

SPECIAL CIRCUMSTANCES INFRINGEMENT REVIEW



**A MODEL OPERATING POLICY
FOR ENFORCEMENT AGENCIES
FEBRUARY 2014**



Global Compact
Cities Programme



CITY OF MELBOURNE

PROJECT PARTICIPANTS



PREFACE

Background

Under the *Infringements Act 2006*, a person may apply for internal review of an infringement notice before the infringement is lodged for enforcement. One of the grounds upon which a person may apply to the issuing enforcement agency for internal review is special circumstances.

The recognition of special circumstances in the *Infringements Act 2006* is to ensure that certain members of the community are not unfairly caught up in the infringement system, through providing flexibility in the system so that the special circumstance can be considered.

Navigating the infringements system can be complex for people with special circumstances. People with special circumstances are often highly marginalised and may face additional issues such as financial hardship, illiteracy, language barriers and/or family violence, which may influence their ability to engage with the infringements system.

The aim of the special circumstances provision is to divert from the criminal justice system people who cannot control or understand the nature or consequences of their behaviour.

When considering an application for internal review on the grounds of special circumstances, it is the responsibility of an enforcement agency to:

- a) specifically consider the aim to divert people who have special circumstances from the criminal justice system
- b) be reasonably satisfied that an internal review applicant has special circumstances
- c) evaluate written evidence provided in support of the special circumstances application
- d) consider the extent to which the written evidence confirms the existence of special circumstances, including a connection with the behaviour which resulted in the infringement.

Project origins

The City of Melbourne, in conjunction with the United Nations Global Compact Cities Programme, convened a working group comprising other enforcement agencies, the Department of Justice, the Magistrates' Court, community lawyers and financial counsellors to create an operating policy for enforcement agencies to use when internally reviewing a special circumstances application.

Objective of the operating policy

The *Attorney-General's Guidelines to the Infringements Act 2006* stipulates agencies are to have in place operational guidelines to assist them in understanding and considering applications for special circumstances.

The overarching objective of the operating policy is to:

- a) improve the internal review process for people with special circumstances
- b) assist enforcement agencies and applicants to comply with their legal responsibilities under the *Infringements Act 2006* and the requirements of procedural fairness
- c) provide a guidance framework for enforcement agencies in dealing with special circumstances internal review applications to promote transparency and consistency in decision making
- d) afford consideration to the common difficulties experienced by people with special circumstances
- e) outline the information required to be submitted for an application to be considered in full.

The operating policy is not binding. It seeks to encourage consistent processes and provide greater clarity about acceptable evidence, but acknowledges that matters still need to be decided on a case by case basis. Each enforcement agency will consider the application submitted and apply its discretion in choosing from the available decisions under the *Infringements Act 2006*.

Working group participants

City of Melbourne

Justice Connect Homeless Law

Maribyrnong City Council

Odyssey House Victoria

State Trustees Ltd

United Nations Global Compact Cities Programme

Victoria Police

Wyndham City Council

Youthlaw, Young People's Legal Rights Centre Inc.

Special thanks to the Department of Justice, the Melbourne Magistrates' Court, Federation of Community Legal Centres (Vic) Inc, Victoria Legal Aid and Public Transport Victoria for the input provided by their representatives.

OPERATING POLICY FOR ENFORCEMENT AGENCIES

1. Glossary of terms

Applicant refers to a person who has made an internal review application on the basis of special circumstances.

Application refers to an internal review application made on the basis of special circumstances.

Conduct refers to an applicant's behaviour that led to an infringement notice being issued by an enforcement agency.

Enforcement agency refers to any agency capable of issuing an infringement notice pursuant to the *Infringements Act 2006*.

Practitioner refers to a person providing evidence in support of an application.

Relevant condition refers to the conditions noted in the definition of special circumstances in the *Infringements Act 2006* (i.e. mental or intellectual disability, disorder, disease or illness; serious addiction to drugs, alcohol or a volatile substance; or homelessness).

Representative refers to an individual and/or organisation that an applicant engages to act on their behalf, as evidenced by a written authority to act.

Reviewer refers to the representative of the enforcement agency responsible for reviewing an internal review application.

Special circumstances has the same meaning as provided for under the *Infringements Act 2006*:

Special circumstances, in relation to a person means:

- 1) 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

- (ii) to control conduct that constitutes an offence; or
- 2) 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
- 3) 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.

2. Relevant legislation

Commonwealth and Victorian legislation relevant to this operating policy include:

- a) *Infringements Act 2006*
- b) Infringements (Reporting and Prescribed Details and Forms) Regulations 2006
- c) Infringements (General) Regulations 2006
- d) *Drugs, Poisons and Controlled Substances Act 1981*
- e) *Supported Accommodation Assistance Act 1994 (Cth)*
- f) *Charter of Human Rights and Responsibilities 2006 Act*.

3. Information for applicants

Enforcement agencies will ensure that their materials (including internal review application forms, fact sheets and website information) clearly inform applicants that any unsuccessful special circumstances applications will be referred to the Magistrates' Court.

4. Internal review decision making process

The reviewer will consider the following guiding questions when determining whether special circumstances apply:

- a) On the balance of probabilities, is it *more likely than not* that the applicant had a relevant condition at the time of the offence?
- b) Is it *more likely than not* that because of the relevant condition:
 - (i) in the case of mental illness and addiction, the applicant was unable to understand or control the conduct; and/or
 - (ii) in the case of homelessness, the applicant was unable to control the conduct.
- c) What action should be taken with respect to the infringement?

At the date of this document, the available options under the *Infringements Act 2006* are to:

- (i) confirm the decision to issue the infringement notice and refer the matter to court;
 - (ii) withdraw the infringement notice and take no further action; or
 - (iii) withdraw the infringement notice and issue an official warning.
- d) Before taking the actions in part 4c (i) above, the reviewer will consider whether it is appropriate to request more evidence in accordance with part 8 of the model operating policy.

5. Acceptable evidence

- a) Acceptable evidence is capable of confirming the existence of a relevant condition and linking that condition to the conduct (i.e. establishing the existence of special circumstances).
- b) Reports attesting to special circumstances can be accepted from relevant practitioners, including but not limited to:
 - (i) in the case of an application based on a mental or intellectual disability, disorder, disease or illness: a general practitioner, case manager, psychiatrist, psychologist or psychiatric nurse.
 - (ii) in the case of an application based on a serious alcohol or drug dependency condition: a general practitioner, case manager, psychiatrist, psychologist, accredited drug treatment agency or accredited drug counsellor.
 - (iii) in the case of an application based on homelessness: a case worker, case manager, agency funded under the *Supported Accommodation Assistance Act 1994* or other health or community welfare service provider (e.g. Salvation Army, Jesuit Social Services).

- c) The amount of evidence required does not increase where the applicant is seeking review of multiple infringement notices concurrently.

6. Content of practitioner's evidence

Where it is within their knowledge, a practitioner should include the following information:

- a) The practitioner's qualification and relationship with the applicant, including the period of engagement between the practitioner and applicant.
- b) The nature, severity and duration of the applicant's relevant condition (e.g. mental illness, intellectual disability, addiction, homelessness) or symptoms:
 - (i) reported by the applicant to the practitioner; and/or
 - (ii) observed by the practitioner.
- c) Whether the applicant was experiencing symptoms of the relevant condition at the time the offence was committed.
- d) Whether, in the opinion of the practitioner, it is more likely than not that the symptoms of the applicant's relevant condition:
 - (i) in the case of mental illness and addiction, would have meant that the applicant was unable to understand or control the conduct; and/or
 - (ii) in the case of homelessness, would have meant that the applicant was unable to control the conduct.

The above information is a guide only. Absence of any of the items would not preclude the enforcement agency from considering applications if the overall evidence is sufficient.

7. Timing of evidence

- a) A practitioner's report will be regarded as current if it is dated within 12 months of the date of the applicant's request for internal review. Enforcement agencies should maintain discretion to accept evidence outside the 12 month period.
- b) Due to the lifetime nature of the condition, documentation evidencing intellectual disability does not need to be dated within 12 months of the date of the applicant's request for internal review.

8. Request for further information

- a) Where the reviewer determines that the application does not provide sufficient evidence to establish special circumstances, an enforcement agency may contact the applicant requesting further information.
- b) Requests for further information should:
 - (i) identify the nature of the further information required to establish that special circumstances apply to the applicant
 - (ii) stipulate the period of time further information must be received by the enforcement agency
 - (iii) inform the applicant that if the additional information is not received within the prescribed time or does not satisfy the enforcement agency that the infringement notice should be withdrawn, the application may be unsuccessful and the matter will be referred to the Magistrates' Court.

9. Review and evaluation

The operating policy should be reviewed and evaluated in 12 months.

How to contact the City of Melbourne

Online: melbourne.vic.gov.au

Telephone: 03 9658 9658

7.30am to 6pm, Monday to Friday

(Public holidays excluded)

Translation services

03 9280 0716	አማርኛ
03 9280 0717	廣東話
03 9280 0718	Ελληνικά
03 9280 0719	Bahasa Indonesia
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03 9280 0722	Soomaali
03 9280 0723	Español
03 9280 0724	Türkçe
03 9280 0725	Việt Ngữ
03 9280 0726	All other languages

National Relay Service: If you are deaf, hearing impaired or speech impaired, call us via the National Relay Service:

Teletypewriter (TTY) users phone

1300 555 727 then ask for

03 9658 9658

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In person

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CITY OF MELBOURNE