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Our ref Jane Sanders

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Fines Act Review
Policy and Legislation Branch
Office of State Revenue
Locked Bag 5215
PARRAMATTA NSW 2124

Dear Sir/Madam

Review of the *Fines Act* 1996: Submission from Shopfront Youth Legal Centre

The Shopfront Youth Legal Centre is a free legal service for homeless and disadvantaged young people aged 25 and under. The Shopfront has been operating since 1993 and is a joint project of Freehills, Mission Australia's Sydney City Mission and the Salvation Army. We represent and advise young people on a range of legal issues, with a particular emphasis on criminal law.

The vast majority of the Shopfront's clients are homeless. Most have been forced to leave home due to abuse, neglect, domestic violence or extreme family dysfunction. Many of our clients have mental health problems, intellectual disabilities, or limited literacy and numeracy.

A substantial number (probably the majority) of our clients have outstanding fines and enforcement orders. They experience various problems as a consequence of their inability to pay their fines and to negotiate appropriate time-to-pay arrangements.

We welcome the opportunity to provide a submission to this review. We will address some specific problems encountered by our clients, and offer some suggestions for changes to legislation and policy.

1 Are the policy objectives of the *Fines Act* still valid?

The policy objectives of the *Fines Act* are to implement a co-ordinated, efficient and accountable fine enforcement system which:

- maintains the integrity of fines (whether court imposed or under administratively imposed penalty notices) by providing effective sanctions against non-compliance;

- ensures equity of treatment by preventing people avoiding the effects of sanctions;
- provides greater certainty by informing defaulters of their rights and obligations, and the consequences of failure to meet those obligations;
- reduces the number of fine defaulters in custody; and
- maximises the collection of monies due to the State.

In general, we support the policy objectives of the Act. It is important that people who have the capacity to pay their fines do not avoid liability. However, we believe that the policy objectives should be amended and broadened as follows:

- We do not believe that “preventing people avoiding the effect of sanctions” necessarily ensures “equity of treatment”. On the contrary, applying the same sanctions to everyone is likely to cause further hardship to people who are already disadvantaged. For example, an employed person with a relatively good income is likely to be able to pay their fines reasonably quickly, so that sanctions are not imposed or are lifted. In contrast, an unemployed person (especially if they are homeless or have a mental or intellectual disability) is less likely to be able to avoid these sanctions.
- We would like to see an extra policy objective added: "to ensure that socially and economically disadvantaged persons do not suffer undue hardship as a result of the fine enforcement process".

2 Are the terms of the *Fines Act* appropriate for securing the policy objectives?

The terms of the Act appear to meet some of the relevant policy objectives, including maintaining the integrity of fines, reducing the number of fine defaulters in custody and maximising the collection of monies due to the State.

However, we believe that the Act (and the policy and practices of the State Debt Recovery Office) leaves something to be desired in terms of ensuring equity and informing fine defaulters of their rights and obligations.

Further, as mentioned above, we believe that the policy objectives of the Act require some amendment. This in turn may necessitate amendments to the Act.

3 Our clients’ difficulties with the fine enforcement system

3.1 The system has not been designed with disadvantaged people in mind

We view the fine enforcement system as very "middle class" in its structure and operation. No doubt it works very well in relation to people who have the capacity to pay their outstanding fines but who wish to avoid paying them. However, for people without the capacity to pay, enforcement mechanisms such as licence sanctions and civil enforcement do not work; it is impossible to draw blood out of a stone. In some cases, the costs of attempting to enforce fines would presumably exceed the amount recouped from the fine defaulter. The SDRO's enforcement procedures only serve to create further financial hardship for most disadvantaged people.

We acknowledge that the SDRO is generally reasonable in allowing people to enter time to pay arrangements. However, this is often of little assistance to our clients, who have difficulty making regular payments. For someone on a government benefit, even five dollars a week is a substantial slice of one's income. If a person is homeless, or has a mental illness or intellectual disability, it is usually very difficult to keep making regular payments.

We believe that the interests of people in genuine personal or financial hardship can be accommodated without compromising the integrity of the fine enforcement system.

3.2 Sanctions against driver licences

The most common problem reported by our clients is the loss of, or inability to obtain, their driver's licence. Having a licence is very important for most young people. Not only does it help open up employment opportunities, but it is closely linked to independence and self-esteem.

We have dealt with hundreds of young people who have sanctions imposed against their licence because of outstanding fines. They are generally told by the SDRO that they will not be able to obtain a licence until the fines are paid in full. It is common for them to feel that they will never be able to pay off their fines and obtain their licence. Some are tempted to drive without a licence, and incur more fines for driving whilst unlicensed or suspended. Not only does this compound the problems faced by the individual fine defaulter; it is also detrimental to the public interest. A young person is much more likely to attain maturity, responsibility and good driving skills if allowed to obtain a licence rather than being restricted from getting one for the foreseeable future.

For our clients, the imposition of licence sanctions raises two main issues:

- Some young people, who were under 18 and had never had a licence when the fines were imposed, are prevented from getting a licence despite the existence of section 65(3).
- It is unreasonable for licence sanctions to remain in place until fines are paid in full, especially for disadvantaged young people who will take several years to pay off their fines.

3.3 Young people and driver licences: *Fines Act* s65(3)

We have run into particular problems with the interpretation of section 65(3) of the *Fines Act*, which provides that "enforcement action with respect to a fine defaulter's driver licence is not to be taken under this Division" in respect of a fine defaulter who was under 18 and had never had a licence at the time of the relevant offence.

"This Division" means Division 3 of Part 4 of the Act. Division 3 provides for the suspension or cancellation of existing licences, and also for fine defaulters to be prevented from applying for a new licence or registering a vehicle.

We interpret section 65(3) to mean that a person who was under 18 and had never had a licence when the fine was incurred cannot have their licence suspended or cancelled, nor can they be prevented from obtaining a licence or renewing their current one.

The SDRO disagrees with our interpretation, saying section 65(3) only applies to people who have obtained a licence between the time when the fine was incurred and the time when it is enforced. This means that a person's existing licence cannot be suspended or cancelled, but a young person who has never had a licence can be prevented from obtaining one.

If the SDRO's interpretation is correct, then section 65(3) is of very little assistance. It favours those who have obtained a licence after their fines were incurred over those who have never obtained one. We suggest that this is inequitable and is not consistent with the legislative intent behind the subsection.

We submit that section 65(3) needs to be amended urgently to make it clear that the young people to whom it applies may obtain new licences, not just keep existing ones.

3.4 Lifting of licence sanctions before fines are paid in full

We recognise that if a person makes a time to pay arrangement at the first available opportunity (either at the court or, in the case of an infringement notice, as soon as the matter reaches the SDRO) then RTA enforcement action will not occur. However, for many disadvantaged young people, it is virtually impossible to make an early time to pay arrangement.

Homeless young people are unlikely to receive infringement notices, reminder notices and enforcement orders in the mail; if they do, it is likely to be some months after they were sent. Even if our clients do receive enforcement orders in time, they often lose the documents before they have had a chance to take any action. This is because homeless young people often have to move in a hurry and may not be able to take all their belongings with them; they are also particularly vulnerable to having their property stolen. In addition, many of our clients have psychiatric or intellectual disabilities (or at the very least, serious literacy problems) which make it difficult for them to obtain information about their outstanding fines and to negotiate with the SDRO. For all these reasons, fines are usually at the RTA enforcement stage by the time our clients are in a position to do anything about them.

It is easy to see the rationale in not allowing a fine defaulter's licence to be reinstated until fines are paid in full. For people with a capacity to pay and the desire to drive, this is a strong incentive to pay off outstanding fines. However, for economically disadvantaged people, the lack or loss of a licence will not make them pay off their fines any sooner. In fact, it may make it more difficult because being unlicensed is often a barrier to obtaining employment.

We acknowledge that that the SDRO sometimes exercises a discretion to lift licence sanctions before the fines are paid in full. However, the SDRO does not generally inform fine defaulters that this may be an option. We suggest that this is contrary to the stated policy objectives of the Act, which include "provid[ing] greater certainty by informing defaulters of their rights and obligations".

Until recently, the SDRO would only lift licence sanctions pending full payment if the need for a licence was linked to a job or to special domestic or medical circumstances. The fine defaulter was generally required to prove that they had been offered a job for which a driver's licence was a requirement. In our view, this is an unrealistic expectation. In a competitive employment market, most

young people will not even get a job interview, let alone a job offer, without a licence.

Further, licence sanctions that were conditionally lifted could be re-imposed if the fine defaulter missed only one payment. We see this as an inflexible approach which does not take into account the reality of people's lives. It is unrealistic to expect disadvantaged people (especially if they are young, homeless or have a disability) to pay every instalment on time. Even a person who is normally prompt and reliable with payment could easily miss one instalment due to a short illness, a family crisis or another similar reason.

We have been informed that this policy has recently been relaxed and that the SDRO is now prepared to lift licence sanctions without the link to a job or special circumstances, as long as the fine defaulter can demonstrate a good payment record over a few months. We also understand that fine defaulters will be given the chance to make good one or even two missed payments before sanctions are re-imposed. This approach is to be commended. Whilst we acknowledge that fine defaulters should take their obligations seriously and that licence reinstatement should not be unconditional, we believe a flexible approach is essential.

3.5 Methods of payment

Currently there is no means of payment by direct debit. We understand that this option was explored by the SDRO some time ago, but the cost was considered to be too great.

We suggest that many people would find it much easier to pay instalments if they had the option to set up an automatic direct debit arrangement (or deductions from their wages or benefits). The administrative cost to the SDRO would be outweighed by the benefits of having more instalments paid on time.

3.6 Discretion to waive fees and enforcement costs

The Act gives the SDRO discretion to waive fees for annulment applications and the like. In our experience, the SDRO is usually reasonable about waiving such fees in cases of genuine hardship.

However, the Act does not give the SDRO any discretion to waive enforcement costs imposed when a matter is referred from the Infringement Processing Bureau. The Infringement Processing Bureau does not allow payment by instalments or significant extensions of time to pay. People who cannot afford to pay infringement notices in full have two choices: take the matter to court (which, if the person admits the offence, is likely to be a waste of court time and resources) or allow the matter to go to the SDRO and then enter a time to pay arrangement. Imposing an extra fee causes unreasonable hardship to people in these circumstances.

We strongly suggest that the Act be amended to give the SDRO discretion to waive the enforcement cost for fines referred from the Infringement Processing Bureau.

3.7 Time to pay- infringement processing bureau

In addition to the above, we suggest that the Act should be amended to allow people to pay fines to the Infringement Processing Bureau in instalments. Although this would increase the administrative burden on the Infringement

Processing Bureau, it is reasonable to expect that there would be a consequent drop in the SDRO's workload which would compensate for this.

3.8 Reimbursement of annulment application fees

A person seeking annulment of an enforcement order must pay a fee (except if it is waived or postponed due to financial hardship). According to the Act, this is an administration fee and is non-refundable.

If an annulment application is granted, and the applicant is ultimately successful in court, there is no means of having the fee refunded by the SDRO. We see this as a flaw in the legislation which ought to be rectified in the interests of justice.

We understand that some magistrates have been attempting to get around this problem by making costs orders against the police. However, this is not really the purpose of a costs order and is an imperfect solution.

3.9 Write-off, waiver and stay

The Act gives the SDRO power to "write off" fines, and provides for the Minister to make guidelines in this regard.

In our experience, the use of the term "write-off" has caused some confusion among the public. Many people understand "write-off" to mean that the debt is extinguished, when this is actually not the case - a "write-off" by the SDRO means a conditional deferral. Although the SDRO does provide explanatory material on write-off, we suggest that consideration be given to changing the terminology to avoid confusion.

We also suggest that the Act be amended to recognise the fact that the SDRO also has power to stay enforcement of fines, and that the Treasurer has power to waive them completely. We also support the issue of guidelines and other information about stay and waiver. Currently the public is not well-informed about the availability of these procedures.

3.10 Community service

We applaud the NSW government for implementing a fine enforcement system that makes imprisonment truly a last resort. The requirement that a community service order be issued prior to imprisonment is a positive feature of the system. However, we would like to see more widespread use of community service orders, particularly in situations where it is clear that a fine defaulter has a very low income and no assets against which to enforce the fines.

3.11 Imprisonment

As mentioned above, we support the concept of imprisonment as truly a last resort. We have no wish to return to the pre-*Fines Act* days when our clients were frequently locked up for their outstanding fines. However, some of our clients have expressed a wish to be able to "cut out" their fines while they are in custody for other matters, so they can start with a "clean slate" upon release. We support an amendment to the Act to allow the SDRO to exercise a discretion to skip steps in the enforcement process and proceed directly to imprisonment in appropriate cases.

Section 92, which provides that children cannot be locked up for failure to pay their fines, is commendable but does not go far enough. As we read the section, a

person imprisoned for defaulting on fines incurred as an adult will also have to serve a period of imprisonment (in an adult prison) for any outstanding juvenile fines. We believe that under no circumstances should people be imprisoned for fines incurred as a juvenile.

3.12 Independent review of SDRO decisions

We believe that there should be a means of independent review or appeal against SDRO decisions (for example, a decision not to annul an enforcement order or not to allow time to pay).

We note that the Ombudsman has some jurisdiction over the SDRO, but it can only make recommendations and has no power to overturn a decision. Judicial or quasi-judicial review is also necessary, and we suggest that the Local Court or Administrative Decisions Tribunal may be appropriate for this function.

4 Recommendations

It is our view that the *Fines Act*, its stated policy objectives, and the policies and practices of the SDRO need to be amended to give more consideration to economically and socially disadvantaged people. We believe that this can be achieved without compromising the integrity of the fine enforcement system.

In summary, our recommendations are:

- Amend section 65(3) of the Act to remove ambiguity, so that it applies to *all* young people who were under 18 and had never had a licence when their fines were incurred.
- More liberal use of discretion to lift licence sanctions before fines are paid in full. It may also be helpful to have some guidelines promulgated, which could be referred to in the Act or Regulations.
- Expand the range of payment options to include direct debit or similar arrangements.
- Amend the Act to allow instalment payments to the Infringement Processing Bureau and/or give the SDRO a discretion to waive enforcement costs for matters referred from the Infringement Processing Bureau.
- Provide a mechanism for reimbursement of annulment application fees if the applicant ultimately succeeds in court.
- Amend the Act to clarify the difference between stay, write-off and waiver. Consider changing the term “write-off” to make it clear that a write-off does not automatically extinguish the debt.
- Allow and encourage the SDRO to bypass steps in the enforcement process and proceed directly to issuing a COS in situations where the fine defaulter has a very low income and no assets.
- Allow the SDRO to bypass steps in the enforcement process and proceed directly to imprisonment in appropriate cases, where the fine defaulter lacks the means to pay the fine and is already serving a period in custody.
- Amend the Act so that fine defaulters cannot be imprisoned for fines incurred for offences committed when under the age of 18.

- Provide a means of independent review or appeal from SDRO decisions.

Yours faithfully

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