



AH10/76996

Law Reform Commission
GPO Box 5199
SYDNEY NSW 2001

Dear Sir/Madam

Re: Consultation Paper 10 – Penalty Notices

I am writing to provide advice in relation to the impact of the issue and enforcement of penalty notices on people with an intellectual disability or other form of cognitive impairment.

Ageing, Disability and Home Care (ADHC), Department of Human Services NSW provides services for people with an intellectual disability. ADHC also funds non-government organizations (NGO) to provide services to people with an intellectual disability as well as other forms of cognitive impairment. These services include support for people in, or at risk of, contact with the criminal justice system.

I would like to support the view put forward by the Intellectual Disability Rights Service in Section 7 of the Consultation Paper, that people with cognitive impairment sometimes lack the capacity to appreciate the wrongfulness of the actions that give rise to the penalties. The enforcement of penalty notices in such cases will not prevent the individual from engaging in offending conduct in the future.

In some cases people with an intellectual disability are able to learn appropriate behaviour in these situations, however they often learn differently and more slowly. They respond best to a positive behaviour support approach. They are not likely to learn appropriate behaviour from the issue and enforcement of penalty notices.

For example, one client of ADHC's Community Justice Program is an Aboriginal man with a mild level of intellectual disability, a co-existing mental illness and a number of complex health needs. He has a history of contact with the criminal justice system and has been involved in a range of offences that have led to periods in custody. Some of his offences were serious and he has attempted suicide while in custody.

There have been numerous incidences of him traveling on trains without a ticket. ADHC has provided support and interventions to this man that has led to a considerable decrease in offending behaviour of a more serious nature. Given the complex range of his needs, his continued train travel without a ticket has not been a high priority for ADHC, however it will be addressed at some point. Current assessment of this client suggests that he is unlikely to ever be a consistent purchaser and user of train tickets.

I would encourage the Law Reform Commission to consider a mechanism whereby such cases can be dealt with more expeditiously and appropriately. This might entail confirmation by an independent disability professional familiar with the individual such as an ADHC or NGO case worker or clinician that the individual:

1. does not have the cognitive capacity to appreciate that what they have done is wrong; and
2. that the enforcement of penalty notices will not prevent repeat offences.

Once this is done, the State Debt Recovery Office could implement a process similar to that noted in Section 9.9 of the Consultation Paper whereby approved cases are reviewed at set intervals and penalties are automatically written off.

ADHC will continue to promote the development of skills among its clients to function fully and appropriately in the community, including in relation to behaviours that might lead to the issue of penalty notices.

If you require further information or would like to discuss the above further, please do not hesitate to contact Mr Paul Tweddell, A/Manager Service Planning and Priority Projects on [REDACTED] or Ms Melinda Smith, A/Director Policy and Practice on [REDACTED]

Yours faithfully



David Coyne
Executive Director
Office of the Senior Practitioner

30 NOV 2010