Shane Rattenbury MLA

Minister for Climate Change and Sustainability
Minister for Corrections and Justice Health
Minister for Justice, Consumer Affairs and Road Safety
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Ms Elizabeth Lee MLA
Chair
Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)
Legislative Assembly
GPO Box 1020
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Dear Ms Lee

I write in relation to comments made by the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) (Scrutiny Committee) in its *Scrutiny Report 21* published on 11 September 2018 in relation to the *Road Transport (Offences) Amendment Regulation 2018 (No 2)*.

Thank you for your consideration of this subordinate law. I note the Scrutiny Committee has sought my advice as to the justification for an offence in this subordinate law needing to be an offence of strict liability. I also note the Committee sought advice in relation to the Committee's terms of reference as it may unduly trespass on rights previously established by law.

In settling the draft of the *Road Transport (Offences) Amendment Regulation 2018 (No 2)* officers within the Justice and Community Safety Directorate identified that a provision of the *Road Transport (Offences) Regulation 2005* was not identified as an offence of strict liability even though an infringement notice penalty was identified for the offence. To rectify this, the offence provision was amended to be in accordance with current drafting practices to identify that the offence is one of strict liability which is generally how the offence had been interpreted prior to this amendment and the intention is to confirm this. To meet the requirements of the guideline for framing offences and current drafting practices, the wording of the offence was amended to remove the recklessness requirement from the provision and included the subsection indicating the offence was one of strict liability. The requirement of recklessness was removed from the provision to align with the straightforward yes or no criteria in the Guide to Framing Offences.

It is appropriate that the offence be one of strict liability as it is considered paramount that behaviour is discouraged that would prevent the responsible person for a vehicle receiving or reading an infringement notice that had been placed on or attached to their vehicle. People are generally aware of what behaviour is considered appropriate in relation to an infringement notice that has been placed on or attached to a vehicle. For a person to commit the offence described they would be required to be actively involved in the behaviour resulting in the offence.

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The inclusion of the offence as one of strict liability supports the application of the road transport infringement notice scheme to offences against the regulation. Infringement notice schemes minimise the cost of litigation for the Territory while offering people a choice concerning whether to accept a lesser penalty without admitting the offence or remaining liable to prosecution.

In relation to the limitation of the right of the presumption of innocence as provided by section 22 of the *Human Rights Act 2004*, it may be argued that a person's right has been limited. However, the nature of the limitation of this right is not extensive. In making the offence one of strict liability, the offence becomes one that can be dealt with by infringement notice. A person issued with an infringement notice may have the matter dealt with by paying the amount of the infringement notice. A person issued with an infringement notice also has the opportunity to dispute the matter through administrative means with the administering authority for the offence and/or challenging the matter in court.

If the matter is dealt with by a court the prosecution needs to prove the matter to the satisfaction of the court to achieve that finding. The defendant, in a matter where defences to the offence are not listed, as is the case with section 12A (3) of the Road Transport (Offences) Amendment Regulation 2018 (No 2), has the normal defences, including the defence of having made a mistake available to them.

Section 23 (1) (b) of the Criminal Code 2002 (the Code) provides a specific defence of mistake of fact for strict liability offences. Section 23 (3) of the Code provides that other defences may also be available for strict liability offences, including the defence of intervening conduct or event (section 39), duress (section 40), sudden or extraordinary emergency (section 41), self-defence (section 42) or lawful authority (section 43).

I trust this advice assists the Scrutiny Committee and again thank you and the Committee for its comments on this regulation.

Yours sincerely

Shane Rattenbury MLA
Minister for Justice, Consumer Affairs and Road Safety