

State Penalties Enforcement (Vehicle Related Offences) and Other Legislation Amendment Regulation 2024

Explanatory notes for SL 2024 No. 240

made under the

State Penalties Enforcement Act 1999
Transport Operations (Road Use Management) Act 1995

General Outline

Short title

State Penalties Enforcement (Vehicle Related Offences) and Other Legislation Amendment Regulation 2024

Authorising laws

Section 165 of the *State Penalties Enforcement Act 1999*
Section 171 of the *Transport Operations (Road Use Management) Act 1995*

Policy objectives and the reasons for them

The Queensland Government has legislated strong measures for hooning and hooning related conduct, including vehicle impoundment and confiscation. Despite these measures, hooning is a persistent problem in many areas.

Some offenders host unlawful events and gatherings to attract hooners at locations such as industrial estates, shopping centre car parks and other public car parks. These organised events can draw large numbers of participants and spectators.

The *Queensland Community Safety Act 2024* (QCS Act), which includes amendments to the *Summary Offences Act 2005*, received assent on 30 August 2024. The explanatory notes to the QCS Act clarify that the offence at section 19C (Unlawful conduct associated with commission of racing, burn out or other hooning offence) of the *Summary Offences Act 2005* extends to people merely spectating hooning activities. The offence is not restricted to people intentionally encouraging or supporting the principal offender by taking active steps.

To avoid detection of ‘burn out’ offending against section 291 (Making unnecessary noise or smoke) of the *Transport Operations (Road Use Management – Road Rules) Regulation 2009*, some offenders place substances on the road to reduce friction. The *Police Powers and Responsibilities and Other Legislation Amendment Act (No.1) 2023* (Amendment Act)

introduced the section 85A (Wilfully causing motor vehicle to lose traction with road) offence to the *Transport Operations (Road Use Management) Act 1995* (Road Use Management Act) to address this gap by prohibiting a person from wilfully operating a motor vehicle in a manner that causes the vehicle to undergo a sustained loss of traction. In addition, the *State Penalties Enforcement (Vehicle Related Offences) and Other Legislation Amendment Regulation 2024* (Amendment Regulation) amends the *Transport Operations (Road Use Management—Driver Licensing) Regulation 2021* to provide that a person who commits an offence against section 85A will have two demerit points recorded on their traffic history.

Police officers spend a significant amount of time preparing documentation and personally serving notices to appear for hooning offences committed at these organised events.

Infringement notices are an alternative enforcement option to prosecuting offences through the 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.

The advantages to government of the prescribing of offences as infringement notice offences include a cost-effective method of enforcement, and administrative efficiency. Offenders benefit from a fixed and discounted penalty for the offence and avoidance of court proceedings.

Prescribing the offence as an infringement notice offence will enable a quicker process for police, reduce court appearances and allow police officers' time to be directed to other road safety measures.

A common tactic to avoid detection when committing hooning offences is to obscure or remove the number plates of the vehicle used to commit the offence or to affix number plates that do not belong to the vehicle being used.

The Amendment Act, which includes amendments to the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2021*, received assent on 2 May 2023. It increased the maximum penalty for the offence against section 211 to strengthen laws to deter hooning behaviour.

The maximum penalty was increased by inserting a circumstance of aggravation where the vehicle is used in the commission of a type 1 vehicle related offence, as defined by section 69A of the *Police Powers and Responsibilities Act 2000*.

A policy objective of the Amendment Regulation is to reflect a circumstance of aggravation by enabling infringement notices to be issued if the vehicle is used in the commission of a type 1 vehicle related offence.

The Amendment Regulation also amends the *State Penalties Enforcement Regulation 2014* (SPE Regulation) to remove reference to the offence formerly at section 8 (Begging in a public place) of the *Summary Offences Act 2005*, which was repealed by the *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2023*.

Achievement of policy objectives

The Amendment Regulation achieves the policy objectives by:

- prescribing the unlawful conduct associated with the commission of racing, burn out or other hooning offence against section 19C of the *Summary Offences Act 2005* as an infringement notice offence;
- prescribing the wilfully cause vehicle to lose traction with road offence against section 85A of the Road Use Management Act as an infringement notice offence;
- increasing the infringement notice fine amounts for the number plate offences against section 211 of the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2021*; and
- imposing demerit points for the wilfully cause vehicle to lose traction with road offence against section 85A of the Road Use Management Act.

Consistency with policy objectives of authorising laws

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

Inconsistency with policy objectives of other legislation

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

Alternative ways of achieving policy objectives

There are no alternative means to achieve the policy objectives.

Benefits and costs of implementation

The Amendment Regulation supports the efficient enforcement of certain offences by allowing enforcement 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.

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*.

The Amendment Regulation prescribes new offences as infringement notice offences, increases the infringement notice fine amount for an existing infringement notice offence, and removes one infringement notice offence.

Prescribing new offences as infringement notice offences and increasing the infringement notice fine amount for an existing infringement notice offence may impact on the rights 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 persons 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. The infringement notice fine amounts ensure that the financial penalty reflects the seriousness of the offences and are an appropriate and proportionate response to the offending 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. The infringement notice fine amounts are an appropriate and proportionate response to the offending behaviour.

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 *State Penalties Enforcement Act 1999* (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 new offences as infringement notice offences and increases the infringement notice fine amount for 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 applicable to the offences, the seriousness of the offences and the intention to discourage and penalise unlawful behaviour.

Consultation

No public consultation was undertaken on the Amendment Regulation.