Parliamentary Committees



State Penalties Enforcement (Modernisation) Amendment Bill 2022

Report No. 24, 57th Parliament
Economics and Governance Committee
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Economics and Governance Committee

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Acknowledgements

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All web address references are current at the time of publishing.

Contents

Abbreviations

Bill	State Penalties Enforcement (Modernisation) Amendment Bill 2022
committee	Economics and Governance Committee
DTMR	Department of Transport and Main Roads
HRA	*Human Rights Act 2019*
LGAQ	Local Government Association of Queensland
LSA	*Legislative Standards Act 1992*
LT Act	*Land Tax Act 2010*
MBRC	Moreton Bay Regional Council
PIN	Penalty Infringement Notice
PSDA Notice	Public Service Departmental Arrangements Notice (No. 1) 2022
QPS	Queensland Police Service
QRO	Queensland Revenue Office
registrar	Registrar of SPER
REIQ	Real Estate Institute of Queensland
RSCO	Road Safety Camera Office
RTA	Residential Tenancies Authority
RTRA Act	*Residential Tenancies and Rooming Accommodation Act 2008*
SBFA Act	*Statutory Bodies Financial Arrangements Act 1982*
SDTs	Special Disability Trusts
SPE Act	*State Penalties Enforcement Act 1999*
SPEA Act	*State Penalties Enforcement Amendment Act 2017*
SPER	State Penalties Enforcement Registry
SPE Regulation	State Penalties Enforcement Regulation 2014
TA Act	*Taxation Administration Act 2001*
TORUM Act	*Transport Operations (Road Use Management) Act 1995*
Traffic Regulation	Traffic Regulation 1962

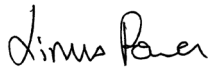
Chair's foreword

This report presents a summary of the Economics and Governance Committee's examination of the State Penalties Enforcement (Modernisation) Amendment Bill 2022.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill. I also thank our Parliamentary Service staff and the Queensland Treasury.

I commend this report to the House.



Linus Power MP

Chair

Recommendation

The committee recommends the State Penalties Enforcement (Modernisation) Amendment Bill 2022 be passed.

1 Introduction

1.1 Role of the committee

The Economics and Governance Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 26 November 2020 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 are:

- Premier and Cabinet and Olympic and Paralympic Games
- Treasury, Trade and Investment
- Tourism, Innovation and Sport.

The functions of a portfolio committee include the examination of bills and subordinate legislation in its portfolio area to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles
- matters arising under the Human Rights Act 2019
- for subordinate legislation – its lawfulness.[2]

The State Penalties Enforcement (Modernisation) Amendment Bill 2022 (Bill) was introduced into the Legislative Assembly and referred to the committee on 17 March 2022. The committee is to report to the Legislative Assembly by 6 May 2022.

1.2 Inquiry process

On 21 March 2022 the committee invited stakeholders and subscribers to make written submissions on the Bill. Seven submissions were received. Appendix A contains a list of submitters.

The committee received a public briefing about the Bill from Queensland Treasury (Treasury or department) on 28 March 2022. A transcript is published on the committee's web page; see Appendix B for a list of officials.

The committee received written advice from the department in response to matters raised in submissions. The committee notes the committee did not receive a submission from the Residential Tenancies Authority on the proposed changes to their funding arrangements.

The committee held a public hearing on 19 April 2022; see Appendix C for a list of witnesses.

The submissions, correspondence from the department and transcripts of the briefing and hearing are available on the committee's webpage.

1.3 Policy objectives of the Bill

According to the explanatory notes, the objectives of the Bill are to:

- implement an integrated approach to managing fines for camera-detected offences and tolling offences, with functions centralised in a single agency – the Queensland Revenue Office (QRO)
- provide a framework for the earlier registration of unpaid infringement notices with the State Penalties Enforcement Registry for enforcement

1 *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

2 *Parliament of Queensland Act 2001*, s 93; and *Human Rights Act 2019* (HRA), ss 39, 40, 41 and 57.

- make miscellaneous amendments to modernise the operation of the *State Penalties Enforcement Act 1999* (SPE Act) and support the effective administration of State Penalties Enforcement Registry (SPER).[3]

The Bill also proposes to:

- make consequential amendments to the *Transport Operations (Road Use Management) Act 1995* (TORUM Act) and the Traffic Regulation 1962 (Traffic Regulation) on account of the integrated approach to fines management
- amend the *Land Tax Act 2010* (LT Act) to ensure that trustees of Special Disability Trusts (SDTs) are subject to the higher tax-free threshold and lower land tax rates that apply to individuals
- amend the *Residential Tenancies and Rooming Accommodation Act 2008* (RTRA Act) to provide stable funding for the Residential Tenancies Authority (RTA) and ensure security of residential bonds on behalf of Queensland tenants
- modernise the confidentiality provisions in the SPE Act and the *Taxation Administration Act 2001* (TA Act).[4]

1.4 Government Consultation on the Bill

As set out in the explanatory notes, community consultation was not undertaken in relation to the SPER-related amendments, the LT Act amendments, the RTRA Act amendments or the amendments to modernise the SPE Act and TA Act.[5]

Community consultation was not undertaken on the SPER-related amendments as it 'was not considered necessary or appropriate as the amendments are necessary to ensure the continued effective operation and administration of SPER and QRO'.[6]

While community consultation was not undertaken in relation to the LT Act amendments, the explanatory notes advise the amendments address issues raised by stakeholders in relation to the land tax treatment of SDTs.[7]

Community consultation was not undertaken on the RTRA Act amendments because 'it was not considered necessary due to the mechanical nature of the amendments'.[8] However, government consultation was undertaken internally with State Government departments and the RTA, with the feedback incorporated into the drafting of the relevant amendments.[9]

REIQ and Tenants Queensland expressed disappointment in the consultation process prior to the Bill's introduction and considered there was a lack of transparency on the proposed amendments to the RTRA Act.[10]

Treasury advised that discussions had been going 'for approximately six months' with the RTA that were:

3 Explanatory notes, p 1.

4 Explanatory notes, pp 1-2.

5 Explanatory notes, p 13.

6 Explanatory notes, p 13.

7 Explanatory notes, p 13.

8 Explanatory notes, p 13.

9 Explanatory notes, p 13.

10 Submission 3, pp 1, 2; submission 7, p 6.

> …focused on implementation, obviously taking the view that there is a government decision to amend the funding model which then results in this legislative amendment. There was no consultation about the decision, but there has certainly been lots of discussion with them about how this is implemented and ensuring that the board is comfortable with the level of funding that it has available to it, particularly over the next four years of the forward estimates period, so that it is able to put forward a budget that it is happy with to the minister and that is consistent with its strategic plan.[11]

Consultation was not undertaken on the amendments to modernise the SPE Act and TA Act confidentiality provisions 'as they are intended to address an inconsistency with a longstanding legal principle'.[12]

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

Recommendation 1

The committee recommends the State Penalties Enforcement (Modernisation) Amendment Bill 2022 be passed.

[11] Public hearing transcript, Brisbane, 19 April 2022, p 15.

[12] Explanatory notes, p 13.

2 Examination of the Bill

The Bill proposes to achieve its objectives by:

- integrating fine administration functions
- reducing the timeframe for registration of defaulted infringement notices with SPER
- modernising the administration of the SPE Act and SPER
- ensuring that trustees of SDTs are subject to the higher tax-free threshold and lower land tax rates that apply to individuals
- reforming the funding model of the Residential Tenancies Authority
- modernising the SPE Act and TA Act confidentiality provisions.

Each of these key amendments is examined in the sections of this chapter that follow.

2.1 Integration of fine administration functions

The State Penalties Enforcement Regulation (SPE Regulation) currently provides that:

- infringement notices for camera-detected offences (such as speeding, not stopping at a red light, or uninsured driving)[13] and tolling offences[14] (collectively known as the *relevant offences*) may only be served by persons who are authorised officers, being either a person appointed by the chief executive of Department of Transport and Main Roads (DTMR), or a police officer
- DTMR is the administering authority for most of the relevant offences, with the Motor Accident Insurance Commission being the administering authority for the rest.

However, on 1 February 2022, fine administration functions relating to the relevant offences were integrated into the QRO via the administrative Public Service Departmental Arrangements Notice (No. 1) 2022 (the PSDA Notice) and machinery-of-government transfers.[15]

The PSDA Notice provides that Queensland Treasury (of which QRO, SPER and the registrar of SPER are a part) is responsible for serving infringement notices and acting as the administering authority for:

- the relevant offences, other than mobile phone and seatbelt offences, from 1 February 2022
- mobile phone and seatbelt offences (collectively known as the *distracted driver offences*) from 30 November 2022.[16]

To give effect to the PSDA Notice, relevant QRO officers were appointed as:

- authorised officers from 1 February 2022, for the purposes of serving infringement notices in relation to the relevant offences (other than the distracted driver offences)
- delegates of the relevant administering authority from 1 February 2022 in respect of the relevant offences (other than the distracted driver offences), with some limitations.[17]

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13 As defined in the TORUM Act.

14 As defined in the *Transport Infrastructure Act 1994.*

15 Explanatory notes, pp 2, 3; Queensland Parliament, Record of Proceedings, 17 March 2022, p 537; public briefing transcript, Brisbane, 28 March 2022, p 1.

16 Explanatory notes, p 2.

17 Explanatory notes, pp 2-3.

In addition, since 1 February 2022, relevant QRO officers have been performing the administering authority functions previously performed by DTMR officers in relation to other infringement notice offences (*additional offences*).[18]

To integrate the approach to the management of infringement notices and give legislative effect to the fine serving and administration system currently in place, the Bill amends the SPE Regulation to prescribe the registrar of SPER (registrar) as the:

- authorised person for service of infringement notices for the relevant offences (other than the distracted driver offences) and administering authority from 1 July 2022
- authorised person for service of infringement notices and administering authority for the distracted driver offences from 30 November 2022, and
- administering authority for the additional offences from 1 July 2022.

QRO (which includes SPER), will become the single agency for issuing and administering infringement notices and collecting fines for the relevant offences. DTMR and QPS will retain responsibility for the prosecution of the relevant offences.[19]

The Bill also makes a range of consequential amendments, including amendments to:

- the TORUM Act to allow the registrar to receive declarations in relation to the relevant offences;
- the Traffic Regulation to allow the registrar to view an image or video made by the digital driver behaviour camera system used to detect the distracted driver offences, and form a belief as to whether such an offence has been detected;
- the SPE Act to:
    - reflect the multiple roles of the registrar (i.e. as an authorised person, an administering authority or as registrar of SPER); and
    - expressly authorise the registrar (as administering authority) to disclose personal information of an alleged offender in relation to a particular infringement notice offence to the department or agency responsible for administration of the relevant legislation (the legislative administrator) for the purposes of enforcement of the offence – this includes investigating or prosecuting the offence, and applying to a court for a civil penalty or other order for the offence; and
- the *State Penalties Enforcement Amendment Act 2017* to replicate a change made to the SPE Act.[20]

2.1.1 Submitter comments

In its submission, LawRight advised that while it supports the underlying objectives of the Bill, the changes that authorise SPER to serve and administer infringement notices in relation to camera detected and tolling offences 'could have a negative impact on vulnerable members of the community if careful measures are not taken to ensure that SPER will appropriately use its discretion as an authorised authority to withdraw infringement notices after considering an individual's circumstances'.[21]

LawRight considered these proposed changes may have a significant impact on individuals experiencing disadvantage, because:

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18 Explanatory notes, p 3. This includes offences for which infringement notices were served by authorised officers appointed under the TORUM Act, and certain offences for which infringement notices were served by QPS officers.

19 Queensland Parliament, Record of Proceedings, 17 March 2022, p 538; explanatory notes, p 3.

20 Explanatory notes, p 3.

21 Submission 4, p 2; public hearing transcript, Brisbane, 19 April 2022, p 11.

> Automated fines, including toll fines and fines for camera-detected offences, make up a significant amount of the SPER debt pool and have a disproportionate impact on people experiencing disadvantage and poverty. People experiencing personal hardship and poverty are both more likely to receive these types of fines and less able to resolve the debt that accrues.
>
> …
>
> …in many instances, a person's experience of hardship and poverty increases the likelihood that a person may be issued a fine, often in circumstances where their experience of poverty is directly connected to the underlying infringement. Anecdotally, this increases where the process for issuing a fine is automated.[22]

LawRight explained that people experiencing forms of disadvantage are more likely to incur automated fines because:

- a person may use their car more frequently because of their living circumstances, such as being transient or living in their car, or
- a person (the registered owner) may share the car with others due to limited financial resources, creating the risk another driver may incur the fine in the registered owner's name.[23]

LawRight also advised that people experiencing poverty are often unaware of automated infringements until contacted by SPER because:

- a person may be transient or have no fixed address to receive correspondence
- a violent partner or family member may be collecting a person's mail to ensure they do not receive this correspondence
- a person may be illiterate or not read English
- a person's mental health may impact their ability to engage with the notices.[24]

In addition, LawRight advised vulnerable Queenslanders are 'less able to resolve SPER fines' because of the size of the debt and being 'at risk of homelessness; surviving on a Centrelink benefit'.[25]

The ability for the administering authority to have the capacity to exercise discretion was seen by LawRight as 'integral to avoid disproportionate and unfair outcomes for vulnerable members of the community'.[26]

LawRight advised that the current legislative framework has allowed for some success at having fines withdrawn, via:

- the legislative discretion of an administering authority to withdraw[27]
- persons who are authorised to issue infringement notices, such as a police officer within the Road Safety Camera Office (RSCO) withdrawing an infringement notice

22 Submission 4, p 3.

23 Submission 4, pp 3, 4.

24 Submission 4, p 4.

25 Submission 4, p 4.

26 Submission 4, pp 4, 5.

27 SPE Act, ss 28 & 29.

- SPER cancelling the enforcement order,[28] with the administering authority considering the option of not taking any further action with respect to the infringement notice.[29]

Further to the reference to SPER cancelling the enforcement order, LawRight advised:

> SPER will not consider the underlying basis of any particular fine. When you are dealing with SPER as it currently stands, they are there just to collect the fine. Any of the success that we have had in resolving these infringements where a person had a reasonable excuse, for instance, for not responding to a toll demand notice, was not the driver of the vehicle at the time, was experiencing domestic violence or a mental health episode—all of those discussions at this point have been had with the Department of Transport and Main Roads and specifically with the tolling offences unit. SPER itself will not consider whether the fine was appropriately issued or if there is any other particular type of consideration.
>
> What we have had success in doing is working with the authority that issued the original infringement to ask them to utilise the rights that they have under section 28 of the State Penalties Enforcement Act to withdraw the fines and then to exercise their existing discretion to then cancel any of those infringements.[30]

For those who have the discretion, LawRight advised there is no criteria, either under the SPE Act or any other legislative or public guidance, 'which address how this discretion should be exercised. This means that the extent to, and way in which the discretion is used, is a matter for the internal regulatory framework of the administering authority or authorised person'.[31]

To ensure the proposed changes 'do not unnecessarily or unintentionally impact vulnerable members of the community', LawRight proposed:

- SPER take measures to ensure it will exercise its discretion appropriately, which include developing an appropriate decision-making matrix or guideline, part of which contains the ability to withdraw infringement notices where an individual can establish
    - they were not responsible for the underlying fine
    - their circumstances at the time the fines were issued justifies the withdrawal and cancelation of the fines
    - public interest considerations justify the withdrawal and cancellation of the fines.
- any relevant decision-making matrixes or guidelines are made publicly available, to ensure transparency and consistency of decision-making.[32]

LawRight argued the benefits of making the matrix public include:

- showing that there is flexibility and discretion with regard to SPER debt
- offering guidelines on the type of information that needs to be provided if requesting a fine be withdrawn
- ensuring it is 'in line with the general objectives of good law which is having transparency and consistency in the law', in the same way some other entities do, such the Rockhampton Regional Council.[33]

Alternatively, LawRight proposed that in 'the absence of clear legislative guidance, this could be achieved through policy documents that indicate an appropriate decision-making matrix to exercise

28 SPE Act, s 56.

29 Submission 4, pp 5-6.

30 Public hearing transcript, Brisbane, 19 April 2022, p 13.

31 Submission 4, p 6.

32 Submission 4, p 2, 8.

33 Public hearing transcript, Brisbane, 19 April 2022, p 12.

the discretion, as well as implementing training for relevant SPER officers of the intersection between infringement notices and social disadvantage'.[34]

LawRight also proposed that future amendments of the SPE Act include 'express legislative criteria as to how this discretion is to be exercised' to ensure 'that the relevant administrative authority (whether it be SPER or another Department at the time) will appropriately exercise its discretion to withdraw infringement notices'.[35]

2.1.2 Departmental response

In response to LawRight's submission, Treasury clarified that the Bill amends the SPE Regulation to provide that the registrar of SPER, not SPER itself, is the authorised person and/or administering authority for particular transport and tolling offences.[36]

Treasury noted 'that SPER does not have legislative power to withdraw an infringement notice that has been referred to it by an administering authority', however that 'in certain circumstances (such as where the person did not receive the infringement notice) the registrar (as registrar of SPER) may refer the matter back to the administering authority'.[37]

Treasury also referred to 'various mechanisms through which SPER works with vulnerable Queenslanders to assist them in discharging their SPER debt. This includes instalment payment plans and work and development orders'.[38]

Treasury also advised there will be guidelines, stating:

> The activities that have been occurring up to date do have those sorts of guidelines. There are occasionally fines and penalties written off in certain circumstances where there is an appropriate case. We look to continue that sort of approach. We will no doubt recast the guidelines at a later time. At the moment in large measure we will pick up the guidelines that are in place.
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> …
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> I think there is sufficient discretion. We do not attempt to overtake the law. The law is as the law is. If there is an offence that has occurred, the offence has occurred. The question is how you manage that administratively. We do look at circumstances of the type you described. Things can happen there—anything from people having a long time to pay to work development orders where people can do some community service instead of paying. In the end, there is a law to be complied with and we will look at it that way. I think any opportunity for people to come forward and put the case to us—we will certainly look at it compassionately, if I can put it that way.[39]

In response to LawRight's proposal that the registrar should exercise discretion to withdraw infringement notices where an individual can establish that they were not responsible for the underlying offence, Treasury noted:

> …the legislation which creates the transport and tolling offences typically contains mechanisms for an infringement notice to be withdrawn in such a case. For instance, the *Transport Operations (Road Use Management) Act 1995* provides that it is a defence for certain offences detected by a photographic detection device for the alleged offender to prove that they were not the driver of the vehicle at the time the offence happened, by providing details of the name and address of the actual driver.[40]

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34 Submission 4, p 8.

35 Submission 4, p 8.

36 Queensland Treasury, correspondence dated 13 April 2022, attachment, p 7.

37 Queensland Treasury, correspondence dated 13 April 2022, attachment, p 7.

38 Queensland Treasury, correspondence dated 13 April 2022, attachment, p 7.

39 Public hearing transcript, Brisbane, 19 April 2022, p 19.

40 Queensland Treasury, correspondence dated 13 April 2022, attachment, p 8.

In response to the proposal that a fine be withdrawn where public interest considerations and/or the circumstances at the time the infringement notice was issued justify the withdrawal, Treasury stated:

> Subject to passage of the Bill, the registrar will not become an administering authority in relation to the relevant offences until 1 July 2022 (or 30 November 2022, in the case of certain offences), and the registrar has therefore not yet finalised consideration of appropriate circumstances in which any discretions as an authorised person or an administering authority will be exercised. LawRight's submission will be considered as part of development of the registrar's practices.[41]

The call for any relevant decision-making matrices or guidelines to be made publicly available for transparency and consistency of decision making was noted by Treasury, who again advised 'the registrar has not yet finalised any such guidelines, nor considered the extent to which they will be published', with LawRight's submission to be 'considered as part of any such decision by the registrar'.[42] Treasury also noted that DTMR or QPS internal guidelines in relation to the exercise of discretions do not appear to be currently publicly available.[43]

Treasury advised that in relation to the consistency of decision making, 'delegates of the registrar will receive appropriate training once a decision-making framework is developed'. Treasury also advised 'for the transport offences for which the registrar will be prescribed as an authorised person, it is the registrar's intention that any offence which is detected by a photographic detection device will be manually reviewed by a delegate of the registrar before an infringement notice is issued'.[44]

2.2 Reduced timeframe for registration of defaulted infringement notices with SPER

Under the SPE Act, a person has 28 days to respond to an infringement notice.[45] An administering authority may register a default certificate with SPER up to and including the last day on which a person may start a prosecution for the offence. This is generally 12 months from the date of the offence, but may be longer. SPER becomes responsible for the collection and enforcement of the unpaid amount once the default certificate is registered.[46]

According to the explanatory notes, 'the actual time administering authorities take to register default certificates with SPER varies but is typically between two to six months from the date of the infringement notice'.[47] This has been raised as a concern because delays in registering default certificates with SPER result in difficulty and cost in recovering debts.[48]

The department advised:

> …the benefit of moving the referral across to SPER as soon as possible is that the older a debt is the harder it becomes to collect, the more cost it takes to collect and the less likely it is you are going to recover it. The goal of the amendments to propose a framework to shorten that period is to enable SPER to act quicker and to have a higher rate of recovery and a quicker rate of recovery of those debts owing to the state of Queensland.[49]

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41 Queensland Treasury, correspondence dated 13 April 2022, attachment, p 8.

42 Queensland Treasury, correspondence dated 13 April 2022, attachment, p 8.

43 Queensland Treasury, correspondence dated 13 April 2022, attachment, p 8.

44 Queensland Treasury, correspondence dated 13 April 2022, attachment, p 8.

45 A person may respond by paying the fine, applying to pay by instalment, electing for the matter of the offence to be heard in a court, or, if relevant, submitting a user declaration for vehicle-related offences, e.g. nominating another driver; explanatory notes, p 4.

46 Explanatory notes, p 4; Queensland Parliament, Record of Proceedings, 17 March 2022, p 538.

47 Explanatory notes, p 4.

48 Explanatory notes, p 4.

49 Public briefing transcript, Brisbane, 28 March 2022, p 4.

The department also advised that SPER 'has a much broader range of powers given to it by the parliament in relation to what activities can be undertaken to incentivise that payment than is generally available in standard debt collection'.[50]

The Bill amends the SPE Act to enable a timeframe for the earlier registration of default certificates for defaulted infringement notices with SPER, to be prescribed by regulation.[51] The amendments enable the earlier registration of default certificates with SPER by:

- specifying that the 'final day' on which a default certificate must be given to SPER for registration is the latest day on which a prosecution for the offence may be started, or an earlier day that is prescribed by regulation to be the final day
- providing that a 'due day' that is earlier than the final day can be prescribed by regulation, and that a default certificate can be given after the due day, subject to payment of a late lodgement fee by the administering authority.[52]

The SPE Regulation will be amended to prescribe the registration timeframe and late registration fee subject to the passage of the Bill and consultation with administering authorities.[53]

2.2.1 Submitter comments

Moreton Bay Regional Council (MBRC) advised it strongly supports the primary objectives of the Bill to modernise the operation of the SPE Act and support the effective administration of SPER.[54]

However, both the Local Government Association of Queensland (LGAQ) and MBRC raised issues with the prescription of the final day, due day and late lodgement fee in the SPE Regulation occurring at a later stage, arguing this 'does not allow for transparency in the policy direction of the State'.[55]

Both stakeholders noted SPER had earlier this year suggested in 'confidential engagement correspondence' the time period would change to 35 days, with the confidentiality of the consultation meaning local governments couldn't secure collective feedback to be given to SPER or the government.[56]

In relation to the due date for an organisation to register unpaid infringement notices with SPER for enforcement before the higher late lodgement fees would start to apply, MBRC told the committee:

> The prescription of any trigger registration date for unpaid infringement notices any earlier than 80 to 90 days would adversely impact on Moreton Bay Regional Council's ability to issue requirement notices; conduct our internal review processes, if necessary; and, most importantly in our mind, comply with the Queensland Ombudsman's principles for procedural fairness.[57]

To support this, MBRC advised its current process of issuing an initial notice 'results in about 73 per cent of notices being paid', with the MBRC then issuing a reminder notice after the 28 days which 'achieves a payment of another approximately 28 per cent of infringements'.[58]

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50 Public briefing transcript, Brisbane, 28 March 2022, p 5.

51 Queensland Parliament, Record of Proceedings, 17 March 2022, p 538.

52 Explanatory notes, p 4.

53 Queensland Parliament, Record of Proceedings, 17 March 2022, p 538; explanatory notes, p 4.

54 Public hearing transcript, Brisbane, 19 April 2022, p 6.

55 Submission 5, p 2; submission 6, p 4.

56 Submission 5, p 2; submission 6, p 4.

57 Public hearing transcript, Brisbane, 19 April 2022, p 6.

58 Public hearing transcript, Brisbane, 19 April 2022, p 6.

According to MBRC, approximately 15 per cent of all fines are subject to a formal review, with 23 per cent paid after this process.[59] MBRC advised this combined process—issuing the notice, providing the reminder notice and then having an appeal right—takes up to '80 to 90 days', which it considers to be good governance. [60] Of the fines issued, MBRC advised approximately 3.5 per cent of all infringements, reflecting a dollar value of $59,428, are subsequently lodged with SPER. MBRC advised:

> The provision of an internal review process by Moreton Bay Regional Council affords our customers a time frame in which they can contest the issue of an infringement. By providing this notice, council reduces any unnecessary enforcement action. Further, council is able to consider the extenuating circumstances such as any unforeseen or emergency situations.[61]

MBRC suggested that 'a due date for referral of 80 to 90 days would also represent good and effective governance by other agencies'.[62]

The LGAQ and MBRC indicated there would be a financial impact on local government if the amendment takes place, because 'There is no option for local government to avoid increased costs if the Bill proceeds'.[63] The LGAQ explained this as follows:

- If local government acceded to an earlier PIN default time period of 35 days, there would be a 30-40 per cent increase in PINs being referred to SPER. For every PIN referred to SPER, local government pays $73.80. A 30-40 per cent increase is a significant financial impact for local government.
- If councils maintain the current system of issuing reminders after a PIN due date they will then be forced to pay a higher SPER referral fee. This fee is not transparent currently. In any respect, an increase in scale for SPER PIN referrals would also be a significant impact on local government. Some PIN amounts are currently only $75. If the current SPER fee of $73.80 is increased it would, in some cases, exceed the value of the penalty.[64]

In addition to the cost to councils, MBRC also referred to concerns about a duplication of work if there was a requirement to register a default notice with SPER prior to MBRC finishing its process, stating 'We would then potentially have SPER and this council dealing with that same matter. In terms of an infringement notice that was already referred to SPER after, say, the 35 days and we are in a reminder process, we are dealing with them at the same time that SPER may well be dealing with them'.[65]

Another concern raised by both stakeholders was the potential for council customer service capacity to be constrained.[66] MBRC advised it is 'a strong advocate for quality customer service, irrespective that a penalty infringement has been issued' and raised the following issues in relation to customer service:

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

59 Public hearing transcript, Brisbane, 19 April 2022, p 7.

60 Public hearing transcript, Brisbane, 19 April 2022, p 6.

61 Public hearing transcript, Brisbane, 19 April 2022, p 6.

62 Public hearing transcript, Brisbane, 19 April 2022, p 6.

63 Submission 5, p 2; submission 6, p 4.

64 Submission 6, p 4.

65 Public hearing transcript, Brisbane, 19 April 2022, p 6.

66 Submission 5, p 2; submission 6, p 4.

- This issue of user declarations has also not been considered by the State. A delay in the submission of a user declaration may result in either the earlier default of a PIN to SPER or alternatively a higher scale SPER fee if the PIN remains unpaid.
- In any respect, if local governments accede to the earlier SPER referral time frame, to avoid increased costs, customers will experience significantly increased costs from SPER on top of the penalty. As explained, the current SPER fee of $73.80 being increased would in some cases exceed the value of the penalty.[67]

Both stakeholders also raised concerns that shortened timeframes may impact on the most vulnerable within the community, particularly when having regard to the Good Decision-Making Guidelines outlined by the Queensland Ombudsman.[68]

The LGAQ and MBRC similarly raised concerns that procedural fairness may be compromised 'by the imposition of increased fees or inability to reasonably respond and reduced time to consider the issue', [69] submitting:

- Procedural fairness is about providing a person who might be adversely affected by a decision a 'fair hearing' before the decision is made.
- Generally, a fair hearing involves disclosure, a reasonable opportunity to respond and impartiality.
- The affected person should be notified of the key issues and given enough information to participate meaningfully in the decision-making process. Reasonable steps should be taken to notify the affected person.
- The affected person should be given a reasonable opportunity and time to respond. The decision-maker should genuinely consider the affected person's submission in making their decision.[70]

2.2.2 Departmental response

Treasury responded to these concerns by advising the government has made no decision on a prescribed registration timeframe or any late lodgement fee, and the QRO will continue to consult with administering authorities as well as consider the issues raised by the LGAQ and MBRC when developing the regulation.[71]

In regards to the 35-day time period raised by stakeholders, Treasury advised:

> Thirty-five days is not a fixed time at all. It was a period of time that was shared with some councils in a consultation phase a little while ago just to get a sense of whether the whole idea was one that was workable. We are still working on that. This bill does not propose 35 days: it simply creates a capacity to have a referral time in a regulation later. This is something that is still out for consultation. Following the passage of the Bill we will work with councils to see what the best time frame is. The main issue for us is that we are trying to make this effective for councils, make the system work more easily and make sure they collect defined penalties that are issued. Any time the collection period goes beyond about 60 days the likelihood of collection diminishes very rapidly. After 60 or so days probably about 60 per cent of fines have been paid; over the next three years, about another 20 per cent. So getting to fines early and collecting those early is a very important thing both for the administration of the law and for councils in terms of the return of money.[72]

Treasury pointed out that 'the longer action is delayed in the recovery of a debt, the less likely it is that the debt will be recovered', with QRO analysis of SPER showing 'that, on average, 61 per cent of

67 Submission 5, pp 2-3.

68 Submission 5, p 2; submission 6, p 5.

69 Submission 5, p 2; submission 6, p 5.

70 Submission 6, p 5.

71 Queensland Treasury, correspondence dated 13 April 2022, attachment, p 10.

72 Public hearing transcript, Brisbane, 19 April 2022, p 16.

penalty debts are finalised within the first two months following issue, with finalisation rates decreasing sharply after that period'.[73]

Treasury advised 'the amendments provide flexibility by allowing different final days and due days to be prescribed for different infringement notice offences'.[74]

Treasury also advised the following about the registration fee paid on registration of a default certificate with SPER:

> When a local government (or any other administering authority that is entitled to retain the amount of the fine paid to it) registers a default certificate with SPER, it must be accompanied by a registration fee of $73.80.
>
> The amount of the registration fee is added to the outstanding debt. If the outstanding debt is collected by SPER, the amount of the registration fee is paid to the local government or other administering authority when the amount collected is remitted.[75]

2.3 Modernisation of administration of the *State Penalties Enforcement Act 1999*

The explanatory notes outline a number of amendments to the SPE Act to 'modernise' its administration and support the administration of SPER and the QRO.[76]

2.3.1 Registrar of SPER

While the SPE Act provides for the position of registrar of SPER, it does not explicitly address how a person is appointed to that position. The current practice is for the Commissioner of State Revenue under the TA Act to also serve as the registrar.[77]

The Bill amends the SPE Act to reflect current practice, providing that the registrar of SPER is the person who is the Commissioner of State Revenue.[78]

2.3.2 Use of body-worn camera by SPER enforcement officers

The Bill amends the SPE Act to expressly authorise the use of body-worn cameras by SPER enforcement officers while exercising functions under the SPE Act.[79]

The explanatory notes justify the amendment by advising it 'is commonplace for body-worn cameras to be used by agencies that have legislative enforcement functions' and that 'although there is a common law right to record images or sounds, over recent years there has been a trend to legislatively clarify that it is lawful for officers of those agencies to use body-worn cameras'.[80]

According to the explanatory notes, the amendment is consistent with similar provisions in other legislation governing the use of body-worn cameras by enforcement agencies.[81]

Treasury advised the fines to be enforced are issued by government or government related entities, which have been lodged with SPER for collection once the fines are considered to be in default. The department also advised enforcement officers have a range of powers that they use, a 'large number' of which 'are dealt with in the office', but 'when they do need to go out into the field to take

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73 Queensland Treasury, correspondence dated 13 April 2022, attachment, p 10.

74 Queensland Treasury, correspondence dated 13 April 2022, attachment, p 11.

75 Queensland Treasury, correspondence dated 13 April 2022, attachment, p 11.

76 Explanatory notes, p 4; Queensland Parliament, Record of Proceedings, 17 March 2022, p 538.

77 Explanatory notes, pp 4-5.

78 Explanatory notes, p 5.

79 Explanatory notes, pp 4-5.

80 Explanatory notes, p 5.

81 Explanatory notes, pp 4-5.

enforcement action, such as sale and seizure, immobilisation of vehicles and so on, they wear the body worn cameras to film the footage'.[82]

Regarding privacy of the footage, Treasury stated:

> That footage is protected by all the privacy regulations. It is also protected by our own confidentiality provisions in the legislation. Its use is only for the purposes of the enforcement and administration of the SPER legislation. Otherwise, it is not disclosed. It is certainly not disclosed publicly. It is not used for media or any of those types of things. It is very restricted.[83]

2.3.3 Prescription of enforcement costs that can be covered from enforcement debtors

When undertaking enforcement action to seize and sell real or personal property to enforce payment of a fine, penalty or other amount, SPER incurs associated costs for the delivery of seizure and sale activities by third-party providers. Costs may include locksmiths, towage, storage, security, insurance and costs associated with sale.[84]

While the SPE Act provides that a regulation may prescribe the enforcement costs payable for enforcing payment of a fine, penalty or other amount, the costs are not currently prescribed under the SPE Regulation. This means the State bears the cost of undertaking the action, rather than the person owing the debt.[85] According to the explanatory notes, the mechanism for recovering enforcement costs under the SPE Act is also unclear, advising:

> The SPE Act sets out an order in which proceeds from the sale of seized property are to be applied, with first priority being payment of enforcement costs incurred by SPER in seizing and selling the property. Ostensibly, this enables enforcement costs to be recovered from the debtor via payment from the sale proceeds.[86]

The Bill amends the SPE Act to insert a definition of 'enforcement costs', part of which will be defined by reference to the types of enforcement costs prescribed in the SPE Regulation.[87]

The types of enforcement costs prescribed in the SPE Regulation are:

- work of a type usually performed by a locksmith
- towing or otherwise transporting a vehicle
- impounding a vehicle
- storing or securing property
- insurance
- selling property, including any of the following:
- engaging an agent
- advertising
- preparation for sale
- commission.[88]

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82 Public briefing transcript, Brisbane, 28 March 2022, p 4.

83 Public briefing transcript, Brisbane, 28 March 2022, p 4.

84 Explanatory notes, p 5.

85 Explanatory notes, p 5.

86 Explanatory notes, p 5.

87 Explanatory notes, p 5.

88 Explanatory notes, pp 5-6.

Amendments to the SPE Act will also ensure the definition of enforcement costs includes a requirement for the costs to have been reasonably incurred by SPER when taking steps to enforce payment of a fine, penalty or other amount under the Act. Amendments will also clarify that enforcement costs are ordinarily recoverable from debtors by payment from the sale proceeds of seized property.[89]

Treasury advised that the enforcement costs will be added to the debt for the purpose of being able to recover the costs out of the sale proceeds, but if there aren't sufficient proceeds, then it will not be added to the debt or separately recovered.[90]

The department also advised that the 'sale and seizure powers are only ever exercised with debtors who are refusing to pay and obviously where there are high-value assets', which constitutes 'an extremely small number', approximately 'less than 50', of the 'thousands and thousands' of fines.[91] According to Treasury, from the period 1 January 2021 to 31 December 2021, 147 assets were seized, with 49 assets sold at auction. During this period, enforcement costs relating to seizure and sale of assets were more than $85,000. The department predicted that indicative enforcement costs that may be recovered from a debtor as a result of the amendment, in relation to seizure and sale of a motor vehicle, would be approximately $700.[92]

2.3.4 Disclosure of personal information in court orders

Court orders requiring an offender to pay a monetary penalty to a prosecuting agency or compensation or restitution to a victim of crime (third party creditor) can be registered with SPER as a debt. SPER then becomes responsible for collection of the unpaid amount and payment of that amount to the prosecuting agency or third party creditor.[93]

When SPER collects an unpaid debt and provides the payment to a prosecuting agency or third party creditor, the remittance advices only contain details of the court order and the offence, but do not identify the debtor. Prosecuting agencies and third party creditors must contact Magistrates Court registries to identify who the debtor is, increasing the workload of registries.[94]

The Bill amends the SPE Act to enable the registrar to disclose personal information contained in a court order registered with SPER for enforcement, for the purposes of remitting an amount collected under the court order.[95]

2.3.5 Appointment of SPER enforcement officers

The SPE Act intends that various actions, such as enforcement actions, are to be undertaken by SPER enforcement officers, but the Act doesn't specify some aspects of the management of SPER enforcement officers, such as how they are to be appointed or how such appointments may be ended.[96]

The Bill proposes amending the SPE Act to clarify the process for managing the appointment of SPER enforcement officers, which is similar to the process for appointing investigators under the TA Act.[97] The explanatory notes provide the following amendments as particular examples:

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89 Explanatory notes, pp 5-6; Queensland Parliament, Record of Proceedings, 17 March 2022, p 542.

90 Public briefing transcript, Brisbane, 28 March 2022, p 3.

91 Public briefing transcript, Brisbane, 28 March 2022, p 3.

92 Queensland Treasury, correspondence dated 31 March 2022, p 1.

93 Explanatory notes, p 6.

94 Explanatory notes, p 6.

95 Explanatory notes, p 6.

96 Explanatory notes, p 6.

97 Explanatory notes, p 6.

- for a public service employee or a debt collector engaged by the registrar under a contractual arrangement (contracted debt collector) to be appointed as a SPER enforcement officer, the registrar must be satisfied that the person is of good character and otherwise suitable for appointment;
- for a SPER enforcement officer who is a sheriff, deputy sheriff or bailiff of a court (court official) or a contracted debt collector, the person's appointment as a SPER enforcement officer will end if (amongst other things) the person ceases to be a court official or a contracted debt collector; and
- a SPER enforcement officer who is a contracted debt collector cannot resign as a SPER enforcement officer if holding such office is a condition of the contract under which the contracted debt collector is engaged by the registrar.[98]

2.4 Modernisation of the *State Penalties Enforcement Act 1999* and *Taxation Administration Act 2001*

Currently, under both the SPE Act and the TA Act, it is an offence for officials under those Acts to disclose confidential information acquired in their official capacity, unless it is for:

- SPE Act – developing or monitoring policies for, or for the operation of, the SPE Act and for writing off losses under the *Financial Accountability Act 2009*, or
- TA Act – developing or monitoring public revenue policies or for writing off losses under the *Financial Accountability Act 2009*.[99]

According to the explanatory notes, these limitations on disclosure prevent the 'appropriate use of information, including for the purposes of forecasting revenue and accounting to the Parliament'.[100]

The Bill amends the SPE Act and TA Act to permit personal confidential information to be disclosed to an officer of the department or responsible Minister if the disclosure is permitted under a law.[101]

2.5 Amendments to the *Land Tax Act 2010*

Special Disability Trusts (SDTs) are established under Commonwealth law to provide for the care and accommodation needs of profoundly disabled beneficiaries.[102]

While SDTs attract a number of benefits under Commonwealth and State revenue law, they are not assessed for land tax at the higher tax-free threshold and lower rates that apply to individuals.

Under the LT Act, this beneficial treatment is currently limited to trustees for bankrupt persons and trustees for incapacitated persons whose estate is being managed by the Public Trustee.[103]

While a land tax exemption is available to SDTs for land that is used as the home of all beneficiaries of the trust, SDT land that is not used as the home of the beneficiary is taxed at higher rates that apply to trustees generally.[104]

The Bill amends the LT Act to ensure that trustees of SDTs are subject to the higher tax-free threshold and lower land tax rates that apply to individuals.[105]

98 Explanatory notes, pp 6-7.

99 Explanatory notes, pp 7-8.

100 Explanatory notes, p 8.

101 Explanatory notes, p 8.

102 Explanatory notes, p 7.

103 Explanatory notes, p 7.

104 Explanatory notes, p 7.

105 Explanatory notes, p 7; Queensland Parliament, Record of Proceedings, 17 March 2022, p 538.

The amendments are due to commence as at 30 June this year, bringing the changes into effect for the land tax year 2022-23.[106]

2.5.1 Submitter comments

Chris and Karen Meimaris expressed their support for the amendments. As trustees for a SDT, they submitted:

> Special Disability Trusts are not an investment vehicle to avoid tax but rather a means of family providing assets to a disabled child for their needs once the child's parents pass away or when they are unable to pay for their child's needs. Therefore, treating a Special Disability Trust in the same manner as corporations and discretionary trusts or other investment vehicles is both morally and ethically wrong when the core aim of an SDT is not wealth accumulation but rather provision of special needs for the severely disabled.[107]

The Meimaris family pointed to a SDT being 'exempt from Transfer Duty when property is transferred to the Trust thus indicating that SDTs are a special case that deserve preferential tax treatment' and submitted that the 'amendment proposed in the Bill is then consistent with other tax or duty exemptions related to the gifting of real property to an SDT' in Queensland.[108]

Chris and Karen Meimaris also noted that in Victoria, an SDT 'is treated as a natural person and thus excluded from any tax surcharges' and 'the federal government taxes income from the Trust at the beneficiary's personal tax rate, i.e., zero in Jessica's case, and it does not charge capital gains tax should an asset be sold again highlighting that these Trusts are special entities that deserve tax relief'.[109]

2.5.2 Departmental response

In response to these issues, Treasury advised the following:

> While the Trustees submit that a transfer duty exemption applies when property is transferred to an SDT, Queensland Treasury notes that the exemption is limited to certain dutiable transactions relating to residential land that is being, or will be, used as the principal place of residence by the beneficiary of the SDT.
>
> Queensland Treasury also notes that similar relief is already provided under the LT Act as a land tax exemption is available to all trustees, including trustees of SDTs, for land that is used as the home of all beneficiaries of the trust.[110]

Treasury advised the existing land tax exemption for land used as the home of all beneficiaries of a trust will continue to apply.[111]

2.6 Reforms of the funding model of the Residential Tenancies Authority

The RTA currently relies on investment returns on tenants' rental bonds to meet its operating expenses.[112]

The Bill amends the RTRA Act so that the RTA will receive annual grant funding to fund its operations, rather than seeking returns on rental bonds, to ensure funding stability.[113] Instead of the rental bonds

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106 Public briefing transcript, Brisbane, 28 March 2022, p 2.

107 Submission 2, p 2.

108 Submission 2, p 2.

109 Submission 2, p 2.

110 Queensland Treasury, correspondence dated 13 April 2022, attachment, p 2.

111 Queensland Treasury, correspondence dated 13 April 2022, attachment, p 2.

112 Queensland Parliament, Record of Proceedings, 17 March 2022, p 538.

113 Explanatory notes, p 7; public briefing transcript, Brisbane, 28 March 2022, p 2.

being invested, they will be held in cash in a bank account by the RTA, with the state gaining legal or beneficial entitlement to an amount earned on the investment of a rental bond held by the authority.[114]

Queensland Treasury referred to the volatility of the returns on the rental bond investment under the current arrangements as the reason for the proposed amendments, stating:

> When that funding model was set up a number of years ago, it was possible to earn returns of three, four or five per cent from holding cash term deposits and very low risk investments. As we have seen interest rates fall, the RTA has had to take on additional risk in order to try to deliver enough returns to meet its operations. In a number of years it has had losses and in other years there have been large gains. It depends on where financial markets have gone. The purpose of this is that they will not take on risky investments in order to fund their operations. They will instead be provided an appropriation.[115]

The Bill also includes a statutory guarantee on the payment of rental bond moneys to ensure the security of rental bonds held.[116]

2.6.1 Submitter comments and departmental response

Both the Real Estate Institute of Queensland (REIQ) and Tenants Queensland opposed the reforms outlined in the Bill. The following provides a summary of their concerns.

2.6.1.1 Ownership of funds invested and returns on invested funds

Ownership of the funds was an issue raised by the REIQ, who submitted that with the RTA currently holding 'close to $1 billion of rental bonds for Queensland tenants' the 'proposed amendments to the RTRA Act have the effect of allocating these funds to the Government's operating bank account (and its balance sheet). These monies belong to Queenslanders and they should remain held by the RTA 'on trust''.[117]

In response to the REIQ's comment about the allocation of funds to the government's balance sheet, Treasury advised the following:

> The rental bonds provided to the RTA will remain on the RTA's balance sheet and be reported in its financial statements, with the bonds received held in a bank account rather than as investments. The RTRA Act specifies the use of funds within the rental bond bank account with all transactions on the account controlled by the RTA. There will be no change to the rental bond liability, which will also continue to be held on the RTA's balance sheet and reported in its financial statements.
>
> The RTA, along with several other statutory bodies, are part of the General Government Sector, which is the focus of the State's financial reporting. As the RTA is already part of the General Government Sector, the assets and liabilities held by the RTA are already reported as part of the General Government Sector balance sheet and this reporting framework will remain unchanged.
>
> In summary, there will be no change to the value of assets or liabilities shown on the General Government Sector balance as a result of the proposed changes to the RTRA Act. The RTA will continue to show the value of bonds as an asset (to be held as cash, rather than investments) and the value of the bond liability on its balance sheet.[118]

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114 Public briefing transcript, Brisbane, 28 March 2022, p 2; RTRA Act, cl 121.

115 Public briefing transcript, Brisbane, 28 March 2022, p 3.

116 Explanatory notes, p 7.

117 Submission 3, p 2.

118 Queensland Treasury, correspondence dated 13 April 2022, attachment, p 5.

Treasury further added:

> Its expenses are unchanged as a result of this….There is certainly no change to the assets and liabilities that are recorded. The rental bonds are both an asset and a liability and they will continue to be held in the residential authority's balance sheet and then consolidated into the general government sector.[119]

In relation to transactions on the account, Treasury advised:

> In relation to bonds, they will continue to be managed by the RTA. They will sit in a whole-of-government offset arrangement along with, effectively, all departmental bank accounts and statutory body bank accounts, but there is no authority for the Treasurer or any other minister to transact on the bond account.[120]

2.6.1.2 Independence and autonomy

Concerns about a loss of independence and autonomy were raised by the REIQ and Tenants Queensland, with both stakeholders arguing it is imperative the RTA retain its independence and autonomy via its self-funding model.[121] In addition, concerns about 'unnecessary interference from the Government' were raised by the REIQ, while Tenants Queensland argued that 'without its self-funding financial model, future governments may be inclined to further erode the RTA's role by folding its functions into a government department such as the Office of Fair Trading'.[122]

In response to these concerns, Treasury advised there is 'no change to the role and objectives of the RTA, the support provided to tenants and landlords or the independence of the Board in providing these services'.[123] The RTA 'currently and will continue to be overseen by a Board appointed by the Governor in Council on recommendation of the Minister' with the Board to 'continue to report to the Minister for Communities and Housing, Minister for Digital Economy and Minister for the Arts'.[124]

In addition, Treasury advised:

> Under the existing legislation, the minister—which in this case is the Minister for Communities and Housing, Minister for Digital Economy and Minister for the Arts— is required to approve the RTA's budget each year. Also, if the RTA does wish to spend money on things that are outside its core functions, including if it wanted to spend money on tenant advisory services, it would require the agreement of the minister…The amount of independence that the RTA has is not being changed as a result of the proposed legislative amendments.[125]

2.6.1.3 Financial performance

The REIQ submitted that the 'brief summary' provided in the explanatory notes about how the funding model will provide greater stability and certainty does not 'substantiate any basis for the proposed material amendments' and that it 'is unclear how these conclusions have been established based on the limited information made available in respect of the proposed reforms'.[126]

The REIQ and Tenants Queensland acknowledged that the RTA's revenue via investment returns is subject to market fluctuations.[127] However, the REIQ stated 'the current financial model has been demonstrated to be stable and reliable' with the RTA already able to rely on Government assistance for financial matters under the *Statutory Bodies Financial Arrangements Act 1982* (SBFA Act). The REIQ

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119 Public hearing transcript, Brisbane, 19 April 2022, p 18.

120 Public hearing transcript, Brisbane, 19 April 2022, p 15.

121 Submission 3, pp 1-2; submission 7, p 6.

122 Submission 3, p 2; submission 7, p 6.

123 Queensland Treasury, correspondence dated 13 April 2022, attachment, p 6.

124 Queensland Treasury, correspondence dated 13 April 2022, attachment, p 6.

125 Public hearing transcript, Brisbane, 19 April 2022, p 15.

126 Submission 3, p 1.

127 Submission 3, p 2.

submitted that to the best of its knowledge, the 'RTA has never obtained financial support from the Government to fund its operations' and that it 'has strong reserves to support operational cashflow'.[128] The REIQ also advised it is 'not aware of instances to date of the RTA failing to pay out a rental bond due to cashflow. We understand that the RTA has successfully funded its operations since its inception'.[129]

Similarly, Tenants Queensland took issue with Treasury's advice that the 'RTA have undertaken increasingly risky strategies to generate enough investment return for its operation', submitting 'that that the RTA's investment strategies, through the Queensland Investment Corporation, are generally low risk'. [130] Tenants Queensland referred to the RTA's annual report which advised:

> The RTA manages its exposure to market risk on investments through compliance with the SBFA Act Queensland Treasury Guidelines and a formal investment policy approved by the RTA Board. The Treasurer must approve through Section 61A of the SBFA Act the strategic asset allocation parameters. The Treasurer approved the RTA to appoint QIC as its fund manager under section 59 of the SBFA Act on 23 November 2004.[131]

Tenants Queensland argued that to mitigate risk management, the RTA needs to accrue cash reserves, but that 'previous governments have requested funds from the RTA for a variety of (lawful but unreasonable) purposes when returns were good, subsequently leaving them in a more precarious position'.[132] Tenants Queensland submitted that bonds should only be used to deliver tenancy advisory services or have the interest returned to tenants, not fund other initiatives that should be tax-payer funded, (such as social housing, the Lady Musgrave Trust, Hostel Industry Development, housing policy and flood related assistance).[133] Tenants Queensland stated 'The fact their reserves are more limited is not a reflection that the self-funding model is not working, rather, the intervention by governments requesting those reserves to be applied to non-core purposes'.[134]

Tenants Queensland indicated that in 2019-20 when the RTA experienced a deficit, money was spent on 'a hub for COVID related issues', and proposed that had the RTA had the cash reserves that were used for 'items like the building of social housing, the start-up funds for a trust that is going to buy furniture for homeless people', 'they probably would have been in a much better position to absorb the years when they were not getting the returns they wanted'.[135]

Tenants Queensland also mentioned that in 2020-21, the RTA 'made significant returns', and argued 'If they were left to self-manage their funds and we limit what they can use those funds for and they can build cash reserves', the self-funding model 'would be a much better model than an annual allocation from consolidated revenue' based on the history of the funding and returns. [136]

In response to these submissions, Treasury advised that, as at 30 June 2016, the RTA held equity (accumulated surpluses) of $42.8 million, but by 30 June 2020, 'the RTAs retained earnings had been eroded as a result of investment returns being insufficient to meet the RTA's operating expenses. The 2019-20 result of a $43.3 million deficit, driven by investment losses, was a key contributor to the RTA

128 Submission 3, p 2.

129 Submission 3, p 2.

130 Submission 7, pp 6-7.

131 Submission 7, pp 6-7.

132 Submission 7, p 7.

133 Submission 7, p 4.

134 Submission 7, p 5.

135 Public hearing transcript, Brisbane, 19 April 2022, p 4.

136 Public hearing transcript, Brisbane, 19 April 2022, p 4.

moving to a negative equity position of $312,000 as at 30 June 2020'. The table below sets out the RTA's financial performance over 2016-2021, as presented in the RTA's 2020-21 Annual Report.

Financial year	Income $m	Expenditure $m	Grant Expenditure $m	Surplus/deficit $m
2016-17	35.0	34.3	-	0.7
2017-18	26.1	34.0	-	(7.9)
2018-19	40.3	31.7	-	8.6
2019-20	34.4	77.7	-	(43.3)
2020-21	**70.4**	**35.1**	**-**	**35.3**

Source: Queensland Treasury, correspondence dated 13 April 2022, attachment, p 3.

Treasury advised the 'RTA also had a working capital shortfall of $10.4 million at 30 June 2020'. To address this, Treasury advised it provided the RTA with a 'letter of comfort that was effective for the period 30 June 2020 to 31 August 2021 to ensure the RTA directors had reasonable grounds to believe that the RTA was a 'going concern' and would be able to pay its debts as and when they fell due'.[137] Treasury also 'provisioned $15.5 million of grant funding that the RTA would be able to access during 2021-22 if investment returns were insufficient'.[138] As a result, Treasury submitted:

> Significant market volatility experienced in recent years has impacted on the stability of the RTA's income and its ability to confidently plan for the future. Under the current model, in periods of protracted market downturn where the value of the investments held are less than the rental bond liability, the RTA cannot access funding from investments to meet its operating costs.
>
> This has also impacted the RTA's ability to provide grant funding towards purposes outlined in the RTRA Act. The RTA last provided grant funding of $5 million in 2015-16 to its administering agency (formerly the Department of Housing and Public Works) to support affordable and social housing initiatives.[139]

On the matter of investments made through QIC and the investment management framework under the SBFA Act, Treasury provided the following information:

> Given the low return environment and the forecast operating costs required to meet stakeholder service expectations, QIC Limited advised the RTA investment risk needed to be increased to target the investment returns necessary to meet the RTA's forecast operating expenses. QIC also advised that increases to investment risk increases the RTA's exposure to market volatility.
>
> In response, the RTA has been progressively increasing its exposure to higher risk investments favouring increased returns over retention of capital.
>
> The investment management framework established under the *Statutory Bodies Financial Arrangements Act 1982* (SBFA Act) is focused on the retention of capital and risk minimisation. The RTA currently invests in products that required specific approval and are not listed in the SBFA Act regulation.
>
> The decision to approve these investments reflected support for the intent that the RTA would continue to fund its own operations, without requiring supplementation from the Consolidated Fund. However, the volatility in returns from 2019-20 onwards has demonstrated that in the current investment

137 Queensland Treasury, correspondence dated 13 April 2022, attachment, p 4.

138 Queensland Treasury, correspondence dated 13 April 2022, attachment, p 4.

139 Queensland Treasury, correspondence dated 13 April 2022, attachment, p 4.

> environment, the existing funding model does not provide stable, reliable returns to fund the RTA's operations.[140]

Treasury advised that during 2019-20, 'when the RTA experienced negative investment returns and recorded a deficit for that year, they did move slightly into a negative net equity position' which is when 'a letter of comfort was sought from Treasury and provided to the RTA to ensure there was confidence that they would operate as a going concern'.

Then, in the following year, after initial concerns about poor returns in investment markets for the majority of the financial year 'beginning around March, or certainly in the last quarter of last financial year, we then saw that investment markets rebounded very sharply, so that put the RTA into a position where it was able to fund itself'.

Treasury stated 'It has certainly been the period of the last two years where the very volatile outcomes, both negative and then positive, have led to the decision that a more stable funding approach would be beneficial'.[141]

Treasury advised the proposed new funding model 'will provide funding stability for the RTA to maintain essential operations for its customers and to continue to support the Queensland rental sector into the future' and 'provides certainty for the RTA and its clients in what is a challenging time for the residential rental sector and the broader housing market'.[142]

2.6.1.4 Security of rental bonds

On the proposed statutory guarantee of the payment of rental bonds, the REIQ questioned whether there are 'existing systematic issues relating to the transparency and security of rental bonds within the RTA'.[143]

Tenants Queensland argued that the proposed model does not provide a greater guarantee on tenants' bonds because 'The RTA as a Queensland Statutory Authority, represents the state, meaning that the state already guarantees them'.[144]

In response, Treasury advised that 'to provide greater protection to rental bonds held, the proposed amendments to the RTRA Act include a statutory guarantee on the payment of rental bond moneys'.[145]

According to Treasury, it is currently 'implied to the extent that the Residential Tenancies Authority represents the state and so there is an expectation that the state would step in'.[146] The legislation will now make it explicit and a 'guaranteed commitment'.[147]

2.6.1.5 Investment returns from cash account

Concerns about lower returns on the bond money collected and held were also raised. The REIQ argued that the RTA's 'autonomy and power to invest interest earned on its investments will be significantly diminished' and 'funds deposited in a Government controlled bank account will attract much lower interest than that generated by RTA's current investments with QIC'.[148]

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140 Queensland Treasury, correspondence dated 13 April 2022, attachment, p 4.

141 Public hearing transcript, Brisbane, 19 April 2022, p 17.

142 Queensland Treasury, correspondence dated 13 April 2022, attachment, p 5.

143 Public hearing transcript, Brisbane, 19 April 2022, p 2.

144 Submission 7, p 7.

145 Queensland Treasury, correspondence dated 13 April 2022, attachment, p 5.

146 Public hearing transcript, Brisbane, 19 April 2022, p 18.

147 Public hearing transcript, Brisbane, 19 April 2022, p 18.

148 Submission 3, p 2.

Similarly, Tenants Queensland submitted 'it makes no financial sense for government to require the RTA to take such a conservative stance as to manage bonds by holding them exclusively in a cash account. The long-term returns, on a balanced portfolio, is in excess of 10%, far and above of the returns on a government CBA cash account'.[149]

Treasury advised the committee that under the proposed funding model, no interest would be earned on those bonds, as the rental bonds would be in a whole-of-government offset account, adding 'the expectation is that they will have some retained earnings going into the new financial year, so they will be able to hold those moneys, invest those moneys and retain any interest on those. However, the bonds themselves will not earn interest'.[150]

In response to the suggestion that it would be preferable for the RTA to maintain a balanced portfolio, Treasury told the committee:

> …under the existing legislation, the Residential Tenancies Authority is only able to fund its operations out of interest earnings, and because of that, it does not have the capacity to take a long-term view about investment returns. If it does experience negative returns to the point where it goes into negative equity—which it has come very close to and in one year did slightly slip into negative equity—it does not have the capacity to dip into those bonds effectively in order to fund its operations. That is a point of distinction between a superannuation fund and a defined benefit fund. In the case of a superannuation fund the returns are passed through to the clients, but with a defined benefits scheme the state has a long-term view and if there are years where it is slightly below 100 per cent funded, it has the capacity to hold on through that.[151]

2.6.1.6 Alternative options

To address any government concerns about the financial stability of the RTA, the REIQ proposed a review be undertaken of how funds can be invested and support mechanisms be made available to the RTA under the SBFA Act by analysing shortfalls of the relevant legislation, while Tenants Queensland similarly proposed risk could be reduced by modifying the RTA's investment parameters.[152]

In response to these proposals, Treasury advised:

> Directing the RTA to invest in lower-risk, lower return investments would provide more stable returns. However, at current interest rates, these returns would be insufficient to fund the RTA's operations.
>
> The SBFA Act establishes the investment powers for the RTA but does not include provisions to supplement the investment income received by an agency. When a statutory body requires income support, the administering agency is required to seek additional funding. If this funding is supported, it is provided as an administered grant by the administering agency.
>
> Unlike the RTA, most statutory bodies have a range of income streams that are not investment exposed, typically reflecting a combination of administered grants and revenue from fees and charges. The proposed reform provides certainty of funding via administered grants.[153]

Tenants Queensland called for the re-establishment of the 'connection between bond interest and the provision of tenant advisory services (consumer advice)' as was the original 'intent from the 1990s' and occurred up until 2012, as interest rates rise and RTA cash reserves increase, rather than the Bill's

149 Submission 7, p 7.

150 Public hearing transcript, Brisbane, 19 April 2022, p 18.

151 Public hearing transcript, Brisbane, 19 April 2022, p 15.

152 Submission 3, p 2; submission 7, p 7.

153 Queensland Treasury, correspondence dated 13 April 2022, attachment, pp 4-5.

proposed funding model and the existing arrangement of the government funding the tenancy advisory program from consolidated revenue.[154]

Tenants Queensland also suggested that an 'Increased limitation on what payments can be made from the rental bond interests account will provide a sharper focus on a return to tenants as consumers (tenancy advisory services) while still supporting the administration of the RTA'.[155]

To achieve this, Tenants Queensland recommended amendments should be made to section 153 of the RTRA Act limiting grants provided by the RTA to subsection (a) for 'establishing or administering rental advisory services', with sub-sections (1)(b)-(d) to be removed.[156]

In response to Tenants Queensland's proposal, Treasury advised that the proposed amendments to the RTRA Act 'do not seek to make any changes to the services the RTA is required to fund, or amend the powers of the RTA in relation to grants. The intent of the Government amendments is simply to provide the RTA with a stable funding source to deliver its current operations'.[157]

Regarding the call for investment returns to be used for tenant advisory services, Treasury stated 'There is insufficient capacity to restore the position of funding tenant advisory services from investment returns. However, the Palaszczuk Government re-established these services in 2015 and is funding them from the Consolidated Fund'.[158]

While Tenants Queensland opposed the Bill and proposed the current self-funding model be retained, it advised that should proposed changes be pursued, it recommended stakeholder consultation be undertaken to identify and improve the specific risk issues before implementing such major changes.[159]

If the amendments proposed in the Bill are to be passed, Tenants Queensland submitted the Bill should be amended to include the following:

- A legislated requirement for transparency over the interest generated on tenants' bonds and a requirement that the interest be returned to tenants either through individual interest or independent tenant advisory services.
- That the RTA be allowed to invest a percentage of the bonds they hold in an investment vehicle rather than a simple interest-bearing account with a bank.[160]

154 Submission 7, p 5.

155 Submission 7, p 5.

156 Submission 7, p 3.

157 Queensland Treasury, correspondence dated 13 April 2022, attachment, p 6.

158 Queensland Treasury, correspondence dated 13 April 2022, attachment, p 4.

159 Submission 7, p 7.

160 Submission 7, p 3.

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals
- the institution of Parliament.

The committee has examined the application of the fundamental legislative principles to the Bill. The committee brings the following to the attention of the Legislative Assembly.

3.2 Rights and liberties of individuals - privacy

Section 4(2)(a) of the LSA requires that legislation has sufficient regard to the rights and liberties of individuals.

3.2.1 Use of body-worn cameras

Clause 28 inserts a new section 117A into the *State Penalties Enforcement Act 1999* (SPE Act) to expressly provide that it is lawful for an enforcement officer to use a body-worn camera to record images or sounds while the officer is performing the officer's functions under the SPE Act.

3.2.1.1 Issue of fundamental legislative principle

This provision raises an issue of fundamental legislative principle relating to the rights and liberties of individuals, regarding an individual's right to privacy.[161] The use of body-worn cameras impacts on a person's right to privacy by recording a person's image and any conversations held at the time the camera is recording.

The explanatory notes do not specifically set out the reason why body-worn cameras are necessary for enforcement officers to carry out their functions under the SPE Act, but rather state that it is 'commonplace for body-worn cameras to be used by agencies that have legislative enforcement functions'.[162]

In considering the impact on an individual's right to privacy, the explanatory notes conclude that any impact is outweighed by the public interest because body-worn cameras may:

- reduce conflict between SPER enforcement officers and debtors
- provide a record of verbal orders and directions given by SPER enforcement officers
- enhance accountability of SPER enforcement officers.[163]

Similar reasoning has been used to justify the use of body-worn cameras in other contexts. For example, the human rights statement of compatibility for the recent Police Service Administration and Other Legislation Amendment Bill 2021 stated that body-worn cameras provide an incontrovertible record of events and help to promote professionalism and accountability of officers.[164]

That statement also noted that over recent years, Parliament has authorised a range of public officials to use body-worn cameras. For example, officials under the *Biosecurity Act 2014*, the *Drugs Misuse*

[161] LSA, s 4(2)(a).

[162] Explanatory notes, p 5.

[163] Explanatory notes, p 9.

[164] Police Service Administration and Other Legislation Amendment Bill 2021, statement of compatibility, p 14.

Act 1986, the *Exhibited Animals Act 2015*, the *Fisheries Act 1994* and the *Youth Justice Act 1992* are all authorised to use body-worn cameras.[165]

As noted in the explanatory notes, there is already a common law right to record images or sounds.[166] The stated purpose of clause 28 is to confirm that SPER enforcement officers can lawfully record images and sounds of their interactions with SPER debtors in the course of exercising their powers under the SPE Act.[167]

The explanatory notes refer to existing legislative and policy safeguards to protect a person's privacy:

> Specifically, section 134H SPE Act makes it an offence for an official (which includes a SPER enforcement officer) to disclose confidential information [maximum penalty of 100 penalty units]. SPER is also bound by the IP Act [*Information Privacy Act 2009*] and the information privacy principles contained in that Act.
>
> Further, SPER currently has guidelines and procedures relating to the use of body-worn cameras and storage and use of footage, which will be reviewed following passage of the Bill.[168]

The explanatory notes do not provide any further detail as to what these guidelines and procedures include, so it is difficult to make both any assessment of their worth as a safeguard and, in turn, a fully considered assessment of whether the impacts on personal privacy are justified.

When asked at the public hearing to provide further information about what SPER's guidelines and procedures contain regarding the protection of a person's privacy, and how inadvertent or incidental recordings of general members of the public will be managed in terms of privacy, Treasury told the committee:

> We gather all sorts of information about the community through our tax management work. This information is carefully controlled and no-one has access to it except officers who need to have that access. The purpose of these cameras is not so much to gather information in that sense but rather to provide a record of the events that occur and ensure there is protection, both for the officer and for the person who owes the money, that appropriate treatment was provided.
>
> …
>
> The vast bulk of our work is done with staff in office buildings by either phoning or emailing or taking other action. It is only when we get to the very extreme end, if I can put it that way, of collection activities that we need to take some robust enforcement action, which is usually either the clamping of motor vehicles or the seizing of motor vehicles—one or the other. It is on those occasions when our staff are out in the field and interacting with a debtor in what can be a fairly confrontational sense, just to make sure there is a record of what has happened and there is no mistake. People can make claims and all sorts of assertions. This both protects the officers and ensures there is appropriate behaviour of the debtor.[169]

On the particular issue of the principles that govern the timing of body worn cameras in terms of being switched on and off, and whether they would be used if children were present, Treasury advised:

> At this stage I will have to say that the issue of children being present is not one that has occurred to me as being different. They are normally part of a family unit and so are present during a visit to a house. I am not sure what the issue is around any of those things.
>
> This does not happen normally inside the person's house; it happens out on the street where a motor vehicle is being parked, where it might be seized or the wheels might be clamped. These are all things

[165] Police Service Administration and Other Legislation Amendment Bill 2021, statement of compatibility, p 14.

[166] Explanatory notes, p 5.

[167] Statement of compatibility, p 14.

[168] Explanatory notes, p 9.

[169] Public hearing transcript, Brisbane, 19 April 2022, p 19.

> that happen in public. The information we collect through the body worn cameras will be protected in the same way that we protect tax and penalty information more generally.
>
> In terms of the switching on or off of the cameras, they would cover the operation; they do not cover the trip there, what people are having for lunch and those kinds of things. It will be just during the course of the operation.[170]

The explanatory notes also state:

> As body-worn cameras will typically be operated by SPER enforcement officers when exercising functions under the SPE Act against debtors who are subject to escalated enforcement action (e.g. debtors who wilfully do not comply with their obligations), the practical use will be limited. Any recording of general members of the public will be inadvertent or incidental.[171]

Committee comment

The committee encourages the department to take issues of inadvertent or incidental recording into consideration when the guidelines are reviewed following passage of the Bill.

The committee considers that, on balance, the provisions outlined above have sufficient regard to an individual's right to privacy, having regard to the overall objective of the Bill to provide an incontrovertible record of events and help to promote professionalism and accountability of officers.

These issues are also noted in the committee's assessment of the Bill's compliance with the *Human Rights Act 2019* below.

3.2.2 Disclosure of personal information

Clause 29 of the Bill amends section 134L of the SPE Act to allow the registrar to disclose confidential information that includes personal information to the Minister or an officer of the department if the disclosure is permitted under a law.

Clause 29 also provides that where the registrar is the administering authority for an infringement notice offence, the registrar may disclose confidential information that includes personal information to the department or other agency in which the legislative provision containing the offence is administered, for the purpose of the enforcement of the offence i.e. prosecuting the offence or applying to the court for a civil penalty.

Clause 30 inserts a new section 134LA into the SPE Act to enable the registrar to disclose 'identifying information' when remitting an amount collected by SPER under a court order to an entity entitled to the amount.

'Identifying information' refers to the particulars that are registered under section 34 of the SPE Act (relating to a default in paying fine, penalty or other amount under court order), that are necessary to identify the person against whom the court order is made.[172]

Clause 54 amends section 111 of the TA Act to allow the Commissioner to disclose personal confidential information to the Treasurer or an officer of the department if the disclosure is permitted under a law.

3.2.2.1 Issue of fundamental legislative principle

These provisions raise an issue of fundamental legislative principle relating to the rights and liberties of individuals, particularly regarding an individual's right to privacy with respect to their personal

[170] Public hearing transcript, Brisbane, 19 April 2022, pp 19-20.

[171] Explanatory notes, p 9.

[172] Clause 30(3); see also SPE Act, s 34.

information.[173] The right to privacy, and the disclosure of private or confidential information are relevant to a consideration of whether legislation has sufficient regard to the rights and liberties of the individual.

Disclosure of personal information to another entity results in an interference with the individual's privacy.

In relation to the amendments to the SPE Act and the TA Act (clauses 29(1) and 54) that permit personal confidential information to be disclosed to an officer of the department or responsible Minister if the disclosure is permitted under law, the explanatory notes state:

> The amendments are intended to address an inconsistency between the existing SPE Act and TA Act confidentiality provisions and other Queensland laws and will facilitate use of information for lawful purposes, including forecasting revenue and accounting to the Parliament.
>
> The proposed amendments are limited in that they permit disclosure only to an officer of the department, or relevant Minister, and only to the extent that such disclosures are already legally permitted outside of the SPE Act and TA Act. Other laws will continue to apply, including the IP Act.[174]

In relation to the disclosure of personal information by the registrar to a department or agency that is the legislative administrator for the offence (clause 29(2)), the explanatory notes state:

> … the information proposed to be disclosed would be information that is necessary for the enforcement of the offence by the legislative administrator. If the registrar could not disclose such information, the legislative administrator would potentially be unaware of the offence (particularly where the registrar is also the authorised person for service of the infringement notice for the offence) and would be unable to commence proceedings.
>
> As noted above, the SPE Act provides a safeguard as unauthorised disclosure of confidential information is an offence under section 134H [maximum penalty 100 penalty units]. The IP Act and the information privacy principles contained in that Act also restrict the disclosure of an alleged offender's personal information by the registrar.[175]

Finally, in relation to clause 30 which allows the register to disclose identifying information contained in a court order to an entity for the purposes of remitting an amount to that entity, the explanatory notes set out the background to this measure:

> Remittance advices currently provided by SPER contain details of the court order and the offence, but do not otherwise identify the debtor to whom the court order relates. Prosecuting agencies and third party creditors must contact Magistrates Court registries to identify who the debtor is, so they can reconcile the payment. This has resulted in an increased workload for Magistrates Court registries.[176]

To justify the potential impact on an individual's right to privacy, the explanatory notes highlight the provisions will be limited in application:

> The information will only be disclosed to an entity that is entitled to the amount collected under a court order (i.e. prosecuting agency or third party creditor). The Bill also limits the type of information that can be disclosed to 'identifying information', which is information necessary to identify the person against whom the court order was made. Practically, the identifying information to be disclosed would be the debtor's name.[177]

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173 LSA, s 4(2)(a).

174 Explanatory notes, pp 12-14.

175 Explanatory notes, p 12.

176 Explanatory notes, p 6.

177 Explanatory notes, p 10.

Similar to the above, existing safeguards to protect against unauthorised disclosure of such information include section 134H of the SPE Act , the IP Act and information privacy principles more generally.[178]

Committee comment

Noting the presence of legislative safeguards to protect an individual from unauthorised disclosure of their personal information, and the limited scope of these provisions in terms of information disclosure, the committee is satisfied that clauses 29, 30 and 54 have sufficient regard to the rights and liberties of individuals.

3.3 Rights and liberties of individuals – administrative power

3.3.1 Appointment of SPER officers

Clause 32 of the Bill inserts a new part 9, division 2A into the SPE Act in relation to the appointment of enforcement officers. Although the SPE Act currently contemplates the existence of enforcement officers, it does not contain express provisions dealing with process by which a person becomes, or ceases to be, an enforcement officer.

New section 159C sets out how an enforcement officer is to be appointed and includes the following criteria:

- A person who is a public service employee or a contracted debt collector may only be appointed if:
  - the person is appropriately qualified, and
  - if the registrar is satisfied that the person is of good character and otherwise suitable for appointment.
- The sheriff, deputy sheriff or bailiff of a court.

The other proposed sections cover administrative matters relating to appointment conditions, end of office and resignation procedure.[179]

3.3.1.1 Issue of fundamental legislative principle

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.[180]

The reasonableness and fairness of treatment of individuals is relevant in deciding whether legislation has sufficient regard to the rights and liberties of individuals.[181]

The fundamental legislative principle relating to administrative power in this circumstance involves consideration of whether the power to appoint a person as an enforcement officer is sufficiently defined, and whether the appointment decision is subject to appropriate review.

In regard to the first element, the explanatory notes acknowledge that there is some form of discretion on the part of the register but state this is appropriate in the circumstances:

178 Explanatory notes, p 10.

179 See Clause 32, proposed sections s159D to s159F.

180 LSA, s 4(3)(a).

181 LSA, s 4(2)(a).

> Given the range of powers conferred upon a SPER enforcement officer by the SPE Act (which are not being changed by the Bill) [eg. enter premises and seize property], it is imperative that only appropriate persons are able to hold such office, and only for so long as is necessary.
>
> The holding of office as a SPER enforcement officer by a public service employee or a contracted debt collector is subject to the registrar's assessment of whether the person is a suitable person for appointment. Although the registrar has power to determine the matters relevant to that assessment (in addition to the person being of good character), it is considered that the nature of a SPER enforcement officer's powers and functions are such that the registrar should not be confined to an exhaustive legislated list of matters.[182]

In regard to the second element, the explanatory notes state that decisions of the registrar in relation to a person holding office as a SPER enforcement officer are not excluded from review under any applicable review frameworks such as the *Public Service Act 2008* or the *Judicial Review Act 1991*.[183]

In relation to existing SPER enforcement officers, the explanatory notes state that a person who is currently appointed as an enforcement officer will continue to be appointed for up to 30 days post-commencement of these provisions and the 'intention is that, within that 30-day window, the registrar will, if considered appropriate, appoint that person as a SPER enforcement officer under the new framework.'[184]

The fair treatment of individuals generally is relevant in these circumstances, as it is possible that some officers who are current enforcement officers will not meet the criteria under the new framework and will, as a result, lose their employment. However, as set out in the statement of compatibility on this issue, some limitations on who can be appointed as enforcement officers are necessary given the nature and range of powers given to these officers under the SPE Act.[185]

Committee comment

The committee is satisfied that clause 32 has sufficient regard to the rights and liberties of individuals, noting the nature and range of the powers given to enforcement officers under the SPE Act.

3.3.2 Delegation of administrative power

Clause 33 of the Bill replaces section 161 of the SPE Act to provide that the registrar may delegate the functions and powers of the registrar, or of SPER, under the SPE Act or another Act to an appropriately qualified person.

3.3.2.1 Issue of fundamental legislative principle

Whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example, the legislation allows the delegation of administrative power only in appropriate cases and to appropriate persons.[186] Powers should be delegated only to appropriately qualified officers or employees.[187]

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182 Explanatory notes, p 11.

183 Explanatory notes, p 11.

184 Explanatory notes, p 11.

185 Statement of compatibility, p 7.

186 LSA, s 4(3)(c).

187 The *Acts Interpretation Act 1954*, s 27A contains extensive provisions dealing with delegations.

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.[188]

According to the explanatory notes, the registrar currently has the ability to delegate the functions and powers of the registrar or of SPER under the SPE Act but this amendment (to include delegations under 'another Act') is necessary to support the delegation of the registrar's functions and powers under the Traffic Regulation 1962.[189] Specifically, the amendment is designed to:

> … facilitate the delegation of the power to be given by the Bill to the registrar under section 208AA of the Traffic Regulation from 30 November 2022 (when the registrar becomes responsible for issuing infringement notices in respect of the distracted driver offences). Such power will only be able to be delegated by the registrar to appropriately qualified persons, and such delegates will receive training in relation to the appropriate exercise of the delegated power.[190]

Committee comment

The committee is satisfied that clause 33 involves an appropriate delegation of administrative power, such that the provision has sufficient regard to individual rights and liberties.

3.4 Institution of Parliament

Section 4(2)(b) of the *Legislative Standards Act 1992* (LSA) requires legislation to have sufficient regard to the institution of Parliament.

3.4.1 Delegation of legislative power

The Bill contains a number of clauses which provide that regulations may prescribe certain matters:

- Clause 22 provides that a regulation may, for an infringement notice offence, prescribe the due day by which an administering authority must give a default certificate to SPER and the late lodgement fee that is payable if the default certificate is not given by the due day.
- Clause 31 contains the definition of an enforcement cost in terms which include types of enforcement costs 'prescribed by regulation'.
- Clause 32 provides that a regulation may set out conditions of appointment for an enforcement officer, or limits on their powers.

3.4.1.1 Issue of fundamental legislative principle

Whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill allows the delegation of legislative power only in appropriate cases and to appropriate persons.[191]

The greater the level of potential interference with individual rights and liberties, or the institution of Parliament, the greater will be the likelihood that the power should be prescribed in an Act of Parliament and not designated below Parliament.[192]

The explanatory notes do not address this issue of fundamental legislative principle.

The matters to be prescribed by regulation in these circumstances are matters that could be considered to be appropriately contained in regulation rather than in an Act of Parliament.

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188 OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 33.

189 Explanatory notes, p 19. See also SPE Act, s 161.

190 Explanatory notes, p 12.

191 LSA, s 4(4)(a).

192 OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 145.

Committee comment

The committee is satisfied that the delegation of legislative power in these circumstances is appropriate, such that the Bill has sufficient regard to the institution of Parliament.

3.5 Explanatory notes

Part 4 of the LSA 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 contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

The explanatory notes do not refer to specific clause numbers in considering issues of fundamental legislative principle. Further, in some instances, aspects of the justification for potential breaches of fundamental legislative principle were not contained in the 'Consistency with fundamental legislative principles' section and could only be ascertained by looking elsewhere in the explanatory notes.

The content in relation to justifications of breaches of fundamental legislative principle was at times less than adequate (as noted above in discussion of privacy issues arising from the use of body-worn cameras).

Furthermore, several canvassed in the explanatory notes under the heading *fundamental legislative principles* are not considered by the committee to raise issues of fundamental legislative principle.

Bearing in mind the desirable outcome of better informing the community about proposed legislation, the committee considers best practice is for explanatory notes to:

- clearly identify each specific issue of fundamental legislative principle that arises and the specific clause giving rise to the issue
- set out the reasons for any inconsistency with the fundamental legislative principles
- provide any justification for that inconsistency.

The explanatory notes otherwise comply with part 4 of the LSA.

4 Compliance with the *Human Rights Act 2019*

The portfolio committee responsible for examining a Bill must consider and report to the Legislative Assembly about whether the Bill is not compatible with human rights, and consider and report to the Legislative Assembly about the statement of compatibility tabled for the Bill.[193]

A Bill is compatible with human rights if the Bill:

(a) does not limit a human right, or
(b) limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.[194]

The HRA protects fundamental human rights drawn from international human rights law.[195] Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

The committee has examined the Bill for human rights compatibility. The committee brings the following to the attention of the Legislative Assembly.

4.1 Human rights compatibility

In the statement of compatibility accompanying the Bill, the Treasurer identified the following human rights as relevant to the Bill:

- the right to take part in public life (section 23 of the HR Act), in relation to the registrar appointment measure[196] and the enforcement officer management measure;[197]
- property rights (section 24 of the HR Act), in relation to the fine serving measure[198] and the enforcement cost recovery measure;[199] and
- the right to privacy and reputation (section 25 of the HR Act), in relation to the body-worn camera measure,[200]
- the debtor details disclosure measure,[201]

193 HRA, s 39.

194 HRA, s 8.

195 The human rights protected by the HRA are set out in sections 15 to 37 of the Act. A right or freedom not included in the Act that arises or is recognised under another law must not be taken to be abrogated or limited only because the right or freedom is not included in this Act or is only partly included; HRA, s 12.

196 Amending the SPE Act to provide that the registrar is the person who is the Commissioner of State Revenue under the TA Act from time to time.

197 Modernising the process for management of SPER enforcement officers.

198 Amending the SPE Regulation to prescribe the registrar of SPER as the authorised person for service of infringement notices for the relevant offences.

199 Amending the SPE Regulation to prescribe the types of enforcement costs payable by a person who owes money to SPER.

200 Amending the SPE Act to expressly authorise the use of body-worn cameras by SPER enforcement officers while exercising their powers under the SPE Act.

201 Amending the SPE Act to expressly authorise the registrar to disclose personal information of a SPER debtor to an entity, where such information is contained in a court order that has been registered with SPER and the disclosure is for the purposes of remitting an amount collected under the court order to the entity.

- the enforcement disclosure measure,[202]
- the adjudication measure[203] and
- the confidentiality measure.[204]

Having considered the explanations provided in the statement, the committee was readily satisfied that the right to take part in public life (section 23 of the HR Act), in relation to the registrar appointment measure and the enforcement officer management measure, and the property rights (section 24 of the HR Act), in relation to the fine serving measure and the enforcement cost recovery measure, are reasonable and justified.

The committee accordingly focussed its attention on the Bill's interaction with the right to privacy and reputation, which raised certain issues warranting further consideration.

4.1.1 Right to privacy and reputation

4.1.1.1 Use of body-worn cameras

Clause 28 of the Bill inserts a new section 117A into the SPE Act to expressly provide that it is lawful for a SPER enforcement officer to use a body-worn camera to record images or sounds while the officer is performing their functions under the SPE Act.[205]

4.1.1.2 Analysis

Nature of the human right

The collection of personal information, including images of people and their homes, falls within the scope of the right to privacy. Under this right, people are protected against unlawful or arbitrary interferences with their privacy. The Human Rights Committee has confirmed that a lawful interference may still be arbitrary if it is not reasonable or is otherwise inconsistent with the provisions, aims and objectives of the International Covenant on Civil and Political Rights (on which the HRA is based).[206]

The right to privacy does not only apply to the collection of personal information, but also to the way that information is stored, used, shared and disposed of. Regulations must ensure that such information is never used in a way which is inconsistent with human rights.

A key component of protecting the right to privacy is ensuring that individuals are provided with clear information about what personal information is being collected, the purpose for that collection and the way their information will be used, stored, shared and disposed of. Interferences with the right to privacy can be avoided where the individual consents to the collection of their personal information.

Nature of the purpose of the limitation

The proposed amendment limits the enjoyment of privacy rights by collecting personal information of an individual who is subject to a SPER enforcement measure, and potentially other people who may be with them at the time, in the form of images and videos.

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202 Amending the SPE Act to expressly authorise the registrar to disclose personal information about an alleged offender in relation to a particular infringement notice offence to the department or agency responsible for administration of the relevant legislation for the purposes of enforcement of the offence.

203 Amending the Traffic Regulation to allow the registrar to view an image or video made by the digital driver behaviour system and form a belief as to whether an offence has been detected.

204 Amending the confidentiality provisions in the SPE Act and the TA Act; Statement of compatibility, p 3.

205 Statement of compatibility, p 14.

206 UN Human Rights Committee (HRC), *CCPR General Comment No. 16: Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation*, 8 April 1988, https://www.refworld.org/docid/453883f922.html

According to the explanatory notes accompanying the Bill, the purpose of this amendment is to confirm that SPER officers are legally able to make recordings through the use of body-worn cameras. The statement of compatibility further explains that body-worn cameras are already in use by SPER officers, and that the purpose of the amendment is to provide certainty and clarity as to the legal status of this practice.

Body-worn cameras themselves can serve several purposes, including promoting transparency and accountability in law enforcement, in addition to any potential evidentiary purposes.

There are two purposes achieved by the amendment: 1) the substantive purpose of body-worn cameras themselves, including enhancing transparency and accountability; and 2) the legislative purpose of providing certainty regarding the right of SPER officers to use body-worn cameras.

The relationship between the limitation and its purpose

The use of body-worn cameras by SPER enforcement officers is clearly directed to the substantive purpose of promoting transparency and accountability in SPER enforcement activities. When used appropriately, body-worn cameras can be effective in ensuring the integrity of, and promoting public confidence in, law enforcement processes.

Further, the wording of the clause achieves the stated legislative purpose of clarifying the legal status of SPER officers' use of body-worn cameras.

Whether there are less restrictive and reasonably available ways to achieve the purpose

Further information about the use of the body-worn cameras and the storage, sharing and disposal of recordings is necessary to fully assess whether there are less restrictive means available. It is not clear, for example, what principles govern the timing of cameras being switched on or off, and whether there are any circumstances in which SPER officers are required not to use their body-worn cameras (e.g. if children are present).

The statement of compatibility indicates that SPER currently has guidelines and procedures relating to the use of body-worn cameras and storage and use of footage, and that 'these will be reviewed following the passage of the Bill'.[207] No further detail is provided of these guidelines and procedures.

The provision in the SPE Act regarding the unlawful disclosure of confidential information (s134H) goes some way to addressing this issue, but this is focused on disclosure. As noted above, the right to privacy also includes the acquisition, use, storage and disposal of information – more information about these aspects is needed to fully assess the extent of the impact on the right. The National Privacy Principles help to fill this gap, but the committee considers more specific guidelines for the use of body-worn cameras by SPER officers would be appropriate.

The comment in the explanatory notes and statement of compatibility that 'it is commonplace for body-worn cameras to be used by agencies that have legislative enforcement functions' is not supported by any evidence, but it seems possible that the public is unaware of the use of body-worn cameras by agencies other than police.[208]

Impacts on the right to privacy would be reduced by ensuring individuals are made aware that body-worn cameras are used by SPER officers and the way that recordings will be used. This would not materially impact on the ability of the limitation to achieve its purpose, and would be reasonably simple to achieve.

The statement of compatibility says that the number of people impacted by the use of body-worn cameras is unlikely to be significant, since 'body-worn cameras will typically be operated by SPER

[207] Statement of compatibility, p 15.

[208] Explanatory notes, p 5; statement of compatibility, p 15.

enforcement officers when exercising functions…against debtors who are subject to escalated enforcement action'.[209]

In the committee's view, this is not a relevant consideration. All individuals are equally entitled to the protection of their human rights; the fact that only a small number of people may have their rights impinged upon should not affect the assessment of compatibility.

Similarly, the fact that 'recording of persons other than SPER debtors will be inadvertent or incidental' does not change the fact that those persons may experience an interference with their right to privacy.[210] Indeed, the recording of personal information of people who are not the subject of SPER proceedings is more likely to be considered arbitrary, as there is no reasonable justification for collecting that information. The limitation would be less restrictive if clear provisions were in place to minimise the interference with the rights of third parties.

The importance of the purpose of the limitation

Both purposes identified above are important, though the purpose of clarifying the legal status of body-worn cameras within the SPER framework seems less critical if in fact current practice supports their use anyway.

The importance of preserving the human right

Privacy is fundamentally connected to personal autonomy and dignity. Respect for individuals' privacy therefore demonstrates respect for their dignity, which goes to the heart of achieving a culture of human rights (one of the stated aims of the HRA).

Preserving the right to privacy is also a significant component of maintaining public trust in government agencies. While the use of body-worn cameras can enhance this trust if used appropriately, misuse has potential to significantly erode the legitimacy of law enforcement agencies and the public's trust in them.

The balance between the importance of the purpose of the limitation and the importance of preserving the human right

Overall, the balance between the importance of the amendment and the need to preserve the right to privacy turns on the guidelines and safeguards which will be put in place around the recording, use, storage, sharing and disposal of personal information recorded by body-worn cameras.

If these safeguards are not adequate, the fact that the amendment provides clarity and certainty on the state of the law would not, in the committee's view, be a sufficient justification. On the assumption that adequate guidelines are in place which align with the National Privacy Principles and other best practice, the impact on the right to privacy would be justified by the need to ensure accountability and transparency.

4.1.1.3 Disclosure measures

The disclosure measures incorporate the following:

- Clause 29 of the Bill which amends the SPE Act to provide that, where the registrar is the administering authority for an infringement notice offence, the registrar may disclose confidential information that includes personal information to the department or other agency in which the legislative provision containing the offence is administered, for the purpose of the enforcement of the offence.[211]

[209] Statement of compatibility, p 15.

[210] Statement of compatibility, p 15.

[211] Statement of compatibility, p 18.

- Clause 30 of the Bill which amends the SPE Act to enable the registrar to disclose identifying information when remitting an amount collected by SPER under a court order to an entity entitled to the amount.[212]
- Clause 54 of the Bill which amends the TA Act to allow the Commissioner to disclose personal confidential information to an officer of the department or Treasurer if the disclosure is permitted under a law.[213]

Nature of the human right

As noted above, the right to privacy protects personal information against any unlawful or arbitrary interference.

Nature of the purpose of the limitation

The proposed amendments include several measures which would facilitate sharing of personal information between different officers or agencies.

These measures prima facie constitute a limitation of the right to privacy.

The stated purposes of these measures are to:

- enhance the efficiency of SPER enforcement processes
- promote confidence in law enforcement systems
- remove inconsistencies in existing provisions
- ensure effective enforcement of infringement notices.

The relationship between the limitation and its purpose

The various disclosure measures clearly serve the stated purposes, as they are likely to enhance efficiency and consistency, facilitate implementation of enforcement, and encourage greater confidence in law enforcement processes.

Whether there are less restrictive and reasonably available ways to achieve the purpose

The limitations are narrowly defined and relate to precise procedures within the SPER regime. There do not seem to be obvious means of achieving these purposes which would be both less restrictive and reasonably available.

The importance of the purpose of the limitation

Enhancing efficiency, consistency and confidence within law enforcement processes is an important objective within a democratic society under the rule of law. These values are supportive of the enjoyment of the full range of human rights.

The importance of preserving the human right

As noted above, protecting privacy in the form of personal and confidential information is a critical component of maintaining confidence in government.

The balance between the importance of the purpose of the limitation and the importance of preserving the human right

While the purposes noted above are important, they are properly viewed as instrumental to the protection of human rights and the promotion of democratic government. They do not on their own

[212] Statement of compatibility, p 16.

[213] Statement of compatibility, p 23.

justify other breaches of human rights, and care must be taken to balance these different objectives in a way which leads to the overall advancement of human rights and public confidence.

With respect to clause 30, the statement of compatibility notes that the personal information is already contained in a court order, and can already be obtained through a request to the Magistrates Court.[214]

The statement claims that the amendment has no material impact on the right to privacy because the information can already be obtained and that the only change is that the process will now be more efficient. While efficiency (and the associated benefits it brings in terms of the use of public funds) is a legitimate aim in a democratic society, this must be offset against the additional safeguard that is provided by the current process.

Similarly, with regard to clause 54, the statement of compatibility explains that the amendment is consistent with human rights because it will only allow disclosures that are already permitted under law.[215] On its own, the fact that disclosures are already permitted is an inadequate justification for the interference with human rights.

That being said, the limitations are narrow and are clearly related to the effective implementation of the SPE Act and related provisions.

On balance, the committee considers that any interference with the right to privacy is justified by the broad purpose of ensuring transparency and an efficient system of penalty enforcement.

4.1.1.4 Adjudication of images/videos from digital driver behaviour system

Clause 56 of the Bill amends the Traffic Regulation from 30 November 2022 to allow the registrar to view images or videos made by a digital driver behaviour system as described in Schedule 10, Part 9 of the Traffic Regulation to form a belief as to whether the image or video has detected a distracted driver offence.[216]

Nature of the human right

As noted above, the right to privacy protects personal information against any unlawful or arbitrary interference. This includes images and videos of the person, their homes and private life, which would extend to their vehicles.

Nature of the purpose of the limitation

The proposed limitation on the right to privacy consists of allowing the registrar (or their delegate) to view images/videos for the purpose of confirming whether a distracted driver offence has been committed.

As the statement of compatibility explains, this is necessary to ensure that infringement notices are not issued in error after they have been detected by the automated camera detection system.[217]

Other safeguards are in place within the relevant legislation with respect to the storage, use and deletion of images collected through the camera detection system.

The purpose of authorising the registrar to perform this function is to align with the proposed change which appoints the registrar of SPER as the responsible officer overseeing infringements of this nature. The registrar will delegate this task to authorised officers.

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214 Statement of compatibility, pp 17-18.

215 Statement of compatibility, p 23.

216 Statement of compatibility, p 20.

217 Statement of compatibility, p 21.

The relationship between the limitation and its purpose

The limitation is directly related to the purpose of ensuring human oversight of automated detection of offences.

Whether there are less restrictive and reasonably available ways to achieve the purpose

The impact on human rights appears to be the least restrictive option of achieving the purpose, provided that images/videos are appropriately stored and deleted if no offence is detected. This also assumes that the images are not viewed by more people than are necessary to make the adjudication.

The importance of the purpose of the limitation

The need for a human to check each recorded image that has been flagged by the automated detection system is an important safeguard against error and is therefore consistent with general principles of justice and human rights. It also helps to uphold the right to a fair hearing and rights in criminal proceedings.[218]

The camera detected offences program also serves the important purpose of ensuring road safety by preventing dangerous activities while driving, which ultimately helps to promote the right to life.[219]

The importance of preserving the human right

As noted above, preserving the right to privacy is an important part of respecting individuals' dignity, while also maintaining public confidence in law enforcement processes.

The balance between the importance of the purpose of the limitation and the importance of preserving the human right

On balance, the committee considers the limitation is justifiable. Any interference with the right to privacy is offset by the need to avoid the injustice of an infringement notice being issued in error. The safeguards already in place around the camera detected offence program would further minimise an impingement of the right to privacy.

4.1.1.5 Committee comment

The committee is satisfied the human rights limitations identified are reasonable and are demonstrably justified, having regard to section 13 of the HRA, and considers the Bill is compatible with human rights.

4.2 Statement of compatibility

Section 38 of the HRA provides that a member who introduces a Bill in the Legislative Assembly must prepare and table a statement of the Bill's compatibility with human rights. The committee is required to consider the tabled statement of compatibility and report to the Legislative Assembly about the statement.[220]

Committee comment

The statement of compatibility contained sufficient information to enable an overall assessment, but the committee considers there were some deficiencies in the information provided and the way in which human rights issues were analysed.

As noted above in relation to clause 28, key information about the safeguards and guidelines which would apply to the use of body-worn cameras was lacking. Such safeguards and guidelines are critical to determining (and therefore minimising) the impact of body-worn cameras on the right to privacy.

[218] HRA, ss 31, 32.

[219] HRA, s 16.

[220] HRA, s 38.

The purpose of many of the amendments was expressed to be promoting consistency and clarity of the law and/or enhancing efficiency by centralising services or streamlining processes.

In many places the statement of compatibility compares the effect of the amendment to the situation which existed (either in law or in practice) prior to the amendment. In many instances the result of this comparison was a conclusion that the amendment would have little practical impact, and that any impact on human rights was therefore negligible.

The committee questions whether this is an adequate or appropriate approach to assessing compatibility. Section 38 of the HRA requires that a statement of compatibility address whether the Bill is compatible with human rights.

As the Explanatory Note to the HRA explains, 'the purpose of the statements of compatibility is to elevate the consideration of human rights in legislative debate and to increase the transparency and accountability of Parliament.'

In the committee's view, this requires a consideration of the overall impact on human rights of the law following the passage of the Bill, and not just a comparison of the pre- and post-amendment effect of specific changes.

Allowing this approach would permit laws which are clearly incompatible with human rights to escape scrutiny when being amended, on the basis that interferences were already occurring prior to the amendment. Instead, compatibility should be assessed substantively, having regard to the full effect of the laws as they will operate post-amendment. This will help to ensure that the objects of the HRA can be genuinely fulfilled.

Appendix A – Submitters

Sub #	Submitter
001	George Dickson
002	Christopher and Karen Louise Meimaris as trustees for the Jessica Meimaris Special Disability Trust
003	Real Estate Institute of Queensland
004	LawRight
005	Moreton Bay Regional Council
006	Local Government Association of Queensland
007	Tenants Queensland

Appendix B – Officials at public departmental briefing

Queensland Treasury

- Mr Glenn Miller, Assistant Under Treasurer
- Ms Melinda Kross, Chief Revenue Counsel, Queensland Revenue Office
- Mr Jason Mew, Director Policy and Legislation, Queensland Revenue Office

Appendix C – Witnesses at public hearing

Real Estate Institute of Queensland

- Ms Katrina Beavon, General Counsel

Tenants Qld

- Ms Penny Carr, Chief Executive Officer
- Ms Mary Flowers, Legal Officer

Moreton Bay Regional Council

- Mr Greg Chemello, Chief Executive Officer
- Ms Sheryl Krome, Manager Customer Response

LawRight

- Mr Stephen Grace, Managing Lawyer, Community and Health Justice Partnerships
- Ms Famin Ahmed, Volunteer Lawyer

Queensland Treasury

- Mr Mark Jackson, Commissioner of State Revenue
- Mr Glenn Miller, Assistant Under Treasurer
- Mr Jason Mew, Director Policy and Legislation, Queensland Revenue Office

Statement of Reservation

Statement of Reservation

The non-government members of the Economics and Governance Committee wish to provide the following Statement of Reservation regarding the State Penalties Enforcement (Modernisation) Amendment Bill.

Firstly, regarding the proposed changes to the SPE and TORUM Acts, it is important to highlight Labor's poor track record on the management of SPER, and our resulting scepticism of their ability to make meaningful progress in this area going forward.

Total value of unpaid SPER debt has ballooned under Labor. In 2014-15, the total value of unpaid SPER debt was $999 million. By 2019/20 that had grown to $1.291 billion. Treasury outlined to the Committee that SPER debt had declined to approximately $1.2 billion since, though that is still a 20% increase under Labor. Additionally, in response to a recent Question on Notice, the Treasurer advised that so far, this financial year, $105.8 million of SPER debt has been written off – 5 times the average of the previous ten years. There is no evidence that the current Treasurer has been able to increase collections of SPER debt.

Secondly, regarding the proposed changes to the Residential Tenancies and Rooming Accommodation Act which propose to change the funding model of the Residential Tenancies authority, we have several issues of note including:

1. Lack of consultation with stakeholders. In the explanatory notes, it is written, "Community consultation was not considered necessary due to the mechanical nature of the amendments." There was no opportunity to question the RTA themselves about the potential impact of the funding changes on their operations. There was no submission from the RTA regarding the Bill. There was only one briefing and one hearing with Treasury to ask questions about the Bill. In our opinion, this demonstrates a refusal on the part of the Government to give proper opportunity for consideration of the full implications of its legislative proposals and is part of a pattern of behaviour of this Government when it comes to listening to the concerns of Queenslanders.

2. Lack of consultation with State Departments and Ministers. During the hearing, questions regarding the timing of briefings given to Minister Enoch and her Department regarding the RTA funding changes were taken on notice. The only evidence relevant to this matter was given by the REIQ and Tenants Queensland, who both indicated that their contacts at the RTA had not made mention of the legislation prior to its introduction.

3. Motive for the changes. The Treasury have themselves said that these changes are of a "mechanical nature." In the Committee's hearing, Treasury were asked whether any changes to Government revenue, expenses, assets and/or liabilities was anticipated as a result of the changes. Treasury denied changes to expenses, assets and liabilities but not revenue. It is possible that this move is another way to inflate the budget figures, as was the case with the valuation of the Titles Registry. However, as outlined, the exact nature of this new brand of 'budget trickery' is still mostly unknown at this time.

In conclusion, we the non-government Members of the Committee hold reservations about aspects of this legislation on the grounds that no opportunity was given for the Bill to be appropriately scrutinised - scrutiny which is certainly in the public interest.

This Government have repeatedly refused to appropriately consult on a wide range of issues. Unfortunately, when it comes to this proposed legislation, the story is no different.

Sincerely,

Ray Stevens MP
Deputy Chair
Member for Mermaid Beach

Michael Crandon MP
Member for Coomera

Daniel Purdie MP
Member for Ninderry