

State Penalties Enforcement and Other Legislation 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*, I, Leanne Linard, Minister for the Environment and the Great Barrier Reef and Minister for Science and Innovation provide this human rights certificate with respect to the *State Penalties Enforcement and Other Legislation Amendment Regulation 2024* made under the *Marine Parks Act 2004*, the *State Penalties Enforcement Act 1999* and the *Work Health and Safety Act 2011*.

The Honourable Yvette D'Ath MP, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence has granted authority for the preparation of this human rights certificate to the extent the proposed regulation is made under the *State Penalties Enforcement Act 1999* for the purpose prescribing offences as infringement notice offences.

In my opinion, the *State Penalties Enforcement and Other Legislation Amendment Regulation 2024*, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The Department of Environment, Science and Innovation have undertaken a statutory review of the *Forestry Regulation 2015*, the *Nature Conservation (Protected Areas Management) Regulation 2017* and the *Recreation Areas Management Regulation 2017* (the old Regulations). The reviews were undertaken at the same time due to the similarity of a number of provisions in each regulation, the fact that the automatic expiry of all three occurs in relatively close proximity to one another, and the benefits in seeking to ensure consistent provisions in the regulations used to manage 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. An online survey was prepared as the main consultation tool as part of the regulation review and development process. The majority of respondents indicated that the proposed changes would have a benefit to or no impact upon them. In addition to the survey, direct stakeholder consultation was undertaken with relevant stakeholders, in particular, with First Nations partners.

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 infringement notice offences and penalty infringement notice (PIN) fines. 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 a PIN fine for an infringement notice offence. The amendments to Schedule 1 of the SPE Regulation give effect to the prescribed penalty units for fines and infringement notices introduced by the Replacement Regulations.

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.

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; and
- make consequential amendments to the *Marine Parks Regulation 2017* and the *Work Health and Safety Regulation 2011* to update references to the Replacement Regulations.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

In my opinion, the Amendment Regulation engages the following rights in the *Human Rights Act 2019* (HR Act):

- Right to recognition and equality before the law (section 15);
- Right to life (section 16);
- Property rights (section 24);
- Right to liberty and security of person (section 29);
- Fair Hearing (section 31); and
- Rights in criminal proceedings (section 32).

Right to life (section 16)

The right to life (section 16) protects that every person has the right to life and has the right not to be arbitrarily deprived of life. This right includes an obligation on states to take steps to protect the lives of individuals, include positive measures to address threats to life through

adequate safety measures. The Amendment Regulation positively engages with the right to life of the community by deterring unsafe behaviours to improve safety for visitors in forestry areas, protected areas and recreation areas. Examples of these behaviours include lighting fires, unsafe driving, entry into restricted access areas and areas closed for public health and safety reasons, and misconduct that interferes with the health and safety of persons.

Right to liberty and security of person (Section 29)

Section 29 of the HR Act provides that every person has the right to liberty and security, including not being arbitrarily arrested or detained. The Amendment Regulation prescribes infringement notice offences and failure to pay a penalty infringement fine may result in enforcement action under the SPE Act, which includes the issue of an arrest and imprisonment warrant. Importantly, the SPE Regulation Charter, provided for under section 9 of the SPE Act, preferences the use of other enforcement actions for unpaid fines over arrest and imprisonment to reduce the use of imprisonment for fine default. There are also a range of alternative payment options available for those who incur fines they cannot afford to pay. Any arrest and imprisonment resulting from unpaid fines is not arbitrary. Therefore, the right to liberty and security of a person is not limited by the Amendment Regulation.

Fair hearing (section 31) and Rights in criminal proceedings (section 32)

Section 31 of the HR Act provides that a person has the right to a fair and public hearing. Section 32 of the HR Act protects the right to be presumed innocent until proven guilty and identifies minimum guarantees for which the person charged is entitled, including to be informed of the nature and reason for a charge and to defend themselves personally or through legal assistance. Prescribing an offence under the SPE Act enables a fine to be issued to an alleged offender by an authorised officer as an alternative to prosecution through the Court system. However, under the SPE Regulation, a person may elect to attend Court if they believe the PIN has been improperly issued or they are unable to pay the PIN and wish to negotiate a lesser fine. Therefore, the Amendment Regulation positively engages with the right to a fair hearing or rights in criminal proceedings.

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

Right to recognition and equality before the law (section 15)

(a) the nature of the right

Section 15 of the HR Act is a stand-alone right that also permeates all human rights. It encompasses both the right to recognition as a person before the law and the right to enjoy human rights without discrimination. The right provides that persons are equal before the law and are entitled to equal protection of the law without discrimination.

Implementing penalties for offences may limit the right to recognition and equality before the law by adversely and disproportionately impacting sectors of the community such as vulnerable groups or persons of a lower socio-economic status, who may have more difficulty paying a monetary sum in the event that they are issued a penalty infringement notice fine or found guilty in a court of law of committing an offence against Replacement Regulations.

(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

Imposing penalties for offences is a widely accepted and common way of achieving compliance with legislation and deterring unwanted behaviours. Setting penalties for offences related to forestry areas, protected areas and recreation areas contributes to safety and the protection of the environment, which is consistent with a free and democratic society.

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

The penalty infringement fines in the Amendment Regulation underpin the objective of deterring unlawful and unsafe behaviours. The increased deterrent to committing an offence and hence subsequent compliance with management provisions is expected to contribute to protection of natural and cultural values, fair and equitable access, improved safety and amenity in forestry areas, protected areas and recreation areas.

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

No less restrictive, reasonable available alternatives to achieve effective conservation outcomes have been identified. There are protections built into the fine enforcement system under the SPE Act for a person who has been issued with an infringement notice fine such that:

- A person who cannot afford to pay the whole fine can seek assistance from the State Penalty Enforcement Registry to pay the fine by instalments or settle the debt through other activities such as a work and development order; and
- A person who is experiencing hardship can apply to resolve their debt under a work and development order (which can include undertaking relevant courses, attending counselling and treatment programs or completing work with an approved hardship partner).

While infringement notice penalties have been a long established tool used in the management of forestry areas, protected areas and recreation areas, ongoing enforcement efforts and education will continue to create awareness of the offences and their associated penalties which is expected to assist with a reduction in negatively impacting behaviours in the areas to which they relate.

(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

A person who is issued with an infringement notice fine may pay the fine by instalments or settle the debt through other means (as outlined above). While the setting of infringement notice fines has the potential to disproportionately impact offenders from vulnerable and low socio-economic groups it is considered that the importance of maintaining the deterrent effect of penalties for the offences outweighs the impact on the right.

Property rights (section 24)

(a) the nature of the right

Property rights (section 24) protects the right of all persons to own property and provides that people have a right to not be arbitrarily deprived of their property (including money). In the

human rights context, arbitrarily is taken to mean capricious, unpredictable, unjust and unreasonable in the sense of not being proportionate to a legitimate policy objective.

(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 Amendment Regulation limits property rights to the extent that it prescribes infringement notice offences that require the payment of a monetary sum. The failure to pay a penalty infringement fine may result in enforcement action taken against the person by the registrar of the State Penalty Enforcement Registry including, among other things, the seizure of the person's property and vehicle immobilisation as provided for in the SPE Act. The Amendment Regulation provides for the issuing of infringement notice fines for failing to obey the requirements of various offences in the Replacement Regulations (as well as amending infringement notice penalties under the *Forestry Act 1959* and the *Recreation Areas Management Act 2006*) through inclusion of penalties in the SPE Regulation.

The Amendment Regulation supports the objective of providing for the protection and management of forestry areas, protected areas and recreation areas and the protection of natural and cultural values, amenity, and safety by continuing a penalty infringement notice framework which contributes to deterring unlawful, problematic or unsafe behaviours within these areas. This has the effect of increased environmental protection, a decrease in poor visitor conduct, and improved safety for users. The protection of natural and cultural values, amenity, and safety is inherently consistent within a free and democratic society. It is in the public interest to protect the environment and ensure that forestry areas, protected areas and recreation areas remain safe and enjoyable to visit.

The inclusion of infringement notice fines is a proportionate response consistent with a free and democratic society based on human dignity, equality and freedom.

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

There is a direct relationship between the ability to issue penalty infringement notices fines and improving unlawful and unsafe behaviour. The fines send a strong deterrent message which helps to encourage compliance with the Replacement Regulations.

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

It is considered that there is no less restrictive and reasonable way available to address unlawful, inappropriate and unsafe behaviour on forestry areas, protected areas, and recreation areas. Increased public education through the departmental media and social media channels about responsible behaviours in these areas has not completely removed the need for ongoing penalty infringement notices as a compliance tool. While the Amendment Regulation provides a continuation of penalty infringement notice arrangements, ongoing compliance effort, and associated education to create awareness of the offences and their associated penalties is expected to assist with a reduction in negatively impacting behaviours in the areas to which they relate.

(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

The Amendment Regulation provides a proportionate response to the current circumstances where there is a need to continue the existing framework of having penalty infringement notices as an alternative to Court prosecutions. Addressing disparities between penalties under different legislation for committing similar offences also seeks to achieve equity and fairness by ensuring that penalties are consistent across legislation. Increasing consistency in the regulatory framework will assist with community compliance through application of similar rules and penalties across similar land management regimes and encourage improved behaviour forestry areas, protected areas and recreation areas, with the aim of ultimately improving environmental protection, protection of amenity and the safety of the community. Any deprivation of property in the form of monetary loss as a result of the increase in an infringement notice fine is considered to be proportionate and not arbitrary. A person who is issued with an infringement notice fine may pay the fine by instalments or settle the debt through other means. Any limitation on property rights is justified considering the benefit to the broader community by improving behaviour and safety.

Conclusion

I consider that the *State Penalties Enforcement and Other Legislation Amendment Regulation 2024* is compatible with the *Human Rights Act 2019* 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.

LEANNE LINARD MP
MINISTER FOR THE ENVIRONMENT AND THE GREAT BARRIER REEF
MINISTER FOR SCIENCE AND INNOVATION

© The State of Queensland 2024