

Magistrates Court (Withdrawal of Infringement Notices) Guidelines 2024 (No 1)

Disallowable instrument DI2024–153

made under the

***Magistrates Court Act 1930*, section 128 (Guidelines about withdrawal of infringement notices)**

1 Name of instrument

This instrument is the Magistrates Court (Withdrawal of Infringement Notices) Guidelines 2024 (No 1).

2 Commencement

This instrument commences on the day after notification.

3 Guidelines

I issue the guidelines for the withdrawal of infringement notices contained at schedule 1 to this instrument.

4 Definitions

In these guidelines:

administering authority, for an infringement notice offence, means the entity that, under the regulations, is the administering authority for the offence.

another jurisdiction means a jurisdiction other than the ACT.

approved community work or social development program means a community work or social development program approved under section 131AD.

authorised person—see section 134A (3).

date of service, of an infringement notice or reminder notice that has been, or is to be, served on a person, means the date the notice is served on the person.

illegal user declaration—see section 131D.

infringement notice means a notice under section 120 (Service of infringement notices).

infringement notice management plan—see section 131AA.

infringement notice offence means an offence declared under the regulations to be an offence to which this part applies.

infringement notice penalty, for a person for an infringement notice offence, means—

- (a) the amount prescribed by regulation 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.

relevant circumstances, of a person, means any of the following circumstances that relate to the person and contributes to the person's ability to pay an infringement notice penalty:

- (a) mental illness or mental disorder;
- (b) disability, disease or illness;
- (c) addiction to drugs, alcohol or another substance;
- (d) family violence;
- (e) homelessness, or living in crisis, transitional or supported accommodation;
- (f) anything else prescribed by regulation.

reminder notice means a notice under section 129 (Reminder notices).

responsible director-general means the director-general for the [Crimes \(Sentence Administration\) Act 2005](#), part 6.2 (Good behaviour—community service work).

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SCHEDULE 1

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WITHDRAWAL OF INFRINGEMENT NOTICE GUIDELINES

OVERVIEW OF INFRINGEMENT NOTICE SCHEME

An infringement notice scheme for the ACT is established by Part 3.8 of the *Magistrates Court Act 1930* and its regulations.

The pathways open to a person who receives an infringement notice in the ACT are:

- Pay the infringement notice directly (or seek an extension of time to pay the infringement 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.

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 126 of the *Magistrates Court Act 1930*.

Applications must be in writing and state the grounds relied on for the infringement notice to be withdrawn.

An application may be made online.

Applications may 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 may withdraw an infringement notice under section 127 of the *Magistrates Court Act 1930* whether or not:

1. the person has applied for withdrawal;
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

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.

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.

When an infringement notice is found to contain an administrative error and is withdrawn, the administering authority should 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.

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.

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 persons and any other relevant circumstances.

Examples of exceptional circumstances include:

- Emergency situation or similar event as opposed to a diagnosed condition or late for an appointment.
- Unexpected trauma.
- Unforeseen or unpreventable circumstance for example a medical emergency.

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

While some infringement notices can be issued to persons under the age of 18 years old, the first option should be 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 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 others;
- 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 ***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 or issued under a regulation of the *Magistrates Court Act 1930*, and no warnings issued in relation to offences under the road transport legislation or in relation to a regulation of the *Magistrates Court Act 1930*.

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 127 of the *Magistrates Court Act 1930*.

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 131AE) or enter into an infringement notice management plan (section 131AA).

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 other penalties associated with the offence will still apply.