

Transport Operations (Passenger 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 and Minister for Digital Services provide this human rights certificate with respect to the *Transport Operations (Passenger Transport) and Other Legislation Amendment Regulation 2023* (the Amendment Regulation) made under the *Transport Operations (Passenger Transport) Act 1994* and the *State Penalties Enforcement Act 1999* (the SPE Act).

In my opinion, the Amendment Regulation as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019* (HRA). I base my opinion on the reasons outlined in this statement.

Yvette D'Ath MP, 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 Amendment Regulation is made under the SPE Act for the purpose of prescribing offences as infringement notice offences.

Overview of the Subordinate Legislation

The Amendment Regulation amends the *Transport Operations (Passenger Transport) Regulation 2018* (the PT Regulation) to:

- Clarify the requirement for the driver of a taxi to activate and use a taximeter to calculate the fare in a taxi providing a taxi service or a booked hire service where the fare for the journey has not been pre-agreed, as has always been the intent of section 85 of the PT Regulation.
- Create a new requirement for the driver to activate and use the taximeter in a taxi providing any booked hire service or taxi service for which a maximum fare has been gazetted under section 91ZR of the *Transport Operations (Passenger Transport) Act 1994* (the PT Act) where the fare has been agreed in advance. Requiring the taximeter to display the maximum fare will ensure that the driver does not breach section 91ZR of the PT Act by charging an agreed fare that exceeds the maximum fare for the journey.
- Create an offence for failing to use the taximeter in the above circumstances.
- Create an offence for tampering with a taximeter.
- Establish a lift payment scheme to provide that a driver is entitled to a lift payment for booked hire services and taxi services provided to Taxi Subsidy Scheme (TSS) members who require a wheelchair to travel.

- Introduce an offence where the payee (authorised booking entity or an operator) will face a penalty if they fail to pass the total lift payment to the driver.
- Enable greater flexibility in the setting of default fares for regional bus services.
- Make consequential amendments to the *State Penalties Enforcement Regulation 2014* for new offences in the PT Regulation.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

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

- 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 raises the above human rights as it introduces offence provisions that impose financial penalties that will apply to taxi drivers, booking entities and taxi operators for failing to comply with new taximeter and lift payment requirements.

Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

Enforcement through the State Penalties Enforcement Regulation 2014

(a) the nature of the right

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, every person is equal before the law and that laws should not be discriminatory. Enforcement action by way of penalty infringement notices for new offences related to taximeter use and lift payments 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 human right under section 24(2) of the HRA is limited where a person is unlawfully or arbitrarily deprived of the person's property. In the human rights context, arbitrarily is taken to mean capricious, unpredictable, unjust and unreasonable in the sense of not being proportionate to a legitimate policy objective. The Amendment 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 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 the 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 individuals the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing. This facilitates procedural fairness and protects natural justice. 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 in the instance a person elects for a matter relating to one of the new offences be heard by a court, instead of paying the infringement notice amount.

(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 may limit the above-mentioned rights to the extent that it prescribes infringement notice offences under the SPE Act. Providing for the issuing of infringement notices has a range of benefits to both the alleged offender and the State. This includes the effective and efficient prosecution of alleged offences without requiring a court appearance by the alleged offender, while retaining the person's entitlement to a court hearing if they choose. The option of the alleged offender electing to pay the infringement notice fine, creates efficiencies for the alleged offender and does not unduly burden the court system. It is therefore considered that the issuing of infringement notices is consistent with a free and democratic society based on human dignity, equality and freedom.

The purpose of the offence provisions in relation to: 1) failing to activate a taximeter, and 2) tampering with a taximeter, is to provide greater confidence and protection for taxi passengers that they will not be overcharged and to provide evidence of the journey and the fare charged to a passenger. Any limitation on the human rights identified above is to ensure the appropriate use of taximeters and therefore quality of service to passengers, as well as to allow for efficient enforcement processes to address instances of overcharging.

The purpose of the offence in relation to a payee (for example: an authorised booking entity or a taxi operator) failing to pass the total lift payment on to the driver is to ensure the driver receives the full benefit of the incentive payment, and consequently increase the service reliability issues for TSS members who require a wheelchair to travel. Any limitation on the human rights identified above is to improve the quality of taxi services to these vulnerable members of the community.

The above offences are underpinned by the objective of enhancing the quality and reliability of services provided to passengers travelling in taxis. Enabling infringement notices to be issued for these offences 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 the purposes of:

- Providing greater confidence and protection for taxi passengers that they will not be overcharged.
- Providing evidence of the taxi journey and the fare charged to a passenger.
- Ensuring the taxi driver receives the full benefit of the lift payment.
- Increasing the service quality for TSS members who require a wheelchair to travel.

The financial penalties serve to encourage compliance with the taximeter and lift payment requirements in the PT Regulation, thereby increasing the likelihood of achieving the purposes above. In addition, there is a direct relationship between the prescription of an infringement notice fine for offences under the PT 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 taximeter and lift payment requirements, which will assist in achieving the objective of enhancing the quality and reliability of services provided to passengers travelling in taxis. In the case of the lift payment and services provided to people who require a wheelchair to travel, it also promotes the human right of freedom of movement.

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

It is considered that there are no less restrictive and reasonably available ways to achieve the purposes outlined above. 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 or prepare their defence with or without legal representation, as well as giving them certainty about their legal position. In addition, if these offences were not infringement notice offences, there would be a cost to the broader community of court proceedings.

Importantly, there are also protections built into the fine enforcement system under the SPE Act for a person who has been issued with an infringement notice:

- 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 the court finds a person guilty of an offence, it can consider multiple factors when handing down the penalty, including the person's socio-economic status.
- If a fine is not paid within the specified timeframe and 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).
- (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

Introducing infringement notice offences to encourage compliance with new taximeter and lift payment provisions is a proportionate response consistent with a free and democratic society, based on human dignity, equality and freedom. The offences strike a fair balance between the benefits gained by the public and the limitation on the rights identified above.

Allowing infringement notice fines to be issued for non-compliance under the PT Regulation provides an efficient enforcement option. If this enforcement option was not available, there would likely be increased instances of overcharging passengers travelling in taxis and reduced incentive for taxi drivers to provide services to passengers who are required to travel in a wheelchair.

A person who is issued with an infringement notice has several options available, as outlined above. These include 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. In addition, the Amendment Regulation does not impact the ability for a person to elect to have their matter heard by a court, enabling the person to choose the option that best suits their circumstances.

The importance of ensuring the appropriate use of taximeters and providing reliable services to people who are required to travel in a wheelchair outweighs any potential limitation on the human rights identified above.

Conclusion

I consider that the *Transport Operations (Passenger Transport) and Other Legislation Amendment Regulation 2023* is compatible with the *Human Rights Act 2019* because it limits human rights 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
Minister for Digital Services