

PENALTY NOTICE AND CAUTION POLICY

This document is to be used when undertaking onroad activities or compliance investigations where an infringement or caution is being recommended.

1. Introduction

This policy is intended to provide assistance to Compliance Officers when issuing penalty notices to people in breach of the *Passenger Transport Act 1990 (the Act)* or associated Regulations.

The purpose of this policy is to provide consistency in enforcement actions for non-compliance, to ensure:

- transparency in each action;
- procedural fairness and natural justice are applied in each case; and
- enforcement action is proportionate to the alleged offence in each case.

Compliance officers are responsible for the accurate completion of every notice issued. Particular care must be taken to ensure that true and correct facts are recorded and all the evidence is available to substantiate any charge.

Every detected breach of the Act or associated Regulations must be dealt with by issuing either a Caution or Penalty Notice.

2. Fraud and Corruption Prevention Policy

The Department of Transport (the Department) will **not** tolerate corrupt conduct.

The Department is committed to dealing effectively with identified and potential threats of fraud and corruption. Fraud and corruption are an ever present threat to public officials and therefore must be a concern to all Compliance Officers.

Departmental officers are not permitted to accept bribes or inducements (no matter how trivial these may be). Departmental officers are expected to act honestly and with impartiality as public officers.

Corrupt conduct can involve:

- dishonest or partial use of official power or position;
- a breach of public trust ; or
- misuse of information or material acquired in the course of official duties.

Corrupt conduct also includes the conduct of people who are not public officials and the conduct of former public officials, where their behaviour could adversely affect the impartial or honest exercise of official functions. Corrupt conduct is a deliberate or intentional act, **not** negligence or a mistake.

It is the Department's policy to report any suspected corrupt conduct to the ICAC and/or the NSW Police.

Officers should ensure that they have read and understood the Department's Fraud and Corruption Prevention Policy available on the Intranet- <http://intranet/guides/>.

3. Issuing a Penalty Notice

When considering issuing a penalty notice, several issues need to be taken into consideration. Refer to the Guidelines for Cautions issued by the Attorney General under the *Fines Act 1996*. In general, follow these guidelines:

- Consider each situation on its merits.
- Ensure you have established a **PRIMA FACIE case** (there are reasonable grounds to believe that an offence has been committed) and that you have all the evidence necessary to substantiate the offence ie that an offence for which a penalty notice can be issued has been committed.
- Be consistent.
- Be accurate.
- Be obvious and clear about issuing the penalty.
- Be impartial.
- If any doubt exists – DO NOT ISSUE a penalty notice.

Penalty notices can be issued during onroad activities or following an investigation. However, officers should **not** issue a Penalty Notice for an offence more than **three months** after the date on which the offence occurred, without the prior approval of the Team Leader. In some cases it may be more appropriate to proceed by way of summons where the three month time limit has been exceeded. (*Penalties issued under the Passenger Transport Act 1990 and Passenger Transport Regulations 2007 are 12 month statute limited.*)

The issue of Penalty Notices to an alleged offender is restricted to a maximum of three (3) Notices at any one time. If more than three offences are detected for which a Penalty Notice can be issued, all matters will be dealt with by summons and court action.

4. Completing a Penalty Notice

- Be clear and concise about the offence for which the Notice is issued.
- Ensure all relevant information is correctly included on the Penalty Notice.
- Ensure the correct offence and regulation codes are recorded on the Penalty Notice.
- Ensure the short title of the offence wording is the same as that set out in the fixed penalty hand book.
- Check the correct day, date and time.
- A complete description of the offence **must** be completed.
- The client code and client edit code **must** be completed.

When issuing an electronically generated penalty notice by post, a notice of explanation **must** be included with the penalty notice.

5. Cautions

Authorised Departmental officers who are delegated to issue penalty notices may issue cautions in certain instances. The *Fines Act 1996* states that a caution may be given if the officer believes:

- The offence is one for which a penalty notice may be issued;
- The issuing officer has reasonable grounds to believe that an offence has been committed; and
- The issuing officer believes it is appropriate to give a caution in the circumstances.

Issuing Cautions

Matters that should be taken into account when deciding whether it is appropriate to issue a caution instead of a penalty notice include:

- a) The incident did not involve risks to public safety, damage to property or financial loss, or have a significant impact on other members of the public.
- b) The behaviour is at the lower end of the seriousness scale for that offence or is minor in nature. (For example, where there are signs prohibiting eating and drinking in a train carriage, and a person is observed eating a meal in a sensible and tidy manner.)
- c) The person did not knowingly or deliberately commit the offence.
- d) The person is co-operative and/or complies with a request to stop the offending conduct.
- e) It is otherwise reasonable, in all the circumstances of the case, to give the person a caution.

The fact that one or more of the above factors is present does not mean that the officer is obliged to issue a caution. All the circumstances of the situation/case should be taken into account to determine whether a caution is an appropriate and reasonable response to the offence.

In deciding whether to give a person a caution, the officer must exercise discretion, based on the facts of each individual case.

A caution must only be given if there are reasonable grounds to believe that an offence has been committed. This is the same test used when deciding whether or not to issue a penalty notice.

In deciding whether to issue a caution, it may be relevant to consider whether the person has been issued with a caution for the same or similar offence before. However, the fact that someone has been issued with a caution previously does not mean that they cannot be given another caution. (Refer to *Guidelines for Cautions* issued by the Attorney General under the *Fines Act 1996*.)

When not to issue a Caution

An officer must **not** give a caution if they are not able to issue the person with a penalty notice for the same offence.

It is **not** intended that a person should receive a caution and a penalty notice for the same offence. Officers should decide the most appropriate response, given the circumstances of the case.

However, it is considered that regardless of the circumstances, matters of a serious nature and those which pose a risk to public safety will **always** incur a penalty notice.

Recording Cautions

When a caution is issued it MUST be clearly documented in the Compliance tab in TIMS and on the appropriate file. The record should include:

- a) date of the caution;
- b) name of the officer who issued the caution;
- c) offence for which the caution was issued;
- d) details of the person issued the caution.
- e) time, date and place of the offence.

When a written caution is issued, it should clearly state that further offences of this type may incur a penalty notice.

Only the person involved in the offence is to receive a copy of the caution. **Under no circumstances is any other person to receive notification.**

In the event of any inconsistency between this policy and the Fines Act 1996, the Fines Act 1996 prevails.