

QUEENSLAND TREASURY

# **SPER fine collection notices**

**Employer guide for redirection of earnings**

**August 2023**

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This publication contains information for the operation of the State Penalties Enforcement Registry (SPER) system. It has been produced and distributed by SPER as an information source for employers within the meaning of the *State Penalties Enforcement Act 1999*.

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## 1.0 Introduction

SPER is responsible for the collection and enforcement of unpaid fines/orders in Queensland. SPER started operating on 27 November 2000 under the *State Penalties Enforcement Act 1999* and the State Penalties Enforcement Regulation 2014.

Once an outstanding fine/order (debt) is registered with SPER, an enforcement order is immediately issued to the debtor at the address supplied by the agency that issued the fine/order. This enforcement order allows the debtor time to pay (minimum 28 days) or to choose from the available options, including:

- pay in full
- apply to pay by instalments
- apply for a work and development order (to do unpaid community work)
- elect to have the matter heard by a court (if not previously heard) for an infringement notice fine or to apply for a rehearing/reopening for a court-ordered fine.

Should the debtor take no action within the time provided, a reminder notice is sent advising that further enforcement action will be taken to recover the outstanding debt. These enforcement actions may result in an additional fee being added to the debt to cover the enforcement costs. The enforcement actions may include:

- suspending the debtor's driver licence
- ordering the debtor's bank to transfer money from their bank account
- ordering the debtor's employer to deduct money from their wages
- registering an interest in the debtor's property (land or motor vehicle)
- immobilising the debtor's vehicle
- seizing and selling the debtor's property
- issuing a warrant to the Queensland Police for the arrest and imprisonment of the debtor.

As a third party, if you are reading this information guide, you would have received a fine collection notice from SPER, compelling you to deduct a certain amount from monies you are holding on behalf of the debtor. This guide is intended to provide you with information to assist you in fulfilling your obligations under this fine collection notice. The guide is not intended to provide comprehensive legal advice. While SPER staff will be able to assist you with queries regarding SPER enforcement procedures, legal advice should only be obtained from a qualified legal practitioner.

In accordance with the *Right to Information Act 2009* and the State Penalties Enforcement Act, a debtor's details registered with SPER are confidential and will not be made available to anyone except the debtor, his/her nominated representative, or where required by law. Accordingly, you are required to ensure that any personal or financial information about the debtor received in this notice remains confidential and is securely stored.

## 2.0 What is a fine collection notice?

Section 75 of the State Penalties Enforcement Act allows the Registrar of SPER to issue a fine collection notice to redirect part of the earnings of a debtor. This means that you, as the employer, are required to deduct the weekly amount as noted on the fine collection notice and pay that to the Registrar of SPER by the 7th day of every month. A copy of the fine collection notice is also given to the debtor (employee) as soon as practicable after it is issued.

A fine collection notice is a type of enforcement action and is only issued if the debtor has failed to enter into one of the many forms of compliance SPER offers to settle the debt.

Should the Registrar consider it necessary, or the employee requests SPER to vary or withdraw (cancel) a fine collection notice, you will receive written advice of any changes.

Should the employee have any queries or concerns regarding their SPER matters or the issue of this fine collection notice, advise them to contact SPER directly.

Once a fine collection notice for redirection of earnings has been issued, it becomes your responsibility (as the employer) to enforce the notice and send monies collected to SPER. As such, SPER will review these notices on a regular basis and make contact with the employer in the following circumstances:

- when no returns (forms SPER3010 or SPER3011) have been lodged with SPER for a period of 3 months or greater
- when no deductions have been paid to SPER for a period of 6 months or greater.

For definitions of an 'employer' and 'earnings', refer to the [Frequently asked questions](#) section.

### 3.0 Role and responsibilities of the employer

Once you, as the employer, have received a fine collection notice, the deductions should commence from the next available pay.

It is the responsibility of the employer to make the deductions as required under the fine collection notice and pay the relevant amount to SPER by the 7th day of each month. Failure to do so, or late payment, could result in a penalty being imposed or the commencement of prosecution proceedings against the employer.

It is also the responsibility of the employer to give written notice to the employee of the amount deducted under the notice, or not deducted as the case may be. Failure to comply could also result in a penalty.

If the debtor ceases employment with your organisation while the fine collection notice is in force or should the debtor never have been employed by your organisation, you should complete a 'Notice of cessation of employment' (Form 3005) and send it to SPER within 7 days. This notice can be downloaded from [qld.gov.au/sper](http://qld.gov.au/sper).

### 4.0 Protected earnings amount (PEA)

Before a deduction can be made from an employee's earnings (for the purposes of a fine collection notice), the employer must take into account the protected earnings amount (PEA). This amount has been set by Commonwealth legislation to cover reasonable living expenses and is adjusted annually.

The [current PEA](#) can be found on the Department of Human Services website at [www.humanservices.gov.au](http://www.humanservices.gov.au) (search for 'PEA').

This means that after the deduction of the appropriate income tax amount and the deduction of the amount noted in the fine collection notice, the employee should be left with an amount not less than the protected earnings amount. This does not include other deductions such as union fees, superannuation, loan repayments, ambulance deductions, etc. (Refer to [Example C.](#))

### 5.0 Deductions

The amount considered as earnings, for the purposes of a fine collection notice, is the amount payable to the employee after the deduction of tax under the *Income Tax Assessment Act 1936* (Cwth), part 6, division 2.

The amount an employer must deduct from a debtor's earnings under a fine collection notice is the weekly deduction amount specified in the notice. However, the employer must take into account the protected earnings amount (PEA).

The employee must be left with an amount not less than the PEA, after the deduction of income tax and the amount under the fine collection notice and any other compulsory payments. If, due to the PEA, a deduction under the fine collection notice is unable to be made, complete a 'Return of non-payments schedule' (Form 3010) and send to SPER by the 7th day of the following month. This form can be downloaded from [qld.gov.au/sper](http://qld.gov.au/sper).

Use the [fine collection notice calculator](#) to confirm the amount to be sent to SPER.

Note: The following examples are based on the PEA for 2023 and are used as a guide. The [current PEA](#) can be found at the Department of Human Services website (go to [www.humanservices.gov.au](http://www.humanservices.gov.au) and search for 'PEA').

## 5.1 Example A

|                  |                 |
|------------------|-----------------|
| Gross weekly pay | \$450.00        |
| Tax withheld     | <u>\$120.00</u> |
| Pay remaining    | \$330.00        |

As the amount of \$330.00 is less than the PEA of \$456.53 per week, a deduction of any amount under a fine collection notice is unable to be made. Accordingly, a 'Return of non-payments schedule' (Form 3010) should be completed and sent to SPER.

## 5.2 Example B

If an employee goes on paid leave (including paid sick leave), deductions must continue to be made at the appropriate rate.

The employee goes on paid holiday leave for 4 weeks and receives an advance payment for that period in his/her next pay. A fine collection notice is currently in force against the employee directing the employer to deduct the equivalent weekly amount of \$25.00

|                                                                 |                  |
|-----------------------------------------------------------------|------------------|
| Total pay received for 4 weeks (includes advance leave payment) | \$2300.00        |
| Tax withheld (for 4 weekly payments)                            | \$350.00         |
| Set aside protected earnings amount (4 × \$456.53)              | <u>\$1826.12</u> |
| Pay remaining                                                   | \$123.88         |
| Deduct amount for fine collection notice (4 × \$25.00)          | <u>\$100.00</u>  |
| Pay remaining                                                   | \$23.88          |
| Plus protected earnings amount                                  | <u>\$1826.12</u> |
| <b>Net pay to employee</b>                                      | <b>\$1850.00</b> |

The amount to be collected weekly under the fine collection notice must be deducted from any advance payments of wages or salary. As per Example B, the amount of \$100.00 should then be sent to SPER, together with a completed 'Return of payments schedule' (Form 3011).

If the employee is paid fortnightly or monthly, rather than weekly, you will need to adjust the deduction amount accordingly. For example, if the fine collection notice states a weekly deduction of \$25.00 is to be made from each pay and the employee is paid fortnightly, then the actual deduction should equal \$50.00. For the purposes of a fine collection notice, one month equals 4.34 weeks.

## 5.3 Example C

A fine collection notice is received for an employee, requiring a weekly deduction of \$20.00.

|                                      |                 |
|--------------------------------------|-----------------|
| Gross weekly pay                     | \$600.00        |
| Tax withheld                         | \$73.00         |
| PEA                                  | <u>\$456.53</u> |
| Pay remaining                        | \$70.47         |
| Deduct fine collection notice amount | <u>\$20.00</u>  |

|                                                   |                 |
|---------------------------------------------------|-----------------|
| Pay remaining                                     | \$50.47         |
| Plus PEA                                          | <u>\$456.53</u> |
| <b>Net pay to employee (more than PEA amount)</b> | <b>\$507.00</b> |

Other deductions such as superannuation, etc. can now be made.

There may be a situation where you will be unable to deduct the full weekly amount as directed under the fine collection notice. An employer must take into account the PEA and the amount of income tax to be deducted, before making any other deductions under the fine collection notice. In the event this occurs, deduct the maximum allowable amount and send to SPER, together with the completed 'Return of payments schedule' (Form 3011). You should note on the schedule the reason why the actual amount deducted differs from the amount directed under the fine collection notice. Do not make up the difference from future pays. The fine collection notice will remain in force until the total amount of the outstanding fine/order is paid in full.

## 5.4 Example D

A fine collection notice is received for an employee, requiring a weekly deduction of \$80.00.

|                                      |                 |
|--------------------------------------|-----------------|
| Gross weekly pay                     | \$600.00        |
| Tax withheld                         | \$73.00         |
| PEA                                  | <u>\$456.53</u> |
| Pay remaining                        | \$70.47         |
| Deduct fine collection notice amount | <u>\$70.47</u>  |
| Pay remaining                        | \$0.00          |
| Plus PEA                             | <u>\$456.53</u> |
| <b>Net pay to employee</b>           | <b>\$456.53</b> |

The full weekly amount of \$80.00 is unable to be deducted as this would leave the employee with a net pay less than the protected earnings amount. The maximum amount able to be deducted is \$70.47.

## 6.0 Where and how do I make payments to SPER?

All deductions made during a calendar month are to be paid to the Registrar of SPER by the 7th day of the following month. For example, a total amount of \$80.00 deducted from the pay of employee Joe Bloggs between the 1st and 31st of October should be remitted to SPER on or before 7 November.

Return forms can be returned by scanning and emailing to SPER.

Payments can be made by:

- electronic funds transfer (EFT)
 

|                            |                                                                                                                                             |
|----------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|
| Account name:              | State Penalties Enforcement Registry                                                                                                        |
| BSB:                       | 064 013                                                                                                                                     |
| Account number:            | 10007985                                                                                                                                    |
| Financial institution:     | Commonwealth Bank of Australia                                                                                                              |
| SPER FCN reference number: | Use the FCN reference number on the relevant fine collection notice to ensure the funds can be allocated against the appropriate SPER debt. |
- cheque or money order made out to 'State Penalties Enforcement Registry' (or 'SPER') and mailed to SPER with the 'Return of payments schedule' (Form 3011).

Payments by credit card are not accepted.

## 7.0 Checklist for deductions under a fine collection notice

For each employee:

- Check notice for amount to be deducted weekly.
- Check protected earnings amount at [Department of Human Services website](#).
- Calculate amount to be deducted (taking into account income tax to be withheld).
- Deduct amount as directed under fine collection notice and ensure employee is advised in writing.
- Ensure all deductions made during the month are sent to SPER by the 7th day of the following month, together with a completed 'Return of payments schedule'.

## 8.0 Frequently asked questions

### What should I do if an employee wants to change the deduction amount?

Do not stop or alter the deductions because an employee is unhappy with the issue of a fine collection notice. The employee can contact SPER should they have any queries or concerns. The State Penalties Enforcement Act allows an employee to make an application to the Registrar to vary or cancel the fine collection notice at any time while the notice is in force.

### What should I do if a solicitor instructs me to change the deductions?

The deduction amount under a fine collection notice can only be varied or cancelled by the Registrar. If an employee or their representative supplies information or instructions regarding the fine collection notice, advise them to contact SPER.

### What are 'earnings'?

Schedule 2 (Dictionary) of the State Penalties Enforcement Act states the earnings of a debtor means '...wages, salary, fees, bonuses, commission, overtime pay or other compensation for services or profit arising from office or employment, a pension, benefit or similar payment, an annuity or an amount payable instead of leave or retirement benefit owing or accruing to the enforcement debtor'.

### Who is the 'employer'?

Schedule 2 (Dictionary) of the State Penalties Enforcement Act states the employer of a debtor means '...a person (including the state) who, as principal, rather than as a servant or agent, pays, or is likely to pay, earnings to the enforcement debtor'.

### If there's a pay day between the 1st and 7th day of the month, when do I pay this deduction?

Deductions for one month are to be paid to SPER by the 7th day of the following month. For example:

- Deductions between 1st and 31st October should be sent to SPER by 7 November.
- Deductions between 1st and 30th November should be sent to SPER by 7 December.

## Can I send deductions to SPER more frequently than once a month?

Yes. The only stipulation is that all monthly deductions must be forwarded to SPER by the 7th of the following month. Whether you do this at the end of each pay period (weekly or fortnightly) or send all the deductions together in one lump sum is up to you.

## What if there is more than one employee for whom I've received a fine collection notice?

The 'Return of payments schedule' can be used for more than one employee, and the total amount of deductions can be forwarded to SPER as one payment per month.

## What should I do if an employee takes leave without pay?

You must notify SPER of any reason for non-payment of a deduction amount under a fine collection notice.

Complete the 'Return of non-payments schedule' (Form 3010) and send to SPER by the 7th of the following month. This schedule will need to be completed for every month a deduction is not made from the employee's earnings.

## What should I do on the termination of the employment of an employee?

If an employee ceases employment with your organisation, only deduct for the last full pay period the person was in employment with you. Complete the 'Notice of Cessation of employment' (Form 3005) and send to SPER immediately.

## Where are the fine collection notice forms available?

The following fine collection notice forms can be downloaded from [qld.gov.au/sper](http://qld.gov.au/sper):

- Notice of cessation of employment (Form 3005)
- Return of payments schedule (Form 3011)
- Return of non-payments schedule (Form 3010).

If you are unable to download the forms from the site, please contact SPER.

### Contact details

#### Phone

1300 365 635 (Australia)

+61 7 3013 4500 (Overseas)

Monday to Friday, 8am to 5pm

#### Email

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