

Infringements Understanding the Process

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Infringements Act 2006

- + Commonly known as ‘fines’ or ‘on the spot’ fines.
 - + usually penalties for minor offences like littering and traffic or parking offences.

- + The Act aims to provide:
 - + a fairer system;
 - + address the needs of people in special circumstances; and
 - + more avenues by which to expiate the matter.

- + An enforcement agency (“agency”) is a person or body authorised under an Act to take proceedings for the infringement officer in respect of an Infringement Notice or Official Warning is issued.

Official Warnings - Part 2, Division One

- + If an agency believes a person has committed an offence but in considering all the circumstances, decides an Infringement Notice is not appropriate, they can issue an Official Warning.

Official Warnings

- + An Official Warning must be in writing and contain the following details:
 - + it is an official warning;
 - + date of official warning;
 - + name and address of person served;
 - + name of agency and its reference;
 - + date, time, place of alleged offence;
 - + the legislation which creates the offence;
 - + brief description of the offence; and
 - + further information may be obtained from a telephone, address or agency website.

Official Warnings

- + An issuing officer must consider any policy guidelines of the agency.

- + Official Warnings:
 - + do not effect other powers.
 - + can be withdrawn within 6 months from date of service.

Infringement Notices – Part 2, Division 2

- + An Infringement Notice must state:
 - + the person is entitled to elect to have the matter of the infringement offence heard and determined in Court;
 - + that it is an Infringement Notice;
 - + the date of the Infringement Notice;
 - + the name and address (if known) of the person served;
 - + the name of the enforcement agency and its reference;
 - + either the name of the issuing officer or the agency reference of the issuing officer;
 - + the date, time and place of the alleged offence;

Infringement Notices – Part 2, Division 2

- + the legislation that creates the offence and a brief description of the alleged offence;
- + the infringement penalty;
- + the manner in which the infringement penalty may be paid;
- + that the infringement penalty must be paid by a specified due date, being **not less than 28 days from the date of service** of the Infringement Notice;
- + that failure to pay the infringement penalty by the specified due date may result in further enforcement action being taken and the incurring of further costs; and
- + that the person may be eligible for a payment plan under section 46 of the Act.

Service: Section 12

- + Infringement Notice may be served on a person by:
 - + delivering it personally;
 - + sending it by post addressed to the person at the person's last known place of residence or business; or
 - + any other manner if the Act or other legislation which establishes the offence.

- + *Food Act 1984* allows service by leaving it with an adult on the premises or by fixing it to conspicuous part of the premises.

Withdrawal of Infringement Notice (section 18 & section 19)

- + An agency, of its own initiative, may withdraw an Infringement Notice that has been issued and:
 - + issue an official warning to the offender, or
 - + proceed in a Magistrates' Court by summons, or
 - + abandon the matter.

- + The form of the withdrawal notice must be in writing and state:
 - + that the agency intends to proceed in respect of the infringement offence by – (i) continuing proceedings and issuing a summons (ii) issuing an official warning or (iii) take no action;

 - + that it is a withdrawal notice;

Withdrawal of Infringement Notice (section 18 & section 19)

- + the date of the withdrawal notice;
- + the name and address of the person served;
- + the name of the agency and its reference;
- + the date of the Infringement Notice;
- + the date, time and place of the alleged offence;
- + the legislation that creates the infringement offence and a brief description of the alleged offence;
- + that further information may be obtained from a telephone number, address or agency website; and
- + If the penalty and any costs have been paid, the penalty and costs will be refunded.

Withdrawal of Infringement Notice

- + It is important to note that pursuant to s.18 of the Infringements Act the agency 'may' withdraw the infringement notice.
- + s.20 of the Infringements Act confirms withdrawal of a notice does not affect any other procedure or action.
- + s.32 of the Infringements Act 2006 provides that if the infringement penalty is paid, or if late payment is accepted, **then the offence has been expiated by the payment.**
- + If you intend to prosecute, it is prudent practice to withdraw the infringement notice and refund any monies.
- + Timing of the withdrawal must be before the expiry period on the notice expires or before the matter is dealt with by the Infringements Court or before.

Withdrawal of Infringement Notice

- + Administrative law principles require the exercise of discretion to withdraw an Infringement Notice :
 - + consider the purpose of the legislation;
 - + based on a proper evidential foundation;
 - + not be exercised in an arbitrary fashion; and
 - + not be used for corrupt or improper purposes.

Internal Review - Part 2, Division 3

- + The recipient of an Infringement Notice may apply for an internal review on the following grounds:
 - + contrary to law;
 - + mistake of identity; or
 - + special or exceptional circumstances apply.

- + An agency:
 - + must undertake an internal review upon request;
 - + may request additional information; and
 - + must within 90 days review the decision to issue the notice or it will be deemed to have been withdrawn (a further 21 days is allowed if further information is requested from the applicant).

Internal Review - Part 2, Division 3

- + Following the review the agency may:
 - + confirm the issuing of the Infringement Notice;
 - + withdraw the notice and serve an official warning instead;
 - + withdraw the Infringement Notice and abandon the matter;
 - + withdraw the Infringement Notice and refer the matter to the Magistrates' Court;
 - + in the case of an infringement offence involving additional steps, alter or vary those steps;
 - + waive all or any prescribed costs;
 - + approve a payment plan; or
 - + do any combination of any of the above actions.

Internal Review - Part 2, Division 3

- + A Review can only be conducted prior to the infringement being lodged with the **Infringements Court**.
- + Application must be in writing and can only be made once in respect of each Infringement Notice.
- + Must be conducted by a person not associated with the issuing of the Infringement Notice.

Review elected by person - Part 2, Division 3

- + Note that the person served with the Infringement Notice may themselves elect for the matter to be taken to Court for review.
- + This election must occur prior to the expiry of the Infringement Notice or before the matter is dealt with by the Infringement Court.

Payment Plans (Part 3)

- + Must be offered to any natural person who meets the eligibility criteria set out in the Attorney-General's Guidelines to the Infringement Act 2006 ("Guidelines").
- + A person will be automatically entitled to be offered a payment plan if they are in receipt of any one of the following:
 - + a Commonwealth Government (Centrelink) Pensioner Concession Card;
 - + a Department of Veterans' Affairs Pensioner Concession Card or Gold Card; or
 - + a Centrelink Health Care Card (all types including non-means tested).
- + If a person enters into a payment plan before the matter proceeds to the Infringements Court, no further enforcement costs will be incurred.
- + Matters taken into account by agency.

Non payment of Infringement Notices

- + Council may issue a penalty reminder notice.
- + Proceed with the prosecution.
- + Abandon the matter.
- + Lodge details of the Infringement Notice with the Infringement Court.
- + Statute of limitations applies.

Record of offence

- + No conviction recorded.
- + However, the fact of an offence having occurred can be recorded for certain purposes. For example a record of the offence may be taken into account in relation to subsequent infringements.
- + **Note:** If the penalty is paid the infringement cannot be listed as an offence and the matter can not be used in any further legal proceedings.

Food Act Offences subject to the Act

- + Certain breaches of section 16(1) of the Act (Food Standards Code).
- + Failure to display name.
- + Failure to keep minimum records/ FSP at premises.
- + Failure to give name and qualifications of FSS.
- + Failure to register business.
- + Penalties are generally:
 - + 5 penalty units for natural person.
 - + 10 penalty units for body corporate.

What should Councils do?

- + Liaise with other departments regarding the Infringements Process and best practices.
- + Develop or alter existing policy to accommodate Food Act offences.
- + Develop precedent documents.
- + Develop monitoring mechanism.

Enforcement Hierarchy

Level 1	<ul style="list-style-type: none">• Advice• Warnings• Official warnings NEW
Level 2	<ul style="list-style-type: none">• Notices to comply following a food safety assessment s.19IA or food safety audit s.19M• Directions/orders about hygiene s.19 or Food Safety Programs, minimum records or appointing a food safety supervisor s.19W• Seizures• Infringement offences s.56A NEW• Registration conditions s.39A
Level 3	<ul style="list-style-type: none">• Temporary closure or restriction of operations s.19• Prosecutions s.45AC• Refusal to renew registration s.38D• Revocation or suspension of registration s.40D

Source: Department of Health, Food Act 1984 Bulletin 12, Infringement notices (advice for Councils and EHOs)

Disclaimer

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