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8.2 Purpose

The purpose of this Chapter is to explain the meaning of Infringement Notices, when they are issued and the procedures involved.

8.3 What is an Infringement Notice?

Infringement Notices referred to as Aviation Infringement Notices (AINs) are another enforcement tool. They impose administrative fines and can be issued in relation to all offences under the Regulations. They are a cheaper and quicker alternative to prosecution but still require the same level of evidentiary proof i.e. the criminal standard of 'beyond reasonable doubt'. To maintain a consistent approach with the Demerit Points Scheme they should generally only be issued by CASA where there is a breach of a strict liability offence. A person served with an AIN can refuse to pay the fine or choose to have the matter dealt with by a court and CASA will then refer the matter to the CDPP for prosecution.

CAR 296A

The level of the administrative fine depends upon the gravity of the offence as determined by the maximum penalty that a court may impose. Regulation 296A of the Civil Aviation Regulations 1988 (CAR) lays down penalties as follows:

- If the maximum penalty for the offence is 5 or 10 penalty units – an administrative fine of 1 penalty unit (\$170)

- If the maximum penalty for the offence is 15, 20 or 25 penalty units – an administrative fine of 3 penalty units (\$510)
- If the maximum penalty for the offence is more than 25 penalty units – an administrative fine of 5 penalty units (\$850).

Crimes Act
4AA

The value of penalty units is set out in *section 4AA* of the *Crimes Act 1914*.

See the following comparative table of penalties

| MAXIMUM PENALTY SET OUT IN CARs & CASRs | MAXIMUM PENALTY UNDER THE INFRINGEMENT NOTICE SCHEME | MAXIMUM FINE A COURT COULD IMPOSE | DEMERIT POINTS INCURRED AGAINST CLASS OF AUTHORISATION |
|-----------------------------------------|------------------------------------------------------|-----------------------------------|--------------------------------------------------------|
| 5 penalty units | \$170 (1 penalty unit) | \$850 (5 penalty units) | 1 demerit point |
| 10 penalty units | \$170 (1 penalty unit) | \$1700 (10 penalty units) | 1 demerit point |
| 15 penalty units | \$510 (3 penalty units) | \$2550 (15 penalty units) | 2 demerit points |
| 20 penalty units | \$510 (3 penalty units) | \$3400 (20 penalty units) | 2 demerit points |
| 25 penalty units | \$510 (3 penalty units) | \$4250 (25 penalty units) | 2 demerit points |
| 30 penalty units | \$850 (5 penalty units) | \$5100 (30 penalty units) | 3 demerit points |
| 50 penalty units | \$850 (5 penalty units) | \$8500 (50 penalty units) | 3 demerit points |

8.4 Decision-making Considerations

CAR 296B

An AIN may be issued where an authorised person has reason to believe that a person has committed an offence under the regulations (see CAR 296B). The Manager, Investigations is currently the only person authorised to issue such notices.

The first step in relation to the decision to issue an AIN is a Coordinated Enforcement Meeting. As a consequence of this meeting it will be determined whether AINs or some other form of enforcement is appropriate. If the Manager, Investigations has reason to believe on the evidence provided that an AIN is appropriate then the information contained in the completed Coordinated Enforcement Referral Form (Form 812) will provide the factual basis for the issuing of the AIN. While it is the authorised person who will make the

decision on issuing the AIN there are certain general considerations that must be borne in mind when making a recommendation:

Appropriate situations for the issue of AINs:

- Where the breach does **not** cause a serious risk to safety
- When the offence has **not** been committed through misunderstanding of the legislation that could be addressed by Informal Enforcement Action
- Where the offence has **not** been committed due to lack of skill or error that could be more appropriately addressed by counselling, remedial training or an examination
- Where the offence is a strict liability offence against the Regulations
- Where the penalty would be an adequate future deterrent given the nature of the offence.

Inappropriate situations for the issue of AINs:

- Where the offence is against the Act
- Where there was a serious risk to safety
- Where the offence was intentional or formed a pattern of breaches
- Where penalty would be inadequate in relation to the nature and or gravity of the offence
- Where it would not provide sufficient deterrent.

It may also be considered that the breach/breaches which have led to the decision to issue an AIN need to be addressed in some additional manner. The AIN will usually address some specific regulatory breach/breaches but there will be times when counselling or administrative action will address other parts of the non-compliance. It is essential that where this is to happen that the offender is made aware that this is CASA's intention so that there can be no misunderstanding.

Ultimately the authorised person will need to consider whether a Part IIIA Investigator should be tasked to investigate the matter further and whether a prima facie case exists.

8.5 Form of Infringement Notice

CAR 296E The AIN is required by CAR 296E to include certain information. The AIN document must comply with the requirements of the Regulation including the requirement to pay the penalty within 28 days.

8.6 Service of Infringement Notices

CAR 296D Service must be accomplished properly, as ineffective service can lead to difficulty in pursuing the matter in court. CAR 296D sets out the procedures for service. AINs are served by an authorised person, currently the Manager, Investigations.

8.7 Register of Infringement Notices

CAA 30EG to
CAA 30EJ The Investigations Branch maintains a Register of Infringement Notices. It is cross-referenced to the Demerit Points Register (see Chapter 10), which CASA is required to maintain along with other relevant information under sections 30EG to 30EJ of the Act.

8.8 Withdrawal of Infringement Notices

CAR 296C CAR 296C provides that an authorised person may withdraw an AIN by serving a written notice of the withdrawal on the recipient:

- Within 28 days after the date of service of the AIN; or
- Before the end of any allowed period of extension for payment.

Only the Manager, Investigations currently has the authorisation to withdraw an AIN.

In making such a decision the authorised person must consider:

- CAR 296C (2)(a) to (c)
- The matters set out in paragraphs 296C(2) (a) to (c)
 - Any submissions made by the alleged offender in response to the AIN
 - Any other relevant matter.

8.8.1 Service of Withdrawal Notices

CAR 296D CAR 296D requires Notice of Withdrawal of AINs to be served in the same manner as AINs.

8.8.2 Withdrawal of Infringement Notice Following Payment of Prescribed Penalty

The authorised person may withdraw an AIN after the recipient of the AIN has paid the prescribed penalty provided that the withdrawal is done within the period set out in 8.9 above. In such cases CASA is required to refund the payment that the alleged offender has made. Any demerit points incurred on payment will also be removed.

The withdrawal of a Notice following payment is unusual, and should generally only occur in the following situations:

- Where CASA has reason to believe on the evidence available, that the person who has paid the prescribed penalty did not in fact commit the offence for which the AIN was served; or
- Where information has come to light following service of the AIN, which convinces CASA that the most appropriate enforcement action to take is to refer the matter to the CDPP for prosecution.

8.9 Payment of an Administrative Fine

8.9.1 Time for Payment

CAR 296I A person served with an AIN, unless they elect to have the matter heard before a court, must pay to CASA the prescribed penalty within 28 days of being served with the AIN. Where a cheque is offered to CASA to pay the prescribed penalty, payment is taken not to have been made unless and until the cheque is honoured— CAR 296I.

8.9.2 Extension of Time to Pay

An authorised person may allow an extension of the period for payment, on application by the recipient of AIN, but that period shall not extend beyond 28 days after the initial 28 days provided by the notice (i.e. up to 28 days extension can be given in addition to the original 28 days set out in the notice).

8.9.3 Part Payments and Instalments

CAR 296F(d), (e) and (f) CASA is not expressly empowered by the regulations to accept part-payments or payments by instalments of a prescribed penalty. A person cannot take advantage of the provisions of paragraphs 296F(d), (e) and (f) (refer to section 8.10.4), unless and until the prescribed penalty has been paid in full within the time permitted for full payment. However, even if a person **only** makes a part-payment, this will still incur demerit points as if the full payment had been made (refer Chapter 10 and section 30DW of the Act).
CAA 30DW

Where a person served with an AIN requests permission to make payment by instalments, that request should normally be denied, although consideration can be given to extending the period in which the person has time to pay.

8.9.4 Consequences of Payment within the Time Permitted

CAR 296F If payment is made within the time permitted or any extension of that time and the notice has not been withdrawn (refer to CAR 296F):

- Criminal liability for the offence is discharged
- Further criminal proceedings cannot be taken in relation to that offence
- There is no conviction

CAA 30DW • Demerit points will accrue against the appropriate class of authorisation (refer to section 30DW of the Act and Chapter 10.

8.9.5 Consequences of Payment after the Time Permitted

If payment is made after the time permitted or any extension of that time and the notice has not been withdrawn:

- CASA should not accept payment/part payment of the administrative fine
- The person may be prosecuted for the offence

CAA 30DW • Demerit points will accrue (refer to section 30DW of the Act and Chapter 10 only if the person is convicted or found guilty of the offence.

8.10 Responsibilities

The Manager, Investigations will advise the Controlling Office Manager and the LSD Enforcement Officer through the Enforcement Policy and Practice Outlook mailbox when payment has been made. This may properly be done by the Investigations Branch officer responsible for preparing the AIN noting this payment on the Enforcement Action Register. If payment has not been made, then Investigations Branch may carry out a Part IIIA investigation where appropriate and may refer the matter to the CDPP. This non-payment and further action must be noted on the Enforcement Action Register.

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