

HISTORICAL PARKING INFRINGEMENTS PURSUANT TO SECTION 87(4) OF THE ROAD SAFETY ACT 1986

Report Author: Manager Community Wellbeing

Responsible Officer: Director Communities

Ward(s) affected: (All Wards);

The author(s) of this report and the Responsible Officer consider that the report complies with the overarching governance principles and supporting principles set out in the Local Government Act 2020.

CONFIDENTIALITY

This item is to be considered at a Council meeting which is open to the public.

SUMMARY

Pursuant to the *Road Safety Act 1986* ('the Act'), Council can resolve to alter the penalty unit amount for eleven parking offences. Following a review, and subsequent detection of overcharging motorists for these eleven parking offences, Merri-Bek Council announced it would be commencing a refund scheme for motorists to apply for partial refunds, being the difference between the amount charged by Merri-Bek and the base infringement amount, set by the Act without a resolution of Council, pursuant to section 87(4) of the Act.

Council Officers then conducted a thorough and fulsome investigation into Yarra Ranges' historical infringement practices. It became apparent that while there was a resolution of Council in 2001, there has been no subsequent resolution made, despite Council raising the penalty amount pursuant to section 84(4) of the Act and indexing that penalty amount yearly. This report presents recommended steps to rectify the matter.

RECOMMENDATION

That Council resolves to

- 1. Establish a refund scheme for those parking infringements specified as Items 1 to 11 in Column 1 of Schedule 6 of the Road Safety (General) Regulations 2019, in line with Attachment 1.***
- 2. Authorise the Director, Communities to establish the refund scheme.***
- 3. In accordance with Section 87(4) of the Road Safety Act 1986, resolves to fix at 0.5 penalty units the penalty for those parking infringements specified as Items 1 to 11 in Column 1 of Schedule 6 of the Road Safety (General) Regulations 2019 effective immediately until otherwise resolved.***

RELATED COUNCIL DECISIONS

At the ordinary Council meeting held on 16 January 2001, a recommendation was put to Council that the statutory penalty amount be increased from \$20 to \$40.

The following resolution was then passed:

“That Council in accordance with provisions of Section 87(4) of the *Road Safety Act 1986* (the Act) fix a penalty amount of \$40 for parking infringements in contravention of the Regulations as set out under the Act in respect to parking infringements occurring within the municipal boundary of the Yarra Ranges Shire Council. Further that the revised penalty level becomes effective February 1, 2001, for the tabled offences.”

DISCUSSION

Purpose and Background

Legislative Context

The Road Safety Act 1986, section 87 (3) & (4) states:

(3) The penalty prescribed for the purposes of this section for any parking infringement, other than a penalty for a parking infringement referred to in subsection (3A) or a penalty fixed by any municipal council or relevant public authority pursuant to subsection (4), is the amount prescribed by the regulations in respect of infringements of the kind in question.

(4) Despite subsection (3)—

(a) a municipal council may, by resolution; or

(b) a relevant public authority may, with the approval of the Minister—

fix a penalty for a parking infringement in contravention of a regulation under this Act, that is a regulation in respect of which regulations under this Act prescribe a penalty, if the penalty to be fixed is not more than 0.5 penalty unit and is not more than the penalty prescribed by the regulations

The relevant offences are –

- Parking for a period longer than indicated
- Parked failing to pay & obey instructions on sign
- Stopping contrary to a No Parking sign
- Stopping on a bicycle parking area
- Stopping on a motor bike parking area

- Parking contrary to requirements of parking area
- Parking not at an angle of 45 degrees
- Parking not at an angle of 90 degrees
- Parking not completely within a parking bay
- Parking a long vehicle exceeding the minimum number of bays
- Parking a wide vehicle exceeding the minimum number of bays

Until 2004, Victoria had a set penalty unit of \$100, which was not indexed.

Since 2004, the Treasurer has indexed the penalty unit, which in 2025 is now \$197.57.

The Act in 2001 stated:

Despite sub-section (3), a municipal council may by resolution fix a penalty of an amount not greater than \$50 for a parking infringement in contravention of a regulation under this Act in respect of which regulations under this Act prescribe a penalty of an amount not greater than the penalty to be fixed, and the penalty so fixed is the penalty prescribed for the purposes of this section in respect of such a parking infringement occurring within the municipal district of that municipal council.

It is clear that Council, by way of resolution as outlined in the section above, intended to set the penalty unit amount at \$40, which was in line with the Act at the time.

With respect to the validity of the 2001 resolution, given that it was a decision of Council passed by an absolute majority of Councillors present at a properly constituted Council meeting, the resolution continues to have force and effect.

However, all subsequent increases to the penalty amounts by annual indexation or otherwise are invalid because those amendments have not been supported by a Council resolution.

It is considered that a reference within an infringement notice to an incorrect infringement penalty constitutes an administrative error and therefore does not necessarily invalidate the notice nor does it undermine the illegality of the identified offending.

Options considered

Officers have not considered any other options.

Recommended option and justification

Given the clear overcharging of motorists who have been issued an infringement for these 11 offences since 2005, Officers consider refunding the overcharged amount the principled and correct option.

A refund scheme should be established, open for a period of twelve months.

Motorists would need to provide either an infringement number, or vehicle registration and proof of ownership at the time of the infringement being issued, in addition to their name and address.

This would allow officers to verify that the refund is being returned to the correct person.

Council should also set the penalty amounts for all 11 offences to 0.5, the maximum penalty amount allowed by the Act.

FINANCIAL ANALYSIS

Since 2004, Council has issued 37,814 of these infringements, with a total value of \$2,619,380.00, the vast majority being for 'parking for a period longer than indicated'

The attached table (Attachment 1) has been prepared which shows, for each financial year, the incorrect penalty amount, the amount which was overcharged, the volume of infringements and the total dollar value to be refunded.

The total pool of available refunds amounts to \$1,119,932.

APPLICABLE PLANS AND POLICIES

Not applicable

RELEVANT LAW

- *Road Safety Act 1986*
- *Road Safety (General) Regulations 2019*
- *Infringements Act 2006*

SUSTAINABILITY IMPLICATIONS

Economic Implications

This is an unexpected and unbudgeted expense which will ultimately impact the adopted 2025/26 and 26/27 budgets.

Social Implications

Given this is a significant administrative error of Council, there may be a period of lower trust in Council overall.

Environmental Implications

Not applicable

COMMUNITY ENGAGEMENT

Not applicable

COLLABORATION, INNOVATION AND CONTINUOUS IMPROVEMENT

Officers have spoken to other Councils, as well as sought legal advice with respect to the legal implications.

RISK ASSESSMENT

Clearly, the reputational risk for Council is significant. However, given this is a self-initiated audit of historical practices, the risk may be decreased.

CONFLICTS OF INTEREST

No officers and/or delegates acting on behalf of the Council through the Instrument of Delegation and involved in the preparation and/or authorisation of this report have any general or material conflict of interest as defined within the *Local Government Act 2020*.

ATTACHMENTS

1. Infringements Issued by Date Range