

POLICY AND PROCEDURE FOR INTERNAL REVIEW OF INFRINGEMENTS

	Approval Date: December 2009
	Last Reviewed: October 2015 (JH)
Author:	Neville Zimmer
Responsible Director:	Director, Planning and Development
Relevant Legislation/Authority	<i>Infringements Act 2006</i> <i>Victorian Charter of Human Rights and Responsibilities Act 2006</i>

PURPOSE

The purpose of this policy is to provide guidance for the internal review of infringements.

SCOPE

This policy has been developed to provide a consistent and fair approach to the internal review of infringements. Decision Matrix's and operational documents have been developed to provide guidance to the Review Officer for the different infringement types.

The Policy and Decision Matrix's will always have regards to the values, guiding principles and relevant provisions of the Victorian Charter of Human Rights and Responsibilities Act 2006 and the City of Greater Bendigo Human Rights Charter.

APPROACH TO DECISION MAKING

The internal review of infringement notices will always be approached in an objective, transparent and impartial manner to enable people to be treated fairly without undermining the integrity of the infringement issuing process.

The decision maker must afford procedural fairness and must approach the decision without bias and be capable of being persuaded by the applicant's submission without discrimination.

As a general rule leniency or benefit of doubt will be applied when it is demonstrated that exceptional circumstances has occurred or an element of doubt exists, however evidence may be required to substantiate the appeal.

The person who issued the infringement must never participate in the decision making in relation to the internal review of the notice. Internal reviews are generally undertaken by the Unit Manager or Coordinator under delegation from the Manager - (Review Officer).

A detailed decision matrix have been developed for each service area, however there are always extenuating circumstances where some level of discretion is afforded, as it is recognised that it is impossible to have an absolute process to cover every conceivable situation.

STATUTORY REQUIREMENTS

The Infringement Act 2006 (s22) legislates that a person who has been served with an infringement notice may seek to have the notice reviewed by the enforcement agency. This allows any errors or concerns to come to light before these matters proceed through the enforcement process.

An application for internal review can be made at any time before the alleged offence is lodged with the Infringements Court, or before the expiry of the period for bringing a proceeding to Court in relation to the offence. (s54)

Only one application for internal review can be made regarding any one infringement offence. Any further review or action is at the discretion of the Review Officer and is not counted in the Attorney General's reports as an internal review.

The 4 criteria which has been legislated as grounds for internal review and which must be reported on to the Attorneys Generals Office as prescribed information are Contrary to Law, Mistake of Identify, Special Circumstances and Exceptional Circumstances. These four criteria must be used as exemption codes.

An application for an internal review must address the following criteria;

- must be in writing; and
- be made by the person receiving the infringement or a person acting on their behalf; and
- must state the grounds on which the decision should be reviewed; and
- must provide the applicant's name and current address for service of a notice of the outcome of the decision; and
- must contain the infringement number or some other means of identifying the specific infringement.

Where applicable, applications for internal review should include corroborating documents to support the grounds for review. For example, letters from Doctor, Psychiatrist, DHS Disability Services, Case Manager or Social Worker, CentreLink details, Police reports or evidence of mechanical breakdowns. Not providing sufficient

information for a review to be considered may influence the outcome. Where possible this must be made clear to applicants before applications are made.

INTERNAL REVIEW PROCESS

- application for internal review received
 - in person
 - by mail
 - electronically
- internal review registered on Councils Electronic Data Management System
- internal review sent electronically to area of responsibility
- issuing officer to provide comment/report if required
- seek additional information from applicant if required
- assessment of review made against established decision matrix
- assessment to include all available evidence collated such as; photos, notes taken by officers at the time of alleged offence, witness statements previous correspondence from or to the applicant,
- response drafted and mailed to applicant
- appropriate next action date set on Pathway Infringements Register
 - Must ensure a minimum of 28 days to pay (14 days to serve & 14 days to pay) or a later date if stipulated in the correspondence
- documents stored in accordance with record management requirements as outlined in the Public Records Act 1973. (Schedule at the end of this document).

Note: The Act requires that the internal review must be completed within 90 days of receiving the application, however all attempts will be made to complete the review within as short a time frame as possible.

THE GROUNDS FOR REQUESTING AN INTERNAL REVIEW

A person who has been served with an infringement notice or a person acting on that person's behalf with the first-mentioned person's consent, may apply for a review of the decision to serve the infringement notice if the person believes the decision was:

- contrary to law; or
- involved a mistake of identity; or
- that special circumstances apply to the person; or
- there are exceptional circumstance relating to the infringement offence.

Contrary to Law

The Act permits a person to seek an internal review if he or she believes that the decision to serve the infringement notice was 'contrary to law'. An action or decision is contrary to law if an enforcement officer acts unlawfully, unfairly, improperly or beyond his or her authority in taking that action or decision.

If a person claims that a decision to serve an infringement notice was contrary to law, some of the matters that the need to be considered as part of the review:

- was the officer authorised to make the decision to serve the notice?

- has the Officer complied with all the procedural requirements?
- were all the relevant signs etc clear, visible and unambiguous?
- did the issuing officer make a mistake in deciding to issue the notice?
- did the issuing officer act improperly or unfairly in deciding to issue the notice?

Mistake of Identity

This ground of review is relatively self-explanatory. It applies to those situations where the applicant provides evidence that he or she was not in fact the person who breached the law. An example is where a person other than the registered owner was driving the vehicle.

Special Circumstances Application (s25-2)

Special circumstances is a term contained within s3 of the Infringements Act which relates to a person with a mental or intellectual disability, disorder, disease or illness or a serious addiction to drugs or alcohol which results in the person being unable to understand or control the offending conduct. It also extends to the homeless as defined by prescribed criteria and also gives standing to those persons acting on behalf of the person who claims special circumstances.

The processing of an infringement for a person applying for special circumstances allows for the matter to be either withdrawn or referred to Court (s25(3)). Once special circumstances is applied for the notice **cannot be processed through the Infringements Court**. A decision must be made taking into account the information supplied by the applicant and any relevant supporting documentation. Advice should be sought from Council's legal officer prior to proceeding with enforcement action through the Court.

The Act specifies the three types of conditions that can be regarded as 'special circumstances':

- (a) a mental illness or disability, disorder, disease or illness
- (b) a serious addiction to drugs, alcohol or a volatile substance; and
- (c) homelessness

What information is required for a 'special circumstances' review?

A person (or his or her representative) who is claiming 'special circumstances' has to show that:

- he or she has suffered from one of the conditions specified as a special circumstance; and
- this condition prevented him/her from realising that the conduct was an offence or from controlling that conduct.

A claim of 'special circumstances' should be supported by a practitioner's statement.

The application may be supported by a current statement (dated within 12 months of the date of the request for review) from a practitioner who has provided a medical or welfare

service to the applicant. Statements over 12 months old would be acceptable in the case where circumstances are unlikely to have changed such as intellectual disability.

The following types of practitioners may provide a statement:

- a case worker, case manager or social worker
- a general practitioner, psychiatrist or psychologist
- in the case of those claiming a serious alcohol or drug dependency condition, an accredited drug treatment agency.

If an applicant has been declared eligible for services from Disability Services (DHS), a Declaration of Eligibility under the Disability Act 2006 for Intellectual Disability Services is sufficient.

The Review Officer may waive a requirement for a practitioner's statement at his/her discretion

In establishing whether the person has provided sufficient information to support a claim of 'special circumstances', the Review Officer should bear in mind the primary goal of the special circumstances provisions: to identify cases in which enforcement action would be inappropriate.

In some circumstances, the Review Officer may find that it is impracticable, unnecessary or unreasonable to request a practitioner's statement. For example:

- the person is already known to the Review Officer or
- the applicant's written request makes it clear that special circumstances apply.

Exceptional circumstances

The 'exceptional circumstances' test, like the special circumstances test, provides the infringements system with the flexibility to determine whether, taking into account the circumstances in which the offending conduct occurred, the imposition of a penalty was justified.

The Act and regulations leave open the types of circumstances that would be covered and excluded by the term, 'exceptional circumstances'. The relevant decision matrix will guide decision making in most of these circumstances.

Exceptional circumstances can also include unforeseen or unpreventable circumstances not covered in the decision matrix that result in the person not being in a position to prevent the offending conduct.

How is a review decided?

The Review Officer will make a decision in accordance with the relevant decision matrix. The Review Officer's decision is final.

After conducting a review, the Review Officer may:

- confirm the decision to serve the infringement notice; or
- withdraw the infringement notice and serve an official warning in its place; or

- withdraw the infringement notice; or
- withdraw the infringement notice and refer the matter to a Magistrates Court in accordance with the legislation; or
- in the case of an infringement offence involving additional steps, alter or vary those steps provided the alteration or variation is consistent with the Act or regulations establishing the offence;
- waive all or any prescribed costs; or
- approve a payment plan; or
- do any combination of any of the actions referred to in the above paragraphs.

All notices of decisions must be provided to applicants in writing. The notice should make reference to the reason for the decision.

City of Greater Bendigo prefers to resolve issues prior to taking enforcement action, however if all else fails an infringement notice may ultimately progress to the Magistrates Court for resolution.

Official Warnings (s8)

City of Greater Bendigo has the discretion, upon review, to withdraw an infringement notice and issue an official warning in its place.

Each application for an official warning is reviewed on a case-by-case basis. The decision matrix outlines where it is appropriate to withdraw an infringement and issue an official warning.

The relevant operational documents also outline where it is appropriate to issue an official warning in lieu of an infringement notice.

Payment Plans (s46)

All agencies are now required to offer payment plans for persons who meet the eligibility criteria. A payment plan is:

- instalment or
- an extension of time to pay or
- both instalment and an extension of time to pay

A person is automatically eligible for a payment plan if they are the holder of

- CentreLink Healthcare card
- Pensioner Concession card or
- Department of Veterans Affairs Card

A payment plan can be applied for:

- prior to the infringement being referred to the registrar of the Infringements Court or
- prior to documents being issued to bring the infringement before a Magistrate in the Magistrates' Court

Parking and Animal Services have been offering payment plans by way of an extension of time since the introduction of the Infringements Act 2006. This method has been well received as an acceptable method to resolve these minor matters.

It is acknowledged that parking fines are on the lower end of the scale in terms of the severity of lodgeable infringement offences and therefore an extension of time is an acceptable payment plan.

It is also recognised that for lodgeable infringement amounts above 1 penalty unit (\$152 - 2015/2016) may cause difficulties for a person to set aside the infringement amount and to make payment in full.

Therefore, for amounts above 1 penalty unit an instalment arrangement may be entered into. The payment plan commences when the first payment is received. If a payment has not been received within 14 days of the agreed due date then a default of payment notice is to be sent out requesting payment within 14 days. If payment is not received the payment plan may be cancelled and the infringement subject to normal processing. Instalment plans can be set up in Pathway as part of the infringement module.

For payment plan defaulters a Penalty Reminder Notice may still be served, however the infringement will not be forwarded to the infringements court if the **original fine** amount outstanding that is greater or equal to \$10.

For extension of time the period of extension is generally an additional 28 days and must be confirmed in writing, to the person requesting the extension, stipulating the new due date for payment. In extenuating circumstances an additional extension of time may only be granted following consultation with the relevant Review Officer who will take into consideration statutory time lines for infringement processing.

Attorney General reporting (s6)

All agencies are required to provide prescribed information including statical infringement data at prescribed interval to the Department of Justice.

The prescribed interval are currently twice yearly. With reports being forwarded to the Department of Justice for the period January - June in the first week of July and July - December. in the first week of January.

The report is prepared by the Coordinator Parking Services.

All infringement data addressing the prescribed details must be provided to the Coordinator Parking on a monthly basis.

Record Management

It is a requirement under the Public Records Act 1973 that Agencies make and keep full and accurate records. All records associated with Internal Reviews are therefore required to be maintained appropriately.

The following extract is from the Public Record Office Standard PROS 09/05 Retention and Disposal Authority for Records of Local Government Functions.

DESCRIPTION	<u>DISPOSAL ACTION</u>	
	<u>STATUS</u>	<u>CUSTODY</u>
Records relating to the enforcement of penalties for non compliance with Local Laws or non compliance with other laws or regulations administered by Council where enforcement action is taken through the courts.	Temporary Destroy 7 years after resolution of matter.	Hold in agency or APROSS pending destruction. Electronic records should be maintained in readable format pending destruction.
Records relating to the enforcement of penalties for non compliance with Local Laws or non compliance with other laws or regulations administered by Council where enforcement action is taken external to the courts. [For records relating to the financial administration of enforcement penalties see Retention and Disposal Authority for Records of Common Administrative Functions - FINANCIAL MANAGEMENT.]	Temporary Destroy 2 years after resolution of matter.	Hold in agency or APROSS pending destruction. Electronic records should be maintained in readable format pending destruction.
Records relating to the enforcement of penalties for non compliance with Local Laws or non compliance with other laws or regulations administered by Council where investigation is undertaken but no penalty ensues.	Temporary Destroy 1 year after resolution of matter.	Hold in agency or APROSS pending destruction. Electronic records should be maintained

		in readable format pending destruction
--	--	---

APROSS = an approved public record office storage supplier