

# State Penalties Enforcement (Hardship and Safeguards) Amendment Regulation 2018

Explanatory notes for SL 2018 No. 52

made under the

*State Penalties Enforcement Act 1999*

## General Outline

### Short title

*State Penalties Enforcement (Hardship and Safeguards) Amendment Regulation 2018*

### Authorising law

Sections 32G, 32H, 102, 103C, 150AA, 158 and 165 of the *State Penalties Enforcement Act 1999*

### Policy objectives and the reasons for them

The *State Penalties Enforcement Amendment Act 2017* (the Amendment Act) supports the implementation of a new service delivery model for the State Penalties Enforcement Registry (SPER) to modernise the management of penalty debts in Queensland. The provisions of the Amendment Act facilitate this new model by amending the *State Penalties Enforcement Act 1999* (the Act) to provide improved non-monetary debt finalisation options for people experiencing hardship by replacing fine option orders with work and development orders, enabling case management of debtors by SPER, establishing fairer and more consistent fee arrangements, and improving SPER's enforcement functions.

On 19 May 2017, the Amendment Act received assent. While the majority of the provisions of the Amendment Act commence by proclamation, a small number of provisions commenced on assent. These provisions primarily provide for the modernisation of the Act and improved enforcement functions, as well as a head of power for the Registrar of SPER to waive or return SPER fees. Further provisions of the Amendment Act, which deliver improved non-monetary debt finalisation options for people experiencing hardship through the introduction of work and development orders, commenced by proclamation on 4 December 2017.

Several of the Amendment Act provisions that have commenced amended the Act to provide that certain details be prescribed by regulation. Such details include the meaning of specific terms mentioned in the provisions that support the operation of work and

development orders, the circumstances in which the Registrar of SPER may waive or return fees and the amount in a person's bank account that is protected from garnishments to pay a person's SPER debt. Prescribing these details is required for the commenced amendments to the Act to be effectively used by SPER.

The *State Penalties Enforcement (Hardship and Safeguards) Amendment Regulation 2018* (the Amendment Regulation) amends the *State Penalties Enforcement Regulation 2014* (the Regulation) to prescribe the details that are required to facilitate use of the commenced provisions of the Amendment Act. Specifically, the Amendment Regulation will:

- prescribe details required to support the operation of work and development orders under the Act, including the amount of a person's debt that is satisfied by undertaking certain activities;
- provide safeguards for debtors, to prevent them being inadvertently placed in financial hardship when their bank account is garnished under a fine collection notice to help pay their SPER debt;
- facilitate the waiver or return of fees payable by a debtor under the Act in certain circumstances to enable SPER to more appropriately respond to debtors experiencing hardship;
- facilitate the service of all documents issued under the Act to postal and unique electronic addresses to maximise the likelihood of documents being received by debtors in a timely manner and opportunities for early compliance; and
- make consequential amendments required because of the commencement of various provisions of the Amendment Act.

## **Achievement of policy objectives**

The Amendment Regulation will achieve its objectives by amending the Regulation to:

- define the meaning of specific terms used in the provisions of the Act relating to work and development orders including remote area, mental illness and substance use disorder;
- outline the supporting evidence that an approved sponsor is required to consider as part of an eligibility assessment for a person who is unable to pay their SPER debt because the person has a substance use disorder;
- provide details of the activities that may be undertaken under a work and development order, such as unpaid work, medical treatment, courses and programs, including any restrictions that apply to these activities and the amount by which particular activities satisfy SPER debts;
- specify the minimum amount that must be retained in a debtor's account and the maximum administrative charge that can be imposed when a financial institution makes a deduction under a fine collection notice issued by SPER for the redirection of monies held in a debtor's financial institution account;
- identify specific circumstances in which the registrar of SPER may waive or return fees payable by a debtor, such as when a debtor has incurred a SPER fee because they were unable to pay an infringement notice fine due to financial hardship;
- expressly authorise that all documents issued under the Act may be served to postal addresses; and
- update the references to sections of the Act which were altered as the result of the commencement of provisions of the Amendment Act.

## **Consistency with policy objectives of authorising law**

The Amendment Regulation is consistent with the policy objects of the Act, which contemplates the making of regulations to prescribe details in relation to:

- terms and activities relating to work and development orders;
- the protected amount and administrative charge for fine collection notices served to financial institutions;
- the circumstances in which the registrar of SPER may waive or return all or part of any fee payable under the Act; and
- the ways in which documents may be served under the Act.

It is also consistent with the Amendment Act's objectives to support the modernisation of the management of penalty debts in Queensland by facilitating the improved non-monetary debt finalisation options for people in hardship through the introduction of work and development orders, establishing fairer fee arrangements, and enhancing SPER's enforcement functions.

## **Inconsistency with policy objectives of other legislation**

The amendments are not inconsistent with the policy objectives of other legislation.

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

There are no alternative ways of achieving the policy objectives.

## **Benefits and costs of implementation**

The Amendment Regulation supports the staged implementation of work and development orders in Queensland by enabling the relevant provisions of the Act to be effectively applied. By inserting definitions relating to the Act's work and development orders provisions and prescribing details of the activities which can be undertaken under an order, the Amendment Regulation provides greater clarity for approved sponsors and debtors in relation to eligibility for a work and development order and how work and development orders will operate, including what activities can be undertaken and the rate at which specific activities satisfy a person's SPER debt. This will assist with the progressive recruitment and registration of Government agencies and non-government community organisations as approved sponsors for work and development orders and, over time, will support approved sponsors to assess the eligibility of debtors to undertake a work and development order.

The Amendment Regulation will also deliver benefits by providing safeguards for debtors that are subject to garnishment of their financial institution accounts by SPER. Ensuring that a specified minimum amount must not be removed from a debtor's account when a deduction is made under a fine collection notice will prevent debtors being inadvertently placed in hardship as the result of SPER garnishing their account. Setting a maximum administrative charge for fine collection notices will also protect debtors from the imposition of excessive fees by financial institutions when deductions are made from a debtor's financial institution account in compliance with a fine collection notice, whilst enabling financial institutions to recover some of the administrative cost to the institution of complying with a fine collection notice.

Additionally, the Amendment Regulation will provide SPER with the capacity to more appropriately recognise and respond to customers experiencing hardship, by enabling the registrar of SPER to waive fees for debtors who attempt to address their debt but are prevented from being able to pay their debt in full due to their personal circumstances. Moreover, enabling service of all infringement notices to postal addresses will result in greater benefit for debtors by maximising the opportunity for penalty infringement notices to be conveniently and properly received by individuals at their postal address. Service on postal addresses will improve prompt and convenient notice to debtors of their debt obligations, which is integral to enabling debtors to respond to the notices and to the viability of fines as punishment. Ensuring individuals are aware of their obligations is a necessary condition of confidence in the justice system and will avoid the cost of disputes relating to non-receipt or late receipt of infringement notices.

The Amendment Regulation does not impose any appreciable costs on government, financial institutions or the community.

## **Consistency with fundamental legislative principles**

Proposed section 19AC prescribes that a substance use disorder, for the purposes of eligibility to undertake a work and development order, means a substance use disorder estimated as moderate to severe under the fifth edition of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM) published by the American Psychiatric Association. The use of DSM-5 for this definition potentially raises the fundamental legislative principle issue of whether the Amendment Regulation shows sufficient regard to the institution of Parliament, by allowing the subdelegation of power delegated by an Act only in appropriate cases and to appropriate persons.

The use of the DSM is justified because it provides a common language and standard criteria for the definition and classification of mental disorders, including substance use disorder, which are widely utilised and understood by practitioners within Australia who may become approved sponsors for work and development orders. The DSM has been the leading authoritative source for defining and classifying mental disorders for the purposes of diagnoses and treatment since it was first published in 1952 and is likely to remain so in the foreseeable future. Use of the DSM in the definition of substance use disorder is also consistent with definitions in other legislative instruments within the Queensland statute book and the approach adopted in Australian jurisdictions that have implemented work and development orders.

## **Consultation**

In accordance with the Queensland Government Guide to Better Regulation, the Office of Best Practice Regulation was consulted in relation to the regulatory proposal and confirmed that a Regulatory Impact Statement is not required.

Extensive consultation has been undertaken with the government agencies, statutory bodies, local governments and universities which refer unpaid fines and penalties to SPER for collection on the implementation of SPER's new service delivery model. These entities were also consulted during the development of the Amendment Act. Additionally, detailed consultation was conducted with other key non-government and government stakeholders on the introduction of work and development orders in Queensland. This involved the targeted release of a consultation paper to over 250 organisations, including peak advocacy groups, non-government organisations and government agencies. Meetings were also held with peak advocacy groups, a number of large community service providers and relevant government agencies. All parties supported the introduction of work and development orders.

An implementation reference group, comprising representatives from peak advocacy groups and government and non-government community service providers, has been established to facilitate ongoing consultation on the operational aspects of implementing work and development orders. In addition, an inter-agency governance group has been formed to guide implementation. Feedback and advice provided by these groups has been used to inform development of the Amendment Regulation.

Targeted high-level consultation has also been undertaken by SPER with the key financial institutions with which SPER interacts in relation to the prescribing of a protected amount and maximum administrative charge for fine collection notices. Community consultation was not undertaken in relation to the specific details the Amendment Regulation, which provide safeguards for debtors who are subject to enforcement action by SPER, to facilitate the service of all documents issued under the Act to postal addresses and to enable fees imposed by SPER to be waived as these details are in accordance with existing Government policy.