State Penalties Enforcement Amendment Bill 2017

Explanatory Notes

Short title

The short title of the Bill is the State Penalties Enforcement Amendment Bill 2017 (the Bill).

Policy objectives and the reasons for them

The Bill will amend the *State Penalties Enforcement Act 1999* (the Act) to modernise the management of penalty debts by the State Penalties Enforcement Registry (SPER). Since SPER's establishment there have been major changes to SPER's operating environment including increased fine volumes and customer service expectations, as well as significant technological advances and the development of new approaches for the management of penalty debt.

The Queensland Government approved the implementation of a new service delivery model for SPER to improve its management of penalty debt and position SPER as a respected leader in penalty debt management. The Bill will support the implementation of the new model.

The Bill has the following policy objectives:

1. Provide improved non-monetary debt finalisation options for people in hardship;
2. Facilitate case management of debtors rather than the management of their individual debts;
3. Establish fairer, simpler and more consistent fee arrangements;
4. Create efficiencies in the management of disputes;
5. Enhance information sharing between SPER and other prescribed agencies for penalty debt management purposes and improve SPER's information collection and disclosure provisions;
6. Assist SPER's enforcement functions.

Improved non-monetary debt finalisation options

A significant number of debtors are unable to pay their penalty debts because they are experiencing hardship. The current law provides limited options for a person in genuine hardship to resolve their debt through non-monetary means, with unpaid community service supervised by Probation and Parole within Queensland Corrective Services being the only avenue for non-monetary debt discharge.

The Bill aims to address this issue by enabling the introduction of a work and development order scheme in Queensland. The work and development order scheme provides individuals

experiencing hardship with an expansive range of non-monetary debt finalisation options and increased access to those options through a network of approved organisations. The policy intent is that work and development orders will enable people in hardship to resolve their penalty debts by undertaking activities that benefit them and the community.

Case management of individual debtors

SPER's new service model will take a case management approach. A debtor's payment, compliance and enforcement history with SPER and the total amount owing in penalty debt will be factors that are considered by SPER to determine an appropriate collection strategy. Case management will be achieved by the introduction of payment plans at a case level and the settlement of debt at a case level in order to lift enforcement action.

Debtors who cannot pay their SPER debt in full will be able to enter into a payment plan with conditions that are largely determined by a person's previous interactions with SPER. Payment plans will be flexible. If a person incurs new debts, these can be added to an existing payment plan. This holistic case management will reduce fees and administration, and bring all outstanding obligations into compliance.

When debtors propose to discharge debts to lift a driver licence suspension or remove a wheel clamp immobilising their vehicle, they will be required to discharge the entirety of their defaulted debts. Discharge may occur by full payment or any combination of payment of an amount, a payment plan or non-monetary means through a work and development order. This approach will avoid the practical result of taking further enforcement action to recover debts immediately after SPER lifts enforcement action. The fee burden is minimised and both the debtor and SPER can avoid ongoing enforcement.

Fairer and more consistent fee arrangements

Fees play a valuable role in upholding the integrity of fines as a viable sanction. By imposing a further financial cost on a debtor at key points in the debt management process, fees incentivise debtor behaviour and early payment of penalty debt. The Bill streamlines and simplifies SPER's fee arrangements, which are currently complicated, inconsistent and inflexible. The Bill provides for SPER fees to be added on an action basis to the debtor's overall balance, rather than to each debt, and applied consistently across all SPER debts and enforcement activities.

Agencies such as local councils, which are entitled to retain the proceeds of the fines they impose, pay a fee to lodge unpaid debts with SPER. The Bill will remove administrative complexity associated with current arrangements and provide agencies with greater certainty about the cost of using SPER's services.

Improved disputes management

The Act sets out the way in which disputes about infringement notices are dealt with after the debt has been referred to SPER. The Bill aims to simplify the approach for debtors who currently engage with both SPER and administering authorities to resolve simple disputes about not receiving or being unable to act on an infringement notice. The Bill provides for decisions about those matters to be determined by the administering authority.

Information sharing

The Queensland Government has decided to take an integrated whole-of-Government approach to improve penalty debt management across government, from the upfront recovery of fines and penalties by administering authorities, through to debt recovery by SPER. The collective performance of penalty debt management across Government depends on accurate data being available from 'end to end' among agencies involved in penalty debt management to broaden opportunities for early and effective recovery. The current law does not effectively facilitate an ongoing information sharing arrangement between SPER and agencies involved in penalty debt management to enable the sharing of information that will assist with their penalty debt functions.

The Bill proposes to address this issue by providing for a permissive information sharing regime between penalty debt agencies, where information would be shared for specific purposes and within prescribed limits.

There are information collection provisions in the Act but in some instances they are narrow. For example, the registrar is able to request specific information from the Commissioner of the Queensland Police Service such as the debtor's criminal history and the criminal history of any person known to reside at the premises where the registrar proposes to have an immobilisation warrant enforced. As SPER's field enforcement actions are broader than vehicle immobilisation, it is proposed to broaden the circumstances in which information can be obtained from the Queensland Police Service to assist with field enforcement, to the issue of other types of warrants.

The Act imposes confidentiality requirements on officials acquiring information in the official's capacity. However, whilst the registrar can disclose confidential information to the Queensland Police Service and the Australian Federal Police in relation to a particular offence or suspected offence of which the registrar has become aware, the provisions are not sufficient to cover all information disclosure from SPER to the Queensland Police Service for broader law enforcement purposes. Further, there is no clear authority to disclose information to other state government, interstate and federal government enforcement agencies for law enforcement purposes. Information held by SPER is likely to be of benefit to assist with their law enforcement functions.

Assisting SPER's enforcement functions

The Bill includes amendments to enhance the effectiveness of enforcement action that can be undertaken by SPER. These relate to the use of vehicle immobilisation and fine collection notices.

Currently, an immobilisation device can only be attached to a vehicle for no longer than five days. This provides limited time for debtors to finalise their debt before further enforcement action is taken, and limited time for SPER to assess any late claims from the debtor for hardship.

Further, when debtors refuse consent for SPER enforcement officers to enter residential parts of premises where it is proposed an immobilisation warrant will be enforced, one of the conditions that must be met in order to apply for an immobilisation search warrant is that the enforcement officer has a reasonable belief that the vehicle has been relocated to avoid

enforcement. This is impractical and limits the ability of SPER to obtain an immobilisation search warrant in instances where the vehicle remains on the premises and the debtor can simply refuse consent to entry in order to avoid enforcement.

The Bill proposes to address these issues by providing that vehicles can be immobilised for up to 14 days. This aligns with SPER's customer centric approach and will result in better case management by allowing maximum opportunity for debtors to pay their debt before further enforcement action, such as seizure and sale, is taken. Further, removal of the condition for seeking an immobilisation search warrant will enable SPER to apply to a magistrate or justice of the peace for the issue of an immobilisation search warrant.

The Act currently authorises fine collection notices to be issued for regular funds redirection from a financial institution account, but the Act does not clearly authorise the issue of a fine collection notice to direct the payment of a single amount from an account held by a debtor with a financial institution. The Bill proposes to address this issue by expressly authorising the issue of a fine collection notice for payment of an amount from a financial institution account. Garnishment by SPER of an amount from a debtor's financial institution account will be consistent with the practices of other enforcement agencies in Australia.

With regard to fine collection notices for wages garnishment, the Act currently requires the registrar to be satisfied of a debtor's financial status before issuing a fine collection notice to an employer. This diminishes the utility of wages garnishment as an enforcement action, particularly where SPER is unable to establish contact with a debtor to facilitate their payment of the debt, or when the debtor refuses to engage with SPER. The Bill proposes to address this issue by removing the requirement to be satisfied of the debtor's financial status. Sections 77 and 82(2) of the Act offer safeguards to ensure that a debtor is not placed into hardship due to a wages garnishment fine collection notice.

The Bill also provides for a charge imposed by an enforcement warrant to be registered with the relevant land registry under section 110 of the Act as a charge rather than as a writ of execution. This will facilitate a more appropriate and efficient registration process to record SPER's interest in the relevant land register.

Modernisation

A number of technical changes will assist with modernisation of the Act. The Bill will broaden the ability to serve documents by electronic means. SPER's information system will be authorised, subject to the registrar's approval, to automate correspondence and certain decisions such as acceptance of payment plans through the online portal to the system. The legislation will also enable money payable to a debtor by SPER to be automatically set-off against an outstanding unpaid amount payable by the debtor to SPER. Other technical changes will address approval of forms by the registrar, declarations by corporate officers without a common seal and inclusion of service of documents to postal addresses. In line with advice from the Office of Queensland Parliamentary Counsel, current drafting practice does not require prescriptive detail for the entire contents of approved forms. Some provisions will be omitted as a result.

Achievement of policy objectives

Improved non-monetary debt finalisation options – Work and Development Orders

The Bill achieves the policy objective of improving the non-monetary debt finalisation options available to individuals experiencing genuine hardship by:

- removing existing non-monetary debt finalisation arrangements – fine option orders – which are limited to people who are in financial hardship and who are suitable to perform community service supervised by Probation and Parole within Queensland Corrective Services;
- replacing fine option orders with work and development orders which:
    - enable an eligible person to satisfy all enforceable debts, except compensation and restitution ordered by a court, by undertaking a range of activities decided by an approved sponsor;
    - provide 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;
    - expand 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;
- introducing provisions to enable the establishment of a network of organisations and health practitioners (approved sponsors) that will be approved by the registrar under a regulation. The Bill will require that approved sponsors assess a person's eligibility for a work and development order, decide activities to be performed under a work and development order and apply 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 will provide for the amount of SPER debt that is to be satisfied by undertaking particular activities; certain obligations of approved sponsors, including the supporting evidence that is to be obtained by an approved sponsor when assessing eligibility for a work and development order; and record-keeping requirements 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 that on commencement, existing fine option orders will be converted to work and development orders involving the undertaking of unpaid work for, or on behalf of, an entity published by the registrar prior to commencement.

The Bill also removes good behaviour orders which provide a mechanism for individuals who are not able to pay their penalty debt and, due to their particular circumstances (e.g. terminal illness or impaired decision-making capacity), are not suitable to perform unpaid work to finalise their debt. The Bill's introduction of a broad range of non-monetary debt

resolutions options via work and development orders, when combined with the existing ability of the registrar to write-off debts, makes good behaviour order provisions unnecessary.

Case management of individual debtors

The Bill achieves the policy objective of case management by introducing provisions:

- enabling the establishment of payment plans and other compliance arrangements through negotiation between debtors and SPER based on case history and total debt owed; and
- requiring full settlement of debt at a case level in order to lift driver licence suspension and vehicle immobilisation enforcement action.

Fairer and more consistent fee arrangements

The Bill achieves the policy objective of creating fairer, simpler and more consistent fee arrangements by:

- introducing a simpler, more streamlined fee structure where fees will be added on an action basis to the debtor's overall balance, rather than to each debt;
- creating consistency in the registration process for different debts types by formalising a 'time to pay' period for court debts that aligns with the period currently provided to respond to infringement notices before the debts are considered to be in default;
- by applying fees in the same way for all debts types and enabling a single fee to be added to a debtor's overall balance each time any enforcement action is taken by SPER;
- simplifying the current fee arrangements so that agencies that are entitled to retain the proceeds of the fines they impose (fine-retaining agencies) pay a lodgement fee at the time that a debt is registered in SPER that is decoupled from the fee levied on a debtor; and
- introducing a power for the registrar to waive or return all, or part of, any fee payable under the Act in the circumstances prescribed by regulation, e.g. if a debtor is experiencing hardship.

Improved disputes management

The Bill achieves the policy objective of more efficient disputes management by ensuring that applications are decided by the agency best placed to assess and finalise the dispute. Disputes involving non-receipt or inability to act on an infringement notice or court election will be assessed and decided by administering authorities. SPER will continue to assess and decide applications dealing with non-receipt or inability to act on an enforcement order. This approach will create a more efficient dispute process, reduce the assessment period and also allow for consistent messaging and communication with debtors about resolving disputes.

Information sharing

The Bill achieves the policy objective of enhancing information sharing by providing for a permissive information sharing regime between SPER and other agencies involved in penalty debt management. The regime enables SPER to request and receive information held by the penalty debt agencies to assist SPER with the administration or enforcement of the Act. Under the regime, SPER will also be able to disclose certain prescribed information to

prescribed entities. The Bill provides for information sharing to be for specific purposes being the administration or enforcement of the Act, the administration or enforcement of a court order, the enforcement of an offence administered by a prescribed entity, or another purpose prescribed by regulation. The permissive information sharing regime is subject to any requirements prescribed entities have regarding non-disclosure of information, e.g. specific confidentiality provisions in the legislation they administer.

The Bill achieves the policy objective of expanding SPER's ability to request information from the Queensland Police Service when SPER has issued not only an immobilisation warrant, but also an enforcement warrant. This will ensure that SPER can ask the Queensland Police Service for information, e.g. the debtor's criminal history and the criminal history of any person known to reside at the premises where the registrar proposes to have the warrant enforced. This will ensure that SPER is best placed to conduct a full risk assessment before undertaking all types of field enforcement activities.

The Bill achieves the policy objective of providing a clear authority to disclose information to the Queensland Police Service and to other state government, interstate and federal government agencies for law enforcement purposes.

Assisting SPER's enforcement functions

The Bill achieves the policy objective of assisting SPER's enforcement functions by making the following amendments:

- providing for an immobilisation period of up to 14 days;
- removing a condition to obtain an immobilisation search warrant that an enforcement officer is to have a reasonable belief that someone has moved a vehicle to avoid immobilisation;
- removing the requirement for the registrar to be satisfied of a debtor's financial status before the issue of a fine collection notice to garnish wages;
- allowing SPER to issue a fine collection notice for the payment of an amount from a financial institution account; and
- providing that a charge created by an enforcement warrant is not a writ of execution for the purposes of registration with the relevant land registry.

Modernisation

The Bill achieves the policy objective of modernisation by providing for technical changes to service by including electronic and postal addresses, creating a power to approve an information system for processing electronic communications and for making decisions, set-off of amounts owed by and owing to a debtor and removing requirements for the use of a common seal of a corporation for declarations.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives other than through legislative amendments.

Estimated cost for government implementation

Any costs associated with these legislative amendments will be met from within existing funding allocations and agency resources.

Government service providers that become approved sponsors under the work and development order scheme will be required to assess a person's eligibility for the scheme, decide activities to be performed under a work and development order, make the work and development order application on behalf of the individual, and report on progress. Whilst this may result in some minor costs being incurred by these entities, these costs will be met internally by service providers on the basis that these organisations are already funded (through state or federal government funding) to deliver the services to the individuals who will be eligible for the work and development order scheme, as well as the broader community.

The implementation of the simpler and more streamlined SPER fee arrangements in the Bill will have no implementation costs for the Queensland Government.

There will be some one-off costs to administering authorities associated with transitioning disputes management for infringement notices to administering authorities, as revisions to current processes, correspondence and websites may be required. The implementation approach will ensure there is sufficient time for administering authorities to plan for and align any necessary changes with ongoing business improvements.

Consistency with fundamental legislative principles

Appropriate review of decisions

Clause 82 provides that a decision of the registrar to refuse to offer a payment plan to a debtor and a decision to cancel a payment plan are non-reviewable decisions under the *Judicial Review Act 1991*. This amendment may give rise to the fundamental legislative principle of making rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

As the Bill replaces instalment payments with payment plans, the existing provision regarding the non-reviewable decision for instalment payments is being removed and replaced with commensurate provisions for payment plans.

The decisions in section 155 relate to the taking of actions and decisions by SPER for a very high volume of debts. An external review process would result in a large administrative burden and potentially require suspension of enforcement action pending the review. This would enable debtors to avoid enforcement action and impede the effectiveness of those actions. SPER may undertake internal review of these decisions. The Act also provides avenues for the variation, cancellation, or suspension of a number of enforcement actions.

Whether legislation has sufficient regard to rights and liberties of individuals

Removal of requirements relating to financial status

Clause 45 removes the requirement for the registrar to be satisfied of a debtor's financial affairs and potential for unreasonable hardship before the issue of a fine collection notice to garnish wages, which may impact on the rights of individuals. In practice, debtors who are not attempting to resolve their debts and who are eligible for enforcement action through a fine collection notice are unlikely to supply information to SPER about their financial status to enable SPER to redirect their earnings. Accordingly debtors who have failed to engage with SPER benefit from their non-engagement as the registrar cannot be satisfied and thus cannot issue a fine collection notice for the redirection of earnings. This requirement diminishes the utility of wages garnishment as an enforcement action. It is appropriate that debtors who have failed to engage with SPER to resolve their penalty debt be subject to enforcement action.

Section 77 of the Act provides for an application process for debtors to request the variation, suspension or cancellation of a fine collection notice, which can be used if the debtor believes that the fine collection notice has placed or will place them in financial hardship. The amendments are considered to strike the appropriate balance between ensuring effective enforcement action is available to the registrar for non-compliant debtors and ensuring that debtors who would be placed in genuine financial hardship due to a fine collection notice are able to have their circumstances taken into account. Opportunities to apply for payment plans or non-monetary discharge through a work and development order are available.

Unpaid amount at time of payment

Amendments to current provisions are proposed to require the debtor to pay or otherwise discharge the total enforceable amount owing to SPER in order to cease enforcement in the form of a driver licence suspension or vehicle immobilisation. These amendments will facilitate management of debtors at a case level rather than on a per debt basis. The amendments affect the rights and obligations of individuals as they may require the debtor to pay debts that were not specified in the notice or warrant in order to lift the enforcement action.

A notice of intention to suspend a driver licence or an immobilisation warrant are issued at a point in time and show the debt amount then owing to SPER. After the issue of the notice/warrant, a debtor may have had further debts registered with SPER which they have not paid and are enforceable. The proposed amendment requires discharge by full payment of, or entering a payment plan, or a work and development order for, all enforceable debts, including debts arising after the enforcement action was taken.

For those new debts, the debtor must have been issued with an infringement notice or court debt payment notice and an enforcement order and failed to respond to both. Debtors will have had the opportunity to dispute the matter of the offence (for infringement notices) or appeal to the court (for court debts), to pay their debt in full or to enter compliance through a payment arrangement. Debtors would thus be aware of the additional enforceable amount and will not have availed themselves of their ability to elect for or appeal to the court. If a debtor cannot pay the full amount they may enter a payment plan or work and development order (if eligible), which will also be grounds for lifting the enforcement action.

The intention of driver licence suspension and vehicle immobilisation is to encourage debtors to engage with SPER and resolve their obligations. Without these administrative powers requiring the debtor to pay or otherwise discharge the total enforceable amount owing to SPER at the time of payment, SPER would be required to lift the licence suspension or remove the immobilisation device respectively on payment of the original amount, only to then reinitiate enforcement action against the debtor for the remaining amount. This would result in a fee being incurred by the debtor for the enforcement action. This is not consistent with the management of a debtor on a case basis. While this amendment impacts the rights of individuals, it is considered appropriate that debts which have become enforceable since the notice or warrant was issued be resolved in order to remove the enforcement action.

Compensation for activities on withdrawal of an infringement notice

Clause 21 proposes amendments to section 29 to provide that if an administering authority withdraws a defaulted infringement notice from SPER, and the person the subject of the notice has performed activities under a work and development order to discharge all or part of the defaulted amount, then the person is only entitled to compensation if the activity is unpaid work. While this is consistent with entitlements currently provided under section 29 for fine option orders, the amendment may raise the fundamental legislative principle of adversely affecting an individual's rights because no compensation is payable to individuals performing other activities under a work and development order, such as drug and alcohol treatment or vocational courses. However, the absence of compensation for activities other than unpaid work is considered reasonable as the individual would derive benefit from the former activities and therefore monetary compensation would not be appropriate.

Privacy rights

Clause 73 inserts a new Part 8A which substantially re-enacts existing provisions of the Act relating to information collection, disclosure and confidentiality. This re-enactment consolidates all provisions relating to information in a single part of the Act for clarity, accessibility and best practice drafting.

The substantively new provisions in part 8A relate to information sharing. These provisions raise the fundamental legislative principle of having regard to the rights and liberties of individuals, namely privacy rights, as the information will include the personal information of individuals.

A whole-of-Government approach is being taken to penalty debt management, as SPER and other agencies involved in penalty debt management have shared responsibility and accountability in the integrated penalty debt management process. This extends from the development of the regulatory regime, detection and prosecution of offences to recovery and enforcement of penalty debts. Establishing a permissive information sharing regime will enhance penalty debt management across government.

Individuals will benefit as a result of penalty debt agencies having accurate records about them, consistent with Information Privacy Principles 7 and 8 in the *Information Privacy Act 2009*. If penalty debt agencies share accurate information under the proposed regime, individuals will have the maximum opportunity to receive correspondence, to comply with their obligations or to dispute offences, and to receive appropriate treatment earlier.

The permissive information sharing regime will improve the ability for both SPER and administering authorities to: accurately identify and contact debtors; enable better upfront recovery of fines by administering authorities; provide earlier access to information to assist in administering authorities' prosecution of offences if they consider another fine is inappropriate to change the behaviour of an individual who continues to offend and not pay their outstanding debt; and for SPER to determine appropriate treatment strategies to achieve the payment of outstanding debt. This will result in more effective penalty debt management by all the relevant agencies, maintain the integrity of fines as a viable sentencing option for offenders and improve equity with the rest of the public who do pay their fines.

Information sharing will take place at an agency level. Limitations on the purpose and breadth of information sharing apply. Only prescribed agencies will have access to information from SPER in restricted circumstances and for prescribed purposes. Information that SPER may disclose will also be prescribed by regulation. Prescribed limitations provide appropriate transparency as to the information which SPER is able to disclose under the regime and to which agency.

The changes included in the Bill will be subject to existing privacy and confidentiality protections, including statutory confidentiality obligations reinforced by offences. In addition, these protections will be supported by an appropriate governance framework including requirements for written arrangements and annual review. If information is disclosed by SPER or used outside of the lawful purposes as outlined in the legislation, offence provisions and penalties within the Act will apply. Disclosure of information without a legitimate purpose attracts an individual penalty.

Offence provisions

As noted above, new part 8A contains a number of offence provisions in relation to information collection and protection. The offences relate to requirements to give the registrar information for the purpose of the administration or enforcement of the Act, and to unauthorised disclosure of confidential information. The registrar needs appropriate powers to obtain information, reinforced by offence provisions, to enable the registrar to effectively administer and enforce the Act. As SPER is in possession of confidential information, including personal information, confidentiality obligations are required to provide appropriate protection of that information and the privacy rights of individuals and ensure that it is only used for authorised purposes.

The offences are not new offences as they correspond to existing offences in the Act, as set out in the table below. The maximum penalty for each offence is unchanged at 100 penalty units. The penalties are consistent with equivalent offences in the *Taxation Administration Act 2001* and *Information Privacy Act 2009*.

Section	**Effect**	**Penalty**
134C	If a person refuses to give information to the registrar, without a reasonable excuse, the person commits an offence. This offence exists in current section 152 and is re-enacted in section 134C of the Bill.	Maximum 100 penalty units (unchanged)

Section	Effect	Penalty
134D	If without a reasonable excuse a person fails to attend before the registrar for giving information or a document to the registrar, fails to give the registrar information or a document, fails to give information on oath if required, or to verify information or a document by statutory declaration if required, the person commits an offence. This offence exists in current section 152A and is re-enacted in section 134D of the Bill.	Maximum 100 penalty units (unchanged)
134F	If a person gives information in a non-English language to the registrar, the registrar may require the person to translate the information into English, convert the information into a written document and convert any amount mentioned in the information into Australian currency. If without a reasonable excuse the person fails to comply with the requirement, the person commits an offence. This offence exists in current section 152C and is re-enacted in section 134F of the Bill.	Maximum 100 penalty units (unchanged)
134G	If a person gives false or misleading information to the registrar or SPER, the person commits an offence. This offence exists in current section 152E and is re-enacted in section 134G of the Bill.	Maximum 100 penalty units (unchanged)
134H	If an official discloses confidential information acquired by the official in the official's capacity to someone else without authorisation under the Act, the official commits an offence unless the disclosure is authorised under division 4. This offence exists in current section 152G and is re-enacted in section 134H of the Bill. If a person knowingly acquires confidential information without lawful authority, and discloses the information, the person commits an offence. If a person receives confidential information and knows, or ought reasonably to know, it is confidential, and discloses the information, the person commits an offence unless the disclosure is authorised under division 4. These offences exist in current section 152H and are re-enacted in section 134H of the Bill.	Maximum 100 penalty units (unchanged) Maximum 100 penalty units (unchanged) Maximum 100 penalty units (unchanged)

Compulsory acquisition of property

Clause 44 of the Bill creates an additional type of fine collection notice, which requires a financial institution to direct payment of an amount which is held by the financial institution on behalf of an enforcement debtor. This raises the fundamental legislative principle of a law which confers powers of compulsory acquisition of property.

SPER's primary function under the Act is to collect amounts payable to SPER, including through the taking of enforcement action. The fine collection notices currently provided for in the Act permit SPER to redirect an amount which is payable to the debtor, such as wages, a debt owed to the debtor, or a regular deposit to a financial institution. This amendment will clarify SPER's powers to enable SPER to better enforce the debt and to collect the amount payable. This is consistent with the powers available to other state and federal agencies that are empowered to collect money.

For a debtor to be eligible for a fine collection notice, they must first have accrued debt which has defaulted, have been issued with an enforcement order which they have not complied with, and may have been subject to prior enforcement action, such as driver licence suspension, which has not resulted in the payment of their debt. If a debtor has the capacity to resolve their debt with money held in a financial institution account but refuses to engage with SPER, it is appropriate that SPER is given the power to order the institution to make a payment to SPER from this account to satisfy their debt. SPER will obtain confirmation from the financial institution that there is an active account before issuing the fine collection notice.

Powers of entry, search or seizure of property

The registrar currently has the power to issue an immobilisation warrant to immobilise a vehicle. Clause 59 extends the maximum time a vehicle may be immobilised from five days to 14 days. Section 108R provides that SPER may seize and sell a vehicle if the immobilisation period has ended and the enforcement debtor has not paid or otherwise discharged the amount owing.

Current practice has highlighted that five days is not sufficient time for many debtors to source finance to resolve their debts. Additionally, it does not provide debtors who present with hardship at a late stage with sufficient time to provide documentation to SPER to substantiate their hardship claim. It is preferable for both SPER and the debtor that a debt is resolved without resorting to the seizure and sale of the debtor's vehicle.

There are clear criteria in the Act for the exercise of the administrative power to issue an immobilisation warrant to immobilise a vehicle. These criteria are not being amended.

To be eligible for vehicle immobilisation, debtors must owe at least $5,000 to SPER, must not be taking action to dispute any part of the amount owed, and another form of enforcement action must not be appropriate or must have been attempted unsuccessfully. The registrar must serve a notice of intention to issue an immobilisation warrant at least 14 days prior to immobilisation detailing the options available to prevent immobilisation. This notice provides opportunity for the individual to pay their debt or to enter into a work and development order or payment plan.

As such, debtors are only subject to vehicle immobilisation if they owe a large sum, have previously failed to engage with SPER and have failed to respond within the 14 day response period provided by the notice of intention.

Whilst increasing the immobilisation period to up to 14 days may result in a debtor's vehicle being immobilised for longer than currently, it will provide the debtor with increased opportunity to source finance to pay their debt. It also provides further time for a debtor to provide documentation to SPER to substantiate a hardship claim made at a late stage. Extension of the immobilisation period is considered to allow a more appropriate amount of time for these types of issues before escalation to seizure and sale of the debtor's vehicle.

Retrospectivity

Payment plans

Clause 23 includes amendments which will enable the registrar to review a payment plan upon additional debts being referred to SPER, or to cancel a payment plan, after which the debtor must agree a subsequent plan in order to lift or avoid enforcement action. Instalment payments which are set up with SPER prior to the commencement of these provisions would become subject to the conditions which would be placed on the amended or renegotiated plan if additional debts are incurred by the debtor. This may give rise to the fundamental legislative principle of retrospectivity.

Payment plans will only be subject to review if the debtor incurs additional fines and fails to respond to them by paying the fine or electing for court within the 28 day response period offered by either the infringement notice or the enforcement order. Payment plans will also have to be renegotiated if a debtor defaults on a plan that was agreed prior to the amended legislation. This means that only debtors who continue to accrue debts, or who do not pay their debts will have their payment plan reviewed or altered. Debtors will have adequate notice of the effect of not paying the additional debt or defaulting on their payment plan. This amendment is consistent with the policy intent of the current section 136 of the Act, which enables SPER to send updated instalment payment notices if additional debts are incurred, or to cancel payment plans when debtors default on their payments.

Transitional regulations

Clause 88 creates a power to make transitional regulations with retrospective effect. However, the earliest date of retrospective effect is the date of commencement, which appropriately limits the extent of this power. The power itself is limited in duration. Regulations cannot be made later than a year after commencement, while the power and any transitional regulations made will expire two years after commencement. The power is also limited to facilitate the change from the operation of the former provisions of the Act to the new provisions.

Onus of proof

Clause 83 amends evidentiary provisions, extending the prescribed matters which the registrar may certify and clarifying matters which an administering authority may certify. Evidentiary certificate provisions affect the onus of proof. Under the proposed amendments,

it will not be necessary to prove a range of new matters in court proceedings unless challenged.

Provision of an evidentiary certificate in the broader range of circumstances proposed such as details of enforcement action that has been taken, the total amount of debt owed by the person or that a payment plan was accepted or cancelled on a stated date, are considered justified as they are non-contentious matters. In the case of service of notices and warrants, the certificate would be proof of issue, and time for effectiveness, but not conclusive proof of service. While certificates would be evidence of non-contentious matters, they would be open to challenge in court and have no effect on appeal rights.

Amendments to the evidentiary provisions will reduce the time and cost impacts on the court system, by focusing only on those matters which are in contention (i.e. where the certificate is challenged). This position is consistent with current Act provisions for evidentiary certificates.

Appropriate protection against self-incrimination

Clause 73 affects the privilege against self-incrimination. The existing provisions in the Act for compulsory information gathering will be re-enacted. Individuals may refuse to give required information with a reasonable excuse. However, the existing exclusion of self-incrimination as a reasonable excuse will also be re-enacted. Abrogating the privilege against self-incrimination is necessary to ensure the registrar is able to access information to effectively manage debtors who have failed to pay an amount outstanding under an enforcement order. However, there is both a direct and derivative use immunity included for information given by a person under the information access provisions, meaning that any evidence directly or indirectly obtained cannot be used in criminal proceedings other than where the falsity or misleading nature of the information or document is relevant.

Whether legislation has sufficient regard to the institution of Parliament

There is an existing Ministerial power to make guidelines. Clause 78 will enable the Minister to also make guidelines about work and development orders. The use of administrative guidelines for this purpose, rather than the Act or subordinate legislation, may be considered to raise the fundamental legislative principle of not having sufficient regard to the institution of Parliament.

The use of guidelines is justified in this context as matters of significance, such as the rate at which activities undertaken through a work and development order will discharge debt and arrangements for approval of sponsors, will be prescribed by regulation. The use of guidelines will be limited to matters relating to the operational administration of the work and development order scheme. Guidelines are a more suitable mechanism for the purpose of outlining the detailed operational requirements of the work and development order scheme than a regulation. The guidelines must not be inconsistent with the Act. Any guidelines issued on work and development orders must be publicly available, which will provide transparency around the exercise of the Ministerial power in relation to work and development orders.

Consultation

Queensland Treasury employees consulted with stakeholders about this Bill including:

- Department of the Premier and Cabinet
- Queensland Treasury
- Department of Transport and Main Roads
- Queensland Police Service
- Department of Justice and Attorney General (including Queensland Corrective Services)
- Department of Infrastructure, Local Government and Planning
- Department of Education and Training
- Queensland Health
- Department of Aboriginal and Torres Strait Islander Partnerships
- Department of Communities, Child Safety and Disability Services
- Department of Housing and Public Works
- Department of Natural Resources and Mines
- Department of Tourism, Major Events, Small Business and the Commonwealth Games
- Department of Energy and Water Supply
- Department of National Parks, Sport and Racing
- Department of Environment and Heritage Protection
- Department of Agriculture and Fisheries
- Department of Science, Information Technology and Innovation
- Public Service Commission
- Office of Queensland Parliamentary Counsel

The following statutory bodies and non-government stakeholders have also been broadly consulted on the proposed legislative reforms:

- Electoral Commission of Queensland
- Office of the Information Commissioner
- Local Government Association of Queensland
- Brisbane City Council
- Gold Coast City Council
- Sunshine Coast Council
- Queensland University of Technology
- Griffith University
- The University of Queensland

Targeted consultation has also occurred with statutory officers and authorities, peak advocacy groups and a number of large non-government service providers on the proposed implementation of a work and development order scheme in Queensland. This has involved meetings with key organisations that engage with individuals experiencing hardship and the distribution of a consultation paper to over 280 organisations, inviting feedback. Consultation on the proposed work and development order scheme has shown that there is overwhelming support for the introduction of a work and development order scheme in Queensland.

Key organisations consulted included:

- The Public Trustee of Queensland
- Office of the Public Guardian
- Office of the Public Advocate
- Legal Aid Queensland
- Queensland Mental Health Commission
- Queensland Council of Social Services
- Aboriginal and Torres Strait Islander Legal Service
- Community Legal Centres Queensland
- Queensland Public Interest Law Clearing House
- Queensland Network of Alcohol & Other Drug Agencies
- Queensland Alliance for Mental Health
- Carers Queensland
- Australian Red Cross (Queensland)
- Anglicare Central Queensland
- Salvation Army Southern Territory (Queensland)
- United Synergies
- UnitingCare Queensland

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland, and is not uniform with or complementary to legislation of the Commonwealth or another state. However other jurisdictions, including New South Wales and Victoria have enacted legislation which confers similar functions and powers that are generally consistent with Queensland's legislation, including the introduction of work and development orders.

Notes on provisions

Part 1 Preliminary

Clause 1 states the short title of the amending Act.

Clause 2 states that the Act, other than sections 7, 9, 10, 13, 20(1), 26(3), 28, 42(1), 44(1) and (2), 45, 46, 47, 53, 55(2), 57, 58, 59, 66, 73, 74, 77, 80, 81(1), 83(1), (3) and (5), 84, 85, 86 and 89(1) and (3), commences on a day fixed by proclamation.

Part 2 Amendment of *Land Act 1994*

Clause 3 states that part 2 amends the *Land Act 1994*.

Clause 4 amends the dictionary of the *Land Act 1994* to define "enforcement warrant" to include an enforcement warrant issued under section 90 of the *Civil Proceedings Act 2011* and an enforcement warrant issued under section 63(1)(a) of the Act (an enforcement warrant to seize and sell real and personal property). The omission of reference to an enforcement warrant that imposes a charge on property allows for the interest in the associated real

property to be registered as a charge under section 110 of the Act and not as a writ of execution.

Part 3 Amendment of *Land Title Act 1994*

Clause 5 states that part 3 amends the *Land Title Act 1994*.

Clause 6 amends the dictionary of the *Land Title Act 1994* to define "enforcement warrant" to include an enforcement warrant issued under section 90 of the *Civil Proceedings Act 2011* and an enforcement warrant issued under section 63(1)(a) of the Act. The omission of reference to an enforcement warrant that imposes a charge on property allows for the interest in the associated real property to be registered as a charge under section 110 of the Act and not as a writ of execution.

Part 4 Amendment of the State Penalties Enforcement Act 1999

Clause 7 states that part 4 amends the *State Penalties Enforcement Act 1999*.

Clause 8 amends section 9(c) of the SPER charter to replace 'community service work' with 'non-monetary satisfaction of SPER debts'. This reflects the broader range of non-monetary activities that may be performed under a work and development order (compared to a fine option order), while retaining SPER's charter of promoting a philosophy that non-monetary discharge options are for the needy in the community and not an alternative to payment of a fine for those who can afford to pay.

Clause 9 amends section 13 to provide that an administering authority must not serve an infringement notice after the limitation period for the relevant offence. If an authority serves a notice after the limitation period, then the section requires the authority to withdraw the notice. Further, the authority must comply with the requirements of section 28 when withdrawing a notice.

Clause 10 amends section 14 to provide that an administering authority may serve an infringement notice involving a vehicle to the address stated in a declaration or to the address stated in the register of vehicles kept under a registration Act. The definition of address in schedule 1 includes a postal address.

Clause 11 inserts new section 14A to provide that an administering authority may recover the cost of verifying ownership of a vehicle from a debtor as part of a fine, if an infringement notice offence involves a vehicle and the authority reasonably incurs a cost to establish ownership of the vehicle. This new section clarifies the arrangements provided in, and replaces, existing section 35(3).

Clause 12 amends section 15 to incorporate the responses to infringement notices under section 22. The clause also amends the required contents of an infringement notice to remove some prescriptive detail from the approved form. It further requires that infringement notices inform the recipient of the amount of the verification cost under section 14A if it has been incurred, and that if the alleged offender defaults the fine may be registered with SPER, additional fees may be payable and enforcement action may be taken to recover the fine.

Clause 13 amends section 17 to allow executive officers of a corporation to make declarations without requiring them to be made under the corporation's common seal.

Clause 14 amends section 22 to replace one of the responses to an infringement notice. A person may within 28 days make an application under new section 23 to have their infringement notice registered with SPER prior to default for the purpose of applying to SPER for a payment plan. This replaces the existing process of applying to the administering authority for payment by instalments. The clause provides a further option to respond to an infringement notice of accepting a payment plan if offered by the administering authority. The clause also provides for the way in which a person may elect within 28 days to have the matter of the offence decided in the Magistrates Court.

Clause 15 inserts new section 23 which provides for applications to an administering authority for immediate registration with SPER for the purpose of applying for a payment plan. The two conditions on the application are that the person must be served with an infringement notice and that the amount payable for the offence is at least the amount prescribed by regulation. The application must be made within 28 days after the date of the infringement notice and must be made in the approved form or in a way acceptable to the authority. An upfront payment or an authorisation for direct debit from a financial institution must accompany the application. The minimum amount of the upfront payment will be prescribed by regulation, and the upfront payment is paid toward the amount of the fine.

If the applicant complies with the requirements, the administering authority must register the unpaid amount of the fine with SPER as soon as practicable. The section does not prevent an authority offering payment plans under its own administration.

Clause 16 removes section 24 which provides for registration of instalment payments, but is no longer necessary due to the changes to payment plan arrangements and the provision for early referral under new section 23.

Clause 17 amends section 25 to prevent prosecution of a person who pays or otherwise discharges their fine under an infringement notice. This applies even though more than one infringement notice has been served.

Clause 18 amends section 26 to provide that a person served with an infringement notice for an offence may not elect to have the matter heard in the Magistrates Court if they pay the fine for the offence or enter a payment plan with SPER after early referral.

Clause 19 amends section 27, which provides that an authority may commence proceedings if the alleged offender does not either elect for a court hearing or respond to an infringement notice as required under section 22. New subsection (2) clarifies that failure to respond to the infringement notice does not prevent the authority registering an infringement notice default under section 34.

Clause 20 replaces section 28(1) to provide that an administering authority may withdraw an infringement notice at any time before the fine is satisfied in full and amends section 28(2)(c) to reflect the new requirements for registration under part 4 of the Act.

Clause 21 amends section 29 to remove references to the existing requirements of registration of a debt with SPER under part 4. If an administering authority gives SPER a copy of a

withdrawal notice under section 28(2)(c), the registrar must as soon as practicable cancel registration of the relevant infringement notice default, cancel any enforcement order issued and refund any amount paid to SPER. The registrar must also revoke any work and development order or, if the work and development order is for more than the amount of the enforcement order, vary the amount of the work and development order to the lesser amount. Consistent with current provisions for fine option orders, the administering authority must compensate the person for any unpaid work performed under a work and development order that has been revoked or varied under this section. The registrar may decide the amount of compensation, having regard to the amounts prescribed by regulation for unpaid work performed under a work and development order. No compensation is payable for other types of activity performed under a work and development order on the basis that the individual has obtained benefit from the activity. If the registrar revokes or varies a work and development order under this section, then the registrar must give the person written notice.

Clause 22 amends section 30 to refer to registration under section 34, to reflect the amended registration provisions.

Clause 23 inserts new part 3A providing for payment plans. These provisions replace existing provisions for payment by instalments.

New section 32A provides for an application to the registrar for a payment plan in response to an early referral notice, a court debt payment notice, an enforcement order or an invitation from the registrar. A person may apply only in the approved form or another way acceptable to the registrar. Subsection (4) prescribes the time limits for the application.

New section 32B requires the registrar to make a decision about an application to pay an amount under a payment plan. The registrar may offer a payment plan, offer a variation of an existing plan or refuse to offer a plan. As enforcement actions are lifted on acceptance of a payment plan, it is important that consideration of past behaviour be taken into account in deciding whether to refuse to offer a payment plan. Reasons for refusal include previous failure to pay an amount, breach of a previous payment plan, failure to comply with a work and development order and previous enforcement action required to be taken against the person. The registrar may also refuse an application when the person has not satisfied the registrar that the debtor is unable to pay the amount in full or is unable to pay the instalments offered. An offer of a payment plan may include all or part of the person's debt. The registrar may include conditions which the registrar is satisfied will ensure compliance with the plan or cooperation with SPER. Communication of the offer may occur in the way decided by the registrar. The registrar must give the person written notice of refusal to offer a payment plan.

New section 32C provides that if a person accepts a payment plan, the registrar must give the person written notice of the plan including any conditions of the plan and the consequences for failing to comply with the conditions, and SPER becomes responsible for collecting the amount remaining to be paid under the plan.

New section 32D provides that the registrar may amend a payment plan or its conditions with the agreement of the person subject to the plan. As soon as practicable after amendment, the registrar must give the person written notice including any conditions of the plan and the consequences for failing to comply with the plan or its conditions.

New section 32E provides for the registrar to immediately cancel a payment plan due to failure to pay an instalment, failure to comply with a condition, or, when the person's enforceable amount increases, the person does not discharge the increase and does not agree to an amended payment plan. However, the registrar must not cancel the plan if satisfied the payment plan can be amended to cover the additional debt and if the person agrees to the amended plan. The registrar must give written notice of the cancellation of a payment plan as soon as practicable.

Clause 24 inserts new part 3B providing for work and development orders, which provide a broad range of non-monetary options for debtors in hardship to discharge their SPER debt.

New section 32F provides definitions for the part. An "approved sponsor" for a work and development order means a person or entity approved by the registrar for that type of work and development order. The type of work and development order for which the sponsor may obtain approval from the registrar will depend on the person or entity's area of expertise and the professional qualifications of the entity's staff or the person. The conditions of a person or entity's approval as a sponsor may be prescribed in a regulation. For example, an entity that has staff who are appropriately qualified to deliver drug or alcohol treatment programs may be eligible to become an approved sponsor to supervise work and development orders involving a person undertaking that type of activity. Similarly, a health practitioner could apply to become an approved sponsor for medical or mental health treatment.

New section 32G provides that a work and development order is an order that requires a person to undertake one or more activities to satisfy all or part of the enforceable amount of the person's SPER debt. Activities that may be undertaken comprise: unpaid work; medical or mental health treatment provided by a health practitioner; an educational, vocational or life skills course; financial or other counselling; drug or alcohol treatment; a mentoring program for a person who is under 25 years of age; or a culturally appropriate program for a person who is an Aboriginal or Torres Strait Islander and lives in a remote area. A work and development order must be in the approved form and state the amount of the person's SPER debt that is to be satisfied by complying with the order and the activities that must be undertaken to comply with the order.

New section 32H provides that an individual is eligible for a work and development order, if the individual is an enforcement debtor and is unable to pay the enforceable amount of their SPER debt because the person: is experiencing financial hardship; has a mental illness; has a cognitive or intellectual disability; is homeless; has a substance use disorder; or is experiencing domestic and family violence. The meaning of mental illness and substance use disorder will be prescribed by regulation.

New section 32I provides that a work and development order will not be available for discharging court orders to pay restitution or compensation to another person.

New section 32J provides for approved sponsors, with the agreement of the individual subject to the application, to apply to the registrar for a work and development order on behalf of an eligible individual. The application must state the grounds on which the individual is eligible for a work and development order, the activities the approved sponsor proposes for the individual and the proposed time by which the activities are proposed to be completed. However, consistent with new section 32I, an application is of no effect if it relates to court orders for restitution or compensation.

New section 32K provides that before making an application for a work and development order, an approved sponsor must undertake an assessment of the person's eligibility for the order under new section 32H, called an eligibility assessment. The registrar may require the approved sponsor to give evidence to the registrar to support the eligibility assessment within a period of at least 28 days. If the sponsor does not respond within the required period, the application is taken to be withdrawn.

New section 32L provides that after receiving an application for a work and development order, the registrar must decide to make the order as applied for or refuse the order. The registrar must refuse to make a work and development order if the making of the order would exceed the maximum number of work and development orders that a person can hold, as prescribed by regulation. If the registrar makes a work and development order, then the registrar must give a copy of the order to the person to be subject to the order. The work and development order begins when it is made or on a later date if stated in the work and development order. If the registrar refuses to make the work and development order the registrar must give the applicant a notice complying with section 157 of the *Queensland Civil and Administrative Tribunal Act 2009*.

New section 32M provides that all unpaid work that is required to be undertaken by a person under a work and development order is to be undertaken cumulatively with any community service the person must perform under another Act. This is intended to ensure that a person does not obtain a 'double benefit' from undertaking unpaid work under a work and development order and undertaking community service, which typically involves performing unpaid work, under another order such as a court order.

New section 32N states that if a work and development order is made for a person, enforcement action cannot be taken against the person for the amount stated in the order while the person is complying with the order. This section also clarifies that for amounts not covered by the work and development order, SPER is not prevented from taking enforcement action in relation to those amounts. This will enable SPER to pursue collection of other amounts including restitution and compensation amounts payable by the person to a third party, which cannot be discharged via a work and development order.

New section 32O provides that the registrar has the power to vary a work and development order on application by an approved sponsor or an individual. An approved sponsor may, with the agreement of the individual subject to the order, apply on behalf of an individual to SPER for an increase in the order amount because an additional enforceable amount of the individual's SPER debt is proposed to become subject to the order. This may occur if an individual that is subject to an existing work and development order accrues additional enforceable debts after their work and development order has been made. An individual may apply to SPER for a decrease in the amount of debt covered by the work and development order because the individual proposes to pay an amount or enter into a payment plan for an amount. The registrar must make a decision to vary the work and development order or refuse the application. If the registrar varies the work and development order, the registrar must give the individual subject to the order a copy of the varied order in the approved form and notify the approved sponsor that the order has been varied. If the registrar refuses to vary the work and development order, the registrar must give the applicant a notice of the decision. Notice of refusal to vary a work and development order must comply with section 157 of the *Queensland Civil and Administrative Tribunal Act 2009*.

New section 32P provides that an approved sponsor may apply to the registrar for a work and development order to be withdrawn because the approved sponsor is unable to continue as the approved sponsor for the order. An individual subject to a work and development order may also apply to the registrar for withdrawal of the order because the individual believes that the approved sponsor will be unable to continue as the approved sponsor. After considering an application to withdraw a work and development order, the registrar must withdraw or refuse to withdraw the order. If the registrar withdraws the work and development order, the registrar must give written notice of the decision to the applicant and if the applicant is not the individual subject to the work and development order, the individual. If the decision taken by the registrar is to refuse to withdraw the work and development order, the registrar must give written notice of the decision to the applicant, compliant with section 157 of the *Queensland Civil and Administrative Tribunal Act 2009*.

If the registrar withdraws the work and development order, any amount that remains unsatisfied continues to be payable to SPER. If a person subject to a work and development order satisfies the full amount of the order before the order is due to end, the registrar must withdraw the work and development order as soon as practicable after becoming aware of the matter and give the person written notice of the withdrawal.

New section 32Q provides that the registrar may revoke a work and development order on prescribed grounds. The registrar must be satisfied that the individual has failed without reasonable excuse to comply with a work and development order. Alternatively, the registrar must believe that one of the following grounds for revocation exist:

- information in connection with an application for a work and development order is false or misleading in a material particular;
- information in connection with an eligibility assessment is false or misleading in a material particular;
- the individual no longer meets eligibility criteria stated on application;
- the approved sponsor is unable to satisfactorily supervise the work and development order or is in breach of an obligation under part 3B; or
- the person or entity supervising compliance with the work and development order is no longer an approved sponsor.

Before revoking a work and development order, the registrar must give written notice to the person subject to the order that the registrar proposes to revoke the order and the reason for revoking the order. The registrar must also include information about the person's right to object to revocation in writing within a period stated by the registrar of at least 28 days. The written objection should state why the work and development order should not be revoked. The registrar must consider all written objections before deciding to take no further action in relation to the order, or to vary or revoke the order. After making the decision, the registrar must give written notice to the person of the decision. If the decision is to vary or revoke the work and development order, then the registrar must give the person notice of the decision complying with section 157 of the *Queensland Civil and Administrative Tribunal Act 2009*.

New section 32R provides that:

- if a person complies with a work and development order, the amount stated in the work and development order is taken to be satisfied;
- if a person pays the amount stated in the work and development order, the person is taken to have complied with the work and development order; and

- if a person complies with part of the work and development order, the amount stated in the work and development order is satisfied in part according to the value of activities undertaken and at the rate or rates stated in the order.

New section 32S provides that a person may apply to the Queensland Civil and Administrative Tribunal for review of a decision taken by the registrar to refuse to make or vary a work and development order, or to vary or revoke a work and development order.

Clause 25 provides for new definitions under division 1 of part 4 and amended procedures for registering unpaid amounts with SPER under new divisions 1A and 1B. These amendments modernise the Act by removing the terms 'default certificate' and 'prescribed particulars', and reflect contemporary arrangements and legislative practices.

New section 33 provides that an infringement notice default occurs when a person fails to respond to an infringement notice in a way provided by section 22 or when, after accepting a payment plan offered by an administering authority, a person fails to pay an instalment under the plan.

New section 33A re-enacts existing section 34 and provides that an unpaid court debt is any amount that is unpaid under any of the following orders:

- an order fining a person for an offence;
- an order for payment on forfeiture of a recognisance under section 33B(1) of the *Penalties and Sentences Act 1992*;
- an order for restitution or compensation under section 35(1) of the *Penalties and Sentences Act 1992*;
- an order to pay a penalty under sections 182A or 185 of the *Penalties and Sentences Act 1992*;
- an order for payment on forfeiture of an undertaking under sections 32(1) or 32A(1) of the *Bail Act 1980*;
- an order under section 161A(3) of the *Justices Act 1886*;
- an order made before 27 November 2000 under sections 13 or 14 of the *Crown Proceedings Act 1980*;
- an order under sections 380(1) or 406(1) of the *Industrial Relations Act 2016*;
- a liability for an order under sections 115 or 781 of the *Police Powers and Responsibilities Act 2000*; or
- another fine or order prescribed by regulation.

However, an unpaid court debt does not occur if a court cannot make an order for imprisonment in relation to an order under sections 182A or 185 of the *Penalties and Sentences Act 1992* or an order under section 161A of the *Justices Act 1886*. An unpaid court debt also includes an offender levy that an offender is liable to pay under the *Penalties and Sentences Act 1992* on being sentenced for an offence. Other Acts also provide for orders to be treated as court debts, e.g. section 120 of the *Victims of Crime Assistance Act 2009*.

New division 1A deals with registering unpaid amounts with SPER.

New section 34 provides for the circumstances in which an unpaid amount can be registered with SPER for collection. An administering authority may register an infringement notice default with SPER and must register the unpaid amount of a fine that is the subject of an early

referral enabling a debtor to apply for a payment plan. However, an infringement notice default may not be registered after expiry of the limitation period for prosecuting the offence. A court may also register an unpaid court debt with SPER for collection. The section provides that any matter registered must be accompanied by the particulars prescribed by regulation.

New section 35 states that, if an administering authority is entitled under an Act to retain the proceeds of any fine paid to it, the authority must pay a lodgement fee prescribed by regulation to SPER each time the authority registers an infringement notice default or an early referral under section 23 with SPER. The lodgement fee replaces the fee paid by those agencies under existing section 33(4) on registration of a default certificate. It further provides that the registrar may refund the lodgement fee under circumstances prescribed by regulation. Such circumstances may include if an infringement notice default is withdrawn from SPER before the debt becomes enforceable under part 5.

New section 36 states that if an infringement notice default, early referral or unpaid court debt is registered with SPER, then SPER is responsible for collecting any unpaid amount. Once registered with SPER, a proceeding for the offence that is the subject of an infringement notice default or early referral may only be started in a court if authorised under part 4 of the Act. This provision re-enacts existing section 35, with amendments to incorporate early referral notices.

New section 37 re-enacts existing section 33(6) and extends the provision to include any debt registered in SPER where an administering authority or court may request that SPER amend the registered particulars of a debt if an amendment is necessary because of error, dishonour of a cheque or for another reason.

New division 1B deals with early referral notices, which replace the instalment payment arrangements under current sections 23 and 24.

New section 37A provides that the registrar must serve an early referral notice on a person, in the approved form, if the administering authority registers with SPER an early referral under section 23. The early referral notice must inform the person that the unpaid amount has been registered with SPER and how the person must respond under section 37B.

New section 37B provides that the person must respond to an early referral notice within 28 days after the date of an early referral notice. The person must either pay in full or apply for a payment plan.

New section 37C provides that the registrar may cancel an early referral notice if satisfied that the recipient has been incorrectly named because of a mistake of fact, misuse of a name or other particulars of the person. This provides the means to rectify a mistake of fact or misuse of identity that is identified after an early referral to SPER. The provision is similar in effect to current arrangements for cancellation of infringement notices under section 30 of the Act.

New section 37D provides that on registration of an unpaid court debt, the registrar of SPER must serve a court debt payment notice on the debtor in the approved form. The court debt payment notice must inform the person that a court debt has been registered with SPER and how the person may respond under section 37E.

New section 37E provides that a person who is served with a court debt payment notice must within the period stated in the notice respond by paying the full amount or by applying for a payment plan. The period stated in the notice must be any period ordered by the court or, otherwise, 28 days after the date of the notice.

New section 37F provides that the registrar may cancel a court debt payment notice if the registrar is satisfied that the person is incorrectly named, due to a mistake of fact, or misuse of name and other particulars of the person named in the notice. This provides the means to rectify a mistake of fact or misuse of identity that is identified after the registration of an unpaid court debt with SPER. The provision is similar in effect to current arrangements for cancellation of infringement notices under section 30 of the Act.

New section 37G provides that an appeal against a court order suspends a court debt payment notice, consistent with the arrangements in sections 54 and 54A in relation to enforcement orders. A successful appeal further requires the registrar to refund any amount paid to SPER in response to the notice. If the appeal is dismissed, the suspension of the court debt payment notice ends.

Clause 26 amends section 38 regarding the circumstances under which an enforcement order is issued. Reference to an infringement notice default replaces previous references to a default certificate. The circumstances have also been extended to include where a person has not responded to an early referral notice as required by section 37B or when a debtor has not responded to a court debt payment notice as required by section 37E. The amount stated in an enforcement order must be the total of the relevant infringement notice default, early referral or unpaid court debt, and the enforcement fee payable under new section 39. An enforcement order must be made in the approved form. To remove any doubt, an enforcement order may include one or more infringement notice defaults.

Clause 27 amends section 39 to require an enforcement debtor to pay SPER the fee prescribed by regulation for the making of an enforcement order if the registrar must make an enforcement order under section 38. The total amount payable by a debtor to be stated in the order is increased by the amount of the fee (as provided for in amended section 38) and the amount of the fee is added to the enforcement debtor's SPER debt. This fee replaces the registration fee imposed under existing section 35(2).

Clause 28 amends section 40 to require service of an enforcement order personally, by ordinary post to the address known to SPER for the person or by electronic communication under section 158.

Clause 29 amends section 41 to provide an amended response to an enforcement order. A person may, within 28 days, make an application for a payment plan under section 32A. Additionally, section 41 is amended to provide that a possible response to an enforcement order is for an approved sponsor, with the agreement of the debtor, to apply for a work and development order on behalf of the person or if the debtor is already subject to a work and development order, apply for a variation to increase the amount of the order.

Clause 30 omits sections 42 to 50 to reflect changes to instalment plans and fine option orders. Section 42 refers to applications for an instalment plan, which will be replaced by section 32A dealing with applications for a payment plan. Sections 43 to 50 deal with fine

option orders (including applications, eligibility, assessment of suitability by Queensland Corrective Services, notices and making and registration of fine option orders) which become redundant due to the replacement of fine option orders with work and development orders.

Clause 31 amends section 51 to remove provisions about the consequences of making an election for court hearing in response to an infringement notice and other provisions relating to court debts. Some existing provisions are re-enacted in new sections 51A and 54B.

Clause 32 inserts new section 51A which clarifies the effect of making a court election or starting proceedings on an enforcement order for an infringement notice default. An enforcement order is cancelled if a debtor elects for a court hearing under section 41(c) or a proceeding for the offence begins under the *Justices Act 1886*. This section re-enacts notification provisions contained in section 51 and provides for the consequences of cancellation of the enforcement order.

Clause 33 amends section 52 in relation to what constitutes default after time to pay due to removal of instalment payment notices. The circumstances for a default on an early referral notice or court debt payment notice are provided for in new section 37B, section 37F and section 38.

Clause 34 omits section 53 which currently provides for the registration by SPER of a fine option order breach notice given to SPER by a corrective services officer. This section is redundant as a result of the replacement of fine option orders with work and development orders.

Clause 35 amends the heading of part 4 division 5 to reflect the inclusion of the rehearing and reopening of court proceedings as events which may affect an enforcement order, in addition to an appeal.

Clause 36 inserts new section 54B to provide that an enforcement order relating to unpaid court debt is cancelled if, under the *Justices Act 1886*, an enforcement debtor is granted a rehearing of the complaint for the offence to which the order relates or a proceeding against the debtor for the offence is reopened. This provision re-enacts existing provisions in sections 51(2)(b) and 51(3) and provides for the consequences and notification of cancellation of the enforcement order.

Clause 37 provides for the replacement of Division 6 relating to cancellation of enforcement orders for infringement notice defaults. Amendments and new provisions relate to:

- limiting the circumstances under which an application can be made on the basis of electing to have the matter of the offence heard in court;
- the establishment of the relevant decision-maker for particular applications (either the administering authority or the registrar depending on the reason for the application);
- the exchange of information between decision-makers on respective decisions; and
- changes to support the provision of current address details by the applicant to the Department of Transport and Main Roads when the application is made on the basis of not receiving an infringement notice or enforcement order.

New section 55 provides definitions for decision maker and relevant offence in the division.

Under new section 56(1), existing grounds for cancellation of an enforcement order in paragraphs (a) to (c) will continue:

- not receiving a related infringement notice or receiving the notice later than the 28 day period for response required under section 22;
- not receiving the enforcement order or receiving the order later than the 28 day period for response required under section 41; and
- being prevented by accident, illness or a similar reason from responding to the enforcement order or infringement notice.

The ground of court election in paragraph (d) is amended to clarify that an application may be made only when an infringement notice default should not have been registered with SPER, that is, the person elected to have the matter heard in court in accordance with section 22.

New section 56(2) provides for a decision on the application to be made by the most appropriate decision maker. If the reason for making an application relates to an infringement notice, the person must apply to the administering authority that issued the notice. If the reason for making an application relates to an enforcement order, the person must apply to the registrar. An application must be made in the approved form or another way acceptable to the decision maker. There is no change to the requirement that the application must be made within the earlier of 14 days after the debtor becoming aware of the order or six months after the issue of the order. Similarly, provision is made to continue to enable the decision maker to accept a late application if satisfied that the debtor has reasonable grounds for the delay. More than one application for review of the same order may only be made with the approval of the decision maker. A single application may deal with review of more than one order.

New section 56A(1) re-enacts the requirements of current section 57(2) that the decision maker may require any information prescribed by regulation to help decide the application. Subsection (2) provides that the application is taken to be withdrawn if the person does not comply with a requirement within the stated time.

New section 56B re-enacts the requirements of current section 60(1) to enable the decision maker to stay enforcement action after receiving an application. If an administering authority acts as decision maker the authority must notify SPER as soon as practicable after granting the stay.

New section 57 requires a decision maker to grant or refuse the application. The decision maker must grant the application only if satisfied that a reason included in section 56(1) applies. After making a decision, the decision maker must give the person notice in the approved form. New subsections (3) and (4) enable the decision maker to suspend the application if satisfied that the person did not receive a notice or an order because the person failed to comply with a legal requirement to inform a government body of a change of address. Suspension of the application may continue until the applicant satisfies the decision maker that the failure to update address has been corrected.

New section 57A sets out requirements for administering authorities and SPER to provide information about respective decisions to cancel enforcement orders. SPER will need to be notified about decisions by administering authorities to give effect to section 59. Similarly, administering authorities will need to be notified about SPER decisions to support an

application in the event a proceeding is started (e.g. if the person elects for court on the re-issue of the enforcement order).

New section 58 continues to provide that if a decision maker refuses to cancel an enforcement order the enforcement debtor may appeal against the refusal in the Magistrates Court within 14 days after the date of refusal.

New section 59 provides for the effects of the cancellation of an enforcement order arising from a successful application. These effects are that the order stops having effect, enforcement action is reversed to the extent practicable, fees and costs are not payable, any amount paid is repayable, and the registrar must record the cancellation in the register.

New section 60 sets out proceedings that may occur after cancellation. Options for the administering authorities are re-enacted with the additional option of being able to re-issue the relevant infringement notice with an amended due date (and potentially amended address of the applicant) with the applicant's agreement. Other changes include requiring the applicant's agreement to the option of paying the infringement notice amount in full, and ensuring that a successful applicant who pays in full cannot be prosecuted.

Clause 38 amends section 61 to provide that part 5 applies if, after being served with an enforcement order, an enforcement debtor does not pay the amount in the order within 28 days, elect to have the matter of the offence decided in a Magistrates Court or is not otherwise discharging the order. Part 5 also starts applying to an enforcement debtor if the person's payment plan is cancelled or the person's work and development order is withdrawn or revoked. Part 5 also applies to a person who entered a payment plan in response to an early referral notice or a court debt payment notice and the plan was cancelled.

Clause 39 amends division 1 of part 5 to provide for when enforcement action may be taken.

New section 62A defines enforcement debtor to mean a person mentioned in section 61(3).

New section 62B provides that for persons mentioned in section 61(3) the amount still to be paid when the plan was cancelled is taken to be an amount stated in an enforcement order. Accordingly part 5 will apply to those persons as if an enforcement order had been served.

New section 62C provides that, if the registrar of SPER takes enforcement action under part 5, the enforcement debtor against whom the action is taken is required to pay the enforcement fee prescribed by regulation for that action. On taking the action, the amount of the enforcement fee is added to the debtor's SPER debt.

New section 62D provides that the registrar may invite a person to apply for a payment plan if taking enforcement action under part 5. There is no requirement to make this invitation before or instead of taking enforcement action, or to stop taking enforcement action during the application process.

Clause 40 amends section 63 in accordance with changes to the *Land Act 1994* and *Land Title Act 1994* and clarifies the procedure for enforcement warrants. The end date for a warrant for seizure and sale continues to be a date within one year of the issue of the warrant. For warrants that impose a charge, amendments provide that:

- if SPER's interest is not registered in a relevant register within six months, the warrant ends at the end of six months from the date of issue;
- if SPER's interest is registered within six months of issue, then the warrant does not end until SPER's interest is removed from the register.

Both warrants must state the date or circumstances under which they end. This clause also removes the reference to the civil enforcement fee and instead requires that, on issue of the warrant, the debtor's SPER debt be increased by the enforcement fee prescribed by regulation for issuing an enforcement warrant.

Clause 41 amends section 63A(1)(b) to specifically refer to an enforcement warrant to impose a charge on property.

Clause 42 amends section 69 to clarify that a debtor must take all action necessary to satisfy an amount stated in a warrant, e.g. by giving the enforcement officer necessary information or completing necessary documents. The existing reference to a fine option order is replaced with a reference to a work and development order.

Clause 43 amends section 73D to provide that an enforcement officer must not sell property seized under an enforcement warrant if, at or before the sale, the enforcement debtor pays the enforceable amount of the enforcement debtor's SPER debt. It replaces the requirement for the enforcement debtor to only pay the amount stated in the enforcement warrant. This change is consistent with the implementation by SPER of a case management approach for debtors.

Clause 44 substantially re-enacts section 75(1) and (2) of the Act and includes a new paragraph (d) that provides for a fine collection notice that is a notice to direct a financial institution to make payment of an amount from money held by the institution on behalf of the debtor. This is in addition to the existing fine collection notices that may be issued under the Act. This clause also removes the reference to the civil enforcement fee and instead requires that, on issue of the fine collection notice, the enforcement debtor's SPER debt be increased by the enforcement fee prescribed by regulation for issuing the fine collection notice. The fine collection notice must be in the approved form. The clause is designed to commence in two stages to enable the additional fine collection notice to commence on assent, whilst the revised fee arrangements will commence by proclamation at a later time.

Clause 45 amends section 79 to remove the requirements in section 79(1)(b) and (c) for the registrar to be satisfied of the debtor's personal financial circumstances, before issuing a fine collection notice for redirection of the enforcement debtor's earnings. The registrar will still need to be satisfied that the person is the enforcement debtor's employer before issuing the fine collection notice.

Clause 46 amends section 102 to clarify that a financial institution may deduct from the enforcement debtor's account an amount, not more than the amount prescribed by regulation as an administration charge, as a contribution towards the administrative cost to the institution of making payment under a fine collection notice for a regular redirection from a financial institution account. The financial institution must also give the enforcement debtor a notice of the deduction and any administration charge deducted.

Clause 47 inserts new division 6A of part 5 which includes provisions about a direction to pay an amount from a financial institution account under section 75(1)(d).

New section 103A states that new division 6A applies if the registrar issues a fine collection notice for payment of an amount from a financial institution account.

New section 103B provides that the registrar must serve a copy of the fine collection notice on the enforcement debtor.

New section 103C provides that the financial institution must deduct the amount stated in the notice from the accounts held by the enforcement debtor with the financial institution as soon as practicable after receiving the fine collection notice. Unless the fine collection notice requires deduction of the recoverable amount from a particular account held by the enforcement debtor, the financial institution may decide the account from which to deduct the recoverable amount. The financial institution may deduct the recoverable amount by deducting lesser amounts from 2 or more of the accounts held by the enforcement debtor. Subsection (3) provides that the financial institution must not deduct an amount from an account if the deduction would cause the account to be overdrawn or the deduction would cause the total balance of all the accounts the enforcement debtor holds with the financial institution to be less than the protected amount prescribed by regulation. If the financial institution is prevented from deducting from the accounts the full amount of the recoverable amount, it must deduct as much of the amount if any, that it may deduct without contravening subsection (3). Consistent with arrangements for a fine collection notice for a regular redirection from a financial institution account, if the financial institution makes a deduction under this section, the institution may only charge the enforcement debtor an amount not more than the amount prescribed by regulation as an administrative cost of complying with the fine collection notice.

New section 103D provides that the financial institution must pay the deducted amount to SPER as soon as practicable after making the deduction. If the deducted amount is less than the recoverable amount, the institution must inform SPER of the reasons why the amount is less.

Clause 48 amends section 104 to simplify the criteria for suspending an enforcement debtor's driver licence. Consistent with other enforcement actions under part 5, the registrar may suspend an enforcement debtor's driver licence if satisfied that the debtor is not taking steps to pay or otherwise discharge the enforceable amount of the debtor's SPER debt.

Clause 49 substantially re-enacts section 105 relating to the decision to suspend a driver licence. If the registrar decides to suspend an enforcement debtor's driver licence, the registrar must serve on the enforcement debtor a notice of intention to suspend a driver licence in the approved form. Reference to the notice being in the approved form is included as a result of section 145 being omitted as a consequence of the removal of prescriptive details from approved forms under the Act. On issue of the notice, the enforcement debtor's SPER debt is increased by the amount of the prescribed enforcement fee for suspending the licence. The enforcement debtor's driver licence is suspended if, within 14 days after the date of issue of the notice, the debtor does not pay SPER the enforceable amount of the debtor's SPER debt or is not otherwise discharging the enforceable amount of the debtor's SPER debt. Suspension of the driver licence continues until the enforcement debtor pays or begins to otherwise discharge the enforceable amount of the debtor's SPER debt. References

to enforceable amount of the debtor's SPER debt replace references to the unpaid amount stated in the notice consistent with the implementation by SPER of a case management approach for debtors. The clause also provides a general discretion for the registrar to end the suspension by written notice to the enforcement debtor.

Clause 50: substantially re-enacts section 106(4) to state that a person who does not hold a driver licence is disqualified from holding or obtaining a driver licence until the debtor pays to SPER the enforceable amount of the debtor's SPER debt or the debtor begins to otherwise discharge the enforceable amount of the debtor's SPER debt under the Act. References to enforceable amount of the debtor's SPER debt replace current references in this section of the Act to the unpaid amount.

Clause 51 amends section 107 to align with section 105 to clarify that the enforcement debtor must pay or otherwise discharge the enforceable amount of the person's SPER debt in order to avoid further enforcement action. The reference to enforceable amount of the debtor's SPER debt replaces the reference to the unpaid amount stated in the notice of intention to suspend the driver licence.

Clause 52 amends section 108A to simplify the criteria for vehicle immobilisation and replace them with a criterion that a vehicle may be immobilised if the registrar is satisfied the enforcement debtor is not taking steps to pay or otherwise discharge the enforceable amount of the debtor's SPER debt. The criteria omitted are an instalment payment notice being cancelled, a fine option order being revoked and a good behaviour order being cancelled, which are omitted by other amendments to the Act.

Clause 53 amends section 108C to state that a notice of intention to issue an immobilisation warrant must be a notice in the approved form. The clause omits reference to section 146A which is omitted as a consequence of the removal of prescriptive details of approved forms from the Act.

Clause 54 substantially re-enacts section 108D(1) to provide that the registrar may issue an immobilisation warrant to immobilise one or more vehicles of an enforcement debtor if, within 14 days after the registrar served a notice of intention to issue an immobilisation warrant on the enforcement debtor, the debtor has not paid or is not otherwise discharging the enforceable amount of the debtor's SPER debt. References to enforceable amount of the debtor's SPER debt replace references to the amount stated in the notice, consistent with the implementation by SPER of a case management approach for debtors.

Clause 55 amends section 108F to remove the reference to the civil enforcement fee and instead provide that on the issue of an immobilisation warrant, the enforcement debtor's SPER debt is increased by the amount of the enforcement fee prescribed by regulation for issuing the warrant. It also provides that an immobilisation warrant ends 12 months after the date of issue of the warrant or the earlier date, decided by the registrar, stated in the warrant. This requirement was reflected in section 146B which has been omitted as a consequence of the removal of prescriptive details of approved forms from the Act

Clause 56 amends section 108H(4)(c) to provide that an enforcement officer must not enforce an immobilisation warrant if the enforcement debtor pays SPER the enforceable amount of the debtor's SPER debt or the debtor begins to otherwise discharge the enforceable amount of the debtor's SPER debt. References to the enforceable amount of the debtor's SPER debt

replace current references in the Act to the amount stated in the immobilisation warrant, consistent with the implementation by SPER of a case management approach for debtors.

Clause 57 amends section 108L to remove, as a condition of judicial issue of a search warrant, that an enforcement officer must reasonably believe that the vehicle has been relocated by or for the enforcement debtor in an attempt to avoid enforcement of the warrant. The condition that an enforcement officer reasonably believes there may be a vehicle mentioned in an immobilisation warrant at a premise, will continue. A magistrate or justice of the peace (Magistrates Court) may issue the warrant only if satisfied there are reasonable grounds for believing the vehicle may be at the premises. New subsection (5) provides that the immobilisation search warrant must be in the approved form and state the powers of an enforcement officer, including powers to enter the stated premises and exercise the powers in section 108M, and, if the warrant is to be enforced at night, the hours when the stated premises may be entered. Additionally, the subsection requires the warrant to state the time, no later than 7 days after the warrant is issued, when the warrant ends. These are requirements reflected in section 146D which is omitted as a consequence of the removal of prescriptive details of approved forms from the Act.

Clause 58 amends section 108N to state that an immobilisation notice must be in the approved form and omits reference to omitted section 146C which is omitted as a consequence of the removal of prescriptive details of approved forms from the Act.

Clause 59 amends section 108O to extend the maximum immobilisation period from five days to 14 days. This will provide greater opportunity for debtors to pay their debt before further enforcement action such as seizure and sale is taken.

Clause 60 amends section 108P to provide that the registrar must direct an enforcement officer to remove the immobilising device and immobilising notice as soon as practicable if, before the end of the immobilisation period, the registrar is satisfied that the enforceable amount of the enforcement debtor's SPER debt has been paid or the debtor is otherwise discharging the amount. This replaces subsection (1) which refers to fine option orders and good behaviour orders. The registrar must also direct the immobilisation device and notice be removed if the vehicle is impeding use of a place or the road network or is a risk to safety which is a re-enactment of the existing requirement.

Clause 61 amends section 108R to provide for the registrar to direct an enforcement officer to seize a vehicle under an enforcement warrant if the enforcement debtor has not paid the enforceable amount of the debtor's SPER debt or the amount is not otherwise being discharged under the Act, consistent with the implementation by SPER of a case management approach for debtors. References to the enforceable amount of the debtor's SPER debt replace current references in the Act to the amount stated in the immobilisation warrant and references to fine option orders and good behaviour orders have been removed.

Clause 62 amends section 108S to replace a reference to instalment payment notices with a reference to payment plans and to replace a reference to a fine option order and good behaviour order with a reference to a work and development order. The registrar may direct an enforcement officer to re-enforce an immobilisation warrant if the enforcement of the immobilisation warrant was stopped because the debtor was discharging the enforceable amount of the debtor's SPER debt under a payment plan or work and development order and the payment plan is cancelled or the work and development order is withdrawn or revoked.

Clause 63 omits section 109 to reflect the removal of fine option orders and introduction of work and development orders under part 3B.

Clause 64 amends section 110 to clarify the conditions under which the registrar may register interests in property. The relevant warrant is one that imposes a charge on land or other property. However, registration of an interest does not prevent the registrar issuing an enforcement warrant to seize and sell property, or for property that is a motor vehicle, issuing a notice to intention to immobilise a vehicle or an immobilisation warrant for a vehicle. New section 110(6) specifies the circumstances under which the registrar must request removal of the registered interest, which are that the enforcement debtor pays the amount stated in the warrant or begins to otherwise discharge the amount. New section 110(7) does not prevent the registrar requesting removal of the registered interest in other circumstances.

Clause 65 amends section 113 to omit example 2 in subsection (3) to reflect the removal of references to the registration fee from the Act.

Clause 66 amends section 114 to correctly refer to section 11A of the Act under which identity cards are issued to enforcement officers.

Clause 67 amends section 115 to replace a reference to payment by instalments with a reference to a payment plan and to replace a reference to a fine option order with a reference to a work and development order.

Clause 68 omits section 118 to remove good behaviour orders as a consequence of the introduction of work and development orders. Existing good behaviour orders will continue in effect under new section 186, but work and development orders will be available for people unable to pay their debts who are experiencing genuine hardship. Hardship debtors who are not eligible for a work and development order (e.g. with impaired decision making capacity) may be eligible for write off of their debts under the Act.

Clause 69 amends section 119 to remove references to the civil enforcement fee and warrant issue fee and provide instead for the enforcement fee prescribed by regulation for the issuing of the warrant to be added to the amount under the warrant. It provides that an arrest and imprisonment warrant must be in the approved form, consequential on the omission of prescriptive details of approved forms from the Act.

Clause 70 inserts new section 119A to provide that a debtor is required to pay an enforcement fee for the issuing of an arrest and imprisonment warrant. The debtor's SPER debt is increased by the amount of the relevant enforcement fee prescribed by regulation. This fee replaces the warrant issue fee.

Clause 71 omits part 7 in accordance with the removal of fine option orders, which enable some debtors to undertake unpaid work to discharge their debts. Work and development orders will provide for other activities in addition to unpaid work to discharge debts.

Clause 72 amends the definition of 'Queensland fine' in section 131 to include an amount for which the registrar must take enforcement action under the Act.

Clause 73 inserts new part 8A to consolidate all provisions regarding information collection and information disclosure in the Act and to provide for information sharing arrangements.

New section 134A inserts division 1 of part 8 and provides definitions of 'confidential information', 'official' and 'police commissioner' for the part.

New division 2 of part 8A relates to information collection.

New section 134B re-enacts existing section 151 of the Act and provides for the registrar to request information from the police commissioner. For taking enforcement action against a person, the registrar may make written requests for information relating to the person's criminal history, a brief description of circumstances of any conviction, any address of the person and any assets of the person known to the commissioner. If the registrar advises the police commissioner about a warrant under new section 134M, then the registrar may request any of the following information from the police commissioner about any person known to the commissioner to reside at premises where it is proposed the warrant will be enforced: the person's criminal history, any warnings about the person, e.g. relating to health or behaviour recorded in a document in the possession of the Queensland Police Service, and details of any warning. The police commissioner may comply with the request only if the information is in the commissioner's possession or the commissioner has access to it. If the police commissioner complies with a request, then the registrar must destroy any information given in writing as soon as practicable after the registrar is satisfied that the information is no longer needed for the purpose for which it was given. This section is subject to chapter 21 of part 2 of the *Police Powers and Responsibilities Act 2000*.

New section 134C re-enacts existing section 152 of the Act and provides for the registrar to require a person to give information to the registrar for the administration or enforcement of the Act. The registrar may give written notice to a person requiring the person to give, either orally or in writing, information about a stated matter within a stated reasonable time and in a stated reasonable way. The information must be within the person's knowledge or a document in the person's possession or control. When giving written notice, the registrar must warn the person that it is an offence not to comply with the requirement unless the person has a reasonable excuse. The person must comply with the requirement, unless the person has a reasonable excuse. The offence has a maximum penalty of 100 penalty units. The privilege against self-incrimination is not a reasonable excuse. A reasonable excuse includes reasonably believing that complying with the requirement is likely to endanger the safety of a person. This section does not apply to the Queensland Police Service.

New section 134D re-enacts existing section 152A of the Act and provides for the registrar to require attendance of a person before the registrar. For the administration or enforcement of the Act, the registrar may give written notice to a person requiring the person to attend before the registrar at a stated reasonable time and place to give, either orally or in writing, information about a stated matter. The information about a stated matter must be within the person's knowledge or a document about a stated matter in the person's possession or control. The registrar may require the information to be given on oath or the information or document to be verified by statutory declaration. When giving written notice, the registrar must warn the person that failing to comply is an offence unless the person has a reasonable excuse. To comply, the person must attend as required by the notice, give the registrar required information or required documents, and comply with requirements for an oath or statutory declaration. The offence for failing to comply has a maximum penalty of 100

penalty units. The privilege against self-incrimination is not a reasonable excuse. A reasonable excuse includes reasonably believing that complying with the requirement is likely to endanger the safety of a person. If the person is not an enforcement debtor or an enforcement debtor's representative, then the person is entitled to be paid expenses prescribed by regulation for attending a place. This section does not apply to the Queensland Police Service.

New section 134E re-enacts existing section 152B of the Act to provide for the power to record giving of information to the registrar. If a person gives information to the registrar under new section 134D, with the person's knowledge, a recording may be made in the way the registrar considers appropriate, of questions asked by the registrar and information given by the person. If the person asks, the registrar must give the person a copy of the recording.

New section 134F re-enacts existing section 152C of the Act to provide for the translation or conversion of information. If a person gives information to the registrar and the registrar reasonably believes the information is relevant to the administration or enforcement of the Act, then the registrar may, by written notice, require the person, within a stated reasonable period, to translate the information into English, convert the information into a written document, or convert any amount mentioned in the information into Australian currency. The person must comply with the requirement unless the person has a reasonable excuse. The offence for failing to comply has a maximum penalty of 100 penalty units. If the person does not comply, the registrar may have the information translated or converted. Costs and expenses incurred by the registrar are a debt payable to the State by the person.

New section 134G re-enacts section 152E which provides for an offence of giving false or misleading information. This section prohibits a person from giving the registrar or SPER information which the person knows is false or misleading in a material particular. The maximum penalty is 100 penalty units. However, this section does not apply if the person discloses to the best of the person's ability how the information is false or misleading, or the person has, or can reasonably obtain, the correct information and gives the correct information.

New division 3 of part 8A provides for information protection and includes offences for the disclosure of confidential information except where authorised by the Act.

New section 134H re-enacts the offence provisions of existing sections 152G and 152H. The maximum penalty for each offence is 100 penalty units. Subsection (1) prohibits disclosure by an official of confidential information acquired by the official in their official capacity unless the disclosure is authorised by division (4). Subsection (2) prohibits disclosure of confidential information by a person who knowingly acquires the confidential information without lawful authority. Subsection (3) prohibits disclosure of confidential information by a person who receives confidential information that the person knows, or ought reasonably to know, is confidential, unless disclosure is authorised under division 4. Examples of persons to whom subsection (3) may apply include a person other than the addressee of an email who receives an email that states the information is confidential, or a person to whom the registrar has disclosed confidential information under division 4.

The offence in subsection (3) does not apply if the registrar disclosed confidential information to the person under division 4, and the person disclosed the information: to the extent necessary to enable the person to exercise a power or perform a function conferred on

a person under a law for the administration or enforcement of the law; for the purpose for which it was disclosed to the person; or to someone else for any purpose if information relates to the person.

New section 134I re-enacts existing section 152I and provides that a person engaged in the administration or enforcement of the Act can not be compelled to disclose to a court or the Queensland Civil and Administrative Tribunal in a proceeding or to a party to the proceeding: confidential information; whether or not the person has received particular confidential information; or the identity of the source of particular confidential information. However, this section does not apply to a proceeding for the administration or enforcement of the Act.

New section 134J re-enacts existing section 152D and provides that information or a document given under new sections 134C or 134D, that might tend to incriminate a person, is not admissible in evidence against the person in a criminal proceeding. Inadmissible evidence extends to evidence directly or indirectly derived from the information or document. However, inadmissibility as evidence does not apply to a proceeding in which the falsity or misleading nature of the information or document is relevant.

New division 4 of part 8A provides for information sharing. The division sets out the circumstances in which disclosure of information is authorised and are therefore exceptions to the offences in part 3.

New section 134K allows the registrar to enter into an information sharing arrangement with an entity prescribed by regulation. The arrangement allows parties to the arrangement to request and receive information held by the other party for the purposes of administration or enforcement of the Act, the administration or enforcement of a court order, enforcement of an offence administered by a prescribed entity or for another purpose prescribed by regulation. Under the arrangement, the registrar may only disclose information prescribed by regulation. A prescribed entity may disclose information under an information sharing arrangement subject to any limitation on disclosure of that information under another Act. Parties to the information sharing arrangement must annually review their compliance with the arrangement. For this section, enforcement of an offence includes: investigating the offence; prosecuting the offence; imposing or collecting a fine for the offence; and applying to a court for a civil penalty or other order for the offence.

New section 134L re-enacts the disclosure provisions of existing section 152G and allows the registrar to disclose confidential information. The registrar may disclose confidential information that includes personal information to the person to whom the information relates, or to someone else with the consent of the person to whom the information relates or who the registrar reasonably believes is acting for the person to whom the information relates. The registrar may also disclose personal information if expressly permitted or required under another Act; in connection with the administration or enforcement of the Act or a revenue law; in relation to a legal proceeding under the Act; to the Minister or an officer of the department for developing or monitoring policies for, or for operation of, the Act or administering the *Financial Accountability Act 2009*, section 21; or to a law enforcement agency for the purpose of an investigation or proceeding including for the purpose of deciding whether to start an investigation or proceeding. The registrar may disclose confidential information that does not include personal information to any person for any purpose if the registrar is satisfied the disclosure is appropriate in the circumstances. If confidential information contains personal information, the registrar may disclose the

confidential information after first removing or concealing the personal information. This section does not create a right in any person to be given information under the section. Subsection (6) provides definitions for law enforcement agency, personal information and revenue law.

New section 134M re-enacts existing section 151A and provides that the registrar may advise the police commissioner about the issue of an immobilisation warrant or an enforcement warrant and when and where the registrar proposes to have the warrant enforced. The addition of an enforcement warrant expands the scope of existing section 151A. The Queensland Police Service may only use the information in relation to enforcement of the warrant.

Clause 74 omits sections 137 to 146D of the Act in order to remove prescriptive detail from the approved forms to reflect current legislative drafting practice. Substantive requirements contained in those provisions are re-enacted in sections 108F(4) and 108L(5).

Clause 75 omits the remaining provisions of part 9 division 1 (sections 135 and 136) to remove prescriptive detail from the approved forms.

Clause 76 inserts new section 149A to define references in the Act to amounts otherwise being discharged, which is relevant to the taking and ending of enforcement action. A reference to a person otherwise discharging an amount, other than by paying the amount, is a reference to the person satisfying the amount in full by any one or a combination of payment of an amount, a payment plan, or a work and development order. This section clarifies that a person ceases to satisfy the amount if the payment plan is cancelled or the work and development order is revoked or withdrawn.

Clause 77 inserts new sections relating to waiver or return of fees payable under the Act and redirection of amounts to unpaid SPER debts.

New section 150AA allows the registrar to waive or return all or part of a fee payable by a person under the Act in circumstances prescribed by regulation. Such circumstances may include if the enforcement debtor is experiencing hardship. However, the registrar may reinstate a waived fee if the fee was incorrectly identified for waiver or if reinstatement is permitted under circumstances prescribed by regulation. Circumstances in which a previously waived fee may be reinstated may include if the registrar's decision to waive the fee was based on false or misleading information provided by the debtor.

New section 150AB allows the registrar to apply all or part of an amount payable to a person under the Act, to a SPER debt payable by that person. This section does not apply to any balance remaining after sale of property under existing section 73J(3)(e).

Clause 78 inserts new section 150B(2A) to provide for the Minister to make guidelines, not inconsistent with the Act, about work and development orders, and makes other consequential amendments as a result of amendments to section 108P.

Clause 79 inserts new section 151 which provides that the registrar may approve an information system for generating, sending, receiving, storing or otherwise processing electronic communications between SPER and an administering authority, or between SPER and an enforcement debtor or another person, or for generating a decision of the registrar,

other than a decision prescribed by regulation. A decision generated by an information system is taken to a decision made by the registrar.

Clause 80 omits sections 151 to 152I which are substantively replaced by provisions regarding information collection, protection and sharing in the new part 8A.

Clause 81 amends section 153 to replace references in the State penalties enforcement register to specific types of fine collection notices with a generic reference to a fine collection notice. It also requires the register to include particulars of an infringement notice default, an early referral and an unpaid court debt registered with SPER, as well as the particulars of an early referral notice, a court debt payment notice and an enforcement order issued by the registrar. It further replaces the reference to the register including the particulars of fine option orders with a reference to work and development orders.

Clause 82 amends section 155 relating to non-reviewable decisions to include decisions regarding payment plans and remove decisions relating to fine option orders.

Clause 83 amends section 157 to provide for new evidentiary certificates of the administering authority and the registrar for the purpose of court proceedings. An administering authority may produce an evidentiary certificate under subsection (2)(a) as evidence that a stated infringement notice was served in a stated way on a stated person at a stated address on a stated day for a stated infringement notice offence. Reference to the address being the 'latest' address is omitted from subsection (2)(i) consistent with similar omissions in other amendments being made in the Bill. The administering authority may also produce an evidentiary certificate under subsection (2)(d) as evidence that an alleged offender applied to the administering authority under section 23 for the immediate registration of a fine for the purpose of paying the fine under a payment plan with SPER.

The registrar may produce an evidentiary certificate under subsection (3) as evidence that:

- a stated matter, including an infringement notice default or unpaid court debt, or particulars were registered under the Act on a stated day;
- a stated person applied to SPER to pay an amount under a payment plan;
- a stated enforcement action is being taken, or has been taken, against a stated person, including the date the action was taken, ceased or withdrawn;
- the amount of a stated person's SPER debt, including information about the unpaid amount of the debt and the history of the debt;
- that a stated payment plan was accepted by a stated person on a stated day, or cancelled on a stated date;
- that a stated work and development order was made, varied, withdrawn or revoked on a stated day;
- a notice of intention to suspend the driver licence of a stated person was served on the person in a stated way on a stated day;
- an administering authority withdrew an infringement notice on a stated day;
- a stated enforcement order was cancelled on a stated day; and
- a stated document was issued on a stated day.

The clause inserts a new subsection that requires the registrar to give an administering authority a certificate under subsection (3) about a stated enforcement order being cancelled

on a stated day if requested by the administering authority for the purpose of starting a proceeding against a person for an infringement notice offence.

The clause also inserts a definition of enforcement action for the purpose of the section.

Clause 84 amends section 158 to provide for the electronic service of documents under the Act. If a person gives a unique electronic address for the person to SPER or the registrar, or consents to SPER using a unique electronic address for serving a document to the person, then a document may be served under this Act to the address by using electronic communication. The clause provides that in addition to being able to send a document to a person by post as provided under the *Acts Interpretation Act 1954*, part 10, the registrar may send the document by post to another address for the person known to the registrar. Given the new definition of address in the Schedule, this enables documents to be served to a postal address. Provisions regarding the time for service by email have been amended to reflect service by using electronic communication. The section also provides a definition of communication network and a definition of unique electronic address.

Clause 85 amends section 163 to provide that the registrar may approve forms under the Act other than forms for use as infringement notices. This removes the requirement for approved forms to be approved by the chief executive.

Clause 86 omits section 164 as the prescribed time for review of the Act has passed.

Clause 87 amends section 165 to provide for a regulation making power about work and development orders. Regulations may be made about matters including: the amount of debt taken to be satisfied by particular activities; the unpaid work, courses, plans or programs that may be undertaken under a work and development order; the approval of sponsors; the conditions that may be included on approval of sponsors; keeping supporting evidence on eligibility assessments; any other records to be kept in relation to work and development orders; and disciplinary action that may be taken against approved sponsors, including immediate suspension of an approval.

Clause 88 inserts new division 7 into part 10 to include transitional provisions.

New section 183 provides definitions for the division.

New section 184 provides that the registrar may publish a list of entities on the department's website that are taken to be approved sponsors for the purpose of work and development orders, prior to commencement. If a list is published, an entity included in the list is taken to be an approved sponsor for the purpose of work and development orders. Nothing in this section prevents the registrar from cancelling an approval granted under this section under a regulation made under section 165(12)(d).

New section 185 provides that if a person is subject to a fine option order immediately before commencement, then the fine option order is taken to be a work and development order to undertake unpaid work for, or on behalf of, an approved sponsor. If the person is subject to more than one fine option order, the registrar may combine them into a single work and development order. The registrar must assign an approved sponsor for a work and development order. The registrar must give the person written notice explaining the effect of this section. The effect of this transitional provision is that a person who was subject to one

or more fine option orders prior to commencement, would continue to perform unpaid work (community service), but would do so under a work and development order instead of a fine option order.

The new section also provides that the registrar may revoke the order in accordance with former section 129 if a fine option order breach notice is in force under new section 190 and the registrar is satisfied the person has contravened the order without reasonable excuse.

New section 186 provides that if a person had applied for a fine option order before commencement, and the application had not been finally dealt with, the application is taken, on commencement, to be an application for a work and development order to undertake unpaid work for, or on behalf of, an approved sponsor. The registrar must assign an approved sponsor for the application. Former sections 44 to 46 apply for the application that has not been finalised prior to commencement as if a reference in the provisions to a fine option order were a reference to a work and development order.

New section 187 provides that if immediately before the commencement a good behaviour order applied to a person, the good behaviour order continues to apply to that person under the former provisions of the Act as if the provisions had not been amended or repealed under the amendment Act.

New section 188 provides for the consideration of applications to pay a fine by instalments that have not been finally dealt with before commencement. An application to enter into a voluntary instalment plan with the administering authority that is not finalised on commencement is taken to be an application for early referral under section 23 and the administering authority must register the unpaid amount of the fine with SPER under section 34(1)(a). An application relating to debt that was the subject of an enforcement order that is not finalised on commencement is taken to be an application for a payment plan under part 3A and the registrar may decide the application under part 3A.

New section 189 provides for the continuation of instalment payments under an instalment payment notice. New sections 32E and 32D apply to instalment payment notices allowing for amendment or cancellation as if the instalment payment notice was a payment plan.

New section 190 provides for continuation of existing enforcement documents issued under the Act prior to the commencement of the provisions in the Bill. Enforcement orders, notices and warrants served prior to commencement of the new provisions will remain valid despite any defects under or inconsistency with the amended Act, and continue in force for the period and in the circumstances in which they would have continued under the former provisions despite any inconsistency with the amended Act. However, if the order, notice or warrant entitles a person to apply for a fine option order or a good behaviour order, the order, notice or warrant is of no effect to that extent.

New section 191 provides that if an administering authority could have given a default certificate to SPER for registration but has not done so prior to the commencement of the new provisions, the default certificate may be registered with SPER under section 34 as if it were an infringement notice default. If SPER has received a default certificate from an administering authority but has not registered it prior to commencement of the new provisions, SPER may register the default certificate at commencement as an infringement notice default.

New section 192 provides for continuation of applications for cancellation of an enforcement order under section 56 and applications for review of revocation of a fine option order under section 130. The section specifies that these applications may be dealt with under the former provisions before amendment.

New section 193 provides for continuation of any evidentiary certificates stating any of the following matters is evidence of the matter:

- a stated person applied to SPER to pay the fine under an infringement notice by instalments;
- a stated person applied to SPER for conversion of an amount payable because of a fine to hours of unpaid community service under a fine option order; and
- a stated fine option order relating to a stated person was revoked on a stated day.

New section 194 provides for a transitional regulation making power to allow change from the operation of former provisions to provisions in force after commencement and for which the amendments do not make sufficient provision. A transitional regulation may have retrospective effect to not earlier than commencement. A transitional regulation must declare it is a transitional regulation. A transitional regulation may only be made within one year after the commencement. This section and a transitional regulation expire two years after commencement.

Clause 89 amends Schedule 2 (Dictionary) to insert definitions of new terms used throughout the provisions such as early referral, enforceable amount and payment plan, and omit definitions which are no longer required.

Part 5 Consequential amendments

Clause 90 provides that schedule 1 amends the various Acts it mentions.

Schedule 1 Minor and consequential amendments

Schedule 1 makes minor and consequential amendments to the *Penalties and Sentences Act 1992*, *Police Powers and Responsibilities Act 2000*, *Queensland Building and Construction Commission Act 1991*, *Transport Operations (Passenger Transport) Act 1994*, *Victims of Crime Assistance Act 2009* and the *Waste Reduction and Recycling Act 2011*.