



A report on the monitoring of the infringement
notices provisions of *The Criminal Code*

Volume 4: The consultation process

Ombudsman Western Australia

Serving Parliament – Serving Western Australians

Volume 4 of 5

About this Report

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ISBN (Print): 978-0-9802905-5-4

ISBN (Online): 978-0-9802905-7-8

The office of the Ombudsman acknowledges Aboriginal and Torres Strait Islander people of Australia as the traditional custodians of Australia. We recognise and respect the exceptionally long history and ongoing cultural connection Aboriginal and Torres Strait Islander people have to Australia, recognise the strength, resilience and capacity of Aboriginal and Torres Strait Islander people and pay respect to Elders past, present and future.

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1 Introduction

In order to:

- keep under scrutiny the operation of the provisions of the Chapter, and the regulations made under the Chapter, and the *Criminal Investigation (Identifying People) Act 2002* Part 7 and section 67; and
- review of the impact of the operation of the provisions on Aboriginal and Torres Strait Islander communities,

In addition to scrutinising the work of relevant government agencies and requesting information from relevant courts, the Office undertook an extensive consultation process, including:

- engaging with police officers regarding the operation of Criminal Code infringement notices;
- conducting consultation with relevant state government authorities and non-government organisations;
- developing and distributing a consultation paper, a community feedback sheet to accompany the consultation paper, and a response template for the consultation paper; and
- specific consultation with Aboriginal and Torres Strait Islander communities regarding their experiences of Criminal Code infringement notices. In particular, the Office placed advertisements in a national Aboriginal newspaper regarding the Ombudsman's role and the consultation paper and ran advertisements on Aboriginal radio stations in Kriol, Wangatja and English languages, regarding the Ombudsman's role and the availability of the consultation paper and invited stakeholders who worked with the Aboriginal community to a Community Consultation Forum.

Details of each consultation activity are provided below.

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2 Engagement with Police Officers

The Office engaged with police officers regarding the operation of Criminal Code infringement notices. This engagement included a total of 16 Police Officer Forums which were held during the monitoring period, with 149 frontline police officers attending from local policing teams, response teams and specialised areas. These Police Officer Forums were held to further our understanding of the operation of Criminal Code infringement notices by engaging with police officers who had issued, or had been authorised to issue, Criminal Code infringement notices. The district, police station and number and rank of attendees are listed in the table below.

Table 1: Police Officer Forums held during the monitoring period

District	Police Station	Attendees
Central Metropolitan	Perth / Northbridge	11 officers attended, their ranks ranging from probationary constable through to senior sergeant
Central Metropolitan	Midland	14 officers attended (two sergeants, six first class constables, three senior constables and three constables)
Central Metropolitan	Regional Operations Group	14 officers attended (one sergeant, six first class constables, two senior constables and five constables)
South Metropolitan	Fremantle	10 officers attended (two sergeants, two first class constables, three senior constables and three constables)
Goldfields-Esperance	Kalgoorlie	Six officers attended (two sergeants, two first class constables, one senior constable and one constable)
South East Metropolitan	Armadale	14 officers attended (two senior sergeants, three sergeants and nine constables)
South Metro	Mandurah	12 officers attended (one Inspector, one sergeant, five first class constables, three senior constables and two constables)
South West	Bunbury	Eight officers attended (one Inspector, three sergeants, three senior constables and one constable)
North West Metropolitan	Joondalup	11 officers attended (two sergeants, four first class constables, three senior constables and two constables)
Pilbara	Karratha	Nine officers attended (one sergeant, two first class constables, two senior constables and four constables)

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provisions of *The Criminal Code*

District	Police Station	Attendees
Pilbara	Roebourne	Five officers attended (one senior sergeant, two sergeants and two constables)
Pilbara	South Hedland	10 officers attended (three sergeants, three first class constables and four senior constables)
North West Metropolitan Response Team	Mirrabooka	10 officers attended (one sergeant, one first class constable and eight constables)
Kimberley	Broome	Six officers attended (three senior constables, one first class constable and two constables)
Kimberley	Derby	Seven officers attended (one senior sergeant, one sergeant, one first class constable, two senior constables and two constables)
Kimberley	Looma	Two officers attended

3 Consultation with state government authorities and non-government organisations

The Office consulted the following state government authorities and non-government organisations:

- Commissioner for Children and Young People;
- Aboriginal Legal Service of Western Australia;
- Community legal services; and
- Men's Outreach Service Inc. (Broome).

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4 Consultation Paper

To assist in obtaining views from members of the public and interested parties regarding their experiences of Criminal Code infringement notices, the Office developed a Consultation Paper, entitled *Monitoring of the infringement notices provisions of The Criminal Code: Consultation Paper (the Consultation Paper)*. The Consultation Paper is attached at Appendix 1.

To accompany the Consultation Paper, the Office developed a *Community Feedback Information Sheet* (Appendix 2) and a *Response Template* (Appendix 3). Responses to the Consultation Paper could be provided to the Office using the *Response Template*, by letter or via email.

The Consultation Paper and *Community Feedback Information Sheet* were issued on 18 April 2016 and made available on the Office's website at www.ombudsman.wa.gov.au/CCINs. As well as being available for download on the Ombudsman Western Australia website, the Consultation Paper was mailed to 100 key stakeholders, including 11 government departments, 18 metropolitan and regional community legal centres, 48 Aboriginal organisations and various relevant non-government organisations.

The Consultation Paper sought responses by 20 May 2016. Eleven responses were received from a wide range of state government departments and authorities and non-government organisations, including responses from organisations representing Aboriginal and Torres Strait Islander communities.

Eleven responses to the Consultation Paper were received from the following stakeholders:

- the Disability Services Commission;
- HelpingMinds;
- Jacaranda Community Centre;
- Aboriginal Legal Service of Western Australia;
- the Office of the Commissioner for Children and Young People;
- Nyoongar Outreach Services;
- Ruah Community Services;
- Western Australian Aboriginal Advisory Council;
- the Department of Transport;
- the Department of Corrective Services; and
- the Department for Child Protection and Family Support.

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5 Specific consultation with Aboriginal and Torres Strait Islander communities

Section 723(2) of *The Criminal Code* provides that the scrutiny referred to in section 723(1) is to include review of the impact of the infringement notices provisions of *The Criminal Code* on Aboriginal and Torres Strait Islander communities.

In keeping under scrutiny the operation of the infringement notices provisions of *The Criminal Code* at all stages, the Office considered how the infringement notices provisions of *The Criminal Code* and associated regulations impacted on Aboriginal and Torres Strait Islander communities.

As noted above, section 723(2) of the *Criminal Code Amendment (Infringement Notices) Act 2011* provides that the Ombudsman review the impact of the infringement notices provisions of *The Criminal Code* on 'Aboriginal and Torres Strait Islander communities', and the Office uses this term throughout this report. The Office recognises, in reviewing the impact of the infringement notices provisions on Aboriginal and Torres Strait Islander communities, that the views of Aboriginal and Torres Strait Islander communities are not necessarily singular, nor are issues identified of uniform impact upon Aboriginal and Torres Strait Islander communities. In other words, there is identifiable 'diversity of cultures, traditional practices and differences across communities and the various clan, language and skin groups represented throughout Australia and the Torres Strait'.¹ It is particularly important to note that Aboriginal and Torres Strait Islander people are two distinct cultural groups that have their own unique identity, history and cultural traditions. Only 0.06 per cent of the Western Australian population identified as Torres Strait Islander people in the 2016 Census and a further 0.07 per cent identified as both Aboriginal and Torres Strait Islander.² During the consultation process, no information was received by the Office identifying specific issues or concerns for Torres Strait Islander people.

In order to review the impact of the infringement notices provisions of *The Criminal Code* on Aboriginal and Torres Strait Islander communities, the Office collected information from state government departments and authorities, and also requested and received information from relevant courts. This information included the WAPOL and DOTAG state-wide data and the court data. Across all of these data sets, the Office collected, or requested and received, information about whether or not the alleged offender was recorded as Aboriginal or Torres Strait Islander. This enabled the Office to analyse the data relating to people from Aboriginal and Torres and Strait Islander communities separately, and to consider the impact of the infringement notices provisions of *The Criminal Code* on people from these communities.

In addition the Office sought to consult with Aboriginal and Torres Strait Islander communities regarding their experiences of Criminal Code infringement notices. In particular, the Office placed advertisements in a national Aboriginal newspaper regarding

¹ Australian Law Reform Commission, *Incarceration Rates of Aboriginal and Torres Strait Islander Peoples*, Discussion Paper No 84, Australian Law Reform Commission, Canberra, 2017, p. 29.

² Australian Bureau of Statistics, 2016 Census: Aboriginal and/or Torres Strait Islander Peoples Quickstats, 2016, ABS, Canberra, June 2017.

the Ombudsman's role and the Consultation Paper and ran advertisements on Aboriginal radio stations in Kriol, Wangatja and English languages, regarding the Ombudsman's role and the availability of the Consultation Paper.

Thirty seconds advertisements were run, four times daily, for a two week period on the following radio stations:

Radio Station	Region	Language
Noongar Radio	Perth	English only
Pakam Radio	Kimberley and Pilbara	English and Kriol
Tjuma Radio	Goldfields-Esperance	English and Wangatja
Goolari Media	Kimberley	English and Kriol
Radio Mama	Carnarvon	English only
Radio Mama	Geraldton	English only
Waringarri Radio	East Kimberley	English and Kriol
Ngarda Radio	Pilbara	English and Kriol

Advertisements were run in one state-wide newspaper, 29 regional newspapers and the Koori Mail, a nation-wide Aboriginal publication:

Publication	Date(s) of Publication
The West Australian	21, 23, 27 and 30 April 2016
Koori Mail	20 April 2016 and 4 May 2016
The Harvey Reporter	19 April 2016
Donnybrook Bridgetown Mail	19 April 2016
Bunbury Herald	19 April 2016
Bunbury Mail	20 April 2016
Bunbury South Western Times	21 April 2016
Busselton Dunsborough Mail	20 April 2016
Busselton Dunsborough Times	22 April 2016

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Publication	Date(s) of Publication
Augusta Margaret River Mail	20 April 2016
Augusta Margaret River Times	22 April 2016
Great Southern Herald	21 April 2016
Albany Advertiser	21 April 2016
Albany & Great Southern Weekender	21 April 2016
Albany Weekend Extra	22 April 2016
Rockingham Sound Telegraph	20 April 2016
Pilbara News	20 April 2016
Port Hedland North West Telegraph	20 April 2016
Manjimup Bridgetown Times	20 April 2016
Geraldton Midwest Times	20 April 2016
Narrogin Observer	21 April 2016
Kimberley Echo	21 April 2016
Mandurah Mail	21 April 2016
Kalgoorlie Miner	21 April 2016
Broome Advertiser	21 April 2016
Countryman	21 April 2016
Sun City News – Yanchep	21 April 2016
Collie Mail	21 April 2016
Esperance Express	22 April 2016
Geraldton Guardian	22 April 2016
Avon Valley Advocate	27 April 2016

In addition, the Office:

- consulted the Department of Aboriginal Affairs, the Aboriginal Legal Service of Western Australia, and the Western Australian Aboriginal Advisory Council;
- engaged people with expertise in the area of the impact of criminal justice processes on Aboriginal and Torres Strait Islander communities, in relation to our analysis, draft findings and draft recommendations; and
- contacted non-government organisations that provide services, including medical services, to Aboriginal and Torres Strait Islander communities, people who are homeless, and people requiring advocacy services.

6 Community Consultation Forum

Following the release of the Consultation Paper, the Office also invited stakeholders working with the Perth Aboriginal community to a Community Consultation Forum. The objective of the forum was to ensure information received in response to the Consultation Paper and *Community Feedback Information Sheet*, particularly in relation to the impact of Criminal Code infringement notices on Aboriginal and Torres Strait Islander communities, had been understood and represented correctly. The Community Consultation Forum was held on 18 August 2016 and was facilitated by the Office's Principal Aboriginal Liaison Officer and an Aboriginal facilitator (engaged by the Office).

The Forum was attended by the following five stakeholders:

- Aboriginal Legal Service of Western Australia;
- Outcare;
- Ruah Community Services;
- Women's Health and Family Service; and
- Youth Legal Service.

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Appendix 1: Monitoring of the infringement notices provisions of *The Criminal Code*: Consultation Paper

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About this Consultation Paper

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First published by Ombudsman Western Australia on 18 April 2016

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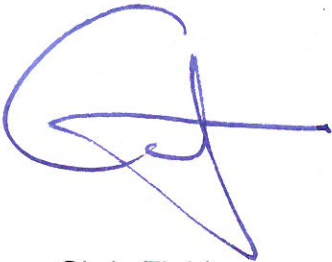
Foreword

I have an important function to keep under scrutiny the operation of the relevant provisions of *The Criminal Code*, relevant regulations made under *The Criminal Code* and the relevant provisions of the *Criminal Investigation (Identifying People) Act 2002* in relation to infringement notices (**Criminal Code infringement notices**).

Authorised police officers can issue Criminal Code infringement notices with a modified penalty of \$500 for the prescribed offences of (1) behaving in a disorderly manner in a public place or in sight or hearing of any person in a public place or in a police station or lock-up or (2) stealing anything capable of being stolen up to and including the value of \$500. Criminal Code infringement notices can only be issued to persons 17 years of age or older on the day on which the alleged offence is believed to have been committed.

I am undertaking a wide range of work and activities as part of my monitoring role, including, critically, a wide range of consultative activities regarding the operation of Criminal Code infringement notices. An important part of these consultation activities is that I am seeking to consult members of the community who have had experience with the operation of Criminal Code infringement notices. In particular, I am seeking to consult Aboriginal and Torres Strait Islander communities on the impact of the operation of Criminal Code infringement notices on communities.

This Consultation Paper is available on the website of the office of the Ombudsman at www.ombudsman.wa.gov.au/CCINs and is being distributed to relevant state government agencies, non-government organisations and community groups for their response. The Consultation Paper is also being advertised in *The West Australian* newspaper, community newspapers, the *Koori Mail* and on Aboriginal radio stations.



Chris Field
OMBUDSMAN

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Responding to the Consultation Paper

Responses do not need to address all questions and additional information and comments are welcomed.

Responses can be made in the attached 'Response Template' or in a letter or email provided to the addresses below.

Postal address: Ombudsman Western Australia
PO Box Z5386
St Georges Terrace
PERTH WA 6831

Email: mail@ombudsman.wa.gov.au

Facsimile: 08 9220 7500

Website: www.ombudsman.wa.gov.au

Responses should be forwarded to the office of the Ombudsman by **Friday 20 May 2016**.

For further information please contact Ms Chrissie Chatterton, Senior Project Officer, Monitoring, on:

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Free call: 1800 117 000 (toll free for country and interstate callers)

Email: communications@ombudsman.wa.gov.au

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1 About the Ombudsman

1.1 The role of the Ombudsman

The Ombudsman is an independent and impartial statutory officer who reports directly to Parliament, rather than the government of the day.

1.2 Functions of the Ombudsman

The Ombudsman has four principal functions derived from his governing legislation, the *Parliamentary Commissioner Act 1971* and other legislation, codes and service delivery arrangements, as follows:

- Receiving, investigating and resolving complaints about State government agencies, local governments and universities;
- Reviewing certain child deaths and family and domestic violence fatalities;
- Improving public administration for the benefit of all Western Australians through own motion investigations, and education and liaison programs with public authorities; and
- Undertaking a range of additional functions, including statutory inspection and monitoring functions. One of these additional functions is monitoring the infringement notices provisions of *The Criminal Code*.

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2 Background

2.1 *The Criminal Code*

The *Criminal Code Act Compilation Act 1913* establishes the Code of Criminal Law and that it may be cited as *The Criminal Code*, as follows:

2. ***The Criminal Code established***

The provisions contained in the Code of Criminal Law set forth in the Schedule to this Act, and hereinafter called the **Code**, shall be the law of Western Australia with respect to the several matters therein dealt with.

The said Code may be cited as “*The Criminal Code*”.

The Law Reform Commission of Western Australia states that:

Following the development of a *Criminal Code* in Queensland by Sir Samuel Griffiths in 1899, a *Criminal Code* was enacted in Western Australia in 1902 to provide a legislative basis for the criminal law. The *Code* of 1902 and subsequent amendments were compiled in the *Criminal Code Act 1913* (WA) and, although amended many times since, that Act continues to define and codify many criminal offences in Western Australia today.¹

2.2 **The Criminal Code Amendment (Infringement Notices) Bill 2010**

The (then) Minister for Police, The Hon. Robert Frank Johnson MLA, stated in the Second Reading Speech of the Criminal Code Amendment (Infringement Notices) Bill 2010 (**the Bill**) that:

The Criminal Code Amendment (Infringement Notices) Bill 2010 introduces a new scheme into Western Australia by which infringement notices can be issued for Criminal Code offences that are considered relatively low level or minor. Historically, infringement or penalty notices have been used for myriad offences of a regulatory nature, such as parking offences, minor traffic offences, fare evasion, littering, breaches of requirements for heavy vehicle drivers, and breaches of business registration and reporting requirements. More recently, there have been moves in Australia and the United Kingdom to expand the use of infringement notices for offences usually characterised as criminal in nature. In the United Kingdom, summary or public order offences such as being drunk and disorderly and threatening behaviour may be dealt with by way of a penalty notice for disorder. In New South Wales, criminal infringement notices, or CINs, can be issued for eight nominated criminal offences, including common assault, shoplifting, offensive conduct and offensive language. Victoria is currently undergoing a three-year trial to issue infringement notices for offences such as shop theft, disorderly or offensive conduct and alcohol-related offences. The arguments for the transition of infringement notice schemes from offences of a regulatory nature into areas traditionally viewed as being the province of the criminal justice system have largely focused on the potential productivity—time—

¹ Law Reform Commission of Western Australia, *Project 92 - Review of the criminal and civil justice system in Western Australia – Final Report*, Law Reform Commission, Perth, September 1999, p. 29.

savings for police and the criminal justice system, with the attraction for affected persons being a quick and relatively simple process whereby the payment of a fixed penalty expiates the offence with, usually, no record of a conviction, notwithstanding the implied admission of culpability.

The key objectives of any such scheme are to reduce the administrative demands on police in relation to relatively minor offences by providing a quick alternative to arrest for police officers in dealing with minor matters; to reduce the time taken by police in preparation for and appearance at court; to allow police to remain on front-line duties rather than having to take the offender back to the police station; to provide an additional general tool in the array of responses available to police; to provide police with greater flexibility in their response to criminal behaviour; to save the court system the cost of having to deal with relatively minor offences and thereby reducing both court time and trial backlogs; and to provide a diversionary option for the community as a means of avoiding court appearances for minor offences, yet still providing an incentive for behaviour change.²

2.3 The *Criminal Code Amendment (Infringement Notices) Act 2011*

The *Criminal Code Amendment (Infringement Notices) Act 2011* amended *The Criminal Code* to include Chapter LXXIII – Infringement notices (**the infringement notices provisions**). Regulations may be made pursuant to section 721 of *The Criminal Code* to allow infringement notices to be issued for *Code* offences, being the *Criminal Code (Infringement Notices) Regulations 2015 (the Regulations)*, and that *The Criminal Code* is to be taken as a prescribed Act for the purposes of Part 2 of the *Criminal Procedure Act 2004 (the CP Act)*.

Together, *The Criminal Code*, the CP Act and the Regulations allow authorised officers to issue Criminal Code infringement notices with a modified penalty for prescribed offences.

Authorised officers are defined in the Regulations as:

6. Authorised officers and approved officers

- (1) Every police officer, other than a senior police officer, is an authorised officer for the purposes of the CP Act Part 2.
- ...
- (3) Every senior police officer is an approved officer for the purposes of the CP Act Part 2.
- (4) The Commissioner of Police may, in writing, appoint a person who is not a police officer to be an approved officer for the purposes of the CP Act Part 2.

² The Hon. Robert Frank Johnson MLA, Minister for Police, Legislative Assembly, Parliamentary Debates (Hansard), 8 September 2010, pp. 6137d-6139a.

Prescribed offences are defined in the Regulations as follows:

4. Prescribed offences under *The Criminal Code* and modified penalties

- (1) The offences under *The Criminal Code* that are specified in Schedule 1 are offences for which an infringement notice may be issued under the CP Act Part 2.
- (2) The modified penalty specified opposite an offence in Schedule 1 is the modified penalty for that offence for the purposes of the CP Act section 5(3).

Schedule 1 of the Regulations further provides that:

Offences under <i>The Criminal Code</i>	Modified Penalty \$
s. 74A (2) Behaving in a disorderly manner —	
(a) in a public place or in sight or hearing of any person in a public place; or	
(b) in a police station or lock-up	500
s. 378 Stealing anything capable of being stolen	500

Regulation 5 of the Regulations provides that:

5. When infringement notices cannot be issued (*The Criminal Code* s. 721(3)(b) and (c))

However, an infringement notice cannot be issued under the CP Act Part 2 for an offence specified in Schedule 1 in the following situations —

- (a) if, on the day on which the alleged offence is believed to have been committed, the alleged offender is under 17 years of age;
- (b) if —
 - (i) the alleged offence is under *The Criminal Code* section 378; and
 - (ii) the value of the thing alleged to have been stolen exceeds \$500.

The infringement notices provisions and the Regulations came into operation on 4 March 2015.

2.4 Monitoring by the Ombudsman

Section 723 of *The Criminal Code* provides that:

723. Monitoring of Chapter by Ombudsman

- (1) For the period of 12 months after the commencement of this section, the Ombudsman is to keep under scrutiny the operation of the provisions of this Chapter and the regulations made under this Chapter and the *Criminal Investigation (Identifying People) Act 2002* Part 7 and section 67.
- (2) The scrutiny referred to in subsection (1) is to include review of the impact of the operation of the provisions referred to in that subsection on Aboriginal and Torres Strait Islander communities.
- (3) For that purpose, the Ombudsman may require the Commissioner of Police or any public authority to provide information about police or the public authority's participation in the operation of the provisions referred to in subsection (1).
- (4) The Ombudsman must, as soon as practicable after the expiration of that 12 month period, prepare a report on the Ombudsman's work and activities under this section and furnish a copy of the report to the Minister for Police and the Commissioner of Police.
- (5) The Ombudsman may identify, and include recommendations in the report to be considered by the Minister about, amendments that might appropriately be made to this Act with respect to the operation of the provisions referred to in subsection (1).
- (6) The Minister is to lay (or cause to be laid) a copy of the report furnished to the Minister under this section before both Houses of Parliament as soon as practicable after the Minister receives the report.

The period of 12 months referred to in Section 723(1) of *The Criminal Code* commenced on 5 March 2015.

The (then) Minister for Police, The Hon. Robert Frank Johnson MLA, stated in the Second Reading Speech of the Bill, in relation to the scope of the Ombudsman's monitoring role, that:

The operation of the CPIN [Criminal Code Infringement Notices] scheme [referred to in this report as the infringement notices provisions of *The Criminal Code*] will be subject to ongoing monitoring and will be evaluated after the first 12 months to ensure that the proposed scheme has met its aims. The evaluation will examine, amongst other things, the impact of the use of infringement notices on resource implications, case length and case flow, the impact of the trial on vulnerable defendants, and the effect, if any, on sentencing outcomes of trial offence matters that are determined by the court.³

³ The Hon. Robert Frank Johnson MLA, Minister for Police, Legislative Assembly, Parliamentary Debates (Hansard), 8 September 2010, pp. 6137d-6139a.

2.5 The impact of Criminal Code infringement notices on Aboriginal and Torres Strait Islander communities

Section 723(2) of *The Criminal Code* provides that the scrutiny referred to in section 723(1) is to include review of the impact of Criminal Code infringement notices on Aboriginal and Torres Strait Islander communities.

The office of the Ombudsman particularly seeks responses regarding the experiences of Aboriginal and Torres Strait Islander communities in relation to Criminal Code infringement notices.

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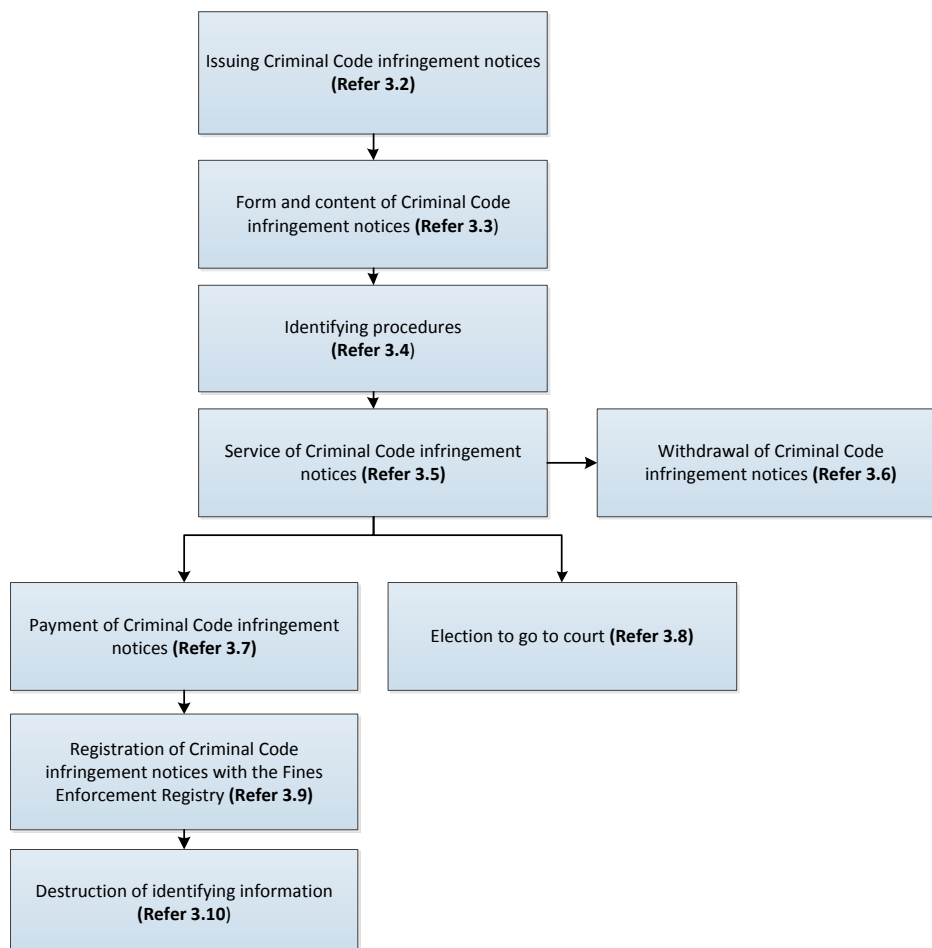
3 The operation of Criminal Code infringement notices

3.1 Overview of the infringement notices provisions of *The Criminal Code*

For the purposes of this Consultation Paper, the office of the Ombudsman (**the Office**) has mapped the main aspects of the operation of Criminal Code infringement notices. This map is provided at Figure 1.

Each main aspect of the operation of Criminal Code infringement notices is discussed in further detail in sections 3.2 to 3.10 of this Consultation Paper, together with consultation questions regarding these aspects.

Figure 1: Main aspects of the operation of Criminal Code infringement notices



3.2 Issuing Criminal Code infringement notices

Section 8(1) of the CP Act provides for the issuing of Criminal Code infringement notices in relation to prescribed offences, as follows:

8. Issuing infringement notices

- (1) An authorised officer who has reason to believe that a person has committed a prescribed offence may issue an infringement notice that complies with section 9 [of the CP Act] for the alleged offence.

The Criminal Code provides for Regulations to be made, as follows:

721. Regulations to allow infringement notices to be issued for Code offences

- (3) Regulations made under subsection (2) —
 - (a) may, despite the CP Act section 5(2), prescribe any offence under this Code to be a prescribed offence for Part 2 of the CP Act;
 - (b) may prescribe classes of person to whom an infringement notice cannot be issued for an alleged offence under this Code; and
 - (c) may prescribe circumstances in which an infringement notice cannot be issued for an alleged offence under this Code.

Prescribed offences are defined in Regulation 4, as follows:

4. Prescribed offences under *The Criminal Code* and modified penalties

- (1) The offences under *The Criminal Code* that are specified in Schedule 1 are offences for which an infringement notice may be issued under the CP Act Part 2.
- (2) The modified penalty specified opposite an offence in Schedule 1 is the modified penalty for that offence for the purposes of the CP Act section 5(3).

Schedule 1 of the Regulations specifies the prescribed offences for which a Criminal Code infringement notice may be issued and modified penalties, as follows:

Offences under <i>The Criminal Code</i>	Modified Penalty \$
s. 74A (2) Behaving in a disorderly manner —	
(a) in a public place or in sight or hearing of any person in a public place; or	
(b) in a police station or lock- up	500
s. 378 Stealing anything capable of being stolen	500

In addition, Regulation 5 provides when Criminal Code infringement notices cannot be issued, as follows:

5. When infringement notices cannot be issued (*The Criminal Code* s. 721(3)(b) and (c))

However, an infringement notice cannot be issued under the CP Act Part 2 for an offence specified in Schedule 1 in the following situations —

- (a) if, on the day on which the alleged offence is believed to have been committed, the alleged offender is under 17 years of age;
- (b) if —
 - (i) the alleged offence is under *The Criminal Code* section 378; and
 - (ii) the value of the thing alleged to have been stolen exceeds \$500.

Further, Regulation 6 provides for Authorised officers and approved officers as follows:

6. Authorised officers and approved officers

- (1) Every police officer, other than a senior police officer, is an authorised officer for the purposes of the CP Act Part 2.
- ...
- (3) Every senior police officer is an approved officer for the purposes of the CP Act Part 2.
- (4) The Commissioner of Police may, in writing, appoint a person who is not a police officer to be an approved officer for the purposes of the CP Act Part 2.

Question 1

Do you have experience in relation to the issuing of Criminal Code infringement notices? If so, please describe your experience.

3.3 Form and content of Criminal Code infringement notices

Section 9(1) of the CP Act specifies the form and content of infringement notices, as follows:

9. Form and content of infringement notices

- (1) An infringement notice must —
 - (a) be in the prescribed form; and
 - (b) be addressed to the alleged offender by name, unless section 12(1) applies; and
 - (c) comply with Schedule 1 clause 5, which applies as if the alleged offence were a charge and the infringement notice were a prosecution notice; and
 - (d) state the modified penalty for the offence; and
 - (e) be dated with the date it is issued; and
 - (f) inform the alleged offender —
 - (i) that within 28 days after the date of the notice the alleged offender may elect to be prosecuted for the alleged offence; and
 - (ii) how to make such an election; and
 - (iii) that if the alleged offender does not want to be prosecuted for the alleged offence, the modified penalty for the offence may be paid to an approved officer within 28 days after the date of the notice; and
 - (iv) how and where the modified penalty may be paid;

and

 - (g) if the *Fines, Penalties and Infringement Notices Enforcement Act 1994* Part 3 applies to the notice, inform the alleged offender of the action that may be taken under that Act if the alleged offender does not act in accordance with the notice; and
 - (h) contain any information prescribed by the regulations made under the prescribed Act.

An example of a Criminal Code infringement notice is provided in the Appendix to this Consultation Paper.

Question 2

Do you have experience in relation to the form and content of Criminal Code infringement notices? If so, please describe your experience.

3.4 Identifying procedures

The Criminal Code provides for alleged offenders to be considered to be charged suspects, as follows:

722. Alleged offenders taken to be charged suspects for purposes of *Criminal Investigation (Identifying People) Act 2002*

If under the CP Act an infringement notice is issued to an alleged offender for an alleged offence under this Code, then —

- (a) for the purposes of the *Criminal Investigation (Identifying People) Act 2002* Part 7 and section 67 the alleged offender is taken —
 - (i) to be a charged suspect; and
 - (ii) to have been charged with the alleged offence;

- (b) without limiting the operation of section 67 of that Act, identifying information obtained under Part 7 of that Act from the alleged offender must be destroyed if —
 - (i) the alleged offender pays the modified penalty prescribed for the offence; and
 - (ii) destruction is requested under section 69 of that Act by or on behalf of the alleged offender;

...

Section 49 of the *Criminal Investigation (Identifying People) Act 2002* (**CIIP Act**) sets out how identifying procedures may be requested, as follows:

49. Request for charged suspect to undergo identifying procedure

- (1) If it is practicable to do so, an officer may request a charged suspect to consent to an identifying procedure being done on the suspect for the purpose of obtaining one or more of a charged suspect's identifying particulars.

- (2) An officer who requests a charged suspect to consent to an identifying procedure being done on the suspect must at the time inform the suspect of these matters —

- (a) the purpose of the procedure;
- (b) how the procedure will be done;
- (c) that information derived from the procedure may be compared with or put in a forensic database;
- (d) the circumstances in which destruction may be requested under section 69;
- (e) that the procedure may provide evidence that could be used in a court against the suspect;
- (f) that if the suspect does not consent or withdraws consent to the procedure —
 - (i) the suspect may be arrested; and
 - (ii) the procedure may be done on the suspect against the suspect's will.

Question 3

Do you have experience in relation to requests to undergo identifying procedures in relation to Criminal Code infringement notices? If so, please describe your experience.

Section 51 of the CIIP Act further provides when an identifying procedure may be done, as follows:

51. When identifying procedure may be done

- (1) If —
- (a) under section 49 a request is made to a charged suspect; and
 - (b) the suspect is informed under that section; and
 - (c) the suspect consents to the identifying procedure being done,

then the identifying procedure may be done on the suspect.

- (2) If —
- (a) subsection (1)(a) and (b) apply but the charged suspect does not consent or withdraws consent to the identifying procedure;
 - (b) it is not practicable to make a request to a charged suspect under section 49,

an officer may —

- (c) if the charged suspect is not in custody — without a warrant arrest the suspect and detain him or her for a reasonable period in order to do the identifying procedure; and
- (d) do the identifying procedure on the charged suspect against the suspect's will.

Identifying particulars are defined in section 47 of the CIIP Act, as follows:

47. Terms used

In this Part —

charged suspect means a person who has been charged with, but not dealt with by a court for, an offence and, for the purposes of this definition, it does not matter whether or not the person is in lawful custody for the offence;

identifying particular, in relation to a charged suspect charged with a serious offence, means —

- (a) a print of the suspect's hands (including fingers), feet (including toes) or ears;
- (b) a photograph of the suspect (including of an identifying feature of the suspect);
- (c) a measurement of any identifying feature of the suspect;
- (da) an impression of an identifying feature of the suspect (including a dental impression);
- (db) a sample of the suspect's hair taken for purposes other than obtaining the suspect's DNA profile;
- (d) the suspect's DNA profile;
- (e) an identifying particular of the suspect that is prescribed for the purposes of this definition;

identifying particular, in relation to a charged suspect charged with an offence other than a serious offence, means —

- (a) a print of the suspect's hands (including fingers), feet (including toes) or ears;
- (b) a photograph of the suspect (including of an identifying feature of the suspect);
- (c) a measurement of any identifying feature of the suspect;
- (d) an identifying particular of the suspect that is prescribed for the purposes of this definition, which cannot include an identifying particular listed in paragraph (da), (db) or (d) of the definition of **identifying particular**, in relation to a charged suspect charged with a serious offence.

Section 3 of the CIIP Act defines a serious offence, as follows:

3. Terms used

- (1) In this Act, unless the contrary intention appears —

serious offence means an offence the statutory penalty for which is or includes life imprisonment or imprisonment for 12 months or more;

The penalty for stealing anything capable of being stolen contrary to section 378 of *The Criminal Code* is imprisonment for 7 years. For the purpose of a Criminal Code infringement notice, stealing is a serious offence and the first of the definitions for 'identifying particular' in section 47 of the CIIP Act applies.

The penalty for disorderly behaviour in public contrary to section 74A(2) of *The Criminal Code* is a fine of \$6000. For the purpose of a Criminal Code infringement notice, disorderly

behaviour in public is an offence other than a serious offence and the second of the definitions for 'identifying particular' in section 47 of the CIIP Act applies.

Question 4

Do you have experience in relation to when an identifying procedure has been done in relation to Criminal Code infringement notices? If so, please describe your experience.

3.5 Service of a Criminal Code infringement notice

The CP Act provides that a Criminal Code infringement notice must be served within 21 days of the relevant offence, as follows:

8. Issuing infringement notices

...

- (2) The infringement notice must be served under section 10 within 21 days after the day on which the alleged offence is believed to have been committed.

Section 10 of the CP Act provides as follows:

10. Service of infringement notices

Unless section 12(1)(b)(i) applies, an infringement notice must be served on an alleged offender —

- (a) if the offender is an individual, in accordance with Schedule 2 clause 2 or 3; or
- (b) if the offender is a corporation, in accordance with Schedule 2 clause 3 or 4; or
- (c) if the offender's address is ascertained at the time of or immediately after the alleged offence was committed, by posting it to the offender at that address

Schedule 2 of the CP Act provides for the method of service for documents, including Criminal Code infringement notices, including as follows:

Schedule 2 — Service of documents and other things

...

2. Personal service on individuals

- (1) This clause does not apply in relation to serving a corporation.
- (2) To serve a document or other thing on an individual (the **named person**) in accordance with this clause, another person must —
 - (a) hand it to the named person in person;

...

3. Postal service on individuals and corporations

...

- (11) A document or other thing that is posted under this clause is to be taken to have been served on the named person on the fourth working day after the date on which it was posted unless the postal service returns it to the sender or the contrary is proved.

Question 5

Do you have experience regarding the service of Criminal Code infringement notices? If so, please describe your experience.

3.6 Withdrawal of a Criminal Code infringement notice

The CP Act provides that an approved officer may withdraw an infringement notice, as follows:

15. Withdrawal of infringement notices

- (1) An approved officer may withdraw an infringement notice.
- (2) To withdraw an infringement notice an approved officer must give the alleged offender a notice in a form prescribed under the prescribed Act stating that the notice has been withdrawn.
- (3) An infringement notice may be withdrawn whether or not the modified penalty has been paid.
- (4) If an infringement notice is withdrawn after the modified penalty is paid, the amount of money paid is to be refunded.

The Regulations prescribe an approved officer, as follows:

6. Authorised officers and approved officers

- (1) Every police officer, other than a senior police officer, is an authorised officer for the purposes of the CP Act Part 2.
- ...
- (3) Every senior police officer is an approved officer for the purposes of the CP Act Part 2.
- (4) The Commissioner of Police may, in writing, appoint a person who is not a police officer to be an approved officer for the purposes of the CP Act Part 2.

The Regulations prescribe the format for a Criminal Code infringement notice form and a Criminal Code infringement notice withdrawal form, as follows:

7. Forms

For the purposes of the CP Act Part 2 —

- (a) Form 1 is the prescribed form for an infringement notice; and
- (b) Form 2 is the prescribed form for the withdrawal of an infringement notice.

Question 6

Do you have experience regarding the withdrawal of Criminal Code infringement notices? If so, please describe your experience.

3.7 Payment of a Criminal Code infringement notice

Section 11 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* (the **FPINE Act**) defines an infringement notice and a modified penalty, as follows:

11. Terms used

infringement notice means a notice issued under a written law, other than this Act, to a person alleging the commission of an offence and offering the person an opportunity, by paying an amount of money prescribed under the written law and specified in the notice, to have the matter dealt with out of court;

...

modified penalty means the amount of money prescribed in a written law and specified in an infringement notice as the amount that the offender is to pay if he or she wants the matter dealt with out of court;

...

The CP Act sets out the effect of paying a modified penalty, including as follows:

16. Modified penalty, effect of paying

- (1) If the modified penalty stated in an infringement notice is paid within the period in section 9(1)(f) or any extension of it and the notice is not withdrawn, the bringing of proceedings and the imposition of sentences are prevented to the same extent as they would be if the alleged offender had been convicted by a court of, and punished for, the alleged offence.
- (2) Payment of a modified penalty is not to be regarded as an admission for the purposes of any proceedings, whether civil or criminal.

Section 9(1)(f) of the CP Act further provides that the form and content of infringement notices must provide specific information to the alleged offender, including as follows:

- (f) inform the alleged offender —
 - (i) that within 28 days after the date of the notice the alleged offender may elect to be prosecuted for the alleged offence; and
 - (ii) how to make such an election; and
 - (iii) that if the alleged offender does not want to be prosecuted for the alleged offence, the modified penalty for the offence may be paid to an approved officer within 28 days after the date of the notice; and
 - (iv) how and where the modified penalty may be paid;

Question 7

Do you have experience in relation to Criminal Code infringement notices, regarding the payment of a modified penalty? If so, please describe your experience.

The CP Act provides that an approved officer may extend the time to pay a modified penalty, as follows:

14. Extensions of time

- (1) An approved officer may, in a particular case, extend the period in section 9(1)(f) ...
- (2) An extension may be allowed even if the period has elapsed.

Question 8

Do you have experience in relation to Criminal Code infringement notices, regarding the extension of the period of time to pay a modified penalty? If so, please describe your experience.

Section 14 of the FPINE Act further provides that Western Australia Police (**WAPOL**) may issue a final demand notice in relation to an unpaid modified penalty, and that this notice must contain a statement specifying the modified penalty and enforcement fees, as follows:

14. Final demand may be issued to alleged offender

- (1) If under a prescribed enactment –
 - (a) an infringement notice has been issued; and
 - (b) the infringement notice has not been withdrawn under that enactment; and
 - (c) the modified penalty has not been paid as required by the infringement notice; and
 - (d) the time for paying the modified penalty has elapsed,

the prosecuting authority may issue a final demand.

- (2) A final demand must be served on the alleged offender.
- (3) A final demand must identify the infringement notice concerned and the alleged offence.
- (4) A final demand must contain a statement to the effect that unless within 28 days after the date of issue of the final demand —
 - (a) the modified penalty, and enforcement fees, specified in the final demand are paid to the person to whom or which, under the principal enactment, the modified penalty is to be paid;
 - (b) an election is made by the alleged offender and given to the person to whom or which, under the principal enactment, the modified penalty is to be paid,

the infringement notice may be registered with the Registry after which a licence suspension order may be made and further enforcement fees may be imposed.

- (5) A final demand must contain such information as may be prescribed.

An example of a final demand is provided in the Appendix to this Consultation Paper.

Question 9

Do you have experience in relation to Criminal Code infringement notices, regarding the issuing of a final demand notice for payment of a modified penalty? If so, please describe your experience.

3.8 Election to go to court

Section 9(1)(f) of the *Criminal Procedure Act* and Form 1 of the Schedule 2 to the Regulations set out both the form and substance of the alleged offender's right to elect to be prosecuted for the alleged offence (rather than pay the modified penalty).

Section 9(1)(f) of the CP Act provides that the content of a Criminal Code infringement notice must inform the recipient of the option to elect to have an alleged offence heard and determined by a court, as follows:

9. Form and content of infringement notices

(1) An infringement notice must —

...

(f) inform the alleged offender —

- (i) that within 28 days after the date of the notice the alleged offender may elect to be prosecuted for the alleged offence; and
- (ii) how to make such an election;

...

Question 10

Do you have experience in relation to Criminal Code infringement notices, regarding an election to have a charge for the alleged offence heard and determined by a court? If so, please describe your experience.

3.9 Registration of a Criminal Code infringement notice with the Fines Enforcement Registry

Section 6 of the FPINE Act establishes the Fines Enforcement Registry:

6. Registry established

As part of the Magistrates Court, a registry called the Fines Enforcement Registry is established.

Section 7 of the FPINE Act defines the Registrar of the Fines Enforcement Registry, as follows:

7. Registrar

...

- (2) The Registrar is an officer of the Magistrates Court and the functions of the Registrar are to be taken to be functions of that Court.
- (3) Any notice, order or warrant issued by the Registrar is to be taken to be a notice, order or warrant issued by the Magistrates Court.

The FPINE Act further provides for the referral of a Criminal Code infringement notice to be registered by the prosecuting authority, as follows:

15. Infringement notice may be registered

If —

- (a) 28 days have elapsed since the date of issue of a final demand to an alleged offender; and
- (b) the modified penalty, and enforcement fees, specified in the final demand have not been paid in accordance with the final demand; and
- (c) an election has not been made by the alleged offender in accordance with the final demand,

the prosecuting authority may register the infringement notice.

Question 11

Do you have experience regarding the registration of Criminal Code infringement notices with the Fines Enforcement Registry? If so, please describe your experience.

3.10 Destruction of identifying information

Section 722 of *The Criminal Code* provides that identifying information is to be destroyed if requested by, or on behalf of, an alleged offender, and the relevant modified penalty is paid in full, as follows:

722. Alleged offenders taken to be charged suspects for purposes of *Criminal Investigation (Identifying People) Act 2002*

If under the CP Act an infringement notice is issued to an alleged offender for an alleged offence under this Code, then —

- (b) for the purposes of the *Criminal Investigation (Identifying People) Act 2002* Part 7 and section 67 the alleged offender is taken —
 - (i) to be a charged suspect; and
 - (ii) to have been charged with the alleged offence;
- (b) without limiting the operation of section 67 of that Act, identifying information obtained under Part 7 of that Act from the alleged offender must be destroyed if —
 - (i) the alleged offender pays the modified penalty prescribed for the offence; and
 - (ii) destruction is requested under section 69 of that Act by or on behalf of the alleged offender;

...

Section 49(2)(d) of the CIIP Act provides that officers must provide information about the circumstances in which destruction of identifying information may be requested, as follows:

49. Request for charged suspect to undergo identifying procedure

...

- (2) An officer who requests a charged suspect to consent to an identifying procedure being done on the suspect must at the time inform the suspect of these matters —

...

- (d) the circumstances in which destruction may be requested under section 69;

...

Section 67 of the CIIP Act provides for identifying information of charged suspects as follows:

67. Identifying information of charged suspects

- (1) Identifying information of a suspect obtained under Part 7 —
 - (a) may be compared with other information, whether or not in a forensic database, as soon as it is obtained; and
 - (b) may be put in a forensic database as soon as it is obtained; and
 - (ca) may be used to obtain any identifying particular of the suspect; and
 - (c) subject to subsection (3), must be destroyed if the charge against the suspect is finalised without a finding of guilt and destruction is requested under section 69 by or on behalf of the suspect.
- (2) Subsection (1) also applies to and in respect of identifying information of a charged suspect (within the meaning of Part 7) lawfully obtained before the commencement of Part 7 as if the references in subsection (1)(a) and (b) to “as soon as it is obtained” were deleted.
- (3) Subsection (1)(c) does not apply to identifying information of a suspect if, in relation to the offence with which the suspect is charged —
 - (a) the suspect is found to be not mentally fit to stand trial under the *Criminal Law (Mentally Impaired Accused) Act 1996*; or
 - (b) the suspect is found not guilty of the offence on account of unsoundness of mind.
- (4) If identifying information of a person is not destroyed because of the operation of subsection (3) and the person —
 - (a) is subsequently reasonably suspected of having committed a serious offence, section 66 applies to the information; or
 - (b) is subsequently charged with a serious offence, this section applies to the information.

Section 69 of the CIIP Act allows certain people to request the destruction of identifying information, as follows:

69. Request for destruction of identifying information

If another provision of this Act refers to the destruction of identifying information being requested under this section, the request may be made —

- (a) if the identifying information is of a person who is an adult at the time the request may be made — by the adult; or
- (b) if the identifying information is of a person who is a child at the time the request may be made — by a responsible person; or
- (c) if the identifying information is of a person who is an incapable person at the time the request may be made — by a responsible person or the Public Advocate,

and must be made to the Commissioner of Police.

Question 12

Do you have experience in relation to Criminal Code infringement notices, regarding the destruction of identifying information? If so, please describe your experience.

3.11 Additional information and comment

Question 13

Please provide any additional information or comments you have in relation to the operation of Criminal Code infringement notices.

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Appendix: Examples

Figure 2: Example of Criminal Code infringement notice



CRIMINAL CODE INFRINGEMENT NOTICE *The Criminal Code of Western Australia*



NAME
ADDRESS
SUBURB STATE POSTCODE

Infringement Notice No	
Date of Issue	
Amount Due	\$500.00 AUD
Due Date	
Payments made online or over the phone must be made before 9 pm Australian Western Standard Time on the Due Date to allow for processing times.	

PART A OFFENCE DETAILS

Alleged Offender
Surname: _____ Given Names: _____

Alleged Offence
Description of Offence: Behaving in a disorderly manner in a public place or in sight or hearing of any person in a public place
The Criminal Code section: 74A (2) (a)
When: Date: _____ Time: _____
Place: _____
Modified Penalty: \$500.00 (Amount Due)

Officer Issuing Notice
Name: _____ Registered Number: _____
Police Station: _____



PART B YOUR OPTIONS (ANY ACTION MUST OCCUR ON OR BEFORE THE DUE DATE)

It is alleged that you have committed the above offence.
i. If you do not want to be prosecuted in court for the alleged offence, pay the Amount Due; or
ii. Elect to have the matter heard in court.
Additional information is overleaf.

PART C HOW TO PAY THE MODIFIED PENALTY (AMOUNT DUE)

Payments made online or over the phone must be made **before 9 pm** Australian Western Standard Time **on the Due Date** to allow for processing times. BPay payment options are not available. Payments must be made in full. Part payments are not accepted.

 Payment Online or By Telephone (MasterCard and VISA only) Biller Code: 524512 Reference Number: _____ INTERNET Visit www.police.wa.gov.au/infringementpayment PHONE 1300 BPOINT (1300 276 468)	In Person  Pay in-store at Australia Post  You may also pay in person at Police Stations with facilities to receive payment and only where there is no local Australia Post Office. Please present this notice intact when paying in person.
By Post: Post this tear-off-slip, with a cheque or money order made payable to "Commissioner of Police", to: Commissioner of Police Payments Processing 2 Adelaide Terrace EAST PERTH WA 6004 Do not send cash in the mail.	



Alleged Offender	Infringement Notice Number	Due Date	Amount Due
_____	_____	_____	_____

PART D NOTICE TO ALLEGED OFFENDER

It is alleged that you have committed the offence detailed in Part A.
 If you do not want to be prosecuted in court for the alleged offence, pay the modified penalty to an approved officer within 28 days after the date of issue of this notice. See PART C for how and where to pay the modified penalty.
 Paying the modified penalty will not be regarded as an admission for the purposes of any civil or criminal court case.
 If you do not pay the modified penalty within 28 days, you may be prosecuted in court for the alleged offence or enforcement action may be taken under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* to recover the modified penalty. Under that Act, some or all of the following action may be taken — your driver’s licence may be suspended; your vehicle licence may be suspended or cancelled; your details may be published on a website; your vehicle may be immobilised or have its number plates removed; and your property may be seized and sold.

PART E FURTHER INFORMATION

It may take up to 24 hours from the issuing of this notice until WA Police and its payment collection agents are able to receive and process payment.
 Payment must be received by the Due Date of this notice.
 The *Criminal Procedure Act 2004* requires payment of an infringement notice to be made within 28 days of the date of the notice. Additional days may have been included in the Due Date appearing on this notice to allow for public holidays and weekends.
 Payments made online or over the phone must be made before 9 pm Australian Western Standard Time on the Due Date to allow for processing times.
 BPay Payment options are not available.
 A modified penalty is the prescribed amount that an alleged offender must pay if he or she wants the matter dealt with out of court. The modified penalty is less than the normal penalty for the offence.
 Frequently Asked Questions (FAQ) are available on the WA Police website: <http://www.police.wa.gov.au/ccinfaq>
 WA Police endeavours to make its information and services accessible to as many people within the community as possible. For more information or assistance regarding accessibility and interpreter services visit the WA Police website Community Diversity pages at <http://www.police.wa.gov.au> or telephone 131 444.
 For enquiries please contact Infringement Management & Operations on (08) 9222 1408.



PART F COURT ELECTION

If you want this matter to be dealt with by prosecution in court, sign and date here:

_____ Date: DD / MM / 20 YY

and post this notice to the address below within 28 days after the date of issue of this notice.


Infringement Management & Operations
 Locked Bag 35
 Perth Business Centre
 PERTH WA 6849

If you are prosecuted in a court for the alleged offence, and convicted, you will be liable to a penalty and costs.




Alleged Offender	Infringement Notice Number	Due Date

Figure 3: Example of Criminal Code infringement notice Final Demand



CRIMINAL CODE INFRINGEMENT NOTICE
The Criminal Code of Western Australia



NAME
ADDRESS
SUBURB STATE POSTCODE

Infringement Notice No	
Date of Issue	
Amount Due	
Due Date	
Payments made online or over the phone must be made before 9 pm Australian Western Standard Time on the Due Date to allow for processing times.	

FINAL DEMAND

PART A OFFENCE DETAILS




Alleged Offender
 Surname: _____ Given Names: _____
Alleged Offence
 Description of Offence: Behaving in a disorderly manner in a public place or in sight or hearing of any person in a public place
The Criminal Code section: 74A(2)(a)
 When: _____ Date: _____ Time: _____
 Place: _____
 Modified Penalty: \$500.00
 Fee for Issuing a Final Demand:
 Total: _____ (Amount Due)
Officer Issuing Notice
 Name: _____ Registered Number: _____
 Police Station: _____

PART B YOUR OPTIONS (ANY ACTION MUST BE TAKEN ON OR BEFORE THE DUE DATE)

It is alleged that you have committed the above offence.
 i. If you do not want to be prosecuted in court for the alleged offence, pay the Amount Due; or
 ii. Elect to have the matter heard in court.
 Additional information is overleaf.

PART C HOW TO PAY THE AMOUNT DUE

Payments made online or over the phone must be made before 9 pm Australian Western Standard Time on the Due Date to allow for processing times. BPay payment options are not available. Payments must be made in full. Part payments are not accepted.

 <p>Payment Online or By Telephone (MasterCard and VISA only) Biller Code: 524512 Reference Number: INTERNET Visit www.police.wa.gov.au/infringementpayment PHONE 1300 BPOINT (1300 276 468)</p>	<p>In Person</p>  <p>Pay in-store at Australia Post</p>  <p>You may also pay in person at Police Stations with facilities to receive payment and only where there is no local Australia Post Office. Please present this notice intact when paying in person.</p>
---	--

By Post: Post this tear-off-slip, with a cheque or money order made payable to 'Commissioner of Police', to:
 Commissioner of Police
 Payments Processing
 2 Adelaide Terrace
 EAST PERTH WA 6004
 Do not send cash in the mail.

Alleged Offender

Infringement Notice Number

Due Date

Amount Due

PART D NOTICE TO ALLEGED OFFENDER

It is alleged that you have committed the offence detailed in Part A.

If you do not want to be prosecuted in court for the alleged offence, pay the Amount Due to an approved officer by the Due Date. See PART C for how and where to pay the Amount Due.

Paying the Amount Due will not be regarded as an admission for the purposes of any civil or criminal court case.

If you do not pay the Amount Due by the Due date, you may be prosecuted in court for the alleged offence or enforcement action may be taken under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* to recover the Amount Due.

Under that Act, some or all of the following action may be taken — your driver's licence may be suspended; your vehicle licence may be suspended or cancelled; your details may be published on a website; your vehicle may be immobilised or have its number plates removed; and your property may be seized and sold.

PART E FURTHER INFORMATION

It may take up to 24 hours from the issuing of this notice until WA Police and its payment collection agents are able to receive and process payment.

Payment must be received by the Due Date of this notice.

The *Criminal Procedure Act 2004* requires payment of an infringement notice to be made within 28 days of the date of the notice. Additional days may have been included in the Due Date appearing on this notice to allow for public holidays and weekends.

Payments made online or over the phone must be made before 9 pm Australian Western Standard Time on the Due Date to allow for processing times.

BPay Payment options are not available.

A modified penalty is the prescribed amount that an alleged offender must pay if he or she wants the matter dealt with out of court. The modified penalty is less than the normal penalty for the offence.

Frequently Asked Questions (FAQ) are available on the WA Police website: www.police.wa.gov.au/criminal

WA Police endeavours to make its information and services accessible to as many people within the community as possible. For more information or assistance regarding accessibility and interpreter services visit the WA Police website Community Diversity pages at www.police.wa.gov.au or telephone 131 444.

For enquiries please contact Infringement Management & Operations on (08) 9374 4555.



PART F COURT ELECTION

If you want this matter to be dealt with by prosecution in court, sign and date here:

Date: / / / 20

and post this notice to the address below within 28 days after the date of issue of this notice.

Infringement Management & Operations
 Locked Bag 40
 Perth Business Centre
 PERTH WA 6849

If you are prosecuted in a court for the alleged offence, and convicted, you will be liable to a penalty and costs.



Alleged Offender	Infringement Notice Number	Due Date
<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>

Appendix 2: Community Feedback Information Sheet

Criminal Code infringement notices: Community Feedback

What is a Criminal Code infringement notice?

Criminal Code infringement notices can be given to you for disorderly behaviour or stealing things worth \$500 or less. An example of a Criminal Code infringement notice is attached.

A Criminal Code infringement notice is for \$500.

You have to be 17 years old or older to get a Criminal Code infringement notice.

Who is the Ombudsman?

The Ombudsman is independent and impartial and reports directly to Parliament.

What is the Ombudsman's job?

Parliament has asked us to monitor how Criminal Code infringement notices work. We have a particular job to see how Criminal Code infringement notices work for Aboriginal and Torres Strait Islander communities.

We would like to hear from you

If you have got a Criminal Code infringement notice we would like to hear from you.

We have made a Response Form for you to fill in about your story. To help you provide your story, we have also made a Consultation Paper giving more details about Criminal Code infringement notices, the Ombudsman's job and questions we are asking the community. The Response Form and Consultation Paper are on our website at www.ombudsman.wa.gov.au/CCINs

Mail: Ombudsman Western Australia
PO Box Z5386
St Georges Terrace
PERTH WA 6831

Email: mail@ombudsman.wa.gov.au

Fax: 08 9220 7500

We would like you to tell us about your experience by **Friday 20 May 2016**.

You can call us and speak directly to Ms Chrissie Chatterton, our Senior Project Officer. You can also speak directly to Mrs Alison Gibson, our Principal Aboriginal Liaison Officer.

Our phone numbers are:

Telephone: 08 9220 7555

Free call: 1800 117 000 (toll free for country and interstate callers)

Translator/Interpreter: If you do not speak English or are assisting someone who does not speak English, first call the Translating and Interpreting Services (**TIS**) on **13 14 50** and they can connect you with the service of your choice and translate or interpret for you.

National Relay Service: TTY or modem users phone 133 677 and quote 9220 7555 Voice-only (speak and listen) users phone 1300 555 727 and quote 9220 7555.



Example of a Criminal Code infringement notice



CRIMINAL CODE INFRINGEMENT NOTICE The Criminal Code of Western Australia



NAME
ADDRESS
SUBURB STATE POSTCODE

Infringement Notice No	
Date of Issue	
Amount Due	\$500.00 AUD
Due Date	
<small>Payments made online or over the phone must be made before 3 pm Australian Western Standard Time on the Due Date to allow for processing times.</small>	

PART A OFFENCE DETAILS

Alleged Offender
Surname: _____ Given Names: _____

Alleged Offence
Description of Offence: Behaving in a disorderly manner in a public place or in sight or hearing of any person in a public place
The Criminal Code section: 74A (2) (a)

When: _____ Date: _____ Time: _____

Place: _____

Modified Penalty: \$500.00 (Amount Due)

Officer Issuing Notice
Name: _____ Registered Number: _____
Police Station: _____



PART B YOUR OPTIONS (ANY ACTION MUST OCCUR ON OR BEFORE THE DUE DATE)

It is alleged that you have committed the above offence.

- If you do not want to be prosecuted in court for the alleged offence, pay the Amount Due; or
- Elect to have the matter heard in court.

Additional information is overleaf.

PART C HOW TO PAY THE MODIFIED PENALTY (AMOUNT DUE)

Payments made online or over the phone must be made **before 3 pm** Australian Western Standard Time **on the Due Date** to allow for processing times.
BPay payment options are not available. Payments must be made in full. Part payments are not accepted.

 BPOINT <small>Bill Payment</small>	Payment Online or By Telephone <small>(MasterCard and VISA only)</small> Biller Code: 524512 Reference Number: INTERNET Visit www.police.wa.gov.au/infringementpayment PHONE 1300 BPOINT (1300 276 468)	In Person  Pay in-store at Australia Post 
	By Post: Post this tear-off-slip, with a cheque or money order made payable to "Commissioner of Police", to: Commissioner of Police Payments Processing 2 Adelaide Terrace EAST PERTH WA 6004 Do not send cash in the mail.	You may also pay in person at Police Stations with facilities to receive payment and <u>only</u> where there is no local Australia Post Office. Please present this notice intact when paying in person.



Alleged Offender	Infringement Notice Number	Due Date	Amount Due
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

PART D NOTICE TO ALLEGED OFFENDER

It is alleged that you have committed the offence detailed in Part A.

If you do not want to be prosecuted in court for the alleged offence, pay the modified penalty to an approved officer within 28 days after the date of issue of this notice. See PART C for how and where to pay the modified penalty.

Paying the modified penalty will not be regarded as an admission for the purposes of any civil or criminal court case.

If you do not pay the modified penalty within 28 days, you may be prosecuted in court for the alleged offence or enforcement action may be taken under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* to recover the modified penalty. Under that Act, some or all of the following action may be taken — your driver's licence may be suspended; your vehicle licence may be suspended or cancelled; your details may be published on a website; your vehicle may be immobilised or have its number plates removed; and your property may be seized and sold.

PART E FURTHER INFORMATION

It may take up to 24 hours from the issuing of this notice until WA Police and its payment collection agents are able to receive and process payment.

Payment must be received by the Due Date of this notice.

The *Criminal Procedure Act 2004* requires payment of an infringement notice to be made within 28 days of the date of the notice. Additional days may have been included in the Due Date appearing on this notice to allow for public holidays and weekends.

Payments made online or over the phone must be made before 9 pm Australian Western Standard Time on the Due Date to allow for processing times.

BPay Payment options are not available.

A modified penalty is the prescribed amount that an alleged offender must pay if he or she wants the matter dealt with out of court. The modified penalty is less than the normal penalty for the offence.

Frequently Asked Questions (FAQ) are available on the WA Police website: <http://www.police.wa.gov.au/ccinfaq>

WA Police endeavours to make its information and services accessible to as many people within the community as possible. For more information or assistance regarding accessibility and interpreter services visit the WA Police website Community Diversity pages at <http://www.police.wa.gov.au> or telephone 131 444.

For enquiries please contact Infringement Management & Operations on (08) 9222 1408.



PART F COURT ELECTION

If you want this matter to be dealt with by prosecution in court, sign and date here:

_____ Date: / / 20

and post this notice to the address below within 28 days after the date of issue of this notice.

Infringement Management & Operations
Locked Bag 35
Perth Business Centre
PERTH WA 6849

If you are prosecuted in a court for the alleged offence, and convicted, you will be liable to a penalty and costs.



Alleged Offender

Infringement Notice Number

Due Date



Appendix 3: Monitoring of the infringement notices provisions of *The Criminal Code*: Consultation Paper Response Template

Ombudsman Western Australia
Serving Parliament – Serving Western Australians

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Monitoring of the infringement notices provisions of *The Criminal Code*: Consultation Paper
Response Template

Name

Organisation

I am responding to this questionnaire as (please tick one):

- an individual
- state government department or authority
- other government department or authority
- non-government organisation
- community group

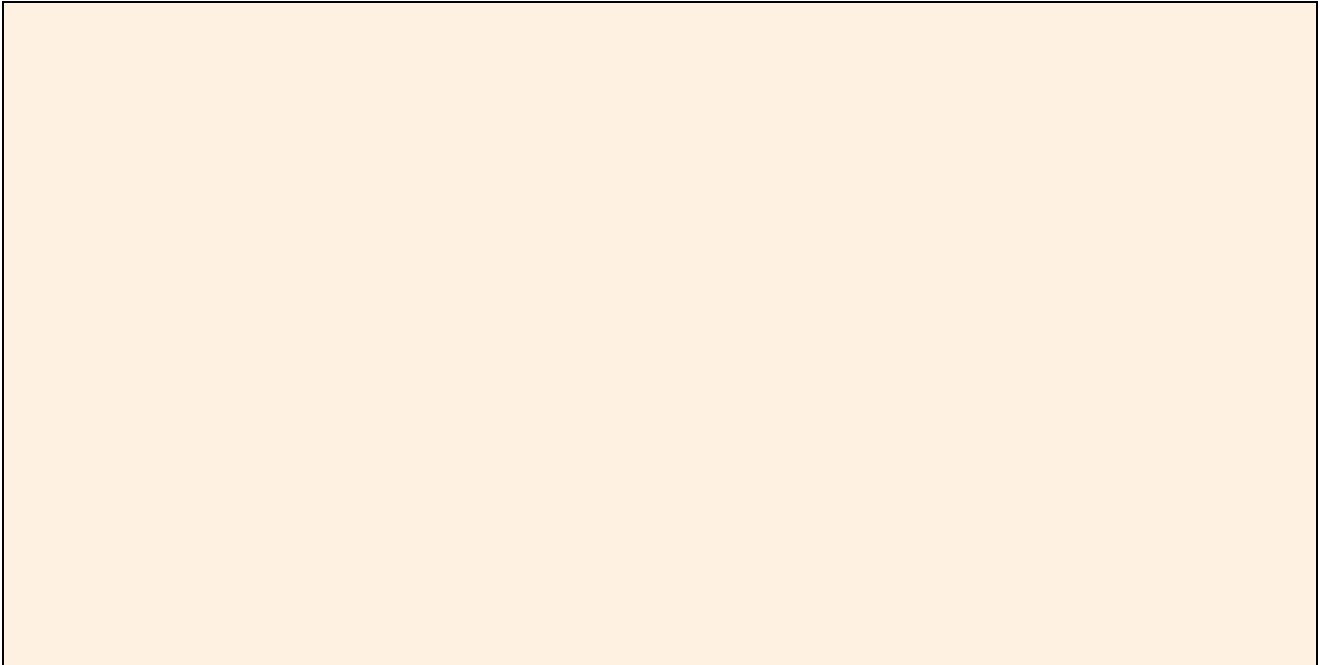
Are you of Aboriginal or Torres Strait Islander origin (optional)?

For persons of both Aboriginal and Torres Strait Islander origin, mark both 'Yes' boxes.

- No
- Yes, Aboriginal
- Yes, Torres Strait Islander

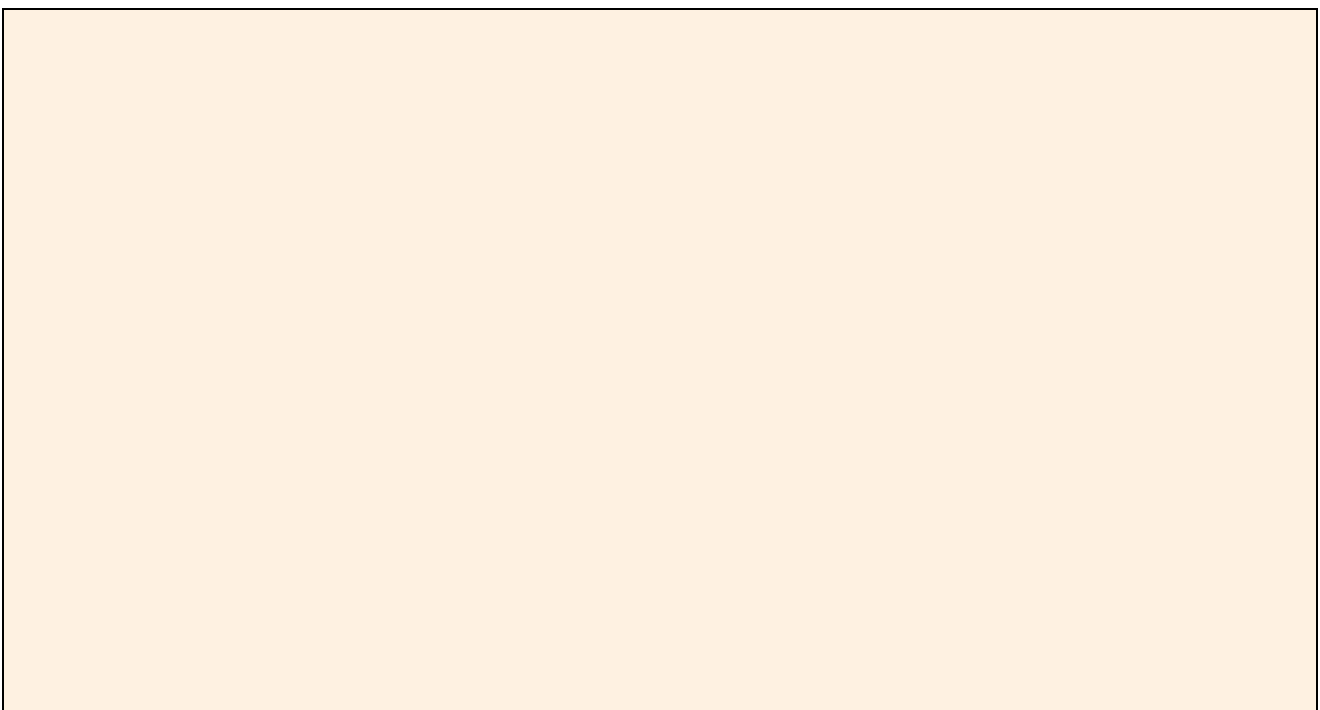
Question 1

Do you have experience in relation to the issuing of Criminal Code infringement notices? If so, please describe your experience.



Question 2

Do you have experience in relation to the form and content of Criminal Code infringement notices? If so, please describe your experience.



Question 3

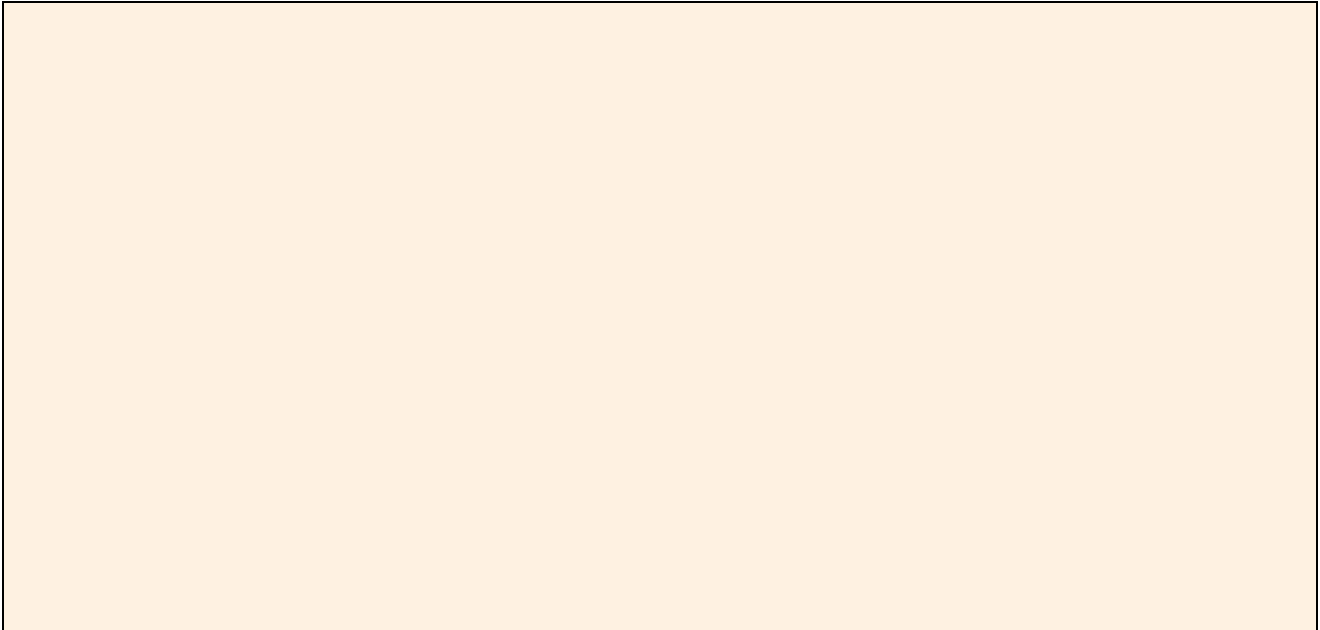
Do you have experience in relation to requests to undergo identifying procedures in relation to Criminal Code infringement notices? If so, please describe your experience.

Question 4

Do you have experience in relation to when an identifying procedure has been done in relation to Criminal Code infringement notices? If so, please describe your experience.

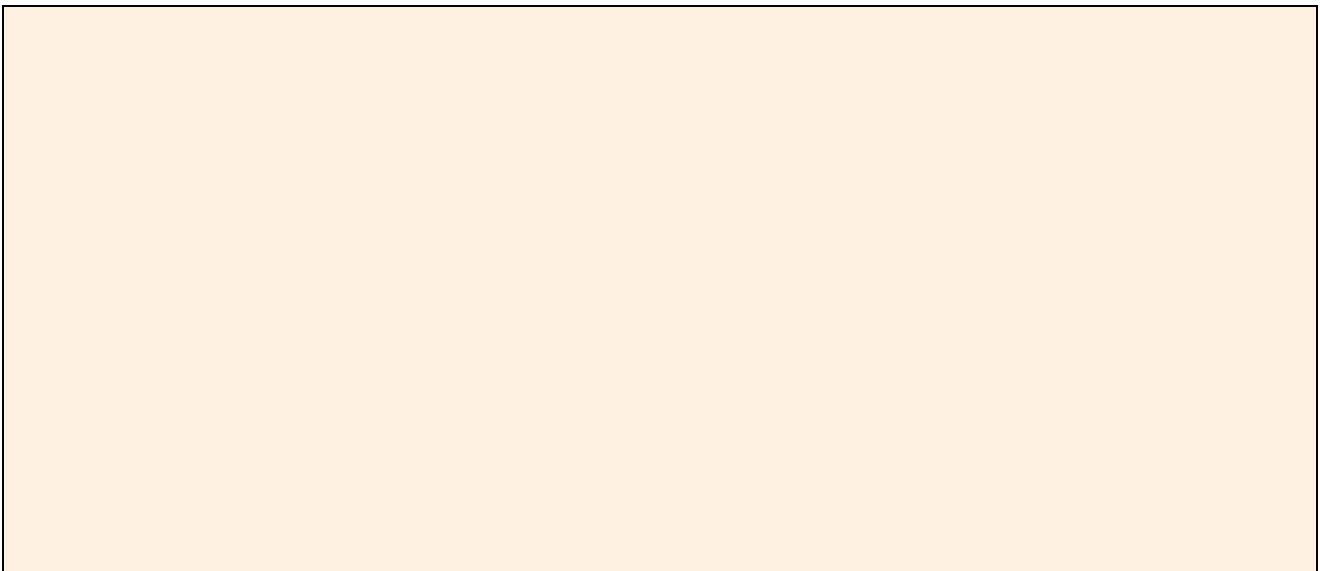
Question 5

Do you have experience regarding the service of Criminal Code infringement notices? If so, please describe your experience.



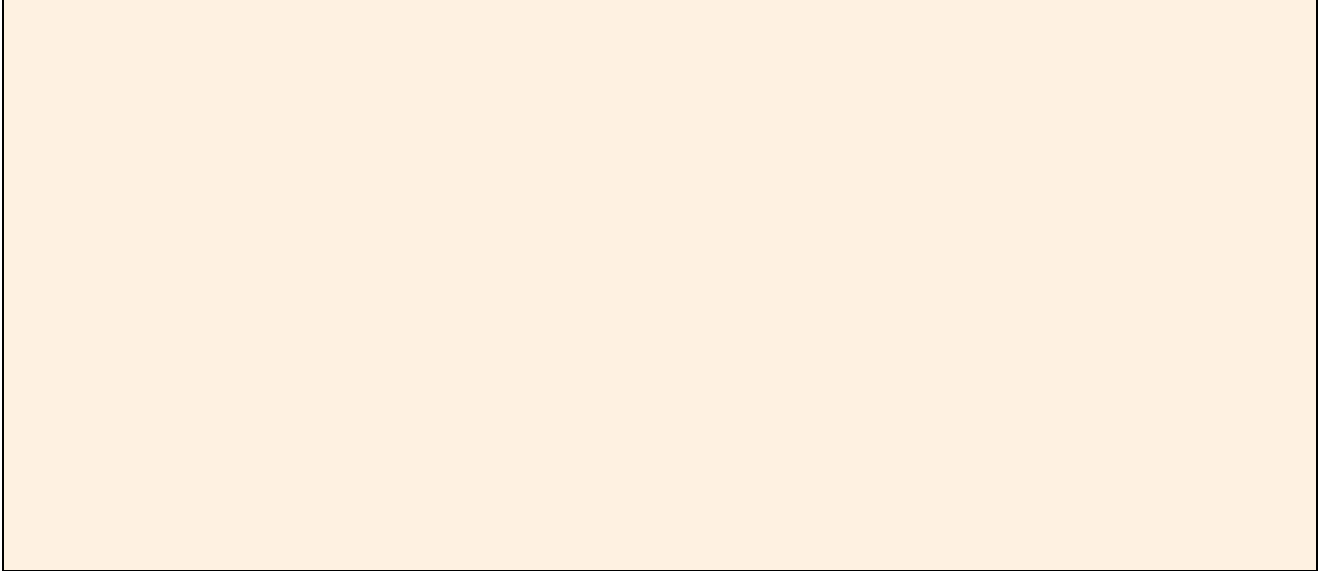
Question 6

Do you have experience regarding the withdrawal of Criminal Code infringement notices? If so, please describe your experience.



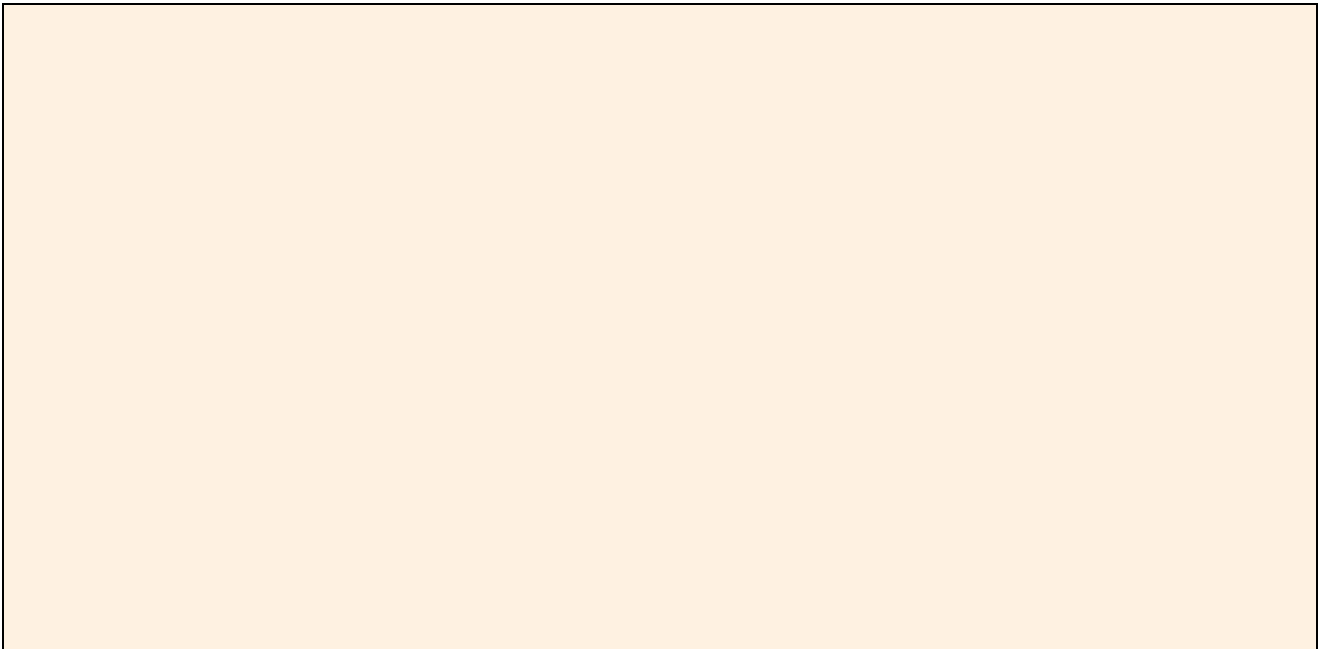
Question 7

Do you have experience in relation to Criminal Code infringement notices, regarding the payment of a modified penalty? If so, please describe your experience.



Question 8

Do you have experience in relation to Criminal Code infringement notices, regarding the extension of the period of time to pay a modified penalty? If so, please describe your experience.



Question 9

Do you have experience in relation to Criminal Code infringement notices, regarding the issuing of a final demand notice for payment of a modified penalty? If so, please describe your experience.

Question 10

Do you have experience in relation to Criminal Code infringement notices, regarding an election to have a charge for the alleged offence heard and determined by a court? If so, please describe your experience.

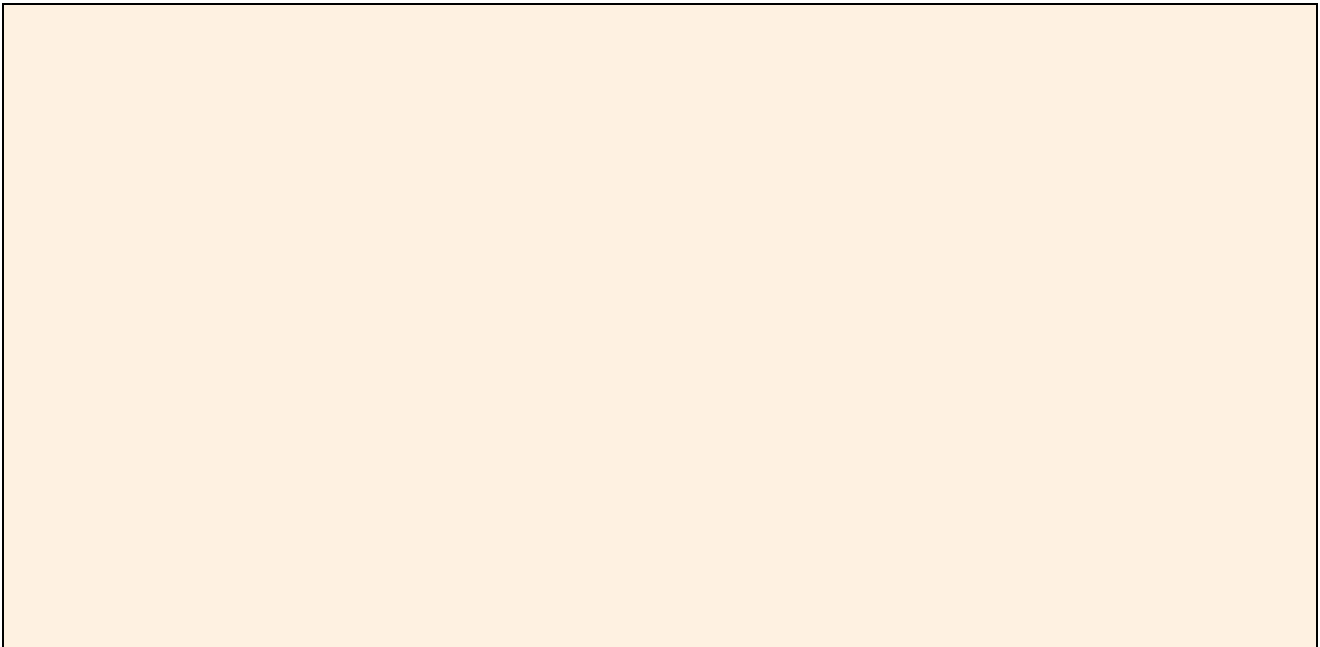
Question 11

Do you have experience regarding the registration of Criminal Code infringement notices with the Fines Enforcement Registry? If so, please describe your experience.



Question 12

Do you have experience in relation to Criminal Code infringement notices, regarding the destruction of identifying information? If so, please describe your experience.



Question 13

Please provide any additional information or comments you have in relation to the operation of Criminal Code infringement notices.



Please send your response to:

Postal address: Ombudsman Western Australia
PO Box Z5386
St Georges Terrace
PERTH WA 6831

Email: mail@ombudsman.wa.gov.au

Facsimile: 08 9220 7500

Website: www.ombudsman.wa.gov.au

Responses should be forwarded to the office of the Ombudsman by **Friday 20 May 2016**.

For further information please contact Ms Chrissie Chatterton, Senior Project Officer, Monitoring, on:

Telephone: 08 9220 7555

Free call: 1800 117 000 (toll free for country and interstate callers)

Email: communications@ombudsman.wa.gov.au

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Ombudsman Western Australia

Level 2, Albert Facey House, 469 Wellington Street Perth WA 6000
PO Box Z5386 St Georges Terrace Perth WA 6831

Tel 08 9220 7555 • Freecall (outside metropolitan area) 1800 117 000 • Fax 08 9220 7500
Email mail@ombudsman.wa.gov.au • Website www.ombudsman.wa.gov.au