

Work Health and Safety (Quad Bikes) Amendment Regulation 2024

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* (HR Act), I, the Honourable Grace Grace MP, Minister for State Development and Infrastructure, Minister for Industrial Relations and Minister for Racing, provide this human rights certificate with respect to the *Work Health and Safety (Quad bikes) Amendment Regulation 2024* (Amendment Regulation) made under the *Work Health and Safety Act 2011*.

In my opinion, the Amendment Regulation is compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The Amendment Regulation amends the *Work Health and Safety Regulation 2011* (WHS Regulation) to improve the safety of workers and others when operating, or being passengers on, quad bikes at a workplace. The Amendment Regulation:

- mandates that a person with management or control of a quad bike at a workplace must take all reasonable steps to ensure:
 - operators and passengers of quad bikes wear helmets;
 - operators of quad bikes are at least 16 years old, or the minimum age recommended by the quad bike manufacturer;
 - a quad bike is not used for carriage of passengers, unless it is designed to carry passengers, and the minimum age of passengers is at least 16 years old, or the minimum age recommended by the quad bike manufacturer.
- imposes a duty on workers who are operating or being passengers of quad bikes, that, if a helmet was provided by their employer, to wear a helmet.
- imposes a duty on a person with management or control of a quad bike at a workplace to take all reasonable steps to ensure that if a quad bike is operated in particular areas, the helmet provided is an ‘approved motorbike helmet,’ as defined in the *Transport Operations (Road Use Management—Road Rules) Regulation 2009*.

The Amendment Regulation also contains minor, consequential and technical amendments to remove redundant explanatory notes to deliver consistency throughout the *Work Health and Safety Regulation 2011* and implement current legislative drafting practices.

Human Rights Issues

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

I have considered the rights protected by Part 2 of the HR Act. In my opinion, the human rights under the HR Act that are relevant to the Amendment Regulation are:

- right to life (section 16);
- right to freedom from forced work (section 18);
- right to freedom of movement (section 19);
- right to freedom of thought, conscience, religion and belief (section 20);
- property rights (section 24);
- right to protection of families and children (section 26);
- cultural rights – generally (section 27); and
- right not to be tried or punished more than once (section 34).

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

The Amendment Regulation will potentially limit or interfere with the following rights:

- freedom of movement (section 19);
- freedom of thought, conscience, religion and belief (section 20);
- property rights (section 24); and
- cultural rights – generally (section 27).

Freedom of movement (section 19)

Property rights (section 24)

(a) The nature of the Rights

Freedom of movement (Section 19 of the Human Rights Act 2019)

The right to freedom of movement recognises that every person lawfully within Queensland has the right to move freely within Queensland, enter or leave Queensland, and choose where they live.

Property rights (Section 24 of the Human Rights Act 2019)

The right to property protects the right of all persons to own property (alone or with others) and provides that people have a right not to be arbitrarily deprived of their property. Deprivation in this sense has been held to include the substantial restriction on a person's use or enjoyment of their property.

A person's right to freedom of movement or to property may be limited by the requirement to wear a helmet (if they do not have one) as they will no longer be able to operate a quad bike at a workplace until obtaining and wearing a helmet. In addition, owners of single seat quad bikes (and their passengers) may have these rights limited in that they will be prohibited from carrying passengers as the quad bike is not designed to carry more than one person. For those under 16 years of age (or below the manufacturer's recommended minimum age), their rights to freedom of movement or to property may be limited as they are no longer able to be a passenger on a quad bike or operate an adult-sized quad bike.

(b) The nature of the purpose of the limitations, including whether they are consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitations is to improve the health and safety outcomes of workers and others when using, or being passengers on, quad bikes at a workplace. The restrictions, as described above, are limited and of low impact when compared to the significant safety benefits of wearing helmets, riding on age-appropriate quad bikes and not doubling on quad bikes which are not designed to carry a passenger.

The Amendment Regulation does not interfere with any other modes of transport or vehicles that may be used by workers at a workplace. These include side-by-side vehicles, the use of youth-sized quad bikes by children or the use of two-seater quad bikes.

The nature of the purpose of the limitations is consistent with a free and democratic society based on human dignity, equality and freedom, as described above.

(c) The relationship between the limitations and their purpose, including whether the limitations help to achieve the purpose

There is a direct relationship between the limitations and achieving the purpose of lower occurrences of injuries or death from the use of quad bikes at a workplace. Introducing offence provisions to enshrine safe quad bike user and passenger behaviour sends a strong message of deterrence.

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

There are no other less restrictive and reasonably available ways to achieve the purpose.

(e) The balance between the importance of the purpose of the limitations and the importance of preserving the human right, taking into account the nature and extent of the limitations

I am satisfied the proposed Amendment Regulation strikes a fair balance between the health and safety benefits gained by prescribing safe rider and passenger behaviour on quad bikes and any limitations on the rights to freedom of movement or property that may result from the commencement of the Amendment Regulation.

(f) Any other relevant factors

There are no other factors considered relevant.

Freedom of thought, conscience, religion and belief (section 20)

Cultural rights – generally (section 27)

(a) The nature of the Rights

Freedom of thought, conscience, religion and belief (Section 20 of the Human Rights Act 2019)

The right to freedom of conscience and religion recognises that every person has the freedom to demonstrate their religion or belief in worship, observance, practice and teaching. This right recognises that people are entitled to have differing beliefs in a pluralistic society.

Cultural rights – generally (Section 27 of the Human Rights Act 2019)

Cultural rights are directed towards ensuring the survival and continued development of the cultural, religious and social identity of minorities. They affirm the right of all persons to enjoy their culture, to practise or declare their religion and to use their language, either alone or in

community, with others who share their background. The right protects persons from being denied the right to enjoy their culture, to declare and practice a religion and to use their language.

The demonstration, enjoyment or practicing of religion or culture may include the wearing of religious or cultural head coverings. As such, a person's human rights under sections 20 and 27 may be limited by the requirement to wear a helmet if riding, or being a passenger on, a quad bike at a workplace.

(b) The nature of the purpose of the limitations, including whether they are consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitations is to improve the health and safety outcomes of workers and others when using, or being passengers on, quad bikes at a workplace. Helmets are only required to be worn when riding, or being a passenger on, the quad bike and can be removed once the person is no longer operating the quad bike. The restrictions, as described above, are limited and of low impact when compared to the significant safety benefits of wearing helmets.

The wearing of helmets is already required under transport legislation for quad bike users who operate on roads or road-related areas and for riders of similar vehicles, such as motorbikes.

Some religious or cultural head coverings (such as a hijab) are also able to be worn under most helmets. Persons who wear these head coverings would not have their religious or cultural rights limited by the requirement to wear a helmet.

The nature of the purpose of the limitation is consistent with a free and democratic society based on human dignity, equality and freedom, as described above.

(c) The relationship between the limitations and their purpose, including whether the limitations help to achieve the purpose

There is a direct relationship between the limitations and achieving the purpose of lower occurrences of injuries or death from the use of quad bikes at a workplace. Introducing offence provisions to enshrine safe quad bike user and passenger behaviour sends a strong message of deterrence.

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

There are no other less restrictive and reasonably available ways to achieve the purpose.

(e) The balance between the importance of the purpose of the limitations and the importance of preserving the human right, taking into account the nature and extent of the limitations

I am satisfied the proposed Amendment Regulation strikes a fair balance between the health and safety benefits gained by prescribing safe rider and passenger behaviour on quad bikes (such as the wearing of helmets) and any limitations to the human rights of freedom of thought, conscience, religion or belief or cultural rights.

(f) Any other relevant factors

There are no other factors considered relevant.

Conclusion

I consider that the *Work Health and Safety (Quad Bikes) Amendment Regulation 2024* is compatible with human rights under the HR Act 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.

GRACE GRACE MP
Minister for State Development and Infrastructure
Minister for Industrial Relations and
Minister for Racing

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