

State Penalties Enforcement 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*, I, Leanne Linard, Minister for the Environment and the Great Barrier Reef, Minister for Science and Minister for Multicultural Affairs provide this human rights certificate with respect to the *State Penalties Enforcement and Other Legislation Amendment Regulation 2023* (the Amendment Regulation) made under the *State Penalties Enforcement Act 1999* for offences prescribed under the *Forestry Act 1959*, the *Nature Conservation Act 1992* and the *Recreation Areas Management Act 2006*.

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*. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

In response to ongoing road fatalities, on 1 July 2022 the Department of Transport and Main Roads (TMR) progressed amendments to increase the penalty infringement notice (PIN) penalties for the driving offences of running red lights, speeding and failure to wear seatbelts, as a deterrent to unsafe driver behaviour.

Driver behaviour is also an ongoing issue in Queensland Parks and Wildlife Service (QPWS) areas such as protected areas, State forests, and recreation areas, where the Queensland road rules apply. Of particular concern is the increase in problematic driver behaviour and resultant incidents in recreation areas, where there have been six fatalities since 2013, five of these since 2020, and numerous vehicle rollovers requiring injured occupants to be transported by helicopter and ambulance for medical treatment. Unsafe driver behaviour creates risks to drivers, their passengers, QPWS officers, and other users of these areas.

While police officers can enforce road rules under TMR legislation (*Transport Operations (Road Use Management) Act 1995* (TORUM) and the *Transport Operations (Road Use Management—Road Rules) Regulation 2009* (Queensland Road Rules)) on QPWS areas, QPWS authorised officers have also been enforcing certain road rule related offences on roads in QPWS areas for almost 40 years under the legislation used to manage these areas. Current QPWS enforcement includes rules regarding driving without due care and attention, how a person must travel in a motor vehicle (e.g. not part of the vehicle that is for carriage of goods), enforcement of official traffic signs, use of motorbike and bicycle helmets, and use of seatbelts. This is enacted through cross references in QPWS legislation to provisions in TMR legislation.

However, there is a disparity between the penalties for PINs issued under QPWS legislation when compared with PIN penalties issued under TMR legislation for the same offence. For example, a person fined by Queensland police for not wearing a motorbike helmet is currently

fined a higher amount (3 penalty units) than someone fined for the same offence by a QPWS authorised officer (2 penalty units). Similarly, the increases in penalties for the seatbelt related offences in the Queensland Road Rules are not reflected in penalties for the same offence in QPWS legislation.

This inconsistency, while also reducing the effectiveness of the deterrent also raises issues of equity and fairness, as the amount of a person's fine should be determined by the significance of the offence and not the identity of the officer undertaking the compliance.

The Amendment Regulation aims to increase the deterrent of transport offences on QPWS areas and result in better consistency with transport legislation. The amendments will ensure that vehicle-related PINs can be issued in QPWS areas for the same PIN penalty amount by QPWS authorised officers as those issued by Queensland police officers.

To improve consistency with existing TMR penalties, the Amendment Regulation amends the *State Penalties Enforcement Regulation 2014* to increase the PIN penalties below for vehicle related offences prescribed under the *Forestry Regulation 2015*, the *Nature Conservation (Protected Areas Management) Regulation 2017* and the *Recreation Areas Management Regulation 2017*.

The offences and their amended infringement notice penalties are:

- failure to comply with requirements on drivers and passengers about properly wearing seatbelts in motor vehicles (increase from two to seven and a half penalty units);
- failure to wear an approved motorbike helmet while riding, or being a passenger on, a motorbike, quadbike or utility off road vehicle (increase from two to three penalty units);
- driving a motor vehicle without due care and attention (increase from two to four penalty units for *Nature Conservation (Protected Areas Management) Regulation 2017* and the *Recreation Areas Management Regulation 2017*, and new infringement notice of four penalty units in the *Forestry Regulation 2015*); and
- dangerous driving of vehicles other than motor vehicles and driving a vehicle other than a motor vehicle without due care and attention (new infringement notice of two penalty units in the *Forestry Regulation 2015*).

The infringement notice fines above are all for individuals. No infringement notices are prescribed for corporations.

A duplicated offence of section 29 of the *Forestry Regulation 2015* for failure to wear a motorbike helmet while riding a quad bike is also to be removed, as this is now covered by the provision within the Queensland Road Rules which is referenced in QPWS legislation.

The offence provisions in the *Forestry Regulation 2015*, the *Nature Conservation (Protected Areas Management) Regulation 2017* and the *Recreation Area Management Regulation 2017* that cross-reference section 83 of TORUM will be amended to clarify that the offence applies only to section 83(1)(c) of TORUM, which is driving without due care and attention other than where the person causes death of, or grievous bodily harm to, another person. Offences involving death or grievous bodily harm will continue to be investigated by the police.

Human Rights Issues

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

In my opinion, the Amendment Regulation engages the following rights in the *Human Rights Act 2019*:

- Right to recognition and equality before the law (section 15);
- Right to life (section 16);
- Right to freedom of expression (section 21); and
- Property rights (section 24).

Right to life (section 16 Human Rights Act 2019)

The right to life (section 16) protects that every person has the right to life and has the right not to be arbitrarily deprived of life. The Amendment Regulation promotes the right to life of drivers, passengers and other users of QPWS areas by deterring unsafe driving behaviours to improve road safety.

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

The provisions of the Amendment Regulation that engage human rights, other than right to life, are detailed below.

Right to recognition and equality before the law (section 15 Human Rights Act 2019)

(a) the nature of the right

Section 15 of the *Human Rights Act 2019* is a stand-alone right that also permeates all human rights. It encompasses both the right to recognition as a person before the law and the right to enjoy human rights without discrimination. The right provides that persons are equal before the law and are entitled to equal protection of the law without discrimination.

(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

This right may be limited by the Amendment Regulation as an increase in the penalties for offences may adversely and disproportionately impact sectors of the community such as vulnerable groups or persons of a lower socio-economic status who may have more difficulty paying a monetary sum.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The penalty increases in the Amendment Regulation underpin the objective of deterring transport offences (which are related to unsafe driver behaviour), thereby reducing the likelihood of accidents and injuries. This is to be achieved by increasing penalties, including by aligning penalties with those already in place under TMR legislation. Road safety is

inherently consistent within a free and democratic society. It is considered both in the public interest to reduce road trauma and to protect a person's right to life.

The Amendment Regulation increases infringement notice fines for vehicle related offences on QPWS areas. There is a direct relationship between the increases in infringement notice fines and improving driver behaviour. Analysis undertaken by TMR shows that increasing monetary fines for traffic offences reduces recidivism rates in Queensland. The ability of trained QPWS authorised officers to penalise offenders with increased fines for existing offences will help to encourage compliance with transport legislation on QPWS areas. This then reduces the incidence of high-risk driving behaviour which has a positive impact on the level of vehicle accidents.

(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 reasonable way available to deter transport offences and reduce the number of vehicle accidents in QPWS areas. The alignment of penalties across several pieces of legislation and creation of a more consistent compliance framework in relation to relevant offences under TMR legislation is the most effective mechanism to achieve the objective. Current penalties under QPWS legislation do not align with the TMR infringement notice fines, such as for seatbelt offences, which were increased by TMR in 2022 in response to serious consequences of people not wearing seatbelts.

Increased public education through departmental media and social media channels about responsible driving in QPWS areas has not resulted in a observable change in driving behaviours. However, through the Amendment Regulation, the increased infringement notice fines introduced by TMR will be reflected in infringement notices issued by QPWS officers, and this change in conjunction with ongoing compliance efforts, and associated public education to create awareness of the new fines are expected to assist with reduction in dangerous driving behaviours on QPWS areas.

There are protections built into the fine enforcement system under the *State Penalties Enforcement Act 1999* for a person who has been issued with an infringement notice fine such that:

- A person who cannot afford to pay the whole fine can also seek assistance from the State Penalty Enforcement Registry to pay the fine by instalments or settle the debt through other activities such as a work and development order; or
- A person who is 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

The Amendment Regulation has the effect on aligning penalties for certain offences in QPWS legislation with existing penalties under TMR legislation. This meets the objective of deterring transport offences and improves the consistency in the regulatory frameworks for addressing particular driving offences and is considered to provide a proportionate response to encourage road safety in a uniform way.

A person who is issued with an infringement notice fine may pay the fine by instalments or settle the debt through other means (as outlined above).

While the increase in the infringement notice fines has the potential to disproportionately impact offenders from vulnerable and low socio-economic groups it is considered that the importance of maintaining the deterrent effect of penalties for the offences outweighs the impact on the right.

Right to freedom of expression (section 21 Human Rights Act 2019)

(a) the nature of the right

The right to freedom of expression (section 21) protects the right to hold and express an opinion and to seek out and receive the expression of others' opinions. Ideas and opinions can be expressed orally, in writing, in print, by way of art or in another way chosen by the person. Freedom of expression could include the freedom to dress in a particular way and could arguably include the freedom to not wear a motorbike helmet.

(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 infringement notice fines for failing to wear a motorbike helmet in section 28(1)(f) of the *Forestry Regulation 2015*, section 123(1)(f) of the *Nature Conservation (Protected Areas Management) Regulation 2017* and section 18(1)(f) of the *Recreation Areas Management Regulation 2017* are increased by the Amendment Regulation to align with existing penalties under the Queensland Road Rules. The Amendment Regulation may have perceived limitations for the right to freedom of expression by enforcing the use of helmets; however, the use of helmets when operating a vehicle such as a motorcycle is already a requirement with an associated penalty infringement notice.

The penalty increases in the Amendment Regulation underpin the objective of deterring unsafe driving behaviours, including on varied types of roads located within QPWS areas. Road safety is inherently consistent within a free and democratic society. It is considered in the public interest to reduce injuries associated with vehicle accidents, for example, by encouraging the use of helmets when operating the relevant type of vehicle.

(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 increases in infringement notice fines and the purpose of deterring transport offences associated with unsafe driving behaviour. The fine increases send a strong message to encourage compliance with TMR legislation on QPWS areas. This then reduces the incidence of high-risk driving behaviour, such as riding a motorbike without a helmet, which has a positive impact on 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 reasonable way available to deter unsafe driving behaviour and reduce the severity of vehicle accidents in QPWS areas. The Amendment Regulation does not impose any new requirements regarding wearing helmets, as these requirements already exist. The current penalty for failure to wear a motorbike helmet

does not align with the TMR infringement notice fine for the same offence. The Amendment Regulation brings the penalty in line with TMR penalties.

- (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

Any perceived limitations on the right to freedom of expression by enforcing the use of helmets is justified in terms of the well-established evidence of increased rider safety and positive public health outcomes of these requirements.

Property rights (section 24 Human Rights Act 2019)

- (a) the nature of the right

Property rights (section 24) protects the right of all persons to own property and provides that people have a right to not be arbitrarily deprived of their property (including money). 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.

- (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 limits property rights to the extent that it prescribes infringement notice offences that require the payment of a monetary sum. The failure to pay a penalty infringement fine may result in enforcement action taken by the registrar of the State Penalty Enforcement Registry against the person, including among other actions, the seizure of the person's property and vehicle immobilisation as provided for in the *State Penalties Enforcement Act 1999*.

The Amendment Regulation increases infringement notice fines for failing to obey the requirements in the transport legislation, through increasing penalties in the *State Penalties Enforcement Regulation 2014* for offences in QPWS legislation that cross reference transport legislation offences as follows:

| Offence | Transport legislation section | QPWS legislation section |
|--|---|--|
| Failure to comply with requirements on drivers and passengers about properly wearing seatbelts | Queensland Road Rules sections: 264 264A 265 | <i>Forestry Regulation 2015</i> section 28(1)(b),(c),(d) <i>Nature Conservation (Protected Areas Management Regulation) 2017</i> section 123(1)(b), (c), (d) <i>Recreation Areas Management Regulation 2017</i> section 18(1)(b),(c),(d) |
| Failure to comply with comply with requirements for wearing motorbike helmets | Queensland Road Rules section 270 | <i>Forestry Regulation 2015</i> section 28(1)(f) <i>Nature Conservation (Protected Areas Management Regulation) 2017</i> section 123(1)(f) <i>Recreation Areas Management Regulation 2017</i> section 18(1)(f) |

| | | |
|--|------------------------|---|
| Driving a motor vehicle without due care and attention | TORUM section 83(1)(c) | <i>Forestry Regulation 2015</i> section 28(2)(a)* <i>Nature Conservation (Protected Areas Management Regulation) 2017</i> section 123(2)(a) <i>Recreation Areas Management Regulation 2017</i> section 18(2)(a) |
| Dangerous driving of vehicles other than motor vehicles, and driving vehicles other than motor vehicles without due care and attention | TORUM section 84 | <i>Forestry Regulation 2015</i> section 28(2)(b)* |

*New infringement notice offence

The penalty increases in the Amendment Regulation support the objective of deterring unsafe driving behaviours, including on roads within QPWS areas, which has the effect of a decrease in road-related incidents and improved safety to users of QPWS areas. Road safety is inherently consistent within a free and democratic society. It is in the public interest to reduce vehicle related injuries and is considered to promote a person’s right to life.

While these amendments will result in increases in the amount a person can be fined by a QPWS authorised officer for certain offences, the change generally aligns penalties in QPWS administered legislation with penalties that are already issued by Queensland police officers for the same offences under TMR legislation. These amendments will improve consistency across legislation. The increase to infringement notice fines 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 increases in infringement notice fines and improving driver behaviour. Analysis undertaken by TMR shows that increasing monetary fines for traffic offences reduces recidivism rates in Queensland. The fine increases send a strong deterrent message which helps to encourage compliance with the transport rules on QPWS areas. This then reduces the incidence of high-risk driving behaviour which has a positive impact on 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 reasonable way available to deter unsafe driving behaviour and reduce the number of vehicle accidents in QPWS areas. Current penalties under QPWS legislation do not align with the TMR infringement notice fines, such as for seatbelt offences, which were increased by TMR in 2022 in response to serious consequences of people not wearing seatbelts.

Increased public education through the departmental media and social media channels about responsible driving in QPWS areas has not resulted in an observable change in driving behaviours. However, through the Amendment Regulation, the increased infringement notice fines introduced by TMR will be reflected in infringement notices issued by QPWS officers, and this change in conjunction with ongoing compliance efforts, and associated public

education to create awareness of the new fines are expected to assist with reduction in dangerous driving behaviours on QPWS areas.

As outlined in this Human Rights Certificate for section 15 of the *Human Rights Act 2019*, there are also protections built into the fine enforcement system under the *State Penalties Enforcement Act 1999* for a person who has been issued with an infringement notice fine, and the ability to elect to have the matter heard by a court.

(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 Amendment Regulation provides a proportionate response to the current circumstances where a disparity exists between penalties under different legislation for committing the same offence. A more consistent regulatory framework will assist to encourage improved driver behaviour, with the aim of ultimately decreasing the incidents of vehicle related accidents and the associated injuries to drivers, passengers and other community members. Any deprivation of property in the form of money as a result of the increase in the infringement notice fines is considered to be proportionate and not arbitrary.

A person who is issued with an infringement notice fine may pay the fine by instalments or settle the debt through other means. Any limitation on property rights is justified considering the benefit to the broader road-using public by improving driver behaviour and safety.

Conclusion

I consider that the Amendment Regulation 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.

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