

Penalties and Sentences Regulation 2025

Explanatory notes for SL 2025 No. 106

made under the

Penalties and Sentences Act 1992

General Outline

Penalties and Sentences Regulation 2025

Authorising law

Sections 161ZW and 196 of the *Penalties and Sentences Act 1992*

Policy objectives and the reasons for them

The *Penalties and Sentences Regulation 2015* (the 2015 Regulation) supports the *Penalties and Sentences Act 1992* (the PS Act) by providing detail essential for the practical operation and implementation of sentence orders such as fines, community-based orders, drug diversion conditions and drug and alcohol treatment orders. Further, the 2015 Regulation prescribes corresponding interstate control orders and the value of the offender levy, for the purposes of the Act.

The 2015 Regulation will automatically expire on 1 September 2025 pursuant to section 54(1) of the *Statutory Instruments Act 1992*.

The policy objective of the *Penalties and Sentences Regulation 2025* (the 2025 Regulation) is to replace the 2015 Regulation and to continue to provide the detail necessary for the practical operation of sentence orders, the offender levy and corresponding control orders.

The 2025 Regulation will commence on 1 September 2025.

The Department of Justice (DoJ) undertook a sunset review of the 2015 Regulation ahead of its expiry. The review concluded it was necessary to retain each existing provision of the 2015 Regulation with minor amendments to reflect current drafting standards. Further, it was identified that section 9A required amendment to reflect changes to control order laws in Victoria.

Corresponding Control Orders (Victoria)

The PS Act provides a scheme for the making of “control orders” under part 9D, division 3.

These provisions empower a sentencing court to impose any conditions under a control order that it considers reasonably necessary to protect the public by preventing, restricting or disrupting involvement by the offender in serious criminal activity. Subdivision 5 provides for recognition of control orders originating in other Australian jurisdictions, giving legal effect in Queensland to the control orders of other States and Territories. Section 161ZW of the PS Act provides that a regulation may prescribe an order to be a corresponding control order if the order is made under a law of another state; and has the same or a similar effect as a control order.

The 2015 Regulation prescribes particular orders that can be made in New South Wales, Northern Territory and South Australia as ‘corresponding control orders’. These provisions will be relevant where a person subject to an order travels to Queensland from interstate. This provision was inserted into the 2015 Regulation in 2016. The policy intention was to exclude interstate schemes that adopted a “declaration-based model” in respect of control orders. This was addressed in the Explanatory Notes to the *Serious and Organised Crime Legislation Amendment Bill 2016*. The Explanatory Notes provided that for each of the prescribed interstate schemes the “order is imposed against the person and is based on their antecedents and their actual (or alleged) behaviour or conduct, as distinct from a control order that is made on the basis of a declaration that an entire organisation, of which the person may be a member of or a participant in, is criminal”.

The *Criminal Organisations Control Act 2012 (Vic)* provided a declaration-based model for the imposition of control orders in Victoria, until recently. On 22 October 2024, the *Criminal Organisations Control Amendment Act 2024 (Vic)* received royal assent. Part 3 of this Act provides a new “serious crime prevention scheme” to replace the current declaration and control order scheme. This new model requires a court to consider an individual’s convictions or personal engagement in serious criminal activity before making an order. This new scheme was modelled closely on the provisions of the *Crimes (Serious Crime Prevention Orders) Act 2016 (NSW)*, which is already a prescribed corresponding control order scheme in Queensland. In light of these amendments, it is desirable to prescribe “serious crime prevention orders” under the *Criminal Organisations Control Act 2012 (Vic)* as a “corresponding control order” in the 2025 Regulation.

Minor Drafting Amendments

The 2025 Regulation reflects current drafting standards.

The drafting changes include amendments to section 8 (*Recording of times when community service is performed*). The remade section 8 refers to an “authorised corrective services officer” to whom an offender reports. In accordance with section 37 of the *Statutory Instruments Act 1992*, the relevant definition of “authorised corrective services officer” is provided at section 4A of the PS Act. Further, the definition of “attendance return” refers to a “document”. The term “document” is broadly defined in schedule 1 of the *Acts Interpretation Act 1954*.

Achievement of policy objectives

The 2025 Regulation will remake and replace the 2015 Regulation in substantially the same form with minor changes to reflect current drafting standards, and to reflect recent changes to the law in Victoria by prescribing a “serious crime prevention order” made under the *Criminal Organisations Control Act 2012 (Vic)* as a “corresponding control order” that may be recognised and enforced in Queensland, upon registration.

Consistency with policy objectives of authorising law

The 2025 Regulation is consistent with the policy objectives of the PS Act.

Inconsistency with policy objectives of other legislation

The 2025 Regulation is not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

The 2025 Regulation will support the practical operation and implementation of sentence orders such as fines, community-based orders, drug diversion conditions and drug and alcohol treatment orders. Further, the 2025 Regulation will continue to prescribe the value of the offender-levy and will ensure all corresponding control order schemes from other Australian jurisdictions may be recognised and enforced in Queensland.

The costs associated with the 2015 Regulation are currently met from existing resources, and there are no anticipated additional implementation costs associated with the 2025 Regulation.

Consistency with fundamental legislative principles

The 2025 Regulation is consistent with fundamental legislative principles.

Consultation

Key legal stakeholders were invited to provide feedback on a proposal to replace and remake the 2015 Regulation in substantially the same form. Limited feedback was received. While some concerns were raised about retaining the offender levy, the 2025 Regulation maintains this element as it helps to pay generally for the costs of administering law enforcement and the justice system.

A Summary Impact Analysis Statement has been completed that identifies that the 2025 Regulation is not subject to regulatory impact assessment requirements under the *Queensland Government Better Regulation Policy* as it relates to general criminal laws.