

Attorney-General's Guidelines to the *Infringements Act 2006*

For Enforcement Agencies

2022 edition

Department of Justice and Community Safety



Justice
and Community
Safety

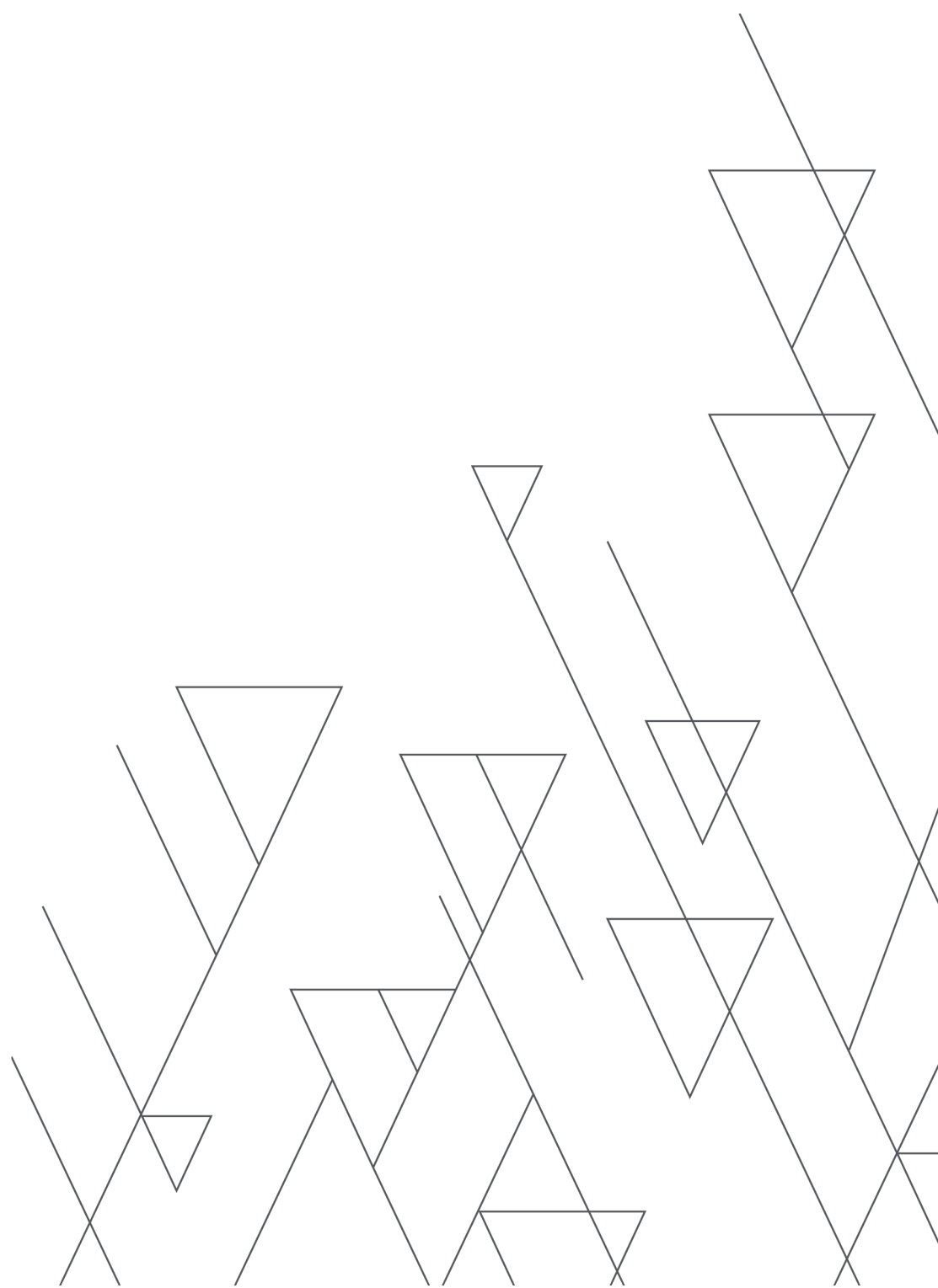


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1. Introduction

In this section

- The purpose of, and the legislative authority for, the **Attorney General's Guidelines to the *Infringements Act 2006* for Enforcement Agencies** (these guidelines).
- An overview of the Victorian infringements system and its statutory framework
- Information about the Attorney-General's annual report on the infringements system, and
- General information about Fines Victoria's role in the collection, management, and enforcement of fines.

1.1 Purpose

The purpose of these guidelines is to provide guidance to enforcement agencies on their responsibilities in administering the *Infringements Act 2006* (Infringements Act).

These guidelines complement the Attorney-General's Guidelines to the Infringements Act for legislating agencies (Attorney-General's Guidelines for Legislating Agencies).

The Attorney-General's Guidelines for Legislating Agencies provide guidance on creating new infringement offences and penalty setting, including consulting with the Infringements System Oversight Unit (ISOU) within the Department of Justice and Community (DJCS).

These guidelines apply to all infringements¹ enforced by enforcement agencies and aim to ensure fairness and consistency across the Victorian infringements system.

They do not comprehensively cover the operation of internal reviews under the Infringements Act, or schemes administered by the Director, Fines Victoria (Director) under the *Fines Reform Act 2014* (Fines Reform Act). These matters are the subject of separate guidelines. These guidelines are available on the DJCS and Fines Victoria websites.

1.2 Authorising provision

These guidelines are made under section 5 of the Infringements Act and take effect on the day of their publication in the Government Gazette. The Attorney-General's Guidelines to the *Infringements Act 2006* published in Gazette G26 on 29 June 2006 are revoked on the day these guidelines take effect.

1.3 The Victorian infringements system

The Victorian infringements system operates as part of the wider Victorian criminal justice system. Enforcement agencies which issue infringement notices exercise criminal law enforcement powers. General information on the Victorian infringements system can be found at section 1.3 of the Attorney-General's Guidelines for Legislating Agencies.

¹ In these guidelines, except where the phrases 'court imposed fine' or 'court fine' appear, the word 'infringement' is used interchangeably with the words 'fine', 'infringement fine' and 'infringement matter'. An infringement notice is a notice issued by an enforcement agency setting out the particulars of an infringement offence. References to an 'infringement notice' in context may refer to the specific notice or the fine.

1.4 Statutory framework

In Victoria, the issuing, management, and enforcement of infringement notices is governed by the Infringements Act, the Fines Reform Act, the *Infringements Regulations 2016* (Infringements Regulations) and the *Fines Reform Regulations 2017* (Fines Reform Regulations) (in these guidelines collectively referred to as 'fines legislation').

Other relevant legislation that forms part of the broader infringements framework includes the *Road Safety Act 1986*, *Children, Youth and Families Act 2005 (CYF Act)*, *Sheriff Act 2009*, *Criminal Procedure Act 2009* and the *Magistrates' Court Act 1989*.

Infringements can be issued under State and local laws. All infringement notices – whether issued by a State government, local government, or other enforcement agency – are governed by fines legislation.

The Infringements Act sets out:

- procedural requirements for the issuance and management of infringement notices, including the provision of payment plans and the conduct of internal reviews by enforcement agencies, and
- a process for matters originating by infringement notice to be referred to the Magistrates' Court (or, if the fine recipient is a child, the Children's Court) for hearing and determination.

The Infringements Regulations set out matters required to be prescribed under the Infringements Act, including:

- the statistical data required to be reported by enforcement agencies to the Attorney-General, and
- the content that must be included on notices served under the Infringements Act, such as infringement notices, official warnings, penalty reminder notices and withdrawals of infringement notices or official warnings.

The Fines Reform Act provides for:

- the enforcement of infringement and court-imposed fines by the Director
- the registration of unpaid infringement penalties with the Director except where the fine recipient is a child, the offence is under a local law, or the offence is otherwise prescribed as non-registrable
- the administration of payment arrangements by the Director
- enforcement review and other schemes administered by the Director (the Work and Development Permit scheme, the Time Served scheme and the Family Violence Scheme)
- unpaid fines to be enforced by the Director through criminal sanctions such as driver and vehicle sanctions (for example, suspension of a driver licence or vehicle registration), charges over land, sale of land, and attachment of debt and earnings, and
- enforcement warrants to be issued by the Magistrates' Court where fines remain unpaid, authorising other sanctions by the Sheriff of Victoria such as the clamping of vehicles, removal of number plates, seizure of property and arrest of fine defaulters.

Where the fine recipient is under the age of 18 at the time of offending, the CYF Act and the Infringements Act set out the procedure for enforcement of infringement notices. An outstanding infringement fine issued to a child may only be registered for enforcement with the Children's Court through the Children and Young Persons Infringement Notice System (CAYPINS). It cannot be registered or enforced by the Director.

1.5 General information about Fines Victoria's role

Fines Victoria provides administrative services on behalf of DJCS, supporting the administrative management of infringement fines by many Victorian Government agencies from the time that an infringement fine is issued. These services include sending out infringement-related notices on behalf of agencies, collecting payments, processing payment plans and undertaking administrative steps to support the internal review process under the Infringements Act.

These responsibilities are in addition to the legislative responsibilities of the Director under the Fines Reform Act which mainly relate to the registration of unpaid fines for enforcement by the Director.

If eligible to be covered by the Victorian Government's administrative services through Fines Victoria, an enforcement agency is encouraged to enter a memorandum of understanding with DJCS instead of administering the enforcement of an offence itself. Using Fines Victoria's administrative services promotes efficiency, consistency of practice, and simplicity for fine recipients.

Fines Victoria can:

- assist legislating and enforcement agencies with the operational steps required to onboard a new enforcement agency proposed to enforce infringement offences
- provide general information in relation to enforcement agency responsibilities under fines legislation
- provide updates to enforcement agencies about annual changes to the value of fee and penalty units under the *Monetary Units Act 2004*
- provide operational guidance and information on registering fines with the Director and processes following registration.

For more assistance, enforcement agencies can contact:

- For operational queries about working with Fines Victoria - FinesVictoriaAgencyEnquiries@justice.vic.gov.au
- For general information about fines legislation and details of infringement offences - isou@justice.vic.gov.au

2. Enforcement agencies' responsibilities under the Infringements Act

This chapter outlines enforcement agencies' responsibilities under the Infringements Act for issuing, reviewing, administering payment plans for, and reporting on infringement matters. It also includes information about prosecuting matters as an alternative to enforcement by infringement.

2.1 Issuing infringement notices

In this section

This section sets out how issuing officers can meet their obligations to:

- be properly authorised to issue infringement notices
- properly exercise their discretionary powers
- deal appropriately with vulnerable persons, and
- comply with operational requirements for issuing infringement notices.

The legitimacy of an infringements scheme depends on a properly managed process for issuing notices.

2.1.1 Authority to issue

An infringement notice can only be issued by an officer authorised to exercise that power. Issuing or authorised officers belong to a specified class of persons.

If the power to issue a notice can be delegated, the delegation should be restricted to persons of suitable seniority and expertise.

Prior to issuing infringements the enforcement agency should review the authorising legislation and ensure issuing officers are appropriately authorised to exercise enforcement powers.

2.1.2 Exercising discretionary powers

A decision to issue an infringement notice requires the issuing officer to exercise their discretion. An issuing officer has the power to choose whether to issue an infringement notice or an official warning, consider that the enforcement agency prosecute the person, or take no action.

Enforcement agencies should ensure that issuing officers:

- use discretionary powers in good faith and for a proper, intended, and authorised purpose
- act within the limits of their powers.

When exercising discretion, issuing officers must comply with a range of legal principles, such as acting lawfully, impartially and reasonably. These principles are set out in the model code of conduct for issuing officers in [Appendix 2 – Model Code of Conduct for issuing officers](#) of these guidelines and more generally in section [3.1- General matters to be covered in policies and guidelines](#).

Enforcement agencies must ensure there is proper accountability for the exercise of powers by issuing officers, for example through internal disciplinary mechanisms.

2.1.3 Dealing with vulnerable persons

When a person from a vulnerable cohort may have committed an offence, enforcement agencies should ensure that issuing officers are trained to be respectful and sensitive to the person's needs and have regard to their circumstances before deciding to issue an infringement notice.

A person may be considered vulnerable if they are experiencing a range of circumstances that may affect their ability to comply with the law or shape their interactions with the law. This may include if they:

- are homeless
- have financial difficulties
- have a serious addiction to alcohol and other drugs
- are experiencing family violence
- have a disability, including cognitive disability
- are experiencing mental health issues
- are a child or young person
- are a member of a Culturally and Linguistically Diverse (CALD) or Aboriginal and/or Torres Strait Islander community group.

Enforcement agencies should develop guidance for issuing officers on how to identify signs of vulnerability, as well as how issuing officers conduct themselves when dealing with vulnerable people.

Enforcement agencies should ensure information supporting a fine recipient to understand the fine and their options is available in a range of accessible and culturally appropriate formats, for example using simple language, in languages other than English, and in large print.

2.1.4 Operational requirements

Enforcement agencies must ensure that issuing officers confirm all statutory and prescribed details required for an infringement notice under the *Infringements Act* and *Infringements Regulations*, which includes but is not limited to:

- the person's name
- (if a natural person) the person's date of birth
- (if a body corporate) the person's Australian Business Number (ABN) or Australian Company Number (ACN)
- the person's address
- the due date for payment.

Enforcement agencies should ensure that issuing officers record details of the offending clear enough to support the review of a fine or court challenge.

2.2 Issuing official warnings

In this section

This section provides guidance to enforcement agencies on the circumstances in which they may consider issuing an official warning to a person.

The guidance contained in this section is not intended to create an expectation that if one of the factors listed in these guidelines apply to a person, they will automatically be issued with an official warning.

The list of factors included in this section is also not exhaustive. Enforcement agencies should exercise their discretion in each case, having regard to the person's circumstances.

Section 8 of the *Infringements Act* authorises an issuing officer to serve an official warning if the officer:

- believes on reasonable grounds that the person has committed the infringement offence
- forms the opinion that, in all the circumstances, it is appropriate to serve an official warning.

In making such a decision, the officer (other than a police officer within the meaning of the *Victoria Police Act 2013*) must observe any policy and guidelines adopted by the enforcement agency.

An official warning may also be issued by an enforcement agency in place of an infringement notice, after internal review by the agency or enforcement review by the Director. More information about official warnings following internal review is available in the Internal Review Guidelines.

Enforcement agencies should develop enforcement policies that indicate the range of circumstances in which an official warning may be issued.

Factors to consider in determining whether an issuing officer should issue an official warning may include:

- whether the offender made a genuine mistake or took reasonable steps to comply with the law, although a defence may not apply
- whether the offender is likely to be successful on the review ground of special or exceptional circumstances
- if known by the issuing officer, the offender's lack of any prior criminal history, particularly where the offender is a child
- circumstances of the offence or offender that are not exceptional or unique but that nevertheless justify not issuing an infringement notice or prosecuting the person
- the severity of the harm caused by the offence (if the harm may vary)
- whether the official warning is likely to be a sufficient deterrent to further offending.

2.3 Conducting internal reviews

The Director has published Internal Review Guidelines to assist agencies in meeting their obligations relating to internal review under Division 3 of Part 2 of the *Infringements Act*.

A copy of those guidelines can be found at <https://www.justice.vic.gov.au/internal-review-guidelines-fines-and-enforcement-services>.

2.4 Administering payment plans

In this section

Enforcement agencies are encouraged to promote the option of payment arrangements with the Director or, where more appropriate, payment plans with the agency to potential applicants.

This section sets out:

- the circumstances in which an enforcement agency must offer a payment plan,
- how enforcement agencies can determine eligibility for payment plans in other cases, and
- the payment arrangement scheme under the Fines Reform Act.

A payment plan is an arrangement for an extension of time to pay, an agreement to pay by instalments or both when a person is otherwise unable to pay the amount outstanding before the due date.

The payment plan framework is set out in Division 2 of Part 3 of the Infringements Act and makes provision for:

- eligibility for payment plans
- varying a payment plan (including requesting an addition of a fine to a payment plan, requesting the removal of a fine from a payment plan or cancelling a payment plan)
- the allocation of money received under a payment plan, and
- enforcement action where payment plans are defaulted on or cancelled.

Under section 46 of the Infringements Act, any person (including a body corporate) with outstanding fines may make an application to an enforcement agency for a payment plan to pay the infringement penalty and the penalty reminder notice fee (if applicable).

The application may be made at any time before the infringement is registered for enforcement with the Director (or, in the case of a child, with the Children's Court). If an enforcement agency receives an application for a payment plan, it must cease any enforcement action until the payment plan application is determined.

Part 5 of the Fines Reform Act enables a person to apply to the Director to consolidate their unpaid court and infringement fines into a single payment arrangement. Referral to the Director is recommended because the person may have several outstanding fines at various stages of the fines lifecycle. Further information is set out at section [2.4.3 - Payment arrangements under the Fines Reform Act](#).

Enforcement agencies are encouraged to promote the option of payment arrangements with the Director or, where more appropriate, payment plans with the agency to potential applicants.

2.4.1 Mandatory payment plans

Section 46(3) of the Infringements Act provides that enforcement agencies must make a payment plan available to people who meet the eligibility criteria set out in these guidelines.

For the purposes of that section, a natural person is entitled to a payment plan if that person holds one of the following concession cards:

- a Commonwealth Government (Centrelink) Pensioner Concession card
- a Department of Veterans' Affairs Pensioner Concession card or Gold card, or
- any Centrelink Health Care card (including those issued for non-means tested benefits).

As noted above, this obligation can be met by referring a fine to the Director for inclusion in a payment arrangement.

2.4.2 Discretionary payment plans

If a natural person or body corporate applies for a payment plan and is not automatically entitled to receive a plan, the enforcement agency has the discretion to decide whether to grant that person a plan. In exercising the discretion, the enforcement agency may consider:

- the financial circumstances of the person, including the impact that payment of the fine in full may have on their financial position
- the number and value of other infringement penalties incurred by that person, and
- the person's payment history for previous infringements issued by that enforcement agency.

If an enforcement agency offers a person a payment plan, it may:

- require a minimum level of payment to be made per instalment, and
- specify the number of instalments or timeframe within which the outstanding fine may be paid.

While other concession card holders (other than those described above) are not entitled to a payment plan as of right, agencies are encouraged to provide payment plans to people holding a Victorian Seniors card or a Commonwealth Government Seniors card.

If an enforcement agency refuses a payment plan, the natural person or body corporate has 21 days from the date of service of the notice of refusal, to pay their fines. If the person fails to pay their fine within that period, the fine may be registered for enforcement.

A natural person or body corporate may seek to have fines referred to the Director for management under a payment arrangement.

If an enforcement agency decides not to offer a payment plan for a fine to a person who is not automatically entitled, the enforcement agency may refer the fine to the Director if requested by the person, in accordance with section 43 of the Fines Reform Act. This option is recommended for the reasons in section [2.4.3 - Payment arrangements under the Fines Reform Act](#).

2.4.3 Payment arrangements under the Fines Reform Act

The payment arrangement scheme established under Part 5 of the Fines Reform Act enables a natural person or body corporate to apply to the Director to consolidate their unpaid court and infringement fines into a single payment arrangement.

The management of payment arrangements by the Director is the recommended option because a person may have several outstanding fines. For example, a person may apply to consolidate a court fine, a parking fine and a speeding fine into one payment arrangement rather than having separate payment plans with the local council and Victoria Police and making payment on orders of the Magistrates' Court. The Director can examine the person's financial circumstances and capacity to pay those fines before determining the most appropriate arrangements for the person to pay the fine, improving the likelihood of recovering the fines.

The payment arrangement scheme also makes the administration of payment plans simpler for enforcement agencies. An enforcement agency may comply with their obligation to offer a payment plan by referring the fine to the Director for management by a payment arrangement. Alternatively, a natural person or body corporate may request that an enforcement agency refer their infringement fines to the Director for inclusion in a payment arrangement.

As referred fines are subject to a payment arrangement rather than a payment plan, enforcement agencies are not required to meet reporting requirements for payment plans with respect to that fine.

Once referred to the Director, the provisions of the Fines Reform Act apply to that payment arrangement, including the order in which payments are allocated to a particular fine.

Enforcement agencies can obtain more information about how to refer fines to the Director from Fines Victoria.

2.5 Reporting on infringements

In this section

This section sets out enforcement agency reporting obligations under the Infringements Act and Infringement Regulations, including:

- six-monthly reports to the Attorney-General in relation to each category of infringement offence, and
- the publication of the Attorney-General's annual reports on the infringements system. The annual reports include data that is provided by enforcement agencies in their six-monthly reports.

Under the Infringements Act and Infringements Regulations, enforcement agencies are required to provide six-monthly reports to the Attorney-General with the following details in relation to each category of infringement offence.

- *Official warnings*: the number of official warnings served and withdrawn by the enforcement agency
- *Infringement notices*: the number of infringement notices served and withdrawn by the enforcement agency
- *Elections to go to court*: the number of persons served with an infringement notice who elect to have the matter of the infringement offence heard and determined in the Magistrates' Court or, in the case of a child, in the Children's Court
- *Internal reviews*: the number of applications for internal review received and decided by the enforcement agency under each of the grounds in section 22(1) of the Infringements Act and, in relation to decisions made under sections 25(1)(h) and 25(2A), the action taken, and
- *Payment plans*: the number of applications for payment plans received by the enforcement agency under section 46(1) of the Infringements Act², and, as far as practicable:
 - the total number of payment plans offered and commenced, and
 - the number of persons advised of a default.

Enforcement agencies are required to submit their reports every six months through the Infringements Information System (IIS) Portal managed by DJCS.

DJCS provides agencies with documents including counting rules and an infringement reporting template. DJCS also sends notifications to enforcement agencies to remind them of their obligations to submit their infringement data report prior to the reporting period.

² Fines referred to the Director for management under a payment arrangement should not be counted as payment plans.

2.5.1 Attorney-General's Annual Report on the Infringements System

The Attorney-General's Annual Report on the Infringements System contains information about the overall performance of the infringements system, key initiatives, and highlights in relation to fines, and infringements activity and outcomes segmented by offence category and agency type.

It includes statistical data on a range of matters relating to infringements that all enforcement agencies must provide to the Attorney-General every six months or when sent a written request by the Attorney-General under section 6 of the Infringements Act.

Previous annual reports are available on the DJCS website at

<https://www.justice.vic.gov.au/justice-system/fines-and-penalties/annual-reports-on-the-infringements-system-2007-18>.

2.6 Prosecuting matters as an alternative to issuing infringements

In this section

The infringements system exists as an alternative to criminal prosecution in court. If a potential criminal incident is detected, enforcement agencies have the choice to give an official warning, issue an infringement notice, or charge the person with the relevant offence.

Once an infringement notice is issued, an enforcement agency may withdraw the infringement notice and prosecute the person under section 17 of the Infringements Act. Alternatively, an infringement fine recipient may elect to go to court under section 16 of the Infringements Act. An enforcement agency may also decide to prosecute a person following internal review, under section 25 of the Infringements Act. These options are available at any time before the matter is registered for enforcement with the Director or the expiry of the prosecutable period under section 7 of the *Criminal Procedure Act 2009* (generally 12 months from the offence date).

The advantages of the infringements system, as an alternative to prosecution, include:

- cost and time efficiencies for enforcement agencies, courts, and defendants
- the avoidance of a conviction being recorded if the infringement is paid (except for some offences such as drink-driving, drug-driving and excessive speed)
- certainty of the penalty amount needed to finalise a matter
- lower maximum fine levels than may apply if the offence is prosecuted in court³
- convenience of payment, including through payment plans and payment arrangements for eligible fine recipients
- individual circumstances being recognised without the need to go to court, through review processes or other schemes to support people with specific circumstances.

Infringement notices depart from the standard practice of court hearings to enforce breaches of the law because of this infringement notices should only be issued where the benefits of the infringements system can be realised. It is more appropriate to prosecute the matter in court where:

- there is a reasonable doubt whether the person's guilt can be established
- the infringement offence captures a wide band of offending and the person has shown severe, wilful or blatant disregard for the law.

³ Infringement fines issued to children for some offences may attract a higher penalty than a court fine because the maximum penalty that the Children's Court can impose under the *Children, Youth and Families Act 2005* may be less than the infringement penalty .

3. Developing enforcement policies and other guidance

In this section

Policies and guidelines should be developed and, where possible, published, in relation to:

- general matters, including how administrative law principles, efficiency requirements and human rights considerations apply to enforcement agency functions
- code of conduct for issuing officers
- training for issuing officers, and
- offence-specific guidelines for enforcing complex offences.

Enforcement agencies should develop policies and guidelines to support their statutory functions. As a matter of best practice, agencies are encouraged to publish these policies and guidelines where possible.

3.1 General matters to be covered in policies and guidelines

3.1.1 Principles of administrative law

In addition to the requirements under fines legislation, the principles of administrative law apply to enforcement agency functions.

Enforcement agencies must not apply decision-making policies in an inflexible manner, because this precludes the proper, genuine, and realistic consideration of a particular case.

The inflexible exercise of discretion is also inconsistent with the principles of good decision making under administrative law.

The following principles of administrative law govern how enforcement agencies and issuing officers should make decisions, particularly as those decisions affect the rights and interests of members of the public:

- lawfulness
- procedural fairness
- independence and impartiality
- openness and transparency, and
- rationality.

Further detail about how these principles of administrative law specifically apply to issuing officers are contained in the model code of conduct for issuing officers, at [Appendix 2 – Model Code of Conduct for issuing officers](#).

More information about how these principles apply to the internal review process is set out in the Internal Review Guidelines.

3.1.1.1. Lawfulness

Decisions made by enforcement agencies must be made within the boundaries of the law. All decisions are subject to review, or court challenge, to ensure the decision complies with the relevant legislation.

The aim of this principle is to ensure:

- fair, efficient, effective, and high-quality decision making
- accountability in decision making, and
- access for those affected by decisions to review mechanisms.

3.1.1.2. Procedural fairness

Procedural fairness is also known as natural justice or due process. It relates to the process of making a decision, rather than the outcome or merits of the decision.

There are two pillars of procedural fairness:

- the 'fair hearing rule', and
- the 'rule against bias'.

The 'fair hearing rule' requires enforcement agencies to ensure that when a decision is made that adversely affects a person's rights, interests or legitimate expectations, the decision-maker:

- provides the person with the information on which the adverse decision is based, and
- gives the person an opportunity to respond.

The rule against bias requires a decision-maker to be free of any reasonable suspicion or apprehension of bias or perception of bias, arising from circumstances such as the decision-maker's financial or personal interest, personal views, prior expression of views or previous role in the decision to be made.

This rule also overlaps with the principles of independence and impartiality.

3.1.1.3. Independence and impartiality

Enforcement agencies must act independently. This means that the decision-maker must make their decision in an environment that is free from inappropriate influences. In practical terms, no outsider should interfere, or attempt to interfere, with the way in which an enforcement agency makes its decision.

Impartiality refers to the state of mind of the decision-maker in relation to the matter before them. This principle seeks to ensure that the decision-maker is not deciding in their own interest, or in a manner that favours one person over another.

3.1.1.4. Openness and transparency

As public officials, decision-makers within enforcement agencies are obliged to behave lawfully, accountably, and transparently.

Enforcement agencies should ensure that there is transparency and accountability in the way that their officers make decisions. Enforcement agencies should do this by ensuring that:

- all decisions made by the enforcement agency are properly documented, and
- all final decision records identify the decision-maker.

3.1.1.5. Rationality

Enforcement agencies should act rationally and consistently when making decisions, ensuring there is appropriate recognition of exceptional and special circumstances if they become aware that those circumstances exist.

When a person from a vulnerable group (as described above, in section 2.1.3) may have committed an offence, enforcement agency officers should be respectful and sensitive to the person's needs and have regard to their circumstances before making any decision that affects that person's rights or interests.

3.1.2 Efficiency

Enforcement agencies should aim to process and make decisions relating to infringements within a reasonable period of time. What constitutes a reasonable period of time may vary depending on the enforcement context of a particular offence.

There are statutory limits on certain decisions relating to infringements, including:

- deciding an internal review within 90 days of the date of the application (regulation 16 of the *Infringements Regulations*)
- registering an outstanding matter with the Director, within six months from the offence date unless extended registration applies (section 17 of the *Fines Reform Act*)
- prosecuting a matter as an alternative to enforcement by infringement, generally within 12 months of the date of the offence (section 7 of the *Criminal Procedure Act 2009*).

3.1.3 Human rights considerations

Enforcement agencies are public authorities bound to comply with the *Charter of Human Rights and Responsibilities Act 2006* (Charter). The Charter sets out the basic rights and freedoms of all people in Victoria. The Charter is primarily about the relationship between government and the people it serves.

Section 38 of the Charter makes it unlawful for a public authority to act in a way that is incompatible with a human right or, in making a decision, to fail to give proper consideration to a relevant human right.

Enforcement agencies must consider whether there are any potential impacts on a person's human rights set out under the Charter when enforcing infringement offences, including while issuing an infringement notice or determining an internal review application.

Further information about human rights considerations, as they specifically apply to issuing officers, can be found in the model code of conduct at [Appendix 2 – Model Code of Conduct for issuing officers](#).

3.2 Code of conduct for issuing officers

Enforcement agencies should develop a code of conduct for issuing officers.

The code should include guidance on the following matters:

- standards of conduct required in the enforcement of infringement offences
- scope of, and limits to, officers' authorisation
- specific considerations relevant to any exercises of discretion, noting the importance of balancing the consistent treatment of cases with the exercise of discretion in individual cases where appropriate
- assistance in the identification and management of vulnerable people, and people who may have additional needs (for example homelessness), including referral to appropriate services as an alternative to criminal enforcement
- privacy obligations, and
- any other relevant matter.

A model code of conduct is set out at [Appendix 2 – Model Code of Conduct for issuing officers](#). Under section 5(1)(c)(i) of the Infringements Act, the model code of conduct applies to issuing officers and enforcement agencies unless an agency has adopted its own code of conduct (which may be described differently or contain different information from the model code of conduct).

Enforcement agencies should review the model code of conduct and consider making any updates to their existing code of conduct or other policies for issuing officers.

3.3 Training for issuing officers

Enforcement agencies should ensure that issuing officers are trained in the exercise of their powers. This includes training in the exercise of any entry, inspection, search and seizure powers available under the relevant legislation.

Enforcement agencies are encouraged to consider other forms of training which may be useful for issuing officers, for example cultural awareness training.

Enforcement agencies should also ensure that issuing officers receive regular and ongoing training.

3.4 Offence-specific guidelines for enforcing complex offences

Complex offences involve judgement of the person's conduct against a certain standard of behaviour, or a mental element (for example, intention), an excuse or a defence. They are only suitable to be made infringement offences by exception.

Where a complex offence is made enforceable by infringement, the Attorney-General's Guidelines for Legislating Agencies provide that the legislating agency responsible should advise all relevant enforcement agencies that the offence is complex and that offence-specific enforcement guidelines may be appropriate. Further guidance on complex offences is available under the Attorney-General's Guidelines for Legislating Agencies.

Where a complex offence is enforceable by infringement notice, the enforcement agency should publish an enforcement policy and operational guidelines relating to the enforcement of that offence. This will provide additional instruction and safeguards in the enforcement of infringement notices issued for complex offences.

4. Administration of infringements affected by Fines Reform

In this section

The Fines Reform Act provides two key administrative schemes that affect an enforcement agency's administration of infringements under the Infringements Act:

- Work and Development Permit scheme, and
- Family Violence Scheme

Enforcement agencies are encouraged to promote the Work and Development Permit scheme and Family Violence Scheme to fine recipients. These schemes apply to all infringement fines, including fines prior to their registration for enforcement.

If a fine is registered with the Director for enforcement, it may be subject to enforcement review. If enforcement is cancelled, enforcement agencies must take certain actions in relation to the fine.

4.1.1 Work and Development Permits

The Work and Development Permit scheme is designed to help vulnerable people eligible for the scheme to deal with their fine debt.

A Work and Development Permit allows an eligible person to work off their fines by engaging in approved activities that address the underlying cause of their offending behaviour.

A person must be engaged with an accredited agency or accredited health practitioner to participate in the scheme. An accredited agency or accredited health practitioner must apply for a Work and Development Permit on behalf of an eligible person.

The framework for the Work and Development Permit scheme is set out in Part 2A of the Fines Reform Act.

The Work and Development Permit Guidelines are available on Fines Victoria's website at www.fines.vic.gov.au/wdp.

4.1.2 Family Violence Scheme

The Family Violence Scheme enables people affected by family violence to apply to the Director to have their eligible infringement fines withdrawn.

If an application is made, the relevant enforcement agency is notified and must suspend enforcement action until the application is determined.

If the Director is satisfied that family violence substantially contributed to the offence or it is not safe for the person to name the responsible person for a driving-related offence, the Director can direct an enforcement agency to withdraw an infringement notice and take no further action.

The framework for the Family Violence Scheme including enforcement agency requirements is set out in Part 2B of the Fines Reform Act.

Guidance about the Family Violence Scheme is available on Fines Victoria's website: www.fines.vic.gov.au/Support/Family-Violence-Scheme.

4.1.3 Enforcement review

Part 4 of the Fines Reform Act replaced the enforcement order revocation process in the Infringements Court with an administrative process in Fines Victoria called 'enforcement review'.

Enforcement review is available after an infringement fine has been registered with the Director and a notice of final demand has been served on the defaulter.

On receipt of an application for enforcement review, the Director is required to review the enforcement agency's decision to serve and enforce an infringement notice and determine whether enforcement of the fine should proceed or be cancelled.

The grounds for enforcement review are set out in the Fines Reform Act and are similar to the grounds for internal review under the Infringements Act.

If the Director cancels enforcement of an infringement fine on any ground except where the person was unaware of the infringement notice and refers the fine back to the enforcement agency, an enforcement agency must take one of three actions within 90 days:

- withdraw the infringement notice and take no further action
- withdraw the infringement notice and issue an official warning, or
- withdraw the infringement notice and (within six months) commence a proceeding for the offence by filing a charge-sheet.

Enforcement agencies must also notify the fine recipient of their decision within the 90-day period.

Once the Director has cancelled enforcement of the fine, liability for the offence can only be determined by the Magistrates' Court of Victoria, should the enforcement agency choose to prosecute the offence.

If an enforcement agency chooses to prosecute the offence, the notification to the fine recipient should clearly state the agency's decision to prosecute the infringement.

Enforcement agencies must not seek payment of an outstanding infringement fine amount (including any fees added to the penalty amount) after enforcement of a fine has been cancelled.

Enforcement agencies are required by the Fines Reform Act to notify the Director if they prosecute a person following enforcement cancellation. This requirement arises only after the enforcement agency decides to prosecute the offence, not where the enforcement agency is considering whether to do so. Enforcement agencies should notify the Director within a reasonable time of deciding to prosecute a person following enforcement review cancellation, typically within one month of deciding to prosecute the person.

Appendix 1 – Glossary

Term	Definition
Child	A child is a person under eighteen years of age at the date of the alleged offence. A child under the age of ten cannot be issued with an infringement notice.
Director	Director means the person holding the position of Director, Fines Victoria under the <i>Fines Reform Act 2014</i> . The Director may delegate their powers, functions and duties.
Enforcement agency	An enforcement agency is a body or person that is authorised under its principal Act to take proceedings in relation to an infringement offence, or a person or body employed or engaged to provide services that include taking proceedings. An enforcement agency can also be a prescribed person or body or an agency that is a member of a prescribed class.
Enforcement warrant	A warrant issued by a registrar of the Magistrates' Court. This warrant allows the sheriff's officer, police officer or other authorised person to whom it is directed to take a range of actions. Most enforcement warrants are directed to sheriff's officers. If a fine is not paid, sanctions may be applied, including the seizure of property up to the value of the infringement penalty plus any prescribed fees. If the property does not cover this value, the person named in the enforcement warrant can be arrested.
Issuing officer	An issuing officer is a person appointed by an enforcement agency to issue or serve an infringement notice in respect of an infringement offence.
Legislating agency	A legislating agency, for the purposes of these guidelines, is an agency that prepares the legislation creating or amending an infringement offence. Such legislation is then considered by the Parliament, Governor or other approving body.
Nomination	A person who receives an infringement notice for certain camera-detected driving-related offences and who was not the driver at the time of the alleged offence may make a statement nominating another person as the actual driver. Another driver cannot be nominated if the person was intercepted by a police officer and issued with an infringement notice for an offence by that officer.
Offence code	The code used to identify an infringement offence for the purposes of Fines Victoria's IT system.
Official warning	A formal warning issued by issuing officers instead of an infringement notice.
Payment plan	A plan arranged with the enforcement agency before the matter is registered with the Director. A payment plan can be an extension of time to pay or an agreement to pay by instalments. An enforcement agency may refer a fine to the Director for inclusion in a payment arrangement instead of offering a payment plan.
Penalty Reminder Notice	A notice served on a person who has not paid an infringement penalty on time. An enforcement agency must send a penalty reminder notice in respect of the unpaid fine and fees before the fine can be registered with the Director or the Children's Court.
Special circumstances	'Special circumstances' is one of the grounds for seeking an internal review or an enforcement review of a decision to issue an infringement notice. Special circumstances are defined in the Infringements Act. The term refers to a person's condition or circumstance of vulnerability or disadvantage (such as a relevant mental illness or homelessness) with a causal link to the offence. In limited circumstances, a person with a severe, long-term condition or circumstance making it impracticable to deal with the fine in any way may also be eligible under this ground.



Term	Definition
Withdrawal of infringement notice	Under section 18 of the Infringements Act, an enforcement agency may withdraw an infringement notice at any time before an infringement fine is registered with the Director for enforcement.

Appendix 2 – Model Code of Conduct for issuing officers

Enforcement agencies should have policies in place to ensure issuing officers face disciplinary action for breaching the agency's policies or this Code of Conduct where appropriate.

1. Conduct generally

Issuing officers must act in accordance with the law and the lawful instructions of the enforcement agency which employs them (the enforcement agency). In addition to this Code of Conduct, issuing officers must comply with any applicable policies set in place by the enforcement agency.

Issuing officers should perform duties to the best of their ability and in a professional, conscientious, and ethical manner. They should promote the purpose of the legislation which they enforce and professional values.

When exercising discretion, issuing officers must act reasonably and impartially. They should not apply personal values in the exercise of their powers. They must not handle matters in which they have an actual or reasonably perceived conflict of interest. If there are any actual or perceived conflict of interests, issuing officers must notify the enforcement agency in accordance with internal policies.

Issuing officers must not accept any benefit (including any gift, gratuity, remuneration, allowance, fee, subsidy, consideration, free service, or entertainment) from a person which may give, or appear to give, rise to professional misconduct.

Issuing officers should not behave in a way that could reasonably be expected to call into disrepute the public perception of issuing officers. Issuing officers should:

- show respect for members of the public, their colleagues, and others' personal property
- refrain from language or behaviour which could be deemed offensive, improper, or inappropriate
- assess safety considerations in the execution of their duties to report compliance breaches and other offending behaviour.

Dealing with vulnerable people

While carrying out their duties, issuing officers may encounter a person or persons they believe to be vulnerable.

A person may be considered vulnerable if they are experiencing a range of circumstances that may affect their ability to comply with the law or shape their interactions with the law. This may include if they:

- are homeless
- have financial difficulties
- have a serious addiction to alcohol and other drugs
- are experiencing family violence
- have a disability, including cognitive disability
- are experiencing mental health issues
- are a child or young person
- are a member of a Culturally and Linguistically Diverse (CALD) or Aboriginal and/or Torres Strait Islander community group.



Issuing officers should communicate with vulnerable persons appropriately, for example by using simple language to ensure the person understands the issuance of an infringement.

Issuing officers should consider whether issuing an infringement notice to a vulnerable person, particularly a person likely to meet the 'special circumstances' test in the Infringements Act, would address the offending behaviour. Officers should consider whether alternatives, such as diversion from the criminal justice system or an official warning, may be more appropriate in the circumstances.

Issuing officers are encouraged to provide information on support services within their local area. This may include leaflets and handouts, or verbal advice, on the available homelessness, counselling, financial support, crisis accommodation, legal assistance, victim services and health services in the local area. Information about support services should be accessible, for example by using simple language, in languages other than English and in large print formats.

If a fine is issued to a person who may be a child, an issuing officer should confirm the person's date of birth. Enforcement agencies are obliged to ensure that children are dealt with through the appropriate enforcement pathway for children. Fines issued to children must not be registered with the Director and may only be registered with the Children's Court of Victoria.



2. Public law obligations

A. Victorian Charter of Human Rights and Responsibilities

Public authorities are required to act compatibly with the *Charter of Human Rights and Responsibilities Act 2006* (the Charter). The term 'public authority' is defined to include an entity whose functions are of a public nature when it is exercising those functions on behalf of the State. This means that enforcement agencies and issuing officers conducting enforcement duties under the relevant legislation are required to comply with the Charter.

Issuing officers are expected to be aware of the rights set out in the Charter. In particular, issuing officers should note a person's right to:

- protection from degrading treatment
- freedom of movement
- protection of privacy and reputation
- freedom of expression
- peaceful assembly and freedom of association
- the presumption of innocence
- liberty
- recognition and equality before the law
- treatment in a way appropriate to their age if a child.

B. Principles of administrative law apply to the issuing of infringements

The following principles govern how issuing officers should make decisions, particularly as those decisions can affect the rights and interests of members of the public:

- A. lawfulness
- B. procedural fairness
- C. independence and impartiality
- D. openness and transparency, and
- E. rationality.

Issuing officers should also exercise their discretion appropriately. Issuing officers must not apply policies inflexibly, because this precludes the proper, genuine, and realistic consideration of a particular case.

The inflexible exercise of discretion is also inconsistent with the principles of good decision making under administrative law. These principles include the requirements to act with lawfulness, fairness, openness, and rationality when making decisions that require officers to exercise their discretion.

A: Lawfulness

Decisions made by issuing officers must be made within the boundaries of the law. All decisions are subject to review on the ground that the infringement notice was issued contrary to law, or to court challenge, to ensure the decision complies with the relevant legislation.



The aim of this principle is to ensure:

- fair, efficient, effective, and high-quality decision making
- accountability in decision making, and
- access for those affected by decisions to review mechanisms.

B: Procedural fairness

Procedural fairness is also known as natural justice or due process. It relates to the process of making a decision, rather than the outcome or merits of the decision.

There are two pillars of procedural fairness:

- the 'fair hearing rule', and
- the 'rule against bias'.

When considering whether to issue an infringement, issuing officers should give individuals the opportunity to explain their conduct. Appropriate consideration of an individual's circumstances will enable issuing officers to determine whether an official warning, infringement notice, charge or no action may be more appropriate.

Issuing officers should also act without bias. The rule against bias requires a decision-maker to be free of any reasonable suspicion or apprehension of bias or perception of bias. Bias may arise from circumstances such as the decision-maker's financial or personal interest, personal views, prior expression of views or previous role in the decision to be made.

This rule also overlaps with the principles of independence and impartiality.

C: Independence and impartiality

Issuing officers must act independently. This means that the issuing officer must make their decision in an environment that is free from inappropriate influences. In practical terms, no outsider should interfere, or attempt to interfere, with the way in which an issuing officer makes their decision.

Impartiality refers to the state of mind of the issuing officer in relation to the matter before them. This principle seeks to ensure that the issuing officer is not deciding in their own interest, or in a manner that favours one person over another.

D: Openness and transparency

As public officials, issuing officers are obliged to behave lawfully, accountably, and transparently.

Enforcement agencies should ensure that there is transparency and accountability in the way that their officers issue infringements. Enforcement agencies should do this by ensuring that:

- all decisions to issue infringements are properly documented, and
- all infringement notices identify the decision-maker.

E: Rationality

Issuing officers should act rationally and consistently when deciding whether to issue an infringement notice to a person, ensuring there is appropriate recognition of exceptional and special circumstances if they become aware that those circumstances exist.

When a person from a vulnerable or disadvantaged group (for example, a person experiencing mental health issues, homelessness, or family violence) may have committed an offence, issuing officers should be respectful and sensitive to the person's needs and have regard to their circumstances before issuing an infringement notice.

3. General employment obligations

A. Identifying officers

Whenever an issuing officer is performing official duties, they are required to identify themselves if they are requested to do so.

If an issuing officer is required to carry an identity card or badge, they should produce their identity card or badge on request. Misuse of the badge or identity card may, depending on the circumstances, call into question an issuing officer's honesty and integrity, or may be considered a failure to properly exercise the functions of an issuing officer.

B. Request for name and address

Unless specific legislative requirements apply, issuing officers should introduce themselves as enforcement officers of the enforcement agency, state their name and produce proof that they are an issuing officer when requesting a person to state their name and address for the purpose of issuing them an infringement notice.

If the person being issued with an infringement notice asks an issuing officer to repeat their name, or to show their identity card again, the issuing officer should comply with that request.

Issuing officers should give their work address, if requested. This information may be given orally or in writing but should be given in writing if this is specifically requested.

4. Privacy obligations

Information privacy is concerned with the collection, use, disclosure, and management of individual's personal information. There are three types of information protected by privacy laws:

- **personal information** includes any information used to identify an individual such as name, address, sex, age, financial details, marital status, education, employment history or any other information that allows any person to work out the individual's identity
- **sensitive information** means any information or opinion about an individual's racial/ethnic origin, criminal record, political opinions or associations, religious beliefs, philosophical beliefs, professional or trade association, trade union or sexual preference
- **health information** includes any information or opinion regarding an individual's physical, mental, or psychological health, or disability.

Any information that allows anyone to easily work out an individual's identity is personal information subject to privacy constraints.

Enforcement agencies should develop their own procedures for common tasks requiring the agency and issuing officers to handle personal information, including in relation to:

- collecting and using personal information
- storing and disposing personal information
- accessing databases to obtain personal information, and
- disclosing personal information.

Any privacy procedures that are developed by enforcement agencies should be compliant with the provisions of the *Privacy and Data Protection Act 2014* and *Health Records Act 2001*.

5. Notifiable incidents

An incident is an unplanned event, which has the potential to negatively impact on issuing officers, enforcement agencies, or any member of the public. The impact of an incident may be physical, mental, reputational, financial, political, or another detrimental impact.

A **notifiable incident** is a significant incident where there is an immediate risk to health and safety, a serious injury or a death. The handling of notifiable incidents is governed by the *Occupational Health and Safety Act 2004* (OHS Act).

Enforcement agencies should ensure that all staff act in accordance with the OHS Act.

Further information about notifiable incidents can be found by contacting WorkSafe Victoria on 13 23 60, or by visiting their website at www.worksafe.vic.gov.au.