

Our ref: R08/0024
Your ref: 13.63
30 November 2010

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

Penalty Notices

Dear Mr McKnight,

Thanks you for the opportunity to comment on the Penalty Notices Consultation Paper.

The Local Government Association of NSW and the Shires Association of NSW are the peak bodies representing 152 local councils and 14 county councils covering the whole of the State of New South Wales.

The Associations have sought input from all councils to assist in the formulation of this submission.

1. Whether current penalty amounts are commensurate with the objective seriousness of the offences to which they relate.

Comment from councils is that the penalty amounts that are set out in the *Local Government Act 1993* are not sufficient to either cover the cost of issuing the notice or to act as a deterrent due to their relatively low set amounts. This is particularly apparent when looking at the penalty amounts that are available in other legislation such as the *Protection of the Environment Operations Act 1997*.

It was also brought to the Associations attention that penalty notice amounts had not been increased in a number of years and were therefore falling behind the CPI.

When looking at actual offences, in particular offences relating to approvals under Section 68 of the *Local Government Act*, disposing of waste in a sewer of council or to install, construct or alter a waste treatment device or human waste storage facility carry penalties of \$330. These are serious offences that could have serious health consequences. The Associations would argue that these penalties are inadequate.

2. The consistency of the current penalty amounts for the same or similar offences.

Issues raised with the Associations include the discrepancy between the ability of the Sydney Water Authority and Local Water Authorities to issue penalty notices for similar offences.

3. Formulation of principles and guidelines for a uniform and transparent method of fixing penalty amounts and their adjustment over time.

The Associations are of the opinion that it would be desirable for penalty notice amounts to be calculated using an increase comparable to the Consumer Price Index yearly and a full review to be undertaken every 5 years.

4. Whether penalty notices should be issued to children and young people having regard to their limited earning capacity and the requirement for them to attend school up to the age of 15.

The Associations do not believe that penalty notices should be issued to persons 16 years or younger.

5. Whether penalty notices should be issued to people with an intellectual disability or cognitive impairment.

The Associations are of the opinion that such persons should not be issued with infringement notices but are aware of some practical difficulties establishing the existence of such impairment. Guidelines would need to be developed to assist councils in this process.

Concerns have been raised regarding the differences between physical and intellectual disability and any level of discretion allowed council officers and councils in pursuit of any breaches.

6. Any related matters.

The appropriate fixing of penalty notices and the circumstances under which they can be issued has the ability to impact on a councils carrying out of its regulatory functions and is therefore of a major concern to local government.

The creation of a stand alone Penalty Notices Act is seen as a positive step in clarifying the how penalty notices are created, how their amounts are set and the procedures to be undertaken relating to infringement notices.

If you have any questions in relation to this submission please do not hesitate to contact the Association's Legal Officer Mr Frank Loveridge on [REDACTED]

Yours sincerely,

Bill Gillooly AM
Secretary General