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## LOCAL POLICY 1 WITHDRAWING EXPIATION NOTICES

<b>Local Policy title</b>	<b>Withdrawing Expiation Notices</b>
<b>Date of issue</b>	20 May 2016
<b>Date of operation</b>	09 November 2021
<b>Review date</b>	November 2022
<b>Review responsibility</b>	Unit Manager ENB
<b>Replaces</b>	Withdrawal of expiation notices (general) Withdrawal of expiation notices (prescribed particulars) policy Withdrawal of expiation notices (human source) policy Two Tiered Expiation Notice Withdrawal Policy ENB19
<b>PCO reference</b>	18/3279
<b>Associated General Order</b>	Not applicable
<b>Enquiries to</b>	Manager ENB
<b>Corporate Policy Sponsor</b>	Manager ENB

Employees must comply with Corporate Policy. Refer to General Order, **Corporate policy framework**.

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## 1. LOCAL POLICY STATEMENT

The Commissioner of Police is the issuing authority for all expiation notices issued by Police Officers and has the power to withdraw those notices once issued.

The Commissioner has delegated the authority to withdraw expiation notices to the Manager of Expiation Notice Branch (ENB) and the Operations Manager ENB.

The criteria to withdraw issued expiation notices is contained in sections 8A and 16 of the Expiation of Offences Act 1996 (the Act).

The Manaer ENB and the Operations Manager consider whether to issue and continue to proceed with an expiation notice if:

- there is a reasonable prospect of a conviction or finding of guilt should the offence/s proceed to a court; or
- whether proceeding with the offence/s is in the 'public interest'.

This policy outlines the criteria and procedures that are to be followed by members of ENB when drafting and authorising recommendations to withdraw expiation notices.

### Scope

This Local Policy applies to all employees of ENB.

## 2. ROLES AND RESPONSIBILITIES

### Expiation Notice Withdrawal Approval Delegations

This delegation was previously referred to as the '*Two Tiered Expiation Notice Withdrawal Policy*'.

Both the Manager ENB and the Operations Manager (Senior Sergeant) or person relieving in those positions have delegated authority to withdraw notices.

However, the Manager ENB has sole responsibility for withdrawing notices under the following criteria - notices that are:

- subject of Ministerial responses
- issued to politicians or other people of public notoriety
- expiated
- of significant public or media interest
- identified as having a significant police procedural flaw
- subject of an actual or perceived conflict of interest
- issued to either an emergency service, police vehicle or a driver of an emergency service or police vehicle
- issued to a member of the Traffic Camera Section.

In the absence of the Manager ENB the person relieving in the position of Manager ENB (authorised via PD162 Sworn employee movement advice) will have the authority to withdraw notices as above.

In the absence of the Operations Manager ENB their authority is delegated to the person relieving (PD162 Sworn employee movement advice) in the role of Operations Manager.

### **3. LEGISLATION - WITHDRAWAL OF EXPIATION NOTICES**

Section 8A of the Act states that an expiation notice may be withdrawn if the offence is trifling because:

- there were compelling humanitarian or safety reasons for the conduct
- in all of the circumstances the offence could not be averted
- the conduct was a technical, trivial or petty breach of the law

An expiation notice cannot be withdrawn on the grounds of trifling if:

- the notice has been paid
- a payment arrangement has been entered into
- the notice is enforced.

Section 16 of the Act states that an expiation notice may be withdrawn if:

- the offender did not commit the offence or the notice shouldn't have been given
- a statutory declaration or similar document has been received by ENB
- the notice is defective
- the offender is suffering from a cognitive impairment that could excuse the offending
- ENB decide that the offender should be prosecuted
- it becomes apparent that the offender didn't receive the expiation notice at all or didn't receive it until after the expiation period, due to an error by the police or the postal system.

An expiation notice may be withdrawn under section 16 despite payment of the expiation fee or an instalment, but in that event the amount paid must be refunded.

#### 4. WITHDRAWAL CRITERIA

The following tables identify the legal basis and criteria to be considered when contemplating withdrawing an expiation notice or an offence on a notice.

The tables are not exhaustive and the Manager ENB and Operations Manager ENB reserve the right to withdraw any expiation notice issued by Police.

<b>HAND ISSUED NOTICES</b>	
<b>Grounds</b>	<b>Requirement</b>
Non-compliant number plate <i>(notice shouldn't have been given)</i>	Where new number plates have been ordered within 5 days from the offence date, with proof of purchase/order.
Seatbelt medical exemption <i>(notice shouldn't have been given)</i>	Rules require driver to be in possession of a medical certificate at the time of driving. Valid certificate for time of offence is produced to ENB in reasonable time then caution to be considered.
Clearway / Bike lane / Parking <i>(notice shouldn't have been given)</i>	Only considered if the offence time was within 10 minutes of the commencement or conclusion of the clearway time.
Major error in prescribed particulars on notice <i>(notice defective)</i>	Where any of the following prescribed particulars are missing or incorrect: <ul style="list-style-type: none"> <li>• name and address of the offender to the point that identity is not satisfied</li> <li>• issue date</li> <li>• offence description either missing or incorrect to the point that the written offence is different to that committed</li> <li>• offence time</li> <li>• offence date</li> <li>• offence location</li> <li>• expiation fee, levy or total amount payable</li> <li>• due date for payment</li> <li>• vehicle registration number for a traffic offence</li> </ul>

<b>CAMERA DETECTIONS</b>	
<b>Grounds</b>	<b>Criteria</b>
Medical emergency ( <i>trifling or notice shouldn't have been given</i> )	<ul style="list-style-type: none"> <li>• Documentation on file that independently supports claim e.g. hospital/medical report</li> <li>• Must be directly related to the emergency.</li> </ul>
Speedometer error ( <i>trifling</i> )	<ul style="list-style-type: none"> <li>• Supported by documentary evidence of fault and corrective action.</li> <li>• Considered reasonable in the circumstance.</li> </ul>
Notice paid by another person without offenders knowledge ( <i>special circumstances</i> )	<ul style="list-style-type: none"> <li>• Statutory declaration stating that it was not paid by the notice holder and the notice holder was unaware of the payment being made</li> <li>• Proof of payment by the other person.</li> </ul>
Compassionate ( <i>notice shouldn't have been given</i> )	<ul style="list-style-type: none"> <li>• Given the time, date, location, offence, reason and personal circumstances of the offender, it is reasonable to withdraw</li> <li>• Supported by documentation.</li> </ul>
Death of driver/owner ( <i>notice shouldn't have been given</i> )	<ul style="list-style-type: none"> <li>• Copy of death certificate or other independent proof required.</li> </ul>
Owner unable to nominate driver ( <i>did not commit the offence</i> )	<ul style="list-style-type: none"> <li>• Statutory declaration from owner must include reasonable enquiries made to identify the driver</li> <li>• Reasonable diligence has been exercised.</li> </ul>
Vehicle for sale being test driven ( <i>did not commit the offence</i> )	<p><i>Natural persons</i></p> <ul style="list-style-type: none"> <li>• Statutory declaration</li> <li>• Confirmation of sale of vehicle required</li> <li>• Reasonable diligence has been exercised</li> <li>• Consider location of offence to location of owner.</li> </ul> <p><i>Body Corporate and Dealers</i></p> <ul style="list-style-type: none"> <li>• Statutory declaration</li> <li>• Higher level of reasonable diligence is expected</li> <li>• Vehicle dealers are expected to keep records.</li> </ul>
Registered owner was not the true owner ( <i>did not commit the offence</i> )	<ul style="list-style-type: none"> <li>• Statutory declaration from registered owner denying true ownership with an explanation regarding the disposal of the vehicle.</li> </ul>
Multiple expired registration	<ul style="list-style-type: none"> <li>• Owner or driver has been issued at least one notice for the offending and the vehicle has been re-registered</li> <li>• Notices may be issued for all expired registration offences occurring after being given hand-issued notice.</li> </ul>

## 5. OUTRIGHT WITHDRAWAL OR CAUTION

Where appropriate, an expiation notice may be withdrawn outright or simply be regarded as a caution. Cautions are an administrative outcome imposed by ENB or issuing police officers and does not have a legislated basis. A caution is not an expiation notice for the purposes of the Act.

When determining a request to withdraw an expiable offence or a notice, consideration should be given to as to whether a caution is appropriate or whether the matter should be withdrawn outright.

Consideration should be given to the following when considering a caution:

- the time of the alleged offence, the location and traffic density
- embarrassment, potential or actual danger to other road users when the offence was committed
- whether offence was trivial
- whether person likely to respond to caution
- where defective equipment involved, whether it can be fixed or whether defect notice appropriate
- any other relevant factors.

A person cannot be cautioned if they have satisfied a defence to the offence or they refuse to accept the caution.

The withdrawal of a caution requires the approval of the Branch or Operations Manager. Where a written request is received from the issuing officer or vetting supervisor for the withdrawal of a caution, delegated approval is not required.

## **6. EXPIATION NOTICE NOT RECEIVED**

An expiation notice must be withdrawn if it becomes apparent that the offender did not receive the notice until after the expiation period, or never received it as a result of a failure of the postal system or the fault of police.

Notification of return to sender (RTS) mail on its own is not sufficient proof of failure to receive a notice.

This does not apply to an expiated notice or where a payment plan has commenced.

## **7. TRIFLING OFFENCES**

A person who has been given an expiation notice may apply to ENB for withdrawal of a notice on the basis it is trifling. All requests for withdrawal based on trifling will be managed by the Review Unit.

## **8. NOTIFICATION OF A WITHDRAWN NOTICE**

Withdrawal of an expiation notice is affected by giving written notice, personally, by post or by email to the offender. The written notice must specify the reason for the withdrawal and ENB has drafted specific template text for this purpose.

## **9. EXTERNAL AGENCIES**

The withdrawal of an expiation notice issued by any external agency should only occur on the written authority of that issuing agency. Where an external agency requests ENB to withdraw a notice issued by their agency, evidence of the approving officer's delegation is required before the notice is withdrawn.

## 10. INFORMANTS / HUMAN SOURCE

The professional and ethical use of registered human source management is a recognised policing strategy which contributes greatly to reduction in crime.

The Manager ENB, will, upon authorising the withdrawal of a notice issued to a human source record the withdrawal in non-returnable PCO file 2003/1735 which is held securely in the ENB Manager's office. The PCO file will include a copy of submitted reports.

Original reports will be returned to the Human Source Management Branch for storage on the Human Source Management Section File. In order to protect the confidentiality of the human source, the Expiation Notice System will only record the withdrawal with reference to the PCO file number.

## 11. POLICY APPROVAL

If the allegation of an offence (or offences) on an expiation notice is to be discontinued an approved withdrawal authority is required.

**\*\*\*Discontinued means the allegation of an offence (or offences) on an expiation notice not proceeding on another expiation notice or on a Shield Occurrence.**

- Where an expiation notice is withdrawn but an offence (or offences) remains live (are reissued on a fresh expiation notice or an occurrence) the withdrawal of the original expiation notice is deemed approved by this policy.
- In the case of a Shield Occurrence or reissued expiation notice replacing the original expiation notice the occurrence number or reissued expiation notice number must be recorded in the ENS correspondence notes for auditing purposes.

### Other

- Where a clerical error is identified on a hand issued expiation notice and the error is major (refer to relevant table) and not reissued by the ENB back office, approval of withdrawal is required. Advice of the error is to then be forwarded to the issuing officer for their reissue discretion.
- Where an eTicket is declined by the vetting supervisor and the notice is invalid on ENS, the withdrawal of the eTicket is deemed approved by this policy.
- Where a valid trade plate or relevant permit has been provided on a statutory declaration the withdrawal of the notice is deemed approved by this policy.



**12. REFERENCES**

Ali v South Australian Police [1994] 62 SASR 591  
 Expiation of Offences Act 1996  
 Expiation of Offences Regulations 2011  
 General Order, **Expiation notices**  
 General Order, **Cautions—traffic offences**  
 General Order, **Human source management**  
 General Order, **Delegations**  
 PCO 2011/3506—SAAS Expiation notice exemption  
 Riessen v State of South Australia [2001] SASC 71  
 PCO 2007/1482  
 PCO 18/3279 – Withdrawal of Expiation Notices – Delegation of Authority  
 DPP policy and Guidelines

**13. FURTHER ENQUIRIES**

Manager ENB.

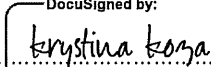
**14. DOCUMENT HISTORY**

Gazette reference (SAPG)	Date	Action (amendment/deletion/new/review/temporary variation)
No reference	17/12/2015	Policy re-write and combining policies 1, 2 & 3 into one policy.
PCO 2011/3506	7/6/2016	Insertion of clause in table A regarding SAAS vehicles not to be referred to Operations Manager if speed greater than 40 km/h over posted speed limit.
N/A	25/06/2018	Copied to new CPU template, annual review and update. Clause 9 (only) to be reviewed after three months to ensure the integrity of this process is imposed.
No reference	28/12/2018	Clause 9 reviewed and retained – whole policy to be reviewed on an annual basis (Melissa McNeil – Administration Manager ENB)
No reference	2/5/2019	Annual review.
	2/4/2020	Camera detections table page 5 – deletion of speed parameters for faulty speedometer and general review
	19/8/2020	Withdrawal of declined eTicketing, withdrawal of caution when requested by issuing officer or vetting officer.(Melissa McNeil - Administration Manager) Withdrawal of valid trade plate and permits on a statutory declaration (Sam Braidwood – Unit Manager)
	30/6/2021	Combined and refined the content of local policy ENB19 (Two Tiered Expiation Notice Withdrawal Policy) and replaced it into this policy (ENB19 deleted as a result).
	5/11/2021	Removed continuous mobile camera speed offence from withdrawal criteria as per decision made by management on 29/10/21.

**APPROVED BY LSA/BRANCH MANAGER**

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Chief Inspector Krystina Koza

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ID Number 50339

DocuSigned by:  
  
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Signature AA478C6FAE94494...

09 November 2021  
.....  
Date

**Documentation certification and verification**

Local Policy draft—prepared by: Sam Braidwood Review Unit Manager, ENB  
Local Policy —verified by: C/Insp Krystina Koza, Manager ENB