

# Transport Legislation (COVID-19 Emergency Response) Regulation (No. 2) 2020

## 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*, I, Mark Bailey, MP, Minister for Transport and Main Roads provide this human rights certificate with respect to the *Transport Legislation (COVID-19 Emergency Response) Regulation (No. 2) 2020* made under the *COVID-19 Emergency Response Act 2020*, the *Rail Safety National Law (Queensland) Act 2017*, the *Transport Infrastructure Act 1994* and the *Transport Operations (Marine Safety) Act 1994*.

In my opinion, the *Transport Legislation (COVID-19 Emergency Response) Regulation (No. 2) 2020*, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

### Overview of the Subordinate Legislation

On 29 January 2020, the then Minister for Health and Minister for Ambulance Services declared a public health emergency under section 319 of the *Public Health Act 2005* (PHA) due to the outbreak of a virus, known as COVID-19. On 11 March 2020, the Director-General of the World Health Organization declared COVID-19 a global pandemic.

During a public health emergency, under section 362B of the PHA, public health directions can be issued. Public health directions related to COVID-19 have been issued including directions that restrict movement, prohibit large gatherings, restrict border crossings and which require self-quarantine. Similar directions have been made in other Australian jurisdictions. Generally, the public is being asked to undertake *social distancing*, which is to limit physical contact with others wherever possible, to limit the spread of COVID-19.

The Department of Transport and Main Roads administers a wide range of transport services. These services are managed through a comprehensive legislative framework that covers, among other things, the road, rail and marine environments.

With directions that the public undertake social distancing and restrict movement, many requirements which would normally be able to be complied with are difficult to meet.

There are also significant economic impacts associated with COVID-19 affecting individuals and Queensland businesses. The Queensland Government is delivering a raft of measures aimed at easing these financial impacts and stimulating the economy which may include reducing or waiving transport-related fees for individuals and businesses.

The *Transport Legislation (COVID-19 Emergency Response) Regulation (No. 2) 2020* (the Response Regulation):

- provides financial relief from certain charges under the *Transport Infrastructure (Public Marine Facilities) Regulation 2011* to help alleviate the financial impacts of the COVID-19 emergency on individuals and businesses operating commercial concerns in State-managed boat harbours;
- provides a framework that will enable exemptions from, or otherwise modify the application of, requirements about certain maritime authorities with which it is not practicable or reasonable for people to comply having regard to the COVID-19 emergency, or that, if complied with, may risk the spread of COVID-19 within the community; and
- extends the expiry of the *Rail Safety National Law (Queensland) (Transitional) Regulation 2017* under section 13 of the *COVID-19 Emergency Response Act 2020* to preserve the current definitions of *level crossing* and *rail or road crossing* under the *Rail Safety National Law (Queensland) Act 2017*.

#### *Transport Infrastructure (Public Marine Facilities) Regulation 2011*

TMR owns and operates eight State-managed boat harbours in Queensland. TMR leases areas of the harbours to tenants who operate businesses such as marinas, clubs, tourist operators, restaurants, seafood processing and seafood retail outlets. Other commercial operators in the harbours have also been impacted.

Schedule 2 of the *Transport Infrastructure (Public Marine Facilities) Regulation 2011* (Fees in State-managed boat harbours) establishes fees payable for activities within Bowen boat harbour, Mooloolaba Harbour, Rosslyn Bay boat harbour, Snapper Creek boat harbour at Tin Can Bay and Urangan Boat Harbour. Fees cover matters such as moorings, operation of ships and fish receipt purposes. Fees are also payable for each mooring in the leased areas. Section 80 of the *Transport Infrastructure (Public Marine Facilities) Regulation 2011* sets out when and how such fees are payable to the Chief Executive.

The Response Regulation will provide the Chief Executive with the ability to waive fees for commercial operators that are payable, or have been paid, under schedule 2 of the *Transport Infrastructure (Public Marine Facilities) Regulation 2011*. The fees may be waived if the Chief Executive is satisfied that the waiver may alleviate the financial burden on the entity caused by the COVID-19 emergency. The waiver of fees will apply to fees payable from 1 April 2020 until 30 September 2020. This period can be extended if the Chief Executive is satisfied it is necessary having regard to the COVID-19 emergency, but for no longer than a period of six months after the day the COVID-19 emergency ends.

#### *Transport Operations (Marine Safety) Regulation 2016*

A range of maritime authorities issued under the *Transport Operations (Marine Safety) Regulation 2016* have been impacted by COVID-19 restrictions. These include aquatic event authorities, buoy mooring approvals, pilot licences, pilotage exemption certificates and marine licences.

The Response Regulation will provide the Chief Executive of the Department of Transport and

Main Roads and the General Manager (Maritime Safety Queensland) with the power to vary or extend the term of a maritime authority and to vary or waive a condition that applies to an existing authority, marine licence or marine licence indicator.

The Chief Executive or the general manager may activate these powers by publishing a notice on the website of Maritime Safety Queensland. This can occur where, for example, having regard to the COVID-19 emergency:

- it would not be practicable or reasonable for the holder to comply with, or satisfy, an existing condition on an authority; or
- complying with, or satisfying, an existing condition may risk the spread of COVID-19 within the community.

Any action taken by the Chief Executive or the General Manager under these provisions must not disadvantage the holder of the authority, marine licence or marine licence indicator.

These powers will be exercisable to minimise risks to the health and safety of persons caused by COVID-19 and to ensure the effective and efficient operation and administration of maritime regulation during the COVID-19 emergency and for a period after.

Introducing these powers will allow financial and administrative relief to be provided to the holders of authorities, who may be exempted from having to apply and pay for the renewal of authorities or variations to their existing authorities.

For example, the businesses of BoatSafe Training Organisations accredited by Maritime Safety Queensland to deliver training for marine licences have suffered significant decline, and it may not be practicable to conduct the required renewal audits during the term of their current authorities. The Response Regulation will empower the administering agency to provide relief by temporarily extending the term of these authorities.

#### *Rail Safety National Law (Queensland) (Transitional) Regulation 2017*

The Rail Safety National Law is set out in a schedule to the *Rail Safety National Law (South Australia) Act 2012* (SA). The *Rail Safety National Law (Queensland) Act 2017* (the Application Law) adopts the Rail Safety National Law as a law of Queensland. When the law was adopted in Queensland in 2017, specific Queensland definitions of *level crossing* and *rail or road crossing* were inserted into the Application Law. This was to reflect the different requirements applying to crossings for heavy rail and trams (including light rail) as already provided for in the Queensland Road Rules.

On 1 July 2019, amendments were made by the South Australian Parliament to the Rail Safety National Law to change definitions to cater for these different concepts. However, these amendments impacted upon the legislative mechanism applying in Queensland. Therefore, the *Rail Safety National Law (Queensland) (Transitional) Regulation 2017* (the Transitional Regulation) was made under section 132 of the Application Law to preserve Queensland's definitions until substantive amendments could be made to recognise the new national law definitions.

Section 132 and the Transitional Regulation made under it are due to expire on 30 June 2020. The Response Regulation will extend the expiry of section 132 and the Transitional Regulation to

ensure that the current definitions of *level crossing* and *rail or road crossing* continue to apply in Queensland until amendments can be made to the *Rail Safety National Law (Queensland) Act 2017*, or until 31 December 2020, whichever occurs sooner.

This extension is facilitated by section 13 of the *COVID-19 Emergency Response Act 2020* which allows an extraordinary regulation to be made to expressly modify the period at the end of which the transitional regulation expires.

## Human Rights Issues

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

Upon analysis, the Response Regulation does not engage any human right. As the purpose of the Response Regulation is to provide exemptions from requirements that are normally in place, extend approvals and to provide fee relief, the impacts of the regulation are entirely beneficial.

## Conclusion

I consider that the *Transport Legislation (COVID-19 Emergency Response) Regulation (No. 2) 2020* is compatible with the *Human Rights Act 2019* because it does not raise a human rights issue.

**MARK BAILEY MP**  
MINISTER FOR TRANSPORT AND MAIN ROADS

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