

Transport and Other Legislation Amendment Regulation 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 and Other Legislation Amendment Regulation 2020* (Amendment Regulation) made under the *State Penalties Enforcement Act 1999* (SPE Act), the *Transport Operations (Road Use Management) Act 1995* (TORUM Act) and the *Transport Infrastructure Act 1994*.

In my opinion, the Amendment Regulation 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

Amendments made under the *Transport Operations (Road Use Management) Act 1995* and the *Transport Infrastructure Act 1994* (Parts 3 and 4 of the Amendment Regulation)

National model laws have been developed to ensure a nationally consistent approach to the transport of dangerous goods by road and rail in Australia. The Transport and Infrastructure Council has approved the 6th package of amendments to the national model laws to ensure they are consistent with updates to the United Nations Recommendations on the Transport of Dangerous Goods Model Regulations. These laws also provide the model to give effect to the Australian Code for the Transport of Dangerous Goods by Road and Rail (ADG Code).

The Amendment Regulation implements these changes through amendments to the *Transport Infrastructure (Dangerous Goods by Rail) Regulation 2018*, the *Transport Operations (Road Use Management—Dangerous Goods) Regulation 2018* (Road Regulation), and the *State Penalties Enforcement Regulation 2014* (SPE Regulation).

Specifically, the amendments will:

- apply placarding thresholds for loads with limited quantity dangerous goods or domestic consumables, depending on the makeup of the load;
- replace the current requirement to have transport documentation, with a requirement to have transport information available in a readily ascertainable form for the transport of dangerous goods packed in limited quantities;
- incorporate two new prime contractor offence provisions that reflect the prime contractor's ability to control or influence the drivers of vehicles transporting dangerous goods;

- clarify existing requirements in relation to the transport of nominally empty storage vessels by incorporating specific offence provisions;
- put beyond doubt that dangerous goods that are purported to be packed in limited or excepted quantities, but do not comply with the specific requirements of the ADG Code that apply to them, will be subject to the general packaging requirements under the ADG Code;
- ensure an offence applies to selling, supplying or offering to sell non-compliant packaging for excepted quantities of dangerous goods; and
- nominate offences under the Road Regulation as infringement notice offences in Schedule 1 of the SPE Regulation and make some consequential amendments to existing entries.

A 12-month transitional period will apply to any new requirements under the ADG Code to allow industry to adjust their practices.

It is important for road and rail safety outcomes that dangerous goods are transported in accordance with the national law. If dangerous goods are not transported with appropriate documentation, labelling and placarding, there is a safety risk to the community and to other parties in the chain of responsibility who may be unaware of the potential risks.

Amendments made under the *Transport Operations (Road Use Management) Act 1995 (Part 5 of the Amendment Regulation)*

Part 5 of the Amendment Regulation amends the *Transport Operations (Road Use Management—Vehicle Standards and Safety) Regulation 2010 (Vehicle Standards Regulation)* to:

- in effect, require identification labels to be fitted conspicuously to the number plates on electric and hydrogen powered vehicles that are driven or parked on a road; and
- put beyond doubt that a traditional signature is not required on an electronic vehicle inspection certificate.

Labels for electric and hydrogen powered vehicles

Electric vehicles have high voltage cabling and battery charge which can pose a risk of fire or shock if the vehicle is involved in an incident. Hydrogen is highly flammable and burns practically clear in oxygen so is almost invisible during daylight and consequently poses a fire and safety risk if a hydrogen powered vehicle is involved in an incident. The requirement to have identification labels fitted to number plates attached to these vehicles is designed to assist first responders to identify and respond to vehicle specific risks at incident scenes. A similar provision already applies to LPG (liquefied petroleum gas) powered vehicles (schedule 1, part 10 of the Vehicle Standards Regulation).

Vehicles that are on the road network and are not labelled correctly may be subject to an infringement notice for an offence under existing section 5(1)(b) of the Vehicle Standards Regulation. A 12-month transitional period will apply to allow currently registered vehicles to comply.

The labelling requirements for electric and hydrogen powered vehicles are also included in the Australian Light Vehicle Standards Rules 2015 (ALVSRs) and have been implemented by most jurisdictions. The ALVSRs were developed and are maintained by the National Transport Commission working with jurisdictions to provide for nationally consistent vehicle standards. The ALVSRs are applied in Queensland through the Vehicle Standards Regulation.

Vehicle inspection certificates

Under the Vehicle Standards Regulation, approved examiners undertake inspections and *safety certificates* or *certificates of inspection* are issued. For light vehicles, a safety certificate is required when the vehicle is registered, offered for sale and when its registration is transferred. For heavy vehicles, public passenger transport vehicles, buses, driver trainer vehicles and licensed tow trucks, certificates of inspection are required at set periods prescribed in legislation. Inspection certificates are issued by approved inspection stations either in paper form or electronically using an electronic system known as ‘Inspection Certificates Online’.

The objective of these amendments is to put beyond doubt the intent of the provisions that a traditional signature is not required on an electronic inspection certificate. This will maintain customer and user confidence in inspection certificates issued using the Inspection Certificates Online system. Further detail on these amendments is outlined in the Explanatory Notes.

Amendments made under the *State Penalties Enforcement Act 1999* (Part 2 of the Amendment Regulation)

Transport of dangerous goods by road and rail

Parts 3 and 4 of the Amendment Regulation will clarify existing requirements for the transport of nominally empty storage vessels by incorporating specific offences for dangerous goods packed in limited quantities and general prime contractor duties as outlined above. Part 2 of the Amendment Regulation makes amendments to the SPE Regulation to introduce penalty infringement amounts for sections 102C (duty of loaders for nominally empty storage vessels), 133A (duty of consignors for limited quantities), 133B (duty of prime contractors for limited quantities), 144A (prime contractor duties relating to parking) and 146A (prime contractor duties relating to tank vehicles equipped with a burner to heat the load).

False or misleading statements or documents

Section 52 of the TORUM Act provides that a person must not state anything to an official that the person knows is false or misleading in a material particular. Similarly, section 53 of that

Act provides that a person must not give an official a document containing information that the person knows is false or misleading in a material particular. The offence provisions in these sections set out the penalties that apply in relation to light vehicles, heavy vehicles, prescribed dangerous goods vehicles, the transport of dangerous goods or in relation to other transport Acts. There are currently corresponding entries in the SPE Regulation which prescribe the offences in sections 52(2)(a), 52(2)(b) and 53(2) as penalty infringement notice (PIN) offences.

The *Transport Legislation (Road Safety and Other Matters) Amendment Act 2019* amended the penalty provisions in sections 52 and 53 of the TORUM Act by renumbering the current provisions and adding an offence for a false or misleading statement made in an online declaration.

Part 2 of the Amendment Regulation makes consequential amendments to the SPE Regulation to renumber the entries for sections 52(2)(a), 52(2)(c), 53(2)(a) and 53(2)(c) of the TORUM Act to ensure that the entries correspond to the renumbered offence provisions in that Act. Sections 52(2)(b) and 53(2)(b) are not considered appropriate for prescription as PIN offences.

Human Rights Issues

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

Property rights (section 24 of the Human Rights Act 2019)

The human right under section 24(2) of the *Human Rights Act 2019* is limited where a person is unlawfully or arbitrarily deprived of the person's property. In the human rights context, 'arbitrarily' is taken to mean capricious, unpredictable, unjust and unreasonable in the sense of not being proportionate to a legitimate policy objective.

The Amendment Regulation may limit property rights to the extent that it prescribes infringement notice offences. The failure to pay an infringement notice fine may result in enforcement action taken by the registrar of the State Penalty Enforcement Registry (SPER) against the person, including among other actions, the seizure of the person's property and vehicle immobilisation as provided for in the SPE Act.

Right to liberty and security of person (section 29 of the Human Rights Act 2019)

The human rights under sections 29(1) and (2) of the *Human Rights Act 2019* are limited where a person is subjected to arbitrary arrest or detention or is deprived of the person's 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 prescribes infringement notice offences. Enforcement action under the SPE Act may, in rare

circumstances, result in arrest and imprisonment where a person fails to pay an amount specified in an enforcement order. 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 (section 31 of the Human Rights Act 2019) and rights in criminal proceedings (section 32 of the Human Rights Act 2019)

The human right under section 31 of the *Human Rights Act 2019* is limited where a person is deprived of 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. The human right under section 32 of the *Human Rights Act 2019* is limited where a person charged with a criminal offence is deprived of the right to be presumed innocent until proven guilty according to law or deprived of the right to certain minimum guarantees.

The Amendment Regulation may limit the right to a fair hearing and rights in criminal proceedings to the extent that it prescribes infringement notice offences. This may arise because a person does not have to attend court in relation to an infringement notice offence. However, a person may elect for a matter in relation to an infringement notice offence to be heard by a court instead of paying an infringement notice fine. A person also has multiple opportunities to elect for a matter in relation to an infringement notice offence that has been referred to SPER to be heard by a court. Once a person elects for a matter in relation to an infringement notice offence to be heard by a court, the person is afforded all the rights in criminal proceedings guaranteed under the *Human Rights Act 2019*. As a result, the Amendment Regulation arguably does not limit the human rights.

Consideration of reasonable limitations (section 13 of the *Human Rights Act 2019*)

Property rights (section 24 of the Human Rights Act 2019)

(a) the nature of the right

Section 24 (Property rights) of the *Human Rights Act 2019* protects the right of all persons to own property and provides that people have a right not to be arbitrarily deprived of their property. Property includes all real and personal property interests recognised under general law and may include some statutory rights.

(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 Amendment Regulation may limit the right to property to the extent that it prescribes infringement notice offences. The failure to pay an infringement notice fine may result in enforcement action relating to an unpaid fine, including among other actions, vehicle

immobilisation or seizure and sale of property (for example, a vehicle owned by the individual) as provided for under the SPE Act.

Transport of dangerous goods by road and rail

Part 2 of the Amendment Regulation makes amendments to the SPE Regulation to introduce entries for sections 102C, 133A, 133B, 144A and 146A for the Road Regulation. This may limit the right to property as outlined below.

Nominally empty storage offences

The purpose of section 102C of the Road Regulation is to ensure nominally empty storage vessels are only loaded in compliance with Chapter 7.2 of the ADG Code. By their nature, dangerous goods have the potential to pose a significant safety risk. If nominally empty storage vessels are not loaded with appropriate documentation, labelling and placarding (as required under chapter 7.2 of the ADG Code), as well as the general safety risk to the community, there is a risk to other parties in the chain of responsibility who may be unaware of the potential risks. Further, there is a risk to first responders to an incident who, without appropriate placarding, may unknowingly deal with dangerous goods.

Dangerous goods packed in limited quantities

The purpose of section 133A and 133B of the Road Regulation is to regulate the giving of information to officials relating to the transport of limited quantity dangerous goods. Section 133A prescribes an offence for consignors to ensure that information is readily ascertainable during transport of the limited quantity dangerous goods and in compliance with the ADG Code. Section 133B contains a similar offence for prime contractors. As mentioned above, if dangerous goods packed in limited quantities are not transported with the correct information being readily ascertainable, there is both a general safety risk to the community and a particular risk to first responders (who may be delayed in their ability to respond in an incident) or to other parties in the chain of responsibility who may be unaware of the potential risks.

Prime contractors' duties

The purpose of sections 144A and 146A of the Road Regulation is to prescribe prime contractors' duties relating to parking of a vehicle, and the use of a road tank vehicle equipped with a burner to heat the load. To park and leave a vehicle standing in a public or private place, or to perform the task of unloading and loading dangerous goods from a road tank vehicle equipped with a burner, poses significant safety risks to the driver and the general public. In many instances, a prime contractor may exert influence over the driver on these matters, essentially directing the driver to not comply and potentially impacting safety. The offence provision reflects the prime contractor's ability to control or influence the drivers of vehicles transporting dangerous goods about these requirements.

Collectively, these sections prescribe infringement notices to regulate the transport of dangerous goods by road so that all those involved in their transport do so in accordance with the ADG Code to increase road safety outcomes. The introduction of infringement notices for these offences will ensure that there are proportionate and effective enforcement responses where a party in the chain of responsibility does not transport dangerous goods in compliance with the ADG Code. This will also provide for national consistency in the regulation of dangerous goods by road and rail. These objectives are consistent with a free and democratic society based on human dignity, equality and freedom.

False or misleading statements or documents

Part 2 of the Amendment Regulation makes consequential amendments to the SPE Regulation to renumber the entries for sections 52(2)(a), 52(2)(c), 53(2)(a) and 53(2)(c) of the TORUM Act to ensure that the entries correspond to the renumbered offence provisions in that Act. This will ensure that the offences can continue to be enforced through the SPE Act. This enforcement may limit the right to property as described above. The purpose of sections 52 and 53 of the TORUM Act is to regulate the giving of information to officials relating to light vehicles, heavy vehicles, prescribed dangerous goods vehicles or the transport of dangerous goods by ensuring that there continues to be an effective system for issuing and enforcing fines for giving false or misleading information to an official. This will ensure that there continues to be a proportionate and effective enforcement response to giving false or misleading information to an official and will encourage compliance with the law. These objectives are consistent with a free and democratic society based on human dignity, equality and freedom.

Labels for electric and hydrogen powered vehicles

The amendments in Part 5 will mean that a person who fails to comply with labelling requirements for electric and hydrogen powered vehicles may also be subject to an infringement notice. Allowing infringement notices to be issued for non-compliance of labelling requirements supports the safety objectives mentioned above and 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

Part 2 of the Amendment Regulation will prescribe penalty infringement notices for offences that regulate the transport of dangerous goods by road. This will help ensure that all those involved in the transport of dangerous goods discharge their duty to ensure safe transport in accordance with the ADG Code to improve road safety outcomes.

In addition, Part 2 of the Amendment Regulation will protect the accuracy of information given to an official in relation to light vehicles, heavy vehicles, prescribed dangerous goods vehicles

or the transport of dangerous goods by ensuring there continues to be an efficient system for issuing and enforcing fines for giving false or misleading information to an official. This will encourage individuals to comply with the law by giving accurate information to officials.

Similarly, labelling requirements for electric or hydrogen powered vehicles aim to help first responders identify potential safety risks. Allowing infringement notices to be issued for non-compliance will provide a proportionate response, encouraging compliance.

(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 to regulate the transport of dangerous goods, so that all those involved in the transport process discharge their duty to transport the goods in accordance with the ADG Code. Nor is there a less restrictive way reasonably available to achieve the safety objectives of the electric and hydrogen powered vehicle labelling requirements.

It is considered that there is no less restrictive and reasonably available way to achieve the purpose of ensuring the accuracy of information given to an official and ensuring there is an efficient system for issuing and enforcing fines relating to false or misleading information, other than by prescribing the offences to be infringement notice offences under the SPE Regulation.

Importantly, there are several protections built into the fine enforcement system under the SPE Act which ensure seizure and sale of property or vehicle immobilisation would only occur infrequently. Importantly, the threshold amount which must be owed to the State Penalties Enforcement Registry (SPER) before vehicle immobilisation can occur is prescribed under the SPE Act and is currently set at \$5,000. 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 requires that the total amount owed by a debtor must be more than \$500 before SPER can register an interest over property.

Other protections include that:

- a person who considers that 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 is registered with SPER for enforcement action, the person may apply to pay their debt by instalments; and
- 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).

Authorised officers appointed to issue fines also receive significant training, in accordance with the requirement set out in section 20 of the TORUM Act, which requires that they have the necessary expertise to be an authorised officer, to ensure that fines are only issued in appropriate cases and circumstances. This includes guidelines which provide information and guidance for authorised officers in respect of situations where a warning may be an appropriate alternative to issuing a PIN or when the severity or complexity of the offence requires that the matter proceed by way of complaint and summons.

- (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 parties in the chain of responsibility safely transport dangerous goods in accordance with the ADG Code and these parties are held liable when non-compliance occurs. The introduction of infringement notices for offences will ensure that there are proportionate and effective enforcement responses where a party in the chain of responsibility does not transport dangerous goods in compliance with the ADG Code.

While these offences are new, no infringement notice fines were issued from 25 June 2019 to 25 June 2020 for similar existing packaging offences or prime contractors' duties suggesting that infringement notices have been effective in promoting industry compliance. If duty provisions for consignors, loaders and prime contractors are not prescribed as infringement notice offences, it could reduce the threat of enforcement action against an offender due to the significant cost to the State of court proceedings.

It is also important for road safety outcomes that persons who provide information to an official give accurate and correct information. The false or misleading offences apply to statements and documents relating to light vehicles, heavy vehicles, prescribed dangerous goods vehicles and the transport of dangerous goods, and can impact a range of road safety matters. For example, vehicles carrying certain quantities of dangerous goods are required to display a placard on the vehicle indicating the type of potentially hazardous material being carried so that emergency personnel can respond appropriately to safety risks in the case of an incident.

If a vehicle is intercepted and it is discovered that the vehicle is carrying dangerous goods without the appropriate placarding and if the driver is questioned by an official and provides false information about who loaded the vehicle, this offence could be enforced by way of the issue of a penalty infringement notice. Allowing false or misleading information to be given would adversely affect the objective of Part 2 of the Amendment Regulation, which is to ensure the accuracy of information given to officials to ensure road safety for all road users.

The existing false or misleading information offences are already prescribed as infringement notice offences. Fifty-eight infringement notice fines were issued from 1 July 2018 to 30 June 2019 for the existing false or misleading information offences. Sixty-seven per cent of these infringement notice fines were referred to SPER. Not continuing to prescribe the false or

misleading information offences as infringement notice offences is likely to reduce the threat of enforcement action against an offender due to the significant cost to the State of court proceedings relating to offences that aim to protect road safety.

Similarly, allowing infringement notices to be issued where an electric or hydrogen powered vehicle fails to meet labelling requirements provides a proportionate response to encourage compliance and promote safety for first responders and the community. If these enforcement actions are not available, there would likely be reduced deterrence due to the significant cost to the State of court proceedings.

For all the matters mentioned above, a decision to prosecute is made on public interest grounds, including consideration of the costs of prosecution. If there were 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 the most recidivist offenders thereby reducing the deterrent effect of the offences. This would directly affect the State's ability to ensure road safety, potentially affecting the safety of other road users in the broader community.

For the reasons outlined above, I consider the balance between the importance of protecting road safety and ensuring an effective enforcement system for the transport of dangerous goods, labelling of electric and hydrogen powered vehicles and false or misleading information offences outweighs the potential negative impact on the right, and as a result, I consider any limitation to be reasonable and demonstrably justified.

Right to liberty and security of person (section 29 of the Human Rights Act 2019)

(a) the nature of the right

Section 29 (Right to liberty and security of person) of the *Human Rights Act 2019* provides a person with certain protections relating to liberty and security, ensuring a person is not subject to arbitrary arrest or detention, or is deprived of their liberty other than on grounds, and in accordance with procedures, established by law. Enforcement action under the SPE Act may, in rare circumstances, result in arrest and imprisonment where a person fails to pay an amount specified in an enforcement order.

(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 Amendment Regulation may limit the right to liberty and security of persons to the extent that it prescribes infringement notice offences. The registrar of 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 an infringement notice fine. 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.

Part 2 of the Amendment Regulation makes amendments to the SPE Regulation to prescribe infringement notices for sections 102C, 133A, 133B, 144A and 146A of the Road Regulation. The purpose of the offence provisions is to encourage those involved in the transport of dangerous goods by road to safely transport those goods in accordance with the ADG Code to increase road safety outcomes. This will provide consistency with the national law and the laws of other states and territories for the regulation of dangerous goods by road and rail. The SPE Regulation amendments will allow infringement notices to be issued for these offences. The introduction of infringement notices for these offences will encourage compliance with the ADG Code by ensuring there are proportionate and effective enforcement responses where a party in the chain of responsibility does not transport dangerous goods in a way that meets requirements. These objectives are consistent with a free and democratic society based on human dignity, equality and freedom.

In addition, Part 2 of the Amendment Regulation will continue to allow false or misleading information offences to be enforced under the SPE Act, which may potentially limit the right to liberty and security through arrest and imprisonment as described above. The purpose of these consequential amendments to the SPE Regulation is to renumber the entries for sections 52(2)(a), 52(2)(c), 53(2)(a) and 53(2)(c) of the TORUM Act to ensure that the entries correspond to the renumbered offence provisions in that Act. This will ensure that the offences can continue to be enforced through the SPE Act. This is intended to protect the accuracy of information given to an official in relation to light vehicles, heavy vehicles, prescribed dangerous goods vehicles or the transport of dangerous goods, by ensuring there is an effective system for issuing and enforcing fines to persons who commit the existing offences, which will encourage compliance with the law. These objectives are consistent with a free and democratic society based on human dignity, equality and freedom.

As mentioned above, the purpose of the amendment to require electric and hydrogen powered vehicles to display identification labels is designed to ensure vehicles are labelled to assist first responders to identify and respond to vehicle specific risks at incident scenes in the interests of safety. Infringement notices provide an efficient and proportionate enforcement response to encourage vehicles to be labelled to avoid the safety risks. These objectives are 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

Part 2 of the Amendment Regulation will prescribe penalty infringement notices for offences that regulate the transport of dangerous goods by road so that all those involved in the transport of dangerous goods discharge their duty to ensure that dangerous goods are transported in accordance with the ADG Code to improve road safety outcomes.

In addition, Part 2 of the Amendment Regulation will protect the accuracy of information given to officials by ensuring there is an efficient system for issuing and enforcing fines.

Labelling requirements for electric and hydrogen powered vehicles aim to help first responders identify potential safety risks. Allowing infringement notices to be issued for non-compliance will provide a proportionate response, encouraging compliance.

If these provisions were not prescribed as infringement notice offences, and if this resulted in a reduction in prosecutions, the threat of enforcement action against an offender may no longer be credible due to the significant cost to the State of court proceedings in relation to offences that aim to ensure road safety. As previously discussed, this is likely to reduce the deterrent effect of the offences, which would directly affect the State's ability to ensure road safety. This could result in risks to the safety of other road users in the broader community.

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

As discussed above, there are a number of protections built into the fine enforcement system under the SPE Act to ensure that there are supports and options available to assist persons who are experiencing hardship and are unable to pay their fines. In addition, the SPER Charter ensures the powers of SPER to issue arrest and imprisonment warrants are rarely used in practice.

While there may be less restrictive options, it is considered that they would not achieve the purpose of ensuring road safety to the same extent. For example, an option which could potentially be considered less restrictive is to prosecute these offences through a court. Under the *Penalties and Sentences Act 1992*, a court is required to take into account the financial circumstances of the offender and the nature of the burden that payment of the fine will have on the offender before imposing a fine. However, the cumulative burden of prosecuting these and other matters in a court means that this option is not feasible and would not achieve the purpose of ensuring road safety.

Therefore, there is no less restrictive and reasonably available way to achieve the purpose of ensuring road safety other than through the issuing of penalty infringement notices as outlined in the Amendment Regulation.

(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 all those involved in the transport of dangerous goods discharge their duty to ensure that dangerous goods are transported by road in accordance with the ADG Code. To encourage compliance, it is important that these parties are held liable when non-compliance occurs. The introduction of infringement notices for offences will ensure that there are proportionate and effective enforcement responses where a party in the chain of responsibility does not transport dangerous goods in compliance with the ADG Code. While these offences are new, no infringement notice fines were issued from 25 June 2019 to 25 June 2020 for similar existing packaging offences or prime contractors' duties.

The existing false or misleading information offences are already prescribed as infringement notice offences. Fifty-eight infringement notice fines were issued from 1 July 2018 to 30 June 2019 for the existing false or misleading information offences. Sixty-seven per cent of these infringement notice fines were referred to SPER.

Similarly, it is important to road safety that electric and hydrogen powered vehicles are labelled.

As previously discussed, a person has several options in relation to an infringement notice fine to avoid arrest or imprisonment. For example, the person may pay the fine in full, elect for a matter in relation to an infringement notice offence to be heard by a court or apply for approval to pay the fine by instalments. If the person does not act in relation to a fine, the registrar of SPER may take further enforcement action relating to the unpaid amount under the SPE Act. This may, as a last resort, result in the registrar of SPER issuing an arrest and imprisonment warrant under the SPE Act. The SPER Charter makes it clear, however, that the use of other enforcement actions for unpaid fines is to be preferred over arrest and imprisonment. Other enforcement actions may include, among others, seizure and sale of property and vehicle immobilisation.

Having regard to the nature and extent of the potential limitation on the right to liberty and security of persons, I consider that the importance of meeting road safety objectives by ensuring there is an efficient system for issuing and enforcing fines, outweighs the potential limit on the right to liberty and security, which in practice is unlikely to be imposed as a result of enforcement under the SPE Act of unpaid fines.

Fair hearing (section 31 of the Human Rights Act 2019) and rights in criminal proceedings (section 32 of the Human Rights Act 2019)

(a) the nature of the right

Section 31 (Fair hearing) of the *Human Rights Act 2019* provides individuals the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing. This facilitates procedural fairness and protects natural justice. Section 32 (Rights in criminal proceedings) of the *Human Rights Act 2019* 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.

(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 Amendment Regulation may limit the right to a fair hearing and rights in criminal proceedings to the extent that it prescribes infringement notice offences.

A person does not have to attend court in relation to an infringement notice offence. However, a person may elect for a matter in relation to an infringement notice offence to be heard by a court instead of paying an infringement notice fine. If a person elects for the matter in relation to an offence to be heard by a court, the person has access to all of the rights given under section 32 of the *Human Rights Act 2019* so, arguably, the Amendment Regulation does not limit these human rights. However, it is recognised that there may be disincentives to persons electing to have these matters heard in court, including the time, effort and stress involved in court processes and the costs, such as the offender levy, which will be imposed on the person in any case where a court imposes a sentence, and this is in addition to any court imposed fine.

Part 2 of the Amendment Regulation makes amendments to the SPE Regulation to prescribe infringement notices for offences under sections 102C, 133A, 133B, 144A and 146A of the Road Regulation. These offences relate to the transport of nominally empty storage vessels, dangerous goods that are packed in limited quantities and general obligations placed on prime contractors. The purpose of these offences is to regulate the transport of dangerous goods by road so that all those involved in their transport discharge their duty to ensure that dangerous goods are transported safely in accordance with the ADG Code to improve road safety outcomes. Road safety outcomes are supported where there is an efficient system for issuing and enforcing fines for non-compliance and will encourage parties in the chain of responsibility to comply with the law.

In addition, Part 2 of the Amendment Regulation relates to false or misleading statements given to an official about a light vehicle, heavy vehicle, a prescribed dangerous goods vehicle or the transport of dangerous goods. These rights are likely to have particular significance for certain individuals. For example, some individuals may have a reasonable excuse for non-compliance including because they have trouble understanding the requirement to give the information. This is particularly relevant for persons for whom English is their second language (including immigrants and tourists) or persons who suffer from disadvantage (including intellectual disabilities or mental health conditions). In addition, some persons may not have access to identity documents, including persons in crisis or suffering homelessness. These are likely matters that would be taken into account by a court before any penalty is imposed on an individual for providing false or misleading information to an official. Further, prescribing an offence under the SPE Act enables a fine of a fixed amount to be issued to an alleged offender. It is possible that such a fine may be imposed where the alleged offender has a reasonable excuse for their offending behaviour or even did not commit the offence that is alleged.

In addition, it is possible that the particular circumstances of the offending behaviour, or the financial circumstances of the offender, or the burden which payment of the fine would impose on the offender could mean that if the matter was heard by a court a lesser fine than the amount prescribed under the SPE Act would be imposed.

The amendments to the Vehicle Standards Regulation in Part 5 will, in the interests of safety for first responders and the community, have the effect of allowing infringement notices to be

issued where an electric or hydrogen powered vehicle does not have the necessary label attached. As mentioned above, issuing fines for non-compliance will encourage drivers to comply with the law in the interests of safety.

Prescribing infringement notice offences provides several benefits to alleged offenders who decide not to contest the infringement notice. These benefits include not having to attend court or prepare their defence with or without legal representation, as well as giving them certainty about their legal liability. Once a person elects for a matter in relation to an infringement notice offence to be heard by a court, the person is afforded all the rights in criminal proceedings guaranteed under the *Human Rights Act 2019*.

The purpose of these amendments is to protect road safety by ensuring there is an effective system for issuing and enforcing fines to persons who commit these offences, which is likely to encourage compliance with the law. The Amendment Regulation retains the ability for individuals to elect to pay the penalty infringement notice amount or to elect to have the matter heard by a court, enabling them to choose the option that best suits their individual circumstances. These objectives are 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

Part 2 of the Amendment Regulation will prescribe penalty infringement notices for offences that regulate the transport of dangerous goods by road so that all those involved in their transport discharge their duty to ensure that dangerous goods are transported in accordance with the ADG Code to improve road safety outcomes. Part 2 of the Amendment Regulation will also continue to enable the false or misleading information offences to be enforced under the SPE Act.

The amendments to the Vehicle Standards Regulation will, in the interests of safety for first responders and the community, have the effect of allowing infringement notices to be issued where an electric or hydrogen powered vehicle does not have the necessary label attached.

The Amendment Regulation will protect road safety by ensuring there is an efficient system for issuing and enforcing fines, which encourages compliance with the law. If the new offence provisions are not prescribed as infringement notice offences, the threat of enforcement action

against an offender may no longer be credible due to the significant cost to the State of court proceedings and the reduced likelihood of prosecution in relation to offences that aim to protect road safety.

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

There are various protections built into the fine enforcement system under the SPE Act,

including the ability for persons to elect to have the matter heard in court at various stages of the process. In addition, the SPE enforcement system includes a number of protections to ensure that there are supports and options available to assist persons who are experiencing hardship and unable to pay their fines.

Further, authorised officers are provided with extensive training by the Department of Transport and Main Roads in respect of issuing fines for false or misleading information offences in appropriate circumstances. This includes guidelines which provide information and guidance for authorised officers in respect of situations where a warning may be an appropriate alternative to issuing a PIN or when the severity or complexity of the offence requires that the matter proceed by way of complaint and summons.

There is no less restrictive and reasonably available way to protect road safety. If these and other offences were not prescribed as infringement notice offences, the increased number of prosecutions proceeding by way of complaint and summons may lead to injustices due to the delay in hearing cases. The cost to the State of court proceedings may affect the State's ability to ensure road safety, potentially affecting the safety of other road users in the broader community.

(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 all those involved in the transport of dangerous goods by road discharge their duty to ensure that dangerous goods are transported in accordance with the ADG Code and these parties are held liable when non-compliance occurs. The introduction of penalty infringement notice offences will ensure that there are proportionate and effective enforcement responses where a party in the chain of responsibility does not transport dangerous goods in compliance with the ADG Code.

In addition, preserving and protecting the accuracy of information given to officials is an important public purpose which ensures the safety of other road users in the broader community. This includes occupants of other vehicles on the road as well as users of road-related areas and footpaths. To achieve this purpose, these amendments maintain the existing false or misleading information offences under the SPE Regulation which enables a set fine to be issued to an alleged offender without an independent court hearing.

As mentioned above, the amendments to the Vehicle Standards Regulation in Part 5 are also in the interests of safety for first responders and the community. Allowing infringement notice penalties to apply will ensure that there are proportionate and effective enforcement responses where a vehicle does not have the requisite label attached.

Although this may limit the right to fair hearing and rights in criminal proceedings, there are various protections under the SPE Act which include the option for persons to elect to have their matter heard in court at various stages of the process.

In particular, section 15 of the SPE Act requires that all penalty infringement notices must indicate that the alleged offender may elect to have the matter of the offence decided by a court, which promotes awareness that persons may elect for the matter of the offence to be heard by a court at the time the person is 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. Without that option, all persons charged under sections 102C, 133A, 133B, 144A and 146A of the Road Regulation, sections 52(2)(a), 52(2)(c), 53(2)(a) and 53(2)(c) of TORUM Act, or under section 5(1)(b) of the Vehicle Standards Regulation for failing to have a label attached, 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 or not they wanted their matter heard before a court. In addition, there are various protections to assist persons who are unable to pay their penalty infringement fines.

Having regard to the nature and extent of the potential limitation on the right to a fair hearing and rights in criminal proceedings, I consider that the importance of meeting the purpose of road safety by ensuring there is an efficient system for imposing and enforcing fines, outweighs the potential impact on these rights.

Conclusion

I consider that the Amendment Regulation is compatible with the *Human Rights Act 2019* because it does limit, restrict or interfere with a human right, but that limitation is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.

Honourable Mark Bailey MP
Minister for Transport and Main Roads