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**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

TENTH ASSEMBLY

**NON-PAYMENT OF FINES - PENALTIES FOR MINOR OFFENCES - RESPONSE TO ASSEMBLY
RESOLUTION OF 24 MARCH 2022 - GOVERNMENT RESPONSE**

**Presented by
Shane Rattenbury MLA
Attorney-General
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Introduction

A range of ACT offences can be subject to administrative (rather than court-ordered) penalties. For these offences, an authorised officer can issue a notice where they believe that the recipient has committed the offence. In this document the term ‘infringement notice’, or ‘IN’, will be used to refer to all notices issued in this manner, including notices for the offence of failing to vote.¹

This response focuses on INs rather than court-ordered penalties because ACT Courts are required by law to consider an offender’s financial circumstances before imposing a fine. ACT Courts must consider circumstances including the offender’s financial situation, cultural background, and physical or mental conditions,² to ensure that the sentence is tailored to the offender.

INs are a useful tool to discourage simple, low-level offending, while reducing the number of prosecutions. As acknowledged by the Legislative Assembly, financial penalties carry a risk of inequitable outcomes for marginalised communities. Extensive work has been undertaken to ensure the ACT’s infringement notice schemes promote equity and address hardship, while supporting effective enforcement.

The majority of INs issued in the ACT are for parking and traffic offences. Non-payment of a parking or traffic IN does not typically result in prosecution for the underlying offence, because alternative sanctions are used (for example, suspension of driving rights).

This response provides data on the offence of failure to vote as an example of an enforcement process that does rely on prosecution for the underlying offence in the case of non-payment. As described below, the majority of INs issued for failure to vote are paid, and do not result in prosecution.

Types of infringement notices

An IN is an offer for the recipient to pay a portion of the maximum financial penalty for an offence (usually around 20%) rather than face prosecution.³ Paying an IN does not involve conviction or admission of criminal liability.

The ACT has multiple legal frameworks for issuing and enforcing INs.

- The *Road Transport (General) Act 1999* (the RT Act) creates **parking and traffic** offences, and its regulations prescribe which offences can be subject to INs. The RT Act scheme is administered by Access Canberra.
- The *Electoral Act 1992* (the Electoral Act) creates a tailored process to issue INs for the offence of **failure to vote**. These provisions are administered by the Electoral Commissioner.
- The *Magistrates Court Act 1930* (the MC Act) creates a broad framework for a range of **other INs**. There are 42 different regulations under the MC Act which allow authorised officers across various agencies to issue INs for offences including, for example:
 - breaches of work health and safety regulations;
 - failure to register a dog; and

¹ Referred to in section 162 of the *Electoral Act 1992* as ‘default notices’.

² *Crimes (Sentencing) Act 2005* s 33 (1).

³ Some INs for traffic offences also involve agreeing to deduction of demerit points.

- failure to meet obligations under the long service leave scheme.

In the 2020-21 financial year:

- **152,498** INs were issued for parking and traffic offences;
- **23,845** INs were issued under the Electoral Act for failure to vote; and
- **901** other INs were issued.

This data includes INs which were subsequently withdrawn. It does not include reminder notices.

Infringement notice collection processes

Parking and traffic infringement offences

Due to the relatively high volume of parking and traffic INs there are formal guidelines in place for considering hardship. Several options currently exist for people experiencing financial hardship and other relevant circumstances. None of these options result in prosecution through the Courts.

Current options available to a person experiencing financial hardship and/or other relevant circumstances which may result in inequity:

- Entering into an infringement notice management plan, whereby the person makes minimum fortnightly instalment of \$10.
- Seeking a waiver of the infringement penalty amount.
- Entering into an approved community work or social development program whereby the approved activity carries a monetary value which is deducted from the infringement notice penalty amount.

Failure to comply with a payment plan may result in suspension of a licence, registration or right to drive in the ACT.

In the 2020-21 financial year:

- 16,657 IN withdrawals were processed;
- 4,537 INs were disputed by recipients;
- 15 INs were waived;
- 25,692 INs were subject to a payment plan; and
- 149 work or development program arrangements were commenced.⁴

Failure to vote

Following the polling day for an election, the Electoral Commissioner must send a 'first notice' to each elector who was required to vote and has not done so. This notice outlines the following:

- That it is an offence to fail to vote without a valid and sufficient reason;
- That the elector has appeared to have failed to vote at the relevant election;
- If the elector does not wish for the matter to be resolved by a court, the elector can either:
 - If the elector did vote at the election, give the Commissioner the particulars in writing of the voting; or

⁴ Note that a work or development program arrangement can be used to 'work off' one or more INs.

- If the elector failed to vote, give the Commissioner particulars in writing of any valid and sufficient reason for the failure, or
- pay a \$20 penalty.⁵

Elections ACT considers each response to determine whether the elector has given a valid and sufficient reason for failing to vote. Matters such as caring responsibilities and personal circumstances are considered routinely and addressed on a case-by-case basis. If an elector lodges a reason for failing to vote that is not accepted by the Electoral Commissioner, the elector is offered the opportunity to pay the prescribed penalty.

If an elector fails to respond to the 'first notice', the Electoral Commissioner sends a 'second notice' in the same terms, noting that the elector has failed to respond to the 'first notice'.

The Electoral Commissioner will send a 'final notice' if an elector has failed to respond to the first and second notice or that the person did not have a valid and sufficient reason for failing to vote. The final notice gives a final opportunity for the elector to pay the \$20 prescribed penalty, or have the matter dealt with by a court.

The final notice still provides the elector with the opportunity to also provide a valid and sufficient reason for the failure to vote or to provide a claim that the elector did vote at the election. If an elector who failed to vote pays the prescribed penalty within the prescribed time, any liability in relation to the failure to vote is discharged.

Electors occasionally request an extension of time to pay due to personal financial circumstances. In cases such as this, wherever possible prior to the issuing of a summons, Elections ACT works with the elector to monitor payments and issue reminders.

Other infringement offences

A person who receives an IN issued under the MC Act can seek an extension of time to pay for up to 6 months, or can apply for the IN to be withdrawn. Administering authorities are not currently required to accept payment by instalment, but some are able to do so. The appropriateness of withdrawing an IN on the basis of financial hardship will vary depending on the nature of the offending and the purpose of enforcement. For example, in the context of breaches of work health and safety obligations by a corporation, withdrawal of an IN is unlikely to be appropriate.

Under the *Magistrates Court (Infringement Notices) Amendment Act 2020* all INs issued under the MC Act will need to be capable of being subject to payment by instalment and/or credit through participation in an approved community work or social development program. These changes are due to commence in February 2024.

Part 2 (a) – prosecution following non-payment of infringement notices

If an IN is not paid or otherwise resolved the recipient may be prosecuted for the underlying offence. Prosecution for the underlying offence can result in criminal conviction and a court-ordered penalty. Prosecution is not automatic, and failure to pay an IN is not, in itself, an offence.

Parking and traffic infringements

The *Road Transport (General) Act 1999* states that for non-payment of infringement notice penalties, the Road Transport Authority must do one of the following:

- suspend the holder's driver licence, or

⁵ This penalty is prescribed by section 161 of the Electoral Act.

- suspend the vehicles registration, or
- suspend the person's right to drive in the ACT.

As a general practice Access Canberra do not initiate prosecutions following non-payment of parking and traffic infringement notices unless the responsible person (the person suspected of committing the offence) decides to dispute legal liability.

In the 2020-21 financial year, 152,498 parking and traffic INs were issued. In that period, 739 matters involving parking and traffic IN offences proceeded to a mention in court, with only 52 reaching the hearing stage.

Failure to vote

If an IN for failure to vote is not paid or withdrawn, the Electoral Commissioner will issue the elector with a summons to the Magistrates Court. Even after summons are issued, the matter can be resolved without conviction (for instance, if the IN penalty is paid).

If the matter proceeds to prosecution and the elector is found guilty, the Court will impose a sentence. The Court may order the elector to pay a fine of up to 0.5 penalty units (currently \$80), plus court costs and a victim support levy. The Court is not required to impose a financial penalty, and may make a non-conviction order or good behaviour order.

For the 2020 election, 23,845 first notices were issued for failure to vote. 2,185 summons were subsequently issued in August 2021. Among these 2,185 court matters:

- in 1184 cases, the charge of failure to vote was **proven**;
- in 1000 cases, the charge of failure to vote was **not proven** (either because the elector was found not guilty, or because the penalty was paid during proceedings); and
- 1 case is ongoing.

Out of the 1184 cases in which the charge of failure to vote was **proven**, the Court ordered a financial penalty 1170 times. Each financial penalty included a fine of up to \$80, a component for court costs, and a victim support levy. The average penalty was approximately \$228.⁶ The table below lists the total value of these 1170 financial penalties, broken down by each component:

Penalty component	Total
Fine	\$93,602.00
Court costs	\$102,972.00
Victim support levy	\$70,220.00
Grand total: \$266,794.00	

The majority of the 1000 matters in which the charge of failure to vote was **not proven** were resolved because the elector paid the infringement penalty before the matter was heard. During the court proceedings in 2022, the Magistrate adjourned cases where the defendant

⁶ It should be noted that a further administrative fee can be imposed for failure to pay a court fine, consistent with section 116G of the *Crimes (Sentence Administration) Act 2005*. Extension of time to pay, and payment through instalments, can be approved under section 116K of the same Act.

attended and requested additional time to pay the \$20 penalty. These defendants were given until 5pm of the day prior to their adjourned date to contact Elections ACT to make the payment of the \$20 penalty. If payment was received, the DPP offered no evidence in support of conviction, and the matter was finalised before the Magistrate.

	2004	2008	2012	2016	2020
First notice issued	11,396	16,673	19,097	21,372	23,845
Summons issued ⁷	894	496	1,047	1882	2,185

Other infringement offences

The ACT Government currently does not consolidate data on IN matters across the MC Act, and manually counting which prosecutions are instituted following an IN is not practicable. As noted above, relatively few INs are issued under the MC Act (901 in the 2020-21 financial year).

Resource implications of prosecution

Elections ACT

The below information is a record of costs associated with printing the summons, postage (which may include registered mail costs) and an estimate of casual staffing costs. Costs associated with casual staff are only provided as an estimate as casual staff employed at the time may have also been engaged on tasks that were not directly related to non-voter administration.

In addition to the casual staffing costs, Elections ACT has historically assigned a Project Manager from permanent/temporary-contract staff. In 2020, due to the ACT lockdown and the limited availability of casual staff, the majority of the work associated with issuing the summons was completed by the Project Manager (ASO6 level, annual salary = \$93,475 plus superannuation). Costs associated with permanent staff time are not recorded by Elections ACT.

Election year	2008	2012	2016	2020
Printing of summons	\$940	\$2,020	\$2,080	\$1,800
Postage	\$1035.78	\$5,319.68	\$6,972.79	\$6,477.47
Casual staff			\$11,294.99	\$8,958.25
Total	\$1,975.78	\$7,339.68	\$21,836.04	\$17,235.72

Note: Summons packs for 2012 and 2016 were sent by registered mail. Summons packs for 2020 were sent by priority mail. Due to the ACT lockdown in September 2021, failure to vote cases were adjourned in the Magistrates Court. The postage costs associated with the 2020 summons include two additional mailouts, one in September 2021 notifying of the adjournment and one in February 2022 notifying of new court dates.

ACT Courts

Prosecutions for failure to vote make up approximately 20% of the annual lodgements for criminal proceedings in the Magistrates Court every four years (or approximately 5% overall). While these matters are a significant proportion of the lodgement count, they are

⁷ This number includes matters which were resolved prior to the hearing date.

typically less resource-intensive compared to other matters. Failure to vote proceedings are managed as a block listing over 1-3 days of Court time, noting some people may later apply to Court to have their conviction and/or sentence set aside.

ACT Courts incur some costs in recovering financial penalties imposed by Courts. ACT Courts have two staff, an ASO4 and an ASO3, who currently manage the fine enforcement process for all Court fines. Staffing and other costs (including for issuing and posting notices) are approximately \$214,000 annually, for all ACT Courts fine enforcement.

Financial penalties imposed for failure to vote are a relatively small proportion of Court fines. For example, in the 2021-22 financial year, the total value of fines imposed was approximately \$2.4million, with \$0.266 million in fines imposed for failure to vote. It should be noted that these fines are only imposed every four years.

Director of Public Prosecutions

Prosecution costs for failure to vote matters vary. For matters resolved before the first mention, for example through payment of the failure to vote infringement penalty, there is some resourcing impact for record-keeping and requesting criminal histories. Matters which proceed to hearing require further resourcing for prosecutor and paralegal time.

Part 2 (b) – alternatives to prosecution

The Assembly calls on the ACT Government to examine ‘whether and in what circumstances a fines regime would be likely to remain effective without the option to pursue a prosecution through the Courts’.

The option of prosecution is currently an important part of the ACT’s Electoral Act and MC Act IN schemes. However, some fines regimes rely on sanctions other than criminal prosecution to encourage recipients to deal with their INs and refrain from further offending. As outlined above, the primary sanction under the ACT’s parking and traffic regime is suspension of driving rights instead of prosecution.

Some jurisdictions have a stronger emphasis on alternative sanctions. In New South Wales and Victoria, driving rights may be suspended for IN offences which do not involve a vehicle,⁸ and fine defaulters may have their wages garnished and their property seized and sold, without facing prosecution for the underlying offence.⁹ On a weekly basis, the Tasmanian Government publishes the names and home addresses of people with outstanding fines.¹⁰

Alternative sanctions may be effective in the sense of strongly incentivising payment of INs, or even obtaining payment through direct methods (such as seizing and selling property). However, alternative sanctions are not necessarily more equitable than prosecution. If prosecuted and found guilty in the ACT, an offender must receive a sentence which takes into account their individual circumstances.¹¹ This allows ACT Courts to consider options for encouraging future compliance without causing undue hardship.

As described above, the majority of INs issued in the ACT can be dealt with through flexible repayment arrangements and/or waiver on the basis of hardship. These flexible arrangements will be available for a wider range of IN types by the *Magistrates Court (Infringement Notices) Amendment Act 2020*, which is due to commence in February 2024.

⁸ *Fines Act 1996* (NSW) s 66 (1), *Fines Reform Act 2014* (Vic) s 89.

⁹ *Fines Act 1996* (NSW) ss 72 and 73, *Fines Reform Act 2014* (Vic) pts 7 and 10.

¹⁰ Per the *Monetary Penalties Enforcement Act 2005* (Tas) s 65 (1).

¹¹ *Crimes (Sentencing) Act 2005* s 33 (1).