

State Penalties Enforcement (Plumbing and Drainage and Other Matters) Amendment Regulation 2019

Explanatory notes for Subordinate Legislation 2019 No. 122

made under the

State Penalties Enforcement Act 1999

General Outline

Short title

State Penalties Enforcement (Plumbing and Drainage and Other Matters) Amendment Regulation 2019

Authorising law

Section 165 of the *State Penalties Enforcement Act 1999*

Policy objectives and the reasons for them

The key policy objective of the *State Penalties Enforcement (Plumbing and Drainage and Other Matters) Amendment Regulation 2019* (Amendment Regulation) is to amend the *State Penalties Enforcement Regulation 2014* (SPE Regulation) to allow penalty infringement notices to be issued for particular offences against the *Plumbing and Drainage Act 2018* (the PD Act 2018) and the *Queensland Building and Construction Act 1991* (QBCC Act).

A penalty infringement notice (PIN) is a notice or ticket imposing a fine that is issued on the spot, or sent by email or post, for a less serious or less complex offence. The fine imposed is a fraction of the maximum penalty for the offence specified under legislation.

The PIN scheme provides 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. It also provides a degree of deterrence in relation to reoffending.

The PD Act 2018 received assent on 11 September 2018. Subject to a few exceptions, the provisions of the PD Act 2018 that are not already in force will commence by proclamation on 1 July 2019. The PD Act 2018 will repeal and

replace the *Plumbing and Drainage Act 2002* (PD Act 2002). By repealing the PD Act 2002, the PD Act 2018 will also repeal the regulations made under the PD Act 2002.

The PD Act 2018 introduces a new penalty framework that is stronger than the penalty framework in the PD Act 2002. The new framework promotes consistency across similar offences and aligns penalties relating to unlicensed plumbing or drainage work with those for unlicensed (or unauthorised) building work in the QBCC Act.

Each offence provision in the PD Act 2018 and the QBCC Act dealing with unlicensed work provides for a penalty for a person's first offence against the provision, and higher penalties for second, third and subsequent offences committed by the person. The escalating penalties are intended to deter individuals from repeatedly contravening offence provisions relating to unlicensed work, including provisions prohibiting a person from carrying out or supervising unlicensed, often defective, work.

The *Plumbing and Drainage Regulation 2019* (the PD Regulation 2019) was recently made under PD Act 2018. The PD Regulation 2019 includes a range of amendments of the SPE Regulation 2014 required to accommodate the introduction of the PD Act 2018 and the PD Regulation 2019. Those amendments will allow PINs to be issued for contraventions of offence provisions in the PD Act 2018 and the PD Regulation 2019, other than those relating to unlicensed plumbing or drainage work. The PD Regulation 2019 was notified on 5 April 2019 and will commence on 1 July 2019.

It is intended that the SPE Regulation 2014, as amended by the PD Regulation 2019, will be further amended by the Amendment Regulation to allow a PIN to be issued to a person for their first contravention of an offence provision in the PDA 2018 relating to unlicensed plumbing or drainage work.

It is also intended that the SPE Regulation 2014 will be amended to ensure a PIN may be issued to a person for only their first contravention of an offence provision in the QBCC Act relating to unlicensed (or unauthorised) building work.

Achievement of policy objectives

The Amendment Regulation achieves the policy objectives mentioned by amending the SPE Regulation 2014 to allow a PIN to be issued to a person for their first contravention of:

- an offence provision in the PDA 2018 relating to unlicensed plumbing or drainage work; or
- an offence provision in the QBCC Act relating to unlicensed (or unauthorised) building work.

The Amendment Regulation will allow for timely, cost-efficient enforcement outcomes to be achieved for contraventions of offence provisions in the PD Act 2018 and the QBCC Act relating to unlicensed (or unauthorised) work.

The Amendment Regulation will commence on 1 July 2019, to ensure all elements of the suite of plumbing reforms commence at the same time.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the objectives of the *State Penalties Enforcement Act 1999*, including the objective of maintaining the integrity of fines as a viable sentencing or punitive option for offenders and reducing the cost to the State of enforcing fines and other money penalties.

Consistency with policy objectives of other legislation

The Amendment Regulation is consistent with the policy objectives of other legislation.

Benefits and costs of implementation

The benefits of the PIN scheme to administrators 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.

A key benefit of the Amendment Regulation is that it allows the PIN scheme to extend to contraventions of:

- offence provisions in the PD Act 2018 relating to unlicensed plumbing or drainage work; and
- offence provisions in the QBCC Act relating to unlicensed (or unauthorised) building work.

If the Amendment Regulation was not made, the only means of addressing contraventions of the offence provisions mentioned would be prosecutions which would be costly and time-consuming for all involved and could lead to findings of guilt in relation to offences.

The costs of implementing the Amendment Regulation will be minimal and will be met by current funding arrangements.

Consistency with fundamental legislative principles

The Amendment Regulation has been drafted in accordance with fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992*.

Consultation

QPC confirmed that the proposed amendment regulation is excluded under the Queensland Government Guide to Better Regulation from regulatory impact analysis (Category G – regulatory proposals that are of a machinery nature).