

Summary Offences Regulation 2016

Explanatory notes for SL 2016 No. 124

made under the

Summary Offences Act 2005

General Outline

Short title

Summary Offences Regulation 2016

Authorising law

Sections 11A, 23D and 49 of the *Summary Offences Act 2005*.

Policy objectives and the reasons for them

The objective of the *Summary Offences Regulation 2016* (the new Regulation) is to prescribe specific matters for the *Summary Offences Act 2005* (the Act). These matters relate to sections 11A 'Unlawful driving of motorbike on public land' and 23D 'Seller of spray paint must display prohibition sign' of the Act.

The new Regulation also remakes and repeals the *Summary Offences Regulation 2006* (the 2006 Regulation).

Section 54(1) of the *Statutory Instruments Act 1992* (SI Act) provides for the automatic expiry of subordinate legislation on 1 September first occurring after the tenth anniversary of the day of its making, unless it is sooner repealed or expires, or a regulation is made under the SI Act exempting it from expiry. The 2006 Regulation is due to expire on 1 September 2016.

A review of the Act and the 2006 Regulation identified no issues with the 2006 Regulation or policy changes that were required to be made by the new Regulation. The new Regulation has made some minor amendments to sections to comply with modern drafting practices.

Achievement of policy objectives

The new Regulation achieves its objective by prescribing specific matters related to sections 11A 'Unlawful driving of motorbike on public land' and 23D 'Seller of spray paint must display prohibition sign' of the Act.

Part 2 of the new Regulation prescribes specific matters for section 11A of the Act. It provides a scheme for an area of public land to be prescribed as motorbike control land and for a person to apply for a motorbike access authority to drive a motorbike on motorbike control land.

Part 3 of the new Regulation prescribes requirements for the display and content of a prohibition sign about the supply of spray paint to minors for section 23D of the Act.

The new Regulation replaces the 2006 Regulation to ensure compliance with the SI Act.

Consistency with policy objectives of authorising law

The new Regulation is consistent with the objectives of the *Summary Offences Act 2005*.

Inconsistency with policy objectives of other legislation

The new Regulation is consistent with the policy objectives of other legislation.

Benefits and costs of implementation

The new Regulation will impose no additional cost on Government.

Consistency with fundamental legislative principles

The new Regulation has been drafted with regard to the fundamental legislative principles and does not raise any new inconsistencies with the fundamental legislative principles that did not already exist under the 2006 Regulation. The inconsistencies are addressed below.

Legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review – *Legislative Standards Act 1992*, section 4(3)(a)

Section 6 'Reconsideration of application for motorbike access authority' allows a person to apply to the responsible chief executive for a reconsideration of the chief executive's decision to refuse to issue a motorbike access authority to the person or impose a condition on a motorbike access authority.

Section 5 'Application for motorbike access authority' provides the process for a person to apply to the responsible chief executive for a motorbike access authority. If the chief executive refuses to issue the motorbike access authority or imposes a

condition on a motorbike access authority, the person may, under section 6, apply to the chief executive for a reconsideration of the refusal to issue the authority or the imposition of the conditions. There is no further review provided in the new Regulation from the reconsideration under section 6 and this could be considered to be inconsistent with the fundamental legislative principle that rights, liberties or obligations should only be dependent on administrative power if the power is subject to appropriate review.

However, section 6 provides for a reconsideration of the original decision under section 5. This allows a person applying for a motorbike access authority to effectively have an application considered twice and it is therefore considered unnecessary to provide a right of review from the reconsideration decision of the chief executive under section 6.

Section 6 ensures fairness to the person applying for the motorbike access authority by stating that the chief executive must give the person written notice stating the reasons for the refusal or the conditions. This ensures that when the person applies to the chief executive for a reconsideration, the person is fully informed of the reasons for the decision and will be able to address any issues raised by the chief executive or raise further points to support the application. Section 6(5) confirms that the person conducting the reconsideration may consider any relevant materials and must make a fresh decision on the merits.

There is a further safeguard in section 6(4) which provides that if the original decision was made by a person other than the chief executive, the reconsideration must be made by another person in a more senior office than the original decision maker.

An application for a statutory order of review of the decision of the responsible chief executive under section 14 can be made under the *Judicial Review Act 1991*.

Section 8 'Application for land to be prescribed as motorbike control land' allows the Minister to decide an application to prescribe an area of public land as motorbike control land.

Under section 8, a responsible government entity for an area of public land may apply to the Minister to prescribe the area as motorbike control land. The Minister can decide to prescribe or not prescribe the area as motorbike control land or to prescribe a part of the area as motorbike control land. As with the existing Regulation, the new Regulation provides no right of review from the decision of the Minister on the application and this is inconsistent with the fundamental legislative principle that rights, liberties or obligations should only be dependent on administrative power if the power is subject to appropriate review. However, based on other requirements that must be met before an application is made, it is not considered necessary for the new Regulation to provide for a review of the Minister's decision.

Section 8(2) requires that before an area is prescribed as motorbike control land, the Minister must ensure the requirements of sections 9 to 11 have been complied with. Section 9 'Requirements of application' provides that an application must be in the approved form and accompanied by a plan of the area and a copy of any submission

received about the application. The approved form must include information about the results of consultation undertaken under section 10, whether the entity has conducted any other consultation and the nature and results of that consultation.

Section 10 'Consultation and notification' requires that before an application is made under section 8, the entity must consult with the district officer of the police district for the area, the local government for the area and a person (or a representative of a person) who is living in or adjacent to, or carrying on business in or adjacent to, the area. Section 10 also requires the entity to publish a notice of the entity's intention to make the application on the entity's website and in a newspaper for the area. Under section 11 'Information to be included in notice', the notice must include information that interested persons may make a written submission to the entity about the proposal. Section 10(3) further requires the entity to take other reasonably necessary steps to ensure that persons who may reasonably be expected to be affected by the proposal are notified of the proposal and given an opportunity to make a written submission about the proposal.

The consultation and notice requirements in sections 9 to 11 are comprehensive. The requirements are intended to ensure that any business or person who is likely to be affected by the proposed application and relevant local entities, including the police district officer and local government, will be consulted or receive notice of the application, prior to the application being submitted to the Minister. This ensures affected persons and entities are given early advice about the proposed application and can make submissions about the proposed application. Therefore, any issues or concerns raised by affected persons and entities are able to be included in the application.

In deciding the application under section 8, the Minister is able to consider any submission made to the entity about the application. Therefore, even though the application is made by the responsible government entity, the application will include views of persons and entities likely to be affected by the application. As a result, the Minister is able to make a decision with all relevant information. In the circumstances, it is not considered necessary for the new Regulation to provide for a review of the Minister's decision.

An application for a statutory order of review of the Minister's decision can be made under the *Judicial Review Act 1991*.

Consultation

The Department of the Premier and Cabinet, Queensland Treasury, the Department of Justice and Attorney-General (DJAG), and the Office of Best Practice Regulation within the Queensland Productivity Commission were consulted and support the new Regulation.

DJAG recommended that section 6 'Reconsideration of application for motorbike access authority' be amended to clarify that new material may be submitted upon an application made under section 6(2) for reconsideration of the original decision. New subsection (5) was inserted into section 6 as a result of DJAG's recommendation and confirms that the person conducting the reconsideration 'may consider any

relevant materials and must make a fresh decision on the merits'. DJAG agreed that the wording of subsection 6(5) clarified the issue.

The Office of Best Practice Regulation has advised that a Regulatory Impact Statement is not required.

©The State of Queensland 2016