

Biosecurity and Other Legislation Amendment Regulation 2021

Explanatory Notes for SL 2021 No. 174

made under the

Animal Management (Cats and Dogs) Act 2008

Biosecurity Act 2014

State Penalties Enforcement Act 1999

General Outline

Short title

Biosecurity and Other Legislation Amendment Regulation 2021

Authorising law

Section 210 and schedule 1, section 2A of the *Animal Management (Cats and Dogs) Act 2008* (the Animal Management Act).

Sections 45A, chapter 14, part 3 and section 503 of the *Biosecurity Act 2014* (Biosecurity Act).

Part 3, section 165 and schedule 2 of the *State Penalties Enforcement Act 1999* (SPE Act).

Policy objectives and the reasons for them

Distinctive collars for regulated dogs

Under the Animal Management Act, regulated dogs, which comprise declared dangerous, menacing or restricted dogs, are required to wear a distinctive collar at all times. The distinctive collar must be of the dimensions, quality and type, and comply with any other requirements, prescribed by regulation.

An objective of the *Biosecurity and Other Legislation Amendment Regulation 2021* (subordinate legislation) is to achieve consistent, distinctive identification of these dogs throughout the State so that the public can visually distinguish regulated dogs from non-regulated dogs and hence be more cautious around them. The subordinate legislation will therefore enhance public safety.

Prohibited feed for pigs and poultry

The feeding or supplying of prohibited feed for pigs and poultry is regulated under section 46A of the Biosecurity Act which provides specific offences for persons feeding, dealing

with or supplying prohibited feed for pigs and poultry.

Feeding of food waste, particularly animal products, to livestock poses a risk of transmitting animal disease pathogens to the animals.

Research has shown that the process of thermally treating materials to 100 degrees celsius for 30 minutes will inactivate a number of important viruses that may be transmitted to animals through feeding of animal matter or material contaminated by animal matter. This includes African swine fever virus, foot and mouth disease virus, Newcastle disease virus and infectious bursal disease virus.

In May 2020, the Animal Health Committee (AHC) agreed to an amended national definition of prohibited pig feed which identified heat treatment requirements to inactivate the African swine fever virus.

Recycling businesses have flagged interest in producing and supplying heat treated, recycled human food waste for commercial poultry feed, which may be diverted to pig feed.

A further objective of the subordinate legislation is to enable the waste food recycling industry to treat human food waste, consistent with the AHC-approved requirements and subject to oversight, and then supply it for feeding pigs and poultry. This will maintain the integrity of Queensland's animal health systems and domestic and export livestock markets by ensuring that viruses such as African swine fever virus are inactivated.

Penalty Infringement Notices

Under part 3 of the SPE Act, Penalty Infringement Notices (PINs) must be prescribed in the *State Penalties Enforcement Regulation 2014*.

PINs can be a cost-effective enforcement tool that avoids the need for court cases while achieving greater awareness of, and compliance with, legislative requirements. The service of PINs also serves an educational purpose to the general community. PINs are generally no more than one-tenth of the penalty prescribed in the Biosecurity Act, the *Biosecurity Regulation 2016* (Biosecurity Regulation) or other statute to which the infringement notice offence relates.

A further purpose of the subordinate legislation is to prescribe PINs which promote compliance under the Biosecurity Act, including to promote persons taking reasonable and practical measures to prevent or minimise biosecurity risks.

Achievement of policy objectives

Distinctive collars for regulated dogs

The subordinate legislation will achieve consistent identification of regulated dogs throughout Queensland by prescribing that all regulated dogs must have a distinctive collar made of durable material and have a buckle or other fastener to securely attach the collar to the dog. The collar must have diagonal stripes of alternating red and yellow colours at least 25mm wide at an angle of 45 degrees. At least one of the colours must be reflective and visible in low light conditions.

The subordinate legislation also represents a move towards national consistency for the identification of regulated dogs, as New South Wales, Victoria, Tasmania and Western Australia currently prescribe the use of similarly prescribed distinctive collars.

Prohibited feed for pigs and poultry

The subordinate legislation will achieve its objective by prescribing that material that has undergone a process that has been approved by the AHC and which is carried out under a compliance agreement in accordance with chapter 14, part 3 of the Biosecurity Act, will not come within the definition of “prohibited feed for pigs and poultry” and will be able to be used for feed purposes. To this extent, the subordinate legislation makes Queensland’s biosecurity legislation consistent with the nationally agreed definition of prohibited pig feed.

Penalty Infringement Notices

The subordinate legislation achieves its policy objective by amending the *State Penalties Enforcement Regulation 2014* to introduce new and amended infringement notice offences related to offences under the Biosecurity Act and the Biosecurity Regulation.

Specifically, these infringement notices relate to:

- offences for distribution and disposal of category three restricted matter which, in recent times, has increasingly involved persons selling a range of invasive cacti species online and at markets;
- offences for corporations for distributing or disposing of a thing infested with category 3 restricted matter where the distribution or disposal is not done in accordance with a restricted matter permit or in a way prescribed under regulation, which is consistent with the compliance approach for individuals;
- an offence by corporations where there is a failure to carry a biosecurity instrument permit when carrying out activities under the permit, which is consistent with the compliance approach for individuals; and
- an offence by registered biosecurity entities of failing to pay the fee for renewal of their registration. The subordinate legislation achieves the objective by eliciting information on the status of registered biosecurity entities and serves as a future deterrent and encourages entities to register to maintain the accuracy of the department’s database. This will ensure that owners of animals the subject of a biosecurity incident can be contacted.

The subordinate legislation also omits the infringement notice offence for the offence relevant to fire ant biosecurity zone three as this biosecurity zone no longer exists in legislation.

Consistency with policy objectives of authorising law

The subordinate legislation is consistent with the policy objectives of each of the relevant Acts.

Animal Management Act

The amendments relating to distinctive collars for regulated dogs will impose obligations on regulated dog owners which are consistent with the objectives of the Animal Management Act to provide in part, for the effective management of regulated dogs.

Biosecurity Act

The amendments relating to prohibited feed for pigs and poultry are consistent with providing an effective biosecurity system that helps to minimise biosecurity risks, and assist in managing risks associated with pests and diseases which impact on plant and animal industries and the environment. These are among the purposes of the Biosecurity Act.

SPE Act

The amendments relating to penalty infringement notice offences are consistent with the objectives of the SPE Act in that they maintain the integrity of fines as a viable sentencing or punitive option for offenders and reduce the cost to the State of enforcing fines and other money penalties.

Inconsistency with policy objectives of other legislation

The subordinate legislation is not inconsistent with the policy objectives of any other legislation.

Alternative ways of achieving policy objectives

Distinctive collars for regulated dogs

There is no other way to ensure consistent requirements across the State. The *Animal Management (Cats and Dogs) Regulation 2019* prescribes requirements of a dog's identifying tag, but does not currently prescribe the dimensions, quality and type of a distinctive collar which must be worn by a regulated dog. Consequently, local governments throughout Queensland can currently prescribe any distinctive collar for regulated dogs.

Prescribing these particular requirements also represents a move towards national consistency as New South Wales, Victoria, Tasmania and Western Australia currently prescribe the use of similar distinctive collars.

Prohibited feed for pigs and poultry

An alternative to using compliance agreements to provide oversight of treatment of waste consistent with the AHC-approved requirements would be to amend the Biosecurity Act to allow a permit to be granted which would also be consistent with the national definition. This alternative is not necessary as the framework already exists in the Biosecurity Act to enable this activity to be undertaken with adequate oversight of the process. Amending the Biosecurity Act to provide for a permit to be issued in this circumstance is not required and unnecessarily time consuming for such a minor amendment.

Penalty Infringement Notices

An alternative way of achieving the objectives would be to not issue PINs and rely solely on educating stakeholders and the community on biosecurity risks and responsibilities. This is not a feasible alternative as it would not serve as a deterrent to errant behaviour. A further alternative would be to prosecute every offence through a court which is impractical and cost prohibitive. This is particularly impractical for offences which are

considered a lesser degree of offending as the action taken is not appropriate to the biosecurity risk.

Benefits and costs of implementation

Distinctive collars for regulated dogs

The wearing of a distinctive collar will promote responsible management of regulated dogs and better serve the safety of the public as the distinctive collar will enable local government officers and members of the community to quickly and clearly identify a regulated dog. There will be minimal negative impact of implementing this amendment as the collars will not be cost prohibitive. Local governments will supply the distinctive collars to regulated dog owners and recoup the cost through their dog registration fees.

Prohibited feed for pigs and poultry

The subordinate legislation will benefit food recycling businesses which will enable them, under a compliance agreement, to produce and legally supply treated recycled human food waste for commercial poultry feed, which may be diverted to pig feed. The general community will also benefit as the amendments will assist in reducing human food waste going to landfill. There will be no additional costs to government as the costs of implementing the amendments will be undertaken within the department's existing budget.

Penalty Infringement Notices

There will be no impacts on stakeholders through the addition of PINs as they will still retain the option of disputing the penalty in a court if they so elect. The Queensland Government will not incur any additional costs in the implementation of PINs for these offences.

Consistency with fundamental legislative principles

The subordinate legislation is generally consistent with fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992*.

Consultation

Distinctive collars for regulated dogs

The department conducted a 30-day state-wide survey of local governments with regard to the proposal to introduce distinctive collars for regulated dogs, in partnership with the Local Government Association of Queensland and the South-East Queensland Regional Animal Management Group. There were 52 respondents and all of them supported the proposal to prescribe requirements in the Animal Management Regulation.

The Department of Agriculture and Fisheries (DAF) consulted the Office of Best Practice Regulation (OBPR) regarding Regulatory Impact Statement requirements. OBPR advised that the proposal is unlikely to result in significant adverse impacts, either for owners of regulated dogs or local councils. No further regulatory impact analysis was required under the Queensland Government Guide to Better Regulation (the guidelines).

Prohibited feed for pigs and poultry

Consultation on the amendment to the national definition of prohibited pig feed was undertaken with all Australian Chief Veterinary Officers and the CSIRO as members of the AHC. Consultation with Animal Health Australia, Wildlife Health Australia, and the New Zealand Ministry for Primary Industries occurred as they are all observers to the AHC. The AHC agreed on the revised definition of prohibited pig feed in May 2020. The Stock Feed Manufacturers' Council of Australia, the Australian Renderers Association and SAFEMEAT were also consulted either directly, or through an advisory group. All agreed with the amendment to the national definition of prohibited pig feed, including an approved cooking process including the time/temperature requirement.

DAF consulted the OBPR regarding Regulatory Impact Statement requirements. OBPR advised that the proposal will provide little to no adverse impact on commercial pig feed manufacturers, suppliers or producers as feed manufacturers and industry have already agreed to a strengthened national definition of prohibited pig feed. OBPR considered the proposal will not add to the burden of regulation; is unlikely to result in significant adverse impacts; and no further regulatory impact analysis was required under the guidelines.

Penalty Infringement Notices

Local government was consulted on some of the PINs and is supportive of their introduction. They have expressed a need for PINs to manage persistent non-compliance with the existing offence provisions which places the local biosecurity system at risk. Informing stakeholders of the proposed PINs will take place through the department's business group compliance strategies and other enforcement activities. External stakeholder engagement was not undertaken as the PINs relate to existing offence provisions.

DAF consulted the OBPR regarding Regulatory Impact Statement requirements. OBPR advised that the amendments support the effective and efficient operation of the Act and there will be no significant adverse impacts and no further regulatory impact analysis was required under the guidelines.