

Economics and Governance Committee

Report No. 14, 56th Parliament

Subordinate legislation tabled between 2 May 2018 and 15 May 2018

Introduction

Role of the committee

The Economics and Governance Committee (the committee) is a portfolio committee of the Legislative Assembly.¹ The committee's primary areas of responsibility include:

- Premier and Cabinet, and Trade
- Treasury, and Aboriginal and Torres Strait Islander Partnerships
- Local Government, Racing and Multicultural Affairs.

The committee is responsible for examining each item of subordinate legislation in its portfolio area to consider the policy to be given effect by the legislation, the application of fundamental legislative principles, and the lawfulness of the legislation.²

Aim of this report

This report summarises the committee's examination of subordinate legislation tabled between 2 May 2018 and 15 May 2018. It reports on any identified fundamental legislative principle issues and the explanatory notes' compliance with the *Legislative Standards Act 1992*.

Subordinate legislation considered

The committee considered the following subordinate legislation.

SL No.	Subordinate legislation	Tabled date	Disallowance date
51 of 2018	State Penalties Enforcement Amendment (Postponement) Regulation 2018	15 May 2018	19 September 2018
52 of 2018	State Penalties Enforcement (Hardship and Safeguards) Amendment Regulation 2018	15 May 2018	19 September 2018

¹ *Parliament of Queensland Act 2001*, s 88 and Standing Order 194.

² *Parliament of Queensland Act 2001*, s 93.

SL 51 of 2018 - State Penalties Enforcement Amendment (Postponement) Regulation 2018

The purpose of State Penalties Enforcement Amendment (Postponement) Regulation 2018 (the regulation) is to delay the period before automatic commencement of the provisions of the *State Penalties Enforcement Amendment Act 2017* (Amendment Act) that have not commenced to the end of 19 May 2019.

The regulation will enable the un-commenced provisions to be commenced by proclamation concurrently with the implementation of elements of State Penalties Enforcement Registry's (SPER's) new service model which the provisions support.

The Amendment Act received assent on 19 May 2017. The Amendment Act supports the implementation of a new service delivery model for the SPER to modernise the management of penalty debts in Queensland. The provisions of the Amendment Act facilitate this new model by providing improved non-monetary debt finalisation options for people experiencing hardship, enabling case management of debtors by SPER, establishing fairer fee arrangements, creating efficiencies in the management of disputes and delivering improvements to SPER's enforcement functions.

The new SPER service delivery model is being implemented through a staged approach throughout 2017 and 2018.³ To support this approach, the Amendment Act provides that the legislation commences by proclamation, with the exception of a small number of provisions that commenced on assent. Provisions of the Amendment Act which deliver improved non-monetary debt finalisation options for people experiencing hardship through the introduction of a work and development order scheme commenced by proclamation on 4 December 2017.

Most of the Amendment Act provisions have not yet commenced, and therefore would have automatically commenced on 20 May 2018, unless postponed by regulation. The regulation enables commencement of the provisions which support specific elements of the new service model to coincide with implementation of each of those elements by SPER.

The regulation will provide for the automatic commencement of the remaining Amendment Act provisions on 20 May 2019, unless the provisions are commenced by proclamation prior to this date.

Committee comment

The committee sought additional information from Queensland Treasury in relation to the implementation of provisions of the *State Penalties Enforcement Amendment Act 2017*.

On the provisions that have not as yet been proclaimed, Queensland Treasury advised the committee that they will commence in accordance with the implementation of the new SPER model. Queensland Treasury stated:

Implementation of the SPER service delivery model anticipates commencement of most of the provisions in Quarter 2 of this financial year. However, this timing will continue to be based on the readiness of the business model. The key elements of the SPER model to which those changes relate are case management of debtors, consistent fee arrangements, payment plans and arrangements for the registration of debts with SPER. Provisions relating to management of disputes under the cancellation of enforcement order process will commence in accordance with an implementation schedule that provides sufficient time for SPER and affected agencies to implement the changes.⁴

Queensland Treasury provided the committee with a timetable of commencement of provisions of the *State Penalties Enforcement Amendment Act 2017*.⁵ The timetable of commencement provisions is provided at **Appendix A**.

³ Explanatory notes, p 1.

⁴ Queensland Treasury, correspondence dated 12 September 2018.

⁵ Queensland Treasury, correspondence dated 12 September 2018.

The committee is satisfied with the implementation schedule as provided by Queensland Treasury and identified no issues regarding completion of commencement by the required legislative timeframe of 19 May 2019, as set by the Regulation.

The committee identified no issues regarding consistency with fundamental legislative principles or the lawfulness of the State Penalties Enforcement Amendment (Postponement) Regulation 2018.

The committee notes that the explanatory notes comply with the *Legislative Standards Act 1992*.

SL 52 of 2018 - State Penalties Enforcement (Hardship and Safeguards) Amendment Regulation 2018

The State Penalties Enforcement (Hardship and Safeguards) Amendment Regulation 2018 (the amending regulation) amends the State Penalties Enforcement Regulation 2014 to achieve the following objectives:

- define the meaning of specific terms used in the provisions of the *State Penalties Enforcement Act 1999* (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 a result of the commencement of provisions of the *State Penalties Enforcement Amendment Act 2017* (Amendment Act).⁶

Committee comment

The committee notes the amending regulation provides for the definition of certain terms: ‘remote area’, ‘mental illness’, and ‘substance abuse disorder’.⁷ There appear to be no issues with fundamental legislative principles concerning the definitions themselves, apart from one potential issue in relation to the term ‘substance use disorder’.

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-5) published by the American Psychiatric Association.⁸

The use of the DSM-5 for this definition raises the issue of whether the amending regulation shows sufficient regard to the institution of Parliament, by allowing the sub-delegation of power delegated

⁶ Explanatory notes, p 2.

⁷ State Penalties Enforcement (Hardship and Safeguard) Amendment Regulation 2018, s 5, insertion of new pt 5A.

⁸ Explanatory notes, p 4.

by an Act only in appropriate cases and to appropriate persons. This is because the amending regulation is defining a term in the legislation by way of an external document that is not incorporated by the legislation.

The amending regulation does not seek to incorporate the DSM-5 document itself as subordinate legislation, but merely refers to it to clarify and standardise the definition of a 'substance use disorder' for the regulation as per section 165 of the Act.

The explanatory notes address this issue by providing the following justification:


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.⁹

By way of examples of precedent in Queensland, both the Civil Liability Regulation 2014 and the Workers' Compensation and Rehabilitation Regulation 2014 define 'mental disorder' as a mental disorder recognised under DSM-4, or the fourth edition of the *Diagnostic and Statistical Manual of Mental Disorders*, published by the American Psychiatric Association in 2000. The committee considers the potential risk to the institution of parliament, by defining a term in this amending regulation by way of an external document that is not incorporated by the legislation, is minimal.

The committee notes the explanatory notes comply with the requirements of the *Legislative Standards Act 1992*.

Recommendation

The committee recommends that the Legislative Assembly note this report.



Linus Power MP

Chair

Economic and Governance Committee

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⁹ Explanatory notes, p 4.

Appendix A – Commencement of provisions of the *State Penalties Enforcement Amendment Act 2017*

Provisions that commenced on assent – 19 May 2017

(Key issues the provisions relate to include fine collection notices, immobilisation warrants, information sharing provisions, fee waiver, approved forms, service of documents)

Section	Section title in Bill
7	Amendment of <i>State Penalties Enforcement Act 1999</i>
9	Amendment of s13 (Service of infringement notices—generally) (requirement to serve during prosecution period)
10	Amendment of s14 (Service of infringement notices for infringement notice offences involving vehicles) (service postal addresses)
13	Amendment of s17 (Liability for infringement notice offences involving vehicles) (omission corporation seal requirement)
20(1)	Amendment of s28 (Administering authority may withdraw infringement notice)
26(3)	Amendment of s38(5) and (6)
28	Replacement of s40 (Service of enforcement order)
42(1)	Amendment of s69 except s 69(7)(b) (Enforcement of enforcement warrant may be made conditional)
44(1) and (2)	Insertion of new s75(2)(d) and (4)
45	Amendment of s79 (When registrar may issue fine collection notice for redirection of earnings)
46	Amendment of s102 (Financial institution to make payments)
47	Insertion of new part 5, division 6A (new ss 103A – 103D)
53	Amendment of s108C (Registrar to serve notice of intention to issue immobilisation warrant)
55(2)	Amendment of s108F(4) (Effect of immobilisation warrant)
57	Amendment of s108L (Immobilisation search warrant)
58	Amendment of s108N (Immobilisation notice)
59	Amendment of s108O (Immobilisation period and access to vehicle)
66	Amendment of s114 (Power of person serving fine collection notice or enforcing warrant to demand name and address etc.)
73	Insertion of new part 8A (Information sharing)
74	Omission of ss 137 – 146D

77	Insertion of new ss 150AA and 150AB
80	Omission of ss 151 - 152I
81(1)	Temporary addition of new fine collection notice provided in new s75(1)(d)
83(1), (3) and (5)	Amendment of s157 2(a) and (i), and s157(3)(k) – (m)
84	Amendment of s158 (Service of document)
85	Replacement of s163 (Approval of other forms)
86	Omission of s164 (Review of Act)
89(1) and (3)	Amendment of schedule 2 (Dictionary) – following items on assent: <ul style="list-style-type: none"> • replacement of 'address' • removal of 'administration charge' • insertion of 'confidential information' • insertion of 'electronic communication' • insertion of 'official' • insertion of 'police commissioner' • insertion of 'postal address' • insertion of 'protected amount' • insertion of 'SPER debt' • insertion of 'State penalties enforcement register'

Provisions that commenced on a date fixed by proclamation – 4 December 2017

(Provisions related to work and development orders)

Section	Section title
8	Amendment of s9 (The SPER Charter)
17	Replacement of s25 (Alleged offender who pays can not be prosecuted)
21	Replacement of s29(2) – (4) (Cancellation of registration on withdrawal of infringement notice)
24	Insertion of new part 3B (Work and development orders)
29(3), (4) and (5)	Amendment of s41 (Ways enforcement debtor may deal with enforcement order)
30	Omission of ss 42 -50 (Application to pay by instalments and fine option orders) <ul style="list-style-type: none"> • other than the extent to which it omits section 42
34	Omission of s53 (Breach of fine option order)
42(2)	Amendment of s69 (Enforcement of enforcement warrant may be made conditional)
48	Amendment of s104 (Criteria for suspending driver licence)
52	Amendment of s108A (Criteria for vehicle immobilisation)
54	Amendment of s108D (Issue and service of immobilisation warrant)
56	Amendment of s108H (Where and when an immobilisation warrant may or may not be enforced)
60	Amendment of s108P (When immobilising device may be removed before end of immobilisation period)
61	Amendment of s108R (Direction by registrar to seize vehicle under enforcement warrant)
62	Replacement of s108S (Direction by registrar to re-enforce current immobilisation warrant)
63	Omission of s109 (Making of fine option order after enforcement warrant)
67	Amendment of s115 (Effect of particular proceedings)
68	Omission of s118 (Good behaviour order when imprisonment not appropriate)
71	Omission of part 7 (General provisions about fine option orders)
72	Amendment of s131 (Definitions for pt 8)
76	Insertion of new s149A (References to amounts otherwise being discharged)
78	Amendment of s150B (Guidelines)
79	Insertion of new s151 (Registrar may arrange for use of information system)
82(2) and (3)	Amendment of s155 (Non-reviewable decision)

83(6) and (7)	Amendment of s155 (Non-reviewable decision)
87	Amendment of s165 (Regulation-making power)
88	Insertion of new part 10, div 7 (Transitional provisions for State Penalties Enforcement Amendment Act 2017) <ul style="list-style-type: none"> • other than the extent to which it inserts sections 188, 189, 190, 191 and 192
89(2), (4) and (5)	Amendment of schedule 2 (Dictionary) <ul style="list-style-type: none"> • subsection (2) other than to the extent it omits definitions <i>civil enforcement fee, default certificate, enforcement debtor, instalment payment notice, registration fee and threshold amount</i> • subsection (4) other than to the extent it inserts definitions <i>civil enforcement fee, default certificate, enforcement debtor, instalment payment notice, registration fee and threshold amount</i>
Part 5	Acts amended by schedule 1
Schedule 1	Minor and consequential amendments <ul style="list-style-type: none"> • Schedule 1, amendments of the <i>Penalties and Sentences Act 1992</i>, items 3 and 4 • Schedule 1, amendments to the <i>Victims of Crime Assistance Act 2009</i>, items 2 and 3

Provisions that have not yet commenced

(Provisions related to case management and improved fee regime, including early referral of debts, debt lodgement, court debt payment notices, fees, payment plans and enforcement warrants)

Section	Section title
3	Act amended (<i>Land Act 1994</i>)
4	Amendment of schedule 6 (Dictionary) (in the Land Act)
5	Act amended (<i>Land Title Act 1994</i>)
6	Amendment of schedule 2 (dictionary)
11	Insertion of new s14A (Recovery of vehicle identification costs)
12	Amendment of s15 (infringement notices)
14	Amendment of s22 (Ways alleged offender may deal with infringement notice)
15	Replacement of s23 (Application to pay by fine by instalments)
16	Omission of s24 (registration of instalment payments for infringement notices)
18	Replacement of s26 (When alleged offender can not elect to have offence decided by court)
19	Amendment of s27 (When infringement notice offence is to be decided by court)
20(2)	Amendment of s28 (Administering authority may withdraw infringement notice)
22	Amendment of s30 (Application to cancel infringement notice for mistake of fact)
23	Insertion of new part 3A (Payment plans)
25	Replacement of part 4, div 1 (Default commences enforcement process)
26(1) and (2)	Amendment of s38 (Issue of enforcement order)
27	Insertion of new s39 (Enforcement fee imposed for enforcement order)
29(1) and (2)	Amendment of s41 (Ways enforcement debtor may deal with enforcement order)
30	Omission of ss42-50 (Application to pay by instalments) <ul style="list-style-type: none"> • To the extent it omits section 42
31	Amendment of s51 (Election for court hearing)
32	Insertion of new s51A (Court election or proceeding for offence cancels enforcement order)
33	Amendment of s52 (Default after time to pay)
35	Amendment of part 4, division 5, heading (Effect of appeal on enforcement order)

36	Insertion of new s54B (Effect of rehearing or reopening proceedings on enforcement order)
38	Replacement of s61 (Application of part 5)
39	Insertion of new ss 62A–62D (definitions, Applying part to particular persons, Enforcement fee imposed for defaults requiring enforcement action, invitation to apply for payment plan)
40	Amendment of s63 (Issue of enforcement warrant)
41	Amendment of s63A (Renewal of enforcement warrant)
43	Amendment of s73D (Payment by enforcement debtor before sale)
44(3)	Amendment of s75 (Issue of fine collection notice)
49	Replacement of s105 (Suspension of driver licence)
50	Amendment of s106 (General effect of suspension of driver licence)
51	Amendment of s107 (Review of suspension of driver licence)
55(1)	Amendment of s108F (Effect of immobilisation warrant)
64	Amendment of s110 (Registration of interests)
65	Amendment of s113 (Order of satisfaction if more than 1 enforcement order)
69	Amendment of s119 (Enforcement by imprisonment)
70	Insertion of new s119A
75	Omission of part 9, division 1 (Content of particular notices, orders and warrants) (s135 and 136 – Default certificates and instalment payment notices)
76	Insertion of new s149A (References to amounts otherwise being discharged)
81(2) and (3)	Amendment of s153 (Register)
82(1)	Amendment of s155 (Non-reviewable decision)
83(2) and (4)	Amendment of s157 (Evidentiary provisions)
88	Insertion of new part 10, div 7 (Transitional provisions for State Penalties Enforcement Amendment Act 2017) <ul style="list-style-type: none"> To the extent it inserts sections 188, 189, 190, 191 and 192
89(2) and (4)	Amendment of schedule 2 (Dictionary) <ul style="list-style-type: none"> subsection (2) to the extent it omits definitions <i>civil enforcement fee</i>, <i>default certificate</i>, <i>enforcement debtor</i>, <i>instalment payment notice</i>, <i>registration fee</i> and <i>threshold amount</i> subsection (4) to the extent it inserts definitions <i>civil enforcement fee</i>, <i>default certificate</i>, <i>enforcement debtor</i>, <i>instalment payment notice</i>, <i>registration fee</i> and <i>threshold amount</i>

Provisions that have not yet commenced

(Provisions relate to management of disputes)

Section	Section title
37	Replacement of part 4, division 6 – Cancellation of enforcement orders
88	Transition provisions – s192(1)(a) and (2)