

# Transport Infrastructure (Public Marine Facilities) 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 and Minister for Digital Services, provide this human rights certificate with respect to the *Transport Infrastructure (Public Marine Facilities) Regulation 2023* (the proposed Regulation) made under the *Coastal Protection and Management Act 1995*, the *State Penalties Enforcement Act 1999* (the SPE Act) and the *Transport Infrastructure Act 1994* (the TI Act).

In my opinion, the proposed 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.

Yvette D'Ath, Attorney-General and Minister for Justice, 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 for the purpose of prescribing offences as infringement notice offences.

## Overview of the Subordinate Legislation

In accordance with Part 7 of the *Statutory Instruments Act 1992*, the *Transport Infrastructure (Public Marine Facilities) Regulation 2011* (the 2011 Regulation) will automatically expire on 31 August 2023. The proposed Regulation replaces the 2011 Regulation and continues to appropriately regulate the matters outlined below.

The proposed Regulation is aimed at ensuring the ongoing safe and efficient operation of public marine facilities. A public marine facility is state-owned or state-controlled transport infrastructure relating to Queensland waters, other than port or miscellaneous transport infrastructure. A public marine facility includes transport infrastructure such as jetties, boat ramps, floating walkways, landings and boat harbours.

The proposed Regulation includes provisions about the following matters:

- The management and use of, and safety at, public marine facilities.
- The control of access to and use of boat ramps and landings.
- The control of activities and conduct in a State managed boat harbour.
- The approval of moorings, fish receipt services, fuelling services and transport services to be undertaken in a State managed boat harbour.
- The appointment and powers of authorised officers for the proposed Regulation.

Part 13 of the proposed Regulation amends the *State Penalties Enforcement Regulation 2014* to make certain offences under the proposed Regulation offences for which a penalty infringement notice may be issued under the SPE Act. The offence provisions are aimed at ensuring:

- The safe and efficient use of boat ramps and landings.
- That fish receival services, fuelling services and transport services in State managed boat harbours are operated safely and efficiently.
- That ships are moored safely in State managed boat harbours.
- That enforcement activities can be effectively performed by authorised officers for public marine facilities.

## Human Rights Issues

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

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

- Freedom of movement
- Property rights
- Privacy and reputation
- Recognition and equality before the law
- Right to liberty and security of person
- Fair hearing
- Rights in criminal proceedings

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

#### *Public marine facilities regulatory framework – freedom of movement*

##### (a) The nature of the right

Section 19 (Freedom of movement) of the HRA provides that every person lawfully within Queensland has the right to move freely within Queensland and to enter and leave it and has the freedom to choose where to live. The right means that a person cannot be arbitrarily forced to remain in, or move to or from, a particular place.

The proposed Regulation may limit freedom of movement by allowing:

- The chief executive to control activities or conduct in a State managed boat harbour by regulatory notice.
- An authorised officer to control movements in a State managed boat harbour by giving a direction.

##### (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

Section 22 of the proposed Regulation provides the chief executive with the power to control activities or conduct in a State managed boat harbour by regulatory notice. This includes the

ability to control movement or mooring of ships, the movement of persons and the movement, stopping or parking of vehicles. Similarly, section 23 provides an authorised officer with the power to give a direction to a person in a State managed boat harbour. Examples of directions that may be given include a direction to control the movement or mooring of a ship and a direction to prohibit the use of a boat ramp or landing.

These provisions could restrict an individual's ability to move through an area of public space, that is, through the relevant boat harbour.

The purpose of these provisions is to support the broader objective of the proposed Regulation, which is to provide safe, secure, efficient and economically sustainable public marine transport infrastructure, including State managed boat harbours. To achieve this purpose, it may be necessary at times to control the movement or mooring of ships, goods, persons and vehicles. This level of control 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

There is a rational relationship between allowing control of activities within a State managed boat harbour by regulatory notice or authorised officer direction, and the purpose of providing for safe, efficient and economically sustainable State managed boat harbours.

For example, a regulatory notice at a State managed boat harbour may state that certain activities are prohibited, such as berthing a ship, without prior written approval. This allows the safe and efficient management of the public marine facility, ensuring berthing is available for approved ships, while prohibiting use for others. This ensures safety, efficient access and harbour sustainability.

An authorised officer direction may be used in a situation that requires an immediate response. An example of an authorised officer direction is to request someone parked on a boat ramp to move their vehicle, so everyone has access to the boat ramp. In addition to allowing access, this also ensures safety as congested boat ramps can lead to unsafe practices.

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

There is no other less restrictive and reasonably available way of achieving the purpose set out above.

Under section 22, the chief executive may only control the activities or conduct by regulatory notice in certain circumstances. These are where the chief executive reasonably believes that giving the regulatory notice is necessary to maintain or improve the safe, secure or efficient operation of, or convenience of users of, a State managed boat harbour or to prevent damage to the environment in the harbour.

Similarly, under section 23, an authorised officer may only give a direction to a person in a State managed boat harbour if the authorised officer reasonably believes giving the direction is necessary to ensure the safety and security of the harbour, users of the harbour or employees of the department.

These requirements prevent the arbitrary restriction of movement by the chief executive or an authorised officer within a State managed boat harbour.

(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

The importance of achieving the purpose of providing for the safe, efficient and economically sustainable use of State managed boat harbours outweighs any potential limitation on freedom of movement, and the limit is reasonable and demonstrably justifiable.

***Public marine facilities regulatory framework – property rights***

(a) The nature of the right

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. In the human rights context, 'arbitrarily' means capricious, unpredictable, unjust and unreasonable in the sense of not being proportionate to a legitimate policy objective.

The proposed Regulation may impact a person's property by:

- Allowing the chief executive or an authorised officer to control how certain property can be dealt with in a State managed boat harbour in prescribed circumstances.
- Establishing investigation and enforcement powers for authorised officers including powers to enter places and powers that are exercisable following entry.

(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

*Management of State managed boat harbours*

Section 23 of the proposed Regulation provides that an authorised officer can give a direction in a State managed boat harbour, including for example, a direction to control the movement, handling or storage of goods.

Part 6, division 1 provides that an authorised officer may take steps to move ships, vehicles or goods that have been illegally left in a State managed boat harbour.

Part 6, division 2 provides that the chief executive may take steps in relation to property believed to be abandoned in a State managed boat harbour.

The purpose of these powers is to help ensure the safe and efficient movement of the public through State managed boat harbours which is consistent with a free and democratic society based on human dignity, equality and freedom.

*Investigation and enforcement*

Part 7, division 2 provides that an authorised officer may enter a place in certain circumstances. This includes entry to a place of business stated in a fuelling service approval or a transport

service approval. Division 3 contains powers after entry and includes for example the power to inspect goods.

The purpose of these divisions is to enable appropriate enforcement of provisions aimed at ensuring safety and efficiency at State managed boat harbours. This 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

There is a rational relationship between the powers outlined above and the purpose of ensuring safety and efficiency at State managed boat harbours.

*Management of State managed boat harbours*

Enabling removal of illegally left or abandoned property from within a State managed boat harbour is directly connected with the purpose of ensuring safety and efficiency within harbours. For example, the removal of abandoned property, such as an unregistered boat trailer left in a car trailer parking area will allow efficient access to other users. Similarly, the removal of an abandoned tender tied to a pontoon would enable a transport service to move safely through a harbour without navigational hazards.

*Investigation and enforcement*

An authorised officer may need to enter a place of business of a boat harbour approval holder to investigate whether an activity is occurring other than in accordance with the conditions of their approval.

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

There are no less restrictive and reasonably available ways to achieve the purpose of ensuring the safety and efficiency at State managed boat harbours.

*Management of State managed boat harbours*

Part 6 division 1 allows the movement of property illegally left in a State managed boat harbour only if an authorised officer believes it is necessary having regard to the efficient operation of the harbour, or the safety and security of the harbour, users of the harbour or employees of the department. Also, the power can only be exercised if the officer has taken reasonable steps to find the person in charge of the property.

Part 6 division 2 provides that the chief executive must take reasonable steps to find the owner of abandoned property. If the chief executive locates the owner, the chief executive must give the owner a written notice describing the property and explaining how the owner can recover their property and advising that the property can be sold or disposed of if the property is not recovered. There are additional steps that must be followed prior to the chief executive being able to sell or dispose of the property.

### *Investigation and enforcement*

Part 7 division 2 allows entry only to a place of business stated in a relevant boat harbour approval. Also, entry is allowed only when the business is open for carrying on the business, otherwise open for entry, or required to be open for inspection under the boat harbour approval.

(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

The importance of achieving the purpose of providing for the safe and efficient use of State managed boat harbours outweighs the potential limitation on property rights, and the limit is reasonable and demonstrably justifiable.

### ***Public marine facilities regulatory framework – privacy and reputation***

(a) The nature of the right

Section 25 (Right to privacy and reputation) of the HRA provides that a person has the right not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with and not to have the person's reputation unlawfully attacked.

The proposed Regulation may limit the right to privacy and reputation by requiring the person to provide personal details and documents that may contain personal information during an investigation by an authorised officer.

(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

Section 71 of the proposed Regulation provides that an authorised officer may require a person to provide personal details and can request evidence to confirm the personal details provided. That is, this provision compels individuals to provide their name and address.

Section 73 provides that an authorised officer may require a person to produce documents and enables the officer to create a copy of the document. This provision enables the collection and storage of information which, depending on the information kept, could limit an individual's right not to have their privacy unlawfully or arbitrarily interfered with.

The purpose of these provisions is to facilitate the enforcement of provisions aimed at ensuring the safety at, and the efficiency of, public marine facilities. This in turn helps to protect the rights and safety of the public and, as such, the purpose of the provisions 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

There is a rational relationship between the powers outlined above and the purpose of facilitating enforcement of provisions aimed at ensuring the safety and the efficiency of public marine facilities.

An authorised officer who is investigating a potential offence must be able to establish basic facts. Allowing an authorised officer to request a person's name and address and to require evidence that these personal details are correct, ensures the officer can verify the person's identity. Where an offence has been committed, these provisions ensure that an infringement notice or other proceeding can be directed to the correct person.

Allowing an authorised officer to require a person to produce documents ensures the officer can verify information related to boat harbour approvals. For example, an authorised officer may require a person to produce logs and receipts for fuel servicing as these are required to be kept as a condition of their approval.

These powers all have the purpose of facilitating investigation and enforcement of offences within the proposed Regulation thereby protecting safety at, and the efficiency of, public marine facilities.

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

There are no less restrictive and reasonably available ways to achieve the purpose of facilitating the enforcement of provisions aimed at ensuring the safety and the efficiency of public marine facilities.

The power to require personal details only applies if an authorised officer finds a person committing an offence against the proposed Regulation or finds a person in circumstances that lead the authorised officer to reasonably suspect the person has just committed an offence against the regulation. It also applies if the authorised officer has information that leads the officer to reasonably suspect a person has just committed an offence against the regulation.

The ability for the authorised officer to require the person to give evidence of the correctness of their stated name or address only applies if the officer reasonably suspects the stated name or address is false.

The power to require production of a document and to copy that document only applies in relation to a document required to be kept by the person under a boat harbour approval. Also, a person to whom a document production requirement is made is not required to comply with the requirement if to comply might tend to incriminate the person or expose the person to a penalty.

The requirements around the exercise of each of these powers mean that any interference with a person's right to privacy will not be arbitrary.

(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

The importance of achieving the purpose of facilitating the enforcement of provisions aimed at providing for the safe and efficient use of public marine facilities outweighs the potential limitation on the right to privacy and reputation, and the limit is reasonable and demonstrably justifiable.

## ***Enforcement through State Penalties Enforcement Regulation 2014***

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

Section 15 (Right to recognition and equality before the law) of the HRA provides that every person has the right to recognition as a person before the law, that every person is equal before the law and that laws should not be discriminatory. Enforcement action by way of penalty infringement notice (PIN) may disproportionately impact 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 proposed Regulation may limit property rights to the extent that it prescribes 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 proposed 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 proposed Regulation may limit the right to a fair hearing and rights in criminal proceedings to the extent that it prescribes 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 offences which may be enforced through the issuing of an infringement notice under the SPE Act is to ensure safety and efficiency in the use of public marine facilities. The offences are outlined below.



### *Two penalty unit infringement notice offences*

- Driving or parking a vehicle on a boat ramp other than when using the vehicle to launch or retrieve a ship.
- Carrying out maintenance or repairs to a ship on a boat ramp.
- Carrying out maintenance or repairs to a ship in water near a boat ramp or landing unless the person has a reasonable excuse.
- Driving or parking a vehicle onto a landing other than-
  - in accordance with a notice erected on or near the landing, and
  - to deliver or pick up goods or passengers to or from a ship moored at the landing.
- Driving or parking a vehicle on a boat ramp or landing without pneumatic or rubber tyres.
- Failing to return, without reasonable excuse, an authorised officer's identity card within 21 days after the office ends.
- Anchoring a ship in a State managed boat harbour.
- Operating a service for receiving fish in a State managed boat harbour without a fish receival service approval.
- Failing to comply with the conditions of a fish receival service approval without reasonable excuse.
- Failure by the permitted user of a fish receival fixed facility to comply with the conditions of a fish receival service approval.

### *Three penalty unit infringement notice offences*

- Failing to comply with a regulatory notice.
- Failing to comply with a direction from an authorised officer unless the person has a reasonable excuse.
- Driving or parking a vehicle on to a boat ramp where the mass of the vehicle and its load is more than 5 tonne, or a greater mass approved by the chief executive.
- Mooring a ship in a State managed boat harbour without a mooring approval.
- Failing to comply with the conditions of a mooring approval without reasonable excuse.
- Operating a commercial ship in a State managed boat harbour to provide a transport service without a transport service approval.
- Failing to comply with the conditions of a transport service approval without reasonable excuse.

### *Four penalty unit infringement notice offences*

- Mooring a ship in a State managed boat harbour to a pile or buoy mooring other than head and stern.
- Operating a service to dispense fuel to a ship in a State managed boat harbour without a fuelling service approval.
- Failing to comply with the conditions of a fuelling service approval without reasonable excuse.

The purpose of prescribing infringement notice offences in the proposed Regulation 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.
- Encourage individuals to comply with the requirements in the proposed Regulation.

Enhancing safety and efficiency in the use of public marine facilities 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 enhancing the safety and efficiency in the use of public marine facilities. The fines send a strong deterrent message to encourage compliance with the requirements in the proposed Regulation.

In addition, there is a direct relationship between the prescription of an infringement notice fine for offences under the proposed 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 has the option to either pay or challenge through a court hearing. This system also encourages individuals to comply with the proposed Regulation which will assist in achieving the desired safety and efficiency outcomes relating to the use of public marine facilities.

(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 and efficiency in the use of public marine facilities other than to create the offence provisions outlined above.

In addition, it is considered that there is no less restrictive and reasonably available way to achieve the purpose of ensuring efficient enforcement of certain objective offences, other than by prescribing the offences as 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 provide several benefits to alleged offenders who decide not to contest the infringement notice fine. These benefits include not having to attend court with or without legal representation, as well as giving them certainty about their legal position.

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 proposed Regulation. These requirements are in place for the safety and benefit of public marine facility users.

Where a person is found guilty of an offence by a court, the court 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

In order to ensure safety and efficiency at public marine facilities, it is important that people are held accountable when non-compliance occurs.

Issuing of infringement notices for offences provides several benefits to alleged offenders who decide not to contest the infringement notice fine. These benefits include not having to attend court with or without legal representation, as well as giving them certainty about their legal position. Without that option, all persons charged with 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.

In addition, allowing infringement notice fines to be issued for non-compliance with the proposed Regulation provides an efficient enforcement option. If this enforcement option was not available, there may 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 recidivist offenders, thereby reducing the deterrent effect of the offences. This would directly affect the State's ability to ensure safety and efficiency in the use of public marine facilities.

The proposed 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. As outlined above, there are also certain fine payment options available under the SPE Act.

The importance of ensuring the safe and efficient use of public marine facilities and ensuring an effective enforcement system also outweighs any potential limitation on the human rights discussed in this certificate.

## **Conclusion**

I consider that the *Transport Infrastructure (Public Marine Facilities) Regulation 2023* is compatible with the *Human Rights Act 2019* because it limits human rights only to the extent that 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  
Minister for Digital Services