

15 July 2016

SPER WDO Project Team
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Via email to: SPER-PolicyProjectTeam@treasury.qld.gov.au

To whom it may concern,

Thank you for the opportunity to provide feedback on the proposed Work and Development Order (WDO) program.

The role of the Public Advocate was established by the *Guardianship and Administration Act 2000* (Qld) to undertake systems advocacy on behalf of adults with impaired decision-making capacity in Queensland.¹ The primary role of the Public Advocate is to promote and protect the rights, autonomy and participation of Queensland adults with impaired decision-making capacity in all aspects of community life.

This office for the past few years has been proposing the implementation of new programs by SPER to take into consideration the circumstances of people with impaired decision-making capacity, including the adoption of a WDO program based upon the New South Wales (NSW) model. In general, this office supports the proposal to introduce a Work and Development Order program, however, the current proposal leaves a number of questions unanswered in terms of implementation, consideration of the circumstances of people who cannot participate in such a program and the need for a specific and appropriate response to the needs of people with impaired capacity who become caught up in the SPER system.

Sponsorship and implementation

The WDO system relies upon a network of sponsor organisations and health practitioners to provide a free service to applicants to undertake activities in discharge of their fine debt. The program in NSW has been successful in having a large number of organisations willing to sponsor individuals, with hundreds of such sponsors listed on the website of NSW's Office of State Revenue.² Clearly, such wide-ranging support is critical in ensuring the success of such a program.

However, it is questionable whether the NSW approach will be successful in Queensland without significant additional investment in programs and services. It is not clear from the Consultation Paper how receptive organisations and health practitioners will be to sponsoring individuals on the WDO program, especially when it is not known whether they would have the capacity and resources to take on a new group of clients under this scheme.

Further, the Consultation Paper notes that in NSW, additional dedicated resources were allocated to not only the State Debt Recovery Office, but also to Legal Aid NSW, the Aboriginal Legal Services and

¹ *Guardianship and Administration Act 2000* (Qld) ch 9.

² New South Wales Government, *Work and development order – Approved WDO organisations* Office of State Revenue State Debt Recovery <<http://www.sdro.nsw.gov.au/fines/eo/wdo.php>>.

the Department of Justice. The Consultation Paper does not clarify whether the NSW resource investment in the WDO program will be matched by Queensland Government funding, nor whether the equivalent agencies in Queensland are willing to undertake similar activities to promote the program.

Therefore, although the concept of a WDO program has always been supported by my office, without further information on the level funding and support for the WDO program by the government and potential sponsors, here appears to be a high level of uncertainty about its implementation.

Eligibility criteria

It is proposed that the WDO program will adopt eligibility criteria similar to those used under the NSW scheme, which will include people who have a mental illness or an intellectual or cognitive disability (this should perhaps include the specific, but increasingly prevalent, condition of age-related dementia). People with these conditions are likely to have impaired decision-making capacity to varying degrees.

I recognise that some people experiencing these conditions may only have low impairment and could potentially benefit from participating in the WDO program. However, I am particularly concerned about the potential for people with significant capacity impairment to be found 'guilty' and have fines imposed on them through the SPER process, when they would have otherwise been found unfit or to not have the legal capacity to be dealt with by a regular court. People in these circumstances should not have a SPER debt recorded against them. Additionally, this cohort of people are unlikely to have the capacity to pay the SPER debt or to undertake the WDO programs.

Under the *State Penalties Enforcement Act*, SPER has the discretion to write-off debt under an issued guideline.³ I understand that SPER has internal guidelines that allow debts to be written-off for people who have impaired decision-making capacity or a medical condition. There does not appear to be any publically available information from SPER that indicates that this is an available option for these vulnerable groups.

Both NSW and Victoria's equivalent agencies have transparent policies for the writing-off of debts for vulnerable people contained in guidelines that are available on their websites.⁴

SPER should have clear publicly available guidelines and a simple process that permit it to write-off debts for vulnerable people with significant capacity issues. These guidelines should also take into consideration potential accessibility issues for people with disabilities so they are able to easily navigate and utilise them.

³ *State Penalties Enforcement Act 1999* (Qld) s 150A.

⁴ New South Wales Government, *Postpone enforcement action* Office of State Revenue State Debt Recovery <http://www.sdro.nsw.gov.au/lib/docs/misc/guidelines_for_writing_off_fines.pdf>; Victoria State Government *Special Circumstances* <<http://online.fines.vic.gov.au/fines/Content.aspx?page=41&s=2&l=10-14-41>>.

Prevention of unpayable fines

Although not specifically within the scope of the Consultation Paper, the need for further criteria to allow the write-off of fines for people with capacity issues raises the need for a more holistic, system-wide approach to prevent unreasonable or unenforceable infringement notices being issued to begin with.

If a person lacks capacity, there is little utility in continuing to issue infringement notices against them for minor matters. This office has concerns that there may be a cohort of people with impaired capacity who are running up significant SPER debts.

For instance, I am concerned that there may be a large number of fines issued to people with impaired capacity for non-payment of fares on public transport. The management of a GoCard is a fairly complex activity which involves the purchasing of the card, the registration of the card, the downloading of credit using a machine at a railway or bus station or through an authorised provider. The card holder needs to ensure that they 'tap' on and off the public transport at each end of the trip. The card holder also needs to be vigilant about the level of credit on their card to ensure they do not ride public transport using a card with insufficient funds to cover the cost of the trip, or they risk a fine. These are complex activities for a person with impaired capacity, which makes them vulnerable to breaching the law and being issued an infringement notice. It is made more difficult because when travelling on most forms of public transport, there are a few, if any, options to pay other than using a GoCard. Also, people with impaired capacity frequently have to rely on public transport as their primary means of transportation, so they are forced to use a system that is particularly challenging for them to navigate.

There may be better ways to manage these issues for people with impaired capacity, such as issuing free or annual travel passes for people with disabilities. Alternatively, enforcement officers should be encouraged to change their approach to people who they suspect have capacity issues and commit minor infringements by exercising their discretion not to issue an infringement notice, issuing a caution or adopting a problem-solving approach and taking the person back to their case worker or a member of their support network and having a discussion about how to reduce incidents of fare evasion.

There may be numerous other areas where people with capacity issues are particularly at risk of breaching the law where we may be able to introduce interventions to reduce the potential of them accumulating SPER debts. I would be pleased to work with SPER, and the agencies it collects and enforces fines for, to identify particular areas of difficulty for people with impaired capacity that may be resulting in infringement notices and see if we can find better ways to manage these matters for this vulnerable group.

Concluding comments

I am pleased to support the concept of a WDO program for those people who could benefit from participation in such a program. However, there are a number of issues that remain to be addressed in the implementation of this program. This includes the currently unexplored capacity in Queensland for potential sponsors to support such a program, as well as the inappropriateness of WDOs for people with significantly impaired capacity who should not have a fine imposed because of their capacity issues or lack the capacity to meaningfully participate in the programs offered.

Thank you again for the opportunity to provide feedback in relation to the WDO program. Should the opportunity arise, I would be pleased to be part of further discussions in relation to the design and/or implementation of future proposals and alternatives to the current fine management system in Queensland, or any other matter raised in this letter.

Yours sincerely



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Office of the Public Advocate