

The contents of this Commissioner's Circular commence on 1 January 2009

TRIAL ISSUING OF INFRINGEMENT NOTICES FOR PUBLIC NUISANCE, PUBLIC URINATION AND ASSOCIATED OFFENCES

On 1 January 2009, a 12 month trial will be conducted in the South Brisbane and Townsville police districts permitting the issue of traffic infringement notices (PT56) for public nuisance, public urination and associated offences.

Queensland Transport will be the authority responsible for processing infringement notices issued by police as a result of the trial. Queensland Transport will be using the TRAILS computer system for the purposes of administering infringement notices issued.

POLICY

The contents of this Circular only applies to prescribed public nuisance offences committed within the trial areas, or associated offences. The policies and procedures contained in this Circular are set out in the format that will be used when incorporated into the Operational Procedures Manual in due course.

13.4.12 Issuing of infringement notices for public nuisance, public urination and associated offences

For the purpose of this Circular the following definitions apply:

prescribed public nuisance offence means an offence against ss. 6(1): 'Public nuisance' or 7(1): 'Urinating in a public place' of the *Summary Offences Act*, unless the offence also involves an offence against the person.

associated offence, in relation to a prescribed public nuisance offence, means an offence (whether committed within or outside the prescribed area) against either or both of the following provisions, unless the offence also involves an offence against the person:

- (i) s. 790(1): 'Offence to assault or obstruct police officer' of the *Police Powers and Responsibilities Act* (PPRA), but only to the extent that it relates to obstructing a police officer in the performance of a police officer's duties in relation to a prescribed public nuisance offence;
- (ii) s. 791(2): 'Offence to contravene direction or requirement of police officer' of the PPRA, but only to the extent that it relates to a requirement to state a person's correct name and address in relation to a prescribed public nuisance offence.

prescribed area means the trial areas of South Brisbane and Townsville police districts.

Prescribed public nuisance offence

POLICY

Depending on the circumstances of the prescribed public nuisance offence committed in the trial area, officers may:

- (i) refer the person to an appropriate agency (see also ss. 16.6.3: 'Drunkenness' and 6.5.5: 'Potentially harmful things - volatile substance misuse' of the Operational Procedures Manual);
- (ii) verbally caution the person;
- (iii) issue an infringement notice to the person; or
- (iv) commence a proceeding against the person.

Officers should consider alternatives to issuing an infringement notice or commencing a proceeding against a person suspected of committing a prescribed public nuisance offence.

Where a person commits a number of prescribed public nuisance offences in the one set of circumstances, officers should only issue one infringement notice for the most relevant prescribed public nuisance offence (see Appendix 1: 'Public nuisance, public urination and associated offence infringement notice codes and penalties' of this Circular).

Associated offence

POLICY

Officers are only to issue an infringement notice for an associated offence where an infringement notice is also to be issued for the prescribed public nuisance offence committed in a prescribed area.

An associated offence does not include an offence against the provisions of s. 791(2): 'Offence to contravene direction or requirement of police officer' of the PPRA that relates to a requirement the person give evidence of the correctness of the stated name and address in accordance with s. 40(2): 'Person may be required to state name and address' of the PPRA.

Examples of when an infringement notice for an associated offence, in addition to an infringement notice for a prescribed public nuisance offence, may be issued include:

- (i) when the person obstructs a police officer dealing with that person's prescribed public nuisance offence;
- (ii) when the person disobeys a requirement by a police officer to state their correct name and address in relation to the prescribed public nuisance offence; and
- (iii) when the person is arrested for a prescribed public nuisance offence and later obstructs a police officer at a watchhouse (see 'Receiving custody of persons arrested for prescribed public nuisance offences' of this Circular).

An infringement notice for an associated offence may be issued regardless of whether the associated offence occurred inside or outside of a trial area.

For example, a person is arrested for a prescribed public nuisance offence committed in the South Brisbane police district. The person is then transported to the Brisbane City Watchhouse where the person obstructs a police officer. The arresting officer then decides to discontinue the arrest and serve infringement notices on the person for both the prescribed public nuisance and the associated offence (obstruct police) in accordance with s. 377: 'Additional case when arrest of adult may be discontinued' of the PPRA. In this instance, an infringement notice has also been issued for the associated offence of obstructing a police officer, even though it occurred outside of the South Brisbane police district trial area.

PROCEDURE

Where an officer gives a verbal caution for a prescribed public nuisance or associated offence, the officer should:

- (i) obtain the alleged offender's name and address; and
- (ii) record in their official notebook or patrol log the full particulars of the alleged offender together with the time, date, location, type of offence and any other relevant particulars.

Issuing an infringement notice

POLICY

Where an officer is to issue an infringement notice for a prescribed public nuisance offence, and where applicable, an associated offence, each infringement notice is only to refer to one offence. Separate infringement notices are to be issued for a prescribed public nuisance offence and an associated offence.

Where an officer has made the decision to issue an infringement notice to a person for a prescribed public nuisance offence and where applicable, an associated offence, the officer should:

- (i) issue a traffic infringement notice (PT56) in accordance with s. 8.8.5: 'Procedure for issuing Infringement Notices' of the Traffic Manual.

Before issuing an infringement notice, officers should ensure the person is positively identified by producing their photographic identification or other suitable identification. Where a driver licence is produced, officers should enter the relevant details on the front of the infringement notice. Where other identification details have been used to identify the person, such details should be recorded on the front of the infringement notice under the area titled 'Information about the offence';

- (ii) prior to serving the infringement notice, clearly cross out the irrelevant information on the rear of the person's yellow copy of the infringement notice, see Appendix 2: 'Example of rear of yellow copy of infringement notice for public nuisance and associated offences' of this Circular;

- (iii) additionally, where appropriate, officers are to give the person a copy of a court diversion options information sheet specific to their trial district

and explain the contents (see also 'Court diversion options information sheet' of this Circular);

(iv) ensure that prior to submitting the pink and green copies of the infringement notice to their officer in charge, a QPRIME occurrence is created for the offence/s by contacting the Police Assistance Centre;

When obtaining the QPRIME occurrence number, ensure that each infringement notice number has a separate entry in the 'Miscellaneous ID' window; and

(v) enter the relevant QPRIME occurrence number on the front of both the pink and green copies of the infringement notice under the area titled 'Information about the offence' prior to the notice being forwarded to their officer in charge.

A copy of the relevant infringement notice codes and penalties is contained in Appendix 1: 'Public nuisance, public urination and associated offence infringement notice codes and penalties' of this Circular.

Interstate residents or overseas visitors committing prescribed public nuisance and associated offences

POLICY

Where overseas visitors and interstate residents commit prescribed public nuisance and associated offences when visiting Queensland they should not be treated any differently to Queensland residents.

The fact that an overseas or interstate resident may commit a prescribed public nuisance offence, and where applicable, an associated offence, and would be due to leave Queensland before such person is required to pay the infringement notice fine should not alone be considered sufficient cause to warrant the arrest of the person.

Officers who detect overseas residents committing prescribed public nuisance and associated offences may consider giving a caution where appropriate.

Where the issue of an infringement notice or caution is not considered appropriate, officers may consider commencing a prosecution by issuing a notice to appear, complaint and summons or making an arrest where justified.

PROCEDURE

Officers who issue infringement notices to interstate residents for prescribed public nuisance and associated offences should ensure that the person's name, address and date of birth are accurately entered on the infringement notice, including any driver licence details. The State Penalties Enforcement Registry (SPER) is unable to process infringement notices issued to interstate residents which do not contain a date of birth. However, it should be noted that there is no legislative power to require a person to state their date of birth.

Officers who issue an infringement notice to an overseas visitor should:

(i) where possible, show the alleged offender's current Australian address on the face of the notice; and

(ii) indicate on the prosecution copy of the notice the alleged offender's usual residential address and the date the alleged offender is due to leave Australia.

For offences not dealt with by the SPER, this information will assist if the infringement notice is returned unpaid to indicate whether the notice may be waived without the need for a report from the issuing officer.

Officers should be mindful of the contents of ss. 11.8: 'Diplomatic Privileges and Immunities Act' and 16.7: 'Foreign nationals' of the Operational Procedures Manual.

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 prescribed public nuisance or associated offences.

Officers are to be mindful that authority exists to take identifying particulars for prescribed public nuisance and associated offences 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 also s. 2.45.2: 'When to take identifying particulars' of the Operational Procedures Manual).

However, where an officer arrests a person for a prescribed public nuisance or associated offence, the officer may discontinue the arrest and issue an infringement notice for the offence in accordance with s. 377(2)(b)(i): 'Additional case when arrest of adult may be discontinued' of the PPRA. In this instance, if the identifying particulars of the person have been taken prior to the person's release, officers should 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.

Court diversion options information sheet

POLICY

District officers for the respective prescribed trial areas are responsible for developing and maintaining a current court diversion options information sheet relevant to their districts. District officers are to ensure that a copy of the information sheet is made available to officers under their command for issuing with infringement notices for prescribed public nuisance offences.

District officers should ensure that where a prescribed police officer at a police station, police establishment or watchhouse outside of the prescribed trial area may issue an infringement notice for prescribed public nuisance and associated offences (e.g. Brisbane City Watchhouse), then a copy of the information sheet should also be made available to such officers (see 'Receiving custody of persons arrested for prescribed public nuisance offences' of this Circular). In this instance a prescribed police officer is the officer referred to in s. 394(2)(ca) of the PPRA.

The court diversion information sheet should contain a list of available court diversion programs and instruct the person issued with the infringement notice to elect to have the matter dealt with by a court should the person wish to access such a program. For example, the Queensland Indigenous Alcohol Diversion Program (QIADP) operates in Townsville, and the Homeless Persons Court Diversion Program operates through the Brisbane Magistrates Court.

Repeat offenders

POLICY

Where officers become aware that a person has been issued multiple infringement notices for prescribed public nuisance offences, officers should consider alternatives to issuing further infringement notices.

Receiving custody of persons arrested for prescribed public nuisance offences

POLICY

A prescribed police officer at the police station, police establishment or watchhouse, may as soon as reasonably practicable, where a person has been arrested for a prescribed public nuisance offence committed, or reasonably suspected of being committed, in the prescribed trial area, issue and serve an infringement notice on the person in accordance with s. 394(2)(ca): 'Duty of police officer receiving custody of person arrested for offence' of the PPRA. In this instance a prescribed police officer is the officer referred in s. 394(2)(ca) of the PPRA.

A prescribed police officer may issue an infringement notice on behalf of the arresting officer in accordance with s. 394(2)(ca) of the PPRA regardless of whether they are in a prescribed trial area or not. For example, a prescribed police officer at the Brisbane City Watchhouse who receives a person arrested for a prescribed public nuisance offence committed in the South Brisbane district during the trial period may issue the person an infringement notice in accordance with s. 394(2)(ca).

Where the person issued the infringement notice elects to have the matter dealt with by a court, the original arresting officer is responsible for commencing court proceedings as if they were the issuing officer of the infringement notice.

PROCEDURE

Where a prescribed police officer determines that an infringement notice for a prescribed public nuisance offence, and where applicable an associated offence, is to be issued in accordance with s. 394(2)(ca) of the PPRA on behalf of the arresting officer, the prescribed police officer is to:

- (i) complete and issue the infringement notice in accordance with this Circular;

- (ii) make appropriate notes on the rear of the pink copy of the infringement notice indicating the infringement notice has been issued on behalf of the arresting officer;
- (iii) ensure a supplementary report in the relevant QPRIME occurrence is completed indicating the action taken;
- (iv) ensure that the 'Miscellaneous ID' window in the relevant QPRIME occurrence is updated with the relevant infringement notice number;
- (v) send a QPRIME task to the arresting officer's organisational unit advising of the action taken;
- (vi) forward the pink and green copies of the infringement notice for processing to the officer in charge of their station or establishment; and
- (vii) where any identifying particulars have been taken of the person in relation to the offence prior to the issuing of an infringement notice, 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.

Court election

POLICY

Officers in charge of stations or establishments who receive advice that a person has elected to have their infringement notice for a prescribed public nuisance or associated offence dealt with in a court are to refer the matter to the officer who issued the infringement notice to consider commencing a proceeding against the person.

Where a prescribed police officer, who has issued an infringement notice on behalf of the arresting officer in accordance with s. 394(2)(ca) of the PPRA, receives notification that the person has elected to have the matter dealt with in court, such officer should forward the notification to the officer in charge of the arresting officer to consider commencing a proceeding against the person.

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.)

Children

POLICY

Officers considering issuing an infringement notice to persons under 17 years of age for prescribed public nuisance and, where applicable, associated offences, are to follow the policy and procedures contained in s. 8.8.2: 'Infringement Notice issued to persons under age of 17 years' of the Traffic Manual.

Officers in charge to forward issued infringement notices to Queensland Transport

POLICY

Officers in charge of stations and establishments should ensure that infringement notices issued by officers under their control for public nuisance and associated offences are forwarded to Queensland Transport in accordance with s. 8.8.8: 'Officers in charge to forward issued Infringement Notices to Queensland Transport' of the Traffic Manual.

Waiving and cancellation of infringement notices

POLICY

Officers in charge of stations or establishments seeking to waive or cancel infringement notices issued in relation to prescribed public nuisance and where applicable associated offences, are to follow the policy and procedures provided for in s. 8.9: 'Waiving and cancellation of Infringement Notices' of the Traffic Manual.

Administrative

Enquiries about the 12 month trial may be directed to the Policy Unit, Office of the Commissioner, telephone 3364 3796.

ORDER

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

**KATHY RYNDERS
DEPUTY COMMISSIONER
(REGIONAL OPERATIONS)**