

Road Transport (General) Waiver of Infringement Notice Penalties Guidelines 2019 (No 1)*

Disallowable instrument DI2019–212

made under the

Road Transport (General) Act 1999, section 31I (Guidelines for waiver of penalty)

1 Name of instrument

This instrument is the *Road Transport (General) Waiver of Infringement Notice Penalties Guidelines 2019 (No 1)*.

2 Commencement

This instrument commences on 28 October 2019.

3 Guidelines

I issue the guidelines for the waiver of infringement notice penalties contained at schedule 1 to this instrument.

4 Definitions

Administering authority, for an infringement notice offence, means the entity that, under section 8 of the *Road Transport (Offences) Regulation 2005*, is the administering authority for the offence.

Note: Section 8 (1) (a) of the *Road Transport (Offences) Regulation 2005* provides that a road transport authority (the Director-General of the Environment, Planning and Sustainable Development Directorate and the Director-General of the Justice and Community Safety Directorate) is the administering authority for the purposes of certain offences contained in part 12 of the *Road Transport (Road Rules) Regulation 2017*, where those offences are infringement notice offences under part 1.12A of schedule 1 of the *Road Transport (Offences) Regulation 2005*. This does not extend to those specific sections of part 12 of the *Road Transport (Road Rules) Regulation 2017* listed in section 8 (1) (a) of the *Road Transport (Offences) Regulation 2005* in relation to which the Chief Police Officer is the relevant administering authority under section 8 (2) of the *Road Transport (Offences) Regulation 2005*.

Section 8 (1) (b) of the *Road Transport (Offences) Regulation 2005* provides that the road transport authority (the Director-General of the Environment, Planning and Sustainable Development Directorate) is the administering

*Name amended under Legislation Act, s 60

authority for the purposes of certain offences contained in division 7.3 of the *Road Transport (Safety and Traffic Management) Regulation 2017*, where those offences are infringement notice offences under part 1.13 of schedule 1 of the *Road Transport (Offences) Regulation 2005*. This does not extend to offences in the *Road Transport (Safety and Traffic Management) Regulation 2017* (which are not contained in division 7.3) in relation to which the Chief Police Officer is the relevant administering authority under section 8 (2) of the *Road Transport (Offences) Regulation 2005*.

Section 8 (1) (c) of the *Road Transport (Offences) Regulation 2005* provides that a road transport authority (the Director-General of the Justice and Community Safety Directorate) is the administering authority for the purposes of certain offences contained in the *Road Transport (Public Passenger Services) Act 2001* and the *Road Transport (Public Passenger Services) Regulation 2002*, where those offences are infringement notice offences under parts 1.10 and 1.11 of schedule 1 of the *Road Transport (Offences) Regulation 2005*.

Which Director-General is the road transport authority is determined by section 16 (3) of the *Road Transport (General) Act 1999* read in conjunction with the *Administrative Arrangements 2019 (No 1)*.

Section 8 (2) of the *Road Transport (Offences) Regulation 2005* provides that the Chief Police Officer is the administering authority for infringement notice offences that are not described in section 8 (1) of the *Road Transport (Offences) Regulation 2005*.

Camera-detected offence means an offence detected by an approved camera detection device or an approved average speed detection system

Infringement notice – see the *Legislation Act 2001* and section 24 (6) of the *Road Transport (General) Act 1999*

Infringement notice management plan – see section 31A of the *Road Transport (General) Act 1999*

Infringement notice offence means an offence mentioned in schedule 1 of the *Road Transport (Offences) Regulation 2005* for which an infringement penalty is provided in column 5 of the item applying to the offence

Infringement notice penalty, for a person for an infringement notice offence, means-

(a) the amount prescribed in column 5 of schedule 1 of the *Road Transport (Offences) Regulation 2005* as the penalty payable by the person for the offence under an infringement notice for the offence; or

(b) if a reminder notice has also been served on the person for the offence – the total of the amount mentioned in paragraph (a) and the amount prescribed by regulation as the amount payable by the person for the cost of serving the reminder notice

Parking offence means an offence that relates to the parking of a motor vehicle

Relevant circumstances – see section 21A of the *Road Transport (General) Act 1999*

Reminder notice – see section 27 (2) of the *Road Transport (General) Act 1999*

Road transport legislation - see section 6 of the *Road transport (General) Act 1999*

Shane Rattenbury MLA
Minister for Justice, Consumer Affairs and Road Safety
18 September 2019

SCHEDULE 1

WAIVER OF AN INFRINGEMENT NOTICE PENALTY

OVERVIEW OF INFRINGEMENT NOTICE SCHEME

The infringement notice scheme for road transport offences in the ACT is established by Part 3 of the *Road Transport (General) Act 1999* and the *Road Transport (Offences) Regulation 2005*. Part 3 applies to all road transport infringement notice offences, for example, speeding, parking and conduct on public passenger services.

The pathways open to a person who receives an infringement notice in the ACT are:

- Pay the infringement notice directly.
- Seek to enter into an infringement notice management plan (payment by instalment or participation in an approved community work or social development program) or seek to add the infringement notice to an existing infringement notice management plan.
- Seek withdrawal or waiver. Internal review can then be sought in respect to a decision by the administering authority not to withdraw or waive an infringement notice. Following internal review an application can be made to the ACT Civil and Administrative Tribunal (ACAT).
- Dispute liability. The matter will then be determined in the Magistrates Court.

Entering into an infringement notice management plan, adding a penalty to a plan or obtaining withdrawal or waiver of a penalty has the same effect as if the person had paid the penalty outright. The effect is that the person is no longer liable for the offence, must not be prosecuted for the offence and is not taken to have been convicted of the offence.

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METHODS FOR WAIVER OF INFRINGEMENT NOTICE PENALTIES

An application for waiver of an infringement notice must be made in accordance with section 31F of the *Road Transport (General) Act 1999*. Applications must be in writing and set out the person's financial circumstances and the person's relevant circumstances. There is no time limit in which an application for waiver can be made.

Applications can be made by either:

- The person served with the infringement notice.
- A representative of the person served with the infringement notice.
- A guardian (parent, kinship parent or carer of the person served with the infringement notice).

GROUNDINGS FOR WAIVER OF INFRINGEMENT NOTICE PENALTIES

The administering authority **must** waive an infringement notice monetary penalty when all of the following elements are satisfied:

- the applicant does not currently have, and is unlikely to have in the future, the financial ability to pay the infringement notice; and
- relevant circumstances exist in relation to the applicant; and
- enforcement action has not resulted in, or is unlikely to result in, the payment of the infringement notice (for example, previous sanctions did not result in payment); and
- the applicant is not a suitable person to discharge the infringement notice by completing an approved community work or social development program.

The administering authority has discretion to waive an infringement notice monetary penalty in circumstances where only some of the above elements are satisfied. Waiver ceases the administering authority's right to take action in relation to the infringement notice monetary penalty.

Financial Ability to Pay

An applicant is considered to not currently have, and is unlikely to have, the financial ability to pay the infringement notice monetary penalty and entering into an infringement notice management plan is unlikely to provide the financial ability. That is, they are unable to make the required minimum fortnightly instalment of \$10 (section 14EB of the *Road Transport (Offences) Regulation 2005*).

Evidence to support an application includes that the person is in receipt of a Centrelink benefit (statement from Centrelink), does not possess substantial assets, their household income per fortnight is not sufficient to meet the minimum instalment management plan payment (payslips, bank statements), the person has significant and unavoidable expenses, for example, large medical bills (invoices, Medicare

statements). Any amount a person is required to pay in child support (Child Support Agency statement) should be deducted from his or her pre-tax income.

Income includes but is not limited to, wages, pensions or benefits, allowances, interest on investment or other financial support (for example, support from a family member).

The Law and Justice Foundation undertook a survey in 2012 to assess the legal needs of Australia and found that sixty-seven (67) per cent of people with a disability aged 15 years or over are financially disadvantaged. Applying this to the ACT it means that around 41,500 people with a disability in the ACT are financially disadvantaged¹. Decision makers should factor this into decisions for waiver when the person has identified as someone with a disability and the evidence they require the person to provide to support their application.

Relevant circumstances

Relevant circumstances are defined in section 21A of the *Road Transport (General) Act 1999* and means any of the following circumstances that relate to the person and contribute to the person's ability to pay an infringement notice penalty:

1. mental illness and/or mental disorder
2. physical or intellectual disability, disease or illness
3. addiction to drugs, alcohol or another substance
4. family violence
5. homelessness, or living in crisis, transitional or supported accommodation.

Issuing and/or enforcing infringement notices in instances where these circumstances apply may not support the overall objective of the infringement notice scheme as a method of deterrence and preventing further offending.

Mental illness/es and/ or disorder/s

Mental illness means a condition that seriously impairs, either temporarily or permanently, the mental functioning of a person². Examples include schizophrenia, psychosis, bipolar disorder, and serious depression or anxiety and personality and other addictive conditions.

Evidence to support an application includes a letter or other documentation, describing the applicant's disability, illness or condition, from one of the following:

- The applicant's general practitioner, treating doctor, psychiatrist, registered psychologist or mental health nurse or other medical practitioner involved in

¹ *Towards Disability Justice for the ACT Summary of Research and Consultations, 2019*
https://www.communityservices.act.gov.au/disability_act/towards-disability-justice-in-the-act

² This is based on the definition of mental disorder (section 9) and mental illness (section 10) in the *Mental Health Act 2015*.

the healthcare of the applicant that the administering authority considers relevant.

- Centrelink, if the applicant is in receipt of a full or partial disability pension (e.g. a job capacity assessment or other report which describes the applicant's disability or impairment).
- The applicant's school teacher or principal, or an employee in the Education Directorate.
- A government agency or non-government organisation with experience working with people with mental illness, intellectual disability or cognitive impairments.
- A government agency or non-government organisation with professionals qualified to make mental health assessments.

The letter or documentation must not be older than 6 months from the date of the application and must provide sufficient information to explain the applicant's mental illness and/or disorder and its duration.

Physical or intellectual disability, disease or illness

A person has a disability where that disability:

- is attributable to an intellectual, psychiatric, sensory or physical impairment or a combination of those impairments, and
- is permanent or likely to be permanent, and
- results in a substantially reduced capacity of the person for communication, learning or mobility and the need for continuing support services, and
- may or may not be of a chronic episodic nature³.

When determining an application on these grounds, an administering authority must have regard to Schedule 1 of the *Disability Services Act 1991* (ACT) (Human rights principles to be furthered in relation to people with disabilities).

Evidence to support an application includes a letter or other documentation, describing the applicant's disability, disease or illness, from one of the following:

- The applicant's general practitioner, treating doctor, psychologist, speech pathologist or other medical practitioner involved in the healthcare of the applicant that the administering authority considers relevant.
- Centrelink, if the applicant is in receipt of a full or partial disability pension (e.g. a job capacity assessment or other report which described the applicant's disability or impairment).
- A government agency or non-government organisation with experience working with people with sensory, cognitive, physical or intellectual disabilities.

³ This definition is taken from the definition of disability in the *Disability Services Act 1991* (ACT).

The letter or documentation must not be older than 6 months from the date of the application and must provide sufficient information to explain the applicant's disability, disease or illness and its duration.

The administering authority should also consider whether written evidence is required, and the level of written evidence based on the person's circumstances.

The *Towards Disability Justice for the ACT Summary of Research and Consultations, 2019*⁴ noted that the heavy reliance on written material when assessing a person's needs or engaging with a person with a disability on legal matters, put them at a disadvantage.

Substance dependence (e.g. drugs, alcohol or other substance)

A person is considered to have a substance dependence if he or she has a pattern of substance use, as manifested by two (or more) of the following:

- Tolerance, as defined by either of the following:
 - a need for markedly increased amounts of the substance to achieve intoxication or the desired effect, or
 - markedly diminished effect with continued use of the same amount of the substance.
- Withdrawal, as manifested by either of the following:
 - the characteristic withdrawal syndrome for the substance, or
 - the same (or closely related) substance is taken to relieve or avoid withdrawal symptoms.
- The substance is often taken in larger amounts or over a longer period than intended.
- There is a persistent desire or unsuccessful efforts to cut down or control substance use.
- A great deal of time is spent in activities necessary to obtain the substance, use the substance, or recover from its effects.
- Important social, occupational, or recreational activities are given up or reduced because of substance use.
- The substance use is continued despite knowledge of having a persistent physical or psychological problem that is likely to have been caused or exacerbated by the substance (for example, current cocaine use despite recognition of cocaine-induced depression or continued drinking despite recognition that an ulcer was made worse by alcohol consumption).

Many people who attend alcohol or other drug treatment services also have co-occurring mental health disorders and poorer physical health.

⁴ https://www.communityservices.act.gov.au/disability_act/towards-disability-justice-in-the-act

The ACT Government through its Drug Strategy Action Plan is committed to increasing diversions from the criminal justice systems for people who are involved in or at risk of being involved in it as a result of them experiencing drug related issues.

Evidence to support an application includes a letter or other documentation from one of the following:

- the applicant's treating doctor, psychiatrist, registered psychologist, nurse working in the field of drug and alcohol addiction or social worker or other medical practitioner involved in the healthcare of the applicant that the administering authority considers relevant
- the applicant's drug and alcohol case worker or counsellor
- the applicant's youth service case worker or counsellor
- the applicant's residential (or outpatient) rehabilitation service provider
- a government or non-government organisation with expertise in working with people with serious addictions to alcohol or other drugs or substances.

The letter or documentation must not be older than 6 months from the date of the application and must provide sufficient information to explain the nature, severity and effects of the addiction and how long the applicant has had the addiction.

Family violence

Family violence is any of the following behaviours by a person against a family member⁵:

- physical violence or abuse
- sexual violence or abuse
- emotional or psychological abuse
- economic abuse
- threatening behaviour
- coercion
- any other behaviour that:
 - controls or dominates the family member and causes them to feel fear for their safety or the safety of another family member
 - causes a child to hear, witness or otherwise be exposed to the above behaviours⁶.

Family violence is a broad term that refers to violence between family members, as well as violence between intimate partners. Family violence includes physical, sexual, emotional and psychological abuse. While there is no single definition, the central element of family violence is an ongoing pattern of behaviour aimed at controlling a victim through fear, for example by using behaviour which is violent and threatening.

⁵ Family member is defined in section 9 of the *Family Violence Act 2016*.

⁶ This is based on the definition of family violence in the *Family Violence Act 2016*.

In most cases, the violent behaviour is part of a range of tactics to exercise power and control over a family member and can be both criminal and non-criminal.

It does not have to occur within the home or between people who are living together. It is when someone intentionally uses violence, threats, force or intimidation to control or manipulate a partner, former partner or family member. There are many different types of violence including physical, verbal, emotional, financial, sexual and psychological abuse⁷.

Documentation that can be used to identify the applicant as having been subjected to family violence includes one or more of the following documents:

- Emergency protection order
- Family / Domestic violence order
- Personal protection order
- Transcript of hearing or orders made after a hearing
- Record of court proceedings
- Police report
- Letter from legal aid office (ACT) Domestic Violence and Protection Order Unit
- Letter from a counsellor
- Letter or record of sessions from Victims Services
- Letter or record of session from Domestic Violence Crisis Service
- Letter from a lawyer who has been consulted regarding safe exit strategy
- Letter from a refuge

Homelessness or living in crisis, transitional or supported accommodation

Homelessness includes people who are sleeping rough, as well as people staying in temporary, unstable or substandard accommodation. Homelessness has many drivers and causes, including the shortage of affordable housing, long term unemployment, mental health issues, substance abuse and family and relationship breakdown.

A person is considered to be homeless if they:

- have no shelter, sleep rough, live on the streets, in cars, under bridges or in improvised dwellings
- frequently move from various forms of temporary accommodation such as emergency accommodation, or short-term accommodation with friends and relatives
- are staying in unstable or substandard accommodation

⁷ The Domestic Violence Crisis Service provides examples of family violence www.dvcs.org.au.

- are staying in a refuge, temporary accommodation or rooming / boarding houses
- are couch surfing
- are living in a caravan park due to their inability to access other accommodation.

Evidence to support an application includes a letter or other documentation from the applicant's lawyers, specialist service provider or case worker, or a government agency or non-government organisation with experience working with people experiencing homelessness which provides details of the type of homelessness, its duration and current living arrangements.

Enforcement action has not resulted in, or is unlikely to result in, the payment of the infringement notice (for example, previous sanctions did not result in payment)

In considering whether enforcement action is likely to result in payment of the infringement notice penalty, the administering authority should refer to:

- the applicant's history, if any, in discharging liabilities resulting from infringement notice penalties
- whether enforcement action is suitable against the applicant given their circumstances outlined in their application
- whether there are unreasonable constraints on the ability of the administering authority to undertake enforcement action against the applicant
- whether enforcement action is likely to impede the applicant's ability to pay the infringement notice penalty
- any other applicable factors that would prevent successful enforcement action.

The administering authority may request additional information from the applicant.

Suitable person to discharge the infringement notice monetary penalty by completing an approved community work or social development program

The *Road Transport (Approval to participate in an approved community work or social development program) Guidelines* state that in determining whether a person is a suitable person to participate in a program, consideration is given to each applicant's individual circumstances and personal history, the appropriateness of the program applied to participate in and the likelihood of successful participation in that program.

An application for participation in a community work or social development program notice must be made in accordance with section 16E of the *Road Transport (Offences) Regulation 2005*. Applications must be in writing and set out the person's financial circumstances and/or the person's relevant circumstances and include supporting documentation.

The application may be approved if satisfied on reasonable grounds that the applicant is suitable to participate in the program and it is justified because of:

- the financial circumstances of the applicant; and/or
- any relevant circumstances of the applicant.