

COMMISSION FOR CHILDREN AND YOUNG PEOPLE

SUBMISSION TO THE NEW SOUTH WALES LAW REFORM COMMISSION  
CONSULTATION PAPER 10: PENALTY NOTICES

DECEMBER 2010

**1. Commission for Children and Young People**

The NSW Commission for Children and Young People ('the Commission') promotes the safety, welfare and well-being of children and young people in NSW.

The Commission was established by the *Commission for Children and Young People Act 1998* (NSW) ('the Act'). Section 10 of the Act lays down three statutory principles which govern the work of the Commission:

- (a) the safety, welfare and well-being of children are the paramount considerations;
- (b) the views of children are to be given serious consideration and taken into account; and
- (c) a co-operative relationship between children and their families and community is important to the safety, welfare and well-being of children.

Section 12 of the Act requires the Commission to give priority to the interests and needs of vulnerable children. Children are defined in the Act as all people under the age of 18 years.

The Commission welcomes the opportunity to comment on the Law Reform Commission's review of penalty notices. This submission addresses section five of the Terms of Reference that specifically relates to children and young people.

## 2. Introduction

Penalty notices are routinely issued to children for a range of offences. However, unlike adults, children and young people have a limited capacity to earn money and can struggle to meet the financial cost of the fine incurred.

This can both create financial hardship for children and young people and limit the effectiveness of the penalty notice system, given their incapacity to pay.

Penalty notices can have disproportionate, detrimental long-term effects on children, particularly those from disadvantaged backgrounds.

The Commission acknowledges the importance of supporting children to take responsibility for their actions. However, the Commission does not support the issuing of penalty notices to persons under 18 years of age.

Instead, the Commission recommends the following to support the development of an evidence-base to guide policy reform:

1. Monitoring and reporting on the impact of the penalty notice system on children in NSW.
2. Evaluating the effectiveness of the penalty notice system in relation to children, including but not limited to, young people seeking an annulment of penalty notices and enforcement orders via the courts and giving consideration to an alternative administrative system.
3. Consulting with children about the impact of the current penalty notice system and seeking their input into the development of alternative approaches.
4. Trialling and evaluating (with published results) alternatives to penalty notices that:
  - support children to take responsibility for their actions
  - deter reoffending

- comply with international instruments such as the United Nations (UN) Standard Minimum Rules for the Administration of Juvenile Justice and the UN Convention on the Rights of Children (CROC)
- embrace the principles and practices of justice reinvestment.

### **3. Children's limited capacity to earn**

Children and young people have limited capacity to earn money. In 2005, the Commission undertook research and spoke with approximately 11,000 children and young people from Year 7 to Year 10 about their experience of work. A copy of the Commission's *Children at Work* report can be found at:

<http://www.kids.nsw.gov.au/kids/resources/publications/specialreports.cfm?itemID=78FB286FE1FC4D521F46B908A2374156>.

The Commission's research found that while hourly rates of pay for children vary markedly, they are relatively low compared with adult pay. About one in three children are paid at four dollars per hour or less. However, the approximate hourly rate of between six to eight dollars is comparable with the mean average rates for 15 to 19 year olds in full-time employment (from *Employee Earnings, Benefits and Trade Union Membership, Australia, August 2001* statistics by the Australian Bureau of Statistics (ABS)).

Children and young people who attend school and also work part-time or casually receive earnings comparably lower to adults. According to 2006 Census data from the ABS, of the 248,300 15-17 year-olds who were enrolled in education, 68,800 combined education and work (29.5%). For the majority, their income was less than \$149 per week (86.3%). A small proportion of 15-17 year olds enrolled in education had a weekly income of \$150 or more (13.7%).

Children and young people under the age of 18 years and living at home who are eligible for Youth Allowance can receive a maximum of \$206.30 per fortnight.

According to 2006 ABS Census data, for those young people in 2006 aged 15-17 years who had left school and were not working:

- 26.5 per cent had no income

- 20.6 per cent received an income of between \$1-149 per week
- 42.9 per cent received an income of between \$150-\$399 per week and
- 9.2 per cent received an income of \$400 or more per week.

From January 2010, all NSW students until the age of 17 must be in school, approved education or training, full-time employment or a combination of these options. Although a 17-year-old can be in full-time employment, their earning capacity is still limited.

Further, children and young people who are homeless, socio-economically disadvantaged or otherwise disadvantaged can be severely affected by penalty notices. Disadvantage coupled with a limited capacity or incapacity to earn, can have severe and lasting knock-on effects for a young person's well-being. It is important to acknowledge that a penalty notice can potentially be a contributing factor to entrenching a young person's long-term disadvantage.

What may constitute a small fine in relative terms can be a critical burden on particular cohorts of people, particularly children and young people. The intended effect of fines as a punishment and a deterrent to committing further offences is negligible for those people who cannot afford to pay fines. A fine may in fact be an inappropriate punishment in a number of circumstances and may not achieve a positive outcome for the individual and the community in terms of promoting rehabilitation. A young person who has no capacity to pay in the first instance may accumulate penalties over time, so that they find themselves in an ever-worsening position.

#### **4. Effectiveness of the current system**

There are a number of issues that arise within the penalty notice system with regard to children and young people that limit its effectiveness. For example, considering the limited capacity for children and young people to pay a fine, it is likely that for some children, parents meet the costs of these penalties. However, it is important to note that this is dependent on the financial circumstances of the child's parents. In this situation the aim of the penalty system to 'punish' is not likely to be fulfilled, apart from the child having to confront their parents. The child is not held directly accountable nor are they necessarily encouraged to accept responsibility for offending behaviour. In this way, the key principles

of restorative justice are not assumed and the child may not be deterred by the system to re-offend.

These principles include:

- Ensuring that those directly affected by crime are involved in the process and that their views are heard.
- Delivering positive outcomes for the victim and the community against valid objectives, alongside changes in behaviour and attitude of the young person, which leads to an understanding of consequences, reduced reoffending and opportunity for reparation.
- Addressing and being sensitive to particular cultural and special needs and based on anti-discriminatory practice<sup>1</sup>.

In addition, the effectiveness of the penalty notice system becomes increasingly questionable in relation to young people who are already disadvantaged and have no ability or capacity to pay the costs of the penalty.

## **5. Developing alternatives**

Children and young people have unique needs and vulnerabilities that require special consideration. This is acknowledged within Australian and NSW legislation and within the principles of juvenile justice. These principals are also enshrined in the United Nations Convention on the Rights of the Child.

In addressing offending behaviour, it is important to recognise that the approaches developed for adults may not necessarily work for children and young people. Within this context, caution must be practiced so as not to impose inappropriate and ineffective adult punishments on children and young people. Doing so may detrimentally affect the well-being of children and young people and have a poorer outcome for the community. It can also be economically ineffective if reoffending behaviour is not moderated and the opportunity to reoffend is widened.

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<sup>1</sup> For further information see: <http://www.yjb.gov.uk/en-gb/>.

The Commission supports developing an evidence base that promotes positive and effective approaches for children who offend.

In developing alternatives to penalty notices, children and young people's perceptions of their own offending behaviour and what influences their decisions needs to be understood. In addition, children and young people should be included as key partners in the design, delivery and evaluation of initiatives aimed at them.

Children and young people have critical and unique perspectives on their lives, and with appropriate structures and support, have both the capacity and potential to contribute to this issue.

The Commission would be pleased to work with the Department of Justice and the Attorney General to develop appropriate mechanisms for children to contribute to the development of alternatives to the current penalty notice system.