

State Penalties Enforcement (Vehicle Related Offences) and Other 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* (HR Act), I, the Honourable Yvette D'Ath MP, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence, provide this human rights certificate with respect to the *State Penalties Enforcement (Vehicle Related Offences) and Other Legislation Amendment Regulation 2024* (Amendment Regulation) made under the *State Penalties Enforcement Act 1999* (SPE Act) and the *Transport Operations (Road Use Management) Act 1995* (Road Use Management 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.

The Honourable Bart Mellish MP, Minister for Transport and Main Roads and Minister for Digital Services has granted authority for the preparation of this human rights certificate to the extent the proposed Amendment Regulation is made under the Road Use Management Act for the purpose of amendments to the *Transport Operations (Road Use Management – Driver Licensing) Regulation 2021*.

Overview of the Subordinate Legislation

The Queensland Government has legislated strong measures for hooning and hooning related conduct, including vehicle impoundment and confiscation. Despite these measures, hooning is a persistent problem in many areas.

The Amendment Regulation seeks to support the efficient enforcement of hooning offences and strengthen the deterrence against this offending behaviour by:

- prescribing section 19C (Unlawful conduct associated with commission of racing, burn out or other hooning offence) of the *Summary Offences Act 2005* as an infringement notice offence;
- prescribing section 85A (Wilfully causing motor vehicle to lose traction with road) of the Road Use Management Act as an infringement notice offence;
- increasing the infringement notice fine amounts for section 211 of the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2021* to reflect an increase in maximum penalties through the introduction of a circumstance of aggravation by the *Police Powers and Responsibilities and Other Legislation Amendment Act (No. 1) 2023*; and

- imposing demerit points for the wilfully causing motor vehicle to lose traction with road offence against section 85A of the Road Use Management Act.

The Amendment Regulation also removes reference to the offence formerly at section 8 (Begging in a public place) of the *Summary Offences Act 2005*, which was repealed by the *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2023*.

Human Rights Issues

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

The Amendment Regulation limits the following human rights:

- right to recognition and equality before the law (section 15);
- property rights (section 24);
- right to liberty and security of person (section 29);
- fair hearing (section 31); and
- rights in criminal proceedings (section 32).

Consideration of reasonable limitations on human rights (section 13 HR Act)

(a) the nature of the right

Recognition and equality before the law

The right to recognition and equality before the law is a stand-alone right that also permeates all human rights. It reflects that every person holds the same human rights by virtue of being 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. It requires public entities, as well as courts and tribunals undertaking certain functions, to treat people equally when applying the law and to not apply the law in a way that is arbitrary or discriminatory.

The Amendment Regulation will limit the right to recognition and equality before the law to the extent that it prescribes new offences as infringement notice offences and increases the infringement notice fine amounts for existing infringement notice offences. The requirement to pay a fine may adversely and disproportionately impact persons of lower socioeconomic status. The impact of fines on individuals from low socioeconomic backgrounds and living in regional and remote areas can be particularly severe, exacerbating existing inequalities. This can perpetuate cycles of poverty and marginalisation due to their limited financial resources, access to alternative transport options and social support networks. These persons may have more difficulty in paying a monetary sum.

Property rights

Property rights 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 ability to own and protect property historically underpins many of the structures essential to maintaining a free and democratic society based on human dignity, equality and freedom. The right includes protection from the deprivation of property. The term deprived in the context of property rights is considered to

include the substantial restriction on a person's use or enjoyment of their property. In a human rights context, arbitrary refers to conduct that is capricious, unpredictable, unjust, or unreasonable in the sense of not being proportionate to a legitimate aim. Property is likely to include all real and personal property interests, including money.

The Amendment Regulation will limit property rights to the extent that it prescribes an offence as an infringement notice offence and increases the infringement notice fine amounts for existing infringement notice offences. This will result in a deprivation of property in the form of money. The failure to pay an infringement notice fine may also result in enforcement action including, for example, vehicle immobilisation or seizure and sale of property (for example, a vehicle owned by the individual), as provided for under the SPE Act.

Right to liberty and security of person

The right to liberty and security of person 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 concept of arbitrariness carries a human rights meaning of capriciousness, unpredictability and unreasonableness in the sense of not being proportionate to the legitimate aim sought. The concept of lawfulness in the context of the right to liberty means that no interference can take place except in cases envisaged by the law.

The Amendment Regulation will limit the right to liberty and security to the extent that it may, under the enforcement action permitted by the SPE Act, result in a term of imprisonment if the person fails to pay the specified amount. The registrar of the State Penalties Enforcement Registry 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 State Penalties Enforcement Registry 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. Further, any such deprivation of liberty would not be unlawful and would not be arbitrary, as it would occur in accordance with the requirements set out in the SPE Act, which importantly preferences the use of other enforcement actions for unpaid fines.

Right to a fair hearing

The right to a fair hearing 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.

What constitutes a fair hearing depends on the facts of the case and requires the weighing of several public interest factors including the rights of the parties. Broadly, this right ensures a party has a reasonable opportunity to put their case in conditions that do not place them at a substantial disadvantage compared to the other party and also embraces principles of unimpeded access to courts and a justice system that can be said to be operating in a way that is predictable to the parties. The concept of a fair hearing is concerned with matters of procedural fairness, rather than substantive fairness in relation to the merits of a particular decision.

The Amendment Regulation will limit the right to a fair hearing and rights in criminal proceedings to the extent that enforcement of offences by way of an infringement notice does not involve a court proceeding. However, a person may elect for a matter the subject of an infringement notice to be heard by a court, ensuring that persons have the option to exercise the right to a fair hearing.

Rights in criminal proceedings

Rights in criminal proceedings protects a range of rights for persons charged with a criminal offence, including that a person has the right to be presumed innocent until proven guilty according to law, as well as a number of minimum guarantees, such as:

- to have adequate time and facilities to prepare the person's defence;
- to be tried without unreasonable delay;
- to be tried in person and to defend themselves personally or through legal assistance chosen by the person or, if eligible, through legal aid;
- to examine, or have examined, witnesses against the person; and
- to obtain the attendance and examination of witnesses on the person's behalf under the same conditions as witnesses for the prosecution.

The prescription of additional offences as infringement notice offences will limit rights in criminal proceedings to the extent that enforcement of offences by way of an infringement notice does not involve a court proceeding. However, a person may elect for a matter that is the subject of an infringement notice to be heard by a court and once an election is made, the person is afforded all of the rights in criminal proceedings guaranteed under the HR Act.

(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 limiting the right to recognition and equality before the law, property rights, right to liberty and security of person, right to a fair hearing and rights in criminal proceedings is to support the efficient enforcement of the relevant offences.

Allowing the prescribed offences to be enforced by way of an infringement notice provides an efficient means of enforcing appropriate offences, minimising the cost and inconvenience associated with court proceedings for both the state and the person to whom the infringement notice is issued. Increasing the infringement notice fine amount for the relevant offences ensures that the financial penalty reflects the seriousness of the offence and are an appropriate and proportionate response to the offending behaviour.

This 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

The limitations on the right to recognition and equality before the law, property rights, right to liberty and security of person, right to a fair hearing and rights in criminal proceedings will achieve the purpose by allowing the prescribed offences to be enforced by way of an infringement notice, while retaining the option for a person to elect to have the matter dealt

with by a court and ensuring that financial penalties reflects the seriousness of the offences and are set at an appropriate level to discourage and penalise unlawful behaviour.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

There is no less restrictive and reasonably available way to achieve the legitimate purpose.

The alternatives to the amendments in the Amendment Regulation would be:

- to not prescribe the offences as infringement notice offences; and
- to not increase the infringement notice fines for the existing infringement notice offences.

Neither of these alternatives offer a less restrictive way to achieve the proper purpose of the limitations as requiring all instances of offending behaviour to be dealt with by a court would not achieve the efficiencies afforded by enforcing offences by way of infringement notices, and not increasing the infringement notice fine amounts would be inconsistent with the increases to the maximum penalties under the *Police Powers and Responsibilities and Other Legislation Amendment Act (No. 1) 2023*.

(e) the balance between the importance of preserving the human right, taking into account the nature and extent of the limitation

In my opinion, the Amendment Regulation strikes an appropriate balance between the importance of the purpose of the amendments and the importance of preserving the human rights that are limited. The importance of preserving the affected rights must be balanced against the need for the efficient enforcement of offences. The potential infringement on the identified human rights is appropriate to ensure the application of legislation and financial penalties that reflect the seriousness of the offences, appropriately discourage and penalise unlawful behaviour.

On balance, having regard to the extent of the limitations on the right to recognition and equality before the law, property rights, right to liberty and security of person, right to a fair hearing and rights in criminal proceedings, it is considered that the importance of achieving the purpose of the amendments outweighs potential harm caused to the rights and that the limitations are reasonable and demonstrably justifiable in a free and democratic society.

(f) any other relevant factors

Nil.

Conclusion

I consider the Amendment Regulation is compatible with the HR Act because it limits human rights only to the extent that it is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

YVETTE D'ATH MP
Attorney-General and Minister for Justice
and Minister for the Prevention of Domestic and Family Violence

© The State of Queensland 2024