

# **State Penalties Enforcement & Other Legislation Amendment Bill 2006**

## **Explanatory Notes**

### **Title of the Bill**

State Penalties Enforcement & Other Legislation Amendment Bill 2006

### **Objectives of the Amendments**

The amendments in the State Penalties Enforcement & Other Legislation Amendment Bill 2006:

- provide court debtors with the full range of payment options and flexible payment plans which are presently only available after the time allowed by the court has expired and the fine remains unpaid;
- increase collections of court ordered fines through the implementation and promotion of one streamlined and consistent fine collection scheme. This will allow the State Penalties Enforcement Registry (SPER) to provide information targeted to debtors as they are leaving a court;
- provide options for a court to better utilise SPER's default imprisonment and time to pay provisions;
- provide greater discretion for the SPER Registrar to grant Good Behaviour Orders to vulnerable persons as an alternative to payment of fines, performing community service or imprisonment;
- allow the writing-off of uncollectible and unenforceable fines according to the *State Penalties Enforcement Act 1999* (the SPE Act) and provide for the issue of subsequent guidelines by the Minister;
- extend the personal information about debtors that is provided to SPER enabling SPER to more effectively enforce and collect unpaid fines and penalties;
- make a number of amendments to the SPE Act, the *Penalties and Sentences Act 1992*, *Justices Act 1886* and the *Bail Act 1980* to

support the early registration of court fines with SPER and to streamline and make consistent the fine collection system; and

- make minor amendments to the *Guardianship and Administration Act 2000* and the *Land and Resources Tribunal Act 1999*.

### **Reasons for the objectives and how they will be achieved**

#### Early Registration of Court Fines

When a court imposes a fine upon a debtor, a time to pay period is allowed, which is on average a period of three months. Only 40% of debtors pay their fines within the time to pay period. During the time to pay period, responsibility to collect the fine remains with the court registry. During the time to pay period, a debtor is not able to access the flexible payment options offered by SPER, such as, Centrelink debit, direct debit and 24 hour phone and internet banking.

The amendments will allow fines to be registered with SPER as soon as practicable after a court order. The early registration of fines with SPER will increase the effectiveness of SPER's collection processes for those fines and offer court debtors access to a range of flexible payment options.

#### Streamlining and Making Consistent the Fine Collection System

The amendments allow further consistency between the respective Acts in regard to the fine collection system and provide greater options to debtors for a full range of payment options and flexible payment plans.

#### Good Behaviour Orders

Currently the SPER Registrar has capacity to deal with fines where the debtor does not have the capacity to pay and is unlikely to pay in the future through the use of Good Behaviour Orders. A debtor must produce a report from a doctor confirming that the debtor is not suitable for performing community service, can not pay or continue to pay the fine and it would be inappropriate for payment to be enforced by the Registrar issuing an arrest and imprisonment warrant.

There are some debtors, who because they are homeless or have a physical or medical condition or impaired decision-making capacity, can not make an application to the SPER Registrar for a Good Behaviour Order. Also, doctors may not be in a position, nor is it appropriate for them to provide a medical opinion about a debtor's ability to pay or their suitability for community service, since this is dependent on the type of community service programs available at the time and the requirements to perform community service, which they may not be fully cognisant of. Because of

the mandatory requirements, there are very few Good Behaviour Orders being made, even though the circumstances indicate that an order of this nature would be appropriate.

The amendments will give the SPER Registrar greater flexibility in making good behaviour orders for debtors by omitting the mandatory requirements of the debtor providing a doctor's report and the SPER Registrar giving 7 days notice to the debtor of the Registrar's intention to make a Good Behaviour Order.

#### Writing Off Debts

SPER has identified many fines, some dating back to the 1970's, which are uncollectible or unenforceable because:

- (a) the debtor has died;
- (b) the debtor is a corporation that has been deregistered; or
- (c) there is insufficient information known about the debtor to adequately identify them or differentiate them from another person, or there is insufficient information to establish their liability for the fine (i.e. J Smith or John Smith).

Under section 115(5) of the SPE Act, the Governor may waive all or part of an unpaid amount. In other jurisdictions, such as New South Wales and Victoria, the respective agency tasked with the responsibility for fine collection has the power to write-off uncollectible or unenforceable debts. In addition, New South Wales and South Australia, also provide for their Attorney-General to issue guidelines with respect to the writing off of unpaid fines. These guidelines are not made public to ensure that debtors are not in a position to find and exploit possible loopholes to avoid payment of fines.

The amendment will allow the Registrar to write-off debts for deceased persons, deregistered corporations and debtors about whom there is insufficient information to adequately identify a debtor or differentiate them from another person or to establish their liability for the fine. A further amendment will allow the Minister to issue guidelines with respect to writing off unpaid fines by the Registrar of SPER in accordance with the New South Wales and South Australian model of not making the guidelines public.

#### **Alternative Ways of Achieving Policy Objectives**

Nil

## **Estimated Cost for Government Implementation**

The additional workload on SPER as a result of the early registration of court fines will be absorbed through its largely automated processes and through its current resources.

## **Consistency with Fundamental Legislative Principles**

The Bill proposes an amendment to section 152 surrounding SPER's ability to access information from entities. This raises privacy related issues. SPER's focus has always been to attempt to contact debtors and provide compliance options that reflect a debtor's personal and financial circumstances before taking enforcement action.

When an unpaid fine is currently registered with SPER, the Act provides for the name and date of birth of the debtor to be provided, although only the name of the debtor is mandatory. SPER has authority under the Act to request information from other State entities, as prescribed under a regulation, in order to verify the identity or locate the debtor, however, this authority does not clearly encompass date of birth or other information.

Without a date of birth, SPER generally does not have sufficient information to adequately determine if the information supplied by the agency relates accurately to a debtor record held by SPER. SPER also lacks the ability to contact debtors before taking enforcement action and to actually take enforcement action because information presently known about the debtor does not include phone number, bank details, employer details or property details. While many agencies are able to supply this critical identifying information about the debtor, concerns about whether the provision of the information would be lawful or a breach of privacy are often cited as a reason for not providing this information to SPER.

In New South Wales, their debt recovery office may seek information from the police service and government agencies about the criminal record, address or assets of a fine defaulter for the purposes of taking action to enforce the payment of a fine. Their debt recovery office may also obtain information about the address and employment details from an employer or past employer for the purposes of enforcement of a garnishee order. The amendments in this Bill are in line with the New South Wales legislation except that there is no provision requiring past or present employers to provide information to SPER. Further, section 11.1(e) of the Information Privacy Principles allows for the disclosure of personal information which is reasonably necessary for the enforcement of a law imposing a pecuniary penalty and this amendment is consistent with this principle.

The amendments allowing SPER to access this information are justified in order for SPER to increase its contact with debtors to offer suitable compliance options. The amendments will foster a seamless transmission of information from the investigatory/prosecution bodies to SPER. Ultimately, the provision of this information to SPER will mean that more fines and monetary penalties will be paid. This will promote community confidence in the fine enforcement system.

The Bill proposes an amendment to include provisions which enable the Minister to issue confidential guidelines with respect to the writing off of unpaid fines and for the Registrar to write off fines consistent with the guidelines. These guidelines will not be made public to ensure that debtors are not in a position to find and exploit possible loopholes to avoid payment of fines. Both New South Wales and South Australia have similar provisions where guidelines issued by their respective Attorney-General enabling the Registrar to write off unpaid fines are not made public. This amendment is consistent with the provisions in these States and it is justified to ensure the creditability and effectiveness of the SPER system.

### **Consultation**

During the preparation of the proposed Bill the following community agencies were consulted about the changes to the Good Behaviour Orders:

- HART 4000;
- Brisbane Homelessness Service Centre;
- Mental Health Homeless Outreach Team; and
- Queensland Public Interest Law Clearing House.

The Adult Guardian, Public Advocate and the Public Trustee of Queensland were also consulted about the changes to the Good Behaviour Orders.

The Chief Justice of Queensland, the Chief Judge of the District Court, the Chief Magistrate as well as Legal Aid Queensland were consulted about the Bill.

## **Notes on Provisions**

### **Part 1                      Preliminary**

#### **Short Title**

Clause 1 provides that the short title is the *State Penalties Enforcement & Other Legislation Amendment Act 2006*.

#### **Commencement**

Clause 2 provides that Parts 2, 3, 5 and 7 of this Act will commence on a day to be fixed by proclamation.

### **Part 2                      Amendment of State Penalties Enforcement Act 1999**

*Act amended in part 2*

Clause 3 provides that this part amends the SPE Act.

*Amendment of section 11 (Management of office)*

Clause 4 amends section 11 by deleting the words “, or staff of the registry who are justices of the peace (magistrates court) acting for the registrar”. The qualification of justice of the peace (magistrates court) is no longer in widespread use and this amendment brings the section in line with the current terminology used. Because the Registrar is able to delegate the Registrar’s functions under the Act to appropriately qualified persons under section 161 of the Act, Registry staff who are appropriately qualified may be delegated the Registrar’s functions under section 11.

*Amendment of section 15 (Infringement Notices)*

Clause 5 amends section 15 to provide that a debtor may make an election to have the matter of the offence decided in a Magistrates Court. This amendment removes the requirement that the election must be in writing

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and will permit an election being made in a manner such as by the telephone or by internet.

*Amendment of section 22 (Ways alleged offender may deal with infringement notice)*

Clause 6 amends section 22 by replacing the word “give” with the word “make” which is consistent with current drafting practices.

*Amendment of section 23 (Application to pay fine by instalments)*

Clause 7 amends section 23 to provide that an application made to the administering authority can also be made in another way acceptable to the administering authority. The amendment further provides that the administering authority must be satisfied that an application is made by the alleged debtor. This will permit applications being made in a manner other than in writing only, such as by the telephone or by internet. The amendments will keep the fine collection system in touch with the modern practices of using the telephone and internet services to conduct business. The amendment will also ensure that SPER is satisfied that the application is being made by the correct person

*Amendment of section 33 (Default by person served with infringement notice)*

Clause 8 amends section 33 to provide that when a debtor is served with an infringement notice, the debtor is able to elect to have the matter dealt with in the Magistrates Court not just by a written election but also in another way acceptable to the administering authority. The amendments will keep the fine collection system in touch with the modern practices of using the telephone and internet services to conduct business. The amendment will also ensure that SPER is satisfied that the application is being made by the correct person

*Amendment of section 34 (Default in paying fine, penalty or other amount under court order)*

Clause 9 amends section 34 to extend the types of court orders that may be registered with SPER. Presently, there are a number of fines or orders that are not able to be registered with SPER and the only means of enforcement available to courts is to issue a warrant of arrest and imprisonment (or a warrant of execution). The amendments will correct a reference in the current sections 34(1)(b)(c) and (d), as well as providing for the following court orders to become registered:

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- an order under the *Justices Act 1886*, section 161A that an amount be recoverable by execution; and
- an order under the *Penalties and Sentences Act 1992*, sections 182A and 185, that a penalty be paid.

The amendments will also permit the proper officer of the court to give to SPER, at any time after the making of an order for a fine or other amount, the prescribed particulars for the registration of the debt with SPER. This will result in debts that would normally be registered with SPER after the time to pay period has expired, to be registered with SPER earlier. Once the debt is registered with SPER, the debtor will have access to the customer focused and flexible plan options offered by SPER.

The amendments will also provide that for new court orders which can be registered with SPER (ie orders made under section 161A of the *Justices Act 1886* and sections 182A and 185 of the *Penalties and Sentences Act 1992*), where the court is not able to enforce the unpaid amount by making a default imprisonment term, that these debts are not able to be registered with SPER. This is to ensure a debtor is not subject to a more onerous penalty than prior to the commencement of the legislation. This is in accordance with fundamental legislative principles.

*Amendment of section 35 (Effect of registration under this division)*

Clause 10 amends section 35 to allow for the registration fee, currently imposed on the amount unpaid when registered with SPER, not to be incurred when court ordered debts are registered with SPER. This will ensure that debtors are not incurring the registration fee when their debt is registered early with SPER in accordance with the amendments in Section 34 and that there is consistency in the treatment of debtors when they choose to pay on time either to the court or to SPER.

The registration fee will continue to be imposed when infringement notice offences are registered with SPER under a default certificate.

*Amendment of section 36 (Default in paying instalment)*

Clause 11 will amend section 36 to provide that if there is default in payment at any time under an instalment plan for an infringement notice offence, the Registrar may cancel the instalment plan. Presently, the Registrar may only cancel the instalment plan when there have been two consecutive failures to pay the instalment. This differs from instalment plans for court ordered fines where the Registrar may cancel the instalment plan at any time there has been a default in payment under the instalment plan. The effect of the amendment will be that there is consistency

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between when the Registrar may cancel an instalment plan for both court ordered debts and for infringement notice offences. The Registrar is not prevented from granting a subsequent instalment plan after the cancellation of a prior plan.

*Amendment of section 38 (Issue of enforcement order)*

Clause 12 will omit section 38(4), which provided for the enforcement order to state the period for which the enforcement debtor may be imprisoned for failure to pay the stated amount. The actual number of days an enforcement debtor may be imprisoned is sometimes difficult to predict accurately, because it depends on which enforcement action is taken and the number of outstanding fines the debtor has. Therefore, this figure can sometimes be misleading. The enforcement order will still advise that default imprisonment remains an enforcement option and this will continue to have a deterrent effect but without the disadvantages of it being misleading as to the actual period.

*Amendment of section 39 (Working out period of imprisonment for enforcement order)*

Clause 13 will omit section 39 as a consequence of the amendment in Section 38. Section 39 provides for the working out of the period of imprisonment for an enforcement order and as a result of section 38(4) being omitted, section 39 is no longer required.

*Amendment of section 41 (Ways enforcement debtor may deal with enforcement order)*

Clause 14 amends section 41 by omitting the option for the debtor applying to SPER for an extension of time to pay an outstanding amount after receipt of the enforcement order. Section 41 provides for a debtor to also apply for a range of other options after service of the enforcement order. When a debtor applies for the other options or elects to go to court to dispute the fine, SPER will automatically extend the time and therefore there is no necessity to include an option of requesting time to pay the amount stated in the order.

The amendments also provide that applications to SPER for an instalment plan may be made in another way acceptable to SPER and not limiting applications to be in the approved form only. The effect of this amendment will be that the fine collection system will be in touch with the modern practices of using phone and internet service to conduct business and debtors will not be prevented from using modern forms of communication when dealing with SPER.

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*Replacement of section 42 (Application for time to pay)*

Clause 15 amends section 42 to provide for the debtor being able to apply in the approved form or in another way acceptable to SPER for an instalment plan. The amendments also provide for the omission of the option for a debtor to apply to SPER for an extension of time to pay as SPER will automatically extend the time to pay when the debtor applies for other options to pay or elects to go to court to dispute the debt.

*Amendment to section 46 (Fine option order only for unpaid fine)*

Clause 16 amends section 46 to omit the reference to ancillary orders in section 46(a) and the examples of ancillary orders. Section 43 permits a debtor to apply to SPER for a fine option order, which will allow the debtor to perform community service instead of paying the fine. The Registrar will permit the conversion of a fine to community service in certain circumstances and when the debtor has no capacity to pay the fine. At present, section 46 prevents a fine option order being made for ancillary orders (such as professional fees, witness expenses and interpreter fees). If ancillary orders are not able to be paid by the debtor and the ancillary orders can not be converted to a fine option order, SPER may be left with no other option but to issue a warrant for the debtor to serve a term of imprisonment. The effect of the amendment will provide consistency in the fine collection system and enable ancillary orders to be converted to community service under a fine option order and avoid the imposition of default imprisonment.

*Amendment of section 52 (Default after time to pay)*

Clause 17 amends section 52 to provide that the period of imprisonment stated in an arrest and imprisonment warrant is to be calculated under the new provision, section 52A. Further, section 52(1) is amended to provide for the omission of the words 'or later time allowed under section 42' as a result of the amendment to section 42.

*Insertion of new section 52A (Working out period of imprisonment for arrest and imprisonment warrant)*

Clause 18 inserts a new provision, section 52A to provide for the method of calculation of the term of imprisonment as a consequence of the omission of section 39. Currently under section 39 the calculation of the term of imprisonment is based on the amounts stated in the enforcement order which includes SPER registration and enforcement costs. The amendment provides that the term of imprisonment will be calculated on the amounts

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outstanding in the enforcement order, less any registration, enforcement or administrative fees.

*Amendment of section 56 (Applications for cancellation of enforcement orders)*

Clause 19 amends section 56 to allow a debtor to seek an extension of time from SPER in which to make an application for the cancellation of an enforcement order for an infringement notice offence. Currently, the debtor can only apply to have the enforcement order cancelled within 14 days after the debtor becomes aware of the existence of the order or 6 months after the issue of the relevant enforcement order (whichever is the earlier). An extension of time will be granted outside the time limitation period but only when the debtor wants to have the matter referred to a Magistrates Court for hearing and the debtor is able to provide reasonable grounds for the delay to SPER.

*Amendment of section 57 (Decision on application)*

Clause 20 amends section 57 to provide that when the Registrar cancels an enforcement order, the Registrar is to refer the matter back to the administering authority and give notice of the decision to the applicant. The administering authority may, at its discretion, commence proceedings against the applicant for the offence. Currently, the legislation provides that the Registrar refers the matter back to the Magistrates Court. However, practice has revealed that it is more appropriate for the administering authority to determine whether a prosecution of the matter in court is warranted or not.

*Amendment of section 58 (Appeal against refusal to cancel enforcement order)*

Clause 21 amends section 58 to provide that any reference to a “referral notice” is substituted with the words, “notice of decision”, as a consequence of the amendments in section 57.

*Amendment of section 59 (Proceedings for offence if enforcement order cancelled)*

Clause 22 omits section 59, as this section is no longer required as a result of the amendments in previous two (2) clauses.

*Amendment of section 61 (Application under Part 5)*

Clause 23 amends section 61(a)(i) to provide for the omission of the words ‘or later time allowed under section 42’ as a result of the amendment to section 42.

*Amendment of section 63 (Issue of enforcement warrant)*

Clause 24 amends section 63 by substituting the words ‘6 months’ for the words ‘3 months’. The effect of this amendment will be that enforcement warrants will last for a 6 month period and may be renewed for a further 6 month period. This amendment is necessary because the seizure and sale of real and personal property is one of the last enforcement options utilised by SPER. It is preferable to wait for a sale rather than force people out of their homes. The extension of both the enforcement warrant period and the renewal period to 6 months will halve the effort required to maintain these interests and provide debtors with time to pay rather than being forced out of their home.

*Amendment of section 104 (Criteria for suspending driver licence)*

Clause 25 amends section 104(5) to provide for the omission of the words ‘or later time allowed under section 42’ as a result of the amendment to section 42.

*Amendment of section 118 (Good behaviour order when imprisonment not appropriate)*

Clause 26 amends section 118 to provide the Registrar with greater flexibility when issuing a Good Behaviour Order for a debtor. Currently, the debtor must apply to SPER and provide a report from a doctor evidencing that community service, imprisonment or payment of the fine is not appropriate for a medical or psychiatric reason. It is often not appropriate for doctors to complete reports because they may not always be aware of the requirements of community service programs and/or a debtor’s suitability for such a program. The doctor may also not be aware of the debtor’s financial situation and/or ability to pay a fine.

The amendments will allow the Registrar to make a Good Behaviour Order where the Registrar is satisfied that the debtor is unable to pay the fine and is not suitable for community service or imprisonment. In making the Good Behaviour Order, the Registrar may have regard to any relevant advice, including expert advice, the Registrar considers appropriate. This advice would be from persons including an advocate or person who works in a diversionary, interventionist or rehabilitation program.

The debtor will be required to consent to the making of the Good Behaviour Order. The amendments will provide that the debtor can make an application to cancel or vary the Good Behaviour Order. Upon cancellation of the Good Behaviour Order, the unpaid fines would again become payable and the Registrar may take any action to collect or enforce

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the amounts the Registrar would have been able to had the Good Behaviour Order not been made.

*Amendment to section 119 (Enforcement by imprisonment)*

Clause 27 amends section 119 to provide that the period of imprisonment is to be calculated under the new provision, section 52A and not under the repealed section 39.

*Amendment of section 135 (Default certificate for infringement notice offence)*

Clause 28 amends section 135 (e)(iii) as a consequential amendment to section 15.

*Amendment of section 136 (Instalment Payment Notice).*

Clause 29 amends section 136 to provide that an instalment payment notice should include the total of all amounts payable by the person under the Act. This will enable all fines previously outstanding with SPER to be included in the one instalment plan and avoid the debtor being liable to pay under several instalment plans and without a full consideration of the debtor's ability to pay under each plan.

*Amendment to section 137 (Enforcement order)*

Clause 30 amends section 137 to provide for the omission of the option for a debtor to apply to SPER for an extension of time to pay as SPER will automatically extend the time to pay when the debtor applies for other options to pay or elects to go to court to dispute the debt.

*Amendment to section 147 (Effect of notices, orders and warrants)*

Clause 31 amends section 147 by deleting the words, "*or staff of the registry mentioned in section 11*", as a consequence of the amendment to section 11.

*Insertion of new section 150A (Registrar may write off unpaid fine or other amount and new section 150B (Guidelines))*

Clause 32 provides for the insertion of two new sections, sections 150A and 150B, which will allow the Registrar to write off debts which have become uncollectible or unenforceable. SPER has identified debts, some debts dating back to the 1970's, which they can not collect or are unenforceable because the debtor has died, the debtor is a corporation that has been deregistered or there is insufficient information known about the debtor to adequately identify them or differentiate them from another

person and accordingly, insufficient information to establish their liability for the fine.

Currently the only person who can waive all or part of the fine is the Governor under section 115(5) of the SPE Act. New South Wales, Victoria and Northern Territory have provisions which provide for the debt enforcement agency to write off debts in certain circumstances. In addition, in New South Wales and South Australia, the Attorney-General may issue guidelines (which are not published) with respect to the writing off of unpaid fines. The guidelines are not required to be made public to prevent debtors becoming aware of any possible loopholes to avoid paying fines.

The effect of the amendments will be that the Registrar of SPER is allowed to write off fines when:

- (a) the debtor has died;
- (b) the debtor is a corporation that has been deregistered;
- (c) there is insufficient information to establish the identity of the person liable to pay the fine or other amount; or
- (d) in other circumstances permitted under a guideline issued by the Minister.

A further provision will allow the Minister to issue guidelines to allow the Registrar to write off unpaid fines, and that these guidelines are not required to be made public.

*Amendment to section 152 (Information from entities other than police service)*

Clause 33 amends section 152 by expanding the type of information the Registrar may seek to obtain from a State entity, or a local government prescribed under a regulation about the debtor. The amendments are consistent with section 11.1(e) of the Information Privacy Principles, which allows for the disclosure of personal information which is reasonably necessary for the enforcement of a law imposing a pecuniary penalty. The effect of the amendment will be to expand the types of personal information that can be provided to SPER to include, date of birth, phone number, bank account details, employer details or details about any property in which the fine defaulter may have a legal or beneficial interest in.

The amendments in clause 33 also provide for an expansion of who can provide information to SPER, to include, administering authorities,

authorised persons; local governments and the Royal Society for the Prevention of Cruelty to Animals Queensland Incorporated.

*Replacement of heading of Part 10, Division 1*

Clause 34 replaces the heading to provide for a correction to the reference.

*Insertion of new section 175 (Transitional provisions for the State Penalties Enforcement and Other Legislation Act 2006)*

Clause 35 inserts new sections 175 to 179 to provide for the transitional provisions of the *State Penalties Enforcement and Other Legislation Amendment Act 2006* to the SPE Act. Section 175 provides that the amendment act is the *State Penalties Enforcement and Other Legislation Amendment Act 2006*.

Section 176 provides that the amendments to section 11 will not affect any enforcement order, warrant or fine collection notice made or issued by a member of the staff of the registry after the commencement of this section.

Section 177 provides that an application for an extension of time made under the repealed sections 41(a) and 42(1)(a) will be taken to be cancelled because applications for an extension of time are no longer necessary. SPER will automatically provide an extension of time to a debtor when a debtor contacts SPER to make other arrangements for the payment of the outstanding debt to SPER.

Section 178 provides that in circumstances where the Registrar has cancelled an enforcement order under the previous section 57, the Registrar is to refer the matter of the offence to the administering authority.

Section 179 provides that the Registrar may issue a Good Behaviour Order under the new provisions of section 118 in relation to an enforcement warrant or a fine collection notice that was issued before or after the commencement of section 118.

*Amendment of schedule 2 (Dictionary)*

Clause 36 amends the definition of ‘cut-out rate’ contained in Schedule 2 to provide for a definition of the cut-out rate where there has been a court order under which a surety is required. Currently, the Schedule provides for a definition for the cut out rate for a court order under which a surety is paid is required to serve a term of imprisonment for failing to pay an amount under the *Bail Act 1980* or the *Penalties and Sentences Act 1992*. However, it does not provide a definition where no default imprisonment is ordered and the amendment will cover this situation.

The amendment will also provide that the reference to \$60.00 in the definition of ‘cut-out rate’ to be replaced with \$75.00. The increase in the amount will bring the cut out rate into line with a penalty unit under the *Penalties and Sentences Act 1992* and ensures the rate at which a debtor may cut-out imprisonment remains consistent with the increases in fine amounts. The proposed increase of the cut out rate will reduce the time debtors may spend in prison for unpaid fines, thus reducing the costs to government of enforcing unpaid fines.

## **Part 3                      Amendment of Bail Act 1880**

### *Act amended in Part 3*

Clause 37 provides that Part 3 amends the *Bail Act 1980*.

### *Amendment of section 6 (Definitions)*

Clause 38 inserts a definition of SPER into the definition section.

### *Replacement of section 32A (Order for payment of amount under forfeited undertaking)*

Clause 39 replaces section 32A to provide the court with discretion in ordering time to pay and default imprisonment upon the forfeiture of a deposit of money or other security on a person released on bail and failing to appear with an undertaking. The amendment will also provide for the court to have the option to order the proper officer to give particulars of the unpaid amount to SPER for registration. The amendment will also provide that the proper officer may give particulars of the unpaid amount at any time after the court order is made, with SPER for registration.

Currently when there is a forfeiture of a deposit of money or other security on a person released on bail and failing to appear with an undertaking, a court must order that the amount undertaken by the surety is to be paid immediately or within a stated period and order a period of imprisonment in default of payment. If the amount remains unpaid, the proper officer of the court may register the penalty with SPER. The effect of the amendment will allow for the early registration of an amount on the forfeiture of an undertaking with SPER. This will increase the access of the debtor to the customer focused and flexible payment options offered by SPER and support the streamlined single and consistent fine collection and enforcement system.

## **Part 4                      Amendment of Guardianship and Administration Act 2000**

*Act amended in Part 4*

Clause 40 provides that Part 4 amends the *Guardianship and Administration Act 2000*.

*Amendment of section 200 (Selection)*

Clause 41 amends section 200 to provide that where the adult guardian is being reappointed, the requirement that the position of adult guardian is advertised is not required.

*Amendment of section 214 (Selection)*

Clause 42 amends section 214 to provide that where the public advocate is being reappointed, the requirement that the position of public advocate is advertised is not required.

## **Part 5                      Amendment of Justices Act 1886**

*Act amended in Part 5*

Clause 43 provides that part 5 amends the *Justices Act 1886*.

*Amendment to section 30 (Mode of levying penalties, moneys or costs.*

Clause 44 amends section 161A to provide that the Clerk of the Court has discretion to also register the unpaid amount with SPER as the alternative to issuing a warrant of execution against the goods and chattels of the person. Currently, the Clerk of the Court may register the matter with SPER after any unsuccessful attempt at execution against the goods and chattels has been made. The early registration of the matter with SPER will allow the associated benefits including increasing access to all debtors to the customer focused and flexible payment options offered by SPER. Further, this amendment will provide for one streamlined single and consistent fine collection system and allow court registries to focus on providing more court related services.

This section has also been redrafted according to current drafting practices to make the section easier to read.

## **Part 6**                      **Amendment of Land and Resources Tribunal Act 1999**

*Act amended in Part 6*

Clause 45 provides that Part 6 amends the *Land and Resources Tribunal Act 1999*.

*Amendment of section 7 (Presiding members)*

Clause 46 amends section 7 to provide that one (1) or more deputy presidents may constitute the presiding members of the Tribunal.

## **Part 7**                      **Amendment of Penalties and Sentences Act 1992**

*Act amended in Part 7*

Clause 47 provides that Part 7 amends the *Penalties and Sentences Act 1992*.

*Amendment to section 4 (Definitions)*

Clause 48 inserts a definition of SPER into the definition section.

*Amendment to section 33B (order for payment of amount under forfeited recognisance)*

Clause 49 amends section 33B to provide the court with discretion when ordering time to pay and default imprisonment upon the forfeiture of a recognisance. Under the current law, when there is a forfeiture of a recognisance, a court must order that the amount specified in the recognisance be paid immediately or within a stated period and order a period of imprisonment in default of payment.

The amendment will provide options for the proper officer of the court to give particulars of the unpaid amount to SPER for registration at any time after the order is made or for the court to order the proper officer to give particulars of the unpaid amount to SPER for registration. This amendment will enable the early registration of unpaid amounts with SPER and is consistent with the previous amendments made in this Bill.

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*Amendment of section 36 (What order may state)*

Clause 50 amends section 36 to provide that the court has an option to make an order that the proper officer is to give particulars of the amount of the restitution or compensation to SPER for registration. The amendments also provide that after an order for compensation or restitution has been made by the court, the proper officer, may at any time give particulars of the amount of the restitution or compensation to SPER for registration.

*Amendment of section 38 (Extension of time)*

Clause 51 amends section 38(1)(c) by removing the provision which provided authority to the proper officer to further extend the time to pay period for an order for compensation or restitution made under section 35. This effect of this amendment is to support the registration of unpaid amounts with SPER and to provide one consistent and streamlined fine collection system.

*Replacement of section 50 (Instalment Order) and section 51 (Payment of fine)*

Clause 52 replaces section 50 to provide that the court has an option to make an order that the proper officer is to give particulars of the amount of the fine to SPER for registration. The amendments also provide that after the court orders a fine, the proper officer, may at any time give particulars of the amount of the fine to SPER for registration. The effect of this amendment will provide for the early registration of court fines with SPER and that the debtor has access to the customer focussed and flexible payment options offered by SPER.

Clause 52 also replaces section 51 to provide that the court has an option to make an order that the proper officer is to give particulars of the amount of the fine to SPER for registration. The amendments also provide that after the court orders a fine, the proper officer, may at any time give particulars of the amount of the fine to SPER for registration. The effect of this amendment will provide for the early registration of court fines with SPER and that the debtor has access to the customer focussed and flexible payment options offered by SPER.

*Amendment of section 94 (Additional requirements of probation order)*

Clause 53 amends section 94 to omit the provisions which provide the court with the ability to order compensation or restitution as a condition of a probation order. When a compensation or restitution order is made as a

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condition of a probation order, no attempt is made to collect this amount until after the period of the probation order has expired. In practice, Queensland Corrective Services are infrequently breaching debtors who have complied with all of the requirements of the probation order, except for the payment of the restitution or compensation and this has posed difficulties for Queensland Corrective Services. The effect of this amendment will be that the compensation or restitution order is made as a separate order to the probation order and the amounts may be registered with SPER at the earliest opportunity under section 35.

*Omission of section 104 (Requirements relating to restitution and compensation)*

Clause 54 omits section 104, which provided the court with the ability to order compensation or restitution as a condition of a community service order. When a compensation or restitution order is made as a condition of a community service order, no attempt is made to collect this amount until after the period of the community service order has expired. In practice, Queensland Corrective Services are infrequently breaching debtors who have complied with all of the requirements of the community service order, except for the payment of the restitution or compensation and this has posed difficulties for Queensland Corrective Services. The effect of this amendment will be that the compensation or restitution order is made as a separate order to the community service order and the amounts may be registered with SPER at the earliest opportunity under section 35.

*Amendment to section 115 (Additional requirements of intensive correction order)*

Clause 55 amends section 115 to omit the provisions which provide the court with the ability to order compensation or restitution as a condition of an intensive correction order. When a compensation or restitution order is made as a condition of an intensive correction order, no attempt is made to collect this amount until after the period of the intensive correction order has expired. In practice, Queensland Corrective Services are infrequently breaching debtors who have complied with all of the requirements of the intensive correction order, except for the payment of the restitution or compensation and this has posed difficulties for Queensland Corrective Services. The effect of this amendment will be that the compensation or restitution order is made as a separate order to the intensive correction order and the amounts may be registered with SPER at the earliest opportunity under section 35.

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*Amendment of section 182A ( Court may make order for default payment of penalty)*

Clause 56 amends section 182A to provide that a court has an option to use the ‘cut-out-rate’ definition in the Schedule to the SPE Act when determining the term of default imprisonment as well as the method of calculation contained in section 182A(2). The effect of this amendment will provide one streamlined single and consistent fine collection system.

*Amendment to section 185A (If offender does not pay penalty under section 185)*

Clause 57 amends section 185A to provide the proper officer with a discretion to register the fine made under section 182A or section 185 at any time with SPER, regardless if a default period has been ordered or not. The effect of this amendment will support the early registration of court penalties with SPER and the associated benefits including increasing access to all debtors to the customer focused and flexible payment options offered by SPER. Further, this amendment will provide for one streamlined single and consistent fine collection system and allowing court registries to focus on providing more court related services.

*Amendment of section 185B (Power of proper officer to postpone warrant)*

Clause 58 amends section 185B by providing that where a debtor does not comply with any conditions made by the proper officer of the court to postpone the issue of a warrant for the arrest and imprisonment of the debtor, the proper officer must comply with section 185A. The effect of this amendment will be that the proper officer now has an option of referring the matter to SPER rather than issuing a warrant for the arrest and imprisonment of the debtor. This is consistent with the principles of the SPE Act that imprisonment is to be used only as a last resort in enforcing penalties and also supports the one streamlined single and consistent fine collection system.

*Insertion of new section 215 (Transitional provisions for the State Penalties Enforcement and Other Legislation Act 2006)*

Clause 59 inserts new section 215 to provide for the transitional provisions for the *State Penalties Enforcement and Other Legislation Amendment Act 2006*. The amendment will provide that for any compensation or restitution order made as a condition of a probation order, community service order or intensive correction order under sections 94(1)(c), (d) or

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(e); section 104 or sections 115(1)(c), (d) or (e) respectively, will continue to be subject to the requirements as if the amendment Act had not commenced.