

Internal Review Guidelines under the *Fines Act 1996*

The *Fines Act 1996* (NSW) provides that all agencies which issue penalty notices have the power to internally review the decision to issue a penalty notice, and sets out the basic requirements for such reviews.

These Guidelines are issued by the Attorney General, as a standard to assist agencies to conduct internal reviews of penalty notices fairly, impartially, and consistently across Government, and in accordance with the law.

In the event of any inconsistency between these Guidelines and the *Fines Act 1996*, the *Fines Act 1996* prevails.

Essential Summary

There are two ways to challenge a penalty notice: applying for internal review of the decision to issue the penalty notice, and electing to have the alleged offence heard in court.

The *Fines Act 1996* states that an application for review of a penalty notice may be made at any time up to the due date for payment specified in the penalty reminder notice.¹

On review, the penalty notice must be withdrawn if the reviewing agency finds that:

- The penalty notice was issued contrary to law,
- The issue of the penalty notice involved a mistake of identity,
- The penalty notice should not have been issued, having regard to exceptional circumstances relating to the offence,
- A caution should have been given instead of a penalty notice, having regard to the relevant caution guidelines.
- The person to whom the penalty notice was issued is unable, because the person has an intellectual disability, a mental illness, a cognitive impairment or is homeless:
 - To understand that their conduct constituted an offence, or
 - To control such conduct.²

¹ *Fines Act 1996*, s24A(3).

² *Fines Act 1996*, s24E (2).

Note that the fact that a person has an intellectual disability, mental illness, cognitive impairment or is homeless is not in itself sufficient grounds to require withdrawal of a penalty notice.

A reviewing agency is to notify the applicant in writing of the outcome of the review within 42 days of receipt of the application (or 56 days if additional information has been requested).

Table of Contents

| | |
|---|-----------|
| Essential Summary | 1 |
| 1 Scope of Guidelines | 3 |
| 2 Definitions | 3 |
| 3 Applications for internal review | 3 |
| 4 Requirements for internal review under the <i>Fines Act</i> | 4 |
| When must an internal review under the <i>Fines Act</i> be conducted? | 4 |
| Purpose and scope of internal review | 4 |
| Person who may conduct the review | 4 |
| Matters to be taken into account on review | 5 |
| Extension of deadline for enforcement | 6 |
| Alternative processes for review | 6 |
| 5 Grounds for review | 6 |
| The penalty notice was issued contrary to law | 7 |
| The issue of the penalty notice involved a mistake of identity | 7 |
| Exceptional circumstances relating to the offence | 8 |
| Intellectual disability, mental illness, cognitive impairment or homelessness | 9 |
| A caution should have been given instead of a penalty notice | 11 |
| 6 Outcome of review | 11 |
| If the penalty notice is withdrawn | 12 |
| If the penalty notice is confirmed | 12 |
| 7 Termination of review | 12 |
| 8 Delegation of internal review | 13 |

1 Scope of Guidelines

- 1.1 These Guidelines do not apply if the agency has issued its own internal review guidelines, or has adopted the Guidelines issued by the SDRO. An agency's internal review guidelines must not be inconsistent with the Attorney General's Guidelines.
- 1.2 These Guidelines apply to requests for internal review which are received before the due date on the penalty reminder notice. If the penalty notice is not paid on the due date, and no time-to-pay arrangements have been made, the penalty will be enforced and an additional enforcement cost will be added to the original fine.
- 1.3 There is a different process for appealing a penalty notice which has already proceeded to enforcement. In these cases, a person must submit an application for annulment of the penalty notice enforcement order to the SDRO, under sections 48 and 49 of the *Fines Act 1996*.

2 Definitions

Unless otherwise specified, the terms used in these guidelines have the same meaning as in the *Fines Act 1996*.

Offence means an offence under a NSW law for which a penalty notice may be issued.

Issuing agency means the agency that has employed or engaged the officer who issued the penalty notice or the caution.

SDRO means State Debt Recovery Office

Fines Act means the *Fines Act 1996* (NSW) , as amended from time to time.

3 Applications for internal review

- 3.1 Applications for review should be made to the SDRO, which will either conduct the review or refer the application to the issuing agency.
- 3.2 Applications may be made by any person to whom a penalty notice has been issued. Applications may also be made on behalf of another person, for example, by their carer, guardian, parent or advocate.

- 3.3 Applications for review must be in writing, and must include
- the mailing address of the applicant,
 - the grounds on which review is sought, and
 - appropriate supporting evidence.
- 3.4 Applications may be made even if the penalty notice amount has been fully paid, or paid in part.³

4 Requirements for internal review under the *Fines Act*

When must an internal review under the *Fines Act* be conducted?

- 4.1 Any issuing agency may review a decision to issue a penalty notice, or withdraw a penalty notice, on its own motion.
- 4.2 However, a review must be conducted in accordance with the *Fines Act* if an application for review is received, and that application complies with the Act's requirements, as set out in Part 4 above.⁴

Purpose and scope of internal review

- 4.3 The purpose of internal review is to determine, on the available information, whether a penalty notice was correctly issued, and whether any circumstances warrant withdrawal of the penalty notice.
- 4.4 Internal review cannot result in any variation of the amount to be paid under the penalty notice, nor any variation in options for payment.
- 4.5 If an application for internal review raises allegations of poor performance or misconduct by law enforcement officers, this may require a separate investigation, independent of any review of the decision to issue penalty notice.

Person who may conduct the review

- 4.6 The internal review must be conducted by a person who was not involved in making the decision to issue the penalty notice.⁵

³ *Fines Act 1996*, s24A.

⁴ In certain circumstances, internal reviews may be carried out using an alternative process (see paragraph 5.16 of these Guidelines).

⁵ *Fines Act 1996*, s24C(2).

- 4.7 The person or people who made the decision to issue the penalty notice must not be the manager or superior of the person conducting the review.
- 4.8 A person must not review penalty notices if they have any actual, potential or perceived conflict of interest or personal interest in the outcome of the decision relating to that penalty notice, including:
- a) Where the penalty notice was issued to a relative, family member, business partner or friend of the person, or
 - b) where the person's relative, family member, business partner or friend issued the penalty notice.

Matters to be taken into account on review

- 4.9 Review officers conducting internal agency reviews must ensure that their discretionary powers are exercised in good faith and in a way that is consistent with Division 2A of the *Fines Act*, these Guidelines (or agency Guidelines which are not inconsistent with these Guidelines).
- 4.10 To help ensure the integrity of the review process, applications must be determined with reference to the written application and wherever possible, to any statement or other information provided by the applicant, such as medical, psychological or case worker reports.
- 4.11 The review must also take into account the grounds upon which the application for review has been made and whether, given the person's application, prosecution of the offence would be likely to be successful and/or, whether it is appropriate to continue the enforcement process.
- 4.12 The reviewing agency may request additional information from the applicant, in writing. The review can be conducted without the additional information if this is not provided within 14 days of the request.⁶
- 4.13 Where an application for review contains information that significantly conflicts with the evidence presented by the issuing officer or any relevant camera, machine or other device, and this information is considered material to the offence/s indicated; a report should generally be requested from the issuing officer, or regarding that device, for consideration as part of the internal review. Such reports should be retained and filed with the application.
- 4.14 A report need not be requested if all the matters on which the application conflicts with the issuing officer's evidence are the subject of express notes made by the issuing officer at or around the time the penalty notice was issued.

⁶ *Fines Act 1996*, s24D.

Extension of deadline for enforcement

4.15 While a review is under way, the deadline for the enforcement of that penalty notice is extended. However, the deadline for enforcement cannot be extended beyond the applicable statutory limitation period for that offence.

Alternative processes for review

4.16 Internal review can be conducted according to a process other than the one set out in the *Fines Act* only if

- (a) Regulations under the *Fines Act* specify an alternative procedure for that type of penalty notice,
- (b) the procedure under section 24B of the *Fines Act* is followed, or
- (c) an internal review in accordance with the *Fines Act* has already been conducted with respect to that penalty notice. In these cases, the agency may either decline to further review the decision to issue that penalty notice, or it may, at its discretion, conduct another internal review using an alternative procedure.

5 Grounds for review

5.1 An issuing agency has the discretion to withdraw a penalty notice on its own motion,⁷ and on any grounds it sees fit.⁸

5.2 However, the *Fines Act* stipulates mandatory grounds on which a penalty notice must be withdrawn. On review, a penalty notice must be withdrawn if the issuing agency finds that:

- The penalty notice was issued contrary to law,
- The issue of the penalty notice involved a mistake of identity,
- The penalty notice should not have been issued, having regard to exceptional circumstances relating to the offence,
- The person to whom the penalty notice was issued is unable, because the person has an intellectual disability, a mental illness, a cognitive impairment or is homeless:
 - To understand that their conduct constituted an offence, or
 - To control such conduct.

Note that the obligation to withdraw the penalty notice only arises if the person is unable to understand that their conduct is an offence, or is

⁷ *Fines Act 1996*, s24H (1).

⁸ *Fines Act 1996*, s24E (3).

unable to control the conduct constituting the offence, as a result of their condition.

- A caution should have been given instead of a penalty notice, having regard to the relevant caution guidelines,
- Any other ground prescribed by the regulations.⁹

5.3 Each of these grounds is discussed in more detail below.

The penalty notice was issued contrary to law.

5.4 A penalty notice is only issued according to law if every element of the offence appears to be present and there is sufficient evidence to prove every element of the offence.

5.5 For example, when an officer issues a penalty notice for travelling on a train without a valid ticket, the penalty notice is issued contrary to law unless officer is satisfied, and there is sufficient evidence to prove, all of the following:

- a) that the person travelled on a train,
- b) without possessing a valid ticket (either personally or with someone else on their behalf), and
- c) none of the legal defences or exceptions are applicable in this case.

5.6 A penalty notice is issued contrary to law, and must be withdrawn if an error has been made regarding the existence of any of the elements of the offence. For example, a penalty notice must be withdrawn on this ground if a person is issued with a penalty notice for not paying a toll, but the toll was in fact paid within time.

5.7 A person cannot lawfully be issued with more than one penalty notice for a single offence. This does not mean that a person who repeats an offence, or a vehicle detected for repeat offences, cannot be given a penalty notice for each separate offence committed.

The issue of the penalty notice involved a mistake of identity.

5.8 A penalty notice must be withdrawn if it has been issued to the wrong person. For example:

- a penalty notice issued by a camera for a driving offence is issued to the registered owner of a vehicle. However, the vehicle had been stolen or sold at the time the offence was committed, or the penalty notice was issued to the wrong vehicle due to an error in recording the registration number.

⁹ *Fines Act 1996*, s24E (2).

- A law enforcement officer gives a penalty notice for an offence, but the offender has provided another person's identification documents.

The penalty notice should not have been issued, having regard to exceptional circumstances relating to the offence.

5.9 In some cases, a penalty notice should not have been issued due to exceptional circumstances relating to the offence.

5.10 Some examples of exceptional circumstances which may mean that a penalty notice should not have been issued are set out below. However, this does not mean that a penalty notice must be withdrawn in every case where there are exceptional circumstances. Regard must be had to what is reasonable in all the circumstances of each case, including the nature and severity of the offence.

| | Example |
|---|---|
| Emergency services | An offence is committed by emergency or essential services personnel while engaged in emergency work. |
| Police direction | A person parks longer than they are entitled to. They could not return to their car because they were taken into Police custody, or were assisting Police with their enquiries |
| Medical emergency | A person parks longer than they were entitled to because <ul style="list-style-type: none"> ○ They experienced unexpected trauma during a medical appointment ○ they were visiting someone in hospital and their condition worsened or death was imminent, and it was not reasonable to leave at that time. |
| Faulty vehicle or machinery | A person travels without a ticket because the vending machine was broken down and there was no other way to purchase a ticket. A person parks longer than they are entitled to because their vehicle was broken down at the time. |
| Circumstances beyond the person's control | A person travels on public transport without a ticket to escape violence or the threat of violence (for example, a family needing to travel suddenly to a |

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| | <p>domestic violence refuge).</p> <p>A person gets a penalty notice for consuming alcohol in a park, but they are at a festival which has Council approval to serve alcohol.</p> <p>A person drives an unregistered vehicle, but the fact that the registration was not valid at the time was due to an error by the registration authority.</p> |
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5.11 This is not an exhaustive list of exceptional circumstances (or of categories of exceptional circumstances) which may mean that a penalty notice should not have been issued.

Intellectual disability, mental illness, cognitive impairment or homelessness.

5.12 The fact that a person has an intellectual disability, mental illness, cognitive impairment or is homeless is not in itself sufficient grounds to require withdrawal of a penalty notice.

5.13 The obligation to withdraw the penalty notice only arises if as a result of the person's condition, the person is unable to understand that their conduct constitutes an offence, or is unable to control the conduct constituting the offence. For example:

- A person with an intellectual disability does not understand that they have to purchase a platform ticket, even if they have no intention of travelling on a train,
- A person with a mental illness is swearing or behaving offensively during a severe episode,
- A person with a cognitive impairment gives a police officer an incorrect name or address because their impairment affects their social and interpersonal skills,
- For a homeless person, everyday domestic activities such as sleeping, having implements to prepare food (such as a knife) or drinking alcohol can become illegal activities because they are undertaken in public.

5.14 If the offence for which the penalty notice was issued is a driving or traffic related offence, and review is sought on this ground, the information and evidence provided may be referred to the Roads and Traffic Authority licence review unit, in the interests of public safety.

5.15 For the avoidance of doubt, the terms used above are defined as follows.

- 5.16 Intellectual disability: A person has an intellectual disability where that disability:
- (a) is attributable to an intellectual impairment, and
 - (b) is permanent or likely to be permanent, and
 - (c) results in a significantly reduced capacity in one or more major life activities, such as communication, learning, mobility, decision-making or self-care.¹⁰
- 5.17 Cognitive impairment incorporates a wider range of disabilities than intellectual disability and includes a disability which:
- (a) is attributable to impaired brain functioning that can be associated with many diagnoses that are present at birth or acquired throughout a person's life span, and
 - (b) is permanent or likely to be permanent, and
 - (c) results in a significantly reduced capacity in one or more major life activities, such as communication, learning, mobility, decision-making or self-care.

Examples of cognitive impairment include a developmental disorder (including an autistic spectrum disorder and cerebral palsy), neurological disorder, dementia, brain injury (including from trauma or as a result of substance abuse), or Alzheimer's disease.¹¹

- 5.18 Mental illness means a condition that seriously impairs, either temporarily or permanently, the mental functioning of a person and is characterised by the presence in the person of any one or more of the following symptoms:
- (a) delusions,
 - (b) hallucinations,
 - (c) serious disorder of thought form,
 - (d) a severe disturbance of mood,
 - (e) sustained or repeated irrational behaviour indicating the presence of any one or more of the symptoms referred to in points (a)-(d).¹²

Some common types of mental illness include schizophrenia, psychosis, bipolar disorder and serious depression or anxiety.

- 5.19 Personality disorder: for the purposes of internal review of penalty notices, personality disorder may be considered a form of mental illness.

¹⁰ This definition is adapted from the definition of the intellectual disability target group in section 5 of the *Disability Services Act 1993* (NSW).

¹¹ This list of examples is adapted from the definition of cognitive impairment in s61H(1A) of the *Crimes Amendment (Cognitive Impairment – Sexual Offences) Act 2008* (NSW).

¹² This definition is taken from s4 of the *Mental Health Act 2007* (NSW)

- 5.20 Personality disorder means an extreme and maladaptive pattern of thinking and behaviour which causes disruption to a person's life.
- 5.21 Examples of personality disorders include, antisocial personality disorder, and borderline personality disorder.
- 5.22 Homelessness: A person is considered homeless if they are:
- (a) Without conventional accommodation – for instance, sleeping in parks or on the street, squatting, living in cars or in improvised dwellings; or
 - (b) Moving from one form of temporary accommodation to another – for example, refuges, emergency hostel accommodation, or temporary space in the homes of family and friends, or
 - (c) Living in temporary accommodation due to domestic violence or unsafe living conditions, or
 - (d) Living in a caravan park due to their inability to access other accommodation, or
 - (e) Living in boarding houses on a medium to long-term basis.¹³

A caution should have been given instead of a penalty notice, having regard to the relevant caution guidelines

- 5.23 The Attorney General has published standard guidelines in relation to cautions. They may be found at: <http://lawlink.nsw.gov.au/lpd> (under the "Publications" section). The Attorney General's Caution Guidelines do not apply to NSW Police, or where an agency has issued its own caution guidelines for the use of issuing officers. Agency caution guidelines must be consistent with the Attorney General's Caution Guidelines.

Any other ground prescribed by the regulations.

- 5.24 The Regulations do not currently prescribe any additional grounds on which a penalty notice must be withdrawn.

6 Outcome of review

- 6.1 After conducting a review to issue a penalty notice, a reviewing agency may confirm the decision to issue a penalty notice or may withdraw the penalty notice.
- 6.2 A reviewing agency is to notify the applicant in writing of the outcome of the review within 42 days of receipt of the application (or 56 days if additional information has been requested).¹⁴

¹³ This is based on the Chamberlain and McKenzie definition of homelessness, which is the most commonly used definition in Australia.

If the penalty notice is withdrawn

- 6.3 If after a review, the penalty notice is withdrawn, then:
- any action to record demerit points recorded against that person by the Roads and Traffic Authority is to be reversed, and
 - any amount paid under the notice is to be refunded, and
 - any penalty reminder notice is also deemed to have been withdrawn,¹⁵ and
 - the issuing agency may, if it considers it appropriate to do so, give an official caution to the person in accordance with Division 1A of the *Fines Act*, as if it were an appropriate officer.
- 6.4 If a reviewing agency withdraws a penalty notice on its own motion after the amount under the penalty notice (or a penalty reminder notice in respect of the offence to which the penalty notice relates) has been paid, no person is liable to any further proceedings for the alleged offence.¹⁶

If the penalty notice is confirmed

- 6.5 A penalty reminder notice is automatically issued for all penalty notices, even if they are being internally reviewed. If after review the penalty notice is confirmed, the person must be advised of the new due date for payment of the penalty. This advice replaces any previous penalty reminder notice for that offence (and it is not necessary for a second reminder notice to be issued).

7 Termination of review

- 7.1 If a person elects to have a matter dealt with by a court under this Part while a review under this Division is in progress, the review is terminated when the person makes that election.¹⁷

¹⁴ *Fines Act 1996*, s24E(4)

¹⁵ *Fines Act 1996*, s24G(2)

¹⁶ *Fines Act 1996*, s24H(2)

¹⁷ *Fines Act 1996*, s24I.

8 Delegation of internal review

- 8.1 A reviewing agency may enter into arrangements with another person or body under which the functions of the agency under this Division are exercised by that person or body on behalf of the agency.

(End)

9 Document history

| Version | Date | Reason for Amendment |
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10 Approval by Attorney General

(John Hatzistergos)