

State Penalties Enforcement and Other Legislation Amendment Regulation 2023

Explanatory notes for SL 2023 No. 131

made under the

Forestry Act 1959

Nature Conservation Act 1992

Recreation Areas Management Act 2006

State Penalties Enforcement Act 1999

General Outline

Short title

State Penalties Enforcement and Other Legislation Amendment Regulation 2023

Authorising law

Section 97 of the *Forestry Act 1959*

Section 175 of the *Nature Conservation Act 1992*

Section 232 of the *Recreation Areas Management Act 2006*

Section 165 of the *State Penalties Enforcement Act 1999*

Policy objectives and the reasons for them

In response to ongoing road fatalities, on 1 July 2022 the Department of Transport and Main Roads (TMR) progressed amendments to increase the penalty infringement notice (PIN) penalties for the driving offences of running red lights, speeding and failure to wear seatbelts, as a deterrent to unsafe driver behaviour.

Driver behaviour is also an ongoing issue in Queensland Parks and Wildlife Service (QPWS) managed areas such protected areas, State forests, and recreation areas, where the Queensland road rules apply. Of particular concern is the increase in problematic driver behaviour and resultant incidents in recreation areas, where there have been six fatalities since 2013, five of these since 2020, and numerous vehicle rollovers requiring injured occupants to be transported by helicopter and ambulance for medical treatment. Unsafe driver behaviour creates risks to drivers, their passengers, QPWS officers, and other users of these areas.

While police officers can enforce road rules under TMR legislation on QPWS areas, QPWS authorised officers have also been enforcing certain road rule related offences on roads in QPWS areas for almost 40 years under their own legislation. Current QPWS enforcement includes rules regarding driving without due care and attention, how a person must travel in a motor vehicle (e.g. not part of the vehicle that is for carriage of goods), enforcement of official traffic signs, use of motorbike and bicycle helmets, and use of seatbelts. This is enacted through cross reference in QPWS legislation to provisions in TMR legislation (*Transport Operations (Road Use Management) Act 1995* (TORUM) and the *Transport Operations (Road Use Management—Road Rules) Regulation 2009* (Queensland Road Rules)).

However, there is a disparity between the penalties for PINs issued under QPWS legislation when compared with PIN penalties issued under TMR legislation for the same offence. For example, a person fined by Queensland police for not wearing a motorbike helmet is currently fined a higher amount (3 penalty units) than someone fined for the same offence by a QPWS authorised officer (2 penalty units). Similarly, the increases in penalties for the seatbelt related offences under the Queensland Road Rules are not reflected in penalties for the same offence under QPWS legislation.

This inconsistency, while also reducing the effectiveness of the deterrent, also raises issues of equity and fairness, as the amount of a person's fine should be determined by the significance of the offence and not the identity of the officer undertaking the compliance.

The objective of the *State Penalties Enforcement and Other Legislation Amendment Regulation 2023* (the Amendment Regulation) is improved deterrent of transport offences on QPWS areas through better consistency with transport legislation.

Achievement of policy objectives

To achieve the policy objective, the Amendment Regulation will amend the penalties for PINs issued under the *State Penalties Enforcement Regulation 2014* (SPER) for transport offences that are cross-referenced to TMR legislation in the following QPWS legislation:

- *Forestry Regulation 2015*, section 28;
- *Nature Conservation (Protected Areas Management) Regulation 2017*, section 123; and
- *Recreation Areas Management Regulation 2017*, section 18.

An offence under section 29 of the *Forestry Regulation 2015* relating to wearing of helmets will also be removed, as it has become a duplicate offence with transport legislation. Section 28 of the *Forestry Regulation 2015* will also be redrafted to introduce subsections (1) (a) – (g) when referencing the provisions of the Queensland Road Rules. This will make the structure consistent with the *Nature Conservation (Protected Areas Management) Regulation 2017* section 123 and the *Recreation Areas Management Regulation 2017* section 18 and provide for specific reference to be made to the subsections as required in the SPER.

The subsections within the *Forestry Regulation 2015*, the *Nature Conservation (Protected Areas Management) Regulation 2017* and the *Recreation Areas Management Regulation 2017* that cross reference sections 83 and 84 of TORUM will be restructured to separate the

two offences which will allow clearer prescription of the respective PINs. It will also be clarified that the offence of driving without due care and attention (section 83) only applies in the circumstance where this has not resulted in the death or grievous bodily harm of another person, by reference to section 83(1)(c) of TORUM, rather than the entire section 83. Penalties for offences in TORUM for circumstances involving death or grievous bodily harm under 83 (1) (a) and (b) are matters administered by the Queensland Police Service.

Seatbelt offences

The Queensland Road Rules include offences in relation to wearing seatbelts as follows:

- a driver of a motor vehicle must not fail to properly wear a seatbelt (section 264);
- a driver of a motor vehicle must not fail to ensure a passenger properly wears a seatbelt (section 264A); and
- a passenger in or on a motor vehicle that is 16 years and over must not fail to properly wear a seatbelt (section 265).

The infringement notice fines for these cross-referenced offences will be increased from two penalty units to seven and a half penalty units in the *Forestry Regulation 2015* section 28 (1)(b), (c) and (d); *Nature Conservation (Protected Areas Management) Regulation 2017* section 123(1)(b), (c) and (d); and *Recreation Areas Management Regulation 2017* section 18(1)(b), (c) and (d). This will ensure consistency with the PIN penalties for section 264, 264A and 265 of the Queensland Road Rules, which were increased in the *Transport and Other Legislation Amendment Regulation (No. 2) 2022*.

Motorbike helmet offences

The Queensland Road Rules provides the following offences in relation to wearing a motorbike helmet:

- a person riding a motorbike or quad bike or driving a utility off-road vehicle must not fail to wear an approved motorbike helmet, and must not ride with a passenger unless the passenger wears an approved motorbike helmet (section 270(1)); and
- a passenger on a motorbike or quad bike or driving a utility off-road vehicle must not fail to wear an approved motorbike helmet (section 270(2)).

The infringement notice fines for these cross-referenced offences will be increased from two penalty units to three penalty units in the *Forestry Regulation 2015* section 28 (1)(f); *Nature Conservation (Protected Areas Management) Regulation 2017* section 123(1)(f); and *Recreation Areas Management Regulation 2017* section 18(1)(f). This will ensure consistency with the PIN penalties for section 270 of the Queensland Road Rules.

The Amendment Regulation also removes section 29 of the *Forestry Regulation 2015* which is a duplicated offence for the requirement for quad bike riders and their passengers to wear a motorbike helmet. This offence now exists under section 270 of the Queensland Road Rules following insertion of motorbike helmet requirements for quad bike and utility off-road vehicle users in the *Transport Operations (Road Use Management—Road Rules) and Other Legislation Amendment Regulation (No. 1) 2016*.

Careless and dangerous driving offences

The TORUM provides offences for:

- driving a motor vehicle without due care and attention (section 83); and

- dangerous driving of a vehicle other than motor vehicle or driving a vehicle other than motor vehicle without due care and attention (section 84).

Subsections 28(2) of the *Forestry Regulation 2015*, subsection 123(2) of the *Nature Conservation (Protected Areas Management) Regulation 2017* and subsection 18(2) of the *Recreation Areas Management Regulation 2017* will be restructured so that the cross-references to section 83 and 84 of TORUM are in separate paragraphs to allow clearer prescription of the PIN penalties in SPER.

The infringement notice penalty that cross-references the offence for failing to drive a motor vehicle with due care and attention will be increased from two penalty units to four penalty units for the *Nature Conservation (Protected Areas Management) Regulation 2017* section 123(2)(a); and *Recreation Areas Management Regulation 2017* section 18(2)(a). A PIN with a penalty of four penalty units will be introduced for the *Forestry Regulation 2015* section 28(2)(a) for this offence. This will align the penalties for offences in the QPWS legislation with the PIN penalties for section 83 of TORUM.

The offence provisions in each regulation cross-referencing section 83 of TORUM will be amended to clarify that the offence applies only to section 83(1)(c) of TORUM, which is driving without due care and attention other than where the person causes death of, or grievous bodily harm to, another person. Offences involving death or grievous bodily harm will continue to be investigated by the police.

The Amendment Regulation also introduces a PIN offence with a penalty of two penalty units for the cross-referenced offence of careless and dangerous driving of vehicles other than motor vehicles, for example personal mobility devices and bicycles, for the *Forestry Regulation 2015* section 28(2)(b). This amendment provides consistency with the PINs for the *Nature Conservation (Protected Areas Management) Regulation 2017* and the *Recreation Areas Management Regulation 2017*.

In accordance with *The Queensland Government Better Regulation Policy*, an Impact Analysis Statement was prepared in relation to the regulatory proposal. The proposal will not add to the burden of regulation and is unlikely to result in significant adverse impacts. No further regulatory impact analysis is required.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the objectives of the authorising laws.

The Amendment Regulation is consistent with the *Forestry Act 1959*, which is to provide for forest reservations, the management, silvicultural treatment and protection of State forests, and the sale and disposal of forest products and quarry material, the property of the Crown on State forests, timber reserves and on other lands; and for other purposes. Under section 97 of the *Forestry Act 1959*, regulations may be made for any purpose necessary for giving effect to the Act including for matters outlined in Schedule 2, such as the conduct of persons in State forests and timber reserves.

The object of the *Nature Conservation Act 1992* is the conservation of nature while allowing for the involvement of Indigenous people in the management of protected areas in which they have an interest under Aboriginal tradition or Island custom. Under section 175 of the *Nature Conservation Act 1992*, regulations may be made in respect of a range of matters, including matters relating to safety of persons, and use of vehicles in protected areas.

The Amendment Regulation is consistent with the objectives of the *Recreation Areas Management Act 2006* which is the establishment, maintenance, and use of recreation areas; and to provide, coordinate, integrate and improve recreational planning, recreational facilities, and recreational management for recreation areas, having regard to the conservation, cultural, educational, production and recreational values of the areas, and the interests of area landholders. Under section 232 of the *Recreation Areas Management Act 2006*, regulations may be made in respect of a range of matters, including entry to, use of, and conduct in recreation areas.

The Amendment Regulation makes amendments to the SPER to provide for revised infringement notice penalties for forest, protected area, and recreation area offences. This contributes to achieving the objects of the *State Penalties Enforcement Act 1999* and is consistent with the regulation-making power under that Act.

The objects of the *State Penalties Enforcement Act 1999* include—

- a) maintaining the integrity of fines as a viable sentencing or punitive option for offenders;
- b) maintaining confidence in the justice system by enhancing the way fines and other money penalties may be enforced; and
- c) reducing the cost to the State of enforcing fines and other money penalties.

Section 165 of the *State Penalties Enforcement Act 1999* allows for a regulation to prescribe an offence to be an infringement notice offence and to provide for an infringement notice fine.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is consistent with the policy objectives of other legislation. The Amendment Regulation seeks to improve consistency in the penalties for equivalent offences enforced under TMR legislation, and to improve consistency across QPWS areas.

Benefits and costs of implementation

Failing to properly wear a seatbelt and careless driving (driving without due care and attention) are major contributors to serious injuries resulting in fatalities and hospitalisations in Queensland, including in QPWS areas. Driving without due care and attention is also considered a type 1 hooning offence under the *Police Powers and Responsibilities Act 2000*. Failure to wear a motorbike helmet can have serious consequences in the event of a motorbike accident.

Every fatality as a result of a crash has a ripple effect that sees far reaching and enduring impacts on entire communities. Even in crashes with no fatalities, serious injuries can create life-long difficulties and a range of costs for individuals.

The benefit of implementing the amendments is to improve road safety outcomes, by increasing penalties to deter the incidence of these high-risk driving behaviours. In QPWS areas, this means that a person's fine will be determined on the significance of the offence and not the compliance officer's identity (i.e. Queensland police or a QPWS authorised officer). The amendments ensure that compliance action undertaken in QPWS areas by trained QPWS authorised officers will result in the same value PIN being issued under QPWS legislation to what would be received by an offender if they were issued a PIN by a police officer for the same offence under TMR legislation.

In the same manner as vehicle operations outside of QPWS areas, where motorists and their passengers comply with the requirements in TMR legislation regarding seatbelts and driving conduct, there will be no cost associated with the amendments. However, where offences are committed, the costs will now be equivalent to the existing fines already in place under TMR legislation. If a person cannot afford to pay their fine immediately, there are options available through the State Penalties Enforcement Registry such as payment by regular instalments.

TMR ran a comprehensive communications campaign, "Anywhere, Anytime", to raise public awareness about the increase in penalties for seatbelt offences before they commenced on 1 July 2022. As result, increased public knowledge on the fines for the increased seat belt penalties in the Queensland Road Rules is already in place. Further communication will be conducted on the department's media and social media pages to educate and inform park users of these amendments. Communication activities will be delivered using existing departmental resources.

Consistency with fundamental legislative principles

This Amendment Regulation is consistent with fundamental legislative principles, and has no adverse impact on the rights and liberties of individuals or on the institution of Parliament.

Consultation

No external consultation was undertaken on the Amendment Regulation, as the changes are required to update QPWS legislation to align with changes introduced by TMR in 2022 under the SPER following a dedicated public awareness campaign. The Amendment Regulation will achieve consistency across several pieces of related legislation, and will improve compliance frameworks by aligning penalties for existing offences relating to unlawful driving behaviours in QPWS areas with the TMR PINs for the same offences.