



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY
Mr Peter Cain MLA (Chair), Dr Marisa Paterson (Deputy Chair),
Mr Andrew Braddock MLA

Submission Cover Sheet

Inquiry into Penalties for Minor Offences and Vulnerable People

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

**STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY
INQUIRY INTO PENALTIES FOR MINOR OFFENCES AND VULNERABLE PEOPLE
GOVERNMENT SUBMISSION**

**Presented by
Shane Rattenbury MLA
Attorney-General
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Introduction

The ACT Government is committed to using administrative penalties¹ in a manner which achieves deterrence while avoiding undue hardship. The ACT has multiple legislative and operational schemes for issuing and enforcing administrative penalties. Each scheme has its own processes in place to reduce hardship, with varying levels of complexity. The most detailed hardship provisions and guidelines apply to parking and traffic infringements, which represent the vast majority of administrative penalties issued.

As highlighted by the Inquiry's terms of reference, financial penalties carry a risk of inequitable outcomes for marginalised communities. The ACT Government is committed to ensuring that the ACT's infringement notice schemes support equity and address hardship, while supporting effective enforcement.

Administrative penalty frameworks

On 24 March 2022 the Legislative Assembly passed a resolution calling on the ACT Government to report on prosecution of minor offences following non-payment of administrative penalties. The Government Response tabled on 21 September 2022 (**the Response**) noted the following points, which remain current.

- The vast majority of administrative penalties are for **parking and traffic** offences.
 - There are detailed formal guidelines in place under the *Road Transport (General) Act 1999* for considering hardship in enforcement of parking and traffic penalties.
 - Options for dealing with parking and traffic penalties include waiver, payment plans, and entering into an approved community work or social development program.
- Following each ACT election, a significant number of administrative penalties are issued for **failure to vote**.
 - The penalty for failure to vote is very low (\$20).
 - Multiple notices are issued before prosecution is initiated.
 - Where a person gives a valid and sufficient reason for failing to vote, no offence will have been committed and no further action will be taken.²
 - Where a person requests an extension of time to pay due to difficult financial circumstances, Elections ACT works with the person to monitor payments and issue reminders.
- A relatively low number of administrative penalties are issued annually for **miscellaneous offences** under the *Magistrates Court Act 1930*.
 - Existing options to limit hardship include options for extension of time to pay.
 - Under the *Magistrates Court (Infringement Notices) Amendment Act 2020*, from February 2024 hardship options modelled on those available for parking and traffic penalties – waiver, payment plans, and approved community work or social development in lieu of payment – will be available for these penalties.
- It is uncommon for matters to be referred for prosecution following non-payment of administrative penalties. Where they do occur, these prosecutions are not for non-payment of fines: they are prosecutions for the conduct in respect of which an administrative penalty was issued.

¹ This Submission uses the term 'administrative penalties', consistent with the Inquiry's Terms of Reference, as an umbrella term for fines issued administratively rather than by a court following criminal prosecution.

² *Electoral Act 1992* (ACT), Section 129

A copy of the Response, which provides further detail on these issues, can be accessed [here](#).

[Impact of administrative penalties on vulnerable people](#)

Issuing administrative penalties for minor offences is an early intervention option to discourage further offending and offer the recipient an opportunity to avoid prosecution by paying a relatively modest penalty amount (usually 20% of the maximum penalty for the offence).

Recipients of administrative penalties may provide information about their personal circumstances, for example, in support of requests for waiver or extension of time to pay. However, the ACT Government does not routinely collect or collate demographic data on recipients of administrative penalties.

The following data is available for the 2021-22 financial year.

- 221,070 parking and traffic infringement notices were issued. Of these, 8,324 were withdrawn and 485 were waived.
- Over 12,400 plans were established to pay parking and traffic infringement notices by instalment, and a further 89 plans were established to work off parking and traffic infringement notices through approved community work or social development program participation, representing over 26,600 infringements and more than \$8.5 million.
- No notices were issued for failure to vote.
- 1,013 notices were issued under the *Magistrates Court Act 1930* scheme. Some of these notices would have been issued to corporations (for example, for work health and safety offences). However, this data is not disaggregated.

As described in the Response, hardship provisions and/or processes apply to each framework under which administrative penalties are issued in the ACT. The most detailed formal guidelines apply under the *Road Transport (General) Act 1999* because parking and traffic infringements represent the vast majority of administrative penalties. The *Magistrates Court (Infringement Notices) Amendment Act 2020*, which commences in February 2024, makes the same hardship options available for parking and traffic offences to infringement notices issued under the *Magistrates Court Act*.

[Prosecution following non-payment of fines and alternatives to prosecution](#)

In the ACT there is a low rate of prosecution following non-payment of administrative penalties, and the options to avoid prosecution (for example, parking and traffic infringements can be paid in instalments of as little as \$10 per fortnight).

For parking and traffic matters, 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.

Prosecutions following failure to vote are relatively more common, but late payments are accepted even after summons have been issued. This further reduces the proportion of matters that proceed through the criminal justice system. For example, for the 2020 election, 23,845 first notices were issued for failure to vote. 2,185 summons were subsequently issued. Of these 998 were resolved either prior to, or during, the court hearing with charges being withdrawn due to payment of the \$20 penalty for failure to vote, or provision of a reason, and supporting documentation, considered to be valid and sufficient.

Administrative penalties are one of a range of tools available to deter and address minor offending. Access Canberra has a compliance framework which relies on three key steps -

engage, educate and enforce. Further information on Access Canberra's Accountability Commitment can be found [here](#).

As described in the Response, other jurisdictions use a range of alternatives to prosecution following non-payment of administrative penalties. These can include suspension of driving rights for non-vehicular offences, and publication of the names and addresses of people who have not paid their administrative penalties. As noted at page 6 of the Response:

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.³ This allows ACT Courts to consider options for encouraging future compliance without causing undue hardship. Further details on these issues is detailed in the Response.

Pending legislative reforms

As described in the Response, and above, the *Magistrates Court (Infringement Notices) Amendment Act 2020* will introduce options which mirror the hardship options available for parking and traffic offences. The ACT Government is currently preparing for implementation of these changes.

The *Drugs of Dependence (Personal Use) Amendment Act 2022* will commence on 28 October 2023. It will reduce penalties for possessing small amounts of some illicit drugs for personal use. Instead of a possible prison sentence, a person may be given a simple drug offence notice and choose to either pay a \$100 penalty or attend an assessment and harm reduction session, which might result in referral to voluntary treatment if appropriate.

The Government amendments to the original *Drugs of Dependence (Personal Use) Amendment Bill 2021* ensured that a person issued with a simple drug offence notice could choose to attend an assessment and harm reduction session through the existing Illicit Drug Diversion program instead of paying the \$100 penalty. This means that those experiencing financial hardship have an alternative to payment available to them.

³ *Crimes (Sentencing) Act 2005* s 33 (1).