

# Road Transport (General) Withdrawal of Infringement Notices Guidelines 2019 (No 1)\*

## Disallowable instrument DI2019–211

made under the

*Road Transport (General) Act 1999*, section 38 (1) (Infringement notice—guidelines for withdrawal)

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### 1 Name of instrument

This instrument is the *Road Transport (General) Withdrawal of Infringement Notices Guidelines 2019 (No 1)*.

### 2 Commencement

This instrument commences on 28 October 2019.

### 3 Guidelines

I issue the guidelines for the withdrawal of infringement notices 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,

\*Name amended under Legislation Act, s 60

Planning and Sustainable Development Directorate) is the administering 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*

## **5 Revocation**

This instrument revokes the *Road Transport (General) Withdrawal of Infringement Notices Guidelines 2018 (No 1) DI2018-70*.

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

# SCHEDULE 1

## WITHDRAWAL OF INFRINGEMENT NOTICE GUIDELINES

### 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 of 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 OF WITHDRAWAL FOR INFRINGEMENT NOTICES**

There are two methods by which an infringement notice can be withdrawn:

1. An application for withdrawal is received by the administering authority.
2. The administering authority decides to withdraw the infringement notice.

An application for withdrawal of an infringement notice must be made in accordance with section 34 of the *Road Transport (General) Act 1999*. Applications must be in writing and state the grounds relied on for the infringement notice to be withdrawn. An application can be made online.

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).

An administering authority can withdraw an infringement notice under section 36 of the *Road Transport (General) Act 1999* whether or not:

1. the person has applied for withdrawal under section 34 of the *Road Transport (General) Act 1999*;
2. the infringement notice has been paid in full or in part; or
3. the person is disputing liability for the offence.

## **GROUNDINGS FOR WITHDRAWAL OF INFRINGEMENT NOTICES**

Withdrawal of an infringement notice has the effect that the offence never happened, that is, all penalties associated with the offence (financial and demerit points) do not apply.

In determining whether to withdraw an infringement notice, the administering authority may take into account:

- the circumstances in which the infringement notice was issued, including the level of risk posed by the applicant's behaviour to other road users or public passengers;
- the seriousness of the offence; and
- 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.

Certain offences are generally considered to be unsuitable for withdrawal due to the level of risk they pose and the seriousness of the offence. These offences are outlined in Attachment A to this schedule.

Disagreeing with a law, or finding it inconvenient, to adhere to it are not grounds for having an infringement notice withdrawn.

### *Administrative or technical reasons*

An infringement notice may be withdrawn for administrative or technical reasons where those reasons are outside the control of the applicant and contributed either wholly or materially to the circumstance in which the applicant was issued with an infringement notice.

For example:

- A machine, device, instrument, sign, signal or other thing (whether used or installed by, or under, authority of the road transport legislation) was missing, defective or malfunctioning, and the absence, defect or malfunction contributed to the circumstance in which the applicant was issued with an infringement notice.
- 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 or a person acting on the applicant's behalf, and this error contributed to the circumstance in which the applicant was issued with an infringement notice.
- Administrative error in the content of the infringement notice, for example, the infringement notice contains an error of the following type:
  - Information concerning the registrable or rail vehicle or animal involved is incorrect.
  - Information concerning the driver, responsible person or accredited operator is incorrect.
  - Information concerning the personal details of the person served is incorrect.
  - The description for the offence is incorrect or there is some technical error in describing the offence.
  - Information concerning the date, time and or location of the infringement notice is incorrect.
  - Incorrect infringement notice penalty stated.
  - Incorrect identifying particulars of the authorised person.
- Administrative error in the issuing of the infringement notice.
- The responsible person is a business or company and such business or company has been de-registered or is in liquidation.

When an infringement notice is found to contain an administrative error and is withdrawn, the administering authority must consider whether further enforcement action for the particular offence is appropriate, for example, re-issue the infringement notice with amended details where the time in which to issue an infringement notice has not elapsed.

### ***Insufficient evidence***

Where the administering authority considers that there is insufficient evidence to establish the commission of the offence and/or the involvement of the applicant in the offence, the administering authority should withdraw the infringement notice.

Where the infringement notice offence involves a vehicle and the administering authority is satisfied that the applicant has taken all reasonable steps to assist the administering authority to identify and locate the individual who was in possession or control of the vehicle at the time of the offence, the administering authority should withdraw the infringement notice.

### ***Defence or exemption applies***

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.

For example:

- The applicant is able to provide evidence that they had sold or transferred the vehicle ownership prior to the date of the offence.
- The applicant is able to provide evidence that the vehicle or plates were stolen at the time of the offence.
- Unregistered or uninsured vehicle - applicant is able to produce evidence of registration and insurance or that the vehicle falls within the grace period.

### ***Exceptional circumstances***

An applicant can seek withdrawal on the grounds of exceptional circumstances. Where an applicant seeks withdrawal on this basis, the application must be accompanied by a statement detailing the exceptional circumstances and attach supporting evidence of the event.

When deciding whether to withdraw an infringement notice on these grounds, the administering authority must consider the specific circumstances and alternative options available to the applicant, the risks posed to other road users and any other relevant circumstances.

Examples of exceptional circumstances are:

- Emergency situation or similar event as opposed to a diagnosed condition or late for an appointment.
- Unexpected trauma to them as driver, a passenger in the vehicle or other road user.
- Unforeseen or unpreventable circumstance for example a medical emergency.



- Penalty is received for not displaying L or P plates and these fell off during the journey or the plates were stolen and the applicant was not in a position to obtain replacement plates at the time of the offence.

Where the grounds for withdrawal relate to an emergency medical situation or event, supporting evidence required includes a statement from a registered health practitioner, hospital records, police report or similar report.

### ***Child***

Infringement notice offences can only be issued to children 14 years or older. Children aged 10 years but under 14 years of age are required to appear before a court and the prosecution must prove that the child knew that their behaviour was wrong.

While infringement notices can be issued to persons from the age of 14 years old, the first option is always to educate children about appropriate behaviour, through informal interaction or by issuing a caution.

In determining an application for withdrawal of an infringement notice issued to a child, the administering authority must give consideration to:

- The family circumstances and whether any other grounds for withdrawal would apply.
- Action taken to address the behaviour by the child's parent, guardian or carer.

### ***Deceased or moved overseas permanently***

Where the person served with the infringement notice offence is now deceased or has moved overseas permanently, the administering authority must withdraw the infringement notice on receipt of:

- a death certificate, fact of death notification or funeral notice; or
- a statement stating details of permanent move overseas with supporting evidence, for example, confirmation of address overseas, evidence of employment or study overseas.

### ***Prior good driving record***

In considering whether to withdraw an infringement notice based on an applicant's prior good driving record, the administering authority must take into account:

- the circumstances in which the infringement notice was issued, including the level of risk posed by the applicant's behaviour to other members of the community;
- the seriousness of the offence; and
- 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.

A **good driving record** is no offence committed under the road transport legislation, excluding parking offences (or a corresponding law of another jurisdiction) in the previous five year period.

### ***Prior good behaviour***

In considering whether to withdraw an infringement notice based on an applicant's prior good behaviour, the administering authority must take into account:

- the circumstances in which the infringement notice was issued, including the level of risk posed by the applicant's behaviour to other road users;
- the seriousness of the offence; and
- 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.

This ground is only available for infringement notices issued under the road transport legislation that do not involve a registrable motor vehicle, for example, traveling on a light rail vehicle without a valid ticket.

A **prior good behaviour** record is the applicant has in the previous 5 year period been generally of good behaviour, for example, no infringement notices issued under the road transport legislation, no warnings issued in relation to offences under the road transport legislation and no infringement notices issued in relation to offences that do not involve a registrable motor vehicle.

### **ADDITIONAL GROUNDS FOR WITHDRAWAL THAT APPLY TO PARKING OFFENCES**

The administering authority must withdraw an infringement notice for a parking offence in the following circumstances:

- The applicant provides a statement or evidence detailing the type of parking permit or parking ticket, that was held, and the steps the person took to display it correctly and the administering authority is satisfied that the person took reasonable steps to display the parking permit or parking ticket correctly.
- The applicant is able to provide evidence of having paid for their parking either by producing the ticket or a receipt from an authorised smart phone application.
- The applicant is able to provide evidence that the ticket machine or meter was faulty and the administering authority is satisfied that the person took reasonable steps to use other means to obtain a parking ticket.
- The applicant is able to provide evidence that their parking permit had recently expired and a new parking permit had been issued before the infringement notice was issued or the applicant had applied for or paid for their new parking permit but have yet to receive it.
- The applicant is able to provide evidence that the signage that applied to the area was changed after they parked.

- The applicant was unable to return to the vehicle before the timed parking expired due to an unexpected medical emergency (for example, unexpected trauma or treatment during an appointment or visiting someone in hospital and their condition worsened or death was imminent and it was not reasonable to leave at that time) and the administering authority is satisfied that the person would have otherwise taken reasonable steps to ensure they complied with the parking signage.
- The applicant is able to provide evidence that they were:
  - directed to park their vehicle by an emergency services worker, or
  - arrested by Police and could not move their vehicle; or
  - assisting Police as a witness and overstayed the time limit.
- The vehicle had broken down or otherwise became immobilised and the applicant has provided satisfactory evidence to the administering authority for example, a statement explaining the circumstances of the vehicle breakdown or immobilisation or 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.

A parking permit includes a business parking permit, commuter parking permit, loading zone permit, resident parking permit, resident's visitor parking permit, special event parking permit, mobility parking scheme authority (see *Road Transport (Safety and Traffic Management) Regulation 2017*, *Road Transport (Safety and Traffic Management) Parking Permit Declaration*).

### **ADDITIONAL GROUNDS FOR WITHDRAWAL THAT APPLY TO PUBLIC PASSENGER TICKETING AND CONDUCT OFFENCES**

The administering authority must withdraw an infringement notice for public passenger ticketing or conduct offences in the following circumstances:

- The applicant provides a statement detailing the type of ticket or concession that was held.
- The applicant is able to provide evidence of having paid for their ticket either by producing the ticket or a receipt from an authorised application or machine.
- The applicant is able to provide evidence that the ticket machine was faulty and the administering authority is satisfied that the person took reasonable steps to use other means to obtain a ticket.
- The applicant is able to provide evidence that they were eating or drinking for medical reasons.
- The applicant is able to provide evidence that the animal was a guide-dog, other animal assisting a person with disability or was being trained to assist a person with disability.
- The applicant is able to provide evidence that they were within the 90 minute transfer window.

## NOTIFICATION OF DECISION

The administering authority must give written notice to an applicant of their decision in respect to their application in accordance with section 35 of the *Road Transport (General) Act 1999*.

A decision to withdraw (a withdrawal notice) must:

- include the infringement notice number and the date of the offence and if known, the date the infringement notice was served; and
- tell the person that the infringement notice is withdrawn and, in general terms, about the effect of the withdrawal notice.

A decision not to withdraw must provide the applicant with reasons why their application has been refused.

When notifying an applicant of the decision to refuse an application for withdrawal of an infringement notice, the administering authority must inform the applicant of the ability to apply for waiver (section 31G (3) of the *Road Transport (General) Act 1999*) or enter into an infringement notice management plan.

Waiver can only be considered at the same time as an application for withdrawal if sufficient evidence has been provided to the administering authority to enable it to determine whether the application satisfies the grounds for waiver (see the Guidelines issued for waiver of infringement notice penalties). A waiver can only be granted for the financial component and any demerit points or other penalties associated with the offence will still apply.

## **Attachment A**

### **Offences that are generally considered unsuitable for withdrawal**

- non-school zone speeding offences where the speed limit has been exceeded by greater than 15km/h
- school zone speeding offences where the speed limit has been exceeded by any margin
- driving while using mobile device
- driver seat belt offences where no medical exemption exists
- any red light offence, including entering the marked foot crossing (please note, not a pedestrian crossing) after the red light has illuminated
- heavy vehicle speed limiter offences
- drive or ride a vehicle on road or road-related area while consuming alcohol
- driver trainer in motor vehicle on road or road-related area while consuming alcohol
- driving unlicensed
- interlock related offences
- improper use of vehicle (for example, burnouts)
- negligent driving
- traffic offence evasion article offences
- use defective vehicle contrary to condition / prohibition
- public passenger safety offences
- parking contrary to, or without a mobility parking scheme authority
- stopping in or near an intersection, children's crossing or pedestrian crossing
- stopping contrary to a "no stopping" sign
- stopping in parking area for disabled
- offences relating to failure to use approved child restraints