

Submission to New South Wales Law Reform Commission

Consultation paper 10 Penalty Notices



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1. Introduction

This submission is prepared by the Illawarra Legal Centre in response to the New South Wales Law Reform Commission Consultation Paper 10 on *Penalty notices*.

Based on our extensive community involvement this submission seeks to address the unfair disadvantage young people face when confronted with fines debt.

Our submission, which is informed by our work around young people and fines debt, particularly train fines, primarily focuses on Chapter 6 of the Consultation Paper concerned with the impact on children and young people. However, in doing so, we automatically address a number of other issues such as, determining penalty notice amounts, determining penalty notice offences and practice and procedure.

The recent policy changes and legislative reforms to the *Fines Act*, particularly the introduction of Work and Development Orders (WDO), are useful and welcome however they are narrowly targeted. Further reforms are now needed to address the disadvantages experienced by all young people under 18 years of age and those living on low incomes.

We argue that reforms should be expanded to address the problems experienced by all young people by virtue of their age, their limited income earning capacity, the burden of multiple layers of social disadvantage and their inexperience in dealing with bureaucratic requirements.

We strongly recommend that the WDO pilot scheme be made a permanent part of the operation of the State Debt Recovery Office (SDRO) and be improved as the operation of the WDO system develops.

We submit this paper for your consideration.

1.1 The Illawarra Legal Centre (ILC)

The Illawarra Legal Centre (ILC) is a community legal centre providing free legal advice to people in the Illawarra and surrounding areas. In our 24th year we continue to be an active centre in the State and National Community Legal Centre movement.

The ILC has a number of specific projects covering different areas of law and a free telephone advice service and legal representation arising from our advice.

The ILC projects include:

- Welfare Rights
- Tenants Service
- Financial Counselling

- General Law
- Child Support
- Children's Court Assistance Scheme (CCAS)
- Aboriginal Legal Access Program

1.2 Our Region

The ILC delivers services to the Illawarra local government areas. The Tenants Service and Welfare Rights cover a larger boundary area.

The ILC is based in Warrawong where various indicators of disadvantage place residents at the highest categories of risk in the state and particularly vulnerable to contractions in the national economy.¹

The Illawarra has high unemployment levels and significant socio-economic disadvantage. The Illawarra has had the highest recorded rate of youth unemployment in NSW with the unemployment rates for 15-19 year olds at 28% for the year ending Dec 2007,² and 22% in 2008.³ In 2009 the rate is reported to have dropped to 13.5%.⁴ However it is also reported that this drop reflects people giving up actively searching for work rather than this being an indicator of less unemployment.⁵ The Illawarra Regional Information Service (IRIS) has identified 5 'hot spots' of youth unemployment in the Illawarra where rates of up to 57% unemployment exist.⁶

1.3 Our Direct Work With Young People

The Illawarra Legal Centre works with young people through our community legal education programs and Children's Court Assistance Scheme (CCAS) in the following ways.

- **Start Out Right (SOR)** program is presented in conjunction with Legal Aid solicitors as part of the local high schools' Crossroads community education program reaching hundreds of young people annually in years 11 and 12. This collaboration currently includes Headspace.

¹ On the Newcastle University Centre of Full Employment and Equity (CofFEE) Employment Vulnerability Index, out of 58 suburbs listed in the Wollongong region, 11 are in the Red Alert – high-risk category (including Warrawong), and a further 23 are in the Amber alert – medium risk category. Centre of Full Employment and Equity (CofFEE) Newcastle University, CofFEE/URP Employment Vulnerability Index (EVI) for Wollongong suburbs 2009.

<http://e1.newcastle.edu.au/coffee/indicators/job_loss_index/index.cfm> (accessed 17th August 2009)

² *Youth Unemployment in the Illawarra: Final Report by Illawarra Regional Information Service (IRIS) Research June 2008 p.12*

³ "Youth Left Behind" *Wollongong & Northern Leader* 16 June 2008.

⁴ IRIS Research Statistics *Profile Illawarra*, June 2009. Source: ABS Labour Force Survey. <<http://www.iris.org.au>>

⁵ Veronika Apap "Jobless give up search" *The Illawarra Mercury*, 14th August 2009 p. 7

⁶ IRIS Research *Youth Unemployment in the Illawarra: An Investigation into the Problems Facing Young Jobseekers in our Region*, Final Report June 2008 p.4

- **Get Ready Get Started** sessions with local youth support group CHAIN where the ILC Financial Counsellor has worked directly with young people concerned about incurring debts and managing their money.
- **Young People and the Law** involving workshops with young people at diverse community organisations, covering tenancy and housing, police and public space issues, debt and fines and rights and entitlements.
- **Children’s Court Assistance Scheme (CCAS)** provides support for young people and their families when attending Children’s Court. CCAS workers provide support with court processes and link young people with key community services.
- **Wollongong Youth Network** a network of youth service workers that meet regularly to consider and take action around issues affecting young people.

For many of the young people connecting with the ILC services there are common themes. These include the:

- ease of incurring fines
- burden of debt
- exclusion from support
- need for information and education
- limited access to meaningful work and training; and
- diverse health problems and life challenges related to emerging development into adulthood.

All these issues serve as barriers to young people’s participation in mainstream community life.

Submission Background

This submission is based on:

- Information gathered from Illawarra Legal Centre (ILC) surveys with young people;
- The ILC’s Children’s Court Assistance Scheme (CCAS) work at the Port Kembla Children’s Court;
- Consultations with youth workers in the community sector; and
- The need for law reform identified by the Youth Justice Coalition (YJC), submissions and fact sheets produced by Shopfront Youth Legal Service and discussions with Community Legal Centre (CLC) workers and the local Legal Aid’s Specialist Homeless Outreach worker.

The ILC Children’s Court Assistance Scheme (CCAS) workers note the high number of fines incurred by young people that result in a disproportionately

harsh fines system on young people under 18 years. This age group has both a limited capacity to pay fines and a reduced capacity to understand the implications of incurring extensive debt, and its associated long-term consequences.

As a result of this concern, the ILC initiated a Young People and Fines Project in collaboration with Wollongong University. The project addresses the problems facing young people in relation to fines, identifies and promotes meaningful alternatives for young people dealing with the fines system.

1.3 Young People and Fines Research Project (2008-2009)

In partnership with the Law Faculty of the University of Wollongong the ILC investigated the impact of fines on young people in the Illawarra region. This work has provided valuable insights into the shortfalls of the current fines debt system and highlighted some possible solutions. The project included:

- Conducting surveys with young people and youth workers in the community sector;
- Developing educational resources for young people and community sector workers based on the recent policy and legislative changes, and
- Developing education sessions for community members on the implementation of the new reforms.

This project has provided valuable insights into the shortfalls of the current fines debt system and highlighted some possible solutions. This submission builds on the work of this project.

2. NSW LRC Discussion Paper Questions

2.1 Chapter 3 Determining penalty notice offences

2.1.1 Question 3.2 If penalty notices apply more broadly to offences with a fault element and/or defences, what additional conditions should apply? Should the conditions include any of those found in the Victorian *Attorney-General's Guidelines to the Infringement Act 2006*, for example:

1. specially trained enforcement officers
2. requirement for operational guidelines
3. a requirement to consider warnings or cautions.

Yes. Where penalty notices apply more broadly to offences with a fault element and/or defences, we recommend that there be:

- specially trained enforcement officers
- clear operational guidelines
- a requirement to consider warnings or cautions; and
- Accessible review processes.

2.2 Chapter 4 Determining penalty notice amounts

2.2.1 Question 4.1 Should principles be established to guide the setting of penalty notice amounts and their adjustments over time?

Yes. Principles should be established to determine the amounts for penalty notices and their adjustments over time.

2.2.2 Question 4.3 Should there be a principle that the penalty amount should be set at a level that would deter offending, but be considerably lower than the penalty a court would impose?

Our experience reinforces the proposition that the imposition of a fine on a person who does not have the capacity to pay does not act as a deterrent but rather it acts against the purpose of the fine.⁷

Financial penalties on young people who have little or no access to money, commonly appear not to act as a deterrent, but to serve as an overwhelming burden that stymies positive action by the young person, as the volume of fines rises. Some young people are even unaware of the extent of their fines debt, what it relates to, and the consequences of not paying or being able to pay the debt.

⁷ See submissions to the Sentencing Council on this point from The Commission for Children and Young People (4); The Salvation Army (5); NCOSS (8); Uniting Care (10); The Shopfront Legal Centre (13); Youth Advisory Council (15); The Coalition of Aboriginal Legal Services (19); Youth Justice Coalition (20); Combined Community Legal Centres Group (NSW) Ltd (21). NSW Sentencing Council, *The effectiveness of fines as a sentencing option: Court-imposed fines & penalty notices* (2007) p. 21

2.2.3 Question 4.6 Should there be a principle that in setting penalty notice amounts, consideration should be given to the proportionality of the amount to the nature and seriousness of the offence, including the harms sought to be prevented?

Yes. Lack of proportionality of the fine amount to the nature and seriousness of the offence encourages public disrespect for the law.

We do recommend that the seriousness of the offence should be taken into account when forming the principles and guidelines surrounding penalty notices. For example, we are concerned that the penalty notice amounts for railway ticketing offences are not commensurate with the seriousness of the offence.

2.2.4 Question 4.7 Should there be a principle that in setting a penalty notice amount, consideration should be given to whether the amount is consistent with the amounts for other comparable penalty notice offences?

Yes. Consistency reduces confusion and demonstrates fairness in the system.

2.3 Chapter 5. Issuing and enforcing penalty notices – practice and procedure

2.3.1 Question 5.1 Taking into account the recent reforms, is there sufficient guidance on:

- 1) When to issue penalty notices; and
- 2) The alternatives available

We argue that those with authority, issue penalty notices as a last resort and apply any available alternatives in the first instance.

We urge that any guidelines emphasise the need for the application of alternatives to penalty notices. We recommend that issuing officers be comprehensively trained on which is the most appropriate course of action within the context of the offence and the circumstances of the offender.

The guidelines for issuing cautions are a good step forward however the extent to which they are being followed is not clear.

Recommendations

1. We recommend that there be strict monitoring of when cautions are used most particularly for young people and vulnerable people.
2. This monitoring could take the form of requiring officers to write and submit a report of the circumstances of the issuing of each caution and penalty notice to ensure cautions are used in place of penalty notices.

2.3.2 Question 5.9 (1) What details should a penalty notice contain?

Currently, parking fines and other infringement notices only advertise two alternatives on how to respond to the notice:

- a) contest the matter in court, or
- b) pay the fine.

Infringement and penalty notices should be updated to reflect the new options available to offenders:

- c) seeking a review of the fine, or
- d) electing to undertake a WDO in lieu of paying the fine.

Our fines survey shows that there are many varied and complex situations that lead to the incurring of a fine. For this reason:

Recommendation

3. We recommend that the relevant details of the facts surrounding the issuing of a penalty notice be recorded and provided to the recipient of the penalty notice. This documentation should accompany the penalty notice.

2.3.3 Question 5.11 (1) Should a period longer than 21 days from the time a penalty notice is first issued be allowed to pay the penalty amount?

Yes. We recommend 3 months.

2.3.4 Question 5.12 Could the operation of fines mitigation mechanisms, including the recent Work Development Order (WDO) reforms, be improved?

Yes. The current reforms to the *Fines Act*, most particularly the introduction of Work and Development Orders (WDO), are socially useful initiatives.

Participation in the WDO scheme can lead to positive engagement with work, training and health support beyond the life of the initial participation. The scheme and its benefits should be extended to all young people under eighteen generally and be more widely promoted. We recommend a new eligibility category that includes all young people under eighteen who seek a WDO due to hardships associated with their age.

We strongly urge that the WDO system continue past the pilot phase that ends July 10 2011.

The establishment of the WDO scheme is a major, complex reform that has significant positive social implications for all people struggling with fines debt, most particularly young people.

The two-year pilot timeframe has been particularly ambitious as this has included a significant period of 'orientation', ongoing operational review and adjustment, education within the community and government sector and promotion of WDO within the broader public.

Community sector workers in particular have recognised the value of the WDO scheme and – without additional funding – have undertaken extensive education and mentoring work to promote the WDO scheme and assist appropriate organisations become “approved” to supervise WDO.

The WDO scheme would benefit from the addition of funded community based facilitators acting as a conduit between potential services, the applicant and the SDRO.

The ‘nuts and bolts’ of implementing and advancing a new program is dependent on ongoing review and consultation to continue to make those changes effective. In this respect we recommend that reforms to the WDO program continue to be considered.

Difficulties organising a WDO

Access to “approved” organisations

Young people who face serious disadvantage find it difficult or impossible to navigate the options to resolve their fines debt. Those who live with disabilities, in rural and remote regions, or those who struggle with literacy and numeracy for example, find it hard to gain benefit from recent reforms made to the *Fines Act*. As an example, there are limited options in rural and remote areas for access to “Approved Organisations” to facilitate the successful completion of a WDO.

Access to SDRO

Access to appeal or review mechanisms to address administrative errors, false identities and other mistakes that could result in an unfair fine, are reportedly difficult. Youth workers report that it is not uncommon for people to experience delays of 10-15 minutes when trying to access the SDRO phone line.

Young people generally use mobile phones making immediate access and call back options essential for them to be able to establish and maintain communication with the SDRO.

Lengthy phone delays, the prevalence of mobile phones within the youth population and prohibitive costs of a lengthy mobile phone call, serve as major barriers for young people trying to contact the SDRO.

Court Ordered Activities

When the court orders a specific activity or place for treatment, for example, ‘attend the Ted Noffs Foundation’, then it will not be included in a WDO.

This can be detrimental to young people who are on orders prescribed by Children’s Courts that are aimed at rehabilitative outcomes. We recommend that all court ordered activities be eligible to be included in a WDO.

Increasing interest and demand for WDO

The ILC has observed that interest by both those seeking a WDO and workers seeking to be “approved” to supervise a WDO, is building momentum. To meet the need the ILC has reprinted essential Fines and WDO educational resources on three occasions. Over six thousand wallet cards and Frequently Asked Questions (FAQ) sheets have been distributed to diverse community and government agencies, the majority following requests for this information. There has been a steady request for workshops on Fines and WDO and those workshops already held have been well attended.

Recommendations

4. We strongly recommend that the WDO pilot scheme be made a permanent part of the operation of the State Debt Recovery Office (SDRO) and be improved as the operation of the WDO system develops.

5. The WDO program should be expanded to include all young people under 18 years of age. All young people who incur fines under the age of 18 years should be given options to reduce or eliminate their fines debt under the WDO system.

6. The Guidelines should be amended to allow Court ordered activities to be included as acceptable activities under a WDO.

7. Increased promotion of WDO, should be undertaken as a matter of priority. In particular the new options available to offenders with respect to changes to the *Fines Act*, seeking a review of a fine or applying for a WDO should be highlighted on infringement and fine notices.

8. The WDO scheme would benefit from more intensive and targeted promotion amongst appropriate and relevant organisations to encourage them to become “approved organisations”.

9. The process for becoming an “approved organisation” should be actively promoted amongst relevant and appropriate organisations.

10. To facilitate appropriate referral, the State Debt Recovery Office (SDRO) WDO scheme would benefit from a comprehensive and up to date list of “approved organisations” being readily available to support workers via the WDO website or through other mechanisms. The current website list does not reflect the number or diversity of “approved organisations” that are operating or assist people to find supervision for a WDO.

11. In view of identified barriers young people face in engaging with Government authorities and officials, an accessible phone link to the SDRO, with immediate access to an SDRO officer, would enhance success with the fines reforms.

Alternatively,

A call back system for those using mobile phones, with a speedy recall time, would allow young people to stay engaged with the process of pursuing a WDO.

2.4 Chapter 6. Impact on children and young people

2.4.1 Question 6.1 (1) Should penalty notices be issued to children and young people?

No. Young people under the age of 16 years particularly and 18 generally, have little or no access to money and therefore little or no capacity to pay fines. We are greatly concerned about the disastrous impact and high incidence of hardship that young people face as a result of debt from fines.

There are 5 regions in the Illawarra with youth unemployment rates ranging between 34%-57%. This means that there are many young people with no income or who are dependent on Centrelink benefits. Many in these groups report that they are unable to afford the high cost of public transport.⁸

Young people commonly travel for family, social reasons, sport, to and from school and TAFE and for 'official' appointments such as Centrelink, Children's Court, Department of Juvenile Justice, counselling, reporting to police to comply with bail conditions and to attend medical appointments.

Survey Findings

From 57 surveys carried out by the Illawarra Legal Centre where young people provided details on the circumstances of their fine, there were:

- *18 instances where young people were travelling to and from TAFE, university and school.*
- *15 instances where young people were travelling for family reasons that included travel between separated parents and visiting relatives.*
- *11 instances where young people were travelling to 'official' appointments such as Centrelink and medical appointments.*

Survey Anecdotes

"I was fined while travelling on the train coming home from sport. I didn't have a concession card as it was early in the school year and they hadn't been issued yet". (16 year old female)

"The TAFE admin people said my application for a student travel pass was sufficient for me to travel on a train. But this was not accepted by the transit officer...I showed him the paperwork and told him what they said but he still fined me". (17 year old male)

"One time me and my friends got fines. We got on at Dapto and got off at Unanderra. There had been a big family incident and we wanted to get away from home. It was a big serious incident at home". (17 year old male)

"Once I was coming to Port Kembla to go to the doctor at Warrawong and then up to the hospital for surgery, I was in a lot of pain so didn't think about getting a ticket". (Now 18 year old male)

2.4.2 Questions 6.1 (2) Are there offences where penalty notices should be issued notwithstanding the recipient is a child below the cut-off age?

⁸ IRIS Research *Youth Unemployment in the Illawarra: An Investigation into the Problems Facing Young Jobseekers in our Region*, Final Report June 2008 p.4

No. This group do not have the benefit of maturity and foresight found in older age groups. Young people under 18 are particularly mobile, vulnerable to peer pressure and easily identifiable in public space for increased scrutiny by those in authority.

Our work has revealed a particular problem with train fines and the resulting penalty notices. In relation to these offences we recommend that penalty notices should not be issued to children under 18 years of age.

Alternatives to penalty notices should be issued to children under 18 years of age.

Recommendation

12. Cautions, warnings and diversionary programs should be the official response to fines for young people under 18 years to minimise likelihood of reoffending.⁹

2.4.3 Question 6.2 Are there practical alternatives to penalty notices for children and young people?

Yes. Diversionary approaches, unlike punitive penalties, are likely to shift behaviour away from offending and secondary offending. Alternatives in the form of work or community participation would promote social inclusion amongst young people.

For example, financial hardship is nominated as a key reason why many young people travel without a train ticket. This issue should be addressed when fines for travelling on public transport without a ticket are being considered by the issuing authority.

The current fines system acts against the efforts of community and government workers who are seeking to link young people to diverse support services.

Alternatives to fines are more likely to promote a culture of encouraging young people to use public transport and increase opportunities for community participation and social engagement.

In this regard we recommend that alternatives to fines be considered when seeking to penalise a young person for a minor offence.

⁹ Preliminary Submission from the Youth Justice Coalition to NSW Law Reform Commission on the *Review of the laws relating to the use of penalty notices in NSW*.
p. 7

Recommendations

13. We recommend that cautions are issued and diversionary strategies are used in the first instance.

14. We recommend the three-tiered approach as recommended by the New Zealand Ministry of Justice be followed.

15. We recommend that if a penalty notice is finally issued that it result in a requirement for participation in a WDO rather than a monetary fine.

2.4.4 Question 6.3 Should parents be made liable for the penalty notice amounts incurred by children and young people?

No. Young people in our survey noted that their parents could not carry the financial burden of paying fines and this often caused conflict in already struggling family units.

2.4.5 Question 6.4 Should enforcement officers be required to consider whether a caution should be given instead of a penalty notice when the offender is below the age of 18 years?

Yes. Recent changes to the *Fines Act*¹⁰ that give discretion to the relevant officers to issue cautions rather than penalty notices to people who have committed offences, are a welcome change.

Survey responses

"I caught the train without a ticket as I didn't have any money and it wasn't far but it was getting late. I rang my father and told him what I had done and he said he would meet me and have a ticket for me. He did and the transit man saw him with the ticket but he still fined me." (18 year old male)

"I have vision problems and I can travel for free as I have a special pass. I had someone with me who can also travel for free, as they are my carer. The transit officers kept saying my pass wasn't valid but it was. They had a go at my carer and tried to fine him as well. Finally they went away and said they were not going to fine us." (17 year old male)

"They came straight up to us, me and a mate with our pushbikes. The transit blokes told us to move on. I said why didn't you ask the two white kids with their bikes to move and he said to me, it's got nothing to do with your colour." (17 year old male who travels regularly from Sydney to Wollongong with his bike so he can maintain family and social ties).

¹⁰ *Fines Further Amendment Act 2008 No 110 S19A*

“The silly thing was that I got a \$400 fine by the police for having an unopened beer on the train and it wasn’t mine, I was just holding it for a friend.” (16 year old female)

“Me and me mate went with our girlfriends onto the train platform to make sure they got safely on the train as it was late. We told them to sit near the guard. The transit officers questioned us as were leaving the platform and they were a bit much, and we ended up with a range of fines. You know language and stuff.” (17 year old male)

Recommendation

16. Transit and other relevant authorities should be trained in ‘best practice’ for working with young people, in relation to cautions, fines and other official processes.

2.4.6 Question 6.5 Should police officers dealing with children who have committed, or are alleged to have committed, penalty notice offences be given the option of issuing a caution or warning, or referring the matter to a specialist youth officer under *Young Offenders Act 1997 (NSW)* to determine whether a youth justice conference should be held?

We recommend that police officers have available all the options to diversionary strategies that keep young people out of the Children’s Court.

2.4.7 Question 6.6 Should a lower penalty notice amount apply to children and young people?

Young people shouldn’t be issued with penalty notices. However, if penalty notices apply to the offence then we recommend a lower penalty notice amount apply to children and young people. Young people generally have little or no income or opportunity to earn income.

Youth workers in the Illawarra estimate at one time that approximately 50% of young people attending their services have fines debt.¹¹ These debts can range between hundreds to thousands of dollars. In some cases the accumulated debt can be as high as \$10,000 to \$25,000.

Community sector workers report that a spiral effect occurs where it all becomes “too much”. There appears to be no way out, and a “what the heck” attitude can develop. This attitude often contributes to secondary offending where young people commit further offences.¹²

Fines for young people under the age of 18 years are currently capped at \$50 for some offences such as travelling on train without a ticket.¹³ However, for

¹¹ Wollongong youth sector workers in discussion with ILC for the UOW Community Engagement Grant on Young People and Fines, 2008.

¹² Second Reading Speech, Hansard. NSW, Parliamentary Debates, Legislative Council, 27 November 2008, 11968 (Hon. John Hatzistergos, Attorney-General)

¹³ *Rail Safety (Offences) Regulation 2008 (NSW) CI 57 (2)*

many offences such as smoking on train platforms or offensive language, the on-the-spot fines are hundreds of dollars with maximum amounts set in the thousands of dollars.¹⁴

Survey anecdotes

"When I was 12, I had no income and needed to visit my father. My parents are separated. So I caught the train and got caught. I had no way of paying them. This caused fights with my mother who also had no money to pay for the fines. Sometimes when I had money to buy a ticket the cashier office was closed and the ticket machine broken....I kept getting train fines which kept going up. This caused heaps of conflict between me and mum. Eventually I ended up homeless and went to the Youth Refuge. I continued to jump trains. Now that I am older and I can't see how I can pay the debt – it will take years..." (17 year old female with \$7,000 debt).

"I have lived away from home since I was 13 years old and I only got a stable place to live when I was 18. I managed to get rid of the fines I had but it wasn't easy because I didn't have much money and it was hard to buy food". (Now, 18 year old male).

"I was running late for work and didn't have time to get a ticket. But I have fines for all sorts of things - graffiti, smoking on the train platform, swearing in a public place. I know it is a lot of money in fines. I am worried about getting my licence, my credit rating and what I will do in the future. I don't know how I will be able to move ahead." (16 year old male with over \$7,000 in fines)

Recommendation

17. All penalty notices for **any** offence issued to young people under 18 years should be capped at \$25.

2.4.8 Question 6.7 should a child or young person be given the right to apply for an internal review of a penalty amount on the grounds of his or her inability to pay?

Yes. If a young person is issued with a penalty notice then they should have the right to apply for an internal review as many appear to be issued in circumstances where a caution would have been more appropriate.

2.4.9 Question 6.8 Should a cap be put on the number of penalty notices, or the total penalty notice amount, a child or young person can be given: (1) for a single incident; and/or (2) in a given time period?

Yes (1) There should be a cap on the total penalty notice amount and for single incidents one penalty notice per incident.

(2) There should be a cap on the total penalty notice amount and the number of notices issued in a given time period.

¹⁴ City Rail Fines <<http://www.cityrail.info/>> (accessed 29th October 2009)

2.4.10 Question 6.9 Should driver licence sanctions be used generally in relation to offenders below the age of 18 years?

RTA sanctions should not apply to any fine defaulter under 18 years of age, regardless of the offence to which the fine relates.

The current licence sanction scheme is not effective as many young people are unable to pay fines and in some cases ignore the sanctions and thereby attract further penalties.

Our survey feedback showed that many young people were concerned that licence sanctions would hinder their efforts to undertake training and meet work commitments, most particularly, in areas with poor public transport.

2.4.11 Question 6.10 Should driver licence and registration sanctions be applied to young people under the age of 18 years for non-traffic offences?

No. The licence sanction scheme under the *Fines Act 1996* should not apply to young people under 18 years of age.

- The current system works to penalise a person twice and is frequently not proportional to the original offence.
- If a young person cannot get a driver's licence they can be severely set back as a licence is often a necessary requirement for a job or training. The Illawarra includes areas with minimal access to public transport.
- Many young people need a licence:
 - To get to educational / training / paid work
 - As a necessary requirement for a job
 - To assist with family obligations
 - To maintain professional and social networks
- The current interpretation of the Fines Act section 65(3) is causing problems that need to be addressed.

S 65(3) states that:

“enforcement action with respect to a fine defaulter's drivers licence is not to be taken under this Division if:

a) the offence: ... occurred while the fine defaulter was under the age of 18 years, and

b) the offence was not a traffic related offence.”

The current interpretation of this wording by the SDRO can result in differing outcomes. In some instances this has been taken to mean that if you have a drivers licence then RTA sanctions are not to be made. But if you do not have a drivers licence but apply to get one later, then RTA sanctions can be applied and a young person can be prevented from getting a licence.

As noted above the current licence sanction scheme is not effective as many young people are unable to pay fines and in some cases ignore the sanctions and thereby attract further penalties.

2.4.12 Question 6.11 Should a young person in receipt of penalty notices for both traffic and non-traffic offences be issued with separate enforcement notices in relation to each offence?

Yes. Many young people report being confused about what their penalty notices and enforcement orders relate to.

2.4.13 Question 6.12 Should a conditional “good behaviour” period shorter than five years apply to children and young people following a fine or penalty notice debt being written-off?

Yes. Where “good behaviour” periods for writing-off fines debt exist they should not apply to children under 18 years of age.

Alternatively, if a “good behaviour” period is imposed on a person under 18 years it should be for a maximum of 6 months.

2.4.14 Question 6.13 Should any of the measures proposed in the New Zealand approach to young people and infringement fines be adopted in NSW?

Yes. There is much to recommend in the New Zealand approach most particularly the emphasis on education and positive incentives. We endorse the supportive case management approach and recognition of different ages and life stages of a person and strategies that reward people for changed behaviour.

2.5 Chapter 7. Impact on vulnerable groups

2.5.1 Question 7.1 Should penalty notices be issued at all to people with mental illness or cognitive impairment? If not how should such people be identified?

No. Workers authorised to issue penalty notices should undertake extensive and appropriate training in the unique needs of specific community members and be guided to only issue a caution to vulnerable community members.

2.5.2 Question 7.2 (1) Should alternative action be taken in response to a penalty notice offence committed by a person with mental illness or cognitive impairment? If so, what is an appropriate alternative?

Yes. Cautions, case management and community engagement strategies would be more appropriate.

The New Zealand approach is preferable given its emphasis on supportive, educative and targeted responses.

We recommend that vulnerable people not be issued with penalty notices.

Should all alternatives in the form of warnings and cautions be exhausted we recommend that a form of Work and Development Order (WDO) be available to all vulnerable people in place of penalty notices to prevent this group from incurring debt.

2.5.3 Question 7.2 (2) Do the official caution provisions of the Fines Act 1996 (NSW) provide a suitable and sufficient alternative?

Cautions are a suitable alternative but not sufficient. A range of alternatives are needed to match the diversity in seriousness and scale of offending behaviours covered by the penalty notice system.

2.5.4 Question 7.8 (1) Should a concession rate apply to penalty notices issued to people on low incomes? If so, how should “low income” be defined?

Yes. There continues to be a problem of unequal impact with the issuing of fines. Many commentators have observed that fines still have a seriously disproportionate impact on the vulnerable in our community, particularly on the young.¹⁵ In 2007 the NSW Sentencing Council recognised in their Report that young people were “seriously disadvantaged” by the fines system, and this disadvantage continues, despite essential and beneficial reforms to the *Fines Act* in late 2008.¹⁶

It is commonly held wisdom that a penalty for an offence should affect all offenders equally. However, the current system of fines affects people unequally.

Applying the same penalty amount to all offenders penalises low and no income earners far more than it does middle or high-income earners. For example a fine of \$100 represents almost the entire weekly allowance for a young single person on Youth Allowance from Centrelink, but only approximately one sixth of the average weekly earnings for a single adult.¹⁷

People receiving any Centrelink benefit (or less) should automatically qualify for a concessional penalty amount.

¹⁵ For example: The Hon John Hatzistergos, *Fines Further Amendment Bill 2008 Second Reading*, quoting the NSW Sentencing Council Report, October 2006, p. 2

¹⁶ NSW Sentencing Council, *The effectiveness of fines as a sentencing option: Court-imposed fines & penalty notices* (2007) p. 5

¹⁷ A child under 18 on Youth Allowance living at home receives \$101.50 per week (2009). Even the reduced amount of a \$50 train fine is approximately the equivalent of 3.5 days payment. An adult on the average wage with a net weekly income of \$644 who incurs a \$200 fine for travelling without a ticket will pay a fine equal to less than 2 days wages. <<http://www.centrelink.gov.au/Internet/Internet.Nsf/individuals/rates.htm>> (accessed 17th August 2009)

2.5.5 Question 7.8 (2) Should a person in receipt of certain Centrelink benefits automatically qualify for a concessional penalty amount? If so, which benefits?

As above, people on all Government benefits should automatically qualify for a concessional penalty amount.

2.5.6 Question 7.14 Given that it is difficult for vulnerable people to make a request in writing for review of a decision to issue a penalty notice, what practical alternatives could be introduced either to divert vulnerable people from the system or to support review in appropriate cases?

Vulnerable people need would benefit from support from community-based advocates. We recommend that special funding be made available for this advocacy work to be undertaken within community based advocacy services.

2.5.7 Question 7.15 Should the requirement to withdraw a penalty notice following an internal review where a person has been found to have an intellectual disability, a mental illness, a cognitive impairment, or is homeless, be extended to apply specifically to:

(1) Persons with a serious substance addiction?

Yes.

(2) in “exceptional circumstances” more generally?

Yes.

3. Conclusions

Young people are currently discriminated against in an imperfect fines system that now rightly looks at extreme need but fails to address the problem of fines, debt and disadvantage for the remaining vulnerable young people in our community.

Constructive, diversionary and non-punitive strategies to deal with fines debt are likely to reduce further accumulation of fines. The recent reforms to the *Fines Act* should be built upon. The reforms should be monitored and the results assessed to confirm their efficacy in reducing the accumulation of fines debt.

4. Recommendations

1. We recommend that there be strict monitoring of when cautions are used most particularly for young people and vulnerable people.
2. This monitoring could take the form of requiring officers to write and submit a report of the circumstances of the issuing of each caution and penalty notice to ensure cautions are used in place of penalty notices.
3. We recommend that the relevant details of the facts surrounding the issuing of a penalty notice be recorded and provided to the recipient of the penalty notice. This documentation should accompany the penalty notice.
4. We strongly recommend that the WDO pilot scheme be made a permanent part of the operation of the State Debt Recovery Office (SDRO) and be improved as the operation of the WDO system develops
5. The WDO program should be expanded to include all young people under 18 years of age. All young people who incur fines under the age of 18 years should be given options to reduce or eliminate their fines debt under the WDO system.
6. The Guidelines should be amended to allow Court ordered activities to be included as acceptable activities under a WDO.
7. Increased promotion of WDO, should be undertaken as a matter of priority. In particular the new options available to offenders with respect to changes to the *Fines Act*, seeking a review of a fine or applying for a WDO should be highlighted on infringement and fine notices.
8. The WDO scheme would benefit from more intensive and targeted promotion amongst appropriate and relevant organisations to encourage them to become “approved organisations”.
9. The process for becoming an “approved organisation” should be actively promoted amongst relevant and appropriate organisations.
10. To facilitate appropriate referral, the State Debt Recovery Office (SDRO) WDO scheme would benefit from a comprehensive and up to date list of “approved organisations” being readily available to support workers via the WDO website or through other mechanisms. The current website list does not reflect the number or diversity of “approved organisations” that are operating or assist people to find supervision for a WDO.
11. In view of identified barriers young people face in engaging with Government authorities and officials, an accessible phone link to the SDRO, with immediate access to an SDRO officer, would enhance success with the fines reforms.

Alternatively,

12. A call back system for those using mobile phones, with a speedy recall time, would allow young people to stay engaged with the process of pursuing a WDO.
13. Cautions, warnings and diversionary programs should be the official response to fines for young people under 18 years to minimise likelihood of reoffending.¹⁸
14. We recommend that cautions are issued and diversionary strategies are used in the first instance.
15. We recommend the three-tiered approach as recommended by the New Zealand Ministry of Justice be followed.
16. We recommend if a penalty notice is finally issued that it result in a requirement for participation in a WDO rather than a monetary fine.
17. Transit and other relevant authorities should be trained in 'best practice' for working with young people, in relation to cautions, fines and other official processes.
18. All penalty notices for **any** offence issued to young people under 18 years should be capped at \$25.

¹⁸ Preliminary Submission from the Youth Justice Coalition to NSW Law Reform Commission on the *Review of the laws relating to the use of penalty notices in NSW*. p. 7