

Transport Operations (Road Use Management—Vehicle Registration) Regulation 2021

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* (HRA), I, Mark Bailey MP, Minister for Transport and Main Roads, provide this human rights certificate with respect to the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2021* (the proposed Regulation) made under the *Transport Operations (Road Use Management) Act 1995* (TORUM Act), the *Environmental Protection Act 1994*, the *Food Act 2006*, the *Forestry Act 1959*, the *Motor Accident Insurance Act 1994*, the *Nature Conservation Act 1992*, the *Queensland Building and Construction Commission Act 1991*, the *Rural and Regional Adjustment Act 1994*, the *State Penalties Enforcement Act 1999* (SPE Act), the *Summary Offences Act 2005*, the *Tow Truck Act 1973* and the *Transport Operations (Passenger Transport) Act 1994*.

In my opinion, the proposed Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the HRA. I base my opinion on the reasons outlined in this statement.

Shannon Fentiman MP, Attorney-General and Minister for Justice, Minister for Women, and Minister for the Prevention of Domestic and Family Violence has granted authority for the preparation of this human rights certificate to the extent the proposed Regulation is made under the SPE Act.

Overview of the Subordinate Legislation

Vehicle registration regulatory framework in Queensland

Vehicle registration in Queensland has been regulated under the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2010* (the 2010 Regulation). In accordance with Part 7 of the *Statutory Instruments Act 1992*, the 2010 Regulation will automatically expire on 31 August 2021. The proposed Regulation replaces the 2010 Regulation and continues to appropriately regulate vehicle registration matters.

The proposed Regulation provides a legislative framework for the administration of Queensland's vehicle registration scheme; including prescribing vehicle registration requirements, setting registration fees, providing for fee concessions and enabling the issuance of number plates. The proposed Regulation also provides for the identification of vehicles and registered operators of vehicles by establishing a register of registered vehicles. This supports the enforcement of a range of transport-related laws via on-road enforcement and camera technology and enables certain responsibilities to be placed on a registered operator.

The proposed Regulation reduces harm to the community by ensuring vehicles used on Queensland roads comply with vehicle law requirements and are safe for on-road use. It does this by working in conjunction with other transport legislation, such as legislation regulating vehicle standards and safety. Together, they create a framework which improves road safety by regulating requirements for vehicles that access the road network and reducing the number of defective vehicles on the road network.

The proposed Regulation provides for monetary fines for driving an unregistered vehicle on a road. This is intended to deter drivers from operating unregistered vehicles on the road which are a risk to road safety and are not covered by Compulsory Third Party (CTP) insurance. CTP insurance coverage is required for road access as it protects registered operators and drivers from financial liability should they injure a third party in a motor vehicle accident. The CTP insurance scheme enables injured persons to access medical treatment, rehabilitation and compensation.

The fees framework contained within the proposed Regulation provides the Queensland Government with funding to ensure roads and transport infrastructure are maintained at a high level to facilitate the safe movement of the Queensland community. The fees are set out in Schedules 2, 3 and 4 and vary by vehicle type, purpose of use and whether the registered operator is eligible for a reduced registration fee. The fees are generally indexed annually to ensure the fees reflect increases in costs within the broader economy.

Enforcement through the State Penalties Enforcement Regulation 2014

Part 16 of the proposed Regulation amends the *State Penalties Enforcement Regulation 2014* to prescribe offences for which a penalty infringement notice (PIN) may be issued under the SPE Act. The offences are about:

- driving an unregistered vehicle on a road;
- using a conditionally registered vehicle on the road in contravention of a condition;
- failing to return number plates or dealer plates if registration is not renewed or is cancelled;
- failing to transfer a vehicle's registration within 14 days of acquisition;
- failing to place a replacement identifying number on a vehicle;
- failing to return a vehicle for further inspection if the chief executive considers a particular recorded in the register for the vehicle may not be accurate;
- failing to notify the chief executive of changes to the name and address of the registered operator, the vehicle's garage address, the vehicle's nominated configuration or the vehicle's purpose of use;
- failing to give the chief executive notice of a vehicle modification;

- failing to make payment of a reassessed registration fee;
- failing to carry an unregistered vehicle permit when the vehicle is being used under the permit on a road;
- failing to ensure a dealer plate is attached correctly to the rear of the vehicle;
- using a dealer plate when not the registered operator of the dealer plate or authorised by the registered operator to use the dealer plate;
- using a dealer plate or a dealer (trailer trade) plate outside of the permitted circumstances for using a dealer plate;
- failing to surrender a dealer plate following the cessation of the dealer's business;
- failing to produce registration and importation documents if asked when driving a vehicle registered in a foreign country on a road;
- failing to attach and display number plates correctly and within 1 day of receiving them;
- failing to apply to the chief executive for replacement number plates if plates are damaged, destroyed, lost or stolen;
- failing to return number plates if required by the chief executive;
- failing to give notice to the chief executive when transferring personalised plates;
- using a written-off vehicle on a road;
- failing to comply with a requirement to report a written-off vehicle to the chief executive;
- failing to comply with a requirement to attach a label to a written-off vehicle;
- removing a written-off vehicle label from a vehicle;
- performing a written off vehicle inspection if not an approved written-off vehicle examiner or nominee;
- not complying with conditions of an inspection approval;
- making, selling or owning anything that purports to be, but is not, a registration certificate, number plate or permit;
- altering or defacing a registration certificate, number plate or permit;
- using a vehicle on the road if its registration certificate, number plate or permit has been altered;
- selling an unregistered vehicle unless a registration application has been made;
- using a heavy vehicle in such a way as to attract a higher registration fee;
- failing to notify the chief executive of changes to eligibility for a registration fee exemption or concession; and
- using a concessionally registered vehicle in contravention of the eligibility criteria.

PIN offences are an alternative to prosecution through the court system. A person who is issued a PIN for an offence may discharge their liability by payment of a financial penalty. There is no requirement for the offence to be prosecuted through the court system, although a person may elect to go to court to challenge the offence or the penalty imposed by the PIN.

Human Rights Issues

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

The proposed Regulation engages the following human rights protected by the HRA:

- Right to recognition and equality before the law (section 15 of the HRA);
- Freedom of movement (section 19 of the HRA);
- Property rights (section 24 of the HRA);
- Right to privacy and reputation (section 25 of the HRA); and
- Rights in criminal proceedings (section 32 of the HRA).

Vehicle registration regulatory framework in Queensland

Right to recognition and equality before the law (section 15 of the HRA)

The right to recognition and equality before the law reflects that every person has the right to recognition as a person before the law, that every person is equal before the law and that laws should not be discriminatory.

The proposed Regulation may limit the right to recognition and equality before the law. There are several sections in the proposed Regulation which confer benefits upon certain people and organisations based on attributes such as location, age, occupation and impairment.

Sections 177 to 191 provide for certain measures to be made available in the event of natural disasters or droughts including reduced terms of registration and the waiving of surcharges and late payment fees. The natural disaster measures apply to any registered operator in the area affected by the natural disaster and the drought measures only apply to primary producers in drought-declared areas.

Sections 222 to 228 provide for certain individuals and organisations to apply for an exemption from the payment of certain fees. For example, exemptions are provided to charitable organisations and the registered operators of motorised wheelchairs.

Section 229 allows for eligible individuals and organisations to apply for concessional registration fees. For example, concessions are provided to holders of a seniors card, holders of a pensioner concession card and prescribed service persons.

Freedom of movement (section 19 of the HRA)

The right to freedom of movement protects a person's right to move freely within Queensland and to enter and leave it and choice of residence, if they are lawfully within Queensland.

Section 10 creates an offence for using an unregistered vehicle on a road unless one of the stated exceptions applies (for example, unregistered vehicle permit, exempt vehicle). Similarly, section 144 creates an offence for using a written-off vehicle on a road unless one of the stated exceptions applies (for example, the vehicle is recorded in the register as a repairable write-off that has been repaired or the vehicle is being driven to, or for the purpose of, testing as part of an inspection). These provisions could restrict an individual's ability to move through an area of public space to the extent that they choose to do so in an unregistered or written-off vehicle, thereby limiting their right to freedom of movement.

Sections 53, 55, 56, 58 and 59 permit the cancellation of vehicle registration, in prescribed scenarios, by the chief executive, the authority of a court, local government or the Commissioner of the Queensland Police Service. These provisions could restrict an individual's ability to move through an area of public space to the extent that they are prevented from doing so by virtue of the cancellation (which causes their vehicle to be unregistered), thereby limiting their right to freedom of movement.

Property rights (section 24 of the HRA)

The human right under section 24(2) of the HRA provides that a person should not be 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.

Section 10 creates an offence for using an unregistered vehicle on a road unless one of the stated exceptions applies (for example, unregistered vehicle permit, exempt vehicle). Similarly, section 144 creates an offence for using a written-off vehicle on a road unless one of the stated exceptions applies (for example, the vehicle is recorded in the register as a repairable write-off that has been repaired, the vehicle is being tested as part of an inspection). These provisions restrict the ability of a person to deal freely with their property (that is, drive an unregistered or written-off vehicle on a road), which could limit an individual's right not to be arbitrarily deprived of their property.

Section 65 allows for the chief executive to deduct from a refund owing, following the cancellation of a vehicle's registration, an administration fee and any unpaid fees relating to the vehicle payable by the last registered operator of the vehicle under the TORUM Act. As this provision disentitles the last registered operator of the entirety of their registration fee refund (money is property), this could limit an individual's right not to be arbitrarily deprived of their property.

Sections 125, 126 and 127 require registered operators to return number plates to the chief executive in particular scenarios including, for example, when the vehicle's term of registration has expired, if the number plate combination is offensive or if a taxi or limousine licence is no longer in force. In addition, section 128 provides that number plates remain the property of the State. These provisions restrict the ability of a person to deal freely with number plates which may be in their possession (a property right itself), which could limit an individual's right not to be arbitrarily deprived of their property.

Right to privacy and reputation (section 25 of the HRA)

The right to privacy and reputation protects a person's right to not have their privacy and reputation unlawfully or arbitrarily interfered with. The nature of the right to privacy and reputation is very broad but contains internal limitations. The protection against interference with privacy is limited to unlawful or arbitrary interference. The notion of arbitrary interference extends to those interferences which may be lawful, but are unreasonable, unnecessary and disproportionate.

Section 67 provides that the chief executive may require a vehicle to be brought to the chief executive for an inspection in relation to registration or being written-off. This provision enables the inspection of an individual's property (being their vehicle), which could limit an individual's right not to have their privacy unlawfully or arbitrarily interfered with.

Section 68 requires registered operators to notify the chief executive within 14 days of any changes to their name or address or to the vehicle's garage address and for the chief executive to record this updated information in the register. As this provision compels individuals to provide personal information (being their name or address) and provides for the recording of this information, this could limit an individual's right not to have their privacy unlawfully or arbitrarily interfered with.

Sections 111 to 115 provide that the chief executive must keep a register of vehicles, personalised plates, dealer plates and unregistered vehicle permits. Information contained in the register includes the operator's name, the vehicle's garage address and identifying details of the vehicle (such as VIN, make and model). These provisions require the collection and retention of information (including personal information) which could limit an individual's right not to have their privacy unlawfully or arbitrarily interfered with.

Section 195 provides that the chief executive may give an applicant a written notice asking for further information that the chief executive reasonably needs to decide an applicant's application. This provision compels individuals to provide information in response to a request, which, depending on the information requested, could limit an individual's right not to have their privacy unlawfully or arbitrarily interfered with.

Sections 202 and 203 authorise the release of information, including personal information, from the vehicle register by the chief executive or a public access provider to certain 'eligible persons' for a fee. Section 202 defines who an eligible person is and includes, for example, a person who proposes to commence or has commenced litigation or a statutory entity. In addition, sections 204 and 205 authorise the release of information to tolling entities for a fee and to an entity that maintains the National Exchange of Vehicle and Driver Information System (NEVDIS). These provisions enable the disclosure of information, which could limit an individual's right not to have their privacy unlawfully or arbitrarily interfered with.

Rights in criminal proceedings (section 32 of the HRA)

The human right under section 32 of the HRA 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 proposed Regulation may limit rights in criminal proceedings by placing an evidentiary onus on a defendant who has breached an obligation to establish that they had a reasonable excuse for the breach. A range of offences in the proposed Regulation require, for example, a person to apply to transfer a vehicle's registration, to return number plates or to give notice of certain information to the chief executive within a certain timeframe.

Enforcement through the State Penalties Enforcement Regulation 2014

Right to recognition and equality before the law (section 15 of the HRA).

As mentioned above, the right to recognition and equality before the law reflects 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.

This right may be limited to the extent that the proposed Regulation imposes a penalty infringement fine for various offences. The requirement to pay a fine for such a behaviour, may adversely and disproportionately impact sectors of the community such as persons of a lower socio-economic status who may have more difficulty paying a monetary sum.

Property rights (section 24 of the HRA)

As mentioned above, the human right under section 24(2) of the HRA 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 proposed 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.

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

Vehicle registration regulatory framework in Queensland – Right to recognition and equality before the law (section 15 of the HRA)

(a) the nature of the right

The right to recognition and equality before the law reflects that every person holds the same human rights by virtue of being a 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. The *Anti-Discrimination Act 1991* defines discrimination as including both direct and indirect discrimination.

(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

Sections 177 to 191 provide for certain measures to be made available in the event of natural disasters or droughts including reduced terms of registration and the waiving of surcharges.

The purpose of these provisions is to provide financial support to a range of individuals and organisations who have been affected by drought or natural disaster. These measures support registered operators who are impacted by drought or natural disaster to keep their vehicles' registration current which reduces the likelihood of unregistered vehicles on the road. The support provided is an acknowledgment of the extenuating circumstances, impacting eligible registered operators, particularly financially. It is considered that this purpose is consistent with a free and democratic society as reducing the number of unregistered vehicles supports the broader public interest.

Sections 222 to 224 provide for certain individuals and organisations to apply for an exemption from the payment of certain fees. Further, section 229 provides for certain individuals and organisations to apply for concessional registration fees. Individuals eligible for exemptions from registration fees or concessional registration fees include charitable organisations, pension card holders and prescribed service persons. The purpose of these provisions is to reduce the fees for individuals and organisations who might otherwise struggle to meet the cost of registration fees. These exemptions are supported by the requirements to meet stringent eligibility criteria to access the entitlement. These measures are consistent with a free and democratic society, preserving human dignity and equality, by assisting these individuals and organisations in registering a vehicle which they can legally use on the road, which supports their participation in society.

This right may also be limited to the extent that the proposed Regulation imposes a penalty infringement fine for various offences. The requirement to pay a fine for such a behaviour, may adversely and disproportionately impact sectors of the community such as persons of a lower socio-economic status who may have more difficulty paying a monetary sum.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

There is a rational relationship between the identified sections and reducing the number of unregistered vehicles on the road by providing a level of financial assistance to make vehicle registration more affordable for individuals and organisations who might otherwise struggle to meet the cost, due to prescribed circumstances.

The provision of discounted registration to discrete subsections of the community experiencing hardship ensures that they can continue to legally use their vehicle on the road network. This is consistent with the aims of the vehicle registration scheme; to ensure vehicles are identifiable, registered and insured. A person of low socio-economic status who may have lesser financial capacity to pay a penalty infringement fine can seek assistance from the State Penalties Enforcement Registry to pay the fine by instalments or settle the debt through other activities such as a work and development order.

A person may also elect to have a matter heard by a court. If the court finds the person guilty of the offence, it has the ability to take into account multiple factors when handing down the penalty, one of which may include the person's socio-economic status or ability to pay a fine.

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

There is no other less restrictive and reasonably available way to achieve this purpose.

Without reduced cost of registration for certain individuals and organisations, it is likely that these individuals would be unable to afford the cost of registration and would either drive unregistered vehicles or become less able to participate fully and freely in society.

In relation to breaches of the proposed Regulation, penalty infringement fines are a key measure to help deter unsafe behaviours on the roads that puts the lives of all road users at risk. A person can avoid having to pay a fine by complying with the requirements of the proposed 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

The importance of reduced registration costs for certain individuals and organisations, and benefits for those in drought or disaster-declared areas, lies in its purpose of ensuring vehicles used on the road are registered and those who might otherwise be unable to afford registration can access a vehicle to support their participation in society. The benefit of these provisions to certain individuals and organisations reasonably and demonstrably outweighs any discrimination based on location, age, occupation or impairment.

While the imposition of a penalty infringement fine may disproportionately impact a person from a lower socio-economic group, it is considered that the importance of maintaining the punishment and deterrent effect of penalties for applicable offences outweighs the impact on the right.

Vehicle registration regulatory framework in Queensland – Freedom of movement (section 19 of the HRA)

(a) the nature of the right

The right to freedom of movement states that every person lawfully within Queensland has the right to move freely within Queensland, to enter and leave Queensland, and has the freedom to choose where to live.

(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

Sections 10 and 144 prohibit the driving of unregistered or written-off vehicles on the road unless a stated exception applies. This limitation ensures only vehicles with current registration are used on the road. Current registration ensures that vehicles meet prescribed standards of safety and roadworthiness and are identifiable. Therefore, the purpose of the limitation is the safety of the vehicle operator, passengers and other road users which is in the public interest and protects the rights of others.

Sections 53, 55, 56, 58 and 59 allow for the cancellation of a vehicle's registration in circumstances other than at the registered operators request.

Section 53 allows for the cancellation of a vehicle's registration when acting under an authority of a court to sell a vehicle. This could occur during bankruptcy proceedings, for example, where the trustee is required to liquidate an individual's assets. The purpose of the limitation is to allow for a vehicle to be removed from a registered operator's name and sold. Although this provision is used rarely, without this provision, trustees would be unable to sell vehicles as is required to meet the debts of the bankrupt. The purpose of the limitation is therefore in the public interest, in that bankrupts should discharge their debts as fully as possible, and in the interest of the property rights of creditors.

Section 55 allows for a local government to apply to the chief executive to have a vehicle's registration cancelled where the vehicle is abandoned and hazardous and where the driver cannot readily be located or has failed to remove the vehicle from the road when requested. Permitting local governments to apply for an abandoned vehicle's registration to be cancelled allows for vehicles which are generally derelict, incinerated or damaged beyond repair to be removed from the road. This occurs quite frequently. For example, in the 12 months preceding April 2021, Townsville City Council applied for the registration of approximately 158 vehicles to be cancelled so these vehicles could be removed from the road. The purpose of the limitation is therefore in the public interest of safety in that hazardous vehicles are removed from public roads where they could cause injury or environmental damage.

Section 56 allows for the Commissioner of the Queensland Police Service to apply to the chief executive to have a vehicle's registration cancelled if the vehicle becomes the property of the State or is forfeited to the State. The purpose of this limitation is to permit the State to dispose of vehicles which have been forfeited to them in circumstances where the driver of the vehicle has been found guilty of repeated, serious, motor vehicle offences. It is considered this is reasonable and in the public interest as it allows the State to dispose of vehicles instead of the public bearing the cost of storing a vehicle until its registration is cancelled, three months after registration expiry.

Section 58 allows the chief executive to cancel a vehicle's registration where the registered operator does not comply with a notice about the vehicle being defective or unsafe. The purpose of this limitation is to prevent registered operators who are aware that their vehicle is defective or unsafe from continuing to use the vehicle on a road. For example, vehicles with faulty Takata airbags who had not had the airbags removed after the recall had ended and after being repeatedly contacted, had their vehicle registration cancelled by the chief executive. Preventing unsafe vehicles from being used on the road is in the interests of public safety.

Section 59 allows the chief executive to cancel a vehicle's registration if the vehicle does not comply with vehicle law or an acquirer of a vehicle does not apply to transfer the vehicle's registration or full payment of the registration fee amount is not made or the vehicle is a written-off vehicle.

The purpose of cancelling a vehicle's registration if the vehicle does not comply with vehicle laws, or is written-off, is to ensure vehicles which do not meet Australian vehicle standards or are unsafe are not used on a road. Australian vehicle standards mandate minimum levels of safety (including, for example, fitting seatbelts and child restraint anchorages) and must be met by vehicles to have unrestricted access the road network. Preventing unsafe or non-compliant vehicles from being used on the road is in the interest of public safety.

The purpose of the chief executive cancelling a vehicle's registration where an acquirer has not notified the chief executive of its acquisition is to ensure the chief executive is notified of vehicle transfers to ensure maintenance of a current list of registered operators. A cancellation in this circumstance is rare as generally acquirers of vehicles meet their notification obligations. This limitation is consistent with a free and democratic society and meets the public expectation that the chief executive can identify a person responsible for a vehicle, particularly for the purpose of compliance, payment of registration fees and enforcement. This supports public safety as registered operators who are a risk to public safety are identified and subject to penalty or prohibition from the road network. In addition, ensuring the chief executive is notified of vehicle transfers allows the chief executive to identify the current registered operator to levy fees. This is important for the protection and collection of public revenue.

Should a registered operator not make payment of the registration fees within three months of the registration term expiring, the chief executive will cancel the vehicle's registration. The purpose of the limitation is to ensure vehicles which are unregistered for more than three months are subject to inspections and other requirements to ensure they are safe to be used on a road. Preventing vehicles which have been unregistered for a long period of time from being used on the road is in the interests of public safety and of public revenue in ensuring fees are paid prior to a vehicle being used on a road.

It is therefore considered that sections 10, 53, 55, 56, 58, 59 and 144 are reasonable and justifiable in 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

Sections 10 and 144 prohibit the use of unregistered or written off vehicles on a road. These provisions have a clear relation to their purpose, which is to prevent unsafe vehicles from endangering drivers, passengers and other road users. Therefore, the requirement achieves its purpose.

There is a clear relationship between providing for the cancellation of vehicle registration in prescribed scenarios and its purpose. These provisions assist in the removal of derelict vehicles from Queensland roads, the sale and disposal of legally seized vehicles and the cancellation where a vehicle is unsafe, ultimately discouraging the registered operator from using the vehicle on a road as they are at risk of significant penalty. These provisions support the overall purpose of maintaining road safety and are in the interests of equity and public revenue in ensuring only vehicles who have paid the applicable fees are able to be used on a road.

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

There are no less restrictive and reasonably available ways to prevent the use of unsafe vehicles on a road in certain prescribed scenarios. It is important for public safety that vehicles used on the road are registered and safe with cancellation of their registration and prohibition of their use only occurring where this safety may have been compromised.

Additionally, there are no less restrictive and reasonably available ways to allow for the disposal of vehicles which have become the property of local government or the State or are required to be sold by a court.

Each cancellation process is supported by required notifications to the registered operator of intended actions, should the relevant issue not be rectified.

(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

In light of the nature and importance of the requirements in sections 10, 53, 55, 56, 58, 59 and 144, in keeping unsafe and unregistered vehicles off the road, as well as supporting the sale of vehicles in prescribed scenarios, the purpose of these provisions outweigh any limited impact on freedom of movement.

Further, the use and application of sections 53, 55, 56, 58 and 59 is limited, extensive notice to the registered operator to remedy is provided and compliance to avoid cancellation is easily achievable. It is considered that these provisions strike a fair balance between the right to travel in a certain vehicle on the road and the broader public interest of road safety.

Should a registered operator be unable to avoid cancellation under these provisions in relation to a specific vehicle, they may travel via public transport, active transport or by using another registered vehicle. These restrictions do not prohibit the travel of individuals by any means other than by way of the cancelled vehicle.

Vehicle registration regulatory framework in Queensland – Property rights (section 24 of the HRA)

(a) the nature of the right

Section 24 (Property rights) of the HRA protects the right of all persons to own property and provides that people have a right not 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

Sections 10 and 144 prohibit the use of unregistered or written off vehicles on a road. This may impact an individual's ability to deal freely with their property which could limit an individual's right to not be arbitrarily deprived of use of their property. The objective of these provisions is to prevent unsafe vehicles from being used on the road and endangering the driver, passenger and other road users. In addition, these provisions support equality as all vehicle owners must pay the applicable fees in order to use their vehicle on a road. This objective is consistent with a free and democratic society based on human dignity, equality and freedom.

Section 65 allows the chief executive to deduct monies from a refund owing to a registered operator including an administration fee and any unpaid fees relating to the vehicle. This could limit an individual's right not to be arbitrarily deprived of their property, that is, the full refund of vehicle registration fees. The objective of this provision is the protection of public money by ensuring full payment of all fees relating to the vehicle. This objective is consistent with a free and democratic society based on human dignity, equality and freedom as it is expected that all registered operators are treated equally and must make payment of all fees applicable to their vehicle registration.

Sections 125, 126 and 127 require registered operators to return number plates in circumstances such as the vehicle's registration expiring, if the number plate is offensive and if a taxi or limousine licence is no longer in force. Further, section 128 prescribes that number plates always remain property of the State. These provisions could limit an individual's ability to deal freely with number plates issued for to their vehicle which could limit an individual's right not to be arbitrarily deprived of their property. However, these provisions prevent the misuse of number plates and is intended to ensure there are no number plates in the community which are not linked to the vehicle they were issued to with current registration. As the power for the chief executive to require the return of a number plate only applies in very limited and clearly defined circumstances, it is not arbitrary in its application. Importantly, also, it relates to property which always remains the property of the State. Any limitation is consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

There is a rational relationship between the prohibition of using unregistered or written-off vehicles on a road and the purpose of road safety. Prohibiting the use of these unregistered or unsafe vehicles on a road will prevent these vehicles from posing a safety risk to their occupants or other road users.

Allowing the chief executive to deduct monies from an individual's refund has a rational relationship with the purpose of protecting public monies by ensuring all registered operators are treated equally and make full payment of the transport fees owed by them.

There is a rational relationship between requiring the return of number plates in certain circumstances and prescribing that number plates remain property of the State with the purpose of limiting the number of number plates in the community which are not attached to a vehicle with current registration. This requirement reduces the incidence of misuse of number plates.

(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 purposes of prohibiting unregistered or written off vehicles to be used on a road and ensuring number plates are only attached to vehicles with current registration.

These powers can only be exercised in limited and clearly defined circumstances which ensures they are not exercised arbitrarily.

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

The prohibition of using unregistered or written-off vehicles on a road supports road safety in keeping unsafe and unregistered vehicles off the road. The purpose of these provisions outweighs any limited impact on an individual's property rights.

Requiring the return of number plates in prescribed circumstances minimises the number of unattached number plates in the community. As there are no legitimate uses of standard number plates which are not attached to a vehicle with current registration. This reduces the risk of misuse of these number plates which can be associated with vehicles being used on the network without the applicable registration fees being paid. It also ensures that the registered operator of a vehicle can be correctly identified for enforcement purposes. Therefore, the importance of achieving this purpose outweighs any limitation on the human right noting, however, that the number plates are at all times the property of the State.

Vehicle registration regulatory framework in Queensland – Right to privacy and reputation (section 25 of the HRA)

(a) the nature of the right

Section 25 of the HRA sets out the right to privacy and reputation. It provides that a person has the right to not have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with and to not have their reputation unlawfully attacked.

(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

Section 67 provides that the chief executive can compel an individual to bring a vehicle to the chief executive for an inspection for the purposes of the vehicle's registration or to assess whether the vehicle is written-off. This section may limit an individual's right to privacy by requiring the inspection of an individual's property. The purpose of this requirement is to ensure the chief executive can be satisfied that a vehicle is safe to register and be used on a road. As this aligns with the public interest of safety on the roads, this requirement is consistent with a free and democratic society based on human dignity, equality and freedom.

Section 68 requires registered operators to notify the chief executive of any changes to a vehicle's garage address or the name or address of the registered operator within 14 days of the change. This section may limit an individual's right to privacy by compelling individuals to provide updated personal information to the chief executive. The purpose of this provision is to maintain the currency of the vehicle registration database. Ensuring TMR has up-to-date information of vehicles and registered operators is imperative for enforcement purposes and to ensure registered operators are contactable in relation to their vehicle registration.

Similarly, sections 111 to 115 provide that the chief executive must collect certain information from registered operators pertaining to vehicles, personalised number plates, dealer plates and unregistered vehicle permits and keep a register of this information. These provisions require the collection and retention of information (including personal information) which could limit an individual's right not to have their privacy unlawfully or arbitrarily interfered with. The purpose of these provisions is to ensure the chief executive has a record of all registered vehicles for the purposes of identification, the charging of fees, enforcement, contacting registered operators and road safety (for example, keeping a register of written-off vehicles and a record of inspections). These provisions also allow Queensland to meet their national obligations of sharing vehicle registration information with other Australian jurisdictions through NEVDIS for vehicle identification, road safety and enforcement purposes. The collection of personal information is therefore critical to the operation of the vehicle registration scheme and is consistent with a free and democratic society based on human dignity, equality and freedom.

Section 195 permits the chief executive to request further information from an applicant should the chief executive reasonably require this information to decide the application. Depending on the information requested, this provision could limit an individual's right to not have their privacy unlawfully or arbitrarily interfered with. Whilst not occurring regularly in practice, as the information required for an application is usually provided by applicants, the purpose of this provision is to ensure the chief executive has sufficient information to fairly and accurately assess the application. This provision also supports the integrity of the vehicle register. It is therefore considered this provision is consistent with a free and democratic society based on human dignity, equality and freedom.

Sections 202, 203, 204 and 205 allow the chief executive to release the personal information of registered operators in limited circumstances. Information can be released under these provisions to an eligible person, tolling entities and an entity that maintains NEVDIS. As these provisions enable the disclosure of information, they could limit an individual's right to not have their privacy unlawfully or arbitrarily interfered with. In recognition of the importance of personal privacy, these circumstances are limited to only those where there is a broader community benefit or a compelling case for assisting individual members of the community (such as in a legal process). The chief executive can also impose conditions on the use and disclosure of the released information and there are penalties for those who contravene those conditions. It is therefore considered that release of information in limited circumstances is compatible 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 limitation on the right to privacy and reputation achieves the objective of the Act which is to establish a scheme to allow the identification of vehicles, drivers and road users through a current register of vehicles and registered operators. The limitation also enables an appropriate level of accessibility to personal information contained in the vehicle register and supports the various functions that the chief executive undertakes including national information sharing obligations. The limitation also enables the enforcement of laws about vehicles.

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

There is not any other reasonably available or restrictive way of achieving the purpose mentioned, namely of maintaining an up to date vehicle register for the purposes of identification, the charging of fees, enforcement, contacting registered operators and road safety.

In relation to the provisions which authorise the release of information, the vehicle register is the largest repository of vehicle and personal information in Queensland. It is therefore the most reasonably available way, and often the only way, to access the personal information of a registered operator, particularly when access to the register is related to an incident, such as a crash involving a vehicle on a road.

(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

Regarding the nature and extent of the information collected by the chief executive, the benefit of maintaining a current and correct vehicle registration database, for the purpose of identifying vehicles and registered operators to undertake the chief executive's functions, outweighs any limitation of the human right to privacy. The proposed Regulation does not allow for the collection of information that is not relevant to the application or the collection of information that would be excessively intrusive to personal privacy. These protections prevent the chief executive from arbitrarily collecting personal information.

The circumstances in which personal information can be released are directly aligned with the establishment of a scheme to allow the identification of vehicles and registered operators. Relevantly, information is only provided to eligible persons who have an identified need for the information, tolling entities and NEVDIS. These parties have a direct role in providing equitable access to the road network, enforcing laws about vehicles or ensuring parties who have suffered loss or injury have mechanisms of recourse against the responsible parties. This in turn has a community benefit, which speaks to the balance that is being struck between the limitation and the human right to privacy. This balance is further reinforced by the system and administrative constraints that have been implemented to ensure that parties accessing personal information are limited and accountable for their use of that information.

Offences that are subject to a reasonable excuse

Rights in criminal proceedings (section 32 of the HRA)

(a) the nature of the right

Section 32 (Rights in criminal proceedings) provides that a person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.

(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 proposed Regulation may limit rights in criminal proceedings by placing an evidentiary onus on a defendant who has breached an obligation to establish that they had a reasonable excuse for the breach. This applies for offences in the proposed Regulation which require, for example, a person to apply to transfer a vehicle's registration, to return number plates or to give notice of certain information to the chief executive within a certain timeframe.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

Placing an evidentiary burden on a person to establish they had a reasonable excuse for failing to comply with certain requirements under the proposed Regulation is a rational measure as it allows the evidence to be produced by the person best able to do so.

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

There is no other, less restrictive, reasonably available way of achieving this purpose.

Further, the matter that is subject to proof by the defendant is of a nature that the defendant is in a position to demonstrate. That is, the basis for establishing a reasonable excuse for failing to comply with certain requirements is within the defendant's knowledge.

(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

Without the reasonable excuse provisions, these offences could be unjust in a range of circumstances. Placing an evidentiary onus on the defendant to establish, on the balance of probabilities, a reasonable excuse for contravening the requirements of those sections is appropriate given that this information will typically be peculiarly within that defendant's knowledge so they will be best placed to bring themselves within the protection that the law provides.

Enforcement through the State Penalties Enforcement Regulation 2014:

Right to recognition and equality before the law (section 15 of the HRA)

Property rights (section 24 of the HRA)

Right to liberty and security of person (section 29 of HRA)

Fair hearing (section 31 of HRA)

Rights in criminal proceedings (section 32 of HRA)

(a) the nature of the right

Section 15 (Right to recognition and equality before the law) 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. Enforcement action by way of penalty infringement notice may disproportionately impact persons of a lower socio-economic status who may have more difficulty paying a monetary sum.

Section 24 (Property Rights) of the HRA 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.

Section 29 (Right to liberty and security of person) of the HRA 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.

Section 31 (Fair hearing) of the HRA 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 HRA 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 proposed Regulation may limit the above-mentioned rights to the extent that it prescribes penalty infringement notice offences under the *State Penalties Enforcement Act 1999*. Providing for the issuing of infringement notices has a range of benefits to both the alleged offender and the State. This includes the effective and efficient prosecution of alleged offences without requiring a court appearance by the alleged offender, whilst retaining the person's entitlement to a court hearing if they choose.

A contrary view of the infringement notice process is that it often results in no opportunity for a person to present before a court and for the evidence in their matter to be presented and tested. Although the majority of infringement notices are not taken to court, it is considered this occurs because it is preferable for the offender to simply pay the infringement notice if they consider they committed the offence. This creates efficiencies for the offender and the chief executive and does not unduly burden the court system. It is therefore considered the issuance of penalty infringement notices are consistent with a free and democratic society based on human dignity, equality and freedom.

The offences which may be enforced through the issuing of an infringement notice under the SPE Act is set out below.

Offences with the objective of improving road safety

Road safety is inherently consistent with a free and democratic society. It is considered both in the public interest to reduce road trauma, and to promote a person's right to life. The offence provisions that fall in line with this objective include:

- failing to return number plates or dealer plates if registration is not renewed or is cancelled;
- prohibiting the driving of an unregistered or written-off vehicle on a road;
- using a conditionally registered vehicle on the road in contravention of a condition;
- failing to give the chief executive notice of a vehicle modification;
- failing to present a vehicle for inspection when requested by the chief executive;
- failing to attach and display number plates correctly and within 1 day of receiving them;
- failing to apply to the chief executive for replacement number plates if damaged, destroyed, lost or stolen;
- failing to return number plates if required by the chief executive;
- using a dealer plate or a dealer (trailer trade) plate outside of the permitted circumstances for using a dealer plate;
- contravening a requirement to report a written-off vehicle to the chief executive;
- contravening a requirement to attach a label to a written-off vehicle;
- removing a written-off vehicle label from a vehicle;
- performing a written off vehicle inspection if not an approved written-off vehicle examiner or nominee;
- not complying with conditions of an inspection approval;

- failing to carry an unregistered vehicle permit when the vehicle is being used under the permit on a road;
- failing to ensure a dealer plate is attached correctly to the rear of the vehicle;
- using a dealer plate if you are not the registered operator of the dealer plate or authorised by the registered operator to use the dealer plate;
- failing to surrender a dealer plate following the cessation of the dealer's business;
- using a vehicle on the road if its registration certificate, number plate or permit has been altered; and
- selling an unregistered vehicle unless a registration application has been made.

Offences with the objective of maintaining the integrity of the vehicle registration database

The integrity of the vehicle registration database is an important part of both road safety and the accurate recording and identification of vehicles and registered operators. Accurate information is required to be collected and routinely updated for vehicle and registered operator identification purposes. This also has a direct road safety impact through the use of the information to aid enforcement. The offences in relation to the integrity of the vehicle registration database are about matters such as:

- failing to transfer a vehicle's registration within 14 days of acquisition;
- failing to place a replacement identifying number on a vehicle;
- failing to return a vehicle for further inspection if the chief executive considers a particular recorded in the register for the vehicle may not be accurate;
- failing to notify the chief executive of changes to the name and address of the registered operator, the vehicle's garage address, the vehicle's nominated configuration or the vehicle's purpose of use;
- failing to produce registration and importation documents if asked when driving a vehicle that is registered in a foreign country;
- failing to give notice to the chief executive when transferring personalised plates;
- making, selling or owning anything that purports to be, but is not, a registration certificate, number plate or permit; or
- altering or defacing a registration certificate, number plate or permit.

Offences with the objective of ensuring payment of the applicable registration fee

The cost of vehicle registration varies depending on the vehicle type, purpose of use and whether the registered operator is eligible for a reduced registration fee. The fees vary by likely impact on the road network; with heavier and more frequently used vehicles (such as taxis or rideshare) paying a higher registration fee. It is important that registered operators pay the fee applicable to them and only receive concessions to which they are entitled. Ensuring registered operators make payment of the fee to which is applicable to them is in the public interests of fairness and equity of treatment and contributes to the development and maintenance of the State's road network. The offences in relation to ensuring the payment of the correct registration fee include:

- failing to make payment of a reassessed registration fee;
- using a heavy vehicle in such a way as to attract a higher registration fee;
- failing to notify the chief executive of changes to eligibility for a registration fee exemption or concession; and
- using a concessionally registered vehicle in contravention of the eligibility criteria.

Allowing infringement notices to be issued for non-compliance with the offence provisions supports the objectives mentioned above. The purpose of the prescription of PINs for the offences in the proposed Regulation is to:

- ensure an efficient means of enforcing these offences;
- avoid the costs and inconvenience to both the individual and the State associated with consideration before a court in relation to offences that are objective in nature; and
- encourage individuals to comply with the requirements in the proposed Regulation which will assist in achieving the desired road safety outcomes.

Enabling infringement notices to be issued 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 the prescription of PINs for the offences and the purpose of providing an efficient means of enforcing these offences and avoiding court costs. This is because the infringement notice system allows enforcement through the issue of a fine by an authorised officer which the alleged offender can pay while avoiding a court process. This system also encourages individuals to comply with the proposed Regulation which will assist in achieving the desired road 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 above purposes, other than by prescribing the offences to be infringement notice offences under the SPE Regulation.

If these offences are not prescribed as infringement notice offences, there would be a cost to the broader community of court proceedings that may affect the State's ability to ensure road safety, potentially affecting the safety of other road users in the broader community. There would also be a cost to alleged offenders caused by compulsory court attendance. 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 timely certainty about their legal position.

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 as a consequence of non-payment of an infringement notice fine would only occur infrequently. Importantly, the threshold amount which must be owed to 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 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).

All persons, including those of low socio-economic status who may have lesser financial capacity to pay a penalty infringement fine, can avoid the impact of any PIN by complying with the requirements of the proposed Regulation. The requirements in the proposed Regulation are in place for the safety and benefit of all road users. A person who receives a PIN who cannot afford to pay the whole fine can also seek assistance from the State Penalties Enforcement Registry to pay the fine by instalments or settle the debt through other activities such as a work and development order.

A person may also elect to have a matter heard by a court. If the court finds the person guilty of the offence, it has the ability to take into account multiple factors when handing down the penalty, one of which may include the person's socio-economic status or ability 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

Allowing infringement notices to be issued for non-compliance with the above provisions in the proposed Regulation provides a proportionate response to encourage compliance with the requirements underpinning the driver licensing scheme. If these enforcement actions are not available, there would likely 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 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.

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 position. Without that option, all persons charged under the offences outlined above 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 PIN fines.

However, the proposed Regulation does not affect the ability for individuals to elect to have the matter heard by a court. In particular, section 15 of the SPE Act requires that all PINs must indicate that the alleged offender may elect to have the matter decided by a court, which promotes awareness that persons have this option 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. This enables individuals to choose the option that best suits their individual circumstances.

In respect of the right to recognition and equality before the law, while the imposition of a penalty infringement fine may disproportionately impact a person from a lower socio-economic group, the importance of maintaining the punishment and deterrent effect of penalties for applicable offences outweighs the impact on the right.

Therefore, the importance of protecting road safety through ensuring an effective enforcement system outweighs the potential limitations on the right to recognition and equality before the law, a potential negative impact on 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 *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2021* is compatible with the *Human Rights Act 2019* because it does limit human rights, 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