

Fact Sheet

7 July 2017

Section 100 Notices

Background (Issue and effect of Section 100 notices; Offence provisions)

Drivers and operators of public passenger services are required to comply with performance standards regarding customer service and safety. These requirements are provided in legislation through the *Transport Operations (Passenger Transport) Standard 2010* (the Standard).

If a person does not comply with a particular standard, then the person can be directed to comply with that standard by a notice issued under Section 100 of *Transport Operations (Passenger Transport) Act 1994* (the Act).

It is an offence not to comply with a direction issued under Section 100. The maximum penalty for this offence is \$20,184. Furthermore, this offence is classified as a *disqualifying offence* for which Driver Authorisation and/or Operator Accreditation can be suspended or cancelled.

Duration of effect for Section 100 notices

A Section 100 notice has effect for three years.

Example -

- John fails to comply with a standard.
- John is issued with a Section 100 notice directing him to comply with that particular standard.
- John fails to comply with that standard, again, within 3 years of the notice's date of effect.
- John commits an offence because he has not complied with the direction given in the notice.

Date of effect for Section 100 notices

Section 100 notices require a person to comply with a particular standard either:

- immediately; or
- from a stated date.

Notices requiring immediate compliance can only be issued for standards about any of the following safety matters.

- fatigue; or
- driver fitness; or
- the condition of a vehicle; or
- the safe operation of a vehicle (including overloading, and the seating or standing of passengers).

For notices issued to have effect from a stated date, that stated date must be at least five working days after the date the notice was issued. For example, for a notice issued on Monday 1 September, the minimum date from which compliance is required would be Monday 8 September.

Section 100 notices requiring compliance from a stated date can also be issued for any of the above- mentioned safety standards or any of the other requirements in the Standard. The issuing officer has the discretion to decide which type of notice to issue.

Examples

The Standard lists a range of requirements that both drivers and operators are required to meet. Some examples of the actions that might result in a departmental officer issuing a Section 100 notice have been included below. The list is not exhaustive.

For requirements in the Standard under **s11 - Operational safety of vehicles**, a departmental officer might consider issuing **a driver** who was carrying too many school children a Section 100 notice requiring delayed compliance. This would allow a driver to complete that journey rather than putting some children immediately off the bus exposing them to increased risk. It may also be possible/necessary to issue **the operator** with a Section 100 notice for a breach of **s22 - Ensuring Operational safety of vehicles** of the Standard in such circumstances.

Section 11 may also be used in circumstances where a driver has failed to secure a wheelchair in his maxi taxi or has driven the vehicle in a way that has put his passenger, himself or other members of the public at risk. A section 100 notice issued against this requirement may have immediate effect because it is safety related.

A driver of a relevant vehicle that is used to provide a public passenger service other than a booked hire service, limousine service or taxi service who was rude or aggressive towards his passengers (or members of the public) or who tried to initiate inappropriate conversations with his passengers may be considered to have breached s13 of the Standard – Customer Service. This section might also capture a driver who failed to provide assistance when asked to do so by a passenger. Under this section, a driver is required to be reasonably courteous to both passengers and the public. In such a circumstance, an issuing officer may consider a Section 100 notice with compliance required from a stated date.

If a driver breached fatigue or alcohol standards (section 9 or 10 of the Standard) then the issuing officer might choose to issue a Section 100 notice requiring immediate compliance. This means that, effective immediately from the time of issue of the notice, the driver cannot drive a public passenger vehicle whilst fatigued or affected by alcohol.

Similarly, if a vehicle providing a general route service or school service was found to be in a very dirty or untidy state, a Section 100 notice under **s30 – Vehicles to be maintained in a clean tidy and comfortable condition etc** could be issued with either immediate effect (as it relates to the condition of the vehicle) or with delayed effect depending on the circumstances.

The relationship between Section 100 notices and other laws

Some matters referred to in the Standard are also covered by other laws, e.g. vehicle safety requirements, blood alcohol requirements of drivers. Any action taken under Section 100 of the Act with regard to standards (For example: the issue of a notice or the (prosecution of an offence) does not restrict the application of other laws.

For example, drivers of unsafe public passenger vehicles could be issued with a notice under Section 100 of the Act and also be prosecuted for an offence under the *Transport Operations (Road Use Management Act) 1995 (TO(RUM)A)*. Furthermore, a subsequent failure to comply with the section 100 notice could result in prosecutions for offences against both the Act and the TO(RUM)A..

Similarly, if a passenger transport vehicle is found to be operating without a current Certificate of Inspection, the driver/owner may be issued with a penalty infringement notice under the *Transport Operations (Road Use Management - Vehicle Standards and Safety) Regulation 2010*. A Section 100 notice may also be issued to the operator under section 24 of the Standard for not complying with this Regulation.

Disclaimer: This document is a guide only and should not be used as a reference to a point in law.