



Department of Primary Industries

Enforcement Guideline for the *Animal Management (Cats & Dogs) Act 2008*

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1 Introduction

The chief executive may make guidelines under section 209B of the *Animal Management (Cats & Dogs) Act 2008* (AMCDA) about matters relating to compliance with the AMCDA, including information to help authorised persons perform their functions.

This guideline is intended to assist authorised persons appointed under the AMCDA in undertaking and making decisions about enforcement actions, whether appointed by the chief executive of the Department of Primary Industries (the department) or the chief executive officer of a local government.

The content of this guideline should be taken into account when considering whether the authorised person is satisfied an offence has or has not been committed under the AMCDA and the appropriate enforcement action. However, for fairness and consistency, in following this guideline, authorised persons for the AMCDA should take care to ensure appropriate consideration is given to the merits of each individual case.

To the extent possible in the circumstances, it is the goal of enforcement responses to:

- reinforce legal obligations under legislation
- achieve outcomes consistent with legislation
- deter non-compliant behaviour
- assertively apply consistent and proportionate enforcement action.

It is important to note that this is a guideline, not a direction. The guideline is designed to assist the making of enforcement decisions to achieve consistency, efficiency, effectiveness and transparency in the administration of legislation by the department.

1.1 Procedure

In addition to undertaking general enforcement processes, authorised persons should assess all notifications or complaints received of possible contraventions of the AMCDA and based on these assessments and any associated investigations, make decisions regarding the appropriate response. In some cases, the decision may be to take no action, for example, if an investigation reveals that no contravention has occurred. In some cases, the authorised person may provide advice, guidance, or assistance to help a person comply with the legislation. In other cases, it may be necessary for the authorised person to take enforcement action in response to a contravention.

In this guideline, enforcement action includes any action taken to punish a contravention of the AMCDA, to deter or prevent a person or persons from committing future contraventions of the legislation, or to require someone to remedy or stop committing a contravention. Enforcement actions do not include measures intended only to inform or educate a person and do not include investigations into alleged contraventions, although such investigations may be required to inform various enforcement actions.


The range of enforcement actions available to the authorised person includes:

- warning letters
- penalty infringement notices
- prosecution.

Sometimes, several enforcement actions may be taken in combination.

From time to time, an authorised person may become aware of matters that are offences against the AMCDA and which are also offences against legislation administered by another government agency. In these circumstances, the following principles will apply:

- The authorised person may consult the other agency to determine which agency should lead any investigation and which agency would be the appropriate agency to take enforcement action. Alternatively, it may be appropriate for a joint investigation to take place and for each agency to take its own enforcement action.
- The authorised person may be appropriate to lead an investigation or take enforcement action where one or more of the following applies:
 - the subject matter is more closely aligned with the responsibilities of the authorised person under the AMCDA than that of the other agency;

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- enforcement action by the authorised person would more effectively prevent or remedy the contravention and its impacts; or
 - the penalties that apply for the offence under the AMCDA reflect the seriousness of the offence more accurately than the penalties under the other agency's legislation.
- Where dishonesty or other criminal offences are involved, the authorised person may refer the matter to the Queensland Police Service, the Australian Federal Police or other authorities as appropriate.

1.2 Principles

The following principles guide authorised persons in making decisions about taking enforcement action:

- enforcement action will be proportionate to the seriousness of the contravention;
- decisions about enforcement action will be impartial, based on available evidence, and on the strategic objectives of the department or local government;
- where enforcement action involves litigation, authorised persons for the agency are bound by the Queensland Government's Model Litigant Principles, which can be found on the Department of Justice and Attorney General website at <www.justice.qld.gov.au>. The principles ensure that, when conducting litigation, community and court expectations that the State will conduct itself in a manner that exemplifies the principles of justice are met and that the State's power will be used in the public interest.

Authorised persons should be guided by the overriding principle that enforcement action must not be taken for improper purposes. A decision about whether enforcement action is taken will not be influenced by factors such as:

- the alleged offender's gender, ethnicity, nationality, political associations, religion or beliefs;
- the authorised person's personal feelings towards the alleged offender or the victim;
- possible political advantage or disadvantage to a government or any political group or party; or
- the possible effect of the decision on the personal or professional circumstances of those responsible for the decision.

2 Who enforcement action will be taken against

One of the main aims of Parliament in making a contravention of the law a criminal offence is to deter the offenders and others from similar behaviour. By extending criminal liability to many people (for example, landowners and directors and managers of corporations), the law generates increased awareness and responsibility for legal obligations within corporate structures and throughout the community.

Situations can arise where several people may be responsible for the commission of an offence and may therefore be liable for enforcement action. The department or local government recognises that it may not always be appropriate to take enforcement action against every person who may be liable for an offence. The following sections set out what the authorised person should consider when determining who enforcement action may be taken against.

2.1 Identification of offender(s)

In determining who was responsible for an offence, the department or local government will take the following considerations into account:

- who was primarily responsible for the offence, that is:
 - who committed the act;
 - who formed the intention (if relevant);
 - who created the material circumstances leading to the alleged offence; and
 - who benefited from the offence
- what was the role of each alleged offender (where there is more than one alleged offender).



2.2 Notification

The authorised person should also take into account any notification it receives of a contravention by an alleged offender. They should specifically consider whether:

- the alleged offender notified the department or local government of the contravention promptly;
- the information assisted in the control or mitigation of any impacts;
- the information substantially aided the department or local government investigation of the incident;
- the information was available from other sources;
- there was a failure to comply with an obligation to notify the department or local government of the contravention; and
- the notification occurred prior to the department or local government, or any other regulatory body obtaining knowledge of the contravention.

2.3 Corporate liability

Due to the nature of the AMCDA, offences are most likely to be committed by individuals. However, authorised persons should be aware that corporations as well as individuals can be liable for offences against legislation. Where an offence is committed by employees, agents or officers of a corporation in the course of their employment, proceedings will usually be commenced against the corporation.

Where, however, the offence has occurred because the employee, agent or officer has committed an offence of their own volition, outside the scope of their employment or authority, proceedings may be instituted against the employee, agent or officer and not against the corporation. Another factor which will be considered is the existence and effective implementation of any training and compliance programs of the corporation.

2.4 Liability of employees and contractors

An employee's obligations under legislation cannot be overridden by an instruction from their employer – it is not a defence for an employee to assert that he or she was acting under direction from a supervisor, although this may be a consideration and a mitigating factor in sentencing or choice of appropriate enforcement action. This principle equally applies to contractors. Therefore, the guiding principle in deciding whether to pursue an employee or a contractor is their degree of culpability or responsibility.


Factors to be considered in assessing the degree of culpability include:

- whether the employee or contractor knew or should have known that the activity was likely to be illegal or;
- the seniority of the employee and the scope of their duties;
- whether, having regard to the employee's seniority and employment duties or the contractor's contract, the employee or contractor had taken reasonable steps to draw to the attention of the employer or any other relevant person the impropriety of the practice; and
- whether the employee or contractor has taken reasonable steps to mitigate or prevent any impacts (if it was in the employee's or contractor's power to do so).

2.5 Liability of government agencies

The AMCDA binds all persons, including government agencies. The decision to take enforcement action or alternative regulatory intervention against a government agency, including an employee of a government agency (for example, the handler of a government entity dog), will depend on whether to do so is in the public interest. The department acknowledges that:

- legislation applies equally to both the private and public sectors, and the public should hold equal expectations that both sectors will comply with legal obligations;
- that for local governments, it is the community that is served by the local government that bears both the costs of a prosecution and ultimately any penalty imposed upon that public authority; and where regulatory intervention is required, consideration will be given to ensuring ratepayer monies remain in local communities while holding local governments accountable and requiring



compliance with the law.

A decision about taking enforcement action against a government agency will consider these factors, together with the other matters set out in this guideline.

When considering the appropriate enforcement response to any non-compliance by a government agency, the authorised person should consider the defences specifically applicable to government entity dogs, including sections 14(2)(b)(i), 43Y(4)(b)(i), 43ZD(2)(b)(i), 44(4)(a), 196(1)(d), and 216(3)(a) of the AMCDA.

3 Choice of enforcement action

3.1 Determining seriousness of a contravention of legislation

The authorised person should determine the seriousness of a contravention by reference to four general considerations:

- the objectives of the legislation, including the nature of the offence and type of impact the offence provision is designed to deter or prevent;
- the actual or potential impact of the offence;
- the level of culpability of the alleged offender; and
- the financial or other benefit received from the contravention.

The seriousness of the contravention of the legislation will inform the decision on the appropriate enforcement action taken in response to the offence.

3.1.1 Objectives of legislation

The objectives or purpose of the AMCDA are outlined in section 3 of the Act and are to:

- provide for the identification of cats and dogs;
- provide for the registration of dogs;
- provide for the effective management of regulated dogs;
- promote the responsible ownership of cats and dogs; and
- promote the responsible breeding of dogs.

To determine the purpose of the particular offence provision, often it is useful to refer to both the objectives of the legislation and to other documents such as the explanatory notes or Parliamentary speeches.

The seriousness with which the Legislature views an offence may often be apparent by the maximum penalty or class of offence assigned to it in the legislation. Where legislation designates levels or classes of offence, this will be considered in deciding the appropriate enforcement response.

3.1.2 Impact

The impact of an offence can be characterised by reference to the effects or consequences of the offence and by reference to the act or omission the offence provision has been designed to prevent or deter (see the objectives of the legislation discussed above).

To determine the level of impact, for example, for the offence where the owner or responsible person for a dog failed to keep the dog under effective control and the dog attacked and wounded an animal, reference may be made to the level and extent of harm to the injured animal resulting from the contravention or consequential impact to the owner of the injured animal (such as where a person's pet or service animal was injured).

An offence not involving an attack, injury, or public safety, for example for the offence of providing false or misleading information to the authorised person, may be characterised as an administrative offence. This does not mean that the offence is not serious.

Examples of other administrative offences include:

- failure to comply with the duty to notify;
- a contravention that undermines a legislative scheme (e.g. failure to pay registration or other fees, etc.);
- the provision of false or misleading statements in applications or other material submitted; or
- failures in respect of permit conditions that relate to reporting or the keeping of documents.

There may be some overlap between administrative and other types of offences.

3.2 Application of objectives of legislation, impact, and culpability

The authorised person should exercise its discretion to take any enforcement action it considers appropriate in the circumstances, taking into account the seriousness of the contravention. The objective of some enforcement actions may be considered punitive, whilst others may be aimed at preventing, deterring or rectifying the impacts of offences.

There are three general categories of enforcement actions available to authorised persons:

- warnings (verbal and written);
- infringement notices; and
- prosecution.

The choice of enforcement action will be determined by reference to the seriousness of the contravention and the desired outcome having regard to the facts and circumstances of each matter.

As a guide, warnings are generally reserved for low or minor contraventions, infringement notices or administrative notices (such as a compliance notice) for minor to moderate contraventions, and court orders and prosecutions are generally reserved for major or serious contraventions of legislation.

4 Warnings

Warning letters or verbal warnings are generally not provided for in legislation but are an enforcement response that an authorised person may take in relation to minor contraventions of legislation. It may be where the imposition of a financial penalty is not considered appropriate and where a warning that the offender's conduct is a contravention of the legislation is considered a sufficient compliance response based on the circumstances of the matter.

For example, in a first contravention or one that is easily remedied, the offence did not result in harm to a person or animal, where the offender demonstrates remorse, and the behaviour is not part of a pattern of non-compliance.


Warnings should be used for minor contraventions involving little or no impact and where the offender has a low level of culpability. They are not appropriate for ongoing or repeated minor contraventions.

5 Infringement notices

Infringement notices are a means of dealing with minor to moderate contraventions which warrant some form of sanction, but which are generally not serious enough to warrant a prosecution. Such contraventions might include a minor contravention of a permit condition or compliance notice, contraventions of effective control requirements where no harm has occurred to a person such as a person not having their dog leashed in public. Infringement notices have the advantage of allowing an offence to be dealt with quickly and without the time and cost involved in a prosecution.

The issuing of infringement notices is governed by the *State Penalties Enforcement Act 1999*. The offences for which infringement notices can be issued, and the associated penalties, are set out in the *State Penalties Enforcement Regulation 2014*.

While an infringement notice is issued because a person has committed an offence, payment of the fine is not an admission of guilt (although the department or local government may record the infringement notice against the person's compliance history). If a person fails to pay an infringement notice, it is referred to the State Penalties Enforcement Registry and is recoverable as a debt.



If a person elects to contest the infringement notice, the authorised person should review the matter and investigate whether the evidence establishes that an offence has been committed and, if so, commence a prosecution in the Magistrates Court. If a person who contests an infringement notice is found guilty, the court may impose a penalty higher than the amount of the infringement notice and may order the payment of costs and the recording of a conviction.

In making decisions about issuing an infringement notice, the authorised person should be guided by the following principles:

- Infringement notices should be issued where the contravention is relatively minor, and the scale of the impact is known and small.
- An infringement notice will generally not be appropriate where the contravention is ongoing.
- Infringement notices should not be issued for multiple offences arising out of the same course of conduct unless the offences go to separate and distinct aspects of that conduct.
- Infringement notices should be issued only where the facts of the offence are clear.
- Infringement notices should be issued only where the infringement notice is likely to act as a deterrent. If an infringement notice is not likely to deter the offender from committing a similar offence in the future, consideration should be given to whether prosecution is a more appropriate response. For example, an infringement notice should not be issued where the benefit gained by the commission of the offence is greater than the fine issued.
- Infringement notices should be issued as soon as reasonably possible after the offence comes to the attention of the authorised person.

6 Prosecution

It is important to remember that prosecution is not the only enforcement action available. Prosecution should only be used after careful consideration. If an alternative to prosecution may be more effective in achieving the objectives of the legislation, then that alternative will be considered. Prosecutions may be an appropriate enforcement action in response to major or serious contraventions of the legislation.

6.1 The decision to prosecute

The decision to prosecute should be based on whether the available evidence provides reasonable prospects of successfully obtaining a conviction and, if so, whether it is in the public interest to exercise the discretion to commence a prosecution.

6.1.1 Prospects of success

The determination of prospects of success of a proposed prosecution will consider whether:

- the available evidence is capable of proving each element of the offence beyond reasonable doubt;
- the admissibility of evidence;
- the credibility of available witnesses;
- the availability or strength of any expert evidence required to prove the offence; and,
- any defences that are plainly open to the alleged offender.

6.1.2 Public interest considerations

The commencement of a prosecution is discretionary, and the dominant factor in the exercise of that discretion is the public interest. When deciding whether to commence a prosecution, the authorised person may take into account the following public interest considerations:

- seriousness of the offence, including the impacts or potential impacts caused by the alleged offence;
- degree of culpability of the alleged offender, including any mitigating or aggravating circumstances (including notification, cooperation or a display of contrition);
- availability and effectiveness of any alternatives to prosecution;

- alleged offender's compliance history;
- whether the alleged contravention is a continuing or subsequent offence;
- prevalence of the alleged offence and the need for general deterrence;
- length of time since the alleged offence occurred;
- age and physical or mental health of the alleged offenders;
- whether there are counter-productive features of the prosecution;
- in cases involving Aboriginal and Torres Strait Islander use or management of natural resources, the views of the traditional owners of the area;
- length and expense of any court hearing;
- likely outcome in the event of a conviction having regard to the sentencing options available to the court;
- any precedent which may be set by not instituting proceedings;
- whether the consequences of a prosecution would be unduly harsh or oppressive;
- whether proceedings are to be instituted against others arising out of the same incident;
- sentencing principles set out in the *Penalties and Sentences Act 1992*; and,
- extent to which the alleged offender cooperates in the investigation or prosecution of other offenders.¹

Once a decision has been made to prosecute, the authorised person must present the evidence fairly and impartially to the court. The only interest in procuring a conviction is to ensure that the right person is convicted, that the truth is known, and that justice is done.

6.2 Choice of charges

The charges against an alleged offender must reflect the nature and extent of the conduct disclosed by the evidence, with the aim of providing a basis for the court to impose an appropriate penalty and make appropriate orders. There will be occasions where the same conduct is prohibited under separate statutes and involves an offence under each. Where another prosecuting agency is involved, the authorised person should liaise with the other agency to ensure the most appropriate charge(s) is commenced.

6.3 Mode of trial – summary or indictable proceedings


Offences under the AMCDA are summary offences that are heard and dealt with by a magistrate. However, as certain offences in the AMCDA can involve the serious harm of a person or animal, authorised persons should be aware that the conduct in some serious cases may reach the level of other criminal offences that may be indictable and may be heard in the District Court at the election of the prosecution, the defendant or the magistrate.

Proceeding summarily on an indictable offence may have the effect of limiting the custodial or financial penalty that may be sought by the prosecution and imposed by the Magistrates Court. In the case of serious offences under the AMCDA an authorised person should seek appropriate advice from the department, or the Queensland Police Service, to ensure enforcement action taken under the AMCDA does not inadvertently impact other enforcement action.

6.4 Charge negotiations

Once a prosecution has commenced, the authorised person may enter into discussions with a defendant about which charges should proceed to a hearing. No agreement can be reached with a defendant who is not prepared to take responsibility for the impacts of their unlawful conduct. When taking part in

¹ The department does not have the power to grant indemnity from prosecution to accomplices. This power resides with the Attorney General. The Office of the Director of Public Prosecutions Guidelines set out how an application for an indemnity from prosecution can be made. The ODPP Guidelines are available online at <http://www.justice.qld.gov.au>. An accomplice who pleads guilty and agrees to testify against an alleged co-offender may receive a sentencing discount for that co-operation.



discussions, the department or local government should take into consideration the public interest considerations outlined in section 6.1.2 and:

- any new information received that was not available when the original decision to prosecute was made;
- whether the potential penalty, remaining charges, or remaining defendants adequately reflect the offending conduct; and
- whether a negotiated response provides an adequate deterrent for similar conduct and/or adequately reflects the seriousness of the matter.

6.5 Sentencing considerations

The *Penalties and Sentences Act 1992* outlines the general factors that can be considered by a court at sentencing. The following is a non-exhaustive list of factors which may be considered by the authorised person in preparing sentence submissions:

- impacts or potential impacts resulting from the offence, including:
 - the seriousness of the impact, or risk of impact, on the 'victim' of the offence; and
 - the potential for the impacts to be rectified or mitigated.
 - culpability of the offender, including:
 - the steps taken by the defendant to rectify or mitigate the impacts;
 - the level of cooperation by the defendant with the department;
 - any prior convictions of the defendants relevant to the matter currently being considered;
- and
- any benefit or profit derived by the defendant due to the offence.
 - level of penalty sufficient to deter others from similar conduct;
 - prevalence of the offence;
 - availability and appropriateness of alternative sentencing orders;
 - maximum penalty for the offence; and
 - any relevant sentencing precedents or comparative cases.

6.6 Recording of convictions


Section 12(2) of the *Penalties and Sentences Act 1992* gives the court the discretion to decide to record or not record a conviction for an offence.

The decision about whether a conviction is recorded lies entirely within the discretion of the magistrate or judge presiding over a particular case. Some factors that the *Penalties and Sentences Act 1992* states must be considered by the magistrate or judge in exercising their discretion are:

- nature of the offence;
- offender's character and age; and
- impact that recording a conviction will have on the offender's economic or social wellbeing and their chance of finding employment.

Factors which may also influence the authorised person's decision to seek the recording of a conviction include, for example, where:

- there is a wilful element to the offence;
- the nature of the offence is serious;
- the defendant has previously been successfully prosecuted or found guilty of a similar offence in Queensland or another jurisdiction;
- there is a commercial element to the offence, that is, the offender obtained or was likely to have obtained a commercial benefit as a result of the offence;
- the defendant is a corporation;

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- the defendant failed to notify the department or local government of an offence where it was required to do so by legislation or other document;
 - the defendant has a relevant compliance history; and
 - there is rehabilitation required as a result of the offence.

Whenever the authorised person asks the court to record a conviction, it will do so within the ambit of the *Penalties and Sentences Act 1992* and will take into account the factors that the court must consider under section 12(2) of said Act.

6.7 Appeals against sentence

While the department or local government may appeal against a sentence imposed by a court, such appeals are generally rare. In considering whether to appeal against a sentence, regard should be given to the principles regarding appeals against sentences set out in the ODPG guidelines, as well as the Model Litigant Principles. An appeal should only be instituted where the appeal is likely to succeed.



Appendix 1 - Detailed infringement notice offences under the *Animal Management (Cats & Dogs) Act 2008*


Key terms and definitions

The following list is intended to provide guidance on key terms and definitions applicable to infringement notice offences under the AMCDA:

- **attack** – is not defined in the AMCDA. However, in the context of the AMCDA offences, it can generally be taken to mean to set upon a person or animal with force in an attempt to injure or kill.
- **authorised person** –
 - a) for an infringement notice offence – means a person who, under the *State Penalties Enforcement Regulation 2014*, may serve the infringement notice;
 - b) for the AMCDA – means a person appointed under section 104 of the AMCDA by the chief executive of the department or chief executive officer of a local government.
- **dog patrol category** – has the meaning given by the *Security Providers Act 1993*, schedule 2.
- **effective control** –
 - a) for a **regulated dog** means one of the following must apply:
 - i. a relevant person for the dog is:
 - A. physically able to control the dog;
 - B. is in control of only that dog; and
 - C. either the person is restraining the dog by holding the dog by a leash, lead or other restraining device that is appropriate to restrain the dog in a way that ensures the dog is not a risk to a person or an animal; OR the dog is securely tethered to a fixed object in a way that ensures the dog is not a risk to a person or an animal and is under the continuous supervision of the person
 - ii. the dog is being kept in an enclosed part of a vehicle and is enclosed or restrained in a way that prevents the dog, or any part of the dog, moving outside the enclosed part of the vehicle;
 - iii. the dog is participating in, or being exhibited or trained at, an exhibition, race meeting, race trial or obedience trial supervised by a body that is recognised by the State as an appropriate body to supervise the exhibition, meeting or trial and published on the department's website; OR recognised by the local government in whose local government area the exhibition, meeting or trial is held as an appropriate body to supervise the exhibition, meeting or trial and published on the local government's website.
 - b) for a **non-regulated dog** means one of the following must apply:
 - i. for a dog in a public place that is an off-leash area, a relevant person is



- able to supervise the dog and control the dog by using voice commands;
- ii. for a dog in a public place other than an off-leash area, a relevant person for the dog is:
 - A. physically able to control the dog, and 1 of the following applies:
 - a. the person is restraining the dog by holding the dog by a leash, lead or other restraining device;
 - b. the dog is securely tethered to a fixed object and is under continuous supervision of the person; or
 - c. the dog is kept in an appropriate temporary enclosure that contains the dog's movement and is under the continuous supervision of the person.
 - iii. the dog is being confined or tethered in, or on, a vehicle in a way that prevents the dog moving any part of its body beyond the vehicle;
 - iv. the dog is participating in, or being exhibited or trained at, an exhibition, race meeting, race trial or obedience trial supervised by a body that is recognised by the State of Queensland as an appropriate body to supervise the exhibition, meeting or trial and published on the department's website; OR recognised by the local government in whose local government area the exhibition, meeting or trial is held as an appropriate body to supervise the exhibition, meeting or trial and published on the local government's website.
 - v. the dog is a government entity dog or security patrol dog performing the functions of that class of dog authorised under this Act or another Act;
 - vi. the dog is a working dog and is performing a function of being a working dog.
- **government entity** – means either:
 - a) the State of Queensland, the Commonwealth or another State; or
 - b) an instrumentality or agent of the State of Queensland, the Commonwealth or another State.
 - **government entity dog** – means either:
 - a) a dog owned by a government entity or a person engaged or employed by the entity; or
 - b) used for a purpose under an Act of the Commonwealth or a State.
 - **off-leash area** – means an area within a local government area where, under a local law, a responsible person for a dog is not required to be in control of the dog by using a leash, lead or other restraining device.
 - **owner** – each of the following persons are an owner of a dog:
 - a) a person who is the registered owner of the dog;
 - b) a person who owns the dog in the sense of it being the person's personal property;
 - c) a person who usually keeps the dog, including through an agent, employee or anyone else;
 - d) if a person mentioned above is a child – a parent or guardian of the child.



Note 1: a person does not usually keep a dog:

- a) *merely because the person occupies a place at which the dog is kept if someone else who is an adult lives at that place keeps it;*
- b) *if the person keeps the dog as an employee of someone else and the person is acting within the scope of the employment;*
- c) *merely because the person is an inspector under the Animal Care and Protection Act 2001 (ACPA) or is performing functions, or exercising powers, in that capacity under the ACPA.*

Note 2: if a person owns a female dog and the female has offspring, the person is taken to be the offspring's owner immediately after its birth.

- **penalty infringement notice (PIN)** – means an infringement notice under the *State Penalties Enforcement Act 1999*.
- **prohibited dog** – means a dog of a breed prohibited from importation into Australia under the *Commonwealth Customs Act 1901*.

Note 1: see the Customs (Prohibited Imports) Regulations 1956 (Cwlth), section 3 and Schedule 1 for the breeds of dogs that are prohibited from being imported.

Note 2: a breed does not include a crossbreed.

- **public place** – means any place that the public is entitled to use, is open to the public, or used by the public, whether or not on payment of money.
- **reasonable excuse** – is not defined in the AMCDA but refers to a justification for conduct that is otherwise illegal, where the justification is considered appropriate given all of the circumstances in which the conduct occurred. This term is necessarily broad due to the range of circumstances and factors that need to be balanced in each case to determine whether a person's excuse is reasonable.
- **regulated dog** – means either:
 - a) a dangerous dog declared under section 94 of the AMCDA to be a dangerous dog; or
 - b) a menacing dog declared under section 94 to be a menacing dog.

Note: a declared dangerous or declared menacing dog includes a dog that is the subject of a declaration, however called, if the declaration was made under a corresponding law and is the same as or similar to a dangerous or menacing dog declaration.

- **relevant person** – for a dog means either:
 - a) the owner of the dog; or,
 - b) a responsible person for the dog.
- **relevant place** – for a regulated dog means the place stated in the registration notice for the dog as the address for the dog.
- **responsible person** – a person is a responsible person for a dog if one of the following applies:
 - a) the person, or the person's employee acting within the scope of the employment, has immediate control or custody of the dog; or
 - b) the person is the parent or guardian of a child who has immediate control or custody of the dog; or,
 - c) the person occupies the place at which the dog is usually kept.



Note 1: a person is not a responsible person for a dog:

- a) *merely because the person occupies a place at which the dog is kept if someone else who is an adult lives at that place keeps it;*
 - b) *if the person has the control or custody of or keeps the dog as an employee of someone else and the person is acting within the scope of the employment.*
- **security officer** – has the meaning given by the *Security Providers Act 1993*, section 7.
 - **security patrol dog** – means a dog used in the dog patrol category of functions of a security officer.
 - **voice command** – is not defined in the AMCDA, however taken at its ordinary meaning it may include dog control by voice or other audible command where the dog is obedient and responsive.
 - **working dog** – means a dog usually kept or proposed to be kept in the following manner:
 - a) on rural land; and
 - b) by an owner who is a primary producer, or a person engaged or employed by a primary producer; and
 - c) primarily for either of the following purposes:
 - i. droving, protecting, tending, or working, stock; or
 - ii. being trained in droving, protecting, tending, or working, stock.

Note: working dog does not include a class of dog prescribed under a regulation.

- **wound** – is not defined in the AMCDA, however is a common term across the statute book and can generally be taken to mean to cause bodily injury by cutting, piercing, breaking or tearing the outer and inner skin. The continuity of the whole skin must be severed, not merely that of the cuticle or upper skin.



Offence specific guidance

Section 134

Failure to comply with a compliance notice for a regulated dog.

PIN value: 15 penalty units

Guidance: A person to whom a compliance notice has been given must comply with the notice unless the person has a reasonable excuse. Requires satisfaction with corresponding evidence a compliance notice was validly given to a person and has not been complied with, without a reasonable excuse.

Section 193(d)(i)

Failure to exercise effective control of a regulated dog in a public place and the dog attacks and wounds an animal.

PIN value: 20 penalty units

Guidance: A relevant person for a regulated dog must, unless the person has a reasonable excuse, exercise effective control of the dog if the dog is in a public place.

i) Elements

In relation to this offence the authorised person should consider whether they can be satisfied of the following elements:

- that the dog is a regulated dog;
- that the dog was in a public place;
- that the regulated dog was not under effective control (see definition of effective control above); and
- that the dog attacked an animal, and that the animal was wounded as a result of the attack.

ii) Reasonable excuse considerations

A person does not commit an offence under this provision if the person has a reasonable excuse. If a person claims to have a reasonable excuse for not exercising effective control of the regulated dog the authorised person should consider whether, in the specific circumstances of the offence, the person's excuse is reasonable.

The following considerations may aid the authorised person in determining whether an excuse is reasonable:

- whether, in considering the individual circumstances of the offence, the person's actions were reasonable and proportional to the event, and whether another reasonable person would likely act in the same manner;
- whether there was an intervening event/incident that was sudden, unforeseeable, and beyond the person's control;
- whether there was a medical or other emergency that incapacitated the person rendering them unable to exercise effective control;
- whether the person took urgent action to render aid to or prevent the harm



of another person.

Scenario examples where a person may have a reasonable excuse:

- 1) *Tom is walking his dog, Bluey, on a leash. Tom starts to feel unwell and is having pains in his chest. Tom falls to the ground and drops Bluey's leash. Several bystanders come to Tom's assistance and call emergency services. Bluey has been sitting by his owner since Tom fell to the ground, Bluey was leashed but Tom let go of his leash. This could be considered a medical emergency.*
- 2) *Jenny is walking her dog, Oliver, past the local lake. Jenny hears screams coming from the lake and several children are waving frantically at her. The children are yelling that their friend fell into the lake and can't swim. Jenny drops Oliver's leash and runs into the lake to rescue the child. While Jenny was helping the child Oliver was still leashed but his leash was not held by anyone. This could be considered an emergency.*

iii) Effective control considerations

When considering whether a regulated dog was under effective control as defined in section 192 of the AMCDA the authorised person may be required to consider some of the following elements depending on the nature of the offence:

For a regulated dog with a relevant person

- whether the relevant person is physically able to control the dog;
- whether the relevant person is in control of only that dog;
- whether the dog was being held by a leash, lead or other appropriate restraining device; OR was securely tethered to a fixed object and under continuous supervision of the relevant person.

For a regulated dog secured in a vehicle

- whether the dog was kept in an enclosed part of a vehicle or restrained in a way that prevented the dog, or any part of the dog, moving outside the enclosed part of the vehicle.

For a regulated dog that is participating in, or being exhibited or trained at, an exhibition, race meeting, race trial or obedience trial supervised by a recognised body

- whether the regulated dog was participating in a stated activity; and
- whether the body is recognised by the State or relevant local government as an appropriate body.

Physically able

In considering whether a relevant person is physically able to control the dog the authorised person should consider factors such as:

the size of the dog;

- the size and/or physical strength of the relevant person;
- the temperament and training of the dog;
- physical, mental, or environmental factors that may aid or inhibit the relevant



person.

Examples may include:

- whether the relevant person is capable of restraining and pulling the dog back if the dog pulls away on the leash; or
- where it is raining did the person become unable to control the dog due to their hands, the leash, or the ground becoming slippery.

Appropriateness of the leash or other restraining device

In considering whether the leash, tether or other restraining device is appropriate for restraining the regulated dog the authorised person should consider factors such as:

- whether the leash, tether, restraining device or collar/harness it is attached to is made of suitable material (i.e. is made of rope, chain, or other material with an appropriate tensile strength not to break if the dog pulls);
- whether there is evidence of wear and tear that could compromise the item (such as frayed rope, cracking leather, separating chain links);
- whether the collar or harness is securely attached to the dog, such that the dog is not capable of slipping out;
- whether the leash is of a suitable length to ensure the person remains within reasonable reach of their dog;
- where the dog is tethered or leashed to an object is the object securely fixed to the ground (such as bolted into a concrete pad), and is the person within eyesight and suitable distance from the tethered dog.

Examples may include:

- using a leash that is designed for a small breed dog would not be suitable for a large breed dog; or
- a person has tethered their dog outside a pole whilst going into a shop. In this instance continuous supervision is lost, therefore the dog is not under effective control.

Scenario examples for effective control generally

1. *Arthur is walking his dog, Spot, on the beach without a leash and Spot is free to run up to other people and their dogs. Spot does not respond to voice commands. Spot is not under effective control.*
2. *Pete is walking his large dog, Reggie, on a leash. However, Pete is not strong enough to stop Reggie from pulling and approaching other dogs. Reggie is not under the effective control of Pete.*
3. *Maggie is in the park with her large dog, Magnus. Magnus is in the off-leash area in the dog park. Maggie is sitting outside the off-leash area as she has a sore ankle and is unable to walk far. Maggie is not able to stop Magnus from approaching other dogs. Magnus is not under the effective control of Maggie.*
4. *Johnnie is walking his dog Bingo with his Mum, Brenda. Johnnie has hold of Bingo's leash. Bingo is a St Bernard and weighs 75kg. Johnnie is 7 years old and weighs 25 kg. Bingo is not under the effective control of Johnnie as Bingo weighs 3 times what Johnnie weighs. Johnnie would not be able to stop Bingo if he ran off.*



iv) Attack considerations

While the following factors may not be definitive in determining whether the actions of a dog are an attack, in considering whether the dog's actions may be an attack the authorised person should consider factors such as:

- the behaviour and body language of the dog (such as whether the dog is acting aggressive or fearful, or is growling or snapping);
- the behaviour and body language of the other animal (such as whether the other animal is acting happy and playful or fearful, or is trying to escape);
- whether the dog applied force to the other animal (such as biting, scratching, or pinning the other animal);
- whether the other animal was injured and the extent of the injury (while accidental injury may occur during animal play, a significant injury may be more indicative of an attack particularly if accompanied by aggressive or fearful behaviour).

If the authorised person is uncertain as to whether the actions of a dog meet the definition of an attack, the authorised person should consider options including:

- in cases where there is doubt, such as whether the dog was attacking or playing with the other animal, especially where no or minimal injury was caused – issuing a PIN for the lesser offence that does not make attack an element;
- in cases where an attack has occurred but there are other doubts, such as whether the dog was attacking in self-defence/the other animal was the aggressor, any resultant injury appears more significant, long-term harm appears more likely, or there is a significant impact on the owner of the injured animal – consider seeking additional guidance before determining an enforcement action, for example seeking a report on the behaviour from a qualified professional, or expert prosecutorial guidance.


v) Wounding considerations

While the following factors may not be definitive in determining whether an injury is a wound, in considering whether the dog's attack wounded the animal the authorised person should consider factors such as:

- whether the injuries to the animal are deep or non-superficial (such as lacerations or deep puncture marks);
- whether there is significant bleeding or exposed internal tissue at the injury (such as bones or muscles);
- whether the injury is severe and/or permanent damage is likely to result.

If the authorised person is uncertain as to whether an injury meets the definition of a wound, the authorised person should consider options including:

- in cases where the injury appears minor or superficial and likely to resolve fully with minor treatment – issuing a PIN for the lesser offence that does not make wounding an element;

- 
- in cases where the injury appears more significant, long-term harm appears more likely, or there is a significant impact on the owner of the injured animal – consider seeking additional guidance before determining an enforcement action, for example seeking a veterinary report on the injury, or expert prosecutorial guidance.

In considering whether a case involving wounding is appropriate for issuing a PIN, the authorised person should consider factors such as:

- the level of harm caused – noting that very minor injuries may warrant consideration of a lesser PIN, but in contrast cases where the wounding is significant (such as multiple deep wounds in a particularly violent attack) may warrant prosecution;
- whether the animal injured was a wild animal or a person's pet/assistance animal – the additional harm caused to the owner of the injured animal may warrant consideration of prosecution action to allow for higher penalty options.



Section 193(1)(d)(iii)

Failure to exercise effective control of a non-regulated dog in a public place and the dog attacks and wounds an animal.

PIN value: 15 penalty units

Guidance: A relevant person for a non-regulated dog must, unless the person has a reasonable excuse, exercise effective control of the dog if the dog is in a public place.

i) Elements

In relation to this offence the authorised person should consider whether they can be satisfied of the following elements:

- that the dog was in a public place;
- that the dog was not under effective control (see definition of effective control above); and,
- that the dog attacked an animal and that the animal was wounded as a result of the attack.

ii) Reasonable excuse considerations


A person does not commit an offence under this provision if the person has a reasonable excuse. If a person claims to have a reasonable excuse for not exercising effective control of the dog the authorised person should consider whether, in the specific circumstances of the offence, the person's excuse is reasonable.

The following considerations may aid the authorised person in determining whether an excuse is reasonable:

- whether, in considering the individual circumstances of the offence, the person's actions were reasonable and proportional to the event, and whether another reasonable person would likely act in the same manner;
- whether there was an intervening event/incident that was sudden, unforeseeable, and beyond the person's control;
- whether there was a medical or other emergency that incapacitated the person rendering them unable to exercise effective control;
- whether the person took urgent action to render aid to or prevent the harm of another person.

Scenario examples where a person may have a reasonable excuse:

- 1) *Tom is walking his dog, Bluey, on a leash. Tom starts to feel unwell and is having pains in his chest. Tom falls to the ground and drops Bluey's leash. Several bystanders come to Tom's assistance and call emergency services. Bluey has been sitting by his owner since Tom fell to the ground, Bluey was leashed but Tom let go of his leash. This could be considered a medical emergency.*



2) Jenny is walking her dog, Oliver, past the local lake. Jenny hears screams coming from the lake and several children are waving frantically at her. The children are yelling that their friend fell into the lake and can't swim. Jenny drops Oliver's leash and runs into the lake to rescue the child. While Jenny was helping the child Oliver was still leashed but his leash was not held by anyone. This could be considered an emergency.

iii) **Effective control considerations**

When considering whether a dog was under effective control as defined in section 192 of the AMCDA the authorised person may be required to consider some of the following elements depending on the nature of the offence:

For a non-regulated dog with a relevant person

- whether the relevant person is physically able to control the dog;
- whether:
 - the dog was being held by a leash, lead or other appropriate restraining device; OR
 - was securely tethered to a fixed object and under continuous supervision of the relevant person; OR
 - was being kept in an appropriate temporary enclosure that contained the dog's movement and was under the continuous supervision of the relevant person.

For a non-regulated dog secured in a vehicle

- whether the dog was confined or tethered in, or on, a vehicle in a way that prevents the dog moving any part of its body beyond the vehicle.

For a non-regulated dog that is participating in, or being exhibited or trained at, an exhibition, race meeting, race trial or obedience trial supervised by a recognised body

- whether the dog was participating in a stated activity; and,
- whether the body is recognised by the State or relevant local government as an appropriate body.

For a government entity dog or security patrol dog performing the functions of that class of dog authorised under the AMCDA or another Act

- whether the dog is a government entity dog or security patrol dog as defined by the AMCDA (see definitions above); and,
- whether at the time the dog was performing the functions of that class of dog as authorised under legislation.

For a working dog

- whether the dog is a working dog as defined by the AMCDA (see definition above); and,
- whether, at the time, the dog was performing the functions of that kind of working dog (e.g. a herding dog herding livestock).



Physically able

In considering whether a relevant person is physically able to control the dog the authorised person should consider factors such as:

- the size of the dog;
- the size and/or physical strength of the relevant person;
- the temperament and training of the dog;
- physical, mental, or environmental factors that may aid or inhibit the relevant person. Examples may include:
- whether the relevant person is capable of restraining and pulling the dog back if the dog pulls away on the leash; or,
- where it is raining did the person become unable to control the dog due to their hands, the leash, or the ground becoming slippery.

Appropriateness of the leash or other restraining device

In considering whether the leash, tether or other restraining device is appropriate for restraining the dog the authorised person should consider factors such as:


- whether the leash, tether, restraining device or collar/harness it is attached to is made of suitable material (i.e. is made of rope, chain, or other material with an appropriate tensile strength not to break if the dog pulls);
- whether there is evidence of wear and tear that could compromise the item (such as frayed rope, cracking leather, separating chain links);
- whether the collar or harness is securely attached to the dog, such that the dog is not capable of slipping out;
- whether the leash is of a suitable length to ensure the person remains within reasonable reach of their dog;
- where the dog is tethered or leashed to an object is the object securely fixed to the ground (such as bolted into a concrete pad), and is the person within eyesight and suitable distance from the tethered dog.

Examples may include:

- using a leash that is designed for a small breed dog would not be suitable for a large breed dog; or
- a person has tethered their dog outside a pole whilst going into a shop. In this instance continuous supervision is lost, therefore the dog is not under effective control.

Scenario examples for effective control generally

- 1) *Arthur is walking his dog, Spot, on the beach without a leash and Spot is free to run up to other people and their dogs. Spot does not respond to voice commands. Spot is not under effective control.*
- 2) *Pete is walking his large dog, Reggie, on a leash. However, Pete is not strong enough to stop Reggie from pulling and approaching other dogs. Reggie is not under the effective control of Pete.*
- 3) *Maggie is in the park with her large dog, Magnus. Magnus is in the off-leash area in the dog park. Maggie is sitting outside the off-leash area as she has a sore ankle and is unable to walk far. Maggie*



is not able to stop Magnus from approaching other dogs. Magnus is not under the effective control of Maggie.

- 4) *Johnnie is walking his dog Bingo with his Mum, Brenda. Johnnie has hold of Bingo's leash. Bingo is a St Bernard and weighs 75kg. Johnnie is 7 years old and weighs 25 kg. Bingo is not under the effective control of Johnnie as Bingo weighs 3 times what Johnnie weighs. Johnnie would not be able to stop Bingo if he ran off.*

iv) Government entity dogs, security dogs, and working dogs considerations

In considering whether a person has committed an offence under this provision authorised persons should ensure they consider that the AMCDA provides specific provisions that government entity, security, and working dogs are considered under effective control when performing their lawful duties, or purpose for working dogs.

Factors that may be relevant in considering whether a government entity, security, or working dog was performing their lawful duties, or purpose for working dogs, include:


- whether the dog was working or “on shift” at the time (such as a police or security dog on patrol with their handler);
- if an attack occurred, was it in the course of the dog’s duties (such as a police or security dog defending their handler); OR was the dog interrupted in the performance of its duties (such as another dog or wild animal engaging a police dog while it is off leash chasing an offender);
- for a working dog, whether the dog was performing the functions of a working dog on rural land (note there may be times when incidental crossing of a public place is essential to a working dog’s purposes, such as herding livestock across a public road between pastures);
- whether the other animal was injured and the extent of the injury (while accidental injury may occur during animal play, a significant injury may be more indicative of an attack particularly if accompanied by aggressive or fearful behaviour).

If the authorised person is uncertain as to whether the government entity, security, or working dog was performing their lawful duties, or purpose for working dogs, the authorised person should seek expert prosecutorial guidance as that is a key determination as to whether any offence occurred at all.

v) Attack considerations

While the following factors may not be definitive in determining whether the actions of a dog are an attack, in considering whether the dog’s actions may be an attack the authorised person should consider factors such as:

- the behaviour and body language of the dog (such as whether the dog is acting aggressive or fearful, or is growling or snapping);
- the behaviour and body language of the other animal (such as whether the other animal is acting happy and playful or fearful, or is trying to escape);
- whether the dog applied force to the other animal (such as biting, scratching, or pinning the other animal).



If the authorised person is uncertain as to whether the actions of a dog meet the definition of an attack, the authorised person should consider options including:

- in cases where there is doubt, such as whether the dog was attacking or playing with the other animal, especially where no or minimal injury was caused – issuing a PIN for the lesser offence that does not make attack an element;
- in cases where an attack has occurred but there are other doubts, such as whether the dog was attacking in self-defence/the other animal was the aggressor, any resultant injury appears more significant, long-term harm appears more likely, or there is a significant impact on the owner of the injured animal – consider seeking additional guidance before determining an enforcement action, for example seeking a report on the behaviour from a qualified professional, or expert prosecutorial guidance.

vi) Wounding considerations

While the following factors may not be definitive in determining whether an injury is a wound, in considering whether the dog's attack wounded the animal the authorised person should consider factors such as:

- whether the injuries to the animal are deep or non-superficial (such as lacerations or deep puncture marks);
- whether there is significant bleeding or exposed internal tissue at the injury (such as bones or muscles);
- whether the injury is severe and/or permanent damage is likely to result.

If the authorised person is uncertain as to whether an injury meets the definition of a wound, the authorised person should consider options including:

- in cases where the injury appears minor or superficial and likely to resolve fully with minor treatment – issuing a PIN for the lesser offence that does not make wounding an element;
- in cases where the injury appears more significant, long-term harm appears more likely, or there is a significant impact on the owner of the injured animal – consider seeking additional guidance before determining an enforcement action, for example seeking a veterinary report on the injury or expert prosecutorial guidance.

In considering whether a case involving wounding is appropriate for issuing a PIN, the authorised person should consider factors such as:

- the level of harm caused – noting that very minor injuries may warrant consideration of a lesser PIN, but in contrast cases where the wounding is significant (such as multiple deep wounds in a particularly violent attack) may warrant prosecution;
- whether the animal injured was a wild animal or a person's pet/assistance animal – the additional harm caused to the owner of the injured animal may warrant consideration of prosecution action to allow for higher penalty options.



Section 193(1)(e)(i)

Failure to exercise effective control of a regulated dog in a public place generally.

PIN value: 10 penalty units

Guidance: A relevant person for a regulated dog must, unless the person has a reasonable excuse, exercise effective control of the dog if the dog is in a public place.

i) Elements

In relation to this offence the authorised person should consider whether they can be satisfied of the following elements:

- that the dog is a regulated dog;
- that the dog was in a public place; and
- that the regulated dog was not under effective control (see definition of effective control above).

ii) Reasonable excuse considerations


A person does not commit an offence under this provision if the person has a reasonable excuse. If a person claims to have a reasonable excuse for not exercising effective control of the regulated dog the authorised person should consider whether, in the specific circumstances of the offence, the person's excuse is reasonable.

The following considerations may aid the authorised person in determining whether an excuse is reasonable:

- whether, in considering the individual circumstances of the offence, the person's actions were reasonable and proportional to the event, and whether another reasonable person would likely act in the same manner;
- whether there was an intervening event/incident that was sudden, unforeseeable, and beyond the person's control;
- whether there was a medical or other emergency that incapacitated the person rendering them unable to exercise effective control;
- whether the person took urgent action to render aid to or prevent the harm of another person.

Scenario examples where a person may have a reasonable excuse:

- 1) *Tom is walking his dog, Bluey, on a leash. Tom starts to feel unwell and is having pains in his chest. Tom falls to the ground and drops Bluey's leash. Several bystanders come to Tom's assistance and call emergency services. Bluey has been sitting by his owner since Tom fell to the ground, Bluey was leashed but Tom let go of his leash. This could be considered a medical emergency.*

- 
- 2) *Jenny is walking her dog, Oliver, past the local lake. Jenny hears screams coming from the lake and several children are waving frantically at her. The children are yelling that their friend fell into the lake and can't swim. Jenny drops Oliver's leash and runs into the lake to rescue the child. While Jenny was helping the child Oliver was still leashed but his leash was not held by anyone. This could be considered an emergency.*

iii) **Effective control considerations**

When considering whether a regulated dog was under effective control as defined in section 192 of the AMCDA the authorised person may be required to consider some of the following elements depending on the nature of the offence:

For a regulated dog with a relevant person

- whether the relevant person is physically able to control the dog;
- whether the relevant person is in control of only that dog;
- whether the dog was being held by a leash, lead or other appropriate restraining device; OR was securely tethered to a fixed object and under continuous supervision of the relevant person.

For a regulated dog secured in a vehicle

- whether the dog was kept in an enclosed part of a vehicle or restrained in a way that prevented the dog, or any part of the dog, moving outside the enclosed part of the vehicle.

For a regulated dog that is participating in, or being exhibited or trained at, an exhibition, race meeting, race trial or obedience trial supervised by a recognised body

- whether the regulated dog was participating in a stated activity; and
- whether the body is recognised by the State or relevant local government as an appropriate body.

Physically able

In considering whether a relevant person is physically able to control the dog the authorised person should consider factors such as:


- the size of the dog;
 - the size and/or physical strength of the relevant person;
 - the temperament and training of the dog;
- physical, mental, or environmental factors that may aid or inhibit the relevant person.

Examples may include:

- whether the relevant person is capable of restraining and pulling the dog back if the dog pulls away on the leash; or
- where it is raining did the person become unable to control the dog due to their hands, the leash, or the ground becoming slippery.

Appropriateness of the leash or other restraining device

In considering whether the leash, tether or other restraining device is appropriate for



restraining the regulated dog the authorised person should consider factors such as:

- whether the leash, tether, restraining device or collar/harness it is attached to is made of suitable material (i.e. is made of rope, chain, or other material with an appropriate tensile strength not to break if the dog pulls);
- whether there is evidence of wear and tear that could compromise the item (such as frayed rope, cracking leather, separating chain links);
- whether the collar or harness is securely attached to the dog, such that the dog is not capable of slipping out;
- whether the leash is of a suitable length to ensure the person remains within reasonable reach of their dog;
- where the dog is tethered or leashed to an object is the object securely fixed to the ground (such as bolted into a concrete pad), and is the person within eyesight and suitable distance from the tethered dog.

Examples may include:

- using a leash that is designed for a small breed dog would not be suitable for a large breed dog; or
- a person has tethered their dog outside a pole whilst going into a shop. In this instance continuous supervision is lost, therefore the dog is not under effective control.

Scenario examples for effective control generally

- 1) *Arthur is walking his dog, Spot, on the beach without a leash and Spot is free to run up to other people and their dogs. Spot does not respond to voice commands. Spot is not under effective control.*
- 2) *Pete is walking his large dog, Reggie, on a leash. However, Pete is not strong enough to stop Reggie from pulling and approaching other dogs. Reggie is not under the effective control of Pete.*
- 3) *Maggie is in the park with her large dog, Magnus. Magnus is in the off-leash area in the dog park. Maggie is sitting outside the off-leash area as she has a sore ankle and is unable to walk far. Maggie is not able to stop Magnus from approaching other dogs. Magnus is not under the effective control of Maggie.*
- 4) *Johnnie is walking his dog Bingo with his Mum, Brenda. Johnnie has hold of Bingo's leash. Bingo is a St Bernard and weighs 75 kg. Johnnie is 7 years old and weighs 25 kg. Bingo is not under the effective control of Johnnie as Bingo weighs 3 times what Johnnie weighs. Johnnie would not be able to stop Bingo if he ran off.*



Section 193(1)(e)(ii)

Failure to exercise effective control of a non-regulated dog in a public place generally.

PIN value: 5 penalty units

Guidance: A relevant person for a non-regulated dog must, unless the person has a reasonable excuse, exercise effective control of the dog if the dog is in a public place.

i) Elements

In relation to this offence the authorised person should consider whether they can be satisfied of the following elements:

- that the dog was in a public place;
- that the dog was not under effective control (see definition of effective control above).

ii) Reasonable excuse considerations

A person does not commit an offence under this provision if the person has a reasonable excuse. If a person claims to have a reasonable excuse for not exercising effective control of the dog the authorised person should consider whether, in the specific circumstances of the offence, the person's excuse is reasonable.

The following considerations may aid the authorised person in determining whether an excuse is reasonable:

- whether, in considering the individual circumstances of the offence, the person's actions were reasonable and proportional to the event, and whether another reasonable person would likely act in the same manner;
- whether there was an intervening event/incident that was sudden, unforeseeable, and beyond the person's control;
- whether there was a medical or other emergency that incapacitated the person rendering them unable to exercise effective control;
- whether the person took urgent action to render aid to or prevent the harm of another person.

Scenario examples where a person may have a reasonable excuse:

- 1) *Tom is walking his dog, Bluey, on a leash. Tom starts to feel unwell and is having pains in his chest. Tom falls to the ground and drops Bluey's leash. Several bystanders come to Tom's assistance and call emergency services. Bluey has been sitting by his owner since Tom fell to the ground, Bluey was leashed but Tom let go of his leash. This could be considered a medical emergency.*
- 2) *Jenny is walking her dog, Oliver, past the local lake. Jenny hears screams coming from the lake and several children are waving frantically at her. The children are yelling that their friend fell into the lake and can't swim. Jenny drops Oliver's leash and runs into the lake to rescue the child. While Jenny was helping the child Oliver was still leashed but his leash was not held by anyone. This could be considered an emergency.*



iii) **Effective control considerations**

When considering whether a dog was under effective control as defined in section 192 of the AMCDA the authorised person may be required to consider some of the following elements depending on the nature of the offence:

For a non-regulated dog with a relevant person

- whether the relevant person is physically able to control the dog;
- whether:
 - a. the dog was being held by a leash, lead or other appropriate restraining device; OR
 - b. was securely tethered to a fixed object and under continuous supervision of the relevant person; OR
 - c. was being kept in an appropriate temporary enclosure that contained the dog's movement and was under the continuous supervision of the relevant person.

For a non-regulated dog secured in a vehicle

- whether the was confined or tethered in, or on, a vehicle in a way that prevents the dog moving any part of its body beyond the vehicle.

For a non-regulated dog that is participating in, or being exhibited or trained at, an exhibition, race meeting, race trial or obedience trial supervised by a recognised body

- whether the dog was participating in a stated activity; and
- whether the body is recognised by the State or relevant local government as an appropriate body.

For a government entity dog or security patrol dog performing the functions of that class of dog authorised under the AMCDA or another Act

- whether the dog is a government entity dog or security patrol dog as defined by the AMCDA (see definitions above); and
- whether at the time the dog was performing the functions of that class of dog as authorised under legislation.

For a working dog

- whether the dog is a working dog as defined by the AMCDA (see definition above); and,
- whether, at the time, the dog was performing the functions of that kind of working dog (e.g. a herding dog herding livestock).

Physically able

In considering whether a relevant person is physically able to control the dog the authorised person should consider factors such as:

- the size of the dog;

- the size and/or physical strength of the relevant person;
- the temperament and training of the dog;
- physical, mental, or environmental factors that may aid or inhibit the relevant person.

Examples may include:

- whether the relevant person is capable of restraining and pulling the dog back if the dog pulls away on the leash; or
- where it is raining did the person become unable to control the dog due to their hands, the leash, or the ground becoming slippery.

Appropriateness of the leash or other restraining device

In considering whether the leash, tether or other restraining device is appropriate for restraining the dog the authorised person should consider factors such as:


- whether the leash, tether, restraining device or collar/harness it is attached to is made of suitable material (i.e. is made of rope, chain, or other material with an appropriate tensile strength not to break if the dog pulls);
- whether there is evidence of wear and tear that could compromise the item (such as frayed rope, cracking leather, separating chain links);
- whether the collar or harness is securely attached to the dog, such that the dog is not capable of slipping out;
- whether the leash is of a suitable length to ensure the person remains within reasonable reach of their dog;
- where the dog is tethered or leashed to an object is the object securely fixed to the ground (such as bolted into a concrete pad), and is the person within eyesight and suitable distance from the tethered dog.

Examples may include:

- using a leash that is designed for a small breed dog would not be suitable for a large breed dog; or
- A person has tethered their dog outside a pole whilst going into a shop. In this instance continuous supervision is lost, therefore the dog is not under effective control.

Scenario examples for effective control generally

- 1) *Arthur is walking his dog, Spot, on the beach without a leash and Spot is free to run up to other people and their dogs. Spot does not respond to voice commands. Spot is not under effective control.*
- 2) *Pete is walking his large dog, Reggie, on a leash. However, Pete is not strong enough to stop Reggie from pulling and approaching other dogs. Reggie is not under the effective control of Pete.*
- 3) *Maggie is in the park with her large dog, Magnus. Magnus is in the off-leash area in the dog park. Maggie is sitting outside the off-leash area as she has a sore ankle and is unable to walk far. Maggie is not able to stop Magnus from approaching other dogs. Magnus is not under the effective control of Maggie.*

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- 4) *Johnnie is walking his dog Bingo with his Mum, Brenda. Johnnie has hold of Bingo's leash. Bingo is a St Bernard and weighs 75kg. Johnnie is 7 years old and weighs 25 kg. Bingo is not under the effective control of Johnnie as Bingo weighs 3 times what Johnnie weighs. Johnnie would not be able to stop Bingo if he ran off.*

iv) Government entity dogs, security dogs, and working dogs considerations

In considering whether a person has committed an offence under this provision authorised persons should ensure they consider that the AMCDA provides specific provisions that government entity, security, and working dogs are considered under effective control when performing their lawful duties, or purpose for working dogs.

Factors that may be relevant in considering whether a government entity, security, or working dog was performing their lawful duties, or purpose for working dogs, include:

- whether the dog was working or “on shift” at the time (such as a police or security dog on patrol with their handler);
- for a working dog, whether the dog was performing the functions of a working dog on rural land (note there may be times when incidental crossing of a public place is essential to a working dog’s purposes, such as herding livestock across a public road between pastures).

If the authorised person is uncertain as to whether the government entity, security, or working dog was performing their lawful duties, or purpose for working dogs, the authorised person should seek expert prosecutorial guidance as that is a key determination as to whether any offence occurred at all.