SUBMISSION TO THE NEW SOUTH WALES LAW REFORM COMMISSION REFERENCE ON "PENALTY NOTICES"

The following relates to what I regard as an arbitrary, unjust and oppressive decision by the State Debt Recovery Office (SDRO) of State Revenue, NSW Treasury. The facts are as follows.

I am a permanent resident of the Australian Capital Territory. On 28 April 2009 a close family member had a terrible fall at her home in North Sydney and was admitted to the Royal North Shore Hospital (RNSH) in a critical condition with severe head and spinal injuries. My wife and I flew immediately to Sydney, staying in an apartment close to the RNSH for some six months. In September 2009 the family member was transferred to the spinal unit at The Royal Rehabilitation Centre, 600 Victoria Road, Ryde and remained there for a further seven months.

About 3.34pm on 20 October 2009 a red light camera located in Victoria Road between Cressy Road and Frank Street recorded that I had driven at 66km/h in a 40km/h school zone. The penalty notice issued advised that the offence carried 5 demerit points and a penalty of $422.00.

At the time I was commuting between Sydney and Canberra and did not receive the penalty notice until 3 November 2009. On 4 November I wrote to the SDRO. In brief, I set out the circumstances of being in Sydney, advising that I had never driven in the area previously, and had simply not seen the school signage – or indeed the school (which is set well back from the roadway) – possibly due to the distracting clutter of diverse signage along Victoria Road. I acknowledged that I was the driver at the time of the offence and would not contest the speed (even though I believed the speed to be less).

In the letter to the SDRO I mentioned that I had held a driver's licence for 45 years and in that time had not incurred any traffic or parking fines whatsoever. I did not add, but perhaps I should have, that I had driven infraction free in all states and territories of Australia and in the UK, USA and Europe over that 45 years. I also conceded in the letter that I knew very well that speeding in a school zone was serious but contended that the circumstances and an exemplary driving record over 45 years deserved some recognition and leniency. I did not expect to be exonerated; I expected, and deserved, some penalty, but in a lesser range.

The SDRO replied by letter dated 17 November. The reply, inter alia, was as follows: "...*We examined the details of the penalty notice and considered the issues you raise. Based on the circumstances you describe we cannot, under our guidelines, cancel or offer leniency for this offence*..." Despite the fact that I had plainly stated in my letter to the SDRO, dated 4 November, that I was indeed the driver of the vehicle at the time of the offence, the SDRO's reply invited me to complete a statutory declaration if I was not the driver of the vehicle at the time. I mention the last as the formatted tenor of the SDRO letter was such that I concluded it was most likely that the mitigating circumstances set out in my letter were paid little or no heed.

The SDRO's "guidelines" on which it stated it relied to dismiss my appeal were not provided.

I paid the fine on 23 November 2009 as I did not want any further entanglement with the SDRO over the overdue payment of the fine.

After giving careful consideration to what I regarded as the arbitrariness and unfairness of the SDRO's decision, I wrote to the NSW Ombudsman. In that letter, dated 23 December 2009, I made three main points:

- First, it seemed appealing to the SDRO, whose business is imposing and administering fines and recovering debt for the NSW Treasury, to exercise impartiality and fairness, was akin to appealing to Caesar, therefore justice is unlikely to be done and cannot be *seen* to be done;

- Second, I suspected that in rigidly adhering to the exact prescribed penalty, the SDRO gave no particular or reasoned consideration to the mitigating circumstances of the case or took into account my long and exemplary driving record; and

- Third, I believed the second point was emphasised by the standard format of the SDRO's reply, where, despite having plainly admitted that I was the driver of the vehicle at the time of the offence, I was again invited, as an available option, to submit a statutory declaration if I were to claim I was not the driver the vehicle at the time. This repeated invitation could be regarded as an incitement to commit the offence of making a false declaration, and ought to be struck out as an option in the SDRO's reply to any correspondent who had previously admitted in writing to being the offending driver.

I also made the general point to the Ombudsman, and I repeat it again here, that there is absolutely no incentive for anyone to have, or strive for, an exemplary driving record if the SDRO's "guidelines" are so inflexible that the mitigating circumstances I advanced could not be taken into account.

This encounter with the NSW traffic/revenue bureaucracy made me appreciate why otherwise law-abiding citizens could be provoked into making false statements when their honesty and the genuineness of their cases are treated so dismissively.

An Investigation Officer for the Ombudsman replied on 23 December 2009, effectively finding no merit in any of the points that I had raised. It was suggested that I had had the option of having the matter dealt with by a magistrate. However, the fact is that even if a magistrate were to cancel or reduce the monetary penalty, the loss of 5 points would have remained undisturbed. Also, the loss of time and cost of travel in contesting the matter before a magistrate would have exceeded the monetary penalty of $422.

The Ombudsman's investigator closed her reply with the observation that she appreciated I may have been disappointed in her decision. My disappointment was that the Ombudsman's office could not see that by the SDRO again inviting me to submit a statutory declaration as to the

identity of the driver, when I had already admitted to being the driver, was ill-advised, was very bad policy, and likely to induce otherwise honest people to act dishonestly.

I contemplated responding to the Ombudsman's investigator's findings, but as the Ombudsman's response was as superficial and as dismissive as that of the SDRO, I grudgingly let the matter rest. I did not expect, and do not expect, redress.

In recent years there have been a number of celebrated cases where individuals of some prominence have responded to the arbitrariness of the traffic laws, in particular, by stooping to deceit in order to retain licences threatened by the gradual, and mostly inadvertent, loss of points – points that cannot be recovered before a court, only redeemed through the long passage of time. It is no wonder then, when faced with the loss of a licence, some individuals have resorted to false swearing. And with the proliferation of even more sophisticated traffic monitoring technologies the number of potential offenders is likely to grow exponentially.

I repeat that I write this submission not to seek redress, but to draw attention, if it is not already obvious to the Commission, that the NSW traffic penalty notice system is badly flawed and that the decisions of bureaucrats within the system do not involve impartial, independent and fair judgments based on the material advanced by those who decide to appeal a penalty.

In my own case I expected, and deserved, a penalty, but I submit that losing 5 of 12 points for a single infraction in 45 years of driving was arbitrary and unreasonable. Such unjust penalties do much to undermine respect for the law.

Adrien Whiddett
Canberra
29 September 2010