

## 41 Administrative Penalty

May 2022

This policy guideline is intended to help people who file a complaint for investigation and those who may be subject to an investigation or administrative penalty proceeding understand the process and issues that are likely to be relevant. It may inform what information or evidence is likely to be relevant. The guideline also sets out the criteria ordinarily used to determine the amount of an administrative penalty. This policy guideline may be revised and updated from time to time.

### A. PURPOSE OF THIS GUIDELINE

The purpose of this policy guideline is to set out the policy framework and assessment criteria ordinarily used by the director in deciding whether to impose an administrative monetary penalty (“administrative penalty”), and, if an administrative penalty is imposed, to determine the amount of the penalty. The director also generally keeps this policy and criteria in mind when deciding whether to initiate an investigation and investigators are aware of this policy when conducting an investigation.

Policy guidelines are not legally binding on the director and cannot fetter the director’s discretion.<sup>1</sup> In some circumstances, the director may decide to deviate from this guideline. Case law establishes that when deviating from the guideline, the director should give reasons as to why they are doing so.

### B. COMPLIANCE AND ENFORCEMENT UNIT

The Compliance and Enforcement Unit (CEU) is a team within the Residential Tenancy Branch that uses a progressive approach to obtaining compliance with the tenancy laws of B.C. It is not the role of the CEU to try to assist landlords and tenants with settling their disputes or to make determinations about disputes between landlords and tenants. This is the purpose of the Residential Tenancy Branch’s dispute resolution process. Rather, the CEU’s focus is on getting landlords and tenants to voluntarily comply with the law by educating and working with a person who is subject to a complaint to ensure they understand their rights and obligations under B.C.’s tenancy laws. If these efforts are not successful in achieving compliance, the CEU will usually take incremental enforcement actions, including verbal and written warnings.

The decision to levy an administrative penalty and the amount of the penalty are determined on a case-by-case basis by looking at the totality of the evidence and circumstances.

### C. LEGISLATIVE FRAMEWORK

Part 5.1 of the *Residential Tenancy Act* (RTA) and Part 6.1 of the *Manufactured Home Park Tenancy Act* (MHPTA) allow the director of the Residential Tenancy Branch to

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<sup>1</sup> See for example: *Powell v. British Columbia (Residential Tenancy Branch)*, 2016 BCSC 1835.

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order a person to pay an administrative penalty if the director is satisfied on a balance of probabilities that the person has:

- contravened a provision of the RTA, MHPTA or the regulations,
- failed to comply with a decision or order of the director, or a demand issued by the director for the production of records, or
- given false or misleading information in a dispute resolution proceeding or an investigation conducted by the CEU.

Pursuant to section 9 of the RTA and MHPTA, the director of the Residential Tenancy Branch has delegated their authority for the purposes of Part 5.1 of the RTA (6.1 of the MHPTA) to the Director of the Compliance and Enforcement Unit (DCEU). The director of the Residential Tenancy Branch has also delegated their authority for conducting investigations under sections 87.1 and 87.2 of the RTA (80.1 and 80.2 of the MHPTA) to Senior Compliance Investigators (Investigators) and Compliance Officers (COs). When necessary, the director of the Residential Tenancy Branch may delegate their authority to investigate or to impose administrative penalties to other individuals on a case-by-case basis.<sup>2</sup>

When an investigation is complete, a report is forwarded to the DCEU with recommendations. The DCEU reviews the evidence and the report, including the analysis of the evidence and the recommendations. If the DCEU decides an administrative penalty is not warranted, the DCEU will notify the person who was being investigated of this outcome. Before the DCEU can make a decision to impose an administrative penalty on a person, the DCEU must give the person (the “respondent”) an opportunity to be heard.<sup>3</sup> A notice of an opportunity to be heard must be sent within 2 years of the facts on which the notice is based first coming to the director’s knowledge.<sup>4</sup> The notice must include:

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<sup>2</sup> Throughout this policy guideline, a reference to the DCEU also includes an individual other than the DCEU to whom the director of the Residential Tenancy Branch has delegated the authority to impose administrative penalties. The same applies for references to Investigators and COs.

<sup>3</sup> Section 87.3(2)(a) of the RTA and section 80.3(2)(a) of the MHPTA).

<sup>4</sup> Section 36 of the *Residential Tenancy Regulation* (section 57 of the *Manufactured Home Park Tenancy Regulation*).

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- the provision of the Act or regulations the person is alleged to have contravened or the decision or order of the director<sup>5</sup> with which the person is alleged to have failed to comply, and the particulars of the alleged contravention or failure;<sup>6</sup>
- the due date for the submissions<sup>7</sup> or the time, date, place, and manner of hearing.<sup>8</sup>

When considering whether to impose an administrative penalty on a person who has contravened a provision of the RTA, MHPTA or the regulations, the DCEU also must consider the following<sup>9</sup>:

- previous enforcement actions for contraventions of a similar nature by the person;
- the gravity and magnitude of the contravention;
- the extent of the harm to others resulting from the contravention;
- whether the contravention was repeated or continuous;
- whether the contravention was deliberate;
- any economic benefit derived by the person from the contravention;
- the person's efforts to correct the contravention.

When considering whether to impose an administrative penalty on a person who failed to comply with a decision or order of the director or a demand for the production of records, or who gave false or misleading information in a dispute resolution proceeding or investigation, the DCEU may consider the above-noted factors that are relevant or applicable.

A person who files a complaint that results in an administrative penalty does not receive any monetary compensation. An administrative penalty is a debt due to the

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<sup>5</sup> In this context, the reference to director means the director of the Residential Tenancy Branch and/or delegates for dispute resolution hearings, such as arbitrators.

<sup>6</sup> Although not required by the regulations, if the person is alleged to have given false or misleading information in a dispute resolution proceeding or an investigation, the DCEU will specify the particulars of the allegation in the notice to ensure there is a fair opportunity to be heard.

<sup>7</sup> In most cases, the DCEU will require written submissions. Section 33(1) of the *Residential Tenancy Regulation* (section 54(1) of the *Manufactured Home Park Tenancy Regulation*) allows for a variety of methods for providing the opportunity to be heard, as the DCEU considers appropriate in the circumstances.

<sup>8</sup> Section 33(2) of the *Residential Tenancy Regulation* (section 54(2) of the *Manufactured Home Park Tenancy Regulation*).

<sup>9</sup> Section 87.3(2)(b) of the *RTA* (section 80.3(2)(b) of the *MHPTA*).

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Government of British Columbia and may not exceed \$5,000 for each instance of a contravention or failure. However, if a particular contravention or failure to comply occurs over more than one day or continues for more than one day, separate administrative penalties of up to \$5,000 may be imposed for each day the contravention or failure continues. In a case involving false or misleading information, an administrative penalty may be levied for each instance of false or misleading information.

Investigations may be conducted to ensure compliance with the RTA, MHPTA and the regulations whether or not there has been an application for dispute resolution in relation to the matter. Part 5.1 of the RTA and Part 6.1 of the MHPTA do not provide the DCEU with authority to enforce an order made in a dispute resolution proceeding related to or to award compensation or an order of possession to a landlord or tenant. Accordingly, the CEU is not an alternative to the Residential Tenancy Branch's dispute resolution services or an alternative way to enforce orders made at a dispute resolution proceeding. A person seeking monetary compensation against another party to a tenancy agreement must apply for dispute resolution. A landlord or tenant who wants to enforce an order they received through dispute resolution for financial compensation or possession must file the order in the Provincial Court or Supreme Court of British Columbia and use the courts' enforcement processes<sup>10</sup>.

During an investigation, a CEU Investigator or a Compliance Officer (CO) may require a person to provide all records<sup>11</sup> in their possession or control related to the investigation. The records must be provided within a reasonable time. Failure to comply with a demand for the production of records could result in an administrative penalty being levied for each day the failure continues.

### D. POLICY STATEMENT ON ADMINISTRATIVE PENALTIES

As previously stated, the goal of the CEU is to educate landlords and tenants about tenancy laws and work with them to come into compliance with tenancy laws and

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<sup>10</sup> See [Serving and Enforcing Orders](#) for information on enforcing an order made at a dispute resolution proceeding.

<sup>11</sup> "Record" is defined in the *Interpretation Act* and includes books, documents, maps, drawings, photographs, letters, vouchers, papers, and any other thing on which information is recorded or stored by any means whether graphic, electronic, mechanical, or otherwise.

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director's orders. In general, administrative penalties are considered a last resort when all other efforts to obtain compliance have been unsuccessful. However, administrative penalties may also be used where immediate enforcement action is warranted, including in situations where immediate compliance is required.

Not all complaints submitted to the CEU will be investigated. When a complaint is filed with the CEU, a CO conducts an initial assessment based on the criteria set out in this guideline to determine if the allegations relate to a matter for which an administrative penalty may be imposed and, if so, whether the allegation is sufficiently serious to merit further investigation. The circumstances and the result of the initial assessment by the CO is shared with the DCEU, who makes a final determination about whether to proceed with an investigation based on several factors including public interest, current caseload, and capacity of the CEU. Generally, only the most serious complaints will result in an investigation. For instance, the DCEU will consider several factors to determine whether to proceed with an investigation, including whether the complaint concerns a contravention of tenancy laws, the repeated or serious and deliberate nature of the alleged contraventions, the level of risk, and whether the dispute resolution process has been exhausted.

- If the DCEU is satisfied further assessment is warranted:
  - A CO will begin a preliminary investigation by taking steps such as a search of historical dispute resolution hearings with the subject of the complaint for similar matters and a determination of whether the dispute resolution process has been exhausted. They will analyze the seriousness of the allegations and their potential impact. In most cases, the CO will contact the subject of the complaint, make them aware of the allegations against them and explain their rights and responsibilities under the RTA or MHPTA. A verbal or written warning may be issued, setting out potential consequences for not following the law. This can also include a warning that the CEU may monitor future activities regarding the tenancy to ensure that compliance is maintained.
  - If the subject of the complaint provides information to the CO that causes the CO to form a concern that the subject will not come into immediate compliance and/or the matter appears sufficiently serious, then if the CO deems it appropriate at this juncture, the CO may prepare a report to the DCEU recommending an administrative penalty. If the CO does not have sufficient evidence to make recommendations to the DCEU, they may refer the complaint to an Investigator for further investigation. The CO will write to the subject of the complaint to inform them that an investigation has been commenced.

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- If the CO refers a complaint for further investigation:
  - An Investigator will confirm with the CO that the person being investigated has been notified in writing that an investigation has been commenced and if for some reason they have not been, the Investigator will provide such notice. The person under investigation will be given an opportunity to provide any information or evidence that may assist in the investigation. The investigation may include steps such as examining the history of compliance; consulting with other agencies, including local governments and law enforcement; collecting evidence and speaking to witnesses; and requiring persons, including the person under investigation, to produce records in relation to the investigation.
  - Following the investigation, the Investigator may decide not to take any further steps and, instead, may issue a warning letter. If, at the conclusion of an investigation, the Investigator recommends the DCEU impose an administrative penalty, the Investigator's recommendation will be documented in a report subject to approval by the DCEU.
- If, based on a recommendation from a CO or Investigator, the DCEU determines an administrative penalty may be warranted, they will give the respondent an opportunity to be heard:
  - The DCEU will provide the respondent with a copy of the investigation report, all evidence that is before the DCEU, and the DCEU's preliminary assessment of those materials in relation to levying an administrative penalty. The respondent can then provide evidence and submissions for the DCEU to consider before the DCEU makes their final decision. When fairness requires, the DCEU may convene a hearing so oral evidence and submissions can be given. The DCEU may also ask the Investigator to reopen the investigation if appropriate based on the evidence and submissions provided.
  - The DCEU will then consider all relevant evidence and submissions and the relevant factors before making a final decision.
- If the DCEU's final decision is to impose an administrative penalty:
  - The decision will specify the contravention, failure or false or misleading information to which the penalty relates; the amount of the penalty; the date by which the penalty must be paid; and the person's right to have the director reconsider the decision imposing the penalty.<sup>12</sup> The DCEU will also issue an order that reflects the decision.

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<sup>12</sup> Section 87.8 of the *RTA* (section 80.8 of the *MHPTA*) allows a person to apply for a review of the matters set out in the notice of administrative penalty on the grounds and procedure found in sections 79

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- An administrative penalty may be imposed for each day a contravention or failure continued or continues. Ordinarily, the DCEU will only impose administrative penalties for each day of an ongoing contravention or failure to follow a decision or order if the contravention or failure has a current and serious impact on health and safety or, with respect to demands for the production of records, the failure significantly impedes the investigation. However, the DCEU may also determine that the totality of the circumstances, including the public interest or the failure of previous administrative penalties for the same or a similar contravention to achieve compliance, warrants a multi-day penalty.
- Instead of enforcing the penalty, the DCEU may choose to enter into an agreement with the respondent to reduce or cancel the penalty subject to the terms and conditions the DCEU considers necessary or desirable. The agreement must set out the actions the respondent will take by a certain date. If the respondent fails to carry out those actions by the date specified or otherwise comply with the terms and conditions, the full penalty is immediately owing.<sup>13</sup>

### E. ASSESSMENT FACTORS

This guideline includes an Assessment Guideline at Appendix A, which the DCEU may use to generate a score to guide their decisions about the amount of administrative penalty to impose, where warranted. The Assessment Guideline includes a number of factors, which each receive a score. This section provides guidance on how the DCEU may interpret those factors and the criteria the DCEU will usually consider in determining a score for a factor.

The legislation requires the DCEU to consider the factors set out below in assessing whether to impose an administrative penalty on the basis of a contravention.<sup>14</sup>

The legislation does not require the DCEU to consider these factors when determining whether to impose an administrative penalty on the basis of a failure to comply with a decision or order of the director or a demand for the production of records, or when a person has given false or misleading information. These factors may not be applicable

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to 82 of the *RTA* (sections 72 to 75 of the *MHPTA*). Section 87.7 of the *RTA* (section 80.8 of the *MHPTA*) allows a person to request a correction or clarification of the decision within 15 days after the decision or order is received.

<sup>13</sup> Section 87.3(4) to (6) of the *RTA* (section 80.3(4) to (6) of the *MHPTA*) and section 37 of the *Residential Tenancy Regulation* (section 58 of the *Manufactured Home Park Tenancy Regulation*).

<sup>14</sup> Contraventions are a reference to section 87.3 (1)(a) of the *RTA* (section 80.3 (1)(a) of the *MHPTA*).

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or relevant in such cases. To the extent that they are applicable or relevant in a particular matter, the DCEU will assess the factors set out below according to the Assessment Guideline. Deviations from the Assessment Guideline may occur when its use is not applicable or relevant to the circumstances.

When the Assessment Guideline is used, a score is generated that usually will correspond to the overall severity of the contravention. The DCEU then considers that score to determine the maximum amount of an administrative penalty to be imposed in accordance with the Penalty Guideline in **Part F**. Generating a score does not automatically mean that an administrative penalty will be levied. In addition to the totality of the circumstances, the DCEU may consider broader implications, including the public interest, in determining whether levying an administrative penalty is appropriate.

Some factors may be assessed quantitatively. For example, the number of previous enforcement actions or the number of times a contravention is repeated can be counted and given a score based on that count. Other factors require a qualitative or subjective assessment. With either factor, the severity of a contravention is usually assessed on a scale of 0 to 10, with 10 being the most severe.

The effort to correct a contravention is assigned a value between 0 and -10 because it is considered a mitigating factor and would be subtracted from the overall score.

The DCEU may, from time to time, deviate from the assessment process set out in Parts E and F and increase or decrease the score or weight given to a factor. Other mitigating or aggravating factors in addition to the seven factors set out in the legislation may also be considered in determining whether to impose an administrative penalty and, if so, the amount of the administrative penalty.

The recommendation from the CO or Investigator will include a valuation assessment document that sets out recommended assessed scores and the analysis leading to the recommendations. The DCEU may accept that recommendation and analysis or may choose to deviate from it either initially when providing the opportunity to be heard or when making a final decision. If the DCEU deviates from the recommendation or this guideline, including the Assessment Guideline, their reasons for doing so will be set out in their decision. Where fairness requires, the DCEU will provide the respondent an opportunity to make submissions and submit evidence in relation to the deviation.

### ***Previous enforcement actions for contraventions of a similar nature***

An enforcement action is an action taken to obtain compliance with laws, orders, or similar legal requirements. It may include, but is not limited to, actions taken by:



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- the director of the Residential Tenancy Branch, including orders made at a dispute resolution hearing or previous administrative penalties,
- the federal or provincial government,
- a federal or provincial government authority,
- a local government,
- a local government authority, or
- a court or administrative tribunal.

A previous enforcement action would be an action set out above that occurred before the contravention at issue took place. The weight given to a previous enforcement action will depend on the length of time that has elapsed since the action. For example, a previous enforcement action that occurred 5 years ago may be given less weight than one that occurred six months ago.

A contravention of a similar nature may include something that is captured by other legislation that is like a requirement found in the RTA, MHPTA or regulations. For example, a local government's standards of maintenance bylaw may be similar in nature to the requirements in section 32 of the RTA (landlord and tenant obligations to repair and maintain), and the DCEU could consider enforcement actions taken by the local government in relation to a contravention of their bylaw when imposing an administrative penalty in respect of a contravention of section 32 of the RTA.

The purpose of looking at previous enforcement actions for similar contraventions is to help determine whether there is a pattern of non-compliance and the need for more severe enforcement measures. In cases where a previous investigation was concluded with no recommendation for a penalty or a prior enforcement action was stayed, the DCEU may consider the circumstances and any actions taken in that process, including warnings issued to or commitments made by the respondent, to determine its relevance to any administrative penalty now being considered.

### ***Whether the contravention was repeated or continuous***

Determining whether a contravention has been repeated more than once also helps determine whether there is a pattern of non-compliance. A contravention that is repeated includes:

- Repeating the same contravention multiple times over the course of a tenancy,
- Escalating related contraventions over the course of a tenancy, or

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- A respondent repeating the same contravention or escalating related contraventions over multiple tenancies.

A continuous contravention is one that is ongoing or uninterrupted. In assessing a score for a continuous contravention, the DCEU may use a measurement of time they consider appropriate in the circumstances.

A contravention can be both repeated and continuous. A score is established for each.

### ***Gravity and magnitude***

Gravity and magnitude refer to the severity or seriousness of the risk or potential impact resulting from the contravention, and the extent of the impact. An example of a contravention that has a serious and extensive potential impact is the failure to repair an inoperative fire alarm system in a multi-unit apartment building because it creates an extreme risk to the safety of many people.

In determining the gravity and magnitude of the contravention, some of the criteria that the DCEU may consider include:

- the risk to the health, safety, or well-being of a person,
- the risk to the personal property, finances, or economic well-being of a person,
- the effect on the habitability of the rental unit or residential property, and
- the number of persons or rental units affected.

### ***Extent of harm to others***

This factor considers the actual harm resulting from the contravention.

A person's physical or mental health can be harmed. Impacts on a person's mental state can be considered even if medical care or treatment is not required.

There can also be economic and fiscal harm arising from damage to property, lost wages and revenue, or the reduction in the value of a material item. In assessing the extent of economic harm, the DCEU may consider the actual amounts involved, such as the amount spent to repair damage or to replace an item that was destroyed. In other circumstances, financial amounts may have to be estimated, such as when the value of a tenancy is reduced due to a tenant not being able to fully enjoy or use the rental unit.

### ***Deliberateness***

A deliberate contravention is one that is done on purpose. This means the respondent has intentionally or knowingly contravened the RTA, MHPTA or their regulations. A

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contravention may not always be deliberate at the beginning, but if the respondent intentionally or knowingly allows the contravention to continue, the contravention may be considered deliberate. Being willfully blind to a contravention may also be considered to be knowledge of the contravention. Willful blindness arises when a respondent has become aware of the need to make some reasonable inquiry considering the circumstances but avoids doing so.

### ***Economic benefit to the person***

Economic benefit refers to the financial gain the respondent obtains from their contravention. For example, if a tenant contravenes the RTA by failing to pay \$12,000 in rent, the economic benefit to them would be \$12,000. If a landlord contravenes the RTA by failing to repair a roof and the repairs would cost approximately \$30,000, the economic benefit to the landlord would be \$30,000 less any reduction in rent that has already been ordered in dispute resolution proceedings relating to this contravention.

In some instances, the economic benefit will have to be estimated. In other instances, it will not be possible to quantify the economic benefit derived from the contravention. In these instances, the scope of the potential benefit will be considered. For example, if a landlord impermissibly attempts to contract out of the RTA, the economic benefits may be substantial even though an exact or estimated amount of the total benefit may not be determinable.

Assessing the significance of the economic benefit depends on the circumstances of each case.

### ***Efforts to correct***

A respondent's efforts to correct a contravention is a mitigating factor. In assessing this factor, the DCEU usually considers the following criteria:

- what, if any, reasonable steps the respondent has taken,
- how promptly the respondent acted,
- the completeness of the correction, and
- any extenuating circumstances that may have impacted a respondent's reasonable efforts.

### ***Other Factors***

In the case of a contravention, the DCEU may consider other aggravating or mitigating factors in addition to the factors set out above. If the DCEU does so, they will set out

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what additional factors are being considered and provide an explanation about why they are considering these factors. The DCEU will also set out any factors they have considered with respect to a failure to comply with a decision or order of the director or a demand for documents, or the giving of false or misleading information. A respondent will be given notice of any factors that the DCEU may consider and an opportunity to make submissions and submit evidence in relation to them.

### F. PENALTY GUIDELINE

Generally, the formula the DCEU will use to determine the maximum amount of an administrative penalty that they may impose on a respondent who contravenes a provision of the RTA, MHPTA or regulations is:

Score X 142 = \$\_\_\_\_\_ (rounded to the nearest \$100 up to a maximum of \$5,000)

The purpose of the formula is to generate consistent administrative penalty amounts proportionate to the severity of the contravention as assessed by the DCEU in the assessment table and an amount that is anticipated to achieve compliance and future deterrence.

The factor of 142 generates a maximum penalty of \$5,000 for a contravention that is assessed a score of at least 35 out of 70. A score of 35 or more (e.g., five of the seven aggravating factors having a score of at least seven or all seven of the aggravating factors having a score of five, and the mitigating factor having a score of zero) would indicate a very serious contravention. The table below shows more calculations.

<b>Score</b>	<b>Calculation</b>	<b>Maximum penalty (rounded to nearest 100)</b>
5	5 X 142	\$700
15	15 X 142	\$2,100
25	25 X 142	\$3,600

Despite the formula, the DCEU has the discretion to impose a penalty for another amount than the calculated maximum if the DCEU, after considering all the circumstances, deems it appropriate.

When an administrative penalty is being imposed with respect to a failure to comply with a decision or order of the director or a demand for documents, or the giving of false or

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misleading information, the formula may be adjusted to reflect that a maximum penalty of \$5,000 is possible for any score that is 50% or greater of the total score possible. If only a few of the listed factors would be relevant, then the DCEU may determine the appropriate penalty on a case-by-case basis rather than relying on a formula.

When an administrative penalty will be imposed for an ongoing contravention or failure to comply, generally an assessment will first be made as to what an appropriate penalty would be if the circumstance occurred once. That amount could then be applied for each day the contravention or failure continued or continues.

### G. CHANGES TO POLICY GUIDELINE

Section	Change	Notes	Effective Date
All	New	Guideline rewritten	May, 2022

#### Change notations

am = text amended or changed

del = text deleted

new = new section added

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**Appendix A: Assessment Guideline**

											Score
<b>Number of previous enforcement actions for similar contraventions:</b>											
0	1	2	3	4	5	6	7	8	9	10	
<b>Number of repeated contraventions:</b>											
0	1	2	3	4	5	6	7	8	9	10	
<b>Number of days/weeks/months the contravention has continued:</b>											
0	1	2	3	4	5	6	7	8	9	10	
<b>Gravity and Magnitude</b>											
0	1	2	3	4	5	6	7	8	9	10	
<b>Extent of harm to others</b>											
0	1	2	3	4	5	6	7	8	9	10	
<b>Deliberateness</b>											
0	1	2	3	4	5	6	7	8	9	10	
<b>Economic benefit</b>											
0	1	2	3	4	5	6	7	8	9	10	
<b>Correction Efforts</b>											
0	-1	-2	-3	-4	-5	-6	-7	-8	-9	-10	
<b>TOTAL</b>											