NSW GOVERNMENT | Maritime

NSW MARITIME RESPONSE TO LAW REFORM COMMISSION CONSULTATION PAPER 10 – PENALTY NOTICES

Question 1.1

Should there be a stand alone statute dealing with penalty notices?

Response 1.1

NSW Maritime is not persuaded that a stand-alone statute is necessary. The *Fines Act 1996 (NSW)* is clearly divided into the schemes to

- administer penalty notices, and
- to administer Court imposed fines.

To split the two schemes into separate statutes may increase red tape.

While the penalty notice scheme is administered by the Treasurer, it could be made subject to the scrutiny of the Attorney General by a simple amendment to the *Fines Act 1996 (NSW)*, without resorting to a new statute. NSW Maritime does not consider such a measure is necessary, given that any penalty notice is in any event capable of being court elected which brings the issue into justice system.

Question 1.2

Should the term "penalty notice" be changed to "infringement notice"?

Response 1.2

NSW Maritime notes that there would be direct and indirect costs of administering this change. This would include resources and time in order to make the necessary amendments to all instruments, documents, educational material and publications including penalty notices themselves and other stationery, as well as publishing educational material to advise the general public and stakeholders of the change.

Question 2.1

Should principals be formally adopted for the purpose of assessing which offences may be enforced by penalty notice?

Response 1.2

Yes. The process of the drafting of new legislation and the administration of that legislation would be assisted if there were clear guidelines as to the types or nature of offences which are appropriate to be dealt with by penalty notice. While NSW Maritime is of the view that it has already achieved an appropriate balance in the marine legislation on this point, it is clear that there is significant inconsistency across Government.

Question 2.2

Should there be a central body in NSW to oversee and monitor the penalty notice regime as a whole? If so, should it be :

(1) the Attorney General and the Department of Justice and Attorney General; or

(2) a stand-alone body; or

(3) a Parliamentary Committee

Response 2.2

NSW Maritime agrees that if guidelines were to be set down as in Question 2.1, then a central body should oversee those guidelines. However, NSW Maritime considers the Better Regulation Office would be appropriate to take on that role, with perhaps parliamentary oversight by Committee to ensure consistency. The distinction between a penalty notice (which is designed to keep regulatory matters out of the justice system) and the court system itself should be maintained, rather than the Attorney General overseeing both the penalty notice system and the justice system, particularly since the justice system acts as a 'merits review' of the penalty notice upon court election.

Question 2.3

What resourcing is required to effectively oversee the operation of the penalty notice regime?

Response 2.2

Resources would be required in order to conduct necessary consultation and drafting of guidelines as per Question 2.1, as well as the overseeing the implementation of those guidelines as per Question 2.2. This may involve the dedication of resources within the central body, such as the Better Regulation Office, to provide support and guidance to agencies administering penalty notices and resources for reporting on and reviewing the regime.

Question 2.4

Should there be a provision for annual reporting to Parliament on the number and type of infringement notices issued and any other relevant data? If so, who should be responsible for this?

Response 2.4

NSW Maritime currently reports penalty notice statistics through its Annual Report. The report to Parliament could be done by the central body identified in the response to Question 2.2, although this may result in additional reporting requirements for agencies such as NSW Maritime, who would be required to continue the existing Annual Report mechanism, and also required to report to the central body.

Question 3.1

(1) Should penalty notices be used only for offences where it is easy and practical for issuing officers to apply the law and assess whether the offence has been committed?

(2) If so, should this principle mean that penalty notices should only apply to strict and absolute liability offences, or should they also apply to offences that contain a fault element and/or defences?

Response 3.1

Yes. Penalty notices issued by NSW Maritime under the relevant legislation are issued only for offences of strict or absolute liability, as opposed to where an intent or '*mens rea*' requirement must be proved.

NSW Maritime applies this principle by virtue of the way the marine legislation is drafted, and the fact that penalty notices are not available for offences which require '*mens rea*'. For instance, there is no penalty notice provision for offences of "Obstruction of Authorised Officer" (Section 97A *Marine Safety Act 1998*) or "Cheating or Forgery" with respect to a marine safety licence (Clause 60 *Marine Safety (General) Regulation 2009*).

Where it may be unclear, and an offence is one of strict liability, but is categorised by reference to an objective standard (e.g. Operate Vessel Negligently/Recklessly), then penalty notices should be available to be issued. However, this should only be by specially trained enforcement officers under written operational guidelines.

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 Generals Guidelines to the Infringement Act 2006, for example :

(1) specially trained enforcement officers

(2) a requirement for operational guidelines

(3) a requirement to consider warnings or cautions ?

Response 3.2

Yes. See Response 3.1

Question 3.3

Should penalty notices be used when an offence includes an element that requires judgment about community standards, for example "offensiveness".

Response 3.3

No. NSW Maritime is of the view that penalty notices should not be used in such cases as it would fall upon the enforcement officer to determine what the acceptable community standard is. This is different to requiring the officer to

call upon specific training and expertise in vessel management to determine whether a vessel was operated negligently, as the objective standard in that case is determinable by way of the specialty training of the officer (as opposed to having to determine what is 'acceptable' to the wider public).

Question 3.4

Should the concept of "minor offence" be among the criteria for determining whether an offence may be treated as a penalty notice offence? If so, how should "minor offence" be defined?

Response 3.4

Yes. A "minor offence" should be defined as being an offence which carries only a fine as the maximum penalty applicable if the matter were to be dealt with by a court. NSW Maritime already applies this principle through the way its legislation is written.

Penalty Notices are not available for offences such as Prescribed Concentration of Alcohol offences (Part 3 *Marine Safety Act 1998)*, Driving a Vessel While Disqualified (section 63A *Marine Safety Act 1998*) or Operate Vessel Negligently Cause Death or GBH (section 13 *Marine Safety Act 1998)**, as those offences may attract a penalty as serious as imprisonment when dealt with by a court.

*note – there is a penalty notice facility available at law for all section 13 offences, but the ability of an Enforcement Officer to issue a penalty notice for a serious breach invoking a possible court imposed prison sentence has been administratively removed.

Question 3.5

Are there any circumstances under which an offence involving a victim of violence could be a penalty notice offence?

Response 3.5

NSW Maritime does not consider a penalty notice for any offence of violence as appropriate. For instance, the offence of "Obstruction of Authorised Officer" (Section 97A *Marine Safety Act 1998*) is capable only of being dealt with by a court. It is considered an obstruction or interference involving violence should similarly be dealt with only by a court.

Question 3.6

Should the concept of "low penalty" be among the criteria for determining whether an offence may be treated as a penalty notice offence? If so, how should "low penalty" be defined?

Response 3.6

NSW Maritime does not have any penalty notice amounts under the marine legislation which exceed $1500, which is the highest level of fine in the 5 tier system implemented by NSW Maritime under the marine legislation (see clause 93 *Marine Safety (General) Regulation 2009)*.

NSW Maritime combines the concepts of "minor offence" (Question 3.4) and "low penalty" in its application of "regulatory offences" (see below at 3.9).

Question 3.7

Should offences with imprisonment as a possible court imposed penalty be considered for treatment as penalty notice offences? If so under what circumstances?

Response 3.7

No. NSW Maritime does not support this proposition.

Question 3.8

Should "high volume offence" be among the criteria for determining whether an offence may be treated as a penalty notice offence? If so, how should "high volume offence" be defined?

Response 3.8

No. NSW Maritime does not support this proposition. To use the marine legislation as an example, there are many offences for which penalty notices are hardly, if ever, issued in practice. However, the fact that the offences exists, and are able to be demonstrated as such by way of signage presents an obvious deterrent value that is effective and is an important tool in promoting public safety. For instance "No Anchoring within 200m of Submarine Cable – Penalties Apply – s.11(2)(c) *Marine Safety Act 1998".*

Question 3.9

Should the concept "regulatory offence" be among the criteria for determining whether an offence may be treated as a penalty notice offence? If so, how should regulatory offence be defined?

Response 3.9

NSW Maritime supports the concepts of "minor offence" and "regulatory offence" being defined in order to facilitate drafting legislation and the allocation of a penalty notice provision to such offences and not to others. The concept of "regulatory offence", as contained in the discussion of the legal principle of 'strict liability' by the High Court in *He Kaw Te v The Queen (1985) 157 CLR 523* (see Dawson J at 13) is generally accepted by Courts at common law, and has been used by NSW Maritime as a guide when determining whether an offence should be treated as a penalty notice offence.

"Conduct prohibited by legislation which is of a regulatory nature is sometimes said not to be criminal in any real sense, the prohibition being imposed in the public interest rather than as a condemnation of individual behaviour" – per Dawson J.

A specific guideline either by statute or by government policy in a similar vein would be supported.

Question 3.10

Is it appropriate to issue multiple penalty notices in relation to conduct that amounts to a continuing offence? If not, how should the penalty notice amount be determined for continuing offences?

Response 3.10

NSW does not support the issue of multiple penalty notices for continuing offences. If a matter is increased in seriousness through failure by the offender to remedy the breach or a disregard of the original penalty notice, then the offence should be dealt with subsequently by a court.

Question 3.11

Are there principles other than those outlined in questions 3.1-3.10 that should be adopted for the purpose of setting penalty notice amounts?

Response 3.11

NSW Maritime, as the safety regulator for vessels, divides the offences which it is required to regulate into categories of "Safety", "Environmental", and "Non safety", with the latter seen as objectively less serious than the first two.

As such, NSW Maritime has traditionally allocated lower penalty notice amounts to "non safety" related offences (e.g. fail to affix registration label - $100) as opposed to offences which have a more serious safety or environmental consequence (create wash in no-wash zone $500).

This supports the contention that the aim of the penalty notice scheme is to increase awareness, promote public and environmental safety, and provide for specific and general deterrence, and not simply to "revenue raise". While this principal may not be as easily applied across the whole of government, it works for NSW Maritime and it would support a similar scheme as a component of any future overarching principle or guideline.

Question 4.1

Should principles be established to guide the setting of penalty notice amounts and their adjustment over time?

Response 4.1

NSW Maritime agrees that penalty notice amounts should be standardised. In order to achieve this internally, NSW Maritime, by way of clause 93 of the *Marine Safety (General) Regulation 2009* has already standardised its penalty notice regime by introducing a 5 level tier system. All penalty notices under the *Marine Safety Act 1998* and its regulations are therefore kept consistent, with offences rated at one of the 5 levels depending on their objective seriousness.

Question 4.2

Should a maximum penalty be set for penalty notice amounts? If so:

(1) What should the maximum be?

(2) Should the maximum be exceeded in some cases? If so :

(a) On what grounds (eg the need to deter offending)?

(b) Should the public interest be among the grounds? If so, how should it be defined or characterised?

(3) Should the maximum be different for individuals and corporations?

Response 4.2

NSW Maritime is of the view that individuals should not be penalised financially any more than is appropriate, considering the 'on the spot' immediate nature of penalty notices. The highest available penalty notice in the marine legislation is $1500, and NSW Maritime is of the view that this is an appropriate amount for an offence at the upper end of the scale for 'on the spot' fines. Any offence deemed more serious should be dealt with by a court.

NSW Maritime is not convinced that the maximum should be exceeded for individuals, and considers alternative methods of law enforcement should be invoked in serious matters. However, there is clearly an argument for, in certain circumstances, maximum penalty notice amounts to be much higher for corporations (e.g. in cases of environmental breaches, corporate breaches), and NSW Maritime would support such an exception.

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?

Response 4.3

NSW Maritime agrees with the proposition that penalty notice amounts should be set considerably lower than the fine able to be imposed by a court. The alternative would appear to negate the principle that penalty notices offer ease of administration and cost effectiveness as opposed to prosecuting all matters in court.

Question 4.4

(1) Should there be a principle that a penalty notice amount should not exceed a certain percentage of the maximum fine for the offence? If so, what should be the percentage?

(2) Should the principle allow the fixing of penalty notice amounts beyond the recommended percentage in special cases? If so, what should the grounds be?

(3) Should there be an upper percentage limit in those special cases? If so, what should the percentage be?

Response 4.4

Aside from the view that the penalty notice amount be 'considerably' lower than the possible court imposed fine, NSW Maritime has no particular view on the appropriateness of specific percentages.

Question 4.5

Should there be a principle that a penalty notice amount should be lower than the average of any fines previously imposed by the courts for the same or similar offence, if such information is available?

Response 4.5

NSW Maritime does not agree that this principle would work as courts, in many cases, issue penalties other than fines (e.g. good behaviour bonds, orders under section 10 of the *Crimes (Sentencing Procedure) Act 1999*) and may also issue orders for professional costs to private prosecutors, all of which makes a comparison or a weighing up of "average" against the actual deterrent value of court process, difficult if not impossible.

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?

Response 4.6

NSW Maritime agrees with this principle and currently applies it to the marine legislation by

- The five tier penalty notice system rated from least serious to most serious (see Response 4.1) and
- An administrative policy dividing offence categories into Safety, Environmental, and Non-Safety (see Response 3.11).

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?

Response 4.7

NSW Maritime supports a whole of government approach in the interests of consistency. While this would be relatively straight forward across some agencies (e.g. across the various transport and 'traffic' schemes), it may be problematic however in terms of unique regulatory schemes (e.g. WorkCover).

Question 4.8

Should there be a principle that for offences that can be committed by both natural and corporate persons, higher penalty notice amounts should apply to corporations? If so, what should be the guidelines for setting such amounts?

Response 4.8

While NSW Maritime agrees this proposition is appropriate as a general principal (see Response 4.2), its application would have marginal impact on the marine legislation.

Question 4.9

Are there principles other than those outlined in Questions 4.1-4.8 that should be adopted for the purpose of setting penalty notice amounts?

Response 4.9

NSW Maritime is not aware of any other principles.

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

Response 5.1

While the recent reforms (amendments to the *Fines Act 1996 (NSW)*) have provided some assistance, NSW Maritime provides guidance to its enforcement officers by way of administrative policy to cover any shortfall. This policy sets out the types of offences (see Response 3.11), and provides guidance as to when the issue of an official caution in lieu of a penalty notice may be appropriate, and similarly, where an offence should be referred for direct court action. NSW Maritime would be supportive of a 'whole of government' approach in similar terms.

Question 5.2

(1) Should government agencies (including statutory authorities) responsible for enforcing penalty notice offences be able to engage the services of private organisations to issue penalty notices? If so, what should be the requirements?

(2) Is there any evidence of problems with the use of contractors for the purpose of enforcing penalty notice offences?

Response 5.2

NSW Maritime allows only NSW Police and its own specially trained enforcement officers to regulate the marine legislation, due to its inherent uniqueness.

Question 5.3

(1) Should a limit be placed on the number or value of penalty notices that can be issued in respect of one incident or on the one occasion of offending behaviour?

(2) If so, should this be prescribed in legislation, either in the *Fines Act 1996 (NSW)* or in the parent statute under which the offence is created, or should it be framed as a guideline and ultimately left to the discretion of the issuing officer?

Response 5.3

NSW Maritime agrees with this proposition and currently limits the issuing of multiple penalty notices for the same incident by way of guidance by internal administrative policy. If this was to become a principle across government, given the wide variety of types of regulatory offences, NSW Maritime is of the view that a guideline would be more appropriate than prescriptive legislation on this issue, as individual agencies may be best placed to determine the objective seriousness of particular matters, particularly in unique areas of regulation.

Question 5.4

Should the power to withdraw a penalty notice only be available in limited circumstances on specific policy grounds? What should those grounds be?

Response 5.4

No. NSW Maritime enforcement officers have the same discretion for withdrawal of a penalty notice, as to the issue of the penalty notice in the first place. There will invariably be cases where new information or evidence comes to light requiring a reassessment of the situation, and it should be able to be dealt with quickly and easily.

Question 5.5

Are current procedural provisions relating to how a penalty notice is to be served on an alleged offender, contained in each relevant parent statute adequate?

Response 5.5

NSW Maritime is of the view that current service provisions are adequate. It should be noted in any event that where a dispute arises, the service of court process is governed uniformly by the *Criminal Procedure Act 1986.*

Question 5.6

Is it feasible to require the State Debt Recovery Office or the issuing agency to confirm service of the penalty notice or subsequent correspondence?

Response 5.6

NSW Maritime is not of the view that this is necessary or feasible. NSW

Maritime notes that where service is disputed, there is already an 'annulment' mechanism built into the *Fines Act 1996 (NSW)*, and there is established common law available as a defence where the issue of service is raised in court for strict liability offences.

Question 5.7

(1) Should the *Fines Act 1996 (NSW)* prescribe a period of time within which a penalty notice is to be served after the commission of the alleged offence? If so, what should the time limit be?

(2) If the penalty notice is served after this time has elapsed, should the Act provide that the penalty notice is invalid?

Response 5.7

(1) Yes. In order that offences are investigated and prosecuted in a timely manner, NSW Maritime currently imposes a regime by way of administrative policy that a penalty notice must be served within 42 days of the alleged offence, in order that persons are unfairly disadvantaged by the passage of time and the fading of memory. After that time, prosecution must be by court attendance notice (requiring a full set of facts to be provided to the accused person).

However, NSW Maritime retains discretion to issue penalty notices outside that time where appropriate.

Such a time limit may be inappropriate for certain agencies or for certain types of offences which may be minor in nature (and thereby appropriate to deal with by penalty notice), but may take much longer to investigate due to the peculiarities of the jurisdiction. Accordingly, NSW Maritime is of the view that time limits should be by way of guideline, rather than prescriptive legislation.

(2) Agencies should retain discretion to operate outside the time limit if appropriate, following a proper and documented assessment process.

Question 5.8

If it is inappropriate to prescribe a time limit in legislation, should agencies be required to formulate guidelines governing the time period in which a penalty notice should be served?

Response 5.8

See Response 5.7.

Question 5.9

(1) What details should a penalty notice contain?

(2) Should these details be legislatively required? If so, should the *Fines Act 1996 (NSW)* be amended to outline the form that penalty notices should take, or is this more appropriately dealt with by the legislation

under which the penalty notice offence is created?

Response 5.9

NSW Maritime is of the view that section 20(1) of the *Fines Act 1996 (NSW)* is generally sufficient as it currently stands, although agrees that a penalty notice should inform the recipient of their right to have an administrative review of the penalty notice in addition to a court election option. It is noted that this information is in fact provided on NSW Maritime penalty notices.

Question 5.10

Are the recent amendments to the *Fines Act 1996 (NSW)* relating to internal review of penalty notices working effectively?

Response 5.10

NSW Maritime has experienced no difficulties or issues in its application of the recent amendments, which in fact provide legislative validation to NSW Maritime's existing policies of a scheme of official cautioning and a mechanism for impartial independent review.

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?

(2) Can the time-to-pay system be improved?

Response 5.11

NSW Maritime uses the State Debt Recovery Office for penalty notice enforcement and recovery, which would be better placed to comment on this question.

Question 5.12

Could the operation of fines mitigation mechanisms, including the recent Work Development Order reforms, be improved?

Response 5.12

N/A

Question 5.13

Should information about penalty notice history be provided to courts for the purpose of determining sentence for any offence?

Response 5.13

Yes. This is currently done automatically for offences under legislation administered by NSW Maritime.

Question 5.14

Are there other issues relating to the consequence of payment of the penalty notice amount?

Response 5.14

NSW Maritime supports the current regime which provides that payment of a penalty notice is not a 'conviction', but that courts may take the accumulation of such offences into account and can attribute appropriate weight or otherwise to them.

Question 6.1

(1) Should penalty notices be issued to children and young people? If so, at what age should penalty notices apply and why?

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

Response 6.1

NSW Maritime agrees with the concerns raised in the consultation paper, and has implemented a detailed policy in relation to the issue of penalty notices to young people. NSW Maritime does not issue penalty notices to any child 14 or under. NSW Maritime will generally not issue penalty notices to a child age 15, and then only with parental involvement.

NSW Maritime treats young persons 16 to 18 as adults generally, commensurate with the road transport legislation and the age at which an adult boat driving licence may be issued. NSW Maritime's enforcement officers are instructed to give more careful consideration before issuing a penalty notice to young persons, and to consider official cautions.

NSW Maritime would support any similar scheme to be introduced across the whole of government. NSW Maritime is not of the view that any child under 15 should be issued with a monetary fine, and further is of the view that any young person under 18 should only be issued with a penalty notice after careful consideration.

Question 6.2

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

Response 6.2

NSW Maritime issues official cautions in lieu of penalty notices, in accordance with Part 3 Division 1A of the *Fines Act 1996 (NSW)*. NSW Maritime internally refers to such official cautions as "Formal Warnings".

Question 6.3

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

Response 6.3

NSW Maritime is not supportive generally of parents being held legally responsible for the actions of children, and in particular older children. Such children, if involved in conduct which would potentially attract a penalty notice, would, in the vast majority of cases, rarely be engaged in such conduct with the approval of their parents.

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?

Response 6.4

Yes. NSW Maritime already follows this principle by way of administrative policy (see Response 6.1).

Question 6.5

(1) 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?

(2) Should some of the diversionary options under *Young Offenders Act 1997 (NSW)* apply, and if so, which ones?

(3) For which penalty notice offences should these diversionary options apply?

Response 6.5

As NSW Maritime enforcement officers are not "investigating officials" within the meaning of section 4 of the *Young Offenders Act 1997 (NSW)*, NSW Maritime is not in a position to respond to this question.

Question 6.6

(1) Should a lower penalty notice amount apply to children and young people? If so, should this be achieved by providing that:

(a) penalty notice amounts are reduced by a set percentage when the offence is committed by a child or young person; or

(b) the penalty notice amount could be set at a fixed sum, regardless of the offence; or

(c) a maximum penalty notice amount is established for children and young people?

(2) What would be an appropriate percentage reduction or an appropriate maximum amount?

Response 6.6

NSW Maritime is not supportive of the concept of penalty notices being issued to children at all, and in cases of older children or young people, penalty notices should only be issued when they are demonstrated to be functioning at the level of an adult. Accordingly, NSW Maritime would not be supportive of a scheme of lower penalty amounts for children.

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?

Response 6.7

Yes, but see Response 6.6.

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

Response 6.8

Yes, but see Response 6.6.

Question 6.9

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

Response 6.9

NSW Maritime is supportive of the current scheme whereby unpaid fines accumulated by older children (over 16) can be used to impose sanctions against a drivers licence or motor vehicle registration. However, NSW Maritime considers that such sanctions should only be imposed if the offences which resulted in the unpaid fines are of a nature relevant to the drivers licence (i.e. 'transport' related 'driving or vehicle/vessel' offences – either against the road transport, or the marine legislation).

This scheme is a preferable deterrent to imposing a monetary sanction on young people who may have little or no earning capacity.

Question 6.10

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

Response 6.10

No. See Response 6.9.

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?

Response 6.11

NSW Maritime would agree with this proposition if it is necessary to give effect to the separation required by a negative Response to Question 6.10.

Question 6.12

Should a conditional "good behaviour" period shorter than 5 years apply to children and young people following a fine or penalty notice debt being written-off?

Response 6.12

NSW Maritime would support an appropriate review of this if sufficient data was available.

Question 6.13

Should any of the measures proposed in the New Zealand Ministry of Justice's 2009 research paper titled *Young People and Infringement Fines : A Qualitative Study* be adopted in NSW ?

Response 6.13

NSW Maritime would support further consultation on any proposal to adopt the measures proposed in the New Zealand Ministry of Justice's 2009 research paper titled *Young People and Infringement Fines : A Qualitative Study.*

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?

Response 7.1

A requirement that penalty notices not be issued at all to people with mental illness or cognitive impairment requires enforcement officers to form a view in the field as to mental illness and/or cognitive impairment, when they do not hold the relevant qualifications to make such determinations. It is considered

such difficulties should be avoided. NSW Maritime also questions how the proposition is practical, for instance, in the case of camera detected offences.

While an assessment of whether a person is a child or not is readily discernable by reference to an empirical fact (i.e. the age of the child), NSW Maritime would not be supportive of 'front line' officers having to make 'on the spot' determinations on the basis of possible mental illness or cognitive impairment.

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 ?

(2) Do the official caution provisions of the *Fines Act 1996 (NSW)* provide a suitable and sufficient alternative.

Response 7.2

Enforcement officers should not be required to make that assessment, unless the impairment/illness is immediately obvious, at which time the official caution provisions of the *Fines Act 1996 (NSW)* are suitable and sufficient.

Question 7.3

Should a list be maintained of people who are eligible for automatic annulment of penalty notices on the basis of mental health or cognitive impairment? If so

(1) What should the criteria for inclusion on the list be?

(2) How should privacy issues be managed?

(3) Are there any other risks, and how should these be managed?

Response 7.3

N/A

Question 7.4

Should fines and penalty notice debts of correction centre inmates with a cognitive impairment or mental illness be written off ? If so, what procedure should apply, and should a conditional good behaviour period apply following the person's release from a correctional centre ?

Response 7.4

N/A

Question 7.5

Should pro-rate reduction of the penalty notice debt (and/or outstanding fines) of offenders in custody be introduced?

Response 7.5

N/A

Question 7.6

Should some other strategy be adopted in relation to offenders who have incurred penalty – or fine – debt? If so:

(1) In relation to which groups should any such strategy be adopted, and

(2) What strategy or strategies would be appropriate?

Response 7.6

N/A

Question 7.7

How should victims compensation be dealt with in any proposed scheme?

Response 7.7

N/A

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?

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

Response 7.8

NSW Maritime is not supportive of concessional rates being applied to penalty notices at first instance. To introduce such provisions would be cumbersome, impractical to administer and would increase red tape. It may also require an enforcement officer to become involved in discussions about a persons social situation and make a judgement call as to which penalty notice to issue 'on the spot', in many cases without sighting documents or having the resources to conduct any proper analysis of the persons' background.

NSW Maritime supports the current approach of persons being able to demonstrate their individual circumstances to a magistrate in order to mitigate the penalty.

The general deterrence factor of penalty notices should also not be diminished, particularly in relation to safety related offences.

Question 7.9

If a concession rate were applied to people on low incomes, should the penalty amount be reduced by a fixed percentage or determined by some other formula?

Response 7.9

See Response 7.8.

Question 7.10

How could such a system be administered simply and fairly?

Response 7.10

See Response 7.8.

Question 7.11

(1) Are the write off provisions of the *Fines Act 1996 (NSW)* effective in assisting vulnerable individuals deal with penalty notice debts?

(2) What improvement, if any, could be made to the write-off procedures under the *Fines Act 1996 (NSW)?*

Response 7.11

While NSW Maritime issues penalty notices for breaches of the marine legislation, it does not involve itself in the debt collection process and relies upon the SDRO to run that process. Accordingly, NSW Maritime is not appropriately placed to respond to this question.

Question 7.12

Should participation in discrimination awareness and disability awareness training be required for all law enforcement officers authorised to issue penalty notices? How else could awareness be raised?

Response 7.12

Refer to Response 7.1.

Question 7.13

How effective are the review provisions for people with a mental health or cognitive impairment?

Response 7.13

For offences against the marine legislation, the current review provisions are effective, notwithstanding that a requirement to make a written representation is still necessary. NSW Maritime notes the challenges posed in Response 7.1.

Question 7.14

Given that it may be difficult for some 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?

Response 7.14

NSW Maritime would be supportive of an awareness campaign or program being developed by any future central body governing the penalty notice scheme (see Response 2.2) targeting carers, welfare organisations, and health workers to enable an easier mechanism of notification to the issuing agency and administrative penalty notice review for vulnerable persons.

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?

(2) In 'exceptional circumstances' more generally

Response 7.15

NSW Maritime considers that such an extension should be by way of guideline, rather than a further amendment to the *Fines Act 1996 (NSW)*; as those factors may or may not have had any bearing on the commission of the offence, and may be required to be assessed on a case by case basis.

Question 7.16

(1) Is the State Debt Recovery Office's Centrepay program helping people receiving government benefits deal with their outstanding fines and penalty notice amounts?

(2) Are there any ways of improving this program?

Response 7.16

While NSW Maritime issues penalty notices for breaches of the marine legislation, it does not involve itself in the debt collection process and relies upon the SDRO to run that process. Accordingly, NSW Maritime is not appropriately placed to respond to this question.

Question 8.1

Should there be formal principles for determining whether a particular criminal offence is suitable to be dealt with by way of Criminal Infringement Notice? If so, what should those principals be? Should they be different from the principles that apply to penalty notice offences generally?

Response 8.1

N/A

Question 8.2

Are there any views about the recommendations in the 2009 Ombudsman's Review of the impact of Criminal Infringement Notices on Aboriginal communities and their implementation?

Response 8.2

N/A

Question 8.3

(1) Are Criminal Infringement Notices having a net-widening effect, in particular in relation to the offences of offensive language and offensive behaviour? If so, what measures should be adopted to prevent or minimise this effect?

(2) Should official cautions (governed by police guidelines) be available as part of the Criminal Infringement Notice regime, as recommended by the Ombudsman?

(3) Should the offences of offensive language and offensive conduct continue to be among the offences for which Criminal Infringement Notices may be issued?

Response 8.3

N/A

Question 8.4

(1) What steps should be taken to address the issue of under-payment of Criminal Infringement Notices issued to Aboriginal persons?

(2) Should recipients of Criminal Infringement Notices be able to apply for an extension of the prescribed time to elect to have the matter dealt with by a court? If so, under what circumstances?

Response 8.4

N/A

Question 8.5

Should Criminal Infringement Notices be issued at all to persons with a cognitive impairment or mental illness? If so, should police have the discretion to issue Criminal Infringement Notice, even after an arrest has been made, if satisfied that the offender has a support person who has understood the offence and consequences of the Criminal Infringement Notice as recommended by the Ombudsman?

Response 8.5

N/A

Question 8.6

Should police have the power to withdraw a Criminal Infringement notice if subsequently satisfied of the vulnerability of the person to whom the Criminal Infringement Notice was issued?

Response 8.6

N/A