

State Penalties Enforcement and Other Legislation Amendment Regulation 2024

Explanatory notes for SL 2024 No. 200

made under the

Marine Parks Act 2004

State Penalties Enforcement Act 1999

Work Health and Safety Act 2011

General Outline

Short title

State Penalties Enforcement and Other Legislation Amendment Regulation 2024

Authorising law

Section 150 of the *Marine Parks Act 2004*

Sections 165 of the *State Penalties Enforcement Act 1999*

Section 276 of the *Work Health and Safety Act 2011*

Policy objectives and the reasons for them

The Department of Environment, Science and Innovation have undertaken a statutory review of the *Forestry Regulation 2015*, *Nature Conservation (Protected Areas Management) Regulation 2017* and *Recreation Areas Management Regulation 2017*. The reviews were undertaken at the same time due to the similarity of a number of provisions in each regulation and the benefits in seeking to ensure consistent management across forestry areas, protected areas and recreation areas. As a result, the *Forestry Regulation 2024*, the *Nature Conservation (Protected Areas Management) Regulation 2024* and the *Recreation Areas Management Regulation 2024* (the Replacement Regulations) will be made.

In Queensland, the *State Penalties Enforcement Act 1999* (SPE Act) and its subordinate legislation, the *State Penalties Enforcement Regulation 2014* (SPE Regulation) provide a framework for prescribing offences that are subject to penalty infringement notices (PINs) and the associated infringement notice fines.

PIN offences are an alternative to prosecution through the court system. A PIN enables an alleged offender to discharge their potential liability by the payment of a prescribed penalty, as opposed to having the matter dealt with by the court. The advantages of the PIN regime to government include a cost-effective method of enforcement, and administrative efficiency. Offenders benefit from a fixed and discounted penalty for the offence; avoidance of court proceedings; and no finding of guilt in relation to the offence. PIN offences and penalty amounts are prescribed in Schedule 1 of the SPE Regulation.

Section 165(2) of the SPE Act provides that a regulation may prescribe an offence to be an infringement notice offence. Section 165(3) of the SPE Act provides that a regulation may prescribe an infringement notice fine for an infringement notice offence. With the making of the Replacement Regulations, the section numbering relating to relevant offences in the SPE Regulation needs to be updated to reflect the new section numbers for the offences in the Replacement Regulations. The Replacement Regulations also contain new offences that need to be prescribed as infringement notice offences with associated fines. The review also identified some PIN penalties that required amendment for consistency with similar infringement notice offences and in some cases increases for improved deterrent against the offence.

Consequential amendments to other legislation are also required to update references to the Replacement Regulations.

Achievement of policy objectives

The objectives of the *State Penalties Enforcement and Other Legislation Amendment Regulation 2024* (the Amendment Regulation) are to:

- amend Schedule 1 of the SPE Regulation to prescribe PIN offences and penalties for new offences in the Replacement Regulations;
- update references in Schedule 1 of the SPE Regulation to reflect the new section numbers for PIN offences contained in the Replacement Regulations;
- amend PIN penalties in Schedule 1 of the SPE Regulation for some existing offences for forestry areas, protected areas and recreation areas to achieve consistency with similar offences, or improved deterrent.
- make consequential amendments to the *Marine Parks Regulation 2017* and the *Work Health and Safety Regulation 2011* to update references to the Replacement Regulations.

While most of the changes made to PIN offences for improved consistency or increased deterrent are in the Replacement Regulations, some relate to offences in the *Forestry Act 1959* and the *Recreation Areas Management Act 2006*, therefore updates to the parts of Schedule 1 of the SPE Regulation relating to these offences are also being made.

The listing of offences under the Replacement Regulations in the SPE Regulation as PIN offences supports effective enforcement by allowing compliance action to be taken through the use of infringement notice fines in forestry areas, protected areas and recreation areas. This approach is more efficient and incurs significantly lower cost (for both the State and the offender), than having the matter dealt with by a court.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the objectives of the SPE Act.

The Amendment Regulation makes consequential amendments to the SPE Regulation to provide for the continuation of infringement notice offences and penalties for offences in forestry areas, protected areas and recreation areas. This contributes to achieving the objects of the SPE Act, and is consistent with the regulation-making power under that Act.

The objects of the SPE Act 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 SPE Act allows for a regulation to prescribe an offence to be an infringement notice offence and to provide for an infringement notice fine, including a fine for a corporation not more than five times the fine for an individual.

The Amendment Regulation is consistent with the objectives of the *Marine Parks Act 2004* and *Work Health and Safety Act 2011*.

Inconsistency with policy objectives of other legislation

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

Alternative ways of achieving policy objectives

There is no alternative to achieving the policy objectives.

Consideration was given to an alternative approach to prescribing offences as penalty infringement offences. This would entail:

- not listing these offences as infringement notice offences in the SPE Regulation;
- undertaking court prosecutions as the sole means of taking action for offences; and
- using increased non-regulatory and self-regulatory measures to try to reduce the incidence of unsafe and inappropriate behaviour within protected areas.

This option was rejected because of the unacceptable risks and consequences that would arise.

Without the ability to issue infringement notices, authorised officers would be limited in their ability to ensure compliance with environmental and safety requirements, owing to the diminished deterrent effect, and the additional demand on enforcement resources that would result.

The cost of enforcement would increase due to the extra effort that would be required to try to maintain effective compliance, and due to the additional cost of court proceedings

instituted for minor offences. Additional effort would be required to address unsafe and inappropriate behaviour, as using non-regulatory and self-regulatory measures would not be effective and would fail to sufficiently alleviate the risks.

The ability to use infringement notices with appropriate penalties is an essential requirement to deter unacceptable behaviour, allow effective enforcement action to be taken, and maintain public confidence that appropriate action will be taken against people who do not obey the rules and who jeopardise public safety and enjoyment.

Benefits and costs of implementation

The benefits arising from the regulatory framework greatly outweigh the potential inconvenience to the users of these areas in order to comply with the regulations. Forestry areas, protected areas and recreation areas are established for the protection of natural and cultural values and also provide for commercial, recreational, and other sustainable and generally, nature-based uses. Enforcing compliance with the Replacement Regulations provides a significant benefit to the community through protection and management of environmental values, and improved safety and amenity for visitors. The Amendment Regulation provides for penalties for relevant offences in the Replacement Regulations in the form of infringement notice offence penalties. However, the cost of these penalties is only borne by a small number of people who commit offences that warrant action stronger than a warning.

The Amendment Regulation imposes some continuing costs on government, including administrative and compliance costs. However, these costs are outweighed by substantial benefits in terms of meeting government responsibilities for the management of State-owned lands, and ongoing cost savings delivered by effective management.

No new costs are introduced by the Regulation.

In accordance with *The Queensland Government Better Regulation Policy*, a Summary 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.

Consistency with fundamental legislative principles

The Regulation has been examined for compliance with the fundamental legislative principles outlined in section 4 of the *Legislative Standards Act 1992* and is considered to have sufficient regard to the rights and liberties of individuals and the institution of Parliament.

Consultation

The Office of Best Practice Regulation within the Queensland Productivity Commission was advised of the proposal to make the *State Penalties Enforcement and Other Legislation Amendment Regulation 2024*.

Informed by advice from the Office of Best Practice Regulation, consultation with the general community regarding the review of the Amendment Regulation occurred through an online survey hosted on the Queensland Government 'Get Involved' consultation platform. Through this process, feedback was requested on the regulatory changes the department was proposing in response to the issues outlined in the survey information. The survey also specifically sought feedback on any costs and benefits on the community that may result from the proposed changes.

Engagement with First Nations Partners occurred prior to the commencement of broader public consultation and the release of the survey to advise why the review was being undertaken, the key changes proposed, the timeframes associated with consultation and how to provide feedback and seek further information.

Additionally, correspondence was sent to private protected area landholders, authority holders, and peak industry groups, local government and other representative bodies regarding the review and seeking their participation in the survey. Consultation also occurred with HQPlantations Pty Ltd who manage State plantation forests in Queensland consistent with the *Forestry Regulation 2015*.

Based on this consultation, the Department of Environment, Science and Innovation believes that there will be negligible costs and impacts associated with making the Amendment Regulation to update the existing framework of PIN offences to provide rangers and other authorised officers with a cost-effective tool for use in their ongoing management of forestry areas, protected areas and recreation areas on behalf of the community.