

State Penalties Enforcement (Animal Management) Amendment Regulation 2024

Explanatory notes for SL 2024 No. 127

made under the

State Penalties Enforcement Act 1999

General Outline

Short title

State Penalties Enforcement (Animal Management) Amendment Regulation 2024

Authorising law

Section 165 of the *State Penalties Enforcement Act 1999*

Policy objectives and the reasons for them

The *Agriculture and Fisheries and Other Legislation Amendment Act 2024* (Amendment Act), which includes amendments to the *Animal Management (Cats and Dogs) Act 2008* (AMCD Act) to reform the control and management of dogs, received assent on 26 April 2024. The amendments to the AMCD Act include:

- the introduction of new offences for owning or supplying a prohibited dog, and for failing to exercise effective control of a dog in a public place;
- increased maximum penalties for the offences of failing to comply with permit conditions for a declared dangerous dog, a declared menacing dog, or a dog the subject of a proposed dangerous dog declaration notice, or of failing to comply with a compliance notice for a regulated dog; and
- the repeal of offences for failing to comply with the conditions of a restricted dog permit (permits for restricted dogs will no longer be issued).

Under section 2 of the Amendment Act, the amendments to the AMCD Act have a staged commencement, commencing on assent, 31 July 2024, and 28 August 2024.

The main policy objective of the *State Penalties Enforcement (Animal Management) Amendment Regulation 2024* (Amendment Regulation) is to support the efficient and effective enforcement of certain offences under the AMCD Act by enabling the use of infringement notices and ensuring that infringement notice fines are set at an appropriate level to reflect the seriousness of the offences and to have an appropriate deterrent and punishment effect.

Infringement notices are an alternate enforcement option to prosecuting offences through courts. Infringement notices give the person to whom the notice is issued the option to either pay the fine set out in the notice or to elect to have the matter dealt with by a court.

Achievement of policy objectives

The Amendment Regulation achieves the policy objectives by:

- prescribing, from 31 July 2024, the offences of failing to exercise effective control of a dog under subsections 193(d)(i), 193(d)(iii), 193(e)(i), and 193(e)(ii) of the AMCD Act as infringement notice offences;
- prescribing, from 28 August 2024, the offences of owning or supplying a prohibited dog under sections 103B and 103C of the AMCD Act as infringement notice offences;
- increasing, from 28 August 2024, the infringement notice fine amount for the offences of failing to comply with permit conditions for a declared dangerous or menacing dog or a dog the subject of a proposed declaration notice, or of failing to comply with a compliance notice under subsections 93(1), 97(1), 98(1) and 134(1) of the AMCD Act; and
- removing, from 28 August 2024, the offences under section 81(1) and (2) of the AMCD Act from the schedule of infringement notice offences.

Consistency with policy objectives of authorising law

The amendments are consistent with the policy objectives of the authorising law.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

The Amendment Regulation supports the efficient and effective enforcement of certain offences under the AMCD Act by allowing enforcement of six new offences by way of an infringement notice as an alternate to prosecuting the offences through the courts, and ensuring infringement notice fine amounts are set at an appropriate level to reflect the seriousness of the offences and have an appropriate deterrent and punishment effect.

Any costs arising from implementation will be met from existing resources.

Consistency with fundamental legislative principles

The Amendment Regulation has been drafted having regard to the fundamental legislative principles (FLPs) in the *Legislative Standards Act 1992* (LSA).

The Amendment Regulation prescribes six new offences relating to owning or supplying a prohibited dog and failing to exercise effective control of a dog in a public place as infringement notice offences, and increases the infringement notice fine amount for four offences relating to failing to comply with conditions or a compliance notice for particular dogs.

Prescribing new offences as infringement notice offences and increasing the infringement notice fine amount for existing infringement notice offences may impact on the right and liberties of individuals.

Reasonable and fair treatment

The reasonableness and fairness of the treatment of individuals, and whether legislation is discriminatory, is relevant to the consideration of whether legislation has sufficient regard to the rights and liberties of individuals.

The prescription of additional offences as infringement notice offences and the increase in infringement notice fines may be a departure from FLPs to the extent that it may disproportionately impact some persons or groups of person in the community who may find it more challenging to pay a fine due to financial reasons or if a person cannot appreciate the gravity or consequences of not paying the fine.

The departure from FLPs is considered to be justified as the imposition of the financial penalty is a consequence of the person committing an offence under the AMCD Act. The infringement notice fine amounts ensure that the financial penalty reflects the seriousness of the offences and is set at appropriate level to discourage and penalise unlawful behaviour.

Common law rights

The principle that legislation should not abrogate common law rights, including the protection of property and the right to personal liberty, without sufficient justification is relevant to the consideration of whether legislation has sufficient regard to the rights and liberties of individuals.

Property rights

The prescription of additional offences as infringement notice offences and the increase in infringement notice fines may be a departure from FLPs as the imposition of the financial penalty will result in a deprivation of property in the form of money if the infringement notice fine is paid, or if the person fails to pay an infringement notice fine the deprivation of any property seized as part of enforcement action taken by the registrar of the State Penalty Enforcement Registry.

The departure from FLPs is considered to be justified as the imposition of a financial penalty is a consequence of the person committing an offence under the AMCD Act. The infringement notice fine amounts ensure that the financial penalty reflects the seriousness of the offences and will have an appropriate deterrent and punishment effect.

Right to personal liberty

The prescription of additional offences as infringement notice offences and the increase in infringement notice fines may be a departure from FLPs to the extent that it may, under the enforcement action permitted by the SPE Act, result in a term of imprisonment if the person fails to pay the specified amount.

The departure from FLPs is considered to be justified as any such deprivation of liberty would occur in accordance with the requirements set out in the SPE Act, which importantly preferences the use of other enforcement actions for unpaid fines.

Natural justice

Whether legislation has sufficient regard to the rights and liberties of individuals may depend on whether legislation is consistent with principles of natural justice, including the right to be heard and procedural fairness.

The prescription of additional offences as infringement notice offences may be a departure from FLPs in relation to natural justice to the extent that the enforcement of offences by way of an infringement notice does not involve a court proceeding.

The departure from FLPs is considered to be justified as a person issued an infringement notice may either pay the fine amount set out in the infringement notice or elect to have the matter dealt with by a court. Enabling the use of infringement notices to enforce the offences provides an alternative enforcement mechanism to prosecuting offences through courts, but the person retains the option to elect to have the matter dealt with by a court.

Proportionality of offences

Whether legislation has sufficient regard to the rights and liberties of individuals depends on whether consequences are proportionate and relevant to the actions to which the consequences are applied by the legislation. Legislation must impose penalties that are proportionate to the offences.

The Amendment Regulation prescribes six new offences as infringement notice offences and increases the infringement notice fine amount for four existing infringement notice offences. The infringement notice fine amounts for these offences are considered proportionate and relevant to the action to which they apply, taking into account the maximum penalties imposed by the AMCD Act, the seriousness of the offences, and the intention to discourage and penalise unlawful behaviour.

Consultation

No public consultation was undertaken on the Amendment Regulation. As the Amendment Act introduced the relevant new offences and increased the penalties applicable to other offences, the amendments to the *State Penalties Enforcement Regulation 2014* to are considered to be consequential to the amendments made to the AMCD Act by the Amendment Act.