

State Penalties Enforcement Amendment Act 2017

Explanatory notes for SL 2017 No. 193

made under the

State Penalties Enforcement Amendment Act 2017

General Outline

Short title

Proclamation made under the *State Penalties Enforcement Amendment Act 2017*.

Authorising law

Section 2 of the *State Penalties Enforcement Amendment Act 2017*.

Policy objectives and the reasons for them

The objective of the Proclamation is to commence, on 4 December 2017, specific provisions of the *State Penalties Enforcement Amendment Act 2017* (the Amendment Act) to enable the introduction of work and development orders.

The Amendment Act received assent on 19 May 2017. It aims to modernise the management of penalty debts by the State Penalties Enforcement Registry (SPER) by providing for amendments to the *State Penalties Enforcement Act 1999*.

The key policy objectives of the Amendment Act are to:

- Enhance information sharing between SPER and other prescribed agencies;
- Assist SPER's enforcement functions;
- Improve non-monetary debt finalisation options for people in hardship, by introducing work and development orders;
- Facilitate case management of debtors;
- Establish fairer, simpler and more consistent fee arrangements; and
- Create efficiencies in the management of disputes.

Section 2 of the Amendment Act provides that specified sections commence on assent, with the remaining sections to commence on a date fixed by proclamation.

The sections that commenced on assent on 19 May 2017 relate to provisions that assist with the modernisation of the *State Penalties Enforcement Act 1999*, enhance information sharing and improve enforcement functions.

It is intended that the remaining provisions will commence by proclamation on three separate dates to align with operational and Information and Communication Technology (ICT) solution readiness, as follows:

- provisions introducing work and development orders – the proposed Proclamation fixing 4 December 2017 as the date for the commencement is necessary to give effect to work and development orders, including relevant transitional provisions;
- provisions facilitating case management of debtors and introducing more consistent fee arrangements are to commence on a future date to align with the implementation of SPER's new ICT solution capability; and
- provisions improving the management of disputes are to commence on a future date following the development of an agreed implementation approach with relevant agencies.

The Proclamation will commence specific provisions of the Amendment Act on 4 December 2017 which are necessary to give effect to work and development orders. The policy objective of work and development orders is to expand the non-monetary debt finalisation options available to individuals who are unable to pay their SPER debt due to genuine hardship and to improve service delivery arrangements.

Achievement of policy objectives

The Proclamation will achieve a key policy objective of the Amendment Act. That is, to provide improved non-monetary debt finalisation options for individuals experiencing hardship by amending the *State Penalties Enforcement Act 1999* to:

- Insert new provisions for work and development orders, which include:
 - providing inclusive eligibility criteria, comprising people who cannot pay their SPER debt because they: are experiencing financial hardship; have a mental illness, cognitive or intellectual disability or a substance use disorder; are homeless; or are experiencing domestic and family violence;
 - expanding the range of activities that can be undertaken to work off SPER debts non-monetarily, comprising: unpaid work; medical or mental health treatment; educational, vocational or life skills course; financial or other counselling; drug or alcohol treatment; mentoring programs (for a person under 25 years of age); and culturally appropriate programs for Aboriginal and Torres Strait Islander people living in a remote area;
 - enabling organisations and health practitioners with expertise and experience in supporting individuals in hardship to become registered as 'approved sponsors' for work and development orders. Approved sponsors will be responsible for assessing a person's eligibility for a work and development order, deciding activities to be performed under a work and development order and applying to the registrar on behalf of the person for a work and development order;

- providing a regulation-making power for work and development orders that may prescribe a range of matters, including the amount of SPER debt that is to be satisfied by undertaking particular activities and the obligations and responsibilities of approved sponsors;
 - providing that no enforcement action may be taken against a person in relation to the amount subject to a work and development order while the person is complying with the work and development order;
 - providing that a work and development order may be varied, withdrawn or revoked in prescribed circumstances and providing for decision review processes; and
 - providing for the removal of good behaviour orders which will be replaced with work and development orders.
- Remove the current restrictive non-monetary debt finalisation arrangements - fine option orders – which will be replaced by work and development orders.
 - Insert provisions to facilitate the transition from fine option orders to work and development orders, including a transitional regulation making power to facilitate the change from the operation of the former provisions to the operation of the provisions in force after commencement.
 - Remove redundant definitions in the dictionary and make minor consequential amendments to other Acts to reflect the removal of fine option orders.

Consistency with policy objectives of authorising law

The Proclamation is consistent with the objectives of the Amendment Act. Specifically, the making of the Proclamation will commence:

- provisions necessary to introduce work and development orders: sections 8, 17, 21, 24, 29(3), (4) and (5), 34, 42(2), 48, 52, 54, 56, 60, 61, 62, 63, 67, 68, 71, 72, 76, 78, 79, 82(2) and (3), 83(6) and (7), 87 and 89(5);
- provisions that omit fine option orders: section 30 other than to the extent that it omits section 42;
- relevant transitional provisions: section 88, other than to the extent it inserts sections 188, 189, 190, 191 and 192;
- relevant definitions in the dictionary: section 89(2), other than to the extent it omits definitions *civil enforcement fee*, *default certificate*, *enforcement debtor*, *instalment payment notice*, *registration fee* and *threshold amount*; and section 89(4), to the extent it inserts definitions *approved sponsor*, *eligibility assessment*, *enforceable amount* (other than the example), *enforcement action*, *unpaid work* and *work and development order*; and
- provisions consequential to introducing work and development orders: part 5; schedule 1, amendments of the *Penalties and Sentences Act 1992*, items 3 and 4; and schedule 1, amendments of the *Victims of Crime Assistance Act 2009*, items 2 and 3.

Inconsistency with policy objectives of other legislation

The Proclamation is not inconsistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

There are no alternative means of achieving the purpose of the Proclamation.

Benefits and costs of implementation

There are no costs associated with the making of the Proclamation. Following commencement by Proclamation, work and development orders will be implemented in a staged manner over a period of time. Stakeholder feedback received during the policy consultation process supported this approach.

Stage one implementation will involve Probation and Parole Offices (PPOs) within Queensland Corrective Services being registered as approved sponsors of work and development orders for unpaid work activities. The benefit of this approach is that it enables the operational aspects of work and development orders to be tested and improved within Government prior to being rolled-out more broadly with non-government organisations. Costs associated with stage one implementation will be met from within existing departmental resources.

Stage two implementation will involve the progressive recruitment and registration of other Government agencies and non-government community organisations as approved sponsors for work and development orders for all activities, including treatment programs, counselling and courses.

Organisations that register to become approved sponsors of work and development orders as part of stage two implementation will do so voluntarily and will not receive additional funding to participate. These organisations already receive State or Federal Government funding to deliver programs to individuals experiencing hardship that a work and development order could be applied to. This is consistent with the approach adopted by other jurisdictions that have implemented similar work and development order schemes. Their experience is that the absence of additional funding has not proven a barrier to organisations participating as approved sponsors.

Consistency with fundamental legislative principles

The Proclamation is consistent with fundamental legislative principles.

Consultation

In accordance with the Queensland Government Guide to Better Regulation, the Office of Best Practice Regulation was not consulted in relation to the regulatory proposal. The department applied a self-assessable exclusion from undertaking further regulatory impact analysis (Category g – Regulatory proposals that are of a machinery nature).

Extensive consultation was undertaken with key non-government and government stakeholders on the introduction of work and development orders in Queensland. This involved the targeted release of a consultation paper to over 250 organisations, including peak advocacy groups, non-government organisations (NGOs) and government agencies. In addition, meetings were held with peak advocacy groups, a number of large community service providers and with relevant government agencies. All parties are supportive of the introduction of work and development orders.

An implementation reference group, comprising representatives from peak advocacy groups and government and non-government community service providers, has been established to facilitate ongoing consultation on the operational aspects of implementing work and development orders. In addition, an inter-agency governance group is being formed to guide implementation.