

Department of Justice and Attorney-General

Strategic Policy and Legal Services

*Guidelines for the prescription of penalty
infringement notice offences under the*

State Penalties Enforcement Regulation 2014



**Queensland
Government**

Introduction

The *State Penalties Enforcement Act 1999* (the Act) and the *State Penalties Enforcement Regulation 2014* (the Regulation) provide the framework for the prescription of penalty infringement notice (PIN) offences in Queensland. The Act establishes the State Penalties Enforcement Registry (SPER) which is responsible for the collection and civil enforcement of overdue penalty amounts.

The objects of the Act include:

- maintaining the integrity of fines as a viable sentencing or punitive option for offenders;
- maintaining confidence in the justice system by enhancing the way that fines and other monetary penalties may be enforced; and
- reducing the cost to the State of enforcing fines and other monetary penalties.

PIN offences are an alternative to prosecution through the court system. A PIN invites an alleged offender to discharge their potential liability by the payment of a prescribed penalty, as opposed to having the matter dealt with by the court. If, however, the person wishes to contest the alleged offence or plead guilty and have a penalty imposed by a judicial officer, they can elect to have the matter dealt with in court.

The advantages of the PIN regime to government include a cost-effective method of enforcement, and administrative efficiency. Offenders benefit from a fixed and discounted penalty for the offence; avoidance of court proceedings; and no finding of guilt in relation to the offence.

PIN offences and penalty amounts are prescribed in the schedule to the Regulation. The Regulation also prescribes the administering authority for PIN offences and an authorised person to issue a PIN.

Not all offences are suitable to be PIN offences. In considering whether an offence is suitable for prescription as a PIN offence, the guiding question is *whether the imposition of an administrative penalty is an appropriate and proportionate response to the offending behaviour*. These Guidelines are designed to assist Departments and agencies when making this assessment. If particular offending, which is not currently the subject of an offence provision, is intended to be ticketed, these principles will assist in the drafting of the offence. The Guidelines will also provide guidance for agencies who are considering amendments to their existing PIN offences or penalty amounts.

Each proposed PIN offence will need to be assessed on its individual merits, and reviewed by the Department of Justice and Attorney-General (DJAG). Before a PIN is prescribed, the Department or Agency requesting the PIN will need to advise the Applications Administrator at SPER of the details of the new PIN to ensure that the correct details are entered in to the SPER system. The contact email address for the Applications Administrator is: spcr.strategyandpolicy@osr.treasury.qld.gov.au.

Departments should also be aware that penalty unit values may change over time as determined under the *Penalties and Sentences Act 1992*¹.

Office of Best Practice Regulation

These Guidelines do not take into account processes under the *Better Regulation Policy*, administered by the Office of Best Practice Regulation (OBPR).

Under the *Better Regulation Policy*, Departments must notify OBPR when a regulatory solution has first been identified as a viable option to address a policy issue under consideration. This includes proposals to prescribe an offence as a PIN offence or otherwise amend PIN offences, penalty amounts and related information in the Regulation. In response to notifications, OBPR may provide preliminary advice on the economic costs, benefits and risks from a proposal.

Departments must also prepare an Impact Analysis Statement (IAS) for all regulatory proposals.

The IAS, approved and signed by the relevant portfolio Minister and Director-General, must be attached to the relevant Cabinet Submission or Executive Council Minute, and published on the relevant Department's website following final approval of the regulatory proposal by the relevant decision-making body (such as Cabinet or Governor-in-Council).

DJAG recommends that the requirements under the *Better Regulation Policy* are met before or concurrently with an assessment under these Guidelines.

Where DJAG has agreed to progress an amendment regulation on behalf of another Department, the amendment regulation will not be progressed until all necessary processes under the *Better Regulation Policy*, such as notifying OBPR and preparing and providing an IAS that has been signed by the other Department's Director-General and Minister, have been completed. Publication of the signed IAS is the responsibility of the Department seeking the amendments to the Regulation. DJAG will endeavour to meet a Department's reasonable timeframes to ensure the timely progression of an amendment regulation.

Departments can contact OBPR for information on complying with the *Better Regulation Policy* and for technical advice on regulatory impact analysis.

Format of these Guidelines

- Part 1 contains a summary of the Guidelines
- Part 2 outlines the policy intention behind the Guidelines
- Part 3 is a checklist for Departments to use when assessing whether offences are suitable for PINs
- Part 4 is a flowchart for the analysis of proposed PIN offences
- Part 5 contains the template table to be completed and submitted to DJAG for both changes to existing PINs, and potential new PINs

¹ See the *Penalties and Sentences (Indexation) Amendment Act 2014* (Qld) for further information.

Part 1: Summary of the Guidelines

Penalty Infringement Notice offences

1. The offence to be prescribed as a PIN offence must be consistent with the definition of an 'infringement notice offence' in Schedule 2 of the Act.
2. Serious and complex offences are not appropriate for the issue of a PIN.
3. Offences which contain subjective or discretionary elements are generally not suitable for prescription as PIN offences.

Penalty amount

4. The penalty amount for a PIN offence must be expressed as a discrete amount and must be the amount of the penalty prescribed in the Regulation for that offence.
5. The penalty amount set for the PIN offence should generally represent a discount on the penalty likely to be imposed by a court if the offence is prosecuted.
6. The penalty amount set for the PIN offence should represent a maximum of 10% of the maximum penalty for the offence. The 1:10 ratio may be breached in certain circumstances. Any proposed PIN amounts that exceed this ratio would need to be justified.
7. The penalty amount for an individual should not exceed 20 penalty units.
8. The maximum penalty amount that can be imposed on a corporation is five times the amount imposed for an individual.
9. When proposing penalty amounts, consideration should be given to PIN amounts for comparable offences and the relativity of PIN offences.
10. There can be no escalating penalties for subsequent offences, and continuing offences may not be suitable for prescription as a PIN.

Administering authority

11. An administering authority for infringement notice offences should generally be a government authority (for example, a department, local government or statutory body).

Authorised person(s)

12. An authorised person to issue a PIN must generally be a public service officer (or equivalent), appointed by a Chief Executive (or delegate) on the basis of that person having the appropriate training or qualifications for the exercise of that power.

Human Rights

13. All public entities are required to act and make decisions which are compatible with human rights, and give proper consideration to relevant human rights when making decisions.

Part 2: The Guidelines in further detail

PIN OFFENCES

1. The offence to be prescribed as a PIN offence must be consistent with the definition of an infringement notice offence in Schedule 2 of the Act.

The definition of ‘infringement notice offence’ in the Act *excludes* indictable offences and offences against the person. These types of offences should be dealt with by way of prosecution.

An Act may designate certain offences as indictable offences. For examples, please see section 494 of the *Environmental Protection Act 1994* and section 123 of the *Transport Operations (Marine Pollution) Act 1995*.

Offence provisions which are drafted in a way that could include *offences against the person*, such as acts of physical violence, are generally inappropriate for prescription as a PIN, unless it is possible for the assault element to be ‘carved out’ of the provision in the Regulation. Examples of PIN provisions where the assault element has been carved out include section 78 of the *Referendums Act 1997*, and section 87(1) of the *Plumbing and Drainage Act 2018*.

2. Serious and complex offences will not be appropriate for the issue of a PIN.

As the issuing of a PIN involves the imposition of a penalty without judicial consideration and determination, minor offences that are objectively defined will generally be the most suitable for prescription.

Offences that are legally complex or would be factually complex are unsuitable for prescription as a PIN. Offences in this category are not suited to the administrative operation of the Act and require judicial determination with the safeguards of the criminal process.

Offences that are serious or have a high maximum penalty also generally require judicial determination. *Seriousness* may be indicated by the nature of the offending behaviour (for example, potential consequences of the behaviour for the safety of others) or the maximum penalty for an offence. *Complexity* may be indicated by the nature, or number, of elements of the offence.

By way of example, offences of impersonation of an officer, or offences involving a breach of confidentiality by public officers, would be unsuitable for prescription as a PIN offence.

An offence with a high maximum penalty, or which includes a term of imprisonment, may be prescribed as a PIN offence where the offence covers a range of potential breaches from minor to serious offending behaviour and the PIN is intended to target lower level offending with a corresponding lower PIN amount.

In each case, the question to be answered is whether the issuing of a PIN and a proposed PIN amount are an appropriate response to the particular offending.

In all circumstances, before proposing a PIN offence, consideration must be given to whether a person with the required qualifications and competencies of an authorised person could be expected to determine whether an offence has been committed.

3. Offences which contain subjective or discretionary elements are generally not suitable for prescription as PIN offences.

The PIN offence should be objectively defined, and clearly state what constitutes offending behaviour for which a PIN may be issued. This is a requirement of the fundamental legislative

principles² which state that an exercise of administrative power must be sufficiently defined, and subject to appropriate review.

Offences which require the exercise of personal discretion, or are open to a range of subjective interpretations, are generally inappropriate for prescription as a PIN. These types of determinations are instead properly made by a court.

Examples of subjective or discretionary concepts include 'must ensure adequate supervision', 'as soon as practicable', and 'adequate'.

If the offence includes a subjective element (for example, 'as soon as practicable'), but also an objective qualifier (for example, 'but within 7 days of receiving a notice') it will be sufficiently certain for prescription as a PIN. An offence containing a subjective element might be suitable for a PIN if the subjective element is well understood by both authorities and participants within a particular industry, for example the building or food industries. Also, if the subjective elements can be the subject of clear operational guidelines provided to authorised persons, a relevant offence may be suitable for prescription as a PIN.

Note: The phrase 'reasonable excuse' is now a common drafting phrase in Queensland legislation, therefore, the inclusion of this phrase in an offence provision will not, of itself, preclude the prescription of the offence as a PIN.

PENALTY AMOUNT

4. The penalty amount for a PIN offence must be expressed as a discrete amount and must be the amount of the penalty prescribed in the Regulation for that offence.

As offenders are entitled to certainty, penalty amounts are fixed and must not be expressed in terms of a penalty range, with a minimum or maximum amount. The infringement notice cannot be used to enforce additional fines or fees.

5. The penalty amount set for the PIN offence should generally represent a discount on the penalty likely to be imposed by a court if the offence is prosecuted.

By paying the PIN, the person is accepting a financial penalty for an untested allegation that they have committed an offence. While it is always open for a person to challenge the PIN in court, an individual may weigh the cost of mounting a defence and choose to pay the fine rather than defend the alleged conduct. In this context, it is fair that the penalty should generally represent a discount on the penalty likely to be awarded by a court.

6. The penalty amount set for the PIN offence should represent a maximum of 10% of the maximum penalty for the offence. The 1:10 ratio may be breached in some circumstances. Any proposed PIN amounts that exceed this ratio must be justified.

The benchmark ratio is set at 1:10 to provide a common standard for the assessment of prospective PINs across all Queensland legislation. The ratio is set at this level with a view to ensuring that PIN values represent a discount on the penalty likely to be imposed by a court should the offence be prosecuted (for the reason set out in Guideline 5 above).

Further, the penalty amount for an offence should generally be rounded down, rather than up. For example, if the maximum penalty for an offence is 25 penalty units then, in applying the 10% guide, the PIN amount should be set at 2 and not 3 penalty units.

In certain circumstances, it may be appropriate for the PIN value to fall above or below the recommended ratio. For example, an offence may have a *high maximum penalty covering a*

² The fundamental legislative principles are enshrined in section 4 of the *Legislative Standards Act 1992*.

range of potential breaches from minor to serious offending. The prescription of a PIN may only be intended to target minor offending, with more serious offending to be prosecuted. In these circumstances, the 1:10 ratio may not be appropriate and consideration should be given as to what penalty the court would be likely to impose were the lower level conduct to be prosecuted, and then discounted to have regard to the fact that there is no finding of guilt. A PIN value that falls below the recommended ratio may be appropriate.

There may be a public policy justification for exceeding the ratio. In circumstances where government policy has identified a greater need for deterrence than application of the 1:10 ratio would allow, the setting of a higher PIN value may be justified, for example, the need for deterrence for certain traffic offences involving speeding. In these circumstances, approval by either the Attorney-General or Cabinet is required.

A very low level of maximum penalty for a minor offence and the likely court imposed penalty may justify exceeding the 1:10 ratio benchmark. A 'very low level of maximum penalty for an offence' is generally considered to be a maximum penalty of less than 10 penalty units.

As an alternative to setting a single individual PIN amount that exceeds the recommended ratio, separate individual and corporate PIN values could be prescribed where appropriate.

Note: Section 6.10 of the *Queensland Legislation Handbook*³ provides further guidance for the application of this Guideline.

7. The penalty amount for an individual should not exceed 20 penalty units.

The 20 penalty unit ceiling applies to all PINs for individuals, whether the offence provision is contained within an Act, or a Regulation. This Guideline is based on comments made by the former Scrutiny of Legislation Committee.⁴

8. The maximum penalty amount that can be imposed on a corporation is five times the amount imposed for an individual.

If a separate corporate PIN is prescribed, it can be higher than the amount prescribed for an individual, but must be appropriate and proportionate to the nature of the offending behaviour and the potential recipients of the PIN notice.

At its highest, the PIN amount for a corporation must not be more than five times the PIN amount prescribed for an individual. This reflects section 181B(3) of the *Penalties and Sentences Act 1992* which states that if a body corporate is found guilty of an offence, a court may impose a maximum fine of an amount equal to 5 times the maximum fine for an individual.

Depending on the offence, there may be no basis for distinguishing between corporate and individual offenders. Where a higher penalty for corporations is appropriate, consideration should be given to whether the corporation PIN amount should be less than five times the individual PIN amount.

9. When proposing penalty amounts, consideration should be given to PIN amounts for comparable offences and the relativity of PIN offences.

There are certain types of PIN offences which are common across various pieces of Queensland legislation administered by different Departments for which consistent PIN amounts should be prescribed. For example, offences relating to the return of identification

³ The Queensland Legislation Handbook is available at:
<http://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks/legislation-handbook.aspx>.

⁴ For further information, see the Scrutiny of Legislation Committee's Policy No. 2, 1996 on the delegation of legislative power to create offences and prescribe penalties, in Alert Digest No. 4 of 1996 at pages 5-7.

cards. Consistency should also be aimed for in relation to comparable offences within an Act or across portfolio legislation.

10. There can be no escalating penalties for subsequent offences and continuing offences may not be suitable for prescription as a PIN.

Offences which provide for escalating penalties are not appropriate PIN offences, as the payment of a PIN does not amount to an admission or finding of guilt.

Continuing offences, whereby a person commits a separate offence for each day of non-compliance with a legislative obligation, may not be appropriate for prescription as a PIN offence if the continuous issuing of PINs could result in the compounding of penalties that are unjust or disproportionate to the nature of the offending behaviour or is unlikely to be effective in achieving compliance.

Further, in relation to a single event or set of circumstances which might result in the compounding of offences, agencies should give consideration to whether the issue of multiple PINs would be unjust or disproportionate to the nature of the offending behaviour and address this possibility through relevant operational guidelines / training, as appropriate.

ADMINISTERING AUTHORITY

11. An administering authority for infringement notice offences should generally be a government authority (for example, a department, local government or statutory body).

Unless otherwise specified, the administering authority for an infringement notice is the Department or Agency that administers the relevant Act or Regulation.

A local government or statutory body (for example, the Electoral Commission of Queensland) may also be prescribed as an administering authority.

Generally, a private corporation should not be prescribed as an administering authority. There are, however, exceptions where it is necessary as a matter of practicality for a private corporation to be the administering authority. These circumstances exist where the exercise of that authority will be limited to privately owned or operated premises. For example, privately operated prisons or correctional facilities, and private hospitals where PINs are issued for offences relating to parking, health and safety which occur within the relevant precincts.

AUTHORISED PERSON(S)

12. An authorised person to issue a PIN must generally be a public service officer (or equivalent), appointed by a Chief Executive (or delegate) on the basis of that person having the appropriate training or qualifications for the exercise of that power.

Persons acting in a private capacity (for example, contractors) would not generally be prescribed as authorised persons.

However, exceptions may be made in limited cases where it is necessary as a matter of practicality for a private individual to be authorised to serve PINs. For example, employees of a private hospital may be authorised to issue PINs for offences relating to parking, health and safety which occur within the relevant precinct. In all cases authorised persons must be appropriately qualified/trained for the exercise of these functions.

HUMAN RIGHTS

13. All public entities are required to act and make decisions which are compatible with human rights, and give proper consideration to relevant human rights when making decisions.

Section 58 of the *Human Rights Act 2019* (HR Act) requires all public entities to act and make decisions in a way that is compatible with human rights, and to give proper consideration to human rights when making decisions.

In addition to the obligation to consider human rights placed on public entities when engaged in decision making, the HR Act requires all Bills and subordinate legislation to be accompanied by a statement of compatibility or human rights certificate which outlines the proportionality assessment discussed below.

Section 41(1) of the HR Act requires that a human rights certificate be prepared by the responsible Minister.

Due to the operation of section 48(4)(b) of the HR Act, if the prescription of an offence is considered to be incompatible with human rights, the offence will not be suitable for prescription.

Whether the prescription of an offence as a PIN offence is compatible with human rights will require a proportionality assessment in accordance with section 13 of the HR Act. This includes an assessment as to whether the proposal is for a proper purpose, whether the prescription of an offence as a PIN offence will achieve that proper purpose, whether it achieves the purpose in a way that has the least restrictive impact on human rights, and whether the proposal strikes a fair balance between the importance of the purpose and the limit on the human right. This proportionality assessment is considered to be in the opinion of the Minister preparing the certificate (section 41(2) of the HR Act).

Prescribing any offence as a PIN offence may engage and/or limit one or more of the human rights protected under the HR Act. Particular consideration will need to be given to the right to recognition and equality before the law (section 15 of the HR Act) in respect of any discriminatory impacts that prescribing an offence as a PIN offence may have on individuals; property rights (section 24 of the HR Act) in relation to the imposition of a PIN and consequences of the failure to pay a PIN; and the general rights that would otherwise apply in criminal proceedings if the offence were not prescribed as a PIN offence (sections 31 and 32 of the HR Act). Other human rights protected under the HR Act may also be relevant, depending on the circumstances and the nature of the offence proposed to be prescribed as a PIN offence.

It is incumbent upon the issuing Departments and Agencies to ensure their enforcement practices and guidelines have considered and are compliant with their obligations under the HR Act.

Section 41 HR Act - Human Rights Certificates

Section 41(1) of the HR Act requires that the responsible Minister for subordinate legislation prepare a human rights certificate. The human rights certificate must also be tabled when the subordinate legislation tabled pursuant to section 49 of the *Statutory Instruments Act 1992*. "Responsible Minister" is defined in section 41(5) of the HR Act.

Section 41(1A) of the HR Act provides that where there is more than one responsible Minister for the subordinate legislation, the human rights certificate for the legislation may be prepared by one of the responsible Ministers under the authority of the other responsible Minister/s.

Where the requesting Department or Agency is progressing the subordinate legislation, which includes an amendment to the Regulation, DJAG does not require a finalised human rights certificate in order to undertake an assessment of the proposed PIN offences against these Guidelines.

DJAG will confirm, at the time confirmation is given that the proposed PIN offences comply with these Guidelines, that the requesting Department of Agency has the authority of the Attorney-General to prepare the Human Rights Certificate and Explanatory Notes.

DJAG will provide content to the requesting Department relevant to the decision to prescribe an offence as a PIN offence for incorporation in the Human Rights Certificate.

Where DJAG is progressing the amendment to the Regulation, the requesting Department must provide a draft human rights certificate setting out the content relevant to the operation of the offence. This content must be approved at a Ministerial level and may be provided after the requesting Department has been advised of the outcome of the consideration of proposed PIN offences against these Guidelines.

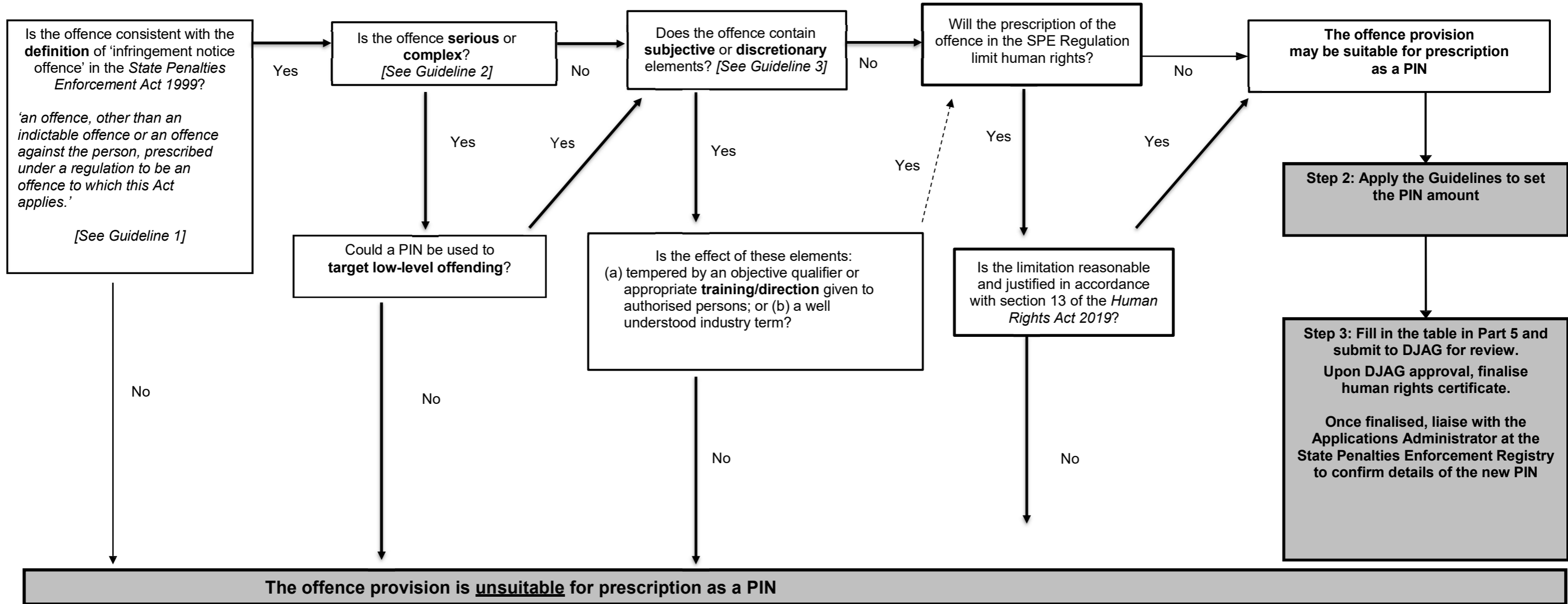
Part 3: Checklist for the analysis of proposed PIN offences

Step 1: Can the offence be prescribed as a PIN? (Refer also to flowchart at Part 5)	
Is the offence provision consistent with the definition of 'infringement notice offence' in the <i>State Penalties Enforcement Act 1999</i> ?	<input type="checkbox"/> If no, PIN not possible
Is the offence serious or complex?	<input type="checkbox"/> If yes, PIN not generally appropriate
If the offence is serious or complex – could a PIN be used to target low- scale offending?	<input type="checkbox"/> If yes, PIN may be appropriate
Does the offence contain subjective elements?	<input type="checkbox"/> If yes, PIN not generally appropriate
If the offence contains subjective elements – is the subjective element (a) tempered by an objective qualifier; or appropriate training/direction given to authorised persons; or (b) a well understood industry term?	<input type="checkbox"/> If yes, PIN may be appropriate
Will the prescription of the offence in the SPE Regulation limit human rights?	<input type="checkbox"/> If the limitation is not justifiable, a PIN will not be appropriate
Step 2: Setting the penalty amount	
Is the proposed penalty amount a discrete figure?	<input type="checkbox"/>
Is the proposed penalty amount 10% or less of the maximum penalty for the offence?	<input type="checkbox"/>
If not – is there a justification for a higher penalty amount?	<input type="checkbox"/>
Is the proposed penalty amount significantly less than the penalty likely to be imposed by a court if the offence was prosecuted?	<input type="checkbox"/>
Is the proposed penalty amount for an individual less than, or equal to, 20 penalty units?	<input type="checkbox"/>
Is the proposed penalty amount for a corporation a maximum of five times the penalty amount for an individual?	<input type="checkbox"/>
Is the proposed penalty amount consistent with comparable offences across the portfolio and Queensland legislation more generally?	<input type="checkbox"/>
Is there a single penalty amount (i.e. no escalating penalty, or continuing penalty?)	<input type="checkbox"/>

Step 3: Administering authority	
Is the proposed administering authority a government authority?	<input type="checkbox"/>
Step 4: Authorised person(s)	
Is the authorised person(s) a public service officer appointed by a Chief Executive (or delegate) on the basis of that person having the appropriate training or qualifications for the exercise of that power?	<input type="checkbox"/>
Step 5: Human Rights Act consideration	
Is any engagement with the Human Rights Act clearly identified and a brief description of the engagement provided in the Part 5 Table?	<input type="checkbox"/>

Part 4: Flowchart for the analysis of proposed PIN offences

Step 1: Can the offence be prescribed as a PIN?



Part 5: Table to be completed and submitted to DJAG for both new and amended PINs

Requiring amendment of schedule 1 of the State Penalties Enforcement Regulation 2014

Name of Act / Regulation								
<i>Administering Department (as per Administrative Arrangements Order):</i>								
Contact details of requesting officer (name / phone / email):								
Brief explanation of why amendments are required:								
Have the proposed amendments been approved at the appropriate level of the requesting Department? If not – this needs to be done prior to the amendments being made.								
Proposed new offences (delete this section if not applicable) How many new PINs are being requested?								
Offence to be prescribed (provide section number and exact wording of offence if it is available)	Maximum Penalty	PIN amount Ind. / Corp. / proposed PIN amount	How much have courts fined for this offence? The PIN amount should be set to be a significant discount on a fine that a court would impose	Estimate number of PINs to be issued in a year	Complies with guidelines		Other comment⁵	Engagement with the Human Rights Act
					Yes/No	If no: provide justification		
Proposed amendment of existing PIN offences (delete this section if not applicable)								

How many existing PINs are being amended?							
Offence already prescribed – or proposed amended wording of offence (provide section number and exact wording of offence if it is available)	Maximum Penalty (is this increasing?)	Existing PIN amount Ind. / Corp.	Proposed new PIN amount (if relevant) Ind./Corp.	Number of PINs issued in the past financial year; OR Estimate number of PINs to be issued in a year	Complies with guidelines	Other comment⁵	Engagement with the Human Rights Act
Proposed repeal of existing PIN offences (delete this section if not applicable)How many existing PINs are being repealed?							
Section number of offence already prescribed	PIN amount Ind. / Corp.	PIN still required Yes/ No			Other comment⁵	Engagement with the Human Rights Act	
Proposed administering authority: Are changes proposed?	<i>(If affecting local government, please indicate whether LGAQ has been consulted)</i>						
Proposed authorised person: Are changes proposed?	<i>(Please include information on qualifications/appointment qualifying a person as an authorised person for the issue of PINs and what offences the person is proposed to be authorised for the issue of PINs. If affecting local government, please indicate whether LGAQ has been consulted)</i>						

⁵ For example, as relevant: changes for greater consistency of approach with other offences; opportunities identified for increased use of the ticketing, generally or in place of prosecution; or issues potentially mitigating against the increased issuing of PINs.