

Transport and Other Legislation Amendment Regulation (No. 2) 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 and Other Legislation Amendment Regulation (No. 2) 2023* (the Amendment Regulation) made under the *State Penalties Enforcement Act 1999* (the SPE Act), the *Transport Infrastructure Act 1994*, the *Transport Operations (Marine Safety) Act 1994* (the Marine Safety Act) 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 *Human Rights Act 2019*. 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

The Amendment Regulation amends the *State Penalties Enforcement Regulation 2014* (the SPE Regulation); the *Traffic Regulation 1962* (the Traffic Regulation); the *Transport Infrastructure (Dangerous Goods by Rail) Regulation 2018* (the Dangerous Goods by Rail Regulation); the *Transport Operations (Marine Safety) Regulation 2016* (the Marine Safety Regulation), and the *Transport Operations (Road Use Management—Vehicle Standards and Safety) Regulation 2021* (the Vehicle Standards Regulation).

Amendments to the State Penalties Enforcement Regulation 2014

Addition of infringement notice offences for the *Transport Infrastructure (Public Marine Facilities) Regulation 2023*

The Amendment Regulation prescribes three offences from the *Transport Infrastructure (Public Marine Facilities) Regulation 2023* (Public Marine Facilities Regulation) as infringement notice offences.

The Public Marine Facilities Regulation was subject to a rewrite process in 2023. There were three infringement notice offences under the *Transport Infrastructure (Public Marine Facilities) Regulation 2011*, that were not included as infringement notice offences in the

rewrite. This occurred because further consideration of their suitability as an infringement notice offence was required.

Part 2 of the Amendment Regulation amends the SPE Regulation to make certain offences under the Public Marine Facilities Regulation offences for which an 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.

Amendment to the Traffic Regulation 1962

Data block example

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 a data block example in the Traffic Regulation to make it more realistic.

Amendment to the Transport Infrastructure (Dangerous Goods by Rail) Regulation 2018

References to an authorised person

The Amendment Regulation changes the term 'authorised officer' to 'authorised person' in section 126 of the Dangerous Goods by Rail Regulation. It also removes the definition of authorised person from the dictionary as it is defined in the *Transport Infrastructure Act 1994*. The purpose of these changes is to maintain consistency with other references throughout the Dangerous Goods by Rail Regulation.

Amendments to the Transport Operations (Marine Safety) Regulation 2016

Lifejackets

The rising popularity of recreational boating in recent years has coincided with a rise in the number of marine incidents reported in Queensland. In 2021 alone, there were 380 marine incidents reported, which is a 12 per cent increase from the previous year. Of the 21 people reported to have fallen overboard, eight of those people lost their life. Of all those people who drowned, or were presumed to have drowned, none were wearing a lifejacket.

In addition, between 2017 and 2021 around half of the reported marine incidents involving a recreational ship that resulted in either serious injury (113 people) or loss of life (31 people) occurred in smooth waters.

An amendment to the Marine Safety Regulation will increase marine safety by removing a specific exception to carrying lifejackets when operating in certain smooth waters.

Update to marine standard reference

The *Transport Operations (Marine Safety—Queensland Regulated Ships Miscellaneous Equipment) Standard 2017* (the Standard) details how the general safety obligations for Queensland regulated ships can be met.

An amendment has been made to the Marine Safety Regulation to refer to the current version of the Standard.

Amendments to the Transport Operations (Road Use Management - Vehicle Standards and Safety) Regulation 2021

Mareeba Shire inspection certificate exemption

An owner of a registered vehicle must have an inspection certificate in effect before they can dispose of a vehicle to another person. An inspection certificate includes a Certificate of Inspection (COI) or a safety certificate. A COI is required by vehicles that are a COI vehicle under section 70, which includes certain heavy vehicles and commercial vehicles. There are several exemptions to this requirement which are found in Schedule 2 of the Vehicle Standards Regulation. Of relevance, for vehicles that are not COI vehicles, certain remote areas in Queensland are exempt from the requirement to have a safety certificate if the vehicle is not garaged within 50km of an authorised inspection station for the vehicle type.

Mareeba Shire was previously part of the Tablelands Region and was included as an exempt area. Mareeba Shire chose to leave the Tablelands Region and re-establish as its own shire. This de-amalgamation resulted in the need for Mareeba Shire to be added to the list of exempt areas.

An amendment to the Vehicle Standards Regulation includes Mareeba Shire as an exempt area.

Modification approvals for motorbikes

Most modifications for motorbikes require chief executive approval. For the chief executive to approve a motorbike modification they must be satisfied that the modification is either reasonably needed or likely to benefit the community and the modification must not make the vehicle unsafe to drive or park on a road. For motorbikes, meeting the criteria that the modification is either reasonably needed or likely to benefit the community is more onerous than for other light vehicles.

The Amendment Regulation amends the Vehicle Standards Regulation so that in deciding an application for a modification to a motorbike, the chief executive only needs to consider whether the modification would not make the vehicle unsafe to drive or park on a road.

Human Rights Issues

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

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 prescribes three offences from the Public Marine Facilities Regulation as infringement notice offences. These offences are:

- Section 15 Launching or retrieving ships at boat ramps
- Section 16 Obstructing person's use of boat ramps or landings
- Section 17 Anchoring, mooring or placing ships near boat ramps or landings

The Amendment Regulation also amends section 13 of the Marine Safety Regulation. This amendment removes an exception from carrying lifejackets in certain smooth waters when specific conditions are met. This changes the scope of an offence in the Marine Safety Act. Section 44 of the Marine Safety Act is a safety equipment obligation offence. The offence occurs when the owner or master of a ship operates the ship without the safety equipment required by a regulation. As the exception has been removed from the Marine Safety Regulation the scope of this offence is now wider.

For these reasons, the Amendment Regulation raises the above human rights as it creates three new infringement notice offences and changes the scope of a fourth.

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

Amendments to the State Penalties Enforcement Regulation 2014

(a) the nature of the right

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 prescribes three offences as infringement notice offences and extends the scope of a fourth offence 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 prescribes three offences as infringement notice offences and extends the scope of a fourth offence. 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 prescribes three offences as infringement notice offences and extends the scope of a fourth offence. 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 prescribing three offences from the Public Marine Facilities Regulation as infringement notice offences is to enhance the safe and efficient use of boat ramps and landings 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 Public Marine Facilities Regulation which will assist in achieving the desired safety outcomes.

The purpose of the amendment to the Marine Safety Regulation is to enhance marine safety. Marine safety is inherently consistent with a free and democratic society. It is considered in the public interest to reduce fatal and serious marine incidents and to promote a person's right to life.

The offence provision is one for which an infringement notice fine may be issued. The purpose of this is to promote marine 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 Marine Safety Regulation which will assist in achieving the desired marine safety outcomes.

This 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 the safe and efficient use of boat ramps and landings, and the purpose of improving marine safety. A fine sends a strong deterrent message to encourage compliance with the requirements in the Public Marine Facilities Regulation and the Marine Safety Regulation.

Further, there is a direct relationship between the prescription of an infringement notice fine for these offences and the purpose of providing an efficient means of enforcing this offence 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 Public Marine Facilities Regulation and the Marine Safety Regulation which will assist in achieving the desired safety and efficiency 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 reasonably available way to achieve the purpose of enhancing marine safety and the safe and efficient use of boat harbours and landings.

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 prescribing these offences as infringement notice offences under the SPE Regulation.

If these offences were not infringement notice offences, an alleged offender 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. 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 marine safety, potentially affecting the safety of other marine 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 Marine Safety Regulation and the Public Marine Facilities Regulation. These requirements are in place for the safety and benefit of all waterway 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 the safe and efficient use of boat harbours and landings that people comply with the requirements in the Public Marine Facilities Regulation, and that they are held accountable when non-compliance occurs. Further, it is important for marine safety outcomes that the master or owner of a ship comply with the requirements in the Marine Safety Regulation, and that they are held accountable when non-compliance occurs.

In addition, allowing infringement notice fines to be issued for non-compliance provides an effective 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 marine safety, potentially affecting the safety of other marine 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 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.

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 marine 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 *Transport and Other Legislation Amendment Regulation (No. 2) 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

© The State of Queensland 2023