

Attorney-General's Guidelines to the Infringements Act 2006

[Note: while these guidelines are still in use, they are under revision and will be updated to reflect changes to legislative instruments that commenced with the *Fines Reform Act 2014*.]

Introduction

In the State of Victoria, infringements are used to address the effect of minor law breaking with minimum recourse to the machinery of the formal criminal justice system and, as a result, often without the stigma associated with criminal judicial processes, including that of having a criminal conviction.

The *Infringements Act 2006* establishes a revised model for managing the issuing of infringements and their enforcement. This Act aims to provide both a fairer system, particularly in addressing the needs of people in special circumstances and providing people with more information about infringements and more avenues by which to expiate (make amends without conviction) the matter. The new model also provides for firmer enforcement through the introduction of a range of measures where expiation has not occurred.

Purpose

These Guidelines are issued by the Attorney-General in accordance with section 5 of the *Infringements Act 2006* (the Act). The purpose of the Guidelines is twofold:

1. to assist enforcement agencies (as defined in section 3 of the Act) in meeting their responsibilities for issuing infringement notices for offences and for the enforcement of infringement notices; and
2. to set out the policy outlining what is appropriate to be dealt with by way of infringement and how that policy should be applied by agencies seeking to make new offences infringeable.

Additional information for members of the public is being developed and will be available at www.justice.vic.gov.au

Scope of the Guidelines

These Guidelines explain the fundamental elements on which the *Infringements Act 2006* was prepared, and the manner in which responsibilities under that Act are to be exercised.

The Guidelines do not cover agency operational procedures, which will be prepared by each agency in accordance with these Guidelines.

The definitions set out in section 3 of the Act apply to terms used in these Guidelines. These Guidelines are designed to assist in the interpretation of the Act and should be read in conjunction with the *Infringements (General) Regulations 2006* and the *Infringements (Reporting and Prescribed Details and Forms) Regulations 2006*.

Infringements System Oversight Unit

The Infringements System Oversight Unit (ISOU), within the Department of Justice, provides authoritative advice to Ministers, the Whole of the Victorian Government, and external enforcement agencies on the policy and operation of the infringements system.

The Unit monitors the success of Government initiatives with respect to the infringements system and in consultation with stakeholders and advocacy groups, examines potential improvements.

The Unit monitors, and provides guidance for, the implementation of these Guidelines. Further advice is available from the Unit on a range of operational matters relating to the Guidelines and the Act.

New Infringements Framework

Victoria's new infringements system as provided for in the *Infringements Act 2006* is based on a number of underlying principles which are to be kept in mind when considering how to apply the Act.

The principles upon which the Act is based are:

- recognition of the authority of the State to set minimum standards of civil behaviour;
- the balancing of fairness (lower fine levels, convenience of payment, consistency of approach) with compliance and system efficiency (reduced administration costs, no need to appear in court, no conviction);
- the provision of a rapid and certain response for lower level offences appropriate for infringements, with deterrence dependent on people being aware they are likely to be detected offending and dealt with through less severe penalties ;
- an acceptance that offences can be dealt with through the efficiency of the infringement system or in open court;
- a requirement that individual circumstances be taken into account;
- a recognition of genuine special circumstances, both at the time of infringement notice issue, and during the enforcement process;
- requiring improved public awareness of rights and responsibilities;
- the provision for regular review of the infringements system; and
- stipulating the duty of external agencies to observe the policies and principles of the system in discharging their responsibilities.

Using these principles, the improved infringements system seeks to achieve:

- improved protection for all individuals, as well as for people in special circumstances (ie mental or intellectual disability, homelessness, serious addictions, those in genuine financial difficulty);

- improved administration by enforcement agencies of the infringements environments they manage; and
- firmer enforcement measures to improve deterrence in the system, and reduce ‘civil disobedience’ and the undermining of the rule of law.

The Infringements Act 2006

The *Infringements Act 2006* provides that guidelines may be made in respect to specific matters, and more generally, to any other matter relating to the administration of this Act.

Guidelines in relation to specific matters

1. Offences suitable for enforcement by infringement notice

The offences covered by the infringement system will include:

- offences that were infringeable prior to 1 July 2006;
- any new offences that the Government introduces on or after that date which fall within the Policy on infringement offences set out in annexure A to these Guidelines, and
- any new offences that the Government introduces for trial on or after that date.

The Government is commencing on 1 July 2006 a three year trial of new offences which can be dealt with by way of infringement notice. This trial will be used to critically assess and further develop the Policy on infringement offences, which is annexed to these Guidelines and forms part of these Guidelines.

From 1 July 2006, any department or enforcement agency wishing to propose new offences to be dealt with by way of infringement must consult with the Infringement System Oversight Unit in the Department of Justice.

When proposed infringement offences are to go to Cabinet, the Cabinet Submission must indicate that the Department of Justice has been consulted and the offence complies with these Guidelines and the annexed Policy.

Where the proposed infringement offence is to be made via regulation and Executive Council, the responsible Minister must obtain a s6A infringements offence consultation certificate (pursuant to s177 of the *Infringements Act 2006* which amends the *Subordinate Legislation Act 1984*) for submission to the Executive Council and also, as soon as practicable after the regulation has been made, to the Scrutiny of Acts and Regulations Committee.

The purpose of both requirements is to ensure that a proposed infringement offence satisfies the annexed Policy on infringement offences and if it does not,

to make clear the reasons and justification why it does not.

The four main principles used in assessing the suitability for new infringement offences are:

- Gravity;
- Clarity;
- Penalty; and
- Consequence.

2. Level of penalty suitable for enforcement by infringement notice

An infringement penalty should generally be approximately no more than 20 – 25% of the maximum penalty for the offence and be demonstrated to be lower than the average of any related fines previously imposed by the Courts. See the Policy annexed to these Guidelines for further information.

3. Code of Conduct to apply to issuing officers

The *Infringements Act 2006* does not require that officers of enforcement agencies consider ‘special circumstances’ at the issuing stage. However, if issuing officers are to exercise such discretions, then each enforcement agency must have a code of conduct to guide officers with the responsibility for issuing infringement notices in the discharge of their responsibilities.

The code should take into account the nature of the business of the issuing agency and the role and functions of its issuing officers. The code should focus on principles of the infringements system with respect to fairness and the recognition of individual circumstances, and deal with the appropriateness of issuing infringements to people with obvious special circumstances.

4. Eligibility criteria for payment plans

The *Infringements Act 2006* (Part 3) provides that a payment plan must be offered to any natural person who meets the eligibility criteria set out in these Guidelines.

Early entry into a payment plan, before the matter reaches the Infringements Court, will allow those wanting to pay their infringement notice by instalment or an extension of time the opportunity to do so without accruing additional enforcement costs. It also diverts people from the court system who have a genuine desire to pay their infringement notice.

Agencies may impose a minimum level of payment before they will offer a payment plan to an individual. This level may differ between agencies and between plans offered to those who have an automatic entitlement and those who have discretionary access to payment plans.

Automatic Entitlement to be offered a Payment Plan

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).

Discretionary Access to Payment Plans

Agencies may, at their discretion, offer a payment plan on the application of any natural person.

Holders of Victorian Seniors Card or Commonwealth Government Seniors Card are not automatically entitled to access a payment plan. However, agencies may at their discretion offer these card holders access to a payment plan.

In exercising the discretion as to whether to offer a payment plan to any person who is not automatically entitled to be offered a payment plan, agencies should take into account the situation of persons who may be experiencing unavoidable financial hardship resulting in the person not having the capacity to pay the fine in full within the payment period. Hardship may be recognised, but not limited to circumstances such as where an individual suffers a sudden change in their situation such as loss of employment, a large unexpected expense on an essential item, sudden or long term illness, family violence or similar circumstances.

5. Internal Enforcement Agency Review

Each enforcement agency must develop procedures for the conduct of internal reviews of infringement notices as required by Part 2 of the *Infringements Act 2006*. The internal agency review process is governed by the Act, the *Infringements (General) Regulations 2006*, the *Infringements (Reporting and Prescribed Details and Forms) Regulations 2006* and these Guidelines.

The time period for conducting an internal agency review is set out in the *Infringements (Reporting and Prescribed Details and Forms) Regulations 2006* and is a maximum of 90 days. This can be extended by a further 21 days if during a review an enforcement agency seeks further information from an applicant.

An internal agency review can only be conducted prior to the infringement being lodged with the Infringements Court. The application must be in writing and can only be made once in respect of each infringement notice.

The grounds for considering internal agency reviews are established by s22 of the Act.

The review must be conducted by a person not associated with the issuing of the infringement notice.

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 the principles of the Act and these Guidelines. 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 provided by the applicant and any other evidence, such as medical, psychological or case worker reports in the case of an application for Special Circumstances.

The review must also take into account the grounds upon which the application for review has been made (as set out in s22 of the Act) 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.

6. Provision of information including statistical data in relation to the enforcement of infringement notices to the Attorney-General

The Attorney-General will publish an annual report outlining information collected on the new infringements system.

Using aggregated data collected from issuing agencies, and advice from both the Standing Advisory Committee of Stakeholders (which has membership outside of the Victorian Government) and an internal government Monitoring Committee, the report will examine the application of the fundamental principles outlined at the beginning of these guidelines to the new system. The data collected will be used to assess how the infringement system is working from a whole of system perspective, as well as whether individual agencies are applying and interpreting the Act in accordance with its guiding principles and these Guidelines.

In particular the annual report may examine and publish information or findings on the operation of the infringement system generally including, but not limited to, reports on the following matters:

- the diversion of inappropriate cases from the criminal justice system;
- the application and effect of the new sanctions regime;
- the take-up rate for payment plans;
- the use of official warnings;
- whether any new infringeable offences have created efficiencies and contributed to diverting cases from the courts; and
- the statistical data authorised to be collected under s6 of the Act and prescribed under the *Infringements (Reporting and Prescribed Details and Forms) Regulations 2006*.

Other matters relating to the administration of this Act

7. Use of Sanctions

Operational guidelines for the use of sanctions have been developed by the Sheriff with regard to the fundamental principles behind the new infringements system.

The operational guidelines establish a process for the use of new and existing sanctions which should only be applied if other avenues of enforcement (including entering into a payment plan/order) have failed. The process the Sheriff's office employs operationally in considering how to apply the sanctions available to it can be viewed at the Sheriff's website located at www.justice.vic.gov.au.

In applying sanctions the Sheriff's office will recognise the balance between temporary measures to encourage fine defaulters to pay, and more serious and permanent sanctions (such as the sale of property) which will be used in the most serious cases of refusal to pay.

The sanctions contained in Parts 10 and 11 of the *Infringements Act 2006*, relating to attachments of earnings and debts, and the sale or charging of real property, cannot be applied without first obtaining authorisation from an Infringements Registrar or the Magistrates Court. Gaol remains the ultimate sanction which can be exercised by the courts after all other measures have been exhausted.

8. Special Circumstances

'Special Circumstances' is defined by the *Infringements Act 2006* and means persons with; a mental or intellectual disability, disorder, disease or illness; a serious addiction to drugs, alcohol or a volatile substance; or are homeless. The definition then requires that these persons could not control or understand their offending conduct because of their condition or situation. Homelessness is defined in the *Infringement (General) Regulations 2006*.

The recognition of 'Special Circumstances' in the *Infringements Act 2006* is to ensure that certain members of the community are not unfairly caught up in the infringement system, through providing flexibility in the system so that the special circumstances of individuals can be considered.

In recognising these circumstances, agencies are reminded that the Act seeks to divert from the criminal justice system those who do not have the ability to understand the consequences of their actions, or by virtue of their circumstances or disability are unlikely to be able to avoid the commission of the offence. This aim should be specifically considered by agencies when applications involving special circumstances are being considered by review officers.

Agencies are to have in place operational guidelines to assist them in understanding and considering applications for 'Special Circumstances'.

There are a number of points at which people with 'Special Circumstances' can be diverted out of the infringement system. These are:

- as part of the individual agency discretion at the point of issue of the Infringement Notice (Part 2 of the Act);
- at the Agency Review Stage (Part 2 of the Act); and
- by the Registrar of the Infringements Court on an application for revocation of an enforcement order (Part 4 of the Act).

It should also be noted that the Magistrates Court, when dealing with people arrested and brought before it on an Infringement Warrant, may have regard, amongst other things, to ‘Special Circumstances’ in accordance with Part 12 of the Act.

8.1 At point of issue of infringement notice

The *Infringements Act 2006* does not require that issuing officers of enforcement agencies consider ‘Special Circumstances’ at the issuing stage. However, enforcement agencies may wish issuing officers to exercise their discretion in issuing infringement notices where it is clear that a person falls within the definition of ‘Special Circumstances’. This will depend on agency circumstances, the type of offence and the level of training possessed by the issuing officers of the particular agency.

8.2 At the Agency Review Stage

An application for internal review may be made by the person served with the infringement notice, or if they consent, someone acting on their behalf.

If an application for withdrawal of an infringement notice is received by the issuing agency on the basis that ‘Special Circumstances’ applied, the agency should consider the application in light of the circumstances identified by the alleged offender.

These circumstances would mean that the person’s judgement was impaired at the time of the offence and meant that they could not control or understand their offending behaviour.

If ‘Special Circumstances’ are considered to apply then the agency should withdraw the infringement notice, or withdraw the infringement notice and issue an official warning in its place (s25(2)) of the Act).

8.3 Application for Revocation of Enforcement Order

When an enforcement order has been made by an Infringements Registrar, a revocation of the order can be sought (under s65) by:

- the enforcement agency;
- the person against whom the order has been made; or
- a person acting on behalf of someone against whom an order has been made to whom Special Circumstances is thought to apply.

If the order is not revoked and the application was by the person against whom it was made, or by the person acting on behalf of someone to whom Special Circumstances is

thought to apply, then the person may apply to the infringements registrar to have the matter referred to the Magistrates Court (s68).

Further Information

For further information on these Guidelines contact the Infringements System Oversight Unit at the Department of Justice on telephone 8684 1781 or via email at isou@justice.vic.gov.au

Annexure A to Attorney-General's Guidelines

POLICY ON INFRINGEMENT OFFENCES

INFRINGEMENTS SYSTEM POLICY FRAMEWORK

Introduction

Infringement notices offer an alternative method for dealing with minor offences, giving the person to whom a notice is issued the option of paying a fixed penalty, rather than proceeding to a court hearing. This system uses inducements such as convenience of payment, lower fine levels than in open court, the avoidance of a conviction being recorded and saving of legal costs to dispose of matters in an efficient and timely manner.

By offering a straightforward, expeditious method of making amends for an offence, the infringement notice system aims to encourage compliance with regulatory regimes. Maintenance of proportionality between the relatively minor, clear-cut nature of infringement offences and the penalty they attract reinforces a sense of fairness in the system.

Because infringement notices depart from the standard practice of court hearings to enforce breaches of the law, their use must be carefully scrutinised, and limited to suitable offences. Consistency of approach is crucial to retaining public understanding of, confidence in, and compliance with, the penalty enforcement system.

Consequently, it is generally inappropriate for more serious or complex offences to fall within the infringement regime. Justice and procedural fairness demands that such matters proceed to court, allowing a full hearing of any charges, including a full response from the alleged offender, rather than being automatically enforced without a hearing.

The Guidelines set out below aim to establish primary principles as a guide to the type of offences that are suitable for enforcement by infringement notice. Departments and agencies are expected to comply with the Guidelines in introducing new infringement offences and reviewing existing infringement offences. A case must always be demonstrated as to the suitability of the offence for the infringements system.

The agency must also demonstrate that it has the capacity to administer the offence fairly and effectively, giving staff appropriate powers and training, taking account of the authority they have, and the discretion they are able to exercise.

If an agency has established that an offence is suitable to be dealt with as part of the infringement system, then it is able to request the Attorney-General to have the offence prescribed under the *Infringements (General) Regulations 2006* as a lodgeable infringement offence. It is for this reason also that offences must satisfy the requirements set out in these Guidelines.

This policy has been approved by the Attorney-General and endorsed by Cabinet and applies to all legislative and regulatory proposals for infringement offences from 1 July 2006. It will be critically reviewed and assessed in the second half of 2009 following the conclusion of a trial on infringement offences on 30 June 2009.

Part 1 of the Guidelines deals with preliminary matters which must be examined before any new infringement offence is considered.

Once this initial analysis has been undertaken, Part 2 below specifies four broad determinants of suitability for specific offences to become an infringement offence:

- Gravity;
- Clarity;
- Penalty; and
- Consequence.

1. ESTABLISHING THE NEED FOR AN INFRINGEMENT OFFENCE

In preparing proposals for considering whether an offence is one appropriate to be dealt with by way of infringement all proposals (to the Infringements System Oversight Unit) must consider the following:

- What is the nature of the disorder or behaviour to be addressed (Is it a behaviour or public disorder that is appropriate to be regulated by infringement offence rather than by court hearing?);
- The consequence of that behaviour continuing unregulated or maintaining the regulation in its current form? (What is the anticipated effect on the behaviour as a consequence of making the offence one regulated by infringement?);
- Deterrent effect sought by regulation as an infringement offence (Would adoption as an infringement offence undermine the perceived seriousness of the offence?);
- Alternative measures considered (Why is adoption of an infringement offence preferable to other options within the criminal justice system?);
- Will the proposal adversely affect fairness and rights within the community? (This is particularly important in relation to the impact on vulnerable members of the community); and
- Is there a strategy for ensuring community awareness of the new offence, and of rights in relation to the offence? (The level and quality of public information is important; community awareness of rights and responsibilities should not only be part of implementation, but ongoing).

2. SUITABILITY FACTORS

After the initial assessment outlined in Part 1 above, more specific criteria must be considered to test the suitability of the proposed offence as an infringement offence. Offences which meet the criteria set out below will generally be able to be enforced through the automatic enforcement process for infringement offences.

2.1 GRAVITY OF OFFENCE

Strict liability infringement offences, where an offence occurs automatically on the basis of proved facts or behaviour (eg speeding by 10kms or less), are currently subject to the infringement process. The philosophy behind this policy is that because there is no requirement to prove a guilty mind or subjective culpability for these offences, their enforcement is relatively straightforward.

Offences which are more complex than strict liability offences can be made infringeable, but will generally be more difficult to establish as infringement offences. Agencies seeking to have these more complex offences included as infringement offences will be required to provide adequate protections and education about the offences.

A. Offences which contain an exception, proviso, excuse or qualification

Offences which contain an exception, proviso, excuse or qualification (e.g. doing a certain act without a lawful excuse) are inherently more complex than offences without such exceptions. They introduce extra elements to be proved by agencies, or which may be contested or claimed by alleged offenders.

Such offences can only be infringement offences under carefully defined circumstances, with clarity being the crucial principle. For such offences to be infringeable the exception, proviso etc must be defined as clearly as possible in the Act, so that the community can clearly understand what actions or behaviour constitutes wrongdoing, taking account of the exception, proviso etc.

The offence must also be fully detailed in the infringement notice, especially where the exception, proviso etc is a defence to the alleged offence shown in the infringement notice (eg. not wearing a seat belt except where reversing, or provisions such as illegal fishing unless authorised in accordance with the Act).

At a minimum, for offences of the types set out above to be considered as appropriate for inclusion as infringement offences the following detail would also be required:

- a) Clarity around what constitutes offending behaviour. The agency's issuing documentation, and other publicly provided information, must clearly and accurately set out the offending behaviour, and the rights of the person, including the right to have the matter determined in court;
- b) Only certain categories of trained officers should be able to issue infringement notices for the more serious offences;
- c) The agency should provide operational guidelines and training for issuing officers prior to any offences coming into effect, and proof of this would be the basis for an offence meeting (b) above;
- d) The operating guidelines would need to be publicly disclosable to the extent that they inform the community of what constitutes wrongdoing;
- e) The guidelines must include an option to give formal and informal warnings (unless a case can be made that this is inappropriate for a particular offence, eg drink driving offences where prosecutorial discretion is rarely exercised); and
- f) The agency must also report annually on such offences.

B. Offences requiring proof of intention, subjective awareness or objective standards and public order offences

The second stage of a trial on infringement offences scheduled to commence, depending upon receipt of Cabinet approval, on 1 July 2007; will allow the limited introduction of a small number of public order/mens rea offences. The purpose of the trial is to test whether these type of offences can be dealt with effectively and fairly by way of infringement.

Pending the analysis of this trial, these types of offences will generally not be considered for inclusion as infringement offences. This is because these offences require proof of an intention, of a subjective state of mind, of fault, or requiring assessment of behaviour against objective standards (i.e. whether it be reasonable, careless, disruptive, abusive, negligent or wilful behaviour), and are not as straightforward. These offences require proof not only as to actions, but also as to the state of mind (or presumed state of mind) of the alleged offender. However, if a significant public policy argument could be mounted in support of the case for making the offence infringeable, then on an exceptional case by case basis, consideration may be given to making the offence infringeable.

Those offences which could be categorised as falling into this category currently, such as disorderly or offensive conduct on public transport will remain as infringement offences but are to be seen as exceptions to the Policy and not to be added to until the trial has been completed.

C. Offences where there is a victim of violence

There is a presumption that offences where there is a victim of violence should not be infringement offences. The concept of restorative justice applies here, so that the rights of, and impact on, the victim should be considered, and the alleged offender should be required to acknowledge and atone for the harm caused by the criminal act, or be provided with the opportunity to respond to all allegations. These precepts necessitate a court hearing.

D. Indictable offences

Indictable offences are those matters requiring deliberation by judge and jury. Where it has already been decided that an offence requires such a full court process to determine guilt and sentencing, it is generally not appropriate that they be infringement offences.

E. Offences where imprisonment is a mandatory sentencing option

Those offences where imprisonment is a mandatory sentencing option by a judicial officer are not suitable as infringement offences (eg. a second offence for 'drive whilst disqualified').

This policy would only allow offences with imprisonment as a punishment to become infringement offences where the magistrate can convert a sentence of imprisonment to a fine. There may be occasions in such instances where an agency can demonstrate a strong public interest case for an offence with a term of imprisonment to be infringeable. Offences in this category would also need to satisfy the requirements set out above at 2.1A (a)-(f).

2.2 CLARITY AND COMPREHENDING OFFENDING BEHAVIOUR

Clarity of description and community awareness

An offence cannot be infringeable unless there is clarity about what constitutes offending behaviour. The community needs to be aware of what type of behaviour is liable to trigger an infringement notice.

Offences should not be infringeable where relevant offending behaviour cannot be adequately dealt with or described on the notice provided, given that an infringement is a fixed penalty which is imposed without the opportunity for independent scrutiny by a court (unless the person chooses to contest it).

Creating awareness of the offending behaviour needs to be dealt with by general public information campaigns, as well as by providing adequate information in the infringement notice

about the offending behaviour.

Further, in providing this information about what constitutes offending behaviour, other critical information should be supplied. This includes ensuring that the notice refers to the individual's options and rights in the infringements process.

2.3 PENALTY

Percentage of maximum penalty

Part of the incentive underpinning the system is that the level of penalty is set at an amount lower than a person might expect to receive were the matter to go to court.

The level of the infringement penalty must be set as a significantly lesser proportion of the maximum penalty to maintain the "bargain" in the infringements system and the incentive inherent in that bargain. As a general rule, the infringement penalty should be no more than approximately 25% of the maximum penalty for the offence. However, a proportion of up to 50% can be considered where there are strong and justifiable public interest grounds.

Level of infringement penalty

The maximum infringement penalty for an individual should generally not exceed 12 penalty units, and for a corporation should not exceed 60 penalty units. The infringement penalty should only be higher than this recommended maximum where a demonstrable case can be made on public interest grounds and/or on the basis of a demonstrable deterrent level of penalty. A deterrent level of penalty can be determined taking into account factors such as consequences of offence, risk or opportunity cost.

The amount of variation must be such that the penalty is still suitable for a summary offence.

Graduated Penalties

Infringements should not generally apply to graduated penalties. This is because they are difficult to apply at the point of issue which cuts across the principle of clarity, as well as the wider principle underpinning the infringement system that infringements 'provide a rapid and certain response for lower level offences'.

The Department of Infrastructure graduated penalty scheme for transport offences should be regarded as an exception to the policy for what can be dealt with by the infringement system.

2.4 CONSEQUENCE

Record of offence

No conviction should be recorded as a result of the issue of an infringement notice or payment of an infringement penalty.

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 (as in graduated penalty schemes for public transport ticketing offences) or other penalty sanctions (as in the demerit points system).

These regimes should only be implemented where the deterrent value can be clearly demonstrated by the enforcement agency, along with a strong public interest case. The enforcement agency must also be able to demonstrate arrangements that ensure that the public is

aware of the offence structure – both general information as well as information in the infringement notice issued (refer to the package of protections outlined in 2.1A (a)-(f) above).

The Infringements Act specifically provides that agencies are able to record an official warning in relation to an infringeable offence. This provides an incentive for agencies to issue a formal warning notice in certain situations rather than an infringement notice carrying a fine. Agencies are also able to withdraw a notice after issue and the fact of this withdrawal can also be recorded.

An exception to the rule that no conviction is recorded has been the existing drink driving/excessive speed legislation which provides for a 'deemed conviction' within 28 days of issue of an infringement notice. No new infringement offences which record a 'conviction' will be allowed under this Policy.