

State Penalties Enforcement Amendment Regulation 2021

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, the Honourable Cameron Dick MP, Treasurer and Minister for Investment, provide this human rights certificate with respect to the *State Penalties Enforcement Amendment Regulation 2021* made under the *State Penalties Enforcement Act 1999*.

In my opinion, the *State Penalties Enforcement Amendment Regulation 2021*, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The *State Penalties Enforcement Amendment Regulation 2021* (the Amendment Regulation) amends the *State Penalties Enforcement Regulation 2014* (the SPE Regulation) to prescribe the department administering the *Transport Operations (Road Use Management) Act 1995* (that is, the Department of Transport and Main Roads (DTMR)) and the Residential Tenancies Authority (RTA) as entities that the Registrar of the State Penalties Enforcement Registry (SPER) may enter into an information-sharing arrangement with, and to prescribe decisions of the Registrar of SPER that cannot be generated by an information system because they require due consideration of the specific circumstances of the case.

The *State Penalties Enforcement Act 1999* (the SPE Act) authorises regulations to be made with respect to these matters, however, currently no entities or decisions are prescribed in the SPE Regulation.

Amending the SPE Regulation to prescribe DTMR and RTA enables the Registrar of SPER to enter into information-sharing arrangements with these entities. While the amendments potentially facilitate a two-way sharing of information, further amendments to the SPE Regulation would be required to prescribe the information that the Registrar of SPER may share with DTMR and RTA. Therefore, the amendment will only practically apply to enable the Registrar of SPER to obtain bulk data from DTMR and RTA initially. This data will be used to enrich and cleanse data about debtors held by SPER and will assist in ensuring SPER is using more complete, accurate and up-to-date data to administer and enforce the SPE Act.

The Amendment Regulation also amends the SPE Regulation to prescribe decisions of the Registrar of SPER that cannot be generated by an information system. These decisions are complex in nature and may have significant implications for a debtor. They require due consideration of the specific circumstances of the case before engagement or enforcement activities are undertaken, which cannot be done by an information system.

These decisions are:

- a decision under section 32Q(3) to revoke a work and development order;
- a decision under section 52(2), 107(3) or 119(3) to issue an arrest and imprisonment warrant;
- a decision under section 57(1) to cancel an enforcement order;
- a decision to issue an enforcement warrant mentioned in section 63(2)(a);
- a decision under section 64(3) to cancel, suspend or vary an enforcement warrant;
- a decision under section 108D to issue an immobilisation warrant; and
- a decision under section 108E(3) to cancel, suspend or vary an immobilisation warrant.

Prescribing these decisions guarantees they can only be made by a SPER officer, ensuring appropriate safeguards and protections are built into collection and enforcement of fines and penalties by SPER.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

In my opinion, the human right under the *Human Rights Act 2019* that is relevant to the Amendment Regulation is the right to privacy and reputation (section 25) in respect of the amendment to enable the Registrar of SPER to enter into information-sharing arrangements.

For reasons outlined below, I am of the view that the Amendment Regulation is compatible with this human right.

Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

(a) the nature of the right

Section 25 of the *Human Rights Act 2019* provides that a person has the right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with, and not to have their reputation unlawfully attacked. The right protects privacy in the sense of personal information, data collection and correspondence, as well as an individual's private life more generally. An unlawful or arbitrary interference would be one not permitted by law or that would be capricious, unpredictable or unjust.

The Amendment Regulation prescribes entities that the Registrar of SPER may enter into information-sharing arrangements with. Under an information-sharing arrangement, the Registrar of SPER may request and receive information from a prescribed entity for the purposes of the administration or enforcement of the SPE Act, the administration or enforcement of a court order, the enforcement of an offence administered by the entity, or another purpose prescribed by regulation.

This engages the right to privacy and reputation to the extent that information that may be shared between SPER and prescribed entities may include personal information about an individual.

Although section 134K of the SPE Act contemplates that the Registrar of SPER may share information with a prescribed entity under an information-sharing arrangement, the Registrar of SPER may only disclose information that is prescribed by regulation. The SPE Regulation does not prescribe any such information, nor does the Amendment Regulation amend the SPE Regulation in this regard. Therefore, the Amendment Regulation does not authorise the Registrar of SPER to share information with a prescribed entity under an information-sharing arrangement.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Accurate data improves opportunities for earlier and more effective recovery of debts. The purpose of the limitation on the right to privacy is to enable the Registrar of SPER to enter into information-sharing arrangements with other entities to obtain bulk data that can be used to undertake cross matching and data validation work to improve current records held by SPER. The availability of more complete, accurate and up-to-date data will support SPER in administering and enforcing the SPE Act.

The SPE Act authorises the Registrar of SPER to enter into such arrangements and provides for entities to be prescribed by regulation for the purpose of information-sharing. Accordingly, amending the SPE Regulation to prescribe entities that the Registrar of SPER may enter into information-sharing arrangements with is not unlawful.

In addition, as the Registrar of SPER can only enter into information-sharing arrangements with entities that are prescribed and information can only be shared under such an arrangement for specific purposes set out in section 134K of the SPE Act, information-sharing under these arrangements would not be arbitrary.

Amending the SPE Regulation to prescribe these entities also promotes transparency around these arrangements.

The Amendment Regulation also delivers benefits for people subject to enforcement activities and the wider community. Use of more accurate data through enhanced information-sharing between SPER and other entities may enable opportunities for earlier notification and interaction with debtors about their debt and options for payment or dispute. The broader public interest considerations also support enabling enhanced information-sharing as it will assist SPER to fulfil its statutory functions of administering the SPE Act; support the objectives of the SPE Act to maintain the integrity of fines as a viable sentencing option, enhance the way fines and other money penalties are enforced, and reduce the cost to the State of enforcing fines and other money penalties; and promote equity with other members of the community who do pay their fines.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

In the absence of powers to enter into information-sharing arrangements with these entities, the Registrar of SPER's ability to effectively identify and contact debtors in relation to outstanding debts referred to SPER will be impeded. Where SPER does not have access to the data necessary to identify a debtor or their correct contact details, SPER is limited in its ability to collect the amount payable.

DTMR and RTA hold key identity and contact information and, as individuals engage with these entities on a more regular basis, for example to renew their driver licence, they are also likely to have more up-to-date contact details. This data could be used to enrich and cleanse SPER data which will support more effective debt management by enabling increased opportunities for engagement with debtors.

For example, where a debtor's contact details have changed between a debt arising and it being referred to SPER, it would be difficult for SPER to subsequently locate and contact the debtor to recover the amount. However, DTMR and RTA may have more current or alternative contact details for the debtor, which would be provide opportunities to engage with the debtor and undertake collection activities.

Accurate data improves the opportunity for more effective recovery of debts. By prescribing DTMR and RTA it will enable the Registrar of SPER to enter into an information-sharing arrangement with these entities to access more up-to-date data which can be used to update SPER records. This would help support proactive debt collection and enforcement activities as it will assist SPER to more accurately and efficiently identify, locate and contact debtors.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

It is not considered there are any less restrictive and reasonably available ways to achieve the purpose of the provisions. It is unlikely the information shared under an arrangement would be available through sources other than the entity itself or the person to whom the information relates. However, the SPE Act provides information can only be shared under an information-sharing arrangement for specific purposes and appropriate safeguards to protect individuals' privacy will be incorporated into the arrangements between SPER and other entities to minimise the impact of this limitation.

Unauthorised disclosure of confidential information is an offence under the SPE Act, which provides a general safeguard to protect private information, and disclosure is permitted in only limited circumstances, including under information-sharing arrangements as identified above. Additionally, the *Information Privacy Act 2009* and the Queensland Government information security policy provide further safeguards relating to the receipt, handling and use of information obtained under an information-sharing arrangement.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

Enhanced information-sharing between SPER and other entities will improve SPER's ability to accurately identify debtors and collect unpaid fines and penalties. This will support the objective of the SPE Act to maintain the integrity of fines as a viable sentencing option for offending behaviour as well as public confidence in the justice system.

Therefore, the benefits to the State of enabling enhanced information are significant. Having regard to the nature and extent of the potential limitation on the right to privacy and reputation, the limitation is considered reasonable and demonstrably justified.

It is also in the public interest as it supports collection and enforcement of fines and penalties imposed for offending behaviour, which promotes equality before the law. The limitation of the right to privacy and reputation is therefore consistent with a free and democratic society.

However, arrangements will be subject to provisions in the SPE Act which regulate the disclosure of confidential information, making it an offence to disclose confidential information except in certain circumstances, including under an information-sharing arrangement, and setting out specific limited purposes for which confidential information can be shared under an information-sharing arrangement to minimise the limitation of this right.

(f) any other relevant factors

Nil.

Conclusion

I consider that the *State Penalties Enforcement Amendment Regulation 2021* is compatible with the *Human Rights Act 2019* because it limits a human right only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

CAMERON DICK MP
Treasurer
Minister for Investment

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