

Road Transport (General) Withdrawal of Infringement Notices Guidelines 2018 (No 1)

Disallowable instrument DI2018–70

made under the

Road Transport (General) Act 1999, section 38 (1) (Infringement notices – guidelines for withdrawal)

1 Name of instrument

This instrument is the *Road Transport (General) Withdrawal of Infringement Notices Guidelines 2018 (No 1)*.

2 Commencement

This instrument commences on 30 April 2018.

3 Issuing of guidelines

(1) I issue the guidelines in Schedule 1 for the withdrawal of infringement notices served under the road transport legislation.

(2) The guidelines in Schedule 1 set out the criteria for the withdrawal of an infringement notice to which the guidelines apply under clause 4 of this instrument.

4 Application of guidelines

A guideline contained in column 3 of the table in Schedule 1 applies to an infringement notice offence mentioned in column 2 of the table, subject to any limitations or conditions mentioned in column 4 of the table.

Note: under section 38 (2) of the *Road Transport (General) Act 1999*, the administering authority for an infringement notice offence must comply with the guidelines.

5 Definitions

mobility parking scheme authority — see the *Road Transport (Safety and Traffic Management) Regulation 2017*, dictionary

parking permit — see the *Road Transport (Safety and Traffic Management) Regulation 2017*, dictionary

parking ticket — see the *Road Transport (Safety and Traffic Management) Regulation 2017*, dictionary

6 Repeal

DI 2012-246 is repealed.

Shane Rattenbury
Minister for Justice, Consumer Affairs and Road Safety
26 April 2018

Part 1: Circumstances that apply to all infringement notices issued under the road transport legislation

Item	Offences to which circumstance applies	Circumstance	Comments, exceptions or other limitations
1.1	All infringement notice offences under the road transport legislation	<p>The infringement notice has been issued incorrectly, including where the infringement notice contains an error of the following type:</p> <ul style="list-style-type: none"> • where information concerning the vehicle is incorrect; • where the information concerning the driver, responsible person for the vehicle or accredited operator (in the case of public vehicles) is incorrect; or • the description of the alleged offence is incorrect, an incorrect offence type has been used or there is some other technical error in describing the offence. 	<p>The notice should be withdrawn, either on application by the person on whom it was served or at the motion of the administering authority.</p> <p>After withdrawing the infringement notice, the administering authority may issue a new infringement notice for the offence with amended details, if the time for issuing an infringement notice has not expired.</p>

**Road Transport (General) Withdrawal of Infringement Notices
Guidelines 2018 (No 1)**

Schedule 1

1.2	All infringement notice offences under the road transport legislation	<p>Administrative or technical reasons outside the control of the applicant for withdrawal, including but not limited to:</p> <ul style="list-style-type: none"> • the infringement notice relied on incorrect information recorded in a database maintained by the road transport authority, and the incorrect information was not supplied by or on behalf of the applicant for the withdrawal (not covered by a circumstance mentioned in item 1.1); • a permit, licence, authority or other document issued or granted by the road transport authority contained an error that did not arise from information supplied by, or actions done by, the applicant for withdrawal or a person acting on the applicant's behalf, contributed to 	The administering authority may withdraw the infringement notice only if satisfied on reasonable grounds that the administrative or technical grounds exist which either wholly or materially contributed to the circumstance in which the applicant was incorrectly issued with an infringement notice.
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		<p>the circumstance in which the applicant was incorrectly issued with an infringement notice ;</p> <ul style="list-style-type: none"> • a machine, device, instrument, sign, signal or other thing (whether used or installed by, or under authority from, the road transport authority or the road transport legislation) was missing, defective or malfunctioning, and the absence, defect or malfunction contributed to the circumstance in which the applicant was incorrectly issued with an infringement notice ; • delay or inaction by the road transport authority materially contributed to the circumstances in which the infringement notice was issued, and the 	
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**Road Transport (General) Withdrawal of Infringement Notices
Guidelines 2018 (No 1)**

Schedule 1

		<p>delay or inaction was not the result of information provided, or actions undertaken, by or on behalf of the applicant for withdrawal.</p>	
1.3	<p>All infringement notice offences under the road transport legislation</p>	<p>Emergency medical situation or similar event, where:</p> <ul style="list-style-type: none"> • the applicant for withdrawal has completed a statutory declaration detailing the emergency situation or similar event; and/or • the emergency medical situation or event can be confirmed by a registered health practitioner, hospital records, police report or similar report. 	<p>In determining whether the infringement notice should be withdrawn on the basis of an emergency medical situation or similar event, the administering authority may have regard to the alleged offender's access to alternative transport or parking options, the actual risks posed to other road users and any other relevant circumstances.</p> <p>If the administering authority is satisfied on reasonable grounds that an emergency situation or similar event existed that justified or excused the alleged conduct of the applicant in all the circumstances, the infringement notice may be withdrawn.</p>
1.4	<p>Infringement notice offences under the road transport legislation,</p>	<p>Applicant's previous good behaviour, having regard to:</p> <ul style="list-style-type: none"> • whether the applicant was 	<p>In determining whether to withdraw an infringement notice on the basis of the applicant's previous</p>

**Road Transport (General) Withdrawal of Infringement Notices
Guidelines 2018 (No 1)**

Schedule 1

	<p>other than offences relating to: (1) parking contrary to, or without a mobility parking scheme authority; (2) stopping in or near an intersection, children’s crossing or pedestrian crossing; (3) stopping contrary to a “No Stopping” sign.</p>	<p>issued any relevant infringement notices under the road transport legislation (or a corresponding law of another jurisdiction); or</p> <ul style="list-style-type: none"> • whether the applicant was convicted (including where an offence has been taken into account under section 57 of the <i>Crimes (Sentencing) Act 2005</i>) or found guilty of any other relevant offences under the road transport legislation, or any offence mentioned in section 29 of the <i>Crimes Act 1900</i>, <p>in the 5 year period before the commission of the infringement notice offence to which the withdrawal application refers.</p> 	<p>good behaviour, the administering authority must consider the following matters in addition to the applicant’s previous good behaviour:</p> <ul style="list-style-type: none"> • the circumstances of the alleged offence, including the level of risk posed by the applicant’s behaviour to other road users; • the seriousness of the alleged offence; • the extent to which the applicant was aware, or ought reasonably to have been aware, that the conduct constituting the offence was contrary to law.
1.5	All infringement notice offences under the road transport legislation	Person in respect of whom notice was issued is deceased or has moved overseas permanently	Provision of appropriate evidence will be required to satisfy the administering authority. Appropriate evidence:

**Road Transport (General) Withdrawal of Infringement Notices
Guidelines 2018 (No 1)**

Schedule 1

			<ul style="list-style-type: none"> • for a death — includes a death certificate, fact of death notification or funeral notice; • moved overseas — includes a statutory declaration.
1.6	All infringement notice offences under the road transport legislation	There is insufficient evidence to establish the commission of the offence and/or the involvement of the applicant in the offence	Where the administering authority considers that there is insufficient evidence, an infringement notice should be withdrawn either on application by person on whom notice was served or at the motion of the administering authority.
1.7	All infringement notice offences under the road transport legislation	Evidence is available that indicates another defence or exemption applies to the person on whom the infringement notice was served.	Where the administering authority forms the view that evidence is available that meets or would meet the applicable evidentiary standard to establish that another defence or exemption applies, the infringement notice should be withdrawn.
1.8	All infringement notice offences under the road transport legislation	Section 53 (5) applies because the person has disputed liability and the administering authority has not laid an information for the offence within 60 days.	The administering authority should withdraw the infringement notice.

Part 2 Additional circumstances that apply to offences involving the parking of a motor vehicle or trailer

Item	Offences to which circumstance applies	Circumstance	Comments, exceptions, modifications or other limitations
2.1	Any offences relating to parking permits and parking tickets under the <i>Road Transport (Safety and Traffic Management) Regulation 2017</i> and the <i>Road Transport (Road Rules) Regulation 2017</i> .	The applicant for withdrawal held a valid parking permit or parking ticket but the parking permit or parking ticket was not properly displayed	<p>The administering authority may withdraw the infringement if:</p> <ul style="list-style-type: none"> • the applicant provides a statutory declaration detailing the type of parking permit or parking ticket that was held, and the steps the person took to display it correctly; and • the parking permit or parking ticket can be provided to the administering authority; and • the administering authority is satisfied that the person took reasonable steps to display the parking permit or parking ticket correctly.

**Road Transport (General) Withdrawal of Infringement Notices
Guidelines 2018 (No 1)**

Schedule 1

2.2	All parking and stopping offences under the road transport legislation	The offence occurred because the vehicle had broken down or otherwise become immobilised.	<p>The administering authority may withdraw an infringement if the applicant:</p> <ul style="list-style-type: none"> • provides a statutory declaration explaining the circumstances of the vehicle breakdown or immobilisation; and • provides other evidence, such as a receipt or statement, from a roadside assistance service, towing service or similar body to confirm that the vehicle was broken down or immobilised at the relevant time in that location.
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