

# **Guidelines for the Enforcement Review Program**

**Disability Services  
2008**

Produced by Community and Individual Support Branch,  
Disability Services, Department of Human Services,  
50 Lonsdale St, Melbourne, Victoria, 3000

September 2008

## **Enforcement Review Program – revoking of fines in special circumstances.**

The Enforcement Review Program (ERP) is a program operating as part of the Parallel Services of the Melbourne Magistrates' Court. The ERP is part of the Court Support Services of Melbourne Magistrates Court and is a permanent service of the court.

### **Target Group:**

The ERP was established to assist people with 'special circumstances' as identified in section 65 of the *Infringements Act 2006*. This includes people with mental illness, intellectual disability, disease or illness where the disability, disorder, disease or illness results in the person being unable to either understand that his or her conduct constitutes an offence or control the conduct that constitutes the offence. The ERP enables people with 'special circumstances' who have outstanding fines registered at the Infringements Court to apply to revoke their fines.

Disability Client Services workers may apply to revoke such fines on behalf of people with 'special circumstances'.

A person with 'special circumstances' on whose behalf an application is made must attend the Court to plead guilty to an infringement notice.

The ERP does not include fines that have been issued by the Magistrates Court.

### **Key Points:**

- The ERP is available to people with 'special circumstances', including people with a intellectual disability, mental illness, disease or illness.
- Applicants must plead guilty to the infringement notices
- The ERP is only available to revoke fines issued through the Infringements Court not the Magistrates Court.

Although the ERP is conducted at the Melbourne Magistrates' Court, it is also open to people living in rural Victoria, however they will need to request a transfer to the Infringements Court. The applicant will need to be in attendance at the Melbourne hearing.

Please refer to the *Disability Services Criminal Justice Manual 2007* for detailed information regarding the court processes and roles and responsibilities of the Disability Client Services worker.

### **Referral Process**

Before being referred to the ERP, the person subject of the fines *must* consent to discussing the application with the ERP Coordinator. The person *must* be asked if consent is also given for the ERP Coordinator to provide the Disability Client Services worker with additional information regarding outstanding fines.

Disability Client Services workers should contact the ERP Coordinator to make an application to be referred to the ERP.

Please note: Not all people with a disability may seek the involvement of Disability Client Services, in this instance the Disability Client Services worker and/or the Intake and Response worker can provide the person with a disability with the contact details of the coordinator of the ERP.

### **Information Required for the ERP**

The ERP Coordinator will require the following information:

- a) Letter requesting that the matters (fines) be revoked and heard through the ERP. Appendix 1
- b) Evidence of the "special circumstances". Either a copy of the statement of disability or detailed information outlining when the person became involved with Disability Services should accompany any documentation to the court.
- c) It is also recommended that Disability Client Services workers provide accompanying information in the form of a Client Overview Report. Practice advice for developing a Client Overview Report can be found in the *Disability Services Criminal Justice Practice Manual 2007*, available on the Disability Services Intranet site.

Please see Appendix 2.

#### **Key Points:**

- The Disability Client Services worker completes a letter to the ERP coordinator requesting that the matters be revoked.
- Provide a copy of the Statement of Disability or information regarding the person's involvement with Disability Services.

#### **Legal Representation for clients:**

Please refer to the *Disability Services Criminal Justice Practice Manual 2007* available on the Disability Services Intranet site, regarding legal representation for people with a disability

Please note: Legal representation for people accessing the ERP is not essential however it is highly recommended should there be significant infringement notices involved i.e. above \$10,000.

#### **At Court**

If the matter has been referred to the ERP, the organisation that issues the infringement notice is notified of the hearing date and will send a prosecutor from the organisation to hear the matters. If there is no prosecutor in attendance, the matter will be dismissed.

## **Who attends the Court Hearing?**

In the case of an application to the ERP, attendance at court by a Disability Client Services worker should be at the discretion of their manager, however it is advised that the worker responsible for the application attends court. Disability Client Services workers should endeavour to ensure that people with a disability are provided with adequate supports when attending a hearing. Disability Client Services workers attending hearings should refer to the *Disability Services Criminal Justice Practice Manual 2007* for further advice.

## **Giving Evidence in Court – some points to consider**

Although conducted in a Magistrates' Court, the proceedings for the ERP are usually relatively informal. On occasion, Disability Client Services workers may not be "sworn in" to provide evidence, however the Magistrate may ask questions from the bench.

Please refer to the *Disability Services Criminal Justice Practice Manual 2007*, available on the Disability Services Intranet site for further information.

## **Sentencing Options:**

A range of sentencing options are available through the ERP. There is a sentencing hierarchy and the court is directed to consider the least restrictive alternative possible when sentencing. Sentences may include an adjournment without conviction, adjournment with conviction, fine, community based order, suspended sentence, intensive corrections order and imprisonment.

Please note:

- If the Court orders an adjournment, the defendant must consent to the conditions of such order in court. When sentenced to an adjournment, it is the responsibility of the offender to uphold the conditions of the order.
- If conditions are attached to an order requiring the person to comply with recommendations made by Disability Services, it is the responsibility of the person who is subject of the order to comply with the order, and the department will not be required to pursue an application to breach the order should the person fail to comply.

### **Key points:**

- A range of sentencing options are available through the ERP.
- If the Court orders an adjournment, and compliance with recommendations made by Disability Services is included in a condition, it is the responsibility of the person who is subject of the order to comply with the order, and the department will not be required to pursue an application to breach the order should the person fail to comply.

## Appendix 1

*DHS Letterhead*

*Date*

Enforcement Review Project Officer  
Melbourne Magistrates' Court Melbourne  
Level 2, 233 Williams St  
MELBOURNE 3000

Dear Sir/Madam,

**Re – John Citizen**

I am writing to you in relation to Mr Citizen's outstanding infringement notices, with a request to the Court to have them revoked.

I am Mr Citizen's case manager with Inner Metro Region Disability Client Services. Mr Citizen has consented to the following information being provided to you by Disability Services.

Mr Citizen has an intellectual disability within the meaning of the *Disability Act 2006*. A copy of a statement of disability in relation to Mr Citizen is attached. Mr Citizen is also in receipt of the Disability Support Pension.

Please also find attached a copy of a report titled 'Client Overview Report' which provides information on Mr Citizen's current situation, including the support he is currently accessing.

Please do not hesitate to contact me on XXXX XXXX for further information.

Yours Sincerely

X  
Advanced Case Manager  
Disability Client Services  
Department of Human Services  
Inner Metro Region

Appendix 2:

***Client Overview Report***

**CLIENT NAME:** Mr John CITIZEN

**DATE OF BIRTH:** 26 February 1964

**ADDRESS:** 8 Rose Street, Blurbville VIC 3175

**CHARGES:** Riding a bicycle without a helmet x 10

**COURT AND COURT DATE:** Blurbville Magistrates' Court  
13 September 2007

**REGION:** Inner Metropolitan Region

**DISABILITY SERVICES CONTACT:** Matthew Worker

**PHONE:** (03) 9999 9999

**DATE OF REPORT:** 7 September 2007

## **Level of Disability**

Mr Citizen has been issued with a statement that he has an intellectual disability within the meaning of the *Disability Act 2006*. An assessment of Mr Citizen's cognitive abilities conducted by a Disability Services Psychologist in 1997 indicated that his level of intellectual functioning fell within the 'mildly intellectually disabled' to 'borderline' range.

Mr Citizen is able to complete all personal care tasks independently and completes a number of domestic duties such as cleaning his house and doing his laundry. Mr Citizen is able to prepare simple meals but prefers to eat 'take away' meals most of the time.

Mr Citizen can independently access his local community and is able to use all modes of public transport. He has a current Victorian Driver's Licence that he renewed last year for a three-year period.

Mr Citizen communicates with clear articulation. He sometimes has difficulty understanding complex information and becomes frustrated at these times. Mr Citizen may become verbally aggressive and swear when he is feeling frustrated. It may be necessary to repeat information to Mr Citizen or to give directions one step at a time to aid his comprehension. Mr Citizen has basic literacy skills, and he reports that he likes reading car magazines, although he does rely on the pictures to help understand the text. Mr Citizen reports he often does not understand the correspondence he receives and he usually ask his friends for help at these times.

## **Developmental History**

Mr Citizen lived with his birth parents until the age of four when he became a ward of the State in 1968. He lived in several institutions until the age of fifteen when he returned to reside with his mother. Mr Citizen reports he then left home shortly afterwards although his age at this time is not known. Mr Citizen has since lived in a number of settings including boarding houses, private rental and shared accommodation with friends and his sister. He described his family as "dysfunctional", and stated that he now has no contact with members of his family.

Mr Citizen attended The Burbville Special School until the age of fifteen when he secured employment. Mr Citizen reported that he has worked for a panel beater, a car wrecker, as a spot welder and has had numerous jobs as a factory hand. Disability Services' files indicate that he has also had short, intermittent periods of unemployment. Mr Citizen currently works on a casual basis in a wrecker's yard to supplement his Disability Support Pension, which he has been a recipient of since January 1997.

## **Contact with Disability Services**

Mr Citizen first came into contact with Disability Services in March 1992 at which time he was provided with support to find permanent accommodation. Between November 1994 and July 1995 he received support with justice issues, finding alternative accommodation and personal support. Mr Citizen also received support with justice issues from May 1996 to July 1998.

In the past Mr Citizen has stated that he did not consider the support from Disability Services to be beneficial and he resisted attending appointments,

however he has since indicated that he is now willing to work with his case manager to develop and implement a person centred plan.

**Current Circumstances**

Mr Citizen has lived at his Office of Housing residence since September 2004. He currently works on a casual basis in a wrecker's yard in Blurbville. Mr Citizen has a strong interest in cars and owns several vehicles. He spends most of his time working on his cars and enjoys attending cars shows and racing events.

Mr Citizen currently receives support from Smithies, a program of the Inner Region Mental Health Association (IRMHA). Smithies have had involvement with Mr Citizen since July 2004, and have assisted him to relocate to his present accommodation and have provided support with budgeting. Smithies have indicated that although Mr Citizen is now in stable accommodation, they will continue to support him, in particular with further developing his budgeting skills.

Mr Citizen considers his current accommodation and financial situation as favourable as he lives at a residence with storage space for the cars he works on and he has a regular job. Mr Citizen relies on his social network for advice regarding correspondence received, however it appears the advice provided is not always accurate or in Mr Citizen's best interests. Smithies have indicated that they will be supporting Mr Citizen to join a local car club where he will be able to meet new people with a similar interest in automotives.

**Prepared by:**

<b>Name of Worker</b>	<b>Signature</b>	<b>Position</b>	<b>Date</b>
Matthew Worker		Case Manager	
<b>Name of Manager</b>	<b>Signature</b>	<b>Position</b>	<b>Date</b>
Mary Manager		Disability Client Services Manager	

