

NSW Police Force
Internal Review Guidelines
For Penalty Notices
under the
Fines Act 1996.

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NSW Police Force

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How to use this Guideline

Part 3 Division 2A of the *Fines Act* 1996 sets out that a person may request that an agency that issued a penalty notice review that decision. Agencies can arrange for the State Debt Recovery Office (SDRO) to carry out the review on their behalf. The SDRO is the primary reviewing agency for most penalty notices issued by the New South Wales Police Force.

These Guidelines establish when and the manner in which the NSW Police Force (NSWPF) will conduct an internal review of a penalty notice, including a penalty notice issued for Criminal Infringement Notice (CIN) offences (see Appendix C: Schedule 3 *Criminal Procedure Regulation* 2010 for CIN offences).

The NSWPF has adopted the 'Internal Review Guidelines' issued by the Department of Attorney General and Justice (DAGJ) under s 120 of the *Fines Act* (the AG Guidelines) and the 'SDRO Review Guidelines' issued by the State Debt Recovery Office (SDRO) (SDRO Guidelines) in conducting its reviews.

The AG and SDRO Guidelines should be read in conjunction with these Guidelines to provide clear guidance to NSWPF officers responsible for the review of penalty notices.

1. Purpose and scope of internal review

The purpose of an internal review is to determine, on the available evidence, whether a penalty notice was correctly issued and whether any circumstances warrant the withdrawal of the penalty notice. The review permits the NSWPF to consider extenuating circumstances that existed but which were not apparent at the time the penalty notice was issued.

The internal review is intended to be a quick and easy response to substantive changes in facts or circumstances and divert vulnerable groups out of the penalty notice system. It provides the NSWPF with a broad discretion to review a penalty notice, including the option to withdraw a penalty notice on practical and compassionate grounds that do not necessarily require a nexus with offending.

The grounds that will be considered during the review are outlined below in 'Matters to be taken into account on review' and in the AG and SDRO Guidelines. The internal review will also allow the NSWPF to identify early those cases where prosecution of a penalty notice is inappropriate and/or unlikely to be successful.

The NSWPF previously applied its Withdrawal Policy to the conduct of an internal review. That process was unnecessarily protracted and it was difficult for the NSWPF to comply with the statutory timeframes in which an internal review must be conducted. The Withdrawal Policy no longer applies to an internal review of a penalty notice.

However, where a person has elected to have a penalty noticed determined by a court, these internal review guidelines will not apply. Any representations in respect to the withdrawal of proceedings before a court will be dealt with in accordance with the NSWPF Withdrawal Policy.

3. Poor Performance and misconduct

Where an application for internal review raises allegations of poor performance or misconduct by a police officer, this will require separate investigation in accordance with performance management and complaint management guidelines.

4. How a review may be requested?

A person may seek a review of a Penalty Notice by contacting the SDRO in one of the ways outlined on page 4 of the SDRO Guidelines.

The NSWPF may review a penalty notice on its own motion in accordance with these guidelines. Requests for review made by members of the NSWPF are to be sent by report to the Commander or equivalent of the officer who issued the penalty notice.

If an application for review is lodged directly with the NSWPF it is important that the SDRO is advised quickly of the existence of a review request so that enforcement action can be suspended. The easiest method is to forward these requests to the SDRO.

5. Who will conduct the Review?

The NSWPF has entered into an agreement with the SDRO which permits the SDRO, in accordance with the SDRO Guidelines, to act as the primary reviewing agency of penalty notices issued by the NSWPF. When the SDRO conducts the review, it may seek a recommendation from the NSWPF to help it make its decision.

The NSWPF retains its discretion to conduct the review itself and make the final decision about an internal review. Where the SDRO is conducting the review, the NSWPF may of its own motion make recommendations to the SDRO in relation to any penalty notice issued by the NSWPF. Such instructions to the SDRO must be in writing and must be authorised by the Local Area Commander or equivalent.

The payment or enforcement of a penalty notice for certain offences may carry with it additional sanctions that affect a licence or entitlement of the person. The SDRO may need to seek clarification or additional information from the NSWPF in conducting its review for these matters. For example, penalty notices issued by the Security Licensing Enforcement Directorate (SLED) may impact on the entitlement of a person to carry on a particular trade or business. The SDRO will seek advice from SLED before making a decision to withdraw any penalty notice issued by that Directorate. The NSWPF may from time to time establish such arrangements with the SDRO.

Where the SDRO seeks this additional information, the SDRO will generally send a report to the issuing officer (or the officer's commander or manager) who issued the infringement notice and ask for his or her recommendation. The issuing officer is to respond to the SDRO via his or her commander or manager in the usual way. The SDRO will then conduct the review and it will make the final determination.

A different rule applies to the penalty notice if it is a Criminal Infringement Notice (CIN). The *Criminal Procedure Act* 1986 requires an Inspector or above to make the decision to withdraw a CIN. For this reason the SDRO will refer all applications for the withdrawal of CINs to the NSWPF for determination as outlined in the SDRO Guidelines.

The NSWPF Internal Review Guidelines have been developed to establish how the NSWPF will conduct an internal review of a penalty notice (primarily CINs) where the

SDRO has determined it will not conduct the review or the NSWPF has elected to conduct the review.

The appropriate officer to conduct the review in accordance with Part 3, Division 2A of the *Fines Act* and Part 3 of the *Criminal Procedure Act 1986* is:

- For all penalty notices, the internal review must be conducted by a person who was not involved in making the decision to issue the penalty notice.
- For all penalty notices, the person who issued the penalty notice must not be the manager or superior of the person conducting the review or have an actual or perceived conflict of interest.
- However, where the penalty notice is a CIN, any decision to withdraw the CIN may only be made by a senior police officer. A senior officer is defined for this purpose in s332 *Criminal Procedure Act 1986* to be a Local Area Commander, Duty Officer or any other police officer of the rank of Inspector or above.

If the SDRO asked the NSWPF to conduct the internal review of a penalty notice or the NSWPF elects to conduct the review itself, the issuing officer's Commander or equivalent must determine who the appropriate reviewing officer is having regard to this policy.

6. Matters to be taken into account on review

S 24E of the *Fines Act 1996* provides the reviewing agency must withdraw a penalty notice if any of the following grounds are found:

- (a) the penalty notice was issued contrary to law,
- (b) the issue of the penalty notice involved a mistake of identity,
- (c) the penalty notice should not have been issued, having regard to the exceptional circumstances relating to the offence,
- (d) the person to whom the penalty notice was issued is unable, because the person has an intellectual disability, a mental illness, a cognitive impairment or is homeless:
 - (i) to understand that the person's conduct constituted an offence, or
 - (ii) to control such conduct,
- (e) an official caution should have been given instead of a penalty notice,
- (f) any other ground prescribed by the regulations.

Although the paragraphs (a) to (f) are self explanatory, further information is available in the AG's guidelines (Appendix A to this guideline). Paragraphs (b) and (d) may require the following more specific information to be obtained or enquiries to be made.

The requirement to withdraw a penalty notice on the basis of a mistake of identity in (b) above refers to the circumstance where the penalty notice is issued to an offender on the basis of the identification particulars supplied by the offender. These particulars are usually provided at the time and place where the offender is spoken to about the offence. Where an offender produces the identification of another person, this may result in enforcement action being taken against an innocent person who then seeks a review on the basis of a mistake of identification. Generally this issue can be quickly

resolved (perhaps by the issuing officer meeting the person who seeks the review) by confirming whether or not they are the person the enforcement action is intended to be directed to. Attempts can then be made to establish the correct identity of the offender.

Further action may be taken in relation to the person who provided the fraudulent identification information.

The requirement to withdraw the penalty notice on the basis of a person's intellectual disability, a mental illness, a cognitive impairment or is homeless in (d) above is based on a nexus between the person's relevant condition and their ability to understand or control their conduct. The reviewing officer is not expected to have the knowledge or expertise to establish this medical condition. The reviewing officer should require the person seeking the review to establish this nexus by providing sufficient additional information reported on official letter head from a medical practitioner, supporting agency or government department as outlined on page 11 of the SDRO guidelines.

Note: If relevant to the person's ability to drive a motor vehicle, such information may be referred to the RMS in relation to the person's 'fitness to drive'.

Generally, it will not be necessary to seek legal advice to resolve these factual or discretionary grounds for reviewing a penalty notice.

7. Material to be used to determine Applications

The reviewing officer must have regard to the written application and wherever possible, to any other statement or other information provided by the applicant, such as medical, psychological or case worker reports.

The reviewing officer may request additional information from the applicant. The review can be completed without the additional information requested if it is not provided within 14 days of the request.

This policy does not require the reviewing officer to obtain a report from the issuing officer on every occasion. This is consistent with the purpose of the internal review. For example, a report does not need to be requested from the officer who issued the penalty notice if all the matters on which the application conflicts with the issuing officer's evidence are the subject of express notes made by the issuing officer at or around the time the penalty notice was issued. Examples of notes that may be used include the issuing officer's notebook, the information recorded in the police copy of the penalty notice or in the related COPS entry.

However, where the application for internal review contains information that significantly conflicts with the evidence presented by the issuing officer and this is considered material to the offence, a report should be requested from the issuing officer. Such reports should be retained and filed with the application.

Note: The quick and easy resolution of the internal review will not generally require the provision of statements or a brief of evidence. For this reason it will not generally be necessary to seek legal advice to complete the review. Commands who implement local arrangements requiring briefs of evidence or reports from issuing officers must ensure that care is taken not to extend the statutory timeframe for completing these reviews.

8. Outcome of Review and Statutory Timeframe

The reviewing officer is to notify the SDRO in writing of the outcome of the review within 28 days of receipt of the review via report to their Commander or equivalent. The outcome should state either; penalty to stand; withdrawn or; caution issued.

If the reviewing officer requested further information from the applicant, the outcome of the review is to be forwarded to the SDRO within 42 days. These times frames are important as the *Fines Act* 1996 requires the SDRO to notify the applicant of the outcome of the review within 42 days of its receipt of the application (or 56 days if further information was sought from the applicant).

The reviewing officer may confirm the decision to issue the penalty notice or may withdraw the penalty notice. Short reasons are to be provided to the SDRO if the decision is made to confirm the penalty notice. The reasons should contain enough detail to allow the SDRO to clearly communicate the reasons for the decision to the applicant.

Where the application disputes liability for the offence on the basis of a disagreement about the evidence relied upon by the issuing officer, and after review there is no reason to doubt the evidence provided by the issuing officer, the application may be declined.

The reviewing officer also has discretion to, if it is considered appropriate to do so, give a caution to the person. The DAGJ has issued cautioning guidelines for penalty notices. Those guidelines do not apply if the penalty notice was issued by a police officer. They will apply if the penalty notice was issued by a non sworn member of the NSWPF.

Send the outcome of the internal review to the SDRO via the email address below.

The SDRO will notify the applicant of the outcome of the review and take the appropriate action in respect of the continued enforcement or withdrawal of the penalty notice.

9. SDRO contacts:

Contact details removed due to these details being for internal use only.

Policy Review: This policy is to be reviewed 12 months after it commences.

Appendix

- A [‘Internal Review Guidelines’ under the *Fines Act 1996*, issued by the Department of Attorney General and Justice](#)
- B [‘SDRO Review Guidelines’ issued by the State Debt Recovery Office](#)
- C Criminal Infringement Notice offences. (link to CIN list)

Column 1	Column 2
Offence	Amount of penalty
Crimes Act 1900	
Stealing section 117 , if value of property or amount does not exceed \$300	\$300
GIC section 527C (1)	\$350
Summary Offences Act 1988	
Offensive Conduct section 4 (1)	\$200
Offensive Language section 4A (1)	\$150
Obstructing Traffic section 6	\$200
Unlawful entry of vehicle or boat section 6A	\$250
Intoxication in public section 9	\$200