

EXPIATION SALVATION

Ensure your Council doesn't end up in a 'fine mess'!

You may have read the article published in the *Sunday Mail* last weekend headed 'A Fine Mess (Council) Parking tickets could be invalid'. The article informs that the Ombudsman is presently conducting investigations to determine whether council parking fines are legally valid.

The article was published as a result of claims made by the South Australian Law Society that a Council's parking fines do not comply with the *Expiation of Offences Regulations 1996* as they do not fully inform people of the legal consequences of ignoring a fine.

In light of the article and the Ombudsman's pending investigation, this Hot Matters provides a reminder to Councils to review their expiation notices to ensure they comply with the minimum legal requirements.

In conducting a review, Councils must refer to Schedule 1 of the *Expiation of Offences Regulations 1996* which sets out the prescribed content of an expiation notice. Specifically, an expiation notice must include the following information:

- a heading identifying it as an expiation notice under the *Expiation of Offences Act 1996*;
- the expiation notice number;
- the date of issue;
- the name of the issuing office or his/her identity code;
- an allegation that a person committed an offence (or offences) and specify:
 - ⇒ where the notice is addressed to a person as the owner or driver of a vehicle, the vehicle registration number; or
 - ⇒ in any other case, the name and address of the person to whom the notice is issued; and
 - ⇒ the general nature of the offence(s) (i.e. a description of the offence); and
 - ⇒ the time and date of the offence(s); and
 - ⇒ the place(s) at which the alleged offence(s) was committed; and
- a statement that the offence(s) may be expiated and specify:
 - ⇒ the amount of the expiation fee for each offence; and
 - ⇒ if a levy is payable, the amount of the levy for each offence; and
 - ⇒ the total amount payable and to whom the amount must be paid; and
- a statement of the choices available to the offender. As set out in the example statement under Clause 1(1)(e) of Schedule 1 of the Regulations, which we recommend all Councils utilise, the following choices are available to the recipient of an expiation notice:
 - ⇒ dispute the allegation and elect to be prosecuted for the offence(s); or
 - ⇒ pay the total amount due for the offence(s) (including levies); or
 - ⇒ apply to the court to pay the notice in instalments or for an extension of time in which to pay it; or
 - ⇒ apply to the Council for a review of the notice if the recipient believes that the offence was 'trifling'; or
 - ⇒ where applicable, if the recipient of the notice was not driving at the time of the offence, send a statutory declaration to the Council stating the name and address of the driver; and

- a statement of the outcome if no choice is made by the recipient of the notice, for example-

"If no choice is made for an offence, 1 reminder notice will be sent (a reminder fee will apply). After that, you may (without a court hearing) be convicted of the offence and the unpaid fee will be your fine. Court costs will be added"; and

- pursuant to section 6(1)(k) of the Act, an accompanying notice in the prescribed form by which the alleged offender may elect to be prosecuted for any of the offences to which the notice relates.

Finally, in addition to the above information, Councils *may* also include payment details, a payment slip, instructions for completion, contact details for obtaining further information or any other information considered relevant by the Council.

We recommend that all Councils undertake a review of their standard template expiation notices to ensure they comply with the above legislative requirements. Further, Councils should ensure that all staff responsible for issuing expiation notices are aware of and understand the application of the Expiation of Offences Act and Regulations.

Please contact Natasha Jones on (08) 8235 3039 or natasha.jones@wallmans.com.au or Cimon Burke on (08) 8235 3084 or cimon.burke@wallmans.com.au for further information.

Disclaimer: The content of this newsletter is for information only and should not be regarded as formal legal advice.

Wallmans Lawyers
Level 5, 400 King William Street
Adelaide SA 5000
P: 8235 3000
www.wallmans.com.au