

# Electing to have an infringement notice dealt with by a court

A person issued with an infringement notice (on-the-spot fine) has the right to have the matter dealt with by a court instead of paying the fine (s22 *State Penalties Enforcement Act 1999*).

The following information may help you decide whether to pay the fine or have the matter decided in a Magistrates Court.

You should seek legal advice before electing to have the matter decided in a Magistrates Court or if you have any questions about this information.

Council cannot give legal advice.

## Payment of infringement notice

Payment of the fine (in full or by instalments) means the person who pays the fine cannot be prosecuted in a court for the alleged offence (s25 *State Penalties Enforcement Act 1999*) and the matter is finalised.

No conviction is recorded against a person's name when they pay the fine.

## Electing to have an infringement notice decided by a court

If you decide to have the matter decided by a court, a proceeding may be started in the Magistrates Court under the *Justices Act 1886*. A complaint and summons are issued and filed in the registry of the Magistrates Court.

The making of the complaint commences a proceeding (criminal prosecution for a simple offence) against the person for the alleged offence.

Electing to have an infringement notice decided by a court is not an internal review by Council.

You cannot decide to pay the fine once a prosecution is started. The prosecution will typically end in one of three ways:

1. The person pleads not guilty, a hearing is conducted and they are found guilty. The person is then sentenced by the court for committing the offence.
2. The person pleads guilty and the court sentences the person for committing the offence.
3. The person pleads not guilty, a hearing is conducted and they are found not guilty. The person is then discharged of the alleged offence and the matter is finished.

## Criminal conviction

A person who pleads guilty or is found guilty by the court of the offence after a hearing may have a criminal conviction recorded against them.

This may impact the ability to travel internationally or hold certain jobs. We recommend you seek legal advice before deciding to have the matter decided by a Magistrates Court.

## Penalty

The court determines the penalty imposed on a person who pleads guilty or is found guilty by the court after a hearing. The court has the power to impose the maximum penalty, which may be more than the original fine.

For example, a fine for carrying out assessable development without all necessary development permits (under s163 of the *Planning Act 2016* as at January 2022) is between:

- \$551 and \$2,757 for an individual, and
- \$551 and \$13,785 for a corporation.

The maximum penalty that can be imposed in the Magistrates Court for the same offence (as at January 2022) is:

- \$620,325 for an individual, and
- \$3,101,625 for a corporation.

## Costs

When a person pleads guilty or is found guilty by the court after a hearing, Council will normally seek a court order for the person to pay the professional (legal) and investigation costs incurred.

An order for professional (legal) and investigation costs is in addition to any penalty the court imposes.

## Other court orders

Some legislation gives the Magistrates Court the power to make orders requiring a person to take stated actions. This may include stopping or demolishing work or restoring property to what it was before the offence.

This is in addition to any penalty imposed by the court. It is another, separate offence not to comply with the requirements of the order.

## Strict liability

Infringement notice offences are often 'strict liability'. This means even if you did not mean to commit an offence, simply doing the act or authorising someone else to do the act is enough to be found guilty of the offence.

For example, a landowner hires someone to clear vegetation or build a large shed on their property without a development permit when one is required. Both the landowner and the person who carried out the work is liable for the offence and both are treated as a 'principal offender'.

It is not a defence if a person did not know they were committing an offence when they did the act. Ignorance of the law is not a defence.

### **Attending court and the hearing**

Electing to have a matter decided by the Magistrates Court will normally involve at least two court appearances. The person or their lawyer will need to appear at the Magistrates Court.

Courts are very busy. You may be at court all day and a hearing date is likely to be several months away.

On the day of the hearing, any admissions made previously about doing the act may be admitted into evidence. If the offence is a strict liability offence, an admission by the person that they did the act and evidence the act happened (e.g. a photograph) may be enough for the person to be found guilty of the offence.

#### **More Information:**

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