

# State Penalties Enforcement (Modernisation) Amendment Bill 2022

## Explanatory Notes

### Short title

The short title of the Bill is the State Penalties Enforcement (Modernisation) Amendment Bill 2022.

### Policy objectives and the reasons for them

The State Penalties Enforcement (Modernisation) Amendment Bill 2022 (the Bill) amends the *State Penalties Enforcement Act 1999* (SPE Act), the *State Penalties Enforcement Regulation 2014* (SPE Regulation) and the *State Penalties Enforcement Amendment Act 2017* (SPEA Act) to:

- implement an integrated approach to managing fines for camera-detected offences and tolling offences, with functions centralised in a single agency – the Queensland Revenue Office (QRO);
- provide a framework for the earlier registration of unpaid infringement notices with the State Penalties Enforcement Registry (SPER) for enforcement; and
- make miscellaneous amendments to modernise the operation of the SPE Act and support the effective administration of SPER.

The Bill also makes consequential amendments to the *Transport Operations (Road Use Management) Act 1995* (TORUM Act) and the *Traffic Regulation 1962* (Traffic Regulation) on account of the integrated approach to fines management.

These amendments will:

- eliminate unnecessary duplication of services across Government;
- improve operational efficiencies;
- provide a central point of contact within Government for persons served with fines for camera-detected offences and tolling offences; and
- enhance the effectiveness of SPER's activities.

The Bill also:

- amends the *Land Tax Act 2010* (LT Act) to ensure that trustees of Special Disability Trusts (SDTs) are subject to the higher tax-free threshold and lower land tax rates that apply to individuals;

- amends the *Residential Tenancies and Rooming Accommodation Act 2008* (RTRA Act) to provide stable funding for the Residential Tenancies Authority (Authority) and ensure security of residential bonds on behalf of Queensland tenants; and
- modernises the confidentiality provisions in the SPE Act and the *Taxation Administration Act 2001* (TA Act).

## Achievement of policy objectives

### *Integration of fine administration functions*

To support an integrated approach to the management of infringement notices, the Bill transfers to the registrar of SPER (the registrar) particular functions, for specific infringement notice offences, formerly performed by the Department of Transport and Main Roads (DTMR) and the Queensland Police Service (QPS).

This involves amending the SPE Regulation to prescribe the registrar as:

- the authorised person for service of infringement notices for the following offences (collectively, the relevant offences):
  - camera-detected offences as defined in the *Transport Operations (Road Use Management) Act 1995* (TORUM Act) (e.g. speeding, not stopping at a red light, or uninsured driving); and
  - tolling offences under the *Transport Infrastructure Act 1994*; and
- the administering authority for:
  - the relevant offences; and
  - other infringement notice offences in respect of which DTMR was practically performing the functions of an administering authority prior to 1 February 2022 (including offences for which infringement notices were served by authorised officers appointed under the TORUM Act, and certain offences for which infringement notices were served by QPS officers) (the additional offences).

*Public Service Departmental Arrangements Notice (No. 1) 2022* (the PSDA Notice) provides that Queensland Treasury (of which QRO, SPER and the registrar are a part) is responsible for serving infringement notices and acting as the administering authority for the relevant offences other than mobile phone and seatbelt offences (the transferred offences) from 1 February 2022, and for mobile phone and seatbelt offences (the distracted driver offences) from 30 November 2022.

The SPE Regulation currently provides that infringement notices for the relevant offences may only be served by persons who are authorised officers under section 20 TORUM Act, being either a person appointed as such by the chief executive of DTMR, or a police officer. To give effect to the PSDA Notice, relevant QRO officers were appointed as authorised officers from 1 February 2022, albeit with their powers limited to serving infringement notices in relation to the transferred offences. Those officers have access to the same training and reference materials in relation to adjudication of the transferred offences as was available to DTMR and QPS officers prior to 1 February 2022.

Similarly, the SPE Regulation currently provides that DTMR is the administering authority for most of the relevant offences, with the Motor Accident Insurance Commission being the administering authority for the rest. To give effect to the PSDA Notice, relevant QRO officers were appointed as delegates of the relevant administering authority from 1 February 2022 in respect of the transferred offences, with some limitations.

Consistent with the PSDA Notice, the Bill amends the SPE Regulation to prescribe the registrar as the authorised person for service of infringement notices, and the administering authority, for the transferred offences from 1 July 2022, and for the distracted driver offences from 30 November 2022.

Prior to 1 February 2022, DTMR officers also performed the functions of an administering authority in relation to the additional offences. This was either because the SPE Regulation provided that DTMR was the administering authority, or DTMR officers were performing the functions of an administering authority pursuant to delegations made by the chief executive of the prescribed administering authority.

From 1 February 2022, relevant QRO officers have been performing the administering authority functions previously performed by DTMR officers in relation to the additional offences. This has been pursuant to delegations made by the chief executive of the relevant administering authority. The Bill amends the SPE Regulation to prescribe the registrar as the administering authority for the additional offences from 1 July 2022.

The intention is that, from 1 July 2022, the registrar will delegate relevant functions of an authorised officer and an administering authority to relevant QRO officers, thus practically maintaining the fine serving and/or administration system in relation to the transferred offences and additional offences which has been in place since 1 February 2022.

The Bill also makes a range of consequential amendments, including amendments to:

- the TORUM Act to allow the registrar to receive declarations in relation to the relevant offences;
- the Traffic Regulation to allow the registrar to view an image or video made by the digital driver behaviour camera system used to detect the distracted driver offences, and form a belief as to whether such an offence has been detected;
- the SPE Act to:
  - reflect the multiple roles of the registrar (i.e. as an authorised person, an administering authority or as registrar of SPER); and
  - expressly authorise the registrar (as administering authority) to disclose personal information of an alleged offender in relation to a particular infringement notice offence to the department or agency responsible for administration of the relevant legislation (the legislative administrator) for the purposes of enforcement of the offence – this includes investigating or prosecuting the offence, and applying to a court for a civil penalty or other order for the offence; and
- the SPEA Act to replicate a change made to the SPE Act.

### ***Reduced timeframe for registration of defaulted infringement notices with SPER***

The SPE Act provides that a person served with an infringement notice for an offence has 28 days to respond to the notice (either by paying the fine, applying to pay by instalment, electing for the matter of the offence to be heard in a court, or, if relevant, submitting a user declaration for vehicle-related offences, e.g. nominating another driver).

If, at the end of the 28-day period, the person has not responded to the notice in one of the ways described above, the infringement notice is taken to be in default and the administering authority for the infringement notice may register a default certificate with SPER for the defaulted infringement notice.

Administering authorities have until the last day on which a person may start a prosecution for the offence to register a default certificate with SPER. This is generally 12 months from the date of the offence.

Once a default certificate for a defaulted infringement notice is registered with SPER, SPER becomes responsible for collection and enforcement of the unpaid amount (i.e. a SPER debt).

The actual time administering authorities take to register default certificates with SPER varies but is typically between two to six months from the date of the infringement notice (sometimes longer). The differences in time taken to register default certificates is reflective of the different approaches that administering authorities have for pursuing payment collection of infringement notice fines. These approaches can range from taking no action at all, through to extensive efforts to collect payment, prior to registration of a default certificate with SPER.

The Bill amends the SPE Act to enable the earlier registration of default certificates with SPER by:

- specifying that the ‘final day’ on which a default certificate must be given to SPER for registration is the latest day on which a prosecution for the offence may be started, or an earlier day that is prescribed by regulation to be the final day; and
- providing that a ‘due day’ that is earlier than the final day can be prescribed by regulation, and that a default certificate can be given after the due day, subject to payment of a late lodgement fee by the administering authority.

It is intended that the prescription of any final day, due day and late lodgement fee in the SPE Regulation will occur at a later stage.

The Bill also makes a similar amendment to an uncommenced provision of the SPEA Act.

### ***Modernisation of administration***

The Bill contains a number of measures to modernise the administration of the SPE Act and support the effective administration of SPER.

#### **Registrar of SPER**

The SPE Act establishes SPER and provides that there is to be a registrar of SPER. However, the SPE Act does not explicitly address how a person is appointed as the registrar. Current

practice is that the person who is the Commissioner of State Revenue under the TA Act (the Commissioner) also serves as the registrar.

The Bill amends the SPE Act to provide that the office of the registrar of SPER is to be filled by the person who is the Commissioner from time to time.

#### Use of body-worn camera by SPER enforcement officers

It is commonplace for body-worn cameras to be used by agencies that have legislative enforcement functions. Although there is a common law right to record images or sounds, over recent years there has been a trend to legislatively clarify that it is lawful for officers of those agencies to use body-worn cameras (e.g. section 609A *Police Powers and Responsibilities Act 2000*).

The Bill amends the SPE Act to expressly provide that it is lawful for SPER enforcement officers to use body-worn cameras while exercising functions under the SPE Act. The amendment is consistent with similar provisions across Queensland legislation relating to the use of body-word cameras.

#### Prescription of enforcement costs that can be recovered from enforcement debtors

Enforcement action to seize and sell real or personal property involves SPER incurring costs payable to third party providers for the delivery of seizure and sale activities. Costs include locksmiths, towage, storage, security, insurance and costs associated with sale.

The SPE Act provides that a regulation may prescribe the enforcement costs payable for any step taken for enforcing payment of a fine, penalty or other amount under the Act. Further, if no enforcement costs are prescribed, no enforcement costs are payable.

Enforcement costs are not currently prescribed under the SPE Regulation. This means the State, instead of the individual debtor that gave rise to seizure and sale action, bears the cost of undertaking the action.

The mechanism for recovering enforcement costs under the SPE Act is also unclear. The SPE Act sets out an order in which proceeds from the sale of seized property are to be applied, with first priority being payment of enforcement costs incurred by SPER in seizing and selling the property. Ostensibly, this enables enforcement costs to be recovered from the debtor via payment from the sale proceeds.

The Bill amends the SPE Act to insert a definition of ‘enforcement costs’, which will be defined partly by reference to types of enforcement costs prescribed in the SPE Regulation. The types of enforcement costs prescribed in the SPE Regulation are:

- work of a type usually performed by a locksmith
- towing or otherwise transporting a vehicle
- impounding a vehicle
- storing or securing property
- insurance

- selling property, including any of the following:
  - engaging an agent
  - advertising
  - preparation for sale
  - commission

The new definition of ‘enforcement costs’ also includes a requirement for enforcement costs to have been reasonably incurred. The Bill also clarifies that enforcement costs are ordinarily recovered from the sale proceeds of seized property.

#### Disclosure of personal information in court orders

Court orders requiring an offender to pay a monetary penalty to a prosecuting agency or compensation or restitution to a victim of crime (third party creditor) can be registered with SPER as a debt. SPER then becomes responsible for collection of the unpaid amount and payment of that amount to the prosecuting agency or third party creditor.

Remittance advices currently provided by SPER contain details of the court order and the offence, but do not otherwise identify the debtor to whom the court order relates. Prosecuting agencies and third party creditors must contact Magistrates Court registries to identify who the debtor is, so they can reconcile the payment. This has resulted in an increased workload for Magistrates Court registries.

The Bill amends the SPE Act to enable the registrar to disclose confidential information contained in a court order registered with SPER for the purposes of remitting an amount collected under the court order to an entity entitled to the amount.

#### Appointment of SPER enforcement officers

The SPE Act contemplates that various actions, such as enforcement of an enforcement warrant issued by the registrar, are to be undertaken by SPER enforcement officers. However, the SPE Act does not expressly deal with some aspects of the management of SPER enforcement officers, such as how they are to be appointed or how such appointment may be ended.

The Bill amends the SPE Act to modernise and clarify the process for managing the appointment of SPER enforcement officers, similar to the process for appointing investigators under the TA Act. In particular, amongst other things:

- for a public service employee or a debt collector engaged by the registrar under a contractual arrangement (contracted debt collector) to be appointed as a SPER enforcement officer, the registrar must be satisfied that the person is of good character and otherwise suitable for appointment;
- for a SPER enforcement officer who is a sheriff, deputy sheriff or bailiff of a court (court official) or a contracted debt collector, the person’s appointment as a SPER enforcement officer will end if (amongst other things) the person ceases to be a court official or a contracted debt collector; and

- a SPER enforcement officer who is a contracted debt collector cannot resign as a SPER enforcement officer if holding such office is a condition of the contract under which the contracted debt collector is engaged by the registrar.

### ***LT Act Amendments***

The LT Act imposes land tax, as at midnight 30 June each year. Different tax-free thresholds and rates apply depending on the type of owner. Individuals, excluding absentees, are generally assessed for land tax at lower rates and subject to a higher tax-free threshold compared to absentees, companies and trustees.

However, certain trustees are assessed for land tax at the threshold and rates that apply to individuals. This beneficial treatment is currently limited to trustees for bankrupt persons and trustees for incapacitated persons whose estate is being managed by the Public Trustee. It is not currently available to the trustee of a SDT.

SDTs are established under Commonwealth law to provide for the care and accommodation needs of profoundly disabled beneficiaries. SDTs attract a number of benefits under Commonwealth and State revenue law to further their primary purpose.

While a land tax exemption is available to all trustees, including SDTs, for land that is used as the home of all beneficiaries of the trust, SDT land that is not used as the home of the beneficiary is taxed at higher rates that apply to trustees generally.

The LT Act will be amended to ensure that trustees of SDTs are subject to the higher tax-free threshold and lower land tax rates that apply to individuals, consistent with the treatment of trustees of trusts for bankrupt persons and certain incapacitated persons.

### ***Reforms of the funding model of the Residential Tenancies Authority***

In relation to the RTRA Act, to achieve its objectives, the Bill will provide for a transparent and stable funding model for the Authority and ensure the security of rental bonds held.

The Bill also will include a statutory guarantee on the payment of rental bond moneys to provide greater protection to rental bonds held on behalf of Queensland tenants.

The Bill will not impact the Authority's operations, powers or functions and no jobs will be lost due to the reforms.

### ***Modernisation of SPE Act and TA Act confidentiality provisions***

Under both the SPE Act and the TA Act it is generally an offence for officials under those Acts to disclose confidential information acquired in their official capacity. However, both the SPE Act and the TA Act permit the disclosure of personal confidential information in specific limited circumstances.

Relevantly, the SPE Act permits disclosure of confidential information (including personal information) to an officer of the Department (or Minister) only for developing or monitoring policies for, or for the operation of, the SPE Act and for writing off losses under the *Financial Accountability Act 2009* (FA Act). Similarly, the TA Act permits disclosure of personal

confidential information to an officer of the department (or Treasurer) only for developing or monitoring public revenue policies or for writing off losses under the FA Act.

The strict limitations on disclosure in the SPE Act and TA Act prevents appropriate use of information, including for the purposes of forecasting revenue and accounting to the Parliament.

The SPE Act and TA Act will be amended in line with other laws to permit personal confidential information to be disclosed to an officer of the department or responsible Minister if the disclosure is permitted under a law. Other laws will continue to apply, including the *Information Privacy Act 2009* (IP Act).

## **Alternative ways of achieving policy objectives**

The policy objectives of the Bill can only be achieved by legislative amendment.

## **Estimated cost for government implementation**

Implementation costs for the SPER-related amendments will be met within existing allocations.

No implementation costs are anticipated in relation to the amendments to the LT Act as they can be implemented within the existing land tax administration framework.

In relation to the amendments to the RTRA Act, no material implementation costs are anticipated. The amendments change the mechanism of how the Authority is funded for its operations and will not lead to additional costs to government.

There are no costs associated with implementation of the amendments to modernise the SPE Act and TA Act confidentiality provisions.

## **Consistency with fundamental legislative principles**

The Bill is generally consistent with fundamental legislative principles (FLPs). Potential fundamental legislative principle issues are discussed below.

### *Service of infringement notices for relevant offences*

The prescription of the registrar as the authorised person for service of infringement notices for the relevant offences raises potential FLP issues relating to whether the relevant provisions have sufficient regard to rights and liberties of individuals (*Legislative Standards Act 1992* (LS Act), section 4(2)(a)).

Other than the identity of who is legislatively prescribed to serve an infringement notice, this measure does not involve changing any aspect of any of the relevant offences such as the scope of the offence, any available defences, or the penalty for committing the offence.

It is therefore considered that this measure does not involve any greater impact on an individual's rights than currently exists. Further, there are review mechanisms, including



proceedings in the Magistrates Court, potentially available to a person who disagrees with a fine served by the registrar.

### ***Use of body-worn cameras***

The Bill expressly authorises the use of body-worn cameras by SPER enforcement officers when exercising a function under the SPE Act. This raises potential FLP issues relating to whether the Bill has sufficient regard to rights and liberties of individuals (LS Act, section 4(2)(a)).

It is considered that the potential impact on an individual's right to privacy of the legislative authorisation of the use of body-worn cameras by SPER enforcement officers is outweighed by the public interest, as body-worn cameras may (amongst other things):

- reduce conflict between SPER enforcement officers and debtors;
- provide a record of verbal orders and directions given by SPER enforcement officers; and
- enhance accountability of SPER enforcement officers.

As body-worn cameras will typically be operated by SPER enforcement officers when exercising functions under the SPE Act against debtors who are subject to escalated enforcement action (e.g. debtors who wilfully do not comply with their obligations), the practical use will be limited. Any recording of general members of the public will be inadvertent or incidental.

The SPE Act also contains safeguards relating to the use and disclosure of confidential information (which includes camera footage). Specifically, section 134H SPE Act makes it an offence for an official (which includes a SPER enforcement officer) to disclose confidential information. SPER is also bound by the IP Act and the information privacy principles contained in that Act.

Further, SPER currently has guidelines and procedures relating to the use of body-worn cameras and storage and use of footage, which will be reviewed following passage of the Bill.

### ***Recovery of enforcement costs***

The Bill amends the SPE Regulation to prescribe certain types of costs incurred by SPER in connection with enforcement action that may be recovered from a debtor. This raises potential FLP issues relating to whether the Bill has sufficient regard to rights and liberties of individuals (LS Act, section 4(2)(a)) and whether there is an appropriate delegation of legislative power (LS Act, section 4(4)(a)).

Although the SPE Act currently contemplates that prescribed enforcement costs payable for steps taken to seize and sell property under an enforcement warrant may be recovered, no such costs are currently prescribed. The prescription of costs in the Bill ensures that where the registrar takes such enforcement action against a particular enforcement debtor, those costs are ultimately borne by the enforcement debtor rather than the State.

While debtors may be adversely affected by recovery of enforcement costs, such recovery arises under the existing enforcement framework which provides for the seizure and sale of

property. Seizure and sale action is only undertaken in relation to high value debtors who wilfully do not comply with their payment obligations despite being given multiple opportunities to do so. The ability to recover the specified enforcement costs is considered to be proportional to the expense and effort associated with enforcing the obligations of such debtors.

The existing enforcement framework under the SPE Act also contains various safeguards to ensure vulnerable debtors (such as debtors experiencing financial hardship, mental illness, cognitive or intellectual disability, homelessness, substance abuse disorder, and domestic and family violence) are not adversely impacted by or subject to escalated enforcement action. For example, the SPE Act provides for debts to be paid by instalments and the ability to discharge debts via work and development orders.

In relation to seizure and sale action specifically, the SPE Act contains various safeguards. For example, under section 69 SPE Act, enforcement warrants to seize and sell property can be made on the condition that the warrant must not be enforced until certain steps are taken to attempt to recover the debt from the debtor (which involve negotiation with the debtor). Section 73C SPE Act also requires consideration of minimising hardship to the SPER debtor and other persons, in deciding the order to seize and sell property.

As a further safeguard, the amendment specifically requires enforcement costs to have been reasonably incurred.

#### ***Disclosure of personal information in relation to court orders***

The Bill permits disclosure of personal information of a SPER debtor contained in a court order that has been registered with SPER to an entity, for the purposes of remitting an amount collected under the court order to the entity. This raises potential FLP issues relating to whether the relevant provisions have sufficient regard to rights and liberties of individuals (LS Act, section 4(2)(a)).

Disclosure of personal information may impact an individual's privacy. However, the information proposed to be disclosed would be information that is contained in a court order, which can be publicly accessed.

Additionally, the information will only be disclosed to an entity that is entitled to the amount collected under a court order (i.e. prosecuting agency or third party creditor). The Bill also limits the type of information that can be disclosed to 'identifying information', which is information necessary to identify the person against whom the court order was made. Practically, the identifying information to be disclosed would be the debtor's name.

The SPE Act also provides a safeguard as unauthorised disclosure of confidential information is an offence under section 134H. The IP Act and the information privacy principles contained in that Act also restrict the disclosure of a SPER debtor's personal information.

#### ***Appointment of SPER enforcement officers***

This amendment raises potential FLP issues relating to:

- whether the relevant provisions have sufficient regard to rights and liberties of individuals generally (LS Act, section 4(2)(a)); and
- in particular, whether the provisions:
  - make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review (LS Act, section 4(3)(a)); and
  - are consistent with the principles of natural justice (LS Act, section 4(3)(b)).

Given the range of powers conferred upon a SPER enforcement officer by the SPE Act (which are not being changed by the Bill), it is imperative that only appropriate persons are able to hold such office, and only for so long as is necessary.

The holding of office as a SPER enforcement officer by a public service employee or a contracted debt collector is subject to the registrar's assessment of whether the person is a suitable person for appointment. Although the registrar has power to determine the matters relevant to that assessment (in addition to the person being of good character), it is considered that the nature of a SPER enforcement officer's powers and functions are such that the registrar should not be confined to an exhaustive legislated list of matters.

Decisions of the registrar in relation to a person's holding office as a SPER enforcement officer are not excluded from review under any applicable review frameworks such as the *Public Service Act 2008* (PS Act) or the *Judicial Review Act 1991*.

For a person who is a SPER enforcement officer immediately before commencement, the person's appointment continues for up to 30 days post-commencement. The intention is that, within that 30-day window, the registrar will, if considered appropriate, appoint that person as a SPER enforcement officer under the new framework. Accordingly, the Bill will not adversely affect rights and liberties, or impose obligations, retrospectively (LS Act, section 4(3)(g)) – that is, existing SPER enforcement officers will become subject to the new framework by being explicitly appointed under that framework.

### ***Delegation by the registrar***

The SPE Act currently provides that the powers of an administering authority under the SPE Act may be delegated by the chief executive of the administering authority to an appropriately qualified person. As the registrar is an individual (and therefore does not have a chief executive), the Bill amends the SPE Act to allow an administering authority's powers to be delegated by the administering authority itself or by the chief executive of the administering authority (the administering authority amendment).

Further, the SPE Act currently provides that the registrar may delegate the registrar's powers under the SPE Act to an appropriately qualified person. The Bill amends the SPE Act to extend the registrar's power of delegation to any powers of the registrar under another Act (the other Act amendment).

These amendments raise potential FLP issues relating to whether these provisions allow the delegation of administrative power only in appropriate cases and to appropriate persons (LS Act, section 4(3)(c)).

The administering authority amendment is purely of a technical nature to facilitate the registrar delegating the registrar's powers as an administering authority, just as the powers of administering authorities can currently be delegated under the SPE Act. Importantly, this amendment does not change the limitations on the class of persons to whom an administering authority's power may be delegated (i.e. an appropriately qualified person).

There are currently no Acts (apart from the SPE Act) under which the registrar has powers to which the other Act amendment would apply. That amendment is to facilitate the delegation of the power to be given by the Bill to the registrar under section 208AA of the Traffic Regulation from 30 November 2022 (when the registrar becomes responsible for issuing infringement notices in respect of the distracted driver offences). Such power will only be able to be delegated by the registrar to appropriately qualified persons, and such delegates will receive training in relation to the appropriate exercise of the delegated power.

### ***Disclosure by the registrar for enforcement purposes***

This amendment raises potential FLP issues relating to whether the provision has sufficient regard to rights and liberties of individuals generally (LS Act, section 4(2)(a)).

The disclosure of personal information may impact an individual's privacy. However, the information proposed to be disclosed would be information that is necessary for the enforcement of the offence by the legislative administrator. If the registrar could not disclose such information, the legislative administrator would potentially be unaware of the offence (particularly where the registrar is also the authorised person for service of the infringement notice for the offence) and would be unable to commence proceedings.

Further, if an alleged offender made an election to the registrar to have the matter of the offence decided in a Magistrates Court, there would be implied consent to the disclosure of relevant information to the legislative administrator to allow the legislative administrator to commence such proceedings.

As noted above, the SPE Act provides a safeguard as unauthorised disclosure of confidential information is an offence under section 134H. The IP Act and the information privacy principles contained in that Act also restrict the disclosure of an alleged offender's personal information by the registrar.

### ***Modernisation of the SPE Act and TA Act confidentiality provisions***

The proposed amendments will, to a limited extent, expand the provisions dealing with permitted disclosures under the TA Act and the SPE Act.

These amendments may be seen to infringe the fundamental legislative principle that legislation should have sufficient regard to rights and liberties of individuals including an individual's right to privacy. However, the amendments are considered to have sufficient regard to the rights and liberties of individuals for the reasons below.

The amendments are intended to address an inconsistency between the existing SPE Act and TA Act confidentiality provisions and other Queensland laws and will facilitate use of

information for lawful purposes, including forecasting revenue and accounting to the Parliament.

The proposed amendments are limited in that they permit disclosure only to an officer of the department, or relevant Minister, and only to the extent that such disclosures are already legally permitted outside of the SPE Act and TA Act. Other laws will continue to apply, including the IP Act.

## **Consultation**

Community consultation was not undertaken in relation to the SPER-related amendments. Consultation was not considered necessary or appropriate as the amendments are necessary to ensure the continued effective operation and administration of SPER and QRO.

Community consultation was not undertaken in relation to the LT Act amendments. However, the amendments address issues raised by stakeholders in relation to the land tax treatment of SDTs.

Community consultation was not undertaken in relation to the RTRA Act amendments. Consultation was not considered necessary due to the mechanical nature of the amendments. Internal to government consultation was undertaken with State Government departments and the Authority. Feedback received has been incorporated into the drafting of these amendments.

Consultation was not undertaken on the amendments to modernise the SPE Act and TA Act confidentiality provisions as they are intended to address an inconsistency with a longstanding legal principle.

## **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.

## Notes on provisions

### Part 1 Preliminary

*Clause 1* provides that the Bill, when enacted, may be cited as the *State Penalties Enforcement (Modernisation) Amendment Act 2022* (SPEMA Act).

*Clause 2* provides that part 2 commences on 30 June 2022, part 3 and part 6, division 3 commence on 1 July 2022 and part 6, division 4 and part 8 commence on 30 November 2022. Further, sections 38 and 39 of the SPEMA Act will commence on the day of commencement of the relevant provision of the SPEA Act being amended by those sections.

### Part 2 Amendment of Land Tax Act 2010

*Clause 3* provides that the part amends the *Land Tax Act 2010*.

*Clause 4* amends section 33 to replace subsection (1) to include an additional paragraph. Section 33 currently provides that certain categories of trustee must be assessed for land tax at the rates which apply to individuals other than absentees in schedule 1, rather than the higher rates which generally apply to trustees in schedule 2.

New paragraph (c) provides that a trustee of a Special Disability Trust under the *Social Security Act 1991* (Cwlth) or the *Veterans' Entitlements Act 1986* (Cwlth) is an additional type of trustee to which section 33 applies. Special Disability Trusts are particular trusts created under Commonwealth law whose beneficiary will always be an individual.

### Part 3 Amendment of Residential Tenancies and Rooming Accommodation Act 2008

*Clause 5* provides that the part amends the *Residential Tenancies and Rooming Accommodation Act 2008*.

*Clause 6* provides that the Residential Tenancies Authority (Authority) will no longer make investments from the rental bond account held by the Authority or earn any interest on the account. Only the State will be entitled to any amount earned from the rental bond account. Instead of relying on investment returns, the Authority will be provided administered grant funding from the consolidated fund.

*Clause 7* replaces the heading of Chapter 2, part 3, division 5 from 'Accounts and investments' to 'Rental bond account'.

*Clause 8* omits sections 149 and 150, and inserts a new section 150, requiring the Authority to keep a rental bond account which may consist of two or more bank accounts. The Authority can maintain other bank accounts as permitted by this Act or another Act.

*Clause 9* expands the definition of 'unclaimed amount' which the Authority can utilise for the purposes allowed under subsection 151(3) with the Minister's agreement.

At present, ‘unclaimed amount’ relates to refunds that are paid by cheques and remained unclaimed for 7 years. This clause expands the definition of ‘unclaimed amount’ to also include refunds that are paid by or attempted to be paid by electronic fund transfer and remained unclaimed for 7 years. No change is proposed to the purposes for which the unclaimed amount can be used.

*Clause 10* removes the legislative requirement to maintain a rental bond interest bank account by the Authority. However, the Authority may keep the current rental bond interest bank account although there is no obligation to do so anymore.

*Clause 11* replaces the current section 153 and inserts a new section 153 providing a Treasurer’s guarantee for rental bonds. If for any reason, the amount available in the rental bond account is less than the rental bond liability, the Treasurer will pay the deficit out of the consolidated fund. The amount payable is appropriated from the consolidated fund.

*Clause 12* inserts a new section 482A providing the Treasurer with the power to direct the Authority regarding the banking arrangements for the rental bond account.

The intention is that the Treasurer will require the Authority to keep the rental bond account as part of the government set-off facility (currently known as Group Limit Facility) within the whole of Government banking arrangements. At present, the whole of Government transactional banking and payment services arrangements are provided for under a contract between a service provider (the Commonwealth Bank) and the State through Queensland Treasury. As a statutory body, the Authority is not an agency for the purposes of the banking contract but may be declared as an agency. On 29 January 2018, the Authority was declared as an agency for the purposes of the banking contract. The rental bond account is currently sitting within the Group Deposit Facility where the Authority is receiving interest on the balance. The expectation is that the Treasurer will direct the Authority to transfer the rental bond account to the Group Limit Facility (noting that the Authority will no longer be entitled to earn any interest on the rental bond account).

Note that the whole of Government banking contract is reviewed and renewed regularly (every three years or so) and the service provider and the banking services available may change over time. As such, the Act does not define the whole of government banking arrangements but establishes a power for the Treasurer to direct the Authority in relation to the rental bond account banking arrangements, which may include a direction to keep the rental bond account within the contemporary whole of government banking arrangements.

The Treasurer’s direction power is limited to the rental bond account and its banking arrangements. The direction power does not extend to any other bank account or matter, and does not extend to the funds available within the rental bond account.

The clause also requires that the Authority must comply with the Treasurer’s direction. If the Authority complies with the Treasurer’s direction, the Authority (its Board and the Chief Executive Officer) will have met its fiduciary duties.

*Clause 13* inserts a transitional provision.

Section 572 allows the Authority to keep the rental bond interest account if they want to do so.

Section 573 creates an obligation for the Authority to transfer the market value of investment made from the rental bond account (invested with QIC Limited and Queensland Treasury Corporation) into the rental bond account.

Section 574 ensures that once the transfer of the market value into the rental bond account is completed, the funds available are sufficient to cover the Authority's total rental bond liability. If there is any deficiency, the Treasurer will (from the consolidated fund) pay the difference into the rental bond account. The amount payable is appropriated from the consolidated fund. However, if there is any surplus then the Authority will transfer the surplus into their operating bank account.

*Clause 14* amends some definitions in the dictionary.

## **Part 4 Amendment of State Penalties Enforcement Act 1999**

*Clause 15* provides that the part amends the *State Penalties Enforcement Act 1999*.

*Clause 16* inserts a new section 9A to establish the office of the registrar of SPER, provide that that office is held by the person holding office as Commissioner, and provide that the registrar has the functions and powers given under the SPE Act or another Act.

Currently, the office of the registrar of SPER is established by section 10, and that section provides that the registrar is to be employed under the PS Act. As section 7 of the TA Act provides that the Commissioner is to be employed under the PS Act, and section 9A provides that the person holding that office also holds office as the registrar, it is no longer necessary for the SPE Act to expressly require the registrar to be employed under the PS Act.

*Clause 17* replaces section 10. The replacement omits the current references in section 10 to the office of the registrar being formed and the registrar being employed under the PS Act, due to those matters now being dealt with by new section 9A.

The replacement section 10 also changes the registrar's current ability to engage a debt collector under a contract as an enforcement officer. Although the registrar can still engage a debt collector under a contract, the debt collector's appointment as an enforcement officer is to be managed under new part 9, division 2A (rather than directly under the contract).

Consistent with the current section 10, the replacement section 10 provides that staff of SPER are to be employed under the PS Act, and that the registrar may engage persons under a contract to assist the registrar in the administration and enforcement of the SPE Act (with such persons being engaged under the SPE Act, not the PS Act).

*Clause 18* amends section 10A to update a reference.

*Clause 19* renumbers sections 11A and 11B and relocates them to the new part 9, division 2A.

*Clause 20* amends section 13(4) to refer to a prosecution for the offence being started, rather than an administering authority starting a prosecution. This is to reflect that, for a given infringement notice offence, an entity other than the administering authority (such as the department or other agency responsible for administration of the legislation in which the infringement notice offence is contained) may potentially start a prosecution.



*Clause 21* amends section 32(2) to remove the specific reference to a proceeding in a court being started by the administering authority.

*Clause 22* amends section 33 to enable the earlier registration of default certificates with SPER. New section 33(10) provides for a ‘final day’ on which a default certificate must be given to SPER for registration, which is either the latest day on which a prosecution for the offence may be started, or an earlier day prescribed by regulation to be the final day. However, new section 33(6) allows for a ‘due day’ for the registration of a default certificate that is earlier than the final day, to be prescribed by regulation. New section 33(6) also allows for a default certificate to be given to SPER after the prescribed due day, subject to payment of a prescribed late lodgement fee by the administering authority. The default certificate will still need to be given to SPER by the final day under section 33(10)(a) or (b).

The clause also makes consequential and renumbering amendments to section 33.

*Clause 23* amends section 35(2)(a) to refer to the registration fee under section 33(3) (as renumbered by the SPEMA Act).

*Clause 24* amends section 57 to provide that, where an administering authority is notified of the cancellation of an enforcement order by the registrar, the administering authority may either accept payment of the fine in full as stated in the infringement notice for the offence or issue a fresh infringement notice for the offence. If the administering authority takes neither of these actions, a proceeding may be started against the applicant for the offence. This is consistent with other amendments being made by the SPEMA Act to reflect that an entity other than the administering authority may potentially start proceedings.

*Clause 25* amends section 73D to replace ‘costs of enforcement’ with ‘enforcement costs’ as a consequence of the amendment to section 149 of the SPE Act, which inserts a definition of ‘enforcement costs’.

*Clause 26* amends section 73E to replace the existing subsection (2) with a new subsection (2), as a consequence of the amendment to section 149 of the SPE Act which inserts a definition of ‘enforcement costs’.

*Clause 27* amends section 114 to replace the cross-reference to section 11A(1) with new section 159G(1).

*Clause 28* inserts a new section 117A to expressly provide that it is lawful for an enforcement officer to use a body-worn camera to record images or sounds while the officer is performing the officer’s functions under the SPE Act.

*Clause 29* amends section 134L to replace paragraph (e) of subsection (1). New paragraph (e) contains an additional subparagraph that allows the registrar to disclose confidential information that includes personal information to the Minister or an officer of the department if the disclosure is permitted under a law.

Section 134L is also amended to provide that, where the registrar is the administering authority for an infringement notice offence, the registrar may disclose confidential information that includes personal information to the department or other agency in which the legislative

provision containing the offence is administered, for the purpose of the enforcement of the offence. In this context, ‘enforcement of the offence’ has the meaning given by section 134K(6), which includes prosecuting the offence or applying to a court for a civil penalty or other order for the offence.

*Clause 30* inserts a new section 134LA to enable the registrar to disclose identifying information when remitting an amount collected by SPER under a court order to an entity entitled to the amount. Identifying information refers to the particulars that are registered under section 34 of the SPE Act, that are necessary to identify the person against whom the court order is made.

*Clause 31* replaces existing section 149 with a new section to define ‘enforcement costs’. An enforcement cost is a cost that is reasonably incurred by SPER in taking a step for the purpose of enforcing payment of a fine, penalty or another amount under the SPE Act, and is of a type prescribed by regulation.

*Clause 32* inserts a new part 9, division 2A in relation to the appointment of enforcement officers. Although the SPE Act currently contemplates the existence of enforcement officers, it does not contain express provisions dealing with process by which a person becomes, or ceases to be, an enforcement officer.

New section 159B provides that part 9, division 2A provides for the appointment of enforcement officers, and that such officers have particular powers under part 5.

New section 159C provides that the registrar may, by instrument in writing, appoint various persons as enforcement officers. A person who is a public service employee or a contracted debt collector (being a debt collector engaged under a contract under new section 10(2)) may only be appointed if the person is appropriately qualified and if the registrar is satisfied that the person is of good character and otherwise suitable for appointment.

New section 159D provides that an enforcement officer holds office on any conditions stated in the officer’s instrument of appointment, a notice signed by the registrar and given to the officer, or a regulation, and that an officer’s powers may be limited by such instrument, notice or regulation.

New section 159E provides that a person’s holding of the office of an enforcement officer ends in certain circumstances, including where the term of office stated in a condition of office ends or when the officer’s resignation under new section 159F takes effect. The list of circumstances in new section 159E(1) does not limit the ways in which a person’s holding of the office of an enforcement officer ends.

New section 159F provides that an enforcement officer may resign from office by signed notice given to the registrar. For an enforcement officer who is a contracted debt collector, the officer cannot resign from the office of enforcement officer if holding such office is a condition of the contract under which the contracted debt collector is engaged by the registrar.

*Clause 33* replaces section 160. New section 160 provides that an administering authority’s functions and powers under the SPE Act or another Act may be delegated by the administering authority, or the chief executive of the administering authority, to an appropriately qualified person. This amendment is necessary to support the registrar delegating the registrar’s

functions and powers as administering authority under the SPE Act (as the registrar does not have a chief executive) and the TORUM Act.

Importantly, this delegation power relates only to the registrar's functions and powers as an administering authority. Delegation of the registrar's functions and powers as an authorised person or as the registrar of SPER is governed by section 161 (as replaced by the SPEMA Act).

Clause 33 also replaces section 161. New section 161 provides that the registrar may delegate the functions and powers of the registrar, or of SPER, under the SPE Act or another Act to an appropriately qualified person. Although the registrar currently has the ability to delegate the functions and powers of the registrar or of SPER under the SPE Act, this amendment is necessary to support the delegation of the registrar's functions and powers under the Traffic Regulation.

New section 161 also expressly states that the registrar may delegate to a bailiff the registrar's power under new section 159C to appoint a contracted debt collector as an enforcement officer. This amendment is necessary because of changes made by the SPEMA Act to the way in which a person becomes an enforcement officer.

New section 161 further provides that if the registrar is an authorised person for an infringement notice, the registrar may delegate the registrar's functions and powers as an authorised person to an appropriately qualified person. This amendment is necessary to support the prescription of the registrar as an authorised person for particular infringement notice offences.

*Clause 34* amends section 165 to clarify that a regulation may prescribe particular matters in relation to an infringement notice or infringement notice offence.

*Clause 35* inserts a new section 166 to provide that the registrar may be prescribed as an administering authority for an infringement notice or infringement notice offence, or as a person who may serve an infringement notice for an infringement notice offence.

New section 166(1) also provides that, unless the context otherwise requires, a reference in the SPE Act to the registrar is a reference to the registrar in that capacity, and does not include the registrar in the registrar's capacity as an authorised person or an administering authority. In particular, despite section 163, the registrar in the registrar's capacity as an administering authority for a particular infringement notice offence is able to approve infringement notices pursuant to section 162 for the offence.

New section 166(2) provides that, in relation to an infringement notice or infringement notice offence for which the registrar is the administering authority, the SPE Act applies to the registrar in the capacity of registrar and in the capacity of administering authority with all necessary changes. In particular, certain requirements of the SPE Act in relation to interactions between an administering authority and the registrar (in the capacity of registrar), such as an administering authority giving a notice of withdrawal of an infringement notice under section 28(2)(c), are modified or are stated to not apply.

*Clause 36* inserts a new part 10, division 9 which provides a number of transitional provisions for the SPEMA Act.

New section 196 deals with the application of the new part 9, division 2A to a person who was an enforcement officer immediately before commencement, and provides that such a person continues to be an enforcement officer as if the person had been appointed under new section 159C for up to 30 days from commencement. That transitional period will be shorter if, before the end of 30 days from commencement, the person is appointed as an enforcement officer under new section 159C, the registrar ends the person's deemed appointment by written notice, or the person resigns as an enforcement officer.

New section 197 deals with the continued operation of the form of the infringement notice where the administering authority prescribed in respect of a particular infringement notice offence is changed by the SPEMA Act. This provision addresses the situation where it is not practicable to change the infringement notice immediately upon the replacement of the administering authority (for example, due to information technology systems limitations), and ensures that pending such change, an alleged offender may rely on the information contained in the infringement notice and that the validity of the notice is not affected by the notice not referring to the new administering authority.

In particular, new section 197 provides that the approved form for the infringement notice that was in effect immediately before the commencement of the change (i.e. a form approved by the former administering authority) continues to be the approved form for the infringement notice from the commencement of the change until a new form approved by the new administering authority under section 162(a) takes effect. Such notice will not contravene section 15 (which specifies the information that must be contained in an infringement notice) only because it refers to the former administering authority rather than the new administering authority. Further, a person who does a thing in the way stated in the notice in relation to the former administering authority is taken to have done that thing in relation to the new administering authority – for example, if a person pays a fine to the former administering authority in accordance with the instructions in the notice, the person is taken to have paid the fine to the new administering authority.

*Clause 37* amends the dictionary in schedule 2 to remove redundant definitions and insert or amend other definitions as a result of the SPEMA Act.

*Clause 38* amends new section 134LA to reflect changes which will be made to the SPE Act upon commencement of section 25 SPEA Act.

*Clause 39* amends new section 166 to reflect changes which will be made to the SPE Act upon commencement of section 37 SPE Act.

## **Part 5 Amendment of State Penalties Enforcement Amendment Act 2017**

*Clause 40* provides that the part amends the *State Penalties Enforcement Amendment Act 2017*.

*Clause 41* amends section 25 so that section 34(2) SPE Act (as would be inserted upon commencement of section 25) replicates the amendments being made to current section 33 by the SPEMA Act.

*Clause 42* amends section 37 so that section 60(2) SPE Act (as would be inserted upon commencement of section 37) reflects that an entity other than the administering authority may potentially start a proceeding for an offence if the administering authority withdraws an infringement notice.

## **Part 6 Amendment of State Penalties Enforcement Regulation 2014**

*Clause 43* provides that the part amends the *State Penalties Enforcement Regulation 2014*.

*Clause 44* amends section 5(1) to replace references to ‘department or agency’ with ‘entity’. This amendment is necessary to support the prescription of the registrar as an administering authority for particular infringement notice offences, as the registrar is neither a department nor an agency.

*Clause 45* omits section 12(4), as a definition of ‘camera-detected offence’ is located in schedule 2 (as amended) because the term is also used in schedule 1 (as amended).

*Clause 46* inserts new section 29A to prescribe the types of enforcement costs for the definition of ‘enforcement costs’ under new section 149 SPE Act.

*Clause 47* amends schedule 2 to include a definition of ‘camera-detected offence’

*Clause 48* omits section 5(2) (which effectively provides that DTMR is the administering authority for an infringement notice offence against a provision of the Heavy Vehicle National Law (Queensland) or a national regulation under it, or an infringement notice about the offence) from 1 July 2022. This is necessary to support the prescription of the registrar as the administering authority for those offences from that date.

*Clause 49* amends the heading of part 7, and effectively moves section 30 into a new part 7, division 1.

*Clause 50* inserts a new part 7, division 2, which provides a transitional provision for the SPEMA Act. New section 31 applies where the SPEMA Act changes the administering authority in respect of a particular infringement notice or offence, and an infringement notice is served on a person by the administering authority prescribed prior to the change (the first entity). In such a case, the person may engage in certain actions described in the notice with either the first entity or the replacement administering authority (the second entity). For example, where the infringement notice states that the person may pay a fine to the first entity, the person may pay the fine to either the first entity or the second entity, but is not required to pay it to both.

*Clause 51* amends schedule 1 from 1 July 2022 to prescribe the registrar as an authorised person and/or an administering authority for particular infringement notice offences or an infringement notice about the offence.

*Clause 52* amends schedule 1 in relation to the *Transport Operations (Road Use Management – Road Rules) Regulation 2009* from 30 November 2022, to prescribe the registrar as the authorised person in respect of an offence against sections 264, 264A or 300 of that regulation that is a camera-detected offence, and the administering authority for an

infringement notice offence that is an offence against those sections (other than if the infringement notice for the offence is served by an employee of a local government).

## **Part 7 Amendment of Taxation Administration Act 2001**

*Clause 53* provides that the part amends the *Taxation Administration Act 2001*.

*Clause 54* amends section 111 to replace paragraph (f) of subsection (2). New paragraph (f) contains an additional subparagraph that allows the Commissioner to disclose personal confidential information to the Treasurer or an officer of the department if the disclosure is permitted under a law.

## **Part 8 Amendment of Traffic Regulation 1962**

*Clause 55* provides that the part amends the *Traffic Regulation 1962*.

*Clause 56* amends section 208AA from 30 November 2022 to provide that, for the purpose of issuing an infringement notice for particular offences, an image or video made by the digital driver behaviour system is accepted as having detected the offence if an authorised officer or the registrar has viewed the image or video and reasonably believes the image or video has detected the offence. This is to facilitate the registrar being prescribed as an authorised person in respect of the distracted driver offences. A definition of 'SPER registrar' is also included.

## **Part 9 Amendment of Transport Operations (Road Use Management) Act 1995**

*Clause 57* provides that the part amends the *Transport Operations (Road Use Management) Act 1995*. The amendments in this part are to facilitate the registrar being prescribed as an administering authority in respect of the camera-detected offences from 30 November 2022, and commence on that date.

*Clause 58* amends section 52 to include the SPEA administering authority in the list of officials to whom a person must not state anything that the person knows is false or misleading in a material particular. The 'SPEA administering authority' is defined in schedule 4 (as amended).

*Clause 59* amends section 53 to include the SPEA administering authority in the list of officials to whom a person must not give a document containing information that the person knows is false or misleading in a material particular.

*Clause 60* amends section 114 to include the SPEA administering authority in the list of persons to whom notification may be given in respect of certain matters, and to whom an online declaration system may send a notification of matters entered into the system.

*Clause 61* amends section 116 to include the SPEA administering authority in the list of persons who may potentially be referred to in a notice, complaint or summons served on a person for a camera-detected offence.

*Clause 62* amends the dictionary in schedule 4 to include a definition of ‘SPEA administering authority’ as being, for a camera-detected offence, the administering authority under the SPE Act for the offence.