



# Expiation Notice Review Policy

<b>Reference Number:</b>	4.20
<b>Type:</b>	Council Policy
<b>Category:</b>	Safety and Community
<b>Relevant Community Plan Outcome:</b>	<ul style="list-style-type: none"> <li>• Provide accessible social infrastructure and services that engage our diverse community.</li> <li>• Capitalise on partnerships, build community resilience and sense of belonging.</li> <li>• Create opportunities for community leadership and civic participation.</li> <li>• Be bold and innovative in our practices, leadership and decision making.</li> </ul>
<b>Responsible Officer(s):</b>	Manager Public Health and Safety
<b>First Issued/Approved:</b>	October 1997
<b>Minutes Reference:</b>	CoS 5/02/2018, Item 3.6
<b>Last Reviewed:</b>	February 2018
<b>Next Review Due:</b>	February 2020
<b>Applicable Legislation:</b>	Expiation of Offences Act 1996, Expiation of Offences Regulations 2011, Local Government Act 1999, Road Traffic (Road Rules – Ancillary and Miscellaneous Provisions) Regulations 2014 Dog & Cat Management Act 1995 Food Act 2001, Public Health Act 2011 Environment Protection Act 1993 Fire and Emergency Services Act 2005 Council’s By-Laws Local Nuisance and Litter Control Act 2016
<b>Related Policies:</b>	Parking Control Policy Enforcement Policy
<b>Related Procedures:</b>	N/A

## 1. Purpose

The City of Charles Sturt acknowledges the right of a person, who has been issued with an expiation notice (“the Notice”) under the Expiation of Offences Act 1996 (the Act”) by the Council to seek a review of the decision to issue the Notice.

## 2. Scope

This Policy is relevant to all expiation notices issued by Authorised persons or on behalf of the Council.

### 3. Policy Statement

If an expiation fee is fixed under an Act, Regulation or By law for an alleged offence, an expiation notice may be given to the person alleged to have committed the offence and the alleged offences may be “expiated” by payment of an expiation fee in accordance with the Act. Where the expiation fee is not paid within the specified period the matter may be referred to the Fines, Enforcement and Recovery Officer for enforcement, which may involve additional fees and penalties being incurred and property owned by the recipient of the notice being seized and sold.

A person issued with an expiation notice may elect to be prosecuted at any time before paying the expiation fee.

#### 3.1 Expiation of Offences Act

The Act provides for circumstances in which a person who has been given an expiation notice may apply to the Council for a review of the notice.

Section 8A of the Act enables a person who has been given an expiation notice to apply to the Council for a review of the notice on the ground that the offence to which the notice relates is trifling. An alleged offence will, for the purposes of the Act, only be regarded as trifling if the circumstances surrounding the commission of the offence were such that the alleged offender should be excused from being given an expiation notice on the ground that :

- there were compelling humanitarian or safety reasons for the conduct that allegedly constituted the offence; or
- the alleged offender could not in all the circumstances, reasonably have averted committing the offence; or
- the conduct allegedly constituting the offence was merely a technical, trivial or petty instance of a breach of the relevant enactment.

If the Delegated Officer is satisfied on a review that an expiation notice has been issued for a trifling offence, the notice will be withdrawn.

Section 16 also provides for circumstances in which Expiation Notices can be withdrawn by Council, which are where:

- The Delegated Officer is of the opinion that the alleged offender did not commit the offence, or offences, or that the notice should not have been given with respect to the offence, or offences; or
- The Council receives a statutory declaration or other document sent to the authority by the alleged offender in accordance with a notice required by law to accompany the expiation notice or expiation reminder notice; or
- The notice is defective; or
- It is determined that the alleged offender should be prosecuted for the offence, or offences.

### 3.3 Conduct of Review

Where the Council receives a request for a review of a notice the reviewing officer will determine whether the offence to which it relates is trifling and if not, whether there are otherwise grounds to withdraw the notice under Section 16 of the Act.

In conducting a review, the reviewing officer will consider the reasons why the notice is disputed and the circumstances leading up to the decision to issue the notice

Factors that may be taken into account in a review include, but are not limited to:

- any errors or omissions of fact;
- any errors or omissions in procedure; and/or
- any evidence of extenuating or mitigating circumstances that may ameliorate the offence (such circumstances are considered on their individual merits).

The Council may require additional information from the applicant in support of a request for a review and may also request that sworn evidence be provided in the form of a Statutory Declaration.

Neither the Council itself nor its Committees will become involved in reviews of expiation notices and will not hear deputations regarding individual expiation notices. This does not take away the right of Council Members to advocate on behalf of community members. However where a request for review is rejected by the initial authorised officers, the expiation recipient may request a second review by another Officer of Council. If the second review is also rejected then the only other course of review is the Courts. A person issued with an expiation notice may elect to have the matter referred to the Courts at any time.

A person who advises they have financial hardship may apply to the Fines Enforcement and Recovery Unit to make arrangements to pay the expiation fee in instalments or for an extension of time (not exceeding 6 months) within which to pay the expiation fee.

### 3.4 Applications

Where the recipient of a notice wishes to informally dispute the alleged offence in accordance with this policy they may do so in writing to Council. The application should set out the reasons why the recipient believes the offence is trifling or any other reasons why the recipient believes the expiation notice should not have been issued and be accompanied by any supporting evidence. <sup>[CAB1]</sup>A review of the circumstances of the notice is carried out by the relevant officer/s and a determination will be made on the basis of the information in the Council's possession.

Council has delegated authority for these reviews to the Team Leader Community Safety, Team Leader Environmental Health, Manager Public Health and Safety, Community Safety Administration Officers, Team Leader Building Compliance and TAG, Manager Planning and Development, General Manager City Services and Manager Governance.

## 4. Definitions - Nil