



Paul McKnight
Executive Director
New South Wales Law Reform Commission
GPO Box 5199
SYDNEY NSW 2001

DGL10/1611

Dear Mr McKnight

I refer to your letter of 20 September 2010, concerning the pending statutory review of the laws relating to penalty notices in NSW.

I appreciate the opportunity you have provided to the NSW Department of Education and Training (the Department) to comment on the consultation paper which has been produced as part of this process.

While a number of questions were identified for discussion in this paper, the Department only wishes to provide a response to the following questions at this time.

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?

Yes. S22D(9)(b) of the *Education Act 1990* (NSW) provides that a child of or above the age of 15 years – is guilty of an offence and is liable to a penalty if the child fails to comply with an obligation under a compulsory schooling order.

The Department does not consider there is an argument to vary what Parliament implemented as an appropriate age for a child to have responsibility in such circumstances.

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

No.

Question 6.2

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

Yes. Under s22B of the *Education Act 1990* the Director-General may make schooling arrangements with one or more parents of a child, that includes a written undertaking by the parent or parents with respect to compulsory schooling for the child.

Diversions options surrounding youth conferencing with specialist youth officers and parents of children who have committed, or are alleged to have committed, penalty notice offences may be a practical alternative in similar circumstances of a penalty notice to a child.

Question 6.3

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

No.

If there are some circumstances in which the conduct of children ought, but for their young age, amount to an offence, there ought to be a duty on parents to prevent their children from acting in that manner. A parental duty might reasonably amount to an offence (subject to appropriate defences). (This suggestion parallels the situation under the *Education Act 1990* where a parent commits an offence if they fail to cause their child to attend school – see section 23).

Parents should not, however, be vicariously liable for the offences of their children.

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.

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?

Yes in all incidents where a penalty notice can be issued. The provisions of the *Young Offenders Act 1997 (NSW)* should be the default position, with penalty notices being issued as a last resort or where young people with the capacity to pay opt for a penalty notice instead.

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

Yes. The use of cautions and/or warnings should be used in the first instance. The Department agrees with the stance of the NSW Police Review Committee that *Young Offenders Act 1997 (NSW)* be extended to cover all offences for which penalty notices may be issued to children and some way found to overcome any administrative problems.

1. Police with discretion to give a penalty notice often use informal warnings and the incident is thereby resolved. A warning given under the *Young Offenders Act 1997 (NSW)* is recorded and kept on the COPS (Computerised Operational Policing) computer system maintained by NSW Police.

2. Cautions involve the offender admitting to the offence, attending the station, a record of the caution kept and a maximum of three cautions can be given before the offender is unable to be dealt with by caution.

3. Given the formal recording of warnings and cautions if penalty notices were covered by the *Young Offenders Act 1997 (NSW)*.

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?

Yes. S22D(9)(b) already applies the principal that a lower penalty notice apply to children. In the case of a child of or above the age of 15 years - the child is guilty of an offence and liable to a penalty not exceeding 1 penalty unit.

S22D(9)(a) in the case of a parent - the maximum penalty for a relevant offence under section 23 (offence if parent fails to send child to school) is 100 penalty units (but without the court proceeding to a conviction), unless the child had a reasonable excuse for not complying with the order.

There should be a difference between the penalty fine amounts for adults and young persons to reflect the difference in earning capacity and circumstances. Any of the above three options could be utilised to serve this purpose.

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

The Department notes that S22D(9)(b) provides a lesser penalty in the case of a child compared to a parent for the same offence. Where the age of the child is or above 15 years the penalty does exceed 1 penalty unit whereas S22D(9)(a) in the case of a parent, the maximum penalty for a relevant offence under section 23 (offence if parent fails to send child to school) is 100 penalty units.

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. There are already provisions for having fines reduced or written off due to an inability to pay.

Question 6.9

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

Yes. Drivers licence and vehicle registration sanctions are an effective means of securing compliance with penalty notices.

Question 6.10

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

Yes. Drivers licence and vehicle registration sanctions are an effective means of securing compliance with penalty notices.

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?

The conditional “good behaviour” period following a penalty notice being written off should be reduced in line with the Youth Justice Coalitions alternative option of 6 months. To provide an unconditional waiver ultimately means that the offender’s behaviour has gone completely unpunished.

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?

The Department recommends considering:

- Case Management: Appointing one staff member to an offender who is responsible for the management and collection of that offenders fines; gives the young offender one point of contact and takes away some of the administrative difficulties.

- Time to Pay: Have arrangements made from the time the notice is issued for the offender to pay the fine off.
- Setting maximums for a single incident or over a given period before other enforcement measures come into play (for example community work, licence suspension).
- Reviewing the weighting of fines so that fines relating to safety have a higher value than licence-related fines.
- Enabling greater discretion by the Collections Unit (for example reducing penalties if fines are paid).
- Ensuring easier access to Community Work- allocated by Collections Unit without having to appear before a Judge.

These options recognise young person's limited earning capacity and provide alternatives or structures to paying off fines.

Enquiries concerning the matter may be directed to Peter McGhee, Senior Legal Officer on telephone [REDACTED]

Yours sincerely



Peter Riordan
Deputy Director-General
Workforce Management and Systems Improvement
2 December 2010