State Penalties Enforcement Regulation 2014

Explanatory notes for SL 2014 No. 177

made under the

State Penalties Enforcement Act 1999

General Outline

Short title

State Penalties Enforcement Regulation 2014

Authorising law

Section 165 of the *State Penalties Enforcement Act 1999*

Policy objectives and the reasons for them

The *State Penalties Enforcement Act 1999* (the Act) was enacted to create the State Penalties Enforcement Registry (SPER) with the objectives of:

- maintaining the integrity of fines as a viable sentencing or punitive option for offenders;
- maintaining confidence in the justice system by enhancing the way fines and other monetary penalties may be enforced; and
- reducing the cost to the State of enforcing fines and other monetary penalties.

Part 3 of the Act provides the legislative basis and supporting framework for the issuing of a penalty infringement notice (PIN), commonly known as a fine or ticket, for an infringement notice offence. An infringement notice offence is "an offence other than an indictable offence or an offence against the person, prescribed under the regulation to be an offence to which the Act applies" (Schedule 2, Act). The remainder of the Act deals with centralising the collection and enforcement of unpaid fines and court ordered amounts which are referred to SPER for collection and enforcement.

The *State Penalties Enforcement Regulation 2000* (the 2000 Regulation) is subordinate legislation subject to automatic expiry under Part 7 of the *Statutory*

Instruments Act 1992. Although the 2000 Regulation was due to expire on 1 September 2010, it has been exempted from expiry until 31 August 2014.

Achievement of policy objectives

The *State Penalties Enforcement Regulation 2014* (the Regulation) will replace the expiring 2000 Regulation, with some amendment.

Similar to the 2000 Regulation, the Regulation:

- prescribes details of the particulars that an administering authority and court must provide to SPER regarding an unpaid PIN, court ordered amount or an instalment arrangement for an unpaid PIN, and the particulars that must be included in certain infringement notices;
- prescribes fees and other monetary amounts relevant to the administration, collection and enforcement of unpaid amounts;
- sets out the offence provisions across all Queensland legislation that are prescribed as infringement notice offences for which PINs may be issued in lieu of instituting prosecution action; and
- prescribes the administering authorities and the authorised persons for infringement notice offences.

Whether an offence is suitable for prescription as a PIN offence in the Regulation involves a range of considerations, including: consistency with the definition of an infringement notice offence in the Act; the nature of the offence; the expected frequency of offending; the policy objectives to be achieved; and the penalty sought to be imposed in each case.

In general, the penalty amount for a PIN offence represents a maximum of 10% of the maximum penalty for the offence. In limited exceptions a PIN amount in excess of the ratio can be justified, for example: where an offence may have a high maximum penalty covering a range of potential breaches from minor to serious offending; or where the maximum penalty for a minor offence is low, for example 1 penalty unit. Offences which contain subjective or discretionary elements are generally considered unsuitable for prescription as PINs unless their scope and operation are simple and expected to be clearly understood by authorised persons and those persons issued with PINs.

For State laws, prescribed offences are listed in one Schedule, amalgamating the previous 5 Schedules contained in the 2000 Regulation. The PIN offences in the Schedule are across a wide range of legislation and include minor criminal, drug and regulatory offences as well as offences related to environmental and heritage protection, fisheries, transport, consumer protection, health, liquor, gaming, electoral processes and police powers.

To a large extent, the content of the 2000 Regulation is being retained, subject to the outcomes of a whole of government review. As a result: some offences which, on reflection, were considered unsuitable for prescription as PIN offences have been removed; new offences suitable for the issue of PINs have been included; and some technical amendments, for example, correcting references to renumbered provisions have been progressed.

Section 7 provides that offences against local laws may be ticketed on a sliding scale (depending on the maximum penalty) up to five penalty units.

Consistency with policy objectives of authorising law

The Regulation is consistent with the policy objectives of the Act.

Inconsistency with policy objectives of other legislation

The Regulation is consistent with the policy objectives of other legislation.

Benefits and costs of implementation

The use of PINs achieves an important policy objective of the Act as they are an efficient and effective alternative to court proceedings. The benefits for authorities across a wide range of regulatory areas, and for alleged offenders, are as follows:

- the ability for an authorised person to issue PINs, as an alternative to prosecuting offences through the courts, assists in reducing court lodgements and ensures that court lists and timeframes are more manageable;
- alleged offenders receive the benefit of a fixed and discounted penalty for the offence and full payment results in: (a) no further proceedings being taken against them; (b) no conviction being recorded and (c) no admission of guilt for the purposes of civil claims; and
- alleged offenders, who wish to challenge the offence, are able to have the matter heard by a Magistrate, or to provide a statutory declaration for certain vehicle related offences where the person was not the driver at the time of the offence.

Consistency with fundamental legislative principles

The proposal will breach the fundamental legislative principle issue concerning the appropriate delegation of administrative power, in that, a number of penalty unit amounts in the Regulation exceed 20 penalty units. Penalty amounts in excess of 20 penalty units are currently contained in the 2000 Regulation, primarily where a corporation has committed the offence.

However, no individual penalty amounts exceed 20 penalty units in the Regulation. Penalty amounts in excess of this amount only apply where a corporation has committed the offence, and the penalty amount is proportionate to the offending behaviour and the maximum penalty for the offence. At its highest, the PIN amount for a corporation must not be more than five times the PIN amount prescribed for an individual. This is consistent with section 181B(3) of the *Penalties and Sentences Act 1992* which states that if a body corporate is

found guilty of an offence, a Court may impose a maximum fine of an amount equal to five times the maximum fine for an individual.

Consultation

All relevant Departments and Agencies, and the Local Government Association of Queensland, were consulted as part of the whole of government review of the 2000 Regulation which involved an audit of existing PIN offences and the identification of suitable new PIN offences.

As part of the review process, the suitability of all offences prescribed as PINs in the 2000 Regulation has been re-assessed in consultation with relevant Departments and Agencies. As a result, over 4000 prescribed PIN offences will be retained, over 200 existing PIN offences will be omitted and over 400 PIN offences will be amended. Further, over 400 new offences have been assessed as suitable for inclusion in the Regulation. Relevant government Departments, and agencies, were also consulted at various stages throughout the preparation of the Regulation.

The Office of Best Practice Regulation was consulted and has advised that a Regulatory Impact Statement is not required.