

# Appeal against SPER refusal to Cancel Enforcement Order

*State Penalties Enforcement Act 1999 Section 58*

**IMPORTANT:**

- This appeal must be made within **14 days** of the date on the notice refusing to cancel the Enforcement Order
- A copy of your application to cancel the Enforcement Order/s **MUST** be attached to this appeal.
- This appeal must be made to a Magistrates Court in the Magistrates Court District in which the offence is alleged to have been committed.

The Court will schedule a hearing date and advise you when and where the appeal will be decided

The Court may decide the appeal in your absence.

1 What is your last name?

2 What is your first name?

3 What is your current residential address?

Postcode:

4 What is your telephone number?

5 What is your date of birth?

6 What is your **SPER Party ID Number**?

*Located on the top right-hand corner of your Enforcement Order*

7 List the **SPER Debt ID Number/s** for this appeal

*Located on the top right-hand corner of your Enforcement Order*


8 What is the **decision date** on the *Notice refusing to cancel the Enforcement Order/s*?

Declaration:

9 I \_\_\_\_\_, hereby appeal to the Magistrates Court under Section 58 of the *State Penalties Enforcement Act 1999*, against the order (on the above date) by the Registrar of SPER, where an order was made refusing to cancel the above mentioned SPER Enforcement Order/s and request that my original application be decided by the court.

The grounds for my appeal are as follows:

- A copy of my original application to SPER to cancel the above Enforcement Order/s is attached.

Signature of applicant

Date:

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**Magistrates Courts use only**

This appeal was filed in the Magistrates court at

	On	/ /
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**Notice of Hearing**

The appeal will be heard in the Magistrates Court at

on  at

Signature of Registrar (Magistrates Court)

## Division 6 - Cancellation of certain enforcement orders - [State Penalties Enforcement Act 1999](#)

### Application of [div 6 \(s.55\)](#)

This division applies to an enforcement order for an infringement notice offence registered with SPER under [section 33](#) (*relevant enforcement order*).

### Applications for cancellation of enforcement orders (s.56)

- (1) An enforcement debtor may apply in writing to SPER for the cancellation of the relevant enforcement order for any of the following reasons—
  - (a) the person did not receive—
    - (i) the infringement notice; or
    - (ii) any reminder notice the relevant administering authority sent to the person about the infringement notice; or
    - (iii) the enforcement order;
  - (b) the person received a notice or order mentioned in paragraph (a) after the time allowed for taking action stated in the notice or order;
  - (c) the person was prevented by accident or illness or for another similar reason from taking action in relation to the infringement notice or enforcement order;
  - (d) the person is electing to have the matter of the offence to which the relevant enforcement order relates decided in a Magistrates Court.
- (2) The application must be made within the earlier of the following—
  - (a) 14 days after the debtor becomes aware of the existence of the order;
  - (b) 6 months after the issue of the relevant enforcement order.
- (3) Despite subsection (2), an application under subsection (1) may be made after the periods mentioned in subsection (2) have ended if the registrar is satisfied the applicant has reasonable grounds for the delay.
- (4) A person must not, without the approval of the registrar, make more than 1 application in relation to the relevant enforcement order.

### Decision on application (s.57)

- (1) The registrar may cancel the relevant enforcement order only if the registrar is satisfied the order should be cancelled for the reason stated in the application.
- (2) The registrar may ask the applicant to give to the registrar any information prescribed under a regulation that will help the registrar decide the application.
- (3) The registrar may consider the application in the absence of the applicant.
- (4) If the registrar cancels the relevant enforcement order, the registrar must refer the matter of the offence to the administering authority.
- (5) The administering authority may—
  - (a) start a proceeding against the applicant for the offence; or
  - (b) accept payment of the fine in full as stated in the infringement notice for the offence; or
  - (c) issue a fresh infringement notice for the offence.
- (6) The registrar must give the applicant notice of the decision in the approved form.

### Appeal against refusal to cancel enforcement order (s.58)

- (1) If, within 14 days after the date of the notice of the decision under [section 57](#)(6) and, after considering an application to cancel an enforcement order, the registrar refuses to cancel the order, the applicant may apply in writing to a Magistrates Court in the Magistrates Court district in which the offence is alleged to have been committed to have the original application decided by the court.
- (2) The application must be filed with the relevant court registrar.
- (3) The court registrar must, as soon as practicable, refer the matter to the court and notify the applicant and the registrar of when and where the application is to be decided.
- (4) The court may make any decision about the application that the registrar could have made.
- (5) The court may decide the application in the absence of the applicant if the court is satisfied the applicant is avoiding service of the notice or can not, after reasonable search and inquiry, be found.
- (6) Also, the court may decide the application if it is satisfied that no party to the application will be prejudiced by the non-service of, or any error or omission in, the notice of the decision under [section 57](#)(6).

### Provisions relating to cancellation of enforcement order (s.60)

- (1) On an application under [section 56](#) or [58](#), the registrar or a Magistrates Court may stay enforcement action under a relevant enforcement order on the conditions the registrar or the court considers appropriate.
- (2) A single application may be made for the cancellation of 2 or more relevant enforcement orders against the same person.
- (3) A relevant enforcement order that is cancelled stops having effect on the making of the order cancelling it and any enforcement action already taken must, if practicable, be reversed.
- (4) Without limiting subsection (3), if a relevant enforcement order is cancelled—
  - (a) enforcement costs are not payable for the issue of the order; and
  - (b) any amount that has been paid under the order is repayable to the person by whom it was paid; and
  - (c) the period of limitation within which a proceeding for the offence to which the order relates may be started for the matter starts on the day the order is cancelled.
- (5) Also, [section 31](#) applies as if the infringement notice to which the relevant enforcement order relates were cancelled under [section 30](#).
- (6) Subsection (4)(c) provides some other time limit for making complaint for the purposes of the [Justices Act 1886](#), [section 52](#).