

QUEENSLAND TREASURY

SPER fine collection notices

**Financial institution guide for notices requiring
information and fine collection notices**

August 2023

© The State of Queensland (Queensland Treasury) 2023

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*.

Contents

1.0	Introduction	1
2.0	Notices requiring information	1
2.1	eSIGN notices requiring information	2
3.0	Fine collection notices	2
3.1	Payment of an amount FCN.....	2
3.2	Regular redirection FCN.....	2
4.0	Role and responsibilities	3
5.0	Account restrictions.....	3
6.0	Protected amount.....	3
7.0	Remitting payments to SPER	4
8.0	Frequently asked questions	4

1.0 Introduction

The State Penalties Enforcement Registry (SPER) is responsible for the collection and enforcement of unpaid infringement notice fines (fines) and court-ordered monetary penalties, offender debt recovery orders and offender levies (court-ordered debts) in Queensland. SPER is governed by the *State Penalties Enforcement Act 1999* (the Act) and the State Penalties Enforcement Regulation 2014 (the Regulation).

When an outstanding fine or court ordered debt is registered with SPER, an enforcement order is immediately issued to the debtor at the address known to SPER for the enforcement debtor. This enforcement order provides the debtor with 28 days to take one of the following actions to address their debt:

- pay in full
- apply to pay by instalments
- apply for a work and development order (to discharge their debt via non-monetary means such as unpaid community work)
- elect to have the matter heard by a court (if not previously heard) for an infringement notice offence or to apply for a rehearing/reopening in relation to a court order.

Should the debtor take no action within the time provided, enforcement action will be taken to recover the outstanding debt if the debt is not paid. These enforcement actions may result in an additional fee being added to the debt. The enforcement actions SPER may take include:

- suspending the debtor's driver licence
- ordering the debtor's financial institution to transfer money from their 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.

SPER may issue a notice requiring information (information request) or a fine collection notice (FCN) to a financial institution compelling it to provide information or deduct amounts from accounts held with the institution by an enforcement debtor. This guide is intended to provide financial institutions with information to assist them in fulfilling their obligations under these notices. It is recommended that independent legal advice is obtained regarding the obligations under any notice issued by SPER.

In accordance with the *Information Privacy Act 2009*, *Right to Information Act 2009* and the Act, an enforcement debtor's details registered with SPER are confidential and will not be made available to anyone except the debtor or their nominated representative, or where required by law. Accordingly, a financial institution is required to ensure that any personal or financial information about the debtor received in any notice remains confidential and is securely stored.

2.0 Notices requiring information

Pursuant to section 134C of the Act, the Registrar of SPER may require a person to provide information for the purposes of the administration and enforcement of the Act. If a financial institution has received an information request, it is required to:

- give the Registrar information in their knowledge about a disclosed matter within a stated reasonable period and way
or
- give the Registrar a document that is in their possession or control and relates to the stated matter in a reasonable way and within a reasonable period.

The Registrar requires that all responses to information requests be provided in writing. It is an offence for a person who has been issued with an information request to not comply with the notice unless that person has a reasonable excuse. It is not reasonable for the person to not comply with the notice due to a perceived risk of incrimination. It is reasonable to not comply with the notice in circumstances where there is a reasonable belief that complying with the notice would likely endanger a person's safety.

If a financial institution is served a notice requiring information by mail, including a document referred via email, the response must be returned to SPER in the same manner at the address provided.

2.1 eSIGN notices requiring information

If a financial institution has subscribed to the eSIGN service and is registered for this service with SPER, any information request under s.134C of the Act will be served to the financial institution via SPERfcn Online. Responses must be returned in the approved response file format via that same service. Electronic submission of the response satisfies the requirement to submit the response in writing.

3.0 Fine collection notices

Pursuant to section 75 of the Act, the Registrar of SPER may issue a fine collection notice (FCN) for the payment of an amount up to and including an amount specified in the notice or for a regular redirection from a financial institution account.

The financial institution is required to deduct the amount noted in the FCN and pay it to the Registrar of SPER. A copy of the FCN is also given to the debtor as soon as practicable after it is issued.

An FCN is regarded as a type of enforcement action and is typically issued if the debtor has failed to enter into a form of compliance with SPER to settle their debt.

Should the enforcement debtor have any queries or concerns regarding their SPER matters or the issue of the FCN, advise them to contact SPER directly.

3.1 Payment of an amount FCN

In accordance with section 75(2)(d) of the Act, the Registrar may issue an FCN directing a financial institution to make payment of an amount from money held by the institution on behalf of an enforcement debtor. An FCN for payment of an amount must be actioned on the date it is received (where reasonable).

The FCN authorises the financial institution to deduct all available monies from the enforcement debtor's account, up to and including the amount for which the notice was issued, taking into account the [protected amount](#).

When a deduction is made, the financial institution must pay it to SPER as stated in the notice within 2 days. A notice of the deduction must also be given to the debtor.

3.2 Regular redirection FCN

The Registrar may issue an FCN for regular redirection from a financial institution account under section 75(2)(c) of the Act where SPER holds information that a regular deposit of earnings is made to the account. The FCN will be served on the relevant financial institution and the enforcement debtor as required under section 101(2) of the Act. The notice does not take effect until the end of 7 days following the date that it is served on the financial institution.

In accordance with section 102(1) of the Act, for each regular deposit into the enforcement debtor's account while the FCN for regular redirection is in force, the financial institution:

1. must, within 2 days of the deposit, deduct from the enforcement debtor's account the amount stated in the notice and pay it to SPER as stated in the notice, taking into account the [protected amount](#)

2. may deduct from the enforcement debtor's account an [administration charge](#), as an administrative cost of complying with the FCN, of not more than the amount specified under section 20A(1) of the Regulation
3. must give to the enforcement debtor a notice of the deduction and any administration charges applied.

A financial institution must comply with an FCN for regular redirection from a financial institution account and remit the deducted amounts to SPER. The notice remains in force until it has been satisfied to the total amount stated in the notice or until the notice is cancelled, varied or expires according to its terms as per section 101(4).

An FCN for regular redirection from a financial institution account issued under s75(2)(c) of the Act cannot be managed using the SPERfch Online portal. SPER will continue to use existing manual mechanisms to issue and manage these FCNs.

For definitions of a 'regular deposit' and 'earnings', refer to the [Frequently asked questions](#).

4.0 Role and responsibilities

A financial institution served with an FCN must commence deductions as indicated on the notice and remit those deductions to SPER as required. The financial institution must give notice to the enforcement debtor of the amount deducted under the notice and any administration charges applied.

The financial institution must complete the fine collection notice return ([Form 3021 or 3021a](#)) and provide the reason for the financial institution's inability to comply with the notice if the enforcement debtor:

- closes their account while the FCN is in force
- never held an account with the financial institution
- has no deductible funds in their account.

If the financial institution has subscribed to the eSIGN and is registered with SPER for this purpose, the financial institution must return the notification in the approved response file format via SPERfch Online.

5.0 Account restrictions

There are certain conditions under which financial institution accounts must not have funds deducted for SPER FCNs. Only accounts that meet all the following criteria are eligible for SPER FCN deductions:

- The enforcement debtor must be the sole owner of the account (i.e. the debtor is not a joint account holder, signatory, trustee, etc.).
- The account type must be 'Current account', 'Savings account' or 'Passbook account'.
- The status of the account must be 'Enabled'.

6.0 Protected amount

The protected amount is the minimum amount that must be left in an enforcement debtor's account after a deduction has been made under an FCN.

Section 20B of the Regulation specifies that the protected amount for an FCN issued by SPER to a financial institution is equal to the protected earnings rate for a one-week period. The protected earnings rate is prescribed by the *Child Support (Registration and Collection) Act 1988* and is adjusted by Commonwealth legislation on the 1st day of January each year. SPER may specify a higher amount in certain circumstances. Where this is the case, it will be clearly indicated on the FCN (this includes any notice issued using the eSIGN format).

The financial institution must ensure that the enforcement debtor's account is left with an amount not less than the specified protected amount following the deduction of both the amount stated in the FCN and any [administration charge](#).

7.0 Remitting payments to SPER

Any payments deducted under an FCN must be remitted to SPER each time a deduction is made (within 2 days after the notice has been actioned).

- For eSIGN–subscribed financial institutions, payments can be made by submitting a response file via SPERfcfn Online and transferring the corresponding payment(s) by the agreed method for the financial institution

Note: Any existing FCNs issued by SPER prior to a financial institution commencing on the eSIGN with SPER are to be actioned under existing manual mechanisms and not through SPERfcfn Online.

- For all other financial institutions, 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 fine collection notice return (Form 3021).

Note: The fine collection notice return (Form 3021) can be returned by email to sper@treasury.qld.gov.au when no payments are made.

Payments cannot be made by credit card.

8.0 Frequently asked questions

What is the eSIGN service?

The eSIGN service is used for the electronic exchange of statutory information and garnishee notices between financial institutions and government agencies.

How can a financial institution subscribe to the eSIGN service?

If your financial institution is interested in becoming an eSIGN–subscribed financial institution, please contact SPER at SPERengagement@treasury.qld.gov.au.

How does an eSIGN–subscribed financial institution submit a response file?

A response file from a financial institution may include responses to both information requests and FCNs.

Responses may include:

- confirming whether an enforcement debtor has active account(s) and if there are available funds
- providing current demographic information for the enforcement debtor
- remitting the required funds from the enforcement debtor's account(s) for debt recovery purposes.

For more information regarding the process of returning a response file as an eSIGN–subscribed financial institution, refer to the Australian Taxation Office's user guide for eSIGN banks.

What should we do if an account holder wants to change the deductions a financial institution makes under the FCN?

Do not stop or alter the deductions because an account holder (the enforcement debtor) is unhappy with the issue of an FCN. The enforcement debtor can contact SPER should they have any queries or concerns. The Act also allows a debtor to make an application to the Registrar of SPER to vary or cancel the FCN at any time while the notice is in force. SPER will provide written notice of any variation or cancellation of an FCN. No changes should be made to the compliance terms and actions associated with an FCN until a new notice has been received by the financial institution.

What should a financial institution do if a solicitor instructs them to change the deductions?

The deduction amount under an FCN can only be varied or cancelled by the Registrar of SPER. If an account holder, or any representative of the account holder, supplies information or instructions regarding the FCN, advise them to contact SPER.

Does the original fine collection notice need to be returned to SPER?

No. A financial institution may retain the original FCN sent to the institution for their records.

What if the enforcement debtor has no account or has never had an account with the financial institution?

If the enforcement debtor no longer has, or has never held, an account with the financial institution that is suitable for the FCN to be applied to, a fine collection notice return (Form 3021) must be completed by the financial institution and returned to SPER noting the reason for non-payment.

What are 'earnings'?

Schedule 2 (Dictionary) of the Act provides that 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'.

What is a 'regular deposit'?

This is an amount that is deposited into an account on a regular basis (such as every week, fortnight or month) from the same source (e.g. employer, Centrelink).

What if there is more than one regular deposit from different sources on different days?

Where there are 2 or more regular deposits from different sources on different days, the deduction amount specified in the FCN should be deducted from each separate deposit on each day.

Can we action the FCN if the full amount is not available?

Yes. An FCN for the payment of an amount from a financial institution account is to be actioned immediately. Any available funds up to the amount requested are to be sent to SPER. If the full amount is not available, the financial institution is only required to submit the available funds (taking into account the protected amount) to satisfy the notice.

For an FCN for regular redirection from a financial institution account, if the full amount of the regular deduction is not available, redirect any amount available up to the deduction amount.

Is a financial institution required to continue to monitor the account if no money is available on the first attempt for an FCN for regular redirection from a financial institution account?

Yes. The financial institution must continue to monitor the account as long as the regular deposit is still being made or until the notice is withdrawn by SPER. If the account has been closed, the institution should advise SPER immediately and the notice will be finalised.

Is a financial institution required to continue to monitor an account after an FCN for payment of an amount has been actioned if no money was available?

No. The financial institution does not need to monitor the account. The institution should complete a fine collection notice return (Form 3021) to advise SPER that no funds were available. On receiving this advice, SPER will finalise the notice and no further action is required.

Is a financial institution required to complete a return form each time a deposit is made, even if no money is available?

Yes. A fine collection notice return (Form 3021) must be completed each time a regular deposit is made to the enforcement debtor's account, whether or not any funds are available.

How often does an FCN for regular redirection from a financial institution account need to be actioned?

The notice needs to be actioned within 2 days of a regular deposit being made into the account.

Does the protected amount relate to an FCN for regular redirection from a financial institution account?

Yes. The protected amount applies to both an FCN for the payment of an amount and an FCN for regular redirection.

Can a financial institution charge an administration fee?

Yes. In accordance with section 102(1)(a) of the Act, a financial institution may charge the enforcement debtor an administrative charge as a cost of complying with the FCN.

The administrative charge must not exceed the prescribed amount specified under section 20A(1) of the Regulation.

Does the *Social Security (Administration) Act 1999* prevent deductions under an FCN?

No. The *Social Security (Administration) Act 1999* (SSA Act) does not prevent deductions under an FCN. As the FCN issued by SPER is not an order of a court, section 62 of the SSA Act does not apply and deductions under the notice can be applied to any amount (including the 'saved amount', if any, in the account).

Contact details

Phone

1300 365 635 (Australia)

+61 7 3013 4500 (Overseas)

Monday to Friday, 8am to 5pm

Email

sper@treasury.qld.gov.au

Website

qld.gov.au/sper

Post

SPER

GPO Box 1387

Brisbane QLD 4001



Queensland
Government