

State Penalties Enforcement (Animal Management) Amendment Regulation 2024

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019* (HR Act), I, the Honourable Yvette D'Ath MP, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence, provide this human rights certificate with respect to the *State Penalties Enforcement (Animal Management) Amendment Regulation 2024* (Amendment Regulation) made under the *State Penalties Enforcement Act 1999* (SPE Act).

In my opinion, the Amendment Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

On 26 April 2024 the *Agriculture and Fisheries and Other Legislation Amendment Act 2024* (Amendment Act) received assent. The Amendment Act includes a range of amendments to the *Animal Management (Cats and Dogs) Act 2008* (AMCD Act) to enhance community safety by reforming the control and management of dogs.

The Amendment Regulation amends the *State Penalties Enforcement Regulation 2014* (SPE Regulation) supports the efficient and effective enforcement of certain offences under the AMCD Act. The Amendment regulation prescribes six new offences introduced by the Amendment Act as infringement notice offences to allow enforcement of the new offences by way of an infringement notice as an alternate to prosecuting the offences through the courts. A person issued an infringement notice may either pay the infringement notice fine or elect to have the matter dealt with by a court. The Amendment Regulation also increases the infringement notice fine amount for four infringement notice offences to ensure the fine amount is set at an appropriate level to reflect the seriousness of the offence and to have a deterrent and punishment effect.

Additionally, the Amendment Regulation removes references to two offences repealed by the Amendment Act, from the SPE Regulation.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 HR Act)

The Amendment Regulation limits the following human rights:

- right to recognition and equality before the law (section 15 of the HR Act);
- property rights (section 24 of the HR Act);
- right to liberty and security of person (section 29 of the HR Act);
- fair hearing (section 31 of the HR Act); and
- rights in criminal proceedings (section 32 of the HR Act).

Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

(a) the nature of the right

Right to recognition and equality before the law

The right to recognition and equality before the law is a stand-alone right that also permeates all human rights. It reflects that every person holds the same human rights by virtue of being human and not because of some particular characteristic or membership of a particular social group. The right encompasses both the right to recognition as a person before the law and the right to enjoy human rights without discrimination. It requires public entities, as well as courts and tribunals undertaking certain functions, to treat people equally when applying the law and to not apply the law in a way that is arbitrary or discriminatory.

The Amendment Regulation will limit the right to recognition and equality before the law as prescribing six new offences as infringement notice offences and increasing the infringement notice fine for four offences 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.

Property rights

Property rights protect the right of all persons to own property and provide that people have a right to not be arbitrarily deprived of their property. The ability to own and protect property historically underpins many of the structures essential to maintaining a free and democratic society based on human dignity, equality, and freedom. The right includes protection from the deprivation of property. The term deprived in the context of property rights is considered to include the substantial restriction on a person's use or enjoyment of their property. In a human rights context, arbitrary refers to conduct that is capricious, unpredictable, unjust, or unreasonable in the sense of not being proportionate to a legitimate aim. Property is likely to include all real and personal property interests, including money.

The Amendment Regulation will limit the right to property as enforcing offences by way of infringement notices, and increasing the infringement notice fines, will result in a deprivation of property in the form of money. The Amendment Regulation will also limit property rights if failure to pay an infringement notice fine results in the seizure of the person's property as part of enforcement action taken by the registrar of the State Penalty Enforcement Registry.

Right to liberty and security of person

The right to liberty and security protects the liberty of all persons, including protection from arbitrary arrest or detention, and the deprivation of liberty only on grounds, and in accordance with procedures, established by law. The concept of arbitrariness carries a human rights meaning of capriciousness, unpredictability, and unreasonableness in the sense of not being proportionate to the legitimate aim sought. The concept of lawfulness in the context of the right to liberty means that no interference can take place except in cases envisaged by the law.

The prescription of additional offences as infringement notice offences and the increase in infringement notice fines will limit the right to liberty and security 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. However, any such deprivation of liberty would not be unlawful and would not be arbitrary, as it 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.

Right to a fair hearing

The right to a fair hearing affirms the right of all individuals to procedural fairness and natural justice when coming before a court or tribunal. It guarantees that proceedings must be heard and decided by a competent, impartial, and independent court or tribunal after a fair and public hearing, and that all judgments or decisions are publicly available.

What constitutes a fair hearing depends on the facts of the case and requires the weighing of a number of public interest factors including the rights of the parties. Broadly, this right ensures a party has a reasonable opportunity to put their case in conditions that do not place them at a substantial disadvantage compared to the other party, and also embraces principles of unimpeded access to courts, and a justice system that can be said to be operating in a way that is predictable to the parties. The concept of a fair hearing is concerned with matters of procedural fairness, rather than substantive fairness in relation to the merits of a particular decision.

The prescription of additional offences as infringement notice offences will limit the right to a fair hearing to the extent that enforcement of offences by way of an infringement notice does not involve a court proceeding. However, a person may elect for a matter the subject of an infringement notice to be heard by a court, ensuring that persons have the option to exercise the right to a fair hearing.

Rights in criminal proceedings

Rights in criminal proceedings protects a range of rights for persons charged with a criminal offence, including that person has the right to be presumed innocent until proved guilty according to law, as well as a number of minimum guarantees, such as:

- to have adequate time and facilities to prepare the person's defence;
- to be tried without unreasonable delay;
- to be tried in person, and to defend themselves personally or through legal assistance chosen by the person or, if eligible, through legal aid;
- to examine, or have examined, witnesses against the person;
- to obtain the attendance and examination of witnesses on the person's behalf under the same conditions as witnesses for the prosecution.

The prescription of additional offences as infringement notice offences will limit rights in criminal proceedings to the extent that enforcement of offences by way of an infringement notice does not involve a court proceeding. However, a person may elect for a matter the subject of an infringement notice to be heard by a court, and once such an election is made the person is afforded all of the rights in criminal proceedings guaranteed under the HR Act.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of limiting the right to recognition and equality before the law, property rights, right to liberty and security of person, right to a fair hearing, and rights in criminal proceedings is to support the efficient and effective enforcement of the relevant offences under the AMCD Act.

Allowing the prescribed offences to be enforced by way of an infringement notice provides an efficient means of enforcing appropriate offences, minimising the cost and inconvenience associated with court proceedings for both the state and the person to whom the infringement notice is issued. Increasing the infringement notice fine amount for the relevant offences ensures that the financial penalty reflects the seriousness of the offence and will have an appropriate deterrent and punishment effect.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The limitations on the right to recognition and equality before the law, property rights, right to liberty and security of person, right to a fair hearing, and rights in criminal proceedings will achieve the purpose by allowing the prescribed offences to be enforced by way of an infringement notice, while retaining the option for a person to elect to have the matter dealt with by a court, and ensuring that financial penalties reflects the seriousness of the offences and are set at appropriate level to discourage and penalise unlawful behaviour.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

The alternatives to the amendments in the Amendment Regulation are to not prescribe the six new offences as infringement notice offences and to not increase the infringement notice fines for the existing infringement notice offences. Neither of these alternatives offer a less restrictive way to achieve the proper purpose of the limitations as requiring all instances of offending behaviour to be dealt with by a court would not achieve the efficiencies afforded by enforcing offences by way of infringement notices, and not increasing the infringement notice fine amounts would be inconsistent with the increases to the maximum penalties under the AMCD Act to reflect the seriousness of the offences and discourage and penalise unlawful behaviour.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

In my opinion, the Amendment Regulation strikes an appropriate balance between the importance of the purpose of the amendments and the importance of preserving the human rights that are limited. The importance of preserving the affected rights must be balanced against the need for the efficient and effective enforcement of offences and ensuring that financial penalties reflect the seriousness of the offences and appropriately discourage and penalise unlawful behaviour.

On balance, having regard to the extent of the limitations on the right to recognition and equality before the law, property rights, right to liberty and security of person, right to a fair hearing, and rights in criminal proceedings, it is considered that the importance of achieving the purpose of the amendments outweighs the harm caused to the rights, and that the limitations are reasonable and demonstrably justifiable in a free and democratic society.

(f) any other relevant factors

Nil.

Conclusion

I consider that the Amendment Regulation is compatible with the HR Act because it limits human rights only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

YVETTE D'ATH MP
Attorney-General and Minister for Justice
Minister for the Prevention of Domestic and Family Violence