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Infringements Act 2006

INTERNAL REVIEW GUIDELINES

Fines and Enforcement Services

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Contents

1 OVERVIEW

These Internal Review Guidelines (Guidelines) form part of the internal review oversight function established by the **Infringements Act 2006** (Infringements Act).[1] The oversight regime aims to support the capacity and capability of enforcement agencies to carry out internal reviews through education, review, resource production and collaborative development of best practice. As part of the oversight function, section 53A(1) of the Infringements Act provides that the Director may make guidelines providing guidance to enforcement agencies on a range of matters.

1.1 Purpose of these guidelines

The purpose of these Guidelines is to encourage enforcement agencies to develop consistent decision making processes, and to assist them with identifying the legal and practical requirements of an internal review process.

Enforcement agency decision makers are required to exercise their discretion in making decisions within a legal framework consisting of legislative provisions and the requirements of general administrative law. These Guidelines provide guidance on that decision making framework, its legal requirements, and the policy aims that underpin them for agencies and their staff. Examples given are specific to those circumstances and the legislation at the time of publication. If in doubt, enforcement agencies should seek independent legal advice about administrative law decision making, policy and the underlying legislation.

For the avoidance of doubt, the decision maker in these Guidelines is referred to as either 'internal review officer' or 'decision maker'. These terms are used interchangeably, on the understanding that an internal review officer who is employed by an enforcement agency makes decisions about whether to grant or refuse an internal review application.

1.2 What is an internal review?

The internal review mechanism[2] for infringement fines allows a person to apply to an enforcement agency for a review of the decision to issue the infringement notice. Internal review is not available for all infringement offences (see Section 3.2 Infringement fines that cannot be internally reviewed); and is only available on specific grounds which are set out in the Infringements Act (see Section 6. Grounds for internal review).

Internal review is an important part of the infringements system because it acts as a first stage of assessment as to whether it was appropriate for a person to have received an infringement fine based on their life circumstances or other relevant ground.

Internal review is available to infringement notice recipients up to the time of registration of the infringement fine with the Director, Fines Victoria.

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1 Part 3A of the **Infringements Act 2006**.

2 See Division 3 of Part 2 of the **Infringements Act 2006** – sections 21 to 27. Part 17, Division 3 of the **Fines Reform Act 2014**.

2 THE ROLE OF INTERNAL REVIEW IN THE INFRINGEMENTS SYSTEM

The internal review process is set out in legislation.[3] The infringements system promotes public safety and public order by holding people accountable for behaviour which adversely impacts on or endangers the community whilst also making allowance for the impact of enforcement action on the vulnerable and disadvantaged. Internal review is an important mechanism for early identification of this cohort of community members that should not be captured by the system.

As decision makers are exercising power under legislation for public purposes, administrative law principles such as lawfulness, fairness, openness and efficiency apply to the making of those decisions. Compliance with legislation, policy and administrative law principles will support lawful and consistent decision making by agencies.

Good internal review decision making requires agencies to consider a range of matters. Many of these are technical requirements to ensure decision-makers exercise their functions properly. Decision makers should also be mindful of the purpose of internal review and the role it plays in the infringements system when making a decision on an internal review application.

[3] Part 2, Division 3 of the **Infringements Act 2006** and Part 17, Division 3 of the **Fines Reform Act 2014**.

3 INTERNAL REVIEW APPLICATIONS

This section provides further detail on the legislative and procedural requirements for processing applications for internal review.

3.1 Who can apply for an internal review, when and for what offences?

3.1.1 Applications by a natural person

A person who has received an infringement notice can apply for an internal review to the enforcement agency that issued the notice. They can also authorise another person (such as a family member, a friend, support worker or solicitor) to make an application for an internal review on their behalf – see Section 3.1.3 Applications by an authorised third party.

3.1.2 Applications by a body corporate

Corporations and other entities that are not 'natural persons' can also make internal review applications.

Generally, if an infringement fine has been issued in the name of a body corporate, the body corporate can apply for internal review in relation to that fine. A body corporate cannot apply for internal review on the ground of special circumstances because those circumstances can only affect natural persons. However, other grounds may be relevant to bodies corporate.

Decision makers should treat applications by bodies corporate in the same way as applications by natural persons.

Only individuals who are authorised company representatives should be permitted to make an internal review application on behalf of a body corporate.

3.1.3 Applications by an authorised third party

A person who has been issued with an infringement fine can authorise a third party to apply for an internal review on their behalf. Enforcement agencies should only deal with the person to whom the fine was issued or their authorised third party. All requests for a third party to act on behalf of a person must be made in writing. If a third party already has a pre-existing written authority to act on behalf of a person, and the written authority is still in effect, the enforcement agency may rely on that written authority, without needing the third party to complete an additional third party authorisation form.

Who can an applicant authorise?

An authorised third party must be over 18 years of age. An applicant does not need to authorise another person if:

- the person acting on the applicant's behalf is their lawyer, or
- the person has a power of attorney, which is current and covers making decisions in relation to infringement matters.

3.2 Infringement fines that cannot be internally reviewed

Some infringement offences are not eligible for internal review. If an infringement fine is issued under the following provisions, it cannot be the subject of an internal review application:

- sections 89A to 89D of the **Road Safety Act 1986**, relating to excessive speed and drink and drug-driving, and
- sections 61A and 61BA of the **Marine (Drug, Alcohol and Pollution Control) Act 1988**, relating to marine infringements.[4]

[4] Section 21(1) of the **Infringements Act 2006**.

In addition, there is no right to apply for internal review on the ground that the person was unaware of the notice having been served if the infringement notice was not personally served and it relates to an alleged offence to which any of the following provisions apply:

- sections 67 or 89B of the **Road Safety Act 1986**
- section 87A of the **Melbourne City Link Act 1995**
- section 96 of the **Transport (Safety Scheme Compliance and Enforcement) Act 2014**
- section 61B of the **Marine (Drug, Alcohol and Pollution Control) Act 1988**, or
- section 219A of the **East Link Project Act 2004**.[5]

The rationale for excluding this category from the "person unaware" ground is that the relevant offences have separate processes for an extension of time on the ground of person unaware.

3.3 Timing requirements for internal review applications

An application for an internal review must be made:

- before the infringement fine (together with any prescribed costs) is registered with the Director, Fines Victoria,[6]
- in the case of an infringement served on a child, at any time before the infringement fine is registered with the Children's Court,[7]
- in the case of a non-registrable infringement offence, at any time before the expiry of the period to which the infringement notice relates,[8] or
- within 14 days of the applicant becoming aware of the infringement notice if the application is being made on the ground of 'person unaware'.[9]

3.4 Matters referred to court

The applicant may request that their matter be referred to the Magistrates' Court of Victoria or the Children's Court even if they have made an application for an internal review.[10] If this occurs, the processing of the internal review application must be terminated by the enforcement agency.

3.5 Suspension of enforcement activity

When an enforcement agency receives an internal review application, the enforcement agency must suspend any enforcement activity until it has completed its review and has sent the applicant advice of the outcome.[11]

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5 Section 21(2) of the **Infringements Act 2006**.
6 Section 22(2)(a)(i)(A) of the **Infringements Act 2006**.
7 Section 22(2)(a)(i)(B) of the **Infringements Act 2006**. A 'child' is defined in section 3 of the **Infringements Act 2006** as a person who is between 10 and 18 years of age.
8 Section 22(2)(a)(ii) of the **Infringements Act 2006**. A 'non-registrable infringement offence' under the **Infringements Act 2006** has the same meaning as it has under section 3 of the **Fines Reform Act 2014:** an infringement that has been prescribed as ineligible for registration, or an offence against a local law, other than a parking infringement.
9 Section 22(3)(a) of the **Infringements Act 2006**.
10 Section 16 of the **Infringements Act 2006**.
11 Section 24 of the **Infringements Act 2006.**

3.6 Internal reviews must be completed within time

On receiving an internal review application, an enforcement agency must review its decision to issue the infringement within the prescribed timeframe of 90 days.[12] A request for further information from the applicant will extend that period by a maximum of 35 days.[13] If these timelines are not met by the agency, the infringement notice will be deemed to have been withdrawn.[14] The 90-day period begins when the application is received. If the application is received by a contracted third party (contractor) on behalf of an enforcement agency, the 90-day period begins from the date that the application is received by the contractor. This is because the contractor is receiving the application for the enforcement agency. Enforcement agencies that have contractors receiving internal review applications for them should therefore ensure that they have proper administrative procedures in place to facilitate the timely processing of internal review applications.

[12] Section 22(3)(a)(i) of the **Infringements Act 2006** and regulation 16 of the **Infringements Regulations 2016**.
[13] Section 24(3)(a)(ii) of the **Infringements Act 2006**.
[14] Section 24(4) of the **Infringements Act 2006**.

4 PRINCIPLES OF GOOD DECISION MAKING

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

- lawfulness
- procedural fairness
- independence and impartiality
- openness and transparency
- efficiency
- rationality, and
- appropriate exercises of discretion.

4.1 Lawfulness

Decisions made by internal review officers are administrative decisions and must be made within the boundaries of the law. All decisions are subject to review 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.

4.1.1 Internal review decision making must not be outsourced

The Infringements Act confines the power to conduct internal reviews to enforcement agencies.[15] Private contractors do not fall within the definition of an 'enforcement agency' under the Infringements Act. For this reason, all enforcement agencies must make their own internal review decisions, and must not outsource this function to private contractors.

In February 2020, the Victorian Ombudsman tabled a report in Parliament following an investigation into three councils' outsourcing of parking fine internal reviews. This practice of outsourcing internal review decision making to private contractors has been found by the Victorian Ombudsman to be contrary to law.[16]

The Victorian Ombudsman noted that:

the outsourcing of some or all internal review functions raise questions of administrative law – the area of law that deals with decision making by government agencies and officials.

It is a general principle of administrative law that statutory powers, such as those in the Infringements Act, can only be exercised by:

- *the agency or officeholder named in the statute*
- *an agency or officeholder acting under a lawful delegation or authority from the named agency or officeholder.*[17]

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15 Section 24 of the **Infringements Act 2006**.

16 Victorian Ombudsman, **Investigation into three councils' outsourcing of parking fine internal reviews**, 25 February 2020.

17 Victorian Ombudsman, **Investigation into three councils' outsourcing of parking fine internal reviews**, 25 February 2020, p 23.

The Victorian Ombudsman has provided the following guidance about what this means in practice:

In practical terms, this means [enforcement agencies] can use private contractors… to provide administrative assistance and support for internal reviews. However, they must not use private contractors to make the internal review decisions [on behalf of the enforcement agency].[18]

Enforcement agencies must ensure that all internal review decisions are made by staff of the enforcement agency, who are properly authorised to conduct internal reviews. Enforcement agencies should check the relevant legislation and their agency's policies and guidelines to ensure that the decision maker has the power to make the decision.

4.2 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 decision makers to ensure that before a decision is made that may adversely affect a person's rights, interests or legitimate expectations, the decision maker:

- provides the person with the information on which the adverse decision may be 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 'impartiality' and 'independence'.

4.3 Independence and impartiality

Independence

Internal review decision makers must act independently. This means that a 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 a decision maker makes their decision.

This is a particularly important principle in cases where enforcement agencies may also find themselves contravening other legislative provisions that prohibit improper conduct and interference in administrative decision making. For example, sections 76D and 76E of the **Local Government Act 1989** expressly prohibit a councillor from misusing their position to improperly influence, or seeking to direct or improperly influence, a member of council staff in the performance of their duties.

Impartiality

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 of the parties over another. Impartiality is based on two fundamental ideas:

- that a decision maker should not have any interest in the outcome of a matter that they are considering, and

[18] Victorian Ombudsman, **Investigation into three councils' outsourcing of parking fine internal reviews**, 25 February 2020, p 31.

- that the decision maker is required to consider all of the applicant's circumstances before making a decision.

4.4 Openness and transparency

Government agencies and officials are entrusted with a service to the public that affects people's rights and liabilities. With that trust comes a responsibility to behave lawfully, accountably and transparently.

The Infringements Act only permits certain persons to make internal review decisions. Affected people cannot tell whether their internal review decision was authorised and valid, unless they know the identity of their decision maker. This transparency builds public confidence in the system. In addition, people who are dissatisfied with the outcome of an internal review may pursue other legal options, such as appealing the infringement in court.

Enforcement agencies must therefore ensure that there is transparency and accountability in their internal review decision making. Enforcement agencies should do this by ensuring that:

- all internal review decisions are available to applicants on request, and
- all internal review decision notices identify the decision maker. Notices can identify a decision maker by name or, if preferred, by an anonymised but identifying reference (if the enforcement agency has concerns for the safety of their employees).

4.5 Efficiency

Review officers should aim to efficiently process applications from the community and stakeholders in a timely and professional manner. On receiving an internal review application, an enforcement agency must review its decision to issue the infringement within the prescribed timeframe of 90 days.[19] A request for further information extends that time period by a maximum of 35 days.[20] If these timelines are not met by the agency, the infringement notice will be deemed to have been withdrawn.[21]

4.6 Rationality

Review officers should rationally assess the merit of applications, ensuring there is appropriate recognition of exceptional and special circumstances. Decision makers must not apply policies in an inflexible manner, because this precludes the proper, genuine and realistic consideration of the merits of a particular case.

The inflexible following of 'blanket rules' in internal reviews is inconsistent with the requirement in the Attorney-General's Guidelines to consider the individual circumstances of a case. The inflexible exercise of discretion is also inconsistent with the requirement in these Guidelines to consider the principles of 'lawfulness, fairness, openness, efficiency and rationality' when making decisions. Policies should not be inflexibly applied to preclude a proper, genuine and realistic consideration of the merits of a case.[22] Neither should policies rigidly define the 'exceptional circumstances' in which a rule is not followed because to do so fetters the decision maker's discretion.[23]

4.7 Appropriately using discretion in decision making

Administrative decisions often require the exercise of discretion.

Discretion exists when the decision maker has the power to make a choice about whether to confirm, withdraw or issue an official warning.

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19 Section 24(3)(a)(i) of the **Infringements Act 2006** and regulation 16 of the Infringements Regulations 2016.

20 Section 24(3)(a)(ii) of the **Infringements Act 2006.**

21 Section 24(4) of the **Infringements Act 2006.**

22 **Foster v Secretary of Department of Education & Early Childhood Development** [2008] VSC 504, [60]; **Khan v Minister for Immigration & Ethnic Affairs** (1987) 14 ALD 291.

23 **Government Employees' Health Fund Ltd v Private Health Insurance Administration Council** (2001) 65 ALD 377.

How should decision makers exercise discretionary powers?

- decision makers must use discretionary powers in good faith and for a proper, intended and authorised purpose
- decision makers must not act outside of their powers, and
- no decision maker has an unfettered discretionary decision making power.

It is not sufficient to exercise discretion and confirm an internal review simply because it seems the right thing to do. When exercising discretion, decision makers need to act reasonably and impartially. They must not handle matters in which they have an actual or reasonably perceived conflict of interest.

It is important to apply the values that the legislation promotes, professional values and the values of the agency, not personal values.

Each case must be assessed on its own merits. This means that consistency in decision making should not be placed above making the correct decision in any individual case. As noted by the Victorian Ombudsman, 'the importance of consistent internal review decision making is important, however, this should not be prioritised at the expense of exercising discretion on a case by case basis according to individual circumstances.'[24]

4.8 Ten key considerations to ensure a good decision is made

The following ten principles are modified from the Ombudsman Western Australia Guidelines, Exercise of discretion in administrative decision making:[25]

1. **Determine that the decision maker has power** – Check the relevant legislation and agency policies and guidelines to ensure that the person has the power to act or to make the decision.
2. **Follow statutory and administrative procedures** – It is important that the person who is responsible for exercising discretion follows statutory and administrative procedures.
3. **Gather information and establish the facts** – Before exercising discretion, it is necessary to gather information and establish the facts. Some facts might be submitted with an application made to the decision maker. Others might be obtained through inquiries or investigation.
4. **Evaluate the evidence** – Consider relevant evidence and not irrelevant considerations to assist you to determine all the facts. Ensure that you give adequate weight to a matter of great importance but do not give excessive weight to a matter that is of no great importance.
5. **Consider the principles of administrative law to be applied** – Internal reviews are administrative matters where the decision must be made reasonably, and in accordance with the administrative law principles outlined above.
6. **Act reasonably, fairly and without bias** – Ensure that decision makers act impartially and do not handle matters in which they have an actual or reasonably perceived conflict of interest.
7. **Observe the rules of procedural fairness** – Before making decisions, the decision maker may be required to provide procedural fairness to anyone who is likely to be adversely affected by the outcome.

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[24] Victorian Ombudsman, **Investigation into Maribyrnong City Council's internal review practices for disability parking infringements**, 30 April 2018, p 32.

[25] See http://www.ombudsman.wa.gov.au/Publications/Documents/guidelines/Exercise-of-discretion-in-admin-decision-making.pdf

8. **Consider the merits of the case and make a judgement** – Although policies, previous decisions and court and tribunal decisions may guide the decision maker, it is still important to consider the matter or application on its merits and to make a judgement about the matter under consideration.
9. **Keep parties informed, advise of the outcome and provide reasons for the decision** – The decision maker should keep relevant parties informed during the decision making process; they should inform the relevant parties of the outcome; and provide reasons for the decision reached.
10. **Create and maintain records** – It is vital that records are created and maintained about the issues that were taken into account in the process and why, the weight given to the evidence and the reasons for the decisions made.

5 STEPS IN THE DECISION MAKING PROCESS FOR INTERNAL REVIEW

These Guidelines set out some steps that enforcement agencies may want to follow in processing internal review applications to ensure legislative and administrative law requirements are duly considered. These are not prescribed steps, they are simply suggested.

A basic flowchart of the steps is also provided at Section 7.1 Appendix 1: Internal review process chart.

5.1 Step 1: assess whether an internal review application is valid

An enforcement agency will need to first assess whether the internal review application satisfies the requirements outlined in section 22 of the Infringements Act.

Enforcement agencies are not obliged to conduct an internal review unless the application satisfies these legislative requirements. All internal review applications must:

- be made in writing[26] (applications made by email satisfy this requirement and should be treated as internal review applications),
- include a current address for service[27].
- can only be made once in relation to any one infringement offence in respect of the applicant,[28] and
- must specify ground/s for review (contrary to law, mistaken identity, special circumstances, exceptional circumstances or person unaware).[29]

While there is no prescribed internal review form, enforcement agencies may consider introducing an application form with specified content to assist applicants to understand requirements. A suggested pro-forma internal review application form is attached (see Section 7.2 Appendix 2: Internal Review application form (sample)).

Enforcement agencies are encouraged to assist applicants by:

- permitting applicants to rectify or replace an application that does not meet requirements
- permitting or encouraging an applicant who is unsure which ground to rely on to apply under a number of, or even all of, the grounds
- providing details of information that may be relevant or required to support the application (for example agencies may make available a list of examples of relevant information for internal review applications via a website or through correspondence with applicants), and
- providing the details of suggested agencies that can assist the applicant with making an internal review application.

Reclassifying the grounds of an internal review application

If a decision maker receives an internal review application that does not satisfy the grounds the applicant applied under, the decision maker may reclassify it and consider the application under other grounds if:

1. it is in the best interests of the applicant (i.e. the decision maker determines that the infringement can be withdrawn under another ground), or
2. the applicant consents to the application being considered on another ground.

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26 Section 22(2)(b) of the **Infringements Act 2006**.
27 Section 22(2)(d) of the **Infringements Act 2006**.
28 Section 22(2)(e) of the **Infringements Act 2006**.
29 Section 22(1)(a)–(d) of the **Infringements Act 2006**.

5.2 Step 2: request additional information (if required)

Enforcement agencies should assist applicants to provide sufficient information to establish a ground for review. Where accompanying information is not sufficient, section 23 of the Infringements Act gives agencies the ability to request further information. Enforcement agencies should take steps to assist the applicant in correcting an application including making reasonable efforts to encourage the applicant to provide relevant information to support their application.

Enforcement agencies are encouraged to consider both the technical requirements for the various internal review grounds as well as the policy purpose those grounds serve in making the infringement system fairer for Victorians and ensuring that any mistakes in law are remedied.

Where, for example, an applicant discloses a mental health disorder, agencies may request the applicant to provide evidence from a medical practitioner that includes details of their mental health disorder and provides advice on whether, on the balance of probabilities, their mental health disorder resulted in the offending conduct. This is the legal test for the application to meet for the 'special circumstances' ground. Agencies may need to assist applicants to meet this requirement in this circumstance because of the nature of the eligibility category.

Where an enforcement agency makes a request for additional information, it must:

- make the request in writing; and
- suspend the internal review until the earlier of:
  - 35 days from the date specified in the correspondence requesting the additional information, or
  - the date when the additional information is provided.[30]

An applicant has 14 days, from receipt of the request, to respond to the enforcement agency's request for additional information.[31]

If the applicant is unable to provide the additional information, they may ask the agency for an extension of time. The enforcement agency may refuse or grant the extension of time and must advise the applicant of that decision in writing. If an enforcement agency decides to grant the applicant's request for an extension of time, it must inform the applicant (in writing) of its decision and the period of the extension.[32]

If the applicant fails to provide the requested information within the relevant period, the enforcement agency may complete its review without the additional information. If the additional information is received out of time, the agency may decide to accept the late information provided and complete the internal review.[33]

5.3 Step 3: assess whether the grounds for internal review apply to the facts

The grounds for internal review reflect the purposes of internal review in the infringement system. These are to ensure:

- where there has been an error in exercising legal power by the agency, the notice can be withdrawn, and
- where the notice was valid but it was issued to the wrong person, or where the person was not aware that the notice had been issued, the notice can be properly issued to, and received by, the correct person, and
- where the notice was valid but circumstances in the applicant's life means that enforcement of the infringement notice is not appropriate on fairness or equity grounds, the notice can be withdrawn.

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30 Section 23(1) and (2) of the **Infringements Act 2006.**
31 Section 23(3) of the **Infringements Act 2006**.
32 Section 23(4) and (5) of the **Infringements Act 2006**.
33 Section 23(6) of the **Infringements Act 2006**.

5.3.1 Grounds for review

All applications for internal review must include at least one ground for review, as contained in section 22(1) of the Infringements Act.

The grounds are:

- contrary to law
- mistake of identity
- special circumstances
- exceptional circumstances, and
- person unaware.

Further detailed information about each of these grounds, guidance around evidentiary requirements and options for enforcement agencies after an internal review has been considered is available in Section 6 of these Guidelines.

5.3.2 The general requirements of decision making in internal review

Decision makers may take a range of factors into account when applying the internal review grounds to the set of facts before them in the application.

Enforcement agencies may choose to structure the decision making process by producing a set of questions for decision-makers to consider whether there is sufficient evidence to allow the application to be granted. These questions may be designed to meet administrative law requirements.

For example, a decision maker may consider:

- if required, evidence that supports a connection between the ground being claimed and the condition or circumstance that the applicant is purporting to rely on (considering particularly the standard of proof required and whether a relevant causal link is demonstrated)
- whether the evidence is authentic, current (where applicable) and provided by an appropriate person (for example, a health practitioner)
- whether the applicant has provided further information, where possible, and when requested to do so and is the further information reliable in the circumstances, and
- whether there are other relevant factors or information of a general nature which may not be able to be evidenced by documentary proof.

Enforcement agencies may refer to Section 6 of these Guidelines for details of the specific kind of evidence outlined for each ground of internal review.

5.4 Step 4: notify the applicant and give reasons for the decision

5.4.1 Notification

Once the enforcement agency has completed the internal review decision, it must serve the applicant with a written notice of the outcome within 21 days.[34] If these timelines are not met by the agency, the infringement notice will be deemed to have been withdrawn.[35]

Under the Infringements Act, a document sent by post is deemed to have been served 7 days after the date of the document.[36] That protection doesn't exist if the notice or request is sent by email alone, even if the request for review was received via email. This is important where the agency needs to rely on service having occurred to move to the next step in the infringements lifecycle.

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[34] Section 24(3)(b) of the **Infringements Act 2006**.
[35] Section 24(4) of the **Infringements Act 2006**.
[36] See sections 162(6) and 163A of the **Infringements Act 2006**.

5.4.2 Giving reasons for the decision

While there is a requirement for notifying the applicant of the decision, there is no clear legislative requirement to provide reasons for a decision. However, the principles of procedural fairness may require enforcement agencies to provide the applicant with reasons for the outcome of a decision.

These may be sent automatically as part of the decision sent to the applicant or be available only on request by the applicant. Enforcement agencies should develop a policy on the provision of reasons and establish consistent practice.

Notification could include a section indicating why the decision maker reached their conclusion. It may refer to matters such as:

- validity issues (for example, timelines or standing)
- failure to provide information to support the review ground
- failure to provide information which established the required nexus between the disability or disadvantage claimed and the conduct involved in the offence, and/or
- withdrawal of the application or referral of the matter to court.

If provided, a statement of reasons should include an explanation of:

- the power the decision-maker is exercising, including the delegation or authority and the relevant section of the Act
- the steps in the reasoning process that led to the decision, linking the facts to the decision. The applicant should be able to understand how the decision was reached, and
- why facts were or were not accepted.[37]

Reasons are not required to be extensive or overly detailed but are an important tool to support the transparency of decision making and fairness of the internal review system.

Using template letters

An enforcement agency can develop standard wording to incorporate in a statement of reasons – for example, setting out the legislative provisions, the relevant policy or guidelines, and general questions to be determined for a decision of the kind in question. A template like this can help the decision maker express and respond to all relevant legal and policy criteria and explain how a discretionary power was exercised.

In this way, template letters can be useful tools in decision writing, however they need to be adapted for the circumstances. The template should be used as a guide or framework for the decision and must be adjusted according to the circumstances of each application. It is a good idea to have a section in the template letter which allows the decision maker to enter free text that relates to the facts of the specific application being considered.

Ideally, the reasons for decision should properly explain:

- the evidence considered
- the findings of fact and how these were reached, and
- how the law applies to the facts in the specific case.

[37] Administrative Review Council 'Decision Making: Reasons' Administrative Review Best Practice Guide, 2007, pp 7 – 9.

6 GROUNDS FOR INTERNAL REVIEW

An internal review application must specify at least one ground of review. The grounds of review are set out in legislation. The following section provides further guidance about the considerations which may support each ground, evidential support which an agency may receive or request and the options available to an agency after consideration of the ground.

6.1 Contrary to law

The *contrary to law* ground can be used if a person believes that the decision to serve the infringement notice was unlawful. For example, this may arise where:

- the infringement notice is not valid (for instance, it is incomplete or it does not otherwise comply with the formal legal requirements for an infringement notice),[38] or
- an infringement officer has acted unlawfully, unfairly, improperly or beyond their authority in taking that action or decision.

Note that the above examples are not exhaustive.

6.1.1 Agency considerations

If an applicant makes this claim, the enforcement agency needs to consider:

- whether the officer was authorised to make the decision to serve the infringement notice
- whether the agency complied with all the procedural requirements (as required by legislation)
- whether the officer complied with all the legal requirements for issuing the infringement
- whether the issuing officer made a mistake in deciding to issue the notice
- whether the issuing officer acted improperly or unfairly in deciding to issue the notice, and
- whether all the relevant signs (if applicable) were clear and visible (for example, were parking signs and signage relating to non-smoking areas and liquor licences visible?)
- any evidence provided, on which the applicant has a defence.

6.1.2 Evidentiary requirements

Applications for internal review that are made on the ground of contrary to law should (where appropriate) be accompanied with supporting evidence. This may include photographs of parking signage, witness statements or other evidence that goes to establishing facts.

6.1.3 Possible outcomes

An enforcement agency may make the following decision upon reviewing an application for internal review based on the grounds of contrary to law:

- confirm the decision to serve an infringement notice
- withdraw the infringement notice and serve an official warning[39]
- withdraw the infringement notice
- withdraw the infringement notice and refer the matter to Court (Magistrates' or Children's Court, as applicable)

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[38] The formal legal requirements for an infringement notice are set out in section 13 of the **Infringements Act 2006**, and regulation 14 of the **Infringements Regulations 2016**.

[39] These guidelines do not extend to providing guidance on the service of official warnings by enforcement agencies. It is a matter for enforcement agencies to develop their own policies and procedures for issuing and serving official warnings.

- in the case of an infringement offence involving additional steps, alter or vary those steps provided the alteration or variation is consistent with the Act or other instrument establishing the offence
- waive all or any prescribed costs, or
- approve a payment plan.

In some cases, it may be appropriate to do a combination of the actions above, in so far as this is possible.

6.1.4 If the application is refused

For applications made on the grounds of contrary to law, the following options are available to the applicant if the application is refused:

- pay the infringement and any prescribed costs by the due date
- where an infringement offence involves additional steps and the enforcement agency confirms the decision, the applicant must pay the infringement and perform all the additional steps by either the end of the period specified in the infringement notice or within 14 days after the applicant has been sent advice of the outcome of the review,
- apply to the enforcement agency for a payment plan,
- apply to the Director, Fines Victoria for a payment arrangement,
- elect to have the matter heard in Court (Magistrates' or Children's Court),
- make an application to the Director, Fines Victoria under the Family Violence Scheme, or
- if the person is eligible, an accredited organisation may apply to the Director, Fines Victoria for a Work and Development Permit on behalf of the applicant.[40]

6.2 Mistake of identity

The mistake of identity ground is intended to apply where a person claims that they were not the person who committed the infringement offence.

This ground is not available in circumstances where a person has been served with a traffic or parking infringement notice and they allege that they are not liable for the offence and cannot reasonably ascertain the identity of the person who was responsible for the offence. Such circumstances should be more appropriately addressed by lodging an unknown user nomination statement.

6.2.1 Agency considerations

The relevant factors decision makers may consider are:

- how was the person identified at the time the infringement notice was issued?
- was there a statutory or procedural requirement for the issuing officer to confirm identity, and, if so, is there evidence this requirement was met?
- did the conduct of the applicant contribute to misidentification at the point of issue? Was the applicant's conduct unreasonable in the circumstances (for instance, did the applicant intentionally provide another person with their identification)?
- is there any evidence that there was conduct by an authorised officer or a third person that resulted in misidentification (for instance, this might include failure by the authorised officer to follow or document compliance with procedural requirements)?

[40] Further detail on Work and Development Permit options and eligibility are available on the Fines Victoria website.

6.2.2 Evidentiary requirements

Applications for internal review on the ground of mistaken identity should (where appropriate) be accompanied by supporting evidence. Examples of supporting evidence for mistake of identity include the applicant's birth certificate, driver's licenceor passport which shows:

- a different person than the one who received the infringement notice in the applicant's name, or
- evidence that the applicant could not have committed the conduct because they could not have been in the relevant location.

6.2.3 Possible outcomes

An enforcement agency may make the following decision upon reviewing an application for internal review based on the grounds of mistake of identity:

- confirm the decision to serve an infringement notice
- withdraw the infringement notice and serve an official warning
- withdraw the infringement notice
- withdraw the infringement notice and refer the matter to Court (Magistrates' or Children's Court, as applicable)
- in the case of an infringement offence involving additional steps, alter or vary those steps provided the alteration or variation is consistent with the Act or other instrument establishing the offence
- waive all or any prescribed costs, or
- approve a payment plan.

In some cases, it may be appropriate to do a combination of the actions above, in so far as that is possible.

6.2.4 If the application is refused

For applications made on the grounds of mistake of identity, the following options are available to the applicant if the application is refused:

- pay the infringement and any prescribed costs by the due date
- where an infringement offence involves additional steps and the enforcement agency confirms the decision, the applicant must pay the infringement and perform all the additional steps by either the end of the period specified in the infringement notice or within 14 days after the applicant has been sent advice of the outcome of the review
- apply to the enforcement agency for a payment plan
- apply to the Director, Fines Victoria for a payment arrangement
- elect to have the matter heard in Court (Magistrates' or Children's Court, as applicable)
- make an application to the Director, Fines Victoria under the Family Violence Scheme, or
- if the person is eligible, an accredited organisation may apply to the Director, Fines Victoria for a Work and Development Permit on behalf of the applicant.[41]

6.3 Special circumstances

An applicant may lodge an internal review application on the ground that special circumstances apply to them.

[41] Further detail on Work and Development Permit options and eligibility are available on the Fines Victoria website.

This provision of the Infringements Act is designed to divert those with special circumstances from the infringements system at the earliest opportunity. This category was introduced in 2006 as:

'A ground for seeking a review of a notice (is) that the person has 'special circumstances' that affected the behaviour at the time of the offence. This is a critical change to filter the vulnerable in the community out of the infringements system. People with special circumstances are disproportionately, and often irrevocably, caught up in the system...' [42]

There are several categories of 'special circumstances' as defined in the legislation – further detail on those categories and the evidence which may be required to rely on each category is set out below. 'Special circumstances' is practically and conceptually distinct from 'exceptional circumstances', discussed in Section 6.4 of these Guidelines.

6.3.1 Special circumstances categories

The Infringements Act defines special circumstances in relation to a person as:

- a mental or intellectual disability, disorder, disease or illness where the disability, disorder, disease or illness results in the person being unable –
  - i. to understand that conduct constitutes an offence; or
  - ii. to control conduct that constitutes an offence; or
- a serious addiction to drugs, alcohol or a volatile substance within the meaning of section 57 of the **Drugs, Poisons and Controlled Substances Act 1981** where the serious addiction results in the person being unable –
  - i. to understand that conduct constitutes an offence; or
  - ii. to control conduct which constitutes an offence; or
- homelessness determined in accordance with the prescribed criteria (if any) where the homelessness results in the person being unable to control conduct which constitutes an offence; or
- family violence within the meaning of section 5 of the **Family Violence Protection Act 2008** where the person is a victim of family violence and family violence results in the person being unable to control conduct which constitutes the offence.[43]

These definitions are expanded upon below.

6.3.1.1 Mental disability, disorder, disease or illness

In accordance with section 4 of the **Mental Health Act 2014** and the definition of 'disability' contained in the **Disability Discrimination Act 1992** (Cth) a mental disability, disorder, or disease or illness means a diagnosed medical condition that is characterised by a disturbance of thought, mood, perception or memory. This may include:

- a total or partial loss of a person's mental functions, or
- a disorder, disease or illness that affects a person's thought processes, perception of reality, emotions or judgment, or that results in disturbed behaviour.[44]
- 'The Guide to Specialist Courts & Support Services' [45] cites common examples of mental illnesses of which include:
  - bipolar disorder
  - serious depression and anxiety

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42 Victoria, **Parliamentary Debates,** Legislative Assembly, 16 November 2005, 2187, (Rob Hulls MP, Attorney-General).

43 Section 3(1) of the **Infringements Act 2006**.

44 This guideline is adapted from section 4 of the **Mental Health Act 2014** and the definition of 'disability' contained within the **Disability Discrimination Act 1992** (Cth).

45 Guide to Court Support & Diversion Services, Magistrates' Court of Victoria, March 2011, p 25.

- psychosis
- schizophrenia
- severe mood disorder
- antisocial personality disorder
- borderline personality disorder
- post-traumatic stress disorder, and
- attention deficit and hyperactivity disorder.

6.3.1.2 Intellectual disability, disorder or disease

In accordance with the definitions of 'disability' and 'intellectual disability' in section 3 of the **Disability Act 2006** and the **Disability Discrimination Act 1992** (Cth), an intellectual disability, disorder or disease means a disorder or malfunction that results in a person learning differently to a person without the disorder or malfunction. This includes:

- the coexistence of significant sub-average general intellectual functioning and significant deficits in adaptive behaviour, which became manifest before the age of 18 years, or
- cognitive impairment, including a neurological condition or acquired brain injury, or a combination of both, which:
  - is, or is likely to be, permanent, and
  - causes a substantially reduced capacity in at least one of the areas of self-care, self-management, or mobility.[46]

Common examples of cognitive or intellectual disability cited in 'The Guide to Specialist Courts and Support Services' include the following:

- autism spectrum disorder
- dementia
- motor neurone disease
- Parkinson's disease
- stroke
- Huntington's disease, and
- acquired brain injury.[47]

6.3.1.3 Serious addiction to drugs, alcohol or volatile substance

A person is considered to have a serious addiction to drugs, alcohol or volatile substances if that person has a maladaptive pattern of substance use leading to clinically significant impairment or distress, as manifested by three (or more) of the following, occurring any time in the same 12-month period:

- tolerance, as defined by either of the following:
  - a need for markedly increased amounts of the substance to achieve intoxication or the desired effect, or
  - markedly diminished effect with continued use of the same amount of the substance.
- withdrawal, as manifested by either of the following:
  - the characteristic withdrawal syndrome for the substance, or
  - the same (or closely related) substance is taken to relieve or avoid withdrawal symptoms.

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[46] This guideline is taken from the definitions of 'disability' and 'intellectual disability' in section 3 of the **Disability Act 2006** and the **Disability Discrimination Act 1992** (Cth).

[47] Guide to Court Support & Diversion Services, Magistrates' Court of Victoria, March 2011, p 25.

- the substance is often taken in larger amounts or over a longer period than intended.
- there is a persistent desire or unsuccessful efforts to cut down or control substance use.
- a great deal of time is spent in activities necessary to obtain the substance, use the substance, or recover from its effects.
- important social, occupational, or recreational activities are given up or reduced because of substance use.
- the substance use is continued despite knowledge of having a persistent physical or psychological problem that is likely to have been caused or exacerbated by the substance (for example, current cocaine use despite recognition of cocaine-induced depression or continued drinking despite recognition that an ulcer was made worse by alcohol consumption).[48]

Volatile substance – definition

Section 57 of the **Drugs, Poisons and Controlled Substances Act 1981** defines volatile substances as:

- plastic solvent
- adhesive cement
- cleaning agent
- glue
- nail polish remover
- lighter fluid
- gasoline
- any other volatile product derived from petroleum, paint thinner, lacquer thinner, aerosol propellant, or anaesthetic gas, and
- any substance declared volatile by the Governor in Council from time to time.

6.3.1.4 Homelessness

The criteria for determining if a person is homeless is prescribed by the Infringements Regulations.

A person is considered homeless if they –

- are living in crisis accommodation, or
- are living in transitional accommodation, or
- are living in any other accommodation provided under the **Supported Accommodation Assistance Act 1994** (Cth), or
- have inadequate access to safe and secure housing as defined in section 4 of the **Supported Accommodation Assistance Act 1994** (Cth).

Common examples include where a person is:

- without conventional accommodation, for instance, sleeping in parks or on the street, squatting, living in cars or in improvised dwellings
- moving from one form of temporary accommodation to another for example, refuges, emergency hostel accommodation, or temporary space in the homes of family and friends

[48] This is based on the definition of substance dependence in American Psychiatric Association, the Diagnostic and Statistical Manual of Mental Disorders: DSM-V. 5th edition, Washington D.C: American Psychiatric Association (2013).

- living in temporary accommodation as a result of unsafe living conditions (such as family violence) or inability to afford other housing
- living in a caravan park due to their inability to access other accommodation, or
- living in boarding houses on a medium to long-term basis.[49]

6.3.1.5 Family violence

The definition of special circumstances includes a person who is a victim of family violence within the meaning of section 5 of the **Family Violence Protection Act 2008** (FVPA).

'Family violence' is:

a) behaviour by a person towards a family member of that person if that behaviour:
   i) is physically or sexually abusive
   ii) is emotionally or psychologically abusive
   iii) is economically abusive
   iv) is threatening
   v) is coercive
   vi) in any other way controls or dominates the family member and causes that family member to feel fear for the safety or wellbeing of that family member or another person, or

b) causes a child to hear or witness, or otherwise be exposed to the effects of, behaviour referred to in paragraph (a).

'Family violence' also includes the following behaviour:

- assaulting or causing personal injury to a family member or threatening to do so
- sexually assaulting a family member or engaging in another form of sexually coercive behaviour or threatening to engage in such behaviour
- intentionally damaging a family member's property, or threatening to do so
- unlawfully depriving a family member of the family member's liberty, or threatening to do so, or
- causing or threatening to cause the death of, or injury to, an animal, whether or not the animal belongs to the family member to whom the behaviour is directed so as to control, dominate or coerce the family member.

Behaviour may constitute family violence even if the behaviour would not constitute a criminal offence.

The Royal Commission into Family Violence report,[50] tabled in Parliament on 30 March 2016, recognised the difficulties faced by victims within the infringements framework and considered that there are a range of car-related debt issues that arise in circumstances of family violence. In making recommendations 112 and 113, the Royal Commission considered that family violence arose in circumstances where:

[49] These examples are based on the Chamberlain and McKenzie definition of homelessness, a commonly used definition in Australia.

[50] Royal Commission into Family Violence website, see: http://www.rcfv.com.au/Report-Recommendations

- victims committed infringement offences (including parking and traffic offences) while experiencing family violence (for example, escaping violence), or
- perpetrators of family violence incurred infringements while driving a vehicle registered in the victim's name and the victim was unable to nominate due to safety fears.

6.3.2 Agency considerations

6.3.2.1 Establishing the nexus

The definition of 'special circumstances' in the Act requires a connection or nexus to be made between the special circumstances category and the offending behaviour. The applicant is required to demonstrate, that it is more probable than not, that the special circumstances resulted in their inability to understand that their conduct constitutes an offence, or that they are unable to control that conduct.

The applicant must show that:

- the person suffers from one of the conditions or circumstances that falls within the definition of special circumstances (for example, mental or intellectual disability, disorder, disease or illness, a serious drug/alcohol/volatile substance addiction, homelessness or family violence), and
- the condition or circumstances resulted in the applicant being unable to either understand the conduct constituting the offence or control that conduct.[51]

6.3.2.2 Using discretion around the currency of evidence

The currency of evidence should be considered when contemplating evidence of special circumstances. As a general rule, evidence provided by professionals or practitioners should be signed and dated within the last 12 months. However, enforcement agencies should take a case by case approach to this requirement depending on the condition or circumstance being relied upon. For example, where the applicant relies on the ground of special circumstances and cites a lifelong intellectual disability, application of the 12-month rule may not be appropriate.

The following requirements for information may be given to professionals and practitioners to assist them in supporting an application for special circumstances:

- details of the individual providing the information including their name, position and qualifications
- the relationship the individual has with the applicant (for example, treating physician, case worker, family violence case worker)
- a submission about the applicant's condition (this may include particulars about the nature of the circumstances/condition), and
- an assessment of whether the applicant's condition/circumstances resulted in the applicant being unable to either understand or control the conduct constituting the offence.

[51] See definition of 'special circumstances' in section 3(1) of the **Infringements Act 2006** and Regulation 7 of the Infringement Regulations 2016.

6.3.2.3 Evidentiary requirements

Applications for internal review on the ground of special circumstances should be accompanied by supporting evidence. Acceptable evidence is that which establishes the nexus required to demonstrate that the special circumstances exist. That is, the evidence should confirm:

- the existence of the relevant condition, and
- the required connection (or nexus) between that condition and the offending conduct.

Evidence that is acceptable includes (but is not limited to) reports, letters, statements, submissions, statutory declarations, police reports, and family violence safety notices.

Decision makers should also consider the reasonableness of asking for particular information. For instance, proving homelessness requires,is in effect, that the person prove proving a negative i.e. that they do not have a home. This can be difficult to do and this difficulty of proof is a relevant factor in deciding the reasonableness of requiring written evidence and the nature of that evidence.

A range of individuals, including professionals and practitioners, can provide evidence if the application is based on:

- *a mental or intellectual disability disorder, disease or illness:* evidence can be obtained from a medical practitioner, psychiatrist, psychiatric nurse or psychologist and can include a letter, statement or report that includes:
  - the practitioner/counsellor's qualification and relationship with the applicant and the period of engagement
  - the nature, severity and duration of the applicant's condition and/or symptoms
  - an assessment on whether the applicant was suffering from the relevant condition at the time the offence was committed, and
  - whether, in the opinion of the practitioner, there is a connection between the applicant's relevant condition and the applicant's offending behaviour.
- *a serious addiction to drugs, alcohol or a volatile substance:* evidence can be obtained from a medical practitioner, psychiatrist, psychologist, accredited drug treatment agency, drug counsellor, or case worker (from a community or social work facility) and can include a letter, statement or a report. Information that may support an application includes the:
  - practitioner/counsellor's qualification and relationship with the applicant including the period of engagement
  - the nature, severity and duration of the applicant's relevant condition and/or symptoms
  - whether the applicant was suffering from the relevant condition at the time the offence was committed, and
  - whether, in the opinion of the practitioner, there is a connection between the applicant's relevant condition and the applicant's offending behaviour.

- *homelessness:* evidence can be obtained from a medical practitioner, psychiatrist, case worker or social worker, health or community welfare service providers and can include a letter, statement or a report. Information that may support an application includes:
  - the practitioner/case worker's qualification and relationship and the period of engagement
  - a summary of the applicant's circumstances
  - whether the applicant was homeless at the time the offence was committed, and
  - whether, in the opinion of the practitioner, there is a connection between the applicant's homelessness and the applicant's offending behaviour.
- *family violence:* evidence can be obtained from family violence case workers or social workers, Victoria Police, medical practitioners or health or community welfare service providers and can include a statement, report, letter, family violence safety notice or a family violence intervention order. Information that may support an application includes:
  - the practitioner/case worker's qualification and relationship and the period of engagement
  - a summary of the applicant's circumstances
  - whether the applicant was experiencing family violence at the time the offence was committed, and
  - whether, in the opinion of the practitioner, there is a connection between the applicant's circumstances involving family violence and the applicant's offending behaviour.

6.3.2.4 Possible outcomes

An enforcement agency may make the following decision upon reviewing an internal review based on special circumstances:

- confirm the decision to serve the infringement notice[52]
- withdraw the infringement notice and serve an official warning, or
- withdraw the infringement notice.

Enforcement agencies should also note the power under section 17 of the Infringements Act to refer a matter to the Magistrates' Court. This power must be exercised before the fine is registered with the Director, Fines Victoria (or where it is a non-registerable matter before the expiry of the date for commencing proceedings).

This power does not apply to infringement notices relating to offences to which the provisions listed in section 17(2) apply. The legislation that establishes those offences has separate processes for referring those matters to court.

For infringement notices relating to alleged offences by children, agencies wishing to exercise this power must do so before an enforcement order is issued under Schedule 3 of the **Children, Youth and Families Act 2005**. Where the infringement notice matter cannot be registered under that Schedule, the time limit on exercising the power is before the expiry of the period for commencing proceedings in relation to that matter.

[52] Note that an applicant will have alternative payment options available to them to discharge the infringement as outlined in Section 6.3.2.5 If the application is refused.

6.3.2.5 If the application is refused

For applications made on the ground of special circumstances, the following options are available to the applicant where a decision-maker refuses the application and confirms the infringement: [53]

- pay the infringement
- apply for a payment plan
- apply to the Director, Fines Victoria for a payment arrangement
- elect to have the matter heard in Court (Magistrates' or Children's Court, as appropriate),
- make an application to the Director, Fines Victoria under the Family Violence Scheme, or
- if the person is eligible, an accredited organisation may apply to the Director, Fines Victoria for a Work and Development Permit on behalf of the applicant.[54]

If an enforcement agency decides to refuse an application for internal review that has been made on the basis of special circumstances relating to family violence, the notification letter to the applicant should set out all the options available to the applicant, including their ability to apply to the Director, Fines Victoria under the Family Violence Scheme (FVS). See Section 6.8 of these Guidelines for further information about the FVS.

6.4 Exceptional circumstances

The exceptional circumstances ground provides decision-makers with the discretion to determine whether the infringement is appropriate, taking into account the circumstances in which the offending conduct occurred.

6.4.1 Agency considerations

Unlike special circumstances, there is no legislative definition of what constitutes exceptional circumstances in the Act. The ground is intended to apply to one-off circumstances, all of which cannot be categorised. This category is designed to include circumstances where the applicant has enough awareness and self-control to be liable for their conduct, but has a good excuse for that conduct.

Some examples include circumstances where the applicant committed the offence due to unforeseen or unpreventable circumstances including medical emergencies, unavoidable or unforeseeable delay or vehicle breakdown. The decision making criterion then is whether imposition of an infringement is fair in the circumstances.

This requires the decision maker to exercise their discretion. For more information and guidance on the exercise of discretion, please see Section 4.7 Appropriately using discretion in decision making and Section 4.8 Ten key considerations to ensure a good decision is made.

6.4.2 Evidentiary requirements

Applications for internal review made on the grounds of exceptional circumstances should (where appropriate) be accompanied by supporting evidence.

Decision-makers can take any matter a reasonable person would consider as relevant information into account.

Examples of supporting evidence could include medical evidence from medical practitioners, an invoice from a mechanic or a towing service.

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[53] Section 25(3)(ea) of the **Infringements Act 2006.**

[54] Further detail on Work and Development Permit options and eligibility is available on the Fines Victoria website.

6.4.3 Possible outcomes

An enforcement agency may make the following decision upon reviewing an application for internal review based on the grounds of exceptional circumstances:

- confirm the decision to serve an infringement notice
- withdraw the infringement notice and serve an official warning
- withdraw the infringement notice
- withdraw the infringement notice and refer the matter to Court (Magistrates' or Children's Court, as appropriate)
- in the case of an infringement offence involving additional steps, alter or vary those steps provided the alteration or variation is consistent with the Act or other instrument establishing the offence
- waive all or any prescribed costs, or
- approve a payment plan.

In some cases, it may be appropriate to do a combination of the actions above.

6.4.4 If the application is refused

For applications made on the grounds of exceptional circumstances, the following options are available to the applicant where a decision maker refuses the application and confirms the infringement:

- pay the infringement and any prescribed costs by the due date
- where an infringement offence involves additional steps and the enforcement agency confirms the decision, the applicant must pay the infringement and perform all the additional steps by either the end of the period specified in the infringement notice or within 14 days after the applicant has been sent advice of the outcome of the review
- apply to the enforcement agency for a payment plan
- apply to the Director, Fines Victoria for a payment arrangement
- elect to have the matter heard in Court (Magistrates' or Children's Court, as appropriate),
- make an application to the Director, Fines Victoria under the Family Violence Scheme, or
- if the person is eligible, an accredited organisation may apply to the Director, Fines Victoria for a Work and Development Permit on their behalf.[55]

6.5 Financial hardship

While financial hardship is not a ground for review, enforcement agencies may consider such applications under the exceptional circumstances ground. It is open to enforcement agencies to implement an exceptional circumstances financial hardship policy. Alternatively, where a person is experiencing financial hardship and is unable to pay their outstanding fines, enforcement agencies should assist the applicant, where appropriate, to negotiate a payment plan.

6.5.1 Bankruptcy and insolvency

A person is responsible for their infringement fine even if they have been declared, or are seeking to be declared, bankrupt. A person who is declared bankrupt retains their rights to deal with the infringement notice including submitting a nomination statement or applying for internal review.

When a company is experiencing financial difficulties, it may be placed into external administration or liquidation. Companies that are in liquidation or under external administration may apply for internal review of their infringement fines.

[55] Further detail on Work and Development Permit options and eligibility is available on the Fines Victoria website.

An enforcement agency may consider a person's bankruptcy status, or a company's financial status, as evidence of financial hardship. It is also open to an enforcement agency to include a person's bankruptcy status or a company's financial status as a relevant consideration in any internal financial hardship policy that the enforcement agency may choose to implement.

Enforcement agencies should also consider the following:

- **For individuals:**

  If an individual is experiencing financial hardship and is unable to pay their outstanding fines, enforcement agencies should assist the applicant, where appropriate, to negotiate a payment plan. It will be up to the review officer to decide whether a payment plan is appropriate in a bankrupt person's particular circumstances.

- **For companies in liquidation or companies under external administration:**

  Enforcement agencies should require that these applications for internal review may only be made by the liquidator or administrator.

Once an insolvent company is deregistered, it ceases to exist, and infringement fines cannot be recovered. Internal review officers should complete an online ASIC search on a company to determine the company's registration status before processing any application in the name of a company. For more information, visit the ASIC website at www.asic.gov.au

6.6 Person Unaware

This ground of internal review enables an applicant to lodge an internal review application on the ground that they were unaware of the infringement notice. Service of the notice must not have been by personal service.

An application made on the ground of 'person unaware' must:

- be made within 14 days of the applicant becoming aware of the infringement notice (a person may evidence the date they became aware of the infringement notice by executing a statutory declaration)
- be made in writing
- state the grounds on which the decision should be reviewed
- provide the applicant's current address for service, and
- may only be made once in relation to any one infringement offence.

6.6.1 Agency considerations

An enforcement agency must not consider an application made on the ground of 'person unaware' if the applicant has not updated their authorised address within 14 days of changing address.[56]

An 'authorised address' is:

- an address that is recorded in relation to a person in a register kept by a public statutory authority (including a Director under the **Corporations Act 2001**), if by law that person is required to notify that public statutory body of any change in that address. An example of a public statutory authority is VicRoads.
- in relation to a transport infringement, within the meaning of Part VII of the **Transport (Compliance and Miscellaneous) Act 1983** or a ticket infringement within the meaning of that Part, an address provided by a person to an authorised officer or police officer under section 218B of that Act after that officer has requested the person to state his or her name and address because the authorised officer or police officer believes on reasonable grounds that the person has committed a transport infringement or a ticket infringement, as the case requires.

[56] Section 22(4) of the **Infringements Act 2006**.

The enforcement agency must suspend all other procedures (including enforcement action) until the agency has completed reviewing the person unaware application and the applicant has been sent advice of the outcome.[57]

6.6.2 Evidentiary requirements

Applications for internal review that are made on the grounds of person unaware should (where appropriate) be accompanied by supporting evidence. For example, copies of date-stamped passports, boarding passes, removalist invoices and mail theft reports made to Victoria Police.

6.6.3 Possible outcomes – if the application is granted

Where an enforcement agency grants an internal review application made on the ground of person unaware, the applicant may:[58]

- pay the infringement
- apply for a payment plan
- apply to the Director, Fines Victoria for a payment arrangement
- apply for a review of the decision to serve an infringement offence under section 22(1)(a), (b) or (c) of the Infringements Act
- nominate another person for the infringement offence (in the case of traffic or parking offences)
- elect to have the matter heard in Court (Magistrates' or Children's Court, as appropriate),
- make an application to the Director, Fines Victoria under the Family Violence Scheme, or
- if the person is eligible, an accredited organisation may apply to the Director, Fines Victoria for a Work and Development Permit on their behalf.[59]

6.6.4 Possible outcomes – if the application is refused

If an application on the ground of person unaware is refused, the applicant must pay the infringement amount and prescribed costs (within 14 days of receiving the refusal notice).[60] The applicant will have the same alternative payment options available to them as are available for other grounds of review (that is, payment plans or arrangements, court referral or work and development permits (if eligible).

6.7 Work and Development Permits (WDPs)

The Work and Development Permit (WDP) scheme commenced on 1 July 2017 to provide vulnerable and disadvantaged people with a non-financial option to address their fine debt. The WDP scheme is administered by the Director, Fines Victoria. A WDP allows an eligible person to work off their fine debt by participating in certain activities and treatment. Enforcement agencies are encouraged to promote this scheme to vulnerable community members.

A person must undertake a WDP under the supervision of a sponsor. A sponsor is an organisation or a health practitioner accredited by the Director, Fines Victoria to support the WDP scheme. Only a sponsor may apply to the Director, Fines Victoria for a WDP on behalf of an eligible person.

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57 Section 24(1A) of the **Infringements Act 2006**.
58 Section 25(5) of the **Infringements Act 2006.**
59 Further detail on Work and Development Permit options and eligibility is available on the Fines Victoria website.
60 Section 25(7) of the **Infringements Act 2006**.

An organisation or a health practitioner may apply to become a WDP sponsor to assist their clients to deal with their fine debt and to encourage engagement with services. If an eligible person is already engaged with an organisation or a health practitioner that is not yet a WDP sponsor, the organisation or health practitioner can contact the WDP Team to get information about becoming a sponsor (see details below).

For more information, visit https://www.justice.vic.gov.au/wdp, or contact the WDP team:

Email: WDP@justice.vic.gov.au

Phone: 1300 323 483

Hours: 9.00 am to 4.00 pm
Monday to Friday (except public holidays)

6.8 Family Violence Scheme (FVS)

The Family Violence Scheme (FVS) is a specialised scheme to support people affected by family violence within the fines system. The scheme is administered by the Director, Fines Victoria. The scheme allows people to apply to Fines Victoria to have their infringement fines withdrawn if family violence substantially contributed to the offence or if it is not safe for them to name the responsible person.

To access the Family Violence Scheme, a person must:

- have been issued an infringement notice for an offence, and
- show they are a victim survivor of family violence, and
- show that the family violence substantially contributed to the person not being able to:
  - control the conduct that constituted the offence, or
  - nominate the driver that committed the offence in a car registered to the victim, or
  - reject a nomination.

A person can apply to the Family Violence Scheme at any time from first receiving the fine until:

- the fine has been paid, or
- a seven-day notice served on the person has expired or been waived, or
- particular enforcement action has been taken against them.

To help decide if the FVS is a suitable option, a person may wish to seek legal advice from a lawyer or by contacting a local community legal centre via the Federation of Community Legal Centres (www.fclc.org.au) or Victoria Legal Aid (www.vla.vic.gov.au).

For more information, visit https://www.justice.vic.gov.au/fvs, or contact the FVS team:

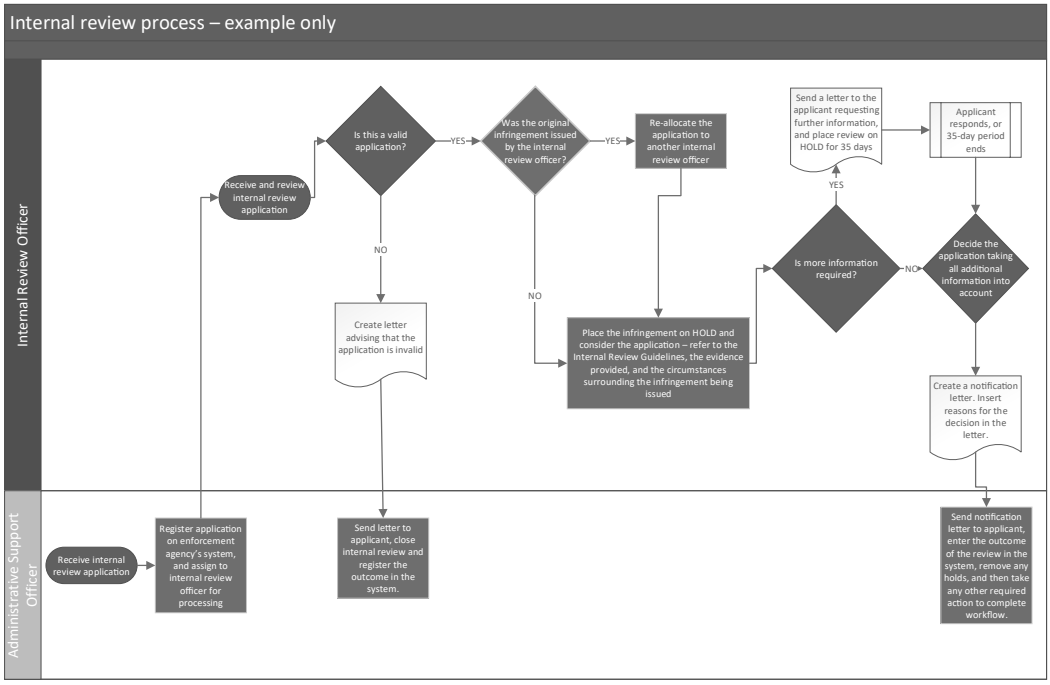
Email: fvs@justice.vic.gov.au

Phone: 1300 019 983

Hours: 9.00 am to 4.00 pm
Monday to Friday (except public holidays)

7 APPENDICES

7.1 Appendix 1: Internal review process chart



7.2 Appendix 2: Internal Review application form (sample)

FINES VICTORIA

Application for Internal Review

(Infringements Only)

1. Please complete all sections below to have your infringement reviewed. Please complete the white sections, print clearly in ink using BLOCK letters, cross where applicable and then sign below.
2. Only one Internal Review may be submitted per Infringement Notice, unless applying when an internal review has been granted on the ground of Person Unaware of Fine.
3. Internal reviews are not permitted for alleged drink-driving, driving under the influence of drugs, or excessive speed infringements that result in a loss of licence.

Applicant details

Who is applying (confirm who is making the application):

- ☐ **Person named on the infringement notice**
- ☐ **Other person with consent** (You must also complete the 'Consent for Internal Review' on reverse side of this page
- ☐ **Authorised company representative**

Your personal details

Full name

Corporate name and ACN (if applicable)

Address of person / Corporate (Outcome will be sent here)

State Postcode

Email

Infringement details

Your obligation number

Infringement notice number

Infringement Type (confirm type of infringement received):

- ☐ **Traffic Camera** — Fines detected by an automatic detection device such as a speed or red light camera
- ☐ **CityLink** — Fines issued as a result of failure to pay a Citylink toll within the prescribed timeframe
- ☐ **Eastlink** — Fines issued as a result of failure to pay an Eastlink toll within the prescribed timeframe
- ☐ **Victoria Police Officer issued** — Fines issued by Victoria Police
- ☐ **Other** — Fines issued by other agencies such as VicRoads, Local Agencies

Grounds for application

Descriptions are located on the reverse of this page. You must select one ground for this application.

- ☐ **Exceptional Circumstances** See description 1
- ☐ **Contrary to Law** See description 2
- ☐ **Special Circumstances** See description 3
- ☐ **Mistaken Identity** See description 4
- ☐ **Person Unaware of Fine** See description 5
- ☐ **Penalty Reminder Notice Fee Waiver Request** See description 6

I have attached an explanation of my circumstances and ground(s) in support of my application ☐

Declaration details

I understand that this is the only Internal Review for this Infringement that I am able to submit pursuant to s.22 (2) of the *Infringements Act 2006*.

I declare that the information that I have supplied in this form, and any attachments to this form, are true and correct to the best of my knowledge.

I understand that by making a false or misleading statement in support of this claim, I may be prosecuted.

Signature of Applicant

Date / /

Upon completion, send this application to Fines Victoria, GPO BOX 1916, Melbourne VIC 3001

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VICTORIA State Government

Description of relevant grounds for internal review appeal

1 **Exceptional Circumstances**

Please provide details of the exceptional circumstances (where you have committed the offence due to unforeseen or unpreventable circumstances, e.g. medical emergencies). For more information, visit www.fines.vic.gov.au

2 **Contrary to Law**

Please provide the reasons why you consider the decision to issue you with an Infringement was contrary to law. For example, this ground can be used if you believe that the infringement notice is not valid, or that an infringement officer has acted unlawfully, unfairly, improperly or beyond their authority in taking that action or decision.

3 **Special Circumstances**

Special circumstances includes:

- a mental or intellectual disability, disorder, disease or illness
- a serious addiction to drugs, alcohol or volatile substance
- homelessness, or
- family violence within the meaning of the *Family Violence Protection Act 2008*.

You must provide evidence (e.g. letter, report, statement) from one of the following parties to support your application.

- a case worker, case manager or social worker
- a general practitioner, psychiatrist or psychologist, or
- an accredited drug treatment agency.

Evidence (e.g. letter, statement or a report) from practitioner or case worker should include the following information:

- the practitioner/case worker's qualification and relationship with you, including the period of engagement
- the nature, severity and duration of your condition or your circumstances:
  - a) whether you were suffering from the relevant condition or circumstances at the time the offence was committed, and
  - b) whether, in the opinion of the practitioner/case worker, it is more likely than not that your condition/ circumstances resulted in your inability to understand or control the conduct constituting the offence.

The practitioner or agency report must show that because of your condition/circumstances you could not understand or control your conduct constituting the offence. For more information, visit www.fines.vic.gov.au

4 **Mistaken Identity**

Please provide an explanation of why you rely on the ground of mistake of identity (including evidence e.g. copy of your driver's licence, in support). For more information, visit www.fines.vic.gov.au

5 **Person Unaware of Fine**

An application made on the ground of 'person unaware' must:

- be made within 14 days of you becoming aware of the infringement notice (You may evidence the date that you became aware of the infringement notice by executing a statutory declaration)
- state the grounds on which the decision should be reviewed, and
- provide your current address for service. For more information, visit www.fines.vic.gov.au

6 **Penalty Reminder Notice Fee Waiver Request**

Please provide the reason(s) why you believe the Penalty Reminder Notice Fee should be waived.

Note: The original penalty amount is still applicable under this request.

Applicants please note:

If you do not provide sufficient information, the enforcement agency may request further information. If you do not provide this further information within 21 days of the date of request, the enforcement agency may determine the application without further information. Internal reviews are not permitted for an alleged drink- driving, driving under the influence of drugs, or excessive speed infringements that result in a loss of licence.

Consent for internal review

To be completed if another person is acting on your behalf.

I (person named in the infringement) .....,

of (address of person named on the infringement) ....., give my

consent to (name of person making the application on your behalf) ....., to apply

for an Internal Review on my behalf to Infringement Number .....

Signature of person named on the infringement

Date / /

Signature of other person with consent

Date / /

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