

2019

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**MAGISTRATES COURT (INFRINGEMENT NOTICES) AMENDMENT BILL
2019**

EXPLANATORY STATEMENT

**Circulated by
Caroline Le Couteur MLA
Member for Murrumbidgee**

This explanatory statement relates to the amendments to the Magistrates Court (Infringement Notices) Amendment Bill 2019 (the Bill) by Caroline Le Couteur as presented to the Legislative Assembly. It has been prepared in order to assist the reader's understanding of the Bill and to help inform debate on it. It does not form part the Bill and has not been endorsed by the Assembly.

The statement is to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill.

Purpose of the Bill

The Bill will amend the *Magistrates Court Act 1930* and the *Magistrates Court Regulation 2009*. It provides a framework for a clear and transparent process for dealing with infringement notices.

It will give people who have been issued with an infringement notice the opportunity to:

1. Enter into an infringement notice management plan to enable them to:
 - a) Pay the infringement penalty by instalment;
 - b) Participate in an approved community work or social development plan in lieu of paying the infringement penalty.

OR

2. Seek the infringement notice penalty be waived.

The purpose of the Bill is to ensure that the payment system for infringement notice offences can take into account the circumstances of people on low incomes or who are otherwise disadvantaged. The changes that this Bill will introduce are expected to result in more socially just outcomes for people who are issued with infringement notices, and increase the amount of fines that are recovered by the Territory.

Background

Infringement notices allow public servants or police officers to give a notice alleging an offence to an alleged offender. This notice provides the opportunity for the recipient to pay a fixed amount to the Government to avoid prosecution. Infringement notices offer an alternative to prosecution and a subsequent court trial.¹

¹ ACT Department of Justice and Community Safety (2010:37) Guide for Framing Offences, Version 2.

The operation of the infringement notice scheme in the ACT is covered by two Acts: the *Road Transport (General) Act 1999*, and the *Magistrates Court Act 1930*.

Part 3 of *Road Transport (General) Act 1999* deals with infringement notices for certain offences under the road transport legislation. Offences for which infringement notices can be issued are identified in the *Road Transport (Offences) Regulation 2005*.

Part 3.8 of the *Magistrates Court Act 1930* deals with infringement notices for certain offences under other legislation. Offences for which infringement notices can be issued under other legislation are identified in regulations under the Magistrates Court Act, with a separate regulation for each Act that has infringement notice penalties.

Infringement notice offences are strict liability offences, although not all strict liability offences are infringement notice offences. Strict liability offences are offences that have no fault elements. There is no requirement to prove that a defendant had an intent to commit the offence. At question is simply whether an offence occurred, and responsibility for this offence. For example, if a motorist exceeds the speed limit, they still commit an offence whether they realised that they were exceeding the speed limit, or if they had an urgent need to reach their destination quickly.

Strict liability offences are a form of “reverse onus” offence. This means that the burden of proof for disputing the offence is on the recipient of the infringement notice, not the person or agency who issued the infringement notice.

Infringement notices can be issued by a variety of authorised officers and agencies. These include Transport Canberra and City Services (for example by a City Ranger, or through Domestic Animal Services), Access Canberra, or ACT Police.

The current framework for infringement notices allows for the recipient of an infringement notice to:

- Dispute an infringement;
- Seek an extension of time to pay the infringement;
- Pay the infringement by the due date; or
- Elect to have the matter referred to the ACT Magistrate’s Court.

The current framework for infringement notices does not:

- Provide a legislative mechanism allowing a person who has received an infringement notice to enter into a payment plan;
- Allow the infringement notice to be paid another way, such as through community work or a social development plan;
- Allow for the penalty to be waived.

On 28 November 2018 the Assembly passed Ms Le Couteur’s motion which called, among other things, on the Government to investigate the potential of

introducing income-based infringement notices. The Government responded on 22 August 2019. In tabling this response, the Chief Minister noted that the current approach to managing infringements for parking or other motor vehicle offences—developed by Greens MLA Amanda Bresnan in 2011—is a “more practical approach than income-based fines”.²

This Bill will extend this approach to cover all infringement notices that are currently covered by Part 3.8 of the *Magistrates Court Act 1930*. The provisions in this Bill broadly mirror the infringement management scheme that currently covers motor vehicle and parking offences, as detailed in Part 3 of *Road Transport (General) Act 1999*.

Human rights implications

The proposed new section 131AA(4) requires a person applying to an administering authority to enter into an infringement notice management plan or an addition to a plan to provide information. This information can be about:

- the person’s financial circumstances;
- if they are a holder of a concession card;
- information about their particular circumstances (if the application is to participate in an approved community work or social development program); and
- anything else prescribed by regulation.

Providing this information could be considered a limitation on the right to privacy and reputation, protected by section 12 of the *Human Rights Act 2004* (HRA). Section 28 of the HRA, however, allows for human rights to be limited if that limit is reasonable. It is considered that the requirement to provide this information is a reasonable and proportionate limitation on the right.

The only information required is information relevant to the administering authority’s decision to grant or not to grant the applicant an option to enter into an infringement notice management plan or to waive an infringement notice penalty. This information allows officials from administering agencies to make an informed decision about whether a person meets the requirements to enter into an infringement notice management plan or to have an infringement penalty waived.

The Bill also affords discretion to the authorities responsible for administering infringement notice offences, allowing them to decide whether an applicant is eligible to enter into an infringement notice management plan or to have their infringement waived. It is considered that these discretions are sufficiently limited by this specificity of this Bill. The Bill also provides for further guidelines

² Barr, Andrew (2019) “Response to Assembly Resolution of 28 November 2018: Support for Low Income Canberrans”. Tabled in the Legislative Assembly on 22 August 2019.

to be developed by the Minister. These are for deciding applications for extensions of time (proposed new section 124A) and for withdrawal of infringement notices (proposed new clause 128(1)).

It is also noted that the changes in the Bill could be perceived as a form of discrimination, given that they will afford benefits to a certain class of people (those who are on low incomes or otherwise disadvantaged) that are not offered to the rest of the population. Providing these benefits, however, is intended to address an existing disadvantage that such people have, which is that infringement notice penalty amounts are a much greater proportion of their incomes and therefore more likely to have greater negative financial consequences.

Notes on Clauses

Clauses amending the *Magistrates Court Act 1930*

Clause 1—Name of Act

This clause is a formal provision setting out the name of the proposed Act.

Clause 2--Commencement

This clause explains that the Act will commence on the day after its notification day.

Clause 3—Legislation amended

This Clause is a formal provision to identify that the bill amends the *Magistrates Court Act 1930* and the *Magistrates Court Regulation 2009*.

Clause 4—Definitions for pt 3.8 Section 117, new definitions

This clause inserts new definitions into section 117 of the *Magistrates Court Act 1930*. These definitions are for:

- approved *community work or social development program*;
- *infringement notice management plan*;
- *relevant circumstances*; and
- *responsible director-general*.

Relevant circumstances details the circumstances that relate to the person and contribute to their ability to pay an infringement notice penalty.

Clause 5—New section 117(2)

This clause refers the terms *disability*, *mental disorder*, and *mental illness*, which are listed under the new definition of *relevant circumstances*, to the *Disability Services Act 1991*, and the *Mental Health Act 2015*.

Clause 6—Purpose and effect of pt 3.8 Section 118(2)(b)(ii)

This is a technical amendment that includes reference to infringement notice management plans in this section.

Clause 7—Additional information in infringement notices New section 122(1)(ba)

This amendment requires that additional information be required in infringement notices, specifying that the recipient of the infringement notice may apply to enter into an infringement notice management plan or to add the infringement notice penalty to an existing infringement notice management plan.

Clause 8—Section 123

This clause amends the existing section 123 to include information about the timeframe to apply for an infringement notice management plan, 28 days, and time period that a person has to pay an infringement notice if their application for one is refused.

Clause 9—Extension of time to pay penalty Section 124(1)

This clause amends the existing section 124 and provides for a person who has received an infringement notice to apply to:

- Enter into an infringement notice management plan;
- Add the infringement notice penalty for the offence to an infringement notice management plan;
- Apply to have the infringement notice waived; and
- Give the administering authority notice disputing liability for the infringement notice offence.

Clause 10—New section 124A

This section allows the Minister to introduce guidelines for deciding applications for extension of time to pay a penalty.

**Clause 11—Guidelines about withdrawal of infringement notices:
Section 128(1)**

This is a technical amendment removes reference to section 133 (extension of time to pay liability), which is now dealt with in new section 124A.

Clause 12—New divisions 3.8.2A and 3.8.2B

This clause introduces seven new sections. Together, these new sections provide the framework for the operation of infringement notice management plans and waiver of infringement notice penalties.

Section 131AA provides for a person who has received an infringement notice penalty to:

- Apply to pay by instalment or participate in an approved community work or social development plan; or
- Participate in an approved community work or social development program.
- Add this infringement notice to an existing infringement notice management plan.

It stipulates that an application for an infringement notice management plan must include:

- Information about the person's financial circumstances; and
- If the person is the holder of a concession card; and
- Information about any relevant circumstances of the applicant if they are applying for a community work or social development program; and
- Anything else prescribed by regulation.

Section 131AB provides information about how decisions must be made by administering authorities. 131AB((3)(a) specifies that the administering authority must allow the application if the applicant holds an approved concession card, such as a health care card or a pension card.

Division 3.8.2B provides for the application of a waiver of an infringement notice penalty. Again, an application must set out:

- Information about the person's financial circumstances; and
- If the person is the holder of a concession card; and
- Anything else prescribed by regulation.

Section 131AF(3) provides a list of circumstances in which the administering authority must allow an application for a waiver of an infringement penalty. Section 131AG provides for the Minister to make guidelines about the waiver of infringement notice penalties.

Clause 13—Extension of time to dispute liability
Section 133

This amendment omits existing section 133. Extension of time to dispute liability is now provided for in section 124(1)(e).

Clause 14—Dictionary, new definitions

This clause inserts definitions into the *Magistrates Court Act 1930* dictionary for:

- *Approved community work or social development program;*
- *Infringement notice management plan;*
- *Relevant circumstances; and*
- *Responsible director-general.*

Clause amending the *Magistrates Court Regulation 2009*

Clause 15—New Section 3A

This section details the concession cards that will be accepted as part of an application for an infringement notice management plan or an addition to an existing plan. These include a health care card and pensioner concession card, both issued under Commonwealth legislation.