

State Penalties Enforcement (Approved Sponsors) Amendment Regulation 2019

Explanatory notes for SL 2019 No. 216

made under the

State Penalties Enforcement Act 1999

General Outline

Short title

State Penalties Enforcement (Approved Sponsors) Amendment Regulation 2019

Authorising law

Section 165 of the *State Penalties Enforcement Act 1999*

Policy objectives and the reasons for them

The *State Penalties Enforcement (Approved Sponsors) Amendment Regulation 2019* (the Amendment Regulation) amends the *State Penalties Enforcement Regulation 2014* (the Regulation) to facilitate the approval and administration of entities as approved sponsors of work and development orders (WDOs), to support the expansion of the State Penalties Enforcement Registry's (SPER's) existing Work and Development Order (WDO) Program.

Part 3B of the *State Penalties Enforcement Act 1999* (the Act) provides the legislative framework for the WDO Program. Broadly, the WDO Program enables SPER debtors who are in hardship, with the support of *approved sponsors*, to undertake activities to discharge their debts non-monetarily as an alternative to payment.

Section 32H of the Act provides that debtors are eligible for a WDO if they are unable to pay their SPER debt because they: have a mental illness, substance use disorder, or cognitive or intellectual disability; are experiencing domestic or family violence; are homeless; or are in financial hardship. Debtor participation is voluntary.

The activities that may be undertaken under a WDO comprise: unpaid work; medical or mental health treatment; educational, vocational or life skills courses; financial or other counselling; drug or alcohol treatment; mentoring for people under 25 years; and culturally appropriate programs for Aboriginal and Torres Strait Islanders in remote areas. (Refer to section 32G of the Act).

Approved sponsors are conferred functions under the Act in relation to WDOs. This includes assessing a debtor's eligibility for a WDO, applying to SPER for a WDO on behalf of a debtor, and deciding and sponsoring the debtor's activities under a WDO. In practice, debtors will need to approach an approved sponsor and, subject to being eligible, obtain their agreement to support and 'sponsor' them to undertake activities under a WDO to discharge their debt.

Section 32F of the Act defines an approved sponsor for a WDO to mean a person or entity approved by the registrar for that type of WDO. The 'type' of WDO relates to the activities that the approved sponsor is qualified to sponsor.

Currently the sole approved sponsor of WDOs is Queensland Corrective Services (QCS) for unpaid work type WDOs, with eligibility assessed on grounds of financial hardship. QCS's approval as an approved sponsor was given effect in December 2017, on commencement of amendments to the Act to provide for WDOs. These amendments also removed the former non-monetary debt discharge mechanism of undertaking community service under a fine option order, administered by QCS.

The purpose of amending the Act to introduce WDOs was to: explicitly recognise the different forms of hardship that impact on debtors' ability to pay their SPER debt; expand the range of activities available to people in hardship to resolve their debt non-monetarily; and to build a network of organisations and health practitioners – approved sponsors – that can support individuals in hardship to undertake activities that resolve their SPER debt. At the same time, the completion of activities or treatment, ensures that the debtor contributes to the community (via unpaid work) or acts to address issues that may have contributed to their offending behaviour.

Approved sponsors will include government agencies, not-for-profit organisations and health practitioners working in the community services sector who have expertise in providing programs targeted to support people in hardship. Typically, these organisations receive State or Federal funding to provide treatment, counselling, activities or programs targeted to vulnerable people in the community who may also be SPER debtors.

Community service providers that apply to become approved sponsors will do so voluntarily and will not receive payment to participate. This approach is consistent with the approach adopted by New South Wales and Victoria in terms of the implementation of similar WDO Programs.

New South Wales' WDO Program has been operating since 2011. In New South Wales, the absence of additional funding has not proven to be a barrier to organisations participating in the Program, with the number of approved sponsors now more than 2,500 (up from 200 in the initial years of the program's implementation).

Organisations will benefit from becoming an approved sponsor of WDOs by being able to offer existing (or new) clients the option of engaging in treatment or development programs while also resolving their SPER debt. This will act as a strong incentive for individuals who are already accessing programs provided by these organisations to persist with activities (instead of 'dropping out' early). In this way, the value of the services offerings already provided by the organisation is optimised.

Section 165(12) of the Act provides that a regulation may be made about the approval and administration of approved sponsors of WDOs. To support the expansion of the WDO Program beyond QCS, a statutory regime is required to enable other organisations and health practitioners to apply to the SPER registrar to become approved sponsors under the Act. This will facilitate the expansion of activities that eligible debtors may be able to undertake to resolve their debt non-monetarily.

The policy objective of the Amendment Regulation is to provide for a statutory regime for the approval of applicants to become approved sponsors and to regulate the ongoing administration and conduct of entities/persons should they obtain approval to be approved sponsors. This is important for several reasons.

- To provide clarity and certainty to organisations seeking to become an approved sponsor about the eligibility requirements to be an approved sponsor;
- To communicate the statutory conditions and obligations that would apply to an organisation should approval be granted as an approved sponsor;
- To provide grounds for disciplinary action to be taken by SPER in relation to an approved sponsor and to prescribe the steps involved in this process; and
- To establish a process for applicants and approved sponsors to seek external review of decisions taken by the registrar about refusal of an application to become an approved sponsor, imposition of conditions, and disciplinary action.

The prescription of the above is important in terms of maintaining community confidence in the WDO Program and the justice system more broadly.

Achievement of policy objectives

The Amendment Regulation will prescribe details in relation to the arrangements for approved sponsors of WDOs, including:

- eligibility requirements for applicants to become approved sponsors for the different activity types, include requiring that: staff delivering activities have the appropriate qualifications, training or experience; the applicant has suitable insurance cover; and the applicant has appropriate risk management arrangement and governance arrangements in place;
- standard conditions for approval, including requirements to: comply with reporting and record keeping requirements; report conflicts of interest; adhere to the *Information Privacy Act 2009*; maintain appropriately qualified staff, insurance and risk management arrangements relevant to the activity type;
- establishing a clear and transparent process (consistent with procedural fairness) for consideration of applications by SPER and notification of applicants of the outcome and reasons for the decision, and providing certainty to applicants of the grounds for approval or refusal;
- safeguards to verify the compliance of approved sponsors with WDO Program requirements, including supplying documents to the SPER registrar or another person appointed by the registrar on request;

- grounds for the SPER registrar to take disciplinary action against approved sponsors, including for breaching a condition of approval, contravention of the Act or regulation and posing an unacceptable risk to the integrity of the WDO Program;
- processes for the SPER registrar to take disciplinary action against an approved sponsor (such as suspension or cancellation of approval), including a show cause process giving notice and 28 days to respond; and
- processes for applicants and approved sponsors to apply for external review of decisions taken by the SPER registrar to: refuse to grant an application; impose additional conditions on an approval; or suspend or cancel an approval.

Consistency with policy objectives of authorising law

Part 3B of the Act provides for WDOs. It prescribes the functions of an approved sponsor for a WDO, including that an approved sponsor must undertake an assessment of a debtor's eligibility for a WDO. If eligible, the approved sponsor may, with the debtor's agreement, apply to the registrar for a WDO, stating the grounds on which the debtor is eligible and the activities proposed to be carried out.

The intent of the authorising law is to provide for new service delivery arrangements to be established under the WDO Program which will improve the support available to people in hardship to resolve their debt. This involves SPER partnering with, and building a network of, community service providers (approved sponsors) who have expertise in providing programs to people in hardship. These organisations have existing relationships with people in hardship, are appropriately qualified to assess eligibility for the different forms of hardship, and are typically funded to provide activities or treatment targeted at people in hardship.

The Amendment Regulation is consistent with the policy intent of the WDO laws. It gives effect to the policy intent by facilitating the expansion of the WDO Program to include additional organisations and health practitioners as approved sponsors.

Additionally, the Amendment Regulation is consistent with provisions of the Act that contemplate the making of a regulation to govern the approval and conduct of organisations and health practitioners as approved sponsors. Specifically, section 165(12) of the Act prescribes that a regulation may be made about:

- the approval of persons or entities as approved sponsors, including conditions of approvals;
- the keeping of records relating to WDOs; and
- disciplinary action that may be taken against approved sponsors, including immediate suspension or cancellation of approvals.

Inconsistency with policy objectives of other legislation

The amendments are not inconsistent with the policy objectives of other legislation. They do not change the relationship of the Act or Regulation with other legislation, for example, creating offences prescribed for issue of infringement notices under the Act.

Benefits and costs of implementation

The Amendment Regulation does not impose any appreciable costs on government, non-government organisations or the public. Primarily, the Amendment Regulation will support the expansion of the WDO Program, by enabling relevant provisions of the Act to be applied.

The Amendment Regulation provides a statutory regime for the approval and administration of government agencies, not-for-profit organisations and health practitioners as approved sponsors under SPER's WDO Program. Entities and persons that are registered as approved sponsors are not paid to participate in the WDO Program. The decision to become an approved sponsor, and to continue participating in the WDO Program, is entirely voluntary.

Typically, organisations that become an approved sponsor receive State or Federal government funding to provide programs targeted at people in hardship. The WDO Program is intended to leverage existing funding provided to approved sponsors so that no additional cost is imposed on an approved sponsor for providing activities.

The application process for potential applicants will be as streamlined as possible, while ensuring the integrity of the WDO Program is maintained.

The benefit of the Amendment Regulation is that provides clarity and certainty to organisations and persons seeking to apply to become an approved sponsor of WDOs about the eligibility requirements, conditions of approval and obligations and external review rights of an approved sponsor. The Amendment Regulation also contributes to maintaining the integrity of the WDO Program and public confidence in the justice system.

Consistency with fundamental legislative principles

The Amendment Regulation is consistent with fundamental legislative principles.

Consultation

Targeted consultation was conducted with key non-government and government stakeholders prior to the amendments to the Act to provide for a WDO Program. This involved the preparation of a consultation paper, which included an outline of requirements for approval of entities as approved sponsors. The consultation paper was released to peak advocacy groups, non-government organisations and government agencies. Meetings were also held with peak advocacy groups, a number of large community service providers and relevant government agencies.

The targeted consultation with key non-government and government stakeholders found overwhelming support for implementation of a WDO Program in Queensland.

An implementation reference group, comprising representatives from peak advocacy groups and government and non-government community service providers, was established to facilitate consultation on the operational aspects of implementing WDOs, including requirements for entities to obtain approval as approved sponsors and their responsibilities.

Feedback and advice provided by the implementation reference group and inter-agency governance group has been used to inform development of the Amendment Regulation.

The Office of Best Practice Regulation (OBPR) was consulted on the proposal to prepare the Amendment Regulation.

OBPR noted that the proposed amendments to the regulation fall within exclusion category (k), which includes the provision that the proposal clearly does not add to regulatory burden, and it is reasonably clear there are no significant adverse impacts.

OBPR also noted that organisations choose to register as approved sponsors and are under no obligation to participate in the WDO Program. Further, that the regulatory amendment is unlikely to result in significant adverse impacts and no further regulatory impact assessment is required under the Queensland Government Guide to Better Regulation.