



State Penalties Enforcement Amendment Bill 2017

Report No. 38, 55th Parliament
Finance and Administration Committee
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Finance and Administration Committee

Chair	Mr Peter Russo MP, Member for Sunnybank
Deputy Chair	Mr Ray Stevens MP, Member for Mermaid Beach
Members	Mr David Janetzki MP, Member for Toowoomba South Mrs Jo-Ann Miller MP, Member for Bundamba Mr Steve Minnikin MP, Member for Chatsworth Mr Linus Power MP, Member for Logan

Address Finance and Administration Committee
Queensland Parliament
George Street
Brisbane
Queensland
4000

Email FAC@parliament.qld.gov.au

Web www.parliament.qld.gov.au/FAC

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Abbreviations

Act	State Penalties Enforcement Amendment Act
Bill	State Penalties Enforcement Amendment Bill 2017
ECQ	Electoral Commission Queensland
LAQ	Legal Aid Queensland
LGAQ	Local Government Association of Queensland
OQPC	Office of the Queensland Parliamentary Counsel
PDMC	Penalty Debt Management Council
PIN	Penalty infringement notice
PPO	Probation and Parole Officer
PPSR	Personal Properties Securities Register
QCS	Queensland Correctional Services
QPS	Queensland Police Service
RFA	road franchise agreement
SPER	State Penalties Enforcement Registry
TIA	<i>Transport and Infrastructure Act 1994</i>
TMR	Department of Transport and Main Roads
TRAILS	Agreement for Provision of Vehicle Registration Information for Toll Compliance
Treasury	Queensland Treasury
TRO	toll road operator
WDO	work and development order

Chair's foreword

Queensland's State Penalties enforcement Registry (SPER) exists to enforce debts owed to the State. SPER performs its role in accordance with the SPER charter which requires SPER to maximise collection of fines and monies before enforcement action is taken. It envisages a reduction in the use of imprisonment for defaulters by encouraging alternative enforcement measures. SPER must also promote public education on the obligations of offenders and the consequences of not satisfying the obligations.

The Bill will amend the Charter to ensure that SPER promotes a philosophy that community service work is for the needy in the community and not an alternative to payment of a fine for those who can afford to pay the fine. Accordingly, the Bill will introduce work and development orders offering non-monetary opportunities for people who are suffering hardship to satisfy their debt. There was widespread support for the introduction of the work and development orders. The committee made a recommendation that the eligibility for the work and development orders be extended to allow for a 'catch all' provision to cater for circumstances outside those prescribed in the Bill.

It is clear that a significant proportion of people who owe SPER debt are vulnerable members of our community. In this respect, the committee heard that SPER must improve its communication with vulnerable debtors. Automated correspondence may be more efficient but may not always be effective. In some cases SPER must utilise its human element to reach out and engage the most vulnerable in our society. This in turn could reduce the escalation of debt and the cycle of poverty.

Increased volumes of debtors and debts means that we need to look to make SPER more efficient and effective. The proposed service model for case management of debtors rather than individual debts, coupled with the fairer and simpler fee arrangements will achieve better results for Queenslanders.

The information sharing provisions will support early intervention by agencies and allow early recovery of fines.

Overall, the Bill will improve the operation, effectiveness and efficiency for SPER.

I thank my fellow committee members for their considered approach to this inquiry. All members worked in a bipartisan and diligent manner to ensure the committee received evidence and fully considered the issues raised in this inquiry.

Finally, I thank the secretariat and other parliamentary service officers who assisted the committee.

I commend this Report to the House.



Peter Russo MP
Chair

Recommendations

Recommendation 1 **2**

The committee recommends that the State Penalties Enforcement Amendment Bill 2017 be passed.

Recommendation 2 **8**

The committee recommends that in proposed new section 32H, clause 24 be amended to include a 'catch all' provision for eligibility for the work and development orders.

1. Introduction

1.1 Role of the committee

The Finance and Administration Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 27 March 2015 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.¹

The committee's primary areas of responsibility include:

- Premier, Cabinet and the Arts
- Treasury, Trade and Investment, and
- Employment, Industrial Relations, Racing and Multicultural Affairs.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles, and
- for subordinate legislation – its lawfulness.

1.2 The Bill referral

On 2 March 2017, the Treasurer and Minister for Trade and Investment, Hon Curtis Pitt MP, introduced the State Penalties Enforcement Amendment Bill 2017 ('the Bill') into the Legislative Assembly.² In accordance with Standing Order 131, the Bill was referred to the committee for consideration.³

The objectives of the Bill are to amend the *State Penalties Enforcement Act 1999* (the Act) to modernise the management of penalty debts by the State Penalties Enforcement Registry (SPER). The Bill has the following objectives:

- provide improved non-monetary debt finalisation options for people in hardship
- facilitate case management of debtors rather than the management of their individual debts
- establish fairer, simpler and more consistent fee arrangements
- create efficiencies in the management of disputes
- enhance information sharing between SPER and other prescribed agencies for penalty debt management purposes and improve SPER's information collection and disclosure provisions,
- assist SPER's enforcement functions.

The committee was required to report to the Legislative Assembly by 28 April 2017.

1.3 Inquiry process

The committee announced the inquiry by advertising the terms of reference on its website.⁴ The committee also wrote to stakeholders and to subscribers to inform them of the inquiry and invite written submissions.

¹ *Parliament of Queensland Act 2001*, section 88 and Legislative Assembly of Queensland, *Standing Rules and Orders of the Legislative Assembly*, 131.

² Queensland Parliament, Record of Proceedings, 2 March 2017, pp 489-491.

³ Queensland Parliament, Record of Proceedings, 2 March 2017, p 491.

⁴ <http://www.parliament.qld.gov.au/work-of-committees/committees/FAC/inquiries/current-inquiries/SPERAmendmentBill2017>

Following a request for assistance on the Bill, Queensland Treasury (Treasury) provided the committee with a written briefing and, on 22 March 2017, attended a public briefing on the Bill.

The closing date for submissions was 24 March 2017. The committee received a total of 33 submissions, one which was provided confidentially. A list of submitters is provided at **Appendix A**.

The committee held a public hearing in Brisbane and a regional hearing on the Gold Coast. Additionally, the committee held a videoconference hearing with witnesses in Ipswich, and a teleconference hearing with a witness in Townsville. A list of the witnesses is available at **Appendix B**.

The committee provided a list of questions to the department for its response. A copy of the questions and the response is at **Appendix C**.

Copies of material published in relation to the Inquiry, including written advice, transcripts of the committee's public briefing and public hearings, and all published submissions, are available on the committee's inquiry webpage.

1.4 Structure of the report

Chapter 2 details the committee's examination of the Bill, and provides a summary of the issues considered by the committee during the course of the inquiry.

Chapter 3 provides information on issues around SPER's collection of toll road fees.

Chapter 4 highlights clauses within the Bill that may contain issues with regards to fundamental legislative principles.

1.5 Outcome of committee deliberations

Standing Order 132(1)(a), requires that the committee examine the Bill and determine whether to recommend that the Bill be passed.

Recommendation 1

The committee recommends that the State Penalties Enforcement Amendment Bill 2017 be passed.

2. Examination of the Bill

2.1 Infringement notices

Section 14A Recovery of vehicle identification costs

Clause 11 of the Bill proposes inserting a new section 14A under Part 3, Division 1 regarding the costs involved with serving infringement notices. The new section provides that an administering authority may recover the cost of verifying ownership of a vehicle from a debtor as part of a fine, if an infringement notice offence involves a vehicle and the authority reasonably incurs a cost to establish ownership of the vehicle.

Issues raised in submissions

The Local Government Association of Queensland (LGAQ) suggested that this section be clarified to accommodate recovery of vehicle identification costs prior to referral to SPER and in recognition of different recovery practices by administering agencies.⁵

The Logan City Council sought clarification on whether the verification cost includes both the council officer time cost for conducting a search and the vehicle registration search cost to establish ownership of vehicle. The Logan City Council also sought clarification as to what constitutes 'reasonably incurs a cost in establishing ownership', as their interpretation was that it covered the cost of establishing ownership to issue a reminder notice to a vehicle owner, or the cost of identifying a vehicle owner to assist SPER recover costs. The Logan City Council also questioned whether the cost of establishing ownership would include obtaining registration details from Citec for the purpose of issuing a parking infringement notice to a vehicle owner by post in the first instance.⁶

Treasury advised that section 14A is intended to enable administering authorities to recover the cost of fees they incur to search vehicle registration records to identify the registered owner of a vehicle involved in an infringement notice offence, prior to referral of a debt to SPER.⁷ The verification cost may be reasonably incurred when the search is undertaken by an administering authority in order to issue an infringement notice to a vehicle owner by post in the first instance, or to issue a reminder notice to a vehicle owner by mail in cases where the notice was initially placed on the vehicle. The fee cost would be considered to have also been reasonably incurred if the search was undertaken to identify the vehicle owner so the relevant infringement notice debt could be referred to SPER for collection.⁸

Treasury acknowledged that administering authorities use different processes and practices to manage unpaid infringements, and that, as a result, administering authorities may incur the search fees at differing stages of the collection process. Treasury advised that the provision is intended to clarify and replace the arrangements provided in existing section 35(3) of the *State Penalties Enforcement Act 1999* (the Act), which only allows administering authorities to recover such fees where the unpaid amount is referred to SPER for collection. It is not intended to enable administering authorities to recover all costs incurred in conducting the search, such as the costs of staff time.⁹

Section 15 Infringement notices

Clause 12 of the Bill would amend section 15 of the Act to incorporate the responses to infringement notices and would also amend the required contents of an infringement notice to remove some of the required detail from the notice. It further requires that infringement notices inform the recipient of the amount of the verification cost if it has been incurred, and that if the alleged offender defaults the

⁵ Submission no. 11, Local Government Association of Queensland, p 2.

⁶ Submission no. 26, Logan City Council, p 2.

⁷ Queensland Treasury, response to issues in submissions, p 1.

⁸ Queensland Treasury, response to issues in submissions, pp 1-2.

⁹ Queensland Treasury, response to issues in submissions, p 1.

fine may be registered with SPER, additional fees may be payable and enforcement action may be taken to recover the fine.

Issues raised in submissions

The Logan City Council advised that administering authorities will need sufficient time to implement these changes after the legislation is enacted but before it commences as it may require changes to infringement notice templates and software systems.¹⁰

Treasury advised SPER will work with administering authorities to plan and manage the implementation, and that key provisions impacting on administering authorities will commence on proclamation, providing time for change management. SPER will work with all external stakeholders whose operations are impacted by the changes.¹¹

2.2 Work and development orders

Currently, the only option available to a person who cannot pay, but wants to discharge their debt non-monetarily, is to perform unpaid work under the supervision of a Probation and Parole Office (PPO) within Queensland Corrective Services. This means that the avenues currently available for non-monetary discharge rely solely on the capacity of PPOs and availability of community service projects which involve an unpaid work component.¹²

Clause 24 inserts new Part 3B providing for work and development orders (WDO), which provide a range of non-monetary options for debtors in hardship to discharge their SPER debt. WDOs are designed to increase the avenues currently available for non-monetary discharge by 'substantially increasing the number of organisations involved in supervising non-monetary debt discharge, and by including a broader range of activities that can be performed, in addition to unpaid work and ensure that access to opportunities is not reliant on the capacity of one service provider.'¹³

The Bill also provides that qualified and experienced professionals from not-for-profit community organisations, government agencies and health services will be able to register with SPER as *approved sponsors* for WDOs. The Bill therefore enables the establishment of genuine partnerships between SPER and the community service sector. Approved sponsors will assess a person's eligibility for a WDO, decide on an appropriate treatment/activity plan for the person, apply for a WDO on behalf of the person, oversee the WDO activities and report on progress.¹⁴

New section 32G would provide that a WDO is an order that requires a person to undertake one or more activities to satisfy all or part of the enforceable amount of the person's SPER debt. Activities that may be undertaken comprise: unpaid work; medical or mental health treatment provided by a health practitioner; an educational, vocational or life skills course; financial or other counselling; drug or alcohol treatment; a mentoring program for a person who is under 25 years of age; or a culturally appropriate program for a person who is an Aboriginal or Torres Strait Islander and lives in a remote area.

New section 32H would provide that an individual is eligible for a WDO, if the individual is unable to pay the enforceable amount of their SPER debt because the person: is experiencing financial hardship; has a mental illness; has a cognitive or intellectual disability; is homeless; has a substance use disorder; or is experiencing domestic and family violence. The meaning of mental illness and substance use disorder will be prescribed by regulation.

¹⁰ Submission no. 26, Logan City Council, p 2.

¹¹ Queensland Treasury, response to issues in submissions, p 2.

¹² Queensland Treasury, response to issues in submission, p 2.

¹³ Queensland Treasury, response to issues in submission, pp 2-3.

¹⁴ Queensland Treasury, correspondence received 13 April 2017, response to questions, p 5.

Sections 35 and 36 of the *Penalties and Sentences Act 1992* provide that a court may order an offender to pay a person (the victim) who has suffered property loss or damage or personal injury in connection with an offence, an amount by way of restitution or compensation. Court-ordered compensation and restitution may be registered with SPER, with amounts recovered from the offender being remitted to the victim.¹⁵ Section 32I provides that a WDO will not be available for discharging court orders to pay restitution or compensation to another person.

New section 32Q would provide that the registrar may revoke a WDO on prescribed grounds, and must be satisfied that the debtor has failed without reasonable excuse to comply with a WDO. Alternatively, the registrar must believe that one of the following grounds for revocation exist:

- information in connection with an application for a WDO is false or misleading in a material particular
- information in connection with an eligibility assessment is false or misleading in a material particular
- the individual no longer meets eligibility criteria stated on application
- the approved sponsor is unable to satisfactorily supervise the WDO or is in breach of an obligation under part 3B, or
- the person or entity supervising compliance with the WDO is no longer an approved sponsor.

Before revoking a WDO, the registrar must give written notice to the debtor that the registrar proposes to revoke the order and the reason for revoking the order. The registrar must also include information about the debtor's right to object to revocation in writing within a period stated by the registrar of at least 28 days. The written objection should state why the WDO should not be revoked.

The registrar must consider all written objections before making a decision, which may be to take no further action in relation to the order, or to vary or revoke the order. After making the decision, the registrar must give written notice to the person of the decision. If the decision is to vary or revoke the WDO, then the registrar must give the person notice of the decision complying with section 157 of the *Queensland Civil and Administrative Tribunal Act 2009*.

New section 32R would provide that:

- if a person complies with a WDO, the amount stated in the WDO is taken to be satisfied
- if a person pays the amount stated in the WDO, the person is taken to have complied with the WDO; and
- if a person complies with part of the WDO, the amount stated in the WDO is satisfied in part according to the value of activities undertaken and at the rate or rates stated in the order.

New section 32S would provide that a person may apply to the Queensland Civil and Administrative Tribunal for review of a decision taken by the registrar to refuse to make or vary a WDO, or to vary or revoke a WDO.

Issues raised in submissions

There was strong stakeholder support for the introduction of work and development orders with acknowledgement that they will only work if they are sufficiently funded.¹⁶

Section 32G Work and development orders

Mr Patrick Morton supported the concept as he believed the cost of a supervisor's time would be less than the cost of incarceration, but raised the concern that the approach had been tried in the

¹⁵ Queensland Treasury, response to issues in submission, p 7.

¹⁶ Bill Potts, Queensland Law Society, Brisbane public hearing transcript, 13 April 2017, p 12.

past but not succeeded because ‘the government wasn’t prepared to pay for a supervisor’s time to oversee the offenders who elected to work out their fine in community projects’.¹⁷

Several submitters raised the issue of the administrative role of service providers and their capacity to meet increased demand for their services which, without additional resources, may impact on the services provided.¹⁸

Submitters also raised the need for the implementation of the program to be carefully considered in conjunction with the community and potential sponsors, including the need for a working group to support effective implementation of the scheme and the need to ensure the scheme remained flexible, transparent and accessible.¹⁹

LawRight expressed support for the scheme as a means of addressing the underlying causes of offending and allowing individuals to improve their independence and agency.²⁰ More specifically, Drug ARM proposed the introduction of diversion services as part of the WDO scheme, including a reduction of fines for people accessing services such as Police Court Diversion or the Drug and Alcohol Assessment and Referral Service. Drug ARM also suggested that any additional program models from the pending Specialist Courts Review should also be taken in to consideration if they aren’t explicitly related to treatment.²¹

LawRight also raised concerns that new section 32G is unduly restrictive and will discriminate between Aboriginal and Torres Strait Islanders living in urban areas who may not be eligible for a culturally appropriate program. LawRight recommended the deletion of the words ‘and lives in a remote area’.²²

In its response to the submissions, Treasury advised SPER has, and will continue to, consult with Legal Aid Queensland (LAQ) on implementation of the work and development order program, noting that LAQ supports the introduction of work and development orders. It notes that LAQ’s operating model is substantially different from its New South Wales (NSW) equivalent. Further, LAQ advised SPER that as part of its existing information services to vulnerable clients, it could perform the role of promoting work and development orders and connecting clients to sponsors, without additional funding.²³

In reference to the issue of the capacity of service providers to provide such assistance, Treasury advised that, based on evaluations conducted on WDO programs in other jurisdictions, the majority of organisations that sponsor WDOs do so to assist their existing client base. Work and development orders provide an additional incentive to existing clients who would benefit from programs such as drug and alcohol counselling or treatment for mental illness, to participate in, and stay in, treatment. Community service providers will not be obliged to sponsor WDO participants. Post-implementation, an independent evaluation of the WDO program will be undertaken, which will include seeking feedback from sponsors.²⁴

Treasury also advised SPER will establish a WDO Implementation Reference Group to facilitate consultation with potential sponsors on the implementation of WDOs. The Reference Group will provide input and guidance to SPER on the implementation of WDOs, including the development of detailed guidelines which will support the operation of WDOs. SPER also intends to implement

¹⁷ Submission no. 12, Mr Patrick Morton, p 1.

¹⁸ Submission no 15, Office of the Public Advocate, p 1; Submission no. 21, Queensland Council of Social Services, p 1; Submission no. 24, Drug ARM, pp 1-2.

¹⁹ Submission no. 19, Ms Judy Andrews, p 1; Submission no. 21, Queensland Council of Social Services, p 1.

²⁰ Submission no. 27, LawRight, p 6.

²¹ Submission no. 24, Drug ARM, p 1.

²² Submission no. 27, LawRight, p 6.

²³ Queensland Treasury, response to issues in submission, p 3.

²⁴ Ibid.

streamlined administrative arrangements for WDOs that are not onerous for community service providers that register as approved sponsors.²⁵

To assist in promoting the WDO scheme, Treasury advised approved sponsors, including not-for-profit community organisations and government agencies, will play a key role in promoting the scheme to clients to ensure that vulnerable individuals are able to access the assistance available. SPER will develop paper-based and web-based communications and promotional material for use by community organisations and also promote the scheme through local community forums.²⁶

Treasury advised that SPER has been working with, and will continue to work with, the Department of Justice and Attorney-General and other agencies to ensure that where practical and appropriate, synergies between work and development orders and existing programs, such as the Drug and Alcohol Assessment and Referral Service, are leveraged during implementation.²⁷

Finally, in response to concerns raised regarding programs for Aboriginal and Torres Strait Islander participants living in urban areas, Treasury advised the inclusion of culturally appropriate programs for Aboriginal and Torres Strait Islanders living in remote areas is intended to respond to stakeholder concerns about limited access to service options in remote areas of the State by providing expanded options in those areas. It is intended that Aboriginal and Torres Strait Islanders living in urban areas will be able to access other activities, such as life skills courses, counselling and mentoring programs that are targeted to Aboriginal and Torres Strait Islanders, and delivered in a culturally appropriate way.²⁸

Section 32H Eligibility for work and development order

Several submitters recommended an additional category be added to this section, such as ‘other special circumstances’ to cater for people who don’t fit the categories listed, but should still be eligible to make an application under this provision for a WDO. For example, LawRight proposed that people experiencing disadvantage based on life circumstances should be eligible for this category, such as individuals exiting prison, those with unexpected illnesses or those with a gambling addiction. LawRight argued that this section ‘fails to achieve the objective of ‘inclusive eligibility criteria’’.²⁹

The Qld Law Society also suggested that:

*A guideline, provided to the administering authority to assist in the assessment of an individual who may be eligible for a work and development order pursuant to one or more of the identified categories (including the ‘catch-all’ category) will be useful to ensure that consistent decision-making is applied.*³⁰

In its response to written questions from the committee (see Appendix C), Treasury advised that currently, in order to be classified as in hardship, the person must be living in a remote community, be dependent on Centrelink benefits, be homeless, have a long-term medical condition, be a victim of a natural disaster or be recently released from custody.

Treasury advised that the government believes the eligibility categories provided for in the Bill provide sufficient scope for individuals to demonstrate eligibility on the basis of genuine hardship, and that specific eligibility criteria are needed to preserve the integrity of the scheme. Treasury also advised that publicly available guidelines and regulations will be developed, in consultation with key

²⁵ Queensland Treasury, response to issues in submission, p 4.

²⁶ Ibid

²⁷ Queensland Treasury, response to issues in submissions, p 5.

²⁸ Ibid.

²⁹ Submission no. 4, Community Legal Centres, p 2; Submission no. 17, Queensland Law Society, p 1; Submission no. 27, LawRight, p 5.

³⁰ Submission no. 17, Queensland Law Society, pp 1-2.

stakeholders, which will include clear definitions for each of the eligibility categories along with evidence of eligibility.³¹

Further, Treasury submitted that to address the concerns raised by submitters, SPER intends that the guidelines will provide that, where a person does not have sufficient evidence to demonstrate that they meet the eligibility criteria for financial hardship, then an application may be made to SPER by the sponsor to consider the specific circumstances of the individual. Treasury contended that this approach would ensure that individuals in genuine financial hardship would not be excluded from accessing WDOs.³²

Committee comment

The committee considers that the Bill would be improved with the inclusion of a 'catch all' provision that ensures that people who don't fit into one of the specified categories of hardship, e.g. those exiting prison, can be eligible for a work development order to reduce the risk of them being further disadvantaged. The guidelines outlined in Queensland Treasury's response can work in conjunction with such a provision.

Recommendation 2

The committee recommends that in proposed new section 32H, clause 24 be amended to include a 'catch all' provision for eligibility for the work and development orders.

32I No work and development order for restitution or compensation

Community Legal Centres raised an issue regarding new section 32I of the Bill, which provides that WDOs cannot be undertaken for restitution or compensation. Their submission states:

There is overlap between the cohort of SPER debtors who struggle to finalise their debts monetarily and those who have a history of being involved in the criminal justice system where compensation and restitution orders are made. The policy framework that recognises the limitations of individuals to pay at debt to the government should equally apply to compensation and restitution amounts administered by SPER so long as there is no disadvantage to the victim. Extending the applicability of WDOs has the potential to reduce the debtor's ongoing interaction with the criminal justice system, often at great cost to the State.³³

Treasury advised that section 9 of the Act currently provides that SPER must maximise the collection, for victims of offences, of amounts ordered to be paid by way of restitution or compensation. Treasury contended that, if WDOs applied to compensation and restitution amounts, there would be no way of avoiding the victim being disadvantaged as the victim would forego the opportunity to receive the monetary compensation or restitution ordered by the court.³⁴

Section 32R Satisfaction of SPER debt

The LGAQ advised it is not clear how WDOs will impact or be notified to the administering authority (e.g. local government) when a debt is finalised but no income is received. LGAQ suggested that SPER should regularly report back to administering agencies on the number of conversions to WDOs and the monetary value of debt worked off through WDOs, to enable reconciliation and financial management by administering agencies.³⁵

³¹ Queensland Treasury, response to issues in submissions, p 6.

³² Queensland Treasury, response to issues in submissions, pp 6-7.

³³ Submission no. 4, Community Legal Centres, p 3.

³⁴ Queensland Treasury, response to issues in submissions, p 7.

³⁵ Submission no. 11, LGAQ, p 2.

The Office of the Public Advocate raised a concern that there has not been a ‘proper write-off system’ established for debts for people who cannot pay the debt and who should not have been liable for the fines in the first instance, such as people with impaired capacity who cannot be held criminally liable for their actions. The Office of the Public Advocate argued that the current system of writing off such debts is not transparent and is largely unknown to the general public.³⁶

Treasury advised that unpaid infringements registered with SPER by local governments for enforcement can currently be discharged non-monetarily through a fine option order. The same reconciliation and financial management arrangements that currently apply to fine option orders, would apply to WDOs. As part of the implementation of its new service delivery model, SPER intends to provide enhanced reporting to administering agencies.³⁷

In reference to writing off debts, Treasury advised that section 150B of the Act provides that a guideline issued by the Minister about the writing off of unpaid fines and other amounts payable under the Act must not be made available to members of the public, with the intention being to ensure debtors are not in a position to find and exploit possible loopholes to avoid payment of fines. Treasury also advised the policy associated with the writing off of SPER debts is not within the scope of the Bill.³⁸ Further information on the policies and procedures to write off SPER debt can be found in Appendix C under Query 6.

Section 32Q Revocation of Work and Development Orders

LawRight raised the issue of revocation of a WDO when the hardship is deemed to be over. LawRight proposed that ‘any decision to refuse, revoke or vary a WDO on the basis of a change in the person’s eligibility should be made in genuine consultation with the sponsor and the participant’.³⁹

LawRight also stated that ‘SPER should publish clear guidelines in relation to eligibility considerations, enforcement action and hardship options for people experiencing disadvantage’, and recommended that:

...the SPER Guideline includes a clear implementation process outlining the factors the registrar needs to consider when an individual’s situation changes. For example, the registrar should not consider that receipt of a Victims Assist payment would immediately make an individual ineligible for the WDO scheme, when they have previously been eligible due to financial hardship.

Lastly, LawRight recommended that a section is inserted in the Bill to allow for the registrar’s exercise of discretion to extend the timeframe in new section 32Q.⁴⁰

Treasury advised that ministerial guidelines will detail the operational process preceding formal revocation proceedings, and that SPER would work directly with the approved sponsor to understand the circumstances of the individual prior to proceeding with formal revocation processes. These processes will be clearly outlined in publicly available guidelines, which will be developed in consultation with key stakeholders.⁴¹

Section 32S External review of decisions under this part

LawRight noted there is no internal review process in the Bill for decisions of the registrar, and recommended transparent and accessible internal review process for registrar decisions.⁴²

³⁶ Submission no. 15, Office of the Public Advocate, p 1.

³⁷ Queensland Treasury, response to issues in submissions, p 7.

³⁸ Queensland Treasury, response to issues in submissions, p 8.

³⁹ Submission no. 27, LawRight, p 6.

⁴⁰ Ibid.

⁴¹ Queensland Treasury, response to issues in submissions, pp 5-6.

⁴² Submission no. 27, LawRight, pp 6-7.

Treasury advised that SPER has internal review processes in place for its decisions, and that appropriate internal review processes will consequently be applied in relation to WDOs upon commencement.⁴³

2.3 Registering unpaid amounts with SPER for collection

Clause 25 provides for new definitions under division 1 of part 4 and amended procedures for registering unpaid amounts with SPER under new divisions 1A and 1B, with section 35 stating that, if an administering authority is entitled to retain the proceeds of any fine paid to it, the authority must pay a lodgement fee each time the authority registers an infringement notice default or an early referral under section 23 with SPER. It further provides that the registrar may refund the lodgement fee under circumstances prescribed by regulation, such as if an infringement notice default is withdrawn from SPER before the debt becomes enforceable under part 5.

Issues raised in submissions

The LGAQ raised the concern that the registration fee, which will no longer be recoverable, will impose additional financial burdens on administering agencies. The LGAQ advised that SPER has given a commitment that the debt lodgement fee value will be set on the basis that it is cost-neutral in the first instance, and that SPER has undertaken to refund lodgement fees if a debt is withdrawn or recalled from SPER within 35 calendar days.⁴⁴

Treasury advised that it is intended that the lodgement fee would be implemented on a budget neutral basis in the first instance, which is likely to be achieved by adopting an initial value for the lodgement fee based on SPER's long term finalisation rate for debts referred by fine retaining agencies. As a result, fine-retaining agencies collectively would pay no more under the revised arrangements in the first instance than they would pay under existing arrangements on a no policy change basis. Under the business rules for SPER's new service delivery model, it is proposed that SPER will not commence enforcement action under part 5 until at least 35 days after an infringement notice default has been registered with SPER.⁴⁵

2.4 Issue of enforcement order and enforcement fee

Clause 26 amends section 38 of the Act regarding the circumstances under which an enforcement order is issued and the method for establishing the total cost of the fee. Section 38 also provides that a single enforcement order may relate to one or more infringement notice defaults.

Clause 27 inserts new section 39 regarding the enforcement fee imposed for an enforcement order. If an enforcement order is required, the debtor must also pay SPER the enforcement fee prescribed by regulation for making the enforcement order. The amount of the enforcement fee is added to the debtor's SPER debt.

Issues raised in submissions

LawRight submitted that registration and enforcement fees constitute a significant proportion of SPER debt, when compared to infringement amounts, and stated:

Administrative fees disproportionately affect people who are on a low income, who are not able to pay the infringement amount at the time it is incurred. For our vulnerable clients, the ongoing accrual of enforcement and registration fees makes it increasingly impossible for them to address their SPER debts and further entrenches their disadvantage. We support a fee arrangement that is consistent, clear, and recognises the disproportionate affect [sic] of administrative fees on people in poverty.

We also note new sections 38(3) and 39, which now stipulate that an enforcement order may relate to one or more infringement notice defaults. People experiencing multiple

⁴³ Queensland Treasury, response to issues in submissions, p 6.

⁴⁴ Submission no. 11, Local Government Association of Queensland, p 2.

⁴⁵ Queensland Treasury, response to issues raised in submissions, p 8.

forms of disadvantage engage more regularly with the criminal justice system, incurring fines that they are unable to pay within the 28 day period. The imposition of enforcement fees in these circumstances further marginalises vulnerable people, enforcing greater disadvantage.⁴⁶

Treasury advised that the new arrangements for early referral of infringement debts will provide people, such as vulnerable people and people with a low income, with the opportunity to have their debts referred to SPER early so they can enter into a payment plan with SPER without incurring any SPER fees. Treasury suggested that this arrangement will also encourage disadvantaged people to engage with SPER earlier to resolve their debts.⁴⁷

Treasury also advised that new sections 38(3) and 39 will enable a single enforcement order to be made for multiple unpaid infringement notices issued to the same individual, with payment plans reflecting payment amounts that take into account the individual's circumstances.⁴⁸

By providing that an enforcement order may relate to one or more infringement notice, Treasury stated that 'this has the potential to reduce the fees imposed incurred by vulnerable people who engage more regularly with the criminal justice system if multiple infringement notice defaults are referred to SPER at the same time by an administering authority.' Additionally, Treasury advised that by providing that an enforcement order may relate to one or more infringement notice, new sections 38(3) and 39 will enable a single enforcement order to be made for multiple unpaid infringement notices issued to the same person, thus reducing the fees imposed they incur.⁴⁹

2.5 SPER communication

The committee heard from several witnesses that advised the communication from SPER is unclear and could be vastly improved. This is particularly so when they are communicating with vulnerable people.⁵⁰

The committee heard that debtors struggle to obtain a statement of their debts including the charges applied at each step of the process. Rather, a total amount is advised leaving some debtors confused as to how small amounts can escalate.⁵¹ [Note: this matter is discussed further, below regarding fines relating to road tolls].

Committee comment

It is clear that many of SPER's clients are disadvantaged members of our community. It is important that SPER ensures that its communication is clear and provides sufficient detail for the person to understand the debt they owe.

2.6 Cancellation of enforcement orders relating to infringement notice defaults

Clause 37 replaces Part 4, Division 6 of the Act, relating to cancellation of enforcement orders for infringement notice defaults.

New section 56 would provide for an application for cancellation of all or part of an enforcement order. This section outlines the reasons a person owing money may apply for a cancellation of an enforcement order, and the conditions under which an application can be made. Section 56 includes

⁴⁶ Submission no. 27, LawRight, p 3.

⁴⁷ Queensland Treasury, response to issues raised in submission, p 9.

⁴⁸ Queensland Treasury, response to issues raised in submissions, p 9.

⁴⁹ Ibid.

⁵⁰ Mr Stephen Grace Coordinator, Homeless Persons' Legal Clinic, LawRight, Brisbane public hearing transcript, 13 April 2017, p 8.

⁵¹ Kristen Vink, Brisbane public hearing transcript, 13 April 2017, p 17.

a provision for a single application to be made for the cancellation of two or more enforcement orders made against the enforcement debtor.

New section 57 provides the parameters for the consideration of an application as to whether to cancel the enforcement order or refuse to cancel the order. Section 57 would also provide that the decision maker must give the applicant notice of the decision in the approved form. New subsections (3) and (4) enable the decision maker to suspend the application if satisfied that the person did not receive a notice or an order because the person failed to comply with a legal requirement to inform a government body of a change of address. Suspension of the application may continue until the applicant satisfies the decision maker that the failure to update address has been corrected.

New section 60 sets out proceedings that may occur after the cancellation of the enforcement order. An additional option of being able to re-issue the relevant infringement notice with an amended due date (and potentially amended address of the applicant) with the applicant's agreement is proposed in the Bill. Section 60(3) provides that for starting a proceeding against the applicant for the relevant offence, the limitation period for making a complaint under the *Justices Act 1886*, section 52 is extended until 1 year after the day the order is cancelled.

Issues raised in submissions

Logan City Council submitted that if a council makes the decision to cancel the enforcement order, they should not be liable to pay the SPER administration fee, and therefore the fee should be refunded. Further, Logan City Council submitted that it is important that SPER provide local governments with an administrative procedure on the process to assess whether an enforcement order should be cancelled, to ensure state-wide consistency. Logan City Council also requested clarification on the limitation on proceedings being extended until one year after the date the order is cancelled.⁵²

Treasury advised it does not consider it appropriate to return a lodgement fee to an administering authority solely because the authority makes a decision to cancel an enforcement order. This is because an application to cancel an enforcement order can occur at any point in the enforcement process, prior to finalisation of a debt, and may include after SPER has taken actions and incurred costs to enforce the debt on an administering authority's behalf.⁵³

Instead, Treasury advised the Bill proposes that the registrar will have authority to return lodgement fees an application to cancel an enforcement order is made prior to SPER undertaking enforcement action (i.e. prior to incurring costs to enforce the authority's debts).⁵⁴

Treasury also advised revised provisions relating to disputes (cancellation of enforcement orders relating to infringements) will commence on proclamation, enabling time for SPER to work with administering authorities, including local governments, to develop a transition plan. This plan may include the development of a practice guideline that is informed by SPER's practice in administering these disputes.

Regarding clarification on the limitation on proceedings, Treasury advised that proposed section 60(3) re-enacts an existing provision that extends the time for starting a proceeding by extending the limitation period for making a complaint under the *Justices Act 1886* section 52 until one year after the date the order is cancelled.⁵⁵

2.7 Issue of fine collection notice

Clause 44 amends section 75(1) and (2) of the Act to include a new paragraph that provides for a fine collection notice, which directs a financial institution to make payment of an amount from money held

⁵² Submission no. 26, Logan City Council, p 3.

⁵³ Queensland Treasury, response to issues in submissions, p 10.

⁵⁴ Queensland Treasury, response to issues in submissions, p 10.

⁵⁵ Queensland Treasury, response to issues in submissions, p 11.

by the institution on behalf of the debtor. This is in addition to the existing fine collection notices that may be issued under the Act. This clause also requires that when the fine collection notice is issued, the enforcement debtor's SPER debt be increased by the enforcement fee for issuing the fine collection notice.

Issues raised in submissions

LawRight submitted that the Bill should include protections for vulnerable or destitute Queenslanders subject to fine collection notices, similar to the protections granted for redirected earnings (section 82(2) the SPE Act) or protections proposed when a financial institution makes a deduction. LawRight stated:

Under section 82(2) of the Act, an employer may not deduct an amount from a person's earnings that would reduce the person's income to below the protected earnings amount, which is currently \$716.10 per fortnight.

Clause 47 of the SPER Bill seeks to introduce section 103C(3)(b) which stipulates that financial institutions are unable to withdraw an amount that would cause an account to be less than the protected amount, which is to be prescribed by regulation.

We submit that a similar protection should be applied to the redirection of deposits made to financial institutions under proposed section 75(1)(c).⁵⁶

Treasury advised that for all fine collection notices (FCNs), section 77 provides for an enforcement debtor to apply to the registrar for the cancellation, suspension or variation of all or part of an FCN for facts that arise or are discovered after the FCN is issued. In the event an FCN has been issued for the regular redirection of deposits made to a financial institution account and the FCN results in financial hardship, this provision is able to be invoked.⁵⁷

Treasury advised further consideration will be given to the suggestion provided in LawRight's submission that a protected earning amount should apply for a FCN for regular redirection from a financial institution account.⁵⁸

Committee comment

The Committee considers that the Bill is not sufficiently clear regarding the protection of a debtor's earnings. This issue could be overcome if SPER publishes information regarding the minimum protected earnings on its website.

2.8 Information sharing

Clause 73 inserts a new Part 8A which consolidates all provisions regarding information sharing, including information collection and information protection.

Section 134E Power to record giving of information

Section 134E would authorise SPER to record interviews, with the provision that the person must be made aware of the fact of the recording and given a copy of the recording on request.

Issues raised in submissions

The Office of the Information Commissioner raised concerns that section 134E would not oblige SPER to inform the person of their right to request a recording, and therefore unless the person has knowledge of their right to request a copy, they may not exercise that right. In keeping with Information Privacy Principle 5 and National Privacy Principle 5 (which require that persons be actively informed of their rights, within reason, to access documents containing their personal information),

⁵⁶ Submission no. 27, LawRight, p 8.

⁵⁷ Queensland Treasury, response to issues in submission, pp 11-12.

⁵⁸ Queensland Treasury, response to issues in submission, p 12.

the Information Commissioner suggested a similar obligation to inform persons who are recorded that they can subsequently obtain a copy of the record should be added to 134E.⁵⁹

Treasury advised SPER must comply with the information privacy principles and therefore already has an obligation to inform the person they may obtain a copy of the recording. Accordingly, Treasury advised that it considers there is no requirement to change proposed section 134E in the Bill.⁶⁰

Section 134K Information sharing arrangements

New section 134K would provide for the registrar to be able to enter into an information sharing arrangement with an entity prescribed by regulation for the purpose of sharing information held by SPER or the prescribed entity. Information held by each party may be requested or received from the other party for the purposes of administration or enforcement of the Act, the administration or enforcement of a court order, enforcement of an offence administered by a prescribed entity or for another purpose prescribed by regulation.

The registrar may only disclose information prescribed by regulation. A prescribed entity may disclose information under an information sharing arrangement subject to any limitation on disclosure of that information under another Act.

Issues raised in submissions

The Office of the Information Commissioner raised issues with sub-section 134K(2)(c) stating that this sub-section:

...mentions the purpose of 'enforcement of an offence administered by a prescribed entity'. If the intent was to limit this potential use to the party to the information-sharing arrangement only, then the use of the term 'party' or even 'the prescribed entity' would make this clearer. At present there is a suggestion that the information could be shared with a party to an information-sharing to another entity, (albeit one prescribed under the Regulation) but which is nonetheless not necessarily a party to this information-sharing arrangement.⁶¹

The Office of the Information Commissioner also raised concerns with sub-section 134K(2)(d), stating it:

...is so broad it potentially negates all the preceding limitations. Section 134K(3) would to some degree put a regulatory limit on the information that could be disclosed, however the potential remains for a later change of regulation (subject to a lesser level of scrutiny) to provide almost unlimited information sharing for any purpose.⁶²

Treasury advised proposed section 134K(2) reflects a policy intention that the purpose of information sharing is limited to legitimate purposes related to penalty debt. Information may be provided to a prescribed entity for the purpose of enforcement of an offence administered by that entity. This information may also be provided by SPER to another entity where it is relevant to an offence administered by that entity. However, the power to prescribe further purposes by regulation ensures that the purposes are not unduly restricted having regard to practical requirements. Treasury advised it considers the relevant provisions of the Bill are appropriately limited to reflect the policy intention and section 134K(2)(d) should remain in the Bill.⁶³

⁵⁹ Submission no. 2, Office of the Information Commissioner, p 2.

⁶⁰ Queensland Treasury, response to issues in submission, p 12.

⁶¹ Submission no. 2, Office of the Information Commissioner, pp 2-3.

⁶² Submission no. 2, Office of the Information Commissioner, p 3.

⁶³ Queensland Treasury, response to issues in submissions, pp 12-13.

Treasury provided two examples, outlined below:⁶⁴

Example 1 - SPER may have obtained an updated address for a debtor from prescribed entity number 1. If asked by prescribed entity number 2 about the debtor's address details to assist them to enforce an offence they administer (e.g. helping them to determine the debtor's address to ensure an infringement notice is sent to the correct address), then SPER may share this information with prescribed entity number 2 to assist with enforcement of an offence administered by that agency.

Example 2 – A prescribed entity may request information from SPER on the value of debt outstanding for a person and whether it is being otherwise discharged or if it is under enforcement, to assess the status of a person who has dealings with the prescribed entity and with SPER, prior to a legal proceeding or for consideration during sentencing for a new offence. Outstanding debts may include not only those debts which have been referred to SPER by the prescribed entity, but by other prescribed entities.

Each entity in the above examples would also have an information sharing arrangement with SPER so would be subject to requirements regarding appropriate use of information received under the arrangement. If a prescribed entity places restrictions on the use of information provided to SPER the restrictions would be reflected in the relevant arrangement.

Section 134L Disclosure of confidential information by registrar

New section 134L outlines the parameters for the registrar to disclose confidential information, which includes personal information. The registrar may disclose confidential information that includes personal information to the person to whom the information relates, or to someone else with the consent of the person to whom the information relates or who the registrar reasonably believes is acting for the person to whom the information relates.

Issues raised in submissions

The Office of the Information Commissioner raised concerns about sub-section 134L(1)(a)(i) which allows the 'owner' of the personal information to give their consent for their information to be disclosed to 'someone else', and that consent can be express or implied. The Office of the Information Commissioner proposed that consent should be limited to express consent given the general sensitivity of the SPER area of operation.⁶⁵

The Office of the Information Commissioner also submitted that the definition of the term 'personal information' in section 134L is inconsistent with the definition given in section 12 of the *Information Privacy Act 2009* (IP Act), and SPER should use and reference the term 'personal information' as defined in section 12 of the IP Act.

The LGAQ proposed that information sharing should include release of date of birth information held by the Department of Transport and Main Roads to councils for debt recovery and enforcement purposes.⁶⁶

Treasury advised this ground for disclosure is consistent with section 11(1)(b) of the IP Act and SPER complies with the OIC guidelines in other circumstances and ensures consent is only implied in appropriate cases having regard to the nature of the information. Therefore, Treasury advised it is of the view that implied consent should remain in section 134L(1)(a)(i).⁶⁷

Treasury provided the following example:

⁶⁴ Queensland Treasury, response to issues in submissions, pp 12-13.

⁶⁵ Submission no. 2, Office of the Information Commissioner, p 3.

⁶⁶ Submission no. 11, Local Government Association of Qld, p 1.

⁶⁷ Queensland Treasury, response to issues in submissions, p 14.

SPER ensures it follows Office of the Information Commissioner (OIC) guidelines on Key Privacy Concepts – Agreement and Consent which outline that “where an individual has their Member of Parliament (MP), doctor, or solicitor write to an agency about a particular matter, an agency can assume that the individual impliedly agrees to the agency replying, including with any personal information about the person, to the MP, doctor, or solicitor”.⁶⁸

SPER often has to provide information for a response to letters from MPs in relation to matters regarding the SPER debt of a constituent. SPER relies on the current section 152G(2)(a)(i) of the SPE Act and the OIC guidelines regarding implied consent, to provide a response to assist the MP to respond to their constituent. If the disclosure on the basis of implied consent was removed from the SPE Act, this may limit SPER’s ability to provide information for an appropriate response to MPs.

Treasury also advised that, as SPER debtors are corporations as well as individuals, it is appropriate that confidentiality requirements apply equally to both. Adopting the definition in the IP Act would mean the definition would only apply to individuals, and therefore Treasury contended the definition should remain as drafted to allow for the limited appropriate disclosure of information about corporations.⁶⁹

Treasury advised it supports the receipt of date of birth information by councils and is of the view it would assist with upfront fine recovery by councils and reduce the likelihood of debts being sent to SPER, but the arrangements for sharing of date of birth information from TMR to councils are outside the scope of the Bill. However, Treasury advised that the Department of Transport and Main Roads (TMR) has approved the release of a debtor’s date of birth to local councils for debt recovery and enforcement purposes and this arrangement is being implemented.

In relation to SPER providing such information, Treasury advised if councils are a prescribed agency as part of the permissive information sharing regime under the Bill, they could obtain any date of birth information held by SPER, if date of birth information is information prescribed by regulation for the permissive information sharing arrangement.⁷⁰

2.9 Waiver of SPER debt

Clause 77 inserts new sections relating to waiver or return of fees payable under the Act and redirection of amounts to unpaid SPER debts.

Section 150AA would allow the registrar to waive or return all or part of a fee payable by a person under the Act in circumstances prescribed by regulation, which may include if the enforcement debtor is experiencing hardship. However, it allows for the registrar to reinstate a waived fee if the fee was incorrectly identified for waiver or if reinstatement is permitted under circumstances prescribed by regulation.

Section 150AB allows the registrar to apply all or part of an amount payable to a person under the Act to a SPER debt.

Issues raised in submissions

LawRight’s submission supported the proposed waiver of SPER debt but considered that section 150A is currently not applied in practice. LawRight expressed support for a system that encourages the resolution of a person’s SPER debt while recognising their disadvantage, and submitted that a clear and accessible process to apply to have a debt waived, including the associated fees, would achieve

⁶⁸ Queensland Treasury, response to issues in submissions, p 14.

⁶⁹ Queensland Treasury, response to issues in submissions, p 15.

⁷⁰ Ibid.

this outcome. LawRight also noted that similar guidelines for the waiver of debt were not made public in New South Wales and Victoria and recommended the guidelines be made public.⁷¹

Treasury advised that section 150AA will provide the registrar with the ability to waive or return all, or part of, fees payable under the Act in certain circumstances, and these circumstances in which fees may be waived will be prescribed in regulation and therefore be publicly available. This will also enable SPER to better recognise financial hardship and help address the disproportionate effect of SPER fees on people in financial hardship. Treasury also advised this power is separate to, and distinct from, the existing power in the Act for the registrar to write off unpaid amounts in accordance with guidelines issued by the Minister.⁷²

Treasury advised that the policy associated with writing off SPER debts is not within the scope of the Bill, however, SPER has established a process to undertake regular debt write off in accordance with guidelines issued by the Treasurer.⁷³

2.10 Information Management

Clause 79 would insert new section 151, which provides that the registrar may approve an information system for generating, sending, receiving, storing or otherwise processing electronic communications between SPER and an administering authority, or between SPER and an enforcement debtor or another person, or for generating a decision of the registrar, other than a decision prescribed by regulation.

Issues raised in submissions

LawRight raised concerns that the information management system will automatically generate correspondence and decisions. LawRight submitted that this is an inappropriate form of communication to vulnerable Queenslanders as outdated information generated by an automatic system could cause distress and be confusing for vulnerable clients. LawRight encouraged further development of effective communication regarding SPER debts particularly with vulnerable clients, for example, those with mental health concerns.⁷⁴

Treasury advised automated correspondence is an efficient way to communicate with large volumes of SPER debtors and allows SPER to implement its new service delivery model, which includes enabling those who can, to self-serve, and allow SPER to better respond to those who have difficulty paying and those who choose not to pay. Treasury also advised that this model will mean SPER will be better informed of a person's circumstances earlier in the debt recovery process and will be better able to identify those people experiencing hardship earlier. Additionally, debtors receiving correspondence also have the option to contact SPER by phone to discuss correspondence received if it is unclear. As part of its new service delivery model, SPER is reviewing all its correspondence to make improvements to tailor and clarify the messages in the correspondence.⁷⁵

Treasury advised that one example is the generation of an enforcement order requiring a person to pay a SPER debt and which outlines how they may respond to the debt. Issuing an enforcement order is generally the first step after a debt is registered with SPER and requires no discretion in decision making, so the notice will be automatically generated by the system.⁷⁶

⁷¹ Submission no. 27, LawRight, p 9.

⁷² Queensland Treasury, response to issues in submissions, p 16.

⁷³ Queensland Treasury, response to issues in submissions, p 16.

⁷⁴ Submission no. 27, LawRight, p 4.

⁷⁵ Queensland Treasury, response to issues in submissions, pp 16-17.

⁷⁶ Queensland Treasury, response to issues in submissions, p 17.

Committee comment

As noted above, a common theme raised in this inquiry was the lack of personal communication from SPER. Automatically generated correspondence, while it may be efficient may not be appropriate for some of SPER's clients who may be vulnerable.

2.11 Support for the Bill

A number of submissions expressed support for the Bill as a means of reforming SPER.⁷⁷ Councils expressed support for the objective of moving from a one-size fits-all debt recovery model to a contemporary risk-based approach to debt recovery. While issues were still raised with various aspects of the Bill, support was provided for provisions relating to case management, consistent fee arrangements, dispute management and information sharing between agencies.⁷⁸

Support was also expressed for the amendments to the Act which were perceived to result in less adverse impacts on disadvantaged, marginalised and vulnerable people and improvements in how such people interact with SPER.⁷⁹ Particular support was expressed by a number of submitters for the introduction and development of payment plans and WDOs. While many of these submitters also raised issues with the proposed provisions within the Bill, and made suggestions to amend the provisions or to assist with implementation of the WDO scheme, there was general support for a scheme allowing prescribed persons an option to pay their debt through non-financial means.⁸⁰

In particular, it was suggested that WDOs would provide people with non-monetary options that reduce their risk of greater involvement in the criminal justice system, and potentially address the underlying causes of offending. It was suggested WDOs would allow individuals to improve their independence and agency by engaging clients in appropriate treatment or activities that they may not otherwise have engaged in, including in particular mental health, drug and alcohol treatment while also reducing their SPER debt.⁸¹

Support was also expressed for the use of electronic communications⁸² and the implementation of the proposed SPER Reference Group to address the concerns and issues raised about the implementation and operation of the WDO scheme.⁸³

⁷⁷ Submission no. 17, Queensland Law Society, p 1; Submission no. 18, Legal Aid Queensland, p 1.

⁷⁸ Submission no. 11, Local Government Association of Queensland, p 1; Submission no. 26, Logan City Council, p 1; Submission no. 31, Council of the City of the Gold Coast, p 1; Submission no. 33, Cassowary Coast Regional Council, p 1.

⁷⁹ Submission no. 4, Community Legal Centres, p 1, Submission no. 27, LawRight, p 1.

⁸⁰ Submission no. 15, Office of the Public Advocate, pp 1-2; Submission no. 17, Queensland Law Society, p 1; Submission no. 19, Judy Andrews, p 1; Submission no. 21, Queensland Council of Social Services, p 1; Submission no. 30, Queensland Advocacy Incorporated, p 12.

⁸¹ Submission no. 4, Community Legal Centres, p 2; Submission no. 27, LawRight, p 3; Submission no. 27, LawRight, p 3; Submission no. 24, Drug ARM, p 1; Submission no. 30, Queensland Advocacy Incorporated, p 12.

⁸² Submission no. 27, LawRight, p 4; Submission no. 30, Queensland Advocacy Incorporated, p 11.

⁸³ Submission no. 27, LawRight, p 8; Submission no. 21, Queensland Council of Social Services, p 2.

3. SPER's collection of tolling related debt

The committee has included this section on road toll collection.⁸⁴ While this matter sits outside the provisions of the Bill, it is important in the scope of the policy of this Bill. Additionally, a number of submitters and witnesses raised issues with the referral of toll road debts to SPER and the associated fines and charges during the committee's inquiry.

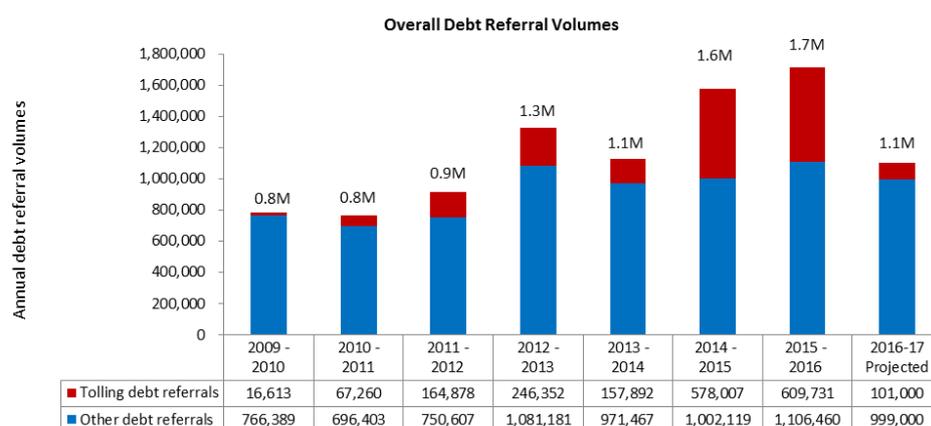
3.1 Toll related debt

In his explanatory speech, the Minister stated that tolling debts now stand at a total of more than \$232 million.⁸⁵ As at 28 February 2017, the composition of the SPER debt pool shows that tolling is the major debt at \$228.4 million.⁸⁶ The Department advised that the introduction of e-tolling in 2009 accounted for the step increase in tolling-related debt from 2009-10. It further stated:

The value of tolling related debt referred in 2015-16 was \$138 million. Approximately \$15 million has been referred to date in the current financial year. The total value of tolling-related debt referred in the 2016-17 year is projected to be \$22 million.⁸⁷

And:

The volume of tolling-related debt referred to SPER increased significantly during 2014-15 and 2015-16. The reduction in referrals projected for the current financial year is due to significantly reduced volume of tolling-related debt referred by the Department of Transport and Main Roads (DTMR).⁸⁸



Source – Queensland Treasury

Treasury also advised that different SPER debts have different collection rates – toll-related debt has a lower than average collection rate, takes longer to collect and consequently accumulates in the pool at a higher rate than other debt types. The sustained significant reduction in tolling-related debts will, over time, significantly impact the mix of debts that accumulate in the pool.⁸⁹

⁸⁴ This section of the report includes information provided by Queensland Treasury.

⁸⁵ Hon C Pitt MP, Treasurer and Minister for Trade and Investment, Queensland Parliament Record of Proceedings, 2 March 2017 at 490

⁸⁶ Queensland Treasury correspondence received 13 April 2017, response to questions, Attachment 1, p 5.

⁸⁷ Queensland Treasury correspondence received 13 April 2017, response to questions, Attachment 1, p 2.

⁸⁸ Queensland Treasury correspondence received 13 April 2017, response to questions, Attachment 1, p 1.

⁸⁹ Queensland Treasury correspondence received 13 April 2017, response to questions, Attachment 1, p 5.

3.2 Overview of Treasury advice re tolling enforcement

Treasury provided an overview of the tolling enforcement process in its response to issues raised in submissions.⁹⁰ Below is a brief overview of that information.

Compliance

Tolling compliance and enforcement is governed by a suite of legislation and agreements:

- the *Transport Infrastructure Act 1994* (TIA)
- the Road Franchise Agreement (Gateway and Logan Motorways)
- the Airport Link Project Deed
- Agreement for Provision of Vehicle Registration Information for Toll Compliance (TRAILS agreement)
- the *State Penalties Enforcement Act 1999* (the Act) and the associated State Penalties Enforcement Regulation 2014

The TIA sets out the legislative framework for tolling compliance and enforcement for the State's toll roads and is applicable to all motorists who elect to use the toll roads. (Note: a separate Part 8 applies to local government toll roads.) The TIA also establishes an offence for failing to comply with a notice of demand (issued by the toll road operator (TRO) for an unpaid toll), unless the registered operator has a reasonable excuse. It also provides for the process to be used by a registered owner to make a driver nomination to the toll road operator as a response to a request for payment by the TRO.⁹¹

Toll Road Declarations

The Minister for Main Roads may declare, under the TIA, that a toll is payable for the use of a franchised road. Current declarations are in place for the Gateway and Logan motorways and Airport Link M7. The declarations include information on the maximum tolls for each vehicle class, the maximum user administration charge (for example, the video matching fee) and maximum administration charge for issuing a demand notice for unpaid tolls, methodology for annual CPI increases and a description of available payment arrangements.

Road Franchise Agreement – Gateway and Logan motorways

The Road Franchise Agreement (RFA) between the State and the franchisees (Queensland Motorways Pty Limited, Gateway Motorway Pty Limited and Logan Motorways Pty Limited) came into effect on April 1, 2011. The RFA sets out the rights and obligations of the parties in relation to the operation and maintenance of the Gateway and Logan motorways for the duration of the 40 year concession period, ending 2051. The RFA identifies the requirement for the State to undertake enforcement services for the Gateway and Logan motorways.

Airport Link Project Deed In 2008

In 2008, the State entered into a Road Franchise Agreement (in this instance, part of a Project Deed) with Brisconnections under the TIA, for the Airport Link project.

The Project Deed authorised the construction of infrastructure for the Airport Link works (including the toll road) and granted a 45 year concession to Brisconnections Trustee and Brisconnections Operations (collectively referred to as 'Brisconnections') to:

- design, construct and commission the AirportLink project, and
- operate, maintain and repair the toll road.

The Project Deed the State's enforcement regime (similar to Queensland Motorways' RFA) applicable to toll roads in 2008 pre-dated the removal of toll booths and the introduction of e-tolling in July 2009.

⁹⁰ Queensland Treasury, response to issues raised in submissions, Attachment 1

⁹¹ See Section 99 *Transport Infrastructure Act 1994*

At that time, there were fewer demand notices and referrals to TMR for the issue of a penalty infringement notice (PIN) because motorists had an “on-road” method for payment (and subsequent barrier) for paying the toll. The Project Deed concession period ends in 2053.

Agreement for Provision of Vehicle Registration Information for Toll Compliance (TRAILS agreement)

TMR collects and maintains a register of Vehicle Registration Information under the *Transport Operations (Road Use Management - Vehicle Registration) Regulation 1999*. TMR provides toll road operators with select information collected in its motor vehicle registration database (TRAILS) for a fee. The motor vehicle registration information is used by toll-road operators for two specific purposes:

Information	Specific use
Vehicle details (make, model, weight, number of axles and purpose of use)	To help calculate the correct toll for motorists
Name, street address, email address and telephone number of the registered operator	To follow-up with motorists who have not made an arrangement to pay for use of the toll roads.

The toll-road operators conduct initial compliance activities including the issue of unpaid toll invoices. The invoice charges are identified as user administration charges (video matching fees and casual user invoice fees) under the toll road declarations. Where an invoice is unpaid, the toll road operator may issue a demand notice.

State Penalties Enforcement Act 1999 (the Act) and the State Penalties Enforcement Regulation 2014

The State Penalties Enforcement Registry (SPER) operates under the Act and the *State Penalties Enforcement Regulation 2014*.

Part 3 of the Act provides the legislative basis and supporting framework that enables administering authorities such as TMR to issue a PIN, commonly known as a fine or ticket, including specification of what must be included in the infringement notice. The remainder of the Act deals with centralising and executing the collection and enforcement of unpaid fines and court ordered amounts which are referred to SPER.

The State Penalties Enforcement Regulation 2014 is subordinate legislation that:

- sets out the offence provisions (across all Acts that define offences) that are prescribed as infringement notice offences for which PINs may be issued;
- prescribes the administering authorities and the authorised persons for infringement notice offences;
- prescribes particulars that must be included in infringement notices and details that an administering authority must provide to SPER regarding an unpaid PIN; and
- prescribes fees and other monetary amounts relevant to the administration, collection and enforcement of unpaid amounts.

Schedule 1 of the State Penalties Enforcement Regulation 2014 reflects inclusion of the offence specified in Section 99 (3) of the TIA as a penalty infringement notice (PIN) offence with a value of 1 2/5 penalty units. The current value of a penalty unit is specified as \$121.90 in the *Penalties and Sentences Regulation 2015*. The current value for a tolling-related PIN is \$170.

Current process

Since the introduction of e-tolling in July 2009, motorists no longer stop on the toll road to pay the fee. Those who do not have a payment arrangement (i.e. an electronic tag in the car) must contact Transurban Queensland (through GoVia – Transurban Queensland’s toll payment provider) to arrange toll payment within 3 days of travel.

Of particular note are the following:

- Due to the high volume of transactions (more than 300,000 trips per day), compliance with timeframes for payment and driver nominations are critical for efficient processing. The window for a road user to negotiate with the toll road operator closes with the referral of the unanswered demand notice to TMR for consideration of issuing of a PIN. At that point, the toll road operator stops pursuing the revenue (i.e. it writes off the specific debt). Legislation and other agreements governing the processes used by the toll road operator are administered by the Minister for Main Roads.
- It is TMR's current practice to accept statutory declarations in relation to not being the driver of the vehicle as a valid response to a PIN.
- Further, the Act enables an administering authority to withdraw a PIN at any time before it is fully paid, including after referral to SPER. This provides a mechanism for TMR to accommodate exceptional circumstances, the facts of which may emerge after referral of a PIN or multiple PINs to SPER. For example, the registered operator may write to the Director (Central Operations and Support) and provide proof:
 - they were away from their residence or outside of Australia at the time of the demand notice being issued,
 - they had sold the registered vehicle prior to the toll travel occurring, yet TMR records did not reflect this at the time of demand notice issue, or
 - the registered operator provides supporting evidence of an exceptional circumstance for failing to comply with the demand notice, satisfying the "reasonable excuse".
- PINs issued by TMR are in relation to a single demand notice and a single tolling event.
 - Under the proposed amendments (Clause 26, proposed section 38 (6)), individual PINs can be aggregated on a single SPER enforcement order, to which a single fee will apply. This means that when multiple tolling PINs for the same person are referred by TMR in a single batch, these will be aggregated by SPER for the purpose of issuing an enforcement order, and a single fee applied.
- Neither SPER nor TMR collect unpaid tolls. TMR and SPER collect only the fine (and associated enforcement fees in the case of SPER) that are owed to the State arising from the issue of a PIN by TMR. The TRO writes off revenue for each trip that is referred to TMR for a PIN, and receives no financial benefit from any subsequent PIN payment.
- The fine value for "failure to respond to a demand notice" is a matter of Government policy.
- SPER's role in enforcing tolling fines comes at the end of a lengthy process that typically lasts three to four months, during which people have had several opportunities to deal with their unpaid toll (with the TRO) or the resulting fine (with TMR).
- The TRO, TMR and SPER are critically reliant on contact details in the TMR database being current. If a person does not update their mailing address with TMR, the person will not receive any of their notices (invoice and demand notice from the toll road operator, penalty infringement notice from TMR or enforcement order from SPER). They may not be aware they are under enforcement until SPER undertakes data enrichment (to source a new address when notices come back to SPER as "return to sender" for example) and eventually makes contact with them or when pulled over by police while driving and are advised that their licence is suspended. Whilst some notices genuinely get lost in the mail, in most cases where people did not receive their notices, this is due to out of date address details in TRAILS.
 - There are provisions in the current Act (sections 55 -60) and proposed amendments (Clause 37) that enable people to apply to restart the PIN process (and cancel enforcement and reverse enforcement fees) if they did not receive their PIN. Proposed section 56 (6) re-enacts the existing provision to enable multiple PINs to be aggregated into one application. There is also a specific proposed amendment (Clause 37, proposed sub-sections 57(3) and (4)) that will require a person to update their address details with TMR before their application will be considered (if the reason they did not receive their PIN was because their address was not current).

- SPER does not treat tolling debt differently to other penalty debt. Rather, SPER's case management approach focusses on the total debt owed by the debtor in determining an appropriate treatment strategy.

Issues raised in submissions

Fees and penalties, and suspension of licence

A number of submitters and witnesses detailed their personal experiences with toll-related SPER debt. A common theme in this evidence was a lack of information provided to the debtor of how the final debt amount was reached i.e. several witnesses advised that the enforcement notice from SPER failed to detail the amount of the toll fees, charges imposed by the toll company, the fine issued by TMR or the charges etc imposed by SPER. Instead, the committee heard that the enforcement notice would have an amount owed by the debtor. The committee heard that this left many debtors feeling that the debt was unfair, unjustified and unreasonable.⁹²

Several people advised that the SPER debt notice was often the first advice of the debt they had received.⁹³

A number of witnesses also queried why the state government was collecting fines and toll fees for a private company.⁹⁴

Several submitters and witnesses considered that the suspension of a person's driving licence due to toll fees was unfair and will lead to further difficulties for that person. Some advised that their licence was suspended without their knowledge, leading to further fines for unlicensed driving.⁹⁵

Treasury advised that the State Government does not collect revenue for toll road operators.⁹⁶

It further advised that debtors have several opportunities to pay their infringement notice before being referred to SPER. After referral of an unpaid infringement notice to SPER, SPER is required to issue an enforcement order which gives the debtor a further opportunity to pay their debt in full or discharge their debt through a payment plan or non-monetary means. If the debtor does not pay or otherwise discharge their debt, they may be subject to enforcement.

Prior to suspending a debtor's licence, SPER must serve a notice of intention to suspend their driver licence on the debtor, providing the debtor a further 14 days to pay or otherwise discharge the debt. If the debtor does not act, then the debtor's licence is suspended. This notice is currently posted to the most reliable address held by SPER for the debtor, and also to the postal address nominated in the TMR database if this is different to the SPER address. The notice clearly outlines that if the debtor does not enter into compliance within 14 days of the date of notice, their licence will be suspended.

Due to the volume of notices sent, it is impractical for SPER to undertake personal follow-up with all debtors who do not subsequently enter into compliance. SPER is heavily reliant on contact details in the TMR database being current.

⁹² Maddie Johnstone, Toll Redress, Gold Coast public hearing transcript, 29 March 2017, p. 1 and p 5. See also submission no. 3, Alison Payne, p 1; Submission no. 8, Glenn Taylor, p 1; Submission no. 9, Andrew Turnbull, p 1&4; Submission no. 13, Cameron Richards, p 1 of attachment; and Submission no. 20, Josh Gale, p 1.

⁹³ Submission no. 7, Bernard Bradley, p 2; Submission No. 9, Andrew Turnbull, p 2; Submission no. 13, Cameron Richards, p 1 of attachment; Submission no. 14, John Zohrab, p 1; Submission no. 20, Josh Gale, p 1; and Submission no 25, David Holder, pp 1-2.

⁹⁴ Submission no. 6, Keith Thomas, p 1; Kristen Vink, Brisbane public hearing transcript, 13 April 2017, p 16.

⁹⁵ See for example Submission no. 22, Chris Abbott, p 1; Submission no 28, Wendy de Graaf; Kristen Vink, Brisbane public hearing transcript, p 18.

⁹⁶ Queensland Treasury, response to issues in submissions, pp 19-20.

The Bill proposes amendments to enable the service of all documents under the Act to postal addresses. Further, the Bill also provides for electronic service of documents to an electronic address such as an email address. Helping people to receive documents under the Act (including correspondence such as a notice of intention to suspend a driver licence) at an address most likely to result in receipt, gives people the maximum opportunity to respond early, pay or discharge their debt to avoid enforcement action.

Under the new service delivery model, SPER will send notifications to debtors alerting them that their drivers licence has been suspended. This is expected to include digital channels where possible.

Calls for independent ombudsman

A number of submitters called for an independent ombudsman to examine disputes regarding toll road fees and charges. Submitters also queried the impartiality of the Tolling Customer Ombudsman employed by Transurban.⁹⁷

Treasury advised that these matters are Government policy and outside the scope of the Bill. It further stated that sections 22 and 41 of the Act provide options to respond to an infringement notice including the ability to elect to have the matter of an offence decided in a Magistrates Court.

Additionally, the Queensland Ombudsman monitors complaints about the administration of toll related offences in regard to TMR, the Brisbane City Council and SPER.⁹⁸

Difficulties in dealing with toll-road operators

A number of submitters and witnesses advised that they have had difficulty navigating the public-private partnership (Transurban, Tolling Offence Unit, Tolling Ombudsman, SPER), to query, negotiate and manage fines and fees. The committee repeatedly heard that the toll road operator, TMR and SPER pass responsibility for dealing with the complaint to each other.

In one example, a submitter advised the committee that they managed to successfully appeal against the penalties with GoVia. However, GoVia then refused to advise SPER and TMR of the successful appeal, and TMR and SPER denied having any executive or administrative responsibility to deal with appeals or waivers would not accept the result of the appeal, despite the submitter having the email from GoVia advising the appeal had been successful.⁹⁹

Other stakeholders advised of difficulties in dealing with the road-toll company where the driver of the car was not the registered operator or owner of the car. Drivers who were not the registered vehicle operator advised of difficulties in paying the fees and registered owners and operators of vehicles advised of difficulty in referring the fees to the driver of the vehicle.¹⁰⁰

Treasury repeated that due to the high volume of transactions (more than 300,000 trips per day on State-controlled roads), compliance with timeframes for payment and driver nominations are critical for efficient processing. Legislation governing these processes falls within the portfolio responsibilities of the Minister for Main Roads. It did not however, provide advice from the Minister for Main Roads for the committee to consider, despite working with TMR to provide further responses to the committee's questions.

It further advised that under the existing section 28 of the Act, administering authorities are able to withdraw an infringement notice at any time before it is fully paid, including after referral to SPER. The Bill continues this provision with minor drafting changes. The extent to which this discretion is used by TMR to withdraw tolling-related offences is a matter for TMR to consider in the context of the

⁹⁷ Submission no. 8, Glenn Taylor, p 1; Submission no. 23, David Fowler, p 1; Submission no. 10, Sophie Skordilis, p 1; Submission no. 13, Cameron Richards, p 7 of attachment.

⁹⁸ Queensland Treasury, response to issues in submissions, p 20.

⁹⁹ Submission no. 13, Cameron Richards, pp 3-6 of attachment.

¹⁰⁰ Submission no. 16. John Freeman, p 1; Submission no. 6, Keith Thomas, p 1.

regulatory framework governing road use. This response however, does not address the issue of the lack of communication experienced by the submitter in the example above.

Calls for cash tools to be reintroduced

Two submitters called for the re-introduction of cash toll booths to address the growing referral of toll road evasion fees and charges and the subsequent referral to SPER.¹⁰¹

Treasury advised that the use of free-flow tolling is a matter of Government policy and is not within the scope of the Bill.¹⁰²

¹⁰¹ Submission no. 6, Keith Thomas, p 1; Submission no. 13, Cameron Richards, p 1 of attachment.

¹⁰² Queensland Treasury, response to issues in submissions, p 24.

4. Compliance with *Legislative Standards Act 1992* – fundamental legislative principles

It is considered that the following clauses may contain issues of fundamental legislative principles (FLPs) 11, 23, 24, 25, 27, 37, 44, 47, 59, 68, 73, 78, 79, 82 and 87.

The Bill also includes seven offence provisions which are set out below.

Rights and liberties of individuals - Section 4(2)(a) *Legislative Standards Act 1992*

Does the bill have sufficient regard to the rights and liberties of individuals?

Clause 73 – S 134L – disclosure of confidential information by registrar

Clause 73 inserts proposed section 134L into the Bill, which permits disclosure by the registrar of confidential information, including personal information. The proposed section is broader than existing section 152G of the Act.

The proposed section permits disclosure to a law enforcement agency for the purpose of an investigation or proceeding, including for the purpose of deciding whether to start an investigation or proceeding.

‘Law enforcement agency’ is broadly defined, including an enforcement body within the meaning of the *Privacy Act 1988* (Cth). This means that confidential information, including personal information, may be disclosed to the following additional bodies:

- the Integrity Commissioner
- the ACC
- the Immigration Department
- the Australian Prudential Regulation Authority
- the Australian Securities and Investments Commission
- the Office of the Director of Public Prosecutions, or a similar body established under a law of a State or Territory
- another agency, to the extent that it is responsible for administering, or performing a function under, a law that imposes a penalty or sanction or a prescribed law
- another agency, to the extent that it is responsible for administering a law relating to the protection of the public revenue
- the New South Wales Crime Commission
- the Independent Commission Against Corruption of New South Wales
- the Police Integrity Commission of New South Wales
- the Independent Broad-based Anti-corruption Commission of Victoria
- the Crime and Corruption Commission of Queensland
- the Corruption and Crime Commission of Western Australia
- the Independent Commissioner Against Corruption of South Australia
- another prescribed authority or body that is established under a law of a State or Territory to conduct criminal investigations or inquiries
- a State or Territory authority, to the extent that it is responsible for administering, or performing a function under, a law that imposes a penalty or sanction or a prescribed law, or

- a State or Territory authority, to the extent that it is responsible for administering a law relating to the protection of the public revenue.

Additionally, the new section proposes to define 'law enforcement agency' to include the Queensland Police Service, Crime and Corruption Commission and the department in which the *Corrective Services Act 2006* is administered. Existing section 152G only provides for disclosure to the Queensland Police Service or the Australian Federal Police, in the following specific circumstances:

...the registrar becomes aware, from information obtained or held by the registrar in the course of administering this Act, of a particular offence or suspected offence (whether against this Act or another law).

This condition is absent from proposed section 134L, which permits disclosure in a broader range of circumstances.

Proposed section 134L also provides:

If confidential information contains personal information, the registrar may disclose the confidential information under subsection (2) if the registrar first removes or conceals the personal information.

Therefore proposed section 134L will allow information to be disclosed to a broader range of entities in a broader set of circumstances.

The explanatory notes deal generally with the interaction of new part 8A (of which section 134L is a part) with fundamental legislative principles, especially privacy rights. The notes state that:

Establishing a permissive information sharing regime will enhance penalty debt management across government...

*Individuals will benefit as a result of penalty debt agencies having accurate records about them, consistent with Information Privacy Principles 7 and 8 in the Information Privacy Act 2009. If penalty debt agencies share accurate information under the proposed regime, individuals will have the maximum opportunity to receive correspondence, to comply with their obligations or to dispute offences, and to receive appropriate treatment earlier.*¹⁰³

As the explanatory notes point out, proposed section 134H provides for penalties for unauthorised disclosure of confidential information. While this will have the effect of punishing a person who makes an unauthorised disclosure, it will not undo the unauthorised disclosure and its impact on the rights and liberties of affected individuals.

Committee comment

The committee notes the information sharing provisions in the Bill will increase the capacity of SPER to better identify and locate debtors including those debtors facing hardship. While there is a risk of unauthorised disclosure in any information sharing regime, the committee considers that guidelines will go some way to prevent this.

Clause 45 – amendment of section 79

Clause 45 proposes to amend section 79. The existing section provides that:

(1) The registrar may issue to the employer of an enforcement debtor a fine collection notice for redirection of the enforcement debtor's earnings only if the registrar is satisfied of the following—

(a) the person is the enforcement debtor's employer;

¹⁰³ State Penalties Enforcement Amendment Bill 2017, explanatory notes, p 10.

(b) the enforcement debtor will have enough money available to satisfy the unpaid amount after deducting—

(i) the necessary living expenses of the enforcement debtor and the enforcement debtor's dependants; and

(ii) any other known liabilities of the enforcement debtor;

(c) the amount of earnings to be redirected would not impose unreasonable hardship on the enforcement debtor.

(2) If the registrar considers it necessary or desirable to cancel or vary a fine collection notice, the registrar must, as soon as is practicable, give written notice to the employer of the cancellation or variation of the relevant notice.

The Bill proposes to amend section 79 to provide that the registrar may issue a fine collection notice to a person for the redirection of an enforcement debtor's earnings, if the registrar is satisfied the person is the debtor's employer. Therefore the proposed amendment removes the protections from hardship currently contained in the section.

This amendment could potentially result in a person experiencing financial hardship after earnings have been redirected. For example, a regular expense deducted from the person's earnings might not be met due to an insufficiency of funds.

The explanatory notes recognise this potential issue of fundamental legislative principle and offer the following justification:

Clause 45 removes the requirement for the registrar to be satisfied of a debtor's financial affairs and potential for unreasonable hardship before the issue of a fine collection notice to garnish wages, which may impact on the rights of individuals. In practice, debtors who are not attempting to resolve their debts and who are eligible for enforcement action through a fine collection notice are unlikely to supply information to SPER about their financial status to enable SPER to redirect their earnings. Accordingly debtors who have failed to engage with SPER benefit from their non-engagement as the registrar cannot be satisfied and thus cannot issue a fine collection notice for the redirection of earnings. This requirement diminishes the utility of wages garnishment as an enforcement action. It is appropriate that debtors who have failed to engage with SPER to resolve their penalty debt be subject to enforcement action.¹⁰⁴

The proposed amendment may potentially limit the liberties of all enforcement debtors, not only those who deliberately fail to engage with SPER to avoid payment of their enforcement debts.

Clause 59 – amendment of section 108O

Clause 59 proposes to amend section 108O to provide that an immobilisation device and notice may be attached to a vehicle stated in an immobilisation warrant for no longer than 14 days. The existing timeframe is 5 days.

The amendment will potentially result in greater limitation of the rights and liberties of individuals.

The Explanatory Notes state that:

Whilst increasing the immobilisation period to up to 14 days may result in a debtor's vehicle being immobilised for longer than currently, it will provide the debtor with increased opportunity to source finance to pay their debt. It also provides further time for a debtor to provide documentation to SPER to substantiate a hardship claim made at a late stage. Extension of the immobilisation period is considered to allow a more

¹⁰⁴ State Penalties Enforcement Amendment Bill 2017, explanatory notes, p 9.

appropriate amount of time for these types of issues before escalation to seizure and sale of the debtor's vehicle.

Clause 68 – omission of section 118

Clause 68 proposes to omit section 118 of the Act. This means that, in cases where a community service or work and development order is not suitable and the enforcement debtor cannot pay the debt, the option of a good behaviour order will be unavailable.

The explanatory notes state that:

Clause 68 omits section 118 to remove good behaviour orders as a consequence of the introduction of work and development orders. Existing good behaviour orders will continue in effect under new section 186, but work and development orders will be available for people unable to pay their debts who are experiencing genuine hardship. Hardship debtors who are not eligible for a work and development order (e.g. with impaired decision making capacity) may be eligible for write off of their debts under the Act.¹⁰⁵

Committee comment

The committee notes that the good behaviour orders will be replaced with the work development orders under the Bill which offers a range of alternative ways to satisfy a SPER debt.

Adding administration fees to SPER debt

The Act includes a number of provisions which add administration fees to a SPER debt. The Bill proposes to:

- insert proposed section 14A, which provides for costs incurred establishing ownership of the vehicle to be added to the fine for the offence (clause 11) - the new section is similar to existing section 35
- insert proposed section 39, which provides for an enforcement fee prescribed by regulation for the making of an enforcement order (clause 27) - this fee is added to the enforcement debtor's SPER debt, and
- amend section 75 to provide that the SPER debt is increased by the enforcement fee prescribed by regulation for issuing the notice (clause 44).

Each of these amendments appear designed to recoup the cost of administration of SPER.

Administrative power - Section 4(3)(a) Legislative Standards Act 1992

Are rights, obligations and liberties of individuals dependent on administrative power only if the power is sufficiently defined and subject to appropriate review?

Discretion under s32B to refuse to offer payment plan

Clause 23 inserts proposed section 32B. Section 32B(3) provides: '*Without limiting the reasons why the registrar may refuse to offer the person a payment plan, the registrar may refuse because...*'. The section proposes five reasons.

Legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined. The Office of the Queensland Parliamentary Counsel (OQPC) Notebook states that:

Depending on the seriousness of a decision made in the exercise of administrative power and the consequences that follow, it is generally inappropriate to provide for

¹⁰⁵ State Penalties Enforcement Amendment Bill 2017, explanatory notes, p 34.

*administrative decision-making in legislation without providing criteria for making the decision.*¹⁰⁶

As currently drafted, the proposed section may allow a registrar to refuse to offer a payment plan for reasons outside of the five listed, because, for example, the applicant may be intending to relocate overseas in the near future.

The registrar's discretion is to be guided by the five reasons listed in the proposed section. However, the importance of these five reasons is heightened by virtue of the fact that the registrar's decision is unreviewable.

Clause 82 – ouster clause

Legislation should make rights and liberties, or obligations, dependent on administrative power only if subject to appropriate review. The OQPC Notebook states that:

*Depending on the seriousness of a decision and its consequences, it is generally inappropriate to provide for administrative decision-making in legislation without providing for a review process. If individual rights and liberties are in jeopardy, a merits-based review is the most appropriate type of review.*¹⁰⁷

Clause 82 amends section 155 to provide that the decision to refuse to offer a payment plan to a person under section 32B and the decision of the registrar to cancel a payment plan under section 32E are decisions to which that section applies. Therefore, judicial review under the *Judicial Review Act 1991*, part 3 – statutory orders of review or part 4 – reasons for decision is not available in respect of those decisions. Section 155 effectively ousts the jurisdiction of the Supreme Court under the *Judicial Review Act 1991*, parts 3 or 4, so that the decision of a registrar to refuse a payment plan or to cancel a payment plan are not reviewable by the Supreme Court.

This issue is identified in the explanatory notes and the following is provided by way of justification:

*The decisions in section 155 relate to the taking of actions and decisions by SPER for a very high volume of debts. An external review process would result in a large administrative burden and potentially require suspension of enforcement action pending the review. This would enable debtors to avoid enforcement action and impede the effectiveness of those actions. SPER may undertake internal review of these decisions. The Act also provides avenues for the variation, cancellation, or suspension of a number of enforcement actions.*¹⁰⁸

The first limb of clause 82 is not dissimilar from the existing law. However, the second limb, which refers to a decision of the registrar to cancel a payment plan under section 32E, removes a debtor's right to enjoy the benefit of an existing arrangement.

Schedule 1 Part 1 of the *Judicial Review Act 1991* already identifies section 155 of the Act as an enactment that provides for non-review or limited review of decisions.

Natural justice - Section 4(3)(b) Legislative Standards Act 1992

Is the bill consistent with principles of natural justice?

Clause 23 – new section 32E

Clause 23 also inserts proposed section 32E, which provides that a registrar may immediately cancel a payment plan, without prior notice to the person subject to the plan, if:

¹⁰⁶ Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 15.

¹⁰⁷ *Ibid*, p 18.

¹⁰⁸ State Penalties Enforcement Amendment Bill 2017, explanatory notes, p 8.

- the person fails to pay an instalment
- the person fails to comply with a condition of the plan
- the person's enforceable SPER debt increases and the person does not discharge the increase within 14 days, or
- the person does not agree to a proposed amendment to a plan under proposed section 32D.

Legislation should be consistent with the principles of natural justice, one of which is that something should not be done to a person that will deprive them of some right, interest, or legitimate expectation of a benefit, without the person being given an adequate opportunity to present their case to the decision-maker.¹⁰⁹

Proposed section 32E allows cancellation of a payment plan without prior notice, potentially depriving a debtor of the benefit of the payment plan, without having an adequate opportunity to present a case to the decision-maker.

The explanatory notes identify this potential issue of fundamental legislative principle and state:

Debtors will have adequate notice of the effect of not paying the additional debt or defaulting on their payment plan. This amendment is consistent with the policy intent of the current section 136 of the Act, which enables SPER to send updated instalment payment notices if additional debts are incurred, or to cancel payment plans when debtors default on their payments.

Delegation of administrative power – Section 4(3)(c) Legislative Standards Act 1992

Does the bill allow the delegation of administrative power only in appropriate cases and to appropriate persons?

Delegation of registrar's decision-making power to information system

Clause 79 inserts proposed section 151, which provides that the registrar may approve an information system for generating a decision of the registrar, other than a decision prescribed by regulation.¹¹⁰ Further, a decision generated by an information system is taken to be a decision made by the registrar.

Powers should only be delegated to appropriately qualified officers or employees. The OQPC Notebook provides that the appropriateness of a limitation on delegation depends on all the circumstances, including the nature of the power, its consequences and whether its use appears to require particular expertise or experience.¹¹¹

Protection against self-incrimination – Section 4(3)(f) Legislative Standards Act 1992

Does the bill provide appropriate protection against self-incrimination?

Clause 73 raises issues in relation to the privilege against self-incrimination. It would insert:

- Proposed section 134C which provides that the Registrar may require a person to give information or a document. Subsection 134C(4) provides that it is not a reasonable excuse for an individual to fail to comply with the requirement because complying with the requirement might tend to incriminate the individual.
- Proposed section 134D, which provides that the Registrar may, by written notice, require a person to attend before the register to give information or a document. It is not a reasonable

¹⁰⁹ Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 25.

¹¹⁰ See the below section, on the 'Institution of Parliament', for issues with proposed section 155 which relate to the inappropriate delegation of legislative power.

¹¹¹ Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 33.

excuse for an individual to fail to give the registrar information or a document because the information or document might tend to incriminate the individual.

- Proposed section 134J, which applies when a person gives information or a document as required by the Registrar under section 134C or 134D. In those circumstances, evidence arising from the information or document is not admissible in evidence against the person in a criminal proceeding, other than a proceeding in which the falsity or misleading nature of the information is relevant.

Legislation should provide appropriate protection against self-incrimination.¹¹² The OQPC Notebook states that:

*...this principle has as its source the long established and strong principle of common law that an individual accused of a criminal offence should not be obliged to incriminate himself or herself.*¹¹³

The denial of the protection afforded by the self-incrimination rule may be justifiable if –

- (a) the questions posed concern matters that are peculiarly within the knowledge of the persons to whom they are directed and that would be difficult or impossible to establish by any alternative evidential means; and
- (b) the legislation prohibits use of the information obtained in prosecutions against the person; and
- (c) in order to secure this restriction on the use of the information obtained, the person should not be required to fulfil any conditions (such as formally claiming a right).

The explanatory notes raise this issue of fundamental legislative principle and state:

*Abrogating the privilege against self-incrimination is necessary to ensure the registrar is able to access information to effectively manage debtors who have failed to pay an amount outstanding under an enforcement order. However, there is both a direct and derivative use immunity included for information given by a person under the information access provisions, meaning that any evidence directly or indirectly obtained cannot be used in criminal proceedings other than where the falsity or misleading nature of the information or document is relevant.*¹¹⁴

Compulsory acquisition of property – Section 4(3)(i) Legislative Standards Act 1992

Does the bill provide for the compulsory acquisition of property only with fair compensation?

Redirection from debtor’s bank account by financial institution

Clause 44 amends section 75 to provide for a fine collection notice to be issued by the registrar directing a financial institution to make payment of an amount from money held by the institution on behalf of the debtor.

Clause 47 inserts proposed section 103C, which provides for a financial institution to deduct an amount stated in a fine collection notice from accounts held by the enforcement debtor with the institution. It also creates a head of power for the financial institution to deduct an amount prescribed by regulation for the administrative cost of complying with the fine collection notice. However, the financial institution is not able to deduct an amount if the deduction would cause the account to be

¹¹² *Legislative Standards Act 1992, s 4(3)(f).*

¹¹³ Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 52.

¹¹⁴ State Penalties Enforcement Amendment Bill 2017, explanatory notes, p 15.

overdrawn or cause the total of all of the debtor's accounts held with that financial institution to be less than the 'protected amount', which is prescribed by regulation.

Together these clauses permit a financial institution to redirect an amount from a debtor's bank account to SPER. Proposed section 103C includes a protection for the debtor, however proposed section 75 could impact on the rights and liberties of the debtor, for example, where a debtor's bank account becomes overdrawn because of the proximate timing of a payment made by a financial institution pursuant to a fine collection notice and another debit from the debtor's account.

The explanatory notes refer to the proposed amendment to section 75 and identify the potential issue of compulsory acquisition of property:

Clause 44 of the Bill creates an additional type of fine collection notice, which requires a financial institution to direct payment of an amount which is held by the financial institution on behalf of an enforcement debtor. This raises the fundamental legislative principle of a law which confers powers of compulsory acquisition of property.

The explanatory notes explain the relevant process:

For a debtor to be eligible for a fine collection notice, they must first have accrued debt which has defaulted, have been issued with an enforcement order which they have not complied with, and may have been subject to prior enforcement action, such as driver licence suspension, which has not resulted in the payment of their debt. If a debtor has the capacity to resolve their debt with money held in a financial institution account but refuses to engage with SPER, it is appropriate that SPER is given the power to order the institution to make a payment to SPER from this account to satisfy their debt. SPER will obtain confirmation from the financial institution that there is an active account before issuing the fine collection notice.

INSTITUTION OF PARLIAMENT

Delegation of legislative power – Section 4(4)(a) Legislative Standards Act 1992

Does the bill allow the delegation of legislative power only in appropriate cases and to appropriate persons?

Matters left to be prescribed by regulation

A number of provisions in the Bill leave matters to be prescribed by regulation rather than being contained in the Act, including the following:

- clause 24 – inserting new section 32G - definition 'remote area'
- clause 24 – inserting new section 32H(b) – 'mental illness' within the meaning prescribed by regulation
- clause 24 – inserting new section 32H – definition 'substance abuse disorder'
- clause 24 – inserting new section 32L – maximum number of work and development orders applying to a person
- clause 25 – inserting new section 33A – subparagraph (i) of the definition of unpaid court debt, and
- clause 25 – inserting new section 35(3) – circumstances in which the registrar may refund the fee

Clause 73 – section 134K(2)(d) – another purpose prescribed by regulation

Proposed section 134K(2) provides that a party to an information-sharing arrangement may request and receive information held by another party to the arrangement for various specified purposes.

Proposed section 134K(2)(d) includes ‘another purpose prescribed by regulation’ as one of those specified purposes.

This issue is identified in submission 2 by the Office of the Information Commissioner, as follows:

OIC also notes that sub-section 134K(2)(d) is so broad it potentially negates all the preceding limitations. It is noted that the enactment of amendments to Regulation are subject to a lesser level of parliamentary scrutiny.

While OIC acknowledges that to some degree, section 134K(3) would put a regulatory limit on the information that could be disclosed, nonetheless, the potential remains for a later change of Regulation to provide almost unlimited information sharing for any purpose. It is unclear why this breadth is needed. OIC notes that the Explanatory Notes for this provision provide little guidance on this issue.

Clause 78 – amended section 150B - Minister may make guidelines about work and development orders

Clause 78 amends section 150B to provide that: ‘The Minister may make guidelines, not inconsistent with this Act, about work and development orders.’

The explanatory notes raise this issue, stating that: ‘The use of guidelines will be limited to matters relating to the operational administration of the work and development order scheme’.¹¹⁵

Section 151 – decision of the registrar other than a decision prescribed by regulation

Clause 79 inserts proposed new section 151, which provides that the registrar may approve an information system for generating a decision of the registrar, other than a decision prescribed by regulation.

PROPOSED NEW OR AMENDED OFFENCE PROVISIONS

Clause	Offence	Proposed maximum penalty
73	<p>Amendment of State Penalties Enforcement Act 1999</p> <p>Insertion of new Part 8A, Division 2</p> <p>134C Registrar may require person to give information</p> <p>(1) For the administration or enforcement of this Act the registrar may, by written notice given to a person, require the person to—</p> <p>(a) give the registrar, either orally or in writing, information in the person’s knowledge about a stated matter within a stated reasonable period and in a stated reasonable way; or</p> <p>(b) give the registrar a document about a stated matter in the person’s possession or control within a stated reasonable period and in a stated reasonable way.</p> <p>(2) When making the requirement, the registrar must warn the person it is an offence not to comply with the requirement, unless the person has a reasonable excuse.</p>	

¹¹⁵ State Penalties Enforcement Amendment Bill 2017, explanatory notes, p 15.

Clause	Offence	Proposed maximum penalty
	<p>(3) The person must comply with the requirement, unless the person has a reasonable excuse.</p> <p>(4) It is not a reasonable excuse for an individual to fail to comply with the requirement because complying with the requirement might tend to incriminate the individual.</p> <p>(5) It is a reasonable excuse for a person to fail to comply with the requirement because the person reasonably believes complying with the requirement is likely to endanger a person's safety.</p> <p>(6) This section does not apply to the Queensland Police Service.</p>	100 penalty units.
73	<p>134D Registrar may require attendance by persons</p> <p>(1) For the administration or enforcement of this Act the registrar may, by written notice given to a person, require the person to attend before the registrar, at a stated reasonable time and place, to do either or both of the following—</p> <p>(a) give the registrar, either orally or in writing, information in the person's knowledge about a stated matter;</p> <p>(b) give the registrar a document about a stated matter in the person's possession or control.</p> <p>(2) The registrar may require—</p> <p>(a) the information to be given on oath; or</p> <p>(b) the information or document given to be verified by statutory declaration.</p> <p>(3) When making the requirement, the registrar must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.</p> <p>(4) The person must not fail, without reasonable excuse, to—</p> <p>(a) attend as required by the notice; or</p> <p>(b) give the registrar information the person is required to give the registrar, and in the way required, under the notice; or</p> <p>(c) give the registrar a document the person is required to give under the notice; or</p> <p>(d) give information on oath if required by the registrar; or</p> <p>(e) verify information or a document by statutory declaration if required by the registrar.</p> <p>(5) It is not a reasonable excuse for an individual to fail to give the registrar information or a document because the information or document might tend to incriminate the individual.</p> <p>(6) It is a reasonable excuse for a person to fail to give the registrar information or a document because the person reasonably</p>	100 penalty units.

Clause	Offence	Proposed maximum penalty
	<p>believes giving the registrar the information or document is likely to endanger a person’s safety.</p> <p>(7) A person, other than an enforcement debtor or the enforcement debtor’s representative, who is required under this section to attend a place is entitled to be paid the expenses prescribed by regulation.</p> <p>(8) For subsection (2)(a), the registrar may administer an oath.</p> <p>(9) This section does not apply to the Queensland Police Service.</p>	
<p>73</p>	<p>134F Registrar may require translation or conversion of information</p> <p>(1) This section applies if—</p> <ul style="list-style-type: none"> (a) a person gives information to the registrar; and (b) the registrar reasonably believes the information is relevant to the administration or enforcement of this Act. <p>(2) The registrar may, by written notice given to the person, require the person to do 1 or more of the following within a stated reasonable period—</p> <ul style="list-style-type: none"> (a) translate the information into the English language; (b) convert the information into a written document; (c) convert any amount mentioned in the information into Australian currency. <p>(3) The person must comply with the requirement, unless the person has a reasonable excuse.</p> <p>(4) If the person does not comply with the requirement, the registrar may have the information translated or converted as mentioned in subsection (2).</p> <p>(5) The costs and expenses incurred under subsection (4) are a debt payable to the State by the person.</p>	<p>100 penalty units.</p>
<p>73</p>	<p>134G False or misleading information</p> <p>(1) A person must not, in relation to the administration or enforcement of this Act, give the registrar or SPER information the person knows is false or misleading in a material particular.</p> <p>(2) Subsection (1) does not apply to a person if the person, when giving information in a document—</p> <ul style="list-style-type: none"> (a) tells the registrar or SPER, to the best of the person’s ability, how the information is false or misleading; and (b) if the person has, or can reasonably obtain, the correct information—gives the correct information. 	<p>100 penalty units.</p>

Clause	Offence	Proposed maximum penalty
73	<p>Insertion of new Part 8A, Division 3</p> <p>134H Unauthorised disclosure of confidential information</p> <p>(1) An official must not disclose confidential information acquired by the official in the official's capacity to someone else unless the disclosure is authorised under division 4.</p> <p>(2) A person who knowingly acquires confidential information without lawful authority must not disclose the information to someone else.</p> <p><i>Example—</i></p> <p style="padding-left: 40px;">A person employed by a cleaning contractor engaged by the State to clean reads a document in the registrar's office containing confidential information.</p> <p>(3) A person who receives confidential information and knows, or ought reasonably to know, it is confidential information must not disclose the information to someone else unless the disclosure is authorised under division 4.</p> <p>(4) However, subsection (3) does not apply to the person if, under division 4, the registrar disclosed the confidential information to the person and the person disclosed the information—</p> <p style="padding-left: 40px;">(a) to the extent necessary to enable the person to exercise a power or perform a function conferred on the person under a law for the administration or enforcement of the law; or</p> <p style="padding-left: 40px;">(b) for the purpose for which the information was disclosed to the person; or</p> <p style="padding-left: 40px;">(c) to someone else for any purpose if the information relates to the person.</p>	<p>100 penalty units</p> <p>100 penalty units</p> <p>100 penalty units</p>

EXPLANATORY NOTES

Part 4 of the *Legislative Standards Act 1992* relates to explanatory notes. It requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins.

Appendix A – List of submissions

Submission no.	Submitter
01	Tasman Bryant
02	Office of Information Commissioner
03	Alison Payne
04	Community Legal Centres
05	Ian Daniels
06	Keith Thomas
07	Bernard Bradley
08	Glenn Taylor
09	Andrew Turnbull – Gobblers Lures
10	Sophie Skordilis
11	Local Government Association of Queensland
12	Patrick Morton
13	Cameron Richards
14	John Zohrab
15	Office of the Public Advocate
16	John Freeman
17	Queensland Law Society
18	Legal Aid Queensland
19	Judy Andrews
20	Josh Gale
21	Queensland Council of Social Services
22	Chris Abbott
23	David Fowler
24	Drug ARM

25	Dave Holder
26	Logan City Council
27	LawRight
28	Wendy Graaf
29	Toll Redress
30	Queensland Advocacy Inc.
31	Council of the City of Gold Coast
32	Confidential
33	Cassowary Coast Regional Council

Appendix B – List of witnesses

Departmental Briefing

Date	Location	Witnesses from the State Penalties Enforcement Registry, Queensland Treasury
22 March 2017	Brisbane	<p>Ms Natalie Barber, Registrar, State Penalties Enforcement Registry</p> <p>Ms Tahnee Booth, Principal Analyst, State Penalties Enforcement Registry</p> <p>Ms Julie Gunter, Principal Policy Advisor, State Penalties Enforcement Registry</p> <p>Mr Richard Jolly, Deputy Registrar, State Penalties Enforcement Registry</p> <p>Mr Geoff Waite, Executive General Manager, Risk and Intelligence</p>

Public hearings

Date	Location	Witnesses (in order of appearance)
29 March 2017	Gold Coast	<p>Toll Redress</p> <p>Mr Michael Fraser</p> <p>Ms Maddison Johnstone</p>
13 April 2017	Brisbane	<p>Office of the Public Advocate</p> <p>Mr Yuu Matsuyama, Senior Legal Officer</p> <p>Office of the Information Commissioner</p> <p>Mr Phil Green, Queensland Privacy Commissioner</p> <p>Mr Lemm Ex, Principal Privacy Officer</p> <p>LawRight</p> <p>Mr Stephen Grace, Coordinator, Homeless Persons' Legal Clinic</p> <p>Ms Paula Hughes, Policy Lawyer, Homeless Persons' Legal Clinic</p> <p>Ms Belinda Tang, Secondee Lawyer, Homeless Persons' Legal Clinic</p> <p>Queensland Law Society</p> <p>Mr Bill Potts, QLS Immediate Past President</p> <p>Ms Rebecca Fogerty, QLS Criminal Law Committee Member</p> <p>Ms Binari De Saram, QLS Acting Advocacy Manager</p> <p>Ms Vanessa Krulin, QLS Policy Solicitor</p> <p>Individual</p> <p>Ms Kristen Vink</p> <p>Townsville Chamber of Commerce</p> <p>Mr Troy Popham, President</p>

Appendix C – Treasury response to written questions

Queensland Treasury

Issues

The Finance and Administration Committee (the Committee) conducted a public hearing on the State Penalties Enforcement Amendment Bill (the Bill) on 22 March 2017 attended by officers of Queensland Treasury (QT).

By letter dated 27 March 2017, the Chair of the Committee provided a list of further questions for QT. Those questions and QT's responses to the questions are set out below.

Attachment 1 provides an overview of State Penalties Enforcement Registry (SPER) performance information that provides answers to and context for specific questions, and further detail in areas in which the Committee has expressed an interest.

Query 1 – Please provide a breakdown of the total SPER debt owed/number of debtors as at 28 February 2017, including:

- a) Number of debtors
- b) Total amount debt referred by entities
- c) Number and amount of debt per agency
- d) debt amount by type of debt – i.e. court fines, police issued fines, local government fines etc
- e) Number of debts referred by toll road operators
- f) Amount of debt referred by toll road operators
- g) Amount of debt as a result of SPER fees, charges, fines etc
- h) Largest number of debts per debtor
- i) Average number of debts per debtor
- j) Largest amount owing by a debtor
- k) Average amount owing by each debtor
- l) Number of debtors in custody
- m) Total number of disputes
- n) Total number of disputes relating to toll road operators

Response – Please refer to the overview in Attachment 1 which provides answers to the specific sub-questions as outlined in the following table.

Question 1 reference	Issue	Relevant section in Attachment 1
(a)	Number of debtors	1.5 and 3.1
(b)	Total amount of debt referred by entities	1.2, 1.3 and 3.3
(c)	Number and amount of debt per agency	1.3 and 3.3
(d)	Debt amount by type of debt	1.2, 1.5 and 3.3
(e)	Number of tolling-related debts	1.4
(f)	Amount of tolling related debts	1.4

(g)	SPER fees, charges, etc	3.4
(i)	Average number of debts per debtor	1.5 and 3.1
(k)	Average amount owing by each debtor	1.5 and 3.1

Query 1(h) – Largest number of debts per debtor

Response – The debtor with the largest number of outstanding debts has 1,532 unpaid debt items comprised mainly of unpaid tolling fines. Details of the debts are outlined in the following table.

Debt Type	Number of Debts	Value Outstanding
Tolling	1,483	\$367,473
Vehicle	15	\$10,756
Parking	11	\$2,901
Speeding	11	\$2,977
Driving	9	\$3,282
Other	3	\$1,466
Total	1,532	\$388,857

Query 1(i) – Largest amount owing by a debtor

Response – The largest amount owed by a debtor is \$671,745 relating to a single court-ordered fine.

Query 1(l) – Number of debtors in custody

Response – QT does not have information regarding the number of individuals in custody in Queensland who have SPER debts. SPER relies on individual debtors in custody contacting SPER to advise their location, which is subsequently confirmed by Queensland Corrective Services. Debtors in custody are able to contact SPER via a direct line to SPER's hardship team.

Query (m) and (n) – Total number of disputes and disputes relating to tolling

Response – Of the debts referred to SPER to date during 2016-17, approximately 1 per cent (7,756) have been the subject of a *Cancellation of Enforcement Order* application under section 56 of the *State Penalties Enforcement Act 1999* (the Act). Of these, 301 relate to tolling debts. This represents a dispute rate of approximately 0.4 per cent for tolling-related debt.

Query 2 – Please provide a list of all agencies and entities that may refer debt to SPER

Response – There are 226 issuing agencies for which SPER undertakes collection. This includes 154 individual courts and 72 agencies that issue infringement notices. The agencies are listed in the Appendix to Attachment 1.

Query 3 – Please detail the growth and reasons behind the growth in SPER debt from 2005/6 to 2015/16, including, among other things, the nature of the transfer of road toll debt in 2010/11.

Response – See sections 1.2 and 1.4 in Attachment 1.

Query 4 – Please detail SPER enforcement action by type/number/type of debt/number of debtors for the period since 1 July 2016 (with a separate column regarding toll road operator referred debt).

Response – The following table sets out the number of enforcement actions taken by SPER in the 2016-17 Financial Year to 28 February 2017.

Enforcement Action	2016-17 YTD
Number of Enforcement Orders made	750,000
Number of Notices Of Intention To Suspend Driver Licence	137,000
Number of Driver Licence Suspensions imposed	87,000
Number of Fine Collection Notices issued	15,000
Number of Enforcement Warrants to register an Interest issued	53,000
Number of Vehicle Immobilisation Warrants issued	75
Number of Enforcement Warrant to seize and sell property issued	27

QT is unable to provide information on enforcement activities by type of debt, number of debtors or between toll and non-toll related debts.

Query 5 – What are the average costs for SPER to recoup debts:

- a. For compliant debtors –i.e. those that pay without further enforcement action?
- b. For debtors placed on payment plans?
- c. For each level of enforcement action required by SPER – e.g. licence suspension, vehicle clamping?

Response – As SPER does not have an activity based costing system in place, QT is unable to provide the information requested.

As a general rule, the more automated the action, the lower the cost. The most automated enforcement requiring minimal manual intervention is driver licence suspension. The most resource-intensive enforcement actions are vehicle immobilisation and seizure and sale. Due to the resource-intensive nature of these field activities, debtors subject to these enforcement actions are carefully prioritised.

Query 6 – What policies and procedures are in place to write off SPER debt?

Response – Section 150A of the Act provides that the registrar of SPER may write off all or part of a fine or other amount payable by a person under the Act in the following circumstances:

- if the person dies;
- if the person is a corporation that has been deregistered;
- if there is insufficient information to establish the identity of the person liable to pay the debt; and
- in other circumstance permitted under a guideline issued under section 150B by the Minister.

Section 150B provides that a guideline issued by the Minister about the writing off of unpaid fines and other amounts payable under the Act must not be made available to members of the public. As indicated in the explanatory notes for the *State Penalties Enforcement and Other Legislation Amendment Act 2007* which inserted this provision into the Act, the intention of this provision is to ensure debtors are not in a position to find and exploit possible opportunities to avoid payment of fines.

SPER has established a process to undertake regular debt write off in accordance with the circumstances for write off provided in the Act and guidelines issued by the Treasurer. When SPER obtains information in relation to a debtor that would make a debt eligible for write-off (for example, if a member of a debtor’s family advises SPER the debtor is deceased), a flag is added to the relevant debt in the SPER system. Automatic processes may also identify debts as potentially eligible for write-off as the result of updates to SPER data based on information obtained from other sources, such as if information is obtained from the Australian Securities and Investments Commission which indicates a company has been deregistered. A manual process is then undertaken once a month to review the debts that have been identified as potentially eligible for write-off and, if the debts are considered appropriate for write off, to seek approval to write off the debts under the Act.

Query 6(a) – Please detail the amount of debt written off in the last five financial years.

Response –

Debt write-off reason	2011-12	2012-13	2013-14	2014-15	2015-2016
	\$M	\$M	\$M	\$M	\$M
Deceased individual	2.9	3.5	0.4	6.7	3.0
Deregistered company	4.3	9.5	2.2	0.6	2.2
Other unrecoverable debts	1.7	89.3	15.5	0.9	0.8
Total	8.9	102.3	18.1	8.2	6.0

During 2012-13, after the transfer of responsibility for SPER from the Department of Justice and Attorney General (DJAG) to QT, significant debt write-off activity was undertaken to clear old, unrecoverable debts.

Hardship

Query 7 – What current processes does SPER have to identify debtors in hardship? i.e. what does a debtor have to show/do to be classified as in hardship?

Response – Current processes require that a person must self-identify that they are in hardship by contacting SPER (via telephone or in writing). In order to be classified as in hardship, the person must be living in a remote community, be dependent on Centrelink benefits, be homeless, have a long-term medical condition, be a victim of a natural disaster or be recently released from custody.

If the debtor identifies as being in one of these categories, they are required to submit documentary evidence to SPER of their situation, unless SPER is able to otherwise confirm the person’s **situation** (e.g. receipt of relevant Centrelink benefits). Where the debtor owes \$8,000 or more, a more detailed assessment of the person’s capacity to pay is undertaken prior to evaluating repayment/discharge options. This requires the debtor to provide documentary evidence of income, expenses and assets, including provision of bank statements etc. For many individuals in hardship, this can prove to be a challenging and lengthy exercise.

Query 7(a) – What **internal** operational processes will be implemented under the Bill to identify debtors in hardship?

Response – The Bill prescribes the hardship circumstances which would need to be satisfied in order for a person to be eligible for a work and development order (WDO). They are that the person is unable to pay due to: having a mental illness, substance use disorder or cognitive or intellectual disability; or being homeless, in financial hardship or experiencing domestic and family violence. **Further details of eligibility criteria will be defined in publicly available regulations and guidelines (following further consultation with key stakeholders).**

The Bill also provides that qualified and experienced professionals from not-for-profit community organisations, government agencies and health services will be able to register with SPER as approved sponsors for WDOs. The Bill therefore enables the establishment of genuine partnerships between SPER and the community service sector. Approved sponsors will assess a person's eligibility for a WDO, decide on an appropriate treatment/activity plan for the person, apply for a WDO on behalf of the person, oversee activities and report on progress.

Unlike SPER, potential approved sponsors such as UnitingCare, Red Cross, the Salvation Army and other key organisations such as Legal Aid Queensland and LawRight are in direct contact with individuals in hardship and are well placed to proactively identify and work with individuals to assist them to resolve their SPER debt. Typically, these organisations receive state or federal government funding to provide programs/treatment targeted at assisting individuals in hardship which would be leveraged to enable WDOs to be embedded in service offerings to existing clients.

A key design principle of the WDO scheme is that it is community-led. SPER will work with community groups, government agencies and service providers to establish localised networks of community service providers to identify and connect individuals to the WDO scheme. SPER will develop brochures and communication material for use by community service providers to promote the scheme to their clients. SPER will establish a support hotline for sponsors and develop training materials and provide on-ground outreach support to approved sponsors to participate in the WDO scheme. In addition, SPER will develop internal operational processes to assist in the early identification of debtors experiencing hardship.

Query 7(b) – How will debtors be advised of the requirements on them to prove or liaise with SPER re hardship?

Response – The Bill provides that approved sponsors will be required to assess the eligibility of individuals for WDOs in accordance with publicly available guidelines. Accredited community service providers (**approved** sponsors) have the necessary experience and qualifications to undertake an assessment of an individual's particular circumstances and develop an appropriate treatment/activity plan designed to support the individual.

If an approved sponsor has not already obtained the necessary documentary evidence required to support a WDO application (through an existing relationship with the debtor), then the sponsor will work with the debtor to assist them to provide the documentation. For example, it is proposed that to demonstrate financial hardship, this would simply involve obtaining evidence from the debtor that Centrelink benefits are their sole source of income.

In addition, SPER officers who identify a debtor in hardship will provide information about eligibility for WDOs and may refer the debtor to an approved sponsor for eligibility assessment. Brochures and information about WDOs will be made available to debtors via existing community referral networks (e.g. homelessness services, Legal Aid Queensland, etc) on SPER's website and when contact is made with SPER.

Query 8 – How many debtors (including their total debt) are considered as in hardship?

Response – As at February 2017, SPER estimates that 63,000 SPER debtors are considered to be in hardship. The amount owed by debtors in hardship is \$180 million, which represents 15 per cent of the SPER debt pool. This estimate is based on debtors on payment arrangements through Centrelink or long term payment plans and is therefore considered to be a conservative estimate.

Work and Development Orders

Query 9 and 9 (a) – What options will be available to prisoners under the hardship WDO options? What **consultation with** and have any undertakings been provided by Corrective Services to ensure that these options will be provided to prisoners?

Response – SPER has been actively consulting with Queensland Corrective Services (QCS) throughout the development of the WDO scheme. QCS has agreed to introduce the WDO scheme as part of Stage 1 roll-out (on commencement of amendments) to ensure the same level of state-wide coverage, as is currently available with Fine Option Orders, continues to be provided.

All prisoners should be automatically eligible for WDOs on the basis that prisoners are not able to undertake salaried employment while in custody and only receive a small minimum allowance per week (starting at approximately \$18.65) and as such would satisfy the financial hardship criteria.

QCS is currently trialling a Fine Option Order program at Helena Jones Community Corrections Centre where female prisoners undertake unpaid work to work off their SPER debts. As at 28 February 2017, 3,432 hours of community service has been completed which correlates to a monetary value of \$82,508. To date 12 women have finalised their SPER debt in total. It is anticipated this correctional centre will participate in the WDOs.

The implementation of WDOs in secure correctional centres could require significant adjustment to prisoner management processes and procedures associated with treatment and education programs. QCS has advised that, in the future, activities that could be performed under a WDO while in a correctional centre could include educational, vocational or life skills courses, drug/alcohol counselling or unpaid work. QCS has advised SPER that it will consider its role in the broader roll-out of WDOs during 2018.

Query 9(b) – What alternative options will be available to prisoners if WDOs are not available to them? e.g. will prisoners be able to call in warrants and serve a prison sentence in lieu of their debts?

Response – SPER has been actively working with QCS on the possible implementation of WDOs for individuals in correctional facilities. For prisoners, it is considered that WDOs would be a preferred debt finalisation option, as they incentivise prisoners to access non-mandatory programs, such as anger management courses, that would support the prisoner's rehabilitation efforts and benefit the broader community on release. QCS has advised that activities that could be performed under a WDO while in a correctional centre could include educational, vocational or life skills courses, drug/alcohol counselling or unpaid work. Depending on the duration of a person's prison sentence, WDOs would provide an effective means of debt clearance while in custody, enabling the prisoner to have a clean slate on release.

While the Act does not preclude a prisoner calling in warrants to serve an additional prison sentence in lieu of payment of their SPER debt, no prisoners availed themselves of this option during 2015-16. From a justice perspective, time served in lieu of payment cannot be performed concurrently. One of the original policy objectives in establishing SPER was to reduce the number of fine defaulters being imprisoned, as provided in the SPER Charter. Consistent with this policy, imprisonment will continue to be the option of last resort for fine defaulters.

Information management and communication

Query 10 – How does SPER ensure contact details for debtors are maintained and up to date?

Response – The current SPER system automatically undertakes a process to obtain the latest address information for debtors from the Department of Transport and Main Roads (DTMR) database before proceeding with enforcement action. The DTMR update process is also automatically undertaken if SPER receives “returned mail” for a debtor, and every three months for debtors who remain noncompliant.

People registered with DTMR are required by law to update their address within 14 days of a change. Most debtors are registered with DTMR and the address data in DTMR’s system is considered to be the most reliable for debtors.

Contact details are also obtained through the debt referral process (all issuing agencies are required to provide debtor address details), scripting in the SPER call centre (operated by Smart Service Queensland) to confirm contact details while engaging with debtors on the phone, and operating procedures also requiring SPER staff to confirm contact details when they engage with debtors on the phone.

Data matching to electoral roll information obtained from Electoral Commission of Queensland (ECQ) is also performed on a regular basis. Other data enrichment processes are conducted periodically to confirm existing details or to obtain new contact details.

The SPER system uses a complex algorithm to determine the “best” address for a debtor based on dates that addresses are advised or new address details are secured, date of returned mail, and confirmation from a debtor that an address is no longer current.

Query 11 – Please detail the steps taken by SPER with respect to communicating with debtors regarding enforcement action, specifically advice regarding licence suspension?

Response – Every debt that is lodged with SPER results in the generation of an order or notice that advises the debtor that SPER is authorised to collect the debt; and provides for information on how to pay and the consequences of non-payment.

Enforcement Orders

Enforcement orders are generally the first communication between SPER and a debtor. Each debt that is referred results in the issue of an enforcement order that is produced overnight and posted the next day. The enforcement order advises the debtor to pay within 28 days to avoid enforcement action.

Enforcement orders are sent by post to the ‘best’ address available to SPER for the debtor. This is most often the address supplied with the referral.

If no action is taken by the debtor by the due date listed on the Enforcement Order, a reminder letter is sent (after checking the address details with the DTMR system where possible). If the reminder letter does not result in compliance, the SPER system will automatically commence enforcement action. Where the debtor is identified as having a DTMR customer reference number (CRN), the first enforcement action undertaken is driver licence suspension.

Driver Licence Suspension

The first step in the driver licence suspension process is to issue in the post a Notice of Intention to Suspend Driver Licence. SPER will issue the notice to the best address held by SPER, and to the postal address in the DTMR system if this is different to SPER’s best address. The Notice of Intention clearly conveys that the debtor has 14 days to take action before their licence is suspended. Where SPER has a mobile number for the debtor, the SPER system also automatically (subject to system volume constraints) sends an SMS message near the end of the 14 day period to warn of imminent suspension.

The Notice of Intention provides the following information:

- Date by which action is required to avoid licence suspension
- Total amount required to be paid to avoid licence suspension
- Payment methods
- Penalty for driving while 'SPER Suspended'
- Other enforcement action that could follow if debtor does not enter into compliance

A debtor's driver licence is suspended if they do not enter into compliance within the required timeframe. No further notification is sent. (By this point, the debtor has received a penalty infringement notice, SPER enforcement order, SPER reminder letter, SPER Notice of Intention to Suspend and possibly an SMS message.)

While the driver licence suspension is in place, the SPER system automatically checks in with the DTMR system every three months to ascertain whether an updated address is available. If yes, then the address is used to issue a letter reminding the debtor of the driver licence suspension and the action to be taken to have it lifted.

Fine Collection Notice

If SPER decides to garnish funds from a debtor's bank account, employer or from a third party under a Fine Collection Notice, SPER is required to provide a copy of the fine collection notice to the debtor.

Enforcement Warrant to Impose a Charge on Property

SPER may issue an Enforcement Warrant to impose a charge on property, which may then be registered over real property with the Land Titles Office in the Department of Natural Resources and Mines or over personal property with the Personal Property Securities Register (the PPSR). The warrant is served on the debtor when it is issued.

A further notice is issued to the debtor by SPER to confirm that registration of an interest over the relevant property has occurred with either the Land Titles Office or the PPSR.

Vehicle Immobilisation

Prior to immobilising a debtor's vehicle, SPER is required to serve a Notice of Intention to Issue an Immobilisation Warrant. The Notice of Intention provides the debtor with 14 days to take action, otherwise an Immobilisation Warrant can be issued by SPER.

The Notice of Intention provides the following information:

- Due date that action is required by
- Total amount required to be paid to prevent immobilisation
- Options to pay the debt
- Vehicle/s that may be immobilised
- Options regarding hardship claims
- Obligations of the debtor
- Details of all outstanding amounts and offences

Once the 14 day period has expired and the debtor does not take any action, an Immobilisation Warrant may be issued and is served on the debtor. Action may then be taken under the warrant to attach an immobilisation device to the vehicle.

Enforcement Warrant to seize and sell property

Under an Enforcement Warrant to seize and sell property, SPER has the authority to seize and sell real and personal property, other than exempt property, in which a debtor has a legal or beneficial interest. A copy of the warrant is required to be served on the debtor when the warrant is issued.

Once property is seized and is proposed to be sold, SPER is required to send a Notice of Auction to the debtor confirming when the auction will occur.

Query 12 – Does SPER have any information sharing with the Registry of Births Deaths and Marriages regarding deaths of SPER debtors?

Response – SPER previously undertook a regular data matching process utilising data sourced through an information sharing arrangement for Australia wide ‘fact of death’ files for fine collection agencies in all states and territories. However, this process has been suspended for the past year, following modifications to administrative arrangements for access to fact of death information by the Registry of Births, Deaths and Marriages in Queensland. The Office of State Revenue is currently considering a revised approach to obtaining this fact of death data, which would include SPER.

Query 12(a) – If so what process is then followed following receipt of this information? Will this change under the Bill?

Response – Not applicable.

Query 12(b) – If not, how do you receive information about the deaths of debtors? Will this change under the Bill?

Response – Due to the recent changes to arrangements for accessing fact of death information from Government sources, SPER currently relies on direct advice from debtors’ families and estates about the deaths of individual debtors. Families are requested to provide SPER with a copy of the official death certificate as part of this process. This process is not directly altered by the Bill but, as noted above, SPER is considering a revised approach to obtaining fact of death data.

Query 12(c) – Do you have information on the current number of SPER debtors that are deceased?

Response – When confirmation is received that a SPER debtor is deceased, that person’s debts are written off. Since the commencement of SPER in 2000, 42,714 SPER debtors have been confirmed as deceased and their debts written off. QT is unable to provide information about the number of debtors who are deceased but for whom confirmation has not been provided.

Query 13 – Please detail the proposed ICT upgrades, including the nature of the software involved, the proposed pricing and the timeframes and stages for the implementation of the upgrade.

Response – SPER has entered into a contract with CGI Technology and Solutions Australia (CGI) to provide a new debt recovery software solution for SPER. The solution is part of a broader change to support implementation of a new service delivery model for SPER. The solution includes:

- Supply, design, and configuration of CGI’s Collections360 product as a service. The Collections360 product includes the below service elements:
 - Case management system (including business rules and best practice penalty debt management processes);
 - Analytics and advanced reporting system;
 - Solution and architecture services, including correspondence management; business intelligence services; and data enrichment services.
- CGI services to deploy and configure the Collections 360 product with contractual requirements in the following areas:
 - Inbound mail services: Analysis, build and configuration of an inbound mail service to reduce costs and provide an improved service; Management of the inbound mail services subcontractor;

- Outbound mail services: Analysis, build and configuration of an outbound mail service to reduce costs and provide an improved outbound mail service; Management of the outbound mail service subcontractor.

The contract valued at \$58.8 million was awarded to CGI in early 2016. SPER and CGI are working to a staged release implementation schedule whereby the solution will be operational in the Quarter 1 2018, following a period of testing scheduled for quarter 4 2017.

Query 14 – What platforms and timeframes are being considered, and what consultation is being undertaken regarding the permissive information sharing regime?

Response – Prior to development of the policy to enhance information sharing, the Penalty Debt Management Council (PDMC) comprising representatives from SPER, DTMR, DJAG (including QCS), the Queensland Police Service (QPS), ECQ and the Department of the Premier and Cabinet considered opportunities to enhance information sharing. The opportunities considered were to make information available as early as possible in the penalty debt management process to enable accurate identification and management of a debtor, and for all agencies involved in the imposition and collection of penalties to maximise information sharing opportunities to improve collective performance.

Following consideration by the PDMC, SPER consulted on the proposed policy for the permissive information sharing regime with all government departments and with the Office of the Information Commissioner.

The amendments proposed in the Bill will enable the permissive information sharing regime to be developed. Factors required to operationalise the permissive information sharing regime include:

- prescription of agencies with whom SPER will share information and the type of information that will be shared; and
- the establishment of an information sharing arrangement in the form of a Memorandum of Understanding (MOU) between SPER and each prescribed entity.

Information sharing will be enabled by the new SPER system currently under development.

The processes supporting the electronic sharing of information will fully comply with appropriate ICT Standards established by the Queensland Government, including Information Standard 18: Information Security, and incorporate appropriate security measures.

SPER will comply with all information security requirements of Government regarding the protection of information and will continue to liaise with the Queensland Government Chief Information Office, which is responsible for information standards including security.

The SPER solution will establish appropriate limits for electronic access to ensure that only information allowed to be accessed is being accessed. This will involve authorisation and classification of information to control who can access what type of information.

Prescription of entities and information

Under the permissive information sharing regime, SPER will share information with agencies which are prescribed by Regulation. Initially, these are expected to include agencies such as QPS, DTMR and DJAG (including courts and QCS). Other agencies may also be prescribed.

A Regulation to amend the State Penalties Enforcement Regulation 2014 to prescribe those entities with which SPER can share information, and the information that SPER can share with the prescribed entities, will be submitted to the Governor in Council for approval when those details are determined.

Establishment of MOUs with prescribed entities

MOUs will be entered into between SPER and each prescribed agency to set out administrative arrangements, including the platform to be used. SPER will develop a draft MOU for use with

prescribed entities and consult with those agencies that are members of Fines Recovery Working Groups on the form and content of the MOU.

SPER has established two Fines Recovery Working Groups. One comprises representatives of government agencies including: DTMR, the Traffic Camera Office, DJAG and QPS. The other comprises representatives of major councils, the Local Government Association of Queensland and large universities.

The MOU may include the following:

- a clear requirement in the MOU that the information can only be accessed for the legitimate purposes as outlined in the legislation;
- limits as to who can electronically access information through appropriate user authentication prior to portal logon, reviewing user access and removing user access when employees no longer require access;
- requiring auditable system logs to monitor access and time of access, to detect attempts at unauthorised access (e.g. above average activity in relation to an individual case) and to determine if unauthorised access is inadvertent or deliberate;
- provisions regarding confidentiality and appropriate access and use of information;
- an outline of the legislative offence provisions for inappropriate access and use of information and requiring inappropriate access and improper use to be dealt with through prompt remedial actions in relation to the public service code of conduct, e.g. removal of access rights and disciplinary action for inappropriate access and improper use.

The MOU between a prescribed entity and SPER will be subject to annual review by each party to the arrangement to ensure compliance with the requirements of the arrangement.

Statement of Reservation

Statement of Reservation State Penalties Enforcement Amendment Bill 2017

THE NON-GOVERNMENT MEMBERS' POSITION

In supporting the recommendation that this Bill be passed by the House, the non-Government members have certain reservations into the efficacy of the proposed changes to the State Penalties Enforcement Act and also to the weak and deceptive response that proper implementation of the outcomes expected if this Bill becomes law will come at no extra cost to the Queensland taxpayer.

As this Bill is based on the New South Wales model, the preposterous notion that successful implementation of the measures required to reduce the out of control, upwardly spiralling mammoth SPER debt of nearly \$1.2 billion will be financially resourced from existing Government budgets, means either that the current Government budgets have too much excess fat in them or other government budgeted programs will have to be sacrificed to financially support the cost burden created by enacting the outcomes of the duties created by the passing of this Bill.

The Queensland Council of Social Services noted in its submission, the requirements of the sponsors are such: *"assessing eligibility, deciding the services to be provided, applying to the registrar on behalf of the individual, delivering services or referring to other service providers, reporting on progress, and keeping records"*. The non-Government members of the committee believe that over the long-term the situation of sponsors being able to fund the wide range of services provided under this scheme internally will not be sustainable and that approved sponsors and individuals providing services will require extra government funding to continue to provide these services on top of the usual services these organisations provide.

The non-Government members also want to highlight a divide that we see emerging between metropolitan areas and regional areas in being able to access these WDO services. It's a simple fact that SPER debtors living in areas like South-East Queensland will have more ability to successfully apply to work off their debt through the WDO scheme. The lack of services available in many regional areas will mean that access to this option will most likely be restricted. Organisations providing these services in regional locations will also find it more difficult to meet the costs of providing WDO services internally. The publicly available SPER debts highlight that the amount owed is spread right across Queensland, including in regional parts of the state. This is a gap in the system that will emerge and needs to be acknowledged.

The Minister needs to quantify the financial cost of the Bill's outcomes to the House; the Minister needs to identify where the funding will come from within Government departments and the Minister needs to set reasonable and relevant financial budgetary outcomes as benchmarks for the commitment of further Queensland taxpayer dollars to a scheme which is spiralling out of control.



Ray Stevens
Deputy Chair of Finance and Administration Committee
State Member for Mermaid Beach