

Penalties and Sentences and Other Legislation Amendment Bill 2012

Explanatory Notes for amendments to be moved during consideration in detail by the Honourable Jarrod Bleijie MP

Title of the Bill

Penalties and Sentences and Other Legislation Amendment Bill 2012.

Objective of the Amendments

The objective of the first amendment is to effect a minor change of a technical drafting nature. Clause 11 of the Bill amends a consequential amendment to section 63(8) of the *State Penalties Enforcement Act 1999* in schedule 1A of the *Civil Proceedings Act 2011* (which is yet to be commenced). The purpose of the consequential amendment is to replace a definition of *exempt property*. However, the *Local Government Electoral Act 2011* has renumbered section 63(8) of the *State Penalties Enforcement Act 1999* as section 63(11). A minor amendment was therefore included in the Bill to update the reference to the renumbered section 63(11).

This amendment is to ensure that clause 11 has the effect only of replacing the definition of *exempt property* in section 63(11) of the *State Penalties Enforcement Act 1999* and not of omitting new definitions also inserted in section 63(11) of the *State Penalties Enforcement Act 1999* by the *Local Government Electoral Act 2011*.

The objective of the further amendments is to clarify the operation of proposed new sections 396A and 396B of the *Industrial Relations Act 1999*.

Those sections as introduced in the Bill permit a health employer to make deductions from a health employee's wages and other amounts payable in relation to employment to recover overpayments or any part of the transition loan that has not been repaid. It is considered appropriate to further amend the proposed sections to make it clear that a health employer is not limited to recovering amounts only by the processes set out in the *Industrial Relations Act 1999*. Like all other employers a health employer will retain the right to recover amounts by legal action instituted other than under the *Industrial Relations Act 1999*. This clarification is in line with

existing section 396(2) which provides that an employer's right to recover overpaid wages is not limited to deductions from an employee's wages paid in a subsequent pay period.

Achievement of the Objective

The objectives are achieved by way of amendment to the Bill.

Alternative Ways of Achieving Objective

There is no alternative way to achieve these objectives.

Estimated Cost for Government Implementation

There are no costs associated with these amendments.

Consistency with Fundamental Legislative Principles

The amendments are consistent with fundamental legislative principles.

Consultation

Amendment 1 has not been the subject of consultation.

Queensland Health and the Department of the Premier and Cabinet have been consulted on the amendments to the Bill which insert new provisions into the *Industrial Relations Act 1999* and are in agreement with this action.

Notes on Provisions

Amendment 1 makes a correction to a consequential amendment in another Act.

Amendment 2 amends clause 19 of the Bill to insert a new section 396A(6)(c) of the *Industrial Relations Act 1999*. This new section clarifies that the arrangements in proposed new section 396A to recover overpayments do not limit a health employer's right to recover an overpayment or other amount from a health employee.

The purpose of stating that there is no limitation on the right to recover an overpayment (i.e. wages and other amounts in relation to employment or purportedly in relation to employment paid to a health employee to which the employee is not entitled) from a health employee is to clarify that, after the section comes into force, health employers will retain all other recovery rights (e.g. legal action instituted outside the *Industrial Relations Act 1999*) in relation to overpayments in addition to the ability to make deductions under s 396A.

Similarly, the purpose of stating that there is no limitation on the right to recover other amounts from a health employee is to clarify that, after the section comes into force, health employers will retain all other recovery rights in relation to other amounts in addition to any recovery rights they have under s 396A.

Amendments 3 and 4 amend clause 19 of the Bill by amending proposed new section 396B(4). The amendment clarifies that the arrangements in section 396B to recover repayment of the transition loan from a health employee's final payment do not limit any other rights a health employer has to recover any part of the loan that has not been repaid.