

Enforcement Team

Checklist for Infringement Notices

Form of infringement notice

The infringement notice must:

- be in writing and state that 'the person is entitled to elect to have the matter of the infringement offence heard and determined in the Court; or in the case of an infringement notice served on a child, is entitled to have the matter of the infringement offence dealt with by the Children's Court in accordance with the *Children, Youth and Families Act 2005*.

Contain the following prescribed details:

- that it is an infringement notice;
- the date of the infringement notice;
- the name and address (if known) of the person served with the infringement notice;
- the name of the enforcement agency;
- the enforcement agency identifying reference of the infringement notice;
- either the name of the issuing officer or the enforcement agency identifying reference of the issuing officer;
- the date and approximate time and place of the infringement offence alleged to have been committed;
- the Act or other instrument that creates the infringement offence and a brief description of the infringement offence alleged to have been committed;
- the infringement penalty;
- the manner in which the infringement penalty may be paid;
- that the infringement penalty must be paid by a specified due date, being **not less than 28 days from the date of service** of the infringement notice;
- that failure to pay the infringement penalty by the specified due date may result in further enforcement action being taken and the incurring of further costs;
- that the person served with the infringement notice, or a person acting on that person's behalf, may apply to have the decision to serve the infringement notice internally reviewed by the enforcement agency under the Act;
- that the person served with the infringement notice may be eligible for a payment plan under section 46 of the Act, **unless that person is a body corporate**;
- that further information and information relating to eligibility for payment plans and applying for internal review can be obtained from – (i) a nominated telephone number (ii) a designated address (iii) if available, the enforcement agency's website address
- any further details specifically required to be included in relation to an infringement offence under any Act or other instrument which creates the infringement offence.

Issues:

In our experience, the issues that arise in the form of the infringement notice are as follows:

- the specified date for payment being less than 28 days;
- the infringement notice does not contain all of the information required in relation to warnings and payment plans;
- the infringement notice is issued to the wrong person.

Comments:

The form of the infringement notice is regulated by section 13 of the *Infringements Act 2006* and regulation 8 of the *Infringements (Reporting and Prescribed Details and Forms) Regulations 2006*

Withdrawal of an infringement notice

The form of the withdrawal notice must be in writing and state:

- that the enforcement agency intends to proceed in respect of the infringement offence by – (i) continuing proceedings and issuing a summons (ii) issuing an official warning (iii) or taking no action;
- that it is a withdrawal notice;
- the date of the withdrawal notice;
- the name and address (if known) of the person served with the infringement notice;
- the name of the enforcement agency;
- the enforcement agency identifying reference of the infringement notice;
- the date of the infringement notice;
- the date and approximate time and place of the infringement offence alleged to have been committed;
- the Act or other instrument that creates the infringement offence and a brief description of the infringement offence alleged to have been committed;
- that further information may be obtained from – (i) a nominated telephone number (ii) a designated address (iii) if available, the enforcement agency's website address.
- if the infringement penalty and any prescribed costs have been paid, the infringement penalty and prescribed costs will be refunded, unless the person has an ongoing payment plan in which case Part 3 of the *Infringements Act 2006* applies.

Issues:

The single issue is the failure to issue a notice.

Comments:

An infringement notice may be withdrawn (s.18 *Infringements Act 2006*). The form of a withdrawal notice is regulated by section 19 of the *Infringements Act 2006*.

Internal review

A person served with an infringement notice is entitled to have the service of the infringement notice internally reviewed.

- delegation of review to an officer
- 90 days to complete a review

Council will need to put in place a structure for the handling of internal reviews of infringement notices.

Comments:

A person served with an infringement notice is entitled to have Council review the decision to serve that person with an infringement notice, section 22 of the *Infringements Act 2006*.

The Act sets up a regime of stepped actions.

An enforcement agency may serve an official warning (s.8) may make and publish guidelines and policies (s.9)

An enforcement agency may serve an infringement notice (s.12)

An enforcement agency may take the matter to court

Comments:

Part 2 of the *Infringements Act 2006*

Non payment of infringement notices.

The single biggest area of concern is the management of the issue and follow up of infringement notices that have not been paid. This is an issue because Council must decide if it is going to proceed with the prosecution of the person for the offence the substance of the infringement notice. The statute of limitations applies and non payment of the notice must be monitored so that offences do not become statute barred.

Comments:

A reporting mechanism should be developed to manage the process of infringement notices from issue, reminder notices, reviews, withdrawal and prosecution where necessary.

A person is entitled to enter into a payment plan

Comments:

Part 3 of the *Infringements Act 2006*