



5 April 2022

Mr Linus Power MP
Chair
Economics and Governance Committee
Member for Logan

Via email: egc@parliament.qld.gov.au

Dear Mr Power

State Penalties Enforcement (Modernisation) Amendment Bill 2022

The Local Government Association of Queensland (LGAQ) is the peak body for local government in Queensland. We are a not-for-profit association set up solely to serve the state's 77 councils and their individual needs.

We have been advising, supporting and representing local councils since 1896, aiding them to improve their operations and strengthen relationships with their communities.

On behalf of our member councils and the local communities they represent, the LGAQ is pleased to make this submission to the State Penalties Enforcement (Modernisation) Amendment Bill 2022 (the SPER Bill).

The explanatory notes outline the objectives of the SPER Bill which proposes to amend the *State Penalties Enforcement Act 1999*, the *State Penalties Enforcement Regulation 2014* and the *State Penalties Enforcement Amendment Act 2017* to:

- implement an integrated approach to managing fines for camera-detected offences and tolling offences, with functions centralised in a single agency – the Queensland Revenue Office
- provide a framework for the earlier registration of unpaid infringement notices with the State Penalties Enforcement Registry for enforcement
- make miscellaneous amendments to modernise the operation of the *State Penalties Enforcement Act 1999* and support the effective administration of SPER.

Further, the explanatory notes outline that the SPER Bill also proposes to:

- make consequential amendments to the *Transport Operations (Road Use Management) Act 1995* and the *Traffic Regulation 1962* on account of the integrated approach to fines management
- amend the *Land Tax Act 2010* to ensure that trustees of Special Disability Trusts are subject to the higher tax-free threshold and lower land tax rates that apply to individuals
- amend the *Residential Tenancies and Rooming Accommodation Act 2008* to provide stable funding for the Residential Tenancies Authority and ensure security of residential bonds on behalf of Queensland tenants



- modernise the confidentiality provisions in the *State Penalties Enforcement Act 1999* and the *Taxation Administration Act 2001*.

The LGAQ considers the administration of justice as undertaken by SPER is a core role of State Government.

One state-wide agency is inherently more efficient and effective in delivering a debt recovery service rather than individual councils undertaking their own follow up and debt recovery arrangements.

However, there is room for review and reform of the system including better consultation regarding the writing off of debts to understand the financial ramifications for councils.

Local government has consistently raised long-standing concerns about the State Penalty Enforcement Registry's (SPER) operations, including through LGAQ Annual Conference resolutions.

2021 LGAQ Annual Conference

At last year's LGAQ Annual Conference in Mackay, held in late October, member delegates overwhelmingly supported a resolution from the Moreton Bay Regional Council calling on the State Government to streamline and modernise SPER processes.

Specifically, the resolution asked the State Government to:

1. Ensure the State Penalties Enforcement Registries (SPER) source and implement an updated "fines-on-line" web portal service.
2. Amend SPER processes and practices to require the approval of the issuing authority prior to the cancellation of an enforcement order in circumstances where legislative requirements of service and lodgement have been met by the issuing authority.
3. Facilitate the compulsory refunding of all fees paid by issuing authorities to SPER on the approval of any Work and Development Orders.
4. Ensure the commencement of quarterly engagement between SPER and issuing authorities requiring motions raised to be addressed and outcomes provided in a timely manner.
5. Ensure quarterly reports detailing Work and Development Orders applicable to issuing authorities identifying the community benefit.

Currently, local governments are required to use SPER for the collection of fines and penalties. SPER's current 'fines-on-line' web portal is outdated and not compatible with current generation internet browsers. It is only compatible with Internet Explorer which is unsupported by Microsoft.

SPER's current internal processes grant a cancellation of enforcement orders on application without investigation or stakeholder feedback from the issuing authority, shifting



and increasing the administrative burden to issuing authorities where penalties have already been issued, served and lodged as per legislative requirements.

Our member councils have indicated they are yet to see any economic or social benefits flow to their local communities from Work and Development Order with the only decreable benefit appears to be to the debtor. Considerations should be given to refunding fees paid by councils for SPER collection services for fines that subsequently become the subject of a Work and Development Order.

2020 LGAQ Annual Conference

At the 2020 LGAQ Annual Conference, member delegates passed a resolution that the State Government review the *State Penalties Regulation 2014* in respect of who can issue an infringement notice for an offence against the *Building Act 1975* to align with who can prosecute the offence.

The matter of who may prosecute offences under the *Building Act 1975* (BA) and its regulations is contained in section 256 of the BA. In accordance with section 256(2)(k), local governments have responsibility to prosecute offences in chapters 4 and 5.

Some of these offences, which relate to private building certifiers, are also identified as infringement notice offences in Schedule 1 of SPER. The person authorised to serve an infringement notice for these offences is either the commissioner or an investigator appointed under the *Queensland Building and Construction Commission Act 1991*.

This creates a situation where the Queensland Building and Construction Commission can issue infringement notices for the offences, but not prosecute the offences. Conversely, local governments may prosecute the offences, but not issue infringement notices for the offences.

To address this issue, local governments are seeking the power to issue infringement notices for those offences listed in Schedule 1 of SPER for which it has prosecutorial jurisdiction under the *Building Act 1975*.

Member feedback

Further to the conference resolutions supported by the majority of member delegates at our most two recent annual conference, the following information is provided from our member councils.

Moreton Bay Regional Council, the local government submitter for the 2021 LGAQ motion, confirms that SPER has earlier this year indicated it is considering reducing the timeframe for the date of issue of a penalty notice to 35 days (in order to register a default certificate with SPER).

The Bill sets a clear direction to achieve this by setting up the head of power in the State Penalty Enforcement Act (SPE Act). The Bill amends the SPE Act to enable the earlier registration of default certificates with SPER by:



- specifying that the 'final day' on which a default certificate must be given to SPER for registration is the latest day on which a prosecution for the offence may be started, or an earlier day that is prescribed by regulation to be the final day; and
- providing that a 'due day' that is earlier than the final day can be prescribed by regulation, and that a default certificate can be given after the due day, subject to payment of a late lodgement fee by the administering authority.

It is important to note the Bill's explanatory notes specifically state: "*It is intended that the prescription of any final day, due day and late lodgement fee in the SPE Regulation will occur at a later stage.*"

This does not allow for transparency in the policy direction of the State. As stated, SPER has already this year indicated the time period would change to 35 days in confidential engagement correspondence. This targeted, confidential consultation has meant the sector has been unable to secure appropriate collective feedback to deliver to the State.

The impacts on local government - financial and customer service (including community impact) are outlined below.

Financial Impact

There will be significant financial impact on local government if the amendment takes place. There is no option for local government to avoid increased costs if the Bill proceeds.

To explain this:

- If local government acceded to an earlier PIN default time period of 35 days, there would be a 30-40 per cent increase in PINs being referred to SPER. For every PIN referred to SPER, local government pays \$73.80. A 30-40 per cent increase is a significant financial impact for local government.
- If councils maintain the current system of issuing reminders after a PIN due date they will then be forced to pay a higher SPER referral fee. This fee is not transparent currently. In any respect, an increase in scale for SPER PIN referrals would also be a significant impact on local government. Some PIN amounts are currently only \$75. If the current SPER fee of \$73.80 is increased it would, in some cases, exceed the value of the penalty.
- In any respect, the Bill, if enacted will be a significant financial impact on local government.

Customer Service (Community) Impact

Another issue for local government is that council customer service capacity is constrained. The current system at Moreton Bay Regional Council, for example, is to promote customer service, irrespective of whether a penalty infringement has been issued. To explain this:

- In some cases, a PIN recipient may seek a review. If the process and timing of the review application and decision goes outside the PIN default period and remains unpaid, local government is forced to pay the higher SPER fee. The SPER fee is then transferred onto the PIN recipient.



- The issue of user declarations has also not been considered by the State. A delay in the submission of a user declaration may be negated by the ability to issue a reminder.
- In any respect, if local governments accede to the earlier SPER referral time frame, to avoid increased costs, customers will experience significantly increased costs from SPER on top of the penalty. As explained, an increase in the current SPER fee of \$73.80 would, in some cases, exceed the value of the penalty.

Importantly, if the timeframes are shortened this may impact on the most vulnerable within our community in accordance with the Good Decision-Making Guidelines outlined by the Queensland Ombudsman. Please refer to: <https://www.ombudsman.qld.gov.au/improve-public-administration/public-administration-resources/good-decisions>

In particular, the following key aspects of procedural fairness are compromised by the imposition of increased fees or inability to reasonably respond and reduced time to consider the issue:

- Procedural fairness is about providing a person who might be adversely affected by a decision a 'fair hearing' before the decision is made.
- Generally, a fair hearing involves disclosure, a reasonable opportunity to respond and impartiality.
- The affected person should be notified of the key issues and given enough information to participate meaningfully in the decision-making process. Reasonable steps should be taken to notify the affected person.
- The affected person should be given a reasonable opportunity and time to respond. The decision-maker should genuinely consider the affected person's submission in making their decision.

Debt write-offs

While the LGAQ understands the need for debt write-offs (primarily debt greater than five years old), we seek a commitment that councils are informed prior to the write off, to give them an opportunity to respond.

Conclusion

Local governments would sincerely appreciate the opportunity to work with the Queensland Revenue Office regarding the importance of updating the fines-on-line software as a priority as well as regarding other issues including: the process of cancellation of enforcement orders relating to local government fines; the process of initiating work and development orders made against debts lodged by the local government; and, administration fees associated with these orders.

We appreciate and welcome the policy objectives achieved through this Bill, particularly realising the benefits of:

- Eliminating unnecessary duplication of services across government;
- Improving operational efficiencies;
- Providing a central point of contact within Government for persons served with fines for camera-detected offences and tolling offences; and



- Enhancing the effectiveness of SPER's activities.

However, while the focus of the Bill is on achieving internal operational efficiencies, we believe this can be enhanced by the measures outlined in this submission, including further and specific consultation on:

- Updating the fines-on-line web portal service;
- Greater consultation with issuing authorities in relation to the cancellation of enforcement orders;
- Refunding of fees on the approval of Work and Development Orders;
- Regular and quarterly engagement with issuing authorities; and
- Greater transparency on the community outcomes from Work and Development Orders.

If you require any further information on this issue, please do not hesitate to contact Nathan Ruhle, Lead – Intergovernmental Relations on [REDACTED] or [REDACTED]

Yours sincerely

A handwritten signature in black ink, appearing to read 'Alison Smith', written in a cursive style.

Alison Smith
CHIEF EXECUTIVE OFFICER