

Transport Operations (Marine Safety) Legislation 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 HR Act), 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) Legislation 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 HR Act. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The Amendment Regulation is made under the Act.

Lifejackets and Personal Flotation Devices

The Amendment Regulation amends the *Transport Operations (Marine Safety) Regulation 2016* (the Marine Safety Regulation) and the *Transport Operations (Marine Safety—Queensland Regulated Ships Miscellaneous Equipment) Standard 2017* to expand the circumstances where lifejackets must be worn for a ship to be taken to meet the requirement for a ship to be equipped with a lifejacket.

This includes:

- People boating alone, or only with children under 12 years on an open boat less than 4.8 metres in length whilst underway.
- People boating between sunset and sunrise on an open boat less than 4.8 metres in length whilst underway.
- People crossing a designated coastal bar on an open boat and on an open area (the deck) of a ship of any length.
- Children aged one year or more and under 12 years on an open boat or an open area (the deck) of a ship of any length whilst underway.

Amendments to require lifejackets to be worn during these heightened-risk activities will commence on 1 December 2024.

Amendments also phase out transitional arrangements by 1 September 2025 that allow the use of Personal Flotation Devices (PFDs), which are an older style of lifejacket that do not align

with current Australian Standards. It has now been over a decade since the outdated PFD standards were superseded.

Lake Wivenhoe Marine Zone

The Amendment Regulation also amends the Marine Safety Regulation to establish a Lake Wivenhoe marine zone. The main purpose of the marine zone is to protect the safety of Lake Wivenhoe users.

The requirements for the marine zone are that the owner or master of a ship must not, within the marine zone, operate a ship—

- That is a personal watercraft.
- That is powered by an engine that is not an electric engine, a 4-stroke engine or a 2-stroke direct injection engine.
- At a speed of more than six knots.
- Between sunset on a day and sunrise on the next day.
- For towing anything, including a person (e.g. water-skier).
- Within a prohibited area near the dam wall.

The Amendment Regulation provides exemptions from the requirements for Seqwater employees carrying out shipping inspector functions under the Act and persons engaged or employed by Seqwater in performing functions under the *South East Queensland Water (Restructuring) Act 2007*. It also provides a speed limit exemption for sailing ships participating in an authorised aquatic event, and ships used for fish stocking activities under a *Fisheries Act 1994* permit.

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 Lake Wivenhoe marine zone requirement. This is a prescribed infringement notice offence under the *State Penalties Enforcement Regulation 2014* (the SPE Regulation).

Human Rights Issues

The Amendment Regulation does not engage any human rights by expanding upon existing requirements for lifejackets to be worn, or by phasing out transitional arrangements for older style PFDs.

The establishment of the Lake Wivenhoe Marine Zone engages the following human rights under the *Human Rights Act 2019* (Human Rights Act):

- 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 the Marine Safety Regulation or to the infringement penalty units under the SPE Regulation.

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

Section 15 (Right to recognition and equality before the law) of the Human Rights Act 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 whose personal financial circumstances mean they would have difficulty paying a financial penalty.

Property rights (Human Rights Act, section 24)

Section 24 (Property rights) of the Human Rights Act 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 *State Penalties Enforcement Act 1999* (the SPE Act).

Right to liberty and security of person (Human Rights Act, section 29)

Section 29 (Right to liberty and security of person) of the Human Rights Act 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 (Human Rights Act, section 31) and Rights in criminal proceedings (Human Rights Act, section 32)

Section 31 (Fair Hearing) of the Human Rights Act 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 Human Rights Act 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 marine zone, including expanding the application of the marine zone offence provision, is to protect the safety of Lake Wivenhoe users. 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 (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 the offence provision and financial penalty for the marine zone offence and the purpose of protecting the safety of Lake Wivenhoe 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 requirements 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 Lake Wivenhoe users, 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 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 who 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 all 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 financial position.

(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 marine safety outcomes that the owner or master of a ship comply with the amended marine zone 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 they wanted their matter heard before a court or not.

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 of lesser means, 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, including 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 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.

Honourable Bart Mellish MP
Minister for Transport and Main Roads
Minister for Digital Services