

MAKING BY-LAWS (4)

PENALTIES AND INFRINGEMENT NOTICES - THE MONETARY PENALTIES ENFORCEMENT ACT 2005

GOOD PRACTICE GUIDELINES
October 11

Note: This information sheet should be read in conjunction with the other information sheets in this series:

- **Making By-laws (1):** Part 11 of the *Local Government Act 1993*
- **Making By-laws (2):** Steps in making a by-law
- **Making By-laws (3):** Regulatory Impact Statements Section 156A *Local Government Act 1993*
- **Making By-laws (4):** Penalties and Infringement Notices - The *Monetary Penalties Enforcement Act 2005*
- **Making By-laws (5):** Tabling a by-law in parliament & the requirements of the Standing Committee on Subordinate Legislation
- **Making By-laws (6):** Making a by-law for which a Regulatory Impact Statement is not required

How to ensure infringement notice provisions comply with the *Monetary Penalties Enforcement Act 2005*

It is important that all by-laws and infringement notices issued under by-laws are consistent with the *Monetary Penalties Enforcement Act 2005* (MPEA). If by-laws and infringement notices do not comply with the MPEA, penalties imposed under the by-law may be unenforceable.

Legislative requirements: By-laws and infringement notices

By-laws

Section 149 of the *Local Government Act 1993* (the Act) states that by-laws may provide that a council:

- may issue infringement notices in respect of offences specified in the by-laws
- may issue one infringement notice in respect of more than one offence
- may impose a monetary penalty for an offence in respect of which an infringement notice is issued.

Section 149 also provides that a by-law which provides for the issue of an infringement notice and monetary penalty is to specify:

- the amount of the monetary penalty
- the person who may issue a notice of infringement
- the person to whom payment of the monetary penalty may be made
- the period within which the monetary penalty is to be paid in order to avoid the infringement notice being referred to the Director of the Monetary Penalties Enforcement Service.

Infringement notices

Section 149(4) states that an infringement notice is to be in accordance with section 14 of the MPEA.

Section 14 of the MPEA requires that an infringement notice is to:

- specify the offence or offences in respect of which it is served
- specify the prescribed penalty or penalties that are applicable
- specify the total amount payable if the notice relates to more than one offence
- specify the payment procedures available
- specify any other details prescribed under the MPEA or the Act that creates the offence.
- inform the person on whom it is served that if he or she wishes to have any of the offences heard and determined by a court, he or she must lodge (with the council) a notice of election in accordance with the MPEA within 28 days of the service of the infringement notice
- inform the person on whom it is served that if he or she does not lodge a notice of election within 28 days of the service of the infringement notice and the infringement notice is not withdrawn, he or she will be taken to be convicted of the offence or offences set out in the infringement notice and the monetary penalty set out in the infringement notice may be enforced under the MPEA.

Compliance

To ensure compliance with these requirements, it is recommended that councils develop a standard form for an infringement notice.

It is good practice to incorporate the MPEA into a by-law by way of a general clause such as the following:

“The *Monetary Penalties Enforcement Act 2005* applies to an infringement notice issued under this by-law.”

This is preferable to directly quoting certain sections of the MPEA within a by-law, such as section 17 which outlines the options for dealing with an infringement notice that is issued by a council. Direct replication of the provisions of sections of the MPEA, although it may be useful for providing information for those who are unfamiliar with the MPEA, would result in inconsistency if the MPEA were amended. Amendments to the by-law itself would be necessary in that situation.

Example of infringement notice provisions in by-laws

The model provisions in the *Local Government (Amendment of By-laws) Order 2008* and *2009* provide a useful example for councils who may be drafting penalty and infringement notice provisions. Also, an example of good practice is attached to this information sheet.

Please note that a council drafting a new by-law should always seek independent legal advice to ensure that the suggested template is appropriate for the specific by-law in question.

Common difficulties

There are some common difficulties faced by councils in ensuring that by-laws are compliant with the MPEA and in developing penalties that make the best use of the infringement notice system. These are discussed below.

Failing to specify offences

A common problem is the failure to adequately specify individual offences and the relevant maximum and infringement notice penalties for those offences. The approach set out earlier in this information sheet is the simplest and clearest way of setting out the infringement notice offences and penalties. Maximum penalties should be specified in the clause in which the offence is created, for example:

- x. A person must not participate in an organised sport, contest or game in a public reserve without approval from the general manager.

Penalty: A fine not exceeding 4 penalty units.

The relevant part of the schedule to the by-law could read:

Column 1 Clause	Column 2 General description of offence	Column 3 Infringement notice penalty (penalty units)
x	Organised sport in a reserve without approval	1

Penalty amounts

Part of the incentive of the infringement notice system is that the penalty imposed by an infringement notice is set at an amount somewhat lower than a person might expect should the matter go to court.

If an infringement notice specifies the maximum penalty for an offence, a person is likely to be better off having the offence heard in court where he or she may be fined a lesser amount.

It is recommended that an infringement notice penalty be set at approximately 25 per cent of the maximum penalty for the offence in question.

Reduced penalties for early payment

It is recommended that discounts for early payment only be used in relation to high volume infringement notices and where they have been effective in the past. If a council wishes to specify a reduced penalty for early payment, it could add an additional column to the sample schedule, as follows:

Column 1 Clause	Column 2 General description of offence	Column 3 Infringement notice penalty (penalty units)	Column 4 Reduced penalty if paid to council within 14 days of date of infringement notice (penalty units)
x	Organised sport in a reserve without approval	1	0.5

Continuing offences

A number of by-laws prescribe continuing penalties – a daily penalty that accumulates while the offence continues. Any daily rate can only apply up to the time the infringement notice is written, as the infringement notice must state an actual amount. As such, it is best not to deal with continuing offences by infringement notice.

Recovery of debt through civil action

If a council wishes to retain the ability to take civil action to recover a debt as well as action under the MPEA, they could insert a subclause such as the following:

“All monies payable to the council or general manager in respect of an infringement notice are a debt due to the council and recoverable at law.”

Disclaimer:

Information on legislation contained in this document is intended for information and general guidance only. Such information is not professional legal opinion.

Attachment

Template by-law infringement notice provision

Infringement notices

1. In this clause –
“specified offence” means an offence against the clause specified in Column 1 of Schedule X.
2. An infringement notice may be issued in respect of a specified offence and the monetary penalty set out adjacent to the offence in Column 3 of Schedule X is the penalty payable under the infringement notice for that offence.
3. An authorised officer may –
 - a. issue an infringement notice to a person whom the authorised officer has reason to believe is guilty of a specified offence
 - b. issue one infringement notice in respect of more than one specified offence.
4. The *Monetary Penalties Enforcement Act 2005* applies to an infringement notice issued under this by-law.
5. In addition to any other method of service, an infringement notice alleging that a vehicle has been used in relation to a specified offence may be served by affixing it to that vehicle.
6. Payment of an infringement notice issued under this by-law must be made to the General Manager within 28 days of the issue of the infringement notice to avoid the infringement notice being referred to the Director, MPES.

This example requires a schedule setting out the offences and the infringement notice penalties. A sample template for such a schedule is below.

Schedule X

Column 1 Clause	Column 2 General description of offence	Column 3 Infringement notice penalty (penalty units)
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