



# Council of Social Service of New South Wales

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NSW Law Reform Commission  
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Dear Sir or Madam,

## **Submission to the Law Reform Commission Regarding Penalty Notices**

The Council of Social Service of NSW (NCOSS) welcomes this opportunity to be able to comment on the issues raised in your discussion paper on penalty notices.

NCOSS is the peak body for the not-for-profit human services sector in New South Wales. NCOSS works with its members on behalf of disadvantaged people and communities towards achieving social justice in NSW. NCOSS provides an independent voice on welfare policy issues and social and economic reforms and is the major coordinator for non-government social and community services in NSW.

### **Introduction**

NCOSS welcomes the Law Reform Commission's review of penalty notices. NCOSS believes that penalty notices are intended as a deterrent measure for 'low level' offences, impacting on recipients in a way that should be, at least in principle, commensurate with the seriousness of offence. We note that the objectives of the *Fines Act 1996* state that monetary penalties should aim to ensure that imprisonment is only a 'last resort.'

The submission focuses on the impact of penalty notices on people with low incomes and driver licence sanctions.

### **Impact of penalty notices on people with low incomes**

People on low incomes, particularly those reliant on a Centrelink benefit or pension, face significant consequences when they incur a monetary penalty. Many people on low incomes have little or no capacity to save because every dollar is spent by the end of the pay period. Consequently these people face significant hardship when they incur an unexpected bill including a penalty notice.

Court levied fines have the advantage of some variability in the amount to reflect the ability of its recipient to pay. Nevertheless, NCOSS is concerned that the financial stress experienced by some low income households as a result of court imposed fines is significant, and in terms of impact upon the fine recipient, may lack proportionality to the seriousness of the offence.

NCOSS is particularly concerned that aspects of the penalty notice recipients' circumstances, such as current level of unpaid fines and penalty notices are not taken into account. NCOSS has been informed of a number of cases where individuals have been fined by a court, despite already owing thousands of dollars in unpaid penalty notices and limited means to meet these obligations within a realistic timeframe.

NCOSS believes that the penalty notice recipients' capacity to pay should be considered in determining the level of monetary penalty.

NCOSS has previously requested that the NSW Government consider reforming the monetary penalties for minor traffic offences to reflect the capacity to pay of the recipient. In its submission to the Roads and Traffic Authority Review of Fines and Demerit Points in 2004, NCOSS noted that other nations such as Sweden, Denmark, Germany and Finland have implemented traffic fines systems that take into account capacity to pay. For example, the Finnish system utilises a sliding scale linked directly to income level for speeding and other traffic offences.

Such a system may not be possible in NSW since information about income, including income support, is held by Australian Government agencies. An easier method, though less equitable, is to define 'low income' to include all those in possession of an Australian Government Health Care Card. Centrelink beneficiaries and pensioners are entitled to a Health Care Card as are low income earners. The income tests for eligibility for a health care card, as at 26 November 2010, are:

- single people with no children \$465 per week;
- couples with no children \$808 per week;
- couples with children \$808 per week plus \$34 per week for each additional child; and
- single parents with one child \$808 per week (add \$34 per week for each additional child).

The use of a Health Care Card to identify low income people is becoming more widely used. For example, eligibility for energy rebates provided by the NSW Government is now determined by the possession of a Health Care Card.

### ***Recommendation***

That penalty notice recipients' capacity to pay should be considered in determining the level of monetary penalty. An easy method, though less equitable, to define 'low income' is to include all those in possession of a Australian Government Health Care Card. Penalty notices should be reduced for people in possession of a Health Care Card.

### **Driver licence sanctions**

The financial impost a monetary penalty may place on an individual can be great. In addition, the consequences of alternatives can generate a range of adverse social impacts within communities. Driver license sanctions impact significantly on low income households located in outer suburban and rural and regional areas that do not have ready access to public transport, and are reliant on motor vehicles to access jobs, education and services.

Driver license sanctions also impact upon the capacity of individuals to meet family responsibilities: for example NCOSS is aware of a number of cases where carers of people with disability who have had their license suspended are no longer able to provide transport to important destinations, including medical appointments.

Many Aboriginal communities across NSW face extreme transport disadvantage, with limited access to motor vehicles and licensed drivers, and dislocation from public transport services. As a result of these limited transport options, a driver's license sanction can have a 'community wide' effect.

NCOSS consultations have revealed that there are a number of Aboriginal communities in NSW adversely affected by license suspensions. Frequently, there is a capacity to pay issue, and those affected may include adults who are unable to hold a license because of unpaid penalty notices and enforcement fees for relatively minor offences committed as a young person (e.g. riding a bicycle without a helmet).

NCOSS questions the fairness of license sanctions, particularly where they are applied to low income people who do not have access to alternative forms of transportation.

### ***Recommendation***

That driver licence sanctions not generally be used to replace penalty notices.

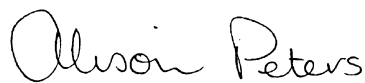
### **Conclusion**

As the impact of a penalty notice is greater on low income people compared those on high incomes, penalty notices should be lower for people on low incomes. This meets the criteria of Fines Act that the impact should be commensurate to the offence.

Similarly, as driver licence sanctions have greater impact for low income people such sanctions should not generally be used.

If you have any questions please do not hesitate to contact Dev Mukherjee, Senior Policy Officer, on either [REDACTED]

Yours sincerely



Alison Peters  
Director