



# PENALTY INFRINGEMENT NOTICES POLICY

Policy ID 2.04

Version 2 (November 2023)

|                        |               |                 |
|------------------------|---------------|-----------------|
| <b>Policy category</b> |               | External        |
| <b>Author</b>          |               | LCIU            |
| <b>Version control</b> | <b>Date</b>   | <b>Comments</b> |
| First Draft            |               |                 |
| Second Draft           | November 2023 |                 |
| Approved by Board      |               |                 |
| Superseded             |               |                 |

## BOARD OF PROFESSIONAL ENGINEERS OF QUEENSLAND

The Board of Professional Engineers of Queensland (Board) is a statutory body established under the *Professional Engineers Act 2002* (the Act), to uphold the standards of practice through regulating the engineering profession in Queensland.

### PURPOSE

This policy outlines the Board's procedure for issuing Penalty Infringement Notices (PINs) under Part 3 of the *State Penalties Enforcement Act 1999* (SPER Act)

### AUTHORITY

Part 3 of the SPER Act provides that if an authorised person reasonably believes a person has committed an infringement notice offence, the authorised person may serve an infringement notice on the person for the offence (s 13(1) of the SPER Act).

Under the State Penalties Enforcement Regulation 2014 (the Regulation) the "authorised person" for the service of infringement notices is the registrar appointed under the Act.

### THE PIN

A PIN is a notice under s 15 of the SPER Act. A PIN imposes a fine (usually served by registered post). A PIN will contain details of the alleged infringement offence, including but not limited to the alleged offending behaviour and the location, time and date of the offence.

A PIN provides the Board an alternative to prosecution through the court system. A PIN invites an alleged offender to discharge their potential liability for an offence by paying a fine, as opposed to having the matter dealt with by a court. Once the PIN has been paid (in full) the person cannot be prosecuted for the offence.

A PIN may only be issued for an offence that is prescribed as an infringement notice offence under the Regulation. Offences for which PINs can be issued are listed in **Attachment 2**.



If, however, the person wishes to contest the alleged offence, they can elect to have the matter dealt with in the Queensland Magistrates Court.

The PIN system provides the Board with a swift and inexpensive means of addressing particular offences that would otherwise be required to be dealt with by means of costly and time-consuming prosecutions. Offenders benefit from a fixed and discounted penalty for the offence, avoidance of court proceedings and a potential court conviction.

It is not mandatory for the Board to use PINs, and the Board will always consider the full range of options available for promoting compliance with the legislation and the most appropriate response to the alleged conduct.

## RESPONSIBILITIES

An authorised person (defined in **Attachment 1**) is required to have regard to the legislative framework that regulates the issuing and management of PINs.

In making a decision to issue a PIN, the authorised person should ensure good decision making principles are adhered to including being guided by the principles of procedural fairness and natural justice, the importance of recordkeeping and providing clear reasons for a decision to issue a PIN.

## PROCEDURE

In making decisions about issuing a PIN to a person for a breach of an offence provision in the Act, consideration is given to all the available evidence and whether issuing the PIN is in the public interest and the preferable course of action in relation to the offence.

The following principles will be applied in each circumstance where the issue of a PIN is being considered:

- whether each of the elements of the offence can be proved to the requisite standard of proof (that is, proved beyond reasonable doubt);
- whether issuing the PIN is in the public interest and preferable to taking any other action in relation to the offence (such as a warning letter for first time offences);
- whether the breach is minor in nature, the scale of the impact is known and small and imposing a PIN is likely to have a punitive effect; and
- whether the PIN is likely to act as a deterrent.

A PIN should not be issued if:

- the alleged offender may gain a benefit greater than the fine imposed by the PIN; or
- it is apparent that a defence, including those defences under Chapter 5 of the *Criminal Code 1899*, is likely to be available to the alleged offender.

## PAYING THE PIN

Paying the PIN in full will finalise the matter. Under the SPER Act, you may make an application for a payment plan. Once the fine is paid, in full or in part, you will no longer have the right to contest the matter in Court.



---

## DISPUTING THE OFFENCE

To dispute a PIN, you can lodge an application to have the PIN reviewed by the Board or elect to have the matter heard and determined in the Queensland Magistrates Court. However, you only have 28 days from the date of service to elect to have the matter heard in Court. At the expiry of the 28 day period, the option is no longer available and the fine is referred to SPER for recovery.

### Provision of written submission

You can write to the Board and request a review of the decision to issue a PIN. The request must be in the form of a written submission and include sufficient information and evidence about why the PIN should be withdrawn. Insufficient or unsubstantiated information may lead to the rejection of your submission. In the event that the submission is rejected written notice will be provided to you. The Board may suspend the 28 day period whilst your submission is being considered.

### Elect to have the matter heard in court

You can elect to have the matter dealt with as a criminal offence by the Queensland Magistrates Court. To elect to do so tick the 'Court Election' box on the reverse side of the PIN. The signed PIN must be returned to the address provided on the PIN within 28 days of the date of service.

In the event you elect to have the matter dealt with in the Queensland Magistrates Court, the PIN is effectively abandoned, you will instead be served with a complaint and summons to the Magistrates Court pursuant to s 54 of the *Justices Act 1886*.

Before you elect to have the matter heard in court we would suggest that you obtain independent legal advice regarding the possible consequences should you be convicted of the offence in a court. These may include significantly higher financial penalties, legal costs and the possibility of a criminal conviction. The Board does not wish to dissuade anyone from exercising their right to a fair hearing but out of fairness we suggest that it may be in your best interests to seek independent legal advice first. The Queensland Law Society can refer you to a suitably qualified lawyer.

## STATE PENALTIES ENFORCEMENT REGISTRY (SPER)

SPER is responsible for the collection and enforcement of unpaid infringement notice fines, court-ordered penalties, offender debt recovery orders and offender levies.

If a person does not act by the due date on the infringement notice issued by the Board:

- the Board can refer the infringement notice to the SPER, and SPER may issue an enforcement order. The order includes a registration fee and a new due date; or
- the person may be prosecuted in a magistrate's court.



As an administering authority the Board must be registered with and provide SPER with a list of code offences for which they can issue a PIN under the relevant legislation (Part 3 of the SPER Act). The Board is required to lodge defaulted PINs or voluntary instalment plans in the SPER's online electronic lodgement system for payment to occur.

Although SPER is responsible for the collection and enforcement of fines and has established the mechanisms for lodging and enforcing defaulted PINs (refer to the *State Penalties Enforcement Registry - Enforcing guidelines*), it does not prescribe a model to follow when implementing a PIN administrative system.

## REFERENCES

Related legislation:

- *Criminal Code 1899: Chapter 5*
- *Human Rights Act 2019*
- *Justices Act 1886*
- *Penalties and Sentences Act 1992*
- *Professional Engineers Act 2002*
- *Professional Engineers Legislation 2019: Part 5*
- *State Penalties Enforcement Act 1999*
- *State Penalties Enforcement Regulation 2014*

Other references:

- *State Penalties Enforcement Registry - Enforcing guidelines*



---

## ATTACHMENT 1 – DEFINITIONS

| Term                       | Description  |
|----------------------------|--|
| <b>Infringement Notice</b> | A notice under section 15 of the <i>State Penalties Enforcement Act 1999</i>   |
| <b>Authorised Person</b>   | The Registrar, appointed under the <i>Professional Engineers Act 2002</i> is the authorised person for service of infringement notices |



## ATTACHMENT 2 – PIN OFFENCES

| Infringement Notice Offence under the Act |  | PIN penalty units under the Regulation |
|---|--|--|
| s 32                                      | <b>s 32 Notification about particular matters</b><br>A registered professional engineer must, within 21 days after changing his or her name or contact details, advise the board about the change unless the engineer has a reasonable excuse.   | 1                                      |
| 32AA (1)                                  | <b>32AA Notification of prescribed changes</b><br>(1) A registered professional engineer must give notice to the board of a prescribed change for the engineer within 21 days after the change, unless the engineer has a reasonable excuse.<br>Maximum penalty—50 penalty units.<br>(2) In this section—<br>prescribed change, for a registered professional engineer, means a change relating to a matter that the board may consider under section 11 when deciding whether a person is fit to practise as an engineer.   | 5                                      |
| s 32A(1)                                  | <b>s 32A Notification of disciplinary action by other bodies</b><br>(1) A registered professional engineer must advise the board about any disciplinary action (the <b>event</b> ) taken against the engineer in another State or a foreign country in relation to the engineer's practice as an engineer, within 21 days after the event, unless the engineer has a reasonable excuse.<br>Maximum penalty—50 penalty units.<br>(2) For subsection (1) it is immaterial whether or not the disciplinary action happened under a law of the other State or country, or under the rules of an association of professional engineers.   | 5                                      |
| s 32C(2)                                  | <b>s 32C Amending or replacing certificates of registration after certain conditions imposed</b><br>(1) This section applies if—<br>(a) a registered professional engineer receives a warning notice under section 27A; or<br>(b) the tribunal makes an order imposing a condition on the engineer's registration.<br>(2) The engineer must return the engineer's certificate of registration to the board within 21 days after receiving the warning notice or the tribunal makes the order, unless the engineer has a reasonable excuse.<br>Maximum penalty—50 penalty units.  | 5                                      |
| 35K (3)                                   | <b>s 35K Power to require production of documents</b><br>(1) The board may, by notice given to an audited engineer, require the audited engineer to give the board a copy of, or access to, a document about a stated matter in the audited engineer's possession or control.<br>(2) The notice must require the copy of, or access to, the document to be given within a stated reasonable period and in a stated reasonable way.<br>(3) The audited engineer must comply with the requirement, unless the audited engineer has a reasonable excuse.<br>Maximum penalty—100 penalty units.<br>(4) For subsection (3), it is a reasonable excuse for the audited engineer not to comply with the requirement if complying with the requirement might tend to incriminate the audited engineer or expose the audited engineer to a penalty. | 10                                     |



| <b>Infringement Notice Offence under the Act</b>                                      |  | <b>PIN penalty units under the Regulation</b> |
|---|--|---|
| <b>s 54</b>   | <b>s 54 Failure to return identity card</b><br>An individual who ceases to be an investigator must return the individual's identity card to the board within 21 days after ceasing to be an investigator, unless the individual has a reasonable excuse.<br>Maximum penalty—10 penalty units.  | <b>1</b>                                      |
| <b>s 56(1)</b>  | <b>s 56 Offences</b><br>(1) A person required to give information to the board or an investigator under section 55 must comply with the requirement unless the person has a reasonable excuse.<br>Maximum penalty—50 penalty units.  | <b>5</b>                                      |
| <b>s 56(2)</b>  | (2) A person given a notice under section 55 must not fail, without reasonable excuse—<br>(a) to attend as required by the notice; or<br>(b) to continue to attend as required by the board or investigator until excused from further attendance; or<br>(c) to answer a question the person is required to answer by the board or investigator; or<br>(d) to produce a document the person is required to produce by the notice.<br>Maximum penalty—50 penalty units. | <b>5</b>                                      |
| <b>62M (1)</b>  | <b>s 62M(1) Offence to contravene help requirement</b><br>(1) A person of whom a help requirement has been made must comply with the requirement unless the person has a reasonable excuse.<br>Maximum penalty—50 penalty units.<br>(2) It is a reasonable excuse for an individual not to comply with a help requirement if complying might tend to incriminate the individual or expose the individual to a penalty.   | <b>5</b>                                      |
| <b>62Q</b>  | <b>s 62Q Offence to contravene seizure requirement</b><br>A person must comply with a requirement made of the person under section 62P(2)(c) unless the person has a reasonable excuse.<br>Maximum penalty—50 penalty units.   | <b>5</b>                                      |
| <b>62R (1)</b>  | <b>s 62R Offence to interfere</b><br>(1) If access to a seized thing is restricted under section 62P, a person must not tamper with the thing or with anything used to restrict access to the thing without—<br>(a) an investigator's approval; or<br>(b) a reasonable excuse.<br>Maximum penalty—50 penalty units.  | <b>5</b>                                      |
| <b>62R (2)</b>  | If access to a place is restricted under section 62P, a person must not enter the place in contravention of the restriction or tamper with anything used to restrict access to the place without—<br>(a) an investigator's approval; or<br>(b) a reasonable excuse.<br>Maximum penalty—50 penalty units.   | <b>5</b>                                      |
| <b>s 67(1) (Other than an offence that constitutes an assault on an investigator)</b> | <b>s 67 Obstructing board or investigators</b><br>(1) A person must not obstruct the board in its exercise of a power in the conduct of an investigation, or an investigator in the exercise of a power, unless the person has a reasonable excuse.<br>Maximum penalty—100 penalty units.  | <b>5</b>                                      |



| <b>Infringement Notice Offence under the Act</b> |  | <b>PIN penalty units under the Regulation</b> |
|--|--|---|
| <b>s 113(1)</b>                                  | <b>s 113 Claims about being a registered professional engineer</b><br>(1) A person who is not a registered professional engineer must not—<br>(a) claim, or hold himself or herself out, to be a registered professional engineer; or<br>(b) allow himself or herself to be held out as a registered professional engineer.<br>Maximum penalty—1000 penalty units  | <b>20</b>                                     |
| <b>s 113(2)</b>                                  | (2) A person must not hold out another person as a registered professional engineer if the person knows or ought reasonably to know the other person is not a registered professional engineer.<br>Maximum penalty—1000 penalty units.   | <b>20</b>                                     |
| <b>s 114</b>                                     | <b>s 114 Using titles or names</b><br>A person who is not a registered professional engineer must not use—<br>(a) the titles 'registered professional engineer', 'registered professional engineer of Queensland' or 'RPEQ'; or<br>(b) another title or name, prescribed under a regulation, that in the context in which the title or name is used suggests that the person is a registered professional engineer.<br>Maximum penalty—1000 penalty units.   | <b>20</b>                                     |
| <b>s 115(1)</b>                                  | <b>s 115 Who may carry out professional engineering services</b><br>(1) A person who is not a practising professional engineer must not carry out professional engineering services.<br>Maximum penalty—1000 penalty units.<br>(2) However, a person does not commit an offence under subsection (1) if the person carries out the professional engineering services under the direct supervision of a practising professional engineer who is responsible for the services.   | <b>20</b>                                     |
| <b>s115 (3)</b>                                  | (3) A person who is a practising professional engineer must not carry out professional engineering services in an area of engineering other than an area of engineering for which the person is registered under this Act.<br>Maximum penalty—1000 penalty units.<br>(4) However, a person does not commit an offence under subsection (3) if the person carries out the professional engineering services under the direct supervision of a practising professional engineer who is registered in the area of engineering and responsible for the services.<br>(5) For this section, a person carries out professional engineering services under the direct supervision of a practising professional engineer only if the engineer directs the person in the carrying out of the services and oversees and evaluates the carrying out of the services by the person.<br><i>Note—</i><br>See also section 6A in relation to the potential application of this section outside Queensland. | <b>20</b>                                     |