desired road safety outcomes relating to the transport of dangerous goods.

(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 enhancing safety in the transport of dangerous goods.

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 continuing to provide that the offences under the DG Road Regulation are infringement notice offences under the SPE Regulation.

If these offences were not infringement notice offences, they would need to proceed to court where additional costs may be payable. Infringement notice offences provides several benefits to alleged offenders who decide not to contest the infringement notice fine. 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 were not 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 that the seizure and sale of property or vehicle immobilisation because of non-payment of an infringement notice fine would only occur infrequently. 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 sets out the minimum amount that must be owed by a debtor before SPER can register an interest over property, or before vehicle immobilisation can occur.

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 fine is registered with SPER for enforcement action, the person may apply to pay their debt by instalments.
- 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 an infringement notice fine, can avoid the impact of any infringement notice fine by complying with the requirements in the DG Road Regulation. These requirements are in place for the safety and benefit of all road users.

A person may also elect to have their matter heard by a court. If the court finds the person guilty of the offence, it can take into account multiple factors when handing down the penalty, including the person's socio-economic status.

(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

It is important for transport safety outcomes that those involved in the transport of dangerous goods comply with requirements in the ADG Code, and that they are held accountable when non-compliance occurs.

In addition, allowing infringement notice fines to be issued for non-compliance under the DG Road Regulation provides an efficient enforcement option. If this enforcement option was 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 was 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.

Infringement notice offences provides several benefits to alleged offenders who decide not to contest the infringement notice fine. 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 these offences 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 they wanted their matter heard before a court.

The Amendment Regulation does not affect the ability for individuals to elect to have their matter heard by a court. Section 15 of the SPE Act requires that all infringement notice fines must indicate that the alleged offender may elect to have the matter decided by a court. This promotes awareness that persons have this option at the time they are 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 circumstances.

In respect of the right to recognition and equality before the law, while the imposition of an infringement notice 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 transport safety and ensuring an effective enforcement system also outweighs any potential limitation 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 *Human Rights Act 2019* because it limits human rights, but only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

**Honourable Mark Bailey MP**  
Minister for Transport and Main Roads