

4 April 2022



Committee Secretary
Economics and Governance Committee
Parliament House
George Street
BRISBANE Qld 4000

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By email only: egc@parliament.qld.gov.au

Dear Sir/Madam

State Penalties Enforcement (Modernisation) Amendment Bill 2022

Thank you for the opportunity to provide this submission to the Economics and Governance Committee inquiry into the *State Penalties Enforcement (Modernisation) Amendment Bill 2022 (Bill)*.

Background

LawRight (formerly known as Queensland Public Interest Law Clearing House) is a not-for-profit, community-based legal centre, which coordinates the provision of pro bono legal services to disadvantaged Queenslanders.

Our Community and Health Justice Partnerships program (**CHJP**) was established in 2002 by LawRight to provide free legal assistance and representation to people experiencing or at risk of homelessness, poverty and the related vulnerabilities.

In the 2020/2021 financial year, LawRight:

- provided legal assistance in 1,329 matters for CHJP clients; and
- met with 548 clients attending a community or health service in Brisbane or Cairns.

CHJP clients typically experience several forms of disadvantage including mental illness, experiences of domestic violence, severe financial hardship, addiction, physical or intellectual disabilities and complex family backgrounds. They are typically reliant on Centrelink benefits, government and community agencies for their income, housing and health needs.

Many CHJP clients have fines which are being collected by the State Penalties Enforcement Registry (**SPER**). The connection between fines and poverty is well established.¹ Multiple reviews of CHJP casework over the last decade indicate an average debt with SPER between \$4,000 - \$8,000 per client. LawRight assists clients to apply for a payment plan, access a Work and Development Order and, in some circumstances, apply to the administering authority to have the infringement notice withdrawn and cancelled.

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¹ See for example, Walsh, Tamara (2011) *Homelessness and the Law*. Federation Press (Chapter 3).



In addition to our casework, LawRight has published multiple reports and discussion papers that outline the impact fines can have on people experiencing homelessness or poverty.² We have made submissions to government on these issues³ and participated in relevant stakeholder forums, including forums with SPER.⁴ Our experience leaves us well placed to make these submissions.

The changes proposed by the Bill

A summary of the current process for issuing and collecting these fines is **enclosed** and marked Annexure 1.

The Bill proposes to amend the SPE Regulation such that SPER acquires additional responsibility for the handling of camera-detected offences and tolling offences in the following ways:

- the registrar of SPER becomes the "authorised person" for service of infringement notices in relation to camera-detected offences and tolling offences; and
- the registrar of SPER becomes the "administering authority" in relation to camera-detected offences and tolling offences, and some other infringement notice offences in respect of which the Department of Transport and Main Roads (DTMR) was performing the functions of an administering authority.

LawRight's submission in relation to the Bill relates to this specific aspect of the Bill.

Summary of LawRight's submissions

On its face, the changes proposed by the Bill are merely procedural. However, in practice these changes may have a significant impact on individuals experiencing disadvantage. This change could have a negative impact on vulnerable members of the community if careful measures are not taken to ensure that SPER will appropriately use its discretion as an authorised authority to withdraw infringement notices after considering an individual's circumstances.

To ensure these changes do not unnecessarily or unintentionally impact vulnerable members of the community, LawRight submits:

1. that SPER should take measures to ensure it will exercise its discretion appropriately, including that SPER will development of an appropriate decision-making matrix or guideline; and
2. any relevant decision-making matrixes or guidelines are made publicly available, to ensure transparency and consistency of decision-making.

Subject to such measures being implemented, LawRight otherwise supports the Bill.

² See Queensland Public Interest Law Clearing House Incorporated (QPILCH), *Homeless Persons' Legal Clinic Discussion Paper: Responding to homelessness and disadvantage in the fines enforcement process in Queensland* (July 2013), QPILCH, *The fines enforcement regime in Queensland for people experiencing homelessness: Options for change* (May, 2011).

³ Submission to the Transport and Public Works Committee's Inquiry into the operation of toll roads in Queensland (August 2018); Submission in response to the *State Penalties Enforcement Amendment Bill 2017* (Qld) (March 2017), both available at <https://www.lawright.org.au/submissions/>.

⁴ See Community Legal Centres Queensland Inc and QPILCH, *Work and development orders: Response to consultation paper* (July, 2016).

Impact of SPER fines on vulnerable Queenslanders

In order to understand the potential impact of the Bill, it is important to have an understanding of the impact SPER fines have on vulnerable Queenslanders.

Automated fines, including toll fines and fines for camera-detected offences, make up a significant amount of the SPER debt pool⁵ and have a disproportionate impact on people experiencing disadvantage and poverty. People experiencing personal hardship and poverty are both more likely to receive these types of fines and less able to resolve the debt that accrues. We discuss this further below.

Vulnerable Queenslanders are more likely to receive SPER fines

According to SPER's own estimation in April 2017, approximately 63,000 (8%) debtors accounting for \$180 million (15% of the debt pool value) are in hardship as indicated by payment arrangements through Centrelink and long duration payment plans. SPER noted that this is a conservative estimate that likely under-represents the rate of hardship experienced by SPER debtors.⁶

Collection rates cited by SPER may provide an inference that vulnerable people are over-represented in certain debt pools, particularly debts for toll-related offences. Tolling fines only make up 17% of the debt mix for new debtors, but 47% of the debt mix for existing debtors.⁷ This is consistent with our experience: in many instances, a person's experience of hardship and poverty increases the likelihood that a person may be issued a fine, often in circumstances where their experience of poverty is directly connected to the underlying infringement. Anecdotally, this increases where the process for issuing a fine is automated.

Tolling and camera-detected fines

LawRight reviewed 20 files where we assisted a client with toll fines and fines for camera-detected offences. This review showed:

- The average debt was \$10,350.12. Of this, on average \$4,598.70 (44%) was a result of toll offences and \$1,788.64 (17%) was for camera-detected offences.
- The combined debt pool for all 20 clients was \$207,002.34. Of this amount, \$127,746.84 (62%) was made up of tolling and camera-detected fines.
- Most of the toll-related fines were issued prior to 2016. The oldest fines dated back to 2013.
- 80% of the clients were female.
- 79% reported an experience or history of domestic violence. In many instances, this violence directly led to, or was connected with, the incursion of the fines.
- 63% reported a mental health or physical health condition.
- All clients were experiencing or at risk of homelessness.

There are many reasons why a person experiencing homelessness and the related forms of disadvantage are more likely to incur fines of this type. A person may use their car more frequently because of their living circumstances or may share the car with others. For example, the person may be transient or living in their car, or they may share a car (where they are the registered owner) with several members of their

⁵ See Queensland Treasury, Response to Finance and Administration Committee, Parliament of Queensland, *Inquiry into the State Penalties Enforcement Amendment Bill* (13 April 2017) 15.

⁶ *Ibid*, 18.

⁷ *Ibid*, 16.

community due to limited financial resources. In many instances, our client was not the driver that used the toll roads or committed the camera-detected offence. Many clients report to us that a violent partner or family member was in charge of the vehicle at the time of the offence/s.

Where an infringement notice is issued, people experiencing poverty may not receive the relevant correspondence and are often unaware of the offence until contacted by SPER. It is not uncommon for client to seek our advice about a SPER debt without any knowledge of how the debt was accrued. There are a few common reasons for this, including:

- a person may be transient or have no fixed address to receive correspondence;
- a violent partner or family member may be collecting a person's mail to ensure they do not receive this correspondence;
- a person may be illiterate or not read English; or
- a person's mental health concerns may impact their ability to engage with the notices.

In the matters we reviewed, the majority of clients were the registered owner of the vehicle but were either not the driver or could provide a reasonable excuse for not responding to a toll demand notice. As discussed below, we have had some success in having fines withdrawn in these circumstances.

Vulnerable Queenslanders are less able to resolve SPER fines

These debts have a significant, negative impact on our clients. The size of the debts limits the options offered by SPER, many of which are inappropriate for a person at risk of homelessness surviving on a Centrelink benefit. Due to the size of these debts, the instalment plans offered are commonly unaffordable, pushing clients into further disadvantage. Some clients report having to "sleep rough" as they cannot afford accommodation costs after entering into unaffordable instalment plans to have a licence suspension lifted. Others report going without food or falling behind in rent payments.

Many clients have not engaged with SPER because their debt seems insurmountable, or they dispute the portion of their debt made up of these fines, or are unable to effectively engage with SPER's systems to resolve unpaid debts.

Below, we provide an example that demonstrates how people experiencing personal hardship and poverty are both more likely to receive these types of fines and less able to resolve the debt that accrues. The story also reflects how these debts unduly impact victims of domestic violence.

Annie's story

Annie was in a violent relationship. When they were together, her partner incurred multiple parking, speeding and toll-based infringements in a vehicle in her name. This left Annie with a SPER debt over \$10,000.00. Annie's ex-partner would keep her mail from her and she only became aware of the fines after they separated and SPER commenced enforcement action.

To prevent further enforcement action, Annie agreed to the payment plan offered by SPER. Unable to afford these payments and her rent, Annie was forced into

homelessness, sleeping in a tent on a friend's property. She reports that she was unable to pay for food and medication because of her dire financial situation.

The importance of discretion

Because of the automated manner in which infringement notices for most toll offences and camera-detected offences are imposed, the existence of discretion to waive an infringement notice, and that discretion being exercised appropriately, is integral to avoid disproportionate and unfair outcomes for vulnerable members of the community.

Without such a discretion both existing and being used appropriately, the imposition of an automatic fine on a vulnerable member of the community does not take into account their individual circumstances, including whether the individual is responsible for the fine or if mitigating circumstances exist. For instance, as explained, for a significant proportion of our client base, homelessness and other factors like domestic violence are often inextricably linked with the offence for which the infringement notice is issued.

Discretion of administering authority to withdraw infringement notices under the current legislative framework

Our submission will firstly outline arrangements under the current legislative framework, focussing on the alternatives available for an administering authority, and/or the person authorised to issue the infringement notice, to withdraw infringement notices.

Express legislative discretion of administering authority to withdraw

Section 28 of the *State Penalties Enforcement Act 1999* (Qld) (**SPE Act**) provides that the administering authority may withdraw an infringement notice at any time before the fine is satisfied in full. For the withdrawal to be effective, the administering authority must serve the withdrawal notice on the alleged offender and repay to the alleged offender any amount paid to the administering authority for the offence.

If the infringement notice had already been registered with SPER, the administering authority must give SPER a copy of the withdrawal notice.⁸ Section 29 of the SPE Act provides that if the administering authority gives SPER a copy of a withdrawal notice, the registrar of SPER must cancel the registration of the relevant infringement notice default, cancel any related enforcement order and refund any related amount paid to SPER as soon as practicable.

Inherent discretion of person issuing infringement notice to withdraw

Persons who are authorised to issue infringement notices, such as a police officer within the Road Safety Camera Office (**RSCO**) in relation to camera-detected offences, also hold a power to withdraw an infringement notice which they have issued, as an incident of holding the power to issue it in the first place.⁹

⁸ *State Penalties Enforcement Act 1999* (Qld), s 28(2)(c).

⁹ *Acts Interpretation Act 1954* (Qld), s 24AA, which provides that if an Act (which includes a regulation made under an Act) authorises the making of an instrument or decision, the power includes power to amend or repeal the instrument or decision. Therefore, where police officers have the power to issue an infringement notice, they also have the power to withdraw that infringement notice after it has been issued.

Application to SPER to cancel enforcement order and resulting discretion of administering authority to re-issue

If an infringement notice has already been referred to SPER and SPER has already issued an enforcement order in relation to it, the person subject to the enforcement order may apply to SPER for the cancellation of the enforcement order under s 56 of the SPE Act. The application can only be made on certain grounds specified in s 56(1). The registrar of SPER may cancel the enforcement order under s 57 of the SPE Act.

If such an application is successful, SPER will then refer the infringement notices issued back to the administering authority.¹⁰ The administering authority will then have legislative discretion to either:¹¹

- issue a fresh infringement notice for the offence. If this occurs, the 28-day period which the person has to respond to the infringement notice in accordance with the options outlined in s 22 of the SPE Act will restart. This means that the person will have a new opportunity to, for example, respond to the infringement notice by providing the administering authority an illegal user declaration, a known or unknown user declaration or a sold vehicle declaration of the vehicle of the offence;¹² or
- commence proceedings in court.

In LawRight's experience, the administering authority will in practice also consider the option of not taking any further action with respect to the infringement notice.

Lack of guidance with respect to exercising discretion

As outlined above, both the administering authority and the person authorised to issue the infringement notice have a discretionary power to withdraw or re-issue any infringement notice that has been issued. However, there is no criteria under the SPE Act, or any other legislative or public guidance, which address how this discretion should be exercised. This means that the extent to, and way in, which the discretion is used is a matter for the internal regulatory framework of the administering authority or authorised person.

LawRight's experience in relation to discretion

In LawRight's experience, DTMR, in its role as administering authority, has appropriately exercised its discretion to withdraw infringement notices, taking into account the circumstances of the individual. In LawRight's submission, the way in which DTMR has done so demonstrates the positive impact the use of discretion can have on disadvantaged individuals.

We can infer from our casework that DTMR previously used its power to withdraw infringement notices where an individual:

¹⁰ *State Penalties Enforcement Act 1999* (Qld), s 57(4).

¹¹ *State Penalties Enforcement Act 1999* (Qld), s 57(5).

¹² *State Penalties Enforcement Act 1999* (Qld), s 22(1)(c).

- can, in relation to a failure to respond to a toll demand notice, establish that they had a "reasonable excuse" and therefore there has been no infringement of s 99(7) of the *Transport Infrastructure Act 1999* (Qld);¹³
- establishes compassionate grounds justifying the cancellation; or
- establishes public interest grounds justifying the cancellation.

By exercising its discretion appropriately, DTMR ensures an individual is not held accountable for offences in unjust circumstances and/or in circumstance where enforcing the infringement notices would further persecute a vulnerable member of the community. The following story of one of our clients is one example of this.

Sally's Story

Sally is an older woman with a significant history of domestic violence and homelessness. She connected to LawRight for help with a SPER debt that included fines for tolling and camera-detected offences.

When Sally fled the home she shared with her violent ex-partner, he kept possession of a car registered in her name. Sally spent the following two years moving between short-term rooming accommodation and informal tenancies. She did not update her addresses in order to avoid detection by her abusive ex-partner. As a result, Sally did not receive any correspondence about toll fines or camera-detected offences.

DTMR withdrew Sally's toll fines after hearing about her experience, reducing her SPER debt significantly. Sally elected to pay the camera-detected offences when informed that her only option was to transfer the fines to her abusive ex-partner. With her toll fines withdrawn, Sally set up a payment plan to resolve the remaining debt.

In many instances, once the toll or camera- detected offences are resolved, clients will engage with SPER to set up appropriate resolutions for other fines. By exercising its discretion in a fair and just way, DTMR has been able to help SPER achieve its goal of fast, fair and efficient collection of fines. The following story of one of our clients is one example of this.

Clare's Story

Clare was connected to LawRight after fleeing a violent relationship. The violent and controlling relationship left its impact: Clare had significant "sexually transmitted debt", limited social connections, a tenuous tenancy history and mental health concerns. She was being pursued by SPER for a debt in excess of \$20,000.00.

LawRight assisted Clare to resolve her debts and tenancy history. After learning of Clare's circumstances, DTMR withdrew and cancelled all of her toll fines, reducing Clare's SPER debt to a manageable amount. Clare then set up an affordable instalment plan and was able to fully resolve her SPER debt.

¹³ Transport Infrastructure Act 1999 (Qld), s 99(7) provides that the registered operator of a vehicle must comply with a toll demand notice unless he or she "has a reasonable excuse". The legislation does not prescribe the meaning or examples of a "reasonable excuse".

Based on our experience, the RSCO will not exercise a discretion to withdraw and cancel infringement notices. However, the RSCO will work with individuals to take steps allowed by s 114 of the *Transport Operations (Road Use Management) Act 1995* after infringement notices are referred back to their office.

Recommendation: Importance of SPER exercising discretion

LawRight submits that if the Bill is passed, it will be important for SPER to take measures to ensure it will exercise its discretion to withdraw infringement notices for camera-detected and tolling offences appropriately. This could be achieved by withdrawing infringement notices where an individual can establish:

- they were not responsible for the underlying fine;
- their circumstances at the time the fines were issued justifies the withdrawal and cancellation of the fines; or
- public interest considerations justify the withdrawal and cancellation of the fines.

In the absence of clear legislative guidance, this could be achieved through policy documents that indicate an appropriate decision-making matrix to exercise the discretion, as well as implementing training for relevant SPER officers of the intersection between infringement notices and social disadvantage.

Further, LawRight recommends that any relevant decision-making matrixes are made publicly available, to ensure transparency and consistency of decision-making.

LawRight is ready, willing and able to engage with SPER to assist it in designing its internal policies and regulatory framework in this regard.

LawRight submits that in the future, ensuring that the relevant administrative authority (whether it be SPER or another Department at the time) will appropriately exercise its discretion to withdraw infringement notices can be achieved through amending the SPE Act to include express legislative criteria as to how this discretion is to be exercised.

However, LawRight submits that such legislative amendment need not be included in the Bill in order to address the issue, if measures are taken to ensure that this concern is effectively dealt with by SPER on an internal policy basis.

Thank you for considering these submissions.

Yours faithfully



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Summary of the relevant legislative framework

Tolling offences

Toll roads in Queensland use free-flow electronic tolling. Registration plate technology is used to identify vehicles which travel on toll roads and send payment notices.

Motorists who do not have a payment arrangement with Queensland's toll payment provider, Linkt, must contact Linkt within 3 days of travel to arrange toll payment. If payment is not made within three days after using a toll road, Linkt will send to the vehicle's registered owner an unpaid toll notice. If the vehicle's registered owner fails to respond to the toll notice, Linkt can issue a demand notice to the registered operator of the vehicle.

If the demand notice remains unpaid, Linkt may pursue the debt civilly. Alternatively, Linkt may refer the matter to the Department of Transport and Main Roads (**DTMR**) or Brisbane City Council, which is the administering authority for tolling offences.¹⁴ The administering authority may then issue an infringement notice.

The authorised authority will then issue an infringement notice for failure to comply with the demand notice,¹⁵ pursuant to its role as an "authorised person" to issue infringement notices.¹⁶ Following the issuing of the infringement notice, the process is as follows:

- If the infringement notice fine is not paid to the administering authority by the person within 28 days,¹⁷ it becomes overdue.
- The administering authority may then give SPER a default certificate for the infringement notice which SPER must register.¹⁸
- Once the default certificate is registered, a fee is added to the amount owed, and SPER becomes responsible for the collection of the unpaid amount.¹⁹
- SPER then serves the person in default with a written enforcement order requiring payment to SPER of the amount stated in the order, within 28 days of the order.²⁰
- If the person fails to pay the amount due in the enforcement order, SPER may take a number of enforcement actions under the SPE Act, including issuing an enforcement warrant.²¹

Camera-detected offences

A similar process applies to camera-detected offences as defined in the *Transport Operations (Road Use Management) Act 1995* (**camera-detected offences**) such as speeding, not stopping at a red light or uninsured driving. However, for these offences,

¹⁴ *State Penalties Enforcement Act 1999* (Qld), s 5(b).

¹⁵ Failure to comply with a demand notice is an offence under s 99(7) of the *Transport Infrastructure Act 1994* (Qld).

¹⁶ *State Penalties Enforcement Act 1999* (Qld), s 13; *State Penalties Enforcement Regulation 2014* (Qld), s 6, Schedule 1 entry for *Transport Infrastructure Act 1994*; *Transport Operations (Road Use Management) Act 1995*, s 20(2)

¹⁷ As required by *State Penalties Enforcement Act 1999* (Qld), s 22.

¹⁸ *State Penalties Enforcement Act 1999* (Qld), s 33(1).

¹⁹ *State Penalties Enforcement Act 1999* (Qld), s 35(2).

²⁰ *State Penalties Enforcement Act 1999* (Qld), s 38.

²¹ *State Penalties Enforcement Act 1999* (Qld), s 52.

infringement notices are currently issued by the Road Safety Camera Office within the Queensland Police Service.²²

Once the infringement notice is issued, the process that follows is the same. The DTMR is the administering authority for most of these offences, with the Motor Accident Insurance Commission being the administering authority for the rest.²³

Interim measures since 1 February 2022

Since 1 February 2022, the Queensland Treasury (within which SPER sits) has been declared to be a part of sections of the DTMR and the Queensland Police Service which are responsible for issuing and administering infringement notices for tolling offences and camera-detected offences.²⁴ This is presumably an interim measure to allow the practical transference of these responsibilities to SPER prior to the Bill being passed.

²² *State Penalties Enforcement Act 1999* (Qld), s 13; *State Penalties Enforcement Regulation 2014* (Qld), s 6, Schedule 1 entry for *Transport Infrastructure Act 1994*; *Transport Operations (Road Use Management) Act 1995*, s 20(1).

²³ *State Penalties Enforcement Regulation 2014* (Qld), Schedule 1, administering authority for various entries including *Motor Accident Insurance Act 1994*, *Motor Accident Insurance Regulation 2018*, *Transport Operations (Road Use Management) Act 1995*, *Transport Operations (Road Use Management – Road Rules) Regulation 2009*.

²⁴ *Public Service Departmental Arrangements Notice (No.1) 2022*.