

Transport Legislation (Road Safety and Other Matters) Amendment Bill 2022

Statement of Compatibility

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019*, I, Mark Bailey, Minister for Transport and Main Roads, make this statement of compatibility with respect to the Transport Legislation (Road Safety and Other Matters) Amendment Bill 2022 (the Bill).

In my opinion, the Bill is compatible with the human rights protected by the *Human Rights Act 2019* (HR Act). I base my opinion on the reasons outlined in this statement.

Overview of the Bill

The policy objectives of the Transport Legislation (Road Safety and Other Matters) Amendment Bill 2022 (the Bill) are to improve road safety, increase the range of allowable motorised mobility devices (MMDs), make improvements to court and other processes and make minor enhancements to transport and other legislation.

Use of penalties from camera-detected offences for road safety

The objective of the Camera-Detected Offence Program (CDOP) is to reduce road trauma. It is a fundamental component of Queensland's approach to road safety. The use of cameras, combined with robust penalties, is known to deter people from engaging in unsafe and illegal behaviours while driving by adding to the perceived likelihood of detection. The general deterrent effect of the CDOP and the more specific deterrent effect of penalties on intercepted drivers results in safer driving behaviours on the network.

Under section 117 of the *Transport Operations (Road Use Management) Act 1995* (TORUM Act) the use of all money collected for penalties imposed for camera-detected offences, in excess of the administration costs of collection, is limited to:

- road safety education and awareness programs;
- road accident injury rehabilitation programs; and
- road funding to improve the safety of the sections of state-controlled roads where accidents most frequently happen.

Section 117 commenced in 1997 with the policy intent of ensuring camera enforcement was, first and foremost, about improving road safety and not about raising revenue. However, 25 years on, more contemporary language is required to describe the types of road safety initiatives that may be funded by the CDOP.

The *Queensland Road Safety Strategy 2022-2031* (the Strategy) seeks to push our thinking beyond the traditional transport sector to consider the health, social and cultural factors that contribute to road trauma in Queensland. The road safety action plans operationalise the

Strategy by presenting milestones and priority initiatives to help achieve the targets. However, some road safety initiatives do not fall neatly within the existing funding categories available under section 117, even though these actions enable road users to make safer decisions or facilitate positive behaviour change.

For the delivery of safer state-controlled road infrastructure, it is desirable to clarify that funding under section 117 may be applied proactively to prevent crashes on roads where serious crashes have not yet occurred, but where analysis shows a serious crash risk exists. It is also important to clarify that road funding can incorporate infrastructure that is innovative and utilises the latest technology and that road safety objectives may be best achieved through improvements to areas and infrastructure adjacent to roads.

Section 117 also includes references to "accident". This is not consistent with the preferred term, "crash". This update reflects Queensland's use of the Safe System framework and the concept that all serious injury crashes are preventable.

As a result, amendments in the Bill clarify how the financial penalties imposed for camera-detected offences are to be invested for road safety and modernising the wording of the provision.

Legal protections for health professionals who report on medical fitness to drive for non-Queensland driver licence holders

While there is no requirement in the legislation to do so, in the interests of road safety, health professionals are encouraged to notify the Department of Transport and Main Roads (TMR) when they become aware that a driver licence holder (including a person who holds a driver licence issued in another jurisdiction) is not medically fit to drive. Once notified, TMR can take action under the *Transport Operations (Road Use Management—Driver Licensing) Regulation 2021* (the Driver Licensing Regulation) to either amend, suspend or cancel the Queensland driver licence or withdraw the person's authority to drive in Queensland under a non-Queensland driver licence.

Section 142 of the TORUM Act provides protection against civil liability or liability under an administrative process for defamation or breach of confidence if a health professional provides information to the chief executive of TMR about a person's medical fitness to hold or continue to hold a Queensland driver licence. However, the same protections do not apply if the health professional provides information about the medical fitness of a non-Queensland licence holder who is driving in Queensland.

As a result, the amendments in the Bill extend legal protections to health professionals who report medical fitness to drive for non-Queensland driver licence holders.

Evidentiary provisions for vehicle standards related prosecutions

Light vehicle standards outlined in the *Transport Operations (Road Use Management—Vehicle Standards and Safety) Regulation 2021* (the VSS Regulation) include safety requirements for vehicles and standards for exhaust noise. Unsafe vehicles are a road safety issue and vehicle exhaust noise is an ongoing community issue, particularly where modified cars and motorbikes impact on community amenity and comfort.

Before a type of road vehicle can enter the Australian market (whether it was manufactured in Australia or imported), it must meet certain standards and be approved by the Australian Government (see the *Road Vehicle Standards Act 2018 (Cwlth)* (RVS Act) and previously the *Road Vehicle Standards (Consequential and Transitional Provisions) Act 2018 (Cwlth)* and the *Motor Vehicle Safety Act 1989 (Cwlth)*) (MVS Act) (collectively the Commonwealth vehicle standards Acts). Vehicle standards in Queensland are regulated based on the principle that a vehicle can never be of a lesser standard than was originally approved by the Australian Government. If a vehicle deteriorates or is modified so that it no longer meets the Australian Government vehicle standards, there may be an offence under the VSS Regulation (see, for example, section 8 and Part 3 of the VSS Regulation).

Effective prosecution of these offences is important to deter offending behaviour and promote safer vehicles. Analysis of the evidentiary provisions in the TORUM Act, *Evidence Act 1977*, RVS Act, MVS Act and the *Evidence Act 1995 (Cwlth)* revealed that proving the standards approved for a vehicle is complex and may require witnesses to testify about information that is technical, objective, non-contentious and administrative in nature and can be sourced from reliable documents.

Calling witnesses in these matters may involve organising people who are based interstate or even internationally. Where the information required for the court is objective and unlikely to be contested, requiring a person to provide witness evidence is inconvenient for the witness and inefficient for the court proceeding, as well as being more costly (as witnesses may be entitled to expenses). In addition, allowing documents to speak for themselves provides more direct information to the court and may lead to more effective prosecutions.

As a result, amendments in the Bill enhance evidentiary provisions to allow certain documents to be admissible without requiring witness testimony. These documents may deal with issues such as, for example, a manufacturer's specifications for a type of vehicle or component of a vehicle and information about a type of vehicle recorded in a Commonwealth register (for example, the Register of Approved Vehicles under the RVS Act).

The amendments also allow evidence of approval related stickers, labels, plates or markings on vehicles to be evidence of the matters stated in the stickers, labels, plates or markings. Importantly, evidence that stickers, labels, plates or markings, VIN or chassis, or modification plates were attached to a vehicle, and their content, will still be provided to the court through testimony from the intercepting officer, such as by photo or contemporaneous notes. However, the amendments in the Bill then enable the court to accept the information in the photo or notes to be proof of its contents, and that the information applied to the vehicle in question without any further witnesses being called.

Increasing the range of allowable MMDs

(MMDs allow people who have reduced mobility to access essential services, employment, socialise and to participate in the community generally.

There are two distinct types of MMD:

- **Mobility scooters** that are often used by older people or people who have a permanent or long-term physical limitation yet have sufficient mobility to walk short distances; and

- **Motorised wheelchairs** that are designed to carry people with greater mobility needs. Users usually have a permanent disability, resulting in an inability to walk, and commonly require assistance to get in and out of the wheelchair.

The National Transport Commission (NTC) has proposed changes to the national model legislation, the Australian Road Rules, to remove regulatory restrictions for MMD users and make the existing legislative framework simpler and more consistent.

The national changes will:

- recognise motorised wheelchairs and mobility scooters as separate devices, collectively referred to as MMDs;
- increase the maximum unladen mass of MMDs to align with the Standards Australia Technical Specification for MMDs. This ensures mass limits are reflective of the actual use and design of devices by removing mass limits for motorised wheelchairs and increase the maximum unladen mass for mobility scooters from 150kg to 170kg;
- ensure MMD operators are consistently classed as pedestrians under the Queensland Road Rules (QRRs) and other transport legislation; and
- introduce a maximum speed capability of 15km/h for MMDs to ensure a broader range of devices can be used while maintaining the existing 10km/h speed limit when travelling on a public path.

As a result, amendments in the Bill will allow MMD users to utilise a device most suitable to their needs.

In addition to the national changes, existing gratuitous MMD registration and Compulsory Third Party (CTP) insurance arrangements will be retained. Importantly, users requiring MMDs over the previous unladen mass limit of 150kg and whose devices meet the amended definitions will now be eligible for gratuitous registration and CTP insurance.

Updating the definition of GVM

GVM, or gross vehicle mass, is the maximum loaded mass allowed for a vehicle. The GVM is important for determining vehicle loading, vehicle registration categories under the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2021* and driver licensing classes under the Driver Licensing Regulation.

The current TORUM Act definition of GVM (in schedule 4) indicates that a vehicle's GVM can be stated on a compliance plate or in a way prescribed by regulation. Section 141 of the *Transport Operations (Road Use Management—Accreditation and Other Provisions) Regulation 2015* then sets out a number of ways a vehicle's GVM may be stated, including, for example, a vehicle's GVM can be stated in writing by a manufacturer, or on a modification plate.

However, it has been identified that where the GVM is stated on a compliance plate and, also in a way prescribed under a regulation (for example, on a modification plate following an allowable modification to the vehicle), it is not clear which should take precedence.

The Bill will update the ways in which a GVM may be stated and will clarify the order of precedence should the GVM be stated in more than one way.

Shelf life of digital photos taken when a person is less than 15 years of age

TMR takes, keeps and uses digital photos for prescribed authorities (such as driver licences and industry authorisations) in accordance with Part 4C of the *Transport Planning and Coordination Act 1994* (the TPC Act).

TMR has also partnered with the Department of Justice and Attorney-General (DJAG) to deliver an online application service for a working with children authority or card, commonly known as a blue card. The online blue card service leverages TMR's customer authentication framework, including its digital image library (that is, digital photos taken of people who applied for a driver licence or industry authority) and card production capability. A similar arrangement is in place for disability worker screening (for NDIS worker screening clearances and state disability worker screening clearances) undertaken by the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships.

Unlike other prescribed authorities, blue cards and disability worker screening clearances can be issued to applicants younger than 15 years of age (potentially as young as 10 years of age for disability worker screening clearances). However, a person's physical appearance and biometric data (the relative position, size and shape of certain facial features as measured and compared by a computer algorithm) is often not stable until they are approximately 15 years of age.

Under the existing shelf life provisions within the TPC Act, a digital photo taken of a blue card or disability worker screening applicant may be required to be reused on other prescribed authorities for up to 10 years. This could include identity products such as photo identification cards (under the *Photo Identification Act 2008*) and Queensland driver licences.

The changing nature of a person's appearance and biometric features could mean photos of persons under 15 years of age taken for blue cards or disability worker screening clearance cards would not be a true likeness if they are subsequently reused on other products such as photo identification cards, Queensland driver licences or other TMR authorities issued under the current 10-year shelf life arrangements. This could compromise confidence in both identity verification and the integrity of identity products. It is noted that the validity period of photos for Australian Passports issued to children aged less than 15 years is five years.

As a result, amendments in the Bill will apply a five-year shelf life to digital photos taken of persons when they are less than 15 years of age.

Clarify accommodation works may be undertaken as a result of a rail project providing certainty and consistency for landowners and occupiers and all transport infrastructure.

The objective of the proposed amendments to the *Transport Infrastructure Act 1994* (TIA) is to clarify the chief executive, or someone authorised by the chief executive, may temporarily enter land (but not dwellings), and undertake accommodation works that are necessary as a direct result of a rail project.

Accommodation works are transport-incident works carried out where necessary to remedy the impact to land caused by the establishment of transport infrastructure. These works are carried out in order to minimise the impact of works, restore land to its former condition, purpose or use and provide for safety to persons who use the land. Accommodation works can include road access works, for example, the replacement or upgrade of driveways and

ensuring safe access points to and from the property and other minor works such as replacement of letterboxes and restoration of gardens.

The amendments replicate similar accommodation works provisions under the TIA for road, busway and light rail but do not currently apply for rail. As a result, TMR must negotiate and enter into individual access agreements with each affected landowner and occupier. The formality of the process can be lengthy and confusing for the landowner or occupier. The lack of clarity about accommodation works can cause a delay in the project increasing the duration of inconvenience for the landowner, occupier and neighbouring property owners and businesses.

These amendments provide a clear process and clarify that accommodation works can be undertaken on land to rectify or remedy impacts caused as a direct result of a rail project and will assist in:

- addressing a landowner and occupier's uncertainty and anxiety by providing clarity about protection of their interests;
- reducing the duration of inconvenience caused by the works and providing better outcomes for impacted landowners and the community; and
- providing certainty to TMR and its works delivery partners in the efficient, safe and cost-effective delivery of rail projects.

Compensation

These amendments do not impact on the existing rights of landholders and occupiers to compensation or rights of review. They will formalise an individual's rights to compensation and rights of review for accommodation works for rail. The amendments provide a clear process and framework to balance the needs of rail projects and landowners and occupiers.

Human Rights Issues

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

This Bill positively engages human rights as follows:

- The MMD amendments in the Bill positively affect the right to recognition and equality before the law by increasing mobility options and classing MMD users as pedestrians under the QRRs and other transport legislation (section 15 of the HR Act)
- The road safety aspects of the Bill positively affect the right to life and protection of families and children (sections 18 and 26 of the HR Act) for road users in Queensland and their families.

Otherwise, the amendments in the Bill may limit the following human rights:

- Right to recognition and equality before the law (section 15 HR Act)
- Right to property (section 24 of the HR Act)
- Right to privacy and reputation (section 25 of the HR Act)
- Rights to a fair hearing and rights in criminal proceedings (sections 31 and 32 of the HR Act).

The MMD related amendments to offences (and the consequential amendment to the *State Penalties Enforcement Regulation 2014*) do not engage human rights because they do not create any new obligations. These changes merely restructure the provisions as a result of changing terminology.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Right to recognition and equality before the law

(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. Age is one of the attributes that may form the basis of prohibited discrimination under section 7 of the *Anti-Discrimination Act 1991*.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The Bill applies a reduced shelf life for digital photos if the person had the photo taken when they were less than 15 years of age, and this may appear to be discriminatory.

The current shelf life provisions in the TPC Act mean the same digital photo must generally be reused on other products during the 10-year shelf life period. Therefore, if a person obtained a blue card when they were 11 years old, the same photo may need to be applied to products such as a driver licence, photo identification card or another authority under transport legislation during that 10-year period.

However, as a person's physical appearance and biometric features are not considered stable until a person is 15 years of age, the photo on these products may not be a true likeness of the person as they grow older. If the photo is not a true likeness, it could impact public and industry confidence that these products are a reputable proof of identity or authority. It could also lead to inconvenience for the person who presents one of these products to establish their identity to a third party.

The amendments in the Bill reduce the shelf life of these photo to five years to ensure the photos held by TMR are a true likeness of the person and to maintain public confidence in these photo-based identity and authority products. This outcome is consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The reduced shelf life that applies to digital photos taken of a person when they are under 15 years of age is directly related to the stability of their physical appearance and biometric features. Limiting the shelf life to five years reduces the chances of a photo that is no longer a true likeness appearing on identity or authority products by ensuring that TMR is able to take and keep a more recent photo of the young person. There is a direct relationship between any limitation on human rights and the purpose of the amendment.

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

There is no less restrictive way to achieve the purpose of these amendments in the Bill. A transitional provision will ensure that existing blue cards, disability worker screening clearances or other authorities issued with a photo that is more than five years old and was taken when the person was less than 15 years old will continue to be valid.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

While a person who had their digital photo taken when they were younger than 15 years of age may be treated differently to another person, this different treatment is justified by the need to maintain public confidence in the integrity of these identity and authority products to benefit the community at large. Providing TMR with a more recent photo may also benefit the person themselves as they will have a more accurate form of identification to provide to third parties.

Property rights and right to privacy and reputation

For the TIA amendments, as the right to privacy and reputation is engaged when affected property is also someone's home, property rights and the right to privacy and reputation will be analysed together.

(a) the nature of the right

Property rights protect individuals from being arbitrarily deprived of their property (section 24(2) of the HR Act). The explanatory notes for the *Human Rights Bill 2018* state the right "essentially protects a person from having their property unlawfully removed". Property rights are drawn from article 17 of the Universal Declaration of Human Rights. This right does not provide a right to compensation and is internally limited to arbitrary deprivation of property, that is, property must not be unreasonably taken.

The right to privacy and reputation protects against unlawful or arbitrary interference with a person's privacy, family, home or correspondence (section 25(a)). The scope of privacy is very broad, extending to an individual's private life more generally. The right to privacy and reputation is modelled on article 17 of the International Covenant on Civil and Political Rights. Like property rights, privacy and reputation are internally limited, though the internal limitation is for unlawful or arbitrary interference.

Currently, TMR may access and temporarily occupy land to carry out railway works. Chapter 7 of the TIA does not clearly provide that TMR, or someone authorised by TMR, may access and temporarily occupy land to carry out minor works known as "accommodation works" as a direct result of a rail project.

Accommodation works are transport-incidental works that may include replacement or upgrade of driveways and ensuring safe access points to and from the property and other minor works such as replacement of letterboxes and restoration of gardens. These works benefit the landowner, occupier and the broader community and are consistent with TMR's obligation to repair and restore any damage to their property.

The amendments limit property rights to the extent they provide the power to enter a person's property and undertake accommodation works. These amendments will also limit privacy and reputation when the affected property is also a person's home. However, these are situation-specific limitations. Entering land and undertaking accommodation works may temporarily hinder a landowner or occupier's use and enjoyment of their property while accommodation works are occurring.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Whenever TMR undertakes a major transport corridor upgrade, there are inevitable disruptions and inconvenience to adjacent land and surrounding areas. This is outweighed overall by improved transport outcomes, promoting the right to freedom of movement (section 19 of the HR Act).

Section 12 of the HR Act establishes the human rights protected by the HR Act are in addition to other laws, including the common law, which provide TMR is obligated to restore and repair any damage as a direct result of a rail project. For example, a person may request works be done instead of monetary compensation for railway works under section 166(1)(c) of the TIA.

Accommodation works are temporary or permanent works to be carried out as a result of the establishment of transport infrastructure to:

- minimise the impact those works or that infrastructure had on the land;
- restore the land to its former condition, purpose or use; or
- provide safety for the persons who use the land.

These works benefit affected landowners and occupiers as well as the broader community. These are works that are not captured within the existing definition of “railway works” under the TIA, nor are they works that must occur because of a partial resumption of land or impacts on land adjacent to land being resumed under the *Acquisition of Land Act 1967*.

The amendments provide consistency across transport modes as TMR works towards a single integrated transport network. The amendments clarify accommodation works may be undertaken as a direct result of rail projects, as already exists for the following linear modes:

- State-controlled roads (chapter 6, sections 35–37);
- busways (chapter 9, sections 297–300); and
- light rail (chapter 10, sections 348–351).

In addition to the direct benefits provided by accommodation works and equity across transport modes delivered by TMR, these amendments will benefit affected landowners and occupiers by providing legal certainty and clarification of TMR's powers and obligations when delivering transport infrastructure projects. This will provide increased efficiencies and improved timeframes for projects, along with minimising disruption and inconvenience to the community.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The amendments will clarify the law, providing certainty to TMR and its delivery partners, affected landowners, occupiers and the broader community. Removing uncertainty will enable TMR to undertake accommodation works in conjunction with railway works reducing project uncertainty, additional costs, delays to projects, and the duration of inconvenience associated with railway works to landowners, occupiers and the community.

Without similar accommodation works provisions to those that apply to road, busway and light rail, TMR cannot rectify or remedy impacts caused as a direct result of a rail project. Instead, TMR must enter into individual access agreements with affected landowners and occupiers. As previous rail projects have identified, the negotiation process can potentially delay the delivery of accommodation works. This can create ongoing inconvenience for affected landowners and occupiers, neighbouring property owners and businesses as agreements are negotiated and landowner and occupier consent is granted. The delay of accommodation works for one affected landowner or occupier can create a cascading effect for the broader neighbourhood or community. For example, a delay may impact a person's ability to run a business or access the street without more inconvenience than is necessary to undertake the works.

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

The only other alternative to legislative amendment would be to continue negotiating access agreements for accommodation works on a case-by-case basis with each affected landowner and occupier. The option to maintain the status quo was rejected during the policy analysis stage as it would not realise the desired benefits of providing for accommodation works as part of rail projects and would continue to disadvantage all affected parties.

Maintaining the status quo will continue to cause legal uncertainty. The efficiencies of scale will not be able to be maximised and the community will also suffer due to project delays with the abovementioned delays to neighbouring properties occurring when owners cannot be contacted, or an agreement cannot be reached. Therefore, amending the TIA is the only reasonable way to provide legal certainty, reduce project timeframes and realise efficiencies of scale.

Therefore, the amendments are the least restrictive and most reasonable way of achieving the purpose as stated above. Property rights remain respected as the rights of landowners and occupiers are maintained with the requirement for TMR to give notice of the proposed works and to consider any submissions made by the landowner or occupier prior to entry of the land to undertake accommodation works. TMR must rectify any damage caused to the property by entering and temporarily occupying land to undertake the necessary works. Compensation provisions will continue to apply.

A number of safeguards are in place, detailing how the power to enter land and undertake accommodation works is not unlawful nor arbitrary, such as:

- a statutory obligation imposed upon the chief executive to advise affected landowners and occupiers that they may make submissions within seven days of notice of entry, and to consider any submissions received before undertaking accommodation works;
- landowners and occupiers can claim compensation for any loss or damage as a result of the accommodation works; and

- the option for external review.

These safeguards ensure the power of entry to a person's property to undertake accommodation works will only be exercised as a result of the establishment of a rail project to benefit affected land and by extension, the people who use that land.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Large transport infrastructure projects always balance the costs to individuals against the benefits of improved transport infrastructure by attempting to minimise inconvenience as much as possible, for example, by providing accommodation works to ensure continued functionality of a person's land.

Accommodation works will not be an arbitrary deprivation of a person's property, nor an unlawful or arbitrary interference with a person's home. Rather, the amendments provide benefits to individual landowners and occupiers, and by extension the community, by providing clarity and certainty about TMR's powers and obligations and an affected individual's rights.

The accommodation works power will only be used as a result of a rail project to benefit an affected person's land. By accessing efficiencies of scale and improved timeliness, the power will also improve project delivery, benefitting affected communities, and facilitate improved movement. Therefore, as the benefits from accommodation works are above and beyond the internal limitations for property rights and the right to privacy and reputation, the benefits outweigh any limitation on human rights.

- (f) any other relevant factors

As stated above, an accommodation works power exists for roads, busway and light rail. It was inserted into the TIA in 2014 by part 6 of the *Transport and Other Legislation Amendment Act 2014*. This amendment will ensure consistency across transport modes.

Privacy and reputation

- (a) the nature of the right

Section 25 (Right to privacy and reputation) provides everyone has the right to keep their lives private and that your family, home or personal information cannot be interfered with unless the law allows. This right protects personal information and data collection. The right protects people from 'unlawful' or 'arbitrary' interference. Arbitrary interference includes when something is lawful, but also unreasonable, unnecessary or disproportionate.

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The Bill provides legal protections for health professionals who, in good faith, report to TMR when a person who is driving in Queensland on a non-Queensland driver licence is no longer medically fit to drive. Examples when these protections may apply include actions raising civil liability for defamation or breach of confidence or administrative process against the health professional. These legal protections remove one of the barriers that may discourage health professionals from reporting on a patient's fitness to drive to TMR.

These amendments are in the interests of road safety as those driving with a medical condition may present a danger to themselves and to other road users. This road safety purpose promotes the right to life and protection of families and children (sections 16 and 26 of the HR Act). Road safety is a purpose consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

By providing protection from civil liability and administrative process, the Bill removes a potential impediment to a health professional reporting a person who is no longer medically fit to drive to TMR. If a health professional reports a person is not fit to drive, TMR can commence action to ensure the person's authority to drive in Queensland is removed. This reduces the risk of harm to themselves and other road users. The limitation clearly helps to achieve the road safety purpose.

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

There are no less restrictive ways to achieve the policy objective. It is noted the legal protections only apply if the information is provided to TMR in good faith.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

While it is generally important that an individual's privacy and reputation is protected, if they choose to continue to drive while medically unfit, they may be impacting the right to life of others. The amendments in the Bill are not an arbitrary interference with the person's right to privacy and reputation because they provide a necessary and proportionate response to a road safety risk. The road safety purpose of the amendment outweighs any human rights limitations on the person's right to privacy and reputation that may arise from this Bill.

Fair hearing and rights in criminal proceedings

(a) the nature of the right

The human right under section 31 (Right to a fair hearing) may be 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. Where the onus of proof is reversed this right may be limited.

The human right under section 32 (Rights in criminal proceedings) may be 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. This right includes the right to examine, or have examined, witnesses against the person.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The Bill includes amendments that will allow documentary related evidence to be provided in court for particular technical, objective, administrative and non-contentious information without the need to call witnesses. The evidence that may be provided as a result of these amendments includes:

- the content and meaning of stickers, labels, plates or markings placed on a vehicle relating to approvals under the Commonwealth vehicle standards Acts;
- extracts from registers and databases kept by the Commonwealth relating to vehicle approvals;
- evidence of specifications or statements about a vehicle published or produced by a vehicle or component manufacturer, importer or representative; and
- information on a modification plate attached to the vehicle.

These are all technical matters that can be obtained from reliable sources.

In addition, the amendments to section 123A and 123B of TORUM Act will mean the prosecution do not have to prove the appointment or signature of the person who signed an approval under the Commonwealth vehicle standards Acts. Again, this will remove the need to call witnesses.

The amendments aim to improve the efficiency of court proceedings, may reduce costs (as witnesses may be entitled to witness expenses and this cost may be borne by a defendant who is found guilty) and reduce inconvenience to witnesses. In addition, effective prosecutions also deter unlawful behaviour and, for vehicle standards matters, encourage safer, exhaust noise compliant vehicles on Queensland roads. Efficient court processes and the road safety and community amenity benefits of compliant vehicles are purposes consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The amendments in the Bill that allow for documentary related evidence will reduce the need to call witnesses for technical and non-contentious information. Allowing documents (or evidence of documents such as stickers, labels, plates and markings on the vehicle) to speak for themselves reduces inconvenience for witnesses who would otherwise need to attend court, will be more efficient for court proceedings and may reduce costs relating to witnesses. Allowing documents to speak for themselves may also provide more direct evidence to the court and potentially lead to more effective prosecutions. There is a clear and direct relationship between any limitation and the purpose of the amendments.

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

There is no less restrictive way of achieving the proposed outcome. Importantly, proposed section 123SA(2) of the TORUM Act still allows a defendant who wishes to contest the documentary related evidence to advise the prosecution so that witnesses can be called and cross examined. This minimises any impact on human rights.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The information that will be able to be provided by documentary related evidence is technical, objective, administrative, and non-contentious (so is unlikely to be challenged by a defendant). The documentary sources are reliable including Commonwealth databases, information prepared by manufacturers for their vehicles or components or from the sticker, plate, label of marking relating to vehicle approval processes. Any impact on a defendant's rights is mitigated by proposed section 123SA(2) which ensures they still have an opportunity to challenge the evidence in which case the prosecution will be required to establish that matter through normal processes including calling witnesses. Calling witnesses to establish each and every element of an offence, even where the defendant does not dispute that matter, would be time-consuming for both the witnesses and the court process and costly (including potentially for a defendant who is found guilty and is required to pay witness costs).

On balance, given the benefits of an efficient court process and effective prosecutions with the protections offered by section 123SA(2), any limitation on human rights is justified.

Conclusion

In my opinion, the Transport Legislation (Road Safety and Other Matters) Amendment Bill 2022 is compatible with human rights under the HR Act because it limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of that Act.

Mark Bailey
Minister for Transport and Main Roads