

Transport Operations (Marine Safety) (Riverston Bay Marine Zone) 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* (the HRA), I, Bart Mellish MP, Minister for Transport and Main Roads and Minister for Digital Services provide this human rights certificate with respect to the *Transport Operations (Marine Safety) (Riverston Bay Marine Zone) Amendment Regulation 2024* (the Amendment Regulation) made under the *Transport Operations (Marine Safety) Act 1994* (the Act).

In my opinion, the Amendment 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 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 proposed Regulation is made under the *State Penalties Enforcement Act 1999* (the SPE Act) for the purpose prescribing offences as infringement notice offences.

Overview of the Subordinate Legislation

The Amendment Regulation is made under the Act.

The Amendment Regulation amends the *Transport Operations (Marine Safety) Regulation 2016* (the Marine Safety Regulation), to establish a marine zone over the waters of Riverston Bay, within Lake Awoonga, Gladstone. The requirement for the Riverston Bay marine zone is that persons must not operate a ship powered by an engine (a motorised ship) within the zone, with the exception of the Gladstone Area Water Board in carrying out its water authority functions, shipping inspector functions, and fish stocking program activities.

Existing exemptions from marine zone requirements for enforcement officers and emergency, rescue and life saving activities will continue to apply under sections 96(2)(c) and 178(2) of the Marine Safety Regulation.

The existing offence provision for contravening a marine zone requirement, under section 178(1) of the Marine Safety Regulation will apply to contraventions of the Riverston Bay marine zone requirement. This is a prescribed infringement notice offence under the *State Penalties Enforcement Regulation 2014* (the SPE Regulation).

The purpose of the Amendment Regulation is to protect swimmers and users of non-motorised watercraft in Riverston Bay from the safety risks posed by the operation of motorised ships in those waters.

Human Rights Issues

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

The establishment of the Riverston Bay marine zone engages the following human rights under the HRA:

- Right to recognition and equality before the law
- Property rights
- Right to liberty and security of person
- Fair hearing
- Rights in criminal proceedings

Section 178(1) of the Marine Safety Regulation is a marine zone offence provision. The offence occurs when the owner or master of a ship operates the ship in a marine zone in contravention of a requirement for the marine zone mentioned in schedule 5 of the Marine Safety Regulation. The Amendment Regulation raises the above human rights as it introduces a new marine zone, which changes the scope of the marine zone offence provision.

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

(a) the nature of the right

The human rights set out below are engaged by enabling financial penalties to be imposed (either through a court-imposed fine or infringement notice fine) for non-compliance with the marine zone requirement. It should be noted that this is an existing offence provision and there are no amendments to its penalty under Marine Safety Regulation or to the infringement penalty units under the SPE Regulation.

Right to recognition and equality before the law (the HRA, section 15)

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. Increasing the scope of the offence provision that exists for contravening a marine zone requirement may engage the right to recognition and equality before the law, in that enforcement action may disproportionately impact persons of a lower socio-economic status who may have more difficulty paying a financial penalty.

Property rights (the HRA, section 24)

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 expands the application of an offence provision. The failure to pay a fine may result in enforcement action including, for example, the seizure and sale of property owned by the individual or vehicle immobilization, as provided for under the SPE Act.

Right to liberty and security of person (the HRA, section 29)

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 expands the scope of a penalty 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.

Fair hearing (the HRA, section 31) and Rights in criminal proceedings (the HRA, section 32)

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 expands the application of an infringement notice 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 the Amendment Regulation, including expanding the application of the marine zone offence provision, is to protect swimmers and users of non-motorised watercraft in Riverston Bay from the safety risks posed by the operation of motorised ships in those waters. 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.

Enabling financial penalties to be imposed on motorised ship operators (either through a court-imposed fine or infringement notice fine) for non-compliance with a marine zone requirement 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 offence provision and financial penalty for the marine zone offence and the purpose of protecting the safety of swimmers and non-motorised watercraft users. The fines send a strong deterrent message to encourage compliance with the requirements for the marine zone.

In addition, there is a direct relationship between having an infringement notice fine for the offence and the purpose of providing an efficient means of enforcing the offence and avoiding court costs. This is because the infringement notice fine system allows enforcement through the issue of a fine by a shipping inspector, 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 marine zone requirement which will assist in achieving the desired 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 reasonably available way to achieve the purpose of protecting the safety of swimmers and non-motorised watercraft users in Riverston Bay, other than to establish a marine zone with enforceable requirements, captured by the existing marine zone offence, which is prescribed as an infringement notice offence under the SPE Regulation.

If the marine zone offence was not an infringement notice offence, alleged offenders 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 that 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 instalment.
- 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 for the marine zone. These requirements are in place for the safety and benefit of members of the public.

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 that people are held accountable when non-compliance occurs. In regards to the Amendment Regulation, it is important for marine safety outcomes that the owner or master of a ship comply with the requirements in the Marine Safety Regulation, and that they 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 or not they wanted their matter heard before a court.

In addition, allowing infringement notice fines to be issued for non-compliance 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 marine safety.

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 financial penalties 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 protecting marine safety 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 Operations (Marine Safety) (Riverston Bay Marine Zone) Amendment Regulation 2024* 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 Bart Mellish MP
Minister for Transport and Main Roads
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