

State Penalties Enforcement Amendment Bill 2017

Explanatory Notes for Amendments to be Moved During Consideration in Detail By The Honourable Curtis Pitt MP

Title of the Bill

The short title of the Bill is the State Penalties Enforcement Amendment Bill 2017.

Objectives of the Amendments

The amendments to be moved during consideration in detail support the fundamental policy underpinning the Bill, that is to amend the *State Penalties Enforcement Act 1999* (the Act) to modernise the management of penalty debts by the State Penalties Enforcement Registry (SPER). The amendments acknowledge and respond to concerns raised during the process of review of the Bill by the Finance and Administration Committee to better deliver on the Bill's policy objectives, and correct minor inconsistencies and drafting issues that have been identified since introduction.

The objectives of the proposed amendments are to make minor and technical amendments to the Bill to:

- address issues raised by the Local Government Association of Queensland and local councils during the Finance and Administration Committee Inquiry in relation to the ability of administering authorities to recover the cost of establishing the ownership of a vehicle involved in an infringement notice offence, if the cost is incurred after an infringement notice has been served;
- provide an appropriate safeguard for debtors when SPER issues a fine collection notice for regular redirection from a financial institution account, that is consistent with the safeguard proposed in the Bill for the payment of an amount from a financial institution;
- correct minor inconsistencies and drafting issues that have been identified since introduction;
- clarify that the department in which the *Corrective Services Act 2006* is administered will, on commencement, be taken to be an approved sponsor for work and development orders and have the powers necessary to supervise unpaid work under a work and development order.

Achievement of the Objectives

The objectives are achieved by making the following amendments:

- amending clause 11 to clarify in subsection 14A(1) that the cost of establishing ownership of a vehicle involved in an infringement notice offence may be recovered by an administering authority if the cost is reasonably incurred in relation to the infringement notice;
- amending clause 12 to clarify in subsection 15(2)(g) that an infringement notice must state that the notice may be withdrawn at any time before the fine is satisfied in full, in line with the proposed amendments to subsection 28(1) contained in the Bill;
- amending clause 46 to provide for the preservation of a protected amount that must remain in the financial institution account for a debtor who is subject to a fine collection notice requiring regular redirection from the debtor's financial institution account under section 102;
- amending clause 73 to replace an incorrect reference to section 134J in new subsection 134B(2), with a reference to the correct section 134M that enables the SPER registrar to tell the police commissioner about a particular warrant;
- amending clause 87 to clarify that a regulation may be made under section 165 about restrictions that may be applied to activities that are 'unpaid work' for a work and development order (e.g. licences a person must have to undertake an activity);
- amending clause 88 to insert section 183A to:
 - explicitly provide that the department in which the *Corrective Services Act 2006* is administered will be taken to be an approved sponsor for a work and development order to undertake unpaid work on commencement;
 - clarify that the chief executive (corrective services) may appoint an appropriately qualified person to supervise a person undertaking unpaid work under a work and development order and that the *Corrective Services Act 2006* applies to that person; and
 - clarify that a corrective services officer has the powers necessary for the department (corrective services) to carry out the functions of an approved sponsor;
- amending clause 88 to clarify in section 184 that other approved sponsors, if published in a list by the registrar on the department's website prior to commencement, are taken to be approved sponsors for a type of work and development order stated in the list;
- amending clause 89 to amend the dictionary to remove definitions of authorised corrective services officer, community service order and corrective services office, which are no longer used in the Act, and insert a definition of unpaid work;
- amending clause 89 to amend the dictionary to insert a replacement definition of fine option order breach notice that will continue until commencement of the work and development order provisions.

Alternative Ways of Achieving Policy Objectives

There are no alternative ways of achieving the policy objectives.

Estimated Cost for Government Implementation

There are no additional costs associated with the amendments to be moved during consideration in detail.

Consultation

The substantive amendments to be moved during consideration in detail have been informed by stakeholder feedback on the Bill, including through submissions provided to the Finance and Administration Committee as part of the Inquiry into the Bill and at the Committee's public hearings.

Queensland Corrective Services within the Department of Justice and Attorney-General were consulted in relation to the amendments to be moved during consideration in detail.

Notes on Provisions

Amendment 1 amends clause 11 of the Bill, which inserts a new section 14A into the Act, to provide that an administering authority may recover the cost in establishing ownership of a vehicle from a debtor as part of a fine, if an infringement notice offence involves a vehicle and the authority reasonably incurs a cost to establish ownership of the vehicle in relation to the infringement notice. The amended clause ensures that the cost may be recovered by an administering authority if it is incurred at any point in the issuing and collection process for an infringement notice.

Amendment 2 replaces sub-clause 12(1) of the Bill with a new sub-clause 12(1). This new sub-clause replaces subsection 15(2)(f) of the Act to provide that the approved form for an infringement notice must include details of the ways that an infringement notice can be responded to under section 22. It further replaces subsection 15(2)(g) of the Act to reflect that the notice may be withdrawn at any time before the fine is satisfied in full, in line with the proposed amendment to subsection 28(1) contained in the Bill.

Amendment 3 replaces clause 46 of the Bill with a new clause 46. Clause 46 now replaces section 102 of the Act to provide a safeguard for debtors who are subject to a fine collection notice requiring regular redirection from a debtor's financial institution account. The clause creates a protected amount that must remain for the debtor after the garnishment has occurred. Subsection (2) prohibits a financial institution from deducting an amount from the account after the regular deposit which would cause the account to be overdrawn or the amount remaining in all accounts the enforcement debtor has with the financial institution to be less than the protected amount prescribed by regulation.

The remainder of clause 46 substantially re-enacts section 102 of the Act and provides that the financial institution must deduct the amount stated in the fine collection notice from the account held by the enforcement debtor with the financial institution within 2 days after each regular deposit is paid into the debtor's account.

The clause provides that if a financial institution makes a deduction under this section, the institution may only charge the enforcement debtor an amount, not more than the amount prescribed by regulation, as an administrative cost of complying with the fine collection notice. The financial institution must give the enforcement debtor a notice of the deduction and any administration charge deducted.

In applying the last deduction, the financial institution must only deduct the amount stated in the notice for deduction for each regular deposit which results in the overall amount deducted being the total amount required to be deducted under the notice.

If the financial institution is prevented from deducting from the account the full amount of the recoverable amount, it must deduct as much of the amount, if any, that it may deduct without contravening subsection (2).

A deduction paid or kept by a financial institution is a valid discharge of the financial institution's liability to the extent of the deduction.

Amendment 4 amends clause 73 of the Bill to replace an incorrect reference to 134J in proposed new subsection 134B(2), with the correct reference to 134M which enables the registrar to advise the police commissioner about particular warrants.

Amendment 5 amends clause 87 of the Bill to provide that a regulation that may be made under section 165 about the activities that are unpaid work under work and development orders, may include restrictions on those activities, for example, restrictions on the places that activities can be undertaken and the licences, authorisations or qualifications a person must have to undertake an activity.

Amendment 6 amends clause 88 of the Bill to insert new section 183A to expressly provide that the department (corrective services) is taken to be an approved sponsor for a work and development order to undertake unpaid work. The new section also provides that the chief executive (corrective services) may appoint an appropriately qualified person to supervise a person undertaking unpaid work under a work and development order and that the *Corrective Services Act 2006* applies as if a reference in that Act to a community service supervisor were a reference to the person. In addition, a corrective service officer has the powers necessary to facilitate the department (corrective services) carrying out the functions of an approved sponsor.

Amendment 7 amends clause 88 of the Bill to replace subsections (1) and (2) of new section 184 as a consequence of expressly providing for the department (corrective services) to be an approved sponsor under new section 183A. The amendment clarifies that other entities that are published on a list prior to commencement will be taken on commencement to be approved sponsors for the type of work and development order stated in the list. This applies to any type of work and development order.

Amendment 8 amends sub-clauses 89(1) and (2) of the Bill which provide for the removal from the dictionary in Schedule 2 of the Act of definitions that are no longer required as a result of the amendments in the Bill. The proposed amendment replaces sub-clause 89(1) to insert the existing definition of fine option order breach notice in the list of terms to be omitted by this sub-clause. The proposed amendment to sub-clause 89(2) inserts the definitions of authorised corrective services officer, community service order and corrective services office in the list of terms to be omitted under sub-clause (2).

Amendment 9 amends sub-clause 89(3) of the Bill to provide a new definition of fine option order breach notice be inserted into the dictionary in Schedule 2 of the Act following removal of the existing definition under amendment 8. This amendment re-enacts the requirements for a fine option order breach notice in existing section 139, which is removed by clause 74. The insertion of this definition, which will commence on assent, is required to support the continuation of fine option orders under the Act until commencement of the work and development order provisions.

Amendment 10 amends sub-clause 89(4) of the Bill which provides for the insertion of new terms into the dictionary in Schedule 2 of the Act that are used throughout the provisions in the Bill, such as early referral, enforceable amount and payment plans. This proposed amendment inserts the term ‘unpaid work’ into the dictionary to clarify that the meaning of unpaid work includes community service under the *Corrective Services Act 2006*, or an activity prescribed by regulation that is performed without pay.