

## Transport and Resources Committee

### Report No. 30, 57th Parliament

### Subordinate legislation tabled between 13 October 2022 and 20 February 2023

#### 1 Aim of this report

This report summarises the committee's findings following its examination of the subordinate legislation within its portfolio areas tabled between 13 October 2022 and 20 February 2023. It reports on any issues identified by the committee relating to the policy to be given effect by the legislation, fundamental legislative principles and lawfulness. It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992*.<sup>1</sup>

The report identifies any issues identified by the committee in its consideration of the human rights certificate[s] tabled with the subordinate legislation.<sup>2</sup>

#### 2 Subordinate legislation examined

No. of 2022	Subordinate legislation	Date tabled	Disallowance date*
n/a	Rail Safety National Law National Regulations (Fees and FOI) Amendment Regulations 2022 (South Australia)	21 October 2022	23 February 2023
142	Transport Operations (Road Use Management - Road Rules) and Other Legislation Amendment Regulation 2022	25 October 2022	14 March 2023

#### 3 Committee consideration of the subordinate legislation

No issues regarding policy, consistency with fundamental legislative principles or the lawfulness of the subordinate legislation were identified with the Rail Safety National Law National Regulations (Fees and FOI) Amendment Regulations 2022 (South Australia).

In regards to the Transport Operations (Road Use Management - Road Rules) and Other Legislation Amendment Regulation 2022, the committee noted the potential FLP and HRA issues contained in this report and is satisfied by the justifications provided.

<sup>1</sup> *Legislative Standards Act 1992*, Part 4.

<sup>2</sup> *Human Rights Act 2019*, s 41.

#### 4 Rail Safety National Law National Regulations (Fees and FOI) Amendment Regulations 2022 (South Australia)

The *Rail Safety National Law National Regulations (Fees and FOI) Amendment Regulations 2022* (SA) (the amendment regulations) are made pursuant to the Rail Safety National Law (the National Law). The *Rail Safety National Law (Queensland) Act 2017* applies the National Law as law in Queensland.

The National Law is set out in the schedule to the *Rail Safety National Law (South Australia) Act 2012* (SA). Amendments to the Rail Safety National Law are made by the Parliament of South Australia and are automatically applied as law in Queensland. The Rail Safety National Law (Queensland) allows the Governor of the State of South Australia to make national regulations.<sup>3</sup>

Analogous to the usual processes applying to subordinate legislation, regulations under the National Law:

- must be tabled within 14 sitting days of being published, or they will cease to have effect in Queensland
- are subject to the provisions of the *Legislative Standards Act 1992* dealing with fundamental legislative principles and explanatory notes
- are subject to disallowance by the Queensland Legislative Assembly
- may be considered and reported on by a committee.<sup>4</sup>

The amendment regulations were published on the New South Wales legislation website on 24 June 2022,<sup>5</sup> commenced on 1 July 2022,<sup>6</sup> and were tabled in the Queensland Legislative Assembly on 21 October 2022 (i.e. within the required 14 sitting days). The disallowance date for the amendment regulations is 23 February 2023.<sup>7</sup>

The amendment regulations increase the fees payable by rail transport operators for:

- applications for accreditation for complex operations
- annual fees
- the project component fee in relation to major projects, such as the introduction of new rolling stock or rail infrastructure not previously used in Australia, which can increase the need for regulatory oversight in relation to the railway operations.<sup>8</sup>

The amendment regulations also make a minor amendment to the definition of the Rail Safety National Law, as applied to the *Freedom of Information Act 1991* (SA) (FOI Act). This is to ensure the FOI Act applies in all participating jurisdictions, as was originally intended.<sup>9</sup>

##### 4.1 Fundamental legislative principle issues

No issues of fundamental legislative principle were identified.

##### 4.2 Explanatory Notes

The explanatory notes comply with part 4 of the *Legislative Standards Act 1992*.

---

<sup>3</sup> See section 264.

<sup>4</sup> See *Rail Safety National Law (Queensland) Act 2017*, s 14.

<sup>5</sup> As required by section 265 of the Rail Safety National Law (Queensland).

<sup>6</sup> Amendment regulations, s 2.

<sup>7</sup> The disallowance date is 14 sitting days after the tabling date. (See *Statutory Instruments Act 1992*, s 50.)

<sup>8</sup> Explanatory notes, p 1; amendment regulations, s 5.

<sup>9</sup> Explanatory notes, p 3; amendment regulations, s 4.

### 4.3 Human rights considerations

The committee is satisfied that the subordinate legislation is compatible with human rights.<sup>10</sup>

## 5 Transport Operations (Road Use Management—Road Rules) and Other Legislation Amendment Regulation 2022

The objective of the Transport Operations (Road Use Management—Road Rules) and Other Legislation Amendment Regulation 2022 (SL No. 142) is to enhance the safety of personal mobility device (PMD) riders.

### Speed limits

SL No. 142 reduces, to 12km/h, the maximum allowable speed at which PMD riders can travel on paths where a lower speed limit is more appropriate, such as on paths where there is the potential for close interaction with pedestrians (see clause 14).<sup>11</sup>

Under existing section 244E of the Transport Operations (Road Use Management—Road Rules) Regulation 2009 (QRRs) PMD riders can travel at up to 25km/h on all other types of infrastructure.<sup>12</sup>

PMD riders will also be subject to lower speed limits that apply under sections 21–24 of the QRRs.

Contraventions of these speed limits will be dealt with under section 20 of the QRR, which provides a maximum penalty of 40 penalty units.<sup>13</sup>

### On-road bicycle lanes by PMD riders

SL No. 142 allows PMD access to some on-road bicycle lanes on roads with a speed limit of no more than 50km/h and all bicycle lanes that are physically separated from other lanes of traffic, for example by a diving strip or separation kerb (see clause 79). This is achieved by replacing section 244G with section 252B (clause 79).<sup>14</sup>

New section 252B also allows PMD riders incidental access to road such as for the purpose of crossing a road, for entering or leaving bicycle lanes to which they are allowed access, and for traveling through intersections between areas of road they are allowed to access.<sup>15</sup> However, the section does not allow PMD riders to leave a prescribed bicycle lane and travel in or across general traffic lanes to access a right turning lane.<sup>16</sup>

### Definition of PMD

Currently, section 18 of the QRRs includes PMDs as pedestrians. SL No. 142 amends section 15 of the QRRs to classify PMDs as a vehicle, and omits section 18 (clauses 9–13). It also extends protections given to bicycle riders in section 144A of the QRRs. This means that motor vehicles passing a PMD rider must pass the PMD at a sufficient distance (clause 47).<sup>17</sup>

SL No. 142 consolidates other rules specific to PMDs and bicycles in the QRRs by omitting part 14 (clause 70), and inserting them in part 15 of the QRRs (clauses 71–90). Requirements applying to

---

<sup>10</sup> Section 8 of the *Human Rights Act 2019* (HRA) relevantly provides that a statutory provision is compatible with human rights if the provision does not limit a human right or limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA. Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

<sup>11</sup> Explanatory notes, p 4.

<sup>12</sup> Explanatory notes, pp 2 and 4.

<sup>13</sup> Explanatory notes, p 4.

<sup>14</sup> Explanatory notes, p 4.

<sup>15</sup> Explanatory notes, p 5.

<sup>16</sup> Explanatory notes, p 5.

<sup>17</sup> Explanatory notes, p 5.

bicycle riders about towing a trailer with a person in it have been extended to apply to PMD riders in section 257.<sup>18</sup>

#### Penalty infringement notices

SL No. 142 streamlines penalty infringement notice fines that apply to PMD and bicycle riders for the same offence. This results in an increase in the penalty infringement notice fine that apply to PMD riders to 1 penalty unit for the following contraventions:

- PMD rider crossing a road at a crossing contrary to requirements in section 248
- PMD rider causing a traffic hazard (section 253)
- PMD rider obstructing other drivers or pedestrians (section 125).<sup>19</sup>

Requirements about crossing near pedestrian lights or at level crossings that currently apply to PMDs users as pedestrians, continue to apply to PMD riders, but not to bicycle riders (see clause 79, new sections 252E to 252G).<sup>20</sup>

The following PMD-specific rules will continue to apply unchanged:

- section 245A—age restrictions for PMD riders (reflects existing rule that is currently in section 244D)
- section 246A—restriction on carrying another person on a PMD (reflects existing rule that is currently in section 244J).<sup>21</sup>

New section 252A preserves the rules in section 244H (omitted with part 14) with some minor additions to clarify that the restriction may be indicated by signs or road markings applying to a stretch of road or footpath.<sup>22</sup>

#### Consequential amendments

SL No. 142 makes consequential amendments to:

- the QRRs to reflect that a PMD is classified as a vehicle and the user as a rider
- the Transport Operations (Road Use Management—Driver Licensing) Regulation 2021 due to this change in classification. These amendments retain the existing position that a PMD rider is not subject to the allocation of demerit points as a result of committing an offence while riding a PMD. This is consistent with bicycle riders not being subject to the allocation of demerit points as a result of committing an offence while riding a bicycle.<sup>23</sup>

#### Non-compliant PMDs

Currently, section 15A of the QRRs sets out a range of characteristics that a device must meet to be classified as a PMD. A device that does not satisfy all of the criteria in section 15A is not classified as a PMD and is therefore not subject to any of the rules within the QRRs relating to PMDs. This would include, for example, a device that resembles a PMD in all respects other than the fact that it is capable of travelling faster than 25km/hr. To clarify this position, SL No. 142, removes the characteristics listed in section 15A (clause 10).<sup>24</sup>

SL No. 142 also inserts new offences for a person using a PMD that does not have an effective stopping

---

<sup>18</sup> Explanatory notes, p 5.

<sup>19</sup> Explanatory notes, p 5-6.

<sup>20</sup> Explanatory notes, p 6.

<sup>21</sup> Explanatory notes, p 6.

<sup>22</sup> Explanatory notes, p 6.

<sup>23</sup> Explanatory notes, p 6.

<sup>24</sup> Explanatory notes, pp 6-7.

system controlled by using brakes, gears or motor control (clause 85, new section 258(2)); or that has sharp protrusions (clause 86, new section 258A). The maximum penalty is 20 penalty units (\$2875) and a penalty infringement notice of 1 penalty unit (\$143).<sup>25</sup>

Electric bicycles are not regarded as PMDs under section 15A. This is achieved through the incorporation of new subsection (h)(iii) which provides that a vehicle with pedals is not a PMD (clause 10). The use of the term 'pedals' in this context is intended to describe both the pedals attached to the drive system that propels a bicycle, and a pedal (or lever) that is pressed to activate an accelerator or brake.<sup>26</sup>

#### Penalties for high risk behaviours

SL No. 142 increases infringement notice fines for offences aimed at preventing high-risk behaviours by PMD riders.

New penalties for exceeding speed limit applying to a PMD rider increases from 20 penalty units under section 244E (currently \$2875) to 40 penalty units under section 20 of the QRRs (currently \$5750).

The penalty infringement notice fine also increased to:

- 1½ (for exceeding speed limit by at least 14km/h but not more than 20km/h)
- 2½ (for exceeding the speed limit by more than 20km/h but not more than 30km/h)
- 4 penalty units (currently \$575) for exceeding the speed limits by more than 30km/h (see clause 4).<sup>27</sup>

Because PMDs are reclassified as vehicles, there will be a significant increase in penalties for illegal mobile phone use and drinking liquor while driving:

- using handheld mobile phone while on a PMD (section 300 QRRs) - increasing from 3 penalty units to 7½ penalty units (currently \$1078)
- drinking liquor while driving (300A) - increasing from 1 penalty unit to 3 penalty units (currently \$431.25).<sup>28</sup>

Importantly, the mobile phone rule under section 300 of the QRRs does not apply to a PMD or bicycle rider if they are stationary on a bicycle path, footpath, separated footpath, shared path or nature strip (clause 96).

#### Warning devices

SL No. 142 require a working warning device (such as a bell, horn or similar device) to be fitted to a PMD that has handlebars, such as an e-scooter. Failure to comply with this requirement is an offence with an infringement notice fine of 1 penalty unit (currently \$143) and a maximum penalty of 20 penalty units (currently \$2,875). (See clause 85 (section 258(3)).)<sup>29</sup>

#### Helmets

SL No. 142 provides an additional option for PMD riders by allowing them to choose to wear an approved motorbike helmet (clause 83 (new section 256A)).<sup>30</sup>

#### Signage

PMD riders must not travel past a no personal mobility devices sign (new section 252A, which replaces existing section 244H). The current sign depicts an upright two-wheeled device, commonly known as

---

<sup>25</sup> Explanatory notes, p 7.

<sup>26</sup> Explanatory notes, p 7.

<sup>27</sup> Explanatory notes, p 7.

<sup>28</sup> Explanatory notes, p 8.

<sup>29</sup> Explanatory notes, p 8.

<sup>30</sup> Explanatory notes, p 8.

a Segway. This sign was introduced as part of the 2013 amendments to restrict the operation of PMDs in certain areas (usually highly pedestrianised) where it is deemed hazardous.<sup>31</sup>

### 5.1 Fundamental legislative principle issues

A penalty should be proportionate and relevant to the offence.<sup>32</sup> SL No.142 increases the amount of the penalty that applies to PMD riders engaging in high risk behaviours, such as speeding and using mobile phone.

The explanatory notes observe that a tiered infringement notice framework reflects the increased risk of higher speeds and that this is:

... similar to the current speeding offence framework that applies to other vehicles, in that it is based on the speed limit that applies to the PMD rider at the time of the offence. This approach recognises the different risk profiles of speeding depending on the infrastructure and environment. That is, using a PMD at more than 25km/h on a footpath amongst pedestrians is generally more dangerous than using a PMD at the same speed on a separated bike path or on-road bicycle lane. While both behaviours are dangerous and would result in a fine, this approach ensures that the penalty is commensurate to the risk profile.<sup>33</sup>

As regards the highest penalty, which is imposed for a PMD rider using a handheld mobile phone while riding, the explanatory note provide the following justification:

It is considered that the risks associated with using a mobile phone while riding a PMD are substantially similar to the risks posed when riding a bicycle and therefore alignment of penalties is also justified on these grounds. Bicycles and PMDs have similar speed and handling characteristics and so will be similarly negatively impacted by the illegal use of a mobile phone. They pose a similar risk to themselves and other path and road users if distracted.

In recognition of the significant penalty for illegal mobile phone use and need to ensure it is only applied where appropriate, the Amendment Regulation will clarify that a PMD and bicycle rider using a mobile phone while stationary on a path or nature strip will not be committing an offence. This behaviour is considered very low risk and does not negatively impact road efficiency in the same way using a mobile phone when stopped at traffic lights does.

The increased penalties in the Amendment Regulation take into account the significant burden on the State's health care system in the treatment of those seriously injured in a crash.

It is therefore believed that significantly increasing the penalties is justified as being the most likely approach to improve road safety outcomes and promote behavioural change. Increasing monetary fines for traffic offences has also been shown to reduce recidivism rates in Queensland. The specific deterrent effect of increased monetary penalties on rates of re-offending is evidenced by an analysis of an increase to monetary penalties for speeding offences published in 2015 which revealed a subsequent 6.3 percent reduction in recidivism.<sup>34</sup>

### Conclusion

The committee is satisfied that the penalties proposed are reasonable and proportionate, such that the provisions have sufficient regard to the rights and liberties of individuals.

### 5.2 Explanatory Notes

The explanatory notes comply with part 4 of the *Legislative Standards Act 1992 (LSA)*.

---

<sup>31</sup> Explanatory notes, 9.

<sup>32</sup> Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: The OQPC Notebook, p 120.

<sup>33</sup> Explanatory notes, p 11.

<sup>34</sup> Explanatory notes, p 12.

### 5.3 Human rights considerations

The committee is satisfied that the subordinate legislation is compatible with human rights<sup>35</sup> as it limits human rights only to the extent that is reasonable and demonstrably justified in accordance with section 13 of the *Human Rights Act 2019*.

The human rights issues raised by SL No. 142 are summarised below.

#### ***Right to recognition and equality before the law***

The HRA provides that every person is equal before the law and is entitled to equal protection of the law without discrimination.<sup>36</sup>

This right places an obligation on public entities to treat people equally and to not apply the law in a discriminatory or arbitrary way.

The human rights certificate acknowledges that this right may be limited to the extent that SL No. 142 creates the possibility of the imposition of financial penalties on PMD riders and other road users. These financial penalties may be in the form of either a court-imposed fine or an infringement notice fine for the offence provision.<sup>37</sup>

However, the human rights certificate goes on to note:

It is considered to be in the public interest to both reduce road trauma and to promote person's right to life. The above offence provisions (and their associated financial penalties) are underpinned by the purpose to enhance road safety.

The only offence that is not aimed at furthering road safety is the offence provision in relation to the unlawful use of parking spaces designated for use by people with disabilities. Ensuring that people with disabilities are able to maintain their human dignity by safely accessing the broader community is also inherently consistent with a free and democratic society.<sup>38</sup>

#### ***Right to property***

A person must not be arbitrarily deprived of their property.<sup>39</sup> The human rights certificate explains that:

Financial penalties for PMD riders and other road users who do not comply with the requirements in the QRRs provide a proportionate response to encourage road safety, and to support safe access to parking spaces for people with disabilities.<sup>40</sup>

#### ***Right to liberty and security of person***

A person has the right not to be subjected to arbitrary arrest or detention or to be deprived of their liberty.<sup>41</sup> SL No. 142 acknowledges that it 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 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

---

<sup>35</sup> Section 8 of the *Human Rights Act 2019* (HRA) relevantly provides that a statutory provision is compatible with human rights if the provision does not limit a human right or limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA. Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

<sup>36</sup> HRA, s 15.

<sup>37</sup> SL No. 142, human rights certificate, pp 3 and 4

<sup>38</sup> SL No. 142, human rights certificate, p 5.

<sup>39</sup> HRA, s 24.

<sup>40</sup> SL No. 142, human rights certificate, p 7.

<sup>41</sup> HRA, s 29.

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.<sup>42</sup>

The human rights certificate concludes that:

The importance of protecting road safety, enabling safe access to parking spaces for people with disabilities, and ensuring an effective enforcement system also outweigh the potential limitations on property rights, the right to liberty and security of person, the right to a fair hearing, and rights in criminal proceedings.<sup>43</sup>

***Right to a fair hearing and rights in criminal proceedings***

A party to a civil proceeding has the right to have the proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.<sup>44</sup> The human rights certificate notes that SL No. 142 may limit this right to the extent that it prescribes penalty infringement notice (PIN) offences. This may arise because a person does not have to attend court in relation to a PIN offence.<sup>45</sup>

**5.4 Human rights certificate**

The human rights certificate tabled with the subordinate legislation provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

**6 Recommendation**

The committee recommends that the House notes this report.



Shane King MP

**Chair**

**February 2023**

**Transport and Resources Committee**

<b>Chair</b>	Mr Shane King MP, Member for Kurwongbah
<b>Deputy Chair</b>	Mr Lachlan Millar MP, Member for Gregory
<b>Members</b>	Mr Bryson Head MP, Member for Callide
	Mr James Martin MP, Member for Stretton
	Mr Les Walker MP, Member for Mundingburra
	Mr Trevor Watts MP, Member for Toowoomba North

---

<sup>42</sup> SL No. 142, human rights certificate, p 4–5.

<sup>43</sup> SL No. 142, human rights certificate, p 8.

<sup>44</sup> HRA, s 31.

<sup>45</sup> SL No. 142, human rights certificate, p 5.