



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY
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Submission Cover Sheet

Inquiry into Penalties for Minor Offences and Vulnerable People

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**ACT
Policing**

ACT Policing Submission

Inquiry into Penalties for Minor Offences and Vulnerable People

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Introduction

ACT Policing appreciates the opportunity to provide a submission to the Standing Committee's Inquiry into penalties for minor offences and vulnerable people. ACT Policing is committed to implementing the most appropriate course of action in response to an individual's criminal behaviour, including when considering whether to issue an infringement notice. An infringement notice is a form of early intervention that provides swift punishment for the offender and justice for the victim and discourages the general public from committing the offence. However, an infringement notice may cause undue hardship if applied to vulnerable people who have limited capacity to understand the situation or pay the infringement notice.

ACT Policing's submission provides information on the infringement notices issued by ACT Policing and current options available to offenders to manage an infringement notice. ACT Policing then addresses the Inquiry's terms of reference where appropriate and concludes that it is vital to identify if an offender is vulnerable early and to ensure there are appropriate penalty and hardship options available to avoid undue hardship while deterring future offending.

Background

What is an Infringement Notice?

Infringement notices are administrative penalties or fines that allow a matter to be dealt with by way of payment rather than through the criminal justice system. ACT Policing issue Criminal Infringement Notices (CINs), Traffic Infringement Notices (TINs), Parking Infringement Notices (PINs) and Simple Cannabis Offence Notices (SCONs).

- CINs can be issued by ACT Policing for 48 different offences, including offences listed in the *Magistrates Court Regulation 2009*, *Liquor Act 2010*, *Crimes Act 1900*, *Smoking in Cars with Children (Prohibition) Act 2011*, and *Public Health Act 1997*.
- TINs and PINs are issued by ACT Policing and Access Canberra for breaches of the *Road Transport (Road Rules) Regulation 2017* and the *Road Transport (Safety and Traffic Management) Act 1999*, and includes offences such as speeding, unregistered vehicles and negligent driving.
- SCONs are issued by ACT Policing for offences listed in the *Drugs of Dependence Act 1989*, including the possession of small amounts of cannabis (s 171) and the cultivation of one or two cannabis plants (s 162).
 - The *Drugs of Dependence (Personal Possession) Amendment Bill 2022* (commences October 2023), will enable police to issue a Simple Drug Offence Notice (SDON) as an alternative to charging individuals for the personal possession of small amount of certain illicit drugs.

When issuing an infringement notice to an individual, police provide verbal and written information about how the individual can pay the CIN or dispute the matter in court. This practice ensures police adequately inform the individual about their options. The written notice includes information regarding how to dispute the matter, what happens if the court finds against the individual, and how to apply for an extension of time to pay the penalty.

Once an infringement notice is issued, individuals may:

- lodge a notice to dispute liability,
- apply for an extension of time to dispute liability or pay the infringement notice, or
- apply to withdraw the notice.
- For TINs and PINs, individuals may also apply for a payment plan, waiver or an approved community work or social development program.

To note, the *Magistrates Court (Infringement Notices) Amendment Act 2020* will commence in February 2024, and will provide additional hardship options for offences where an infringement notice can be issued under the *Magistrates Court Act 1930*, based current hardship options available for parking and traffic offences.

Although ACT Policing issue CINs, PINs, TINs and SCONs, Access Canberra is responsible for the management of the payment of PINs and TINs, for example, non-payments and hardship applications.

Purpose of Infringement Notices

Infringement notices are used as a method of early intervention to divert offenders from the court system and deter further offending. If the fine is paid within a certain period, no criminal record will be recorded. However, failure to pay the penalty order may result in a suspension action or criminal proceedings before the court.

The immediate nature of issuing an infringement notice also contributes to specific and general deterrence by providing a swift punishment for the individual, justice for the victim and discouraging the general public from committing the offence.

What is a Vulnerable Person?

For the purposes of this Inquiry, ACT Policing considers a 'vulnerable person' as a person who has limited capacity to understand or pay an infringement notice. This may be influenced by factors such as First Nations status, age, mental health, disability, culturally and linguistically diverse background, socioeconomic disadvantage, or ability to work.

A child under the age of 16 cannot be issued with a CIN, TIN or PIN, however, a child 12 years or older can be issued a SCON. Noting the ACT Government's commitment to raise the minimum age of criminal responsibility, this reform will limit ACT Policing's ability to issue SCONs/SDONs to children under the minimum age of criminal responsibility.

Terms of reference

Suitability of current ACT Government alternative measures to fines

As an alternative to issuing an infringement notice, police have discretion as to a chosen course of action, including whether to issue a warning, caution or charge (court attendance notice, summons or arrest). To issue a caution, infringement notice or charge, police officers are required to fully investigate the incident and have sufficient evidence to formally lay criminal charges, including being prepared to respond to a lack of capacity defence for persons aged 10 – 14 years of age.

Police consider a range of available factors before deciding how to finalise the offence, including the seriousness of the offence, likelihood of reoffending, any mitigating or aggravating circumstances, age, mental health, background of the offender, availability and efficacy of alternatives to prosecution, whether the offence is of public concern, and the sentencing options available if found guilty by court.

In situations involving vulnerable people, issuing a warning, caution or charge for a minor offence instead of a CIN, PIN, TIN or SCON may be more suitable option where the individual is:

- **A young person** – the ACT Policing Purchase Agreement¹ requires 100% of eligible young people to be referred to restorative justice.
- **An Aboriginal and Torres Strait Islander person** – restorative justice or other diversionary avenues may be a more appropriate option which can only be accessed through judicial proceedings. The ACT Aboriginal and Torres Strait Islander Agreement 2019-2028 commits to referring at least 25% of all eligible 18-25 year old Aboriginal and Torres Strait Islander people to restorative justice.
- **Experiencing financial hardship and/or poverty** – a CIN would risk further marginalising the individual, noting an infringement notice management plan is currently only available for TINs and PINs. If individuals are interested in an infringement notice payment plan for a CIN or SCON, currently this can only be entered into through judicial proceedings.
- **A first-time offender** – a warning or caution may be appropriate if the individual has not previously been charged with an offence, the circumstances are suitable without needing to refer to court, and there are other support processes and mechanisms that are appropriate to address criminal conduct.
- **A recidivist offender** – if the individual has a criminal history and has previously been issued multiple cautions, it may be more appropriate to charge the individual to enable the court to identify appropriate sentencing options such as referral programs to address recidivist behaviour.

Although more administration is required to charge an individual compared to issuing an infringement notice, it may be more appropriate for judicial proceedings to determine guilt and the most appropriate sentencing option to address offending behaviour for vulnerable people, noting ACT Policing does not have the ability to vary the penalty amount when issuing an infringement notice. In comparison, if an offender is found guilty and sentenced by a court, the judge can consider the individual's circumstances and reduce or remove the monetary penalty, however, this would result in a criminal record which may inhibit future employment prospects, and potentially be a worse outcome than an isolated fine.

¹ 2022-26 Purchase Agreement, <https://www.justice.act.gov.au/safer-communities/crime-prevention/act-policing>.

ACT Policing Position

ACT Policing is working with ACT Government agencies to consider additional hardship options for infringement notices, modelled off the traffic and parking infringement notice options, per the *Magistrates Court (Infringement Notices) Amendment Act 2020* commencing in February 2024. Current traffic and parking infringement notice hardship options include payment plans, waiver, and approved community work or social development in lieu of payment.

ACT Policing is supportive of exploring other evidence-based alternative measures to infringement notices, however, is wary of placing excessive responsibility on police where judicial oversight would be more appropriate, especially in relation to vulnerable people.

Alternative measures to infringement notices

Illicit Drug Diversion Program

For simple cannabis offences, police can refer the individual to an Illicit Drug Diversion Program instead of issuing a SCON. For people referred to the program in lieu of prosecution, entry to and participation in the program is voluntary, however, refusal to enter or withdrawal from the program limits police action to criminal caution or prosecution.

The Illicit Drug Diversion Program diverts individuals who have been apprehended by police for possession of small amounts of illicit drugs (or legal drugs used illicitly) and provides assessment, education and/or treatment, with compliance resulting no conviction recorded on their criminal record. In 2021-2022, ACT Policing submitted 112 diversions for drug related incidents. This program reduced the overall burden on the justice system and leverage from education, counselling and substance abuse programs to minimise the harm caused by illicit drugs and alcohol.

In addition to diverting people from court, the ACT Health Directorate led program provides pre-sentence and sentencing diversion options for people arrested for alcohol and other drug related offences in the ACT.

Youth and Adult Alcohol Diversion

The Youth and Adult Alcohol Diversion Programs are a collaboration between the ACT Government Canberra Health Services and ACT Policing. The program provides alcohol/drug education, referral, and treatment and participation is voluntary.

Support services

SupportLink

ACT Policing partners with SupportLink to ensure that victims, witnesses and offenders can be referred to the best information, counselling and support services that suit their circumstances or wishes. In the 2020-21 financial year, ACT Policing made 5802 referrals through the SupportLink gateway.

Impacts of fines on vulnerable people

Although infringement notices aim to divert individuals from the criminal justice system, ACT Policing acknowledge that financial penalties may have a significant impact on vulnerable people who may have limited capacity to understand the situation or pay the penalty.

A study by Quilter and Hogg (2018)² of New South Wales, Western Australia, Tasmania and Northern Territory found that fines administered via fixed penalty regimes (i.e. over 95% of fines in total) do not account for the offender's financial circumstances and the facts surrounding the offence. Fines often have serious and disproportionate adverse outcomes for disadvantaged and vulnerable members of the community, as they are more likely to be fined and accrue multiple fines (Quilter & Hogg, 2018³). These groups are also less likely to be able to negotiate the processes to challenge the penalty and are less likely to be able to pay infringements.

It is difficult for ACT Policing to identify the impact of infringement notices on vulnerable people, as ACT Policing does not routinely collect or collate demographic data on recipients of infringement notices, except for the age of individuals who receive TINs.

The majority of infringement notices issued by ACT Policing are TINs, per the below table.

Infringement Notices	Amount Issued by ACT Poling in 2021-22
COVID related Criminal Infringement Notices	100
Criminal Infringement Notices (CIN)	115
Simple Cannabis Offence Notices (SCON)	1
Traffic Infringement Notices (TIN)	4886
Parking Infringement Notices (PIN)	131
Total	5233

Traffic Infringement Notices

ACT Policing members do not ask personal questions regarding the driver's circumstances when issuing a TIN, however, anecdotal evidence from ACT Road Policing revealed that the only indication of a person being vulnerable would be if the individual made a comment about not being able to pay the infringement notice or by referencing the individual's age on their driver's licence. In this instance, the police member would explain the options available to the driver, such as the time to pay and ability to apply for a payment plan. For example, if police issue a TIN to an elderly person who cannot easily access the internet, the police officer would take time to explain the situation and the available options to manage the TIN, such as paying by phone or applying for a waiver.

It would be rare for police to encounter a driver that has limited capacity to understand an infringement notice, as legally driving a vehicle requires a certain level of comprehension.

The ACT has a large number of culturally and linguistically diverse drivers, and police do their best to ensure the driver understands why they have been stopped and what is going to occur. Often, these drivers will have a passenger in the car, or someone they can call, to translate and explain the situation.

² Quilter, J. and Hogg, R. (2018) 'The hidden punitiveness of fines', <https://ro.uow.edu.au/lhapapers/3603/>.

³ Ibid.

Suitability of existing formal government guidelines for considering treatment of vulnerable people in administering penalties

ACT Policing has internal governance related to issuing infringement notices. These documents consider the treatment of vulnerable people to guide appropriate decision making. This guidance is readily accessible to members through relevant Standard Operational Procedures and other functional governance instruments on the internal ACT Policing Governance Instrument Framework.

Impacts of and alternatives to prosecution for vulnerable people for non-payment of fines

If an individual does not pay their infringement notice, Access Canberra will notify ACT Policing. ACT Policing will then consider the situation and may escalate this to the ACT Office of the Director of Public Prosecutions who will consider whether to prosecute for the underlying offence. ACT Policing does not collect data on how often prosecution occurs following the non-payment of a fine.

Prosecution may be the most appropriate enforcement option for some people, noting that a magistrate has broader powers than police to deal with an offence, the penalty of an offence, and the non-payment of an infringement notice. This is particularly beneficial for certain vulnerable groups (i.e. those with financial difficulties).

How to maximise compliance with legislation, particularly for young people

ACT Policing believe adequate education, diversion, support services, deterrence and detection will assist in maximising compliance with legislation.

In 2022, ACT Policing Intelligence reviewed and analysed recidivist offenders operating in the ACT. It determined that repeat offenders would benefit from early interventions through support services offered by welfare and social support, including drugs and alcohol management, as opposed to law enforcement treatments which are limited and specific to crime activity.

Conclusion

ACT Policing recognises the importance of early intervention, swift justice and reducing the impact on the criminal justice system through the issuing of infringement notices. ACT Policing notes that it is vital to identify if an offender is vulnerable early and to ensure there are appropriate penalty and hardship options available to avoid undue hardship and deter future offending.