

State Penalties Enforcement (Property Occupations) Amendment Regulation 2025

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019* (HR Act), I, the Honourable Deb Frecklington MP, Attorney-General and Minister for Justice and Minister for Integrity, provide this human rights certificate with respect to the *State Penalties Enforcement (Property Occupations) Amendment Regulation 2025* (the Amendment Regulation) made under the *State Penalties Enforcement Act 1999* (SPE Act).

In my opinion, the Amendment Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The *Property Occupations Act 2014* (PO Act) provides an occupational licensing framework for real estate agents, real property auctioneers, resident letting agents and real estate salespersons (property agents). While real estate agents, real property auctioneers, and resident letting agents hold a licence under the PO Act, real estate salespeople hold a registration certificate.

The PO Act is supported by the *Fair Trading Inspectors Act 2014* (FTI Act). The FTI Act enacts common provisions for fair trading legislation concerning the appointment and powers of inspectors, and the procedures relating to the exercise of those powers, including in relation to the enforcement of relevant provisions of the PO Act. The Office of Fair Trading (OFT) within the Department of Justice administers the PO Act, including by exercising the powers afforded to inspectors under the FTI Act.

On 23 May 2024, the *Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Act 2024* (Amendment Act) was passed by the Queensland Legislative Assembly. The Amendment Act received assent on 6 June 2024. The Amendment Act includes amendments to the PO Act to introduce mandatory continuing professional development (CPD) for property agents from 6 June 2025 (Part 1, section 2(2) for commencement provision and Part 3, Divisions 2 and 4 for CPD requirements).

The new CPD provisions require property agents (both licensees and registration certificate holders) to complete CPD requirements (for example, training courses) approved by the chief executive for each CPD year. A CPD year for a property agent is the period of 12 months ending the day before an anniversary of the date the property agent's licence or registration certificate was first issued.

Mandatory CPD requirements are intended to facilitate an increase in the skills of property agents on an ongoing basis, recognising that property agents hold a position of trust for their clients. In addition, mandatory CPD requirements will support agents to adapt to changes and challenges in the marketplace, while minimising the burden on industry.

As part of the CPD amendments, property agents will be required to comply with the following record keeping obligations (section 92C of the PO Act for licensees and section 151C of the PO Act for registration certificate holders):

- a property agent must keep a record of the CPD requirements completed by that person for each CPD year (maximum penalty of 10 penalty units); and
- a property agent must keep records of completed CPD requirements for a period of five years after the end of the CPD year to which the record relates (maximum penalty of 10 penalty units).

The policy objective of the Amendment Regulation is to amend the *State Penalties Enforcement Regulation 2014* (SPE Regulation) to prescribe that the failure of property agents to comply with record keeping obligations under sections 92C(1), 92C(2), 151C(1) or 151C(2) of the PO Act are penalty infringement notice (PIN) offences, with corresponding PIN fine amounts of two penalty units.

Amending the SPE Regulation to prescribe PIN offences will provide OFT inspectors with the option to issue PIN fines to property agents who fail to comply with CPD record keeping obligations under the PO Act.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 HR Act)

In my opinion, the human rights protected under the HR Act that are relevant to the Amendment Regulation are property rights (section 24, HR Act).

Consideration of reasonable limitations on human rights (section 13 HR Act)

(a) the nature of the right

Section 24 of the HR Act provides that all persons have the right to own property alone or in association with others and that a person must not be arbitrarily deprived of the person's property. Property includes real and personal property, and encompasses economic interests in a broad sense, including money.

The term 'deprived' is not defined by the HR Act. However, deprivation in this sense is considered to include the substantial reduction of a person's use or enjoyment of their property, to the extent that it substantially deprives a property owner of the ability to use their property or part of that property (including enjoying exclusive possession of it, disposing of it, transferring it, or deriving profits from it).

The concept of arbitrariness in the context of the right to property carries a meaning of capriciousness, unpredictability, injustice, and unreasonableness – in the sense of not being proportionate to the legitimate aim sought. Whether a deprivation of property is arbitrary therefore needs to be considered in light of the elements of proportionality, as set out below.

The Amendment Regulation amends the SPE Regulation to prescribe as PIN offences the failure of property agents to comply with CPD record keeping obligations under the PO Act. This may limit a person's property rights by depriving a person of property (money) if they are issued with a PIN requiring them to pay a fine for failing to comply with CPD record keeping obligations under the PO Act, or else in relation to any consequences for the failure to pay or challenge the PIN, which may result in additional enforcement action being undertaken in accordance with the SPE Act.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purposes of the potential limitation of property rights are to:

- promote property agent compliance with CPD requirements, including record keeping obligations, under the PO Act;
- provide the OFT with the ability to promptly address property agent non-compliance by issuing a PIN fine.

CPD record keeping obligations are considered suitable for prescription as PIN offences under the SPE Regulation, as the imposition of an administrative penalty is considered an appropriate and proportionate response to the offending behaviour involving the failure of a property agent to comply with CPD record keeping obligations. The PIN offence may result in a property agent who has failed to comply with their record keeping obligations being required to pay the relevant PIN fine, rather than have the matter dealt with by more formal enforcement options, such as having the matter dealt with by a court. The proposed PIN amount represents a reduced penalty amount in comparison to the maximum penalty that may be imposed by a court if the offence is successfully prosecuted (10 penalty units).

Currently, PIN fines of two penalty units are prescribed in the SPE Regulation for contraventions of section 15 (Keeping documents) and section 16 (Keeping documents in electronic form) of the *Property Occupations Regulation 2014* (PO Regulation). Sections 15 and 16 of the PO Regulation require principal licensees to maintain documents in particular ways, with each provision prescribing a maximum penalty of 10 penalty units.

In this respect, the PIN fine amounts of two penalty units for failure to comply with CPD record keeping obligations are commensurate with the PIN fine amounts currently prescribed by the SPE Regulation for other property agent record keeping obligations.

The PIN fines are not arbitrary, as the OFT will only issue PIN fines to property agents who fail to comply with CPD record keeping obligations. For this reason, it is considered any limitation of property rights resulting from PIN fines is consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The limitation on property rights is directly and rationally related to the purpose of promoting compliance with particular obligations under the PO Act, as any PIN fines will only be issued where appropriate, for failure to comply with the CPD record keeping obligations.

The limitation on property rights is also directly and rationally related to the purpose of providing the OFT with the ability to promptly resolve compliance issues associated with CPD record keeping obligations by facilitating the issuing of PIN fines to non-compliant property agents, rather than needing to pursue more formal enforcement action (such as commencing court proceedings).

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

There are no less restrictive or reasonably available ways to achieve the purpose. Prosecuting the offences through the courts would be more time-consuming and onerous for all parties and would be less efficient than a PIN as an enforcement response, taking into account the nature of the offending.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

On balance, I consider the importance of promoting compliance with CPD requirements under the PO Act and ensuring any non-compliance may be dealt with promptly by the OFT through the issuing of a PIN fine outweighs the possible limitation of the property rights of property agents, as outlined in this Certificate.

Conclusion

I consider that the Amendment Regulation is compatible with the HR Act because it limits property rights only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

Deb Frecklington MP
Attorney-General and Minister for Justice
Minister for Integrity