

Transport Operations (Road Use Management—Accreditation and Other Provisions) (AIS approvals) 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 (Road Use Management—Accreditation and Other Provisions) (AIS approvals) Amendment Regulation 2024* (the Amendment Regulation) made under the *Transport Operations (Road Use Management) Act 1995* (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.

The Amendment Regulation amends the *Transport Operations (Road Use Management – Accreditation and Other Provisions) Regulation 2015* (the AOP Regulation) to introduce training requirements for Approved Inspection Station (AIS) participants and applicants. An AIS participant is the holder of an AIS approval, nominee approval or approved examiner (AE) accreditation. An AIS applicant is a person applying for the grant of an AIS approval, nominee approval or AE accreditation.

The Department of Transport and Main Roads (TMR) requires that vehicles be inspected to ensure they meet minimum safety standards. An AIS is a place at which vehicles are inspected. An AIS approval holder (or their nominee if they are required to have one) is responsible for managing the operations of the AIS in accordance with the legislation and prescribed rules. An approved examiner (AE) is a person employed to carry out vehicle inspections at an AIS and complete inspection certificates.

The Amendment Regulation provides that individuals that have not completed the approved training when making an initial application for entry to the scheme, will not be granted the relevant approval (AIS approval or nominee approval) or accreditation (approved examiner accreditation).

It includes successful completion of approved training within a completion period set by the chief executive as a statutory condition for approvals and accreditations granted or renewed after commencement. Breaching a condition of an approval is already a ground for suspension or cancellation of an approval or accreditation under section 18(1)(b) of the Act.

For approvals and accreditations in existence before commencement, the Amendment Regulation provides that failure to complete the approved training within the completion period is a ground for the chief executive to suspend, cancel or refuse to renew the approval or accreditation.

Decisions to refuse to grant, refuse to renew, suspend or cancel an approval or accreditation are reviewable decisions.

The Amendment Regulation empowers the chief executive to share relevant information, with an approved registered training organisation, for the purpose of monitoring compliance with the training requirements.

The Amendment Regulation also introduces an offence for a person who completes training on behalf of a person who is required to complete the training. This is not an infringement notice offence and as such would be dealt with by the courts.

Human Rights Issues

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

The establishment of training requirements for AIS participants engages the following human rights under the HR Act:

- Right to recognition and equality before the law
- Property rights
- Privacy and reputation

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

(a) the nature of the right

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

Section 15 (Right to recognition and equality before the law) of the HR 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.

The Amendment Regulation may engage the right to recognition and equality before the law, in the following ways:

- The requirement to complete training may disproportionately impact persons of limited means, who may have more difficulty paying course fees.

- The imposition of financial penalties for an offence may disproportionately impact persons of limited means.

Property rights (HR Act, section 24)

Section 24 (Property rights) of the HR 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 contains 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.

Privacy and reputation (HR Act, section 25)

Section 25 (Privacy and reputation) of the HR Act provides that a person has the right—

- (a) not to have the person’s privacy, family, home or correspondence unlawfully or arbitrarily interfered with; and
- (b) not to have the person’s reputation unlawfully attacked.

The Amendment Regulation engages the right to privacy and reputation in that it provides for the disclosure of information about an accreditation or approval holder to a registered training organisation, for the purpose of monitoring compliance with a training requirement.

- (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 objective of the Amendment Regulation is to ensure only AIS participants and applicants who are trained to the required standard, in performing the functions of their role, are able to operate an AIS or carry out a vehicle inspection, thereby reducing the risk of unsafe vehicles passing inspections and being driven on Queensland roads.

The purpose of each limitation engaged by the Amendment Regulation is therefore to protect the safety of road users.

This is 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 limitations engaged by the Amendment Regulation and the purpose of protecting the safety of road users.

Increasing levels of audit failures for AIS participants have highlighted the need for improvements to the quality of vehicle inspections. Targeted training modules have been designed to facilitate this uplift. A regulatory scheme requiring completion of training, monitoring AIS participants for compliance, and penalising non-compliance is considered integral to the uptake and success of the training.

The amendments, and associated limitations, ensure that vehicle safety inspections are carried out and overseen by appropriately trained AIS participants. The goal of such measures is to minimise the risk of unsafe vehicles being passed at inspection and driven on Queensland roads and therefore to protect the safety of road users.

(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 other than to require AIS participants and AIS applicants to complete approved training. The introduction of these training requirements is necessary to ensure vehicle safety inspections are carried out and overseen by appropriately trained persons. The Amendment Regulation provides appropriate limitations to ensure human rights are not impacted any more than necessary to achieve the purpose.

Training course fees are to be set by a registered training organisation approved to conduct the training. The expected costs are similar to or less than that of similar training in other Australian jurisdictions. To limit the impact on persons of limited means, who may have more difficulty paying course fees, TMR will fund training for existing approval and accreditation holders. TMR is not funding training for new applicants because they are not already financially invested. While the cost of training for applicants may disproportionately impact persons of limited means, the costs are not considered significant or a barrier to entry. The importance of ensuring AIS participants are able to provide high quality, compliant inspection services outweighs the cost impact.

There is no less restrictive way to achieve the purpose of penalising non-compliance other than an offence provision. Although the imposition of financial penalties for an offence may disproportionately impact a person of limited means, a court that finds a person guilty of an offence can take into account multiple factors when handing down the penalty, including the person's means. It is considered that the importance of maintaining the punishment and deterrent effect of penalties for applicable offences outweighs the impact on the right to recognition and equality before the law.

The failure to pay a fine may result in enforcement action including, for example, the seizure and sale of property owned by the individual. It is considered that the importance of maintaining the punishment and deterrent effect of penalties for applicable offences outweighs the impact on the right to property.

Monitoring compliance with the training requirement is considered essential to the effectiveness of the framework in addressing road safety risks. Disclosure of information about an accreditation or approval holder to a registered training organisation is integral to effective compliance monitoring. The impact on the right to privacy is limited as the chief executive may only disclose information about the person to the registered training organisation to the extent the disclosure of the information is necessary to enable the chief executive to monitor compliance with the requirement in the administration of the Act. There is no less restrictive way to achieve this purpose.

(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

The Amendment Regulation strikes an appropriate balance between road safety and the rights of AIS participants.

In order to provide for better road safety outcomes through legislation, it is important that people are held accountable for their safety responsibilities. AIS participants have direct responsibility for ensuring that vehicles passed at inspection are free of defects and are therefore safe to be driven on Queensland roads. The provisions in the Amendment Regulation represent reasonable and proportionate responses to ensuring accountability for vehicle inspections.

The importance of road safety outweighs any potential limitation on the human rights discussed in this certificate.

Conclusion

I consider that the *Transport Operations (Road Use Management—Accreditation and Other Provisions) (AIS approvals) 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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