



Work and development orders

Response to consultation paper

July 2016

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CONTRIBUTORS

As part of developing this response to the *Work and Development Order Consultation Paper*, a wide range of community based organisations were consulted. Each organisation has extensive experience in working with vulnerable and disadvantaged Queenslanders and each organisation had a valuable contribution to make in relation to Work and Development Orders.

We also acknowledge our consultation with Legal Aid Queensland and QNADA.

We would like to thank the pro bono team of DLA Piper, Brisbane office for their research and assistance in drafting this response.

The names of people in this submission have been de-identified. We thank and acknowledge these individuals for allowing us to share their stories.

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Cover image: "Volunteers are tuff" by Lisa Hupp/USFWS

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EXECUTIVE SUMMARY

Disadvantaged members of society are more likely to interact with the justice system and to have issues that result in repeat encounters with enforcement authorities.¹ Fines and infringement notices have a significant impact on the marginalised groups in the community.

Often fines and infringements are part of a cycle where people incur penalties at times of crisis or as a result of chronic disadvantage. As people cannot pay, they are driven further into debt and greater involvement with the criminal justice system through the sanctions and enforcement costs that follow.² Many disadvantaged people accrue significant unpaid fines for public space, public order and public transport offences.³

The factors leading to this increased vulnerability also impacts a person's capacity to pay a fine and impedes their ability to deal with SPER and navigate the enforcement process.⁴

As President of the New South Wales Court of Appeal, Justice Michael Kirby observed:

The imposition of a fine which is totally beyond the means of the person fined and which the Court, the prisoner and the community realise has no prospect whatsoever of being paid, does nothing for the deterrence of others. Such a fine is seen by the community for what it is: a symbolic act of the law without intended substance which neither coerces the particular prisoner nor convinces the community.⁵

The current fines enforcement and collection system in Queensland does not appropriately recognise or respond to vulnerability and marginalisation. At present, in our experience the system generates, reinforces and exacerbates disadvantage by failing to provide accessible and non-financial options to address unpaid fines. Consequently, significant resources are spent by government to enforce fines that may never be recovered or may not be recovered within a reasonable time.

We support the introduction of a well-resourced, fair and collaborative Work and Development Order (**WDO**) scheme in Queensland.

¹ Infringements Working Group, *Vulnerable people and fines position paper*, Victoria Legal Aid, October 2013.

² See Public Interest Advocacy Centre and the Homeless Person's Legal Service, *Reform of the Management of Fines Matters in New South Wales* (2006) and NSW Parliament, Standing Committee on Law and Justice into *Community Based Sentencing Options for Rural and Remote Areas and Disadvantaged Populations*, Final Report March 2006 in NSW Sentencing Council, 'The Effectiveness of Fines as a Sentencing Option: Court-imposed fines and penalty notices: Interim report', October 2006.

³ Public Interest Law Clearing House *Disadvantage and Fines* (2003) in Infringements Working Group, *Vulnerable people and fines position paper*, Victoria Legal Aid, October 2013.

⁴ Infringements Working Group, *Vulnerable people and fines position paper*, Victoria Legal Aid, October 2013.

⁵ *Smith v The Queen* (1991) 25 NSWLR 1 per Kirby P (dissenting) at 21.

RECOMMENDATIONS

Guiding principles

Recommendation 1: Establish a working group of key stakeholders from government and the community sector to design a WDO scheme to meet Queensland's unique requirements and develop Work and Development Order Guidelines.

Eligibility criteria

Recommendation 2: Include eligibility category for 'other special consideration' to ensure the WDO scheme is accessible to as many vulnerable people as possible.

Recommendation 3: Adopt the definition for substance use disorder recommended by QNADA.

Recommendation 4: Delete the word "acute" from the financial hardship eligibility category.

Recommendation 5: Adopt the requirements in the New South Wales guidelines in relation to sponsors' obligations to indicate why certain applicants should participate in the WDO scheme.

Recommendation 6: Individuals should be allowed to undertake any of the specified activities regardless of the criteria under which they are eligible to participate in the WDO scheme.

Recommendation 7: Any decision to refuse or cancel a WDO on the basis of a change in the person's eligibility should be made in consultation with the sponsor and the participant. These decisions should also be subject to a clear and accessible internal review process.

Operation of the WDO scheme

Recommendation 8: Undertake further consultation with the community sector about the requirements to become a sponsor under the WDO scheme and the role of referral organisations.

Recommendation 9: Include cultural engagement or mentoring activities to support the genuine participation of Aboriginal and Torres Strait Islander people in the WDO scheme.

Recommendation 10: Consider what other activities may be available for people in regional or remote communities.

Recommendation 11: Include attendance at playgroups or similar activities to support the participation of parents in the WDO scheme.

Recommendation 12: the WDO scheme guidelines should include suggested minimum attendance thresholds and maximum cut-offs. However, there should be flexibility for these requirements to be varied at the time each WDO is established, and on an ongoing basis with consent of the sponsor and participant.

Recommendation 13: Establish clear complaints processes and regular audits as part of the WDO scheme to ensure people are not subject to predatory practices.

Recommendation 14: The WDO scheme guidelines should include suggested caps on the number of WDOs. However, there should be flexibility for the cap to be waived in appropriate circumstances.

Recommendation 15: Engage in ongoing consultation with the community sector about appropriate resourcing for the WDO scheme.

Recommendation 16: Consult with community sector representatives or peak bodies in relation to the design and development of any IT systems they may be expected to use.

Recommendation 17: Engage in ongoing consultation with key stakeholders to develop the training and communication strategy for the WDO scheme.

Recommendation 18: Implement an accessible process for individuals, sponsors or other relevant services to access the debt schedule.

Recommendation 19: Consider whether legislative amendments are required to Division 9, Part 5 of the *State Penalties Enforcement Act 1999* (Qld) to support the fair and flexible operation of the WDO scheme.

Other comments

Recommendation 20:

SPER should:

- Publish clear guidelines in relation to enforcement action and hardship options for people experiencing disadvantage; and
- Embed a hardship strategy to guide decision-makers and frontline staff across the organisation to identify people who may be eligible for hardship options and refer them to appropriate teams within SPER.

Recommendation 21: Establish a process and clear guidelines for waivers on the basis of special circumstances.

Recommendation 22: Clarify that people covered under existing arrangements with the Public Trustee will not be required to participate in the WDO scheme.

Recommendation 23: Establish a clear and accessible review mechanism as part of the implementation of the WDO scheme.

Recommendation 24: Establish clear arrangements with Centrelink Community Engagement Officers to support the implementation of the WDO scheme (and other hardship options).

Recommendation 25: Include appropriate representatives from Centrelink in the Working Group proposed in recommendation 1.

Recommendation 26: Consider how the WDO scheme may complement other Queensland government initiatives, such as the FRIAP and reinstatement of diversionary court processes.

GUIDING PRINCIPLES IN DEVELOPING A WDO SCHEME

The WDO consultation paper outlines six guiding principles in developing a WDO scheme for Queensland.

Community-owned and driven

The contributors to this response agree that the community services sector has a key role in the development and success of any WDO scheme.

In our experience, we believe a combination of government services, community-based social services, medical treatment and access to free legal services is essential to support people to exit situations of crisis.

Queensland's government and non-government sectors are diverse. In order for the WDO scheme to succeed, we consider it must be grounded in a genuine collaboration between SPER, other key government and representatives from the non-government sector.

The WDO scheme must also recognise the unique service delivery challenges in Queensland, especially the limited availability of services for regional and remote communities.

Key government stakeholders and community sector organisations must be involved in the design and implementation of the scheme. A working group should be established to assist in development and implementation of the scheme.

Self-service, not red tape

The contributors to this response are concerned at the lack of resources to be directed to establishing and supporting the WDO scheme.

The sector's ability to identify, sponsor and support people to participate in the WDO scheme within current funding constraints is limited and there is a real risk the scheme will fail unless appropriately resourced.

Clear information about participation in the scheme is essential for potential sponsors and participants.

Community legal centres, alongside Legal Aid and other legal assistance service providers could play an important role in providing information to the community sector and potential participants about the WDO scheme.

Fairness and flexibility

We consider that fairness and flexibility are also critical principles that must underpin the establishment of a WDO scheme in Queensland.

In our view, fairness requires clear and public guidelines about the operation of the WDO scheme and consistency in decision-making practices.

Flexibility requires decision-makers and approved organisations to take into account and address the personal circumstances and systemic barriers that are likely to affect the ability of vulnerable people to participate in and comply with the WDO scheme.

Case study: Lydia*

Lydia sought assistance from a community organisation in southern Brisbane for her personal circumstances. Lydia had accumulated a number of SPER fines for fare evasion, due to not paying for train tickets.

Lydia's only source of income was Centrelink, she had a Health Care Card and she was looking for work.

Lydia indicated that she wanted to do community service to make connections with the community, but she could not afford the transport costs.

In the end, it was cheaper for Lydia to pay her debt at \$10 per fortnight than to do community service. However, this meant she did not have the opportunity to make connections in the community that may have led to work.

Transport costs and other practical barriers to participation should be considered and addressed in the design and implementation of the WDO scheme.

Recommendation 1: Establish a working group of key stakeholders from government and the community sector to design a WDO scheme to meet Queensland's unique requirements and develop Work and Development Order Guidelines.

ELIGIBILITY CRITERIA

Q5.4.1 Should any additional eligibility criteria be added to the proposed list?

We understand the eligibility criteria are important because they guide the evidence that SPER will accept in order to demonstrate a person's vulnerability.

In our experience, vulnerability is complex and successful services need to be flexible to recognise different personal circumstances.

To ensure the WDO scheme is accessible as widely as possible to people experiencing marginalisation, we recommend a separate eligibility category for 'other special circumstances'.

People who may apply under this in this category include people who have experienced domestic violence or people who have recently exited prison. Based on our experience, these cohorts are very vulnerable and face significant difficulties rebuilding their lives.

We acknowledge that these groups may fall within other eligibility criteria. However, a separate category for 'other special consideration' may allow otherwise eligible people to demonstrate their eligibility to participate in the WDO scheme more easily.

For example, for a person who has experienced domestic violence, we propose that it would be sufficient to show a letter from a domestic violence service to demonstrate eligibility to participate in the WDO scheme.

Similarly, for a person who has recently exited prison, we suggest it would be sufficient to provide documents from Queensland Corrective Services that show a release date within 6 months of the application.

Case study: Liam*

Liam was released from prison on parole with strict conditions in April 2015. He was staying in temporary accommodation, his only source of income was a Newstart Allowance and he was also under an Involuntary Treatment Order.

Liam became aware of his unpaid SPER debt when \$50 per week started being deducted from his bank account. Liam was not able to afford his medication as a result of the deductions.

Liam sought help from a legal service to manage his SPER debt. The legal service assisted Liam to enter into a manageable instalment plan for his outstanding fines. Liam's total SPER balance was \$18,335.40.

A category for 'other special consideration' would also allow people who are experiencing hardship based on life circumstances to be eligible.

Case study: Murray*

Murray's SPER debt was originally around \$22,000. Murray is single and earns a wage. His sister is a single parent; she was very ill and unable to work and Murray provided her and her children with significant financial support. Murray also provided financial support to his elderly mother who lives overseas.

SPER refused to accept that Murray's mother and sister and her children were financially dependent on Murray and indicated that in their view, it was his choice to support his family. SPER initially applied for a garnishee order over his wages of around \$1100 per month. SPER were unwilling to reconsider this payment arrangement for a number of months, despite requests from Murray. This led to severe financial difficulties for Murray.

We note that the New South Wales scheme allows for 'exceptional circumstances' applications where a person is in acute economic hardship because of exceptional circumstances, even where the person's combined household income is above the threshold in the WDO Guidelines.

Recommendation 2: Include eligibility category for 'other special consideration' to ensure the WDO scheme is accessible to as many vulnerable people as possible.

Children

Section 5 of the *State Penalties Enforcement Act 1999* (Qld) allows SPER to take enforcement action against 17 year olds (as they are not children within the meaning of the *Youth Justice Act (1992)*). However, we understand that it is SPER's general policy that enforcement action is deferred until after a young person turns 18 years old.

In our experience, there are a significant number of 17 year olds with serious levels of SPER debt for their age. These young people have often been criminalised as children. It is clear that a significant proportion of children and young people involved in the criminal justice system are known to the child protection system.

Case study: Jamie*

Jamie was initially referred to a legal service by a youth support advocate who assists young people experiencing or at risk of homelessness. Jamie was in care until he turned 18 years old in June 2016.

Jamie's SPER debt was \$5,470.90, which was comprised of mostly fare evasion and other public space offences. His only source of income was Youth Allowance and his housing situation is precarious.

Jamie was recently approved for a Fine Option Order (**FOO**). However, \$1,334.70 is not able to be dealt with under the FOO because this amount is for offender levies for Jamie's appearances in the Magistrates Court.

Jamie plans to enter into a manageable instalment plan after he completes his FOO. However, given his vulnerable situation, it is likely that a payment plan will have a long-term impact on his income and stability.

Given the significant vulnerability of children under 18 years old, we agree they should not be included in the WDO scheme initially. However, we strongly recommend that SPER gives

further consideration to options available for children, including waivers or other arrangements.

We also support changes to the law so that 17 year olds are treated as children in Queensland's criminal justice system. We consider this would clarify the position in the *State Penalties Enforcement Act 1999* (Qld).

Q5.4.2 Are there any other definitions that can be utilised to better articulate WDO target groups to provide as much clarity as possible to individuals and potential sponsors of the scheme?

Serious addiction to drugs, alcohol or other volatile substances

We have had the opportunity to consider QNADA's submission in relation to the proposed definition of 'serious addiction' to drugs, alcohol or other volatile substances.

We support and endorse their submission that the definition should be based on the updated DSM-5 terminology of substance use disorder and the disorder classification of mild, moderate or severe, rather than introducing the new term of 'serious addiction'.

Recommendation 3: Adopt the definition for substance use disorder recommended by QNADA.

Financial hardship

People receiving Centrelink benefits may not identify experiencing "acute" financial hardship. The unintended consequence of using "acute" could be to make the scheme less accessible.

We recommend SPER deletes the word "acute" from the financial hardship category.

Recommendation 4: Delete the word "acute" from the financial hardship eligibility category.

Q5.4.3 Do you agree that for WDO applications for a person with mental or cognitive disability or serious drugs/alcohol/substance addiction, Sponsors would be required to declare that these conditions have contributed to the person's inability to pay?

We do not consider there is a significant risk that people who can afford to pay their fines will choose to engage in the WDO scheme.

In New South Wales, the WDO Guidelines state:

...where an application is made on the grounds of intellectual disability, cognitive impairment, mental illness, personality disorder or serious addiction to drugs, alcohol or volatile substances, the application should indicate that, in the view of the approved person, the person's condition:

- *has contributed or is contributing to the person's inability to pay the fine; or*
- *because of the person's condition, it is more appropriate for the person to undertake the work or activities proposed rather than pay the fine.*

Sponsors will not generally be in a position to give a declaration of a person's capacity to pay. In our view, it will be more appropriate for sponsors to explain why the proposed WDO

is appropriate for the person, taking into account the person's recovery, treatment or case management goals (where applicable).

We recommend that SPER adopts the requirements in the New South Wales guidelines in relation to sponsors' obligations to indicate why certain applicants should participate in the WDO scheme.

Recommendation 5: Adopt the requirements in the New South Wales guidelines in relation to sponsors' obligations to indicate why certain applicants should participate in the WDO scheme.

Other comments about eligibility

Link between eligibility and activities

We understand the eligibility criteria are not intended to impact on the person's choice of activity for the WDO.

For example, a person who applies on the basis of addiction may choose to undertake unpaid work under the WDO scheme to reduce their unpaid SPER fines.

To ensure clarity in the application of the WDO scheme, this should be clearly articulated in guidelines.

Recommendation 6: Individuals should be allowed to undertake any of the specified activities regardless of the criteria under which they are eligible to participate in the WDO scheme.

'Preservation' of eligibility

In our experience, recovery and stability are complex and ongoing processes for vulnerable people who the WDO scheme is intended to support.

For this reason, we consider it is important to ensure that people remain eligible to participate in the WDO scheme even if there is a temporary change in their circumstances during the period of their application or participation.

For example, if a person becomes employed temporarily, we consider this should not affect their eligibility to participate or continue participating in the WDO scheme. For persons experiencing entrenched circumstances of disadvantage, it is not unusual that they might experience instability, particularly in relation to maintaining continuous employment.

We recommend that any decision to refuse or cancel a WDO on the basis of a change in the person's eligibility should be made in consultation with the sponsor organisation and the participant. These decisions should also be subject to a clear and accessible internal review process.

Recommendation 7: Any decision to refuse or cancel a WDO on the basis of a change in the person's eligibility should be made in consultation with the sponsor and the participant. These decisions should also be subject to a clear and accessible internal review process.

OPERATION OF THE SCHEME

Q6.7.1 Are you satisfied with the level of information required to support an application to become a sponsor under the WDO scheme?

Further information about the accreditation process, role and obligations of sponsor organisations is required.

It is also important to clarify the position of referral organisations (such as legal services), who may play a role in disseminating information about the WDO scheme, supporting sponsor organisations to apply and connecting clients to sponsor organisations.

We understand Probation and Parole may have an ongoing role as a sponsor organisation under the WDO scheme. We support the ongoing involvement of Probation and Parole, especially to support the initial implementation of the scheme.

We recommend SPER undertakes further consultation with the community sector about the requirements to become a sponsor under the WDO scheme and the role of referral organisations. This consultation should be guided by the Working Group in recommendation 1.

Recommendation 8: Undertake further consultation with the community sector about the requirements to become a sponsor under the WDO scheme and the role of referral organisations.

Q6.7.2 Are there any other activities that could potentially be included in our proposed treatments?

Cultural engagement or mentoring activities

We note that many Aboriginal and Torres Strait Islander people live in regional or remote communities, where support or rehabilitation services are not available.

We consider SPER should play a central role in identifying and supporting activities for Aboriginal and Torres Strait Island people in regional and remote communities as part of the WDO scheme.

We also note the reinstatement of the Murri Court may provide a positive opportunity for people to 'count' court-based activities towards their SPER debt.

To support the genuine engagement of Aboriginal and Torres Strait Islander people in the WDO scheme, we recommend cultural engagement or mentoring activities should be included as approved activities.

We also recommend that SPER considers whether other activities may be available for people in regional or remote communities.

Recommendation 9: Include cultural engagement or mentoring activities to support the genuine participation of Aboriginal and Torres Strait Islander people in the WDO scheme.

Recommendation 10: Consider what other activities may be available for people in regional or remote communities.

Activities for parents

In our experience, many parents are open to engaging in Fine Option Orders to address their SPER debt but face significant barriers to participation, especially childcare. We note this issue disproportionately affects women.

We recommend SPER includes attendance at playgroups or similar activities (for example young parent programs) to support the genuine participation of parents in the WDO scheme. Such programs provide invaluable support, especially for young parents, to build connections in the community and learn skills.

Recommendation 11: Include attendance at playgroups or similar activities to support the participation of parents in the WDO scheme.

Further information in relation to current activities

We note and reiterate QNADA's concerns that non-residential drug and alcohol treatment options may not be considered approved activities for the WDO scheme.

We also note that there is no clear definition for 'mentoring' activities for under 25 year olds.

We consider it is important for SPER to provide further information about the types of activities will be included in the WDO scheme as part of the accreditation process.

Limited access to services

We also note our general concerns that:

- in practice, there are limited community services to support vulnerable people, especially financial counselling services and drug and alcohol treatment and rehabilitation; and
- people in regional and remote areas will not have access to the same number or variety of services as people in urban areas.

We consider the community sector should be involved in ongoing consultation with SPER and other relevant government bodies to develop innovative solutions to these issues.

Q6.7.3 Does the introduction of minimum time-based attendance thresholds with a cut-off category of \$1,000 per month need to be considered?

We understand people undertaking Fine Option Orders are currently required to complete a minimum of 8 hours per week of unpaid community service.

Strict minimum time-based attendance thresholds and maximum cut-offs may reduce the flexibility of the WDO scheme.

We recommend the WDO scheme guidelines should include suggested minimum attendance thresholds and maximum cut-offs. However, there should be flexibility for these requirements to be varied at the time each WDO is established, and on an ongoing basis with consent of the sponsor and participant. This will allow individual circumstances and the nature of each activity to be taken into account.

Recommendation 12: the WDO scheme guidelines should include suggested minimum attendance thresholds and maximum cut-offs. However, there should be flexibility for these requirements to be varied at the time each WDO is established, and on an ongoing basis with consent of the sponsor and participant.

Based on our experience with Fine Option Orders, we acknowledge that some people will want to engage in additional hours of unpaid work.

Case study: Robin*

Robin was undertaking a Fine Option Order in the kitchen at his temporary accommodation provider. Robin completed 115 hours of work in the kitchen over two months.

During this period, Robin was able to reduce his weekday drinking, was housed and able to prioritise his rent and bills. His regular work meant that he began to feel part of the team of volunteers.

We note that it is important to guard against abuse of unpaid work.

We recommend that SPER establishes clear complaints processes and regular audits as part of the WDO scheme to ensure people are not subject to predatory practices.

Recommendation 13: Establish clear complaints processes and regular audits as part of the WDO scheme to ensure people are not subject to predatory practices.

Q6.7.4 Is there a need for a cap on the number of WDOs that can be undertaken in a given period of time, for example, establishing a limit of 6 either new WDOs or variations to existing WDOs per year?

While we acknowledge the need for behavioural change, we also consider that any scheme designed to support vulnerable people with complex needs must be flexible enough to deal with 'failure' and crises that may arise for people.

The following comment from a contributor demonstrates the difficulties that vulnerable people face in complying with their obligations and the stress caused by the threat of extreme consequences:

A number of clients have indicated they are scared of locking into a set payment plan to enable SPER to direct debit from their bank account. They are fearful they will not be able to pay consistently because they have such a small amount to spare from each week after all expenses (such as rent, electricity, food and travel expenses) are paid for. If a car breaks down or there is an extra medical bill then they are left with nothing to spare and no savings in the bank so they default on their payment plan to SPER. These clients often have a good payment record and want to pay their debt but where some unexpected essential expense occurs, they will not have sufficient funds to meet their SPER repayments.

Strict caps may reduce the flexibility of the WDO scheme. We consider there should not be any legislated cap on the number of WDOs.

We recommend the WDO scheme guidelines should include suggested caps on the number of WDOs. However, there should be flexibility for the cap to be waived in appropriate circumstances.

Recommendation 14: The WDO scheme guidelines should include suggested caps on the number of WDOs. However, there should be flexibility for the cap to be waived in appropriate circumstances.

We also note that other mechanisms may be available to address issues with compliance under the WDO scheme, for example review and case management processes.

Other comments about operation of the WDO scheme

Resourcing for the community sector

We note that the consultation paper does not propose additional resources for the community sector to support the implementation and operation of the WDO scheme.

We are concerned that the WDO scheme will not succeed without additional resources to support the further burden of administering the scheme.

We acknowledge that additional resourcing for SPER and improved IT systems may reduce the burden on the community sector. However, community organisations already face significant resourcing constraints which may not be alleviated by these measures.

We recommend SPER engages in ongoing consultation with the community sector about appropriate resourcing for the WDO scheme. As appropriate, this matter could be discussed in the Working Group proposed in recommendation 1.

Recommendation 15: Engage in ongoing consultation with the community sector about appropriate resourcing for the WDO scheme.

Training and information for individuals and the community sector

We note that many contributors are concerned about the IT and administrative requirements of the WDO scheme for sponsors.

We understand SPER is in the process of upgrading its IT requirements to support better service delivery, including implementation of the WDO scheme.

The IT will need to be able to support easy access, flexibility and quick responses.

To the extent possible, we recommend SPER or its contractors consult with community sector representatives or peak bodies in relation to the design and development of any IT systems they may be expected to use.

Recommendation 16: Consult with community sector representatives or peak bodies in relation to the design and development of any IT systems they may be expected to use.

We also recommend SPER engages in ongoing consultation with the community sector, Legal Aid and other relevant organisations to develop the training and communication strategy for the WDO scheme. As appropriate, this matter could be discussed in the Working Group proposed in recommendation 1.

Recommendation 17: Engage in ongoing consultation with key stakeholders to develop the training and communication strategy for the WDO scheme.

Access to debt schedule

In our experience, many vulnerable people are not aware of the details of their SPER debt. Currently, many community organisations and legal services support clients to contact SPER to request a copy of their debt schedule.

To facilitate the effective operation of the WDO scheme, it will be important as an initial step to access and review the debt schedule to determine if:

- the debt can be addressed under a WDO;
- any fines can be challenged; and
- alternative options (such as waivers) may be available for certain components of the debt.

We recommend SPER implements an accessible process for individuals, sponsor organisations or other relevant services to access the debt schedule.

Recommendation 18: Implement an accessible process for individuals, sponsors or other relevant services to access the debt schedule.

Clarification about debt components included in the WDO scheme

We understand the intent of the WDO scheme is to include all fines, fees and levies with the exception of amounts payable to a third party.

Based on SPER's current practice, we understand the offender levy may not be included in the WDO scheme as it is possibly considered a debt ordered by the court 'to be paid'. It is also not clear whether offender debt recovery orders under the *Victims of Crime Assistance Act 2009* (Qld) will be included in the WDO scheme.

We suggest SPER clarifies which debt components will be included in the WDO scheme in further consultation with stakeholders.

Order of satisfaction of fines

Division 9, Part 5 of the *State Penalties Enforcement Act 1999* (Qld) sets out the requirements about the order of satisfaction of fines. We expect these provisions will apply to the operation of the WDO scheme.

We note that the imposition of SPER's registration fees disproportionately impacts people in poverty because they are often not able to pay infringement notices or (where available) the \$60 payment required for a voluntary instalment plan.

We also note that many vulnerable people are likely to have 'old' debts (over 6 years old).⁶ These debts may merit different arrangements, e.g. waivers (discussed further below).

To allow for fairness and flexibility in the administration of the WDO scheme, we suggest the offender levy and SPER's administrative fees should be recovered last. As a general rule, we also suggest that newer fines should be dealt with first.

We recommend SPER considers whether legislative amendments are required to Division 9, Part 5 of the *State Penalties Enforcement Act 1999* (Qld) to support the fair and flexible operation of the WDO scheme.

Recommendation 19: Consider whether legislative amendments are required to Division 9, Part 5 of the *State Penalties Enforcement Act 1999* (Qld) to support the fair and flexible operation of the WDO scheme.

⁶ We note other civil debts expire after 6 years, which is why we have chosen this as the benchmark: Limitation of Actions Act 1974 (Qld), s 10.

TIMING CONSIDERATIONS

Q8.1.1 Are the timing considerations sufficiently clear to understand the lead times required to deliver a successful WDO scheme in Queensland?

As indicated above, we recommend the establishment of a Working Group of key stakeholders to support the implementation of the WDO scheme.

The Working Group should be established as soon as possible to support genuine collaboration in relation to the design and implementation of the WDO scheme.

As no pilot program is proposed, the WDO scheme's success will depend on its smooth implementation.

Q8.1.2 Are you in favour of a staged implementation approach similar to what is proposed in this paper? If not could you suggest an alternative approach?

We support a staged implementation approach.

However, clarification should be provided for individuals who live in one area but access support services in another area to avoid fragmentation issues with the rollout.

OTHER COMMENTS

SPER's general approach to hardship and vulnerability

Fine Option Orders

We understand the WDO scheme is intended to replace Fine Option Orders (**FOOs**). Given FOOs are intended for people who have no ability to pay the fine (by instalments or otherwise),⁷ we agree that the WDO scheme should replace FOOs.

However, we note that there have been ongoing issues with SPER in relation to the implementation of FOOs. We consider it is important for these issues to be acknowledged and addressed in the implementation of the WDO scheme.

Case study: Ozcare Men's Hostel

Ozcare Men's Hostel (**Ozcare**) applied through Brisbane South Probation and Parole office to become an FOO site in December 2015. There were a significant amount of men who indicated they would like to reduce their SPER debt by contributing in various ways in the hostel. Some indicated that they are unable to move forward in their goals around employment and reunification with children as their license had been revoked due to their unpaid SPER debt. There was considerable cooperation with the Probation and Parole office, and Ozcare was able to sign off all paperwork by 10 February 2016.

Ozcare has had ongoing difficulties working with SPER to have FOO applications considered and approved. SPER has not received applications sent by fax. There has also been considerable delay in approving the applications. One resident moved out of Ozcare to Pindari Hostel two days prior to approval being received from SPER for a FOO. There have also been situations where SPER has rejected applicants on the basis that they have 'capacity to pay', despite being homeless.

Stewart* is an Ozcare resident who has accumulated debt in the amount of \$1,050. He was recently approved for a FOO, two months after his paperwork was provided to SPER with a letter of support from Ozcare. Stewart was previously on a Centrepay payment plan with SPER for \$10 a fortnight.

Stewart applied for the FOO as he said this would "give him something to do", and offers a chance to get rid of his debt through working it off.

Stewart came to Ozcare with a history of homelessness, and identifies as struggling with substance misuse and dependence issues. Stewart speaks frequently around the loss of family and the impact that the grief and loss associated with this has had on his moving forward with hope. Stewart had a previous fall off a second floor balcony which has left him with a back injury and acquired brain injury. Upon learning that he has been approved for the FOO, Stewart is looking forward to working off his debt by assisting with the laundry.

As indicated above, we would support the ongoing involvement of Probation and Parole in the WDO scheme, subject to clear information about their role and responsibility in relation to community sector sponsor organisations.

⁷ State Penalties Enforcement Act 1999 (Qld), s 45.

SPER's approach to hardship

From conversations with SPER, we understand about 70,000 people currently have Centrepay arrangements in place with SPER for repayment of unpaid debt.

We note that WDOs will not be the best option for every eligible person. This means that SPER's other hardship arrangements and processes will remain important.

We understand the Individual Consideration Team (**ICT**) currently has responsibility for supporting people experiencing disadvantage to address their SPER debt.

In our experience, the ICT is under-resourced and 'hidden' in the SPER system. There are limited publicly accessible contact details and many individuals and community organisations are not aware that hardship options are available.

We also note that SPER does not currently publish guidelines about hardship options or factors that are taken into account in assessing 'capacity to pay'.

Lack of clarity around eligibility for hardship options and decision-making criteria are serious issues and, in our experience, contribute to inconsistent and unjust decision-making.

Case study: Thomas*

Thomas has a SPER debt of over \$100,000 which relates to a criminal compensation debt.

Thomas spent some time in prison and while he was incarcerated his adult child had an accident which led to a profound disability. Thomas receives a disability support pension and has been diagnosed with anxiety and depression.

For a number of years Thomas was making regular payments of \$25 per fortnight to SPER. SPER recently asked Thomas to complete a financial disclosure application and review this payment plan and increased the target amount to \$100 per fortnight.

Thomas complained about this decision but it was confirmed by SPER. A legal service assisted Thomas to negotiate a payment plan of \$40 per fortnight.

Whether or not the WDO scheme is introduced, SPER should:

- publish clear guidelines in relation to enforcement action and hardship options for people experiencing disadvantage; and
- embed a hardship strategy to guide decision-makers and frontline staff across the organisation to identify people who may be eligible for hardship options and refer them to appropriate teams within SPER.

Recommendation 20:

SPER should:

Publish clear guidelines in relation to enforcement action and hardship options for people experiencing disadvantage; and

Embed a hardship strategy to guide decision-makers and frontline staff across the organisation to identify people who may be eligible for hardship options and refer them to appropriate teams within SPER.

Waivers and ‘capacity to pay’

We understand that SPER waives very little debt compared to its counterparts interstate.

Debts of thousands or tens of thousands of dollars are very significant for people whose only source of income is Centrelink. In the face of large debts, people often feel hopeless and decide not to take action.

Practically, FOOs, WDOs or instalment plans may not be reasonable for SPER or individuals where they will be in place for many years to address the debt.

We also note that there is an inherent inconsistency in approving a FOO (or WDO) on the basis that a person has no capacity to pay, but then requiring the person to enter into an instalment plan for other components of their debt.

Case study: Glynn*

Glynn is a 27 year old male with a history of youth homelessness (since 2006) and is currently sleeping rough and intermittently couch-surfing. Support (including support from mental health services) has been occasional over the years and limited to periods of time when Glynn has been contactable.

Given Glynn’s transient situation, no sustained support around health, legal, financial or other issues could be put in place and Glynn has been unable to maintain his housing application without support to keep it active.

His housing application was cancelled on 26 June 2016, and support services are unable to have this reinstated until contact can be made.

Glynn identifies his homelessness as a contributing factor to a list of charges for which he is appearing before court. These charges are for stealing, fare evasion, assaulting/obstructing police, contravening a police banning order and possessing a knife in public space.

Glynn has recently had all his ID stolen, leading to further complications in accessing money for food, transport and daily living, and also in applying for housing, should the opportunity arise to progress this

Glynn has been unable to find employment since losing his job 8 years ago. Glynn’s licence is currently suspended as a result of unpaid SPER debt, further limiting his employment prospects.

Glynn is currently receiving Newstart and has accumulated a SPER debt of \$24,386. Glynn’s SPER debt is exacerbating the challenges he already faces.

We consider waivers are an important complementary component to the WDO scheme, as they will allow access to fully non-financial options to address unpaid debt.

However, even if the WDO scheme is not implemented, SPER should consider waivers on the basis of special circumstances to reduce the levels of debt for vulnerable people. It is

undesirable as a matter of public policy that persons be allowed to languish in debt to the government where there is no likelihood, save for an unprecedented positive change in their circumstances, that such debt will be repaid in their life-time.

For these reasons, we recommend that SPER establishes a process and clear guidelines for waivers on the basis of special circumstances.

We acknowledge that waivers would only be available in limited circumstances. Waiver of offender levies, SPER fees and/or 'old' fines would be a positive starting point.⁸

Recommendation 21: Establish a process and clear guidelines for waivers on the basis of special circumstances.

Public Trustee

We understand SPER has an existing arrangement with the Public Trustee, which allows debts to be waived in certain circumstances.

We recommend SPER clarifies that it will not require people who are covered under this arrangement to participate in the WDO scheme.

Recommendation 22: Clarify that people covered under existing arrangements with the Public Trustee will not be required to participate in the WDO scheme.

Accessible review mechanisms

Accessible review mechanisms are an important feature of good public administration and transparent decision-making.

As part of the WDO scheme, SPER may make significant decisions that impact on vulnerable people in relation to eligibility, ongoing participation and non-compliance.

To address unfairness and encourage consistency in decision-making, we recommend that SPER establishes a clear and accessible review mechanism as part of the implementation of the WDO scheme.

The review mechanisms will be particularly important where a person has not been able to comply with the WDO. Consequences for non-compliance should be fair and proportionate. As well as clear, flexible guidelines about non-compliance, relevant decisions should be subject to review mechanisms.

We consider the same review mechanism should apply to all of SPER's decisions.

Recommendation 23: Establish a clear and accessible review mechanism as part of the implementation of the WDO scheme.

⁸ Although we support the abolition of the offender levy, as an alternative, we would support the introduction of a discretion for SPER to waive the offender levy.

Links with Centrelink Community Engagement Officers

We note SPER no longer conducts outreach activities. In our experience, this means it is very difficult for SPER to identify vulnerable people and put in place appropriate arrangements for their SPER debt.

It is not clear whether SPER proposes to resume its outreach activities as part of the WDO scheme.

Given the importance of face-to-face engagement with vulnerable people, we recommend SPER establishes clear arrangements with Centrelink Community Engagement Officers to support the implementation of the WDO scheme (and other hardship options).

We also recommend that SPER includes appropriate representatives from Centrelink in the Working Group proposed in recommendation 1.

Recommendation 24: Establish clear arrangements with Centrelink Community Engagement Officers to support the implementation of the WDO scheme (and other hardship options).

Recommendation 25: Include appropriate representatives from Centrelink in the Working Group proposed in recommendation 1.

Links with other Queensland government initiatives

We note the Department of Communities, Child Safety and Disability Services recently launched the Financial Resilience and Inclusion Action Plan (**FRIAP**).

We also note that the Murri Court and Queensland Integrated Court Referrals have recently been reinstated to provide eligible people with access to social support.

We recommend SPER considers how the WDO scheme may complement other Queensland government initiatives, such as the FRIAP and reinstatement of diversionary court processes.

Recommendation 26: Consider how the WDO scheme may complement other Queensland government initiatives, such as the FRIAP and reinstatement of diversionary court processes.

