

Transport Operations (Passenger Transport) 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* (HRA), I, Bart John Mellish 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) Amendment Regulation 2024* (the Amendment Regulation) made under the *Transport Operations (Passenger Transport) Act 1994* (the Act).

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

Overview of the Subordinate Legislation

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

- clarify that authorised persons for service contracts can, where agreed, perform duties for multiple operators providing public passenger services under service contracts, and
- ensure substitute taxis can continue to be used during peak demand periods until 30 September 2026.

Authorised persons for service contracts

Fare evasion on public transport is currently estimated to cost the State about \$31 million each year. Safety concerns around passenger behaviour are also an ongoing issue.

Compliance and enforcement activities on public passenger services are performed by authorised persons appointed under section 111 of the Act. The Department of Transport and Main Roads (TMR) has been trialling the use of persons managed by operators who hold a service contract with TMR to provide public passenger services (service contract holders), undertaking compliance and enforcement activities. The aim is to ensure a more consistent presence of authorised persons across Translink's public transport network. To facilitate the trial, TOPTR was amended in 2019 to allow for the appointment of authorised persons who are employees of, or contractors (or employees of contractors) for, a service contract holder. Their role is to:

- protect fare revenue;
- support the safety and security of drivers and customers; and
- address any other relevant behaviours on public passenger services.

These authorised persons for service contracts, known operationally as 'Network Officers', have limited powers under section 268B of TOPTR. For example, they do not have powers to detain, use force or search.

Currently, the TOPTR potentially restricts the deployment of authorised persons for service contracts to the contracted public passenger services provided by their employer, and may also prevent their deployment on the services of other operators who also hold service contracts, theoretically restricting their duties for multiple operators.

The Amendment Regulation clarifies that these authorised persons can, when agreed by the relevant operators and TMR, perform duties for multiple operators providing public passenger services under service contracts. This allows increased flexibility to deploy authorised persons for service contracts, across Translink's network and ensure compliance issues are addressed.

Peak demand arrangements for substitute taxis

Currently, during times of peak customer demand, substitute taxis may be used to supplement taxi fleets to provide personalised transport services. Part 8, division 4 of TOPTR provides for substitute vehicle authorities for taxi service licences. An authorised booking entity may apply for a substitute vehicle authority for a motor vehicle to be used under a taxi service licence in particular circumstances, such as where an existing taxi cannot be used due to accident or repair. These vehicles are called 'substitute taxis'. Section 284 of TOPTR is a transitional provision, which applies until the end of 30 September 2024, and provides that substitute taxis may also be approved to supplement the taxi fleet during times of peak customer demand.

TMR is currently progressing a review of the taxi licensing framework. Until this review is completed, and a longer-term solution is determined, peak demand arrangements for substitute taxis must remain in place to ensure that substitute vehicles can continue to be used to provide taxi services, and booked hire services, during peak patronage periods. This will be achieved through an amendment to section 284 to extend the current arrangements until 30 September 2026.

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 may be relevant to the Amendment Regulation are:

- Recognition and equality before the law (section 15 HRA);
- Freedom of movement (section 19 of the HRA);
- Property rights (section 24 of the HRA);
- Privacy and reputation (section 25 of the HRA);
- Right to liberty and security of person (section 29 of the HRA);
- Fair hearing (section 31 of the HRA); and
- Rights in criminal proceedings (section 32 of the HRA).

Any human rights issues arise due the ability of authorised persons for service contracts to exercise existing powers such as seeking name and address, directing a person to leave a public passenger vehicle and issuing infringement notices for certain offences. However, the Amendment Regulation is not changing these existing powers. If an operator with a service contract employed an authorised person for a service contract directly rather than sharing their services, the authorised person would have the same powers. Any human rights issues arising are a consequence of the increased scope for deployment to multiple operators.

Human rights are not limited by the amendments for peak demand arrangements for substitute taxis.

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

(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 clarifies that authorised persons for service contracts may issue infringement notices for certain offences on public passenger services that are not operated by their employer. The requirement to pay an infringement notice fine may adversely and disproportionately impact persons of lower socio-economic status who may have more difficulty paying a monetary sum.

Section 19 (Freedom of movement) of the HRA provides for the right to freedom of movement protects a person's right to move freely within Queensland, to enter and leave it, and the freedom to choose where to live. The Amendment Regulation may limit this right as the existing powers available to authorised persons include directing a person to leave or not enter a vehicle or public transport infrastructure, thereby restricting an individual's ability to move freely on the public transport network. However, these powers are limited and can only be activated in certain circumstances.

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 this right as the existing powers available to authorised persons include serving an infringement notice in limited circumstances. 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 *State Penalties Enforcement Act 1999* (SPE Act).

Section 25 (Right to privacy and reputation) of the HRA protects a person's right to not have their privacy and reputation unlawfully or arbitrarily interfered with. The notion of arbitrary interference extends to those interferences which may be lawful, but are unreasonable, unnecessary and disproportionate. The Amendment Regulation may limit this right as the existing powers available to authorised persons include the power to require a person's name, address and age for the purpose of serving an infringement notice in limited circumstances.

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 this right as the existing powers available to authorised persons include serving an infringement notice in limited circumstances. 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 to the extent authorised persons for service contracts may issue infringement notices which allow matters to be resolved without going to court.

(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 the existing powers of authorised persons for a service contract may be exercised on public passenger services (and related infrastructure) provided under service contract by someone other than the person's employer. As mentioned above, authorised persons for service contracts have powers to:

- direct a person, including for a person leave a public passenger vehicle in limited circumstances (see sections 143AG and 143AH of the Act);
- require personal information such as name, address and age (see section 127 of the Act); and
- serve infringement notices in limited circumstances, for example, minor offences such as fare evasion (see section 218C of TOPTR).

It is noted that, while infringement notices may technically evoke human rights issues as outlined above, they also provide 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.

Ultimately, the powers of authorised persons for a service contract are appropriately limited through section 268B of TOPTR. The ability of authorised persons for a service contract to make directions, require the provision of certain information and issue infringement notices is underpinned by the objective of enhancing the safety, quality and reliability of services provided to passengers on the public transport network and managing fare evasion. Therefore, any limitation on the above human rights 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 deployment of authorised persons for service contracts and the purposes of enhancing the safety, quality and reliability of services provided to passengers on the public transport network and managing fare evasion.

The expanded presence of authorised persons for a service contract with appropriately limited powers on the public transport network will enable contemporaneous responses to fare evasion and poor behaviour and encourage passenger confidence in a safe passenger service. For example, if a member of the public is exhibiting unsociable behaviour on a bus, an authorised person can direct the person to leave the bus, protecting the safety of other passengers and the driver. In addition, expanding the presence of these officers (with their appropriately limited powers) across the network will have an increased deterrence effect.

(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. While security cameras can record incidents and may serve to deter certain unwanted behaviour, they cannot intervene when an issue arises. The presence of authorised persons on public transport services also serves as a form of deterrence to unwanted behaviour and fare evasion.

Data collected by TMR shows that since April 2023, fare evasion rates have been trending down on services where authorised persons for service contracts have been deployed, falling below the 2022 rates for the same period. This is the first time in more than a decade where fare evasion levels have decreased rather than increased.

Further, the ability of an authorised officer for a service contract to exercise their powers is already limited by section 268B of TOPTR. An authorised officer may direct a person to leave, or not to enter, a vehicle, however they do not have the power to remove a person from a vehicle. In addition, the amendment is not limiting a person's ability to freely move from one destination to another, as alternative forms of transportation are available (for example, train, car or walking).

In addition, if the limited offences for which an authorised officer can issue infringement notices 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; and
- 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

Allowing infringement notice fines to be issued in limited circumstances provides an efficient enforcement option. If this enforcement option was not available, passenger and driver safety would be compromised and there would likely be increased instances of fare evasion and poor behaviour. This would lead to an erosion of the public's confidence in a safe and cost-effective means of transport.

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.

Having regard to the nature of the powers of authorised persons for service contracts and their impact on human rights, allowing these persons to be more flexibly deployed across the public transport network provides a sensible response to ongoing concerns about passenger and driver safety and to protect fare revenue, and so outweighs any potential limitation on the human rights identified above.

Conclusion

I consider that the *Transport Operations (Passenger Transport) 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
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