

Transport Operations (Road Use Management—Vehicle Registration) and Other Legislation Amendment Regulation 2023

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* (the HR Act), I, Mark Bailey MP, Minister for Transport and Main Roads and Minister for Digital Services, provide this human rights certificate with respect to the *Transport Operations (Road Use Management—Vehicle Registration) and Other Legislation Amendment Regulation 2023* (the Amendment Regulation) made under the *State Penalties Enforcement Act 1994* (the SPE Act), the *Tow Truck Act 1973*, and the *Transport Operations (Road Use Management) Act 1995*.

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

The Honourable Yvette D'Ath MP, Attorney-General and Minister for Justice 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 Amendment Regulation is made under the SPE Act for the purpose of prescribing offences as infringement notice offences.

Overview of the Subordinate Legislation

The Amendment Regulation amends the *State Penalties Enforcement Regulation 2014*; the *Tow Truck Regulation 2009*; the *Traffic Regulation 1962*; the *Transport Operations (Road Use Management—Accreditation and Other Provisions) Regulation 2015*; the *Transport Operations (Road Use Management—Driver Licensing) Regulation 2021*; the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2021*; and the *Transport Operations (Road Use Management—Vehicle Standards and Safety) Regulation 2021*.

The objectives of the Amendment Regulation are to:

- allow sharing between primary producers of heavy vehicles that are used in primary production and are concessionally registered under the Primary Producer Concession Scheme (PPCS);
- provide the chief executive the discretion to allow only one number plate to be attached to the rear of specific vehicles registered under limited access conditional registration;
- provide that a vehicle is eligible for concessional registration if the vehicle's garage address is in a prescribed restricted area;
- prescribe cocaine as a relevant drug for the purpose of Queensland's roadside drug testing program and approve a new drug testing device;
- adopt a number of amendments to the Australian Light Vehicle Standards Rules 2015 (the ALVSRs); and
- allow a person to apply for a replacement smartcard identification product where they have been subject to a data breach.

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

Sharing of concessionally registered primary production vehicles

The Amendment Regulation will amend the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2021* (Registration Regulation) to allow vehicles registered under the PPCS to be shared by a primary producer with up to five nominated primary producers for the sole purpose of carrying out their primary production business. Currently, vehicles registered under the PPCS can only be used for the registered operator's own primary production business.

To disincentivise misuse of vehicles registered under the PPCS with the expanded sharing arrangements, the amendment regulation makes a number of changes to offences and penalties under the Registration Regulation.

The penalty for misuse of a vehicle registered under the PPCS by the registered operator in section 241 of the Registration Regulation is being increased and the offence is being expanded to cover misuse of the vehicle by a nominated primary producer. The maximum penalty will change from 60 penalty units to 80 penalty units and the Penalty Infringement Notice (PIN) amount will change from 4^{4/5} penalty units to 6^{2/5} penalty units.

The new section 243A of the Registration Regulation will require the registered operator of a vehicle registered under the PPCS or a nominated primary producer for the vehicle to notify the chief executive of a change in circumstances relating to whether the person is a primary producer. The maximum penalty will be 80 penalty units and the PIN amount will be 6^{2/5} penalty units. A registered operator captured by this new offence will no longer be captured by the existing, more general requirement for a registered operator to notify the chief executive of circumstances affecting eligibility for a concessional registration under section 243 of the Registration Regulation which attracts a lower maximum penalty of 60 penalty units.

Number plates on certain conditionally registered vehicles

Conditional registration is available for vehicles that do not comply with the standard regulations for registration and have a genuine need for limited access to the road network. This can include vehicles used in agriculture, construction and certain recreational activities.

There are three categories of road access allowable under the conditional registration scheme. The most restrictive of those categories is *limited access registration* which is available for vehicles that are used predominantly on worksites or only in designated areas. This would include, for example, motorised golf buggies as their on-road access is predominantly restricted to designated areas such as car parks or holiday resorts. The Department of Transport and Main Roads (TMR) has been made aware that due to their construction, some vehicles have issues with loss or damage to their front number plates, resulting in the need for regular replacing of the plates.

Amendments to the Registration Regulation will allow the chief executive to approve only one number plate to be attached to the rear of specific conditionally registered vehicles registered under *limited access registration*.

Restricted areas concessional vehicle registration

Currently, TMR offers reduced vehicle registration fees to vehicles used only in the following restricted areas:

- the local government areas of:
 - Aurukun,
 - Doomadgee,
 - Kowanyama,
 - Pormpuraaw, and
 - Yarrabah.
- a coastal island that is not joined to the mainland by a bridge;
- the area north of the Archer River from the western end to the eastern end of the river; and
- the area north of a straight line from the eastern end of the Archer River to Friendly Point.

Currently, vehicles on a restricted area concession are not permitted to operate outside of the restricted area. In recognition that these remote areas may lack a number of essential services, and to reduce the regulatory burden, amendments to the Registration Regulation will state that a vehicle is eligible for a restricted area concession if the vehicle's garage address is listed in a prescribed restricted area. This will remove the current restriction on where those vehicles can travel.

Amendments to the Traffic Regulation 1962

Prescribe cocaine as a relevant drug and approve a new drug testing device

Driving while affected by drugs is dangerous and increases the risk of crashes. The Roadside Drug Testing program is a key component of Queensland's road safety strategy to reduce road crashes in Queensland. The program currently tests drivers for the presence of methamphetamine (also known as speed and ice), 3,4-Methylenedioxymethamphetamine (the active ingredient in ecstasy and also known as MDMA) and delta-9-tetrahydrocannabinol (the active ingredient in cannabis and also known as THC).

Research has found that cocaine use is becoming increasingly prevalent in Queensland. Amendments to the *Traffic Regulation 1962* will list cocaine as a relevant drug for the Roadside Drug Testing program and will approve a new drug testing device.

Amendments to the Transport Operations (Road Use Management—Vehicle Standards and Safety) Regulation 2021

Adoption of amendments to the Australian Light Vehicle Standards Rules

The Australian Design Rules (the ADRs) are developed and administered by the Commonwealth Department of Infrastructure, Transport, Regional Development, Communications and the Arts. They provide the rules for designing and building vehicles that apply at the time a vehicle is built or imported into Australia. The ALVSRs are based on the ADRs and are the model law for implementing these nationally agreed standards in each jurisdiction.

In December 2022, the Infrastructure and Transport Ministers' Meeting approved amendments to the ALVSRs and jurisdictions are expected to amend their local legislation to reflect the changes made to the model law. These changes include:

- clarifying rules relating to left-hand drive vehicles; and
- correcting cross-referencing errors relating to the *Road Vehicle Standards Rules 2019*.

Amendments to the Tow Truck Regulation 2009, Transport Operations (Road Use Management—Accreditation and Other Provisions) Regulation 2015 and the Transport Operations (Road Use Management—Driver Licensing) Regulation 2021

Data breach as a reason for a smartcard product replacement

TMR issues a number of smartcard identification products including:

- a smartcard driver's certificate and a smartcard assistant's certificate, under the *Tow Truck Regulation 2009*;
- a smartcard accreditation document, under the *Transport Operations (Road Use Management—Accreditation and Other Provisions) Regulation 2015*; and
- a smartcard driver licence, under the *Transport Operations (Road Use Management—Driver Licensing) Regulation 2021*.

There have been a number of significant recent data breaches in Australia including those impacting customers of Optus and Medibank and data held by Latitude Financial. Following such breaches, for privacy and security reasons, customers may wish to replace their TMR smartcard identification document.

As such, the Amendment Regulation will expressly recognise that a person who is at risk from a data breach can apply to the chief executive for a replacement smartcard document.

Enforcement through the State Penalties Enforcement Regulation 2014

The Amendment Regulation amends the SPE Regulation to make certain offences subject to the issuing of a PIN under the SPE Act. The offences relate to the misuse of a vehicle registered under the PPCS by registered operators and nominated primary producers, namely:

- increasing the penalty for using or permitting the use of a vehicle registered under the PPCS for a purpose other than the registered operator's primary production business and expansion of the offence to cover a nominated primary producer's use for a purpose other than their primary production business; and
- a new offence where a registered operator for a vehicle registered under the PPCS or a nominated primary producer fails to notify the chief executive of changes in their status as a primary producer.

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 HR Act)

In my opinion, the human rights that are relevant to the Amendment Regulation are:

- Right to recognition and equality before the law (section 15 of the HR Act)
- Property rights (section 24 of the HR Act)
- Privacy and reputation (section 25 of the HR Act)
- Right to liberty and security of person (section 29 of the HR Act)
- Fair hearing (section 31 of the HR Act)
- Rights in criminal proceedings (section 32 of the HR Act).

The Amendment Regulation raises the above human rights as it creates the possibility of the imposition of new and increased financial penalties for non-compliance with the requirements of the PPCS and on road users who test positive for the presence of cocaine under the Roadside Drug Testing program. These penalties are in the form of court-imposed penalties and PINs in relation to the PPCS, and court-imposed penalties in relation to the Roadside Drug Testing Program.

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

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

The Amendment Regulation creates the possibility of the imposition of financial penalties or criminal proceedings on a primary producer and nominated primary producer for non-compliance with the PPCS requirements. These financial penalties may be in the form of either a court-imposed fine or PIN for the offence provisions that are impacted by the Amendment Regulation as outlined below.

(a) The nature of the rights

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

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.

This right may be limited to the extent that the Amendment Regulation imposes a financial penalty, through a court-imposed fine or a PIN, for a primary producer or a nominated primary producer not complying with the requirements of the PPCS. The requirement to pay a fine for such behaviour may adversely and disproportionately impact persons of a lower socio-economic status who may have more difficulty paying a monetary sum.

Property Rights (section 24 of the HR Act)

Section 24 of the HR Act provides that every person has the right to own property alone or in association with others and must not be arbitrarily deprived of their property. Property includes all real and personal property interests recognised under general law and may include statutory rights. 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 term 'deprived' is not defined by the HR Act, however deprivation in this sense is considered to include the substantial restriction on a person's use or enjoyment of their property, to the extent that it substantially deprives a property owner of the ability to use his or her property or part of that property (including enjoying exclusive possession of it, disposing of it, transferring it or deriving profits from it).

This right may be limited as the Amendment Regulation includes an offence in the Registration Regulation with a maximum penalty of 80 penalty units. The failure to pay a court-imposed fine may result in enforcement action being taken by the registrar of the State Penalties Enforcement Registry (SPER) against the person including, for example, vehicle immobilisation or seizure and sale of property (for example, a vehicle owned by the individual), as provided for under the SPE Act.

Right to liberty and security of person (section 29 of the HR Act)

Section 29 of the HR Act 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. The right may only be limited where such limitation is proportionate and not capricious, unpredictable, unjust or unreasonable.

The Amendment Regulation may limit the right to liberty and security to the extent that it prescribes financial penalties that may be enforced under the SPE Act. The registrar of SPER may, in rare circumstances, issue an arrest and imprisonment warrant to a person for failing to pay an amount stated in an enforcement order, after the person fails to pay a financial penalty. Importantly, however, the 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.

Right to a fair hearing (Section 31 of the HR Act)

Section 31 (Fair Hearing) of the HR Act provides a person charged with a criminal offence the right to have the charge decided by a competent, independent and impartial court after a fair and public hearing. A principle of the right is that each party must be given a reasonable opportunity to present their case, which involves being informed of the case being made by the opposing party and having the opportunity to respond.

The Amendment Regulation may limit the right to a fair hearing to the extent that it creates infringement notice offences and extends the scope of existing infringement notice offences. This may arise because a person does not have to attend court in relation to an infringement notice offence.

Rights in criminal proceedings (section 32 of the HR Act)

Section 32 (Rights in criminal proceedings) of the HR Act 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.

The Amendment Regulation may limit rights in criminal proceedings to the extent that it creates infringement notice offences and extends the scope of existing infringement notice offences. This may arise because a person does not have to attend court in relation to an infringement notice offence.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the offence provisions is to ensure the integrity of the PPCS. The PPCS provides a significant discount off standard heavy vehicle registration fees. As such, it is important that those with vehicles registered under the scheme abide by its requirements so that they do not receive an unfair competitive advantage over other transport operators.

The Amendment Regulation enhances the PPCS by supporting the contemporary business models within the agricultural sector and strengthens the compliance framework to encourage compliance with PPCS requirements by enabling appropriate financial penalties to be imposed.

This is a proportionate response consistent with a free and democratic society based on human dignity, equality and freedom.

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

There is a direct relationship between the offence provisions and their financial penalties, and the purpose of ensuring compliance with the PPCS. The fines send a strong deterrent message which will assist in achieving the desired outcome of ensuring that those who receive the concessional registration benefit abide by the scheme's requirements.

In addition, there is a direct relationship between the prescription of PINs related to the PPCS and the purpose of providing an efficient means of enforcing these offences and avoiding court costs. This is because the infringement notice fine system allows enforcement through the issue of a fine by an authorised officer which the alleged offender can pay while avoiding a court process.

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

It is considered that there are no less restrictive and reasonably available ways to achieve the purpose of deterring misuse of vehicles registered under the PPCS than imposing financial penalties for misuse, including through the issuing of PINs. A person can avoid having to pay a fine by complying with the PPCS requirements.

The ability to issue PINs for the offences ensures efficient enforcement of PPCS requirements while retaining a person's right to have the matter heard by a court if they wish.

If these offences were not infringement notice offences, they would all need to proceed to court where additional costs may be payable. Infringement notice offences provide several benefits to alleged offenders who decide not to contest the infringement notice fine. 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.

Importantly, there are several protections built into the fine enforcement system under the SPE Act which ensure that the seizure and sale of property or vehicle immobilisation because of non-payment of an infringement notice fine would only occur infrequently. 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 sets out the minimum amount that must be owed by a debtor before SPER can register an interest over property, or before vehicle immobilisation can occur.

Other protections built into the fine enforcement system under the SPE Act include that:

- a person who considers a PIN 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 fine 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).

A person of low socio-economic status who may have lesser financial capacity to pay a financial penalty has the same opportunity as all others to comply with the obligations that may be imposed on them and avoid the impact of a financial penalty.

A person who receives a court-imposed fine or PIN who cannot afford to pay the whole fine amount 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.

If the court finds a person guilty of the offence, it can take into account multiple factors when handing down the penalty, including the person's socio-economic status.

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

It is important for the integrity of the PPCS that those who have received concessional registration for heavy vehicles for use in their primary production business comply with requirements of the PPCS, and that they are held accountable when non-compliance occurs.

In addition, allowing PINs to be issued for non-compliance with requirements of the PPCS provides an efficient enforcement option. If this enforcement option was 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 was 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 compliance with the scheme, potentially affecting others in the community if PPCS registered vehicles are competing with commercial operators who are unable to offer competitive rates, due to their higher on road costs.

Infringement notice offences provide several benefits to alleged offenders who decide not to contest the infringement notice fine. 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 these offences 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.

The Amendment Regulation does not affect the ability for individuals to elect to have their matter heard by a court. Section 15 of the SPE Act requires that all infringement notice fines must indicate that the alleged offender may elect to have the matter decided by a court. This promotes awareness that persons have this option at the time they are issued with a PIN. 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 circumstances.

In respect of the right to recognition and equality before the law, while the imposition of an infringement notice 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.

The importance of protecting the integrity of the PPCS also outweighs any potential limitation on property rights, the right to liberty and security of person, the right to a fair hearing, and rights in criminal proceedings.

Amendments to the Traffic Regulation 1962

The Amendment Regulation creates the possibility of the imposition of financial penalties for criminal proceedings on a driver who, under the Roadside Drug Testing program, tests positive for the presence of cocaine. These financial penalties are in the form of a court-imposed fine under the existing drug driving provisions in section 79 of the *Transport Operations (Road Use Management) Act 1995* (the TORUM Act).

(a) The nature of the rights

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

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.

This right may be limited to the extent that the Amendment Regulation prescribes cocaine as a relevant drug for Queensland's Roadside Drug Testing Program and, as a result, makes a driver who tests positive for the presence of cocaine, liable to the drug driving penalties in the TORUM Act.

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 HR Act)

Section 24 of the HR Act protects the right of all persons to own property and provides that people have a right not to be arbitrarily deprived of their property.

The Amendment Regulation may limit property rights as it makes drivers who are found to have cocaine in their system liable to court-imposed financial penalties.

Right to liberty and security of person (section 29 of the HR Act)

Section 29 of the HR Act 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.

The Amendment Regulation may limit the right to liberty and security to the extent that it makes a person who tests positive for cocaine liable for financial penalties that may be enforced under the SPE Act. In rare circumstances, the registrar of SPER may issue an arrest and imprisonment warrant to a person for failing to pay an amount stated in an enforcement order, after the person fails to pay a financial penalty. 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.

(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

It is unsafe for people to drive with drugs in their system. The technology is now available for police to reliably test for the presence of cocaine in a driver's system as part of the existing Roadside Drug Testing Program and the Amendment Regulation will allow that testing to occur. Deterring people driving while drugs are in their system, through the imposition of financial penalties, is an important part of ensuring road safety.

This is a proportionate response consistent with a free and democratic society based on human dignity, equality and freedom.

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

There is a direct relationship between the offence provisions and their financial penalties, and the purpose of improving road safety. The risk of a court-imposed penalty will send a strong deterrent message to people who might consider driving while cocaine is present in their system.

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

No other less restrictive, reasonably available alternatives have been identified.

A person of low socio-economic status who may have lesser financial capacity to pay a financial penalty has the same opportunity as all others to comply with the obligations that may be imposed on them and avoid the impact of a financial penalty.

A person who receives a court-imposed 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.

(c) 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

For the reasons outlined above, any potential human right impact is considered reasonable and justified. While the imposition of a financial penalty may have a greater impact upon a person from a lower socio-economic group, it is considered that the importance of maintaining the deterrent effect of penalties for applicable offences outweighs any potential limitation on the right.

Conclusion

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

Honourable Mark Bailey MP
Minister for Transport and Main Roads
Minister for Digital Services