

Mr Paul McKnight
Executive Director
NSW Law Reform Commission
GPO Box 5199
SYDNEY NSW 2001

15 DEC 2010

Dear Mr McKnight

I am writing in reply to your letter of 20 September 2010 inviting the Division of Local Government, Department of Premier and Cabinet to make a submission to the Commission's inquiry into the laws relating to the use of penalty notices.

I have carefully considered Consultation Paper 10 *Penalty Notices*, which accompanied your letter.

In general, the Division supports the principles underlying the suggestions contained in the Paper and will comment specifically on the following matters:

1. The Division does not issue penalty notices, but oversees the following legislation under which penalty notices may be issued by authorised local council officers:
 - *Companion Animals Act 1998*
 - *Local Government Act 1993*
 - *Impounding Act 1993*
 - *Swimming Pools Act 1992*

However, council enforcement officers also issue penalty notices under other legislation outside of the Local Government portfolio (eg, the Road Rules 2008).

2. Question 2.2 *Should there be a central body in NSW to oversee and monitor the penalty notice regime as a whole?*

The Division supports the establishment of a centralised body to coordinate the NSW penalty notice regime. This would ensure consistency in the advice provided to enforcement officers on penalty notice matters and provide a centralised point of reference for related enquiries from members of the public.

The Division considers that such a body should be managed by the Attorney General and the Department of Justice and Attorney General, as they have



relevant expertise and experience in the administration of legislation related to systems of law enforcement.

It is expected that such a centralised body would employ a consultative approach to policy development, as adopted by the Attorney General's Department in 2009 in coordinating the development of the *Cautions Guidelines* and *Internal Review Guidelines* under the *Fines Act 2006*.

3. Questions 3.2, 5.1 and 7.12: Enforcement officer training and guidance.

In its report *Review of Parking Enforcement: Report on Findings (2008)* the then Department of Local Government found that many councils have training in place for their enforcement officers but the type of training varies greatly from council to council. This included training on specific enforcement practices but also included related training, such as customer service, conflict resolution, and occupational health and safety.

The report recommended that councils continue to support the development of their staff through appropriate training to ensure that enforcement officers have the necessary skills and resources to undertake their duties in a safe, fair, transparent, consistent and accountable manner.

The *Cautions Guidelines*, released by the Attorney General in March 2010, have addressed some concerns about lack of guidance to enforcement officers regarding the application of discretion in undertaking their enforcement duties. These guidelines reflect amendments to the *Fines Act* in 2008, which mandated the principle of discretion for those officers responsible for issuing penalty notices.

However, debate about the need for standardised training continues in the local government sector, with lobbying from training providers and interest groups such as the Australian National Parking Steering Group and the Australian Institute of Local Government Rangers.

It is noted that the Department of Premier and Cabinet is in the early stages of a review of special constable powers, which will, among other things, consider issues relating to officer training.

The Division supports the development of standardised training for enforcement officers, coordinated by a centralised body in consultation with relevant agencies.

4. Question 4.1: *Should principles be established to guide the setting of penalty notice amounts and their adjustment over time?*

The Division supports the development of such guidance. Currently, the setting of penalty notices has been undertaken by individual agencies in an ad hoc manner. However, there should be some autonomy for agencies in making a final determination of penalty amounts (eg, restricted/dangerous dog offences need to be significantly higher than other related offences to act as a deterrent).

To ensure consistency for similar offences across different pieces of legislation, it may be beneficial for such a process to be coordinated by the centralised body referred to in the response to question 2.2, above. However, consultation with the relevant agencies is strongly recommended.

5. Question 5.3: *Should a limit be placed on the number or value of penalty notices that can be issued in respect of one incident or the one occasion of offending behaviour?*

The Division considers that such a limit may unduly restrict effective enforcement. For example, limits may adversely affect an enforcement officer's ability to deal effectively with repeat offenders or offending that is of a more serious nature than usual.

It is considered that a limit may not be warranted given the ability of enforcement officers to exercise discretion in issuing penalty notices and the various rights of review and appeal available to the recipients of penalty notices.

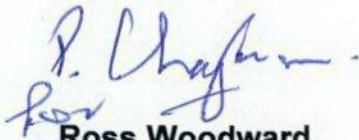
6. Question 5.10 *Are the recent amendments to the Fines Act 1996 relating to internal review of penalty notices working effectively?*

Anecdotal evidence suggests these amendments have been welcomed by local councils. However, it may be too early to determine their effectiveness as the amendments (and the related *Internal Review Guidelines*) have only been in place since March 2010.

The Local Government and Shires Associations of NSW and the Australian Institute of Local Government Rangers may be able to provide more feedback on their member's views on this issue.

Thank you for providing the Division with the opportunity to provide a submission to the Commission in relation to this Inquiry.

Yours sincerely



Ross Woodward
Chief Executive, Local Government
A Division of the Department of Premier and Cabinet