

# **JUVENILE JUSTICE SUBMISSION**

## **NSW LAW REFORM COMMISSION CONSULTATION PAPER 10 – PENALTY NOTICES**

### **JUVENILE JUSTICE RECOMMENDATIONS:**

- a) children and young people aged between 10 and 16 years should be excluded from penalty notices; or
- b) penalty notice amounts for children and young people should be set at a rate different to adults, the payment schedule should be indexed to reflect the person's income; and
- c) extend the amount of time young people have to complete payments for outstanding penalty notices; and
- d) extend the current Work and Development Order Pilot project to make it easier to participate; and
- e) develop a specific assessment process for the Department of Human Service NSW, Department of Education and Training, NSW Health and other relevant agencies to apply for a permanent or temporary exemption (based on individual circumstances) whereby relevant young people are not subject to the payment of fines; and
- f) develop a publication in plain and simple language assisting young people to understand how to write off accumulated penalties; and
- g) exempt people with an intellectual disability or other form of cognitive impairment from being subject to penalty notices;
- h) a system of driver education programs is a better alternative to sanctions (particularly in regional and rural areas) and is a more effective approach to young people who hold a licence and have been issued penalties for driving offences.

### **GENERAL COMMENTS:**

- Juvenile Justice is tasked with reducing youth offending. The Agency welcomes a complete review of how the penalty and fines system operates for young people in NSW.
- There is little evidence that the current penalty infringement system has a deterrent or rehabilitative effect on young people.
- Juvenile Justice considers that the penalty notice scheme should treat children and young people differently to adults, due to considerations of age, disadvantage and limited earning capacity.

- Juvenile Justice would seek to ensure that children and young people are not needlessly drawn into the criminal justice system through minor infringements.

## **SPECIFIC RESPONSES**

### **6.1 Should penalty notices be issued to children and young people?**

- Young people, particularly aged 16 years and under, who for the most part are still at school (or at least of compulsory education age), generally have limited means to pay fines. Juvenile Justice does not, therefore, support issuing penalty notices to children and young people.
- For the most part, the types of infringements likely to incur fines are predominantly committed by young people who are economically and socially disadvantaged, or are otherwise considered to be vulnerable due to their age, mental health or level of intellectual functioning. Issuing penalty notices to such young people is likely to cause further financial hardship to those who can least afford it, or to simply transfer the onus of payment to a parent or carer.
- If penalty notices are to be issued to young people they should be quarantined to young people aged 16 years and over.
- It is further recommended that the fine amounts that young people are required to pay should differ from adults, with a payment schedule being indexed to reflect the young person's income.
- It is also recommended that an extended payment schedule be considered for young people.

### **6.2 Practical alternatives to penalty notices.**

- Juvenile Justice recommends that some young people would benefit from additional support and legal protections. Where appropriate, young people should be provided with an appropriate referral to a local youth service or other relevant agency to identify why they have come to the attention of police or transit authorities, rather than be burdened with fines they are unlikely to pay.
- Enforcement officers should also have the discretion to not issue an infringement notice but the authority to notify parents or carers if they have real concerns about the young person's behaviour. Many young people who come to the attention of police and transit authorities for minor infringements are in danger of becoming entrenched in the juvenile justice system.
- The laws around offensive language, in particular the subjective notion of 'community standards', need to be reviewed to ensure that young people are not inappropriately caught up in the legal system for what could be viewed as typical adolescent behaviour.

- Juvenile Justice strongly supports the Work and Development Order Pilot as an alternative to payment of penalty notices for disadvantaged young people. This is a therapeutic approach whereby the young person participates in programs such as mentoring, mental health programs or drug and alcohol rehabilitation in lieu of paying a fine. Agencies are able to adapt programs to the young person's age and specific circumstances.
- Juvenile Justice would support further investigation into the effectiveness of the Work and Development Order scheme in rural and remote areas where there may be little or no access to local programs and services.

**6.3 Should parents be made liable for penalty notices incurred by children and young people?**

- Parents of young offenders and many other young people are not usually in the position to pay fines that their children have incurred.
- It is questionable whether the payment of a young person's fine by a parent or carer would have the desired deterrent effect.

**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?**

- See below answer for question 6.5.

**6.5 Should the diversionary options under the *Young Offenders Act 1997* be used instead of penalty notices?**

- There is anecdotal evidence that penalty notices are issued to children and young people as a first resort, rather than a measure of last resort, for what are typically minor infringements. Research across a range of jurisdictions indicates that young people can be an easy target for both Police and transport authorities.
- Juvenile Justice is concerned that the suggested alternative to serving a penalty notice, that being to issue a warning or caution under the *Young Offenders Act 1997*, would have a net-widening effect, thereby drawing young people into the formal justice system for what are very minor offences.
- As previously noted, enforcement officers should have the ability to take no further action with young people for minor offences without the need for any form of formal processing.
- Enforcement officers should also be given the discretion to inform the parent or carer of the young person, where they have concerns about the young person's behaviour.

**6.6 Should a lower penalty notice amount apply to children and young people?**

- If there must be penalty notices for young people, they should never be subject to fines that can burden them for many years after the offence. As previously noted, penalty notices should be indexed to reflect the young person's income. Therefore in some cases whereby the young person has no means to pay, due to full time school enrolment for example, the penalty should be a nominal amount such as \$5 or \$10 in total.
- As stated above, Juvenile Justice would recommend that penalty notices can only be served on young people aged 16 years and over.

**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 inability to pay?**

- Due to the limited earning capacity of children and young people, the capacity to apply for internal review is important. However, due to their immaturity and, for disadvantaged young people, their lack of support, most are unlikely to apply for a review and will find themselves with unpaid fines whether or not there are grounds for a review.

**6.8 Should a cap be put on the number of penalty notices, or the total penalty notice amount?**

- Juvenile Justice notes that some young offenders have thousands of dollars in penalty notices for such low-level offences as offensive language or bicycle offences. These are as a result of enforcement officers issuing multiple penalty notices for one incident.
- Young people subject to a number of penalty notices often feel defeated when they incur multiple fines that they are unable to pay. This results in penalty notices having no deterrent value and therefore defeats the purpose of the *Fines Act 1996*.
- Juvenile Justice recommends that a cap be put in place on the number and amount of penalty notices incurred for one incident, particularly for disadvantaged children and young people.

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

- Juvenile Justice is not in favour of driver licence sanctions for young people. Such measures are particularly detrimental to young people from rural and regional areas, and / or disadvantaged backgrounds. In such cases, this type of measure will often result in multiple unlicensed driving offences, due to the inability of the young person to pay the fine and the lack of public transport in regional communities. In such communities this type of penalty will also impact on the capacity of the young person to engage in training and employment opportunities.

- Juvenile Justice recommends a system of driver education programs for young people as opposed to licence sanctions. This would be a more effective approach to young people who hold a licence and have been issued penalties for driving offences. These programs could be issued by the local court when determining outcomes for driving offences. However, not many such programs currently operate to support this option.

**6.10 Should driver licence and registration sanctions be applied to people under 18 years of age for non-traffic offences?**

- Juvenile Justice is not in favour of driver licence and registration sanctions being imposed on young people. Where this is used for non-driving offences as well as driving offences this measure would exacerbate the issues identified in point 6.9.

**6.11 Should a young person in receipt of penalty notices for both traffic and non-traffic offences be issued with separate enforcement notices in relation to each offence?**

- See response to 6.8.

**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?**

- Conditional good behaviour following a penalty notice write-off for young people should be limited. This process should focus on the individual, taking into consideration their social circumstances, intellectual and mental capacity as well as previous criminal history.
- The Children's Court currently issues good behaviour bonds for six months for minor offences. This is a reasonable period of good behaviour for a child or young person and would be consistent with section 33 of the *Children (Criminal Proceedings) Act 1987*.
- Allowing longer periods of time to pay penalty notices (an increase from 28 days) is also relevant to young people. If a penalty notice is imposed the young person should be given an extended period of time to pay. Research suggests that when a young person has ongoing outstanding fines and a short time to pay, they tend to feel overwhelmed and usually do not get around to finalising their payments.

**6.11 Should any of the measures proposed by the New Zealand Ministry of Justice be applied in NSW?**

- The New Zealand Ministry of Justice focus on minimising debt while still deterring unacceptable behaviour has some merit for NSW. Lowering fines to an acceptable level to reflect the income of young people is a sensible initiative. As previously stated, if young people are to be fined at all, the payment schedule should be indexed to reflect the person's income and ability to pay.

**7.1 Whether penalty notices should be issued to people with an intellectual or cognitive impairment.**

- It is not appropriate to issue penalty notices to people with intellectual disabilities, cognitive impairments or serious mental illnesses. Such people will often be on a very low income. Further, cognitively impaired people may find it very difficult to fully comprehend and comply with their legal obligations (such as purchasing the correct ticket on the train) and may also be unable to comprehend the nature of the offence for which they are being fined.
- Juvenile Justice recognises that intellectual disability or other forms of cognitive impairment can be difficult to recognise by those who are untrained or who are only in contact with the person for a short period.

#### **Young people in the Juvenile Justice system and intellectual disability:**

- According to the Juvenile Justice 2003 and 2009 *Young People in Custody Health Surveys* there are high levels of intellectual disability and mental illness for this specific group of young people.

<b>Profile of Young People in Custody Health Surveys</b>				
<b>Characteristics</b>	<b>03 Overall</b>	<b>03 ATSI</b>	<b>09 Overall</b>	<b>09 ATSI</b>
IQ 70 and under	13%	17%	10%	13%
IQ 79 and under	27%	32%	45.8%	58.8%
Any Psychological Disorder	88%		86.7%	92.1%
Ever placed in care under 16	28%		27.2%	38.3%
Average age left school	14.5	14.0	14.4	14.0

- The surveys indicated that young offenders are often from disadvantaged backgrounds, characterised by poor educational attainment, disrupted families and engagement in regular risk-taking behaviour.
- The surveys also show rates of borderline intellectual disability as high as 45.8% among detainees. Education levels are commonly low, with three-quarters of detainees having left school before finishing Year 9, and over 90% having been suspended at one time or another.
- Levels of mental illness are high among offenders – 92% of detainees reported mild, moderate or severe symptoms consistent with a clinical disorder, and 30% reported high or very high psychological distress, implying that they may have an increased chance of an anxiety or depressive disorder.
- Aboriginal young people should receive focussed attention as they often present to children's criminal courts in early adolescence and remain in the criminal justice system into adulthood. Many have committed minor offences as children, which

should alert authorities that they are in need of support as opposed to criminal sanctions.