

Circular No. 20/2011

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File No.

ISSUING INFRINGEMENT NOTICES FOR FAIR TRADING OFFENCES

A recent amendment to [Schedule 1](#) of the State Penalties Enforcement Regulation 2000 (SPER) has empowered officers to issue infringement notices for offences against the *Security Providers Act 1993* and the *Second-hand Dealers and Pawnbrokers Act 2003* and their regulations (Fair Trading offences).

An 'Infringement notice' form developed by the Office of Fair Trading, Department of Justice and Attorney-General is to be used for this purpose.

The Office of Fair Trading is responsible for administering infringement notices issued by police officers for Fair Trading offences and will be using their MACS database for this purpose.

The Office of Fair Trading has prepared administrative guidelines for the issue and processing of infringement notices for use by QPS officers and Office of Fair Trading employees (referred to as the 'OFT Guidelines'). These guidelines are to be read in conjunction with this Circular and where any inconsistency exists, the policy contained in this Circular prevails.

The OFT Guidelines are contained in Appendix 1 of this Circular.

The Office of Fair Trading has also prepared a list of infringement notice offences including offence codes, descriptions and penalties which are contained in Appendix 2 of this Circular.

The following sections of the Operational Procedures Manual have been amended to reflect the introduction of the new infringement notice powers and are set out in the format which will be used when incorporated into the Operational Procedures Manual.

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13.4.7 Security Providers

Definitions

Security Provider

is defined in [s. 4](#) of the *Security Providers Act 1993* as a:

- (i) bodyguard;
- (ii) crowd controller;
- (iii) private investigator;

- (iv) security adviser;
- (v) security equipment installer;
- (vi) security officer; or
- (vii) security firm.

Inspectors under the Act

The primary enforcement role of the *Security Providers Act* (the Act) rests with the Office of Fair Trading. Police officers cannot be appointed as inspectors under the Act (see [s. 32](#): 'Appointment of Inspectors' of the Act).

However, officers may have occasion to enforce certain provisions of the *Security Providers Act* and the Security Providers Regulation (the Regulation) and in doing so, may use general investigative powers conferred by the *Police Powers and Responsibilities Act 2000*. For example, an officer can demand name and address of a person if the officer finds the person committing an offence or reasonably suspects the person has committed an offence against the Act (see [ss. 40 and 41](#) of the *Police Powers and Responsibilities Act*).

In addition, the *Security Providers Act* is a relevant law (see 'relevant law' in [Schedule 6](#) of the *Police Powers and Responsibilities Act* and [s. 9](#): 'Relevant laws' of the Police Powers and Responsibilities Regulation) and officers may exercise certain powers under [ss. 22](#): 'Power to enter etc. for relevant laws' of the *Police Powers and Responsibilities Act*.

See also [s. 13.32](#): 'Issuing infringement notices for Fair Trading Offences' of this Circular.

Identification to be worn by crowd controllers (s. 47 of the Act)

When acting as a crowd controller, a licensed crowd controller must wear identification on their chest so that it is clearly visible (see [s. 47](#): 'Identification to be worn by crowd controllers' of the Act).

The identification must consist of a number no smaller than 3 cm in height and 4 mm in thickness, and the word 'SECURITY' in letters no smaller than 1 cm in height and 2 mm in thickness (see [s. 25](#): 'Crowd controller's identification – Act, s. 47' of the Regulation).

The numbers and letters of identification must be black on a white background and each crowd controller at a public place must bear a different number (see [s. 25](#)(4) and (5) of the Regulation).

This section does not apply to a person who is acting as a bodyguard.

Security provider not to wear or display chequerboard hat (s. 24 of the Regulation)

In carrying out the security provider's functions, a security provider must not wear, display, or permit to be displayed, a chequerboard hat. A 'chequerboard hat' means a hat displaying a chequerboard design, and includes a hat that has a chequerboard hatband (see [s. 24](#): 'Security provider not to wear or display chequerboard hat' of the Regulation).

POLICY

Officers who detect offences against [s. 25A](#): 'Production of licence' and [s. 47](#) of the Act and [s. 18](#): 'Liquor licensee to keep register of crowd controllers', [s. 20](#): 'Security firm to keep register of security providers', [s. 21](#): 'Security firm to keep register of crowd controllers', [s. 23](#): 'Security firm's duties about functions and supervision of restricted licensee' or [s. 24](#): 'Security provider not

to wear or display chequerboard hat' of the Regulation should, if appropriate, prosecute any person who commits such offence or where authorised, issue an infringement notice.

Commissioner may give investigative information

Under [s. 12B](#): 'Commissioner may give investigative information' of the Act, if the Commissioner reasonably suspects a person is the holder of, or an applicant for a security provider's licence, the commissioner may give information about an investigation relating to the possible commission of a disqualifying offence (see [Schedule 2](#): 'Dictionary' of the Act) to the Chief Executive. The Commissioner's power under [s. 12B](#) of the Act has been delegated to all officers in charge of regions or commands (See Delegation No. [D 3.3](#)).

Pursuant to [s. 12B\(3\)](#) of the Act, investigational information about a person is not to be provided where:

- (i) giving the information may prejudice or otherwise hinder an investigation;
- (ii) giving the information may lead to the identification of an informant;
- (iii) giving the information may affect the safety of a police officer, complainant or other person;
- (iv) for an investigation that has been completed, the investigation has not led and is not likely to lead to a reasonable suspicion that the person committed a disqualifying offence; or
- (v) for an investigation that has been completed, the person has been charged with a disqualifying offence (this information has already been provided to the chief executive, see [s. 3.4.32](#): 'Notification of Office of Fair Trading regarding Property Agents and Motor Dealers Act and Security Providers Act' of this chapter; or
- (vi) for an investigation that has not been completed, the investigation is unlikely to lead to a reasonable suspicion that the person committed a disqualifying offence.

POLICY

Where an investigating officer reasonably suspects a person is a holder of, or an applicant for a security provider's licence, and the officer has information about that person relating to the possible commission of a disqualifying offence listed in the Schedule contained in the Act, where the information does not fall within categories (i) to (vi) above, officers are to submit a report to the officer in charge of the region or command, outlining the relevant information.

Officers in charge of regions or commands are to assess the information in terms of the conditions as set out in [s. 12B\(3\)](#) of the Act and, if suitable, forward the details direct to the Manager, Licensing Branch, Business Services Division, Office of Fair Trading (see '[Contact Directory](#)' of the Operational Procedures Manual).

13.15 Second-hand Dealers and Pawnbrokers

13.15.1 Definitions

Licensee

For the purposes of this section, a licensee means a person who holds a second-hand dealers and/or pawnbrokers licence under the *Second-hand Dealers and Pawnbrokers Act*.

13.15.2 References to legislation

Second-hand Dealers and Pawnbrokers Act 2003

Police Powers and Responsibilities Act 2000

Police Powers and Responsibilities Regulation 2000

13.15.3 Application for licences

ORDER

Officers are not to accept applications for licences under the *Second-hand Dealers and Pawnbrokers Act* (the Act). All inquiries in relation to licensing should be directed to the Office of Fair Trading, Department of Justice and Attorney-General (see '[Contact Directory](#)' of the Operational Procedures Manual).

13.15.4 Licence particulars

PROCEDURE

Officers that require licence particulars under the Act are to contact the Dealer Audit and Compliance Coordinator (DACC), Property Crime Investigation Group.

13.15.5 State Drug and Property Crime Group (SDPCG), State Crime Operations Command – to be advised

The Property Crime Investigation Unit (PCIU), State Drug and Property Crime Group, State Crime Operations Command performs the function of investigating offences relating to stolen property with the aim of recovering stolen property and reducing trade in stolen goods.

POLICY

When an officer records a QPRIME occurrence for an offence committed by licensees under the *Second-hand Dealers and Pawnbrokers Act* which has not been tasked to PCIU for investigation, crime managers are to assign a notification task to the Crime Manager, PCIU for information unless alternative regional standing operating procedures exist (see [QPRIME User Guide](#)).

See also [s. 13.32](#): 'Issuing infringement notices for Fair Trading offences' of this Circular.

13.15.6 Stolen Property Investigation and Recovery System (SPIRS)

The Stolen Property Investigation and Recovery System (SPIRS) is a computer system that matches information collected from licensees to information from QPRIME.

The purpose of SPIRS is:

- (i) to assist in the identification of stolen property and offenders; and
- (ii) to monitor the compliance of licensees.

POLICY

The Officer in Charge, PCIU is responsible for the coordination of SPIRS state-wide. The granting or removal of access privileges to SPIRS is at the discretion and direction of the Officer in Charge, PCIU.

PROCEDURE

Members may be granted a password to access SPIRS upon completion of appropriate training. This training is coordinated by the Education and Training Coordinator, State Crime Operations Command. Members should apply to their regional or command education and training coordinators for SPIRS training. Members who have access to SPIRS should be conversant with the contents of the 'SPIRS User Guide'.

13.15.7 Collection of data from licensees

[Section 22](#) of the *Police Powers and Responsibilities Act* allows an officer, to ensure compliance with a relevant law by a licensee, to inspect, photograph or copy a document or thing that is required or permitted to be kept under a relevant law at the place where located or at a place with appropriate facilities for photographing or copying the document or thing. The *Second-hand Dealers and Pawnbrokers Act* is a relevant law (see [s. 9](#): 'Relevant laws' of the Police Powers and Responsibilities Regulation).

Licensees are required to maintain records of their business transactions, which may include:

- (i) pawn tickets – copies of pawn tickets on which all relevant data have been entered;
- (ii) register copies – photocopies of the actual register maintained by the licensee; and
- (iii) electronic download – an electronic download of data in the approved form, where the licensee maintains records on a computer-based system.

POLICY

Officers in charge of regions should ensure that standing operating procedures are developed for the collection of transaction records from licensees.

Standing operating procedures should include that:

- (i) collections are to be undertaken on a regular basis;
- (ii) irrespective of who actually collects the records, SPIRS-approved members should be involved to ensure that SPIRS is updated to ensure licensees are complying with the act and the records are adequate; and
- (iii) all collected transaction records are forwarded to the Officer in Charge, PCIU as soon as practicable after collection.

The Officer in Charge, PCIU is to ensure that the received collections of transaction records are entered onto SPIRS.

13.15.8 SPIRS system integrity

POLICY

The SPIRS system administrator is responsible for the:

- (i) quality control of data input;
- (ii) maintenance of the SPIRS system;
- (iii) maintenance of the SPIRS User Guide; and
- (iv) security of the SPIRS system.

The SPIRS system administrator is to monitor all aspects of system use to ensure accuracy and compliance within the system and maintain liaison with SPIRS-approved personnel and licensees supplying data.

Problems identified within the system should be directed to the SPIRS system administrator.

13.15.9 SPIRS property matches

POLICY

The SCOC Crime Manager is responsible for the analysis of all matches generated by SPIRS. Where a match is verified the SPIRS crime manager should conduct a caveat check on the suspect to identify if the suspect is involved in any current operation or investigation being conducted in another area. The SCOC Crime Manager should then update the relevant occurrence report for allocation.

Where property is matched or suspects identified through SPIRS the general report of the relevant QPRIME occurrence is to be updated by the SCOC Crime Manager, and assigned through QPRIME to the relevant officer in charge of a station or establishment where the offence occurred for the appointment of a Case Officer to manage the recovery of the property and the location of the suspect.

Officers assigned occurrences for investigation are to comply with [s. 1.12.6](#): 'Follow-up investigations' of the Operational Procedures Manual, paying particular attention to verifying that the property identified by SPIRS is the property nominated on the occurrence report, and recovering the property.

13.15.10 Licensee audits

POLICY

Where practicable, audit or compliance checks on licensees should be made by SPIRS-approved officers. Officers should view the SPIRS audit log to ascertain details of the last check on the relevant licensee or place. The DACC can also provide advice on the recommended processes involved in conducting the audit and arrange for any expert assistance, if necessary.

Where SPIRS-approved officers are not available, officers conducting these checks are to forward relevant details to a SPIRS-approved member. SPIRS-approved members receiving these details are to cause the details to be entered onto SPIRS.

Details to be entered on SPIRS include:

- (i) the names, ranks and stations of all officers attending;

(ii) any warning given with the time set for compliance, and to whom this warning was given; and

(iii) any infringement notices issued (note – infringement notices are to be entered into the 'Breaches' section of SPIRS).

Charges resulting from dealer audits and their results are no longer entered into SPIRS as this information is now recorded in QPRIME.

Audit guidelines have been prepared by the Officer in Charge, PCIU in consultation with the Investigation Section of the Office of Fair Trading (the Audit Guidelines are available on the QPS Bulletin Board). Any audits are to be conducted in accordance with these guidelines. Any request for clarification of these guidelines by officers or licensees should be referred to the Officer in Charge, PCIU.

Requests for officers attached to PCIU to assist in the conduct of compliance checks, audits or other offences related to licensees should be directed to the Officer in Charge, PCIU.

Where an audit is conducted by PCIU and non-compliance by a licensee is identified by the SPIRS system administrator, the SPIRS system administrator is to notify the officer in charge of the station or establishment where the licensee's business is located.

See also [s. 13.32](#): 'Issuing infringement notices for Fair Trading offences' of this Circular.

13.32 Issuing infringement notices for Fair Trading offences

13.32.1 References to legislation

Police Powers and Responsibilities Act 2000

Security Providers Act 1993

Security Providers Regulation 2008

Second-hand Dealers and Pawnbrokers Act 2003

Second-hand dealers and Pawnbrokers Regulation 2004

State Penalties Enforcement Regulation 2000

Youth Justice Act 1992

13.32.2 Definitions

For the purpose of this Circular, the following definitions apply:

Fair Trading offence

means an offence against the *Security Providers Act*, *Security Providers Regulation*, *Second-hand Dealers and Pawnbrokers Act* or *Second-hand dealers and Pawnbrokers Regulation*.

13.32.3 Authority to issue infringement notices for Fair Trading offences

Officers are empowered by the provisions of [Part 3, Division 1](#): 'Service of infringement notices' of the *State Penalties Enforcement Act* and [Schedule 1](#): 'Consumer related legislation' of the State Penalties Enforcement Regulation to issue infringement notices for Fair Trading offences.

ORDER

Officers are to use an 'Infringement Notice' form supplied by the Office of Fair Trading to issue infringement notices for Fair Trading offences.

Officers are not to issue infringement notices for Fair Trading offences unless they have successfully completed the relevant Service-approved training.

13.32.4 Office of Fair Trading – administering authority

The Office of Fair Trading is responsible for administering and processing infringement notices issued by police officers for Fair Trading offences and will be using their MACS database for this purpose.

The Office of Fair Trading has prepared administrative guidelines for the issue and processing of infringement notices for use by QPS officers and Office of Fair Trading employees ('OFT Guidelines'). These guidelines are to be read in conjunction with this Circular and where any inconsistency exists, the policy contained in this Circular prevails.

The OFT Guidelines are contained in Appendix 1 of this circular.

The Office of Fair Trading has also prepared a list of infringement notice offences including offence codes, descriptions and penalties which are contained in Appendix 2 of this circular.

The Office of Fair Trading has agreed to provide details of licensees' enforcement history (warnings/tickets/charges) held by Office of Fair Trading to QPS officers enforcing the provisions of the *Security Providers Act* and *Second-hand dealers and Pawnbrokers Act*.

PROCEDURE

Officers investigating offences against the *Security Providers Act* or *Second-hand dealers and Pawnbrokers Act*, or otherwise enforcing the provisions of those Acts, who require a licensee's enforcement history, may make a request to the Data Officer, Office of Fair Trading during business hours (9am-5pm), by way of written request on official Service letterhead or if urgent, by telephone.

Officers making a request are to provide:

- (i) the full name of the person or business, address, and if applicable, DOB;
- (ii) the requesting officer's:
 - (a) full name, rank and employee number; and
 - (b) station/establishment and contact details; and
- (iii) the reasons for the request.

Officers who obtain a licensee's enforcement history as a result of an urgent request over the telephone are to forward written confirmation of the request to the Data Officer, Compliance Planning, Office of Fair Trading on official Service letterhead as soon as practicable.

Officers in charge of stations and establishments may request additional infringement notice books direct from the Data Officer, Compliance Planning, Office of Fair Trading (see 'Contact Directory' of this Circular) who will supply them at no cost to the Service.

13.32.5 Enforcement powers

Chapter 2, Part 1, [ss. 19](#) to [25](#): 'Entry, inquiries and inspection' of the *Police Powers and Responsibilities Act* relates to powers of entry, inquiries and inspection generally and in relation to relevant laws.

The *Security Providers Act* and *Second-hand dealers and Pawnbrokers Act* are relevant laws (see [s. 9](#): 'Relevant laws' of the Police Powers and Responsibilities Regulation).

Powers of entry

There is no specific power of entry available to officers for entry into licensed premises to ensure compliance with the *Security Providers Act*. However, the following powers may be appropriate for officers when investigating offences against the *Security Providers Act*:

(i) under [s. 19](#): 'General power to enter to make inquiries, investigations or serve documents' of the *Police Powers and Responsibilities Act* officers may use general powers of entry to inquire into or investigate a matter; and

(ii) under [s. 176](#): 'Entry and search-monitoring compliance' of the *Liquor Act* investigators may enter any place at any reasonable time of the day or night and exercise the powers set out in [s. 178](#): 'General power of investigators in relation to places' for the purpose of finding out whether the *Liquor Act* is being complied with. (note – all police officers are approved to exercise powers of investigators under the *Liquor Act*; see Delegation No. [D 27.3](#)).

Under [s. 22](#): 'Power to enter etc. for relevant laws' of the *Police Powers and Responsibilities Act*, officers may, at any reasonable time, enter and stay on a place used for a purpose under a licence under the *Second-hand Dealers and Pawnbrokers Act* for ensuring compliance with that Act.

Powers to demand name and address

[Sections 40](#): 'Person may be required to state name and address' and [41](#): 'Prescribed circumstances of requiring name and address' of the *Police Powers and Responsibilities Act* apply to offences against the *Security Providers Act* and *Second-hand Dealers and Pawnbrokers Act*.

In addition to the above, pursuant to [sections 40](#) and [41\(g\)](#) of the *Police Powers and Responsibilities Act*, officers may require a person to state the person's correct name and address and if appropriate, evidence of correctness thereof, if the officer reasonably believes obtaining the person's name and address is necessary for the administration or enforcement of the *Second-hand Dealers and Pawnbrokers Act*.

POLICY

To assist with the administration of infringement notices, officers should wherever possible, when requiring evidence of the correctness of the name and address given, ensure that the name and address of the alleged offender is confirmed by some means of photographic identification before

issuing an infringement notice. Appropriate notes about identification should be made on the rear of the prosecution copy of the relevant infringement notice.

See also [s. 13.3.2](#): 'Helping public officials exercise powers under various Acts' of the Operational Procedures Manual.

13.32.6 Evidentiary notes on rear of infringement notice

PROCEDURE

Officers issuing an infringement notice should make appropriate notes on the rear of the white original (prosecutions) copy of the particular infringement notice in relation to the alleged offence, including

- (i) conversations with the alleged offender including:
 - (a) any admissions or confessions;
 - (b) any reasons for the alleged offence; and
 - (c) negation of any relevant defences/exculpations;
- (ii) description of the offender including any identification produced;
- (iii) position held by the offender at the relevant premises;
- (iv) corroborating officer's details;
- (v) details of any other witnesses; and
- (vi) any other relevant details.

See also subsection titled: 'Reporting incidents involving licensed premises' of [s. 13.4.4](#): 'Liquor', [s. 13.4.7](#): 'Security Providers' and [s. 13.15](#): 'Second-hand Dealers and Pawnbrokers' of the Operational Procedures Manual.

13.32.7 Property Crime Investigation Unit – to be forwarded copy of notice

PROCEDURE

Officers issuing infringement notices to any licensees for offences against the *Second-hand Dealers and Pawnbrokers Act*, are to forward a copy of the infringement notice by way of email or facsimile to the Officer in Charge, Property Crime Investigation Unit for inclusion on SPIRs.

13.32.8 Discontinuing arrest

[Section 377](#): 'Additional case when arrest of adult may be discontinued' of the *Police Powers and Responsibilities Act* (PPRA) outlines when police have a duty to release an adult who has been arrested. This duty includes when it is more appropriate to serve an arrested person with an infringement notice, notice to appear or summons for the offence (see [s. 377](#)(2) of the PPRA).

POLICY

Where an officer has arrested an adult person for a Fair Trading offence, the officer is to consider discontinuing the arrest and issuing an infringement notice to the person for the offence in accordance with [s. 377](#): 'Additional case when arrest of adult may be discontinued' of the PPRA.

Also see [s. 16.6](#): 'Discontinuing arrest' of the Operational Procedures Manual.

13.32.9 Identifying particulars

POLICY

There are no provisions for the taking of the identifying particulars of a person who has only been issued with an infringement notice for a Fair Trading offence.

Officers are to be mindful that authority only exists to take identifying particulars for offences against the *Second-hand dealers and Pawnbrokers Act* and [s. 9](#): 'Requirement to be licensed' of the *Security Providers Act* (third offence only) in accordance with [ss. 467](#): 'Taking identifying particulars of person in custody' and [468](#): 'Taking identifying particulars—proceeding started by notice to appear or complaint and summons' of the PPRA (see [s. 2.45.2](#): 'When to take identifying particulars' of the Operational Procedures Manual).

However, where an officer arrests a person for a Fair Trading offence and discontinues the arrest and issues an infringement notice for the offence in accordance with [s. 377\(2\)\(b\)](#), the officer is to determine whether the identifying particulars should be destroyed within a reasonable time in the presence of a justice in accordance with [s. 474](#): 'Destruction of identifying particulars' of the PPRA.

13.32.10 Court election

Where an alleged offender has elected to defend the matter in Court, the Office of Fair Trading will forward written advice and the white original (prosecutions) copy of the infringement notice by secure post to the officer in charge of the issuing officer's station or establishment.

POLICY

Officers in charge who receive advice from the Office of Fair Trading there will be a defended action are to refer the matter to the issuing officer to consider commencing a proceeding against the alleged offender by way of complaint and summons, notice to appear or arrest, where appropriate.

The police prosecutor responsible for prosecution of the matter is to advise the Manager, Compliance Planning, Office of Fair Trading of the outcome of such a defended action (see 'Contact Directory' of this Circular).

PROCEDURE

Officers who receive advice that a person has elected to have their infringement notice dealt with in a court should comply with [ss. 3.4.2](#): 'The decision to institute proceedings' and [3.4.3](#): 'The discretion to prosecute' of the Operational Procedures Manual.

See also [s. 3.5](#): 'The institution of proceedings' of the Operational Procedures Manual.

See also 'Waiving and cancellation of infringement notices' of this Circular.

13.32.11 Children

POLICY

Officers are not to issue infringement notices for Fair trading offences alleged to have been committed by a person under 17 years of age.

Officers are to consider alternative action for dealing with alleged child offenders for Fair Trading offences (see [s. 5.4.2](#): 'Alternatives for dealing with child offenders of the Operational Procedures Manual').

13.32.12 Infringement notices to be limited

POLICY

The issue of infringement notices to an offender is restricted to a maximum number of three infringement notices for Fair Trading offences at any one time. If more than three offences are detected for which an infringement notice can be issued, the officer may determine, depending on the circumstances, to either:

- (i) issue three infringement notices and provide a verbal caution for all the other offences; or
- (ii) commence proceedings for all the offences detected as appropriate.

13.32.13 Distribution of infringement notices

PROCEDURE

Distribution of infringement notices for offences against the *Security Providers Act* or *Second-hand Dealers and Pawnbrokers Act* is as follows:

- (i) white original (prosecutions) copy to be forwarded by the relevant officer in charge to the Data Officer, Compliance Planning, Office of Fair Trading (see 'Contact Directory' of this Circular) within five days of issue, with an 'Infringements Issued Notice' form (see Attachment B of the OFT Guidelines);
- (ii) blue duplicate (office) copy to be retained in the book and filed at issuing station/establishment; and
- (iii) yellow triplicate (alleged offender's) copy to be given to the offender.

13.32.14 Withdrawal and cancellation of infringement notices

Withdrawal or cancellation of infringement notices in possession of or issued by members of the Service are actioned by the Office of Fair Trading after receiving an appropriate recommendation from the officer in charge of the relevant station or establishment.

Withdrawal of an infringement notice refers to the discontinuance of enforcement action in relation an infringement notice after the infringement notice has been issued to an alleged offender and the police or the offender has departed the scene.

Cancellation of an infringement notice refers to the revocation of an infringement notice because:

- (i) the infringement notice is reported as lost, stolen or damaged; or
- (ii) of errors detected on the infringement notice by the issuing officer, relevant officer in charge, Office of Fair Trading, or State Penalty Enforcement Registry (SPERS).

Suitability of infringement notice for withdrawal or cancellation

POLICY

Where an infringement notice contains one or more of the errors listed below, that infringement notice should be considered for withdrawal or cancellation as appropriate:

- (i) incorrect or false name or address or date of birth of the alleged offender;
- (ii) no time of offence (if relevant to the offence);
- (iii) no or incorrect date of offence (incorrect date of issue does not invalidate the infringement notice)
- (iv) no or incorrect location of offence;
- (v) no or incorrect penalty inserted;
- (vi) no or incorrect offence title or code inserted;
- (vii) no or incorrect offence title or code inserted;
- (viii) more than one offence inserted; or
- (ix) expiration of limitation of proceedings (i.e. more than 12 months after the date of the offence).

Where applicable, in making a determination as to whether or not an infringement notice should be withdrawn or cancelled consideration should be given as to whether a prosecution action instigated before a court would be likely to fail due to the apparent defect in the infringement notice subject of the determination.

Action by officers – errors on infringement notices

POLICY

Officers who make an error on an infringement notice to be issued to a person, should neatly cross out and initial the error, ensuring enough space is remaining to insert the correct details. However, if the error is substantial or more than one error is made, the infringement notice should be cancelled and another notice issued.

Officers who make an error(s) on an infringement notice, which cannot be rectified as above, prior to issue to a person, are to:

- (i) retain the original and two copies of the infringement notice including the yellow triplicate (alleged offender) copy;
- (ii) issue another correctly completed infringement notice to the alleged offender if appropriate in the circumstances;

(iii) report on the infringement notice containing the error(s) to their officer in charge, including whether another infringement notice was issued in lieu and the number of such infringement notice; and

(iv) attach the original and two copies of the infringement notice containing the error to the report.

Officers who detect an error in an infringement notice which has been issued to an alleged offender who has departed from the scene are to:

(i) report the circumstances to their officer in charge; and

(ii) attach the original and remaining copies of the infringement notice containing the error to the report.

Action by officers in charge – errors on infringement notices

The Office of Fair Trading will return any infringement notices with errors detected by the Office of Fair Trading or SPERS, to the relevant officer in charge for review and determination as to whether any further enforcement action is appropriate.

PROCEDURE

Officers in charge who detect a previously undetected error in an infringement notice or who receive infringement notices which contain errors detected by the Office of Fair Trading or SPERS are to, if considered appropriate, refer the infringement notice to the issuing officer:

(i) for a report outlining the circumstances of the error; and

(ii) consider the commencement of proceedings or the issue of another infringement notice.

Officers in charge who receive a report from an issuing officer regarding an infringement notice containing error(s) are to consider the contents of the report and if supported, forward the report together with their recommendation as to whether or not the infringement notice should be withdrawn/cancelled, to the Manager, Compliance Planning, Office of Fair Trading (see 'Contact Directory' of this Circular). The original and remaining copies of the infringement notice containing the error are to be attached to the report.

Where an infringement notice relates to an offence against the *Second-hand Dealers and Pawnbrokers Act*, officers in charge are to ensure that a copy of the report forwarded to the Office of Fair Trading is also provided to the Officer in Charge, Property Crime Investigation Unit for removal from SPIRs.

13.32.15 Requests for withdrawal (waiving) or cancellation

POLICY

Letters from alleged offenders containing requests for withdrawal or cancellation of infringement notices issued by a police officer and sent directly to the Office of Fair Trading will be forwarded to the officer in charge of the issuing officer's station or establishment for review and determination.

Officers in charge receiving requests for withdrawal or cancellation of infringement notices are to:

- (i) if received directly from the alleged offender, forward a copy of the letter with a covering report to the Manager, Compliance Planning, Office of Fair Trading, as soon as possible;
 - (ii) review the grounds for the request/complaint;
 - (iii) determine, with reference to the OFT Guidelines and 'Suitability of infringement notices for withdrawal or cancellation' of this Circular, whether:
 - (a) the infringement notice should remain and be enforced; or
 - (b) the infringement notice should be withdrawn or cancelled; and
 - (c) another infringement notice should be issued/substituted; and
 - (iv) forward written advice of their determination to the Manager, Compliance Planning, Office of Fair Trading within 30 days of receipt of the request (see 'Contact Directory' of this Circular).
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ORDER

Officers in charge are to note the contents of this Circular and bring them to the notice of all members under their control.

Administration

POLICY

The contents of this Circular will be incorporated into [Chapter 13](#): 'Miscellaneous' of the Operational Procedures Manual in due course.

The following sections of the Operational Procedures Manual are hereby cancelled:

[s. 13.4.7](#): 'Security Providers'; and

[s. 13.15](#): 'Second-hand dealers and pawnbrokers'.

R BARNETT
DEPUTY COMMISSIONER
(SPECIALIST OPERATIONS)