

METROPOLITAN FIRE & EMERGENCY SERVICES BOARD

Title: Enforcement and Prosecution Management Policy 	Board Policy No:	Management Policy No: PL-002
	Prepared By: T Georgas	
	Authorised By: S Wright	
Issue Date: 14 Feb. 07	Version Number: 1	Page Number: 1 of 7

1. PURPOSE:

This policy relates to the issuing of Building Infringement Notices and the prosecution of offences under the Building Act 1993 (Act) and the Building Regulations 2006 (Regulations).

2. SCOPE:

This policy applies to the Chief Officer of the MFB who is tasked with the enforcement of Regulations 707, 708, 709, 710, 1009, 1205, 1207, 1208, 1211, 1214, 1216, 1217 and 1218 within the Metropolitan Fire District (MFD) as they apply to buildings and places of public entertainment (POPEs).

The primary focus of much of these (specific) Regulations is to ensure that—

- A safe environment exists for occupiers and users of buildings and POPEs;
- Regular maintenance inspections are being conducted and test reports are generated for all essential safety measures that may exist within buildings or POPEs; and
- The necessary fire safety equipment is provided in a functional state to facilitate fire brigade intervention.

The Act and the Regulations provide a range of enforcement and prosecution measures to help achieve this. When required, enforcement or prosecution action is taken in the public interest to protect people, property and the environment.

3. REFERENCES:

- Building Act 1993
- Building Regulations 2006
- Metropolitan Fire Brigades Act 1958
- Memorandum of Understanding between the Building Commission and the Metropolitan Fire and Emergency Services Board, 28 November 2005
- Metropolitan Fire and Emergency Services Board, Building Infringement Notices Manual, December 2005, Maddocks Lawyers
- Prosecution Policy of the Commonwealth – Guidelines for the making of decisions in the prosecution process, March 1992 (www.dcita.gov.au/ccca)
- Infringements Act 2006
- Infringements (Reporting and Prescribed Details and Forms) Regulations 2006

THIS DOCUMENT IS UNCONTROLLED WHEN PRINTED

METROPOLITAN FIRE & EMERGENCY SERVICES BOARD

Title: Enforcement and Prosecution Management Policy 	Board Policy No:	Management Policy No: PL-002
	Prepared By: T Georgas	
	Authorised By: S Wright	
Issue Date: 14 Feb. 07	Version Number: 1	Page Number: 2 of 7

4. RESPONSIBILITY:

The Chief Officer of the MFB is authorised under Section 255 of the Building Act 1993 to issue BINs for prescribed offences.

The task of issuing (and withdrawing) Building Improvement Notices (BINs) is delegated by the Chief Officer via an instrument of delegation to the persons or officers, from time to time, holding certain positions within the Community Safety Directorate.

The authority to prosecute the owners of buildings and POPEs is delegated by the Building Commission pursuant to Section 241(3) of the Building Act to the person, from time to time, holding the position of Director, Community Safety with the MFB.

A prosecution may only be initiated or withdrawn by the Director, Community Safety.

5. DEFINITIONS:

In this policy:

- Act means the Building Act 1993, as amended from time to time;
- BIN means a Building Infringement Notice within the meaning of Section 255 of the Building Act 1993;
- Building has the same meaning as Section 3 of the Building Act 1993;
- Chief Officer means the Chief Officer of the Metropolitan Fire and Emergency Services Board and includes a delegate of the Chief Officer;
- Metropolitan Fire District (MFD) has the same meaning as Section 4 of the Metropolitan Fire Brigades Act 1958;
- MFB means the Metropolitan Fire and Emergency Services Board;
- MFB Act means the Metropolitan Fire Brigades Act 1958, as amended from time to time;
- Place of Public Entertainment (POPE) has the same meaning as Section 3 of the Building Act 1993;
- Prescribed Offence has the same meaning as Section 254 of the Building Act 1993 and encompasses those offences Regulations 707, 708, 709, 710, 1009, 1205, 1207, 1208, 1211, 1214, 1216, 1217 and 1218 as stipulated in Regulation 1703 of the Building Regulations 2006;
- Regulations means the Building Regulations 2006 and includes any amendment, remaking or replacement of those Regulations;

THIS DOCUMENT IS UNCONTROLLED WHEN PRINTED

METROPOLITAN FIRE & EMERGENCY SERVICES BOARD

Title: Enforcement and Prosecution Management Policy 	Board Policy No:	Management Policy No: PL-002
	Prepared By: T Georgas	
	Authorised By: S Wright	
Issue Date: 14 Feb. 07	Version Number: 1	Page Number: 3 of 7

6. POLICY STATEMENT

Enforcement

Enforcement is an essential element in controlling or regulating activities and gaining compliance with statutory requirements. This is done by detecting breaches, bringing them to the attention of owners of buildings and POPEs, identifying corrective or preventative action through education, providing deterrence and applying penalties (directly or through the courts).

The Regulations provide the Chief Officer the discretion to determine when enforcement action is required and what enforcement measures are appropriate to encourage compliance. This policy statement is the basis on which enforcement decisions are made.

Principles of enforcement

In deciding whether enforcement action is required in the Public Interest and what measures should be adopted, the Chief Officer will use the following principles.

- **Objective:** Enforcement action will achieve a clear outcome.
- **Proportionality and responsiveness:** Enforcement action will be responsive, timely and in proportion to risk and potential impact on life safety, property protection and the environment.
- **Transparency:** Recognising transparency is important in maintaining public confidence and helping owners of buildings and POPEs to understand what is expected of them. Enforcement measures will be transparent so that parties understand what constitutes compliance.
- **Consistency:** Enforcement action will be administered fairly, consistently and equitably, taking into account the attitude and actions of the alleged offender and any history of previous incidents or breaches.
- **Targeting:** Where appropriate, MFB (Community Safety) resources will be directed primarily towards those owners of buildings and POPEs whose activities generate considerable risk or serious harm, with action primarily focused on lawbreakers or those directly responsible for the risk.
- **Due process and natural justice:** Enforcement action will be carried out within the powers and processes of the legislation, using principles of natural justice.
- **Cost-effectiveness:** Enforcement action will be exercised to produce the desired outcome.

THIS DOCUMENT IS UNCONTROLLED WHEN PRINTED

METROPOLITAN FIRE & EMERGENCY SERVICES BOARD

Title: Enforcement and Prosecution Management Policy 	Board Policy No:	Management Policy No: PL-002
	Prepared By: T Georgas	
	Authorised By: S Wright	
Issue Date: 14 Feb. 07	Version Number: 1	Page Number: 4 of 7

Enforcement criteria

If, on investigation, it appears that an offence under the legislation may have occurred, the alleged offender will be informed of the legislation that is applicable to owners of buildings and POPEs as well as identifying what enforcement action may be taken by the Chief Officer to ensure that the legislation is satisfied. Depending on the severity of the alleged offence, on-the-spot direction, in the form of a verbal warning or an Essential Safety Measures Notice (ESMN) to take corrective action may also be given to owners of buildings and POPEs.

The need for enforcement action will be considered using the following criteria and applying the aforementioned principles.

- Seriousness of breach;
- Failing to adhere to a Warning or an Essential Safety Measures Notice;
- Level of broad public concern; and
- Need for both specific and general deterrence.

Enforcement measures

The enforcement options, and their priority in application, that are available to the Chief Officer include:

- **Warnings:** Written warnings or verbal warnings, which may be given where the breach is minor and can be rectified quickly.
- **Essential Safety Measures Notices:** Require compliance with the legislation, either by ceasing certain activities or carrying out certain measures within a specified time.
- **Building Infringement Notices (BINs):** Certain offences contravening the Regulations may result in a BIN being issued.
- **Prosecutions:** May be initiated following breaches of the legislation.

Building Infringement Notices

A Building Infringement Notice (BIN) is a notice that may be served by the Chief Officer, pursuant to section 255 of the Act, on the owner of a building or a POPE who has committed a prescribed offence.

THIS DOCUMENT IS UNCONTROLLED WHEN PRINTED

METROPOLITAN FIRE & EMERGENCY SERVICES BOARD

Title: Enforcement and Prosecution Management Policy 	Board Policy No:	Management Policy No: PL-002
	Prepared By: T Georgas	
	Authorised By: S Wright	
Issue Date: 14 Feb. 07	Version Number: 1	Page Number: 5 of 7

A BIN serves two main purposes—

- To penalise a person for committing a prescribed offence without bringing proceedings in a court; and
- To require a person to take additional steps to expiate the offence concerned, where appropriate.

Decision to Prosecute

Prosecution is an important part of enforcement. It aims to penalize wrongdoing, avoid recurrence and act as a deterrent.

The Director, Community Safety may use prosecution in conjunction with other enforcement measures.

Prosecution may occur if the Director, Community Safety is satisfied there is sufficient, admissible and reliable evidence that an offence has been committed and that it is in the public interest to proceed.

The following factors may indicate that it is in the Public Interest to commence or continue a prosecution—

- The need to maintain the rule of law;
- The need for deterrence, specifically or generally;
- The circumstances in which the alleged offence was committed; and
- The need to maintain public confidence in the MFB acting in the interest of the community and as a regulator.

The following factors may indicate that it is not in the Public Interest to pursue a prosecution—

- The youth, age, physical or mental health or special infirmity of the alleged offender or of a witness;
- The triviality of the offence;
- The availability of alternatives to prosecution;
- The financial capacity or insolvency of the offender;
- The offender rectifies the act or omission which led to the charge;
- The likely length of the hearing or the expense of pursuing the prosecution; and
- The likely outcome in the event of a finding of guilt having regard to the punishment.

THIS DOCUMENT IS UNCONTROLLED WHEN PRINTED

METROPOLITAN FIRE & EMERGENCY SERVICES BOARD

Title: Enforcement and Prosecution Management Policy 	Board Policy No:	Management Policy No: PL-002
	Prepared By: T Georgas	
	Authorised By: S Wright	
Issue Date: 14 Feb. 07	Version Number: 1	Page Number: 6 of 7

Prosecution

Where there is sufficient evidence, the Director, Community Safety will prosecute for those offences against the Act and the Regulations as detailed in the Building Commission's "Instrument of Authority to Bring Proceedings", dated 28 November 2005.

Irrelevant Matters

The following matters are not to be taken into account when considering whether a Building Infringement Notice is to be issued or where a prosecution should be commenced or continued—

- The race, sex, religious belief, political opinions, or cultural views of the alleged offender; and
- The possible political consequences of the exercise or non-exercise of discretion to prosecute.

Collection of Penalties

Within 28 days after the end of every month, the MFB will pay into the Building Administration Fund all the penalties that were received for BINs issued during that month. The MFB will also provide the Building Commission a report that identifies the following matters—

- The date of issue of the BIN;
- The BIN number;
- The name and address of the owner;
- The prescribed penalty; and
- The date that the penalty was paid.

In relation to the payment of the MFB's costs and expenses associated with the Director, Community Safety undertaking a prosecution, section 3 of the "Memorandum of Understanding between the Building Commission and the Metropolitan Fire and Emergency Services Board" dated 28 November 2005 shall apply.

Working with other regulators

THIS DOCUMENT IS UNCONTROLLED WHEN PRINTED

METROPOLITAN FIRE & EMERGENCY SERVICES BOARD

Title: Enforcement and Prosecution Management Policy 	Board Policy No:	Management Policy No: PL-002
	Prepared By: T Georgas	
	Authorised By: S Wright	
Issue Date: 14 Feb. 07	Version Number: 1	Page Number: 7 of 7

In appropriate circumstances, the Chief Officer may also refer identified breaches of prescribed offences to the Municipal Building Surveyor of the relevant municipality or to the Building Commission to ensure that any MFB action does not compromise any existing Council or Building Commission enforcement initiatives.

7. DOCUMENTATION:

- Metropolitan Fire and Emergency Services Board, Building Infringement Notices Manual, December 2005, Maddocks Lawyers
- MFB Quality Procedures

8. VERIFICATION:

Authorised by Shane Wright (Director, Community Safety) on 27 March, 2007.

Signed:- 

THIS DOCUMENT IS UNCONTROLLED WHEN PRINTED