

Transport Legislation Amendment Regulation (No. 2) 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 Legislation Amendment Regulation (No. 2) 2024* (the Amendment Regulation) made under the *Transport Operations (Road Use Management) Act 1995* and the *Transport Planning and Coordination Act 1994*.

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 *Transport Operations (Road Use Management) Act 1995* and the *Transport Planning and Coordination Act 1994*.

Exclusion of parking and no stopping sign contraventions from the demerit point schedule

The Amendment Regulation amends Schedule 5 of the *Transport Operations (Road Use Management – Driver Licensing) Regulation 2021* so that demerit points for disobeying an official traffic sign do not apply if the sign is a parking control sign¹ as defined under Schedule 5 of the *Transport Operations (Road Use Management—Road Rules) Regulation 2009* (the Queensland Road Rules) or another type of official traffic sign that gives an indication about the parking of vehicles. This aligns the legislation with community expectations, existing enforcement practice and system functionality.

Alignment with Australian Road Rules

The Australian Road Rules are designed to provide uniform road rules as the basis of the road rules for each Australian state and territory. They are reviewed every two years to ensure they remain contemporary. To align with recent changes to the Australian Road Rules, the Amendment Regulation amends the Queensland Road Rules, as outlined below.

- The Amendment Regulation replaces images at section 85, that show the border of a painted island as a dashed line, with images that show the border of the island as a continuous line. This aligns with engineering practice and reflects the actual appearance of painted islands.

¹ The definition of *parking control sign* includes no stopping signs, no parking signs and particular permissive parking signs.

- The Amendment Regulation amends section 129, which exempts bicycle and personal mobility device (PMD) riders from keeping to the far left when entering and riding in a single-lane roundabout, to include approaching the roundabout. This achieves the objective of enhanced road safety, while improving consistency with national model legislation.
- The Amendment Regulation replaces gendered language at section 266 with non-gendered language.
- The Amendment Regulation amends section 280 to expand the application of B light (bus traffic light) rules to bus only lanes (currently applicable to bus lanes), which clarifies the policy intent of the provisions and reflects the existing use and application of B lights in both bus lanes and bus only lanes.
- The Amendment Regulation inserts a new section that clarifies when an approved seatbelt is properly adjusted and fastened. It does not apply to approved child safety harnesses, or seatbelts, harnesses or restraints that are part of approved child restraints. This new section aligns closely with the Australian Road Rules. It supports the efficient enforcement and communication of the obligation to wear a properly adjusted and fastened approved seatbelt, and it addresses risks to compliance and enforcement that may arise from inconsistent interpretation and understanding of the obligation.

Exception from keeping left of a dividing line for long vehicles

The Queensland Road Rules require drivers to keep left of a dividing line unless an exception applies. Due to the impracticalities of navigating long vehicles on narrow roads, the Amendment Regulation inserts a new exception to the requirement to keep left of a dividing line for drivers of long vehicles either turning left from a single lane of a two-way road or navigating a road that has a bend, for example, a bend designed for traffic calming. The exception only applies if it is not practicable for the driver to drive to the left of the dividing line and the driver can safely drive to the right of it. A definition of long vehicle is provided for the provision.

Minor corrections and clarifications

The Amendment Regulation makes minor corrections and clarifications to the Queensland Road Rules to better reflect the policy intent.

- Replacing the outdated terminology ‘pedalec’ with ‘electrically power-assisted cycle (EPAC)’ aligns with changes in terminology in the Commonwealth vehicle standards to which it refers, and to the Australian Road Rules.
- Correcting a reversed image of a PMD speed limit sign in Schedule 3 of the Queensland Road Rules, achieves consistency with the PMD icon used on other signage, and removes the potential for confusion.
- Amending the definition of ‘approved seatbelt’ to clarify its relationship to the seatbelt standard for heavy vehicles addresses a disconnect in referencing caused by light vehicle and heavy vehicle standards being in different statutory instruments.

Prescribing additional digital authorities

The Queensland Digital Licence app is being transitioned into a Whole-of-Government Digital Wallet over two years from 2023/24. Work has commenced to digitise and add to the wallet a range of industry authorities issued by the Department of Transport and Main Roads, building and construction industry licences issued by the Queensland Building and Construction

Commission, and real estate agent licences issued by the Department of Justice and Attorney General. The Amendment Regulation prescribes these as ‘relevant authorities’ in the *Transport Planning and Coordination Regulation 2017* so they can be accepted as valid digital authorities under the *Transport Planning and Coordination Act 1994*.

Human Rights Issues

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

The Amendment Regulation includes the following amendments that change the scope of particular offence provisions of the Queensland Road Rules:

- Exemption from the requirement to keep to the far left for bicycle and personal mobility device (PMD) riders when approaching a single-lane roundabout.
- Exception from the requirement to keep left of a dividing line for long vehicles turning left or navigating a bend.
- Clarifying when an approved seatbelt is properly adjusted and fastened.
- Clarifying the application of B light rules to drivers in bus lanes and bus only lanes.

As such, it engages the following human rights under the HR Act:

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

The Amendment Regulation does not introduce new penalties or change the number of penalty units that may be applied for offences.

The remaining amendments do not limit any human rights.

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 relevant provisions.

It should be noted that these are existing offence provisions and there are no amendments to the penalties under the Queensland Road Rules or to the infringement penalty units under the State Penalties Enforcement Regulation 2014 (the SPE Regulation).

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. Increasing the scope of a road rule offence provision may engage the right to recognition and equality before the law, in that enforcement action may disproportionately impact persons of limited means who have comparatively greater difficulty paying a financial penalty.

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 expands the application of particular offence provisions. 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 (HR Act, section 29)

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

Section 31 (Fair Hearing) of the HR 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 HR 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 scope of particular offence provisions that may be enforced under the SPE Act. 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 particular offence provisions, is to enhance road safety outcomes through clarity for both obligation holders and enforcement responders. Road safety is inherently consistent with a free and democratic society. It is considered in the public interest to reduce fatal and serious road 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 an offence provision of the Queensland Road Rules 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 provisions and financial penalties for Queensland Road Rules offences and the purpose of protecting the safety of road users. The fines send a strong deterrent message to encourage compliance with road rules.

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 an authorised person, 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 Queensland Road Rules 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 road safety, other than to have offence provisions in the Queensland Road Rules, some of which are prescribed as infringement notice offences under the SPE Regulation.

If the offence provisions were not prescribed as infringement notice offences, 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 Queensland Road Rules. 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 capacity to pay a fine.

(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 road safety outcomes that road users comply with the offence provisions in the Queensland Road Rules, 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 road 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 limited 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 road 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