

Transport Operations (Road Use Management—Vehicle Standards and Safety) 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 Standards and Safety) Regulation 2021* (the proposed Regulation) made under the *Transport Operations (Road Use Management) Act 1995* (the TORUM Act), and with consequential amendments made under the *Petroleum and Gas (Production and Safety) Act 2004*, the *Police Powers and Responsibilities Act 2000*, the *Rural and Regional Adjustment Act 1994*, the *State Penalties Enforcement Act 1999* (SPE Act), 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

Regulatory framework

The objective of the proposed Regulation is to provide a legislative framework that improves road safety and protects community amenity by managing the risks associated with defective light vehicles (including from gaseous and noise emissions) and unsafe loading of light vehicles.

The proposed Regulation replaces the *Transport Operations (Road Use Management—Vehicle Standards and Safety) Regulation 2010* (the 2010 Regulation) which will automatically expire on 1 September 2021 under Part 7 of the *Statutory Instruments Act 1992*.

The proposed Regulation applies to most light vehicles (that is, vehicles with a gross vehicle mass or aggregate trailer mass of 4.5 tonne (t) or less) although some light vehicles (for example, animal-drawn vehicles and personal mobility devices) are only subject to dimension provisions. The proposed Regulation also applies to heavy vehicles (that is, vehicles with a gross vehicle mass or aggregate trailer mass of more than 4.5t) for vehicle inspections and to facilitate certification of life extensions for heavy buses. Otherwise, heavy vehicle standards, defective heavy vehicles and modifications to heavy vehicles are regulated by the *Heavy Vehicle National Law (Queensland)*.

The proposed Regulation includes provisions to:

- apply nationally-harmonised, light-vehicle standards to light vehicles in Queensland (schedule 1);
- minimise the use of defective light vehicles on roads and ensure defective vehicles are repaired or removed from service;
- manage light vehicle modifications to allow flexibility without compromising minimum safety standards;
- guide drivers about requirements for light vehicle coupling and loading, including load placement and restraint, mass limits, and limits for projecting loads;
- require light and heavy vehicle inspections at appropriate intervals to verify vehicle identity and to check whether the vehicle is defective;
- ensure the integrity of inspection certificates issued for light and heavy vehicles; and
- allow flexibility to accommodate commercial, industrial or recreational interests while maintaining safety.

Vehicle standards and defective vehicles

A light vehicle is defective if the vehicle or a component does not comply with the vehicle standards (whether through wear and tear, a crash or through unapproved modification) or because the vehicle or a component is unsafe.

The proposed Regulation prescribes the following as vehicle standards for light vehicles: *light vehicle standards (model provisions)*, *light vehicle standards (safety inspection)* and *light vehicle standards (modifications)*. These vehicle standards are further described below:

- The *light vehicle standards (model provisions)* are found in schedule 1 of the proposed Regulation and are based on the nationally harmonised *Australian Light Vehicle Standards Rules 2015* (ALVSRs). The ALVSRs were developed through consultation at a national level with road agencies, police services, automotive industry bodies, motoring organisations and members of the public. These standards incorporate:
 - the Australian Design Rules (ADRs) (reflecting international design and performance standards);
 - standards for light vehicles built before the ADRs were introduced; and
 - other matters not covered by the ADRs.

Schedule 1 standards cover a range of matters including general safety requirements, vehicle markings, vehicle configuration, lights and reflectors, braking systems, control of emissions, alternative fuel systems and mechanical connections between vehicles. The changes to the model provisions through the proposed Regulation are primarily to improve alignment with the model provisions while adopting Queensland drafting protocols.

- The *light vehicle standards (safety inspection)* will be in the Queensland Light Vehicle Inspection Manual (the Inspection Manual). The Inspection Manual will replace the existing *Code of Practice – Light Vehicle Inspection Guidelines* to better align with modern drafting protocols. Despite the change of name, the substance of the Inspection Manual has not changed. The Inspection Manual will reflect many of the nationally harmonised vehicle standards and, importantly, provide practical, easy to understand information for identifying if a vehicle is defective. The Inspection Manual is also the basis for light vehicle inspections for the issue of inspection certificates by approved examiners. Approved examiners are accredited to provide vehicle inspections under the *Transport Operations (Road Use Management—Accreditation and Other Provisions) Regulation 2015* (the Accreditation Regulation).
- The *light vehicle standards (modifications)* will be in the *Queensland Road Vehicle Modification Handbook* (the Modification Handbook) to align with modern drafting protocols. The Modification Handbook will combine the current *National Code of Practice for Light Vehicle Construction and Modification* with the *Queensland Code of Practice: Vehicle Modifications* to provide a single source of information about vehicle modifications in Queensland. The Modification Handbook will assist vehicle owners and modifiers when modifying vehicles and approved persons (who are accredited under the Accreditation Regulation) when certifying modifications.

Part 1 of the proposed Regulation deals with preliminary matters including providing for the commencement of the proposed Regulation on 1 September 2021.

Part 2 of the proposed Regulation provides for the offence of driving or parking, or permitting someone else to drive or park, a defective vehicle on a road unless one of the stated exceptions applies (for example, the vehicle is being driven in accordance with a defect notice).

In addition to the offence, if an authorised officer (such as police officer or transport inspector) reasonably believes that a light vehicle is defective, they may issue a defect notice. A defect notice requires the owner of a vehicle to rectify identified defects within a specified period, unless the vehicle is de-registered or disposed of to a dealer.

Modified vehicles

Part 3 of the proposed Regulation provides for vehicle modifications. A vehicle is modified if it is changed from the manufacturer's specifications, for example, by adding, removing or altering a component. The Modification Handbook provides for a range of common modifications. Some of these modifications must be certified by an approved person to ensure they meet the standards outlined in the Modification Handbook. If the Modification Handbook does not cover a type of modification to a vehicle, a person may apply to the chief executive for approval of the proposed modification. This allows for assessment and approval, when appropriate, of uncommon or extreme modifications.

Light vehicle loading

Part 4 of the proposed Regulation outlines requirements for light vehicle loading including mass and projection limits, load restraint and placement and coupling requirements for light vehicle combinations.

Safe movement approvals

Part 5 of the proposed Regulation allows for the chief executive to issue permits and guidelines to exempt light vehicles from particular provisions of the proposed Regulation as long as road safety is not diminished when the conditions of the approval are complied with.

Vehicle Inspections

Part 6 of the proposed Regulation requires vehicle inspections for certain registered vehicles at specific intervals or when triggered by specific events to verify vehicle identity and monitor whether the vehicle is defective. Most registered vehicles must have an inspection certificate on disposal. In addition, vehicles that need a certificate of inspection (COI) (such as heavy vehicles, vehicles that provide public passenger services and tow trucks) need to be inspected at regular intervals. These vehicles are considered higher risk because of their design or nature of their use.

Exemptions to inspection certificate requirements apply for new vehicles, vehicles in particular remote areas where inspection facilities are not reasonably available (see schedule 2), or where the vehicle is participating in an approved maintenance management scheme under the *Heavy Vehicle National Law* (HVNL) or an alternative compliance scheme related to vehicle maintenance under the TORUM Act. These documented and auditable maintenance schemes facilitate frequent proactive maintenance procedures that reduce the likelihood the vehicle will be defective.

Other matters

The proposed Regulation also includes provisions about:

- requirements for compliance and identification plates and offences for altering, defacing or removing identification or modification plates (Part 7);
- how applications under the proposed Regulation may be made to the chief executive (Part 8);
- an offence for persons who make, possess or use a document under the proposed Regulation that they know to be false or misleading (section 108);
- fees for activities done under the proposed Regulation (schedule 3) and allowing for the waiving of fees in special circumstances (such as floods or other natural disasters) (section 111);
- allowing a certificate to be tabled in court as evidence of the calibration of noise testing equipment (section 109);
- transitional provisions to ensure the continuity of matters done under the 2010 Regulation (Part 10); and

- consequential amendments for other regulations to maintain the status quo after the repeal of the 2010 Regulation.

Enforcement through the State Penalties Enforcement Regulation 2014 (SPE Regulation):

Part 12 amends the SPE Regulation to prescribe offences for which a penalty infringement notice (PIN) may be issued under the SPE Act. The offences are about:

- driving, parking or permitting the driving or parking of a light vehicle on a road;
- ensuring a driver passes on a defect notice to the vehicle owner;
- vehicle owners failing to comply with a defect notice;
- altering or defacing a defective vehicle label;
- removing a defective vehicle label;
- signing a clearance declaration (for a defect notice) if not authorised;
- noncompliant modifications;
- ensuring a vehicle is not driven or parked if a modification is noncompliant;
- using a vehicle with a modified exhaust system;
- approved persons failing to give a modification certificate or attach a modification plate after certification of a modification;
- approved persons issuing a certificate of modification or attaching a modification plate when the vehicle was not inspected or the approved person was not satisfied the modification was compliant;
- a person, other than an approved person, issuing a certificate of modification or attaching a modification plate;
- driving a vehicle that exceeds mass requirements;
- driving a vehicle towing a trailer that exceeds mass requirements;
- driving a light combination that exceeds mass requirements;
- driving a motorbike with a projecting load;
- driving a motor vehicle, other than motorbike, with a projecting load;
- driving an animal-drawn vehicle with a projecting load;
- failing to comply with visibility requirements for light vehicles with projecting loads;
- driving or parking a light vehicle that does not comply with load restraint and placement requirements;
- ensuring a light vehicle combination coupling is secure and appropriate;
- complying with miscellaneous vehicle dimension requirements while on road;
- contravening a safe movement approval;
- ensuring the owner of a COI vehicle has a current COI for the vehicle;
- registered vehicle owners having an inspection certificate on disposal of a vehicle;

- dealers acting for an owner in disposal when the owner has not complied with inspection certificate requirement;
- approved examiners locating and recording vehicle identification before inspection;
- approved inspection station proprietors ensuring an inspection certificate is completed correctly, unaltered and approved by the approved examiner before issue;
- approved examiners completing an inspection certificate correctly and legibly without alteration before issue;
- approved examiners inspecting a vehicle and being reasonably satisfied the vehicle is not defective before issuing a certificate;
- approved inspection station proprietors arranging reinspection of a vehicle within 14 days (after an inspection report was issued for the vehicle for defects);
- approved inspection station proprietors writing cancelled on manual inspection reports if a vehicle is not returned within 14 days;
- approved inspection station proprietors arranging reinspection if chief executive refuses vehicle registration because of an inspection certificate;
- approved inspection station proprietors charging a fee for reinspection or replacement certificate (after chief executive refusal to register vehicle);
- altering or defacing an identification plate;
- removing an identification plate without the chief executive's approval;
- altering or defacing a modification plate; and
- removing a modification plate without the chief executive's approval.

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)
- Property rights (section 24 of the HRA)
- Fair hearing (section 31 of the HRA)
- Rights in criminal proceedings (section 32 of HRA)

Vehicle standards and safety 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.

There are sections in the proposed Regulation which confer benefits upon certain people and organisations based on location or being impacted by special circumstances (for example, drought or natural disaster). While location and experiencing natural disaster are not strictly attributes identified in the *Anti-Discrimination Act 1991*, the provision may still lead to different outcomes for different persons.

Section 111 of the proposed Regulation provides the chief executive with discretion to waive payment of certain fees in special circumstances (for example, natural disaster or drought). The fee waiver applies to costs associated with vehicle inspections conducted by the Department of Transport and Main Roads (TMR) and replacement documents (such as books of modification or inspection certificates). This provision may be viewed as applying the law differently to different groups because some people may be eligible for fee waiver while others are not (even though all people subject to the same 'special circumstances', such as the effects of natural disasters or the challenges of limited service delivery in remote areas, will be treated equitably).

Sections 71 and 75 exempt owners who live in or use their vehicle in certain areas from compliance with inspection certificate requirements. The exempt areas are outlined in schedule 3 of the proposed Regulation. The exemption is based on access to inspection facilities.

Freedom of movement (section 19 of the HRA)

The right to freedom of movement protects a person's right to move freely within Queensland, to enter and leave Queensland, and to choose where they live within Queensland.

There are several provisions that prohibit driving a vehicle when it is defective, modified or not loaded in compliance with requirements (see sections 8, 20, 32 to 36, 40 to 44, 46, 47 and 52). While the proposed Regulation does not limit a person's ability to move around Queensland using other compliant forms of transport, the proposed Regulation provisions could be viewed as restricting an individual's ability to move through an area of public space to the extent that they might choose to do so in a noncompliant vehicle.

A defect notice may also limit a person's ability to drive a particular vehicle while it is defective. For example, if the headlights are not working, the defect notice may include a condition prohibiting the use of the vehicle at night. While the proposed Regulation does not limit the person's ability to move around Queensland using other, safer forms of transport, these provisions could be viewed as restricting an individual's ability to move through an area of public space to the extent that they might choose to do so in a defective vehicle.

Property rights (section 24 of the HRA)

The human right under section 24 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. Deprivation in this sense has been held to include the substantial restriction on a person’s use or enjoyment of their property.

The proposed Regulation includes offences under sections 8, 20, 32 to 36, 40 to 44, 46, 47 and 52 that limit a person's ability to drive their vehicle on the road if the vehicle or the loading is not compliant with requirements in the proposed Regulation. Sections 8 and 19 also prohibit a person from allowing another person to use their vehicle. These provisions limit a vehicle owner's property rights by limiting when they can use or allow the use of their vehicle.

Defect notices require a vehicle owner to rectify a vehicle defect within a specified time or they must de-register the vehicle or dispose of it to a dealer. In addition, the conditions on a defect notice, or extension of time for compliance with a defect notice, may prohibit the use of the vehicle or restrict the circumstances when the vehicle may be used. As a result, defect notices limit a person's ability to use or dispose of their property as they see fit.

Section 12 of the proposed Regulation provides a person must not remove a defective vehicle label if they are not authorised. Part 7 includes offences for altering, defacing or removing identification and modification plates. These provisions restrict an owner's ability to deal freely with their property in that the owner is unable to change or remove labels or plates attached to their vehicle.

Section 18 prohibits certain noncompliant modifications to light vehicles thereby limiting an owner's ability to modify their vehicle as they see fit.

While the proposed Regulation may impact property rights as outlined above, I am of the view that, consistent with section 24(2) of the HRA, that impact is predictable, just, reasonable and proportionate as it is clearly linked to road safety and protecting the property rights of others and so does not limit property rights. However, if there is a contrary view, I have outlined reasons for any limitations on human rights below.

Fair hearing (section 31 of the HRA)

The human right under section 31 of the HRA 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 proposed Regulation may limit the right to a fair hearing to the extent that it does not allow for review of some administrative decisions including refusal of approval for a modification (section 24), refusal of application to alter or remove a vehicle identification or modification plate (section 103), and refusal to allow extensions of time to comply with a defect notice or certificate of inspection requirement (sections 15, 16 and 72 to 74). The proposed Regulation also only allows internal review for decisions to impose conditions on a modification approval (section 24) and safe movement permits (section 62).

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 reversing the onus of proof for exceptions to offences that apply through sections 8(2) and (3), 11(2), 18(3), 71(2), 75(2) and 76(2). Traditionally, the onus is on the prosecution to establish all elements relevant to an offence, including prima facie evidence that exceptions do not apply. However, if section 76 of the *Justices Act 1886* is applied during a prosecution of these offences, the onus of proving the matters in the exceptions will be on the defendant. Reversing the onus of proof may limit a person's right to be presumed innocent.

Similarly, the proposed Regulation places an evidentiary onus on a defendant who has breached an obligation under section 10, 11 or 12 of the proposed Regulation to establish that they had a reasonable excuse for that breach.

Section 44(2) applies presumptions relating to evidence that a load did not meet the load performance standards or where a load has fallen from a vehicle. In addition, a court must presume a document that purports to be the Load Restraint Guide for Light Vehicles is the Load Restraint Guide. These matters may limit a person's right to be presumed innocent.

In addition, section 109 (for noise testing equipment) reverses the onus of proof by providing for certificate evidence for calibration of noise testing equipment (instead of the prosecution calling witnesses).

Enforcement through the SPE Regulation

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.

This right may be limited to the extent that the proposed Regulation imposes penalty infringement fines for failing to comply with certain requirements. The obligation to pay a fine may disproportionately impact persons of a lower socio-economic status who may have more difficulty paying a monetary sum.

Property rights (section 24 of the HRA)

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 being taken by the registrar of the State Penalties 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 HRA)

The human rights under sections 29(1) and (2) of the HRA 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 proposed 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 HRA) and rights in criminal proceedings (section 32 of the HRA)

The human right under section 31 of the HRA 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 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 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 HRA. As a result, the proposed Regulation arguably does not limit the human rights.

If there is an alternative view that the power limits the human rights, it is considered that the limitation would also be reasonable and demonstrably justified using the proportionality factors under section 13 of the HRA as explained below.

Consideration of reasonable limitations on human rights (section 13 of the HRA):***Vehicle standards and safety 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.

(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

Allowing the chief executive to waive certain fees in special circumstances such as drought or natural disaster, aims to assist those that may otherwise struggle to meet the costs associated with vehicle inspections conducted by TMR and replacement documents. Those who are not subject to the special circumstances will not be able to benefit from the fee waiver and so, are treated differently. Given, all those who share the same 'special circumstances' will be treated equitably, I believe, the nature of the purpose of the provision is consistent with a free and democratic society based on human dignity, equality and freedom.

Exempting people in remote areas from inspection certificate requirements is designed to reduce the disproportionate burden to those who do not have reasonable access to inspection facilities. While those in other areas are not entitled to the same exemption, their relative ease of access to inspection facilities means they do not have a disproportionate burden. I believe reducing hardship for persons in remote areas is consistent with community expectations 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

The purpose of allowing some fees to be waived is to provide some financial relief to those in communities experiencing events such as droughts and natural disasters. Those not experiencing these hardships are not eligible. There is a direct link between the limitation and purpose.

The purpose of exempting persons without reasonable access to inspection facilities from inspection certificate requirements is to avoid a disproportionate burden for those in remote areas. There is a direct link between the limitation and purpose.

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

There are no less restrictive options reasonably available. An alternative to the limited exemption for inspection certificates would be to remove inspection certificate requirements for all vehicles. This would compromise the safety objectives 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

On balance, I believe the benefit of the fee waiver for those experiencing hardship due to extreme weather events for example, justifies any limitation on human rights for those who do not obtain the benefit.

The exemption for inspection certificates applies only where there is no reasonable access to inspection facilities. Other provisions relating to the use of defective or modified vehicles and vehicle loading, will continue to apply to those in remote areas so vehicle safety is still regulated. The population density of these remote areas also reduces safety risks to others. On balance, I believe the benefit to those in remote areas of allowing the exemptions in remote areas justifies any limitation on human rights for those who are not in remote areas.

Vehicle standards and safety regulatory framework in Queensland – Freedom of movement law (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

Offences under sections 8, 20, 32 to 36, 40 to 44, 46, 47 and 52 prohibit the driving of vehicles that do not comply with requirements under the proposed Regulation. These provisions may be viewed as limiting a person's freedom of movement to the extent they may choose to use a defective (which includes illegally modified) or incorrectly loaded vehicle to move through Queensland. A defect notice may also affect a person's freedom of movement to the extent any condition imposed through the defect notice may limit the ability to use the vehicle.

The above provisions operate to ensure vehicles that may be used on roads comply with vehicle standards and safe loading practices.

While the vehicle standards do not apply retrospectively (that is, vehicles are not required to be updated to meet changing standards), they ensure the ADRs that apply when the vehicle is built or imported into Australia continue to apply throughout the lifespan of a vehicle. In other words, vehicles must never be less safe than when they were built, even if modified.

Modifications to vehicles that do not meet legislative standards carry road safety risks. In addition, complaints about vehicle modifications, for example those relating to excessive noise or the brightness of after-market headlights, are common themes raised by the public in correspondence and enquiries to TMR demonstrating they are real and persistent issues for the community. While vehicle modifications may be legitimately done for personal, commercial or recreational purposes, they must still comply with accepted vehicle standards to ensure safety and protection of community amenity.

Vehicle theft is also an ongoing concern for the community. There were 13,288 vehicles stolen in Queensland in 2020. This compares to 12,153 vehicles stolen in 2016 and equates to an increase from 2.54 to 2.92 per 1,000 vehicle registrations. Vehicle standards requirements for theft reduction devices in motor vehicles (for example, engine immobilisers) reduces the opportunity for unlawful use of those motor vehicles.

Vehicle loading (such as mass, projections or load restraint and placement) and coupling (between vehicles in a combination) also affects road safety. Exceeding the manufacturer's specifications for mass impacts vehicle stability and may impact the performance of the vehicle's steering or braking or cause the failure of another vehicle component, potentially leading to a crash. Projecting loads may also impact vehicle stability and cause a hazard to other road users. In addition, incorrectly coupled vehicles may detach, causing a hazard to other road users.

Loads that are not placed or restrained properly are also a serious road safety risk as they can impact vehicle stability or fall from the vehicle which can be dangerous to other road users. This continues to be an ongoing road safety issue and as recently as April 2020, there was an incident involving a ladder falling from a light vehicle causing the death of a motorcyclist.

The purpose of the limitations in these provisions is primarily road safety. Ensuring that vehicles used on road are safe promotes human rights for other road users relating to right to life and protection of families. The limitations in the above provisions also protects property rights of others by reducing the possibility a defective vehicle may cause an incident resulting in damage to another person's property. In addition, applying vehicle standards promotes community amenity by managing noise emission and gaseous emission limits. I believe that provisions which contribute to positive road safety outcomes, protect property rights and community amenity are consistent with community expectations 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

In terms of road safety, it is estimated that defective vehicles which are unsafe contribute to approximately four per cent of road crashes. In the 12-month period from 1 March 2020 to 28 February 2021, there were 300 lives lost on Queensland roads, equating to potentially 12 lives lost due to vehicle defects. Deterring the use of defective vehicles on Queensland roads has a clear and rational link with achieving the road safety purpose of the provisions.

There is also evidence to show that ensuring light vehicles comply with nationally harmonised ALVSRs improves road safety over time. Statistical analysis conducted by the Australasian New Car Assessment Program (ANCAP) using Australian Bureau of Statistics' Motor Vehicle Census data from 2016 showed light passenger vehicles built before 2000, which accounted for 20 per cent of the Australian fleet, were involved in 33 per cent of fatalities. This compared with vehicles built between 2011 and 2016, which made up 31 per cent of the fleet but were only involved in 13 per cent of fatalities.

While the ALVSRs do not apply retrospectively (that is, vehicles are not required to be updated to meet changing standards), they still ensure that vehicles must never be less safe than when they were built. There is a clear and direct link between limiting the use of vehicles that do not comply with vehicle standards and the road safety purpose of the proposed Regulation.

Modifications to vehicles that do not meet legislative standards carry road safety risks. In addition, complaints about vehicle modifications are common issues raised by the public in correspondence to TMR, demonstrating they are real and persistent issues for the community. While vehicle modifications may be legitimately done for personal, commercial or recreational purposes, they should still comply with accepted vehicle standards to ensure safety and protection of community amenity. In addition to the link with road safety, there is also a clear and rational link between limiting the use of modified vehicles that do not comply with noise emission requirements and the community amenity objectives of the proposed Regulation.

Vehicle loading (such as mass, projections or load restraint and placement) and coupling (between vehicles in a combination) also affect safety. Loading and coupling impact vehicle stability or the performance of components like braking systems. Projecting loads or loads that fall from vehicles may also cause hazards for other road users.

There is a clear and direct link between limiting the use of vehicles that do not comply with loading or coupling requirements and the road safety objectives of the proposed Regulation.

Prohibiting the use of defective vehicles, including noncompliant modified vehicles, has a clear and rational connection with the road safety, property protection and community amenity objectives of the proposed Regulation.

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

The proposed Regulation includes features that balance the impact of human rights limitations. Part 5 includes provisions allowing for safe movement approvals and many of the offence provisions also include exceptions so vehicle owners and drivers can lawfully use defective or modified vehicles in limited circumstances.

Importantly, I note the proposed Regulation does not limit a person's ability to use other, compliant forms of transport to move around Queensland. With that in mind, I believe, there are no less restrictive approaches available to achieve the road safety and property protection purposes of the provisions.

(e) Assess 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

Limiting the use of defective, modified or incorrectly loaded vehicles through this regulation aims to improve road safety and protect other's property rights as well as protecting community amenity.

The proposed Regulation is designed to deter people using, or allowing the use of, defective, modified or incorrectly loaded vehicles on Queensland roads. Without the limitation on freedom of movement, there may be increased use of defective and unsafely loaded vehicles increasing the road safety risks in the community, which potentially impacts the right to life, the protection of family and property rights of others. In my view, on balance, any limitation on freedom of movement is justified.

Light vehicle standards and vehicle safety 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

There are several offences that prohibit the driving and parking on public roads of defective or modified vehicles or vehicles that are not loaded correctly. In addition, sections 8 and 19 also prohibit a person permitting the use of a defective vehicle or allowing the use of a noncompliant modified vehicle. These provisions may be viewed as limiting a person's ability to use, or allow the use of, their vehicle.

The issue of defect notices also affects property rights in that they require a vehicle owner to rectify a registered vehicle's defects or they must dispose of the vehicle to a dealer or de-register it. In addition, they may impose conditions of use on the vehicle that may limit a person's ability to use it as they wish on a public road.

The purpose of limiting the ability to drive non-compliant vehicles is to promote road safety, protect the property of others and support community amenity. Supporting road safety supports human rights relating to right to life and protecting families. In my view, these outcomes are consistent with community expectations in a free and democratic society based on human dignity, equality and freedom.

There are also offences prohibiting specific vehicle modifications, and altering, defacing or removing modification and identification plates or defective vehicle labels. These provisions limit the ability of the owner of a registered vehicle or vehicle that is proposed to be used on the road to do what they wish with their vehicle or plates and labels attached to their vehicle.

Identification and modification plates are sources of information to determine vehicle identity and whether a modification has been certified. Identification plates contain important information such as the vehicle's year of manufacture, approval number and vehicle identification number, all of which help to identify the vehicle standards that apply to the vehicle and whether it is has previously been written off (which may indicate it is not suitable for ongoing use on the road). Vehicle identification plates are also an important tool in identifying stolen vehicles.

A defective vehicle label may be attached to a defective vehicle if the authorised officer considers there is a risk the vehicle may be used on a road in contravention of the conditions. The label provides a visual indicator to others, including authorised officers and other potential drivers, of limitations on the use of the vehicle.

Limiting a person's ability to remove identification and modification plates and defective vehicle labels is also in the interests of safety and protecting property rights. In my view, these outcomes are consistent with community expectations 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

The data outlined above shows there is a clear link between ensuring vehicles comply with vehicle standards and road safety. In addition, as discussed above, vehicle loading also impacts road safety. Prohibiting the altering, defacing or removing of modification or identification plates or defective vehicle labels protects the property rights of others and community amenity as well as promoting road safety.

There is a clear and rational connection between limiting property rights of vehicle owners in the ways mentioned above and achieving the road safety, property protection and community amenity objectives of the proposed Regulation.

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

The proposed Regulation includes features that allow flexibility in limited circumstance including through safe movement approvals in Part 5, and exceptions that apply to some offences.

The provisions that may limit a vehicle owner's property rights outlined above are necessary elements of the scheme promoting vehicle safety, community amenity and property interests of others. The scheme includes enough flexibility for limited use in circumstances that do not compromise safety, community amenity or the property rights of others. I believe there are no less restrictive approaches available to achieve the purposes of the provisions.

(e) Assess 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 proposed Regulation is designed to deter the use of defective (including illegally modified) vehicles and vehicles that are not loaded correctly on Queensland roads in the interests of road safety. Without the limitation on use of the vehicle or the ability to remove identification plates, modification plates and defective vehicle labels, there may be increased safety risks, and potentially impact the human rights of others including the right to life and the protection of family. In addition, the property rights of others may be impacted through damage in an incident caused by a defective vehicle, or incorrectly loaded vehicle.

Property rights are also protected through the ability to use identification plates to identify stolen vehicles. Further, loss of community amenity through noise emissions for example, is a real, ongoing issue for the community. As a result, any limitation on property rights has not been done arbitrarily, but only where there is a clear link with the policy objectives of road safety, protecting property interests and community amenity. In my view, on balance, any limitation on vehicle owner property rights is justified.

Vehicle standards and safety regulatory framework in Queensland – Fair hearing (section 31 of HRA)

(a) the nature of the right

The human right under section 31 of the HRA 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.

(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

Consistent with the 2010 Regulation, under the proposed Regulation, the chief executive may make the following decisions that are not subject to review:

- refusal of application for modifications not covered by the Modification Handbook (section 24);
- refusal of extension of time to comply with defect notice or certificate of inspection requirements (sections 15, 16 and 72 to 74); and
- refusal of application to remove modification plates and vehicle identification plates (section 103).

In addition, under the proposed Regulation, decisions about conditions on safe movement permits or conditions on a modification approval will only be subject to internal review. Lack of external review may be viewed as a limitation on the right to fair hearing.

Importantly, persons involved in these decision-making processes are accountable under the Code of Conduct for the Queensland Public Service and a statutory order of review of the decisions will be available under section 20 of the *Judicial Review Act 1991*.

Modified vehicle decisions – refusal

The chief executive's approval of modifications is only required for vehicles that are registered or are to be used on roads and where the modification does not fall within the Modification Handbook. The Handbook aims to cover the field from minor to complex modifications for vehicles for road use. Generally, in the interests of safety, it is not considered desirable to allow modifications that are not covered by the Modification Handbook. However, allowing the chief executive to approve modifications not covered by the Modification Handbook provides some flexibility and ensures a practical approach can be applied to meet individual or commercial needs, while still protecting road user safety and public amenity.

Any modification that is not covered by the Modification Handbook will be complex requiring technical expertise to assess safety impacts and appropriate conditions. In practical terms, these applications are uncommon, and the unusual nature of the modifications sought will require a number of reviewers, meaning the outcome is not based on a single individual's assessment. In addition, applications involve a consultative process with the applicant wherever possible. As a result of the complex technical nature of these applications, the expertise required, the consultative approach to resolving them and the safety impacts if an approval was granted inappropriately, the lack of review is considered consistent with a free and democratic society based on human dignity, equality and freedom.

Modified vehicle decisions – conditions

If an application for modification is granted, the chief executive may impose conditions on that approval. In that circumstance, the proposed Regulation requires the chief executive to give the owner of the vehicle, or the owner's agent, a written notice stating the decision, the reasons for the decision to impose conditions and that the person may ask for the decision to impose conditions to be reviewed. The decision on this internal review, however, is final and cannot be challenged in the Queensland Civil and Administrative Tribunal.

The internal review will allow a second person with experience in vehicle standards and safety issues to assess whether the decision to impose conditions on the approval was not correct. Importantly also, the provision to the applicant of the reasons for the original decision will allow them, when they apply for internal review, to provide any additional material they believe is relevant to consider at review and to directly address any issues raised by the chief executive when coming to the original decision.

Considering the potential impact to road safety and other's property and the expertise required in making a decision, only allowing internal review of conditions, is considered consistent with a free and democratic society based on human dignity, equality and freedom.

Approval to remove modification and identification plates

The nature and importance of modification or identification plates and the impact of removing these plates is discussed above. The fundamental importance of these plates remaining on vehicles means that, if the chief executive decides not to allow removal, there should be no avenue for review. Circumstances that would justify removal are extremely rare. As a result, not allowing review of these decisions is justified in the interests of safety and protecting vehicle identity to support the property rights of others and is consistent with a free and democratic society based on human dignity, equality and freedom.

Refusal to extend time to comply with a defect notice or obtain a certificate of inspection

Where a vehicle owner is unable to comply with a defect notice or obtain a certificate of inspection for their vehicle within the required timeframes, they may apply for an extension of time to avoid enforcement action. If the person's application is refused, the decisions are not reviewable.

The purpose of defect notices and certificates of inspection is to ensure that vehicles are safe for use on the road. For practical reasons, conditions may be applied to allow limited use of vehicles subject to defect notices (see section 9 and 14). However, even limited use beyond the required timeframes may cause defects to deteriorate and so further impact safety. Extending the time to comply with a defect notice or requirement for a certificate of inspection extends the time when a vehicle that is known to be defective or is potentially defective (because it has not been inspected for a certificate of inspection) is able to be used on Queensland roads. As a result, ensuring these decisions are not reviewable is considered justified in the interests of road safety, consistent with a free and democratic society based on human dignity, equality and freedom.

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

The limitations on reviews discussed above are aimed at protecting road safety, property rights and community amenity. The applications for these matters are rare. Even applications to the chief executive for an extension of time to obtain a certificate of inspection are rare because the online booking system successfully manages the needs of most vehicle owners.

The opportunities to apply to the chief executive are intended to provide flexibility to vehicle owners or drivers. Limiting access to review reduces the risk of unsafe vehicles being used on the roads and vehicle identification being compromised. There is a clear and rational link between limiting reviews and promoting road safety, protecting property rights and amenity outcomes for the community.

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

The applications outlined above are designed to provide flexibility to cater for unusual circumstances. These applications require expertise in vehicle standards and safety issues.

While the proposed Regulation may not provide additional avenues for review, members of the public may still make further representations to TMR, including through formal complaints procedures. Persons involved in these decision-making processes are also accountable under the Code of Conduct for the Queensland Public Service and a statutory order of review of the decisions will be available under section 20 of the *Judicial Review Act 1991*.

Applying review options would raise the risk of unsafe vehicles being used on the roads, prolong the use of defective vehicles on roads, and compromise vehicle identification. There is no less restrictive or reasonably available way to achieve the road safety, property and amenity objectives 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

Allowing the decisions outlined above to be further reviewed increases the risks associated with noncomplying vehicles being used on roads and may compromise vehicle identification. Therefore, any limitation of the human rights related to a fair hearing is outweighed by the risk to road safety, property rights of others and community amenity.

Vehicle standards and safety regulatory framework in Queensland – Rights in criminal proceedings (section 32 of HRA)

(a) the nature of the right

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.

- (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

Exceptions to offences

The proposed Regulation reverses the onus of proof by applying exceptions to some offences through sections 8(2) and (3), 11(2), 18(3), 71(2), 75(2) and 76(2).

Traditionally, the onus is on the prosecution to establish all elements relevant to an offence, including prima facie evidence that exceptions do not apply. However, if section 76 of the *Justices Act 1886* is applied during a prosecution of these offences, the onus of proving the matters in the exceptions will be on the defendant. Reversing the onus of proof limits the presumption of innocence.

Importantly, each of the above exceptions relate to matters where the defendant is in the best place to provide the evidence needed. For example, for section 8(2), the defendant is the only person who would know whether they were genuinely driving to a place for repair or inspection of the vehicle or using the vehicle illegally. Similarly, for section 8(3), the person will be best placed to establish whether or not they are the owner of the vehicle, since the registered operator of the vehicle is not always the vehicle's owner. For example, a parent may register their child's vehicle in their name for insurance purposes, even though the child owns the vehicle. While the parent would technically meet one form of the definition of owner in the TORUM ACT, it does not mean the child is not also an owner who should be held accountable for driving an unapproved modified vehicle.

Similarly, the proposed Regulation places an evidentiary onus on a defendant who has breached an obligation under section 10, 11 or 12 of the proposed Regulation to establish that they had a reasonable excuse defence for that breach. Providing a reasonable excuse ensures that people are not unjustly held liable for these offences. As with the exceptions discussed above, however, the defendant is in the best place to provide evidence about the reasons for their conduct. In many cases, that information will be solely within their knowledge. If they are able to establish a reasonable excuse on the balance of probabilities the onus returns to the prosecution to disprove that excuse beyond a reasonable doubt.

In practice, if a defendant provides enough information at the time of interception, the matters are sufficiently objective that an authorised officer will be able to determine whether an exception applies and whether enforcement action should be commenced. However, if the person does not provide information at the time of interception, and the matter proceeds to hearing, it would be impracticable, if not impossible, for the prosecution to produce evidence to address a defendant's potential claims and the prosecution would not be successful.

The purpose of allowing the reversal of onus is to provide a balance between allowing some limited reasonable use of vehicles that would otherwise not be allowed on the roads, while still ensuring prosecutions can be effective. If prosecutions are ineffective, the deterrent value of the offences is undermined. The limitation on presumption of innocence supports the road safety, protection of property and community amenity objectives of the proposed Regulation and promotes human rights relating to right to life and protection of families and property rights for others. These objectives are consistent with community expectations in a free and democratic society based on human dignity, equality and freedom.

Presumptions for loading offences

Section 44(1) requires that a person who drives or parks a light vehicle on a road must ensure that a load on the vehicle:

- is not placed in a way that makes the vehicle unstable or unsafe;
- is secured in a way that makes it unlikely to fall or be dislodged from the vehicle; and
- is restrained using an appropriate method.

It will be up to the prosecution to prove that this requirement has been contravened.

However, section 44(2) provides that evidence in a proceeding for an offence that a load did not meet the load performance standards is evidence of a contravention of the requirement in section 44(1). Further, evidence that a load has fallen from a vehicle is evidence that it was not properly secured. In addition, a court must presume a document that purports to be the Load Restraint Guide for Light Vehicles is the Load Restraint Guide. These matters may limit the presumption of innocence.

Inappropriate loading can impact the performance of the vehicle, including braking and stability and loads can fall from vehicles causing a hazard to other road users risking safety and property damage.

Most people using light vehicles are not engineers and do not have access to professional advice each time they load their vehicle. As a result, the offence in section 44(1) does not require strict compliance with the load performance standards and instead applies practical obligations. If a person complies with these obligations, they will not breach the load performance standards. However, if there was an incident and the investigation determined that the performance standards were not met, then, section 44(2)(a) allows a court to conclude the offence had been committed. The load performance standards are objective measures and, evidence would be based on expert testimony.

Section 44(2)(b) provides that evidence that a load or part of a load has fallen from a vehicle is evidence that the load was not properly secured. During a court prosecution, the direct evidence of an authorised officer or civilian witness that a load had fallen from a vehicle may not be sufficient to establish a case that the load was not properly secured. Expert evidence may be required. If witnesses need to be called, the process of giving evidence takes time and increases the costs of the proceeding. Ultimately, if there is a finding of guilt, it may also significantly increase potential costs payable by the defendant. This rebuttable presumption will assist with efficient court processes.

The Load Restraint Guide for Light Vehicles 2018 has been developed by the National Transport Commission in consultation with engineers and loading experts to provide guidance to light vehicle drivers about appropriate loading and load restraint methods. It does not purport to be the only way of loading vehicles, but it provides a useful tool explaining complex loading concepts including options that may be available. Section 44(2)(c) ensures a document purporting to be the Load Restraint Guide for Light Vehicles 2018 is presumed to be the Load Restraint Guide and this can assist both the prosecution and the defendant in explaining loading concepts.

The above provisions provide a logical, efficient and cost-effective means of producing evidence and information to courts for loading issues. They do not compromise the defendant's ability to call additional or contrary evidence. The purposes of the limitations in these provisions are road safety, protection of property of others and efficiency of court proceedings. These purposes are consistent with community expectations in a free and democratic society based on human dignity, equality and freedom.

Evidentiary certificate

Section 109 allows for certificate evidence to be provided about the calibration of noise testing equipment. Certificate evidence may be viewed as reversing the onus of proof, as it allows the evidence to be presented to the court without witnesses being called. Certificate evidence is generally acceptable, however, where the matter dealt with is technical and non-contentious. Allowing certificate evidence for the calibration of noise testing equipment reduces the need for the prosecution to call expert witnesses where the calibration of the equipment is not contested. However, the defendant is still able to challenge the calibration certificate through providing notice under section 123 of the TORUM Act so that the prosecution can organise appropriate witnesses.

Promoting efficient court process benefits all parties and so is consistent with community expectations 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

Allowing the reversal of onus provisions arising from the operation of section 76 of the *Justices Act 1889* and the offences allowing for a reasonable excuse, support road safety, property protection and community amenity objectives through ensuring provisions are enforceable and thereby deter unsafe or antisocial conduct.

Section 44(2), which allows the prosecution to present certain evidence regarding load restraint, promotes the provision of clear information for courts on load restraint and placement issues. Again, this supports road safety and property protection objectives through ensuring provisions are enforceable and thereby deter unsafe conduct.

The certificate evidence for calibration of noise testing equipment promotes efficient court processes and may benefit both parties.

There is a clear and rational connection between the limitation on rights in criminal proceedings and the road safety, property protection, community amenity and court efficiency objectives of the provisions.

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

The excuses and exceptions to the offences outlined above are designed to assist drivers and vehicle owners by articulating limited circumstances where use of noncompliant vehicles may be acceptable. Whether or not section 76 of the *Justices Act 1886* is applied to the offences outlined above, will usually depend on the information provided by the defendant at the time of interception. If the person is forthcoming about the circumstances for their use of the vehicle, the prosecution will have no need to rely on section 76. However, if the person is not forthcoming, the prosecution will likely be unable to negative potential matters raised and will not be able to establish a case to answer. This would undermine the deterrent effect of the offences and compromise road safety. In my view, there is no less restrictive and reasonably available way to achieve the purpose of the limitation.

Load restraint and placement and the forces that apply can be complex matters. The evidentiary matters in section 44(2) may assist the court by simplifying the prosecution of unsafe loading offences. Removing these provisions would increase the complexity of prosecutions, increasing costs to all parties and potentially reducing the deterrent effect of the offences. In my view, there is no less restrictive and reasonably available way to achieve the purpose of the limitation.

In addition, the evidentiary provisions for noise testing equipment do not limit the ability of the defendant to provide additional or contrary evidence. In my view there is no less restrictive and reasonably available way to achieve the purpose of the limitation.

(e) Assess 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 proposed Regulation is designed to deter people from offences that may have road safety impacts, property damage or community amenity impacts. Without the reversal of onus provisions, some key offences may be unenforceable in court and would undermine the deterrent effect. This may lead to increased safety risks in the community, potentially impact the right to life, the protection of family and property rights of others. In addition, efficient court processes benefit all parties to a proceeding.

Without the reasonable excuse provisions, the offences in sections 10, 11 and 12 of the proposed Regulation 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.

In my view, on balance, any limitation on human rights that arises from the reversal of onus of proof provisions is justified.

Enforcement through the SPE Regulation:***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) and 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.

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 PIN offences under the SPE Act. 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 may result in a person not attending court and having the evidence in their matter presented and tested. Although the majority of infringement notices are not taken to court, it is considered this typically 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 does not unduly burden the court system. It is therefore considered the issue of PINs is 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 vehicle safety (including ensuring the integrity of the vehicle inspections scheme)

The offences are about:

- driving, parking or permitting the driving or parking of a light vehicle on a road;
- ensuring a driver passes on a defect notice to the vehicle owner;
- vehicle owners failing to comply with a defect notice;
- altering or defacing a defective vehicle label;
- removing a defective vehicle label;
- signing a clearance declaration (for a defect notice) if not authorised;
- noncompliant modifications;
- ensuring a vehicle is not driven or parked if a modification is noncompliant;
- using a vehicle with a modified exhaust system;
- approved person failing to give a modification certificate or attach a modification plate after certification of a modification;
- approved persons issuing a certificate of modification or attaching a modification plate when the vehicle was not inspected or the approved person was not satisfied the modification was compliant;
- a person, other than an approved person, issuing a certificate of modification or attaching a modification plate;
- driving a vehicle that exceeds mass requirements;
- driving a vehicle towing a trailer that exceeds mass requirements;
- driving a light combination that exceeds mass requirements;
- driving a motorbike with a projecting load;
- driving a motor vehicle, other than motorbike, with a projecting load;
- driving an animal-drawn vehicle with a projecting load;
- failing to comply with visibility requirements for light vehicles with projecting loads;
- driving or parking a light vehicle that does not comply with load restraint and placement requirements;
- ensuring a light vehicle combination coupling is secure and appropriate;
- complying with miscellaneous vehicle dimension requirements while on road;
- contravening a safe movement approval;
- ensuring the owner of a COI vehicle has a current COI for the vehicle;
- registered vehicle owners having an inspection certificate on disposal of a vehicle;

- dealers acting for an owner in disposal when the owner has not complied with inspection certificate requirement;
- approved examiners locating and recording vehicle identification before inspection;
- approved inspection station proprietors ensuring an inspection certificate is completed correctly, unaltered and approved by the approved examiner before issue;
- approved examiners completing an inspection certificate correctly and legibly without alteration before issue;
- approved examiners inspecting a vehicle and being reasonably satisfied the vehicle is not defective before issuing a certificate;
- approved inspection station proprietors arranging reinspection of a vehicle within 14 days (after an inspection report was issued for the vehicle for defects);
- approved inspection station proprietors writing cancelled on manual inspection reports if a vehicle is not returned within 14 days;
- approved inspection station proprietors arranging reinspection if chief executive refuses vehicle registration because of an inspection certificate;
- approved inspection station proprietors charging a fee for reinspection or replacement certificate (after chief executive refusal to register vehicle);
- altering or defacing an identification plate;
- removing an identification plate without the chief executive's approval;
- altering or defacing a modification plate; and
- removing a modification plate without the chief executive's approval.

The nature of these offences and their compatibility with a free and democratic society based on human dignity, equality and freedom has been outlined at length above. In summary, whether the offence is about the condition of the vehicle itself, or it is about the integrity of the documents and vehicle inspections, underpinning all the above offences is road safety. Even vehicle identification plates provide important information about the standards to be applied to each vehicle.

Road Safety is inherently consistent with a free and democratic society. It is considered both in the public interest to reduce road trauma and is considered to promote a person's right to life.

Allowing infringement notices to be issued for non-compliance with each of the offence provisions supports the safety 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 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, 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. There would also be a cost to alleged offenders both in terms of financial impact and the emotional impact that court attendance potentially causes.

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 the 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 SPER 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 light vehicle standards and vehicle safety 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 liability. 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 pay the PIN amount or 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 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. 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 Standards and Safety) Regulation 2021* is compatible with the HRA 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