

Submission by South West Brisbane Community Legal Centre

Inquiry into the operations of Toll Roads in Queensland

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Introduction

Increasingly in modern-day society our ability to function depends on the use of transportation. Consequently, transport and road use are essential public services. At present there are six toll roads in Queensland all located within the Greater Brisbane region.¹ Under the provisions of the *Transport Infrastructure Act 1994* the Department of Transport and Main Roads manages the policy and legislative framework for toll roads in Queensland.² Whilst the operations of the toll roads are designated to a private company, Transurban Queensland (Linkt).³ With “nearly half a million trips being taken on toll roads in south-east Queensland on any given work day”, these roads play a major part in the day-to-day functioning of peoples’ lives.⁴

The Treasurer, Mr Curtis Pitt stated that the Palaszczuk government’s main aim is to “reduce the overall SPER [State Penalties Enforcement Registry] debt”. However, he recognises that “there are some in the community who are in genuine hardship and cannot pay their debts. For many of these people, the requirement to pay SPER debts compounds existing long-term hardships.”⁵

Despite recent amendments to the legislative regime to change the way that SPER operates, we firmly believe that these proposals have not gone far enough. There remains inadequate protection for those vulnerable groups experiencing extreme financial hardship in Queensland.

Who we are

At South West Brisbane Community Legal Centre, we are part of the larger network of Queensland’s 33 community legal centres. We provide legal information, assistance and referral services, legal representation and casework, community education and advocacy for vulnerable clients and communities facing legal problems. We are an independent, not-for-profit, non-governmental organisation. Being based in Inala, our practice area stretches from Ipswich across the west of Brisbane and down into Logan.

The clients that use our services cannot afford a lawyer and are often not entitled to legal aid. They face economic, social and cultural disadvantages which present barriers to them accessing information and support. They often present to us with a range of inter-related issues which affect both their individual and family’s ongoing welfare.

¹ Logan Motorway, Gateway Motorway, Airpor linkM7, Clem Jones Tunnel (CLEM 7), Legacy Way and the Go Between Bridge.

² <https://www.tmr.qld.gov.au/business-industry/Transport-sectors/Toll-roads>.

³ Ibid.

⁴ Transurban Group Executive, Sue Johnson, ‘Almost half of all toll road complaints about Transurban in Queensland’, Brisbane Times, 17 July 2018.

⁵ Hon C Pitt MP, Treasurer and Minister for Trade and Investment, Queensland Parliament Record of Proceedings, 2 March 2017 at 490.

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Toll fine enforcement in Queensland

All toll roads in Queensland use electronic tolling, which means that there is no requirement for a motorist to stop and pay at a toll gate. It is the responsibility of motorists to contact the toll operator within three days to pay the toll charge.⁶ If there is no payment within the set period a demand notice is raised by Linkt. This can either be pursued via civil debt recovery in the Magistrate's Court or it can be sent to the Department of Transport and Main Roads (DTMR) for administrative enforcement. DTMR may then issue a Penalty Infringement Notice (PIN) for failure to comply with the demand notice. If the PIN remains unanswered then the matter can be referred to SPER who may issue an enforcement order.⁷ At this point, further fees are added and SPER takes over management of the debt.

The legislation provides SPER with numerous powers to obtain payment. These include the seizure or selling of property, redirection of earnings or financial assets, vehicle immobilisation and imprisonment.⁸ Various procedures are available for the debtor to apply for an extension of time to pay or to pay the debt in instalments.⁹ The minimum amount payable per month is normally \$60 but it can be reduced for those experiencing hardship.¹⁰ If a person can prove to SPER that they are unable to pay the debt then there is a possibility of undertaking unpaid community service work.¹¹

Our clients, toll roads and toll related debts

The issue of toll debts has come to our attention because, not only we are receiving increasing levels of requests for assistance from clients who have demands for payment of unpaid tolls and the associated administrative fees, but our non-legal community partners are witnessing a knock-on effect in the growth of requests for emergency aid.¹²

Being geographically located in the vicinity of several of these toll roads we have witnessed a significant impact upon our client base. In many cases, we have seen that small amounts of unpaid tolls have rapidly spiralled into debts of thousands of dollars. The impact of these demands has often been devastating for the individuals concerned. The campaign group 'Toll Redress' have stated that, "existing escalation arrangements enslave people in a vicious cycle of confusion, stress and financial strain".¹³

Some have tried independently to negotiate their way through the complex public-private relationship that exists between the toll road operator (Transurban/Linkt) and the enforcement agencies (DTMR, SPER) to no avail.¹⁴ Many have approached the Queensland Tolling Ombudsman for assistance only to be advised that they are "unable to investigate as [the agencies] are outside [their] jurisdiction".¹⁵

⁶ Linkt (2018) Toll pricing: www.linkt.com.au/brisbane/using-toll-roads/about-brisbane-toll-roads/toll-pricing.

⁷ *State Penalties Enforcement Act 1999* (Qld), s34.

⁸ *Ibid*, ss63-74 (seizure of property), ss79-103 (redirection of earnings), ss108A-108Z.

⁹ *Ibid*, s42.

¹⁰ *State Penalties Enforcement Regulation 2014* (Qld), s25.

¹¹ *State Penalties Enforcement Act 1999* (Qld), ss43-46 Fine Option Order.

¹² QCOSS (Queensland Council of Social Service) receiving more requests for necessities (e.g. food) due to the financial pressure applied by toll associated debts.

¹³ 'Toll Roads: Issues of building, financing and charging', The Senate, Economics References Committee, Sept 2017, Submission 36, p. 5, p. 3.

¹⁴ Also highlighted by the Finance and Administration Committee, Report No. 38, April 2017, p:24.

¹⁵ www.ombudsman.qld.gov.au/how-to-complain.

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They often approach us in desperation with the experience having a devastating effect on theirs and their families' well-being. Whilst we have had some minor success in obtaining a waiver of the fees by petitioning SPER directly, there are many more cases where we have not reached a resolution. This highlights the fact that there is no consistency with regards to how these 'hardship' cases are dealt with. This presents uncertainty and could lead to injustice.

Remarkably, a number of our clients' cases bypass the SPER process completely. The toll operator is referring matters directly to the Civil Court system. A vast tranche of people have received court orders for toll debts in the region of \$10,000- \$25,000. The opportunities for us to be able to petition on the client's behalf are non-existent as often a court has already passed judgment by the time the clients contact us.

Case Study Illustration

Rebecca, a single mother with 3 children in primary school at Beenleigh was living in a violent relationship. For some months her partner was driving her car daily on the Gateway Motorway from Beenleigh to his work at Pinkenba. Then she fled the violence and took the children with her to live with her disabled mother in Ipswich. To minimise disruption for the children, she kept the kids at the Beenleigh State School where they had long established relationships with other children, teachers and sports coaches.

But given the way the roads are set up between Ipswich and Beenleigh, Rebecca had no alternative but to make the 43 km trip using toll roads (31 km of this trip are on the M2 and Metroad6 tollways: see **Annexure 1**, attached). Each trip to and from school required Rebecca to go through 2 toll points, meaning that she passed through 8 toll points each day getting the children to and from school.

Given her only income was Centrelink Social Security benefit, she could not afford to pay the tolls and she could not pay the demand notices sent to her in the post. Finally, the tollway operator served her with a Magistrates Court Claim - the Statement of Claim included accumulated unpaid tolls plus administration fees relating to each time her car had passed individual toll points over the months – the claim totalled \$17,000.

After paying for the essentials (food, housing, education and medical costs), Rebecca had nothing left out of her Centrelink income. Indeed she obtained food from local charities to get by, because the Centrelink benefit was not enough to cover the actual costs for the fundamental requirements for her family. Rebecca owned no valuable assets and had no savings in the bank. It was simply not possible for her to pay the amount claimed, yet she had no legal defence to file in the Court to stave off the Court enforcement action by the tollway operator or its corporate debt collectors.

We submit that there are many more people in the community suffering that we do not know about as it is often those most disadvantaged who do not approach legal services but seek emergency relief assistance from other agencies such as neighbourhood services, doctors, teachers, social workers etc.¹⁶ Having recognised this we are actively engaging with these non-legal services to facilitate client referrals to our legal service as early as possible.

State Penalties Enforcement Amendment Bill 2017

It was recognised by the government during the discussions to the proposed amendments of the *State Penalties Enforcement Act 1999* that there are "significant number of debtors [who]

¹⁶ S. Clarke & S. Forrell, 'Pathways to justice: the role of non-legal services', Justice Issues, Paper 1, June 2007, Law and Justice Foundation, p:10.

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are unable to pay their penalty debts because they are experiencing genuine hardship” and that there were insufficient means for providing alternative options for those debtors.¹⁷

To combat these issues the *State Penalties Enforcement Amendment Bill 2017* proposes a case management system to reduce the imposition of cumulative SPER fees and Work and Development Orders (WDOs) to provide an alternative non-monetary method of discharging debt.¹⁸ We acknowledge that these amendments have gone some way to modernise the management of penalty debts by SPER. However, we believe that it has not gone far enough when dealing with those whose income is derived solely from social security benefits.

It needs to be accepted that payment by instalments is not a ‘viable’ option for those people living on social security benefits.¹⁹ The level of benefit is set at barely sufficient to provide for the fundamental necessities of life such as food, shelter and utilities leaving nothing remaining.²⁰ Further, whilst non-paid community work may be a practicable solution for some there are those who, through no fault of their own, may be unable to undertake the prescribed activities. Many people who are in receipt of Centrelink or WorkCover are elderly, ill, disabled, care for others or have a lack of access to transport. These people are not wilful or “repeat defaulters”²¹ they simply cannot afford to pay the fines or perform the activities prescribed.

The likelihood is that the introduction of a work and development order scheme combined with the government’s commitment to “get tougher on repeat defaulters”²², will have an adverse impact on those who simply cannot afford to pay or undertake unpaid work and will undoubtedly exacerbate their plight.

Furthermore, these options are not open to the huge number of cases that are processed through the route of civil debt recovery. Queensland’s Magistrate’s court records demonstrate that **Transurban filed 505 cases in one month for an average debt of \$6,000.**²³ A steady increase in toll related cases is having a marked impact on the court system and leaves those most impecunious exposed to further hardship.²⁴

What we propose is an automatic recognition of those who are in receipt of prescribed social security benefits as being “judgment proof”²⁵.

We believe that this will serve two aims. Firstly, it will protect those most vulnerable in society from the stress of (futile) debt recovery legal action resulting in compounding financial hardship. Secondly, it will assist government agencies and courts by avoiding wasting their tax-payer-funded time and resources in the futile pursuit of these claims.

¹⁷ *State Penalties Enforcement Amendment Bill 2017*, Explanatory Notes, p:1.

¹⁸ *Ibid.* Part 3B

¹⁹ T. Walsh, ‘*Won’t Pay or Can’t Pay? Exploring the Use of Fines as a Sentencing Alternative for Public Nuisance Type Offences in Queensland*’, *Current Issues in Criminal Justice*, Vol. 17, No. 2.

²⁰ Australian Law Reform Commission: www.alrc.gov.au/publications/5-social-security/australia's-social-security-system. See further: T. Walsh, ‘*Breaching the right to social security*’, *Griffith Law Review*, Vol. 12 No.1, pp 43-63.

²¹ *Ibid* f/n: 5.

²² *Ibid* f/n: 5.

²³ <http://tollredress.com.au/2017/11/transurban-queensland-go-via-sue-505-motorists-in-one-month/>

²⁴ E. Vowles, ‘*Road toll debt clogging courts with some drivers facing fines of up to \$200k*’, ABC News, 20 March 2018 <http://www.abc.net.au/news/2018-03-20/how-does-a-road-toll-debt-get-to-200000-dollars/9555960>.

²⁵ See: www.homelesslaw.org.au/istheclientjudgmentproof

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What is a “judgment proof” debtor?

Other states in Australia have recognised that taking legal action against low income debtors is both unconscionable and financially pointless.²⁶ In these circumstances social security legislation linked with regulation governing the debt recovery process has led to the development of legal protections for this group.²⁷ This has led to the creation of the concept of the “judgment proof debtor”²⁸.

The state of Victoria has legislated to provided that:

s12 No instalment order if judgment debtor is pensioner etc.

An instalment order shall not without the consent of the judgment debtor be made if the income of the judgment debtor is derived solely from a pension benefit allowance or other regular payment under the Commonwealth Social Security Act 1947 or section 24 of the Children, Youth and Families Act 2005.²⁹

Furthermore, the Victorian court rules prohibit the attaining of garnishee orders when dealing with social security income.³⁰ This is in accord with section 60(1) of the *Social Security (Administration) Act 1999* (Cth) which states that:

s60 Protection of social security payment

A social security payment is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.³¹

When considering assets of a debtor, legislation and court rules state that the rules of bankruptcy apply.³² Protected assets which cannot be seized by creditors include general household furniture, whitegoods, tools of trade and motor vehicles used as a means of transport (up to a limit of \$7,800).³³

It is important to note that these provisions do not prevent a creditor from pursuing debt recovery. They simply prevent the execution of an order against a specified income source. Although this framework might prompt corporate creditors to act ethically and responsibly when deciding whether to pursue legal claims against a small section of society who are already suffering extreme hardship, this framework does not include any legal prohibition from obtaining instalment orders against those who simply cannot pay Court Judgments. Thus there is no “legislated backstop” or reference point to prevent corporates from employing legal debt enforcement processes running their full course against those who live in chronic, extreme financial distress, and who will never be able to pay their judgement debts. It is a case of “the law grinding the poor”.

²⁶ *Policy Report: The pursuit of the impossible, consumer experience with external collection of retail energy debts*, Consumer Action Law Centre, June 2012.

²⁷ *Ibid.* s1.6.

²⁸ *Ibid* f/n: 24.

²⁹ *Judgment Debt Recovery Act 1984* (Vic), Part II Instalment Orders, s12(1).

³⁰ *Magistrates' Court General Civil Procedure Rules 2010* (Vic), Order 72.01.

³¹ See also: *Social Security (Administration) Act 1999* (Cth), s62, Effect of garnishee or attachment order.

³² *Supreme Court Act 1986* (Vic), s42. *Bankruptcy Act 1966* (Cth).

³³ *Bankruptcy Act 1966* (Cth), s116(2); *Bankruptcy Regulations 1966*, r6.03. These amounts change periodically see: Australian Financial Security Authority.

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Time for a responsible and ethical look at debt recovery in Queensland

As this present time in Queensland we have a 'David and Goliath' situation whereby a public-private enterprise can utilise the infrastructure of the state Courts and SPER to recover its debts. Quite apart from the inherent injustice of this situation, it is obvious that there are systematic problems as there are tolling debts outstanding of over \$232 million³⁴ with toll cases "clogging up" the Queensland court system.³⁵

As with any business model debt write-off is expected. In fact, the Queensland Audit Office has already stated that, "it has grown to the point where further debt write-off is needed, pursuing old debts and those that lack sufficient information is uneconomical to the state".³⁶

It is widely accepted that social security benefits are paid to individuals who are most disadvantaged in society so that they may have access to "minimum adequate standards of living"³⁷. Those individuals that receive income support through Centrelink benefits or WorkCover generally fall within the following categories:

- Pensioners,
- Carers,
- Single parent families,
- People who are homeless,
- Those experiencing domestic or family violence,
- Those that have impaired decision-making capacity,
- Those who live in remote Aboriginal or Torres Strait Islander communities,
- Those undergoing rehabilitation,
- People who are disabled,
- Those experiencing acute financial difficulties or are unable to work due to illness,
- Those in custody or recently in custody.³⁸

Recognition at Federal level has occurred that there is this small section of society who need legal protection. Parliament has legislated specifically denoting the inviolability of social security payments and the setting of clear boundaries on asset seizure via bankruptcy regulations. This protection has already been embodied in federal legislation prohibiting garnishee orders from Family Assistance payments.³⁹

Section 109 of the *Commonwealth of Australia Act 1900* (Imp) provides that,

When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.⁴⁰

In our view repayment of debt by deductions from social security payments is in direct contravention to the legislative dictates of the Federal Parliament.⁴¹

³⁴ Ibid f/n: 5.

³⁵ Ibid f/n: 24.

³⁶ 'Finalising unpaid fines', Report 10: 2017-2018, Queensland Audit Office, p:5.

³⁷ Ibid f/n: 21.

³⁸ 'A Guide to Australian Government payments 20 March-30 June 2017', Department of Human Services, Australian Government.

³⁹ A New Tax System (Family Assistance) (Administration) Act 1999 (Cth), s66 payment protections and garnishee orders.

⁴⁰ Commonwealth of Australia Act 1900 (Imp).

⁴¹ *Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (Engineers Case)* (1920) 28 CLR 29.

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Conclusion and recommendations

But we hold that the existing provisions that apply in Queensland do not actually provide protection for those in the community who live in chronic financial distress.

We recommend amending the existing provisions contained with the *Civil Proceedings Act 2011* (Qld)⁴² and the *Uniform Civil Procedure Rules 1999* (Qld)⁴³ to include a section that provides for the prohibition of courts making instalment or garnishee orders against those in our community who rely solely on income support provided to them under Commonwealth Social Security legislation, Veterans Affairs or Family Services legislation.

We recommend a section such as the following should be inserted to the above-mentioned legislation:

No instalment order if judgment debtor is pensioner etc.

An instalment order shall not without the consent of the judgment debtor be made if the income of the judgment debtor is derived solely from a pension benefit allowance or other regular payment under the Commonwealth Social Security Act 1991, Social Security (Administration) Act 1999 and A New Tax System (Family Assistance) Act 1999.⁴⁴

We believe that this solution will provide an appropriate legislative backstop and go some way to achieving the “balance between justice and compassion” that the Palaszczuk government is striving for.⁴⁵

⁴² *Civil Proceedings Act 2011* (Qld), s90(2)(a)-(c).

⁴³ *Uniform Civil Procedure Rules 1999* (Qld), Chp19, Pts 4-7.

⁴⁴ As per s66, 'A New Tax System (Family Assistance) (Administration) Act 1999 (Cth).

⁴⁵ Mr Curtis Pitt, 'Unpaid fines could be cleared for some Queenslanders with the new SPER debt laws', ABC News, 20/07/2018.